COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

LINDA DE ROGATIS, INDIVIDUALLY AND AS SUCCESSOR-IN-INTEREST TO TARA DE ROGATIS; PETER DE ROGATIS, INDIVIDUALLY AND AS SUCCESSOR-IN-INTEREST TO TARA DE ROGATIS,	)	
PLAINTIFFS-APPELLANTS,	)	
VS.	)	NO. BC457891
KAREN MICHELLE SHAINSKY, D.O.,	)	NO. B254024
DEFENDANT-RESPONDENT.	)	

APPEAL FROM THE SUPERIOR COURT OF LOS ANGELES COUNTY

HONORABLE JAN A. PLUIM, JUDGE PRESIDING

REPORTER'S TRANSCRIPT OF PROCEEDINGS

NOVEMBER 5, 2013

APPEARANCES:

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KAREN E. KAY, CSR NO. 3862, RMR, CRR
COURT REPORTER PRO TEMPORE

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES - CENTRAL DISTRICT

DEPARTMENT P HON. JAN A. PLUIM, JUDGE

LINDA DE ROGATIS, INDIVIDUALLY AND AS SUCCESSOR-IN-INTEREST TO TARA DE ROGATIS; PETER DE ROGATIS, INDIVIDUALLY AND AS SUCCESSOR-IN-INTEREST TO TARA DE ROGATIS,	)	
PLAINTIFFS,	)	
VS.	)	NO. BC457891 (CONSOLIDATED WITH NO. BC453966)
KAREN MICHELLE SHAINSKY, D.O., ET AL.,	)	
DEFENDANTS.	)	

REPORTER'S TRANSCRIPT OF PROCEEDINGS

NOVEMBER 5, 2013

APPEARANCES:

FOR PLAINTIFFS:
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M A S T E R I N D E X

NOVEMBER 5, 2013; VOLUME 7

CHRONOLOGICAL AND ALPHABETICAL INDEX OF WITNESSES

EXHIBITS

CASE NUMBER: BC457891
CASE NAME: DE ROGATIS VS. SHAINSKY
PASADENA, CALIFORNIA TUESDAY, NOVEMBER 5, 2013
DEPARTMENT P HON. JAN A. PLUIM, JUDGE
REPORTER: KAREN E. KAY, CSR NO. 3862
TIME: A.M. SESSION
APPEARANCES:

PLAINTIFFS LINDA DE ROGATIS AND PETER DE ROGATIS ARE PRESENT WITH THEIR COUNSEL, GEORGE B. NEWHOUSE, JR., AND KATHERINE C. MC BROOM, ATTORNEYS AT LAW
DEFENDANT KAREN MICHELLE SHAINSKY, D.O., IS PRESENT WITH HER COUNSEL, RAYMOND L. BLESSEY, ATTORNEY AT LAW

(THE FOLLOWING PROCEEDINGS WERE HELD IN OPEN COURT, OUTSIDE THE PRESENCE OF THE JURY:)

THE COURT: LET'S GO ON THE RECORD OUTSIDE THE PRESENCE OF THE JURY. COUNSEL ARE PRESENT. PARTIES ARE PRESENT.

ANYTHING WE NEED TO TAKE UP THIS MORNING?

MR. NEWHOUSE: NO, YOUR HONOR.

MR. BLESSEY: NO, YOUR HONOR.

MR. NEWHOUSE: I THINK CINDY IS OUTSIDE COUNTING THE JURORS.

THE COURT: ALL RIGHT.

MR. NEWHOUSE: WE'RE READY TO GO.

THE COURT: SHE MAY HAVE TO TAKE HER SHOES OFF TO GET THAT HIGH.

MR. BLESSEY: JUST TO FILL YOU IN, JUST TO GET IT ON THE RECORD, WE DID MEET AND CONFER LAST NIGHT ON THE SPECIAL VERDICT FORM. ACTUALLY, I HAVE COPIES FOR THE -- A COPY FOR THE COURT AND I HAVE COPIES FOR COUNSEL, SO WE MADE PROGRESS THERE.

THE COURT: OKAY.

MR. BLESSEY: WE ALSO WENT OVER THE JURY INSTRUCTION. I THINK THERE MAY BE MAYBE TWO OR THREE THAT ARE, RIGHT NOW, IN DISPUTE. I THINK IT WOULD DEPEND ON THE EVIDENCE.

THE COURT: OKAY. FAIR ENOUGH.

WHO ARE YOU GOING TO START WITH THIS MORNING?

MR. NEWHOUSE: DR. RODNEY BLUESTONE, AND HE'S HERE, READY TO GO.

(THE FOLLOWING PROCEEDINGS WERE HELD IN OPEN COURT, IN THE PRESENCE OF THE JURY:)

THE COURT: GOOD MORNING, LADIES AND GENTLEMEN. WE'RE BACK ON THE RECORD. ALL JURORS ARE PRESENT. THE PARTIES ARE PRESENT. LAWYERS ARE PRESENT.

COUNSEL, NEXT WITNESS.

MS. MC BROOM: CALL DR. RODNEY BLUESTONE. I BELIEVE HE'S ON HIS WAY IN RIGHT NOW.

THE CLERK: PLEASE RAISE YOUR RIGHT HAND.

DO YOU SOLEMNLY STATE THAT THE TESTIMONY YOU MAY GIVE IN THE CAUSE NOW PENDING BEFORE THIS COURT SHALL BE THE TRUTH, THE WHOLE TRUTH, AND NOTHING BUT THE TRUTH, SO HELP YOU GOD?

THE WITNESS: YES, I DO.

THE CLERK: PLEASE HAVE A SEAT. PLEASE STATE YOUR NAME AND SPELL YOUR NAME FOR THE RECORD.

THE WITNESS: MY NAME IS RODNEY BLUESTONE, B-L-U-E-S-T-O-N-E.

THE COURT: AND WELCOME, DOCTOR.

THE WITNESS: THANK YOU, SIR.

MS. MC BROOM: THANK YOU, YOUR HONOR.

THE COURT: YOU MAY PROCEED.

RODNEY BLUESTONE, M.D.,

CALLED AS A WITNESS BY THE PLAINTIFFS, WAS DULY SWORN AND TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

BY MS. MC BROOM:

Q GOOD MORNING, DR. BLUESTONE.

A GOOD MORNING.

Q WHAT IS YOUR OCCUPATION?

A I'M A PHYSICIAN.

Q WHAT TYPE OF PHYSICIAN ARE YOU?

A I'M A RHEUMATOLOGIST.

Q AND CAN YOU DESCRIBE FOR US WHAT A

RHEUMATOLOGIST IS?

A A RHEUMATOLOGIST SPECIALIZES IN THE DIAGNOSIS AND CARE OF PATIENTS WITH VARIOUS RHEUMATOLOGIC DISEASES, BETTER KNOWN MAYBE AS ARTHRITIC DISEASES PLUS VARIOUS AUTOIMMUNE STATES WHICH OFTEN CAUSE JOINT PROBLEMS.

Q ARE YOU CURRENTLY PRACTICING?

A YES, I AM.

Q OKAY. AND WHERE IS YOUR OFFICE LOCATED?

A MY OFFICE IS IN BEVERLY HILLS, CALIFORNIA.

Q TELL US YOUR EDUCATIONAL BACKGROUND.

A I BECAME A PHYSICIAN IN 1960, GRADUATED LONDON UNIVERSITY. I THEN DID A SERIES OF INTERNSHIPS AND FELLOWSHIPS ENCOMPASSING INTERNAL MEDICINE, NEUROLOGY, VENEREOLOGY, PSYCHIATRY, CARDIOLOGY. AND THEN I WENT TO BE CHIEF RESIDENT AT THE UNIVERSITY OF THE WEST INDIES IN JAMAICA FOR A YEAR, AND THEN AFTER -- FOR WHICH I WAS A BRITISH HEART FOUNDATION PACEMAKING FELLOW DOING CARDIOLOGY AND PACEMAKING.

I CAME BACK FROM JAMAICA IN 1966 TO BECOME A FELLOW IN RHEUMATOLOGY AT THE ROYAL POSTGRADUATE MEDICAL SCHOOL IN LONDON. THAT'S THE ENGLISH EQUIVALENT OF THE N.I.H. I DID A FOUR-YEAR FELLOWSHIP TO BECOME A RHEUMATOLOGIST, AND YEAR THREE OF THAT, I WAS SENT AS AN ARTHRITIS AND RHEUMATISM TRAVELING FELLOW TO LOS ANGELES TO DO RESEARCH, AND I DID THAT RESEARCH AT U.C.L.A.

JUST BEFORE I LEFT LOS ANGELES TO GO BACK TO DO MY FOURTH YEAR IN LONDON, THEY OFFERED ME THE JOB OF

CHIEF OF RHEUMATOLOGY AT WADSWORTH V.A. HOSPITAL. I ACCEPTED THAT POSITION. THEY HELD IT OPEN FOR ME FOR A YEAR. I CAME BACK A YEAR LATER TO BE CHIEF OF ARTHRITIS AT THE V.A. HOSPITAL AND TO BE ASSISTANT PROFESSOR OF MEDICINE AT U.C.L.A. I THEN SPENT THE NEXT NINE YEARS DOING RESEARCH, TEACHING, PATIENT CARE, AND BECAME A FULL PROFESSOR OF MEDICINE BY THE MID-1970S.

AND IN 1980 OR LATE '79, I LEFT ACADEMIC MEDICINE AND RELINQUISHED MY POSITION AS PROFESSOR OF MEDICINE AT U.C.L.A. AND BECAME A CLINICAL PROFESSOR IN MEDICINE AND MOVED INTO PRIVATE PRACTICE, WHERE I'VE BEEN EVER SINCE.

AND SINCE THEN, SINCE 1980, I HAVE DEVOTED MY ENTIRE LIFE TO PATIENT CARE, TO TEACHING AND BECOMING -- HEADING ORGANIZATIONS. I BECAME PRESIDENT OF THE SOUTHERN CALIFORNIA CHAPTER OF THE ARTHRITIS FOUNDATION. I BECAME CHAIRMAN OF LUPUS INTERNATIONAL. I BECAME CHAIRMAN OF THE ANKYLOSING SPONDYLITIS ASSOCIATION. I BECAME CHAIRMAN OF THE SJOGREN'S SOCIETY. SO I DID A LOT OF PATIENT WELFARE WORK AND CHARITY WORK OF THAT KIND.

ABOUT TEN YEARS AGO, I VOLUNTARILY GAVE UP MY PROFESSORSHIP TO BECOME AN EMERITUS PROFESSOR; AND AS AN EMERITUS PROFESSOR, IT MEANS IF I WANT TO TEACH AT U.C.L.A., I CAN, BUT I DON'T -- I'M NOT OBLIGED TO. I'M NOT OBLIGATED TO. SO I'M NOW JUST A GRAND OLE DOCTOR WHO TEACHES THERE IF I WANT TO. AND IF I WANT TO ADMIT A PATIENT TO THE HOSPITAL, I HAVE TO ASK PERMISSION, BUT I'VE STILL BEEN DOING THE SAME CLINICAL CARE AND PATIENT

EDUCATION THROUGHOUT AND STILL DO IT TO THIS DAY FIVE DAYS A WEEK.

Q THANK YOU. WHAT HOSPITAL AFFILIATIONS DO YOU HAVE?

A WELL, I DON'T HAVE ANY AFFILIATION BECAUSE I DON'T -- I'M NOT ON THE STAFF ANYMORE. SINCE BECOMING AN EMERITUS PROFESSOR, I'M -- NO LONGER HAVE AN AFFILIATION. IF I WANT TO HAVE -- SEE A PATIENT AT U.C.L.A. OR AT CEDARS-SINAI, I HAVE TO PHONE OVER AND GET PERMISSION, SO I NO LONGER CARRY AN OFFICIAL HOSPITAL AFFILIATION.

Q ARE YOU A BOARD-CERTIFIED PHYSICIAN?

A YES, I AM BOARD CERTIFIED IN INTERNAL MEDICINE AND IN RHEUMATOLOGY.

Q AND ARE YOU REQUIRED TO COMPLETE SOME TYPE OF CONTINUING EDUCATION TO MAINTAIN BOARD CERTIFICATION?

A NOT -- NOT FOR MY BOARD BECAUSE I GOT MY BOARDS IN MEDICINE EARLY IN 1973, SOON AFTER COMING HERE AS AN IMMIGRANT. THEN I BECAME -- GOT MY BOARDS IN RHEUMATOLOGY IN ABOUT '76, AND I WAS A FOUNDING FELLOW OF THE AMERICAN COLLEGE OF RHEUMATOLOGY, ONE OF THE FIRST TO GET THAT, SO I'VE BEEN GRANDFATHERED IN. I DON'T HAVE TO DO RE-BOARD EXAMS EVERY TEN YEARS.

WHAT I DO HAVE TO DO, OF COURSE, IS FOR MY LICENSE, I HAVE TO DO 55 HOURS OF CONTINUING EDUCATION EVERY TWO YEARS TO MAINTAIN MY CALIFORNIA LICENSE, BUT THAT'S THROUGHOUT THE ENTIRE FIELD OF INTERNAL MEDICINE.

Q THANK YOU. DO YOU HAVE A SOLO PRACTICE OR ARE YOU WITH A GROUP?

A CURRENTLY, I'M SOLO. I'VE NEVER BEEN WITH A GROUP. FOR MANY YEARS I'VE HAD ASSOCIATES WITH ME, BUT FOR THE LAST YEAR, I'VE BEEN ON MY OWN, SO RIGHT NOW I'M A SOLO PRACTITIONER.

Q DR. BLUESTONE, CAN YOU GIVE US A GENERAL DESCRIPTION OF YOUR PRACTICE, YOUR RHEUMATOLOGY PRACTICE?

A CERTAINLY. I SEE PATIENTS WHO COME REFERRED TO ME BY OTHER PHYSICIANS OR THEY FIND ME THROUGH THEIR OWN RESOURCES OR THEY FIND ME ON MY WEBSITE OR THEY'VE BEEN RECOMMENDED BY OTHER PATIENTS, AND THEY COME TO ME FOR DIAGNOSIS AND OFTEN MANAGEMENT AND, THEREFORE -- BUT I ONLY SEE PATIENTS AND LOOK AFTER -- ONLY CARE FOR PATIENTS WITH RHEUMATOLOGIC CONDITIONS.

AND SINCE I'M ALSO TRAINED IN PEDIATRIC RHEUMATOLOGY, WHEN I WAS TRAINING IN LONDON, I SEE CHILDREN FROM THE AGE OF 12 UPWARDS FOR DIAGNOSIS, NOT FOR FUTURE MANAGEMENT, BUT OFTEN FOR DIAGNOSIS. BUT EVERYONE ELSE, EVERY ADULT I SEE, IF THEY HAVE A RHEUMATOLOGIC PROBLEM, AN ARTHRITIS PROBLEM, I'M AVAILABLE TO LOOK AFTER THEM IF THEY WISH OR TO DIRECT THEIR REFERRING PHYSICIAN ABOUT HOW TO LOOK AFTER THAT PATIENT.

Q HAVE YOU PUBLISHED ANY ARTICLES IN YOUR FIELD?

A YES. I'VE PUBLISHED A LOT OF ARTICLES WHEN I WAS IN ACADEMICS AND SHORTLY AFTERWARD, SO I'VE PUBLISHED MANY ARTICLES AND WRITTEN BOOKS AND WRITTEN CHAPTERS IN BOOKS. BUT SINCE BEING IN PRACTICE, I HAVE NOT FURTHER ENGAGED IN RESEARCH OR PUBLICATION.

Q DO YOU DO ANY WORK OTHER THAN TREATING PATIENTS AND TEACHING AS AN EMERITUS?

A WELL, I'VE TOLD THE JURY THAT I'VE WORKED HARD AT SUPPORTING GROUP WORK THAT NURTURE THE WELFARE OF PATIENTS, ARTHRITIS FOUNDATION, LUPUS INTERNATIONAL, SJOGREN'S SOCIETY. SO MOST OF MY WORK OUTSIDE OF THE OFFICE IS IN THAT.

BUT I ALSO DO, AND HAVE DONE FOR ABOUT 15 PLUS YEARS -- I DO A GREAT DEAL OF WORKERS' COMPENSATION WORK, AND I SEE PATIENTS WHO -- WHERE THERE'S A QUESTION OF WHETHER OR NOT THEY'VE HAD AN INJURY AT WORK THAT'S RESULTED IN SOME KIND OF ARTHRITIS OR THAT THEY HAVE ARTHRITIS, AND THE INJURIES MADE THEM WORSE.

SO I'M QUALIFIED -- I'M A QUALIFIED MEDICAL EXAMINER, AND I SEE PATIENTS REFERRED BY ADJUSTERS OR BY ATTORNEYS, SOMETIMES BY THE PATIENTS THEMSELVES WHO CHOOSE THEIR OWN DOCTOR, SO I DO A FAIR AMOUNT OF WORKERS' COMPENSATION WORK IN MY FIELD OF SPECIALTY.

Q I TAKE IT YOU ALSO PERFORM SOME MEDICAL-LEGAL WORK AS WELL?

A YES. I SOMETIMES GET ASKED TO LOOK AT PATIENTS IN REGULAR LITIGATION, WHETHER IT BE MALPRACTICE OR PERSONAL INJURY, AND SO I'M ASKED TO LOOK AT THOSE ISSUES, AND I LOOK AT THE RECORDS OR LOOK AT THE PATIENT. THEN I LET THE REFERRING ATTORNEY KNOW MY OPINION. WHETHER OR NOT THAT GOES ON ANY FURTHER IS ENTIRELY UP TO THE ATTORNEY, WHETHER THEY LIKE OR DISLIKE WHAT I TELL THEM.

Q CAN YOU GIVE US AN IDEA OF THE PERCENTAGE, YOU KNOW, WHAT PERCENTAGE OF TIME YOU DEVOTE TO MEDICAL-LEGAL WORK AS OPPOSED TO YOUR PRACTICE?

A CERTAINLY. MY PRACTICE, THE DIAGNOSIS AND LOOKING AFTER PATIENTS, TAKES 80 PERCENT OF MY TIME.

MY WORKERS' COMPENSATION WORK PROBABLY TAKES ABOUT 15 TO 18 PERCENT OF MY TIME, SOMETIMES 20 PERCENT, AND MY MEDICAL-LEGAL WORK, LITIGATION WORK OUTSIDE OF WORK INJURY, PROBABLY ABOUT 2 PERCENT MOST YEARS.

Q OKAY. HAVE YOU GIVEN A MEDICAL OPINION IN A MEDICAL MALPRACTICE CASE IN THE PAST?

A YES, I HAVE, ON SEVERAL OCCASIONS, I BELIEVE.

Q AND WHEN DID YOU BEGIN PERFORMING SUCH EXPERT ANALYSIS?

A WHEN I WAS PROFESSOR OF MEDICINE AT U.C.L.A. AROUND 1975, THE DEPARTMENT OF MEDICINE ASKED ME TO LOOK AT SOME PATIENTS REGARDING MALPRACTICE SUITS.

Q OKAY. AND CAN YOU GIVE US SOME IDEA OF HOW MANY MEDICAL MALPRACTICE CASES YOU'VE WORKED ON IN THOSE YEARS?

A WELL, I DON'T HAVE AN ACCURATE NUMBER FOR YOU. MEDICAL MALPRACTICE, I THINK I'VE PROBABLY LOOKED AT ABOUT 20 SITUATIONS, BUT MAYBE I'VE ONLY THEN THEREAFTER BEEN INVOLVED IN PROVIDING TESTIMONY OF ANY KIND MAYBE IN ABOUT TEN SUCH PATIENTS THROUGHOUT MY CAREER.

Q AND CAN YOU GIVE US A BREAKDOWN IN TERMS OF PERCENTAGE; WHAT'S THE PERCENTAGE YOU GAVE AN OPINION FOR

THE PLAINTIFFS VERSUS THE DEFENSE IN THOSE CASES?

A WELL, UNTIL ABOUT TEN YEARS AGO, I WOULD SAY THAT 60 PERCENT OF THE WORK I DID WAS FOR THE DEFENSE, AND 40 PERCENT WAS FOR THE PLAINTIFF. AND THAT WAS BECAUSE I USED TO GET ASKED QUITE A LOT BY KAISER PERMANENTE TO LOOK AT THEIR DEFENSE SITUATION, GET READY FOR -- READY FOR PRESENTING TO THEIR LITIGATION COMMITTEE.

BUT IN THE LAST TEN YEARS, THAT'S NOT BEEN THE CASE, AND I'D SAY IT'S ABOUT 50/50 NOW THAT I TESTIFY OR GIVE DEPOSITION OR GIVE AN OPINION, ABOUT 50 PERCENT FOR THE PLAINTIFF, 50 PERCENT FOR THE DEFENDANT.

Q OKAY. SO YOU HAVE GIVEN OPINIONS ON BEHALF OF THE DEFENSE IN A MEDICAL MALPRACTICE CASE?

A YES, I HAVE.

Q OKAY. AND IN THOSE CASES, IT WAS YOUR OPINION THAT THE PHYSICIAN ACTED WITHIN THE STANDARD OF CARE?

A YES, OR I'VE SAID THAT AND THEN THE REFERRING ATTORNEY HAS CHOSEN NOT TO ENGAGE MY SERVICES.

Q SO I TAKE IT IF YOU GIVE AN OPINION TO PLAINTIFF'S COUNSEL THAT THE DOCTOR -- THE DEFENDANT ACTED WITHIN THE STANDARD OF CARE, YOU'RE THEN NOT RETAINED AS THE EXPERT?

A THAT HAS HAPPENED ON SEVERAL OCCASIONS.

Q NOW, AT MY OFFICE'S REQUEST, DID YOU AGREE TO REVIEW CERTAIN RECORD AND MATERIALS CONCERNING THE MEDICAL TREATMENT OF THE YOUNG WOMAN NAMED TARA DE ROGATIS?

A YES.

Q AND MY OFFICE HAS RETAINED YOU TO RENDER OPINIONS IN THIS CASE, CORRECT?

A THAT IS CORRECT.

Q CAN YOU JUST -- WE'LL START WITH THE GENERAL DESCRIPTION.

CAN YOU DESCRIBE FOR ME WHAT YOU WERE ASKED TO OPINE ABOUT?

A I BELIEVE I WAS ASKED TO SEE WHETHER THE TREATING RHEUMATOLOGIST HAD MATCHED THE STANDARDS OF CARE FOR OUR SPECIALTY. I THINK THAT WAS THE ESSENCE OF IT.

Q AND MY OFFICE IS COMPENSATING YOU FOR YOUR PROFESSIONAL TIME AWAY FROM YOUR PRACTICE; IS THAT RIGHT?

A THAT IS CORRECT.

Q OKAY. AND WHAT ARE YOUR RATES?

A I DON'T CARRY THAT NUMBER IN MY HEAD, BUT I THOUGHT THAT CAME OUT AT MY DEPOSITION SO THAT'S ON RECORD.

Q OKAY. DOES $750 AN HOUR FOR RECORD REVIEW SOUND FAMILIAR?

A THAT SOUNDS VAGUELY FAMILIAR, YES.

Q OKAY. AND 1500 AN HOUR FOR DEPOSITION?

A I BELIEVE THAT'S FOR -- YES, I THINK THAT'S CORRECT. IT MAY DEPEND ON THE LENGTH OF THE DEPOSITION. I'M NOT CERTAIN.

Q OKAY. DO YOU HAVE SOME IDEA, NOT COUNTING TODAY, WHAT YOU'VE INVOICED FOR YOUR WORK THUS FAR IN THIS CASE?

A NO, I DON'T LOOK AT THAT, BUT I DO KNOW THAT WAS DISCUSSED AT MY DEPOSITION, AND I SAW SOME RECEIPTS WHEN I WENT THROUGH MY FILE OVER THIS WEEKEND.

Q DID SOMEONE ELSE AT YOUR OFFICE HANDLE THAT?

A YES. MY OFFICE MANAGER HANDLES ALL FISCAL MATTERS IN ANY OFFICE.

Q HOW DID YOU SPEND THE MAJORITY OF YOUR TIME IN REVIEWING THIS CASE?

A I REVIEWED RECORDS THAT WERE SENT TO ME, I THINK, FROM YOUR OFFICE, AND THEN I SPENT TIME THINKING ABOUT THEM AND THEN REREVIEWING THEM. AND I THINK I HAD A CONFERENCE, I BELIEVE, WITH YOUR OFFICE, AND I THINK THAT WAS IN PERSON. AND I SPENT TIME GETTING READY FOR A DEPOSITION, AND I'VE SPENT TIME BEING DEPOSED. AND I'VE SPENT TIME THIS PAST WEEKEND REVIEWING MY ENTIRE FILE, READY FOR THIS TRIAL.

Q I WANT TO TURN NOW TO PATIENTS YOU'VE SEEN WHO COMPLAIN OF CHRONIC PAIN.

HOW MANY PATIENTS HAVE YOU SEEN WHO COMPLAIN OF CHRONIC WIDESPREAD PAIN IN YOUR OFFICE?

A WELL, YOU USED -- YOU USED A VERY SPECIAL TERM. YOU USED THE TERM "CHRONIC WIDESPREAD PAIN."

Q THANK YOU. WHY DON'T YOU FIRST START WITH WHAT IS CHRONIC WIDESPREAD PAIN?

A THAT'S A VERY MEANINGFUL RHEUMATOLOGIC DIAGNOSIS. CHRONIC WIDESPREAD PAIN MEANS THE PATIENT HURTS EVERYWHERE, EVERYTHING HURTS, AND IT HURTS SO BADLY THEY CAN'T SLEEP AND THEY'RE TIRED, AND SOMETIMES THEY

DON'T FUNCTION WELL. AND WHEN THE PHYSICIAN EXAMINES THAT PATIENT AND PERFORMS LOTS OF TESTS, BLOOD TESTS, X-RAYS, M.R.I.'S, THE RHEUMATOLOGIST, THE PHYSICIAN, CAN FIND NOTHING CAUSING THAT PAIN. THERE IS NOT A DISEASE IN THE MUSCLES, BONES, OR JOINTS CAUSING THE PAIN. IT IS, THEREFORE, WHAT WE CALL CENTRALLY MEDIATED. IT'S THE PERSON'S BRAIN TELLING THEM THAT EVERYTHING HURTS, EVERYTHING'S TENDER, EVERYTHING'S DIFFICULT. AND THAT CONDITION IS CALLED CHRONIC WIDESPREAD PAIN.

AND THAT TERM IS VERY IMPORTANT TO THE RHEUMATOLOGIST BECAUSE THERE ARE ONLY TWO CAUSES OF CHRONIC WIDESPREAD PAIN: ONE CAUSE IS AN ILLNESS CALLED FIBROMYALGIA, AND ANOTHER CAUSE IS PSYCHIATRIC DISEASE WHERE THE PAINS AND TENDERNESS IS PSYCHO -- PSYCHOSOMATIC OR WHAT WE CALL IN MODERN MEDICINE, PSYCHOPHYSIOLOGIC. THAT DOESN'T MEAN THE PERSON'S IMAGINING THE PAINS AND ONLY IMAGINING EVERYTHING HURTS. IT'S JUST THAT THIS IS BEING GENERATED BY THEIR PSYCHIATRIC STATE.

AND SOMETIMES, AND MOST DIFFICULT OF ALL, COUNSELOR, A RHEUMATOLOGIST IS FACED WITH A PATIENT WHERE THERE'S SO MUCH DEPRESSION FROM ALL THE PAIN, YOU CAN'T TELL WHAT CAME FIRST, THE DEPRESSION CAUSING THE CHRONIC WIDESPREAD PAIN OR THE CHRONIC WIDESPREAD PAIN CAUSING THE DEPRESSION. AND THAT'S ONE OF THE MOST DIFFICULT DIFFERENTIAL DIAGNOSES IN RHEUMATOLOGY. SO THAT IS THE TERM "CHRONIC WIDESPREAD PAIN."

Q AND HOW MANY PATIENTS HAVE YOU SEEN, WOULD YOU SAY, DURING YOUR PRACTICE WHO COMPLAIN OF CHRONIC

WIDESPREAD PAIN?

A I'VE SEEN MANY HUNDREDS OF PATIENTS BECAUSE, AS HAVE EVERY RHEUMATOLOGIST, BECAUSE IT'S NOT -- IT'S QUITE A COMMON SITUATION. SO IN MANY RHEUMATOLOGY OFFICES IT MAKES UP 10, 15, 20 PERCENT OF NEW PATIENT REFERRALS, BUT I'VE SEEN MANY MORE THAN THAT BECAUSE IT'S REMARKABLE THAT IN WORKERS' COMPENSATION, A LOT OF PATIENTS END UP COMPLAINING OF CHRONIC WIDESPREAD PAIN AS A RESULT OF INJURY AND, THEREFORE, I SEE MANY OF THOSE PATIENTS WITH THE ATTORNEYS OR THE ADJUSTER SAYING, "DOES THIS PERSON HAVE INJURY CAUSING THIS CHRONIC WIDESPREAD PAIN?" SO I'VE SEEN MANY, MANY HUNDREDS OF SUCH PATIENTS WITH THAT PRESENTATION.

Q YOU MENTIONED THE TERM "FIBROMYALGIA"?

A YES.

Q CAN YOU DESCRIBE FOR US WHAT THAT IS?

A YES. FIBROMYALGIA IS A CONDITION WHICH PRESENTS AS CHRONIC WIDESPREAD PAIN, AND, THEREFORE, THERE'S NO UNDERLYING ORGANIC DISEASE IN THE MUSCLES, BONES, AND JOINTS, BUT THEY HURT EVERYWHERE. AND EVERYWHERE IS VERY TENDER USUALLY, VERY SENSITIVE, AND USUALLY THEY'RE AWAKE AT NIGHT BECAUSE THE PAIN DOESN'T LET THEM REST, AND THEY'RE VERY TIRED IN THE MORNING, AND THEY'RE VERY TIRED DURING THE DAY.

AND WHEN YOU'RE THAT TIRED, YOUR BRAIN DOESN'T WORK PROPERLY. IF YOU CAN'T SLEEP FOR A COUPLE OF DAYS, YOU CAN'T THINK STRAIGHT, SO VERY OFTEN, THEY HAVE MEMORY AND CONCENTRATION PROBLEMS. AND THEN IF THAT GOES

ON FOR YEARS OR A COUPLE OF YEARS, A YEAR OR TWO, ALL THE DOCTORS ARE SAYING TO YOU, "THERE'S NOTHING WRONG," THEN WHAT HAPPENS IS THAT 50 PERCENT OF SUCH PATIENTS GET DEPRESSED.

AND THEN ONCE THEY GET DEPRESSED, THEY GET THE SYMPTOMS OF DEPRESSION SUPERIMPOSED ON THEIR CHRONIC WIDESPREAD PAIN.

SO THAT IS THE PICTURE OF FIBROMYALGIA, AND IT APPEARS TO BE COMMONER IN WOMEN THAN MEN, MUCH COMMONER, I WOULD SAY, AND USUALLY THERE'S NO KNOWN CAUSE. SOMETIMES IT'S CAUSED BY HAVING A BIG INJURY, WHICH HAS CAUSED AGONIZING PAIN KEEPING YOU AWAKE, AND IT SETS OFF FIBROMYALGIA, AND SOMETIMES WE SEE PATIENTS WITH A PROPER RHEUMATOLOGIC DISEASE, SUCH AS RHEUMATOID ARTHRITIS OR SYSTEMIC LUPUS OR SJOGREN'S SYNDROME, AND A CERTAIN PERCENTAGE OF THOSE PATIENTS GET A SECONDARY FIBROMYALGIA.

SO YOU'RE TREATING SOMEBODY WITH, FOR EXAMPLE, RHEUMATOID ARTHRITIS, AND YOU THINK YOU'VE GOT IT UNDER GREAT CONTROL, BUT THE PERSON IS STILL DISABLED BECAUSE THEY HAVE THE SECONDARY STAGE OF CHRONIC WIDESPREAD PAIN. BUT PRIMARY FIBROMYALGIA, A PATIENT PRESENTING THIS PICTURE WITH NO KNOWN CAUSE, IS A REMARKABLY DIFFICULT SITUATION TO DIAGNOSE AND TO TREAT.

Q WHERE WOULD THE TERM "CHRONIC WIDESPREAD PAIN" ORIGINATE?

A THAT DERIVED MAINLY OUT OF THE EUROPEAN LITERATURE AND WAS -- IN THE LAST FIVE OR SIX YEARS, HAS BEEN RAPIDLY ASSIMILATED BY SCIENTIFIC RHEUMATOLOGY

BECAUSE IT'S A MUCH BETTER WAY OF DEFINING THE SITUATION, AND ALSO IT POINTS THE DOCTORS TO THE VERY IMPORTANT DIFFERENTIAL DIAGNOSIS I TOLD YOU, FIBROMYALGIA VERSUS PSYCHIATRIC DISEASE OR A MIX OF BOTH.

Q SO HAS THAT TERM BEEN INCORPORATED INTO AMERICAN MEDICINE?

A OH, VERY MUCH SO. PEOPLE STILL USE THE WORD "FIBROMYALGIA." IF YOU GO TO THE BEST LITERATURE, WHICH COMES OUT OF ANN ARBOR, MICHIGAN, MOST OF THE SCIENCE IN THIS CONDITION IS NOW EMERGING, THE TERM --

MR. BLESSEY: I'M SORRY. IF HE'S GOING TO BE TALKING ABOUT MEDICAL TEXTBOOKS, RESEARCH ON DIRECT, IT'S IMPROPER. I OBJECT.

THE COURT: WELL, I THINK HE'S PROBABLY BEEN CAUTIONED ABOUT THAT.

MR. BLESSEY: I'M NOT SO SURE, YOUR HONOR.

THE COURT: YOU HAVE CAUTIONED HIM?

MS. MC BROOM: WE HAVE. I WAS -- IT'S A SIMPLE QUESTION, JUST WHETHER IT'S BEEN INCORPORATED INTO AMERICAN MEDICINE, AND HE ANSWERED.

THE COURT: WELL, HE CAN ANSWER "YES" OR "NO."

BY MS. MC BROOM:

Q "YES"?

THE WITNESS: THANK YOU, YOUR HONOR.

YES.

BY MS. MC BROOM:

Q THANK YOU. IS THERE AN INCREASED RISK OF CHRONIC WIDESPREAD PAIN IN A CERTAIN DEMOGRAPHIC IN A

CERTAIN TYPE OF PATIENT?

A YES.

Q YOU MENTIONED WOMEN.

A YES.

Q ARE THERE ANY OTHER PATIENTS THAT YOU'VE SEEN THIS?

A IT'S PREDOMINANTLY AN ILLNESS OF YOUNG TO MIDDLE-AGED WOMEN. IT STILL IS SEEN IN MEN. IT'S SEEN IN CHILDREN AS WELL, AND IT'S WELL REPORTED IN THE PEDIATRIC LITERATURE.

MR. BLESSEY: YOUR HONOR, AGAIN, I WOULD OBJECT AND MOVE TO STRIKE HIS LAST STATEMENT.

THE COURT: WE CAN'T REFER TO OTHER MATERIALS.

THE WITNESS: I SEE.

THE COURT: IF YOU COULD JUST CONFINE IT TO YOUR OPINIONS, ALL RIGHT?

THE WITNESS: THANK YOU.

BY MS. MC BROOM:

Q HOW DO YOU DETERMINE WHETHER CHRONIC WIDESPREAD PAIN IS CAUSED BY FIBROMYALGIA, PSYCHIATRIC ILLNESS, OR A COMBINATION OF BOTH?

A WELL, THAT CAN BE VERY CHALLENGING BECAUSE OF WHAT I TOLD THE JURY EARLIER, THAT IF YOU'RE IN PAIN FOR YEARS, YOU GET VERY DEPRESSED. BUT VERY OFTEN A RHEUMATOLOGIST CAN UNCOVER A STRONG, STRONG STORY OF PREEXISTING PSYCHIATRIC DISEASE, AND THEN ONE CAN BE VERY SUSPICIOUS THAT WHAT YOU'RE LOOKING AT IS A CHRONIC WIDESPREAD PAIN DERIVED OFF OF DEPRESSION OR ANXIETY OR

SOME OTHER MENTAL ILLNESS.

SOMETIMES THE STORY IS THAT IT COMES ON OUT OF THE BLUE FOR NO REASON, AND THEN YOU'RE VERY MUCH ATTUNED TO THIS BEING A PRIMARY CASE OF FIBROMYALGIA, AND SOMETIMES IT'S A VERY DIFFICULT DIAGNOSTIC CHALLENGE.

Q WHEN YOU'RE DEALING WITH A PATIENT WHO HAS -- IS COMPLAINING OF CHRONIC WIDESPREAD PAIN, IS IT IMPORTANT TO INQUIRE AS TO WHETHER OR NOT THEY HAVE PSYCHIATRIC CARE?

A WELL, I THINK -- THE ANSWER IS "YES." THAT THAT GOES FOR ANY PATIENT YOU SEE WITH ANY ILLNESS.

Q ARE YOU FAMILIAR WITH A DIAGNOSTIC TOOL FOR FIBROMYALGIA REFERRED TO AS THE 18-POINT TRIGGER TEST?

A I AM FAMILIAR WITH THE TERM, YES.

Q AND CAN YOU DESCRIBE WHAT THAT IS?

