

1 MS. STANISH: Yeah, I think it's up there.

2 THE COURT: I think it's --

3 THE WITNESS: DD-1?

4 BY MR. STAUDAHER:

5 Q DD-1.

6 A Is that correct?

7 Q I'm going to leave that with you so that
8 you've got it if you need it. A couple things I want to ask
9 you about related to this. First of all, this is the date up
10 here is the 25th of July of 2008; correct?

11 A Correct.

12 Q So this would have been if the infection
13 occurred to Mr. Meana in September 2007. We're talking about
14 the next year, mid-summer.

15 A This is approximately ten months after that.

16 Q So in this report, the part that you were
17 asked about, and I'm going to zoom in on this a little bit so
18 that we can see it. The part you were asked about was here
19 where it said related to the diagnosis chronic hepatitis,
20 clinically hepatitis C, and then it comes across here and it
21 says with immediate -- or moderate activity Grade 3/4. What
22 does moderate activity Grade 3/4 mean?

23 A That's the degree of inflammation. So you
24 look at the inflammatory cells in the liver and you grade it.

25 Q So he -- his liver was pretty inflamed then at

1 that time?

2 A Well, it's exactly what it says, it's moderate
3 inflammation Grade 3 of 4. I don't know what pretty means,
4 but that's a pretty good --

5 Q Well, your --

6 A -- that's a good --

7 Q Give me the range.

8 A -- pathological description.

9 Q What does 3 of 4 mean?

10 A They grade it from zero to 4. This would be
11 considered moderate.

12 Q Okay. So what to you does -- if you have a
13 scale of 1, 2, 3, 4, and 3 is what we're looking at here, is
14 that significant inflammation?

15 A I would say that's moderate inflammation.

16 Q Is it significant?

17 A It's moderate. I can't answer that. I'm
18 sorry.

19 Q So when we look down here where it says
20 periportal fibrosis, what does that mean exactly?

21 A That means fibrosis or scar tissue that's
22 extending beyond the structures in the liver known as portal
23 tracts. So portal tracts are these areas all throughout the
24 liver where an artery and a vein and a bile duct can be found
25 that enter and exit the liver. And those areas, when you have

1 many types of hepatitis, not all, but many types of hepatitis
2 are the first areas that get inflamed. And this means --
3 periportal means it's beyond the portal tract, it's
4 periportal, extending beyond the portal tract.

5 Q Okay. This is still within the liver, though.

6 A This is within the liver. This is a
7 microscopic portion of the liver, right.

8 Q Now, you said, if I understood you correctly,
9 that you don't know that this was caused by hepatitis C; is
10 that correct?

11 A I can't say that all that fibrosis was caused
12 by hepatitis C, no. It would be very atypical.

13 Q You're familiar with the medical records of
14 Mr. Meana?

15 A Yes.

16 Q You've reviewed all the pre-2007 September
17 medical records available; correct?

18 A I've reviewed what I was given. That's what I
19 reviewed, yes.

20 Q Well, what were you given?

21 A I was given not that many medical records
22 prior to September 2007. There were a few medical records
23 from his primary care doctor, and there was maybe one or two
24 sets of labs in there. I don't have records going further and
25 further back.

1 Q In the medical records you saw, limited as
2 they were, did you see any evidence that he had fibrosis,
3 liver disease, anything like that? Any of his labs or
4 reports, anything like that?

5 A You can only tell that by liver biopsy, which
6 he hadn't had.

7 Q I'm asking you based on the liver studies,
8 whatever you saw as part of the medical records. Was there
9 any evidence at all that he had any kind of liver disease
10 prior to September 2007?

11 A There was evidence of liver disease, which
12 were these dilated extra hepatic bile ducts, or a process that
13 could affect the liver. Fibrosis you need a biopsy. I can't
14 say whether he had fibrosis or not.

15 Q So the extra hepatic ducts, and that was in --

16 A June.

17 Q -- June of 2007. I'm putting that up right
18 now. June 2007 report; correct?

19 A Yes, a report of a CT scan, I believe.

20 Q And do you see where it says CT scan of the
21 abdomen?

22 A Yes.

23 Q Now, the part that you mentioned that was
24 significant to you I've highlighted here. It says distended
25 extra hepatic bile ducts, distal obstruction is not excluded,

1 changes of cholecystectomy. Do you see that?

2 A Yes.

3 Q So extra hepatic means what? Outside the
4 liver; correct?

5 A Yes.

6 Q And bile ducts -- and it says distal
7 obstruction on this. Let me go briefly again. Distal
8 obstruction is not excluded. What -- what does that mean,
9 distal obstruction?

10 A That means an obstruction beyond where the
11 bile ducts are dilated. This scan cannot exclude that.

12 Q Okay. So that would be even further away from
13 the liver; correct? An obstruction potentially?

14 A In the bile ducts outside of the liver, yes.

15 Q Now, what would cause the bile ducts to
16 dilate?

17 A Oh, it could be a stricture, it could be a
18 stone, it could be a tumor, it could be things that are
19 unusual, it could be congenital, there could be many, many
20 causes.

21 Q But outside the liver; correct?

22 A But when you have bile ducts dilated outside
23 the liver, it's connected to the liver. You can't image the
24 interior hepatic bile ducts with this type of scan, so you
25 can't look at those.

1 Q Not my question. The obstruction was away
2 from the liver causing the actual dilation; correct?

3 A That would be most consistent with this, yes.

4 Q So the dilation didn't come from something
5 inherent within the liver according to this report; correct?

6 A Inherent within the liver? No. But it's part
7 of the biliary system that drains the liver.

8 Q Any indication from this report that there is
9 actual liver disease other than the dilation caused by an
10 obstruction away from the liver?

11 A Well, this is not the type of test you would
12 do to determine that, so I can't say.

13 Q So when I asked you if there was any evidence
14 of any liver disease or anything related to it before
15 September of 2007, you pointed to this. So I want to know
16 what part of this you're saying shows liver disease in Mr.
17 Meana.

18 A I'm saying that the extra hepatic duct
19 dilation suggests there's an obstruction. An obstruction can
20 cause, or a subclinical obstruction, damage to the liver over
21 time. But this test did not look for that specifically.

22 Q So there is no evidence that you reviewed and
23 had access to that showed any evidence of liver disease prior
24 to September of 2007?

25 MR. SANTACROCE: I'm going to object to his

1 categorizing that as evidence. It was a medical record. I
2 think he just misstated.

3 THE COURT: Well, no, he said he can -- he's --
4 that's overruled. He can answer if he's seen any evidence --

5 THE WITNESS: I can --

6 THE COURT: -- suggesting --

7 THE WITNESS: Sorry.

8 THE COURT: -- liver disease prior to 2007.

9 THE WITNESS: I can say I've seen evidence of a
10 process that can affect the liver.

11 BY MR. STAUDAHER:

12 Q Later; correct? A process that could affect
13 the liver later?

14 A Later?

15 Q Than this.

16 A Or at this time. I don't know.

17 Q I'm going to ask you this the third time. Is
18 there any evidence at all of active liver disease at the time
19 before September of 2007?

20 A I'll answer it again just by saying I can see
21 evidence of a process that can affect the liver.

22 Q So the answer is no?

23 MR. SANTACROCE: Objection, Your Honor.

24 THE COURT: Overruled.

25 You can answer. Is the answer no?

1 BY MR. STAUDAHER:

2 Q Yes or no?

3 A And I think I've --

4 Q Yes or no?

5 A -- given my answer. You cannot look at the
6 liver itself with this test.

7 Q That isn't my question. Is there any evidence
8 of disease?

9 A Yes, of bile duct disease there is evidence.
10 Yes.

11 Q Now, have you -- have you heard of -- well, I
12 think you've mentioned them, benign cysts in the liver and the
13 kidneys and things like that?

14 A Yes.

15 Q And benign to you means what?

16 A Benign usually means it's not causing any
17 significant problem. In cancer it's not a cancer. It's a
18 mass that doesn't grow or metastasize.

19 Q In fact, in kidneys, over -- people over the
20 age of 50, typically half the people will have a cyst in their
21 kidney; correct?

22 A I don't know the number, but it's not uncommon
23 to have kidney cysts.

24 Q Nothing to do with any disease process, it
25 just happens; correct?

1 A It's an abnormal process, but it's not serious
2 and not significant.

3 Q What about the liver? Is that something that
4 happens congenitally? It just -- it just happens, it doesn't
5 cause any real problem?

6 A People may have benign liver cysts for sure.

7 Q You were asked about interferon. Do you
8 recall that? Interferon ribavirin, I think, was the
9 combination that you actually studied?

10 A Interferon-alpha, peg interferon-alpha is what
11 we use to treat hepatitis C, yes.

12 Q And you studied that back when?

13 A Oh, I mean, I've been using it clinically for
14 years. The clinical trials I did were probably in the very
15 late '80s to early '90s.

16 Q Have you done --

17 A I take that back. I take that back. I'm
18 sorry. It would have been the -- I was at Columbia in '95.
19 It would have been the late '90s to around 2000.

20 Q Because I've got your reports, your studies,
21 if you want to look at them. Would that help?

22 A No, the dates were in the late '90s where I
23 did interferon and ribavirin.

24 Q Okay. Late '90s. So as far as those studies
25 are concerned, what -- what were you studying? What were you

1 doing?

2 A Treating hepatitis C.

3 Q And -- and what did you find? When you --
4 when you said that you treated, I mean, are there different
5 effects on different genotypes of the virus, I mean, as far as
6 how well it works?

7 A Interferon-alpha and ribavirin, people with
8 genotype 2 and 3 respond more commonly than people with
9 genotype 1 infections or genotype 4 infections, which are
10 extremely rare.

11 Q Which, in the scheme of things, a 1, 2, or 3
12 is going to respond less effectively?

13 A Well, genotype 1 probably responds to that
14 treatment 40 to 50 percent of the type than genotype 2 and 3,
15 closer to 60 or 65 percent at a time.

16 Q Okay. So we've got Mr. Meana as genotype
17 what?

18 A He was 1a, I believe.

19 Q So he would fall under that 40 to 50 category?

20 A And looking at the general population for
21 chronic hepatitis C, yes.

22 Q So if I understand you correctly, 40 to 50
23 percent of the people that were -- had his genotype will
24 respond positively to interferon therapy; is that correct?

25 A With chronic hepatitis C, yes.

1 Q You mentioned acute. What is your definition
2 of acute hepatitis?

3 A Acute is hepatitis lasting less than six
4 months. That's a generally accepted definition.

5 Q So after six months we're at the chronic
6 phase?

7 A You call it chronic. It's somewhat arbitrary,
8 but that's the accepted term.

9 Q Now, within that time window, is that when
10 people usually will exhibit symptoms if they're going to
11 exhibit symptoms?

12 A Interestingly, most people with chronic
13 hepatitis C don't exhibit --

14 Q No, I'm --

15 A -- symptoms.

16 Q -- talking about acute. I'm sorry. The acute
17 phase.

18 A Oh. Interestingly, most people with acute
19 hepatitis C don't develop symptoms. But the ones who do, it's
20 roughly from a month or two after infection up to about six
21 months after infection.

22 Q So the window would actually -- for that acute
23 time, when you said would be the most effective at treatment
24 would be when people are exhibiting their symptoms then
25 primarily?

1 A Well, the truth is actually the sooner you
2 start treatment after an acute infection the better. There's
3 not a lot of data that looks at if you start seven months or
4 eight months or ten months or twelve months, but the general
5 consensus is the sooner you start treatment after an infect,
6 the better the chance of response.

7 Q So you, as a person who has studied this,
8 you're a hepatologist by trade, essentially; correct?

9 A Yes.

10 Q And that's what your specialty is?

11 A That's what I do clinically, yes.

12 Q Knowing that someone like Mr. Meana with Type
13 1a serotype virus, the response rate in the 40 to 50 percent
14 range for that, can you say that Mr. Meana would have
15 responded positively to that -- to that therapy if he had been
16 able to tolerate it?

17 A Okay. Just a correction, genotype virus, not
18 serotype.

19 Q I'm sorry. Did I say that --

20 A We don't serotype --

21 Q -- incorrectly?

22 A -- the virus. I can only say he would have
23 roughly a 50 percent chance perhaps if he were treated earlier
24 better because there just are data that suggest the earlier
25 the treatment the better. But I can't give an exact number.

1 Q So he's got maybe a 50/50 chance at even
2 having it have any effect at all on him?

3 A I think he has a chance of responding to
4 treatment that was -- I would put roughly in the 50 percent
5 range.

6 Q And there's clearly side effects related to
7 that treatment?

8 A Some people have side effects, some people
9 don't. Most people who are treated go through it without
10 having to stop the treatment.

11 Q Now, related to that, are neurologic
12 conditions -- I'm not talking about related to the end stage
13 liver failure that causes the toxins and the encephalopathy.
14 I'm talking about in general the virus itself and the
15 treatment, interferon with -- what was it, ribavirin?

16 A Ribavirin.

17 Q Ribavirin.

18 A That's okay.

19 Q With the treatment and -- and the actual
20 infection, were you saying that there is no mental component
21 to this that can be affected, that the virus doesn't affect
22 the brain at all?

23 A The virus doesn't affect the brain, no. And
24 also I was saying there's no dementia, was the question I was
25 asked.

1 Q Oh. I'm sorry. So -- well, let's -- let me
2 follow up with that. No dementia.

3 A No.

4 Q And the virus does not affect the brain?

5 A The virus itself does not affect the brain.
6 You cannot find hepatitis C in brain cells or in the central
7 nervous system.

8 Q I've got four articles here and I want to ask
9 you if you're familiar with any of them. The first one, it
10 was published in Metabolism and Brain Disease, and it's
11 entitled Hepatitis C Virus Infection in the Brain. Have you
12 ever read that article?

13 A I haven't read it. May -- may I see it?
14 You're asking me --

15 Q Sure.

16 A -- to comment on things --

17 Q Absolutely.

18 A -- I've never seen.

19 Q I'll give you a copy. Have you ever seen that
20 one?

21 A No, I haven't seen this.

22 Q Okay. I've got another one here called
23 Emerging Evidence of Hepatitis C Virus Neuroinvasion. And
24 I'll give you a copy of that one, too. I've got another one
25 here called Hepatitis C Virus Neuroinvasion Identification of

1 Infected Cells, Journal of Virology. And one last one. It's
2 entitled Hepatitis C Virus Infection and Health Related
3 Quality of Life.

4 Now, that last one was in the World Journal of
5 Gastroenterology. The next one was in the Journal of
6 Virology. The next one was in the Journal AIDS, and then the
7 last one was in the Metabolism and Brain Disease Journal, as
8 well. All of those related to actually infection in the
9 brain, virus getting into the brain. You say you're
10 unfamiliar with this at all?

11 A Hepatitis C virus does not infect brain cells.
12 You can show me all the articles like this you want. This
13 does not prove anything. These are publications that are
14 suggestive.

15 Q Suggestive. If we go to the one entitled
16 Hepatitis C Virus Neuroinvasion Identification of Infected
17 Cells, just look at the abstract. I know you haven't had a
18 chance to read the whole thing, but take a moment and read
19 that abstract and tell me again if you believe that that --
20 there's no evidence whatsoever in any peer reviewed journal
21 that there's evidence of an infection of the virus hepatitis C
22 into brain cells.

23 A I'm going to need a moment to --

24 Q Sure.

25 A -- read this.

1 Q Take a moment.

2 A [Witness complied]. Okay. I've glanced
3 through it.

4 Q Okay. And the other two, the one that says
5 Emerging Evidence of Hepatitis C Virus Neuroinvasion, and also
6 the one that says Hepatitis C Virus Infection of the Brain, if
7 you want to just look at the abstracts of those briefly
8 because it talks about the same neuro-cellular invasion in the
9 brain, all three papers, three different journals.

10 A Which was the other one you were talking about
11 now? I'm sorry.

12 Q Hepatitis C Virus Infection and the Brian, the
13 Metabolism and Brain Disease Journal, and also Emerging
14 Evidence of Hepatitis C Virus Neuroinvasion in the Journal
15 AIDS, 2008 and 2005 respectively. Actually, published in 2009
16 on the first one, 2005 on the second one.

17 A On this one I do not have the entire paper, I
18 don't believe.

19 Q Which is that?

20 A Hepatitis C Infection and the Brain.

21 Q I'll let you have my copy.

22 A Okay.

23 Q Okay. Do not all of those, all three of
24 those, those last three that I gave you, indicate the
25 astrocytes, macronuclear invasion of the virus into the brain,

1 actually into the brain?

2 A I would say these three papers prove nothing.
3 These are suggestive papers in second or third tier journals
4 that just point towards more research. This is not generally
5 accepted in the medical community.

6 Q So the Journal of Virology and AIDS and also
7 the -- what was it the, World Journal of Gastroenterology, the
8 -- what was the last one? Brain Metabolism -- Metabolism and
9 Brain Disease, you don't consider those peer reviewed journals
10 to be any evidence whatsoever of hepatitis C virus infection
11 in the brain or proof thereof?

12 A Any suggestive evidence whatsoever, or does
13 this conclusively prove that hepatitis C virus can damage the
14 brain by infecting it? Those are two very different questions
15 for me.

16 Q Well, does it revise your opinion at all --

17 A These papers --

18 Q -- seeing that there's some -- there's some
19 literature out there on this very subject?

20 A No. In fact, I --

21 Q Because you were fairly unequivocal that there
22 was no evidence whatsoever --

23 MR. SANTACROCE: Your Honor, I'm going to ask him to
24 finish his last answer.

25 THE COURT: Yeah, let him.

1 You can finish.

2 THE WITNESS: Well, may I read a few things from
3 these papers?

4 BY MR. STAUDAHER:

5 Q If you wish.

6 A Because you're asking me --

7 Q Go ahead.

8 A -- to look at abstracts and titles. In fact,
9 look at Hepatitis C Infection and the Brain, their last
10 paragraph. This still hypothetical scenario connecting HCV
11 infection and functional CMS changes could be summarized as
12 follows. This still hypothetical scenario. Okay. We're
13 dealing with hypothetical here. Okay.

14 In your prestigious journal Metabolism and Brain
15 Disease, which I've never heard of before, while the HRQL
16 reduction in depression may be discussed as caused by multiple
17 factors, blah blah blah -- here we go -- it is suggested that
18 alterations in brain function also play a role. I mean, these
19 are the type of literature that are small studies, suggestive,
20 oh, we did microcapture microscopy and we were able to amplify
21 hepatitis C virus RNA from a few brains.

22 That is a far cry from saying that hepatitis C virus
23 infects the brain. Now, I'm a peer reviewer for many
24 journals. I'm an editor of medical journals, an editor of a
25 scientific journal. There is a big jump from saying this

1 proves anything to that this is suggestive -- some suggestive
2 laboratory test.

3 Q Fair enough. So when it talks about detected
4 CD69 positive cells and HCV RNA also found in astrocytes which
5 are contained in the brain; correct? It's talking about the
6 HCV RNA is contained in the astrocytes within the brain. Does
7 that not mean that it's in the brain?

8 A Can I say that from this? Absolutely not. Do
9 I know he's actually looked at astrocytes? Do I know there
10 was no contaminating cells in the sample? This is just not
11 mainstream accepted medical stuff. This is suggestive stuff
12 from a few laboratory experiments. I can tell you that's how
13 the medical literature works. You make an observation, you
14 publish it, it needs further testing. You won't find this in
15 a review in a New England Journal of Medicine. You won't find
16 this in a textbook. This is very early suggestive stuff that
17 may very likely be wrong. That's all I can say about these
18 papers. I'm sorry.

19 Q Well, you did say just a moment ago that there
20 was no literature at all, isn't that fair?

21 A Well, we have to talk about literature at all,
22 or -- I'm sorry, maybe I'm saying is this literature that
23 makes people believe this to a reasonable degree of medical
24 certainty or probability?

25 Q So the public --

1 A This is just a paper describing some
2 experiments. That's different than proving cause and effect
3 or anything.

4 Q So the public medicine website, which is where
5 these came from, which is where a lot of journal articles
6 reside, you don't think that that's -- that's an outlet for
7 medical providers for people looking at this to see whether or
8 not there's any validity to it?

9 A I guess -- I'm sorry, sir. I guess you don't
10 understand peer review in the medical literature. I'm very
11 sorry. You publish things that are not necessarily facts.
12 You publish observations. This is science. You make an
13 observation. You amplify RNA from a cell from somebody's
14 brain. More people have to do it. Have I seen a bigger
15 series? Have I seen a paper in nature saying that hepatitis C
16 virus conclusively infects the brain? Based on observations
17 published in these small journals we have now proven. That's
18 how medicine works. Not you get a paper from --

19 Q Fair enough.

20 A -- this journal published in China and tell me
21 it's proof. I'm sorry.

22 Q Is that journal published in China?

23 A This is a Chinese journal, the World
24 Journal --

25 Q And you're familiar --

1 A -- of Gastroenterology.

2 Q -- with it?

3 A Yes, I am. I even was on the editorial board

4 for awhile or something.

5 Q Oh, you were even on the --

6 A Yes.

7 Q -- editorial board of that journal.

8 A That's right.

9 Q This obscure journal that is worthless --

10 A And I'm not saying --

11 Q -- as far as the scientific --

12 A I'm not --

13 Q -- community is concerned?

14 A And that does not mean everything is right in

15 there.

16 Q But you're on the editorial board; right? Or

17 you were.

18 A To help keep -- to try to help keep papers out

19 that weren't right, except I didn't review every one of them.

20 Q Okay. But you --

21 A Okay.

22 Q -- were on the editorial board of that very

23 journal that I brought up to you.

24 A The journal where I tried my very best to keep

25 papers out that were not based on solid science.

1 Q Fair enough. You -- not based on solid
2 science. I'm glad you asked -- you said that because in the
3 case that you -- that counsel asked you about that you
4 actually came in and testified in this -- gave a deposition in
5 this particular city; correct? Related to a non-genetically
6 matched patient?

7 A An alleged hepatitis C infection, yes. I
8 testified in one case of that.

9 Q Okay. And in that you said that the patient
10 didn't get hepatitis from the -- from his colonoscopy;
11 correct?

12 A As best as I was able to tell from looking at
13 all those records, I couldn't say to a reasonable degree of
14 medical certainty that it did.

15 Q What was your scientific basis for that
16 determination?

17 A I haven't looked at those records and I
18 haven't looked at that report in a long time.

19 Q I've got your deposition. Would you like to
20 see it?

21 A We can go through the deposition line by line
22 if you like. I mean --

23 THE COURT: Well, no --

24 MR. SANTACROCE: Your Honor --

25 THE COURT: -- we can't.

1 MR. SANTACROCE: -- I'm going to --

2 THE WITNESS: I mean, I just felt there was no
3 evidence.

4 THE COURT: But if Mr. Staudaher wants to ask you
5 look at it to refresh your recollection, he's welcome to do
6 that.

7 BY MR. STAUDAHER:

8 Q Specifically in that deposition did you not
9 say that you believed that there was no connection, that there
10 was no connection from a scientific or whatever your
11 perspective is, that the person had hepatitis derived from
12 that clinic?

13 A That person?

14 Q Yes.

15 A That person, if I remember correctly, there
16 was a large window where he may have contracted hepatitis, a
17 several month window where anything could have happened.

18 Q Well, was it not true that even a few weeks
19 before he had had a negative study or a negative test for
20 hepatitis C?

21 A I can't remember how many weeks before.

22 Q But you definitively said that he did not get
23 it from the clinic, did you not?

24 A I said to a reasonable degree of medical
25 probability I couldn't say he got it from the clinic.

1 Q And other than that clinic, according to the
2 records you reviewed, there was not a single other risk factor
3 that you identified, isn't that correct, other than the
4 clinic?

5 A I didn't identify the clinic as a risk factor.

6 Q Oh, I forgot. You didn't identify them, but
7 I'm saying there were no -- taking the clinic aside, there
8 were no other risk factors that you identified?

9 A In that case, I don't remember. I can look at
10 my report and see what I wrote in there.

11 Q Do you recall where it is in your deposition,
12 because I can help you with that.

13 A Yeah, I --

14 Q And I believe that if you go to page 13, and
15 you can read as much of it before and after as you need to get
16 context.

17 A Page -- I'm sorry?

18 Q 13.

19 A [Witness complied].

20 Q And then I want you to hop forward to 24.

21 A Well, it's kind of hard to hop forward.

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

23 THE COURT: Sure.

24 (Off-record bench conference.)

25 THE COURT: All right. Mr. Staudaher.

1 BY MR. STAUDAHER:

2 Q Now, when you said before that you did not
3 exclude that -- the person who had gotten hepatitis C at the
4 clinic on 13, do you actually say that you do not believe that
5 he got hepatitis C at the clinic?

6 A I think I say here he contracted it sometime
7 in a time span roughly six months before that time or from
8 going back a couple of weeks before that time and I think that
9 there's many possible ways he could have contracted because,
10 and I don't believe it was from a colonoscopy.

11 Q Okay. The colonoscopy is -- maybe I misspoke.
12 I guess it could have happened at the clinic, but not from a
13 colonoscopy according to you; correct?

14 A Well, it didn't happen from a colonoscopy. I
15 think I can say exactly what I said here. There are many
16 possible ways that it could have happened.

17 Q But not from a colonoscopy; correct?

18 A From an actual colonoscopy, no. I mean, I'm
19 sorry. I have to read.

20 Q Read. Feel free.

21 A I can't take a sentence out of context and --

22 Q That's why I said read as much as you wish.

23 A [Witness complied]. As far as I can tell, he
24 was not infected at the clinic.

25 Q Okay.

1 A That's all I can say.

2 Q And your scientific basis for that was what?

3 A The lack of any evidence that he was infected
4 at the clinic. Can you tell me evidence that he was? I
5 haven't seen any.

6 THE COURT: All right.

7 MR. STAUDAHER: All right. I'll move on, Your
8 Honor. I'll move on.

9 BY MR. STAUDAHER:

10 Q I want to move to a different case. Sears v
11 Foote Hospital, do you recall that case?

12 A Wow. That was quite some time ago, but I --

13 Q It dealt with --

14 A -- vaguely remember.

15 Q -- endoscopies; right?

16 A Yes, it did.

17 Q Okay. And scopes were -- people, at least
18 three, I think, or so were coming in complaining, or at least
19 alleging that they got their hepatitis C infections from the
20 scopes.

21 A As best as I can remember that, yes.

22 Q What was your opinion in that case?

23 A Well, I looked at a few cases, and one had a
24 blood transfusion as an infant. There was another cause of
25 hepatitis C. I cannot remember the other two. One was

1 somebody who was incarcerated and was injecting himself with
2 different dyes and sharing needles to tattoo people. I can't
3 remember the other case. But those cases there was no acute
4 hepatitis C and they all had other risk factors for hepatitis
5 C.

6 Q But you stated that it was not from the
7 scopes; correct?

8 A It absolutely wasn't from the scopes in those
9 cases.

10 Q You mentioned incarceration. Did you not
11 involve -- or were you an author on a paper involving whether
12 or not it was appropriate to give interferon therapy to
13 incarcerated persons or to wait because it doesn't -- I mean,
14 there's a window of time that you have that it's not going to
15 cause a problem?

16 A In chronic hepatitis C, yes.

17 Q Well, after --

18 A People --

19 Q -- six months you're into chronic; correct?

20 A No, no, no. You're playing with words a
21 little bit. I said the sooner you're treated, the better.
22 But if you're someone who has been in jail and you've been
23 infected for 10 or 15 years waiting a year or two isn't going
24 to matter. But if you're in jail and you're infected six
25 months, seven months, eight months, ten months, there may be

1 reason to do that. That -- that was dealing strictly with
2 people who were long term infected.

3 Q What about people that would have been in jail
4 that might be having some symptoms?

5 A I didn't comment on that in that paper.

6 Q Well, I'm asking you.

7 A Having symptoms or get acutely infected in
8 jail?

9 Q I'm talking about cirrhosis, things like that,
10 direct causes.

11 A Well, once you have cirrhosis, that's --
12 you're having symptoms from it, the treatment may not do that
13 much. The goal of treatment is to prevent getting
14 complications of cirrhosis.

15 Q So back to this exhibit, and this is the
16 defense exhibit. And I think it's DD whatever it was, DD-1.
17 In this particular case you say that once the cirrhosis or
18 fibrosis or whatever is onboard that it's not really effective
19 to have the treatment anymore; correct?

20 A Once you have established cirrhosis and
21 complications, the treatment doesn't help that much.

22 Q So we've gone from our 40 to 50 percent down
23 to what?

24 A Sorry, I don't understand.

25 Q Well, you said that in somebody with genotype

1 1a that they would have a 40 to 50 percent, 45, 50 percent.
2 You said, I think, 50 to be fair. 50 percent chance of
3 getting benefit from that therapy.

4 A Of being cured by that therapy, yes.

5 Q Okay. Somebody who starts to have cirrhosis
6 or signs of cirrhosis, where does it drop down to as far as
7 affectivity of any treatment?

8 A Oh, I don't know the exact numbers, but you
9 lose some efficacy once there is histological cirrhosis.

10 Q In this case there is histological cirrhosis
11 here, at least development of that; isn't that correct?

12 A No, that doesn't matter. I say when there is
13 established cirrhosis, whether there's Stage 2, that's not
14 going to really change the effectiveness that much. That's --

15 Q But this is histological result, is it not?

16 A Fibrosis. This is not cirrhosis. You were
17 asking me about cirrhosis.

18 Q Oh, that's good. That's good. Okay. So
19 fibrosis.

20 A Yes.

21 Q What's the difference between fibrosis and
22 cirrhosis?

23 A Oh, as I explained before, fibrosis is scar
24 tissue that forms in the live. Cirrhosis is a very advanced
25 stage of liver disease where you have regenerating nodules of

1 liver cells with scar tissue all around those nodules. So
2 fibrosis is just a scar tissue itself. Cirrhosis is very
3 advanced fibrosis with abnormal regeneration of the liver.

4 Q And you said -- when was the first time you
5 saw this document here?

6 A I don't remember.

7 Q Today?

8 A Oh, no. No, I saw this at least a few months
9 ago.

10 Q Those documents that are sitting right up
11 there, those medical records from the Philippines, when was
12 the first time you saw those?

13 A I saw those a few months ago. Although, I
14 should say I saw a clearer copy today. The copy I was
15 provided with was a little bit hard to read, but I had seen
16 those records before, too.

17 Q But you reviewed those literally before you
18 came and testified today; correct?

19 A No, no. I reviewed these records, I don't
20 remember the exact date, but one or two months ago. I just --

21 Q But most recently you reviewed them just
22 before you testified?

23 A Just to make sure that there was nothing
24 missing from the copies that I received, there was really
25 nothing significant missing.

1 Q In Defense Exhibit DD-1, you indicated that
2 what's listed there, the chronic hepatic -- hepatitis,
3 clinically hepatitis C with moderate activity, Grade 3/4 and
4 periportal fibrosis and mild microvesicular and macrovesicular
5 steatosis; is that correct?

6 A Steatosis, yes.

7 Q Steatosis, which is a --

8 A Fatty liver.

9 Q -- fatty liver. Right.

10 A Right.

11 Q Now, with regard to the next portion, I mean,
12 you said that the circle part, that there is no way to
13 determine that that -- the hepatitis C infection has anything
14 to do with that; correct?

