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SUPERIOR COURT
YAVAPAI COUNTY, ARIZONA
2011 APR 25 AM 9:44
JOANNE HICKS, CLERK
BY: Joy Rios

SUPERIOR COURT OF STATE OF ARIZONA
COUNTY OF YAVAPAI

STATE OF ARIZONA, Plaintiff, vs. JAMES ARTHUR RAY, Defendant.	CASE NO. V1300CR201080049 Hon. Warren Darrow DIVISION PTB **DEFENDANT JAMES ARTHUR RAY'S** **(1) MOTION TO EXCLUDE TESTIMONY OF RICHARD HADDOW;** **(2) RENEWED MOTION FOR SANCTIONS PURSUANT TO RULE 15.7 BASED ON VIOLATION OF *BRADY V. MARYLAND*** Defendant James Arthur Ray, by and through undersigned counsel, hereby moves this Court to exclude the testimony of proposed expert witness Richard Haddow, whom the State improperly identified as a trial witness after court proceedings concluded on Friday, April 22, 2011. Mr. Ray also renews his motion for sanctions pursuant to Ariz. R. Crim. P. 15.7. This motion is supported by the following Memorandum of Points and Authorities.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

On April 13, 2011, this Court found that the State had violated its constitutional duty under *Brady v. Maryland* by suppressing exculpatory evidence material to Mr. Ray's defense. The Court denied Mr. Ray's request for a mistrial "[a]t the present time," but ruled that "circumstances regarding the late disclosure can be the subject of cross-examination of both future witnesses and witnesses who are recalled to testify." Under Advisement Ruling on Defendant's Motion for Mistrial, 4/13/11, at 3. After court ended on Friday, April 22, the State notified the Defense by letter that it would call Richard Haddow as a witness after its next witness, Amayra Hamilton. *See* Letter from Sheila Polk to Truc Do, 4/22/11 (Exhibit A). The State's attempt to call Mr. Haddow as a witness at this juncture is late and improper.

First, the State has not filed the required motion under Rule 15.6(d) for leave to use late-disclosed evidence. Nor could such a motion have any legitimate basis. There is no possible good cause for informing the Defense on Friday that the State will, a few days later, call an expert witness who is not on the State's witness list—and who was explicitly *withdrawn* as a trial witness in December 2010. Moreover, the State's letter is not merely late, but also *still* fails to provide adequate disclosure. The letter does not state whether Mr. Haddow will testify as an expert, on what topics the State may seek to qualify him as an expert, or to what opinions he will testify. This disclosure violation alone is dispositive of the State's attempt, even apart from constitutional issues. But were there any doubt, it would be resolved by the fact that this is the very witness whose opinions the State *suppressed for eleven months* in violation of *Brady v. Maryland* and Mr. Ray's Due Process rights. The Constitution does not permit the State to profit from its *Brady* violation by leveraging its suppression to introduce the supposedly inculpatory aspects of the witness's opinion.

Second, permitting Mr. Haddow to testify would prejudice the Defense and infringe Mr. Ray's Sixth Amendment right to a fair trial, because the State has deprived Mr. Ray of the opportunity to investigate and test Mr. Haddow's complex scientific analyses. Although Haddow's report "contained information that, for purposes of *Brady* and Rule 15 analysis, was

clearly exculpatory," Under Advisement Order, 4/13/11, at 2, the State believes that aspects of Haddow's analysis are *in*culpatory. Mr. Ray is entitled to an opportunity to investigate and respond to this new prosecution theory. But conducting such an investigation would take months. By Haddow's admission, even *his* opinions are incomplete and preliminary. *See* Transcript of Interview of Richard Haddow, 4/15/11, Part 4, at 42:10–20 (Exhibit B) ("I didn't have all the facts, I didn't have the materials, I didn't [inaudible] rocks, I didn't get the—calculate the heat and what they were experiencing, and I—there was just a ton of stuff that I didn't do. I only spent less than a week on it."). There is not sufficient time, at this late date, to complete Haddow's analysis, let alone to independently test the conclusions.

Third, even if admission of Mr. Haddow's testimony for the State were constitutionally permissible, which it is not, a hearing and full briefing would be necessary to determine Mr. Haddow's qualifications as an expert. As the State itself has acknowledged, there are significant questions as to whether Mr. Haddow, who is neither an environmental engineer nor a medical doctor, can properly opine as an expert on many of the topics of his report. *See* State's Response to Defendant's Motion for Mistrial, filed 4/12/11, at 5 ("[T]he State was concerned about Mr. Haddow's qualifications.").

The Defense also renews its request for a jury instruction regarding the State's *Brady* violation and for sanctions. As the Court noted, the Defense is entitled to cross-examine witnesses regarding "circumstances regarding the late disclosure," Under Advisement Ruling 4/13/11, at 3, and the Defense will do so. But mere questioning of the State's witnesses cannot cure the prejudice arising from the State's constitutional violation. The State's suppression denied the Defense an opportunity to develop and use at trial a scientific and powerfully exculpatory theory. As the Court noted, "the late disclosure could prejudice the Defendant's ability fully to present a defense." *Id.* at 2. Short of a mistrial, the only remedy that could mitigate the harm is an instruction alerting the jury to the violation and permitting them to draw inferences against the State's evidence.

Furthermore, sanctions are appropriate. As noted in Mr. Ray's original motion for sanctions, filed April 20, 2011, the interview of Mr. Haddow, and the documents now disclosed

by both Mr. Haddow and the State, reveal a *Brady* violation more substantial than the State initially let on to the Defense and the Court. The State and its agents misrepresented the extent of their contact with Mr. Haddow and their knowledge of his exculpatory opinions. The federal and Arizona Constitutions and Arizona's rules provide that serious infractions should not be rewarded.

II. ARGUMENT

A. Haddow's testimony is inadmissible because the State has not filed a motion under Rule 15.6, and in any event, is not permitted to profit from its *Brady* violation.

As the Court is well aware, Mr. Haddow is a late-disclosed witness. For the eleven-month period prior to April 4, 2011, the State suppressed his opinions in violation of *Brady v. Maryland* and Rules 15.1(b)(1), 15.1(b)(4), 15.1(b)(8), and 15.1(e)(3)). *See* Under Advisement Ruling, 4/13/11, at 1, 2 (finding that "the prosecution suppressed evidence" within the meaning of *Brady* (quoting *Boss v. Pierce*, 263 F.3d 734, 739–40 (7th Cir.2001)). Furthermore, until Friday, April 22, 2011, the State had never listed Mr. Haddow on its list of trial witnesses. *See* State's Amended Witness List, 4/22/11 (Exhibit C) (adding, for the first time, Mr. Haddow as a witness among the State's 79 listed trial witnesses). Indeed, the State had explicitly *withdrawn* Mr. Haddow as a witness in its December 10, 2010 letter to the Defense and denied the Defense's request at that time to timely interview Mr. Haddow and obtain disclosure of his opinions and conclusions. *See* Letter from Sheila Polk to Truc Do, 12/10/10 (Exhibit D). The State's attempt to introduce Mr. Haddow's testimony days after giving notice of its intent to do so, and without leave of Court, is barred by the Arizona Rules of Criminal Procedure and the State and federal Constitutions.

First, the State's attempt fails at the outset, because the State has not filed the required motion under Rule 15.6(d). That rule requires that a party "*shall* obtain leave of court by motion, supported by affidavit," when "seeking to use material and information not disclosed at least seven days prior to trial." *See* Ariz. R. Crim. P. 15.6(d). Moreover, as a matter of law, the State *cannot* identify any good cause for its attempted use of this late-disclosed evidence.

More fundamentally, the law does not permit the State to benefit from its *Brady* violation by using the suppressed evidence—evidence disclosed so late that the violation reached *constitutional* proportions— against the criminal defendant. The State has apparently concluded that some aspects of Mr. Haddow's analysis—which the State, but not the Defense, has known about since April 2010—could be construed as inculpatory and would aid the State at trial. At the same time, *as a direct result of the State's unconstitutional suppression*, the Defense has been prevented from preparing a response to the State's theory. Had Mr. Haddow's findings been disclosed eleven months ago, the Defense would have conducted a thorough investigation and would now be armed with independent findings regarding the myriad scientific variables that Haddow raises. The State's disclosure violation deprived the Defense of this preparation. To permit the State to introduce Haddow's testimony would directly reward the government for its misconduct, to the severe detriment of the defendant. The Due Process violation would be clear-cut.

B. Permitting Mr. Haddow to testify would prejudice the Defense.

Second, and related, permitting Mr. Haddow to testify would prejudice the Defense, and would infringe Mr. Ray's Sixth Amendment fair-trial right. To be sure, Mr. Haddow's preliminary report "contained information that, for purposes of Brady and Rule 15 analysis, was clearly exculpatory." Under Advisement Order, 4/13/11, at 2; *see also id.* ("As noted by the Defendant, the information was arguably favorable to him in all aspects of his defense as presented at trial."). The exculpatory nature of this information was confirmed by Mr. Haddow's interview.[1] In the State's view, however, Mr. Haddow's analysis purportedly also includes *in*culpatory information. Mr. Ray cannot adequately respond to this new theory at this juncture.

[1] The law is clear that "[t]o say that evidence is 'exculpatory' does not mean that it benefits the defense in every regard or that the evidence will result in the defendant's acquittal. Rather, the preliminary inquiry in a *Brady* claim has always been whether the evidence in question is 'favorable' to the accused." *Bailey v. Rae*, 339 F.3d 1107, 1115 (9th Cir. 2003). *See also United States v. Howell*, 231 F.3d 615, 625 (9th Cir. 2000) ("The government's characterization of the information withheld as exclusively inculpatory, not exculpatory, is flatly contradicted by Supreme Court precedent. In fact, it was both. . . . That the information withheld may seem inculpatory on its face in no way eliminates or diminishes the government's duty to disclose evidence of a flawed police investigation.").

As the Court has noted, these issues are highly complex both factually and scientifically. The direct result of the State's suppression of the evidence is that the Defense has not had the opportunity to investigate the scientific issues raised in Haddow's preliminary report. The three-day continuance afforded Mr. Ray a chance to interview Mr. Haddow and explore the nature of the State's *Brady* violation, and revealed the State's extensive contacts with him. It did not provide sufficient time to conduct independent investigation on the subject.[2] Many steps would be required to make such an investigation meaningful. Indeed, Haddow himself emphasizes that his report is incomplete, and that significant additional work would be needed to complete it:

> "HADDOW: You know I'd really like you to understand this report was written around Liz and I did not weigh or contribute the circumstances to any other individuals other than I did pay attention to both Kirby and James on where they were just for my own understanding, and I pass that on even though it wasn't my objective. And so the report is focused on Liz and not everybody and so just so you know. That's one of the reasons why it was incom—I don't—that's the reason why I called it a preliminary report, because ***I didn't have all the facts, I didn't have the materials, I didn't [inaudible] rocks, I didn't get the—calculate the heat and what they were experiencing, and I—there was just a ton of stuff that I didn't do. I only spent less than a week on it.***"

Transcript of Interview of Richard Haddow, Part 4, at 42:10–20 (Exhibit B).

Significant expert investigation and analysis would be needed to complete Haddow's preliminary conclusions and then validly test them. The process would involve retaining an expert and could take months. This could have been completed had the State timely disclosed Mr. Haddow's opinions, but cannot be completed now.

C. Serious concerns exist as to Mr. Haddow's qualifications as an expert.

Third, even if admitting Mr. Haddow's testimony could be constitutionally permissible, which it is not, a hearing and full briefing would be required to evaluate Mr. Haddow's qualifications as an expert. The State itself has acknowledged that serious questions exist as to Mr. Haddow's qualifications. *See* State's Response to Defendant's Motion for Mistrial, filed

[2] On April 14, the Court granted Mr. Ray's motion for a continuance to investigate the issues related to Mr. Haddow's report. On April 14 and 15, Mr. Haddow and the State disclosed documents related to Mr. Haddow's involvement in this case, and the parties jointly interviewed Mr. Haddow on April 15.

4/12/11, at 5 ("[T]he State was concerned about Mr. Haddow's qualifications."). Indeed, Mr. Haddow apparently was informed by the State after their June 30, 2010 interview that the State questioned his qualifications and was not interested in retaining him for that reason. *See* Transcript of Interview of Richard Haddow, 4/15/11, Part 2, at 10:20–22 (Exhibit B) (HADDOW: I believe it was...I think Ross Diskin explained that to me after the, our teleconference or some, sometime around that time that a county attorney questioned my credentials."); *see id.* at 66:10–11 (HADDOW: I think Ross told me later that they were concerned about my qualifications or something.). Mr. Haddow's opinions include matters for which he has no qualifications at all, such as the medical conditions of participants and the cause of death. *See, e.g.*, Transcript of Interview of Richard Haddow, 4/15/11, Part 4, at 6:18–23 (Exhibit B) ("HADDOW: I'm not a medical doctor. I'm only going by a lot of documents that I had read and I . . . and from what I could see and hear that intubating a person with hypercapnia could be a . . . not a good thing but I don't understand the entire picture because Lou [Diesel] and I didn't need me to get into such details so I just scraped on patient care in my documents. As you go through them, you will see that."). Moreover, the Defense learned in its interview that Mr. Haddow is not in fact an environmental engineer, but rather an environmental scientist with some business education, and reached his conclusions on many matters within his report based on internet research.

D. The court should instruct the jury regarding the *Brady* violation and should impose sanctions.

Rule 15.7(a) provides that, upon motion of a party, the Court "shall impose any sanction it finds appropriate" based on a disclosure violation. As noted in Mr. Ray's motion of April 20, the drafters of Rule 15.7 specifically contemplated the steps the Court has taken to date—ordering disclosure and granting a continuance—and deemed them insufficient as sanctions. *See* Ariz. R. Crim. P. 15.7 cmt. (noting that "ordering disclosure and granting a continuance" "merely ordered the offending party to do what was already required, and gave the party more time to do it, a result that the party may have desired in the first place," such that "[f]ailure to disclose was thus encouraged instead of sanctioned"). Here, strong sanctions are justified as a result of the State's repeated violations of *Brady v. Maryland* and Rule 15.1, its inaccurate representations to the

Court and the Defense, and its pattern of failing to make mandatory disclosures, particularly related to causation.

At a minimum, the Court should give each of the jury instructions submitted by the Defense on April 14 (Exhibit E). It is well-established that the quality of a police investigation affects the weight of the prosecution's evidence. "When, for example, the probative force of evidence depends on the circumstances in which it was obtained and those circumstances raise a possibility of fraud, indications of conscientious police work will enhance probative force and slovenly work will diminish it." *Kyles v. Whitley*, 514 U.S. 419, 446 n.15 (1995). Under Supreme Court precedent, then, "information which might 'have raised opportunities to attack ... the thoroughness and even good faith of the investigation' constitutes exculpatory, material evidence." *United States v. Howell*, 231 F.3d 615, 625 (9th Cir. 2000) (quoting *Kyles*, 514 U.S. at 443). Indeed, "[d]etails of the investigatory process potentially affect[] . . . the weight to be given to evidence produced by [the] investigation." *United States v. Sager*, 227 F.3d 1138, 1145 (9th Cir. 2000). And flaws in a police investigation may make "the Government's agents and case appear to be haphazard and inconsistent as well as prone to errors." *Howell*, 231 F.3d at 625.

In light of this established law, jury instructions regarding a *Brady* violation are proper. *See, e.g.*, *United States v. Burke*, 571 F.3d 1048, 1054 (10th Cir. 2009) ("Where the district court concludes that the government was dilatory in its compliance with *Brady*, to the prejudice of the defendant, the district court has discretion to determine an appropriate remedy, whether it be exclusion of the witness, limitations on the scope of permitted testimony, ***instructions to the jury***, or even mistrial." (emphasis added)); *People v. Jackson*, 637 N.Y.S.2d 158 (N.Y. Sup. Ct. 1995) ("the jury will be provided with an adverse inference charge regarding the *Brady* violation by the People").

III. CONCLUSION

The State's attempt to surprise the Defense and the Court with the late addition of Richard Haddow as a testifying expert witness, without seeking leave of Court or offering any good cause, is impermissible. The State's attempt would not only violate the disclosure rules, but would

infringe Due Process by permitting the State to capitalize on unconstitutional suppression of evidence. The Court should deny the State's attempt, provide the Defense's requested jury instructions, and impose additional sanctions that the Court deems appropriate.

DATED: April 25th, 2011

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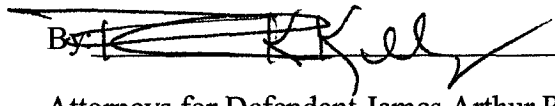
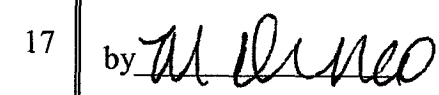
By: 

Attorneys for Defendant James Arthur Ray

Copy of the foregoing delivered this 25th day of April, 2011, to:

Sheila Polk
Yavapai County Attorney
Prescott, Arizona 86301

by 

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SHEILA POLK
Yavapai County Attorney

April 22, 2011

Truc Do
Munger, Tolles & Olson, LLP
355 South Grand Avenue, 35th Floor
Los Angeles, CA 90071-1560

RE: *State v. James Arthur Ray, V1300CR201080049*

Dear Ms. Do:

The State is providing notice that it intends to call Mr. Haddow as a witness. The State anticipates calling Mr. Haddow following the testimony of Amyra Hamilton.

Please advise us if you would like the opportunity to do an additional interview of Mr. Haddow prior to his testimony and provide my assistant Penny Cramer with your availability for a telephonic interview on Monday, April 25, 2011. As soon as we receive a fee agreement from Mr. Haddow, we will disclose it to you.

Very truly yours,

Sheila Sullivan Polk
Yavapai County Attorney

SUPERIOR COURT OF STATE OF ARIZONA
COUNTY OF YAVAPAI

STATE OF ARIZONA, Plaintiff, vs. JAMES ARTHUR RAY, Defendant.	CASE NO. V1300CR201080049 **TRANSCRIPT OF INTERVIEW** Witness: Richard Haddow (PART 2) By: Truc Do, Tom Kelly, Miriam Seifter, Bill Hughes, Sheila Polk Date: 04-15-11 Length: 2:19:13

DO: Okay, we're back on tape. It's 11:20 and Mr. Haddow has come back into the room and everyone who was present earlier was present now.

HUGHES: Hold on a sec Truc, I still have to get my tape going. Okay, it's rolling now.

DO: Okay. Alright, Mr. Haddow. I think we've resolved it and first of all, I wanted to reiterate what Ms. Polk just said, we appreciate your patience.

HADDOW: Thank you.

DO: So what we've done is we've agreed both sides will split the 4,375 for your work product. We are going to submit the issue to the court to make sure the, that's what the court is going to decide, but the bottom line is, it is covered and the parties will split if that's decided. Okay. Does that make sense?

HADDOW: Are you saying that the judge says that—

DO: The judge could say the State could bear the cost, the State, or the defense could bear the cost.

HADDOW: Okay. Not, nobody has to pay me [laughter].

DO: But not Mr. Haddow.

HADDOW: Okay. Okay.

DO: Correct.

HADDOW: Okay. Thank you. Yes, I'm very good with everything.

DO: Okay. So, and that's on tape, so you don't have to worry, we don't need to put it in writing or anything. Okay?

HADDOW: Thank you.

DO: And so at the end of today, what you could do is just prepare your invoice and—the way you normally do it— and, and provide, you can provide the copies to the defense and we'll make sure that everybody gets it or ... I think I cc'd you on an email where you now have the State's email as well.

HADDOW: Okay.

1 DO: Okay? So we're ready to go forward.
2 HADDOW: Yes ma'am.
3 DO: Alright, thank you so much. I think before we got into the subject
4 of...the...your invoice, we were talking about the files you brought in last
5 night.
6 HADDOW: Okay.
7 DO: You have your originals in front of you, correct?
8 HADDOW: Yes.
9 DO: And you did see me and Tammy and another assistant making copies.
10 HADDOW: Yes I did.
11 DO: I just want to confirm that we did make all of them and so I don't expect
12 you to go through each page, but why don't you just quickly look at...the
13 binder of documents that I have starting with what's been Bates stamped at
14 the bottom right corner as Defense 75, and just sort of flip through that and
15 let me know if that looks like your file.
16 HADDOW: It is, it is all my, it's all my work and file, yes.
17 DO: Okay. And so I'll just put on the record that what we produced to the State
18 last night was Defense 75 to 583. You also brought in last night a CD,
19 correct?
20 HADDOW: Yes.
21 DO: And that CD has some writing on it, as well, correct?
22 HADDOW: Yes ma'am.
23 DO: I just want to confirm that the cover of the CD is what we see in Bates
24 stamped Defense 584?
25 HADDOW: Yes.
26 DO: Alright and I, I'm looking at that and it shows sweat lodge photos and
27 reports?
28 HADDOW: Yes.

DO: And it has a note on it, "Rick Haddow will pick up."

HADDOW: Yes.

DO: And Diskin C23 at the bottom.

HADDOW: Yes.

DO: Okay so this is part of your file, and you brought it in and we copied that, correct?

HADDOW: Yes.

DO: Other than the documents we just talked about and the CD, did you have anything else remaining from your file that we have not received?

HADDOW: No.

DO: Alright so we have everything?

HADDOW: You have all my draft, preliminary and final reports.

DO: Okay and I understand as part of the file you brought in, you also had a little notebook, which you have in front of you.

HADDOW: Yes.

DO: And that was essentially a note of your communications?

HADDOW: Yes.

DO: And the work that you were performing along the way?

HADDOW: Yes.

DO: Alright. Just some background, Mr. Haddow, you were initially retained on this matter involving the October 8, 2009 sweat lodge at Angel Valley in Sedona, Arizona as an expert for a plaintiff's lawsuit, correct?

HADDOW: It was, you need to talk to Lou Diesel. I believe it was an insurance…there's a step before—

DO: Sure.

HADDOW: —we would do it, so I'm not sure of the actual term. We weren't involved in the lawsuit yet, it was…I'm not sure the, the term…it was—

DO: Okay.

1 HADDOW: —it was an insurance policy claim of some sort.

2 DO: Alright and I appreciate that clarification, we don't, I, we don't need to talk
3 about the charges of the civil lawsuit if that was what it was, but what I
4 mean—plaintiffs—is that you were retained by the plaintiff's lawyer?

5 HADDOW: Correct.

6 DO: And that would be Lou Diesel?

7 HADDOW: Yes.

8 DO: And the plaintiff that you understood Mr. Diesel to represent was Liz
9 Neuman's estate and family?

10 HADDOW: Yes.

11 DO: Alright. Anyone else that you know of? That was part of the plaintiffs?
12 Any of the other participants or decedents?

13 HADDOW: Just, just what you said is all I had from my, my perspective.

14 DO: Okay. So Liz Neuman and her estate and family, correct?

15 HADDOW: Yes.

16 DO: Okay. You are at this moment no longer retained by Lou Diesel?

17 HADDOW: Correct.

18 DO: Can you tell me when about your relationship with Mr. Diesel ended?

19 HADDOW: I gave them a, I gave him a final invoice…I believe it was in June…I
20 believe the end of June, I generated, I think I generated the final invoice.

21 DO: Would you say June 2010 or—

22 HADDOW: Yeah, I think it was.

23 DO: Okay.

24 HADDOW: I'm, I'm not positive but I believe it was just, just about then, and what we
25 had done, and so we completed the invoice and the program was over.

26 DO: Okay. And to your best estimate that was the end of June 2010?

27 HADDOW: Yes.

28 DO: Okay. Now I'm going to move to what involvement, if any, you had with

the criminal matter in this case. You are aware that the State of Arizona is prosecuting Mr. Ray for three counts of reckless manslaughter?

HADDOW: I do now.

DO: Okay. You did know at some point earlier than today that there is a criminal trial going on?

HADDOW: I'm sort of understanding what you're, the question you're asking is if actually there was a case, I think there was a case in development when I was sharing information with the lawsuit. There was not, there were no charges, I don't, I don't believe, I don't believe there was an ongoing—

DO: Sure.

HADDOW: —I think there was an investigation going...that's what....

DO: We'll go through that Mr. Haddow, I guess my—

HADDOW: I'm not sure what your question was.

DO: Yeah, my question wasn't very clear. What I'm trying to, to distinguish, distinguish here is that you had worked at one time for Lou Diesel in a civil lawsuit.

HADDOW: Correct.

DO: And now I want to talk to you about the criminal case.

HADDOW: Okay.

DO: Okay. So at some point you got involved in the criminal case?

HADDOW: No.

DO: And when I say case, I'm not talking about whether there's charges or trials but, but—

HADDOW: No.

DO: Okay, go ahead and explain.

HADDOW: As a private investigator licensed by the State of Arizona I can conduct investigations and collect information from, with a law firm and take some information. I was asking for support documentation for my civil case,

1		Lou Diesel offered to provide the State reciprotory information on, on
2		some of my findings we could, I could share with them.
3	DO:	Okay. So when I say involved I mean that very broadly. It means that you
4		had contact with the Det. who was handling the criminal investigation.
5	HADDOW:	Okay.
6	DO:	It means you had contact with the prosecutors handling the criminal case
7		and then we're going to get into detail of what involvement, if any.
8	HADDOW:	Okay. I understand what you are saying, yes.
9	DO:	Alright. So my understanding of, of how this all came about was you were
10		working for Mr. Diesel and Mr. Diesel offered reciprocity with the State,
11		sharing information that you were doing.
12	HADDOW:	Correct.
13	DO:	Alright. And at some point you came into contact with a Det. named Ross
14		Diskin?
15	HADDOW:	Yes.
16	DO:	Who is a Det. with the Yavapai County Sheriff's Office.
17	HADDOW:	Yes.
18	DO:	Can you tell me when it was you first had contact with Det. Diskin?
19	HADDOW:	I believe it was October 20th.
20	DO:	2009?
21	HADDOW:	2009.
22	DO:	And you are referring to the log of communications that we discussed
23		earlier?
24	HADDOW:	Yes.
25	DO:	Okay so you began your contacts, and we'll get into the details, with Det.
26		Diskin, your first recollection is October 20, 2009?
27	HADDOW:	Yes.
28	DO:	At some point along the way in 2009 you drafted an email that you sent to

1		Det. Diskin, is that correct?
2	HADDOW:	Say that again?
3	DO:	You emailed Det. Diskin, your preliminary opinions and conclusions at
4		some point, correct?
5	HADDOW:	I think in April of '010.
6	DO:	April 2010?
7	HADDOW:	Right.
8	DO:	Okay. And then after drafting that email to Det. Diskin, you were then
9		contacted by someone from the Yavapai County Attorney's office?
10	HADDOW:	No because I had contact with Ross Diskin in between that time—
11	DO:	Sure.
12	HADDOW:	—in trying to find out if there was information or what information was
13		collected. They had quite a few Det.s interviewing many, many witnesses,
14		some of them had left the State—
15	DO:	Sure.
16	HADDOW:	—so we had—
17	DO:	And I—
18	HADDOW:	—so I'm not quite sure what you're asking.
19	DO:	Let me clarify. I understand you've had multiple contacts with Det. Diskin
20		and I'm going to go back and cover each of those contacts with you. I'm
21		just sort of getting, I'm trying to get a broad picture here, okay. So you had
22		contact first with Det. Diskin on October 20, 2009, correct?
23	HADDOW:	Correct.
24	DO:	Some time in April 2009 you wrote—
25	HADDOW:	2010.
26	DO:	2010. Thank you. You wrote him an email that laid out or outlined your
27		preliminary opinions and conclusions about Liz Neuman, correct?
28	HADDOW:	I…yes.

DO: After you emailed Det. Diskin on April 29, 2010, you then at some point had a conversation with somebody from the Yavapai County Attorney's Office, correct?

HADDOW: Yes. I believe it was in June, I think that was our June teleconference.

DO: Okay. June 2010?

[TIME STAMP: 10:02]

HADDOW: Yes.

DO: Alright. And then after June 2010 were you ever retained by the State?

HADDOW: No.

DO: Okay. Were you ever told by the State that they wanted to retain you?

HADDOW: No.

DO: Okay. So you've never been paid any monies by the State prior to today's date, correct?

HADDOW: Correct.

DO: I had asked you this earlier but I just want to confirm it since we had a break...they did notice you as an expert witness in this criminal trial in a filing with the court on October, in October 2010. Were you aware of that?

HADDOW: No.

DO: Did they ever ask you for your consent to being noticed as an expert witness?

HADDOW: No.

DO: If someone noticed you as an expert witness, would you have had expectations to have been one retained?

HADDOW: I provided that document to them.

DO: A blank retainer?

HADDOW: Yes.

DO: Was that ever completed?

HADDOW: No.

DO: Okay. So back to my question, if someone filed with the court a notice that they were going to call you as an expert witness for their, their case, would you have accepted that they would have retained you in some way before doing that?

HADDOW: Absolutely.

DO: Would you have expected that they would have paid you for whatever work or opinions, conclusions that you had provided if they were noticing you as an expert witness?

HADDOW: Yes.

DO: But again you were never told that you were noticed as an expert?

HADDOW: Correct.

DO: Then I assume that you were also never noticed or told by the State that they then, after making that filing in October 2010, withdrew you as an expert witness?

HADDOW: Also correct.

DO: Okay. Did you ever become aware that the State had made statements or representations that they had concerns about your qualifications?

HADDOW: Yes.

DO: When was that?

HADDOW: I believe it was…I think Ross Diskin explained that to me after the, our teleconference or some, sometime around that time that a county attorney questioned my credentials.

DO: And that would be after the June 2010 conversation you believe?

HADDOW: Correct.

DO: And what was specifically said about their questioning your credentials?

HADDOW: My only notes was that it was a financial cost and I, I don't know.

DO: Okay. So Mr. Haddow, let me try to understand that. After you had a conversation with the Yavapai County Attorney's office, did that include

Mr. Hughes, who's here?

HADDOW: I didn't take copious notes and I—

DO: Okay.

HADDOW: —I was introduced but I don't remember…I didn't take…I was not a….

DO: Sure and I understand. It's been some time.

HADDOW: Well, yeah.

DO: We'll go back to it because I think maybe your notes will help, but I'm just trying to get a broad chronology and then we'll go in and fill the details. So this, through Mr., through Det. Diskin you were informed that the State had some concerns about two issues. One was the financial costs?

HADDOW: Yes.

DO: And the other was about your qualifications?

HADDOW: Yes.

DO: And can you tell me to the best of your ability what specifically you remember being told about the financial costs?

HADDOW: I just…I had just put a note. I had put a note to myself on that conversation. Take all these stickers off. My, my personal notes say, "Told…told attorney service or told any services needed by the court, attorney would not be paid by this office."

DO: What does that mean?

HADDOW: It means that they didn't want to pay for my retainer.

DO: Okay. And then what do you remember, if you do, about the concerns about your credentials?

HADDOW: I don't know. They never explained that to me. I provided an additional document that listed additional qualifications besides my resume.

DO: Okay. And then are you a little bit surprised that they noticed you as an expert in October 2010 after expressing both that they didn't want to, you know, pay whatever costs you were asserting and questioned your

1 credentials?

2 HADDOW: I don't have an idea.

3 DO: Are you at all surprised?

4 HADDOW: Disappointed.

5 DO: Okay. I've already then explained to you and we've had a lot of

6 conversations already this morning about you being here subject to a Court

7 Order, correct?

8 HADDOW: Yes.

9 DO: And we've had some conversations but I just want to make sure that the

10 record is clear on this. Your emailed report to Det. Diskin was dated April

11 29, 2010 and you are now aware that has just been produced to the defense

12 for Mr. Ray, correct?

