

1 -- in part some of the observations -- there was communication
2 apparently from them back to CDC as they went through getting,
3 you know, telling them their findings, what's going on, what
4 they're doing, getting advice on where to go from there as far
5 as the investigation was concerned.

6 Now, all of this was condensed into their report,
7 essentially, but these are clearly handwritten notes of her
8 contemporaneous observations and so forth at the time, which
9 may be, you know, additionally some information that is not
10 directly contained in the report.

11 To that degree I think counsel is certainly entitled
12 to them, and we provided them as soon as we had access to them
13 ourselves.

14 THE COURT: And we didn't know about these before?

15 MR. STAUDAHER: We knew about them this weekend and
16 we attempted to get them this weekend, but with the time
17 change and everything it was -- they were not able to be sent
18 here in advance, and we got them last night was the first time
19 we had access.

20 THE COURT: Okay. But before this weekend you didn't
21 know about the --

22 MR. STAUDAHER: Not --

23 THE COURT: -- all these notes and --

24 MR. STAUDAHER: -- notes from her.

25 THE COURT: Okay. And my understanding is you have

1 two witnesses here today?

2 MR. STAUDAHER: Yes.

3 THE COURT: Can we maybe do the other witness first,
4 then? Here's the thing --

5 MR. STAUDAHER: That's fine. I don't --

6 THE COURT: -- as you know, we're late. I mean, I
7 agree, Mr. Wright needs time to look at the notes. That's, I
8 think, a fair request. And I think, you know, he's had --
9 because a juror -- two jurors were late, one had a babysitting
10 issue, the other juror had to go to the VA and he left the VA
11 around 9. He's been in contact with my bailiff. We were kind
12 of, you know, my bailiff was, you know, kind of rushing him to
13 get here, so I'm reluctant now that we rushed the jurors here,
14 the lady with the babysitting issue had to find a babysitter
15 at the last minute, the gentleman who was at the VA, I'm
16 reluctant now to say, okay, we rushed you here, sit in the
17 back for another hour.

18 So if we can get started, that would be the Court's
19 preference. Whether you want to put on the other witness and
20 get through that person and then we'll have -- you know, as I
21 said, I wanted to break around 1 to accommodate a juror who
22 has to go to her child's graduation.

23 So, you know, it would be my preference to start
24 now, you know -- if we take a longer lunch that's fine -- to
25 give Mr. Wright the time he needs that will actually be

1 accommodating to one of the jurors. That would be my
2 preference. So could we start with the other --

3 MR. WRIGHT: That's fine.

4 THE COURT: -- either start direct on this juror
5 (sic), -- I don't know how long that's going to take; that
6 might take a while, or start with the other juror [sic] and
7 let Mr. Wright and Mr. Santacroce do their cross of the other
8 juror. However we do it, I want to get, you know, with a few,
9 you know, bathroom breaks or whatever, I want to get us to
10 1:00 and then maybe take an hour and forty-five minute lunch
11 or whatever to give Mr. Wright the time he needs to review the
12 records that were produced. So --

13 MR. STAUDAHER: That's fine. However the Court wants
14 to do it. We can start --

15 THE COURT: Okay. Well, I --

16 MR. STAUDAHER: -- with the second witness, that's
17 fine, or, you know, that would be -- I think that would be
18 probably the most --

19 THE COURT: All right. Let's do that, then. Can we
20 do that?

21 MR. WRIGHT: Yes.

22 THE COURT: All right.

23 MR. WRIGHT: Can we -- why don't we take -- I mean,
24 these came out in different page orders and things --

25 THE COURT: Okay.

1 MR. WRIGHT: -- Margaret to mine. Why don't we take
2 one set of these, give them to Gayle Fischer Langley, ask her
3 to put the copy in the logical, correct order.
4 MS. WECKERLY: I'll have her do that while the other
5 one is testifying.
6 MR. WRIGHT: Right. Right.
7 THE COURT: Okay. She can work on that in the
8 hallway.
9 MS. WECKERLY: Sure.
10 MR. WRIGHT: The --
11 MS. WECKERLY: Oh, you don't want --
12 MR. WRIGHT: Right. I've only got one set --
13 MS. WECKERLY: Okay. That's okay.
14 MR. WRIGHT: -- okay.
15 MS. WECKERLY: I'll use my set.
16 MR. WRIGHT: Okay.
17 THE COURT: Okay.
18 MR. WRIGHT: Yeah, but --
19 THE COURT: And then if they're in order --
20 MR. WRIGHT: -- let her put them in order.
21 THE COURT: -- if you want to make another copy in
22 the back or whatever we need to do --
23 MS. STANISH: Right. And maybe have her --
24 THE COURT: -- to get this moving, we'll do that.
25 MS. STANISH: -- maybe have her put a -- just

1 handwrite a page number on the top so we can refer --

2 MS. WECKERLY: Okay. And then --

3 MS. STANISH: -- to some with her.

4 MS. WECKERLY: -- I can also on the break have her
5 stay if you have questions about the order or anything like
6 that, you know, when we're on the lunch break.

7 MR. WRIGHT: Okay.

8 MS. WECKERLY: We'll have her explain --

9 MR. WRIGHT: Yeah, she can put one set -- just the
10 whole order --

11 MS. WECKERLY: Okay.

12 MR. WRIGHT: -- chronologically.

13 MS. WECKERLY: That's fine.

14 THE COURT: Right. If you need to talk to her over
15 the lunch break, you can certainly have her -- you can use the
16 courtroom, you can use the vestibule --

17 MS. STANISH: Sure.

18 THE COURT: -- or whatever you need to do.

19 MR. WRIGHT: Okey-doke.

20 THE COURT: So all right. Having said that, can we
21 bring the jury in and get started?

22 MS. STANISH: Yes.

23 THE COURT: All right.

24 (Pause in the proceedings.)

25 THE MARSHAL: Ladies and gentlemen, please rise for

1 the presence of the jury.

2 (Jury entering at 9:53 a.m.)

3 THE MARSHAL: Thank you, everybody. You may be
4 seated.

5 THE COURT: All right. Court is now back in session.
6 The record should reflect the presence of the State, the
7 defendants and their counsel, the officers of the court, and
8 the ladies and gentlemen of the jury.

9 And the State may call its next witness.

10 MR. STAUDAHER: State calls Dr. Melissa Schaefer,
11 Your Honor.

12 THE COURT: All right.

13 THE MARSHAL: Will you step right up there for me,
14 please. Remain standing. Raise your right hand and face that
15 young lady to the left.

16 MELISSA SCHAEFER, STATE'S WITNESS, SWORN

17 THE CLERK: Thank you. Please be seated. Will you
18 please state and spell your first and last name for the
19 record.

20 THE WITNESS: My name is Melissa Schaefer,
21 M-E-L-I-S-S-A, S-C-H-A-E-F, as in Frank, E-R.

22 THE COURT: All right. Thank you.

23 Mr. Staudaher?

24 MR. STAUDAHER: Thank you, Your Honor.

25 DIRECT EXAMINATION

1 BY MR. STAUDAHER:

2 Q Dr. Schaefer, what do you do for a living?

3 A I am a medical officer at the Centers for
4 Disease Control and Prevention in Atlanta, Georgia.

5 Q And how long have you done that job?

6 A Since 2009. So almost four years now.

7 Q I'm going to take you back in time a bit. Would
8 -- but before we get to an investigation that I want to ask
9 you some questions about, could you go through a little bit of
10 your training and background that led you to be in the
11 position you are today.

12 A Sure. So I'm a physician. I got my medical
13 degree from Northwestern University in Chicago in 2003; and
14 then I did an emergency medicine residency at UC Davis in
15 Sacramento, which was a three-year residency, and got board
16 certified in emergency medicine; and then moved on to do a
17 fellowship program at the Centers for Disease Control and
18 Prevention.

19 Q So when you say "fellowship program," what is
20 that?

21 A So it was a two-year fellowship, or training
22 program. Essentially in epidemiology or public health.

23 Q So that was an area that you had interest or --

24 A Yes.

25 Q -- how did you get into it in the first place?

1 A Yeah. So it was an area I had interest and
2 basically wanted to move from kind of direct patient care
3 one-on-one to, you know, a bigger impact in healthcare; and so
4 that was, to me, public health and seemed like a great
5 opportunity.

6 Q Now, you mentioned that you did a residency in
7 -- in the emergency room or emergency medicine?

8 A In emergency medicine, yes.

9 Q Did you actually practice in that capacity for
10 any length of time?

11 A Following my residency, no. I was -- it was a
12 three-year residency, so I'm working as a physician in the
13 hospital training in that field.

14 Q So you did the training you -- in that specialty
15 area, and then when you finished you went to the CDC?

16 A Yeah. So I did the training in that field. I
17 completed the series of exams in order to get board certified
18 or recognized as certified in emergency medicine, and then
19 went after that to do the program at CDC.

20 Q And in that program at CDC, what kind of
21 training does that entail?

22 A So it's a two-year training program. They take,
23 you know, physicians, nurses, PhDs; you apply, you go through
24 an interview process, and then you get accepted or rejected
25 into the program. And then you get -- you choose amongst

1 different divisions or locations at CDC or as a CDC person in
2 different state health departments. And then depending on the
3 specialty of where you end up, you work within that division
4 and that field with that group.

5 Q I'm going to take you back in time a little bit
6 now to the beginning of 2008 -- January 2008. You know why
7 you're here today, correct?

8 A Yes.

9 Q Were you part of an investigation related to a
10 potential hepatitis C outbreak at the time at the Southern
11 Nevada Health District -- a call that came in from them and
12 related to that issue?

13 A Yes, I was part of that investigation.

14 Q Can you tell us how it was that you became
15 involved and then how you ended up getting out here?

16 A Sure. So the Southern Nevada Health District
17 contacted CDC, and so that would have been my supervisor as
18 well as Dr. Langley's supervisor to talk about, I think they
19 had two cases of acute hepatitis C virus infection in patients
20 who had a common exposure at a clinic, and then within a day
21 of that phone call, I think had identified a third patient,
22 which was unusual, and so wanted to discuss it with CDC and
23 get some assistance. So -- sorry, go ahead.

24 Q I'm sorry. Go ahead. I didn't mean any --

25 A So that call would have come in to our

1 supervisors, and then they eventually pulled us in.

2 Q Now, when you say two cases, that doesn't sound
3 like a lot, but what's the issue?

4 A So Southern Nevada Health District, I think,
5 typically reported zero to four cases of acute hepatitis C
6 virus infection per year. And so then, you know, a couple-day
7 time period they had two acute cases reported to them, and
8 these people -- and I'd have to look at -- at their notes or
9 whatever, but I don't think had any traditional risk factors
10 for hepatitis C virus infection in that six-month period
11 before they had symptoms. And -- but they had both gotten a
12 procedure at the same clinic around the same time period, and
13 so that was a red flag.

14 Q So you're -- I mean, were you part of this
15 initial phone call?

16 A I don't think I was on that -- I can't remember
17 if I was on that initial phone call or if it was an email. I
18 don't recall exactly when I was pulled in. I know I was on a
19 call before we came out, but I think our supervisors were more
20 the first -- the first point of contact for this.

21 Q If you know, in relation to the call that came
22 in from Nevada, how quickly or how soon thereafter did that
23 third case come into -- into play?

24 A I think it was the following day, yeah.

25 Q So after --

1 A I think it was the --

2 Q -- that third case came into play, was there
3 some plan to put into motion for you-all to come out and help
4 with the investigation?

5 A Yeah. So at that point they issued an
6 invitation for us to do an Epi-Aid investigation, or basically
7 have a team from CDC travel to Las Vegas to work with the
8 Health Department to do a field investigation.

9 Q Okay. You mentioned the term "Epi-Aid" --

10 A Right.

11 Q -- what does that mean?

12 A Essentially -- in order for CDC to go anywhere,
13 we need to get an invitation from the Health Department, and
14 we're giving aid in an epidemiologic investigation, so it's an
15 Epi-Aid. We will send a team to work with the Health
16 Department to do the investigation.

17 Q Moving kind of into the future of your
18 investigation, at some point do you have to generate a report
19 as a result of being called out to help with the community
20 investigation?

21 A Yes.

22 Q And did you do that in this case?

23 A Yes, we did.

24 Q And what was the title of that report?

25 A It's a trip report. Sometimes it's called an

1 Epi-2, but it -- a trip report is essentially what we refer to
2 it as.

3 Q Okay. So "trip" does that mean the trip that
4 you went out to investigate?

5 A Right. So we took a trip to Las Vegas, so it's
6 the summary of our investigating in Las Vegas. Some of these
7 investigations you don't have to travel for, but we did, so we
8 call it a trip report.

9 Q So if it's referred to as "trip report" or
10 Epi-Aid report" or "Epi-Aid trip report," is it the same thing
11 that we're talking about?

12 A Yes.

13 Q Okay. You come out to Las Vegas -- did you come
14 out by yourself or with anybody else?

15 A I came out with Dr. Fischer or Langley -- she
16 was Dr. Fischer at the time, but Dr. Fischer or Langley.

17 Q Okay. So her name is changed but --

18 A Yes.

19 Q -- she's still the same person?

20 A Same person. Yes.

21 Q So you come out with her. Anybody else that
22 accompanied you from CDC?

23 A No.

24 Q So just you two. How does it go when you get
25 out here to Las Vegas?

1 A So -- I should say that we had supervisors back
2 in Atlanta, our home team, who we were in, you know, daily
3 contact with who were helping to supervise and frequent
4 contact -- working on the investigation with us, but as far as
5 traveling to Las Vegas, it was Dr. Langley and I.

6 So we arrived in Las Vegas and went to the Health
7 Department and interest -- an entrance meeting with folks from
8 the Health Department, folks from the Bureau of Licensure and
9 Certification. I don't recall who all was at this meeting,
10 but basically the public health group to talk about why we
11 were there, what we were going to do, how we were going to
12 work together to do it.

13 Q Do you remember when -- what day that was --

14 A I think it was --

15 Q -- when you first came out?

16 A -- January 9 is the day we arrived, I think.

17 Q Okay. So you get the call from -- obviously
18 before that. Do you remember what day the call came in?

19 A I think we've said January 2 in the reports that
20 we've generated. That sounds right.

21 Q That's about right?

22 A I think so.

23 Q Okay. So a call comes in around the second of
24 January, and then on the 9th you're actually physically out in
25 Las Vegas?

1 A Correct.

2 Q Is -- you mentioned that beside you and Dr.
3 Fischer Langley or -- or Langley, I guess is what it is now --

4 A Yes.

5 Q -- that beside you actually physically being
6 here, working with the local -- local entity that does
7 investigations, you were in communication back with your --
8 sort of the mother ship or the -- or CDC?

9 A The home team, yes.

10 Q How does that work when you -- when you're in an
11 investigation, how and why do you even communicate back and
12 forth?

13 A So whenever we do an Epi -- an Epi-Aid,
14 essentially you have the field team, which was Dr. Langley and
15 myself, and then you have the supervisors which are back in
16 Atlanta. And so those are the folks that are supervising us
17 as we're doing the investigation, so we're doing, you know,
18 daily calls back with them to say here's what we accomplished
19 today, here's what we saw, here's what we found. They give
20 feedback on, okay, you need to X, Y, and Z tomorrow, or we
21 agree with your plan or look more into this.

22 So they, you know, are employees at CDC that have
23 been there longer than us. I'm in a training program, so
24 they're part of supervision for us.

25 Q So do you rely on their aid as well, as far as

1 how -- areas to go in your investigation, looking at things
2 that you may have missed, that kind of thing?

3 A Yeah, so we, you know, obviously we were talking
4 to them before we come out to get a game plan together for
5 what we're going to do when we arrive and, you know, relying
6 on their experience from prior outbreaks and, you know,
7 looking at literature ourselves; and then as we're talking
8 each day of, you know, here's what we did today, going through
9 the game plan, moving forward.

10 Q Now, it seems -- and please explain to us if you
11 can -- when you go to do an investigation for an outbreak or
12 for a restaurant or whatever the issue is that you're trying
13 to help with the local entity that has called you in, are they
14 all different or do they pretty much follow the same pattern?

15 A Well, so I guess I should -- should qualify by
16 saying I was an EIS officer and am currently employed in the
17 division of healthcare quality promotion.

18 Q And before we go any further, "EIS" means what?

19 A The epidemic intelligence service. So that's
20 the two-year fellowship program I mentioned. I'm sorry.

21 Q Okay. Sorry, I didn't mean to interrupt you.

22 A No. No. So I am in the division of healthcare
23 quality promotion. So we focus on patient and healthcare
24 worker safety. So we got involved in this because it looked
25 like it was an outbreak tied to a healthcare setting. And

1 then Dr. Langley was an EIS officer in the division of viral
2 hepatitis. And so since we had cases of acute hepatitis C
3 virus infection, we thought we were looking at an outbreak of
4 hepatitis. That's where they got involved.

5 So we're working together bringing different areas
6 of expertise to the table. So I wouldn't necessarily do a
7 restaurant investigation. That would be other folks.

8 Q And I just used that as an example, I'm sorry.

9 A Yeah, I know, but -- right.

10 Q So if I understand you correctly, because of the
11 type -- the type of facility that might be involved, the
12 actual infectious agent and so forth, that's what sort of
13 picked, so to speak -- although CDC decides who actually goes
14 that goes to the calculus of what -- I mean, who actually is
15 going to come out to do the investigation?

16 A Yeah. So when Southern Nevada Health District
17 had this issue, they're calling, and that call is going to go
18 to the division of viral hepatitis and to our group because of
19 those factors. And then we're the folks that are going to go
20 to assist if we're invited.

21 Q So you complemented each other, then, in your
22 areas?

23 A Yes.

24 Q Was that the plan to have some complementary
25 sort of investigation going on?

1 A Yeah. Yeah, and that's -- that's how we've
2 historically done it and, you know, even in my time since
3 then, if there is a hepatitis outbreak that looks like it's
4 linked to healthcare, our groups work very closely together.

5 Q Okay. So you come out together -- all right.
6 Do you arrive on the same plane?

7 A Yes.

8 Q Are you from the same location --

9 A Yes.

10 Q -- when you -- when you start out?

11 A Yes.

12 Q Okay. So you get here, what's -- what happens
13 when you first arrive in Las Vegas?

14 A So we went to the health department and that's
15 where we had that entrance or the first meeting with us, the
16 Board of Licensure and Certification, which are the regulatory
17 folks, and the health department. And that's where, you know,
18 everyone was there at the health department to talk about what
19 brought us there and what our plans were moving forward for
20 this investigation.

21 Q Okay. So you all meet -- did you know at the
22 time how close in proximity this clinic was to the health
23 district itself?

24 A I think they mentioned that it was within
25 walking distance, so yes.

1 Q So did you actually walk there?

2 A We did.

3 Q Okay. So you know how close it was?

4 A Yes.

5 Q At the time that you're at the -- the health

6 district and you're going through the meeting and talking

7 about it, is -- does anybody ever call over to the clinic to

8 let them know you're going to come over there?

9 A Yes.

10 Q So you just didn't show up on their front door.

11 You at least called over and said, hey, we're going to come

12 over or we'd like to, something along those lines?

13 A I did not call, but yes, someone called.

14 Q Okay. So after the call is made, what do you

15 do?

16 A We walked to the clinic.

17 Q So you come over there; when you get to the

18 clinic, roughly what time of day was it, if you can recall?

19 A I don't recall. It was -- it was afternoon, it

20 was after lunch, it was probably getting later in the

21 afternoon toward when the clinic I think was wrapping up for

22 the day. It was later in the --

23 Q So they were --

24 A -- afternoon, so --

25 Q -- near the end of their schedule you think --

1 A I believe so --

2 Q -- or close to it?

3 A -- yes.

4 Q When you get over there, what do you do?

5 A So we had --

6 Q Before we go there, who is accompanying you
7 physically over to that location?

8 A So it was myself, it was Dr. Langley from CDC,
9 it was Brian Labus from the Southern Nevada Health District.
10 I believe we had folks from the -- the regulatory folks from
11 Board of Licensure and Certification, although I'm not 100
12 percent, but I know for certain Dr. Langley and Brian and I
13 were there.

14 Q So you go over. What do you do?

15 A So we had an entrance meeting with the folks at
16 the -- the ambulatory surgery center or the clinic to tell
17 them this is why we're here, this is what our concerns are,
18 and this is our plan for an investigation here.

19 Q So do you tell them that we're going to come
20 back tomorrow or the next day or -- or some other time? Or
21 how does that -- I mean, what kind of information do you give
22 them about how you're going to conduct your investigation?

23 A Yeah, so we, you know, had a meeting with a
24 couple folks while they are basically saying, you know, we had
25 these reports of acute hepatitis C infection. They had

1 procedures at your facility, so we're planning to do an
2 investigation here. We'll be here for several days on site to
3 look at your records, to look at procedures while you're
4 taking care of patients to try to figure out how or where
5 these people got their infection and make any recommendations
6 to stop transmission if it occurred here.

7 Q And you mentioned records. Why would records be
8 important to look at?

9 A So we look at medical records of patients and --
10 to verify their infection, to see if they were infected before
11 they actually had the procedure there, and also to look at
12 what procedure they had and look for commonalities amongst the
13 cases. You know, did they all get the same medicine? Did
14 they all have procedures on the same day? Did they all have
15 the same healthcare worker? You know, looking for common
16 things that could have resulted in transmission.

17 Q You typically start your investigation with a,
18 sort of a paper review like that, or how do you -- how do you
19 go about it?

20 A I mean, it can vary; you have to be flexible.
21 But typically, yes, we will look at medical records to, again,
22 get at some of those commonalities which can help direct our
23 observations. You know, if we all -- if we know that all the
24 patients had the same procedure with the same healthcare
25 workers, then we're going to want to make sure to observe that

1 healthcare worker if we can, those kinds of things.

2 Q So it gives you a roadmap as to how to do your
3 observational [inaudible] investigation?

4 A Yeah, it can inform how we, you know -- making
5 sure that we check the right boxes for observations, yeah.

6 Q So if -- and let's go back. You're -- you're
7 over at the clinic, you come later in the day, you meet and
8 have -- and have this sort of general meeting; you know who
9 you met with at the clinic?

10 A So I know we met with Ms. Rushing, Tonya
11 Rushing, I think her name is. I think Dr. Cliff Carrol was
12 there as well. And then there may have been one or two nurses
13 or a nurse manager there. I don't recall names, but I know
14 for sure that at least Ms. Rushing and Dr. Carrol were there.

15 Q So -- but a small group?

16 A Yes, we were in --

17 Q Two to four --

18 A -- Ms. Rushing's --

19 Q -- people?

20 A -- office, so, yes.

21 Q And now, her office -- was it located on the
22 ground floor, or was it up higher?

23 A No, it was upstairs.

24 Q So you come in and -- I mean, when you walk into
25 the facility, they -- did they know you were actually walking

1 over to come see them?

2 A Yeah. So I believe it was Brian Labus who had
3 called to tell them that we were coming over. And I don't
4 recall the specifics that if they met us there or if they told
5 us where to go, but I know we ended up in -- in, I believe,
6 her office.

7 Q So that -- you come in however you come in and
8 you end up at -- on one of the higher floors --

9 A Yeah.

10 Q -- to talk with Tonya and Clifford Carrol and
11 whomever else was there?

12 A Correct.

13 Q Now, when you are up there, you're doing this
14 discussion. I mean, how long does this conversation take
15 place? Do you tell him anything about what you found, what
16 you're there for, any of that?

17 A You know, I don't recall all of the details of
18 the discussion. We obviously told them that we were looking
19 into these case -- reports of hepatitis C virus infection in
20 patients who had procedures at their facility, and told them
21 that we would be conducting an on-site investigation, and I
22 don't recall any, you know, the specifics of -- of any more of
23 that, really.

24 Q Now, that day after the meeting, what do you do?
25 Do you -- do you leave? Do you come back? I mean --

1 A So, I think on that day we went back downstairs
2 to just do kind of a walk-through to, you know, take a look at
3 the layout of the facility, how things were set up. And I
4 believe we did one observation of a procedure that day, I
5 think. I think it was the last case of the day, you know,
6 since we were there and wrapping up. I think we went in, I
7 think, and did one observation that day.

8 Q Okay. But then you left?

9 A Correct. I think they were closing up. I don't
10 remember if we reviewed any records or if they were going to
11 pull them for us for the next day, but yes, I think then we
12 left.

13 Q So you say, "the next day." Is it the next day
14 that you come back?

15 A Yes.

16 Q How many days were you there in the clinic after
17 you started actually reviewing things?

18 A So I think we were in Las Vegas for nine or ten
19 days and would have been at the clinic pretty much all of
20 those days. I'm trying to think if there was one day that
21 they were closed on, like, a Sunday, but I think we were
22 pretty much there every day.