15 A From -- I'm sorry. I didn't --

16 Q That the hepatitis C infection had anything to
17 do with that.

18 A Had anything to do with what? The --

19 Q What's listed there, the diagnosis.

20 A The steatosis?

21 Q No, all of it, any of it.

22 A I didn't say that.

23 Q Oh, I'm sorry.

24 A I said --

25 Q What did you say?

1 A I said he had chronic hepatitis that
2 clinically was hepatitis C. And then I said he had periportal
3 fibrosis, which may have been from hepatitis C or other
4 causes, and he has another insult in his liver, which is the
5 fatty liver.

6 Q Okay. And that one actually has -- is the
7 only one that says mild, is it not?

8 A It's mild.

9 Q Okay. It's mild. Now, when we go down here
10 to the lower portion of this under comments, pertinent
11 laboratory values found within Qwest Diagnostics Laboratory
12 are as follows. Do you see that?

13 A Yes.

14 Q And it's got a date, 6/3/2008. So that's
15 before this study on 7 -- it was -- I think the sample was
16 taken 7/25/2008; correct? Does it say that?

17 A This was 7/25/2008.

18 Q So go down there and look at that, each HCV
19 RNA PCR quantitation at, it looks like 8,850 international
20 units per mil; is that correct?

21 A Yes, I commented that when I talked about this
22 before. I said there was some data showing that he had
23 hepatitis C virus RNA at a low viral load, yes.

24 Q And it's PCR quantitation which means that
25 somebody did what?

1 A Oh, you want me to explain --

2 Q Sure.

3 A -- how PCR is done? So the virus is an RNA
4 virus. There's an RNA genome. We have DNA. The virus has
5 RNA. You have to take the RNA and convert it to DNA in one
6 reaction, and then there's a reaction called PCR where you can
7 amplify the DNA and you can semi-quantify how much virus is
8 present in the blood. And in this case this would be a
9 relatively or quite low value of 8,850, but the hepatitis C
10 virus RNA was present in his blood.

11 Q So when it says here quantitation 3.9 log,
12 what does that mean?

13 A That -- that's -- to the 10. 10 --

14 Q So it's 10 to the 10 --

15 A -- 10 to the 3.9.

16 Q -- to the 10 to the 10?

17 A No, 10 to the 3.9. So it's a little
18 different. I mean, if you take that, I don't know, that would
19 come out to maybe 10,000. No, it would come out to 8,850;
20 right? Because that's the same number.

21 Q And if you move across here, again, it says
22 genotype 1a.

23 A I think that's been established, yes.

24 Q Okay. No question that there's at least
25 genetic linkage in this particular case; correct?

1 A There's -- I can tell from this there's
2 genotype 1a virus. What do you mean by genetic linkage?

3 Q You're familiar that there was a genetic link
4 in this case for this particular patient?

5 A Can you ask me a more specific question?

6 Q Are you aware that there was a genetic link to
7 a source patient in this particular case --

8 A Oh, I'm --

9 Q -- with this -- with this particular patient?

10 A I'm aware looking at data from the Southern
11 Nevada Health District and the CDC that there were several
12 patients on that day that had genetically similar isolates,
13 yes.

14 Q Now, with regard to the -- the test here, I
15 mean, clearly there's evidence of disease that you even
16 acknowledge could be caused by hepatitis C; correct?

17 A Well, I don't think you can get Stage 2
18 fibrosis after just 10 months of hepatitis C.

19 Q In the medical records that you saw before
20 September 2007, did you see any evidence of anything that
21 could have led to this? We're talking about alcoholism,
22 infections of other kinds, whatever.

23 A No, the -- the bile duct obstruction and also
24 the fact that he had microvesicular and macrovesicular
25 steatosis here, he may have had that for quite some time.

1 Q And you're not a pathologist; right?

2 A I look at liver biopsies, but I'm not a
3 pathologist.

4 Q Okay. Do you feel competent to opine as to
5 cause of death when looking at records that two coroners, two
6 medical examiners looked at?

7 A I feel competent to opine on cause of death
8 because I've looked extensively at these medical records.
9 I've looked at their reports, and I've looked at the death
10 certificate, yes.

11 Q Extensively at medical records that -- which
12 medical records are we talking about?

13 A The ones that I mentioned when we began today.

14 Q Did you not say that it was relatively sparse,
15 the medical records that you had?

16 A I looked extensively at what I had, and it
17 was --

18 Q Okay.

19 A As far as I --

20 Q So even if you didn't have very much, you
21 looked at it really hard; is that right?

22 A As far as I know, it's the same medical
23 records that these pathologists looked at. If there's other
24 ones, I assume they would have been given to me. Are -- are
25 there other medical -- I guess I --

1 Q I don't know.

2 A -- can't ask questions, but --

3 Q I don't know what you actually looked at.

4 With regard to the kidney, I want to ask you about an issue
5 related to that that you testified. Already we've established
6 that little cysts, benign hepatic or renal cysts, they don't
7 really cause an issue; correct?

8 A The cysts in this place were not a major
9 contributing factor, if at all. I --

10 Q So the cysts don't cause any issue.

11 A That's true.

12 THE COURT: Let him finish.

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

14 THE COURT: Did you finish?

15 MR. STAUDAHER: I'm sorry to the witness.

16 THE WITNESS: I said that's true, the cysts that
17 were found on the radiology scans were not major factors here.
18 BY MR. STAUDAHER:

19 Q You said that one of the concerns that you had
20 was the benign -- benign prostatic hypertrophy; correct?

21 A It could be a concern, yes.

22 Q That it might cause backing up of the urine
23 which might affect the kidneys, that kind of thing?

24 A Yes.

25 Q If you have backing up of the urine into the

1 kidneys, what do you get as a result, typically?

2 A You can get infections, which he possibly had,
3 but over long term you can get damage to the kidneys.

4 Q In what form? I mean, what do you usually see
5 as a harbinger before the damage occurs?

6 A Well, I'm not a kidney pathologist, so I don't
7 want to get into the details of what can happen, but as an
8 internist I know having chronic kidney obstruction you can get
9 kidney disease.

10 Q Do you see things like hydronephrosis?

11 A You might see hydronephrosis. You might --

12 Q And what is that?

13 A Hydronephrosis is when the -- the kidney where
14 the urine is collected expands, and you can see it perhaps on
15 an x-ray or an imaging study.

16 Q Okay. And there was no evidence in these
17 imaging studies?

18 A On that scan, no, but we don't have any
19 imaging since then, so I don't know.

20 Q Okay. Do you know what hepatorenal failure
21 is?

22 A I know what hepatorenal syndrome is.

23 Q Okay. Tell me about hepatorenal syndrome.

24 A So hepatorenal syndrome is when you have a
25 normal kidney. So your kidney has no structural kidney

1 disease. There is no damage to glomeruli. There is no
2 nephrosclerosis. There is no chronic kidney disease. So a
3 perfectly normal kidney in a person whose liver fails, that
4 kidney can stop working because the liver fails. Now, if you
5 changed a person's liver, the person gets a liver transplant,
6 that kidney works normally. If you take the kidney out of
7 that person and put into a normal person, and this is a dog
8 experiment, you don't do that in people, but that kidney works
9 normally. So that's when the kidney fails solely secondary to
10 the liver failing.

11 Q Isn't it true that approximately 40 percent of
12 patients with combination cirrhosis and ascites, which was the
13 case in this particular instance, will get renal failure as a
14 result, and that's what is termed hepatorenal syndrome?

15 A That's an interesting question because there's
16 two types of hepatorenal syndrome. So when you put that big
17 number on it, that sort of literature saying there is a low
18 grade renal insufficiency that some of them get, but the full
19 blown hepatorenal syndrome where your kidney completely fails,
20 that's a much, much, much smaller number.

21 Q But it's progressive renal failure caused by
22 liver cirrhosis; right?

23 A That -- that can happen in a structurally
24 normal kidney. Correct.

25 Q And that's what we actually have here is liver

1 failure; correct?

2 A We have a structurally abnormally kidney,
3 though.

4 Q And what are you basing that off of, again?

5 A I'm basing it on your -- your coroner and your
6 pathologist reports.

7 Q And which reports were those?

8 A Those would be --

9 Q And read me the grossly or structurally
10 abnormal results there.

11 A Okay. So this is the -- okay. This is the
12 autopsy report from the Philippines. And I see here
13 hypertensive nephrosclerosis kidney. I think the pathologist
14 from -- from here in Nevada -- I can't quite find that one. I
15 think I have it.

16 Q I've got a copy.

17 A Okay. So this is from the Clark County
18 Coroner. It says nephrosclerosis, but I think there's a more
19 extensive -- kidney, dissection shows mild to moderate
20 nephrosclerosis with associated interstitial fibrosis. There
21 also appears to be mesangial thickening within many of the
22 remaining glomeruli, as well as the presence of excessive
23 amounts of proteination and fluid within Bowman's space.
24 Occasional foci of interstitial chronic inflammation are
25 present. There is patchy parenchymal congestion, but no frank

1 hemorrhages observed. Occasional foci of arteriosclerosis are
2 present. So this is describing several structural kidney
3 lesions here.

4 Q Well, aside from the atherosclerotic issue,
5 the narrowing of the arteries in the kidney, isn't that --
6 doesn't that seem to match up with progressive renal failure
7 due to cirrhosis?

8 A No. I have nephrosclerosis here and
9 interstitial fibrosis and mesangial thickening. This is a
10 description of damage to the glomerulus itself. This is not
11 just arteries being hardening. This is the unit that filters
12 the blood in the kidney is damaged in this patient.

13 Q So how does cirrhosis cause renal failure.

14 A That doesn't cause it by doing that.

15 Q Well, I'm asking you.

16 A It causes it by hormonal and blood flow
17 problems. The kidney is structurally normal. If it was
18 purely hepatorenal syndrome and took the kidney out, the
19 kidney would not have any of these changes in it. Your
20 glomeruli look completely normal. It's because you get an
21 imbalance of hormones, such as renin, angiotensin,
22 aldosterone. These are hormones that control blood flow to
23 the kidney. You get problems with that and essentially you
24 get decreased perfusion of the kidney because the liver fails.
25 But once you start seeing these things, that's structural

1 damage to the kidney that probably resulted from years of
2 hypertension and perhaps resulted from years of low grade
3 obstruction.

4 Q But your opinion is that the liver had nothing
5 to do with that?

6 A I'm saying he had structural kidney disease.

7 Q I'm not asking you whether there was
8 structural kidney disease.

9 A I cannot --

10 Q I'm saying the findings in the kidney beyond
11 the structural disease, is there any --

12 MR. SANTACROCE: Your Honor, I'm going to object.
13 This is getting to the point of argumentative. It's been
14 asked and answered.

15 THE COURT: Well, let him -- no. He can --
16 BY MR. STAUDAHER:

17 Q Is there any portion of the cirrhosis, the
18 liver disease, that could have affected that?

19 A That could have? Yes. But can I say that
20 from looking at the history in this? I don't know.

21 Q Now, you mentioned in the -- in the -- I think
22 it was the -- gosh, the -- well, first of all, do you think
23 based on your review of the medical records that he had a
24 hepatorenal syndrome?

25 A I can't say he had hepatorenal syndrome from

1 the medical records, not with this degree of structural kidney
2 disease. Also, the necessary --

3 Q The --

4 A -- tests for hepatorenal syndrome --

5 THE COURT: Let him finish again.

6 MR. STAUDAHER: I'm sorry.

7 THE WITNESS: The necessary tests to diagnose
8 hepatorenal syndrome were not in the labs in the Philippines.
9 BY MR. STAUDAHER:

10 Q The medical records that you have up there,
11 specifically the 4/20 -- this is the second hospitalization,
12 the one where he died, 4/24/2012, a note indicating that he
13 was declared to be in hepatorenal syndrome -- in the
14 hepatorenal syndrome with associated hepatic encephalopathy.

15 A Can you show -- I -- I'm sorry. I can't find
16 that in here.

17 Q Well, I'm asking -- I've given you the date.
18 You've got the records in front of you.

19 A What was the date?

20 Q The date was 4/24/2012.

21 A You're going to have to help me a little more.
22 I have doctor's notes and nurse's notes here --

23 THE COURT: Mr. Staudaher --

24 THE WITNESS: -- and other notes.

25 THE COURT: I'm sorry. Now I'm interrupting you.

1 THE WITNESS: I'm sorry. It's okay.

2 THE COURT: If you're aware of where that is in the
3 record, can you --

4 MR. STAUDAHER: I know it's on that date. I don't
5 know if it's --

6 THE COURT: -- can you maybe --

7 MR. STAUDAHER: -- tabbed or not. I can try and
8 look.

9 THE COURT: -- try to kind of facilitate this.

10 THE WITNESS: There's doctor's and nurse's notes.
11 I'm sorry.

12 MR. STAUDAHER: Well, Your Honor, I've got the date,
13 but it may be the wrong -- wrong one here at the time. So
14 I'll look at that for later on.

15 THE COURT: Okay.

16 BY MR. STAUDAHER:

17 Q If the record had shown that, and we can look
18 at it another time, but if the record had shown that, would
19 you -- would that change your opinion at all?

20 A Well, it would depend how the record showed
21 that. If it's just a doctor writing a note, I did see a note
22 in here at one point that said diagnosis, question mark,
23 hepatorenal syndrome, that would not affect me at all. If I
24 saw laboratory evidence, that might affect me, but that's not
25 in here as far as I know.

1 Q What laboratory evidence would you need?

2 A Well, you need to check the urine sodium and
3 see if he had extremely low urine sodium.

4 MR. STAUDAHER: Your Honor, I pass the witness.

5 THE COURT: All right. Thank you.

6 Redirect.

7 MS. STANISH: May I approach?

8 THE COURT: You may. You may move freely.

9 REDIRECT EXAMINATION

10 BY MS. STANISH:

11 Q I have the exhibit from the Philippines. Is
12 this -- from your review of this record, was it a complete
13 medical record in your experience? What's missing, I guess?

14 A Again, as I said, that's not at the standard
15 of medical records we would have at New York Presbyterian
16 Hospital or most U.S. hospitals. I didn't find good discharge
17 summaries. I didn't find detailed admission notes. And I
18 think some laboratory tests that you probably should have done
19 on a patient like this I didn't see in there.

20 Q Do you know if there was reference to labs in
21 -- if you recall, was there reference to labs, but the lab
22 reports themselves were not contained in these records?

23 A Not that I can recall, no.

24 Q Now, the -- Mr. Staudaher had indicated that
25 you just had to scurry to review these records before coming

1 to testify this -- in the morning today. You were -- when did
2 you first received these records?

3 A So I actually received two copies of those
4 records. One was a hard copy that I'm going to estimate about
5 six to eight weeks ago. Then I subsequently received a
6 scanned .pdf of the same records, and some of them were just
7 difficult to read. So the only thing I did today was
8 re-review them to see more clearly the pages that I couldn't
9 see in the scan copies and photocopies that I had.

10 Q If you recall, do you remember if the copies
11 you received had what we call little Bates stamps showing at
12 the -- it was discovery provided by the State?

13 A I believe that either you or your paralegal
14 sent a note that said these were provided by the State, but I
15 cannot be sure.

16 Q Do you know if you have reviewed all the
17 documents that the State of Nevada provided with respect to
18 Mr. Meana's medical records?

19 A I've --

20 MR. STAUDAHNER: Objection. Speculation. It's what
21 he was provided by defense counsel. He doesn't know what we
22 provided.

23 BY MS. STANISH:

24 Q Were you provided medical records that
25 indicate -- had Bates stamps on them?

1 A Some of them at least did, yes. And maybe
2 perhaps all of them, but there are Bates stamped records for
3 sure.

4 Q With regards to peer review articles versus
5 what you refer to as suggestive articles, can you explain why
6 the three articles that Mr. Staudaher gave you don't fall into
7 the category of what's accepted by -- in general by the
8 medical community? Maybe I need you to explain the standard,
9 to clarify that for us.

10 A Well, it's -- in biomedical research, it's
11 very typical that small interesting observations often get
12 published that are never followed up upon and never proven to
13 be conclusive. And I would consider these type of
14 publications in these type of, some of them highly
15 sub-specialized journals, and some of them even journals, you
16 know, that are not of even a middle caliber. I would say
17 these are at best suggestive.

18 I mean, these are certainly types of experiments
19 that you cannot hold to a reasonable degree of medical
20 certainty or a reasonable degree of scientific certainty.
21 These are suggestive findings and a few experiments. These
22 are not in textbooks. These are not in the New England
23 Journal of Medicine. They are not in nature. They are in
24 science. These are small suggestive findings. This is not
25 where I would base decisions of treating a patient, life and

1 death, or in a court determining, you know, causation or
2 problems.

3 Q But Mr. Staudaher seemed to think it was
4 significant that you were on the editorial board of one of
5 those. Can -- can you explain how these middle -- what did
6 you call them, middle range periodicals?

7 A Middle range journals. How'd they get me on
8 the editorial board?

9 Q I don't know. Were you on the editorial board
10 when it -- that was written?

11 A I was on the editorial board for awhile. I
12 was invited to give a lecture in China and I met the editor of
13 that journal, and he said would you be on the editorial board?
14 And I said, sure, I'll review a few papers a year. And my
15 only contribution to that journal was reviewing a few papers.

16 Q Did you review that one?

17 A Nope.

18 Q If you did, would you have let it into the --
19 recommended it be published?

20 A I haven't read it in its entirety, but I would
21 say I certainly have a lot of questions about it.

22 Q All right. Now, you're not a pathologist. So
23 are you sitting here today rendering an opinion as to what
24 caused Mr. Meana's death?

25 A Well, yes, I think as an internist and a

1 hepatologist I can review all these records and come to a
2 conclusion.

3 Q And explain to us why -- explain to us what
4 your conclusion is based on that review.

5 A Well, I think Mr. Meana had several underlying
6 medical problems. He had medical problems that were affecting
7 his kidneys from as early as 2006, 2007. He had medical
8 conditions that were chronic, that were to some degree
9 affecting his liver as manifested by biliary obstruction, and
10 also by fat in his liver. He got infected with hepatitis C on
11 top of that. He became quite sick with both kidney failure
12 and with liver disease and liver failure. But to look at all
13 these records and to say it was infection with the hepatitis C
14 virus on September 21, 2007, that led to his death, it's just
15 not possible.

16 Q Why? Isn't medicine a science of certainty?

17 A Medicine is a science of probability. There
18 may be some things that are 99.99 percent certain, but not
19 looking at a complicated patient with multiple problems who
20 had something happen to him four or five years ago and then
21 later say, oh, it's that that killed him. I just -- as a
22 physician and as a scientist, I cannot do that based on
23 everything I looked at here.

24 Q Thank you.

25 MS. STANISH: I have nothing further.

1 THE COURT: Mr. Santacroce.

2 MR. SANTACROCE: Thank you.

3 RECROSS-EXAMINATION

4 BY MR. SANTACROCE:

5 Q Doctor, Mr. Staudaher asked you about a case
6 many years ago that involved scopes where you ruled that out
7 as the mechanism of transmission of hep C. Can you tell me a
8 little bit more about that case, how long ago was it? I don't
9 need an exact date. Was it like ten years ago?

10 A It was -- it was roughly ten years ago, I
11 would say.

12 Q And in that particular case you ruled out the
13 scopes because the patients or the individuals that were
14 infected had other possible means of catching that disease.
15 For example, you said one had blood transfusion, one, I
16 believe, had some shared needles, and the other one you
17 couldn't think of; correct?

18 A I can't remember the other one, but I know all
19 those cases were -- there was no evidence of acute hepatitis C
20 infection, and they all had other risk factors for hepatitis
21 C.

22 Q And in that particular case you weren't making
23 a global determination that hepatitis C can't be transmitted
24 through scopes. That was just a fact specific case; correct?

25 A Correct. I was looking at those specific

1 cases that I looked at.

2 Q And, in fact, how long can hepatitis C virus
3 live in the environment outside of the human body?

4 A Oh, boy. I don't know the exact number.
5 There is some period of hours or something, but I don't know.

6 Q We had from 16 hours to four days. Does that
7 comport with your knowledge?

8 A I would not argue with that, but I don't know
9 for sure.

10 Q And it's a blood-borne pathogen; correct?

11 A Yes.

12 Q So that means it passes through blood, blood
13 to blood contact?

14 A Blood-blood is the only way to really get it,
15 yes.

16 Q And blood lives in fecal matter; correct? Or
17 can be present in fecal matter?

18 A Can be. I would say that would be a quite
19 low, low, low, low risk way of transmitting this virus, but
20 it's theoretically possible.

21 Q Okay. And it can be passed through -- well,
22 first of all, you're not here to make a determination as to
23 mechanism of transmission in this case; correct?

24 A Correct. I was asked to look at Mr. Meana's
25 medical records and comment on his medical history and medical

1 condition and how he ended up.

2 Q So when Mr. Staudaher asked you about the
3 scopes, you weren't opining in this particular case the
4 mechanism of transmission of the disease?

5 A All I did when he asked me that is read what I
6 had said in my deposition from two to three years ago in a
7 different case.

8 Q Okay. And your -- your testimony is emphatic
9 that hepatitis C does not cause dementia; correct?

10 A It does not cause dementia.

11 Q If I was a neuropsychologist and I did a study
12 of 19 people and I have had that some sort of correlation
13 between hepatitis C virus and that these 19 individuals had
14 some sort of neurological damage, and then I concluded that
15 one of them, at least, had dementia, would that be a valid
16 study?

17 A That would probably not even get published in
18 some of these journals. There is no controls, there is no
19 methodology, there is -- it's never been peer reviewed as far
20 as I know, so, no.

21 Q Thank you.

22 THE COURT: Mr. Staudaher.

23 MR. STAUDAHER: No redirect, Your Honor.

24 THE COURT: Counsel approach.

25 (Off-record bench conference.)

1 THE COURT: Doctor, I have a couple of juror
2 questions up here.

3 THE WITNESS: Okay.

4 THE COURT: A juror would like to know if Mr. Meana
5 had not been infected with hepatitis C on September 21, 2007,
6 can you say that he would probably have died from liver -- I'm
7 sorry, from liver complications in 2012?

8 THE WITNESS: Boy. It's just really not possible to
9 say that based on the records. I mean, I would say probably,
10 maybe not from liver disease. From kidney maybe, but I -- I
11 just can't say. That would be speculating.

12 THE COURT: Okay. And then another juror would like
13 to know can hepatitis C accelerate existing kidney disease or
14 liver disease or does it have no effect?

15 THE WITNESS: Well, obviously, if there is more than
16 one insult to your liver, it can accelerate it. So a classic
17 example is people who have hepatitis C and also drink alcohol.
18 They do progress faster. So having two or three different
19 diseases can make your liver worse than having one disease.
20 Kidney disease, hepatitis C rarely affects the kidney. There
21 are rare circumstances where you can get something called
22 cryoglobulins where hepatitis C can affect the kidney, but
23 there's no evidence that he had that and it's, you know, not
24 really common.

25 THE COURT: Ms. Stanish, do you have any follow up

1 to those last juror questions?

2 MS. STANISH: Court's indulgence.

3 THE COURT: I guess that would be no.

4 MR. WRIGHT: I'm shaking my head no.

5 MS. STANISH: Can we approach, Your Honor?

6 THE COURT: Sure.

7 MS. STANISH: Thank you.

8 (Off-record bench conference.)

9 THE COURT: Ms. Stanish. Oh, I'm sorry. We need to
10 wait for everybody to get back to their seats.

11 FURTHER REDIRECT EXAMINATION

12 BY MS. STANISH:

13 Q Dr. Worman, did you review all the medical
14 records that our office forwarded to you?

15 A Yes.

16 MS. STANISH: And, Your Honor, may the record
17 reflect that the medical records forwarded to Dr. Worman were
18 provided by the State of Nevada and we forwarded all that we
19 received from them to Dr. Worman.

20 THE COURT: Okay.

21 MR. STAUDAHER: State will -- will take the
22 representations of counsel, Your Honor.

23 THE COURT: All right. Then that will be reflected
24 in the record.

25 MS. STANISH: Nothing further.

1 THE COURT: Mr. Santacroce, anything else?

2 MR. SANTACROCE: No, Your Honor.

3 THE COURT: Mr. Staudaher, anything else?

4 MR. STAUDAHER: No, Your Honor.

5 THE COURT: All right. Doctor, thank you for your
6 testimony. You are excused at this time.

7 THE WITNESS: Thank you.

8 THE COURT: And I'm sorry. We didn't have any other
9 juror questions? I forgot to ask.

10 All right. Thank you, Doctor. You're free to
11 leave.

12 All right. Ladies and gentlemen, in a moment we'll
13 be taking our evening recess. We will not be in session
14 tomorrow. On Thursday we will resume. I anticipate that we
15 will have the closing arguments on Thursday, and following
16 that the case will be submitted to you.

17 Now, trial is not over, so obviously the prohibition
18 about discussing the case or anything relating to the case is
19 still in effect. You are additionally reminded that you are
20 not to read, watch, or listen to any reports of or
21 commentaries on the case, any person or subject matter
22 relating to the case. Do not do any independent research by
23 way of the internet or any other medium, and please do not
24 form or express an opinion on the trial.

25 If you would all please place your notepads in your

1 chairs. And I forgot to tell you when to come back. We'll
2 see you back here at 9:00 a.m. on Thursday morning. 9:00 a.m.
3 Thursday morning.

4 (Jury recessed at 4:39 p.m.)

5 THE COURT: All right. How about 10:30 for us
6 tomorrow, or is that too early?

7 MS. WECKERLY: No, that's not too early. I'm just
8 hoping we can get the proposed defense ones tonight so we can
9 look at them.

10 MS. STANISH: I believe so. You know, we have 15
11 special jury instructions. Many of them are evidentiary right
12 out of the Ninth Circuit pattern book. And then it's really
13 the elements of the offense relating to the negligent charges
14 that I think they want to focus on, but we will get those to
15 them.

16 THE COURT: Well, they may want to focus on the ones
17 from the Ninth Circuit, which by virtue of the fact that you
18 say --

19 MS. WECKERLY: We're in State Court.

20 THE COURT: Well, we're in the -- under the -- by
21 virtue of the fact that you say they're from the Ninth Circuit
22 book suggests we normally, and I'm sure we normally don't give
23 them, so, I don't know, they may have objections on those, as
24 well.

25 MS. STANISH: I understand.

1 THE COURT: All right. We'll see you back here
2 tomorrow at 9 -- I'm sorry, 10:30.

3 MS. STANISH: Thank you.

4 (Court recessed for the evening at 4:41 p.m.)
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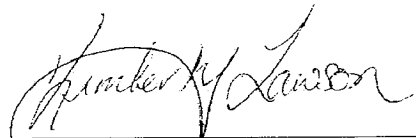
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1 we will consider making him an alternate and moving in one of
2 the others because I don't want them to start deliberating and
3 then he leave on his vacation and everything like that. So
4 those are the only issues I can think of that may still be out
5 there in the wind.

6 MS. STANISH: Judge --

7 THE COURT: I just want to make sure I'm not
8 neglecting.

9 MS. STANISH: You know what, I have to apologize if
10 there was something you heard that was offensive. We had a
11 discussion --

12 THE COURT: Well, that's fine. You two are free to
13 discuss whatever you want.

14 MS. STANISH: No, but I wanted to let you know what
15 we discussed because Ms. Weckerly and I started the discussion
16 in the anteroom and then we continued it in the courtroom.
17 And we were discussing the jury instructions. I was
18 describing for them what I had written so far, and we were
19 trying to anticipate what issues we would have.

20 And the issues are, which we may agree on, is the
21 mental element for the criminal neglect statute, and then we
22 are probably going to have issues regarding the -- the theft
23 statute and how to -- whether the jury needs to be instructed
24 specially on whether or not to take into account services
25 rendered, that whole issue that Mr. Staudaher raised. But we

1 agree there has to be argument on it.

2 THE COURT: Right. That's why I'm saying I don't
3 think it's fair to characterize that as an outstanding
4 decision when there hasn't been argument on it.

5 MS. STANISH: No, it's something that still, you
6 know, is --

7 THE COURT: And, to me --

8 MS. STANISH: -- contemplated in here.

9 THE COURT: -- you know, what do I know, that seems
10 to be a relatively big deal, at least with the theft statute.
11 I mean --

12 MS. STANISH: It depends --

13 THE COURT: -- on the insurance --

14 MS. STANISH: -- on the --

15 THE COURT: -- defense it doesn't really matter,
16 but --

17 MS. STANISH: Correct. The great scheme of things.
18 And then the --

19 THE COURT: So, I mean, what's one more if he's
20 convicted. I mean, you know --

21 MS. STANISH: And then just to let Your Honor know
22 what we were contemplating doing is hopefully having tomorrow
23 off so that we can meet with Your Honor to do the jury
24 instructions. We wanted to know -- that's why we were talking
25 about what kind of argument we would expect. And hopefully

1 we'll get that worked out by the end of the day.

2 THE COURT: Yeah, I don't care when you folks meet.
3 I mean, I would -- if you want to meet tonight, that's up to
4 you. If you want to meet tomorrow morning, that's up to you.
5 I would like to go on the record and settling jury
6 instructions relatively early in the day, like 10 or 10:30.

7 So whenever you folks need to meet, you know, if you
8 need to meet at 8:00 to do that or you want to do it tonight,
9 obviously I don't care. What I don't want to have happen is
10 waiting until like 2:00 in the afternoon to settling the jury
11 instructions because there may be typing that needs to be done
12 and whatnot.

13 The Court -- you know, it's my experience that the
14 later we wait, the more burdensome it is on the court staff
15 who then has to do all the typing and corrections. So for
16 that reason I don't want us to be here at 4:30 with my staff
17 having to do all the changes and corrections and everything
18 like that.

19 So for that reason, it's better if we do it earlier,
20 that way we can get a cleaned up packet, we can number them,
21 we can make sure everybody has time to review the changes,
22 that they've been done correctly, and all of those things. So
23 I don't want to -- in other words, the whole point of that was
24 I don't want to wait until the last minute on getting together
25 in the afternoon because I think it could take, based on

1 everything else that's transpired in the case, I think it
2 could take some time.

3 MS. STANISH: And what we were hoping is that we
4 could have the afternoon off so that both parties could
5 prepare for closing and then deliver the closing on Thursday.

6 THE COURT: Right. And you think we can do the
7 closings and the jury instructions in one day?

8 MS. STANISH: Well, I thought we would do jury
9 instructions tomorrow.

10 THE COURT: No, no, I meant read them.

11 MS. STANISH: If you don't do the lengthy
12 indictment.

13 THE COURT: Yeah, that's what I was going to say.
14 Do both sides --

15 MS. STANISH: You already read that.

16 THE COURT: Do both sides stipulate to the Court not
17 rereading the indictment and just saying the indictment is
18 here as part of Instruction No. 3. It's been read to you
19 already. And both sides stipulate to me not reading it again?

20 MR. STAUDAHER: State does.

21 MR. WRIGHT: Who has to read it?

22 THE COURT: I do.

23 THE CLERK: It's an hour and 20 minutes.

24 MR. WRIGHT: You got me. I'll stipulate.

25 THE COURT: Mr. Santacroce, do you stipulate?

1 MR. SANTACROCE: Yes, Your Honor.

2 THE COURT: All right. So that'll save some time,
3 then. And how many proposed instructions including the stocks
4 does the State have?

5 MS. WECKERLY: You know, there really aren't that
6 many. I didn't number them. But when you take out the
7 indictment it's substantially smaller.

8 THE COURT: Okay.

9 MS. WECKERLY: So I think that -- I understand there
10 will be argument on the instructions, but there really aren't
11 -- there's probably less than 30 substantive instructions, or
12 maybe right around 30.

13 THE COURT: Okay. So -- and both sides, we think we
14 can do all the closings on -- in a single day?

15 MR. WRIGHT: Yeah.

16 MS. WECKERLY: Sure.

17 THE COURT: Well, I don't know. I mean, I don't
18 know if, you know, somebody has got a three and a half hour
19 PowerPoint.

