

KATHERINE JACKSON V AEG LIVE September 4th 2009. AM session only,
waiting for PM



Dr. Earley

Judge. You may continue your cross-examination.

Mr. Boyle. Thank you, your honor. Dr. Paul Earley, recalled as a witness by the defendants,

Was previously sworn and testified as follows: cross-examination (resumed) by Mr. Boyle:

Q. Dr. Earley, good morning.

A. Good morning.

Q. When we left off yesterday, we were talking about your study of Propofol. Do you recall that?

A. I do.

Mr. Boyle. Mr. Dowell, will you please put back up 13012, "Propofol"?

Q. And to briefly recap, this is the study that was funded by AEG Live for \$53,000; correct?

A. That's correct.

Q. And this study was funded by AEG Live after the death of Michael Jackson; correct?

A. That's correct.

Q. And this study was funded by AEG Live during the pendency of the litigation that you're here testifying today about; correct?

A. I now know that information, yes.

Q. Because you know that the complaint in this matter was filed in September of 2010; right?

A. I know that now. I did not know that at the time.

Q. But as you told us yesterday, you knew this litigation was pending when you were doing your research for AEG Live; correct?

A. I knew there was litigation pending, yes, but I didn't know the date. That's the part I want to be clear about.

Q. But you -- but as you testified at your deposition, you had been retained by AEG Live in February of 2011 in a consulting capacity; correct?

A. That's correct.

Q. And you were doing consulting work for AEG Live as of February 11th -- I'm sorry -- as of February 2011; right?

A. As of that time I began doing consulting research, correct.

Q. Okay. But it was consulting; right?

A. Yes.

Q. Okay. Now, sir, we were talking about potential conflicts in not disclosing in your article that you were doing that consulting work for AEG Live, and I think you -- I take that back. Why don't we -- I'd like to show -- strike that. You testified, when Ms. Cahan was asking you questions, that you were familiar with the guidelines for submitting articles to the *journal of addiction medicine*; correct?

A. That's correct.

Q. And you read those guidelines before you submitted the article; correct?

A. I did.

Mr. Boyle. And so I'd like to show exhibit 989, please. Let's go to the first page. Highlight the title.

Mr. Panish. You can put it up. It's in evidence.

Mr. Boyle. It's in evidence.

Q. So do you recognize this as the *journal of addiction medicine* online submission and review system, sir?

A. I do.

Q. And this is the system you used in submitting your article for peer review and publication; correct?

A. That's correct.

Q. Okay. And this is actually a new peer-reviewed journal; correct?

A. I think it's about three years old at this point.

Q. Okay. About three years old. And some peer-reviewed journals, like the *New England journal of medicine*, have been around much longer; correct?

A. That's correct.

Q. And so this is a -- in the developing field of addiction medicine. This is a relatively new publication?

A. That's correct.

Mr. Putnam. Asked and answered.

Judge. Overruled.

Q. And, sir, how many peer-reviewed articles have you authored?

A. This is the -- I have one in submission now, and I have three other peer-reviewed -- I think two to three other peer-reviewed articles that appeared.

Q. What publications are those other two to three peer-reviewed articles in?

A. Several in European journals, European journals of substance abuse. And I have now -- we're not sure where we're going to submit it.

Q. And how many peer-reviewed articles do you have published in U.S. Publications?

A. One.

Q. And that's this one here?

A. That's correct.

Q. And so the only peer-reviewed articles you have in the U.S. Is the one funded by AEG Live; correct?

A. Actually, that's incorrect. I'm sorry. I forgot about several older articles in 1991 in the *journal of substance abuse treatment*. And then I have two articles in a peer-reviewed journal of general physiology from 19 -- boy, this is really going back. I think it's 1980. I just want to be complete with you.

Q. How about in this century, the 2000s? You have one peer-reviewed article published in the united states, and that was the one funded by AEG Live; correct?

A. So if we're drilling down --

Q. Just drilling down to this century.

A. -- let me make sure -- but you also said some criterion about U.S. Journals, and I got confused about that.

Q. U.S.-based peer-reviewed journals.

A. U.S. Peer-reviewed journals plus this century, yeah. If we drill it down like that, there's one.

Q. And there's been 13 years in this century so far; right?

A. Yes.

Q. Okay. So this is the first U.S.-based article you got published in the U.S. For this century; correct?

Ms. Cahan. Objection. Asked and answered.

Judge. Overruled.

A. Yes.

Q. Okay, sir.

Mr. Boyle. Okay. On to exhibit 989. If -- Mr. Dowell, if you could turn to 189-2, and if you could blow up the "conflict of interest" paragraph. And you can do it where it says, "for example."

Q. And, Dr. Earley, when you were preparing to submit your article to the *journal of addiction medicine*, as you stated, you read these guidelines closely; correct?

A. I did.

Q. I'm going to read the paragraph entitled, "conflicts of interest": "authors must state all possible conflicts of interest in the manuscript, including financial, consultant" --

Mr. Boyle. I'd like you to highlight "financial and consultant," Mr. Dowell. -- "financial, consultant, institutional and other relationships that might lead to bias and a conflict of interest."

Mr. Boyle. I'd like you to highlight "bias," Mr. Dowell. "if there is no conflict of interest, this should also be explicitly stated as 'none declared.' all sources of funding should be acknowledged in the manuscript. All relevant conflicts of interest and sources of funding should be included on the title page of the manuscript with the heading 'conflict of interest and source of funding.'"

Mr. Boyle. Mr. Dowell, I'd like you to highlight "title page."

Q. And you read this, sir, before you submitted your article?

A. I did.

Q. And as you just told us before, you had a consulting arrangement with AEG Live; correct?

A. That's correct.

Q. And they were paying you financial benefits to serve as a consultant; correct?

A. That's correct.

Q. And, sir, now I'd like to call --

Mr. Boyle. Mr. Dowell, maybe you could sort of keep that aside and call back up the first exhibit of the day, which is 13012.

Q. Okay, sir --

Mr. Boyle. On the left I'd like to have that bubble you just added. Put that up a little bit. Okay.

Q. So on the right, sir, we have the title page of your study?

A. The title page of the published study, that's correct.

Q. Okay. Great. Now, does the source of funding of the study appear on the title page?

A. Yeah. You're confused here about something. It says, "title page of the manuscript," and the manuscript I sent in did indeed have the source of funding on the title page. That's the manuscript I submit. Once I submit that, the formatting becomes part of the journal. I have no control over how the journal formats it. And in fact, if you would like to know this information, the source of funding appears in the place the journal normally puts it, at the rear of the article. So when I --

Q. Sir, did you bring your manuscript here today?

A. I did.

Q. Can I see that?

A. I guess I don't have it up here.

Q. Can we get it? Is it in the courtroom somewhere?

A. Oh, did I bring my manuscript?

Q. Yes, sir.

A. No, I did not bring my manuscript, only the published article.

Q. Okay. And, sir, then on the title page of the manuscript, did you disclose that you were working as a consultant for AEG Live with regard to this litigation?

A. The -- I disclosed the source of funding as requested on the title page. The -- because the sentence, if you read the entire sentence, it says, "might lead to bias or conflict of interest."

Q. Sir, again, the first thing I said to you when we started yesterday was, I'd like you to answer my questions. I'd like to get you out of here as soon as possible.

A. And I just want to make sure you get the best possible answer.

Q. I know you're concerned about what I get, but I'm pretty quick and --

Ms. Cahan. Objection, your honor. Argumentative. He's answering the question. Mr. Boyle may not like it.

Mr. Panish. He's not answering it.

Judge. Overruled.

Q. So my question is: when you submitted the manuscript on the title page, did you put on there that you had a consulting arrangement with AEG Live? "yes" or "no"?

A. No, because it did not have --

Q. All right, sir. So the answer is "no"; correct?

A. The answer is, "no."

Q. Right. Okay. But the "conflict of interest" section says specifically: "authors must state all possible conflicts of interest in the manuscript, including financial, consultant." and you had a consulting relationship with AEG Live that you didn't state on the front page of the manuscript; correct?

Mr. Putnam. Objection, your honor. Misstates the document.

Judge. Overruled.

