

1 MR. BROWN: I'm just bringing it to your attention.  
2 I'm not even trying to argue about it. I'm just letting  
3 everybody know. But we're ready to go when you are.

4 THE COURT: All right. Let's bring in the jury.

5 (In the presence of the jury:)

6 THE COURT: Back on the record. The parties are  
7 present before the court in the presence of the jury.

8 Good morning, everyone.

9 Mr. Brown?

10 MR. BROWN: Thank you, your Honor. Mr. Mickey would  
11 call Mr. Gamez to the stand.

12 THE COURT: Yes, sir.

13 THE CLERK: Please remain standing and raise your  
14 right hand. You do solemnly state that the evidence you shall  
15 give in this matter shall be the truth, the whole truth, and  
16 nothing but the truth, so help you God?

17 THE WITNESS: I do.

18 THE CLERK: Thank you. Please have a seat. Will you  
19 please state your full name and spell it for the record.

20 THE WITNESS: My name is Raul Gamez, R-a-u-l  
21 G-a-m-e-z.

22 THE COURT: Mr. Brown, you may proceed.

23 MR. BROWN: Thank you, your Honor.

24 RAUL GAMEZ,  
25 called as a witness on behalf of the Defense, having been first  
26 duly sworn, was examined and testified as follows:

27 DIRECT EXAMINATION

28 BY MR. BROWN:

1 Q. Mr. Gamez, can you help us understand CPR?  
2 A. Yes.  
3 Q. Can you help us understand the methods of performing  
4 CPR?  
5 A. Yes.  
6 Q. Can you help us understand some potential harm that  
7 might come from performing CPR?  
8 A. Sure.  
9 Q. All right. Before we do that and go into those  
10 areas, I would like you to talk with the jury a little bit  
11 here about your educational background that qualifies you to  
12 talk about some of the issues that I just raised. Can you  
13 tell us how you're educated.  
14 A. I'm a registered respiratory therapist for the past  
15 18 years. And prior to that, I was a paramedic for five or  
16 six years.  
17 Q. And what is a registered respiratory therapist?  
18 A. A registered respiratory therapist is someone who  
19 assesses, treats and manages patients with breathing  
20 deficiencies. We respond to all emergencies in the hospital  
21 to maintain an airway and provide CPR and/or ALS, if needed.  
22 Q. Are you a little nervous?  
23 A. A little bit.  
24 Q. Don't pass out. I think you're the only one that  
25 knows CPR.  
26 A. Yeah. I'll calm down in a bit.  
27 Q. Okay. Now, are there different levels of a  
28 respiratory therapist?

1 A. Yes, there are.

2 Q. And how many levels are there?

3 A. Two, and I'm at the higher level.

4 Q. What does that mean, the higher level?

5 A. Just another year of education, more about the  
6 physiology of patients.

7 Q. When you say "physiology of patients," what do you  
8 mean by that?

9 A. More disease processes, injuries, more in depth on  
10 what could cause potential problems with a patient regarding  
11 breathing and the heart.

12 Q. Now, how long have you been this upper-level  
13 respiratory therapist?

14 A. For 17 years.

15 Q. Are you employed?

16 A. Yes, I am.

17 Q. Where are you employed?

18 A. At TriCity Medical Center in Oceanside, California.

19 Q. How long have you been employed there?

20 A. Going on 18 years.

21 Q. And do you have a job title there?

22 A. Yes. I'm the charge therapist and I have been for  
23 the last 16 years there. My duties are working in the  
24 emergency department.

25 Q. What, typically -- what typical duties do you have as  
26 a respiratory therapist in the emergency department?

27 A. I treat anyone that has any kind of breathing  
28 disability. And if someone comes in and they're unable to

1 maintain an airway, we intubate them, which means putting in  
2 an endotracheal tube, and then if they need manual  
3 resuscitation, and we provide that. They'll be placed on a  
4 ventilator, and we manage that also.

5 Q. How many times do you think you've performed CPR in  
6 your career?

7 A. Hundreds.

8 Q. Thousands maybe?

9 A. If not thousands. I can't even count.

10 Q. Would that be on children and adults?

11 A. Both, yes.

12 Q. All right. And how many times have you been called  
13 upon to intubate a patient?

14 A. Hundreds.

15 Q. Thousands maybe?

16 A. Could be. We respond to at least two to three  
17 respiratory and/or cardiac arrests a day in the emergency  
18 department at that particular hospital.

19 Q. Well, you multiply that -- how many days a week are  
20 you working?

21 A. Three, four, fives days a week, and we do 12-hour  
22 shifts. So I'm there an awful lot.

23 Q. So 18 to 21 patients a week, we can do the math from  
24 there, right?

25 A. Yes.

26 Q. All right. Now, in addition to your hospital duties,  
27 have you ever had the occasion to go to a scene, like a home  
28 or a park or a beach or whatever on an emergency call to

1 provide CPR to someone who has been injured or someone who  
2 can't breathe?

3 A. Yes, I have.

4 Q. How many times have you been called upon to do that?

5 A. Hundreds of times.

6 Q. All right. What role in that kind of an emergency  
7 situation did you typically play?

8 A. I was a first responder; therefore, I was responsible  
9 for assessing the patient and see if they require  
10 resuscitation, whether it be rescue breathing, chest  
11 compressions, CPR or intubation.

12 Q. When you use the term "rescue breathing," can you  
13 tell the jury what you mean by that?

14 A. Rescue breathing is someone who may have a pulse, but  
15 they're not spontaneously breathing; therefore, you provide  
16 breaths for them with either mouth-to-mouth or an ambu bag  
17 mask ventilation.

18 Q. Have you had occasion to provide CPR, rescue  
19 breathing or chest compression to someone who had no pulse?

20 A. Yes, I have.

21 Q. Many times?

22 A. Many times.

23 Q. Can you explain briefly the differences, assuming  
24 there are differences, between providing rescue breathing and  
25 CPR -- well, let me ask you this. Are those separate terms,  
26 rescue breathing and CPR, or does CPR encompass rescue  
27 breathing?

28 A. CPR would encompass it. Rescue breathing is, in

1     itself, if they do have a pulse, and then you only have to  
2     breathe for the patient.

3           Q.    All right.  So if you have a child versus an adult is  
4     there different ways you would approach providing CPR?

5           A.    In a sense, yes.  Positioning of the head is pretty  
6     much the same, whether it's a baby or an adult, but the  
7     maneuvers are the same.

8           Q.    When you say "maneuvers," what do you mean by  
9     "maneuvers"?

10          A.    By the way you're going to ventilate, whether it's by  
11     mouth or by mask.

12          Q.    So you're talking about the breathing aspect of  
13     things; is that fair?

14          A.    Yes.

15          Q.    How about the compression aspect, adult versus child,  
16     is there a difference there?

17          A.    There is a difference in the depth of compressions on  
18     an infant child and an adult.

19          Q.    Can you explain to the jury what you mean by the  
20     difference in depth of compressions?

21          A.    Infants and children require not as much force on the  
22     compressions.  You're going to go about an inch, versus an  
23     adult you're going to compress about two inches on the sternum  
24     to contract the heart.

