

1 A CORRECT.

2 Q THEN THE OTHER DRUG, HYDROCODONE, AND YOUR
3 TESTIMONY IS THAT MIGHT HAVE KILLED HER, BUT WILL YOU AT
4 LEAST AGREE WITH ME THAT'S A CLOSER CALL BECAUSE THE
5 LEVELS WERE CLOSER TO THE LETHAL LEVEL?

6 A YES, I AGREE.

7 Q AGREE WITH ME -- WELL, LET ME ASK YOU THIS:
8 HOW DID YOU DETERMINE THE LETHAL LEVELS TO APPLY TO YOUR
9 CALCULATIONS? BECAUSE THE CORONER, THIS IS WHAT THE
10 CORONER DID -- STRIKE THAT.

11 WOULD YOU AGREE THE CORONER, THEY DO MORE
12 TOXICOLOGY ANALYSIS THAN YOU DO?

13 A THEY DO MORE TOXICOLOGY, YES, THAN I DO.

14 Q A LOT MORE?

15 A OH, YES.

16 Q AND THEY SELECTED, LET'S SEE, FOR LETHAL
17 LEVELS FOR OXYCODONE, THEY SELECTED 5 MILLIGRAMS PER
18 MILLILITER, RIGHT?

19 A WELL, IT'S MICROGRAM, BUT FINE.

20 Q THANK YOU.

21 A THAT'S OKAY. I DON'T MEAN TO BE TECHNICAL,
22 BUT THIS IS A COURT AND EVERYTHING COUNTS.

23 Q WE WANT TO BE RIGHT.

24 A RIGHT. SO I APOLOGIZE. I DON'T MEAN TO BE
25 PICKY, BUT --

26 Q NO, I WANT YOU TO CORRECT ME WHEN I'M WRONG.

27 A I WASN'T TRYING TO CORRECT. I JUST WANTED
28 TO MAKE SURE WE'RE USING THE CORRECT FIGURES AND FACTS.

1 Q EVEN LAWYERS MAKE MISTAKES .

2 A I'M NOT GOING THERE .

3 Q AND THE LEVEL OF TRAMADOL, THE LEVEL OF
4 TRAMADOL THAT THE CORONER'S NUMBER WAS THAT 13 MICROGRAMS
5 PER MILLILITER WOULD BE LETHAL, CORRECT?

6 A CORRECT .

7 Q AND YOU PICKED A DIFFERENT NUMBER?

8 A YES .

9 Q WHAT, IF YOU KNOW, WHAT WAS THE SOURCE FOR
10 THE CORONER'S NUMBER?

11 A WELL, I CAN'T SAY FOR CERTAINTY, BUT I
12 UNDERSTAND THE CORONER WAS HERE AND YOU ASKED HIM.

13 SO THAT'S REALLY A QUESTION FOR HIM, BUT I
14 WILL SAY WHAT THE DIFFERENCE IS, IS THAT MY SUSPICION
15 IS -- IT'S A SUSPICION; I'M NOT SAYING THAT'S WHAT HE
16 DID -- IS THAT THE CORONER USED A REFERENCE THAT'S CALLED
17 "DISPOSITION OF TOXIC DRUGS & CHEMICALS IN MAN" AND THE
18 AUTHOR IS RANDALL BASELT .

19 Q SPELL BASELT FOR THE COURT REPORTER .

20 A B-A-S-E-L-T .

21 Q AND THIS BASELT IS A COMMONLY USED REFERENCE
22 TEXTBOOK FOR PEOPLE WHO DO TOXICOLOGY ANALYSIS FOR A
23 LIVING, CORRECT?

24 A CORRECT .

25 Q OKAY .

26 A NOW, WHAT I DID IS I LOOKED AT THAT
27 REFERENCE, BUT I ALSO USED ANOTHER REFERENCE, AND MY
28 REFERENCE IS CALLED THE INTERNATIONAL ASSOCIATION OF

1 FORENSIC TOXICOLOGISTS, AND THE INFORMATION FOR THE SOURCE
2 THAT I USED IS -- DOESN'T COME FROM ONE SOURCE; IT COMES
3 FROM SEVEN SOURCES, ONE OF WHICH IS BASELT'S TEXTBOOK. SO
4 I FELT MORE COMFORTABLE USING A MORE COMPREHENSIVE SOURCE
5 BECAUSE I FELT THAT IT GAVE ME MORE INFORMATION AND I WAS
6 NOT LIMITED TO THE ONE SOURCE.