A. The document says, "it might lead to bias" --

Q. Is that correct? Sir, I'd like you to answer my question.

Judge. Sir, just answer the question. Listen to what's being asked. Just answer what's being asked.

A. I did not put it on there because it was not indicated.

Q. Well, sir, so you did not put it on there; right?

A. Because it was not indicated, I did not put it on there.

Q. Well, sir -- or because you were trying to hide it; right?

A. No. That's ridiculous.

Q. Sir, it's not a possible conflict of interest that you were working for AEG Live on a litigation while you are doing a study that was funded by them? You're trying to tell us that that's not a possible conflict of interest?

A. That would not create a conflict of interest as to the outcome of a study of health care professionals, of which Michael Jackson was not, on data that was already complete and our analysis of that data.

Q. Sir, aren't you -- you're using this article as a basis of some of your opinions in this case; correct?

A. Actually, how I'm --

Q. Is that -- "yes" or "no"? I mean, are you or are you not?

A. In some small ways, it was. And if you'd like me to tell you how, I will.

Q. Sir, isn't it part of your opinion that Mr. Jackson had access to drugs like doctors had access to drugs?

A. No, he did not have access to drugs like doctors had access to drugs.

Q. So Mr. Jackson did not have as much access to drugs as doctors do; correct?

A. Doctors have direct access to drugs. Mr. Jackson did not have direct access to drugs unless he ordered them, which he obviously did.

Q. Sir --

Mr. Boyle. I'm going to move to strike that, your honor.

Judge. Motion denied.

Q. Sir, are you an independent witness here in this case?

A. I am.

Q. Really? Okay.

Ms. Cahan. Objection. Move to strike.

Judge. Motion granted.

Q. Sir, in your Propofol study of 22 doctors who were addicted to Propofol, the one we're talking about right now --

A. Correct.

Q. -- those doctors had direct access to their own Propofol; correct?

A. That's correct.

Q. And Mr. Jackson did not have direct access to Propofol; correct?

A. He had to get it through physicians, correct.

Q. So the answer is "correct"; right? Mr. Jackson did not have direct access?

A. Mr. Jackson did not have direct access to Propofol.

Q. But the doctors you studied did; correct?

A. Correct.

Q. And the doctors you studied self-administered the Propofol; correct?

A. Correct.

Q. And there's no evidence that Mr. Jackson ever self-administered Propofol; correct?

A. That's correct.

Q. And, sir, as a general proposition, you'd have to agree with me, right, that self-administration of Propofol is more dangerous than having a physician administer Propofol? As a general premise.

A. As a general premise. I'm not sure it applies here, but as a general premise, i'll agree with that.

Q. And, sir, these doctors you determined were addicted to Propofol; correct?

A. I did.

Q. And, sir, you do not have the opinion that Mr. Jackson was addicted to Propofol; correct?

A. My statement was that I did not have sufficient data to say that he was addicted to Propofol.

Q. Okay. So you're not opining that Mr. Jackson was addicted to Propofol; correct?

A. There's not sufficient data to say that, that's correct.

Q. Now, let me ask you this, sir: of the 22 doctors that you studied, how many are alive today?

A. I don't know that data. During the deposition you asked me that question, and at the time, as far as I knew, none of them had died.

Q. So your deposition was march 28th, 2013?

A. That's correct.

Q. And so as of that date, as far as you know, all 22 were alive?

A. And I had insufficient follow-up to render an opinion on that. That's why it does not appear in the article. There's just no data on that.

Q. Sir, have you had time to make 22 phone calls to check up on your patients to see if they're alive?

A. I don't currently work at that facility anymore, sir, and as a result, I cannot get access to those medical records, nor have those individuals consented to those follow-up calls, which would be a HIPAA violation if I called them, so I cannot.

Q. All right. But did you think all of their prognoses were grave?

A. Some of their prognoses were grave, yes.

Q. And they're all alive?

A. That's incorrect. We don't have data about it.

Q. Oh. So they might all be dead?

A. It's possible they might all be dead; it's possible they might all be alive. I just don't have data.

Q. You think AEG will provide additional funding so you can figure out if they're alive or dead?

Mr. Putnam. Objection. Move to strike.

Q. Okay. Can you --

Judge. Wait a minute. Objection sustained. Argumentative. Question is stricken.

Q. So at this point you're just speculating as to whether they're alive or dead?

A. You asked me to do so, and so I was doing my best to give you information in that regard, Mr. Boyle. I'm sorry. You asked me to speculate about it.

Q. And these people were all doctors; right? All physicians?

A. They were not all physicians. Some of them were nurse anesthetists, and I don't know those numbers exactly. It appears in the paper, but I don't have it memorized.

Q. So they're still all medical personnel; right?

A. They're all medical personnel.

Q. So you can check up on the internet to see if they still have their license or determine something about it; right?

A. I guess in the abstract I could, but that was not the design of the study. And, frankly, it feels a little intrusive for me to do so.

Q. Okay. And, sir, do you recall yesterday, we were talking about your blog about "Michael Jackson - addiction in the privileged"?

A. Correct.

Q. And you are on the board of the American society of addiction medicine?

A. Yes. As I said yesterday, that is correct.

Q. And I asked you if it would violate any of their guidelines to publish something where you diagnose a celebrity. Do you recall that?

A. Yes. And you used the word "diagnose," correct.

Q. And you told me there's unwritten guidelines that you're not supposed to do that; right?

A. You're not supposed to make a direct diagnosis because I have not seen a patient.

Q. And you told me there were unwritten guidelines on that; right?

A. It's just good ethics.

Q. But you said yesterday you said, "unwritten guidelines." I can pull it up. You remember what you said yesterday?

A. My recollection of what I said yesterday is there are unwritten guidelines that are good, common ethics about making a diagnosis. I haven't seen a patient.

Q. I'd like to show you exhibit 937.

Mr. Boyle. You might want to give Ms. Cahan one of those.

Mr. Koskoff. Sure.

Mr. Boyle. And show it to the court and the witness and counsel, first.

Q. Here you go, sir (indicating).

A. Thank you.

Ms. Cahan. I don't know how he's planning on using this, but this would be hearsay.

Judge. Sustained unless you have some other way --

Mr. Panish. It's evidence code 721. It's a publication.

Mr. Boyle. This is his organization.

Mr. Panish. It's his organization. 721(b).

Mr. Boyle. For the record, this is the A..S.A.M., American Society of Addiction Medicine, "public policy statement on principles of medical ethics."

Mr. Putnam. Doesn't make anything not hearsay, your honor.

Mr. Panish. 721(b)(1).

Ms. Cahan. Your honor, I don't think it falls under 721(b)(1).

Mr. Panish. (b) (1) Absolutely. He just said what ethics --

Ms. Cahan. it has nothing to do with any of his opinions in this case.

Q. Sir, this is the public policy statement --

Mr. Putnam. Your honor, I have an objection.

Ms. Cahan. We have an objection pending.

Judge. Okay. Overruled. You can lay some foundation.

Q. Sir, is this the public policy statement on principles of medical ethics put out by the American Society of Addiction Medicine, your organization?

A. To the best of my understanding, it is.

Q. And you're on the board of that organization?

A. I am.

Q. And it's a reliable source, or else the A.S.A.M. Wouldn't put it out; correct?

A. That's correct, if this is the document, yeah.

Q. Now -- and it says on the back, "copyright 2005, American society of addiction medicine"; correct?

A. To the best -- yes, it does say that.

Q. And it says -- on the fourth page, it says it was adopted by the A.S.A.M. Board of directors October of 1992; correct?

A. Correct.

Mr. Boyle. Your honor --

Q. Again, this is the authoritative source of the A.S.A.M. As to their public policy statement as to the principles of medical ethics; correct?

A. I'm sorry. The question --

Q. This is the authoritative public policy statement by the A.S.A.M. On the principles of medical ethics?

A. Yes.

Mr. Boyle. Your honor --

Ms. Cahan. I'll just renew my objection on the record. It does not fall under 721(b)(1). It's not something he testified that he ever considered, relied on, or --

Mr. Panish. If you go to 3, it says --

Judge. Overruled.