13 HADDOW: Yes.

14 DO: So produced to the defense on April 4, 2011 almost 11 months later after

15 you had drafted it, correct?

16 HADDOW: Yes.

17 DO: The email. So I had explained to you earlier that the purpose of this

18 interview is to one ask you questions about what information you provided

19 to the State? Okay?

20 HADDOW: Okay.

21 DO: And the second part is I'm going to then ask you to explain your opinions,

22 conclusions that you had written in that email, okay?

23 HADDOW: Okay.

24 DO: Let me first ask you. You indicated that it was sort of Lou Diesel who

25 connected you with Det. Diskin, correct?

26 HADDOW: I believe...I don't remember exactly but I made, I made the efforts of

27 calling.

28 DO: Okay.

1 HADDOW: And so...I...I'm...I proactively contacted...make, made all the contacts.
2 DO: Alright.
3 HADDOW: And I believe I contacted...actually now I'm starting to recall that I met in
4 Lou Diesel's office and he provided me Ross Diskin's name, that's how I
5 got Ross Diskin's name.
6 DO: And then you subsequently contacted him?
7 HADDOW: Yes ma'am.
8 DO: Okay. And your first contact with him, was that by telephone?
9 HADDOW: Yes.
10 DO: And you've indicated you would have done that on October 20, 2009?
11 HADDOW: Correct.
12 DO: Okay. At any point during the beginning of your relationship with Det.
13 Diskin did you rather than calling him just show up to the Sheriff's office
14 unannounced without an appointment?
15 HADDOW: Never.
16 DO: Did you at any point without calling him as you indicated on October 20th
17 '09 just show up to the Sheriff's office with a bunch of papers that you,
18 you put in front of Det. Diskin?
19 HADDOW: No.
20 DO: Okay. So let's talk about then how it was that you began your relationship
21 and I don't mean relationship in any sort of negative connotation, okay?
22 HADDOW: Okay. And, and, and just so we're clear. I'm, I'm working on a civil case
23 and concurrently the Sheriff's working on a criminal case. I'm not
24 working on their criminal case so...okay.
25 DO: Right. Okay. And as you're working on a civil case, you were trying to get
26 information that would help you from the Det., correct?
27 HADDOW: Correct.
28 DO: And you were also providing him information that may be helpful to him?

HADDOW: Correct.

DO: Alright. Let's turn to your notes on October 20, 2009 which has been produced in this case as Defense Bates stamp 558. And I believe Ms. Polk and Mr. Hughes have these copies and so are there any questions about a discrepancy between your originals and the Bates stamped I'm sure someone will bring it up, okay?

HADDOW: Okay.

DO: Looking at the Defense stamped 558, is that a note that you made on October 20, 2009?

HADDOW: Yes.

DO: And it indicates at 4:30 you had a conversation with Det. and you wrote Faskin, did you mean Diskin?

HADDOW: It was Diskin, I didn't know what his name was and that's what I thought I heard.

DO: Okay. And that, that would have been the first conversation with him?

HADDOW: Yes.

DO: And that, according to your notes, was about 10 minutes, is that correct?

HADDOW: Correct.

DO: Now this is the 20th, so if I counted correctly, that's 12 days after the accident occurred?

HADDOW: Correct.

DO: You indicated in this particular note that you 'will go up to site without sheriff'. Can you tell me what that means?

HADDOW: The, it was a crime, it was considered a crime scene and Lou asked me to go, go out there and take a look and apparently I was going to go there with the Sheriff to get access, and apparently, for some reason, that wasn't a crime scene anymore and it was released and so I didn't need to go there with the Sheriff.

DO: Okay. So you never did go to the site?

HADDOW: I did go to the site but I didn't go, I went without the Sheriff.

DO: Alright. When, and then below it says here 'call again to Angel Valley resort to schedule a day visit'.

HADDOW: I wanted to go down and conduct a site visit with authorization from the, from the property owner.

DO: Did you talk to the property owner?

HADDOW: Yes I did.

DO: Do you recall that person's name or persons?

HADDOW: Yeah it was Mrs. Hamilton.

DO: Amayra Hamilton?

HADDOW: Amayra Hamilton.

DO: Okay. Can you tell me in total how many times you think you've spoken to Amayra Hamilton?

HADDOW: Just that one time and I was covertly talking to her.

DO: Explain that.

HADDOW: I was pretending to want to look at the site. I was not tell, letting her know what the reason for the visit was.

DO: Okay.

[TIME STAMP: 19:54]

HADDOW: And it ended up that she would not allow me...she, she didn't know...she decided not to allow anybody. There was a lot of turmoil in the Ranch, kind of business stopped and she had, she had gotten an attorney, the attorney says 'no, we don't want people coming in' and I went to the site and viewed the site from the perimeter.

DO: Okay so you never actually entered the property?

HADDOW: Never entered the property.

DO: Okay you did it from the perimeter meaning from the road?

HADDOW: From the perimeter, from around the property boundaries.

DO: I see.

HADDOW: Yeah and from the road and then closer to the property, so I took some pictures.

DO: Okay. And what day do you think that occurred?

HADDOW: The 21st of October 21st '09.

DO: Alright. And did you have contact with Ms. Hamilton then when you went to the property perimeter?

HADDOW: No.

DO: Alright. Other than that time did you ever go to Angel Valley?

HADDOW: No.

DO: Alright. You said that you did not go to the site with the Sheriffs because you had learned that the structure was no longer there?

HADDOW: No. There was no longer, it was no longer a crime scene and I didn't need access.

DO: Access. Okay. At any point did you learn what happened to the structure?

HADDOW: Yes.

DO: What did you learn happened?

HADDOW: That they disassembled it.

DO: And who's they?

HADDOW: Apparently there's a ceremony that goes on to disassemble it and it's the retreat folks—

DO: Alright.

HADDOW: —of some sort.

DO: Alright. And disassembling it, you mean that the structure was actually taken down and removed from the site, correct?

HADDOW: I believe the structure was disassembled but I don't, I don't know if the material was taken off-site.

DO: Okay. So you don't know whether or not the wooden structure was taken down, burned and the materials that covered the wooden structure was also taken down and, and discarded?

HADDOW: Correct.

DO: Alright. Okay. So, and we'll get to your opinions and conclusion, is it fair to say that your analysis in this case then was based upon written documentation as opposed to actually being able to look at the structure, the physical structure?

HADDOW: No that's incorrect.

DO: Go ahead, explain.

HADDOW: I think there's 300 photos of it.

DO: Yes. And by that, that's what I mean and I appreciate your clarification. Whether it is photo documentation or written documentation, you didn't actually get to go and see the structure—

HADDOW: Correct.

DO: —in real life, three dimensions.

HADDOW: Correct.

DO: Okay. The next time that you spoke to....

POLK: I'm sorry to interrupt, I just wanted to clarify one thing about this page before we moved on.

DO: Sure.

POLK: Rick you had said that the, you thought you were going to go with the Sheriff to see the site?

HADDOW: I believe, I thought it was still under with, a crime scene and apparently it was not, it would have been released.

POLK: But who, had you made contact with the Sheriff or was Lou Diesel who said you would go with the Sheriff? Why, why did you believe you would go with the Sheriff?

HADDOW: Because, I, Lou, Lou had thought it was still considered a crime scene and I would need to contact the Sheriff's office and I don't remember how I discovered it was not a crime scene anymore and then, I must of, I don't know how, he must have told me it was released. I don't remember.

POLK: Do you think your contact was through Lou though?

HADDOW: Yeah, it was, yes it was. It was for my access to the site was based on, you know, the yellow tape line that—

DO: Sure, sure. When you talked to Det. Diskin on the 20th of October, did you ever talk to him about going down to the site?

HADDOW: I do not believe, I just introduced myself.

DO: Right.

HADDOW: I believe all I did was just establish a point of contact and we really...he didn't know me.

DO: Yes.

HADDOW: And so he didn't share too much information with me. I didn't share too much with him. It was our first contact.

DO: Okay. So for introduction purposes.

HADDOW: Yes.

DO: Okay now going to the next page of your notebook, it's October 21, 2009, which is Bates stamped Defense 559.

HADDOW: Mm hmm.

DO: At the bottom it indicates that you spoke with Det. Baskin, who is Diskin, correct?

HADDOW: Correct.

DO: And if I read your handwriting it says, "Will provide lodge dimensions"?

HADDOW: Yes.

DO: And when you say "Will provide lodge dimensions" is that you providing it to Det. Diskin or he providing it to you?

HADDOW: He provided it to me.

DO: Alright. And below there, there's information that there were 19 injured two hours in sweat lodge?

HADDOW: That was the cursory information that I could obtain from my conversation.

DO: With?

HADDOW: With the Det. Diskin.

DO: Okay.

POLK: And Truc, could you tell me what page you are on?

DO: Yes, it's bate 559.

POLK: Thank you.

DO: So on this date, the 21st, Det. Diskin indicated to you that he would provide you with the lodge dimensions. Is that correct?

HADDOW: Correct.

DO: So at this point, after you made introductions, he knows who you are, you know who he is. You sort of begin getting information from him and you giving him information.

HADDOW: Not, not yet. It, it was pretty much just things that I'd like to, that I would like to have.

DO: Sure.

HADDOW: And they were consumed by this collecting statements.

DO: Their investigation?

HADDOW: Their investigation.

DO: Correct.

HADDOW: So I needed to give them space, so I didn't really push too hard to, to work on that part.

DO: Okay, I understand that, and, you know, you may not have gotten much or you may not have given much, but if I look at your notes, it says 'will provide lodge dimensions' at least this is the beginning of you being able

1		to ask for information, correct?
2	HADDOW:	Correct.
3	DO:	Okay. The next indication in your notes, a contact with Det. Diskin was on
4		October 29, and I'm going to go to Bates 566. I'm sorry 565. Okay. Is
5		that a note dated as October 29, 2009?
6	HADDOW:	Yes.
7	DO:	And it indicates that you again had some sort of conversation with Det.
8		Diskin?
9	HADDOW:	Yes.
10	DO:	And you wrote 5 minutes, is that the length of the conversation?
11	HADDOW:	When I, when you see the letters "LMAM"—
12	DO:	Yes.
13	HADDOW:	—that means left message on answering machine.
14	DO:	Okay.
15	HADDOW:	And so at this particular moment I'm not sure if I just left him a voice
16		message. I don't think, I can't recall but my notes here tell me it's a,
17		leaving a message.
18	DO:	Alright. So, sort of based upon the way you note, you take notes, this
19		indicates to you perhaps you left a message for him on October 29, '09?
20	HADDOW:	Correct.
21	DO:	Now let's go to the next page Defense 566, that seems to me to be notes of
22		October 29, '09 continued?
23	HADDOW:	Okay.
24	DO:	Is that correct?
25	HADDOW:	Yes.
26	DO:	Okay. And at the top it shows 30 minutes, correct?
27	HADDOW:	Yes.
28	DO:	Now, did you according to this note contact someone at the Verde Valley

1 Fire Department?
2 HADDOW: Yes I did.
3 DO: And you spoke to the Chief as you indicated?
4 HADDOW: Yes.
5 DO: Can you tell me what and is it correct that that conversation with the Chief
6 at the Verde Valley Fire Department was for 30 minutes?
7 HADDOW: Yes.
8 DO: Can you tell me what you remember that conversation involving?
9 HADDOW: Yes. The Chief was the incident commander. The hazardous materials
10 team air-tested the air. The following folks responded: it was the Camp
11 Verde Fire Department, the Cottonwood Fire Department, Verde Valley
12 Fire Department, Guardian Air Ambulance helicopter, two Native Air
13 Ambulance helicopters, Sedona ... I guess the Sedona ambulance
14 responded, Lakemont ... I'm not sure what that is ... ambulance responded
15 and a Verde Valley ambulance responded. Staff reporting. EMS reports
16 and I'm not sure what the RED reports are. The Chief said that he did not
17 go into the lodge because all the people were out when he got there.
18 DO: Alright. Is this information being provided to you over the telephone?
19 HADDOW: Yes.
20 DO: Okay so it's not in reference to any documents you reviewed as of this
21 date?
22 HADDOW: Correct.
23 DO: Alright. Going to the next page, Defense 567. That's still a continuation
24 of your entry of October 29, '09.
25 HADDOW: Yes it is.
26 DO: Still a continuation of the conversation you were having with the Chief?
27 HADDOW: Yes.
28 DO: If I could ask you, at the bottom of this page, you wrote 'fire/med called

PHX-TUC', which I assume is Phoenix, Tucson—

HADDOW: It is.

DO: —Poison control centers—

HADDOW: Yes.

DO: —and describes symptoms, try to determine cause and method at, of treatment, correct?

HADDOW: Correct.

DO: Can you tell me what that note meant?

HADDOW: I was, I was asking them what was his speculative thoughts of what happened and he was letting me, letting me know that they had conducted air sampling and were calling Phoenix Tucson Poison Control Centers and describing symptoms to see if they could reverse engineer the, to diagnose the patients.

DO: Okay do you remember the name of the Chief?

HADDOW: I do not, but I have, his phone number is right there, so whoever answers that phone....

DO: Okay.

HADDOW: But it was the Chief.

DO: It was the Chief.

HADDOW: It was the Chief of the Valley Verde Fire Department from, from my recollection. And this was the only time I spoke to that person.

DO: Okay. So Mr. Haddow you spoke to the Chief on October 29, '09, you had asked him, you know, "what's your opinion of what caused this"?

HADDOW: Correct.

DO: And he responded to you that—

HADDOW: That he, that he had...that they were, that they were trying to research...you know trying to figure out what happened to the people and how to treat them. And they were at a loss. They didn't understand.

1 DO: Okay so when you say they were trying to figure it out, was that, based
2 upon what he is telling you, them trying to figure it out as of October 8th or
3 were they still trying to figure it out October 29th?
4 **[TIME STAMP: 30:00]**
5 HADDOW: That, no, I was asking them on the, on the day for the October 8th.
6 DO: Okay.
7 HADDOW: When they were there, I was asking them only about his activities on-site.
8 DO: Thank you. So you asked him on October 8, 2009, 'Chief when you got
9 there with your men and your crew, what did you think had happened',
10 right?
11 HADDOW: Correct.
12 DO: And he said to you that they were at a lost?
13 HADDOW: Yes.
14 DO: And that they had that night called the Phoenix Tucson Poison Control
15 Centers?
16 HADDOW: Yes.
17 DO: And did he tell you whether or not he personally did that or his crew did?
18 HADDOW: I believe his staff had.
19 DO: Okay. And he told you that his staff contact ... and you said plural, so is
20 that more than one poison control center according to—
21 HADDOW: From what I understand it was multiple poison control centers.
22 DO: Alright. And that was so that they could describe the symptoms they were
23 seeing in the folks that came out of the lodge?
24 HADDOW: Yes—no, everybody was out when they got there.
25 DO: Right. What I meant is the folks who were in to lodge.
26 HADDOW: Yes.
27 DO: Okay. So he was describing the symptoms of those folks?
28 HADDOW: Yes.

1 DO: And trying to determine what caused it?
2 HADDOW: Correct.
3 DO: Okay. And that was also so they could figure out how to best treat these
4 folks, right?
5 HADDOW: Yes.
6 DO: And he told you that, even after being on the scene, doing whatever it was
7 that he did to investigate and calling the poison control centers, they were
8 at a loss?
9 HADDOW: Correct.
10 DO: Okay. Do you remember anything about, anything else about your
11 conversations with the Chief regarding their investigation on October 8th
12 that is not reflected in your notes?
13 HADDOW: Yes.
14 DO: Go ahead, please tell me.
15 HADDOW: A lot of the patients left the immediate area and distributed themselves to,
16 to the rooms—
17 DO: Yes.
18 HADDOW: —or to take showers, and so they were having a hard time finding out who
19 were victims and who, who was subject, because apparently some people
20 that felt bad, felt better then got much worse later, and so he described
21 trying to track down people that were in there that weren't in the general
22 area.
23 DO: Okay. Anything else you remember him saying?
24 HADDOW: I had asked him quite a few questions on treatment and he wasn't able to
25 give me that information, and....
26 DO: Could you explain that a little more, when you say you were trying to ask
27 questions about treatment, what did you—
28 HADDOW: I wanted to know exactly what they did to the patients.

1 DO: At the scene?
2 HADDOW: Yes.
3 DO: Were you also interested in what happened to them at the hospital?
4 HADDOW: No.
5 DO: Okay. So at the scene you wanted to know how did emergency first
6 responders treat them, right?
7 HADDOW: Yes.
8 DO: And he wasn't able to give you information, meaning he wasn't at liberty?
9 HADDOW: He didn't know.
10 DO: Oh, he didn't know. Okay. Alright. Anything else that you remember
11 about that conversation, not reflected in your notes?
12 HADDOW: Um...no.
13 DO: Alright. Then the next time you had contact, oh, by the way, Mr. Haddow,
14 when the Chief said he contacted the poison control centers, did he relay to
15 you what information, if any, he had gotten from the control centers?
16 HADDOW: No, I think he was just describing their efforts and not necessarily what
17 they, I don't know, I don't think they came to a conclusion.
18 DO: Okay.
19 HADDOW: I'm not sure. So he did not...I'm just trying to pick his brain on that
20 event—
21 DO: Yeah.
22 HADDOW: —and so....
23 DO: Okay. But to the best of your recollection, it wasn't that the Chief said
24 "Well the poison control said it was, you know, A, B or C."
25 HADDOW: Correct.
26 DO: Alright. The next time I see contact with Det. Diskin is February 2nd,
27 2010 and that's at Bates stamp 573. Okay, are you at that page now?
28 HADDOW: Yes, I am.

1 DO: February 2, 2010?

2 HADDOW: Yes.

3 DO: Alright. I'm just wondering because it looks a little different.

4 HADDOW: Is it different?

5 DO: Yes.

6 HADDOW: Which one?

7 DO: February 2, 2010.

8 HADDOW: Oh, February 2, I—

9 DO: Yes, right here.

10 HADDOW: Oh, I'm sorry, okay.

11 DO: And you indicated here at 8 AM you spoke with Det.—now you are

12 spelling it Beskin, but it's Diskin, right?

13 HADDOW: It's still…yes, exactly. I haven't seen it printed yet.

14 DO: Alright. You indicated here "scheduled appointment for next Thursday, 12

15 to 5"?

16 HADDOW: I think it's…is it…12, 5…is it…yeah, it must be 12 to 5.

17 DO: Okay. And below it says "Det. said they need help".

18 HADDOW: Correct.

19 DO: And I can't read the first three letters of the next sentence —it's

20 "something not going to be enough", can you tell me what you wrote?

21 HADDOW: I think it was the initial assessment is not going to be enough.

22 DO: What did you understand "initial assessment" to be?

23 HADDOW: My, my, my focus and my…and my focus—

24 DO: Yes.

25 HADDOW: —is…was for Liz and her family and his focus was in, in, in everything.

26 DO: Right.

27 HADDOW: And so I was only going to, I'm only giving him the perspective for Liz's

28 circumstances not necessarily the circumstances for everybody else.

1 DO: Okay. So if I understand what you just said to me, on February 2nd, 2010
2 you spoke to Detective Diskin?
3 HADDOW: Correct.
4 DO: I assume this is again by phone.
5 HADDOW: Yes.
6 DO: And when you wrote "initial assessment not going to be enough," what you
7 meant there is that the initial assessment you gave to Detective Diskin was
8 not enough.
9 HADDOW: I hadn't given it to him by then, and this is just my own notes to myself—
10 DO: I see.
11 HADDOW: —that, that it's, from my perspective, what I, I'm not, this isn't going to be
12 enough for them, for their—
13 DO: I understand now.
14 HADDOW: —their perspective.
15 DO: So it was, 'cause what I wanted to make sure that I understood it not, have
16 this confused in my mind is that when you wrote "initial assessment not
17 going to be enough" that was not something you communicated to
18 Detective Diskin.
19 HADDOW: No, I did not.
20 DO: Was this a mental note—
21 HADDOW: It was my mental note.
22 DO: But the detective did say to you, because you wrote "detective said they
23 need help".
24 HADDOW: They need help.
25 DO: Can you tell me what Detective Diskin said in that regard?
26 HADDOW: It just, I believe just an understanding, what happened with all these
27 people, everyone still at a loss, they didn't know what happened to them
28 actually, and so they were kind of....

DO: Sure.

HADDOW: You know, he's a scientist . . .

DO: Right.

HADDOW: I think he was not sure because it was new territory and it's just unfamiliar territory, I think, is what I felt.

DO: Could you in the, to your best of, the best of your recollection, tell me what it was that Detective Diskin said to you that made you think that as you, I think you just said, they were still trying to figure it out. What was it that he said?

HADDOW: He didn't really say, it was by...just an understanding of where they were at in the case...I didn't feel...I felt they needed help, and I, and I could see that they needed help, and it was quite overwhelming with as many people and as many witnesses, so....

DO: Sure. So I....

HADDOW: That's where I....

DO: Right, and to be fair to, you know, Detective Diskin, I don't want...what I want is to make sure that this is based upon something he said to you, and not something that you're sort of...guessing. Okay?

HADDOW: [Inaudible].

DO: So when you wrote "detectives said they need help," did the detective say he needed help.

HADDOW: Yes.

DO: And when the detective said he needed help on February 2, 2010, did he elaborate on that, did he tell you "Hey, Rick, can you help us figure out the cause? Hey Rick, can you help us figure out"—what was it that he said, if anything?

HADDOW: No, it, it, it was just manpower, resources, under, you know, having the ability to conduct an adequate investigation with all the ongoing current

1 work they were doing.

2 DO: Okay. Did he say that to you?

3 HADDOW: No, that's what I, that's what I, when he said that "we need help" it was

4 like, you know, he's just overwhelmed—

5 DO: Yes.

6 HADDOW: —there was so much stuff—

7 DO: Okay.

8 HADDOW: —so it wasn't saying "Rick, I need you to help me with this and come

9 help."

10 DO: Got it.

11 HADDOW: —necessarily with the....

12 DO: Okay. So was he, when he said, you know, "Rick, we need help" that was,

13 as far as you understood it, about the investigation, right?

14 HADDOW: It would be about the investigation, not necessarily just geared to me but—

15 DO: Correct.

16 HADDOW: —in the—

17 DO: Okay. Now, did Detective Diskin at that point with you tell you what

18 conclusions, if any, they had reached in their investigation?

19 HADDOW: No, he did not.

20 DO: Did he tell you whether or not they had in fact reached any conclusions?

21 HADDOW: No.

22 DO: Did you talk about that? Did you ask him?

23 HADDOW: I did ask him...and I...no.

24 DO: Okay.

25 HADDOW: No information came from him on this case.

26 DO: Let me ask you this, as best as you can reach back to your conversation on

27 that date, what, what was said? What did you ask him? What did he say?

28 HADDOW: I don't recall.

DO: Okay.

HADDOW: You know, we've had a few phone calls, and it was generally it was trying to find out what information they had that would help me and listening to his statements, it was, it was just struggling and that sort of stuff, not necessarily something substantive. Usually I would write it down if it was something meaningful.

DO: So from his statements you're saying struggling, they were struggling trying to figure it out or—I'm trying to understand, I don't want to—

HADDOW: I'm trying, I'm saying that this is a very complex and overwhelming case and with all the other responsibilities that the Sheriff's Office has with the Prosecutor's Office—

DO: Yes.

HADDOW: —it was a monumental task—

DO: Right.

HADDOW: —that sort of help with everything, all parts, including mine and all the other parts of the investigation.

DO: Okay.

HADDOW: So that's, but I don't remember the call in particular.

DO: Okay. And I understand, I appreciate that. Let me ask you this, on February 2nd, 2010, when you spoke to Detective Diskin, did it appear to you that they had concluded their investigation?

HADDOW: No.

[TIME STAMP: 40:10]

DO: Did it appear to you that they had reached any findings as to what happened in the sweat lodge?

HADDOW: He didn't share that with me.

DO: Okay. And I understand that. But from your conversation, did you get that impression?

HADDOW: I didn't, I didn't deduce.

DO: One way or the other?

HADDOW: Yeah, correct.

DO: Okay. But he did not tell you "Hey Rick, you know, we finished our investigation and we know what happened."

HADDOW: No.

DO: Okay.

POLK: Before you move on just if I could—

DO: I had a few more questions about this—

POLK: Okay, then before you move on, then just let me know.

DO: Okay. So when you then after having this conversation with Detective Diskin, was that when you made a mental note to yourself that the "initial assessment was not going to be enough"?

HADDOW: Yes.

DO: Was that you saying to yourself that you needed to do a little bit more work in order to respond to the detectives saying they needed help? No?

HADDOW: No.

DO: Okay. Explain that to me 'cause I want to understand it.

HADDOW: It, it, what, the way I looked at it, for his case and his perspective on his side that their case would need more information than I have.

DO: Yes. And what kind of more information were you thinking they needed?

HADDOW: They needed to know what happened to the victims.

DO: Okay.

HADDOW: I, I explained what happened to one victim.

DO: Alright. That would be Liz Neuman

HADDOW: Yes.

DO: And so you were saying they needed to know what happened to Kirby Brown—

HADDOW: I did not say that.

DO: Mental note?

HADDOW: Mental note.

DO: Kirby Brown and James Shore?

HADDOW: And the 16 or 19 other injured people, folks.

DO: Okay. Let me just finish this out and then I'll let Ms. Polk ask the questions that she had. Then you wrote, at the end of this conversation, "*February 9, 2010 called Detective Diskin, appointment Wednesday before lunch".

HADDOW: Correct.

DO: So is this now, another conversation on February 9?

HADDOW: Yeah, I think we were going to make an appointment.

DO: Okay. So do you remember why you were going to make an appointment, what was, what was discussed between you and Detective Diskin that would necessitate an appointment?

HADDOW: I think this was when they gave me the, the, I think he must have, might have given me something, I'm not sure, I'm not sure what we had done on that date.

DO: I think if you look at your February 10, 2000 notes, which is the next page, a Bates stamp 574—

HADDOW: Okay. Okay, I'm in his office.

DO: Okay. And you got some information—

HADDOW: Yeah, the advantage of notes.

DO: And you got some information from him, correct?

HADDOW: I got, I got a DVD with site plans and investigative interviews and provided site drawings with measurements.

DO: Okay.

HADDOW: And I gave Ross questions from a document dated November 8th, '09.

DO: Okay. So what I want to make sure I understand is that, now looking at what happened on February 10, do you know whether or not on February 9 you, you made an appointment Detective Diskin to come into the office.

HADDOW: Say that again?

DO: On February 9, 2010, looking at that entry....

HADDOW: Yes.

DO: You called Detective Diskin, correct? Or you had a call with Detective Diskin?

HADDOW: I might have returned a call or had a call, 'cause he had that information for me.

DO: Okay, so tell me how that, let me just close this out and then I'll turn it over to Ms. Polk. You had a conversation with Detective Diskin and he said he had information for you?

HADDOW: Correct.

DO: And then you went in and picked up that information on February 10?

HADDOW: Yeah, that's what my notes say.

DO: Okay. Now, can you tell me how that occurred? Was it you asking Detective Diskin "can I get this information" or was it Detective Diskin saying "I have information, come in and pick it up."

HADDOW: No, I'd been, I had been asking for their interviews all along—

DO: Okay

HADDOW: —and they put it together.

DO: Alright. And you explained to Detective Diskin why you needed that information?

HADDOW: For my case.

DO: Okay. As you're trying to get information to, you know, do the work on your case, are you sharing what you know at that point with Detective Diskin from your work?

HADDOW: No.

DO: Okay. Go ahead Sheila, you had a question or two.

POLK: The backing up to the notes of 2/10.

HADDOW: Okay.

POLK: And some of the responses to Ms. Do's questions, you said that you felt that Diskin needed help and you talked about manpower, resources. Is that what he was telling you or is that just—

HADDOW: No.

POLK: —what you concluded?

DO: It was just all the people that were doing the interviews, all the detectives that were out there, and I guess whatever his regular job was before the case came on, the, all that work was there, and in just conversation with each other, it was, this was a big case and they're spread very thin, to put the energy that, that they would like to put into it, there was just casual conversation, it wasn't relationship work type, you know, it was just him, him expressing how overwhelming this case was with everything else, so he didn't and when he said 'help', it was like 'I need help' not 'Rick, I need your help'—

POLK: Right.

HADDOW: It was "I need help" and so, excuse me.

POLK: And your relationship with Detective Diskin at that point was you wanted information from him.

HADDOW: Yes.

POLK: And not vice versa.

HADDOW: Correct.

POLK: Were you privy to the Sheriff's investigation?

HADDOW: Yes.

POLK: At, at what, in what sense?

HADDOW: I was provided a DVD of the witness statements and of the photo log of the lodge photos.

POLK: But that was on February 10th?

HADDOW: Correct.

POLK: So as of February 2nd, your relation, were you privy to the investigation at that point?

HADDOW: No.

POLK: You made the statement that Detective Diskin was not giving you information and that was true on February 2nd?

HADDOW: I'm sorry, I didn't hear what you just said.

POLK: You had made the statement to Ms. Do that Detective Diskin had not provided you with information on February 2nd, is that right?

HADDOW: Correct. On February 2nd, I didn't, I just spoke with him.

POLK: And so your contact up until the 10th of February with Detective Diskin was you were trying to get information for what you had been hired by Mr. Diesel to do?

HADDOW: Yes ma'am.

POLK: And then you finally, on the 10th, get some information in the form of whatever Detective Diskin provided you?

HADDOW: Yes.

POLK: Okay.

DO: Okay, so let's talk about the February 10 note that is Bates stamped Defense 574. Taking it from the 282 miles you drove, you drove 282 miles to the Sheriff's Office?

HADDOW: I think it's a round trip.

DO: A round trip. Okay. And you wrote '282 miles to interview with Sheriff, Sergeant Detective Diskin, and now I think you've spelled his name right. Okay.

HADDOW: I got an email I think or something.

DO: Okay. You think you got an email with information or?

HADDOW: No. No, I think, somehow, I think through, I don't remember how I got it, Lou, Ross's correct spelling of his name.

DO: Okay. But you indicated 'to interview with Sheriff Sergeant Detective Ross Diskin', can you explain to me what that meant?

HADDOW: I went up there to talk to them about the case, and him and another detective, I don't know his name, was there.

DO: Do you know if it was Mike Poling?

HADDOW: I really don't know.

DO: And I don't want you to guess, it was one other detective or one other—

HADDOW: Yeah, it was another detective for a very short period of time.

DO: Okay. And then you wrote 'it's a 2 hour interview', is that correct? You were there for 2 hours?

HADDOW: Yup.

DO: And on that date, Detective Diskin provided you with a DVD with site plan, I'm sorry, site photos, investigative interviews.

HADDOW: He, he had, it wasn't completed and so he asked me to come back and check at the front desk to pick up the DVD in an hour or some time later, so I did not pick up the disk when I was, when we were talking.

DO: Okay. And is that the disk that you brought in last night, which has been copied as Defense 584 and actually burned as 585, you won't know that, but the parties will.

HADDOW: Yes, yes.

DO: Okay. And you did get a chance at some point after getting it, look at what was contained on the DVD?

HADDOW: I did.

DO: And there were, as you said, said it earlier, a lot of photos.

