

1 Q Okay. I'm asking you individually.

2 A Did I -- no. It was collective of me and my
3 husband together. The settlement was for my husband and I.

4 Q Okay. I didn't know that. That's why I'm
5 asking.

6 A Okay.

7 Q So the numbers we were provided by your husband
8 was \$25,430,000. That was jointly --

9 A Yes, it was.

10 Q -- between each of you, correct?

11 A Yes. That was for the two of us.

12 Q Okay. Thank you very much.

13 MR. WRIGHT: Nothing further.

14 THE COURT: All right. Thank you. Redirect.

15 MS. WECKERLY: Yes. Just briefly.

16 REDIRECT EXAMINATION

17 BY MS. WECKERLY:

18 Q Mrs. Washington.

19 A Yes.

20 Q Mr. Santacroce was asking you some questions
21 about some testimony that we heard from your husband. Has he
22 suffered, in your observation, a cognitive decline since all
23 this happened?

24 A Yes, he has.

25 Q And can you just give us a little bit more of a

1 sense of what the issues are?

2 A He doesn't remember, you know, facts, and
3 sometimes he even doesn't remember names of individuals that
4 he previously knew. He'll recognize their face but he said, I
5 can't remember their name. Or he'll have certain -- he may
6 remember today see, your name is Jane, but tomorrow he might
7 not remember you were Jane. He'll just know your face. And
8 like he say, I just say, Hi, how are you, you know, that kind
9 of thing. Or he doesn't remember a lot of just common things,
10 you know, everyday things.

11 Q So it's --

12 A It's just -- it's confusion.

13 Q -- primarily with his memory?

14 A Yeah. It's his cognitive status has changed.
15 It's just --

16 Q And has it gotten worse over time?

17 A Yes, it has.

18 Q Back closer to when these events occurred,
19 meaning right after you learned that he was positive for
20 hepatitis C, when he described what occurred with him at the
21 Endoscopy Center, did he describe getting a saline flush from
22 the nurse, or did he say the nurse only placed in the IV --

23 A That's what he said.

24 Q -- and there was no flush?

25 A He stated that the nurse placed in the IV, she

1 just hung the bag of saline, then he wheeled him over and the
2 other nurse, he said a tall male, started, you know, connected
3 up the heplock to -- he didn't know heplock, but he said it
4 connected up something to that, the IV where she started.
5 She -- he connected it up and he was the one that pushed the
6 medication in.

7 Q So the one who pushed the medication in is the
8 one that ultimately hooked up to your husband?

9 A Yes, that hooked it up, yes.

10 Q And Mr. Wright asked you about the lawsuits that
11 you filed.

12 A Right.

13 Q One of -- was one of the defendants a drug
14 company?

15 A Yes.

16 Q And does that drug company make propofol?

17 A Yes, it does.

18 Q And that was the medication used on your husband
19 in this procedure?

20 A Yes, it was.

21 Q And do you know if you are the only litigant,
22 the only plaintiff in this case?

23 A No, we are not.

24 Q Okay. I mean, to your knowledge there is more,
25 more than you?

1 A Multiple cases, yes.

2 Q And the settlement that you got, what are you --
3 what are you and your husband doing with that money?

4 A We can't do much of anything. What can we do?
5 He can't travel anymore. He can't bowl anymore. What do we
6 do?

7 Q Are you paying your doctors for now his
8 treatment?

9 A His medical treatment, that's the only thing,
10 and that's where we spend most of our time now, from one
11 doctor to another, from one specialist to another trying to
12 see what can be done, you know. He destroyed my husband's
13 life.

14 Q Thank you.

15 THE COURT: Recross.

16 MR. WRIGHT: Yes.

17 RE CROSS-EXAMINATION

18 BY MR. WRIGHT:

19 Q How many other -- I'm sorry, ma'am.

20 THE COURT: Ma'am, just take a minute. There's some
21 tissues up there.

22 THE WITNESS: I'm sorry.

23 THE COURT: Do you want a drink a water or anything?

24 Kenny, get her -- dispense a cup of water, please.

25 Let me know if you need a break. Otherwise just, you

1 know, take your time.

2 (Pause in proceeding.)

3 THE COURT: We'll be on cross -- recross.

4 BY MR. WRIGHT:

5 Q On the lawsuit against the manufacturer of the
6 propofol, okay?

7 A Yes.

8 Q How many other plaintiffs? How many other
9 [inaudible]. You indicated that you were just one party in
10 that lawsuit.

11 A From my understanding, there are other people
12 that have filed lawsuits too. According to the newspaper and
13 everyplace, we are aware of a lot of cases that filed
14 lawsuits. We were not the only one.

15 Q I understand that. I thought you were saying
16 that you had sued the pharmaceutical company and you were just
17 one [inaudible] getting a portion of some judgment.

18 A No. That is not what I stated.

19 Q Okay.

20 A What I was stating is that what I thought you
21 were asking, were there other parties that had sued the
22 pharmaceutical company and I told you yes, from my knowledge
23 there are other people. I don't know who those individuals
24 are, but according to the newspapers and everything there are
25 other parties. There were other people infected, so they

1 filed suits too, lawsuits also.

2 Q They weren't part of your lawsuit?

3 A No, they were not.

4 Q Yours was only yours --

5 A Yes.

6 Q -- and that settlement --

7 A Yes.

8 Q -- was only yours and no one else shared it?

9 A No, just ours. Just my husband and myself.

10 Q And it wasn't part of a bigger settlement?

11 A No, it was not.

12 Q The conversation you had with your husband
13 regarding the heplock, the starting of the heplock --

14 A Yes.

15 Q -- when did that take place?

16 A He told me when they took him back and they
17 asked him remove his clothing --

18 Q I'm sorry. Your -- you weren't there?

19 A No, I was not.

20 Q Okay.

21 A All I can do is tell you what he -- what he
22 stated to me, that when they took him back --

23 Q I understand that.

24 A Yes.

25 Q Let me finish.

1 A Okay.

2 Q What I'm asking you is he told you what
3 happened --

4 A Yes, that is correct.

5 Q And I'm asking you when did he tell you what had
6 happened back there?

7 A Oh, right after when he came out in the
8 procedure and we were going, you know, riding home and et
9 cetera.

10 Q Okay. Well, then so he told you right
11 afterwards about the heplock, how it had been placed, right?

12 A Yeah. He just --

13 Q Okay. And do you recall when you were
14 interviewed by the police like in April of 2008?

15 A Yes.

16 Q Okay. You and Michael Washington?

17 A Right.

18 Q Okay. And at that time you and Michael
19 Washington didn't know who or how the heplock had been placed,
20 correct?

21 A I don't remember that, no. I do not.

22 Q Okay. The -- let me show you and see if it
23 refreshes your recollection.

24 (Pause in proceedings)

25

1 BY MR. WRIGHT:

2 Q Do you remember being interviewed with Edward
3 Bernstein?

4 A My attorney, one of our attorneys.

5 Q Okay. And were you interviewed with him with
6 the police?

7 A Yes.

8 Q Was he present when the police interviewed you
9 and your husband?

10 A Yes.

11 Q Okay. And at that time, did Michael state he
12 received a heplock, but he did not remember when and where he
13 got it? Do you recall that?

14 A No, I can't tell you. No. I do not remember
15 that.

16 Q You don't remember him saying that or you don't
17 remember that --

18 A I don't remember him saying that. No, I don't.

19 Q And at that time did you tell the police, well,
20 I remember because he told me, and explained to them what had
21 happened?

22 A I don't -- I don't know if I did or not. I
23 can't remember that back far.

24 Q Okay.

25 A I don't remember that.

1 THE COURT: Mr. Wright, the jury's having a little --
2 some trouble hearing you.

3 MR. WRIGHT: Okay.

4 THE COURT: So I need you to speak up, try to speak
5 into the microphone there.

6 And then, ladies and gentlemen, if you're still
7 having trouble, just indicate and we'll make Mr. Wright hold
8 the handheld microphone.

9 BY MR. WRIGHT:

10 Q Okay. So don't recall if you told the police
11 that when they interviewed you?

12 A No. I do not remember every word I said to
13 them, no.

14 MR. WRIGHT: Okay. Nothing further.

15 THE COURT: All right. Oh, I'm sorry. You didn't do
16 recross. Go ahead.

17 MR. SANTACROCE: That's okay.

18 THE COURT: No, no. I mean, if you have any
19 additional questions, you can also --

20 RECROSS-EXAMINATION

21 BY MR. SANTACROCE:

22 Q The conversation you had with your husband
23 regarding the heplock, that was after the procedure was done
24 back in 2007?

25 A It was -- yeah, it was after the procedure was

1 done and, you know, it hadn't -- we talked over the long term,
2 meaning, you know, going over it. At that time his memory was
3 good. So, you know, in preparing for the trial and all that
4 kind of stuff, we'd go over -- we've gone over the -- what
5 happened to him, so. You know, he repeated it many times, so.

6 Q And he -- and he gave depositions in the civil
7 case, correct?

8 A Yes, he did.

9 Q And he explained that in the civil depositions,
10 correct, about the heplock?

11 A I'm sure he did.

12 Q He was very specific today, saying that he
13 received an IV, that the saline bag was hung up, that it was
14 flushed, and that he saw blood. That was my recollection of
15 his testimony. It was very specific. He's the one that used
16 the word "flushed." Are you saying that that is inaccurate,
17 his testimony's inaccurate?

18 A All I can say is that is not what he stated to
19 me.

20 Q Okay. And you're telling us that his memory is
21 not as good as it used to be, correct?

22 A That is correct.

23 Q When he testified that the two of you received
24 \$25,430,000, was that accurate?

25 A Yes. That is correct.

1 MR. SANTACROCE: Nothing further.

2 THE COURT: Anything else from the State?

3 MS. WECKERLY: No, Your Honor.

4 THE COURT: All right. Do we have any juror
5 questions for this witness? All right. I see no juror
6 questions.

7 Ma'am, Mrs. Washington, I'm about to excuse you.
8 Please don't discuss your testimony with anyone else who may
9 be a witness in this case, okay?

10 THE WITNESS: Okay.

11 THE COURT: Thank you, ma'am, and just follow the
12 bailiff from the courtroom. You are excused at this time.

13 And then, State, call your next witness.

14 MR. STAUDAHER: The State calls Dr. Patel to the
15 stand.

16 MR. WRIGHT: Can we approach the bench, Your Honor?

17 THE COURT: You may.

18 (Off-record bench conference.)

19 SHAILESH PATEL, STATE'S WITNESS, SWORN

20 THE CLERK: And please state and spell your name.

21 THE WITNESS: My name is Dr. Patel. First name is
22 Shailesh, S-h-a-i-l-e-s-h. The last name Patel, P-a-t-e-l. P
23 like Peter.

24 THE COURT: Thank you. Mr. Staudaher.

25 DIRECT EXAMINATION

1 BY MR. STAUDAHER:

2 Q Doctor, what kind of a physician are you?

3 A I'm an internal medicine physician.

4 Q And how -- did you practice here in town?

5 A I have been with the VA. I'm practicing for the
6 Veterans Administration.

7 Q How long have you done that?

8 A I have been with the VA since 1997, and over
9 here since 1998.

10 Q Do you know a patient by the name of Michael
11 Washington?

12 A Yes.

13 Q And have you had a chance before you came into
14 court today to review the record of Mr. Washington, at least
15 the record that you have of him?

16 A Yes.

17 Q Were you his physician and if so, in what
18 capacity?

19 A I am -- actually, I was his primary care
20 physician. So as an internal medicine, we have a patient who
21 is assigned to us, and so Mr. Washington was my primary care
22 patient.

23 Q Is he your current patient?

24 A No.

25 Q So when did he cease to be your patient?

1 A Somewhere in February of 2012.

2 Q And backward beyond before that, how long --
3 when did he first come to you and how long was he your
4 patient?

5 A I have been seeing him since 1999.

6 Q So quite a long time?

7 A Yes.

8 Q In reviewing his medical records, I wanted to
9 ask you a couple of questions. First of all, were you aware
10 that he went for an endoscopic procedure in 2007, specifically
11 July of 2007?

12 A Yes.

13 Q Was that a referral from your office to have
14 that done?

15 A Yes. My colleagues referred.

16 Q And whether it's you directly or in your review
17 of the medical record which you rely upon, can you tell us
18 what the reason was for the referral?

19 A It was a screening colonoscopy we ordered as a
20 part of a screening exam.

21 Q So at the time that this referral was done, was
22 there any medical problem that you were sending him for
23 because of the screen related to it?

24 A It was my colleague who referred this patient,
25 so I just want to be clear about that.

1 Q Certainly. But in your view of the medical
2 record, which is your record, right?

3 A Yes.

4 Q Was it strictly screening, or was there some
5 sort of medical problem that you were sending him to the
6 clinic for in addition?

7 A It was a screening test.

8 Q Now, prior to that screening test, and this is
9 the time period I'm talking about, 1999 all the way up to
10 2007, July 25th is when the procedure was done, correct?

11 A That is correct.

12 Q So up to that point had Mr. Washington ever
13 been, to your knowledge through your review of the records,
14 ever been diagnosed with hepatitis C, B, A, anything?

15 A No.

16 Q You, I assume, over the years may have had blood
17 work done on him?

18 A Yes.

19 Q The blood work, would that include like
20 chemistries, things like that of the blood?

21 A Yes, chemistry.

22 Q Would the chemistries include liver function
23 tests?

24 A Yes.

25 Q Would liver function tests have been something

1 that you would have reviewed over the years?

2 A Yes.

3 Q So you -- is it fair to say that that happened
4 more than once, it was a regular kind of thing over the years?

5 A That is correct.

6 Q Did you ever see any incidence where there was
7 an elevation in any liver function test which would have made
8 you think that he had a problem with his liver?

9 A No.

10 Q Was there any evidence of liver cancer or
11 anything like that with Mr. Washington?

12 A Not that I know.

13 Q Not that you're aware of --

14 A Yes.

15 Q -- from your treatment and records --

16 A Yes.

17 Q -- and so forth, correct?

18 A Yep.

19 Q And again, as far as his sort of situation, was
20 there any medical problem that related to his liver;
21 cirrhosis, cysts, fatty liver, anything that would be a
22 concern to you?

23 A Well, he had fatty liver, but that was on the
24 CAT scan exam. But that's the only thing I know.

25 Q And is that something that's pathological in the

1 nature of something that would cause an impairment to his
2 liver function?

3 A Yes, it can.

4 Q Was it during the time that you were seeing him?

5 A No.

6 Q Now let's move forward in -- oh, before I get
7 there. Were there any risk factor -- I assume when you do --
8 see a patient as a primary care physician, you do histories
9 and physicals periodically; is that right?

10 A That is correct.

11 Q During the time you do a history and physical,
12 do you also get kind of a social history or a review of
13 systems as it's called?

14 A Yes.

15 Q In that do you ask questions like alcohol use,
16 sexual contacts, things like that to give you an idea of what
17 the lifestyle was of the person?

18 A Yes.

19 Q Was there any indication that you had prior to
20 him going to the clinic, from a lifestyle perspective, that he
21 had any risk factors for hepatitis C?

22 A No.

23 Q No blood transfusions from any procedures that
24 he'd had done, anything like that?

25 A I'm not certain about that.

1 Q Okay. But at least according to your records,
2 was there any record of anything like that in the case?

3 A Not in my records, no.

4 Q So let's move forward in time past the screening
5 date of July 25. Did you ever see him again after the test?

6 A Yes.

7 Q Did he have any problem when he came back to
8 you?

9 A I saw him in October or November.

10 Q Okay. And what was the issue?

11 A That visit was medication refill visit, you
12 know. And he had mild enzyme elevation of the AST and ALT.

13 Q Was it something -- was it something that was
14 different than what you had seen before in all the testing you
15 had done in the past?

16 A That's correct.

17 Q Did it alarm you?

18 A It alarmed me in a sense that I had to order
19 [unintelligible] test, you know, and that's what I did.

20 Q And what was elevated at that time?

21 A AST and ALT was elevated.

22 Q Can you tell us what those are?

23 A Both of them, AST and ALT, are liver enzymes,
24 and they were twice the normal that what I used to see before.

25 Q Okay. As far as those tests are concerned, you

1 ordered the secondary test because of those; is that fair?

2 A That is correct.

3 Q When he's -- when he's before you on that visit,
4 is he showing any outward signs or symptoms of any problem?

5 A Not when I saw him in November earlier. Earlier
6 somewhere in November 2007.

7 Q Are you talking about this is the first time you
8 see him for this problem, or was this later -- or earlier
9 rather?

10 A I'm talking about a visit in November after he
11 had the blood work done that was in October.

12 Q Okay. So in October you see this, you have some
13 concerns, you have the blood work done, and then you see him
14 in November?

15 A Yes. That's correct.

16 Q So when he comes back in November, what's the
17 situation?

18 A Well, that's where I notice that he had little
19 bit elevation of liver enzyme, you know.

20 Q Oh, I'm sorry. So liver enzymes are elevated in
21 November. What do you do, or what happens to him after that?

22 A Well, I ordered another test, you know, to make
23 sure that what are the reason for this elevation of liver
24 test, you know.

25 Q And what was the test that you ordered?

1 A We ordered hepatitis screening test.

2 Q Did you get the results of those?

3 A Yes.

4 Q And what were they?

5 A His hepatitis C, B were positive. And our lab
6 does other tests, you know. If hepatitis C is positive, they
7 ordered the viral count.

8 Q So was that done?

9 A That was done automatically as per our lab's
10 policy.

11 Q So the initial test showed this positivity for
12 hepatitis B and C?

13 A Yes.

14 Q The tests that you did subsequent to that, what
15 did those show?

16 A I had a high hepatitis C virus level.

17 Q And what about the hepatitis B?

18 A Hepatitis B, the patient was already immune to
19 it, you know. So that means he has developed immunity, so we
20 don't look for hepatitis B virus at that time.

21 Q Okay. So the hepatitis C virus was active, and
22 whatever was going on with the hepatitis B was just the
23 antibody or something that you were looking for, or that you
24 saw?

25 A Yes. The patient had developed antibodies so

1 that, you know, in that case if the core antibody's positive,
2 we don't look for hepatitis B.

3 Q So that means that it's -- could that have
4 been -- could somebody -- what about the vaccinations that are
5 done for hepatitis, anything like that? And I'm talking about
6 hepatitis B vaccinations obviously, because there is no
7 hepatitis C vaccination, correct?

8 A Yes.

9 Q If you have a hepatitis B vaccination, do you
10 end up with a core antigen that shows positive on further
11 tests?

12 A If you have hepatitis B vaccination, you will
13 not get positivity for core antibody, no.

14 Q And is that what you had in this particular
15 case?

16 A This patient had core antibody positive. That
17 means he must have had infection and he got over with it.

18 Q Okay. So that would have been in the past?

19 A Yes.

20 Q So what you were dealing with right now was an
21 acute hepatitis C viral infection; is that correct?

22 A What I saw was hepatitis C virus positivity when
23 I saw him in November.

24 Q In November, when you saw him, was he then
25 exhibiting any outward symptoms, any jaundice, any abdominal

1 pain, anything that was going on?

2 A As far as I remember, when I saw him in
3 November, it was the medication refill visit at that time. We
4 do do screening tests, you know, anytime patient is visiting
5 us, so that's where I noticed the liver enzyme elevation.

6 Q So when the tests came back that show that it
7 was positive for hepatitis C, an active infection, what
8 happened next? What did you do?

9 A We obviously wait for hepatitis C virus and -- a
10 count, you know, and also ordered the ultrasound of the liver,
11 you know, to make sure that why his enzymes were elevated.

12 Q So what did the ultrasound show?

13 A Ultrasound shows there was no obstruction,
14 because we look for, you know, if somebody's -- you have to
15 understand that I saw him in November and then my colleagues
16 saw him again in November, a little bit later part, you know.
17 And that's where the enzymes were very high, you know. So
18 we --

19 Q Then he came back to you again?

20 A Why he came back to me, because I had to call
21 him in November because we had very, very high enzyme at that
22 time, extremely high enzyme.

23 Q So between the first time when you saw the
24 elevation until he goes to see your colleague and then he
25 comes back to you, the elevation of those enzymes had gone

1 way, way up; is that fair?

2 A Yes. So the -- I saw him in November earlier,
3 the first or second week, and at that time I had the blood
4 work from October. So I ordered the hepatitis C test and a
5 viral load test. And then patient comes and sees in later
6 part of November, 26 or 27, I'm not sure, but he sees my
7 colleague. And at that time he had jaundiced, and my
8 colleague ordered another blood test. And at that time he had
9 very, very high enzymes.

10 So that's where I call around November 28 to see, to
11 make sure that we want to do liver test -- I mean, ultrasound
12 of the liver to make sure why do you have jaundice.

13 Q So when you saw him after your colleague did,
14 did he have jaundice?

15 A That would be in December I saw him, in December
16 7th or 6th.

17 Q So that was a while later. Did he have jaundice
18 at that time?

19 A Yes, he had jaundice.

20 Q Okay. Did he have any other symptoms that he
21 was exhibiting at that point beside jaundice?

22 A I'm not sure whether he had constitutional
23 symptoms or not, but I think not that I recollect right now.

24 Q Dark urine, anything like that that he --

25 A He did have dark urine, that's true.

1 Q So the -- what are the standard symptoms for
2 somebody that comes in with hepatitis?

3 A Lack of appetite, you know, dark urine. You
4 start showing the yellowness of your skin, your eyes get
5 yellow and you feel weak and tired.

6 Q Weight loss, things like that, clay colored
7 stools, all of those things?

8 A Yeah. In advance case, you know, you might --
9 if you have obstruction, then you don't see any color in your
10 stool, which is usually yellow. So it's white stool.

11 Q And in this case did he have the weight loss as
12 well?

13 A Not that I recollect right now.

14 Q But you do recollect the dark urine and the
15 jaundice for sure?

16 A That is correct, yes.

17 Q Then after that, what did you do? Did you refer
18 him somewhere? Did you continue to treat him?

19 A I referred him to gastrointestinal clinic, GI
20 referral again.

21 Q And where was that?

22 A We make referral to our gastroenterology
23 department, and they contract out to endoscopy group.

24 Q Do you know where he went after that?

25 A He went to gastro center.

1 Q The place where he had his colonoscopy?

2 A That is correct.

3 Q So he gets referred back to the place where he
4 had had his colonoscopy?

5 A That is correct.

6 Q After he went there -- I mean, you've obviously
7 been his -- was his doctor thereafter, correct?

8 A Yes.

9 Q Up until 2012, I think you said?

10 A Yes.

11 Q When you were dealing with him after that, did
12 he continue to have issues? I mean, was he further being
13 treated? For example, did he ever receive treatment like
14 interferon therapy?

15 A I did refer him to an infectious disease doctor,
16 and the conclusion was that he wanted to wait, not proceed
17 with the treatment.

18 Q Who, the patient or the infectious disease
19 person?

20 A I think it was a joint discussion as far as I am
21 reading the infectious disease note, you know. That's what my
22 recollection is.

23 Q Was there anything that precluded him from
24 having that therapy, to your knowledge?

25 A He might have comorbidities, you know, that's

1 why.

2 Q But that wasn't your realm? You weren't dealing
3 with that?

4 A No. That is not my specialty.

5 MR. STAUDAHER: I have nothing further, Your Honor.

6 THE COURT: All right. Cross.

7 CROSS-EXAMINATION

8 BY MS. STANISH:

9 Q Good afternoon, sir. Can you tell us how long
10 you were doctor -- I'm sorry, Mr. Washington's doctor, for how
11 long?

12 A Since September of '99.

13 Q And were you his primary doctor, or were there
14 other doctors that treated him?

15 A I was his primary care doctor, but once in a
16 while, if I'm not there, they will see other doctors too.

17 Q And educate us a bit about the VA. Did you have
18 his entire medical record prior to 1999? I mean, did that
19 medical record follow him from wherever he was in the military
20 to the VA office where you were?

21 A No. I had the records from the previous doctor
22 in the VA prior to '99. And obviously I obtained the history
23 and physical myself.

24 Q And I'll come back to that in a moment. I want
25 to jump now to what you had to tell us about some of the liver

1 tests that you had done and the results, in particular the
2 hepatitis B, bravo. Is -- I want to make sure I understood
3 what you testified to earlier. He tested positive for both
4 hepatitis C and B, correct?

5 A Yes.

6 Q And did I understand you to say that at one time
7 he was infected with hepatitis B?

8 A Well, when I saw the result of hepatitis
9 screening that is A, B and C, the C was positive. The B
10 had -- we do two antibodies. One is surface antibody and we
11 do core antibody. And if somebody has surface antibody and
12 core antibodies positive, that means they are -- they are
13 immune to it, you know. And his hepatitis A test was
14 negative.

15 Q Right. I under -- I think I understood that,
16 that by the time you get these results back they show some
17 kind of immunity to hepatitis B. But I thought I understood
18 you to say in response to Mr. Staudaher's question that he had
19 this -- he now was immune to hepatitis B. My question is:
20 Based on your training and experience and these test results,
21 was there a time where -- when he was likely infected with
22 hepatitis B?

23 A That's correct.

24 Q Can you elaborate on that, please?

25 A Based on my knowledge as a primary care, that if

1 somebody's immune to hepatitis B, that means he had hepatitis
2 B in the past.

3 Q All right. Now let's go back to the medical
4 records. I understand that you inherited the medical records
5 from the previous VA doctor who treated him. Do you recall
6 seeing anything in his medical records that disclosed the fact
7 that he had hepatitis B?

8 A No.

9 Q And it's possible, is it not, that somebody
10 could have hepatitis B, hepatitis C, ABC, whatever letter, and
11 not know it?

12 A It is possible.

13 Q But you saw nothing in Mr. Washington's records
14 that would indicate he did in fact have hepatitis B at one
15 point?

16 A Not from the test that I was following.

17 Q I mean from his medical records in general. You
18 have a lot of records on him, I assume?

19 A Yes.

20 Q And I understood you to say that you took a
21 social history from him.

22 A Yes.

23 Q Educate us a bit on hepatitis B, to the extent
24 you can as an intern -- internist. As an internist, you have
25 training on hepatitis in general, do you not?

1 A Yes, in general. So what is your question? I'm
2 sorry.

3 Q Well, let me just lay a little foundation here.
4 Do you treat many people for various types of hepatitis C or
5 B?

6 A No.

7 Q But you identify people who have hepatitis?

8 A Yes.

9 Q Then once you identify them, you refer them on
10 to a specialist?

11 A That is correct.

12 Q Do you know what are the risk factors that would
13 lead somebody to having hepatitis B? What kind of behavior
14 would I have to engage in to be a likely candidate for
15 hepatitis B?

16 A You had to have exposure to blood or body fluid,
17 and that could be surgery or if you had had infected blood, or
18 if you came in contact with anybody's body fluid in any shape,
19 or if you were using IV drugs, you know. Those are the risk
20 factors.

21 Q Do you -- when you do the -- when you did the
22 social history for Mr. Washington, did that social history
23 include a discussion of these kinds of risk factors or
24 behaviors?

25 A Not in that detail.

1 Q You wouldn't talk to -- you wouldn't collect
2 from him information about whether he had surgery before? I
3 know my doctor always seems to ask me a lot of things that
4 I --

5 A We [unintelligible]. I mean, if I -- I usually
6 ask for the surgery, no doubt about it, you know.

7 Q Would you ask about use of controlled
8 substances, intravenous drug use?

9 A Yes. That one I ask.

10 Q Do you -- what would you ask with respect to
11 anything that would be blood or body fluid borne, anything in
12 that regard?

13 A I don't think I asked him about that, you know,
14 because not that I can see from my documentation.

15 Q I want to talk a bit about the -- well, let me
16 ask you this: How often did you see Mr. Washington over a
17 course of time? Did he come in annually or less than
18 annually?

19 A No. He always came annually. I might have seen
20 every, I would say, three, four, five months interval.

21 Q Since you -- just to get me a timeline on this,
22 you started seeing him in 1999 --

23 A Yes.

24 Q -- and then you would visit with him how often
25 through --

1 A Every three to five months.

2 Q Beginning in 1999?

3 A Yes.

4 Q Why so often?

5 A Because he has other medical problems too.

6 Q And what are those medical problems at that
7 time?

8 A He has diabetes, coronary artery disease,
9 hypertension, obesity. He has sickle cell trait. And hearing
10 problem, he has a hearing loss. And I think I already
11 mentioned about diabetes.

12 Q Just to educate us a bit on some of the blood
13 tests that you would periodically give him, I understand from
14 Mr. Staudaher's questioning that you would have liver
15 functioning tests administered; is that correct?

16 A That's correct.

17 Q And a liver functioning test will show whether
18 or not there's -- what the level of enzymes are in the liver;
19 is that correct?

20 A Yes.

21 Q Something like that?

22 A Yeah.

23 Q Am I right in that? Am I explaining that
24 correctly? I mean, if I'm a three-year-old, how would you
25 explain to me what a liver function test does?

1 A A liver function is a blood test which tests for
2 a couple of enzymes, protein, and that tells us the status of
3 liver function.

4 Q And does the liver function fluctuate at any
5 given time? I guess the enzymes is -- I didn't word that
6 right. I'm sorry. Do the enzyme levels change over time?

7 A No. They have a normal limits, you know. They
8 don't go beyond that. They are not the same number all the
9 time, but they have a range, you know. So they do fluctuate,
10 but they have a narrow range, you know. They stay within the
11 range.

12 Q These liver function tests are not designed to
13 determine whether the person has hepatitis C or B, correct?

14 A Yeah. We cannot say that it is B or C, because
15 we have to have the test. So you're right, enzymes are not
16 designed to diagnose --

17 Q You have to have a qualitative hepatitis C or
18 hepatitis B blood panel, correct?

19 A That is correct.

20 Q And that's ultimately what you've described here
21 that Mr. Washington eventually did receive, correct?

22 A That is correct.

23 Q What did you mean in response to Mr. Staudaher's
24 question about Mr. Washington having a fatty liver?

25 A That was a test that was done somewhere in

1 November on a CAT scan that shows that he had the fatty liver.

2 Q Oh, so that was in November of 2008. You had
3 mentioned that he was obese throughout your treatment of him
4 since the 1990's; is that correct?

5 A That is correct.

6 Q And that doesn't have anything to do with --
7 does his weight have anything to do with that?

8 A Well, you can have fatty liver if you are very
9 obese, you know. But not -- I don't recall that we ever did
10 the test for it.

11 Q So he could have had liver issues, but it wasn't
12 something that was tested for until 2008; is that fair to say?

13 A We didn't do ultrasound or CAT scan, but we did
14 do blood work for the liver function test, you know.

15 Q Okay. The liver function test that we already
16 discussed. All right. And were you aware that he had some
17 heart surgery, I think, in around 2005 or so?

18 A I remember I thought he had a stent, not the
19 heart surgery.

20 Q What is that?

21 A That means a cardiac catheterization and
22 somebody puts a spring-like device to open up the blood
23 vessels. That's the stent, you know.

24 Q Is that what goes up -- they cut through the leg
25 and put something up the vein?

1 THE WITNESS: My name is Michael Washington,
2 M-i-c-h-a-e-l, E, Washington, W-a-s-h-i-n-g-t-o-n.

3 THE COURT: We're hearing some noise. Is that coming
4 from -- do you have hearing aids in?

5 THE WITNESS: Yes.

6 THE COURT: Okay. Are the microphones making the
7 sound worse for you, or...

8 THE WITNESS: Well, it was ringing there.

9 (Pause in proceeding.)

10 THE COURT: Okay. That will not work then.

11 MR. STAUDAHER: Maybe I'll just try and talk loudly,
12 Your Honor.

13 THE COURT: And what we can do to assist you is we
14 have a handheld microphone. And so, Mr. Washington,
15 Mr. Staudaher is going to try talking there with that
16 microphone. If that doesn't work, we're going to give him a
17 handheld microphone.

18 MR. STAUDAHER: Okay. And I can use that. Sir, can
19 you hear me?

20 THE WITNESS: Yes, I can hear you.

21 MR. STAUDAHER: I'll try to speak loudly enough that
22 you can hear me, okay?

23 THE WITNESS: Great.

24 MR. STAUDAHER: If at any time during the questioning
25 I drop down in my volume of questions, I mean as far as you

1 not being able to hear me, please let us know.

2 THE WITNESS: Yes.

3 MR. STAUDAHER: Okay. I'll also try and talk a
4 little slower, so that you can see or get the words all out,
5 okay?

6 THE WITNESS: Yes.

7 DIRECT EXAMINATION

8 BY MR. STAUDAHER:

9 Q Sir, I'm going to take you back in time a little
10 bit to not just a -- the time frame is July 25th of 2007, but
11 I want to take you back even further than that, okay?

12 A Yes.

13 Q Now, you know why you're here today, correct?

14 A Yes.

15 Q At some point prior to July 25th of 2007, did
16 you go to your doctor and get referred to the Endoscopy Center
17 of Southern Nevada for a colonoscopy?

18 A Yes, I did.

19 Q Who was the doctor that you went and saw?

20 A Dr. -- I can't quite remember his name now.

21 Q Does Patel sound familiar to you?

22 A I beg your pardon.

23 Q Does Patel, the word --

24 A Yeah. Dr. Patel.

25 Q Patel. Okay.

1 A That's who was --

2 Q So when you went -- was he a doctor that you had
3 seen before? Was he your primary doctor?

4 A Yes. Dr. Patel was my primary doctor.

5 Q So you had been seeing him for quite some time?

6 A Yes.

7 Q At the time that he refers you to go and have
8 the colonoscopy done, did you have any medical problem, or was
9 it just for screening? What was the reason?

10 A The problem was just for screening, that I was
11 over 60 years old and had not had a scope, completed the
12 physical. And that was part of the physical, by having that
13 test.

