In The Matter Of:

JANICE K. SMITH, EXEC., et al. v.
PAUL VENIZELOS, M.D., et al.

HARRY J. BONNELL, M.D.
May 19, 1995

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STATE OF OHIO)
COUNTY OF CUYAHOGA)
IN THE COURT OF COMMON PLEAS
JANICE K. SMITH, EXEC., etc.,)
Plaintiffs,)
v.)Case No. 247061
PAUL VENIZELOS, M.D., et al.,)
Defendants.)
)Pages 1 - 52

DEPOSITION OF:
HARRY J. BONNELL, M.D.
FRIDAY, MAY 19, 1995
9:20 A.M.

Reported by:
M. PATRICIA WARD
RPR, CSR No. 7605

Deposition of HARRY J. BONNELL, M.D., the witness, taken on behalf of Plaintiffs, on Friday, May 19, 1995, 9:20 a.m., at 5555 Overland Avenue, Building 14, San Diego, California, before M. PATRICIA WARD, CSR No. 7605.

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SAN DIEGO, CALIFORNIA; FRIDAY, MAY 19, 1995 9:20 A.M.

HARRY J. BONNELL, M.D., having been first duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. BECKER:

Q: Doctor, would you state your full name for us, please.

A: Yes. It's Harry James Bonnell, B as in boy o-n-n-e-l-l.

Q: Doctor, I understand you're from New Jersey originally; is that correct?

A: That's where I was born and raised through my high school years, yes.

Q: Okay. What brought you to the Cincinnati area back in the '80s?

A: I was in the military at the Armed Forces Institute of Pathology. The folks in Cincinnati were looking for a Chief Deputy Coroner. They recruited me in February of '87, and I joined them in June of '87.

Q: And you stayed with them for how long?

A: Until February of '91.

Q: And did you have malpractice insurance at that time?

A: No. I believe Hamilton County was self-insured.

Q: And the reason you left Cincinnati?

A: I was offered the current position in San Diego, which is a more responsible position, a little bit busier area and a slightly higher salary in absolute dollars. Not a higher salary versus cost of living, however.

Q: Doctor, did you bring with you a – your reports today?

A: Yes, I have them here.

Q: Did you bring with you a current CV?

A: Yes, I did.

Q: And if you're relying upon any articles or publications, do you have those in hand?

A: I am not; so I do not.

Q: Okay. And do you have the slides at hand?

MR. BONEZZI: Which slides are you speaking of?

MR. BECKER: Slides of St. John and West Shore and/or slides of Cleveland Clinic.

MR. BONEZZI: He has the slides of St. John which he received on Tuesday. He will tell you that he has not had an opportunity to review them as of yet because of business.

And, also, I'm going to make a request right now that the 17 slides that you gave to Dr. Godlewski be turned over to me so that Dr. Bonnell can see those. We don't have the same slides that you do.

MR. BECKER: I'm confused, Bill.

MR. BONEZZI: We have 14 recuts, Mike. Dr. Godlewski has 17 recuts. I don't know where those recuts came from. I know that he has more slides than we do. I don't know where those slides, the extra three, came from. And I also don't know –

MR. BECKER: I don't either.

MR. BONEZZI: And I also don't know whether the slides that Dr. Godlewski looked at are representative of the area in which Dr. Bonnell reviewed.

BY MR. BECKER:

Q: Doctor, did you look at originals or recuts?

A: I looked at recuts.

Q: And where did you obtain those recuts?

A: I obtained them from Mr. Bonezzi who I believe obtained them from The Cleveland Clinic.

Q: All right. The record should reflect that this is a discovery deposition of Dr. Bonnell. We're proceeding with his deposition without waiving any argument for exclusion of partial testimony.

Doctor, this matter is set for trial in June –

MR. BONEZZI: And I will object to the taking of Dr. Bonnell's deposition –

BY MR. BECKER:

Q: Do you plan on coming up to Cleveland?

MR. BONEZZI: -- Mr. Becker. Go ahead.

MR. BECKER: I didn't hear you.

MR. BONEZZI: I said I will object to the taking of Dr. Bonnell's deposition without waiving any –

MR. BECKER: I hear you, Bill, but this is awful. I'm only catching the very end of your sentence. I hear you now that you object to that.

MR. BONEZZI: Go ahead. Take the deposition.

BY MR. BECKER:

Q: Doctor, do you remember my question?

A: I got it. Let me see if the court reporter nods her head as to whether she got your question or not. You want to know whether or not I will come there to testify in June if the trial comes off as scheduled. And the answer is yes.

Q: Do you have present plans to come to Cleveland?

A: I don't have a date yet. I won't be coming to Cleveland for any other reason that I'm aware of.

Q: Doctor, would you hand the court reporter a copy of your CV and ask her to mark it.

Ms. Court Reporter, would you mark it and let me know after it's been marked.

(Plaintiffs' Exhibit No. 1 was marked for identification by the reporter.)

BY MR. BONEZZI:

Q: Doctor, you've been handed your CV marked as number one. Would you take a look at it for me, please.

A: Yes.

Q: Can you tell me if it is current?

[1] **A:** It is current as of January of '95. [2] The only changes on it would be an increase in the [3] number of autopsies performed and testimonies in [4] court.

[5] **Q:** All right. Doctor, the publications, [6] are there any journals or articles where you have [7] authored or coauthored that are not listed on that [8] publication form?

[9] **A:** None that have been published. There [10] is one regarding emetine, e-m-e-t-i-n-e, that has [11] been submitted by physicians at Children's Hospital [12] in Cincinnati, and I'm a coauthor on that, but it [13] certainly bears no relevance to this matter.

[14] **Q:** Are there any journals or articles [15] that are listed in your curriculum vitae that you [16] feel bear relevance to this case?

[17] **A:** No.

[18] **Q:** All right. Doctor, let's move on to [19] your medical/legal experience. How long have you [20] been reviewing medical/legal matters in terms of [21] years, approximately?

[22] **A:** In terms of years, I would say four [23] to five years.

[24] **Q:** And can you tell me how many cases [25] you reviewed in total, roughly?

[1] **A:** Roughly cases I've – in total that [2] I've looked at I would estimate somewhere in the [3] range of 60 or so.

[4] **Q:** Six zero?

[5] **A:** That's correct.

[6] **Q:** And of those, what percentage have [7] been for the medical provider versus the patient?