Mr. Boyle. So, Josh, I'd like you to highlight the title and "A.S.A.M. Public policy statement." and for the record, this is 937-1 through 4.

Q. Okay, sir. And as we said, this is your organization's public policy on principles of medical ethics; correct?

A. It is.

Q. Okay.

Mr. Boyle. And, Josh, I'd like you to go to the fourth page.

Q. I want to show you, sir, the last paragraph in this statement, and I will read it into the record. "2. The physician may be asked for an opinion about an individual who is in the public eye or who has disclosed personal information to the media. The physician may comment on general issues raised without making specific diagnostic or therapeutic comments on the individual in question." did I read that correctly?

A. You did.

Q. Does that refresh your recollection that there is actually a written policy on commenting on individuals in the public eye?

A. I had forgotten that this had been published. Thank you for helping me with that.

Q. No problem. Now, sir, I'd like to go back to your blog.

Mr. Boyle. And maybe, Josh, you can put that on one side, and we can pull the blog back up.

Q. Okay, sir. So on the left side, we have exhibit 13,024, which has been put into evidence yesterday (indicating), and this is the "Michael Jackson - addiction in the privileged"; correct?

A. Yes. Yes, it is.

Q. Okay. Thank you, sir. And, sir, in this article, you made specific diagnostic comments about Michael Jackson in regards to him being addicted; correct?

A. No.

Mr. Boyle. Well, why don't we go back to the article, Josh? And, Josh, I would like you to go to the first paragraph and -- no, no. I'm sorry. I want 13,024. Go to the first paragraph, please. The sentence, "once he began using it." it's about four lines down. I'd like you to highlight that. Two to four lines down. "Once he began using it." start there.

Q. It says -- in reference to Michael Jackson, sir, you wrote: "once he began using it" -- which was referring to Propofol -- "it was a simple matter to find physicians with mixed motives, whether co-dependent, star struck, or sociopathic, to prescribe toxic doses (not difficult at all with Propofol) and even assist in the injection of addicting drugs." did you write that, sir?

A. I did.

Q. Now, sir, isn't that an extremely specific diagnostic comment regarding Michael Jackson?

A. No.

Q. I mean, in fact, sir, isn't that the opinion that you're giving in this trial today?

A. No.

Q. It's not? Okay.

A. The opinion about the "mixed motives," yeah. But the point that -- you asked two questions. The first question is, is there any diagnosis in there? And once he began finding someone -- physicians to give it, that's a statement about getting the drugs.

Mr. Boyle. I move to strike, your honor. Nonresponsive.

Judge. Motion denied.

Q. So -- well, we went through this at length yesterday. I don't want to bore the jury with it again. But the title of this blog is "Michael Jackson - addiction in the privileged"; right?

A. Correct.

Q. And you admitted to me yesterday that the title implies that Michael Jackson was privileged; right?

A. I did.

Q. Okay. But then you're not admitting that the title implies that Michael Jackson was addicted; correct?

A. Correct.

Mr. Putnam. Asked and answered, your honor, yesterday.

Judge. Overruled.

Mr. Boyle. And I'd like to -- because -- I'd like to show the deposition. 260 --

Ms. Cahan. Your honor, he can't just show a deposition. We need to have some reason to do so.

Judge. True.

Mr. Boyle. Well, I believe, one, this is already in evidence; and two, it's directly impeaching what he just said.

Mr. Putnam. We need to see it.

Judge. All right. Show a reference to counsel.

Mr. Panish. It is in evidence.

Judge. I don't recall it, but --

Mr. Panish. It was played.

Mr. Boyle. We played Dr. Earley.

Ms. Cahan. Some short excerpts were played. I don't know what they --

Judge. Just show them what it is.

Mr. Boyle. Page 260, line 24, through 261, line 7.

Q. Sir, let me just ask you another question while we're doing this. So even in 2009, you knew Michael Jackson was addicted; correct?

A. That's incorrect.

Q. Incorrect?

Mr. Boyle. Okay. I'd like to play that portion of the deposition. Do you need a copy, your honor?

Ms. Cahan. There's an objection here in between the question and the answer.

Mr. Putnam. For a reason.

Judge. All right. Let's go to sidebar. I don't want to have this discussion here.

(the following proceeding was heard at sidebar:)

Judge. The question starts, "sir, even you"?

Mr. Boyle. Yes, your honor.

Judge. Okay. "sir, even you in 2009 knew that Michael Jackson was -- had an addiction; correct? "Ms. Cahan: objection. Argumentative. Assumes facts not in evidence, and I will note for the record that this is post-mortem. "the witness: right. So first of all, if one dies of a Propofol problem, it's not a far stretch to assume that addiction is a causation there."

Mr. Boyle. So I just asked him that exact question on the record, and he said, "incorrect."

Ms. Cahan. And I --

Mr. Boyle. And in the deposition he said, "right, I did know that."

Ms. Cahan. And I'd ask, your honor, to read down to line 23 on 261. You'll see he's not giving incorrect testimony.

Judge. Okay. By Mr. Boyle, question: "sir, you told me everything in this writing that you did was true and correct. "Ms. Cahan: is there a question?" by Mr. Boyle, question: "so when you wrote that Michael Jackson was addicted in 2009, you obviously wouldn't be lying in your web site. So how did you know in 2009 that Michael Jackson was addicted when you had no contact with him?" answer: "because he died of a drug which has addiction liability" --

Mr. Boyle. I'd like to play that, too.

Judge. -- "and did I know for sure this was the case? I mean, is this -- this is not a refereed journal with a specific opinion; this is a concern voiced in a blog."

Mr. Boyle. She says that --

Judge. Okay. Go ahead and read it. We can read it to 20.

Ms. Cahan. 20 or 23?

Judge. To 23.

Mr. Putnam. Thank you.

Ms. Cahan. That's fine.

Mr. Panish. Just so we can get through this, we have multiple counsel objecting, multiple speaking objections. The witness is not answering the question. He continues to volunteer information. So I would just ask if we could have the legal basis of the objection. When he doesn't answer, that the court could assist in reining in the witness so we can get through his testimony.

Mr. Putnam. I think we've been doing precisely that.

Mr. Panish. No, you haven't. You've been making speaking objections like crazy.

Judge. Mr. Boyle, if you want me to ask the witness to answer the question, you can ask me.

(the following proceeding was heard in open court:)

Mr. Boyle. Could I ask the reporter to read back the last question and answer, please? (the requested question and answer was read back.)

Mr. Boyle. All right. Thank you. Now I'd like to play the deposition of Dr. Earley, pages 260, line 24, through 261, line 23, with objections removed.

Mr. Putnam. No objection, your honor. (a video clip was played with the following testimony being said:) "sir, even you in 2009 knew that Michael Jackson had an addiction; correct? "right. So, first of all, if one dies of a Propofol problem, it's not a far stretch to assume that addiction is the causation there, and -- "sir, you told me everything in this writing is true and correct. So when you wrote that Michael Jackson was addicted in 2009, you obviously wouldn't be lying in your web site, so how did you know in 2009 that Michael Jackson was addicted when you had no contact with him? "because he died of a drug which has addiction liability. And did I know for sure this was the

case? I mean, this is not a refereed journal with a scientific opinion. This is a concern voiced in a blog."

Q. Okay, sir. Now, sir, that's not the only blog you wrote about Michael Jackson on your web site before you were hired in this case; correct?

A. There was one other blog that I wrote before I was hired in the case, that's correct.

Mr. Boyle. Pull that up here.

Ms. Cahan. You have a copy?

Mr. Boyle. I believe that is exhibit 13,025. And also for the record, it was exhibit 18 to Dr. Earley's deposition.

Ms. Cahan. No objection, your honor.

(defendants' exhibit no. 13,025, a blog, was marked for identification.)

Judge. Could you pass one through, Dr. Earley?

A. Oh, yes, yes.

Q. And so, Dr. Earley, this was a blog that you posted on December 5th, 2011; correct?

Mr. Boyle. I'd like that highlighted, Josh, over in the corner.

A. Yes. I can see that, so December.

Q. So I want to direct -- help you correct your final answer. You were already hired as a consultant by AEG Live when you posted this blog; correct?