25          Q.    Now, during your times when you've been called upon  
26     to go to an emergency scene as a first responder, have you had  
27     the opportunity to ask questions of people that might have  
28     been there with the person that you're trying to assist?

1 A. I have.

2 Q. And have you had experience in kind of understanding  
3 demeanors of different people at the scenes when you're trying  
4 to ask questions of them?

5 A. It's always a panic situation, especially on  
6 children. It also is on adults, but children are worse. And  
7 even for first responders that do it on a regular basis, it's  
8 pretty nerve-wracking. And for anybody that is associated  
9 with the patient, you can imagine how intense that is.  
10 It's -- like I said, it's a panic situation.

11 Q. When you have the opportunity to ask questions of  
12 people that are there perhaps with the child that is not  
13 breathing or needs your assistance, have you come to find over  
14 the years that sometimes these people have a difficult time  
15 focusing on your questions?

16 MR. WALSH: Object as to relevance.

17 THE COURT: Overruled.

18 You can answer that, if you have an opinion.

19 THE WITNESS: Sure. In that state of mind that most  
20 people are in, I've found that it's pretty consistent on all  
21 responses that I went to. As far as asking someone a specific  
22 question, a lot of times you'll find that their thoughts  
23 aren't really there to answer correctly. And even if you  
24 think they are, sometimes they're not. So you pretty much  
25 have to make a picture of what is going on yourself, of what  
26 you see.

27 Q. (BY MR. BROWN) Now, during the course of your  
28 performing CPR on folks, have you had the opportunity to see

1 potential injuries or harm or bruises that might be caused to  
2 a person as a result of CPR?

3 A. Yes, I have.

4 Q. Can you describe for the jury, briefly, what kind of  
5 injuries, bruises or harm that you've seen caused to a patient  
6 as a result of CPR?

7 A. Well, you'll see some bruising on -- facial bruising,  
8 or you may see some on the chest, or if compressions were done  
9 inappropriately, you may see some on the abdomen. The facial  
10 markings are usually from someone grabbing the head or the  
11 pressure from an ambu bag mask. Because under those  
12 circumstances, you -- a lot of times you may put a little bit  
13 too much force, but you're not really thinking of the pressure  
14 you're using. You're only thinking of trying to save the  
15 patient, whether it be a child or an adult.

16 Q. Let me, if I can -- I'm going to have to ask you to  
17 turn around to see what it is I'm going to -- is this ready to  
18 go? To see the -- I'm going to reference Exhibit G.  
19 Generally, have you -- do you recognize this report, sir?

20 A. It looks like a medic report.

21 Q. Now, during the course of your career, have you had  
22 the opportunity to fill out reports like this?

23 A. Yes, I have.

24 Q. And have you reviewed this report?

25 A. Yes, I have.

26 Q. All right. And let me just draw your attention to  
27 the narrative portion of it. As soon as it stops moving and I  
28 don't get seasick, then I'll be fine. Do you see where it



1 reads, in the first sentence, "pulseless, apneic with  
2 bystander rescue breathing"?

3 A. Yes.

4 Q. What does that mean to you, sir?

5 A. Someone was providing ventilations to this patient.

6 Q. By "bystander rescue breathing," what does that mean  
7 to you as a first responder?

8 A. Someone that apparently was instructed on CPR was  
9 giving rescue breaths, most likely with their mouth, because I  
10 wouldn't assume they would have an ambu bag in their house.

11 MR. WALSH: I'm sorry. I'm going to object as to  
12 speculation and ask the answer be stricken.

13 THE COURT: Sustained. The jury is to disregard the  
14 answer, the entire answer.

15 Next question.

16 Q. (BY MR. BROWN) Mr. Gamez, what is going on now is  
17 that I just need you to focus on the question that I'm asking  
18 you without worrying about what you think about things.

19 When you read the word "bystander," what does that  
20 mean to you as a first responder?

21 A. A layperson was providing the rescue breathing.

22 Q. All right. Now, when you go down further, I believe  
23 right here it says "Bruising" -- do you see where I am --  
24 "Bruising about head and face"?

25 A. Uh-huh.

26 Q. Do you see that?

27 A. Yes.

28 Q. All right. Now, have you seen, as a result of CPR,

1 bruising about the head and face before?

2 A. Yes, I have.

3 Q. All right. And let me show you quickly what has been  
4 marked as Exhibit A and ask you to take a look at the  
5 narrative portion of this. Have you seen this report before,  
6 sir?

7 A. Yes, I have.

8 Q. All right. And I'll direct your attention to the  
9 bottom right, "Hematomas on forehead."

10 A. Yes.

11 Q. Have you seen, as a result of CPR, hematomas on the  
12 forehead before?

13 A. Sure. I have.

14 Q. Now, I'm going to show you a photograph here, which  
15 is Exhibit 3, and ask you have you seen this photograph in the  
16 past?

17 A. I did view this photograph.

18 Q. All right. Now, are you -- do you see the bruises on  
19 the top by the forehead area and the bruise over here?

20 A. Yes.

21 Q. Now, have you seen bruises like that on a person that  
22 CPR has been performed on in the past?

23 A. Yes, I have.

24 Q. All right. And what, typically, is the cause of  
25 those bruises as a result of CPR?

26 A. There's a lot of pressure applied when you're  
27 maintaining --

28 Q. You can turn around.

1           A.    There's a lot of pressure applied when you're  
2 maintaining someone's positioning on the head, and that's also  
3 a very vascular area close to bone; therefore, you will see  
4 bruising, and more likely on children or elderly adults.

5           Q.    Now, when CPR is being performed by a first  
6 responder, are you all really worried about bruising someone?  
7 I mean, let me rephrase it. What is your primary focus? Is  
8 it reviving someone or is it worried about bruising?

9           A.    It's always reviving someone. Of course, you try to  
10 prevent any more injury, but your main focus is to try to  
11 establish an airway on the patient; therefore, you're not  
12 really thinking about how much pressure you're applying. You  
13 apply the pressure that is needed to get the job done.

14          Q.    Now, I want to show you what has been marked as  
15 Exhibit ZZ. Are you familiar with these things?

16          A.    Yes.

17          Q.    What do you typically call this?

18          A.    We call them a dummy.

19          Q.    Kind of like a lawyer sometimes. All right. So --  
20 you've mentioned how -- you've used a couple terms that I'm  
21 not particularly familiar with, and you used the term in  
22 describing how those bruises might have been caused as a  
23 result of holding and pressure applying CPR; correct?

24          A.    Yes.

25          Q.    Can you demonstrate for the jury, please, what you  
26 mean by -- how this could have been caused?

27          A.    Sure. After you establish whether they're breathing  
28 or not, you will hold the patient's head here, and you're

1 going to kind of give a lift back on it. And you may put your  
2 fingers here to hyperextend the head, and then you're going to  
3 apply your breaths.

4 Sometimes the jaw is dropped down, so you may have  
5 someone here on this side doing a chin lift. And you can see,  
6 where your hands are underneath the chin, and you're bringing  
7 it forward, and that allows you to ventilate the patient.  
8 Otherwise, the tongue and everything is back and you can't  
9 ventilate, even with a -- even with --

10 Q. Now, I want to show you another photograph that I  
11 think is consistent with what you just demonstrated. It's  
12 Exhibit No. 5. If you can take a look at that. Do you see  
13 the bruised area on the child's left eyebrow area?