[8] **A:** I would say approximately 50 to 60 [9] percent have been for the provider or defense and 40 [10] to 50 percent for plaintiffs' attorneys.

[11] **Q:** Doctor, how many cases have you [12] reviewed for the law firm of Jacobson, Maynard, [13] Tuschman & Kalur either in the past or currently [14] total?

[15] **A:** Reviewed for them my estimate would [16] be somewhere around 15 to 20.

[17] **Q:** How many of those are current?

[18] **A:** Still current I believe are three, [19] maybe four.

[20] **Q:** Okay. How many times have you [21] been – worked with Mr. Bonezzi out of the 15 or 20?

[22] **A:** I have worked with Mr. Bonezzi [23] on–let me think now–I believe five cases. It may [24] be six, but I can remember five.

[25] **Q:** Okay. Have you ever not been able to

[1] assist Mr. Bonezzi in a defense of a case when he's [2] requested you to review material?

[3] **A:** Yes.

[4] **Q:** How many times?

[5] **A:** When he's requested me to review the [6] material, I would say two to three times. And by [7] that, I would mean that I provided him my opinion and [8] he didn't use me anymore after that. That may have [9] been helpful to him, but he didn't use me after that.

[10] **Q:** How many plaintiffs' cases in the [11] Cleveland area have you worked on – or let's not [12] restrict it to Cleveland. Let's restrict it to Ohio.

[13] **A:** Plaintiffs' cases I would estimate [14] somewhere in the range of 20 to 25 in Ohio.

[15] **Q:** Okay. And the law firms that you've [16] worked for would be Jacobson, Maynard. Anybody else?

[17] **A:** Yeah. I've worked for a man by the [18] name of Dick Lawrence down in Cincinnati.

[19] **Q:** All right.

[20] **A:** And several other attorneys, [21] individual attorneys. Not more than once per each. [22] And those cases would have originated out of [23] autopsies I performed in Cincinnati.

[24] **Q:** When you were in Cincinnati?

[25] **A:** Yes.

[1] **Q:** When you were in Cincinnati?

[2] **A:** Yes, when I was in Cincinnati.

[3] **Q:** Okay. Do you have a log of [4] medical/legal cases you reviewed? Do you keep a [5] running log?

[6] **A:** No, I do not.

[7] **Q:** All right. Have you ever reviewed a [8] medical/legal case where the issue was whether or not [9] a person had fungal pneumonia?

[10] **A:** No.

[11] **Q:** Doctor?

[12] **A:** Yes? Did you hear my answer?

[13] **Q:** I didn't hear your answer.

[14] **A:** The answer is no. I'm sorry.

[15] **Q:** Have you ever reviewed a case where [16] there was a – medical/legal case. Again, I was [17] asking for plaintiff or defendant. It doesn't matter [18] who asked to review it, just so we're clear. The [19] previous question was not restricted to the plaintiff [20] or the defendant.

[21] **A:** I understand.

[22] **Q:** The answer would still be no?

[23] **A:** Yes, it's still no. Yes, the answer [24] is still no.

[25] **Q:** Okay. Any medical review cases

[1] whether on behalf of the medical provider or the [2] patient where there was evidence of late stage air [3] space pneumonia whether bacterial or fungal?

[4] **A:** No, not to the best of my memory. [5] That has not been the issue in any of the cases.

[6] **Q:** How about the subject matter of [7] existence of air space pneumonia in a lung? Can you [8] think of any case?

[9] **A:** There have been a few cases. Most of [10] those have been the end stage pneumonia in Adult [11] Respiratory Distress Syndrome, and those cases have [12] been not medical provider litigation but rather [13] accident litigation.

[14] **Q:** Okay. Doctor, what kind of patterns [15] are consistent – pathological patterns or findings [16] would you expect to see in late stage air space [17] pneumonia?

[18] **A:** In late stage air space pneumonia, [19] you might around the peripheral area see evidence of [20] still an acute process, depending upon how successful [21] treatment has been.

[22] In the more advanced areas, you would [23] see everything from replacement of tissue by scar or [24] fibrosis in which case the lung pneumonia has [25] progressed to destroy the tissue and be replaced by

[1] scar.

[2] You may also simply see some thin [3] bands of fibrosis or scarring. And in the air [4] spaces, you would see inflammation in the air spaces [5] as well as what might be called granulation tissues [6] in the air spaces.

[7] **Q:** Do you have an opinion as to how many [8] weeks it takes for the process of pneumonia to reach [9] late stage?

[10] **A:** It will vary from individual to [11] individual, and it will also depend upon the success [12] of the treatment or not. We have – I've seen it in [13] my autopsy practice where the time difference between [14] symptoms where the individual has complained and the [15] time of death and there is evidence of areas of end [16] stage pneumonia, and that time interval has been as [17] short as five days.

[18] **Q:** I'm sorry, Doctor, I didn't hear that [19] answer. The end of it was cut off. Could you repeat [20] your answer, please?

[21] **MR. BONEZZI:** Mike, is there something wrong [22] with your phone? We can hear you fine.

[23] **MR. BECKER:** I don't know, Bill. I've not had [24] a problem with this phone in a depo.

[25] **THE WITNESS:** Okay. I'll basically repeat the

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[1] answer that how quickly the pneumonia process is in [2] end stage pneumona is variable, depending on what the [3] organism is, how the individual is treated and what [4] their immune status is. In my autopsy practice, I [5] have seen cases where the interval has been as short [6] as five days between the time that the individual [7] complained or showed symptoms to somebody they lived [8] with and the time they died, and at autopsy, they [9] showed evidence of advanced end stage pneumonia.

[10] **BY MR. BECKER:**

[11] **Q:** Thank you for speaking up. I heard [12] that fine.

[13] Turn to Chet Smith for a moment. Did [14] you find any stage of late stage air space pneumonia [15] in the materials you reviewed?

[16] **A:** He has evidence of late or end stage [17] pneumonia particularly in the form of abscesses which [18] have fungi in them. He also shows a cross pattern of [19] both Adult Respiratory Distress Syndrome and the end [20] stage pneumonia, and the end stage of both of those [21] is quite similar.

[22] **Q:** Doctor, can a person develop Candida [23] pneumonia initially as air space pneumonia?

[24] **A:** If the main portal of entry was into [25] the lungs and the person inhaled Candida and if the

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[1] person is immunocompromised, those Candida could [2] proliferate, but it is very rare for the Candida to [3] be primarily inhaled into the lung. It's much more [4] common for it to be blood-born and deposited into the [5] lung.