A YES, I CAN. WHEN THE AMERICAN COLLEGE OF RHEUMATOLOGY WANTED TO OFFER DIAGNOSTIC CRITERIA RECOGNIZING FIBROMYALGIA, RHEUMATOLOGISTS LOVE DIAGNOSTIC CRITERIA, SO THEY ISSUED A SERIES OF FINDINGS, AND THEY SAID THERE ARE ABOUT 11 PLACES IN THE BODY WHERE YOU CAN BE VERY TENDER WITH THIS ILLNESS, AND THEY FEEL TENDER IN EIGHT OF THOSE 11, THAT MATCHES THE DIAGNOSIS.

OF COURSE, WHAT HAPPENED WAS WHEN THEY ISSUED THE CRITERIA, THEY SAID, "BUT IF THE PATIENT CARRIES A KNOWN PSYCHIATRIC DISEASE, YOU BETTER BE CAREFUL ABOUT DIAGNOSING FIBROMYALGIA." BUT MOST RHEUMATOLOGISTS DIDN'T NOTICE THAT, BUT IT WAS WRITTEN IN THE GUIDELINES. AND THEN, OF COURSE, THAT LED TO AN UPROAR OF SCORN AND

RIDICULE FROM PSYCHIATRISTS AND PAIN MANAGEMENT DOCTORS BECAUSE MANY PSYCHIATRISTS IN THEIR TEACHINGS AND LEARNINGS --

MR. BLESSEY: YOUR HONOR, LET ME MOVE TO STRIKE AS NONRESPONSIVE TO THE QUESTION.

THE COURT: WHAT WAS THE QUESTION?

MS. MC BROOM: I ASKED IF HE WAS FAMILIAR WITH THE -- OR TO EXPLAIN WHAT THE 18-POINT TRIGGER TEST IS.

THE COURT: IS THERE SUCH A THING?

THE WITNESS: NOT ANYMORE. THERE WAS, YOUR HONOR.

THE COURT: OKAY. THANK YOU.

THE WITNESS: SO MAYBE I SHOULD SAY THAT THE NEWLY PROPOSED CRITERIA FOR FIBROMYALGIA ISSUED BY THE AMERICAN COLLEGE OF RHEUMATOLOGY SELECT COMMITTEE --

MR. BLESSEY: AGAIN, YOUR HONOR, HE'S REFERRING TO A MEDICAL PUBLICATION.

THE COURT: OVERRULED ON THAT. GO AHEAD.

THE WITNESS: THANK YOU, YOUR HONOR.

SO THE LATEST CRITERIA ISSUED TWO YEARS AGO BY THE AMERICAN COLLEGE OF RHEUMATOLOGY NO LONGER MENTIONS TENDER AREAS. IT IS NO LONGER CONSIDERED AN IMPORTANT DIAGNOSTIC TOOL.

BY MS. MC BROOM:

Q THANK YOU. HOW DO YOU TREAT PATIENTS WITH CHRONIC WIDESPREAD PAIN CAUSED BY FIBROMYALGIA?

MR. BLESSEY: YOUR HONOR, IF -- HIS PRACTICE AND HOW HE TREATS PATIENTS IS NOT RELEVANT. THE STANDARD OF CARE IS. SO I WOULD OBJECT TO THAT QUESTION.

THE COURT: SUSTAINED.
BY MS. MC BROOM:
Q LET ME ASK IT THIS WAY.
A YES.
Q IS IT WITHIN THE STANDARD OF CARE FOR A RHEUMATOLOGIST TO TREAT CHRONIC WIDESPREAD PAIN USING OPIATES?
A IN MOST INSTANCES, IT IS NOT.
Q CAN YOU EXPLAIN WHY?
A THERE HAVE BEEN STUDIES THAT SHOW IN PATIENTS WITH FIBROMYALGIA --
MR. BLESSEY: YOUR HONOR, AGAIN, HE'S REFERRING TO STUDIES AND RESEARCH.
MS. MC BROOM: YOUR HONOR, HE'S NOT --
THE COURT: OVERRULED.
JUST TELL US WHAT YOUR OPINION IS, SIR, NOT WHAT OTHERS HAVE SUGGESTED --
THE WITNESS: ALL RIGHT.
THE COURT: -- OR SAID, OKAY?
THE WITNESS: SO THE QUESTION WAS, COUNSELOR, PLEASE?
BY MS. MC BROOM:
Q SURE. I'M ASKING YOU IF IT IS WITHIN THE STANDARD OF CARE FOR A RHEUMATOLOGIST TO TREAT CHRONIC WIDESPREAD PAIN WITH OPIATES.
A SOMETIMES IN SMALL AMOUNTS IN OCCASIONAL PATIENTS.
Q SO FOR WHAT PATIENTS SHOULD A

RHEUMATOLOGIST -- IS IT WITHIN THE STANDARD OF CARE FOR A RHEUMATOLOGIST TO TREAT WITH OPIATES? ANOTHER WAY TO SAY IT IS: IN WHAT CASES WOULD IT BE APPROPRIATE TO TREAT WITH OPIATES?

A IT'S NEVER ACTUALLY APPROPRIATE BECAUSE PEOPLE WITH FIBROMYALGIA LACK A RECEPTOR IN THE BRAIN THAT RECOGNIZES OPIOIDS. THEY LACK THE MU RECEPTOR, AND THAT'S BEEN WELL DISPLAYED SCIENTIFICALLY, BUT THERE ARE QUITE A FEW PAIN MANAGEMENT DOCTORS THAT STILL SOMETIMES USE SPARINGLY LOW DOSES OF OPIOIDS IN PATIENTS WITH FIBROMYALGIA.

Q I'M GOING TO ASK YOU, WHAT DOCUMENTS AND DATA AND OTHER INFORMATION DID YOU RELY ON IN FORMING YOUR OPINION IN THIS CASE? I REALIZE YOU MAY NOT HAVE AN INVENTORY IN YOUR MIND, BUT CAN YOU DESCRIBE FOR US WHAT YOU REVIEWED?

A WELL, MY REVIEW IS CONTINUOUS AND ONGOING. I READ THE RHEUMATOLOGY LITERATURE, AND I INCORPORATE THE INFORMATION FROM THAT LITERATURE WHEN I MAKE MY DIAGNOSES AND RECOMMENDATIONS. SO IT'S ONGOING. I DIDN'T MAKE A SPECIFIC NEW LITERATURE SEARCH, COUNSELOR.

Q AND AS FAR AS DOCUMENTS THAT WERE PROVIDED TO YOU FOR YOUR REVIEW, CAN YOU RECALL WHAT YOU REVIEWED TO REACH YOUR OPINION IN THIS CASE?

A I CAN'T RECALL OFF THE TOP OF MY HEAD. I HAVE A FILE HERE.

Q IF IT REFRESHES YOUR RECOLLECTION --

A EXCUSE ME A MINUTE. I'LL TELL YOU WHAT I'VE

REVIEWED.

Q THANK YOU.

A I'VE REVIEWED RECORDS FROM DR. B. SPIEGEL, I THINK HE'S A PAIN MANAGEMENT PHYSICIAN; DR. GIOMBETTI, WHO IS A PAIN NEUROLOGIST; NEUROLOGY & REHAB MEDICAL GROUP, PER DR. CARL ORFUSS, WHO IS A NEUROLOGIST; DR. PAUL BOHN, WHO IS A PSYCHIATRIST; NOTES OF CEDARS-SINAI MEDICAL CENTER EMERGENCY ROOM, PER DR. LUTSKY; RECORDS FROM DR. CASSILETH, WHO IS A PLASTIC SURGEON; SOME NOTES FROM THE LOS ANGELES POLICE DEPARTMENT; SOME PHARMACY RECORDS FROM C.V.S./PHARMACY; DR. BOHN'S RECORDS AGAIN FROM WESTSIDE INTERNAL MEDICINE, INCLUDING RECORDS FROM DR. REISS, WHO IS A GYNECOLOGIST; AND DR. BISCOW, INTERNAL MEDICINE, AND DR. WARING, INTERNAL MEDICINE; DOCUMENTS OUT OF SAINT JOHN'S HEALTHCARE CENTER; DR. FEINSTEIN, WHO IS A PSYCHIATRIST; RITE AID PHARMACY RECORD; WESTSIDE NEUROLOGY MEDICAL GROUP, PER DR. GIOMBETTI; ANTHEM BLUE CROSS REPORT ON M.R.I. OF THE BRAIN OF 2/2010; A DR. TAMKIN, ALLERGIST; DR. LATIMER, PSYCHIATRIST; WARREN HOSPITAL EMERGENCY ROOM; A DR. PASTENA AND DR. SHOWNGOLD, UROLOGY; DR. CAMMARATA, PSYCHOLOGIST; DR. DUBIN, A GYNECOLOGIST, DR. SHAINSKY, RHEUMATOLOGIST; MOUNTAINSIDE HOSPITAL; SAINT BARNABAS MEDICAL CENTER; VARIOUS COURT DOCUMENTS. THE DEPOSITION OF DR. -- DR. DE ROGATIS.

Q DE ROGATIS?

A DE ROGATIS, THANK YOU, VOLUMES I, II, AND III; DEPOSITION OF DR. BOHN; DEPOSITION OF DR. PETER DE ROGATIS; DECLARATION FROM DR. ALAN WEINBERGER;

DEPOSITION OF DR. SHAINSKY, VOLUME I; ANOTHER DECLARATION FROM ALAN WEINBERGER; DEPOSITION OF DR. SHAINSKY, VOLUME II; VOLUME -- DEPOSITION OF DR. SHAINSKY, VOLUME III; DEPOSITION OF DR. WEINBERGER; A DEPOSITION FROM DR. AUDELL, PAIN MANAGEMENT.

THAT WAS THE SUM TOTAL OF THE RECORDS I'VE REVIEWED ON THIS CASE.

Q THANK YOU. IS IT YOUR BELIEF, BASED ON THE RECORDS YOU REVIEWED, BASED ON YOUR BACKGROUND, TRAINING, AND EXPERIENCE, THAT YOU HAVE A BASIS UPON WHICH TO GIVE OPINIONS REGARDING DR. SHAINSKY'S DIAGNOSIS AND TREATMENT OF TARA DE ROGATIS?

A YES.

Q DOCTOR, ARE YOU FAMILIAR WITH THE STANDARD OF CARE FOR A RHEUMATOLOGIST LIKE DR. SHAINSKY TREATING A PATIENT WHO HAS THE CLINICAL PRESENTATION OF TARA DE ROGATIS, IN TERMS OF COMPLAINING OF PAIN AND OTHER RELATED SYMPTOMS?

A YES.

Q IN DETERMINING WHETHER OR NOT DR. SHAINSKY FAILED TO MEET THE APPLICABLE STANDARD OF CARE FOR A REASONABLE RHEUMATOLOGIST, DID YOU CONSIDER THE MINIMUM STANDARD OF CARE THAT WOULD APPLY TO HER AT THE TIME?

A I DON'T UNDERSTAND THAT WORD, "MINIMUM," COUNSELOR.

Q IT WOULD MEAN, DID DR. -- DID YOU CONSIDER THE VERY LEAST THAT WOULD BE REQUIRED OF HER WITHIN THE STANDARD OF CARE?

A WELL, YES, I THINK THE STANDARD OF CARE IS THAT.

Q THANK YOU. BASED ON YOUR REVIEW OF THE RELEVANT RECORDS, INCLUDING DR. SHAINSKY'S TESTIMONY AND MEDICAL CHART OF TARA DE ROGATIS AND BASED UPON YOUR TRAINING AND EXPERIENCE, DO YOU HAVE AN OPINION REGARDING WHETHER DR. SHAINSKY'S MEDICAL CARE OF TARA WAS WITHIN THE STANDARD OF CARE?

A I FELT IT WAS NOT.

Q OKAY. AND EXPLAIN TO US WHY.

A WHEN DR. SHAINSKY FIRST SAW THIS PATIENT, THERE WAS AVAILABLE AND, I BELIEVE, I REVIEWED A REPORT FROM THE CEDARS-SINAI MEDICAL CENTER EMERGENCY ROOM WHERE THE PATIENT HAD PREVIOUSLY PRESENTED WITH CLEAR EVIDENCE OF A PROFOUND PSYCHIATRIC AND MAYBE EVEN PSYCHOTIC ILLNESS. SHE REPORTED HAVING BEEN IN PAIN DOWN ONE ENTIRE SIDE OF HER BODY FOR ONE YEAR AND HAVING HALLUCINATIONS, AND THEN THEY GAVE HER IN THE EMERGENCY ROOM SOME SEDATIVES AND PSYCHIATRIC DRUGS, AND SHE FELL ASLEEP AND WOKE UP PAIN-FREE.

WELL, THAT RECORD MEANS THAT YOU ARE DEALING WITH A POWERFUL AND POTENT PSYCHIATRIC DISEASE, AND, THEREFORE, YOU KNOW THAT YOU CANNOT DIAGNOSE CHRONIC WIDESPREAD PAIN DUE TO FIBROMYALGIA WITH THAT STORY.

AND SO DR. SHAINSKY WROTE THE RIGHT THING. SHE SAID, "NO. YOU'VE GOT TO BE CAREFUL HERE. YOU'VE GOT TO HAVE THIS PERSON EXERCISE, AND YOU'VE GOT TO TREAT HER PERHAPS WITH AN ANTIDEPRESSANT MEDICATION, AND YOU'VE GOT

TO BE THERE FOR -- VERY CAREFUL THE WAY YOU HANDLE THE PATIENT."

BUT THEN, TO MY SURPRISE, SHE DID THE OPPOSITE, AND SHE SAID THAT THREE TIMES, "CAUTION, EXERCISE, PSYCHIATRIC CARE, MAYBE AN ANTIDEPRESSANT MEDICINE." BUT EACH TIME SHE SAID IT, SHE THEN PRESCRIBED RATHER LARGE AMOUNTS OF OPIOID NARCOTICS.

SO THERE WAS A MARKED DISCORDANCE BETWEEN WHAT SHE WROTE IN THE CHART, WHICH WAS REPEATED WITH EACH VISIT WORD FOR WORD LIKE IT WAS ALMOST REMOTE, AND THEN WHAT SHE ACTUALLY DID, WHICH WAS TO GIVE THIS PERSON WITH A TERRIBLE HISTORY OF PSYCHIATRIC DISEASE, POTENT PSYCHOTIC AND POTENT OPIOIDS; AND NOR DO I SEE IN HER RECORD THAT SHE HAD MADE PROMPT CONTACT WITH THE PSYCHIATRISTS INVOLVED IN THIS PATIENT'S PRIOR CARE EVEN BEFORE GIVING HER ANTIDEPRESSANT DRUG SINCE THE PERSON WAS TAKING PSYCHIATRIC MEDICATIONS ANYWAY.

SO I FELT THAT SHE WROTE THE RIGHT THING AND DID EXACTLY THE OPPOSITE.

Q DOES THE STANDARD OF CARE REQUIRE A RHEUMATOLOGIST TO INVESTIGATE WHETHER A PATIENT IS ON ANY PSYCHIATRIC MEDICATION BEFORE PRESCRIBING A MEDICATION LIKE CYMBALTA?

A THE STANDARD OF CARE OF ANY INTERNAL MEDICINE BRANCH WOULD SAY THAT. YOU NEVER -- YOU HAVE TO KNOW WHAT PATIENTS ARE TAKING BEFORE YOU PRESCRIBE ANYTHING ELSE.

Q DOES THE STANDARD OF CARE REQUIRE

DR. SHAINSKY TO, AT THE VERY LEAST, REACH OUT TO DR. PAUL BOHN REGARDING HIS TREATMENT AND DIAGNOSIS OF TARA DE ROGATIS?

A YES, AND/OR THAT PSYCHIATRIST WHO SAW THE PATIENT IN THE EMERGENCY ROOM ABOUT THE NOTE I REFERRED TO, YES.

Q DOCTOR, IS YOUR OPINION -- IN YOUR OPINION, WAS DR. SHAINSKY'S DIAGNOSIS CONSISTENT WITH THE ACCEPTED STANDARDS OF PRACTICE FOR A RHEUMATOLOGIST?

A I DON'T -- NO, I DON'T BELIEVE SO, BECAUSE HOW CAN YOU -- YOU CANNOT DIAGNOSE FIBROMYALGIA IN A PATIENT WHO HAS A YEAR'S HISTORY OF HURTING ALL DOWN ONE SIDE ONLY AND HAS POWERFUL PSYCHIATRIC HISTORY. NO, THAT WOULD NOT BE AN APPROPRIATE DIAGNOSIS.

Q IS IT YOUR OPINION THAT THE CEDARS-SINAI RECORD REVEALED TO DR. SHAINSKY THAT SHE WAS DEALING WITH A PATIENT WITH PSYCHIATRIC ILLNESS AS OPPOSED TO FIBROMYALGIA?

A YES, IT WOULD. IT WOULD INDICATE THAT YOU CAN'T -- TO DIAGNOSE FIBROMYALGIA, YOU'VE GOT TO HAVE AN HONEST, FRANK, CLEAR, NONEMOTIONAL, NONPSYCHIATRIC HISTORY; OTHERWISE, YOU CANNOT DIAGNOSE THAT CONDITION. SO THE MINUTE YOU SEE THERE IS EVIDENCE OF SEVERE PSYCHIATRIC ILLNESS, YOU KNOW YOU'RE NOT ANYWHERE ABLE TO ENTER THE SCIENTIFIC ARENA OF DIAGNOSING FIBROMYALGIA.

Q ARE YOU REFERRING -- SPEAKING OF THE CEDARS E.R. RECORD, ARE YOU REFERRING TO BOTH THE ONE-SIDED PAIN AND THE PSYCHOTIC SYMPTOMS DESCRIBED?

A BOTH. BOTH BUT -- YES, BOTH.

Q AND IN YOUR ANALYSIS, DID YOU ALSO CONSIDER THAT DR. SHAINSKY HAD REVIEWED A RECORD FROM DR. ORFUSS DESCRIBING THAT HE PERFORMED AN E.E.G. ON THIS PATIENT DUE TO COMPLAINTS OF AUDITORY HALLUCINATIONS AND ALTERED MEMORY?

A I SAW THAT NOTE. I CANNOT REMEMBER WHETHER I SAW IT IN DR. SHAINSKY'S RECORD.

Q NOW, DO YOU HAVE THE SAME OPINION, YOU KNOW, DESPITE THE FACT THAT THESE SYMPTOMS WERE REPORTED ABOUT A YEAR PRIOR TO TARA DE ROGATIS' VISIT WITH DR. SHAINSKY?

A YES.

Q OKAY. AND WHY IS THAT?

A SORRY. WHAT IS THE QUESTION, COUNSELOR?

Q MY QUESTION IS: DO YOU HAVE THE SAME OPINION THAT DR. SHAINSKY VIOLATED THE STANDARD OF CARE IN HER DIAGNOSIS OF TARA DE ROGATIS DESPITE THE FACT THAT THE COMPLAINTS REPORTED IN THE CEDARS E.R. RECORD ARE APPROXIMATELY TEN MONTHS OLD?

A YES, VERY MUCH SO, BECAUSE IN THAT RECORD IT SAYS THE PERSON'S BEEN HURTING DOWN THE WHOLE SIDE OF HER BODY FOR ONE YEAR AND SHE WAS PSYCHOTIC AND TAKING POWERFUL MEDICINES, SO YOU CAN NEVER ESCAPE THAT PRESENTATION.

Q IS THE FACT THAT THE CEDARS E.R. RECORD MENTIONS A HISTORY OF METHAMPHETAMINE ABUSE RELEVANT TO YOUR ANALYSIS?

A IT WASN'T PARTICULARLY RELEVANT TO MY

ANALYSIS. IF I WAS A TREATING PHYSICIAN, I WOULD BE REALLY CAUTIOUS ABOUT MANAGING THE PATIENT WITH A HISTORY OF DRUG ABUSE.

MR. BLESSEY: YOUR HONOR, AGAIN, MOVE TO STRIKE ANY COMMENTS ABOUT WHAT HE WOULD DO. I THINK HE'S HERE TO TESTIFY ABOUT THE STANDARD OF CARE.

MS. MC BROOM: WE'LL MOVE ON, YOUR HONOR.

THE COURT: RIGHT.

MS. MC BROOM: THANK YOU.

BY MS. MC BROOM

Q WHAT ABOUT THE FACT THAT -- YOU'RE AWARE FROM THE REVIEW OF YOUR RECORDS THAT DR. SHAINSKY PERFORMED A TRIGGER POINT EVALUATION ON TARA DE ROGATIS AND USED THAT IN PART TO DIAGNOSE HER WITH FIBROMYALGIA.

WAS THAT EVALUATION BELOW THE STANDARD OF CARE, IN YOUR OPINION?

A IT'S BELOW THE STANDARD OF CARE IF YOU'RE DEALING WITH A PSYCHIATRICALLY SICK PATIENT WHERE SOFT TISSUE TENDERNESS DOES NO MORE THAN REFLECT THE LEVEL OF PSYCHOLOGIC DISTRESS ON THE DAY YOU'RE FEELING HER TISSUES.

Q YOU'RE AWARE FROM THE RECORDS THAT AT THE CONCLUSION OF THIS VISIT, DR. SHAINSKY PROVIDED TARA DE ROGATIS WITH A PRESCRIPTION FOR 60 NORCO.

DO YOU BELIEVE THAT PRESCRIPTION WAS BELOW THE STANDARD OF CARE?

A YES, I DO.

Q AND PLEASE EXPLAIN WHY.

A BECAUSE BY THEN SHE KNOWS OR SHOULD KNOW SOON THEREAFTER THAT SHE'S DEALING WITH A PSYCHIATRICALLY SICK PERSON, THAT THIS IS NOT TYPICAL FIBROMYALGIA, AND SO I COULD UNDERSTAND A FEW NORCO OUT OF -- TO HELP THE PATIENT THROUGH A FEW DAYS WHILE SHE MAKES THE RELEVANT INQUIRIES, BUT TO GIVE SOMEONE THAT LARGE AMOUNT OF OPIOID IS, I BELIEVE, A DANGEROUS PRECEDENT.

Q SO WHAT DID THE STANDARD OF CARE REQUIRE DR. SHAINSKY TO DO IN HER TREATMENT OF TARA? AND LET'S JUST FOCUS ON THE FIRST TWO VISITS.

A EXACTLY AS SHE WROTE IN HER NOTE, TREAT HER CAREFULLY, GENTLY, GET HER PSYCHIATRIC HELP, TELL HER TO EXERCISE, GIVE HER SOMETHING FOR DEPRESSION. WHAT SHE WROTE WAS THE RIGHT THING TO DO.

Q BUT SHE DIDN'T DO THAT?

A NO.

Q SO HOW CAN A RHEUMATOLOGIST MANAGE A PATIENT WITH CHRONIC PAIN WHO IS -- THAT'S ATTRIBUTED TO A PSYCHIATRIC ILLNESS IF NOT WITH THE USE OF OPIATES?

A YOU -- YOU'VE GOT TO SIT THERE AND DO NOTHING AND BE KIND AND GENTLE AND LISTEN AND BELIEVE AND HELP THE PERSON TO COPE.

THE COURT: I'M SORRY. HELP THE WHAT?

THE WITNESS: HELP THE PATIENT TO COPE, YOUR HONOR.

THE COURT: TO HELP?

THE WITNESS: YES. THAT'S THE AMERICAN COLLEGE OF PHYSICIANS' RECOMMENDATION DEALING WITH ANYONE WITH PSYCHOPHYSIOLOGIC SYMPTOMS.

BY MS. MC BROOM:

Q SO WOULD THAT INCLUDE COGNITIVE THERAPY?

A YES, IT INCLUDES --

Q CAN YOU EXPLAIN THAT FOR THE JURY?

A COGNITIVE BEHAVIORAL THERAPY IS GIVING THE PATIENT PSYCHOLOGIC HELP IN TEACHING THEM HOW TO COPE AND GIVING THEM CREDIT FOR SO DOING. SO IN PEOPLE WHO HAVE UNPLEASANT SYMPTOMS AND THEY HAVE TO LIVE WITH THEM, YOU HELP THEM DO THAT THROUGH COGNITIVE BEHAVIORAL THERAPY.

Q SO YOU'RE AWARE FROM A REVIEW OF DR. SHAINSKY'S TESTIMONY IN THE PHARMACY RECORDS THAT BETWEEN THE FIRST AND SECOND VISIT, DR. SHAINSKY PRESCRIBED ANOTHER 56 NORCO PILLS?

A YES.

Q I TAKE IT BASED ON YOUR PREVIOUS TESTIMONY TODAY THAT YOU BELIEVE THAT PRESCRIPTION WAS BELOW THE STANDARD OF CARE?

A UNDER THESE CIRCUMSTANCES, YES.

Q AND FOR THE SAME REASONS YOU JUST PREVIOUSLY SAID?

A YES.

Q AND I TAKE IT THAT THE THIRD PRESCRIPTION GIVEN ON MARCH 1ST, 2010, FOR 100 NORCO WAS ALSO BELOW THE STANDARD OF CARE IN YOUR OPINION?

A YES.

Q WHAT ABOUT THE FACT THAT ON THAT SECOND VISIT, DR. SHAINSKY INCREASED THE CYMBALTA PRESCRIPTION; WAS IT BELOW THE STANDARD OF CARE FOR HER TO INCREASE THAT

MEDICATION WITHOUT CONSULTING THE PSYCHIATRIST?

A I BELIEVE IT WAS, BUT I'M NOT QUALIFIED TO TALK ABOUT THE STANDARD OF CARE FOR PSYCHIATRIC MEDICINE.

Q I UNDERSTAND.

MR. BLESSEY: I MOVE TO STRIKE HIS FIRST PART OF THAT ANSWER, OR ACTUALLY, HE ANSWERED IT IN ITS ENTIRETY, YOUR HONOR.

THE COURT: SUSTAINED. STRICKEN.

MR. BLESSEY: THANK YOU.

BY MS. MC BROOM:

Q OVERALL WAS DR. SHAINSKY'S TREATMENT OF TARA ON THAT SECOND VISIT BELOW THE STANDARD OF CARE?

A YES.

Q BECAUSE BY THAT POINT DR. SHAINSKY HAD REVIEWED THE CEDARS-SINAI E.R. RECORD?

A I BELIEVE SO.

Q AND YOU BELIEVE THE FACT THAT SHE FAILED TO REACH OUT TO A TREATING PSYCHIATRIST OR THE PSYCHIATRISTS WHO WROTE THE CEDARS REPORT WAS BELOW THE STANDARD OF CARE?

MR. BLESSEY: YOUR HONOR, THIS IS LEADING NOW, THIS WITNESS.

THE COURT: WELL, THIS AN EXPERT. OVERRULED.

THE WITNESS: YES.

BY MS. MC BROOM:

Q I WANT TO FOCUS -- FOCUS YOU ON THAT THIRD VISIT, THIRD AND LAST VISIT ON MARCH 22ND, 2010.

A YES.

Q YOU'RE AWARE FROM THE RECORD THAT TARA DE ROGATIS REPORTED TO DR. SHAINSKY THAT SHE WAS IN TREMENDOUS PAIN; YOU'RE AWARE FROM A REVIEW OF ALL THE MATERIALS IN THIS CASE THAT THERE WAS A DISCUSSION OF SUICIDE BETWEEN TARA DE ROGATIS AND DR. SHAINSKY, CORRECT?

A YES, I WAS AWARE, IN FACT.

THE REPORTER: I'M SORRY?

THE WITNESS: I WAS AWARE, IN FACT.

THE REPORTER: THANK YOU.

BY MS. MC BROOM

Q AND YOU'RE ALSO AWARE THAT DR. SHAINSKY AT SOME POINT LEFT A MESSAGE FOR DR. BOHN CONCERNING HER CONSULTATION WITH TARA DE ROGATIS?

A YES.

Q AND, FINALLY, YOU'RE AWARE THAT AT THE END OF THAT APPOINTMENT, DR. SHAINSKY PROVIDED TARA WITH A PRESCRIPTION FOR 100 PERCOCET PILLS?

A YES.

Q OKAY. ADDITIONALLY, THE RECORDS FROM THAT FINAL VISIT INDICATE THAT DR. SHAINSKY BECAME AWARE THAT TARA WAS ON SOME PSYCHIATRIC MEDICATIONS THAT SHE HADN'T PREVIOUSLY BEEN AWARE OF?

A YES.

Q SO IS IT YOUR OPINION THAT ON THIS THIRD VISIT, DR. SHAINSKY VIOLATED THE STANDARD OF CARE IN HER TREATMENT OF TARA?

A YES.

Q AND CAN YOU EXPLAIN WHY?

A SHE KNOWS THE PATIENT HAS POTENT PSYCHIATRIC DISEASE. SHE KNOWS SHE'S TAKING OTHER MEDICATIONS. SHE SHOULD KNOW THAT THIS PATIENT DOES NOT HAVE REAL FIBROMYALGIA. SHE SHOULD KNOW THAT, THEREFORE, PRESCRIBING OPIOIDS IN THIS SETTING CARRIES WITH IT NUMEROUS RISKS.

MS. MC BROOM: ONE MOMENT, YOUR HONOR.

NOTHING FURTHER, YOUR HONOR.

THE COURT: CROSS-EXAMINATION?

MR. BLESSEY: THANK YOU, YOUR HONOR.

CROSS-EXAMINATION

BY MR. BLESSEY:

Q GOOD MORNING, DR. BLUESTONE.

A GOOD MORNING, COUNSELOR.

Q WE'VE NEVER MET BEFORE, HAVE WE?

A NOT THAT I RECALL.

MR. NEWHOUSE: WOULD YOU LIKE SOME WATER?

THE WITNESS: YES, PLEASE. THANK YOU.

MR. NEWHOUSE: NO CHARGE. YOU'RE GOOD TO GO, MR. BLESSEY.

MR. BLESSEY: THANK YOU.

BY MR. BLESSEY

Q SO, DR. BLUESTONE, LET'S TALK A LITTLE BIT ABOUT YOUR QUALIFICATIONS, OKAY?

A YES.

Q I THINK YOU TOLD US UNDER DIRECT EXAMINATION THAT YOU HAVE NOT HAD PRIVILEGES TO ADMIT A PATIENT WITH

FIBROMYALGIA OR ANY OTHER DIAGNOSIS TO A HOSPITAL SUCH AS CEDARS-SINAI SINCE 1997, CORRECT?

A NO. I SAID ABOUT TEN YEARS, THEREABOUTS, TEN, 12 YEARS, I THINK I BECAME EMERITUS ABOUT THEN. I DON'T REMEMBER THE EXACT DATE.

Q OKAY. SO TEN TO 12 YEARS, THAT WOULD PUT US BACK AROUND THE EARLY 2000'S, RIGHT?

A YES.

Q AND IN TERMS --

MS. MC BROOM: YOUR HONOR, I WOULD JUST OBJECT THAT THIS MISSTATES THE TESTIMONY. I BELIEVE HE SAID, "TEN YEARS."

MR. BLESSEY: HE ACTUALLY SAID, "TEN TO 12 YEARS," AND I PUT IT --

THE WITNESS: I SAID, "ABOUT TEN YEARS."

BY MR. BLESSEY:

Q COULD BE MORE, RIGHT?

A I DON'T THINK IT'S MUCH MORE THAN THAT.

Q WELL, YOU KNOW, SIR, ON YOUR -- YOU HAVE A CURRICULUM VITAE, DO YOU NOT?

A YES.

Q THAT'S A RESUME. THAT'S ANOTHER WORD FOR RESUME, RIGHT?

A YES.

Q ALL RIGHT. AND ON YOUR RESUME, IT INDICATES THAT YOU HAVE NOT HAD HOSPITAL PRIVILEGES SINCE 1997; IS THAT CORRECT?

A THAT WOULD NOT BE ON MY RESUME.

Q I THINK IT IS, SIR.
MR. BLESSEY: CAN I APPROACH, YOUR HONOR?
THE COURT: YOU MAY.
MS. MC BROOM: CAN I JUST SEE?
MR. BLESSEY: IT'S HIS C.V. I'D THINK YOU'D HAVE IT. DO YOU WANT ME TO SHOW IT TO YOU?
MS. MC BROOM: I'D LIKE YOU TO.
MR. BLESSEY: OKAY.
MS. MC BROOM: THANK YOU.
BY MR. BLESSEY:
Q FIRST, LET'S ESTABLISH, IS THIS YOUR RESUME, DOCTOR?
A CAN I LOOK, PLEASE?
Q SURE.
A YES, THIS IS.
Q OKAY. AND CAN WE GO TO THE SECOND PAGE?
A YES.
Q AND IT SAYS -- UP ON TOP HERE, WHAT DOES THAT FIRST LINE SAY?
A "ATTENDING STAFF."
Q AND WHAT ARE THE YEARS? THIS IS AT CEDARS-SINAI MEDICAL CENTER?
A 1979 TO 1997.
Q THANK YOU. MAY I HAVE IT BACK, PLEASE? CAN I HAVE IT BACK?
A YES, SIR.
Q THANK YOU.
MS. MC BROOM: YOUR HONOR, I'D JUST ASK TO HAVE

THAT DOCUMENT MARKED.

THE COURT: PARDON?

MS. MC BROOM: I WOULD ASK TO HAVE THAT DOCUMENT MARKED.

THE COURT: OH, IT HASN'T BEEN MARKED?

MR. BLESSEY: NO.

THE COURT: WE'LL MARK IT NEXT IN ORDER.

MS. MC BROOM: THANK YOU.

THE CLERK: 136.

(MARKED FOR IDENTIFICATION, JOINT EXHIBIT 136, CURRICULUM VITAE OF RODNEY BLUESTONE, M.D.)

BY MR. BLESSEY:

Q IN TERMS OF YOUR TEACHING --

A YES.

Q -- YOU TOLD THE JURY YOU'VE DEDICATED YOUR ENTIRE LIFE TO TEACHING, ESSENTIALLY, CORRECT?

A YES.

Q YOU HAVE NOT DONE ANY DIDACTIC TEACHING IN THE LAST TEN OR 12 YEARS EITHER, TRUE?

A NO. I'VE TAUGHT PATIENT SUPPORT GROUPS WITH DIDACTIC LECTURES.

Q LET'S MAKE SURE THAT WE'RE CLEAR AND THE JURY IS CLEAR.

YOU'VE NOT DONE ANY TEACHING TO PHYSICIANS IN A STRUCTURED SETTING SINCE TEN OR 12 YEARS AGO,

CORRECT?

A YES, THAT IS CORRECT. I'VE NOT GIVEN ANY LECTURES TO PHYSICIANS IN THAT TIME.

Q NOT EVEN ABOUT CHRONIC WIDESPREAD PAIN, CORRECT?

A THAT IS CORRECT.

Q AND IN TERMS OF PUBLICATIONS, IT'S BEEN QUITE SOME TIME, I THINK YOU TOLD US ALREADY, SINCE YOU'VE PUBLISHED ANY MEDICAL JOURNAL ARTICLES, TRUE?

A YES, THAT IS CORRECT.

Q NOW, YOUR PRACTICE, I THINK YOU TOLD US 20 PERCENT OF YOUR PRACTICE IS WORKERS' COMPENSATION PATIENTS, TRUE?

A APPROXIMATELY, YES.

Q AND THE MAJORITY OF THE REST OF YOUR PRACTICE IS RHEUMATOLOGICAL DISEASES, CORRECT?

A YES.

Q AND THEN I THINK YOU SAID THAT YOU SPEND SOME TIME DOING EXPERT WORK, CORRECT?

A YES.

Q NOW, I THOUGHT I HEARD YOU SAY THAT IN TERMS OF YOUR EXPERT WORK, IT'S ABOUT 50/50, THAT IS, 50 PERCENT OF THE TIME YOU HAVE GIVEN -- YOU'VE BEEN RETAINED BY THE PLAINTIFF AND 50 PERCENT OF THE TIME YOU'VE BEEN RETAINED BY A DEFENDANT, TRUE?

A YES.

Q YOU'VE GIVEN, HAVE YOU NOT -- YOU'VE GIVEN HUNDREDS AND HUNDREDS OF DEPOSITIONS OVER THE COURSE OF

THE YEARS, TRUE?

A YES.

Q NOW, AT YOUR DEPOSITION, DESPITE THIS 50/50 BREAK IN TERMS OF YOUR EXPERT WORK, YOU COULD NOT RECALL THE NAME OF ONE DEFENSE FIRM THAT RETAINED YOU, TRUE?

A EXCUSE ME, COUNSELOR?

Q IS THAT TRUE, SIR?

A I DON'T REMEMBER THE NAMES OF COUNSELORS, BUT YOU'RE MAKING A MISTAKE, SIR.

Q SIR --

A THE VAST MAJORITY --

MS. MC BROOM: YOUR HONOR, CAN HE BE PERMITTED TO ANSWER THE QUESTION?

THE COURT: OKAY. GO AHEAD.

THE WITNESS: THE VAST MAJORITY OF MY DEPOSITIONS ARE IN WORKERS' COMPENSATION, AS AN AGREED MEDICAL EXAMINER, SO I SEE -- SO THAT I'M BEING QUESTIONED BY THE DEFENSE AND PLAINTIFFS' ATTORNEYS. THAT IS THE VAST MAJORITY OF MY DEPOSITIONS.

BY MR. BLESSEY:

Q SO YOU'VE HAD LOTS OF MEDICAL-LEGAL EXPERIENCE GIVING DEPOSITIONS AND THE LIKE, TRUE?

A YES.

Q BUT THAT'S A DIFFERENT ISSUE.