20 MS. WECKERLY: Not yet.

21 MR. WRIGHT: I don't PowerPoint.

22 THE COURT: Okay. So then they'll start Friday, so
23 that takes care of the issue regarding Juror 7. That gives
24 plenty of time for him to deliberate and all of those things.
25 And I think those were the only things that we needed to

1 discuss at this point.

2 MS. STANISH: Okay.

3 THE COURT: All right.

4 MR. STAUDAHER: We're to be back, Your Honor, at
5 what time?

6 THE COURT: I told them 1:30.

7 MR. STAUDAHER: 1:30? Okay

8 THE COURT: Oh, should we do the Fifth Amendment
9 admonishment, or do you guys want to do that after lunch?

10 MR. SANTACROCE: Whatever you prefer.

11 THE COURT: Let's do it now.

12 All right. We'll start with Dr. Desai. Everyone
13 listen carefully to make sure I cover everything. I do it
14 from memory.

15 Dr. Desai, I need you to stand up, please. And I
16 need you to respond out loud to the Court. If it takes you
17 some time to speak, that's fine with me. Okay?

18 All right. Dr. Desai, you -- do you understand that
19 you have the right to take the stand and testify on your own
20 behalf? Do you understand that?

21 THE DEFENDANT DESAI: No.

22 THE COURT: All right. Have you had an opportunity
23 to discuss his Fifth Amendment right with him, his right to
24 testify and his right not to testify?

25 MR. WRIGHT: Yes.

1 THE COURT: All right. Do you want additional time
2 to go over those rights with him?

3 MR. WRIGHT: No, it doesn't --

4 THE COURT: Okay.

5 MR. WRIGHT: -- change anything.

6 THE COURT: We'll go over those after the lunch
7 break. You know, I would just note that --

8 MR. WRIGHT: I'll talk to him.

9 THE COURT: -- Dr. Desai's demeanor in terms of his
10 posture, I don't know if demeanor is the right word, and
11 inability to face me is a little different than what I've
12 perceived at the breaks in terms of his posture and whatnot.
13 I'm not accusing anyone of anything. I would just say it's
14 different. So I hope there's not some exaggeration going on.
15 Posture, obviously, is different than his ability to
16 understand and communicate. However, it's curious to me that
17 it's manifesting differently than other times when I've seen
18 movement.

19 MR. WRIGHT: He's not moving.

20 THE COURT: I understand that. But, I mean, you
21 know, he walks out of the courtroom, he walks down the street,
22 he walks down the stairs, and his posture standing here right
23 now and his hunched over appearance and his failure to look at
24 the Court is, I think, different. You know, he's walking in
25 and out of this building unassisted. I know his daughters are

1 with him sometimes, but all I'm saying is I just hope that
2 there is not some exaggeration going on because --

3 MR. WRIGHT: There's no exaggeration --

4 THE COURT: All right.

5 MR. WRIGHT: -- going on.

6 THE COURT: Well, you can say that. We're back --
7 you know, we're kind of a in a full circle here to square one.
8 You know, I think your representations are well intentioned.
9 That does not necessarily make them accurate in terms of what
10 you're accurately perceiving and how you're communicating, I
11 think that's well intentioned. Whether or not that's the
12 ultimate truth, I don't necessarily know that that's -- that
13 that's the case or the -- that that's fact. So we'll cover
14 this again at the -- after the lunch break.

15 And, you know, if the State wants to be heard on
16 some of what I've said and their observations, they will be
17 allowed to -- to do that. But, you know, I don't know why Dr.
18 Desai cannot face the Court, and I think that that could be
19 evidence of some exaggeration going on. Because certainly --
20 well, I'm not going to opine. I'm just saying I don't
21 understand it. So go to lunch.

22 (Court recessed at 12:36 p.m., until 1:45 p.m.)

23 (Outside the presence of the jury.)

24 THE COURT: We'll do the witness, start with the
25 witness, and then at our afternoon recess we'll do the Fifth

1 Amendment admonishment.

2 MS. WECKERLY: Okay.

3 MR. STAUDAHER: Yes, Your Honor. Before we bring
4 the jury in we do have to address the next witness, the scope
5 of that person's testimony.

6 THE COURT: All right. Go ahead.

7 MR. STAUDAHER: We had -- I just want to bring it to
8 the Court's attention and actually try and find out exactly
9 where we plan on going with this witness because this is a
10 witness who testified to the Chanin case, gave a deposition
11 and gave opinions in the Chanin case regarding the fact of no
12 transmission at the clinic and there was no genetic match to
13 that person.

14 That's one of the issues is that he claimed in his
15 attached affidavit that one of the issues as to why that
16 person, Chanin, did not have hepatitis C from the clinic is
17 because there was no genetic link or no genetic match to that
18 one. He testified in a -- and this is not the Endoscopy
19 Center of Southern Nevada. This is the Desert Shadow
20 Endoscopy Center. Sorry, Your Honor.

21 So it's a different clinic, it's a different
22 non-genetically matched patient, and he was directly involved
23 with the review of those records and testimony about that,
24 which we have received a deposition of. So it's a concern,
25 obviously, that the State has as to the scope because in his

1 deposition he talks about having reviewed a number of cases.

2 I don't know which ones he reviewed and didn't
3 review, which if they were genetically linked, if they weren't
4 genetically linked. I know he was involved in Michael
5 Washington, at least, and Patty Aspinwall, I believe there was
6 a reference to that in there, as well as Chanin where he
7 actually did give the deposition. So --

8 THE COURT: So what are you trying to limit?

9 MR. STAUDAHER: I'm not trying to limit anything.
10 I'm just --

11 THE COURT: Okay.

12 MR. STAUDAHER: -- trying to make sure that they
13 know that I feel it's fair cross-examination --

14 THE COURT: Yeah, I mean, if you --

15 MR. STAUDAHER: -- for bias purposes.

16 THE COURT: I mean, they've been pretty scrupulous
17 about not introducing the evidence on the other 109 or 7 or
18 whatever it is. So is what you're saying that if then they
19 get into all this other stuff he's reviewed, it would open the
20 door, then, to that? Is that --

21 MR. STAUDAHER: That's partially it.

22 THE COURT: Okay.

23 MR. STAUDAHER: That's not the main portion of
24 what --

25 THE COURT: Okay.

1 MR. STAUDAHER: -- my concern is. I want to be able
2 to cross-examine him on this that this -- he was involved in a
3 non-genetically matched patient at a different related clinic,
4 and that he opined as to what the infections were or weren't
5 in that case and what he would --

6 THE COURT: This is another --

7 MR. STAUDAHER: -- rely upon.

8 THE COURT: -- another gastro -- one of their
9 centers?

10 MR. STAUDAHER: Yes --

11 THE COURT: And so --

12 MR. STAUDAHER: -- the Desert Shadow, the Burnham
13 clinic.

14 THE COURT: The Burnham clinic. So there was a
15 non-genetically linked patient at the Burnham clinic and he
16 opined that he, what, wasn't infected at the Burnham clinic?

17 MR. STAUDAHER: Right.

18 THE COURT: And, Mr. Wright, do you intend to get
19 into that?

20 MS. STANISH: No, I had indicated earlier to the
21 prosecutors that the primary purpose of Dr. Worman's testimony
22 was to address Mr. Meana's death, and then touch upon, in
23 general, hepatitis C and dementia, and that's it.

24 THE COURT: So he is just testifying strictly as a
25 medical expert relating to the cirrhosis and the cause of

1 death and as to whether or not hepatitis C could cause
2 dementia?

3 MS. STANISH: Correct.

4 THE COURT: Not as to causation of the infection or
5 genetic linkage or anything like that?

6 MS. STANISH: Yeah, we're not challenging the -- the
7 contraction of the hepatitis C by Mr. Meana, but it's to
8 address the proximate cause issue.

9 MR. STAUDAHER: So that -- I mean, that's -- I mean,
10 they've alluded to it, but I've never heard before that
11 they --

12 THE COURT: Okay.

13 MR. STAUDAHER: -- don't challenge the --

14 THE COURT: If that's all they're -- they're -- I
15 mean, if that's what it's limited to --

16 MR. STAUDAHER: My concern was the bias issue, that
17 I felt it was -- especially because he had opined as to the
18 fact that it was not that particular clinic that gave him the
19 infection and that he also said in his affidavit that one of
20 the reasons he based that on was that there was no genetic
21 link to Mr. Chanin and that clinic and that he -- he believed
22 that he must have a risk factor, although none were ever
23 articulated, just that he must have a risk factor so,
24 therefore, he could not have gotten it.

25 He also said that even though in that case Mr.

1 Chanin, I think a few weeks before, at least within the window
2 of incubation, had had a test for hepatitis C that came back
3 negative. He said, well, that could have been within the
4 window of incubation, so the -- the most he could say was that
5 he contracted hepatitis C from somewhere in February of 2007
6 up to the time --

7 THE COURT: So you want --

8 MR. STAUDAHER: -- at the clinic.

9 THE COURT: -- to cross-examine -- do you still want
10 to cross-examine him about all that?

11 MR. STAUDAHER: That he was paid by the -- by the
12 defense to essentially opine in a different case that --

13 THE COURT: But the --

14 MR. STAUDAHER: -- that it was not --

15 THE COURT: -- insurance --

16 MR. STAUDAHER: -- the clinic.

17 THE COURT: -- defense?

18 MR. STAUDAHER: Yes. Not this defense, not these
19 defense attorneys.

20 THE COURT: Okay. So he wasn't retained by -- I'm
21 assuming it was insurance defense or the defense team, maybe
22 -- who was it, Teva? Was it -- was it the endoscopy's
23 defense, was it the pharmaceutical defense?

24 MR. STAUDAHER: Well, I believe --

25 THE COURT: Do you know?

1 MR. STAUDAHER: Let me look.

2 THE COURT: Maybe you guys know, Ms. Stanish.

3 MS. STANISH: Give me a moment, Your Honor, please.

4 MR. STAUDAHER: Yes, this was -- and this was the
5 first trial, as my co-counsel pointed out. This was the one
6 that went to verdict, the Chanin matter against Teva and
7 Baxter.

8 THE COURT: So he would have been the
9 pharmaceutical's paid expert.

10 MS. STANISH: No, I don't think that's correct, Your
11 Honor.

12 MR. STAUDAHER: Actually, I think --

13 MS. STANISH: I believe he was hired by the McFadden
14 law firm that represented the endo center early on. And as I
15 recall, and correct me if I'm wrong, they did depositions in
16 groups. And then -- and then the insurance company settles
17 out with the clinic and doctors and, of course --

18 MR. STAUDAHER: It says here --

19 MS. STANISH: -- Chanin.

20 MR. STAUDAHER: -- that he was hired by the
21 defendants for the Endoscopy Center of Southern Nevada and
22 Gastroenterology Center, as well. So that -- it was Mr.
23 McFadden's.

24 MS. STANISH: Correct.

25 MR. STAUDAHER: But that's who he represented at the

1 time.

2 MS. STANISH: Correct. And then it settled -- the
3 Chanin case went forward to trial, history is made, but he
4 never -- he did not testify at the trial is my understanding.

5 MR. STAUDAHER: At least I don't know if it --

6 MS. STANISH: This is --

7 MR. STAUDAHER: The only thing we have is a
8 deposition. I've asked Ms. Stanish for anything else, and
9 she --

10 MS. STANISH: Right.

11 MR. STAUDAHER: -- doesn't have anything else.

12 MS. STANISH: We -- we received the deposition from
13 the -- in the State discovery. The deposition and a couple
14 reports that we forwarded --

15 MR. STAUDAHER: Right.

16 MS. STANISH: -- since there was --

17 MR. STAUDAHER: He did a report in Washington, he
18 did a report in Chanin, and I don't know if he's done any
19 others.

20 THE COURT: So, what, you want to ask him, oh, you
21 were retained by the defense in the civil case and you
22 provided an opinion that said Mr. Chanin didn't contract
23 hepatitis because it wasn't genetically linked? What do you
24 want to ask him?

25 MR. STAUDAHER: It wasn't genetically linked and he

1 said that there was no -- even though there was reported no
2 risk factors, he opined that there must be one because he had
3 had a hepatitis C test, and even though there was some
4 questioning about the fact that the doctor he went to did it
5 as a routine because his insurance would pay for it, that
6 didn't matter.

7 He just felt that there should be a risk factor that
8 this person was not disclosing and, therefore, he couldn't --
9 he didn't think that he was genetically linked to a reasonable
10 degree of medical probability to that claim. I mean --

11 THE COURT: And you think that shows what? That --

12 MR. STAUDAHER: His bias.

13 THE COURT: -- like he's a hired gun and he'll just
14 say whatever or --

15 MR. STAUDAHER: Well, I think that there is -- in my
16 opinion, based on what he testified to at the deposition,
17 there was no -- there was no basis for him saying that. He
18 gave enough wiggle room. But to come forward with that kind
19 of evidence and say to a reasonable degree of medical
20 probability he did not get the infection at that clinic I
21 think goes to show that he was essentially bias, that he was
22 bias for the defense in that case. He's been hired by the
23 defense in this case and he's -- you know, it goes to his
24 bias, I believe.

25 THE COURT: Okay. So his opinion wasn't to -- his

1 opinion wasn't I can't say that he's linked to a reasonable
2 degree of medical certainty, it was I can say that he's not
3 linked to a reasonable degree of medical certainty?

4 MR. STAUDAHER: That was my understanding of reading
5 his transcript.

6 THE COURT: All right. Ms. Stanish.

7 MS. STANISH: Let me just look to see what words he
8 articulated. They ask how -- how he thinks he was infected
9 and the doctor responds, I can only say that he was infected
10 in that time period, and there are many possible routes of
11 transmission. I'm not seeing where he says to a reasonable
12 degree of certainty that he concludes that he did not get
13 hepatitis C. I think what he was saying was he could not
14 state with -- that there was insufficient evidence to connect
15 him to the clinic with a reasonable degree of medical
16 certainty. Do you find --

17 MR. STAUDAHER: I will -- I will look --

18 MS. STANISH: -- a different line?

19 MR. STAUDAHER: -- for it --

20 MS. STANISH: I guess my other issue --

21 MR. STAUDAHER: -- because the issue --

22 THE COURT: I mean, I think that that's --

23 MR. STAUDAHER: It says did not believe that Chanin
24 got hep C at the clinic, page 13, from February to July. If I
25 go to that page --

1 MS. STANISH: I see where you're looking. The
2 question was do you think he contracted hepatitis C. Do you
3 have an opinion to a reasonable degree of medical probability
4 how Mr. Chanin contracted hep C that was diagnosed at the end
5 of July '06? He contracted it sometime in the time span
6 roughly of six months before the time or from going back a
7 couple week before that time, and I think that there --
8 there's many possible ways that he could have contracted hep
9 C, and I don't believe it was from the colonoscopy.

10 MR. STAUDAHER: So --

11 THE COURT: And then he says that's to a reasonable
12 degree --

13 MS. STANISH: No, he doesn't say that.

14 MR. STAUDAHER: That's how the question was
15 prefaced, to a reasonable degree of medical probability, and
16 then he says he doesn't think he got it at the clinic. So --
17 or got it from the colonoscopy, which was at the clinic.

18 MS. STANISH: But then I -- you know, to put it in
19 context, I think he continues about the -- the difficulty of
20 trying to pinpoint what occurred. And there was something
21 about --

22 MR. STAUDAHER: He never comes --

23 MS. STANISH: -- he traveled overseas.

24 MR. STAUDAHER: -- off that, though. I mean, he
25 never says get, well, you know, he could have gotten it at the

1 clinic. He maintains that position.

2 THE COURT: All right. I think it goes to bias.
3 I'll allow Mr. Staudaher to question her about it.

4 MR. WRIGHT: Well, but --

5 THE COURT: All right. Kenny, bring them in.

6 MR. WRIGHT: We object.

7 THE COURT: I got that from her --

8 MR. WRIGHT: All right.

9 THE COURT: -- her lengthy argument that she was --
10 I mean, you know, I guess you're objecting that you don't
11 necessarily think it's relevant to anything, but I think if --

12 MR. WRIGHT: I don't think the gastro -- the
13 defendants in there wasn't the defendant here. The defense
14 wasn't -- he had no control over the defense in that case, and
15 if he tries to lump us together, it's -- it's not correct.

16 And secondly, just to bring out he testified to show
17 bias is fine, but I don't understand that you -- to show bias
18 you then bring out what he testified to, and I don't believe
19 what you testified to. That doesn't show bias. The bias is
20 he's held out to give opinions.

21 THE COURT: Well, no, I mean --

22 MR. WRIGHT: So we -- we put on his rebuttal that
23 he's right and his opinion is well founded.

24 MS. STANISH: Plus the standard of proof in the
25 civil case is --

1 THE COURT: Well, except he's saying to a reasonable
2 degree of medical probability, which is what they all testify
3 to, that it couldn't have been caused that way, that he didn't
4 believe. Now, if he had stated it the other way, that he
5 couldn't attribute a cause, I think that's -- I mean, I see
6 that as a significant difference. Whether he's saying it
7 wasn't the cause or, you know what, I just can't attribute a
8 cause. To me, those things are -- are very different and, I
9 think, significantly different.

10 Mr. Santacroce?

11 MR. WRIGHT: But how do we know he wasn't right? I
12 mean, what's the evidence going to be that that was incorrect?

13 MR. STAUDAHER: Well, the evidence he reviewed,
14 clearly. I mean, he listed a whole list of things and he
15 gives -- I'm sorry, Your Honor -- he gives his --

16 THE COURT: Well, how are you going to introduce
17 that?

18 MR. STAUDAHER: He gives his opinion that -- the
19 reason for his opinion is this, that -- just what I said,
20 there was no genetic link, and that because he believed that
21 there must be a risk factor when, in fact, none was
22 articulated that that must be the reason why he got it.

23 THE COURT: Well --

24 MR. STAUDAHER: He has a risk factor that he's not
25 disclosing and that --

1 THE COURT: Well, I don't think that's so out in
2 left field because typically a physician isn't going to test
3 you for hepatitis C. So I think what he's saying is if he's
4 being tested for hepatitis C, he must have articulated a
5 reason to his physician because that's not a standard --
6 that's not one of the standard tests.

7 MR. STAUDAHER: Correct. But then they ask him the
8 questions in follow up, well, do you know if his doctor did
9 that as a routine, if it was because of his insurance. They
10 give the doctor, they give the information, and he goes, no, I
11 don't know any of that stuff. Would it change your opinion?
12 No. I mean, that's -- that's what we're basically at. So if
13 he doesn't take into account that information, if he didn't at
14 least say, well, if that had been the case, that would change
15 my opinion.

16 THE COURT: Well, I don't want to -- okay. Here's
17 the deal. I don't want to get into a lengthy litigation over
18 the Chanin matter and what he should have known or asked or
19 whatever. Now, I mean, I certainly think it's fair for you to
20 bring up that he was retained, just like the defense did for
21 all of the experts that have testified.

22 Kenny, I need a minute.

23 Just like the defense has done for the experts that
24 have testified on the State's side. Oh, you were retained to,
25 you know -- you testified and you -- you know, that the State

1 wound up subpoenaing that. In fact, they had originally been
2 retained by plaintiff's counsel in those cases.

3 So I certainly think it's fair and goes to bias
4 that, just like you guys did or the defense did, for those at
5 least a couple of witnesses that the State learned about
6 through plaintiff PI counsel. So they can certainly bring out
7 that he opined in a civil case and that he was retained to do
8 that and that was by the civil defense attorneys, and this was
9 what he opined.

10 Beyond that there really -- he can't really comment
11 too much because we're not going to litigate the merits of the
12 Chanin case. So, I mean, that's -- that's what he can ask
13 him. You were, you know, a retained expert, who retained you
14 and what was your opinion?

15 Now, beyond that we're not going to -- as I said,
16 we're not going to get into a mini trial over the merits of
17 the Chanin matter. So, you know, do with that -- you know, do
18 what you will with that, but that's the extent of what the
19 State is going to be able to get into.

20 I do think it goes to bias that he was retained and
21 he gave an opinion favorable to the defense attorneys in that
22 matter, just like with the State's witness, the defense got to
23 get into, oh, you were retained by the PI lawyers and you gave
24 an opinion favorable in those cases and you made all this
25 money. You know, certainly I think that that's a fair subject

1 for cross-examination and he can get into it in that limited
2 way. So -- yes?

3 MR. SANTACROCE: I just want, for the record, to
4 state my objection, as well. I think you've stated my
5 objection, so I don't need to go over it again, but I think to
6 introduce another name and an infected patient, we'll have to
7 re-litigate that issue, put it before the jury. This serves
8 to confuse the jury and it's really kind of a backdoor
9 approach of the State to get in more information about
10 infected patients at Burnham.

11 So I think that, yes, it's fair game to go after the
12 bias that he was paid by the defense to testify here today,
13 he's testified for the defense in the past and he's been paid
14 for that. But to go into specific names and diseases and what
15 you testified to as to whether he had hep C or not, I think
16 it's irrelevant, it's confusing to the jury, and it's highly
17 prejudicial over probative.

18 MR. STAUDAHER: We didn't choose the expert. I
19 mean, they picked him knowing full well that he had testified
20 in that case, that it was a non-infected patient, that he
21 actually provided an opinion and that information has been out
22 there, so --

23 THE COURT: It wasn't -- why don't you do this.
24 Here is, I think, balancing everything you can ask -- don't
25 introduce the name because we haven't heard about this name

1 before and I think that that would be unduly confusing.
2 Again, I don't want to litigate the infection of this person
3 and whether he got infected or not. He's not a named victim.
4 You know, we're here at the defense's case. I don't want to,
5 you know, open the door.

6 But, again, you can certainly ask he was retained in
7 one of the civil cases for a non-genetically linked patient
8 who was infected with hepatitis. You can ask what he was paid
9 and that he gave an opinion that -- you know, favorable to the
10 endoscopy center, that he did not contract hepatitis there
11 without getting into the name or who it was or whatever. Just
12 point out it wasn't one of the, you know, genetically linked.

13 MR. STAUDAHER: Can I at least put out that he -- it
14 was at a different clinic, it was at the Burnham clinic and
15 not the Shadow Lane clinic? I mean, that's germane because
16 it's not a genetically linked patient. I don't want to have
17 -- it's a misperception to the jury that it may be one of the
18 patients like Lakota Quannah or somebody like that who was
19 non-genetically linked who is in our case.

20 I mean, I understand this Court's stricture on -- on
21 the name. I don't have an issue with that. But as far as at
22 least a different clinic and that he -- am I going to be able
23 to at least ask him what the basis for his opinion is?

24 THE COURT: Why don't you say this? You know, I
25 don't want to start now -- I mean, I just -- you know, a

1 non-genetically linked patient who is not part of this case or
2 something like that, not part of this case and you were
3 retained, how much did he get paid, and he gave a favorable
4 opinion that he wasn't infected at the center or he didn't
5 receive the infection through a colonoscopy or something like
6 that. That way we're not litigating a side issue, but the
7 State is able to introduce this kind of, you know, hired gun,
8 bias idea if that's -- obviously you can't refer to him as a
9 hired gun because we know that that would be misconduct, so --

10 MR. STAUDAHER: And I did not use those words at
11 all.

12 THE COURT: Right. I'm just saying, I mean, to me
13 that's the gist. Those are my words, for the record, not Mr.
14 Staudaher's words. I'm just cautioning not to use those words
15 because that would be misconduct. But I think that's the
16 idea, that this guy is retained, he's going to say whatever is
17 favorable to the defense.

18 And, again, the defense has been allowed to
19 cross-examine the State's experts on their bias as a result of
20 having been retained by PI lawyers, plaintiff's attorneys in
21 this -- in the related matters and making a lot of money from
22 that. So I think it's the same -- it's the same line of
23 thinking.

24 MR. WRIGHT: That's as far as it went, though. I
25 didn't ask a single one of those witnesses, and what was your

1 opinion and what did you testify to in that other case? The
2 bias is shown by being --

3 THE COURT: Well, no, I think you did because you
4 got into the whole idea, well, who are you suing and it's the
5 propofol and, oh, and if it wasn't the propofol or it wasn't
6 -- if it was the -- I remember on one if it was the saline
7 then that would be against your theory that it's the propofol.
8 So that did come out. Somehow I remember the -- I mean, the
9 idea was, well, you have to say that it was the unsafe
10 injection practices through the propofol because that's where
11 the money is was the gist of it. Not your words, but that was
12 the -- the import of the cross-examination that I took from it
13 that --

14 MR. WRIGHT: You're right.

15 THE COURT: -- that the reason they -- you know,
16 they have to say it is because the saline, there's not --
17 there's not a lot of money there. And, you know, again, I
18 think that goes to the bias and I -- I don't know that we have
19 to discuss anything.

20 Mr. Staudaher, I trust you'll stay within the
21 parameter set by the Court, and I'll bring them in.

22 MS. STANISH: If I may, Your Honor, I just want to
23 tell the witness.

24 THE COURT: That's fine.

25 (Inside the presence of the jury.)

1 THE COURT: All right. Court is now back in
2 session, and the defense may call its next witness.

3 HOWARD WORMAN, DEFENDANT'S WITNESS, SWORN

4 THE CLERK: Thank you. Please be seated. And
5 please state and spell your name.

6 THE WITNESS: Okay. Is this the mic here that picks
7 me up?

8 THE COURT: It is.

9 THE WITNESS: I'm fine?

10 THE COURT: The black box. Yes.

11 THE WITNESS: Howard Worman, W-O-R-M-A-N.

12 THE COURT: Howard, H-O-W-A-R-D?

13 THE WITNESS: H-O-W-A-R-D, yes.

14 THE COURT: All right. Thank you.

15 Ms. Stanish, you may proceed.

16 MS. STANISH: Thank you, Your Honor.

17 DIRECT EXAMINATION

18 BY MS. STANISH:

19 Q What do you do for a living?

20 A I'm a professor of medicine and pathology and
21 cell biology at Columbia University.

22 Q And are you a practicing physician?

23 A In New York State I am, yes.

24 Q And what exactly do you do as a practicing
25 physician in New York State?

1 A Well, my clinical work is focused primarily on
2 liver disease, and I also attend on general medicine in the
3 hospital we're affiliated with. And then I do research and
4 teaching at the medical school.

5 Q And let -- let me have you take us back to
6 your younger days of your medical education. Please describe
7 for the jury your educational background.

8 A Okay. So I got a bachelor's degree from
9 Coronel University. That was 1981. M.D. Degree from the
10 University of Chicago in 1985. Then I trained in internal
11 medicine at what was then New York Hospital for two to three
12 years. Then I did a three year fellowship in cell biology at
13 Rockefeller University with Nobel Laureate whose name was
14 Gunter Blobel.

15 Then I got an assistant professor job at Mount Sinai
16 School of Medicine where for a year I had intensive training
17 in liver disease from someone whose name was Fenton Schaffner.
18 I worked at Mount Sinai for three more years, then started at
19 Columbia in 1995, assistant professor, associate professor,
20 tenured associate professor, full professor, until now.

21 Q And as I understand what you explained to us
22 earlier, you -- you -- are you consulting -- are you a
23 consulting doctor for other doctors who have patients with
24 liver issues?

25 A Well, yeah, my clinical work would be divided

1 up into sort of two groups. One is there's a liver clinic at
2 Columbia where there are probably 1,000 or so patients with
3 hepatitis C where the fellows care for them and I oversee them
4 and that's a large group of patients referred to other doctors
5 at the medical center. And then I have a smaller practice
6 where I see patients for second, third opinions who have
7 usually seen gastroenterologists or hepatologists beforehand.

8 Q And you mentioned that you were involved in
9 research. Could you overview for us what type of research you
10 do in the area of livers?

11 A Okay. Well, in the area of liver disease, if
12 I go back, I first got into that by studying auto-antibodies
13 in a rare liver disease called primary biliary cirrhosis.
14 After that I did some work in the laboratory on hepatitis C,
15 characterizing some of the proteins of what was then a newly
16 discovered virus. I've done clinical trials for hepatitis C
17 back when interferon and ribavirin were relatively new drugs.

18 I did two or three clinical trials to treat patients
19 with hepatitis C with interferon and ribavirin, one trial
20 before the drugs were approved. And I've done some other
21 projects in liver disease in the lab looking at some genes
22 that cause fatty liver, involved in a project like that, and I
23 do basic cell biology research, as well, that relates to
24 diseases other than liver diseases.

25 Q And do you publish articles or review articles

1 in those journals that most of us don't read?

2 A Yes. I mean, shall I elaborate?

3 Q Approximately how many articles have you
4 written in the area of liver disease?

5 A Oh, I can't say. It's in -- all together I've
6 published about 180 medical articles, and maybe 30 to 40 to 50
7 on -- somehow related to liver disease.

8 Q And you are here today as an expert retained
9 by the defense; correct?

10 A That's correct.

11 Q How much of your working life is devoted to
12 testifying in -- in or reviewing cases involving litigation?

13 A It varies from year to year, and I'd say it
14 varies from 10 percent of my time to the most, some years, 15
15 or so percent of my time.

16 Q And had you been previously -- had you
17 previously worked for a civil law firm that represented the
18 corporate corporation at the endoscopy center?

19 A I believe the -- the defendant there was
20 called the Endoscopy Center of Southern Nevada and I worked
21 for a law firm that was defending them.

22 Q And that case involved a non-genetically
23 connected patient that was -- had nothing to do with the dates
24 of September 21, 2007, and July 25, 2007?

25 A The case that I testified in?

1 Q In a deposition, correct.

2 A Yes, the case that I gave deposition testimony
3 was not in that day.

4 Q All right. Now, you had occasion to review
5 the medical records of Mr. Meana; correct?

6 A Yes, I did.

7 Q And I have those -- some of those records
8 here. If there is anything you need to refresh your memory,
9 please let me know.

10 A I will.

11 Q Could you generally describe for the jury what
12 medical records you reviewed?

13 A As best as I remember, I hope I'm not
14 forgetting one, I reviewed medical records from the Endoscopy
15 Center of Southern Nevada. I reviewed medical records from
16 Mr. Meana's primary doctor, Junari (sic) or something like
17 that was his name. I reviewed medical records from a
18 gastroenterology consultant he saw, Dr. -- it was Sood or
19 Soot. And I reviewed medical records from the Philippines
20 from two hospitalizations he had in the Philippines. And I
21 think that covers it, although there may be one or two in
22 there that I'm not recalling.

23 Q All right. And did you also have the
24 opportunity to review the coroner's report, as well as the
25 autopsy report relating to Mr. Meana?

1 A Yes, I did.

2 Q And do you recall what the cause of death was
3 in the death certificate of Mr. Meana?

4 A It might --

5 Q If you need --

6 A -- help if I read it.

7 Q Sure.

8 A I mean, I recall, but I don't want to say
9 something wrong.

10 Q I'm handing you State's Exhibit 18 and 20.

11 A Okay. Shall I read it?

12 Q Sure.

13 A So this is -- it says certificate of death,
14 it's from the Philippines. It says immediate cause of death,
15 hepatic and uremic encephalopathy, antecedent cause says
16 sepsis, and then it says underlying cause is hepatitis C and
17 chronic kidney disease.

18 Q And with respect -- did you also review the
19 conclusions of the coroner in this case?

20 A Yes, I did.

21 Q And as well as the autopsy report?

22 A Yes.

23 Q And do you recall what the conclusions in
24 those -- those persons and entity were?

25 A Maybe I can just check here. They may not be

1 in here.

