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2 MR. NEWHOUSE: PROBABLY ABOUT 20 MINUTES.

3 THE COURT: LET'S TAKE OUR NOON RECESS UNTIL 1:30.

4 PLEASE REMEMBER THE ADMONITION OF THE COURT. THE COURT IS  
5 IN RECESS UNTIL 1:30. THANK YOU, DOCTOR. SEE YOU BACK AT  
6 1:30.

7 THE WITNESS: YES, SIR.

8

9 (THE NOON RECESS WAS TAKEN UNTIL

10 1:35 P.M. OF THE SAME DAY.)

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1 CASE NUMBER: BC457891  
2 CASE NAME: DE ROGATIS VS. SHAINSKY  
3 PASADENA, CALIFORNIA THURSDAY, NOVEMBER 7, 2013  
4 DEPARTMENT P HON. JAN A. PLUIM, JUDGE  
5 REPORTER: KAREN E. KAY, CSR NO. 3862  
6 TIME: P.M. SESSION

7 APPEARANCES:

8 PLAINTIFFS LINDA DE ROGATIS AND PETER DE ROGATIS  
9 ARE PRESENT WITH THEIR COUNSEL, GEORGE B. NEWHOUSE,  
10 JR., ATTORNEY AT LAW  
11 DEFENDANT KAREN MICHELLE SHAINSKY, D.O., IS PRESENT  
12 WITH HER COUNSEL, RAYMOND L. BLESSEY, ATTORNEY AT  
13 LAW

14  
15 (THE FOLLOWING PROCEEDINGS WERE HELD  
16 IN OPEN COURT, OUTSIDE THE PRESENCE  
17 OF THE JURY:)

18  
19 THE COURT: ON THE RECORD. ANYTHING WE NEED TO  
20 TAKE UP?

21 MR. NEWHOUSE: NO, YOUR HONOR.

22 MR. BLESSEY: NO, YOUR HONOR.

23 THE COURT: WELCOME.

24 THE WITNESS: THANK YOU.

25 THE COURT: SO PLAINTIFFS WERE GOING TO FINISH UP  
26 WITH DR. SAFANI?

27 MR. NEWHOUSE: YES. AND WE DON'T ANTICIPATE A  
28 REBUTTAL CASE.

1 THE COURT: AND NO REBUTTAL. AND THEN WE'LL SPEND  
2 A LITTLE TIME, GO OVER THE JURY INSTRUCTIONS. I'LL  
3 INSTRUCT. THE JURY IS GONE, WE CAN TALK ABOUT THE  
4 EXHIBITS AND THE VERDICT FORM, OKAY?

5 MR. NEWHOUSE: EXCELLENT.

6 MR. BLESSEY: SOUNDS GOOD, YOUR HONOR.

7 THE COURT: BRING THEM IN.  
8

9 (THE FOLLOWING PROCEEDINGS WERE HELD  
10 IN OPEN COURT, IN THE PRESENCE OF  
11 THE JURY:)  
12

13 THE COURT: WELCOME BACK, LADIES AND GENTLEMEN,  
14 WE'RE BACK ON THE RECORD. ALL JURORS ARE PRESENT IN  
15 PLACE, PARTIES ARE PRESENT, LAWYERS ARE PRESENT,  
16 DR. MICHAEL SAFANI HAS RESUMED THE WITNESS STAND.

17 A REMINDER TO YOU, SIR, YOU REMAIN UNDER  
18 OATH.

19 THE WITNESS: YES, SIR.

20 THE COURT: BEFORE WE GOT STARTED, WE'VE BEEN  
21 CALLING YOU "DOCTOR."

22 THE WITNESS: SAY AGAIN.

23 THE COURT: WE'VE BEEN CALLING YOU "DOCTOR."

24 THE WITNESS: RIGHT.

25 THE COURT: TELL ME ABOUT YOUR DEGREE. AND WHERE  
26 DID YOU GET IT OR WHAT --

27 THE WITNESS: WELL, OKAY. SO THAT'S WHAT I WAS  
28 SAYING EARLIER. IT'S A PROFESSIONAL DEGREE. SO THERE'S A

1 DOCTOR OF MEDICINE, DOCTOR OF DENTISTRY, AND THIS IS A  
2 DOCTOR OF PHARMACY.

3 THE COURT: WHERE DO YOU RECEIVE SUCH A DEGREE?

4 THE WITNESS: WELL, THE SCHOOL OF PHARMACY.

5 THE COURT: WHERE?

6 THE WITNESS: WELL, THERE ARE SEVERAL SCHOOLS OF  
7 PHARMACY IN THE STATE OF CALIFORNIA. THERE IS ONE RIGHT  
8 HERE AT U.S.C. HAS A SCHOOL, EXCELLENT SCHOOL; U.C.S.F.,  
9 UNIVERSITY OF CALIFORNIA SAN FRANCISCO; UNIVERSITY OF  
10 CALIFORNIA SAN DIEGO. BUT THE SCHOOL I WENT TO IS THE  
11 UNIVERSITY OF THE PACIFIC WHICH IS IN STOCKTON.

12 THE COURT: I SEE. AND YOU WERE AWARDED A  
13 DOCTORATE?

14 THE WITNESS: A DOCTORATE DEGREE.

15 THE COURT: I SEE. OKAY.

16 THE WITNESS: YES.

17 THE COURT: VERY GOOD. THANK YOU.

18 GO AHEAD, COUNSEL.

19 MR. NEWHOUSE: THANK YOU, YOUR HONOR.

20

21 CROSS-EXAMINATION (CONTINUED)

22 BY MR. NEWHOUSE:

23 Q DR. WOLFF, I'M GOING TO TURN OUR ATTENTION  
24 NOW AND TALK ABOUT TRAMADOL.

25 MR. BLESSEY: FOR THE RECORD, THIS IS DR. SAFANI.

26 MR. NEWHOUSE: SORRY FOR THAT. THANK YOU.

27 MR. BLESSEY: DR. WOLFF WAS IN THE OTHER DAY.

28 MR. NEWHOUSE: THANK YOU.

1 Q I HOPE TO HAVE A BETTER AFTERNOON THAN I DID  
2 THE LAST AFTERNOON. WE'RE NOT STARTING WELL.

3 DR. SAFANI.

4 A YES, SIR.

5 Q I APOLOGIZE FOR THAT.

6 A NO PROBLEM.

7 Q WE'RE BACK LOOKING AT THE CORONER'S REPORT.  
8 THERE'S A DR. WOLFF, WHICH IS WHY HE WAS IN MY MIND,  
9 POINTED OUT THAT THERE'S ANOTHER -- OR AT LEAST AN ERROR  
10 ON THIS FORM, AND I WAS WONDERING IF YOU SAW IT. CLEAR  
11 ERROR ON THIS FORM IN TERMS OF CALCULATIONS.

12 DO YOU SEE IT?

13 A NOT REALLY, NO.

14 Q LET ME DIRECT YOUR ATTENTION TO WHERE IT  
15 SAYS, "TRAMADOL," NUMBER OF PILLS, "39"?

16 A RIGHT.

17 Q AND DR. WOLFF POINTED OUT THAT THAT'S ON THE  
18 ASSUMPTION THAT IT WAS A 50-MILLIGRAM TABLET SHE WAS  
19 TAKING.

20 DO YOU SEE THAT?

21 A RIGHT.

22 Q IS THAT CORRECT OR INCORRECT BASED UPON YOUR  
23 REVIEW OF THE RECORDS?

24 A I DON'T REMEMBER IF THEY WERE 100- OR  
25 50-MILLIGRAM TABLETS.

26 Q IS IT POSSIBLE THEY WERE 37.5-MILLIGRAM  
27 TABLETS?

28 A THAT'S POSSIBLE.

1 Q IF THAT WAS THE CASE, THIS CALCULATION OF  
2 PILLS -- WELL, LET ME ASK YOU: DR. WOLFF CALCULATED THAT  
3 THAT NUMBER WAS 52, THAT SHE TOOK 52 TABLETS OF TRAMADOL.  
4 SOUND ABOUT RIGHT TO YOU?

5 A WELL, WHAT WAS THE BASIS OF THAT?

6 Q ON THE BASIS THAT IT WASN'T A 50-MILLIGRAM  
7 TABLET; IT WAS 37.5.

8 A WELL, I HAVE TO DO THE CALCULATIONS, BUT IT  
9 WOULD BE HIGHER THAN THAT.

10 Q AND THAT'S CONSISTENT, IS IT NOT, WITH  
11 MS. TARA DE ROGATIS' SELF-REPORT THAT THE DRUG DIDN'T WORK  
12 FOR HER? SHE GOT 60 INITIALLY ON FEBRUARY 3RD AND THE  
13 EVIDENCE IS, IS IT NOT, THAT SHE ONLY USED EIGHT OF THOSE  
14 TABLETS?

15 A WELL, THE EVIDENCE IS THAT SHE USED -- WELL,  
16 NO, I DON'T KNOW THAT. JUST ONE SECOND, PLEASE. BECAUSE  
17 YOU HAVE THREE CONCEPTS HERE THAT WE ARE ENTERTAINING, AND  
18 THEY ARE ALL DIFFERENT. NOW, I SEE THAT IN YOUR MIND THEY  
19 MAY BE ALL INTERRELATED, BUT IN MY MIND THEY ARE NOT. SO  
20 ONE MOMENT, LET ME GO TO THE PAGE THAT I'M LOOKING FOR IN  
21 THE AUTOPSY.

22 Q OKAY.

23 A IF YOU WOULD BE PATIENT ENOUGH. THANK YOU.

24 Q YOU'RE LOOKING AT THE AUTOPSY REPORT?

25 A YES, I AM.

26 Q THAT'S EXHIBIT 114.

27 A I'M LOOKING AT THIS.

28 Q FOR THE RECORD, IT'S BETTER IF YOU USE --



1 A THOSE RECORDS?

2 Q YEAH.

3 A ABSOLUTELY.

4 Q "YES," I SHOULD SAY, BECAUSE THIS IS THE  
5 COURT RECORD AND SO WE'LL KNOW -- SEE THIS BATES NUMBER  
6 HERE?

7 A YES.

8 Q YOU CAN CALL THAT OUT SO WE'LL KNOW EXACTLY  
9 WHAT PAGE YOU'RE ON, PLEASE.

10 A THANK YOU.

11 Q GO TO PAGE 30. THAT'S A SCHEDULE OF ALL  
12 THE --

13 A RIGHT.

14 Q UNDER "TRAMADOL," DOES THAT GIVE YOU AN  
15 INDICATION OF HOW MANY MILLIGRAMS WE'RE TALKING ABOUT?

16 A PAGE 30? HANG ON.

17 Q IT SAYS 114, PAGE 30.

18 A WELL, ACCORDING TO THESE RECORDS, IT'S PAGE  
19 31, BUT I SEE IT.

20 Q RIGHT HERE, "TRAMADOL"?

21 A RIGHT.

22 Q AND UNDER "DOSAGE," 37.5/325 REFERS TO THE  
23 ACETAMINOPHEN, CORRECT?

24 A CORRECT.

25 Q OKAY.

26 A AND THERE WERE 60 THAT WERE PROVIDED TO  
27 TARA.

28 Q HOW MANY WERE -- WHAT IS YOUR ESTIMATE OF

1 HOW MANY WERE LEFT ALMOST 50 DAYS AFTER SHE INITIALLY  
2 RECEIVED THE PRESCRIPTION? SHE WASN'T USING THEM, WAS  
3 SHE?

4 A I DON'T HAVE AN ESTIMATE, BUT I'M LOOKING AT  
5 THIS RECORD. IT SAYS THERE WERE NONE LEFT.

6 Q NONE LEFT AFTER SHE INGESTED THEM. I'M  
7 TALKING ABOUT AT THE MOMENT THAT SHE TOOK THE PILLS ON THE  
8 MORNING OF MARCH 23RD, DR. WOLFF ESTIMATED, BASED UPON  
9 CATCHING THIS ERROR, THAT THERE WERE -- THAT SHE PROBABLY  
10 TOOK AROUND 52 PILLS.

11 DO YOU AGREE OR DISAGREE WITH THAT  
12 CONCLUSION?

13 A WELL, NO, I AGREE WITH THAT. THAT'S FINE.

14 Q GREAT. LET'S MOVE ON. THANK YOU.

15 TRAMADOL IS A SYNTHETIC OPIATE; IS THAT  
16 RIGHT?

17 A YES.

18 Q DO YOU AGREE -- YOU'VE REVIEWED THE  
19 LITERATURE REGARDING TRAMADOL EXTENSIVELY NOW, HAVEN'T  
20 YOU?

21 A WELL, I'VE REVIEWED IT.

22 Q WOULD YOU AGREE WITH THE STATEMENT THAT IT  
23 IS, QUOTE, "A WEAK MU OPIOID RECEPTOR AGONIST"?

24 A RELATIVE TO MORPHINE, YES.

25 Q AND SO IT'S -- MORPHINE IS A LOT STRONGER?

26 A IT'S TEN TIMES MORE POTENT.

27 Q AND PERCOCET IS A LOT STRONGER, CORRECT?

28 A THAN TRAMADOL?

1 Q YES.

2 A YES, ALSO TEN TIMES MORE POTENT.

3 Q NOW, DO YOU AGREE OR DISAGREE WITH  
4 DR. WOLFF'S CONCLUSION THAT -- OR STATEMENT THAT TRAMADOL  
5 MUST BE METABOLIZED IN THE LIVER IN PART OF THE PROCESS OF  
6 IT BECOMING FULLY EFFECTIVE AS AN ANALGESIC?

7 A NO, I DISAGREE WITH THAT.

8 Q WELL, LET ME ASK YOU: YOU'VE READ THE  
9 LITERATURE. WHEN TRAMADOL IS ABSORBED, IT GOES TO THE  
10 LIVER?

11 A CORRECT.

12 Q AND IN THE LIVER -- AND YOU DESCRIBED, I  
13 THINK, VERY CLEARLY THIS MECHANISM A CHEMICAL REACTION  
14 CALLED METABOLISM, CORRECT?

15 A YES.

16 Q AND THAT INVOLVES AN ENZYME, RIGHT?

17 A WELL, THERE ARE SEVERAL ENZYMES.

18 Q CAN YOU NAME THE KEY ONE?

19 A WELL, THERE'S -- WELL, ARE WE TALKING ABOUT  
20 TRAMADOL SPECIFICALLY?

21 Q TRAMADOL, CYP2D6.

22 A THAT'S ONE. THERE ARE THREE ENZYMES THAT  
23 ARE RESPONSIBLE FOR METABOLISM OF TRAMADOL AND THAT'S ONLY  
24 ONE OF THEM.

25 THE CYP2D6 IS ONE OF THEM.

26 Q CYP2D6, RIGHT?

27 A RIGHT. THAT'S ONE OF THEM. AND THE OTHER  
28 TWO, C-Y-P, CYP2, "B" AS IN BOY, 6; AND THE THIRD ONE IS

1 CYP3, "A" AS IN APPLE, 4. AND THE CYP IS BASICALLY C-Y-P.

2 Q C-Y-P. SO I'M NOT GOING TO ATTEMPT TO  
3 DIAGRAM TRAMADOL, THE ACTUAL CHEMICAL COMPOSITION.

4 DO YOU AGREE WITH ME THAT TRAMADOL HAS A  
5 METHYL GROUP, WHICH IS A CARBON WITH THREE OXYGENS ON IT,  
6 AT ONE POINT IN ITS STRUCTURE?

7 A YES. EXCEPT YOUR DRAWING IS INCORRECT.

8 Q IT'S A BAD DRAWING.

9 A NO, NO, IT'S NOT A BAD DRAWING. YOU'VE LEFT  
10 OUT AN OXYGEN. IF YOU'RE DRAWING THE CHEMICAL -- I'M  
11 SORRY, SO --

12 Q PLEASE HELP ME.

13 A SO IN THAT CORNER THERE IS AN OXYGEN AND  
14 THEN THE CARBON.

15 Q RIGHT HERE?

16 A YES, SIR. OXYGEN --

17 Q OKAY.

18 A -- CARBON, HYDROGEN. THERE WE GO.

19 Q WHERE IS THE CARBON? THE HYDROGEN IS HERE?

20 A NO. THE REST OF IT IS CORRECT. IT'S JUST  
21 THAT YOU ATTACHED THE CARBON TO THE --

22 Q IT'S BEEN MANY YEARS SINCE I'VE STRUGGLED  
23 WITH ORGANIC CHEMISTRY.

24 A IT'S OKAY. I STILL STRUGGLE WITH IT.

25 Q IN THE LIVER, THERE'S A CHEMICAL REACTION,  
26 RIGHT? WE'RE IN THE LIVER NOW.

27 AND ONE OF THESE -- OR ALL OF THESE ENZYMES  
28 ARE KEY IN CONVERTING TO METABOLITE? DO YOU SEE IN THE

1 LITERATURE THERE'S BEEN A REFERENCE TO METABOLITE 1?

2 A YES.

3 Q WHAT IS THAT METABOLITE?

4 A THAT'S THE O-DESMETHYLTRAMADOL ABBREVIATED  
5 AS O.D.T., OTHERWISE REFERRED TO AS M1.

6 Q O.D.T.?

7 A O.D.T. M1 IS METABOLITE 1.

8 Q ONE OF THE OTHER METABOLITES YOU SAID ARE  
9 NORTRAMADOL, RIGHT?

10 A EXACTLY. BUT, AGAIN -- AGAIN, YOU SEE YOUR  
11 DRAWING IS NOT CORRECT.

12 Q I'M NOT SURPRISED TO HEAR THAT.

13 A SO TO HAVE A CORRECT REPRESENTATION FOR  
14 VISUAL AID FOR THE MEMBERS OF THE JURY -- MAY I STEP --  
15 THE COURT: SURE, GO AHEAD.

16 BY MR. NEWHOUSE:

17 Q CORRECT ME.

18 A THAT'S FINE. THIS COMES DOWN IN HERE. THIS  
19 IS THE NOR --

20 MR. BLESSEY: MR. NEWHOUSE, HOW ABOUT A DARKER --  
21 THE WITNESS: NORTRAMADOL.

22 MR. NEWHOUSE: MR. BLESSEY DOESN'T LIKE MY PEN.

23 A SO THIS IS THE 1 METABOLITE.

24 Q NORTRAMADOL IS INACTIVE?

25 A CORRECT, RIGHT. NOT ACTIVE. ALL RIGHT. SO  
26 THIS ENZYME --

27 Q CYP2D6?

28 A THIS IS RESPONSIBLE FOR THE METABOLISM OF

1 TRAMADOL TO THIS METABOLITE, AND THESE OTHER TWO ARE  
2 RESPONSIBLE FOR METABOLISM TO THIS ONE.

3 Q THANK YOU.

4 A THANK YOU.

5 Q YOU CAN GET BACK OFF YOUR KNEES NOW.

6 A OKAY.

7 Q NOW, SO IS IT CORRECT THAT FOR TRAMADOL TO  
8 BE EFFECTIVE AS AN ANALGESIC, FOR THE PATIENT TO GET FULL  
9 RELIEF, WE NEED TO HAVE THIS IMPORTANT REACTION, THE ONE  
10 THAT WENT STRAIGHT ACROSS THE PAGE TO THE M1 METABOLITE,  
11 THE O-DESMETHYLTRAMADOL?

12 A NO, THAT'S NOT CORRECT.

13 Q AND WHAT DO YOU BASE YOUR CONCLUSION ON?

14 A WELL, IT'S BASICALLY WHAT'S IN THE  
15 PHARMACOLOGICAL TEXTBOOKS. THAT'S WHAT'S KNOWN ABOUT THE  
16 PHARMACOLOGICAL PROPERTIES OF THIS DRUG.

17 NOW, IT IS TRUE THAT THE M1 O.D.T. IS  
18 ACTIVE, PROVIDES ADDITIONAL ANALGESIA AND PAIN RELIEF, BUT  
19 TO SAY THAT THAT'S THE ONLY AGENT THAT PROVIDES IT IS  
20 INCORRECT. TRAMADOL ITSELF HAS ACTIVITY.

21 Q IN YOUR DEPOSITION, DID YOU CITE AS ONE OF  
22 THE ARTICLES THAT YOU PULLED UP A JOURNAL CALLED "CLINICAL  
23 PHARMACOLOGY OF TRAMADOL"? DID YOU CITE THAT IN YOUR  
24 DEPOSITION?

25 A I BELIEVE SO. HANG ON ONE SECOND.

26 Q "CLINICAL PHARMOKINETICS" 2004, VOLUME 43?

27 A YES, I DID.

28 Q DO YOU AGREE OR DISAGREE WITH THE FOLLOWING

1 STATEMENT :

2 "TRAMADOL POSSESSES ONLY A MODEST  
3 AFFINITY FOR THE MU OPIOID RECEPTORS AND NO  
4 AFFINITY FOR" --

5 THERE ARE TWO OTHER GREEK LETTERS, INDICATE  
6 TWO DIFFERENT RECEPTORS.

7 "THE AFFINITY OF TRAMADOL FOR THE MU  
8 OPIOID RECEPTORS IS APPROXIMATELY 10-FOLD  
9 LESS THAN THAT OF CODEINE AND 6000-FOLD LESS  
10 THAN THAT OF MORPHINE, AN AFFINITY THAT BY  
11 ITSELF DOES NOT SEEM SUFFICIENT TO CONTRIBUTE  
12 TO THE ANALGESIC ACTION OF TRAMADOL."

13 DID YOU REVIEW -- WOULD YOU LIKE ME TO SHOW  
14 YOU --

15 A NO. I HAVE IT IN HERE. I HAVE THE ARTICLE  
16 HERE.

17 Q ALL RIGHT. SO THAT ARTICLE SEEMS TO TAKE  
18 ISSUE WITH YOUR CONTENTION THAT TRAMADOL DOESN'T NEED TO  
19 BE CONVERTED BY WAY OF CYP2D6, THAT ENZYME, TO THE M1  
20 METABOLITE IN ORDER TO BE EFFECTIVE? IS THAT WHAT YOU'RE  
21 SAYING?

22 A NO. THE ARTICLE DOES NOT TAKE ISSUE. I  
23 THINK WE HAVE DIFFERENT INTERPRETATION OF WHAT THE ARTICLE  
24 IS SAYING.

25 Q SO YOU DISPUTE OTHER STATEMENTS IN THE  
26 LITERATURE TO THE EFFECT THAT THE O-DESMETHYLTRAMADOL  
27 METABOLITE HAS 200 TIMES THE MU AFFINITY OF REGULAR  
28 UNMETABOLIZED TRAMADOL? YOU DISAGREE WITH THAT?

1           A           NO, I TOTALLY AGREE THAT IT HAS 200 TIMES  
2 THE AFFINITY FOR BINDING TO THE RECEPTOR; HOWEVER, WHERE  
3 THE DISTINCTION INTERPRETATION IS, WHICH I WAS JUST  
4 REFERRING TO, IS THIS: BINDING TO THE RECEPTOR IS TOTALLY  
5 DIFFERENT FROM POTENCY. A DRUG CAN BIND TO THE RECEPTOR,  
6 BUT IT DOESN'T MEAN THE SAME AS POTENCY.

7                       IN FACT, THERE ARE SOME DRUGS THAT BIND TO  
8 THE RECEPTOR AND NOT ONLY THEY'RE NOT POTENT, THEY BLOCK  
9 THE EFFECT. NARCAN IS ONE OF THEM. IF A PERSON SHOWS IN  
10 THE EMERGENCY ROOM WITH AN OVERDOSE OF OPIATE WHATEVER,  
11 THE DRUG THAT WE GIVE THEM TO REVERSE THIS IS CALLED  
12 NARCAN. NARCAN BINDS EXACTLY TO THE SAME RECEPTORS. SO  
13 BINDING TO THE RECEPTOR HAS NOTHING TO DO WITH POTENCY,  
14 AND IT'S EXAMPLE OF A DRUG THAT BINDS TO THE RECEPTOR BUT  
15 ACTUALLY BLOCKS ACTIVITY.

16                      SO ACTIVITY, POTENCY, AND BINDING TO THE  
17 RECEPTOR ARE TOTALLY DIFFERENT CONCEPTS.

18           Q           WHAT IF A PATIENT LACKS THIS KEY ENZYME,  
19 CYP2D6? THEY'RE NOT GOING TO REALIZE THE BENEFITS OF  
20 TRAMADOL AS AN ANALGESIC, ARE THEY?

21           A           THAT'S INCORRECT ALSO. THEY WILL NOT GET AS  
22 MUCH BENEFIT, BUT THERE WILL BE BENEFIT BECAUSE TRAMADOL  
23 ITSELF HAS ANALGESIC PROPERTIES FOR PAIN RELIEF.

24           Q           DO YOU AGREE THAT 7 PERCENT OF THE  
25 POPULATION DOES NOT -- LACKS THIS ENZYME?

26           A           AGAIN, THAT'S TAKEN OUT OF CONTEXT. I AGREE  
27 THAT 7 PERCENT OF THE CAUCASIAN POPULATION. NOT ALL  
28 POPULATION. WHEN WE TALK GENETICS, WE NEED TO -- YEAH.



1 Q I WANT TO BE PRECISE.

2 TARA DE ROGATIS WAS A YOUNG 29-YEAR-OLD  
3 CAUCASIAN WOMAN, CORRECT?

4 A CORRECT.

5 Q TALK A LITTLE BIT ABOUT PERCOCET FOR A  
6 MOMENT.

7 ACCORDING TO YOUR CALCULATIONS, THE AMOUNT  
8 OF PERCOCET, WHICH IS OXYCODONE, I THINK YOU TESTIFIED,  
9 WOULD HAVE BEEN NINE TIMES THE LETHAL DOSE, RIGHT?

10 A NOT DOSE. LETHAL LEVEL.

11 Q STRIKE THAT. LETHAL LEVEL. THANK YOU.

12 A YOU'RE WELCOME.

13 Q BY THE CORONER'S CALCULATION, IT WOULD STILL  
14 BE LETHAL, CORRECT? IF YOU TAKE THE CORONER'S ASSUMPTION  
15 BASED UPON --

16 A YEAH, HE'S ASSUMING THAT THE LETHAL LEVEL IS  
17 ANYTHING OVER 5. SO 5.5 WOULD STILL BE LETHAL.

18 Q EITHER WAY YOU'RE DEAD?

19 A EXACTLY.

20 Q AND YOU'RE IN AGREEMENT WITH ME THAT THE  
21 PERCOCET WAS THE STRONGER AGENT, SO PERCOCET WOULD HAVE  
22 KILLED HER CERTAINLY, CORRECT?

23 A IF IT WAS PRESENT ALONE, YES.

24 Q AND YOUR TESTIMONY IS TRAMADOL, YOU THINK,  
25 ALSO WOULD HAVE KILLED HER?

26 A IF IT WAS PRESENT ALONE, YES.

27 Q AND IN YOUR DEPOSITION, I THINK YOU REFERRED  
28 TO -- YOU HAD A GOOD METAPHOR. I THINK YOU SAID IF YOU

1 RUN OVER SOMEONE WITH A TANK OR YOU CAN RUN OVER THEM WITH  
2 A CAR; EITHER WAY YOU'RE GOING TO KILL HIM. CORRECT?  
3 REMEMBER THAT?

4 A CORRECT. I DON'T REMEMBER THAT, BUT THAT'S  
5 TRUE.

6 Q AND SO THAT'S THE WAY IT REALLY WORKS OUT  
7 AND ONCE YOU REACH THE LETHAL LEVEL AND SUPPRESS  
8 RESPIRATION -- AND THAT'S, OF COURSE, HOW THESE DRUGS KILL  
9 US? THEY SUPPRESS RESPIRATION; IS THAT RIGHT?

10 A YES.

11 Q SO THE WEAKER THE DRUG, THE WEAKER THE  
12 ANALGESIC OR POTENCY, THEN ONE WOULD THINK THE WEAKER  
13 WOULD BE THE RESPIRATORY DEPRESSION; AM I RIGHT?

14 A NO. YOU'RE INCORRECT. AGAIN, IT IS YOUR  
15 INTERPRETATION THAT'S INCORRECT. SO IF I MAY, I'D LIKE TO  
16 PUT THAT INTO CONTEXT.

17 Q PLEASE.

18 A SO IT IS TRUE THAT TRAMADOL IS A WEAKER  
19 NARCOTIC. YOU DON'T GET AS MUCH ANALGESIC RELIEF FROM IT.  
20 AND IT'S ALSO TRUE THAT BECAUSE OF THAT, IT CAN CAUSE LESS  
21 RESPIRATORY DEPRESSION; HOWEVER, THAT IS AT THERAPEUTIC  
22 LEVELS. ONCE THE TRAMADOL GETS IN THE TOXIC AND LETHAL  
23 LEVELS, IT WILL DO THE SAME. IT WILL MAKE THE PATIENT  
24 STOP BREATHING.

25 SO THAT'S WHERE THE CONTEXT IS. SO TO SAY  
26 THAT IT DOES NOT SUPPRESS RESPIRATION IS CORRECT BUT ONLY  
27 AT THERAPEUTIC LEVEL. AT LETHAL LEVELS, IT WILL MAKE THE  
28 PATIENT STOP TAKING BREATHS.

1 Q NOW, DO YOU KNOW WHAT TIME THE DEATH  
2 OCCURRED?

3 A WELL, THE ESTIMATE WAS MAYBE BETWEEN 3:00  
4 AND 5:00 IN THE MORNING.

5 Q 3:00 AND 6:00 IN THE CORONER'S REPORT,  
6 CORRECT?

7 A FINE.

8 Q DO YOU KNOW WHAT TIME DAVID RUSHED INTO HER  
9 ROOM AND DISCOVERED HER NOT BREATHING?

10 A I BELIEVE IT WAS 6:00 IN THE MORNING.

11 Q SO AM I RIGHT THAT -- AND SHE WAS --  
12 ACCORDING TO THE AUTOPSY REPORT, SHE WASN'T BREATHING BUT  
13 THEY ATTEMPTED TO RESUSCITATE HER?

14 A THAT'S CORRECT.

15 Q SO AM I RIGHT THAT IF DAVID HAD MAYBE RUSHED  
16 IN THERE AN HOUR BEFORE, SHE MIGHT HAVE BEEN -- WE MIGHT  
17 HAVE BEEN ABLE TO RESUSCITATE HER?

18 A I DON'T KNOW HOW YOU COULD SAY THAT. I  
19 CAN'T SAY THAT. I DON'T KNOW THAT.

20 Q I'M JUST ASKING IF IT'S POSSIBLE.

21 A NO, I DON'T KNOW IF IT'S POSSIBLE.

22 Q YOU DON'T KNOW ONE WAY OR ANOTHER?

23 A NO, I DON'T. I THINK IT'S IMPOSSIBLE TO  
24 TELL.

25 Q LET ME ASK YOU THIS: IF SHE HAD NOT TAKEN  
26 OXYCODONE, IF SHE HAD NOT TAKEN 100 TABLETS OF THE VERY  
27 FIRST DRUG --

28 A WE DON'T KNOW THAT SHE TOOK 100 TABLETS.

1 DID SHE TAKE 100 TABLETS?

2 Q LET'S ASSUME THAT SHE DID TAKE 100.

3 A OKAY, HYPOTHETICALLY.

4 Q RIGHT. AND LET'S ASSUME NOW -- BACK THAT  
5 ASSUMPTION OUT -- THAT SHE DIDN'T HAVE PERCOCET AVAILABLE  
6 SO SHE TOOK EVERYTHING ELSE.

7 A UH-HUH.

8 Q ISN'T IT A FACT THAT HER RATE OF RESPIRATION  
9 WOULD HAVE BEEN DIMINISHED, BUT THEY MIGHT HAVE BEEN ABLE  
10 TO RESUSCITATE HER?

11 A NO. AGAIN, IT'S INCORRECT BECAUSE --

12 Q WHY?

13 A -- BECAUSE THE AMOUNT OF TRAMADOL THAT SHE  
14 HAD TAKEN RESULTED IN A LETHAL LEVEL THAT'S EIGHT TIMES  
15 THE MINIMUM. SO THAT ALONE WOULD HAVE STOPPED HER  
16 BREATHING.

17 Q BUT YOU DON'T KNOW WHEN THE TRAMADOL WOULD  
18 HAVE STOPPED HER BREATHING, DO YOU?

19 A NO. NEITHER DO I KNOW WHEN OXYCODONE WOULD  
20 HAVE. THE FACT IS THEY WERE BOTH SEVERAL-FOLD OVER THE  
21 MINIMUM LETHAL LEVEL. SO I DON'T KNOW WHICH ONE SHE TOOK  
22 FIRST. I DON'T KNOW WHICH ONE REACHED THE LETHAL LEVEL  
23 FIRST. I DON'T KNOW. I DON'T THINK ANYBODY CAN TELL.

24 Q ALL SPECULATION, CORRECT?

25 A ABSOLUTELY.

26 Q YOU DO KNOW, HOWEVER, DO YOU NOT, THAT  
27 TRAMADOL OVERDOSE DEATHS ARE MUCH RARER THAN OXYCODONE OR  
28 HYDROCODONE, CORRECT?

1           A           WELL, AGAIN, YOU SEE, YOUR QUESTION IS -- IS  
2 CORRECT, BUT IT'S OUT OF CONTEXT.

3           Q           JUST FOR A SECOND --

4           THE COURT:   LET HIM FINISH.   LET HIM FINISH,  
5 COUNSEL.

6           THE WITNESS:  THANK YOU, YOUR HONOR.

7                        THE REPORTS OF TRAMADOL OVERDOSE AND DEATH  
8 ARE MUCH LESS THAN IT IS WITH OXYCODONE BECAUSE TRAMADOL  
9 IS PRESCRIBED MUCH LESS FREQUENTLY.   SO THE INCIDENCE  
10 BEING LOWER IS NOT A REFLECTION OF THE DRUG BEING SAFE;  
11 IT'S JUST THAT IT'S NOT UTILIZED AS OFTEN.

12 BY MR. NEWHOUSE:

13          Q           IS IT CORRECT TO SAY THAT TRAMADOL OVERDOSE  
14 DEATHS ARE MUCH LESS COMMON THAN OXYCODONE?

15          A           IT'S NOT TRUE.

16          Q           NOW, YOU CITE SEVERAL ARTICLES OR AT LEAST  
17 YOU DISCUSS SEVERAL ARTICLES IN YOUR DEPOSITION THAT  
18 APPEAR TO CONTRADICT YOU, DO THEY NOT?

19          A           I'M NOT AWARE OF THAT.   PLEASE ENLIGHTEN ME.

20          Q           LET ME SHOW YOU --

21          MR. NEWHOUSE:  MAY I APPROACH, YOUR HONOR?

22          THE COURT:   YOU MAY.

23 BY MR. NEWHOUSE:

24          Q           THIS IS TAKEN FROM "FORENSIC SCIENCE  
25 INTERNATIONAL," "FATALITY DUE TO INGESTION OF TRAMADOL  
26 ALONE."

27                        IS THAT ONE OF THE ARTICLES YOU CITED IN  
28 YOUR JOURNAL?

1 A YES, I BELIEVE SO.

2 Q IT SAYS IN THE ABSTRACT, DOES IT NOT, "A  
3 RARE CASE OF FATAL INTOXICATION IN AN ADULT WITH TRAMADOL  
4 ALONE IS REPORTED"?

5 DO YOU SEE THAT?

6 A YES.

7 Q I REPEAT MY QUESTION: IS IT NOT THE CASE  
8 THAT IT'S RELATIVELY RARE FOR THERE TO BE A DEATH OVERDOSE  
9 CAUSED BY TRAMADOL?

10 A IT IS RARE AS A REFLECTION OF THE FREQUENCY  
11 OF HOW OFTEN THE DRUG IS PRESCRIBED. BUT IT'S NOT RARE IN  
12 TERMS OF THE PERCENTAGE OF THE PATIENTS WHO GET TRAMADOL  
13 AND HAVE OVERDOSES.

14 DOES THAT MAKE SENSE?

15 Q IT DOES.

16 A THANK YOU.

17 Q ONE FINAL LINE OF QUESTIONS.

18 THERE IS EVIDENCE IN THIS CASE -- AND YOU'VE  
19 REVIEWED MOST OF THE MEDICAL RECORD AND DEPOSITIONS,  
20 CORRECT?

21 A I BELIEVE SO.

22 Q DID YOU SEE EVIDENCE THAT TARA WAS  
23 DEVELOPING A TOLERANCE TO SOME OF THE NARCOTICS SHE HAD  
24 BEEN TAKING OVER THE PRIOR 90-DAY PERIOD?

25 A ABSOLUTELY. THERE WAS CLEAR EVIDENCE OF  
26 TOLERANCE, NARCOTIC TOLERANCE.

27 Q AND IF SOMEONE IS DEVELOPING A NARCOTIC  
28 TOLERANCE, DOES THAT HAVE AN IMPACT ON WHAT THE FATAL OR

1 LETHAL LEVEL OF DRUGS THAT THEY WOULD BE TAKING?

2 A IT COULD, DEPENDING ON THE DEGREE OF  
3 TOLERANCE.

4 Q SO THE MORE A PATIENT IS BECOMING TOLERANT,  
5 THE MORE THEY CAN TAKE WITHOUT KILLING THEMSELVES?

6 A EXACTLY. AND THAT'S WHY THEY REQUIRE MORE  
7 AND MORE EVERY TIME.

8 Q I'M SORRY, I DIDN'T HEAR YOUR ANSWER.

9 A AND THAT'S EXACTLY WHY INDIVIDUALS WHO TAKE  
10 NARCOTICS CHRONICALLY, OVER TIME THEY WILL REQUIRE MORE  
11 DRUG TO HAVE THE SAME PAIN RELIEF.

12 MR. NEWHOUSE: NO FURTHER QUESTIONS, YOUR HONOR.

13 MR. BLESSEY: NOTHING FURTHER, YOUR HONOR.

14 THE COURT: MAY THE WITNESS BE EXCUSED?

15 MR. NEWHOUSE: YES.

16 MR. BLESSEY: YES.

17 THE COURT: DOCTOR, THANK YOU VERY MUCH.

18 ALL RIGHT. DEFENSE, NEXT WITNESS.

19 MR. BLESSEY: YOUR HONOR, AT THIS POINT THE DEFENSE  
20 WILL REST.

21 THE COURT: WITH THE EXCEPTION OF ANY EXHIBITS THAT  
22 YOU WANT TO HAVE?

23 MR. BLESSEY: YES.

24 THE COURT: FIRST REBUTTAL WITNESS?

25 MR. NEWHOUSE: NO REBUTTAL CASE, YOUR HONOR.

26 THE COURT: ALL RIGHT. WE HAVE NOW COMPLETED ALL  
27 THE EVIDENTIARY TESTIMONY IN THIS CASE; IS THAT CORRECT?

28 MR. BLESSEY: YES, YOUR HONOR.

1 MR. NEWHOUSE: YES, YOUR HONOR.

2 THE COURT: ALL RIGHT. SO WHAT IS LEFT NOW ARE GO  
3 OVER THE JURY INSTRUCTIONS AND EXHIBITS AND I'LL INSTRUCT  
4 THE JURY THIS AFTERNOON. AS I HAD TOLD THEM YESTERDAY,  
5 WE'RE GOING TO TAKE A RECESS FOR ABOUT A HALF AN HOUR AT  
6 THIS POINT IN TIME. WHEN YOU GET BACK, I'M GOING TO  
7 INSTRUCT YOU ON THE LAW AND TOMORROW MORNING STARTING AT  
8 NINE O'CLOCK WE'LL HAVE CLOSING ARGUMENTS.

9 COURT IS IN RECESS FOR HALF AN HOUR. PLEASE  
10 REMEMBER THE ADMONITION OF THE COURT. THE COURT IS IN  
11 RECESS. COUNSEL, YOU CAN GET OUT THE JURY INSTRUCTIONS.

12 MR. NEWHOUSE: YES, YOUR HONOR.

13

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

17

18 THE COURT: WE'LL REMAIN ON THE RECORD, AND I HAVE  
19 A SPECIAL VERDICT FORM THAT APPEARS TO BE THE ONE THAT WAS  
20 SUBMITTED. IF BOTH OF YOU WILL PLEASE LOOK AT IT AND SIGN  
21 IT ON THE BACK.

22 CINDY, IF YOU COULD GIVE IT TO PLAINTIFFS'  
23 COUNSEL AND DEFENSE COUNSEL.

24 MR. NEWHOUSE: THANK YOU.

25 MR. BLESSEY: VERY WELL, YOUR HONOR, I'M SIGNING  
26 THE BACK AS WELL.

27 THE COURT: ALL RIGHT.

28 MR. NEWHOUSE: I'M HANDING IT BACK TO THE CLERK,



1 YOUR HONOR.

2 THE COURT: BOTH COUNSEL HAVE APPROVED THE SPECIAL  
3 VERDICT FORM.

4 ALL RIGHT. NOW IS THE TIME AND PLACE WE'RE  
5 GOING TO PUT ALL OF THE JURY INSTRUCTIONS THAT WILL BE  
6 GIVEN AND THOSE THAT ARE DENIED OR REFUSED ON THE RECORD.

7 LET'S BEGIN WITH THE ORDER IN WHICH THEY  
8 APPEAR AND THE ORDER IN WHICH THEY WILL BE GIVEN.

9 C.A.C.I. 100 OF WHICH THE COURT HAS  
10 PREVIOUSLY READ.

11 C.A.C.I. 101 NEXT IN ORDER, AND WITH  
12 STIPULATION OF COUNSEL, CAN I NOT READ THESE AGAIN TO THE  
13 JURY?

14 MR. BLESSEY: YES, YOUR HONOR.

15 MR. NEWHOUSE: SO STIPULATED.

16 THE COURT: ALL RIGHT. THEY WILL HAVE THEM IN THE  
17 JURY ROOM. OKAY. THE COURT ACCEPTS THAT STIPULATION.

18 THE FOLLOWING WILL BE THE JURY INSTRUCTIONS  
19 I WILL BE GIVING, AND IN THE FOLLOWING ORDER:

20 C.A.C.I. 102, C.A.C.I. 106, 107, 111,  
21 INSTRUCTION TO ALTERNATE JURORS 112, AND I HAVE THIS ONE  
22 TAGGED BECAUSE I DO NOT TYPICALLY ASK THE JURORS TO GIVE  
23 ME QUESTIONS. I'VE DONE IT, BUT IT'S A REAL PAIN. SO I'M  
24 GOING TO REFUSE THIS ONE BECAUSE I DON'T ENTERTAIN  
25 QUESTIONS FROM THE JURY. I THINK IT'S UP TO THE LAWYERS  
26 TO MAKE THEIR OWN CASE.

27 MR. NEWHOUSE: NO OBJECTION, YOUR HONOR.

28 MR. BLESSEY: NO OBJECTION.

1 MR. NEWHOUSE: JUST SO I UNDERSTAND THE COURT'S  
2 PROCEDURE, YOU'RE NOT GOING TO INSTRUCT THEM, BUT IF YOU  
3 GET A QUESTION, THEN WE DO ADDRESS IT?

4 THE COURT: IF I GET A QUESTION FROM THE JURY, YES,  
5 FROM THE JURY FOREMAN, THAT'S ONE THING. BUT THIS IS  
6 QUESTIONS FROM JURORS. THIS CONTEMPLATES DURING THE TRIAL  
7 JURORS WILL GIVE ME QUESTIONS AND I HAVE TO SPEND TIME  
8 TALKING TO THE LAWYERS AND ENTERTAINING AN OBJECTION.  
9 SOME JUDGES DO THAT. I DON'T.

10 MR. NEWHOUSE: IT WOULDN'T APPLY NOW ANYWAY.

11 THE COURT: IT'S OVER.

12 MR. NEWHOUSE: MAKES SENSE.

13 THE COURT: NEXT ONE THAT WILL BE GIVEN IS 113,  
14 WHICH IS BIAS. FOLLOWED BY 114, 116, 200, 202.

15 I GENERALLY GET THESE. A PARTY HAVING POWER  
16 TO PRODUCE BETTER EVIDENCE. IS THAT SOMETHING THAT EITHER  
17 SIDE IS GOING TO ARGUE?

18 MR. BLESSEY: YES.

19 MR. NEWHOUSE: IT DOESN'T APPLY.

20 THE COURT: YOU WILL. THEN I WILL GIVE IT.

21 LIKEWISE, THE NEXT ONE, FAILURE TO EXPLAIN  
22 OR DENY EVIDENCE, IS THAT ONE THAT EITHER SIDE --

23 MR. BLESSEY: I INTEND TO ARGUE THAT AS WELL, YOUR  
24 HONOR.

25 THE COURT: GIVEN AS REQUESTED.

26 206, EVIDENCE ADMITTED FOR LIMITED PURPOSE.  
27 I DON'T KNOW THAT WE HAD THAT DURING THE COURSE OF THE  
28 TRIAL. DID WE?

1 MR. BLESSEY: I WOULD AGREE, YOUR HONOR.

2 MR. NEWHOUSE: NO, THERE WAS NONE OF THAT, YOUR  
3 HONOR.

4 THE COURT: ALL RIGHT. IT'S WITHDRAWN.

5 NEXT ONE IS DEPOSITION TESTIMONY, FOLLOWED  
6 BY 209, USE OF INTERROGATORIES. WE DIDN'T HAVE ANY  
7 INTERROGATORIES.

8 MR. NEWHOUSE: YOUR HONOR, ACTUALLY ON 208?

9 THE COURT: YES.

10 MR. NEWHOUSE: THERE WERE NO DEPOSITIONS INTRODUCED  
11 AS SUBSTANTIVE EVIDENCE I DON'T THINK.

12 THE COURT: DEPOSITION TESTIMONY THAT WAS READ.

13 MR. NEWHOUSE: WELL, THERE WAS DEPOSITION TESTIMONY  
14 READ, BUT IN MOST CASES IT WAS IMPEACHMENT EVIDENCE.

15 THE COURT: IT WAS STILL READ.

16 MR. NEWHOUSE: WELL, BUT THE QUESTION IS: IS IT  
17 INTRODUCED AS SUBSTANTIVE EVIDENCE OR IS IT INTRODUCED FOR  
18 LIMITED PURPOSE OF IMPEACHING A WITNESS?