[6] **Q:** Does the probability increase of a [7] person developing Candida pneumonia as air space [8] pneumonia if that person is immunocompromised?

[9] **A:** Yes.

[10] **Q:** Doctor, you have no clinical [11] practice; is that fair?

[12] **A:** Except for occasionally taking care [13] of my children and my spouse, no, I don't see or I do [14] not treat live patients on a regular basis. I do see [15] live patients for pattern of injury interpretation, [16] but I do not treat.

[17] **Q:** Okay. Now the autopsies that you [18] perform can be in the form of accident, foul play or [19] an uncomplained illness; is that fair?

[20] **A:** Yeah. Basically unexpected death [21] whether it turns out to be due to natural causes or [22] unnatural causes.

[23] **Q:** What is the difference between an [24] anatomical and a forensic pathologist?

[25] **A:** A forensic pathologist has an

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[1] additional one or, in my case, two years of [2] fellowship training in forensic pathology which [3] concentrates on both unnatural injuries in death as [4] well as sudden, unexpected death which turns out to [5] be natural causes. And, of course, there is a [6] separate board certification and board certification [7] exam for it.

[8] **Q:** Doctor, turning to your reports of [9] March 10th and May 8th, do you have those in hand?

[10] **A:** I'm getting them out of my file here.

[11] **Q:** While you're pulling it out of your [12] file, I'm going to have the court reporter mark those [13] two.

[14] Do you have any personal notes or [15] chronology –

[16] **A:** Hold on. I'm still looking for my [17] March 10th and May 8th.

[18] **Q:** Take your time.

[19] **A:** And yes, they're not handwritten [20] notes. They're actually notes that I type into a [21] word processor. And I do have a half page [22] typewritten or word processor notes on Mr. Smith.

[23] **Q:** Would you hand all three of those to [24] the court reporter and ask her to mark them two, [25] three and four.

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[1] **A:** Okay. Is it okay if we photocopy [2] them and then mark them?

[3] **Q:** Sure.

[4] **A:** Is it okay if we photocopy them when [5] we're down so we can save you money on the call?

[6] **Q:** Let me ask you this, Doctor: Is [7] there someone there that can fax me a copy of your [8] notes as we continue this deposition?

[9] **A:** Yes.

[10] **Q:** Would you mind doing that?

[11] **A:** Certainly. We can do that.

[12] **Q:** Let me give you my fax number.

[13] **MR. BONEZZI:** Go ahead. Give it to me.

[14] **MR. BECKER:** (216)323-1879.

[15] (Brief break.)

[16] **THE WITNESS:** Okay. This is Dr. Bonnell. I'm [17] back in my room, and you should have this material on [18] your fax machine by now or it's in transit.

[19] **MR. BECKER:** I have it in my hand. Thank you, [20] Doctor.

[21] **Q:** Did you make a copy of those reports, [22] of the particular note sheets so we can mark it?

[23] **A:** Yes. I'm handing the court reporter [24] three pieces of paper. The top one is the 10 March [25] report. The second one is the 8 May report, and the

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[1] third page is my typed work sheet.

[2] **Q:** Okay. Doctor, if you would hand them [3] to her so she can mark them.

[4] (Plaintiffs' Exhibit Nos. 2-4 [5] were marked for identification by the [6] reporter.)

[7] **BY MR. BECKER:**

[8] **Q:** Okay. Doctor, handing you what's [9] been marked as Exhibits 2, 3, 4, would you identify [10] those for the record?

[11] **A:** Yes. Exhibit 2 is a report that I [12] issued on the 10th of March for Mr. Bonezzi [13] describing what I saw on the 14 glass slides of lung [14] tissue regarding the autopsy of Mr. Smith.

[15] Exhibit 3 is the letter of 8 May that [16] I issued at his direction. I believe your request [17] asked my opinion regarding the cause of death of [18] Mr. Smith.

[19] And then Exhibit No. 4 is the half [20] page of notes.

[21] **Q:** Okay. Were you provided any type of [22] a chronology of events by anyone?

[23] **A:** Yes. What I was provided–I will [24] look in my file–is I received kind of a chronology [25] of events. That is, I received The Cleveland Clinic

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[1] chart. And the other chronology of events was a [2] memorandum to Mr. Bonezzi from a Barbara Jones dated [3] June 21, 1994, which is a one-and-a-half-page [4] chronology and summation.

[5] **Q:** Let's back up a minute. [6] The Cleveland Clinic chronology, that [7] was prepared by whom?

[8] **A:** It's – well, I call it a chronology. [9] It's their records; okay? It's The Cleveland Clinic [10] records as provided to me by Mr. Bonezzi. And I –

[11] **Q:** Okay. That was just the actual [12] records?

[13] **A:** That's correct.

[14] **Q:** Is part of the opinion based on the [15] chronology of events you have in front you?

[16] **A:** Part of my opinion is based on the [17] Cleveland records. None of it is based on the [18] chronology prepared by Ms. Jones.

[19] **Q:** Okay. Let's make sure I understand [20] what you have reviewed, then, prior to generating [21] your two reports. What have you reviewed, Doctor?

[22] **A:** Okay. What I have reviewed is a copy [23] of The Cleveland Clinic Foun-

dation records dated [24] December 26th, 1991 through December 27th, 1991. I [25] have read through the chronology provided by

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[1] Ms. Jones but have not used it in determining my [2] opinions. I have a one-and-a-half-page opinion by a [3] Dr. Fisher. And, let's see, I have a transmittal [4] letter with the glass slides and a bunch of paperwork [5] from The Cleveland Clinic billing somebody for the [6] glass slides, and that did not enter into my opinion. [7] The slides did but not the paperwork. And that would [8] be it for my 10 March 1995 opinion.

[9] **Q:** Okay. Anything else that you [10] reviewed prior to the second report? Anything [11] additional?

[12] **A:** Let's see. What I received in April [13] was a one-and-a-half-page opinion letter from a [14] Dr. Godlewski, but that didn't affect the content of [15] my report, but I did review it. And that was all I [16] actually reviewed before the May 8th report.

[17] **Q:** Okay. Now did – in addition to [18] that, Doctor, in preparation for today's deposition, [19] have you reviewed any other material?

[20] **A:** The other thing that I have reviewed [21] was a copy of a – let me get the number of pages [22] here. A three-and-a-half-page report of a [23] Dr. Lerner, L-e-r-n-e-r.