2 MS. STANISH: May I approach with my copies --

3 THE COURT: You may.

4 MS. STANISH: -- to expedite it?

5 THE COURT: That's fine.

6 MS. STANISH: Thank you.

7 BY MS. STANISH:

8 Q That's a big package there.

9 A Okay. Well, this one is the coroner.

10 Q Right. Okay. I'll leave this one with you.

11 A Okay.

12 Q I'll take that.

13 A So the coroner's final pathologic findings,
14 and these are pathologic findings from looking at the tissue
15 in the organs, it says hepatitis C infection genetically
16 typed, hepatic cirrhosis, splenic fibrosis. It says acute to
17 subacute pneumonia bilateral, and it says nephrosclerosis mild
18 to moderate.

19 Q Now, based on your review of all the medical
20 records, as well as the coroner's report, etcetera, can you
21 opine with a reasonable degree of medical certainty whether
22 Mr. Meana died because of the hepatitis C that he contracted
23 on September 21, 2007?

24 A Given everything else, you can't say that that
25 is the reason he died.

1 Q Now, I want to explore your conclusion in some
2 detail. But before I do that, when we use the term medically
3 certainty, what does that mean to you?

4 A A reasonable degree of medical certainty would
5 be, to me, this is the most likely thing that happened or out
6 of several possibilities what within the understanding of
7 medicine most likely was the cause of injury, cause of death,
8 or cause of whatever.

9 Q And as you sit here today, do you know what
10 caused the death of Mr. Meana?

11 A I can say there were several factors, and I
12 can't say which one was the immediate cause.

13 Q Now what I'd like to do, sir, is I'm going to
14 take you through a chronology of your review of Mr. Meana's
15 medical records, starting with what you observed in his
16 medical records prior to his visit to the -- to the gastro
17 center for a colonoscopy. All right? Did you note anything
18 in Mr. Meana's medical records prior to that date that caused
19 you concern?

20 A There were a couple medical problems that were
21 concerning and probably played a factor over the next few
22 years. One is he had hypertension that was being treated.
23 Another condition he had was benign prostatic hypertrophy,
24 which is an enlargement of the prostate gland that seemed to
25 be causing urinary obstruction so the urine wasn't flowing

1 properly, and that might have been increasing the pressure in
2 the kidney.

3 So I noticed, for one thing, two things that were
4 affecting his kidneys prior to then. And I also noticed on a
5 CT scan that I believe he had in June of 2007 there were a
6 couple of liver findings. And one in particular was dilated
7 extra hepatic bile ducts. So the bile ducts that take the
8 bile from the liver to the intestine were abnormally dilated.
9 And I noted he had also had his gallbladder removed at some
10 time prior to that, so suggesting that there had been and
11 might have still been some low grade obstruction of the bile
12 ducts in Mr. Meana.

13 Q Okay. And we're going to come back to that in
14 a moment because a lot of that you're going to have to
15 explain.

16 MS. STANISH: May I approach, Your Honor?

17 THE COURT: You may.

18 BY MS. STANISH:

19 Q I'm going to show you what's been marked as
20 Exhibit DD-1. Did you review this document?

21 A Yes. DD-1 is the results of a liver biopsy
22 that Mr. Meana had on July 25, 2008.

23 Q And there is a second page on that. If you
24 could identify that, as well.

25 A Yes, that's a continuation of the description

1 that was on the previous page.

2 MS. STANISH: Your Honor, I'd move for the admission
3 of DD-1.

4 MR. STAUDAHER: No objection.

5 THE COURT: All right. DD-1 is admitted.

6 (Defendant's Exhibit DD-1 admitted.)

7 BY MS. STANISH:

8 Q Now, we'll come back to that exhibit in a
9 moment. But would you please explain to us in the most layman
10 terms you can what you just described regarding Mr. Meana's --
11 the condition of his kidney?

12 A Well, the kidney, from what I saw, was he had
13 hypertension that was being treated with one or two
14 medications. And he also had obstruction of the flow of urine
15 from his kidney out of his body. So both of those things over
16 time can damage the kidney.

17 High blood pressure or hypertension, by causing the
18 part of the kidney where the blood is filter, by getting
19 scarred so it doesn't work too well. And a urinary
20 obstruction is just really like a plumbing problem. The
21 pressure backs up into the kidney, and the kidneys over time
22 can be damaged. So with regards to his kidney, he had, at
23 least in 2006 or 2007, two processes that could have been
24 contributing to damaging his kidney over time.

25 Q And I should have dropped this off while I was

1 up there, but I need the exercise so let me give you what's
2 already been admitted as Defense Exhibit AA-1. You had also
3 mentioned that you noticed a cyst, a right renal cyst or --
4 could you describe what that means to us?

5 A Yes, there's -- there's -- well, let me just
6 read this carefully. Hang on. So there's a cyst in the
7 kidney and that could mean many things. Many cysts are benign
8 in the kidney. Sometimes they could be causing --
9 contributing to obstruction. I can't really say just based on
10 this.

11 Q And turning your attention to the second page
12 of Defense Exhibit AA-1, an exam that was conducted on June 7,
13 2007. If you would review, sir, the impressions there that
14 relate to the kidney and the extra hepatic bile ducts. Could
15 you explain those impressions to us?

16 A Okay. Well, really, No. 3 is what stood out
17 to me, which are the distended extra hepatic bile ducts.
18 Distal obstruction is not excluded. Changes of
19 cholecystectomy, probably small cyst of the liver, hepatic
20 nodule not excluded. And then they say a different type of CT
21 scan of the abdomen could be used to further assess the liver
22 and also to previously describe -- some previously described
23 kidney problems on here.

24 And it's important to lock up into the finer print
25 when I talk about the findings. There's distention of the

1 extra hepatic bile ducts up to ten millimeters in diameter,
2 and normally they're not more than six millimeters in
3 diameter. So, again, suggesting that there was some chronic
4 obstructive process obstructing, in this case, his liver. The
5 bile flowing from the liver into the intestine.

6 Q And I need you to go more basic than that.
7 Could you start off with explaining to us what an extra
8 hepatic bile duct is?

9 A Okay. So the liver sits in the right upper
10 quadrant of your abdomen, and the liver makes bile. And bile
11 is composed of several things. It's composed of bile salts,
12 which are salts that the liver makes from cholesterol. It
13 helps you digest food. It also has bilirubin in it, which
14 comes from the breakdown of red blood cells.

15 And in the liver there are small bile ducts that
16 take these substances and collect them and they go into larger
17 and larger bile ducts. And the bile ducts that you see
18 outside of the liver are called the extra hepatic bile ducts.
19 And those bile ducts lead to the intestine where the bile that
20 contains these substances is led to go where it helps with
21 digestion or some things are excreted that way.

22 Q And the fact that those are somehow enlarged,
23 is that what I'm understanding you to say?

24 A They're abnormally dilated, yes. They're --
25 they're diameter is bigger than normal.

1 Q What does that mean and why would you be
2 concerned as a doctor about that?

3 A Well, I would be concerned that if something
4 like that were present over time, which it seems like it was
5 not terribly symptomatic, but over time something like that
6 can cause damage to the liver in terms of scarring or
7 fibrosis.

8 Q And the fact that the findings also say that
9 there was no focal hep -- hepatic lesion seen at that time in
10 June of '07, how does that factor into the findings in your
11 analysis of this document?

12 A You know, focal hepatic lesions, you know,
13 those could be things like cancers or tumors or benign cysts
14 or things like that. And those aren't really that relevant to
15 Mr. Meana's progression and that they're not there doesn't
16 really contribute one way or another.

17 Q All right. Was there anything else you saw
18 prior to the September '07 visit to the gastro center that you
19 believe is important to determining Mr. Meana's ultimate
20 demise?

21 A I think the chronic insults to the kidney and
22 this dilated bile ducts that might say there's something wrong
23 with the liver are the two most relevant things.

24 Q All right. Now, let's move to the next period
25 in time, that would be after Mr. Meana goes to the clinic in

1 September of '07, but before he leaves the country for the
2 Philippines. And more particularly after he's diagnosed as
3 having hepatitis C, was there any other indication of medical
4 problems that cause you concern?

5 A Well, certainly the hypertension and the --
6 most likely the prostatic obstruction, although I didn't see
7 specific records at that time, continued. Otherwise, he had
8 hepatitis C, he had an acute infection that resolved and, you
9 know, the liver got better. He continued to have the virus in
10 his body with the fluctuating viral load, and at some points
11 the virus was detectable at a very low level, later to
12 intermediate level. And then really the liver biopsy that he
13 had in July of 2008 showed some other things that were going
14 on.

15 Q And that's already been introduced into
16 evidence, so I'm going to throw this -- my copy up on the
17 screen. And if we can -- if you could show us, if I need to
18 go to the next page, let me -- let me know. But if you could
19 -- you can point to that screen, by the way, and touch it, and
20 it will highlight information. And if you want to get rid of
21 a highlight just tap it on the bottom --

22 MR. STAUDAHER: Lower right.

23 BY MS. STANISH:

24 Q -- right. Okay?

25 A Sorry.

1 Q That was very good. And so will you explain
2 to us and maybe point out for us so we're clear what your
3 concern is about this liver biopsy result. And by the way,
4 what was the date and who recommended it?

5 A The date was July 25, 2008, and it says Dr.
6 Sood is probably the doctor who recommended this, but I see
7 there's names of another doctor there, too, that I don't
8 recognize. I may actually have --

9 Q Can you read that okay? Are you looking at
10 the right one?

11 A Oh, here we go. Dr. Sood, and there's another
12 doctor's name above it. Can -- how do I get the arrow? There
13 we go.

14 Q All right. So what is it in this lab -- point
15 out to us in this lab report what causes you concern.

16 A Well, the essence of the results are really up
17 here. I guess I just can't do this. Do you see the --

18 THE COURT: If you drag your finger, that would like
19 make a line.

20 THE WITNESS: How's that? This --

21 THE COURT: Or, Ms. Stanish, just --

22 MS. STANISH: Well, you could actually --

23 THE COURT: -- move the paper.

24 MS. STANISH: -- make me look at what I circled
25 here.

1 THE COURT: Just make a mark and she'll move the
2 paper.

3 THE WITNESS: Start right there where it says
4 diagnosis and read down. Okay?

5 BY MS. STANISH:

6 Q Okay. Go ahead.

7 A So there were a few things here --

8 Q We won't try the high-tech. Just explain it.

9 A Okay. Diagnosis, and here you can see it says
10 core biopsy. That means I stuck a needle into the liver and
11 took a tiny piece of liver tissue out. Well, it's gone.

12 Q No, see what I'm doing, I'm zooming in for
13 those of us --

14 A Okay.

15 Q -- that have to actually read this. And,
16 again, if you would tap on the bottom right with your
17 fingernail.

18 A Okay. Okay. So it says chronic hepatitis.
19 Hepatitis means inflammation of the liver. It says clinically
20 hepatitis C, and that means the pathologist is basing that on
21 the clinical history, and he or she even writes here that
22 there was hepatitis C virus detected in the patient below over
23 -- over here. Now, it says with moderate activity, Grade 3
24 out of 4, and periportal fibrosis, Stage 2 out of 4. So those
25 are important when you talk about, one, the degree of

1 inflammation, the inflammation is inflammatory cells in the
2 liver. Like if you banged yourself and it gets red and
3 inflamed, at a microscopic level similar things are going on
4 in the liver. And the second thing is fibrosis. That's the
5 amount of scar tissue in the liver.

6 So the amount of liver that's been replaced by a
7 scar. If you cut yourself and get a scar, fibrous tissue.
8 That's the fibrosis. And secondly there is a second problem
9 going on in Mr. Meana's liver here. Maybe not the most
10 dramatic, but certainly something else contributing here,
11 which is mild microvesicular and macrovesicular and steatosis.
12 And what that, steatosis simply means is fat in the liver.
13 And microvesicular and macrovesicular basically means the fat
14 are in little, little, little tiny drops when you look under
15 the microscope or the fat is in slightly bigger drops in the
16 -- within the liver cells when you look under the microscope.

17 Q I'm just going to call that fatty liver.

18 A That's okay. That's what most people call it.

19 Q And let me -- before we talk about fatty
20 liver, let me go back to this finding or this diagnosis that
21 relates to the fibrosis. Could you explain to us what exactly
22 is fibrosis?

23 A So fibrosis simply is scar tissue. The same
24 scar tissue if any of you have ever cut yourself or had a
25 surgery and the normal skin is replaced by scar tissue, over

1 time as the liver gets damaged, you get scar tissue in the
2 liver. And that can result from many, many processes. It can
3 result from viral hepatitis, such as hepatitis C, it can
4 result from fatty liver, it can result from obstruction, it
5 can result from drugs, it can result from maybe alcohol is the
6 most common cause in our country. So that's something that
7 can result from may long term insults to the liver.

8 Q And just to be clear, does hypertension or the
9 kidney issue relate to the fibroid condition at all?

10 A No, what's going on in anyone's kidneys, or
11 specifically Mr. Meana's kidneys, doesn't relate to this.

12 Q And sticking with the fibrosis for awhile,
13 explain to us what Stage 2/4 means.

14 A So in hepatitis C the degree of scar tissue in
15 the liver is generally graded from 0 to 4. Zero means there
16 is no scar tissue in the liver. 4 means there is full blown
17 cirrhosis in the liver. Cirrhosis is when the liver has sort
18 of balls of liver cells, if you will, sort of surrounded by
19 scar tissue. 1, 2, 3 are varying advancing degrees between
20 nothing and that, and 1 actually, if you want to get a little
21 technical, it's scar tissue confined to just little parts of
22 the liver called the portal tracts.

23 Stage 2 is what I think the pathologist actually
24 described here as periportal. So it means the fibrosis, the
25 scar tissue is extending from these portal tracts where the

1 blood vessels enter the liver into the major body of the liver
2 itself. And Stage 3 is a little more advanced fibrosis where
3 the scar tissue is stretching across parts of the body of the
4 liver called the lobule.

5 Q So this -- this is the sample, the liver
6 samples collected on July 25, 2008. Can you say with any
7 medical degree of certainty whether the hepatitis C virus that
8 was contracted in September of 2007, approximately -- was that
9 10 months before this, did that cause the fibroids?

10 A The fibrosis? I think it would be
11 extraordinarily unlikely that hepatitis C, in less than one
12 year, can lead to this degree of fibrosis. I mean, typically,
13 hepatitis C takes decades for the fibrosis to advance, at
14 least several years.

15 Q Would it matter that, you know, he was -- had
16 acute hepatitis C at one point and had a viral load that goes
17 up and down over time?

18 A Viral load doesn't really correlate with the
19 progression of fibrosis in hepatitis C, so that shouldn't
20 matter.

21 Q And if you would, please give us a
22 clarification on what is the term viral load?

23 A So viral load, when you measure hepatitis C in
24 the blood, we measure hepatitis C virus in the blood because
25 it's hard to go measuring it in the liver, you do a technique

1 where you can actually amplify the RNA, which is the genetic
2 material in a virus, and quantify it, get some idea of how
3 much virus there is in the blood, which roughly correlates
4 with how fast the virus is replicating in the liver. So
5 roughly a high viral load might mean the virus is replicating
6 or dividing very rapidly in a person, whereas a low viral load
7 would mean roughly that the virus is not replicating so
8 rapidly in the liver.

9 Q Now, is there -- on page 2 is there anything
10 else in the -- is this somehow connected to -- tap the screen,
11 please. Again. And again. Bottom right. There you go. And
12 does this document relate to the first page, or does it show
13 something different or more information?

14 A It says that there is mild microvesicular and
15 macrovesicular steatosis once again, which is --

16 Q A fatty liver.

17 A -- confirming what the pathologist wrote in
18 the main diagnosis. Otherwise, most of this looks like
19 negative or pretty much non-contributory descriptions of
20 what's going on here.

21 Q Now, let me return you to the subject of fatty
22 liver and have you explain that to us like we were three year
23 olds. What -- what is fatty liver?

24 A So simply fatty liver is abnormal accumulation
25 of fat within the liver, within the cells of the liver, fat

1 accumulates.

2 Q And is that something I need to worry about?

3 A Possibly.

4 Q Okay. What -- what -- that term fat. What is
5 it that causes fatty liver so we can all be forewarned and
6 understand this document?

7 A So there are really two major causes. There
8 are other causes, such as drugs and other things, but the two
9 major causes is, one, excessive alcohol drinking, and the
10 other one, which is probably much more common in America now,
11 is being overweight and being insulin resistant. So fatty
12 liver now in the United States has become an unrecognized
13 endemic maybe, probably. Some estimates say 25 percent of a
14 population have excess fat in their liver. And in some cases
15 over time that could also make low grade inflammation that can
16 cause scarring in the liver.

17 Q So fatty liver can -- can actually cause
18 cirrhosis?

19 A Fatty liver by itself can cause cirrhosis,
20 yes.

21 Q And by the way, just clarify for me, you know,
22 we've already seen that he -- he -- the liver biopsy shows
23 fibroids in his liver. How does fibroids relate to cirrhosis?
24 Is it the same thing or a matter of degree?

25 A So fibrosis, fibrosis is sort of the early

1 process that leads to cirrhosis. So cirrhosis is actually
2 defined pathologically and anatomically as regenerating
3 nodules of liver cells with fibrosis. So cirrhosis in a way
4 is very advanced fibrosis or scar tissue where the liver
5 begins to regenerate in an abnormal fashion. So earlier
6 stages of fibrosis such as you see here in various liver
7 diseases over time can progress to cirrhosis.

8 Q Now, I want to address a different subject
9 during this time frame after the colonoscopy, but before Mr.
10 Meana goes to the Philippines. Did you review the documents
11 pertaining to his treatment following the diagnosis of
12 hepatitis C?

13 A Yes, I believe after this biopsy or perhaps
14 even a little bit before, I can't remember the exact time, but
15 his gastroenterologist, I know he had seen a few, but I know
16 at least Dr. Sood and maybe another recommended that he be
17 treated for hepatitis C.

18 Q And what would that treatment have been?

19 A The treatment then would have been a pegylated
20 interferon and ribavirin.

21 Q And in your opinion, based on your review of
22 the medical records, is that something that would have been
23 beneficial for Mr. Meana to undergo shortly after this
24 diagnosis or biopsy, I should say?

25 A Well, with acute hepatitis C there's a real

1 benefit of starting treatment early. Most patients with
2 hepatitis C who get treated, they have it for years or
3 decades, so starting fast doesn't often matter that much. But
4 the one time where it does seem to matter to start sooner is
5 when the infection is acute because there's data that say when
6 you're acutely infected, if you start treatment sooner, you
7 have a better chance of clearing the virus.

8 Q And do you recall seeing that Mr. Meana
9 ultimately did at least try to undergo the treatment in March
10 of 2009?

11 A Yes, I can't remember the exact date, but I do
12 remember it was sometime in 2009, not as early as his doctors
13 had recommended.

14 Q And does that have any significance to you?

15 A Well, he may have had a better response if he
16 was treated earlier. And from the records I have, it's not
17 entirely clear why once he started treatment he stopped. He
18 tried a couple times and just seemed to not do it, so I can't
19 say.

20 Q Okay. Now I want to move to your review of
21 the medical records in the Philippines. Can you first tell us
22 why was it he was hospitalized in the Philippines?

23 A So from my reading of those records, he was
24 hospitalized twice in the Philippines, once in late March or
25 early April of 2012, and again later in April of 2012.

1 Q And can you explain to us what was the reason
2 for his first hospitalization?

3 A So as best as I could ascertain from the
4 records from the Philippines, the first hospitalization
5 appeared to be for some confusion and some lab abnormalities
6 they were attributing to hepatic encephalopathy, which is some
7 confusion people can sometimes get when the liver doesn't work
8 well, and also for some kidney problems. He had a rise in
9 creatinine, which is a test of kidney function in the -- in
10 the blood. So it seemed like a mixture of, you know, I'd say
11 low grade problems or medium grade problems with his liver and
12 his kidneys not working well.

13 Q And can you tell us what happened during his
14 first -- well, let me ask you this. With respect to the
15 Philippine medical records, were they understandable to you
16 and organized for -- for your review?

17 A They were legible. They were understandable,
18 but they were not, I should say the best medical records.
19 There were not admission notes in there or discharge notes.
20 It was not like in -- typically in the United States where you
21 have much better summaries of why the patient came in and what
22 the situation was when they went home. It was more small
23 notes and sentences.

24 Q All right. Could you discern from the medical
25 records what happened during the course of his first

1 hospitalization in late March or early April of, what was it,
2 two thousand --

3 A 2012. And I think he was discharged around
4 April 6, 2012. And apparently they treated him, from as far
5 as I can see, fairly conservatively. And I noted right before
6 his discharge it said hepatic encephalopathy resolving. Then
7 they put -- said something like chronic kidney diseases, and
8 benign prostatic hypertrophy. That's the big prostate.

9 Q Now I need you to stop and decode that for us.
10 What does that mean?

11 A The enlarged prostate that he had had even
12 several years previously.

13 Q And what was resolving?

14 A What was resolving was the hepatic
15 encephalopathy. The note said, and it was just a small note,
16 but that would be the confusion he might have had from his
17 liver not working well. And I saw that he was discharged in a
18 wheelchair, awake and alert, and went wherever he went from
19 the hospital in the Philippines to his home or a relative's
20 home or wherever that was.

21 Q And then when did he return to the hospital,
22 if you can recall?

23 A He returned to the hospital approximately two
24 weeks later.

25 Q And what was the reason for his admission into

1 the hospital?

2 A The admission into the hospital, as far as I
3 could tell from the notes, was it said uremic and hepatic
4 encephalopathy. But from looking at the records -- and it
5 also said sepsis. From looking at the laboratory tests he had
6 a markedly elevated creatinine saying that the kidneys
7 basically stopped working in the two weeks since the previous
8 discharge and this admission. And also he had an elevated
9 white count, white blood count, that got even higher when he
10 came in, suggesting that he had -- or very strongly suggesting
11 that he had a source of infection. And they noted in the
12 notes urosepsis, which is an infection from the urinary
13 system.

14 Q And so the -- and correct me if I'm wrong, the
15 primary reason he was admitted was because his kidneys stopped
16 working and he had an infection due to a urinary blockage?

17 A It's not clear exactly if the infection was in
18 his urine or what the cause was, but that was their clinical
19 impression, and he did have some findings on his urinalysis,
20 many red cells in his urine and some white cells in his urine
21 suggesting there may have been an infection in the urinary
22 tract. But I'd say the main reason he was admitted were those
23 two reasons, kidney failing, and he was, in fact, started on
24 dialysis, and infection for which he was given antibiotics.

25 Q Was there any indication that he had pneumonia

1 at the time of admission?

2 A As far as I was able to tell, none of the
3 doctors had mentioned pneumonia as a high suspicion. Whether
4 I can say he had it or not, I can't.

5 Q And did you -- did you find it, as you
6 reviewed the records following the second admission into the
7 hospital, did you find appropriate testing of the blood or
8 other labs?

9 A I think there was, as far as I can ascertain
10 from those records, some testing was appropriate. What I
11 didn't see in there was a blood culture, which was a little
12 atypical to see if there was an infection in his blood. And,
13 again, I don't know if I missed it or it wasn't in there, but
14 I didn't see that in there. But for the most part I think
15 they treated kidney failure appropriately with dialysis. They
16 treated him for an infection, even though they may not have
17 known the exact cause, with antibiotics. And, you know, once
18 you're infected and your kidneys fail, it's possible that some
19 of -- some liver not working well was contributing. And they
20 gave him some medication to also help with the confusion that
21 may have come from his liver, too.

22 Q Give me a moment. Now, how long -- could you
23 describe for us how they treated the kidney failure? You said
24 they put him on dialysis?

25 A Yes, he received hemodialysis.

1 Q And what exactly does that mean?

2 A Hemodialysis is where an external machine
3 basically filters your blood. So it's an artificial kidney,
4 if you will, to some extent. You generally put a patient on
5 that three times a week, and it helps get rid of the things
6 that the kidney normally gets rid of.

7 Q And could you describe for us what you -- what
8 you noted in his -- in the hospital records as he -- his
9 health progressively declined during his hospital stay?

10 A I can't say much from those records except
11 they dialyzed him, they gave him antibiotics. He didn't get
12 better, his blood pressure dropped, they tried to maintain
13 that with types of drugs that raise blood pressure, but
14 ultimately he died.

15 Q And now let's discuss the findings of the --
16 the coroner in -- in the Philippines. Did I give that to you
17 up there, or is it --

18 A Yes. Well, I have the coroner from Clark
19 County.

20 Q All right.

21 MS. STANISH: Is it part of the Philippine package?
22 Court's indulgence. I've got to dig for this. I
23 might have it up here.

24 THE COURT: There's maybe a copy up here, as well.

25 MS. STANISH: Oh, okay. Thank you.

1 MR. WRIGHT: What are you looking for, Margaret?

2 THE COURT: Is that what you're looking for?

3 MS. STANISH: Yeah, I believe it is. Court's
4 indulgence.

5 THE COURT: I'm not sure if that's what -- what you
6 wanted.

7 BY MS. STANISH:

8 Q Let me start with the -- I'd like your medical
9 opinion on reviewing the findings in the autopsy. After you
10 reviewed the medical records, what is your evaluation of the
11 findings of the autopsy?

12 A Well, the autopsy report focuses on hepatic
13 failure, cirrhosis, and chronic hepatitis C, and it does
14 mention pneumonia. But what's a little bit striking to me
15 about the causes of death in the autopsy, even though this
16 pathologist mentions the condition is the lack of saying that
17 the kidney disease contributed to death here. And in
18 particular, even on the death certificate and from looking at
19 the records, it really looked like kidney disease was a major
20 player and also infection and why he came in in his final
21 hospitalization.

22 Q And the -- and if you turn your attention to
23 the death certificate, with respect to the finding of
24 pneumonia, how was that characterized in the death
25 certificate?

1 A Well, in the death certificate it's referred
2 to as sepsis because I think the clinician knew he was
3 infected, but wasn't sure it was from the lungs or from the
4 kidneys or somewhere else. But clearly the patient had an
5 overwhelming infection that they called sepsis on the --

6 Q Okay.

7 A -- death certificate.

8 Q That's where I was getting confused about your
9 testimony about you didn't see pneumonia as being part of the
10 hospitalization, but there is this infection. And so could
11 you explain to me a bit more?

12 A So the clinicians who were taking care of him
13 knew he had an infection, a severe infection because his white
14 blood count was very high, his blood pressure was very low.
15 And, you know, you call that, when it's a severe infection,
16 sepsis, or you can call it septic shock when a blood pressure
17 drops. So when the infection gets so bad, it gets into the
18 blood and your body really begins to fail. They didn't really
19 know what the cause was.

20 They suspected the urinal -- the pathologist, both
21 the coroner in the pathologist in the Philippines, when they
22 looked at his lungs under the microscope, they noticed that
23 there was inflammation in the lungs or pneumonia. Now, it's
24 hard to say whether pneumonia was the cause of that sepsis
25 that resulted from that sepsis. But from -- clinically you

1 can say you had a severe infection, and at the autopsy one
2 organ that they saw was acutely infected was the lungs, so
3 they call that pneumonia.

4 Q Now, we've heard testimony about the condition
5 of Mr. Meana's liver. By the way, how big is the liver? Is
6 it the size of volleyball, football, what?

7 A The normal liver is about 1,500 grams, so
8 that's --

9 Q Oh, okay.

10 A -- roughly --

11 THE COURT: And we thought it was 1,600 grams, so --

12 THE WITNESS: So my guess is Mr. Meana's liver at
13 the end was a little bit smaller. It's up -- I don't know,
14 that big, right here.

15 BY MS. STANISH:

16 Q How big? How big is this?

17 A Maybe the span -- the normal span in the
18 front, in the right midclavicular line, the right middle of
19 your chest might be about 10, 12, 14, 15 centimeters. So
20 divide that by two and a half will give you inches.

21 Q Well, we don't need to go that --

22 THE COURT: And while we think about that, the jury
23 tells me they need a break right now.

24 MS. STANISH: All right.

25 THE COURT: So, ladies and gentlemen, we'll take a

1 relatively quick break. The bailiff will let me know when
2 you're ready.

3 During the break you're reminded that you're not to
4 discuss the case or anything relating to the case with each
5 other or with anyone else. Don't read, watch, or listen to
6 any reports of or commentaries on this case, any person or
7 subject matter relating to the case, and please don't form or
8 express an opinion on the trial.

9 Notepads in your chairs, and through the rear door.

10 (Jury recessed at 2:59 p.m.)

11 THE COURT: One of the jurors feels sick, and that's
12 why we needed to take an immediate break.

13 You can take your break. We don't need you for
14 this.

15 THE WITNESS: I cannot practice medicine in Nevada.

16 MS. STANISH: Do they need a liver doctor?

17 THE COURT: So that's why I said as long as the jury
18 needs. So we'll see what's up with that.

19 MS. STANISH: I'm almost done, Your Honor.

20 THE COURT: Yeah, I mean, she just said like she
21 needed an immediate break.

22 MS. STANISH: Okay.

23 THE COURT: So that suggested to me like a stomach
24 type of an issue. That's why I --

25 MR. SANTACROCE: Which one?

1 THE COURT: Ms. Booker.

2 MR. SANTACROCE: I saw her kind of moving -- moving
3 around.

4 THE COURT: Yeah, so we'll see. So we'll -- I'll
5 update you.

6 Yes?

7 MS. WECKERLY: I just wanted -- well, Mr. Wright
8 left. But I wanted to put -- just enter something as a
9 Court's exhibit. When Dr. Carrera testified, the defense
10 entered a community letter, proffer letter into evidence
11 after, and Mr. Pitaro was present in court when that happened.
12 After court Pitaro contacted me and said he thinks that's the
13 wrong letter or the witness thinks it's the wrong letter. I
14 provided the right one to the defense. I told them if they
15 want to switch it out that's fine, or we can leave it how it
16 is because it was admitted, but I'd just like to have this as
17 a Court's exhibit that I provided it to the defense on the day
18 I got it.

19 THE COURT: Okay. And then, Ms. Stanish and Mr.
20 Santacroce, how do you want to handle that?

21 MR. SANTACROCE: It matters not to me.

22 THE COURT: I mean, do you want to substitute for
23 the correct one?

24 MS. STANISH: I have it --

25 THE COURT: I don't know what the --

1 MS. STANISH: Yeah.

2 THE COURT: -- difference is between the two.

3 MS. STANISH: I don't know either, so let me talk to
4 Mr. Wright about it. I think he stepped out.

5 THE COURT: Okay. You might want to compare it to
6 the other one to see really what the difference is.

7 MS. STANISH: Right. Thank you.

8 MS. WECKERLY: Yeah, so -- all right.

9 THE COURT: Okay.

10 (Court recessed at 3:02 p.m., until 3:14 p.m.)

11 (Inside the presence of the jury.)

12 THE COURT: All right. Court is now back in
13 session.

14 And, Ms. Stanish, you may resume your direct
15 examination.

16 MS. STANISH: Thank you, Your Honor.

17 BY MS. STANISH:

18 Q So, Dr. Worman, right before the break I was
19 about to broach with you the subject matter of Mr. Meana's
20 cirrhosis. We've had testimony, and I think that the document
21 of the coroner shows that he had cirrhosis, he had at the --
22 during the autopsy evidence of ascites?

23 A Ascites.

24 Q Yeah, that's what I meant. So can you explain
25 to us how he got to that point in comparison to where he was

1 prior to the September 2007 time period? What happened to Mr.
2 Meana?