19 THE COURT: WHAT DIFFERENCE DOES IT MAKE? IF IT'S  
20 NOT SUBSTANTIVE, WHY READ IT? I DON'T QUITE UNDERSTAND  
21 THE FOLLOWING ON THAT. IF IT'S A PARTY OPPONENT, YOU CAN  
22 USE IT FOR ANY REASON --

23 MR. NEWHOUSE: CORRECT.

24 THE COURT: -- I MEANT, BUT AS FAR AS EXPERTS,  
25 YEAH, YOU WOULD NORMALLY USE IT FOR IMPEACHMENT. BUT --

26 MR. NEWHOUSE: WELL, THIS ACTUALLY IS RELATED TO AN  
27 ISSUE I WANT TO TAKE UP AFTER THE INSTRUCTIONS. MY  
28 BELIEF -- AND IF THE COURT DISAGREES, IT DISAGREES, BUT

1 EVIDENCE THAT IS READ, A DEPOSITION EXTRACT THAT'S READ TO  
2 A WITNESS SHOULD NOT BE RECEIVED FOR THE TRUTH OF THE  
3 MATTER ASSERTED. IT SHOULD BE ONLY RECEIVED FOR PURPOSES  
4 OF IMPEACHING THAT WITNESS'S TESTIMONY. YOU KNOW,  
5 "MR. JOE, YOU SAID THE CAR WAS GREEN. IN YOUR DEPOSITION  
6 YOU SAID IT'S RED. WHICH IS RIGHT?"

7 THE COURT: SO THE DEPOSITION TESTIMONY IS FOR THE  
8 PURPOSES OF SHOWING THAT IT WAS RED.

9 MR. NEWHOUSE: WELL, BUT ONE COULD INSTRUCT --

10 THE COURT: YOU COULD SAY, "WELL, HE'S IMPEACHED;  
11 THEREFORE, NOBODY KNOWS WHAT COLOR IT IS"? I MEAN --  
12 ANYHOW, OKAY, I UNDERSTAND YOUR POINT, BUT OVERRULED, 208.

13 MR. NEWHOUSE: THAT'S FINE. THANK YOU.

14 THE COURT: USE OF INTERROGATORIES, WITHDRAWN.

15 MR. NEWHOUSE: NOT APPLICABLE.

16 THE COURT: REQUEST FOR ADMISSIONS.

17 MR. NEWHOUSE: NOT APPLICABLE.

18 THE COURT: WITHDRAWN. STATEMENTS OF A PARTY  
19 OPPONENT.

20 MR. NEWHOUSE: IT IS APPLICABLE.

21 THE COURT: OKAY. GIVEN.

22 MR. NEWHOUSE: 213 HAS BEEN WITHDRAWN PER THE  
23 PARTIES.

24 THE COURT: 212. I DON'T HAVE 213 HERE.

25 MR. NEWHOUSE: I HAVE THAT AS ADOPTED ADMISSIONS.

26 THE COURT: I DON'T KNOW WHERE IT IS, BUT IT'S BEEN  
27 WITHDRAWN?

28 MR. NEWHOUSE: IT'S BEEN WITHDRAWN.

1 THE COURT: NEXT ONE I HAVE IS 219, GIVEN.

2 MR. NEWHOUSE: 218 IS WITHDRAWN, TOO? I MUST BE  
3 LOOKING AT A DIFFERENT LIST.

4 THE COURT: I LEFT OFF WITH 212, STATEMENTS OF A  
5 PARTY OPPONENT. THEN I HAVE 219 IN THE SUBSEQUENT  
6 ORDER --

7 MR. NEWHOUSE: THANK YOU.

8 THE COURT: -- AS READ. 220, 221, 223. BY THE  
9 WAY, ALL OF THESE ARE REALLY NOT IN DISPUTE, I THINK.  
10 BOTH SIDES MET AND CONFERRED AND YOU AGREE TO THESE. I  
11 WILL GET TO THE ONES THAT ARE IN DISPUTE, OKAY?

12 CAUSATION, MULTIPLE CAUSES, 431 --

13 MR. NEWHOUSE: THERE IS AN ISSUE ON 430.

14 THE COURT: 430?

15 MR. NEWHOUSE: YES.

16 THE COURT: I DON'T HAVE 430.

17 MR. BLESSEY: YOU SHOULD. WHICH IS 430?

18 MR. NEWHOUSE: YOU SHOULD HAVE 430. THAT'S  
19 CAUSATION AND THERE IS -- WELL --

20 THE COURT: THAT MAY BE IN THE ONES THAT ARE IN  
21 DISPUTE. MAYBE I'LL COME BACK TO THAT.

22 MR. BLESSEY: OKAY.

23 THE COURT: THESE ARE BASICALLY THE ONES YOU GAVE  
24 ME THAT YOU SAID WERE NOT IN DISPUTE AND I'M JUST PUTTING  
25 THEM ON THE RECORD.

26 MR. NEWHOUSE: GOT IT.

27 THE COURT: OKAY? SO 431, FOLLOWED BY MEDICAL  
28 NEGLIGENCE, ESSENTIAL FACTUAL ELEMENTS, FOLLOWED BY 430,

1 CAUSATION.

2 MR. NEWHOUSE: CAN I ASK, 430, THE ISSUE ON 430 IS  
3 THE FIRST SENTENCE, TWO SENTENCES, WE AGREE WITH. THERE  
4 IS THEN SOME LANGUAGE IN A BRACKET THAT WE STRONGLY  
5 DISAGREE WITH. IT'S NOT APPROPRIATE. SO THE PORTION OF  
6 THE INSTRUCTION, THE COURT SHOULD NOT SAY TO THE JURY,  
7 "CONDUCT IS NOT A SUBSTANTIAL FACTOR IN CAUSING HARM IF  
8 THE SAME HARM WOULD HAVE OCCURRED WITHOUT THAT CONDUCT."

9 AND IT'S ADDRESSED ACTUALLY BELOW BY SAYING,  
10 "THE BUT-FOR TEST," THE LAST OPTIONAL SENTENCE, "DOES NOT  
11 APPLY TO CONCURRENT INDEPENDENT CAUSES," WHICH IS EXACTLY  
12 THIS CASE.

13 SO WE WOULD HAVE NO OBJECTION TO THE FIRST  
14 PARAGRAPH UNDER 430, BUT WOULD STRONGLY DISPUTE THAT IT'S  
15 APPROPRIATE TO GIVE THE INSTRUCTION THAT'S IN THE  
16 BRACKETED LANGUAGE. AND, OF COURSE, THE BRACKETED  
17 LANGUAGE INDICATES THAT IT'S NOT ALWAYS APPLICABLE IN  
18 EVERY CASE.

19 MR. BLESSEY: WELL, IT IS APPLICABLE IN THIS CASE,  
20 YOUR HONOR. WE JUST HEARD FROM DR. SAFANI WHO SAID THE  
21 TRAMADOL BY ITSELF WOULD HAVE CAUSED THE DEATH. IN OTHER  
22 WORDS, THE SAME HARM WOULD HAVE OCCURRED WITHOUT THE  
23 PERCOCET. SO IT'S VERY APPLICABLE IN THIS CASE. IT'S  
24 DEAD ON.

25 MR. NEWHOUSE: YOUR HONOR, IF I COULD JUST --

26 THE COURT: IT WILL BE GIVEN AS REFLECTED. I  
27 THOUGHT YOU WERE DONE.

28 MR. NEWHOUSE: NO. PLEASE NOTE MY OBJECTION FOR

1 THE RECORD ON THAT.

2 THE COURT: SO NOTED. OVERRULED.

3 502 IS THE NEXT ONE. AGAIN, THESE ARE ALL  
4 THE ONES THAT WERE REALLY NOT IN DISPUTE.

5 INTRODUCTION TO TORT DAMAGES. AND THEN I  
6 HAVE ECONOMIC DAMAGES, NONECONOMIC. I GUESS I SHOULD  
7 PROBABLY PUT ON 3902 THAT COUNSEL HAVE STIPULATED TO THE  
8 ECONOMIC DAMAGES OF WHATEVER IT WAS.

9 MR. NEWHOUSE: YES, FUNERAL AND BURIAL EXPENSES.

10 THE COURT: 27,229.27.

11 SO JUST TO MAKE THE RECORD CLEAR:

12 "DAMAGES CLAIMED BY PLAINTIFFS LINDA  
13 DE ROGATIS AND PETER DE ROGATIS FOR THE HARM  
14 CAUSED BY DEFENDANT KAREN M. SHAINSKY, D.O.,  
15 FALL INTO TWO CATEGORIES CALLED ECONOMIC  
16 DAMAGES AND NONECONOMIC DAMAGES. YOU WILL BE  
17 ASKED ON THE VERDICT FORM TO STATE THE TWO  
18 CATEGORIES OF DAMAGES SEPARATELY.

19 "COUNSEL HAVE STIPULATED TO THE  
20 ECONOMIC DAMAGES AS BEING \$27,229.27."

21 THEREAFTER THE FOLLOWING IS 3905 DEALING  
22 WITH NONECONOMIC DAMAGES. THEN I HAVE 3921, GIVEN. 3924,  
23 GIVEN. 3925, 5000, 5009, 5011, 5012 AND 5015.

24 NOW, THAT'S THE PACKAGE THAT BASICALLY BOTH  
25 SIDES HAVE AGREED TO. LET'S TALK ABOUT THE ONES THAT ARE  
26 IN DISPUTE. SOME OF THESE, FOR EXAMPLE, 5002 DEALS WITH  
27 EVIDENCE. IT RESTATES WHAT I HAD PREVIOUSLY READ ON  
28 EVIDENCE, SO THAT'S REFUSED.

1 MR. NEWHOUSE: THAT'S 5002?

2 THE COURT: 5002. THAT'S A DUPLICATE OF 106.

3 LIKEWISE, 5003 ON WITNESSES, THAT'S A  
4 DUPLICATION OF 107, SO THAT'S WITHDRAWN LIKEWISE.

5 TAKING NOTES DURING TRIAL, 5010, THAT'S BEEN  
6 PREVIOUSLY GIVEN.

7 AND 102, THAT'S WITHDRAWN.

8 DEADLOCK JURY ADMONITION, I'LL DEFER ON THAT  
9 ONE.

10 SUBSTITUTION OF ALTERNATE JUROR, I'LL DEFER  
11 ON THAT ONE.

12 JUDGES COMMENTING ON THE EVIDENCE, I DO NOT  
13 DO THAT. WITHDRAWN.

14 AUDIO-VIDEO RECORDING AND TRANSCRIPT, WE  
15 HAVEN'T HAD ANYTHING LIKE THAT, HAVE WE?

16 MR. BLESSEY: WE HAVE A TELEPHONE MESSAGE.

17 MR. NEWHOUSE: TELEPHONE.

18 THE COURT: HAS THAT BEEN REFLECTED IN ANY WRITTEN  
19 DOCUMENT?

20 MR. NEWHOUSE: YES.

21 THE COURT: HAS THAT BEEN RECEIVED?

22 MR. NEWHOUSE: YES. WELL, WE'RE GOING TO CHECK ON  
23 THAT. IT SHOULD BE. WE SUBMITTED A TRANSCRIPT OF THAT  
24 CALL WHICH SHOULD BE RECEIVED IN EVIDENCE, AND THEN WE  
25 DON'T HAVE TO WORRY ABOUT PLAYING OF THE ACTUAL RECORDING.

26 MR. BLESSEY: I AGREE.

27 THE COURT: WE DON'T NEED THIS ONE?

28 MR. BLESSEY: NO.



1 THE COURT: OKAY. WITHDRAWN.

2 QUESTIONS FROM JURORS, WITHDRAWN. I DON'T  
3 DO THAT.

4 DEMONSTRATIVE EVIDENCE. I HAVE TAGGED THIS  
5 ONE, DEMONSTRATIVE EVIDENCE. ANYBODY WANT TO USE ANY OF  
6 THE CHARTS THAT WERE USED OR --

7 MR. NEWHOUSE: IN CLOSING?

8 THE COURT: AT ANY TIME AS PART OF YOUR EVIDENCE.

9 MR. NEWHOUSE: WELL, TECHNICALLY --

10 THE COURT: SOMETIMES WHEN A WITNESS WILL DRAW A  
11 CHART, YOU KNOW, I DON'T OBJECT TO IT GOING IN.

12 MR. NEWHOUSE: FOR EXAMPLE, THIS CHART.

13 THE COURT: IT COULD, BUT I DON'T KNOW THAT THAT'S  
14 GOING TO HELP THE JURY MUCH. IT'S MORE CONFUSING THAN  
15 ANYTHING. NOR WAS IT EVEN MARKED DURING THE COURSE OF THE  
16 TRIAL, BUT --

17 MR. BLESSEY: I'M NOT INTENDING TO USE ANY OF MY  
18 MULTIPLE CHARTS.

19 THE COURT: IT MAY BE ONE THING IF IT WAS RECEIVED  
20 INTO EVIDENCE.

21 MR. NEWHOUSE: IT'S DIFFERENT WHEN THE LAWYER IS  
22 WRITING IT. IT'S DIFFERENT WHEN THE LAWYER IS DOING THE  
23 WRITING BECAUSE MR. BLESSEY --

24 THE COURT: RIGHT. IT'S ARGUMENT.

25 MR. NEWHOUSE: -- HE WASN'T TESTIFYING. BUT I  
26 DON'T THINK ANY OF THE -- OTHER THAN DR. WOLFF HAD SOME  
27 SLIDES.

28 THE COURT: BUT THOSE WERE PART OF THE EVIDENCE.

1 THAT'S AN EXHIBIT THAT'S BEEN RECEIVED. SO THIS IS  
2 WITHDRAWN. OKAY.

3 NOW WE GET INTO -- THESE ARE -- THERE'S  
4 ABOUT THREE OR FOUR THAT ARE IN DISPUTE.

5 218, I DON'T KNOW WHO'S OFFERED THESE OR  
6 WHO -- SAYS REQUESTED BY BOTH SIDES.

7 MR. NEWHOUSE: I THINK THE DEFENSE IS REQUESTING  
8 IT. WE WERE OBJECTING TO IT. WE THINK IT'S -- DO YOU  
9 HAVE THAT ONE?

10 MR. BLESSEY: I DO.

11 MR. NEWHOUSE: YOUR HONOR, OUR PROBLEM WITH THIS IS  
12 IT REALLY AMOUNTS TO THE COURT COMMENTING ON THE EVIDENCE  
13 WHEN IT SAYS:

14 "THESE STATEMENTS HELPED KAREN M.  
15 SHAINSKY, D.O. AND OTHER HEALTHCARE PROVIDERS  
16 DIAGNOSE THE PATIENT'S CONDITION."

17 WELL, WE DON'T THINK THE STATEMENTS TO KAREN  
18 SHAINSKY HELPED HER DIAGNOSE BECAUSE, OF COURSE, THAT'S  
19 IMPLICIT ALSO THAT SHE, IN FACT, DIAGNOSED THE CONDITION.  
20 IT'S UNNECESSARY AND IT'S REALLY COMMENTING ON THE  
21 EVIDENCE.

22 MR. BLESSEY: THIS IS A STANDARD -- THE TEXT OF THE  
23 PROPOSED INSTRUCTION IS ENTIRELY CONSISTENT WITH THE  
24 C.A.C.I. INSTRUCTION IN THE BOOK.

25 THE COURT: OBJECTION NOTED. OVERRULED. GIVEN AS  
26 REQUESTED.

27 THE NEXT ONES I HAVE, PRETTY STANDARD, 505  
28 AND 506 IN A MEDICAL MALPRACTICE CASE. I REALIZE

1 PLAINTIFFS GENERALLY DON'T LIKE THEM, BUT --

2 MR. NEWHOUSE: THEY'RE DUPLICATIVE. WHAT I OFFERED  
3 TO MR. BLESSEY WAS THAT IF HE COULD PICK ONE OR THE OTHER,  
4 BUT TOGETHER I THINK THEY ARE DUPLICATIVE AND MISLEADING.  
5 YOU NEVER DID RESPOND.

6 MR. BLESSEY: I DIDN'T RESPOND BECAUSE I TOLD YOU  
7 THAT I WOULD WAIT TO SEE WHAT THE EVIDENCE IS. AND THE  
8 EVIDENCE IS THAT THERE ARE ALTERNATIVE METHODS OF CARE  
9 FROM A NUMBER OF THE EXPERTS.

10 SO I THINK THAT'S APPROPRIATE, AND 505 IS A  
11 TOTALLY DIFFERENT CONCEPT. IT DEALS WITH SUCCESS NOT  
12 REQUIRED. JUST BECAUSE YOU HAVE A BAD OUTCOME DOESN'T  
13 MEAN THERE WAS NEGLIGENCE. THAT'S A CRITICAL INSTRUCTION.

14 THE COURT: 505, 506 ARE GIVEN.

15 MR. NEWHOUSE: OBJECTION TO THOSE, YOUR HONOR.  
16 THANK YOU.

17 THE COURT: SO NOTED. AND THAT COMPLETES THE JURY  
18 INSTRUCTIONS.

19 ARE THERE ANY ADDITIONAL ONES THAT ANYBODY  
20 KNOWS OF THAT YOU WANT ME TO INCLUDE OR YOU WANT ME TO GO  
21 OVER AGAIN OR --

22 MR. NEWHOUSE: NO.

23 MR. BLESSEY: NO, YOUR HONOR.

24 THE COURT: SO IN THE MEANTIME, CINDY HAS GIVEN ME  
25 A LIST AS OF ALL THE EXHIBITS THAT HAVE BEEN MARKED AND  
26 RECEIVED INTO EVIDENCE AND THOSE THAT HAVE NOT BEEN  
27 RECEIVED INTO EVIDENCE. IT'S BEEN LESS THAN A HALF AN  
28 HOUR. WE CAN TALK ABOUT THESE RIGHT NOW, IF YOU WANT.

1 MR. NEWHOUSE: SURE.

2 THE COURT: THE TWO OF YOU CAN MEET AND CONFER OVER  
3 IT.

4 MR. BLESSEY: OKAY. WE MET AND CONFERRED AT THE  
5 END OF THE DAY YESTERDAY AND THERE MAY BE SOME ADDITIONAL  
6 ONES ON THIS LIST, SO MAYBE WE SHOULD.

7 THE CLERK: THE ONES FROM TODAY.

8 THE COURT: PARDON?

9 THE CLERK: THE ONES FROM TODAY ARE ADDITIONAL.

10 MR. BLESSEY: RIGHT, OKAY.

11 THE COURT: I'LL TELL YOU, FOR EXAMPLE, THE RESUME  
12 I GENERALLY DON'T HAVE RECEIVED BECAUSE IT'S JUST  
13 CUMULATIVE. THEY CAN EITHER TELL THE JURY OR NOT, AND YOU  
14 ONLY HAVE ONE. THAT TENDS TO BE A LOT OF ATTENTION GIVEN  
15 TO JUST ONE. IF WE HAVE ONE FOR EVERYBODY --

16 MR. NEWHOUSE: THE RESUME OF DR. BLUESTONE, THAT'S  
17 NOT -- ACTUALLY, I WOULD ACTUALLY SUGGEST, YOUR HONOR,  
18 THAT WE BELIEVE ALL OF EXHIBIT 100, WHICH IS THE PATIENT'S  
19 CHART --

20 THE COURT: RIGHT.

21 MR. NEWHOUSE: -- THE ENTIRE 100 SHOULD BE IN  
22 EVIDENCE, AS WELL AS EXHIBIT 101, WHICH ARE BILLING  
23 RECORDS THAT REFLECT --

24 THE COURT: HOW IS THE BILLING RECORD OF ANY  
25 SIGNIFICANCE?

26 MR. NEWHOUSE: BECAUSE THEY REFLECT THE LINK OF THE  
27 VISITS, WHICH IS IMPORTANT.

28 THE COURT: OKAY.

1 MR. NEWHOUSE: THEY'RE NOT -- CERTAINLY NOT  
2 PREJUDICIAL.

3 SO 112 -- 112 IS THE RITE AID CUSTOMER  
4 RECORD THAT'S STIPULATED TO AS TO FOUNDATION. AND AGAIN,  
5 IT REFLECTS THE PRESCRIPTIONS THAT ARE AT ISSUE.

6 AND 116 SHOULD ALSO BE IN EVIDENCE. THAT'S  
7 THE PERCOCET.

8 MR. BLESSEY: 116 IS NOT AN ISSUE. 112 I DO HAVE  
9 AN ISSUE WITH, YOUR HONOR. THERE'S A BIG DIFFERENCE  
10 STIPULATING TO FOUNDATION. AND JUST THROWING RECORDS IN  
11 TO THE JURY WHEN WE'VE HAD NO WITNESSES TESTIFYING ABOUT  
12 THE RECORDS, THEORETICALLY, WE WOULD JUST PUT ALL THE  
13 EXHIBITS IN, BUT THE PROBLEM IS THERE'S NO FOUNDATION AND  
14 IT'S HEARSAY. THERE'S NOT SUFFICIENT EVIDENCE TO --

15 THE COURT: WE DID USE 112, DID WE NOT?

16 MR. BLESSEY: WE USED ONE PAGE IN 112.

17 THE COURT: REFRESH MY RECOLLECTION. I KNOW  
18 THAT -- WAS IT THE LAST DAY? WAS IT 3/23 OR 3/22,  
19 SOMETHING LIKE THAT? I'M NOT INTERESTED IN HAVING THEM  
20 ALL.

21 MR. NEWHOUSE: THAT ONE PAGE -- IT'S ACTUALLY PAGE  
22 10 OF EXHIBIT 112 AND THAT'S THE ONE THAT ACTUALLY  
23 REFLECTS THE -- NOT ONLY DOES IT REFLECT THE  
24 PRESCRIPTIONS, BUT IT REFLECTS -- IT IS THE ONLY RECORD,  
25 IF THE COURT RECALLS, OF THE TELEPHONIC PRESCRIPTION THAT  
26 DR. SHAINSKY DIDN'T KEEP A RECORD OF. THAT'S VITAL  
27 EVIDENCE FOR US, YOUR HONOR, THAT THEY BE ABLE TO REFER TO  
28 THAT.

1 SO JUST 112-10, THAT DOES NEED TO BE IN  
2 EVIDENCE. THE REST OF THE DOCUMENT, I DON'T THINK --

3 THE COURT: THAT'S ALL THAT WE HAVE IS 112-10.  
4 I'LL HAVE IT RECEIVED.

5  
6 (RECEIVED INTO EVIDENCE, JOINT  
7 EXHIBITS 101-1 AND 101-2, 112-10,  
8 116, 120-5, AND 121-9.)  
9

10 MR. NEWHOUSE: THANK YOU.

11 THE COURT: JUST FOR THE RECORD, THEN, ALL OF 100,  
12 THOSE VARIOUS PAGES. 101, THE BILLING RECORDS, I'LL HAVE  
13 THAT RECEIVED. 112-10 WILL BE RECEIVED.

14 MR. NEWHOUSE: 116.

15 THE COURT: 116 IS THE PERCOCET PRESCRIPTION. THAT  
16 WILL BE RECEIVED. 120 --

17 MR. NEWHOUSE: LET ME SEE WHAT THAT IS.

18 THE COURT: HANDWRITTEN NOTE.

19 MR. NEWHOUSE: 120, I THINK IT WAS -- IS IT 120-5?  
20 YEAH, 120-5 WAS IDENTIFIED, I THINK, BY LINDA DE ROGATIS  
21 AS A HANDWRITTEN NOTE FROM HER DAUGHTER AND IT WAS  
22 INTRODUCED TO SHOW HER DAUGHTER'S RELATIONSHIP WITH MOM  
23 AND SOME OF HER PLANS AS OF THE TIME THAT SHE WROTE THE  
24 NOTE.

25 THE COURT: ANY OBJECTION?

26 MR. BLESSEY: NO, YOUR HONOR.

27 THE COURT: RECEIVED. PHOTO OF TARA, 121. I KNOW  
28 WE HAD A BUNCH OF DUPLICATIONS, BUT I DON'T HAVE A

1 PARTICULAR PROBLEM WITH THAT.

2 MR. BLESSEY: I DON'T EITHER, YOUR HONOR.

3 THE COURT: RECEIVED.

4 VOICE MAIL MESSAGE, 122.

5 MR. NEWHOUSE: THAT WE --

6 THE COURT: IS THAT THE ONE WE'RE TALKING ABOUT?

7 MR. NEWHOUSE: YES. THAT, WE DON'T NEED. WHAT I

8 WOULD SUGGEST IN LIEU OF THAT IS 123, WHICH IS THE

9 TRANSCRIPT OF THAT RECORDING. NO OBJECTION.

10 MR. BLESSEY: NO, I HAVE NO OBJECTION TO THAT.

11 THE COURT: 123-1 IS RECEIVED. 122 IS NOT

12 RECEIVED.

13

14 (MARKED FOR IDENTIFICATION AND  
15 RECEIVED INTO EVIDENCE, JOINT  
16 EXHIBIT 123-1, TRANSCRIPTION OF THE  
17 VOICE MAIL MARKED JOINT EXHIBIT  
18 122.)

19

20 THE COURT: THEN I HAVE 136.

21 MR. NEWHOUSE: WHICH WE TALKED ABOUT.

22 THE COURT: THAT WILL NOT BE RECEIVED.

23 THREE-PAGE BILLING RECORD FOR DR. BLUESTONE,  
24 NOT RECEIVED.

25 139 AND 140, CHART. THESE WERE MARKED  
26 TODAY. DO YOU HAPPEN TO HAVE THEM OR YOU'LL BE GETTING  
27 THEM?

28 MR. BLESSEY: I THINK I GAVE THEM TO THE CLERK.

1 THE COURT: ALL RIGHT.

2 MR. BLESSEY: 138 WAS MENTIONED, BUT --

3 THE CLERK: WE RECEIVED IT. IT'S ON THE OTHER  
4 SIDE.

5 THE COURT: OH, THESE ARE DEMONSTRATIVE EVIDENCE  
6 FROM OUR LAST WITNESS, I BELIEVE.

7 MR. BLESSEY: RIGHT.

8 MR. NEWHOUSE: OBJECTION. IT'S IRRELEVANT, YOUR  
9 HONOR.

10 THE COURT: SUSTAINED.

11 MR. NEWHOUSE: LET ME GO BACK TO 138.

12 THE CLERK: THAT WAS RECEIVED.

13 MR. NEWHOUSE: STRIKE THAT. I DIDN'T MEAN 138. I  
14 MEAN -- OH, I SEE. WHEN IT SAYS "CORONER'S," THAT WAS  
15 THE -- CAN I SEE 138? THAT'S JUST ONE PAGE. THE  
16 CORONER'S REPORT IS IN, I THINK.

17 THE CLERK: CORONER'S REPORT IS IN.

18 MR. NEWHOUSE: THAT'S FINE.

19 THE COURT: CINDY, COULD YOU REDO THIS FOR ME SO I  
20 CAN TELL THE JURY? GIVE ME ABOUT 2 MINUTES, OKAY.

21 THE CLERK: YEAH?

22 THE COURT: LET'S TAKE ABOUT 3 OR 4 MINUTES. CINDY  
23 WILL HAVE THIS FINALIZED AND I'LL TELL THE JURY UPON  
24 READING THE JURY INSTRUCTIONS, THEN, OF THE EXHIBITS AND  
25 WE'RE DONE FOR THE DAY.

26 MR. NEWHOUSE: THANK YOU, YOUR HONOR.

27 MR. BLESSEY: THANK YOU.

28 (RECESS.)



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(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, YOU'VE NOW RECEIVED THIS INDEX THAT  
MY CLERK HAS KINDLY FURNISHED TO US. ALL THE EXHIBITS  
THAT WE'VE TALKED ABOUT RECEIVED INTO EVIDENCE, EACH OF  
YOU HAS NOW REVIEWED THIS, AND ALSO EXHIBITS MARKED FOR  
IDENTIFICATION ONLY AND NOT RECEIVED, AND THERE'S SOME  
FIVE OF THEM THERE, IF THERE'S NO OBJECTION, I'D LIKE TO  
SEND THIS BACK WITH ALL THE EXHIBITS THAT ARE RECEIVED.

MR. NEWHOUSE: JUST THE RECEIVED ONES OR BOTH  
PAGES?

THE COURT: I'M SORRY.

MR. NEWHOUSE: I DIDN'T HEAR.

THE COURT: ONLY THE ONES THAT ARE RECEIVED, JUST  
BECAUSE IT FACILITATES THE JURY TO QUICKLY IDENTIFY WHAT  
EXHIBIT, UNLESS YOU WANT ME TO CHANGE HOW WE ENUMERATED  
WHAT THE EXHIBIT IS ON HERE.

MR. NEWHOUSE: NO OBJECTION.

MR. BLESSEY: NO OBJECTION, YOUR HONOR.

THE COURT: THANK YOU. WITH THAT, CINDY, YOU'RE  
GOING TO HAVE TO GO TO WORK AGAIN. GET OUR JURORS IN  
HERE.

THE CLERK: I'LL GO WRANGLE THEM UP. THEY CALL ME  
THE JURY WRANGLER.

1 MR. BLESSEY: I THOUGHT THEY CALLED YOU THE CANDY  
2 LADY.

3 THE CLERK: THAT, TOO.  
4

5 (THE FOLLOWING PROCEEDINGS WERE HELD  
6 IN OPEN COURT, IN THE PRESENCE OF  
7 THE JURY:)  
8

9 THE COURT: WE'RE BACK ON THE RECORD. ALL JURORS  
10 ARE PRESENT AND IN PLACE. PARTIES ARE PRESENT, LAWYERS  
11 ARE PRESENT.

12 IN YOUR ABSENCE, COUNSEL AND MYSELF HAVE  
13 GONE OVER ALL THE EXHIBITS. I'M NOT GOING TO READ TO YOU  
14 ALL THE EXHIBITS THAT ARE RECEIVED IN EVIDENCE. PUT IT  
15 THIS WAY: ALMOST ALL OF THEM THAT HAVE BEEN REFERRED TO  
16 DURING THE COURSE OF THE TRIAL ARE RECEIVED INTO EVIDENCE,  
17 MEANING YOU WILL HAVE THESE IN THE JURY ROOM TO REFER TO.  
18 THEY WILL HAVE A YELLOW STICKER ON THEM SAYING THAT THEY  
19 HAVE BEEN RECEIVED INTO EVIDENCE.

20 THERE ARE FIVE EXHIBITS THAT WERE BROUGHT TO  
21 THE ATTENTION OF THE JURY DURING THE COURSE OF THE TRIAL  
22 THAT ARE NOT RECEIVED INTO EVIDENCE, AND I JUST WANT TO  
23 MAKE CERTAIN YOU UNDERSTAND THAT THERE ARE FIVE THAT ARE  
24 NOT RECEIVED INTO EVIDENCE. YOU WILL NOT HAVE THEM IN THE  
25 JURY ROOM: EXHIBIT 122, VOICE MAIL MESSAGE, NOT RECEIVED;  
26 136, RESUME OF DR. BLUESTONE, NOT RECEIVED; 137,  
27 THREE-PAGE BILLING RECORDS THROUGH AUGUST 2012 OF  
28 BLUESTONE; 139 AND 140, THESE ARE CHART TABLES THAT

1 DR. SAFANI HAD REFERRED TO DURING THE COURSE OF HIS  
2 TESTIMONY, ARE NOT RECEIVED. OTHERWISE, THE REMAINING  
3 RECORDS HAVE BEEN RECEIVED. YES, COUNSEL.

4 MR. NEWHOUSE: JUST FOR CLARIFICATION, COULD THE  
5 COURT EXPLAIN TO THE JURY THAT ALTHOUGH THE ACTUAL VOICE  
6 MAIL WE LISTENED TO ISN'T RECEIVED THAT THEY WILL BE  
7 GETTING A TRANSCRIPT OF THAT MESSAGE.

8 THE COURT: WE'LL GET A TRANSCRIPT TOMORROW?

9 MR. NEWHOUSE: IT'S IN EVIDENCE.

10 THE CLERK: IT'S 123.

11 THE COURT: IT'S 123.

12 MR. NEWHOUSE: THANK YOU.

13 MR. BLESSEY: THAT'S BEEN STIPULATED.

14 THE COURT: YES, THE TRANSCRIPT OF VOICE MAIL  
15 MESSAGE. SO YOU'LL HAVE THAT.

16 ALL RIGHT. THIS PARTICULAR DOCUMENT I'M  
17 HOLDING IS AN INDEX OF ALL OF THESE EXHIBITS. YOU WILL  
18 HAVE THIS ON TOP OF ALL THE EXHIBITS SO THAT YOU CAN  
19 READILY FIND THE EXHIBITS, ALL RIGHT?

20 NOW, WE'VE HEARD ALL THE ORAL TESTIMONY. WE  
21 HAVE DISCUSSED ALL OF THE EXHIBITS THAT ARE GOING TO BE  
22 RECEIVED INTO EVIDENCE. LADIES AND GENTLEMEN, YOU NOW  
23 HAVE HEARD AND WILL BE SEEING, WHEN YOU SIT DOWN TO RETIRE  
24 AND DELIBERATE, ALL OF THE EXHIBITS IN THE JURY ROOM,  
25 OKAY?

26 NOW IT'S MY TIME TO INSTRUCT YOU ON THE LAW.  
27 YOU NEED NOT TAKE NOTES OF THESE. ALL OF THE INSTRUCTIONS  
28 I'M NOW HOLDING UP IN MY HAND ARE THE LAW THAT PERTAINS TO

1 THIS CASE. YOU WILL HAVE THESE IN THE JURY ROOM ALONG  
2 WITH WHAT WE CALL A SPECIAL VERDICT FORM. AND I CAN TELL  
3 YOU NOW IT'S RELATIVELY SHORT. IN FACT, IT'S QUITE SHORT.  
4 IT'S TWO PAGES, THREE QUESTIONS. DEPENDING ON HOW YOU  
5 ANSWER THE FIRST QUESTION, YOU MAY NOT EVEN GO ON TO THE  
6 SECOND. DEPENDING ON HOW YOU ANSWER THE SECOND QUESTION,  
7 YOU MAY OR MAY NOT GO ON TO THE THIRD QUESTION.

8 IT WILL TELL YOU EXACTLY -- THIS IS KIND OF  
9 THE SCRIPT THAT YOU'RE GOING TO BE FOLLOWING, I THINK, AS  
10 YOU DISCUSS THE TESTIMONY IN THE JURY ROOM.

11 SO -- AND I'LL COME BACK TO THE SPECIAL  
12 VERDICT FORM AS WE GO THROUGH THE JURY INSTRUCTIONS.

13 NOW, THE FIRST COUPLE I HAVE READ TO YOU  
14 PREVIOUSLY AND THEY BEGIN BY SAYING:

15 "YOU HAVE NOW BEEN SWORN AS JURORS IN  
16 THIS CASE. I WANT TO IMPRESS ON YOU THE  
17 SERIOUSNESS AND IMPORTANCE OF SERVING ON A  
18 JURY. TRIAL BY JURY IS A FUNDAMENTAL RIGHT  
19 IN CALIFORNIA."

20 YOU RECALL I READ THAT TO YOU, RATHER  
21 LENGTHY, SOME TWO PAGES IN LENGTH. COUNSEL STIPULATED I  
22 NEED NOT READ IT TO YOU AGAIN.

23 "OVERVIEW OF THE TRIAL. TO ASSIST YOU  
24 IN YOUR TASKS AS JURORS, I WILL NOW EXPLAIN  
25 HOW THE TRIAL WILL COMMENCE."

26 AND I TOLD YOU ABOUT DIRECT -- THAT THE  
27 PLAINTIFF GOES FIRST AND SECOND. I READ THIS TO YOU. YOU  
28 WILL HAVE THIS IN THE JURY ROOM. COUNSEL HAVE STIPULATED

1 THAT I NEED NOT READ IT TO YOU AGAIN. AND THAT'S TWO SOME  
2 PAGES.

3 "LADIES AND GENTLEMEN, YOU HAVE BEEN  
4 GIVEN NOTEBOOKS AND MAY TAKE NOTES DURING THE  
5 TRIAL. DO NOT TAKE THE NOTEBOOKS OUT OF THE  
6 COURTROOM OR JURY ROOM AT ANY TIME DURING THE  
7 TRIAL. YOU MAY TAKE YOUR NOTES INTO THE JURY  
8 ROOM DURING DELIBERATIONS. YOU SHOULD USE  
9 YOUR NOTES ONLY TO REMIND YOURSELF OF WHAT  
10 HAPPENED DURING THE TRIAL. DO NOT LET YOUR  
11 NOTE TAKING INTERFERE WITH YOUR ABILITY TO  
12 LISTEN CAREFULLY TO ALL THE TESTIMONY AND TO  
13 WATCH THE WITNESSES AS THEY TESTIFY, NOR  
14 SHOULD YOU ALLOW YOUR IMPRESSION OF A WITNESS  
15 OR OTHER EVIDENCE BE INFLUENCED BY WHETHER OR  
16 NOT OTHER JURORS ARE TAKING NOTES.

17 "YOUR INDEPENDENT RECOLLECTION OF THE  
18 EVIDENCE SHOULD GOVERN YOUR VERDICT AND YOU  
19 SHOULD NOT ALLOW YOURSELF TO BE INFLUENCED BY  
20 THE NOTES OF OTHER JURORS IF THOSE NOTES  
21 DIFFER FROM WHAT YOU REMEMBER.

22 "THE COURT REPORTER IS MAKING A RECORD  
23 OF EVERYTHING THAT IS SAID. IF DURING  
24 DELIBERATIONS YOU HAVE A QUESTION ABOUT WHAT  
25 THE WITNESS SAID, YOU SHOULD ASK THAT THE  
26 COURT REPORTER'S RECORDS BE READ TO YOU. YOU  
27 MUST ACCEPT THE COURT REPORTER'S RECORD AS  
28 ACCURATE.

1                   "AT THE END OF THE TRIAL YOUR NOTES  
2                   WILL BE COLLECTED AND DESTROYED."

3                   NOW, THERE'S ANOTHER JURY INSTRUCTION LATER  
4 ON. I WILL READ IT TO YOU, BUT IF YOU COMMUNICATE AS A  
5 JUROR TO THE COURT, TO MYSELF, THERE IS A FORM THAT YOU  
6 WILL HAVE IN THE JURY ROOM, AND IT WILL BE SIGNED ONLY BY  
7 YOUR FOREPERSON.

8                   AND IF YOU REQUEST TO HAVE TESTIMONY REREAD  
9 TO YOU, VERY HELPFUL, IN ORDER TO FIND IT, WHO THE PERSON  
10 IS, WHAT LAWYER WAS ASKING THE QUESTION, AND BASICALLY THE  
11 SUBJECT MATTER THAT YOU'RE ASKING FOR. AS YOU KNOW, WE'VE  
12 GOT EIGHT DAYS OF TESTIMONY AND IT WILL BE VERY DIFFICULT  
13 TO GO THROUGH SOMEBODY THAT'S BEEN ON THE WITNESS STAND  
14 FOR TWO AND A HALF HOURS, THREE HOURS, AND TRY TO FIND  
15 WHAT IT IS, IF YOU CAN REMEMBER WHAT IT WAS ON DIRECT OR  
16 CROSS AND WHO THE LAWYER MIGHT BE. SO I'LL GET BACK TO  
17 THAT AND FURTHER EXPLANATION.

18                   "YOU MUST DECIDE WHAT THE FACTS ARE IN  
19 THIS CASE ONLY FROM THE EVIDENCE YOU SEE OR  
20 HEAR DURING THE TRIAL. SWORN TESTIMONY,  
21 DOCUMENTS, OR ANYTHING ELSE MAY BE ADMITTED  
22 INTO EVIDENCE. YOU MAY NOT CONSIDER AS  
23 EVIDENCE ANYTHING THAT YOU SEE OR HEAR WHEN  
24 COURT IS NOT IN SESSION, EVEN SOMETHING DONE  
25 OR SAID BY ONE OF THE PARTIES, ATTORNEYS, OR  
26 WITNESSES.

27                   "WHAT THE ATTORNEYS SAY DURING THE  
28 TRIAL IS NOT EVIDENCE. IN THEIR OPENING

1           STATEMENTS AND CLOSING ARGUMENTS, THE  
2           ATTORNEYS WILL TALK TO YOU ABOUT THE LAW AND  
3           THE EVIDENCE. WHAT THE LAWYERS SAY MAY HELP  
4           YOU UNDERSTAND THE LAW AND THE EVIDENCE, BUT  
5           THEIR STATEMENTS AND ARGUMENTS ARE NOT  
6           EVIDENCE.

7                     "THE ATTORNEYS' QUESTIONS ARE NOT  
8           EVIDENCE. ONLY THE WITNESSES' ANSWERS ARE  
9           EVIDENCE. YOU SHOULD NOT THINK THAT  
10          SOMETHING IS TRUE JUST BECAUSE AN ATTORNEY'S  
11          QUESTION SUGGESTS THAT IT IS TRUE. HOWEVER,  
12          THE ATTORNEYS FOR BOTH SIDES CAN AGREE THAT  
13          CERTAIN FACTS ARE TRUE. THIS AGREEMENT IS  
14          CALLED A 'STIPULATION.' NO OTHER PROOF IS  
15          NEEDED AND YOU MUST ACCEPT THOSE FACTS AS  
16          TRUE IN THIS TRIAL."

17                    AS YOU RECALL, I READ TO YOU A STIPULATION  
18   IN REGARD TO THE FUNERAL EXPENSES. AND I'LL GET BACK TO  
19   THAT.

20                    "EACH SIDE HAS THE RIGHT TO OBJECT TO  
21          EVIDENCE OFFERED BY THE OTHER SIDE. IF I DO  
22          NOT AGREE WITH THE OBJECTION, I WILL SAY IT  
23          IS OVERRULED. IF I OVERRULE AN OBJECTION,  
24          THE WITNESS WILL ANSWER AND YOU MAY CONSIDER  
25          THE EVIDENCE. IF I AGREE WITH THE OBJECTION,  
26          I WILL SAY IT IS SUSTAINED. IF I SUSTAIN AN  
27          OBJECTION, YOU MUST IGNORE THE QUESTION. IF  
28          THE WITNESS DID NOT ANSWER, YOU MUST NOT

1 GUESS WHAT HE OR SHE MIGHT HAVE SAID OR WHY I  
2 SUSTAINED THE OBJECTION. IF THE WITNESS HAS  
3 ALREADY ANSWERED, YOU MUST IGNORE THE ANSWER.

4 "AN ATTORNEY MAY MAKE A MOTION TO  
5 STRIKE TESTIMONY THAT YOU HAVE HEARD. IF I  
6 GRANT THE MOTION, YOU MUST TOTALLY DISREGARD  
7 THAT TESTIMONY. YOU MUST TREAT IT AS THOUGH  
8 IT DID NOT EXIST.

9 "A WITNESS IS A PERSON WHO HAS  
10 KNOWLEDGE RELATED TO THIS CASE. YOU WILL  
11 HAVE TO DECIDE WHETHER YOU BELIEVE EACH  
12 WITNESS AND HOW IMPORTANT EACH WITNESS'S  
13 TESTIMONY IS TO THE CASE. YOU MAY BELIEVE  
14 ALL, PART, OR NONE OF A WITNESS'S TESTIMONY.

15 "IN DECIDING WHETHER TO BELIEVE A  
16 WITNESS'S TESTIMONY, YOU MAY CONSIDER, AMONG  
17 OTHER FACTORS, THE FOLLOWING:

18 "(A) HOW WELL DID THE WITNESS SEE,  
19 HEAR, OR OTHERWISE SENSE WHAT HE OR SHE  
20 DESCRIBED IN COURT?

21 "(B) HOW WELL DID THE WITNESS  
22 REMEMBER AND DESCRIBE WHAT HAPPENED?

23 "(C) HOW DID THE WITNESS LOOK, ACT,  
24 AND SPEAK WHILE TESTIFYING?

25 "(D) DID THE WITNESS HAVE ANY REASON  
26 TO SAY SOMETHING THAT WAS NOT TRUE? FOR  
27 EXAMPLE, DID THE WITNESS SHOW ANY BIAS OR  
28 PREJUDICE OR HAVE A PERSONAL RELATIONSHIP



1 WITH ANY OF THE PARTIES INVOLVED IN THE CASE  
2 OR HAVE A PERSONAL STAKE IN HOW THIS CASE IS  
3 DECIDED?" AND

4 "(E) WHAT WAS THE WITNESS'S ATTITUDE  
5 TOWARD THIS CASE OR ABOUT GIVING TESTIMONY?

6 "SOMETIMES A WITNESS MAY SAY SOMETHING  
7 THAT IS NOT CONSISTENT WITH SOMETHING ELSE HE  
8 OR SHE SAID. SOMETIMES DIFFERENT WITNESSES  
9 WILL GIVE DIFFERENT VERSIONS OF WHAT  
10 HAPPENED. PEOPLE OFTEN FORGET THINGS OR MAKE  
11 MISTAKES IN WHAT THEY REMEMBER. ALSO, TWO  
12 PEOPLE MAY SEE THE SAME EVENT BUT REMEMBER IT  
13 DIFFERENTLY. YOU MAY CONSIDER THESE  
14 DIFFERENCES, BUT DO NOT DECIDE THAT TESTIMONY  
15 IS UNTRUE JUST BECAUSE IT DIFFERS FROM OTHER  
16 TESTIMONY.

17 "HOWEVER, IF YOU DECIDE THAT A WITNESS  
18 HAD DELIBERATELY TESTIFIED UNTRUTHFULLY ABOUT  
19 SOMETHING IMPORTANT, YOU MAY CHOOSE NOT TO  
20 BELIEVE ANYTHING THAT WITNESS SAID. ON THE  
21 OTHER HAND, IF YOU THINK THE WITNESS  
22 TESTIFIED UNTRUTHFULLY ABOUT SOME THINGS BUT  
23 TOLD THE TRUTH ABOUT OTHERS, YOU MAY ACCEPT  
24 THE PART YOU THINK IS TRUE AND IGNORE THE  
25 REST.