A. When I looked at it, I saw that as well, yeah.

Q. So sometime -- December and February threw me off guard. So I'm not trying to -- so you were hired in February of 2011, correct, by AEG Live?

A. Correct.

Q. To be a consultant for this litigation; correct?

A. Correct.

Q. Okay. So then on December 5th, 2011, while you were a consultant for this litigation, you posted a blog on your web site that says, "Murray convicted: addiction wins"; correct?

A. Correct.

Q. And so when you were using the word "addiction" in that blog title, you were referring to Michael Jackson; correct?

A. When I used the word "addiction"? No, I was -- that's not correct. As a matter of fact, in the whole thing, it doesn't say anywhere in here that Michael Jackson was addicted. It talks -- what it does, is it immediately moves into talking about this underscores some sad issues in our society. That's the purpose of the blog.

Mr. Boyle. Your honor, I would ask the court's help --

Judge. Yes.

A. I'm sorry. Trying be helpful again. My apologies.

Judge. Just "yes" or "no."

Q. Sir, when you wrote "addiction" in this title, "Murray convicted: addiction wins," you were referring to Michael Jackson? "correct" or "incorrect"?

A. Incorrect.

Q. Okay. Were you referring to the doors lead singer, Jim Morrison?

A. No, I was not.

Q. Were you referring to Whitney Houston?

A. Well, in the abstract, I was referring to everyone who died in circumstances which might impugn addiction was involved in it. The purpose of this is to get people to understand that addiction is a problem.

Q. So, again, sir, my question was: were you referring to Whitney Houston? "yes" or "no"?

Mr. Putnam. Objection, your honor. Irrelevant.

Judge. Overruled.

Q. "yes" or "no"?

A. No.

Q. Sir, was Dr. Murray convicted of killing anybody other than Michael Jackson?

A. He was not.

Q. Okay. So I'm going to ask it one more time, so maybe you got confused on this. When you said, "Murray convicted: addiction wins," you were referring to Michael Jackson; correct?

A. I was referring to the addiction problem. The answer is, "no."

Q. Okay. That's your answer.

Mr. Boyle. And, Josh, I'd like you to show the first sentence of this blog next to the picture of Dr. Murray. Maybe you can make it bigger, because it's kind of small. Could you enbigger that?

Mr. Panish. That's not a word yet.

Mr. Boyle. E-n-b-I-g-g-e-n. Okay. And i'll read that. And this is pretty dramatic. "the sad story of another superstar's drug-propelled streak into oblivion concluded November 29 when Dr. Conrad Murray was sentenced to four years in prison for his role in the death of Michael Jackson." did I read that correctly?

A. You did.

Q. Okay. Now, sir, when it says "Michael Jackson" in that sentence, were you referring to Michael Jackson?

A. I was.

Q. Okay. And the first part of the sentence where it says, "the sad story of another superstar's drug-propelled streak into oblivion," now, that part of the sentence references, also, Michael Jackson; correct?

A. That's correct.

Q. And in the title again is "Murray convicted: addiction wins"; right?

A. That's correct.

Q. So, sir, in this blog piece, December 5th, 2011, after you've been hired as a consultant for AEG Live, were you violating the A.S.A.M. Public policy statement on ethics by publicly saying that Michael Jackson was an addict?

A. No.

Q. Is there anybody else at A.S.A.M. We could talk to, to get a different opinion on that?

A. Sure.

Q. Who would you suggest?

A. Well, why don't you call the chief executive officer, penny mills? M-I-1-1-s.

Q. And where is Ms. Mills located?

A. She's in silver springs, Maryland. She's going to want to --

Q. Sir, that's all I needed to know, is where she's located. Thank you.

A. Okay.

Q. Do you have her phone number?

A. I do. It's (301) 656-3920. That's the headquarters of A.S.A.M.

Q. Is she a friend of yours?

A. I work with her. She's the executive director.

Q. Is there an unbiased body in A.S.A.M. Who can determine whether or not this violates the public policy statement? I mean, you know what I'm saying? Is there a committee that will analyze this and determine whether it's a violation?

A. I suppose there is. You know, you could probably -- you know how you could find out about that, is by talking with Ms. Mills; okay?

Q. Okay. Thank you. Now, sir, did you -- were you instructed to post this blog by counsel for AEG Live?

A. No.

Q. Did you seek their permission before you posted the blog?

A. No.

Q. Did they ever comment on the blog?

A. Not to my recollection, no.

Q. Did you put a disclaimer on this blog noting that you were currently working as a consultant for AEG Live in a litigation regarding Michael Jackson's death?

A. It's a blog, it's not a scientific article. The answer is, "no."

Q. Well, sir, this is on the -- your medical professional web site; right?

A. Yeah. And I suppose you -- everything on the web you believe, too. I mean, this is just --

Q. Are you saying you put untrue things on your web site?

A. No, I'm not, sir. This is -- I'm just tired. My apologies.

Q. I'm sorry you're tired.

A. I said I'm tired. My apologies. I'm tired of this.

Q. You're tired of this?

A. Yeah.

Q. Well, unfortunately, we have a little while to go, sir. You can get a coffee at the break. So do you think that your patients who go to read your blog should just get a bunch of untrue information that you

just throw up there without any regard to any ethics or medical ethical standards?

Mr. Putnam. Objection. Argumentative.

Judge. Overruled.

A. If one read that article, there's a . -- what I was trying to do was promote a fine link by one of my colleagues regarding this issue. And that's the whole purpose of this blog, if you looked at the whole thing, is to get people's interest in understanding addiction. And when a superstar dies like this, it's an opportunity for everyone to learn more about the illness. That's my purpose.

Mr. Boyle. Your honor, I'm sorry to bother the court again, but I could use the court's help in getting an answer.

Judge. Just answer "yes" or "no." if you could reread the question.

Mr. Boyle. My -- I'll just paraphrase my question.

Q. My question was: you must assume that your patients go look at your web site, and I'm assuming you want them to be able to get truthful and accurate information from your web site; right?

A. I do.

Q. Because what you do is important, isn't it? Trying to get people off drugs?

A. I believe it is, yes.

Q. And so I can't imagine you'd put anything up on your web site that would be untrue, would you?

A. No, I would not.

Q. Okay. Sir, let's switch topics to something, unfortunately, a little more dull. Sir, you were retained, again, in February of 2011; correct?

A. Yes. As a consultant.

Q. To be a consultant?

A. As a consultant, yes.

Q. And how many hours did you spend as a consultant?

A. I think yesterday I said about 30, but I'm not sure of the exact number.

Q. And then -- and that was all at 375 an hour?

A. That's correct.

Mr. Boyle. Brian, maybe you can do a calculator on that.

Q. And, sir, then you were retained as a testifying expert somewhere in 2013?

A. That's correct.

Q. Okay. Since the time you were retained as a testifying expert, how many hours have you spent?

A. I think I testified yesterday, and, again, to the best of my knowledge, up until coming to Los Angeles, it was around 80 hours. Something of that nature a lot to read.

Q. Now, sir, they gave a long list of depositions and trial testimony and medical records and the coroner's report. Remember you read it yesterday about all you looked at?

A. I did.

Q. How did you read all that in 80 hours?

A. Well, when there are long depositions, I would skim past places I couldn't read, you know, that didn't seem to be relevant. I just did my best.

Q. Are you trained in speed reading?

A. I'm not trained in speed reading, but I'm a fast reader.

Q. Because some of these depositions are hundreds and hundreds and hundreds of pages.

A. Hundreds of pages, right.

Q. And multiple volumes of pages; right?

A. Correct.

Q. But you were able to digest -- I mean, what that list is, it's probably a stack of paper about this big; right (indicating)?

Judge. Indicating three feet.

Mr. Boyle. I would say three -- whatever my wingspan is. Five feet and about four feet high.

A. I have no idea or how many pages it was a lot of that was -- almost all of it was sent electronically, so I have no idea.