3 A Well, all I can tell from these records is the
4 degree of fibrosis in his liver progressed from a State 2 in
5 2008 to a Stage 4 sometime in 2012, which would be cirrhosis.
6 And, you know, that would be extraordinarily atypical to occur
7 just because of hepatitis C.

8 Q And I'll come back to that in a moment, but I
9 want to go back to something I meant to ask you about the
10 mental condition of Mr. Meana when he was hospitalized.
11 What's that word? I know I can't pronounce it.

12 A Encephalopathy?

13 Q Yeah, it sounds like something from Sesame
14 Street, that elephant. But the -- that -- that issue, what
15 causes that?

16 A So encephalopathy is a broad term, really,
17 just meaning that the brain is not working right. It can
18 happen in end stage liver disease or in very severe acute
19 liver disease, but that's not the only cause. It could also
20 result from kidney failure, which he had at the end. And, you
21 know, looking at the death certificate and the medical
22 records, they were attributing that to both his liver not
23 working and his kidneys not working.

24 I should say after he left the hospital the first
25 time, as best I can remember it says encephalopathy was rather

1 mild. He just had problems sleeping and perhaps was a little
2 bit confused, but still awake and alert and knew, for the most
3 part, where he was and, you know, what was going on.

4 Q And just briefly on the topic of dementia.
5 Are you familiar with whether or not the medicine regimen for
6 hepatitis C treatment, does that cause dementia?

7 A No, absolutely not. Interferon and ribavirin
8 does not cause dementia. No.

9 Q And does having either acute or chronic
10 hepatitis C cause dementia?

11 A Dementia? Absolutely not. No.

12 Q Are you familiar with any literature that
13 supports that?

14 A There is no mainstream medical literature on
15 that. And if you look in terms of treatment at the labels,
16 the FDA approved labels for the drugs, dementia is not an
17 adverse event. I mean, dementia is something different. I
18 mean, liver disease can cause neurological problems and so
19 could the medicines, but not dementia. Absolutely not.

20 Q Okay. Returning to Mr. Meana now. Based on
21 your review of the medical records, can you -- can you tell us
22 with any degree of medical certainty whether the hepatitis C
23 was a direct and immediate cause of his death?

24 A Direct and immediate cause? I cannot say that
25 based on reviewing all the records.

1 Q Thank you.

2 MS. STANISH: I have nothing further.

3 THE COURT: All right. Thank you.

4 Mr. Santacroce, do you have any questions?

5 MR. SANTACROCE: No, Your Honor.

6 THE COURT: Cross, Mr. Staudaher.

7 MR. STAUDAHER: Yes, Your Honor.

8 CROSS-EXAMINATION

9 BY MR. STAUDAHER:

10 Q Sir, I want to ask you a couple of questions
11 first about your training that counsel went over with you. I
12 noticed on your CV that it said board certifications you have
13 two; is that correct?

14 A No, I'm board certified in internal medicine.

15 Q American Board of Internal Medicine?

16 A Yes.

17 Q Is that the only one you hold?

18 A Yes.

19 Q On your CV it says National Board of Medical
20 Examiners back in 1986.

21 A Oh, yes. That's the -- means you passed all
22 of your exams and you're certified to become a -- do an
23 internship and become a physician. That's not a medical
24 specialty.

25 Q Oh. So when it said -- the confusion there I

1 wanted to make sure I was clear was that you're not a medical
2 examiner; correct?

3 A No, I'm not a medical examiner.

4 Q You're not trained in pathology?

5 A I have learned liver pathology in part of my
6 training as a hepatologist, but I'm not a pathologist.

7 Q Okay. And that's what I'm talking about, a
8 pathologist who studies disease of various organs and the
9 like; correct? I mean, that's their focus.

10 A Well, I study disease of organs, but I'm not
11 formally trained as a pathologist.

12 Q Okay. Have you ever opined or have you ever
13 given testimony as to cause and manner of death in any case?

14 A Cause of death? No, I don't believe so
15 until --

16 Q Until today --

17 A -- now.

18 Q -- right?

19 A Well, I've looked at cases and, you know,
20 looked at what -- well, actually, I take that back. I
21 probably have opined as cause of death in drug overdose cases
22 related to the liver, yes, I have.

23 Q Okay. How many cases have you reviewed for
24 that kind of a thing? I mean, actually primarily you're
25 looking at why somebody died, the reasons behind it.

1 A In terms of legal cases how many have --

2 Q In general. I mean, have you ever been asked
3 to come in and say, hey, why did this guy die?

4 A Well, we do that sometimes at conferences
5 or --

6 Q You specifically. Not just at conferences.

7 A So in legal cases maybe three or four times.

8 Q Well, let's talk about those. What were the
9 three or four times?

10 A Those were cases where there were overdose of
11 a drug where a patient died.

12 Q So all of them were like that?

13 A Those cases all involved drug alleged overdose
14 or possible overdose.

15 Q And what was the drug?

16 A The drug was acetaminophen.

17 Q Because that's toxic to the liver; correct?

18 A It's toxic to the liver only if you take it in
19 excess. That's correct.

20 Q You were asked some questions. I'm going to
21 use my -- I don't know what the exhibit is. I'm going to use
22 the one that counsel gave me for -- to go through this.

23 MR. STAUDAHNER: And, Madame Clerk, I don't know what
24 the exhibit number is on this.

25 You may actually have a copy up there.

1 propofol; is that correct?

2 A Yes.

3 Q And when -- when she would redose, did she use
4 same needle and syringe or new needle and syringe?

5 A New syringe.

6 Q Okay. So the -- she -- she -- she would --
7 and we're talking about giving a second injection to the
8 patient; correct?

9 A Yes.

10 Q Okay. And she would utilize a new needle and
11 syringe to give an additional dose to the patient?

12 A I have written down just that new syringe.

13 Q Okay. I see written there separate syringes
14 for additional doses propofol.

15 A Yes.

16 Q Okay. Is that what you're referring to?

17 A Yes.

18 Q And at the time they were still utilizing
19 propofol as multi-dose vial; correct?

20 A Yes.

21 Q Meaning if -- if a new patient, if there's
22 still propofol available and a new patient comes in, they
23 would use the same vial on the new patient, but with a new
24 needle and syringe --

25 MS. WECKERLY: Objection.

1 BY MR. WRIGHT:

2 Q -- is that correct?

3 THE COURT: Basis?

4 MS. WECKERLY: Well, he said they, and I think she's
5 only observing Ms. Hubbard.

6 THE COURT: All right. So be more specific in your
7 question.

8 BY MR. WRIGHT:

9 Q Ms. Hubbard.

10 A I'm sorry. Can you ask that again?

11 Q Yes. Now, tell me the propofol was being used
12 multi-dose; correct?

13 A Yes.

14 Q Okay. And so one vial could be used on more
15 than one patient; correct?

16 A Yes.

17 Q Okay. And so if one patient is done and a new
18 patient comes in and the remainder of the propofol is to be
19 used, what would Linda Hubbard do?

20 A She indicated she would get a new syringe.

21 Q Okay. And is -- is all of that safe and
22 aseptic as you understand it?

23 A Yes.

24 Q Okay. Because she is utilizing a new -- is it
25 because she is utilizing a new needle and syringe each time

1 she goes into the vial?

2 A Yes.

3 Q Now, did anyone at that time, Thursday, okay,
4 you three representatives from BLC are there, CDC is there,
5 Southern Nevada Health District is there; correct?

6 A Yes.

7 Q Okay. Did anyone on Thursday step in and stop
8 the clinic and say propofol is single-use, you shouldn't be
9 multi-dosing?

10 A No.

11 Q Okay. I want to go -- you -- you made
12 additional visits to the clinic; correct?

13 A Yes.

14 Q Okay. And did you make additional
15 observations at the clinic?

16 A Yes.

17 Q Okay. And do you recall observations on
18 January 16, 2008?

19 MR. WRIGHT: If I can approach?

20 THE COURT: That's fine.

21 BY MR. WRIGHT:

22 Q I'll direct you to the way I read your notes.
23 Did you again see -- observe Linda Hubbard on the 16th?

24 A This was just an interview.

25 Q Okay. An interview with Linda Hubbard on

1 January 16, 2008?

2 A Yes.

3 Q Okay. And that's you interviewing her?

4 A Yes.

5 Q Okay. And she is the CRNA you had previously
6 observed?

7 A Yes.

8 Q Okay. And why don't -- why don't you run
9 through your interview with her?

10 MS. WECKERLY: Objection. Hearsay.

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

12 (Off-record bench conference.)

13 THE COURT: All right. That's overruled.

14 Ladies and gentlemen, the statements made by Ms.
15 Hubbard that are testified to may only be considered by you as
16 to their effect on the listener, the person hearing the
17 statements and what knowledge and what information they had in
18 the course of their investigation.

19 So go on, Mr. Wright.

20 BY MR. WRIGHT:

21 Q Go ahead and explain what Linda Hubbard told
22 you on January 16th.

23 A The registered nurse would give the propofol
24 vials to the CRNA. The propofol vials were to remain in the
25 room. A syringe and needle, both new, and 20 milligrams of

1 lidocaine and 110 milligrams of propofol would be drawn up.
2 They would refill same syringe, same vial, and toss the
3 propofol after each patient.

4 Q Okay. And -- and what did she tell you had
5 been the practice in the past?

6 A In the past did not use the propofol as a
7 single-use vial. Used a clean syringe for each patient, may
8 use the propofol for two patients, clean draw.

9 Q Okay. Now, it -- interpret what her practice
10 on January 16th was as you understood it. At that time were
11 they using propofol as a single patient -- a single-use vial
12 as opposed to multi-use?

13 A Yes. On January 16th Linda Hubbard indicated
14 that the propofol was used for one patient only.

15 Q Okay. And so no more multi-use, single-use
16 propofol; correct?

17 A Yes.

18 Q Okay. And if the patient needed additional
19 dose of propofol, Linda Hubbard was refilling same syringe,
20 same vial; is that correct?

21 A Yes.

22 Q Okay. And does that -- rather than using a
23 new needle and syringe, she was reusing same needle and
24 syringe, go back into the vial, redose the patient, and at the
25 conclusion toss needle, syringe, and remnants of propofol; is

1 that correct?

2 A Yes.

3 Q Okay. And is all of that safe injection
4 practices and aseptic technique?

5 A It would not be the best practice, but if she
6 tossed the propofol vial after each patient, my opinion it
7 would be safe, but not best practice.

8 Q Okay. What -- what would you view as best
9 practice?

10 A New syringe, new needle to reenter the vial.

11 Q Okay. At -- at the time did you or BLC tell
12 Linda Hubbard on the 16th you can't do that?

13 A No, we did not. I did not.

14 Q Okay. At -- at that time -- I'm taking this
15 chronologically.

16 A Okay.

17 Q At that time you were aware of the fact that
18 the clinic historically had been using propofol as multi-use
19 vials; correct?

20 A Yes.

21 Q Okay. You were aware of reuse of syringes on
22 same patient; correct?

23 A Yes.

24 Q Okay. And at that time you and the BLC did
25 not recognize those two components as creating a health

1 hazard; correct?

2 A From what they told us, that's correct.

3 Q Okay. And ultimately BLC issued a -- what do
4 you call that document where -- where the clinic then gives
5 you a plan of correction?

6 A A statement of deficiencies.

7 Q Okay. Statement of deficiencies. That's what
8 I was looking for. The BLC, your agency, issued a statement
9 of deficiencies to the clinic on Shadow Lane; correct?

10 A Yes.

11 Q And that statement of deficiencies identified
12 what deficiencies, do you recall?

13 A No, I would -- I would need to see the
14 statement of deficiencies.

15 Q Okay. Does that look like it?

16 A Yes.

17 Q Okay. And what -- what were the deficiencies
18 -- when did your investigation end?

19 A January 17, 2008.

20 Q Okay. So it went from January 9th through
21 January 17th; correct?

22 A Yes.

23 Q Okay. And then a -- a report or a statement
24 of deficiencies is issued to the clinic; correct?

25 A Yes.

1 Q And it's pointing out any deficiencies that
2 have been identified by inspection, observation, or
3 interviews?

4 A Yes.

5 Q Okay. And then once the clinic receives that,
6 just like any other clinic here in Nevada or hospital or
7 doctor's office now, they -- they get to respond; correct?

8 A Yes.

9 Q And that response is called what?

10 A A plan of correction.

11 Q Okay. And is that -- that document there,
12 does that have the statement of deficiencies and the plan of
13 correction?

14 A Yes, it does.

15 Q Okay. And so the statement of deficiencies
16 was authored -- was authored or delivered to them, the clinic,
17 about when?

18 A It was provided to the clinic on -- around
19 February 4, 2008.

20 Q Okay. And -- and did they -- and you
21 indicated that there is a plan of correction. Is that where
22 they essentially -- the clinic answers and states what they
23 will do to correct each deficiency right in on the same
24 report?

25 A Yes.

1 Q Okay. And did the clinic provide a plan of
2 correction?

3 A Yes, they did.

4 Q Okay. Now, explain what the deficiencies were
5 that were that were identified for the clinic.

6 A The first deficiency was the facility failed
7 to ensure the center adopted and reviewed written policies and
8 procedures for the use of single dose of propofol vials, and
9 for the first step of the cleaning process for the upper
10 gastrointestinal endoscopy and colonoscopy scopes, and the use
11 of disposable biopsy instruments.

12 Q Okay. So three different deficiencies?

13 A For the first tag, yes.

14 Q First tag?

15 A Yes.

16 Q What's that mean?

17 A In our regulations we have tag numbers to
18 identify specific regulation sets. So when we find a
19 deficient practice we would cite it at the most appropriate
20 tag.

21 Q Okay. So you -- to a layman it sounds like
22 you found three things wrong.

23 A Under the administration tag, so it's the
24 governing body, the regulation is the governing body shall
25 ensure that that the center adopts and enforces and annually

1 reviews written policies and procedures required by the NAC,
2 inclusive and including an organizational chart, and these
3 policies and procedures must be approved by the governing body
4 annually. So that --

5 Q Okay.

6 A -- was the regulation, and we found three
7 areas of deficient practice under that regulation.

8 Q Okay. And what were the three deficient
9 practices? Number one was propofol?

10 A Failure to adopt and review written policies
11 and procedures. The first one was the use of single-dose
12 propofol vials.

13 Q Okay. And -- and the deficiency was what?
14 Using single-dose as multi-dose?

15 A That's correct.

16 Q Okay. And it had -- when we went through it
17 chronologically you all had been there on Wednesday and they
18 explained that they used propofol multi-dose.

19 A Uh-huh.

20 Q It was observed on Thursday, multi-dosing
21 propofol. And then by the 16th of January, the practice had
22 changed; correct?

23 A Yes.

24 Q Okay. And during the interim was it brought
25 to the clinic's attention? Between January 10th and 16th when

1 they changed their practices, was that because they were told
2 use this single-dose, not multi-dose?

3 A Yes.

4 Q Okay. And that was why?

5 A We did not -- the BLC did not inform them to
6 use it as a single-dose. That was done by either the CDC or
7 Southern Nevada --

8 Q Okay.

9 A -- Health District.

10 Q All right. So you -- you were aware -- this
11 investigation you were participating in, there were other
12 agencies there at the same time?

13 A Yes, during the investigation.

14 Q Okay. And so you were aware that that was
15 brought to the clinic's attention that propofol should be used
16 single-dose rather than multi-dose?

17 A Yes.

18 Q Okay. And did -- did you independently learn
19 that yourself, like by researching?

20 A That I have to review to my notes.

21 Q Okay. You don't recall?

22 A The -- the question -- can you repeat the
23 question?

24 Q Did you like go online to AstraZeneca and look
25 up propofol and determine whether it should be used single-use

1 or multi-use?

2 A Yes, we did do that.

3 Q Okay. I mean, does that refresh your
4 recollection --

5 A Yes, that does.

6 Q -- when I told you?

7 A Yes.

8 Q Okay. And the -- do you -- do you recall from
9 your investigation that it -- it should be single-use rather
10 than multi-patient use because of the lack of preservatives in
11 the propofol?

12 A Yes.

13 Q Okay. Now, what was the -- the deficiency
14 pointed out to the clinic -- I'm just taking them one at a
15 time.

16 A Okay.

17 Q But regarding propofol, what was the plan of
18 correction?

19 A The facility implemented a policy which was
20 approved by the governing body outlining the strict adherence
21 to the administration of propofol. The policy states that all
22 propofol vials are to be utilized as single-dose only, one
23 vial per patient. The policy also states that needles and
24 syringes are to be utilized as single-use only and are to be
25 discarded intact in an appropriate Sharps container

1 immediately after use.

2 The nurse anesthetists and staff nurses have been
3 informed and reeducated regarding the newly implemented policy
4 and proper protocols for single-dose vial medications, and
5 needle and syringe utilizations. The facility no longer uses
6 any multi-dose medication vials.

7 The 50 milliliter 2 percent lidocaine and the .9
8 percent normal saline vials have been discontinued and removed
9 from the facility. The 0.9 percent vial, normal saline, now
10 comes in a prefilled single-use 3 cc syringe, 2.5 percent
11 lidocaine injectable for use with propofol has been stopped
12 until further notice. If the 2 percent lidocaine is
13 reimplemented for use with propofol at a later date, 5
14 milliliter single-dose vials will be utilized

15 Q Okay. And when a clinic responds like -- you
16 -- the deficiencies are served on them, and then a plan of
17 correction is returned to the agency, BLC. What -- what then
18 happens? Is it -- is it approved? Is it disapproved? What's
19 the agency do? Like okay, or not good enough? How does this
20 work?

21 A We would review the plan of correction to see
22 if they have addressed the deficient processes that were
23 identified. If they have, we can accept the plan of
24 correction. If they have not addressed the deficiencies
25 practice, then we cannot accept it and we would inform the

1 facility that the plan of correction was unacceptable and
2 identify why it was unacceptable.

3 Q Okay. And what happened here?

4 A I don't know because when we accept a plan of
5 correction we usually identify at the top of the statement of
6 deficiencies that the plan of correction was acceptable. It's
7 not identified on this here, so I'm not sure if this was
8 accepted or not.

9 Q Okay. Do you have any recollection at all?
10 That's the only copy I've got.

11 A No, I don't. We would usually, like I said,
12 whoever reviews it will identify if it was acceptable or not.

13 Q Okay. Who would have reviewed that?

14 A It would have been either the Health Facility
15 Surveyor III, the supervisor, myself, or any other surveyor
16 who was available to review it.

17 Q Okay. And to jump back -- what were -- what
18 were the other two deficiencies?

19 A In regards to this tag, the first step of the
20 cleaning process for the upper GI endoscopy and colonoscopy
21 scopes, the facility failed to ensure the center adopted and
22 reviewed written policies and procedures. Again, for the
23 first step of the cleaning process and for the upper GI
24 endoscopy and colonoscopy scopes and the use of disposable
25 biopsy instruments.

1 Q Okay. Sounds like two different things there.
2 One is biopsy instruments, one is scope cleaning.

3 A That's correct.

4 Q Okay. There was a scope cleaning deficiency.

5 A Yes.

6 Q Okay. When you keep talking tags, you throw
7 me for a loop. Were there additional tags in there,
8 additional things found wrong?

9 A Let's see. There was another tag, again,
10 related to the center failed to ensure the administrator
11 evaluated and revised the policy and procedure for the use of
12 propofol, for the cleaning of the scopes.

13 Q Okay. The way I read that, tell me if I'm
14 wrong. I'm just a layman. Without tags and everything, just
15 tell me how many things were found wrong.

16 A Okay. Let me see.

17 Q The way I read it there's three things.

18 A That's correct.

19 Q Okay.

20 A There are three areas of deficient practice.

21 Q Okay. And it impacts various ways because
22 they didn't have written policies or else they were not
23 following them or something, and that accounts for the
24 different tags under the regulations; right?

25 A That's correct.

1 Q But -- but basically three things wrong.
2 A That's correct.
3 Q Okay. And one of them was the propofol. They
4 were using multi-use; correct?
5 A Yes.
6 Q Secondly, scope cleaning problems?
7 A Yes.
8 Q And was there a plan of correction for that?
9 A Yes.
10 Q Okay. And basically did they say we will --
11 we'll clean them properly?
12 A Yes.
13 Q Okay. So the plan of correction was the
14 deficiencies found in scope cleaning, they will correct and
15 clean them properly, is that fair?
16 A Yes.
17 Q Okay. And the third deficiency you said had
18 to do with biopsy forceps?
19 A Disposable biopsy instruments, yes.
20 Q Okay. And what was -- what was the
21 deficiency?
22 A The administrator failed to ensure the
23 policies and procedures were evaluated and revised to reflect
24 the current practice at the center.
25 Q What's that mean in layman's terms?

1 A In layman's terms, let me see. The
2 administrative staff indicated that the facility used
3 disposable biopsy instruments, and the policies and procedure
4 had not been updated to reflect the current practice. So the
5 facility had switched from --

6 Q Reusable.

7 A -- reusable to disposable, and the policy and
8 procedure was not updated to reflect that current practice.

9 Q Okay. The policy and procedure still said
10 using reusables and cleaning them, and, in fact, they had gone
11 to disposable biopsy forceps and the policy was outdated?

12 A Yes.

13 Q And I guess the plan of correction would be we
14 updated the policy?

15 A Yes.

16 Q Okay. Now, I want to go back to your notes.
17 Aside from January 16th interviews at the clinic, did you also
18 interview Vincent Mione, another CRNA? And if you'll go to
19 the third page -- you found it?

20 A Yes.

21 Q Is that January 16, 2008?

22 A Yes.

23 Q And Vincent Mione, a CRNA?

24 A Yes.

25 Q And what did -- in this interview, what did he

1 explain?

2 A He indicated that the RN distributes the
3 propofol vials to the CRNA, the vials were to remain in the
4 procedure room, propofol single-use vials, they were 20
5 milliliter vials. He would open the vial, draw up 20 ccs,
6 same vial, same patient, same syringe. Throw out remaining
7 propofol and open bottle after each patient. The usual
8 propofol dose was 120 to 180 milligrams, and lidocaine 2
9 percent, they would draw up -- or he would draw up .5 ccs
10 first, and then 10 ccs of propofol.

11 Q Okay. Now, on January 16th when you
12 interviewed Mr. Mione, his practice on single-use -- because
13 it's January 16th now. So propofol being used single-use
14 vial, and his practice for a patient was the same as Linda
15 Hubbard's; is that correct?

16 A Yes.

17 Q Okay. Meaning one needle and syringe, dose
18 patient, if patient needs more, use the same needle and
19 syringe back into the same propofol vial, same needle and
20 syringe back into the patient, and then at the conclusion,
21 discard propofol vial, needle, and syringe; correct?

22 A Yes.

23 Q And once again, at that time on January 16th,
24 you didn't say anything to Mr. Mione about this being an
25 improper procedure; correct?

1 A That's correct.

2 Q Because at -- at that time it was viewed as a
3 safe aseptic procedure, meaning on January 16th.

4 A It was a safe procedure. Now, again, not best
5 practice, but, yes.

6 Q Okay. But the -- I mean, Linda Hubbard and
7 Vincent Mione are telling you in interviews, BLC, this is the
8 way we are doing it under our new policy of single-use
9 propofol; right?

10 A Yes.

11 Q And no one said to them, well, this is okay,
12 but it's not best practices; correct?

13 A That's correct.

14 Q Okay. That -- that determination came at a
15 later time?

16 A I'm not sure what you mean.

17 Q Did -- did you have discussions with Brian
18 Labus like in February about the dangers of such a practice?

19 A That I don't recall.

20 Q Okay. Well, at -- at what point was the
21 determination made, as you understand it, to put them on
22 notice that, hey, you need to use a brand new needle, brand
23 new syringe every single time you enter the propofol vial or
24 the patient?

25 A So a brand new syringe, brand new needle for

1 each patient?

2 Q Well, you tell me. You're a nurse and you're
3 an inspector for the BLC; correct?

4 A I didn't -- I did not tell them that, no. Not
5 during my -- not during the investigation --

6 Q Okay.

7 A -- that I participated in.

8 Q And had you -- had you been there on January
9 16th and seen a practice that was putting patients in danger
10 because they were operating and doing it exactly the way they
11 were telling you; correct?

12 MS. WECKERLY: I'm going to object, unless she --

13 THE COURT: That wasn't really --

14 MS. WECKERLY: -- observed procedures.

15 THE COURT: -- a question, either.

16 MR. WRIGHT: I threw a correct on the end.

17 THE COURT: Well, I know, but the first part didn't
18 match up with the second part. Is your question -- I mean,
19 state your question again.

20 MR. WRIGHT: Okay.

21 BY MR. WRIGHT:

22 Q I presume other inspectors were there other
23 than yourself; correct?

24 A Yes.

25 Q And if -- if a clinic is telling you they are

1 engaging in certain practices and you have any inkling that
2 those are unsafe practices putting patients at risk, you would
3 stop those practices and advise them; correct?

4 A That's correct.

5 THE COURT: Maybe this would be a good time for a
6 morning recess.

7 MR. WRIGHT: Thank you.

8 THE COURT: Ladies and gentlemen, we're going to go
9 ahead and take until about 11:30 our morning recess.

10 During the recess you're reminded that you're not to
11 discuss the case or anything relating to the case with each
12 other or with anyone else. You're not to read, watch, or
13 listen to any reports of or commentaries on this case, any
14 person or subject matter relating to the case, and please
15 don't form or express an opinion on the trial.

16 Notepads in your chairs, and follow the bailiff
17 through the rear door.

18 And, ma'am, during the break, don't discuss your
19 testimony with anyone else.

20 THE WITNESS: Okay.

21 THE COURT: Okay. And if you want to take a break,
22 it's just through the double doors there.

23 THE WITNESS: Okay. Thank you.

24 (Court recessed at 11:15 a.m., until 11:28 a.m.)

25 (Inside the presence of the jury.)

1 THE COURT: All right. Court is now back in
2 session.

3 Mr. Wright, you may resume your questioning.

4 MR. WRIGHT: Thank you.

5 BY MR. WRIGHT:

6 Q Did you also observe or interview another CRNA
7 on January 16th, Mr. Vincent Sagendorf? And the -- like on
8 page 5.

9 A Yes.

10 Q Do you have that? Yes.

11 A Yeah.

12 Q January 16, 2008, interview of Vinnie
13 Sagendorf, CRNA; correct?

14 A Yes.

15 Q And what did Mr. Sagendorf explain regarding
16 his procedure?

17 A The RN distributes the propofol in the
18 morning. He draws up 1 cc of Xylocaine first, then 10 ccs of
19 propofol. It's a 20 cc standard vial. When -- when a patient
20 -- when with the patient and ready to start the procedure,
21 that's when he would draw up the propofol. Start with 100
22 milligrams of propofol, augment as needed, use a new syringe,
23 discard the propofol after each patient, standard practice for
24 CRNA.

25 Q Okay. So as -- tell me if I'm incorrect, but

1 as far as Mr. Vinnie Sagendorf, he indicates that he would be
2 doing what you refer to as best practices.

3 A Yes.

4 Q Is that right?

5 A Yes.

6 Q Whereas Linda Hubbard and Mr. Mione were
7 reusing needle and syringe for same patient, Vincent Sagendorf
8 is saying every time I draw up again I use a new needle and
9 syringe.

10 A Yes.

11 Q And at the end, toss the propofol because it's
12 single-patient use as of now; correct?

13 A Yes.

14 Q Okay. And do you recall you and Nadine Howard
15 and Leslee Kosloy, the three BLC investigators, were
16 interviewed by the Metropolitan Police Department in March
17 2008? Do you recall that?

18 A Yes.

19 Q Okay. Have you seen your transcript of
20 interview?

21 A Briefly.

22 Q Okay. And do you recall that at that
23 interview in March -- on March 5, 2008, it was all three of
24 you; correct?

25 A Yes.

1 Q Okay. And you are all three nurses?
2 A Yes.
3 Q And inspectors?
4 A Yes.
5 Q Okay. And you explained to the detectives
6 that the procedures described on January 16th by Mr. Mione,
7 Mr. Sagendorf, and Linda Hubbard were proper and correct
8 procedures; right?
9 A That I don't recall. I'll need to see the --
10 Q Okay. 23 to 27 -- 23 to 26, read that to
11 yourself, all four pages.
12 A Okay.
13 Q Starting like about there on line -- page 23.
14 A [Witness complied]. Okay.
15 Q Does that refresh your recollection?
16 A Yes.
17 Q And that's on March 5, 2008. I'll tell you
18 because I didn't hand you the cover page.
19 A Okay.
20 Q And that's interview of Leslee Kosloy, Dorothy
21 Sims, Nadine Howard at the BLC; correct?
22 A Yes.
23 Q And it's by Detective Gray and Detective Hahn
24 of the Metropolitan Police Department.
25 A Okay.

1 Q And at that time you were interviewed, you
2 all, let me put it that way, and the practices described of
3 Mr. Mione, Linda Hubbard, Sagendorf were stated by you all to
4 be perfectly acceptable.

5 A That's correct.

6 Q Is that correct?

7 A Yes.

8 Q And there was nothing in there to the
9 detectives about not best practices or anything else. It was
10 they are using acceptable safe practices --

11 A Yes.

12 Q -- correct?

13 A Uh-huh.

14 Q And it was talking specifically about reusing
15 needle and syringe; correct?

16 A Yes.

17 Q And apparently at some later time after March
18 5, 2008, there was a determination that that may not be safe
19 practices or best practices; right?

20 A My opinion, yes, not best practice.

21 Q Okay. After March 5, 2008?

22 A Yes.

23 Q Okay. And -- because on March 5, 2008, you
24 and the other two inspectors are agreeing that those are safe
25 practices; correct?

1 A Yes.

2 Q Okay. And you're now saying today it's not
3 best practices; right?

4 A That's correct.

5 Q Okay. So that change occurred after March 5,
6 2008?

7 A Yes.

8 Q Okay. And investigation of Shadow Lane had
9 ended by BLC on January 17th when the statement of
10 deficiencies was issued; correct?

11 A That's correct.

12 Q Additional -- did additional investigation by
13 BLC occur at the sister clinic on Burnham Lane?

14 A Did we do an inspection over there?

15 Q Yes.

16 A Yes, we did.

17 Q Okay. And that was after Shadow Lane?

18 A Yes.

19 Q Okay. And so -- and you knew Burnham was
20 simply another clinic of the same practice; correct?

21 A That's correct.

22 Q Okay. And so BLC went and inspected there --

23 A Yes.

24 Q -- correct? And did another statement of
25 deficiencies; correct?

1 A Yes.

2 MS. WECKERLY: I'm going to object as to foundation
3 unless she was at Burnham and observed it.

4 MR. WRIGHT: Okay. Well, the -- I'm not going to go
5 any further with going into Burnham.

6 THE COURT: Okay. Move on.

7 BY MR. WRIGHT:

8 Q There -- thereafter did your agency conduct
9 further investigations of other ambulatory surgical centers,
10 starting in February 2008?

11 A We did do inspections of other ambulatory
12 surgery centers. I don't know the exact date as when they
13 were started, but we did do other investigations, yes.

14 Q Okay. And was that precipitated, started
15 because of what was found at Shadow Lane?

16 MS. WECKERLY: Objection. Calls for speculation.

17 THE COURT: If she knows.

18 You can answer. Don't guess if you don't know.

19 THE WITNESS: That I don't know.

20 BY MR. WRIGHT:

21 Q Okay. You don't know why the governor asked
22 all of the ambulatory surgical centers in the state to be
23 inspected starting right after the Shadow Lane clinic?