26 "DO NOT MAKE ANY DECISION SIMPLY  
27 BECAUSE THERE WERE MORE WITNESSES ON ONE SIDE  
28 THAN ON THE OTHER. IF YOU BELIEVE IT IS

1 TRUE, THE TESTIMONY OF A SINGLE WITNESS IS  
2 ENOUGH TO PROVE A FACT.

3 "AS AN ALTERNATE JUROR, YOU ARE BOUND  
4 BY THE SAME RULES THAT GOVERN THE CONDUCT OF  
5 THE JURORS THAT ARE SITTING ON THE PANEL.  
6 YOU WILL OBSERVE THE SAME TRIAL AND SHOULD  
7 PAY ATTENTION TO ALL OF MY INSTRUCTIONS JUST  
8 AS IF YOU WERE SITTING ON THE PANEL.  
9 SOMETIMES A JUROR NEEDS TO BE EXCUSED DURING  
10 THE TRIAL FOR ILLNESS OR SOME OTHER REASON.  
11 IF THAT HAPPENS, AN ALTERNATE WILL BE  
12 SELECTED TO TAKE THAT JUROR'S PLACE.

13 "EACH ONE OF US HAS BIASES ABOUT OR  
14 CERTAIN PERCEPTIONS OR STEREOTYPES OF OTHER  
15 PEOPLE. WE MAY BE AWARE OF SOME OF OUR  
16 BIASES, THOUGH WE MAY NOT SHARE THEM WITH  
17 OTHERS. WE MAY NOT BE FULLY AWARE OF SOME OF  
18 OUR OTHER BIASES.

19 "OUR BIASES OFTEN AFFECT HOW WE ACT,  
20 FAVORABLY OR UNFAVORABLY, TOWARDS SOMEONE.  
21 BIASES CAN AFFECT OUR THOUGHTS, HOW WE  
22 REMEMBER, WHAT WE SEE AND HEAR, WHOM WE  
23 BELIEVE OR DISBELIEVE, AND HOW WE MAKE  
24 IMPORTANT DECISIONS.

25 "AS JURORS YOU ARE BEING ASKED TO MAKE  
26 VERY IMPORTANT DECISIONS IN THIS CASE. YOU  
27 MUST NOT LET BIAS, PREJUDICE, OR PUBLIC  
28 OPINION INFLUENCE YOUR DECISION. YOU MUST

1 NOT BE BIASED IN FAVOR OF OR AGAINST ANY  
2 PARTY OR WITNESS BECAUSE OF HIS OR HER  
3 DISABILITY, GENDER, RACE, RELIGION,  
4 ETHNICITY, SEXUAL ORIENTATION, AGE, NATIONAL  
5 ORIGIN, OR SOCIOECONOMIC STATUS.

6 "YOUR VERDICT MUST BE BASED SOLELY ON  
7 THE EVIDENCE PRESENTED. YOU MUST CAREFULLY  
8 EVALUATE THE EVIDENCE AND RESIST ANY URGE TO  
9 REACH A VERDICT THAT IS INFLUENCED BY BIAS  
10 FOR OR AGAINST ANY PARTY OR WITNESS.

11 "FROM TIME TO TIME DURING THE TRIAL,  
12 IT MAY BECOME NECESSARY FOR ME TO TALK WITH  
13 THE ATTORNEYS OUT OF THE HEARING OF THE JURY,  
14 EITHER BY HAVING A CONFERENCE AT THE BENCH  
15 WHEN THE JURY IS PRESENT IN THE COURTROOM, OR  
16 BY CALLING A RECESS TO DISCUSS MATTERS  
17 OUTSIDE OF YOUR PRESENCE. THE PURPOSE OF  
18 THESE CONFERENCES IS NOT TO KEEP RELEVANT  
19 INFORMATION FROM YOU, BUT TO DECIDE HOW  
20 CERTAIN EVIDENCE IS TO BE TREATED UNDER THE  
21 RULES OF EVIDENCE. DO NOT BE CONCERNED ABOUT  
22 OUR DISCUSSIONS OR TRY TO GUESS WHAT IS BEING  
23 SAID.

24 "I MAY NOT ALWAYS GRANT AN ATTORNEY'S  
25 REQUEST FOR A CONFERENCE. DO NOT CONSIDER MY  
26 GRANTING OR DENYING A REQUEST FOR A  
27 CONFERENCE AS ANY INDICATION OF MY OPINION OF  
28 THE CASE OR OF MY VIEW OF THE EVIDENCE.

1           "I KNOW THAT MANY OF US ARE USED TO  
2           COMMUNICATING AND PERHAPS EVEN LEARNING BY  
3           ELECTRONIC COMMUNICATIONS AND RESEARCH.  
4           HOWEVER, THERE ARE GOOD REASONS WHY YOU MUST  
5           NOT ELECTRONICALLY COMMUNICATE OR DO ANY  
6           RESEARCH ON ANYTHING HAVING TO DO WITH THIS  
7           TRIAL OR THE PARTIES.

8           "IN COURT, JURORS MUST MAKE IMPORTANT  
9           DECISIONS THAT HAVE CONSEQUENCES FOR THE  
10          PARTIES. THOSE DECISIONS MUST BE BASED ONLY  
11          ON THE EVIDENCE THAT YOU HEAR IN THIS  
12          COURTROOM.

13          "THE EVIDENCE THAT IS PRESENTED IN  
14          COURT CAN BE TESTED; IT CAN BE SHOWN TO BE  
15          RIGHT OR WRONG BY EITHER SIDE; IT CAN BE  
16          QUESTIONED; AND IT CAN BE CONTRADICTED BY  
17          OTHER EVIDENCE. WHAT YOU MIGHT READ OR HEAR  
18          OR YOUR OWN COULD EASILY BE WRONG, OUT OF  
19          DATE, OR INAPPLICABLE TO THIS CASE.

20          "THE PARTIES CAN RECEIVE A FAIR TRIAL  
21          ONLY IF THE FACTS AND INFORMATION ON WHICH  
22          YOU BASE YOUR DECISION ARE PRESENTED TO YOU  
23          AS A GROUP, WITH EACH JUROR HAVING THE SAME  
24          OPPORTUNITY TO SEE, HEAR, AND EVALUATE THE  
25          EVIDENCE.

26          "ALSO, A TRIAL IS A PUBLIC PROCESS  
27          THAT DEPENDS ON DISCLOSURE IN THE COURTROOM  
28          OF FACTS AND EVIDENCE. USING INFORMATION

1 GATHERED IN SECRET BY ONE OR MORE JURORS  
2 UNDERMINES THE PUBLIC PROCESS AND VIOLATES  
3 THE RIGHTS OF THE PARTIES.

4 "A PARTY MUST PERSUADE YOU, BY THE  
5 EVIDENCE PRESENTED IN COURT, THAT WHAT HE OR  
6 SHE IS REQUIRED TO PROVE IS MORE LIKELY TO BE  
7 TRUE THAN NOT TRUE. THIS IS REFERRED TO AS  
8 'THE BURDEN OF PROOF.'

9 "AFTER WEIGHING ALL OF THE EVIDENCE,  
10 IF YOU CANNOT DECIDE THAT SOMETHING IS MORE  
11 LIKELY TO BE TRUE THAN NOT TRUE, YOU MUST  
12 CONCLUDE THAT THE PARTY DID NOT PROVE IT.  
13 YOU SHOULD CONSIDER ALL THE EVIDENCE, NO  
14 MATTER WHICH PARTY PRODUCED THE EVIDENCE.

15 "IN CRIMINAL TRIALS, THE PROSECUTION  
16 MUST PROVE THAT THE DEFENDANT IS GUILTY  
17 BEYOND A REASONABLE DOUBT. BUT IN CIVIL  
18 TRIALS, SUCH AS THIS ONE, THE PARTY WHO IS  
19 REQUIRED TO PROVE SOMETHING NEED ONLY PROVE  
20 THAT IT IS MORE LIKELY TO BE TRUE THAN NOT  
21 TRUE.

22 "EVIDENCE CAN COME IN MANY FORMS. IT  
23 CAN BE TESTIMONY ABOUT WHAT SOMEONE SAW OR  
24 HEARD OR SMELLED. IT CAN BE AN EXHIBIT  
25 ADMITTED INTO EVIDENCE. IT CAN BE SOMEONE'S  
26 OPINION.

27 "DIRECT EVIDENCE CAN PROVE A FACT BY  
28 ITSELF. FOR EXAMPLE, IF A WITNESS TESTIFIES

1 SHE SAW A JET PLANE FLYING ACROSS THE SKY,  
2 THAT TESTIMONY IS DIRECT EVIDENCE THAT A  
3 PLANE FLEW ACROSS THE SKY. SOME EVIDENCE  
4 PROVES A FACT INDIRECTLY. FOR EXAMPLE, A  
5 WITNESS TESTIFIES THAT HE SAW ONLY THE WHITE  
6 TRAIL THAT JET PLANES OFTEN LEAVE. THIS  
7 INDIRECT EVIDENCE IS SOMETIMES REFERRED TO AS  
8 'CIRCUMSTANTIAL EVIDENCE.' IN EITHER  
9 INSTANCE, THE WITNESS'S TESTIMONY IS EVIDENCE  
10 THAT A JET PLANE FLEW ACROSS THE SKY.

11 "AS FAR AS THE LAW IS CONCERNED, IT  
12 MAKES NO DIFFERENCE WHETHER EVIDENCE IS  
13 DIRECT OR INDIRECT. YOU MAY CHOOSE TO  
14 BELIEVE OR DISBELIEVE EITHER KIND. WHETHER  
15 IT IS DIRECT OR INDIRECT, YOU SHOULD GIVE  
16 EVERY PIECE OF EVIDENCE WHATEVER WEIGHT YOU  
17 THINK IT DESERVES.

18 "YOU MAY CONSIDER THE ABILITY OF EACH  
19 PARTY TO PROVIDE EVIDENCE. IF A PARTY  
20 PROVIDED WEAKER EVIDENCE WHEN IT COULD HAVE  
21 PROVIDED STRONGER EVIDENCE, YOU MAY DISTRUST  
22 THE WEAKER EVIDENCE.

23 "IF A PARTY FAILED TO EXPLAIN OR DENY  
24 EVIDENCE AGAINST IT WHEN IT COULD REASONABLY  
25 BE EXPECTED TO HAVE DONE SO BASED ON WHAT IT  
26 KNEW, YOU MAY CONSIDER ITS FAILURE TO EXPLAIN  
27 OR DENY IN EVALUATING THAT EVIDENCE.

28 "IT IS UP TO YOU TO DECIDE THE MEANING

1 AND IMPORTANCE OF THE FAILURE TO EXPLAIN OR  
2 DENY EVIDENCE AGAINST THE PARTY.

3 "DURING THE TRIAL, YOU RECEIVED  
4 DEPOSITION TESTIMONY THAT WAS READ FROM THE  
5 DEPOSITION TRANSCRIPT. A DEPOSITION IS THE  
6 TESTIMONY OF A PERSON TAKEN BEFORE TRIAL. AT  
7 A DEPOSITION THE PERSON IS SWORN TO TELL THE  
8 TRUTH AND IS QUESTIONED BY THE ATTORNEYS.  
9 YOU MUST CONSIDER THE DEPOSITION TESTIMONY  
10 THAT WAS PRESENTED TO YOU IN THE SAME WAY AS  
11 YOU CONSIDER TESTIMONY GIVEN IN COURT.

12 "A PARTY MAY OFFER INTO EVIDENCE ANY  
13 ORAL OR WRITTEN STATEMENT MADE BY AN OPPOSING  
14 PARTY OUTSIDE THE COURTROOM.

15 "WHEN YOU EVALUATE EVIDENCE OF SUCH A  
16 STATEMENT, YOU MUST CONSIDER THESE QUESTIONS:

17 "1. DO YOU BELIEVE THAT THE PARTY  
18 ACTUALLY MADE THE STATEMENT? IF YOU DO NOT  
19 BELIEVE THAT THE PARTY MADE THE STATEMENT,  
20 YOU MAY NOT CONSIDER THE STATEMENT AT ALL.

21 "2. IF YOU BELIEVE THAT THE STATEMENT  
22 WAS MADE, DO YOU BELIEVE IT WAS REPORTED  
23 ACCURATELY?

24 "YOU SHOULD VIEW TESTIMONY ABOUT AN  
25 ORAL STATEMENT MADE BY A PARTY OUTSIDE THE  
26 COURTROOM WITH CAUTION.

27 "KAREN M. SHAINSKY, D.O. AND OTHER  
28 HEALTHCARE PROVIDERS HAVE TESTIFIED THAT TARA

1 DE ROGATIS MADE STATEMENTS TO THEM ABOUT TARA  
2 DE ROGATIS' MEDICAL HISTORY. THESE  
3 STATEMENTS HELPED KAREN M. SHAINSKY, D.O. AND  
4 OTHER HEALTHCARE PROVIDERS DIAGNOSE THE  
5 PATIENT'S CONDITION. YOU CAN USE THESE  
6 STATEMENTS TO HELP YOU EXAMINE THE BASIS OF  
7 KAREN M. SHAINSKY, D.O. AND OTHER HEALTHCARE  
8 PROVIDERS' OPINION. YOU CANNOT USE THEM FOR  
9 ANY OTHER PURPOSE.

10 "HOWEVER, A STATEMENT MADE BY TARA  
11 DE ROGATIS TO KAREN M. SHAINSKY, D.O. AND  
12 OTHER HEALTHCARE PROVIDERS ABOUT HER CURRENT  
13 MEDICAL CONDITION MAY BE CONSIDERED AS  
14 EVIDENCE OF THAT MEDICAL CONDITION.

15 "DURING THE TRIAL YOU HEARD TESTIMONY  
16 FROM EXPERT WITNESSES. THE LAW ALLOWS AN  
17 EXPERT TO STATE OPINIONS ABOUT MATTERS IN HIS  
18 OR HER FIELD OF EXPERTISE EVEN IF HE OR SHE  
19 HAS NOT WITNESSED ANY OF THE EVENTS INVOLVED  
20 IN THE TRIAL.

21 "YOU DO NOT HAVE TO ACCEPT AN EXPERT'S  
22 OPINION. AS WITH ANY OTHER WITNESS, IT IS UP  
23 TO YOU TO DECIDE WHETHER YOU BELIEVE THE  
24 EXPERT'S TESTIMONY AND CHOOSE TO USE IT AS A  
25 BASIS FOR YOUR DECISION. YOU MAY BELIEVE  
26 ALL, PART, OR NONE OF AN EXPERT'S OPINION" --  
27 "EXPERT'S TESTIMONY. IN DECIDING WHETHER TO  
28 BELIEVE AN EXPERT'S TESTIMONY, YOU SHOULD



1           CONSIDER :

2                   "1.   THE EXPERT'S TRAINING AND  
3           EXPERIENCE;

4                   "2.   THE FACTS THE EXPERT RELIED ON;  
5           AND

6                   "3.   THE REASONS FOR THE EXPERT'S  
7           OPINION.

8                   "THE LAW ALLOWS EXPERT WITNESSES TO BE  
9           ASKED QUESTIONS THAT ARE BASED ON ASSUMED  
10          FACTS.   THESE ARE SOMETIMES CALLED  
11          'HYPOTHETICAL QUESTIONS.'

12                   "IN DETERMINING THE WEIGHT TO GIVE TO  
13          THE EXPERT'S OPINION THAT IS BASED ON THE  
14          ASSUMED FACTS, YOU SHOULD CONSIDER WHETHER  
15          THE ASSUMED FACTS ARE TRUE.

16                   "IF THE EXPERT WITNESSES DISAGREED  
17          WITH ONE ANOTHER, YOU SHOULD WEIGH EACH  
18          OPINION AGAINST THE OTHERS.   YOU SHOULD  
19          EXAMINE THE REASONS GIVEN FOR EACH OPINION  
20          AND THE FACTS OR OTHER MATTERS THAT EACH  
21          WITNESS RELIED UPON.   YOU MAY ALSO COMPARE  
22          THE EXPERTS' QUALIFICATIONS.

23                   "A WITNESS WHO WAS NOT TESTIFYING AS  
24          AN EXPERT GAVE AN OPINION DURING THE TRIAL.  
25          YOU MAY, BUT ARE NOT REQUIRED TO, ACCEPT THAT  
26          OPINION.   YOU MAY GIVE THE OPINION WHATEVER  
27          WEIGHT YOU THINK IS APPROPRIATE.

28                   "CONSIDER THE EXTENT OF THE WITNESS'S

1 OPPORTUNITY TO PERCEIVE THE MATTERS ON WHICH  
2 THE OPINION IS BASED, THE REASONS THE WITNESS  
3 GAVE FOR THE OPINION, AND THE FACTS OR  
4 INFORMATION ON WHICH THE WITNESS RELIED IN  
5 FORMING THAT OPINION. YOU MUST DECIDE  
6 WHETHER INFORMATION ON WHICH THE WITNESS  
7 RELIED WAS TRUE AND ACCURATE. YOU MAY  
8 DISREGARD ALL OR ANY PART OF AN OPINION THAT  
9 YOU FIND UNBELIEVABLE, UNREASONABLE, OR  
10 UNSUPPORTED BY THE EVIDENCE.

11 "A PERSON'S NEGLIGENCE MAY COMBINE  
12 WITH ANOTHER FACTOR TO CAUSE HARM. IF YOU  
13 FIND THAT KAREN M. SHAINSKY, D.O.'S  
14 NEGLIGENCE WAS A SUBSTANTIAL FACTOR IN  
15 CAUSING LINDA DE ROGATIS AND PETER DE  
16 ROGATIS' HARM, THEN KAREN M. SHAINSKY, D.O.  
17 IS RESPONSIBLE FOR THE HARM. KAREN M.  
18 SHAINSKY, D.O. CANNOT AVOID RESPONSIBILITY  
19 JUST BECAUSE SOME OTHER PERSON, CONDITION, OR  
20 EVENT WAS ALSO A SUBSTANTIAL FACTOR IN  
21 CAUSING LINDA DE ROGATIS AND PETER DE  
22 ROGATIS' HARM.

23 "PLAINTIFFS LINDA DE ROGATIS AND PETER  
24 DE ROGATIS CLAIM THAT THEY WERE HARMED BY  
25 DEFENDANT KAREN M. SHAINSKY, D.O.'S MEDICAL  
26 NEGLIGENCE. TO ESTABLISH THIS CLAIM, LINDA  
27 DE ROGATIS AND PETER DE ROGATIS MUST PROVE  
28 THE FOLLOWING:

1                   "1. THAT KAREN M. SHAINSKY, D.O. WAS  
2 NEGLIGENT;

3                   "2. THAT LINDA DE ROGATIS AND PETER  
4 DE ROGATIS WERE HARMED; AND

5                   "3. THAT KAREN M. SHAINSKY, D.O.'S  
6 NEGLIGENCE WAS A SUBSTANTIAL FACTOR IN  
7 CAUSING LINDA DE ROGATIS AND PETER DE  
8 ROGATIS' HARM.

9                   "A SUBSTANTIAL FACTOR IN CAUSING HARM  
10 IS A FACTOR THAT A REASONABLE PERSON WOULD  
11 CONSIDER TO HAVE CONTRIBUTED TO THE HARM. IT  
12 MUST BE MORE THAN A REMOTE OR TRIVIAL FACTOR.  
13 IT DOES NOT HAVE TO BE THE ONLY CAUSE OF THE  
14 HARM.

15                   "CONDUCT IS NOT A SUBSTANTIAL FACTOR  
16 IN CAUSING HARM IF THE SAME HARM WOULD HAVE  
17 OCCURRED WITHOUT THAT CONDUCT.

18                   "A RHEUMATOLOGIST IS NEGLIGENT IF HE  
19 OR SHE FAILS TO USE THE LEVEL OF SKILL,  
20 KNOWLEDGE, AND CARE IN DIAGNOSIS AND  
21 TREATMENT THAT OTHER REASONABLY AND CAREFUL  
22 RHEUMATOLOGISTS WOULD USE IN SIMILAR  
23 CIRCUMSTANCES. THIS LEVEL OF SKILL,  
24 KNOWLEDGE, AND CARE IS SOMETIMES REFERRED TO  
25 AS 'THE STANDARD OF CARE.'

26                   "YOU MUST DETERMINE THE LEVEL OF  
27 SKILL, KNOWLEDGE, AND CARE THAT OTHER  
28 REASONABLY CAREFUL RHEUMATOLOGISTS WOULD USE

1           IN SIMILAR CIRCUMSTANCES BASED ONLY ON THE  
2           TESTIMONY OF THE EXPERT WITNESSES, INCLUDING  
3           KAREN M. SHAINSKY, D.O., WHO HAVE TESTIFIED  
4           IN THIS CASE.

5                   "A RHEUMATOLOGIST IS NOT NECESSARILY  
6           NEGLIGENT JUST BECAUSE HIS OR HER EFFORTS ARE  
7           UNSUCCESSFUL OR HE OR SHE MAKES AN ERROR THAT  
8           WAS REASONABLE UNDER THE CIRCUMSTANCES. A  
9           RHEUMATOLOGIST IS NEGLIGENT ONLY IF HE OR SHE  
10          WAS NOT AS SKILLFUL, KNOWLEDGEABLE, OR  
11          CAREFUL AS OTHER REASONABLE RHEUMATOLOGISTS  
12          WOULD HAVE BEEN IN SIMILAR CIRCUMSTANCES.

13                   "A RHEUMATOLOGIST IS NOT NECESSARILY  
14          NEGLIGENT JUST BECAUSE SHE CHOOSES ONE  
15          MEDICALLY ACCEPTED METHOD OF TREATMENT OR  
16          DIAGNOSIS AND IT TURNS OUT THAT ANOTHER  
17          MEDICALLY ACCEPTED METHOD WOULD HAVE BEEN A  
18          BETTER CHOICE.

19                   "IF YOU DECIDE THAT PLAINTIFFS LINDA  
20          DE ROGATIS AND PETER DE ROGATIS HAVE PROVED  
21          THEIR CLAIM AGAINST DEFENDANT KAREN M.  
22          SHAINSKY, D.O., YOU ALSO MUST DECIDE HOW MUCH  
23          MONEY WILL REASONABLY COMPENSATE LINDA  
24          DE ROGATIS AND PETER DE ROGATIS FOR THE HARM.  
25          THIS COMPENSATION IS CALLED 'DAMAGES.'

26                   "THE AMOUNT OF DAMAGES MUST INCLUDE AN  
27          AWARD FOR EACH OF THE ITEMS OF HARM THAT WAS  
28          CAUSED BY KAREN M. SHAINSKY, D.O.'S WRONGFUL

1 CONDUCT, EVEN IF THE PARTICULAR HARM COULD  
2 NOT HAVE BEEN ANTICIPATED.

3 "PLAINTIFFS LINDA DE ROGATIS AND PETER  
4 DE ROGATIS DO NOT HAVE TO PROVE THE EXACT  
5 AMOUNT OF DAMAGES THAT WILL PROVIDE  
6 REASONABLE COMPENSATION FOR THE HARM.  
7 HOWEVER, YOU MUST NOT SPECULATE OR GUESS IN  
8 AWARDING DAMAGES.

9 "DAMAGES CLAIMED BY PLAINTIFFS LINDA  
10 DE ROGATIS AND PETER DE ROGATIS FOR THE HARM  
11 CAUSED BY DEFENDANT KAREN M. SHAINSKY, D.O.  
12 FALL INTO TWO CATEGORIES CALLED ECONOMIC  
13 DAMAGES AND NONECONOMIC DAMAGES. YOU WILL BE  
14 ASKED ON THE VERDICT FORM TO STATE THE TWO  
15 CATEGORIES OF DAMAGES SEPARATELY."

16 AND I'LL TALK TO YOU ABOUT THAT, AND THAT  
17 WILL BE THE LAST QUESTION.

18 "COUNSEL HAVE STIPULATED TO THE  
19 ECONOMIC DAMAGES AS BEING \$27,229.27.

20 "ITEMS OF NONECONOMIC DAMAGE.

21 "THE FOLLOWING ARE THE SPECIFIC ITEMS  
22 OF NONECONOMIC DAMAGES CLAIMED BY PLAINTIFFS  
23 LINDA DE ROGATIS AND PETER DE ROGATIS:

24 "THE LOSS OF TARA DE ROGATIS' LOVE,  
25 COMPANIONSHIP, COMFORT, CARE, ASSISTANCE,  
26 PROTECTION, AFFECTION, SOCIETY, AND MORAL  
27 SUPPORT.

28 "IF YOU DECIDE THAT PLAINTIFFS LINDA

1 DE ROGATIS AND PETER DE ROGATIS HAVE PROVED  
2 THEIR CLAIM AGAINST DEFENDANT KAREN M.  
3 SHAINSKY, D.O. FOR THE DEATH OF TARA  
4 DE ROGATIS, YOU ALSO MUST DECIDE HOW MUCH  
5 MONEY WILL REASONABLY COMPENSATE LINDA  
6 DE ROGATIS AND PETER DE ROGATIS FOR THE DEATH  
7 OF TARA DE ROGATIS. THIS COMPENSATION IS  
8 CALLED 'DAMAGES.'

9 "LINDA DE ROGATIS AND PETER DE ROGATIS  
10 DO NOT HAVE TO PROVE THE EXACT AMOUNT OF  
11 THESE DAMAGES. HOWEVER, YOU MUST NOT  
12 SPECULATE... IN AWARDING DAMAGES.

13 "THE DAMAGES CLAIMED BY LINDA  
14 DE ROGATIS AND PETER DE ROGATIS" -- AND I  
15 KNOW THAT THIS IS SOMEWHAT CUMULATIVE --  
16 "FALL INTO TWO CATEGORIES CALLED ECONOMIC  
17 DAMAGES AND NONECONOMIC DAMAGES. YOU WILL BE  
18 ASKED TO STATE THE TWO CATEGORIES OF DAMAGES  
19 SEPARATELY ON THE VERDICT FORM.

20 "LINDA DE ROGATIS AND PETER DE ROGATIS  
21 CLAIM THE FOLLOWING ECONOMIC DAMAGES:

22 "FUNERAL AND BURIAL EXPENSES."

23 AND I GAVE YOU THAT NUMBER JUST PREVIOUSLY.

24 "YOUR AWARD OF ANY FUTURE ECONOMIC  
25 DAMAGES MUST BE REDUCED TO PRESENT CASH  
26 VALUE."

27 AND I DON'T THINK THAT THAT PERTAINS TO THIS  
28 PARTICULAR CASE, RIGHT?

1 MR. NEWHOUSE: AGREED, YOUR HONOR.

2 MR. BLESSEY: SO STIPULATED.

3 THE COURT: "LINDA DE ROGATIS AND  
4 PETER DE ROGATIS ALSO CLAIM THE FOLLOWING  
5 NONECONOMIC DAMAGES:

6 "THE LOSS OF TARA DE ROGATIS' LOVE,  
7 COMPANIONSHIP, COMFORT, CARE, ASSISTANCE,  
8 PROTECTION, AFFECTION, SOCIETY, [AND] MORAL  
9 SUPPORT.

10 "NO FIXED STANDARD EXISTS FOR DECIDING  
11 THE AMOUNT OF NONECONOMIC DAMAGES. YOU MUST  
12 USE YOUR JUDGMENT TO DECIDE A REASONABLE  
13 AMOUNT BASED ON THE EVIDENCE AND YOUR COMMON  
14 SENSE.

15 "FOR THESE NONECONOMIC DAMAGES,  
16 DETERMINE THE AMOUNT IN CURRENT DOLLARS PAID  
17 AT THE TIME OF JUDGMENT THAT WILL COMPENSATE  
18 LINDA DE ROGATIS AND PETER DE ROGATIS FOR  
19 THOSE DAMAGES. THIS AMOUNT OF NONECONOMIC  
20 DAMAGES SHOULD NOT BE FURTHER REDUCED TO  
21 PRESENT CASH VALUE BECAUSE THAT REDUCTION  
22 SHOULD ONLY BE PERFORMED WITH RESPECT TO  
23 FUTURE ECONOMIC DAMAGES."

24 AND THAT'S NO LONGER BEFORE US.

25 "IN DETERMINING LINDA DE ROGATIS' AND PETER  
26 DE ROGATIS' LOSS, DO NOT CONSIDER:

27 "1. LINDA DE ROGATIS' AND PETER DE  
28 ROGATIS' GRIEF, SORROW, OR MENTAL ANGUISH;

1                   "2. TARA DE ROGATIS' PAIN AND  
2                   SUFFERING; OR

3                   "3. THE POVERTY OR WEALTH OF LINDA  
4                   DE ROGATIS AND PETER DE ROGATIS.

5                   "IN DECIDING A PERSON'S LIFE  
6                   EXPECTANCY, YOU MAY CONSIDER, AMONG OTHER  
7                   FACTORS, THE AVERAGE LIFE EXPECTANCY OF A  
8                   PERSON OF THAT AGE, AS WELL AS THAT PERSON'S  
9                   HEALTH, HABITS, ACTIVITIES, LIFESTYLE, AND  
10                  OCCUPATION. ACCORDING TO [THE] LIFE TABLES  
11                  IN VITAL STATISTICS OF THE UNITED STATES,  
12                  PUBLISHED BY THE NATIONAL CENTER FOR HEALTH  
13                  STATISTICS, A 30-YEAR-OLD FEMALE IS EXPECTED  
14                  TO LIVE ANOTHER 51.6 YEARS. THIS IS THE  
15                  AVERAGE LIFE EXPECTANCY. THIS PUBLISHED  
16                  INFORMATION IS EVIDENCE OF HOW LONG A PERSON  
17                  IS LIKELY TO LIVE BUT IS NOT CONCLUSIVE.  
18                  SOME PEOPLE LIVE LONGER AND OTHERS DIE  
19                  SOONER.

20                  "IN COMPUTING THESE DAMAGES, CONSIDER  
21                  THE LOSSES SUFFERED BY ALL PLAINTIFFS AND  
22                  RETURN A VERDICT OF A SINGLE AMOUNT FOR ALL  
23                  PLAINTIFFS. I WILL [THEN] DIVIDE THE AMOUNT  
24                  AMONG THE PLAINTIFFS.

25                  "YOU MUST NOT INCLUDE IN YOUR AWARD  
26                  ANY DAMAGES TO PUNISH OR MAKE AN EXAMPLE OF  
27                  DEFENDANT KAREN M. SHAINSKY, D.O. SUCH  
28                  DAMAGES WOULD BE PUNITIVE DAMAGES, AND THEY



1 CANNOT BE PART OF YOUR VERDICT. YOU MUST  
2 AWARD ONLY THE DAMAGES THAT FAIRLY COMPENSATE  
3 PLAINTIFFS LINDA DE ROGATIS AND PETER DE  
4 ROGATIS FOR THEIR LOSS.

5 "THE ARGUMENTS OF THE ATTORNEYS ARE  
6 NOT EVIDENCE OF DAMAGES."

7 NOW, TOMORROW MORNING WHEN WE START AT NINE  
8 O'CLOCK, YOU WILL HEAR CLOSING ARGUMENTS. REMEMBER I  
9 TALKED ABOUT AN OPENING STATEMENT BEING A ROAD MAP, A  
10 PREVIEW. SO YOU'LL HEAR ARGUMENTS TOMORROW.

11 "YOUR AWARD MUST BE BASED ON YOUR  
12 REASONED JUDGMENT APPLIED TO THE TESTIMONY OF  
13 THE WITNESSES AND THE OTHER EVIDENCE THAT HAS  
14 BEEN ADMITTED DURING TRIAL.

15 "MEMBERS OF THE JURY, YOU HAVE NOW  
16 HEARD ALL THE EVIDENCE AND [YOU WILL HEAR]  
17 CLOSING ARGUMENTS OF THE ATTORNEYS."

18 I HAVE NOW INSTRUCTED YOU ON MOST OF THE  
19 LAW. THERE ARE A FEW THINGS I HAVE TO FURTHER INSTRUCT  
20 YOU ON. YOU OBVIOUSLY HAVE A COPY OF THESE INSTRUCTIONS  
21 IN THE JURY ROOM.

22 "YOU MUST DECIDE WHAT THE FACTS ARE.  
23 YOU MUST CONSIDER ALL THE EVIDENCE AND THEN  
24 DECIDE WHAT YOU THINK HAPPENED. YOU MUST  
25 DECIDE THE FACTS BASED ON THE EVIDENCE  
26 ADMITTED IN THIS TRIAL.

27 "DO NOT ALLOW ANYTHING THAT HAPPENS  
28 OUTSIDE THIS COURTROOM TO AFFECT YOUR

1 DECISION. DO NOT TALK ABOUT THIS CASE OR THE  
2 PEOPLE INVOLVED IN IT WITH ANYONE, INCLUDING  
3 FAMILY AND PERSONS LIVING IN YOUR HOUSEHOLD,  
4 FRIENDS AND COWORKERS, SPIRITUAL LEADERS,  
5 ADVISORS, OR THERAPISTS. DO NOT DO ANY  
6 RESEARCH ON YOUR OWN OR AS A GROUP. DO NOT  
7 USE DICTIONARIES OR OTHER REFERENCE  
8 MATERIALS.

9 "THESE PROHIBITIONS ON COMMUNICATIONS  
10 AND RESEARCH EXTEND TO ALL FORMS OF  
11 ELECTRONIC COMMUNICATIONS. DO NOT USE ANY  
12 ELECTRONIC DEVICES OR MEDIA, SUCH AS A CELL  
13 PHONE OR SMARTPHONE, P.D.A., COMPUTER, TABLET  
14 DEVICE, THE INTERNET, ANY INTERNET SERVICE,  
15 ANY TEXT OR INSTANT-MESSAGING SERVICE, ANY  
16 INTERNET CHAT ROOM, BLOG, OR WEBSITE,  
17 INCLUDING SOCIAL NETWORKING WEBSITES OR  
18 ONLINE DIARIES, TO SEND OR RECEIVE ANY  
19 INFORMATION TO OR FROM ANYONE ABOUT THIS CASE  
20 OR YOUR EXPERIENCE AS A JUROR UNTIL AFTER YOU  
21 HAVE BEEN DISCHARGED FROM YOUR JURY DUTY.

22 "DO NOT INVESTIGATE THE CASE OR  
23 CONDUCT ANY EXPERIMENTS. DO NOT CONTACT  
24 ANYONE TO ASSIST YOU, SUCH AS A FAMILY  
25 ACCOUNTANT, DOCTOR, OR LAWYER. DO NOT VISIT  
26 OR VIEW THE SCENE OF ANY EVENT INVOLVED IN  
27 THIS CASE. IF YOU HAPPEN TO PASS BY THE  
28 SCENE, DO NOT STOP OR INVESTIGATE."

1                   OBVIOUSLY THAT APPLIES TO GENERALLY A  
2 PERSONAL INJURY CASE.

3                   "ALL JURORS MUST SEE OR HEAR THE SAME  
4 EVIDENCE AT THE SAME TIME. DO NOT READ,  
5 LISTEN TO, OR WATCH ANY NEWS ACCOUNTS OF THIS  
6 TRIAL. YOU MUST NOT LET BIAS, SYMPATHY,  
7 PREJUDICE, OR PUBLIC OPINION INFLUENCE YOUR  
8 DECISION."

9                   I WILL NOW TELL YOU THE LAW THAT PERTAINS TO  
10 THIS CASE. I'VE ALREADY DONE PRETTY MUCH ALL THAT, AND  
11 THERE'S A FEW ADDITIONAL INSTRUCTIONS I'LL NOW READ TO  
12 YOU.

13                   "YOU MUST FOLLOW THE LAW EXACTLY AS I  
14 GIVE IT TO YOU, EVEN IF YOU DISAGREE WITH IT.  
15 IF THE ATTORNEYS SAY ANYTHING DIFFERENT FROM  
16 WHAT THE LAW MEANS, YOU MUST FOLLOW WHAT I  
17 SAY.

18                   "IN REACHING YOUR VERDICT, DO NOT  
19 GUESS WHAT I THINK YOUR VERDICT SHOULD BE  
20 FROM SOMETHING I MAY HAVE SAID OR DONE.

21                   "PAY CAREFUL ATTENTION TO ALL THE  
22 INSTRUCTIONS I GIVE YOU. ALL THE  
23 INSTRUCTIONS ARE IMPORTANT BECAUSE TOGETHER  
24 THEY STATE THE LAW THAT YOU WILL USE IN THIS  
25 CASE. YOU MUST CONSIDER ALL THE INSTRUCTIONS  
26 TOGETHER.

27                   "AFTER YOU HAVE DECIDED WHAT THE FACTS  
28 ARE, YOU MAY FIND THAT SOME JURY INSTRUCTIONS

1 DO NOT APPLY. IN THAT CASE, FOLLOW THE  
2 INSTRUCTIONS THAT DO APPLY AND USE THEM  
3 TOGETHER WITH THE FACTS TO REACH YOUR  
4 VERDICT.

5 "IF I REPEAT ANY IDEAS OR RULES OF LAW  
6 DURING MY INSTRUCTIONS, THAT DOES NOT MEAN  
7 THAT THESE IDEAS OR RULES ARE MORE IMPORTANT  
8 THAN THE OTHERS. IN ADDITION, THE ORDER IN  
9 WHICH THE INSTRUCTIONS ARE GIVEN DOES NOT  
10 MAKE ANY DIFFERENCE.

11 "WHEN YOU GO TO THE JURY ROOM, THE  
12 FIRST THING YOU SHOULD DO IS CHOOSE A  
13 PRESIDING JUROR. THE PRESIDING JUROR SHOULD  
14 SEE TO IT THAT YOUR DISCUSSIONS ARE ORDERLY  
15 AND THAT EVERYONE HAS A FAIR CHANCE TO BE  
16 HEARD.

17 "IT IS YOUR DUTY TO TALK WITH ONE  
18 ANOTHER IN THE JURY ROOM AND TO CONSIDER THE  
19 VIEWS OF ALL THE JURORS. EACH OF YOU MUST  
20 DECIDE THE CASE FOR YOURSELF, BUT ONLY" --  
21 "ONLY AFTER YOU'VE CONSIDERED THE EVIDENCE  
22 WITH THE OTHER MEMBERS OF THE JURY. FEEL  
23 FREE TO CHANGE YOUR MIND IF YOU'RE CONVINCED  
24 THAT YOUR POSITION SHOULD BE DIFFERENT. YOU  
25 SHOULD ALL TRY TO AGREE. BUT DO NOT GIVE UP  
26 YOUR HONEST BELIEFS JUST BECAUSE THE OTHERS  
27 THINK DIFFERENTLY.

28 "PLEASE DO NOT STATE YOUR OPINIONS TOO

1 STRONGLY AT THE BEGINNING OF YOUR  
2 DELIBERATIONS OR IMMEDIATELY ANNOUNCE HOW YOU  
3 PLAN TO VOTE AS IT MAY INTERFERE WITH AN OPEN  
4 DISCUSSION. KEEP AN OPEN MIND SO THAT YOU  
5 AND YOUR FELLOW JURORS CAN EASILY SHARE IDEAS  
6 ABOUT THE CASE.

7 "YOU SHOULD USE YOUR COMMON SENSE AND  
8 EXPERIENCE IN DECIDING WHETHER TESTIMONY IS  
9 TRUE AND ACCURATE. HOWEVER, DURING YOUR  
10 DELIBERATIONS, DO NOT MAKE ANY STATEMENTS OR  
11 PROVIDE ANY INFORMATION TO OTHER JURORS BASED  
12 ON ANY SPECIAL TRAINING OR UNIQUE PERSONAL  
13 EXPERIENCES THAT YOU MAY HAVE HAD RELATED TO  
14 MATTERS INVOLVED IN THIS CASE. WHAT YOU MAY  
15 KNOW OR HAVE LEARNED THROUGH YOUR TRAINING OR  
16 EXPERIENCE IS NOT A PART OF THE EVIDENCE  
17 RECEIVED IN THIS CASE.

18 "SOMETIMES JURORS DISAGREE OR HAVE  
19 QUESTIONS ABOUT THE EVIDENCE OR ABOUT WHAT  
20 THE WITNESSES SAID IN THEIR TESTIMONY. IF  
21 THAT HAPPENS, YOU MAY ASK TO HAVE TESTIMONY  
22 READ BACK TO YOU. ALSO, JURORS MAY NEED  
23 FURTHER EXPLANATION ABOUT THE LAWS THAT APPLY  
24 TO THE CASE. IF THIS HAPPENS DURING YOUR  
25 DISCUSSIONS, WRITE DOWN YOUR QUESTIONS AND  
26 GIVE THEM TO THE COURT ATTENDANT. I WILL  
27 TALK WITH THE ATTORNEYS BEFORE I ANSWER SO IT  
28 MAY TAKE SOME TIME. YOU SHOULD CONTINUE YOUR

1 DELIBERATIONS WHILE YOU WAIT FOR MY ANSWER.  
2 I WILL DO MY BEST TO ANSWER THEM. WHEN YOU  
3 WRITE ME A NOTE, DO NOT TELL ME HOW YOU VOTED  
4 ON AN ISSUE UNTIL I ASK FOR THIS INFORMATION  
5 IN OPEN COURT.

6 "AT LEAST NINE JURORS MUST AGREE ON A  
7 VERDICT."

8 I'LL READ THAT AGAIN TO YOU. THERE'S 12 OF  
9 YOU. THIS IS A CIVIL CASE. IT REQUIRES THREE-QUARTERS BY  
10 STATUTE. OF 12, AT LEAST 9 JURORS MUST AGREE ON A  
11 VERDICT.

12 "WHEN YOU HAVE FINISHED FILLING OUT  
13 THE FORM, YOUR PRESIDING JUROR MUST WRITE THE  
14 DATE AND SIGN IT AT THE BOTTOM AND THEN  
15 NOTIFY THE COURT ATTENDANT THAT YOU ARE READY  
16 TO PRESENT YOUR VERDICT IN THE COURTROOM.

17 "YOUR DECISION MUST BE BASED ON YOUR  
18 PERSONAL EVALUATION OF THE EVIDENCE PRESENTED  
19 IN THE CASE. EACH OF YOU MAY BE ASKED IN  
20 OPEN COURT HOW YOU VOTED ON EACH QUESTION.

21 "WHILE I KNOW YOU WOULD NOT DO THIS,  
22 I'M REQUIRED TO ADVISE YOU THAT YOU MUST NOT  
23 BASE YOUR DECISION ON CHANCE, SUCH AS A FLIP  
24 OF A COIN. IF YOU DECIDE TO AWARD DAMAGES,  
25 YOU MAY NOT AGREE IN ADVANCE TO SIMPLY ADD UP  
26 THE AMOUNTS EACH JUROR THINKS IS RIGHT AND  
27 THEN, WITHOUT FURTHER DELIBERATIONS, MAKE THE  
28 AVERAGE YOUR VERDICT.

1 "YOU MAY TAKE BREAKS, BUT DO NOT  
2 DISCUSS THIS CASE WITH ANYONE, INCLUDING EACH  
3 OTHER, UNTIL ALL OF YOU ARE BACK IN THE JURY  
4 ROOM," ALL 12 OF YOU.

5 I GOT A FEW MORE HERE, FOUR.

6 "YOU MAY REQUEST IN WRITING THAT TRIAL  
7 TESTIMONY BE READ TO YOU. I WILL HAVE THE  
8 COURT REPORTER READ THE TESTIMONY TO YOU.  
9 YOU MAY REQUEST THAT ALL OR A PART OF A  
10 WITNESS'S TESTIMONY BE READ.

11 "YOUR REQUEST SHOULD BE AS SPECIFIC AS  
12 POSSIBLE. IT WILL BE HELPFUL IF YOU CAN  
13 STATE:

14 "THE NAME OF THE WITNESS;

15 "THE SUBJECT OF THE TESTIMONY YOU  
16 WOULD LIKE TO HAVE READ; AND

17 "3. THE NAME OF THE ATTORNEY OR  
18 ATTORNEYS ASKING THE QUESTIONS WHEN THE  
19 TESTIMONY WAS GIVEN.

20 "THE COURT REPORTER IS NOT PERMITTED  
21 TO TALK TO YOU" -- "TALK WITH YOU WHEN SHE OR  
22 HE IS READING THE TESTIMONY YOU HAVE  
23 REQUESTED.

24 "WHILE THE COURT REPORTER IS READING  
25 THE TESTIMONY, YOU MAY NOT DELIBERATE OR  
26 DISCUSS THE CASE.

27 "YOU MAY NOT ASK THE COURT REPORTER TO  
28 READ TESTIMONY THAT WAS NOT SPECIFICALLY

1 MENTIONED IN A WRITTEN REQUEST. IF YOUR  
2 NOTES DIFFER FROM THE TESTIMONY, YOU MUST  
3 ACCEPT THE COURT REPORTER'S RECORD AS  
4 ACCURATE.

5 "I WILL GIVE YOU A VERDICT FORM WITH  
6 QUESTIONS YOU MUST ANSWER."

7 AND I'VE ALREADY TALKED ABOUT THE SPECIAL  
8 VERDICT. AND LET ME JUST READ IT TO YOU. THE FIRST  
9 QUESTION READS AS FOLLOWS:

10 "WAS DEFENDANT DR. KAREN SHAINSKY  
11 NEGLIGENT IN HER CARE AND TREATMENT OF TARA  
12 DE ROGATIS?"

13 THERE'S A PLACE TO ANSWER "YES" OR "NO."

14 "IF YOU ANSWER 'NO,' STOP HERE, ANSWER  
15 NO FURTHER QUESTIONS, AND HAVE THE PRESIDING  
16 JUROR SIGN AND DATE THIS FORM.

17 "IF YOUR ANSWER TO QUESTION NO. 1 IS  
18 'YES,' THEN GO TO QUESTION NO. 2.

19 "QUESTION NO. 2: WAS THE NEGLIGENCE  
20 OF DR. KAREN SHAINSKY A SUBSTANTIAL FACTOR IN  
21 CAUSING THE DEATH OF TARA DE ROGATIS? 'YES'  
22 OR 'NO.'

23 "IF YOU ANSWERED 'NO,' STOP HERE,  
24 ANSWER NO FURTHER QUESTIONS, AND HAVE THE  
25 PRESIDING JUROR SIGN AND DATE THIS FORM.

26 "IF YOUR ANSWER TO QUESTION NO. 2 IS  
27 'YES,' THEN ANSWER QUESTION NO. 3."