14 Q How long after you went and saw the doctor did
15 you go to the clinic? Was it the next day, a week later, how
16 far?

17 A I'm not sure of that day that I -- I won't give
18 that to you.

19 Q I want to talk to you again about before you
20 actually go to the Endoscopy Center, okay?

21 A Mm-hmm.

22 Q And you have to answer yes and no. You can't
23 just nod your head in this one, the courtroom, okay?

24 A All right.

25 Q All right. Because the court recorder is taking

1 down all the words that are being said and we've got to make
2 sure we have a transcript of it, okay?

3 A Yes.

4 Q Now, before you went to the clinic, had you ever
5 had any issues with regard to signs or symptoms of hepatitis?

6 A No.

7 Q Had you ever had any sickness where somebody had
8 said you had a liver problem?

9 A No.

10 Q Cirrhosis?

11 A No.

12 Q Cancer of the liver, anything like that?

13 A No.

14 Q Any indication whatsoever that you had -- you
15 know what jaundice is, do you not?

16 A Yes, I do.

17 Q The yellowing of the skin and eyes and so forth?

18 A Yes.

19 Q Did you ever have any of those kinds of symptoms
20 before you went to the clinic?

21 A No. Let me think for a minute. When I left
22 Dr. Patel -- no, not before I went to the clinic.

23 Q Not before? Okay. And again, the time frame
24 I'm talking about is before you went to the clinic. Okay.

25 A No. I did not have any --

1 Q Now, you eventually go to the clinic, correct?

2 A Correct.

3 Q And after -- and we're going to talk about that
4 in just a moment, but now I want to talk to you about after
5 the clinic. After you went to the clinic, did you start to
6 develop some kind of a problem?

7 A After the clinic and after the test, yes.

8 Q Tell us about that. About how long was it after
9 you went to the clinic that you started to have trouble?

10 A I'm not sure about that one. I could not give
11 you a --

12 Q Well, was it a month, months?

13 A Yes. It was around a month.

14 Q So a few weeks afterward?

15 A Yes.

16 Q During that time frame when you start having
17 these problems, what kind of problems were they?

18 A One was that my eyes turned yellow. I had a
19 problem with my -- with urine being very, very dark like that,
20 and problems with the stomach.

21 Q Now, had you had those kinds of problems at any
22 time in your life before you went to the clinic?

23 A No, I did not.

24 Q So this was the first time you had experienced
25 those kinds of problems?

1 A Yes.

2 Q Okay. Now, I'm kind of jumping around, but now
3 I want to move back to the time when you were -- when you went
4 to the clinic for your treatment. Okay. You go to the
5 clinic. Do you remember who the doctor was that you were
6 dealing with that day?

7 A I was going to deal with Dr. Desai, was going to
8 do the test.

9 Q Was this over on the Shadow Lane clinic?

10 A Yes. The Shadow Lane clinic.

11 Q So you go over there. I want you to walk me
12 through the day, from the first time you get there until you
13 leave. Were you with anybody, first of all?

14 A Yes. My wife was with me.

15 Q When you got to the clinic, about what time of
16 day it was, to the best of your recollection?

17 A At 8:00 o'clock that morning.

18 Q 8:00 o'clock?

19 A Yes.

20 Q Was that when your appointment was, or just when
21 you arrive?

22 A We was notified of an early appointment.

23 Q So you go at 8:00 o'clock?

24 A Yes.

25 Q When you get to the clinic, what happens? What

1 do you do first?

2 A What did I do first?

3 Q Yes.

4 A I have to sign in at the desk at the clinic.

5 Q And then what happened after you signed in?

6 A After I signed in, I was picked up by --
7 escorted by the nurse to the area that you have to go to.

8 Q Okay. Now, before you did that, at any time did
9 you have to wait in the waiting room at all?

10 A It was a very short wait.

11 Q So were there any other patients --

12 A It wasn't maybe ten minutes.

13 Q -- there at that -- I'm sorry. I was talking
14 over you and I'm not supposed to do that.

15 So please finish your answer, sir.

16 A It was a very short time.

17 Q So from the time you get into the clinic until
18 you actually go back for whatever they're going to do to you,
19 you didn't have to wait very long?

20 A Yes. True.

21 Q When you were there though, are there other
22 patients in the clinic at that time?

23 A Yes.

24 Q A few, a lot? I mean, what was the volume?

25 A I beg your pardon.

1 Q How many patients were there? Not an actual
2 number. Were there a lot or were there just a few?

3 A I cannot give you an answer on that. I do
4 not --

5 Q You don't remember?

6 A -- remember that. Right.

7 Q So once you sign in and you start to go back,
8 where is the first place that you go?

9 A The first place I went to was the dressing room
10 with the nurse. She escorted me back to the dressing room.

11 Q Was your wife with you at that time?

12 A Yes.

13 Q Okay. So she went back to the dressing room
14 with you?

15 A Yes.

16 Q What did they have you do?

17 A They had me take off my clothes and put on a
18 gown.

19 Q After you did that, where did you go next?

20 A Next we was into -- finally into the examination
21 room where the test was going to be.

22 Q Okay. Did they do anything to you before you go
23 into the procedure room?

24 A Yes.

25 Q Let's talk about that for a minute. What kinds

1 of things -- I mean, what did you do? What happened?

2 A The nurse gave me an IV in my arm, left arm.

3 Q Okay. Where in your arm was it, if you recall?

4 A Right in here [indicating].

5 Q So they put a needle in your arm?

6 A Yes. They put a needle in there and also they
7 hung a bottle up over the top of the bed that I was in.

8 Q So they have a bottle hanging up there. Did
9 they connect the bottle to you, or did they just put this
10 thing in your arm?

11 A They connected the bottle to the IV.

12 Q So you go in there. When they put this device
13 in, was it something that they had to tape down or do
14 something to after they stuck the needle in your arm?

15 A Yes. They did have to tape it down.

16 Q Did they ever use the term, like a heplock or
17 something like that?

18 A I don't recall heplock.

19 Q Okay. But it was something that was sticking in
20 your vein in your arm?

21 A Yes. Right.

22 Q So was this a nurse or a doctor that came out
23 and did this?

24 A This was a nurse who did this.

25 Q As far as your interaction with that person,

1 after they put that sort of IV in your arm, did they ever
2 flush it with any kind of syringe of anything?

3 A Well, yes. They had to flush out, the blood out
4 of their line, so that was that IV that was up, they ran
5 something through it. They had to clear the blood out of the
6 line down there where the needle was.

7 Q So that's what they connected up and then that
8 flushed some of the blood out; is that right?

9 A Correct.

10 Q When you had that IV put in, was there blood
11 that came -- you know, you could see blood in your arm where
12 they poked it?

13 A Yes.

14 Q Now, the person who did that for you, was that
15 person involved in any kind of procedure with you after that,
16 the person who put the IV in your arm?

17 A There was times that that person kept -- it was
18 two times. One, they pushed me into the room where they was
19 going to run the test, and then after the test was finished
20 she pulled my bed out --

21 Q So she helped you get in and then she helped you
22 get out; is that right?

23 A True.

24 Q So when you're in that area where they put the
25 IV in, did anybody ever come up and plug anything into it and

1 inject anything to you while you were waiting before you went
2 into the procedure?

3 A No.

4 Q So you just waited until they were ready to take
5 you back?

6 A True.

7 Q How long did you wait there before you went
8 back?

9 A I'm not sure of that, but it's maybe -- maybe 10
10 to 15 minutes.

11 Q So once you get back to the room, was it that
12 same nurse that you -- took you into the room then?

13 A She took me into the test room and then left.

14 Q What happened when you got into the test room?

15 A Went into the test room, I was right there and
16 waited for them to put the -- give me medicines to put me to
17 sleep.

18 Q Were you sitting down, lying down, what --

19 A No. I was lying on the bed, the stretcher.

20 Q Were you on your back?

21 A Yes, on my back.

22 Q So at some point do they make you move, roll
23 onto your side or anything like that?

24 A No. I never rolled on my side.

25 Q Now, you said that there were -- was there

1 anybody in the room when you got inside the room?

2 A Yes. There was Dr. Patel -- a doctor was there,
3 and also there was a technician there who was dispensing
4 drugs.

5 Q Okay. So let's talk about the technician. Is
6 that the person that put -- when you say dispensing drugs, did
7 somebody put you to sleep eventually?

8 A Yes. It was him.

9 Q It was that person?

10 A Yeah. He gave me the solution.

11 Q And was that a male?

12 A Yes.

13 Q Did you have any -- when you first get into the
14 room, was that male there? Did he come in the room later?

15 A Yes. He was there.

16 Q When you first get in the room?

17 A Yes.

18 Q So when you get into the room that male's there.
19 Did he ask you any medical questions, like what's your history
20 or anything like that?

21 A No.

22 Q Did you have any real discussion with him at
23 all?

24 A No. No discussion with him at all.

25 Q Did he ever say anything to you the whole time

1 you were in the room?

2 A No. He just spoke to me, said good morning,
3 that was about it.

4 Q So he introduces himself. And you said that he
5 was the one that was dealing with the medicines?

6 A Repeat that again.

7 Q That was dealing with the medicines.

8 A Yes.

9 Q Now, the doctor who actually does your
10 procedure, I think you said it was Dr. Desai; is that right?

11 A Yes.

12 Q Did he -- did you see him come into the room at
13 some point?

14 A Yes. He came into the room.

15 Q And then what happened after he came into the
16 room?

17 A He just spoke, said, Good morning, and then they
18 gave me my solution.

19 Q Now, the person who gave you the solution was
20 this technician you said that was in the room?

21 A Yes.

22 Q Do you know who that was?

23 A No. I do not.

24 Q But he was the one who actually pushed the
25 medication in?

1 A True.

2 Q Did you see him do that?

3 A No. I didn't see him push it in from -- draw it
4 up or anything. All I did was saw him when he, you know, the
5 injection in my arm. That's about all.

6 Q But did you see that actually happen?

7 A What?

8 Q The injection itself.

9 A Yes.

10 Q Okay. When that occurs, I assume that you fell
11 asleep fairly soon after that; is that right?

12 A Yes.

13 Q When you wake up, where are you?

14 A When I wake up I was in the test room, then the
15 nurse came in and gave -- pushed my bed out.

16 Q So you actually woke up in the same room that
17 you had the procedure done in?

18 A Yes.

19 Q When that nurse comes back into the room and
20 takes you out, did that man who put you asleep, put you to
21 sleep, was he still in the room?

22 A As far as I could see, yes.

23 Q Okay. You didn't see him walk out with you for
24 instance?

25 A No. I did not.

1 MR. SANTACROCE: Objection. Leading.

2 THE WITNESS: No.

3 THE COURT: Overruled.

4 BY MR. STAUDAHER:

5 Q So when you get out to the recovery room, or the
6 place that they took you -- my word, not yours. I'm sorry.
7 After you leave the endoscopy or the -- as you called it, the
8 test room, where did you go next?

9 A What room -- repeat that. For the test room?

10 Q The room that you said you had the test in, the
11 procedure in.

12 A Yes.

13 Q Where did you go next?

14 A Next we was pushed out into the waiting area
15 sort of right there by the nurse.

16 Q And how long were you out there roughly?

17 A Oh, I would say about 20 minutes, because they
18 had to -- had to take the IV loose.

19 Q Okay. So they eventually take that IV out at
20 some point?

21 A That's true.

22 Q And then do you leave shortly thereafter?

23 A Yes. I changed from -- into my clothing, yes.

24 Q And then leave?

25 A Yes.

1 Q At any point when you were out in the recovery
2 area, that place that they took you to after the test, did you
3 ever see that man who put you to sleep again?

4 A No. I did not see him.

5 Q So he never came out to you and ministered to
6 you, did anything with you out in the recovery area?

7 A Not that -- I didn't see him.

8 Q What about Dr. Desai, did you see him after your
9 test?

10 A No, I did not.

11 Q So he didn't come up to your bedside at any
12 point and say anything to you or --

13 MR. SANTACROCE: Asked and answered.

14 THE WITNESS: No.

15 THE COURT: Go on, Mr. Staudaher.

16 BY MR. STAUDAHER:

17 Q Did not, never saw him?

18 A No.

19 Q Before you left the building though, did Dr.
20 Desai or anybody else come up and talk to you about your test
21 or anything like that?

22 A No. There was another technician there that
23 explained the results from the test.

24 Q So it was somebody different than the previous
25 people you had already seen?

1 A Yes. Right.

2 Q And then did you leave after that?

3 A Yes.

4 Q Now, you said your wife was there during the
5 time you were in the clinic, correct?

6 A Yes.

7 Q When was the -- when did your wife separate from
8 you when you first started the process? I mean, did she go
9 back into the procedure room with you?

10 A She went back to where I changed clothes and I
11 got -- I was on the cart and getting ready to be pushed into
12 the test room by the nurse.

13 Q So after you go to the test room, does your wife
14 come in there with you?

15 A No. She was not. She had to stay outside.

16 Q So when you finally get to the other end when
17 you're getting ready to leave, at what point does your wife
18 come back in, do you make contact with your wife again?

19 A My wife was waiting for me right there beside
20 the nurse that went over the information from the test, and
21 then we left.

22 Q So she then takes you home?

23 A Yes.

24 Q And you said -- now let's move away from the
25 clinic for a moment and move forward in time, to the time that

1 you said you started having these symptoms, the dark urine and
2 so forth. Okay. When you started having the problem.

3 A The what?

4 Q When you started having the problem later on,
5 we're going to move to that time period, okay?

6 A Yes.

7 Q So when that started happening to you, what did
8 you do? I mean, was this something that was disturbing to
9 you?

10 A No.

11 Q So you were kind of noticing that something
12 wasn't right, but did you eventually go to the doctor about
13 it?

14 A No. I didn't have to go to the doctor from
15 that -- directly from that test, no.

16 Q No, no, no. Let's back up and make sure we're
17 clear. I'm not talking about after you get off the test. I'm
18 talking about later on, when you start having the trouble with
19 your stomach and your -- and your urine turning dark, your
20 eyes turning yellow, that kind of thing.

21 A Yes.

22 Q Did you eventually go to the doctor when that
23 started happening?

24 A Yes.

25 Q Who did you go see at that time? Was it also

1 Dr. Patel?

2 A Dr. Patel.

3 Q When you go back to Dr. Patel, did you call him?
4 Did you just go into his office? What happened?

5 A I called him and he gave me an appointment.

6 Q So you go in to see him and what happens?

7 A What happened was he went over some information,
8 but he couldn't do -- he was very -- he had to get me another
9 date with another doctor right there, because he was busy and
10 didn't have enough time to go through everything.

11 Q So you see another doctor?

12 A Yes.

13 Q Do you see Dr. Patel at some point again?

14 A After I visit this other nurse, yes, or other
15 doctor, I do go back and see Dr. Patel.

16 Q Do you end up in the hospital at any point?

17 A I beg your pardon.

18 Q Do you go to the hospital at any point?

19 A Yes.

20 Q Tell us about that.

21 A Well, it was the hospital, what was the name.
22 It's something where the doctors do their examinations and
23 things at. What happened was he started explaining the test
24 results, what the results were.

25 Q You're talking about like blood or something

1 like that?

2 A Yes. He took -- he had drawn blood on that
3 first meeting, and blood, and sent it out to be tested.

4 Q Now, did you have to go to the hospital because
5 of your -- what was going on with your body?

6 A No. I didn't have to go to the hospital for
7 nothing that was wrong with my body when it first started. I
8 was over 60 years old and I had not had that type colon exam
9 in my career.

10 Q Okay. I'm talking about going past the exam
11 time, when you have these problems and you go to Dr. Patel,
12 you said you eventually had to go to the hospital, right?

13 A I had to go to the -- down at the clinic where
14 they had given the test at.

15 Q You had to go back to the clinic where they did
16 the test?

17 A Where they do the test, I had the first go from
18 Dr. Patel. They scheduled me through the records section at
19 the Veterans Administration, and then I had to report over to
20 that clinic to sign off on the papers and get things straight
21 so that I'd be ready for their tests.

22 Q Okay. And what tests were those? What test was
23 that?

24 A That was the test for the colon.

25 Q The colonoscopy?

1 A Yeah, colonoscopy.

2 Q Okay. I'm talking about after you had the
3 colonoscopy and after you went back and saw Dr. Patel when
4 you're starting to have your problems. Okay. That's the time
5 period I'm at right now.

6 A Yes.

7 Q Okay. When you went back to Dr. Patel and the
8 other doctor, what happened after that?

9 A Well, the test came out positive. Hepatitis was
10 beginning to show up. And that's when he went over the
11 information for all of the different tests that he had run
12 from drawing blood samples from me and urine samples from me.

13 Q And then what happened next?

14 A What happened next was eventually, about four
15 weeks later I had a real bad problem. That's when my skin, my
16 eyes turned yellow and my skin was giving me problems, and my
17 stomach -- not my skin. My stomach was giving me problems.
18 We went to another doctor.

19 Q Okay.

20 THE COURT: Can all the jurors hear the witness?
21 Okay.

22 THE WITNESS: And that information was explained was
23 what happened.

24 BY MR. STAUDAHER:

25 Q Okay. What happened after that?

1 A After that, Dr. Patel, I went to see him again
2 from that doctor, and he said that he's going to have --
3 you're positive for hepatitis. He's got to call the city,
4 city board, to notify them that they have a person who has --
5 who had hepatitis.

6 Q And what -- so did you have -- and that
7 obviously happened, right?

8 A Beg your pardon.

9 Q That happened?

10 A Yes.

11 Q Then what was the next thing that happened with
12 you?

13 A The next thing that happens to me was they --
14 the board, the health -- health for the hepatitis area -- I
15 mean the area here, they started asking me some questions.
16 This person from Georgia, he wanted to know what went on, had
17 I been -- lot of questions. Did I drink, did I smoke, did
18 I -- was I a homosexual, involved in sex like that. And then
19 they took the samples that they got from me and sent them to
20 CDC to run tests on them.

21 Q So you answered a whole bunch of questions and
22 then they got blood to send to the CDC?

23 A Yes.

24 Q Now, during this time, the problems that you
25 were having that you mentioned earlier, were you still having

1 those problems?

2 A Yes. We were still having those problems. They
3 had not cleared up right away. They eased up a little bit,
4 like the pain was a little dropped off some, and my yellow
5 around my eyes had dropped down a little bit. But it wasn't
6 completely evaporated.

7 Q To this day, do you have any problems related to
8 that?

9 A Today?

10 Q Yeah, today.

11 A Today, yes. I have serious problems.

12 Q What is that?

13 A One is that the hepatitis is acting up. I have
14 to have liquid, the water in my stomach drawn away. And they
15 also have to give me advice on some medication they're going
16 to give to me and I had to take it. But as far as anything
17 else, no. I'm still very critical. I can hardly get along.
18 I can hardly walk and I hardly can eat anything. And these
19 things, I've lost weight. I've lost to about 250. I'm down
20 to 193.

21 Q Wow. So you've lost quite a bit of weight?

22 A Yes. And they're still trying to find a
23 medication that will come out the first of the year, every
24 year that can cure this, the liver problem, because I cannot
25 take that present medication to cure liver. I will die if I

1 take that. I can't take it.

2 Q So let's talk about that for a moment. What --
3 are you talking about interferon therapy?

4 A Yes.

5 Q So you -- did you ever take that medication?

6 A No. I could never take that medication.

7 Q Why is that?

8 A Because it's -- the hepatitis I have, the type I
9 have and the way it is constructed, it will not let me take
10 that medicine without the -- being seriously ill.

11 Q So is it something your doctors have told you,
12 or is it something you just decided on your own?

13 A No. This is what a doctor told me that we went
14 to see about the liver. He explained to me that I could not
15 take that particular medication because it would kill me.

16 Q So if I understand you correctly, you're hoping
17 for a medication down the road that will help you --

18 A Yes.

19 Q -- but right now you're still suffering from all
20 these problems related to an infection you got five years ago?

21 A Yes.

22 Q Now, you had mentioned that -- one of the things
23 you said was that they have to draw fluid off of my stomach.
24 Do you remember that?

25 A Yes.

1 Q Is that where they like poke a needle or
2 something into your abdomen and pull fluid out of it?

3 A Yes.

4 Q Okay. So not your stomach to eat in, but your
5 belly area down here?

6 A Right.

7 Q Have they ever mentioned to you the word
8 "ascites"?

9 A Site?

10 Q Ascites.

11 A Ascites. I heard of it, but I don't know what
12 it is and I don't remember what it is. I know it was spoken
13 once around me.

14 Q Okay. You just have to go in and have this
15 done?

16 A Yes.

17 Q How often do you have to have that done?

18 A It was once every four weeks. Now it's going to
19 be once every week.

20 Q So it's happening more often?

21 A Yes.

22 Q When you go in there, how long does that take?
23 I mean, is it something you can just go in and walk in and
24 walk out, or do you have to be there for awhile?

25 A Oh, you have to be there awhile laying on a

1 table. And of course, after they put that puncture on you,
2 then they hook that machine up to draw the fluid out of your
3 midsection.

4 Q Do you know why they have to draw this fluid out
5 of your midsection?

6 A From where I know is that it can cause serious
7 problems to other organs if it's not removed and you got all
8 this fluid floating around. So they have to remove it, bring
9 it down to a natural level.

10 Q So when you say that, when they're having to do
11 this fluid, do you know why that fluid is coming into your
12 stomach, or your abdomen all the time?

13 A Yes. When you have hepatitis, it's one of the
14 things that does happen. Your liver does not push that fluid
15 into your intestinal tract, so it stays right there and you
16 can get bigger and bigger because it's not moving.

17 Q So this is because of the hepatitis?

18 A Yes. The hepatitis is active.

19 Q So you have not -- have you been tested again to
20 see if you're -- if you have virus that's active, or is this
21 just something that's resulted from a prior infection?

22 A Wait a minute. Repeat that again.

23 Q Bad question. Let me try and rephrase that.

24 Have you been tested recently to see if you have
25 active virus in your system?

1 A Active what?

2 Q Virus. The hepatitis virus.

3 A Yes. They have run tests on that hepatitis
4 quite a few times and found out that it is active and it's
5 creating problems.

6 Q Now, one of the -- do you remember quite a -- a
7 couple years ago coming before the grand jury and giving some
8 testimony in this case?

9 A Do I remember, you said?

10 Q Do you remember -- do you remember me asking --

11 A Yes.

12 Q -- you some questions at the grand jury a few
13 years ago?

14 A Yes.

15 Q When you were down there, were you able to, I
16 mean, answer questions faster, a little more mentally there at
17 the time?

18 A No. Not no faster, but I might have been a
19 little slower because I had to think clearly and give you the
20 true answer.

21 Q Fair enough. Have you had any effects of your
22 ability to think, to do things from a mental perspective
23 because of the hepatitis?

24 A There is one thing that goes on. That is -- I
25 cannot call the name of it, but it affects your memory. Your

1 memory is very spared.

2 Q Have you heard the term "encephalopathy" before?

3 A Yes.

4 Q Has anybody ever diagnosed you with having that
5 problem?

6 A I don't recall them diagnosing me, but I
7 probably -- it might have come out, but I don't remember it.

8 Q Okay. And to this day, other than the things
9 you've mentioned, is there any other issue that you have
10 related to the hepatitis?

11 A Yes. There's -- it is actually almost
12 destroying my walking. I have -- I can hardly walk. I have
13 my balance is off. And I don't -- I have very serious
14 problems trying to eat. And the other thing is that my
15 stomach keeps getting bigger and bigger, and then I have to
16 see the doctor and have that fluid drawn off.

17 MR. STAUDAHER: I have no further questions.

18 THE COURT: All right. Cross.

19 MR. STAUDAHER: One second, Your Honor.

20 THE COURT: Oh, I'm sorry.

21 (Pause in proceedings)

22 MR. STAUDAHER: Your Honor, I'm sorry.

23 THE COURT: That's fine.

24 BY MR. STAUDAHER:

25 Q Your insurance, when you went and had the

1 procedure done, which was your -- you know, who covered
2 your -- the cost of your treatment for the colonoscopy?

3 A Oh, the Veterans Administration.

4 Q When you went in to actually, you know, get --
5 fill out your paperwork, did you have to do any kind of copay
6 or anything like that?

7 A I had to do what?

8 Q A copay. Did you have to pay any money at the
9 time?

10 A No. I did not.

11 Q Did you ever receive a bill afterward?

12 A No. I did not.

13 Q So the VA took care of all of that?

14 A True.

15 Q But did all the bills have to get submitted to
16 the VA?

17 A Yes.

18 Q And did the VA actually help set up the
19 appointment to go to the colonoscopy?

20 A Yes, they did. That's what recommended me over
21 to that clinic and got the appointment there. That's where
22 the test was, because they scheduled me to go over to that
23 clinic on -- and get me -- and get the appointment set up.

24 Q Fair enough.

25 MR. STAUDAHER: Thank you.

1 THE COURT: All right. Cross, Mr. Wright.

2 MR. WRIGHT: Thank you.

3 CROSS-EXAMINATION

4 BY MR. WRIGHT:

5 Q Mr. Washington, my name is Richard Wright.

6 MR. STAUDAHER: Mr. Wright, your pad.

7 BY MR. WRIGHT:

8 Q Can you hear me?

9 A Yes. I can.

10 UNKNOWN SPEAKER: Explain your messy handwriting.

11 THE WITNESS: I can hear you now.

12 THE COURT: Oh, Mr. Wright, your notes are on the --
13 take those off, because it's on. It's broadcast.

14 MR. WRIGHT: Oh, I thought it was off.

15 THE COURT: You can put them there, but you need to
16 turn the equipment off.

17 MR. WRIGHT: Okay.

18 (Pause in proceeding.)

19 THE COURT: Oh, it's on my monitor.

20 MR. WRIGHT: You're not supposed to be looking.

21 THE COURT: And I'm reading your notes. All right.

22 To make it easy for you, Mr. Wright, I -- the Court will shut
23 off its monitor.

24 MR. WRIGHT: It's all right.

25 THE COURT: And that way you can put your notes back

1 up there, and I have turned off my monitor and nobody else can
2 see. So feel -- just put -- my monitor's off.

3 MR. WRIGHT: Check it. The judge is smart.

4 BY MR. WRIGHT:

5 Q My name's Richard Wright. I represent Dr. Dipak
6 Desai. I'm an attorney. Okay, sir?

7 A Yes.

8 Q Okay. How old are you, Mr. Washington?

9 A Seventy-two.

10 Q Seventy-two. You're retired Air Force; is that
11 correct, sir?

12 A Correct.

13 Q And you came to Las Vegas when you retired from
14 the Air Force?

15 A Very shortly after.

16 Q Okay. In about what year?

17 A Yes.

18 Q About what year did you retire and come to Las
19 Vegas?

20 A About 1980.

21 Q Okay. And before you go to the clinic and get
22 your colonoscopy and end up sick, before that time had you had
23 any serious medical issues?

24 A No. I didn't have any serious medical issues
25 before I got the problem.

1 Q Any medical conditions at all?

2 A Yes. There were routine. I had a cold, a very
3 bad cold. I had to get the -- schedule an appointment with
4 the eye doctor to get the eye drops for my eyes.

5 Q Okay. So previously in your life, never any
6 medical issues, heart problems, anything else like that,
7 correct?

8 A No.

9 Q Okay. That's correct, you were perfectly
10 healthy?

11 A What, in the military?

12 Q I didn't --

13 A Or after I got out?

14 Q Before you retired you were in good medical
15 health, right?

16 A Yes.

17 Q Okay. And then until we know you went and had
18 your colonoscopy, we have your medical records, and so that
19 was on July 25, 2007, okay?

20 A Yes.

21 Q Okay. And so for those 17 years here in Las
22 Vegas, you were healthy and had no medical issues?

23 A Yes. I was healthy.

24 Q Okay. And no medical issues?

25 A No real serious medical issues, no.

1 Q Okay. So then because you were 60, you decided
2 to get a colonoscopy, or your doctor advised it?

3 A No, I -- that's who advised it, yes, Dr. Patel.
4 We scheduled an appointment to have a physical, and that's
5 when it came out.

6 Q Okay. And he referred -- Dr. Patel's a VA
7 doctor?

8 A Yes.

9 Q And he referred you to Dr. Desai?

10 A No. What he did was they turned the report in
11 to the records section at the Veterans Administration, and the
12 Veterans Administration scheduled me to go see Dr. Desai and
13 get the appointment, correct.

14 Q Okay. And when is -- was your first time at the
15 clinic on July 25, or did you go previously for an appointment
16 to schedule your colonoscopy?

17 A I'm saying I went to -- was to get the
18 appointment, yes, but nothing else, no.

19 Q Okay. Well, you -- before July 25, you went to
20 the clinic to meet with like a physician's assistant?

21 A No. They meet at the desk right there and get
22 my name on the list for an appointment.

23 Q Okay. Do you remember in May going and meeting
24 with a physician's assistant at the clinic, a tall lady, and
25 then she scheduled your colonoscopy for July 25?

1 A Yes.

2 Q Do you recall that?

3 A As far as I can remember, yes, I --

4 Q Okay. And at the -- I don't want to lead you,
5 and I don't want you just to agree with me. Do you remember
6 the first meeting in May at the clinic?

7 A Over at which clinic are you referring to?

8 Q Where you had your colonoscopy.

9 A What are the dates you're asking for?

10 Q Do you recall -- how did you schedule your
11 colonoscopy at the clinic? Did you go in first and have a
12 meeting with someone and they tell you here's what you do for
13 a colonoscopy, you're going to have to not eat, you're going
14 to have to drink liquids and we've got an appointment for you?
15 Do you remember anything like that?

16 A No. The first thing you had to do was you had
17 to sign in and then they go over, establish an appointment for
18 you.

19 Q Okay. So you signed on some day before July 25?

20 A Yes.

21 Q Okay. And do you remember when that was?

22 A No. I do not.

23 Q Okay. Was that the only time you were there
24 before July 25?

25 A That one time to sign in and get started for the

1 appointment, yes.

2 Q Okay. And at that time did they give you
3 instructions on how to prepare, like to drink stuff?

4 A Like what?

5 Q Like to don't eat before the procedure and what
6 time to be there and instruction.

7 A Oh, yeah. They run across these instructions
8 for you.

9 Q And did they give those all to you on your first
10 meeting?

11 A Yes.

12 Q Okay. And did you meet with the doctor or with
13 a physician's assistant, do you remember?

14 A Physician assistant.

15 Q And was it a young lady?

16 A I think it was a physician assistant, let's put
17 it that way.

18 Q Okay. Was it a female?

19 A Yes. It was a male.

20 Q Okay. And so then you come back on July 25,
21 that's your scheduled appointment, right?

22 A I'm not sure of that appointment. I don't want
23 to give you some false information.

24 Q Okay. Well, the day -- we have your -- all of
25 your medical records. And so July 25, 2007 is the date of

1 your procedure. Okay. So on that date, that's the day you
2 get there. Your wife, Josephine, accompanies you, correct?

3 A Yes.

4 Q Okay. And you go in and essentially have your
5 procedure. You're put to sleep and you receive a colonoscopy,
6 correct?

7 A True.

8 Q Okay. And then you saw Dr. Desai there,
9 correct?

10 A I saw him in the test room. That's all.

11 Q Correct. When you got the procedure, you saw
12 Dr. Desai?

13 A Yes.

14 Q You saw the person who put you to sleep?

15 A Correct.

16 Q Did you see another tech, another person in
17 there to assist?

18 A There was one, I think. It might have been an
19 equipment operator, because was standing over there turning on
20 equipment.

21 Q Okay. And then you were put to sleep, had the
22 colonoscopy, and then woke up and went out, and after 20 or so
23 minutes you were done, correct?

24 A True.

25 Q And a person told you the results of the test

1 that you had just undergone, right?

2 A Correct.

3 Q Okay. And do you recall what that was?

4 A I cannot recall the name of that term where they
5 find a problem in your -- when they're doing that colon. I
6 cannot -- the physical information on that I cannot remember.

7 Q Okay. Did -- there was -- an issue had arisen
8 during the colonoscopy that this person told you about; is
9 that fair?

10 A What's this now?

11 Q An issue. Did they find something wrong during
12 the colonoscopy?

13 A Yes. I was there, they had that information on
14 to whether there was a -- there's a medical problem that it
15 was.

16 Q And so did they then schedule another
17 appointment?

18 A No.

19 Q Okay. What did they tell you to do about the
20 problem that they had found?

21 A That's when I went back to see Dr. Patel.

22 Q Okay. So you went back to see Dr. Patel because
23 of what they had found during the colonoscopy?

24 A Yes.

25 Q And so tell me about that visit with Dr. Patel.

1 A Beg your pardon.

2 Q Tell me, when you went back to Dr. Patel and
3 told him what had been determined by the colonoscopy, what
4 happened at that meeting.

5 A No, I did not give him that information. He got
6 the record from the clinic. I read it and saw what
7 information there was and what the problem was.

8 Q Okay. And then what did -- did he discuss with
9 you whatever the problem was?

10 A Yes, he did.

11 Q And then what were you -- what was the result?

12 A Was it a polyp something? It was some kind of
13 medical term and I'm positive, and he explained what it was
14 and the best way to handle it.

15 Q Okay. Are you talking about when Dr. Patel told
16 you that you were positive for hepatitis C?

17 A Wait a minute. You're running two things
18 together.

19 Q I'm not trying to, sir.

20 A Well, you are.

21 Q Well, I'm sorry.

22 A You're running a medical test that we did and
23 you're also running with hepatitis.

24 Q I apologize, Mr. Washington. I'm not trying to
25 run these things together, and I -- let me back up again.

1 Okay?

2 A Yes.

3 Q And if I do misstate something or you think I'm
4 doing -- mixing things up or something, speak up and stop me,
5 okay?