23 Q So on -- and that includes the weekends?

24 A Yeah. Yes.

25 Q Okay. So if you start on a Wednesday or a

1 Thursday or whatever it is, you would continue to go through
2 the following weekend into the next week?

3 A Right.

4 Q When you are there on the weekends, procedures
5 going on, or are you doing chart review?

6 A I don't remember honestly, for the weekend. I
7 think we probably did chart review. I don't know that they
8 had any cases going on on Saturday. I think it was just a
9 chart-review day, but I -- I don't remember.

10 Q Let's walk through your -- your first couple of
11 days. What is the main emphasis? You mentioned chart review
12 to get your roadmap --

13 A Right.

14 Q -- and how long did you do that before you were
15 actually down looking at procedures and so forth?

16 A Well, so when we're doing chart review, we have
17 what we call an abstraction form, which is essentially a form
18 that we develop that's standardized to make sure that when
19 we're looking at the medical records, we're all documenting
20 the same information systematically for each record.

21 So, you know, you complete this form and it will
22 have fields for, you know, procedure information, meds they
23 received, personnel that took care of them, so that we're --
24 we're collecting that systematically.

25 And so we were looking at records for those three

1 cases we knew about, and essentially looking at the days they
2 had procedures, looking at the records of all the other
3 patients that had procedures on those days to see is there
4 anybody else who is infected that we don't know about, any
5 other cases we haven't heard about yet, or anybody who had
6 their infection before they came there that could have been a
7 source for these patients, for their infection.

8 So again, collecting that information for everybody
9 on those days is what we're looking at.

10 Q When you -- when you say you're looking at the
11 records, and you said some of the information that you're
12 actually looking for, is there anything specific that you're
13 looking for in the record? Not just the -- the healthcare
14 worker, or, you know, the type of procedure they had, but I
15 mean, is there something that you can glean from the records
16 that gives you an idea that there may be something to focus on
17 specifically?

18 A Well, so again, we're looking at commonalities
19 and so -- I guess I should go through, you know, when you were
20 doing the hepatitis investigation there are certain ways you
21 can get hepatitis, and so we're focusing on, you know, how
22 hepatitis is transmitted in what we're observing or looking
23 for.

24 And then when we're looking at the records, again,
25 like I said, we're looking for commonalities. Did these

1 people have the same scope used on all of them? Did they all
2 get a biopsy? Did they all get the same medication? Did they
3 get re-dosed with their medication? What time of day did they
4 have their procedure and in what order? Who was -- who was
5 the healthcare worker, you know, caring for them? Was there
6 the same worker for everybody? Did they get, you know,
7 blood-glucose monitoring? I mean, we're looking at, you know,
8 common links amongst everyone that could explain how
9 transmission might have occurred.

10 Q Now, is it sufficient to just use the chart work
11 to -- to look for those commonalities to figure it out, or do
12 you have to actually -- have to actually do observation as
13 well?

14 A You have to do both, yes.

15 Q And did you do both in this case?

16 A We did.

17 Q So after that period of chart review, whatever
18 it was, is that primarily when you started doing the
19 observations in conjunction with the continuation of that
20 chart review?

21 A Correct. I mean, we were doing chart review
22 throughout our time there, but yes, we were -- then had moved
23 on to do observations.

24 Q And you said you focused on the two -- two days
25 when you had patients that were infected, correct?

1 A Yes.

2 Q And when you looked at that, you said you looked
3 at all of the patients on those -- on those two days?

4 A Correct.

5 Q Now, did the clinic staff help pull those
6 records for those dates for you, or did you just wander
7 through the medical records unit and just do it yourself?

8 A No, they pulled the records for us.

9 Q So you relied on them to help you at least to
10 categorize things to --

11 A Yes.

12 Q -- to look --

13 A Yes.

14 Q -- at?

15 A Yes.

16 Q How many people were assigned to that chart
17 review during the process and how many people were assigned to
18 do observation? Did you do combinations?

19 A Yes, we did combinations. As far as chart
20 reviews, so Dr. Langley and myself, and then I believe there
21 were some folks from Southern Nevada Health District that
22 helped as well. I can't recall exactly how many. Maybe two
23 or three people. But that's why we have a form that we all
24 use so that everybody is collecting things the same way.

25 And then the same with observations. Dr. Langley

1 and myself, Brian Labus from Southern Nevada, the Board of
2 Licensure and Certification. The regulatory folks were doing
3 their own investigation, but they were there reviewing their
4 own records and doing their own observations in parallel with
5 us.

6 Q So even though there are other people there like
7 the Bureau of Licensing and Certification, and maybe Brian
8 Labus with the Health District, and maybe anybody from his --
9 his unit, and then, obviously you and Ms. Langley -- or Dr.
10 Langley. I assume you talked together at some point; is that
11 right?

12 A Yeah. So we -- the clinic gave us a conference
13 room that we were all -- had a table where they brought all
14 the records and we were all able to gather in, you know, each
15 day to do the record review and abstraction, to -- to have
16 meetings with each other to talk about things we were seeing
17 or doing.

18 So we were pretty much together, you know, the whole
19 time other than when, you know, if we were separated for some
20 observations.

21 Q So are you at least aware of what's going on
22 with other portions of the investigation at the time?

23 A Yes.

24 Q And when you find something in a chart or
25 something -- somebody observes something, do -- do you point

1 it out to each other --

2 A Yes.

3 Q -- so that everybody else can look and try to
4 see the same things?

5 A Yes. We discuss as we're going, you know, what
6 we're seeing, what we're finding; and I think as I mentioned,
7 you know, Dr. Langley and I are doing, you know, daily calls
8 back with this home team at CDC, so she and I are staying at
9 the same motel, you know, meeting together to cover the day's
10 events as well.

11 Q Now, the -- during the time that you're there,
12 the -- the volume of patients coming through, was there
13 anything about that that struck you?

14 A I mean, it seemed like they were very busy. It
15 was a two-procedure room clinic and patients were moving
16 through pretty quickly.

17 Q Something you noted, though?

18 A Yeah.

19 Q Okay. Was that something that went into your
20 analysis that -- of actually the volume of patients kind of
21 going through? How did that --

22 A I mean, we recorded the number of patients seen
23 each day. And as I said, we, you know, focused on primarily
24 these two dates where we had -- where our patients had their
25 procedures. So obviously, we had the list of all the patients

1 seen on those days.

2 Q On those days?

3 A Correct.

4 Q The days that you were actually there observing,
5 did you record anything related to that as well?

6 A I don't think so, no.

7 Q You just noted it?

8 A Yes.

9 Q Okay. Now, you mentioned the -- the chart
10 review. Did -- when you were going through the chart review,
11 did you know -- did anything start sticking out in your mind
12 or -- or as you're looking at it, is that something that
13 either you wanted to follow up on or something that seemed a
14 bit odd? Anything like that as you go through the charts?

15 A It was -- it was hard for us to actually get an
16 order that patients went in for their procedures. They had
17 two procedure rooms, but there was no room number or
18 delineation documented, so it wasn't possible for us through
19 the record to tell which patient was in which room.

20 So then we were looking at times recorded, and that
21 was also challenging because there seemed to be some
22 overlapping times where maybe a healthcare provider was
23 documented in two places at the same time. And so I think we
24 were challenged even -- and I think we mentioned this in -- in
25 our, you know, our report of trying to get the correct order

1 that everybody was in for their procedures.

2 Q Generally, did you feel that after you looked at
3 all of the different sources that you had the general order
4 correct?

5 A Yeah. I mean, we did the best we could based on
6 the times to try to get a general order.

7 Q Was -- so is it fair to say that -- that
8 accurate documenting in the record was important for you?

9 A Sure. Yes.

10 Q If you had learned that it was completely
11 fabricated or portions were completely fabricated, would that
12 have been a concern?

13 A Yes.

14 Q Specifically the anesthesia records in the case,
15 did you review those?

16 A Yes.

17 Q Why would you have need to even look at those
18 records?

19 A I mean, again, it's trying to get an order that
20 patients were in. We also were looking at the anesthesia
21 records to see what medications patients received. They get,
22 you know, an IV to sedate them for their procedure, so looking
23 to see what medications were administered, who administered
24 it, how many doses were administered. So trying to -- to
25 glean that.

1 Q That kind of information, does that relate to
2 direct modes of transmission that you were familiar with?

3 A Right. So, you know, one of the -- I'd say the
4 most frequent or one of the most frequent mechanisms of
5 transmission when we see hepatitis in a healthcare setting is
6 from unsafe injection practices or mishandling of medications.

7 Q Okay. So that was one area you were looking at?

8 A Sure.

9 Q To the exclusion of all others or -- or how did
10 it work? I mean, how do you decide what to focus on or what
11 to do as far as your investigation?

12 A So again, it's, you know, knowing how the virus
13 is transmitted, knowing kind of the history of outbreaks and
14 mechanisms of transmission and possibilities, and so we tried
15 to make sure we covered the bases to look at all those
16 possibilities.

17 Q So when you move to your observational sort of
18 aspect of it -- I know you're still continuing with the chart
19 review, but when you move to the observational part, what
20 kinds of things were you looking for or looking at?

21 A So we're looking for opportunities of -- of
22 blood exposure and shared equipment or shared medications
23 between patients. So, you know, we asked do they do any
24 finger-stick testing for diabetics, for blood-glucose
25 monitoring, you know, that they could share equipment. They

1 didn't do that there, so that was not an issue.

2 We looked at, you know, the medications that folks
3 are getting. They're all -- or for the most part all getting
4 an IV and getting medication for sedation and getting, you
5 know, some of them are getting saline to flush. So we're
6 looking at how those meds are handled and administered.

7 They're getting an endoscopy procedure, which is why
8 they're there, so we're looking at the scopes that are used to
9 see if there's any scope in common and how it's reprocessed to
10 make sure that's done appropriately. Some of them are getting
11 biopsies, taking tissue, you know, from their colon or from
12 their esophagus, and so we're looking at that process.

13 I mean, I think those are some of the -- the main
14 things. We're looking at, you know, there's been reports of a
15 health -- healthcare workers being infected themselves with
16 hepatitis and transmitting to patients through theft of
17 narcotics and -- and misuse of that. So we're looking did any
18 of these patients get narcotics and is that a possibility.

19 Q Okay. Did you also decide whether they got
20 narcotics or the like? And just sticking with that one part
21 for just a moment, are we talking about, like, a physician or
22 healthcare worker that might be stealing the medication and
23 using it?

24 A Correct.

25 Q And then maybe contaminating because that --

1 that supply because they are in fact infected -- infected
2 themselves?

3 A Correct.

4 Q And then that is used to -- another -- for
5 another patient and then infects that patient?

6 A Correct.

7 Q Did you look at the aspect of that in the
8 practice?

9 A We did.

10 Q In doing so did you -- do you look at things
11 like where the medication is stored, who has access to it,
12 that kind of thing?

13 A Correct.

14 Q Again, did you look at those -- all of those
15 aspects?

16 A Yes.

17 Q Any issue there with regard to that -- that sort
18 of narcotic medication that was available at the clinic?

19 A No.

20 Q Now, you had mentioned flushes and IV's and the
21 like. Were there specific areas of the practice where things
22 were done that you focused on, meaning, like, a preop area, a
23 postop area, a procedure room, things like that?

24 A Yes.

25 Q Can you tell us about that, how you kind of

1 walked through that?

2 A So patients get an IV placed in order to give
3 them their medicine. So in some instances a nurse would place
4 the IV in this preop area, so the patient would be changed in
5 their gown and they would go and sit in this area to get their
6 IV placed. And so typically we were told that when the IV is
7 placed, if it's placed by a nurse in that preop area, they'll
8 flush it with saline; and essentially, that's just to keep the
9 line open so that it doesn't clot off by the time they go back
10 for their procedure to get their medicine.

11 And so we did observe -- did some observations in
12 that area. They had -- I think they were 20 cc vials of
13 saline that are multidose saline vials that they did use for
14 multiple patients. And so the practice would essentially be
15 to place an IV, to draw up, you know, 1 or 2 cc of saline or 1
16 or 2 ml of saline and go ahead and inject it into that IV to
17 leave it open. And then the patient would go, you know, for
18 their procedure when they were called.

19 Q So what would be the issue there? What would
20 you be looking at?

21 A So we're looking to see, you know, is there any
22 possibility for contamination of that vial since it's used for
23 multiple patients; but because you don't typically for the --
24 for this short waiting time need to give an -- another flush
25 or another dose of saline, they didn't have any reason to go

1 back into the vial for the patient to get a second dose.

2 So essentially they would take a new needle and a
3 new syringe, draw up those 1 to 2 cc, give it to the patient,
4 discard the needle and syringe, and then the patient is
5 waiting for their procedure and then the vial is hanging out
6 for the next patient.

7 Q Okay. Did you observe anything amiss there at
8 all?

9 A Not that I can recall, no.

10 Q Okay. Would you have noted it had you --

11 A Yeah, it --

12 Q -- seen something?

13 A -- would have been in our report.

14 Q And it does not -- it's not in your report?

15 A It's not in our report, no.

16 Q As far as the -- I mean, you mentioned multi-use
17 of saline bottles; that's a known use for those kinds of
18 bottles, correct?

19 A If they're labeled multi-use, which means they
20 have some type of preservative in them, yeah, they can be used
21 for multiple patients assuming that you are safe about it.

22 Q Did you ever see a breach in the sense of -- and
23 I'm talking about the preop room there -- any of that, meaning
24 that anybody took a used syringe and tried to go back into a
25 bottle even?

1 A No, I did not.

2 Q You -- and I assume you interviewed people and
3 the like as well?

4 A Right.

5 Q And it was important for your investigation?

6 A Right.

7 Q Any indication from any source that there was
8 reuse of that medication, meaning multiple syringes going in
9 and out of those bottles?

10 A No.

11 Q So also I assume that you look at the people
12 that would be administering that medication?

13 A Right. And so that was typically the nurses
14 that were doing that. Actually, I think it was pretty much
15 always the nurses out there that were doing that. We were
16 told that the nurse anesthetist, if they placed an IV, they
17 didn't typically use flush because if they're placing the IV
18 they're going to give the sedative for the procedure at that
19 point.

20 So, you know, we did look at the saline flush, and
21 as I said, you know, we looked at patients on, you know, that
22 were on those two days, and there wasn't, like, a common nurse
23 that gave saline flush to all of our cases.

24 Q In fact, on the 25th was there even a nurse
25 involved in the saline flush for one of the patients?

1 A No.

2 Q Okay. So there's a --

3 A Well, so -- so I should -- I should clarify.

4 You're talking about the patient who had the -- the acute
5 hepatitis C infection?

6 Q That's correct.

7 A Yes. There was not a -- a nurse that was
8 documented as admin -- as putting the IV in for that patient.

9 Q Who -- it was a CRNA?

10 A Correct.

11 Q Okay. So no nurse involved in that patient at
12 all?

13 A Well, there may have been a nurse in the
14 procedure room --

15 Q Well --

16 A -- but as far as placing the IV, no.

17 Q I misspoke. And that's what I was referring to
18 was --

19 A Yes.

20 Q -- related to the IV placement.

21 MR. WRIGHT: Can I have foundation on this?

22 THE COURT: Well, yeah --

23 BY MR. STAUDAHER:

24 Q We're talking about the 25th of July, correct --

25 A Correct.

1 Q -- that date --

2 A 2007, yes.

3 Q -- and the source patient on that date is the
4 one we're talking about?

5 A Well, I was talking about the -- the case
6 patient, but it's also true for the source patient as well.

7 Q Okay. So on the case patient, which was the --
8 do you remember the name of the case patient at that time?

9 A I don't. We try not to bring back names to CDC
10 of patients.

11 Q Eventually was that information -- I mean, those
12 -- those patients, did their blood samples go off to CDC?

13 MR. WRIGHT: The foundation I wanted is just how she
14 knows this. Or -- read it?

15 THE COURT: Did you --

16 MR. STAUDAHER: Oh --

17 MR. WRIGHT: Looked at it? Interviewed the people?

18 THE COURT: Okay. How --

19 MR. STAUDAHER: That's fine. We'll go --

20 THE COURT: -- did you glean this information?

21 THE WITNESS: Through a review of the medical record.

22 BY MR. STAUDAHER:

23 Q Okay. So you actually physically put your eyes
24 on the medical records and could see that kind of stuff?

25 A Yeah, and I can refer to our trip report if --

1 if we need to to --

2 Q Sure. Go ahead, if you would.

3 A So this was the -- the Epi-Aid 2 or the trip
4 report that you mentioned.

5 MR. STAUDAHER: And just for Counsel, as she goes
6 through this, this is State's Exhibit 92.

7 THE COURT: And that's --

8 MR. STAUDAHER: It starts with Bates No. 1 -- or
9 4199.

10 THE COURT: -- and that's been admitted, correct?

11 MR. STAUDAHER: Yes, it has been.

12 THE COURT: All right.

13 THE WITNESS: So this is on page 13 of that report.
14 It's tables 1 and table 2 that I'm referring to. Do I --

15 MR. STAUDAHER: Let me --

16 THE COURT: He's putting it --

17 MR. STAUDAHER: -- go to it.

18 THE COURT: -- up -- oh.

19 THE WITNESS: Okay.

20 BY MR. STAUDAHER:

21 Q And just -- if we have to at any point -- and
22 these are new, so I don't know if they work the same as 2.2,
23 but you can just draw with your fingernail --

24 A Oh.

25 Q -- on the screen, and then you just tap down

1 here and it goes away.

2 A Okay.

3 Q All right? So if you have to clear it, you can
4 do that, okay?

5 A Okay. Thank you.

6 THE COURT: So he's going to put it up, and then it
7 -- the report will --

8 THE WITNESS: I'll draw?

9 THE COURT: -- appear on the --

10 THE WITNESS: Okay.

11 THE COURT: -- monitor.

12 BY MR. STAUDAHNER:

13 Q Okay. And you said page 13, correct?

14 A Yep, so table -- if you bring it up just a
15 little bit so you can see table 1 and 2.

16 Q Okay. I can zoom in on that a little --

17 A Okay.

18 Q -- if we need to. I'll try to -- okay.

19 A So this is our case patient 1 who had their
20 procedure, as you can see, on July 25, 2007. They had a
21 colonoscopy. The IV was started by one of the nurse
22 anesthetists -- nurse anesthetist 4. And then, if you look
23 down on table 2, this is the patient who we ultimately linked
24 as the source patient, who also had their procedure on July
25 25, had their procedure before our patient. He became

1 infected and had their IV started by nurse anesthetist 4.

2 So this information was obtained from a review of
3 the records at the clinic.

4 Q So in this case both the source patient from the
5 25th -- the source patient and the infected patient had their
6 IV started by the nurse anesthetist?

7 A That was what was documented, yes.

8 Q And it was nurse anesthetist 4; do you know who
9 that was?

10 A That was Mr. Lakeman.

11 Q Okay. Ronald Lakeman?

12 A Yes.

13 Q So no -- no nurse involved -- and when I say
14 "nurse," because obviously he's a nurse too, but no preop
15 nurse or anybody involved in that -- in the IV insertion or
16 any saline flush or anything like that?

17 A Based on documentation it -- no.

18 Q Okay. Anything else I missed that you wanted to
19 point out or no?

20 A I think this is it for the --

21 Q Okay.

22 A -- for that question.

23 Q And we can come back to it if we need to.

24 A Okay.

25 Q Now, let's move forward. So we're talking about

1 the preop area that you looked at, the commonalities in people
2 and whether or not even a nurse was involved in the IV,
3 correct?

4 A Correct.

5 Q The next area, as we understand, was a procedure
6 room?

7 A Correct.

8 Q Did you -- what did you do as far as either
9 observational work there or -- or work to try and determine
10 where there might be a potential source of infection?

11 A So the procedure room is basically where they're
12 having their procedure, so they go into the room; and
13 essentially what I did was, you know, kind of put myself in
14 the corner of the room so that I could, you know, as
15 unobtrusively as possible observe what was happening to, you
16 know, when they -- from when they wheeled the patient in to
17 when they wheeled the patient out. And basically kind of
18 stationed myself in there for a while to watch multiple
19 procedures.

20 Q Okay. Any issues there?

21 A Yes.

22 Q Okay. So that's where you -- is that the first
23 time that you actually saw something in the clinic that gave
24 you some concern?

25 A Yeah, I think so.

1 Q Besides -- I'm not talking about the charts.
2 I'm talking about observational things.

3 A Yeah. Yes.

4 Q Okay. So -- so walk us through what you see.

5 A I mean, I think the main thing we saw there is
6 they're using -- the medicine that they're using to sedate
7 people or make them go to sleep or sleepy for the procedure is
8 a medication called propofol. And propofol is -- in a vial it
9 is labeled for single-patient use, and the clinic's practice
10 was to use those vials for multiple patients.

11 Q Now, are you personally -- I mean, as a
12 physician familiar with that drug?

13 A Yes.

14 Q Is that in your stint in the ER that you used
15 that drug or were familiar with it there?

16 A I did use it in the ER, yes.

17 Q You said that it's single patient use only; is
18 there a reason why?

19 A It doesn't have a -- it doesn't have a
20 preservative or a bacteria static -- a preservative that
21 essentially makes sure that bacteria can't multiply in there.
22 Yeah, they call it milk of anesthesia because --

23 MR. WRIGHT: Say that again?

24 THE WITNESS: Milk of anesthesia.

25 MR. WRIGHT: Okay.

1 THE WITNESS: -- because it's -- it looks like milk.
2 It's a white, opaque liquid, and, you know, there's concern
3 for bacterial growth that can happen in there if it's, you
4 know, used serially for multiple patients going in and out of
5 it over, you know, a prolonged period of time.

6 BY MR. STAUDAHER:

7 Q And that's just bacterial infection, correct?

8 A Right.

9 Q But are -- is it -- do I understand you
10 correctly that the bottles themselves say single patient use
11 only on them --

12 A Yes.

13 Q -- or something to that effect?

14 A Yeah. Yes.

15 Q And is that generally known?

16 A Yes.

17 Q So at this point you're familiar with the
18 medication, you know kind of how it's supposed to be used, and
19 you're not seeing it used in that manner?

20 A Correct.

21 Q What else, if anything?

22 A I mean, I saw some lapses in hand hygiene, or,
23 you know, not looking like they were cleaning their -- the
24 nurse anesthetist was cleaning her hands appropriately, you
25 know, when she should have. Saw the propofol being used for

1 multiple patients. Saw some recapping of needles, which can
2 put the healthcare worker at risk of a needle disk injury.

3 Q But that would be a risk from basically an
4 infected patient to the healthcare worker --

5 A Right. Right.

6 Q -- not the other way around --

7 A Right.

8 Q -- correct?

9 A But we're looking at kind of everything, so...

10 Q Everything? The hand washing and hygiene
11 issues, did those -- I mean, this -- this agent -- this
12 infectious agent hepatitis C is a blood-borne pathogen,
13 correct?

14 A Right.

15 Q Is that a concern that -- I mean, obviously it's
16 not the best thing, but is that a concern for the transmission
17 of just hand-washing issues?

18 A No, not particularly.

19 Q So at this point, though, if I understand you
20 correctly, the use -- the multiple use of this single-use
21 medication was a concern?

22 A Yes.

23 Q Now, you mentioned the CRNA -- you said female,
24 Are you actually observing this person yourself?

25 A Yes.

1 Q Do you know who that was?

2 A That was Ms. Hubbard.

3 Q And tell us what you observed during the time
4 that you're in the room with these multiple bottles.

5 A So --

6 MR. WRIGHT: That's foundation. Just a date, if you
7 know --

8 MR. STAUDAHER: Oh.

9 THE COURT: Right. If you know --

10 MR. WRIGHT: -- like, where it is in your report?

11 THE COURT: -- which particular date --

12 THE WITNESS: Can I look at my notes to see if I --

13 BY MR. STAUDAHER:

14 Q Sure.

15 THE COURT: Sure.

16 BY MR. STAUDAHER:

17 Q If you need to refresh your memory, go ahead and
18 do so.

19 A -- if I made any notation of that. So I don't
20 recall the date. I don't have it documented. It was while we
21 were obviously in Las Vegas, so during those nine or ten days.

22 THE COURT: Do we need a -- I'm sorry, do we need a
23 break, or do we need more notepads?

24 UNIDENTIFIED JUROR: No, we need pens.

25 MR. STAUDAHER: New pens?

1 UNIDENTIFIED JUROR: And paper.

2 MR. STAUDAHER: Okay.

3 THE COURT: So stop us and we'll get that to the
4 jurors --

5 THE WITNESS: Nope, no problem.

6 THE COURT: -- and --

7 All eyes are on the bailiff.

8 MR. STAUDAHER: Both of you need new ones?

9 THE COURT: Three new notepads?

10 UNIDENTIFIED JUROR: No, just two.

11 THE COURT: Just two? Does anyone need new pens?
12 Two new pens -- oh, three new pens?

13 (Pause in proceedings.)