24 THE COURT: Well, that would --

25 MS. WECKERLY: Objection.

1 THE COURT: -- be speculation.

2 MS. WECKERLY: That's not in evidence.

3 THE COURT: Yeah, so --

4 BY MR. WRIGHT:

5 Q Okay. Do you know?

6 THE COURT: Mr. Wright, I already sustained the
7 objection --

8 MR. WRIGHT: Okay.

9 THE COURT: -- so you need to move on.

10 BY MR. WRIGHT:

11 Q Did you -- in February did BLC inspect another
12 clinic on Maryland Parkway, an endoscopic clinic?

13 MS. WECKERLY: I'm going to object unless she
14 personally did the inspection. I mean, she could, I guess,
15 say that --

16 THE COURT: Well, she could --

17 MS. WECKERLY: -- she heard

18 THE COURT: -- be aware of it in her role as part of
19 the team.

20 So do you know whether or not there was another
21 inspection?

22 THE WITNESS: We did do an inspection on an
23 ambulatory surgery center on Maryland Parkway. I don't know
24 the exact date, though.

25 THE COURT: Okay. Were you involved in that

1 inspection?

2 THE WITNESS: No, I was not.

3 BY MR. WRIGHT:

4 Q Would you look at that document and tell me --
5 tell me what that is?

6 A Going back to your -- the Judge's question on
7 was I involved with it, is that directly involved with it, or
8 as a supervisor?

9 Q As a supervisor.

10 A As supervisor, I may have been involved with
11 it, but I wasn't directly onsite.

12 Q Okay.

13 A This is a state --

14 MS. WECKERLY: My objection, then, is foundation as
15 to any observations if she wasn't onsite.

16 THE COURT: All right. Lay a foundation, Mr.
17 Wright.

18 MR. WRIGHT: I'm having her -- I handed her an
19 exhibit and I'm asking her what it is --

20 THE COURT: Okay.

21 MR. WRIGHT: -- before I move its introduction.

22 BY MR. WRIGHT:

23 Q What is that exhibit?

24 A This is a statement of deficiency for a
25 gastrointestinal diagnostic clinic on 3196 South Maryland

1 Parkway.

2 Q Okay. And is that the inspection we've -- you
3 and I have been talking about?

4 A The one on Maryland Parkway?

5 Q Yes.

6 A Yes, this occurred in February.

7 Q Of 2008?

8 A Yes.

9 Q And that -- and that's a document of your
10 agency; correct?

11 A That's correct.

12 MR. WRIGHT: I move its admission.

13 MS. WECKERLY: Objection. Hearsay.

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

15 (Off-record bench conference.)

16 BY MR. WRIGHT:

17 Q Would you look at that page by page and tell
18 me if that appears to be an accurate copy of a record of your
19 agency?

20 A [Witness complied]. Yes, this is a statement
21 of deficiencies from our agency.

22 Q And it's page 1 through 29 and every single
23 page is there; correct?

24 A Yes.

25 MR. WRIGHT: Move it's admission.

1 MS. WECKERLY: Same objection that I previously
2 stated.

3 THE COURT: Basis, why are you --

4 MS. WECKERLY: Foundation.

5 THE COURT: -- admitting it?

6 MS. WECKERLY: Oh, sorry.

7 THE COURT: Mr. Wright?

8 MR. WRIGHT: Pardon? I'm sorry.

9 THE COURT: I'll see --

10 MR. WRIGHT: -- I didn't --

11 THE COURT: -- counsel up here.

12 MR. WRIGHT: -- hear you.

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

14 (Off-record bench conference.)

15 MR. WRIGHT: Thank you, Your Honor.

16 THE COURT: Go ahead.

17 BY MR. WRIGHT:

18 Q Do you have Exhibit CCC -- CC-1; correct?

19 A Yes.

20 THE COURT: Two Cs.

21 BY MR. WRIGHT:

22 Q CC-1

23 A Yes.

24 Q The -- these inspections of an endoscopy -- a
25 gastrointestinal diagnostic clinic, is that an ambulatory

1 surgical center?

2 A Yes.

3 Q Okay. And these inspections take place
4 unannounced?

5 A Yes.

6 Q Okay. So it's inspectors walk in the door,
7 watch, and interview?

8 A Yes.

9 Q And look at records?

10 A Yes.

11 Q Okay. And this occurred on February 15, 2008?

12 A That's the date that the investigation was
13 completed. It started on February 13, 2008.

14 Q Okay. Looking at page 25 -- 25 of 29.

15 A Okay.

16 Q Did the observations begin on February 14th,
17 general observations of four patients receiving endoscopy
18 procedures at the facility between 7:35 a.m. and 9:30 a.m.?

19 A Yes.

20 Q And going to page 26 of 29 -- and this is a
21 different clinic in Las Vegas; correct?

22 A Yes.

23 Q It's not -- not Burnham, not Shadow Lane, not
24 associated with the Gastroenterological Center of Las Vegas?

25 A Yes.

1 Q Okay. Now, on page 26, Patient No. 3, okay.

2 A Yes.

3 Q Would you read the paragraph as to Patient 3?

4 MS. WECKERLY: I'm going to just object as to
5 foundation unless she was there and observed this.

6 THE COURT: What was your role as a supervisor on
7 this investigation or document?

8 THE WITNESS: I would have assigned the surveyors to
9 go out to investigate. They would call for any questions or
10 guidance. And then once the investigation was completed, I
11 would review the report, and then I would mail the report out
12 to the facility. And then I would track the inspection
13 process.

14 THE COURT: Okay. When you say track the inspection
15 process, what does that mean?

16 THE WITNESS: I would track as to what facilities we
17 are going at to do any inspections at, which day we started,
18 what day we've completed, did the statement go out, and did we
19 get a plan of correction in.

20 THE COURT: Okay. And then as the supervisor, did
21 you have any role in making sure the plan of correction was
22 actually adhered to or the changed -- the recommended changes
23 were made?

24 THE WITNESS: It looks like I reviewed the plan of
25 correction and accepted it. And this is a federal statement,

1 so because of the conditions we would be then responsible to
2 do a follow up visit to make sure they are in compliance with
3 the regulations.

4 THE COURT: And you do that as a supervisor?

5 THE WITNESS: I would assign --

6 THE COURT: Okay.

7 THE WITNESS: -- the -- the surveyors to go out and
8 do the follow up investigation. But I would not have been the
9 investigator going out to do it.

10 THE COURT: All right. Go ahead, Mr. Wright.

11 MR. WRIGHT: Okay.

12 BY MR. WRIGHT:

13 Q And do you all -- your -- your agency, you do
14 the inspections for the centers for Medicare and Medicaid
15 services, federal government; correct?

16 A Yes.

17 Q I mean, just the way our government is set up
18 here, the feds for Medicare and Medicaid contract to the
19 state, your agency, to do the inspections of their clinics
20 that are qualified for Medicare and Medicaid services?

21 A That's correct.

22 Q Okay. And so that's what was taking place
23 here?

24 A Yes.

25 Q Okay. Now, Patient No. 3, read that

1 paragraph.

2 A Patient No. 3 was brought into the procedure
3 room at 8:35 a.m. The anesthesiologist injected the patient
4 with propofol through the patient's intravenous IV tubing.
5 The anesthesiologist opened a new vial of propofol. The
6 anesthesiologist used an open needle and syringe to draw up
7 additional propofol from the vial. The anesthesiologist was
8 observed putting the used vial with the remaining propofol
9 back on the counter after the case. This was the only used
10 propofol vial observed. The other vials on the countertop
11 were new, unopened vials.

12 Q Okay. And then Patient 4 follows Patient 3;
13 correct?

14 A Yes.

15 Q Okay. And what happened with Patient 4?

16 A Patient No. 4 was brought into the procedure
17 room at 9:15 a.m. The anesthesiologist was observed drawing
18 up propofol in the same -- the anesthesiologist was observed
19 drawing up propofol from the same vial that he had used on
20 Patient No. 3 to inject Patient No. 4.

21 Q Okay. I had -- I had skipped Patient 2 before
22 that, but read the next paragraph about Patients 2, 3, and 4.
23 What then occurred?

24 A Patients No. 2, 3, and 4 were observed being
25 transferred into the procedure room one at a time on a gurney

1 with their intravenous IV bags lying on the gurney with them.
2 An observation was made that one of the patients -- the
3 patient's blood flowed back into the IV tubing. When the IV
4 bag was hung on an IV pole, the blood cleared from the tubing.

5 Q Okay. Next paragraph.

6 A During the observation time frame, the
7 anesthesiologist was never observed opening new syringes.

8 Q Okay. And then was the anesthesiologist
9 interviewed? What's the next paragraph?

10 A On 2/24/08 at 9:45 a.m., the anesthesiologist
11 stated that it was okay to use a single patient use propofol
12 vial on multiple patients because the purpose of the single
13 patient use label on the vial was to prevent bacterial growth
14 in cases that required a long period of time. The
15 anesthesiologist stated that because these cases were of short
16 duration there was not enough time for bacterial growth to
17 occur, that way it was safe to reuse the propofol vials on
18 multiple patients.

19 The anesthesiologist was asked what the process was
20 when he went from a used propofol vial to a new patient. The
21 anesthesiologist stated that he would change the needle and
22 reuse the same syringe. The anesthesiologist explained that
23 because a high port was used on the IV line it was safe to
24 change the needle and reuse the same syringe on multiple
25 patients.

1 Q Okay. And that -- that was an
2 anesthesiologist, M.D., not a CRNA; correct?

3 A That's correct.

4 Q Okay. And the report, the statement of
5 deficiencies, the same syringe was being used by the
6 anesthesiologist, multi-patient, but simply changing the
7 needle; correct?

8 A Yes.

9 Q Okay. And all of the investigation at
10 Burnham, Shadow Lane, the entire investigation, there was
11 never any finding ever of any reuse of needles, reuse of
12 syringes between patients; correct?

13 A At the Shadow Lane, that's correct.

14 Q Okay. I don't recall the Burnham clinic.

15 Q Okay. You would have to look at the report on
16 Burnham?

17 A Yes, I would.

18 Q Okay. But at Shadow Lane no reuse of syringe
19 between patients?

20 A That's correct.

21 Q Okay. And then this on February 15, 2008,
22 reuse of syringe, changing needle between patients and
23 multiple use of propofol; correct?

24 A That's correct.

25 Q Okay. And was a plan of correction filed?

1 A Yes.

2 Q Okay. And plan of correction is propofol used
3 single-use and new needles and syringes?

4 A It would be in the attachments because they
5 attached their policies and procedures. But if I accepted it,
6 then --

7 Q Okay.

8 A -- they would have changed their policies and
9 procedure.

10 Q Now, thereafter was a plan put in place to
11 survey or investigate, inspect, I guess, is the correct word,
12 all of the ambulatory surgical centers in the state of Nevada
13 in 2008?

14 A That's correct.

15 Q And did -- did you -- did your office
16 participate in that?

17 A Yes.

18 Q Okay. Did CDC participate in that?

19 A Yes.

20 Q And do you recall the time frame?

21 A No.

22 Q Look at that document to yourself and tell me
23 if you recognize what that is.

24 A [Witness complied].

25 Q Do you know what that is?

1 A It looks like it's a report that was done by
2 our administrator, Richard Whitley.

3 Q Okay. And who is Richard Whitley?

4 A He is the administrator for the Health
5 Division.

6 Q And is that your division?

7 A Yes, it is.

8 Q He's the boss?

9 A Yes, he is.

10 Q And does -- is that report the -- a report of
11 the results of the inspection of ambulatory surgical centers
12 in Nevada in 2008 regarding infection control practices?

13 MS. WECKERLY: Your Honor, I'm going to object
14 unless she independently recognizes it. It sounds like she --
15 or it looks like she's reading it.

16 THE WITNESS: I -- to be honest, I don't recall
17 seeing this report.

18 THE COURT: Okay.

19 BY MR. WRIGHT:

20 Q Okay. Do you know was it -- let me show you
21 Exhibit R-1.

22 MS. WECKERLY: Can I see that exhibit? I don't --

23 THE COURT: Yeah. It's already been admitted.

24 MS. WECKERLY: Right. I just want --

25 THE COURT: That's fine. He can --

1 MS. WECKERLY: I just want to --

2 THE COURT: -- show it to you.

3 MS. WECKERLY: -- know what it is.

4 THE COURT: And R-1 is what, Mr. Wright?

5 MR. WRIGHT: It's a Nevada State Health Division

6 technical bulletin --

7 THE COURT: Okay.

8 MR. WRIGHT: -- regarding potential exposures to
9 hepatitis C in -- in ambulatory surgical centers in Las Vegas.

10 THE WITNESS: Okay.

11 BY MR. WRIGHT:

12 Q Are you familiar with that?

13 A No, I'm not.

14 Q Okay. Do you -- do you -- who is -- that's in
15 evidence already. That technical bulletin is from whom?

16 A It looks like it was written by Dr. Ihsan
17 Azzam.

18 Q Who is he?

19 A He is the state epidemiologist.

20 Q Okay. And is he in your agency or in a
21 different state agency?

22 A It looks like he's with the Nevada State
23 Health Division, so --

24 Q That's different than you all?

25 A The Nevada State Health Division is a division

1 within the Department of Health and Human Services, and then
2 our bureau is like a program within that Health Division. So
3 he's with -- he's the state epidemiologist, but he's not with
4 the Bureau of Healthcare Quality and Compliance.

5 Q Okay.

6 A Or the BLC?

7 Q Do you recall that as a result of inspections
8 taking place a technical bulletin was sent out to healthcare
9 providers about multi-use vials and reuse of syringes?

10 A I don't recall personally, but this is --

11 MS. WECKERLY: I'm going to object unless she
12 recalls.

13 THE COURT: All right. Okay.

14 BY MR. WRIGHT:

15 Q Now, you do recall that there was -- your
16 agency participated in an inspection of all the ambulatory
17 surgical centers in the state of Nevada; right?

18 A Yes.

19 Q And do you recall how many of them were
20 inappropriately using single-use items, especially syringes?

21 A I don't recall how many of them.

22 Q Let me show you something and see if this
23 refreshes your recollection.

24 A Without seeing the inspection reports --

25 Q That does not refresh your recollection?

1 A No. We have a total of about 60 facilities
2 all throughout the state. So without seeing each of the
3 inspection reports, I really can't say.

4 Q Okay.

5 THE COURT: That's fine. I mean, the question is
6 does that refresh your recollection.

7 THE WITNESS: Yeah.

8 THE COURT: And if it doesn't, then Mr. Wright is
9 going to move on.

10 BY MR. WRIGHT:

11 Q Right. My question was do you recall of the
12 number inspected, like 60 of them, how many of them were found
13 to be reusing syringes?

14 A No, I can't recall how many of them.

15 Q Does looking at that refresh your
16 recollection?

17 MS. WECKERLY: I'm going to object. She just said
18 it didn't.

19 THE COURT: I think she just said it didn't.

20 THE WITNESS: No, it doesn't.

21 THE COURT: All right.

22 MR. WRIGHT: I move the admission of the exhibit.

23 MR. STAUDAHER: Well --

24 MS. WECKERLY: I'm going to object as to foundation.

25 THE COURT: That's sustained.

1 MS. WECKERLY: Among others.

2 THE COURT: That's sustained, Ms. Weckerly.

3 BY MR. WRIGHT:

4 Q So you don't --

5 THE COURT: I don't think that's been --

6 BY MR. WRIGHT:

7 Q -- have any idea --

8 THE COURT: -- marked yet, either.

9 BY MR. WRIGHT:

10 Q Do you remember you were working and
11 participating in it; correct?

12 A Yes.

13 Q Okay. And this is 2008. And an inspection of
14 all the ambulatory surgical centers because we had this
15 outbreak here; correct?

16 A Yes.

17 Q Okay. And can you remember if there was zero
18 found? Do you have any memory whatsoever of the results of
19 this investigation?

20 A Without looking at those inspection reports I
21 couldn't tell you what was found at each of the facilities.

22 Q Okay. So for all you know it was 100 percent
23 reusing; correct?

24 A Without looking at the inspection reports, I
25 can't say.

1 Q Okay. In preparation for your testimony here,
2 have you been interviewed by anyone?

3 A For?

4 Q In preparation for testifying --

5 THE COURT: For coming in today did anyone interview
6 you, like a police officer or investigator or attorneys,
7 anybody like that?

8 THE WITNESS: I met with the DA awhile ago.

9 THE COURT: Okay. By awhile, a week ago, two weeks
10 ago, a month ago, what do you mean?

11 THE WITNESS: Prior to -- prior to jury selection.

12 THE COURT: Okay. So that would have been a couple
13 of months ago?

14 THE WITNESS: Yes.

15 THE COURT: All right. Go on, Mr. Wright.

16 BY MR. WRIGHT:

17 Q Okay. Who did you -- you never met with me;
18 right?

19 A No, I have not.

20 Q Okay. But you met with the District
21 Attorney's office?

22 A Yes.

23 Q Okay. Who did you meet with?

24 A The gentleman here and the lady here.

25 THE COURT: Which gentleman?

1 BY MR. WRIGHT:

2 Q This is Mr. Staudaher.

3 A Mr. Staudaher.

4 Q Ms. Weckerly.

5 A Yes.

6 Q You met with them?

7 A Yes.

8 Q Did you discuss what I'm talking about here
9 today?

10 A No.

11 Q What did you discuss?

12 A He -- we discussed the police officer's
13 interview.

14 Q Okay. That March 5, 2008, interview I showed
15 you?

16 A Yes.

17 Q Anything else?

18 A No, I don't recall.

19 Q Okay. Thank you very much.

20 THE COURT: Nothing else, Mr. Wright?

21 MR. WRIGHT: No, Your Honor.

22 THE COURT: Mr. Santacroce, do you have any
23 questions for this witness?

24 MR. SANTACROCE: I do not.

25 THE COURT: Thank you.

1 Ms. Weckerly, is this your witness?

2 MS. WECKERLY: Yes.

3 THE COURT: Cross?

4 MS. WECKERLY: No cross.

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

8 Ma'am, thank you for your testimony. Please do not
9 discuss your testimony with anyone else who may be called as a
10 witness in this matter.

11 THE WITNESS: Okay.

12 THE COURT: You are excused.

13 THE WITNESS: Thank you.

14 THE COURT: Thank you.

15 I'll see counsel at the bench, please.

16 (Off-record bench conference.)

17 THE COURT: Ladies and gentlemen, we're going to go
18 ahead and take our lunch break now. We'll be in recess for
19 the lunch break until 1:25.

20 During the lunch recess you are reminded that you're
21 not to discuss the case or anything relating to the case with
22 each other or with anyone else. You're not to read, watch, or
23 listen to any reports of or commentaries on this case, any
24 person or subject matter relating to the case by any medium of
25 information. Please do not do any independent research, and

1 please do not form or express an opinion on the trial.

2 Place your notepads in your chairs and follow the
3 bailiff through the rear door.

4 (Jury recessed at 12:20 p.m.)

5 THE COURT: And before we take our break, I
6 overheard the attorneys commenting that there was an
7 outstanding ruling on something prior to resuming the
8 testimony.

9 MR. STAUDAHER: No.

10 THE COURT: Can you enlighten me as to what that
11 might be?

12 MR. STAUDAHER: Outstanding ruling regarding jury --
13 so it was related to jury instructions where --

14 THE COURT: Is that regarding the statute or --
15 because how can there be an outstanding ruling on jury
16 instructions when we haven't --

17 MR. STAUDAHER: Well, not --

18 THE COURT: -- covered jury instructions?

19 MR. STAUDAHER: -- a jury instruction, but the issue
20 regarding the theft that the Court -- we provided the
21 authority for the Court.

22 THE COURT: Right. I'm expecting argument on
23 that --

24 MR. STAUDAHER: Okay.

25 THE COURT: -- so I don't really think it's fair to

1 characterize that as an outstanding ruling because I was going
2 to give the defense time to argue that, unless they agree that
3 that's an appropriate --

4 MR. STAUDAHER: I think we said that we need a
5 ruling from the Court, not necessarily that there was an
6 outstanding ruling.

7 THE COURT: Okay. Well, I heard outstanding ruling.
8 So I just want to make sure that other than the exhibit that
9 we talked about this morning that there's no outstanding
10 rulings. The only other issue is the graph thing that may be
11 considered outstanding. So I just want to make sure that I
12 haven't neglected to remember anything other than that.

13 And as I said, I don't consider that an outstanding
14 ruling because I'm assuming -- well, first of all, I don't
15 know. Maybe the defense will agree that that's an appropriate
16 statute to use and an appropriate instruction. I would assume
17 not, but, you know, I'm obviously not as wise as they are, so
18 perhaps they'll agree to that.

19 If not, I certainly would anticipate there's going
20 to be some argument on something that critical to a case. So
21 I don't consider that outstanding, as I said, because it
22 hasn't been -- it hasn't been argued, litigated yet, and, you
23 know, whatever. So is that --

24 MS. STANISH: No, Your Honor --

25 THE COURT: Am I missing something? Is there

1 anything else that either side feels they need a ruling on
2 that hasn't been ruled on?

3 MS. WECKERLY: I think we were -- we were discussing
4 jury selection -- or, sorry, jury instructions. And what we
5 were talking about is how we could probably reach agreement --

6 THE COURT: Right.

7 MS. WECKERLY: -- on some things, probably not that
8 issue. I mean, I don't know if Ms. Stanish was talking about
9 something else, but that was my recollection, that we thought
10 we could get agreement on certain parts of the --

11 THE COURT: Right. And you're fine to talk about
12 whatever you want to talk about. All I'm saying is if there
13 is an outstanding ruling, I certainly want to, you know, make
14 sure the record is complete and rule on anything that hasn't
15 been ruled on. So to the extent I may have overheard that, I
16 just want to make sure that I haven't neglected to make a
17 ruling on something that I have forgotten.

18 Like I said, those are the only two things at the
19 forefront of my mind, but it's possible I'm not recollecting
20 something. So if that's the case, then I need to be made
21 aware of that. The only other potential is the Ms. Pomykal
22 issue, which she's been kept here, you know. I'm concerned
23 about the thing -- I was going to review her -- I've reviewed
24 it already. You folks have reviewed it. You know, if we
25 decide to make her an alternate, then it's going to be the

1 next number alternate.

2 I am not going to shuffle the alternates to benefit
3 any particular side. So the next in number alternate, I
4 believe, is the blonde gal that you folks have complained
5 about has been sighing and doesn't appear to like Mr. Wright.
6 That, I believe, is our next in order. And, like I said, I'm
7 not shuffling the alternates unless there is a real reason.
8 And the fact that she may sigh and, you know, express boredom
9 is not a reason to shuffle the alternates.

10 So just to -- I don't know if anyone would have had
11 that idea, but to the extent someone would have, that is not
12 going to happen. The only one -- you know, we could make Ms.
13 Pomykal an alternate because she has -- and I'm going to
14 decide if I'm even going to make that option available. But,
15 you know, she has expressed something that could create, at
16 least in the minds of the defense, a conflict. So there is
17 that.

18 The only other remaining issue that really, I don't
19 know is a remaining issue, is the gentleman in Chair 7 who
20 will be allowed to go on his vacation starting early in the
21 morning on July 4th. So, you know, if we finish up Friday
22 like we think, that would give them three days to deliberate,
23 and my belief is he should remain as one of the main members
24 of the jury.

25 If for some reason it takes longer than that, then

IN THE SUPREME COURT OF THE STATE OF NEVADA

Electronically Filed
SEP 02 2014 09:19 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 38

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1 BY MR. WRIGHT:

2 Q Right. But you can't rule -- you can't say
3 hepatitis C, he still had it, correct?

4 A Not from my direct observation, no, I can't.

5 Q Right.

6 BY MR. STAUDAHER::

7 Q Did you see medical records which showed that he
8 had active lab results, laboratory results showing hepatitis C
9 up until he went to the Philippines at least?

10 A Yes.

11 THE COURT: Okay.

12 BY MR. STAUDAHER:

13 Q So at least -- and he was only in the
14 Philippines a couple of weeks before he died?

15 A That's correct.

16 THE COURT: If you've had hepatitis C for five years,
17 is it suddenly going to go away? Is that something that could
18 happen?

19 MR. WRIGHT: Asking a non-expert.

20 THE COURT: Does that make any sense, if you know?

21 THE WITNESS: I don't -- I don't know enough about
22 the natural --

23 THE COURT: Okay.

24 THE WITNESS: -- history of hepatitis C to answer
25 that one.

1 THE COURT: Okay. Anyone else? All right, ma'am,
2 thank you. You can go ahead and return to the vestibule.

3 She's expect -- I'm looking at the expert witness
4 disclosure, page 13. She is disclosure number 62, Alane
5 Olson, Medical Examiner, is a medical doctor employed by the
6 Clark County Coroner's Medical Examiner. She is an expert in
7 the area of forensic pathology and will give scientific
8 opinions related thereto. She is expected to testify
9 regarding the cause and manner of death of Rodolfo Meana, as
10 well as her direct and indirect involvement in the autopsy of
11 Rodolfo Meana. I think that covers it. So I mean I think --

12 MR. WRIGHT: I thought -- I told you, when I read the
13 grand jury, I thought she would be capable of properly
14 testifying to it. Now I know she isn't, she didn't. Well,
15 our initial motion opposing, defendant's opposition to foreign
16 documents pointed out the autopsy report refers to serological
17 and histopathological testing that were apparently conducted
18 by others outside the presence of Olson. That's the very
19 blood test I'm talking about, those tests. And she doesn't --
20 she didn't test -- she can't even say he still has hepatitis
21 C. And so now I'm supposed -- I want -- I want to articulate
22 again the dilemma I have on cross-examining her.

23 I -- I -- I want -- my problem is, I need the
24 witnesses from the Philippines because she's -- she says --
25 I'm looking at the death certificate. What I believe occurred

1 here, my theory in this defense as to how all of a sudden
2 cause of death only became hep C and not kidney problems is
3 the death certificate says both. And then along comes the
4 autopsy report, which is done in a funeral home at the request
5 of the family allegedly resulting from hepatitis C and then lo
6 and behold, look at the cause of death. There isn't a single
7 thing in the autopsy report about his kidney disease as the
8 cause of death.

9 So I'm supposed to cross-examine her when she
10 concludes remarkably the same as the autopsy report done by
11 the family that it's just hepatitis C. And so what -- and so
12 I'm -- my witnesses I want to examine are about how it changes
13 from both to go into the autopsy. They don't even -- what's
14 bilateral?

15 MR. STAUDAHER: Both sides -- two sides.

16 THE COURT: Both sides.

17 MR. WRIGHT: Okay. So it's bilateral lung? See, I
18 mean, look at that. Other significant conditions contributing
19 to death. They don't even relegate his chronic kidney
20 failure, which is the cause of death in the death certificate
21 to a footnote in this autopsy. And so I'm supposed to
22 cross-examine her about it? She's going to say, Mr. Wright, I
23 agreed with the autopsy report, I already said that. That's
24 where I'm hamstrung.

25 MR. STAUDAHER: Two -- two things, Your Honor. First

1 of all, when she was in here under questioning from counsel or
2 from myself, from the Court, she did not say one word about
3 basing, first of all, any of her findings or her opinions on
4 the autopsy report at question -- in question. She used her
5 direct observations that she delineated to the Court, her
6 observations under the microscopic -- the fact that that --
7 everything she talked about was medical records, medical
8 records. Those medical records are in in this particular case
9 and that's certainly something she can rely upon. She did not
10 say one time even for the confrontation -- just isolating the
11 confrontation clause issue, that she relied upon the autopsy
12 report. The only testimony she gave about the autopsy report
13 was that it was consistent with what her opinion was and her
14 belief and her findings. So that's not something that she
15 said she relied upon. So the things that she did rely upon
16 are certainly germane.

17 She also said as far as the active infection, that
18 she believed it was active and ongoing because under the
19 microscopic she saw focal areas of inflammation, which would
20 indicate an ongoing infected process. So with regard to the
21 fact that she didn't find a virus in the samples that she
22 directly had, she did see laboratory results in evidence a
23 couple of weeks before he dies that he had evidence of a
24 hepatitis C infection. And then she sees actual physical
25 findings consistent with that herself, which is what she

1 relied upon. But in no case -- what case did she actually
2 come in and say, I only relied, if I didn't have that autopsy
3 report, I couldn't have come up with this opinion.

4 MR. WRIGHT: She testified on direct examination,
5 Your Honor, that she didn't even reach a cause of death and
6 she didn't go there to perform an autopsy or give a cause of
7 death and she relied upon the autopsy conducted in the
8 Philippines, her own examination of the tissue and on the
9 death certificate. And she was in full agreement with them.
10 And, of course, the answer is, she isn't in full agreement
11 with them.

12 THE COURT: Let me ask this or just put this out
13 there as more of a legal question than a medical question, and
14 that is this. So what if he had died from both liver failure
15 and kidney failure at the same time? Okay, let's assume
16 that's true. He still died of the liver failure. So, I mean,
17 in terms of cause, I mean if everyone adopted -- let's just
18 say, well, he had both, he had renal failure and he had liver
19 failure and those are both the causes of death. And let's
20 even set aside the issue that she's spoken to that well, even
21 if it was kidney failure, it's likely caused by the liver
22 failure. Let's just say maybe he had kidney failure -- just
23 for right now, let's just say from an infectious disease or
24 some other unrelated cause, whatever that -- that may be. So
25 what? He still -- I mean, isn't the cause of death still, as

1 a legal matter, still the liver failure?

2 MR. WRIGHT: No.

3 THE COURT: Even if it was also partially
4 contributed --

5 MR. WRIGHT: No, it wasn't.

6 THE COURT: -- to the kidney failure if they're
7 working together? I don't know that -- I mean, I'm asking.
8 Because to me you still have a --

9 MR. WRIGHT: It's two things.

10 THE COURT: -- legal cause of death being the liver
11 failure. And she's explained how they go together, but even
12 setting that aside.

13 MR. WRIGHT: It's -- it's two -- two different
14 things. First of all, I am saying from the records I
15 introduced that he had renal and hepatic abnormalities showing
16 up on the tests prior to hep C. Okay? So that's one thing.

17 THE COURT: All right.

18 MR. WRIGHT: She -- she'd like to rule out or ignore.
19 First she told me on cross that there was nothing in the
20 medical records at all that showed any hepatic abnormalities
21 because I asked her what the word meant, hepatic
22 abnormalities. Anything in the records that he had any at all
23 before September 21st? No, Mr. Wright. What do you call
24 this? What's that word? Hepatic abnormality. I impeached
25 her on it, showed he had renal and hepatic problems ahead of

1 time. So that goes to a causation issue.

2 Then we get to the intervening cause. Is there an
3 independent intervening cause that preceded it actually here,
4 kidney disease. And then we add on to it for our independent
5 intervening, the decision I don't even want to be treated for
6 it and, I mean, because that can be an intervening cause.

7 THE COURT: Right. Well, that's different. That's
8 not related to her. I mean, you still can argue the
9 independent intervening cause of his refusal to even try the
10 treatment, that's different.

11 MR. WRIGHT: Well, I think an independent intervening
12 cause on the evidence may be he -- he died of kidney failure
13 and he would have died of it anyway at the same time because
14 he had it before he got hepatitis C. That's -- but --

15 MR. STAUDAHER: There's no evidence of that. There's
16 no evidence of that at all. He couldn't make that argument.

17 MR. WRIGHT: Look at the death certificate.

18 MR. STAUDAHER: It doesn't say that that was before
19 he got hepatitis C and that's not what the evidence has come
20 in to and not what she testified about, nor anybody else in
21 this case.