6 A Yes, sir.

7 Q Okay. The -- you got a colonoscopy and there
8 was some problem detected and that -- those records of your
9 colonoscopy were sent to Dr. Patel.

10 A True.

11 Q Okay. And then you went and saw Dr. Patel?

12 A Yes.

13 Q Okay. And then that visit with Dr. Patel was to
14 talk about the results of your colonoscopy?

15 A True.

16 Q Okay. And then did Dr. Patel, what did he
17 diagnose? What did he tell you, you needed to do?

18 A I cannot give you the medical term to what it
19 was, but he explained what that medical problem was that was
20 tested and found.

21 Q Okay. And so thereafter, so Dr. Patel has told
22 you the results of your colonoscopy and what they found
23 medically, and thereafter, going on down the road, you start
24 becoming ill, correct?

25 A True.

1 Q Okay. And that's all of the symptoms you have
2 described here, which were the yellow, jaundice eyes, dark
3 urine, not feeling well. And do you call Dr. Patel?

4 A I went to see Dr. Patel, yes, because that
5 problem came up. And then -- yeah.

6 Q Okay. And at that time Dr. Patel sent you for
7 blood work, blood tests, or did he do them?

8 A No. You have to go down to the laboratory for
9 the blood test.

10 Q Okay. And then he gets those test results from
11 your -- from the laboratory, right?

12 A Yes.

13 Q And that's when it's determined you have -- you
14 tested -- you may have tested positive for hepatitis; is that
15 correct?

16 A Yes.

17 Q And then did they do -- did Dr. Patel order more
18 confirmatory tests?

19 A What Dr. Patel did was he sent me over to
20 another doctor, an emergency appointment to take care of me
21 right away, and trying to get these things under control and
22 find out what was going on.

23 Q And then did you -- and then you were at that
24 point, you -- it's been determined you've been diagnosed with
25 hepatitis, correct?

1 A Yes.

2 Q Okay. And then you told the jury that Dr. Patel
3 told you he's required to notify the authorities of the test
4 result, correct?

5 A Yes. The emergency doctor called him back and
6 gave him that certain information, and he -- so Dr. Patel
7 said, I have to call, that they're going to need that.

8 Q Okay. And thereafter you were interviewed by
9 someone from CDC, correct?

10 A Yes.

11 Q And they ask you a bunch of questions designed
12 to find out if you had various risk factors. Did you
13 understand that?

14 A Yes. That's what was going on.

15 Q Right. And so they also arranged to draw blood
16 from you to send to CDC for further testing?

17 A True.

18 Q And thereafter in your treatment, did you return
19 to the clinic where you had had your colonoscopy?

20 A No. Well, yes, one time there's a doctor, where
21 we got a call from one of the doctors. I can't recall his
22 name. And he talked to me.

23 Q Do you recall, does the name Dr. Clifford
24 Carrol --

25 A Yes.

1 Q -- sound familiar?

2 A That's who it was.

3 Q Okay. And do you recall, did he call you or did
4 you call him?

5 A He called me.

6 Q Okay. And did you go in to his office to visit
7 him?

8 A Yes.

9 Q Okay. And did you -- you went with Jo, your
10 wife?

11 A Did I what?

12 Q Did you go with your wife?

13 A Yes.

14 Q And do you have a -- do you recall when that
15 was, like month time of the year?

16 A No. I do not.

17 Q Okay. The -- your meeting with -- your meeting
18 with Dr. Carrol, you knew he was a physician with the same
19 clinic as Dr. Desai, correct?

20 A True.

21 Q And what was that meeting for?

22 A That meeting was for that he explained that the
23 hepatitis was there, and with giving him a chance he would try
24 and cure me of it.

25 Q Okay. And did anything come of that?

1 A No, it did not. I would not let anybody else
2 touch me for the VA doctors over there running that test.

3 Q Okay. Did he offer his services to you --

4 A Yes.

5 Q -- to try to assist --

6 A Yes, he did. He said -- he did offer his
7 services to me.

8 Q And thereafter you're being treated for
9 hepatitis. And were you diagnosed with hepatitis C?

10 A Yes.

11 Q And hepatitis B?

12 A I don't know. All I know is came out was, it
13 might be on the medical records, but all I know was a
14 hepatitis C. There was another -- how do you want to say it.
15 Another --

16 Q Diagnosis?

17 A Something else was there too. Now, I don't know
18 if that was B or what. I cannot tell you that.

19 Q Okay. Did you -- did you believe that you
20 got -- contracted, got hepatitis B and hepatitis C from your
21 colonoscopy at the clinic?

22 A Can you explain that?

23 Q I'm saying do you think that you got, acquired
24 hepatitis B and hepatitis C from your procedure, your
25 colonoscopy at the clinic?

1 A I believe when they -- with the test involved,
2 yes, that was where I caught the hepatitis from, was right
3 there in that -- in that test room.

4 Q Yes, sir. And what I'm asking you is do you
5 recall stating that your hepatitis B and hepatitis C, that you
6 caught that at the clinic?

7 A I know nothing about the B. I know the
8 hepatitis C was developed.

9 Q Okay. Do you recall testifying previously in
10 depositions with your lawyers in the civil cases?

11 A Do you mind explaining that? Why would I be
12 [unintelligible] the lawyers like that, huh? Would you
13 explain that, what you're saying?

14 Q I don't think I -- I don't think I asked it the
15 right way, Mr. Washington. I'm saying did you give -- do you
16 know what a deposition is?

17 A Yes.

18 Q Okay. Did you give depositions in your civil
19 litigation?

20 A Do you mind explaining that [unintelligible]?
21 What does it affect that I'm supposed to be giving this
22 information?

23 THE COURT: Is there a point in time that you went
24 and some lawyers asked you questions, and there was probably a
25 court reporter taking down information, and then your lawyer

1 was there and he or she might have asked you questions? Did
2 that happen at some point?

3 THE WITNESS: I seen the one who gave me the
4 information on the colon test.

5 THE COURT: Okay. Maybe Mr. -- I was trying to be
6 helpful, but maybe Mr. Wright can -- he's going to ask the
7 question a different way.

8 MR. WRIGHT: Right. Do you remember -- I'm going to
9 approach the witness, Your Honor.

10 THE COURT: You may.

11 BY MR. WRIGHT:

12 Q Do you remember, sir, the deposition of Michael
13 Ellsworth Washington, February 6, 2009?

14 A Mm-hmm. The District Court, Clark County. What
15 are you asking? Is it --

16 Q This is a transcript of you being questioned in
17 the civil litigation.

18 A Okay.

19 Q Do you remember that?

20 A Yeah. I remember answering the questions.
21 That's all I can say, is I was called in for questioned.

22 Q Okay. And do you remember being asked, Are you
23 claiming in this case that you contracted both hepatitis B and
24 C from the Endoscopy Center, and do you recall answering yes?

25 A I don't recall that. My memory is not good

1 enough. I don't --

2 Q Okay. The -- do you know if you have hepatitis
3 B and C?

4 A At the present time, I know I have hepatitis and
5 I know that there is a problem with it because it's --

6 Q Okay.

7 A -- a very rare type of hepatitis that I have.

8 Q Were you -- I'm sorry. I interrupted you.
9 Were you ever hospitalized after you got the
10 hepatitis C?

11 A No.

12 Q Okay. And did -- and does -- do you know what
13 the doctors call chronic hepatitis and acute hepatitis?

14 A No.

15 Q Okay. Do you know if you presently have chronic
16 or acute?

17 A The honest thing I can tell you is that I know I
18 have active hepatitis.

19 Q Okay. Well, I didn't hear you.

20 A Now, that's it. I cannot give you any other
21 what the medical information.

22 Q You know you have hepatitis --

23 A Yes.

24 Q -- and you don't know if it's chronic or acute?

25 A No.

1 Q Okay. Fair enough. And you're presently being
2 treated by whom, sir? Who is your doctor right now treating
3 your hepatitis?

4 A I cannot recall his name right now. I can't
5 think --

6 Q Is it a specialist?

7 A Yes. He is a liver specialist.

8 Q Okay. And the -- because of what happened at
9 the clinic you hired lawyers, correct?

10 A I what?

11 Q You got a lawyer, you hired lawyers? A lawyer.
12 An attorney like me.

13 A Yes.

14 Q Okay. To litigate, to sue somebody for what
15 happened to you?

16 A True.

17 Q True. Okay. And you did sue someone, correct?

18 A Confidential information.

19 Q Pardon?

20 A Confidential information.

21 THE COURT: Sir, you have to answer the question,
22 okay?

23 THE WITNESS: Yes, we did go through that.

24 BY MR. WRIGHT:

25 Q Okay. And you won -- do you know how many

1 lawsuits you brought?

2 A How many what?

3 Q Lawsuits.

4 A That was what?

5 Q How many -- do you know how many lawsuits you
6 brought?

7 A No. I do not.

8 Q Okay. Are they done, over?

9 A You mean the lawsuits that I went through --

10 Q Yes.

11 A -- are you asking me are they complete --

12 Q Yes, sir.

13 A -- now?

14 As far as I know, yes.

15 Q Okay. And how many lawsuits were there?

16 A I do not know. I don't remember.

17 Q Okay. You won, right?

18 A Excuse me.

19 THE WITNESS: Do I have to answer that?

20 THE COURT: Yes, sir, you do have to answer the
21 question.

22 THE WITNESS: Yes.

23 BY MR. WRIGHT:

24 Q And how much did you win?

25 A I won \$25,000 from the drug company that made

1 the drug. I received 30,000 from the pharmacist that worked
2 with it. And I also received 400,000 from against Dr.
3 [indicating].

4 MR. WRIGHT: Okay. Just a moment.

5 (Pause in proceedings)

6 BY MR. WRIGHT:

7 Q Are you saying you won \$25,000?

8 A \$25 million.

9 Q Pardon?

10 A 25 million.

11 Q Okay. Million dollars.

12 A Yes.

13 Q I'm sorry.

14 A I'm sorry. I [unintelligible]. That was 25
15 million.

16 Q \$25 million from the drug manufacturer?

17 A True.

18 Q Okay. And what was the next amount?

19 A 30,000 from the pharmacist.

20 Q Now, it's 30,000?

21 A Yes.

22 Q From? From who?

23 A 400,000 from the doctor.

24 Q I'm sorry. I'm just not understanding you.

25 A \$400,000 from Dr. Desai that came through, as

1 far as I know. How it was hooked up I cannot explain it, but
2 I know it was \$400,000 issued.

3 Q Okay. What's the grand total?

4 A You add it up. I don't have a pen here.

5 Q I'm having a hard time getting the numbers, sir.

6 THE COURT: I think the total speaks for itself.

7 BY MR. WRIGHT:

8 Q \$25,430,000.

9 A Yes.

10 Q Is that right?

11 A Yes.

12 MR. WRIGHT: Okay. The Court's indulgence for a
13 moment.

14 Thank you, sir.

15 THE COURT: Mr. Santacroce, cross.

16 MR. SANTACROCE: I don't have any questions for
17 Mr. Washington. Thank you.

18 THE COURT: All right. Thank you. State, redirect.

19 MR. STAUDAHER: No, Your Honor.

20 THE COURT: No redirect?

21 MR. STAUDAHER: No redirect.

22 THE COURT: All right. Do we have any juror
23 questions for this witness? All right. I see no juror
24 questions. Mr. Washington, thank you for your testimony.
25 Please don't discuss your testimony with anybody else who may

1 be a witness in this case.

2 THE WITNESS: I understand.

3 THE COURT: Okay. Thank you, sir, and you are
4 excused, and just go ahead and follow the bailiff through the
5 double doors there.

6 All right. Ladies and gentlemen, I think before the
7 State calls its next witness we're just going to take a brief
8 recess until 3:45. I must admonish you again that before our
9 brief recess you're not to discuss anything relating to the
10 case with each other or with anyone else. You're not to read,
11 watch or listen to any reports or commentaries on this case,
12 any person or subject matter relating to the case. You're not
13 to do any independent research, and you're not to form or
14 express an opinion on the case.

15 Please place your notepads in your chairs and follow
16 the bailiff through the rear door.

17 (Jurors recessed at 3:31 p.m.)

18 THE COURT: The Court's in recess.

19 (Court recessed at 3:32 p.m. until 3:44 p.m.)

20 (Outside the presence of the jury.)

21 THE COURT: Kenny, bring them in.

22 State, you got anybody else for today other than
23 Mrs. Washington?

24 MR. STAUDAHER: Yes. We have --

25 MS. WECKERLY: Oh, yeah. We have four witnesses out

1 there.

2 MR. STAUDAHER: -- Mrs. Washington and four doctors
3 out there. The doctors are short. We really -- if we could
4 possibly do it at --

5 THE COURT: Are you asking us to stay late?

6 MR. STAUDAHER: If we need to for these four.

7 MR. WRIGHT: I object.

8 MR. SANTACROCE: Me too.

9 THE COURT: Who are the doctors?

10 MS. WECKERLY: They're the referring doctors.

11 MR. STAUDAHER: They're the referring doctors.

12 They're just to say --

13 MR. WRIGHT: Well, then put them on.

14 MS. WECKERLY: She's got to go out of town --

15 MR. STAUDAHER: She's got to go back to Texas --

16 MS. WECKERLY: -- because he has to get treatment.

17 MR. STAUDAHER: -- because he has to get treatment.

18 THE COURT: So she can't -- she has to go today?

19 MR. STAUDAHER: Yes.

20 MS. WECKERLY: Yes. Because he's got treatment
21 scheduled to treat this.

22 THE COURT: Well, now, these referring doctors, does
23 Dr. Desai doesn't really have any knowledge about the
24 referring doctors, or does he? I mean, let's at least do the
25 first referring doctor, and we'll see what all it is that

1 they've got to say and how detailed the questions are.

2 I mean, if there's a lot of cross-examination, then
3 we're not going to be able to get to them all today. If it's
4 really easy, yes, Mr. Washington was my patient, he was over
5 60, I recommend all patients over 50 get a routine colonoscopy
6 and so I sent him there, then that's, you know, not much. If
7 it's going to be more -- and then, you know, he came and he
8 had a polyp and he had a diverticulitis and then he had --
9 bring them in.

10 (Jurors reconvene at 3:46 p.m.)

11 THE COURT: That's going to be too much.

12 All right. Court is now back in session. The record
13 should reflect the presence of the State, the defendants and
14 their counsel, the officers of the court, and the ladies and
15 gentlemen of the jury. The State may call its next witness.

16 MS. WECKERLY: Thank you. The State calls Josephine
17 Washington.

18 THE COURT: All right.

19 JOSEPHINE WASHINGTON, STATE'S WITNESS, SWORN

20 THE CLERK: Ma'am, would you please state and spell
21 your name.

22 THE WITNESS: My name is Josephine Washington,
23 J-o-s-e-p-h-i-n-e, W-a-s-h-i-n-g-t-o-n.

24 THE COURT: All right. Thank you. Ms. Weckerly.

25 DIRECT EXAMINATION

1 BY MS. WECKERLY:

2 Q Mrs. Washington, are you married to Michael
3 Washington?

4 A Yes, I am.

5 Q Is that the man who just left the courtroom in
6 the sort of darker blue suit?

7 A Yes.

8 Q I want to draw your attention to July of 2007.
9 During that month, did your husband have a procedure done at
10 the Shadow Lane clinic of the Endoscopy Center of Southern
11 Nevada?

12 A Yes, he did.

13 Q Ma'am, do you recall if prior to having the
14 procedure, the colonoscopy, do you recall if he went to any
15 kind of appointment there prior to the procedure?

16 A Yes, we did.

17 Q And how far before the procedure was that
18 appointment?

19 A It was sometime in June. I do not remember the
20 exact date at this time.

21 Q Did you accompany your husband?

22 A Yes, I did.

23 Q And do you remember who you met with at that
24 earlier appointment?

25 A It was a PA. I do not remember the name. I

1 wish I did, but I do not.

2 Q And you said PA. What does that mean?

3 A A physician's assistant.

4 Q And do you actually have a medical background?

5 A Yes, I do.

6 Q What is your background?

7 A I'm a registered nurse.

8 Q And did you -- are you working now?

9 A No. I'm retired.

10 Q Did you work as a nurse prior to your
11 retirement?

12 A Oh, yes. Of course.

13 Q How long did you work?

14 A Forty-six years.

15 Q As a nurse? What type of nursing did you do?

16 A Almost everything. In 46 years you do a lot.

17 Q So you and your husband went to the appointment
18 maybe in June, but sometime before the actual procedure in
19 July?

20 A Yes, we did.

21 Q What was the purpose of that appointment?

22 A They wanted to inform my husband what the
23 procedure would be about and the medication that he would have
24 to take, you know, to cleanse the colon, and when to come back
25 to the clinic and what to expect.

1 Q Okay. And I assume when you heard those
2 instructions, they were instructions that you were probably
3 familiar with?

4 A Yes, they were.

5 Q Let's talk about the actual date of the
6 colonoscopy, which was July the 25th; is that right?

7 A Yes.

8 Q Did you drive your husband to the appointment?

9 A Yes, I did.

10 Q And do you remember if it was in the morning
11 or --

12 A It was in the morning, early morning.

13 Q And describe what you saw as you went into the
14 clinic.

15 A Oh, just the regular clinic, people there
16 sitting waiting. And my husband had to sign in and then we
17 sat in the waiting room.

18 Q Did you go up with your husband when he signed
19 in, or did you sit?

20 A No. I went up with him to the window.

21 Q Okay. And do you remember if he had to show any
22 type of proof of insurance or anything like that?

23 A He had to show his VA card, yes.

24 Q And that's Veterans Administration insurance?

25 A Yes, it is.

1 Q And do you remember if he had to make any kind
2 of copayment or anything like that?

3 A No, he did not.

4 Q No copay?

5 A No.

6 Q And then I assume you two sat down in the
7 waiting room?

8 A Yes, we did.

9 Q Do you remember how long you had to wait before
10 he was kind of called into the next area?

11 A It was not very long, no.

12 Q And what would you describe the next area as,
13 given that you're a nurse?

14 A The next area they told him he had to go to was
15 the procedure area, so she wanted to take him back and change
16 his clothing and then go to the procedure area.

17 Q And did you go with him to the second part?

18 A No, I did not.

19 Q Okay. Prior to him going into the procedure,
20 did you see anything done medically to your husband?

21 A No, I did not.

22 Q Did you see any needles or heplocks being placed
23 in him?

24 A No, I did not.

25 Q Okay. When you get to the procedure area, were

1 you back there with him?

2 A No, I was not.

3 Q Okay. You were in the waiting room the whole
4 time?

5 A Yes.

6 Q Did you ever see a nurse interact with your
7 husband?

8 A Only when she came, you know, to get him to go
9 back to the procedure room.

10 Q What did you see at that point?

11 A Just her taking him back to the procedure room.

12 Q Okay. And you stayed in the waiting room?

13 A Yes, I did.

14 Q And he goes into the procedure area?

15 A Yes.

16 Q And you stayed out, I assume, where other people
17 were waiting?

18 A That is correct.

19 Q Did you ever go into the procedure room or in
20 the back area at all?

21 A Yes, after the procedure was completed.

22 Q Okay. Was that a different room than where you
23 had originally waited?

24 A Yes, it was.

25 Q And when you went to that area, what did it look

1 like?

2 A It was just a room with the gurney and where she
3 was taking his -- she was removing his IV and informing what
4 they had found.

5 Q And when you say she was removing his IV, who
6 was the person, or what would you describe that person as?

7 A It was a nurse. Excuse me.

8 Q Did you ever meet with a doctor after your
9 husband had the procedure?

10 A No, I did not.

11 Q Did any doctor ever come out and tell you any
12 results?

13 A No. Only the nurse.

14 Q Only the nurse. And did any anesthesiologist
15 ever come out and make sure your husband was okay?

16 A No.

17 Q Did you ever see any doctor at the bedside?

18 A No.

19 Q Did the person who removed the IV give you any
20 kind of results that you heard regarding your husband?

21 A Yes. She told my husband that he had
22 diverticulitis, and --

23 Q Do you know what that is?

24 A Yes. It has to do with the colon and a pouch
25 area in the colon.

1 Q Okay. So it's like irritation in the colon?

2 A Yeah.

3 Q Based on that diagnosis, did you have any
4 follow-up appointments with any doctors for the --

5 A No. No, we did not.

6 Q Okay. Tell me what happened after the
7 procedure.

8 A After the procedure and he -- they removed the
9 IV, he got dressed and she informed him about the
10 diverticulitis and told him that he need to eat a lot of
11 roughage and et cetera. She explained that to him. She also
12 informed him that they had performed a liver -- I'm sorry, a
13 colon biopsy, that they had performed that, and that he would
14 receive follow-up call after that.

15 Q In the -- following the procedure, did your
16 husband have any health problems that you observed?

17 A You mean later?

18 Q Yes.

19 A Oh, yes.

20 Q Describe how long it was after the procedure
21 that he had problems.

22 A In the latter part of August he began to
23 complain about feeling tired and not having much appetite.
24 But I didn't really focus on it, I have to be honest. I
25 didn't focus on it at all. And not until in September, when

1 he began to complain about pain in his right side and feeling
2 tenderness, and then he began to lose weight. And he was
3 losing weight so rapidly and he had no appetite.

4 And then in October it was really bad. He had lost a
5 lot of weight. He was 256 pounds and, I mean, he had lost all
6 the way down. He was really, I mean, losing really rapidly.
7 And at that time I really, I got worried and he, you know, and
8 asked him to go to the doctor. I didn't go with him that
9 time, and he went to see Dr. Patel. And he told me that Dr.
10 Patel drew some bloods and et cetera and et cetera, and
11 examined him.

12 And then later on in October, when he began to
13 complain more -- it was in October, the last part of October,
14 I think. You know, it's been so long I don't remember the
15 exact dates.

16 Q That's okay.

17 A But then I noticed that he, I mean, the no
18 appetite and a lot of weight loss. And then I went in one
19 morning, he called me, he said, Jo, come look, come look. And
20 I went in and looked and his urine was dark. I mean, a dark
21 gold, just, you know, really gold.

22 Q And with your training and your background --

23 A I knew he was spilling bilirubin. I mean, you
24 would know.

25 Q You knew what it was?

1 A Yes.

2 Q And so based on what you observed, what did you
3 two do?

4 A I immediately called the VA and explained his
5 symptoms and what had been happening, and asked if we could
6 get an appointment, an emergency appointment that day. And
7 they told me yes, and we went in and we saw a Dr. Kaul. Anita
8 Kaul, I think her name was. I think that was her name. But
9 we went to see her. I remember her name was Kaul, K-a-u-l.

10 We went in to see her, and she went and reviewed the
11 labs that they had taken back in either the latter part of
12 September or the first part of October, and she told him that
13 from looking at his labs she felt that he had hepatitis C, he
14 had acute hepatitis C.

15 Q And did she do further blood testing?

16 A Yes, she did. She told him she was going to
17 have further testing done and she was going to draw more
18 bloods and more testing done, and she wanted us to make an
19 appointment right away to go see his internist, who is Dr.
20 Patel.

21 Q His -- oh, his regular doctor --

22 A Yes.

23 Q -- Dr. Patel?

24 A Absolutely.

25 Q Did you ever have to take your husband to the

1 health district to give blood, give a blood sample there for
2 testing? Do you recall that?

3 A He did. He went to the health district, because
4 when we -- yes, he did go, but that was after it had been
5 reported by Dr. Patel that he had hep C.

6 Q Okay.

7 A That was after the summer.

8 Q So he sees Dr. Patel, who confirms that he has
9 hepatitis C --

10 A Yes.

11 Q -- and then he goes to the health district --

12 A Right.

13 Q -- and gives more blood?

14 A Right. Dr. Patel, we went to see Dr. Patel
15 again. He stated that he did have hep C and that he had to
16 report it to the health district. And then the health
17 district called my husband and told him that it had been
18 confirmed that he had hep C, and that it may be there were
19 other cases, and she didn't tell him how many.

20 She just said there were other cases and she asked
21 him some questions, and then she -- at that time she had told
22 us to call Dr. Carrol at the clinic to see what he would do
23 for us.

24 Q To see what he would do for you?

25 A Yes.

1 Q Did you and your husband go back to the clinic
2 and meet with Dr. Carrol?

3 A Yes. We -- indeed. We called Dr. Carrol and he
4 set up an appointment for us to come in, and we went in and
5 sat down and talked to him, and he stated that he -- when he
6 started talking to Michael, he said after he reviewed his
7 record he said, I had my pad ready to write out your
8 prescription and put you on interferon treatment. He says,
9 But after reviewing your chart, you are not a candidate for
10 the treatment. He said, I would not recommend it.

11 Q And were you -- I mean, did you and your husband
12 want him to get treatment from Dr. Carrol?

13 A Well, at that time, you know, we wanted to get
14 treatment from anyone that was -- if it was going to eradicate
15 the hep C, you know.

16 Q Sure.

17 A And at that time we did not know for sure, you
18 know, where the hep C came from. We, you know, we had an
19 idea. The only place, it had to be the clinic, because that's
20 the only procedure he'd had. So but, yes, we did, and we
21 would have taken it.

22 Q But at the time you meet with Dr. Carrol,
23 there's no report out from the health district or the CDC
24 about all these cases coming from the clinic --

25 A No. No. No.

1 Q -- is that fair?

2 A No.

3 Q You meet with him before all that?

4 A Right. Yes.

5 Q And he offers to provide treatment --

6 A Right.

7 Q -- for your husband?

8 A That is correct.

9 Q And you -- do you know what interferon treatment
10 or therapy is?

11 A Basically, yes, somewhat. And I know that it is
12 really hard and it's really -- you have to be really in good
13 health and strong in order to take it. And it works,
14 according to the record, 50 percent of the time. It doesn't
15 work on everybody. It doesn't work for everybody. So when
16 you take it, you're taking a chance, you know, so.

17 Q And based on your husband's health, he wasn't a
18 good candidate for it?

19 A No, he was not.

20 Q Even since that time has he ever been able to
21 undergo the interferon treatment?

22 A No, he has not.

23 Q Since that time up until now, what physical
24 changes have you noticed in your husband?

25 A Oh, my gosh. Oh, there are so many. My

1 husband, he just -- he's tired. He's not able to walk long
2 distances anymore. He used to be an avid bowler. He cannot
3 bowl anymore because he can't keep his balance. And his
4 appetite is poor.

5 Now his liver's really acting up. He's gotten to
6 where he has ascites on his abdomen, and his legs are swelling
7 now. And he's become confused at times, you know. He may be
8 clear like this minute and then the next minute you ask him
9 something he's not as clear. He's just as -- he's not as
10 clear as he used to be, you know.

11 Q Let me ask you a couple questions about that.
12 He said that he's not able to walk long distances.

13 A No, he cannot.

14 Q Can you describe to me like what -- how short or
15 how -- you know, where he would need a ride, that kind of
16 thing?

17 A Just for instance, from the attorney's office
18 across the street to the courthouse, he wouldn't have been
19 able to do that and then come up those steps.

20 Q And you said he can't bowl anymore.

21 A No.

22 Q Was that something --

23 A No. He was an avid bowler. He bowled three
24 times a week on a league and -- we did. So a lot of our
25 lifestyle -- our lifestyle has just gone to pot really. We

1 bowled three times a week. He used to shoot pool in there on
2 Tuesday afternoons with his friends and, you know, just he's
3 not able to do any of these things anymore.

4 Q And you said he has -- you even used the medical
5 term -- ascites in the abdomen?

6 A Yeah, which is fluid in the abdomen.

7 Q Fluid in the abdomen?

8 A Yes.

9 Q Is he getting treatment for that?

10 A Yes. He's had to be tapped twice because his
11 abdomen is, you know, distended so much. So they've basically
12 drained off so many liters of fluid, and then they give him a
13 medication which is called albumin to replace his proteins,
14 and so he has to do that.

15 And now, with us in Texas, we found a hepatologist in
16 Texas that is going to follow him closely, and they're going
17 to be tapping him and giving him albumin every week to try to
18 help control the fluid. Hopefully that will control it. And
19 then there's a new treatment that's coming out, we hope and we
20 pray, the first of the year, and they want to place him on
21 that and see can they eradicate the hep C.

22 Because if they can eradicate the hep C, then he can
23 be a transplant patient. But he can't even get a liver
24 transplant with the hep C still -- him still having hep C.
25 And he's so weak, they need to get a decent weight on him. I

1 don't know if -- he's very thin now and he's not the man that
2 he was before all of this happened.

3 Q So I mean, is it fair to say the goal is to try
4 to get him healthy enough --

5 A Yes.

6 Q -- so maybe he could be a candidate for --

7 A Maybe, yes.

8 Q -- for a transplant?

9 A But they have to eradicate it. They have to
10 eradicate the hep C. Because it would be useless to give him
11 a transplant, you know, a liver transplant and still the hep
12 C, because the hep C still can attack the new liver. So it
13 just -- the doctor said it'd just be useless to do that.

14 Q When is his next appointment to get the ascites
15 tapped, as you put it, drained?

16 A Yes. We are due like the 15th. We're leaving
17 on the 14th and he goes the very next day.

18 Q So coming up?

19 A Yes.

20 Q I want to just go back to the procedure day at
21 the clinic.

22 A Okay.

23 Q So back in the clinic on July the 25th, how long
24 would you say it was in time from the time he's called back
25 out of that first waiting room until the time you see him in

1 the recovery room?

2 A Approximately 25 to 30 minutes.

3 Q And fairly around a half-hour, give or take --

4 A Right.

5 Q -- is that what you're saying?

6 A Mm-hmm.

7 Q And do you know -- as a nurse, do you know what
8 a saline flush is?

9 A Saline flush?

10 Q Mm-hmm. What is it?

11 A You mean an IV?

12 Q Yeah, on an IV.

13 A Oh, yes.

14 Q What is that?

15 A Where you hang a bag of saline and you flush the
16 IV. You start an IV and just do the butterfly, and just flush
17 it through to make sure that it's in the vein.

18 Q Do you know whether or not your husband had that
19 done to him on the day of this procedure?

20 A He -- he stated that the nurse started the
21 little IV, the butterfly in him in one room, and then she took
22 him into the other room and the male nurse put -- connected
23 the port up, you know, so that they could put the medication
24 in.

25 Q So no saline flush by a nurse?

1 A No. It was the male nurse.

2 Q Thank you, ma'am.

3 MS. WECKERLY: I'll pass the witness.

4 THE COURT: All right. Who would like to go first?
5 Mr. Santacroce, go ahead.

6 CROSS-EXAMINATION

7 BY MR. SANTACROCE:

8 Q Your husband just said a few minutes ago that
9 the nurse started the IV, and then she hung a saline bag --

10 A Right.

11 Q -- and then flushed the IV. Do you have any
12 reason to doubt that?

13 MS. WECKERLY: And I'm going to object, Your Honor.
14 I don't actually think that was his testimony.

15 THE COURT: Well, overruled. And ladies and
16 gentlemen, from time to time, you know, a lawyer may remember
17 something one way, the other lawyer may remember it some other
18 way. I may remember it incorrectly or I may not remember at
19 all.

20 So whenever a lawyer asks a question that says the
21 evidence was this or that, if that's not your recollection of
22 the evidence, then of course your recollection of what the
23 evidence was should control regardless of what either side may
24 say, or what the Court may remember, because my recollection
25 could be wrong, so.

1 BY MR. SANTACROCE:

2 Q So my recollection was that your husband
3 testified that the nurse started the IV, hung a saline bag,
4 and flushed the IV and he saw some blood. Do you have any
5 reason to doubt his testimony?

6 A I doubt that. Because that's not what my
7 husband told me.

8 Q Okay. But you didn't see --

9 A No, but he didn't tell me that.

10 Q You need to let me finish the question.

11 A Oh, no problem.

12 Q Okay. You didn't see the nurse start the IV,
13 correct?

14 A No, I did not.

15 Q And you didn't see whether there was a saline
16 bag, correct?

17 A No, I did not.

18 Q And you didn't see whether the nurse flushed
19 that --

20 A No, I did not.

21 Q -- IV?

22 You testified that a nurse took your husband back
23 into a procedure room and then the nurse removed the IV, which
24 you witnessed, correct? You witnessed the removal of the IV?

25 A Yeah. I witnessed the removal of the IV.

1 Q Was it the same nurse that took him back into
2 the procedure room?

3 A That I do not remember.

4 Q The nurse that removed the IV, was it a female?

5 A Yes, it was.

6 Q And the nurse that took him in the procedure
7 room, was it a female?

8 A But I can't say they're the same females.

9 Q Okay. But they were both female?

10 A Yes. But I cannot say they were the same.

11 Q Okay. Did your husband have any medical
12 problems prior to having the colonoscopy?

13 A He had -- he was hypertensive, he had glaucoma,
14 and he was diabetic.

15 Q Was he on diabetic medication?

16 A Yes, he was.

17 Q Was he on blood pressure medication?

18 A Yes, he was.

19 Q Did I read somewhere that he had had a heart
20 attack?

21 A Yes, he did.

22 Q When was that?

23 A I think that was in 2005.

24 Q And I believe I read somewhere that he had heart
25 stents; is that correct?

1 A Yes, he did.

2 Q And the heart stents, was it an actual surgical
3 procedure to have the heart stents put in?

4 A Yes, it was.

5 Q And when was the heart stents put in?

6 A At the same time of the surgery.

7 Q And what year was that again?

8 A 2005. 2005 or 2002. I can't remember. I don't
9 remember. It was either 2002 -- I think it was 2002. I think
10 it was 2002.