THE ISSUE IS, IN TERMS OF MEDICAL MALPRACTICE CASES, YOU WERE UNABLE TO IDENTIFY ONE DEFENSE FIRM THAT HAD RETAINED YOU FOR A MEDICAL MALPRACTICE CASE AT YOUR DEPOSITION, TRUE?

A THAT IS TRUE, NOR ONE PLAINTIFF FIRM.
Q WELL, ACTUALLY, YOU TOLD US ABOUT TWO PLAINTIFF FIRMS AT YOUR DEPOSITION.
DO YOU REMEMBER THAT?
A I WAS ASKED WHAT OTHER CASES I WAS LOOKING AT AT THE TIME, SO I REMEMBERED THOSE TWO.
Q NOW, YOU REGARD YOURSELF AS AN EXPERT IN CHRONIC WIDESPREAD PAIN; IS THAT FAIR TO SAY?
A NO, NO, I'M AN EXPERT IN RHEUMATOLOGY.
Q OKAY. AND AS AN EXPERT IN RHEUMATOLOGY, BEFORE THIS CASE, YOU HAD NEVER THROUGHOUT YOUR ILLUSTRIOUS CAREER BEEN RETAINED ON A CASE, A MEDICAL MALPRACTICE CASE, INVOLVING THE SAME OR SIMILAR ISSUES THAT WE'RE DEALING WITH HERE, TRUE?
A NO, THAT'S NOT TRUE.
Q OKAY. I'D LIKE TO READ FROM DR. BLUESTONE'S DEPOSITION TRANSCRIPT ON PAGE 30, LINE 21 THROUGH PAGE 31, LINE 5.
MS. MC BROOM: NO OBJECTION.
THE COURT: GO AHEAD.
BY MR. BLESSEY:
Q "QUESTION: WITH RESPECT TO YOUR -- THE CASES THAT YOU'VE REVIEWED...IN THE MEDICAL MALPRACTICE AREA, DID ANY OF THEM INVOLVE...THE SAME OR SIMILAR TO THE ISSUES WE'LL BE TALKING ABOUT IN A MOMENT, THAT IS, THE TREATMENT OF FIBROMYALGIA, MEDICATIONS, NARCOTICS, THOSE TYPES OF ISSUES?

"ANSWER: NOT THAT I RECALL OUTSIDE OF WORKERS' COMPENSATION BECAUSE IN WORKERS' COMPENSATION A LOT OF THE PATIENTS I SEE COME IN THE OFFICE WITH A PAST GIVEN DIAGNOSIS OF FIBROMYALGIA."

YOU KNOW THE DIFFERENCE BETWEEN WORKERS' COMPENSATION AND MEDICAL MALPRACTICE, DON'T YOU?

A YES.

Q AND YOU UNDERSTAND IN WORKERS' COMPENSATION THERE'S NO ISSUE OF FAULT; WHEREAS, IN MEDICAL MALPRACTICE, THERE IS AN ALLEGATION OF FAULT, CORRECT? DO YOU UNDERSTAND THAT DISTINCTION, SIR?

A YES.

Q SO YOU WOULD AGREE THAT, ALTHOUGH YOU'VE TESTIFIED IN THE SOME WORKERS' COMPENSATION CASES THAT MAY INVOLVE FIBROMYALGIA, BEFORE THIS CASE, YOU WERE NEVER RETAINED AS AN EXPERT IN A MEDICAL MALPRACTICE CASE WITH THE SAME OR SIMILAR ISSUES WE'RE DEALING WITH HERE, CORRECT?

A THAT'S CORRECT. ONLY IN A PERSONAL INJURY CASE.

Q RIGHT. A WORKERS' COMPENSATION?

A NO, NO. PERSONAL INJURY IN TRIAL.

Q OKAY. LET'S TALK ABOUT THAT. PERSONAL INJURY DOESN'T INVOLVE ALLEGATIONS OF MEDICAL MALPRACTICE, DOES IT?

A NO.

Q WHEN YOU WERE RETAINED BY MS. MC BROOM OR

MR. NEWHOUSE OR THEIR FIRM, DID YOU TELL THEM THAT THIS WAS THE FIRST TIME THAT YOU'D BEEN RETAINED IN A MEDICAL MALPRACTICE CASE INVOLVING AN ISSUE ABOUT TREATMENT OF FIBROMYALGIA?

A NO, I DON'T RECALL TELLING THEM. I DON'T REMEMBER THEM ASKING ME.

Q DON'T YOU THINK YOU HAD AN OBLIGATION TO LET THEM KNOW THAT?

A NO. I HAVE AN OBLIGATION TO ANSWER ANY QUESTIONS THEY ASK ME, WHICH I DID, HONESTLY AND FULLY.

Q NOW, LET'S TALK A LITTLE BIT ABOUT YOUR FEES. WE KIND OF BRUSHED OVER THAT BEFORE.

YOUR FEES ARE HANDLED -- OR YOUR FISCAL MATTERS, YOU TOLD THE JURY, ARE DEALT WITH BY SOMEBODY ELSE IN YOUR OFFICE, CORRECT?

A YES.

Q I'LL JUST SHOW COUNSEL AN EXHIBIT TO YOUR DEPOSITION TRANSCRIPT.

MR. BLESSEY: MAY I APPROACH, YOUR HONOR?

THE COURT: YOU MAY.

BY MR. BLESSEY:

Q FIRST, DR. BLUESTONE --

A YES.

Q -- DO THESE APPEAR TO BE YOUR BILLING RECORDS FOR SOME OF THE WORK THAT YOU'VE DONE IN THIS CASE?

A YES.

Q OKAY. NOW, LET ME DRAW YOUR ATTENTION --

AND THIS -- THIS BILLING RECORDS, BECAUSE THE JURY -- IT'S NOT DISPLAYED BEFORE THE JURY, STARTS WHEN, SIR, WHAT MONTH?

A MAY THE 21ST, 2012.

Q WERE YOU AWARE THAT THIS CASE WAS FILED IN MARCH OF 2011 BY THE RECORDS THAT YOU REVIEWED?

A I HAVE NO RECORD OF THAT.

Q DO YOU KNOW WHY IT WAS THAT YOU WERE RETAINED MORE THAN A YEAR AFTER THE CASE WAS FILED?

A NO, I DON'T.

MS. MC BROOM: OBJECTION, YOUR HONOR. RELEVANCE.

THE COURT: OVERRULED.

BY MR. BLESSEY:

Q DO YOU KNOW, SIR --

THE COURT: GO AHEAD.

BY MR. BLESSEY:

Q SIR, DR. BLUESTONE, DO YOU KNOW WHETHER OR NOT YOU WERE THEIR FIRST CHOICE AS AN EXPERT IN RHEUMATOLOGY IN THIS CASE RETAINED A YEAR AFTER THE LAWSUIT WAS FILED? DO YOU KNOW THAT?

A NO, I DON'T.

Q OKAY. NOW, IN TERMS OF THESE BILLING RECORDS, THEY COVER A PERIOD FROM MAY TO -- WHAT'S THE LAST DATE WE HAVE HERE?

A JULY THE 27TH, 2012.

Q IS THERE A LATER DATE HERE IN AUGUST?

A OH, I'M SORRY. IT SAYS, "AUGUST THE 27TH, 2012."

Q SO WE HAVE MAY THROUGH AUGUST, THE END OF AUGUST, ON THIS BILLING STATEMENT, CORRECT?

A YES.

Q AND WHAT'S THE TOTAL AMOUNT THAT YOU BILLED OVER THOSE SEVERAL MONTHS?

A I THINK THAT THIS IS THE TOTAL; IS THAT CORRECT? YES.

Q I BELIEVE SO. CAN YOU READ IT TO THE JURY?

A $14,875.

Q AND THAT WOULD BE AS OF AUGUST 27TH, 2012?

A YEAH.

Q NOW, YOU'VE PUT IN A CONSIDERABLE AMOUNT OF TIME SINCE AUGUST OF 2012; IS THAT FAIR TO SAY?

A YES, I HAVE.

MS. MC BROOM: YOUR HONOR, I'D JUST ASK THAT THAT BE MARKED AS WELL, THAT EXHIBIT, I BELIEVE, THE NEXT --

THE COURT: SURE. WE CAN MARK IT NEXT IN ORDER, CLERK.

THE CLERK: 137. WHAT IS IT?

MR. BLESSEY: IT'S A THREE-PAGE BILLING RECORD OF DR. BLUESTONE FOR HIS WORK IN THIS CASE THROUGH AUGUST OF 2012.

(MARKED FOR IDENTIFICATION, JOINT EXHIBIT 137, BILLING RECORDS OF RODNEY BLUESTONE, M.D., THROUGH AUGUST 2012.)

BY MR. BLESSEY:

Q SO WE HAVE $14,875 AS OF AUGUST 2012.

HOW MUCH TIME -- COULD YOU ESTIMATE FOR THE JURY HOW MANY HOURS HAVE YOU PUT INTO THIS CASE IN THE WAY OF RECORD REVIEW SINCE AUGUST OF 2012?

A I CAN'T SAY OFF THE TOP OF MY HEAD. IF YOU GIVE ME A CHANCE TO LOOK AT THIS --

Q PLEASE.

A -- I MIGHT BE ABLE TO GIVE YOU AN ESTIMATE.

Q PLEASE.

A WHAT DATE -- WHAT DATE IN AUGUST WAS THAT, PLEASE?

Q THAT WAS AUGUST 27TH, 2012.

A THANK YOU. I BELIEVE I DID SOME MORE HOURS OF REVIEW. I DON'T KNOW HOW MANY, PLUS I WAS DEPOSED, PLUS I HAD TO PREPARE FOR THE DEPOSITION, PLUS I HAD TO PREPARE FOR THIS TRIAL.

Q RIGHT.

A SO I DON'T HAVE -- I CAN'T -- I CAN'T ESTIMATE SENSIBLY HOW MANY HOURS THAT WAS. IT WAS A LARGE NUMBER OF HOURS, I'M SURE, BUT I DON'T KNOW HOW MANY.

Q LARGE NUMBER MEANING MORE THAN 20?

A OH, I DON'T KNOW ABOUT THAT. NO, NO, I CAN'T MAKE THAT ESTIMATION. I KNOW, FOR EXAMPLE, I SPENT 1 HOUR THIS WEEKEND REVIEWING THE FILE. I KNOW, FOR EXAMPLE, I WAS DEPOSED, I BELIEVE -- I BELIEVE I WAS DEPOSED FOR 2 HOURS, BUT I CAN'T RECALL THE OTHER HOURS.

Q THE LARGE NUMBER OF HOURS THAT YOU'VE PUT IN

SINCE AUGUST 27, 2012, WOULD BE BILLED OUT AT $750 AN HOUR; IS THAT TRUE?

A THEY SHOULD BE, YES.

Q AND THEN IN TERMS OF -- IN TERMS OF THE TOTAL NUMBER, YOU JUST CAN'T PROVIDE THE JURY WITH AN ESTIMATE?

A NO, I DON'T KNOW.

Q FAIR ENOUGH. WHAT -- WHEN YOU TAKE TIME AWAY FROM YOUR PRACTICE TO COME TO A TRIAL LIKE THIS, WHAT ARE YOUR FEES, SIR?

A I'M TOLD MY FEE IS $5,000.

Q AND IS THAT FOR A HALF DAY? IN OTHER WORDS, IF WE -- AND I THINK WE WILL -- IF WE GET YOU DONE BY NOON, IS THAT $5,000 FOR A HALF DAY OR FOR A FULL DAY?

A I'M NOT CERTAIN ABOUT THAT.

Q NOW, LET'S TALK A LITTLE BIT MORE ABOUT THIS CONDITION OF FIBROMYALGIA.

A YES.

Q YOU HAVE TOLD US THAT THIS CONDITION -- FIRST OF ALL, THERE'S NO KNOWN ORGANIC CAUSE FOR THE PROBLEM, CORRECT?

A THUS FAR DISCOVERED.

Q RIGHT, JUST REVIEWING WITH YOU.

AND WHEN YOU SAY, "NO ORGANIC CAUSE," YOU MEAN THERE ARE NO TESTS THAT WILL REVEAL FOR THE PHYSICIAN THAT'S WORKING WITH THE PATIENT AN UNDERLYING CAUSE SUCH AS AN INJURY TO A JOINT OR SOME AUTOIMMUNE DISEASE OR SOME OTHER NEUROLOGICAL DISEASE THAT MIGHT EXPLAIN THE PAIN,

SOMETHING ALONG THOSE LINES, TRUE?

A THAT IS CORRECT.

Q ALL RIGHT. AND YOU MENTIONED THAT THE DESCRIPTION OF PAIN IS WIDESPREAD AND CHRONIC, CORRECT?

A YES.

Q YOU MENTIONED THAT IT INTERFERES WITH SLEEP, CORRECT?

A YES.

Q AND THAT THE PATIENTS COMMONLY ARE TIRED?

A YES.

Q RIGHT? AND YOU TOLD US IN YOUR DEPOSITION, AND I DON'T THINK YOU SAID IT HERE, BUT THIS CONDITION, FIBROMYALGIA, ALSO INTERFERES WITH LIBIDO, CORRECT?

A IT CAN DO.

Q ALL RIGHT. AND THEN AT SOME POINT IN TIME, THE PATIENT MAY PRESENT WITH DEPRESSION, RIGHT?

A YES.

Q NOW, AS YOU CAREFULLY REVIEWED THE MEDICAL RECORDS, YOU -- IS IT TRUE, SIR, THAT YOU SAW EACH AND EVERY ONE OF THESE SIGNS OF FIBROMYALGIA IN THE MEDICAL RECORDS THAT YOU WERE PRESENTED WITH, CORRECT?

A AT WHAT STAGE IN THE PATIENT'S HISTORY?

Q AT ANY STAGE, UP UNTIL THE TIME SHE SAW DR. SHAINSKY.

A NO. I SAW THAT SHE'D BEEN HURTING DOWN ONE SIDE OF THE BODY FOR ONE YEAR.

Q OKAY. GOOD. LET'S TALK ABOUT THAT. YOU'RE REFERRING TO THE ONE ADMISSION AT CEDARS-SINAI IN AN

EMERGENCY ROOM PHYSICIAN'S RECORDING OF WHAT SHE TOLD THEM, CORRECT?

A YEAH.

Q NOW, SO LET'S TALK ABOUT THAT. AND BEFORE I GO INTO A LITTLE DIFFERENT DIRECTION, ARE YOU TELLING THIS JURY THAT FROM EITHER BEFORE 2009 OR UP TO THE TIME SHE SAW DR. SHAINSKY, THIS PATIENT DID NOT COMPLAIN ABOUT CHRONIC WIDESPREAD PAIN?

A NO. WHAT I'M SAYING IS THAT FOR ONE YEAR SHE HAD BEEN COMPLAINING OF PAIN DOWN ONE ENTIRE SIDE OF THE BODY. THAT IS NOT CHRONIC WIDESPREAD PAIN, WHICH IS DEFINED AS PAIN IN BOTH SIDES OF THE BODY, UPPER AND LOWER, GOING ON FOR MORE THAN THREE MONTHS WITH NO KNOWN CAUSE.

Q DOES THE TERM "UNILATERAL" MEAN ONE SIDE?

A YES.

Q AND AT THE EMERGENCY ROOM, IT WAS LEFT-SIDED, CORRECT?

A I CAN'T RECALL, BUT I CAN LOOK IT UP.

Q THAT'S OKAY. THE POINT IS IT WAS ONLY ON ONE SIDE, AT LEAST --

A YEAH.

Q -- THAT'S WHAT --

A UNILATERAL, YES.

Q AND IT'S YOUR OPINION, BASED ON YOUR CAREFUL REVIEW OF THE MEDICAL RECORDS, THAT IN 2009 WHEN SHE'S AT CEDARS, SHE'S COMPLAINING ABOUT UNILATERAL PAIN AND THAT WAS HER COMPLAINT UP UNTIL AND INCLUDING THE TIME SHE WAS

SEEN BY DR. SHAINSKY, TRUE?

A NO. I'M NOT CERTAIN ABOUT THAT BECAUSE --

Q OH, YOU'VE ANSWERED MY QUESTION.

A -- I'M ONLY REFERRING TO THAT RECORD.

Q WERE YOU TOLD, PREDATING THIS ADMISSION AT CEDARS-SINAI MEDICAL CENTER, BY MR. NEWHOUSE, MS. MC BROOM, ANYBODY IN THEIR FIRM, THAT THERE WERE WITNESSES, FAMILY MEMBERS, AND THE FIANCE CAME INTO THIS COURTROOM AND TOLD THIS JURY THAT MS. DE ROGATIS WAS COMPLAINING ABOUT CHRONIC WIDESPREAD PAIN PREDATING THIS ADMISSION AT CEDARS-SINAI MEDICAL CENTER? WERE YOU AWARE OF THAT?

A I SAW NO MEDICAL RECORD PREDATING THAT OUTSIDE OF THE RECORDS GIVEN TO ME.

Q DID YOU READ THE DEPOSITIONS OF MR. -- DEPOSITION TRANSCRIPTS OF MR. MAC EACHERN, THAT WOULD BE THE FIANCE THAT WAS LIVING WITH MS. DE ROGATIS FROM 2004 UP UNTIL THE TIME OF HER SUICIDE? DID YOU READ THAT DEPOSITION?

A NO.

Q WOULD THAT HAVE BEEN IMPORTANT FOR YOU TO KNOW WHAT A DAY-TO-DAY OBSERVER WAS SEEING IN TERMS OF THE COMPLAINTS OF THE PATIENT, WHETHER IT WAS UNILATERAL OR CHRONIC AND WIDESPREAD? WAS THAT REPORTED TO YOU?

A NO. I'D NEED A PHYSICIAN DESCRIPTION.

Q OKAY. LET'S TALK ABOUT THAT.

SO YOU TOLD US EARLIER THAT YOU REVIEWED THE RECORDS OF A DR. SPIEGEL, RIGHT? IS THAT CORRECT?

A YOU'LL HAVE TO GIVE ME A MOMENT, PLEASE. YES, DR. B. SPIEGEL.

Q CORRECT. CAN YOU PUT YOUR NOTES AWAY, SIR?

A OH, ALL RIGHT. YOU ASKED ME TO REMEMBER WHAT IT SAID.

Q THAT'S OKAY. BUT I'D RATHER NOT -- I'D RATHER NOT HAVE YOU USE A SCRIPT TO TESTIFY. CAN YOU PUT YOUR NOTES AWAY?

A YES.

MS. MC BROOM: OBJECTION, YOUR HONOR.

THE COURT: YOU CAN REFER TO YOUR NOTES IF YOU CAN'T REALLY REMEMBER TO REFRESH YOUR RECOLLECTION --

THE WITNESS: THANK YOU.

THE COURT: -- AT ANY TIME.

THE WITNESS: THANK YOU.

MS. MC BROOM: I MOVE TO STRIKE COUNSEL'S STATEMENT.

THE COURT: STRICKEN.

BY MR. BLESSEY:

Q SIR, WHEN WAS IT -- CAN YOU RECALL, WITHOUT LOOKING AT YOUR NOTES, WHEN WAS IT THAT THE PATIENT SAW DR. SPIEGEL FOR ASSESSMENT OF HER PAIN SYMPTOMS?

A I CAN'T RECALL WITHOUT LOOKING AT MY NOTES.

Q PLEASE LOOK.

A JANUARY 2010.

Q AND DR. SPIEGEL CHARACTERIZED THE PATIENT'S PAIN SYMPTOMS AS CHRONIC AND WIDESPREAD OR TERMS INTO THAT -- IN THAT CATEGORY, TRUE?

A I'LL QUOTE WHAT HE SAID.
Q PLEASE.
A HE SAID, "PAIN PRETTY MUCH IN REST OF BODY."
Q "PAIN PRETTY MUCH IN REST OF BODY."
A "...REST OF BODY," YES.
Q WOULD THAT INFER TO YOU THAT THAT WAS WIDESPREAD PAIN?
A IT'S NOT CLEAR ENOUGH, BUT IT WOULD SUGGEST THAT COULD BE THE CASE. IT'S JUST NOT CLEAR ENOUGH TO ME.
Q OKAY.
A BECAUSE HE WAS DEALING MAINLY WITH ABDOMINAL PAIN AND ADDED AS A RIDER, "PAIN PRETTY MUCH IN THE REST OF THE BODY."
Q WELL, THAT'S A GOOD POINT.
IS IT UNCOMMON THAT FIBROMYALGIA PATIENTS COMPLAIN OF GASTROINTESTINAL OR ABDOMINAL DISCOMFORT?
A NO, IT'S NOT UNCOMMON.
Q THANK YOU. OKAY.
SO LET'S TALK ABOUT ANOTHER DOCTOR THAT SAW THE PATIENT. ARE YOU AWARE THAT THE PATIENT SAW A DR. RAMIN?
A WOULD YOU PLEASE SPELL THAT?
Q SURE. R-A-M-I-N.
WOULD YOU LIKE TO CHECK YOUR NOTES?
A YES, PLEASE. THANK YOU.
Q YOU KNOW, DOCTOR, I MAY SAVE YOU TIME.
A I DON'T HAVE A NOTE HERE ABOUT DR. RAMIN.
Q AND YOU TOLD US AT YOUR DEPOSITION THAT THE

ATTORNEYS WHO RETAINED YOU IN THIS CASE DID NOT PROVIDE YOU WITH DR. RAMIN'S RECORDS.

A THANK YOU FOR REMINDING ME.

Q DOES THAT SOUND CORRECT?

A YES, BECAUSE I DON'T SEE ANYTHING HERE.

Q SO YOU HAVE NO BASIS TO CHALLENGE -- WHAT I'LL REPRESENT TO YOU IS THAT DR. RAMIN STATED IN HIS MEDICAL RECORDS THAT THIS PATIENT HAD NOT ONLY CHRONIC WIDESPREAD PAIN BUT FIBROMYALGIA AND TREATED HER WITH OPIATES. YOU CAN'T CHALLENGE THAT BECAUSE YOU HAVEN'T SEEN HIS RECORDS, CORRECT?

MS. MC BROOM: OBJECTION, YOUR HONOR. ASSUMES FACTS.

THE COURT: OVERRULED.

BY MR. BLESSEY:

Q DOCTOR, HYPOTHETICALLY, HYPOTHETICALLY, IF DR. RAMIN SAT WHERE YOU'RE SITTING IN THAT CHAIR YESTERDAY AND TOLD THIS JURY THAT MS. DE ROGATIS HAD FIBROMYALGIA, WAS APPROPRIATE TO TREAT HER WITH OPIATES, THAT WOULD CONFLICT WITH YOUR OPINION, TRUE?

A YES.

Q AND WOULD YOU FEEL THAT DR. RAMIN, THEN, WAS BELOW THE STANDARD OF CARE UNDER THE CIRCUMSTANCES OF THIS CASE?

A I CAN'T ANSWER THAT QUESTION. I'VE NOT REVIEWED THOSE RECORDS.

Q FAIR ENOUGH. HOW ABOUT DR. GIOMBETTI? I THINK YOU MENTIONED HIS NAME.

A YES.
Q AND WHEN DID THE PATIENT SEE DR. GIOMBETTI?
A GIVE ME A MOMENT, PLEASE. I WILL SEE.
HE -- SHE SAW DR. GIOMBETTI IN JANUARY 2010.
Q AND IS IT NOT TRUE, SIR -- PLEASE LOOK AT YOUR NOTES IF YOU NEED TO -- THAT DR. GIOMBETTI CHARACTERIZED THE PATIENT'S PAIN AS BEING ENTIRE BODY?
A THIS IS WHAT HE SAID, "CHRONIC PAIN FOR TWO YEARS BEGAN WITH HEARING VOICES THEN PAIN IN THE ENTIRE BODY, LIKE WHOLE BODY ON FIRE, TINGLING IN THE WHOLE BODY."
THAT'S WHAT HE WROTE HERE.
Q OKAY. AND YOU'RE AWARE THAT DR. GIOMBETTI -- WELL, LET ME ASK YOU THIS: DID DR. GIOMBETTI HAVE ANY INFORMATION ABOUT THE PATIENT'S PSYCHIATRIC HISTORY?
A I DON'T KNOW THE ANSWER TO THAT.
Q COULD YOU CHECK YOUR NOTES AND SEE?
A NO, I DON'T HAVE ANYTHING IN MY NOTE ABOUT WHETHER HE CHECKED THAT.
Q ALL RIGHT. HYPOTHETICALLY, IF DR. GIOMBETTI GOT THIS HISTORY OF ENTIRE BODY PAIN AND A HISTORY OF THIS PATIENT'S PSYCHIATRIC PROBLEMS AND TREATED THE PATIENT WITH AN OPIATE, NORCO, WOULD YOU BELIEVE THAT DR. GIOMBETTI FELL BELOW THE STANDARD OF CARE?
A FOR A RHEUMATOLOGIST, YES, BUT HE'S NOT A RHEUMATOLOGIST.
Q OH, IT'S A DIFFERENT STANDARD FOR OTHER

SPECIALTIES. IS THAT WHAT YOU'RE SAYING?

A WELL, HE'S A NEUROLOGIST, AND I'M NOT QUALIFIED TO JUDGE THE STANDARD OF CARE FOR NEUROLOGY.

Q ESPECIALLY IF HE DOES SOMETHING THAT'S CONTRARY TO WHAT YOU BELIEVE, YOU'RE NOT QUALIFIED, CORRECT?

A BY NO MEANS.

MS. MC BROOM: OBJECTION. ARGUMENTATIVE.

THE COURT: OVERRULED.

BY MR. BLESSEY:

Q AND YOU WERE REFERRING TO DR. SHAINSKY'S NOTES. HOW DID DR. SHAINSKY DESCRIBE THE PRESENTATION OF THIS PATIENT IN TERMS OF THE TYPE OF SYMPTOMS SHE WAS COMPLAINING OF?

A SHE REPORTED DIFFUSE PAIN. SHE DESCRIBED IT AS DIFFUSE PAIN.

Q SHE SAID, "HEAD TO TOE," CORRECT?

A I DIDN'T WRITE DOWN THAT, SO IF SHE DID, I'LL TAKE YOUR WORD FOR IT. I WROTE DOWN, "DIFFUSE PAIN."

Q SO THE VARIOUS DOCTORS THAT WE'VE GONE THROUGH, AT LEAST THE RECORDS THAT YOU'VE SEEN, HAVE ALL DESCRIBED HER PAIN DIFFERENTLY THAN WHAT WAS DESCRIBED IN THE CEDARS-SINAI MEDICAL CENTER RECORDS IN 2009; WOULD YOU AGREE?

A YES, THAT IS CORRECT.

Q ALL RIGHT. NOW, LET'S TALK A LITTLE BIT ABOUT THIS CONCEPT OF THE STANDARD OF CARE, AND CAN YOU DEFINE FOR THE JURY WHAT DEFINITION YOU HAD IN YOUR MIND

WHEN YOU LOOKED AT THE RECORDS IN THIS CASE? WHAT IS THE STANDARD OF CARE? CAN YOU DEFINE IT? I MEAN IN A GLOBAL SENSE.

A ACCURACY OF DIAGNOSIS, THE RECOGNITION THAT PSYCHIATRIC DISEASE CAN LOOK LIKE FIBROMYALGIA --

Q SIR, LET ME STOP YOU.

A I'M SORRY.

Q WHAT I'M ASKING FOR HERE --

MR. BLESSEY: LET ME MOVE TO STRIKE AS NONRESPONSIVE.

MS. MC BROOM: WELL, HE WASN'T PERMITTED TO FINISH HIS ANSWER.

THE COURT: CAN YOU DEFINE WHAT THE STANDARD OF CARE IS?

BY MR. BLESSEY:

Q AS A CONCEPT, SIR.

THE WITNESS: YES, YOUR HONOR.

THE COURT: GO AHEAD AND DO THAT.

THE WITNESS: A CORRECT DIAGNOSIS AND AN APPROPRIATE MANAGEMENT BACKED UP BY PEER-REVIEWED STANDARDS OF CARE.

BY MR. BLESSEY:

Q "PEER-REVIEWED STANDARDS" MEANING WHAT OTHER DOCTORS WOULD SAY IS REASONABLE; IS THAT A FAIR WAY TO SAY IT?

A IN YOUR SPECIALTY, YES.

Q NOW, YOU DON'T BELIEVE THAT THIS PATIENT HAD, IN FACT, FIBROMYALGIA, TRUE?

A THAT IS CORRECT.
Q YOU DO BELIEVE, HOWEVER, THAT CHRONIC WIDESPREAD PAIN CAN BE CAUSED BY PSYCHIATRIC ISSUES?
A YES.
Q FIBROMYALGIA?
A YES.
Q OR A COMBINATION OF BOTH?
A YES.
Q AND YOU JUST HAPPENED TO THINK IN THIS CASE IT'S NOT A COMBINATION OF BOTH. IT'S JUST THE PSYCHIATRIC ISSUES THAT ARE CAUSING THIS PATIENT'S PAIN, TRUE?
A NO. WHAT I SAID WAS THAT THE CAUSE OF THIS PATIENT'S PAIN WAS HER PSYCHIATRIC DISEASE, HER PSYCHOTIC ILLNESS.
Q I THINK THAT'S WHAT I JUST SAID. IN THIS CASE -- YOU HAVE THREE OPTIONS, DOCTOR: PSYCHIATRIC CAUSE, FIBROMYALGIA, OR A COMBINATION OF BOTH; THAT IS, THE PATIENT HAS PSYCHIATRIC ISSUES AND THEY ALSO HAVE FIBROMYALGIA, OKAY? DO YOU HAVE THAT IN MIND? THAT'S YOUR OPINION, RIGHT?
A NO. ON THIS PATIENT? ON THIS PATIENT?
Q OKAY. LET ME CLARIFY.
IN GENERAL, YOU TOLD US AT DEPOSITION -- I'LL READ IT IF I NEED TO -- THAT FIBROMYALGIA -- I'M SORRY -- CHRONIC WIDESPREAD PAIN CAN BE CAUSED BY PSYCHIATRIC ISSUES, BY FIBROMYALGIA, OR A COMBINATION OF BOTH CONDITIONS?
A YES.

Q THANK YOU. AND IN THIS CASE, YOU JUST HAPPENED TO BELIEVE THAT IT'S ONLY THE PSYCHIATRIC ISSUES THAT WERE CAUSING THE WIDESPREAD PAIN IN THIS PATIENT, TRUE?

A YES.

Q THANK YOU. ALL RIGHT. NOW, YOU'RE AWARE, ARE YOU NOT, THAT YOUR OPINION ABOUT WHETHER OR NOT IT WAS -- LET ME ABBREVIATE -- FIBROMYALGIA WAS A PROPER DIAGNOSIS IS NOT ACCEPTED BY VIRTUALLY EVERY OTHER DOCTOR THAT EITHER SAW THE PATIENT OR TESTIFIED AS EXPERT WITNESSES; ARE YOU AWARE OF THAT?

A NO. IT'S NOT --

MS. MC BROOM: YOUR HONOR, THAT MISSTATES THE RECORD. IT'S ARGUMENTATIVE.

THE COURT: IT WILL BE SUBJECT TO BEING STRICKEN IF HE CAN'T HOOK IT UP.

BY MR. BLESSEY:

Q LET ME ASK YOU: WE HAVE DR. BLUESTONE ON THE COLUMN OF "NO FIBROMYALGIA."

YOU READ DR. ALAN WEINBERGER'S DEPOSITION; DID YOU NOT?

A YES.

Q AND HE BELIEVES THE PATIENT HAD FIBROMYALGIA, TRUE?

A YES.

Q THERE'S SOME DISAGREEMENT THERE, RIGHT?

HOW ABOUT DR. RAMIN; DID DR. RAMIN BELIEVE THE PATIENT HAD FIBROMYALGIA?

MS. MC BROOM: YOUR HONOR, OBJECTION. CALLS FOR SPECULATION.

THE WITNESS: I BELIEVE I HAVEN'T REVIEWED --

THE COURT: OVERRULED. OVERRULED. JUST TELL US FROM THE MEDICAL RECORDS OF HIS THAT YOU REVIEWED.

MS. MC BROOM: HE TESTIFIED TODAY HE DIDN'T REVIEW THEM.

THE WITNESS: I HAVEN'T REVIEWED DR. RAMIN'S RECORDS.

THE COURT: ALL RIGHT. FAIR ENOUGH.

BY MR. BLESSEY:

Q YOU DON'T KNOW AS YOU SIT HERE TODAY WHETHER OR NOT DR. RAMIN TESTIFIED TO THIS JURY YESTERDAY THAT THE PATIENT HAD FIBROMYALGIA?

A NO, I DON'T KNOW.

Q OKAY. BY THE WAY, YOU HAVE CERTAIN PATIENTS THAT COME TO YOU THAT HAVE PAIN SYMPTOMS THAT YOU REFER TO PAIN MANAGEMENT SPECIALISTS AT CEDARS-SINAI MEDICAL CENTER, CORRECT?

A YES.

Q YOU RELY ON THEM TO MANAGE CERTAIN TYPES OF PATIENTS, RIGHT?

A YES.

Q AND DO YOU KNOW DR. LAURA AUDELL?

A YES.

Q SHE'S ONE OF THOSE DOCTORS IN THE PAIN MANAGEMENT GROUP THAT YOU RELY ON TO MANAGE SOME OF YOUR PATIENTS, CORRECT?

A YES.

Q AND HAVE YOU READ DR. AUDELL'S DEPOSITION THAT WAS GIVEN IN THIS CASE?

A YES.

Q AND DR. AUDELL DISAGREES WITH YOUR CONCLUSION THAT THIS PATIENT DIDN'T HAVE FIBROMYALGIA, TRUE?

A YES.

Q DO YOU KNOW DR. BRUCE STARK?

A NO.

Q WERE YOU AWARE THAT THE PLAINTIFFS RETAINED A DR. BRUCE STARK IN THIS CASE?

A NO.

Q WERE YOU AWARE THAT DR. BRUCE STARK TESTIFIED IN DEPOSITION THAT THE PATIENT HAD FIBROMYALGIA?

A NO, I DON'T KNOW ANYTHING ABOUT THAT.

Q YOU READ DR. BOHN'S DEPOSITION, CORRECT?

THE COURT: WHILE YOU'RE LOOKING THAT UP, DOCTOR, LET'S TAKE OUR MORNING RECESS. LADIES AND GENTLEMEN, 15 MINUTES. AGAIN, PLEASE REMEMBER THE ADMONITION. COURT'S IN RECESS FOR 15 MINUTES.

(RECESS.)

THE COURT: WE'RE ON THE RECORD OUTSIDE THE PRESENCE OF THE JURY.

(THE FOLLOWING PROCEEDINGS WERE HELD

IN OPEN COURT, OUTSIDE THE PRESENCE OF THE JURY:)

MS. MC BROOM: YOUR HONOR, WE WANTED TO BRING UP, THERE WAS MENTION OF DR. BRUCE STARK DURING CROSS-EXAMINATION. WE'RE NOT INTENDING TO CALL DR. BRUCE STARK.

THE COURT: I'M SORRY, WHO?

MS. MC BROOM: DR. BRUCE STARK.

THE COURT: YES.

MS. MC BROOM: HE WAS DESIGNATED AS AN EXPERT LONG AGO. WE'RE NOT CALLING HIM.

THE COURT: YEAH. HE STILL HAS AN OPINION, THOUGH.

MR. BLESSEY: HE WAS DEPOSED.

MS. MC BROOM: HE WAS DEPOSED.

THE COURT: HE WAS DEPOSED.

MS. MC BROOM: BUT I THINK WITHOUT HIM PROVIDING TESTIMONY BEFORE THE JURY, IT'S INAPPROPRIATE TO STATE HIS OPINION.

MR. NEWHOUSE: WELL, PARTICULARLY BECAUSE THIS WITNESS DIDN'T --

THE COURT: HOW WOULD COUNSEL KNOW THAT, THAT YOU'RE NOT INTENDING TO CALL DR. STARK --

MR. NEWHOUSE: BECAUSE WE TOLD HIM --

THE COURT: WHEN WAS HE DEPOSED?

MR. NEWHOUSE: BECAUSE WE TOLD HIM TWO DAYS AGO. AND STARK -- THE ONLY REASON I RAISE THE ISSUE IS WHEN COUNSEL DETERMINED THAT HE HAD NOT READ STARK'S

DEPOSITION, IT'S IMPROPER FOR HIM TO START RECITING WHAT STARK SAID IN HIS DEPOSITION. THE WITNESS DOESN'T KNOW THAT, STARK ISN'T GOING TO BE A WITNESS, AND WE WOULD ASK FOR AN INSTRUCTION THAT THAT KIND OF THING NOT BE DONE BECAUSE HE'S BASICALLY TESTIFYING. OKAY? STARK ISN'T GOING TO TESTIFY. HE ISN'T GOING TO BE HERE, AND COUNSEL SHOULD NOT BE PERMITTED TO BASICALLY TESTIFY BECAUSE THE WITNESS CLEARLY DOESN'T KNOW WHAT STARK SAID. HE DIDN'T READ THE DEPO. IT WOULD BE DIFFERENT IF HE HAD READ THE DEPO.

THE COURT: HOW WAS I TO KNOW THAT HE WASN'T GOING TO BE CALLED?

MR. NEWHOUSE: WE'RE NOT FAULTING THE COURT. WE'RE RAISING THIS ISSUE SO THAT -- TO ASK FOR AN INSTRUCTION. ABSOLUTELY, YOU DIDN'T KNOW.

THE COURT: HOW AM I TO KNOW THAT HE WAS OR WASN'T DEPOSED? I MEAN, I KNOW HE GAVE HIS OPINIONS IN THE CASE.