HADDOW: A lot of photos.

DO: And a lot of reports.

HADDOW: A lot of witness statements.

DO: Transcripts?

HADDOW: Transcripts. Yes. Not, I don't know if they would be considered....

DO: They may not have been formal transcripts, but they were witness statements.

HADDOW: Yes.

DO: Okay. You also indicate here 'provided site drawings with measurements'. You were provided with site drawings, or vice versa?

HADDOW: I was, and they're, do you want to see them?

DO: I think I've seen them, but—

HADDOW: Yes.

DO: Find them for me and then we'll come back to them, okay?

HADDOW: Okay.

DO: You also wrote here that on that day of February 10 you gave Detective Diskin questions that were dated 11/8/09.

HADDOW: Yes.

DO: Okay. Can you also pull that out for me? The questions you provided the detective?

HADDOW: These are the, the drawings.

DO: Okay. And what you've pointed out to me are scene diagrams by Detective Steve Pace with the serial number 5430, is that what you referred to as 'provided site drawings with evidence.'

[TIME STAMP: 50:04]

HADDOW: Yes.

DO: Okay. You also indicate on your note you gave Ross questions dated 11/8/09, can you pull those out for me?

HADDOW: Okay.

DO: Mr. Haddow, can I ask you this, maybe this will facilitate it a little bit.

HADDOW: Okay.

DO: I'm looking at the copies we made that we then Bates stamped.

HADDOW: Okay.

DO: The scene diagrams or the site drawings with measurements, are those the same as Defense 456, 457, 458, 459 through 463?

HADDOW: Yes.

DO: Okay. And they you gave Detective Diskin questions dated November 8, 2009, is that the same as Defense 452 through 455?

HADDOW: Yes, I believe so.

DO: Well make sure you, you are sure?

HADDOW: Does it say November 8th on my, I think this is the document that you were just asking me to look for.

DO: Yes, yes.

HADDOW: Okay.

DO: Yes. I just thought it would be quicker because I knew [inaudible].

HADDOW: Well, [inaudible]. That's the, those are the questions that I had asked Lou and then I had asked the Sheriff's Office if they would be willing to answer my questions.

DO: Alright. So you had drafted some questions on November 8, 2009, that you provided to Lou Diesel—

HADDOW: Yes.

DO: —and they were questions that you wanted certain facts—

HADDOW: Yes.

DO: —to help you in your work on the civil case.

HADDOW: Yes.

DO: And they were questions about the sweat lodge, about the participants,

about what happened, etc.?

HADDOW: Yes.

DO: So on February 10, 2010, when you were at the Sheriff's Office, you provided that exact same set of questions to Detective Diskin?

HADDOW: Yes.

DO: And what was the purpose of that?

HADDOW: I didn't know what the disk contained.

DO: Yes.

HADDOW: And I wanted the, I had outlined some particular questions I'd like to have him, if he could answer them, answer them for me.

DO: Okay. And at any point after you gave them to him, did he provide you with answers?

HADDOW: He told, yes. Apparently, after all this got done, apparently his, his site map is wrong and the direction of north is wrong, and so a lot of my findings are incorrect as far as the location of...of...where people are, orientated, so apparently the document that he gave me has, it's relative relationship to north is off, and I don't remember what it's off, so that's the only thing I think he gave me.

DO: Did they ever provide you with a corrected site map or scene diagram?

HADDOW: No.

DO: So as far as you know what you have now is still incorrect?

HADDOW: Correct.

DO: And what is incorrect about it is that north should be....

HADDOW: Yeah, it's off, it's off.

DO: It's off.

HADDOW: It's off, I don't know what, I probably have some notes or something similar, but apparently it's, it's skewed, so the location of the entrance and where the victims were, I was describing based on his drawings.

DO: Okay. So that is now incorrect?

HADDOW: It is, it is incorrect.

DO: Okay. And I will get back to [inaudible].

POLK: What drawings are you referring to?

HADDOW: The drawings that Ross had given me that showed the location for the opening and the relative direction, the, you know, the compass directions....

POLK: Do you have a bates number [inaudible]?

DO: I had it just a minute ago.

HADDOW: Oh, you copied double-sided. That's a lot thicker, a lot thinner.

DO: Saving trees. It starts at 456.

HADDOW: Those drawings, yes.

DO: Okay.

POLK: And if you're going to ask more about it, go ahead, but when I, when you're finished, I'd like to follow up on what he's saying.

DO: Go ahead.

POLK: So, 456, and you can, you can see from down there what I'm holding up?

HADDOW: No, no.

DO: Let me show you my copy. It's right here.

HADDOW: Yeah, I think the cardinal direction of north, oh I'm sorry—

MAN: No, that's okay.

HADDOW: —I believe the cardinal direction for north is incorrect in this document, and I—

POLK: Let me just back up a little bit.

HADDOW: Okay.

POLK: This 456 was provided to you from Ross Diskin on the 10th of February?

HADDOW: Yes.

POLK: And part of that whole DVD that he gave you.

HADDOW: Correct.

POLK: And is this the site drawing that was referred to in that note where you said 'site drawings'?

HADDOW: Yes.

POLK: Okay. And you're saying at some point you have decided that it is inaccurate? Or what are you saying?

HADDOW: Ross called, Ross and I, in some conversation, he had mentioned that they incorrectly orientated the lodge.

POLK: And what did he say is incorrect about this 456?

HADDOW: If...north isn't north. North...if north is like...he's putting it here and really north is over here, so the perspective...so if I would describe the northeast corner or something, it might be the east corner.

POLK: When do you think you had that conversation with Detective Diskin?

HADDOW: It was quite, quite a ways into my investigation and I deemed it to be a variable of insignificant weight.

POLK: Did you document that conversation with Diskin?

HADDOW: I do not believe I did.

POLK: Do you have any other questions for? Okay.

DO: Alright, so the next, let me just make sure, 'cause I'm not sure if I got an answer, if anybody answered, you, when you gave Detective Diskin those questions that are dated November 8, 2009, which are Bates stamped 452, did you ever get answers?

HADDOW: No.

DO: Okay.

HADDOW: No answers.

DO: Let's go to your notes in the log at March 5, 2010.

HADDOW: Okay.

DO: It's the next time I see that you've had conversation with Detective Diskin.

1 And that's at Defense 578. You wrote 'spoke with Ross Diskin, YCSO,
2 details about case in work'. Can you tell me what was discussed with
3 Detective Diskin on that date?
4 HADDOW: Yeah, I think I was just explaining to him about my process of evaluating
5 the DVD that he gave me.
6 DO: Okay. How long do you thing that conversation took?
7 HADDOW: Not very long, 'cause I didn't put any time down to it. So it was a query
8 quick call and I'm not sure why I did it. I think I might, I think what I
9 might have done is just, if there was something that I would share, that I
10 would discover, I might share it with him. But it was, it was not,
11 apparently it was not significant and I'm not sure if I was, sometimes I
12 would call and let him know what I was doing, also fishing for info,
13 possible answers to more questions, and stuff like that, so, if there's any
14 additional information that I could garner from him, sometimes why I
15 would call.
16 DO: Okay, so you're now, we're talking about March 5, 2010 and your first
17 contact with Detective Diskin was October 20th, 2009, so we're some
18 months in.
19 HADDOW: Correct.
20 DO: Did you get the feeling that Detective Diskin was interested in your
21 whatever work you were doing and whatever findings you might come to?
22 Or did you get the feeling that you were it was more one way?
23 HADDOW: No, I believe that he was interested in finding, understanding or solving the
24 case or having collect information that could help determine what
25 happened.
26 DO: Collect information from you?
27 HADDOW: And any way from everybody in all, in all aspects.
28 DO: Okay, well I don't want you to guess about anyone else. So, I can only ask

questions about you. When for these some months from October 2009 to March 5, 2010, based upon the contacts that you had with Detective Diskin did you feel that he was interested in what you were doing?

HADDOW: He was supportive, I don't understand what you mean by "if you feel that he was interested?"

DO: I mean I guess and I don't want to, I am trying to ask the question without like putting any kind of, did you feel that like the information street was one way where you were just calling and getting information or did he give you any indication that he was also interested in what, if anything, you found?

HADDOW: I would only just suspect that he was interested in what I was trying to find.

DO: Okay, and so because you said suspect it not that Detective Diskin said anything to you that would lead you to think—

HADDOW: No, no I understood from our conversations that anything I could contribute and provide support for his case or his investigation at this point would be appreciated.

DO: Okay and did you understand that the investigation was still going on March 5, 2010?

HADDOW: I didn't know the status of the investigation, if they were going to continue or if they were going to make it a civil or the, he, they never shared anything about their process or anything on that.

[TIMESTAMP 1:00:00]

DO: Okay. Okay, when you say that you understood from your conversations that they were that Detective Diskin was interested in whatever it was you were doing in your findings, was there anything that was ever said to you that lead you that understanding?

HADDOW: That they were interested?

DO: Yes.

HADDOW: By them providing me the information and if I could come up with some, some information that would be beneficial for themselves.

DO: Okay, so and I don't want to put words in your mouth so you tell me because I'm trying to figure out what happened here. Did Detective Diskin say something to you to the effect of, you know, "Rick if you find out anything in your investigation please let me know"?

HADDOW: No, I, it was the other way around.

DO: Alright, so explain that to me.

HADDOW: If I found if I found out information based on my work with Lou Diesel that we would provide information that we discovered he wasn't asking me to do, to investigate and I was putting demands on him for his material and his, his case.

DO: Okay, then after when you spoke to him on the 5th and, you said details about case and the work, you mean details about your case and your work?

HADDOW: Yes.

DO: Okay, and did you provide him with any details about your case and your work on that date?

HADDOW: No, I did not.

DO: Okay, what makes you say that?

HADDOW: Because I was overwhelmed with, with work from the DVD.

DO: Okay, okay. As you're doing this work at this point on March 5, 2010 are you working for Lou Diesel?

HADDOW: Yes.

DO: Okay, now I am going to go to March 16, 2010 which begins at Bates 579 and 580. On the second page at 580 your wrote, " 3/16 continued trial dates set August 31 criminal," correct?

HADDOW: Correct.

DO: And what did you mean by that note and where did you get that

information?

HADDOW: I don't know where I got the information. It might have been on the news or something but it was information that came to me. I don't know where it came from.

DO: Okay, based upon the way you wrote it it's not necessarily that somebody gave you that information it's just something you came up on?

HADDOW: Correct.

DO: Okay, then below that on the next day March 17, 2010 has "Contact Ross Diskin."

HADDOW: Yes.

DO: And then you wrote "rock species basic," I can't read the next—

HADDOW: Hardness.

DO: —hardness and specific gravity." Can you explain that note to me?

HADDOW: I was conducting my investigation trying to design the temperature inside the sweat lodge and I needed to know, I needed a sample of the rock.

DO: Okay, and what did you discuss with Diskin on that date?

HADDOW: That for me to reverse engineer the temperatures of the sweat lodge I needed to get a rock.

DO: Did you tell Detective Diskin that you could reverse engineer the temperature?

HADDOW: Mm hmm.

DO: Is that yes?

HADDOW: Yes.

DO: Okay and what did Detective Diskin say if anything to that?

HADDOW: I don't remember. I think, I think they were in evidence. I'm not, I'm not sure but it ended up that I was never provided it and I didn't follow through on it.

DO: Okay. When you say it's in evidence you're talking about the rocks, right?

HADDOW: Excuse me?

DO: You mean the rocks?

HADDOW: Correct.

DO: I'm still on the question of when you told Detective Diskin that you could reverse engineer and calculate the temperature.

HADDOW: Yes.

DO: You mean the temperature in the lodge?

HADDOW: Yes.

DO: And Detective Diskin, how did, if he did, did he follow up on that?

HADDOW: No.

DO: Alright. What do you mean when you say hardness and specific gravity?

HADDOW: If you have a rock that's let's say it is pumice, real light—

DO: Yes.

HADDOW: —and you heat it up to it's maximum ability to hold heat it will be far less, the ability to store energy will be far less than a rock that has incredible mass to it.

DO: Okay.

HADDOW: So, it can store more energy and so the radiant heat energy is from a rock would based on its hardness and specific gravity.

DO: Okay, thank you. Then the next entry that I see in your notes, the very next page, Defense 581 is dated 4/23/2010. Is that correct?

HADDOW: Yes.

DO: And this looks to me sort of to be your notes that then made it's way to be in the email that you sent Detective Diskin April 29.

HADDOW: Yes.

DO: Is that correct?

HADDOW: Yes.

DO: This is you jotting down your thoughts, your opinions, etc.?

1 HADDOW: Yes, yes.

2 DO: You wrote at the top that you had preliminary investigation of site
3 conditions, YCSO interviews and then you have a parenthesis of 31. Is that
4 mean that you have reviewed 31 statements?

5 HADDOW: Yes.

6 DO: Documentation modeling photos have provided the following, correct?

7 HADDOW: Yes.

8 DO: And I am going to return to your opinions and conclusions but just so that
9 we understand on April 23, 2010 you had come to sort of a preliminary
10 conclusion of your work, correct?

11 HADDOW: Yes.

12 DO: And this is you jotting down what those conclusions are?

13 HADDOW: Yes.

14 DO: Then I see that on the same date, now at Defense 582 the next page, April
15 23, 2010, you wrote "40 minutes with Detective Ross Diskin." Do you see
16 that?

17 HADDOW: Up here?

18 DO: Yes, right here.. And that's defense 582.

19 HADDOW: Oh, 4/23, yes.

20 DO: So after you jotted down—

21 HADDOW: Oh, there's my notes. I'm sorry. Ross, Ross, I do, I do have the notes, it
22 says "Lodge door faced East not South as originally stated."

23 DO: Okay, so that answers Ms. Polk's question from earlier.

24 HADDOW: Yes, and I apologize I didn't know where that was.

25 DO: It's okay so let me make sure, on April 23rd you jotted your conclusions
26 and thoughts and that's at Defense 581 that I am pointing to.

27 HADDOW: Okay, yes.

28 DO: Then on the same day, after you jotted down your conclusions you had a 40

1 minute conversation, I assume with Detective Ross Diskin, as reflected in
2 you notes at, correct?
3 HADDOW: Yes.
4 DO: And that would be Defense 582?
5 HADDOW: Correct.
6 DO: What did you speak with Detective Diskin for forty minutes on that date?
7 HADDOW: I believe I was recapping what the email I was going be sending to Lou and
8 essentially I sent them both the same email with...by except for cutting out,
9 I cut out from the bottom, what I wrote to Lou I didn't give it to the
10 detectives.
11 DO: Alright.
12 HADDOW: And so, I just let them, probably just gave them a verbal summary. I don't
13 remember for positive what I did but if it's just before the report actually
14 went out I would assume I perhaps summarized some findings with him.
15 DO: Okay and that would explain why this particular call on 4/23 was 40
16 minutes?
17 HADDOW: Yes.
18 DO: To the best of your recollection when you were sort of giving an oral
19 summary of what you were going to sending out in email did Detective
20 Diskin ask you any questions?
21 HADDOW: I don't remember the conversation at all.
22 DO: Okay. You do, according to your notes, indicate that he had given you
23 some correction about the direction of the door?
24 HADDOW: Correct.
25 POLK: Can I, do you mind if I follow up on that before you moving on. If, are you
26 moving on now?
27 DO: Sure, go ahead.
28 POLK: Rick, if I can get you to go back to the diagram of the sweat lodge which is

456.

HADDOW: Okay.

POLK: And the correction that you are noting, from the conversation with Detective Diskin on 4-23-10, is the lodge door faces East?

HADDOW: Yes.

POLK: And if you look at that diagram, that you have in your hand, which way is the lodge door facing?

HADDOW: It's facing East.

POLK: So, your statement earlier about this diagram being wrong, could you be confused about when?

HADDOW: I think, yeah, it might have been in his, in the preliminary DVD this might have come out later or a different time. There was some confusion and I apologize I don't remember which way the door faced for me it was insignificant and I don't even think I might not even have updated my documents based on, he made mention to me and I thought this, I thought I had this, this drawing earlier.

POLK: Was it possible that yor belief that the door was facing South actually came from witness interviews or statements that Mr. Ray had made as opposed to coming from Detective Diskin?

HADDOW: It wouldn't have come from Mr. Ray, I had no, I never got anything from him. But it was in the big picture, Ross let me know that somehow they missed, I don't remember, I don't know to answer you question. I just knew there was my where I thought the door was and where he thought the door was because those guys would have been, Liz would have been over here in this corner over here. And so, I'm not sure how to answer your question right now.

POLK: Was is possible that your belief that the door, your original belief that the door was facing South, came from someone other than Detective Diskin?

HADDOW: Yes.

POLK: And that Detective Diskin who at least by the 23rd tells you that actually the door is facing East.

HADDOW: Yes.

POLK: Thank you.

DO: Right above that note Mr. Haddow you have statutes of homicide culpable mental states: intentionally, knowing, recklessly, negligently, can you explain to me what that note meant?

HADDOW: I think I found out that he was going to be, Mr. Ray was going to be charged and I just put down my thoughts on those statutes. Like what, no one said what he was going to be charged so these are my own personal notes.

[TIMESTAMP: 1:10:10]

DO: Do you know where it was that you learned he was going to be charged?

HADDOW: No I think back on, I think the trial date, I think on March 16th I heard about a trial date.

DO: Alright.

HADDOW: And so, you know, from you know you can just listen to the media and stuff and they, they knew they were going to charge him and I was just putting down my thoughts to myself of what the consequences were.

DO: Were you sort of following the media?

HADDOW: No, I, if I would, I wasn't following. Yes, yes, if there was an article I would read it.

DO: Okay. I'm not suggesting that you sought it out but if there was an article or if it was on the news you would watch it.

HADDOW: Yes.

DO: Okay, now after you wrote down the entries of April 23, 2010, reflecting both your preliminary opinions and your conversation with Detective

1 Diskin, you then emailed Detective Diskin on April 29, is that correct?
2 HADDOW: The document was, that's the date of the document , I'm hoping that's the
3 date I emailed it just to make sure that we have, do you understand what
4 I'm saying?
5 DO: Yes, let me get it so, I do want you to be certain and not speculate. By the
6 way, prior to emailing Detective Diskin on April 29, 2010 did you let
7 Detective Diskin know that it was coming his way or was it sort of a
8 surprise?
9 HADDOW: No, I just think I sent it to him.
10 DO: You just sent it to him, okay. So, now I'm going to show you what has
11 been marked as Defense 83. Looking at this entry dated April 29, 2010 at
12 6:49 am.
13 HADDOW: Okay.
14 DO: Does that, is that the email?
15 HADDOW: Yes, it is.
16 DO: Okay. And you included your preliminary opinions about Liz Neuman,
17 correct? Which I think you also said in the email would also apply to
18 Kirby Brown and James Shore?
19 HADDOW: Yes.
20 DO: And we'll review that more in depth. So you're, you're at this time saying
21 that you sent this email to Detective Diskin without having a prior
22 conversation with him saying, I'm going to shoot you this email or him
23 asking you to put this in writing?
24 HADDOW: Correct.
25 DO: Alright. Did you have any other conversation with Detective Diskin about
26 the case before sending him this email?
27 HADDOW: Just that 40, whatever the 40 minutes was prior.
28 DO: Okay. Now, you then after emailing Detective Diskin that interview, you

had some conversations with him about testifying for the prosecutors?

HADDOW: Yes.

DO: And tell me about that conversation.

HADDOW: Are you talking about the teleconference?

DO: No. After you emailed Detective Diskin, according to what I have seen of Detective Diskin he indicated that you wanted the prosecutors to know that you were available for questions or available to testify, correct?

HADDOW: Yes.

DO: Okay. Tell me about that conversation with Detective Diskin.

HADDOW: That was pretty much about it.

DO: What did you—

HADDOW: What you just said. It pretty much I'd be interested in providing my services to the, to the county and I was not pushing him I was—

DO: Sure.

HADDOW: —it was, I'm trying to be as tactful but I was also trying to garner some work.

DO: Okay, and that would have been near, either before or after or even when you sent this email, you provided him with your preliminary conclusions in the email and said hey by the way, let the prosecutors know that I'm available if they have questions?

HADDOW: Correct.

DO: Let them know that I am available if they want me to testify?

HADDOW: Yes.

DO: Alright, now after you sent Detective Diskin that email, and made that statement to Detective Diskin, at some point you had an interview set up with the persecutors, correct?

HADDOW: I believe so.

DO: And that was by telephone?

1 HADDOW: Yes.

2 DO: Okay, do you have any notes that reflect that interview?

3 HADDOW: Yes, on this one.

4 DO: Okay you're looking at June 23rd, 2010 and that is Bates stamped at 583,

5 correct?

6 HADDOW: Yes.

7 DO: Alright. So, this is a notation on June 23, 2010 that you set up an interview

8 telephonically for Wednesday June 30th, correct?

9 HADDOW: Correct.

10 DO: And then you did in fact have that telephonic interview?

11 HADDOW: Yes.

12 DO: Alright. Do you have any notes past that indicating what happened on June

13 30th?

14 HADDOW: I don't believe so.

15 DO: Alright. I'm going to ask you questions about that June 30th, 2010

16 telephonic interview and I'm going to periodically, to help me, refer to

17 notes that Mr. Hughes provided to us of that interview.

18 HADDOW: Okay.

19 DO: Okay, and I'll show it to you so that you can see what I'm looking at. Oh

20 I'm sorry sir.

21 MALE: No, that's fine.

22 DO: These were notes provided to us that Mr. Hughes took of that telephonic

23 interview, you can see at the top it's dated June 30, 2010 and it's Rick

24 Haddow the IV? You're not the 4th?

25 HADDOW: I'm not.

26 DO: Okay.

27 HADDOW: Just me.

28 DO: Alright. And that's starting at Bates stamp 8101, correct?

POLK: That stands for interview.

DO: Oh.

WOMAN: AB is an abbreviation.

DO: Thank you. Well he made it seem like roman numeral so. Sorry Bill. 8101, right?

HADDOW: Yes.

DO: Okay. So looking at that ....

HADDOW: For what it's worth I still have IBM on my note pad.

DO: Okay now I know how to read your hard notes. So knowing that this comes from Mr. Hughes, does that help you remember that Mr. Hughes was on the cell phone call with you?

HADDOW: Okay.

DO: Does it? Don't agree with me now.

HADDOW: I knew there were more people in there besides Ross and the county attorney.

DO: Okay when you say the County Attorney, are you talking about Ms. Polk?

HADDOW: I believe she was in the meeting.

DO: Okay. I don't want you to guess.

HADDOW: I don't. I don't.

DO: Was there a female on the phone call?

HADDOW: I don't remember.

DO: Okay. That's fine.

HADDOW: Yeah, I don't remember.

DO: That's fine. But you believe that there was Ross on the phone and was there one or two more people on the phone?

HADDOW: I believe there is some folks from the prosecutor's office.

DO: Alright. And at this time and I think from the encounter this morning it seemed like this is the first time you met Mr. Hughes and Ms. Polk.

1 HADDOW: Yes.
2 DO: You've never met them before?
3 HADDOW: No.
4 DO: Okay so you don't have any reason to dispute Mr. Hughes saying that he
5 was present on this?
6 HADDOW: No.
7 DO: Okay. On this telephone call. First of all can you tell me how long
8 approximately it lasted?
9 HADDOW: I...no.
10 DO: Was it like something that was quick? Five minutes or was it more than
11 that?
12 HADDOW: Oh yeah, it seemed pretty...yeah, it seemed pretty quick.
13 DO: And by your definition ....
14 HADDOW: 10 or 15 minutes, not very long.
15 DO: Do you know if that was recorded in any way?
16 HADDOW: I do not remember if they said it was going to be recorded or not.
17 DO: Did you record it?
18 HADDOW: I did not.
19 DO: Do you know if you took notes?
20 HADDOW: I took no notes.
21 DO: Alright. In this telephone call would this have been the first time that you
22 would have spoken to the prosecutors?
23 HADDOW: Yes.
24 DO: And when you spoke to them did you go over your qualifications? Was
25 there questions and answers?
26 HADDOW: I believe you know I don't remember, I don't really remember the
27 substances of the conversation other than they didn't want me.
28 DO: Okay.

1 HADDOW: That's what I got out of it.

2 DO: Okay. Fair enough. Did they say that or was that your impression?

3 HADDOW: Ross you know I don't want to throw Ross under the bus but you know but
4 I think my qualifications were an issue or something. I'm not sure what
5 the, what the reasons were and you know, I wasn't going to challenge him
6 or try to overcome them.

7 DO: Sure.

8 HADDOW: So I just accepted that and pretty much understood I was out.

9 DO: Okay. So I know it's been some time and you don't have notes. I do have
10 Mr. Hughes' notes and there seems to be indication that your qualifications
11 were discussed. For example, began environmental air quality experience
12 on board submarines, is that true? Is that....

13 HADDOW: Yes.

14 DO: Okay. For 6 years in the U.S. Navy?

15 HADDOW: Yes.

16 DO: Okay does that give you some indication that you did explain to them what
17 your qualifications were?

18 HADDOW: Well I think we spent some time going over the resume and statement of
19 qualifications or something but we didn't go into laborious....

20 DO: Sure. Okay. But being it's the first time you spoke to prosecutors you
21 would have given an introduction of your background?

22 HADDOW: They had some documents.

23 DO: Okay. And you reviewed those with them.

24 HADDOW: I believe so.

25 DO: Okay. In Mr. Hughes' notes at Bate Stamp 8102, he wrote he created a
26 chart showing seating location, track number of rocks coming inside. Did
27 you in fact create a seating chart of the various participants?

28 HADDOW: I believe I had.

1 DO: Okay. Is that contained in the documents produced?

2 HADDOW: I don't have them.

3 DO: Do you know where they are? You are shaking your head.

4 HADDOW: I don't ... I'm sorry. I ... no. I don't know. See the problem. You see
5 what I was doing is I had all these papers out and each round everybody
6 moved and so I would have to re-design where everybody was.

7 DO: Okay.

8 HADDOW: And for me to do my modeling, I need to know how many people were in
9 there and how long the door was open. I mean more rocks were in and
10 where people went. And so the seating where everybody was, was only
11 relative for me to know the influence of factors, variables that influenced
12 Liz and so where everybody was and what they were doing other than how
13 it affected her for my calculations for each round. It was immaterial. It
14 meant nothing to anybody other than the Sheriff's office and the attorney's
15 office.

16 **[TIME STAMP: 1:20:28]**

17 DO: I understand. Okay. Do you know what you did with the seating chart?

18 HADDOW: They were just ... it was a working...it was a working piece of paper and
19 they're gone.

20 DO: Alright. So not something you preserved?

21 HADDOW: Not something I preserved.

22 DO: Okay. And the seating chart that you put together—was that based upon
23 those 31 interviews that you had read?

24 HADDOW: Yes.

25 DO: Okay. You didn't read more than those 31?

26 HADDOW: I read everything...I wrote 31 but I read every...all the statements.

27 DO: That were provided to you?

28 HADDOW: Correct. Some of the ... some of the statements that were given were from

1 people that didn't participate

2 DO: Sure. Mr. Hughes next wrote after that, he did not go beyond ...I'm sorry

3 he did not read beyond the 33rd narrative. Does that indicate to you that

4 you had at least told the prosecutors on this phone call that you had not

5 read beyond the 33rd? The way they number it is the 33rd supplemental.

6 HADDOW: If I said ... if he wrote that down I would say I said that.

7 DO: Okay. And did you ever provide a copy—I know that it was a working

8 document moving things around—but did you ever provide a copy of that

9 seating chart to the prosecutors?

10 HADDOW: Never.

11 DO: Alright. So in this conversation I would assume and tell me if I'm wrong

12 that you are talking to the prosecutors about your opinions and conclusions

13 preliminary opinions and conclusions that you had written to Ross on April

14 29?

15 HADDOW: No what I did is I provided Ross the exact letter I gave to Lou.

16 DO: Mm hmm.

17 HADDOW: And so my letter...what I was doing is copying my report to Ross but it was

18 actually the exact letter, except for at the bottom of 2 paragraphs that I gave

19 Lou. So all I did was ....

20 DO: I understand.

21 HADDOW: It wasn't a report to them. It was a copy of my report.

22 DO: I understand. You drafted it for Lou and then you provided the same with

23 a few paragraphs ....

24 HADDOW: Less.

25 DO: Less. Okay.

26 HADDOW: Correct.

27 DO: Let me show you what was produced to us by the prosecutors. This is an

28 email chain that was Bates stamped 8097 and you can see here your email

1 to Det. Diskin of April 29, 2010 at 6:49 a.m.

2 HADDOW: Okay.

3 DO: Okay. And you can see above that, that Det. Diskin then forwarded on the
4 same day approximately an hour, less than an hour later to Sheila Polk, Bill
5 Hughes, Kathy Durrer, Penny Kramer and Mike Poling, do you see that?

6 HADDOW: Yes.

7 DO: And Det. Diskin wrote here are the results of the air quality expert's
8 examination, he wanted me to tell the prosecutors that he is available to
9 answer questions and/or testify if needed.

10 HADDOW: Yes.

11 DO: Okay. Looking at that then. You understand that your opinions and
12 conclusions were then forwarded to the prosecutors?

13 HADDOW: And with my retainer agreement.

14 DO: I think that came later. But....

15 HADDOW: It was all...you know...it was all if in fact I could help I would like to look
16 for a job. So....

17 DO: Okay. So after you forwarded ... after you emailed them that you had this
18 June 2010 conversation, so my question is the purpose of this interview,
19 telephonic interview was for you to one, talk to, introduce yourself to the
20 prosecutors but then to talk about those opinions and conclusions, correct?

21 HADDOW: No. I don't think ... I don't believe we really went over that. I think they
22 were more asking me and this is, I'm only going on my memory. I don't
23 believe we talked about the case. I think we were just talking about me.