Q. And, sir, but you were able to digest all of that information in 80 hours?

A. I don't know about "digest." I was able to scan areas and focus on other areas within the documents, that's correct.

Q. Okay. Fine. And did you make any notes while you were reading all those?

A. I made notes after the deposition. Previous to the deposition, I did not.

Q. You mean after the deposition I took of you?

A. Yeah. The march 28th, 2013, deposition we had.

Q. You made no notes before that, but after it you did more work and made some notes?

A. Yes.

Q. Did you bring those notes today?

A. I did.

Q. Do you have them?

A. I do. They're in -- I think they're in two -- now, I want to let you know, if you look at something that doesn't apply to you, there are phone calls, so I'd ask you not to look at those.

Mr. Boyle. I'll ignore them and not put them in the record.

Mr. Putnam. Perhaps we can take a break so he can get those.

Judge. Well, he can look in his own bag.

Ms. Bina. I was just going to bring the witness's bag. That way he can find them in here.

A. No problem. I want to make sure there are no patient records or patient phone numbers on there.

Q. Tell you what. Are those two --

A. It's a total of six pages.

Q. Six pages? Okay.

A. Yeah.

Mr. Boyle. Why don't we mark, just for identification purposes --

Q. And those are notes you prepared in preparation for your testimony, right?

A. Yes.

Mr. Putnam. Objection. Misstates the --

Mr. Panish. What? I can't hear you. You're mumbling. He was mumbling.

Judge. I'm sorry. I can't hear you.

Mr. Putnam. I said, "objection. Misstates the testimony."

Judge. Okay. It may. Why don't you reask your question, Mr. Boyle?

Q. You prepared those notes in reading depositions and records, as part of your work, preparing for your testimony in this case; correct? Don't look over at him.

A. I was waiting. That's all.

Q. Okay.

A. They objected on the previous one, and I didn't understand it, so I wanted to make sure there wasn't another one.

Q. Okay.

A. Yes. These are notes that I took as I was reading, you know, starting probably in May or something like that. That's why they're in two separate tablets.

Q. Okay. And at that time you continued to work after the deposition because you knew you were going to be testifying at the trial; right?

A. That's what I was told.

Q. Okay. And so -- and you brought these notes here today because -- to prepare for your testimony? That's why you brought them out from Atlanta?

A. I brought them out from Atlanta because I was instructed to do so by the attorneys. They said, "any notes that you take, you have to bring."

Q. Okay. And those are them. And there's --

Mr. Boyle. Why don't we do this: why don't we mark those all as exhibit 1141? And then before we do anything with them, on a break, you can -- we can redact any numbers.

A. There's nothing in there. One phone number on a page that is --

Q. Okay. So there actually won't be a problem?

A. No problem.

Ms. Cahan. Your honor, I'd like a chance to review those just to make sure there's no hearsay or other issues with having them come into evidence. No issue with them being marked for identification.

Judge. All right. Marked for identification, but have counsel look at them.

Mr. Boyle. Okay.

(plaintiffs' exhibit no. 1141, notes of Dr. Earley, was marked for identification.)

Mr. Boyle. Those are marked for identification as 1141.

Q. Okay. Sir, you did 80 hours until you came to Los Angeles for this testimony. Did you come to LA Over the labor day weekend?

A. I did.

Q. When did you come to LA

A. Saturday night.

Q. And did you meet with counsel on Saturday night?

A. No.

Q. When did you first meet with counsel?

A. Sunday.

Q. And how many lawyers did you meet with?

A. Three.

Q. And who were they?

A. Ms. Kleindienst, Mrs. Cahan -- sorry about that.

Ms. Cahan. Cahan. That's all right.

A. Cahan. I'll get it right one of these days. And Jeremy Tran.

Q. And how many hours did you meet with them on Sunday?

A. Seven.

Q. Okay. And, sir, when you were meeting with them on Sunday, did they give hypothetical questions to you, and you were giving them answers, and kind of doing a dry run-through?

A. Yes.

Q. And did someone pretend to be the plaintiffs' lawyer and ask you questions, and you would respond, and then they would comment on your answers?

A. Yes.

Q. Did they actually give you a script of answers you should be giving?

A. No.

Q. Did they tell you things like you should look at the jury as much as you can and smile at them, and stuff like that?

A. Yes. They said I should answer to the jury, but, unfortunately, I haven't been doing a very good job. My apologies. This is not a skill set I'm good at yet.

Q. And, sir, did you meet with the lawyers on Monday, labor day?

A. I did.

Q. And how many hours did you meet on Monday?

A. I think eight.

Q. Sounds like a fun labor day.

A. Yes.

Q. And who did you meet with on Monday, labor day?

A. The same three attorneys.

Q. Okay. The same sort of instruction, prepare you for your testimony?

A. Correct.

Q. And then did you meet with them on Tuesday morning before you testified?

A. Briefly. Half an hour. Just --

Q. Same lawyers?

A. Same lawyers.

Q. And then did you meet with them on Tuesday at lunch in between testimony?

A. Briefly, yes.

Q. Hour?

A. Half an hour. I had to answer some phone calls.

Q. Same lawyers?

A. Same lawyers, yes.

Q. And then did you meet with them last evening or last night?

A. We walked back to their offices and chatted for a few minutes, and that was about it.

Q. Few minutes?

A. Yeah.

Q. Did you meet with them this morning before you testified?

A. I did.

Q. How long?

A. Half an hour, 45 minutes.

Q. All right. Now, did they discuss with you how you guys were going to handle this whole issue that AEG Funded a scientific study that's being used in this case?

A. They asked me questions to clarify the dates when I was working with them, and we looked that up to make sure that my answers were correct and that we had everything straight.

Q. They were a little bit concerned that that was going to look bad in front of the jury; that they funded the study, weren't they?

Ms. Cahan. Objection, your honor. Argumentative.

Judge. Also speculative. Sustained.

Q. Based on your discussion with the lawyers, did you get the impression that they were concerned about how it was going to appear to the jury that a concert promoter funded a scientific study?

A. They were interested in making sure that the data was presented correctly about that. I don't think -- "concern" is not a word I would use.

Q. All right. And then you spent some hours testifying at trial so far. About five hours, I would say?

A. Yeah. Seems like five centuries. Yeah, five hours.

Q. And you bill for the whole time you're in Los Angeles; right?

A. No. I only bill for time when I'm with the attorneys or when I'm up here.

Q. So how much has AEG Live paid you to date?

A. I don't know.

Q. Have you billed them for all your time so far?

A. Yes, I have.

Q. I mean, including this LA. Trip.

A. No. Not this LA Trip.

Q. You billed them for everything up to LA?

A. Yes.

Q. Do you know how much you billed them for?

A. I don't.

Q. We can add that up later. And you're here being paid for your testimony right now; correct?

A. I am.

Q. And what's your hourly rate for being here?

A. For being in this courtroom, it's \$850 an hour.

Q. And, sir, how many times have you testified in a trial?

A. In a courtroom -- this is complicated, because I present in front of the board of medicine frequently, and --

Q. Let me narrow it down for you. How many times have you testified in civil jury trials?

A. In a civil jury trial? Again, I'm going to have to be clear, try to figure that out. Probably three -- probably two times previously, and one time in an armed services court-martial trial.

Q. So a civil jury trial, probably two other times?

A. Yes, that's correct. I testified in a courtroom, you know.

Q. With a jury?

A. Oh, with a jury?

Q. Civil jury trial.

A. Civil jury trial. I think that's probably accurate. Two times, and then the court-martial.

Q. So was the other civil jury trial you did a wrongful-death case?

A. No.

Q. So this is the first wrongful-death case you ever testified in, in a civil jury trial?

A. Yes.

Q. Okay. And, sir, if I were to add up everything, your hours, does it sound like it's about \$120,000?

A. If you're including the \$53,000, that was used -- only a portion of that was for me, because I had to pay four other workers, and I had to pay the statistician for computer time, that sort of thing. So do you want to know how much I made, or do you want to know how much was paid to the company? I don't know what you're asking.

Q. I mean, well, you benefited from publishing the article; right? Because you were the author; right?

A. I did. I was paid for my time.

Q. And you put it on your resume?

A. I did put it on my resume.

Q. So I'm including the whole \$53,000. Can you give me an estimate of what you're owed by AEG Live, including the 53,000?