11 Q I don't think -- oh, one other question. Did he
12 have hepatitis B?

13 A No.

14 Q To your knowledge he does not have --

15 A Never.

16 Q Never.

17 A And the medical records will show that he never
18 had it.

19 Q Okay. Thank you.

20 MR. SANTACROCE: I have no further questions.

21 THE WITNESS: No problem.

22 THE COURT: All right. Mr. Wright.

23 MR. WRIGHT: Yes.

24 CROSS-EXAMINATION

25

1 BY MR. WRIGHT:

2 Q You all went to see Dr. Carrol, Clifford Carrol?

3 A Yes.

4 Q At the -- and the purpose of that was because he
5 was offering assistance; is that correct?

6 A He was offering treatment, yes.

7 Q Okay. And he evaluated your husband?

8 A Yes.

9 Q Okay. And the test results; is that fair?

10 A Yes.

11 Q Okay. And he determined that he wasn't a
12 candidate for interferon treatment?

13 A That is correct.

14 Q Okay. And did he offer any other suggestions?

15 A No.

16 Q Okay. And was that diagnosis of -- or that
17 recommendation of Dr. Carrol, was that consistent with
18 [inaudible]?

19 A With what? You have to speak up.

20 Q Was that consistent with what you later learned
21 from other doctors?

22 A Yes.

23 Q Okay. And you were a nurse. You know acute
24 hepatitis C from chronic hepatitis C?

25 A Absolutely.

1 Q And what is your husband's condition presently?

2 A At present?

3 Q Yes.

4 A At present it's chronic, because it's acute when
5 the first onset.

6 Q Okay. So he presently has chronic hepatitis

7 C --

8 A Yes.

9 Q -- correct?

10 A Right.

11 Q Okay. And on the -- ultimately you all sued
12 various people because of what had happened to your husband,
13 correct?

14 A We had one lawsuit, yes.

15 Q Okay. Did you have one --

16 A No. We filed -- we filed one lawsuit together
17 for the people who were guilty of infecting my husband, all
18 the people that we felt were guilty of infecting my husband.

19 Q Okay. And were you a plaintiff in it?

20 A Was I what?

21 Q I mean, did you file -- were you a party? Did
22 you sue also?

23 A Yes, I was. Yes.

24 Q Okay. And did you win settlements?

25 A Yes, we did.

1 talking about in a criminal neglect of patients case.

2 And in a sense you'll hear from witnesses, I believe,
3 that once they focused in on what they believe is the likely
4 method of transmission, that means what's the most likely way
5 hepatitis C was spread in the clinic on those two dates.
6 Okay. And the -- you'll hear about the investigation of it at
7 the clinic, the clinic participating, CDC, BLC, Southern
8 Nevada Health District, everyone participating trying to
9 figure out how was this happening.

10 It's blood-borne, blood to blood. You have a -- what
11 we call a source patient there, a patient who has hepatitis C
12 who came into there, and somehow the patient from the known
13 hepatitis C source patient, his blood must have interacted
14 with the other patients on that day who got hepatitis C. So
15 that's what the investigation was about, to determine what we
16 call the likely cause of it.

17 Now, you will hear once they -- and the Southern
18 Nevada Health District and CDC have come up with a most likely
19 cause, and Mr. Staudaher explained it with charts in his
20 opening. And they think the most likely cause involved two
21 different things that were going on at the same time in
22 administering the anesthesia.

23 And the two things were utilization of propofol,
24 that's the anesthetic -- you remember the bottles that were up
25 here. That's the stuff they inject into you to make you go to

1 sleep for the procedure. And they believe that the multiple
2 use, that means you essentially using the bottle until it was
3 empty. It's got 50 whatever in it, cc, milliliters, I can't
4 even keep it straight. I'll call them 50s and 20s.

5 But it's got an amount of propofol in it and it is
6 undisputed and without a doubt that the propofol in the clinic
7 was being used until it was empty. Okay. So that means if
8 it's a 50 vial, the evidence is going to show and the clinic
9 employees all admit, because that's the way they were doing
10 it, the evidence will show got a propofol vial, say it has 50
11 in it and you need 15 for this patient, draw out.

12 And the way it works, there are separate medications,
13 but say you put 5, 5 and 5 in the first patient, there's
14 still 35 in there. That 35 was then used next patient. Okay.
15 Now, that's one component of what they believe was most likely
16 occurred.

17 The second component was the nurse anesthetists, the
18 CRNAs we call them who inject the anesthesia, the propofol,
19 what -- and the CRNAs, there were Ron Lakeman, Mathahs, Linda
20 Hubbard, several others. You'll hear from them and you'll
21 hear about them. They all used not identical practices, put
22 it that way.

23 But they're the ones who were drawing the propofol
24 and injecting the patient. And what they believe is most
25 likely happened is the nurse anesthetists were using same

1 needle -- same needle and syringe, let me call it that way,
2 even though we'll get into some differences on some people
3 changed the needle on the syringe.

4 But they were using -- the first patient comes in,
5 get out a brand new needle and syringe, go into the propofol
6 vial, inject Patient No. 1. Patient No. 1 is starting to wake
7 up, needs some more propofol because it's very short. The
8 procedure's going on. The CRNA back into propofol vial, same
9 needle and syringe because it's the same patient, injects
10 patient again. There's still propofol there.

11 The CRNA takes the needle and syringe, because it's
12 been used on a patient -- and you'll hear about aseptic
13 technique that the doctors call it, and they put it -- it just
14 means real clean practices. But using aseptic technique,
15 you'll hear that the CRNAs then discard it in the Sharps
16 container, the needle and syringe, and got out a brand new
17 one.

18 New patient comes in, new needle and syringe,
19 propofol vial, into it, inject patient. Now, what they
20 believe happened as the most likely cause was that the first
21 patient had hepatitis C, and when the CRNA went back into
22 propofol vial to get a re-dose, a second dose for the patient,
23 that the needle and syringe may have been contaminated by the
24 patient, and then when the CRNA goes back into the vial, it is
25 believed that the vial may have been contaminated by the

1 patient, and then CRNA re-doses the patient.

2 They believe -- CDC, when I say they, the health
3 authorities believe the vial could have been contaminated that
4 was sitting there. So then the CRNA -- in comes a new
5 patient, CRNA thinking aseptic practices, throws out the
6 needle and syringe, gets out a brand new clean one, but goes
7 into what may have been a contaminated vial. Now, that's what
8 they believe may have occurred on these various days.

9 And so what you're going to be trying to determine as
10 you are going through all of this and hearing it is who did
11 what. The CRNAs, the medical staff, Dr. Desai, what was their
12 participation in this and what were they thinking, and did
13 they know of any of the risks involved if that's the way it
14 occurred.

15 And what they were thinking and the risks involved
16 are what matters for a criminal neglect case, because for it
17 to be criminal negligence and not just ordinary medical
18 malpractice negligence, there must be the elements of the
19 statute. The law tells you that it has to be the individuals,
20 the CRNA knew of the wrongdoing and was aware of the dangerous
21 risks and essentially did it anyway.

22 And so knowing that's what it is, you need to be
23 looking at the CRNAs and employees to see if they thought they
24 were doing okay, or did they know it was wrong and that it was
25 foreseeable, the risks and the wrongdoing.

1 And when this is explained, CDC representatives
2 actually said and will probably say in here, I mean, trying to
3 make it understandable to the public -- and one of them even
4 said at the legislature this idea of multiple use of a vial,
5 plus re-use of same syringe for same patient is so risky,
6 there is so much risk involved in that, that is the equivalent
7 of driving the wrong way on the freeway.

8 Okay. Now, that -- because they're trying to
9 simplify it so that you understand it. Because knowingly
10 driving the wrong way on the freeway is a crime. If you get
11 in an accident and someone gets hurt, that's a crime. And
12 where you compare criminal neglect, criminal -- or let me put
13 it this way. Reckless disregard for safety negligence, which
14 is like what they're charged with, when you compare that to
15 simple negligence, a mistake, misjudgment, error, those aren't
16 crimes.

17 So if you take the CDC's example, which they'll
18 explain here, about driving the wrong way on the freeway, I
19 want you all to keep that in your mind. Because the
20 difference between civil and criminal is if you go out of here
21 and you go to a different town, you're not familiar with the
22 freeways or something, and you happen to make a wrong turn and
23 get on the highway and you're going the wrong direction, but
24 you are not cognizant of it, you made a mistake.

25 You're not familiar with the neighborhood, I'm

1 driving the wrong way down the street and I get in an
2 accident; if that occurred under those circumstances where it
3 was a mistake, misfortune, misjudgment, and I get in an
4 accident and I'm driving the wrong way -- I see it all the
5 time here on 4th Street.

6 We've got a one-way street, and I'm consciously
7 watching because people aren't familiar with it, and they
8 accidentally hang a right and they're coming towards me on a
9 one-way street. If we get in an accident, I've got a great
10 civil suit. They were negligent and I win. Can they be
11 criminally prosecuted for reckless disregard or criminal
12 negligence in that? The answer is only if they knew what they
13 were doing and were conscious of the risk they were imposing.

14 And so if you take the driving the wrong way on the
15 freeway, I'll give you an example of the way it would be a
16 criminal case. Say you're out on I-15 on the way home tonight
17 and you come up to a big traffic jam. Okay. And you decide,
18 I'm late, I've got to go to work, the kids are home or
19 something, this is stopped dead, the sign's saying all lanes
20 closed up ahead, and I look over and there's an on-ramp and
21 there are no cars on it.

22 And I think, I'm going to go real quickly the wrong
23 way up the on-ramp, I know I can't do what I'm going to do, I
24 am consciously going to do something wrong, I'm aware of the
25 risk, but I'm going to go real fast and try to get there and

1 not get in an accident. So if I peel out of the traffic jam
2 and look and there's no cars coming and zip the wrong
3 direction, then I am doing everything that makes it a crime.

4 What we call all of the elements; I'm aware of
5 wrongdoing on my part, I'm conscious of the risk I am
6 creating, and I'm saying to hell with it, I'm wantonly and
7 willfully, which is the words of the statute, throwing caution
8 to the wind and putting other people at risk because I'm in a
9 hurry. Now, if I do that and I get in an accident -- of
10 course, even without an accident I'm breaking the law. But if
11 I get in an accident and there's substantial bodily harm or
12 God forbid, a death, then I have committed a crime under those
13 facts.

14 That is an example of what we are dealing with when
15 we are talking about criminal neglect in this courtroom. It's
16 looking at what the CRNAs were doing and what they believe.
17 Did they believe they were -- oh, let's see, this is probably
18 contaminated, but I'm going to save a few cents for that old
19 cheapskate Dr. Desai, so I'm just going to go ahead and put
20 patients at risk anyway?

21 You're going to hear from CRNAs here who have been
22 medical practitioners for 150 years between them, and you're
23 supposed -- and you're going to sit here and think, figure out
24 did they know of the dangers and risks involved in these
25 practices at the time they were doing it. And if the answer

1 is no, they didn't commit any offense.

2 Now, the actual statute on the -- just to demonstrate
3 what you all are looking for as you listen to the evidence --

4 (Pause in proceeding.)

5 MR. WRIGHT: This is the statute on the criminal
6 neglect of patients. There will be a different statute on the
7 reckless disregard for -- wanton and willful reckless
8 disregard for safety. Both of them deal with the same
9 conduct. And the components and mental requisites, that's
10 what do the individuals have to know to make this a crime
11 rather than a mistake or misadventure, that they're about the
12 same.

13 So professional caretaker -- under the law that's
14 Dr. Desai and Mr. Lakeman, because they're caring for
15 patients -- who fails to provide such service, care or
16 supervision as is reasonable and necessary to maintain the
17 health or safety of a patient is guilty of criminal neglect of
18 patient if, and then there's four what we call elements. And
19 the four things are -- follow here. They're in the
20 conjunctive, meaning and.

21 So A, B, C and D all have to occur in order for
22 someone to have committed an offense. Number 1, the act is
23 aggravated, reckless or gross. I left out or omission,
24 because here we're dealing with an act. Here we're dealing
25 with the act of anesthesia being introduced into a patient by

1 the CRNA. So that act, the way he performed his job had to
2 have been aggravated, reckless or gross, not just what we call
3 ordinary negligence.

4 Secondly the act, the act of the way he utilized his
5 aseptic technique, the way he anesthetized the patient, the
6 way he used the propofol, that act which has to be aggravated,
7 reckless or gross is such a departure from what would be the
8 conduct of an ordinarily prudent person under the same
9 circumstances that it is contrary to a proper regard for
10 danger to human life or constitutes indifference to the
11 resulting consequences.

12 So that means that that aggravated act has to be
13 something that is so far a departure from what others
14 similarly situated are doing. So that's where the evidence
15 will come in into the court as to what were others doing, what
16 were they doing at other facilities. Were they endangering in
17 the same type utilization of propofol and the same aseptic
18 technique. Because what it has to be is that it's so reckless
19 that others in the same situation would not even be --

20 MR. STAUDAHER: Your Honor, I'm objecting at this
21 point.

22 THE COURT: All right. Ladies and gentlemen, in
23 terms of the definition of the terms in all of the
24 instructions on the law, you'll be given that in a complete
25 packet at the conclusion, so I just want to remind you all of

1 that.

2 And additionally, there will be an instruction that
3 essentially says you're to consider all of the instructions
4 as a whole and consider each in the light of all of the
5 others. So just to remind everyone, there will be complete
6 instructions with some definitions at the conclusion of the
7 trial.

8 And Mr. Wright, please proceed.

9 MR. WRIGHT: Correct. Once again, I'm just trying to
10 explain to you all, and I'm not telling you what the law is
11 that the judge will read. This is the statute. I'm trying to
12 focus you all on -- into what the crime is, what the elements
13 are, so that when you hear the CRNAs and the questions they're
14 asked, what did you think, did you think, did you really
15 believe, Mr. CRNA, what did you believe was happening.

16 Because CRNAs will testify I thought as long as I
17 used the same syringe on the same patient and I took out a
18 brand new needle and put it on and changed the needle every
19 single time I entered the propofol vial, I thought that was
20 okay and that's the way I was taught. I want you all to know
21 these elements when you're hearing that, because it all
22 matters as to whether the CRNAs thought they were doing right
23 or whether they were just saying hell with it, I don't care
24 about the patient, I'm throwing caution to the wind.

25 The next thing that has to be shown for the criminal

1 case is the consequences of the negligent act could have
2 reasonably been foreseen. So this reckless act, the
3 individual engaging in it, the consequences of it; in other
4 words, that I'm engaging in a negligent reckless act the
5 consequences must have been reasonably foreseeable.

6 And if you just apply it to the guy taking the
7 shortcut on the freeway, he knows that's reckless and gross.
8 An ordinary prudent person waits in line on the freeway in the
9 traffic jam. You don't take a shortcut and endanger other
10 people's life.

11 And then for the third element, are the consequences
12 reasonably foreseeable, that means does the guy who decides he
13 can't wait and wants to go the wrong way on the freeway, was
14 it reasonably foreseeable that he's putting people's lives at
15 risk by doing that. And of course the answer's yes.

16 And then the fourth element, and of course, that's
17 and, meaning all of these have to be there. The fourth thing
18 to be shown is the danger to human life. Okay. The danger
19 that resulted from these practices at the clinic was not the
20 result of inattention, mistaken judgment or misadventure, but
21 the natural and probable result of an aggravated, reckless or
22 grossly negligent act.

23 That means even after you've shown one, two and
24 three, the last element that has to be shown and that the
25 State has to prove -- I don't have to prove it was

1 inattention, mistaken -- misjudgment or misadventure. The
2 State must prove it was not any of those things by the CRNAs
3 and these clinic employees and Dr. Desai, the managing member,
4 majority owner of the clinic.

5 And if you'll apply that to the guy going the wrong
6 way on the freeway, all of them match. It wasn't a matter of
7 inattention. That's what happens when somebody accidentally
8 turns and goes the wrong way on the freeway, or on any street.

9 It wasn't mistaken judgment when a guy intentionally
10 takes a shortcut and goes the wrong way on the freeway, and it
11 wasn't misadventure. It was someone knowing I am conscious of
12 the risk, I'm going to do it anyway because I don't care for
13 the patient. That's what the criminal portion of this case is
14 about.

15 Now, with that understanding of the offenses -- and
16 of course, the ultimate -- I don't want to leave out anything,
17 but the ultimate absolute count in here is a murder count, the
18 final count. And that count of murder is because Mr. Meana
19 died after having getting hepatitis. Mr. -- and so that they
20 ultimately charged as a murder count.

21 And of course, for murder, I'm not going to go
22 through all the elements. You'll hear the instructions.

23 THE COURT: Ladies and gentlemen, again, you'll get
24 complete instructions at the conclusion of the trial on
25 everything and are told to consider those all together.

1 So go on, Mr. Wright.

2 MR. WRIGHT: Right. But as you hear the case on
3 Mr. Meana and what happened in the treatment of him, because
4 it was really -- Mr. Meana is really the same -- what occurred
5 in his treatment on that day is the same as all the other
6 patients, but Mr. Meana had the misfortune of dying.

7 Okay. And so that's why the extra element is that
8 the CRNA acted willfully, wantonly and foresaw that he was
9 going to kill Mr. Meana when he was treating him that day.
10 That's what you will be looking for. Now, with that
11 framework --

12 MR. STAUDAHER: Your Honor, I must object to this. I
13 mean --

14 THE COURT: At this point it's overruled, so go on.

15 MR. WRIGHT: Okay. I'm done with the --

16 THE COURT: And then, Mr. Staudaher, you can --

17 MR. WRIGHT: -- statute.

18 The point of what happened at the clinic, as you all
19 know, the -- just Mr. Staudaher went through how this outbreak
20 of hepatitis C became known. There were two hepatitis C
21 reports. They went to the Southern Nevada Health District in
22 December of 2007. You had two cases of hepatitis C. And then
23 all of a sudden a third popped up on January 3, and of course
24 this raises a concern, an alarm.

25 And so they look and say any common denominators

1 here? We have three hep C cases and the common denominators
2 were all three of them got a procedure at the clinic. And so
3 obviously an investigation was started. Because the purpose
4 of the investigation by CDC, that's the group out of
5 Atlanta -- the feds came in here and the Southern Nevada
6 Health District, that's our county health offices, and the
7 state Bureau of Licensing Control, or it has some different
8 name now.

9 But it's the BLC, the CDC and the SNHD. So you have
10 the state, the feds and the county all come in, because you
11 have to figure out what's happening and how do we stop it.
12 And so they immediately mobilize their investigation. And
13 their goal in conducting an investigation like this is to
14 determine that how did it happen so that we can stop it and
15 prevent it and educate people, CRNAs, nurses, clinics,
16 doctors, so that it is not repeated if we can determine how it
17 happened.

18 So what do they do? By January 9 of 2008, everyone
19 is here, CDC, BLC, SNHD. And they all, without notice to the
20 clinic because that's the way you do these investigations, the
21 notice was like a half-hour. They're across the street on
22 Shadow Lane. Brian Labus from the health district called and
23 said essentially we have a hepatitis cluster and it may be at
24 your clinic, we're on our way over.

25 And within a half-hour, in they all walk, and they

1 meet with Dr. Clifford Carrol, who is there and in charge at
2 that time. And they meet with the chief, chief operating
3 officer, Tonya Rushing. They meet with Jeff Krueger, who's
4 like the -- one of the head nurse managers or something, and I
5 think with Kathy Maley, another nurse type manager.

6 And so this is the first meeting, and they're there
7 on January 9. And they're all -- the entire purpose,
8 everything is explained, because they are seeking the clinic's
9 cooperation in identifying how in the heck did this happen.
10 And the testimony in evidence will show that the clinic and
11 all of the employees, including Dr. Desai and Dr. Carrol, were
12 100 percent onboard, absolutely cooperative, what can we do,
13 number one, skeptical that they had done anything wrong and
14 wondering what did go wrong.

15 So they cooperate 100 percent. They meet for 2 1/2
16 hours that first day getting an overview, a walk-through;
17 here's our practice, here's how it works, here's our
18 anesthesia, here's our saline, here's our lidocaine, here's
19 our methods, here's our procedures, all to give them an
20 overview at the request of the investigators, or surveyors as
21 they call themselves, because they're coming back to do this
22 complete investigation.

23 And the clinic says, we're onboard a hundred percent,
24 and they were and remain as such. And so the next day, back
25 they all come and of course they had -- and I can't remember

1 at which point additional patients with hep C came into play.
2 But it might be by the 9th and 10th there were like a third,
3 fourth or fifth, because people started getting the symptoms.
4 They got sick, went to the doctor, they reported. And of
5 course every hep C is notified to the health district.

6 So it was put together that they had a patient on
7 the 25th of July with hep C, and they had like three, four or
8 five on September 25. And so they make all of the records and
9 everything available, set up an office, give them whatever
10 they need. And they bring in all the patient files, every
11 patient from September, every patient from July.

12 And they -- all of the surveyors, everyone starts
13 going over them and inputting all the information, because
14 they're looking for how did this happen because there are hep
15 C outbreaks at various surgical centers. And so they're
16 looking at scope cleaning. They're looking at the what do you
17 call it, infusion practices. And so they are looking at all
18 of this to determine what happened.

19 And so that -- then everyone in the clinic knows
20 what's going on, or everyone who is there working obviously.
21 And so they have all of the records so that they can look at
22 them all. And then they go to the direct observation stage,
23 and that's because the clinic's saying we didn't do anything
24 wrong to our knowledge, here's all of our records, please test
25 us all.

1 I mean, because they tested every single employee to
2 see if this was caregiver to patient. They still didn't know
3 the source of this. So all of the employees have their blood
4 drawn and they're tested to see where this hep C came from.
5 And so everyone's there, they know the purpose of it. So the
6 next thing is CDC, Southern Nevada Health District, two
7 doctors from CDC, two -- Ms. Fisher and Schaffer, who will be
8 witnesses here, come out, participate.

9 And after they look at everything, they do a full day
10 on-site participation observation. We're going to shadow you
11 through your entire practice and procedure to see if we can
12 figure out how this happened. And so you have this situation
13 where -- and of course in order for them to do it -- I mean by
14 shadow, really shadow.

15 Schaffer, Labus, people from BLC, right into the
16 procedure room, right from starting the hep-lock in the preop
17 area and then in the procedure room. And of course they had
18 to get the patient's consent for HIPAA purposes and
19 everything. But the patients on that day, 9th or 10th -- the
20 10th or 11th of January 2008 consented to the observation.

21 So you have the observers all standing there watching
22 like Dr. Cliff Carrol perform an endoscopy, an upper or a
23 lower colonoscopy, and watching the nurses and watching the
24 CRNAs, and observing everything that's going on trying to find
25 what had happened. And this goes on for the entire day, and

1 every employee there who was being observed knows they're
2 being observed and why they're being observed.

3 And so the employees, as you'll hear from the
4 evidence, engaged in the precise practices that I previously
5 described about use the propofol until it's empty and toss it,
6 new needle and syringe for every single patient. Right there
7 in front of the authorities who will have -- who file
8 complaints with the nursing board and medical board if you do
9 anything wrong, right in front of them they engaged in the
10 precise conduct which the CDC and the authorities believe most
11 likely caused the hepatitis C spread.

12 So right there in front of the authorities, propofol
13 draw, inject patient, patient needs more, back in, new draw,
14 patient needs more, set down the bottle, new patient, throw
15 out -- get out brand new sterile needle and syringe, use same
16 propofol. They do the alleged method of transmission, the
17 alleged wrongdoing, the vehicle by which this happened, they
18 do it right in front of them.

19 By the end of the day, that was Friday, whatever day
20 that is, like the 11th, I think, CDC, Southern Nevada Health
21 District say, whoa, we think this may likely be a way in which
22 it happened. We think the propofol vial, the medication vial
23 may have been contaminated, even though they watch various
24 CRNAs, even though the CRNA meticulously took out before going
25 back in.

1 One CRNA, he injects the patient and then he's going
2 to go back into the propofol vial, but before he goes back
3 into the vial he holds it up, he takes off the needle that he
4 had used to go into the patient, and he gets out a brand new
5 needle and puts it on for the inspectors, goes in and
6 reinjects.

7 The inspector said it's possible that even though you
8 used a new needle and even though the CRNA said he thought he
9 was using aseptic clean technique, they said maybe there was
10 backwash that got up into the syringe, so changing the needle
11 isn't enough. From now on, brand new needle, brand new
12 syringe every single time you go into the propofol vial.

13 So that from now on, starting today, this was the
14 11th of January, the patient comes in, inject, throw that away
15 right then and there. If the patient needs more, get out a
16 new needle and syringe to do it. That's what you need to do.
17 Secondly, no more re-use of the propofol vial. The patient's
18 done, throw it out, get out a new one. They said we think
19 that's likely what had happened.

20 Thereafter every single CRNA told, out comes the
21 written thing, here are the new procedures. And of course,
22 they weren't certain then and they still aren't as to what
23 the -- what really -- how it really transmitted. Now, they
24 were still thinking maybe it was the saline to start the IV,
25 the saline flush, because that's a multi-use. They use the

1 same saline to start the IV for every single patient that goes
2 through for the day. It's a multi-use saline bottle.

3 And then the CDC thought maybe it's the lidocaine.
4 Lidocaine is a multi-use thing, and they mix lidocaine with
5 propofol so it doesn't sting you when it goes in. So they
6 said -- CDC said, could be the lidocaine, could be the saline,
7 could be the syringe re-use, could be propofol re-use.

8 So the clinic said, okay, they got rid of the
9 lidocaine, they got rid of the multi saline because that could
10 have been the cause, and instead ordered prefilled little
11 syringes of saline. And they set out no more multi-use of
12 propofol and no more re-use of syringes at any time, and the
13 investigation goes on.

14 All those changes were put in play and the
15 cooperation of the clinic goes on. And as you know, there's
16 more than one clinic. There's what we call the Shadow Lane
17 clinic and there's the Burnham clinic. And the evidence will
18 be such that some of these CRNAs are so -- and you'll hear
19 their testimony, because they believe what they were doing was
20 correct and that they were being safe in the way they were
21 doing it.

22 And even after this memo went out and they were
23 instructed and they even signed that they would do it, one of
24 these CRNAs of Burnham -- and it's not Mr. Lakeman. One of
25 these CRNAs like on January 29 or 30, further inspections are

1 still going on, still trying to resolve this riddle. BLC from
2 the state goes out to the Burnham branch of the clinic and
3 they go in and they do the observation.

4 They're in there watching and everything, and
5 there's a CRNA -- and of course they're well aware the BLC,
6 CDC and Southern Nevada Health District knew of all the
7 changes that had been implemented. And there's a CRNA that
8 proceeds to use two propofol vials right in front of the
9 inspector. And she goes, I don't believe what I just saw.

10 And she says, Tell me what you're doing. And he
11 explains he isn't going to throw away -- this bottle's still
12 half full, I'm not going to throw it away. I am using aseptic
13 technique. I am getting a brand new needle and syringe every
14 time I go into the vial. Every single time I enter it I'm
15 using a new needle and syringe, so there is no way on earth
16 this is -- can harm anyone.

17 She says, Hold on. She goes and gets Dr. Mason. She
18 goes and gets Jeff Krueger. She goes and gets Tonya Rushing.
19 She tells the CRNA, tell them what you just told me. The CRNA
20 says, I can use each propofol vial, as long as I use a brand
21 new needle and syringe it is impossible for me to infect
22 anyone, and I can use all the propofol and not waste money
23 because I'm using new needle and syringes.

24 They say, Didn't you get the memo, no propofol
25 re-use? So despite the best efforts, he thought he was right.

1 He said, Okay, I'll follow the rules and I won't do it that
2 way. But you will hear from all of these witnesses.

3 So then what happens, we're into early February.

4 Okay. The investigation has gone on and the health district
5 is determining -- the Southern Nevada Health District is
6 determining what steps do we need to take, because it's -- if
7 these clusters occurred the way we believe they occurred from
8 these practices which were standard and had been ongoing, then
9 other patients are at risk.

10 If we are right that this is the method of
11 transmission, and we believe we're right, I'm talking the CDC
12 now, we believe this is the most likely way it happened, then
13 that means it could have happened every other day also.

14 So therefore we need to notify all patients for every
15 day that due to unsafe injection practice with use of multi --
16 common use of a vial, there is a possibility you may have been
17 infected, go get a test to make sure you don't have HIV, any
18 blood-borne disease. So that's what was going to precipitate
19 the notification to 63,000 patients of the clinic.

20 Well, the clinic -- and you'll hear this evidence.

21 But the clinic, because it's a business, you heard that, and
22 Dr. Desai is a businessman and all the other physicians that
23 are part-owners of this clinic, they're concerned that we're

24 not sure you guys are right. You're going to go out and

25 notify 63,000 people, and it is going to be the death nail for

1 our business. Our business will not be open the next day if
2 you go forward. What if you're wrong about your theories of
3 transmission.

4 So the clinic, they hired their own epidemiologist
5 and specialist and said, look, why don't you do a random
6 sampling if you think it's necessary, take various dates and
7 test everyone before you put a scare into the population with
8 this widest notification in nation history.

9 And the answer was, and this will be the evidence,
10 that it doesn't matter whether our theory of transmission was
11 right or wrong, because it's simply the hepatitis C clusters
12 that got us into your clinic, and once we were in your clinic
13 we observed the unsafe practice we are going to notify about.
14 And that makes sense, because their goal is to notify if
15 there's a possibility that there were unsafe practices that
16 could potentially expose other patients.

17 Well, obviously the clinic owners and the employees
18 also, because there were like 200 people employed throughout
19 the clinic, they were saying, gee, your method of
20 contamination and your mechanism that you think happened
21 doesn't make sense to us and our experts, because we have this
22 strange phenomena on the 25th -- well, I was going to point at
23 Mr. Staudaher's charts, but we don't share.

24 If you look on the 25th, you're going to see infected
25 patient, source patient come in, and then there's like 60

1 procedures that day, and somehow hepatitis C from the source
2 patient goes from one procedure room to the other procedure
3 room, so that patients are infected with hepatitis C in the
4 room that the source patient wasn't in, and the propofol all
5 stays in each room, yet somehow the hepatitis C jumped rooms
6 and jumped over patients.

7 Because you have people, source patient, hepatitis C,
8 the next patient no hepatitis C, third patient gets hepatitis
9 C, four, five and six, no hepatitis C. You have someone get
10 hepatitis C like 4 1/2 hours later with 20 patients who got no
11 infection in between. And so everyone's scratching their
12 heads and saying how did this happen.

13 Well, even you'll hear from Dr. Carrol and he'll say
14 we were worried about a rogue employee, we were worried that
15 it was the scopes, we were -- the cleaning of the scopes, or
16 was there a scope problem that caused it, and we were saying
17 don't jump the gun and ruin our -- close our business with a
18 needless notification if you're wrong on the mechanism.

19 And once again they said -- Brian Labus said to
20 him -- Brian Labus will be here to testify. He said, That's
21 all very interesting epidemiologically, however it really
22 doesn't matter how it was transmitted. What matters is we
23 know there was an unsafe practice and it's the unsafe practice
24 we discovered which triggers the notification, so we reject
25 your offer and we're going with the notification. And those

1 offers included -- well, I'm going to go on too long.

2 But the next thing that happened, they do the patient
3 notification. And so all those letters go out. But it ended
4 up being 63,000 letters to everyone to go out and get tested.
5 And I think Mr. Staudaher said that this was the biggest
6 hepatitis outbreak in the history of the country or something,
7 and I beg to differ. I mean, I think what he meant to say was
8 this was the largest notification of patients ever in the
9 history of the country, because there have been other
10 hepatitis C outbreaks with more people infected.

11 However, at that point notice goes out and of course
12 within days clinics are closed. Okay. No longer operating.
13 That within days, I think March 10, Mr. Whiteley [phonetic],
14 this Detective Whiteley sitting there was at the door of the
15 clinics with a search warrant. And of course that means law
16 enforcement in. Seize all of the records, all of the
17 computers, everything going on in the business.

18 Well, at that point there wasn't any business because
19 it had been closed by licensing. And by that point what we
20 call the plaintiff's bar, that's the personal injury lawyers,
21 were out and on the loose and advertising. And so by that
22 point all of the lawyers were out and so civil suits were then
23 being filed by any -- essentially anyone who ever went to the
24 clinic were being filed.

25 Thereafter the evidence will show that the clinics

1 are closed. All those people went out of work. You will hear
2 from the nurses, the GI techs, everyone else that worked there
3 will tell you they didn't think they were doing anything
4 wrong. It was difficult getting jobs again because they were
5 tarnished by where they had been employed.

6 But all of that's closed. The lawsuits come.
7 Every -- a lot of lawsuits were filed, a lot of civil suits.
8 Dr. Desai was sued. Dr. Desai, you will see from the
9 evidence, went into -- ultimately into bankruptcy and lost
10 everything he has had in bankruptcy. And the lawsuits of the
11 various people suing all of the doctors and the people that
12 worked at the clinic, that's sort of how it ended up.

13 Now, I want to be -- I can't tell you -- I'm not
14 going to sit here and forecast what various witnesses are
15 going to say or tell you. I mean, I just told you -- I'll
16 tell you where I think it's going to end up, the state of the
17 evidence. But I can't tell you what various doctors are going
18 to say other than I've had access to transcripts, meaning
19 their testimony like at the grand jury or in civil cases.

20 There are so many transcripts in this case it drives
21 you nuts. I must have 200,000 pages because of all the civil
22 lawsuits. So I have a sense of what various people will say,
23 but being a criminal defense attorney and representing
24 Dr. Desai, the situation is such that the witnesses don't talk
25 to me.

1 Because if -- Mr. Staudaher pointed out that this was
2 a difficult case to investigate. He had a situation where
3 people wouldn't talk to him, but he just casually tossed out
4 we had to immunize them. He has more power than I do. I
5 can't immunize anyone and no one has to talk to me.