[24] **Q:** Anything else?

[25] **A:** Nope. That's been about it for this

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[1] deposition. I have received materials. I got a big [2] box on – that was on my desk when I came in [3] Wednesday morning that has the records from the first [4] hospital and the slides from the lung biopsy, lavage, [5] and I have not looked at those yet.

[6] **Q:** So up until just this past week, you [7] did not have the actual hospital records?

[8] **A:** That's correct.

[9] **Q:** Well, Doctor, then, what did you base [10] your opinion on on May 8th about the clinical history [11] of this person?

[12] **A:** It's primarily based on the records [13] of The Cleveland Clinic which kind of summarized his [14] course at the previous hospital.

[15] **Q:** Let me back up, Doctor. I want to [16] make sure I understand what slides you have reviewed. [17] You reviewed 11 slides from St. John – 13 slides [18] from St. John and West Shore?

[19] **A:** I reviewed 14 glass slides from the [20] autopsy tissue from The Cleveland Clinic.

[21] **Q:** Okay.

[22] **A:** And those are the only slides that I [23] have looked at so far.

[24] **Q:** You've not looked at any slides from [25] St. John and West Shore?

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[1] **A:** That's correct.

[2] **MR. BECKER:** Bill, I think you and I can – I [3] think we can figure out these missing slides when I [4] see you on Monday. I have an idea.

[5] **MR. BONEZZI:** Well, I know that the slides [6] that we have are recuts from tissue blocks that were [7] at the clinic. The Cleveland Clinic would not [8] release any of the original cuts that they had, and [9] they would only make us the recuts.

[10] **MR. BECKER:** I don't know what the hell's the [11] problem with this phone. You're cutting out in the [12] middle of your sentence. Say that one more time.

[13] **MR. BONEZZI:** As I said, the slides that we [14] had were recuts that were obtained from The Cleveland [15] Clinic. The clinic would not release any of the [16] original slides.

[17] **MR. BECKER:** The 14 glass slides?

[18] **MR. BONEZZI:** Those are the ones that we had [19] made.

[20] **MR. BECKER:** We'll talk about it Monday.

[21] **Q:** Doctor, I understand that there's [22] some additional slides for us coming–are you [23] aware–from the clinic as to kidney slides?

[24] **MR. BONEZZI:** It's the one I asked for. I [25] don't have those yet. As soon as you give them to me

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[1] or they get them, I will provide those to [2] Dr. Bonnell.

[3] **MR. BECKER:** Bill, we just signed the [4] authorization and sent it right back to Maureen.

[5] **MR. BONEZZI:** As soon as we get the slides, [6] they will be sent to Harry.

[7] **BY MR. BECKER:**

[8] **Q:** Doctor, did you specifically request [9] slides of the kidney?

[10] **A:** No, I did not.

[11] **Q:** Prior to trial, what additional [12] slides do you plan on reviewing besides the package [13] of St. John and West Shore that you've recently [14] received?

[15] **A:** As of this morning, those were the [16] only slides that I intended to review. [17] This morning I found out that there [18] are now some kidney slides that are being ordered. I [19] will expect I will be asked to review those. If [20] either party asks me to review anything, for example, [21] it might be a good idea if I look at the exact same [22] slides as the other pathologist. Then I would expect [23] to review those, but as of this morning, I was only [24] expecting to review what I had already received.

[25] **Q:** The two reports, those are the only

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[1] reports that have been generated on this case?

[2] **A:** By me, yes.

[3] **Q:** And you've had an opportunity to [4] review them. Do you want to make any changes, [5] amendments, or do you want to stand on the reports?

[6] **A:** I have not looked at anything since [7] then to make any changes.

[8] **Q:** Doctor, would it be fair for us to [9] conclude that you're not going to be rendering any [10] opinions on standard of care?

[11] **A:** I don't intend to render any opinions [12] on standard of care, but I always say if somebody [13] asks me the question and a judge tells me to answer [14] it, I'll answer it either – most likely with that [15] I'm not a standard of care expert, but I don't intend [16] to answer any questions on that unless some judge so [17] orders me to.

[18] **Q:** Doctor, do you have experience in [19] pathology of bronchoscopies and open lung biopsies?

[20] **A:** Yes.

[21] **Q:** How currently have you done that?

[22] **A:** That would have been done during my [23] residency training which as you'll see in my CV was [24] back in 1979 to 1981, as well as the portions in 1982 [25] to '83. Now the lung tissue I look at is what you

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[1] would call a maximum open biopsy, and that is autopsy [2] specimens.

[3] **Q:** Okay. Doctor, what in your opinion [4] was the initiating organism in Chester Smith?

[5] **A:** Based upon what I reviewed, my [6] opinion is that most likely some type of a virus [7] would have been the initiating agent based upon the [8] clinical picture as reviewed in The Cleveland Clinic [9] records.

[10] **Q:** Okay. Well, can you be more [11] specific? What about the clinical records that [12] points you to that?

[13] **A:** Just simply their description of the [14] summary of what the X rays looked like, and that's – [15] and the fact that historically no other material was [16] found on the microscopic slides. Now I

may be able [17] when I review the microscopic slides to find some [18] type of organism on them to allow me to be more [19] specific.

[20] **Q:** Can you be any more specific as to [21] what type of virus?

[22] **A:** No, I cannot.

[23] **Q:** You agree that he came in with [24] pneumonia to the hospital?

[25] **A:** I can only accept the records that I

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[1] read, and that is that the clinicians who looked at [2] the patient and the chest films felt that he had a [3] type of pneumonia. I've got no reason to disagree [4] with that, but as a pathologist, I cannot say that [5] that's what he had.

[6] **Q:** Doctor, the concept of neutrophils in [7] bronc slides, many neutrophils, what is the [8] significance of that to you?

[9] **A:** Neutrophils are a body's response to [10] infection as well as inflammation, and they could [11] represent a response to either of those two.

[12] **Q:** Okay. Does that – if there are many [13] neutrophils on a bronc specimen, does that have a [14] tendency to exclude certain type of organism whether [15] fungal, bacterial or virus?

[16] **A:** I think the presence of a neutrophil, [17] even large numbers of neutrophils, does not preclude [18] or rule out anything because they could be there [19] responding to the infection, or they could be there [20] responding to an inflammation and, therefore, there [21] may be both things going on at the same time.