A. My guess is it's 80, \$90,000. Something like that.

Q. Probably more like over 100,000, wouldn't you say, if you add up this trip and the trial?

A. In case you haven't figured this out, doctors aren't good with math.

Q. Okay.

A. Especially around money.

Q. And, sir, when you were doing your consulting work for AEG Live in part of this litigation, was it ever discussed with you the Conrad Murray criminal trial? Did any of the lawyers for AEG Ever talk to you about the Conrad Murray trial?

A. I received materials, such as the LAPD. -- redacted LAPD Murray interview; the coroner's report; the secondary coroner's -- secondary evaluation.

Q. Did you receive that before the conviction of Dr. Murray?

A. No, no, no. This was all -- I didn't get any records until February or so of this year.

Q. Did any one of the lawyers of AEG Live ever express to you any concern that they, AEG Live personnel, could be subject to some criminal liability for the death of Michael Jackson?

Mr. Putnam. Objection, your honor. Argumentative and also irrelevant.

Judge. It's irrelevant. Sustained.

A. Okay.

Mr. Boyle. I'm just trying to find out if he was working on that aspect of the case.

Mr. Putnam. Same objection, your honor.

Judge. Sustained.

Mr. Boyle. All right.

Q. And so you did receive various police statements?

A. I don't know if I'd say "various." I did receive the -- to my recollection, I received that one interview, and I guess maybe one other interview that was from the police. I'm sorry. I'd have to look at my records to find that out. If you'd like me to do that, I could.

Q. Did you see in any of the police statements that you read that lawyers from O'Melveny & Myers were present at the police interviews?

A. No. That's a surprise to me.

Q. Now, sir, speaking of being bad at math, you stated yesterday that you had 30 years of experience treating addicted patients; correct?

A. I said I'm in my 30th year, I believe.

Q. Your 30th year. Okay. But you also -- and I wasn't planning on bringing this up, but you brought it up. You also mentioned that you had an opioid addiction.

A. That's correct.

Q. And that you lost your medical license for a time?

A. My medical license was suspended during the time of my treatment.

Q. And how long was that?

A. I was in treatment for almost nine months.

Q. So during those nine months, you weren't treating any patients; correct?

A. That's correct.

Q. But as you testified yesterday, you're relying on your own personal experience with opioid addiction to offer your opinions here today?

A. Uhm, at this point that's an extremely small portion of my opinion. It does have some part in it, I guess.

Q. So is that a "yes"?

A. That's a "yes."

Q. Okay. Sir, were you addicted to the opioid Demerol?

A. No.

Q. Which opioid were you addicted to?

A. This was 30 years ago.

Q. Sir, I'm going to ask you to answer my question. Which opioid were you addicted to?

A. Okay. I was trying to use that as a way of recalling, letting you know -- the primary drug I used was oxycodone, but I also did use heroin and codeine and hydrocodone.

Q. Are those all opioids?

A. Those are all opioids.

Q. Those are all opioids, like Demerol is an opioid?

A. That's correct.

Q. So heroin, you cannot get that by prescription, can you?

A. You can, actually, in the UK not in the united states.

Q. And, sir, there's no evidence in this case that Mr. Jackson did heroin; correct?

A. There is no evidence of that.

Q. There's no evidence that Mr. Jackson did oxycodone, is there?

A. Oh, yes.

Q. Oxycodone, there is?

A. Oh, yes.

Q. What evidence is that?

A. The evidence is that there are several prescriptions for oxycodone. I would have to refresh myself from the record on that.

Q. Okay. Do you know who?

A. No. I can't recall.

Q. Do you know what year those prescriptions were?

A. There was -- in 1993 there were several prescriptions that were mentioned. There was also fentanyl and -- yes.

Q. All right, sir. Let's go back to the heroin. Did you self-administer that?

A. I did.

Q. And, sir, would you be on heroin when you were treating patients?

A. No. By the time I got that ill, I had basically become almost homeless and was unable to practice medicine, and the board at some point, because they couldn't find me, asked me to relinquish my license, and I did so.

Q. And, sir, I mean -- it's an amazing story, and I congratulate you on your recovery, and it's amazing, but I want to ask you some questions on that.

A. Sure.

Q. On the one hand, we have Michael Jackson who you testified was addicted to prescription opioids; correct?

A. Correct.

Q. Particularly Demerol; correct?

A. Correct.

Q. And Mr. Jackson -- no evidence that he self-administered that; correct?

A. Correct.

Q. And no evidence that he was ever prescribed it for anything other than legitimate pain; correct?

A. It's a complicated answer, but I would say he was -- it was prescribed by physicians, yes.

Q. It was prescribed by physicians in connection with medical procedures -- medical or dental procedures; correct?

A. Yes. Or detoxification or --

Q. Right. So, for example, when he had his scalp surgery, when they put the balloons in his scalp, and they were fixing all the scarring, he was prescribed some Demerol; correct?

A. Correct.

Q. And then on the other hand, we have you, who is testifying as an expert in this case, who was self-administering the drug heroin; right?

A. Correct.

Q. And you weren't getting that prescribed by a doctor; right?

A. Correct.

Q. You were buying it on the street, presumably?

A. Yes, I was.

Q. And -- I mean, as everyone knows, there's a lot of dangers involved in buying street heroin; right?

A. There is.

Q. And a lot of risk involved?

A. There is.

Q. Now, sir, when you were at your worst, was your prognosis grave?

A. Yes, it was.

Q. Yet, sir, you're here today testifying in this high-profile, large trial; correct?

A. I am, and there are many of my colleagues that are dead.

Q. But you're alive?

A. By a miracle, grace of god, yes.

Q. And you -- you received proper treatment for your addiction; right?

A. I did.

Q. You didn't have a concert promoter company pay

A. Cardiologist to help you out, did you?

Mr. Putnam. Objection. Assumes facts not in evidence, your honor, "tried to help him out."

Judge. Overruled.

A. I did not have any concert promoter involved in my life.

Q. Okay. And you went to a legitimate addiction recovery center?

A. I did.

Q. And you had trained addiction medicine doctors treating you; correct?

A. I did.

Q. And if I asked this, I apologize. How many years were you addicted?

A. Well, that's a complicated question. The end-stage of my use was probably about a year. In that area. And -- but I was taking narcotics intermittently previously and had tried to stop on multiple occasions. And so the total length of time I was consuming the drugs was probably about four or five years.

Q. I think you told me in your deposition five to seven years.

A. That might be accurate.

Q. And did you also have problems with alcohol?

A. I did.

Q. And did those start before the drug usage started?

A. Uhm, pretty much at the same time. Alcohol is more available. When it became problematic was maybe around the same time. Maybe a little bit earlier.

Q. And so during some of those years when you had the problem, you were treating patients?

A. That is correct. Something I'm not proud of.

Q. And I think I saw on one of the videos on your web site when you gave -- you're open about this; right? I'm not prying here, how you gave television interviews on this?

A. I think it's important for people to understand that it can happen, and people can get better.

Q. All right. If I'm crossing the line, you just tell me; all right? And on one of the interviews you gave, you would consume substances while actually in the hospital. You would go into the file room while on duty.

A. Down in the file room, medical records, dictating, that sort of stuff, yes, I would consume drugs, yes.

Q. And, sir, you were a medical doctor, so you had direct access to all kinds of drugs; right?

A. That's correct.

Q. Yet despite all of that, you are here today, you look healthy and great; correct?

A. Well, I don't know about the "great" part. I am healthy, and in some ways I'm very happy about that. More than I ever deserved.

Q. And from what I saw on your interviews, you've used things like the love of your family as motivators to get off the substances?

A. The love-of-my-family piece is really -- was very important. Early in recovery, especially.

Q. And as you testified at your deposition, all the evidence in this case points to the fact that Mr. Jackson, Michael Jackson, had a selfless love of his children; correct?

A. I think that's throughout his record, yes.

Q. And you told me at the deposition that that kind of love for family can be an important motivating factor for an addict to get beyond their problem; correct?

A. That's correct.

Q. And you also saw in the records that Michael Jackson was a truly outstanding father; correct?

A. The record certainly reflects that, yes.

Q. And a truly outstanding son to his mother, Katherine; correct?

A. Yes.

Q. And that he was a truly outstanding citizen of the world who wanted to help all people; correct?

A. That's true.

Q. And so Michael had a lot to live for, did he not?

A. That's -- I don't know if I know that to be true. I know that certainly the data shows that. I don't know what he felt like inside. Yeah, the external data shows that.