28 AND THIS IS THE LAST OF THE QUESTIONS.



1 "QUESTION NO. 3: WHAT ARE THE DAMAGES  
2 OF PLAINTIFF LINDA DE ROGATIS AND PETER DE  
3 ROGATIS?

4 "A. THE PARTIES HAVE STIPULATED THAT  
5 TARA DE ROGATIS' FUNERAL AND BURIAL EXPENSES  
6 ARE \$27,229.27.

7 "B. THE LOSS OF TARA DE ROGATIS'  
8 LOVE, COMPANION, COMFORT, CARE, ASSISTANCE,  
9 PROTECTION, AFFECTION, SOCIETY, AND MORAL  
10 SUPPORT FROM MARCH 22ND, 2010, TO PRESENT."

11 AND THERE'S A LINE HERE TO PUT IN A LOSS.

12 "LOSS OF TARA DE ROGATIS' LOVE,  
13 COMPANION, COMFORT, CARE, ASSISTANCE,  
14 PROTECTION, AFFECTION, SOCIETY, AND MORAL  
15 SUPPORT FROM THE PRESENT FORWARD."

16 AND THERE'S A PLACE FOR A MONEY AMOUNT AND  
17 THEN DATE IT AND SIGN BY THE FOREPERSON. THAT'S THE  
18 VERDICT FORM.

19 "I HAVE ALREADY INSTRUCTED YOU ON THE  
20 LAW THAT YOU ARE TO USE IN ANSWERING THESE  
21 QUESTIONS. YOU MUST FOLLOW MY INSTRUCTIONS  
22 AND THE FORM CAREFULLY. YOU MUST CONSIDER  
23 EACH QUESTION SEPARATELY. ALTHOUGH YOU MAY  
24 DISCUSS THE EVIDENCE AND THE ISSUES TO BE  
25 DECIDED IN ANY ORDER, YOU MUST ANSWER THE  
26 QUESTIONS ON THE VERDICT FORM IN THE ORDER  
27 THEY APPEAR. AFTER YOU ANSWER A QUESTION,  
28 THE FORM TELLS YOU WHAT TO DO NEXT. ALL 12

1 OF YOU MUST DELIBERATE ON AND ANSWER EACH  
2 QUESTION. AT LEAST 9 OF YOU MUST AGREE ON AN  
3 ANSWER BEFORE ALL OF YOU CAN MOVE ON TO THE  
4 NEXT QUESTION. HOWEVER, THE SAME 9 OR MORE  
5 PEOPLE DO NOT HAVE TO AGREE ON EACH ANSWER."

6 LET ME READ THAT AGAIN TO YOU.

7 "AT LEAST 9 OF YOU MUST AGREE ON AN  
8 ANSWER BEFORE ALL OF YOU CAN MOVE ON TO THE  
9 NEXT QUESTION. HOWEVER, THE SAME 9" -- IT  
10 REQUIRES 9 BUT IT NEED NOT BE THE SAME 9 --  
11 "OR MORE PEOPLE DO NOT HAVE TO AGREE ON EACH  
12 ANSWER."

13 IT REQUIRES 9 BUT FOR EACH ANSWER DOESN'T  
14 REQUIRE THE SAME 9. ALL RIGHT.

15 "WHEN YOU FINISHED FILLING OUT THE  
16 FORM, THE PRESIDING JUROR MUST WRITE THE DATE  
17 AND SIGN IT AT THE BOTTOM AND THEN NOTIFY MY  
18 COURTROOM" -- WHAT ARE YOU, JUDICIAL  
19 ASSISTANT? CLERK -- "THAT YOU ARE READY TO  
20 PRESENT YOUR VERDICT IN THE COURTROOM.

21 "THE JURY WILL SOON BEGIN  
22 DELIBERATING, BUT" -- THIS IS AS TO THE  
23 ALTERNATE JURORS -- "BUT YOU ARE STILL  
24 ALTERNATE JURORS AND ARE BOUND BY MY EARLIER  
25 INSTRUCTIONS ABOUT YOUR CONDUCT.

26 "UNTIL THE JURY IS DISCHARGED, DO NOT  
27 TALK ABOUT THE CASE OR ABOUT ANY OF THE  
28 PEOPLE OR ANY SUBJECT INVOLVED IN IT WITH

1 ANYONE, NOT EVEN YOUR FAMILY OR FRIENDS, AND  
2 NOT EVEN WITH EACH OTHER. DO NOT HAVE ANY  
3 CONTACT WITH THE DELIBERATING JURORS. DO NOT  
4 DECIDE HOW YOU WOULD VOTE IF YOU WERE  
5 DELIBERATING. DO NOT FORM OR EXPRESS AN  
6 OPINION ABOUT THE ISSUES IN THIS CASE, UNLESS  
7 YOU ARE SUBSTITUTED IN FOR ONE OF THE  
8 DELIBERATING JURORS.

9 "AFTER YOUR VERDICT IS READ IN OPEN  
10 COURT, YOU MAY BE ASKED INDIVIDUALLY TO  
11 INDICATE WHETHER THE VERDICT EXPRESSES YOUR  
12 PERSONAL VOTE. THIS IS REFERRED TO AS  
13 'POLLING' THE JURY AND IS DONE TO ENSURE THAT  
14 AT LEAST NINE JURORS HAVE AGREED TO EACH  
15 DECISION.

16 "THE VERDICT FORM THAT YOU WILL  
17 RECEIVE ASKS YOU TO ANSWER SEVERAL QUESTIONS.  
18 YOU MUST VOTE SEPARATELY ON EACH QUESTION.  
19 ALTHOUGH NINE OR MORE JURORS MUST AGREE ON  
20 EACH ANSWER, IT DOES NOT HAVE TO BE THE SAME  
21 NINE FOR EACH ANSWER. THEREFORE, IT IS  
22 IMPORTANT FOR EACH OF YOU TO REMEMBER HOW YOU  
23 VOTED ON EACH QUESTION SO THAT IF THE JURY IS  
24 POLLED, EACH OF YOU WILL BE ABLE TO ANSWER  
25 ACCURATELY HOW YOU VOTED."

26 AND, LADIES AND GENTLEMEN, THAT NOW  
27 COMPLETES THE READING OF THE JURY INSTRUCTIONS TO YOU.

28 AGAIN, YOU WILL HAVE ALL THESE INSTRUCTIONS

1 IN THE JURY ROOM TO REFER TO DURING YOUR DELIBERATIONS.  
2 WITH THAT, WE'LL TAKE OUR EVENING RECESS, LADIES AND  
3 GENTLEMEN, TILL 9:00 A.M. TOMORROW MORNING, AT WHICH TIME  
4 WE WILL HEAR CLOSING ARGUMENTS. HAVE A GOOD EVENING.  
5 PLEASE REMEMBER THE ADMONITION OF THE COURT.

6 DO NOT DISCUSS THE FACTS OF THIS CASE  
7 AMONGST YOURSELVES OR WITH ANYBODY ELSE. DO NOT FORM ANY  
8 OPINIONS OR CONCLUSIONS ON THIS MATTER UNTIL IT'S FINALLY  
9 SUBMITTED TO YOU.

10 COURT'S IN RECESS UNTIL 9:00 A.M. TOMORROW  
11 MORNING.

12  
13 (THE FOLLOWING PROCEEDINGS WERE HELD  
14 IN OPEN COURT, OUTSIDE THE PRESENCE  
15 OF THE JURY:)

16  
17 THE COURT: ALL RIGHT. SEE YOU TOMORROW, COUNSEL.

18 MR. NEWHOUSE: SEE YOU TOMORROW.

19 MR. BLESSEY: THANK YOU.

20

21 (AT 3:19 P.M. THE PROCEEDINGS WERE  
22 ADJOURNED UNTIL FRIDAY, NOVEMBER 8,  
23 2013, 9:00 A.M.)

24

25

26

27

28

1 CASE NUMBER: BC457891  
2 CASE NAME: DE ROGATIS VS. SHAINSKY  
3 PASADENA, CALIFORNIA FRIDAY, NOVEMBER 8, 2013  
4 DEPARTMENT P HON. JAN A. PLUIM, JUDGE  
5 REPORTER: KAREN E. KAY, CSR NO. 3862  
6 TIME: A.M. SESSION

## 7 APPEARANCES:

8 PLAINTIFFS LINDA DE ROGATIS AND PETER DE ROGATIS  
9 ARE PRESENT WITH THEIR COUNSEL, GEORGE B. NEWHOUSE,  
10 JR., AND KATHERINE C. MC BROOM, ATTORNEYS AT LAW  
11 DEFENDANT KAREN MICHELLE SHAINSKY, D.O., IS PRESENT  
12 WITH HER COUNSEL, RAYMOND L. BLESSEY, AND  
13 PATRICIA M. TAZZARA, ATTORNEYS AT LAW

14  
15 (THE FOLLOWING PROCEEDINGS WERE HELD  
16 IN OPEN COURT, IN THE PRESENCE OF  
17 THE JURY:)

18  
19 THE COURT: ALL RIGHT. GOOD MORNING, LADIES AND  
20 GENTLEMEN. WELCOME BACK. WE'RE BACK ON THE RECORD. ALL  
21 JURORS ARE PRESENT AND IN PLACE, PARTIES ARE PRESENT,  
22 LAWYERS ARE PRESENT.

23 COUNSEL, CLOSING ARGUMENT, PLEASE.

24 MR. NEWHOUSE: THANK YOU, YOUR HONOR. GOOD  
25 MORNING, LADIES AND GENTLEMEN OF THE JURY. THIS IS MY  
26 OPPORTUNITY AS COUNSEL FOR THE DE ROGATISES TO ADDRESS YOU  
27 AND TO ANALYZE -- THE PURPOSE OF ARGUMENT IS TO ANALYZE  
28 THE EVIDENCE THAT'S COME IN, TO SUMMARIZE IT, AND

1 HOPEFULLY EXPLAIN TO YOU OUR VIEW OF THE CASE AND THE  
2 IMPACT THAT WE BELIEVE THAT THE EVIDENCE HAS HAD AND  
3 SHOULD HAVE IN YOUR DELIBERATIONS.

4 BUT BEFORE I GO FURTHER, LET ME JUST START  
5 OFF BY EXPRESSING -- I'M SURE BOTH SIDES WOULD CONCUR WITH  
6 THIS, MAYBE THE ONLY THING WE AGREE ON, BUT WE VERY MUCH  
7 APPRECIATE YOUR SERVICE. IT'S BEEN TWO WEEKS OUT OF YOUR  
8 LIFE. WE'VE SEEN HOW DILIGENT YOU ARE AND HOW CAREFUL YOU  
9 HAVE LISTENED TO THE TESTIMONY. AND IT'S VERY MUCH  
10 APPRECIATED. WHATEVER THE OUTCOME, WE'RE CONFIDENT THAT  
11 JUSTICE WILL BE DONE AND WE THANK YOU VERY MUCH FOR YOUR  
12 ATTENTION TO DETAIL AND YOUR SACRIFICE. AS THE COURT  
13 INDICATED, IT'S A VERY IMPORTANT PART OF OUR SYSTEM OF  
14 JUSTICE, THE JURY SYSTEM. SO WE APPRECIATE THAT.

15 I BEGIN WITH OBVIOUSLY TARA DE ROGATIS, A  
16 TRAGIC SITUATION, A SHORT LIFE, A LIFE CUT SHORT BY  
17 SUICIDE, AND WE CONTEND AND THE EVIDENCE HAS SHOWED  
18 NEGLIGENT MEDICAL CARE. SHE LIVED ABOUT 30 YEARS AND  
19 DIED, AS YOU WELL KNOW, WE'VE ALL HEARD MANY TIMES, ON  
20 MARCH 23, 2010.

21 I LIKE TO BEGIN CLOSING ARGUMENTS WITH A FEW  
22 THINGS, FACTS THAT WE DON'T BELIEVE ARE IN DISPUTE OR  
23 SHOULD BE IN DISPUTE.

24 EVIDENCE IN THIS CASE, WE WILL ARGUE AND I'M  
25 CONTENDING, HAS ESTABLISHED THAT TARA SHOULD NOT HAVE DIED  
26 AND THAT HER TRAGIC DEATH WAS PREVENTABLE WITH THE  
27 EXERCISE OF REASONABLE CARE BY DR. SHAINSKY.

28 LET'S REVIEW THE KEY FACTS. THE KEY FACTS

1 AGAIN THAT WE DON'T BELIEVE ARE IN SERIOUS DISPUTE.

2 SO KEY FACT NO. 1: TARA WAS A BEAUTIFUL  
3 CHILD. YOU HEARD ABOUT HER CHILDHOOD FROM BOTH OF HER  
4 PARENTS, FROM PETER AND LINDA. HERE SHE IS IN THIS  
5 PHOTOGRAPH WHICH IS IN EVIDENCE WITH HER BROTHER P.J. SHE  
6 LED A NORMAL LIFE IN NEW JERSEY, CREATIVE, ENTERPRISING.  
7 AND AS PETER DE ROGATIS TOLD YOU, SHE WAS THE SORT OF  
8 PERSON WHO WOULD THROW HERSELF INTO SOMETHING, EVEN IF IT  
9 WAS A BOYS' FOOTBALL GAME, AND PLAY THAT GAME WITH ABANDON  
10 AND GUSTO, WHICH IS WONDERFUL.

11 TWO, SHE HAD A LOVING FAMILY. YOU'VE SEEN  
12 EVIDENCE OF THAT. I DON'T THINK THERE'S A DISPUTE THAT  
13 BOTH LINDA -- HERE IS LINDA AND TARA AND P.J. AT AN EARLY  
14 AGE IN CALIFORNIA, AND HERE SHE IS WITH PETER AFTER THE  
15 SEPARATION. SO SHE REALLY HAD A BI-COASTAL LIFE AND SHE  
16 HAD A WARM AND LOVING FAMILY ON EITHER SIDE. SO SHE HAD  
17 THAT GOING FOR HER AS WELL.

18 NUMBER THREE, I DON'T THINK IT'S IN SERIOUS  
19 DISPUTE. THIS IS DAVID, OF COURSE, MAC EACHERN. HER  
20 FIANCÉ CARED FOR HER, HE LOVED HER, HE WAS THERE FOR HER.  
21 HE TOOK HER TO DOCTORS APPOINTMENTS, HE TOOK HER TO GET  
22 HER PRESCRIPTIONS, HE WAS THERE FOR HER, HE TRIED TO  
23 SUPPORT HER.

24 WAS HE PERFECT? ABSOLUTELY NOT. WE'RE  
25 GOING TO COME BACK TO THAT IN A SECOND, BUT THERE'S NO  
26 DOUBT SHE HAD SOMEONE WHO CARED FOR HER AND WHO WAS  
27 WILLING TO DO WHAT WAS NECESSARY, WE THINK, TO HAVE SAVED  
28 HER LIFE HAD HE ONLY RECEIVED APPROPRIATE INSTRUCTIONS.

1                   NUMBER FOUR, TARA HAD TALENT, SHE HAD  
2 PROMISE. WE SAW SOME EVIDENCE OF HER PAINTINGS. HERE WE  
3 HAVE TWO OF THEM. THIS ONE IS MY FAVORITE, DOLCE, BUT  
4 PETER AND LINDA WALKED YOU THROUGH THESE AND EXPLAINED,  
5 SHOWED YOU THE GREAT JOY THAT A PARENT NATURALLY DERIVES  
6 FROM THE SUCCESSES AND CREATIVITY OF THEIR CHILDREN. TWO  
7 MORE PAINTINGS. AND THERE WERE OTHERS. THESE ARE IN  
8 EVIDENCE. YOU CAN LOOK AT THESE IN THE JURY ROOM.

9                   FACT NO. 5. NO DISPUTE. TARA HAD A LOT TO  
10 LIVE FOR. SHE WAS AN ASPIRING ACTRESS. LINDA TOLD YOU  
11 ABOUT HER S.A.G. CARD. NOW, YOU KNOW, SHE NEVER MADE THE  
12 BIG TIME. LIKE SO MANY PEOPLE HERE IN SOUTHERN CALIFORNIA  
13 WHO ARE IN THE ENTERTAINMENT INDUSTRY, SHE DIDN'T MAKE THE  
14 LEADING ROLE, SHE DIDN'T BREAK THROUGH, IN PART TRAGICALLY  
15 BECAUSE OF HER PSYCHIATRIC ISSUES.

16                   BUT SHE WAS AN ASPIRING ACTRESS, SHE HAD  
17 TALENT, SHE WAS AN ARTIST, SHE HAD A LOVING AND SUPPORTING  
18 FAMILY, SHE HAD A FIANCE. SHE HAD A LOT OF GOOD THINGS  
19 AND A LOT -- MANY, MANY REASONS TO LIVE. AND AGAIN, NO  
20 DISPUTE. GOING TO HEAR THIS FROM THE DEFENSE AS WELL. WE  
21 ALL AGREE SHE WAS FIGHTING TO GET BETTER. SHE WANTED TO  
22 GET BETTER. SHE STRUGGLED. SHE SAW PLENTY OF DOCTORS,  
23 VARIOUS PSYCHIATRISTS, AT LEAST THREE, DR. FEINSTEIN,  
24 DR. BOHN, DR. LATIMER IN NEW JERSEY, AND DOCTORS FROM 2007  
25 ON AS SHE STRUGGLED TO CONFRONT HER DEMONS AND TO GET  
26 BETTER.

27                   SHE WAS -- GOT INVOLVED IN 2010 INDEED WITH  
28 THE CATHOLIC CHURCH. SHE TOOK UP YOGA, SHE PURSUED



1 ALTERNATIVE REMEDIES, ACUPUNCTURE. SHE GOT A LIFE COACH  
2 AT THE VERY END.

3 SO THE EVIDENCE IS CLEAR AND WE HAVE  
4 ABSOLUTELY NO DISPUTE THAT SHE WANTED TO GET BETTER, SHE  
5 HAD A LOT TO LIVE FOR, AND SHE WOULD HAVE GOTTEN BETTER IF  
6 SHE HAD RECEIVED ADEQUATE, DILIGENT, AND CAPABLE MEDICAL  
7 CARE.

8 ITEM NO. 6. NO DISPUTE. TARA WAS VERY SICK  
9 IN THE SENSE OF SHE WAS AFFLICTED WITH MENTAL ILLNESSES,  
10 SHE WAS PSYCHOTIC. WE'VE HEARD A LOT OF THAT. I DON'T  
11 THINK THERE'S ANY DISPUTE FROM DR. BOHN. HE WALKED YOU  
12 THROUGH HIS NOTES. SHE HAD SUICIDAL IDEATION, WHICH IS  
13 TALK OF SUICIDE. AND THAT, AS WE KNOW, CAN RUN FROM, "I  
14 WANT TO DIE," THINKING ABOUT DYING, BETTER OFF BEING DEAD  
15 TO, OF COURSE, TALK THAT INCLUDES INTENT AND PREPARATION.

16 BUT THE POINT IS IT WAS PERSISTENT BEGINNING  
17 IN 2007 AS WE'LL SEE IN A MINUTE.

18 SHE ALSO HAD AND COMPLAINED CONSISTENTLY  
19 THROUGH 2007 THROUGH 2010 OF AUDITORY HALLUCINATIONS,  
20 TACTILE HALLUCINATIONS, WHICH ARE CLASSIC PSYCHOTIC  
21 SYMPTOMS, OKAY? THIS IS NOT SOMEONE WHO IS SIMPLY HAVING  
22 A PROBLEM. THIS IS SOMEONE WHO HAS A SERIOUS MENTAL  
23 ILLNESS, AS DR. BOHN TOLD YOU. AND DR. BOHN AND  
24 DR. RUDNICK, OUR EXPERT, SAID SHE, IN FACT, HAD THREE  
25 COMPLICATED DIAGNOSES: DISSOCIATIVE DISORDER, PSYCHOTIC  
26 DISORDER NOT OTHERWISE SPECIFIED, AND SCHIZOAFFECTIVE  
27 DISORDER.

28 THESE WERE DIFFICULT CONDITIONS. AND LIKE

1 MANY PSYCHIATRISTS, DR. BOHN WAS GIVING HER -- TRYING A  
2 NUMBER OF DIFFERENT PSYCHIATRIC OR PSYCHOTIC --  
3 ANTIPSYCHOTIC MEDICATIONS TO TRY TO FIND THE RIGHT MIX TO  
4 SEE WHAT CAN SOLVE THE PROBLEM. BUT MAKE NO MISTAKE, SHE  
5 WAS VERY ILL.

6 OF COURSE, DR. LATIMER SAW HER IN NEW JERSEY  
7 AND WAS INVOLVED IN A HOSPITALIZATION IN NEW JERSEY LATE  
8 19 -- IT SAYS 1979. I THINK THAT'S WRONG. THAT SHOULD BE  
9 2009. BUT, AGAIN, SUICIDAL IDEATION. AGAIN, NOT IN  
10 DISPUTE.

11 NUMBER 7, NOW, THERE MAY BE SOME DISPUTE,  
12 BUT WE DON'T THINK THERE CAN BE A REASONABLE ISSUE THAT  
13 SHE WAS AT RISK FOR SUICIDE. CONSIDER SOME OF THE BULLET  
14 ITEMS: 2009, THE CEDARS E.R. ADMISSION. SHE TALKED OF  
15 TAKING PILLS TO DIE. IT'S IN THE RECORD. WE HAVE IT.  
16 THAT WAS IN FEBRUARY. THE END OF THE YEAR 2009, SHE'S  
17 AGAIN, AS I MENTIONED BEFORE, HOSPITALIZED IN NEW JERSEY  
18 FOR SUICIDAL IDEATION.

19 DR. BOHN ALSO TOLD YOU THAT SHE WAS  
20 NONCOMPLIANT WITH HER MEDICATIONS, WHICH MEANS SHE WASN'T  
21 FOLLOWING THE INSTRUCTIONS OF HER DOCTORS. SOMETHING THAT  
22 DR. SHAINSKY SHOULD HAVE KNOWN ABOUT HAD SHE ONLY  
23 CONTACTED DR. BOHN. HERE IS SOMEONE WHO IS NOT COMPLIANT  
24 WITH INSTRUCTIONS.

25 SHE WAS ALSO DRUG SEEKING, AND THAT DRUG  
26 SEEKING BEHAVIOR WAS EXHIBITED IN 2009 AND ACCELERATED IN  
27 2010 WHEN SHE, IN FACT, BECAME ADDICTED TO OPIATES.

28 MARCH 22 VISIT, OF COURSE, WE'RE GOING TO

1 FOCUS AND TALK A LOT ABOUT THIS MORNING BECAUSE THAT'S THE  
2 TIME WHEN SHE TELLS DR. SHAINSKY, "I WANT TO DIE. I'M IN  
3 SO MUCH PAIN, I'M OUT OF HERE." DAVID, OF COURSE,  
4 CONFIRMED TO YOU THAT HE TOLD DR. SHAINSKY ABOUT, YOU  
5 KNOW, THE TALK, SUICIDAL TALK WITH REGARD TO LINDA'S MOM.  
6 AND THEN, OF COURSE, THERE'S NO DISPUTE WITHIN 6 TO 9  
7 HOURS AFTER GETTING THE PERCOCET TABLETS, THE  
8 PRESCRIPTION, TARA CARRIES OUT HER PLAN OF COMMITTING  
9 SUICIDE.

10 WE DON'T KNOW, WE WILL NEVER KNOW, WHEN SHE  
11 DECIDED TO COMMIT SUICIDE. AND IN A SENSE I SUPPOSE  
12 SUICIDE BY DEFINITION, SINCE IT'S AN IRRATIONAL ACT, IS AN  
13 IMPULSIVE ACT. BUT WE'RE GOING TO GET TO THAT. THERE IS  
14 SOME EVIDENCE, IN FACT, IN THE RECORD BEFORE YOU TO SHOW  
15 THAT SHE DID, IN FACT, HAVE A PLAN AND, OF COURSE, SHE  
16 TOLD DR. SHAINSKY ABOUT AT LEAST THE IDEA EARLIER THAT  
17 DAY.

18 SO WAS IT SO -- REALLY SO UNFORESEEABLE?  
19 APPARENTLY NOT. DR. SHAINSKY HANDS THE DEADLY  
20 PRESCRIPTION OVER TO HER THAT AFTERNOON ABOUT 12 HOURS  
21 BEFORE SHE DIED SAYING, "PROMISE ME YOU'RE NOT GOING TO  
22 HURT YOURSELF." SHE CLEARLY HAD IN HER MIND THERE WAS A  
23 RISK OF SUICIDE OR SHE NEVER WOULD HAVE MADE THAT  
24 STATEMENT.

25 ALL RIGHT. THE NEXT TOPIC I WANT TO DISCUSS  
26 IS WHAT I LIKE TO CALL THE BLAME GAME. NOW, THE BLAME  
27 GAME IS, WELL, THIS TRIAL COULD BE ABOUT A LOT OF THINGS.  
28 AND LIFE AND TRAGEDIES IN LIFE ARE FREQUENTLY CAUSED IN

1 PART BY MANY DIFFERENT THINGS. THIS ISSUE IN THIS CASE IS  
2 ONLY: DID DR. SHAINSKY EXERCISE REASONABLE, CAREFUL,  
3 DILIGENT MEDICAL CARE? AND DID HER NEGLIGENCE RESULT, AS  
4 WE SAY IT DID, IN TARA'S DEATH?

5 IT'S NOT ABOUT DAVID. YOU SAW DAVID ON THE  
6 STAND. LOOK AT HIM IN THIS PICTURE IN LATE 2009. WAS  
7 THAT THE SAME GUY WE SAW ON THE STAND? THE GUY ON THE  
8 STAND IS ALSO A TRAGIC FIGURE. LINDA DESCRIBED HIM AS A  
9 SHELL OF A MAN. HE HAS SUFFERED.

10 IS DAVID PARTIALLY TO BLAME FOR LINDA'S  
11 SUICIDE? WELL, YOU KNOW WHAT? HE SHOULD HAVE KNOWN. WHY  
12 WASN'T HE MORE CAREFUL? WHY DIDN'T DAVID TAKE GREATER  
13 STEPS TO PREVENT HER SUICIDE? WHY DID DAVID -- I'M SURE  
14 YOU'RE GOING TO HEAR IN A MOMENT, YOU KNOW -- CONTINUE FOR  
15 AT LEAST SEVERAL INSTANCES OF TAKING METHAMPHETAMINES WITH  
16 HER WHEN DR. BOHN SAID, "DON'T DO THAT"? DAVID COULD BE  
17 HELD TO ACCOUNT. BUT THIS TRIAL ISN'T ABOUT DAVID.

18 IT'S ALSO NOT ABOUT DR. BOHN. SHOULD  
19 DR. BOHN HAVE BEEN MORE DILIGENT, MORE PROACTIVE WHEN HE  
20 SAW HER IN FEBRUARY OF 2009 AND DISCOVERED THAT, CONTRARY  
21 TO HIS ADVICE OF NO OPIATES, SHE WAS TAKING OPIATES.  
22 SHOULD HE HAVE BEEN MORE PROACTIVE? MIGHT THAT HAVE  
23 HELPED? MAYBE. BUT DR. BOHN IS NOT INVOLVED IN THE SUIT  
24 EXCEPT AS A WITNESS.

25 THE FACT OF THE MATTER IS THE ISSUE IS --  
26 YOU CAN PUT ALL THAT ASIDE BECAUSE THE ISSUE IN THIS CASE  
27 IS IF DR. SHAINSKY HAD NOT GIVEN TARA 100 PERCOCET TABLETS  
28 ON MARCH 22ND, SHE WOULD BE ALIVE TODAY. SO THAT'S THE

1 BLAME GAME. IT'S A DISTRACTION. IT'S AN ATTEMPT BY THE  
2 DEFENSE TO GET YOU FOCUSED ON SOMEONE ELSE, SOMEONE ELSE  
3 WHO ISN'T HERE WHO ISN'T PROPERLY BEFORE YOU.

4 WHAT WE'RE GOING TO DO NOW, WE'RE GOING TO  
5 BRIEFLY REVIEW VIA A TIMELINE A LOT OF THE FACTS. AND THE  
6 STORY BEGINS IN NOVEMBER 2007 WHEN TARA HIRES DR. BOHN,  
7 HAS A FIRST VISIT WITH HIM, AND REPORTS AUDITORY  
8 HALLUCINATIONS, ANXIETY, AND IS PROVIDED WITH PSYCHIATRIC  
9 MEDICATION.

10 NOW, YOU CAN GO BACK, I SUPPOSE, IN TIME TO  
11 2004 AND WE CAN SPECULATE ON WHAT WAS THE CAUSE OF HER  
12 PSYCHIATRIC ISSUES. WAS IT THE -- SHE SUSTAINED A HEAD  
13 INJURY AS A RESULT OF AN ABUSIVE BOYFRIEND. WAS IT THE  
14 RESULT OF METHAMPHETAMINE? AGAIN, A DISTRACTION. IT  
15 DOESN'T REALLY MATTER AT THE END OF THE DAY WHY SHE  
16 DEVELOPED THE PROBLEMS. THE ISSUE IS SHE DEVELOPED THE  
17 PROBLEMS AND SHE WAS ENTITLED TO CAPABLE, DILIGENT MEDICAL  
18 CARE.

19 THE DECLINE BEGINS, THE EVIDENCE HAS SHOWN  
20 YOU, REALLY IN THIS PERIOD NOW IN THE BEGINNING OF 2008  
21 WHEN DAVID, LINDA, AND PETER BEGIN TO DESCRIBE FOR YOU HOW  
22 SHE STOPS PRODUCING. HER -- THE DEMONS, THE MENTAL DEMONS  
23 THAT ARE PURSUING HER, THE PAIN, SHE STOPS PAINTING, SHE  
24 STOPS GOING TO AUDITIONS, AND SHE BEGINS TO SEEK  
25 SOLUTIONS, INCLUDING, OF COURSE, AT TIMES THE PURSUIT OF  
26 OPIATES.

27 IN JANUARY 2008 -- NOW, THIS IS IN EVIDENCE.  
28 YOU HAVE DR. BOHN'S MEDICAL RECORDS. SO LOOK IN JANUARY

1 2008 FOR AT LEAST ONE OF THE EARLY INSTANCES OF DAVID  
2 TELLING DR. BOHN THAT TARA IS SUICIDAL. HE'S CONCERNED.  
3 HE LETS THE PSYCHIATRIST KNOW. THERE'S A TELEPHONE  
4 MESSAGE.

5 NOVEMBER 25TH TO DECEMBER 31ST, LINDA AND  
6 PETER BOTH BEGIN TO NOTICE THAT TARA IS DECLINING  
7 PSYCHOLOGICALLY, SPEAKS OFTEN OF WANTING TO DIE. AGAIN,  
8 REPEATED INSTANCES OF SUICIDAL TALK OR IDEATION SHOULD  
9 HAVE PUT PEOPLE ON NOTICE.

10 2009. TARA SEES THE NEUROLOGIST,  
11 DR. ORFUSS. SHE REPORTS TO HIM SUICIDAL THOUGHTS AND  
12 DEPRESSION. WE HAVE THAT RECORD AND THIS IS ONE OF THE  
13 RECORDS, BY THE WAY, THAT DR. SHAINSKY HAD AT THE FIRST  
14 VISIT. SO SHE KNEW ABOUT THIS.

15 DR. ORFUSS DOES THE E.E.G. AND, NOT  
16 SURPRISINGLY, THE ELECTROENCEPHALOGRAM REPORTS NO  
17 ABNORMALITIES IN THE BRAIN. SO WHATEVER HER PROBLEMS ARE,  
18 THEY'RE NOT CAUSED BY A STRUCTURAL ORGANIC PROBLEM. IT'S  
19 PSYCHOLOGICAL.

20 APRIL 12, 2009, TARA GOES TO THE  
21 CEDARS-SINAI EMERGENCY ROOM STATING SHE WANTS TO DIE FROM  
22 TAKING PILLS AND COMPLAINING OF PAIN AND AUDITORY AND  
23 TACTILE HALLUCINATIONS. THIS, AS YOU KNOW, IS LESS THAN A  
24 YEAR BEFORE SHE DIES IN MARCH OF 2010, TEN MONTHS BEFORE  
25 SHE FIRST VISITS DR. SHAINSKY. THAT'S RELATIVELY RECENT  
26 IN TIME, FOLKS. AND WHEN DR. SHAINSKY REALIZES THE EXTENT  
27 OF THE ISSUES, SHE SHOULD HAVE BEEN ON NOTICE.

28 MAY 15, 2009, TARA AGAIN CALLS DR. BOHN

1 REQUESTING PAIN MEDICATIONS. AND THIS IS IMPORTANT IN THE  
2 EVIDENCE BECAUSE THE DEFENSE WOULD LIKE YOU TO BELIEVE  
3 ERRONEOUSLY THAT DR. BOHN WAS OKAY WITH HER BEING ON  
4 OPIATES. THE EVIDENCE IN THE RECORD IS UNCONTRADICTED.  
5 EVERY TIME THAT DR. BOHN WAS CONSULTED, HE TOLD TARA, "I  
6 DON'T PRESCRIBE OPIATES." INDEED, THE DEFENSE  
7 PSYCHOLOGIST -- PSYCHIATRIST DOESN'T PRESCRIBE OPIATES.  
8 HE TELLS HER "NO."

9 TARA AGAIN IN JULY 2009 -- THIS IS NOW CLEAR  
10 EVIDENCE OF DRUG-SEEKING BEHAVIOR. WE KNOW FROM THE  
11 RECORD THAT AT SOME POINT IN 2009, EARLY 2009, SHE HAS  
12 THIS SURGERY, THE COSMETIC SURGERY, AND SHE'S PUT ON  
13 OPIATES AS A PAINKILLER. AND AT THAT POINT SHE BEGINS  
14 THIS DRUG-SEEKING BEHAVIOR. SHE ASKED DR. BOHN AGAIN FOR  
15 DARVOCET FOR PAIN, STATES SHE'S SUICIDAL. HE DENIES THE  
16 PRESCRIPTION AGAIN TELLING HER, "NO OPIATES. I DON'T  
17 PRESCRIBE OPIATES."

18 AND DECEMBER 4, 2009, AS WE MENTIONED, SHE'S  
19 ADMITTED TO THE HOSPITAL IN NEW JERSEY, HELD FOR AN  
20 INVOLUNTARY SUICIDE EVALUATION, AND THAT STRETCHES US  
21 THROUGH 2009.

22 WHICH BRINGS US TO THE LAST THREE MONTHS OF  
23 HER LIFE WHEN ALL OF THESE PROBLEMS ACCELERATE AND,  
24 UNFORTUNATELY AND TRAGICALLY, THE DRUG-SEEKING BEHAVIOR  
25 INTENSIFIES AND, OF COURSE, DR. SHAINSKY GETS INVOLVED.

26 SO WE START WITH JULY 11, 2010. TARA SEES A  
27 PAIN MANAGEMENT SPECIALIST, DR. SPIEGEL, AND REQUESTS PAIN  
28 MEDICATION FROM HIM. SHE RECEIVES -- AND WE'LL LOOK AT

1 HIS RECORD. HE DIDN'T TESTIFY, BUT WE HAVE HIS SUMMARY SO  
2 YOU CAN SEE EXACTLY WHAT A CAPABLE, COMPETENT, DILIGENT  
3 PHYSICIAN DOES UNDER THE CIRCUMSTANCES. AND ONE OF THEM  
4 IS YOU DON'T GIVE THEM A LOT OF OPIATES. HE GIVES HER 20  
5 AND HE SAYS, "NO MORE."

6 JANUARY 20TH, SHE GOES TO DR. RAMIN WHO  
7 TESTIFIED. SHE RECEIVES 30 NORCO FROM DR. RAMIN. SHE  
8 COMES BACK TWO WEEKS LATER FOR A SECOND VISIT AND SHE GETS  
9 A PRESCRIPTION FOR 30 NORCO AND THE 60 ULTRACET, THE  
10 TRAMADOL PRESCRIPTION, WHICH, OF COURSE, SHE NEVER USES.  
11 IN FACT, THE EVIDENCE THAT YOU HEARD FROM THIS WITNESS  
12 STAND IS SHE ONLY USED AT MOST EIGHT OF THEM. THAT WOULD  
13 PROBABLY BE TWO DAYS. IT DIDN'T PROVIDE HER WITH ANY  
14 RELIEF AND THE TABLETS SAT IN THE BOTTLE UNTIL THE VERY  
15 END.

16 TARA ADVISES DR. BOHN ON FEBRUARY 9TH, AND  
17 THIS, OF COURSE, IS THE FINAL VISIT WITH DR. BOHN, THAT  
18 THE CURRENT MEDICATION IS NOT HELPING, THE VOICES ARE  
19 CONTINUING, SHE DIS -- SHE WANTED TO DISCONTINUE SOME OF  
20 THE MEDICATION. DR. BOHN ADVISES TARA THAT SHE SHOULD NOT  
21 BE TAKING OPIATES BECAUSE OF THE RISK OF OVERDOSE AND  
22 PLACES HER ON NEW PSYCH MEDICATIONS.

23 REMEMBER WHAT THAT MESSAGE SAID. IT'S IN  
24 EVIDENCE, WE'RE GOING TO LOOK AT IT IN A MINUTE, HE TELLS  
25 HER, "YOU SHOULDN'T BE TAKING OPIATES BECAUSE I HAVE YOU  
26 ON BENZODIAZEPINES AND THEY COULD CONFLICT. THERE COULD  
27 BE A SERIOUS ISSUE."

28 NOW, AGAIN, THE BLAME GAME. COULD YOU FAULT



1 DR. BOHN FOR NOT FOLLOWING UP? SHOULD HE HAVE SAID, "WHO  
2 IS GIVING YOU THESE NORCO, I WANT TO CALL THAT DOCTOR"?  
3 HE DOESN'T DO THAT. BUT HE'S NOT ON TRIAL. THAT'S NOT AN  
4 ISSUE.

5 OKAY. FEBRUARY 10 IS OUR FIRST VISIT WITH  
6 DR. SHAINSKY. LOOK AT THIS. NOW SHE GETS 60 NORCO. AND,  
7 OF COURSE, DR. SHAINSKY HAS NO IDEA AT THAT TIME WHO ELSE  
8 HAS BEEN PRESCRIBING NARCOTICS IN WHAT AMOUNTS AND WHAT  
9 QUANTITIES AND WHAT ISSUES MIGHT BE PRESENTED.

10 FEBRUARY 25TH, SHE GETS AN ADDITIONAL 56 ON  
11 THE TELEPHONE PRESCRIPTION, THE ONE THAT FOR WHATEVER  
12 REASON IS NEVER DOCUMENTED IN DR. SHAINSKY'S CHART.

13 MARCH 1ST, OF COURSE, IS THE SECOND VISIT.  
14 SHE GETS AN ADDITIONAL 100 NORCO. SO THE AMOUNTS OF  
15 NARCOTICS ARE CONTINUING TO GO UP AND THE ADDICTION, THE  
16 EVIDENCE WILL SHOW, BEGINS TO KICK IN, THE EVIDENCE OF  
17 ADDICTION BEGINS TO SHOW IN EARLY MARCH, WHICH YOU WILL  
18 HEAR.

19 WHAT EVIDENCE IS THAT? WELL, PETER, HER  
20 LOVING FATHER, CONCERNED, SKYPES WITH HER IN ABOUT  
21 MID-MARCH. THIS IS AN APPROXIMATE DATE. AND HE HAS A  
22 SKYPE CONVERSATION WITH HER. AS YOU KNOW, WITH SKYPE YOU  
23 GET AN IMAGE AND YOU CAN SEE AND INTERACT WITH THE PERSON.

24 WHAT DOES HE SEE ON THAT DATE? HE SEES  
25 SOMEONE THAT HAS TO BE AWAKEN MIDDAY, SHE'S SLEEPING,  
26 SHE'S SLURRING HER WORDS, SHE'S DETACHED, SHE'S ACTUALLY  
27 SHOWING SYMPTOMS OF SOME DISSOCIATIVE BEHAVIOR. AND SHE'S  
28 NONRESPONSIVE TO HER FATHER. SHE IS UNDER THE INFLUENCE

1 OF NARCOTICS AND UNRESPONSIVE TO HER FATHER.

2 THAT'S A GREAT CONCERN. AND, OF COURSE, IT  
3 WAS A GREAT CONCERN FOR LINDA, WHO LEFT A MESSAGE FOR  
4 DR. BOHN, "I'M CONCERNED ABOUT TARA." SO HER PARENTS AND  
5 DAVID ARE SEEING IN MARCH CLEAR EVIDENCE OF ADDICTION,  
6 CLEAR EVIDENCE OF ABUSE OF DRUGS, AND, OF COURSE, THE  
7 CONTINUING DECLINE OF TARA.

8 THEN WE HAVE THE FATAL VISIT ON MARCH 22ND,  
9 4:15. OR ACTUALLY FOUR O'CLOCK IN THE AFTERNOON, THE  
10 THIRD VISIT TO DR. SHAINSKY, AND THE PRESCRIPTION WHICH  
11 ULTIMATELY KILLED HER, 100 PERCOCET.

12 ALL RIGHT. SO YOU'VE HEARD EVIDENCE FROM  
13 THE EXPERTS. AND THAT'S COMMON IN THESE TRIALS. ONE SIDE  
14 PUTS ON EXPERTS; THE OTHER SIDE PUTS ON EXPERTS. THEY  
15 DISAGREE. ALL THESE EXPERTS ARE PAID. THEY'RE PAID FOR  
16 THEIR TESTIMONY. YOU HAVE TO TAKE THAT INTO ACCOUNT IN  
17 DECIDING WHO DO I BELIEVE AND WHO DO I NOT BELIEVE.

18 BUT SOMETIMES THE BEST EVIDENCE IS NOT THE  
19 PEOPLE THAT ARE BEING PAID TO SAY ONE THING OR ANOTHER.  
20 IT'S THE PROFESSIONALS, THE TREATING PHYSICIANS. AND  
21 LOOK, WE HAVE TWO INSTANCES OF CAPABLE DOCTORS WHO DID THE  
22 RIGHT THING, WHO DID EXACTLY THE RIGHT THING.

23 AND LET'S LOOK AT DR. SPIEGEL. SHE COMES TO  
24 SEE HIM ON JANUARY 11TH. "THE PATIENT IS A 30-YEAR-OLD  
25 CAUCASIAN FEMALE WHO PRESENTS TO MY PRACTICE WITH  
26 COMPLAINTS OF EXCRUCIATING ABDOMINAL PAIN...PAIN PRETTY  
27 MUCH IN THE REST OF HER BODY."

28 HE LEARNS AT THAT TIME THAT SHE'S BEING

1 TREATED BY A PSYCHIATRIST, SOMETHING THAT APPARENTLY TOOK  
2 DR. SHAINSKY SOME TIME TO DISCERN. AND HE BASICALLY GOES  
3 ON AND SAYS, YOU KNOW, THESE ARE SOME ISSUES. HERE IS HIS  
4 TREATMENT PLAN. AND THIS IS THE KEY. DOES HE JUST SAY,  
5 "HERE, HAVE SOME NARCOTICS, YOU KNOW, COME BACK IN A  
6 COUPLE WEEKS"? NO. HE SAYS THE FOLLOWING, AND IT'S IN  
7 EVIDENCE. YOU SHOULD READ IT.

8 HE TALKS ABOUT EXPLAINING TO THE PATIENT HE  
9 COULD NOT GIVE HER A LENGTHY COURSE OF MEDICATION,  
10 MEANING, I'M NOT GOING TO GIVE YOU A LOT OF DOPE WITHOUT  
11 KNOWING ETIOLOGY, I.E., WHAT IS THE UNDERLYING PROBLEM,  
12 BECAUSE OF THE EXTENSIVE NATURE OF IT, AS WELL AS HER  
13 PRIOR WORKUP, INCLUDING HIS CONCERN OVER THE PSYCHIATRIST  
14 HISTORY. I EXPLAINED AT THIS POINT BECAUSE SHE HAD NOT  
15 HAD ANY RECENT LAB TESTS, SO HE DOES LAB TESTS. AND HERE  
16 IS THE PRESCRIPTION: NORCO, 5/325, WHICH IS THE LOW DOSE,  
17 AND HE GIVES HER 20 PILLS. BASICALLY GIVES HER THREE OR  
18 FOUR DAYS' SUPPLY. NOT VERY MUCH. AND HE TELLS HER, "I'M  
19 NOT GOING TO GIVE YOU ANY MORE."

20 HOW DOES SHE RESPOND TO THAT? "FOLLOWING  
21 THIS CONSULTATION WITH THE PATIENT, THE PATIENT WAS RATHER  
22 UNHAPPY."

23 AN UNDERSTATEMENT. DAVID WAS THERE. SHE  
24 SCREAMED AT HIM. SHE WANTED MORE NARCOTICS. AND, OF  
25 COURSE, THAT'S THE LAST VISIT WITH DR. SPIEGEL.

26 SO WHAT DOES HE DO? HE'S GOING TO CONTACT  
27 OTHER INTERNISTS, HE'S GOING TO FOLLOW UP WITH A  
28 PSYCHIATRIST, AND HE'S GOING TO LIMIT HER ACCESS TO

1 NARCOTICS. THAT'S THE RIGHT THING TO DO.

2 THE OTHER INSTANCE OF HOW TO PROPERLY TREAT  
3 THIS SORT OF PATIENT, OF COURSE, WAS THE 2009 CEDARS-SINAI  
4 EMERGENCY ROOM ADMISSION. AND THIS IS A RECORD THAT THE  
5 EVIDENCE IS CLEAR, DR. SHAINSKY KNEW ABOUT BECAUSE I'M  
6 SHOWING YOU A DOCUMENT THAT SHE ACCESSED FROM HER COMPUTER  
7 TERMINAL IN HER OFFICE.

8 SO SHE KNEW THE FOLLOWING SHORTLY AFTER THE  
9 FIRST VISIT: TARA HAD COMPLAINED OF BODY PAIN. "I WANT  
10 TO DIE." CHIEF COMPLAINT RIGHT UP THERE FRONT AND CENTER.  
11 HERE IS A PATIENT WITH PSYCHIATRIC MOOD DISORDER WITH  
12 PSYCHOTIC FEATURES. FEATURES, OF COURSE, ARE OBVIOUS,  
13 HALLUCINATIONS, DELUSIONS. WE'RE NOT TALKING ABOUT A  
14 MINOR PROBLEM.