[22] **Q:** Doctor, is it your opinion that Ches [23] Smith developed multisystem organ failure secondary [24] to pneumonia or secondary to ARDS?

[25] **A:** In my opinion, he developed his

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[1] multisystem organ failure due to neither ARDS nor [2] pneumonia.

[3] **Q:** What did he develop it to?

[4] **A:** I believe that he developed his [5] multisystem organ failure as a result of a shock-like [6] picture which is due to the Clostridia toxin in his [7] intestines being released through the damaged wall of [8] his intestine through his bloodstream, and he had [9] Clostridium toxin disseminated through his body [10] through his bloodstream with that toxin being reduced [11] into his intestines.

[12] **Q:** You mentioned in your report that it [13] also could be due to Candida sepsis?

[14] **A:** It may be secondary to his Candida [15] sepsis. However, that – yeah, it may be. It's not [16] my opinion, but it may be.

[17] **Q:** Well, is it your opinion the toxin is [18] more likely than not?

[19] **A:** It is my opinion the toxin is more [20] likely than not. And it is also my opinion that the [21] Candida sepsis would most likely have come from his [22] central intravenous lines and not from the lung.

[23] **Q:** Okay. When did this occur, Doctor? [24] When did the – when were the toxins released and the [25] multisystem organ failure begun based on your review

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[1] of the chart?

[2] **MR. BONEZZI:** Objection to the form of the [3] question.

[4] Go ahead and answer.

[5] **THE WITNESS:** I believe that it was – and I [6] would have to review the St. John and West Shore [7] records, but it was somewhere in, around the time of [8] the sixth to the tenth where he clinically developed [9] multisystem organ failure, began dropping his blood [10] pressure and began developing possible liver failure.

[11] **BY MR. BECKER:**

[12] **Q:** You're not able to pinpoint it any [13] more than that?

[14] **A:** Not at this point in time. I might [15] be after I review the records of the first hospital [16] and see exactly when certain lab values started [17] changing and what their clinical description shows.

[18] **Q:** Doctor, was there a point in time in [19] the care of Mr. Smith at St. John and West Shore [20] where you felt that the window of opportunity was [21] closed and he was beyond salvage?

[22] **A:** Again, I have to look at their [23] records. All I have is a summary of The Cleveland [24] Clinic. It would seem to me that at the time that he [25] goes in a multisystem organ failure, that that is

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[1] pretty much the time frame where any window of [2] opportunity is lost. It could have been lost before [3] then, but I've got to look at their records.

[4] **Q:** Doctor, I've noticed in – you [5] didn't – maybe you included the autopsy within The [6] Cleveland Clinic records. You also looked at the [7] autopsy?

[8] **A:** Yes, sir. It came to me as part of [9] their chart.

[10] **Q:** Do you have any criticism of their [11] autopsy?

[12] **A:** My biggest criticism of the autopsy [13] is one which is sometimes by forensic pathologists, [14] and that is that the microscopic examination was not [15] done. I think that is crucial in any autopsy where [16] there is tissue available and would certainly expect [17] to find it in a teaching institution.

[18] **Q:** Doctor, there's reference in the [19] autopsy about the concept of diffuse alveolar damage. [20] Do you remember reading that?

[21] **A:** I don't remember it. I'm looking at [22] it – I'm looking at the autopsy report now.

[23] **Q:** At least I think there is.

[24] **A:** Yeah, they – one of their diagnoses [25] says "acute suppurative (gram negative rods)

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[1] tracheobronchitis." And underneath that, it says [2] "exudative and organizing diffuse alveolar damage, [3] all lobes."

[4] **Q:** Doctor, would you agree that most [5] pathologists would not make a diagnosis of diffuse [6] alveolar damage in the state of evidence of air space [7] pneumonia?

[8] **A:** Could you repeat that because I don't [9] understand that.

[10] **Q:** Would you agree that most [11] pathologists if they make a finding of air space [12] pneumonia would not go on to describe the condition [13] of the lungs as diffuse alveolar damage?

[14] **A:** I don't know what most pathologists [15] would do. I think that you can have both in the lung [16] at the same time. There can be diffuse alveolar [17] damage in all lobes, and there also can be other [18] areas of end stage pneumonia or air space disease. [19] They're not exclusive of each other.

[20] **Q:** What does this concept of diffuse [21] alveolar damage mean?

[22] **A:** The concept to my understanding of [23] diffuse alveolar damage is that the walls of the [24] alveoli or the air spaces show evidence of damage or [25] destruction, and diffuse would mean widespread. You

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[1] can have diffuse alveolar damage – even in a disease [2] like emphysema you can have diffuse alveolar damage.

[3] **Q:** From a pathological standpoint, what [4] does the concept of ARDS mean, ARDS?

[5] **A:** From a pathological standpoint, the [6] concept of ARDS, or the Adult Respiratory Distress [7] Syndrome, indicates that there is a pink material [8] that lines the alveolar spaces and that there is [9] fibrosis of the alveolar walls, and in general, this [10] has to be a diffuse process throughout the lung.

[11] **Q:** Does the concept of diffuse alveolar [12] damage suggest that the primary process started [13] someplace else other than in the lung?

[14] **A:** Not in my mind, no.

[15] **Q:** Have you spoken to any physicians who [16] participated in the autopsy?

[17] **A:** No, I have not.

[18] **Q:** Have you spoken to any of the [19] clinical physicians who took care of Mr. Smith either [20] at St. John and West Shore or Cleveland Clinic?

[21] **A:** No, I have not.

[22] **Q:** Was there anything missing from the [23] materials that you were provided that you felt [24] necessary for you to look at before you could conduct [25] a complete review?

[1] **A:** Well, I was never really asked to do [2] a complete review. I initially was asked to look at [3] the glass slides as provided from the autopsy and say [4] what was there, and so I did that.

[5] And then I was asked to give an [6] opinion as to the cause of death, and I did that, [7] again, as based on the information provided by The [8] Cleveland Clinic.

[9] Now then I was told that there were [10] going to be slides coming from the alveolar lavage [11] and that questions were going to be raised as to what [12] was there then and what progressed with him. And at [13] that point in time, I asked for not only the slides [14] but his clinical records because I needed to know [15] what was going on and to look at the records and see [16] if the records contained exactly what part of the [17] lung the samples were taken from and all that kind of [18] stuff. And so I've just reviewed that.

[19] **Q:** Would it be fair to state, Doctor, [20] that your assignment on this case has been changing [21] as time passes?