6 And so when I tell you we will sort of learn together
7 to hear all the evidence and to seek out the truth, I am
8 meaning that because the State has the ability to talk to all
9 of these witnesses who will be in here. And they have the
10 ability because if one of those witnesses is contacted by
11 Detective Whitley [phonetic] or Mr. Staudaher or Ms. Weckerly,
12 it's tough to hang up on them, because they issue subpoenas
13 like the grand jury.

14 And if someone wants to say, well, I take the Fifth,
15 you know, I don't want to talk to you, I'm a doctor there, I'm
16 a nurse, I'm a CRNA, I take the Fifth, I don't want to answer
17 any questions because my answers might harm me, they have the
18 ability to -- we use some immunity. That means they have the
19 ability to take away the Fifth Amendment rights and to turn
20 the people into witnesses.

21 I don't have that ability. I can't immunize. I
22 can't drag them to the grand jury. I can call people up and
23 get hung up on, or I can send out investigators and ask will
24 you please talk to me.

25 But so a lot of it, I have a sense of what will be

1 said from transcripts, but I haven't had a chance, and I'll
2 talk to each juror and -- pardon me, each witness, and I
3 normally ask them have we ever met before, have you ever
4 talked to me before. You'll find out like 99 percent of them
5 have talked to Mr. Staudaher or talked to Ms. Weckerly or
6 talked to Detective Whiteley, but the first time they're ever
7 talking to me is right here in the courtroom.

8 But that's just the nature of the way the practice
9 goes. So I can't say that Jeff Krueger is going to testify to
10 this or that, because I don't know. But what I can say is
11 that I -- my sense is that at the end of this case you are not
12 going to find CRNAs, nurses, doctors who are going to say that
13 they perceived wrongdoing, that they perceived risky practices
14 going on.

15 They're -- I think the state of the evidence is going
16 to be they were not cognizant, aware of this risk that
17 occurred if that is the way it happened. And I think the
18 whole focus of the case is going to be on the propofol, the
19 CRNAs and the needle and the syringes and the injection
20 practices.

21 I think all this other talk about bite blocks,
22 blankets, sheets, biopsy snares, biopsy forceps, everything
23 else, I think all of the evidence -- despite the opening
24 statement and showing the picture of a bite block and gee,
25 here's a bite block, and it went into the Medivator and it

1 said single use and they sterilized it and used it a second
2 time.

3 I believe all of the evidence is conclusively going
4 to show that a bite block has nothing to do with any
5 transmission of hepatitis C, and that the entire focus of this
6 case from all of the witnesses talking about truly what
7 happened on that day is going to be on their injection
8 practices and on the utilization of propofol. So it's our
9 request that you pay particular attention to that.

10 And as you're listening to those various witnesses,
11 that determine if when they were doing that, did they perceive
12 that they were knowingly, consciously doing something wrong
13 and knowing the risks involved in it. Were they at that time,
14 when they were actually engaging in the practices in front of
15 the inspector --

16 Now, Mr. Staudaher characterized their conduct for
17 you yesterday by saying their unsafe practices were so
18 ingrained in them that they had the audacity to do it in front
19 of the inspector. That's his view of what the CRNAs were
20 doing, that they knew they were wrong and did it anyway with
21 the inspectors watching. That would be just like the guy on
22 the freeway, knowing the highway patrol is sitting there
23 watching him, does it anyway.

24 Now, you listen to the CRNAs when they testify and
25 you see if this was some ingrained knowing wrong practice. I

1 know they're watching me, they're looking for if I do anything
2 wrong they're going to file a complaint, and so I go ahead and
3 intentionally do something I know is wrong anyway.

4 I think the evidence is going to be such that every
5 single one of those employees, every practitioner in there did
6 not know they were engaging in risky behavior when they did
7 what they did which allegedly caused the hepatitis
8 transmission. And when you come to that conclusion on it, you
9 will see they didn't engage in criminal reckless wanton
10 knowingly foreseeable harming misconduct.

11 On the billing cases, same thing. I'll go through
12 them with the witnesses with you all, and we'll see what the
13 bills all are and how it transpired, if they are right, wrong,
14 and who knew it and where the fault is and whether it's
15 criminal or not. Once again, witnesses don't talk to me about
16 that, so we'll learn about it in court.

17 I think when you have looked at the evidence the way
18 I believe it will come in, you will see that there was not a
19 criminal case here that the State can prove beyond a
20 reasonable doubt. I'm not even sure -- it's going to be
21 interesting to see with CDC and Southern Nevada Health
22 District -- I'm not even sure we're going to be able to get to
23 proving exactly what the transmission mechanism was that day,
24 which is what's necessary for us to determine who was at fault
25 and whether or not they knew they were at fault at the time

1 they were doing it. And when you reach those conclusions, if
2 you reach the same as I do, you would return verdicts of not
3 guilty. Thank you.

4 THE COURT: All right. Thank you, Mr. Wright.

5 Ladies and gentlemen, I believe it is lunchtime. In
6 a moment we will take our recess for lunch break. It is now
7 noon. I will give you until 1:10 for the lunch recess.
8 Before I excuse you, I must again admonish you that you are
9 not to discuss the case or anything relating to the case with
10 each other or with anyone else. You are not to read, watch,
11 or listen to any reports of or commentaries on this case, any
12 person or subject matter relating to the case by any medium of
13 information. You are also not to do any independant research
14 by way of the Internet or any other medium. And finally
15 please do not form or express an opinion on the trial.

16 Would you all please place your notepads in your
17 chairs and follow our bailiff through the rear door.

18 (Jury recessed at 12:00 p.m.)

19 THE COURT: All right. I'd like the lawyers and the
20 defendants back at 1:00 so that we can discuss and hopefully
21 resolve any issues or questions regarding Mr. Santacroce's
22 opening statement prior to the time he begins so hopefully we
23 can avoid any interruptions in Mr. Santacroce's opening
24 statement.

25 Is that acceptable, Mr. Santacroce.

1 MR. SANTACROCE: Very acceptable, Your Honor. Thank
2 you.

3 THE COURT: All right. We'll see you all back here
4 at 1:00. The courtroom will be closed so we need everyone to
5 please exit.

6 (Court recessed at 12:01 p.m. until 1:05 p.m.)

7 (Outside the presence of the jury.)

8 THE COURT: Where is Mr. Staudaher? Was that just
9 him?

10 MS. WECKERLY: No. I'll grab him.

11 THE COURT: Is this door shut?

12 THE MARSHAL: The doors are locked.

13 THE COURT: Okay. And this door is shut?

14 THE MARSHAL: Yes.

15 THE COURT: All right. Thank you. I wanted to just
16 place this on the record concerning Juror Rachel Robinson. As
17 the attorneys know, we met in chambers this morning regarding
18 her situation and it was requested of the Court that the Court
19 take some steps to see if her employer would accommodate her
20 service as a juror.

21 And so in the presence of the attorneys this morning,
22 the Court contacted the two people that we received -- that
23 were part of the email traffic, Ms. Robinson's supervisor and,
24 I believe, a Ms. Sanford, who was more in charge of human
25 resources, according to the email. And the Court left voice

1 mail messages for both of them essentially saying who I was
2 and that we received their copies of the emails, and that I
3 was contacting them regarding Juror Rachel Robinson.

4 At the lunch break, the beginning of the lunch break,
5 I received a return telephone call from Ms. Sanford of human
6 resources. And I explained the situation to her and I said
7 that Ms. Robinson wanted to be excused -- essentially this is
8 my recollection, so I'm paraphrasing a great deal here.

9 Ms. Robinson wanted to be excused and was very upset and
10 concerned about being compensated.

11 And I informed the woman, you know, it wasn't that
12 simple of a matter, that we had already gone through jury
13 selection and that it was an inconvenience for all of the
14 jurors and she'd already been selected and that we were hoping
15 we could somehow reach some kind of solution, that I didn't
16 want Ms. Robinson, you know, to not pay her bills or be
17 homeless or lose her car or anything of that nature, and that
18 we had discussed the issue of the HOA meetings during the jury
19 selection, and the Court had indicated to her that she would
20 be able to attend all the HOA board meetings, that we would
21 even break early if she had meetings in Green Valley or
22 something like that as long as she notified us ahead of time.

23 And then I said, you know, is it the kind of thing
24 where she could maybe do her duties in the morning, make phone
25 calls, things like that at our lunch breaks, or exchange

1 emails, that sort of thing, and receive all or part of her
2 salary. And Ms. Sanford indicated that there was a 24-hour
3 policy regarding returning phone calls from the HOA members,
4 and I indicated I didn't see that that would be a problem, as
5 we don't start right at 8:00 a.m.

6 We never start at 8:00 a.m. You know, we might be
7 starting 9:30 or 10:00. She could certainly return calls in
8 the morning. She could certainly return calls after we broke,
9 you know, at 5:00 or thereabouts, and she could certainly
10 return phone calls and emails, you know. If she had a laptop
11 or an iPhone or something like that, she could certainly
12 return emails, return phone calls during the lunch break.

13 So I asked if they as a good corporate citizen, to
14 encourage jury participation, could see if there was some way
15 they could pay her all or part of her salary so long as she
16 continued to perform much of her or some of her duties in that
17 way. And so Ms. Sanford indicated that that was not their
18 policy to do that.

19 And I said, Well, you know, can you make an
20 exception, I don't want Ms. Robinson to be retaliated against
21 in any way, so I wanted it to be clear that this wasn't, you
22 know, the Court was asking based on where we were in the
23 process, and that she had asked to be excused and we had told
24 her no, she would not be, you know, we were not excusing her
25 at this point.

1 And although, you know, I pretty much indicated that
2 if they said no, she would be, you know, be excused, but I
3 said, We don't expect people, you know, to lose their homes,
4 we don't expect people who are so upset, you know, that
5 they're crying or physically ill to serve as jurors obviously,
6 I said, you know.

7 She said, well, that wasn't their policy, that she
8 was not in a high enough position that she could make a
9 decision, but that she would have to meet with various
10 higher-ups in the organization and see what they -- sort of
11 see what they could do.

12 My sense is they're probably not going to make an
13 accommodation, but I don't have an answer. She said she'd try
14 to get back with me in the afternoon. Then depending what she
15 says, I'll inform you and decide where to go from there. So
16 that's where we are and that's as accurately as I can recall
17 the conversation. I wanted to inform you and place that on
18 record. All right.

19 MR. STAUDAHER: Could I address one issue?

20 THE COURT: Sure.

21 MR. STAUDAHER: I don't know if we're planning to
22 take a short break after Mr. Santacroce's opening.

23 THE COURT: Well, if it's 30 minutes or less, no. If
24 it's, you know, an hour or so, then definitely.

25 MR. STAUDAHER: Based on that --

1 THE COURT: Unless you need to like set up something.

2 MR. STAUDAHER: No, that's not the issue. The issue
3 is that the first witnesses that we have that are actually
4 here in the vestibule as we speak, the attorney for them --
5 they are the Washingtons. This is Ms. Patty Weiss. She is
6 their attorney.

7 One of the concerns I think I raised to the Court in
8 chambers previous to this trial even going forward was the
9 concern that the victims in this case who are party to
10 lawsuits that have confidentiality agreements, that if
11 questions were asked about that, that they couldn't
12 voluntarily just come up with that, that the Court would have
13 to order them to do so.

14 THE COURT: Right. But we're going to do that out of
15 the presence --

16 MR. STAUDAHER: But on the record.

17 THE COURT: -- of the jury, but out of the record.
18 Now, obviously if they go beyond sort of the basics, you filed
19 a lawsuit and this and that, if it's something that the
20 State -- you know, obviously you can't be making objections or
21 anything like that. But, you know, if the State feels that
22 it's getting into something that's irrelevant, then certainly
23 the State is free to object on relevancy grounds.

24 You know, basically the fact that there were lawsuits
25 goes to, you know, bias and their motivations, or it can be

1 argued that it goes to that, so I'm letting it in. But, you
2 know, if they -- if it becomes irrelevant, then certainly the
3 State can then at any time lodge a relevancy objection and
4 I'll, you know, rule on it. If I overrule the objection, then
5 obviously they have to answer.

6 But certainly we can put on the record the agreement
7 and I'll say, well, this is, you know, a criminal prosecution
8 and the rights of the defendant have to be protected, and
9 therefore, if I feel it's a relevant question, then
10 notwithstanding any private agreement they've entered into,
11 even if it's been approved by another district court, they do
12 have to answer.

13 MR. STAUDAHER: Now, that being said, I want to make
14 sure that -- and that's one of the reasons why Ms. Weiss is
15 here, that both the defense parties are aware that there
16 was -- there was not just a settlement that was with this one
17 individual, they were part of a more global settlement.

18 So it would bring in -- and I know that there was an
19 allusion to this during opening statements, but there were
20 multiple plaintiffs involved in those things --

21 THE COURT: Right.

22 MR. STAUDAHER: -- which would indicate that there
23 are multiple instances, or other -- because there was an issue
24 of whether there were other clusters out there or so forth. I
25 think it would lend itself to possibly opening the door to

1 that, which I don't have an issue with. I'm just making sure
2 that everybody's on board with this.

3 And also that Dr. Desai was actually a party and did
4 settle, and that these witnesses are subject to a
5 confidentiality agreement with Dr. Desai specifically, so they
6 would -- if they're asked to essentially answer the questions,
7 that they're foregoing -- or he is foregoing that issue with
8 regard to them personally because they were a part of an
9 individual lawsuit with him.

10 Is that fair?

11 THE COURT: Is that understood? Any objection to
12 that from the defense, Mr. Wright, Ms. Stanish? No.

13 And then, Counsel, your concerns?

14 MS. WEISS: Yes. Actually, I don't think it's a
15 concern as much for the plaintiffs that they were involved in
16 the lawsuit, the lawsuits were settled. It's the amount of
17 the lawsuit, because they are confidential. And by the
18 agreement, it has to be a court order to make sure that they
19 don't have to give the money back.

20 THE COURT: Okay.

21 MS. WEISS: So if they say --

22 THE COURT: Now, I know that -- is it -- were they
23 part of the whole big global settlement?

24 MS. WEISS: They settled with Nevada Mutual on behalf
25 of Mr. Lakeman and Mr. Desai.

1 THE COURT: Okay.

2 MS. WEISS: That was the first settlement.

3 THE COURT: Okay.

4 MS. WEISS: The amount is confidential and my
5 understanding is that Nimick [phonetic] was going to object to
6 the amount being told in open court.

7 MR. STAUDAHER: Not Nemec.

8 THE COURT: He was going to object --

9 MR. STAUDAHER: Not Nemec. It's Nevada Mutual
10 Insurance.

11 THE COURT: Oh, I'm sorry. I thought you meant Nemec
12 like Frank Nemec. I'm thinking what does Frank Nemec -- I
13 know he's an expert in the case, what does he have to do with
14 that.

15 MS. WEISS: I'm sorry. Nevada Mutual, which is the
16 insurance company for the doctors. So there's a
17 confidentiality agreement with them, which is separate.
18 There's a confidentiality agreement with Mary Greer, who's a
19 pharmacist, and there's a confidentiality agreement with Teva
20 and Baxter, who are the product defendants, and that's the
21 major global settlement --

22 THE COURT: Right.

23 MS. WEISS: -- that was rendered.

24 THE COURT: Right.

25 MS. WEISS: And there's, you know, my understanding,

1 there's 70 or 80 different plaintiffs. We don't represent
2 them all. I'm here for just two of the victims, the
3 Washingtons, and then also Sonia Rivera.

4 THE COURT: Right. Here's my comment on the Teva. I
5 mean, I'm semi aware of the amount of the global -- I don't
6 remember the exact figure, but I'm pretty much aware of what
7 it was on that global settlement. I know obviously the
8 attorneys took their share and then it was divided up.

9 I mean, the reason I was so fortunate to get the
10 criminal prosecution is because, I don't know if you recall,
11 but I was handling the consolidated civil cases.

12 MS. WEISS: Right. Hall Hilty, which is my case. So
13 yeah, [inaudible].

14 THE COURT: Right. And so I, you know, have some
15 memory of this, although it was a while ago. And then I know
16 that there was some basis for how it was divided up among the
17 various plaintiffs. My sort of initial response to all of
18 this is I don't think it's relevant what the lawyers got. I
19 don't think it's relevant what the other plaintiffs may have
20 gotten.

21 So in those terms, I would direct both sides to stay
22 away from the global settlement, because they're going to hear
23 these huge numbers, and I think it's going to be completely
24 misleading to the jury, number one. Number two, as I said
25 before, you know, what the lawyers made on this I don't think

1 is relevant, and what other plaintiffs may have made I don't
2 think is relevant.

3 And so I don't see that that should even be coming
4 in, because as I just said, first of all, then now you're
5 intruding on their privacy and they're not even maybe related
6 to the victims in this case. And second of all, I think that
7 just that sounds like such a huge amount without them
8 appreciating, okay, this goes to costs and these were all the
9 experts that they had to have, and then this goes to the
10 lawyers, and this was all divided up among the lawyers, and
11 now you've got these different plaintiff groups.

12 I think that just a number is completely misleading
13 and confusing, and I don't want to open a whole separate, you
14 know, issue on how that was all handled and it was approved by
15 the court. So it was approved here, and Judge Togliatti spent
16 a long time, settlements, other judges were involved, and so
17 that's too much of a side issue. So is everybody clear on the
18 limitation there?

19 I think in terms of the plaintiffs themselves,
20 that -- this, you know, whoever is under oath right now, that
21 could be the subject of fair game. But to go beyond that I
22 don't think is appropriate.

23 MR. STAUDAHER: Just what that person may have
24 received?

25 THE COURT: Right. Yeah. Is everyone fine with

1 that?

2 MS. WEISS: I just have an objection, that if you can
3 order them to tell, because I mean, the --

4 THE COURT: Right.

5 MR. STAUDAHER: Yes. That has to be done.

6 MS. WEISS: If you order them to tell, and also
7 because, I mean, there is an amount that was given to the
8 Washingtons. They got a huge verdict against Teva, and
9 they're concerned for their privacy and safety. They're both
10 elderly and he's very ill. If you could maybe like do what
11 you're doing now, and have the jury present when they testify
12 about the amount, but not the media and all the attention.
13 Because I mean, I think that is a concern for them.

14 MR. SANTACROCE: I'm going to object to that, Your
15 Honor.

16 THE COURT: Yeah. So they received a jury verdict,
17 correct?

18 MS. WEISS: They got a verdict, and subsequent to the
19 verdict there was a settlement with that defendant. They
20 settled with these guys before.

21 THE COURT: Right. I understand. And then the
22 settlement -- I mean, basically what did they wind up getting?

23 MS. WEISS: In their pockets?

24 THE COURT: Right.

25 MS. WEISS: I'd have to -- I mean, honestly, I'd have

1 to go back and look at that.

2 THE COURT: So they're not even going to know?

3 MS. WEISS: They may not know the amount they
4 actually -- because there was -- it was done and there was
5 payout to, you know, in different ways and structures and
6 things like that. I'm not sure if they're going to know that
7 answer.

8 THE COURT: I don't know that that's even terribly,
9 you know, relevant. We could do a ballpark. I mean, here's
10 the thing.

11 MR. WRIGHT: I want to know.

12 THE COURT: As you know, this is a public forum.
13 This is a case that has a huge amount of public interest.
14 And, you know, it is the great exception rather than the rule
15 that the media is ever excluded.

16 The only reason that actually they had just been
17 excluded is to discuss a private situation with a juror that
18 frankly, at this point, could have involved some other health,
19 for lack of a better word, issues that I don't feel the media
20 needs to be privy to at this point in time. So that's why we
21 closed the door.

22 In terms of the trial process and the evidence that
23 the jury's going to consider, I think that that is germane for
24 the public to know, and so I'm very reluctant -- defense has
25 objected, you know. I think it's the extreme situation. I

1 mean, we have, you know, people who testify in criminal trials
2 about, you know, children who testify not necessarily on
3 camera, but children who testify about sexual abuse, and we
4 don't exclude the media there.

5 So I don't see that this is like such a heightened
6 situation where we have to exclude the media. People like --
7 you know, rich people who are victims, well-known people, you
8 know, they give their residential addresses. Now, I
9 understand this is probably going to be -- this is a little
10 bit reel to reel. I don't know if it's being broad -- well,
11 just on the Internet and that's like all over the country. So
12 I have to say no to excluding any portion of their testimony
13 from the media.

14 MR. STAUDAHER: But you will order them to do it, so
15 that there's no issue with their confidentiality?

16 THE COURT: Right. So Mr. -- right. Exactly.

17 MR. WRIGHT: Well, and I would hope, I mean, they --
18 if you refresh their recollect -- I don't want to have to
19 probe them to get the amounts, you know, I mean, to get
20 them --

21 THE COURT: Do we know what the, Mr. Wright --

22 MR. WRIGHT: I don't.

23 THE COURT: I mean, I don't think we need, you know,
24 dollar and cents. I mean, is it over between five and ten
25 million?

1 MR. WRIGHT: No. I want to know the --

2 THE COURT: Is it between 20 and, you know, 25
3 million? I mean, to me, if it's 21.5 million or 23 million
4 isn't really a big difference.

5 MS. WEISS: Well, no. We know the exact amount they
6 settled for net -- or gross. I'm talking now, because it
7 sounds like you're limiting it to the net amount that they
8 recovered. I could try to get that amount for you and try
9 [inaudible].

10 THE COURT: Or they could say --

11 MR. WRIGHT: [Inaudible.]

12 THE COURT: Right. I mean, just basically, like I
13 said, especially concerning the global settlement and the
14 amount of the global settlement, I don't want that to come in.
15 That's not relevant to anything here and, you know, how much
16 the different lawyers made off that, that's totally
17 irrelevant.

18 MS. WEISS: Yeah. If you want a net figure, that's
19 why I was saying there's a difference between the gross. Of
20 course we know the gross figure. It's just the net figure
21 after everything came out.

22 THE COURT: Yeah. That, I don't know how hard that
23 is for you to calculate, because there's, you know, it's
24 obviously more complicated.

25 So Mr. Santacroce, how long do you anticipate for

1 your opening?

2 MR. SANTACROCE: About an hour.

3 THE COURT: Okay. Why don't we do this. Let's move
4 into Mr. -- first we're going to deal with your pre-opening
5 issue, we're going to do Mr. Santacroce's opening, then we'll
6 take a break.

7 In the meantime, ma'am, if you could try to calculate
8 that, we'll take a break, I'll advise your clients, and then
9 you can say what that is. And if there is any questions or
10 issues with the lawyers, we'd bring that up at that time.

11 MR. WRIGHT: On any amount from any source, meaning
12 the settlement with my client and/or --

13 MS. WEISS: We don't want to [inaudible] what your
14 client's settlement, correct?

15 THE COURT: Yes, just the clients.

16 MR. WRIGHT: Right. I'm not saying global. I'm just
17 saying how much was for Mrs. Washington.

18 MS. WEISS: How much did Dr. Desai pay, how much did
19 this -- okay.

20 MR. WRIGHT: Correct.

21 THE COURT: Yeah, that's it. And only them, nobody
22 else. Okay. I think we're all saying the same thing.

23 MS. WEISS: I appreciate it.

24 THE COURT: All right. Thank you.

25 Kenny, you can let the media set up.

1 And Mr. Santacroce, what was your -- after seeing
2 what Mr. Wright did, that excellent closing argument [sic]
3 Mr. Wright made, do you have any questions regarding what you
4 can do?

5 MR. SANTACROCE: Yes. I want to know if I can refer
6 to the language in the indictment specifically related to the
7 murder charge, and read some of the language in the indictment
8 as it relates to my client.

9 THE COURT: Any objection? I mean, it's already been
10 read to the jury.

11 MR. STAUDAHER: Yeah. I don't have a problem with
12 him reading the language in it.

13 THE COURT: Okay. That's fine.

14 All right. If anyone needs to use the restroom, do
15 it right now, so we don't have to hopefully take a break
16 again.

17 (Court recessed at 1:24 p.m. until 1:27 p.m.)

18 (In the presence of the jury.)

19 THE COURT: Court is now back in session. The record
20 should reflect the presence of the State through the deputy
21 district attorneys, the presence of the defendants and their
22 counsel, the officers of the court, and the ladies and
23 gentlemen of the jury.

24 Mr. Santacroce, are you ready to proceed with your
25 opening statement?

1 MR. SANTACROCE: I am, Your Honor.

2 THE COURT: All right. Thank you.

3 MR. SANTACROCE: Thank you.

4 DEFENDANT LAKEMAN'S OPENING STATEMENT

5 MR. SANTACROCE: Good afternoon, ladies and
6 gentlemen. My name is Frederick Santacroce, and I represent
7 Ronald Lakeman, as you know through our jury voir dire.

8 This is my opportunity to tell you a little bit about
9 the evidence that I think's going to be brought out from this
10 trial. And specifically, I'm not going to rehash what's
11 already been done, so you can relax about that. What I'm
12 going to do is I'm going to focus in on the evidence that the
13 State didn't tell you about, and the evidence they didn't tell
14 you about that I expect to come into this trial.

15 Now, as you know, Mr. Lakeman here is sort of the
16 forgotten person in this case in many ways. And as we talked
17 about in jury voir dire, you all promised me at that time that
18 you would weigh the evidence individually against Dr. Desai
19 and Mr. Lakeman to come to your decision.

20 You also promised me in jury voir dire that you would
21 withhold any decision until all the evidence has been
22 presented, and I'm going to call upon you to do that again.
23 Please do not make any decisions until you hear all of the
24 evidence.

25 Mr. Lakeman is a 65-year-old man. He is a CRNA, a

1 certified registered nurse anesthetist, and you already know
2 what that is by now. He's the one that administered the
3 propofol at the clinic. Not the only one. There were seven
4 of them, seven CRNAs. Mr. Lakeman was trained in the
5 military. He entered the Air Force in 1980. He was trained
6 by the Navy and the Air Force to become a CRNA.

7 In 1985, after graduating from George Washington
8 University in Washington, D.C., he became a CRNA. All of the
9 practices and procedures he learned about administering
10 propofol was learned through the military, and then carried on
11 through his some 25 or 28 year career before he left the
12 employ of the endoscopy center.

13 He was discharged from the Air Force in 1990. He
14 went to Columbus, Georgia and worked in the hospitals there.
15 In 2004, he came out to Las Vegas, Nevada with his family, and
16 he went to work for Dr. Desai's clinic. And it's important to
17 note that he left the employ of the clinic on October 17,
18 2007.

19 And why that's important is because the evidence that
20 you're going to hear is that the CDC made their inspections
21 and observed the various procedures and practices long after
22 Mr. Lakeman had left the employ of the Endoscopy Center. The
23 CDC and the Southern Nevada Health District never saw
24 Mr. Lakeman at the clinic performing his duties, and I want
25 you to be clear about that fact as the evidence is presented.

1 Now, the State argued to you that what made this a
2 criminal case was money and greed. That's what they told you.
3 Where was the money and the greed? Was the money and greed
4 from Mr. Lakeman? Not hardly. If there was any money and
5 greed, it was from the 10 or 11 doctors, the
6 gastroenterologists, the people in charge.

7 Those doctors that the State said had a duty of trust
8 between doctor and patient, those are the ones that reaped the
9 benefits from this clinic. And you're going to hear from some
10 of those doctors. You're going to hear from a Dr. Carrol.
11 You're going to hear from a Dr. Carrera.

12 And I want you to know and as the evidence will show,
13 of the seven CRNAs that worked at the clinic, all seven of
14 those people lost their nurse's licenses due to this outbreak.
15 Five of them were not charged for anything, two were charged,
16 and one sits here in front of you fighting for his life.

17 Of the ten doctors that worked at the endoscopy
18 clinic, every single one of them, except that man right there,
19 is still practicing medicine today. Not one of those doctors
20 lost their license or their ability to practice medicine as a
21 result of this case. You saw the little diagram that
22 Mr. Staudaher presented to you with the structure of the
23 clinic, where Dr. Desai was up here and the other doctors were
24 down here.

25 Well, those other doctors were all receiving a part

1 of the clinic profits. You're going to hear, for example,
2 Dr. Carrol made \$2 million in 2007 from the clinic. You're
3 going to hear that Dr. Carrera made approximately a million
4 and a half dollars from the clinic. You're going to hear that
5 the other doctors made approximately the same amount.

6 The doctors at the clinic made between 1 and
7 \$6 million per year, and every one of those doctors is still
8 practicing today. And you're going to also hear that the
9 doctors that come testify were all granted immunity by the
10 State; in other words, they aren't going to be prosecuted.
11 Mr. Lakeman, salaried employee nurse, made \$130,000 a year,
12 132,000 a year, being prosecuted.

13 Now, the State and -- as you know, they have to prove
14 each and every element of the crime beyond a reasonable doubt.
15 We talked about this ad nauseam. You've heard it here today
16 ad nauseam. I'm not going to belabor the point. But what I
17 am going to ask you to do is to hold the State to that burden.

18 Specifically the State has charged that the mechanism
19 for contamination was the propofol. They have to prove to you
20 beyond a reasonable doubt that it was the propofol and the
21 procedures used by Mr. Lakeman and the other CNRAs that was
22 somehow violative of their duties and responsibility. The
23 evidence is going to show that all of the CRNAs used basically
24 the same practices.

25 The evidence is going to show you that most CRNAs

1 throughout the United States use the same practices. The
2 evidence is going to show you that most CRNAs after the
3 epidemic used the same practices. And the evidence is going
4 to show you that today the CRNAs throughout the country use
5 the same practices.

6 Now, they showed you a letter from the C -- from this
7 anesthesiology group that sent out a letter saying one use,
8 one vial, in 2002. They say that Mr. Lakeman was part of that
9 group and therefore he got a letter. They have to show you he
10 got the letter. And despite the letter, the practices that
11 they used by the CRNAs was in existence long after this 2002
12 letter not only by Mr. Lakeman, by CRNAs throughout the
13 country.

14 Now, the propofol, was this the infecting agent?
15 Well, you heard statements from Mr. Wright, I believe it was,
16 that said that the CDC and the Southern Nevada Health District
17 said that this was most likely the mechanism of transmission.
18 Ladies and gentlemen, we don't deal in most likelies in this
19 courtroom. We deal with proof beyond a reasonable doubt.

20 And if they cannot show you that the propofol
21 transmission was the mechanism for infection beyond a
22 reasonable doubt, they haven't proved their case. And I
23 submit to you that they aren't going to be able to do that,
24 and I'm going to show you why.

25 This is a diagram of the September 21, 2007

1 infection. And I hope you can all see that. If not, let me
2 know. You'll notice, as the State mentioned, the source
3 patient was Kenneth Rubino. He was in Room 1 of the endoscopy
4 center. The CRNA in that room was not Mr. Lakeman. It was
5 another CRNA who treated Kenneth Rubino. Kenneth Rubino was
6 the source patient that has had hepatitis when he came in.

7 That procedure was done at 10:50 in the morning
8 according to the logs. And there will be a discrepancy of a
9 minute or two in the logs, but you're going to see that it was
10 right around 10:50. Stacy Hutchison was in Room 2. This was
11 the room Mr. Lakeman was in. Her procedure started at 9:52 in
12 the morning, two minutes after Kenneth Rubino.

13 And you will know this and the evidence will show
14 this, that in the morning before each procedure was started,
15 each CRNA went to a room and picked up 20, 50 cc bottles of
16 propofol, and 20 of those bottles went in this room, 20 of
17 those bottles went in this room.

18 Now, Mr. Mathahs, the CRNA in this room, starts the
19 propofol on Mr. Rubino, 9:50. Mr. Lakeman starts the propofol
20 on Stacy Hutchison, 9:52. You tell me how this infected
21 patient, at 9:50, gets an infected propofol bottle that finds
22 its way two minutes later to this room and is used by
23 Mr. Lakeman to infect Stacy Hutchison. It doesn't happen. It
24 can't happen.

25 What would have had to happen is that the CRNA in

1 this room would have had to take that infected bottle, carry
2 it to this room, gave it to Mr. Lakeman to use, and then taken
3 it back to his room. Because what happens next, 10:04, the
4 next patient in Mathahs's room, Ms. Lakota Quannah, is
5 infected.

6 Now, the interesting thing about Ms. Quannah that
7 you're going to hear is that her hepatitis C infection cannot
8 positively be genetically linked to Mr. Rubino. You know that
9 chart that they showed you with all those dots and clusters
10 and all that stuff. Well, you're going to find out that this
11 cannot be positively genetically matched to this source
12 patient.

13 Stacy Hutchison is genetically matched to Kenneth
14 Rubino. How in the world does that happen? I'm going to tell
15 you how it happens, or I'm going to let the evidence tell you
16 how it happens. But let's follow the State's theory a little
17 bit more.

18 At 10:24, Mr. Lakeman does another patient called
19 Patty Aspinwall. You need to know this, that between Stacy
20 Hutchison and Patty Aspinwall, there were three other patients
21 treated by Mr. Lakeman, injected with propofol. Not one of
22 those three got hepatitis C. How did the transmission of the
23 disease get from Stacy Hutchison to Patty Aspinwall?

24 Did it jump over three people? How did the infected
25 bottle from Rubino get to Hutchison back here, back here? It

1 couldn't have happened. And I'll tell you another reason it
2 couldn't happen, and I'll show you in a minute the evidence to
3 support that.

4 There's 50 cc in a bottle of propofol. Kenneth
5 Rubino -- might as well do that right now and show you that.
6 I think the State showed you these diagrams on the screen. I
7 know it's going to be hard to see, but you're going to see
8 this in the jury room, so you can take a look at this.

9 Kenneth Rubino, it tells you the name of the source
10 patient --

11 MR. STAUDAHER: Your Honor, he's displaying something
12 that is actually not going to be evidence, and so we have a
13 redacted form of that chart. So I would object at this time
14 that information being presented in any form to the jury.