24 DO: Sure. Okay. In Mr. Hughes' notes and this is either going to help you
25 remember or not and you tell me. He wrote in this case he looked at
26 Sedona Airport's Meteorologic Data for days of the sweat lodge. He
27 researched the size of lodge to figure out the amount of air space inside
28 deducted air volume displaced by participants, etc., etc. Does that give you

1 an indication that you did talk to the prosecutors on June 30, 2010 about
2 some substance of your opinion and conclusions?
3 HADDOW: Yes.
4 DO: Okay. Because that's contained in your April 29, 2010 email, correct?
5 HADDOW: Yes.
6 DO: Then as we already went over, Mr. Hughes wrote he created a chart
7 showing seating location, track number of rocks coming inside. You told
8 him that on that date, correct?
9 HADDOW: I did.
10 DO: Okay. And then he next wrote Mr. Hughes wrote, he reversed engineered
11 the amount of heat a glowing rod rock would produce, correct?
12 **[TIME STAMP: 1:25:01]**
13 HADDOW: Correct.
14 DO: Okay so it seems to me based upon Mr. Hughes notes at least, that you did
15 go into some substance of your opinion and conclusions, correct?
16 HADDOW: Yes.
17 DO: Alright.
18 MALE: And Ms. Do, just so I can clarify.
19 DO: Yes.
20 MALE: On these notes, when I was preparing the notes I may have been including
21 information from the email.
22 DO: Sure.
23 MALE: So that my notes were comprehensive to my self about what he knew. So
24 some of the stuff on here I can't tell you what was or what wasn't. There
25 may have been things I was taking from the email.
26 DO: Okay.
27 MALE: And not things we were discussing in the conversation.
28 DO: Okay. I don't think that you included in your email of April 29, the fact

1 that you had any testimony—provided testimony in the courts. Mr.
2 Hughes you wrote he has testified in court as an air quality expert, was that
3 something you would have told them on that day?
4 HADDOW: Yes. If they were looking for my qualifications I would.
5 DO: Okay. And there was some discussion of your qualifications, correct?
6 HADDOW: Yes.
7 DO: Alright. Below here it says he has researched a number of container deaths
8 which have similar conditions to a sweat lodge. I don't recall seeing
9 anything about container deaths in your email of April 29 so that would
10 have been additional information you gave me, correct?
11 HADDOW: You have it. No he has nothing of that.
12 DO: Well when you pointed to your stack and said you have it, you mean we all
13 have now what is your file as of last night?
14 HADDOW: Yes. And....
15 DO: Let me finish.
16 HADDOW: Okay.
17 DO: And with the County Attorney at least this morning when we provided to
18 them, right?
19 HADDOW: Yes.
20 DO: But what we are talking about now occurred on June 2010, June 30, 2010.
21 HADDOW: Okay.
22 DO: Okay. So when Mr. Hughes wrote "he has researched a number of
23 container deaths which have similar conditions to a sweat lodge" that
24 would have been information you gave the prosecutors on that telephone
25 call of June 30, 2010, correct?
26 HADDOW: If his notes are coming from our conversation and not something from
27 Ross and my conversations so yes for the best that I understand it.
28 DO: Okay. But clearly you had not given the prosecutors any of the documents

1 that we are looking at today.
2 HADDOW: Correct.
3 DO: Other than the April 29, 2010 email?
4 HADDOW: Absolutely.
5 DO: Okay. So if Mr. Hughes didn't get this information regarding container
6 deaths from Det. Diskin it would have come from you?
7 HADDOW: Yes. And Det. Diskin received no...nothing from me.
8 DO: Okay. And then below that on...in Mr. Hughes' notes, there is a discussion
9 of hypercapnia, correct?
10 HADDOW: Yes.
11 DO: So on that date you did have a discussion about the substance of your
12 opinions and conclusions because it involved hypercapnia?
13 HADDOW: Yes.
14 DO: Okay. And we'll talk about that a little bit more. At 8103 Mr. Hughes
15 wrote he and I assume he is you. "He believes that hypercapnia pushed
16 people over the edge into death due to the hyperthermia conditions." First
17 of all that is your opinion, correct?
18 HADDOW: Just my opinion.
19 DO: I understand.
20 HADDOW: Yes.
21 DO: And that was the opinion that you wrote in the April 29, 2010 email to Det.
22 Diskin in some form, correct?
23 HADDOW: You have it reversed but yes.
24 DO: I have reversed how?
25 HADDOW: Yeah the heat would have been the major contributor, the hypercapnia
26 would have been an additional. That's what I tried to say was the ... so . .
27 DO: I ... well I, I ... I'm not ... I read exactly what Mr. Hughes wrote so let me
28 make sure I understand what you are saying. Mr. Hughes wrote, "he

1 believes that hypercapnia pushed people over the edge into death due to the
2 hyperthermia conditions" was that something that you told . . . .
3 HADDOW: Yes.
4 DO: Okay let me finish this sentence. Was that something you told Mr. Hughes
5 and the other folks on that phone call?
6 HADDOW: Yes.
7 DO: Okay. And now explain to me what you mean when you said hypercapnia
8 pushed people over the edge into death?
9 HADDOW: If you had a situation with the tremendous amount of heat.
10 DO: Yes.
11 HADDOW: The people might have gotten very, very sick but because of the CO2
12 released from the people breathing that created a hypercapnia situation that
13 I believe lead to the injuries and to the deaths.
14 DO: Alright. And that was the conclusion you had reached for Liz Neuman,
15 correct?
16 HADDOW: Yes.
17 DO: And because Kirby Brown and James Shore, though not your case, were in
18 the same environmental conditions, you had written in your April 29, 2010
19 email that the same environmental factors lead to their death?
20 HADDOW: Yes.
21 DO: Okay. Staying on this June 2010 interview with the prosecutors at Bates
22 stamp 8104 Mr. Hughes wrote, "he thinks a defense expert" and he I
23 assume is you. "He thinks a defense expert in Haddow's field would have
24 an engineering or scientific background and attack the issue of C02 toxicity
25 structure construction and insulation." Now obviously that statement was
26 not contained in your April 29, 2010 email, correct?
27 HADDOW: Correct.
28 DO: So this would have been additional information that you brought up or you

provided to...let me restate that, that was poorly worded. This would have been additional information that you discussed with the prosecutors on June 30, 2010, correct?

[TIME STAMP: 1:30:20]

HADDOW: Could…I think that's his statement not mine.

DO: Well.

HADDOW: What does it say?

DO: I'm going to read it to you again.

HADDOW: You're talking about a defense, oh the defense for them, for them?

DO: Yeah. Let me read it again. I don't want you to be confused.

HADDOW: Okay.

DO: I assume from Mr. Hughes' notes, when he says he wrote, he believes, he said, that he's talking about you.

HADDOW: Okay.

DO: And he wrote he thinks a defense expert in Haddow's field….

HADDOW: Okay.

DO: …would have an engineering or scientific background….

HADDOW: Okay.

DO: …and attack the issue of CO2 toxicity, structure construction, and insulation.

HADDOW: Yes. I said that.

DO: Okay. You said that to Mr. Hughes and whoever else was on the phone, correct?

HADDOW: Yes, yes.

DO: Including Det. Diskin?

HADDOW: Yes.

DO: And so were you telling them what you would anticipate the defense for Mr. Ray doing in regards to this case?

HADDOW: Yes.

DO: Okay. And did you tell them that you believed that such an expert would be someone like you who has an engineering or scientific background?

HADDOW: Yes.

DO: Did you tell them that you believe that such an expert that you would anticipate the defense hiring would attack the issue of carbon dioxide toxicity?

HADDOW: Yes.

DO: And also the structure construction, correct?

HADDOW: Yes, yes.

DO: Because you, I believe in your opinions and your conclusions, had reached that the way in which lodge had been constructed was a contributing cause.

HADDOW: Yes.

DO: Okay and I want to get back to that. So you told....

HUGHES: Stop. Hold on. If I can ask a follow up on that.

DO: Let me finish my line if you don't mind. And then we'll....

HUGHES: Are you moving off of that particular statement?

DO: No I'm not. So when you told the prosecutors in this phone call that you would if, I mean, let me say this and you tell me if it's right. You were telling them hey if I were you guys I would anticipate the defense hiring an expert who's like me, has a background in engineering and a background in science and that expert for the defense is going to attack carbon dioxide toxicity and the structure construction, correct?

HADDOW: Yes.

DO: Okay and was that statement provided by you sort of on your own initiative?

HADDOW: Trying to get a job.

DO: Okay.

1 HADDOW: I was trying to sell myself.

2 DO: Okay. So you were trying to tell them hey this is what I would anticipate if
3 I were you guys, right?

4 HADDOW: Yes.

5 DO: And what was their response to that? Do you remember?

6 HADDOW: I don't think they came up with any conclusions.

7 DO: They didn't ask any questions?

8 HADDOW: I don't, I don't remember.

9 DO: Mmm hmm.

10 HADDOW: I think Ross told me later that they were concerned about my qualifications
11 or something.

12 DO: Okay.

13 HADDOW: He didn't elaborate, you know, because I asked him.

14 DO: Yeah.

15 HADDOW: And I never contacted the, I never pursued the prosecutor's office on this
16 matter.

17 DO: Okay. I understand that. I don't want to get into what Ross may or may
18 have...Diskin told you later. I just want to stay on this interview. So to
19 your best recollection, you don't recall the prosecutors asking you any
20 follow up questions when you said the defense will attack the issue of
21 carbon dioxide toxicity, structure construction, and insulation.

22 HADDOW: No I do not.

23 DO: Okay. Staying on that same subject and I won't forget Bill that you have
24 questions, later on in the same, on the same page, Mr. Hughes wrote he can
25 talk about the argument but toxins in air or from the sandalwood or gas
26 from tarps made people ill. And again I assume he is you?

27 HADDOW: Mmm hmm.

28 DO: Do you want me to read that again?

HADDOW: Yeah well I, I'm not sure where you're going.

DO: Sure. He, well this is what Mr. Hughes wrote.

HADDOW: Okay.

DO: He can talk about the argument that toxins in air or from the sandalwood, or gas from tarps made people ill.

HADDOW: Yes.

DO: Okay. And so that was also discussed, correct?

HADDOW: Apparently so. I don't remember but if it's ... I don't have any ... I would, I would imagine I would have said that but I can't tell you categorically if I absolutely said that but....

DO: Alright.

HADDOW: ... I believe I said that.

DO: Alright. And you would agree with me that there is no mention of toxins in the air, sandalwood, or gas from the tarps in your April 29, 2010 email, correct?

HADDOW: Correct.

DO: And so this information that Mr. Hughes is writing down on June 30, 2010 would have come from you, as opposed to Det. Diskin or someone else?

HADDOW: No. I wouldn't necessarily say that. I believe that people, because of the plastic tarps were used that maybe formaldehyde was coming out. Nobody knew what was going on so I don't' know where you know I could debate that or I could, I could generate the....

[TIME STAMP: 1:35:03]

DO: Okay. I'm not asking you to talk to me about the actual substance of the statement. What I'm trying to make sure that I understand is that when Mr. Hughes wrote he can talk about the argument that toxins in air, or from the sandalwood, or gas from tarps made people ill, first of all, that he is you.

HADDOW: Okay.

DO: Does that seem right?

HADDOW: Okay. I might have been putting up a statement that the other side might try to you know there might have been some enough, you know, I, I don't remember the conversation.

DO: Okay. Okay. In this part of the conversation is it fair to say that you were basically telling the prosecutors hey if I were you, this is what I would anticipate coming from the defense, whether it be carbon dioxide toxicity, structure construction, or toxins in the air?

HADDOW: Yes.

DO: Alright. Do you know as you sit here today or remember whether or not any of the prosecutors asked you any further questions regarding toxins in the air?

HADDOW: I do not remember.

DO: Anything about gas from the tarps?

HADDOW: I do not remember.

DO: Bill?

HUGHES: Okay, Truc had asked you about the note that was made, he thinks the defense expert in Haddow's field would have an engineering or scientific background and attack the issue of CO2 toxicity, structure construction, and insulation. Do you recall, was there any conversation about your belief the defense expert would try and show that there wasn't carbon dioxide toxicity?

DO: I'm not sure I understand that. Can you say it one more time?

HUGHES: Well in other words, what do you recall about that?

HADDOW: About the....

HUGHES: About a defense expert attacking the issue of carbon dioxide toxicity?

HADDOW: Well I would think they would try to say it wasn't. I would try to think they would think it was some structure, the structure caused the problem

versus the people. So I think I was thinking, I was saying the defense would probably try to look at an external, non-human condition, like you know something else was burning or there was something gassing off or something like that.

HUGHES: Something other than carbon dioxide.

HADDOW: Yes.

HUGHES: Okay. And then and then the statement, he can talk about the argument that toxins in the air, or from sandalwood, or gas from tarps made people ill. Do you recall what toxins you were talking about?

HADDOW: The toxins would have been the formaldehydes and on, from what I understood, the sweetgrass and there was some other organic materials put on, maybe some oils? I'm not sure what was put on the fire. And the result of those incomplete combustion would create particulates and carbon monoxide.

HUGHES: Carbon monoxide?

HADDOW: Yeah. And so....

HUGHES: Do you recall specifically what you said about that?

HADDOW: No I don't.

HUGHES: Okay Truc.

DO: Thank you. Okay and then just to close this out, Mr. Haddow, the last page of Mr. Hughes' note says he charges $125 an hour. He can be flexible with it. He works with a $4,000 retainer. Was there a discussion between you and the prosecutors about how much it would be to retain you?

HADDOW: No.

DO: Okay do you know where Mr. Hughes would have gotten this information about?

HADDOW: I, I gave them a copy of a blank retainer.

DO: Okay and that retainer included your request for a $4,000 retainer and your

1 hourly rate?

2 HADDOW: That's my standard. That's my standard retainer.

3 DO: Oh no and please I'm not challenging whether or not....

4 HADDOW: No, no, no. That's just, it's just a standard, it's my generic everyone gets

5 that one. That's the....

6 DO: And the one that everyone gets, does it contain your request for $4,000

7 retainer and the hourly rate?

8 HADDOW: Yes.

9 DO: Okay. Got it and then the last notation that Mr. Hughes made was in the

10 mid 1990s, he had to set up air quality monitoring stations inside Maricopa

11 County, so there were additional discussions about your qualifications,

12 correct?

13 HADDOW: Yes.

14 DO: Alright. Having gone through with me about four and a half pages of Mr.

15 Hughes notes and touching on the specifics, do you still believe that

16 conversation took only ten to fifteen minutes or could it have been longer?

17 HADDOW: It could have been longer.

18 DO: And when you say could have been longer, could it have been a half hour

19 more?

20 HADDOW: It could have been a half hour more.

21 DO: Could it have been an hour?

22 HADDOW: I, I don't believe it was an hour but I'm just at a loss for length of time

23 right now.

24 DO: Sure. But you would agree that there was quite a bit of specifics and

25 substance gone into after reviewing the notes with me?

26 HADDOW: I would only argue that all the information that you were discussing was in

27 written form for both of us to see so....

28 DO: Sure.

1 HADDOW: ... you know it wasn't like we were discussing something new.
2 DO: Correct.
3 HADDOW: And I think we... it could have been covered fairly quickly since it was
4 already written out.
5 DO: Okay.
6 HADDOW: And I do not, and I particularly do not remember ever talking to anybody
7 about my fees or my rates.
8 DO: Okay.
9 HADDOW: And so I don't even remember that part.
10 DO: Okay. Fair enough. Obviously you, you are the expert not only in this
11 field but you would've been the expert with those opinions and conclusions
12 that are in the April 29, 2010 email. It's your expert opinions, right?
13 HADDOW: Yes.
14 DO: Okay so on this date when you're talking to the prosecutors, they obviously
15 don't have expertise in this area, correct?
16 HADDOW: Correct.
17 DO: And so it was your intention to help them understand from your point of
18 perspective as an expert what opinions and conclusions you had reached,
19 correct?
20 HADDOW: Yes.
21 **[TIME STAMP: 1:40:56]**
22 DO: And so would it be fair to say that you did more of the talking since it's
23 your expert opinions than they did?
24 HADDOW: You know I'm having a really hard time remembering the whole
25 conversation so I can't answer that.
26 DO: Alright fair enough. After you had this telephonic conversation, did you
27 then email to Det. Diskin your resume and the blank retainer?
28 HADDOW: I had sent him my resume and the retainer and I think a document

1 describing some other qualifications I had. I don't remember when. It's
2 whatever they're dated.
3 DO: Okay. Let me show you an email that was produced to us by the
4 prosecutors. It's Bates stamp 8095 and 8096. The first email in this chain
5 is from Rick Haddow. That's you, correct?
6 HADDOW: Yes.
7 DO: June 30, 2010 at 11:56 am.
8 HADDOW: Okay.
9 DO: Correct?
10 HADDOW: Yes.
11 DO: To Ross Diskin.
12 HADDOW: Yes.
13 DO: And the subject is background information for Rick Haddow.
14 HADDOW: Yes.
15 DO: And the first line is please see my attached resume. Also included is a
16 blank copy of my working agreement.
17 HADDOW: Yes.
18 DO: Okay and then the rest of the email goes into further qualifications of
19 yours, correct?
20 HADDOW: Correct.
21 DO: The attachment would've been that blank retainer agreement that you
22 talked about.
23 HADDOW: Okay.
24 DO: Is that right?
25 HADDOW: Yes.
26 DO: Do you see at the top here that Det. Diskin with about a minute forwarded
27 your email, along with the attachments, to Sheila Polk, Bill Hughes, Steven
28 Cisneros, Kathy Durer and Penny Kramer?

1 HADDOW: Okay.
2 DO: Is that, is that what you see?
3 HADDOW: Yes. Yes it is.
4 DO: Okay and that's Bates stamp 8095. Does that help you remember that, that
5 on the same day after you spoke to the prosecutors and Det. Diskin about
6 your opinions and conclusions, that you then emailed them your resume
7 and the blank retainer agreement?
8 HADDOW: I believe yes.
9 DO: Alright. And so did you, did you do that all on your own initiative, that
10 you were just going to send your resume and your retainer? Or did you
11 send it pursuant to some sort of suggestion that you could possibly...let me
12 finish the question and you can answer it however it is truthfully, okay? Or
13 did you do that at some suggestion that you're possibly going to be
14 retained?
15 HADDOW: No I did it on my own.
16 DO: Alright. And did you ever receive any response from anyone, Det. Diskin
17 or anyone from the prosecutor's after you emailed this?
18 HADDOW: No ma'am.
19 DO: Okay. Was this the last contact that you had with the state, or did you have
20 further contact after June 30th?
21 HADDOW: I, I believe that was the last time I ever talked to anybody.
22 DO: Okay, except for when you talked to Det. Diskin and he told you that they
23 had questions about your qualifications?
24 HADDOW: Yeah, but yes, but nothing documented for this, for your questioning.
25 DO: Okay. Okay so was it your belief at that point that nothing more would,
26 would go or result from your work?
27 HADDOW: It was my understanding that there's a 50/50 chance. I might. I might not.
28 DO: Where did you get that understanding?

1 HADDOW: Just the statistics.

2 DO: Just, okay.

3 HADDOW: Just statistics.

4 DO: Alright. And as I had stated to you earlier, we received notice in October
5 2010 that the state filed with the court a notice of calling you an expert, as
6 an expert witness.

7 HADDOW: I didn't know that.

8 DO: Okay. No I'm saying that I, I've told you that several times.

9 HADDOW: Oh. I didn't know if I was supposed to answer that.

10 DO: And so is it your statement to us today that between June 30, 2010 and
11 October 2010 you had no further discussion with the state about whether or
12 not you were going to testify?

13 HADDOW: I might have talked to Ross on the telephone one time, but I don't think I
14 had. I think I let it go. I was just waiting for something to come back. I
15 figured I did all the marketing that I could and it's just waiting to see and I,
16 I personally, well you didn't ask, you're not asking me.

17 **[TIME STAMP 1:45:01]**

18 DO: Personally, what?

19 HADDOW: I figured maybe they were going to go find another expert to, that they felt
20 more comfortable with.

21 DO: Alright.

22 HADDOW: And so I didn't know.

23 DO: Okay. Did you get any, any, was there anything said or done or not said on
24 your conversation—this telephone conversation with the prosecutors that
25 led you to think at that point that they weren't comfortable with you?

26 HADDOW: No.

27 DO: Okay. The conversation seemed fine and normal?

28 HADDOW: Correct.

1 DO: Alright. Did anyone, after you sent the email of April 29 with what you
2 had termed as preliminary conclusions and had this conversation with the
3 prosecutors June 30th, did anyone ask you to write up a formal final
4 report?
5 HADDOW: No.
6 DO: Not Det. Diskin?
7 HADDOW: No.
8 DO: Okay. And no one from the prosecutor's office, right?
9 HADDOW: Nobody.
10 DO: Okay. I'm going to now move into asking you specific questions about
11 your actual conclusions, okay?
12 HADDOW: Okay.
13 DO: And so to do that let's refer to that April 29, 2010 email. I'm going to be
14 looking at my copy, which is Bates stamped 8097.
15 HADDOW: You, you're doing the, the....
16 DO: Yes, that one.
17 HADDOW: Okay.
18 DO: You can let me know whenever you're ready. Also let me know if you
19 need a break.
20 HADDOW: I just, I just want you to know that this is the same letter that I sent to Lou.
21 DO: Yes.
22 HADDOW: And I didn't...Okay.
23 DO: I believe we, we, we got this....
24 HADDOW: So....
25 DO: ...this as part of your file. So let me make sure that I understand what
26 you're trying to tell me. On April 27, 2010, you wrote a letter to Lou
27 Diesel, correct?
28 HADDOW: Yes.

1	DO:	And it's a two page letter in which you provided the same 8 bullet points
2		regarding your preliminary environmental investigation analysis, correct?
3	HADDOW:	Yes.
4	DO:	And when you forwarded the same information to Det. Diskin on April
5		29th....
6	HADDOW:	I did not forward it to him.
7	DO:	What, let me finish the....
8	HADDOW:	Okay.
9	DO:	...the question. When you forwarded what I think is the same information
10		in April 29, on the April 29, 2000 email, what you omitted that is different
11		is the last three paragraphs?
12	HADDOW:	Yes.
13	DO:	And that last three paragraphs is one as you know the Yavapai Attorney's
14		Office has scheduled an August trial date for the criminal case against
15		James Ray. Correct?
16	HADDOW:	Yes.
17	DO:	Please let me know if you would like me to contribute my efforts to bolster
18		their criminal case. Correct?
19	HADDOW:	Yes.
20	DO:	Second paragraphs. I have been working closely with Det. Diskin and have
21		been provided all the interviews, photos and working documents. Correct?
22	HADDOW:	Yes.
23	DO:	And that was a true statement when you wrote this, "I've been working
24		closely with Det. Diskin," correct?
25	HADDOW:	Yes.
26	DO:	Alright. So, other than these three paragraphs that were specific to Mr.
27		Diesel, you sent out the same information to Det. Diskin on April 29?
28	HADDOW:	Yes.

DO: Let's look at that email then.

HADDOW: Yes.

POLK: And before you move on, can I ask Rick a question about the letter to Lou Diesel?

HADDOW: Yes.

POLK: The statement that Ms. Do just read to you that where you wrote to Mr. Diesel, "I have been working closely with Det. Diskin," is everything that you did, have you told Ms. Do everything you did with respect to....

HADDOW: Yes.

POLK: ...with Det. Diskin?

HADDOW: Yes.

POLK: And so everything that you have just described for us, you characterized as working closely with him?

HADDOW: Yes.

POLK: And in what sense do you feel that you were working closely with Det. Diskin?

HADDOW: That he would share his personal opinion and his feelings on the case and his frustrations and I felt like we were, we were kind of in line together and kind of, you know, established a working relationship. I felt comfortable with him. And I felt, I feel right now still to this point that I have a good relationship with him and I feel like we've, I don't want to say bonded, but, you know, that's the, that's what I was trying to describe the close, I have. I think we have integrity and I think we have, I, I, I just believe we both feel comfortable with each other and that's what I was trying to relate.

POLK: Okay, thanks.

DO: Have you had any contact with Det. Diskin since the last?

HADDOW: No.

DO: Okay. If Det. Diskin had stated that his only contact with you was the April

29, 2010 email and a conversation on February 2, 2010 that wouldn't be correct?

[TIMESTAMP: 01:50:06]

HADDOW: That's probably, yes.

DO: Probably or wouldn't?

HADDOW: I think, if that's what he's saying then I would agree with him. You're asking the last time we talked?

DO: No, I'm asking you, we've gone through all your contacts....

HADDOW: Right.

DO: ...with Det. Diskin. What I'm asking you is if Det. Diskin said that his contact with you included the April 29, 2010 email and a contact on February 2, 2010 and that was the extent of it, is that correct or not correct?

HADDOW: Extent of what, I'm not quite sure of what....

DO: Sure.

HADDOW: I'm totally missing what you're asking.

DO: Det. Diskin, if he said that the only contacts he's had with you included the April 29, 2010 email that you're looking at....

HADDOW: Okay.

DO: ...and a contact, whether in person or by telephone, on February 2, 2010. And it was just those two times, would that be correct or not correct?

HADDOW: That would be incorrect.

DO: Okay.

POLK: Why don't we just clarify it's not clear that's what Det. Diskin said, Ms. Do was just asking you if that's what he had said?

HADDOW: No, no. He had never said that to me.

POLK: Okay.

DO: Okay, let's talk about your opinions and conclusions that you have in this email. I've already gone through your qualifications, I understand that

you're an environmental engineer.

HADDOW: I'm not an environmental engineer. I'd be considered an environmental scientist.

DO: Environmental scientist. Okay. You were trying, you went through the MBA course, but you didn't actually complete it and get your degree.

HADDOW: I completed the course, but I did not do the dissertation and complete it. So, I did not get awarded the degree.

DO: Okay. So, you're an environmental scientist, it wouldn't be correct to say an environmental engineer?

HADDOW: Correct.

DO: Okay. Thank you for that clarification. This might seem obvious, but I just want to make sure we're clear. You're also not a medical doctor?

HADDOW: Correct.

DO: Okay. Ever gone to medical school or?

HADDOW: No.

DO: And in order to do your work for the civil case, which you shared in some manner with Det. Diskin and the prosecutors, you obtained information that was collected in the criminal investigation, correct?

HADDOW: Yes.

DO: And that would be the scene photos, the interviews, the scene diagram, whatever it was provided to you on that disc?

HADDOW: Yes.

DO: Alright. You believe on this date that you have reviewed everything that was on that DVD?

HADDOW: Yes.

DO: Okay. So, if someone made a note that you had reviewed only up to 31 of the interviews or not gone past the 33rd, is that correct or incorrect?

HADDOW: Would be incorrect.

1 DO: Were you ever, Mr. Haddow, ever provided with any medical records in
2 this case?
3 HADDOW: No.
4 DO: So, you never reviewed any medical records?
5 HADDOW: No medical records and Lou never sent me the autopsy report.
6 DO: Okay, so, you've not had a chance to review any medical records nor have
7 you had a chance to review the autopsy reports?
8 HADDOW: Correct.
9 DO: Okay. Do you know whether or not your report as reflected in this April
10 29, 2010 email was ever provided with the medical examiners in this case?
11 HADDOW: I have no idea.
12 DO: Alright. Were you at any time other than what you were given on that DVD
13 which we've marked as 585, ever given any other information from Det.
14 Diskin about other possible causes in this case?
15 HADDOW: No.
16 DO: Were you ever told by anyone whether it was Det. Diskin, the prosecutors
17 that there was a mention in this case of organophosphates?
18 HADDOW: No.
19 DO: Did anyone, Det. Diskin, or the prosecutors, or anyone in this case mention
20 to you the possibility of treated wood being burned?
21 HADDOW: No.
22 DO: Did anyone in this case, Det. Diskin, the prosecutors, or anyone else ever
23 mention to you the possibility of rat poison being an issue?
24 HADDOW: No.
25 DO: Okay. Would you have wanted that information as part of your work in
26 reaching the conclusions that you have?
27 HADDOW: Yes.
28 DO: Because they suggest other causes that you would want to consider,

1 correct?

2 HADDOW: Correct.

3 DO: And I understand that that information wasn't ever provided to you. Did

4 you ever see anything in the information given to you on that DVD that

5 suggested organophosphates?

6 HADDOW: No.

7 DO: Wood, treated wood?

8 HADDOW: No.

9 DO: Or rat poison?

10 HADDOW: No.

11 DO: That disc that was compiled for you, I'm sure you had assumed that Det.

12 Diskin was giving you everything that he had?

13 HADDOW: No.

14 DO: Okay. What did you think he was giving to you?

15 HADDOW: I'd like to verify or correct something, maybe a misunderstanding. I think

16 the drawings....

17 DO: Yes.

18 HADDOW: ...were handed to me, I don't think they were part of the DVD.

19 DO: Okay.

20 HADDOW: The...where was I at?

21 **[TIMESTAMP: 01:55:06]**

22 DO: What did you think you were getting on that DVD?

23 HADDOW: I thought, what I thought I was getting is, was exactly what I got, was that

24 the Det.'s statements or questioning and statements of the....

25 DO: Yes.

26 HADDOW: ...witnesses and photos for help, to help me analyze the incident.

27 DO: And did you believe that Det. Diskin was, well let me ask you this first Mr.

28 Haddow, did you believe that Det. Diskin gave you reports of every

interview conducted in his investigation to date or was it just sort of a select choice?

HADDOW: I believe it was everything he had to that, to that point.

DO: Okay, but you believe that and that's fine. But did you ever verify whether that was in fact true?

HADDOW: No, no I did not.

DO: Okay, so if it isn't the complete set of interviews done in the investigation, who would have then picked which statement to have provided you? Do you understand that?

HADDOW: No.

DO: Okay, sorry. You didn't tell Det. Diskin, for example, "Hey Ross, I would like to look at witness A, B, C, D," correct?

HADDOW Correct.

DO: So, if that file on that DVD is not the complete set of Det. Diskin's investigation, then Det. Diskin would have been the one to say I'm going to put witness A, B, C, D on this disc, correct?

HADDOW: From what I understand and this is how I remember the conversation, I think he delegated or asked somebody and....

DO: Sure.

HADDOW: ...he just shot gunned the information into the disc to burn the disc. I don't think he was, I don't think he was making any, he was screening....

DO: Okay.

HADDOW: ...screening them.

DO: I understand. I guess that's not a fair question because you cannot speculate what was going on in his head. So, let me ask this question. Obviously you didn't have control or choice or decision in what to put on that DVD?

HADDOW: Yes.

DO: You just accepted that as being what was provided.

HADDOW: Yes.

DO: Okay. You had written in one of your notes a question and I'm going to refer to Bates stamp 295. And in your conclusions and opinions, Mr. Haddow, I assume up to that date of April 29 would be based upon the information that you had available to you. Correct?

HADDOW: In part.

DO: Yes.

HADDOW: Only in part.

DO: Okay. What do you mean by only in part?

HADDOW: Because the information they provided me wouldn't in itself be able to let me conduct my analysis, I needed, I need more information for my analysis, the engineering information.

DO: Okay, so it's all part of the equation?

HADDOW: Yes.

DO: In terms of the circumstantial, the facts at the scene that was from what they provided you on that disc?

HADDOW: Yes.

DO: These are your notes I believe. I'm looking at specifically what's been marked as Defense 295 and at the top you had a question. These are just notes. You can look at them and I don't know whether they were notes you took after reviewing the information provided to you. But there's a question up here that you wrote, "Was the sweat lodge layered differently this year compared to other years?"

HADDOW: Yes.

DO: You wrote that, right?

HADDOW: Yes.

DO: Was that a question you had to yourself?

HADDOW: Yes.

1 DO: And why was that question important?
2 HADDOW: I, I, I needed to understand the design of the structure.
3 DO: Mm hmm.
4 HADDOW: And try to understand what contributing factors were different from last
5 year to this year and I found a couple of differences.
6 DO: Did you get that information about whether or not the, the sweat lodge was
7 layered differently?
8 HADDOW: Just verbally.
9 DO: From whom?
10 HADDOW: I can't tell you who it was, it might have been in the Det.s' narrative
11 questioning of the lodge employees, asking them those questions....
12 DO: Okay.
13 HADDOW: ...and how things came on, I believe that's where I deduced that
14 information.
15 DO: And from your deduction of the information it was your conclusion or
16 impression that there were differences in the sweat lodge for 2009 as
17 compared to other years?
18 HADDOW: There were, you could stand in the last year's.
19 DO: Okay. What other differences?
20 HADDOW: I don't recall.
21 DO: Okay. So, let me now go back through your report, okay?
22 HADDOW: Okay.
23 POLK: Before we move on, while we're on this page it's Bates stamped as 295, do
24 you still have that page in front of you Truc?
25 DO: Oh, I'm sorry. Here you go.
26 POLK: Rick, you, this is the page where it says, "Was the sweat lodge layered
27 differently this year compared to other years?" And then there's a note that
28 is crossed out that says, "Thunder Mike, Michael Barber said last year you

could stand up." And it's crossed out.