[22] **MR. BONEZZI:** Objection. It has not been [23] changing, and I take issue with your choice of terms.

[24] Go ahead and answer that, Doctor.

[25] **THE WITNESS:** I'm not sure – did you hear

[1] Mr. Bonezzi's objection?

[2] **MR. BECKER:** I did not hear a word.

[3] **MR. BONEZZI:** Well, you'll see it in the [4] record then.

[5] **THE WITNESS:** He objected, and it will be in [6] the record.

[7] Basically whether you want to say [8] changing or added on to, I was asked to – you know, [9] one thing. And then I was sent some more material [10] and asked something else. And actually my [11] understanding is that the second report as to the [12] cause of death was initiated by you folks that I [13] expressed that opinion, and so I did that.

[14] Now I would expect that the latest [15] material and slides is probably not your idea, but I [16] mean basically there have been additions – or I have [17] been asked to look at additional material, yes.

[18] **BY MR. BECKER:**

[19] **Q:** Based on your conclusions from the [20] autopsy, what would you anticipate finding upon [21] review of the kidney slides?

[22] **A:** Well, I would expect that I would see [23] some damage to the kidneys. I would expect to see [24] some microscopic blood clots in the kidneys as [25] evidence of the disseminated intravascular

[1] coagulation problem. At his age, I might find some [2] atherosclerotic changes in the kidneys. And the main [3] thing I think I would be looking for – or the [4] question to be asked is whether or not there is [5] Candida in the kidneys because the urinary system is [6] one of the portals of entry for Candida into the [7] body.

[8] **Q:** Doctor, I assume you have not taken [9] any photographs of the slides?

[10] **A:** That is correct, sir.

[11] **Q:** And have you been asked to do so?

[12] **A:** I've been told that I should plan on [13] preparing some photomicrographs. I have not yet been [14] asked as to what areas or what we are going to try to [15] demonstrate. As you well know, there's a lot on a [16] microscopic slide, and it will depend upon what we [17] intend to try to demonstrate. And quite honestly, I [18] do not – I am not aware of that right now. And [19] Mr. Bonezzi is approaching the speaker; so I will [20] finish my answer.

[21] **MR. BONEZZI:** He has not been asked to put [22] together photomicrographs simply because he doesn't [23] have all of the slides. Once we have received all [24] the slides, including those from Dr. Godlewski, then [25] he will indeed, at my insistence, be putting together

[1] those slides, and we'll make copies for you.

[2] **MR. BECKER:** Okay. Bill, I hope to have, [3] before Godlewski's deposition, for you a complete [4] copy of his photographs.

[5] **MR. BONEZZI:** Okay. That will be fine, and [6] I'll send those out here to Dr. Bonnell.

[7] **MR. BECKER:** I've been promised that by early [8] next week, but we'll see.

[9] **MR. BONEZZI:** Sometimes promises by the [10] physicians don't always come to bear now; do they?

[11] **MR. BECKER:** That's true.

[12] **Q:** Doctor, are you aware whether or not [13] there were actual photographs taken of the autopsy by [14] The Cleveland Clinic?

[15] **A:** I'm not aware whether there were or [16] not.

[17] **MR. BONEZZI:** Excuse me. Do you know if there [18] are because if do you have any pictures, I would like [19] to have them?

[20] **MR. BECKER:** I do not know, Bill, but it is [21] generally my practice to find that photographs are [22] taken of autopsies, and I'm surprised there weren't.

[23] **MR. BONEZZI:** I'm surprised about a lot of [24] things relative to this autopsy at this clinic, but [25] that's neither here nor there.

[1] **BY MR. BECKER:**

[2] **Q:** Doctor, speaking about fungal [3] pneumonia, would you agree that there are two [4] different types of fungal pneumonia, one would be air [5] space fungal pneumonia and the other would be [6] invasive which actually goes through the tissue?

[7] **A:** Those would be two different ways of [8] it occurring.

[9] **Q:** Do you think that – do you have an [10] opinion whether or not there was any evidence of [11] aspiration pneumonia in Mr. Smith?

[12] **A:** From the microscopic slides that I've [13] seen, I do not see evidence of aspiration pneumonia. [14] It is described in the autopsy report grossly, but [15] I've not found any evidence clinically in The [16] Cleveland Clinic records of aspiration.

[17] **Q:** Excuse me. I didn't mean to cut you [18] off.

[19] **A:** I was just finishing it. [20] The Cleveland Clinic records that I [21] reviewed there does not seem to be any mention in it [22] of an episode of aspiration. Now I will also add [23] that aspiration at the time of death, or angular [24] aspiration, commonly occurs in both people who are [25] sick and people who are not sick, and we as forensic

[1] pathologists also see that in many people who commit [2] suicide or have a traffic accident. It certainly [3] doesn't affect their prognosis or cause of death.

[4] **Q:** Doctor, in your review – I'm back to [5] your reports now. If you'd pull them up for [6] yourself. Did you find any evidence of Candida in [7] the slides?

[8] **A:** In the slides that I looked at, the [9] 14 glass slides, I did not see Candida readily. I [10] did see the Aspergillus readily there. There's quite [11] an over-

growth. I did not see Candida, but the stains [12] that I prefer to look at define Candida were not done [13] on these slides. And if I'm allowed the liberty, I [14] might decolorize some of these slides and restain [15] them with a stain called P as in Peter, A as in [16] alpha, S as in Sam.

[17] **Q:** And you would restain them for [18] purposes of helping you to determine whether or not [19] there actually is Candida?

[20] **A:** Yes.

[21] **Q:** Doctor, in your March 10th letter, [22] you say there's evidence of Acute Respiratory [23] Distress Syndrome changes in the lung tissue. We may [24] have already touched on this. I just want to make [25] sure I understand what you're saying. What are you

[1] referring to?

[2] **A:** This is what they refer to as the [3] Adult Respiratory Distress Syndrome, and it is simply [4] the fibrosis in the hyaline membranes that we [5] previously described as evidence of ARDS.

[6] **Q:** In your report, you referenced an [7] area of calcification and area of a blood clot. [8] That's on the March 10 report.

[9] **A:** That is correct.

[10] **Q:** What is the significance of that [11] relative to your opinions here?