MR. NEWHOUSE: YOU COULDN'T POSSIBLY HAVE KNOWN, AND THAT'S WHY WE WANTED TO TELL YOU, TO ASK THAT MR. BLESSEY BE TOLD IT'S NOT APPROPRIATE TO GO INTO WHAT STARK MAY OR MAY NOT HAVE SAID IN HIS DEPOSITION.

THE COURT: NOW, IF BLUESTONE HAD READ HIS DEPOSITION --

MR. NEWHOUSE: THAT WOULD BE DIFFERENT.

THE COURT: -- HE CONSIDERED IT.

MR. NEWHOUSE: IT WOULD BE DIFFERENT. BUT HE DIDN'T.

MR. BLESSEY: WELL, THERE'S THE OTHER ISSUE, YOUR

HONOR. I HAVE NO IDEA, LET'S SAY, JUST FROM A STRATEGY DECISION, AND THIS IS JUST AN EXAMPLE, THE PLAINTIFFS' LAWYERS DECIDE, "GEE, DR. STARK'S OPINIONS ARE 180 DEGREES FROM DR. BLUESTONE'S," AND THEY TELL DR. BLUESTONE THAT "DR. STARK SAYS 'A,' 'B,' 'C,' AND 'D' IN A DEPOSITION." I DON'T KNOW IF DR. BLUESTONE IS AWARE THROUGH COUNSEL WHAT DR. STARK SAID.

I'M NOT GOING TO GET INTO IT ANY FURTHER WITH THIS WITNESS. I WILL SAY, THOUGH, THAT MY EXPERTS REVIEWED DR. STARK'S DEPOSITION, AND THEY WILL COMMENT ON IT.

THE COURT: ALL RIGHT.

MR. NEWHOUSE: THAT'S DIFFERENT. THANK YOU, YOUR HONOR.

THE COURT: ALL RIGHT. LET'S BRING IN THE JURORS, INCLUDING DR. BLUESTONE.

(THE FOLLOWING PROCEEDINGS WERE HELD
IN OPEN COURT, IN THE PRESENCE OF
THE JURY:)

THE COURT: ALL RIGHT. PLEASE HAVE A SEAT. WELCOME BACK, LADIES AND GENTLEMEN. WE'RE BACK ON THE RECORD. ALL JURORS ARE PRESENT, IN PLACE. PARTIES ARE PRESENT. LAWYERS ARE PRESENT. DR. RODNEY BLUESTONE HAS RESUMED THE WITNESS STAND. REMINDER, PLEASE, SIR, THAT YOU REMAIN UNDER OATH, UNDERSTOOD?

THE WITNESS: YES, SIR.

BY MR. BLESSEY:

Q DR. BLUESTONE, I CAN FINISH THIS UP FAIRLY QUICKLY WITH A COUPLE OF QUESTIONS FOR YOU. DID YOU -- AT THE BREAK, DID YOU HAVE A DISCUSSION WITH MR. NEWHOUSE?

MR. NEWHOUSE: I'M MR. NEWHOUSE.

THE WITNESS: YES, WE HAD A CONVERSATION.

BY MR. BLESSEY:

Q WAS HE TELLING YOU ABOUT SOMETHING YOU SHOULD SAY IN YOUR TESTIMONY?

A NO.

Q DID HE SHARE WITH YOU SOME RECORDS?

A YES.

Q OKAY. NOW, BEFORE WE GET TO FINISH THIS LIST, YOU WERE TELLING THE JURY ABOUT THE SYNDROME OF CHRONIC WIDESPREAD PAIN, AND I JUST WANT TO MAKE SURE I'M CLEAR.

YOU HAVE NEVER IN YOUR CAREER DONE ANY EXPERIMENTAL OR SCIENTIFIC WORK IN THE FIELD OF CHRONIC WIDESPREAD PAIN, TRUE?

A THAT IS CORRECT, I HAVE DONE NO SCIENTIFIC WORK EXPERIMENTS IN THIS FIELD.

Q OKAY. THANK YOU, DOCTOR.

ALL RIGHT. NOW, ON THIS LIST, I THINK AT THE BREAK, RIGHT BEFORE THE BREAK, I WAS ASKING ABOUT DR. BOHN, THE PSYCHIATRIST, RIGHT?

A YES.

Q AND ARE YOU AWARE FROM READING HIS DEPOSITION OR FROM TALKING TO COUNSEL WHETHER OR NOT

DR. BOHN TOLD THIS JURY IN TRIAL THAT HE FELT THAT MS. DE ROGATIS HAD FIBROMYALGIA, IN FACT, PSYCHIATRIC ISSUES AND FIBROMYALGIA ARE COMMON; WERE YOU AWARE OF THAT?

A NO, I DON'T KNOW WHAT DR. BOHN TOLD THE JURY.

Q OKAY. HOW ABOUT THROUGH HIS DEPOSITION? DID YOU READ HIS DEPOSITION?

A I READ HIS DEPOSITION.

Q DID YOU MAKE NOTE THAT HE FELT THAT FIBROMYALGIA WAS A MAINSTREAM DIAGNOSIS, THAT IT WAS APPROPRIATE TO TREAT WITH OPIATES AND THIS PATIENT HAD, IN FACT, FIBROMYALGIA?

A I READ THAT, YES.

Q AND THEN LAST, I THINK, BUT REALLY NOT LEAST, DR. SPIEGEL, YOU'RE AWARE THAT DR. SPIEGEL OPINED ABOUT WHETHER OR NOT THE PATIENT HAD FIBROMYALGIA?

A I BELIEVE THAT WAS -- EXCUSE ME A MINUTE, PLEASE.

NO, I DID NOT READ IN DR. SPIEGEL'S NOTE THAT HE DIAGNOSED FIBROMYALGIA. I READ HIS NOTE OF 1/2010. HE DIDN'T SAY THAT.

Q DO YOU HAVE -- ARE THOSE YOUR NOTES OR DR. SPIEGEL'S NOTES?

A THESE ARE MY NOTES.

Q OKAY. SO IS IT POSSIBLE YOU MIGHT HAVE LEFT THAT OUT?

A WELL, I BELIEVE I READ DR. SPIEGEL'S REPORT.

REMEMBER, I TOLD YOU, I READ A REPORT WHILE IN RECESS, AND I READ THAT REPORT. HE DIDN'T SAY THAT SHE HAD FIBROMYALGIA IN THAT REPORT.

Q SO WE SHOULDN'T INCLUDE HIM WITH THE OTHER FIVE DOCTORS THAT FELT SHE HAD FIBROMYALGIA?

A THAT'S NOT -- THAT'S NOT FOR ME TO DECIDE.

Q OKAY. NOW, ON THE ISSUE OF TREATING FIBROMYALGIA WITH OPIATES, YOU'RE AWARE, ARE YOU NOT, THAT DR. WEINBERGER BELIEVES IT WAS WITHIN THE STANDARD OF CARE TO DO SO, CORRECT?

A I -- YES, I READ HIS DEPOSITION.

Q AND YOU'RE NOT SURE ABOUT DR. RAMIN, BUT HYPOTHETICALLY, ONCE AGAIN, IF DR. THE RAMIN WAS HERE IN COURT AND TOLD THIS JURY THAT IT WAS APPROPRIATE TO TREAT THIS PATIENT WITH OPIATES, THAT WOULD CONFLICT WITH YOUR OPINION, CORRECT?

A YES, I WOULD STRONGLY -- IT WOULD STRONGLY CONFLICT WITH MY OPINION.

Q ALL RIGHT. AND HOW ABOUT DR. AUDELL; YOU'RE AWARE THAT SHE DOESN'T AGREE WITH YOUR OPINION ABOUT OPIATES TREATING THIS PATIENT, CORRECT?

A AND I STRONGLY DISAGREE WITH DR. AUDELL.

Q AND DR. STARK, WE'LL SKIP OVER.

HOW ABOUT DR. BOHN; HE ALSO -- HYPOTHETICALLY, IF HE TOLD THIS JURY THAT IT WAS NOT ONLY APPROPRIATE TO TREAT MS. DE ROGATIS WITH OPIATES, IT WAS IMPORTANT TO MINIMIZE HER RISK OF SUICIDE, THAT WOULD DISAGREE WITH YOUR OPINION, AS WELL?

MS. MC BROOM: EXCUSE ME. OBJECTION. IT MISSTATES THE EVIDENCE, YOUR HONOR.

THE COURT: SUSTAINED. HE DID SAY THAT HE DID NOT PRESCRIBE OPIATES. HE LEFT THAT TO OTHERS.

BY MR. BLESSEY:

Q BUT HE DID ALSO SAY -- HYPOTHETICALLY, DOCTOR, IF DR. BOHN TOLD THIS JURY YESTERDAY UNDER OATH THAT IT WAS APPROPRIATE AND REASONABLE TO TREAT THIS PATIENT WITH OPIATES, YOU WOULD DISAGREE WITH THAT, CORRECT?

MS. MC BROOM: OBJECTION, YOUR HONOR. IT STILL MISSTATES THE EVIDENCE.

THE COURT: I'M GOING TO LEAVE THAT UP TO THE JURY. OVERRULED. GO AHEAD.

THE WITNESS: I WOULD STRONGLY DISAGREE WITH IT.

BY MR. BLESSEY:

Q DO YOU KNOW, SIR, OF THE LIST OF THE DOCTORS THAT WE HAD -- I GUESS I SHOULD PUT THIS PAGE BACK -- OF THE TREATING DOCTORS, THAT WOULD BE DOCTOR -- LET'S START WITH DR. SPIEGEL.

WAS DR. SPIEGEL AWARE OF THE PATIENT'S PSYCHIATRIC CONDITION WHEN HE SAW HER IN JANUARY 2010?

A I DID NOT SEE ANY AWARENESS OF THAT.

Q HYPOTHETICALLY, SIR, IF DR. SPIEGEL'S RECORDS INDICATE THAT HE WAS AWARE OF THE PATIENT'S PSYCHIATRIC PROBLEMS AND TREATED THE PATIENT WITH NORCO, WOULD HE BE PRACTICING BELOW THE STANDARD OF CARE?

A NO, BECAUSE HE'S A GASTROENTEROLOGIST. SHE

WAS COMPLAINING OF SEVERE ABDOMINAL PAIN, AND UNTIL HE COULD SORT IT OUT, HE GAVE HER A LIMITED NUMBER OF NORCO. I FELT THAT WAS REASONABLE.

Q ARE YOU AS SURE ABOUT HIM BEING A GASTROENTEROLOGIST AS YOU ARE WITH ALL YOUR OTHER OPINIONS IN THIS CASE?

A NO, I THINK HE'S -- NO, I THINK HE IS A PAIN MEDICINE DOCTOR, PAIN MANAGEMENT, I BELIEVE.

Q YOU MADE A MISTAKE IN YOUR TESTIMONY?

A YES, HE'S A PAIN MANAGEMENT DOCTOR.

Q SO HERE'S WHAT I WANTED TO KNOW THEN, ON THAT SCORE: ARE YOU TELLING THIS JURY THAT WHEN A PATIENT PRESENTS TO A PHYSICIAN WITH CHRONIC WIDESPREAD PAIN, THAT THE STANDARD OF CARE IS DIFFERENT FOR DIFFERENT SPECIALTIES?

A I DON'T UNDERSTAND YOUR QUESTION.

Q WELL --

A COULD YOU CLARIFY IT?

Q LET ME SEE IF I CAN HELP.

YOU UNDERSTAND THAT THERE'S SOMEWHAT OF AN OVERLAP SOMETIMES IN TERMS OF TREATING PATIENTS FOR -- LET'S USE PAIN SYMPTOMS, CORRECT? IN OTHER WORDS, RHEUMATOLOGISTS DO IT, RIGHT?

A YEAH.

Q PAIN MANAGEMENT SPECIALISTS DO IT?

A YES, YES.

Q INTERNISTS DO IT, CORRECT?

A YES.

Q SO WHEN A DOCTOR WHO IS NOT A RHEUMATOLOGIST TREATS A PATIENT WITH CHRONIC WIDESPREAD PAIN, DO THEY NOT ESSENTIALLY TAKE ON THE RESPONSIBILITIES OF A RHEUMATOLOGIST IN TREATING THAT PATIENT?

A YES, SOMETIMES.

Q THAT'S WHAT I THOUGHT.

SO, BACK TO THESE TREATING DOCTORS, YOU DON'T THINK DR. SPIEGEL WAS AWARE -- HE'S NOT ON THE LIST -- OF THE PSYCHIATRIC CONDITION. WHAT ABOUT -- WHAT ABOUT DR. BOHN? HE OBVIOUSLY WAS AWARE OF THE PATIENT'S PSYCHIATRIC ISSUES, CORRECT?

A YES. HE'S A PSYCHIATRIST.

Q WAS HE PRACTICING BELOW THE STANDARD OF CARE BY ALLOWING THE PATIENT TO BE TREATED WITH NORCO?

MS. MC BROOM: OBJECTION, YOUR HONOR. MISSTATES THE EVIDENCE.

THE COURT: OVERRULED. THAT'S FOR THE JURY'S DETERMINATION.

THE WITNESS: I MADE NO OBSERVATION ABOUT THAT. IN MY NOTES ABOUT PAUL BOHN, I DISCUSS WHAT HE LOOKED AT. I SAW WHAT HE WAS TRYING TO DO, BUT I DIDN'T SEE ANYTHING OF THE NATURE YOU'VE JUST MENTIONED.

BY MR. BLESSEY:

Q AND YOU CAN'T COMMENT ON DR. RAMIN; YOU ALREADY ESTABLISHED YOU HADN'T SEEN HIS RECORDS OR HIS DEPOSITION?

A THAT IS CORRECT.

Q WERE YOU AWARE BEFORE YOU CAME INTO COURT

TODAY OF DR. RAMIN AS A TREATING DOCTOR?

A I DON'T BELIEVE SO.

Q NOW, I THINK THE LAST ISSUE I HAVE FOR YOU IS, THERE WAS SOME MENTION ABOUT CYMBALTA --

A YES.

Q -- ON DIRECT EXAM.

NOW, WHEN A RHEUMATOLOGIST PRESCRIBES CYMBALTA, IT'S GENERALLY TO TREAT PAIN SYMPTOMS, TRUE?

A IT MAY BE -- NO. RHEUMATOLOGISTS USE IT SOMETIMES TO TREAT CHRONIC PAIN AND SOMETIMES TO TREAT DEPRESSION.

Q WHAT'S YOUR IMPRESSION OF WHAT DR. SHAINSKY WAS DOING IN THIS CASE -- IN THIS CASE? THAT IS, WHAT WAS YOUR UNDERSTANDING OF WHY SHE PRESCRIBED CYMBALTA IN THIS CASE?

A I THINK SHE WAS GIVING CYMBALTA BECAUSE SHE DIAGNOSED FIBROMYALGIA.

Q AND WHAT WAS YOUR UNDERSTANDING -- WE TALKED ABOUT THE CONFLICT IN HER NOTES ABOUT WHETHER OR NOT TO USE OPIATES. LET ME ASK IT THIS WAY: YOU'VE HEARD THE EXPRESSION "TITRATING MEDICATIONS"?

A YES.

Q WHAT DOES THAT MEAN TO YOU?

A THAT MEANS YOU WEAN OFF ONE DRUG WHILE YOU INTRODUCE ANOTHER. USUALLY IT MEANS THAT, OR YOU'RE JUST TITRATING, GRADUALLY REDUCING ONE DRUG.

Q OKAY. SO, FOR EXAMPLE, IN THIS CASE, CYMBALTA WAS A DRUG, WAS IT YOUR UNDERSTANDING, THAT

DR. SHAINSKY WAS TITRATING?

A I DIDN'T SEE ANY EVIDENCE OF THAT. I JUST SAW A PRESCRIPTION, AND I DIDN'T SEE ACTUALLY A NOTE SAYING SHE'S TITRATING.

Q WELL, DID YOU SEE THE -- THE FIRST PRESCRIPTION, DOCTOR, IN YOUR CAREFUL REVIEW OF THE RECORDS OF A 30-MILLIGRAM PRESCRIPTION FOR CYMBALTA?

A YES.

Q AND THEN DID YOU SUBSEQUENTLY SEE IN LATER VISITS A 60-MILLIGRAM PRESCRIPTION FOR CYMBALTA?

A YES, YES.

Q DID YOU NOT THINK THAT MAYBE SHE WAS TITRATING UP THE CYMBALTA IN AN EFFORT TO EVENTUALLY DECREASE THE OPIATE? DID YOU NOT THINK THAT?

A NO, I CAN'T MAKE THAT CONCLUSION. ALL I SAW WAS THAT SHE INCREASED THE DOSE OF CYMBALTA TO A MORE SUBSTANTIAL DOSE.

Q SO AS YOU SIT HERE TODAY, UNDER OATH --

A YES.

Q -- YOU HAVE NO OPINION WHETHER OR NOT DR. SHAINSKY WAS TITRATING UP THE CYMBALTA WITH THE LONG-TERM GOAL OF EVENTUALLY TAKING THE PATIENT OFF OPIATES? YOU HAVE NO OPINION ABOUT THAT?

A NO. I HAVE NO STRONG OPINION EXCEPT WHAT SHE WROTE AND AS OPPOSED TO WHAT SHE DID.

Q YOU HAVE A STRONG OPINION ABOUT YOUR INTERPRETATION OF WHAT SHE WROTE, CORRECT?

A OH, YES. I ONLY HAVE HER RECORDS.

Q JUST TO BE CLEAR, YOU NEVER HAD THE OPPORTUNITY TO EVALUATE, EXAMINE MS. DE ROGATIS, DID YOU?

A THAT IS CORRECT.

Q YOUR OPINIONS ARE BASED ON WHAT YOU REMEMBER IN THE MEDICAL RECORDS, THAT IS, THE MEDICAL RECORDS THAT YOU WERE PROVIDED WITH BY COUNSEL, TRUE?

A WELL, NOT ON MEMORY. I'VE MADE NOTES BECAUSE I COULDN'T REMEMBER IT.

Q WELL, YOU CERTAINLY DIDN'T WRITE DOWN EVERYTHING IN YOUR NOTES, DID YOU?

A NO. I WROTE DOWN WHAT I FELT WERE THE KEY AREAS.

Q YOU DON'T BELIEVE THAT THE PRESCRIPTION FOR CYMBALTA, THE TREATMENT WITH CYMBALTA, WAS BELOW THE STANDARD OF CARE, DO YOU?

A NO. WHAT I'VE SAID, AND I BELIEVE I SAID IN DEPOSITION --

Q WAS YOUR ANSWER "NO," SIR?

MS. MC BROOM: YOUR HONOR, COULD HE BE PERMITTED TO ANSWER?

THE COURT: I'M SORRY. IS THE ANSWER "NO" OR "YES"? WAS THE TREATMENT IN THE USE OF CYMBALTA -- ARE YOU CRITICAL OF THAT?

THE WITNESS: I WAS ONLY CRITICAL, YOUR HONOR, THAT SHE WAS ALREADY TAKING PSYCHIATRIC MEDICATIONS AND NO ATTEMPT HAD BEEN MADE TO LIAISE WITH THE TREATING PSYCHIATRIST. THAT WAS MY ONLY CRITICISM. I'M NOT CRITICAL OF USING THAT DRUG IN PATIENTS WITH CHRONIC

WIDESPREAD PAIN.

MR. BLESSEY: I MOVE TO STRIKE AS NONRESPONSIVE.

BY MR. BLESSEY:

Q LET ME ASK A "YES" OR "NO" QUESTION.

A YES.

Q WAS THE PRESCRIPTION BY DR. SHAINSKY FOR CYMBALTA IN THIS CASE BELOW THE STANDARD OF CARE?

A NO.

MR. BLESSEY: THANK YOU. NOTHING FURTHER.

THE COURT: REDIRECT.

MS. MC BROOM: THANK YOU, YOUR HONOR.

REDIRECT EXAMINATION

BY MS. MC BROOM:

Q DR. BLUESTONE, HAS ANY AMOUNT OF MONEY BEEN PAID OR GOING TO BE PAID FOR TODAY'S TESTIMONY INFLUENCED YOUR OPINION OF DR. SHAINSKY'S CARE IN THIS CASE?

A NO.

Q YOU MENTIONED TODAY THAT LEGAL-MEDICAL CASES, YOU KNOW, TAKE UP ABOUT 2 PERCENT OF YOUR PRACTICE.

SO AM I RIGHT THAT THE INCOME YOU RECEIVE FROM MEDICAL-LEGAL CASES, YOU'RE NOT DEPENDENT ON TO SUPPORT YOUR PRACTICE?

A THAT IS CORRECT.

Q THERE'S A LIST OF DOCTORS HERE.

A YES.

Q AND DO YOU UNDERSTAND DR. WEINBERGER IS RETAINED BY THE DEFENSE?

A YES, I READ THAT.
Q SO ARE YOU SURPRISED THAT HE WOULD DISAGREE WITH YOUR OPINION?
A WELL, I HAVE NOT MADE ANY -- NO, I HAVE NO THOUGHTS ABOUT THAT.
Q DR. RAMIN, YOU TALKED ABOUT. DO YOU UNDERSTAND HIM TO BE A RHEUMATOLOGIST?
A I DON'T KNOW HIM AS A RHEUMATOLOGIST.
Q OKAY. DR. AUDELL, DO YOU UNDERSTAND HER TO BE RETAINED BY THE DEFENSE TO DISAGREE WITH YOUR OPINION?
A I DON'T -- I DON'T KNOW THE REASON FOR HER RETENTION.
Q OKAY. DO YOU UNDERSTAND WHETHER SHE IS A RHEUMATOLOGIST?
A OH, I KNOW SHE'S NOT A RHEUMATOLOGIST. SHE'S A PAIN MANAGEMENT SPECIALIST.
Q AND DR. STARK, YOU HAVEN'T REVIEWED THOSE RECORDS, CORRECT?
A CORRECT.
Q YOU UNDERSTAND HIM TO BE A RHEUMATOLOGIST?
A NO, HE'S NOT A RHEUMATOLOGIST.
Q AND DR. BOHN, DO YOU UNDERSTAND HIM TO BE A RHEUMATOLOGIST?
A NO, HE'S NOT A RHEUMATOLOGIST.
Q AND IN YOUR REVIEW OF THE RECORDS, DID YOU SEE THAT ANY OF THE OTHER TREATING PHYSICIANS OF TARA DE ROGATIS HAD ACCESS TO THAT CEDARS E.R. DOCUMENT WHICH OUTLINED TARA'S PSYCHIATRIC HISTORY?

A NO. I DON'T SEE THAT ANY OF THEM WERE AWARE OF THAT DOCUMENT.

Q THERE WAS SOME DISCUSSION ABOUT DR. SPIEGEL'S RECORDS. I'D LIKE TO DIRECT YOUR ATTENTION TO EXHIBIT 102. I'LL GET THAT FOR YOU. IT MIGHT BE HARD TO READ.

A I CAN READ IT OKAY.

Q OKAY.

A YES.

(MARKED FOR IDENTIFICATION, JOINT EXHIBITS 102-1 TO 102-6, 1/11/10 MEDICAL RECORDS OF BRADLEY SPIEGEL, M.D.)

BY MS. MC BROOM:

Q DO YOU RECALL REVIEWING THESE RECORDS?

A YES. AND I WAS -- REREVIEWED THEM DURING THE INTERMISSION WE HAD.

Q OKAY. IS IT YOUR UNDERSTANDING FROM A REVIEW -- DO YOU HAVE AN UNDERSTANDING OF WHAT DR. SPIEGEL DIAGNOSED TARA WITH?

A IT'S ON THE NEXT PAGE, I THINK.

Q GO AHEAD AND TAKE YOUR TIME --

A THANK YOU.

Q -- TO REFRESH YOUR RECOLLECTION.

A THANK YOU. YES, THIS IS WHAT I RECALL NOW, HE DIDN'T ACTUALLY STATE -- HE DIDN'T ACTUALLY MAKE A

DIAGNOSTIC STATEMENT.

Q HE DID NOT MAKE A DIAGNOSTIC STATEMENT?

A NO, HE DID NOT, NO, NO. HE EXPLAINED HER HISTORY AND THE PHYSICAL AND THE DILEMMAS, BUT HE DID NOT MAKE A DIAGNOSTIC STATEMENT.

Q DID HE PROVIDE SOME REASONING AS TO WHY HE WASN'T ABLE TO DO SO?

A WELL, HE SAID SHE HAD HAD AN EXTENSIVE WORKUP IN THE PAST WITH A LONG HISTORY OF THE SYMPTOMS, AND HE COULDN'T DO -- HE THOUGHT -- HE WOULD TRY AND WORK UP WHY SHE HAS PAIN, BUT HE WAS WANTED TO FIND OUT WHAT TESTS HAD BEEN DONE IN THE PAST.

AND THEN HE FOUND OUT SHE HAD BEEN TAKING SOME VICODIN FROM HER FRIEND, AND HE EXPLAINED TO HER THAT THAT WASN'T A GOOD THING TO DO UNTIL THEY KNEW WHY SHE WAS HAVING PAIN. AND SO HE GAVE HER A PRESCRIPTION FOR JUST 20 NORCO AND SOMETHING TO STOP NAUSEA WHILE HE STARTED TO TRY AND CONTACT THE OTHER DOCTOR TO SEE WHAT HAD BEEN DONE IN THE PAST DURING HER INVESTIGATIONS.

Q SO HE HAD, ACCORDING TO THESE RECORDS, INTENDED ON REACHING OUT TO A PRIMARY CARE PHYSICIAN?

A YES, THE DOCTORS WHO HAD PREVIOUSLY DONE TESTS ON HER.

Q AND YOU'RE AWARE FROM A REVIEW OF THIS RECORD THAT HE HAD SOME KNOWLEDGE OF TARA DE ROGATIS' PSYCHIATRIC HISTORY?

A YES, AND INCLUDING NUMEROUS MEDICATIONS IN THE PAST.

Q INDEED, DR. SPIEGEL DID NOT MAKE A DIAGNOSIS OF FIBROMYALGIA; IS THAT CORRECT?

A NO, HE DIDN'T -- HE MADE NO DIAGNOSTIC STATEMENT AT ALL IN HIS REPORT.

Q IN FACT, HE STATED THAT HE WAS NOT GOING TO GIVE HER AN ONGOING COURSE OF TREATMENT WITH OPIATES AT THIS POINT?

A THAT IS CORRECT.

Q IS THAT WITHIN THE STANDARD OF CARE?

A YES. HE PRACTICED ABSOLUTE STANDARD OF CARE FOR TREATING PAIN, BUT I'M NOT QUALIFIED TO STATE THE STANDARD OF CARE FOR PAIN MANAGEMENT. ONLY OTHER PAIN MANAGEMENT DOCTORS CAN DO THAT.

MS. MC BROOM: NOTHING FURTHER, YOUR HONOR.

THE COURT: RECROSS?

MR. BLESSEY: YES, JUST BRIEFLY.

RECROSS-EXAMINATION

BY MR. BLESSEY:

Q SO, DOCTOR, DR. SPIEGEL, YOU BELIEVE, PRACTICED WITHIN THE STANDARD OF CARE. ARE YOU AWARE THAT HE WAS THE ONE WHO REFERRED THE PATIENT TO DR. RAMIN FOR FURTHER TREATMENT? ARE YOU AWARE OF THAT?

A NO.

Q OKAY. IF YOU -- ACTUALLY, IF YOU LOOKED CAREFULLY THROUGH HIS RECORDS -- IN THE INTEREST OF TIME, LOOK AT PAGE -- I BELIEVE IT'S 11 -- ACTUALLY IT'S 10.

A IN THIS FILE?

Q YES, IT IS, SIR. CAN I HELP YOU FIND IT?
A I CAN GO TO 10. OOPS. IT'S A BIG FILE.
Q IT IS.
A ALL RIGHT. I NOW HAVE OPENED PAGE 10.
Q OKAY. AND DO YOU SEE BY THE DATE JANUARY 20TH, 2010, RESULTS TO DR. RAMIN?
A EXCUSE ME A MOMENT. I'M LOOKING -- PAGE 10 HERE IS -- IT'S NOT FOR THIS PHYSICIAN.
MR. BLESSEY: MAY I APPROACH, YOUR HONOR?
THE COURT: YES.
BY MR. BLESSEY:
Q I THINK THERE'S -- AND IT'S EASY BECAUSE IT'S A BIG FILE, LIKE YOU SAID. SO, YEAH, YOU'RE IN -- IT'S EXHIBIT 102, SO WE'RE GOING TO FLIP THE PAGE.
A OH.
Q IT'S OKAY. YOU'RE KEEPING ME ON MY TOES HERE.
A I CRUSHED MY KNEES FOR NOTHING.
Q OKAY. WE'RE ON PAGE 10 NOW?
A OKAY. I'VE GOT 102-10. I SEE IT NOW. THANK YOU.
Q AND IS THERE A REFERENCE TO DR. RAMIN?
A IT SAYS, "FAX BLOOD TEST RESULTS TO DR. RAMIN."
Q WHEN YOU SAW THAT NOTE, DID YOU ASK COUNSEL, "YOU KNOW, GET ME THE RECORDS OF DR. RAMIN BECAUSE I DON'T KNOW WHO HE IS"?
A NO, I DIDN'T ASK THAT QUESTION.

Q OKAY. YOU JUST TOLD THE JURY THAT YOU THOUGHT DR. SPIEGEL, THOUGH, UNDER THESE CIRCUMSTANCES, WAS PRACTICING WITHIN THE STANDARD OF CARE, CORRECT?

A AND I POINTED OUT, I'M NOT REALLY QUALIFIED TO SAY THAT.

Q I UNDERSTAND. SO LET'S TAKE A LOOK AT SOME OTHER RECORDS HERE IN DR. SPIEGEL'S. YEAH, LET'S NOT DROP THAT ON YOUR KNEE AGAIN.

YOU RECALL, DO YOU NOT, THAT THE PATIENT FILLED OUT A QUESTIONNAIRE IN DR. SPIEGEL'S OFFICE?

A YES.

Q TAKE A LOOK.

A YES.

Q WE'RE LOOKING TOGETHER NOW AT EXHIBIT 102-3, CORRECT?

A YES.

Q AND UNDER "PSYCHIATRIC," THERE ARE THESE CATEGORIES THAT ARE THERE, AND THERE'S A LITTLE CIRCLE NEXT TO IT, CORRECT?

A YES.

Q AND SOME OF THESE CIRCLES ARE CHECKED, RIGHT?

A YES.

Q AND WHERE IT SAYS, "SUICIDAL THOUGHTS," IS THAT BOX CHECKED IN DR. SPIEGEL'S RECORDS?

A YES.

Q AND WHERE IT SAYS -- WHAT ELSE DOES IT SAY? IT SAYS, "TROUBLE SLEEPING," IS CHECKED, RIGHT?

A YES.
Q "FEELING DEPRESSED"?
A YES.
Q WHAT DOES THIS SAY HERE?
A "INAPPROPRIATE CRYING."
Q OKAY.
A AND "INAPPROPRIATE LAUGHING."
Q SO YOU WOULD ASSUME THAT DR. SPIEGEL WAS AWARE OF THESE PSYCHIATRIC ISSUES WHEN HE TREATED MS. DE ROGATIS, TRUE?
A YES.
Q AND YOU FEEL IT WAS WITHIN THE STANDARD OF CARE, KNOWING THAT PSYCHIATRIC HISTORY, TO TREAT THIS PATIENT WITH AN OPIATE, NORCO, TRUE?
A I'M NOT QUALIFIED WITH STANDARD OF CARE FOR A PAIN MANAGEMENT DOCTOR.
Q WELL, YOU JUST TOLD US A FEW MINUTES AGO --
A NO, I SAID, IF IT WAS -- IN TERMS OF RHEUMATOLOGY, I HAVE NO PROBLEM WITH WHAT HE DID.
MR. BLESSEY: OKAY. THANK YOU VERY MUCH.
I HAVE NOTHING FURTHER, YOUR HONOR.
THE COURT: ALL RIGHT. ANYTHING ELSE?
MS. MC BROOM: JUST BRIEFLY.

FURTHER REDIRECT EXAMINATION

BY MS. MC BROOM:
Q TO YOUR KNOWLEDGE, DID DR. SPIEGEL REFER TARA DE ROGATIS TO SEE DR. RAMIN? IS THAT WHAT THE

RECORDS STATE?

A IT DOESN'T SAY THAT. IT JUST SAID, "FAX THE RESULTS TO HIM." IT DOESN'T SAY "REFER THE PATIENT," SO I DON'T KNOW ABOUT THAT.

Q AND TO YOUR UNDERSTANDING, DID TARA DE ROGATIS MAKE STATEMENTS TO DR. SPIEGEL ABOUT WANTING TO DIE AND WANTING TO END HER LIFE?

A YES, YES.

Q TO DR. SPIEGEL?

A WELL, IT SAID -- NO, BUT IT SAID -- I DON'T KNOW ABOUT THAT, BUT HE TICKED OFF AS POSITIVE "SUICIDAL THOUGHTS."

Q ALL RIGHT. IN THE RECORDS, THERE'S NO EVIDENCE THAT SHE WALKED INTO THE OFFICE AND STATED SHE WANTED TO END HER LIFE?

A NO, I DIDN'T SEE THAT IN THE RECORD.

Q AND, AGAIN, DR. SPIEGEL'S RECORDS DO NOT INCLUDE THE CEDARS E.R. RECORD FROM JUST TEN MONTHS AGO, CORRECT?

A THAT IS CORRECT.

MS. MC BROOM: THANK YOU.

THE COURT: ANYTHING ELSE?

MR. BLESSEY: NO, YOUR HONOR.

THE COURT: ALL RIGHT. THANK YOU VERY MUCH, DOCTOR.

THE WITNESS: THANK YOU, YOUR HONOR.

THE COURT: YOU'RE EXCUSED. THANK YOU FOR COMING IN.

MS. MC BROOM: YOUR HONOR, WE WOULD MOVE TO ADMIT THE ENTIRE RECORD, 102-1 TO 102-10.

THE COURT: DR. SPIEGEL'S RECORDS?

MR. BLESSEY: NO OBJECTION.

THE COURT: RECEIVED.

(RECEIVED INTO EVIDENCE, JOINT EXHIBITS 102-1 TO 102-6.)

THE CLERK: DO YOU SOLEMNLY STATE THAT THE TESTIMONY YOU MAY GIVE IN THE CAUSE NOW PENDING BEFORE THIS COURT SHALL BE THE TRUTH, THE WHOLE TRUTH, AND NOTHING BUT THE TRUTH, SO HELP YOU GOD?

THE WITNESS: I DO.

THE CLERK: PLEASE HAVE A SEAT ON THE WITNESS STAND.

PLEASE STATE YOUR NAME AND SPELL YOUR NAME FOR THE RECORD.

THE WITNESS: MY NAME IS RAFFI DJABOURIAN. THE FIRST NAME IS R-A-F-F-I. THE LAST NAME IS D-J-A-B-O-U-R-I-A-N.

THE COURT: WELCOME.

THE WITNESS: GOOD MORNING.

THE COURT: ARE YOU A DOCTOR?

THE WITNESS: YES, I AM.

THE COURT: OKAY. ARE YOU THE HEAD CORONER?

THE WITNESS: NO, I'M NOT.

THE COURT: OKAY. YOU'RE WITH THE COUNTY CORONER'S

OFFICE?

THE WITNESS: OH, YES. IN FACT, WE JUST GOT A -- WE JUST HAVE A NEW CHIEF --

THE COURT: THAT'S WHAT I THOUGHT.

THE WITNESS: -- A FEW WEEKS AGO.

THE COURT: OKAY. THANK YOU.

MS. MC BROOM: THANK YOU, YOUR HONOR. YOU HELPED ME OUT.

RAFFI DJABOURIAN, M.D.,

CALLED AS A WITNESS BY THE PLAINTIFFS, WAS DULY SWORN AND TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

BY MS. MC BROOM:

Q WHAT IS YOUR POSITION AT THE CORONER'S OFFICE?

A I'M A SENIOR DEPUTY MEDICAL EXAMINER.

Q OKAY. AND WHAT ARE YOUR RESPONSIBILITIES AS A SENIOR DEPUTY MEDICAL EXAMINER?

A IN ADDITION TO CONDUCTING THE AUTOPSIES IN WHICH I DETERMINE CAUSE OF DEATH AND MANNER OF DEATH, I ALSO ASSIGN CASES. IN THE MORNINGS ON CERTAIN DAYS, I DO EVALUATIONS OF SOME OF THE OTHER DEPUTY MEDICAL EXAMINERS AND OTHER TASKS AS WELL.

Q OKAY. ARE YOU A MEDICAL DOCTOR?

A YES, I AM.

Q CAN YOU JUST, FOR THOSE OF US WHO MAY NOT

KNOW, BRIEFLY TELL US WHAT AN AUTOPSY IS?

A SURE. IT'S AN EXAMINATION OF A HUMAN BEING AFTER DEATH IN ORDER TO DETERMINE THE CAUSE OF DEATH AND MANNER OF DEATH.

DIFFERENT PARTS OF THE AUTOPSY INCLUDE EXTERNAL EXAMINATION, IN WHICH WE LOOK FOR CHARACTERISTIC FEATURES ON THE BODY, IDENTIFYING FEATURES, DISEASE PROCESSES, INJURIES.