15 SHE WANTS TO DIE BECAUSE SHE CANNOT TAKE IT  
16 ANYMORE. AND, OF COURSE, AS YOU KNOW FROM THE WITNESS  
17 STAND, SHE WAS ACTUALLY SPECIFICALLY EVEN ALSO REFERRING  
18 TO TAKING PILLS IN HER POSSIBLE ATTEMPTED SUICIDE,  
19 SOMETHING THAT MR. BLESSEY WANTED TO GET DR. RUDNICK TO  
20 SAY DIDN'T HAPPEN, BUT THEN DR. THE RUDNICK DIRECTED  
21 DEFENSE COUNSEL TO THE PAGE OF THE CEDARS RECORD WHERE  
22 THAT ACTUALLY WAS CONTAINED.

23 PAST MEDICAL HISTORY: MOOD DISORDER,  
24 HALLUCINATIONS, HYPOTHYROIDISM. ALSO, DR. SHAINSKY LEARNS  
25 HOURS AFTER THE VISIT, CONTRARY TO THE SELF-REPORT WHERE  
26 TARA DENIED ANY RECREATIONAL DRUG USE, IN FACT, CEDARS'  
27 RECORD SAYS THE PATIENT HAS A HISTORY OF METHAMPHETAMINE  
28 ABUSE AND USED METHAMPHETAMINES A WEEK AGO, WHICH WOULD

1 MEAN IN APRIL OF 2009, TEN MONTHS BEFORE THE VISIT, SHE  
2 HAD USED METHAMPHETAMINES.

3 SO WHAT DOES CEDARS DO? IN MR. BLESSEY'S  
4 OPENING STATEMENT -- I'M SURE YOU LISTENED CAREFULLY TO  
5 BOTH COUNSEL -- HE SAID, "THEY GAVE HER OPIATES." DID  
6 THEY GIVE HER OPIATES? LET'S TAKE A LOOK. THEY GAVE HER  
7 BENADRYL FOR THE ITCHING; TORADOL, WHICH IS A PAIN  
8 MEDICATION BUT IS NOT AN OPIATE. AND THE EVIDENCE WAS  
9 CLEAR. IN FACT, DR. SHAINSKY ADMITTED THAT'S AN  
10 N.S.A.I.D., NONSTEROIDAL ANTI-INFLAMMATORY, LIKE TYLENOL,  
11 LIKE MOTRIN, NOT AN OPIATE. ATIVAN AND SEROQUEL, OF  
12 COURSE, ARE MEDICATIONS TO TREAT PSYCHOLOGICAL CONDITIONS.

13 SHE SLEEPS. SHE WAS AWOKEN. SHE FEELS  
14 BETTER. AND THEY LET HER GO, BUT WHAT DO THEY DO?  
15 PATIENT IS DISCHARGED, BY THE WAY, FOLLOWING A PSYCHIATRIC  
16 REFERRAL. SO THEY BRING IN A PSYCHOLOGIST, A  
17 PSYCHIATRIST, AND SAY, "WE NEED YOU TO EVALUATE THE  
18 PATIENT." AND WHAT DO THEY GIVE HER? DO THEY GIVE HER  
19 OPIATES? NO. TAKE MOTRIN AND TYLENOL FOR PAIN. SHE CAN  
20 USE SEROQUEL AS DIRECTED AND, "YOU NEED TO SEE A  
21 PSYCHIATRIST."

22 AND THEY TELL DAVID, "BE CAREFUL. TAKE HER  
23 HOME. IF THERE'S MORE SUICIDAL OR HOMICIDAL THOUGHTS,  
24 COME BACK." THAT'S THE RIGHT THING. WHAT DR. SHAINSKY  
25 DID, AS WE'LL SEE IN A MINUTE, WAS THE WRONG THING. HERE  
26 IS THE CEDARS-SINAI RECORD WHERE SHE, IN FACT, SAID SHE  
27 WAS TALKING ABOUT SHE WANTS TO DIE, "I WANT TO TAKE PILLS  
28 TO END MY LIFE."

1                   AND HERE IS THE -- ALL OTHER RECORDS THAT  
2 DR. SHAINSKY HAD ACCESS TO BECAUSE THE PATIENT HANDED IT  
3 TO HER FROM, AGAIN, LESS THAN A YEAR BEFORE. THE E.E.G.,  
4 ELECTROENCEPHALOGRAM, TRACING PERFORMED ON A 29-YEAR-OLD  
5 FEMALE, REFERRED IN BY PSYCHIATRY BECAUSE OF ALTERED  
6 MEMORY AND AUDITORY HALLUCINATIONS.

7                   DOES DR. SHAINSKY EVER FOLLOW UP ON THE  
8 AUDITORY HALLUCINATIONS? YOU DON'T HAVE TO GO TO MEDICAL  
9 SCHOOL. YOUR COMMON SENSE AND YOUR EXPERIENCE TELLS ALL  
10 OF US THAT THESE KINDS OF ISSUES TEND TO BE RECURRING. IF  
11 I WAS HAVING HALLUCINATIONS TEN MONTHS AGO, I MIGHT BE  
12 HAVING THEM TODAY. ONE WOULD THINK A DILIGENT  
13 PROFESSIONAL WOULD HAVE FOLLOWED UP ON THAT, AND SHE DID  
14 NOT.

15                   DR. BOHN'S NOTES. RECALL DR. WEINBERGER  
16 TOLD US HE COULD READ DOCTORS' HANDWRITING. IT TURNS OUT  
17 HE HAD SOME TROUBLE WITH HIS HANDWRITING. BUT YOU RECALL  
18 DR. BOHN'S TESTIMONY THAT THIS LITTLE CIRCLE IN HIS NOTES  
19 FROM THE LAST FEBRUARY 9, 2010 MEETING IS WHERE HE SAID,  
20 "I WARNED PATIENT OF TAKING OPIATES PARTICULARLY BECAUSE  
21 OF THE CONFLICT, POTENTIAL CONFLICT WITH BENZODIAZEPINES."  
22 BAD IDEA. DON'T TAKE THEM. HE'S NOT OKAY WITH IT. DID  
23 HE FOLLOW UP? DID HE BE PROACTIVE? NO.

24                   SO LET ME ADDRESS THE STANDARD OF CARE.  
25 THAT'S REALLY THE ISSUE FOR YOU. AND THE STANDARD OF  
26 CARE, WHICH IS WAS SHE NEGLIGENT OR NOT, AND THIS IS A  
27 CIVIL CASE. THERE IS NO EVIDENCE AND WE'RE NOT CONTENDING  
28 THAT DR. SHAINSKY ACTED INTENTIONALLY. OKAY? THAT'S NOT

1 WHY WE'RE HERE. IT'S NEGLIGENCE ONLY. DID SHE ACT  
2 ACCORDING TO THE STANDARD OF CARE?

3 ONE THING I WANT TO BE CLEAR ON, IT'S NOT  
4 THE CARE AT ANY GIVEN POINT IN TIME, OKAY? SO DON'T ALLOW  
5 THE DEFENSE TO WHAT I CALL ATOMIZE THIS CASE. DON'T LET  
6 THEM PICK IT APART. WELL, ON MARCH 1ST IN DOING THIS, WAS  
7 THAT THE STANDARD OF CARE? AND WAS SHE WITHIN THE  
8 STANDARD OF CARE ON FEBRUARY 10TH?

9 BECAUSE MAKE NO MISTAKE, IF  
10 DR. SHAINSKY'S -- IF THIS CASE ONLY INVOLVED  
11 DR. SHAINSKY'S CARE AND TREATMENT OF TARA ON FEBRUARY 10,  
12 WE WOULDN'T BE HERE. BECAUSE IF YOU LOOK ONLY AT THAT,  
13 SHE DIDN'T DO ALL THE RIGHT THINGS, BUT SHE DIDN'T KILL  
14 HER AND SHE DIDN'T ACT BELOW THE STANDARD OF CARE. YOU  
15 HAVE TO CONSIDER THE ENTIRE PATTERN STARTING WITH THE  
16 FIRST VISIT THROUGH THE LAST VISIT. DID SHE DO WHAT SHE  
17 NEEDED TO DO? AND THE ANSWER IS "NO."

18 DR. RUDNICK TOLD YOU THAT THAT STANDARD OF  
19 CARE REQUIRES A PHYSICIAN. AND IT'S A HIGH STANDARD,  
20 LADIES AND GENTLEMEN, BECAUSE, AS I MENTIONED AND IT'S  
21 CLEAR, WE ALL MAKE MISTAKES. ATTORNEYS MAKE MISTAKES. I  
22 FLUBBED UP THE OTHER DAY WHEN I TRIED TO DRAW THE TRAMADOL  
23 AND I LEFT OFF THE OXYGEN BEFORE THE METHYL GROUP.  
24 FORTUNATELY, THE EXPERT WAS THERE TO CORRECT ME.  
25 MR. BLESSEY ERRED, MADE A MISTAKE, WHEN HE ERRONEOUSLY  
26 TOLD YOU THAT OPIATES WERE GIVEN IN THE CEDARS-SINAI  
27 ADMISSION. NOT TRUE.

28 JUDGES SOMETIMES MAKE MISTAKES. NOT THIS

1 JURIST, BUT JUDGES DO. AND WHEN JUDGES MAKE MISTAKES, THE  
2 COURT OF APPEALS IS THERE TO CORRECT HIM, PROVIDE SOME  
3 FRIENDLY HELP.

4 BUT WHEN PHYSICIANS MAKE MISTAKES,  
5 SOMETIMES, AS IN THIS CASE, IT CAN RESULT IN THE DEATH OF  
6 A PATIENT. SO IT IS A HIGH STANDARD, AND DR. RUDNICK SAID  
7 A DOCTOR IS REQUIRED TO OPERATE AT THE LEVEL AT WHICH AN  
8 ORDINARY, REASONABLE, MEANING DILIGENT, RHEUMATOLOGIST  
9 WOULD PERFORM UNDER THE CIRCUMSTANCES.

10 LADIES AND GENTLEMEN, THE EVIDENCE, I THINK,  
11 IS CLEAR THAT HER FAILURE TO ACT WITH DILIGENCE AND CARE  
12 AND THE DAY YOU HAVE TO FOCUS ON IS MARCH 22ND, 2010.  
13 THAT WAS A SERIOUS VIOLATION OF THE APPLICABLE STANDARD OF  
14 CARE, AND THAT MEANS SHE'S NEGLIGENT.

15 OKAY. SO LET'S LOOK AGAIN AT THE FIRST  
16 VISIT. WHAT DID DR. SHAINSKY KNOW ON FEBRUARY 10TH, 2010?  
17 SHE LEARNS ON THAT DATE FROM THE PATIENT, OR SHE SOON  
18 BECOMES AWARE, FIRST, WITHOUT QUESTION, THAT TARA HAS A  
19 HISTORY OF PSYCHIATRIC MOOD DISORDER. SHE PUT THAT IN HER  
20 PROGRESS NOTE. INCLUDING AUDITORY HALLUCINATIONS AND  
21 OTHER ISSUES, WHICH I'VE ALREADY MENTIONED, ARE SYMPTOMS  
22 AND SYMPTOMATOLOGY AND PROBLEMS THAT ARE NOT LIKELY TO BE  
23 TRANSITORY. THEY'RE LIKELY TO BE LONG LASTING.

24 SHE ALSO LEARNS WHEN SHE ACCESSES THE E.R.  
25 RECORDS THAT TARA HAD A HISTORY OF METHAMPHETAMINE ABUSE.  
26 SHE LEARNS THAT TARA HAD BEEN REFERRED TO A NEUROLOGIST IN  
27 2009 FOR AUDITORY HALLUCINATIONS AND MEMORY LOSS. SHE  
28 KNOWS THAT TARA IS TREATED BY A PSYCHIATRIST. SHE DOESN'T



1 KNOW WHO THE PSYCHIATRIST IS, SHE DOESN'T ASK WHO IS THE  
2 PSYCHIATRIST, SHE DOESN'T ASK TO SPEAK TO THE  
3 PSYCHIATRIST, AND SHE DOESN'T EVEN BOTHER TO OBTAIN THOSE  
4 RECORDS. HAD SHE DONE ANY ONE OF THESE THINGS, TARA WOULD  
5 BE ALIVE TODAY.

6 TARA REPORTS TO CEDARS-SINAI IN 2009 -- WE  
7 TALKED ABOUT THIS -- WANTING TO DIE, LEFT-SIDED BODY PAIN,  
8 AND AGAIN CLEAR EVIDENCE OF PSYCHOSIS. AND WHAT DOES SHE  
9 WANT ON FEBRUARY 10? SHE'S IN PAIN AND SHE WANT OPIATES.  
10 AND THIS BEGINS THE PROBLEMS.

11 PROGRESS NOTES AGAIN FROM VISIT NO. 1, HERE  
12 IS THE PLAN UNDER "ASSESSMENT," THIS IS THE TREATMENT  
13 PLAN. "I STRONGLY DISCOURAGE HER FROM THE USE OF  
14 NARCOTICS AND RECOMMEND POOL THERAPY AND TREATMENT WITH  
15 CYMBALTA."

16 AND AS WE'LL SEE IN A MINUTE, SHE SAID THE  
17 RIGHT THING. DR. BLUESTONE HAS NO ISSUE WITH ANY OF  
18 THOSE. CYMBALTA IS APPROPRIATE. POOL THERAPY IS ACTUALLY  
19 EXACTLY WHAT THE PATIENT NEEDS BECAUSE IT GENERATES, IN A  
20 MANNER THAT DOESN'T AGGRAVATE THE PAIN, ENDORPHINS.  
21 EXERCISE, EXCELLENT.

22 DR. BLUESTONE SAID SHE ALSO SHOULD HAVE  
23 GOTTEN, OF COURSE, SOME COGNITIVE THERAPY. BUT THAT'S THE  
24 RIGHT THING. WHAT DOES SHE ACTUALLY DO? SHE GIVES HER 60  
25 NORCO PILLS. "I DISCOURAGE BEHAVIOR, BUT HERE, HAVE SOME  
26 PILLS."

27 WHAT DOESN'T SHE DO? SHE DOESN'T CONTACT  
28 DR. BOHN. SHE DOESN'T INQUIRE FURTHER ABOUT THE CEDARS

1 RECORDS BECAUSE IN YOUR EVIDENCE, LOOK AT EXHIBIT 103 AND  
2 YOU'LL SEE THE COMPLETE CEDARS-SINAI EMERGENCY RECORD  
3 INCLUDING THE WRITE-UP BY THE PSYCHIATRIC RESIDENT WHO  
4 EVALUATED HER. SHE DOESN'T EVEN GO OVER TO THE HOSPITAL  
5 AND GET THAT RECORD, WHICH SHE HAD ACCESS TO. NOT AN  
6 ISSUE FOR HER.

7 NOR DOES SHE PROVIDE A LIMITED NUMBER OF  
8 OPIATES BEFORE CONDUCTING LAB TESTS. BUT AGAIN, WE'RE NOT  
9 REALLY GOING TO HOLD HER FOR THAT BECAUSE THIS VISIT IS  
10 NOT -- WAS NOT THE PROBLEM. IF SHE'D STOPPED HERE, WE  
11 WOULDN'T BE HERE. THEN, OF COURSE, THERE'S THE 56 NORCO  
12 PILLS PHONED IN TWO WEEKS LATER WHICH SHE KEEPS NO RECORD  
13 OF. NO RECORD. IF WE HAD NOT SUBPOENAED THE RECORDS FROM  
14 C.V.S., WE WOULD NEVER KNOW ABOUT THIS PRESCRIPTION  
15 BECAUSE DR. SHAINSKY KEPT NO RECORD OF IT.

16 SECOND VISIT ON MARCH 1ST. NOW, AT THIS  
17 POINT TARA COMES IN AND THIS IS WHEN WE SUBMIT CLEAR  
18 EVIDENCE OF ADDICTION, OF DRUG INTOXICATION SHOULD HAVE  
19 BEEN EVIDENT. OF COURSE, UNFORTUNATELY, WE DON'T HAVE  
20 DAVID AT THIS MEETING SO WE ONLY HAVE DR. SHAINSKY'S  
21 RENDITION, BUT WHAT DOES SHE GET? SHE HAD 56 NORCO PILLS  
22 FOUR DAYS BEFORE, AND SHE WANTS MORE. HAS SHE RUN OUT OF  
23 THE 56 FOUR DAYS LATER?

24 DR. SHAINSKY LEARNS THAT TARA IS UNDER  
25 ADDITIONAL STRESS, SHE'S MOVING OUT OF HER -- SHE AND  
26 DAVID AT THAT POINT WERE MOVING FROM THE HOUSE WHICH SHE  
27 LOVED TO THE APARTMENT THAT SHE WASN'T SO CRAZY ABOUT,  
28 HAVING FINANCIAL PROBLEMS. WE ALL KNOW FROM OUR

1 EXPERIENCE IN LIFE THAT WHEN YOU ARE MOVING AND YOU'RE  
2 HAVING FINANCIAL TROUBLES, THESE ARE STRESSFUL EVENTS, AND  
3 SOMEONE WITH A PSYCHIATRIC HISTORY IS GOING TO REACT  
4 ADVERSELY TO THOSE CIRCUMSTANCES. AGAIN, SHOULD HAVE PUT  
5 DR. SHAINSKY ON NOTICE.

6           WHAT DOES SHE DO? SHE INCREASES THE --  
7 OOPS, THE ANTIDEPRESSANT CYMBALTA. NOW, AGAIN, NO ISSUE  
8 WITH CYMBALTA. NO ISSUE WITH HER TREATMENT PLAN HAD SHE  
9 CARRIED IT OUT. BUT WOULDN'T YOU THINK THAT BEFORE  
10 PUTTING A PATIENT ON A PSYCHIATRIC MEDICATION, SHE WOULD  
11 HAVE CONSULTED WITH THE PSYCHIATRIST? "DR. BOHN, I'M  
12 TREATING YOUR PATIENT. I WANT TO PUT HER ON CYMBALTA.  
13 ARE YOU PUTTING HER ON ANY OTHER ANTIDEPRESSANTS OR OTHER  
14 MEDICATIONS WHICH MIGHT COME INTO CONFLICT?" NO EVIDENCE  
15 THAT THAT OCCURRED. CLEAR NEGLIGENCE.

16           DR. SHAINSKY THEN PRESCRIBES TARA ANOTHER  
17 100, SO WE'RE GOING UP, FOLKS. NOT ONLY DOES SHE GET 100  
18 PILLS, BUT NOW THEY'RE 10-MILLIGRAM. AND WITHIN 20 DAYS,  
19 OF COURSE, DR. SHAINSKY PROVIDES HER -- WITHIN 20 DAYS  
20 HENCE SO ON MARCH 1ST, 20 DAYS, SHE'S NOW PROVIDED TARA  
21 WITH 216 OPIATE PILLS WITHOUT EVER CONTACTING THE  
22 PSYCHIATRIST.

23           IN THE WORDS OF DR. BLUESTONE, THE EXPERT  
24 RHEUMATOLOGIST, DR. SHAINSKY SAYS THE RIGHT THING, BUT  
25 DOES THE WRONG THING. THE RIGHT THING, AGAIN, WAS  
26 DISCOURAGE USE OF NARCOTICS. MEANING DON'T GIVE THEM  
27 NARCOTICS. OR IF YOU GIVE THEM NARCOTICS, ACTUALLY GIVE  
28 THEM LIMITED SUPPLIES SO YOU CAN BEGIN TO WEAN THEM OFF.

1 SO THE SUPPLY OF NARCOTICS SHOULD HAVE BEEN ON THIS SLOPE.  
2 INSTEAD, IT'S THIS SLOPE.

3 POOL THERAPY, THE RIGHT THING TO DO. DOES  
4 HE ACTUALLY SAY IT? WE DON'T KNOW. WHAT WE DO KNOW IS  
5 THAT SHE NEVER FOLLOWED UP. "TARA," ON MARCH 1ST, "HOW IS  
6 THE POOL THERAPY GOING? IS THAT WORKING FOR YOU?" TARA  
7 SAID, "NO." THE DOCTOR WOULD SAY, "YOU NEED TO DO THIS.  
8 AND, IN FACT, YOU'RE NOT GETTING ANY MORE PAIN PILLS UNTIL  
9 I HEAR REPORTS OF HOW THE POOL THERAPY IS GOING. INCREASE  
10 THE CYMBALTA IS FINE."

11 SO SHE SAYS THE RIGHT THING. AND SAYING THE  
12 RIGHT THING TELLS YOU SOMETHING. IT TELLS YOU THAT SHE  
13 KNEW PERFECTLY WELL ON MARCH 1ST THAT HER TREATMENT PLAN,  
14 WHAT SHE WAS ACTUALLY GIVING THIS PATIENT, WAS HARMFUL TO  
15 HER BECAUSE SHE KNEW THE RIGHT PRESCRIPTION BUT DID THE  
16 WRONG THING.

17 OKAY. SO BY MARCH 1ST, TARA IS BECOMING  
18 HOOKED ON NARCOTICS. THIS IS IN EVIDENCE. THIS IS A NOTE  
19 FROM TARA IN OR ABOUT -- WE THINK IN OR ABOUT FEBRUARY OR  
20 MARCH BECAUSE SHE ACTUALLY REFERS TO FIBROMYALGIA. "I'M  
21 SO TIRED OF FIGHTING. I JUST WANT THE THINGS TO GO  
22 SMOOTHLY. NO ANXIETY, NO PANIC. HYPERSENSITIVITY  
23 DISORDER."

24 SHE'S DETAILING ALL OF HER PROBLEMS, ALL OF  
25 HER ISSUES, ALL OF WHICH WAS WELL AVAILABLE TO  
26 DR. SHAINSKY, AND SHE'S SAYING, "AND I CAN'T DEAL WITH  
27 THIS ANYMORE." SHE BEGINS TO STRUGGLE WITH THE -- LET'S  
28 FACE IT, IF THE TUNNEL IS DARK AND YOU DON'T SEE LIGHT AT

1 THE HEAD OF THE TUNNEL, YOU'RE GOING TO BECOME DESPONDENT  
2 AND YOU'RE GOING TO BECOME POTENTIALLY SUICIDAL.

3 THE THIRD VISIT WITH DR. SHAINSKY ON  
4 MARCH 22ND, 2010. THIS IS WHERE THE STANDARD OF CARE WAS  
5 CLEARLY VIOLATED, AND THIS IS WHERE TARA WAS HANDED, AS  
6 MS. MC BROOM MENTIONED IN HER OPENING, THE EQUIVALENT OF  
7 THE PROVERBIAL LOADED GUN, OKAY, A WEAPON THAT SHE COULD  
8 USE AND DID USE TO END HER LIFE.

9 SO TARA MAKES THE SAME-DAY APPOINTMENT,  
10 MEANING SHE WASN'T ACTUALLY, INTERESTINGLY, SUPPOSED TO  
11 COME IN UNTIL THE END OF MARCH. WE KNOW SHE'S ACTUALLY  
12 RUNNING OUT OF HER NORCO AT THAT POINT BECAUSE WE KNOW  
13 FROM DR. SHAINSKY'S PROGRESS NOTES THAT THE PATIENT WAS  
14 REPORTING TAKING DOUBLE DOSAGE OF NARCOTICS AT THAT POINT.  
15 SO SHE IS DRUG NONCOMPLIANT, SHOWING CLEAR SIGNS OF  
16 ADDICTION, AND SHE COMES IN THAT MORNING. AND DAVID TOLD  
17 THE STORY VERY WELL, I THINK, AND VERY CLEARLY.

18 SHE WAS DISHEVELED. THIS IS A WOMAN WHO  
19 NORMALLY TOOK PRIDE IN HER APPEARANCE. SHE LOOKED  
20 TERRIBLE. SHE LOOKED SO BAD THAT WHEN DR. SHAINSKY SAW  
21 HER, SHE SAID, "TARA, WHAT'S WRONG? WHAT'S WRONG? WHAT'S  
22 HAPPENING?" AND TARA'S RESPONSE WAS, "I'M IN SO MUCH PAIN  
23 I WANT TO KILL MYSELF."

24 THEN THERE WAS, OF COURSE, THIS DISCUSSION  
25 ABOUT THAT, THAT DR. SHAINSKY HAD. THAT'S A VERY SERIOUS  
26 STATEMENT. THEY TALKED ABOUT IT. AND DURING THIS  
27 MEETING, YOU RECALL HER PHONE KEPT RINGING. LINDA WAS  
28 CALLING BECAUSE LINDA WAS WORRIED ABOUT HER BECAUSE SHE

1 HAD BEEN TELLING LINDA SHE WANTED TO KILL HERSELF. AND  
2 THE PHONE IS RINGING AND DAVID SAYS TO TARA, "YOUR MOTHER  
3 WOULDN'T BE CALLING YOU IF YOU WEREN'T TELLING HER THAT  
4 YOU WANT TO KILL YOURSELF." SO A SECOND CLEAR REFERENCE  
5 TO TARA'S MAKING SUICIDAL STATEMENTS IN THE IMMINENT PAST.  
6 AND ALL THIS IS IN DR. SHAINSKY'S PRESENCE.

7 DAVID TELLS TARA, "WELL, YOU KNOW, YOUR MOM  
8 WOULDN'T KEEP CALLING IF YOU WEREN'T TELLING HER THESE  
9 THINGS." AND TARA, OF COURSE, ALSO TELLS DR. SHAINSKY  
10 DURING THAT MEETING THAT THE NORCO IS NO LONGER WORKING.

11 SO WHAT DOES SHE KNOW? TOLERANCE TO NORCO;  
12 RUNNING OUT OF THE PRESCRIPTION BEFORE SHE SHOULD BE,  
13 WHICH MEANS SHE'S NONTOLERANT; CLEAR SIGNS OF ADDICTION;  
14 AND SHE IS IN IMMEDIATE STRESS. IN FACT, SHE NOTES IN HER  
15 PROGRESS REPORT, SIGNS OF HIGH ANXIETY, OKAY? BOY, TALK  
16 ABOUT RED FLAGS. HOW MANY MORE RED FLAGS DO YOU NEED?

17 DR. SHAINSKY ALSO LEARNS, IRONICALLY AT THAT  
18 DATE, THAT TARA IS ON A NUMBER OF MEDICATIONS THAT SHE  
19 DOESN'T EVEN KNOW ABOUT. HOW DOES SHE KNOW THAT? WELL,  
20 TARA BRINGS IN, YOU RECALL, THE WHOLE BAG OF ALL HER  
21 PRESCRIPTIONS. AND DR. SHAINSKY LINES THEM UP AND LOOKS  
22 AT IT AND SEES THERE ARE ONLY A FEW OF THE NORCO LEFT,  
23 CONFIRMING THAT SHE'S MOSTLY USING UP HER SUPPLY.

24 HOW IS IT THAT HAPPENED? DID DR. SHAINSKY  
25 TELL HER TO DO THAT? THIS IS SIX WEEKS, FOLKS, 40 DAYS IN  
26 HER TREATMENT. SHE'S NEVER EVEN INQUIRED ABOUT A FULL  
27 LIST OF MEDICATIONS. THAT WAS LINDA'S INSISTENCE. SHE  
28 TOLD DAVID, "HAVE TARA BRING IN ALL HER MEDICATIONS."

1 IT'S IMPORTANT FOR A TREATING PHYSICIAN TO KNOW ABOUT THE  
2 OTHER MEDICATIONS TO ENSURE THERE ISN'T A CONFLICT.

3 NOW, IN THE MIDDLE OF THE MEETING AFTER THE  
4 SUICIDE TALK, WHAT DOES DR. SHAINSKY DO? SHE LEAVES THE  
5 MEETING. LOOK AT THE TIME OF THIS MESSAGE TO DR. BOHN.  
6 SHE FINALLY, FINALLY SEES TO IT THAT SHE'S GOING TO CALL  
7 DR. BOHN. SO SHE CALLS HIM AT 4:21 P.M. WE KNOW FROM --  
8 THIS IS DR. BOHN'S OFFICE RE TARA DE ROGATIS. AND HERE IS  
9 WHAT HE WROTE. ACTUALLY, HIS WRITING HERE IS REMARKABLY  
10 CLEAR. SHE SAYS, "I'M A RHEUMATOLOGIST. I'M TREATING  
11 YOUR PATIENT FOR FIBROMYALGIA, ANXIETY, AND DEPRESSION,"  
12 MEANING THE PATIENT IS SUFFERING FROM ANXIETY AND  
13 DEPRESSION. SHE SAW IN HER OFFICE THAT DAY, "AND SHE'S  
14 TALKING ABOUT KILLING HERSELF, SUICIDAL IDEATION."

15 NOW, IS THAT WHAT DR. SHAINSKY TOLD YOU ON  
16 THE STAND? NO. SHE SAID, "I CALLED TO TELL DR. BOHN THAT  
17 I WAS TAKING HER OFF CYMBALTA BECAUSE OF THE SURGERY."  
18 ASK YOURSELF: WHERE DOES IT SAY IN THIS MESSAGE CYMBALTA?  
19 YOU HEARD DR. BOHN ON THE STAND. HE SAID, "SHE DIDN'T  
20 MENTION CYMBALTA IN THE MESSAGE. HAD SHE, IT WOULD HAVE  
21 BEEN WRITTEN ON THERE. IT SAID 'SUICIDAL IDEATION.'"

22 HERE'S A NOTE -- HERE'S HOW YOU CAN FURTHER  
23 CONFIRM IT. DR. BOHN'S RECORD, SO THIS IS THE PROGRESS  
24 NOTE IN 2007, THE VERY FIRST VISIT, SO GO TO NOVEMBER 1ST,  
25 2007, AND PULL UP THIS RECORD. AND WHEN YOU SEE DR. BOHN,  
26 WHEN HE WROTE "SUICIDAL IDEATION" AS A TOPIC, IF THERE WAS  
27 NO MENTION OF IT, HE WRITES ZERO WITH A SLASH WHICH MEANS  
28 "NO," "NONE." SO THAT'S WHAT HE WROTE THEN. HERE HE

1 WRITES "S.I." SO THERE'S ABSOLUTELY NO DOUBT THAT NOT  
2 ONLY DID DR. SHAINSKY TELL DR. BOHN IN THE MESSAGE THAT  
3 HIS PATIENT WAS TALKING ABOUT KILLING HERSELF, WHAT DID  
4 SHE DO THEN? SHE HADN'T GIVEN THE PRESCRIPTION, THE FATAL  
5 PRESCRIPTION, THAT KILLED HER.

6 DID SHE SAY, "I'M GOING TO WAIT TO HEAR FROM  
7 DR. BOHN"? NO. DID SHE EVEN THINK TO MARK THE MESSAGE  
8 URGENT? URGENCY? NO. IN FACT, DR. BOHN TOLD YOU THAT HE  
9 HAD AN AVAILABLE SYSTEM, HE COULD BE PAGED, IT COULD HAVE  
10 BEEN MARKED URGENT. HAD THAT HAPPENED, HAD SHE SPOKEN TO  
11 DR. BOHN ON MARCH 22, THE PATIENT WOULD BE ALIVE TODAY AND  
12 WE WOULD NOT BE HERE. BUT THAT DID NOT HAPPEN.

13 WHAT DOES SHE DO? SHE GIVES THIS  
14 PRESCRIPTION, BASICALLY THE EQUIVALENT OF A DEATH WARRANT,  
15 AND SHE HANDS IT TO A PATIENT SHE KNOWS IS AT RISK FOR  
16 SUICIDE. IS IT HIGH RISK? MEDIUM RISK? LOW RISK? IT'S  
17 NOT AN ISSUE. SHE KNOWS THERE'S A RISK. SHE'S CONCERNED  
18 ENOUGH TO SAY, "TARA, YOU'RE NOT GOING TO KILL YOURSELF,  
19 ARE YOU?" TARA, OF COURSE -- AND BY THE WAY, AGAIN YOUR  
20 COMMON SENSE. DON'T NEED TO HAVE A DEGREE IN PSYCHIATRY  
21 TO KNOW THAT IF I AM SEEKING DRUGS AND I KNOW WHAT THE  
22 RIGHT ANSWER IS, THAT PATIENT IS GOING TO LIE TO YOU,  
23 OKAY? "NO, NO, I WANT TO LIVE," SHE SAYS. YOU KNOW, "I  
24 WANT TO LIVE. THIS IS JUST A FIGURE OF SPEECH." BOOM.  
25 THAT'S ALL THE INQUIRY THAT WAS DONE.

26 INDEED, WE KNOW ON MARCH 22ND, 9 HOURS  
27 LATER, SHE IS DEAD. THERE IS SOME EVIDENCE THAT IT WASN'T  
28 A TOTALLY UNPLANNED EVENT. HERE IS THE SUICIDE NOTE,



1 WHICH IS EXHIBIT 121. SHE WRITES OUT VERY CALMLY,  
2 "EVERYTHING I OWN INCLUDING THE WARHOLS," THE PAINTINGS,  
3 "GO TO MY MOTHER AS SOLE BENEFICIARY TO DISBURSE AS SHE  
4 PLEASES TO MY FAMILY, MY FATHER AND MY BROTHER AND DAVID.  
5 I LOVE YOU. TARA DE ROGATIS."

6 AND ALSO, IF YOU RECALL DAVID'S TESTIMONY,  
7 WHAT HAPPENS THAT NIGHT? OF COURSE, SHE GETS TO THE  
8 PHARMACY AROUND NINE O'CLOCK, OR ACTUALLY EARLIER, TO PUT  
9 IT IN AND THEY WON'T GIVE HER THE DRUGS. HOW DOES SHE  
10 REACT? SHE'S FURIOUS. SHE'S YELLING. SHE ACTUALLY -- I  
11 THINK THERE'S A PHONE CONVERSATION BETWEEN DAVID AND  
12 LINDA, AND LINDA THINKS THAT THERE'S AN ARGUMENT GOING ON  
13 BECAUSE TARA IS SCREAMING AT THE PHARMACIST. SO HER  
14 MENTAL STATE WAS NOT SO CLEAR.

15 BUT WHAT DOES SHE DO? SHE GOES HOME, SHE  
16 GOES IN HER ROOM, AND SHE PRAYS. YOU DRAW YOUR OWN  
17 CONCLUSIONS. WHY WAS SHE PRAYING? WAS THIS HER FINAL  
18 ACT? THERE'S SOME EVIDENCE OF PLAN AND INTENT.

19 THIS CHART GIVES YOU A RECORD THAT  
20 DR. SHAINSKY SHOULD HAVE HAD, COULD HAVE HAD, BUT DID NOT.  
21 THIS IS ALL THE NARCOTICS GIVEN TO TARA THAT WE HAVE  
22 RECORDS OF IN 2010. SO HERE IT IS. JANUARY 1ST, 20  
23 NORCO, DR. SPIEGEL, HERE IT IS, "TARA, NO MORE." THAT WAS  
24 THE RIGHT THING.

25 DR. RAMIN, JANUARY 20TH, 30 NORCO. NOW,  
26 THESE ARE STRONGER, HE'S INCREASED THE DOSAGE. TWO WEEKS  
27 LATER, 30 MORE NORCO. BUT WHAT DR. -- AND, OF COURSE, HE  
28 GIVES THE TRAMADOL, 37.5 MILLIGRAMS, WHICH DOESN'T WORK

1 FOR HER, AND HE TELLS HER, "YOU NEED TO SEE OTHER DOCTORS.  
2 YOU NEED TO SEE A PSYCHIATRIST." THAT'S THE RIGHT THING.  
3 "YOU NEED TO SEE A NEUROLOGIST." AND HE REFERS HER TO  
4 ANOTHER SPECIALIST WHO HE BELIEVED MIGHT BE ABLE TO HELP  
5 HER. HE DID THE RIGHT THING.

6 AND IN RED, THE NARCOTICS THAT DR. SHAINSKY  
7 PROVIDED ON THE 10TH, ON THE 25TH, MARCH 1ST, AND THE  
8 23RD. AND YOU SEE THE ESCALATING AMOUNTS. WE WEREN'T  
9 TITRATING DOWN, FOLKS. WE WERE TITRATING UP. MORE  
10 CYMBALTA, MORE PAINKILLERS. AND, INDEED, IN 90 DAYS, LESS  
11 THAN 90 DAYS, TARA RECEIVES FROM ALL OF THESE DOCTORS  
12 ALMOST 400 NARCOTIC PILLS AND THE 60 TRAMADOL WHICH SHE  
13 DIDN'T TAKE.

14 AND, OF COURSE, DR. SHAINSKY HAD NO IDEA  
15 ABOUT THE MEDICATIONS IN GREEN. DR. RAMIN REFERRED THIS  
16 PATIENT TO HER, AND THE EVIDENCE IS UNCONTRADICTED SHE  
17 NEVER TALKED TO HIM ABOUT IT, DIDN'T GET HIS CHART. SHE  
18 SAYS, "WELL, I MIGHT HAVE PASSED HIM IN THE HALLWAY AT  
19 CEDARS." BUT DID DR. RAMIN TELL YOU THAT? NO. NO REPORT  
20 RECEIVED, NO PHONE CALLS, NO ATTEMPT TO ELICIT THE  
21 INFORMATION THAT'S IN GREEN THAT MIGHT HAVE PUT  
22 DR. SHAINSKY ON NOTICE THAT THIS WAS A DRUG-ADDICTED  
23 PATIENT.

24 ALL RIGHT. SO QUICKLY LET ME REVIEW THE  
25 EVIDENCE PRESENTED BY THE EXPERT WITNESSES.

26 DR. RODNEY BLUESTONE SAYS THE STANDARD OF  
27 CARE WAS VIOLATED. TARA, FIRST OF ALL, HE SAYS, WAS  
28 MISDIAGNOSED. SHE DID NOT, IN FACT, HAVE FIBROMYALGIA.

1 SHE WAS -- THE ORIGIN OF HER CHRONIC BODY PAIN WAS  
2 PSYCHOSIS, NOT FIBROMYALGIA. AND HE EXPLAINS YOU CAN'T  
3 HAVE IT BOTH WAYS.

4 FIBROMYALGIA IS A CONDITION WHICH WE MAY NOT  
5 UNDERSTAND THE ORIGIN OR THE ETIOLOGY, BUT WHEN YOU HAVE A  
6 PATIENT WHO IS PSYCHIATRIC, WHO IS PSYCHOTIC, THAT'S  
7 WHAT'S CAUSING THE PAIN. AND YOU HAVE TO TREAT THAT  
8 PATIENT AS A PSYCHIATRIC PATIENT AND NOT AS A FIBROMYALGIA  
9 PATIENT. BUT YOU KNOW WHAT, WE DON'T NEED TO RESOLVE THIS  
10 DISPUTE TODAY. IT WAS A MISSED DIAGNOSIS, BUT THE  
11 MISDIAGNOSIS, AGAIN, DID NOT KILL HER. THE MISDIAGNOSIS  
12 WAS A PROBLEM.

13 WHAT WAS A PROBLEM WAS THAT DR. SHAINSKY  
14 KNEW OR SHOULD HAVE KNOWN THAT TARA'S PAIN SYMPTOMS WERE  
15 CAUSED BY PSYCHIATRIC DISORDERS AND SHOULD HAVE KNOWN THAT  
16 THOUGH, INDEED, SHE SAID IT, "STRONGLY DISCOURAGED USE OF  
17 OPIATES" SHOULD HAVE MEANT NO OPIATES OR EXTREMELY LIMITED  
18 QUANTITIES OF OPIATES WITH AN ATTEMPT TO ACTUALLY WEAN HER  
19 OFF, WHICH DID NOT HAPPEN.

20 WHAT ALSO SHOULD DR. SHAINSKY HAVE DONE  
21 ACCORDING TO DR. BLUESTONE? CONTACT THE PSYCHIATRIST.  
22 THAT'S WHAT DR. SPIEGEL DID IN JANUARY. THAT'S WHAT  
23 DR. RAMIN RECOMMENDED IN JANUARY. THAT'S WHAT THEY DID AT  
24 CEDARS. THREE INSTANCES. GET THE PSYCHIATRIST INVOLVED  
25 AND, IF YOU RECALL, THE PSYCHIATRIST, DR. RUDNICK, TOLD  
26 YOU THAT ON THE FEW OCCASIONS WHERE HE HAS PRESCRIBED  
27 OPIATES TO PSYCHIATRIC PATIENTS HE'S COUNSELING, HE DOES  
28 IT IN CONSULTATION WITH A PAIN MANAGEMENT SPECIALIST OR

1 SOMEONE ELSE SO THE DOCTORS ARE COORDINATING. NO EVIDENCE  
2 OF COORDINATION IN THIS CASE.

3 SHE SHOULD HAVE ACTUALLY PRESCRIBED POOL  
4 THERAPY. AND MOREOVER, SHE SHOULD HAVE FOLLOWED UP. IF  
5 THAT WAS A REAL PRESCRIPTION, HOW IS IT COMING? HOW IS  
6 THE POOL THERAPY COMING? DO YOU NEED HELP FINDING A  
7 SUITABLE POOL? NO EVIDENCE OF THAT HAPPENING. AND SHE  
8 SHOULD HAVE PRESCRIBED COGNITIVE THERAPY.

9 SO THE PROBLEM, ACCORDING -- AND BY THE WAY,  
10 RED HERRING. DID DR. BLUESTONE REALLY SAY, AS THE DEFENSE  
11 WOULD LIKE TO HAVE YOU BELIEVE, "YOU KNOW WHAT, YOU DON'T  
12 NEED TO DO ANYTHING, YOU KNOW, JUST TELL THE PATIENT  
13 'NO'"? OF COURSE NOT. HE SAID CYMBALTA WAS APPROPRIATE.  
14 POOL THERAPY, EXCELLENT. COGNITIVE THERAPY, EXCELLENT.  
15 CARE FOR THE PATIENT, ENSURE THAT THEY CAN SLEEP IS ONE OF  
16 THE PROBLEMS WITH CHRONIC BODY PAIN, OBVIOUSLY, IS YOU  
17 DON'T HAVE SLEEP SO THE FATIGUE AND THE DEPRESSION  
18 MAGNIFY.

19 BUT MOREOVER AND MOST IMPORTANTLY, SHE  
20 SHOULD NOT, CERTAINLY FROM MARCH ON, FROM MARCH ON, SHE  
21 SHOULD NOT HAVE BEEN PRESCRIBING OPIATES. SHE SHOULD HAVE  
22 ACTUALLY IMPLEMENTED HER OWN PLAN. "DISCOURAGE OPIATES"  
23 SHOULD HAVE MEANT NO OPIATES. THAT DIDN'T HAPPEN.

24 THE EXPERT PSYCHIATRIST, DR. RUDNICK, TOLD  
25 YOU THAT SHE WAS AT SIGNIFICANT RISK FOR SUICIDE. AND HE  
26 TOLD YOU SOMETHING, LADIES AND GENTLEMEN, THAT REALLY HE  
27 DIDN'T NEED TO TELL YOU. IF SOMEONE IS TALKING ABOUT  
28 SUICIDE OVER A PERIOD OF TIME, REPEATEDLY, THE MORE THEY

1 TALK OF IT, THE GREATER THE RISK THAT AT SOME POINT THEY  
2 WILL CARRY OUT THAT ACTION.

3 WE WERE ALL IN AGREEMENT. IF THERE HAD BEEN  
4 ONE INSTANCE OR MAYBE TWO ISOLATED INSTANCES WHERE THERE  
5 WAS SUICIDAL IDEATION AND NO EVIDENCE OF THAT ON MARCH 22,  
6 WHO COULD FAULT DR. SHAINSKY? BUT THAT WASN'T THE CASE  
7 HERE. HE SAID SHE WAS CLEARLY AT RISK FOR SUICIDE.

8 DR. SHAINSKY AS AN INTERNIST DID NOT CONDUCT  
9 AN APPROPRIATE SUICIDE RISK OF TARA. HE'S NOT SAYING SHE  
10 SHOULD BE HELD TO THE STANDARD OF A PSYCHIATRIST, BUT ANY  
11 PHYSICIAN WHO -- PARTICULARLY A PHYSICIAN GIVING A PATIENT  
12 A POWERFUL NARCOTIC, SHOULD NOT BE SO CAVALIER AS TO  
13 SIMPLY SAY, "OH, YOU WANT DRUGS? YOU'RE NOT GOING TO KILL  
14 YOURSELF? HERE, HAVE AT IT." THAT WAS NOT ADEQUATE.

15 AND MOST IMPORTANTLY, IF SHE FELT COMPELLED  
16 TO PROVIDE THE PATIENT WITH SOMETHING FOR THE PAIN, AND  
17 THERE'S NO QUESTION, PAIN IS A TERRIBLE CONDITION AND  
18 DOCTORS WANT TO ALLEVIATE PAIN, SO THERE IS A NEED AND A  
19 NECESSITY AT TIMES TO DO SOMETHING FOR THE PATIENT'S PAIN,  
20 BUT IF YOU'RE GOING TO GIVE HER SOMETHING, AT MOST THREE  
21 OR FOUR DAYS WITH A PAINKILLER, I DON'T KNOW, PERCOCET  
22 WOULD HAVE BEEN THE RIGHT ONE, IT'S VERY POWERFUL, THREE  
23 TO FOUR DAYS WITH APPROPRIATE IMMEDIATE FOLLOW-UP  
24 INCLUDING PSYCHIATRIC CARE. NONE OF THAT HAPPENED.

25 THE LAST THING HE SAYS, SHE SHOULD HAVE  
26 ENLISTED DAVID WHO WAS THERE FOR HER, HE WAS PRESENT.  
27 "DAVID, YOU'RE GOING TO BE A MONITOR. I'M GOING TO GIVE  
28 YOU THE MEDICATIONS. HERE IS THE PRESCRIPTION. YOU

1 ADMINISTER IT TO THE PATIENT AND YOU WATCH HER CAREFULLY.  
2 CONTACT THE PSYCHIATRIST." ALL KINDS OF INSTRUCTIONS.  
3 APPROPRIATE MEASURES THAT SHOULD HAVE BEEN TAKEN THAT WERE  
4 NOT.