7 AND I WILL ALSO SAY -- DO YOU WANT TO TALK
8 ABOUT THE --

9 Q I THINK YOU'VE ANSWERED THE QUESTION. I
10 HAVE A FOLLOW-UP.

11 A THANK YOU.

12 Q IS YOUR SELECTION OF THE LOWER NUMBER FOR
13 LETHALITY FOR TRAMADOL, IS THAT AT ALL INFLUENCED BY THE
14 FACT THAT THAT GIVES YOU MORE OF A BASIS FOR CONCLUDING
15 THAT TRAMADOL WAS LETHAL IN THIS CASE?

16 A ABSOLUTELY NOT.

17 Q HOW DO YOU KNOW THAT -- AND THIS DATA SOURCE
18 THAT YOU USE IS A PUBLICATION?

19 A YES.

20 Q YOU DON'T HAVE ANY PERSONAL KNOWLEDGE ABOUT
21 WHAT THEY -- YOU NEVER PEER-REVIEWED THEIR ANALYSIS,
22 CORRECT?

23 A I HAVE NOT, BUT THIS IS A PEER-REVIEWED
24 PUBLICATION.

25 Q YOU'VE NEVER PEER-REVIEWED THEIR DATA,
26 CORRECT?

27 A NO.

28 Q SO HOW DO YOU KNOW -- AS YOU SIT HERE, CAN

1 YOU STATE WITH A DEGREE OF REASONABLE CERTAINTY AS AN
2 EXPERT THAT THE SOURCE YOU SELECTED IS MORE RELIABLE THAN
3 THE CORONER'S SOURCE?

4 MR. BLESSEY: OBJECT TO THE STANDARD REASONABLE
5 CERTAINTY.

6 THE COURT: REASONABLE PROBABILITY.

7 BY MR. NEWHOUSE:

8 Q FINE. REASONABLE PROBABILITY.

9 A I'M SORRY, CAN YOU -- YOU DON'T NEED TO
10 REWORD IT. JUST REPEAT IT.

11 Q LET ME REPHRASE.

12 A OKAY.

13 Q WHAT IS YOUR BASIS FOR CONCLUDING TO A
14 REASONABLE DEGREE OF PROBABILITY AS AN EXPERT THAT YOUR
15 SOURCE, WHICH IS -- YOU'LL AGREE WITH ME -- SIGNIFICANTLY
16 LOWER THAN BASELT, WAS APPROPRIATE AND THE CORONER'S
17 SELECTION, 13, WAS INCORRECT?

18 A WELL, I'M NOT SAYING 13 IS INCORRECT. WHAT
19 I'M SAYING IS THE SOURCE THAT I USE IS MORE COMPREHENSIVE.
20 AND TO ME THAT'S IMPORTANT. YOU DON'T WANT TO LOOK AT ONE
21 CASE AND DRAW A CONCLUSION ON ONE CASE.

22 YOU WANT TO DRAW AS MUCH INFORMATION AS
23 THERE IS OUT THERE SO THEN YOU HAVE A PERSPECTIVE THAT'S
24 ALL ENCOMPASSING. YOU WANT TO BE -- I WANT TO BE
25 EMPOWERED WITH INFORMATION SO I CAN DRAW THE RIGHT
26 CONCLUSION.

27 MR. NEWHOUSE: YOUR HONOR, IT'S 12:00. IT'S AN
28 APPROPRIATE PLACE IF THE COURT WANTED TO TAKE A BREAK.

1 THE COURT: HOW MUCH MORE TIME?

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.)

1
2 (THE FOLLOWING PROCEEDINGS WERE HELD
3 IN OPEN COURT, OUTSIDE THE PRESENCE
4 OF THE JURY:)

5
6 THE COURT: LET'S GO ON THE RECORD. OUTSIDE THE
7 PRESENCE OF THE JURY, YOU'VE NOW RECEIVED THIS INDEX THAT
8 MY CLERK HAS KINDLY FURNISHED TO US. ALL THE EXHIBITS
9 THAT WE'VE TALKED ABOUT RECEIVED INTO EVIDENCE, EACH OF
10 YOU HAS NOW REVIEWED THIS, AND ALSO EXHIBITS MARKED FOR
11 IDENTIFICATION ONLY AND NOT RECEIVED, AND THERE'S SOME
12 FIVE OF THEM THERE, IF THERE'S NO OBJECTION, I'D LIKE TO
13 SEND THIS BACK WITH ALL THE EXHIBITS THAT ARE RECEIVED.

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

16 THE COURT: I'M SORRY.

17 MR. NEWHOUSE: I DIDN'T HEAR.

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

22 MR. NEWHOUSE: NO OBJECTION.

23 MR. BLESSEY: NO OBJECTION, YOUR HONOR.

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

27 THE CLERK: I'LL GO WRANGLE THEM UP. THEY CALL ME
28 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 NEGLIGENCE 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 NEGLIGENCE 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 NEGLIGENCE 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 FIANCE 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.)

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