15 THE COURT: All right. May I see counsel at the
16 bench.

17 (Off-record bench conference)

18 THE COURT: Mr. Santacroce is either going to fold
19 that to show the redacted portion -- can you do that,
20 Mr. Santacroce?

21 MR. SANTACROCE: Yes.

22 THE COURT: All right. Very good.

23 MR. SANTACROCE: And we have some privacy issues, so.

24 THE COURT: There's some privacy issues, as
25 Mr. Staudaher, I think, explained. That's why some of the

1 information had to be redacted, and you'll be getting the
2 redacted copy as an exhibit.

3 MR. SANTACROCE: As I was saying, Kenneth Rubino, he
4 received 50 milliliters, another 50 milliliters, 60
5 milliliters, 40 milliliters, which equals about 20 cc, a third
6 of the bottle. Okay. Then the next patient, this lady here,
7 and you'll have all this to look at, so she receives another
8 10, almost another 20 cc, almost 40 cc. The bottle only has
9 10 more cc in it.

10 Okay. This is supposed to be the infected bottle,
11 remember. 10 cc left. So how does it get to Stacy Hutchison?

12 MR. STAUDAHER: Your Honor, I hate to interrupt, but
13 that is materially false information that's being presented to
14 the jury at this point, and that's not --

15 THE COURT: All right. Well --

16 MR. SANTACROCE: It is not materially false.

17 THE COURT: Ladies and gentlemen --

18 MR. SANTACROCE: It is what your evidence shows.

19 THE COURT: Excuse me. All right.

20 Ladies and gentlemen, this, as I told you before, is
21 just an opportunity for the lawyers to tell you what they
22 anticipate the evidence is going to be. So it will be up to
23 you at the end of the day, meaning when all the evidence is in
24 and you go to the jury room to decide the case, it will be up
25 to you to decide what the evidence is.

1 And if you hear something from any of the lawyers in
2 the opening statement and you don't hear any evidence about
3 that, then you can't consider that in your deliberations.
4 Because at the end of the day, this is just what they say the
5 evidence is going to be. It will be up to you to determine
6 what the evidence actually was and how you're going to assess
7 that.

8 So go on, Mr. Santacroce.

9 MR. SANTACROCE: You're going to see this document
10 again, trust me, and you're going to see it from the State and
11 we'll be able to discuss it at that time, as to whether or not
12 it's materially false. The fact remains that the State posits
13 a theory that the infected bottle was transferred somehow from
14 this room to this room, two minutes.

15 That would have meant that Keith Mathahs, the CRNA,
16 would have had to leave the procedure, with his patient under
17 anesthesia, go to this room, take an infected bottle. That
18 infected bottle would have had to been returned up to this
19 room with still some propofol in it to infect this person.
20 Remember, they have to prove this beyond a reasonable doubt.

21 Now, let's say that was even possible. How does
22 Patsy -- Patty Aspinwall, at 10:24, get contaminated with
23 hepatitis C, which the State alleges is from the source
24 patient via Stacy Hutchison to Patty Aspinwall, when there's
25 patients in between that didn't get infected?

1 Now let's go up again to the chart. We come to a
2 patient that was between the first patient and the second
3 patient, and that was Rodolfo Meana. And you've heard his
4 name. He's the patient that died. He sits in this line right
5 here. He's after Rubino. After this patient, then comes
6 Meana.

7 And I need to point something out to you at this
8 point. You remember in the State's opening, when Mr.
9 Staudaher pointed this accusatory finger of the State at Dr.
10 Desai and said, That man. And then he came over and pointed
11 his finger at my client, that man is responsible for the death
12 of Mr. Meana.

13 What the State didn't tell you was that my client,
14 Mr. Lakeman, never worked on Mr. Meana, never saw Mr. Meana,
15 never treated Mr. Meana, doesn't know who Mr. Meana is. And
16 yet he's being tried for murder for someone he doesn't even
17 know, didn't treat, had no contact with. How does that
18 happen?

19 It's like you going to work this morning and you're a
20 food server. And a fellow food server serves some
21 contaminated food to somebody, and that food has salmonella
22 and that person dies. And they charge you for the death of
23 that person because you're a food server at the same place.
24 How does that happen?

25 Well, the State's going to posit a theory to you that

1 there was some conspiracy, a conspiracy between Mr. Lakeman,
2 Mr. Mathahs, and Dr. Desai, and because they all conspired to
3 do something, I'm not sure what it is yet, we'll hear it,
4 because of that conspiracy, he's somehow responsible for the
5 death of someone he never treated and never knew. Remember,
6 they have to prove it beyond a reasonable doubt, this
7 conspiracy theory. They're going to have to show that there
8 was a conspiracy, and I submit they're not going to be able to
9 do that.

10 Now, we can talk about these other individuals as
11 well, who also were infected on that same day. You have Patty
12 Aspinwall at 10:24, Carole Grueskin at 12:04. You know how
13 many patients were between Patty and Carole? One, two, three,
14 four, five. Five patients here that were treated by
15 Mr. Lakeman in Room 2, between Patty Aspinwall and Carole
16 Grueskin.

17 How does the virus jump over five people and get over
18 here? It wasn't through the propofol, ladies and gentlemen.
19 There's only one common denominator in this whole chart. You
20 know what it is? These two people right here. These were the
21 nurses that started the heparins and administered saline
22 solution.

23 These are the only common denominator. Look at
24 Lynette Campbell. She started Rubino. She started Meana.
25 She started Orellana. She started Martin. And Jeff Krueger,

1 he started this infected patient, and he started Stacy
2 Hutchison.

3 The CDC put out a report, and this is important and
4 we'll question the CDC about this. And Mr. Staudaher said,
5 well, it couldn't be the saline, it couldn't be this, it
6 couldn't be that, it couldn't be the other thing, most likely
7 it was the propofol. The CDC puts out a report in 2007 --
8 actually 2008, reporting on what happened in 2007.

9 These are the various outbreaks of hepatitis C that
10 they were able to find. This is the state it occurred in.
11 This one is in Illinois, and it was in an assisted living
12 facility, and the persons that were notified were screening
13 were 21. The confirmed cases of hepatitis in that case were
14 seven. And I want you to compare the numbers here.

15 Mr. Staudaher said this was the largest notification
16 in the country, 63,000 people. Yes, probably. How many
17 people got infected here? Seven that we know of. Seven
18 people get infected in Illinois. What was the mechanism of
19 transmission? Hygiene lapse in finger stick procedures on
20 diabetics. California, the same year, in a skilled nursing
21 facility, 115 people were notified, nine people got hepatitis
22 B.

23 These are all hep B figures here. And the cause
24 of it? Hygiene lapse during podiatric care and other possibly
25 secondary modes. And then in Pennsylvania the same year, 25

1 notified, nine cases, shared glucometer and finger stick
2 devices.

3 Now we go on to hep C, hep C in the same year.
4 Here's our case. Nevada, endoscopy clinics, 50 -- more
5 than 50,000 notified. They say eight maybe. I don't know.
6 Seven or eight, we're not sure. We'll wait and see what the
7 State says on that. And what do they -- what's their
8 mechanism for transmission? Reuse of syringes contaminating
9 vials of propofol. That's what the CDC concluded was the
10 mechanism of transmission despite all the evidence to the
11 contrary.

12 In North Carolina the same year, outpatient
13 cardiology clinic, 1200 notified, five cases, and what's --
14 the reuse of syringes which contaminated by what? 30 cc
15 saline vials, saline vials shared for IV catheter flushes.
16 Was it unheard of that saline contamination caused hepatitis
17 C? No. They had cases documented to that fact. And the
18 evidence is going to show you that despite that evidence, they
19 had to come up with a most likely method of contamination, and
20 they had to come up with this in a fairly quick amount of
21 time.

22 You remember the cases were recorded in mid December.
23 CDC comes out in January. The Southern Nevada Health clinic
24 [sic] comes out. And what do they -- you know, it's only a
25 matter of a couple weeks and they have to come up with a

1 cause, because the public is demanding an answer.

2 This affected a wide array of people in Clark County,
3 Nevada. People were outraged. People wanted answers. And
4 they came up with this, this mechanism of transmission. And
5 we're going to question them on it and you'll be able to make
6 that determination on your own.

7 Now I want to talk to you about some other mechanisms
8 of transmission. Remember, the defense doesn't have to prove
9 anything. I don't have to -- I can no more prove to you that
10 saline was the cause of transmission as the State can prove to
11 you that propofol was. We don't have to prove it. They have
12 to prove beyond a reasonable doubt how it happened.

13 What are some other possibilities? Well, you saw all
14 these medical devices that the State put up here on the screen
15 that said single use vials. What about the endoscopy scopes
16 that the State talked to you about? And you saw them hanging.
17 And the State told you that that little chuck on the bottom
18 was to catch fecal matter. These were supposed to be clean
19 scopes. And he vividly described to you this fecal soup when
20 they pull out the scopes.

21 You're going to find out that the scopes were reused
22 on multiple patients. You're going to find out that perhaps
23 the cleaning mechanisms for the scope wasn't what it should
24 have been. You're going to find out that those scopes
25 contained blood-to-blood transfers, and you're going to find

1 out that that could be a possibility as a mechanism for
2 transmission.

3 There's other possibilities that we're going to talk
4 about. The heplocks, the bite blocks, all of these are
5 different mechanisms for transmission, and the State has to
6 prove to you which one it was.

7 I want to talk to you just briefly about some of the
8 economic --

9 THE COURT: Counsel, just so you know, that's being
10 put up there.

11 MR. SANTACROCE: Oh, I thank you.

12 Some of the other issues in the case, another big
13 issue is the billing practices of the clinic. And my client
14 is charged with theft, insurance fraud and a variety of other
15 kinds of theft charges. And again, you'll need to look at
16 this indictment, because my client is charged with criminal
17 neglect of patients for people he never treated. He's charged
18 with fraud for people he never saw or billed or wrote out a
19 chart for.

20 But of the ones he did treat and of the ones that he
21 did fill out a form for, the State is going to argue to you
22 that he billed at 31 minutes, and therefore the procedure took
23 maybe 10 minutes, 5 minutes, whatever it took, and he was
24 defrauding the insurance companies.

25 What the State doesn't tell you is that Mr. Lakeman

1 or any of the CRNAs were not responsible for billing. They
2 were employees that came into the clinic that were instructed
3 that this is the way we do things. You do a procedure, if
4 it's an endoscopy -- an upper GI, you put this many minutes,
5 and if it's a colonoscopy, you put this many minutes on your
6 chart and that's it, you get rid of it. And that's what he
7 did. That's what the other CRNAs did.

8 In order for the State to prove that he defrauded an
9 insurance company, they have to prove that he knew what he was
10 doing was likely to defraud or steal. You're going to hear
11 that Mr. Lakeman didn't submit bills to the insurance company.
12 That was done by the COO of the company, Tonya Rushing. She's
13 going to come in here.

14 And I think the State characterized it as Ms. Rushing
15 received a bone, they said. And the bone was that she was
16 allowed to set up a little offshoot company and bill the
17 insurance companies for the time, and she'd get a piece of
18 that money. She was the one that submitted the bills, or her
19 company, not Mr. Lakeman.

20 Mr. Lakeman did his procedures one right after the
21 other, like a dutiful employee. And Tonya Rushing, where is
22 she today? Well, you know what, she got immunity. She's not
23 being charged. She's going to be testifying here. A bit
24 ironic.

25 Now, some of the other things that we have to talk

1 about, the State's going to say to you, well, Mr. Lakeman knew
2 he was doing wrong because he had a conversation with the CDC
3 in January of 2008, and he told that CDC lady, if you tell
4 anybody that I talked to you, I'm going to deny it.

5 And he's going to tell -- the State's going to tell
6 you that in an interview Mr. Lakeman said, This is how we do
7 the procedures. And you know what, that's how they did the
8 procedures. It didn't mean it was wrong. That's how they did
9 the procedures.

10 Now, let's go back in time. January 2008,
11 Mr. Lakeman's sitting home, just finished work or whatever he
12 was doing. He gets a call from a lady who identifies herself
13 as a doctor from the Centers for Disease Control. And she
14 tells him, Mr. Lakeman, you were a CRNA at the Endoscopy
15 Center in Las Vegas, Nevada. He says, Yes, I was. And she
16 says, Well, we want to ask you a few questions. He says,
17 Okay. What's it about?

18 Because remember, at this time there were no criminal
19 charges filed. There were no notification letters sent to the
20 public. This is all before that. And she says to him, Well,
21 in order to protect the public safety, we are going to -- we
22 are going to give you anonymity. We're going to give you --
23 assign you a number and refer to you in all future documents
24 as this number. You're going to be anonymous.

25 And Mr. Lakeman says, Well, what do you want to know?

1 And she's going to tell you that Mr. Lakeman cooperated. He
2 didn't attorney up. He didn't get an attorney. He didn't
3 take the Fifth Amendment. Why? Because he had nothing to
4 hide. He had been doing this procedure for 20-something
5 years, tens of thousands of patients, and didn't have a
6 problem. He had nothing to hide.

7 And then he says, Well, if you tell anybody about
8 this, I'm going to deny it. Why? Was that some sort of
9 culpability or admission or a guilty conscience on his part?
10 No. He was worried about his career, his family, that this
11 publication, or whatever was going to happen from the CDC, was
12 going to affect him somehow in his personal and private and
13 employment history. He wasn't hiding anything. And they can
14 color it any way they want to, but remember, they have to
15 prove it beyond a reasonable doubt, and they won't be able to
16 do that.

17 Now, ladies and gentlemen, you've heard an awful lot
18 of information. And I'm sorry to say for the next two months
19 you're going to hear a whole lot more. And it's incumbent
20 upon you to give these two men a fair and impartial hearing.
21 Set aside the publicity. Set aside the mass hysteria.

22 You are in a difficult position, because you are
23 going to be the truth finders. You are going to have to
24 ferret out and set yourself aside, and be independent and be
25 strong and listen to all the evidence. And when you've heard

1 all that evidence, I'm going to ask you to return a not guilty
2 verdict on all counts. Thank you.

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

4 Ladies and gentlemen, before we move into the
5 testimony from the first witness, we're going to take another
6 brief recess. We'll go ahead, let's see, and be in recess
7 until about 2:20.

8 And once again, I must remind you of the admonition
9 not to discuss the case, read, watch or listen to any reports
10 of or commentaries on any person or subject matter relating to
11 the case, and not to form or express an opinion on the trial.

12 If you would all please place your notepads in the
13 chair and follow the bailiff through the double door.

14 (Jurors recessed at 2:07 p.m.)

15 THE COURT: All right. Ladies and [unintelligible]
16 the bailiff. We're just in a brief recess for ten minutes.
17 We were going to take a break too, so we do need to empty the
18 courtroom. That means everybody.

19 Oh, I'm sorry. We're in recess. The courtroom --
20 not the lawyers, but just the -- right, just the audience.
21 Thank you. Everybody that's not a defendant, a lawyer or
22 court staff, we are in recess.

23 (Court recessed at 2:09 p.m. until 2:16 p.m.)

24 (Outside the presence of the jury.)

25 MR. STAUDAHER: Your Honor, Mr. Santacroce in his

1 opening had some documents and chart. I haven't seen it or I
2 don't recall if it's part of discovery. Let's go ahead and
3 make sure we make that part of the court record like we did
4 with our PowerPoint.

5 THE COURT: Mr. Santacroce --

6 I'm assuming you're talking about the chart with the
7 heads and then the lines.

8 MR. STAUDAHER: No, no. That's part of discovery.
9 I'm talking about the other one, where it listed the studies
10 and things like that.

11 THE COURT: Oh, okay. Mr. Santacroce --

12 MR. SANTACROCE: The only copy I have --

13 MR. STAUDAHER: Just make a copy is all.

14 THE COURT: We'll make a copy for you. We're full
15 service here. So we'll make a copy and we'll make that a
16 court's exhibit. That'll be, what are you on, Court's
17 Exhibit 3?

18 MR. STAUDAHER: And if you could make another copy
19 for us too.

20 MR. WRIGHT: Me too.

21 MS. STANISH: Could we get a copy too, please.

22 MR. STAUDAHER: So a copy for us, as well as court's
23 exhibit.

24 THE COURT: All right, then. Are we ready with
25 the --

1 THE MARSHAL: Mr. Staudaher.

2 MR. STAUDAHER: Oh, yes. I'm sorry.

3 THE COURT: Are we ready with the next witness?

4 MR. STAUDAHER: Yes, we are.

5 THE COURT: Okay.

6 MS. WECKERLY: The first witness.

7 THE COURT: The next -- has it only been two days?

8 Doesn't it seem like a month?

9 MS. WECKERLY: It's moving really fast.

10 THE COURT: It's been kind of a month though, because

11 we started what, two weeks ago. Last month.

12 MS. STANISH: The 22nd.

13 MS. WECKERLY: Are you admonishing them on the --

14 ordering them --

15 THE COURT: On the record, yeah.

16 MS. WECKERLY: I know on the record. I'm sorry.

17 Out -- before they start, or when do you want to do that?

18 THE COURT: Okay. I thought that the next witness

19 was the victim that needed the admonition, correct?

20 MR. WRIGHT: Both.

21 MR. STAUDAHER: Actually, both of the next witnesses.

22 THE COURT: Okay. Now, my understanding was the

23 request was that I admonish them out of the presence of the

24 jury.

25 MS. WECKERLY: Yes.

1 THE COURT: That's what I intend to do right now. Is
2 that your question?

3 MS. WECKERLY: Yes.

4 THE COURT: Okay. Yes, I think it's more appropriate
5 to admonish them out of the presence of the jury than in the
6 presence of the jury. So my understanding was before we could
7 start we had to admonish them. So let them come in along with
8 their lawyer. If the media comes in, I don't care, but I --
9 you know.

10 THE MARSHAL: You don't care about the media?

11 THE COURT: No, I don't care.

12 MS. WECKERLY: They're husband and wife, so.

13 THE COURT: Okay.

14 MR. STAUDAHER: And he's very hard of hearing, so I
15 don't know if --

16 THE COURT: I don't know that we actually need to
17 drag them up -- they can both come in at the same time. I
18 don't know that I need to drag them up to the witness stand.

19 MR. STAUDAHER: Right.

20 THE COURT: Come on in. I don't know that your
21 clients need to come up to the witness stand for this part.

22 MS. WEISS: Okay. I'm not sure what we're doing, so.

23 THE COURT: Oh, the -- I'm admonishing them.

24 MS. WEISS: Oh, okay.

25 THE COURT: For the record, we need counsel's name.

1 MS. WEISS: Patty Weiss.

2 THE COURT: Okay. And then your clients are?

3 MS. WEISS: Michael Washington and Josephine
4 Washington.

5 THE COURT: All right. Mr. and Mrs. Washington, can
6 you hear me?

7 JOSEPHINE WASHINGTON: Yes, I can.

8 THE COURT: Sir, can you hear me?

9 MICHAEL WASHINGTON: [No audible response.]

10 THE COURT: Okay. You can come closer if you can't,
11 if you want to come stand closer.

12 MS. WEISS: Okay. Make sure you can hear the judge.
13 He is hard of hearing.

14 THE COURT: Okay. I talk loud, but if you can't hear
15 me, we have earphones for you. All right?

16 MICHAEL WASHINGTON: [Inaudible.]

17 THE COURT: No. We have special earphones that can
18 actually go over your hearing aids.

19 MS. WEISS: Yeah. I think he'll need that.

20 THE COURT: Okay. Well, there they are. We'll
21 practice. I always wanted to do that. Can you hear me now
22 better?

23 MICHAEL WASHINGTON: Yes.

24 THE COURT: Okay. My understanding is, Mr. and
25 Mrs. Washington, that pursuant to a negotiation in connection

1 with the civil cases you signed confidentiality agreements; is
2 that correct?

3 JOSEPHINE WASHINGTON: Yes, it is.

4 THE COURT: Okay. And that those agreements, like
5 any settlement, were those approved then by the Court or not,
6 it was just a separate agreement?

7 MS. WEISS: There was one that had [inaudible]
8 approved by the Court, and the other ones were just
9 negotiation terms.

10 THE COURT: All right. So it was just the good faith
11 settlement that was approved?

12 MS. WEISS: Correct.

13 THE COURT: All right. Even though you've signed an
14 agreement with another party, that does not preclude the
15 defense from being able to conduct a thorough
16 cross-examination of you in this trial as part of their
17 defense of the accused, Mr. Lakeman and Dr. Desai. Do you
18 understand that?

19 JOSEPHINE WASHINGTON: Yes.

20 THE COURT: And I have to let them do that as part of
21 insuring that their due process rights in this proceeding are
22 protected. So basically, I'm ordering you, notwithstanding
23 any civil agreements that you have signed, that you must
24 answer the questions put forward by either the State or the
25 defense attorneys. You must answer them truthfully concerning

1 your settlement and the amount of the settlement, even if in
2 your confidentiality agreement you agreed not to do that. Do
3 you understand?

4 JOSEPHINE WASHINGTON: Yes.

5 THE COURT: Sir, Mr. Washington, do you understand?

6 MICHAEL WASHINGTON: I think I do.

7 THE COURT: Okay. Basically what I'm telling you is
8 in my view, the accused's rights to conduct a thorough
9 cross-examination kind of supersede any agreement that you may
10 have entered into. And if you're going to testify in this
11 case as a witness, they have to be able to cross-examine you.

12 So even if you said, you know, told the insurance
13 company or whatever that you weren't going to talk about it,
14 if it's a question and I allow the question to go forward, you
15 must answer truthfully. Do you understand?

16 MICHAEL WASHINGTON: Yes.

17 THE COURT: Do you understand, Mrs. Washington?

18 JOSEPHINE WASHINGTON: Yes.

19 THE COURT: Okay. State, Mr. Staudaher and
20 Ms. Weckerly, did I cover that admonition adequately in your
21 estimation?

22 MR. STAUDAHER: As long as it's --

23 THE COURT: Yeah. I was going to ask her next.

24 MR. STAUDAHER: Yes. From our perspective, yes, Your
25 Honor.

1 THE COURT: All right. Ma'am, Ms. Weiss, did I cover
2 that admonition adequately?

3 MS. WEISS: Well, clearly there's a court order
4 standing right now saying that regardless of what the
5 confidentiality was, you're ordering them as the judge in this
6 case to answer the questions that you deem relevant?

7 THE COURT: That's correct. Any question that is not
8 objected to or is objected to and I overrule the objection
9 they must answer truthfully.

10 MS. WEISS: I understand [inaudible].

11 THE COURT: All right. Do you understand?

12 JOSEPHINE WASHINGTON: Yes.

13 MICHAEL WASHINGTON: Yes.

14 THE COURT: All right. Very good. You can return
15 with them to the vestibule.

16 MS. WEISS: Should he leave these on, because he's up
17 first.

18 UNKNOWN SPEAKER: He's first.

19 THE COURT: Oh. You know what. We won't have him
20 walk in with those. We'll just have them present at counsel
21 table.

22 MR. STAUDAHER: Did those help? Did those help you?

23 MICHAEL WASHINGTON: Yes, it did.

24 THE COURT: Okay. Did you let the media know we're
25 going to start?

1 THE MARSHAL: I did not.

2 THE COURT: And then as -- you can just let them
3 know, and then immediately, Kenny, go get the jurors.

4 THE MARSHAL: Yes, Your Honor.

5 (Pause in proceeding.)

6 (Jurors reconvene at 2:25 p.m.)

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

13 MR. STAUDAHER: The State calls to the stand Michael
14 Washington.

15 THE COURT: Sir, please remain standing facing our
16 court clerk, this lady right here. And sir, if you're a
17 little bit hard of hearing, we have some headphones, and those
18 may help you hear better, okay?

19 MICHAEL WASHINGTON: Yes.

20 THE COURT: So just put those on, and this lady right
21 here, Ms. Husted, is going to -- just put them on -- is going
22 to administer the oath to you.

23 MICHAEL E. WASHINGTON, STATE'S WITNESS, SWORN

24 THE CLERK: You can be seated. And sir, could you
25 state and spell your name.

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.)	
_____)	

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1 Rubino. This is a source patient from the 21st of September.
2 Let's see. There was Clifford Carrol. The nurse was Peggy
3 Tagle. Keith Mathahs was the CRNA.

4 And then you'll see at the end, it's a two-page
5 document, that the note was initiated at 9:50, and was even
6 signed at 10:00. None of these notes make any -- none of
7 these numbers match up, make any sense.

8 Now, what's even more disturbing is this. This is
9 the anesthesia record, and this is where Keith Mathahs comes
10 into play, as well as Dr. Desai. The insurance fraud that
11 you're going to hear about, the theft in obtaining money under
12 false pretenses. This is an anesthesia record, the time that
13 you are -- not you, but the patient would be under anesthesia
14 for the procedure.

15 Now, this is a medical record that future medical
16 providers might rely on down the road, see how you responded
17 and dealt with medication, meaning anesthesia. Anybody that's
18 ever had a procedure where they have to be put to sleep,
19 what's the first question that gets asked? Have you ever had
20 any medication, have you ever been put to sleep, how did you
21 respond, how long were you -- you know, was there any
22 complications. This is the record.

23 You'll see that here, not only is there time, 9:45
24 to, in this case, we'll get to it, to 10:17, this whole time,
25 which is in this case 32 minutes, but there are vital signs.

1 That's what these marks are telling you, heart rate,
2 respiration, blood pressure. Vital signs, meaning you've got
3 a live patient you're actually measuring these things on. In
4 this case that's what we see.

5 And down below here, you're going to see some other
6 things in a minute that we'll highlight, but now look at this.
7 This is the actual time that is listed on this record, 9:45 to
8 10:17. And remember that. That's 32 minutes. Thirty-two
9 minutes. Remember the procedure before was 11 minutes long.
10 The anesthesia record says 32 minutes long.

11 This is the propofol that was given, 200 milligrams,
12 four separate doses. That means if you're using one syringe,
13 one syringe, and remember, 50 milligrams equals 5 cc, 5
14 milliliters. That means that there's five, ten, another 20
15 total cc given. One syringe means you have to go back into
16 the bottle to do it or use a new syringe. If there's not
17 enough syringes, you have to go back in the bottle. If you
18 use that bottle for the next patient, you've got
19 contamination.

20 This one is one, a different anesthesia record. That
21 whole last series of documents came from one patient at the
22 clinic and it was all the same, so you could see his
23 progression. But this one is one that that man filled out.
24 Not Desai, but Mr. Lakeman. Here's his signature. Same day
25 were there one of the source patients, and look at this time.

1 You're going to see a theme, 9:55 to 10:26, 31 minutes.

2 Always over 30 minutes, that's what you'll hear.

3 Again, the anesthesia record during that entire time showing
4 vital signs. A live patient sitting on the table. In this
5 case 150 milligrams and 10 milligrams, which is one -- 1
6 milliliter of lidocaine.

7 Now, the health district, when they went back and did
8 their investigation, and I know this is very faint, but you'll
9 see that there's kind of a bar graph area right in the middle.
10 And this is time for procedure and the procedures, the number
11 of procedures that were done. And you'll see that the time
12 ranged from about 30 minutes to about 35 minutes, every single
13 procedure.

14 Well, almost every single procedure. There were a
15 few that were under that, there were a few that were a little
16 bit longer, but they were all in that range. Procedure after
17 procedure after procedure. It didn't matter if they were the
18 short upper endoscopies or the longer colonoscopies.

19 This is illustrative of what we're talking about.
20 This is from the health district report as well. It's a
21 clock, ladies and gentlemen. It looks like a clock. The
22 procedure start time is zero report -- on the report, followed
23 by the nursing log. The first monitor read -- there's two
24 monitors, one in the procedure room which was the tape with
25 the actual -- which looked like a heart rhythm attached to it,

1 and the one that's out in the recovery room which is attached
2 to the patient when they're ready to discharge them out of
3 there.

4 Nursing monitor time, anesthesia start time, the
5 nurse's login time in the report, the report end time, the
6 monitor start time in the recovery, the physician at bedside
7 supposedly, the monitor end time, which means that's when the
8 patient's done and is getting ready to walk out the door.

9 And look at this. For some reason the patient is
10 still under anesthesia for all that time. And the last vital
11 sign on that record, on that anesthesia log is recorded clear
12 over here. The patient's not even in the facility at that
13 time.

14 This is what you're going to see as far as there's a
15 chart like this for each day. I know it's really hard to see.
16 And you're going to have a big blow-up. It'll be available to
17 you back in the jury room and throughout the trial. This is
18 from the 25th. And this line here, you're going to see some
19 things, some things blown up, but this is we have the source
20 patient, and then we have the infected patient, Michael
21 Washington.

22 What's important about this chart that I want to
23 emphasize to you now is this. That column is the anesthesia
24 record that I told you about, or that you just saw you're
25 going to see evidence of. You'll see them all. You'll have

1 access to all of them. That's what it says the procedure
2 times were. Now, that's the top of the chart.

3 I couldn't get it all in there, so I blew up the
4 bottom of the chart so you could see. And these are different
5 CRNAs, meaning this is Ronald Lakeman. This is another
6 CRNA -- no, actually, this is Lakeman and this is Hubbard,
7 Linda Hubbard. So they're both doing the same thing.

8 Now, if we move over to the next column that will be
9 displayed and blown up a little bit, you'll see that that is
10 the log that came from the -- from that nurse's record which
11 is, we believe, more accurate and close in time to what the
12 actual monitor reads and so forth are. Right next to it, and
13 then again, the bottom of the chart. This is probably closer
14 to reality. And my point is look across. These aren't lined
15 up exactly, but you can look across and get the same --

16 Now, this is the 21st. We're talking about two
17 months later. Two months later, the 21st. Same column, this
18 time with Pete Mathahs and Ronald Lakeman. You'll see quite a
19 distinct pattern, two -- again, separated into two different
20 CRNAs, then what we believe is more closer to reality.

21 This form here is sent out to every insurance
22 company. It's called a HCFA 1500 form. It comes up there.
23 HCFA, Health Insurance Claim Form 1500. The clinic would have
24 to fill one of these out to send it off to the insurance
25 company for reimbursement. Now, you'll hear from the

1 insurance people that if they knew that there was anything
2 false on this form, anything that wasn't right, they wouldn't
3 pay on the claim.

4 So if they submit -- it doesn't matter if they have a
5 capitated rate where it's \$100 for the procedure or not. If
6 they submit a claim that is false in any way, the insurance
7 company would not, does not have to pay the claim. So if
8 there's false information here, you'll hear that not dollar
9 one could leave the insurance company to go to the clinic.

10 And this one and the very next one are not only
11 patients, but they're listed here for a specific reason, and I
12 show you them here. Because there was a policy in place at
13 the clinic that Desai implemented that -- and everybody knew
14 about. Some people could understand why and some people
15 didn't, but you'll hear that. That a particular insurance
16 company called PacifiCare did not -- we couldn't have those
17 patients back to back.

18 You don't have patients come through the clinic with
19 PacifiCare patients back to back why? Well, this one here is
20 for Rodolfo -- excuse me, is Rodolfo Meana's record from
21 the 21st of September. You can see that the -- it was
22 actually one that came from the endoscopy center, and it was
23 Keith Mathahs. And then this form here shows you what was
24 submitted as far as charges, 33 minutes, which we know is not
25 accurate, or you will know based on the record.

1 It happened on the 21st. And here is something that
2 only PacifiCare required. They require the actual start and
3 stop time of the procedure be on the HCFA 1500 form. What is
4 important about that, ladies and gentlemen, is that the reason
5 you will hear that the PacifiCare patients are not back to
6 back is because the times would overlap, and that if somebody
7 saw that, it would be a red flag for the insurance company
8 that maybe there was a problem with this clinic. So we don't
9 put PacifiCare patients back to back.

10 The next form, this one is from Gwendolyn Martin.
11 She's also a patient on the 21st, the Endoscopy Center, Keith
12 Mathahs. Now, Keith Mathahs and Ronald Lakeman don't submit
13 these forms, but they give that anesthesia record by which
14 these forms are filled. You're going to hear something about
15 anesthesia time.

16 You're going to hear that for an endoscopic
17 procedure, the -- there were three charges that came from a
18 colonoscopy at the clinic. One was the procedure -- or the
19 facility charge you got a charge for, one was the doctor
20 charge, and one was the anesthesia charge. And the anesthesia
21 charge was related to that -- that anesthesia record that came
22 in, got wherever it went.

23 It was submitted to the insurance companies for
24 payment, different insurance companies. And that when those
25 got submitted, typically the insurance companies would

1 start -- you'd start off with a base of five units, what was
2 called five units that you'd get. And they pay anesthesia
3 based on time. That's what's important. They pay anesthesia
4 based on time.

5 So five units is what you would start off with to set
6 up, get the case going or whatever. And then how much time
7 the person was under anesthesia is how much time you'd
8 actually get the bill -- how much money that they could get
9 billed for. Well, time is set up in 15-minute increments,
10 which means that if you go to 31 minutes or 32 minutes or 33
11 minutes, you get to go for three anesthesia units instead of
12 one for an 8 to 10 or 12-minute procedure.

13 We look at this one again. This is another
14 PacifiCare one. These are the two that were specific to the
15 group that we have. Again, note it there, because on the
16 other forms you won't see that. And the order didn't matter
17 for those other forms.

18 Now, ladies and gentlemen, who's on the top of that
19 organizational chart? Dipak Desai. And you'll hear that
20 Dipak Desai, he controlled the practice completely. No one
21 else controlled -- there may have been people who were
22 supervisors of some of the lower staff, but he controlled
23 everything. And when I talk to you about the complete
24 laser-like focus on costs and saving money and cutting
25 corners, Desai was the king.

1 He had Jeff Krueger get him a list or tell him what
2 the absolute costs of doing a colonoscopy was as far as
3 anything is concerned. You'll hear that things like the KY
4 Jelly I talked to you about, that he would -- you'll hear that
5 the KY Jelly -- and all of you, I hope, know what that is, but
6 it's a lubricant.