5 NOW, DR. WOLFF ON CAUSATION. SO THE FIRST  
6 TWO EXPERTS DEMONSTRATED TO YOU WHAT SHE DID WRONG BOTH BY  
7 AN ACTUAL MISPRACTICE OF MEDICINE AND, OF COURSE,  
8 OMISSION. AND DR. WOLFF SPOKE TO CAUSATION. HIS OPINION  
9 WAS THAT TARA DIED FROM AN INGESTION OF 100 PERCOCET PILLS  
10 PRESCRIBED BY DR. SHAINSKY. AND AS DR. SAFANI, THE  
11 DEFENSE EXPERT CALLED, 100 PERCOCET PILLS IS EQUIVALENT TO  
12 THE TANK. OF COURSE, HE SAID, "WELL, EITHER OF THEM WOULD  
13 HAVE KILLED HER." PERCOCET MUCH STRONGER, PERCOCET IS THE  
14 TANK AND -- BUT, YOU KNOW WHAT, TRAMADOL, ACCORDING TO  
15 DR. SAFANI, WAS LIKE BEING HIT BY A CAR.

16 IT'S AN APT ANALOGY FOR THIS REASON. IF  
17 YOU'RE RUN OVER BY A TANK, YOU'RE DEAD. IF YOU'RE HIT BY  
18 A CAR, THERE'S A PROBABILITY, AT LEAST A CHANCE, A  
19 REASONABLE CHANCE, THAT YOU COULD BE RESUSCITATED, OKAY?

20 LEAVING ASIDE THE FACT THAT DR. WOLFF THEN  
21 PROCEEDED TO DEMONSTRATE THAT SHE WAS NOT A METABOLIZER.  
22 IN ORDER FOR TRAMADOL TO BE EFFECTIVE ANALGESIC IN THE  
23 BODY, THERE HAS TO BE A CHEMICAL REACTION, WHICH I INEPTLY  
24 TRIED TO DIAGRAM FOR YOU, WHERE IT IS CONVERTED INTO THE  
25 METABOLITE NO. 1, WHICH IS THE O.D.T., LET'S CALL IT THAT,  
26 O.D.T., AND THAT HAS 200 TIMES THE EFFICACY OR THE POTENCY  
27 OF TRAMADOL WHICH HAS LOW POTENCY.

28 SO IF SHE'S NOT METABOLIZING THE TRAMADOL --

1 WHAT'S THE EVIDENCE OF THAT? SHE REPORTED IT DIDN'T WORK.  
2 MOST IMPORTANTLY, SHE DIDN'T USE IT. SHE HAD IT FOR 60  
3 DAYS. SHE HAD 60 TABLETS; SHE USED EIGHT AS FAR AS WE CAN  
4 SEE. THIS IS A PERSON IN PAIN. IF SHE HAD BEEN IN PAIN  
5 AND IT HAD BEEN A METABOLIZER, SHE WOULD HAVE TAKEN THE  
6 PILLS.

7 BUT THERE WAS ONE FINAL THING, ONE FINAL  
8 CONCLUSION, SCIENTIFIC EVIDENCE THAT CONFIRMED HIS  
9 HYPOTHESIS THAT SHE WAS NOT A METABOLIZER. WE KNOW FROM  
10 THE MEDICAL EXAMINER'S REPORT THAT SHE HAD, LET'S SEE,  
11 TRAMADOL, 16 MICROGRAMS. THEY LIST THAT AS LETHAL, BUT  
12 THEY'RE ASSUMING SHE'S A METABOLIZER. AND DR. WOLFF  
13 EXPLAINED TO YOU THAT, IN FACT, HE LOOKED AND FOUND THE  
14 LEVELS, CONCENTRATION, OF A METABOLITE, WHICH MEANS IN THE  
15 CHEMICAL REACTION THAT PRODUCES O.D.T., THE POWERFUL  
16 METABOLITE, IS ANOTHER CHEMICAL PRODUCED AND THAT'S CALLED  
17 NORTRAMADOL, WHICH WE ALL AGREE IS INACTIVE.

18 THEY DETECTED THAT AT VERY LOW LEVELS, 0.37  
19 MICROGRAMS. LETHAL DOSE IS 16. AND DR. WOLFF EXPLAINED  
20 THAT TO CONFIRM HIS HYPOTHESIS WHICH WAS BASED ON THE  
21 EVIDENCE, HE LOOKED TO SEE ON ANOTHER CASE OF A FATAL  
22 POISONING BY TRAMADOL -- WHICH WERE RARE, BY THE WAY. YOU  
23 ALSO HEARD EVIDENCE THAT TRAMADOL WAS A RARE CAUSE OF  
24 DEATH. TRAMADOL IN THAT CASE WAS 19 SO IT'S A SIMILAR  
25 LEVEL. LOOK AT THAT, NORTRAMADOL IN THE CASE OF WHERE IT  
26 WAS FATAL WERE LEVELS OF 8.5 MICROGRAMS, 53 PERCENT AS  
27 OPPOSED TO 2.2 PERCENT, OKAY.

28 SO WHAT'S HAPPENING IS IF THE CHEMICAL

1 REACTION DOESN'T OCCUR AND THE O.D.T., THE POWERFUL  
2 ANALGESIC -- WHICH, BY THE WAY, HAS TWO EFFECTS WE'VE  
3 HEARD: IT RELIEVES PAIN AND IT SUPPRESSES BREATHING. AND  
4 THAT'S, OF COURSE, WHAT KILLS YOU. IF WE DON'T HAVE  
5 O.D.T., WE ALSO HAVE VERY LOW LEVELS OF NORTRAMADOL. BY  
6 THE WAY, THIS TESTIMONY WAS NOT CONTRADICTED. DR. WOLFF  
7 WAS NOT CROSS-EXAMINED ON THIS AT ALL. NOR DID THE  
8 DEFENSE EXPERT EVEN ADDRESS IT. SO THERE IT IS. PROOF  
9 POSITIVE.

10 DEFENSE EXPERTS VERY BRIEFLY.  
11 DR. WEINBERGER AND DR. ALEXANIAN TESTIFIED -- I MEAN,  
12 THEIR ATTITUDE SEEMED TO BE, WELL, YOU KNOW, ANYTHING  
13 GOES, ANYTHING SHORT OF ACTUALLY HANDING THE PATIENT OR  
14 HAVING A DIRECT INVOLVEMENT WITH HER SUICIDE WOULDN'T BE  
15 BELOW THE STANDARD OF CARE.

16 I ASKED DR. WEINBERGER -- BY THE WAY, YOU  
17 SAW HIS AFFECT AND HIS DEMEANOR ON THE STAND. DID YOU GET  
18 THE SENSE HE WASN'T -- HE WAS A LITTLE RELUCTANT TO ANSWER  
19 MY QUESTIONS? COULDN'T GET A DIRECT OR STRAIGHT ANSWER  
20 FROM HIM. BUT I FINALLY ASKED HIM, "DO YOU THINK,  
21 DR. WEINBERGER, IT IS OKAY TO PRESCRIBE OPIATES TO A  
22 PATIENT SUFFERING FROM A PSYCHOTIC ILLNESS, 'YES' OR  
23 'NO'?" OF COURSE, HE SAID, "YES." I MEAN HE SAID, "NO,  
24 IT'S NOT OKAY."

25 BUT THEN HE WENT ON TO TELL US THAT IN HIS  
26 VIEW, AND APPARENTLY A VIEW SHARED BY DR. SHAINSKY,  
27 OPIATES, NOT DANGEROUS. IN FACT, HE TOLD ME THAT NARCOTIC  
28 PILLS ARE NO MORE DANGEROUS THAN IF I VISITED HIS HOUSE



1 AND HE OFFERED ME A GLASS OF WINE. REALLY? A GLASS OF  
2 WINE, A COCKTAIL, AS DANGEROUS AS OPIATES? THEY SHARE  
3 SOME QUALITIES, I SUPPOSE. BOTH CAN BE ADDICTIVE.

4 REMEMBER HE ALSO TRIED TO EXPLAIN TO YOU,  
5 REALLY, IN HIS VIEW, YOU KNOW, NO WARNING WAS NEEDED BY  
6 DR. SHAINSKY BECAUSE, YOU KNOW, WITH ANY PRESCRIPTION, YOU  
7 GIVE A PATIENT A PRESCRIPTION, THEY COULD GO ACROSS THE  
8 STREET, AS THEY'RE FILLING IT AT THE PHARMACY, THE  
9 PHARMACY COULD BE ROBBED, AND THEY COULD BE SHOT. ABSURD.

10 DR. ALEXANIAN. IN HIS OPINION, THE STANDARD  
11 OF CARE WAS VIOLATED ONLY IF -- AND THIS WAS HIS ANSWER --  
12 IF THE DOCTOR KNOWS THAT THE PATIENT IS HIGHLY SUICIDAL --  
13 THOSE WERE HIS WORDS -- AT THE TIME THE OPIATES ARE  
14 PRESCRIBED.

15 REALLY? HIGHLY? HOW ABOUT MODERATELY  
16 SUICIDAL? HOW ABOUT CLEAR INDICATIONS OF SUICIDE? NOT  
17 ACCORDING TO DR. ALEXANIAN. AND REALLY, THE IRONY IS, AND  
18 THIS IS IMPORTANT, IF A PATIENT IS AT HIGH RISK, IF  
19 THEY'RE TALKING ABOUT, "I'M GOING TO KILL MYSELF AND I  
20 HAVE A PLAN," WHAT HAPPENS? THAT PATIENT IS  
21 INSTITUTIONALIZED, WHAT WE CALL A 5150. THAT'S THE  
22 WELFARE AND INSTITUTIONS CODE, OKAY.

23 THE PSYCHIATRIST HAS THE POWER TO CALL AND  
24 HAVE THAT PATIENT PUT IN. THAT'S EXACTLY WHAT HAPPENED TO  
25 TARA IN NEW JERSEY IN 2009. WE'RE NOT TALKING ABOUT HIGH  
26 LEVEL. WE'RE TALKING ABOUT WAS IT RESPONSIBLE TO GIVE  
27 THIS YOUNG WOMAN 100 PERCOCET KNOWING SHE HAD BEEN TALKING  
28 ABOUT KILLING HERSELF.

1                   DAMAGES IN THIS CASE. SO LET ME TURN TO  
2 DAMAGES. IF YOU FIND, AS WE BELIEVE YOU SHOULD,  
3 NEGLIGENCE, THAT THE -- IT WAS WELL BELOW THE STANDARD OF  
4 CARE, IT WAS SHOCKING APATHY AND NEGLIGENCE TO GIVE THIS  
5 YOUNG WOMAN 100 PERCOCET KNOWING SHE HAD BEEN TALKING IN  
6 HER OFFICE ABOUT KILLING HERSELF. AND IF YOU FIND, AS YOU  
7 SHOULD, THAT THE 100 PERCOCET WAS A SUBSTANTIAL FACTOR IN  
8 CAUSING HER DEATH, THEN YOU GET TO THE THIRD QUESTION  
9 WHICH IS: WHAT AMOUNT OF MONEY CAN COMPENSATE LINDA  
10 DE ROGATIS AND PETER DE ROGATIS FOR THE LOSS OF THEIR  
11 DAUGHTER'S LOVE, AFFECTION, CARE, ET CETERA?

12                   HOW LONG IS A 29-YEAR-OLD, OTHERWISE HEALTHY  
13 PHYSICALLY, GOING TO LIVE? AND WHAT KIND OF MONEY COULD  
14 COMPENSATE THE PARENTS FOR THE LOSS OF THEIR DAUGHTER'S  
15 LOVE, CARE, COMFORT, COMPANIONSHIP, AND MORAL SUPPORT?  
16 AND WE ALL KNOW AS PARENTS, WHETHER YOU ARE PARENTS OR  
17 WHETHER YOU SOON WILL BE PARENTS, THAT THE WORST NIGHTMARE  
18 FOR ANY PARENT ON THIS PLANET IS LOSING ONE OF YOUR  
19 CHILDREN. HORRIBLE.

20                   SO IT'S AN IMPERFECT REMEDY, AS I SAID IN  
21 THE VOIR DIRE. NO AMOUNT OF MONEY CAN POSSIBLY SUPPORT OR  
22 COMPENSATE THE DE ROGATISES FOR THIS HORRIBLE LOSS, A LOSS  
23 FOR WHICH THEY ARE NOT RESPONSIBLE, OKAY. WE CAN POINT  
24 FINGERS AT DAVID. I'M SURE WE WILL. WE CAN POINT FINGERS  
25 AT DR. BOHN. I'M SURE HE'LL GET BLAMED. BUT LINDA AND  
26 PETER DID EVERYTHING THEY COULD TO PREVENT THIS FROM  
27 HAPPENING AND THEY HAVE LOST THEIR DAUGHTER.

28                   WE SUGGEST RESPECTFULLY IT'S A SUM YOU WOULD

1 FIND REASONABLE UNDER THE CIRCUMSTANCES, BUT \$10 MILLION  
2 WOULD AT LEAST BE A START. SO THAT WOULD BE THE AMOUNT  
3 THAT WE WOULD ASK YOU TO RETURN. OKAY.

4 SO I'M GOING TO CLOSE NOW BECAUSE IN A  
5 MINUTE MR. BLESSEY, VERY ABLE ATTORNEY AS YOU'VE SEEN, IS  
6 GOING TO GET UP AND HE'S GOING TO TELL YOU WHY YOU  
7 SHOULDN'T FIND THAT DR. SHAINSKY WAS NEGLIGENT AND WHY YOU  
8 SHOULD FIND THAT HER OBVIOUS NEGLIGENT CONDUCT DID NOT  
9 CAUSE THE DEATH.

10 SO I'M GOING TO POSE TEN QUESTIONS FOR  
11 MR. BLESSEY. I THINK IN MANY SENSES WE HAVE MORE  
12 QUESTIONS THAN ANSWERS. BUT I RESPECTFULLY SUBMIT TO YOU  
13 THAT MR. BLESSEY NEEDS TO ANSWER THESE TEN QUESTIONS. AND  
14 IF HE CAN'T, HE CAN'T EXPLAIN WHY INEXPLICABLE THINGS  
15 HAPPENED BY A TRAINED PROFESSIONAL, THEN NEGLIGENCE IS THE  
16 ONLY CONCLUSION.

17 SO QUESTION NO. 1: WHY WAS IT THAT LINDA  
18 DE ROGATIS HAD TO BE THE FIRST PERSON TO INSIST THAT  
19 DR. SHAINSKY BE TOLD ABOUT ALL THE PRESCRIPTIONS? WHY WAS  
20 IT THAT DR. SHAINSKY DIDN'T KNOW? WELL, SHE NEVER  
21 REQUESTED ANYONE'S PRIOR CHARTS. SHE SAID, "WELL, I ASKED  
22 THE PATIENT AND SHE DESCRIBED WHAT SHE WAS TAKING." BUT  
23 WE ALL KNOW PERFECTLY WELL THAT PATIENTS DON'T ALWAYS  
24 FULLY SELF-REPORT. THEY DON'T ALWAYS REMEMBER. AND,  
25 INDEED, DR. SHAINSKY KNEW FROM THE FIRST VISIT THAT TARA  
26 WASN'T BEING FULLY FORTHCOMING IN HER ANSWERS. HOW HARD  
27 WOULD IT HAVE BEEN TO SAY, "BRING ALL THE PRESCRIPTIONS  
28 IN"? WHY WAS IT THAT HAD TO BE LINDA?

1                   QUESTION NO. 2: WHY DID DR. SHAINSKY NEVER  
2 SPEAK TO DR. BOHN DURING TARA'S LIFE? SHE PLACED ONE CALL  
3 ON THE DAY -- OR THE DAY BEFORE SHE DIED, SUICIDAL  
4 IDEATION TALK WAS LEFT IN THE MESSAGE, AND IT WASN'T EVEN  
5 MARKED URGENT. SHE NEVER SPOKE TO THE PSYCHIATRIST. IF  
6 THAT HAD HAPPENED, IF SHE'D SPOKEN TO DR. BOHN AND HE'D  
7 SAID, AS HE WOULD HAVE, "DO NOT RECOMMEND OPIATES TO THIS  
8 PATIENT, SHE HAS SERIOUS ISSUES," SHE'D BE ALIVE.

9                   QUESTION NO. 3: WHY DID DR. SHAINSKY REALLY  
10 SEE NO REASON TO CHECK WITH DR. BOHN BEFORE PRESCRIBING AN  
11 ANTIDEPRESSANT, CYMBALTA, BUT THOUGHT THAT HE NEEDED TO  
12 KNOW IF SHE COULD TAKE HIM -- TAKE HER OFF CYMBALTA?  
13 THAT'S HER STORY. "THAT'S WHY I WAS CALLING DR. BOHN."  
14 DOES THAT MAKE ANY SENSE TO YOU? WOULDN'T YOU THINK THAT  
15 IF SHE WANTED TO COORDINATE WITH A PSYCHIATRIST, SHE'D ASK  
16 HIM, "IS IT OKAY TO PUT HER ON CYMBALTA?" THEN IT WOULD  
17 MAKE SENSE TO CALL IF SHE WAS TAKING HER OFF. DIDN'T  
18 HAPPEN.

19                   WHICH LEADS US TO QUESTION NO. 4: WHY DID  
20 DR. SHAINSKY LIE TO YOU, RESPECTFULLY, ABOUT THE SUBJECT  
21 OF THE CALL TO DR. BOHN? THE ONLY CONCLUSION YOU CAN DRAW  
22 FROM THE EVIDENCE IN FRONT OF YOU IS THAT THE PURPOSE OF  
23 THE CALL TO BOHN IN THE MIDDLE OF THIS MEETING, THIS  
24 TURBULENT MEETING ON MARCH 22ND, WAS TO TELL DR. BOHN,  
25 "YOUR PATIENT IS TALKING ABOUT KILLING HERSELF AND I'M  
26 CONCERNED AND I WANT YOU TO KNOW SO YOU CAN TAKE  
27 APPROPRIATE MEASURES." OKAY? WE'VE SEEN THE TELEPHONE  
28 MESSAGE. THERE'S NO MENTION OF CYMBALTA. BOHN DOESN'T

1 RECALL CYMBALTA. IT WAS A LIE. WHY DO PEOPLE LIE?  
2 PEOPLE LIE WHEN THEY HAVE SOMETHING TO HIDE. SO SEE IF  
3 MR. BLESSEY CAN EXPLAIN TO YOU WHY DR. SHAINSKY LIED ABOUT  
4 THAT CALL.

5 QUESTION NO. 5: WHY WOULD DR. SHAINSKY CALL  
6 THE PSYCHIATRIST TO TELL HIM -- THIS IS HER STORY -- THAT  
7 HIS PATIENT WAS NOT SUICIDAL? "I LEAVE IN THE MIDDLE OF  
8 THE MEETING, I WANT TO CALL THE PSYCHIATRIST BECAUSE TO  
9 TELL HIM I'M NOT CONCERNED. SHE DENIED SUICIDAL INTENT."  
10 THAT'S WHAT SHE WOULD HAVE YOU BELIEVE. OKAY? THAT'S  
11 WHAT SHE WOULD HAVE YOU BELIEVE. IT'S FOOLISH.

12 QUESTION NO. 6 -- OKAY, I DON'T HAVE 10; I  
13 HAVE 11. I TRIED TO CUT MY LIST DOWN TO 10, BUT I  
14 COULDN'T DO IT. YOU MAY HAVE YOUR OWN QUESTIONS FOR  
15 MR. BLESSEY. SO I HAVE PADDED IT WITH ONE.

16 QUESTION NO. 6: WHY DID DR. SHAINSKY NEVER  
17 ASK TO SEE OR OBTAIN TARA'S PRIOR MEDICAL HISTORY, WHICH  
18 WAS COMPLICATED, WHICH WAS DETAILED, WHICH WOULD HAVE  
19 INCLUDED ALL THE MEDICATIONS AND THE PSYCHIATRIC  
20 MEDICATIONS? WHY DID SHE NOT GET THAT FROM BOHN? REALLY,  
21 WHY DID SHE NOT AT LEAST GET IT FROM DR. RAMIN WHO WAS THE  
22 PERSON WHO REFERRED THE PATIENT TO HER? SHE NEVER GOT HIS  
23 FILE. IF SHE HAD, SHE WOULD HAVE KNOWN ABOUT THE NORCO  
24 THAT HE WAS GIVING HER.

25 QUESTION NO. 7: WHY DID DR. SHAINSKY REALLY  
26 KEEP SUCH APPALLING MEDICAL RECORDS? WE HEARD REPEATEDLY  
27 ON THE STAND, "WELL, YOU KNOW, WE WERE TRANSITIONING TO  
28 ELECTRONIC," BUT HOW MANY TIMES CAN THAT EXCUSE JUSTIFY

1 POOR MEDICAL PRACTICES? SO -- OR MORE LIKELY, DID SHE NOT  
2 WANT TO KEEP RECORDS OF THE NARCOTICS SHE WAS PROVIDING TO  
3 THIS PATIENT?

4 QUESTION NO. 8: WHAT WAS IT ABOUT THE  
5 TURBULENT MARCH 22 VISIT THAT FINALLY CAUSED DR. SHAINSKY  
6 TO REFER THE PATIENT TO A PSYCHIATRIST? LOOK AT HER  
7 NOTES. LOOK AT HER PROGRESS NOTES. ON ALL THREE  
8 OCCASIONS, CLEAR CONCERN ABOUT PSYCHIATRIC ISSUES. ONLY  
9 ON MARCH 22ND DOES SHE SAY, "REFERRAL TO PSYCHIATRIST."  
10 ONLY IN THE MIDDLE OF THE MARCH VISIT 22 MEETING DID SHE  
11 ACTUALLY TRY TO CALL DR. BOHN. WHAT WAS IT ABOUT WHAT WAS  
12 GOING ON? WAS IT TARA'S DISHEVELED APPEARANCE WHICH WAS  
13 ALARMING? WAS IT HER TALK OF IMMINENT SUICIDE? WAS IT  
14 HER CONVERSATION WITH DAVID? SOMETHING CALLED HER TO CALL  
15 THE PSYCHIATRIST THAT DAY AND MAKE A REFERRAL, "TARA, YOU  
16 SHOULD SEE A PSYCHIATRIST." WHAT WAS IT? YOU ANSWER THAT  
17 QUESTION.

18 THEN, OF COURSE, QUESTION NO. 9: IF THE  
19 PATIENT WAS TRULY IN NEED OF PAIN RELIEF ON MARCH 22, WHY  
20 DID DR. SHAINSKY NOT IMPLEMENT LESS DANGEROUS  
21 ALTERNATIVES? DR. RUDNICK SPOKE CLEARLY TO THIS.  
22 DR. BLUESTONE AS WELL. IF THE PATIENT IS IN PAIN, THERE  
23 WERE ALTERNATIVES. THERE WERE PROPHYLACTIC MEASURES THAT  
24 COULD HAVE BEEN IMPLEMENTED. OKAY? YOU DON'T GIVE 100 --  
25 YOU DON'T GIVE A MONTH'S SUPPLY. YOU GIVE THREE OR FOUR  
26 DAYS' SUPPLY. YOU DEPUTIZE DAVID. YOU SAY, "DAVID,  
27 YOU'RE HER CARETAKER. YOU'RE HERE TODAY. YOU TAKE THE  
28 DRUGS. I'M GIVING THE PRESCRIPTION TO YOU. YOU

1 ADMINISTER THE PATIENT. KEEP AN EYE ON HER." NONE OF  
2 THAT HAPPENED AND, OF COURSE, WHAT HAPPENED THEN, DAVID  
3 LEFT THE MEETING THINKING, "WELL, THE PROFESSIONAL ISN'T  
4 CONCERNED, YOU KNOW, I'M NOT CONCERNED." THERE WERE  
5 MEASURES THAT COULD HAVE BEEN IMPLEMENTED, ALTERNATIVES  
6 THAT WERE NOT. WHY?

7 AND THEN 10: IN LIGHT OF EVERYTHING THAT  
8 TRANSPIRED ON MARCH 22ND, INCLUDING SUICIDAL TALK, THE  
9 PSYCH REFERRAL, WHY WOULD DR. SHAINSKY PROVIDE 100  
10 PERCOCET PILLS TO TARA AT THE HIGHEST POSSIBLE STRENGTH?  
11 OKAY. SHE'S GIVING A LOADED GUN TO SOMEONE THAT SHE KNOWS  
12 IS AT LEAST THINKING ABOUT IT.

13 AND THEN FINALLY: DID DR. SHAINSKY REALLY  
14 NOT -- YOU HEARD MR. BLESSEY'S OPENING. I'M SURE HE'S  
15 GOING TO COME BACK TO YOU AND SAY, "WELL, YOU KNOW, SHE  
16 DIDN'T HAVE AN INKLING. PEOPLE DON'T KNOW WHEN OTHER  
17 PEOPLE ARE GOING TO COMMIT SUICIDE." AND I SUPPOSE THAT'S  
18 TRUE. BUT ASK YOURSELF, SEE IF MR. BLESSEY EXPLAINS THIS:  
19 DID DR. SHAINSKY REALLY NOT HAVE AN INKLING ON THAT DAY  
20 THAT HER PATIENT WAS SUICIDAL? NOT AN INKLING, NO  
21 CONCERN? REALLY. THANK YOU, YOUR HONOR.

22 THE COURT: ALL RIGHT. MR. SMITH, SHALL WE TAKE  
23 OUR MORNING RECESS?

24 JUROR NO. 4: YES.

25 THE COURT: LET'S MAKE IT 10 MINUTES, THOUGH. I'D  
26 LIKE TO GET STARTED A 10:25, IF YOU DON'T MIND, OKAY?  
27 AGAIN, PLEASE REMEMBER THE ADMONITION. THE COURT'S IN  
28 RECESS.

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(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 IN PLACE, PARTIES ARE PRESENT, LAWYERS ARE  
PRESENT. ALL RIGHT. DEFENSE, CLOSING ARGUMENT?

MR. BLESSEY: THANK YOU, YOUR HONOR.

COUNSEL, MR. AND MRS. DE ROGATIS,  
DR. SHAINSKY. GOOD MORNING, LADIES AND GENTLEMEN OF THE  
JURY.

LET ME START ALSO BY THANKING YOU ALL FOR  
YOUR SERVICE. I THINK I MENTIONED IT IN MY OTHER  
OPPORTUNITY TO TALK WITH YOU I'VE BEEN IN YOUR SEATS ON  
THREE OCCASIONS. ONE OF THE OCCASIONS WAS A FAIRLY HIGH  
PROFILE CASE WHERE I WAS A JUROR. IT WENT ON FOR THREE  
WEEKS. I KNOW FIRSTHAND YOUR PROFESSIONAL AND PERSONAL  
SACRIFICES YOU MADE. SO ON BEHALF OF DR. SHAINSKY AND ALL  
THE PARTIES, I THANK YOU.

LADIES AND GENTLEMEN, LET ME REMIND YOU THAT  
YOU'VE TAKEN AN OATH IN THIS COURTROOM TO APPLY THE LAW AS  
INSTRUCTED BY HIS HONOR TO THE FACTS AND THE EVIDENCE IN  
THIS CASE.

YOU HEARD NOTHING FROM MR. NEWHOUSE ABOUT  
THE LAW, YET YOUR DUTY IS TO APPLY THE LAW AS YOU SEE FIT



1 THAT APPLIES TO THE FACTS AND EVIDENCE IN THIS CASE.  
2 YOU'RE GOING TO HEAR A LITTLE DIFFERENT STYLE, A LITTLE  
3 DIFFERENT APPROACH. I WON'T TAKE OVER AN HOUR. I'M GOING  
4 TO TALK A LITTLE BIT ABOUT SOME GENERAL PRINCIPLES OF LAW  
5 AND THEN I'M GOING TO GET INTO THE LAW THAT APPLIES TO THE  
6 QUESTIONS THAT YOU'RE HERE TO ANSWER, OKAY? SO BEAR WITH  
7 ME.

8           YOU WILL REMEMBER BACK WHEN HIS HONOR READ  
9 YOU THE VERY FIRST INSTRUCTIONS. AND HE SAID TO YOU IN  
10 THAT FIRST LONG INSTRUCTION, HE READ YOU A PARAGRAPH WHICH  
11 SAID DO NOT INCLUDE SYMPATHY IN YOUR CONSIDERATION OF YOUR  
12 VERDICT, OR WORDS TO THAT EFFECT. SO IF THERE'S ANYBODY,  
13 AND I DOUBT THERE IS, SITTING THERE THINKING THESE POOR  
14 FOLKS, WHAT THEY WENT THROUGH, TO GO -- FIRST OF ALL, LOSE  
15 THEIR DAUGHTER AND THEN HAVE TO GO THROUGH TRIAL, DESERVE  
16 SOMETHING FOR THEIR EFFORT. YOU ARE NOT, LADIES AND  
17 GENTLEMEN, TO CONSIDER SYMPATHY IN REACHING YOUR VERDICT  
18 IF YOU WITHHOLD -- AND UPHOLD, RATHER, YOUR OATH TO FOLLOW  
19 THE LAW.

20           THERE'S ANOTHER JURY INSTRUCTION WHICH  
21 RELATES AND IT SAYS YOU ARE NOT TO CONSIDER GRIEF, SORROW,  
22 AND ANGUISH IN CONSIDERING YOUR VERDICT.

23           LET'S TALK ABOUT A FEW JURY INSTRUCTIONS  
24 THAT ARE PERTINENT, AGAIN, TO THE OVERALL CASE. THIS IS  
25 C.A.C.I. -- WHEN I SAY "C.A.C.I.," IT'S THE NUMBER OF THE  
26 INSTRUCTION. C.A.C.I. BASICALLY STANDS FOR THE CALIFORNIA  
27 JURY INSTRUCTION 200. YOU'RE GOING TO HAVE THESE IN THE  
28 ROOM, IN YOUR DELIBERATION ROOM. I'M NOT GOING TO GO

1 THROUGH EVERY WORD HERE, BUT BASICALLY THE POINT IS THAT  
2 THE PLAINTIFFS HAVE MADE A VERY SERIOUS ALLEGATION AGAINST  
3 DR. SHAINSKY THAT SHE MALPRACTICED.

4 IT IS THEIR BURDEN TO CONVINCING YOU THAT SHE  
5 WAS NEGLIGENT, AND IF THEY HAVEN'T CONVINCED YOU, THEN  
6 OBVIOUSLY THE VERDICT MUST BE AGAINST HER.

7 IF YOU'RE UNDECIDED, SECOND PARAGRAPH, IF  
8 YOU'RE UNDECIDED, NEITHER SIDE CONVINCING YOU ONE WAY OR  
9 THE OTHER, AGAIN, THEY FAIL THEIR BURDEN. I'M GOING TO  
10 KEEP COMING BACK TO IT, SO I DON'T NEED TO SHOW YOU THE  
11 INSTRUCTION. I'M GOING TO ILLUSTRATE WHY THE PLAINTIFFS  
12 DIDN'T COME CLOSE TO SATISFYING THEIR BURDEN IN THIS CASE.  
13 JUST KIND OF WENT THROUGH THIS.

14 THE TWO ISSUES THEY HAVE THE BURDEN TO  
15 PROVE: WAS DR. SHAINSKY'S CARE UNREASONABLE UNDER THE  
16 CIRCUMSTANCES OF THIS CASE? AND DID -- WAS DR. SHAINSKY'S  
17 CARE CAUSED -- DID HER CARE CAUSE THE DEATH BY SUICIDE?  
18 THOSE ARE THE ISSUES. WE'LL GET BACK TO THOSE IN A  
19 MINUTE. ONCE AGAIN, IF THE PLAINTIFFS FAIL THEIR BURDEN,  
20 THE LAW TELLS YOU YOU MUST RETURN A VERDICT IN FAVOR OF  
21 DR. SHAINSKY.

22 NOW, HERE IS ANOTHER INSTRUCTION WHICH I  
23 WANT YOU TO PAY CAREFUL ATTENTION TO BECAUSE IT WAS READ  
24 TO YOU AND IT'S PART OF THE INSTRUCTIONS THAT YOU WILL  
25 APPLY TO THIS CASE.

26 LADIES AND GENTLEMEN, IT READS:

27 "YOU MAY CONSIDER THE ABILITY OF EACH  
28 PARTY TO PROVIDE EVIDENCE. IF A PARTY

1           PROVIDED WEAKER EVIDENCE WHEN IT COULD HAVE  
2           PROVIDED STRONGER EVIDENCE, YOU," LADIES AND  
3           GENTLEMEN, "MAY DISTRUST THAT EVIDENCE."

4                   WHAT AM I TALKING ABOUT? DO YOU THINK THAT  
5           MR. NEWHOUSE AND MS. MC BROOM DON'T HAVE THE SAME ABILITY  
6           TO GO OUT AND RETAIN EXPERTS IN A CASE LIKE THIS? WELL,  
7           LET'S START WITH THE FIRST ONE.

8                   WHY WOULD YOU CALL DR. WOLFF INTO THIS  
9           COURTROOM TO TRY TO TELL YOU THAT TRAMADOL WAS NOT AT A  
10          LETHAL LEVEL DESPITE WHAT THE CORONER SAID? WHY WOULD YOU  
11          DO THAT? LET'S REVIEW DR. WOLFF. DR. WOLFF RETIRED IN  
12          1995 AS A CHEMICAL PHARMACEUTICAL PERSON.

13                   WHAT WAS HIS CAREER? HIS CAREER WAS IN  
14          DEVELOPING PATENTS FOR DIFFERENT MEDICATIONS WHICH DID NOT  
15          INCLUDE NARCOTICS, OPIATES, THOSE KIND OF MEDICATIONS.

16                   HE HAD NEVER TESTIFIED IN A MEDICAL  
17          MALPRACTICE CASE. ASK YOURSELF WHY. THE CLEAR ANSWER IS  
18          HE'S NOT A CLINICIAN. HE'S NEVER SEEN A PATIENT IN HIS  
19          LIFE. WHY WOULD THEY CALL HIM OF ALL PEOPLE? HE'S NEVER  
20          TESTIFIED IN A CASE ABOUT TOXICOLOGY IN THE CAUSE OF  
21          DEATH. NOT ONCE. THIS WAS HIS FIRST ATTEMPT. WHY DID HE  
22          SPEND 100 HOURS TRYING TO FIND SOMETHING THAT WOULD  
23          SUPPORT HIS OPINION? REMEMBER DR. SAFANI WAS ASKED, "HOW  
24          MUCH TIME DID YOU SPEND LOOKING UP ARTICLES?"

25                   "ABOUT 5 HOURS."

26                   I PUT THE NUMBERS UP.

27                   THE OTHER THING ABOUT DR. WOLFF IS REMEMBER  
28          HE ADVERTISES FOR HIS TIME AS AN EXPERT IN JURISPRO AND HE

1 TOLD YOU, HE TOLD YOU HE HOPED TO GET A GOOD RETURN ON HIS  
2 MONEY. I THINK HE DID. DON'T YOU? \$40,000 TO COME IN  
3 HERE AND TRY AND TELL YOU THAT TRAMADOL, ALTHOUGH IT WAS  
4 AT A LETHAL LEVEL, DIDN'T CAUSE THE DEATH IN THIS CASE.  
5 USE YOUR COMMON SENSE.

6 ONE OTHER POINT: WHEN WAS DR. WOLFF  
7 RETAINED? 14 MONTHS AFTER THEY FILED THE LAWSUIT. COMMON  
8 SENSE. WOULDN'T YOU EXPECT, IF YOU WERE GOING TO ACCUSE  
9 SOMEBODY OF MEDICAL MALPRACTICE, THAT THEY WOULD HAVE MET  
10 WITH THEIR EXPERTS, MADE SURE THEY HAD A CASE BEFORE THEY  
11 FILED IT? IT'S KIND OF LIKE, IF I COULD MAKE AN ANALOGY,  
12 TAKING A SQUARE PEG AND TRYING TO PUT IT IN A ROUND HOLE.  
13 WE'LL MAKE THIS ALLEGATION AND WE'LL GO OUT EVENTUALLY AND  
14 FIND AN EXPERT WHO'S QUALIFIED TO RENDER AN OPINION.

15 NOW, ANOTHER POINT THAT I WANT TO GO OVER  
16 HERE. WHAT ABOUT THE CONTRADICTIONARY OPINIONS OF THE  
17 PLAINTIFFS' OWN EXPERTS? REMEMBER, YOU MAY DISTRUST  
18 WEAKER EVIDENCE. LET'S TALK ABOUT THE EXPERTS.

19 WE HAVE DR. RUDNICK, THE PSYCHIATRIST, WHO  
20 TOLD YOU, AT LEAST CONCEDED TO YOU, HE HAD FOUR PATIENTS  
21 OF HIS COMMIT SUICIDE. TWO OF THEM WERE UNDER HIS ACTIVE  
22 CARE, YET HE SURE WASN'T NEGLIGENT. YET HE WAS MORE THAN  
23 WILLING TO BLAME DR. SHAINSKY FOR AN IMPULSIVE ACT THAT  
24 COULD NOT HAVE BEEN PREDICTED.

25 NOW, THINK ABOUT THIS. UNDER MR. NEWHOUSE'S  
26 DIRECT EXAM, THE PSYCHIATRIST, DR. RUDNICK, SAID, "I HAD  
27 NO PROBLEM IN TERMS OF STANDARD OF CARE OF DR. SHAINSKY ON  
28 THE FIRST VISIT AND ON THE SECOND VISIT, NONE." MEANING

1 HE WAS NOT CRITICAL OF THE PRESCRIPTION FOR 100 TABLETS OF  
2 NORCO. YET HE'S CRITICAL OF THE PRESCRIPTION OF THE 100  
3 PERCOCET. DOES THAT MAKE SENSE? LET'S GO ON.

4 CLEARLY, LIKE I SAID, HE WAS CRITICAL OF THE  
5 POTENTIALLY LETHAL DOSE OF PERCOCET ON MARCH 22ND. DO YOU  
6 REMEMBER WHAT HE TOLD US? HE WAS OKAY WITH THE FOUR-DAY  
7 SUPPLY OF PERCOCET. YOU KNOW NOW FROM DR. SAFANI, WHICH  
8 WAS NOT REFUTED BY ANYBODY, THAT A FOUR-DAY SUPPLY IS  
9 EQUALLY LETHAL. SO DOES IT MAKE SENSE? WEAKER EVIDENCE,  
10 YOU MAY DISTRUST IT.

11 NOW, LAST POINT AS TO DR. RUDNICK. HE COMES  
12 INTO COURT, I THINK MR. NEWHOUSE TRIED TO INFER HE WAS  
13 CRITICAL OF THE PHONE CALL SOMEHOW BEING BELOW THE  
14 STANDARD OF CARE. HIS HONOR READ YOU THE DEPOSITION JURY  
15 INSTRUCTION. DEPOSITION TESTIMONY IS AS IF IT'S BEING  
16 GIVEN HERE IN COURT, IT'S UNDER OATH. WE WERE TRYING TO  
17 FIGURE OUT FROM DR. RUDNICK, MS. TAZZARA, MY ASSOCIATE,  
18 WAS TRYING TO FIGURE OUT WHAT IS YOUR OPINION ABOUT THIS  
19 PHONE CALL ISSUE? LET ME READ TO YOU WHAT WAS READ TO YOU  
20 IN COURT.

21 "CAN YOU EXPLAIN TO ME WHAT KIND OF  
22 INTERVENTION YOU WERE TALKING ABOUT? I THINK  
23 YOU WERE TALKING ABOUT -- TALKING ABOUT IT IN  
24 THE CONTEXT OF DR. SHAINSKY BEING REQUIRED TO  
25 GET SOME COMMUNICATION WITH A PSYCHIATRIST.  
26 TELL ME SPECIFICALLY WHAT WAS REQUIRED."

27 ANSWER FROM DR. RUDNICK: "I THINK  
28 CONTACT WITH A PSYCHIATRIST NO LATER THAN THE

1 FOLLOWING DAY AS LONG AS SHE'S BEING  
2 ACCOMPANIED THROUGH THE NIGHT WOULD BE WHAT I  
3 WOULD CONSIDER URGENT AND NECESSARY  
4 INTERVENTION UNDER THE CIRCUMSTANCES THAT  
5 WERE PRESENT."

6 HE'S OKAY WITH DR. SHAINSKY NOT BOTHERING TO  
7 CALL UNTIL THE FOLLOWING DAY.

8 LET ME BRING UP ONE ANOTHER POINT ABOUT  
9 DR. RUDNICK. IF HE'S OKAY WITH FEBRUARY 20 AND IF HE'S  
10 OKAY WITH MARCH 1 IN TERMS OF THE STANDARD OF CARE BEING  
11 MET BY DR. SHAINSKY, DOESN'T THAT CONTRADICT  
12 DR. BLUESTONE'S OPINION THAT SHE HAD TO PICK UP THE PHONE  
13 RIGHT AWAY AND CALL THE PSYCHIATRIST? THIS IS THEIR  
14 PSYCHIATRIST SAYING THERE WAS NO NEED TO DO THAT.

15 NOW LET'S TALK ABOUT DR. BLUESTONE.  
16 DR. BLUESTONE WAS THE GENTLEMAN WHO SAID THIS PATIENT  
17 DIDN'T HAVE FIBROMYALGIA, EVEN THOUGH HE TOLD YOU THREE  
18 OPTIONS: PSYCHOLOGICALLY INDUCED GENERALLY WIDE-SPREAD  
19 PAIN, FIBROMYALGIA, OR A COMBINATION OF BOTH. HE DIDN'T  
20 SAY IT HAD TO BE ONE OR THE OTHER, BUT THAT'S NOT EVEN THE  
21 POINT.

22 HE ALSO SAID THAT OPIATES WERE NOT TO BE  
23 PRESCRIBED FOR A PATIENT LIKE THIS. WELL, YOU HEARD  
24 DR. SPIEGEL PRESCRIBED OPIATES. DR. RAMIN PRESCRIBED  
25 OPIATES ON TWO OCCASIONS. DR. RUDNICK SAID HE WAS OKAY,  
26 REMEMBER, TO GIVE HER A FOUR-DAY SUPPLY OF OPIATES.  
27 DR. STARK, THE EXPERT THEY DIDN'T CALL -- WE'LL GET INTO  
28 THAT IN A MINUTE -- SAID IT WAS OKAY TO GIVE OPIATES.

1 DR. WEINBERGER AND DR. AUDELL -- REMEMBER DR. AUDELL? SHE  
2 WAS THE PAIN SPECIALIST THAT DR. BLUESTONE REFERS TO.  
3 APPROPRIATE TO GIVE OPIATES. AND DR. SHAINSKY.

4 LET ME, WHILE WE'RE ON THIS SLIDE, LET ME  
5 BRING UP ONE POINT. THIS LOADED GUN CONCEPT, REMEMBER, 16  
6 OR MORE PERCOCET OR OPIATES ARE LETHAL, AND THAT'S THE  
7 EVIDENCE IN THIS CASE THROUGH DR. SAFANI. DID DR. SPIEGEL  
8 GIVE MS. DE ROGATIS A LOADED GUN WHEN HE PRESCRIBED 20  
9 TABLETS OF NORCO? DID DR. RAMIN HAND MS. DE ROGATIS A  
10 LOADED GUN WHEN HE PRESCRIBED 30 TABLETS TWICE?

11 DID DR. BOHN RECOGNIZE THAT SHE WAS ON NORCO  
12 AND, REMEMBER, PRESCRIBED LUNESTA, AMBIEN, AND SEROQUEL.  
13 THEY WERE ALL FOUND AT TOXIC LEVELS IN HER BLOOD. DID HE  
14 GIVE HER THREE LOADED GUNS? USE YOUR COMMON SENSE.

15 WHAT'S HAPPENING WITH THESE PRESCRIPTIONS IS  
16 THEY ARE GIVING THE PATIENT -- DR. BOHN TESTIFIED TO  
17 THIS -- MEDICATION, IF TAKEN AS PRESCRIBED, IS GOING TO  
18 HELP HER. IT'S GOING TO HELP HER PAIN, IT'S GOING TO HELP  
19 REDUCE HER PSYCHOLOGICAL ISSUES, AND MINIMIZE HER RISK OF  
20 TALKING HER OWN LIFE.

21 NOW, I THINK I BROUGHT THIS UP EARLIER. I  
22 WON'T GO OVER IT IN TOO MUCH DETAIL. OF COURSE,  
23 DR. BLUESTONE INSISTED SHE HAD TO PICK UP THE PHONE AND  
24 GET AHOLD OF DR. BOHN ON THE FIRST, OR CERTAINLY NO LATER  
25 THAN THE SECOND VISIT. DR. RUDNICK, AGAIN, THEIR  
26 PSYCHIATRIST, SAYS THERE ARE NO CRITICISMS OF THE STANDARD  
27 OF CARE OF DR. SHAINSKY ON THE FIRST OR SECOND VISIT. IN  
28 FACT, HE NEVER RENDERED A CRITICISM ABOUT HER NEEDING TO

1 CALL DR. BOHN ON THE FIRST OR SECOND VISIT.

2 NOW, HERE IS AN INTERESTING POINT FOR YOU.  
3 AGAIN, WEAKER EVIDENCE YOU MAY DISTRUST. YOU HEARD ABOUT  
4 DR. STARK. THAT WAS THEIR PAIN MANAGEMENT SPECIALIST  
5 EXPERT THAT THEY RETAINED IN THIS CASE WHO HAD GIVEN A  
6 DEPOSITION.

7 WHY DID THEY NOT CALL HIM AND HAVE HIM  
8 TESTIFY LIKE THE OTHER THREE EXPERTS? WHAT HE SAID, AND  
9 YOU HEARD THIS THROUGH DR. AUDELL, BECAUSE IN HIS  
10 DEPOSITION HE TESTIFIED UNDER OATH THAT DR. SHAINSKY MET  
11 THE STANDARD OF CARE IN A NUMBER OF WAYS -- THIS IS THEIR  
12 EXPERT, NOT MINE -- THAT SHE APPROPRIATELY EVALUATED THE  
13 PATIENT AND DIAGNOSED FIBROMYALGIA. THEIR EXPERT  
14 CONTRADICTING DR. BLUESTONE THAT SHE APPROPRIATELY  
15 PRESCRIBED, WITHIN THE STANDARD OF CARE, IN OTHER WORDS,  
16 CYMBALTA AND NORCO FOR THE PATIENT'S PAIN COMPLAINT. AND  
17 THAT SHE APPROPRIATELY RECOGNIZED THAT NORCO, AT LEAST UP  
18 UNTIL THE LAST VISIT, WAS APPROPRIATELY EFFECTIVE  
19 MEDICATION TO CONTROL HER PAIN.