14 THE COURT: All right. Everyone good to go? All
15 right. Mr. Staudaher, perhaps if you would recall your last
16 question you could state --

17 MR. STAUDAHER: If I -- I'll try to the best of my
18 ability if I can do so.

19 THE COURT: State it again.

20 BY MR. STAUDAHER:

21 Q We were -- I think we were talking about in the
22 procedure room watch -- or seeing multiple vials and I asked
23 you who it was, you said Linda Hubbard, and I think we were at
24 the point where you were trying to discern in the scheme of
25 this -- this ten days that you were there, do you remember

1 roughly where it was in that time period?

2 A It would have been toward the beginning of, you
3 know, the first half of that because I think we did -- but I
4 can't give you the exact dates. We did some chart review,
5 then we were doing some observations, and then we made some
6 recommendations to fix some practices. So this was obviously
7 before they had fixed the practices.

8 Q Okay. So let --

9 MR. WRIGHT: And -- and she -- she indicates -- just
10 for the record, you looked at what when you were trying to
11 find the date?

12 THE WITNESS: Oh, I was looking at the notes that I
13 had provided. I don't know if they're an exhibit or not,
14 but --

15 MR. WRIGHT: Okay.

16 BY MR. STAUDAHNER:

17 Q They're not.

18 A Okay.

19 MR. WRIGHT: May I approach?

20 THE COURT: Sure.

21 MR. WRIGHT: Just --

22 THE COURT: Just so Mr. Wright can --

23 MR. WRIGHT: -- I've got a stack --

24 THE WITNESS: Yes, sir.

25 MR. WRIGHT: -- so I just want to be --

1 THE WITNESS: Sure. So it's this -- you have the
2 right stack, and so I was looking here on page 3, and then
3 again on page 23 where it says Hubbard and perhaps some
4 handwritten notes.

5 MR. WRIGHT: Okay. You have the same stack that I
6 do?

7 THE WITNESS: Yes, sir --

8 MR. WRIGHT: It's to 32?

9 THE WITNESS: -- I believe -- this is what they've
10 provided, so --

11 MR. WRIGHT: Okay. Thank you very --

12 THE WITNESS: -- let me just make sure.

13 MR. WRIGHT: -- much.

14 THE WITNESS: Well -- yep to 32.

15 MR. STAUDAHER: Okay. May I proceed, Your Honor?

16 BY MR. STAUDAHER:

17 Q So anyway, we're talking about Ms. Hubbard, your
18 observations of her --

19 A Right.

20 Q -- and the fact that there appears to be
21 multiple -- or use of one bottle for more than one patient; is
22 that --

23 A Right.

24 Q -- correct?

25 A Correct.

Municipal Form No. 103
(Revised January 2007).

Republic of the Philippines

OFFICE OF THE CIVIL REGISTRAR GENERAL

CERTIFICATE OF DEATH

2. accomplished in quadruplicate using black ink

Province <u>MEIKRO MANILA</u>		City/Municipality <u>MUNTINLUPA CITY</u>		Registry No. <u>2012-901</u>	
1. NAME (First, Middle, Last)	2. SEX (Male/Female)				
<u>RODOLFO</u>	<u>MALE</u>				
3. DATE OF DEATH (Day, Month, Year)	4. DATE OF BIRTH (Day, Month, Year)	5. AGE AT THE TIME OF DEATH (Fill in below according to age category) a. IF UNDER 15 YEARS OLD: (Specify years) _____ b. IF UNDER 24 HRS: (Specify hours) _____ c. IF UNDER 24 HRS: (Specify minutes) _____			
<u>27 APRIL 2012</u>	<u>20 FEBRUARY 1935</u>	<u>77</u>			
6. PLACE OF DEATH (Name of Hospital/Clinic/Institution/House No., St., Barangay, City/Municipality, Province)		7. CIVIL STATUS (Single/Married/Widow/Widower/Annulled/Divorced)			
<u>OSPITAL NG MUNTINLUPA, ALABANG, MUNTINLUPA CITY</u>		<u>MARRIED</u>			
8. RELIGION/RELIGIOUS SECT	9. CITIZENSHIP	10. RESIDENCE (House No., St., Barangay, City/Municipality, Province, Country)			
<u>ROMAN CATHOLIC</u>	<u>FILIPINO</u>	<u>SUCAT MONTAÑA, MICHELANGELO TOWER PRESIDIO</u>			
11. OCCUPATION	12. NAME OF FATHER (First, Middle, Last)	13. NAME OF MOTHER (First, Middle, Last)			
<u>RET. MIL. OFF.</u>	<u>FEDERICO MEANA, SR. (DEC.)</u>	<u>EXPECTACION TORRILLO (DEC.)</u>			
MEDICAL CERTIFICATE (For ages 0 to 7 days, accomplish items 14-19a at the back)					
19a. CAUSES OF DEATH (If the deceased is aged 8 days and over)					
1. Immediate cause <u>2. HEPATIC & UREMIC ENCEPHALOPATHY IV</u>					
Antecedent cause <u>3. SEPSIS</u>					
Underlying cause <u>4. HEPATITIS C & CHRONIC KIDNEY DISEASE</u>					
19b. MATERNAL CONDITION (If the deceased is female aged 15-49 years old)					
a. pregnant, <u>not in labour</u> b. pregnant, in <u>labour</u> c. less than 42 days after <u>delivery</u> d. 42 days to 1 year after <u>delivery</u> e. None of the choices					
19c. DEATH BY EXTERNAL CAUSES					
a. Manner of death (Homicide, Suicide, Accident, Legal intervention, etc.) <u>N/A</u>					
b. Place of Occurrence of External Cause (e.g. home, farm, factory, street, sea, etc.) <u>N/A</u>					
21a. ATTENDANT					
1. Private Physician <u>2. Public Health Officer</u> 3. Hospital Authority <u>4. None</u> 5. Others (Specify) _____ From _____ To _____					
22. CERTIFICATION OF DEATH					
I hereby certify that the foregoing particulars are correct as near as same can be ascertained and I, <u>Albert T. Aragon</u> , have attended the deceased and that death occurred at <u>11:25 am</u> on the date of <u>27 April 2012</u> at <u>OSPITAL NG MUNTINLUPA</u>					
Signature <u>Albert T. Aragon</u> Medical Officer IV Name in Print <u>RODOLFO DAYEM, M.D.</u> Resident Physician Title or Position <u>RESIDENT PHYSICIAN</u> Address <u>OSPITAL NG MUNTINLUPA</u> Date <u>4/27/2012</u>					
23. CORPSE DISPOSAL					
a. Burial, Cremation, if others, specify _____					
24a. BURIAL/CREMATION PERMIT Number <u>3161311</u> Date Issued <u>MAY 2, 2012</u>					
25. NAME AND ADDRESS OF CEMETERY OR CREMATORY <u>BAYANI LISINGAN NG BAYANI</u>					
26. CERTIFICATION OF INFORMANT					
I hereby certify that all information supplied are true and correct to my own knowledge and belief					
Signature <u>Albert T. Aragon</u> Name in Print <u>ALBERT T. ARAGON</u> Title or Position <u>CLERK</u> Relationship to the Deceased <u>DAUGHTER</u> Address <u>MICHELANGELO TOWER SUCAT MUNT.</u> Date <u>4/28/2012</u>					
29. REGISTERED BY THE CIVIL REGISTRAR					
Signature <u>Susan E. Brindley</u> Name in Print <u>SUSAN E. BRINDLEY</u> Title or Position <u>REGISTRATION OFFICER III</u> Date <u>MAY 02 2012</u>					
REMARKS/ANNOTATIONS (For LCR/OCRG Use Only)					
TO BE FILLED UP AT THE OFFICE OF THE CIVIL REGISTRAR					
5. 8. 9. 10. 11. 19a(a)/19b. 19a(c)					
<u>27 APR 2012 160207603 022</u>					

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National Statistics Office

Carmelita N. ERICIA





AGE OF MOTHER
TYPE OF BIRTH
(Single, Twin, Triplet, etc.)

CHILDREN AGED 0 TO 7 DAYS
METHOD OF DELIVERY (Normal spontaneous vertex, if others, specify)
LENGTH OF PREGNANCY:
(in completed weeks)

IF MULTIPLE BIRTH, CHILD WAS
(First, Second, Third, etc.)

MEDICAL CERTIFICATE

19a. CAUSES OF DEATH

- a. Main disease/condition of infant _____
b. Other disease/conditions of infant _____
c. Main maternal disease/condition affecting infant _____
d. Other maternal disease/condition affecting infant _____
e. Other relevant circumstances _____

CONTINUE TO FILL UP ITEM 20

POSTMORTEM CERTIFICATE OF DEATH

I HEREBY CERTIFY that I have performed an autopsy upon the body of the deceased and that the cause of death was _____

Signature _____ Title/Designation _____
Name in Print _____ Address _____
Date _____

I HEREBY CERTIFY that I have embalmed _____ following all the regulations prescribed by the Department of Health.
CERTIFICATE OF EMBALMER
ROBOLFO TORRILLO MEANA

Signature _____ Title/Designation _____
Name in Print _____ License No. _____
Address _____ Issued on _____ at _____
Dr. A. Santos Ave., Paranaque City Expiry Date _____

AFFIDAVIT FOR DELAYED REGISTRATION OF DEATH

_____ of legal age, single/married/divorced/widow/widower, with residence and postal address _____ after being duly sworn in accordance with law, do hereby depose and say:

1. That _____ died on _____ in _____ and was buried/cremated in _____
2. That the deceased at the time of his/her death: ☐ was attended by _____ ☐ was not attended.
3. That the cause of death of the deceased was _____
4. That the reason for the delay in registering this death was due to _____
5. That I am executing this affidavit to attest to the truthfulness of the foregoing statements for all legal intents and purposes.

In truth whereof, I have affixed my signature below this _____ day of _____ at _____ Philippines.

(Signature Over Printed Name of Affiant)

SUBSCRIBED AND SWORN to before me this _____ day of _____ at _____ Philippines, affiant who exhibited to me his Community Tax Cert. _____ issued on _____ at _____

Signature of the Administering Officer _____ Position/Title/Designation _____
Name in Print _____ Address _____

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Documentary
Stamp Tax Paid

Administrator and Civil Registrar General
National Statistics Office

CARMELITA N. ERICIA
Carmy R.

005341



Embassy of the United States of America

Manila, Philippines


Republic of the Philippines)
City of Manila)
Embassy of the United States of America) ss:

I, **Jennifer Landau-Carter**, a Vice Consul of the United States of America at Manila, Philippines, duly commissioned and qualified, do hereby certify that

****JERMYN JULIUS R. CHECA****

whose true signature and official seal are, respectively, subscribed and affixed to the foregoing (annexed) certificate (document), on the **12th** day of **April 2013**, the date thereof, **Authentication Officer, Department of Foreign Affairs, Manila, Republic of the Philippines**, duly commissioned and qualified, to whose official acts, faith and credit are due. NOTE: This document is only to be used in the United States of America.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the American Consular Services at Manila, Philippines, this **15th** day of **April 2013**.


Vice Consul of the
United States of America

"The Embassy assumes no responsibility for the truth or falsity of the representations, which appear in the foregoing (or, annexed) document (or specified elements of the document)."

005342

DEPARTMENT OF FOREIGN AFFAIRS
MANILA, PHILIPPINES



S.N. 11A - 1382937

AUTHENTICATION CERTIFICATE

To All Whom These Presents Shall Come, Greetings :

I, JERMYN JULIUS R. CHECA, Authentication Officer of the Department of Foreign Affairs, do hereby certify that CARMELITA N. ERICTA, whose name appears signed in the attached certification / document, was at the time of signing, Administrator and Civil Registrar General, National Statistics Office Manila, duly appointed and qualified to sign

the certification / document and that full faith and credit may be given to her / his acts.

For the contents of the annexed document (s), the Department assumes no responsibility.

I Further Certify that I am familiar with her / his handwriting and verily believe that the signature and seal affixed to the said certification / document are genuine.

IN WITNESS HERE OF, I have
hereunto set my hand at the
City of Manila, Philippines, this
12th day of APRIL 201 3.



JERMYN JULIUS R. CHECA

Authentication Officer

Annexed document(s) is/are:

NSO Certified true copy of
Death Certificate of
RODOLFO TORRILLO MEANA
4980546

Documentary
Stamp
(P5.00)

O.R. No. 0599 DATE 12 April 2013, sff
(Not valid without DFA dry seal, red ribbon, documentary stamp
and if document bears any visible physical tampering, erasures or
if soiled and worn out).

Department of Foreign Affairs ANY ALTERATION OR ERASURE voids THIS DOCUMENT

005343

Municipal Form No. 103
Revised January 2007.

Republic of the Philippines

accomplished in quadruplicate using black ink

OFFICE OF THE CIVIL REGISTRAR GENERAL
CERTIFICATE OF DEATH

Province MEIKRO MANILA		City/Municipality MUNTINLUPA CITY		Registry No. 2012-901	
1. NAME (First, Middle, Last)	2. SEX (Male/Female)				
RODOLFO TORILLO MEANA	MALE				
3. DATE OF DEATH (Day, Month, Year)	4. DATE OF BIRTH (Day, Month, Year)	5. AGE AT THE TIME OF DEATH (Fill in below according to age category) a. IF 1 YEAR OR ABOVE: (1) Months (2) Days (3) Hours (4) Minutes			
27 APRIL 2012	20 FEBRUARY 1935	77			
6. PLACE OF DEATH (Name of Hospital/Clinic/Institution/House No., St., Barangay, City/Municipality, Province, Country)		7. CIVIL STATUS (Single/Married/Widow/Widower/Annulled/Divorced)			
OSPITAL NG MUNTINLUPA, ALABANG, MUNTINLUPA CITY		MARRIED			
8. RELIGION/RELIGIOUS SECT	9. CITIZENSHIP	10. RESIDENCE (House No., St., Barangay, City/Municipality, Province, Country)			
ROMAN CATHOLIC	FILIPINO	UNITIP MICHELANGELO TOWER PRESIDIO SUCAT MONTENEGRO MOTHER (First, Middle, Last)			
11. OCCUPATION	12. NAME OF FATHER (First, Middle, Last)	13. NAME OF MOTHER (First, Middle, Last)			
RET. MIL. OFF.	FEDERICO MEANA, SR. (DEC)	EXPECTACION TORILLO (DEC)			
MEDICAL CERTIFICATE (For ages 0 to 7 days, accomplish items 14-18a at the back)					
19a. CAUSES OF DEATH (If the deceased is aged 8 days and over) I. Immediate cause 2. HEPATIC & UREMIC ENCEPHALOPATHY IV Antecedent cause b. SEPSIS Underlying cause c. HEPATITIS C & CHRONIC KIDNEY DISEASE 1769 II. Other significant conditions contributing to death:					
19c. MATERNAL CONDITION (If the deceased is female aged 15-49 years old) a. pregnant, <input type="checkbox"/> b. pregnant, in labour <input type="checkbox"/> c. less than 42 days after delivery <input type="checkbox"/> d. 42 days to 1 year after delivery <input type="checkbox"/> e. None of the choices <input type="checkbox"/> 20. AUTOPSY (Yes/No) No					
19d. DEATH BY EXTERNAL CAUSES a. Manner of death (Homicide, Suicide, Accident, Legal intervention, etc.) N/A b. Place of Occurrence of External Cause (e.g. home, farm, factory, street, sea, etc.) N/A c. If attended, state duration (mm/dd/yy) 21a. ATTENDANT 1. Private 2. Public 3. Hospital 4. None 5. Others Physician Health Officer X Authority (Specify) From To					
22. CERTIFICATION OF DEATH I hereby certify that the foregoing particulars are correct as near as same can be ascertained and I further certify that I have attended the deceased and that death occurred at 11:25 am on the date of 27 April 2012 at OSPITAL NG MUNTINLUPA Signature [Signature] REVIEWED 28 April 2012 Medical Officer IV Name in Print ROBERTY DAYEM, MD Lic. No. 98867 Title or Position RESIDENT PHYSICIAN Signature Over Printed Name of Health Officer Address OSPITAL NG MUNTINLUPA 5-2-12 Date 4/27/2012					
23. CORPSE DISPOSAL (Burial, Cremation, if others, specify) Burial		24a. BURIAL/CREMATION PERMIT Number 3161311		24b. TRANSFER PERMIT Number 3161311	
25. NAME AND ADDRESS OF CEMETERY OR CREMATORY LIBINGAN NG BAYANI		Date Issued MAY 2, 2012			
26. CERTIFICATION OF INFORMANT I hereby certify that all information supplied are true and correct to my own knowledge and belief. Signature [Signature] Name in Print MELANI MEANA Title or Position DAUGHTER Relationship to the Deceased DAUGHTER Address MICHELANGELO TOWER SUCAT MUNT Date 4/28/2012					
29. REGISTERED BY THE CIVIL REGISTRAR Signature [Signature] Name in Print SAN E. B. EDO Title or Position REGISTRATION OFFICER III Date MAY 02 2012					
REMARKS/ANNOTATIONS (For LCRO/OCRG Use Only)					
TO BE FILLED UP AT THE OFFICE OF THE CIVIL REGISTRAR 5 27 APR 2012 8 1 9 60207603 10 032 11 19a(a)/19b 19a(c)					

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Carmelita N. Erica
CARMELITA N. ERICIA
Administrator and Civil Registrar General
National Statistics Office



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AGE OF MOTHER	15. METHOD OF DELIVERY (Normal spontaneous vertex, if others, specify)	16. LENGTH OF PREGNANCY (in completed weeks)
17. TYPE OF BIRTH (Single, Twin, Triplet, etc)	18. IF MULTIPLE BIRTH, CHILD WAS (First, Second, Third, etc)	

MEDICAL CERTIFICATE

19a. CAUSES OF DEATH

- a. Main disease/condition of infant
- b. Other disease/conditions of infant
- c. Main maternal disease/condition affecting infant
- d. Other maternal disease/condition affecting infant
- e. Other relevant circumstances

CONTINUE TO FILL UP ITEM 20

POSTMORTEM CERTIFICATE OF DEATH

I HEREBY CERTIFY that I have performed an autopsy upon the body of the deceased and that the cause of death was

Signature	Title/Designation
Name in Print	Address
Date	

I HEREBY CERTIFY that I have embalmed all the regulations prescribed by the Department of Health.

CERTIFICATE OF EMBALMER	
Signature	Title/Designation
Name in Print	License No.
Address	Issued on
Dr. A. Santos Ave., Paranaque City	at
Expiry Date	July 10, 2012

AFFIDAVIT FOR DELAYED REGISTRATION OF DEATH

I, _____, of legal age, single/married/divorced/widow/widower, with residence and postal address _____ after being duly sworn in accordance with law, do hereby depose and say:

1. That _____ died on _____ in _____ and was buried/cremated in _____
2. That the deceased at the time of his/her death, ☐ was attended by _____ ☐ was not attended.
3. That the cause of death of the deceased was _____
4. That the reason for the delay in registering this death was due to _____
5. That I am executing this affidavit to attest to the truthfulness of the foregoing statements for all legal intents and purposes.

(Signature Over Printed Name of Affiant)

SUBSCRIBED AND SWORN to before me this _____ day of _____ at _____ Philippines, affiant who exhibited to me his Community Tax Cert. issued on _____ at _____

Signature of the Administering Officer	Position/Title/Designation
Name in Print	Address

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Administrator and Civil Registrar General
National Statistics Office

Carmelita N. ERICIA

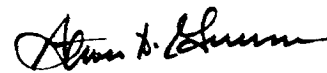


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TRAN



CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

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

BEFORE THE HONORABLE VALERIE ADAIR, DISTRICT COURT JUDGE

JURY TRIAL - DAY 28

TUESDAY, JUNE 4, 2013

APPEARANCES:

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

RECORDED BY JANIE OLSEN COURT RECORDER
TRANSCRIBED BY: KARR Reporting, Inc.

KARR REPORTING, INC.

005346

I N D E X

WITNESSES FOR THE STATE:

MELISSA SCHAEFER

Direct Examination By Mr. Staudaher 11

Cross-Examination By Mr. Santacroce 113

Cross-Examination By Mr. Wright 172

E X H I B I T S

STATE'S EXHIBITS ADMITTED:

PAGE

164 and 50 63

1 LAS VEGAS, NEVADA, TUESDAY, JUNE 4, 2013, 9:30 A.M.

2 * * * * *

3 (Outside the presence of the jury.)

4 THE COURT: All right. If everyone's ready?

5 MR. WRIGHT: No.

6 THE COURT: What's wrong?

7 MR. WRIGHT: I'm barely halfway through the notes
8 that were produced this morning, and my suggestion is putting
9 Langley on the stand and going through the notes outside of
10 the presence of the jury. I think these are her notes.

11 MS. WECKERLY: They are.

12 MR. STAUDAHER: Yeah.

13 THE COURT: Okay.

14 MR. WRIGHT: And I'd -- I mean -- or I'm going to do
15 it in front of the jury and it's going to be a long,
16 convoluted process.

17 THE COURT: Okay. Let's back up. You were provided
18 with notes this morning from the next witness; is that what
19 you're telling me?

20 MR. WRIGHT: Yes, but they just received them. I'm
21 not --

22 THE COURT: Okay. They just received them. How many
23 pages of notes? What are we talking about?

24 Mr. Staudaher, tell us what you've got and what you
25 did with it and when you got it.

1 MR. STAUDAHER: We received, I believe last night
2 when -- at around 9:00 or so Detective Whiteley met the
3 investigators at the airport to pick them up and take them to
4 their hotel room. We were aware that they had -- at least one
5 of them had -- notes were previously produced from the other
6 one that we had in our possession, but this particular witness
7 we did not have any, and there were some notes available. She
8 brought those with her, they were copied, they were scanned
9 and sent; but apparently, in the form they were sent last
10 night late it was difficult, if not impossible, for counsel to
11 open them.

12 So this morning when they arrived physically here we
13 made copies of those, provided them to counsel, and they've
14 been going through them, as have we.

15 THE COURT: Okay.

16 MR. STAUDAHER: So it's probably -- I haven't counted
17 the pages, but it looks like there's probably 30-plus pages or
18 40 pages.

19 THE COURT: Okay. And the notes are of what? Notes
20 she took contemporaneous with the investigation?

21 MR. STAUDAHER: With the investigation, yeah, that's
22 when --

23 THE COURT: So as she's there, she's making notes of
24 her observations, or what?

25 MR. STAUDAHER: Combinations of that. I think part

1 THE COURT: Well, you know, it's at 1:15, so
2 scheduling, we'll be breaking for lunch around 1:00, so make
3 sure you have witnesses here through until 1:00. And another
4 juror has a graduation at 5:00, so we'll be breaking for the
5 day at --

6 MS. STANISH: Second grade?

7 THE COURT: -- at 4:40. So just so you know with
8 scheduling -- okay. This is -- I know, you know, early on we
9 had witnesses who had to come back a couple of days, this is
10 the second day -- you know, Friday we had to break really
11 early, and I know defense had said they thought they'd take
12 all day and they didn't, and today we've had to break an hour
13 and 15 minutes early.

14 So, you know, I don't want anyone to be
15 inconvenienced, but I would rather one juror -- one witness,
16 excuse me, be inconvenienced than the Court, and more
17 significantly 16 jurors. So, you know, even if some people
18 have to come back, I don't want to keep running out of people.
19 And I know in the beginning we had too many -- too many
20 witnesses for the, you know, how far we got, but maybe things
21 are picking up speed now. So just be mindful of that.

22 As I said, I don't want anyone to have to be
23 inconvenienced, but I'd rather one witness be inconvenienced
24 than 16 jurors and the Court that now, you know, has nothing
25 -- well, I'm sure we can -- actually, we all have work to do,

1 so it's mainly the jurors. You know, we can fill up the next
2 hour and a half working on other things. So that's not the
3 big deal. So just, as I said, let's please try to have a full
4 day going forward.