HADDOW: Yes, yes.

POLK: Do you know what that's about?

HADDOW: Why I crossed it out?

POLK: Yes.

HADDOW: I think what, what Lou had me doing is I was, we were trying to evaluate if there were sick people from the prior years and there was one sick person, and we started investigating that, but I can't tell you why I scratched it out and I'm not sure, I'm not sure why I scratched it out and I'm not sure if I can tell you off the top of my head what Michael's position is. We haven't reviewed the case for a year now. So....

[TIMESTAMP: 02:00:23]

POLK: But you don't know when you are looking at this note why you crossed out the note about how Michael said you could stand up last year?

HADDOW: Yeah, it would probably...I usually do that not to put into other documents so I'm not going to carry this forward. I don't know if it was speculative or thought. It might have been. I think I might have read that statement and then later it was contradicted perhaps. And so I can't tell you why I crossed it out but I believe it was just my note and then may be something lead me to believe that that was a misstatement.

DO: Sure.

HADDOW: So I can't tell you why I crossed it out.

POLK: Okay. Thanks.

DO: But the question ....

POLK: Sure.

DO: The question you wrote was the sweat lodge layered differently this year compared to other years was not crossed out, correct?

HADDOW: That's correct.

1 DO: And that was a question that you felt significant enough that you wrote a
2 note about it.
3 HADDOW: Yes.
4 DO: And that was a question that you felt was significant enough that you were
5 searching for facts to answer that question?
6 HADDOW: Yes.
7 DO: Okay. Did you ever ask Det. Diskin that question?
8 HADDOW: Yes.
9 DO: Do you remember what he said if anything?
10 HADDOW: He didn't know.
11 DO: He didn't know.
12 HADDOW: He didn't know.
13 DO: Okay. And so if the sweat lodge was constructed or the materials were
14 layered differently in 2009 as opposed to prior years that would be
15 important to you?
16 HADDOW: Yes.
17 DO: Okay. Let's talk about your findings here.
18 POLK: And I'm sorry before you go on. Did you ever conclude that it was layered
19 differently?
20 HADDOW: No I did not investigate that.
21 POLK: Okay.
22 DO: Okay so you stated that you had not read the autopsy report or the medical
23 records. Do you know where it was that you obtained the information that
24 Liz died? Liz Neuman died of hyperthermia and organ failure?
25 HADDOW: I believe Lou let me know she died of organ failure.
26 DO: Okay. Also hyperthermia or only organ failure?
27 HADDOW: See I ... organ failure is a result of hyperthermia. So the cause of death
28 will be a organ failure. The cause of death doesn't list the ... why ... So if

you fallen into the ocean you drown, you know you're suffocating, you are not going to say why you fell off the ship. I'm just saying that the information I have here is ... it's ....

DO: Okay. And that's why I'm asking. I'm just trying to figure out where you got this information. Because I ... for whatever reason when I saw this I thought may be you have read the autopsy report and indicated you haven't. So the information of organ failure you believe came from Lou Diesel?

HADDOW: You are talking about for Liz now?

DO: Yes.

HADDOW: Yeah. Yes. I believe Liz lived for 8 days I believe. And then passed.

DO: Okay.

HADDOW: I can't tell you exactly where I gleaned the information but I believe it was from Lou.

DO: Alright. Okay. And....

HADDOW: I think that was on Kirby and James.

DO: Say that again.

HADDOW: I think. I believe the organ failure issue was with Kirby and James because they, they passed pretty much immediately.

DO: Okay. You believe that Kirby Brown and James were also died of organ failure? I'm trying to understand

HADDOW: Yes.

DO: Okay. So where did you get hyperthermia?

HADDOW: Well it was ... I, I, I ... this is my opinion.

DO: Yes.

HADDOW: I believe the doctors saw these people in a very, very hot compartment and all the symptoms as I have documented here reflect the symptomatology. Reflects heat stress.

1 DO: Okay.

2 HADDOW: And it was ... it doesn't take a rocket scientist to know that the heating,
3 hyperthermia and organ failure were related.

4 DO: Okay.

5 HADDOW: So . .

6 DO: And so I'm trying to understand you gleaned this information not from
7 reading medical reports, autopsy but you got it from ....

8 HADDOW: At what point in time are you talking about?

9 DO: When you write this report?

10 HADDOW: When I wrote the report I already had a very detailed medical analysis of
11 what happened to you if you hypercapnia, poisoning ....

12 DO: Let me just stop you for a second there. And we are going to talk about
13 that. I don't mean like to cut you off there.

14 HADDOW: Sure.

15 DO: What I'm trying to understand here Mr. Haddow is specific to Liz Neuman
16 where did you gleam the information that she died of hyperthermia or
17 organ failure?

18 HADDOW: From Lou Diesel.

19 DO: Okay. You then a little while ago said you believe that Kirby Brown and
20 James Shore also died of organ failure, where did you glean that
21 information?

22 HADDOW: From my analysis.

23 DO: Okay so your analysis of the signs and symptoms that you researched?

24 HADDOW: Yes.

25 DO: And so and I'm not questioning your conclusion but you are not a medical
26 doctor. That was the best conclusion you reached from doing your
27 research?

28 **[TIMESTAMP: 02:05:05]**

1 HADDOW: No essentially what it is as a scientist what I do is I present the data.
2 DO: Mm hmm.
3 HADDOW: And a doctor needs to take that data and make the analysis and so what I
4 do... what I've done is I provided the data.
5 DO: Mm hmm.
6 HADDOW: That the analysis needs to be interpreted by a doctor but the analysis if you
7 read it shows how they died and I'm not telling you how they died I'm just
8 saying what the facts are. The facts are that people can't live in this
9 environment and they are going to die based on the engineering that I did.
10 DO: Right. And I'm ... we are going to get to that. Because I want to ask you
11 about your conclusions as an engineer ... an environmental scientist but
12 what I'm trying to understand is where you gleaned the medical diagnosis
13 that these people died you know with Liz Neuman dying of hyperthermia
14 and organ failure you've already indicated that came from Lou.
15 HADDOW: My own research.
16 DO: Okay let me finish so from Lou you got hyperthermia and organ failure for
17 Liz Neuman, correct?
18 HADDOW: Correct.
19 DO: And for James Shore and Kirby Brown was from your own research?
20 HADDOW: And Liz Neuman's.
21 DO: Okay.
22 HADDOW: What I did in my reports supported the doctor's statement.
23 DO: Got it. Okay. So let me look at the second bullet point. You wrote here a
24 contributing cause of Liz's hyperthermia is based on the rock pit's offset of
25 center, close to the northwest section of the lodge where Liz's positioned in
26 the lodge, correct?
27 HADDOW: Correct.
28 DO: And so explain to me how the rock pits offset a center would be a

contributing cause to the hyperthermia?

HADDOW: That, that . . I might have misstated the location of the pit offset might have been, might have been where the pit was located. Because if you look at their drawings, it's in the center.

DO: Mmm hmm.

HADDOW : So there was a little confusion. I'm not sure the timeline and talking to Ross about the location of the door and the location of the pit so I'm a little bit fuzzy on that but the pit...the rock pit was closer to one of the walls ....

DO: Mmm hmm.

HADDOW: And what you want to know what happened to them?

DO: Well I do but you brought up a question or a question in my mind that I need to make sure I understand. Are you now questioning whether the rock pit was offset of center?

HADDOW: Well I know it was offset. It's just what direction it was offset is the question and ....

DO: Got it.

HADDOW: Because Lou did not need that. I just let it go.

DO: Alright.

HADDOW: It was an incomplete investigation on that part.

DO: So you knew it was off center.

HADDOW: Yes.

DO: You didn't know in which direction.

HADDOW: Well I know what ... I knew where the rock pit was located. I knew where it was offset, I knew where everybody was located relative but if you were to say was it northeast, southeast, northwest, I wouldn't be able to analytically tell you. But I could tell you the word is relative....

DO: Got it.

HADDOW: ...to the door.

DO: Okay. Can you please explain to me how and I'm asking because I don't know the rock pit offset of center would contribute to the hyperthermia?

HADDOW: Okay do we have a...It's hard for an engineer guy... Okay.

DO: You want paper?

HADDOW: No let me just try to describe it. If you a tremendous amount of heat come in out of a radiant heat which is in all directions.

DO: Yes. Right.

HADDOW: You have radiant heat coming out in all directions. If you have somebody that is over here where you have the radiant heat right here and there is the wall. The radiated heat is going to create more pressure inside the lodge. So when the door opens up the radiant heat will go out.

DO: Yes.

HADDOW: You are not going to get normal equalization. It's just going to be heat out. So with Liz being between the fire pit and the wall, the radiant heat release would be pretty much not. So when the doors opened up the radiant heat is not going to change. It's going to be the radiant heat near the door.

DO: Yes.

HADDOW: In addition to that the CO2 that was in the air being heavier than the air would be closer to the ground and so what was happening between the water which water and the air is stored energy. So if you have a very humid hot environment, it would be much more dangerous then a dry environment.

DO: Mmm hmm.

HADDOW: So when you inhale the heated water moisture, it's going heat up your core.

DO: Yup.

[TIME STAMP 2:09:45]

HADDOW: And that is part of the problem with the heat stress that they were dealing with. It was not being able to get out of that particular situation. The part

of the ventilation, the ability for the site to ventilate that area where Liz was at, there was no ventilation. And so between the heat and the CO2 buildup, and everybody was laying on the ground trying to breathe as close to the ground that they can, part of the problem happens when high CO2 enters the body at about 3%, the body starts respirating twice as fast.

DO: Mmm hmm.

HADDOW: So now they're breathing in faster and faster, breathing in more CO2. Once you get to 5%, you, your breathing will increase four times as fast. And so....

DO: What happens at 30%?

HADDOW: You die.

DO: Okay.

HADDOW: And so when you're ... so the, the variables is if the door's opening, people are moving and shifting. And so we're trying...my calculations were to evaluate each round as they progressed and how many people were in there and how many more rocks were put in there.

DO: Mmm hmm.

HADDOW: And so all...it wasn't just the first round that got her.

DO: Yeah.

HADDOW: It was by the end of the last round.

DO: Okay.

HADDOW: So....

DO: I think I understand what you're saying.

HADDOW: Okay.

DO: Okay. If the rock pit was not offset of center, but perfectly centered....

HADDOW: Mmm hmm.

DO: ... how does that change things?

HADDOW: It would lessen her direct energy. So it's just like if you have a flame that's

hot, the closer your hand is to it the more heat you're going to feel and it drops significantly as you go away. So her area was significantly warmer than the other folk's.

DO: Okay. Did you consider her area to be the most dangerous?

HADDOW: Yes.

DO: So if the and her … and I know that because there was some confusion about where north was, and you said it's you can't tell us right now whether it's northwest, southeast, the area where Liz sat, regardless of what cardinal direction it is, in your opinion, because of the offset pit, was the most dangerous, correct?

HADDOW: Correct.

DO: Alright and….

POLK: Can I just clarify where you believe Liz was sitting in relationship to the door?

HADDOW: If, if the door was here, and the pit was off to like at the two o'clock position, she was between the pit and the wall.

DO: Are you indicating directly opposite of the flap?

HADDOW: She is not directly opposite of the flap because the pit is skewed to the, to her position….

DO: Let me see if this will help. Mr. Haddow I'm going to draw a circle on my yellow pad, okay?

HADDOW: Mmm hmm.

DO: And it's not a very good circle. I know that. And let's just look at it as the phase of a clock. Here's twelve, here's nine, here's three and six. Let's say the door is at six o'clock. Where's Liz Neuman?

HADDOW: Do, do I have that in my notes right here?

DO: Well I don't know.

HADDOW: I'm going from my memory right now.

POLK: Please look at your notes if that will help you. We don't want you guessing what you thought when you....

HADDOW: Well no I can tell you from what I understand. But I don't do it exactly. So if I'm exaggerating because I don't know the dimension, let's say the pit was like that.

DO: Okay.

HADDOW: This is, this is the opening. Liz was here. And I think just from my memory, Kirby and James were within this, this area. And essentially, anybody on this half of the room is going to be in danger. Anybody on this half is going to have a lot better chance. Anybody that leaves and comes back is starting from ground zero again for their, their blood chemistry, both Ph and CO2.

DO: You know what I'm going to do so that we are all you know if there's any question, I'm going to date this as what's today, the 15th?

POLK: Mmm hmm.

DO: 2011? And why don't you, I'll just put Richard Haddow.

HADDOW: Okay.

DO: And we'll preserve this, okay?

HADDOW: Okay.

DO: So when you said anyone who was in this area would be in a more dangerous zone, you drew a line directly across the circle from nine to three o'clock and I would assume from where you drew it would be wherever going through the pit, correct?

HADDOW: Yeah, yes.

DO: Okay. Alright.

HADDOW: The exact line isn't going to [inaudible] much.

DO: Okay. And so what I'm trying to understand is if that pit had been....

POLK: Would you mind showing me that?

DO: Sure. And I'll make you guys copies before we leave. If that pit had been perfectly centered, then what are you saying?

HADDOW: I'm saying that the contribution of the heat would be lessened.

DO: Okay. So according to what you're saying here, the contributing cause of Liz's hyperthermia is based on the rock pit's offset of center. If that pit had been perfectly centered, that would not have been a contributing cause of her hyperthermia.

HADDOW: It'd been not...it would've been not as contributing as much. When you're doing variables....

DO: Sure.

HADDOW: They're going to be weighted.

DO: Okay.

HADDOW: And the variable is where you're at relative to the rock pit. If you're further away from the rock pit, you won't have that direct heat. So she's in the sweat lodge. It is impacting her. It does have an impact. But it doesn't have the impact as significantly as if it was a foot closer to her, half a foot closer.

DO: Okay. And tell me if I'm pushing on this, if you, you weight it, it's relative obviously, can you tell me what the changes, what is the delta change if you had the pit being perfectly centered?

HADDOW: I didn't, I didn't conduct that analysis.

DO: Okay. Can you answer that now or you can't?

HADDOW: It would just be a guess.

DO: Okay.

POLK: Would you, before you move on, could you clarify your last statement about we, the variable is how close you are to the source of the heat.

HADDOW: Yes.

POLK: The further away from the, the further you are from the source of the heat,

the less of the impact of the heat?

HADDOW: Yes.

POLK: Does CO2 play into this or are you just talking about heat at this point?

HADDOW: We're just talking about heat. The CO2 is also....

DO: Which we're going into next.

HADDOW: Okay.

DO: So do you want ... can I continue or....

HUGHES: Let me ask a question. On this diagram you drew the line to kind of show this danger zone, correct?

HADDOW: Yes.

HUGHES: And the line I think, and correct me if I'm wrong, the line has some relevance to where the pit is located, correct?

HADDOW: Yes.

HUGHES: Now if that pit was perfectly centered in the sweat lodge, assuming the sweat lodge was a perfect circle? Would that line then move down to where the pit would move to?

HADDOW: Yes.

HUGHES: So the location where you believe Liz was sitting which you've designated by an x and a circle, that would still remain in the same danger zone?

HADDOW: It would be in the same danger zone.

HUGHES: Okay.

POLK: Can I ask you, do you recall what you base, where you've illustrated you think Liz was sitting? What did you base that on?

HADDOW: All those narratives. And where everybody was sitting. And they all described each other. They all described...every narrative described the other folks and the folks also described what problems that people they were seeing having difficulty. And they described where they were sitting, where they were located. And because I drew those charts and did

everything for every statement. And some people were wrong but I could calculate and I could determine where she was actually sitting and that she didn't leave the pit and didn't leave the, the lodge.

[TIME STAMP 2:17:29]

DO: So we, we talked about heat and how the location of the pit affects heat, distribution of heat. Now I want to talk to you about the third bullet point.

HADDOW: Can I please?

DO: Go ahead.

HADDOW: The heat, the heat barrier what it does, is when you open up the flap the radiant heat going away from the flap is going to keep and maintain the air shed that's in there. It's not going to let it ventilate where this half that's open is physically draining out. Where the radiant heat on the opposite site of the fire pit is going to be not allowing ventilation to happen.

DO: So air is more stagnant.

HADDOW: So the air is more stagnant and it's not being refreshed with oxygen either.

DO: Okay. Did you read anywhere in the reports that you did review whether or not participants inside the lodge was lifting up any part of the tents.

HADDOW: Oh very much so.

DO: Okay. Alright did that factor in at all for you?

HADDOW: Yes it did for the ones that survived.

DO: Okay got it. Now when...I want to move to carbon dioxide unless you have something more....

HADDOW: No.

DO: Okay. The third bullet point in this email that you sent to Det. Diskin that was then forwarded to the prosecutors, you have the northwest section in which Liz and again you are moving off the northwest because there is some questions right?

POLK: I feel guilty about my bottles. Yes.

HADDOW: Your carbon foot print?

MALE: Let me pull it out.

POLK: Do you want more water too then.

DO: Sure.

HUGHES: Are we taking a break?

DO: Yeah.

HADDOW: I was going to use the ....

MALE: Let's take a break. It's a .... It's about 1:35. It's about time for a break anyways. We've been going for a while. I'm going off.

DO: Okay.

[TIMESTAMP: 02:19:13] END OF TAPE AND PART 2

SUPERIOR COURT OF STATE OF ARIZONA
COUNTY OF YAVAPAI

STATE OF ARIZONA, Plaintiff, vs. JAMES ARTHUR RAY, Defendant.	CASE NO. V1300CR201080049 **TRANSCRIPT OF INTERVIEW** Witness: Richard Haddow (PART 3) By: Truc Do, Tom Kelly, Miriam Seifter, Bill Hughes, Sheila Polk Date: April 15, 2011 Length: 29:57 Start Time: 1:45 p.m.

1 DO: We're back on tape I have 1:45 p.m.

2 HUGHES: Okay and this is Part 3 of Mr. Haddow's interview.

3 DO: Let me go back real quick—Mr. Kelly just pointed something out to me.

4 We were talking about that June 30, 2010 telephone interview that you had

5 with Det. Diskin and the prosecutors, do you remember that? Yes?

6 HADDOW: Yes.

7 DO: Okay, and I know you had some trouble recalling how long the phone call

8 went and initially thought maybe ten to fifteen minutes?

9 HADDOW: Okay.

10 DO: Is that right?

11 HADDOW: Yes.

12 DO: And then, as we went through the substance reflected in Mr. Hughes' notes

13 you thought maybe a little longer?

14 HADDOW: Correct.

15 DO: Okay, let me show you what's been Bates stamped Defense 280 and these

16 are your notes, correct?

17 HADDOW: Correct.

18 DO: And at the top it says James Arthur Ray Sedona Sweat Lodge, June 30,

19 2010, telephone conference with Yavapai Attorney Office. Correct?

20 HADDOW: Yes.

21 DO: And below that, you have Bill Hughes, Attorney Office, correct?

22 HADDOW: Yes.

23 DO: And Ross Diskin?

24 HADDOW: Yes.

25 DO: And you wrote 1 hour, 8 minutes?

26 HADDOW: That would probably be—I would feel that would be the telephone

27 conference.

28 DO: Okay, so based upon your notes which you took at that time, right?

HADDOW: Yes.

DO: That would be an accurate reflection of how long you thought the phone call took?

HADDOW: Yes.

DO: An hour and 8 minutes?

HADDOW: Yes.

DO: Alright, thanks Tom. Let's go back now to your April 29, 2009...[Door knocking].

WOMAN: What's at your door?

DO: ...2010 email, your next bullet point you have "northwest section in which Liz was positioned experienced hazardous concentrations of carbon dioxide a condition known as hypercapnia," correct?

HADDOW: Correct.

DO: And when you say "experienced hazardous concentrations of carbon dioxide" where did you extrapolate that from?

HADDOW: From my research of determining how much carbon dioxide a human breathes out ....

DO: Mm hmm.

HADDOW: ... and breathes in, and then I determine how much volume of air was in the space, calculating how many people were in there. Ten percent of the volume is gone because the people displace the air and so from that—taking all the contributing factors of how many people are in there and at what stage of the—not stages, the ....

DO: rounds?

HADDOW: rounds, they were—it would be increasing—there would be an increasing ....

DO: ...accumulation of carbon....

HADDOW: ...of carbon dioxide.

DO: Okay.

HADDOW: And the core temperature of the body and the ability to take heat for an extended amount of time would also—is part of that process.

DO: Okay, so let me try and say that back to you so that I—you can tell me if I understand it correctly, or not. Taking round 1, for example, you would include in your calculations the dimensions of the lodge, correct?

HADDOW: Yes.

DO: You would include in your calculations the number of people in that round?

HADDOW: Yes.

DO: And whatever number of people in that round would displace the air, the oxygen volume? Correct?

HADDOW: The total air volume.

DO: Correct. And then based upon those variables you would then sort of crunch out a model that would tell you how much of a concentration of carbon dioxide you might expect based upon those variables.

HADDOW: The heat of the rocks....

DO: Yes.

HADDOW: ... that barometric atmospheric pressure.

DO: Yes.

HADDOW: The outdoor temperature, the relative temperature, the relative humidity....

DO: Right.

HADDOW: ...the conditions of the people, their location.

DO: Conditions of the people, how?

HADDOW: If they're sitting, lying or kneeling, or laying on the ground ....

DO: Okay.

HADDOW: ...the CO2 is heavier than air and so it's about from waist height to the ground....

DO: Yes.

HADDOW: ... so the people that would be sitting up would not be experiencing the same conditions as people that were laying down, like Liz.

DO: Alright, okay.

HADDOW: So....

DO: So there were a lot of variables.

HADDOW: A lot of variables and where I would weight the variables would be the length of the round, how many rocks went into the pit because they weren't uniform and consistent in adding rocks so all the variables would be... would have to be evaluated each time ....

DO: Okay.

HADDOW: ... and then trying to determine how long the door was left open and closed and how much water was put there and taken out.

DO: Right, and then what I was trying to do with round 1 was sort of get an idea of what—what the variables would be even though the variables would change.

HADDOW: Correct, and so the variables of the heat generation, the people, the breathing habits—part of the process that's an unknown variable that you have to have is that the physiological part of your experience makes you behave differently so when you're hot, you going to exhale more or you're going to so—the sight that there is physiological conditions that the body will experience when it starts....

DO: Yes. Right.

HADDOW: ...to get to a certain degree, that's another variable that would contribute to their ability to handle it. Another point that was really important that I did not deduce in my initial evaluation—folks that have COPD....

DO: Mm hmm.

HADDOW: ...currently....

DO: Right.

HADDOW: ... their blood concentration of carbon dioxide is higher than most people.

DO: So they're able to resist it more?

HADDOW: They are able to resist it more and have a better chance so those are some unknown variables that could contribute to the differences of the folks that are in there.

[TIME STAMP: 5:37]

DO: Sure, and I completely understand what you're saying. Again, just so that we all are on the same page, when you're trying to figure out the concentration of carbon dioxide, you're calculating a number of variables?

HADDOW: Yes.

DO: Okay, and you're calculating those variables for each round because those variables will change each round, correct?

HADDOW: Yes.

DO: The information that you use to determine what the variables are, you got from the reports of the witness statements, for example, how many people were in that round, where they were sitting....

HADDOW: Partially.

DO: Okay.

HADDOW: Just a little bit.

DO: Where else did you get that information?

HADDOW: In my research.

DO: Research of ?

HADDOW: Of how much CO2 comes out of your breath....

DO: Oh, no, no, no. What I'm trying to get at is for example, a variable that you mentioned is how many people are in the round, correct?

HADDOW: Yes.

DO: Another variable is whether or not they are sitting up, laying down—you

1 know kneeling, correct?

2 HADDOW: Yes.

3 DO: Another variable is how many rocks in there that determines what you

4 believe the heat might be, right?

5 HADDOW: Yes.

6 DO: Okay, those variables you would have determined based upon what you

7 gleaned from the folks who were there and their witness statements,

8 correct?

9 HADDOW: Yes.

10 DO: That's what I mean, okay. And then the other variables that you're talking

11 about in terms of how much C02 a person would breathe out is based upon

12 the research you're talking about? Let me get an answer, is that right or

13 not?

14 HADDOW: Yes.

15 DO: Okay. What did you want to expand on?

16 HADDOW: Well, I just—the person's location.

17 DO: Yes.

18 HADDOW: How long they left.

19 DO: Right.

20 HADDOW: And so....

21 DO: And that would all be information you would get from the witness

22 statements provided to you by Det. Diskin?

23 HADDOW: Yes.

24 DO: Okay. When you said that Liz experienced hazardous concentrations of

25 carbon dioxide, was it your conclusion that carbon dioxide was A, or a

26 contributing cause of death?

27 **[TIME STAMP: 7:25]**

28 HADDOW: A contributing cause of death.

DO: Okay, and when you say contributing cause of death, I would assume then that the other cause that you believed was in play was heat. Or hyperthermia?

HADDOW: ...and only a contributing consideration.

DO: That's what I said—when you said it's a contributing cause, then that means—I'm assuming then there are other causes?

HADDOW: Yes.

DO: And the other causes that you believed were at issue, was hyperthermia or heat, correct?

HADDOW: Correct.

DO: And again, you had not been provided any information regarding whether or not there were organophosphates, correct?

HADDOW: Correct.

DO: Or whether there had been any issue regarding treated wood being burned.

HADDOW: Correct.

DO: Or any other kind of toxins, correct?

HADDOW: Correct.

DO: And so, you believe that heat was the other cause of death, because that's what you, one, were told by Lou Diesel, and what you gleaned from the information you were provided, correct?

HADDOW: Not in total.

DO: What else is missing?

HADDOW: The conditions of the folks' experience the day prior to the event. They....

DO: The vision quest?

HADDOW: The vision quest. I believe that it would be quite a contributing factor....

DO: To?

HADDOW: ...to all of them whoever participated—to what degree they participated.

DO: I'm trying to understand, you mean the vision quest contributed to what?

HADDOW: Contributed to the sick folks, everyone that got sick or passed.

DO: Okay. So you believe that the vision quest where people went out, in your understanding, is they went out for thirty-six hours and fasted?

HADDOW: I don't have all the details.

DO: Sure.

HADDOW: But yes, they fasted and went without normal fluids and such, but....

DO: Okay, so am I understanding you, you're not saying that the vision quest is another cause of death, you're saying that the vision quest was perhaps a factor that made folks vulnerable or susceptible?

HADDOW: To be more—yes, if they're not hydrated, you can't hydrate yourself in one sitting. That's going to have to do with your past.

DO: Sure. Okay.

HADDOW: So, I just wanted to say that if somebody didn't do the vision quest, and then did the sweat lodge, that their chances would probably be better, if they're both physically the same.

DO: Yes.

HADDOW: And one came and one out.

DO: Yes.

HADDOW: So I would like to say I took that as a component of the contributing....

DO: Okay and I understand what you're saying. So, what I—rather than talking about factors that you think may make somebody more susceptible, and we can talk about that more if you want, but what I'm trying to make sure that I understand and have pinned down is the causes of death. You believe that a cause of death was heat, correct?

[TIME STAMP: 10:14]

HADDOW: No, I don't think I wrote cause of death.

DO: Well, let me try and understand this. When you say a contributing cause of Liz's hyperthermia.

HADDOW: Yes.

DO: Based on the rock pits offset of center and you also wrote here, "Liz was positioned—the section in which Liz was positioned experienced hazardous concentrations of carbon dioxide" correct?

HADDOW: Correct.

DO: So and then you said Liz's health condition was worse in vital length in exposure to both heat and carbon dioxide. Are you saying that you feel both are causes?

HADDOW: Are the causes leading to?

DO: Death.

HADDOW: No.

DO: Okay, tell me what you're saying.

HADDOW: What I'm trying to tell, what I'm trying to express to you is that what happens for my description will cause organ failure. Organ failure is the cause of death. I didn't...that needs to be absolutely clear.

DO: Mm hmm.

HADDOW: I'm not stating the cause of death. I'm stating what lead towards whatever I'm saying.

DO: I'm trying to understand, bear with me—please be patient. You're saying....

HADDOW: I'm saying that the hypercapnia and the heat would cause organ failure. The doctors then say the organ failure is what people died from.

DO: Then, if I'm understanding you. You're saying hypercapnia which is basically carbon dioxide toxicity, right?

HADDOW: In your bloodstream.

DO: In your bloodstream, plus the hyperthermia caused organ failure for Liz Neuman.

HADDOW: That's what I—yes.

1 DO: Okay.

2 HADDOW: That's my ascertation.

3 DO: Alright so when you say that hypercapnia and hyperthermia caused Liz
4 Neuman's organ failure can you tell me quantitatively which is which? Is
5 hyperthermia more than hypercapnia? Are they equal, or is hypercapnia
6 more than hyperthermia?

7 HADDOW: Well it depends on the concentration of the CO2 and I don't have the—it's
8 not an absolute—and/or the heat, so I couldn't tell you for sure which one
9 outweighed the other. I would....

10 DO: Okay, in the note that Mr. Hughes wrote and if you need me to show it to
11 you again, I will. It was "he said hypercapnia pushed people over into the
12 edge of death." Do you remember that note?

13 HADDOW: Yes.

14 DO: Okay, so does that indicate to you that you felt that hypercapnia carbon
15 dioxide toxicity essentially pushed people over into the danger of death?

16 HADDOW: Yes.

17 DO: Into actual death?

18 HADDOW: Yes.

19 DO: And that's what you were explaining in this particular report that you
20 forwarded to Det. Diskin?

21 HADDOW: Yes.

22 DO: And this was the report that you discussed with the prosecutors on June 30,
23 2010?

24 HADDOW: Yes.

25 DO: And I'm, I don't know who long we've been going? I'm certain that we've
26 gone more than an hour and 8 minutes, but you—and I might be asking
27 you a lot more detailed questions, is that fair to say? Am I asking you a lot
28 more?

HADDOW:	Uh [laughter] I'm here in the conversation and I thought it was ten minutes, so yes.
DO:	Okay. But you know I'm obviously trying to understand this because I'm not the expert so I would assume that the prosecutors also were asking you questions to try to understand your opinions, right?
HADDOW:	You know I don't remember it being like your line of questioning....
DO:	Yeah.
HADDOW:	...challenging me. I think they were—I'm not saying you're challenging me but I don't—I don't remember—I think they were trying to understand what I was trying to describe....
DO:	Yes.
HADDOW:	...more than your analysis of it.
DO:	Right.
HADDOW:	They were trying to get a handle on it ....
DO:	Got it.
HADDOW:	...versus you—you know you're quite—you know, do you understand what I'm trying to say.
DO:	Yeah, and I'm sorry I don't mean ....
HADDOW:	I think it's more lay person analysis....
DO:	Got it.
HADDOW:	...and you're more like analytical—analysis.
DO:	[Laughter].
HADDOW:	Well no, this is a first pass and I don't mean to be—you know....
DO:	No, no, no and I don't think anyone is, and I don't mean to be challenging what you're saying. I really am trying to understand it and you know. She's an environmental engineer, I'm not.
HADDOW:	Okay.
DO:	I was a political science major, okay so, I'm really truly trying to

understand what you're saying and if I say something that mischaracterizes what you're trying to say here, feel free.

HADDOW: Okay.

DO: Just tell me, okay? So what I'm—what I was asking is that I'm obviously asking you a ton of questions, right?

HADDOW: Yes.