THEN WE DO AN INTERNAL EXAMINATION WHERE AGAIN WE LOOK FOR DISEASE PROCESSES, INJURIES, DESCRIBE THE ORGANS, AND WE COLLECT ANY SPECIMENS THAT MAY BE USEFUL IN ANY TYPE OF TESTING, EITHER TOXICOLOGY EXAM, MICROSCOPIC EXAM, AND OTHER EXAMINATIONS.

Q OKAY. THANK YOU. HOW LONG HAVE YOU BEEN EMPLOYED ABOUT THE COUNTY DEPARTMENT CORONER?

A ROUGHLY 15 YEARS.

Q NOW, WHEN YOU PERFORM AN AUTOPSY, DO YOU DRAFT A REPORT REGARDING THE FINDINGS?

A YES.

Q OKAY. DO YOU TYPICALLY INCLUDE A TOXICOLOGY ANALYSIS WITH AN AUTOPSY, OR DOES IT DEPEND ON THE CIRCUMSTANCES?

A EXACTLY, IT DEPENDS ON THE CIRCUMSTANCES.

Q IN WHAT CASES WOULD YOU PERFORM SUCH AN ANALYSIS?

A ON ALL CASES THAT ARE HOMICIDES, WE PERFORM TOXICOLOGIC ANALYSIS; AND ON ALMOST ALL CASES THAT ARE LIKELY DRUG OVERDOSES, WE'LL DO AN ANALYSIS. AND OTHER

CASES THAT MAY BE COMPLEX OR WHERE WE NEED TO RULE OUT DRUG TOXICITY, WE MAY DO IT, EVEN THOUGH WE DON'T THINK THERE MAY BE DRUGS ON BOARD.

Q NOW, DO YOU DO THE TOXICOLOGY ANALYSIS TO DETERMINE THE PRESENCE OF DRUGS?

A YES, AS WELL AS ALCOHOL.

Q OKAY. ARE YOU ABLE TO DETERMINE THE QUANTITY OF THE DRUG AND NOT, YOU KNOW -- AS OPPOSED TO JUST THE PRESENCE OF THE DRUG?

A YES. WE QUANTIFY IT AS WELL.

Q OKAY. AND ARE THE FINDINGS FROM THE TOXICOLOGY ANALYSIS ALSO TYPICALLY INCLUDED IN AN AUTOPSY REPORT?

A YES, THAT'S PART OF THE REPORT. THE TOXICOLOGY ANALYSIS IS DONE BY OUR LABORATORY DEPARTMENT, BUT WE DO -- WHEN WE GET THE RESULTS, WE DO INTERPRETATION. AND IF WE NEED SOME CONSULTATION WITH THE TOXICOLOGIST, WE'LL REQUEST A CONSULTATION WITH THEM.

Q OKAY. I'M GOING TO HAVE YOU TURN TO EXHIBIT 114. I'M GOING TO HELP YOU GET THAT IN FRONT OF YOU.

(MARKED FOR IDENTIFICATION, JOINT EXHIBITS 114-1 TO 114-26, AUTOPSY REPORT.)

BY MS. MC BROOM:

Q CAN YOU IDENTIFY EXHIBIT 114?

A YES. THAT'S A COPY OF THE AUTOPSY REPORT. IT'S AN ADULT FORM PROTOCOL. IT'S A HANDWRITTEN PROTOCOL WHICH WE PLACE OUR FINDINGS ON, INCLUDING AN ANATOMIC SUMMARY AS WELL AS AN OPINION.

Q OKAY. FOR WHOM WAS THIS AUTOPSY PERFORMED ON?

A THE NAME OF THE DECEDENT WAS TARA DE ROGATIS.

Q LOOKING AT THIS DOCUMENT, ARE YOU THE ONE WHO PERFORMED THE AUTOPSY OF TARA DE ROGATIS?

A YES, AND I WAS ALSO SUPERVISING A PATHOLOGY RESIDENT FROM ONE OF THE HOSPITALS.

Q IS THIS YOUR REPORT? DID YOU DRAFT THIS REPORT FOLLOWING THE AUTOPSY?

A YES.

MS. MC BROOM: YOUR HONOR, I MOVE TO ADMIT EXHIBIT 114.

THE COURT: ANY OBJECTION?

MR. BLESSEY: NO, YOUR HONOR.

THE COURT: RECEIVED.

(RECEIVED INTO EVIDENCE, JOINT EXHIBITS 114-1 TO 114-26.)

THE CLERK: HOW MANY PAGES?

THE COURT: GOSH, WHAT IS IT? 31 PAGES.

MR. NEWHOUSE: 31 PAGES.

MS. MC BROOM: WE'VE ALREADY ADMITTED PART OF IT.

THE COURT: WELL, ANYHOW, IT STARTS AT EXHIBIT 114-1 THROUGH 114-31, SO --
BY MS. MC BROOM:
Q ON WHAT DAY DID YOU PERFORM THE AUTOPSY OF TARA DE ROGATIS?
A IT WAS ON MARCH 25TH, 2010.
Q OKAY. AND ARE YOU AWARE OF HER DATE OF DEATH?
A I BELIEVE IT WAS MARCH 23RD, 2010.
Q SO APPROXIMATELY TWO DAYS LATER?
A YES.
Q NOW, AS PART OF YOUR AUTOPSY, YOU EXAMINED EACH OF TARA DE ROGATIS' ORGANS?
A YES.
Q OKAY. DID YOU DISCOVER ANYTHING IN TARA DE ROGATIS' STOMACH IN YOUR EXAM?
A YES, WE DID.
Q AND WHAT DID YOU DISCOVER?
A WE SAW THAT THERE WAS A SUBSTANTIAL AMOUNT OF PASTY CONTENTS, WHICH WOULD BE TYPICAL OF RESIDUAL MEDICATIONS.
Q OKAY. SO, IN OTHER WORDS, DID YOU TAKE THAT TO BE PILLS OR MEDICATION THAT HAD NOT YET BEEN ABSORBED?
A YES, THEY WERE PARTIALLY DIGESTED AND NOT YET ABSORBED.
Q DID YOU FIND ANY INTACT PILLS IN TARA'S STOMACH?
A I DON'T BELIEVE WE FOUND ANY INTACT PILLS.

Q DID YOU CONDUCT A TOXICOLOGICAL ANALYSIS OF THAT PASTY FLUID THAT WAS DISCOVERED IN HER STOMACH?

A I WOULD HAVE TO REFER TO MY REPORT, IF I MAY.

Q YOU MAY.

THE WITNESS: YOUR HONOR?

THE COURT: YES.

THE WITNESS: I'M REFERRING TO THE FORENSIC SCIENCE LABORATORIES, LABORATORY ANALYSIS SUMMARY REPORT. IT'S TWO PAGES, AND SO THE LABORATORY --

THE COURT: WHAT PAGES?

THE WITNESS: OH, IT'S NOT A PAGE NUMBER. IT'S ACTUALLY THE LABORATORY REPORT -- WE -- WE PHRASE IT "THE TOXICOLOGY REPORT."

MS. MC BROOM: I'LL GET THE PAGE. EXCUSE ME.

BY MS. MC BROOM:

Q IS THIS WHAT YOU'RE LOOKING AT?

A YES.

MS. MC BROOM: IT'S PAGE -- YOUR HONOR, IT'S PAGE 114-25.

THE COURT: THANK YOU.

THE WITNESS: SO THE LABORATORY DETERMINES WHAT TESTING TO DO. IF THEY HAVE ANY QUESTIONS, THEY MAY ASK US CERTAIN QUESTIONS, IF WE WANT OTHER THINGS TESTED, BUT MOST OF THE TIME THEY DON'T ASK US.

A STOMACH CONTENT ANALYSIS WAS NOT DONE.

BY MS. MC BROOM:

Q OKAY. DID YOU ALSO TAKE SPECIMENS FROM THE

LIVER?

A AGAIN, I'LL REVIEW -- I'LL REVIEW THE REPORT. WE -- TYPICALLY, IN A CASE LIKE THIS, WE DEFINITELY WOULD TAKE THE LIVER, BUT I'LL CONFIRM EXACTLY WHAT SPECIMENS WERE TAKEN.

Q SURE.

A I'LL REFER TO THE EXHIBIT SINCE IT HAS NUMBERS. I'M REFERRING TO PAGE 114-15.

Q THANK YOU.

A ON THE BOTTOM OF THE PAGE, IT SAYS, "TOXICOLOGY. THE SPECIMENS RECOVERED INCLUDED LIVER TISSUE."

Q AND DID YOU CONDUCT ANY TOXICOLOGICAL TESTING ON THAT SPECIMEN?

A AGAIN, I'M REFERRING TO THE TOXICOLOGY REPORT. NO, NO TESTING WAS DONE ON THE LIVER EITHER.

Q DID YOU DISCOVER ANY ABNORMALITIES IN TARA'S HEART OR LUNGS DURING THE AUTOPSY?

A NO.

Q AND WERE YOU ABLE TO ESTIMATE THE TIME OF DEATH OR A TIME FRAME?

A YES. IN FACT, I DID IT ON ONE OF THE FORMS. FROM THE TIME -- THE WAY THAT WE CAN GIVE AN ESTIMATE DEPENDS A LOT ON OUR CORONER INVESTIGATOR. THEY GO TO THE SCENE, AND THEY TAKE CERTAIN MEASUREMENTS ON THE BODY OR MAKE CERTAIN OBSERVATIONS; BECAUSE BY THE TIME THE BODY GETS TO AUTOPSY, IT'S BEEN REFRIGERATED, AND THERE'S A LOT OF OTHER FACTORS, SO WHAT WE SEE IS NOT AS USEFUL.

HOWEVER, CERTAIN THINGS CAN BE TAKEN BY THE INVESTIGATOR. ONE OF THOSE THINGS INCLUDES WHAT'S CALLED A LIVER TEMPERATURE, AND THAT CAN BE HELPFUL. YOU CAN LOOK AT THE -- HOW THE BLOOD SETTLES ON THE BODY. SOMETIMES THAT CAN BE HELPFUL.

AND YOU CAN LOOK AT THE STIFFNESS OF THE BODY, WHETHER, WE CALL IT, RIGOR MORTIS, IF THAT HAS SET IN. THOSE ARE ALL FACTORS YOU CAN USE TO MAKE AN ESTIMATE. YOU CAN NEVER BE EXACT.

Q OKAY. AND I'M SHOWING YOU WHAT'S MARKED EXHIBIT 114-19, 114-19.

IS THIS THE PAGE WHERE YOU PUT YOUR FINDINGS REGARDING THE TIME OF DEATH?

A YES.

Q AND IT LOOKS LIKE YOU CONCLUDED IT WAS MOST -- SOMETIME BETWEEN 3:00 A.M. AND 6:00 A.M.?

A THAT'S CORRECT.

Q WAS A TOXICOLOGY ANALYSIS DONE IN THIS CASE FOR TARA DE ROGATIS?

A YES.

Q DID YOU CONDUCT THAT ANALYSIS?

A NO. THE LABORATORY CONDUCTS IT. WE INTERPRET THE REPORT THAT THEY PROVIDE US.

Q AND DID YOU REVIEW THAT REPORT?

A YES.

Q AND DID YOU USE THAT REPORT IN DETERMINING THE CAUSE OF DEATH?

A YES.

Q I'M SHOWING YOU -- I'D LIKE YOU TO TURN TO 114-20. IT IS A DOCUMENT, IT SAYS, "MISCELLANEOUS WORKSHEET TOXICOLOGY REVIEW." I JUST WANT TO WALK THROUGH THIS WITH YOU.

THERE'S DIFFERENT COLUMNS. THIS COLUMN IS LABELED, "DRUGS." ARE THESE THE DRUGS THAT WERE DETECTED IN TARA'S BLOOD?

A YES.

Q OKAY. AND OVER HERE IT SAYS, "LEVELS." IT SAYS, "FEM," AND THEN, "HEART." CAN YOU EXPLAIN WHAT THAT MEANS?

A YES. WHEN WE TAKE BLOOD SPECIMENS FROM A PERSON WHO HAS DIED, WE TAKE THEM FROM TWO SEPARATE LOCATIONS. ONE OF THEM IS CALLED THE CENTRAL BLOOD SPECIMEN, AND TYPICALLY WOULD BE THE HEART. IT CAN BE A LARGE VESSEL, AS WELL, BUT TYPICALLY IT'S JUST FROM THE HEART.

WE ALSO TAKE A PERIPHERAL SPECIMEN, AND IN THAT CASE IT'S USUALLY FROM ONE OF THE -- A LEG VEIN OR ONE OF THE VEINS IN THE GROIN AREA, AND SO WE CALL THAT FEMORAL BLOOD. F-E-M MEANS FEMORAL IN THAT CASE.

Q WHY DO YOU DO THAT? WHY DO YOU TAKE SAMPLES FROM TWO DIFFERENT PLACES?

A AFTER DEATH WHAT CAN HAPPEN IN THE CENTRAL BLOOD, THE HEART BLOOD, IS THAT THERE CAN BE A REDISTRIBUTION. WHEN YOU -- IN GENERAL, IN YOUR BODY, MEDICATIONS AREN'T ONLY IN YOUR BLOOD. THEY DISTRIBUTE TO ALL OF YOUR TISSUES AS WELL. AND SO WHEN YOU DIE, YOU

HAVE DRUGS AND OTHER TISSUES, ORGANS, INCLUDING LUNGS, AS WELL AS GASTROINTESTINAL ORGANS, AS WELL, ALL THOSE CAN DIFFUSE INTO THE CENTRAL BLOOD SPECIMEN, SO IT CAN GIVE A READING THAT'S ACTUALLY QUITE HIGHER THAN IT MIGHT HAVE BEEN, THE TRUE LEVEL IN THEIR SYSTEM WHEN THEY DIE.

SO THE FEMORAL BLOOD TENDS TO BE A LITTLE BIT -- WE CONSIDER IT A LITTLE BIT MORE ACCURATE BECAUSE IT DOESN'T HAVE SO MUCH OF A REDISTRIBUTION FACTOR.

Q OKAY. SO IF YOU'RE DOING A TOXICOLOGY ANALYSIS ON THE BLOOD, YOU PREFER TO HAVE BLOOD TAKEN FROM THE FEMORAL VEIN? DO YOU BELIEVE THAT TO BE MORE ACCURATE THAN THE BLOOD THAT WOULD BE -- IN TERMS OF THE QUANTITY OF DRUGS, THAN BLOOD TAKEN FROM THE HEART?

A YES, FOR THE MOST PART. SOMETIMES THEY CAN BE SIMILAR, THE LEVELS, AND SOMETIMES THEY CAN BE QUITE -- QUITE DIFFERENT. WE TEND TO GO WITH THE FEMORAL LEVEL.

Q IN THIS CASE, THEY APPEAR TO BE QUITE DIFFERENT; WOULD YOU AGREE?

A YES, IN MOST OF THEM, THERE ARE THOSE DISCREPANCIES IN LEVELS, WHICH WOULD BE EXPECTED.

Q OKAY. SO LET'S TAKE THE OXYCODONE, THE FIRST ONE.

IS OXYCODONE THE SAME THING AS PERCOCET?

A OXYCODONE IS A DRUG IN PERCOCET. I BELIEVE -- NOW, OBVIOUSLY, BECAUSE OF MY OCCUPATION, I DON'T PRESCRIBE DRUGS. I DON'T NEED TO.

Q OKAY.

A BUT --

MR. NEWHOUSE: IT'S A LITTLE LATE.

THE WITNESS: -- PERCOCET, FROM MY UNDERSTANDING, INCLUDES OXYCODONE AND ACETAMINOPHEN.

BY MS. MC BROOM:

Q OKAY. OKAY. SO YOU WROTE "FEM," THAT MEANS A SAMPLE TAKEN FROM THE FEMORAL VEIN.

AND THEN WHAT DOES THIS SAY RIGHT HERE?

A IT'S AN INDICATION OF THE UNITS, WHICH IS MICROGRAM PER MILLILITER.

Q OKAY. SO TOXICOLOGIST DETECTED 5.5 MICROGRAMS PER MILLILITER OF OXYCODONE FROM A BLOOD SAMPLE TAKEN FROM THE FEMORAL VEIN. IS THAT WHAT THAT REPRESENTS?

A YES.

Q OKAY. OVER HERE, IT SAYS, "PRESUMPTIVE EFFECT, LETHAL, GREATER THAN 5 MICROGRAMS PER MILLILITER."

CAN YOU TELL US, IS THAT -- CAN YOU TELL US WHAT THAT IS. TELL US WHAT THAT MEANS.

A OKAY. FIRST OF ALL, EVERYTHING WRITTEN ON THIS PAGE IS MY HANDWRITING, SO I USE THIS FORM AS A REVIEW BECAUSE IT'S NOT -- IF IT'S JUST A SINGLE MEDICATION, I USUALLY DON'T USE THIS FORM, BUT WHEN THERE'S SEVERAL OF THEM AND THERE CAN BE DIFFERENT EFFECTS, I LIKE TO HAVE SOMETHING THAT KIND OF SUMMARIZES IT.

SO WHAT I DID IN THIS CASE, BESIDES PUTTING THE DRUG AND THE LEVELS, I PUT THE PRESUMPTIVE EFFECT, WHETHER IT'S LETHAL OR TOXIC OR NORMAL THERAPEUTIC OR LOW

LEVEL, WHATEVER IT MAY BE. I ALSO MADE A SEPARATE COLUMN FOR, IN THE GENERAL LITERATURE, WHAT'S CONSIDERED LETHAL LEVELS AS WELL OR, IN SOME CASES, TOXIC LEVELS.

Q OKAY. SO FOR THE NUMBER -- IT LOOKS LIKE ALL THE WAY DOWN, YOU'VE WRITTEN, YOU KNOW, THE LETHAL OR, YOU KNOW, TOXIC LEVELS OF CERTAIN MEDICATIONS.

WHERE IS THIS DATA FROM?

A THERE'S DIFFERENT SOURCES. A COMMON SOURCE THAT WE USE IN OUR OFFICE, IT'S A BOOK CALLED BASELT, B-A-S-E-L-T. THERE'S ALSO A CHART, NUMEROUS PAGES, IT'S CALLED WINEK, W-I-N-E-K. SO THOSE ARE AUTHORS THAT HAVE LOOKED AT A LOT OF LITERATURE, LOOKED AT A LOT OF MEDICATIONS AND SEEN WHAT -- I GUESS IN THE MEDICAL COMMUNITY, WHAT'S CONSIDERED A LOW OR NORMAL OR THERAPEUTIC LEVEL, WHAT'S CONSIDERED A TOXIC LEVEL, AND THEN WHAT'S CONSIDERED A LETHAL LEVEL.

Q ARE THERE INSTANCES IN THOSE TWO SOURCES WHERE IT MAY NOT STATE THE TOXIC OR LETHAL LEVEL FOR A CERTAIN MEDICATION?

MR. BLESSEY: YOUR HONOR, I'M SORRY, REFERRING TO MEDICAL LITERATURE.

THE COURT: SUSTAINED.

BY MS. MC BROOM:

Q TELL US WHAT YOU DO IF YOU'RE NOT ABLE TO -- IF YOU'RE NOT ABLE TO PINPOINT OR FIND FROM AN OUTSIDE SOURCE WHAT THE LETHAL LEVEL OR TOXIC LEVEL OF A MEDICATION IS.

A WELL, IN THAT CASE, WE WILL PROBABLY DISCUSS

WITH OUR LABORATORY DEPARTMENT OR A TOXICOLOGIST IF THEY HAVE ANY -- ANY INFORMATION. THERE MAY BE -- THAT CERTAIN INSTANCE MAY BE BECAUSE IT'S JUST A VERY SAFE DRUG AND IT'S NOT KNOWN TO HAVE A SIGNIFICANT TOXICITY OR MAYBE A VERY NEW DRUG THAT THAT DATA JUST ISN'T THERE YET. YOU KNOW, THAT'S WHY -- THAT'S WHY THERE'S PEER-REVIEWED JOURNALS AS WELL, SO PEOPLE CAN SUBMIT -- AS A DRUG, PEOPLE GET MORE EXPERIENCE WITH A DRUG, THEY CAN SUBMIT INFORMATION.

BUT I JUST GO -- I TRY TO SEE THROUGH OUR TOXICOLOGIST IF THERE'S ANY SOURCES OF ANY NEW INFORMATION THAT MAY HELP. I MEAN, IF WE JUST DON'T HAVE THE INFORMATION, IT'S HARD TO ASCRIBE A CAUSE OF DEATH TO IT. IF, FOR EXAMPLE, SOMEBODY IS COMPLETELY HEALTHY AND HAS THIS VERY NEW DRUG IN THEIR SYSTEM AND THERE'S NO LEVELS IN THE LITERATURE, WE MIGHT JUST SAY THE DEATH IS UNDETERMINED. IT MAY OR MAY NOT BE DRUG RELATED.

Q OKAY. JUST LOOKING AT THE OXYCODONE, IT LOOKS LIKE YOU'VE LISTED TWO MEDICATIONS HERE AS LETHAL, ONE BEING OXYCODONE AND ONE BEING TRAMADOL, IS THAT RIGHT, AT LETHAL LEVELS?

A THAT'S CORRECT.

Q OKAY. HOW MANY OVER -- EXCUSE ME -- OVERDOSE DEATHS PER YEAR DO YOU SEE WITH OXYCODONE?

A I CAN'T -- I CAN'T PUT AN EXACT NUMBER ON IT, BUT JUST FOR MYSELF, I MAY SEE MAYBE FIVE TO TEN.

Q DO YOU HAVE ANY IDEA OF WHAT -- YOU KNOW, THE NUMBER FOR THE ENTIRE DEPARTMENT? WOULD YOU HAVE ANY

WAY OF KNOWING THAT?

A I CAN'T GIVE ANYTHING THAT'S ACCURATE.

Q I UNDERSTAND.

LET'S TAKE A LOOK AT -- IN THOSE CASES WHERE THERE HAVE BEEN OXYCODONE OVERDOSE -- LET ME PUT IT THIS WAY. STRIKE THAT.

A 5.5-MICROGRAM-PER-MILLILITER QUANTITATIVE ANALYSIS WAS DONE OR -- STRIKE THAT.

PURSUANT TO THE QUANTITATIVE ANALYSIS, IT WAS DISCOVERED THAT THERE'S 5.5 MILLIGRAMS -- MICROGRAMS PER MILLILITER OF OXYCODONE IN TARA DE ROGATIS' BLOOD.

IN YOUR EXPERIENCE, IS THAT A PARTICULARLY HIGH NUMBER?

A YES.

Q WHAT DO YOU TYPICALLY SEE? WHAT NUMBERS DO YOU TYPICALLY SEE IN OVERDOSE DEATHS --

MR. BLESSEY: I'M NOT SURE --

BY MS. MC BROOM:

Q -- OF OXYCODONE?

MR. BLESSEY: I'M NOT SURE IT'S RELEVANT, YOUR HONOR. I OBJECT.

THE COURT: OVERRULED.

THE WITNESS: WE TYPICALLY SEE SOMETHING LIKE A POINT SOMETHING, SO A POINT -- IF IT'S EXTREMELY LOW, IT MIGHT JUST BE LIKE 0.02, OR IT COULD BE, LIKE, IF IT'S HIGHER, 0.5 OR SOMETHING LIKE THAT.

WE MAY SEE ON OCCASION SOMETHING IN THE 1 OR 2, 1 OR 2 MICROGRAM RANGE.

BY MS. MC BROOM:

Q SO WOULD YOU DESCRIBE THIS QUANTITY AS PARTICULARLY HIGH GIVEN WHAT YOU'VE SEEN?

A YES.

Q NOW, YOU'VE ALSO MENTIONED TRAMADOL HERE. HOW MANY AUTOPSIES HAVE YOU PERFORMED WHERE THERE'S -- OVERDOSE OF TRAMADOL HAS BEEN THE CAUSE OF DEATH?

A EITHER ALONE OR IN COMBINATION WITH OTHER DRUGS?

Q ALONE.

A ALONE, I CAN'T REMEMBER A LOT. I MAY HAVE HAD ONE, ONE OR TWO WHERE IT'S JUST ALONE.

Q AND SO THEN HOW DID YOU DETERMINE THE LETHAL LEVEL OF TRAMADOL TO BE OVER 13 MICROGRAMS PER MILLILITER?

A AGAIN, IN THE LITERATURE, I GOT IT FROM VARIOUS SOURCES OF LITERATURE THAT WE USE.

Q PRIOR TO TARA'S -- WELL, HOW MANY INSTANCES HAVE YOU SEEN TRAMADOL IN COMBINATION WITH OTHER MEDICATIONS IN AN OVERDOSE CASE?

A IT MAY BE A LITTLE BIT MORE -- A LITTLE MORE COMMON WHEN IT'S IN COMBINATION WITH OTHER MEDICATIONS, BUT I CAN'T -- AGAIN, I CAN'T REMEMBER AN EXACT NUMBER. IT'S NOT SOMETHING, I MEAN, I CAN SAY I SEE EVERY MONTH. I MAY SEE IT A FEW TIMES A YEAR.

Q SO IS IT YOUR EXPERIENCE THAT TRAMADOL DEATHS FROM AN OVERDOSE ARE NOT NEARLY AS COMMON AS WITH OXYCODONE?

A I'D SAY IN MY EXPERIENCE, I KNOW I'VE HAD

MORE OXYCODONE DEATHS THAN TRAMADOL.

Q I WANT TO JUST LASTLY HIT THIS. IT SAYS, "ESTIMATED NUMBER OF PILLS BASED ON LOWEST" -- CAN YOU TELL ME WHAT THAT SAYS THERE?

A YEAH. IT SAYS, "V.D.," AND I'M REFERRING TO THIS ONE, AND THE LOWEST CONCENTRATION.

Q WHAT DOES V.D. MEAN?

A V.D. IS AN ABBREVIATION, STANDS FOR VOLUME OF DISTRIBUTION. IT'S THE TOTAL VOLUME IN THE BODY WHERE THE DRUG DISTRIBUTES INTO.

Q IN CASES LIKE THIS, DO YOU TYPICALLY TRY TO DETERMINE OR -- THE NUMBER OF PILLS THAT SOMEBODY HAS INGESTED? IS THIS SOMETHING YOU TYPICALLY DO?

A WE MAY DO IT IN CERTAIN CASES. WE DON'T DO IT A LOT. THE PROBLEM WITH IT, IT'S -- ESSENTIALLY, IT'S A GUESSTIMATE. YOU'RE TAKING CERTAIN SCIENTIFIC FACTORS LIKE BODY WEIGHT, VOLUME OF DISTRIBUTION, CONCENTRATION, AND THEN TRYING TO GO BACK, AND YOU'RE ALSO MAKING CERTAIN ASSUMPTIONS ABOUT THE SIZE OF THE PILL THE PERSON TOOK, WHETHER IT WAS, FOR EXAMPLE, A 10-MILLIGRAM, 25-MILLIGRAM TABLET, SO THIS IS JUST AN ESTIMATE BASED ON THE CONCENTRATION THAT WE'RE FINDING.

Q AND IS IT AN ESTIMATE -- IS IT AN ESTIMATE -- IT SAYS DOWN HERE, "ESTIMATED PILL NUMBERS ARE THE MINIMUM NUMBER BASED ON LOWEST VOLUME TO DISTRIBUTION AND THE FEMORAL CONCENTRATIONS."

A YES.

Q SO DOES THAT -- DOES THAT MEAN THAT THE

ESTIMATES THAT YOU'VE WRITTEN UP HERE ARE ESTIMATES OF THE MINIMUM NUMBER OF PILLS THAT WOULD BE REQUIRED TO REACH THE CONCENTRATION DISCOVERED?

A THAT'S CORRECT. THE VOLUME OF DISTRIBUTION OFTENTIMES IS GIVEN AS A RANGE, SO I'LL TAKE THE LOWEST ONE, YOU KNOW, THAT WILL GIVE ME THE MINIMUM NUMBER, AND, AGAIN, I'LL ALSO USE THE FEMORAL LEVEL AS OPPOSED TO THE HEART LEVEL.

Q SO DOES THAT IN TURN MEAN THAT THE NUMBER OF PILLS ACTUALLY INGESTED COULD BE MUCH HIGHER THAN IS STATED IN THIS DOCUMENT?

A IT COULD BE. IT COULD BE MORE THAN THAT. NOW, AGAIN, THIS IS A GUESSTIMATE. IT MAY BE A LITTLE BIT LOWER THAN THAT, BUT, LIKE, FOR EXAMPLE, THE ONE THAT SAYS 46, I CAN'T IMAGINE THAT THE ACTUAL WOULD BE 5 OR 6. IT WOULD BE IN THE DOUBLE DIGITS SOMEWHERE.

MS. MC BROOM: NOTHING FURTHER, YOUR HONOR.

THE COURT: ALL RIGHT. CROSS?

MR. BLESSEY: YES, THANK YOU, YOUR HONOR.

CROSS-EXAMINATION

BY MR. BLESSEY:

Q GOOD MORNING, DOCTOR.

A GOOD MORNING.

Q I'M GOING TO SWITCH OVER HERE TO ANOTHER SOURCE.

SO, SO I UNDERSTAND IT, WHAT YOU BASICALLY DID IN THIS CASE WAS YOU TOOK YOUR PHYSICAL AUTOPSY

FINDINGS, TOXICOLOGY INFORMATION YOU RECEIVED AND PUT TOGETHER YOUR ANALYSIS OF WHAT YOU BELIEVE MOST LIKELY CAUSED THE DEATH IN THIS CASE; FAIR TO SAY?

A YES.

Q ANYTHING ELSE IN YOUR DATABASE OTHER THAN YOUR PHYSICAL AUTOPSY AND THE ANALYSIS THAT YOU JUST WENT THROUGH WITH COUNSEL, THAT IS, THE TOXICOLOGY FINDINGS FROM THE LAB? DID YOU INCLUDE ANYTHING ELSE?

A AGAIN, THE -- THE TOXICOLOGY DEPARTMENT AT OUR OFFICE, THEY DO HAVE ALSO SOME INFORMATION OF THEIR OWN, SO WE MAY OR MAY NOT USE THAT AS WELL IN A -- BESIDES THE OTHER REFERENCES I MENTIONED, WINEK AND BASELT.

Q YEAH. NOW, LET'S TAKE A LOOK, THIS IS EXHIBIT 114-1, THE FIRST PAGE OF YOUR REPORT, AND ON THIS REPORT YOU MENTION THAT THE CAUSE OF DEATH IS WHAT, SIR?

A "MULTIPLE DRUG INTOXICATION."

Q OKAY. DID YOU TRY TO FERRET OUT OR SEPARATE OUT THE VARIOUS DRUGS TO DETERMINE IF THEY WERE TAKEN BY THEMSELVES, WHETHER OR NOT THEY WOULD HAVE CAUSED THE DEATH?

A I DIDN'T DO THAT, EXCEPT TO THE EXTENT IN THE PREVIOUS -- MY TOXICOLOGY REVIEW, I DID SEPARATE WHAT I THOUGHT WAS -- WOULD HAVE BEEN LETHAL IN AND OF ITSELF, IF THAT WAS THE ONLY THING THAT HAD BEEN FOUND. BUT, ESSENTIALLY, IT'S CLEAR THAT THIS IS A -- IT'S A COMBINATION, IT'S A COMBINATION, THAT IT'S ALL THESE MEDICINES ACTING TOGETHER.

Q OKAY. WELL, LET'S TAKE A LOOK NOW AT

EXHIBIT 114-20. THIS IS THE REPORT WE JUST HAD UP THERE.

SO, I MEAN, AT THE RISK OF ASKING THE OBVIOUS, LETHAL LEVEL MEANS A LEVEL OF A DRUG THAT WILL END SOMEBODY'S LIFE, CORRECT?

A YES.

Q SO WHEN YOU LOOK AT TRAMADOL, YOU FOUND IN THE FEMORAL SAMPLE A LETHAL LEVEL OF TRAMADOL, CORRECT?

A YES.

Q AND HAD THE PATIENT ONLY TAKEN TRAMADOL, BASED ON THIS LETHAL LEVEL, IT WOULD HAVE -- THAT LEVEL WOULD HAVE ENDED HER LIFE, CORRECT?

A YES.

Q OKAY. NOW, YOU HAVE -- LET'S SEE. YOU HAVE ZOLPIDEM. DO YOU KNOW WHAT THAT DRUG IS, WHAT THE GENERIC NAME IS FOR ZOLPIDEM?

A ZOLPIDEM? AMBIEN.

Q AMBIEN.

A THAT'S ONE OF THE -- ONE OF THE TRADE NAMES. THERE CAN BE SEVERAL.

Q OKAY. I'LL REPRESENT TO YOU THAT THERE'S EVIDENCE IN THIS CASE THE PATIENT HAD BEEN PRESCRIBED AMBIEN BY HER PSYCHIATRIST.

DOES THAT SOUND REASONABLE BASED ON WHAT YOU FOUND HERE?

A YES, WE FOUND ZOLPIDEM IN HER SYSTEM.

Q SO YOU FOUND TOXIC TO LETHAL LEVELS OF AMBIEN IN HER FEMORAL SAMPLE, CORRECT?

A YES.

Q SO BASED ON THE REFERENCE SOURCE THAT YOU USED, IF, IN FACT, THE AMBIEN WAS AT A LETHAL LEVEL, THAT BY ITSELF COULD HAVE ENDED HER LIFE, CORRECT?

A YES.

Q ALL RIGHT. AND LET'S SEE. NOW, WHEN YOU SAY "TOXIC LEVELS," CAN YOU DEFINE FOR THE JURY WHAT YOU MEAN BY THAT?

A YES. IT'S SOMETHING THAT CAN CAUSE SIGNIFICANT TOXICITY, ESSENTIALLY. IT MEANS THAT IT CAN HAVE VERY SERIOUS SIDE EFFECTS, SERIOUS EFFECTS ON DIFFERENT ORGAN SYSTEMS, THE HEART, BREATHING, BRAIN, AND IT CAN POTENTIALLY CAUSE SOMEBODY TO DIE. BUT BECAUSE SOMETIMES WE JUST GET SOMETHING THAT'S IN THE TOXIC LEVEL AND THAT'S ALL WE HAVE AND WE HAVE NO OTHER CAUSE OF DEATH, SO WE'LL USE IT AS A CAUSE OF DEATH.

Q SO I UNDERSTAND YOU, IF YOU HAVE A DRUG, FOR EXAMPLE, LIKE AMBIEN, ALTHOUGH IT'S TOXIC TO LETHAL, BUT IF YOU HAVE A DRUG THAT'S JUST TOXIC AND YOU HAVE A DEATH, THERE ARE INSTANCES WHERE YOU WILL ASCRIBE THE CAUSE OF DEATH TO THE TOXIC LEVEL OF THAT DRUG, CORRECT?

A THAT'S CORRECT. IT WOULD HAVE TO BE -- I MEAN, IT WOULD HAVE TO BE IN THE DECENT RANGE OF TOXICITY. IF IT'S BORDERLINE BETWEEN THERAPEUTIC AND TOXIC, YOU KNOW, WE MAY, YOU KNOW, WE'LL HEDGE ON THAT ONE POSSIBLY.

Q OKAY. BUT IN THIS CASE YOU DIDN'T PUT THAT RANGE OF THERAPEUTIC TO TOXIC. YOU'VE GOT -- WHAT'S THIS DRUG CALLED?

A ZOPICLONE.

Q AND WHAT DID YOU ASSESS IT TO BE IN TERMS OF ITS LEVEL?

A ELEVATED TO TOXIC. THE FEMORAL, I BELIEVE, WAS ZERO POINT -- 0.21. IN THAT CASE, IT WOULD HAVE JUST BEEN ELEVATED. THE HEART LEVEL WOULD HAVE BEEN CONSIDERED TOXIC.

Q OKAY. AND WHAT'S THE TRADE NAME FOR THAT MEDICATION? DO YOU KNOW?

A ZOPICLONE, THAT'S ONE WE DON'T -- WE DON'T SEE THAT OFTEN, SO I DON'T -- I DON'T HAVE A TRADE NAME FOR THAT ONE.

Q HAVE YOU EVER HEARD OF THE DRUG LUNESTA?

A LUNESTA, THAT SOUNDS FAMILIAR. IT MAY POSSIBLY BE THAT.

Q OKAY. THIS MEDICATION HERE, WHAT'S YOUR ASSESSMENT OF THIS DRUG?

A THAT'S QUETIAPINE. IT'S USED TO TREAT VARIOUS PSYCHIATRIC DISORDERS.

Q IS THAT ALSO -- I'M SORRY. IS THAT ALSO SEROQUEL?

A YES.

Q AND WHAT HAVE YOU ASSESSED IN TERMS OF THE LEVEL, THE PRESUMPTIVE EFFECT OF THAT DRUG?

A WELL, I LISTED IT -- THAT ONE, THAT'S AN EXAMPLE OF ONE OF THE DRUGS WE HAVE A HARD TIME FINDING ACTUAL LETHAL LEVELS DEFINED, BUT IT DEFINITELY WAS -- I DON'T HAVE IT WRITTEN HERE, BUT I SAW WHAT THE NORMAL OR THERAPEUTIC RANGE WAS, AND IT WAS DEFINITELY ELEVATED

ABOVE THAT.

Q THE SEROQUEL LEVEL WAS DEFINITELY ABOVE THE THERAPEUTIC LEVEL, CORRECT?

A YES.

Q AND DO YOU HAVE AN OPINION ONE WAY OR THE OTHER WHETHER IT WAS AT A LEVEL THAT COULD HAVE ENDED THIS YOUNG LADY'S LIFE?