20 LADIES AND GENTLEMEN, MS. MC BROOM AND  
21 MR. NEWHOUSE'S EXPERT DIRECTLY CONTRADICTED THEIR OTHER  
22 EXPERT. WHY DO YOU THINK THEY DIDN'T CALL HIM TO TESTIFY?

23 THIS IS A DIFFERENT INSTRUCTION, DIFFERENT  
24 ISSUE. WITNESSES EVALUATING WITNESSES. I'M NOT GOING TO  
25 GO THROUGH THE WHOLE THING. THERE ARE POINTS THAT THE  
26 INSTRUCTION MAKES OUT AS HOW DID THE WITNESS LOOK, ACT,  
27 AND SPEAK WHILE TESTIFYING? I MEAN, YOU ALL HAVE YOUR OWN  
28 IMPRESSIONS, BUT WHEN I THINK ABOUT THE Demeanor ON THE



1 WITNESS STAND OF DR. WOLFF, DR. RUDNICK, DR. BLUESTONE,  
2 COMPARED TO THE DEFENSE EXPERTS, I PERCEIVED A MAJOR  
3 DIFFERENCE. THE DEFENSE EXPERTS WERE COMMON SENSE  
4 ORIENTED, THEY WERE ANSWERING QUESTIONS DIRECTLY, AND I  
5 DIDN'T HEAR MR. NEWHOUSE READ FROM ONE DEPOSITION TO  
6 CONTRADICT THEIR OPINION, NOT ONE.

7 DID YOU NOTICE THAT DR. RUDNICK -- I DON'T  
8 KNOW HOW MANY OF YOU SAW WHAT WAS GOING ON, BUT AFTER I  
9 READ FROM HIS DEPOSITION THREE OR FOUR OCCASIONS AND HE  
10 WAS EMBARRASSED, HE TURNED KIND OF RED. HE WAS  
11 EMBARRASSED. AND I WAS SHAKING MY HEAD AND HE TRIED TO  
12 TAUNT ME BY SHAKING HIS HEAD BACK. I THINK HE KNEW HE WAS  
13 CAUGHT. I DON'T KNOW HOW MANY OF YOU SAW THAT, BUT IT WAS  
14 INTERESTING BEHAVIOR TO SEE.

15 NOW, THERE'S ANOTHER PART OF THIS SAME  
16 INSTRUCTION, IF YOU DECIDE THAT A WITNESS LIKE DR. RUDNICK  
17 DELIBERATELY TESTIFIED UNTRUTHFULLY ABOUT SOMETHING  
18 IMPORTANT, YOU MAY CHOOSE NOT TO BELIEVE ANYTHING THAT  
19 WITNESS SAID. AND THE INSTRUCTION GOES ON TO TALK A  
20 LITTLE BIT ABOUT MORE ABOUT HOW MUCH YOU MAY WANT TO  
21 BELIEVE OR NOT.

22 OKAY. THOSE ARE SOME OF THE GENERAL  
23 INSTRUCTIONS THAT I BELIEVE ARE APPLICABLE TO THIS CASE IN  
24 YOUR ANALYSIS.

25 NOW, LET'S GO TO THE NEXT PHASE AND THAT IS:  
26 WHAT ARE THE SPECIFIC QUESTIONS YOU'RE GOING TO BE ASKED  
27 TO ANSWER ON THE VERDICT FORM? THE FIRST QUESTION -- HIS  
28 HONOR READ THIS TO YOU YESTERDAY. THE FIRST QUESTION WAS:

1 WAS DEFENDANT DR. SHAINSKY NEGLIGENT IN HER CARE AND  
2 TREATMENT OF TARA DE ROGATIS? THAT'S THE FIRST QUESTION.  
3 THERE'S SOME INSTRUCTIONS DOWN BELOW THAT IF YOU ANSWER  
4 THIS QUESTION "NO," YOU'RE DONE, CASE IS OVER.

5 BUT WHAT I WANT TO DO NOW IS I WANT TO TALK  
6 TO YOU A LITTLE BIT ABOUT THE JURY INSTRUCTIONS THAT  
7 PERTAIN TO THIS QUESTION OF NEGLIGENCE, OKAY? FIRST  
8 INSTRUCTION, AND AGAIN, I'M NOT GOING TO READ EVERY WORD,  
9 BUT THIS IS THE INSTRUCTION ON THE STANDARD OF CARE AND IT  
10 TALKS ABOUT ONE OF THE CONCEPTS THAT'S REALLY IMPORTANT  
11 IS, YOU'RE LOOKING AT THE STANDARD OF CARE OF A  
12 RHEUMATOLOGIST THAT HE OR SHE WOULD USE IN SIMILAR  
13 CIRCUMSTANCES, NOT AT CEDARS-SINAI MEDICAL CENTER, NOT  
14 2007, BUT UNDER THE CIRCUMSTANCES THAT DR. SHAINSKY HAD IN  
15 HER OFFICE. THOSE ARE THE CIRCUMSTANCES THAT ARE  
16 APPLICABLE TO THE ASSESSMENT OF THE STANDARD OF CARE.

17 WE DON'T SAY UNDER THE LAW A PATIENT HAS  
18 COMMITTED SUICIDE, THERE MUST BE NEGLIGENCE, AND WE IGNORE  
19 THE CIRCUMSTANCES OF THE DOCTOR'S CARE.

20 THE OTHER THING THAT'S IMPORTANT ABOUT THIS  
21 INSTRUCTION, YOU'RE TO DETERMINE THE LEVEL OF SKILL,  
22 KNOWLEDGE, AND CARE BASED ON THE TESTIMONY OF THE EXPERT  
23 WITNESSES, INCLUDING DR. SHAINSKY. IMPORTANT CONCEPT  
24 UNDER THE LAW. SO THAT'S ONE INSTRUCTION, 502.

25 NOW, WHAT WERE THE CIRCUMSTANCES, LADIES AND  
26 GENTLEMEN, THAT DR. SHAINSKY WAS DEALING WITH AT THE TIME  
27 OF HER CARE AND TREATMENT OF TARA DE ROGATIS? PERSISTENT  
28 TOTAL BODY PAIN BY ALL ACCOUNTS, AN OBLIGATION TO TREAT

1 PAIN. I DON'T THINK THERE'S ANY DISPUTE THERE.

2 SHE WAS DESCRIBED AS ALERT, COOPERATIVE,  
3 COHERENT, AND INTERESTED IN HER WELL-BEING. SHE WAS,  
4 ACCORDING TO MRS. DE ROGATIS, PARTICIPATING IN RIGOROUS  
5 ACTING, SPEECH, AND CATECHISM CLASSES AT THE TIME.

6 SHE HAD PLANS FOR DAYS AHEAD, INCLUDING  
7 ACTING CLASSES, DINNER WITH HER LIFE COACH, AND, OF  
8 COURSE, THE PLASTIC SURGERY. SHE EXPRESSED SHE WANTED TO  
9 LIVE, SHE LOVED LIVE, AND WOULD NEVER HURT HERSELF. AND  
10 HER LIFE PARTNER, MR. MAC EACHERN, HAD NOT ONE INKLING OR  
11 SUSPICION THAT SHE WOULD TAKE HER OWN LIFE AFTER LEAVING  
12 DR. SHAINSKY'S OFFICE.

13 AND FINALLY, WHO ARE THE TWO PEOPLE WHO KNEW  
14 TARA DE ROGATIS THE BEST AT OR AROUND THE TIME THAT  
15 DR. SHAINSKY WAS TREATING HER? THE TREATING PSYCHIATRIST,  
16 DR. BOHN, THREE YEARS' WORTH, 18 VISITS; AND  
17 MR. MAC EACHERN.

18 DR. BOHN TOLD YOU HE HAD ABSOLUTELY NO  
19 SUSPICION THAT SHE WOULD TAKE A LETHAL LEVEL OF ANY OF HER  
20 PRESCRIPTION DRUGS, INCLUDING THE ONES THAT HE PRESCRIBED.  
21 WHY? BECAUSE HE ASSESSED HER AS LOW RISK FOR SUICIDE.  
22 THESE ARE THE CIRCUMSTANCES THAT YOU NEED TO CONSIDER IN  
23 EVALUATING THE CARE AND TREATMENT OF DR. SHAINSKY.

24 ANOTHER INSTRUCTION THAT APPLIES TO THE  
25 QUESTION OF NEGLIGENCE, THIS IS CRITICAL. THIS IS THE  
26 CALIFORNIA LAW.

27 WHAT I THINK HAPPENED IN THIS CASE -- AND  
28 UNDERSTANDABLY, I'M A PARENT, YOU LOSE A CHILD, A

1 DAUGHTER, YOU -- WHO COMMITS SUICIDE AND YOU THINK, YOU  
2 KNOW, SOMETHING, SOMETHING SHOULD HAVE BEEN DONE  
3 DIFFERENTLY TO PREVENT THIS DEATH. THAT'S A NATURAL  
4 INCLINATION; HOWEVER, THE LAW -- THAT IS AN INCORRECT  
5 ASSUMPTION UNDER THE LAW IN CALIFORNIA.

6 THE LAW IN CALIFORNIA IS THAT A  
7 RHEUMATOLOGIST IS NOT NECESSARILY NEGLIGENT JUST BECAUSE  
8 HER EFFORTS ARE UNSUCCESSFUL, A SUICIDE OCCURRED, OR IT  
9 EVEN GOES FURTHER, IF SHE MAKES AN ERROR THAT WAS  
10 REASONABLE UNDER THE CIRCUMSTANCES. LADIES AND GENTLEMEN  
11 YOU CANNOT UNDER THE CALIFORNIA LAW ASSUME THAT BECAUSE  
12 THERE WAS A SUICIDE, THAT DR. SHAINSKY WAS NEGLIGENT.  
13 C.A.C.I. 505.

14 THE OTHER INSTRUCTION WHICH APPLIES TO  
15 NEGLIGENCE IS C.A.C.I. 506. THE IMPORT OF THIS  
16 INSTRUCTION, AND WE'LL GO THROUGH IT, IS THAT YOU CANNOT  
17 UNDER THE CALIFORNIA LAW DO A RETROSPECTIVE ANALYSIS  
18 THINKING ABOUT, WELL, MAYBE LIKE DR. RUDNICK SAID, FOUR  
19 DAYS' WORTH WOULD BE A BETTER CHOICE. IT'S STILL LETHAL,  
20 BY THE WAY, BUT THE LAW READS THAT IF DR. SHAINSKY CHOOSES  
21 ONE MEDICALLY ACCEPTED METHOD OF TREATMENT OR DIAGNOSIS  
22 AND IT TURNS OUT ANOTHER MEDICALLY ACCEPTED METHOD WOULD  
23 HAVE BEEN A BETTER CHOICE, AND I'M NOT SURE THERE WOULD BE  
24 A BETTER CHOICE IN THIS CASE, YOU CAN'T DETERMINE  
25 NEGLIGENCE BASED ON THIS SO-CALLED BETTER CHOICE. OKAY?  
26 ANOTHER INSTRUCTION THAT RELATES TO NEGLIGENCE.

27 I'M GOING TO SKIP OVER THIS IN THE INTEREST  
28 OF TIME. WE TALKED BRIEFLY ABOUT THE EXPERTS. YOU HEARD

1 FROM DR. WEINBERGER WHO HAD, UNLIKE DR. BLUESTONE,  
2 SIGNIFICANT EXPERIENCE WITH FIBROMYALGIA, BOTH AS  
3 INPATIENTS AND OUTPATIENTS. DID YOU FIND IT A LITTLE ODD  
4 THAT DR. BLUESTONE DIDN'T HAVE ANY HOSPITAL PRIVILEGES AND  
5 HADN'T FOR OVER TEN YEARS? BECAUSE HE'S DOING MOSTLY  
6 WORKERS' COMP CASES. HE TOLD YOU THAT.

7 CLEARLY AN OBLIGATION TO TREAT THE PATIENT  
8 WITH THE APPROPRIATE Demeanor. NO CONTRAINDICATION TO  
9 TREATING WITH OPIATES IN THE SHORT TERM.

10 LADIES AND GENTLEMEN, WHAT DID WE HEAR IN  
11 TERMS OF THE OPIATES ON THE FIRST VISIT? MS. DE ROGATIS  
12 COMES TO DR. SHAINSKY ON NORCO. YOU CANNOT STOP THAT  
13 MEDICATION SUDDENLY. I DON'T KNOW WHY WE KEEP BRINGING UP  
14 THE LANGUAGE ABOUT HER STRONGLY DISCOURAGING AND  
15 CONTRADICTING HER PLAN WHEN IT WAS CRYSTAL CLEAR TO ME AND  
16 ANYBODY ELSE THAT WAS LISTENING DURING THIS TRIAL THAT THE  
17 LONG-TERM PLAN WAS TO WEAN HER OFF, IF EVERYTHING WENT  
18 WELL, THE OPIATES AND INCREASE THE CYMBALTA, NOT TO STOP  
19 IT SUDDENLY. WHY NOT? BECAUSE IF YOU STOP IT SUDDENLY,  
20 YOU SET THE PATIENT UP FOR A REBOUND EFFECT, INTENSE PAIN,  
21 MORE ANGUISH, AND WHO KNOWS WHAT WOULD FOLLOW.

22 BRIEFLY, DR. BLUESTONE LOST HIS HOSPITAL --  
23 STOPPED PRACTICING IN THE HOSPITAL IN 1997. WHEN WAS THE  
24 LAST TIME THIS SO-CALLED EXPERT LECTURED TO PHYSICIANS?  
25 REMEMBER? I ASKED HIM ABOUT THAT. BEEN ABOUT 10 OR 12  
26 YEARS. DID HE EVER DO ANY SCIENTIFIC OR EXPERIMENTAL WORK  
27 IN THE FIELD OF CHRONIC WIDE-SPREAD PAIN? WHAT DID HE  
28 TELL YOU? NO. SO WHAT WAS THE BASIS OF HIS OPINION?

1 OTHER THAN HIS OPINION. DID HE TELL YOU? I DON'T THINK  
2 SO.

3 AND I'VE ALREADY MENTIONED THIS, THE BOTTOM  
4 POINT, HIS OPINIONS SURELY WERE NOT SHARED BY DR. STARK,  
5 THE EXPERT THEY DIDN'T CALL, AND THE OTHER PHYSICIANS I  
6 POINTED OUT BEFORE.

7 YOU KNOW, I THINK THE QUICKEST WAY TO  
8 SUMMARIZE THE ASSESSMENT OF THE SUICIDE ON MARCH 22ND,  
9 2010, THERE'S A CONFLICT, I GUESS, BETWEEN DR. ALEXANIAN  
10 AND DR. RUDNICK. SO LET'S FACTOR THEM OUT FOR A SECOND.

11 WHAT WAS DR. BOHN'S ASSESSMENT? AN  
12 UNPAID -- I DON'T THINK THEY PAID HIM -- AN UNPAID -- IN  
13 THEIR CASE, THEY CALLED HIM AS A WITNESS IN THEIR CASE.  
14 DR. BOHN ASSESSED HER RISK AS LOW DESPITE THE REPEATED  
15 SUICIDE IDEATIONS THAT HE WAS AWARE OF, LOW. THAT'S WHY  
16 HE WASN'T WORRIED ABOUT GIVING HER MULTIPLE PSYCHIATRIC  
17 MEDICATIONS AND HER TAKING MORE THAN WHAT WAS PRESCRIBED.  
18 THAT'S DR. BOHN. I'LL CONCEDE THERE'S A DISPUTE, I GUESS,  
19 BETWEEN ALEXANIAN AND DR. RUDNICK. BACK TO DR. RUDNICK  
20 AGAIN, I THINK THERE'S GOOD REASON TO QUESTION HIS  
21 OPINIONS IN THIS CASE.

22 OKAY. SO OVERVIEW OF THE INSTRUCTIONS THAT  
23 APPLY TO QUESTION NO. 1. WE'RE BACK TO QUESTION NO. 1  
24 AGAIN NOW. JUST IN SUMMARY, IF NINE OR MORE OF YOU  
25 CONCLUDE THAT DR. SHAINSKY WAS NOT NEGLIGENT ON QUESTION  
26 NO. 1, THE CASE IS OVER. HIS HONOR INSTRUCTED YOU, YOU  
27 SIGN THE -- YOUR FOREPERSON SIGNS THE VERDICT FORM, AND  
28 YOU LET THE CLERK KNOW YOU HAVE A VERDICT AND THE CASE IS

1 DONE.

2 NOW, HERE IS WHAT I WANT YOU TO THINK ABOUT  
3 IN TERMS OF DAMAGES. MARCH 22ND, 2010, THINK ABOUT THE  
4 FOLLOWING: THE EVIDENCE WAS, WHEN DAVID MAC EACHERN WAS  
5 AT SEVERAL VISITS, AT LEAST TWO WITH DR. SHAINSKY, SHE WAS  
6 WHAT? VERY THOROUGH, NUMBER ONE.

7 NUMBER TWO, IN THE TIME PERIOD BETWEEN  
8 FEBRUARY 10TH AND UP THROUGH THE WEEKEND OF MARCH THE  
9 21ST, WHAT WAS GOING ON ACCORDING TO MR. MAC EACHERN AND  
10 OTHERS? SHE WAS MORE ENGAGED IN HER ACTING, IN THEIR  
11 RELATIONSHIP, IN HER RELIGIOUS STUDIES. SHE AND HE WERE  
12 THINKING ABOUT -- THIS IS EVIDENCE FROM THE WITNESS  
13 STAND -- THEY WERE THINKING ABOUT AND HOPING SHE WAS DOING  
14 SO WELL SHE WOULD EVENTUALLY BE ABLE TO COME OFF ALL OF  
15 HER PAIN MEDICATIONS. AND ON THE WEEKEND OF MARCH THE  
16 20TH AND 21ST, THEY HAD, WHAT, A BEAUTIFUL WEEKEND  
17 ACCORDING TO MR. MAC EACHERN. WHY? BECAUSE  
18 MS. DE ROGATIS IS RESPONDING TO THE TREATMENT OF  
19 DR. SHAINSKY. IT'S EVIDENT IN THE RECORDS AND IT'S  
20 EVIDENT FROM HIS TESTIMONY.

21 NOW, LET'S GO MORE SPECIFICALLY INTO  
22 ANALYZING WHETHER OR NOT THIS DOCTOR WAS NEGLIGENT. WHAT  
23 WAS SHE PRESENTED WITH? SHE WAS PRESENTED WITH A PATIENT  
24 WHO WAS ABOUT TO HAVE PLASTIC SURGERY IN A FEW DAYS. SHE  
25 WAS PRESENTED WITH A PATIENT THAT WAS DEPRESSED AND  
26 ANXIOUS.

27 AND WHAT DID DR. SHAINSKY DO? WHAT SHE DID  
28 WAS TO ADDRESS EACH AND EVERY ONE OF THOSE PROBLEMS AS FAR

1 AS -- AND THE PATIENT WITH PAIN, OF COURSE. IN TERMS OF  
2 THE PAIN, SHE GAVE TRIGGER POINT INJECTIONS. THE PATIENT  
3 RESPONDED. SHE ADJUSTED THE MEDICATION FROM NORCO TO  
4 PERCOCET. IN TERMS OF THE ANXIETY AND DEPRESSION, SHE  
5 GAVE HER A REFERRAL TO A PSYCHOLOGIST FOR TALK THERAPY.  
6 DR. BOHN DOESN'T DO TALK THERAPY I THINK WE LEARNED.

7 SHE GAVE HER A REFERRAL TO A PAIN MANAGEMENT  
8 SPECIALIST. AND -- TAKE A LOOK AT THE EXHIBIT -- SHE  
9 SPENT 40 MINUTES TALKING WITH THE PATIENT. HOW MANY OF  
10 YOU HAVE SPENT 40 MINUTES TALKING TO YOUR DOCTOR ABOUT  
11 YOUR MEDICAL PROBLEMS? DOES THAT SOUND LIKE A NEGLIGENT  
12 DOCTOR?

13 ONE OTHER ISSUE I WANT TO BRING UP WITH YOU  
14 AS FAR AS WHAT REALLY HAPPENED DURING THAT LAST VISIT.  
15 THIS WAS AN INTERESTING POINT IN THE TRIAL, AND I HOPE YOU  
16 WERE PAYING ATTENTION. MAYBE I CAN REFRESH YOUR  
17 RECOLLECTION. SO THE THEORY OF THE PLAINTIFFS IS THAT  
18 DR. SHAINSKY WALKS IN THE ROOM, SEES MS. DE ROGATIS, SAYS,  
19 "OH, MY GOD, WHAT'S WRONG WITH YOU," RUNS OUT, AND GOES  
20 AND CALLS DR. BOHN RIGHT AWAY.

21 BY THE WAY, HE SHOULD BE EMBARRASSED FOR  
22 CALLING DR. SHAINSKY A LIAR BECAUSE -- AND I'LL SET HIM  
23 STRAIGHT IN A MINUTE. ON THAT NOTE, REMEMBER  
24 DR. SHAINSKY -- SO LET'S DO THE TIMELINE REAL QUICK.

25 THE PHONE CALL TO DR. BOHN -- YOU'LL HAVE IT  
26 IN EVIDENCE -- IS 4:21. REMEMBER WHEN DR. SHAINSKY WAS ON  
27 THE STAND, MR. NEWHOUSE ASKED HER, "WASN'T THE APPOINTMENT  
28 AT 4:00?" SHE SAID, "NO." IT WAS AT 3:30, 50 MINUTES



1 BEFORE THE CALL. SHE OFFERED TO HIM, "I'VE GOT THE  
2 SCHEDULE HERE. DO YOU WANT TO SEE IT, MR. NEWHOUSE?"  
3 THREE TIMES HE DIDN'T TAKE HER UP ON IT BECAUSE HE KNEW HE  
4 WAS GOING TO GET IMPEACHED, IN A SENSE, BECAUSE THE THEME  
5 HAS BEEN SHE COMES IN AT FOUR O'CLOCK, WITHIN A FEW  
6 MINUTES THEY CALL DR. BOHN. THAT'S NOT WHAT HAPPENED.

7 WE KNOW THAT IT'S AT LEAST A 40- TO  
8 50-MINUTE VISIT. THAT PHONE CALL OCCURRED RIGHT NEAR THE  
9 END OF THAT VISIT. WHY DID IT OCCUR? HE'S CALLING HER A  
10 LIAR. IT'S NOT ONLY UNPROFESSIONAL, IT'S DISAPPOINTING.  
11 BUT WHAT HE FORGOT TO TELL YOU IS THERE WAS A SECOND PHONE  
12 CALL FROM DR. SHAINSKY THE DAY AFTER THE SUICIDE, BEFORE  
13 THESE FINE LAWYERS FILED THE LAWSUIT, BEFORE DR. SHAINSKY  
14 HAD ANY NEED TO, QUOTE, LIE. THERE'S A NOTE IN DR. BOHN'S  
15 RECORDS AS A RESULT OF THAT PHONE CALL REFERRING TO THE  
16 DISCUSSION ABOUT CYMBALTA. HOW DARE HE GET UP AND CALL MY  
17 CLIENT A LIAR. UNPROFESSIONAL, UNETHICAL, AND INACCURATE.

18 NOW, LADIES AND GENTLEMEN, I DON'T THINK  
19 YOU'RE GOING TO GET TO THE NEXT QUESTION ON THE VERDICT  
20 FORM. I DON'T KNOW FOR SURE, SO LET'S TALK ABOUT THE  
21 SECOND QUESTION.

22 THIS IS A REALLY INTERESTING QUESTION, AND  
23 BEAR WITH ME BECAUSE I'M GOING TO GET READY TO WIND UP IN  
24 A FEW MINUTES. SO THE SECOND QUESTION IS: WAS THE  
25 NEGLIGENCE OF DR. SHAINSKY A SUBSTANTIAL FACTOR IN CAUSING  
26 THE DEATH OF TARA DE ROGATIS? AND AGAIN, YOUR  
27 INSTRUCTIONS, IF YOU GET TO THIS QUESTION AND NINE OR MORE  
28 OF YOU ANSWER "NO," YOU'RE DONE. YOU DON'T GO ON TO THE

1 NEXT QUESTION AND START THINKING ABOUT A \$10 MILLION  
2 VERDICT IN THIS CASE.

3 SO THIS IS A CRITICAL, CRITICAL INSTRUCTION.  
4 YOU'VE GOT IT FROM HIS HONOR, C.A.C.I. 430. YOU GOT TO  
5 BE -- I'VE BEEN IN YOUR SHOES AND WHEN YOU HEAR THESE  
6 INSTRUCTIONS AND THESE TERMS, YOU GO, "WHAT, WHAT? WHAT  
7 THE HECK DOES THIS MEAN?" I'M SURE.

8 LET'S TALK ABOUT SUBSTANTIAL FACTOR BECAUSE  
9 THAT'S WHAT THE QUESTION ASKS. WAS HER CARE AND TREATMENT  
10 A SUBSTANTIAL FACTOR IN CAUSING THE DEATH?

11 WHAT THE JURY INSTRUCTION SAYS IN THE SECOND  
12 PARAGRAPH IS:

13 "CONDUCT IS NOT A SUBSTANTIAL FACTOR  
14 IN CAUSING HARM IF THE SAME HARM WOULD HAVE  
15 OCCURRED" REGARDLESS -- I'M PARAPHRASING --  
16 "WITHOUT THAT CONDUCT."

17 WHAT DOES THAT MEAN? THAT MEANS, FOR  
18 EXAMPLE, HAD THE PATIENT NEVER COME TO SEE DR. SHAINSKY  
19 AND WAS GIVEN A PRESCRIPTION FOR PERCOCET, WOULD SHE HAVE  
20 DIED ANYWAY GIVEN WHAT SHE INGESTED ON MARCH 22ND, 2010?  
21 I THINK THE EVIDENCE IS PRETTY CLEAR FROM THE CORONER AND  
22 DR. SAFANI, THE ANSWER IS "YES."

23 LET'S GO THROUGH THIS NOW. DR. BOHN'S  
24 TESTIMONY, HE -- I THINK WHAT I WANT TO EMPHASIZE AT THIS  
25 POINT IS THAT HE HAD NO SUSPICION THAT SHE WAS GOING TO GO  
26 HOME AND AT SOME POINT IN TIME SOON AFTER FEBRUARY 2010 TO  
27 TAKE TOXIC OR LETHAL AMOUNTS OF ANY OF HER PRESCRIPTION  
28 MEDICATIONS, INCLUDING LUNESTA, AMBIEN, AND SEROQUEL. ALL

1 FOUND TO BE TOXIC. NO SUSPICION. OR I ASSUME HE WOULD  
2 HAVE DONE SOMETHING DIFFERENTLY. THIS ISN'T A BLAME GAME.  
3 I'M JUST ILLUSTRATING THE MIND-SET OF THE TREATING  
4 PSYCHIATRIST. HE TOLD YOU, NOT OUR EXPERT, NOT THEIR  
5 EXPERT, DR. BOHN TOLD YOU THIS WAS AN IMPULSIVE ACT THAT  
6 WAS UNPREDICTABLE AND UNPREVENTABLE.

7 NOW, IN EVIDENCE YOU'VE GOING TO HAVE HIS  
8 CHART NOTE, WHICH I THINK HELPS US UNDERSTAND THOSE OF YOU  
9 WHO ARE SEARCHING FOR A REASON WHY THIS IMPULSIVE ACT  
10 OCCURRED. THERE'S AN EXHIBIT, 115-73, DR. BOHN'S NOTE, IT  
11 WAS SHOWN TO YOU, I THINK, YESTERDAY, WHERE HE SAYS, HE'S  
12 TALKING ABOUT TARA WAS GOING TO AUDITIONS. "IF LOST  
13 AUDITION, SHE WOULD CRASH. UNREALISTIC EXPECTATIONS," AND  
14 THEN THERE'S OTHER LANGUAGE.

15 THEN HE GOES ON TO SAY AND SUMMARIZES  
16 DISCUSSION WITH MR. MAC EACHERN THAT SHE HAD TOLD OTHER  
17 DOCTORS SHE WOULD NEVER HURT HERSELF. "THINGS WERE GOING  
18 WELL." A COMMENT FROM MR. MAC EACHERN, CONSISTENT WITH  
19 HER IMPROVING STATUS IN THE WEEKS AFTER STARTING WITH  
20 DR. SHAINSKY'S CARE AND TREATMENT. "WAS TO GET PLASTIC  
21 SURGERY THIS FRIDAY [FOR] EYES [AND] BREASTS. FELT IF  
22 DIDN'T GET THIS, WOULD HAVE" -- AND THEN THE NOTE CUTS  
23 OFF.

24 REMEMBER THE EVIDENCE? WHAT'S HAPPENING THE  
25 EVENING OF THE 22ND? SHE'S TEXTING WITH A FORMER ABUSIVE  
26 BOYFRIEND. HE'S THE GUY SHE'S HOPING IS GOING TO BUY THE  
27 PAINTING. AND BY THE WAY, THERE'S A REFERENCE TO THAT IN  
28 DR. BOHN'S NOTE. AND APPARENTLY HE RENEGES ON THE DEAL.

1 DOES THAT PUSH HER OVER THE EDGE? IS DR. SHAINSKY  
2 SUPPOSED TO PREDICT THAT AND SEE THAT COMING? BY THE WAY,  
3 THINK ABOUT THIS: "I'M HAVING SO MUCH PAIN I WANT TO  
4 DIE," OVER AND OVER AND OVER AGAIN. DID SHE COMMIT  
5 SUICIDE BECAUSE SHE WAS IN PAIN? DOESN'T SOUND LIKE IT.

6 I'M GOING TO MOVE QUICKLY THROUGH THESE  
7 OTHER INSTRUCTIONS, BUT LET'S DO THE FOLLOWING. NOW, LET  
8 ME ASK YOU A QUESTION AND I WANT YOU TO THINK ABOUT THIS.  
9 WHAT EVIDENCE DO YOU HAVE OF THE SOURCE OF THE PERCOCET  
10 THAT WAS INGESTED? HERE IS WHAT I'M ASKING. WE'VE GOT  
11 THE BLOOD LEVELS THAT WERE MEASURED BY THE CORONER. WE  
12 HAVE GOT ALL THESE PILL BOTTLES ON THE COUNTER OR IN THE  
13 DRESSER IN THE ROOM OR IN THE IMMEDIATE AREA. WHERE DID  
14 THE PERCOCET COME FROM THAT SHE INGESTED?

15 LET'S TAKE A LOOK. SO THEY WENT TO THE  
16 PHARMACY BEFORE THEY GOT HOME THAT NIGHT BEFORE SIX  
17 O'CLOCK AND SHE WAS UNABLE TO OBTAIN THE PILLS. OKAY?  
18 AND WHY? THINK ABOUT THAT. WHAT WAS THE EVIDENCE ABOUT  
19 UNABLE TO OBTAIN THE PILLS?

20 DR. SHAINSKY TOLD YOU THAT FOR THIS KIND OF  
21 MEDICATION, THE PHARMACIST NEEDS TO VERIFY THAT THIS IS A  
22 PRESCRIPTION THAT THE DOCTOR WANTS FILLED. SO AT THE TIME  
23 THAT THEY ARRIVE AT THE PHARMACY BEFORE SIX O'CLOCK, THE  
24 PHARMACIST HAD NOT YET CONTACTED DR. SHAINSKY. HER  
25 TESTIMONY WAS IT WAS WELL AFTER EIGHT O'CLOCK BECAUSE SHE  
26 WAS MAKING ROUNDS IN THE HOSPITAL AND JUST ABOUT FINISHED  
27 HER ROUNDS ON THREE OR FOUR PATIENTS AND IT WAS WELL AFTER  
28 8:00 AT THE TIME SHE GOT THE CALL. UNREFUTED.

1 DID THEY CALL THE PHARMACIST IN TO SAY, "NO,  
2 NO, NO, WE CALLED A LOT SOONER THAN THAT"? THEY HAVE THE  
3 BURDEN OF PROOF. KEEP THAT IN MIND. THEORETICALLY, IF  
4 THEIR EXPERTS ARE HELPING MAKE MY CASE, AS THEY DID IN  
5 THIS CASE, I DON'T HAVE TO CALL ONE EXPERT. THEY HAVE THE  
6 BURDEN ON THIS ISSUE AS WELL.

7 OKAY. SO THEY GET AT 6:00 IS THE TESTIMONY.  
8 THE DECEDENT LEAVES FOR THE PHARMACY AT 7:00 AND RETURNS  
9 HOME BY 7:30. REMEMBER THE TESTIMONY? LET ME REMIND YOU.

10 "QUESTION: WHAT TIME DID TARA COME  
11 BACK IF SHE WENT OUT AROUND 7:00-ISH? WHAT  
12 TIME DO YOU REMEMBER HER COMING BACK?

13 "ANSWER: 7:30."

14 HOW DOES SHE GET THAT PRESCRIPTION BEFORE  
15 IT'S VERIFIED? ASK YOURSELF THAT QUESTION. WAS IT  
16 DR. SHAINSKY'S PRESCRIPTION?

17 AT NINE O'CLOCK, REMEMBER THE DISCUSSION  
18 BETWEEN DAVID AND MS. DE ROGATIS? THEY'RE DISCUSSING  
19 ACTING CLASS THE NEXT DAY, WHETHER OR NOT SHE SHOULD WASH  
20 HER HAIR, THE UPCOMING DINNER WITH THE LIFE COACH. AND HE  
21 ASKED HER, "HAVE YOU TAKEN ANY OF YOUR PERCOCET YET?" SO  
22 SHE CLEARLY HAD THE MEDICATION AT NINE O'CLOCK. SHE  
23 CLEARLY HAD IT. BUT SHE HADN'T NEEDED TO TAKE IT.

24 THERE'S AN EXHIBIT 16 THAT YOU'RE GOING TO  
25 HAVE, 16-1, I THINK IT IS. I THINK IT'S JUST ONE PAGE.  
26 THAT'S THE EXHIBIT THAT HAS THE VERIFIED PRESCRIPTION ON  
27 THE LEFT SIDE. AND ON THE RIGHT SIDE FROM THE PHARMACY IT  
28 SAYS, "TRANSACTION TIME 9:27 P.M." WHO PICKED UP THAT

1 PRESCRIPTION AT 9:27 P.M. WHEN MS. DE ROGATIS WAS IN THE  
2 ROOM PRAYING AND MR. MAC EACHERN WAS APPARENTLY SLEEPING  
3 IN THE LAWN CHAIR IN FRONT OF THE TELEVISION? WHO PICKED  
4 IT UP? AND BY THE WAY, WHOSE PRESCRIPTION WAS FILLED FOR  
5 THE PERCOCET? IN FACT, IT WASN'T DR. SHAINSKY.

6 AND LET ME TELL YOU WHY I SAY THAT. YOU  
7 REMEMBER THE TESTIMONY OF MR. LOPEZ. THEY CALLED HIM TO  
8 THE STAND. AND REMEMBER HE TOLD YOU, "I PREPARED A  
9 EXHAUSTIVE DETAIL OF WHAT WAS ON THOSE PILL BOTTLES."  
10 LADIES AND GENTLEMEN, YOU'VE SEEN PILL BOTTLES AND THEY  
11 HAVE A TYPED INFORMATION ON IT, THE NAME OF THE DOCTOR,  
12 HOW MANY PILLS, WHAT THE DOSE IS.

13 HE DID THIS FOR ALL OF THE PILLS. AND LET  
14 ME DRAW YOUR ATTENTION TO THE PERCOCET, OXYCODONE.  
15 THERE'S THE PHARMACY NUMBER, THE DATE, THE NUMBER OF  
16 PILLS, THE TABLETS, DR. UNG, NOT DR. SHAINSKY. WHO IS  
17 DR. UNG? DOES UNG LOOK LIKE SHAINSKY? SEEMS TO ME THAT  
18 MR. LOPEZ WAS ABLE TO READ DR. SHAINSKY'S NAME ON AT LEAST  
19 TWO OTHER PRESCRIPTIONS. DO YOU THINK HE CONFUSED UNG  
20 WITH SHAINSKY? I EXPECT THAT MS. NEWHOUSE IS GOING TO GET  
21 UP AND TELL YOU ABOUT ALL THE ERRORS THE CORONER MADE IN  
22 THIS AUTOPSY INCLUDING THIS RECORD.

23 ASK YOURSELF THE QUESTION: DID THEY SATISFY  
24 THEIR BURDEN TO ESTABLISH THAT DR. SHAINSKY'S PRESCRIPTION  
25 WAS THE SOURCE OF THE PERCOCET THAT WAS INGESTED BY THIS  
26 PATIENT? THEY HAVE TO BRING EVIDENCE THAT IS MORE LIKELY  
27 TRUE THAN NOT TRUE. DID THEY CALL DR. UNG? DID THEY CALL  
28 MR. LOPEZ TO CLEAR THAT UP? DID THEY CALL A PHARMACY

1 PERSON? NO. THEY HAVE THE BURDEN.

2 WHAT ABOUT THE NORCO? IT WAS INTERESTING, I  
3 LISTENED CAREFULLY TO MR. NEWHOUSE'S ARGUMENT.

4 EXHIBIT 14-29 IS THE ONE WE JUST LOOKED AT. LET ME GO  
5 BACK TO THAT. THIS IS THE -- THIS IS THE LIST BY

6 MR. LOPEZ. WE HAVE THE HYDROCODONE, NORCO, 56 TABLETS,  
7 NONE. THAT'S THE PRESCRIPTION THAT'S WRITTEN IN FEBRUARY,  
8 THE END OF FEBRUARY. SURPRISED THERE ARE NONE LEFT?

9 SHE WAS -- BY THE WAY, THIS CONCEPT OF ALL  
10 OF THESE PILLS AND ALL OF THIS TIME, DO THE MATH. SHE'S  
11 AVERAGING A LITTLE OVER FOUR PILLS A DAY. THAT'S A DRUG  
12 ADDICT? MR. DE ROGATIS TOLD YOU HIS DAUGHTER WASN'T A  
13 DRUG ADDICT. SHE WASN'T SEEKING DRUGS. I FOUND THAT  
14 BELIEVABLE.

15 NOW, THE SECOND PRESCRIPTION FOR  
16 HYDROCODONE, 88 TABLETS. I LIKE THIS. REMEMBER THE MATH  
17 THAT MR. NEWHOUSE DID? IT'S STILL UP THERE ON THE BOARD.  
18 HE WAS DOING ALL THE MATH, AND THAT WOULD BE ABOUT 84  
19 TABLETS. WELL, SHE DIDN'T EVEN GET THE FULL PRESCRIPTION  
20 FROM THE PHARMACY.

21 HERE'S AN INTERESTING POINT. HOW MANY WERE  
22 LEFT IN THE BOTTLE? 4-1/2 TABLETS. SOUNDS TO ME LIKE  
23 SHE'S NOT EVEN TAKING A FULL TABLET FROM TIME TO TIME.  
24 AND IF THIS WAS THE SOURCE OF HER NORCO, WHY IS SHE  
25 LEAVING 4-1/2 TABLETS IN THE BOTTLE?

26 WE JUST WENT THROUGH THIS SO I'M GOING TO  
27 MOVE ON.

28 NOW, BACK TO THE JURY INSTRUCTION 430. IF

1 THE SAME HARM WOULD HAVE OCCURRED WITHOUT SEEING  
2 DR. SHAINSKY, THEN DR. SHAINSKY'S CARE IS NOT A  
3 SUBSTANTIAL FACTOR. IN OTHER WORDS, LEGALLY SHE DID NOT  
4 CAUSE THE DEATH. FIRST OF ALL, IT WASN'T EVEN HER  
5 PRESCRIPTION OF PERCOCET. SECOND OF ALL, FROM A LEGAL  
6 ANALYSIS, THERE'S THIS DISCUSSION.

7 THE ANSWER TO THAT QUESTION IS "YES,"  
8 TRAMADOL WAS AT LETHAL LEVELS. MR. NEWHOUSE CAN GET UP  
9 AND TRY TO GIVE A SONG AND DANCE ABOUT THE METABOLITE AND  
10 THIS AND THAT. WAS THE TRAMADOL LEVEL BY THE CORONER AT A  
11 LETHAL LEVEL? THE ANSWER IS "YES." AGAIN, THROW OUT THE  
12 EXPERTS. USE THE UNBIASED PERSON. THAT'S WHAT HE TOLD  
13 YOU TO DO.

14 HE CALLED THE CORONER. THE CORONER SAID,  
15 "IT'S AT A LETHAL LEVEL, SUFFICIENT BY ITSELF TO CAUSE THE  
16 DEATH." WASN'T MY WITNESS; IT WAS HIS. AND UNBIASED ONE  
17 AT THAT. OF COURSE, DR. SAFANI AGREED. THE TRAMADOL WAS  
18 NOT PRESCRIBED BY DR. SHAINSKY. APPARENTLY DR. RAMIN GAVE  
19 THE PATIENT A LOADED GUN BY PRESCRIBING THE TRAMADOL.

20 AT LEAST -- LET'S DO A LITTLE COMMON SENSE.  
21 IF THESE FINE LAWYERS REALLY THOUGHT THAT DR. SHAINSKY'S  
22 CONDUCT OF GIVING THE PATIENT A DOSE OF MEDICATION THAT  
23 COULD KILL HER, AND WE HAVE EVIDENCE THAT TRAMADOL WAS AT  
24 LETHAL LEVELS, WHY ISN'T DR. RAMIN SITTING RIGHT NEXT TO  
25 DR. SHAINSKY WITH HIS ATTORNEY DEFENDING HIMSELF AT TRIAL  
26 HERE IF THEY REALLY BELIEVE THAT?

27 THE OTHER POINT IN TERMS OF DRUGS OTHER THAN  
28 THE PERCOCET, TOXIC LEVELS OF AMBIEN, LUNESTA, AND



1 SEROQUEL WERE SUFFICIENT TO CAUSE DEATH, AT LEAST  
2 ACCORDING TO THE CORONER. DR. SAFANI, I WOULD CONCEDE,  
3 HEDGED ON THAT. HE SAID, YOU KNOW, "IT'S REALLY HARD FOR  
4 SOMEBODY TO KILL THEMSELVES WITH JUST BENZOS. BUT," HE  
5 DID SAY, "IN COMBINATION, THOSE BENZOS, THOSE THREE DRUGS  
6 WITH OTHER MEDICATIONS CERTAINLY COULD DO IT."

7 LADIES AND GENTLEMEN, ASK YOURSELF THE  
8 QUESTION: DID THE PLAINTIFFS SATISFY THEIR BURDEN OF  
9 ESTABLISHING MORE LIKELY THAN NOT THAT DR. SHAINSKY WAS  
10 NEGLIGENT? I BELIEVE THE EVIDENCE IS TO THE CONTRARY.

11 SECOND QUESTION. ASK YOURSELF: DID THEY  
12 SATISFY THEIR BURDEN THAT THE DEATH WAS CAUSED BY  
13 SOMETHING DR. SHAINSKY DID? I BELIEVE THEY FAILED THEIR  
14 BURDEN ON THAT QUESTION.

15 NOW, BECAUSE THEY HAD THE BURDEN OF PROOF --  
16 YOU'LL BE THANKFUL TO KNOW I'M GOING TO SIT DOWN IN A  
17 MINUTE. I DON'T GET TO COME UP AGAIN AND SPEAK TO YOU A  
18 SECOND TIME. BUT WHEN MR. NEWHOUSE GETS UP AND STARTS  
19 TALKING TO YOU ABOUT WHATEVER THEY BRING UP, I'D ASK YOU  
20 TO DO THE FOLLOWING: ASK YOURSELF WHAT MR. BLESSEY WOULD  
21 SAY IN REGARDS TO WHATEVER COMMENTS HE'S GOING TO BE  
22 MAKING IF HE HAD ANOTHER CHANCE.

23 LADIES AND GENTLEMEN, THANK YOU SO MUCH  
24 AGAIN FOR YOUR WILLINGNESS TO SERVE ON THIS JURY. BOTH  
25 DR. SHAINSKY AND I APPRECIATE IT A GREAT DEAL. THANK YOU,  
26 YOUR HONOR.

27 THE COURT: ALL RIGHT, THANK YOU. COUNSEL?  
28 REBUTTAL.

1 MR. NEWHOUSE: COULD I HAVE A BRIEF MOMENT TO  
2 CONFER WITH MS. MC BROOM?

3 THE COURT: SURE. LET'S TAKE 5 MINUTES. IF YOU'D  
4 LIKE TO USE THE RESTROOM, YOU MAY. COURT'S IN RECESS FOR  
5 5 MINUTES. PLEASE REMEMBER THE ADMONITION.

6  
7 (RECESS.)

8  
9 (THE FOLLOWING PROCEEDINGS WERE HELD  
10 IN OPEN COURT, IN THE PRESENCE OF  
11 THE JURY:)

12  
13 THE COURT: WE'RE BACK ON THE RECORD. ALL JURORS  
14 ARE PRESENT AND IN PLACE, PARTIES ARE PRESENT, LAWYERS ARE  
15 PRESENT.

16 ALL RIGHT, COUNSEL, REBUTTAL ARGUMENT.

17 MR. NEWHOUSE: THANK YOU, YOUR HONOR. AGAIN,  
18 LADIES AND GENTLEMEN OF THE JURY, GOOD MORNING, AND THIS  
19 WILL BE OUR FINAL OPPORTUNITY TO SPEAK TO YOU. AND AFTER  
20 I CONCLUDE, I HAVE A FEW HOPEFULLY RELATIVELY BRIEF  
21 REMARKS AND THEN YOU WILL BE ALLOWED TO COMMENCE YOUR  
22 DELIBERATIONS.