5 And, Ms. Weckerly, can you give the Court kind of a
6 head's up of where we're going with the witnesses and --

7 MS. WECKERLY: You mean for the balance of the
8 trial?

9 THE COURT: Yeah.

10 MS. WECKERLY: Okay. Well, we -- after we get
11 through this week, which I've emailed everybody the --

12 THE COURT: Okay. So this week --

13 MS. WECKERLY: We're going to put on --

14 THE COURT: Obviously, I don't get the email, so --

15 MS. WECKERLY: Okay. This week we're putting on
16 tomorrow the two doctors from the CDC, and I'm told they'll
17 take over a day combined. Wednesday is Nancy Sampson who did
18 the whole analysis with the times and the charts. So my --
19 you know, in speaking with everyone we all agreed that she'd
20 probably take a day. Thursday morning the Court is going to
21 hear the balance of the other bad acts hearing. We have two
22 witnesses telephonically and one appearing live. The
23 afternoon we have Rod Chaffee who I think will be a long
24 witness. But if not, I'll bring --

25 THE COURT: Yeah, Mr. --

1 MS. WECKERLY: -- someone else in.

2 THE COURT: Yeah, I mean, have some -- again, you
3 know, I don't want to inconvenience anybody, but one person
4 inconvenienced is better than 16.

5 MS. WECKERLY: Okay.

6 THE COURT: And Mr. Chaffee is the one that got
7 fired and had the --

8 MS. WECKERLY: Right.

9 THE COURT: -- threat and the bomb scare and --

10 MS. WECKERLY: Right.

11 THE COURT: Okay.

12 MS. WECKERLY: So we'll need to have like a little,
13 from the State's perspective, hearing on what is admissible
14 regarding his conduct and what isn't.

15 THE COURT: Okay.

16 MS. WECKERLY: Friday we have Ann Lobiondo who is
17 also a CRNA and then the doctors, the quality care people.
18 Next week we're planning on putting on all of the insurance
19 people, including two experts on insurance billing as well as
20 Tonya Rushing and all the representatives from the various
21 insurance companies and the actual data input person. And
22 then the next week will be Brian Labus and experts Miriam
23 Alter and Dr. Cohan. And then if we get further --

24 THE COURT: And Dr. Cohan is going to say what?

25 MS. WECKERLY: He's -- he's looked at all the cases

1 and the epidemiology and also the effects on the various
2 victims. But if we get -- if we can get through more than
3 those three, I'll have other doctors at the end of the week.

4 THE COURT: And that's it?

5 MS. WECKERLY: Then it -- I mean, then it's just the
6 -- yeah, then it's just the Philippines and the --

7 THE COURT: Right. Defendants. So then we still
8 have Mr. Meana's deposition.

9 MS. WECKERLY: Well, right, which we can throw on, I
10 guess, whenever.

11 THE COURT: Right. That's ready and waiting. And
12 then the coroner from the Philippines?

13 MR. STAUDAHER: Yeah.

14 MS. WECKERLY: The coroner is here. She went to the
15 Philippines --

16 THE COURT: Okay.

17 MS. WECKERLY: -- but she's local.

18 THE COURT: Okay. So the coroner from the autopsy,
19 and then the medical records, you just got the -- everything
20 to comply with the requirements. You're just going to put that
21 in, and is there anything else from the Philippines?

22 MS. WECKERLY: The --

23 MR. STAUDAHER: The death certificate is here.

24 MS. WECKERLY: The death certificate --

25 THE COURT: Right.

1 MR. STAUDAHER: And the autopsy report.
2 THE COURT: That's just an exhibit.
3 MS. WECKERLY: And the detective goes to the
4 Philippines on just sort of chain of custody.
5 THE COURT: Right. The -- the detective who is
6 fluent in --
7 MS. WECKERLY: Right.
8 THE COURT: -- in Tagalog; correct?
9 MS. WECKERLY: Right.
10 THE COURT: And goes to translate --
11 MS. WECKERLY: But he's --
12 THE COURT: -- for the coroner.
13 MS. WECKERLY: -- short.
14 THE COURT: So he's short. Okay. So that's
15 everybody on the Philippine Mr. Meana situation; correct?
16 MR. STAUDAHER: Correct.
17 MS. WECKERLY: Yes.
18 THE COURT: And then what else is there?
19 MR. STAUDAHER: We have two other people. One from
20 the American Association of Nurse Anesthetists who is coming
21 in, but we'll work that in as far as the scheduling is
22 concerned. And the other one -- I just lost it. Oh, the
23 person for -- who is the guardian for Ms. Grueskin to come in
24 and talk about her situation, so --
25 THE COURT: Okay.

1 MR. STAUDAHER: But that -- that should be the
2 balance.

3 MS. WECKERLY: That's it.

4 THE COURT: Okay. And then does the defense still
5 anticipate two weeks for the defense case? Maybe one, and
6 that includes, Mr. Santacroce, your case as well?

7 MR. SANTACROCE: Yes.

8 MR. STAUDAHER: I think they had -- had joint --

9 MR. SANTACROCE: Right.

10 THE COURT: No, I know. I'm just -- so that's --

11 MR. STAUDAHER: And we told them that if they needed
12 for scheduling purposes to call one of their experts out of
13 order in our case in chief, we can interrupt our case in
14 chief --

15 THE COURT: Okay.

16 MR. STAUDAHER: -- to do that to accommodate them,
17 so --

18 THE COURT: Okay. So minimum four weeks. And is
19 any of the Metro people going to testify about the search
20 warrant or all of that? So I didn't hear -- I didn't hear
21 that part, so --

22 MS. WECKERLY: He'll be -- he'll be a quick witness.

23 THE COURT: Yeah. So that's another day. Anybody
24 else from law enforcement besides this detective?

25 MR. STAUDAHER: Possibly Levi Hancock, but I think

1 we can get most of what we need through --

2 THE COURT: Is that an FB -- I'm not familiar.

3 MR. STAUDAHER: He was -- like, for example, on
4 the --

5 THE COURT: He's an FBI agent?

6 MR. STAUDAHER: -- statement that we --

7 MR. WHITELEY: No, Metro.

8 THE COURT: Metro?

9 MR. STAUDAHER: -- were just going over with Linda
10 Hubbard, I mean, he and -- and Mr. Whitely were both there for
11 it, but I'm not sure Mr. Whitely was here for the entirety of
12 the -- of it. So he needs to go back and listen to it to make
13 sure.

14 MR. WRIGHT: It was a tag team.

15 MR. STAUDAHER: Yeah.

16 THE COURT: Well, Mr. Wright, it's always a tag
17 team. I mean, that's what they teach. No, I don't know what
18 they teach. It's always a tag team. I mean, that's --

19 MR. WHITELEY: Not if I can help it.

20 THE COURT: That's -- I've never seen one that
21 didn't involve two officers hardly ever, if ever. Okay.
22 Well, I'm just wanting a heads up. So okay, then. We'll see
23 everyone --

24 MS. WECKERLY: Well, I mean -- well, I'll speak to
25 defense counsel, but once we kind of set those experts' times

1 and days, they're all flying from out of state. So it's not
2 like we can just get a witness here once -- you know, once we
3 get out of the --

4 THE COURT: No, I'm good on the out of state people.
5 I'm just saying on some of these filler people, you know, if
6 local people have to sit in the hall and then come back the
7 next day, I would rather do that than have --

8 MR. STAUDAHER: Sure.

9 THE COURT: You know, especially -- well, we're all
10 done with the CRNAs; correct?

11 MS. WECKERLY: One more.

12 THE COURT: Okay. And what about the GI techs?

13 MS. WECKERLY: We're done with them.

14 THE COURT: Okay. You know what I'm saying? I
15 mean, on the local people I'd rather they sit out in the hall
16 and have to come back than, you know, we have these days that
17 were, you know, an hour and a half, two hours early. That's
18 all I'm saying. I get it for the out of state people that,
19 you know, obviously we're -- you know, sometimes they're going
20 to take over a day.

21 Oh, the woman, the safekey mom, her -- the last day
22 of school is tomorrow, so she'll be able to stay late on the
23 days we have the out of state people. If we -- we've had to
24 end at 5:00, and I know at least -- I can think of at least
25 one, maybe two, that had to stay over at additional expense

1 for the State and so forth.

2 So at least on those people we have to go not three
3 hours late, you know, not two and a half hours late, but if we
4 have to go a little bit late on those out of state experts,
5 both sides, we will go late so that we can save either the
6 State or the defense the expense of having to keep them here
7 another night and changing their tickets and all of that
8 stuff.

9 Okay. Well, I'm hearing actually from what you've
10 told me five weeks. But maybe -- I don't know. And maybe
11 consider this, too. On some of these things, I mean, so far,
12 no, there really hasn't been anything. But maybe on some of
13 this stuff if you can enter into some stipulations on --

14 MS. WECKERLY: Okay. If you want --

15 THE COURT: -- the foundational --

16 MS. WECKERLY: -- to stip to the health report.

17 THE COURT: -- things or whatever. Huh?

18 MS. WECKERLY: The Health Department report.

19 MS. STANISH: All right. Well, how about you guys
20 not doing that 404B stuff so we're not here for another six
21 weeks.

22 MS. WECKERLY: We'll all talk and see if we can
23 pinpoint how much time on these -- some of these witnesses so
24 we can maybe stack two experts on the same day or something.

25 THE COURT: Right. And like I said, on those

1 people, after the safekey mom's issue, if we have to run late
2 on those days, then we're going to run late on those days.

3 MR. STAUDAHER: Was she the only one that had a
4 strict --

5 THE COURT: She was the only one that had a strict
6 5:00. Some people may have, you know, issues as they come up.
7 We're just trying to deal with all the juror issues as they
8 come up. Like another guy has a VA thing tomorrow, but I
9 think he can get him -- he can get that done during the time
10 the other juror is at the graduation. And so I think he'll
11 fit into the --

12 THE MARSHAL: He's going to try and go first thing
13 in the morning --

14 THE COURT: Okay.

15 THE MARSHAL: -- and see if he can -- if the line is
16 short enough to where he can get it handled. If not, he's
17 going to take care of it --

18 THE COURT: Okay. Otherwise, he's going to go at
19 lunch, but that may take a little bit longer. But he has to
20 do whatever it is at the VA tomorrow, so we said he could do
21 that.

22 MR. SANTACROCE: I hate to keep bringing up Pomykal,
23 but have we --

24 THE COURT: Yes.

25 MR. SANTACROCE: -- reached any decision with her?

1 THE COURT: If you'd like to -- I was going to give
2 you guys copies of the unofficial transcript so you can look
3 at them, and then I'll read it over and if you want to make
4 argument off that or whatever, either side, you can.

5 MR. STAUDAHER: Okay.

6 THE COURT: And we'll do that, I guess, first thing
7 in the morning.

8 (Court recessed for the evening at 3:55 p.m.)
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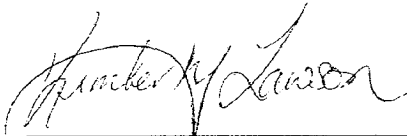
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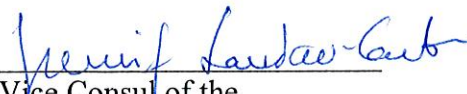
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I, **Jennifer Landau-Carter**, a Vice Consul of the United States of America at Manila, Philippines, duly commissioned and qualified, do hereby certify that

****JERMYN JULIUS R. CHECA****

whose true signature and official seal are, respectively, subscribed and affixed to the foregoing (annexed) certificate (document), on the **12th** day of **April 2013**, the date thereof, **Authentication Officer, Department of Foreign Affairs, Manila, Republic of the Philippines**, duly commissioned and qualified, to whose official acts, faith and credit are due. NOTE: This document is only to be used in the United States of America.

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DEPARTMENT OF FOREIGN AFFAIRS
MANILA, PHILIPPINES



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I, JERMYN JULIUS R. CHECA, Authentication Officer of the Department of Foreign Affairs, do hereby certify that CARMELITA N. ERICIA, name appears signed in the attached certification/document, was at the time of signing, Administrator and Civil Registrar General, National Statistics Office Manila, Manila, duly appointed and qualified to sign the certification/document and that full faith and credit may be given to her acts. the contents of the annexed document(s), the Department assumes no responsibility. I further Certify that I am familiar with her/his handwriting and believe that the signature and seal affixed to the said certification/document are genuine.

IN WITNESS WHERE OF, I have
hereunto set my hand at the
City of Manila, Philippines, this
12th day of APRIL 2013.

JERMYN JULIUS R. CHECA

Authentication Officer

Annexed document(s) is/are:

NSO Certified true copy of
Death Certificate of
RODOLFO TORRILLO MEANA
4980546

O.R. No. 0599 DATE 12 April 2013, sff
(Not valid without DFA dry seal, red ribbon, documentary stamp and if document bears any visible physical tampering, erasures or if soiled and worn out)

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1 unusual?

2 A No, because we covered for each other. I've
3 never seen this record before. I don't --

4 Q Okay. Well --

5 A -- understand what this is.

6 Q -- I'm not asking you if you have or haven't.
7 I'm asking you if you remember on that day why neither one of
8 you appear to be in the other person's room at any time during
9 the day.

10 A Probably because, you know, if I would start
11 it, it would be my case. If Ron would start it, it would be
12 his case. Now, as to who typed all this stuff up, it
13 evidently wasn't slash, you know, Hubbard/Lakeman or
14 Lakeman/Hubbard. I -- I have nothing to -- I understand this.

15 THE COURT: Did you ever relieve each other in the
16 middle of a patient, like there'd be a patient already under
17 anesthesia and then you --

18 THE WITNESS: Well, that's what I said. For lunch,
19 you know --

20 THE COURT: Okay. So you -- he'd go to lunch and
21 you'd take over and the patient was already there getting the
22 procedure done?

23 THE WITNESS: Yeah, that's what I was trying to
24 explain.

25 THE COURT: Okay. And so was there ever any days

1 that you didn't -- you just worked straight through the whole
2 day and didn't --

3 THE WITNESS: No.

4 THE COURT: -- go lunch? Always went to lunch?

5 THE WITNESS: Yes.

6 THE COURT: Okay.

7 BY MR. SANTACROCE:

8 Q Okay. So the fact that this diagram doesn't
9 show you being in his room or he being in your room doesn't
10 mean it didn't happen, is that what you're telling me?

11 A Correct.

12 Q So tell me the standard procedure. If you
13 took a lunch, you would go into Ron's room or vice versa?

14 A Well, if I was going to lunch, you know, if
15 Ron was working in the other room, if we had one doc and we
16 were working back and forth, that's when we tried to get our
17 lunches done before the afternoon when the second physician
18 would appear. And, you know, I'd go over and tell him that I
19 was going to lunch, or he'd come in and relieve me and tell me
20 to go to lunch.

21 Q When you went in -- when -- when someone
22 relieved the other person, you would use the supplies and
23 propofol in that person's room?

24 A Yes, sir.

25 Q And you would use the same aseptic techniques

1 and practices that you talked about all day today?

2 A Yes, sir.

3 Q Okay. Let's go back up to you, okay.

4 A Okay.

5 Q On this particular -- I'll represent to you
6 that the orange line indicates people that came into the
7 clinic that already had hep C, that the white lines or no
8 colored lines are people that haven't reported hep C, and the
9 yellow lines or the green lines are the people that allegedly
10 were infected at the clinic. Do you see that?

11 A What's the blue one?

12 Q I'm not sure what the blue one is.

13 MS. WECKERLY: It's the source patient.

14 BY MR. SANTACROCE:

15 Q Oh, it's the source patient. So in other
16 words, this person had hep C when they came into the clinic.

17 A And my red patient had hep C when he came in?

18 Q Correct. So the blue one would be what the
19 State is alleging was the source patient for -- for this green
20 one, Washington, you see that? The other orange ones are
21 people that came into the clinic that already had hep C, as
22 well as this person with the blue. Did I make myself clear,
23 or am I confusing you?

24 A Okay. So the blue guy should really be a red
25 guy?

1 Q No, the blue guy had hep C when he came in,
2 but --
3 A Well, that's what you told me the red guy did,
4 too.
5 Q Okay. Well, let me finish.
6 A Okay.
7 Q The blue guy had hep C when he came in, but he
8 is allegedly the one that -- that infected --
9 THE COURT: The green guy.
10 BY MR. SANTACROCE:
11 Q -- Mr. Washington, the green guy.
12 A So the green guy didn't have hep C when he
13 came in?
14 Q Correct. That's what the State is saying.
15 The green guy didn't have hep C when he came in, but they're
16 saying he got it from the blue guy.
17 A Okay.
18 Q Okay? You with me?
19 A Gotcha.
20 Q Okay. My question --
21 A But my red guy had hep C when he came in?
22 Q Yeah. Would you --
23 A Okay.
24 Q -- have known that?
25 A Would I have known that he had hep C?

1 Q When he came in.

2 A No.

3 Q You would have no way of knowing that?

4 A We had no records. And we asked patients if
5 they ever had any bloodborne problems, you know, if they ever
6 had hepatitis or HIV or Aids or any of that kind of stuff.
7 But half of them didn't have the foggiest idea of what was
8 going on with their bodies anyway, so --

9 Q Okay. So you wouldn't have done anything
10 different to your red guy here; right? I mean, you would have
11 used the same universal precautions you would normally use;
12 correct?

13 A I wouldn't -- right.

14 Q Okay. And you notice it's -- it doesn't
15 appear, at least it hasn't been reported, that anybody you
16 treated after the red guy came up with hep C. Good for you.
17 It's a good thing.

18 A It was my lucky day, huh?

19 Q Yeah, apparently. Now, let's look at Mr.
20 Lakeman's room. A guy comes in with hep C. Do you see that?

21 A Yes, sir.

22 Q There's been no switching of rooms back and
23 forth between you and Mr. Lakeman at this time of day.

24 A No.

25 Q There's been no transfer of propofol from room

1 to room at this time of day; correct?

2 A Correct.

3 Q Because you testified the only time you would
4 bring another bottle of the propofol to another room was late
5 in the day with the last patient; correct?

6 A Correct, sir.

7 Q All right. So now the blue guy comes in with
8 hep C. Mr. Lakeman treats one, two, three patients; correct?
9 Apparently, from this chart anyway.

10 A Correct.

11 Q And then Mr. Washington comes in and gets hep
12 C, correct, according to the chart?

13 A According to this, yes.

14 Q And then nobody after that for the rest of the
15 day gets hep C.

16 A Okay.

17 Q Okay. Now, when you first found out from the
18 CDC that they were saying that poor injection practices from
19 propofol caused the outbreak, what was your reaction?

20 A It was ridiculous.

21 Q And why did you --

22 MS. WECKERLY: Your Honor, may we approach?

23 THE COURT: Sure.

24 (Off-record bench conference.)

25 BY MR. SANTACROCE:

1 Q In your opinion is there anything in the
2 procedures that you employed while at the clinic in using
3 propofol that could -- could account for this hep C outbreak?

4 A I don't think so.

5 Q I want to talk to you a little bit more about
6 the billing because you said that when you got there Mr.
7 Lakeman told you to bill at 31 minutes; correct?

8 A Yes, sir.

9 Q And your belief was he told you that because
10 of PacifiCare?

11 A Yes, sir.

12 Q And your belief was that it didn't matter how
13 much time you billed because you believed that it was a flat
14 fee anyway; correct?

15 A Yes, sir.

16 Q And was that common knowledge among the CRNAs?

17 A That --

18 MS. WECKERLY: Objection. Foundation.

19 BY MR. SANTACROCE:

20 Q Well --

21 THE COURT: Yeah, you need to --

22 BY MR. SANTACROCE:

23 Q -- you discussed this --

24 THE COURT: -- lay a foundation.

25 BY MR. SANTACROCE:

1 Q -- with other CRNAs; correct?
2 MS. WECKERLY: Objection. Hearsay.
3 THE COURT: Yeah, that's sustained.
4 MR. SANTACROCE: I didn't ask what they said, Your
5 Honor. I'm asking her --
6 THE COURT: Well, I know, but --
7 MR. SANTACROCE: -- if she based --
8 THE COURT: -- then you're going to --
9 MR. SANTACROCE: -- her opinion on it.
10 THE COURT: -- say based on what they said did they
11 do this or that, and that would call for her to comment on
12 what they said. So she can say what her practice was or what
13 she was directed by management to do or --
14 MR. SANTACROCE: Well, she particularly --
15 THE COURT: -- you know, if her -- in her practice
16 this would have occurred or something like that.
17 MR. SANTACROCE: Well, I can ask her about my client
18 since she said my client told her to bill 31 minutes.
19 THE COURT: Okay.
20 MR. SANTACROCE: Okay.
21 BY MR. SANTACROCE:
22 Q And your basis for that was because of the
23 PacifiCare issue?
24 A Correct.
25 Q Okay. Nothing else in your mind; correct?

1 A Correct.

2 Q And you had nothing to do with billing anyway,
3 did you?

4 A No, and I never have.

5 Q Do you know if any of the other CRNAs had
6 anything to do with billing?

7 A No.

8 Q You don't know or they didn't?

9 A I don't know.

10 Q Okay. But as far as you're concerned, you had
11 nothing to do with it?

12 A Correct.

13 Q You were asked some questions about who you
14 perceived to be your supervisor, and I believe you said Jeff
15 Krueger and Katie Maley, and as far as billing went it was
16 Tonya; correct?

17 A Correct.

18 Q Did you ever have discussions with Tonya
19 regarding practices of billing?

20 A Not really. She would send Jeff down or one
21 of the other people would come down from upstairs and tell us
22 that, you know, we had to change our times and do this stuff
23 because the patient -- you know, we needed to bill for 31
24 minutes.

25 Q So in other words, if you had filled out an

1 anesthesia record and didn't have 31 minutes, they would bring
2 it back and say fix it?

3 A Correct.

4 Q Other than that, that was as far as you had to
5 do with billing?

6 A Yeah, I -- I never knew anything about
7 billing. I've never done any billing for anybody or anything
8 and I -- I know nothing about it.

9 Q And you didn't get paid, your salary wasn't
10 based on how much billing you did or how many patients you
11 saw?

12 A No, sir.

13 Q You were on salary plus bonuses?

14 A Well, yeah. It was salary. We -- I really --
15 I didn't count on the bonuses because you never knew when you
16 were going to get them.

17 Q And those bonuses weren't tied to any
18 performance by you as far as how many patients you did?

19 A No, sir.

20 Q And, in fact, bonuses stopped at some point;
21 correct?

22 A They were very delayed, but -- I guess they
23 did stop.

24 Q I'm sorry?

25 A I guess they did stop.

1 Q In the procedure room itself -- well, strike
2 that. You said that you were responsible for patients all the
3 way until they were discharged; right? Basically in the
4 post-op area?

5 A Correct.

6 Q So in other words, if there was an emergency,
7 the nurses would come get you?

8 A Would get one of the nurse anesthetists,
9 right.

10 Q What about in the procedure room? Did you
11 have emergency medications other than propofol that you were
12 able to use in case of a patient emergency?

13 A We had to go out to the locked cabinet
14 outside.

15 Q Okay. And what source of emergency medication
16 would you have?

17 A We have all of the epinephrine and everything
18 that we needed for cardiac arrest, sodium bicarbon, everything
19 else would be out there.

20 THE COURT: So you didn't have that in the procedure
21 room? If someone had an emergency somebody had to run out and
22 get --

23 THE WITNESS: You had to --

24 THE COURT: -- somebody to unlock --

25 THE WITNESS: -- run out and --

1 THE COURT: -- the cabinet and --

2 THE WITNESS: -- unlock the red cart and --

3 THE COURT: -- then you'd run back in or whatever?

4 THE WITNESS: Yes.

5 BY MR. SANTACROCE:

6 Q Okay. There's been some testimony about a
7 tackle box. Do you recall seeing a tackle box in any of the
8 rooms that had medication in it?

9 A No.

10 Q Did you carry a tackle box from room to room?

11 A No.

12 Q There was testimony about the saline pushes.
13 Remember that testimony --

14 A Yes, sir.

15 Q -- the saline push? Do you know -- did you
16 know a Janine Drury?

17 A She was one of the RNs, yes.

18 Q Okay. Did she have something to do with
19 saline that you used for those pushes?

20 A There were a time -- I think there were a
21 couple mornings where they really wanted us to implement this
22 thing that she and Katie were out at the desk and they were
23 drawing the syringes up.

24 Q For the saline pushes for the propofol?

25 A Yes.

1 Q And they would draw them out of a common
2 saline bottle?

3 A A bag, yeah.

4 Q A bag?

5 A A small bag.

6 Q And they would draw multiple syringes of
7 saline out of that common bag?

8 A [Nods head yes].

9 Q Is that a yes?

10 A Yes, that's a yes.

11 THE COURT: You have to answer yes or no.

12 THE WITNESS: Oh, I'm sorry. I did it again.

13 THE COURT: I know. People do it all the time.

14 It's a taped transcript. Well, it's a tape and then it'll be
15 a written transcript.

16 BY MR. SANTACROCE:

17 Q And your testimony was that you never reuse a
18 syringe or needle on more than one patient, isn't that
19 correct?

20 A Until after the CDC was there, correct.

21 Q And then after the CDC came, what was the
22 change?

23 A I would reuse the syringe because the propofol
24 was just for one patient.

25 Q And you thought that was aseptic?

1 A Yes, sir.

2 Q And you tried to explain that to the CDC
3 person?

4 A Well, that's -- she asked me if I would ever,
5 and I said, yes, now that the propofol would be for one
6 person, yes.