A I DO NOT -- I VAGUELY, VAGUELY REMEMBER IT POSSIBLY HAVING A HIGH -- A HIGH SAFETY INDEX, SO IF THIS WAS THE ONLY THING I'D FOUND, IT'S ONE OF THOSE WHERE I SAID I JUST CAN'T BE SURE THAT IT REALLY CONTRIBUTED OR CAUSED HER DEATH.

Q DO YOU HAVE THE EXPERTISE TO, FOR EXAMPLE, TAKE THESE -- DRUGS, AMBIEN, LUNESTA, SEROQUEL, IN COMBINATION, THAT ARE AT TOXIC OR ELEVATED LEVELS -- AND FORM AN OPINION AS, FOR THOSE THREE MEDICATIONS, TO WHETHER OR NOT THAT COMBINATION AND THE DRUG INTERACTIONS WOULD HAVE BEEN SUFFICIENT BASED ON THE FEMORAL LEVELS TO CAUSE DEATH IN THIS CASE?

A WHICH THREE BESIDES THE QUETIAPINE?

Q SEROQUEL, LUNESTA, AND AMBIEN. ZOLPIDEM, QUETIAPINE, AND WHAT'S THIS ONE CALLED?

A ZOPICLONE.

Q ZOPICLONE.

A YES. IN COMBINATION, IF I HAD -- IF I ONLY HAD THOSE THREE, ESPECIALLY WITH THE ZOLPIDEM, I WOULD HAVE SAID, YEAH, "MULTIPLE DRUG INTOXICATION" WITH THAT ONE, WITH THOSE THREE.

Q VERY GOOD.

NOW, DOCTOR, IN ADDITION TO TESTING FOR -- WELL, LET ME ASK THIS QUESTION: I THINK YOU'VE ANSWERED IT, BUT IF AN EXPERT -- WELL, HYPOTHETICALLY, IF AN EXPERT WERE TO TESTIFY THAT, IN THE ABSENCE OF PERCOCET IN THIS CASE, THE EFFECT, THE NET EFFECT WOULD HAVE BEEN THE PATIENT WOULD HAVE HAD A LONG SLEEP AND WOULD HAVE WOKEN UP WITHOUT ANY RESIDUAL EFFECTS, DO YOU AGREE WITH THAT?

MS. MC BROOM: YOUR HONOR, OBJECTION. IT'S AN INCOMPLETE --

THE COURT: I'M SORRY. I COULDN'T UNDERSTAND YOU.

MS. MC BROOM: IT'S AN INCOMPLETE HYPOTHETICAL.

THE COURT: INCOMPLETE? SEEMS LIKE IT'S BEYOND HIS EXPERTISE, SO SUSTAINED ON THAT GROUND.

BY MR. BLESSEY:

Q WELL, MAYBE I CAN ASK IT THIS WAY: I THINK YOU ALREADY TOLD US, BUT LET'S ASSUME THE PATIENT DIDN'T TAKE PERCOCET AT ALL. DO YOU HAVE AN OPINION, BASED ON THE LETHAL LEVEL OF TRAMADOL, THESE COMBINED LEVELS OF -- TOXIC LEVELS OF THESE OTHER DRUGS, THAT THE PATIENT WOULD HAVE MERELY SLEPT AND WOKE UP WITH ANY -- ANY SEQUELAE FROM THOSE DRUGS?

MS. MC BROOM: YOUR HONOR, I'M GOING TO OBJECT AGAIN. I THINK IT GOES BEYOND THE SCOPE OF HIS EXPERTISE.

THE COURT: OVERRULED. SO EXCLUDING THE FIRST ONE, OXYCONTIN?

MR. BLESSEY: YES, YES. THAT'S CORRECT.

THE WITNESS: IF I FOUND -- IF I HAD A TOXICOLOGY

REPORT WHICH HAD THOSE, THE TRAMADOL LEVELS, ZOLPIDEM LEVELS, QUETIAPINE LEVELS, TRAZODONE LEVELS, ZOPICLONE -- SORRY, EXCLUDE THE TRAZODONE -- ZOPICLONE AND HYDROCODONE, THAT TO ME WOULD BE -- I'D FEEL COMFORTABLE ASSIGNING THE CAUSE OF DEATH AS MULTIPLE DRUG INTOXICATION.

BY MR. BLESSEY:

Q THANK YOU. NOW, IN ADDITION TO LOOKING FOR LEVELS OF PRESCRIPTION DRUGS, DID YOU NOT LOOK AT WHETHER OR NOT THIS INDIVIDUAL HAD INGESTED ILLICIT DRUGS?

A YES. THAT'S PART OF OUR -- THE DRUG SCREEN IS ALSO DRUGS OF ABUSE AND ALCOHOL.

Q WHY DON'T YOU TURN TO EXHIBIT 114-24. HERE WE GO, 25. I'M SORRY. ACTUALLY, THIS IS THE -- EXHIBIT 114-25 AND -26 IS A TWO-PAGE REPORT FROM THE FORENSIC LABORATORY, CORRECT?

A YES.

Q AND THEY MEASURED LEVELS OF THE PRESCRIPTION MEDICATIONS AS WELL AS LOOKING FOR ILLICIT DRUGS, TRUE?

A YES.

Q CAN YOU TAKE A LOOK AT THAT TWO-PAGE REPORT AND TELL ME WHETHER YOU SAW ANY EVIDENCE IN THE FORENSIC REPORT OF ANY, WHAT YOU WOULD CONSIDER TO BE STREET DRUGS OR ILLICIT DRUGS?

A THE -- COCAINE WAS NOT DETECTED; METHAMPHETAMINE WAS NOT DETECTED; MORPHINE, WHICH IN SOME INSTANCES MAY BE DERIVED FROM HEROIN, WAS NOT DETECTED; P.C.P. WAS NOT DETECTED. AND, I MEAN, ALCOHOL IS A LEGAL DRUG, BUT THAT WAS NOT DETECTED AS WELL.

MR. BLESSEY: THANK YOU VERY MUCH, DOCTOR. I HAVE NOTHING FURTHER.

THE COURT: REDIRECT?

REDIRECT EXAMINATION

BY MS. MC BROOM:

Q THIS MIGHT BE STATING THE OBVIOUS, BUT YOUR COMMENTS BEFORE ABOUT WHETHER -- IF TARA HAD INGESTED EVERYTHING OTHER THAN OXYCODONE WHEN SHE HAD DIED, IT ASSUMES -- IT ASSUMES THAT YOU HAVE A DEAD BODY IN FRONT OF YOU, CORRECT? I MEAN, YOU'RE NOT PERFORMING TESTS ON LIVE PATIENTS TO DETERMINE WHAT LEVELS END UP LETHAL?

A WELL, IF I'M UNDERSTANDING THE QUESTION, IT SOUNDS LIKE IT'S A HYPOTHETICAL BECAUSE I FOUND OXYCODONE, AMONG SEVERAL OTHER THINGS, I MEAN, SO -- BUT I WAS JUST ANSWERING THE QUESTIONS BASED ON THE HYPOTHETICALS.

Q RIGHT. YOU COULDN'T SAY WITH CERTAINTY WHETHER TARA DE ROGATIS WOULD HAVE DIED FROM INGESTION OF THE REMAINING PILLS BECAUSE YOU WERE ALREADY PRESENTED WITH THE BODY? SHE WAS ALREADY DECEASED. YOU CAN'T GIVE -- YOU CAN'T REALLY SAY WITH ANY CERTAINTY WHETHER SHE WOULD HAVE DIED FROM A CERTAIN COMBINATION OF DRUGS OR NOT?

MR. BLESSEY: LET ME JUST OBJECT. CERTAINTY IS NOT A STANDARD, NUMBER ONE, AND THE QUESTION IS --

THE COURT: MORE PROBABLE THAN NOT MEDICALLY, AND MAYBE WE CAN DEAL WITH THE STANDARD.

MR. NEWHOUSE: YOUR HONOR, COULD I TRY ASKING THE

QUESTION?

MR. BLESSEY: NO, YOU CAN'T.

THE COURT: I'M SORRY.

MR. NEWHOUSE: SORRY.

MS. MC BROOM: NOTHING FURTHER.

THE COURT: ANYTHING ELSE?

MR. BLESSEY: NO, YOUR HONOR.

THE COURT: THANK YOU VERY MUCH, SIR. YOU'RE EXCUSED.

ALL RIGHT. SHALL WE TAKE OUR NOON RECESS?

MR. BLESSEY: YES, THANK YOU.

THE COURT: WE'LL BE IN RECESS UNTIL 1:30. AGAIN, PLEASE REMEMBER THE ADMONITION OF THE COURT. DO NOT DISCUSS THE FACTS OF THIS CASE AMONGST YOURSELVES OR WITH ANYBODY ELSE. DO NOT FORM ANY OPINIONS OR CONCLUSIONS ON THIS MATTER UNTIL IT'S FINALLY SUBMITTED TO YOU.

COURT'S IN RECESS UNTIL 1:30.

(THE NOON RECESS WAS TAKEN UNTIL
1:38 P.M. OF THE SAME DAY.)

CASE NUMBER: BC457891
CASE NAME: DE ROGATIS VS. SHAINSKY
PASADENA, CALIFORNIA TUESDAY, NOVEMBER 5, 2013
DEPARTMENT P HON. JAN A. PLUIM, JUDGE
APPEARANCES: (AS HERETOFORE NOTED)
REPORTER: KAREN E. KAY, CSR NO. 3862
TIME: P.M. SESSION

(THE FOLLOWING PROCEEDINGS WERE HELD IN OPEN COURT, IN THE PRESENCE OF THE JURY:)

THE CLERK: PLEASE RAISE YOUR RIGHT HAND.

DO YOU SOLEMNLY STATE THAT THE TESTIMONY YOU MAY GIVE IN THE CAUSE NOW PENDING BEFORE THIS COURT SHALL BE THE TRUTH, THE WHOLE TRUTH, AND NOTHING BUT THE TRUTH, SO HELP YOU GOD?

THE WITNESS: I DO.

THE CLERK: PLEASE STATE AND SPELL YOUR NAME FOR THE RECORD.

THE WITNESS: MY NAME IS MANFRED, THAT'S SPELLED M-A-N-F-R-E-D, INITIAL E., WOLFF, W-O-L DOUBLE "F."

THE COURT: ALL RIGHT. THANK YOU, DOCTOR. COUNSEL.

MR. NEWHOUSE: MAY I PROCEED, YOUR HONOR?

THE COURT: YES.

MANFRED WOLFF, M.D.,
CALLED AS A WITNESS BY THE PLAINTIFFS, WAS DULY SWORN AND TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

BY MR. NEWHOUSE:

Q GOOD AFTERNOON, DR. WOLFF.

A GOOD AFTERNOON.

Q WHAT IS YOUR OCCUPATION, SIR?

A WELL, BY TRAINING, I AM A MEDICINAL CHEMIST.

Q AND DOES MEDICINAL CHEMIST ALSO -- SOME PEOPLE CALL THAT PHARMACEUTICAL CHEMIST?

A YES. THE TERM USED IN EUROPE ORIGINALLY WAS PHARMACEUTICAL CHEMIST, IN BRITAIN; AND IN THE U.S. IT BECAME MEDICINAL CHEMIST.

Q IS IT CORRECT THAT YOU ARE SEMIRETIRED NOW, SIR?

A THAT'S CORRECT.

Q JUST VERY BRIEFLY TRACE FOR US, PLEASE, YOUR EDUCATIONAL BACKGROUND, BEGINNING WITH UNDERGRADUATE.

A MY UNDERGRADUATE DEGREE IS IN PHARMACY, A BACHELOR'S DEGREE.

I ALSO HAVE A MASTER'S DEGREE IN PHARMACEUTICAL CHEMISTRY AND, FINALLY, A DOCTOR OF PHILOSOPHY IN PHARMACEUTICAL OR MEDICINAL CHEMISTRY. ALL OF THAT WORK WAS DONE UNDER THE AUSPICES OF THE UNIVERSITY OF CALIFORNIA BERKELEY. MOST OF IT WAS DONE AT THE SAN FRANCISCO MEDICAL CENTER, WHICH AT THAT TIME WAS

SIMPLY A DEPARTMENT OF BERKELEY.

Q WHAT YEAR DID YOU RECEIVE YOUR PH.D. IN PHARMACEUTICAL CHEMISTRY?

A 1955.

Q AND DID YOU DO A POSTDOCTORAL FELLOWSHIP AT THE --

A YES.

Q GO AHEAD. WHERE?

A YES, I DID A POSTDOCTORAL FELLOWSHIP IN THE DEPARTMENT OF CHEMISTRY AT THE UNIVERSITY OF VIRGINIA UNDER THE WORLD-FAMOUS AUTHORITY IN MEDICINAL CHEMISTRY, PROFESSOR ALFRED BURGER.

Q DID YOU COMPLETE, AT TUFTS UNIVERSITY, SOME ADDITIONAL POSTGRADUATE TRAINING, SIR?

A I DID. I TOOK A COURSE THERE IN THE PHARMACOLOGY DEPARTMENT, WHICH WAS FOCUSED ON THE PROCESS OF BRINGING A DRUG FROM THE PRECLINICAL STAGE, WHEN ALL THE TOXICITY AND OTHER EFFICACY, OTHER PRECLINICAL TESTS HAD BEEN COMPLETED, TO THE CLINICAL STAGE AND ULTIMATELY TO THE APPROVAL STAGE.

Q AND BY "EFFICACY OF CLINICAL TESTING," ARE YOU REFERRING TO BASICALLY MEASURING THE EFFECTIVENESS OF PHARMACEUTICALS?

A YES.

Q WHAT IS THE DIFFERENCE BETWEEN A PHARMACEUTICAL CHEMIST AND A PHARMACOLOGIST, IF ANY?

A OKAY. A PHARMACOLOGIST IS INVOLVED IN THE TESTING OF DRUGS IN ANIMAL SYSTEMS, AND ACTUALLY,

PHARMACEUTICAL RESEARCH IN THE INDUSTRY IS CARRIED OUT BY TEAMS.

I WAS AN EMPLOYEE OF SMITH KLINE AND FRENCH LABORATORIES IN PHILADELPHIA RIGHT AFTER I TOOK MY POSTDOCTORAL WORK.

AND THE TEAMS CONSIST OF PHARMACOLOGISTS, MEDICINAL CHEMISTS, BIOCHEMISTS, SOMETIMES PEOPLE FROM THE PHARMACY DEPARTMENT, THE FORMULATION PEOPLE, AND USUALLY AN M.D.

SO YOU CAN THINK OF THE DISCIPLINES AND THE KNOWLEDGE THAT GOES INTO THE DEVELOPMENT OF A NEW DRUG FROM ITS EARLIEST STAGES TO ITS CLINICAL REALITY AS CONSISTING OF ALL OF THESE DISCIPLINES, ALL OF THESE SCIENTIFIC DISCIPLINES, KIND OF MERGED INTO ONE.

AND SO THAT'S THE WAY I'M USED TO THINKING OF DRUG DISCOVERY AND DEVELOPMENT.

Q THANK YOU. HAVE YOU EVER WORKED AS A PHARMACIST?

A OH, RIGHT AFTER I TOOK MY BACHELOR'S DEGREE, I SPENT A FEW MONTHS AS A PHARMACIST TO MAKE SOME MONEY TO MAKE IT POSSIBLE TO GO ON INTO GRADUATE WORK. ALSO, WHEN I COMPLETED MY GRADUATE STUDIES AND I HAD TO TRAVEL FROM --

Q I ACTUALLY THINK YOU'VE ANSWERED THE QUESTION. THANK YOU.

A OKAY.

Q FORGIVE ME FOR INTERRUPTING. I WANT TO MOVE ON TO THE NEXT AREA.

HAVE YOU HELD ANY TEACHING POSITIONS IN THE AREA OF PHARMACEUTICAL OR MEDICINAL CHEMISTRY, SIR?

A YES. BOTH AT U.C.S.F. BY THE TIME I TAUGHT THERE, IT WAS A SEPARATE CAMPUS. AT U.C.S.F. I CAME IN AS ASSISTANT PROFESSOR AND ROSE THROUGH THE RANKS TO FULL PROFESSOR AND, FINALLY, CHAIRMAN OF THE DEPARTMENT OF PHARMACEUTICAL CHEMISTRY.

AND THERE I DID TEACH PHARMACY STUDENTS AND LATER GRADUATE STUDENTS IN MEDICINAL CHEMISTRY AND ALSO EARLY ON IN PHARMACEUTICS.

Q PRIOR TO YOUR SEMIRETIREMENT, HOW WERE YOU -- WERE YOU EMPLOYED FULL-TIME BY A PHARMACEUTICAL COMPANY?

A WELL, I WAS. AFTER MY -- LET'S SEE, AFTER MY TEACHING CAREER, I WAS RECALLED BY SMITH KLINE AND FRENCH, WHICH AT THAT TIME HAD JUST PURCHASED ALLERGAN HERE IN IRVINE, AND AT THAT TIME ALLERGAN WAS A CONTACT LENS SOLUTION COMPANY, KIND OF LOW-TECH PRODUCTS.

SMITH KLINE WANTED THEM TO BECOME A DRUG DISCOVERY COMPANY IN OPHTHALMOLOGY AND DERMATOLOGY, AND SO I WAS BROUGHT IN TO HIRE THE TEAMS THAT DID THAT WORK.

Q SMITH KLINE AND FRENCH IS A PHARMACEUTICAL COMPANY?

A IT WAS AT THE TIME. AT THE PRESENT TIME IT'S A PART OF A BRITISH -- GLAXO SMITH KLINE, IT'S CALLED GLAXO SMITH KLINE.

Q WHEN YOU RETIRED FROM THAT COMPANY, WHAT WAS YOUR POSITION, SIR?

A FROM WHICH COMPANY?
Q SMITH KLINE AND FRENCH.
A I WAS SENIOR MEDICINAL CHEMIST.
Q AND DID THAT WORK INVOLVE RESEARCH INTO DEVELOPING NEW DRUGS?
A YES. I WAS INVOLVED IN THE EARLY WORK ON STEROIDS. THE TYPES OF STEROIDS THAT WE WERE LOOKING AT ARE THE ANABOLIC STEROIDS, WHICH HAVE OBTAINED A CERTAIN DEGREE OF FAME IN THE ATHLETIC AREA; BUT AT THE TIME THE DEVELOPMENT OF ANABOLIC AGENTS WAS AN EFFORT TO PRODUCE COMPOUNDS THAT WOULD SPEED WOUND-HEALING AFTER SURGERY, AND SO WE WERE WORKING ON THAT.
WE ALSO BEGAN WORK ON THE ORAL CONTRACEPTIVES FOR USE AS BIRTH CONTROL AGENTS.
Q HAVE YOU RECEIVED ANY AWARDS OR HONORS IN YOUR FIELD, SIR?
A I AM AN ELECTED FELLOW OF THE AMERICAN ASSOCIATION FOR PHARMACEUTICAL SCIENTISTS AND ALSO AN ELECTED FELLOW OF THE AMERICAN ASSOCIATION FOR THE ADVANCEMENT OF SCIENCE.
Q HAVE YOU IN YOUR CAREER PUBLISHED ARTICLES INVOLVING SCIENTIFIC RESEARCH IN --
A YES, I HAVE.
Q -- PHARMACOLOGY?
A ABOUT 100 ARTICLES IN -- MAINLY IN MEDICINAL CHEMISTRY. I'VE EDITED TWO BOOK SERIES THAT WERE FOUNDED BY ALFRED BURGER.
IT'S -- THEY ARE NOW CALLED BURGER'S

MEDICINAL CHEMISTRY AND DRUG DISCOVERY, AND I EDITED TWO EDITIONS OF THAT. AND THEN I ALSO CONTRIBUTED BOOK CHAPTERS TO OTHER PUBLICATIONS.

Q IN ADDITION TO YOUR WORK AS A PHARMACEUTICAL CHEMIST, HAVE YOU ALSO RENDERED SERVICES IN WHAT WE'RE CALLING MEDICAL-LEGAL WORK, EXPERT TESTIMONY?

A YES. AFTER I SEMIRETIRED, I BECAME VERY INTERESTED IN THE PHARMACEUTICAL PATENTS BECAUSE ALL OF THE EXPENSE OF PHARMACEUTICAL RESEARCH, AND IT IS CONSIDERABLE, HAS TO BE PROTECTED BY PATENTS.

AND SO AT THAT TIME, AS I SAY, I BECAME INTERESTED IN THAT WHOLE FIELD, AND I BECAME A REGISTERED PATENT AGENT IN THE UNITED STATES PATENT OFFICE.

Q AND WHEN DID YOU START DOING THIS EXPERT TESTIMONY?

A WELL, ACTUALLY, IT GOES BACK A LONG WAYS. THE EARLIEST I DID WAS A TRIAL IN BRITAIN, AND THEY BROUGHT ME OVER THERE TO OPINE ON -- ON ANABOLIC AGENTS IN A PATENT CONTROVERSY.

BUT MORE RECENTLY, I THINK IT'S BEEN ABOUT 15 YEARS OR SO THAT I'VE BEEN DOING THAT.

Q SO IN THE LAST 15 YEARS, HOW MANY CASES WOULD YOU ESTIMATE THAT YOU'VE BEEN RETAINED AS AN EXPERT WITNESS IN THE FIELD OF PHARMACOLOGY -- NOT PHARMACOLOGY -- PHARMACEUTICAL CHEMISTRY?

A I THINK IT'S ABOUT NINE CASES.

Q AND HAVE YOU RENDERED, IN THE PAST, OPINIONS WITH REGARD TO THE EFFECT THAT CERTAIN PHARMACEUTICALS OR

DRUGS HAVE ON INDIVIDUALS, HUMAN BEINGS?

A YES.

Q JUST GIVE US AN EXAMPLE OF SOME PRIOR TESTIMONY WHERE YOU RENDERED AN OPINION.

A WELL, ONE RECENT ONE WAS IN THE CASE OF A PETTY OFFICER IN THE U.S. NAVY WHO HAD -- WAS INTERESTED IN BODY BUILDING AND HAD UNFORTUNATELY TAKEN A BODY-BUILDING SUPPLEMENT, WHICH, AS WE KNOW, THESE SUPPLEMENTS ARE FREQUENTLY LACED WITH ILLEGAL ANABOLIC STEROIDS, AND HE WAS -- HE WAS CAUGHT BY MEANS OF A URINE TEST.

AND I WAS BROUGHT IN TO SEE IF I COULD PROVIDE SOME REASON THAT THE NAVY COURT SHOULD EXCUSE HIM FROM THAT -- FROM THAT TRANSGRESSION, AND IT TURNED OUT THAT THE TESTING METHODS USED IN THAT CASE WERE VERY DEFICIENT BECAUSE THE NAVY WAS TRYING TO SAVE MONEY AND DID NOT ORDER THE FULL PANOPLY OF STEROID TESTS.

AND THE RESULT WAS THAT I COULD PROVIDE THE OPINION THAT THE TESTS WERE INCOMPLETE, AND HE WAS EXCUSED FROM THAT POTENTIAL ERROR.

Q IS THIS THE FIRST TIME YOU'VE BEEN RETAINED TO RENDER AN OPINION IN A MEDICAL MALPRACTICE CASE, DR. WOLFF?

A YES, IT IS.

Q WHAT IS TOXICOLOGY?

A TOXICOLOGY IS THE SCIENCE OF POISONS. IT'S CARRIED OUT SOMETIMES BY PHARMACOLOGISTS. IN FACT, IN MEDICAL SCHOOLS, VERY OFTEN THE TOXICOLOGY PORTION OF

PHARMACOLOGY IS TAUGHT WITHIN THE PHARMACOLOGY COURSE.

AND, AS I SAY, IT'S A SCIENCE OF POISONS, THEIR ACTIONS, THEIR ANTIDOTES, AND ALSO WHAT KINDS OF TOXIC EFFECTS CAN BE PRODUCED BY APPROVED DRUGS.

Q AND DO YOU HAVE EXPERIENCE IN YOUR PROFESSIONAL CAPACITY IN TERMS OF DEALING WITH ISSUES ARISING OR DEALING WITH TOXICOLOGY?

A WELL, YES. ONE OF THE ASPECTS OF DRUG DISCOVERY IS BEING ABLE TO KNOW WHAT THE TOXIC EFFECTS OR POTENTIAL TOXIC EFFECTS OF THE DRUGS THAT YOU'RE ATTEMPTING TO DISCOVER ARE.

AND SO, AS I SAY, THERE WAS A TOXICOLOGIST ON THE TEAMS FOR THE DRUG DISCOVERY. IN FACT, AT ALLERGAN, I ACTUALLY HIRED THE INCOMING TOXICOLOGIST BECAUSE THEY DIDN'T HAVE ONE AT THE TIME WHEN I GOT THERE.

Q LET ME ASK YOU NOW TO GIVE US, IF YOU CAN, A ROUGH BREAKDOWN, AN ESTIMATE OF THE PERCENTAGE OF TIME SPENT CURRENTLY DOING RESEARCH AND WRITING VERSUS MEDICAL-LEGAL WORK.

A I WOULD SAY THAT IT PROBABLY BREAKS DOWN 50/50 BECAUSE I ATTEMPT TO KEEP UP MY -- IN MY FIELD BY ATTENDING THE AMERICAN CHEMICAL SOCIETY MEETINGS AND THE AMERICAN PHARMACEUTICAL ASSOCIATION MEETINGS AND ALSO READING JOURNALS THAT ARE MAINLY REVIEWED JOURNALS, SUCH AS DRUG DISCOVERY WORLD AND ALSO NATURE REVIEWS DRUG DISCOVERY.

SO I SPEND A CONSIDERABLE PORTION OF MY TIME JUST KEEPING UP WITH THIS RAPIDLY CHANGING FIELD, AND

PROBABLY LESS THAN HALF OF MY TIME IS INVOLVED IN MEDICAL-LEGAL ISSUES.

Q NOW, DR. WOLFF, AT THE REQUEST OF MY LAW FIRM, DID YOU AGREE TO REVIEW CERTAIN RECORDS, MEDICAL RECORDS, AND OTHER MATERIALS RELATING TO THE TRAGIC DEATH OF TARA DE ROGATIS?

A YES.

Q AND TELL ME, WHAT -- GENERALLY, WHAT SOURCES OR DATA DID YOU EXAMINE WHEN YOU WERE ASKED TO EXAMINE IN YOUR -- RENDERING YOUR OPINION?

A WELL, I RECEIVED THE REPORTS FROM THE CORONER'S OFFICE. I RECEIVED SOME DOCUMENTS RELATING TO THE TREATMENT OF TARA DE ROGATIS BY DR. SHAINSKY, INCLUDING SUCH THINGS AS PRESCRIPTION RECORDS THAT WERE PRODUCED FROM THE PRESCRIPTIONS THAT DR. SHAINSKY WROTE FOR TARA. I THINK I MENTIONED THE CORONER'S REPORTS. I ALSO EXAMINED PERTINENT LITERATURE REFERENCES THAT DEALT WITH THAT CASE.

Q NOW, WITHOUT GOING INTO THE ACTUAL SPECIFIC REFERENCES, WHEN YOU SAY "LITERATURE," YOU'RE REFERRING TO RESEARCH LITERATURE DEALING WITH PHARMACEUTICAL?

A YES.

Q DID YOU ALSO EXAMINE SOME DEPOSITION TRANSCRIPTS?

A YES. I READ A TRANSCRIPT FROM DR. SAFANI. I THINK THERE WERE -- WERE ONE OR TWO OTHERS.

Q SAFANI. HOW ABOUT DR. BOHN?

A I THINK I DID READ THAT, YES.

Q AND HOW ABOUT A DR. SPIEGEL?
A I DON'T RECALL READING THAT.
Q DID YOU REVIEW DEPOSITION TRANSCRIPTS OF A DAVID MAC EACHERN, TARA'S FIANCE?
A YES, YES, THE FRIEND OF TARA'S.
Q NOW, LET ME ASK YOU, DOCTOR, YOU'RE BEING COMPENSATED TODAY FOR YOUR TIME, ARE YOU NOT?
A I AM, YES.
Q AND TELL US WHAT YOUR -- WHAT THE BILLING ARRANGEMENTS ARE. HOW MUCH ARE YOU CHARGING PER HOUR FOR RESEARCH, DEPOSITIONS, COURT TESTIMONY, ET CETERA?
A WELL, MY BASE RATE IS $335 PER HOUR.
FOR DEPOSITIONS, THERE'S A 2-HOUR MINIMUM, AND I THINK THE RATE IS AROUND $500 AN HOUR.
FOR COURT TESTIMONY, IT GOES BY A HALF DAY OR A FULL DAY, AND I THINK THE RATE IS SOMETHING LIKE $3,000 FOR A HALF DAY.
Q I HOPE TO COMPLETE THIS IN A HALF A DAY.
SO FAR, JUST A ROUGH ESTIMATE, SO FAR, APPROXIMATELY HOW MUCH HAVE YOU RECEIVED FROM -- IN WITNESS FEES FROM BROWN WHITE & NEWHOUSE?
A IN THIS CASE?
Q YES, IN THIS CASE.
A I'VE RECEIVED -- WELL, I HAVEN'T RECEIVED ALL OF IT, ACTUALLY, BUT I THINK THE TOTAL I'VE BILLED IS UNDER -- JUST UNDER $30,000.
Q THANK YOU. LET'S GO BACK TO -- HAVE YOU DONE ANY -- IN PREPARING YOUR ANALYSIS, HAVE YOU DONE ANY

RESEARCH -- STRIKE THAT. LET ME IDENTIFY THE DRUGS.

YOU EXAMINED THE CORONER'S REPORT, DID YOU NOT?

A YES, I DID.

Q LET ME JUST LIST THE CHEMICALS. ACCORDING TO THE CORONER'S REPORT, AND THIS IS IN EVIDENCE, THE FOLLOWING DRUGS WERE DETECTED IN TARA'S BLOOD: OXYCODONE, HYDROCODONE, TRAMADOL, ZOLPIDEM, QUETIAPINE -- I CAN'T PRONOUNCE THAT -- TRAZODONE AND ZOPICLONE; IS THAT RIGHT?

A YES, SEVEN DRUGS, THAT'S CORRECT.

Q AND HAVE YOU CONDUCTED ANY INDIVIDUAL -- DON'T TELL US -- WE DON'T NEED CITATIONS NOW, BUT HAVE YOU DONE ANY RESEARCH, SCIENTIFIC REVIEW OF LITERATURE, WITH RESPECT TO THE CHEMISTRY OF THESE PARTICULAR PHARMACEUTICALS?

A I HAVE. I'VE EXAMINED REPORTS DEALING WITH THE MEDICINAL CHEMISTRY AND ALSO THE PHARMACOLOGICAL EFFECTS OF THESE DRUGS.

Q IS IT FAIR TO SAY, DOCTOR, THAT YOU HAVE SPENT A LOT OF TIME DOING THE RESEARCH NECESSARY SO YOU FEEL COMFORTABLE IN RENDERING THIS OPINION?

A THAT'S CORRECT.

Q HAS MY LAW FIRM PLACED ANY LIMITATIONS ON YOU IN TERMS OF THE MAXIMUM AMOUNT OF TIME THAT YOU COULD SPENT DOING YOUR RESEARCH SO YOU WOULD BE COMFORTABLE RENDERING THIS OPINION?

A THEY NEVER HAVE, NO.

Q IN FACT, YOU CREATED A WRITTEN OPINION IN

THIS CASE, WHICH HAS BEEN PRODUCED TO THE DEFENDANTS, RIGHT?

A YES.

Q YOU KNOW THAT BECAUSE THEY TOOK YOUR DEPOSITION ON THAT, CORRECT?

A CORRECT.

Q SO, OF THE DOCUMENTS YOU MENTIONED SO FAR, WERE THERE ANY THAT WERE OF PARTICULAR IMPORTANCE IN YOUR EVALUATION AS TO THE CAUSE OF DEATH IN THIS CASE?

A WELL, THERE WERE A NUMBER OF THEM, YES.

THE MOST IMPORTANT IS THE CORONER'S REPORT, WHICH GIVES THE BLOOD LEVELS OF THESE SEVEN DRUGS.

Q AND IF I CAN APPROACH.

SO IF YOU NEED TO REFERENCE THAT, DR. WOLFF, THAT'S GOING TO BE IN VOLUME II. IT'S EXHIBIT 114, WHICH IS RIGHT HERE, OKAY? SO THAT'S THE CORONER'S REPORT.

A OKAY.

Q AND THIS, BY THE WAY, IS THE SWITCHER IN CASE YOU NEED TO MOVE IT.

A OKAY.

Q OKAY. TELL THE JURY WHAT SPECIFIC QUESTION OR QUESTIONS YOU WERE ASKED TO GIVE AN OPINION ABOUT.

A I WAS ASKED TO DETERMINE THE DRUGS RESPONSIBLE FOR THE DEATH OF TARA DE ROGATIS AND TO SEPARATE THOSE -- OR I SHOULD SAY, AS DISTINGUISHED FROM THE DRUGS THAT WERE NOT INVOLVED IN THE DEATH.

Q AND DO YOU FEEL THAT YOU'VE HAD SUFFICIENT TIME TO ARRIVE AT AN OPINION WITHIN A REASONABLE DEGREE OF

MEDICAL CERTAINTY AS TO THE CAUSE OF DEATH OF TARA DE ROGATIS ON MARCH 23RD, 2010?

A YES, I HAVE.

Q PLEASE TELL THE JURY WHAT YOUR OPINION IS AND THEN WHAT WE'D APPRECIATE IS YOUR EXPLAINING YOUR OPINION, FULLY GOING INTO DETAIL, EXPLAINING THE BASIS OF THE ANALYSIS UNDERLYING THAT OPINION, OKAY?

A YES. MY OPINION IS THAT THERE WERE TWO DRUGS INVOLVED IN THE DEATH OF TARA DE ROGATIS.

THE MOST IMPORTANT ONE, OR THE MOST INVOLVED ONE, IS OXYCODONE, WHICH WAS ADMINISTERED TO HER IN THE FORM OF A PRODUCT CALLED PERCOCET.

AND PERCOCET IS A COMBINATION OF OXYCODONE AND ACETAMINOPHEN. ACETAMINOPHEN IS PROBABLY BETTER KNOWN TO YOU AS TYLENOL. SO A TABLET OF PERCOCET CONTAINS 10 MILLIGRAMS OF OXYCODONE AND 325 MILLIGRAMS OF ACETAMINOPHEN.

THE OTHER DRUG THAT WAS -- THAT I IMPLICATED OR I FOUND IMPLICATED IS THE DRUG NORCO, WHICH IS HYDROCODONE. BOTH OF THESE ARE DERIVATIVES OF MORPHINE, ACTUALLY. CODEINE ITSELF IS A MORPHINE DERIVATIVE.

Q I'M SORRY. I DIDN'T HEAR THAT LAST PART.

A I SAID CODEINE ITSELF IS A MORPHINE DERIVATIVE.

Q THANK YOU.

A AND OXYCODONE AND HYDROCODONE ARE ALSO, THEREFORE, MORPHINE DERIVATIVES.

THERE WAS A QUESTION REGARDING THE ROLE OF

TRAMADOL IN THE DEATH. THAT'S THE SECOND ONE DOWN OVER THERE, AND I FOUND -- AND AS YOU SEE, THE CORONER HAS GIVEN AN INTERPRETATION FROM HIS STUDY THAT THAT TRAMADOL WAS PRESENT IN A LETHAL AMOUNT, AND I CONCLUDED ON THE BASIS OF THE METABOLISM OF TRAMADOL THAT TRAMADOL IS ACTUALLY A PRODRUG, WHAT WE CALL A PRODRUG -- I CAN GO INTO THIS IN MORE DETAIL, WHICH A PRODRUG BEING --

Q DO YOU WANT TO DO THAT NOW, OR DO YOU WANT TO GO THROUGH YOUR POWERPOINT SLIDE?

A I'D RATHER JUST GO THROUGH IT SEQUENTIALLY.

Q OKAY.

A I'LL JUST FINISH SAYING, A PRODRUG IS A SUBSTANCE THAT ITSELF HAS LITTLE OR NO DRUG-LIKE EFFECT, BUT IS CONVERTED BY ENZYMES IN THE BODY, IN THE LIVER SPECIFICALLY, TO AN ACTIVE AGENT.

AND TARA WAS INCAPABLE OF DOING THAT CONVERSION. TARA'S BODY WAS INCAPABLE OF DOING IT, AS EVIDENCED BY SOME -- SOME RESULTS THAT WE CAN GET INTO.

Q OKAY. DO YOU WANT TO SWITCH NOW TO YOUR POWERPOINT, THEN, SIR?

A YEAH.

Q LET ME DO THAT. AND, AGAIN, YOU HAVE THE -- LET ME JUST SHOW YOU. YOU CAN BACK UP.

A YEAH.

Q I THINK THIS IS BACK, SO THAT SHOULD TAKE YOU TO -- THAT'S GOING THE WRONG DIRECTION. THIS IS THE BACK KEY.

A YES.

Q SURPRISINGLY, IT POINTS IN THE BACKWARD DIRECTION AND THEN THE FORWARD KEY GOES FORWARD.

A ALL RIGHT.

MR. BLESSEY: I'M SORRY. IS THERE A QUESTION PENDING RIGHT NOW?

THE COURT: THIS IS JUST FOUNDATION.

BY MS. MC BROOM:

Q EXPLAINING -- GO AHEAD AND EXPLAIN YOUR ANALYSIS, SIR, USING YOUR POWERPOINT.