23 LET ME START OFF WITH -- AND AGAIN, THE  
24 COURT HAS INSTRUCTED YOU ON THE JURY INSTRUCTIONS. YOU  
25 HAVE THEM, YOU'LL TAKE THEM INTO THE JURY ROOM WITH YOU,  
26 YOU WILL, I'M SURE, PERUSE THEM. I DIDN'T SPEND A LOT OF  
27 TIME. IN FACT, I SPENT VERY LITTLE TIME IN MY OPENING AND  
28 I'M GOING TO SPEND A LITTLE TIME IN REBUTTAL GOING OVER

1 THE JURY INSTRUCTIONS.

2 BUT THE JURY INSTRUCTIONS, LIKE THE EVIDENCE  
3 IN THE CASE, CANNOT AND SHOULD NOT BE TAKEN OUT PIECEMEAL,  
4 OKAY? ONE, THAT'S WHAT DEFENSE COUNSEL FOCUSED ON, AND HE  
5 THINKS HE MAKES A POINT. READ THEM IN THEIR ENTIRETY.  
6 READ THE INSTRUCTIONS IN THEIR ENTIRETY. THAT'S HOW THEY  
7 ARE INTENDED TO GUIDE YOU. AND WHEN YOU DO THAT, YOU WILL  
8 SEE, FOR EXAMPLE, THAT -- DO YOU HAVE THE INSTRUCTION?

9 SO THE ONE I WANT TO EMPHASIZE, HOWEVER,  
10 THAT WASN'T EMPHASIZED BY MR. BLESSEY IS C.A.C.I. 431  
11 WHICH DEALS WITH CAUSATION OR MULTIPLE -- OR MULTIPLE  
12 CAUSES BECAUSE, OF COURSE, THE CONTENTION OF THE DEFENSE  
13 IS, WELL, THE PERCOCET WOULD HAVE KILLED HER, BUT SO TOO  
14 WOULD THE TRAMADOL.

15 AND, AGAIN, YOU'VE HEARD OUR EVIDENCE, THE  
16 UNCONTRADICTED TESTIMONY OF DR. WOLFF, THAT, IN FACT,  
17 TRAMADOL WOULD NOT IN ALL LIKELIHOOD, CAN'T BE 100 PERCENT  
18 CERTAIN, IN ALL LIKELIHOOD WOULD NOT HAVE KILLED HER  
19 BECAUSE SHE DID NOT METABOLIZE THE DRUG. AND WE KNOW THAT  
20 BECAUSE SHE DIDN'T USE IT.

21 THIS IS A CASE INVOLVING THESE CONTENTION OF  
22 MULTIPLE CAUSES. SO THE INSTRUCTION YOU'RE GOING TO GET  
23 ON THAT BASICALLY SAYS:

24 "A PERSON'S NEGLIGENCE MAY COMBINE  
25 WITH ANOTHER FACTOR TO CAUSE HARM."

26 IT'S IMPORTANT. "A PERSON'S NEGLIGENCE" --  
27 IN THIS CASE DR. SHAINSKY IS GIVING HER 100 PERCOCET ON  
28 THE SAME DAY THAT SHE KNOWS SHE IS TALKING ABOUT KILLING

1 HERSELF -- "MAY COMBINE WITH ANOTHER FACTOR" -- OTHER  
2 PRESCRIPTIONS -- "TO CAUSE HARM." IF YOU FIND THAT  
3 DR. SHAINSKY'S NEGLIGENCE WAS A SUBSTANTIAL FACTOR IN  
4 CAUSING THE HARM, THEN SHE IS RESPONSIBLE FOR THE HARM.

5 THE DEFENDANT CANNOT AVOID RESPONSIBILITY  
6 JUST BECAUSE SOME OTHER PERSON, CONDITION, OR EVENT MAY  
7 ALSO HAVE BEEN A SUBSTANTIAL FACTOR IN CAUSING THE HARM.  
8 SO CONSIDER THAT INSTRUCTION IN THE CONTEXT OF THE OTHERS.

9 MR. BLESSEY MADE A NUMBER OF POINTS AND, OF  
10 COURSE, HE ROLLED OUT AN ISSUE WHICH HAS NEVER BEEN  
11 RAISED, SAVED FOR JURY INSTRUCTIONS. HE, OF COURSE -- AS  
12 YOU KNOW, WE HAVE THE POWER TO SUBPOENA WITNESSES AND  
13 RECORDS, AND WE EXAMINED WITNESSES. MR. BLESSEY HAD EVERY  
14 OPPORTUNITY TO ASK DAVID MAC EACHERN ANY QUESTIONS HE  
15 WANTED ABOUT THE PRESCRIPTIONS, WHICH YOU KNOW DAVID  
16 GENERALLY WENT WITH HER AT EVERY DOCTOR'S APPOINTMENT, AT  
17 EVERY PRESCRIPTION.

18 THEY DID NOT ASK A SINGLE QUESTION ABOUT THE  
19 NEW THEORY WHICH IS JUST THROWN OUT FOR YOUR ENTERTAINMENT  
20 VALUE, MY GOD, MAYBE IT'S MAYBE SOMEONE ELSE, SOME OTHER  
21 DOCTOR, UNKNOWN DOCTOR, A DR. UNG WROTE THE PRESCRIPTION  
22 OF PERCOCET THAT KILLED HER. IT'S A POSSIBILITY. WELL,  
23 LADIES AND GENTLEMEN, THAT IS COMPLETE HOGWASH.

24 WHAT WE DO KNOW IS THAT THE ONLY REFERENCE  
25 TO DR. UNG APPEARED IN THE CORONER'S REPORT, IN THE  
26 CORONER'S REPORT, WHICH WE ALREADY KNOW WAS RIDDLED WITH  
27 ERRORS, OKAY? OH, MY GOSH, WHAT A SHOCK TO LEARN THAT  
28 SOMETIMES GOVERNMENT AGENCIES, PARTICULARLY ON IMPORTANT

1 MATTERS, MAKE MISTAKES IN THEIR PAPERWORK.

2 I REPEAT: LAWYERS MAKE MISTAKES.

3 MR. BLESSEY MADE A NUMBER OF MISTAKES DURING THE TRIAL. I  
4 MAKE MISTAKES. THE CORONER MADE A MISTAKE. WE ALREADY  
5 KNOW ONE. HE ASSUMED A 37 -- HE ASSUMED A 50-MILLIGRAM  
6 TABLET FOR THE TRAMADOL WHEN, IN FACT, IT WAS 37.5. YOU  
7 SAW -- BY THE WAY, THE POOR DR. WOLFF WHO WAS JUST RIDDLED  
8 BY MR. BLESSEY, WHO IS THE PERSON WHO PICKED UP THAT  
9 ERROR? WAS IT MR. SAFANI -- DR. SAFANI WHO SPENT 5 HOURS  
10 DOING HIS PREP WORK? NO. YOU SAW HIM. I HAD DR. SAFANI  
11 ON THE STAND. SAID, "DR. SAFANI, DO YOU SEE ANYTHING  
12 WRONG WITH THIS REPORT? DID YOU SEE ANY ERRORS?" HE  
13 DIDN'T PICK UP ON A SINGLE ERROR. "NO, I DON'T."

14 HOW ABOUT THE TABLET, THE CALCULATION, KEY  
15 CALCULATION IN THE NUMBER OF TRAMADOL THAT SHE INGESTED?  
16 DON'T SEE AN ERROR. WE THEN DIRECTED HIM TO THE CORONER'S  
17 REPORT WHERE IT LISTED 37.5 AS OPPOSED TO 50, AND UP WENT  
18 THE ESTIMATE. SAFANI DIDN'T GET IT; WOLFF GOT IT. YOU  
19 JUDGE FOR YOURSELVES. WHOSE CREDIBILITY DOES THAT ENHANCE  
20 IN OUR VIEW? OKAY.

21 SO LET'S GO BACK TO THE CORONER'S REPORT.  
22 WE HAVEN'T HEARD ANYTHING ABOUT DR. UNG. THERE'S NO  
23 EVIDENCE ABOUT HIM. DAVID MAC EACHERN DOESN'T MENTION  
24 HIM. YOU HAVEN'T SEEN A SINGLE RECORD THAT SHE EVER  
25 VISITED A DR. UNG. SO WHO IS DR. UNG? HE APPEARS  
26 APPARENTLY IN A CHART THAT THEY FILLED OUT WITH THE  
27 VARIOUS PILLS AND THEY HAD THE DOCTOR SUPPOSEDLY ON THE  
28 PRESCRIPTION BOTTLES.

1                   WHO IS DR. UNG? USE YOUR COMMON SENSE.  
2 MAYBE DR. UNG WAS A TYPO. MAYBE THAT SHOULD HAVE READ  
3 U.N.K., WHICH IS GOVERNMENT SHORTHAND FOR UNKNOWN. THEY  
4 DIDN'T GET THE NAME OF THE DOCTOR RIGHT. THAT IS A  
5 SMOKESCREEN.

6                   BUT IT'S MORE THAN A SMOKESCREEN. WHY WOULD  
7 MR. BLESSEY ATTEMPT TO MISLEAD YOU? WHY WOULD HE ATTEMPT  
8 TO THROW UP AN ISSUE IN HIS CLOSING ARGUMENT AFTER THE  
9 EVIDENCE IS CLOSED TO SUGGEST, OH, MY GOSH, SOMEONE ELSE,  
10 SOMEONE ELSE MAY WELL HAVE BEEN RESPONSIBLE FOR THE DEATH.  
11 MAYBE IT WAS, EVEN THOUGH -- WELL, WE KNOW THAT  
12 DR. SHAINSKY'S PRESCRIPTION WAS PICKED UP.

13                   I KNOW IT'S NOT ON. THE QUESTION IS WHY IT  
14 ISN'T ON. I NEED TO SWITCH IT.

15                   OKAY. THIS IS IN EVIDENCE. THIS IS  
16 EXHIBIT 116. OKAY? HERE IS DR. SHAINSKY'S PRESCRIPTION.  
17 DID YOU SEE ANY EVIDENCE OF DR. UNG'S PRESCRIPTION? AND  
18 WHY ON EARTH WOULD SHE GO OUT AND GET TWO PRESCRIPTIONS  
19 FOR 100 TABLETS OF PERCOCET AT THE SAME TIME? HELLO. BUT  
20 LET'S LOOK. IT WAS FILLED ON MARCH 22ND, 2010, AT 9:27  
21 P.M. IN THE EVENING. THAT IS A FACT, LADIES AND  
22 GENTLEMEN. THAT'S NOT SOMETHING THAT THE DEFENSE COUNSEL  
23 CAN MAKE UP. THAT'S NOT SPECULATION. THAT'S A FACT.

24                   NOW, SO WHAT DO THEY TELL YOU? WELL,  
25 ACCORDING TO DAVID, SHE WAS ALREADY BACK IN HER ROOM AT  
26 EIGHT O'CLOCK. LADIES AND GENTLEMEN, AGAIN USE YOUR  
27 COMMON SENSE. WHEN YOU GO BACK SEVERAL YEARS AND YOU  
28 ATTEMPT TO GET TIME FRAMES, PRECISE TIME FRAMES, FROM

1 PEOPLE WITHOUT THE USE OF DOCUMENTATION, PEOPLE MAKE  
2 MISTAKES. YOU KNOW, I LOOK BACK SIX MONTHS AGO, I THOUGHT  
3 I WENT TO BED AT EIGHT O'CLOCK, TURNS OUT I WENT TO BED AT  
4 TEN O'CLOCK. WHAT DOES IT MATTER?

5 WHAT IS ABSOLUTELY CLEAR IS THIS  
6 PRESCRIPTION WAS FILLED AT 9:27, TRANSACTION TIME, IT'S  
7 PROBABLY WHEN TARA PICKED IT UP. YOU RECALL SHE WENT OUT  
8 ON HER OWN TO PICK IT UP. SHE CAME BACK TO THE HOUSE AND  
9 SHE TOOK 100 PERCOCET. AND IT WASN'T SOME FICTITIOUS  
10 DOCTOR NAMED DR. UNG THAT NO ONE HAS EVER HEARD OF. YOU  
11 ASK YOURSELF: WHY WOULD MR. BLESSEY TELL US THIS STORY?  
12 MAYBE IT'S BECAUSE THEY WANT TO POINT FINGERS IN OTHER  
13 DIRECTIONS, OKAY.

14 SO DR. WOLFF. BACK TO DR. WOLFF. HE DID  
15 SPEND A LOT OF TIME DOING HIS RESEARCH. HE SPENT OVER 100  
16 HOURS, AND YOU SAW THE DEFENSE EXPERTS. WELL, THEY ALL  
17 KIND OF DIAL IT IN. DR. SAFANI, ALSO, BY THE WAY, NOT A  
18 TOXICOLOGIST. HE'S A PHARMACIST. HE'S AN EXPERT IN  
19 DEALING WITH ALIVE PATIENTS. HE SPENDS 5, MAYBE 10 HOURS,  
20 AND YOU SAW THE RESULTS OF HIS WORK.

21 HE MADE A LOT OF ASSUMPTIONS. HE DIDN'T  
22 LIKE THE CORONER'S NUMBERS FOR TOXICITY LETHALITY. AND HE  
23 WASN'T ABLE TO EXPLAIN TO YOU WHY HE LIKED HIS NUMBERS  
24 BETTER. ALTHOUGH HIS NUMBERS, BY THE WAY, ALLOW HIM TO  
25 MAKE ALL THESE SPECULATIVE INFERENCES SUCH AS, GEE, A  
26 FOUR-DAY SUPPLY OF PERCOCET WOULD HAVE KILLED THE PATIENT.  
27 IF HE HAD SPENT THE TIME THAT DR. WOLFF SPENT, MAYBE HE  
28 WOULDN'T HAVE MADE AS MANY MISTAKES. MAYBE HE WOULDN'T

1 HAVE FAILED TO PICK UP ON THE ERRORS IN THE CORONER'S  
2 REPORT, THE ONES WE JUST POINTED OUT TO YOU. YOU DECIDE  
3 WHOSE CREDIBILITY IS BETTER.

4 THAT BRINGS ME TO THE NEXT POINT, THIS  
5 LOADED GUN NOTION. THERE'S NO QUESTION. SAFANI ADMITTED  
6 IT. AFTER ASCERTAINING THAT THE PATIENT HAD SUICIDAL  
7 TALK, POSSIBLY INTENT, ON MARCH 22ND, AND AFTER PLACING A  
8 CALL TO DR. BOHN, WHICH DID NOT REACH HER IN CONNECTION  
9 WITH DR. BOHN, AND FAILING TO SPEAK WITH HIM, SHE GAVE THE  
10 PRESCRIPTION NONETHELESS. THAT WAS A LOADED GUN.

11 NOW, THE DEFENSE SAYS, WELL, YOU KNOW,  
12 DR. RUDNICK SAID, AND, IN FACT, ALL THE CREDIBLE EXPERTS  
13 SAID, "IF YOU NEED TO GIVE THE PATIENT A PAIN PRESCRIPTION  
14 IF THESE CIRCUMSTANCES, DO SO, BUT MAKE SURE IT'S A  
15 LIMITED AMOUNT, THREE TO FOUR DAYS. PROBABLY NOT TOXIC."

16 WELL, THE DEFENSE, OF COURSE, AFTER  
17 DR. SAFANI SAYS, "WELL, YOU KNOW, TURNS OUT THAT FOUR-DAY  
18 SUPPLY, LET'S SEE, THAT WOULD BE 18 TO 20 PILLS, WOULD  
19 HAVE KILLED HER." DO WE KNOW THAT? WE DON'T KNOW THAT.

20 BUT HERE IS THE QUESTION YOU HAVE TO ASK  
21 YOURSELF. THE DOCTOR SAYS TO THE PATIENT, AS DR. SHAINSKY  
22 SHOULD HAVE DONE HAD SHE ACTUALLY SHOWED A CARE OR  
23 CONCERN, "I'M NOT GOING TO GIVE YOU A LOT OF PAIN PILLS.  
24 I'M NOT GOING TO GIVE YOU ENOUGH TO HURT YOURSELF. I'M  
25 GOING TO GIVE YOU A LIMITED SUPPLY."

26 DR. SAFANI WITH HIS 5 HOURS OF ANALYSIS  
27 CONCLUDES THAT WOULD HAVE KILLED HER. THE QUESTION YOU  
28 HAVE TO ASK YOURSELF IS: WOULD THE PATIENT KNOW THAT?



1 WOULD THE PATIENT KNOW THAT THAT WOULD KILL HER? NO, OF  
2 COURSE NOT. AND, OF COURSE, WE'RE GOING TO GET TO  
3 CAUSATION AT THE END.

4 SO THE LOADED GUN ANALOGY DOESN'T WORK. THE  
5 LOADED GUN WAS THE 100 PERCOCET. THE GUN LOADED WITH  
6 BLANKS WOULD HAVE BEEN THREE TO FOUR DAYS, SOMETHING THAT  
7 THE PATIENT WOULD NOT -- IS NOT LIKELY TO CAUSE SUICIDE  
8 BECAUSE THE PATIENT DOESN'T NECESSARILY REALIZE THAT'S  
9 GOING TO BE HER DEMISE.

10 LET'S TALK ABOUT DR. BOHN. AGAIN, ANOTHER  
11 SMOKESCREEN. WHEN YOU GET A SMOKESCREEN, WHEN YOU GET AN  
12 ARGUMENT THAT IS DESIGNED -- WITH ALL DUE RESPECT, HE'S A  
13 VERY FINE LAWYER -- TO MISLEAD YOU, YOU NEED TO ASK  
14 YOURSELF: WHY IS THE DEFENSE TELLING US THIS?

15 WELL, ACCORDING TO DR. BOHN, ON HIS LAST  
16 VISIT, WHICH WE KNOW WAS FEBRUARY 9, 2010, SHE WAS AT LOW  
17 RISK. SO THE DEFENSE'S RATIONALE SUPPOSES SO IF  
18 DR. BOHN WHO KNEW HER WELL -- AND THAT'S TRUE, HE HAD SEEN  
19 HER OVER THREE YEARS, HE HAD DETAILED FILES, HE HAD  
20 DETAILED FINDINGS, WHICH, OF COURSE, DR. SHAINSKY WAS  
21 COMPLETELY IN THE DARK ABOUT BECAUSE SHE NEVER BOTHERED TO  
22 GET THE FILE, CALL DR. BOHN. BUT AS OF FEBRUARY 9, HE DID  
23 NOT SEE HER AS SUICIDAL.

24 SO THEY SAY, "HOW COULD DR. SHAINSKY  
25 POSSIBLY KNOW DIFFERENT ON MARCH 22ND?" AND THE ANSWER  
26 IS, "IT'S A DIFFERENT DATE." LOTS OF STUFF HAS HAPPENED  
27 BETWEEN FEBRUARY 9 AND MARCH 22ND. SHE WAS SUICIDAL ON  
28 MARCH 22ND.

1           IF WE HAVE PROVED NOTHING IN THIS CASE, WE  
2 HAVE PROVED THAT THIS PATIENT WITHIN 6 TO 9 HOURS OF  
3 GETTING DR. SHAINSKY'S PRESCRIPTION WAS DEAD, AND DEAD  
4 FROM AN OVERDOSE OF PERCOCET. SO SHE WAS SUICIDAL. AND,  
5 OF COURSE, IN THAT LAST VISIT WITH DR. BOHN -- LOOK AT THE  
6 RECORDS, YOU'LL HAVE THEM IN THE JURY ROOM -- HE --  
7 REMEMBER HE RETESTIFIED. HE ALWAYS HAD "S/I" SO HE WOULD  
8 CHECK UP ON SUICIDAL IDEATION. AND HIS TESTIMONY WAS, "I  
9 DON'T RECALL HER MENTIONING SUICIDAL TALK ON THAT  
10 OCCASION." HE SAID, "IT WASN'T WELL DOCUMENTED." HE  
11 DOESN'T RECALL IT. IT DIDN'T HAPPEN. SO BASED UPON  
12 WHAT'S BEFORE DR. BOHN ON FEBRUARY 9TH, NO SUICIDAL  
13 IDEATION.

14           AND REMEMBER WHAT I SAID IN MY OPENING  
15 PORTION OF MY CLOSING ARGUMENT? I SAID TO YOU, "YOU KNOW  
16 WHAT? IF THIS CASE HAD BEEN ABOUT WHAT DR. SHAINSKY DID  
17 ON THE NEXT DAY ON FEBRUARY 10TH, WE WOULDN'T BE HERE. WE  
18 WOULDN'T BE HERE." I DON'T THINK SHE ACTED WITH AS MUCH  
19 DILIGENCE AS SHE SHOULD HAVE, BUT SHE GAVE A LIMITED  
20 AMOUNT OF NORCO. SHE DID NOT NECESSARILY AT THAT POINT  
21 REALIZE THAT THE PATIENT'S PROBLEMS WERE PSYCHOTIC OR  
22 PSYCHIATRIC IN NATURE. SHE PRESCRIBED HER CYMBALTA. HER  
23 CARE WAS NOT BELOW THE STANDARD OF CARE.

24           WHEN YOU FAST-FORWARD, HOWEVER, 40 DAYS  
25 LATER TO MARCH, AFTER THIS PATIENT HAS BECOME ADDICTED TO  
26 OPIATES BECAUSE OF A CARELESS AND IRRESPONSIBLE ACT OF  
27 DR. SHAINSKY, TOTALLY DIFFERENT STORY.

28           IF THIS PATIENT HAD COME INTO DR. BOHN'S

1 OFFICE ON FEBRUARY 9TH WITH HER BOYFRIEND AND SAYING, "I  
2 WANT TO DIE, I'M THING OF KILLING MYSELF," DR. BOHN  
3 PROBABLY WOULD HAVE PUT HER IN ON A 5150. AT A MINIMUM,  
4 HE WOULD NOT HAVE PRESCRIBED HER OPIATES. SO THIS  
5 CONSTANT COMPARISON TO DR. BOHN, ANOTHER EXAMPLE OF A  
6 FALSE AND MISLEADING ARGUMENT.

7           AGAIN, I HAVE TO COMMENT ON THE DEFENSE  
8 SAYS, "WELL, YOU KNOW, YES" -- I MEAN, THEY IMPLICITLY  
9 CONCEDE SHE SAID THE RIGHT THING, STRONGLY DISCOURAGED  
10 OPIATES. SHE DID THE WRONG THING. SHE PRESCRIBED  
11 OPIATES. "WELL," THEY SAY, "YOU KNOW, YOU HAVE TO  
12 UNDERSTAND" -- IN FACT, YOU HEARD -- REALLY, DR. SHAINSKY  
13 WAS ABLE TO TESTIFY TWICE IN THIS CASE. SHE TESTIFIED  
14 FIRST ON THE STAND -- AND I TAKE NO PLEASURE IN IT. I'M  
15 CALLED UNPROFESSIONAL, I GUESS, UNETHICAL BECAUSE I TELL  
16 YOU, AND I REPEAT, SHE LIED TO YOU ON THE STAND, LIED ON A  
17 NUMBER OF POINTS. SHE COVERED UP HER NEGLIGENCE AND HER  
18 MISTAKES. I DON'T TAKE PLEASURE IN IT.

19           BUT SHE SAYS, "WELL, IT WAS A LONG-TERM PLAN  
20 AND THE LONG-TERM PLAN WAS, YES, WE WERE EVENTUALLY GOING  
21 TO WEAN HER OFF OPIATES. WE'RE GOING TO GET THE CYMBALTA  
22 UP." THEN, OF COURSE, THE TESTIMONY WAS, WELL, THAT  
23 SHOULD HAVE BEEN EFFECTIVE IN SIX WEEKS. SIX WEEKS IS  
24 ABOUT 40 DAYS WHEN SHE CAME BACK ON MARCH 22ND. NOT ONLY  
25 DOES SHE NOT WEAN HER OFF OPIATES, WE INCREASED THE  
26 OPIATES.

27           BUT, OF COURSE, THE DEFENSE WANTS YOU TO  
28 BELIEVE THERE WAS REALLY THIS LONG-TERM PLAN. YOU KNOW

1 WHAT? THE BEST TEST PROOF OF THE PIE IS THE EATING. GO  
2 TO HER PROGRESS NOTES, HER OWN RECORDS, AND YOU TELL ME IF  
3 YOU SEE ANYTHING IN THERE ABOUT THE LONG-TERM PLAN. "OH,  
4 YEAH, ALTHOUGH I STRONGLY DISCOURAGE NARCOTICS, WE'RE  
5 GOING TO CONTINUE TO KEEP THEM ON. THIS MAY NOT WORK  
6 UNTIL SIX WEEKS, EIGHT WEEKS, 12" -- AT SOME POINT  
7 DR. SHAINSKY NEEDED TO IMPLEMENT -- BUT YOU DON'T SEE  
8 THAT, IT'S NOT THERE. IT WAS ALL MADE UP FOR YOUR  
9 BENEFIT.

10 THE PHONE MESSAGE. AGAIN, I'M UNETHICAL  
11 BECAUSE I READ THE PHONE MESSAGE IN THE ONLY WAY THAT IT  
12 CAN BE READ. DO YOU SEE ANY EVIDENCE AT ALL THAT CYMBALTA  
13 WAS MENTIONED WHEN SHE PLACED THE CALL TO DR. BOHN? YOU  
14 HEARD DR. BOHN, I ASKED HIM, "SIR, DID SHE SAY ANYTHING  
15 ABOUT CYMBALTA?"

16 "NO." NO RECOLLECTION.

17 WHAT SHE SAID WAS, "I'M TREATING THE PATIENT  
18 FOR FIBROMYALGIA. THE PATIENT IS SUFFERING FROM ANXIETY  
19 AND DEPRESSION, AND THE PATIENT IS TALKING ABOUT SUICIDE,  
20 SUICIDE IDEATION." THAT WASN'T -- DIDN'T SEE THE LITTLE  
21 CIRCLE WITH THE SLASH THAT YOU'LL FIND IN HIS RECORDS.

22 SO THAT CONVERSATION FROM DR. SHAINSKY IS A  
23 LIE. AND THE QUESTION -- BY THE WAY, HOW DID MR. BLESSEY  
24 DO ON HIS 10 QUESTIONS? DID HE ANSWER ANY OF THEM? HE  
25 DIDN'T ANSWER THIS ONE FOR SURE. HE SAID, "WELL, IT  
26 WASN'T REALLY A LIE." YOU DECIDE.

27 AND IF IT WAS A LIE, IF YOU THINK THAT SHE  
28 CLEARLY TOLD OR WAS TRYING TO TELL DR. BOHN, YOU NEED TO

1 ASK YOURSELF: WHY WOULD SHE LIE? WHY WOULD SHE FEEL  
2 COMPELLED TO TELL A DIFFERENT STORY ON THE STAND EVEN  
3 THOUGH THERE'S ABSOLUTELY NO SUPPORT FOR IT?

4 LET ME CLOSE WITH A FEW REMARKS ABOUT  
5 CAUSATION. WE BELIEVE WE HAVE SHOWN YOU, PROVIDED YOU  
6 WITH AMPLE EVIDENCE THAT YOU CAN FIND MORE LIKELY THAN NOT  
7 THAT THE TRAMADOL WASN'T EFFECTIVE, WOULDN'T HAVE HAD THE  
8 ANALGESIC EFFECT, WOULDN'T HAVE HAD THE RESPIRATORY  
9 INHIBITION DEPRESSION EFFECT, WOULDN'T HAVE KILLED HER.

10 BUT LET'S ASSUME FOR THE MOMENT WE'RE WRONG,  
11 OKAY? LET'S ASSUME FOR THE MOMENT THAT DR. SAFANI AND HIS  
12 5-1/2 HOURS OF RESEARCHING THE ONLINE PERIODICALS IS RIGHT  
13 AND, AS YOU HEARD HIM STRONGLY DENY, "NO, YOU KNOW, THE  
14 O.D.T. METABOLITE 1 ISN'T THE PRIMARY, IT WOULD HAVE STILL  
15 HAD THIS IMPACT." LET'S JUST ASSUME THAT.

16 YOU HAVE TO ASK YOURSELF THE FOLLOWING  
17 QUESTION: WHAT WAS IT THAT TRIGGERED THE SUICIDE? OKAY?  
18 NOW, IN THE LAW WE HAVE AN EXPRESSION. IT'S DERIVED FROM  
19 A LONG LINE OF CASES. IT'S CALLED "RES IPSA LOQUITUR,"  
20 LATIN FOR "THE THING SPEAKS FOR ITSELF." AND IT DERIVES  
21 FROM AN OLD FAMOUS CASE WHERE IN THE 1800S A GUY IS  
22 WALKING DOWN THE STREET IN NEW YORK AND, LIKE THE SUICIDE,  
23 NO ONE KNOWS WHAT HAPPENS, BUT A SAFE FALLS OUT OF THE  
24 WINDOW AND KILLS HIM ON THE SIDEWALK AND THEY SUE FOR  
25 WRONGFUL DEATH. AND NO ONE KNOWS HOW THE SAFE FELL OUT OF  
26 THE WINDOW, BUT SOMETIMES THE INFERENCES YOU CAN DRAW, THE  
27 THING SPEAKS FOR ITSELF, SOMEONE WAS NEGLIGENT. OKAY?

28 WELL, THE SAME RATIONALE HERE. WHY WAS IT

1 THAT SHE HAD THE TRAMADOL FOR 60 DAYS? SHE DIDN'T USE IT.  
2 DIDN'T WORK FOR HER. SHE DIDN'T USE IT TO COMMIT SUICIDE.  
3 SHE HAD A LOT OF OTHER PRESCRIPTIONS. WHAT WAS IT ABOUT  
4 THE PERCOCET THAT GIVEN HER SUICIDAL THOUGHTS AND  
5 INTENTIONS CAUSED THE SUICIDE? WELL, LET ME PUT IT TO YOU  
6 THIS WAY. LET'S ASSUME -- IT'S A THOUGHT EXPERIMENT --  
7 THAT YOU'RE SUICIDAL.

8 THE COURT: COUNSEL, 5 MINUTES.

9 MR. NEWHOUSE: I'M ALMOST DONE, YOUR HONOR. THANK  
10 YOU.

11 LET'S ASSUME THAT YOU'RE SUICIDAL. YOU WANT  
12 TO COMMIT SUICIDE. HAVE YOU EVER NOTICED THAT ONE OF THE  
13 WAYS PEOPLE COMMIT SUICIDE IS THEY JUMP OFF BUILDINGS.  
14 OKAY? PEOPLE STEP IN FRONT OF TRAINS, PEOPLE JUMP OFF  
15 BUILDINGS. HAVE YOU EVER NOTICED THAT YOU NEVER HEAR A  
16 REPORT OF SOMEONE JUMPING OFF A THREE-STORY BUILDING.  
17 PROBABLY GOING TO KILL YOU. BUT THE PROBLEM IS IT'S NOT  
18 CERTAINLY GOING TO KILL YOU AND YOU MIGHT WIND UP, IF YOU  
19 JUMP OFF A THREE-, FOUR-, OR FIVE-STORY BUILDING, DOING  
20 NOTHING MORE THAN HURTING YOURSELF EVEN WORSE.

21 WELL, THE ANALOGY IS APT BECAUSE IN THIS  
22 CASE SHE HAD SOME DRUGS. SHE MIGHT HAVE BEEN ABLE TO TAKE  
23 THOSE DRUGS AND THEY MIGHT HAVE HAD AN IMPACT ON HER, BUT  
24 LIKE A THREE-STORY BUILDING, IT MIGHT NOT HAVE KILLED HER.  
25 SHE HAD IN HER HAND, AS DR. SAFANI PUT IT WELL, A TANK.  
26 IF IT WAS A FIREARM, IT WAS, YOU KNOW, A .357 MAGNUM.  
27 THERE WAS NO DOUBT ABOUT IT, SHE KNEW THAT WOULD DO THE  
28 JOB.

1                   SO THAT WAS THE EQUIVALENT OF JUMPING OFF A  
2 40-STORY BUILDING AND THAT TANK, THAT LETHAL WEAPON, WAS  
3 PROVIDED TO HER BY DR. SHAINSKY AFTER SHE TRIED TO CALL  
4 THE PSYCHIATRIST AND DIDN'T REACH HIM, WITHOUT A CARE OR  
5 CONCERN UPON ONE SOLE INQUIRY, "YOU'RE NOT GOING TO HURT  
6 YOURSELF, ARE YOU?"

7                   "NO, I'M NOT."

8                   AND THAT WAS IT.

9                   LADIES AND GENTLEMEN, I REALLY AGAIN  
10 APPRECIATE YOUR TIME, YOUR ATTENTION. AND WE -- ON BEHALF  
11 OF MY CLIENTS, I WANT TO THANK YOU FOR YOUR SERVICE AS  
12 JURORS IN THIS CASE. WE WOULD ASK YOU TO, AFTER YOU  
13 DELIBERATE, TO RETURN THE ONLY VERDICT THAT IS CONSISTENT  
14 WITH THE EVIDENCE, NOT COUNSEL'S ARGUMENT, NOT UNKNOWN  
15 DOCTORS. THE EVIDENCE IS THAT DR. SHAINSKY WAS NEGLIGENT  
16 ON MARCH 22ND, THAT THAT NEGLIGENCE CAUSED THE DEATH OF  
17 TARA DE ROGATIS, AND THAT LED TO CLEARLY THE DAMAGES THAT  
18 WE ASK YOU TO RETURN.

19                  SO THANK YOU VERY MUCH INDEED.

20                 THE COURT: ALL RIGHT. THANK YOU, COUNSEL. CAN  
21 YOU LOWER THE SCREEN FOR ME?

22                 MR. NEWHOUSE: OF COURSE.

23                 THE COURT: THANK YOU VERY MUCH.

24                         THIS IS WHEN I GET TO DO SOMETHING REALLY  
25 IMPORTANT. PLEASE RAISE YOUR RIGHT HAND. DO YOU SOLEMNLY  
26 SWEAR TO TAKE CHARGE OF THE JURY AND KEEP THEM TOGETHER,  
27 THAT YOU WILL NOT SPEAK TO THEM YOURSELF NOR ALLOW ANYONE  
28 ELSE TO SPEAK TO THEM UPON ANY SUBJECT CONNECTED WITH THIS

1 CASE EXCEPT ON ORDER OF THE COURT AND WHEN THEY HAVE  
2 AGREED UPON A VERDICT YOU WILL RETURN THEM INTO THIS  
3 COURT, SO HELP YOU GOD?

4 THE CLERK: I DO.

5 THE COURT: DO YOU SOLEMNLY SWEAR THAT YOU WILL  
6 TAKE CHARGE OF THE ALTERNATE JURORS AND KEEP THEM APART  
7 FROM THE JURY WHILE THEY ARE DELIBERATING ON THE CAUSE  
8 UNTIL OTHERWISE INSTRUCTED BY THE COURT SO HELP YOU GOD?

9 THE CLERK: I DO.

10 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN,  
11 ALTERNATES, YOU CAN LEAVE YOUR NOTEBOOKS HERE. THE 12 OF  
12 YOU, TAKE ANY PARAPHERNALIA YOU HAVE WITH YOU, INCLUDING  
13 YOUR NOTEBOOKS. FOLLOW CINDY, MY CLERK, DOWN THE HALL.  
14 IT WILL BE TO YOUR LEFT AND THEN AT THE END OF THE HALL,  
15 TO YOUR LEFT AGAIN AND INTO THE JURY ROOM.

16 THE FIRST THING YOU WANT TO DO IS SELECT  
17 YOUR FOREPERSON. RING AT NOON SO SHE CAN RELEASE YOU FOR  
18 LUNCH. LUNCH WILL BE FROM 12:00 TO 1:30. YOU'RE ON YOUR  
19 OWN. THE ADMONITION STILL REMAINS ABOUT TALKING TO OTHERS  
20 AND SO ON.

21 ALTERNATES, YOUR NOTEBOOKS REMAIN HERE. IF  
22 YOU CAN HAVE A SEAT IN THE HALLWAY, SHE'LL COME BACK AND  
23 GIVE YOU SOME INSTRUCTIONS. WHAT I NEED TO KNOW AT ALL  
24 TIMES IS WHERE YOU'RE GOING TO BE. IF WE HAVE READBACK OR  
25 I HAVE A VERDICT OR A QUESTION THAT I HAVE TO HAVE  
26 ANSWERED IN FRONT OF ALL THE JURORS, I HAVE TO BE ABLE TO  
27 FIND YOU.

28 SO, YOU KNOW, IF YOU WANT TO GO UP TO THE



1 FIFTH FLOOR OR STAY OUT HERE, OR DO WHATEVER YOU WANT TO  
2 DO, BUT JUST MAKE CERTAIN WE CAN IMMEDIATELY FIND YOU. ON  
3 OCCASION, SOMETIMES ALTERNATES WILL WANDER DOWN TO THE  
4 MALL. PLEASE DON'T DO THAT.

5 ALL RIGHT? ALL RIGHT.

6  
7 (JURY BEGINS DELIBERATING AT 11:45 A.M.)

8  
9 (THE FOLLOWING PROCEEDINGS WERE HELD  
10 IN OPEN COURT, OUTSIDE THE PRESENCE  
11 OF THE JURY:)

12  
13 THE COURT: WE'RE NOW OUTSIDE THE PRESENCE OF THE  
14 JURY. COUNSEL, I'LL HOLD THE VERDICT UP TO 15 MINUTES  
15 WHEN I GET IT. SO, YOU KNOW, CERTAINLY REMAIN HERE. I  
16 WILL HAVE THEM DELIBERATING UNTIL 4:30 TODAY.

17 MR. NEWHOUSE: OKAY.

18 THE COURT: AND THEN THEY WILL RETURN ON TUESDAY AT  
19 9:00 A.M.

20 MR. NEWHOUSE: SO WHAT'S YOUR POLICY WITH REGARD TO  
21 IF YOU GET A NOTE? DO YOU WANT US --

22 THE COURT: IF I GET A NOTE, I WANT TO BE ABLE TO  
23 FIND YOU. I DON'T MIND YOU GOING BACK TO YOUR OFFICE, BUT  
24 THE ONLY PROBLEM IS -- YOU KNOW, I CAN READ TO YOU THE  
25 NOTE, BUT I LIKE TO HAVE THE LAWYERS HERE SO YOU CAN SIGN  
26 OFF ON WHATEVER I SEND BACK TO THE JURORS.

27 MR. NEWHOUSE: UNDERSTOOD. SO YOU WOULD LIKE A  
28 RESPONSE --

1 THE COURT: PUT IT THIS WAY: DON'T LEAVE THE  
2 COURTHOUSE TODAY, ALL RIGHT? THERE WE GO.

3 MR. NEWHOUSE: THAT, I CAN UNDERSTAND. THANK YOU.

4 THE COURT: OKAY.

5  
6 (THE NOON RECESS WAS TAKEN UNTIL  
7 1:30 P.M. OF THE SAME DAY.)  
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1 CASE NUMBER: BC457891  
2 CASE NAME: DE ROGATIS VS. SHAINSKY  
3 PASADENA, CALIFORNIA FRIDAY, NOVEMBER 8, 2013  
4 DEPARTMENT P HON. JAN A. PLUIM, JUDGE  
5 REPORTER: KAREN E. KAY, CSR NO. 3862  
6 TIME: P.M. SESSION

## 7 APPEARANCES:

8 GEORGE B. NEWHOUSE, JR., AND KATHERINE C. MC BROOM,  
9 ATTORNEYS AT LAW, COUNSEL FOR PLAINTIFFS, ARE  
10 PRESENT  
11 RAYMOND L. BLESSEY, ATTORNEY AT LAW, COUNSEL FOR  
12 DEFENDANT, IS PRESENT  
13

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

17  
18 (THE JURY RETURNED FROM  
19 DELIBERATIONS AT 3:31 P.M.)  
20

21 THE COURT: ALL RIGHT. WELCOME, LADIES AND  
22 GENTLEMEN. WE'RE BACK ON THE RECORD IN THE CASE OF  
23 DE ROGATIS VERSUS SHAINSKY. ALL THE JURORS ARE PRESENT  
24 AND IN PLACE, AND ALL COUNSEL ARE PRESENT.

25 WAIVE THE APPEARANCE OF PLAINTIFFS?

26 MR. NEWHOUSE: WE DO, YOUR HONOR.

27 THE COURT: DEFENSE?

28 MR. BLESSEY: YES, YOUR HONOR.

1 THE COURT: MR. MC NAMARA, I NOTICE THAT YOU HAVE  
2 THE THIN FOLDER.

3 THE CLERK: MR. KENNEDY.

4 THE COURT: MR. KENNEDY. I'M SORRY. YOU HAVE THE  
5 THIN FILE THERE.

6 THE FOREPERSON: YES, I DO.

7 THE COURT: HAS THIS JURY REACHED A VERDICT?

8 THE FOREPERSON: YES.

9 THE COURT: IF YOU WOULD BE SO KIND AS TO HAND IT  
10 TO MY CLERK.

11 THE CLERK: "TITLE, COURT, AND CAUSE. WE ANSWERED  
12 THE QUESTIONS SUBMITTED TO US AS FOLLOWS:

13 "QUESTION NO. 1: WAS DEFENDANT DR. KAREN  
14 SHAINSKY NEGLIGENT IN HER CARE AND TREATMENT OF TARA  
15 DE ROGATIS? ANSWER: NO. DATED 11/8/13. SIGNED, JOHN  
16 KENNEDY, FOREPERSON."

17 LADIES AND GENTLEMEN OF THE JURY, IS THIS  
18 YOUR VERDICT?

19  
20 (THE JURORS ANSWERED IN THE  
21 AFFIRMATIVE.)

22  
23 THE COURT: DO YOU WISH TO HAVE THE JURY POLLED?

24 MR. NEWHOUSE: YES, PLEASE, YOUR HONOR.

25 THE COURT: I'M GOING TO HAVE CINDY READ THE  
26 QUESTION AGAIN AND THE ANSWER, AND THEN SHE'S GOING TO ASK  
27 EACH ONE OF YOU IF YOU AGREE.

28 IF YOU AGREE WITH THE ANSWER, SAY "I AGREE."

1 DON'T SAY "YES" OR "NO." IT GETS CONFUSING BECAUSE THE  
2 ANSWER IS "NO," AND SO JUST SAY "I AGREE," OR "I  
3 DISAGREE," OKAY?

4 THE CLERK: "QUESTION NO. 1: WAS DEFENDANT  
5 DR. KAREN SHAINSKY NEGLIGENT IN HER CARE AND TREATMENT OF  
6 TARA DE ROGATIS? ANSWER: NO."

7 JUROR NO. 1, IS THIS YOUR ANSWER?

8 JUROR NO. 1: I AGREE.

9 THE CLERK: JUROR NO. 2?

10 JUROR NO. 2: I AGREE.

11 THE CLERK: JUROR NO. 3?

12 JUROR NO. 3: I AGREE.

13 THE CLERK: JUROR NO. 4?

14 JUROR NO. 4: I AGREE.

15 THE CLERK: JUROR NO. 5?

16 JUROR NO. 5: I AGREE.

17 THE CLERK: JUROR NO. 6?

18 JUROR NO. 6: I AGREE.

19 THE CLERK: JUROR NO. 7?

20 JUROR NO. 7: I AGREE.

21 THE CLERK: JUROR NO. 8?

22 JUROR NO. 8: I AGREE.

23 THE CLERK: JUROR NO. 9?

24 JUROR NO. 9: I AGREE.

25 THE CLERK: JUROR NO. 10?

26 JUROR NO. 10: I AGREE.

27 THE CLERK: JUROR NO. 11?

28 JUROR NO. 11: I AGREE.

1 THE CLERK: JUROR NO. 12?

2 JUROR NO. 12: I AGREE.

3 THE COURT: MR. KENNEDY, IT APPEARS TO BE  
4 UNANIMOUS; IS THAT CORRECT?

5 THE FOREPERSON: YES, YOUR HONOR.

6 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN OF THE  
7 JURY, I WANT TO THANK YOU ON BEHALF OF LOS ANGELES  
8 SUPERIOR COURT, MYSELF, MY STAFF, THE LAWYERS, AND  
9 LITIGANTS IN THIS MATTER. I KNOW IT'S A DISRUPTION IN  
10 YOUR DAILY LIVES TO COME HERE AND SERVE AS A JUROR, BUT  
11 THIS IS THE BEST SYSTEM AVAILABLE. WE ALL APPRECIATE IT.  
12 YOU'RE THANKED AND EXCUSED AND MAY RETURN TO THE JURY  
13 ASSEMBLY ROOM.

14 BEFORE YOU GO, I NEED TO THANK THE  
15 ALTERNATES. I KNOW IT'S VERY DIFFICULT TO SIT HERE AND  
16 LISTEN TO THIS CASE FOR TWO WEEKS AND NOT BE ABLE TO SIT  
17 DOWN WITH 11 OTHER JURORS AND DECIDE IT. BUT AGAIN, THANK  
18 YOU SO MUCH. AND I KNOW EVERYBODY THANKS ALL OF YOU FOR  
19 THE SERVICES THAT YOU'VE GIVEN IN THIS MATTER.

20 I MUST TELL YOU THAT MEDICAL MALPRACTICE  
21 CASES FROM MY STANDPOINT ARE INTERESTING. I'M SURE THAT  
22 ALL OF YOU LEARNED SOMETHING TO HAVE EXPERTS ON BOTH SIDES  
23 RATHER THAN AN AUTOMOBILE CASE IN WHICH SOMEBODY, YOU  
24 KNOW, GETS A BROKEN ARM OR SOMETHING. SO THIS IS REALLY  
25 KIND OF A FUN CASE. I'M GLAD YOU WERE ABLE TO SIT HERE  
26 AND LISTEN TO IT.

27 AND I, AGAIN, I THANK YOU VERY MUCH FOR YOUR  
28 SERVICE TO THE COURT AND TO THE PEOPLE OF THIS COUNTY.

1 THANK YOU VERY MUCH. YOU'RE EXCUSED AND DISCHARGED. YOU  
2 MAY RETURN TO THE JURY ASSEMBLY ROOM AT THIS TIME.

3 LEAVE YOUR NOTEBOOKS. WE DO RECYCLE THEM,  
4 BELIEVE IT OR NOT. AND YOUR JURY DUTY IS NOW COMPLETE.

5 THANK YOU VERY MUCH. IF YOU'D LIKE TO SPEAK TO THE  
6 LAWYERS, YOU MAY DO SO OUT IN THE HALLWAY.

7 THE CLERK: ON THE RECORD, THEY WERE THE BEST JURY  
8 EVER.

9 THE COURT: THEY PROBABLY WOULD SAY THE SAME THING  
10 ABOUT YOU.

11

12 (THE PROCEEDINGS WERE CONCLUDED AT

13 3:36 P.M.)

14

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