7 Q And you didn't see how there could be
8 contamination based upon the procedures you were using; is
9 that correct?

10 A Correct.

11 Q I believe you testified on direct examination
12 that it wasn't the only way people got sick. What did you
13 mean by that?

14 A Well, there were other ways that a virus can
15 be transferred.

16 Q Okay. Specifically tell me what you meant
17 when you made that statement.

18 A Well, from what I understand there was also a
19 bottle of saline used --

20 MS. WECKERLY: Objection. Foundation.

21 BY MR. SANTACROCE:

22 Q You saw this at the clinic during the time
23 period of the infection; correct?

24 A During the time period before the CDC was
25 there.

1 Q Okay. What -- what did you observe?

2 A We had -- they had taken our break room and
3 made it into a room where the patients would come and get
4 their IVs started. And there was one to two of the nurses
5 back there and they used a multi-dose vial of saline to flush
6 the IVs, you know, to put saline in through the hepllock to
7 make sure that the IV was open prior to bringing the patient
8 over to us.

9 Q And that was multiple patients, one dose -- I
10 mean, one container?

11 A One container.

12 Q Okay. What other -- did you have any other
13 things when you said it wasn't the only way people got sick?

14 A Well, I think part of it could have come from
15 the scopes themselves, from the endoscopy scopes.

16 Q And did you see something in particular during
17 this time period before the CDC got there?

18 A Well, there is always -- there's always a
19 chance of contamination with feces and body fluids between one
20 patient and another.

21 Q From the scopes, is that what you're telling
22 me?

23 A From the scopes.

24 Q Is there anything else that you observed
25 during that time period that caused you concern?

1 A That I personally observed?

2 Q Yes.

3 A No.

4 Q No?

5 A I've learned a lot from reading the newspaper,

6 but --

7 THE COURT: Well, we're not going to talk about
8 that.

9 BY MR. SANTACROCE:

10 Q Well --

11 A But that's not what I saw.

12 Q Okay. I only want you to tell me what you
13 saw.

14 A When the CDC observed you, you testified that
15 there was an exit interview or a summation period.

16 A Yes, sir.

17 Q What do you mean by that?

18 A They called each -- each one of us out into
19 this room with a big table and talked to us before they left.

20 Q Do you know who -- was it a male or a female
21 who talked to you?

22 A Female.

23 THE COURT: And was it individual? Each employee
24 went to this table individually, or were you there as a group?

25 THE WITNESS: I was there by myself.

1 THE COURT: That's what I meant. Okay.

2 BY MR. SANTACROCE:

3 Q And this person is female from the CDC tell
4 you that they observed you and that you were doing something
5 wrong?

6 A No.

7 Q Okay. Did they mention anything about gloves
8 to you?

9 A No, they never did.

10 Q Okay.

11 A They talk -- I think they spoke to different
12 people about different things, but --

13 Q And you in particular, that's all I want you
14 to talk about. When you had this summation or interview with
15 this female from the CDC, she didn't say, hey, we observed you
16 doing this, this, and this, and you need to do this?

17 A No.

18 Q Nothing?

19 A No.

20 Q Okay.

21 THE COURT: Why don't we go ahead and just take
22 our --

23 MR. SANTACROCE: I'm done, Your Honor, so --

24 THE COURT: Okay. Well --

25 MR. SANTACROCE: -- let me just review my notes.

1 That's all I have, ma'am. Thanks very much.

2 THE WITNESS: Thank you.

3 THE COURT: All right. Ladies and gentlemen, we're
4 going to go ahead and take a quick 10 minute recess. During
5 the recess you're reminded that you're not to discuss the case
6 or anything relating to the case with each other or with
7 anyone else. You're not to read, watch, or listen to any
8 reports of or commentaries on the case, person or subject
9 matter relating to the case. Please don't form or express an
10 opinion on the trial. Notepads in your chairs. If you have
11 any questions, hand them to the bailiff on the way out the
12 door.

13 (Jury recessed at 2:48 p.m.)

14 THE COURT: And, ma'am, don't discuss your testimony
15 with anybody else during the break.

16 (Court recessed at 2:48 p.m., until 3:03 p.m.)

17 (In the presence of the jury.)

18 THE COURT: All right. Court is now back in
19 session.

20 And, Ms. Weckerly, you may conduct your redirect
21 examination.

22 MS. WECKERLY: Thank you.

23 REDIRECT EXAMINATION

24 BY MS. WECKERLY:

25 Q Ms. Hubbard, if I understood you correctly on

1 cross-examination, you said there were occasions where you or
2 another CRNA might start a procedure and take a break and
3 another one would come in and finish?

4 A For lunch, yes.

5 Q For lunch. Okay. In -- in those instances
6 where one of you started it and the other one finished, would
7 the patient actually be sedated when you switched over?

8 A Yes.

9 Q Okay. In those instances is there anywhere in
10 the record, the anesthesia record or the medical record, that
11 would tell us that occurred?

12 A Usually we put a slash and then the other
13 person's name.

14 Q Okay.

15 A That's why I don't understand on those ones
16 that were presented there weren't two names on a couple of
17 them.

18 Q So your recollection is when that occurred
19 mid-procedure, there's be a slash and both names would appear?

20 A Yes.

21 Q Now, when you would go -- I assume you'd go
22 over in the other CRNAs room during the lunch period when
23 you're covering for that person?

24 A Yeah, that person would come in and relieve me
25 in my room, or I would go over and relieve them in their room,

1 yes.

2 Q Okay. When you would go over to their room,
3 did you ever see partially used vials of propofol in the room?

4 A There might be one from that patient.

5 Q And would you use those partially open vials
6 or was it your practice to just start over and open all new
7 ones?

8 A I would -- I would use what was there.

9 Q Okay. So --

10 A It would only be one -- it would be the bottle
11 from that patient.

12 Q Okay. So you would use the partially open
13 vial even though maybe you didn't witness it being opened?

14 A We were all professional people. Yes.

15 Q Okay. You were -- you were asked about if
16 there was anything on the patient's record that would indicate
17 whether or not they were hepatitis C positive.

18 A Yes.

19 Q And to your recollection that wasn't something
20 that would be filled out, you know, when they first got to the
21 clinic or anything like that?

22 A I don't remember ever seeing anything, you
23 know, like there's nothing -- there wasn't anything that came
24 with them from the office or anything, you know, like --

25 Q Would it be in their history and physical at

1 all if they were hepatitis C positive to your recollection?

2 A It should be.

3 Q Okay. And so --

4 A But most of the time we didn't have a history
5 and physical.

6 Q You didn't have that available to you?

7 A No, that's why we had to ask them all the
8 questions.

9 Q Okay. And would that be one of the questions
10 that you'd ask in your pre-anesthesia evaluation?

11 A Yes.

12 Q And so you would know before you did the
13 procedure --

14 A If they knew.

15 Q If they knew. Right. If they had reported
16 it, you would know.

17 A If they realized that they actually had it,
18 yes.

19 Q Okay. Now, you -- you were interviewed by the
20 FBI and then you were interviewed by the police twice. And
21 you indicated that occurred over a two-day period?

22 A Yes.

23 Q And one at -- the second date was October the
24 15th of 2008? I can show you my copy --

25 A I guess.

1 Q -- if you don't want to dig yours out.
2 A The first one was the 14th?
3 Q Yeah, this is page --
4 A It was one day after another.
5 Q Yeah. And I meant -- I just want to just want
6 to make sure I have the date right. It looks like on page 22
7 that the second part starts on the --
8 A This was the 14th, yes.
9 Q Right.
10 A So on the 22nd was the 15th. Yes.
11 Q Okay. And your lawyer was present; correct?
12 A Yes, sir -- ma'am.
13 Q And Detective Whitely here was present?
14 A Yes.
15 Q And what -- what did he do in that interview
16 that you found coercive?
17 A I felt -- it wasn't just him, but I felt that
18 they really didn't believe what I was saying.
19 Q Okay. And so how did -- how did that seem
20 coercive to you? What was done that made it seem like a
21 coercive setting?
22 A It was just challenging what I said.
23 Q And that would be like verbally saying that
24 doesn't make sense or we don't believe you, that sort of
25 thing?

1 A Yeah.

2 Q And other than that, was there anything
3 coercive, were you not allowed to take breaks when you wanted
4 to or were you not allowed to speak with your attorney?

5 A Not that I remember.

6 Q And -- and as I understand it, you don't
7 remember a single part of this interview; correct?

8 A I really and truly -- I -- I'm drawing a total
9 blank with it. I'm sorry.

10 Q So you don't remember anything discussed in
11 that interview?

12 A Basically, no.

13 Q Now, you -- you said on cross-examination that
14 it's your view that anesthesia time is calculated from your
15 per-assessment time through recovery; correct?

16 A Yes, ma'am.

17 Q Okay. And when you were -- you were
18 interviewed by the FBI prior to being interviewed by the Las
19 Vegas Metropolitan Police Department, and you described the
20 timing for anesthesia time. You said that we would get
21 creative or use, quote, creative timing. And this is on the
22 bottom of page 4 and the top of page 5 of that document. And
23 my question is what do you mean by get creative or use
24 creative timing?

25 A I don't know because I have question marks

1 there, too.

2 Q Okay. So you don't -- you don't know.

3 A I don't know what those words of getting
4 creative -- I -- I don't know.

5 Q Okay. But it is your -- your belief that you
6 can legitimately claim time for pre-op through recovery?

7 A It was my belief, yes.

8 Q Okay. And -- and if that's true, why was it
9 necessary to chart false vital signs as though they occurred
10 in the procedure room?

11 A Because they didn't take vital signs when I
12 was talking to the patient, and I didn't take vital signs when
13 the patient was in the recovery room.

14 Q Right. But if you could chart all the way
15 through recovery legitimately, why would you need to make it
16 look like they're in the procedure room longer than they were?

17 A I don't know.

18 Q Now, you discuss that you thought that there
19 were other ways that this virus could have been transmitted
20 besides through propofol; correct?

21 A Yes, ma'am.

22 Q Did you do any independent research in this
23 case like reviewing patient files or anything like that?

24 A On our patients?

25 Q Yes.

1 A No.

2 Q Did you review which scopes were used to see
3 if there was any commonality between the scopes and when they
4 were used and processed and who ended up getting infected with
5 hepatitis C?

6 A No.

7 Q Did you do any research about how the scopes
8 were processed between the patients that ultimately ended up
9 infected?

10 A No.

11 Q Did you do any research regarding the number
12 of syringes that might have been used at the clinic?

13 A No.

14 Q How about the number of vials of propofol?
15 Did you look into that?

16 A No.

17 Q Okay. Did you -- did you look into or observe
18 any practices in the pre-op area that you thought were
19 improper?

20 A Me myself?

21 Q Yes.

22 A No.

23 Q No. Okay. So you didn't have any first hand
24 view of anything going on in pre-op that you thought was a
25 dangerous practice?

1 A I didn't, no.

2 MR. WRIGHT: I'll pass the witness.

3 THE COURT: All right. Mr. Wright, any recross?

4 MR. WRIGHT: Your Honor, I do have a question which
5 would be cross that I forgot to ask.

6 THE COURT: That's all right.

7 RECROSS-EXAMINATION

8 BY MR. WRIGHT:

9 Q When Dr. Carrol wanted you fired, okay --

10 A Yes, sir.

11 Q -- that time frame, do you recall discussing
12 with Tonya or with Dr. Desai your need to remain employed
13 because of your husband being on your insurance?

14 A No.

15 Q Okay. You don't recall anything about that?

16 A He wasn't on my insurance.

17 Q Okay.

18 A It was disability Medicare.

19 Q Okay. Thank you.

20 THE COURT: Mr. Santacroce.

21 MR. SANTACROCE: Yes.

22 RECROSS-EXAMINATION

23 BY MR. SANTACROCE:

24 Q Ms. Hubbard, what time would you typically
25 take lunch?

1 A 11:00, 11:30.

2 Q I want to go back to Exhibit 157. Do you see
3 the green stripe there?

4 A Green stripe. Yes, sir.

5 Q What time was that procedure started?

6 A 8:25.

7 Q And that was the procedure Mr. Lakeman did?

8 A Yes, sir.

9 Q And now I want to go back up to here. You
10 notice any procedures you started at 8:25?

11 A No.

12 Q Huh?

13 A Yes, I do.

14 Q So you were in a procedure room at 8:25 on one
15 patient, Mr. Lakeman was in the other procedure room on Mr.
16 Washington at 8:25. So there was nothing -- he wasn't
17 relieving you for lunch or you weren't relieving him for lunch
18 at 8:25 in the morning; correct?

19 A Correct.

20 MR. SANTACROCE: I have nothing further.

21 THE COURT: Ms. Weckerly.

22 MS. WECKERLY: Nothing further.

23 THE COURT: All right. We have a couple of juror
24 questions up here. A juror would like to know who would be
25 charging for anesthesia if you started a procedure but another

1 CRNA finished it? For example, if you left the proceeding,
2 who would fill out the time for the procedure, you or the --

3 THE WITNESS: I would say the person finishing the
4 case.

5 THE COURT: Okay. During the time all CRNAs were
6 using saline to push any propofol in the hepllock into the
7 bloodstream, from where were you drawing the saline?

8 THE WITNESS: That's what I was asked. Those
9 syringes most of the time were drawn up for us by the RNs.

10 THE COURT: Okay. So did you have a bottle of
11 saline there with you, or were you getting syringes that
12 already had saline in them? This is when you administered,
13 not to flush the hepllock, but when you were administering the
14 propofol with saline that you talked about before.

15 THE WITNESS: That was the flush.

16 THE COURT: Okay. There was no time that you were
17 administering propofol and saline? Not talking about the
18 flush when they first put the hepllock in, but unrelated to
19 that.

20 THE WITNESS: No, the syringe -- the hepllocks were
21 usually flushed by the RNs back in the back --

22 THE COURT: Okay.

23 THE WITNESS: -- in the -- in the room when they
24 were started if they were started back there. And then the 5
25 cc flushes the RNs drew up for us in the morning and gave us

1 this bundle of syringes --

2 THE COURT: That already had saline in it.

3 THE WITNESS: That already had the saline in it.

4 THE COURT: Did you ever have a bottle of saline
5 that you or another nurse anesthetist could draw from in the
6 procedure room?

7 THE WITNESS: I don't remember that.

8 THE COURT: Okay. And were new syringes and needles
9 used for each patient that had the saline in them?

10 THE WITNESS: The saline syringes, yes.

11 THE COURT: Okay. Did you ever take those syringes
12 from one room to another, from one procedure room to another
13 procedure room?

14 THE WITNESS: I don't remember doing that, no.

15 THE COURT: Okay. Now, when you and another nurse
16 anesthetist such as Mr. Lakeman would work on the same
17 patient, was that reflected anywhere in the patient's chart?
18 I mean, did you both sign off on the patient's chart or how
19 did that work?

20 THE WITNESS: It should be on the anesthesia record.

21 THE COURT: Okay.

22 THE WITNESS: And the nurses should have noted it on
23 their record for the procedure.

24 THE COURT: Is it the kind of thing where you would
25 both sign the patient's record or that --

1 THE WITNESS: Yeah, or slash and we'd write each
2 other's name down.

3 THE COURT: Okay. So you wouldn't necessarily, if
4 you were the second nurse anesthetist or the first, you
5 wouldn't necessarily yourself write on it, but it was the job
6 of the other nurse anesthetists to make sure both names were
7 on the chart or were you both required to write on the chart?

8 THE WITNESS: Yeah, someone would make sure that
9 both names were on there.

10 THE COURT: Someone?

11 THE WITNESS: Right.

12 THE COURT: Okay.

13 THE WITNESS: Be it nurse anesthesia A or nurse
14 anesthetist B, you know --

15 THE COURT: Someone should have done it.

16 THE WITNESS: Yes.

17 THE COURT: Okay.

18 Ms. Weckerly, do you have any follow up to those
19 last juror questions?

20 MS. WECKERLY: No, Your Honor.

21 THE COURT: Mr. Wright, do you have any follow up to
22 those last juror questions?

23 MR. WRIGHT: No, Your Honor.

24 THE COURT: Mr. Santacroce?

25 MR. SANTACROCE: Yes.

1 FURTHER RECROSS-EXAMINATION

2 BY MR. SANTACROCE:

3 Q We're talking about two terms, two different
4 terms here, a push and a flush. They're two different things;
5 right?

6 A Correct.

7 Q The flush is when the nurses in the pre-op
8 room would flush a heplock and they would use saline; correct?

9 A Correct.

10 Q And the push is when you would use saline for
11 the propofol?

12 A Correct.

13 Q And the saline that you used for the push came
14 from the nurses in the pre-op area like Janine Drury?

15 A Well, not -- they didn't draw -- they weren't
16 drawn up in the pre-op area. They were drawn up at the
17 nurse's desk --

18 Q Okay.

19 A -- out in the front.

20 Q And that would have been done by the RNs in
21 another area with a saline bottle?

22 A Correct.

23 Q A multi-use saline bottle?

24 A I would think so.

25 Q And those syringes were brought to you;

1 correct?

2 A Yes.

3 Q Okay. You didn't fill them out of any bottle?

4 A No.

5 MR. SANTACROCE: Nothing further.

6 THE COURT: Ms. Weckerly?

7 MS. WECKERLY: Nothing else.

8 THE COURT: Any additional juror questions for this
9 witness?

10 All right. Ma'am, I see no additional questions.
11 Please don't discuss your testimony with anyone else who may
12 be called as a witness in this matter and you are excused.

13 THE WITNESS: Thank you.

14 THE COURT: State may call its next witness.

15 MS. WECKERLY: Peter Maanao.

16 THE COURT: And, sir, just face this lady right here
17 who will administer the oath.

18 PETER MAANAO, STATE'S WITNESS, SWORN

19 THE COURT: Thank you. Please be seated. And
20 please state and spell your first and last name for the
21 record.

22 THE WITNESS: My first name is Peter, my last name
23 is Maanao, and that's spelled M-A-A-N-A-O.

24 DIRECT EXAMINATION

25 BY MS. WECKERLY:

1 Q Can you pronounce your last name for me again?

2 A It's Maanao.

3 Q Okay.

4 A Close enough.

5 Q I'll try that.

6 THE COURT: Say it about another ten times and maybe
7 we'll get it.

8 BY MS. WECKERLY:

9 Q I don't know if I'm going to get that one
10 right.

11 A It's been 20 years.

12 Q Sir, how were you employed in 2007?

13 A In 2007 I was an employee of the Shadow Lane
14 Endoscopy Center.

15 Q And when were you hired?

16 A In the month of December 2007.

17 Q Okay. So December 2007. Do you remember what
18 day your first day of work was?

19 A I believe it was maybe two days after
20 Christmas, so either the 26th or the 27th.

21 Q Of '07?

22 A Yes.

23 Q And you were hired to work as what?

24 A As one of the registered nurses.

25 Q Where did you go to school to be a registered

1 nurse?

2 A CSN.

3 Q And when did you graduate from nursing school?

4 A March 2007.

5 Q So less than a year earlier?

6 A Correct.

7 Q After you graduated from nursing school, did
8 you work anywhere else before the endoscopy center?

9 A Yes, I did. I was at Spring Valley Hospital.

10 Q And also as an RN, I presume?

11 A That's correct.

12 Q Where were you assigned to work at Spring
13 Valley Hospital?

14 A Med tele.

15 Q What is that?

16 A It's basically you take -- how do I explain
17 this to you? It's medical telemetry. While patients are on
18 the unit being monitored by heart monitors, they're sick, but
19 not sick enough to be anywhere else on our floor.

20 Q Okay. And so is that -- you're not doing
21 procedures, but monitoring problems with patients as they come
22 up; is that correct?

23 A That's correct. After they're transferred
24 from the emergency room, they usually end up on my unit.

25 Q Okay. And then if there's problems you have

1 to decide how to address them?

2 A Correct.

3 Q You -- when you decided to go work for the
4 endoscopy center, who was it that interviewed you from the
5 center?

6 A Her name is Katie Maley.

7 Q And you were obviously hired -- do you
8 remember how long it was between your interview and the time
9 you started work?

10 A Maybe two weeks.

11 Q And it's still like over the -- the holidays
12 kind of of '07?

13 A Correct.

14 Q When you first got or you first started work
15 at the endoscopy center, was there anyone who kind of oriented
16 you or showed you around?

17 A Yes.

18 Q Who was that?

19 A It was Janine Drury.

20 Q And did Ms. Drury sort of walk you through the
21 place and give you sort of the -- the responsibilities for
22 each part of the center?

23 A Yes.

24 Q And in your time that you worked there, did
25 you work in pre-op?

1 A Yes, I did.

2 Q Did you work in the procedure room?

3 A On occasion to either start the morning with
4 the surgeons or to break the nurses that were already in there
5 doing the rest of the cases.

6 Q And did you ever work in recovery?

7 A Sometimes.

8 Q How about discharge, did you do that?

9 A Every once in awhile.

10 Q Okay. So you actually worked in all the areas
11 that nurses work in at the endoscopy center?

12 A Yes.

13 Q When you were working in pre-op, what were
14 your responsibilities?

15 A I would receive the patient, get them checked
16 in, do their vital signs, put their IVs in, and just make sure
17 that all the documents that were needed for today's procedure
18 were in that patient's chart. And then --

19 Q And when you were putting the IVs in, did you
20 flush those, the IVs you put in with saline?

21 A Yes, I did.

22 Q And was that saline a multi-use container of
23 saline?

24 A Yes, it was.

25 Q And did you do that aseptically or according

1 to how you were taught in nursing school?

2 A Yes, I did.

3 Q And what does that mean when you have a
4 multi-use container?

5 A When you go into a multi-dose vial, it's one
6 syringe and one needle every time you go into it.

7 Q Okay. So you never injected someone with
8 saline and went back in the bottle with the same syringe?

9 A No.

10 Q Would you ever do something like that?

11 A No.

12 Q You -- after you flushed the IVs with saline I
13 assume that patients would wait or move on to the procedure
14 room if there was a room available?

15 A Correct.

16 Q When you worked in -- at the center, was there
17 ever a time when the center moved from the multi-use bottle of
18 saline to actual prefilled saline syringes?

19 A It was several days after my employment, my
20 first day of work, when they went to the 5 -- 5 ml prepackaged
21 saline syringes.

22 Q And those are individually filled with saline;
23 correct?

24 A Yes.

25 Q When you -- when you worked in the procedure

1 room, my understanding is that you -- you weren't in there
2 except for maybe to relieve people to go on breaks?

3 A Yes.

4 Q So was the majority of your time in pre-op
5 or --

6 A Usually typically in the morning. But as it
7 became -- needed to break nurses in other areas, then I would,
8 of course, be told to go and relieve this person or that
9 person, to go ahead and have them get their lunches in.

10 Q When you were in the procedure room, what --
11 what was your -- what were your roles? What was your
12 responsibility?

13 A If the surgeon found any polyps or anything
14 like that he would biopsy that and I would have to chart down
15 where in the colon they were taken so that I could fill out
16 the Quest Laboratory, the pathology forms, and then I would
17 document the vital signs that I saw on the monitors, just
18 basically just try to fill out my paperwork before that
19 procedure was completed.

20 Q During the time you worked at the endoscopy
21 center, did you ever see the reuse of any equipment used in
22 the procedure rooms?

23 A No, I did not.

24 Q You also worked in post-op?

25 A That's correct.

1 Q And what were your responsibilities in
2 post-op?

3 A I would receive the patient after their
4 procedure. They would be placed on a monitor, observed for
5 half an hour. If after a half an hour their vital signs were
6 stable, they would be escorted to a bathroom where they were
7 given their clothes to change. If -- and then they were
8 escorted from that point over to the discharge area.

9 Q Now, when you were working in pre-op, did you
10 ever have the CRNAs come out and interview patients before
11 their procedures?

12 A I don't recall.

13 Q Okay. I mean, you don't remember that at all,
14 or you don't recall that occurring?

15 A They may have. It's just so busy. It's hard
16 to say who was talking to who at what time because you're
17 focused on that one patient. Once you get them squared away,
18 you move on to your next patient to pre-op and you just try to
19 keep pace with as many of those patients that were coming back
20 as best you can.

21 Q Were patients moving, from your observation,
22 were patients moving through pre-op pretty quickly?

23 A I would say so.

24 Q Okay. Were they sitting there for half hour
25 periods at a time, or less time than that in your

1 recollection?

2 A Half an hour or more.

3 Q Okay. When -- when you were working in
4 recovery, I assume your responsibility was to make sure that
5 patients were coming out of the procedure okay?