14 A. Yes.

15 Q. Have you seen bruises like that in the past performed  
16 as a -- incurred as a result of CPR?

17 A. I have.

18 Q. And is what you just demonstrated a method in which  
19 that could have occurred?

20 A. That could have happened with a chin lift, because  
21 what you're doing is you're putting your hand like this, so  
22 your thumbs are most likely going to be close to the orbit,  
23 and so you're putting pressure and pulling the jaw -- chin up.

24 MR. WALSH: I'm sorry, your Honor. Are we going to  
25 make a record of what the witness is doing with the exhibit at  
26 any point?

27 THE COURT: You know what, given everything that is  
28 going on, I'm going to say no. The motions the witness is

1 using speak for themselves. The trier of fact, everyone, I  
2 assume -- and I'm seeing everyone nodding their head  
3 affirmatively; am I correct? -- can see what he's doing, and  
4 then they'll make the determination. But I think trying to  
5 describe this for the record may make it actually incomplete  
6 or inaccurate.

7 Do you agree with that, Mr. Brown?

8 MR. BROWN: I don't know what words I would use to  
9 describe it, so I would agree with the Court, yes.

10 THE COURT: All right. You may continue.

11 MR. BROWN: Thank you.

12 Q. (BY MR. BROWN) Based on your skill, training,  
13 education and background, Mr. Gamez, the bruising to the left  
14 eyebrow that you see on Exhibit 5, do you have an opinion as  
15 to whether or not that bruise would be consistent with CPR  
16 being performed on this child?

17 A. Could have been.

18 Q. And looking at Exhibit 3, the bruises across the  
19 child's forehead, do you have an opinion, based on your skill,  
20 training, education and background as to whether or not those  
21 bruises could have been incurred as a result of CPR?

22 A. They certainly could have been.

23 Q. Now, there is an indication in this case that there's  
24 also a bruise to the back of the child's head, back in this  
25 direction here. Are you aware of that?

26 A. I may have seen that on one of the photos.

27 Q. Is there a -- do you have any thoughts as to whether  
28 or not CPR being performed on this child could have caused a

1 bruise to the center portion of the back of the skull?

2 MR. WALSH: I'm going to object as misstates the  
3 evidence.

4 THE COURT: Sustained.

5 Q. (BY MR. BROWN) Can bruising -- can CPR cause  
6 bruising to the back of the head?

7 A. Yes, it can.

8 MR. WALSH: I'm going to object as to relevance,  
9 based on the evidence.

10 THE COURT: Overruled. He can answer that based on  
11 his training and experience.

12 Q. (BY MR. BROWN) What is your answer, sir?

13 A. Yes, it could.

14 Q. How so?

15 A. Because, again, you're applying pressure here, so  
16 therefore, you're applying pressure to the back of the head  
17 against -- if the patient is on the floor, especially, or  
18 something hard. And, again, there's a very vascular area and  
19 close to the bone.

20 Q. I had one other question for you here. You have  
21 provided CPR to people who were pulseless; is that true?

22 A. Yes.

23 Q. Based on your skill, education, training and  
24 background, do you have an opinion as to whether or not a  
25 pulse can be regained in a patient if they haven't been -- if  
26 they have, in fact, been pulseless for 10 or 15 minutes?

27 A. Not likely.

28 Q. Would it be possible to recover a pulse in someone

1 over a 10- or 15-minute period if someone else had not been  
2 performing CPR on that child?

3 A. Not likely.

4 MR. BROWN: Thank you. I have nothing else, your  
5 Honor.

6 THE COURT: Thank you, Mr. Brown.

7 Mr. Walsh?

8 MR. WALSH: Thank you, your Honor.

9 CROSS-EXAMINATION

10 BY MR. WALSH:

11 Q. Good morning, sir.

12 A. Good morning.

13 Q. We haven't had a chance to meet before. I'm Jess  
14 Walsh, the People's representative in this case. Thanks for  
15 coming in today.

16 I want to ask you some questions about what we've  
17 gone over this morning. First of all, has your entire 18  
18 years been spent at TriCity?

19 A. Yes.

20 Q. And when the occasions arise that you're able to  
21 provide life-saving measures for people, I guess for lack of a  
22 better term, out in public, when has that come about?

23 A. I've actually had the opportunity to provide CPR  
24 twice while I was on vacation.

25 Q. Okay.

26 A. And working as a paramedic.

27 Q. Okay. So how long -- how much time did you spend --  
28 when I hear you say working as a paramedic, that makes me

1 think that you're riding around in an ambulance and going to  
2 different scenes. Is that a fair assessment of what you're  
3 talking about?

4 A. That's what I did, yes.

5 Q. How long did you do that for?

6 A. Five years, and then I started respiratory school.

7 Q. And Mr. Brown asked you some questions about your  
8 recollections of panic situations when people are around, I  
9 guess, patients who can't breathe. Was that the time that you  
10 were referring to or the experiences you were referring to?

11 A. Yes. Those all -- all of those times, and also  
12 you'll see paramedics come into our emergency room with  
13 patients, and you can see that they're also coming down from a  
14 panicked state, because even professionals do get nervous and  
15 panicky during those situations.

16 Q. Okay. Now, let me ask you this. Are you being  
17 compensated for your testimony today?

18 A. I am.

19 Q. Have you ever had situations in which the -- we're  
20 talking about people's reactions to stressful situations or  
21 what you've observed from people who are around the patient.  
22 Have you ever had -- because sometimes you need to get a  
23 history from those people who are around the patient; correct?

24 A. Yes.

25 Q. Sometimes it's helpful for you to know how to treat  
26 the patient or how to advise others to treat the patient based  
27 on what the people who are around the patient had to say about  
28 what happened before an arrest, perhaps; correct?



1 A. Correct.

2 Q. And you were describing for us that some  
3 have difficulty answering your questions in those s  
4 correct?

5 A. Yes.

6 Q. Have you ever had situations in which people have  
7 given you three different versions of what happened to the  
8 patient immediately before the arrest happened?

9 A. I have.

10 MR. BROWN: Objection. Argumentative.

11 THE COURT: Overruled.

12 Your answer was "I have"?

13 THE WITNESS: Yes.

14 Q. (BY MR. WALSH) Now, the -- you said that if a -- I  
15 believe one of your answers this morning was that you would  
16 expect to see bruises on the chest of a patient from improper  
17 chest compressions. Is that what you said this morning?

18 A. It could, yes.

19 Q. Okay. And I also noticed that when you were showing  
20 us -- when you stood up and demonstrated for us one of the  
21 methods by which -- you were showing us two different ways to  
22 hold the head. I saw you do two different things. Is that  
23 what you recall doing this morning?

24 A. One is holding the head for breathing. The other one  
25 is to do the chin lift to open the airway.

26 Q. Okay. Under CPR there will be two different ways --  
27 or the ways in which CPR can be administered to a patient will  
28 vary by how many emergency personnel are there; correct?