22 MR. WRIGHT: And I say she's not qualified to testify
23 about it. She's not a kidney expert and she's not a hepatitis
24 expert. She's a coroner who did a show and tell and didn't
25 even get her ring back right.

1 THE COURT: Well, neither is the coroner from the
2 Philippines. I mean, assuming we were to get the coroner from
3 the Philippines here, he's not a liver expert or a kidney
4 expert either. All I'm saying is even if the two went hand in
5 hand, legally I'm thinking that just the one, even if they're
6 acting in concert would be sufficient as the cause of death,
7 if they're acting together. So, you know --

8 MR. WRIGHT: Well, I -- I disagree and I don't think
9 that rose my confrontation rights.

10 THE COURT: Well, no. I said that that's a separate
11 issue and we've already made a record on that. And I think,
12 you know, it may be, it may come down to where you have to
13 actually have the coroner who performed the autopsy in these
14 murder cases. I think the state of the law is somewhat
15 unclear on that. On the -- on the -- I think that's not
16 decided and I think, like I said, right now all over this
17 country coroners who didn't perform autopsies are testifying
18 about autopsies in older murder cases, either because the
19 coroner's unavailable who did the autopsy and coupled with
20 that maybe the body's unavailable and -- or they just, you
21 know, can't do it anymore, don't want to do it anymore,
22 whatever.

23 I think that the notice, on the notice issue, I think
24 the notice -- even setting aside the grand jury transcript, I
25 think the notice was adequate. It said she's going to testify

1 to the cause and manner of death. So I think that that
2 disclosure there was adequate. How you choose to proceed with
3 cross-examination is up to you, Mr. Wright. I mean, you asked
4 me to strike the exhibit and normally the reports don't come
5 in. I struck the exhibit. If you think you want the report
6 to come in now, then that's fine. If you want to just
7 question her about the report, that's up to you. Or you want
8 to do nothing with the report, that's certainly your decision.
9 You know, proceed as -- as you want.

10 But I think going -- I mean, they did disclose her
11 and I think that they're disclosure was adequate. And so, you
12 know, and just my questioning of her, I'm comfortable on this
13 confrontation clause issue that she does have independent
14 knowledge. She's not relying solely on the report, she's
15 relying on the -- her eyeball observations of the liver.
16 She's relying on her looking at the slides of the liver.
17 She's relying on the yellowing of Mr. Meana's skin. And she's
18 relying on the bruising, although in response to my question
19 she admitted that that could also be caused she felt possibly
20 by kidney failure.

21 So I think while there still may be a confrontation
22 issue, I think certainly a lot of the information she's giving
23 and her opinion is based on, in part, significant part I would
24 say, her own observations and her own conclusions based upon
25 those observations.

1 So if anyone needs to take a two or three minute
2 break, do it and we'll finish up.

3 MR. WRIGHT: If she's relying upon the blood test
4 done in the Philippines, which we objected about -- the first
5 objection we filed in this that we don't have that and it's
6 hearsay and -- and even with all the notice to this day we
7 don't have that blood test result, which was done at a
8 different hospital at a different time.

9 MR. STAUDAHER: And just for the record, do we -- did
10 she come in here and say that she relied upon the blood test
11 result?

12 MR. WRIGHT: I asked her.

13 MR. STAUDAHER: No. When we were in here and the
14 Court was asking her what the basis of her opinion was and she
15 told us what it was. She didn't say that she was relying on
16 the blood test result in the Philippines. That -- she didn't
17 say that. Now that's --

18 MR. WRIGHT: Judge, I stood up and said, you -- you
19 don't know if he still had hepatitis C when he died, you're
20 relying upon the blood --

21 THE COURT: Well, that's a different question that
22 that -- I mean that's a different question than that she's
23 relying on the blood testing concluding that he died from
24 hepatitis or a condition caused by his hepatitis. Those are
25 two different questions. In -- in response to -- I don't know

1 why, I mean I don't know if they tried to get the results -- I
2 mean, I don't know what the background is there. But your
3 question is you didn't know if he had hepatitis, I'm relying
4 on the blood test is a different question than why do you
5 think he died from complications or --

6 MR. WRIGHT: No. If he didn't have hepatitis C, if
7 it -- if it tested very low and -- or negative, okay, would
8 that impact her decision?

9 THE COURT: I don't know.

10 MR. STAUDAHER: Well he should -- he can ask that
11 question.

12 MR. WRIGHT: Oh, right, I can ask it about the report
13 that we don't even have that we asked for.

14 MR. STAUDAHER: He -- or she actually testified that
15 her blood results were -- that she was relying on were from
16 the United States. She said she reviewed the medical records
17 from the United States and saw that he had active hepatitis
18 infections.

19 MR. WRIGHT: Can we play it back? I stood up and
20 asked her what she relied upon. I stood up when he was
21 talking and said you don't know whether he had hepatitis C
22 when he died or not and she said that's correct. All I can
23 rely upon is the report from the Philippines because she
24 brought it back to accomplish all of this.

25 THE COURT: I don't remember. I mean, when I asked

1 her she said she brought it back to confirm her belief about
2 the cause of death relating to the liver. Janie, do you know
3 where that is? All right. If anyone needs a couple minute
4 break, take that and then if Janie can find it, great. If not
5 we'll --

6 THE CLERK: Mr. Wright, was that in your direct or
7 was it in -- I mean was that in your cross or recross?

8 MR. WRIGHT: I don't know. This was just when she
9 came back in.

10 THE CLERK: Oh, you mean outside the presence?

11 MR. WRIGHT: Right.

12 THE CLERK: Oh, okay.

13 (Court recessed at 5:03 p.m. until 5:07 p.m.)

14 (Outside the presence of the jury.)

15 THE COURT: Mr. Wright, what was your memory of the
16 exchange in question?

17 MR. WRIGHT: I thought I -- when she was -- when Mr.
18 Staudaher was resummarizing for her after you were done, you
19 relied upon medical records --

20 THE COURT: Oh, you mean just in this last exchange?

21 MR. WRIGHT: Correct, just in this last -- you
22 finished, said any questions from counsel and Mr. Staudaher
23 said you looked at his medical records and the blood -- your
24 tissues, et cetera and she said, yes, yes and I made my
25 conclusion. And I said -- and I stood up and said, and the

1 only -- what you don't know is whether he had hepatitis C at
2 the time he died and she said correct. That -- I know that
3 only from the autopsy report.

4 THE COURT: Okay, I think that's fair. I don't think
5 we need to play it back. I think that's -- I think that's a
6 fair recollection of what she said. And I think that's
7 consistent with what she told me essentially so -- where's Ms.
8 Stanish? Restroom?

9 MR. SANTACROCE: She's in the vestibule.

10 THE COURT: If I had known that I wouldn't have
11 waited for you. Would you get them? Oh, Mr. Santacroce?

12 MR. SANTACROCE: Yes?

13 THE COURT: Could you do me a favor and grab the
14 witness?

15 MR. SANTACROCE: Sure.

16 THE COURT: That's your problem for sitting so close
17 to the door.

18 MR. SANTACROCE: I didn't make the seating
19 assignment.

20 THE COURT: I know. Ma'am, come on back up.

21 (Jury reconvened at 5:12 p.m.)

22 THE COURT: All right. Court is now back in session.
23 Mr. Wright, you may resume your examination.

24 MR. WRIGHT: Thank you.

25 BY MR. WRIGHT:

1 Q Dr. Olson, Mr. Meana had a history of high blood
2 pressure, correct?

3 A Yes, he did.

4 Q Okay. And that often manifests itself in kidney
5 disease, correct?

6 A It can, yes.

7 Q Okay. And he had chronic kidney disease.

8 A Yes.

9 Q And at the autopsy you not only looked -- saw
10 the liver but you saw the kidney, correct?

11 A Yes.

12 Q Okay. And it had scarring on the kidney?

13 A Microscopic -- under the microscope it had
14 scarring. Sometimes it's difficult to tell just looking at it
15 if there's scarring. But definitely under the microscope he
16 did have evidence of scarring.

17 Q Okay. And the scarring on the kidney most
18 likely the result of high blood pressure, correct?

19 A Likely, yes.

20 Q Okay. And -- and that -- that's not -- not the
21 result of liver disease.

22 A Correct.

23 Q And the cause of death on the Exhibit 18 in
24 evidence, on the certificate of death, one more time, hepatic
25 and uremic encephalopathy four.

1 A Yes.

2 Q Okay. And that's the immediate cause.

3 A Yes.

4 Q Okay. And sepsis was the antecedent cause.

5 A Yes.

6 Q And then the underlying was hepatitis C and
7 chronic kidney disease, correct?

8 A Yes.

9 Q Now this report, this certificate, finding of
10 cause of death in the Philippines is inconsistent with the
11 autopsy performed later in the Philippines for the family,
12 correct?

13 A The statement of cause of death differs from the
14 death certificate to the autopsy report.

15 Q Okay. Because the autopsy report -- and I'm
16 going to hand you a copy of it because it was stricken and
17 it's not in evidence. In the autopsy report the immediate
18 cause of death -- oh, immediate cause, I added the of death,
19 right?

20 A Yes.

21 Q Okay. Immediate cause hepatic failure, right?

22 A Yes.

23 Q Okay. And that's kidneys -- pardon me, liver.

24 A It's liver failure.

25 Q Liver. Antecedent cause, micronodular

1 cirrhosis.

2 A Yes.

3 Q Liver?

4 A Yes, liver, scarring in the liver.

5 Q And then 1C, underlying cause, chronic hepatitis

6 C.

7 A Yes.

8 Q Okay. Once again, liver.

9 A Correct.

10 Q And then other significant conditions

11 contributing to death, down below, almost like a footnote,

12 right?

13 A Yes.

14 Q Okay. Pneumonia?

15 A Yes.

16 Q Lungs?

17 A Yes.

18 Q Bilateral?

19 A Yes.

20 Q What's bilateral mean?

21 A It means both sides.

22 Q Okay. And so in -- in the autopsy report, even

23 in the footnotes, the chronic kidney disease, which is the

24 cause of death, doesn't even bear a mention, correct?

25 A That's correct.

1 MR. WRIGHT: No further questions.

2 THE COURT: All right. Mr. Santacroce?

3 MR. SANTACROCE: I don't have any questions.

4 MR. STAUDAHER: No redirect, Your Honor.

5 THE COURT: Any juror questions for this witness? No
6 juror questions? All right, Doctor. Thank you for your
7 testimony. There are no further questions for you. You are
8 excused at this time.

9 THE WITNESS: Thank you, Your Honor.

10 THE COURT: All right. Thank you.

11 MR. STAUDAHER: May we approach, Your Honor?

12 THE COURT: You may.

13 (Off-record bench conference.)

14 THE COURT: We're going to go ahead and take our
15 evening recess. We will reconvene tomorrow morning at 9:30.

16 During the evening recess you're reminded that you're
17 not to discuss this case or anything relating to the case with
18 each other or with anyone else. You're not to read, watch,
19 listen to any reports of or commentaries on this case, any
20 person or subject matter relating to the case by any medium of
21 information. Don't do any independent research by way of the
22 Internet or any other medium. And please do not form or
23 express an opinion on the trial. We'll see you all back here
24 tomorrow morning at 9:30. Notepads in your chairs.

25 (Jury recessed at 5:19 p.m.)

1 THE COURT: All right. Mr. Wright, did you need to
2 put something on the record before I leave?

3 MR. WRIGHT: Yes.

4 THE COURT: You mentioned something at the bench
5 regarding a deposition or something?

6 MR. WRIGHT: Yes. The -- Mr. Meana in his deposition
7 in November 23, 2011. I would propose reading into it pages
8 -- it's like a total of about one page but it goes from 38 to
9 45 because there's a lot of objections and things. But the
10 essence of it was Dr. Sood, he confirms Dr. Sood told him he
11 should take this and that would cure him and that he knew he
12 didn't want to and he felt that he -- he would -- he could be
13 cured without it. "Did Sood tell you the interferon treatment
14 could cure you? Yes. Did you understand there was a risk you
15 would develop cirrhosis of the liver if you did not continue?
16 Yes. I understand that but I was told that it depends on how
17 strong is your immune system. Sometimes the immune system
18 might be able to cure you. Did you feel that you had a strong
19 immune system and that you would be cured without interferon?
20 Yes."

21 And there's a few other, just rehashing the same
22 thing and him describing that he just didn't like it. He only
23 tried it once and he didn't feel well and he's feeling good so
24 why should I.

25 THE COURT: Which is consistent with what Dr. Sood's

1 records indicated?

2 MR. WRIGHT: Correct.

3 THE COURT: Any objection, State?

4 MR. STAUDAHER: We want to look at it.

5 THE COURT: That's fine. So we can do that in the
6 morning and then also write out the stipulation regarding the
7 amount the Meana family received in --

8 MS. WECKERLY: You have that, right?

9 THE COURT: Well --

10 THE CLERK: It's a Court's exhibit.

11 THE COURT: Yeah, thank you because -- you have it?

12 THE CLERK: Yeah.

13 THE COURT: Denise has it.

14 MS. WECKERLY: Okay.

15 THE COURT: I read it out the other day but --

16 MS. WECKERLY: Yeah, I just didn't remember the
17 number.

18 THE COURT: Yeah, Denise has it if you guys forget.
19 And so just make sure we do that in the morning. And then
20 that's that.

21 (Court recessed for the evening at 5:23 p.m.)

22

23

24

25

CERTIFICATION

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

AFFIRMATION

I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

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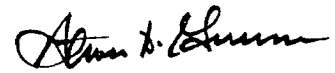

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TRAN



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 43

TUESDAY, JUNE 25, 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
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1 LAS VEGAS, NEVADA, TUESDAY, JUNE 25, 2013, 9:30 A.M.

2 * * * * *

3 (Outside the presence of the jury.)

4 THE COURT: Did anyone need me for anything before
5 we start?

6 MR. WRIGHT: I was going to mark that as an exhibit.
7 It's simply the Meana family proceeds received from the civil
8 litigation.

9 THE COURT: Oh. Okay.

10 MR. WRIGHT: That's the number we got from you.

11 THE COURT: Right. Which --

12 THE CLERK: It's a Court's exhibit.

13 THE COURT: All right. So are we just going to read
14 that as a stipulation, or do you want it to be an exhibit
15 exhibit or what?

16 MR. WRIGHT: I'll just make it a defense exhibit.

17 THE COURT: Okay. So make it BB-1 or whatever is
18 next.

19 MR. WRIGHT: And then I was going to read in a
20 portion of Meana deposition.

21 THE COURT: Okay.

22 MR. STAUDAHER: Which we don't necessarily have an
23 issue with, but the issue that's concerning that area that
24 counsel gave us a head's up on was related to interferon. And
25 if he wants to read it in, I want the entirety of that section

1 dealing with interferon read, which is pages 31 through 45.

2 MR. WRIGHT: Well, I -- I object to it.

3 THE COURT: Basis?

4 MR. WRIGHT: I never got the right to cross-examine
5 him. I am -- at all. This was already offered by the State,
6 denied confrontation, then over our objections you introduced
7 the -- his deposition.

8 THE COURT: Yeah, I mean, that would be the point of
9 them introducing the deposition testimony that they didn't get
10 to complete their cross-examination. I mean, it's not fair to
11 say you didn't get to cross-examine him. You didn't complete
12 your cross-examination.

13 MR. STAUDAHER: I don't have a problem with him
14 introducing it. I just don't want it to be piecemeal. I
15 think that that whole section should --

16 THE COURT: Well, what's the whole section say?

17 MR. STAUDAHER: It's all about -- it's the exchange
18 back and forth about his understanding about his interferon
19 therapy, why he didn't do it, what his symptoms were, things
20 like that. I think it's fair if --

21 THE RECORDER: I'm not picking you up, Mr.
22 Staudaher.

23 MR. STAUDAHER: Oh. I think it's fair that if we
24 bring that in, which I don't have an objection to, that we do
25 the complete section of that to get context so it's not just

1 parsed out. That's what would have happened at a deposition.

2 MR. WRIGHT: Well, let's -- let's read the entire
3 thing because it is the entire thing. I selected the portions
4 that were relevant because he was confused between Dr. Lipman
5 and Dr. Sood and who gave him the -- or the questioners were,
6 or the lawyers or he were confused and mixing up Lipman and
7 Sood.

8 Lipman was only in the case from like April -- no,
9 February, March, April 2008. And Sood and the interferon
10 treatments were in the spring of 2009. And so if you read
11 that part, Lipman's name hasn't even been introduced here in
12 evidence as to who Dr. Lipman is.

13 MR. STAUDAHER: But that's what he's saying. He got
14 advice, at least, from Dr. Lipman in this part of the
15 deposition. So, I mean, that's what I mean. It's a
16 collective whether it was --

17 THE COURT: Well, my other concern is now you're
18 introducing this purported hearsay from Dr. Lipman that Dr.
19 Lipman gave him advice that he wasn't supposed to do or could
20 -- what's the advice? I don't even know.

21 MR. STAUDAHER: That he didn't need to continue it
22 if he had -- if he had problems.

23 THE COURT: That's kind of big stuff, that he didn't
24 need to continue it. So to me, now to introduce something
25 with this Dr. Lipman, do you see what I'm saying? I mean,

1 then that's putting that out there that it's true that Dr.
2 Lipman told him he didn't need to continue it. Is that
3 basically --

4 MR. STAUDAHER: But it's in the context of the exact
5 -- I mean, it's not -- I mean, you just can't take a little
6 piece out and out of context. That's the whole discourse back
7 and forth about interferon therapy, what he was -- that it was
8 offered to him, who offered to him, when did they offer it,
9 what were the -- what -- what did he know about side effects
10 or lack thereof, why he stopped it, why he didn't start it.
11 That's the questioning that goes on.

12 So to take an individual question out of it and put
13 that out there I don't think is fair. I think if that's the
14 case, read it in context, and then he can argue to his heart's
15 content.

16 MR. WRIGHT: You know it's misleading deposition
17 testimony when they say it was Lipman who told him to
18 discontinue it when he is wrong by a year as to what doctor he
19 is talking about. And you're trying to interject information
20 you know is not accurate. That's why I edited it to make it
21 comport with the truth, which is what we're supposed to be
22 looking here --

23 MR. STAUDAHER: Again --

24 MR. WRIGHT: -- for here.

25 MR. STAUDAHER: -- I would ask him --

1 MR. WRIGHT: There is no --

2 MR. STAUDAHER: -- to address the Court --

3 MR. WRIGHT: -- question --

4 MR. STAUDAHER: -- instead of counsel.

5 THE COURT: Okay. First of all, address the Court.

6 MR. WRIGHT: Yes.

7 THE COURT: Second of all, don't interrupt each
8 other. And third of all, and most significantly, don't
9 interrupt me. You may speak.

10 MR. WRIGHT: There -- there is no question in the
11 evidence if you go through all of the medical records of Mr.
12 Meana that starting in February -- January and February of
13 2007 Dr. Carrera and Dr. Clifford Carrol told him to start
14 interferon treatment. That's in evidence by the documents
15 AA-1.

16 And then it's -- there is no question that he
17 learned of the outbreak and obviously I'm not going back to
18 Gastro Center, terminated his relationship. Then there's no
19 question Dr. Jurani told him you need to start interferon, go
20 see another gastroenterologist. Instead, there's no question
21 Mr. Meana hired a lawyer and the lawyer said I want you to go
22 to Infectious Diseases Specialist Lipman.

23 And so he went from March, April, into May to
24 Infectious Control Dr. Lipman. And finally Lipman said I'm
25 not going to treat you for hepatitis C. You need to go to a

1 gastroenterologist. Dr. Jurani then referred him to Dr. Sood
2 like in May or June of 2008. From May or June of 2008, Dr.
3 Sood raised various questions. You need a cardiologist
4 clearance, you need an ophthalmologist clearance because of
5 your blood pressure. Those took -- took from -- took six
6 months because of foot dragging or problems with medical --
7 with --

8 THE COURT: Getting --

9 MR. WRIGHT: -- insurance.

10 THE COURT: -- appointments, whatever.

11 MR. WRIGHT: Right. Then into 2009, spring, Dr.
12 Sood, records are in evidence in AA-1, told him you need to
13 start this. No more foot dragging. No more excuses. And he
14 then started it and next treatment by Dr. Sood in evidence, he
15 said I'm not taking it anymore. I took it once and I can't
16 tolerate the side effects.

17 And so the testimony I am offering is solely about
18 Dr. -- Mr. Meana's testimony about his relationship with Dr.
19 Sood and why he stopped doing it. And significantly did Dr.
20 Sood tell you the consequences it could flow? Yes, he told me
21 I could get cirrhosis, but he said I could beat it on my own
22 if I have a strong immune system, and I do have a strong
23 immune system, so I elected not to take it.

24 THE COURT: All right. Two questions. Number one,
25 you, I'm assuming, have the Lipman records that you're

1 referring to and you reviewed them and that's what the Lipman
2 records indicate, that Lipman said to him, said I can't treat
3 you, you need to go to a gastroenterologist?

4 MR. WRIGHT: I have Lipman's records that Dr. Jurani
5 -- I'm unclear where I acquired them, but I have Lipman's
6 records, Sood's records, and Jurani's records.

7 THE COURT: Okay. So do you have -- the question is
8 do you have records from Dr. Lipman showing from Dr. Lipman,
9 yes, I can't treat him here anymore, he needs to see a gastro
10 specialist? Are those in the records that you have?

11 MR. WRIGHT: I -- I --

12 MR. STAUDAHER: Because I don't have Dr. Lipman's
13 records, so --

14 THE COURT: Yeah, I'm just wondering where that's
15 coming from. Is that coming from Jurani's records, is that --

16 MR. WRIGHT: Jurani's records.

17 THE COURT: Okay.

18 MR. STAUDAHER: Those aren't Lipman's records, then.

19 MR. WRIGHT: Well, it's -- it's -- I don't know.

20 THE COURT: Okay. Then the second question I've now
21 forgotten. What does he say, then, in the deposition about
22 Dr. Lipman that you think is not true that Mr. Staudaher wants
23 to read?

24 MR. STAUDAHER: No, I just want it to be complete.

25 THE COURT: Well, and it's the part you want to read

1 or have read or present to the jury.

2 MR. WRIGHT: Well, where I stop is, question -- I
3 mean, this is part of what I left out.

4 Do you remember seeing Dr. Lipman in November 2008?

5 Answer, I cannot remember.

6 Do you remember Dr. Lipman offering to set up the
7 interferon treatment plan for you?

8 I mean, I just know these questions are wrong.

9 THE COURT: Who is asking the questions in the
10 deposition? Is it the --

11 MR. WRIGHT: Civil attorney.

12 THE COURT: I know. Is it the defendants that are
13 asking those questions or his own lawyer?

14 MR. WRIGHT: Stoberski.

15 THE COURT: Oh, yeah, Mr. Stoberski. Okay. He was
16 on the defense side. I don't remember who he represented,
17 but --

18 MR. STAUDAHER: It says right in the deposition, and
19 I'm referring to page 34.

20 It says, question, You first saw Dr. Lipman in March
21 of 2008?

22 His answer, I don't remember.

23 Do you recall discussing with Dr. Lipman whether you
24 should go on interferon treatment? Yes. Dr. Lipman
25 told me I don't have to take the treatment because I'm too old

1 for the supposed treatment and I may not be able to -- to be
2 the side effects.

3 Did you start treatment despite his warning?

4 Yes, only once.

5 Then there's an objection.

6 Did Dr. Lipman advise you start interferon
7 treatment?

8 No.

9 Did he want you to start interferon treatment?

10 The what?

11 He didn't want you to do interferon treatment?

12 Yes.

13 And you tried interferon treatment once?

14 Yeah. Not Dr. Lipman, but another gastro
15 specialist.

16 So he's telling -- he's saying that's not who he did
17 it with. He's saying it was with another one.

18 Later on after Dr. Lipman?

19 Yes.

20 Do you remember the other specialist that you went
21 to, what his name was?

22 Dr. Rajat Sood. I'm not sure about the first name.

23 I think you're correct, it's Dr. Sood. What is your
24 understanding of what kind of specialist Dr. Sood is?

25 And then he goes on. But that's clearly a conversation he had

1 with Dr. Lipman beforehand. He knows that there's a
2 difference, that he actually treated with interferon with --
3 with Dr. Sood. So I don't necessarily think based on that
4 that it appears as though it's false or inaccurate. He went
5 to Dr. Lipman in the time frame in question, he got advice
6 from him, and then he went to Dr. Sood for the actual
7 treatment.

8 THE COURT: Here's the deal. Because the
9 limitations with cross-examination and the fact -- I mean,
10 we've heard abundant evidence of Mr. Meana's sort of weakened
11 mental state and everything like that, I'm not going to allow
12 either side to introduce something that's inconsistent with
13 the medical records. Because I think we can assume that that
14 would be the truth. So do we -- that's why I ask. Do we have
15 anything from either Dr. Jurani or from Dr. Lipman showing
16 that he was told he wasn't a good candidate for interferon
17 or --

18 MR. STAUDAHER: I don't have --

19 THE COURT: -- that that was --

20 MR. STAUDAHER: -- Dr. Lipman's records.

21 THE COURT: Okay.

22 -- or that was discussed or if they're in Dr.
23 Jurani's records? Because at some point he came back from Dr.
24 Lipman to Dr. Jurani; is that correct?

25 MR. STAUDAHER: I don't know the answer to that.

1 THE COURT: You see what I'm saying? So if the
2 medical records don't comport with that, then I'm reluctant to
3 let you get into it because I would defer to the medical
4 records. If the medical records are consistent with that or
5 -- then I would say certainly I think you're -- you can
6 introduce the whole thing or that portion.

7 MR. STAUDAHER: Right. I mean, then that's just
8 what we're talking about. The State's position is that if you
9 piecemeal put in between those two pages, which is 31 to 45,
10 it's incomplete and misrepresents what the questions and
11 answers were about that very issue. So that's why I'm just
12 asking for completeness --

13 THE COURT: Okay.

14 MR. STAUDAHER: -- if he's going to put it in.

15 THE COURT: Does someone have Dr. Jurani's medical
16 records --

17 MR. WRIGHT: Yes.

18 THE COURT: -- that show when he came back and was
19 referred to Dr. Sood?

20 MR. WRIGHT: Yes.

21 THE COURT: Can I see that, please?

22 Are the jurors all here, Kenny?

23 THE MARSHAL: Yes, Judge.

24 (Pause in the proceedings.)

25 THE COURT: So am I correct that neither side

1 requested the medical records from Dr. Lipman?

2 MR. STAUDAHER: The State did not, Your Honor.

3 MR. WRIGHT: Yeah, I --

4 THE COURT: Okay. No, I'm just -- just trying to
5 get to the bottom of things. I'm not --

6 MS. STANISH: I can tell you when we arranged for
7 the deposition we requested complete records so we could be
8 prepared for the deposition and the State provided us with
9 what it had and it did not include that.

10 THE COURT: Okay.

11 MR. STAUDAHER: Your Honor, while --

12 THE COURT: Like I said, with all of the limitations
13 that have been imposed with the -- on the defense, I'm going
14 to go with whatever the medical records say.

15 MR. STAUDAHER: Your Honor, while Mr. Wright is
16 looking that up, I just wanted to -- I went through the -- I
17 went up and went through the exhibits today. There are a
18 couple of issues with some things related to the -- I know
19 there was all this stuff that was going on with the billing
20 records. There were some things related to that that appear
21 as though they're not marked as being admitted. It's my
22 understanding that they were. I'm willing to go through it
23 with counsel to go through that, but as far as our resting, I
24 would rest with the caveat that we have to get that
25 straightened out.

1 THE COURT: Okay. That's fine.

2 MR. STAUDAHER: And I believe that there is -- those
3 are the only -- I've marked the areas and I'll go over that
4 with counsel if we -- if we have some time to do that. But I
5 just wanted to make sure that that was on the record that
6 we're resting kind of --

7 THE COURT: Okay.

8 MR. STAUDAHER: -- with that.

9 THE COURT: And then, defense, you have your witness
10 here?

11 MS. STANISH: Yes, she's here, Your Honor. And then
12 we, basically just for scheduling purposes, should be done
13 today.

14 THE COURT: Okay. So we're going to do her -- is
15 she a full day witness?

16 MS. STANISH: She's a half day witness, and then we
17 have our expert, and he'll be -- we figured he probably
18 wouldn't get on until the afternoon.

19 THE COURT: Okay.

20 MS. STANISH: I don't imagine he'll be very long.

21 MR. STAUDAHER: And we do need to talk about him
22 before he gets on the stand.

23 THE COURT: Okay. And then I'll do the -- probably
24 then at the lunch break or so I'll do the Fifth Amendment
25 admonishment with the defendants.

1 MS. STANISH: Correct.

2 THE COURT: I still have to do that.

3 MS. STANISH: And, Your Honor, just kind of long
4 term if you could bear with us, we -- both sides, I believe,
5 would like to have tomorrow off to address with you the jury
6 instructions, as well as prepare for closing arguments.

7 THE COURT: That's fine. I think -- I don't know.
8 I mean, my guess would be jury -- there might be a lot of
9 argument on the instructions. That would be my guess, but I
10 -- I don't know.

11 MS. WECKERLY: We haven't received any yet, so I
12 think we're going to get those tonight. And so that -- you
13 know, I mean, we can maybe --

14 THE COURT: Right.

15 MS. WECKERLY: -- shorten some of it.

16 THE COURT: What I like to make the lawyers do, I
17 mean, if it's clear that there's just, you know, you're not
18 going to agree on some of them, I like the lawyers to meet
19 themselves. Sometimes it's just rewriting one. For example,
20 you may find the defendant guilty or innocent. You know, if
21 they want it changed to not guilty, I normally make that
22 change.

23 Little things like that you may be able to just
24 agree on and make those changes together. Or let's say you
25 want to add a paragraph to one of theirs and if you agree to

1 that or -- you know, things like that if you can agree. On
2 the ones you can't agree on, then, obviously, we just -- we'll
3 settle them in here in front of me. And then I just ask that
4 you just do the special ones that you want either
5 alternatively or in addition to whatever specials they have.

6 And then is this a concerted effort between Mr.
7 Santacroce and Ms. Stanish on the jury instructions?

8 MS. STANISH: It will be. I have --

9 THE COURT: Okay.

10 MS. STANISH: I have my --

11 THE COURT: So there's just --

12 MS. STANISH: -- first draft done.

13 THE COURT: -- going to be, in other words, one
14 defense packet for both defendants; is that correct?

15 MR. SANTACROCE: Yes.

16 THE COURT: Okay. And then I want you to then, of
17 the ones that can't be agreed on that you are submitting, I
18 want those to come to the Court to be made a Court's exhibit
19 in their original form as well. I don't really care about
20 annotations if you want to also submit an annotated form.
21 That's fine. So a copy, two copies, one for me to work off of
22 and one that's a clean copy that won't have my notes on it to
23 be the original Court's exhibit.

24 MS. WECKERLY: Right.

25 THE COURT: Okay.

1 MS. STANISH: Well, we're giving you an annotated
2 one because that fan man statute is -- you know, there's
3 nothing published on it.

4 THE COURT: Okay. That's fine. I'm just saying,
5 you know, I definitely want a clean copy and an annotated
6 copy --

7 MS. STANISH: Absolutely.

8 THE COURT: -- if you're going to do the annotated.
9 And then, like I said, clean to go to the clerk so that
10 anything that we don't use then is definitely part of the
11 record for potential appellate purposes.

12 MS. STANISH: Okey-dokey.

13 MR. WRIGHT: May I -- I'm going to read six pages of
14 deposition of Dr. Jurani, and the reason I'm doing it is
15 that's his records.