6 A Yes.

7 Q Did you ever have a doctor come out and check
8 on the patient?

9 A I can't say that I have.

10 Q Okay. How about a CRNA? Did you ever see
11 that happen?

12 A I can't say that.

13 Q Okay. Do you know what pre-charting is?

14 A Yes, I do.

15 Q What is that?

16 A That's filling in information on a patient's
17 chart before they either arrive in your area or you've taken a
18 set of vital signs or you've even had a chance to assess the
19 patient.

20 Q In nursing school what is taught to you
21 regarding pre-charting?

22 A You chart what you see and what you do when
23 you do it.

24 Q So you're not supposed to pre-chart?

25 A Correct.

1 Q Were you -- when you worked at the endoscopy
2 center, were you trained by anyone to pre-chart?

3 A I was trained by Janine Drury to do that.

4 Q Okay. And would that include the times and
5 everything?

6 A Yes.

7 Q Before -- before those events occurred?

8 A Correct.

9 Q And so on the -- I know you were there very
10 briefly, but were there times that you actually pre-charted?

11 A Probably.

12 Q Now, you -- you were there a very, very brief
13 amount of time. Do you remember the CDC coming into the
14 center and observing?

15 A Yes.

16 Q And if I represented to you that was around
17 January the 8th, does that comport with your recollection?

18 A Somewhere around after January 2nd, I believe.

19 Q Okay. And when they came in, did you -- did
20 you see -- strike that, better question. When they came in,
21 did they watch you work in any part of the facility?

22 A Yes.

23 Q Where did they watch you? Where were you when
24 they observed you?

25 A I was in pre-op and also in recovery.

1 Q Okay. And so they would have observed your
2 practices in those two areas?

3 A Yes.

4 Q Do you recall how long it was that they
5 observed you?

6 A Maybe 15 minutes at a time.

7 Q While -- while you were at the endoscopy
8 center, did you ever work with -- with Dr. Desai?

9 A No.

10 Q Never in the procedure room with him?

11 A No.

12 Q Okay. Did you ever hear a conversation about
13 syringes involving Dr. Desai?

14 A Yes.

15 Q Can you give us the time frame on when that
16 conversation occurred to the best of your recollection?

17 A I would have to say on -- before -- it was
18 before the end of the year.

19 Q So before -- before the CDC and obviously
20 after you're employed, so sometime towards the end of
21 December --

22 A Correct.

23 Q -- of 2007? Where -- where did this
24 conversation take place?

25 A There is an area between one of the procedure

1 rooms and the pre-op room which is no further than five feet
2 in front of me.

3 Q And was the conversation between yourself and
4 Dr. Desai?

5 A No, it wasn't.

6 Q Who -- who was in the conversation?

7 A It was between Dr. Desai and Dr. Carrol.

8 Q And what did you hear Dr. Desai say?

9 A I heard him say that -- discussing the amount
10 of the price of syringes and that, you know, staff should be
11 -- should try to minimize the amount of supplies used during
12 patient care.

13 Q And was it a lengthy conversation or did you
14 just hear those couple comments?

15 A Just those couple of comments, and they just
16 end up walking away from me at that point.

17 Q And I assume you didn't follow along?

18 A No, I've got other things to do.

19 Q Thank you, sir.

20 MS. WECKERLY: I'll pass the witness, Your Honor.

21 THE COURT: All right. Cross.

22 CROSS-EXAMINATION

23 BY MR. SANTACROCE:

24 Q Good afternoon, sir.

25 A Good afternoon.

1 Q I represent Ron Lakeman sitting back there.
2 You don't know Ron, do you?

3 A I can't say that I do.

4 Q Okay. You were employed at the end of
5 December at the clinic; correct?

6 A Correct.

7 Q And I'll represent to you that he left
8 employment in October. So you don't recall him coming back at
9 any time and working with him, do you?

10 A I can't say that I do.

11 Q And all of the procedures that you talked
12 about were procedures that were employed at the clinic from
13 December 26th or 27th until the clinic closed; correct?

14 A Correct.

15 Q You have no knowledge or did not see anything
16 firsthand prior to that time period, and specifically
17 September 21, 2007, or July 25, 2007?

18 A No, sir.

19 Q You talked about when you worked in the pre-op
20 area that you would flush every heplock; correct?

21 A Correct.

22 Q And you would do that with saline?

23 A Yes.

24 Q And when you first got there you would use
25 multi -- you would use saline on multiple patients; correct?

1 A I would use a multi-dose saline bottle, but I
2 didn't ever practice the -- I never practiced that way of
3 using a multi-dose vial on the same -- on different patients.

4 Q Okay.

5 A That's just not my practice.

6 Q Okay. But you can't speak for what others did
7 prior to you getting there, can you?

8 A No, I can't.

9 Q All we can tell from you is that there was
10 multi-use saline in the pre-op area and you didn't use that on
11 more than one patient with the same needle and syringes;
12 correct?

13 A Yes, sir.

14 Q Were there other RNs in the pre-op area when
15 you were there?

16 A Yes, there were.

17 Q And who were they?

18 A That would be Janine Drury and on occasion
19 Jeff Krueger.

20 Q Okay. And did you ever witness them flushing
21 heplocks?

22 A Yes, I did.

23 Q Would they use the multi-dose vials as well?

24 A Yes, they would.

25 Q You testified that Janine Drury, I guess, sort

1 of mentored you when you got there; is that correct?

2 A That's correct.

3 Q You testified that she instructed you on
4 pre-charting?

5 A Yes, she did.

6 Q So if she was here testifying contrary to that
7 she'd be mistaken about pre-charting?

8 A Yeah.

9 Q I wasn't clear about the pre-op patients. Did
10 you say that they could possibly be in the pre-op area for a
11 half hour or more before they went to a procedure room?

12 A That's correct. That would be more so in the
13 afternoon times or maybe 10:00, 11:00 in the morning. That's
14 when things start to slow down --

15 Q Started to back up.

16 A -- and back up.

17 Q So when you administered a heplock and flushed
18 that heplock, they could be sitting in that room for a half
19 hour before they get called into your procedure room?

20 A Yes.

21 Q When you worked in the procedure rooms
22 themselves, you never saw propofol reused on multiple
23 patients, did you?

24 A No.

25 MR. SANTACROCE: That's all I have. Thank you.

1 THE COURT: Ms. Stanish.

2 CROSS-EXAMINATION

3 BY MS. STANISH:

4 Q Good afternoon.

5 A Good afternoon, Counselor.

6 Q My name is Margaret Stanish. I am counselor
7 to Dr. Desai. And how do I say your last name?

8 A It's Maanao.

9 Q Ma --

10 A Close enough. That's fine.

11 Q Clarify for me a couple things about the
12 pre-charting issue, okay? Let's start when you're in pre-op.
13 When you're doing the assessment when the patient first comes
14 in, do you recall writing a time for a pre-op assessment in
15 the chart?

16 A Yes.

17 Q What time would you use?

18 A The time that the patient was received by me.

19 Q And what would you do, would you look at your
20 watch?

21 A Or there was a clock similar to that one in
22 the pre-op room.

23 Q Okay. And when you're in the pre-op doing the
24 patient assessment, did you have -- have a quick time to
25 assess the patient?

1 A Yes.

2 Q And the -- let's move into the procedure room
3 now. What time did you use to denote the start time of the
4 procedure?

5 A Again, the time was taken off the clock.

6 Q And what time did you use to end the procedure
7 time?

8 A When the patient leaves the room.

9 Q And, again, you're taking it off the clock?

10 A Yes.

11 Q Is that something that Ms. -- is it Drury,
12 Janine Drury told you to do, or is that something you did just
13 because that's how you were trained?

14 A Well, that's how I was trained.

15 Q And when you're in the procedure room -- or,
16 I'm sorry, when you're in the recovery room, did you denote
17 the time that the patient -- well, what kinds of times did you
18 note, if any, when you were in the recovery room?

19 A The arrival time of the patient, and then of
20 course the portable monitors are hooked up to the patient and
21 the times are taken off of that to write down those vital
22 signs, and they're set for every five minutes.

23 Q Okay. So you would take the time from the
24 monitor?

25 A Yes.

1 Q And why would you use a monitor instead of a
2 watch or clock?

3 A Because the monitors are set for every five
4 minutes. They're set to go off and take vital signs every
5 five minutes.

6 Q Okay. And then you get a little strip with
7 the time on it?

8 A Right.

9 Q And that's what you would use to denote the
10 time in the chart?

11 A Yes.

12 Q Did you ever see anybody reuse a syringe in
13 the clinic?

14 A No.

15 Q Okay. I have nothing further. Thank you,
16 sir.

17 A You're welcome.

18 THE COURT: Any redirect?

19 MS. WECKERLY: No redirect.

20 THE COURT: Any juror questions for the witness? No
21 juror questions.

22 All right. Sir, thank you for your testimony.
23 Please don't discuss your testimony with anyone else who may
24 be a witness in this case.

25 THE WITNESS: Yes, ma'am.

1 THE COURT: Thank you and you are excused.

2 State, call your next witness.

3 MS. WECKERLY: Can we approach?

4 THE COURT: Sure.

5 (Off-record bench conference.)

6 THE COURT: All right. Ladies and gentlemen,
7 apparently that's all the witnesses that were scheduled for
8 today, so we are going to go ahead and take our evening
9 recess.

10 During the evening recess you are not to discuss the
11 case or anything relating to the case with each other or with
12 anyone else. You're not to read, watch, or listen to any
13 reports of or commentaries on this case, any person or subject
14 matter relating to the case. Do not do any independent
15 research by way of the internet, or any other medium, and
16 please do not form or express an opinion on the trial. We'll
17 reconvene tomorrow morning at 9:00 a.m. And please place your
18 notepads in your chairs and follow the bailiff through the
19 rear door.

20 (Jury recessed at 3:42 p.m.)

21 THE COURT: Okay. On scheduling, tomorrow one of
22 the jurors has a graduation at 1:15.

23 MS. STANISH: First grade?

24 THE COURT: No, it's actually eighth grade.

25 MS. STANISH: Oh, okay.

IN THE SUPREME COURT OF THE STATE OF NEVADA

Electronically Filed
SEP 02 2014 09:08 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

DIPAK KANTILAL DESAI,)	CASE NO. 64591
)	
Appellant,)	
)	
vs.)	
)	
THE STATE OF NEVADA,)	
)	
Respondent.)	
_____)	

APPELLANT'S APPENDIX VOLUME 23

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1 And once they leave the room, correct me if I'm wrong, but my
2 understanding was you said you really didn't have time to go
3 see them in recovery.

4 A Yeah, I -- yes.

5 Q Okay. So your time with them would end after
6 they left the procedure room?

7 A But if there was a problem, the nurses that
8 were in the recovery area would come get one of us to come
9 take care of that patient.

10 Q Okay. But your normal face time with the
11 patient would end after they left the procedure room; is
12 that --

13 A Correct.

14 Q Okay. Now, do you remember any special
15 consideration for patients who had PacifiCare insurance?

16 A I think they were supposed to be 31 minutes
17 for the procedure itself.

18 Q Okay. And why -- why -- was that? What's
19 your understanding of that?

20 A I think it was that the patient would have to
21 pay for their anesthesia if it wasn't at 31 minutes.

22 Q And did you only do that for PacifiCare
23 patients?

24 A I tried initially, but then it just got to be
25 too difficult because I didn't have time to find out who had

1 what insurance.

2 Q Okay. So was some of the information you put
3 on the anesthesia time wrong?

4 A Probably, yes.

5 Q Okay. And you knew that form was going to
6 insurance companies because you knew the thing about
7 PacifiCare; right?

8 A But I understood that it was a flat fee for
9 anesthesia --

10 Q Okay.

11 A -- so it really didn't matter what time was on
12 there.

13 Q Well, actually, that's my question. If your
14 understanding was that it was a flat fee, why would PacifiCare
15 patients have to show a time of over 31 minutes?

16 A Because PacifiCare was different than the
17 other insurances.

18 Q So are you saying that it's PacifiCare that
19 wasn't a flat fee, or they all were a flat fee?

20 A The way I understood it, PacifiCare wasn't,
21 that's why they wanted the 31 minutes.

22 Q Okay. And other than PacifiCare, though, you
23 started putting over 30 minutes on people that didn't have
24 PacifiCare insurance?

25 A Correct.

1 Q And was that correct? Was the time correct
2 that you put on those forms?
3 A No.
4 Q And was it longer than those procedures were?
5 A It could have been, yes.
6 Q Okay. And so did you actually put vital signs
7 that didn't exist?
8 A I could have.
9 Q Okay. And you knew that that form was going
10 to an insurance company; right?
11 A No, I really didn't.
12 Q You didn't know it was for billing?
13 A No, I knew the time was for billing, yes.
14 Q Okay. So --
15 A But I didn't think that it really mattered
16 because I really thought that it was just a flat fee --
17 Q Okay.
18 A -- except for PacifiCare?
19 Q Why did you bother to put the false vital
20 signs?
21 A To make it look good.
22 Q Why would you need to make it look good?
23 A Just because.
24 Q To make it look like the patient was in there
25 and you were taking vitals when you weren't?

1 A Probably.

2 Q Was that what you were trained to do?

3 A No.

4 Q Do you remember anyone telling you to do it
5 that way?

6 A No, I don't.

7 Q Do you remember telling the police, this is on
8 page 12, that Ron Lakeman told you to do it that way?

9 A As far as the time, yes.

10 Q Okay. So you actually do remember Ron Lakeman
11 telling you to do over 30?

12 A Because it -- because it was the way it was
13 done, that PacifiCare's had to be 31 minutes.

14 Q Right. Not just PacifiCare. Did he tell you
15 that that was the way the timing was supposed to be done?

16 A Not for everybody, no.

17 Q So he just limited it, in your recollection,
18 to PacifiCare?

19 A Correct.

20 Q And you just took it upon yourself to do
21 everyone else that way?

22 A Just because there wasn't enough time in the
23 day to check everybody's insurance.

24 Q Okay. And in that 10 minutes that you were
25 spending in pre-op doing the pre-anesthesia evaluation you

1 didn't have time to ask what the insurance was?

2 A That was the least of my problems.

3 Q Okay. Did Dr. Desai ever tell you about
4 billing 31 minutes or --

5 A Yes.

6 Q What did he say about that?

7 A That it was -- that it should be billed 31
8 minutes.

9 Q Did he ever look at your anesthesia records to
10 see --

11 A Yes, he did.

12 Q -- that you were billing 31 minutes?

13 A Yes, he did.

14 Q Did the policy of billing 31 minutes ever
15 change in your employment there?

16 A After the whole thing with the CDC and stuff,
17 yes.

18 Q And then what happened? How did it change?

19 A We were told to bill for the time that the
20 patient was in the room.

21 MS. WECKERLY: Court's indulgence.

22 I'll pass the witness, Your Honor.

23 THE COURT: All right. Let's get started on cross.
24 Who would like to go first?

25 MR. WRIGHT: I'm going to, but can we take a brief

1 recess.

2 THE COURT: All right. Let me see counsel at the
3 bench, please.

4 (Off-record bench conference.)

5 THE COURT: Ladies and gentlemen, we're just going
6 to take a quick like 10 minute recess. And during the recess
7 you're reminded not to discuss the case or anything relating
8 to the case with each other or with anyone else, not to read,
9 watching, or listen to any reports of or commentaries on the
10 case, person or subject matter relating to the case, and
11 please not to form or express an opinion on the trial.
12 Notepads in your chairs. Follow the bailiff out the double
13 doors this time.

14 (Court recessed at 11:24 a.m., until 11:36 a.m.)

15 (In the presence of the jury.)

16 THE COURT: All right. Court is now back in
17 session.

18 And Mr. Wright, are you ready to proceed with your
19 cross-examination?

20 MR. WRIGHT: Yes, Your Honor.

21 THE COURT: All right.

22 CROSS-EXAMINATION

23 BY MR. WRIGHT:

24 Q Ma'am, my name is Richard Wright. I represent
25 Dr. Desai. You -- you testified about transcripts you have

1 looked at because you were previously interviewed. You
2 brought those with you --
3 A Yes, sir.
4 Q -- correct? How many -- how many of those do
5 you have?
6 A Two.
7 Q Two? Do you -- do you understand -- which two
8 do you have? Do you have them there?
9 A I have one from the FBI and one that was a
10 two-day thing with the police.
11 Q Okay. You have an FBI interview, summary of
12 an interview; correct?
13 A Yes, sir.
14 Q And that's August 14, 2008?
15 A That's the date on there, yeah.
16 Q Yeah, the date on there.
17 A Uh-huh.
18 Q And you also have a transcript, and the date
19 on that is October 14, 2008?
20 A Yeah, and I think it's continued on the 15th.
21 Q Okay. October 14th and 15th.
22 A Yes, sir.
23 Q Two days with police. And, in fact, you were
24 interviewed by the FBI; correct?
25 A Yes, sir.

1 Q Okay. And you were interviewed by the police
2 over two days?

3 A Yes, sir.

4 Q Okay. And in addition to that you also went
5 before the Grand Jury --

6 A Yes, sir.

7 Q -- correct? And that -- do you recall when in
8 the chronology you went to the Grand Jury?

9 A That was before the FBI and the police.

10 Q Okay. And did they -- were you provided a
11 transcript of your Grand Jury testimony?

12 A No, sir.

13 Q Okay. Your -- your Grand Jury testimony
14 transcript shows July 17, 2008.

15 A Okay.

16 Q So we have Grand Jury, July 2008; FBI, August
17 2008; police, two days, October 2008. Do you think that's a
18 correct chronology?

19 A Yeah, I guess.

20 Q Okay. Now, at -- at that time you were
21 unemployed?

22 A Yes, sir.

23 Q Okay. And you had worked up until the closing
24 of the clinic; correct?

25 A Yes, sir.

1 Q And then did -- did you -- did you surrender
2 your CRNA license --

3 A Yes, we --

4 Q -- when the other --

5 A -- voluntarily surrendered them.

6 Q Okay. And you voluntary -- let me finish the
7 question so that --

8 A Oh, I'm sorry.

9 Q -- we get a good record of it. Did you
10 surrender at the same time all the other CRNAs turned in their
11 license? Do you know?

12 A Yes, sir.

13 Q Okay. And it was at the same time?

14 A Yes, sir.

15 Q Okay. And you -- you had an attorney that was
16 hired to represent you all, Tracy Singh? Did you know that?

17 A Yes, sir.

18 Q Okay. And you followed her advice to turn in
19 your license?

20 A Yes, sir.

21 Q Okay. And thereafter you didn't practice any
22 further --

23 A Correct.

24 Q -- CRNA-ing?

25 A Or nursing.

1 Q Or nursing. Okay. And I want to go back now
2 to your career. Okay?

3 A Yes, sir.

4 Q Starting back in where did you go to nursing
5 school?

6 A Cooper Hospital in Camden.

7 Q Okay. In Camden New Jersey.

8 A Correct.

9 Q And is that -- how -- how long of nursing
10 school?

11 A It was three years.

12 Q Three years? And you got out of nursing
13 school when?

14 A 1967.

15 Q Okay. And did you immediately go to CRNA
16 school?

17 A No, sir.

18 Q Okay. You went into nursing --

19 A Yes.

20 Q -- is that correct? At what point in time did
21 you go back and study anesthesia?

22 A I believe it was 1969.

23 Q Okay. So you worked a couple years as a
24 nurse?

25 A Yes, I worked nights in intensive care.

1 Q Okay. And then did you go back to nursing
2 school to become a CRNA?

3 A I went to Nazareth Hospital School of
4 Anesthesia for Nurses in Northeast Philadelphia.

5 Q Okay. How long is that?

6 A It was 18 months at the time.

7 Q Okay. And you graduated?

8 A Yes, sir.

9 Q Okay. And to become a CRNA do you take tests,
10 a board?

11 A Boarded.

12 Q Boarded?

13 A Uh-huh.

14 Q Okay. And what does that mean?

15 A That means you have satisfied the requirements
16 of the American Association of Nurse Anesthetists to be a
17 nurse anesthetist, a CRNA.

18 Q Okay. And then you went to work as a CRNA in
19 the New Jersey area?

20 A Yes, sir.

21 Q Okay. And tell -- run through your CRNA
22 career.

23 A I worked at Helene Fuld Hospital for probably
24 about five or six years. And then I went to Hamilton Hospital
25 for another maybe five years. And then I came back into the

1 city of Trenton and worked at Mercer Hospital, and then that
2 became Mercer Medical Center and then it combined with Helene
3 Fuld. I was there for 18 years.

4 Q Okay. And did -- did you -- was that your
5 last job in New Jersey?

6 A That was my last job in New Jersey.

7 Q Okay. And then you came out to Las Vegas?

8 A Correct.

9 Q Okay. And that was in -- we know you started
10 August 2005 at the clinic --

11 A Yes, sir.

12 Q -- correct? And you saw an advertisement for
13 a nurse anesthetist in your --

14 A In the AANA Journal.

15 Q Okay. IN the AA --

16 A Bulletin. Bulletin. The American Association
17 of Nurse Anesthetist.

18 Q Okay.

19 A Yeah. We have -- we have little things --
20 they have the classified ads in the back.

21 Q Okay.

22 A And it sounded like a good sounding job. And
23 I wanted to get my husband out of New Jersey because it was
24 too cold and he had a very, very bad winter. So we liked Las
25 Vegas and it was warm.

1 Q Okay. You just held up -- I'm going to
2 describe for the record, you held up a --

3 A Yeah, this is a page. This is the -- the next
4 one. This was not the one -- this was the one that Mr.
5 Sagendorf was hired from, but it was basically the same
6 advertisement.

7 Q Okay. And this -- this is a page out of the
8 AANA news bulletin --

9 A Yes.

10 Q -- that you looked at here on the --

11 A Yes, sir.

12 Q Okay. And --

13 A It's right there under Nevada. It sounded
14 like a good job.

15 Q This -- this is a May 2007.

16 A Yes, that's what I said. That's probably the
17 one that Mr. Sagendorf was hired from, but it was basically
18 the same ad.

19 Q Okay. There was an ad run -- and this is a
20 journal you receive monthly?

21 A With your membership, yes.

22 Q Okay. And you've been a member all along
23 throughout your career?

24 A Yes, sir.

25 Q Okay. And the --

1 A Until 2008.

2 Q When the clinics closed and you turned in your
3 license?

4 A Correct.

5 MR. WRIGHT: Can you mark that?

6 THE COURT: Any objection to the ad in the nursing
7 magazine? Are you shaking your head no, Mr. Staudaher?

8 MR. WRIGHT: It's your --

9 MR. STAUDAHER: No.

10 MS. WECKERLY: No objection.

11 MR. STAUDAHER: No.

12 THE COURT: Okay.

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

14 MR. WRIGHT: Just because she brought it and we're
15 talking about it, so --

16 THE COURT: That's fine. They don't object. So
17 it'll be Desai next in order.

18 Which is, for the record?

19 THE CLERK: L1.

20 THE COURT: L1.

21 (Defendant's Exhibit L1 admitted.)

22 BY MR. WRIGHT:

23 Q Even though that's a later edition, that's the
24 same ad you were responding to back in 2005?

25 A Correct.

1 Q Okay. And when -- when you responded, if you
2 -- you started in August 2005, but you were interviewed prior
3 to that?

4 A I was interviewed in June, I think.

5 Q Okay. And you -- you fly out or you and your
6 husband?

7 A Both of us flew out.

8 Q Okay. And interviewed by Tonya Rushing?

9 A Yes, sir.

10 Q Okay. And another lady you don't recall?

11 A Yes.

12 Q Okay. And meet any of the doctors at that
13 time?

14 A I met Dr. Carrol.

15 Q Dr. Carrol?

16 A And Ron Lakeman.

17 Q And Ron Lakeman.

18 A Uh-huh.

19 Q Okay. And were you hired -- were you offered
20 a job on the spot?

21 A Yes, I was.

22 Q Okay. And then even though that's June it
23 took until August to get your licensing in Nevada; is that
24 correct?

25 A Correct.

1 Q Okay. And there was a delay in there because
2 of your fingerprints or something?

3 A Correct.

4 Q Okay. So when -- when you started work at the
5 clinic, Shadow Lane, okay, you were starting as a full time
6 CRNA?

7 A Correct.

8 Q Okay. So I think you said Keith Mathahs, you
9 were replacing him?

10 A That's what I understood, yes.

11 Q Okay. And he was retiring from full time
12 CRNA --

13 A Yes, sir.

14 Q -- correct? But he -- he -- he still remained
15 vacations and call back?

16 A Yes, sir.

17 Q Because you -- you continued to work with
18 Keith intermittently up until the clinic closed?

19 A Very rarely, yes.

20 Q Okay. Rarely you worked with him?

21 A Correct.

22 Q Okay. And by with him, I mean he had a shift
23 at the same time you did and --

24 A He had one room and I had the other.

25 Q Okay. And you -- you would mainly work -- the

1 majority of your time, you were there two and a half years;
2 correct?