7 It is squirted onto little four-by-four gauze pads,
8 and that -- those big scopes that you saw are slathered in
9 that, so that when they insert that into the patient's rectum
10 and up through their colon, that it glides through, that it
11 doesn't get hung up, it doesn't perforate somebody's bowel,
12 cause a hole somewhere. That liberal use of that would
13 probably be wanted and needed for most patients.

14 Desai was absolutely focused on things like limiting
15 even that. Don't use too much KY Jelly. When he did
16 colonoscopies, it was dime-sized little dollop for one of
17 those big scopes. Don't use too much. Twenty-nine cents a
18 tube. For an entire tube of KY Jelly, 29 cents, and he's
19 limiting and giving people a hard time about using too much KY
20 Jelly.

21 He was -- he was a master. He actually bragged about
22 how fast he could do the procedures. Upper endoscopy between
23 one and three minutes, on average a colonoscopy between five
24 and seven minutes, ten minutes tops. These are screening
25 procedures or procedures where you're trying to find out if

1 something's wrong with you, and he's going to do them as fast
2 as he possibly can. And you'll see that theme over and over
3 and over again.

4 And not anything went on in this clinic that didn't
5 pass his muster. There will be memos that you'll either hear
6 about or actually see in which he is dictating the very
7 minutest details of control over that practice. You've got
8 doctors that will come in here and tell you that they have a
9 title of like operations manager, when in fact they didn't
10 operate anything. They couldn't make a decision.

11 You'll hear about Desai, that he, in 2007, actually
12 after these occur, these two infections occur at the clinic,
13 September 2007 he goes over to India. And he's flying back on
14 an airplane and he suffers a stroke, has to divert to Taiwan.
15 He eventually comes back to the United States. Nobody is in
16 charge of that clinic. The first time he is going to
17 relinquish control.

18 So he meets with his partners, because he can't do
19 the procedures right because he's impaired. And you'll hear
20 that at that time it was, you know, Clifford Carrol, the --
21 one of the doctors, the staff physician, staff physicians over
22 here. Clifford Carrol was one of them. He was the one who
23 was kind of told you're going to handle the Shadow Lane
24 Endoscopy Center kind of thing. Albert Mason gets the Burnham
25 clinic, that kind of thing. He kind of doled it out.

1 Well, what was the first thing that Clifford Carrol
2 did when he got in there? He has a meeting with the staff.
3 Desai said he's going to be taking himself out of the practice
4 for three to six months, take himself out, you guys run it.
5 Clifford Carrol comes in and he has a meeting, and he said,
6 the first thing we're doing is reducing the patient numbers.
7 We're not going to have 70, 80 patients booked in a day and do
8 60 to 70 patients a day. It's just not tenable.

9 Everybody will come in here and tell you that the
10 relentless pressure of running patients through that clinic,
11 people were even concerned for the patient care for themselves
12 that somebody was going to make a mistake. They had to
13 pre-chart and do things like we've described.

14 That when that institution of sort of the delegation
15 of responsibility was in place, that although they reduced the
16 patient numbers, but gosh, all the sudden the patient numbers
17 started coming back up for some reason and we couldn't figure
18 it out. And within two weeks, two weeks he comes back and he
19 has a meeting -- or he has a meeting with Carrol and he wants
20 to know how things are going.

21 Carrol tells him what he's done, and Desai berates
22 him. And miraculously he's better, and he comes back in and
23 takes over control of the clinic again. And guess what
24 happens to the patient numbers. They go right back up.

25 You will hear over and over again that he is the man

1 on top of this, except for when it comes to calling up, you
2 know, stepping up to the plate. You'll hear that when this
3 all broke, when the clinic was kind of under the microscope in
4 the press and everything else, in February of 2008 there was a
5 news conference. And you'll hear that in that news
6 conference, they were going to have to make a statement.

7 You'll hear that, gosh, the likely guy would be maybe
8 the guy who manages, who runs the practice, but he couldn't do
9 it, didn't want to do it. You'll hear that Dr. Carrera was on
10 vacation with his family, and he got called on vacation as
11 he's coming back to town, and they wanted him to come to have
12 a meeting. So he's like, well, I'm in the car with my family,
13 come on, how long is it going to be, and I come on down.

14 So he gets down -- he gets back to town and he goes
15 down there, and he finds out that they want him to make the
16 statement to the press. Well, now, he's not -- he's not even
17 one of the higher-ups. I mean, he's part of the group
18 certainly. He's one of the partners kind of, so to speak.
19 But he's like, Well, why do I have to make it? Well, nobody
20 else could do it.

21 They finally agreed -- or he finally agrees to go
22 ahead and do that, but he will do it under one condition, that
23 Desai is standing on that podium with him when he makes the
24 press conference, so when he reads the statement, the prepared
25 statement.

1 So the time for the press conference comes and
2 they're going to go up to the podium, and all of the sudden
3 Desai has some medical issue and he cannot go up on stage, so
4 he doesn't. So who's up there? Clifford Carrol and Eladio
5 Carrera.

6 Now, if there was ever any indication that the
7 practices which were admitted to by Ronald Lakeman were not
8 known, this is a letter. It's dated in December -- or excuse
9 me, September of 2002. And this was by the American
10 Association of Nurse Anesthetists. It was an urgent letter
11 that went out in response to an outbreak that had occurred
12 through the use of unsafe injection practices.

13 They sent it out to all the members of the profession
14 at that time, and Ronald Lakeman was one. Keith Mathahs was
15 one. And in that they talk about specifically making sure
16 that all nurse anesthetists across the country know that
17 needles are not to be reused, that syringes are single use
18 items and should not be reused on the same patient or from
19 patient to patient.

20 Not on the same patient, or from patient to patient.
21 That once the syringe is completely emptied it should not be
22 even refilled, even if used on the same patient. 2002.
23 They're urging them to follow the AANA standards and make sure
24 that the practice is consistent.

25 Now, Rodolfo Meana. Rodolfo Meana is an individual

1 that we'll talk about in just one second. But I want to go
2 back for just a moment and talk about some of those cost items
3 that we were talking about with regard to where patient care
4 gets compromised.

5 Desai wanted limitation on those items that I told
6 you about, the KY Jelly. In addition to that, he gave people
7 a hard time about using too much tape, too much tape on the
8 IVs. And the tape was essentially -- I think it was 78 cents
9 a roll, for a whole roll of it. Syringes were 7.4 cents
10 apiece. KY Jelly was 29 cents a tube. The Chux were less
11 than a penny apiece. Alcohol pads were less than a penny
12 apiece. Lab coats were about two bucks.

13 The lab coats, they would have fecal material
14 splattered on them, and he would give people a hard time about
15 wanting to change them. No blankets, they're too expensive.
16 One sheet per patient. Sometimes those sheets would even be
17 reused.

18 Desai was so fast at his procedures, you'll hear
19 that -- you'll even hear the term "cracking the whip," that he
20 would yank the scopes out of patients sometimes so quickly
21 that fecal material would come out onto the table, maybe onto
22 the floor and onto the wall, that the GI tech that was there
23 in the room had to act like a catcher for the scope, because
24 if that scope hit the ground he was in trouble.

25 He yanked the scope out, patient -- next patient,

1 over and over and over again. And he was in such a hurry that
2 patients would be back there and sometimes on not an isolated
3 event, sometimes they would be not -- they wouldn't have any
4 medication onboard for their anesthesia, and he'd start the
5 procedure anyway. They'd be writhing around, moving around.
6 It didn't matter to him --

7 Same thing at the end of the procedure, or near the
8 end. The person starts moving around, the CRNA wants to give
9 a little more medication -- that propofol is fast acting. It
10 comes on quickly and goes off quickly. Don't give anymore.
11 And what was the single most expensive item in that whole mix?
12 Propofol. Propofol was, I believe, for a 20 ml bottle was
13 about \$15.19 a bottle. Do not waste anything.

14 Rodolfo Meana, he's a patient that ends up dead.
15 Before we get to him and his plight, one last part. You're
16 going to hear from Clifford Carrol, who is a doctor working at
17 the clinic. And he was one of the ones who took over and
18 reduced the patient load for awhile. You're going to hear
19 that Clifford Carrol was sued. You're going to hear about
20 this Rexford lawsuit, by a patient named Rexford.

21 And during the time that he was being sued -- and
22 this is actually in the beginning part of 2008, when he was
23 being sued, he was deposed, meaning they put him -- they went
24 in a room and a lawyer was asking him some questions, that
25 kind of thing. And during that deposition, the issue of this

1 30 minute thing came up. He didn't know what this is about.

2 So after the deposition he goes and he talks to
3 Desai, and he says to Desai, you know, I got asked about this
4 30 minute thing, what's that about? Oh, don't worry, it's not
5 no problem, no problem, don't worry about it. He goes back
6 and he has to either continue his deposition or it was another
7 day, I can't remember which, but he gets asked it again. It
8 comes up again.

9 He goes back and he talks to Desai again. Desai's
10 response this time is, Don't worry, we're not committing any
11 fraud. So this didn't settle well with Dr. Carrol. He
12 actually starts paying attention a little more. He goes in to
13 do a procedure one day shortly thereafter, and he's looking
14 around and he sees that, gosh, the nurse anesthetist is there
15 and the anesthesia record is there and he hasn't started the
16 procedure yet.

17 And he looks down and he sees that that anesthesia
18 record is filled out completely, vital signs, all that stuff.
19 It's done. He looks at it and he goes, What's this? He goes
20 and he confronts the business manager, Tonya Rushing. She
21 doesn't know what the heck's going on. Then he goes down and
22 he confronts Desai.

23 And this is the thing you will hear over and over
24 again, about how his knowledge of these things is present, how
25 his manipulation is present whether it's him in the process

1 directly or not. When confronted, he doesn't say, oh, well,
2 you know, I don't know what you're talking about, let's fix
3 this or who's doing that. No.

4 He sheepishly looks and he looks down, okay, okay,
5 okay, we'll do it right from now on. From that point forward
6 the times dropped from 30-plus minutes, 31, 32 minutes down
7 to 8, 10 minutes, 11 minutes, so much so that these anesthesia
8 records for billing went to a separate entity.

9 Tonya Rushing, who is one of the business managing
10 people there, got as a little bone -- she had a side company
11 that billed anesthesia, and she would get a piece of that
12 action if that happened; meaning she would get a percentage of
13 what was billed. She worked for Desai. She was his like
14 personal assistant essentially.

15 So that those forms went off, they would be gathered
16 up and they would be taken over to where her business was
17 across town, and there would be this young man that would be
18 filling -- just taking the data entry, putting it into the
19 computer. His name's Ron Cerda [phonetic]. You'll hear from
20 him.

21 And you'll hear that when he was putting the data
22 into the computer, that all the sudden on almost like a light
23 switch one day, 32, 31 minutes, whatever, and he's putting
24 every single form was down there at the 8, 10, 11 minute mark.
25 He thinks something's wrong. He -- it is markedly different

1 enough that he feels he needs to contact somebody and make
2 sure it's right. Yes, it's right, that's what we're doing
3 from now on.

4 Now, as I said earlier too, the witnesses in this
5 case are a mixed bag. Some of them, you're going to have to
6 determine their credibility, what parts, if any, to believe of
7 their testimony. Because what you'll hear over and over again
8 is, you know, either nothing was wrong, nothing was wrong, or
9 yes, I knew this was wrong, I saw this, I saw other people do
10 this, but I never did it.

11 Very few, if any, will admit to some of the actual
12 practices that we know were observed and were present in the
13 practice. A lot of -- a lot of witnesses in this case were
14 pretty uncooperative afterward for the investigation, required
15 us granting them immunity, or they always had to have their
16 lawyers present whenever they talked to anybody.

17 Even leading up to this trial some who were not even
18 culpable, who came into the practice, saw what was going on
19 and quit after a day or three days, are not being that
20 cooperative. It's a difficult case from that standpoint, and
21 you'll see that as the evidence comes out.

22 The issue was that essentially Desai was the one in
23 charge. Desai called the shots. Desai knew what was going
24 on. Desai did everything. And what ends up happening is not
25 only are people infected with the hepatitis C virus that they

1 have as a friend for life, but this man up here wasn't so
2 lucky. This man up here got cirrhosis that accelerated
3 markedly. And you'll hear a description of what happens to
4 him in the trial.

5 When one gets cirrhosis of the liver -- the liver is
6 the filter for the body, the blood filter for the body
7 essentially. It's almost like a sponge, you envision it that
8 way. Blood flows in, gets filtered and flows back to the
9 body. If the sponge pores are blocked, what happens? Blood
10 doesn't go through. It pressurizes the system below it. It
11 shouldn't be under pressure. It's a venous system, not an
12 arterial system.

13 And what you'll hear is that that pressure causes
14 things like ascites. You'll hear that term. And it's where
15 somebody's tummy, abdomen blows up like a balloon and it's
16 full of fluid. It's full of fluid because the veins inside
17 the peritoneum, the lining of the abdomen and the mesentery,
18 the stuff that holds all the organs together and supplies
19 those organs with blood start to engorge.

20 And when they engorge and become pressurized in a way
21 that they haven't been or shouldn't be, they start to weep
22 fluid. Not blood, but fluid. And that fluid collects in the
23 abdomen and it gets bigger and bigger. And if you evacuate
24 it, it comes back, because the liver doesn't work anymore.

25 And because the liver doesn't work anymore, the

1 toxins in your blood start to go up, and they infect your
2 brain and your ability to think and mentate. And your liver
3 function is not only kaput, but then all of the resulting
4 things affect your kidneys and every other organ until you
5 essentially succumb.

6 And that is usually a long process, and usually with
7 people who have a history of alcoholism or something along
8 those lines. He did not have that. He was not infected
9 before he goes to the clinic. And those patients that are
10 infected in this case are genetically matched to the source
11 patients for those days.

12 That man becomes this a short time later, and notice
13 his abdomen. This is what he looked like shortly before his
14 death. You will see a deposition taken, or not a deposition,
15 but -- well, it's a videotape deposition of him, and you'll
16 see how he reacts in that.

17 And within a couple of weeks after the deposition was
18 done, this is where he was. And he died a horrible
19 preventable death because that man and that man over there
20 took it upon themselves to assume the risks for a patient and
21 to compromise the care of a patient, and to harm a patient for
22 the sole purpose of profit. That's it.

23 Patient care was relegated to the basement. Concern
24 for patients was relegated to the basement. And this
25 gentleman, who left after that deposition within days to go

1 back to the Philippines, which was his dying wish, to go back
2 there and die, did exactly that.

3 This is his death certificate from the Philippines.
4 He was born in '35, and he died September -- April 27th of
5 2012. The cause of his death was hepatic uremic
6 encephalopathy. Big words. Hepatic means liver. Uremic has
7 to do with the kidneys, because his kidneys were failing. And
8 encephalopathy because everything up here was going haywire
9 because of the toxins.

10 What he dies of, an antecedent, or also a related
11 cause was sepsis infection, because things aren't working well
12 in your body. Every organ system is shutting down. Every
13 organ system. But the underlying cause, ladies and gentlemen,
14 the underlying cause is hepatitis C. That's what the
15 underlying cause of his death was. These are the immediate
16 causes. That's the underlying cause. And chronic kidney
17 failure.

18 I'm basically done. I know it's been long, and you
19 need to go to the bathroom or go home. But suffice it to say
20 this is an important case. This is an important case not just
21 for the State of Nevada, but for the seven victims that are in
22 this case, six of which are still alive.

23 And one you will hear from, Carole Grueskin, who will
24 not come and testify before you, but her caregiver will,
25 because she's had such a marked cognitive decline, mental

1 decline, which has been attributed to or exacerbated by this
2 infection, that she doesn't even know essentially who she is.
3 You can't even ask her a question. Two people who have had
4 severe, one not just life-threatening, but life-killing
5 results as for pennies.

6 Pennies, ladies and gentlemen. Fractions of pennies
7 on procedures to cut patient care, to compromise that care, to
8 assume the risk for a patient without the patient even
9 knowing. How many patients of those individuals there do you
10 think would have agreed to have a procedure at that clinic
11 under those conditions had they known even a fraction of what
12 was about to happen to them?

13 In our society, in our society the entirety of the
14 medical care system is based on trust. You have to be able to
15 trust your doctor. You have to be able to put your life in
16 that doctor's hands, or those healthcare providers' hands if
17 they are such that they can do things like put you to sleep
18 and then do something to you, cut you open and operate on you.

19 You have to be reliant on the fact that they will do
20 the right thing, that they will not in a sense put you and
21 your condition aside and look upon you as a commodity. A
22 commodity, that's all you are in that clinic. And everybody
23 knew about it. Everybody was complicit. Those individuals
24 who are charged were directly related and associated with the
25 death of Mr. Meana and the infections caused to those patients

1 who have been charged in this case.

2 Ladies and gentlemen, at the end of this case, at the
3 end of this case, at the end of the trial, after all of the
4 evidence has been submitted to you, the State will submit to
5 you that we will have proven beyond any reasonable doubt that
6 Dipak Desai and Ronald Ernest Lakeman are guilty of the
7 charges of murder in the second degree, of performance of an
8 act in reckless disregard of persons or property, of criminal
9 neglect of patients resulting in substantial bodily harm, of
10 theft, obtaining money under false pretenses, and insurance
11 fraud. We will ask you at that time to return a guilty
12 verdict to each and every charge. Thank you.

13 THE COURT: Thank you. May I see counsel at the
14 bench.

15 (Off-record bench conference.)

16 THE COURT: Ladies and gentlemen, we're going to take
17 our evening recess at this time. We'll be in recess until
18 9:00 a.m. tomorrow morning.

19 Before I excuse you for the evening recess, I must
20 admonish you that you're not to discuss the case or anything
21 relating to the case with each other or with anyone else. You
22 are not to read, watch, listen to any reports of or
23 commentaries on this case, any person or subject matter
24 relating to the case. You are not to do any independent
25 research by way of the Internet or any other medium, and you

1 are not to form or express an opinion on the case.

2 If you would all please place your notepads in your
3 chairs and then in a moment follow the bailiff through the
4 double doors. He will give you instructions on parking
5 tomorrow, where to meet tomorrow. Any other questions or
6 concerns, please address the bailiff in the hallway, and if
7 it's something he needs to bring to my attention he will at
8 that point.

9 All right. Thank you, all of you. Notepads in your
10 chairs, and through the double doors.

11 (Jurors recessed at 4:34 p.m.)

12 MR. STAUDAHER: Your Honor, could we make -- before
13 the media leaves, if -- we need to make an announcement at
14 least about that issue with regard to the source patients,
15 that they refrain from using the name of the source patients
16 in this case.

17 Ladies and gentlemen, I know that this is an open
18 forum, you can do what you want to do. But we would ask you
19 if you would please to refrain, if you can, the use of the
20 source patients' names in your reporting of this case. They
21 are concerned -- you know, obviously they were not victims,
22 made victims in the case, and they were just asking for your
23 discretion in that regard. So we told them that we would ask
24 you and we hope that you will abide by their wishes.

25 THE COURT: All right. Thank you, Mr. Staudaher. I

1 just wanted to also place on the record that at the bench
2 following Mr. Staudaher's opening, which ended roughly at
3 4:35, the Court gave the defense the option of Mr. Santacroce
4 doing his opening statement this evening, because I believe
5 his is around 45 minutes or so by his estimate.

6 And for the record, Mr. Wright and Mr. Santacroce
7 both requested that Mr. Wright go first, and that the opening
8 statements for the defense go forward tomorrow together. Is
9 that correct, Mr. Santacroce?

10 MR. SANTACROCE: That is correct, Your Honor.

11 THE COURT: Is that correct, Mr. Wright?

12 MR. WRIGHT: Yes, it is.

13 THE COURT: All right. I just wanted it to be put on
14 the record that you did have the option of going forward
15 today. And is there anything else we need to discuss on the
16 record?

17 (Negative responses.)

18 THE COURT: All right. May I see counsel at the
19 bench.

20 (Off-record bench conference.)

21 (Court recessed for the evening 4:37 p.m.)

22

23

24

25

CERTIFICATION

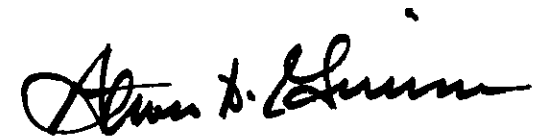
I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

AFFIRMATION

I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

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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,)	
)	AMENDED TRANSCRIPT
Defendants.)	
_____)	

BEFORE THE HONORABLE VALERIE ADAIR, DISTRICT COURT JUDGE

JURY TRIAL - DAY 9

TUESDAY, MAY 7, 2013

APPEARANCES:

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

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1 **LAS VEGAS, NEVADA, TUESDAY, MAY 7, 2013, 9:40 A.M.**

2 * * * * *

3 (Outside the presence of the jury.)

4 THE COURT: All right. So the plan is on the record,
5 we'll bring Ms. Robinson in and question her. Kenny, just
6 bring Ms. Robinson in by herself. Oh, they're in the back.

7 UNKNOWN SPEAKER: Is she also the one that was heard
8 complaining by jury services?

9 THE COURT: No. That was Ms. Mayo, Mayo Habile
10 [phonetic]. I'm sure she was -- is that door shut?

11 THE CLERK: Hm-mm.

12 THE COURT: When they're in the back, that door
13 always needs to be shut. So you were only gone one day. Oh,
14 I thought it was longer.

15 (Pause in proceeding.)

16 (Ms. Robinson, Juror No. 3, enters the courtroom.)

17 THE COURT: Good morning, Ms. Robinson.

18 JUROR NO. 3: Good morning.

19 THE COURT: First of all, I'm sorry for all of the
20 difficulties that all of this is causing, you know. As you
21 know, you filled out the questionnaire, and then you came in
22 for questioning and you expressed some concerns about the
23 homeowners meetings. And, you know, we thought, well, we can
24 work around that if you let us know, by releasing you early,
25 and, you know, giving you time to go to the meetings and all

1 of that. So we thought that we'd addressed that issue.

2 And then I guess you called my JEA and indicated
3 you'd just discovered that you are pregnant. And
4 congratulations, I guess. And, you know, we said, okay, well,
5 we'll accommodate that issue if you, you know, if you can
6 schedule your visits to the doctor. Because of course we
7 expect you to go to the doctor. We're not going to tell you
8 don't go to the doctor, don't take care of your baby. So, you
9 know, mornings or afternoons or whatever, we'd work around
10 that.

11 And now, when I came in this morning, I have the
12 letter regarding compensation from your job. Let me first
13 tell you, we've been through the jury selection process, as
14 you know. You know, we had all the people come in and fill
15 out the questionnaires and then we had you back to be
16 interviewed. And now we've excused, as you saw yesterday, all
17 these people and this is the jury.

18 So it's not like, you know, this far into the
19 process, when we get new information like this from your
20 employer, we can just say, okay, we'll let you go and start
21 the -- you know, as you can, I'm sure, appreciate, and start
22 the process all over, because the trial has started. You
23 know, there's already been the opening statement and
24 unfortunately, we can't like rewind that and play it over.

25 JUROR NO. 3: I understand that, but --

1 THE COURT: So let me just say, you know, we don't
2 want anyone to suffer. You know, we don't want anything bad
3 to happen to your children. We don't want you to lose your
4 home or anything like that obviously.

5 So, you know, what I, I guess, wanted to talk to you,
6 is there something, some way we can, you know, I guess, work
7 this out, something some way that you can serve and maybe get
8 partial compensation or something like that from your
9 employer? Because, you know, I would just note the dates of
10 the email are May 6, which was yesterday. So this is kind of
11 new information.

12 JUROR NO. 3: I mean, I've spoken to my boss. The
13 email that -- I did send an email. I don't know if it went
14 through, but I forwarded the email from HR. They only pay up
15 to five days.

16 THE COURT: Right.

17 JUROR NO. 3: After that is PTO, and I don't -- I
18 only have 30 hours. I am the sole provider for my family.

19 THE COURT: Because your husband's out of work.

20 JUROR NO. 3: He's out of work. I mean, even if he
21 does get a job, it doesn't make any sense because his paycheck
22 would go to daycare. So and my job is -- although I can miss
23 HOA meetings, it's based on performance. I know they can't
24 legally fire me, but if I'm going to be gone, whoever's going
25 to take over my spot has no history on these committees that I

1 work with. It's beyond -- I'm just -- I'm to the point where
2 I didn't even sleep last night because I'm so stressed out.

3 THE COURT: Okay. Let me ask you this: How are you
4 compensated again?

5 JUROR NO. 3: I'm salary.

6 THE COURT: Okay. And then you make what a week?

7 JUROR NO. 3: Every two weeks I make a little bit
8 over 1700. I have rent. I have insurance. I have a loan
9 on -- I have two cars, my husband's and I's. I pay the car
10 notes.

11 THE COURT: So you make about \$850 a week?

12 JUROR NO. 3: Yeah.

13 THE COURT: And let me ask you this: Normally you
14 work during the day and then sometimes you go to the meetings
15 at night, correct?

16 JUROR NO. 3: I work from -- I'm off on Mondays,
17 because we do four tens until November. Then I work Tuesday
18 to Fridays. I have a total -- now I have a total of seven
19 communities. They all meet. I may work from 7:00 to 5:30,
20 and then board meetings start at 6:00 p.m.

21 THE COURT: Okay. Now, you will be able to make the
22 board meetings because we will make sure. Just your
23 obligation is to tell us ahead of time and to tell the bailiff
24 so he can tell me, and I can tell the lawyers so they don't,
25 you know, fly in a witness that they're -- you know, could run

1 late for those days. So, you know, we can --

2 JUROR NO. 3: What I'm worried about is money.

3 THE COURT: Right.

4 JUROR NO. 3: I don't have money --

5 THE COURT: Well, but I mean, if you're going to the
6 board meetings --

7 JUROR NO. 3: I don't get paid for that. I don't get
8 paid -- because I'm salary. That's why I'm salary. I don't
9 get extra hours. If my meeting is lasting three hours, four
10 hours, what I can do is I can come in late the next day or
11 leave the office early. I don't -- we don't get paid.

12 THE COURT: Okay. But isn't that part of your job to
13 attend the --

14 JUROR NO. 3: It's part of my job duty, yeah.

15 THE COURT: Well, I mean --

16 JUROR NO. 3: I don't mean to be rude or anything.
17 I'm just -- I feel like vomiting right now. I am like -- I
18 don't know what to do.

19 THE COURT: Okay. Well, we're going to see if we can
20 work to solve this problem. All right. So don't, you know --
21 we want you to be a juror, and so we'll see if we can work to
22 resolve this problem. That's where we are right now. Okay.
23 We're not going to say we can't resolve the problem. We're
24 going to try to work to resolve it. That's where we are right
25 now. Okay. So don't cry. We're not there yet.

1 JUROR NO. 3: I'm just stressed out.

2 THE COURT: Did you talk to your boss about, you
3 know, if you could be compensated for like working on the
4 weekends?

5 JUROR NO. 3: They won't do that.

6 THE COURT: They won't. So they won't pay your
7 salary --

8 JUROR NO. 3: If you even -- they don't pay us salary
9 if we -- if I was even to come in on a Saturday and work, I'm
10 not going to see extra money on my paycheck.

11 THE COURT: Right. And that's most salaried
12 positions. But, you know, if you're getting the work done and
13 you're coming in on the weekends, then a lot of times they're
14 not going to take your salary away as long as you do it.

15 I understand in a salaried job, you know, we've all,
16 you know -- like we've all had salaried jobs where you get
17 your work done. If you have to work late or you have to work
18 on the weekend, you get your work done and it's just your
19 salary. But what I'm saying is, is your boss going to take
20 away your salary if you're getting your job done by coming in
21 on the weekends or coming in early or something like that?

22 JUROR NO. 3: The emails specifically state that's
23 based off of the employee handbook. They only pay you up to
24 five days. So my five days start today, because I don't work
25 on Mondays. After five days is up, I can use 30 hours of PTO,

1 which isn't even four days, and after that's done that's it.
2 It's unpaid --

3 THE COURT: Right. But what I'm say --

4 JUROR NO. 3: -- no matter if I come in.

5 THE COURT: Okay. But what I'm saying is maybe your
6 employer -- it doesn't sound like you've discussed this with
7 your employer. Maybe your employer would be willing, if you
8 come in on the weekends or, you know, part time in the
9 mornings or something like that, maybe they would be willing
10 not to take away, or to pay you all or part of your salary.
11 It doesn't sound like that's an option that's been pursued.
12 Is that true?

13 JUROR NO. 3: It's not an option, but I will call
14 them. But here's the situation with that. When I come in on
15 weekends, there's no way for them to validate. Like someone
16 has to be there to see that I am working.

17 THE COURT: Okay. They don't look to see, you know,
18 that you did the --

19 JUROR NO. 3: I don't clock in and out.

20 THE COURT: -- that your job is done?

21 JUROR NO. 3: No. I have seven communities. Each
22 one is different. I have one board member who is psychotic
23 and spends most of his time emailing for all kinds of things.

24 THE COURT: Right. But what I'm saying is --

25 JUROR NO. 3: It's not like -- it's --

1 THE COURT: Tell me what you do, say if you had gone
2 to work today. Tell me what you do. You know, you show up at
3 work, and tell me exactly what it is --

4 JUROR NO. 3: It's different every day. I go into
5 work, check emails, make sure voice mails are done. Put
6 together an action list. I had meetings back to back. Last
7 week I had three board meetings back to back.

8 THE COURT: And those were in the evenings though,
9 correct?

10 JUROR NO. 3: Those were all the evenings. We had to
11 make sure minutes are done. We have to make sure action items
12 are sent to the board. There's legal issues that takes place
13 with those. Most of the communities in town had just finished
14 with a lawsuit with a bunch of investors. So there's a lot of
15 meetings, email communication, phone communication with board
16 members explaining what's going on with their attorneys.

17 It's not just like a regular 9:00 to 5:00 job.
18 Things happen. Emergencies happen. Even when I'm not
19 working, on weekends I will get an emergency phone call
20 because someone had a leak or a gate was hit.

21 THE COURT: Okay. Well --

22 JUROR NO. 3: If you picture that, my job already as
23 an HOA manager, I know I signed up for it, is already a
24 stressful thing of its own. So to sit here, to worry about
25 what I'm going to do with my money and what's going to

1 happen -- because I know they can't fire me. But if I'm gone,
2 all the hard work I put in with these accounts trying to clean
3 them up is just going to go down the drain, because --

4 THE COURT: Ma'am.

5 JUROR NO. 3: -- the next person is not going to know
6 what to do.

7 THE COURT: Ms. Robinson, what I'm trying to do, and
8 right now, like I said, this is we're trying to find solutions
9 here right now. If -- what I'm trying to see is if maybe your
10 employer will pay you all or part of your salary if you did
11 some of this work, you know, emailing.

12 You can do emailing responses at any time. Phone
13 calls, you can do phone calls, you know, in the morning before
14 we start if we start later. You can do phone calls in the
15 afternoon. You can do attending the meetings in the evening.
16 You can, you know, do the minutes and other things like that.

17 JUROR NO. 3: I'll talk to my job. But I just don't
18 think you guys fully understand. Like this isn't -- if I can
19 get my job to write something explaining exactly what my role
20 is --

21 THE COURT: You don't need to ask your job to do
22 that.

23 JUROR NO. 3: I mean, it's not something -- it's -- I
24 don't just do customer service. I have an assistant that
25 works below me. I have to make sure that her work is done.

1 If I'm not in the office, she's really not going to know what
2 her duties are going to be except for the day to day stuff,
3 which is doing violation reports.

4 THE COURT: Right.

5 JUROR NO. 3: If something comes up, she's not going
6 to know what to do because her manager's not in the office and
7 can't get ahold of me. And that's going to just piss people
8 off, board members, because most of them are retired and have
9 no control in their lives, so they try to control what we do.
10 So it's -- I can't even like go further into what it is. Like
11 I'm right now, I feel like just vomiting.

12 THE COURT: Okay. Well --

13 JUROR NO. 3: Some guy was just telling me just go
14 apply for unemployment. Like I've been doing this for --

15 THE COURT: We're not telling you to --

16 JUROR NO. 3: No, that's not going to work.

17 THE COURT: Like I said, what we want to try to do is
18 see if there is some way we can find a solution where you'll,
19 you know, be able to do some work and receive some salary for
20 your efforts for your job and still serve as a juror. That's
21 what we're looking at, is trying to find a solution. And, you
22 know, it doesn't sound to me, you know, that everything in
23 your job is something that requires you to be in the office at
24 a particular period of time.

25 JUROR NO. 3: There's managers that try to say the

1 excuse that they have to go on property almost every day, and
2 their work in the office is behind.

3 THE COURT: Right.

4 JUROR NO. 3: I mean, it's to the point where I can
5 bring work home, and I've already thought about it. I can
6 bring work home because I can remote in, but it's not the same
7 when you're not in the office.

8 THE COURT: And I understand. But we're asking
9 you -- you know, it's not a perfect world. And unfortunately,
10 we've gone this far in the jury selection and every single
11 person up there is making sacrifices to serve on the jury.
12 And that's part of being, you know, a citizen frankly. And
13 I'm sure if you were in a dispute, you would want people who
14 are willing to serve as jurors.

15 And so every single person is inconvenienced and we
16 try to have people as inconvenienced as little as possible.
17 And all I'm saying to you is, you know, even if you're going
18 to be inconvenienced, if there are solutions, then let's try
19 to find them.

20 JUROR NO. 3: I'll call my job.

21 THE COURT: And the solutions aren't, you know -- and
22 I'm happy, you know, I'll talk to your office. Because this,
23 you know, they understand you've tried to get out of jury
24 duty. You know, if everyone who tried to get out of jury duty
25 got out of jury duty, then unfortunately, we wouldn't have

1 enough people to serve.