1 A. Repeat the question, please.

2 Q. Sure. It might be vague. What I'm asking is, is  
3 a -- what you've been showing us, that is check the airway and  
4 holding the head, that will be done different ways depending  
5 on how many paramedics or EMTs are at the scene; correct?

6 A. Not necessarily. It doesn't matter how many people  
7 are there. You're going to -- you're going to do the same  
8 thing whether there's ten people in the room or two of you in  
9 the room.

10 Q. Right. But if there's only one person who can work  
11 on the patient, then there are certain things that they will  
12 do. But if there's a second responder available to assist  
13 with that resuscitation, that can result in different handling  
14 of the patient; correct?

15 A. Well, if there's one person, obviously you're not  
16 going to be able to do a chin lift because you're going to  
17 have the head back for doing the breathing.

18 Q. Uh-huh.

19 A. And if you have another person -- if you're fortunate  
20 enough to have another person, then they can provide the chin  
21 lift. So if you're by yourself, this is the primary thing  
22 you're going to do first, is tilt the head back.

23 Q. Okay. And just so we understand some things here  
24 now, this doll that you're using, ZZ; is that right?

25 MR. BROWN: Yes, sir.

26 Q. (BY MR. WALSH) This is not supposed to be an exact  
27 comparison to the size of Kerianne Bradley who we're talking  
28 about in this case; correct?

1 A. Correct.

2 Q. She was smaller. Her chest and torso were smaller  
3 than this; correct?

4 A. I would imagine so, yes.

5 Q. Okay. Now, we had -- some of the paramedics who  
6 worked on Kerianne Bradley came in here and testified during  
7 this trial, and they talked about some of the measures that  
8 they used to try to help her at the scene. Do you have any  
9 idea what they testified to when they were here?

10 A. They started IO, which is interosseous, because they  
11 obviously couldn't get an IV in. So it's actually a big  
12 needle that goes into the bone to administer drugs, and they  
13 provided CPR and intubation.

14 Q. Okay. Let me ask you this. If a -- I'm going to, I  
15 guess, touch ZZ here for a moment. Is one of the mechanisms  
16 or one of the methods by which to steady the head of the  
17 patient in administering CPR, can it be done to have the hands  
18 resting sort of on a solid surface underneath the patient's  
19 head to steady their head during that time period where  
20 breaths are being administered or through a bag valve mask?

21 A. In most cases you're not going to lift the patient up  
22 like that.

23 Q. I guess I'm not -- there's a bar here, so I'm kind of  
24 limited, but let's put it here and let's pretend this is the  
25 floor. To steady the head resting the hands on the floor with  
26 the hands at either side of the back of the head, is that an  
27 acceptable method by which to steady the head during CPR?

28 A. You really don't need to steady the head with someone

1 who is basically flaccid and not breathing and pulseless.  
2 Your best position would be this way.

3 Q. Okay. But you're also saying that in order to check  
4 the airway with the chin tilt -- that you were describing  
5 before -- it can be done, you showed us, one hand on the  
6 forehead, and tilting back was one method you showed us this  
7 morning; correct?

8 A. Yes.

9 Q. And you also showed us another method where the hands  
10 can be placed on the side of the face or the side of the head  
11 and the hand tilted back in that manner?

12 A. Correct.

13 Q. I saw you use two hands.

14 A. I'm not really tilting the head. What I'm doing is  
15 I'm lifting the jaw. As you can see, I'm just lifting.

16 Q. What is that done for?

17 A. That's to -- because when someone is not -- when  
18 someone is, let's say, pulseless and apneic, their tongue and  
19 everything falls back, and you cannot get air through their  
20 trachea, which is their breathing tube. So by doing this, you  
21 lift that tongue up and you lift the jaw forward allowing air  
22 to go through the trachea.

23 Q. Okay. And then so it -- I've seen you this  
24 morning -- and please feel free to disagree with me, if you  
25 do. I've seen you this morning, I think it's about three  
26 times now, you've demonstrated the types of ways that you can  
27 tilt the head back to perform that portion of CPR. Is that a  
28 fair number?

1 A. To tilt the head back?

2 Q. About three times you've shown us that?

3 A. Yes.

4 Q. And each time I've noticed that your hands, when you  
5 first place them on the head, you place them sometimes in  
6 different positions. And you've also moved your hands around  
7 during the time you've had your hands on ZZ. Is that fair to  
8 say?

9 A. Well, I've pretty much shown you the same way,  
10 whether my fingers are on a different spot or not. It's this  
11 way; it's this way. So my fingers may be half an inch forward  
12 or backwards, but that's basically the way you do it.

13 Q. Okay. And the exact placement that a person uses --  
14 an EMT uses can vary from person to person; correct?

15 A. I guess it could.

16 Q. Okay. And if an EMT is able to clear -- if an EMT is  
17 able to expose the airway, you've shown us the method where  
18 you had your hands -- I'm not doing it right, I know, but you  
19 had your hands somewhere in here to do the head tilt with two  
20 hands. You've shown us that.

21 A. It's the chin lift, not the head tilt.

22 Q. I'm sorry, the chin lift. If someone is capable of  
23 doing it with their hands near the back of the head, if they  
24 can accomplish the same mechanism with the patient to  
25 accomplish the same goal, is it permissible to do that?

26 A. I guess it would be. But I don't -- especially on a  
27 baby, you really don't need to hold the head with both hands,  
28 because -- and I say baby, a pediatric -- a 16-month-old is

1 pretty close to a baby. So it really only takes one hand  
2 because you're only doing a stiff position on a child or an  
3 infant.

4 Q. Now, the -- I would assume that if bruises were  
5 present on the patient prior to any hands of EMTs being placed  
6 on the patient, you would not attribute those bruises that  
7 were existing before the EMTs to the EMTs. Is that fair to  
8 say?

9 A. If they were existent prior to EMTs?

10 Q. Yes.

11 A. I guess not. You couldn't, then, if the EMTs weren't  
12 involved yet.

13 Q. Okay. And now are you familiar with -- now, as a --  
14 I want to make sure I have it right -- registered respiratory  
15 therapist?

16 A. Yes.

17 Q. Okay. As a registered respiratory therapist, do you  
18 continue ongoing education, or do you continue reading and  
19 studies and literature in the field of respiratory therapy?

20 A. Yes. We're required to to maintain our licensure.

21 Q. Are you familiar with the study that was done in  
22 1996, published in 1996 by Drs. Bush, Jones, Cohle and Johnson  
23 titled "Pediatric Injuries from Cardiopulmonary  
24 Resuscitation"?

25 A. Probably not that particular article, but I have read  
26 literature on injuries caused by improper CPR.

27 Q. Are you familiar with the fact that in this study  
28 conducted in 1996, that included approximately 211 children

1 who were studied, that only about 7 percent of them  
2 demonstrated any injuries as a result of CPR?

3 A. I didn't know the statistics on that, no.

4 Q. Okay.

5 A. Hopefully, in most cases it's done properly, but I  
6 could see it being done improperly.

7 Q. Okay. Well, is it -- would you agree that it would  
8 be in the minority; that is, patients who receive injuries  
9 from CPR administered by paramedics or qualified medical  
10 personnel?