3 A Yeah.

4 Q Approximately?

5 A Approximately.

6 Q Okay. The majority of the time you would have
7 been working Ron Lakeman in the other room?

8 A Yeah, until Ron left. Right.

9 Q Okay. And he left in the fall of 2007. Do
10 you recall that?

11 A I don't recall when he left, no.

12 Q Okay. Now, you were -- you, when you were
13 hired, already had experience with gastroenterology; correct?

14 A Yes, sir.

15 Q Because you had worked in -- you had worked
16 where there were endoscopies and colonoscopies done; correct?

17 A Yes, sir.

18 Q And you worked with propofol?

19 A Yes, sir.

20 Q And you were very experienced with it?

21 A Somewhat experienced.

22 Q Okay.

23 A Yes.

24 Q Somewhat like you had used it frequently?

25 A We used it a lot with same day stay -- same

1 day stay patients and patients that wouldn't have a lot of
2 post-operative pain. Because patients that would have pain,
3 our nurses in recovery room would just turn around and give
4 morphine to. And, you know, why use propofol which is
5 probably four times as expensive as pentathal if they were
6 just going to get slammed with a narcotic post-operatively?
7 So when I worked endoscopies and when I did some other things
8 like smaller surgeries that were supplemented with local
9 anesthetics like arthroscopies and that kind of stuff, I would
10 use propofol, yes.

11 Q Okay. Because basically with those type of
12 procedures, when you've had it you're going to wake up
13 relatively pain free from the procedure; correct?

14 A Yeah, it's -- it's a procedure that would not
15 have a lot of pain associated with it. Yes.

16 Q Okay. So when -- when you came and started
17 work at the clinic, August 2005, you -- you started doing
18 procedures and you started working in one of the rooms;
19 correct?

20 A Yes, sir.

21 Q Okay. And the -- you -- you stated that your
22 patient interview about half the time was done in the pre-op
23 area, and about half the time in the procedure room; is that
24 correct?

25 A Correct.

1 Q Okay. Run through the patient interview
2 process.

3 A Start off with asking if they had any problems
4 with their heart or their lungs. It was all basically on the
5 back of the anesthesia record was like a mini physical kind of
6 thing. And you would cover all the systems, ask them if they
7 had an problems with anesthesia in the past, if their family
8 had had any problems with anesthesia because some of the
9 things are familial.

10 Q Okay. And you would do all of that with every
11 patient whether it was out in the pre-op area or in the
12 procedure room before the procedure started?

13 A One way or the other, yes, sir.

14 Q Okay. And if it was done in the procedure
15 room, that would be a situation where you didn't have time to
16 do it in pre-opinion, but the patient is brought in and you
17 interview them before the procedure begins?

18 A Yes, sir.

19 Q Okay. And the -- did you do that with every
20 patient?

21 A Yes, sir.

22 Q Okay. I mean, it never got so busy that you
23 just like skipped interviews and things?

24 A No.

25 Q Okay. The -- you've -- you've indicated that

1 the practice, the clinic patient load escalated; correct?

2 A Yes, sir.

3 Q Okay. And you started off, you doing in your
4 room, what, maybe 25 patients?

5 A Maybe 20, 25, yeah.

6 Q Okay. And then it got up to around 30?

7 A Yes, sir.

8 Q Is that correct?

9 A And then it kept on going.

10 Q Okay. How far did it go?

11 A I think there's a couple of days like to the
12 end of the thing where we were doing -- there were like 80
13 patients on the schedule for the day.

14 Q Okay. All in the schedule?

15 A Correct.

16 Q Okay. And the -- some percentage of them may
17 not come?

18 A And there would be some percentage that would
19 be added as well.

20 Q Okay. And so do you know what the highest
21 ever done was in the records for the clinic?

22 A I'd say in the 80s.

23 Q Okay. Did the district attorney or the police
24 show you any records showing there was never a day where it
25 was in the 80s?

1 A No.

2 Q Okay. Now, you were asked some questions by
3 Ms. Weckerly, and she was asking you about you doing 60 or 70
4 patients.

5 A The clinic doing them.

6 Q Okay. But you would do one half of those;
7 correct?

8 A Yes, sir.

9 Q I mean, you weren't doing 60 or 70 patients?

10 A No.

11 Q Okay. Now, when it's time to administer the
12 propofol -- I want to go through your process. And did your
13 process remain the same -- your practice and procedure, okay.

14 A Uh-huh.

15 Q Did it remain the same from August 2008 until
16 the CDC came in January 2008?

17 A Yes, sir.

18 Q Okay. Did I say August 2005? That's what I
19 mean.

20 A I think so.

21 Q Okay. I'm getting mixed up here. The -- your
22 procedure remained the same, your method of administering
23 propofol, and then it changed on propofol multiuse after the
24 CDC came; is that --

25 A Correct.

1 Q -- correct?

2 A Yes, sir.

3 Q Okay. So before the CDC comes, tell me what
4 would you do first thing in the morning?

5 A We'd open syringes and put the syringes -- put
6 the needles on the syringes. Draw up some lidocaine in some
7 of them. Go over to the procedure room that had the locked
8 closet, get flats of propofol, bring one to each room, and
9 draw up propofol in some of the syringes that had the
10 lidocaine in it and some of the syringes that didn't have
11 lidocaine in it.

12 Q Okay. Now, assuming -- were you the first --
13 normally scheduled to be the first CRNA there?

14 A I was one of the first.

15 Q Okay.

16 A There were two of us that opened in the
17 morning.

18 Q Okay. And each of you would be there and one
19 of you or both of you would go get the propofol?

20 A No, one person would go do it.

21 Q Okay. Go check it out. There was a checkout
22 procedure; correct? Did you sign it out?

23 A I don't -- I don't really -- I think we signed
24 out by the flats. I'm not really sure.

25 Q Okay. And a flat would be like 25 bottles of

1 20s?

2 A Correct.

3 Q Okay. And so you would get your flat, 25
4 bottles in a flat container; correct?

5 A Yeah, a little cardboard bottom.

6 Q Okay. And take it to your room and the other
7 CRNA would take a flat to his room?

8 A Sometimes. And sometimes the one person would
9 just take out two --

10 Q Okay.

11 A -- and leave the one in the one room and go to
12 the other room.

13 Q Okay. And the -- the propofol, it -- other
14 than end of the day, last patient, the propofol would stay in
15 each procedure room; correct?

16 A As far as I remember, yes.

17 Q Okay. The -- and so you would get out needles
18 and syringes, and they're packaged separately; correct?

19 A Correct.

20 Q Put -- put together -- put the needle on the
21 syringe; right?

22 A Yes, sir.

23 Q Okay. And then you would preload, you'd put
24 lidocaine in some. Like, what, 1 cc?

25 A One to two, yeah.

1 Q Okay. And then you'd fill the balance with
2 propofol?

3 A Correct.

4 Q Okay. So it's like 10 ccs of propofol.

5 A Between eight and ten, right.

6 Q Eight and ten. And then you would fill
7 another stack of needles and syringes with just propofol.

8 A Correct.

9 Q Okay. And -- and you would -- if you used --
10 if you filled 10 syringes you would have used like five vials
11 of 10; correct?

12 A Yeah, I guess that would be it.

13 Q Well --

14 A Yeah.

15 Q Okay. And you -- you would use each of those
16 up; correct?

17 A Yes, sir.

18 Q Okay. So it's empty and you toss them out?

19 A Yes.

20 Q Okay. And so then the patients start coming
21 in. The first patient comes in. You -- you may have
22 pre-interviewed the patient already, right, in the pre-op
23 area?

24 A I may have or I may talk to them in the room.

25 Q Okay. Either way, first patient comes in,

1 okay.

2 A Yes, sir.

3 Q Is the heplock in?

4 A It might be or it might not be.

5 Q Okay. And if it's not, you put it in?

6 A Yes, sir.

7 Q Okay. And if it's in, that means a nurse did
8 it out in pre-op; correct?

9 A Yes.

10 Q Okay. So the patient is there, doctor comes
11 in, tech is there, nurse is there; correct?

12 A Yeah.

13 Q Okay. Now, what is your practice? What do
14 you then do when you're ready to put the patient to sleep?

15 A Put the monitors on the patient, turn the
16 patient on their side, get a baseline reading on all of the
17 monitors, and give the patient propofol and --

18 Q Okay.

19 A -- monitor them while the procedure is being
20 done.

21 Q Okay. And what's get a baseline reading on
22 the monitors mean?

23 A Get a blood pressure recording, make sure I
24 know what the EKG says because if the -- if the stickies -- if
25 the electrodes aren't in the right place you may not get a

1 good tracing. Make sure that the pulse oximeter is reading
2 right.

3 Q Okay.

4 A Make sure you know where you stand before you
5 give that patient any medication.

6 Q Okay. So the -- everything is totally hooked
7 up so that you can fully monitor the patient the entire time
8 of the procedure?

9 A Correct.

10 Q Okay. And then that -- that everything, the
11 patient is okay and hooked up, and then your -- your first
12 injection, you -- you put it in the heplock; right?

13 A Yes, sir.

14 Q The needle and syringe. Do you clean the
15 little heplock?

16 A Sure.

17 Q Okay. And then do you put the full -- you
18 pick up one with lidocaine and propofol, okay.

19 A Yes, sir.

20 Q Do you inject the full 10 ccs?

21 A Depends on how big the patient is. It depends
22 on -- you know, you're -- you're talking to them while you're
23 doing this and you're saying, you know, it may burn a little
24 bit while you're going off to sleep, just let yourself relax,
25 and you watch the patient.

1 Q Okay.

2 A And when the patient starts to flutter their
3 eyes or their eyes close, then you know that they're pretty
4 well asleep.

5 Q Okay. And -- and you are going to, on the
6 charts, what you chart, you're going to keep track of the
7 quantity of propofol administered; correct?

8 A Yes, sir.

9 Q And you're going to have the total and the
10 number of doses; is that correct?

11 A Yes.

12 Q Okay. So if at the beginning, assuming you --
13 what, do you slowly give the full thing, assuming you were
14 going to give 10 ccs?

15 A Yes, slowly.

16 Q Okay. You just slowly -- the patient goes to
17 sleep, and then you like jot down 10 ccs, check that or write
18 it down?

19 A Or -- or 2 ccs of lidocaine and 10 of
20 propofol. It depends on what was in the syringe, yes.

21 Q Okay. But you chart that?

22 A Yes, sir.

23 Q Okay. And then we -- we've -- I'm asking you
24 this methodically because we've had different CRNAs explaining
25 different procedures they utilized. Okay?

1 A Okay.

2 Q So after your done with that first -- and I'm
3 presuming you gave the full syringe, okay.

4 A Okay.

5 Q And let's make it a colonoscopy.

6 A Okay.

7 Q What do you do with that syringe?

8 A It goes in the red box.

9 Q The red box?

10 A Uh-huh.

11 Q That's the Sharps container?

12 A Yes, sir.

13 Q Okay. And then you pick -- you pick up
14 another and insert it, or do you wait?

15 A Probably insert another syringe.

16 Q Okay. So you would be ready if more propofol
17 is needed?

18 A Correct.

19 Q And this would just be no lidocaine, just the
20 -- another syringe of propofol?

21 A Yes, sir.

22 Q Okay. And then you are watching the patient,
23 you're watching the monitor or their -- what do you call those
24 -- what are you watching?

25 A Monitors and the patient.

1 Q Okay. And if -- if more is needed, you have
2 the needle and syringe in the heplock, and you would, if more
3 is needed, you would give some dosage; correct?

4 A Yes, sir.

5 Q And you might give 5 ccs?

6 A Yes.

7 Q Okay. And if you did, you would then chart
8 that?

9 A Yes.

10 Q And if -- if you ended up giving another 5,
11 you would chart that?

12 A Yes, sir.

13 Q And if the procedure was -- goes on, you --
14 you've stated for colonoscopy you might use two, sometimes
15 three syringes; correct?

16 A Correct.

17 Q Okay. So assuming on this you used the second
18 one fully, okay.

19 A Okay.

20 Q Do you then toss that one?

21 A Yes, sir.

22 Q Okay. Now, the -- say the patient needs more.
23 You pick up another needle and syringe full of propofol --

24 A Yes, sir.

25 Q -- correct? Put it in the heplock, patient

1 needs more, you'd give whatever additional dosage is needed.

2 A Yes, sir.

3 Q Okay. Now, in that situation, suppose you had
4 given 150, 50, 50. So that's 250, or 25 ccs, okay.

5 A Uh-huh.

6 Q Third -- third syringe, patient is done,
7 procedure is done. You still have propofol in the third
8 syringe; correct?

9 A Uh-huh.

10 Q What do you do with that?

11 A Usually squirt it out in the trash can.

12 Q Okay.

13 A And then put the needle and syringe in the --
14 in the Sharps container.

15 Q Okay. You would not use that on any other
16 patient?

17 A No, sir.

18 Q You wouldn't put it back in the vial or
19 something?

20 A No, sir.

21 Q Okay. And you -- you testified on direct
22 examination with Ms. Weckerly that there were occasions when
23 you would -- like let's take the hypothetical. You've used
24 the second syringe so that the patient has received 20 ccs,
25 okay.

1 A Okay.

2 Q And suppose there's a little bit left still in
3 the propofol vial, okay.

4 A Okay.

5 Q Propofol vial holds more than 20; correct?

6 A A little bit more, yeah.

7 Q Okay. I mean, it's 22?

8 A Whatever.

9 Q Okay. So suppose the patient just needs a
10 little bit more propofol. Rather than picking up a new fully
11 loaded 10 cc propofol, you may take that same needle and
12 syringe that's used on the patient for the second time, go
13 into the vial and get what's left, and inject that into the
14 patient; correct?

15 A Yes, sir.

16 Q Okay. And in doing that, that is a fully,
17 totally clean aseptic procedure; correct?

18 A Well, yeah, because then you're going to toss
19 that bottle. You're not going to use that on another patient.

20 Q Okay.

21 A You wipe the top of the -- the rubber -- the
22 stopper off with alcohol before you put the needle through.

23 Q Okay. And so -- and -- and reusing the needle
24 and syringe --

25 A The inside is sterile.

1 Q -- same patient -- right. And there -- you
2 have on occasion done that; correct?

3 A Yes, sir. The inside is sterile. The inside
4 of the syringe is sterile, the inside of the needle is
5 sterile, and the propofol is clean.

6 Q Okay. And -- and what is then done? The
7 propofol vial is tossed; right?

8 A Yes, sir.

9 Q And the needle and syringe?

10 A After the patient is injected, yes.

11 Q Okay. Now, same -- I -- I want to go -- same
12 process when you are using 50s, the big propofol vial.

13 A Yes, sir.

14 Q Okay. Did -- did you use the spike or the --

15 A Sometimes.

16 Q Did you use the spike?

17 A Sometimes.

18 Q Okay. And if you use the spike, that's a
19 device that you punch through the rubber; right?

20 A Yes, sir.

21 Q And allows you to draw propofol without having
22 to enter with the needle and syringe?

23 A Yeah, you just screw the syringe onto the
24 spike and draw it up --

25 Q Okay.

1 A -- into the syringe.

2 Q So if on a given morning you had 50s rather
3 than 20s, okay.

4 A Yes, sir.

5 Q You would take five syringes, hook each of
6 them onto the spike on the 50 propofol vial, and draw up five
7 syringes?

8 A One at a time, yes.

9 Q Right. One at a time. And then you would put
10 the needle on it and the cap on it and put them in the box?

11 A On the syringes; yes.

12 Q Okay. Now, you would be monitoring the
13 patient and determining if more propofol is needed, and your
14 monitoring of it means is the patient starting to come up,
15 wake up --

16 A Yes, sir.

17 Q -- right?

18 A Yes, sir.

19 Q Okay. And is that visibly looking at the
20 patient, or also looking at -- did the monitors change when
21 I'm starting to wake up?

22 A It can.

23 Q Okay.

24 A Your pulse rate will get faster.

25 Q Okay. So when I'm under the influence of

1 propofol, my pulse rate slows down normally?

2 A It's basically a general anesthetic, yes, sir.

3 Q I didn't hear you.

4 A It's a general anesthetic, yes.

5 Q Okay. Well, I'm not familiar with it. You
6 are. Okay. With a general anesthetic, it slows me down, all
7 of my -- my heartbeat?

8 A Yes, sir.

9 Q Okay. And -- and that's why it has to be
10 carefully monitored because you're slowing down my heartbeat;
11 right?

12 A Yes.

13 Q Okay. And as -- as more is needed, you -- you
14 are determining, the patient is starting to wake up, where is
15 the procedure, meaning is it almost done; correct?

16 A Yes, sir.

17 Q Okay. And you went through various
18 physicians, Carrol, Desai, Carrera, on your direct
19 examination. As you were going to give more propofol and the
20 physician says no more, I'm done, words to that effect;
21 correct?

22 A Or close to done, yes.

23 Q Pardon?

24 A Or close to done.

25 Q Okay. I'm close to done. And that -- and

1 that would be like code for you don't need anymore, I'm close
2 to done; right?

3 A Yeah.

4 Q Okay. And then you would go ahead and make
5 the judgment yourself; correct?

6 A Well, you're -- you're twisting that.

7 Q Okay. Well, I don't want to twist it.

8 A Because I would be watching the screen as
9 well. When you watch the screen you know how much scope is
10 there to go in or out or where are they with that.

11 Q Okay.

12 A And, you know, you're -- you're kind of --
13 you're watching the patient -- it's kind of like a whole area
14 that you're observing at the same time.

15 Q Okay.

16 A And if you see them playing with a polyp or a
17 little node kind of thing, you know they're not really on the
18 way out because you know they're going to put something in
19 there and either remove the polyp or burn the nodule,
20 whatever.

21 Q Okay. And so you being aware of all of the --
22 MR. STAUDAHNER: Could we approach for one moment,
23 please?

24 THE COURT: Sure.

25 (Off-record bench conference.)

1 THE COURT: Ladies and gentlemen, we're going to go
2 ahead and take our lunch break at this point. We'll be in
3 recess for the lunch break until 1:20.

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

13 And, ma'am, during the break, please don't discuss
14 your testimony with anybody else. Okay?

15 (Jury recessed at 12:14 p.m.)

16 THE COURT: All right. Ma'am, you're excused for
17 the lunch break.

18 THE WITNESS: Thank you.

19 (Court recessed at 12:15 p.m., until 1:23 p.m.)

20 (In the presence of the jury.)

21 THE COURT: All right. Court is now back in
22 session.

23 And, ma'am, of course you are still under oath.

24 Mr. Wright, you may resume your cross-examination.

25 BY MR. WRIGHT:

1 Q We -- on those occasions when physicians would
2 tell you no more, I'm about done during a procedure and you
3 determined that you believed more propofol was needed, you
4 would go ahead and give more propofol; correct?

5 A Yeah. It depended where I was looking at it
6 on the screen and what the patient was presenting me.

7 Q Okay. And despite what Carrol -- Dr. Carrol
8 or Dr. Carrera or Dr. Desai said, you would make your own
9 independent judgment; correct?

10 A Yes, sir.

11 Q Okay. And then you would give more propofol
12 if that was your judgment?

13 A Yes, sir.

14 Q Okay. And did any of them ever discipline you
15 for disobeying?

16 A No.

17 Q Okay. Now, CDC comes in January 2008, and you
18 were present at a time when evaluations and reviews were
19 taking place, observations; correct?

20 A Yeah.

21 Q Okay. Do you recall it?

22 A I don't actually remember them observing us.

23 Q Okay.

24 A They were floating all around the clinic.

25 They -- somebody drew our blood and asked us a whole bunch of

1 questions about our past medical history.

2 Q Okay. And --

3 A And then there was a summation with a bunch of
4 people sitting around the table and that was -- that is all I
5 really remember.

6 Q Okay. The -- do you remember that afterwards
7 certain changes were implemented in the clinic?

8 A Yes, sir.

9 Q Okay. And one of the changes would be no more
10 lidocaine; is that correct?

11 A Yeah, I guess that was probably one of them.

12 Q Okay. Well, do you recall it?

13 A No, I really don't.

14 Q Okay. Do you recall that no more multi-use of
15 propofol?

16 A Yes, sir.

17 Q Okay. And do you recall that 50s would no
18 longer be used?

19 A Yes, sir.

20 Q Until that time, 50s would be used for
21 multiple patients; correct?

22 A Yes.

23 Q Okay. And after the CDC is there, use only
24 20s; correct?

25 A Yes, sir.

1 Q And if it's not totally used up, discard it?
2 A Yes, sir.
3 Q Meaning the vial of propofol --
4 A Yes, sir.
5 Q -- correct? And any time you're going to
6 enter a vial of propofol, use a new needle and syringe?
7 A No.
8 Q No?
9 A No.
10 Q You don't recall that?
11 A No.
12 Q Okay. What do you recall?
13 A It was one patient, so why did it matter if we
14 were using the same syringe and needle?
15 Q Okay. And I don't know the answer to that.
16 A And that's what I told the inspector when they
17 were leaving. She asked me if I had ever reused needles and
18 syringes. And I said no, but now where we're using a 20 --
19 one patient, 20 ccs, that's it, there's no -- what -- what's
20 the sense in using another syringe?
21 Q Okay. Because --
22 A And she couldn't give me an answer, so --
23 Q Okay. And because -- and explain why that's
24 totally safe now that it's -- the rule is one 20 cc vial for a
25 patient, okay.

1 A Yes, sir.

2 Q Okay. And if I use simply one needle and
3 syringe for that one patient, and then throw away that needle
4 and syringe and the vial, that's totally safe; correct?

5 A But it's totally safe to redraw from that same
6 vial for that same patient.

7 Q Right. Is that what you're saying?

8 A Yes, sir.

9 Q Okay. And you -- you absolutely believe
10 that's totally safe; correct?

11 A Yes, sir.

12 Q Okay. Now, what if after CDC was there a
13 patient needed more than one 20 vial?

14 A And that did happen.

15 Q Okay. What happened -- so you've used one --
16 one 20 and the patient needs more, so you get another 20.

17 A Right, but now that belongs to that patient,
18 too.

19 Q Meaning?

20 A It gets tossed when the patient leaves the
21 room.

22 Q Okay. So if there's any left, throw it out?

23 A Correct.

24 Q Okay. Now, you were asked about a meeting
25 with the CRNAs present where saline propofol mix or push was

1 discussed.

2 A Push.

3 Q Push. Okay. A saline push means after --

4 after injecting propofol, separately inject saline?

5 A Correct.

6 Q Not mixing the two.

7 A Correct.

8 Q And not using saline instead of propofol;

9 correct?

10 A Correct.

11 Q It's simply propofol injection, then follow

12 with saline; right?

13 A Correct.

14 Q Okay. And do -- do you recall that at the

15 meeting, see if this refreshes your recollection at all, that

16 there was the discussion by a CRNA about that practice, that

17 saline push being utilized at the VA?

18 A No.

19 Q You don't recall that?

20 A No.

21 Q Do you recall Mr. Mione discussing that?

22 A No, I really don't.

23 Q Okay. Now, when the new -- the new rules post

24 CDC are in place, you have your incident in February with Dr.

25 Carrol, okay.

1 A Yes, sir.

2 Q And what --- what actually did you do before
3 we discuss what Dr. Carrol claims he saw? Tell me what you
4 did.

5 A What I did?

6 Q Yes, with the propofol. Do you recall?

7 A I drew up the propofol to give to a patient.

8 Q Okay. And what happened?

9 A I don't understand --

10 Q Okay.

11 A -- what you're saying.

12 Q Okay. Tell me what Dr. Carrol accused you of.
13 Let me start that way.

14 A He accused me of using left over propofol from
15 another patient for that patient.

16 Q Okay. He accused you at the time. At the
17 time it was propofol can't be used on another patient; right?

18 A Yeah.

19 Q Okay. And he accused you of drawing up
20 propofol to use for a different patient?

21 A He accused me of drawing up propofol from a
22 vial that had been used on another patient.

23 Q Okay. And so did you draw it? I mean, that's
24 what he accused you of.

25 A Correct.

1 Q Okay. What did --

2 A It was --

3 Q Did you --

4 A -- it was what was --

5 Q -- do that?

6 A No, it was -- it's what was remaining in that
7 -- in that vial that hadn't been drawn up for the patient that
8 was on the bed at that time.

9 Q Okay. I'm not -- I'm not understanding. Did
10 -- did he observe --

11 A There's more than 20 ccs of propofol in the
12 vial.

13 Q Okay.

14 A And I was just drawing up what was left in
15 that vial into another syringe because I knew -- you know, I
16 didn't want to take the time to draw it up in that same
17 syringe, in the full syringe, because I knew he wanted to get
18 these cases down and get out.