2 And so I don't expect you to lose your, you know,
3 home or your apartment. I don't expect you to lose your car.
4 I don't expect you to not feed your children, and I don't
5 expect you to not see your physician. Okay. I want you to
6 understand that. And if we can find a way that we can
7 accomplish you not having to have any of those results and
8 still serving as a juror, then we're going to try to do that.
9 That's all I'm saying to you.

10 And I don't mean to be unsympathetic or anything like
11 that. So I don't want you to feel nauseated or so stressed
12 out, because I'm not here to tell you that you're going to
13 have to serve and your family's going to wind up homeless.
14 Okay. That's not what this is about. What this is about
15 right now is trying to see if there's a solution that maybe is
16 a little bit burdensome on you, but that you could still be
17 able to serve as a juror, and maybe is a little bit burdensome
18 on your employer.

19 But frankly, I think part of being an employer and
20 being a corporation that operates in our community is being a
21 good corporate citizen and making allowances so your people
22 can serve, and not saying hard and fast, oh, no, our people
23 can't serve, we expect all of the other employers to make
24 sacrifices, but we're not going to.

25 So that's all I'm saying, is I hope we can find a

1 solution that may be a little difficult but, you know, gets
2 your employer on board, you know, that you can serve. And
3 like I said, I'm not -- I'm not here to put you out on the
4 streets or anything like that.

5 JUROR NO. 3: No, I understand that.

6 THE COURT: So please relax, you know.

7 JUROR NO. 3: I understand that. I'll call my
8 employer and speak to them. If I have to speak to the owners,
9 I will.

10 THE COURT: Okay. Well, we'll do it. We'll do that
11 for you. Because at this point, you know, it's between the
12 court and your employer, all right, and not between you and
13 your employer. I don't want to put you crosswise with your
14 employer. It's between the court and your employer. So I
15 want that very clear. We don't expect you to get crosswise
16 with your employer.

17 I don't expect you -- you know, I want you to relax.
18 I don't expect you to, you know, again, lose your car or
19 anything like that. We're going to see if we can find a
20 solution. Okay. If we can't find a solution, then we'll deal
21 with that when we get there. All right.

22 And again, you know, it's between the court and your
23 employer. I can't make your employer do this and accommodate
24 you, but as I said, you know, if they want to be in business
25 in this community and represent all these homeowners

1 associations, and they want to avail themselves of the court
2 system, and to me, part of that is being a good citizen in our
3 community, and that means allowing people to serve.

4 Now, I can give your employer that opportunity and
5 they can accept it or they can reject it. And if they reject
6 it, well, then it is what it is and, you know -- you know,
7 that's how they choose then to be in this community. So
8 again, I don't want you to be worried about it or anything
9 like that. Like I said, what we're going to do is see if we
10 can find solutions here, okay?

11 JUROR NO. 3: Did your assistant receive the emails
12 that I forwarded?

13 THE COURT: You sent for -- my JEA received that you
14 sent at 7:25, "Please see below," and then there is an email
15 from Charlene Sanford [phonetic] and an email from Michelle
16 Nieto-Deck [phonetic], and I'm assuming she's your supervisor.

17 JUROR NO. 3: Yeah. She's my boss.

18 THE COURT: Okay. And then Charlene Sanford is more
19 the corporate --

20 JUROR NO. 3: She's the HR.

21 THE COURT: -- person?

22 Okay. All right. Basically, we're going to go ahead
23 and let you go back with the other jurors. You know, they may
24 wonder of course, oh, what did they talk to you about. You
25 are not to discuss what we've discussed in here and your

1 personal issues relative to jury service with any of the other
2 jurors. Do you understand?

3 JUROR NO. 3: Yes.

4 THE COURT: All right. Thank you. Like I said, you
5 know, I don't want you to worry. I don't want you to feel
6 sick and stressed out. We're going to see if we can find a
7 solution to this problem. If we can't, then we'll know that.
8 But I'd like to at least try to exhaust some other
9 possibilities. Okay. All right. So just relax and it'll be
10 okay.

11 Take her back.

12 (Juror No. 3 exits the courtroom.)

13 THE COURT: What do you want to do going forward? My
14 proposal is to see what her job says, and then see where we
15 are at that point. And if her job, like I said, doesn't want
16 to be a good corporate citizen, then that's up to them, and
17 then obviously we'll have to excuse her. Is everyone in
18 agreement that that's how we should proceed at this point?

19 MR. SANTACROCE: Yes.

20 MR. WRIGHT: Yes.

21 THE COURT: Okay. So shall we then get started with
22 opening statements?

23 MR. SANTACROCE: Can I just put some observations on
24 the record?

25 THE COURT: Sure.

1 MR. SANTACROCE: That at some point it looked to me
2 like she had started crying during your conversation with her.
3 Basically she was very emotional, and I don't know if the
4 record can catch that with just the questioning. So I just
5 wanted to put that on the record.

6 THE COURT: Okay. She did seem to be emotional. You
7 know, I don't want anyone to become physically ill because
8 they're serving as a juror. Okay. I mean, if we're there
9 with this woman, then I'm going to excuse her now. You know,
10 I don't want somebody to be -- especially someone who's
11 pregnant. Okay. I don't want to be responsible for that.

12 Does anyone feel that she's at a situation where we
13 need to excuse her now? I mean, I --

14 UNKNOWN SPEAKER: No.

15 THE COURT: She seemed calm to me. What's the
16 State's view?

17 MR. STAUDAHER: I mean, I agree with the Court. I
18 think at this point, by the time you got finished talking to
19 her, she was calmed down it seemed like. There was even, to
20 my view, a glimmer of hope that maybe we could work out some
21 solution, as you put it. That she is not one that is
22 essentially at this point, I think, one we have to release.
23 Maybe we have to at some point.

24 But at this stage, she is an African-American
25 individual. We have an issue with the make-up of the jury

1 anyway, so we want to make sure that we have this jury keep as
2 many of the jurors here on board as possible. And I think if
3 the Court does what it intends to do and we come back with
4 information that says -- well, however it goes, we'll make a
5 decision then.

6 THE COURT: Defense, are you -- again, you know, I
7 don't want to cause a miscarriage, God forbid, or anything
8 like that, so.

9 MR. WRIGHT: I agree with the Court's observation.
10 If we can possibly get her employer to bend, good. If we
11 can't, she's going to have to go.

12 MR. SANTACROCE: I agree with that.

13 THE COURT: Okay. Kenny, would you just pull her to
14 the side, make sure she's okay, tell her, you know, just
15 relax.

16 THE MARSHAL: Okay. Do you want me to get everybody
17 in the courtroom first?

18 THE COURT: No, no.

19 THE MARSHAL: All right.

20 THE COURT: Just say I just want to make sure, the
21 judge wants to make sure you're okay. Don't engage in any
22 further conversation with her.

23 All right. I think that's all we need to do for
24 right now. We'll see if these people from her job call us
25 back.

1 If somebody wants to open the door and let everybody
2 get back set up. If anyone needs to use the restroom, do it
3 right now, and then we'll move right into the opening
4 statements from the defense.

5 (Pause in proceedings.)

6 THE COURT: Is everyone ready to begin?
7 Kenny, go ahead and bring the jury in.

8 (Pause in proceeding.)

9 THE MARSHAL: Ladies and gentlemen, please rise for
10 the jury.

11 (Jurors reconvene at 10:11 a.m.)

12 THE COURT: Court is now in session. The record
13 should reflect the presence of the State through the deputy
14 district attorneys, the presence of the defendants and their
15 counsel, the officers of the court, and the ladies and
16 gentlemen of the jury.

17 Mr. Wright, are you ready to proceed with your
18 opening statement?

19 MR. WRIGHT: Yes.

20 THE COURT: All right. Thank you.

21 DEFENDANT DESAI'S OPENING STATEMENT

22 MR. WRIGHT: May it please the Court.

23 Ladies and gentlemen, as you know, I'm Richard
24 Wright. Margaret Stanish over there, my partner, and she and
25 I represent Dr. Dipak Desai sitting here in the courtroom.

1 Now, I'm going to talk to you for a couple hours this morning.
2 As you all know, there's always two sides to every story, so
3 I'm going to give you -- the State told you their side, so I'm
4 going to give you a little roadmap of where I'm going first.

5 I'm going to talk to you first about the principles
6 of a criminal case, and then I want to make sure we're all on
7 the same page, because we've talked about civil malpractice
8 and medical malpractice, criminal neglect, I'm going to
9 distinguish between them to make sure we're all on the same
10 page.

11 And I'm going to talk generally about the actual what
12 we call elements of the crimes he's charged with, exactly what
13 is it that the State is going to have to prove. And I want it
14 to be -- discuss these elements and what we are exactly
15 looking for, what you all will be looking for, so when you're
16 hearing all the testimony and listening to the evidence, you
17 can fit it into a how does that precisely fit with criminal
18 neglect of patients.

19 And then I'm going to talk to you about what happened
20 in the practice, meaning what happened back in 2007, when
21 there were these hepatitis clusters, and then talk to you
22 about the investigation that took place on trying to determine
23 how the heck did this happen.

24 That's what will be called the epidemiological
25 investigation that took place -- there was clearly a cluster

1 of hepatitis C -- to what went wrong, and any investigation
2 about what actually occurred that was wrong, how foreseeable
3 was it, and were there individuals responsible criminally for
4 engaging in the acts which actually caused the transmission of
5 the hepatitis. So that's like where I'm going to be going,
6 big picture.

7 Now, first of all, Dr. Desai, who I represent, he's
8 63 years old. He was a physician. He was born in India,
9 middle class family, went to high school and medical school in
10 England -- pardon me, India, came here in the 1970s. Did his
11 residency and training in New York, and then at the time in
12 New York met his wife, Kusum Desai, who is also a physician.
13 And they moved to Las Vegas in about 1980, and he opened his
14 practice in gastroenterology. And that was 1980, and he
15 practiced all the way here.

16 And his practice grew up until 2008, when the
17 business closed, his clinics and offices, and he stopped
18 practicing medicine completely. And he's been a practicing
19 physician all that time, you'll hear about in the trial, here
20 in Las Vegas. He's still married. He has three adult
21 daughters. And that's essentially who he is, and you'll learn
22 more as the case goes on.

23 He had this practice, which was a group of
24 physicians. He was the majority owner of the practice. There
25 were about 15 physicians in this practice. Other doctors with

1 him, they were lesser owners, minority owners, et cetera. But
2 that was the general practice.

3 Now, getting back to the basics of this being a
4 criminal case, I want to go over those fundamental bedrock
5 principles that apply. And I don't always go over it again,
6 but this time we talked to each of you for jury selection
7 individually and not as a group. So I can't remember, when
8 the lawyers got to talk to each of you, if we covered every
9 point. So I want to go over it again to make sure we're all
10 on the same page and we've all heard the same thing.

11 Now, this is a criminal case, so the fundamental
12 principles that are going to be applying in here, it's a
13 dispute. I mean, you all are the finders of the fact. This
14 is a dispute resolution essentially. The State of Nevada says
15 Dr. Desai and Ron Lakeman committed a crime. That's the
16 dispute. And so in any issue like this, whether it's civil or
17 criminal, the first question that comes up is when there's a
18 dispute, is who has to prove it.

19 In this courtroom, who has to prove that Dr. Desai
20 did something wrong, committed a criminal offense. And
21 because it's a criminal case, the burden of proof -- and that
22 just means for this, who has to bring in all of the evidence
23 and who has to convince you of things. And that burden of
24 proof is with the State. And it never shifts, changes at any
25 time. If you're accused and you're a citizen and you ever

1 have to be in a courtroom like this, the State has to prove
2 you did something wrong.

3 This isn't something of you're accused, prove you
4 didn't do it. This is something where the State must prove
5 it. And then because it's a criminal case, okay, the State
6 has to prove the crime in the courtroom. What -- how
7 convincingly must they prove it? And of course you heard it
8 in here; beyond reasonable doubt, because it's a criminal
9 case. We all hear that.

10 And so that actually means when you're sitting there
11 and you're ultimately going to deliberate, you're going to be
12 saying to yourself, do I think the State has proved what is
13 alleged by beyond reasonable doubt. And that's the highest
14 standard in the arena of civil criminal cases. And so the
15 result is we have to have proof beyond reasonable doubt. Not
16 a preponderance. Not 50 percent. But it has to be firmly the
17 State proves it beyond reasonable doubt because it's a
18 criminal case. It applies in every courtroom.

19 Now, additionally, when you were questioned and when
20 Judge Adair gave you some instructions, we talked about
21 because it's a criminal case every accused is presumed
22 innocent right now. Dr. Desai and Ron Lakeman are presumed --
23 and of course that means a presumption. So that means I
24 mentally must believe at the present time they are innocent as
25 they are in the courtroom. Presumed innocent.

1 And of course, individually we questioned you all
2 about that, because it's kind of counter-intuitive, I mean in
3 the sense some of you had read about it in the newspaper, had
4 seen it on television, had heard about this case before. And
5 so some of you had even already formed opinions from the news
6 media.

7 And so we meticulously asked you are you going to be
8 able to totally set that aside, because that's what's required
9 in a criminal case. Are you going to be able to presume, to
10 sit there and think right now the man is totally innocent
11 despite the media, despite the fact that he's in the
12 courtroom. And so that's what's required.

13 And an additional part of it in a criminal case is an
14 accused, if you're ever in this position, you don't have to do
15 anything. I think Ms. Stanish asked each of you when you were
16 being qualified, you understand we don't have to do anything.
17 We can just sit here and do nothing if we wanted to, that the
18 State has to do it all. But it's the right of an accused to
19 not say a word if he chooses.

20 Now, you've seen this if you watch TV shows. You got
21 the right to remain silent, and that's right in the
22 Constitution. He had -- an accused has the right to not --
23 I'll put down testify. The right to not speak, to not say a
24 word. If I'm accused, State, you say I did something wrong,
25 you prove it, you prove it beyond a reasonable doubt and I do

1 not have to say a word.

2 And then also as part of not having to say a word,
3 there is a part of this right of not having to testify that
4 includes no inference can be drawn from my silence. Okay.
5 Now, that means, as you all are sitting there, you cannot
6 think, well, gee, why didn't someone be interviewed, or why
7 didn't they say something, or why didn't they testify. But
8 I'm going to infer or presume or guess that they didn't
9 because it wouldn't have been helpful. That's drawing an
10 inference from their silence.

11 And the final jury instructions you're going to get
12 when we're all done with the evidence and Judge Adair is
13 instructing you, she's going to tell you if an individual does
14 not testify, you cannot draw an inference from it. He is
15 presumed innocent and you cannot in any way draw any inference
16 adverse to him from his remaining silent. So that's the
17 resolution of the rules for playing this as a criminal case.

18 Now, as Mr. Staudaher said, this isn't a civil
19 medical malpractice case. This is a criminal case. You're
20 going to hear about some of the civil medical malpractice
21 cases, because the patients who contracted hepatitis C at the
22 clinic on these two cluster days, they're going to come in
23 here, testify, and they've been engaged in civil litigation.
24 They've been the plaintiff, because they were harmed by
25 negligence by either the clinic or the practitioners or the

1 sellers of propofol, or the distributors.

2 You will hear about their lawsuits, because they sued
3 to get made -- as much as the law can do or we can do, to get
4 made whole economically for their wrong. This criminal case
5 isn't about making them whole or anything. This is about did
6 individuals commit a criminal act at the clinics.

7 Now, when the plaintiffs sued -- that being the
8 patients who got hepatitis C who will come in here and
9 testify. As you know, there were seven of them, six on
10 September 21, one on July 25, 2007. Now, when they sued, it
11 was a civil case. So when they sued, different rules applied.
12 Say they sued the clinic. I went in. I didn't have hep C
13 when I went in there. I had hep C when I came out of there,
14 something went wrong and that's negligence, so I am suing you.

15 So they sue, they're plaintiffs, and the question is
16 who has to prove it in a civil case. Well, the plaintiffs do.
17 The burden of proof is on them. Has to prove I went in there,
18 I was hepatitis C free, I didn't have it when I went in and
19 when I came out I had it.

20 So they put on their evidence. Then how much do they
21 have to -- in order to win a judgment for being wronged and to
22 be made whole, how much do they have to prove it by? Not
23 beyond a reasonable doubt. It's a civil case. It's simply a
24 preponderance of evidence. And a preponderance, you'll hear,
25 is more probable than not. Call it 51 percent if you want to,

1 because it's simply it's more probable than not. So for a --

2 MR. STAUDAHER: Your Honor, I hate to interrupt
3 openings, but could we approach the bench?

4 THE COURT: Sure.

5 (Off-record bench conference.)

6 THE COURT: Once again, I need to remind you of the
7 admonition not to discuss anything relating to the case with
8 each other or with anyone else, not to read, watch or listen
9 to any reports of or commentaries on any subject matter
10 relating to the case and not to form or express an opinion on
11 the trial. Please follow Officer Hawkes through the double
12 doors.

13 (Jurors recessed at 10:31 a.m.)

14 THE COURT: Basically, we excused the jury because it
15 seemed like there was more of a dispute at the bench than just
16 concerned the objection, which was to the burden of proof. I
17 overruled the objection.

18 It's fine to discuss that a burden of proof in a
19 civil case is only a preponderance of the evidence and --
20 generally, and proof beyond a reasonable doubt in a criminal
21 case. However, you can't give broader instructions on the
22 law, as the instructions on the law come at the end of the
23 case and have not been decided upon yet.

24 So Mr. Wright, up here at the bench we got into a
25 discussion as to now where are you going with your argument,

1 and whether or not you intend or hope to get into a discussion
2 of the law rather than the evidence, which you either intend
3 to present or what you think the evidence, regardless of who
4 presents it, is going to show in this case?

5 MR. WRIGHT: Yeah. I don't call it the law. I
6 absolutely call it I am going to tell them the elements of the
7 crimes which he is charged with. Those come right out of the
8 statute. I'm not giving jury instructions. I think a jury
9 needs to know before I tell them what I think the evidence
10 will show and what show -- what they are supposed to be
11 looking for. It's the exact road map I explained to them when
12 I opened.

13 First I'm going to talk about the general principles
14 of a criminal case. Then I'm going to talk to you --

15 THE COURT: That was all fine and no one objected to
16 that, and that's perfectly fine.

17 MR. WRIGHT: Then I'm going to talk to you all about
18 the elements of the crime that he's charged with, so that you
19 all will know when I go through the evidence what it is you
20 are looking for.

21 MR. STAUDAHNER: That is exactly the problem. That
22 then -- well, why do we even have instructions? Just throw
23 the statute book back there and say here we go. And that's
24 not what we do. We -- those are not settled. They don't know
25 what theory, for example, in the murder that we ultimately

1 will be proceeding under. We gave them the ones that are
2 there.

3 But the evidence, as it comes out, the jury and the
4 judge, you, will instruct them on the elements that are there,
5 what that means, and we have to go through that and settle
6 those. This is not the forum or the time, in opening
7 statement, to lay out the elements and what is the law that
8 they have to follow as their road map.

9 It's what evidence will be presented in the case or
10 what evidence won't be presented, and how to interpret that or
11 whatever. It's not the law at this point. That's given at
12 the end of the trial. After both sides have had the trial
13 done, we settle the jury instructions, and then the judge,
14 you, can instruct them on the law.

15 This is not the time to instruct them on the law.
16 It's the time to show what evidence is going to be presented
17 and what essentially their take on it will mean.

18 THE COURT: All right. Tell me --

19 MR. SANTACROCE: Your Honor, may I be heard?

20 THE COURT: Well, right now, no, because this
21 concerns Mr. Wright's opening.

22 MR. SANTACROCE: It's going to concern mine.

23 THE COURT: Well, all right. Mr. Wright -- I'm going
24 to finish with Mr. Wright, because we're in his opening and
25 the issue right now concerns what Mr. Wright would like to

1 say.

2 So Mr. Wright, what exactly is it that you want to
3 say? Because again, you know, in a way, I'm concerned that
4 you're trying to put the cart before the horse; meaning
5 instruct them on the law prior to the presentation of evidence
6 through your opening statement.

7 Now, I think as a general principle, you know, if
8 you're just saying, you know, like these are the elements of
9 burglary and entry with the intent to commit this and that.
10 But, you know, the way this indictment reads is fairly
11 complicated and it's different theories of liability. And I
12 certainly don't want to create a situation where you're
13 focusing maybe on proving the elements and ignoring the
14 theories of liability.

15 And to then start discussing theories of criminal
16 liability, I think now we're definitely getting into
17 instructions on the law and really again, as I said
18 colloquially, putting the cart before the horse here. So
19 that's my concern. You know, this isn't a simple indictment
20 like a burglary where you have a principal actor and that's
21 it.

22 So I think Mr. Staudaher touched on that a little
23 bit, where you're talking about different theories and then,
24 you know, is it that you want to explain the theories and now
25 we're really going to get into something where I think you're

1 really moving into an instruction on the law, and that's my
2 concern here.

3 So I guess my -- you know, I would be less concerned
4 about it, like I just said, if this were a very simple
5 indictment and really we're just limited to, you know, one
6 principal and the direct elements of the crime. But so maybe
7 you can enlighten me, and then if I understand what it is that
8 you want to do, you know, I can try to make a more informed,
9 at least, decision.

10 MR. WRIGHT: I want to tell the jury what they're
11 charged with and what the crime is. I don't understand why we
12 want to conceal that from the jury and why the State doesn't
13 want them to know it. I want to use the statute. I've never
14 had an opening where I'm not allowed to use the statute and
15 then go through the elements with the evidence.

16 If you call -- the fact that this is a difficult,
17 poorly drafted, confusing, should have been dismissed
18 indictment cries out for clarification. You point out this
19 isn't simple. What are they supposed to be looking for when
20 they hear all of this evidence coming in? What's the crime
21 I'm supposed to be looking out for?

22 THE COURT: Well, they're supposed to be looking for
23 the -- they're supposed to be looking for the truth and
24 they're supposed to be looking at what all the facts are, and
25 then at the end, like in every other trial, they get the law

1 and they go in the back and they try to assess, well, what has
2 the State proven, what do we believe the facts are from the
3 evidence that's been presented, and how does that apply to the
4 law in this case. I mean, that's -- I think it --

5 MR. WRIGHT: Well, if you're instructing me I can't
6 tell them the law or the statute, I can't throw them the
7 statute and I can't tell them the elements of the crime, I'll
8 abide by it.

9 MR. STAUDAHER: Your Honor, this is opening
10 statement. It is not --

11 MR. WRIGHT: I understand what it is.

12 MR. STAUDAHER: -- closing argument. I mean, Your
13 Honor is the one who gives the law, not Mr. Wright, and that's
14 the issue.

15 MR. WRIGHT: Okay. You put the statute up and tell
16 them the elements.

17 THE COURT: Mr. Wright, I don't think you need to be
18 facetious at this point. Like I said, you know, I understand
19 your argument that, you know, you want the jury to just focus
20 on certain elements when they hear the evidence, and I can
21 understand why you would want them to do that.

22 But I also don't think it's inappropriate for the
23 jury to consider all of the facts as presented, and then from
24 all of the evidence make their determination as to what they
25 think the truth is, what they think the facts are --

1 MR. WRIGHT: I will tell them that.

2 THE COURT: -- without trying to -- I don't know that
3 this is the State's concern, but without somehow trying to
4 narrow that focus without giving them full instructions on all
5 of the theories of liability that the State has pled.

6 And just, you know, in response to your comment that,
7 well, it's a poorly drafted pleading that should have been
8 dismissed, that's been thoroughly litigated. That was
9 litigated here. That's been litigated in front of the Nevada
10 Supreme Court. So we are where we are and the indictment has
11 been held to stand.

12 So that is my concern with allowing parsing out of
13 the law and everything like that. You know, I think, you
14 know, generally commenting on the difference between civil and
15 criminal is certainly appropriate. The constitutional
16 principles, making sure that they're focusing on those
17 constitutional principles, I think, is certainly appropriate.

18 But my feeling is this: That, you know, you can't
19 just isolate one theory of liability from the other theories
20 of liability. You can certainly point out the difference
21 between criminal neglect and civil neglect, and if that's what
22 you're seeking to do by way of this, I think that that's
23 appropriate and that's also been the subject of comment in our
24 voir dire with the prospective jurors. I certainly think
25 that's appropriate if that's how you want to use the statute.

1 But I would just say generally -- I'm still not
2 exactly sure how you want to use this. But I would say
3 generally, you know, opening statement is not a time to
4 provide instruction on the law, and opening statement is not a
5 time for the defense to try to limit what the theories are and
6 to tell the jurors, look, just focus in on this, when there
7 are other theories that the State may be trying to present.

8 And so that's my concern. You know, I've articulated
9 that as best as I can. And hopefully, you know, going
10 forward, I'm not exactly sure how you wanted to use this. But
11 if you're saying, you know, it's not ordinary negligence, it's
12 beyond that, it's aggravated, reckless or gross, I would let
13 you say that. But again, I -- Ms. Stanish is nodding -- I
14 hope you understand what the Court's concerns are and what I
15 won't allow you to do.

16 MR. WRIGHT: I don't understand the Court's concerns.

17 THE COURT: Okay.

18 MR. WRIGHT: I wasn't arguing theories. I wasn't
19 arguing conspiracy, aiding and abetting, theories of
20 liability.

21 THE COURT: We don't know what your --

22 MR. WRIGHT: I am arguing, well, I never had to
23 preview it before for a Court, and I've never been stopped
24 before in telling the elements of the offense and where I
25 think the evidence will and will not go. And I haven't --

1 THE COURT: And that's -- Mr. Wright.

2 MR. WRIGHT: -- been stopped in presenting the
3 statute to the jury.

4 THE COURT: Mr. Wright, that's all certainly, you
5 know, fine. Mr. Staudaher may have kind of jumped the gun a
6 little bit. Like I said, what you started with was perfectly
7 fine and again, the Court overruled Mr. Staudaher's objection.
8 However, based on what you said here at our conversation at
9 the bench became concerning as to what you intended to do.

10 And my concern is this, that you cannot, you know,
11 try to instruct the jury on the law at this point, and you
12 cannot -- and my concern with that is in somehow focusing the
13 jury to the exclusion of various theories of liability or
14 something like that that have been pled. So that is my
15 concern. And when you say, well, I didn't intend to instruct
16 them on theories of liability, that right there may be the
17 problem, depending on what you make of your argument.

18 You know, the indictment is again, complex. Like I
19 said, you know, it is what it is. It's been litigated.

20 MR. WRIGHT: I intend to focus --

21 THE COURT: The State's been allowed to proceed on
22 that. And so, you know, what you've done in other cases,
23 that's what you've done in other cases. I can't comment on
24 that. But, you know, like I said, you can tell them, you
25 know, the difference between civil and criminal, that, you

1 know, it's not an ordinary negligence standard. We discussed
2 that already in voir dire.

3 You can say what you want from the statute is, you
4 know, the act or omission is aggravated, reckless or gross,
5 it's a departure. That's all fine if that's where you wanted
6 to go with this. You know, maybe we're not -- I'm not sure
7 exactly what it is that you wanted to do, but I think that
8 that would be appropriate.

9 All I'm saying is, you know, don't -- don't in your
10 presentation, you know, point only to certain things to the
11 exclusion of other theories and other things, so that it would
12 be an inaccurate representation of what the instructions would
13 be at the end.

14 MR. WRIGHT: I won't.

15 THE COURT: And again, you know, the point of opening
16 statement is -- you know, and that's a subject of debate.
17 Some judges and some legal scholars think that the jury should
18 be instructed on the law in the beginning, so they know what
19 they're doing, and that's -- but as you know, the procedure
20 here in the Eighth Judicial District is to instruct the jury
21 immediately before closing statements.

22 You know, regardless of when we instruct the jury,
23 the point is that the instructions are given by the Court and
24 approved by the Court after discussion and argument by both
25 sides. So that's my concern. You know, you say you don't

1 understand it. You know, I've tried to articulate it as best
2 as I can.

3 I've indicated what you can -- you know, certainly if
4 that's what you wanted to use the statute for, that those are
5 the elements, that it's not ordinary negligence, it's this
6 higher thing, then that's fine. And that's already been
7 commented on frankly, in the jury selection process. So
8 that's all fine. Do we understand where we are going forward?

9 MR. WRIGHT: I think so.

10 THE COURT: All right. Mr. Santacroce, if you have
11 additional questions before your opening statement, then we
12 can -- let's bring those up before you begin your opening
13 statement, so we don't have to take a break in the middle.

14 MR. STAUDAHER: Your Honor, before that comes in, I
15 just want to -- I'm concerned now. Are we going to be putting
16 statutes up before the jury --

17 MR. WRIGHT: I'm going to --

18 MR. STAUDAHER: -- and presenting that, because
19 that's going to be the instruction by this Court at the end.
20 And again, I must say that this is --

21 THE COURT: Well, that instruction comes -- I mean,
22 that comes directly from the statute.

23 MR. WRIGHT: It's the statute.

24 MR. STAUDAHER: Of course.

25 THE COURT: So I don't think that there's any real

1 concern that that's not going to be the instruction. But like
2 I said, you know, you can, you know, he can't try to limit the
3 theories of liability or limit things in other ways, and there
4 are a number of the other thing, you know. And I'm sure you
5 wouldn't do that. He's focusing right now on the criminal
6 negligence. Obviously there's other charges here and things
7 like that.

8 So Mr. Staudaher, if you believe that Mr. Wright goes
9 beyond what the Court has said is allowable, then certainly
10 stand up and say, you know, objection, inappropriate for
11 opening, you know, or whatever the basis of your objection
12 might be.

13 MR. STAUDAHER: I just hate to interrupt him in his
14 opening if -- but okay.

15 THE COURT: I mean, I don't see a need to approach
16 the bench again is what I'm saying, and that may be less
17 disruptive so to speak.

18 And then Mr. Santacroce, like I said, whatever
19 concerns you have, we'll address those prior to your opening
20 statement.

21 MR. SANTACROCE: Well, I'm unclear as to the Court's
22 ruling.

23 THE COURT: Well, Mr. Santacroce, it's not necessary
24 that you be clear at this point in time because you're not
25 making the opening statement. Mr. Wright is making the

1 opening statement. It's important that Mr. Wright be clear,
2 but not that you be clear. Because frankly, you know, Mr.
3 Wright's opening statement was estimated to take about two
4 hours. We're roughly what, 25, 30 minutes into it. So we
5 have another hour and a half.

6 We'll clearly be taking some sort of a break prior to
7 that time, and we will certainly give you whatever time you
8 need to address your concerns, and the Court will endeavor to
9 explain its ruling and what you're allowed to do as best as it
10 can. So I don't know that we need to take the time right now,
11 in the middle of Mr. Wright's opening statement, to address
12 what you may be doing sometime this afternoon.

13 MR. SANTACROCE: Fair enough.

14 THE COURT: All right. Kenny, bring them in.

15 (Jurors reconvene at 10:49 a.m.)

16 THE COURT: Court is now back in session. I
17 apologize to everyone for that interruption.

18 Mr. Wright, sorry for the interruption. You may
19 proceed where you were.

20 MR. WRIGHT: Thank you, Your Honor.

21 DEFENDANT DESAI'S OPENING STATEMENT (continued)

22 MR. WRIGHT: We're back to talking about the
23 difference between criminal negligence and civil negligence.
24 Criminal neglect, that's what we're here for. And I had gone
25 through the criminal, how the criminal case goes, and then

1 talking about civil. The main difference was in the criminal
2 case, beyond reasonable doubt; in the civil case, a
3 preponderance more probable than not.

4 And additionally in the civil case, there's no
5 presumption of innocence and there's no right not to testify.
6 In fact, in the civil case, if you are being sued civilly, you
7 can not testify if you want to, but there is an inference that
8 is drawn civilly that is adverse. In a civil case you presume
9 the person didn't testify, so I'm able to believe that their
10 testimony would have hurt them. That's how civil cases work.

11 Okay. In the criminal case it's just the opposite.
12 You can't do that. So understanding the difference between
13 civil and criminal and the fact that this is criminal, but
14 you'll hear about civil cases that went on.

15 What are the charges here against Dr. Desai and Ron
16 Lakeman. They're both charged in all of the counts. Okay.
17 That means all of the 28 or 29 crimes. And they're
18 basically -- you'll be pleased to know I'm not going to go
19 through them and read the indictment to you again. That
20 indictment was the thing that went on and on and on and on.
21 And if you can understand that, you're a better lawyer than I
22 am.

23 I'll break it down to what the accusations are.
24 There's accusations of false billing on the patients. Okay.
25 So there's going to be little components of the case will deal

1 with the seven, eight or nine patients that are relevant to
2 this case, and that will have to do with each of them tracking
3 through their bill and how much was paid and was it
4 overbilled, and if it was overbilled, how much, a hundred
5 bucks, 50 bucks, whatever for each of them.

6 And then did the insurance company pay and what were
7 the insurance contracts. And then, was it criminally done,
8 was it intentionally cheating and committing fraud on the
9 hospital or the facility billing, the anesthesiologist
10 billing, the doctor billing. So each of those are going to be
11 separate little counts that had to do with the theft or
12 medical false billing counts.

13 And then aside from the billing questions that you'll
14 hear about is the what I call criminal neglect counts. And
15 that means the counts -- and there are two for each patient.
16 But it's essentially medical criminal neglect and -- or
17 another count or another charge for the same patient is
18 reckless disregard, wanton and willful reckless disregard for
19 safety.

20 That's all going to boil down to the treatment that
21 was given the patient and a determination of how did the hep C
22 get transmitted, and then a determination of did someone who
23 did the acts that caused the transmission, and did they know
24 they were wrong acts, and was the horror that followed
25 reasonably foreseeable to them. That's generally what we're