Q. And you think he was a privileged individual; right?

A. Yes.

Q. And a wealthy individual; right?

A. Yes.

Q. And Michael Jackson was very wealthy, wasn't he?

Ms. Cahan. Objection. Outside the scope. Calls for speculation.

Mr. Boyle. Well, I think, your honor, financial status goes into opinions about access to drugs.

Judge. Okay. Overruled.

A. You know, I don't know the details about his financial situation. I didn't look into that.

Q. But your impression was that he was very wealthy?

A. Yeah, but there was all sorts of things in the record about him having to have money, you know, to borrow money for his tour, so I don't know.

Q. For example, like when the CEO of AEG Live, Randy Phillips, brought \$200,000 in cash to Michael at the Carolwood house; is that correct?

A. Yeah. But it seemed to me he had financial troubles, not the other way around. I don't know.

Q. But AEG Live was bringing him cash to the Carolwood house, weren't they?

Ms. Cahan. Objection. Calls for speculation.

Judge. Yeah. Sustained, but not on that ground.

Ms. Cahan. Outside the scope as well.

Judge. Sustained.

Q. Well, we talked about this at your deposition, didn't we?

Ms. Cahan. Same objection.

Judge. Sustained.

Q. You reviewed the e-mail I'm talking about at your deposition; right?

Ms. Cahan. Same objection.

Judge. Okay. Let's go to sidebar for a minute.

(the following proceeding was heard at sidebar:)

Ms. Bina. Your honor, I thought we had a motion in limine about advances in cash, cash, and the idea of cash in a paper bag and that --

Judge. Yes, we did.

Ms. Bina. -- and that was something improper.

Mr. Boyle. I was trying to -- the ruling from the court was that we can't say it was in a brown paper bag.

Mr. Panish. That's the ruling of the court.

Ms. Bina. Well, your honor, if I recall, it was about the bag of cash as opposed to advances in cash. And there being no significance as to whether he got \$200,000 wire-transferred versus in cash, other than to try to make things look bad, which is exactly what he's trying to do here.

Mr. Panish. That's not the court's ruling. Let's break out the order. And the ruling says --

Judge. Let's look at it.

Mr. Panish. Okay. Well, let's get -- where's the order? The ruling says the plaintiff cannot refer to the money being given in a brown paper bag.

Mr. Putnam. And the reason --

Mr. Panish. That was -- well, that was the ruling, because the court thought, like the strip club and others, that that would be prejudicial and connote some bad conduct. The court did not rule that we couldn't say he gave cash to Mr. Jackson. That was not the court's ruling. And if we want to go get the order --

Ms. Bina. Well, your honor --

Mr. Panish. -- that's exactly --

Ms. Bina. If we are going to take a morning break, I'm happy to get the order. But, again, they could have asked any of the witnesses directly involved in the cash transaction, had this been an area -- to ask an expert about an e-mail they showed him at a deposition to try to infer that there was some type of improper cash transfer is just inappropriate. It's well beyond the scope of this expert. It's not being brought in for any kind of proper purpose.

Mr. Boyle. Yes. He put up financial. Remember the slide? They got into that as one of the factors why Michael Jackson had a grave prognosis. He reviewed the deposition testimony of Mr. Phillips. An expert can be cross-examined on anything he's reviewed or the basis of his opinion. He put up a slide that said, "finances." how can that be beyond the scope of this witness? Financial.

Mr. Putnam. Financial, however, your honor, means getting advances. Getting advances in cash is absolutely permissible. What is not, and precisely the basis for the M.I.I., is this idea of clandestine arrivals of cash, which is precisely how it was trying to be -- let me --

Judge. It connotes that.

Mr. Putnam. And that was the M.I.I., your honor. If he wanted to say, did he get advances in cash, that is fine, as we have always indicated, as the M.I.I. Goes to the heart. But what they're trying to do here, which is this idea of bags of cash and clandestine arrivals of cash that arrives, and it's not relevant to his testimony. If the question is financial relevance, yes, and he was asked those questions. This goes well beyond the scope, your honor, and it's more prejudicial than probative value.

Mr. Panish. It's not.

Mr. Boyle. Your honor, here's the problem we're having in this case. Sometimes Mr. Jackson is wealthy when they want him to be wealthy, and sometimes he's dead broke when they want him to be dead broke. And this guy said he was wealthy, then he remembered he was supposed to say not wealthy. And I brought up the fact that -- I didn't say, "bags," I didn't say, "clandestine." I said the CEO himself delivered the cash to Michael Jackson.

Judge. I'll sustain the objection. I just -- I mean, it connotes some, like Mr. Putnam said, clandestine deliveries of cash. Let's just stay away from it all together.

Mr. Boyle. But, your honor, just because something is prejudicial doesn't mean it's not evidence.

Mr. Panish. It's not probative? I mean, it's got substantial probative.

Mr. Putnam. It's more prejudicial.

Judge. It's outweighed.

Mr. Panish. It actually has to be "substantially."

Judge. Then I'm making that finding.

Mr. Panish. I understand that. But the motion in limine was not that.

Judge. Okay.

(the following proceeding was heard in open court:)

BREAK....

Q. Dr. Earley, as a physician, are you familiar with the book called the *physicians' desk reference*?

A. I am.

Q. And what is that?

A. It's a compendium of all the pharmaceutical companies' literature about their drugs.

Q. And so is it a fair statement that the *physicians' desk reference* contains information about virtually all prescription drugs?

A. Most prescription drugs are in the PDR, yes.

Q. And were you familiar with the PDR in 2009?

A. I was.

Q. Okay.

Mr. Boyle. Your honor, may I approach?

Judge. Yes.

Ms. Cahan. Can I have a copy, if they're going to show the witness --

Mr. Boyle. The PDR of 2009? If I show any pages -- that's 2005 (indicating).

Mr. Panish. If there's any change, I'll let you know.

A. As long as you're not going to make me read the entire thing.

Q. You don't have this memorized?

A. I don't.

Q. Okay. All right. So there it is (indicating). And, sir, is that a copy of the 2009 *physicians' desk reference*?

A. It is.

Ms. Cahan. Objection. Misstates the document. Did you say 2009?

Mr. Boyle. It is. You have 2005.

Ms. Cahan. My apologies.

Mr. Panish. If there's a change, we'll let you know.

Q. Sir, is that 2009 *physicians' desk reference*, was that the pdr that was in effect when Dr. Murray was prescribing medications for Michael Jackson?

A. I assume it was, yes.

Q. And, sir, do you know what a prescription pad is?

A. I do.

Q. Do you have a prescription pad?

A. Actually, I do not have a prescription pad. I do all my prescriptions electronically now.

Q. Okay. But in the older days, people would have an actual pad; right?

A. Oh, yeah.

Q. And I couldn't get an actual pad because doctors are protective of their prescription pads; correct?

A. They should be.

Q. Because a doctor with a prescription pad, you can have access to the drugs in this book; right?

A. If you commit a felony, you can.

Q. No, no. a Doctor.

A. A doctor?

Q. Right. **A** Doctor. And sometimes people -- all these drugs in here, sometimes people steal prescription pads to try to write prescriptions; right?

A. That's correct.

Q. Okay. But a doctor who is properly licensed, with a prescription pad, can gain access to those drugs; right?

A. Yes.

Q. And so I just brought this (indicating). This isn't an actual prescription pad, this is just some little note pad on my desk. But this is about the size of a prescription pad; right?

A. They vary in size.

Q. And so when you have one of these, a doctor has one of these, he can scribble out in that crazy doctor handwriting that no one can

read, except for pharmacists, apparently, and he can get access to the drugs in that book; right?

A. Yes.

Q. Okay. And, sir, one of the worst things for a person like Michael Jackson is to be given access to a full-time doctor with a prescription pad; right?

A. Full-time access to physicians was indeed part of his problem, yes.

Q. Because, as you testified, people with addiction problems like you say Michael Jackson had, one of his triggers was being with doctors; right?