19 Q Okay. So were you drawing up the left over in
20 the propofol to use on the patient that was still there?

21 A It was not left over. It was that vial of
22 propofol that was for that patient.

23 Q Okay. So you were redrawing to use for that
24 patient; correct?

25 A I was drawing another syringe into another

1 syringe for the patient that was on that.

2 Q Okay. On -- right there, the patient in the
3 room?

4 A Yes, the patient that was right in front of
5 me.

6 Q Okay. And -- and Dr. Carrol accused you of
7 drawing that up to use for a subsequent patient?

8 A No, he thought it was propofol that was left
9 from a patient before.

10 Q Oh, I see. He -- he thought that you --

11 A That I had it in my coat pocket or wherever
12 and that I pulled it out to give it to that patient.

13 Q Okay. And that did not happen?

14 A Correct.

15 Q Okay. And he takes you upstairs? Dr.
16 Carrol --

17 A Yes.

18 Q -- takes you to Tonya's office?

19 A Yes.

20 Q Okay. And he asks that you be fired?

21 A Yes.

22 Q Okay. And what happens with you and Tonya?

23 A She asked me what happened and I told her what
24 happened.

25 Q Okay.

1 A And she told me to go home and that she'd be
2 in touch with me.

3 Q Okay. And that's when she called you and said
4 report to Burnham?

5 A Correct.

6 Q And you went to Burnham?

7 A I went to Burnham and Mr. Mione came to
8 Shadow.

9 Q Okay.

10 A We traded places.

11 Q And at Burnham you were working under Dr.
12 Mason?

13 A Correct.

14 Q Okay. And did you discuss with him what had
15 occurred?

16 A Well, as I already stated, he called me into
17 his office when we sat down and we talked it all out before I
18 started my first case.

19 Q Okay. And you stayed there two weeks and
20 returned to Burnham?

21 A Correct.

22 Q Pardon me. To Shadow.

23 A To Shadow.

24 Q I got them mixed up. Okay. Now, you -- I'm
25 going to jump now to July of 2008, okay. Clinic closes in

1 March 2008 and you go to the Grand Jury. Do you recall that?

2 A Yes, sir.

3 Q Okay. And when you went to the Grand Jury, do
4 you recall what you told them?

5 A Not totally, no.

6 Q Okay. The -- do you recall telling the Grand
7 Jury that your procedure, your practice method of dispensing
8 propofol, drawing it up, mixing with lidocaine, medicating a
9 patient, was the same as you had previously done before you
10 ever came to Las Vegas?

11 A I don't recall that, but that's basically what
12 my practice was, yes.

13 Q Okay. That -- that -- but that is true if you
14 told the Grand Jury that; correct?

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

16 Q Okay. And do you recall explaining to the
17 Grand Jury that you used propofol for multiple patients
18 aseptically, cleanly?

19 A Yes.

20 Q Okay. And do you recall being asked about
21 single-dose or single-use vials and what it means?

22 A I don't remember that and I -- I never
23 remember seeing the word single-dose on the bottles of
24 propofol.

25 Q Okay. And the -- were you honest with the

1 Grand Jury when you testified?

2 A Yes.

3 Q Okay. I mean, you testified to the best of
4 your ability to what you then knew. Is that a fair statement?

5 A Yes, sir.

6 Q I mean, you didn't go in and lie to anyone;
7 correct?

8 A Not that I -- not that I know of, no.

9 Q Okay. Do you -- do you recall telling the
10 Grand Jury, and going back to this saline flush meeting, okay.

11 A Okay.

12 Q It was mainly --

13 MR. WRIGHT: I'm on page 151.

14 BY MR. WRIGHT:

15 Q It was mainly it was the difference between
16 the practice at VA because we were providing services for the
17 Veteran's Administration, as well, where a lot of the patients
18 are sicker and a lot less propofol could be used. So one of
19 the nurse anesthetists said he used smaller doses and used
20 saline flushes with everyone so that the propofol would
21 totally get into the vein and be totally used. Does that ring
22 any bells?

23 A No.

24 Q Okay. Do you recall then stating that the
25 individual you were talking about was Vincent Mione?

1 A No.

2 Q What -- that -- that -- if you stated that,
3 that would have been -- you -- you were testifying truthfully
4 at the time; right?

5 A I'm telling you that I don't remember that
6 now, sir.

7 Q I understand you don't recall that. What I'm
8 saying is if you'd said that in July 2008, you were truthfully
9 answering questions?

10 A Yes, sir.

11 Q Do you recall being asked at the Grand Jury
12 whether you had ever told the CDC representatives that you
13 were instructed to reuse syringes with multiple doses of
14 propofol?

15 A No, I don't remember.

16 Q Okay. Do you remember telling the Grand Jury
17 that you were not instructed in that fashion?

18 A No, I don't remember.

19 Q Okay. Do you remember telling the Grand Jury
20 that you did not tell that to the CDC?

21 A No, I don't remember.

22 Q Okay. Now, you don't remember your testimony
23 at the Grand Jury; correct?

24 A Correct.

25 Q Okay. You haven't seen that transcript. I

1 know you've looked at other transcripts. Would it refresh
2 your recollection if you looked at your Grand Jury testimony?

3 A I doubt it.

4 Q Do you want to attempt it?

5 A No.

6 Q Because?

7 A Because it's been almost five years ago, and
8 some of the things that have been put in these testimony I
9 don't honestly believe I said. And I remember discussing with
10 the CDC before they left that I had not reused syringes and
11 needles, but that we probably would be due to the fact that
12 now we're just using 20 ccs -- the 20 cc on a patient. When
13 the patient leaves the room, we throw it out.

14 Q Okay. That much -- that -- that's your best
15 recollection of your conversation with the CDC?

16 A Yes, sir.

17 Q Okay. Now, ask you some questions out of your
18 Grand Jury testimony. You tell me if you recall the questions
19 and answers, okay?

20 A Sure.

21 Q Did you ever -- did propofol ever move from
22 room to room? No, sir. Do you recall giving that testimony?

23 A No, because it did in the afternoon. It did
24 for the last patient.

25 Q Okay. For the last patient it would go to

1 be --

2 A It wasn't a room to room to room to room kind
3 of thing. It would be from one room, the last patient would
4 be in the other room and we would bring over the last of the
5 propofol. So it wasn't like a tennis ball kind of thing, no.

6 Q Okay. Question, did you ever tell the Center
7 for Disease Control that you were instructed to use or reuse
8 syringes and to use these syringes with multiple doses of
9 propofol? Did you make that statement to the Center of
10 Disease Control? Answer, not that I remember, no. Do you
11 recall giving that?

12 A No, I don't.

13 Q Okay. Do you recall -- did you tell them that
14 you were instructed, though? Answer, I don't think so.
15 Question, could you have? Answer, no. Do you recall that?

16 A No, I don't.

17 Q Okay. Your -- as I understand your
18 recollection of the meeting, what you recall of meeting with
19 CDC, those answers would be correct.

20 A Yes, I think so.

21 Q Now, after -- after your Grand Jury appearance
22 in July, you were next interviewed by the FBI in August. Do
23 you recall that?

24 A Somewhat, yes.

25 Q Okay. And you -- I'm going to ask you some

1 questions about your responses in this summary. And once
2 again, this is simply --

3 A The summary is ridiculous.

4 Q You have a report; correct?

5 A Yes, I do.

6 Q And it's not a transcript like of a tape
7 recording?

8 A No, it's not.

9 Q I'm going to ask you about page 7.

10 A Okay.

11 MR. WRIGHT: If I may approach the witness to point
12 out --

13 THE COURT: That's fine.

14 MR. WRIGHT: -- where I am because it's a lot of
15 writing.

16 BY MR. WRIGHT:

17 Q I'm starting on Hubbard claimson page 7, the
18 first big paragraph. Did you tell the FBI that ECSN, that's
19 the clinic; correct?

20 A Uh-huh. Yes, sir.

21 Q Always used clean needles and syringes. Do
22 you recall telling him that?

23 A No, but we did.

24 Q Okay. That's true.

25 A Yes.

1 Q She would -- she, that would be you --
2 A Yes.
3 Q -- you would sometimes reuse a syringe if
4 there was a small amount of propofol left in the bottle;
5 correct?
6 A For that patient, yes.
7 Q Yes. It says she would only do this if the
8 syringe was being used on the same patient.
9 A Right.
10 Q Okay. And that is true?
11 A Yes, it is.
12 Q Okay. Do you recall telling them that?
13 A No.
14 Q Okay. Now, in the -- the next paragraph --
15 A Yes.
16 Q -- same page, you were asked about your
17 conversation with the CDC --
18 A Okay.
19 Q -- in January of 2008. It said you do not
20 recall advising the CDC that you were instructed to reuse
21 syringes.
22 A Correct.
23 Q Okay. You -- you don't recall it and -- do
24 you recall?
25 A No, I don't.

1 Q Okay. And do you believe you told the FBI
2 that?

3 MS. WECKERLY: Excuse me. I think you said CDC and
4 then FBI. So --

5 MR. WRIGHT: Okay. I'm mixing these up.

6 THE WITNESS: I thought he was referring to this
7 being the FBI thing, so --

8 MS. WECKERLY: Yeah, that's what I mean. I just
9 want to clear it for the record.

10 MR. WRIGHT: I don't even know what I was referring
11 to.

12 MS. WECKERLY: I just want it clarified.

13 MR. WRIGHT: Okay.

14 THE COURT: Okay.

15 BY MR. WRIGHT:

16 Q Did you tell -- the FBI asked you, did you
17 tell the CDC that you had been instructed at the clinic to
18 reuse syringes? And you told the FBI you did not recall
19 telling the CDC that.

20 A Correct.

21 Q And that is a true statement?

22 A Yes, it is.

23 Q Now, you were interviewed, same interview,
24 FBI, and they asked -- they were asking about your billing
25 practices, timing of anesthesia practices, okay.

1 A Okay.

2 Q I'm on page 2, third paragraph down. Right
3 here. She -- she claims that the CRNAs were responsible for
4 patients after procedures had been done and the patients were
5 recovering, not the nurses.

6 A If there was a problem, they would come get
7 us, yes.

8 Q Okay. But you were explaining -- do you
9 recall explaining to them that your responsibility as a CRNA
10 continued while the patients were in recovery?

11 A Correct.

12 Q And that's true?

13 A That's true.

14 Q Now, you were next interviewed for two days --
15 for -- on two separate days by the police department?

16 A Correct.

17 Q Okay. And that was in October 14 and 15?

18 A Uh-huh.

19 Q And you have that --

20 A Yes, I do.

21 Q -- transcript? You were represented by
22 counsel. You had a lawyer --

23 A Yes.

24 Q -- when you went to the Grand Jury --

25 A Yes.

1 Q -- right? And who is that lawyer?
2 A Michael Pariente.
3 Q Okay. And so he accompanied you to the Grand
4 Jury in July?
5 A Uh-huh.
6 Q He was present with the FBI --
7 A Uh-huh.
8 Q -- when you were interviewed in August?
9 A Yes.
10 Q And he's present when you were interviewed by
11 the police; correct?
12 A Yes, it was in his office.
13 Q Okay. It was in his office. Now, the -- had
14 -- had you received -- entered into an agreement with the
15 State to protect yourself?
16 A At what time?
17 Q You tell me when it was entered into.
18 A There was -- I am not an attorney, sir. I'm a
19 nurse.
20 Q Yes, I --
21 A And I know that Michael talked to somebody and
22 I -- I -- really and truly I don't remember when it happened.
23 I don't know when in the sequence of the -- I -- I really --
24 I'm sorry, but that was five years ago, and --
25 Q I understand.

1 A -- I don't remember what I had for breakfast
2 yesterday, you know.

3 Q Okay. Did the -- you understood that at some
4 point an agreement was entered into; correct?

5 A Yes, sir.

6 Q Okay. And what did you understand that
7 agreement to be?

8 A I really can't tell you now.

9 Q Okay. Did -- did you believe that if you were
10 honest with them you would not be charged, prosecuted?

11 A If I was honest, yes.

12 Q Okay. I mean, generally that -- that was the
13 -- what your understanding was?

14 A Yes.

15 Q Okay. And when you're interviewed by the
16 police after the FBI interview, they started questioning at
17 one -- well, many things. But they questioned you at one
18 point about your anesthesia billing times. Do you recall
19 that?

20 A Yes.

21 Q Okay. Do you recall trying to explain to the
22 officers that your time included the responsibility you still
23 had for the patients in recovery?

24 A I can't remember the specific things, but
25 that's what -- that's the way I've always looked at it, so,

1 yes.

2 Q Okay. Do you recall -- let me -- do you
3 recall there were times that it appeared the detectives did
4 not like your answers?

5 A Well, yeah.

6 Q Do you recall there were times when they --
7 when it was said let's go off the record?

8 A Yeah, and I don't remember what they were.
9 I've read over this like three or four times and I -- I just
10 don't remember what that was about.

11 Q Okay. Why -- why would someone go off the
12 record and have conversations and then turn the tape recorder
13 back on?

14 A I don't know, sir.

15 Q I want you to look at pages 13 through 18.
16 Well, let's start on page 13 there.

17 A Okay.

18 Q I'm starting on. Now you have said you
19 personally give anesthesia to an average of 30 patients a day.
20 Okay?

21 A Yes, sir.

22 Q The -- the question, Now, you said that you'd
23 personally give anesthesia to on average approximately 30
24 patients a day. And you answered, Correct.

25 A Yes.

1 Q Right? And that is true; correct?

2 A Yes.

3 Q Okay. And then the detective says, So we
4 figure that up, and if you're billing 31, 32, 33 minutes a
5 day, that's a 15 to 16 hour day. And then you -- you answer,
6 That's not saying that I'm personally with them for that time,
7 but it's saying that I was responsible for them.

8 A Yes, sir.

9 Q Correct? The detective says --

10 MS. WECKERLY: Your Honor, can we approach?

11 THE COURT: Sure.

12 (Off-record bench conference.)

13 THE COURT: All right. Mr. Wright, you may proceed.

14 MR. WRIGHT: Okay.

15 BY MR. WRIGHT:

16 Q You had answered, No, because patients that
17 are not in recovery room are still our responsibility, but
18 we're not sitting there with them. Detective, Okay. We're not
19 -- I guess you're not understanding where I'm going with this.
20 You answer, No, I'm not because you're -- you're blocking out
21 what I told you before where there's a pre-anesthesia
22 evaluation. Detective, No, we understand that. You answer,
23 There's the time we spent with them.

24 Detective, And we understand that you were fudging
25 the anesthesia on the front side because you would go

1 backwards. You answer, But I really don't call that fudging.

2 I'm sorry. I'm still responsible for that patient until they
3 walk out the door. Detective says, Okay. M.P. Who is that?

4 A That's my attorney, Michael Pariente.

5 Q Okay. He says -- your attorney says, I guess
6 what she's asking, Linda, that it's not -- you weren't looking
7 at it -- one could look at it and say 16 hours for not
8 actually there with that patient the entire 16 hours. In
9 other words, that's all they're trying to say. You answer,
10 Well, we already went over that before. Your attorney says,
11 Why don't we take a break? And it goes off the record. Okay?

12 A Okay.

13 Q Correct? Do you -- do you know what happened
14 during that break?

15 THE COURT: And any --

16 THE WITNESS: No.

17 THE COURT: I was just going to tell you anything
18 you discussed privately with your attorney you don't have to
19 tell us about if it was just you and your attorney talking
20 privately. Okay?

21 THE WITNESS: I -- I don't remember.

22 THE COURT: Okay. And that's --

23 THE WITNESS: I really --

24 THE COURT: -- fine, too. I'm just --

25 THE WITNESS: -- don't remember.

1 THE COURT: I'm just letting you know that if it was
2 a private conversation with your lawyer, you don't have to
3 tell us. Now, if you're talking to your lawyer and the police
4 are sitting there or the DA or the FBI or something like that
5 and you're listening, then you have to tell us in response to
6 a question. Okay?

7 THE WITNESS: Okay.

8 THE COURT: And so, Mr. Wright, she's testified --

9 MR. WRIGHT: Okay.

10 THE COURT: -- that she doesn't remember.

11 BY MR. WRIGHT:

12 Q Okay. You don't recall what happened during
13 the off the record; correct?

14 A Correct.

15 Q Okay. Now -- all right. Operator, We're back
16 on the record. Time is 10:12. Same persons present.
17 Detective, Okay. So we're just going to go back for a minute
18 and talk about the 31 minutes. In the first interview you
19 told us that you billed 31 minutes universally; is that
20 correct? Yes. Okay. And you told us on the average you
21 thought that you probably spent about 20 minutes face to face
22 time with each patient on average, yes or no? Yes. Okay. And
23 did you follow most of your patients out to the recovery room
24 physically?

25 You say, Physically taking them out? Detective,

1 Yes. Did you? You say, Yes. Detective, That's our sticking
2 point. Another detective, Taking them out, just wheeling them
3 out, dropping them off in recovery, and then going back into
4 the room to start the next patient? You answer, Correct.
5 Detective, So you're taking them out. What you're saying is
6 most of the time you took them, you physically wheeled them
7 out? Answer, I would take my patients out. Most of the time I
8 would disconnect them and take them out.

9 Detective, Well, that doesn't really add up either
10 because your records reflect the time the patient left the
11 room is when you ended your time. You answer, Okay. Detective,
12 Because you told us in the first interview, correct me if I'm
13 wrong, that you would put the actual end time which is when
14 they wheeled out of the room, and then you would backtrack 31
15 minutes. You say, minutes. So that when I said you were
16 fudging on the front side, that's what I meant, that you were
17 altering the billing time when the patient got in there, not
18 when the patient left. You answer, Correct.

19 Detective, So that doesn't make sense with what
20 you're telling me now. If you were following the patient out
21 of the room, then you would put your end time at the time that
22 the procedure ended because almost every file of yours, and
23 I've reviewed your anesthesia time, ends when everybody else's
24 procedure time is ending. So it doesn't, if you're following
25 the patient out to the recovery room every time, wouldn't you

1 put the time that they hit the recovery room within a few
2 minutes instead of ending it when the patient was wheeling out
3 of the room?

4 You say, That's the time. Okay. Yeah. Detective,
5 Okay. Right, what? You answer, Whatever you said. Operator,
6 We're going back off the record. What happens when you go off
7 the record again?

8 A I don't know, sir.

9 Q Operator, We're back on the record Detective,
10 Okay. We're just going back to go back and review one more
11 time the billing for the at least 31 minutes of anesthesia
12 time. Do -- do you know -- can you tell me what --- what the
13 purpose was for those stops, why you -- did you leave the
14 room?

15 A No.

16 Q No recollection?

17 A No.

18 Q Is what you were attempting to tell the
19 detectives about you viewing your responsibility as beginning,
20 start time, beginning when you start your patient interview
21 either in pre-op or the procedure, and that your
22 responsibility continues until during the recovery period and
23 until they are discharged from the -- the recovery room?

24 A Yes, sir.

25 Q That is your true belief; correct?

1 A Yes, sir.

2 Q And you told the FBI that; correct?

3 A Yes, sir.

4 Q And you attempted to tell these detectives
5 that; correct?

6 A Yes, sir.

7 MR. WRIGHT: Court's indulgence.

8 BY MR. WRIGHT:

9 Q After the CDC came, still on billing time,
10 okay.

11 A Okay.

12 Q The CDC came, and then as I understand your
13 testimony, you then had a meeting with Dr. Carrol and Dr.
14 Desai about start time, end time. Do you recall that?

15 A I -- I remember reading about it. I don't
16 really remember the meeting, no.

17 Q Okay. But you don't -- you don't recall the
18 meeting.

19 A No, I don't.

20 Q Okay. Do you recall that after, among the
21 changes that were implemented after the CDC time frame, that
22 one of the procedures that was implemented, was utilized,
23 first as the start time, your first interaction with the
24 patient wherever it would be, and then you utilize end of the
25 procedure as your end time. Do you recall that being

1 implemented?

2 A Yes.

3 Q But you just don't recall at what meeting or
4 how --

5 A No.

6 Q -- it came about?

7 A I don't.

8 Q Okay.

9 (Pause in the proceedings.)

10 MR. WRIGHT: I've completed, Your Honor.

11 THE COURT: All right. Mr. Santacroce, cross.

12 MR. SANTACROCE: Thank you.

13 CROSS-EXAMINATION

14 BY MR. SANTACROCE:

15 Q Good afternoon, Ms. Hubbard. I represent Ron
16 Lakeman.

17 A Yes, sir.

18 Q I know you've been up here a long time --

19 A Yes, sir.

20 Q -- and probably want to get out of here --

21 A Yes, sir.

22 Q -- so I'll try to make this as brief as
23 possible. Okay?

24 A Thank you.

25 Q I want to talk about some of the things you

1 testified to as it relates to Mr. Lakeman.

2 A Okay.

3 Q You testified that you came to the clinic in,
4 I think, August of 2005; is that correct?

5 A Yes, sir.

6 Q That Mr. Lakeman was already working there;
7 right?

8 A Yes, sir.

9 Q And I think you testified that you observed
10 Mr. Lakeman do a procedure. You didn't know how many or
11 exactly when, but you did observe him do a procedure; right?

12 A Yes, sir.

13 Q And your testimony was that you didn't observe
14 anything out of the ordinary.

15 A Correct.

16 Q So when you -- when you mean nothing out of
17 the ordinary, are you saying that his technique and procedure
18 was something you had seen in the past, was familiar to you,
19 and possibly you had used the same procedures?

20 A Probably, yes.

21 Q Okay. Was there ever a time when you, Mr.
22 Lakeman, and Mr. Mathahs worked together all at the same -- on
23 the same day?

24 A There were a few occasions, yes.

25 Q And I believe you testified that you worked

1 Monday to Friday, correct, at Shadow?

2 A Yes, sir.

3 Q And it would be you and Ron?

4 A Yes, sir. But sometimes Keith would -- Mr.
5 Mathahs would come in, as well.

6 Q Okay. I want to show you a couple of things
7 on a couple of days that are in question in this case. You
8 can look on your screen there if you would.

9 A Thank you.

10 Q This is the patient procedures for September
11 21, 2007. And can you read that?

12 A Yeah. I didn't work that day.

13 Q That's exactly my point. Do you know why you
14 didn't work that day?

15 A Yeah, I was at a continued education thing
16 done at New York New York.

17 Q So on that day Mr. Mathahs was in one room and
18 Mr. Lakeman was in the other room; correct?

19 A Probably, yes.

20 Q Okay. Would you have called Mr. Mathahs in,
21 or would someone else have done that for you?

22 A I don't know how that was handled.

23 Q Okay. Let me show you another day in question
24 here, July 25, 2007. Do you see that day?

25 A Yes, sir.

1 Q You did work that day, though; correct?

2 A It looks like it.

3 Q Okay. Well, I'll represent to you that this

4 is information the State prepared from plaintiff records,

5 okay.

6 A Yeah, I was going to say it's got a lot of

7 places with my name on it, so I guess I must have been there.

8 Q Okay. So let's talk about that. You see the

9 first patient of the day?

10 A Yes, sir.

11 Q Started at 6:50; correct?

12 A Yes, sir.

13 Q And you did every patient in that particular

14 room throughout the whole day ending at 16:25 or 4:25 in the

15 afternoon; correct?

16 A It ended at 16:57.

17 Q Okay. So that would be 4 --

18 A It was 5:00.

19 Q 5:00.

20 A Yeah.

21 Q You did every patient in that room; correct?

22 A Yes, sir.

23 Q Now, I'm going to show you the other room.

24 You see that room?

25 A Yes, sir.

1 Q Who did that procedures in that room as far as
2 CRNAs go?

3 A Ron Lakeman.

4 Q Okay. And Mr. Lakeman's first procedure
5 started at 7:05 --

6 A Yes, sir.

7 Q -- in the morning; correct?

8 A Yes, sir.

9 Q And went through the whole day ending at
10 17:21, or what time is that?

11 A I don't know if that's 5:21 or if there's -- I
12 don't know. It says that there's one missing for the 25th. I
13 don't understand.

14 Q Okay. His last procedure --

15 A The line under the one that says 5 -- yeah,
16 that says 5:21, but then the one afterward, the line after it
17 says that there's a procedure missing or something.

18 Q Okay. So at least according to this chart his
19 last ending time was 5:21?

20 A Yes, sir.

21 Q Okay. Now, I noticed something unusual when I
22 looked at this chart, and that is neither one of you appear to
23 have taken a lunch break, or at least it doesn't show that you
24 went and covered for Ron in his room, or that he covered for
25 you in your room at any time on this particular day. Is that