A OKAY. WELL, I DON'T KNOW IF WE NEED TO GO THROUGH THIS ONE AGAIN. WE'VE TALKED ABOUT THE NATURE OF MEDICINAL CHEMISTRY, TALKED ABOUT THE NATURE OF PHARMACOLOGY. CLINICAL PHARMACOLOGY IS NOW A SUBSET OF PHARMACOLOGY ITSELF, AND THAT'S DIRECTED SPECIFICALLY TOWARDS CONDITIONS UNDER WHICH DRUG ACTIONS ON PATIENTS VARY.

AND, FINALLY, "TOXICOLOGY," WE'VE DISCUSSED AGAIN ALREADY.

OKAY. HERE ARE THE SEVEN DRUGS WE'VE SAID ALREADY THAT OXYCODONE -- OOPS.

Q DO ONE MORE BACK. THERE YOU GO.

A OKAY. TRYING TO GET TO THIS --

Q THE POINTER IS -- LET ME SHOW YOU WHERE THE POINTER IS.

A YEAH, I'VE GOT IT, BUT IT'S SO CLOSE TO THE OTHERS.

Q YEAH. THE POINTER IS THE LITTLE RED BUTTON HERE. DON'T POINT THAT IN COUNSEL'S EYES.

A NO, I WOULDN'T DO THAT.

OKAY. SO WE TALKED ABOUT OXYCODONE AND HYDROCODONE. TRAMADOL, AS I WAS EXPLAINING, IS NOT INVOLVED UNDER MY ANALYSIS, AND WE CAN GET INTO THE DETAILS.

Q "NOT INVOLVED," YOU MEAN NOT THE CAUSE OF HER DEATH?

A NOT THE CAUSE OF HER DEATH.

Q OKAY. THANK YOU. THEN WE HAVE THE TWO, G.A.B.A.A. AGONISTS, ZOLPIDEM AND ZOPICLONE, WHICH ARE BETTER KNOWN TO YOU AS AMBIEN AND LUNESTA. THEY ARE SEDATIVE HYPNOTICS AND USED AS A SLEEPING AID.

AND, FINALLY, THE TWO DRUGS QUETIAPINE AND TRAZODONE, WHICH ARE -- ONE IS A SEROTONIN ANTAGONIST; THE OTHER IS A SEROTONIN AGONIST.

Q BY THAT, YOU MEAN THEY OFTEN -- THEY ACT IN OPPOSITE DIRECTIONS?

A OPPOSITE DIRECTIONS, YEAH.

SO I WOULD LIKE TO EXPLAIN THE SITE OF ACTION OF THESE DRUGS AND WHY THEY'RE IMPORTANT IN NERVOUS TRANSMISSION.

AND THIS IS THE STRUCTURE OF A NEURON. THIS IS A DIAGRAM, OBVIOUSLY, AND WE HAVE ABOUT 85 BILLION OF THESE NEURONS IN THE BRAIN. IT'S AN INCREDIBLE NUMBER, WHEN YOU THINK ABOUT IT.

IT WOULD BE -- IF EVERY PERSON ON EARTH WAS MULTIPLIED BY 10, YOU WOULD GET TO 80 BILLION PEOPLE. IT'S JUST A HUGE, HUGE NUMBER.

AND THESE NEURONS ARE NOT ONLY VERY NUMEROUS, BUT THEY ALSO ARE CONNECTED TO EACH OTHER. THEY TERMINATE IN A TERMINAL CALLED AN AXON TERMINAL AT THE END OF THIS AXON PROCESS, WHICH EMANATES FROM THE CELL BODY ITSELF. AND THESE AXON TERMINALS ARE CONNECTED TO THE DENDRITES OF THE NEXT. ANOTHER NEURON HERE. THEN THE CONNECTION IS BETWEEN THE AXON TERMINALS, WHICH YOU CAN THINK OF AS AN ELECTRICAL PLUG, AND THE DENDRITES, WHICH YOU CAN THINK OF AS AN ELECTRICAL SOCKET, BECAUSE NERVOUS TRANSMISSION IS AN ELECTRICAL EFFECT.

BUT IT NOT THE SAME KIND OF ELECTRICITY THAT YOU SEE IN A COPPER WIRE. THE REASON FOR THAT IS THAT THE -- ANY ANIMAL BODY CONTAINS A GREAT DEAL OF WATER, AND OBVIOUSLY YOU CAN CANNOT HAVE A SIMPLE ELECTRIC CIRCUIT IN A WATER ENVIRONMENT. SO IT'S A DIFFERENT KIND OF ELECTRICITY, DIFFERENT KIND OF ELECTRICAL CURRENT, BUT IT IS ELECTRICAL.

AND SO IT'S THE CONNECTIONS BETWEEN THE NEURONS WHICH ARE CRUCIAL TO THE NORMAL FUNCTIONING OF THE BRAIN, AND I JUST RECENTLY FOUND THIS PICTURE ON THE COVER OF DRUG DISCOVERY WORLD SHOWING NOT JUST THE STRUCTURE OF THE BRAIN BUT EMPHASIZING MORE THE STRUCTURE OF THE NERVES WHICH ARE ISSUED FROM THE BRAIN, AND THOSE NERVES ALSO ARE COMPRISED OF NEURONS THAT ARE CONNECTED TO EACH OTHER THE WAY WE JUST DISCUSSED.

AS I SAID, THESE HAVE TO BE CONNECTED TOGETHER, THE AXONS -- THE AXONS UP HERE AND THE DENDRITES DOWN HERE, AND THEY AREN'T CONNECTED DIRECTLY. THERE'S A

GAP BETWEEN THE END OF THE AXON AND THE BEGINNING OF THE DENDRITE.

AND WHAT HAPPENS IS THAT THE SIGNAL IS TRANSMITTED ACROSS THIS GAP BY CHEMICALS, AND THESE CHEMICALS ARE CALLED "NEUROTRANSMITTERS." SO IT WILL TURN OUT THAT THIS IS THE POINT AT WHICH THESE CENTRAL NERVOUS SYSTEM DRUGS ACT, IN THAT -- IN THAT GAP. OKAY.

AND THERE ARE FOUR TYPES OF NEUROTRANSMITTERS THAT WE SHOULD MENTION HERE. THE ACTION OF THESE FOUR IS AFFECTED BY THE DRUGS INGESTED BY TARA IN HER SUICIDE.

THOSE -- THE FOUR NEUROTRANSMITTERS ARE NOREPINEPHRINE, DOPAMINE, SEROTONIN, AND GAMMA-AMINOBUTYRIC ACID, ALSO CALLED G.A.B.A.A.

AND YOU CAN SEE FROM THEIR STRUCTURES THAT THERE IS SOME SIMILARITY BETWEEN SOME OF THEM. FOR EXAMPLE, THERE IS A SIMILARITY BETWEEN NOREPINEPHRINE AND DOPAMINE BECAUSE THEY BOTH HAVE THIS HEXAGONAL RING, AND THEY BOTH HAVE O.H. GROUPS ATTACHED TO THE RING. THEY BOTH HAVE SIDE CHAINS THAT TERMINATE IN N.H.2 GROUPS.

Q AND THOSE RINGS ARE COMPOSED OF CARBON ATOMS AT EVERY JUNCTURE; IS THAT CORRECT?

A YES. THOSE SIX-MEMBERED RINGS ARE COMPOSED OF SIX CARBON ATOMS ATTACHED TO SIX HYDROGEN ATOMS, AND SO THIS RING ACTUALLY IS JUST A SHORTHAND WAY OF DESCRIBING THIS SIX-MEMBERED CARBON-HYDROGEN RING.

SEROTONIN DIFFERS SOMEWHAT IN HAVING TWO RINGS. GAMMA-AMINOBUTYRIC ACID IS COMPLETELY DIFFERENT

FROM THE OTHERS BECAUSE IT DOESN'T HAVE ANY RINGS AT ALL. IT'S JUST A STRAIGHT CHAIN.

SO HOW DOES THE NEUROTRANSMITTER ACT? THIS QUESTION HAS BEEN EXPLORED FOR -- FOR MORE THAN 100 YEARS NOW.

IN THE EARLY YEARS OF THE 20TH CENTURY, TWO MAJOR SCIENTISTS, PAUL EHRLICH AND A BRITISH PHARMACOLOGIST NAMED LANGLEY, PROPOSED THAT DRUGS MUST ACT BY COMBINING WITH SOME KIND OF RECEPTOR.

AND THERE WAS REALLY NO BASIS FOR SAYING THIS EXCEPT THEIR RESULTS. THEY FELT THAT SINCE THESE DRUGS HAD SUCH A POWERFUL EFFECT, THAT THEY MUST BE COMBINING WITH A RECEPTOR.

IT HASN'T BEEN UNTIL QUITE RECENTLY THAT THIS -- THE PICTURE YOU SEE HERE ACTUALLY HAS CONSIDERABLE TRUTH TO IT.

WHAT BOTH EHRLICH AND LANGLEY BELIEVED WAS THAT THE DRUG COMPOUND RESEMBLES -- IN SOME WAY RESEMBLES A KEY, A KEY THAT FITS A PARTICULAR LOCK, AND THAT THE COMPOUND, THEREFORE, HAS THE CHARACTERISTICS OF A KEY, THE RECEPTOR HAS THE CHARACTERISTICS OF A LOCK; THAT IS TO SAY, THAT THERE ARE PROJECTIONS OF THIS KIND IN THE DRUG COMPOUND THAT FIT INTO CAVITIES OF THIS KIND IN THE RECEPTOR.

AND IT'S REMARKABLE THAT IT ACTUALLY TURNED OUT THAT THERE'S A GOOD DEAL OF TRUTH TO THAT IN THIS CASE.

WHEN THE DRUG -- THE KEY FITS INTO THE

RECEPTOR, SOMETHING HAPPENS, AND THAT -- THAT HAS BEEN THE BASIS BY WHICH PHARMACEUTICAL COMPANIES AND ACADEMIC SCIENTISTS DISCOVERED NEW DRUGS THAT -- NEW SYNTHETIC DRUGS BECAUSE THEY ATTEMPTED TO MIMIC THE CHEMICAL STRUCTURES OF NATURAL PRODUCTS LIKE MORPHINE INTO ABBREVIATED CHEMICAL STRUCTURES LIKE OXYCODONE IN ORDER TO PREPARE NEW DRUGS THAT, IN THE CASE OF THE MORPHINE ANALOGS, COULD TREAT PAIN.

NOW, IT'S INTERESTING THAT THE STRUCTURE OF A NEURORECEPTOR WAS ACTUALLY DEVELOPED RIGHT HERE IN PASADENA BY PROFESSOR DOUGHERTY, BY CRYSTALLOGRAPHY. IT CONSISTS OF A NUMBER OF SCREW-LIKE ENDS WHICH ARE BURIED, WHICH ARE BASICALLY BURIED INTO THE CELL MEMBRANE. AND THEN PROJECTING -- PROJECTING ABOVE THE MEMBRANE THAT IS EXTERNAL TO THE CELL ARE THESE VARIOUS LOOPS. AND HERE YOU CAN SEE THIS LITTLE PURPLE FIGURE, AND THAT IS A SMALL MOLECULE, A DRUG-LIKE MOLECULE, WHICH IS -- HAS FITTED ITSELF INTO SOME OF THE CHEMICAL FEATURES OF THE RECEPTOR.

Q SO WITH THAT BIT OF BACKGROUND, WE CAN TALK ABOUT WHAT THE DEPUTY MEDICAL EXAMINER IN THE CORONER'S DEPARTMENT DEVELOPED IN HIS TOXICOLOGY REVIEW OF TARA'S BLOOD.

THIS BLOOD WAS TAKEN POSTMORTEM. SHE DIED ON MARCH 23RD, 2010. AND HER BODY WAS DISCOVERED THAT MORNING, AND IT'S POSSIBLE TO GET SAMPLES EVEN AFTER -- BLOOD SAMPLES EVEN AFTER DEATH, AND THAT'S WHAT THEY DID.

THESE BLOOD SAMPLES WERE TAKEN FROM THE FEMORAL VEIN, A VEIN THAT IS IN THE UPPER PART OF THE

THIGH. IT'S EASILY ACCESSIBLE, AND THAT'S WHY THEY USED THAT.

AND SO EACH OF THESE DRUGS HAS A VALUE FOR THE FEMORAL BLOOD, EACH ONE, AND MOST OF THEM, ALL BUT ONE ACTUALLY, ALSO HAVE A VALUE FOR THE BLOOD IN THE HEART, SO A HEART SAMPLE WAS TAKEN. A SAMPLE OF HEART BLOOD WAS ALSO TAKEN.

AND I WANTED TO SAY THAT, AND IT'S WELL-ESTABLISHED, THAT THE HEART BLOOD IS NOT AS ACCURATE AS THE FEMORAL VEIN BLOOD. SO THAT IT'S PREFERABLE TO HAVE BLOOD FROM THE FEMORAL VEIN, WHICH HE DID HAVE IN SIX OF THE SEVEN CASES.

BUT WHEN YOU HAVE NOTHING ELSE, THEN HE USED THE HEART.

Q AND IT'S PREFERABLE BECAUSE THE FEMORAL CONCENTRATION IS MORE ACCURATE INDICATION OF THE CONCENTRATION AT THE TIME OF DEATH THAN THE HEART?

A THAT IS CORRECT, YES, THAT'S EXACTLY RIGHT.

Q PLEASE GO ON. THANK YOU.

A SO, NOW, IN ORDER TO GET INFORMATION ABOUT -- FROM THESE BLOOD SAMPLES, THEY WERE PROCESSED TO REMOVE THE CELLULAR MATERIAL, AND SO WHAT REMAINS THEN IS THE PLASMA OR THE SERUM WITHOUT CELL -- WITHOUT RED BLOOD CELLS, FOR EXAMPLE.

AND THIS MATERIAL, PLASMA OR SERUM, WAS INJECTED INTO A GAS -- INTO A CHROMATOGRAPH. A CHROMATOGRAPH IS AN INSTRUMENT THAT CAN SEPARATE THE CONSTITUENTS OF A MIXTURE INTO INDIVIDUAL CHEMICAL PEAKS.

THE OUTPUT THAT YOU SEE IS PEAKS ON A GRAPH THAT GO LIKE THAT.

AND FROM THESE PEAKS YOU CAN GET TWO THINGS: ONE IS THE -- WELL, THE MOST IMPORTANT THING YOU CAN GET IS THE AREA UNDER THE CURVE OF EACH PEAK, WHICH TELLS YOU THE RELATIVE AMOUNTS OF EACH PEAK -- THE RELATIVE AMOUNTS OF THE BLOOD CONSTITUENT THAT IS RESPONSIBLE FOR EACH PEAK, AND THE OTHER QUESTION, OF COURSE, IS WHAT PEAK CORRESPONDS TO WHAT DRUG.

AND THIS IS OBTAINED BY COUPLING THE CHROMATOGRAPH TO A MASS SPECTROMETER.

AND THE MASS SPECTROMETER IS CAPABLE OF DETERMINING THE MOLECULAR MASS OF EACH CONSTITUENT IN EACH PEAK.

Q BY "MOLECULAR MASS," YOU'RE REFERRING TO THE STRUCTURE OF THAT PARTICULAR MOLECULE?

A YES. IT WILL TELL YOU WHAT THE -- ESSENTIALLY, THE MASS CORRESPONDING TO THE CHEMICAL STRUCTURE FOUND THAT HAS BEEN SEPARATED INTO EACH PEAK.

AND SO WHEN YOU GET ALL THROUGH WITH THAT -- AND THIS IS A VERY STANDARD PROCEDURE NOW, THE CORONER DOES IT, A LOT OF THE LABS DO IT.

WHEN I STARTED STUDIES, THE IDEA OF COUPLING A CHROMATOGRAPH INTO A MASS SPEC WAS -- SOUNDED INSANE BECAUSE OF THE DIFFICULTY IN KEEPING THE HIGH VACUUM NEEDED IN A MASS SPEC WHEN YOU'RE INJECTING THINGS LIKE THAT INTO IT, BUT --

Q LET ME JUST INTERRUPT AND ASK: SO THIS

ANALYSIS, THE IDENTIFICATION OF THE SPECIFIC COMPOUNDS, THESE DRUGS AND THE QUANTIFICATION, MEANING MEASURING THE AMOUNTS OF THE CONCENTRATIONS --

A CORRECT.

Q -- THAT WAS ALL DONE BY THE CORONER'S OFFICE, CORRECT?

A CORRECT.

Q SO THOSE -- THAT DATA IS AN ASSUMPTION, A GIVEN FOR EVERYONE IN THE CASE, RIGHT?

A YES.

Q PLEASE CARRY ON.

A SO NOW -- NOW HE HAS THE CONCENTRATION, AND THE CONCENTRATION OF EACH OF THESE PEAKS IS EXPRESSED IN MICROGRAMS PER-MIL, WHICH IS SOME -- I CAN'T REALLY SEE IT FROM HERE.

MR. BLESSEY: YOUR HONOR, AT THIS POINT I THINK I'D LIKE TO OBJECT, AND HERE'S THE GROUNDS: HE WAS ASKED WHAT THE BASIS OF HIS OPINION IS, AND FOR THE LAST 10 MINUTES, HE'S BEEN TALKING ABOUT WHAT THE CORONER DID. SO I DON'T SEE THE CONNECTION. I THINK IT LACKS FOUNDATION. WE JUST NEED TO HEAR HIS OPINIONS.

THE COURT: OVERRULED.

MR. NEWHOUSE: THANK YOU.

Q CARRY ON.

A SO YOU CAN SEE, I THINK THAT SAYS 5-1/2 MICROGRAMS PER-MIL. THAT'S THE CONCENTRATION OF OXYCODONE IN THE FEMORAL BLOOD, AND THEN HE -- EITHER FROM HIS OWN RECORDS OR FROM THE LITERATURE, HE HAS VALUES THAT

INDICATE WHAT A LETHAL RANGE IS, WHAT A TOXIC RANGE IS, OR WHAT A RANGE THAT IS NEITHER LETHAL NOR TOXIC IS FOR EACH OF THESE DRUGS. SO HE HAS THAT INFORMATION, SOMETIMES, AS I SAID, FROM HIS OWN DATA BECAUSE THEY DO HUNDREDS OF THESE THINGS, AND SOMETIMES FROM THE LITERATURE. AND THERE ARE BOOKS THAT HAVE THESE VALUES. ONE OF THE IMPORTANT ONES THAT I USE, IT'S AN IMPORTANT BOOK, AND I USE IT --

MR. BLESSEY: YOUR HONOR, I WOULD OBJECT TO ANY CITE SPECIFICS.

MR. NEWHOUSE: HE'S NOT GOING TO MENTION --

THE COURT: HE CAN TELL US WHAT THE BOOK IS.

BY MR. NEWHOUSE:

Q JUST CARRY ON. THERE IS A BOOK?

A THERE IS A BOOK.

Q GO AHEAD.

A ALL RIGHT. SO ON THE BASIS OF THAT INFORMATION, HE HAS CONCLUDED THAT THE OXYCODONE IS PRESENT IN A LETHAL CONCENTRATION.

SECONDLY, HE IS ABLE TO SAY HOW MANY TABLETS OF THE OXYCODONE WERE RESPONSIBLE FOR THIS BLOOD LEVEL, AND THE WAY HE DOES THAT IS TO USE AN ESTIMATE OF SOMETHING CALLED THE "VOLUME OF DISTRIBUTION."

THE VOLUME OF DISTRIBUTION IS THE VOLUME OF EVERYTHING INTO WHICH THE BLOOD -- INTO WHICH THE DRUG PENETRATES IN THE BODY. IT'S A NUMBER, AGAIN, THAT YOU FIND IN BOOKS. AND USING THE VOLUME OF DISTRIBUTION AND THE CONCENTRATION IN MICROGRAMS PER-MIL, HE CAN CALCULATE

THAT 46 TABLETS, EACH CONTAINING 10 MILLIGRAMS, WERE RESPONSIBLE FOR THIS CONCENTRATION.

Q LET ME JUST INTERRUPT AND ASK YOU: DO YOU AGREE WITH THE CORONER'S CONCLUSION THAT THE OXYCODONE, A.K.A. PERCOCET, IF TAKEN ALONE, WOULD SURELY HAVE KILLED TARA DE ROGATIS?

A YES.

Q THEN WHY DON'T YOU MOVE ON TO THE ANALYSIS OF THE OTHER COMPOUNDS. TRAMADOL?

A OKAY. NOW, TRAMADOL IS A VERY INTERESTING CASE. FORGIVE ME FOR USING TERMS LIKE "INTERESTING." OF COURSE, THE DEATH OF TARA DE ROGATIS WAS A VERY TRAGIC EVENT. BUT WHEN WE DO AN ANALYSIS LIKE THIS, WE GET TO THE POINT WHERE WE'RE TALKING ABOUT MILLIGRAMS AND MICROGRAMS, AND SOMEHOW THE TRAGEDY RECEDES INTO THE BACKGROUND.

BUT I DO WANT TO SAY THAT I DON'T MEAN TO BE DISRESPECTFUL IN TALKING ABOUT THESE VALUES THAT WAY.

Q LET ME ASK YOU: IS TRAMADOL AN OPIATE?

A YES, IT IS, AND I WANT TO TALK A LITTLE ABOUT THE -- THE TRAMADOL WAS GIVEN AS ULTRACET. ULTRACET IS THE TRADE NAME FOR THE PHARMACEUTICAL PRODUCT.

ULTRACET, LIKE SOME OF THESE OTHERS, IS A MIXTURE OF THE OPIATE PLUS ACETAMINOPHEN, AS WE'VE TALKED ABOUT FOR NORCO AND PERCOCET.

AND IN THIS CASE, THE TRAMADOL IS PRESENT IN 37-1/2 MILLIGRAMS PER TABLET. THE CALCULATION IN THE CORONER'S REPORT ASSUMED A 50-MILLIGRAM TABLET. HE DIDN'T

AT THAT MOMENT REALIZE THAT THIS WAS ACTUALLY ULTRACET RATHER THAN PURE TRAMADOL TABLETS, SO HIS CALCULATION IS WRONG.

Q THE NUMBER OF TABLETS IS WRONG?

A YES. HE CALCULATED 39 TABLETS BASED ON A 50-MILLIGRAM TABLET, AND THE ACTUAL NUMBER WHEN I RECALCULATED IT WAS 52 TABLETS BASED ON THIS LOWER WEIGHT.

SO I WANT TO JUST MENTION THAT IT'S NECESSARY TO BE CAREFUL ABOUT READING DATA LIKE THIS BECAUSE YOU HAVE TO BE SURE THAT -- THAT IT'S CORRECTLY CALCULATED.

Q AND YOU ARE AWARE, ARE YOU NOT, FROM REVIEWING THE DOCUMENTS IN THIS CASE, THAT ON FEBRUARY 3RD, 2010, SHE HAD RECEIVED FROM A DR. RAMIN A PRESCRIPTION OF 60 TRAMADOL TABLETS?

A YES.

Q SO YOUR CONCLUSION IS THAT SHE USED, AT MOST, ONLY EIGHT OF THOSE IN THE PRECEDING -- THE NEXT 60 DAYS?

MR. BLESSEY: SOUNDS LIKE LEADING, YOUR HONOR.

THE COURT: HE'S AN EXPERT. OVERRULED.

BY MR. NEWHOUSE:

Q CAN YOU ANSWER THE QUESTION?

A YES. ACTUALLY, SHE HAD RECEIVED, FIVE WEEKS BEFORE HER SUICIDE, THIS PRESCRIPTION FOR 60 TABLETS. SHE ONLY USED EIGHT OF THOSE IN THE FIVE WEEKS. WE CAN TELL THIS FROM THE -- FROM THE DATA HERE BECAUSE IF 52 TABLETS WERE IMPLICATED IN HER DEATH, THEN OBVIOUSLY EIGHT -- SHE

ONLY USED EIGHT OF THOSE IN HER -- IN THE COURSE OF MEDICATING HERSELF.

THE COURT: I'M SORRY. WERE ALL 60 USED UP? ARE YOU ASSUMING THAT OR SOME --

THE WITNESS: YEAH, THAT'S CORRECT. THE VIAL WAS EMPTY -- WHEN SHE EMPTIED THESE THINGS OUT, SHE SWALLOWED THEM AND JUST DROPPED THE VIAL ON THE BED, AND SO THEY FOUND THE VIALS.

THE COURT: SO SHE SWALLOWED 52 OF THESE TABLETS?

THE WITNESS: CORRECT.

THE COURT: RATHER THAN 39; IS THAT WHAT YOU'RE SAYING?

THE WITNESS: RATHER THAN 39; THAT'S CORRECT.

THE COURT: ACCORDING TO YOU.

THE WITNESS: YES. AND THAT'S BECAUSE THE DOSE IS LOWER.

BY MR. NEWHOUSE:

Q LET ME ASK YOU, YOU WERE ALSO AWARE, WERE YOU NOT, THAT SHE REPORTED TO HER PHYSICIAN, DR. SHAINSKY, THAT THE ULTRACET DID NOT WORK FOR HER, DID NOT RELIEVE HER PAIN? ARE YOU AWARE OF THAT?

A YES, I THOUGHT I HAD THAT.

Q THERE IT WAS.

A I THOUGHT THERE WAS A COPY OF THE PRESCRIPTION.

Q WE JUST SAW IT.

A PARDON ME?

Q I THINK WE SAW IT BRIEFLY, BUT GO AHEAD.

A OKAY. SO WE DID HAVE A COPY OF THE PRESCRIPTION INDICATING THAT IT HAD BEEN PRESCRIBED FIVE WEEKS PRIOR, AND WE KNOW FROM THIS THAT SHE ONLY USED EIGHT OF THE 60 TABLETS.

SO THE QUESTION IS: WHY DON'T I BELIEVE THAT TRAMADOL IS IMPLICATED --

Q CORRECT.

A -- IN TARA'S DEATH. AND THE REASON FOR THAT IS THAT TRAMADOL IS ESSENTIALLY AN INACTIVE PRODRUG. THIS IS KNOWN AND --

Q JUST LET ME INTERRUPT. BY "PRODRUG" WHAT YOU'RE SAYING IS TRAMADOL IN ITS INITIAL FORM, THE ONE ON THE LEFT, ISN'T GOING TO HAVE ANY ANALGESIC THERAPEUTIC QUALITY IN A HUMAN BODY BY ITSELF?

A CORRECT.

Q WHAT DOES IT TAKE FOR IT TO BECOME ACTIVE?

A OKAY. LET'S JUST SAY THAT THE BASIS FOR THAT INACTIVITY, OTHER THAN THE FACT THAT IT IS INACTIVE, IS THAT THE -- IS THAT WE CAN MEASURE THE AFFINITY OF A DRUG OR A CHEMICAL SUBSTANCE TO ITS RECEPTOR. WE CAN MEASURE THAT.

AND WHEN WE MEASURE THAT, THE -- IT TURNS OUT THAT TRAMADOL HAS AN AFFINITY OF ONLY 2.4 MICROMOLAR. IN OTHER WORDS, THE AFFINITY WOULD MEASURE AS A -- AS A CONCENTRATION OF A SOLUTION THAT WOULD BE STRONG ENOUGH TO BIND TO THE RECEPTOR.

AND IT'S 2.4 MICROMOLAR FOR TRAMADOL, BUT FOR THE METABOLITE, THIS METABOLITE, WHICH IS

O-DESMETHYLTRAMADOL, THE AFFINITY IS 3.4 NANOMOLAR.

NOW, THERE ARE 1,000 NANOMOLES IN A MICROMOLE. SO THE METABOLITE IS OBVIOUSLY FAR MORE STRONGLY ATTRACTED TO THE RECEPTOR THAN THE PARENT COMPOUND.

Q WE'RE CALLING THAT RECEPTOR THE "MU OPIOID RECEPTOR"?

A YEAH, THE MU OPIOID RECEPTOR IS THE NATURAL RECEPTOR FOR MORPHINE, AND IT'S CALLED A MU RECEPTOR BECAUSE MU IS THE GREEK LETTER "M," AND IT'S "M" FOR MORPHINE, SO THAT'S HOW WE END UP WITH PHRASES LIKE "MU RECEPTOR."

SO -- AND TRAMADOL ITSELF IS ATTRACTED TO THAT -- SORRY, THE O-DESMETHYLTRAMADOL ITSELF IS ATTRACTED TO THAT RECEPTOR 700 TIMES MORE EFFECTIVELY THAN TRAMADOL ITSELF. SO WE KNOW FROM THIS THAT THERE'S A REASON FOR THE INACTIVITY OF TRAMADOL.

AND TARA, IN HER INTERVIEW BY DR. SHAINSKY, TOLD DR. SHAINSKY THAT TRAMADOL DID NOT WORK FOR HER. THOSE ARE HER WORDS AS REPORTED BY DR. SHAINSKY.

SO ONE HAS TO ANSWER THE QUESTION IN ANALYZING THIS: WHY DIDN'T IT WORK? WELL, THIS IS THE MOST OBVIOUS REASON, THAT HER LIVER WAS INCAPABLE OF METABOLIZING TRAMADOL TO THE DESMETHYLTRAMADOL, AND THE ONLY DIFFERENCE BETWEEN THESE COMPOUND IS THIS C.H.3 GROUP, WHICH IS A METHYL GROUP.

IN THE LIVER THAT CAN BE METABOLIZED TO TAKE IT OFF AND LEAVE AN O.H. GROUP. THIS IS THE ACTIVE

COMPOUND WITH THE O.H. GROUP. WHERE THE C.H.3 GROUP IS ON THERE, IT IS 700 TIMES LESS ACTIVE.

SO IT TURNS OUT THAT THERE IS A CERTAIN SUBSET OF HUMAN BEINGS WHO LACK THE PARTICULAR ENZYME, WHICH IS CALLED CYP -- CYP2D6. CYP2D6 IS KNOWN TO BE THE ENZYME THAT REMOVES THIS METHYL GROUP FROM THIS POSITION.

AND SO WE KNOW IN GENERAL THAT THERE IS A CERTAIN SUBSET OF HUMAN BEINGS WHO DO NOT HAVE CYP2D6 OR HAVE ONLY SMALL AMOUNTS OF IT, AND THOSE PEOPLE ARE NOW CLASSIFIED AS POOR METABOLIZERS, POOR METABOLIZERS.

THERE ARE SEVERAL CLASSES OF HUMAN BEINGS WITH RESPECT TO METABOLISM. THERE ARE POOR METABOLIZERS, INTERMEDIATE METABOLIZERS, AND ULTRAFAST METABOLIZERS.

AND THAT DEPENDS ON THE -- YOUR GENETIC MAKEUP. IF YOU DON'T HAVE THE GENE TO MAKE THE ENZYME, THEN YOU'RE GOING TO BE A POOR METABOLIZER FOR THIS PARTICULAR DRUG.

SO FROM THAT INFORMATION WE CAN GO BACK --

Q BEFORE YOU GO ON, I HAVE ONE QUESTION.

A YEAH.

Q THE ENZYME YOU'RE TALKING ABOUT, THIS IS A MOLECULE THAT ESSENTIALLY ACTS AS A CATALYST, FACILITATES THE TRANSACTION?

A THAT IS CORRECT.

Q BUT IT'S NOT USED UP IN THE TRANSACTION?

A THAT IS CORRECT.

Q AND THAT ENZYME COMES INTO PLACE RIGHT WHERE YOU HAVE LIVER AND THE ARROW, THAT'S A CHEMICAL REACTION

OCCURRING IN THE LIVER?

A IN THE LIVER, YES.

Q SO WE DON'T SEE THE ENZYME, BUT THE ENZYME IS ACTIVE AT THAT POINT?

A WE KNOW IT'S THERE, YEAH, RIGHT.

Q THANK YOU.

A AND, OF COURSE, AS MANY OF YOU WELL KNOW, OUR WHOLE BEING DEPENDS ON THE ACTIVITY OF ENZYMES BECAUSE WHEN -- FOR EXAMPLE, WHEN WE DIGEST A HAMBURGER, WE USE AN ENZYMATICALLY CATALYZED PROCESS, AND IF WE DIDN'T HAVE THAT -- AS YOU KNOW, YOU HAVE TO COOK A HAMBURGER IN A PAN, A HEATED PAN, TO COOK IT. SO WITHOUT -- SINCE OUR BODIES ARE NOT AT THE TEMPERATURE OF A HEATED PAN, THERE HAS TO BE SOMETHING THAT MAKES IT POSSIBLE TO CARRY OUT THESE CHEMICAL REACTIONS, AND THE ENTITY THAT MAKES IT POSSIBLE IS THE GROUP OF ENZYMES THAT ALL OF US CONTAIN.

AND WHAT WE'RE TALKING ABOUT HERE IS THAT THERE IS SOME VARIATION IN THE ENZYME, ENZYMATIC MAKEUP OF A HUMAN BEING, JUST LIKE SOME OF US HAVE BLUE EYES AND SOME OF US HAVE BROWN EYES. SO WHAT YOU'RE SEEING HERE IS THE CONSEQUENCE OF THAT TYPE OF GENETIC VARIATION.

Q SO WHAT IS THE BASIS, THEN? WHAT IS THE SCIENTIFIC EVIDENCE THAT YOU RELIED UPON FOR YOUR CONCLUSION THAT TARA LACKED THIS IMPORTANT ENZYME FOR HER TO BE A METABOLIZER OF THE INACTIVE PRODRUG TRAMADOL?

A WELL, AMONG OTHER THINGS, THE CONCLUSION IS BASED ON THE SECOND METABOLITE WHICH IS CALLED NORTRAMADOL, AND HERE THE METHYL GROUP IS -- THAT WAS ON

THE NITROGEN IS NOW OFF. IN THE FIRST CASE IT WAS A METHYL GROUP ON THE OXYGEN THAT'S OFF. IN NORTRAMADOL THAT METHYL GROUP IS STILL HERE, BUT THE METHYL GROUP THAT WAS ON THE NITROGEN IS NOW OFF AND NORTRAMADOL IS AN INACTIVE METABOLITE.

Q WHICH MEANS THAT IT WOULD HAVE NO IMPACT, NO ANALGESIC IMPACT?

A NO ANALGESIC ACTIVITY.

SO HERE YOU CAN SEE THE TWO DIFFERENT METHYL GROUPS. THIS IS THE METHYL GROUP ON THE OXYGEN, THE ONE THAT HAS TO COME OFF TO BE ACTIVE; AND THIS IS A METHYL GROUP ON THE NITROGEN, WHICH LEADS TO THE NORTRAMADOL.

SOMEWHERE -- OH, YEAH, HERE IT IS.

WHAT WE SEE IN THE BLOOD LEVELS IN TARA'S CASE WERE THAT THE TRAMADOL LEVELS WERE AT 16 MICROGRAMS PER-MIL. THE NORTRAMADOL LEVELS WERE VERY SMALL, ONLY ABOUT 2.2 PERCENT.

Q SO WAS NORTRAMADOL SOMETHING THAT THE CORONER'S OFFICE, THAT LABORATORY, ACTUALLY TESTED FOR?

A THEY DID, BUT THEY BURIED IT. THEY DIDN'T ACTUALLY CALL ATTENTION TO IT, BUT IT WAS IN A LIST OF THEIR DATA.

Q BUT YOU FOUND IT?

A I FOUND IT.

Q EXPLAIN THE SIGNIFICANCE.

A AND THE SIGNIFICANCE TO ME WAS THAT IF YOU LOOK AT THE BLOOD LEVELS IN A CASE OF POISONING BY TRAMADOL ALONE, WHICH MEANS THAT THAT PERSON HAD TO HAVE

THE ENZYMES NECESSARY TO PROCESS TRAMADOL, IN THAT CASE, THE BLOOD LEVEL OF TRAMADOL WAS 19 MICROGRAMS, A LITTLE HIGHER THAN TARA'S, BUT THE NORTRAMADOL LEVELS WERE 8.5 MICROGRAMS, WHICH IS ABOUT 53 PERCENT OF THE 19, THIS VALUE FOR TRAMADOL ITSELF.

IN TARA'S CASE, THE NORTRAMADOL LEVEL WAS ONLY 2.2 PERCENT. SO TARA WAS -- HAD IMPEDED METABOLISM, NOT ONLY OF THE OXYGEN METHYL GROUP BUT ALSO OF THE NITROGEN METHYL GROUP.

AND SO THAT IS CLEAR EVIDENCE THAT THERE IS A METABOLIC DYSFUNCTION HERE.

Q LET'S TALK ABOUT HYDROCODONE, WHICH WAS THE THIRD SUBSTANCE OR COMPOUND IDENTIFIED IN THE CORONER'S REPORT, AND THAT'S ALSO KNOWN AS NORCO?

A YES, IT IS.

Q AND YOU HAVE AT THE TOP, YOU KNOW THAT SHE HAD ALMOST USED UP, HAD A FEW TABLETS LEFT OF A 10-MICROGRAM -- I'M SORRY, 10-MILLIGRAM 325, AND THE 325 REFERS TO ACETAMINOPHEN?

A YES.

Q SO DID YOU AGREE OR DISAGREE WITH THE CORONER'S CONCLUSION THAT THE NORCO MAY WELL HAVE HAD AN IMPACT ON HER POISONING AND HER FATALITY?

A I DID AGREE WITH IT, YES; THAT IS, HE INDICATED THAT IT WAS AT THE LETHAL LEVEL OR CLOSE TO IT. IT HAS EXACTLY THE SAME MECHANISM OF ACTION -- AND I SHOULD TALK FOR A MOMENT ABOUT THE MECHANISM OF ACTION OF THESE OPIATES IN PRODUCING A DEATH, NOT IN PRODUCING THE

ANALGESIA THAT IS THE PAIN-MODERATING EFFECT, BUT THE UNWANTED TOXIC EFFECT OF DEPRESSING THE RESPIRATIONS.