[12] **A:** Well, it – the significance is that [13] there is evidence of a blood clot, and that since [14] it's calcified, it has been there, in my opinion, for [15] at least two weeks. I think that it would be nice to [16] know whether that is a embolus, that is to say a [17] blood clot, that has come from someplace else and [18] gone to the lung or whether it is primarily in the [19] lung. The autopsy pathologist did not see these [20] blood clots when they were cutting through the lungs, [21] although they are definitely present. And I would [22] have to assume that since they did not see them when [23] they were cutting through the lungs, that that is the [24] reason why they did not look for a source of them, [25] which most commonly would be the legs. And I guess

[1] going back to a previous question, that might be [2] another problem I have with their autopsy.

[3] **Q:** Doctor, did you say that you can age [4] that clot?

[5] **A:** I can only say that based upon the [6] changes in the clot and that there is calcification [7] associated with the clot, that I would say that it's [8] at least two weeks old.

[9] **Q:** What do you base it on again?

[10] **A:** It's based upon my experience and [11] training in diagnosing blood clots and the age of [12] blood clots which we commonly do in forensic [13] pathology where we have a clot formed because of a [14] certain injury and we know the time interval, and [15] then we look at the clot at autopsy. It's one of the [16] areas that I have testified about before in trial [17] actually for Jacobson, Maynard.

[18] **Q:** Yeah, I've seen some of those depos [19] on pulmonary embolisms.

[20] So, Doctor, the precipitating event [21] for multiorgan failure you feel more likely than not [22] was a release of this difficile toxin; is that fair?

[23] **A:** Yes, sir.

[24] **Q:** You're now saying it could possibly [25] be also to Candida sepsis but more likely difficile

[1] toxin?

[2] **MR. BONEZZI:** Objection to the form of your [3] question.

[4] Go ahead and answer.

[5] **THE WITNESS:** If you didn't hear, Mr. Bonezzi [6] just objected to the form of your question.

[7] In my opinion, I'd say that it may be [8] secondary to his sepsis and is likely due to the [9] toxin. It is my current opinion that it is more [10] likely due to the toxin. I would like to review the [11] records of the first hospital that might allow me to [12] say with greater assuredness that this is the toxin.

[13] **BY MR. BECKER:**

[14] **Q:** What would you be looking for in the [15] record to help you have greater assurance on that [16] issue?

[17] **A:** I would like to find out whether [18] there is information in the records that describes [19] whether or not the toxin was found at an earlier date [20] and that this information wasn't picked up in The [21] Cleveland Clinic records or other information as to [22] exactly when central lines were begun and exactly [23] when the Candida could have seeded the bloodstream [24] from the central lines.

[25] **Q:** Doctor, this organism of Clostridia

[1] difficile, is it true that it generally surfaces [2] after one is on long-term antibiotic therapy?

[3] **A:** Well, the bacteria itself is commonly [4] found mixed in with the other flora or bacteria and [5] so forth in the bowel. It has a tendency obviously [6] to proliferate and begin to produce large amounts of [7] toxin when it no longer has to compete with other [8] organisms for nutrients, and this does increase when [9] other bacteria in the bowel are being killed by [10] antibiotics. The most common tread in proliferation [11] of this organism is due to trauma.

[12] **Q:** Well, we don't have trauma here, [13] Doctor; do we?

[14] **A:** Not that I know of, but I don't have [15] those records, and I don't know whether they passed [16] anything either into the large bowel or from above; [17] so as far as I know, there's no trauma or damage [18] caused during the therapy.

[19] **Q:** Okay. If we don't have trauma, [20] what's the next most likely cause?

[21] **A:** The next most likely cause for the [22] proliferation of the bacteria is antibiotic therapy, [23] and the fact that there is damaged bowel, that is, [24] the colitis, makes it easier for the toxin and [25] eventually perhaps the bacteria itself to get into

[1] the bloodstream, but, you know, until I look at the [2] records and look at what kind of blood cultures they [3] took, I can't tell you whether the bacteria itself [4] may or may not have gotten into the bloodstream.

[5] **Q:** Doctor, doesn't diarrhea generally [6] accompany a condition of Clostridia difficile?

[7] **A:** No.

[8] **Q:** So it's your opinion at the moment [9] this Clostridia difficile sent these toxins within [10] his system and that caused the multisystem organ [11] failure?

[12] **A:** That's correct, they produced the [13] toxins which in the damaged bowel got into the [14] bloodstream. And Clostridia toxin is known and does [15] cause shock and result in multisystem organ failure [16] as well as disseminated intravascular coagulation, [17] and this can lead to the ARDS.

[18] **Q:** So in your opinion, Doctor, the ARDS [19] was a very late comer in the whole scene with [20] Mr. Smith?

[21] **A:** No, I don't believe it's a latecomer. [22] They only looked for the toxin as I understand it [23] after he had been in the hospital for about three [24] weeks or so. This doesn't mean that the toxin wasn't [25] already being produced early on in the course as a

[1] result of the antibiotics they were giving him. I [2] would need to look at these records and see exactly [3] when he does start showing the signs of multisystem [4] organ failure.

[5] **Q:** Doctor, I misspoke. I meant to say [6] ARDS was a latecomer in the clinical scene.

[7] **A:** Again, I don't think that the ARDS is [8] a latecomer. It's a progressive problem with the [9] lungs. And, again, without actually looking at the [10] records and seeing what the radiologist felt was [11] happening in the lungs and what his arterial blood [12] gases were doing, I can't give an exact date. With [13] that information, I may be able to give a more exact [14] answer.

[15] **Q:** Doctor, would you agree if Ches Smith [16] walked in with Candida air space pneumonia, that [17] wouldn't necessarily manifest itself in the [18] bloodstream?

[19] **A:** If he had air space pneumonia and the [20] Candida went in the bloodstream, then that's true, I [21] would not expect to recover Candida in the [22] bloodstream.

[23] **Q:** And we've already talked about it's [24] likely the sepsis of Candida was from the [25] long-standing I.V. line; is that correct?

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[1] **A:** I believe that the most likely source [2] of the Candida into the bloodstream was the central [3] intravenous lines. That is also a known clinical [4] source of the fungi to come in through the skin along [5] the catheters and into the bloodstream.

[6] **Q:** Doctor, turning to DIC for a moment. [7] What do you think was the most likely cause of DIC in [8] Mr. Smith?

[9] **A:** My opinion is that the most likely [10] cause of his DIC was the toxin entering the [11] bloodstream and setting off this cascade of clotting [12] and consumption of clotting products.