11 A. By professionals, the chances are, of course, less to  
12 have it done improperly.

13 Q. And when CPR is administered properly, it's in the  
14 minority that injuries would be inflicted or are seen  
15 afterwards; correct?

16 A. Yes.

17 MR. WALSH: Thank you very much. I have no  
18 additional questions.

19 THE COURT: Thank you, Mr. Walsh.

20 Mr. Brown, any follow-up?

21 MR. BROWN: Very quickly, your Honor.

22 REDIRECT EXAMINATION

23 BY MR. BROWN:

24 Q. There was a term used about you being compensated for  
25 your testimony.

26 A. Yes.

27 Q. Are you being compensated for what you're saying here  
28 today, or are you being compensated for your time coming up

1 here?

2 A. My time, and -- yes, my time.

3 Q. If these forehead bruises did not exist on this child  
4 prior to -- excuse me. Let me completely rephrase that.

5 If these forehead bruises existed prior to the EMTs  
6 arriving at the scene -- and I'm looking at this photograph  
7 here marked as Exhibit 3 -- those are the bruises you said  
8 were consistent with bystander -- with CPR; correct?

9 A. Yes.

10 Q. So if those bruises were not there prior to the EMTs  
11 or the fire department showing up, would that be an indication  
12 to you, sir, that someone else had performed CPR on this child  
13 before the EMTs or the fire department showed up?

14 A. You're saying if the bruises were not there?

15 Q. If -- no. If the bruises were there.

16 A. Uh-huh.

17 Q. These forehead bruises that you said were  
18 attributable to CPR on the forehead; correct?

19 A. Yes.

20 Q. If they were there before the EMTs or the fire  
21 department showed up -- you follow me?

22 A. Uh-huh.

23 Q. Yes?

24 A. Yes, I follow you.

25 Q. -- would that be an indication that someone else had  
26 performed or attempted to perform CPR on this child?

27 A. I would think so, sir.

28 Q. And that would be consistent, sir, with the report



1 that you read, Exhibit G, where Officer Rimmer discusses  
2 bystander rescue breathing; isn't that true?

3 A. Yes.

4 MR. BROWN: Thank you. I have nothing further, your  
5 Honor.

6 THE COURT: Thank you, Mr. Brown.

7 Mr. Walsh?

8 RE CROSS-EXAMINATION

9 BY MR. WALSH:

10 Q. If those bruises were there prior to emergency  
11 personnel arriving, as you sit here today, you can't say for  
12 certain how those bruises got there; correct?

13 A. I couldn't say for certain, but I would assume it's  
14 from finger placement.

15 Q. Could also be from blunt force trauma; correct?

16 MR. BROWN: Vague and ambiguous.

17 THE COURT: Overruled.

18 You can answer that.

19 THE WITNESS: I've seen lots of blunt force trauma  
20 where there's been a punch -- we see a lot of fighting come  
21 into the emergency department. We see accidents. We see  
22 people falling. And most blunt force trauma, you're going to  
23 see lots of swelling around the orbits, a lot of black and  
24 blue. You're going to see a lot more damage than you see  
25 there.

26 Q. (BY MR. WALSH) Okay.

27 A. In blunt force.

28 Q. Depends on the force; right?

1           A.    Depends on the force.  
2           MR. WALSH:  Okay.  Thank you.  
3           THE COURT:  Thank you, Mr. Walsh.  
4           Mr. Brown?  
5           MR. BROWN:  Nothing else, your Honor.  Thank you.  
6           THE COURT:  Mr. Gamez, thank you, sir.  Have a good  
7 rest of the day.  
8           THE WITNESS:  Thank you.  
9           THE COURT:  Mr. Brown?  
10          MR. BROWN:  I think we have a tape to play, your  
11 Honor.  
12          THE COURT:  All right.  Do we have any stipulations  
13 that are going to be read, or are we just playing the tape,  
14 Mr. Walsh?  
15          MR. WALSH:  As we discussed yesterday afternoon, the  
16 tapes have been redacted pursuant to our conversation.  The  
17 People would stipulate and agree that these are recordings of  
18 various dispatchers who were working on the phone call placed  
19 to 911 on February 4th, 2006, in the afternoon, that has been  
20 testified to thus far.  
21          THE COURT:  Mr. Brown, do you agree with all that?  
22          MR. BROWN:  I do.  
23          THE COURT:  It is so stipulated.  
24          You may proceed, sir.  
25          MR. BROWN:  Judge, with your permission, I'm going to  
26 get out of the way because I'm not real familiar with how to  
27 do this.  I'll assist in passing out -- I guess that's part of  
28 the task is to pass out the -- or maybe have the deputy.

1 THE COURT: Yeah, my deputy will handle that.  
2 MR. BROWN: As far as playing the CD --  
3 THE COURT: This is Defense --  
4 MR. BROWN: Well, I guess we can mark them next in  
5 order, sir, which will be --  
6 THE CLERK: AAA.  
7 MR. BROWN: AAA. I pay for that every year. Your  
8 Honor, can I have these marked before I hand them out?  
9 THE COURT: We're going to do AAA for identification.  
10 That would be the CD.  
11 Madam Clerk, shall we mark the transcript AAA-1?  
12 THE CLERK: Yes.  
13 THE COURT: Same stipulation, Counsel, that our  
14 reporter doesn't have to take down this recording?  
15 MR. BROWN: Yes, sir.  
16 THE COURT: Mr. Simowitz, the first CD that is going  
17 to be played is AAA; correct?  
18 MR. SIMOWITZ: Triple B.  
19 THE COURT: The transcript is going to be marked  
20 Triple B-1; is that correct?  
21 MR. SIMOWITZ: Yes, your Honor.  
22 THE CLERK: Yes.  
23 MR. SIMOWITZ: That's the two-page transcript.  
24 THE COURT: This is Triple B?  
25 MR. SIMOWITZ: Yes.  
26 (CD recording played.)  
27 MR. SIMOWITZ: The next CD is AAA, and the transcript  
28 is multiple pages.

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(CD recording played.)

THE COURT: Mr. Brown?

MR. BROWN: I believe that we're prepared to read some stipulations to the jury at this time, your Honor.

THE COURT: Very good.

MR. BROWN: I would ask Mr. Walsh to do so.

MR. WALSH: If I can have 60 seconds to proofread one that was given to me that we talked about yesterday.

THE COURT: Absolutely.

MR. WALSH: We have a number, your Honor.

THE COURT: What is that?

MR. WALSH: We have a number of them, your Honor.

THE COURT: Very well.

MR. WALSH: I should probably pour myself a glass of water.

MR. BROWN: I'll be happy to help.

MR. WALSH: Sure.

MR. BROWN: I charge, though.

MR. WALSH: Okay. The first of which is the stipulation that blood samples were taken from Ryan Mickey, Rosan Mickey and Jennifer Bradley at the Murrieta police station during the evening hours, approximately 7:00 p.m., on February 4th, 2006.

These samples were sent to an analysis company called Bio Tox for screening of the blood of these three individuals for alcohol or drugs. The blood samples from Rosan Mickey contained no alcohol or drugs. The blood samples from Jennifer Bradley contained no alcohol or drugs. The blood

1 samples from Ryan Mickey contained no alcohol but did test  
2 positive for marijuana.