DO: And I'm being pretty analytical about it?

HADDOW: Yes.

DO: Okay, it's because I don't understand it. So what I'm asking you is were questions being asked of you on June 30th when you were explaining some pretty complicated concepts here?

HADDOW: I don't recall.

DO: Okay. Alright. So it is your opinion that hypercapnia, the carbon dioxide toxicity pushed people over into that—into I think the words were into death, is that correct?

[TIME STAMP: 15:10]

HADDOW: I don't remember saying into [laughter] death but yes, it could have. That's....

DO: Right, beyond the hyperthermia condition?

HADDOW: It—yes.

DO: Okay, so you have the hyperthermia conditions but it's your opinion based on your analysis that hypercapnia pushed people over into death.

HADDOW: Correct, but to how—how much it's weighted, I don't know.

DO: Sure, it could be ten percent, it could be fifty percent, correct?

HADDOW: Exactly.

DO: Okay, now I want to understand, in your opinion okay? Again, I'm not challenging—I want you really to explain this to me. You believe the hypercapnia and the hyperthermia are environmental conditions created by

the structures, as I understand it? Correct?

HADDOW: Correct.

DO: And that's when you wrote, for example, the lodge construction created a nearly airtight structure?

HADDOW: Correct.

[TIME STAMP: 15:56]

DO: And that I assume is based upon your analysis of what was reported to you in terms of what materials were used, correct?

HADDOW: I do....

DO: Tell me why you think it was an airtight structure?

HADDOW: The description of the witnesses said that there was quite a bit of material that was around the lodge and rocks were placed on top of them.

DO: Okay, and you saw that in the photos, right?

HADDOW: Um....

DO: I can't pull them up cause I don't have them with me.

HADDOW: Yeah, they—well I saw how the tarp was and how the layout of the ....

DO: Okay.

HADDOW: ... sweat lodge was.

DO: So, by the way have you ever done sweat lodges?

HADDOW: No.

DO: Okay, so you have the structure, right?

HADDOW: Yes.

DO: Which is the wood, made of willow trees—it's the wood frame.

HADDOW: Mm hmm.

DO: And then they layer materials over that, correct?

HADDOW: Yes.

DO: And it's your belief based upon the information you reviewed that the materials were laid over and then rocks were placed around the

circumference to keep the tarps, or whatever the materials were, down, correct?

HADDOW: Yes, yes.

DO: And so the rocks around the circumference, in addition to the materials, and tell me if I'm not resuscitating this correct—reciting this correctly. All of those things lead you to believe that the design of the structure created an airtight structure, correct?

HADDOW: No, a near ....

DO: Near.

HADDOW: ... near airtight.

DO: Thank you, nearly airtight structure is what you wrote, is that right?

HADDOW: Correct.

DO: Okay, what did you know about the actual materials that were used to layer. Like how much material, what type of materials?

HADDOW: I don't think I was ever provided with actual materials or the layering.

DO: Yeah.

HADDOW: That information wasn't provided to me.

DO: Okay, did you know that the detectives had on October 9 cut through in four locations of the coverings to obtain an actual cross section of the membrane?

HADDOW: Yes.

DO: Okay, was that ever offered to you to review?

HADDOW: No.

DO: Alright, but it was your conclusion based upon the information provided to you that the lodge construction created a nearly airtight structure?

HADDOW: Correct.

DO: Add to that also, was your belief that the location of the pit contributed to creating heat barriers, correct?

1 HADDOW: Yes.

2 DO: Okay. Was there any other—in lay person terms somebody might call that
3 a design defect, would you agree? It could have been designed better?

4 HADDOW: It could have been designed better.

5 DO: It could have been designed more safely?

6 HADDOW: It's, it's—now, you know, I don't want—I don't know how to address this
7 and please if I'm going the wrong way—the amount of rocks put in
8 there....

9 DO: Sure.

10 HADDOW: ...would be significantly much more weighted....

11 DO: Okay.

12 HADDOW: ...than the location of the pit. So, the location of the pit isn't the problem,
13 it was the amount of heated rocks that was put in there.

14 DO: Okay.

15 HADDOW: And if it was even a poorly designed and had some ventilation or draft
16 ability....

17 DO: Mm hmm.

18 HADDOW: ... the amount of heat that was put in there would overcome that draft—
19 ability to draft.

20 DO: Mm hmm.

21 HADDOW: Because you can't draft if you just have positive pressure it can't flow
22 through.

23 DO: I understand.

24 HADDOW: So, the design is a weighted issue, but even if it had some ventilation it
25 would have still probably had maybe not as much impact to the folks but it
26 would still significantly do so.

27 DO: Okay.

28 HADDOW: The rocks is significantly more....

DO: Sure.

HADDOW: ...weighted than the location, so....

DO: Do you know many rocks were used?

HADDOW: I do not have it on top of my head—I think it was either fifty-six or sixty-six. I don't remember.

DO: Okay.

HADDOW: I have, I think it's in my notes.

DO: Do you know whether or not in the prior year more rocks or less rocks were used?

HADDOW: From what I understand more—the most rocks were used on this pit.

[TIME STAMP: 20:01]

DO: In 2009, correct?

HADDOW: In this, yes.

DO: Okay, and if that turned out to be incorrect, Mr. Haddow, would that affect your opinion?

HADDOW: No, because from what I understand that this—they've never had so many people inside.

DO: Okay let me ask you this. If you were to learn that it was in fact, true that they had more people in the lodge the year before?

HADDOW: Mm hmm.

DO: And that they had more rocks in the year before, would that change your opinion?

HADDOW: Well, there was one person that had gotten sick and so I don't know what variables were there. I don't know what the ambient outdoor conditions were. I don't know how much water they put in the pit. I don't know what kind of smoke they did. So you're comparing apples and oranges for me right now.

DO: Okay, no I understand. What I'm asking is because you're are saying that you would weight more—the fact that—of how many rocks were used and it was your impression that it was more rocks used in 2009. And so—and you don't have to assume that what I'm telling you is true. It's just hypothetically, if you were to find out that it was in fact true that there were more people and they actually went longer rounds, more rounds and used more rocks in 2008 where no deaths occurred, would that affect your opinion at all about the fact that you would give more weight to the number of rocks in 2009?

[TIME STAMP: 21:21]

HADDOW: Well, it would—the....

DO: You just—for this hypothetical, just assume when I told you those three things....

HADDOW: But are the—is the size of the structure the same? Is every—is the material the same? Is everything else the same?

DO: I can tell you hypothetically....

HADDOW: Yeah, hypothetically ....

DO: ...that the mentions of the lodge are the same.

HUGHES: And based on your hypothetical, would the temperature of the rocks be the same in '08 as in '09?

DO: Okay, let me finish the question first. Okay, so hypothetically, if you were told that in 2008, it's the same wooden frame, so that the dimensions of the structure is the same, okay? And there were more people. They went more rounds, they used more rocks. My question is specifically to how does that affect how you weight the number of rocks in 2009?

HADDOW: No.

DO: Okay and explain that.

HADDOW: The design of the pit.

DO: Yes.

HADDOW: How many people. Was the wind blowing, so that every time they open up the tarp did it force ventilate the structure?

DO: Mm hmm.

HADDOW: So I have all that information for this case, I don't know about the other case. So if I was debate you on the differences, it would be the outdoor ambient temperature, it would be the relative humidity, it would be other folks, how many people, the water they put on it, was there a vision quest, was it to the same degree. All those contributing factors would be involved.

DO: Did you know that Liz Neuman did not go on the vision quest?

HADDOW: Correct.

DO: Okay.

HADDOW: Yeah, but there were a lot of sick people and I was trying to do an understanding of what affected the people, because when I first started we thought it was perhaps formaldehyde or some other contributing factor of some sort so it was....

DO: How did you rule out formaldehyde? If you did.

HADDOW: I did not evaluate it.

DO: So had you thought it—you haven't evaluated it—so it's not something that you'd analyzed and ruled out.

HADDOW: I had not analyzed and ruled out.

DO: Okay, so let me go back to this question. I guess what I'm hearing from you is that you believe that the rocks is a weightier factor but in order for you to give me answer to the question that I'm asking, you have to know a lot of other variables, correct?

HADDOW: That's it.

DO: So a lot of other variables, like what is the ambient temperature outside,

1 correct?

2 HADDOW: Mm hmm.

3 DO: How many people are inside?

4 HADDOW: Yes.

5 DO: At that given moment, correct?

6 HADDOW: Yes.

7 DO: Whether or not the dimensions are the same?

8 HADDOW: Yes.

9 DO: Whether or not they use the same layering of materials?

10 HADDOW: Yes.

11 DO: Whether they put the rocks around the circumference, correct?

12 HADDOW: Yes.

13 DO: So it's not just the heat, it's a lot of other variables that also include
14 environmental factors that nobody would have control over, correct? Like
15 if the wind is blowing?

16 HADDOW: Yes.

17 DO: It would also have to do with the construction of the sweat lodge itself,
18 correct?

19 HADDOW: Yes.

20 DO: Okay, so it's sort of like a mixed pot of variables, correct?

21 HADDOW: And people that come in and come out. So on the last year if everybody
22 left at least one time, that would be weighted.

23 DO: Right, okay.

24 HUGHES: Truc, before you move away from that area, I've got a question.

25 DO: Sure, hold on one second. And so this, what you believed about the lodge
26 construction being a nearly airtight structure you obviously, I mean that's
27 what you wrote in this April 29 email that was also discussed with the
28 prosecutors on June 30th, correct?

HADDOW: Yes.

DO: And it was in your opinion, that in addition to, you know, the human agents, the human factors like how many rocks are being called in, how many people are coming in and out. Things that are in the control of people and their will, right so to speak?

[TIME STAMP: 25:11]

HADDOW: Yes.

DO: You felt that another, you know, let's put the weight aside—another factor that lead to this tragedy was the construction of the sweat lodge, correct?

HADDOW: Yes.

DO: And you made that known, not only in your April 29 email to Det. Diskin that was then forwarded to the prosecution but you also made that known to the prosecution when you were explaining all these various factors of heat barrier, airtight structure, things like that, correct?

HADDOW: Yes.

DO: Okay, give me one second. I'm going to review something real quick.

[TIME STAMP: 25:39 no dialogue until 26:01]

DO: Oh, by the way what's formaldehyde out-gassing?

HADDOW: If a material has—depending on what the material is, it could—a constituent of it is heated. It could maybe produce a gaseous release.

DO: Mm hmm.

HADDOW: It's sort of like when you go down to a car—a new car smell.

DO: Yeah.

HADDOW: That new car is the off-gassing of plastics, and that's sort of where....

DO: Okay, how do you test for that, do you know? Is there a way?

HADDOW: If you were—there's a couple of different ways. If you wanted to do—expose it to heat and do an air analysis with a gas chromatograph or some spectrum analyzer you can probably determine it.

1 DO: That would be for toxic volatiles?

2 HADDOW: No, it would be for whatever constituent you would want. It's everything.

3 DO: Okay.

4 HADDOW: And was that something you were considering in this case, formaldehyde

5 out-gassing?

6 HUGHES: Oh, hold on Truc, before...it sounds like we've moved away from....

7 DO: Oh, I'm sorry, go ahead.

8 HUGHES: You were talking a few minutes ago about—Truc had given you some

9 hypothetical questions, with one of the factors in trying to determine the

10 differences between 2008 and 2009, would you want to know how hot the

11 rocks have been heated say in '08 as opposed to '09?

12 HADDOW: Yeah and how they were heated and transport, how far away they were

13 exactly, there's....

14 HUGHES: In other words, the heat—the how hot the rock is as it's going into the

15 sweat lodge is a factor that would be relevant?

16 HADDOW: Yes.

17 HUGHES: And how relevant would that be?

18 HADDOW: It would be significant. It has to do back with when I talked about the heat

19 storage capability of the rock. If the set of rocks that were used last year

20 can store the heat, the amount of energy they would be able to release

21 would be lessened.

22 HUGHES: Okay.

23 DO: I'm following up on that. Would the heat that is contained and then given

24 off by a rock depend on those things that you asked Det. Diskin about in

25 your notes—the hard nose of specific gravity, things like that?

26 HADDOW: Yes.

27 DO: And what about, you know, whether or not it's porous or not?

28 HADDOW: That's what that is.

DO: Okay, that's what it is. So all of those things about that particular rock or rocks that are chosen....

HADDOW: Mm hmm.

DO: ...and then used in the ceremony would affect the heat, correct?

HADDOW: Yes.

DO: Alright.

[TIME STAMP: 28:29 Unrelated dialogue until 28:56]

WOMAN: There's one back there. I know.

MALE: Who drinks coffee at 4 in the afternoon? It's an old cowboy thing. [Inaudible].

[TIME STAMP: 28:56]

DO: All of these things that we're talking about Mr. Haddow, and I'm nearly done and I want to thank you for your patience. All of these factors that we've discussed. You know, the offset of center of pit, the radiant heat barrier, the excessive concentrations of carbon dioxide, the airtight structure, all of those environmental factors you believe contributed to Liz Neuman's death, correct? Organ failure.

HADDOW: Contributed, yes.

DO: Okay, and you also believe and you wrote "participants James Shore and Kirby Brown experienced these same environmental conditions and died."

HADDOW: Yes.

DO: So it was your belief that these same environmental factors also contributed to their demise.

HADDOW: Yes.

DO: Okay, and these are all things that you talked with the prosecutors on June 30th, 2010?

HADDOW: Yes.

DO: Okay. I don't think I have any more questions, but if you don't mind giving

me just a moment to consult with my colleagues?

HADDOW: Sure.

DO: Because we don't want to bring you back do we?

KELLY: No. No problem.

DO: Okay, alright, so we'll be right back.

HUGHES: So you want to go off tape then?

DO: Yeah, it's 2:15.

[TIME STAMP: 29:56] END OF PART 3

SUPERIOR COURT OF STATE OF ARIZONA
COUNTY OF YAVAPAI

STATE OF ARIZONA, Plaintiff, vs. JAMES ARTHUR RAY, Defendant.	CASE NO. V1300CR201080049 **TRANSCRIPT OF INTERVIEW** Witness: Richard Haddow (PART 4) By: Truc Do, Tom Kelly, Miriam Seifter, Bill Hughes, Sheila Polk Date: 04-15-11 Length: 1:30:34

HUGHES: Let me start the tape then. This is going to be Part 4 of Mr. Haddow's interview. It is about 2:20 in afternoon.

POLK: And thank you. First of all, thank you for hanging in there with us. As I recall you have never been an expert in a criminal case before?

HADDOW: Not in a criminal case, no.

POLK: And have you been an expert in a civil case?

HADDOW: Yes.

POLK: And with respect to the criminal rules, can I assume that you are not familiar with the disclosure requirements that a State has noticing the other side who our witnesses might be?

HADDOW: Correct.

POLK: So you were asked some questions by Ms. Do about not knowing that we had put you down on our disclosure statement as an expert in the case and expressed surprise over that?

HADDOW: Yes.

POLK: Do you recall that?

HADDOW: Yes.

POLK: But again not being familiar with the way a criminal case operates, you don't really have a basis to be surprised or not? Could I assume that safely?

HADDOW: That's very good.

POLK: Do you recall the day that you went to visit with Ross Diskin? Let me ask you this. I don't to, to ask questions about what you did for Lou Diesel if any of that you don't want to answer, you could certainly say so. But did you travel up to Flagstaff to meet with Mr. Diesel?

HADDOW: Yes.

POLK: And did you recall if you ever stopped by here on your way back from a trip to Flagstaff?

HADDOW: No.

POLK: Okay. You were asked a question about your conversation with the Verde Valley Fire Department Chief and you had some notes and the notes you provided us about your conversation with him.

HADDOW: Yes.

POLK: And you made the comment in response to a question from Ms. Do that I guess you were left with the impression that people had dispersed and that some people got worse later so the paramedics went to find them and bring them back to get treatment for them?

HADDOW: Yes.

POLK: Do you . . . Did anybody ever tell you that Mr. Ray had told the participants at the scene that if you could get up and leave that you should and go back to your cabins?

HADDOW: I read all the narratives and that narrative—that information might have been in there but I can't tell you for sure.

POLK: Have you ever worked with law enforcement before?

HADDOW: Yes.

POLK: And how many times?

HADDOW: For the 20 years at Maricopa County, we would do a criminal search. They would do a . . . What would you call it? Umm. The SWAT team would go in to clear a building that had some illegal and/or activity like a printing press. I would go in after and conduct an analysis of what was there and so I would cooperate with the local law enforcement and the regulatory whether it's OSHA or whatever situation it might be. And for civil, for Super Funds sites with the Attorney General's Office, I don't know so I'm not sure what other types you're....

POLK: Well your, your responses to some questions about how in terms of your working relationship with Det. Diskin, you were asking him some

questions but he didn't really provide you with information. He gave you the disk with the reports and things but he really wasn't telling you about the status of the criminal investigation, do you recall that?

HADDOW: Yes.

POLK: And I assume you know that detectives...it's not usual for detectives to nurture information but not necessarily give out the information themselves.

HADDOW: Sure.

POLK: They want to keep relationships and doors open so in case there is information for them to learn.

HADDOW: Sure, yes.

POLK: Without necessarily telling about the State's investigation.

HADDOW: And I also just . . . just so you know where I'm coming from he, he acquiesced to your role and your all's responsibility that the calls are in your shop and not his so a lot of the information I was wondering about the case and how I stood in it was not in his . . . you know in his decision making.

POLK: Right.

HADDOW: And I accepted that and I'm not going to start pushing him. Hey go ask them, go ask them. You know. He is very personable and the close part came in cause I think we hit it off okay. You know and so.

POLK: He is a nice guy.

HADDOW: He is a nice guy and so.

POLK: The letter that you wrote for Lou Diesel?

HADDOW: Yes.

[TIME STAMP: 05:05]

POLK: With your conclusions, do you know if that was ever provided to Mr. Ray's attorneys?

1 HADDOW: No, not that I know of.

2 POLK: And what happened if you can tell me in terms of Mr. Diesel's civil lawsuit
3 what happened with the letter that he got from you? Where did he go from
4 there?

5 HADDOW: He . . . I believe it was and please ask Lou these questions but I don't
6 believe we were in a lawsuit. We were challenging an insurance claim
7 policy and supported that and we settled.

8 POLK: How . . . did your relationship with Mr. Diesel continue after writing that
9 letter?

10 HADDOW: No I buttoned up my invoice and we finished . . . I gave my closing invoice
11 and we were done.

12 POLK: And do you know if Mr. Ray had an attorney that was working also with
13 the insurance company?

14 HADDOW: I had . . .

15 POLK: In that issue?

16 HADDOW: Well I . . . I would assume so but I, I didn't . . . I was . . . I didn't ask Lou
17 whose insurance was it the Lodge or Ray's or whose. I didn't ask him any
18 of the circumstances of his case. I was providing him analytical
19 information to support his case. And so I don't know any of the details.
20 He didn't share any of that with me.

21 POLK: At some point were you aware that, that case had been settled?

22 HADDOW: Oh absolutely.

23 POLK: When did you learn that?

24 HADDOW: Well actually I didn't learn that it was settled. He gave me confidential
25 information that it looks like it settled but he asked me to keep it a secret
26 and it was hard. We have a client, attorney-client privilege that I didn't
27 share with anybody. I didn't share it with Ross, I didn't share with
28 anybody about it and....

POLK: When you say that . . . this is what I wrote down anyway that he was the major contributor to the deaths. Hypercapnia also contributed. What did you mean by that? Can you just tell us in your own words?

HADDOW: Yeah, I think because it was so hot even if the carbon dioxide wasn't an issue that you get people too hot in a confined space and their core temperature goes up and they can't regulate their core temperature, you are gonna . . . you would die from heat stress. And from my observations of a closed container, a CO_2 would be a major contribution that would create a bigger problem. Part of the hypercapnia is not only having CO_2, high concentrations of CO_2 in your body. It actually leads to the inability for your body to accept oxygen so even if you came out your . . . for a point there for a little bit you won't have the ability to take oxygen in. And how patients are treated based on their circumstances would be important to from my . . . from my understanding.

POLK: Okay.

HUGHES: And Mr. Haddow what do you mean by how patients would be treated would be important?

HADDOW: I'm not a medical doctor. I'm only going by a lot of documents that I had read and I . . . and from what I could see and hear that intubating a person with hypercapnia could be a . . . not a good thing but I don't understand the entire picture because Lou and I didn't need me to get into such details so I just scraped on patient care in my documents. As you go through them, you will see that.

POLK: On the diagram that you made for us.

HADDOW: Yes.

POLK: I can pass it down to you if you want me to.

HADDOW: I have a copy.

POLK: Oh okay. We have the entrance at six o'clock.

HADDOW: Okay.

POLK: And you drew on at where you believe Liz Neuman was sitting. Hypothetically, if Liz Neuman was sitting at the eight o'clock position.

HADDOW: Mm hmm.

POLK: Does that change your analysis?

HADDOW: Oh significantly.

POLK: And how so?

HADDOW: The description from all of the narratives when the doors . . . when the, when the door would be opened everyone could feel the relief and just the psychological feeling was incredible. All the folks that were over here on this side, the narrative said they couldn't even feel the door open. And when you are hot and sweaty, you could . . . you know when you are going to . . . you could feel that. And so the folks did mention that they could not even feel the door open so the air exchange is going to be significantly more on this side because this is the side that's ventilating the heat.

[TIME STAMP: 10:10]

POLK: And when Bill asked you the question about if the rock . . . when we have the diagram with the pit off center more toward the back of the sweat lodge.

HADDOW: Yes.

POLK: Then you essentially draw a line straight through the pit and that's where the rock barrier begins? Or I'm sorry the heat barrier begins?

HADDOW: The heat barrier is radiating 360 degrees.

POLK: Okay.

HADDOW: And so essentially I was just trying to give you a part of the demarcation. You could put it through right the middle of it if you like, but the pit wasn't significant so it . . . her relationship to the pit wasn't the issue. Her distance from the pit was the issue and her ability to move from her

location which she was mandated not to, from what I can understand. Everybody else had an opportunity to change their location and she was I think designated to a spot.

POLK: And why did that distance to the pit make a difference?

HADDOW: Because it's going to heat you up more. If you are next to a heat lamp at one foot you can only stand so much heat. A foot and a half, you'll be able to stay there longer. At two feet, it dramatically drops so the relative proximity of the pit and the heat source is going to be an issue and then the stagnation of the air and where she was. The concentration of CO will be the greatest at the bottom . . .

POLK: CO_2 or CO?

HADDOW: CO, I'm sorry. Everyone's been [inaudible]. CO_2 is going to be concentration, highest at the bottom and it would dilute as it goes up into [inaudible]. Normally an atmospheric pressure . . . atmosphere right here, we have 350 parts per million of CO_2. That's a normal con . . . that's what we normally all breathe. So CO_2 is part of our makeup of air.

POLK: The heat barrier though why does it . . . why would you draw it where the pit is? Why not draw the heat barrier, you know [inaudible] 25% of the way into the sweat lodge?

HADDOW: If you have a heat source that is right here and you are able to open up the door, the heat barrier . . . the heat radiant...heat is going to leave and so . . . Let's say okay it's all closed in right now and the whole thing is homogenously the same temperature. Everything is the same temperature. You open up the front flap, the air because it's hotter in there and there is more pressure, air is expanding and all that heat is going to blow out. Because . . . because the fire pit is radiating in all directions, it's holding back the air shed in that half. It's not letting . . . it's not letting the air get past it because on this side when you open up the flap, the radiant heat is

pushing out the bad stuff. When you open up the flap, the radiant heat is holding stagnant and still everything else.

POLK: But if it is and explain it to me, if the hotter the source of the heat?

HADDOW: Mm hmm.

POLK: Does that cause the heat barrier to move outward?

HADDOW: No. What, what it . . . the hotter the heat source what it's going to do is create more pressure inside and it will actually contain everything on the back side. It's going to . . . the hotter it is the more it's going to . . . it's going to be like a wall of heat so the air isn't...the air can't just flow pass this radiant heat. Just think of all this hot energy coming out and you are in a stagnant position so when the door opens up, there is no draft. There is no place for air to come through the building and so what happens is when you open up the door, the convection of the heat goes out and there is going to be some air that comes in from the door but all that radiant heat going that way—that's why I did it at the front of the pit going that way—it's going to try to keep everything there. And, and . . .

POLK: And that part I think I understand.

HADDOW: Okay.

POLK: What I'm trying to understand is if this source is less hot, does that heat barrier move this way? And if it's hotter does that heat barrier move this way?

HADDOW: No. The heat barrier will remain the same. It will just be the strength of the heat barrier. How well it can contain or not allow draft to happen.

POLK: You mean...okay, and then so meaning that the heat barrier because of the location of heat as the pit stays the same but the . . . how hot it is behind the heat barrier there's lots of variables to it.

HADDOW: Well how hot it is behind it. So if you put 11 rocks in there...when you open up the door the heat is going to be trapped behind over there, right?

POLK: Aah huh.

HADDOW: And the heat will go out the door. If you have a very, very little fire or heat and you open up the doors, the barrier isn't going to be as strong and it could create a pouring out of the air shed. Just think of it like liquid, the entire thing is filled with liquid. If you have a heat barrier it's like a wall, so when you open up the door, only half of it is going to evacuate. If you have a heat source that is really light and not very strong, you open up the door the water can get past the heat barrier. It's like a big shield.

[TIME STAMP: 15:40]

POLK: So no matter what in a structure with just the entrance where it is . . .

HADDOW: Correct.

POLK: You are going to have some kind of heat barrier...

HADDOW: Yes.

POLK: ...and it may be hotter, it may be less hot depending on the heat source itself.

HADDOW: Yes.

POLK: Okay.

HUGHES: And can I ask a question since you are on that topic?

POLK: Yes.

HUGHES: Mr. Haddow, do you know how much off center the pit was, do you recall?

HADDOW: No. Not at the top of my head.

HUGHES: And can you tell me how the pit being off center affects your determination as to what happened to the participants? How is that relevant to what happened to the people inside?

HADDOW: The direct exposure to radiant heat to their body is going to be a factor of time and the amount of heat. Liz was the hottest because she was the closest and she stayed there the duration.` How long she was there. She stayed there for all the rounds and she never left so the contributing factors

are how close are you to the pit, where are you located, how long did you stay in there, did you move, where were you breathing, were you up, she was laying down.

HUGHES: So is it correct to sort of summarize that's to say that the pit being off center you think is relevant because it moved the location of those hot rocks closer to where those were seated?

HADDOW: Exactly. It's just having a heat lamp. It's just one foot closer or 18 inches closer or something. It was just physically closer.

HUGHES: And do you know how much closer it was to her?

HADDOW: I, I . . . I didn't have any time to go and do . . . it's somewhere in the reports. I don't have that with me.

HUGHES: Okay. And I'm just trying to ask . . . and I, I realize that you've got the reports. I just trying to see if you remembered today was she 18 inches away, was she 3 inches away?

HADDOW: She was laying down and she was moving and so you know I wouldn't say it was a consistent one spot place she was at but where she stayed she stayed relatively in the same position as everybody had told me.

HUGHES: And I think you also said the pit being off center also affected where this heat barrier would physically be located within the lodge, is that correct?

HADDOW: That's correct. And the heat barrier is really . . . is a major factor 'cause there's no draft. There's no ability to . . . it's not going to vent so – usually when you open up a door, if there is another opening, it would have the ability to draft the heat barrier could even actually when it goes out as a big whoosh, it could draw out the other side, so . . .

HUGHES: And if the pit had been in . . . let's say it had been perfectly in the center, would the area behind the heat barrier then have been a greater area than it was in this particular case?

HADDOW: It would be a larger area, but the . . . the impact to Liz would have been

1 lessened.

2 HUGHES: And that, is that because the distance between where Liz was seated and

3 the edge of the pit would have been greater then?

4 HADDOW: Correct.

5 HUGHES: Okay.

6 HADDOW: So she would be further away from the heat. Her core body wouldn't heat

7 up as much, and part of the heating up of your core . . . part of the . . . part

8 of your respiratory system, when you take in hot, heated water, it heats up

9 your body. When he pours water onto that, the steam that's generated will

10 go to the closest people around the pit, and so she's being subjected to the

11 . . . superheated is what it's called—superheated water—that she's in . . .

12 that she's breathing in.

13 HUGHES: Okay.

14 DO: Can I ask you if any of these questions were asked of you during that hour

15 and eight minutes that you had on June 30th, 2010?

16 HADDOW: No, no.

17 DO: These questions weren't being asked?

18 HADDOW: No, it was mostly like what your . . .

19 DO: Yeah.

20 HADDOW: . . . your notes had said about my letter.

21 DO: Okay. And obviously if they wanted to ask you these questions, they could

22 have called you right after June 30th?

23 HADDOW: They could have.

24 DO: Okay.

25 HADDOW: But, again, I think, and no digs to you guys, sometime . . . lay people

26 sometimes . . . it just doesn't comprehend, and I sort of....

27 DO: But you'd be the one to answer those questions?

28 HADDOW: Yeah, but they weren't asking the right questions necessarily, or the

questions that you're thinking that they might have asked. I don't . . . they don't think they were prepared to understand that.

[TIME STAMP: 20:04]

HUGHES: Shelia, do you have any more?

POLK: Are you then saying what matt . . . for this what matters is how close she was to the heat source?

HADDOW: How close she was to the heat source because the water that was poured on to her, she breathed in an extra step, made her extra hot, the radi . . . the radiant heat is the hottest because it couldn't get past her. It was a wall right there, so it got absolutely the hottest . . . altogether . . . and then when you look at carbon dioxide that's accumulating, from the ground up, it's all these contributing factors to . . . and then her staying there was the other part too.

POLK: Right, but, just in terms of the questions about the pit being off center, what really mattered to Liz was her re . . . her position with respect to the pit, not necessarily that the pit was in the center or off center.

HADDOW: Correct.

POLK: And then does the carbon dioxide form equally? You talk about a layer of carbon dioxide. Is it equal or unequal throughout the entire sweat lodge?

HADDOW: It . . . I, I, I could not tell you that for sure, but the . . . the carbon dioxide's about another 50% heavier than air so it would normally will form homogeneously on the ground, but we also have the factor of the heat . . . the radiant heat that's pushing . . . but see none of this . . . there's no air movement in here, so it just . . . the CO_2 cannot leave, it's just going to build. And where it's going to build will be on the ground where everyone thinks the air is the coolest, 'cause it is, and they're all at the highest concentration of CO_2.

POLK: But your . . . if I, if I understand you, you're saying that the concentration

of CO_2 is lower to the ground and would be uniform throughout the sweat lodge?

HADDOW: It would be uniform in area. So if you were six inches off the ground, chances are the CO_2 would be homogeneously the same concentration, as you go up in elevation to your hips, the concentrations of CO_2 would go down. So, the higher concentrations of CO_2 are on the ground, and it would lessen until it mixed to be normal at 350 parts, if that was the case.

POLK: Is that the same thing in this room, right now?

HADDOW: This room is homogeneously with the carbon dioxide top to bottom. We can't . . . we don't have enough people to influence the . . .

HUGHES: Just the fan, two fans in here make any difference?

HADDOW: We're not breathing out enough CO_2 and the room isn't air tight enough. There . . . we . . . there's . . . you know it's like being in a car—you're not going to have a....

POLK: So the construction of the sweat lodge itself doesn't necessarily create carbon dioxide? It's what is introduced into that structure?