NORMALLY --

Q LET ME JUST INTERRUPT. BY "DEPRESSING THE RESPIRATION," YOU MEAN THAT ELEVATED CONCENTRATIONS OF THE DRUG WOULD BASICALLY STOP ME FROM BREATHING --

A YES.

Q -- WHEN TAKING IT, RIGHT?

A YES.

Q IF I DON'T BREATHE LONG ENOUGH, THAT'S A BAD THING?

A THAT'S BAD, YES.

Q CARRY ON.

A THE NORMAL BREATHING RATE OF A HUMAN BEING IS AROUND 20 RESPIRATIONS PER MINUTE, AND WE DO NOT CONSCIOUSLY BREATHE 20 TIMES A MINUTE. WE CAN CONSCIOUSLY BREATHE, BUT FOR OUR ORDINARY 20 TIMES A MINUTE BREATHING, IT'S NOT A CONSCIOUS ACT.

THAT IS THE RESPIRATORY CENTER IN THE BRAIN SIGNALING TO BREATHE, BREATHE, BREATHE. AND THE EFFECT OF THE OPIOIDS, MORPHINE, HEROIN, METHADONE, ALL OF THOSE OPIOIDS, IS TO DEPRESS THE RESPIRATORY CENTER.

AND SO WHAT HAPPENS -- I ACTUALLY HAD A CASE IN NORTHERN CALIFORNIA WHERE A COUPLE OF HIGH SCHOOL KIDS STARTED PLAYING AROUND WITH METHADONE, WHICH IS ANOTHER OPIATE, AND THEY WERE AT A FOOTBALL GAME. THEY BECAME FATIGUED FROM THE EFFECTS OF THE METHADONE AND WENT HOME, AND WHEN THEY GOT HOME, THEY TOLD THE PARENTS OF ONE OF

THEM, YOU KNOW, "WE'RE GOING TO CRASH. WE'RE PRETTY TIRED FROM THE DAY."

SO THEY LAID DOWN ON THEIR BEDS, AND THE PARENTS LOOKED IN ON THEM SOMETIME DURING THE EVENING, AND THEY WERE SNORING. THEY WERE BOTH SNORING, AND THE PARENTS BELIEVED THAT THAT WAS FINE, THAT THEY WERE RESTING COMFORTABLY. BUT, ACTUALLY, THE SNORING IS ALSO A SYMPTOM OF -- IN CASES OF OPIATE DEPRESSION OF RESPIRATION, IT'S A SYMPTOM THAT PEOPLE SNORE, AND THAT'S WHAT THEY WERE EXPERIENCING.

SO, ANYWAY, THEY CLOSED THE DOOR, EVERYBODY WENT TO BED, AND THE NEXT MORNING BOTH KIDS WERE DEAD. VERY SAD CASE.

AND THAT'S AN EXAMPLE OF RESPIRATORY DEPRESSION. IT'S A SERIOUS THING. AND THIS IS THE --

Q CAN I ASK YOU A QUESTION? THE CORONER MEASURED HYDROCODONE AT 0.45 MICROGRAMS PER-MILLILITER?

A THAT'S THE HEART CONCENTRATION.

Q YEAH. WELL, THE CORONER DIDN'T, FOR SOME REASON, TAKE A FEMORAL SAMPLE WITH RESPECT TO --

A FOR SOME REASON, NO. I DON'T KNOW WHAT THAT IS.

Q SO IS THAT MEASUREMENT THEN TAKEN -- TAKEN FROM THE HEART SUBJECT TO SOME DOUBT OR ELEVATION BECAUSE OF THE REDISTRIBUTION EFFECT?

A WELL, YES. WHEN YOU TAKE A SAMPLE OF HEART BLOOD OF A PATIENT THAT HAS INGESTED DRUGS, THE BLOOD, AS WE'VE TALKED ABOUT -- THE DRUG, AS WE'VE TALKED ABOUT,

DISTRIBUTES INTO VARIOUS TISSUES IN THE BODY, AND IT PARTICULARLY DISTRIBUTES INTO THE HEART MUSCLE. THE HEART BLOOD IS, AFTER ALL, A MUSCLE SURROUNDING THE --

THE COURT: YES?

A JUROR: MY BLADDER'S SHRINKING UP.

THE COURT: ALL RIGHT. TIME OUT. WE NEED TO TAKE A BREAK HERE. COURT'S IN RECESS FOR 15 MINUTES.

(RECESS.)

(THE FOLLOWING PROCEEDINGS WERE HELD IN OPEN COURT, IN THE PRESENCE OF THE JURY:)

THE COURT: WE'RE BACK ON THE RECORD. ALL JURORS ARE PRESENT. PARTIES ARE PRESENT. LAWYERS ARE PRESENT, MANFRED WOLFF HAS RESUMED THE WITNESS STAND.

A REMINDER TO YOU, SIR, YOU REMAIN UNDER OATH. UNDERSTOOD?

THE WITNESS: YES. THANK YOU.

THE COURT: LET'S FINISH THIS UP.

MR. NEWHOUSE: THANK YOU, YOUR HONOR.

Q DR. WOLFF, WE'RE GOING TO MOVE MUCH MORE QUICKLY THROUGH THE REMAINING CHEMICALS, AND IF I COULD JUST -- IN SUM, YOUR TESTIMONY WITH REGARD TO HYDROCODONE, YOUR ANALYSIS IS THAT THE INGESTION OF THE SEVEN OR SO TABLETS MIGHT HAVE ADDED TO THE RESPIRATORY EFFECTS BUT WOULD NOT HAVE BEEN SUFFICIENT IN AND OF ITSELF TO KILL

HER?

MR. BLESSEY: YOUR HONOR, THAT'S NOT RELEVANT. EITHER HE'S GOT A REASONABLE MEDICAL PROBABILITY OPINION OR HE DOESN'T, SO "MIGHT HAVE" IS NOT THE STANDARD. I WOULD OBJECT.

THE COURT: GO AHEAD.

MR. NEWHOUSE: I'LL TAKE THAT AS A --

THE COURT: REPHRASE IT.

MR. NEWHOUSE: I'LL TAKE THAT AS A FRIENDLY AMENDMENT.

Q DO YOU HAVE AN OPINION TO A REASONABLE DEGREE OF MEDICAL CERTAINTY THAT INGESTION OF THE SEVEN NORCO 10-MILLIGRAM 325 TABLETS MIGHT HAVE ADDED TO THE RESPIRATORY DEPRESSION BUT WOULD NOT HAVE KILLED HER?

MR. BLESSEY: SAME OBJECTION.

THE COURT: OVERRULED.

THE WITNESS: I BELIEVE THAT IN VIEW OF THE FACT THAT THE HEART CONCENTRATION IN ALL OF THOSE MEASUREMENTS BY THE MEDICAL EXAMINER WERE -- THE HEART CONCENTRATIONS WERE ABOUT DOUBLE THE FEMORAL VEIN CONCENTRATIONS. THAT'S REALLY THE ONLY WAY I CAN INTERPRET THIS HEART CONCENTRATION, WOULD BE DOWN AROUND 0.22, AND SO I BELIEVE THAT THE NORCO CONTRIBUTED TO THE DEATH OF TARA BECAUSE IT WAS GIVEN IN CONJUNCTION WITH THE -- WITH THE OXYCODONE. SO IT WAS A CONTRIBUTING FACTOR TO HER DEATH.

BY MR. NEWHOUSE:

Q LET'S MOVE ON TO ZOLPIDEM, THE NEXT CHEMICAL.

A YES.

Q CORONER'S REPORT STATED THAT ZOLPIDEM WAS DETECTED IN HER BLOOD AT WHAT LEVELS?

A 1.2 MICROGRAMS PER-MIL IN THE -- IN THE FEMORAL VEIN.

IN THIS CASE, THERE HAVE BEEN REPORTS THAT I'M RELYING ON THAT LEVELS AS HIGH AS 140 TO 440 MILLIGRAMS RESULTED IN ONLY 6 PERCENT FATALITIES. THESE LEVELS IN TARA'S CASE ARE DOWN AT, LIKE, 1 PERCENT OF THAT, SO --

Q SO YOUR OPINION WAS?

A MY OPINION IS THAT THE ZOLPIDEM DID NOT CONTRIBUTE TO THE DEATH OF TARA.

Q OKAY. AND THE REMAINING CHEMICALS, WHAT'S THE NEXT ONE? WE HAVE A SLIDE, I THINK. THERE WE GO.

I'M GOING TO CALL IT SEROQUEL BECAUSE I CANNOT PRONOUNCE THE OTHER NAME, THE SEROTONIN DOPAMINE ANTAGONIST.

WHAT WAS YOUR ANALYSIS AND OPINION AS TO WHETHER OR NOT THIS DRUG, SINGLY OR IN COMBINATION, WOULD HAVE CAUSED THE DEATH OF TARA?

A MY OPINION IS THAT IT DID NOT CONTRIBUTE TO THE DEATH OF TARA, AND I WANT TO EMPHASIZE AT THIS POINT THAT WHEN HE SAYS THAT "3.8 MICROGRAMS IS ELEVATED, POSSIBLY TOXIC," TOXIC DOES NOT MEAN LETHAL. OKAY? TOXIC IS SOME NEGATIVE IMPACT ON THE PERSON, MAYBE AN ORGAN INJURY OR --

Q SO IF SOMETHING IS TOXIC TO ME, I MIGHT BE

INJURED OR MY ORGANS MIGHT BE ADVERSELY AFFECTED, BUT I'M NOT GOING TO DIE?

A YOU'RE NOT GOING TO DIE FROM IT.

Q THE NEXT ONE? TRAZODONE?

A THAT'S DESYREL. THAT'S A SEROTONIN REUPTAKE INHIBITOR. NOW, THAT -- A REUPTAKE INHIBITOR WOULD INCREASE THE CONCENTRATION OF SEROTONIN IN THE SYNAPTIC CLEFT.

Q SO IT'S ONE OF THESE NEUROTRANSMITTERS YOU WERE SHOWING US MOVING FROM THE DENDRITE TO THE RECEIVER?

A FROM THE AXON TO THE DENDRITE, YEAH.

SO -- SO THIS WOULD GIVE A SEROTONIN-LIKE EFFECT, BUT THE -- THE CONCENTRATION HERE IS A LOW NORMAL AS CALCULATED BY THE DEPUTY MEDICAL EXAMINER.

Q SO YOUR --

A AND FATALITIES ARE RARELY ATTRIBUTED SOLELY TO TRAZODONE AT BLOOD CONCENTRATIONS BELOW 9 MICROGRAMS, SO IT'S JUST A SMALL FRACTION OF THAT, AND I THINK IT DID NOT CONTRIBUTE TO THE DEATH OF TARA.

Q AND THE NEXT CHEMICAL, PLEASE, ZOPICLONE?

A LUNESTA IS A SELECTIVE G.A.B.A.A. AGONIST. THAT'S SUPPOSED TO BE G.A.B.A.A., SUB "A," BUT THE MACHINE DIDN'T PRINT IT THAT WAY.

SHE, AGAIN, HAD A LOW POSTMORTEM BLOOD CONCENTRATION, ONLY 0.21 MICROGRAMS PER-MIL. 1.1 TO 4-1/2 IS ELEVATED TO TOXIC, SO ZOPICLONE IS NOT INVOLVED IN THE DEATH OF TARA.

Q AND YOUR NEXT SLIDE. SO HERE YOU SUMMARIZE,

DO YOU NOT, YOUR ULTIMATE CONCLUSION AS TO THE INGESTION OF THE DRUGS THAT THE CORONER DETECTED AND WHETHER OR NOT THESE DRUGS MAY OR MAY NOT HAVE BEEN RESPONSIBLE FOR HER DEMISE?

A CORRECT. AND SO WHAT WE'RE SAYING IS THAT -- WHAT WE'RE CONCLUDING IS THAT OXYCODONE, AN OPIATE, AND HYDROCODONE, AN OPIATE, ARE RESPONSIBLE -- ANYWAY, OXYCODONE IS THE MAIN ACTOR HERE. IT ALONE WOULD HAVE -- WOULD HAVE BEEN LETHAL, BUT THE HYDROCODONE HAS EXACTLY THE SAME MECHANISM OF ACTION, RESPIRATORY DEPRESSION, AND IT IS, THEREFORE, CONTRIBUTORY TO THE DEATH OF TARA.

THE OTHERS, TRAMADOL, ZOLPIDEM, ZOPICLONE, QUETIAPINE, AND TRAZODONE, ARE NOT RESPONSIBLE FOR TARA'S DEATH.

MR. NEWHOUSE: NO FURTHER QUESTIONS, YOUR HONOR. THANK YOU.

THE COURT: CROSS-EXAMINATION.

MR. BLESSEY: THANK YOU, YOUR HONOR.

CROSS-EXAMINATION

BY MR. BLESSEY:

Q GOOD AFTERNOON, DR. WOLFF.

A HELLO, SIR.

Q YOU'RE NOT A MEDICAL DOCTOR, ARE YOU?

A I AM NOT.

Q NOW, LET'S SEE IF WE CAN SET THE RECORD STRAIGHT ON A COUPLE OF THINGS, AND WE'LL START WITH --

MR. NEWHOUSE: YOUR HONOR, I'M GOING TO OBJECT TO THE ARGUMENTATIVE QUESTION. WE'RE NOT SETTING THE RECORD STRAIGHT.

THE COURT: SUSTAINED.

MR. NEWHOUSE: THANK YOU.

BY MR. BLESSEY:

Q LET'S TALK ABOUT YOUR FEES. I THINK I HEARD YOU SAY YOUR FEES IN THIS CASE TOTAL ARE AROUND 30,000, CORRECT?

A YES, IT'S UNDER -- SOMETHING UNDER 30,000.

Q OKAY. WELL, I'D LIKE TO READ FROM YOUR DEPOSITION TRANSCRIPT, PAGE 15, LINES 3 THROUGH 5.

MR. NEWHOUSE: NO OBJECTION, YOUR HONOR. THANK YOU.

BY MR. BLESSEY:

Q "QUESTION: OKAY. I UNDERSTAND. I SEE. THE AMOUNT THAT HAS NOT BEEN PAID, IS THAT IN RELATION TO THE JULY 29 INVOICE FOR $38,432.95?"

MR. NEWHOUSE: DO YOU WANT TO READ THE ANSWER?

BY MR. BLESSEY:

Q THE ANSWER:

"WELL, THAT'S THE TOTAL, I THINK."

SO WHAT HAPPENED, MR. WOLFF, IS THAT YOU WERE SHOWN AN INVOICE AT YOUR DEPOSITION, CORRECT?

A YES, I DID.

Q OKAY. AND YOUR DEPOSITION WAS TAKEN ON AUGUST 16TH, 2013 -- '12, SORRY, CORRECT? AUGUST 16TH,

2012, CORRECT?

A YES.

Q ALL RIGHT. AND PART OF THE REASON THAT YOUR FEES ARE SO HIGH IS BECAUSE YOU SPENT MANY, MANY, MANY HOURS TRYING TO READ ABOUT THE SUBJECT MATTER OF THIS CASE, TRUE?

A I REVIEWED THE LITERATURE RELEVANT TO THE CASE, YES.

Q YES, YOU SPENT MANY HOURS, CORRECT?

MR. NEWHOUSE: OBJECTION. ARGUMENTATIVE.

THE WITNESS: I SPENT --

THE COURT: OVERRULED.

THE WITNESS: I SPENT THE HOURS THAT ARE REFLECTED IN THAT NUMBER, YES.

BY MR. BLESSEY:

Q OKAY. SO YOUR HOURLY FEE IS, I THINK YOU SAID, $335 PER HOUR?

A RIGHT.

Q SO IF WE DID THE MATH, YOU SPENT THOUSANDS OF HOURS GENERATING THAT BILL AS OF AUGUST 16, 2012, CORRECT?

A WELL, I SPENT ABOUT -- LET'S SEE. IT'S 3 HOURS PER THOUSAND, SO IT'S 38 TIMES 3, SO IT'S THOUSANDS? IT'S LIKE 110 OR 120.

Q OKAY. ONLY 100 -- APPROXIMATELY ONLY 110 HOURS OF READING WHATEVER YOU COULD GET YOUR HANDS ON ABOUT THIS SUBJECT MATTER, CORRECT?

A WHATEVER I COULD -- I READ INFORMATION

RELEVANT TO THE CASE, AND THAT INCLUDES ALL OF THE DOCUMENTS LIKE THE CORONER'S REPORT THAT WERE INVOLVED IN THE CASE.

Q OKAY. NOW, THE REASON YOU READ THE OTHER MATERIALS, THAT IS, YOU WENT TO THE LITERATURE AND LOOKED UP THINGS, IS BECAUSE THIS SUBJECT MATTER OF THIS CASE IS NEW TO YOU, ISN'T IT?

MR. NEWHOUSE: OBJECTION. VAGUE AND AMBIGUOUS.

THE COURT: OVERRULED.

THE WITNESS: WHEN YOU SAY NEW TO ME, THE SUBJECT OF DRUG ACTION IS CERTAINLY NOT NEW TO ME.

BY MR. BLESSEY:

Q THAT'S A GOOD POINT, MR. WOLFF.

A IT'S DR. WOLFF, BY THE WAY.

Q I'M SORRY, DR. WOLFF.

"DRUG," THE TERM "DRUG" IS VERY GENERAL, ISN'T IT? SO LET'S TALK ABOUT -- YOU WOULD AGREE THE TERM "DRUG" COULD REFER TO A LOT OF DIFFERENT TYPES OF DRUGS, CORRECT?

A IT COVERS THE FIELD OF DRUGS, YES.

Q SURE. NOW, I SAY IT'S NEW TO YOU BECAUSE ISN'T IT TRUE THAT IN YOUR PAST WHEN YOU'RE ACTIVELY INVOLVED WITH YOUR PROFESSION, YOU WERE INVOLVED WITH THE RESEARCH AND DEVELOPMENT OF DRUGS THAT ARE NOT IN THE FAMILY OF DRUGS IN THIS CASE, TRUE?

A I -- I WAS INVOLVED IN DRUGS, INCLUDING ADRENERGIC DRUGS, CHOLINERGIC DRUGS, STEROID DRUGS, RETINOID DRUGS, PROSTAGLANDIN DRUGS, SO A BROAD VARIETY OF

DRUGS WHICH MAKES IT POSSIBLE FOR ME TO UNDERSTAND WHAT DRUG ACTION IS ALL ABOUT.

Q THE PERTINENT QUESTION, SIR -- PLEASE ANSWER MY QUESTION -- IS: YOU WERE NOT INVOLVED WITH RESEARCH AND DEVELOPMENT OF THE CLASS OF DRUGS THAT ARE INVOLVED IN THIS CASE, TRUE?

A I WAS NOT INVOLVED TO ANY GREAT EXTENT; THAT'S TRUE.

MR. BLESSEY: OKAY. I'D LIKE TO READ FROM DR. WOLFF'S DEPOSITION TRANSCRIPT, PAGE 34, LINES 4 THROUGH 9.

MR. NEWHOUSE: OBJECTION. IT'S IMPROPER IMPEACHMENT, YOUR HONOR.

THE COURT: LET ME HAVE THE ORIGINAL.

MR. NEWHOUSE: KAMAN, CAN YOU GET DR. WOLFF'S TRANSCRIPT?

THE COURT: LISTEN, GO AHEAD AND READ IT.

MR. BLESSEY: THANK YOU, YOUR HONOR.

THE COURT: PLEASE, YOU KNOW, IF YOU DON'T HAVE IT LODGED WITH THE COURT, I CAN'T DO MUCH ABOUT IT. GO AHEAD.

BY MR. BLESSEY:

Q "QUESTION: AND I'VE SEEN A BIT ON YOUR C.V. AND IN MATERIALS ABOUT THE MEDICATIONS AND DRUGS THAT YOU HAVE DEVELOPED. ARE ANY OF THOSE IN THE SAME DRUGS OR IN THE SAME FAMILY OF DRUGS THAT WE ARE TALKING ABOUT MOMENTARILY REGARDING TARA DE ROGATIS?

"ANSWER: THEY ARE NOT."

MR. NEWHOUSE: OBJECTION. IT'S CUMULATIVE AND NOT -- IT'S IMPROPER IMPEACHMENT, YOUR HONOR. IT'S THE SAME ANSWER HE GAVE.

THE COURT: OVERRULED.

BY MR. BLESSEY:

Q NOW, IN ADDITION NOT BE BEING INVOLVED IN RESEARCH AND DEVELOPMENT OF THE DRUGS IN THIS CASE, SIR, YOU HAVE -- PRIOR TO THIS CASE, YOU HAVE NOT BEEN CALLED UPON IN YOUR PROFESSIONAL CAPACITY OVER THE YEARS TO FORMULATE OPINIONS ABOUT TOXICOLOGY AND THE CAUSE OF DEATH, TRUE?

A MY EFFORTS IN -- IN PROVIDING INFORMATION IN CASES OF THIS TYPE INVOLVES THE ACTION OF DRUGS GENERALLY.

THE -- THE TOXICOLOGICAL EFFECTS OF DRUGS ARE SIMILAR TO THE THERAPEUTIC EFFECTS. IT'S JUST THAT THEIR ACTIONS ON SYSTEMS SUCH AS THE LIVER OR THE SKIN, THAT ARE BEING DAMAGED RATHER THAN BEING HELPED.

SO THERE'S NO FUNDAMENTAL DIFFERENCE BETWEEN TOXICOLOGICAL ACTIONS AND -- AND VALUABLE DRUG ACTIONS, OTHER THAN THAT THE TOXICOLOGICAL ACTIONS PRODUCE AN UNDESIRABLE EFFECT.

MR. BLESSEY: I'D LIKE TO READ FROM DR. WOLFF'S DEPOSITION TRANSCRIPT ON PAGE 35, LINES 19 THROUGH 23.

MR. NEWHOUSE: NO OBJECTION.

THE COURT: READ IT.

BY MR. BLESSEY:

Q "QUESTION: HAS THERE BEEN ANY ASPECT OF

YOUR PROFESSIONAL EXPERIENCE OVER ALL OF THE YEARS OF YOUR WORK IN WHICH YOU HAVE HAD OCCASION TO FORMULATE OPINIONS ABOUT CAUSE OF DEATH OR THE TOXICOLOGICAL ASPECTS OF A DEATH?

"ANSWER: NO."

NOW, YOU RETIRED FROM YOUR PROFESSION AS A CHEMICAL PHARMACEUTIST IN 1995, CORRECT?

A LET ME THINK ABOUT THAT. I THINK THAT'S CORRECT, YEAH.

Q AND WHAT YOU DID AFTER YOU RETIRED IS YOU FORMED AN "S" CORPORATION. WHAT WAS THE NAME OF IT?

A INTELLIPHARM, INCORPORATED.

Q AND THAT'S A CORPORATION THAT'S BASICALLY YOU WORKING OUT OF YOUR HOUSE, CORRECT?

A YES.

Q YOU'VE GOT ONE ROOM THAT YOU WORK IN, AND YOU'VE GOT YOUR WIFE WORKING IN ANOTHER ROOM, CORRECT?

A THAT'S RIGHT.

Q AND THAT 38,000-PLUS FEE THAT YOU CHARGED WAS PAID TO YOUR CORPORATION, CORRECT?

A IT WAS.

Q THAT'S SO YOU COULD TAKE ADVANTAGE OF THE TAX BENEFITS, TRUE?

A I DON'T THINK THAT THE 38,000 HAS BEEN PAID. IT'S OWING.

Q WELL, IT WAS CHARGED, CORRECT?

A IT'S OWING, OKAY?

Q OKAY. SINCE WE'RE ON THAT POINT, SINCE AUGUST OF 2012, INCLUDING YOUR TIME HERE IN TRIAL, HOW MUCH MORE ARE YOU GOING TO BILL ON THIS CASE?

A I DON'T KNOW. I THINK -- I THINK THE LAST -- WHAT I REMEMBER IS THAT THE LAST NUMBERS ARE SOMEWHERE UNDER 30,000, AND I DON'T SEE A LOT MORE. THERE'S THIS -- AS YOU SAID, OTHER THAN THIS TRIAL, I DON'T SEE A LOT MORE. THIS IS THE END.

Q OKAY. AUGUST OF 2012 --

A YEAH.

Q -- TO NOVEMBER THE 5TH, 2013, DID YOU DO ANY WORK ON THE CASE, DR. WOLFF?

A YOU KNOW WHAT? I DON'T -- I DON'T KNOW. I -- I CERTAINLY PREPARED THE SLIDE EXHIBIT, SO I DON'T HAVE THESE NUMBERS IN MY HEAD, AND I DON'T WANT TO GUESS.

Q YOU CERTAINLY BILL -- YOU'VE PUT IN TIME OVER THAT OVER-A-YEAR PERIOD OF TIME I JUST REFERRED TO, CORRECT?

A YES, OF COURSE.

Q BUT YOU JUST HAVE NO IDEA HOW MANY HOURS?

A THAT'S RIGHT.

Q NOW, I THINK THAT WE ESTABLISHED IN DIRECT EXAM, THIS IS THE ONLY MEDICAL MALPRACTICE CASE THAT YOU'VE BEEN RETAINED ON SINCE YOU STARTED REVIEWING CASES IN OR AROUND 2002, CORRECT?

A MEDICAL MALPRACTICE, THAT'S CORRECT, YES.

Q AND YOU HAVE NEVER BEFORE GIVEN AN OPINION IN YOUR CAPACITY AS AN EXPERT IN CASES INVOLVING

POSTMORTEM FINDINGS REGARDING TOXICOLOGY AND THE CAUSE OF DEATH, TRUE?

A YES.

Q AND, TO SAY IT ANOTHER WAY, YOU'VE NEVER PREVIOUSLY RENDERED AN OPINION AS AN EXPERT IN A MEDICAL-LEGAL CASE ABOUT THE CAUSE OF DEATH, TRUE?

MR. NEWHOUSE: OBJECTION. ASKED AND ANSWERED, CUMULATIVE.

THE COURT: I THINK HE'S NOW INCLUDING WORKERS' COMP, ARE YOU NOT, ANYTHING OTHER THAN --

MR. BLESSEY: THE WHOLE GAMUT, THE WHOLE GAMUT, YOUR HONOR.

THE COURT: ALL RIGHT.

BY MR. BLESSEY:

Q ISN'T THAT TRUE, SIR?

A IF YOU'RE INCLUDING WORKERS' COMP, THAT'S CORRECT.

Q YOU ADVERTISE FOR YOUR WORK AS AN EXPERT, DON'T YOU?

A I HAVE A WEBSITE THAT LISTS WHAT I AM DOING. IF YOU WANT TO CALL THAT ADVERTISING, THAT'S YOUR PRIVILEGE, BUT I DON'T PUBLISH ANYTHING IN THE NEWSPAPERS, IF THAT'S WHAT YOU'RE REFERRING TO.

Q WELL, YOU DO BELONG TO AN ASSOCIATION CALLED JURISPRO, CORRECT?

A YES, I DO.

Q AND JURISPRO IS AN ENTITY THAT YOU PAY A FEE FOR EVERY YEAR SO YOUR NAME CAN BE LISTED SO LAWYERS LIKE

MR. NEWHOUSE CAN LOOK YOU UP AND FIND YOU AS AN EXPERT FOR A CASE LIKE THIS?

A THAT'S TRUE.

Q AND WHAT'S THE FEE, 500 -- $500 A YEAR?

A SOMETHING LIKE THAT. YES.

Q NOW, YOU ADVERTISE AND PAY THAT FEE BECAUSE YOU'RE HOPING TO GET A RETURN ON YOUR INVESTMENT, WOULD YOU AGREE?

MR. NEWHOUSE: OBJECTION. COMPOUND. ASSUMES FACTS NOT IN EVIDENCE.

THE COURT: OVERRULED.

THE WITNESS: I FEEL IT'S AN EFFECTIVE USE OF MONEY, YES.

BY MR. BLESSEY:

Q OKAY. AND IT WAS VERY EFFECTIVE IN THIS CASE BECAUSE WE KNOW YOU'VE BILLED AT LEAST $38,000-PLUS, CORRECT?

MR. NEWHOUSE: OBJECTION. ASSUMES FACTS NOT IN EVIDENCE. ARGUMENTATIVE.

THE COURT: IT'S IN THE DEPOSITION, BUT ARGUMENTATIVE. SUSTAINED.

MR. BLESSEY: YOUR HONOR, IT'S CROSS-EXAMINATION.

THE COURT: WE'VE BEEN OVER IT.

BY MR. BLESSEY:

Q OKAY. DID YOU TELL ANY OF THE ATTORNEYS AT MR. NEWHOUSE'S FIRM WHEN THEY CONTACTED YOU AND WERE CONSIDERING YOU AS AN EXPERT THAT YOU'VE RENDERED AN OPINION IN A MEDICAL MALPRACTICE CASE BEFORE ABOUT THE

CAUSE OF DEATH, THAT THIS IS OUTSIDE OF YOUR AREA OF EXPERTISE, AND MAYBE THEY SHOULD LOOK FOR SOMEBODY ELSE? DID YOU TELL THEM THAT?

MR. NEWHOUSE: OBJECTION. ARGUMENTATIVE, YOUR HONOR. WHY WOULD HE SAY THAT?

THE COURT: OVERRULED.

THE WITNESS: I DON'T RECALL.

BY MR. BLESSEY:

Q YOU MAY HAVE?

A I SPOKE TO THE ATTORNEYS, AND I REALLY DON'T RECALL WHAT I TOLD THEM YEARS AGO.

Q THERE ARE SOME OPINIONS OF THE CORONER THAT YOU OBVIOUSLY DISAGREE WITH, CORRECT?

A I DISAGREE WITH THE NUMBER OF TABLETS, AS I POINTED OUT TODAY.

Q YOU ALSO DISAGREE THAT, BUT FOR THE TRAMADOL, THIS POOR WOMAN WOULD HAVE SURVIVED, CORRECT?

A I DIDN'T HEAR THAT. WHAT?

Q LET ME TRY IT AGAIN. HYPOTHETICALLY, IF THE CORONER TOOK THE STAND THIS MORNING AND WENT OVER HIS RESULTS AND TOLD THIS JURY THAT THE TRAMADOL WAS AT LETHAL LEVELS AND IT BY ITSELF CAUSED -- WOULD HAVE CAUSED THE DEATH IN THIS CASE, YOU DISAGREE WITH THAT OPINION, CORRECT?

A OF COURSE.

Q YOU DON'T HOLD YOURSELF OUT AS A CORONER IN THE MEDICAL COMMUNITY, DO YOU?

A ABSOLUTELY NOT.

Q WHY NOT?

MR. NEWHOUSE: OBJECTION. THAT'S ARGUMENTATIVE, YOUR HONOR.

THE COURT: SUSTAINED.

BY MR. BLESSEY:

Q YOU DON'T HAVE ANY TRAINING, EDUCATION, AND EXPERIENCE IN THE FIELD, IN THE SUBSPECIALTY OF BEING A CORONER, DO YOU, AS A PATHOLOGIST?

A I DO NOT.

Q IN FACT, YOU DON'T HOLD YOURSELF OUT AS A CLINICAL PHARMACOLOGIST, DO YOU?

A NO, I DO NOT.

Q AND THAT'S BECAUSE YOU HAVEN'T HAD ANY INVOLVEMENT AS A PHARMACOLOGIST IN THE CLINICAL SCENARIO, THAT IS, INTERACTING WITH PATIENTS, DOCTORS, AND THE LIKE, TRUE?

A THAT'S NOT WHAT I USUALLY DO.

Q YOU BELIEVE -- LET ME BACK UP.

AT THE TIME OF YOUR DEPOSITION, AS TO THE NORCO, YOU TOLD US THAT IT WAS QUESTIONABLE THAT THE HYDROCODONE OR NORCO WAS INVOLVED WITH THE DEATH, TRUE?

A I HAVEN'T LOOKED AT THAT, BUT I RECALL THAT, AS WE WENT ON, I DID SAY THAT IT WAS INVOLVED. THERE ARE VARIOUS QUOTES ON IT, KIND OF TALKED ABOUT THAT AT VARIOUS POINTS, AND AS I RECALL, I DID SAY THAT NORCO WAS INVOLVED.

Q WELL, I'D LIKE TO READ FROM --

A ARE YOU GOING TO READ ALL OF IT? BECAUSE

I'M SAYING THAT IT WAS AT VARIOUS POINTS.

THE COURT: WELL, HE CAN READ A PORTION AND THE LAWYER FOR --

MR. BLESSEY: YOUR HONOR, I'M SORRY. THANK YOU.

Q MAYBE IN THE INTEREST OF TIME -- SO YOU'RE TELLING THE JURY THAT THERE WERE POINTS IN THE DEPOSITION YOU MIGHT HAVE SAID YOU WERE UNSURE, BUT LATER ON YOU SAID YOU THINK MAYBE IT REALLY IS IMPLICATED IN THE CAUSE OF DEATH. IS THAT WHAT YOU'RE TELLING US?

A I DON'T KNOW IF I SAID I WAS UNSURE. I'M SAYING THAT I RECALL THAT BY THE TIME THE DEPOSITION WAS OVER, I DID SAY THAT IT WAS INVOLVED.

Q WAS THERE A POINT EARLIER IN THE DEPOSITION WHEN YOU INDICATED SOME AMBIVALENCE ABOUT THAT OPINION?

A IT'S POSSIBLE. I DON'T RECALL.

Q OKAY. NOW, THE OTHER OPINION THAT YOU RENDERED AT THE TIME OF YOUR DEPOSITION WAS THAT, HAD PERCOCET NOT BEEN TAKEN OR INGESTED, YOU BELIEVED THAT THE NET EFFECT WOULD HAVE BEEN FOR MS. DE ROGATIS, A LONG SLEEP WITHOUT ANY CONSEQUENCES TO HER WELL-BEING, TRUE?

A IF PERCOCET HAD NOT BEEN TAKEN; IS THAT CORRECT? IS THAT WHAT YOU SAID?

Q YES.

A I THINK I DID SAY THAT, YEAH.

Q DID MR. NEWHOUSE TELL YOU THAT THE JURY HEARD A DIFFERENT OPINION FROM THE CORONER THIS MORNING?

MR. NEWHOUSE: OBJECTION. ARGUMENTATIVE, YOUR HONOR.

THE COURT: OVERRULED.

THE WITNESS: MR. NEWHOUSE DID NOT DISCUSS THAT WITH ME.

MR. BLESSEY: YOUR HONOR, I HAVE NOTHING FURTHER FOR THE DOCTOR AT THIS POINT.

THE COURT: REDIRECT?

MR. NEWHOUSE: IN THE INTEREST OF MOVING THIS ALONG, A VERY BRIEF REDIRECT, YOUR HONOR.

REDIRECT EXAMINATION

BY MR. NEWHOUSE:

Q DR. WOLFF, DO YOU CONSIDER THE SUBJECT OF YOUR TESTIMONY TODAY OUTSIDE YOUR AREA OF EXPERTISE?

A NOT AT ALL. I -- I HAVE BEEN INVOLVED IN THE MECHANISM OF DRUG ACTION FOR DECADES, AND IT'S A SUBJECT OF GREAT INTEREST TO ME, AND I THINK MOST OF WHAT WE WERE TALKING ABOUT TODAY WAS THE MECHANISM OF DRUG ACTION, AND MOST OF THE CONCLUSIONS I DREW WERE BASED ON THAT.

Q DR. WOLFF, IS THERE ANY AMOUNT, WHATEVER THE AMOUNT OF MONEY THAT HAS BEEN PAID TO YOU OR IS OWED TO YOUR FIRM -- HAS RECEIPT OF ANY OF THAT MONEY IN ANY WAY INFLUENCED YOUR ANALYSIS AND YOUR OPINIONS?

A NO, IT HAS NOT. I PRIDE MYSELF ON GIVING AN HONEST OPINION, AND I THINK MANY, MANY EXPERTS DO THAT. SO I DON'T HAVE TO LIE TO -- TO BE AN EXPERT. AND IF I DID, I WOULD STOP BEING AN EXPERT.

MR. NEWHOUSE: NO FURTHER QUESTIONS, YOUR HONOR.

THANK YOU.

MR. BLESSEY: NOTHING FURTHER, YOUR HONOR.

THE COURT: ALL RIGHT. DO WE HAVE ANOTHER WITNESS TODAY?

MR. NEWHOUSE: WE DO NOT, YOUR HONOR.

THE COURT: WE'RE DONE?

MR. NEWHOUSE: WE'RE DONE FOR THE DAY.

THE COURT: WE'RE DONE FOR THE DAY, LADIES AND GENTLEMEN. 9:30 RATHER THAN NINE O'CLOCK. 9:30 TOMORROW MORNING.

AGAIN, PLEASE REMEMBER THE ADMONITION OF THE COURT. DO NOT DISCUSS THE FACTS OF THIS CASE AMONGST YOURSELVES OR WITH ANYBODY ELSE. DO NOT FORM ANY OPINIONS OR CONCLUSIONS ON THIS MATTER UNTIL IT'S FINALLY SUBMITTED TO YOU. COURT'S IN RECESS UNTIL 9:30.

(AT 3:30 P.M. THE PROCEEDINGS WERE ADJOURNED UNTIL WEDNESDAY, NOVEMBER 6, 2013, AT 9:30 A.M.)