3 If called to testify, Officer Juan Failde would  
4 testify to the following: He interviewed Jesse Plumley on  
5 February 6th, 2006 at 29298 Broken Arrow Way. He asked him if  
6 he heard anything unusual involving Jennifer, Ryan or their  
7 baby on February 3rd, 2006. Plumley replied no. He said he  
8 heard Kerianne crying before he left that morning, but it  
9 didn't seem unusual. He did not actually see her.

10 The parties agree that if called to testify, an  
11 engineer from the Samsung Corporation cell phone division  
12 would testify to the following regarding the operation of Ryan  
13 Mickey and Jennifer Bradley's Samsung cell phone: The model  
14 number of the phone is SPHA740.

15 Number one, every missed call will be logged to the  
16 missed call log and will not overwrite a number already in the  
17 log with a new date and time.

18 Two, when making an outgoing call to a number already  
19 in the outgoing call log, it will overwrite with the most  
20 current date and time for that number that was called.

21 Three, when receiving an incoming call from a number  
22 already in the incoming call log, it will overwrite with the  
23 most current date and time for that number.

24 If recalled to testify, Detective Juan Failde would  
25 testify to the following: He first interviewed Kristy Martin  
26 on February 5th, 2006. During his first conversation with  
27 Kristy Martin, she told Detective Failde that she had never  
28 seen Jennifer Bradley or Ryan Mickey injure or abuse Kerianne

1 Bradley. She stated she never -- excuse me. She stated she  
2 had never seen any indications of child abuse committed by  
3 Jennifer Bradley or Ryan Mickey.

4 Kristy Martin stated that she never noticed any marks  
5 on Kerianne Bradley, but Kerianne Bradley was normally fully  
6 clothed while at the home on Broken Arrow. Kristy Martin  
7 stated to Detective Failde that she had only seen Kerianne  
8 Bradley at the Broken Arrow house approximately seven times.

9 Kristy Martin stated that she heard Kerianne Bradley  
10 cry early Saturday morning. Kristy Martin stated that she  
11 never saw Kerianne Bradley between Wednesday, February 1st and  
12 Saturday, February 4th.

13 Detective Failde interviewed Kristy Martin a second  
14 time on February 6th, 2006. During this conversation Kristy  
15 Martin stated she heard Kerianne cry at approximately 1:00 to  
16 2:00 a.m. on Saturday, February 4th, and that it sounded like  
17 a normal cry.

18 If called to testify -- if recalled to testify,  
19 Detective Glen Schnoor would testify that defense Exhibits WW  
20 and YY are photographs of him holding his hand up against Ryan  
21 Mickey's hand during an interview that took place on  
22 February 5th, 2006.

23 If called to testify Cynthia Bradley, Kerianne's  
24 paternal grandmother would testify to the following: That on  
25 February 22nd, 2006, she told Detective Ullrich that Denise  
26 Pou had told her that Kerianne does have asthma and on one  
27 occasion she was given a medication, a liquid albuterol;  
28 however, she did not use the medication.

1           This is titled "The Sprint Stipulation." The Sprint  
2 cell phone bill, marked as People's Exhibit No. 37, is the  
3 cell phone bill for phone number (951)378-1176, which is the  
4 cell phone belonging to Ryan Mickey and Jennifer Bradley.  
5 This bill shows, on Ryan and Jennifer's phone, placed a call  
6 to 911 on February 4th of '06 at 13:55:31 and ended at  
7 13:56:28. The duration of the call is listed as 57 seconds.

8           Placed a second call to 911 on February 4th, 2006 at  
9 13:57:45 and ended at 14:00:01. The duration of that call is  
10 listed as 136 seconds.

11           Received a call from (858)637-3800 on February 4th,  
12 2006 at 13:56:42, and the call ended at 13:57:12. The  
13 duration was 30 seconds. This (858)637-3800 number is a call  
14 from the California Highway Patrol dispatch.

15           Received a call from (951)443-3581 on February 4th,  
16 '06 at 13:58:47, and the call ended at 14:00:40 and lasted 113  
17 seconds. This (951)443-3581 is a call from the Riverside  
18 County Department of Fire, also known as CDF.

19           Received a call from (951)443-3780 on February 4th of  
20 '06 at 14:05:41, and the call ended at 14:06:19 and lasted 38  
21 seconds. This (951)443-3780 is a call from the Riverside  
22 County Department of Fire, CDF.

23           Received a call from (951)443-3581 on February 4th of  
24 '06 at 14:12:19, and the call ended at 14:13:22 and lasted 63  
25 seconds. This (951)443-3581 is a call from the Riverside  
26 County Department of Fire, CDF.

27           Received a call from (951)443-1321 on February 4th,  
28 '06 at 14:16:30, and the call ended at 14:16:51 and lasted 21

1 seconds. This (951)443-1321 is a call from the Riverside  
2 County Department of Fire, CDF.

3 The CHP log, Defense Exhibit HH, reflects receiving  
4 only one call to 911 from Ryan and Jennifer's phone at 1358,  
5 which is recorded on the CDF log, Defense Exhibit II, as  
6 occurring at 13:57:20.

7 And, finally, the final stipulation that we've  
8 reached between the parties is actually a log or a record  
9 listing the phone numbers that are contained on the various  
10 phone logs that we've seen during this trial and various  
11 exhibits and affiliating those phone numbers with the  
12 businesses or the persons that they reflect. This will be  
13 available to the jury during deliberations.

14 THE COURT: All the stipulations will be?

15 MR. WALSH: Yes. Thank you.

16 MR. BROWN: Thank you, Mr. Walsh.

17 THE COURT: Thank you, Mr. Walsh.

18 Mr. Brown, anything else?

19 MR. BROWN: Your Honor, that is all we have for the  
20 jury this morning. We have one witness this afternoon.

21 THE COURT: All right.

22 MR. BROWN: He will be here at about 1:30.

23 THE COURT: Very good. We'll recess until 1:30.

24 Obviously, we're very close to the end of the case. Remember  
25 the admonition. Please keep an open mind. Don't draw any  
26 conclusions about the case. Please don't talk to anybody  
27 about the case. We'll see you at 1:30.

28 (Outside the presence of the jury:)



1 THE COURT: The record should reflect the jury has  
2 left the courtroom. My inclination, at this point, is  
3 tomorrow -- I'm going to work on these today. Tomorrow we get  
4 together at 9:00, we finish the instructions so my clerk has a  
5 chance to make copies, and bring them back a week from  
6 tomorrow so I can read the instructions. There are going to  
7 be a number of instructions, and then that Monday, we start  
8 fresh with closing arguments.

9 Because what can happen is if I read these on Monday,  
10 I have to take a break, and they're going to be tired. They  
11 won't really be listening. It's best that we do it in that  
12 order.

13 So tomorrow we're going to work on the instructions.  
14 We're going to finalize them. My clerk is going to make  
15 copies for the jurors, and we're going to come back a week  
16 from tomorrow, and all we're going to do is I'm going to read  
17 the instructions. And I'm going to release them, and I think  
18 both sides wanted to be able to begin early and then get them  
19 out and begin deliberating.