HADDOW: The people.

POLK: The people?

HADDOW: Yes.

POLK: And . . .

HADDOW: Water, the heat.

POLK: Water, heat.

HADDOW: The smoke. I don't . . . I never determined how much sandalwood, what other chemicals, organics . . . what other chem . . . stuff was being put onto the fire, and, as any type in complete combustion, will have a particulate and a carbon monoxide. So I don't know. I never found out how much, what was put on there. I'm not too fearful of any of the, of the wood that was used on heating the rocks because the temperature of the rock of any

volatiles or any kind of anything that would have been on the rocks would not have been an issue for . . . from how I saw it was designed and used.

HUGHES: Can you expound on that a little more? Explain, maybe more for a lay person, what you mean by volatiles and the wood.

HADDOW: They . . . usually the pressure treated woods will have some sort of oil or a hydrocarbon based material to slow decomposition of the wood. So, you know, if they were trying to use railroad ties to heat up the rocks, your question would "Oh, would the poisons in the natch . . . nasty stuff in the railroad ties contribute to inside the sweat lodge?" and my evaluation is a glowing, red rock that has no . . . no materials on it, would not have . . . would not subject the, the participants to any, any dangers.

HUGHES: Okay.

POLK: And that's not part of that email that you sent out. Is that something you thought of before today?

HADDOW: No, I've had all this stuff. There's quite a bit of stuff. Once you know, you know I was so consumed in doing this. But once Lou and I got the case settled, I didn't need to continue investigating anything on my own, and that's one of the reasons why my notes don't reflect too much of our meeting, 'cause it wasn't part of Lou's.

DO: You just told Ms. Polk that you had considered wood before? I'm sorry, I wasn't sure I heard that right.

[TIME STAMP: 25:09]

HADDOW: No, I had . . . in my analysis, when I very first started, I wanted to know where the rock . . . how things were being heated, what was the wood, what was the contribution. But then as I did a little more research, I understood that the rocks were actually glowing hot and they were actually pulled from the fire and removed, so anything . . . any volatile, pretty much anything that was subjected to a glowing, red rock, is going to be not whatever it

was before it got to the red rock. So even if it was an ash, I would not feel the participants would have an environmental constituent of some, of something dangerous for them.

DO: Mm hmm.

POLK: And Rick, is that . . . that conclusion is based on your training and experience as an environmental scientist?

HADDOW: All, all, all of this is.

POLK: Did you ever calculate the temperature inside the sweat lodge?

HADDOW: No.

POLK: And were you ever asked to do that?

HADDOW: No. Lou and I were going to do all of what you're asking, including building one.

POLK: Um, humm.

HADDOW: And . . . so it would . . . wouldn't be so subjective and stuff, but we did not follow through with those things—weren't necessary. He's a go-getter. I don't know, I guess you guys might already know him. So . . .

DO: I've never met him.

HADDOW: He had me going in lots of different directions at once. He's....

POLK: Does that....

HADDOW: . . . he's a multi-tasker.

POLK: Does that . . . the . . . the discussion about carbon dioxide.

HADDOW: Mm hmm.

POLK: Is the amount of carbon dioxide in the sweat lodge affected by the steam and the heat? Or take those one at time if that's easier. Does the heat—does the temperature inside the sweat lodge affect the amount of carbon dioxide?

HADDOW: No.

POLK: And why not?

HADDOW: Because if you expel a gas . . . carbon and oxygen molecules together . . . the water vapor isn't going...isn't going to change the chemical state and the heat isn't going to change it to a different . . . it's not going to create a . . . it would not separate the molecules. So you're not going...you're not going to scrub it. Let's say if you had some charcoal air going through there, and you're able to scrub it or to change or modify, the only way you're going to get carbon dioxide to be scrubbed would be to put it through some sort of scrubbing device.

POLK: Let me ask that to you in the reverse. If you put 60 people inside that sweat lodge and did not introduce any heat at all, would you have produced the same amount of carbon dioxide?

HADDOW: Oh yes.

POLK: And how?

HADDOW: Pardon me?

POLK: And how?

HADDOW: Just breathing out. It's just the same thing for a container death. When people come across . . . when people come across in those containers, they don't die from heat, they die from . . . when you breathe out, the oxygen, the CO_2, you're also displacing oxygen.

DO: It's basically suffocation, it's oxygen deprivation, right? As you're displacing the oxygen and you are breathing out CO_2, and that builds up excessively, then you're basically depleting oxygen and so the person in the container is basically suffocating.

HADDOW: They're, yes, they're, yeah . . . you are depleting the oxygen. You can re-breathe, you can get a bag and breathe into air a few times—but you'll run out, but let's say the sweat lodge people were in there. Let's say you had 70 people in there, and you kept them in there for those two hours. The CO_2 concentration would probably get to a concentration to make people

be harmed, without any heat.

POLK: And be harmed to what extent?

HADDOW: To, to death.

POLK: To death?

HADDOW: Yes.

POLK: And is that with, or without, opening the door?

HADDOW: Without opening the door.

POLK: So if you . . . now you're making assumptions then about being air tight?

HADDOW: It doesn't have to be air tight. You have to remember that. There's no air exchange, there's no vent, there's no draft, and the draft is the only way you can introduce more air, so there's a limited amount of air. Part, part of the problem too is the elevation that we have over here. Instead of being at 19% oxygen, we're already probably dropped to about 18 . . . 18%.

POLK: So walk me through that. What you're...I think I just heard you say if you put 70 people inside that, that sweat lodge, for two hours, without introducing heat, that people would die?

HADDOW: Most likely, yes.

POLK: And what are the assumptions in that you're making that conclusion?

HADDOW: That the, the ability, the CO_2 concentration would build to a level to be unhealthful. Oh.

[TIME STAMP: 30:08]

POLK: What assumptions about the environment are you making? For example.

HADDOW: The elevation. The elevation that Sedona or the sweat lodge is located will change the actual concentration of oxygen that's available. So like when you climb the mountain, you have less air.

DO: You should probably look to her.

HADDOW: Oh, you're the mountain climber? Boy that's . . . so, so, you're . . . what you have to work with is less than you would at sea level, and it's not a ma

1 . . . it's only a couple percent, but it is different and it is less, and a lot of
2 people from Phoenix go to Flagstaff to try to breathe in the rarified air, and
3 that's what we call it. It's the rarified air. It's less oxygen.
4 DO: Rick, if somebody had ... you know...go ahead.
5 POLK: Okay, can if finish what I....
6 DO: Go ahead.
7 POLK: As soon as finish it's just that I know, I'm . . . it takes me a little while to
8 formulate my...what I'm thinking into words. What assumptions then are
9 you making about how much air is entering that sweat lodge for that two
10 hours in the example you're giving us?
11 HADDOW: I'm giving that there's a good exchange of air in the front half, or actually
12 it's almost 3/5ths of the . . . I think we have moderate air exchange. I don't
13 know how much. I don't know how big the opening was. I don't know
14 how long the opening was, but I feel comfortable that the people that
15 experienced it, and where . . . where Mr. A was, was over here.
16 HUGHES: And, can you maybe tell us just where, where you're pointing to, just so we
17 have an idea.
18 DO: Can you actually write on that for me? I'm going to take that copy too.
19 HADDOW: Okay. I believe, from what I understand, and this is rough.
20 DO: Can you put JR in there if you think that's what's right?
21 HADDOW: Okay.
22 DO: Great.
23 HADDOW: And this is . . .
24 POLK: We have a thing on ours too Truc.
25 HADDOW: Okay.
26 DO: Well I can just copy that so it's completely accurate. Oh, thanks Tom.
27 POLK: You can just show me where it's [inaudible] you need to show me.
28 HADDOW: Thank you sir.

POLK: I just want to see...okay. So going back to the example that we're talking about Rick, which is 70 people in a, in that particular sweat lodge structure for two hours without introducing heat, and are you saying that . . . with they're coming in or out or it just being closed for two hours?

HADDOW: If we're . . . if we're going to do a hypothetical, with that vent, with that door just being closed, if you left 70 people in there breathing for two hours, they would be . . . and they're down low, they're not all standing trying to breathe the air . . . they're all sitting down or laying down . . . 70 people . . . the CO_2 concentration, from my analysis, would be of a concentration above surviving.

POLK: And for that analysis, what are the variables?

HADDOW: The variables is the dead space in your lungs, which means how much you respirate out CO_2, how much you breathe in, so everybody's going to be different. Normally what happens to the body physiologically will de . . . will be . . . you know each person will experience something, something different, but the end result is that many people in that you know. . . you also have to remember, just think, you put . . . you get 70 people and you put them in a big blender. Okay. Now you blended all these people. Pour it into the sweat lodge, there is going to be two foot of people. Now how much space do you have? Okay. So, the people's volume displaced air.

DO: I'm not sure I understand that. [Laughter].

HADDOW: I'm trying to...I'm trying to....

POLK: It sounds gruesome.

HADDOW: If you have the notes here, but the notes, okay, when . . . it's just like this, if you have a toy soldier, or let's say you put your child into a tub, all the way under water . . . well not all the way, but...is this on tape? You put a rock in the water, the water volume will change. And when you put people into a space....

DO: They're going to displace.

HADDOW: They're going to displace the air that they would normally get to breathe.

DO: Right.

HADDOW: And I think it's probably 10, 10%, 12, 15%, but with 70 people, it might be more on the lines of 25% of the air space is going to be gone, so they're going to have less oxygen to breathe in and carb . . . and the CO_2 that they're breathing out will concentrate faster because it can't dilute. So right now, if I put a bunch of ... if I got a bottle of carbon monoxide, opened it up in here, because there's so much volume in here ....

DO: Monoxide?

HADDOW: Carbon monoxide, like the poison.

DO: Mmm hmm.

[TIME STAMP: 35:07]

HADDOW: If I open up the poison, the volume of space in here would dilute the carbon monoxide to a concentration that would be okay for you. If this was a very small closet or you were inside of a refrigerator and someone opened up that same bottle of carbon monoxide, the concentration that you're experiencing would be significantly more. So the concentration that ... like the parts per million, that value, the higher it is, the more dangerous it is. And some of the reports will talk about percent, some talk parts per million. But it's all about how polluted is it, how dark and thick of, of those constituent pollutants are.

POLK: And so seventy people for two hours, no air, excuse me, no opening up the door, nobody leaving, would be enough to cause some deaths?

HADDOW: Yes.

POLK: So is it your opinion then that Mr. Ray taking in—I believe there were about fifty-six people in that sweat lodge—intending to keep them in there for two hours, telling them that they needed to stay in there for that entire

1		time to experience an altered experience, an altered state, that that act
2		alone, even before he introduced heat was enough to cause injury and
3		deaths?
4	HADDOW:	If they, if they all stayed in and the fifty-five people, there could be a very
5		good chance for it. It's just how airtight it was and how, how, how the
6		people were breathing, and how they were expelling it. The … all that
7		information's in here where we can give you the count, the calculations
8		that tells you how much it contributes. You can only be in a confined
9		space for so long.
10	POLK:	Mmm hmm.
11	DO:	Do you think it would have been a good idea, I mean this is sort of … you
12		know when you go into a building at like maximum capacity...
13	HADDOW:	Mm hmm.
14	DO:	…I mean if, if, if the structure had been inspected for permitting purposes
15		for example, would a safety, you know, somebody with an engineering
16		background would have been able to tell whether or not that structure could
17		have held X amount of people in a safe manner? Or is this going beyond
18		your scope?
19	HADDOW:	No it's not, 'cause I do zone . . . I do zoning . . . too. This structure, the
20		structure, would it be a permitted structure?
21	DO:	Mmm hmm.
22	HADDOW:	It's temporary, it's not designed with a floor and so it wouldn't … I, I
23		personally don't believe it would need to be permitted so I don't think there
24		would be any regulatory review over it. There's no employees.
25	DO:	Mmm hmm.
26	HADDOW:	Most of the issues about people's, you know safety issues, is for employees
27		…
28	DO:	Right, right, right.

1 HADDOW: … versus fire safety for folks.

2 DO: Well, right. And I'm not saying that I know whether or not there is any
3 ordinance that requires permitting. But I'm just asking is that it would
4 have been the, in your opinion, given what you're saying now about the
5 capacity of that structure for the number of people that you think is at a
6 safe level, you know, is that something that a normal, lay person is going to
7 know or is it going to be somebody who has like more of an engineering
8 background like you?

9 HADDOW: You know I, I, usually those are standards that are known for the size of the
10 building, so it's just common …

11 DO: Known to?

12 HADDOW: Known to, if you had a building inspector …

13 DO: Yeah.

14 HADDOW: If you have a 2800 square foot restaurant …

15 DO: Right.

16 HADDOW: You can only get 80 people in there.

17 DO: Mmm hmm.

18 HADDOW: So it's a standard, which means … a standard is something that's already
19 understood …

20 DO: Yeah.

21 HADDOW: …and known. So people, the people that are doing those inspections don't
22 know why, they just know the standard.

23 DO: Right.

24 HADDOW: And so I don't think people can either …

25 DO: But is someone like Miriam going to know that standard? I mean that's
26 what I'm asking. Is it somebody who you know whose job it is like you,
27 you're in zoning, and you might be familiar with the standards. You know
28 where to go to look for the standards, is my question.

HADDOW: I'm kind of confused on what you're actually asking.

DO: Never mind.

HADDOW: Okay.

POLK: And let me pick up back where I was. Do you have an opinion on what it takes to run a safe sweat lodge ceremony?

HADDOW: I have no opinion.

POLK: Because obviously to do a sweat lodge ceremony you, apparently, I've never been in one either, but apparently you bring people into a enclosed space and you heat it up. And what you're saying is that even before the heat was introduced, that this act that Mr. Ray was engaged in, which was bringing a large number of people into an enclosed space, intending to keep them in there for a fairly lengthy period of time, was going to cause CO_2 buildup and cause harm.

HADDOW: Yes.

POLK: Okay. Let me just run through what I believe are the variables you would need to be able to calculate the amount of CO_2 in that particular sweat lodge. And you can just tell me if I'm on the right track.

[TIME STAMP 40:10]

HADDOW: Can I make a mention to you?

POLK: Oh yeah.

HADDOW: If you go through those notes I have, you can, you can, there, that information exactly—how much comes out of a breath.

POLK: Right.

HADDOW: That, all that stuff's in here. But I can, I'll try to explain it to you in what your question is though.

POLK: Well if you were trying to calculate the carbon dioxide amount inside the sweat lodge . . .

HADDOW: Yes.

POLK: —is humidity a variable?

HADDOW: And it, it, it wouldn't be a variable because it would be, it would be another constituent. It would just be added to what we have here so let's say we have a high concentration of CO_2 in here right now and you add a bunch of butter or, or water to the ground, it's not gonna change the concentration of CO_2. So you're not gonna change the concentration of CO_2 unless you ventilate or add something else. And the water is not going to lessen the concentration of carbon dioxide.

POLK: Okay.

HADDOW: So the, the water issue is only with heat and you all know that when—a steam burn is much worse because of the radiant heat, storage capacity of the water. And so the humidity is, is that being able to take charged hot air with water molecules inside your body to raise your core temperature, and so they're two separate, two separate systems.

POLK: The number of participants are a variable?

HADDOW: Very big variable. Because if there were only six, it probably wouldn't get that bad.

POLK: Right so the number that, that Mr. Ray had present was a variable that you would need to know in calculating the CO_2.

HADDOW: Yes.

POLK: The, does the size of the participants or that body weight and size matter?

HADDOW: Yes it's, that's part of the volume displacement.

POLK: Okay.

HADDOW: They're gonna displace the air they could normally breathe.

POLK: Does the lung capacity of an individual person make a difference?

HADDOW: Yes.

POLK: The respiration rate of the person?

HADDOW: Yes.

POLK: And so it's as somebody becomes more panicky or becomes heated due to the heat and the respiration rate increases, that will increase the carbon dioxide?

HADDOW: Yes.

POLK: The length of time that that particular individual is in the sweat lodge would be a variable?

HADDOW: Yes.

POLK: The length of time that the door was open between rounds?

HADDOW: Yes.

POLK: The, how wide the door was opened? What the space was once the door was opened?

HADDOW: Yes.

POLK: Whether a person inside the sweat lodge was crawling, standing, sitting, does that make a difference?

HADDOW: Significant difference.

POLK: Okay. The, how far from the door a person was?

HADDOW: Yes.

POLK: That makes a difference to calculating what the CO_2 was inside the sweat lodge?

HADDOW: Yes.

POLK: Okay. Does it make a difference how the formation of the rocks in the pit, how they were piled, where they were piled?

HADDOW: Yes. Do you want to know why?

POLK: Um okay, I'll bite.

HADDOW: No it's just, it's just if you can imagine a bunch of glowing red rocks, if they're all stacked together like this, the ones that are on the bottom have to try to generate heat through the one rock that's below it to get out. So the pit will be hot, but if you, able to spread the rocks out so each rock is able

to radiate all its energy, so....

HUGHES: In other words, the surface area of the exposed rocks is relevant?

HADDOW: Yes. The contact to the outside air versus if you had them all, if you it in a, if you had them all in a tube that were all underground and the only thing you could see was the top rock, it wouldn't be the same as if all those rocks were spread around.

POLK: To creating the CO_2? That's what we're talking about.

HADDOW: Oh for, for CO_2?

POLK: Yeah.

HADDOW: Well part of, part of the factors that are all, there's heat rises. The heat's gonna dissipate or is going to displace and create an inversion layer where you have hotter air up here and cooler air down here. The heavier air is gonna be with the CO_2 down on the ground. If you have something hot up here, it's gonna physically start to change the ability of the, of the air shed. You're gonna have an inversion of cool air on the bottom and hot air at the top. So your pollutants will concentrate. So like in the valley when we have an inversion, it's, it, it's cool on the bottom and warm on the top. And so what happens is the lower the, the, the inversion, as the inversion lowers, the concentration of the pollutants go up because they're in less space now. If you have a big space, it's the concentration of carbon dioxide will be lessened. But if you, if you put all the pollutant into an area, even though the volume is big, the heat is gonna have a physical barrier just like you have in the valley with an inversion. So what you have is a heat inversion that all the CO_2 is gonna be pushed more down on the ground.

[TIME STAMP 45:41]

POLK: So the heat or the temperature makes a difference to the concentration of the CO_2?

HADDOW: Yes.

POLK: Okay. Does the outside ambient temperature make a difference?

HADDOW: Yes.

POLK: And going back to the example of 70 people inside that particular sweat lodge for 2 hours, nobody leaving, the door never opens, does the outside ambient temperature make a difference to how, at what point people would start to get sick?

HADDOW: For just, for just CO_2?

POLK: Yes.

HADDOW: No.

POLK: So it's, what makes the difference there, what was the difference between those two examples?

HADDOW: The, with the heat?

POLK: Yes.

HADDOW: The heat puts, for, the heat displaces and forces the CO_2, which is heavier than air, to be concentrated lower. So if you add heat to it, you're going to get an inversion, and the concentration of CO_2 will increase.

POLK: Does the amount of water introduced into the, now we're talking about calculating the amount of CO_2 in that sweat lodge, does the amount of water introduced affect the CO_2?

HADDOW: I do not believe so.

POLK: Okay. So whether you ladle two cups of water on 56 rocks, or whatever it was, versus 6 buckets of water, does that make a difference?

HADDOW: For CO_2? No.

POLK: Yeah, for CO_2. Obviously it does for the temperature, but for the CO_2. When the door is open, wind gusts make a difference to the CO_2?

HADDOW: Yes.

POLK: And then I think I'm hearing you say, at any given moment, the number of

1 people inside obviously makes a difference to CO_2.

2 HADDOW: Yes.

3 POLK: I think I asked you about the respiration rate of a participant, that makes a

4 difference, obvious difference.

5 HADDOW: It would. And part of the problem with the CO_2 hypercapnia is as a

6 concentration of CO increases at 3%, the respirate, respiratory rate

7 increases twice, and then at 5% it's four times. So. . .

8 POLK: So you really get. . .

9 HADDOW: —so you really. . .

10 POLK: —you exacerbate it.

11 HADDOW: Right. And I do have one sheet in here that describes the sweat lodge

12 where people get hot and then try to get, kind of, you know, disorientated.

13 So that information is in there for. . . .

14 HUGHES: If your. . .

15 DO: Go ahead.

16 HUGHES: If your, if your respiration rate, let's say it doubles, because the percentage

17 of carbon dioxide in the air has increased, you're breathing more quickly,

18 does each exhalation carry the same percentage of carbon dioxide going

19 out of your body as it would it you were breathing only half as quickly, or

20 are you only putting out if you're breathing twice as fast, you're only

21 putting out half as much carbon dioxide? Do you, do you understand what

22 I'm saying?

23 HADDOW: I understand what you're saying. Your chest has the ability to bring air out

24 and in. There's a space, that space that you're not going to be able to clear

25 all the air out of your lungs. Normally, when your respiration rate goes up,

26 you start doing shallow breaths and you start breathing from the top of your

27 lung and you're not exhausting down here. So your lung, so your, your

28 concentration out is not going to be as weighted as if you were taking a full

breath and exhaling. So there's going to be that difference, because you're taking a smaller breath on how much CO_2 you're putting out, but then there's, you're doing it twice as much, or four times as much. The physiological and psychological parts of this is where doctors need to come in because that's one of the things I read in here, how people deal with the heat and stress will depend on how their body starts to react, too. And some of the things are automatic. If CO_2 is high, your body will just start doing things on its own. Your brain cells and stuff will just start operating independently of you. So some of this stuff is physiologically going to happen to you.

[TIME STAMP: 50:00]

HUGHES: Okay. Thank you.

POLK: Are you familiar with the debate as, as, when I did a little bit of research, it kind of looks like the chicken and the egg. Is it the high CO_2 that causes a person's death, or is it the low amount of oxygen that's then left?

HADDOW: The body has a blood chemistry, a PH, and it has the ability to we have to, we have to have carbon dioxide in our body to live. It has to be in our bloodstream. When you introduce high concentrations of CO_2 into the bloodstream, the body starts to put up a change in our blood chemistry, your PH changes, and what it does is it stops the ability to take oxygen in. So it's, it's a very weird situation, so as the higher the CO_2 goes up, how it impacts you, even though, if it's, you know, it's a poison your blood chemistry is changing, and whatever oxygen that's in there, it's not going to let you take it.

POLK: And the debate about well was it lack of oxygen or was it CO_2 that killed you?

HADDOW: Well the, the CO_2 is, is affecting your ability to absorb and use oxygen. My concern is the oxygen had been displaced and the concentration of CO_2

1 was way high, where the concentration of oxygen was maybe at 12 or 14%.
2 So they're not, they're not independent, they're, both the variables work
3 together.
4 POLK: [Inaudible].
5 HADDOW: Yeah, so when you say 'did they die from lack of oxygen', well their, their
6 ability to accept oxygen has been greatly reduced. The oxygen level in
7 there had been greatly reduced, because it was being consumed. And part
8 of our metabolism, taking the oxygen and our fuel, food, metabolizes to
9 carbon dioxide. So the oxygen is depleted. And so it, they essentially died
10 of lack of oxygen.
11 POLK: Okay.
12 HADDOW: But, if, if you were in an oxygen rich environment, let's say you put an
13 oxygen tank in there, but you're also experiencing high concentrations of
14 CO_2, the blood chemistry will change that won't allow ambient good
15 concentrations to oxygen to even be able to be taken in.
16 POLK: Right, I get you. I understand.
17 HADDOW: Okay.
18 POLK: I think in Bill's notes I read, I put it in quotes here so it's either from Bill's
19 notes or from the email that you had sent us, that the medical examiner
20 doesn't tell us what caused the organs to fail, carbon dioxide plus heat plus,
21 plus moisture causes organ failure. Do you recall that?
22 HADDOW: Yeah.
23 DO: Do you know where you got that?
24 POLK: I think that's from Bill's notes.
25 DO: What time do you have to be out of here?
26 HUGHES: [Inaudible].
27 POLK: Yeah.
28 DO: I don't see it in Bill's notes.

POLK: [Inaudible] one of my notes somewhere.

HADDOW: I was saying that, earlier.

DO: You were saying that earlier, when?

HADDOW: I was saying, I was saying earlier that the, what was happening was, the medical examiner doesn't tell you what caused the organs to fail, you fail the, the doctors tell you that, what was the cause of death. They don't go one step back to what caused the organ failure.

POLK: Tell me what you mean by that?

HADDOW: Okay. I feel, I, from how I, the cause of death is if your internal organs quit operating. You, you, you die. And what I'm trying to deduce was what caused the organs to fail. And it was the heat and the CO_2. And so the coroner, or the medical examiner, isn't telling you what led, how, the series of events that led to the death, they describe what the death was, but what was the cause of death. And so it was organ failure, and so my, my documents show that heat will cause organ failure and CO_2 poisoning will cause organ failure.

POLK: And that's your research.

HADDOW: Yes.

POLK: That they will both cause organ failure?

HADDOW: Yes.

[TIME STAMP 55:00]

POLK: Is it the CO_2 that causes the organ failure or is it the lack of oxygen to the organs that causes organ failure?

HADDOW: The, it would be the blood chemistry change, the acid, the PH, and the ability to absorb oxygen with CO_2 concentrations.

POLK: So it would be the lack of oxygen to the organs that would cause organ failure?

HADDOW: Yes. If that, okay, I'm not a medical doctor, and I, I, off the top of my

	head, I can't remember, but, yes, it's the organ damage. The consequences of CO_2, or the heat to the organs, would have them shut down.
POLK:	But the, the organs need oxygen. They need the oxygen that's supplied to them through the blood to survive.
HADDOW:	Right, but, right now, off the top of my head, I don't want, I would, I would rather not try to describe the chemistry of blood and the organ fail and the different organs that would be potentially . . . 'cause I don't remember what I, what I had read, but it's in here right now.
POLK:	Would you want to defer to. . .
HUGHES:	Hold on a sec. My tape I think is, needs a new battery or something. Let me stop it for a second.
MALE:	Do you have a battery?
HUGHES:	Well, it actually may be slowing down. We've been going so long. [Inaudible].
POLK:	[Inaudible].
HUGHES:	Let me try and see if this works. If it beeps again we may have—I may have to run back and download this report before we can keep going.
DO:	Mine is continuing—I'm not really sure [inaudible] few hours [inaudible].
POLK:	Do you have any batteries?
DO:	Do you need batteries?
HUGHES:	You know it's not the battery—it's physically full [inaudible].
POLK:	I didn't bring mine 'cause I—you have yours, I don't need it. Well we'll just keep going.
HUGHES:	....copy of yours.
DO:	Yeah.
HUGHES:	Okay. I appreciate that.
POLK:	Would you defer to the medical doctors on ultimately what causes the organ failure?

HADDOW: Yes. Not that I would like to be able to provide the database and the variables that they would apply to [inaudible] and to organ failure, so the doctor has to analyze something, and he needs to know what the environment was, the circum—the doctor, they ask all these questions, but they would need to know the concentrations—the heat—how hot was it? Was it hot? What happened to them? [Inaudible].

POLK: And according to your report that the conditions inside the sweat lodge did cause—impairment to the cognitive functions?

HADDOW: Mm hmm.

POLK: I don't remember where I saw that.

HADDOW: For Liz—for her ability to, to...cognitive. That's the goal though, as I read for sweat lodges that, that happened.

POLK: I was going to ask you about that. What was your understanding of that?

HADDOW: I have it written—it's written in the report, it was, I think a single page about the sweat lodge and it talks about the heat inducing some sort of visions and the physiological of what's happening to you, but I'm not a sweat lodge [inaudible].

POLK: Would you—would your testimony be though that your analysis of the conditions inside the sweat lodge would cause loss of cognitive functions?

HADDOW: Yes. I also think that would be, equate to the reason why everybody is doing, doing the, the event.

DO: You mean to get visions? Altered state?

HADDOW: To get visions, to be in an altered state. In an altered state I don't—and this just my opinion. I don't believe that you have the cognitive abilities in an altered state to rationally make decisions.

POLK: Do you understand that the altered state is the result of moving toward heat stroke?

HADDOW: Yes.

POLK: Okay.

DO: Do you have medical training for that, or is it from what you are reading from the internet?

HADDOW: This is—part of being an environmental person, we do—we're environment, health and safety.

DO: Mm hmm.

HADDOW: So my background has been safety also, and so I have some experience with that. You know not just reading it—just through my life experience.

DO: So, are you—what I'm trying to understand is—do you have background training and education to understand the patho-physiology of heat while you're in an altered state to heat stroke?

HADDOW: Yes from my research.

DO: From your research on what?

HADDOW: Pardon me?

DO: Your research over the internet?

HADDOW: No. My, my—from my life, my life, my career—from my whole career, from my life experience. Most, almost everything that we are dealing with here I was already familiar with.

[TIME STAMP 1:00:08]

DO: Mm hmm.

HADDOW: Becoming a subject matter expert is what I did—is to delve into a refutable text that I can present, that is hard science, you know—and that's what I was trying to do is provide you all with the information of the hard science and then a doctor or somebody else would make the—that next step.

DO: Mm hmm.

POLK: And did you have to do additional research to be able to say what you just said or before you even looked at this did you have that expertise?

1 HADDOW: Expertise towards all of this?
2 POLK: Yes.
3 HADDOW: I believe I had that before.
4 POLK: Okay. In your review of the documents that were provided to you by
5 Detective Diskin or perhaps—did Lou Diesel provide you with additional
6 documents by the way?
7 HADDOW: No he didn't. [Inaudible]. [Laughter].
8 POLK: Well did he [inaudible] public records request about [inaudible] giving him
9 letters he requested?
10 HADDOW: No he didn't share anything with me.
11 POLK: Your review was based on just the [inaudible] he gave you?
12 HADDOW: I've—for the event, I'm—just yeah.
13 POLK: Okay. Anywhere in what you reviewed did you review information
14 relating to Mr. Ray's past sweat lodge ceremonies? You mention one
15 person getting sick in 2008, what was that based on?
16 HADDOW: I believe the narratives, and then Lou and I had spoke a few times, and he
17 has talked to other participants that were there last year. We were able to
18 get a name of someone that got really, really sick, a man. And he's still
19 having issues now. And so Lou and I talked about it. This was in our
20 discovery phase of the all the injured people so. . .
21 POLK: You are only aware of only one person getting sick in 2008?
22 HADDOW: Sick to the point where they are now permanently injured.
23 POLK: Did you ever learn of people getting sick, having done Mr. Ray's sweat
24 lodge ceremonies in 2007?
25 HADDOW: I believe there were a few years past that individuals did get sick, but I, we
26 don't have any details.
27 POLK: Okay. And did you ever learn that other facilitators who conducted sweat
28 lodge ceremonies inside the same structure that Mr. Ray used that people

1 did not get sick?

2 HADDOW: [Inaudible].

3 POLK: And did you know that Mr. Ray had problems with people getting sick
4 conducting the ceremony even without all of the layers that were present in
5 2001?

6 HADDOW: Say that again?

7 POLK: Did you know that Mr. Ray had people get sick during his ceremony even
8 when conducted in a different sweat lodge?

9 HADDOW: No.

10 POLK: Have you done any research into running sweat lodges at all?

11 HADDOW: No.

12 POLK: And would you have an opinion on conducting a sweat lodge, doing a
13 round, letting everybody out, cooling off, the environment, and then
14 allowing people to come back in and do a second round, would you have
15 an opinion on whether or not people would have gotten sick if Mr. Ray had
16 conducted or facilitated the ceremony in that way?