[13] **Q:** Doctor, on your May 8th letter, you [14] indicate that Candida was not the lethal or [15] precipitating cause of his severe illness. I want to [16] explore each and every reason for the basis of that [17] opinion.

[18] **A:** My opinion again is that the most [19] likely cause of the Candida getting into the [20] bloodstream and causing the Candida sepsis, if that [21] were indeed the cause of his multisystem organ [22] failure, would have been from the central lines, and [23] that is why I feel that if that were it, that the – [24] that that was not the initiating event, that that [25] only happened after he had been in the hospital

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[1] receiving the therapy.

[2] **Q:** Okay. Why do you – let me – it was [3] a poor question. Let me restate that question.

[4] Can you – how are you ruling out [5] Candida air space pneumonia as the lethal or [6] precipitating cause of his severe illness?

[7] **A:** Because I have no evidence yet to say [8] that it is.

[9] **Q:** Okay. If you find evidence in the [10] slides that you review that it likely is, how would [11] that alter your opinion?

[12] **A:** Well, if I find Candida in the slides [13] that would indicate that there is Candida in the [14] lungs at the time that the samples were taken, then I [15] got to look at the chart and see whether or not the [16] history and findings are consistent with it being the [17] cause, and to do anything else right now would be [18] speculation.

[19] **Q:** Doctor, at the time you wrote these [20] reports, were you making any assumptions as to his [21] clinical record, the clinical course?

[22] **A:** The only assumptions that I'm making [23] is that what was in The Cleveland Clinic records was [24] accurate. The other assumption I'm making is what [25] the pathologist at the first hospital saw and

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[1] reported on the slides is what's really there on the [2] slides.

[3] **Q:** Doctor, on your March 10th report, [4] you used the word "acute" when describing respiratory [5] distress syndrome changes. When you use the word [6] "acute," what do you mean by that in that [7] circumstance?

[8] **A:** In that circumstance, it indicates to [9] me that this is a process that continued until death [10] rather than something that the person developed; that [11] respiratory distress syndrome was successfully [12] treated and went on to survive. And then we see [13] changes that I would then describe as chronic. Some [14] people use Adult Respiratory Distress Syndrome as [15] separated from the Infantile Respiratory Distress [16] Syndrome. I think from a pathology point of view, [17] it's different acute respiratory rather than the [18] chronic.

[19] **Q:** Well, what role, if any, did his [20] pneumonia play in his death?

[21] **A:** As of now, the most likely – the [22] only thing I can blame on the pneumonia at the – [23] which was seen upon his admission is to put him in a [24] hospital environment where he may have been more [25] easily exposed to hospital pathogen such as Candida

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[1] and Aspergillus and led to him being treated with [2] antibiotics which allowed the Clostridia to [3] proliferate and produce toxin.

[4] **Q:** So it's your opinion that the [5] pneumonia did not lead to respiratory failure in his [6] case?

[7] **A:** I've not seen his records, and I [8] think respiratory failure is a clinical diagnosis [9] which would be in the hospital records. I do not [10] know whether he was in respiratory failure prior to [11] the point in time where he developed multisystem [12] organ failure and everything started going downhill.

[13] **Q:** Well, Doctor, can respiratory failure [14] lead to multisystem organ failure?

[15] **A:** Yeah. If the respiratory failure is [16] severe enough so the body is not provided enough [17] oxygen, yes, all the organs in the body rely on [18] oxygen, and you can get a multisystem organ failure.

[19] **Q:** Doctor, were there any opinions [20] requested of you from defense counsel that you felt [21] you were unable to speak to?

[22] **A:** Not yet.

[23] **Q:** Have we – I know we haven't covered [24] all your opinions because you've not completed your [25] work on this case; is that fair?

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[1] **A:** Well, yeah, that's true. And there [2] probably may be some questions out there that you or [3] defense haven't asked me yet whether I have an [4] opinion on. There certainly are questions that I've [5] been asked that I can't express a valid opinion on [6] yet.

[7] **Q:** We've covered all your opinions as it [8] stands right now based on the material you've [9] reviewed as to what the likely cause of death was for [10] this person, number one?

[11] **A:** That is correct.

[12] **Q:** And we covered your opinion as to [13] when the last date was that he would have been [14] salvageable, which I take to be around the tenth, [15] using your window that you gave me; is that clear?

[16] **A:** I believe I used somewhere like [17] around the sixth to the tenth, depending upon what I [18] see or review in the records of the first hospital.

[19] **Q:** Okay. Now, Doctor, are you familiar [20] with something called an Apache study?

[21] **A:** No.

[22] **MR. BECKER:** Okay. Bill, that's all I have. [23] I've obviously got to continue the deposition pending [24] his review of this new material. And I'll see you [25] Monday.

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[1] **MR. BONEZZI:** Yeah, at 10:00. That will be [2] fine.

[3] **THE WITNESS:** I'm a baseball umpire. He said [4] it's this Monday at 10:00.

[5] **MR. BECKER:** Thank you, Doctor, for

your time, [6] and we'll talk again. Nice meeting you.

[7] **THE WITNESS**: Take care.

[8] **MR. BECKER**: Doctor, would you tell - - [9] Ms. Court Reporter, Ms. Ward, we're off the record. [10] Thank you.

[11] (Discussion was held off the [12] record.)

[13] **MR. BONEZZI**: Until Dr. Bonnell has an [14] opportunity to go ahead and review this record, I'm [15] not waiving signature of this.

[16] (The deposition proceedings were [17] concluded at 10:30 a.m.)

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STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN DIEGO)

I, HARRY J. BONNELL, M.D., declare under penalty of perjury that the foregoing testimony is true and correct to the best of my knowledge and belief.

Dated this ____ day of _____, 1995.

HARRY J. BONNELL, M.D.

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STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN DIEGO)

I, M. PATRICIA WARD, CSR No. 7605 in and for the State of California, do hereby certify:

THAT *prior to being examined, the witness named* in the foregoing deposition, HARRY J. BONNELL, M.D., was by me duly sworn to testify the truth, the whole truth, and nothing but the truth;

THAT said deposition was taken down by me in shorthand at the time and place therein named and was thereafter reduced into typewritten form under my direction by computer-assisted transcription;

THAT the foregoing pages numbered 4 through 50 consist of a full, true, and correct transcription of my notes so taken;

I further certify that I am not interested in the event of this action.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 22nd day of May, 1995.

M. PATRICIA WARD

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