20 Is that right, Mr. Walsh?

21 MR. WALSH: Yes.

22 THE COURT: Mr. Brown?

23 MR. BROWN: I agree with the start of the closing,  
24 yes. Thank you. Yes.

25 THE COURT: Okay.

26 MR. SIMOWITZ: Is it possible -- is the court in  
27 session on Tuesday?

28 THE COURT: No. That's why we're going to do it.

1 I'm going to read the instructions next Thursday, but we'll be  
2 in session tomorrow to go through them. I'm going to work on  
3 them, and you'll have copies tomorrow morning.

4 MR. BROWN: Judge, all I can do, as far as the jury  
5 instructions are concerned, is -- I don't have them prepared.  
6 All of my material relating to jury instructions is in  
7 San Diego, and it's going to be really difficult for me to  
8 accommodate you tomorrow to have this occur.

9 In addition, I've got three federal hearings  
10 tomorrow, which is going to -- you know, I'm being ordered by  
11 district court judges to be at certain places at certain  
12 times, and it's -- so this is obviously of utmost importance,  
13 and everybody is going to allow me to be here, but I would ask  
14 for some consideration in getting this package to you, because  
15 I just can't do all that today and tonight.

16 And, in fairness, there are some very, very important  
17 issues relating to these jury instructions that I would like  
18 the opportunity to talk to Mr. Mickey about, because he  
19 ultimately has to make some decisions as to what direction we  
20 want to go with these.

21 So I have stressed my desire to end this case many,  
22 many times, and I think we're making good progress towards  
23 that. As far as the jury instructions, if there's some other  
24 accommodations you can make, I would be indebted to the court.

25 THE COURT: What accommodations?

26 MR. BROWN: Well, perhaps we can have tomorrow to go  
27 through these and get them together and then ship them up to  
28 you on Friday, and then somehow, telephonically, go over them

1 or something on Friday or -- are you not going to be in  
2 session at all on Tuesday? The Court won't be available to  
3 even go over these?

4 THE COURT: No. Now, I can -- again, I can do it  
5 tomorrow. I mean, I can go --

6 I think we have a light calendar, don't we, on  
7 Friday?

8 THE CLERK: Yes, we do.

9 THE COURT: We can even discuss these on Friday. Do  
10 you have someone in your office that can send your request to  
11 Mr. Walsh? Because he may agree with some of them.

12 MR. BROWN: I don't until Saturday, because the way  
13 this has worked out is my secretary went on a boat cruise, and  
14 she's in the Caribbean now. So I don't have anybody that has  
15 access to these things at the moment. I mean, we can attend  
16 to them tomorrow. That's not a major issue. And I can  
17 somehow get them up here, perhaps by e-mail.

18 THE COURT: When would you be able to get them up  
19 here?

20 MR. BROWN: Either tomorrow or Friday morning.  
21 Probably Friday morning would be the safest.

22 THE COURT: I don't have a problem with that, but  
23 you're going to have to be available telephonically, and  
24 Mr. Walsh would come in. What I want to be able to do is  
25 this, next Thursday when the jury comes in, they all have a  
26 copy of the finalized instructions so I can read them.

27 MR. BROWN: I agree.

28 THE COURT: That's what I want to be able to do. We

1 have tomorrow and Friday to be able to get that accomplished.  
2 I know I can get it accomplished with Mr. Walsh because I have  
3 his list.

4 MR. BROWN: He shared his list with us, and he's  
5 given a copy of a blank list to Mr. Simowitz this morning.

6 THE COURT: Some of the changes you're going to make,  
7 I'm not going to be able to make those. You're going to have  
8 to actually make them and then provide copies, if I agree to  
9 provide those instructions.

10 MR. BROWN: I agree. I understand that. Would it be  
11 all right -- another way to try to approach this is if we can  
12 get these to Mr. Walsh and back to the Court, and instead of  
13 reading the instructions to the jury next Thursday in the  
14 morning, we can have the jury come back Thursday at 1:30, and  
15 that will give us an opportunity to clean up any issues  
16 relating to those that we can put on the record in the morning  
17 and then read them to them at 1:30 and then come back that  
18 Monday morning for closing.

19 THE COURT: I don't have a problem with that either.

20 MR. BROWN: It just would be really helpful.

21 THE COURT: Yeah. I'm going to be reading them on  
22 Thursday. Whether it's in the morning or the afternoon, I  
23 don't have a problem with that.

24 MR. BROWN: With your permission, we would like to  
25 have until Thursday or Friday to get an e-mail -- we'll e-mail  
26 what our requests are, if we have special ones, and we'll  
27 e-mail those as well. I'm always going to be available  
28 telephonically at your convenience. I'll make sure that all

1 the courts know that I need to do this, and perhaps we can  
2 meet next Thursday in the morning and go through the finalized  
3 portions.

4 THE COURT: How many are there?

5 MR. BROWN: I don't think there's a lot. I was  
6 trying to talk to Mark about that last night, and there are  
7 some issues that we want to talk about. I don't think we're  
8 talking about an enormous amount of special instructions.

9 But the biggest issue I have, to be quite candid with  
10 you, is the murder instruction. And Mr. Mickey has to make  
11 some decisions as to what he wants us to try to do in that  
12 regard. So I need some time to talk with him.

13 THE COURT: That's fine. I can read them Thursday  
14 afternoon, but you still need to be here tomorrow because the  
15 vast majority of these instructions we need to review, and  
16 we're not going to have time to do all of this Thursday  
17 morning and have my clerk make copies to read them.

18 MR. BROWN: Can we come in Friday morning?

19 THE COURT: This Friday?

20 MR. BROWN: Yes, sir.

21 THE COURT: I believe so.

22 How many cases do we have on calendar?

23 THE CLERK: I show two right now.

24 THE COURT: I don't have a problem with Friday.  
25 That's fine.

26 MR. BROWN: If that works for you, I'll make sure  
27 that we're here, and that gives me a little bit of time to  
28 talk to the courts down there, because I have other hearings

1 on Friday, but I can use tomorrow to contact them and ask  
2 them --

3 THE COURT: So you don't want to be in session  
4 tomorrow at all? You would rather just do this Friday?

5 MR. BROWN: I would, yes.

6 THE COURT: How am I going to get these instructions  
7 that I'm going to draft to you so you know whether you agree  
8 with them or not? Because what I want to do is you come in;  
9 Mr. Walsh will be here. And what I do is I'm going to give  
10 100, 101, you know, 220. And then if I don't hear from you,  
11 it's deemed that you accept the instruction as drafted.  
12 That's the final copy. So you have to be prepared to do that  
13 on Friday morning. So I need to have a way to get these  
14 instructions to you, because I only have Mr. Walsh's requests.

15 MR. BROWN: Well, we'll get the requests in the  
16 morning. We'll attend to that tomorrow and get them up to  
17 you. And then, you know, either Mark or I can be here on  
18 Friday morning somehow, some way to go through these things.  
19 But I do need tonight, and I need tomorrow to attend to these  
20 hearings and put these things together.

21 As far as you getting those to us, I mean, it would  
22 be more than acceptable to me to just have Mr. Walsh e-mail  
23 them down, and we can review them.