16 THE COURT: Okay. May I see that, please?

17 MR. WRIGHT: Okay. And so you can't tell anything
18 from his records, but he testifies to those records.

19 THE COURT: Okay. Would you just show this to the
20 State so they can see what page you're talking about?

21 MR. WRIGHT: Right. I'll just --

22 THE COURT: His writing is pretty impossible to
23 read, I will say.

24 MR. WRIGHT: Right. The -- the portion I'm going to
25 read, 67 to 73, is his reading of the documents --

1 THE COURT: Okay.

2 MR. WRIGHT: -- for March and April regarding Lipman
3 and why it's being switched to Dr. Sood. Page 67 of his May
4 14, 2009, deposition of Dr. Jurani.

5 March 6, 2008, can you go over the clinical history
6 with me, please?

7 Okay. It states he's hired an attorney to sue
8 Endoscopy Center. GI Center was closed. He needs a new
9 referral. He is referring to a gastroenterologist.

10 What does it say under that?

11 It says he knows that it's out of plan, his
12 insurance will not pay if you refer him to a
13 gastroenterologist that's not -- that's out of plan.

14 Okay.

15 Answer, The insurance will not pay. It states Dr.
16 Lipman-- he's referring to his notes. It states Dr. Lipman
17 and attorney will manage the payment. He was very specific
18 about getting referred to a specific person.

19 And that specific person was Dr. Brian Lipman?

20 Answer, Well, that's -- initially that was, you
21 know, Dr. Lipman, infectious disease specialist.

22 Did you refer him to another GI?

23 Well, at that particular time he was insisting on
24 going to -- we have like a healthy discussion of -- because I
25 don't really feel like he should go there, but he insisted on

1 going there.

2 Going where?

3 To see Dr. Lipman. I said patient will go on his
4 own to Dr. Lipman.

5 Why? Did you want him not to go to Dr. Lipman?

6 No, because the appropriate consult would be a
7 gastroenterologist, the one who deals with hepatitis more than
8 infectious diseases.

9 Is that why you wrote in the clinical history needs
10 referral?

11 When he insisted on seeing Dr. Lipman, I crossed it.

12 Do you know if he's still seeing Dr. Lipman?

13 No.

14 Under this note under the test results and
15 medication notes, are you saying that Dr. Lipman -- the note
16 here says -- does that say Dr. Lipman will take care of
17 payments? Can you read that? Can you read it again, please?

18 Okay. GI referral is crossed out, and it says Dr.
19 Brian Lipman, infectious disease, and then the note, it says
20 patient will go on his own.

21 THE COURT: Okay. I'm assuming -- I'm just -- my
22 comment would be, my assumption would be Dr. Lipman would have
23 been treating him on a lien if he was referred by the
24 plaintiff's attorney. That's what that sounds like to me.

25 MR. WRIGHT: Right.

1 Under test results, medication notes, his insurance
2 will not pay. That's under clinical history. Then it
3 continues into test results. He states Dr. Lipman and
4 attorney will manage payment. And is the payment for you or
5 for Dr. --

6 Objections.

7 Okay. I was not involved because he knows insurance
8 will not pay, so they will take care of payment.

9 When did you next see Mr. Meana?

10 April 3, 2008.

11 Can you read the clinical history for me?

12 Saw Dr. Lipman, has more blood tests, no fever, no
13 further treatment. No further treatment was given. He was
14 given a hepatitis B shot, and then below that is the hepatitis
15 RNA report, 12/27/07, \$5,980,000.

16 Going back on something. Brian Lipman.

17 Yes?

18 Have you ever referred to an infectious disease
19 specialist? Why did you have a problem with Dr. Lipman?

20 Well, my concern is treating hepatitis C, an
21 infectious disease, while they deal with that, apparently
22 that's not the normal course that we take when we are dealing
23 with hepatitis C. It has to be either a gastroenterologist,
24 or even a hepatologist. So you're granting, as primary care
25 physician, you're told hep C to refer to a gastroenterologist

1 or a hepatologist.

2 THE COURT: All right. I've heard enough.
3 Balancing everything, you know, like I said the constraints
4 placed upon the defense, the fact that we don't have the
5 Lipman records, the fact that he went to this doctor against
6 the advice of his primary care physician, apparently on an
7 attorney's lien or a personal injury lien it sounds like, it
8 was a separate arrangement, that he ultimately comes back to
9 Dr. Jurani, his primary care physician who has been sort of
10 managing his care this entire time, who then sends him to --
11 I'm sorry --

12 MR. WRIGHT: Dr. Sood.

13 THE COURT: -- Dr. Sood. The fact that the defense
14 is limited in their ability to cross-examine, clearly, Mr.
15 Meana on all of these things, including the incredibly
16 important question of, well, why would you go against the
17 advice of your primary care physician, Dr. Jurani, who you
18 presumably trusted, to go to this other specialist who is not
19 the recommended kind of specialist at the advice of your
20 lawyer I think is opening up a huge Pandora's box of
21 questions.

22 So balancing everything out, the constraints that
23 have been placed due to the, you know, death of Mr. Meana, the
24 fact that he left the country, you know, to die in his
25 homeland, you know, that -- obviously, he had the right to do

1 that, but that placed further constraints on the ability to
2 depose him.

3 The unfortunate timing in the matter and everything
4 else, I'm going to have Mr. Wright just read the portion of
5 the deposition that he selected because, as I just said,
6 looking at the records of Dr. Jurani, which really we can't
7 make out, but Dr. Jurani's testimony, what we understand from
8 that, I think that that creates more questions that then would
9 open more doors for cross-examination that would need to be
10 pursued.

11 Because, like I said, you know, the question is,
12 well, why on earth would he disregard the advice of his
13 primary care physician, Dr. Jurani, and go to a lawyer who was
14 suggested apparently by his attorney when he had insurance in
15 place which would have covered initially a gastroenterologist,
16 presumably. So reading the rest of it along -- and then, you
17 know, if you're going to read that, then we have to read the
18 testimony of Dr. Jurani. I mean, it just opens up a whole new
19 kettle of worms, if you will.

20 So I'm going to have Mr. Wright just read the -- you
21 know, balancing everything, the limitations that were place,
22 the fact that the deposition was played, I'm going to let Mr.
23 Wright just read that portion. Because, again, I think that
24 the testimony, the independent testimony of the primary care
25 physician, who I'm assuming testified as not an expert, but as

1 a treating -- he may have also been an expert, but certainly
2 he was testifying as a treating physician in the civil cases
3 -- I think suggests that the recommended course of treatment
4 was a GI specialist, was Dr. Sood, and there was this sort of
5 deviation that ultimately resulted in him going back to Dr.
6 Jurani and pursuing the course of action that Dr. Jurani had
7 recommended in the first place. So for those reasons I'm
8 going to deny the State's request.

9 Are they ready?

10 MR. STAUDAHER: Your Honor?

11 THE COURT: Yes.

12 MR. STAUDAHER: I understand the Court's ruling, I
13 just want to make a record on it --

14 THE COURT: That's fine.

15 MR. STAUDAHER: -- because of the accusation that
16 was proffered. I did not hear in any of the discourse that
17 counsel read regarding the deposition or any reference to any
18 medical record that what was contained at least in the
19 deposition transcript of Mr. Meana was false, as was implied.
20 We're talking about a date of March of 2008. The dates that
21 counsel referenced were March of 2008, and then in April 2008
22 also when he followed back up after seeing Dr. Lipman. So I
23 think that that was consistent.

24 THE COURT: I think it is consistent with what Mr.
25 Meana said. All I'm saying is I think it opens up --

1 MR. STAUDAHER: I have no problem with that.

2 THE COURT: -- a whole array of other questions and
3 more cross-examination, which obviously he would want to know,
4 well, why are you disregarding Dr. Jurani's suggestion? Why
5 is your lawyer telling you who to treat with that ultimately
6 could have contributed to, you know, a misunder -- I don't
7 want to say contributed to his death, but certainly could have
8 contributed to a misunderstanding in his own mind that led him
9 to refuse treatment?

10 Now, we -- we don't know the answer to that
11 question, but that's certainly a question that pops into my
12 mind hearing the deposition of Dr. Jurani. The reason I said
13 he's certainly a treating physician is because if he testified
14 solely as a treating physician, then he has no dog in the
15 fight. He's not a retained expert. He's just there to say
16 these are my notes, this is what happened as opposed to, as
17 you know, a retained expert that's been paid by either side.

18 So certainly he's testifying as a treating, possibly
19 as an expert, but I don't -- I don't know. But I think, you
20 know, his records as -- my point being I think the records of
21 a treating are more inherently reliable than something that's
22 done by an expert who has been retained by one side or the
23 other and is being paid to form, essentially, a particular
24 opinion.

25 You know, Dr. Jurani's records, he was strictly

1 treating at that point in time, had been his primary care
2 physician. So I think there is a great deal of reliability in
3 those records and the testimony that was based on the records.
4 So if anyone needs to take a quick restroom break, let's --
5 oh, we're not done.

6 MR. WRIGHT: He was a treating physician.

7 THE COURT: No, he was a treating, but I'm saying he
8 could have also then been brought in as an expert. I suspect
9 he wasn't, but that's what I meant.

10 MR. WRIGHT: He was not.

11 THE COURT: Clearly he was a treating. And like I
12 said, all of his records and the testimony was based on his
13 role as a treating physician, which I think is more accurate
14 or is more likely to be accurate because there is no dog in
15 the fight at that point. And he wasn't -- it doesn't sound
16 like he's working on a medical lien, either. He was paid by
17 insurance.

18 MR. WRIGHT: Correct.

19 THE COURT: So in any event --

20 (Court recessed at 10:00 a.m., until 10:03 a.m.)

21 (Outside the presence of the jury.)

22 MR. STAUDAHER: Your Honor, we're going to -- we
23 will be resting with the reservation about the exhibits.

24 THE COURT: Okay.

25 MR. STAUDAHER: And also with the reservation that

1 there's just a couple of cleanup things we want to put on the
2 record in our case in chief, outside the presence, obviously,
3 later on. It doesn't have to be done now, but we just want to
4 make sure that that's reserved, as well.

5 THE COURT: Okay. Like what?

6 MR. STAUDAHER: Well, things that were brought up
7 initially about records with Tom Pitaro involved with
8 attorney-client privilege stuff, things like that.

9 THE COURT: Oh.

10 MR. STAUDAHER: We ferreted out some of that and
11 want to make sure --

12 THE COURT: Okay. So you just --

13 MR. STAUDAHER: -- we put it on the record.

14 THE COURT: -- want to correct some
15 representations --

16 MR. STAUDAHER: I just want to put --

17 THE COURT: -- that were made --

18 MR. STAUDAHER: -- it on the record, yes.

19 THE COURT: -- that maybe weren't correct? That's
20 fine.

21 MR. STAUDAHER: And also that we made a disclosure
22 to the defense as to who the CI was listed in the search
23 warrant so that that's on the record, too.

24 MR. WRIGHT: And -- and at the same time I -- I want
25 to reserve arguing about Exhibit 87. That's the affidavit

1 prepared for CRNAs that I had stipulated to, then withdrew my
2 stipulation because I didn't know where it came from.

3 THE COURT: Oh, this was from the search warrant
4 that they found?

5 MR. WRIGHT: Right. I want to -- and we reserved on
6 that, and so I want to -- and we don't have to do it now.

7 THE COURT: Okay.

8 MR. WRIGHT: I mean, but at the same time I want to
9 argue about --

10 THE COURT: Yeah, we never had any testimony on that
11 anyway about where that came from --

12 MR. WRIGHT: Right.

13 THE COURT: -- as a result of the search warrant, if
14 it was in a box, if it was --

15 MR. STAUDAHER: Well, it's because it was a
16 stipulated --

17 THE COURT: -- on a computer. Right. It was
18 stipulated.

19 MR. STAUDAHER: He can get back up on the stand if
20 we need to deal with that.

21 THE COURT: I don't know if -- I mean --

22 MR. WRIGHT: Well, I -- I stipulated to it not
23 knowing that it was -- what I stipulated to was when I went
24 over there on that Friday afternoon and looked at everything
25 and I understood it had all come from, and then this appeared

1 and I didn't stipulate to that. I agree I --

2 THE COURT: What do you mean this appeared? Was it
3 there when you looked at the exhibits in their office --

4 MR. WRIGHT: No.

5 THE COURT: -- or wasn't it?

6 MR. STAUDAHER: I don't believe that -- at least at
7 court beforehand, the two weeks before or whatever, or the
8 week before we started trial, it was not part of that. It was
9 part of the exhibits that I brought over to show --

10 THE COURT: That particular day.

11 MR. STAUDAHER: -- before we started, then they
12 stipulated in court that day as to them, but I don't believe
13 that he realized, afterward, at least that was what he said,
14 that he didn't realize what it was until later. So --

15 MR. WRIGHT: Right.

16 MR. STAUDAHER: But -- but we did, then, disclose
17 where that information came from one of the computers, and I
18 think that --

19 THE COURT: Right. Well, here's the deal. Where
20 did that -- does --

21 Detective Whitely, do you know where that particular
22 exhibit even came from?

23 MR. STAUDAHER: He does.

24 MR. WHITELEY: I'll find it.

25 THE COURT: Okay.

1 MS. STANISH: Well, he didn't know where the other
2 exhibits came from yesterday.

3 MR. STAUDAHER: He knows. He said that he needed a
4 cover sheet. And he can actually do that, it's just that you
5 didn't provide the cover sheet for him.

6 MR. WHITELEY: Where's the cover sheet?

7 MS. STANISH: I didn't provide the cover sheet?

8 MR. WRIGHT: We can do this --

9 THE COURT: All right. We can do it later. I'm
10 just -- just making sure that we have a witness who even knows
11 where it comes from as opposed to --

12 MR. STAUDAHER: He does.

13 THE COURT: -- oh, here's just this exhibit that
14 came out of the search warrant, but we don't know if it's from
15 a computer or if it was in a file or, you know, who downloaded
16 it or where it was, if it was an email. Because that was the
17 attorney-client issue --

18 MR. WRIGHT: Right.

19 THE COURT: -- that I had raised that I was
20 concerned about that this better not have been an attachment
21 to an email or in a file or something like that because it
22 could also be -- I mean, it's clearly written by a lawyer or
23 appears to be. Clearly, I'm pretty sure it wasn't written by
24 Dr. Desai based on the other things he's written. There is no
25 way he wrote that. Nothing against --

1 MR. STAUDAHER: Just so the Court would be aware
2 that if we -- if there was an issue on that and we had to then
3 bring it in through the detective --

4 THE COURT: Okay.

5 MR. STAUDAHER: -- we would have to reopen --

6 THE COURT: That's fine.

7 MR. STAUDAHER: -- our case.

8 THE COURT: That's fine. All right. Bring them in.

9 (Inside the presence of the jury.)

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

15 Mr. Staudaher.

16 MR. STAUDAHER: Your Honor, at this time with the
17 reservations that we have discussed previously related to
18 exhibits and other things, the State would rest at this time.

19 THE COURT: All right. Mr. Wright.

20 MR. WRIGHT: Yes, before calling a witness I'm going
21 to offer two items.

22 THE COURT: All right.

23 MR. WRIGHT: One is Exhibit BB-1.

24 THE COURT: All right. And that's stipulated to; is
25 that correct?

1 MS. WECKERLY: Is that this one?
2 THE COURT: Yes.
3 MS. WECKERLY: Yes.
4 MR. STAUDAHER: Yes.
5 THE COURT: Thank you.
6 MR. STAUDAHER: Oh, yes. I'm sorry.
7 THE COURT: All right. And would you just present
8 that? You can publish that to the jury, if you'd like.
9 MR. WRIGHT: Thank you. Exhibit BB-1 deals with
10 resolution of the civil cases with the Meana family by the
11 Meana family's civil litigation against various individuals.
12 And the Meana family total proceeds received from civil
13 litigation, \$2,349,268.18.
14 THE COURT: All right. Thank you.
15 MR. WRIGHT: And I'm going to read, Your Honor, a
16 portion of a deposition of Mr. Meana taken on November 22,
17 2011, in civil litigation.
18 THE COURT: All right. Thank you.
19 And, ladies and gentlemen, this deposition, as Mr.
20 Wright just told you, was taken in connection with one of the
21 civil lawsuits that Mr. Meana was involved with.
22 MR. WRIGHT: And I will read the questions and
23 answers, Your Honor.
24 THE COURT: All right.
25 MR. WRIGHT: Question, Did Dr. Sood recommend that

1 you start the interferon treatment?

2 Answer, Dr. Sood actually was the one who told me to
3 undergo the tests, the treatment of the interferon.

4 Question, Did you start the interferon based on Dr.
5 Sood?

6 Answer, And Dr. Sood.

7 Question, And how many times did you take
8 interferon?

9 Answer, Only once.

10 Question, Did you give yourself a shot?

11 Answer, Yes.

12 Where did you take the shot?

13 Answer, On my thigh.

14 Question, And what type of side effects did you have
15 from the shot?

16 Answer, I have a flu-like symptom. I have diarrhea,
17 jaundice, and some sort of slight depression.

18 Question, Did Dr. Sood explain to you what might
19 happen if you didn't continue with the treatment?

20 Answer, Yes.

21 What do you remember him telling you?

22 Answer, Telling me that I might not -- telling me
23 that I might have some scar -- scar in my -- and that I might
24 also possibly will have later on cirrhosis and it will
25 actually try to destroy some cells in my liver.

1 Question, Did Dr. Sood tell you how long the
2 cirrhosis might take to develop?

3 Answer, No.

4 Question, Was it your decision to not stay with the
5 interferon, to not keep going with the interferon?

6 Answer, Yes, I have decided not to take it.

7 Question, And was that because of the side effects
8 only?

9 Answer, Yes.

10 Did Dr. Sood tell you that the interferon treatment
11 could cure you?

12 Answer, Yes.

13 But the side effects were too much, so you decided
14 not to stay on the interferon?

15 Answer, Yes.

16 Did you understand that there was a risk that you
17 would develop cirrhosis of the liver if you did not continue
18 with interferon treatment?

19 Answer, Yes, I understand that, but I was told that
20 it depends on how strong is your immune system. Sometimes the
21 immune system might be able to cure you.

22 Question, Did you feel that you had a strong immune
23 system that would be cured without the interferon?

24 Answer, Yes.

25 THE COURT: All right.

1 MR. WRIGHT: Thank you, Your Honor.

2 THE COURT: Thank you, Mr. Wright. And the defense
3 may call its first witness.

4 MR. WRIGHT: We call Dorothy Sims.

5 THE COURT: Ma'am, just right up here, please, up
6 those couple of stairs. And then just remain standing facing
7 that lady right there who will administer the oath to you.

8 DOROTHY SIMS, DEFENDANT'S WITNESS, SWORN

9 THE CLERK: Thank you. Please be seated. And
10 please state and spell your first and last name for the
11 record.

12 THE WITNESS: Dorothy, D-O-R-O-T-H-Y, Sims, S-I-M-S.

13 THE COURT: All right. Thank you.

14 Mr. Wright, you may proceed.

15 DIRECT EXAMINATION

16 BY MR. WRIGHT:

17 Q Dorothy Sims, is it Nurse Sims or what's your
18 title?

19 A I am a registered nurse, yes.

20 Q Okay. And tell the jury a little bit about
21 your education.

22 A I attended the University of Nevada at Las
23 Vegas. I have a bachelor's degree in nursing. I have five
24 years experience in neonatal intensive care nursing, I did two
25 years of case management, and for the last eight years I've

1 been with the Bureau of Healthcare Quality and Compliance.

2 Q Okay. The Bureau of Healthcare Quality and
3 Compliance was previously known as what?

4 A The Bureau of Licensure and Certification.

5 Q Okay. In the courtroom here for the period in
6 2007 and 2008 we've been referring to a state agency as the
7 BLC. Is that where you work?

8 A Yes.

9 Q Okay. And it's now changed its name?

10 A Yes.

11 Q Okay. Just for continuity and what we've been
12 doing here in the courtroom I'm going to call it the BLC,
13 okay?

14 A Okay.

15 Q And so you were employed by the BLC in January
16 2008, five and a half years ago?

17 A Yes.

18 Q And you're still so employed?

19 A Yes.

20 Q And what is your current position?

21 A I'm a Health Facilities Inspector III,
22 supervisor position.

23 Q Okay. And in January 2008 what was your
24 position?

25 A I was a Health Facilities Inspector II as a

1 surveyor, and then I got promoted to a Health Facilities -- or
2 at the time it was a Health Facilities Surveyor III,
3 supervisor position.

4 Q Okay. And so did you participate in January
5 2008 for the BLC with an inspection at the endoscopy clinic on
6 Shadow Lane here in Las Vegas?

7 A Yes.

8 Q Now --

9 THE COURT: Keep your voice up.

10 MR. WRIGHT: Okay.

11 BY MR. WRIGHT:

12 Q Do -- do you recall your first involvement?
13 When did you first go to the clinic?

14 A That I can't recall.

15 Q Okay.

16 A Can --

17 Q I'm going to show you some documents. It's
18 been five and a half years; correct?

19 A Yes, it has.

20 Q Okay. And we have not met until I just saw
21 you in the anteroom; correct?

22 A Yes.

23 Q So I have not interviewed you or had meetings
24 to prepare your testimony; correct?

25 A Yes.

1 MR. WRIGHT: May I approach, Your Honor?

2 THE COURT: You may.

3 BY MR. WRIGHT:

4 Q I'm going to show you something called a ACPS
5 complaint incident investigation report.

6 A Okay.

7 Q Look at that to yourself and tell me if you
8 recognize what that is.

9 A Yes, I do recognize it.

10 Q Okay. Is that the incident investigation
11 report pertaining to the Shadow Lane clinic for January 2008?

12 A Yes, it is.

13 Q Okay. And was this report produced based upon
14 BLC's investigation at the Shadow Lane clinic?

15 A Yes, it is.

16 Q Okay. You -- you may utilize that to refresh
17 your recollection as to dates, times, meetings.

18 A Okay.

19 Q And the -- what I'm -- what I'm initially
20 looking for is do you recall a first entry meeting when it was
21 the first time you went to the clinic?

22 A Yes.

23 Q Okay. And can you tell when that was by
24 refreshing your recollection?

25 A January 9, 2008.

1 Q Okay. And do you -- using that date, do you
2 recall the meeting and who you went with?

3 A Yes.

4 Q Okay. And who was that?

5 A There was another member of the Bureau of
6 Licensure and Certification, there were two members from the
7 CDC or Center for Disease Control, and one member from the
8 Southern Nevada Health District.

9 Q Okay. And would that have been Brian Labus?

10 A Yes.

11 Q Okay. And do you -- you -- you went to the
12 clinic to participate in an investigation because there had
13 been a hepatitis C outbreak; is that correct?

14 A Yes.

15 Q Okay. Do you recall that independently?

16 A No, I read it from the --

17 Q Okay.

18 A -- report.

19 Q The -- okay. Well, I'm just trying to figure
20 -- do you recall going to the clinic and participating in the
21 investigation? Forget in the time frame and day of the week.
22 Just tell me if you remember that.

23 A I do remember going to the clinic to
24 participate in an investigation.

25 Q Okay. And do you remember that it was a

1 hepatitis C -- outbreak was my word, but there had been
2 several cases of hepatitis C identified for patients from the
3 clinic?

4 A That's correct.

5 Q Okay. And do you recall that they had been
6 patients, the victims had been patients at the clinic on a
7 couple of specific days?

8 A I'm not -- I'm not understanding the question.

9 Q Okay. Do you recall that they -- the -- the
10 patients who contracted hepatitis C had been patients at the
11 clinic on Shadow Lane on a couple, two specific dates in 2007?

12 A Yes.

13 Q Okay. Now, your -- your purpose in going --
14 you -- you went with -- who did you go with from BLC?

15 A On the first day of the survey, so on Sep --
16 no, on January 9th it was Nadine Howard.

17 Q Okay. And the first meeting you had at the
18 clinic, do you recall who was present on behalf of the clinic?

19 A Can I refer to my --

20 Q Yeah. Do you --

21 A -- notes?

22 Q Do you recall was a -- well, you can go ahead.
23 I don't want to lead you.

24 A According to the report we met with the chief
25 operating officer, a physician, the charge nurse, and the

1 director of nursing.

2 Q Okay. And would the -- would the -- do you
3 recall the name Tonya Rushing?

4 A Yes.

5 Q Okay. Would she be like the chief operating
6 officer?

7 A Yes.

8 Q Okay. And Dr. Clifford Carrol?

9 A Was the physician.

10 Q Okay. And Jeffery Krueger?

11 A Was the charge nurse.

12 Q Okay. And the director of nursing, Katie
13 Maley?

14 A Yes.

15 Q Okay. And at -- at this initial meeting, tell
16 the jury what the purpose of the initial meeting was.

17 A The initial meeting was to inform the -- the
18 facility that we were there to investigate a complaint
19 allegation regarding infection control.

20 Q Okay. And did you tell them what the issue
21 was?

22 A The Southern Nevada Health District informed
23 them of the issue.

24 Q Okay. And was the issue the outbreak of
25 hepatitis C connected to that clinic?

1 A Yes.

2 Q Okay. And did -- at that meeting did the
3 clinic representatives cooperate?

4 A Yes.

5 Q Okay. And did the clinic representatives
6 explain their procedures and what they do there?

7 A Can you clarify the procedures?

8 Q Okay.

9 A Like as to what you're asking.

10 Q Okay. Like what type of anesthesia they use
11 for the procedure.

12 A Yes.

13 Q Okay. And do -- do you recall what -- what
14 they -- what you learned?

15 A And I can go by my notes here?

16 Q Sure, if you need to refresh your
17 recollection.

18 A Okay. Okay.

19 Q Do you recall what they said about the
20 anesthesia used at the clinic?

21 A Yes.

22 Q And what did they say?

23 A They use propofol and lidocaine to sedate the
24 patient.

25 Q Okay. And did they use multi-dose vials?

1 A Yes.

2 Q Okay. And you were -- you were -- you and
3 everyone at the meeting were told that at the initial entry
4 meeting; correct?

5 A Yes.

6 Q Did you have familiarity with propofol?

7 A No.

8 Q Okay. Did -- did you know if propofol is
9 single-dose or multi-dose vials on Wednesday, January 9th at
10 the first meeting?

11 A No, I did not.

12 Q Okay. Did -- is -- is it fair to say that at
13 that meeting the -- do you recall specifically who of the
14 individuals, who explained that they use multi-dose propofol
15 and multi-dose lidocaine to sedate?

16 A No, I don't.

17 Q Okay. The -- did anyone at that meeting, the
18 CDC or the -- you're the BLC, but your other BLC member there
19 with you, or the Southern Nevada Health District, did anyone
20 at that meeting say stop, you can't multi-dose propofol at
21 that initial meeting?

22 A No.

23 Q Okay. At that initial meeting it -- it was
24 not known by the -- by yourself that propofol could not be
25 used multi-dose, is that fair?

1 A Yes.

2 Q Okay. You learned differently, correct, after
3 the initial meeting?

4 A Yes.

5 Q Okay. I mean, I saw some hesitancy on your
6 face. I want to be clear. That initial meeting Wednesday the
7 9th we multi-dose propofol and no one -- no representative of
8 the government said anything about stopping that practice;
9 correct?

10 A That's correct.

11 Q Okay. And did you -- did you all return the
12 next day?

13 A Yes.

14 MS. WECKERLY: I just want to -- if we could just
15 clarify who it is that's returning.

16 BY MR. WRIGHT:

17 Q Okay. Who -- who is returning on January
18 10th?

19 A The BLC returned with -- Nadine returned, I
20 returned, and we had another surveyor from the BLC, Leslee
21 Kosloy joined us. There were representatives from the CDC and
22 representatives from the Southern Nevada Health District.

23 Q Okay. And on that next day, Thursday, January
24 10th, did -- did you -- were you there all day, the three of
25 you, from BLC?

1 A Yes, we were.

2 Q Okay. And did you participate in chart
3 reviews and observations in the clinic?

4 A Yes.

5 Q Okay. And were you observing procedures and
6 cleaning of scopes and everything that goes on in the clinic?

7 A Yes.

8 Q And you were looking to see if, in layman's
9 terms, they were doing everything right?

10 A Yes.

11 Q Is that -- is that fair?

12 A Yes.

13 Q Okay. Because there -- there had been an
14 outbreak of hepatitis C tied to the clinic, and you all were
15 investigating to determine if you could figure out how the
16 hepatitis C spread and any wrongdoing in any of the procedures
17 or processes in the clinic; correct?

18 MS. WECKERLY: I'm going to object to leading.

19 THE COURT: Overruled.

20 You can answer.

21 THE WITNESS: We were looking at whether they were
22 following infection control practices. Whether they were --
23 the cleaning of the scopes was done properly, so that's what
24 we were looking -- looking at.

25 BY MR. WRIGHT:

1 Q Okay.

2 A So we were looking at infection control
3 practices in the facility.

4 Q Okay. And so in doing that you would observe
5 procedures?

6 A Yes.

7 Q Okay. And follow a patient through -- a
8 patient is done and following to the cleaning of the scopes
9 and all that takes place?

10 A Yes.

11 Q Okay.

12 THE COURT: You are leading.

13 MR. WRIGHT: Okay. Correct.

14 BY MR. WRIGHT:

15 Q Tell me, who did -- do you recall who you
16 observed on Thursday, January 10th? And I'm going to give you
17 some more notes.

18 A Okay.

19 Q Okay?

20 A Okay.

21 Q Because it's been five and a half years.

22 MR. WRIGHT: I'm going to ask her to identify --

23 MS. WECKERLY: Okay.

24 MR. WRIGHT: -- what they are.

25 MS. WECKERLY: Yeah, would you, please.

1 BY MR. WRIGHT:

2 Q I have one stack here. Can you -- do you --
3 can you tell me what those represent?

4 A These are my handwritten notes.

5 Q Okay. And so the -- your handwritten notes,
6 you write well, I can read it. And the -- to your right, you
7 were actually looking at the typed report; correct?

8 A That's correct.

9 Q And so this -- your handwritten notes were
10 made simultaneously while you were at the clinic?

11 A Yes.

12 Q Okay. And I have another package of notes.
13 Can you tell me what those represent?

14 A These are notes that were taken during
15 telephone calls after the investigation was completed.

16 Q Okay. And are those your notes?

17 A Yes, they are.

18 Q Okay. You can just hang on to those three
19 things as I go through because the first question I have is on
20 January 10th did you observe an endoscopic procedure in which
21 a CRNA participated? Looking at your handwritten notes, look
22 at the second to the last page.

23 A Okay. Okay.

24 Q Is that a 1/10/08 observation?

25 A Yes.

1 Q Okay. And is -- and these are your notes, and
2 is this your observation?

3 A Yes.

4 Q Okay. And do you recall who is the CRNA you
5 were observing?

6 A Linda Hubbard.

7 Q Okay. And it's -- the date is January 10,
8 2008. That's a Thursday. I'll tell you that. We know it
9 because we've been dealing with it here. Okay?

10 A Okay.

11 Q And what time?

12 A 3:35 p.m.

13 Q And the -- the administration of anesthesia,
14 did the CRNA administer propofol?

15 A Yes.

16 Q Okay. And is it -- is she using the propofol
17 -- Linda Hubbard using the propofol vial as a multi-dose vial
18 on Thursday afternoon?

19 A Yes.

20 Q And if -- do you recall watching her like
21 administer propofol?

22 A I watched her administer the propofol to the
23 patient.

24 Q Okay. And if the patient needed additional
25 propofol, another dose, she was utilizing the same vial of