17 DO: As an environmental scientist expert opinion? Are you asking him for his
18 personal opinion?

19 POLK: Either one. Let me hear what his opinion is and then we can qualify it.

20 HADDOW: Are you okay?

21 DO: Yeah, yeah.

22 HADDOW: Okay, I want to make sure everyone's happy with what [inaudible]. Okay I
23 have to remember what the question was. Part of what I understand the
24 sweat lodge's function is, is to create that disorientation for people. And
25 depending on how long each round is, if they could get to that state or say
26 two states, so if people were able to get out in a relative short time, their
27 heat stroke—the chances of getting heat stroke would be significantly
28 reduced, because their core temperatures would be dropped. So if they

would go back in, they would then be able to be starting from a better position—rather than if they had stayed there. So yes. Both my professional and my personal opinion is that if everyone left, every time, the situation would not have happened. But the—from what I understand the sweat lodge's goal—the goal is to try to endure this, this, the ceremony.

[TIME STAMP 1:05:02]

HUGHES: If people had left in between rounds, could that address the hypercapnia that you spoke about in your emailed report?

HADDOW: It would reduce the amount of—the more people that left, would reduce the amount of carbon dioxide in the —and so, the out gassing of CO_2 from 56 people now is only 44, it would be less contribution. But I'm, I'm—from what I'm understanding in the, inside the pit, the rocks were just, being added to, so the heat is going to be increasing so that CO_2 is going to be pushed down so with less people—less people contributing CO_2 into the room, with hotter air pushing down, you are going to be a smaller air space with higher concentrations of CO_2.

HUGHES: And then the people outside would there be—would you expect that the CO_2 that was being generated inside would affect people outside?

HADDOW: Oh absolutely not at all.

HUGHES: And why is that?

HADDOW: Because of the air volume of the atmosphere. Once that—it's just like you—you can stand next to moving traffic or slow traffic or stopped traffic with all those tailpipes submitting CO—you have no impact or effect on you because there is so much air space, it's just diluting. So outside, outside of the sweat lodge you would have no impact on anybody at all.

HUGHES: And do you have an opinion if someone had been exposed to say you were saying I think at 4% carbon dioxide your respiration is at doubles because of [inaudible]?

HADDOW: I think they have it at 3% doubles and 5% in quadruples.

HUGHES: So if you were in it say 5% carbon dioxide inside, do you have an opinion, if you were to go outside the structure into the fresh air, how long it would take for a person to equivilate back to normal?

HADDOW: That—I, I would deter that as a medical condition because of the variables of the person and the blood chemistry and how fast they are able to take it. So I'm not quite sure how to answer that.

HUGHES: Okay, [inaudible]—am I hearing you correctly, that's something you think a doctor would have a better answer for?

HADDOW: They would, but they would need to know circumstances and the facts. You're are asking me how long would it take them to recover? Well I need to know what, what the, what they were exposed to, for how long, and what state their blood chemistry was at when they came out, and so you're asking me to make an opinion on an unknown.

HUGHES: Okay.

POLK: What is the [inaudible], is it true that if somebody is suffering from exposure to CO_2 then—the quicker you remove them from the CO_2, the better—the better their chances are of recovery?

HADDOW: Yes.

POLK: So if you hear inside the sweat lodge that somebody is not doing well if that person had been moved outside at that point, their chance of recovery would be greater than leaving them in that condition for more minutes?

HADDOW: Yes.

POLK: If you were going to—before I had said—had boasted about how his sweat lodge was the hottest sweat lodge out there in the hellacious heat. If you want to provide a really hot sweat lodge, is that particular sweat lodge structure a good environment to create the hottest sweat lodge around?

DO: Compared to what?

1 POLK: Do you understand the question?

2 HADDOW: If I, are you asking me if it could be designed to be—if you made it air
3 tight, it would be—you would be able to create—you would be able to
4 contain all the energy. And if it was made of concrete and insulated where
5 the radiant heat energy couldn't permeate through with the Styrofoam, if it
6 was just Styrofoam and concrete, the energy wouldn't be able to leave, it
7 would stay inside. So it would be—you could create a worst situation.

8 POLK: You did—based on your review of that particular sweat lodge, if Mr. Ray's
9 goal was to create the hottest sweat lodge around, was that a structure that
10 would be useful to him; would that be a good environment for him to
11 attempt to keep his goal of having the hottest sweat lodge around?

12 HADDOW: Yes.

13 POLK: That particular sweat lodge that you looked at through the records that you
14 reviewed?

15 HADDOW: Yes, by the number of rocks and by the volume of air space, I'd say yes.

16 POLK: Bill do you have anything else?

17 HUGHES: Mr. Haddow, the opinions that you have given us today, I know you have a
18 lot of research that you provided copies to Ms. Do and she provided them
19 to us. Are those things that you've relied upon in reaching the opinions
20 you've been telling us about today, things that environmental scientists in
21 your field typically rely upon?

22 **[TIME STAMP 1:10:11]**

23 HADDOW: Yes. And also my background, my experience, my education and my
24 practice. So this—what I wanted to do is to support my conclusions and
25 my analysis and provide you calculations and how I came up with my
26 information. So in [inaudible] that you would be able to determine the
27 concentration of CO for a fixed point, at a fixed point in time. The
28 problem is for me is the variable of the door, people coming in, coming

1 out, water going on the heat, rocks coming in, heat going up, coming down,
2 people opening up the back of the vent—the back of the thing that
3 helped—could ventilate, but part of the problem is when the guy lifted up
4 the tarp to breathe the air, the light shined in and Mr. Ray got upset.
5 Obviously the door was closed so it wasn't like they opened it up—opened
6 up the other door and now you've got ventilation coming through, I, I have
7 a draft, so.
8 HUGHES: And then another question, just sort of a catch-all. I can't speak for the
9 defense, but I can tell you that Shelia and I are not environmental scientists.
10 Is there anything that we haven't asked you about your investigation in this
11 case or about your report that you think is important to try and determine
12 what exactly happened out there at the sweat lodge?
13 HADDOW: Not much [inaudible] on how the patients were triaged, how they were
14 triaged, medically.
15 HUGHES: What do you mean by that?
16 HADDOW: Were they given oxygen? And I agree if oxygen—I believe that could be
17 a, could be a—not a good thing but I'm not sure if that's how I understand
18 oxygen. So that's where I would bring up the idea that somebody, I need
19 to bring it up and then somebody a doctor or....
20 DO: What do you mean by that? If you are ill or dying of CO_2 toxicity, you
21 should not give that patient oxygen?
22 HADDOW: Correct.
23 DO: Why, what does that do?
24 HADDOW: It says not to intubate them. And you know, please it was a year ago when
25 I did this research.
26 DO: Sure.
27 HADDOW: And believe me I was on my game a year ago. I don't know exactly but
28 apparently it has something to do—I don't know because you want to get

1 people out of the environment, and breathing air, but you might not
2 necessarily want to intubate them, but I don't know that. And I don't know
3 how that would affect—if that's appropriate.
4 HUGHES: Is that something a medical doctor would have a better idea?
5 HADDOW: Oh no absolutely. Environmental scientists [inaudible] and how the body
6 works for that.
7 HUGHES: Anything else you can think of that we haven't asked you about that is
8 relevant?
9 HADDOW: You know I'd really like you to understand this report was written around
10 Liz and I did not weigh or contribute the circumstances to any other
11 individuals other than I did pay attention to both Kirby and James on where
12 they were just for my own understanding, and I pass that on even though
13 that wasn't my objective. And so the report is focused on Liz and not
14 everybody and so just so you know. That's one of the reasons why it was
15 incomplete. I don't—that's the reason I called it a preliminary report,
16 because I didn't have all the facts. I didn't have the materials, I didn't get
17 the rocks, I didn't get to calculate the heat and what they were
18 experiencing. There's just a ton of stuff that I didn't do. I only spent like,
19 less than a week on it.
20 HUGHES: And then there is some questions about—a comment about how a defense
21 expert might attack your opinion. I think you said one would be the CO_2
22 toxicity. Can you tell us a little more what you meant by how they would
23 attack that? What did you mean by that?
24 HADDOW: Well I would think they would want to debate or try to. . .
25 DO: And this was a question that was asked on May 30th, right?
26 HUGHES: You had asked a question about I think the note that indicated that was his
27 opinion, that was what the defense might attack on.
28 HADDOW: Right I think that if somebody was trying to challenge my theory, they

would evaluate how much carbon dioxide people breathe, [inaudible] the air space and they would want to probably show that the concentration was a lot less.

[TIME STAMP 1:15:04]

HUGHES: The concentration of what?

HADDOW: CO_2 would be less. And you know saying—they're going to say a variable that it wasn't air tight and I have this much air, cross air ventilation in this situation, that situation. Scientifically they are going to try to describe the air shed and what the pollutants that are in there and how it built up and in their opinion. And so....

HUGHES: And you said they were trying to say it wasn't that air tight. I think one of the other item points was the structure construction. That the construction of the structure, is that what you are talking about? You think the defense might try and show that the sweat lodge structure had more of a breeze, if you will, blowing through it than it did?

HADDOW: Correct. I believe that they might consider that—it was more permeable.

HUGHES: And to what end would that play?

HADDOW: It would—to lead questions on how higher the concentration of CO_2 could build up or how much heat the blankets and the tarp could store and hold. Because if you had something like a sheet of plastic, it's just a cellophane piece of plastic and you heat it, the energy is going to go right through it. It's not going to—you are not going to be able to contain the energy.

HUGHES: By energy going through, you are talking about the insulation factor of the structure?

HADDOW: Correct. [Inaudible].

POLK: I'm sorry, but I'm on [inaudible] oh, do you have—I'm just looking at Bill's notes—he had written 'HO2 inside was a significant factor.' Does that ring a bell with you at all?

1 HADDOW: The H . . yeah, yeah. Water.

2 POLK: Water and what was the significant factor?

3 HADDOW: Well, it's just that—the storage that—water can hold, can hold energy
4 more than air can because the air molecules are heated up, but a water
5 vapor will hold more energy. That energy is going to—that heat, is going
6 to go into your lungs and cause a person to—heat stroke to increase, so the
7 higher the humidity vs. heat will create a more faster sweat lodge goal, you
8 know. So if you could—if you had two sweat lodges together, one was
9 putting water on it and the other was not, your core temperature would go
10 up faster and get towards heat stress quicker than the one without heat.

11 HUGHES: Does that affect the [inaudible] tell me if this would happen, [inaudible] but
12 would it be similar to someone being in say Louisiana in a 100 degree
13 summer day as opposed to being in Phoenix with 3% humidity, 100%
14 [inaudible], is that a similar analogy?

15 HADDOW: Yes.

16 HUGHES: Okay.

17 HADDOW: Yeah. But the big thing is the heat transfer and your core temperature for
18 heat stress is how did your core get heated. Your breath, you're heating up
19 your core. You're breathing in hot air, it's going to have an effect. You'll
20 have a greater effect if it's steam or humid because when the hot water gets
21 to your lungs, it's able to release the energy into your body raising your
22 [inaudible] core temperature. Have you been into a sauna?

23 HUGHES: Yeah.

24 HADDOW: You can feel it when you breathe it in.

25 DO: I don't think you should ask any personal questions.

26 HADDOW: Oh okay. I'm sorry.

27 POLK: Before we—you concluded because I had found that quote from my notes
28 about the—what I'd written was 'how to show just how CO_2 + heat +

moisture caused organ failure and perhaps hyperthermia and he doesn't tell us what caused the organs to fail'....

DO: Can you tell us where your notes come from?

POLK: Well what I would do is give you—I had not given you my notes because I thought Bill's were much more comprehensive, but let me give you my notes to see if you have anything based on my notes, just so that we got what we got very clear.

DO: Your notes of the June 30th meeting?

POLK: Yeah, yeah. Because I thought they had been incorporated.

DO: Alright. Can I get copies of your notes?

POLK: Yeah, let me—I can give you copies right now and then while we have Rick here, if you've got follow-up, but I don't want to have [inaudible] to—if you have to come back.

DO: Great, thank you.

HADDOW: Would we be able to do anything on the telephone or do we always have to do it in person? I mean, I'm....

DO: You mean, we don't make you drive back up here?

HADDOW: No, I don't mind driving back up here if you guys are okay with it. You know. No, I'd be more than happy to come up here. I was just asking for your convenience if you have one or two questions I don't know what our understanding is at this moment.

POLK: I—you know it's not clear what will happen from here forward.

HADDOW: Okay.

POLK: But yeah, definitely when we work with experts we try to do what we can over the telephone and we try to always reduce our cost.

[TIME STAMP 1:19:59]

HADDOW: Absolutely. How, how does, how does my relationship with both sides in my current position—I'm not sure, if you guys are now thinking, and you

wake up at 3 and say 'God, I want to know what this question', I don't know how I stand technically.

HUGHES: You're not being represented by either side so you're free to answer questions from either one of us but you need then to disclose that to the other side.

HADDOW: Okay, so I'm—according to you guys, I'm good to talk to either one of you so long as I share that information, then I have permission to talk to you guys.

HUGHES: You might want to send an email out just saying, just to both sides that "I've spoken to Bill today" and then they know to ask me what we talked about.

HADDOW: Okay, okay.

[TIME STAMP 1:20:41]

HUGHES: You should, I think right now, have an email for both sides.

HADDOW: I don't have the Blackberry though. It's in town, so.

HUGHES: Okay.

HADDOW: Okay, so I just want to make sure I don't compromise anybody, but I'm also providing everything you might need.

DO: Appreciate it.

HUGHES: We [inaudible] the case [inaudible] to speak to the witnesses and professional courtesy relating to the [inaudible].

DO: Thank you.

HUGHES: ...experts who are retained.

HADDOW: Okay.

HUGHES: So your question Shelia?

POLK: Well I just wondered if I had—[inaudible] given you our notes, I had not given you my notes, because I thought everything was in Bill's, and Bill's were more comprehensive – because I came in late to the meeting, but then

1 I note that Bill did not have that reference I had made about the—the note I
2 took when Rick was talking about CO_2, plus heat, plus moisture
3 [inaudible]. I just thought while we have Rick, Rick here, before we let
4 him go, make sure if there's anything from my notes that he might want to
5 follow up on if he gets that chance.
6 HUGHES: Take a look at these notes, where it says Haddow—there's a big arrow,
7 read those if you can then let me ask you two questions. First of all, do
8 you, does that in any way refresh your recollection as to Ms. Polk being
9 present at that June 30th, 2010 meeting?
10 HADDOW: Well I understood she was there, but I don't think you were talking much.
11 HUGHES: My question is, is—reviewing that in any way refresh your recollection,
12 yes or no?
13 HADDOW: En....
14 HUGHES: Sounds like no.
15 HADDOW: Well, no, it, it does refresh my memory, but I'm—my memory is based on
16 what I understand now, you know that I went for 10 minutes on . . .
17 HUGHES: What I'm trying to do is just to see if those notes help you remember, a
18 separate recollection as—anything during that meeting [inaudible], and the
19 first question was, does it help you refresh in any way your recollection
20 that Ms. Polk was present then?
21 HADDOW: I, I, yes. I, I, I remember that we all talked, and I understood she was there.
22 HUGHES: And then she—she took some notes based apparently—on a conversation
23 that she had in front of you about carbon dioxide and, let's see, the more I
24 try to figure what she's writing, but it says 'how carbon dioxide plus heat
25 plus moisture caused organ failure....
26 DO: ...hypercapnia, hypothermia'....
27 HUGHES: ...and then 'and the medical examiner presumably doesn't tell us what
28 caused organs to fail'. [Inaudible]. Mr. Haddow, the question is, do you

remember discussions along those lines? I don't want you guessing or making stuff up, but I was just trying to interpret that.

HADDOW: I do not remember speaking about that, but I have spoke about that to a lot of people often and you know...as...if I—if you're asking me if I can remember it during that particular conversation, I, I, I do not, because I've been talking to a lot of people about it, and this is—it's very common, and that's something that I, I pointed out often, so I can not honestly tell you without discussing or just [inaudible] on every [inaudible] that I was there, that she was there. I'm also very embarrassed that there was an hour—now that my notes said that there was an hour meeting and it did not seem like that too and it follows just from the past, and I apologize for my....

DO: No worries, I thank you for that, I didn't have any questions off of it, so.

HUGHES: I have one additional matter, just so there's complete disclosure. Where is your little journal? [Inaudible] at the beginning. I didn't look at it, but you explained yesterday, before the copies, that only a portion of the journal applied to this case, correct?

[TIME STAMP 1:24:54]

HADDOW: Yeah, and I gave, I actually gave . . .

DO: Tammy?

HADDOW: No, I actual—I actually told you—I forget your first name....

DO: Truc.

HADDOW: I gave Truc permission to read underneath the stickers just so she'd, she could see that it wasn't relevant to this, but I just didn't want it to go into public record that she got involved in the case without you.

HUGHES: You, you would, but you would make the same offer to the State, correct?

HADDOW: Sure, yeah, I had, I had . . .

DO: Are you sure it was me? I don't recall that. Are you sure it wasn't Tammy?

HADDOW: Well you were—I'm pretty . . .

DO: Yeah, okay, [inaudible].

HUGHES: I know you made the offer [inaudible].

HADDOW: Well, who, who was here when that meet—was it Tammy when I was trying to tell her—I didn't want her—I wanted her to have these in groups so she could....

DO: Yeah, I wasn't even here [inaudible].

HADDOW: [Inaudible]. That was Tammy and I apologize.

DO: No, no problem.

HADDOW: But I wanted to make sure...absolutely clear that you guys realized that I didn't—that I'm not taking anything out, and I said "Go ahead, look underneath there, you can read them" but I just—didn't want them to be a public record or, you know. And there wasn't anything bad. One of them was Lou, Lou Diesel's private eyes—a lot of private eyes are just insurance people, and he was so jealous of me and I wrote some nasty things about him. [Laughter]. So I don't want you to see that and I don't want you—there—so, if you want to look at my—if you want me to . . .

HUGHES: [Inaudible].

DO: I have what you gave us [inaudible].

HADDOW: Oh, abso—oh, absolutely, and . . .

POLK: And just, sorry to keep you here, but under the section about where you were telling us how a defense expert might attack your work—I'm just looking at what I wrote, 'to attack Rick's work—poke holes in the hard science'. Do you remember what that was about?

HADDOW: Yeah, essentially what, what—somebody's that's trying to have a different opinion—is they're going to try to say that people don't breathe out this much, and the volume of air and the concentration of air, you know, the oxygen outside, isn't going to be—it, it's, it's as significant. They might say when you open up the vents, all the air is going to be released, versus

1 I'm saying that only the front two-thirds are being released.
2 POLK: So are you confident in what you're saying about [inaudible] the front
3 opening?
4 HADDOW: Yes, yes. And, and, and one of the reasons that I feel confident is it's being
5 corroborated by the witness statements that all moved from where they
6 were—where they couldn't even feel the door open a few times—to where
7 they could feel the door open, and so I have independent people explain it
8 to me—those observations. But, you know, if someone wants to say that
9 maybe they were mistaken in their understanding of how they felt, or not
10 felt—you know, that's what I'm trying to say, people might try to dismiss
11 my assumptions or my analysis.
12 POLK: And then I had also written down 'attack your engineering background'.
13 Does that—do you believe, there's some expert out there with a different
14 background that could render a different opinion?
15 HADDOW: No, no, I just think they would—no. I think people—you know, if
16 you're...I made an example if you're—if you do a model, and you're
17 trying to figure out what's going to happen if you do these things, but if
18 you're not scrupulous, you can change the model to, to, to make it work
19 what you want it to, a lot of the chemical companies do that for
20 pharmaceuticals, where they don't report actually what happened. They
21 can adjust the data and so the outcome, the result, can be modified by
22 removing some parts of the equation—not giving it what each that it should
23 have. And so, if they're trying to show something, they adjust over here to
24 show it not happening. So that's what I talk about—pushing holes in the
25 data.
26 POLK: And then hyper-inflated values by Rick?
27 HADDOW: The, the values—I'm sure that would be the, the pollutant concentrations.
28 POLK: Are you suggesting that an expert who wanted to offer an opinion different

from yours would say that you used inflated values? I understand that this is what I wrote down when you were talking.

HADDOW: Yeah and you can inflate the values. No, it would be how—what was the contribution? What was the contribution of CO. If I say, according to the medical records that I have, and all the research—clinical, it's this contribution, he might be able to find a document that has a different contribution. So—when they start plugging in [inaudible] the model, or numbers that—we won't, we won't end up being the same. So it's interpret—interpreting the information. And right now, what I've done, what you all have, is I, I have both extrapolated beyond the data points and I'm having to interpolate between the data points, and unfortunately I can't do linear regression because I don't have the points, we're just out in space, so, there's a lot of variables and a lot of unknowns at the moment.

POLK: Okay. I have nothing else. Well, I'll let you know.

HADDOW: I can hear your st—I can hear your stomach.

DO: Yeah, I know, I have not eaten anything all day. We're good?

HADDOW: I'm sorry.

DO: Well you were talking about donuts earlier.

HADDOW: That's true.

DO: Alright. The time is . . .

POLK: [Inaudible] all morning.

DO: 3:50

[TIME STAMP 1:30:35] [END OF TAPE AND PART 4]

Sheila Polk, State Bar No. 007514
Yavapai County Attorney
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Attorneys for STATE OF ARIZONA

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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF YAVAPAI

STATE OF ARIZONA, Plaintiff, vs. JAMES AUTHUR RAY, Defendant.	CAUSE NO. V1300CR201080049 STATE'S AMENDED LIST OF WITNESSES Division PTB

The State of Arizona, by and through Sheila Polk, Yavapai County Attorney, hereby submits the following amended list of witnesses it intends to call in the case-in-chief.

I. WITNESSES – CASE-IN-CHIEF

1. Paula Aletto
2. Linda Andresano
3. Jeanette Armstrong
4. Sgt. Frank Barbaro, YCSO
5. Michael Barber
6. Scott Barratt
7. Lt. Tom Boelts, YCSO
8. Kim Brinkley
9. Ginnie Brown
10. Julia Bunker
11. Beverly Bunn
12. Taylor Butler
13. Lou Caci
14. Dustin Chambliss, VVFD
15. Matt Collins
16. Brent Cutshall, M.D., FMC
17. John DeMartino
18. Matthew Dickson, D.O.

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19. Detective Ross Diskin, YCSO
20. David Duhaime
21. Mark Fischione, M.D., MCME
22. Fawn Foster
23. Joshua Fredrickson
24. Vincent Furrey, M.D., VVMC
25. Laurie Gennari
26. Tere Gingerella
27. Lance Giroux
28. Dawn Gordon
29. Daniell Granquist
30. Richard Haddow **
31. Jennifer Haley
32. Amayra Hamilton
33. Michael Hamilton
34. Greg Hartle
35. David Kent M.D.
36. Danielle Koproski
37. Robert Lyon, D.O., MCME
38. Chris Majer
39. Cynthia Manner
40. Melinda Martin
41. Dennis Mehavrer
42. Debbie Mercer
43. Sarah Mercer
44. Ted Mercer
45. A.L. Mosely, M.D., CCME
46. Richard Neff, MD, FMC
47. Josh Nelson, YCSO
48. Nancy Ogilvie
49. Mike Olesen
50. Timothy Omley, DO
51. Steven Pace
52. Detective Steve Page, YCSO
53. Deputy Jay Parkinson, YCSO
54. Mark Peterson, D.O., FMC
55. Michelle Pfankuch
56. Melissa Phillips
57. Andrea Puckett
58. Brandy Rainey
59. Stephen Ray
60. Mickey Reynolds
61. Mark Rock
62. Vicky Rock
63. Sean Ronan
64. Lisa Rondan

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65. Rick Ross
66. Jane Shore-Gripp
67. Jack Silver
68. Susan Smyser
69. Sidney Spencer
70. Sheryl Stern
71. Douglas Sundling
72. Deputy Joseph Sutton, YCSO
73. Joel Swedberg, Guardian Air
74. Dawn Sy, Criminalist
75. Laura Tucker
76. Greg VanderHaar, VVFD
77. Nell Wagoner
78. Clayton Young, CVFD
79. Toxicologist from National Medical Services (To be identified)

** denotes an added witness.

The State reserves the right to call additional witnesses or to submit additional exhibits listed in its disclosures as permitted by the Rules of Criminal Procedure and consistent with pending rulings by this Court.

RESPECTFULLY SUBMITTED this 22nd day of April, 2011.

By: Sheila Polk
SHEILA SULLIVAN POLK
YAVAPAI COUNTY ATTORNEY

COPIES of the foregoing hand delivered this 22nd day of April, 2011, to

Hon. Warren Darrow
Judge of the Superior Court

Thomas Kelly
Truc Do
Attorneys for Defendant

By: Kathy Durer

Yavapai County Attorney

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SHEILA POLK
Yavapai County Attorney

December 10, 2010

Truc T. Do
Munger, Tolles & Olson L.L.P.
355 South Grand Avenue, 35th Floor
Los Angeles, CA 90071-1560

Re: State v. Ray, Request for Discovery and Interviews of State's Expert Witnesses, Your Letter dated December 7, 2010

Dear Ms. Do:

I am in receipt of your letter dated December 7, 2010. Below are responses to each item.

Disclosure Request

With respect to your request for the reports and remunerations for each of the State's Expert Witnesses, the State provides the following:

Rick Ross: The State disclosed the CV and Fee Agreement for Rick Ross (Bates No. 5378-53888). We anticipate Mr. Ross will complete his report by the end of December. Upon receipt of his report it will be immediately disclosed.

Steven Pace: The State disclosed the CV and Fee Agreement for Steven Pace (Bates No. 5376-5377; 5505-5506). Although the Fee Agreement was included in the documents provided with the State's 15th Supplemental Disclosure Statement, it was inadvertently omitted from the items described on the Statement. It was redisclosed with the same bates numbers in the State's 22nd Supplement Disclosure Statement to document the earlier disclosure. We anticipate Mr. Pace will complete his report by the end of December. Upon receipt of his report it will be immediately disclosed.

Richard Haddow: The State withdraws Mr. Haddow as a witness in this case.

Matthew Dickson: Dr. Dickson's CV was disclosed at Bates No. 5669. We are currently finalizing the retention and fee agreement. We anticipate Dr. Dickson will complete his report by the end of December. Upon receipt, both the signed Fee Agreement and his report will be promptly disclosed.

Douglas Sundling: Mr. Sundling was disclosed to provide timely notice that the State is considering retaining him as an expert witness. The State does not have an agreement with Mr. Sundling at this time. Should an agreement be reached, the Fee Agreement and any report prepared for Mr. Sundling will be promptly disclosed.

Interview Requests (Expert Witnesses)

As indicated above, the State anticipates that our experts will have their reports completed by the end of December. We will work with you to schedule the interviews of our experts in January when you will have the benefit of their reports. As soon as possible, please provide Penny Cramer, my assistant, with multiple dates in January of your availability for the interviews of the experts and indicate whether you want to conduct the interviews telephonically or in person. As you know, the schedules of professionals fill up quickly.

Interview Request (Civilian Witnesses)

Based on your previous request, we have scheduled the following interviews:

Date: **December 16, 2010**
Location: Thousand Oaks Police Department Conference Room
2101 E. Olsen Road
Thousand Oaks, CA 91360

Schedule: 9:00 a.m. Jennifer Haley
11:00 a.m. Sheryl Stern (tentative – awaiting confirmation)

Date: **December 21, 2010**
Location: San Diego Police Department, Northeastern Division
13396 Salmon River Road
San Diego, CA 92129

Schedule: 9:00 a.m. Tere Gingerella
11:00 a.m. John De Martino
1:00 p.m. Stephen Ray (tentative – awaiting confirmation)
3:00 p.m. Kim Brinkley (tentative – awaiting confirmation)

We were unable to schedule the following witnesses as requested:

Bobby Brooks-Moore: Ms. Brooks-Moore has moved and now lives in Nashville, Tennessee. Her new address is 912 Gold Hill Court, Franklin, TN 37069. Please indicate whether you wish to interview her in person there.

Melanie Dodaro: Ms. Dodaro resides in Canada at 627 Denali Drive, Kelowna, BC VIV2P5. In your letter dated November 30, 2010, you mistakenly listed her as a resident of Arizona. Please indicate whether you wish to interview her in person.

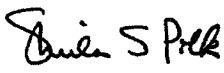
Lisa Rondan, Brent Mekosh and Lynette Wachterhauser are not available until January 2011.

Extending the Motion Deadline

The State understands your concern that the motion deadline of December 27, 2010 may need to be extended to allow motions concerning issues learned after the deadline. Indeed, the State has twice raised this same concern with the court and you as we have not received any information relating to your trial expert, Dr. Ian Paul. You may recall that when the State expressed this concern, the Court indicated it understood that there may be issues that arise after the deadline that will need to be addressed. Accordingly, the State will not object to your request to extend the motion deadline.

If you have any questions or need anything further, please do not hesitate to contact me.

Very truly yours,



Sheila Sullivan Polk
Yavapai County Attorney

Defense Requested Jury Instructions
4/14/11[1]

Delay in trial

As you know, this trial was delayed for two days. The delay was necessary for the court to resolve a legal issue. Under the United States Constitution, the Arizona Constitution, and the Arizona Rules of Criminal Procedure, the prosecution has an affirmative duty to disclose to a defendant all exculpatory evidence. Exculpatory evidence means evidence that is favorable to the defendant. This rule is essential to the defendant's right to a fair trial.

In this case, the Court found that the prosecution violated its constitutional duty by suppressing, for a period of eleven months, evidence that is "clearly exculpatory" to Mr. Ray. The Court has further concluded that "the State not only failed to disclose the information, it misrepresented (whether inadvertently or not) that no such information existed." I will give you further instructions regarding the evidence at issue as the need arises during trial.

Because of the State's violation, the Court has ordered a continuance of this trial for two weeks. During this time, you will not report to court, but the admonition will apply fully. When trial resumes, the Defense will be permitted to recall certain witnesses to examine them on circumstances regarding the State's suppression of evidence.

Suppression of Evidence (to be given after testimony of each relevant witness)

Ladies and Gentleman, you have heard testimony from this witness regarding the suppression of evidence by the State. As I instructed you previously, under the United States Constitution, the Arizona Constitution, and the Arizona Rules of Criminal Procedure, the prosecution has an affirmative duty to disclose to a defendant all exculpatory evidence. Exculpatory evidence means evidence that is favorable to the defendant. This rule is essential to the defendant's right to a fair trial.

This Court has concluded that the prosecution violated its constitutional duty by failing to disclose, for a period of eleven months, evidence that is "clearly exculpatory" to Mr. Ray. The Court further concluded that "the State not only failed to disclose the information, it misrepresented (whether inadvertently or not) that no such information existed."

You may consider the fact that the State suppressed the evidence in weighing the evidence offered by the State in this case. You may draw an inference that is unfavorable

[1] The instructions submitted on April 14 contained one additional instruction pertaining to evidence regarding other sweat lodge ceremonies. This requested instruction, which stated that the jury could consider prior sweat lodge evidence only as it may relate to causation, is now explicitly not the law of the case due to the Court's ruling on April 22 that the prior sweat lodge evidence is not admissible to prove causation. The instruction has therefore been deleted from this submission.

to the State based on the fact of suppression, which in itself may create a reasonable doubt as to the defendant's guilt.