24 THE COURT: Well, I'm the one that has to draft them.  
25 He just drafts his requests.

26 Mr. Walsh, would you be -- if I work on these today,  
27 which I'm going to, tomorrow get you a copy of my proposed  
28 instructions based on your requests, would you be able to get

1 those to Mr. Brown tomorrow somehow?

2 MR. WALSH: I don't know how.

3 THE COURT: See, that's what I'm wondering.

4 MR. BROWN: Well, I'll have somebody come by.

5 THE COURT: You can have somebody come by?

6 MR. BROWN: I'll have somebody -- if it comes down to  
7 that, I'll have somebody come by and pick them up, and we can  
8 get, you know, a process server or somebody to come by and  
9 pick them up and bring them down to San Diego.

10 THE COURT: All right. What I'm going to do, then,  
11 is I'm going to work on these.

12 Mr. Walsh, are you going to be in your office  
13 tomorrow?

14 MR. WALSH: I am now.

15 THE COURT: Okay. My clerk will call you with my  
16 instructions as drafted, and you can take these down and just  
17 have one of your secretaries call Mr. Brown.

18 And, Mr. Brown, you're telling the court that you'll  
19 have somebody pick them up so it doesn't inconvenience  
20 Mr. Walsh?

21 MR. BROWN: Yes, sir.

22 THE COURT: Okay. That's fine. And Friday, we'll go  
23 over these instructions, and you'll have had a chance to read  
24 the Court's proposed draft.

25 MR. WALSH: Can we skip a step? I'm not trying to  
26 put the onus on the Court. But can the Court simply prepare  
27 two copies, and the Court, instead of contacting me, can  
28 contact Mr. Brown to let him know to have somebody pick them

1 up? Can it simply be the Court notifies Mr. Brown that the  
2 copy of Walsh's proposed are ready?

3 THE COURT: We could, but if we're not in session,  
4 the door is going to be locked, and then my deputy may not be  
5 here, because he has to help in other courts.

6 MR. WALSH: That's fine.

7 THE COURT: That's the big problem, is we don't have  
8 enough staff.

9 MR. SIMOWITZ: You Honor, I have a question. Do you  
10 have it in electronic format?

11 THE COURT: No. The one that I have -- that's why I  
12 don't put the burden on the D.A.'s office, unless you want me  
13 to do that.

14 MR. WALSH: No. You don't ever want to work with  
15 that program.

16 THE COURT: Well, I do that as a courtesy to the  
17 district attorney's office.

18 MR. WALSH: We appreciate it.

19 THE COURT: Because whenever I -- I've done that a  
20 couple of times, and it's very difficult, and I'm used to it  
21 and I'm pretty fast, so that's why you do that to save both  
22 sides time.

23 But that's why I wouldn't do it, Mr. Walsh, because I  
24 would have to have my deputy sit in here.

25 MR. WALSH: Makes sense.

26 THE COURT: And you can just come down.

27 THE DEPUTY: Your Honor, whatever it is, they can  
28 just drop it off at the main office.



1 THE COURT: Well, I think what I'm going to do is  
2 I'll make copies. My clerk can contact Mr. Walsh. He can  
3 actually send somebody down here.

4 MR. WALSH: I'll come get it. That's fine.

5 THE COURT: Then he can call either Mr. Simowitz or  
6 Mr. Brown to get the copy, and they can come up and get it.

7 MR. BROWN: That works fine. We'll make sure that  
8 happens.

9 THE COURT: All right. We'll see you at 1:30.

10 MR. WALSH: We have one more thing.

11 THE COURT: Yes, sir.

12 MR. WALSH: I apologize. The defense has provided to  
13 me -- I guess it's a DVD. I couldn't get it to play on my DVD  
14 player, but it's a DVD made by the American Medical  
15 Association.

16 MR. SIMOWITZ: American Heart Association.

17 MR. WALSH: American Heart Association, which has  
18 various actors performing CPR on dummies. And they want --  
19 Mr. Brown told me this morning he wasn't sure if he wanted to  
20 play it or not. I don't want it played, so I don't know where  
21 we are.

22 MR. BROWN: Well, I think we've had Mr. Gamez  
23 demonstrate CPR. I think the jury knows CPR is a different  
24 issue with children. I can talk with Dr. Carr. I'm not sure  
25 it's real instrumental to his testimony; it may be. Clearly,  
26 it's demonstrative, but at the same time I'm trying to get  
27 through these witnesses so we can rest and everybody move on.  
28 I'm not sure what the objection would be, and I would like

1 some clarification about that.

2 THE COURT: Well, I think the objection, Mr. Brown,  
3 would be this. You play a tape. Mr. Walsh doesn't have a  
4 chance to ask the individual on that tape any questions  
5 whatsoever.

6 MR. BROWN: The tape isn't that kind of a tape. It's  
7 just an instructional thing. And if we use it, Dr. Carr was  
8 just going to show portions of it to show this is how it's  
9 taught. It's just a demonstrative kind of presentation.

10 THE COURT: All right. Well, I'll save you the time.  
11 I'm going to sustain the objection under 352. You actually  
12 had somebody come in here who was a licensed respiratory  
13 therapist. They used the doll. You were able to ask a lot of  
14 questions, and Mr. Walsh was able to cross-examine, but that's  
15 how it should be handled. So I take -- then you don't have to  
16 worry about it.

17 MR. BROWN: Thank you for taking the decision away  
18 from me.

19 THE COURT: We'll see you at 1:30. What is your time  
20 estimate for today with your last witness?

21 MR. BROWN: I think I'll be done in an hour at the  
22 most.

23 THE COURT: It sounds like we'll be finished this  
24 afternoon.

25 MR. SIMOWITZ: Your Honor, since we're not in session  
26 tomorrow, can the jail be informed that we don't need  
27 Mr. Mickey?

28 THE COURT: Tomorrow, if the defense closes, no

1 rebuttal witnesses, we will be dark tomorrow, and we do not  
2 need Mr. Mickey. Do you waive his presence for Friday?  
3 Because you will be here on Friday at 9:00.

4 MR. BROWN: Is that at 9:00?

5 THE COURT: Well, 9:30. Which is easier for you? We  
6 have other matters.

7 MR. BROWN: What time are your hearings?

8 THE COURT: That depends when we get the parties  
9 here. Generally what happens is they have different cases in  
10 different courts, so I have to be somewhat flexible. Why  
11 don't we do 9:30.

12 Mr. Walsh, is that a good time for you Friday?

13 MR. WALSH: Yes.

14 THE COURT: All right. We'll do it at 9:30. Do you  
15 waive your client's presence, and then I don't need to have  
16 him here Friday?

17 MR. BROWN: Yes, sir.

18 THE COURT: But he will need to be here next  
19 Thursday. We'll read the instructions in the afternoon at  
20 1:30.

21 MR. BROWN: Correct.

22 THE COURT: All right. Let's recess.

23 MR. BROWN: Thank you.

24 (Lunch recess taken.)

25 (In the presence of the jury:)

26 THE COURT: Let's go on the record in SWF015286.  
27 Parties are present before the court in the presence of the  
28 jury.