A. Yes.

Q. And so if Michael Jackson was given a full-time doctor who had one of these (indicating), Michael Jackson had access to everything in that PDR; right?

Ms. Cahan. Objection. Calls for speculation.

Judge. Overruled.

A. The intervening part is that the physician has to be in control of the drugs that he writes.

Q. Correct. And if the physician, for whatever reason, is in a situation where he feels compelled to write prescriptions on his pad for Mr. Jackson, he can get Mr. Jackson drugs that are in that book; right?

A. Correct.

Q. And, sir, in 2009, Propofol was in that book; right?

A. Uhm, I guess it was. It usually is an intravenous -- some drugs are not. For example, cancer treatment therapy drugs are not. If you want me to look --

Q. Yes. Go ahead.

Judge. I'm sorry. You want him to look for Propofol in that book?

Ms. Cahan. It's not under "Propofol."

Mr. Panish. He's the expert. Let's have him see it.

Mr. Boyle. Diprivan.

Mr. Panish. You know, that's -- the witness: there's a generic section. (reviewing book.) I'm having -- maybe I'm a little anxious. Having a problem with my alphabet. So -- I don't see it. Look under Diprivan, maybe. It's not here. It's not here.

Q. Let me take it back. Maybe my assistant, Mr. Panish, can find it.

Mr. Panish. I don't have a pad.

Q. But, anyway, sir, regardless, prescription pad equals access to drugs; correct?

Ms. Cahan. Objection.

A. No. That's an oversimplification.

Judge. There's an objection, so let her make the objection.

A. Sorry.

Ms. Cahan. Vague.

Judge. Overruled.

Q. A prescription pad and a licensed doctor is an access to drugs; right?

A. I think I'm going to have to answer that "no," because there's several other variables. But I know what you're trying to get at. So if you have a physician; if you have a prescription pad; if you have access to it, and if that physician does not be the gatekeeper on the drugs, then the answer is, "yes."

Q. And, sir, there's a term that you coined called "addiction memory"; correct?

A. Correct.

Q. What is addiction memory?

A. One of the things that happens when you become addicted to drugs is specifically using the environment to induce a whole series of unconscious streams of memories. And so if you are at a concert, and you smoke marijuana, and it's a great concert, and you have a great time, it creates a memory which is hardwired in the addict's brain. So those tapes play sometimes and cause relapse. That's what addiction memory is.

Q. Okay. And so I think on your web site, you give -- and a speech you gave, you gave an example of sometimes an alcoholic or former alcoholic might be driving home from work, and the next thing he knows, he's just in the parking lot of his favorite old bar; right?

A. Correct.

Q. And I believe that you testified at your deposition that with regard to Michael Jackson, his addiction memory would trigger when he was around doctors; correct?

A. Correct.

Q. And so ideally, for someone like Mr. Jackson, not being around doctors all the time would probably be a better thing for him; right?

A. Yes. Limiting his access to physicians would be a good thing that would help him recover.

Q. And certainly, not being around doctors who, for whatever reason in their life, may have a motive to violate their Hippocratic Oath, it would be good for Mr. Jackson not to be around doctors like that; correct?

A. Correct.

Q. Now, sir, I would like to put up a slide that you were shown yesterday about all the things needed to administer Propofol properly.

Mr. Boyle. Did you find it yet, Mr. Panish?

Mr. Panish. Yes. Found it in an old one. Looking in this one.

Q. Okay. Sir, this was slide 2. I believe it was 13,472. Do you recall being shown this slide yesterday?

A. I do.

Q. And you helped create this slide; correct?

A. Correct.

Q. And I think you represented that this slide is everything that is needed to safely administer Propofol.

A. I'm not -- I wouldn't put in the word "everything," but it is, in general, things that are needed to administer Propofol.

Q. And I recall yesterday, you, I think, properly corrected the slide and pointed out, one thing that needs to be on there is a trained anesthesiologist; right?

A. If that's what I testified to, that -- it should be on that slide, yes.

Q. Okay. So in addition to that, we need a trained anesthesiologist, or I guess a nurse anesthetist could do it; correct?

A. Correct. Under a doctor's supervision, yes.

Q. And I'll start running through. So was Dr. Murray a trained anesthesiologist?

A. He was not.

Q. Did Dr. Murray have an ambu bag and mask?

A. No.

Q. Did Dr. Murray have any assorted airway equipment?

A. No.

Ms. Cahan. Objection, vague. Is he asking with respect to taking care of Michael Jackson?

Mr. Boyle. Yes, I am.

Q. With respect to taking care of Michael Jackson in the Carolwood house, did Dr. Murray have in there -- did you see any evidence that Dr. Murray had any sort of airway --

A. Thank you for that clarification, because all I have is what the e.m.t. Saw, and that kind of thing.

Q. Right. Based on the evidence in this case, did you see any evidence that Dr. Murray had an ambu bag and mask?

A. No.

Q. Did he have any airway equipment?

A. No.

Q. And that would be particularly important with somebody with an abnormally large tongue like Michael Jackson; correct?

A. That's correct.

Q. Did you see that Dr. Murray had a capnograph?

A. No.

Q. Any evidence he had a pulse oximeter?

A. I don't remember. I don't think so.

Q. And, sir, another thing that might be on your list that could be important in administering Propofol is having a medical assistant, correct, to help with the continuous monitoring?

A. Right. It's just like having a copilot in an airplane.

Q. And you saw evidence in the record, did you not, that Dr. Murray was on lengthy phone calls while he was supposed to be monitoring Mr. Jackson while Mr. Jackson was under the influence of Propofol?

A. I recall information that he was on the phone several times. I don't know how one defines "lengthy," but, yeah, i'll give you that he was on the phone a lot.

Q. And he didn't have a medical assistant there with him to monitor Mr. Jackson while he was away, did he?

A. Not to my understanding of the record.

Q. And so, sir, fair statement, Dr. Murray was not fit and competent to administer Propofol, was he?

A. He was not a trained anesthesiologist. He was not competent to administer Propofol nor did he have the right equipment.

Q. And, sir, Mr. Jackson was requesting -- well, we don't know what Mr. Jackson requested of Dr. Murray based on the record; correct? We don't have any evidence of what Mr. Jackson said to Dr. Murray; correct?

A. Correct.

Q. Right. But Mr. Jackson had asked a couple other medical providers for Propofol to help him sleep; correct?

A. Correct.

Q. And fair statement that the record reflects that Mr. Jackson had a sleep problem? A Sleep disorder?

A. Yes.

Q. And, sir, Dr. Murray's treatment, presumably, for Mr. Jackson's sleep disorder, was to administer Propofol; correct?

A. That's -- that is correct.

Q. And also benzodiazapines?

A. Correct.

Q. And, sir, that's not a good way to treat a sleep disorder, is it?

A. Certainly, using the intravenous Propofol is not a good way to treat a sleep disorder.

Q. So fair statement, Dr. Murray was not a fit and competent doctor to treat Mr. Jackson's sleep disorder?

A. I mean, I would say that how he treated his sleep disorder was not proper. I don't have enough data to say whether he's a fit or competent doctor to treat his sleep disorder, but he did not act in that way.

Q. Did you see anything in the record that Dr. Murray had any training whatsoever in treating sleep disorders?

A. Most internal medicine physicians do get a fair amount of experience these days in treating it, but I --

Q. "these days." did you see anything in the record that Dr. Murray specifically got any training --

A. I did not see anything in the record one way or the other.

Q. And he certainly wasn't an expert in treating sleep disorders?

A. He was not an expert in treating sleep disorders.

Q. Now, sir, did you see anything in the record that indicated that Michael Jackson had any heart problems?

A. No.

Q. And Dr. Murray was a cardiologist; correct?

A. Correct.

Q. And cardiologists deal with matters of the heart; correct?

A. He was also an internal medical physician, a generalist, yes.

Q. I'm going to ask you to answer my question. Cardiologists deal with matters of the heart; correct?

A. Correct.

Q. And to clear it up, Mr. Jackson did not have any heart problems; correct?

A. That's correct.

Q. Let's talk about, sir -- and, sir, do you know if Dr. Murray -- doctor, do you know if Mr. Koskoff ripped the pages out of the pdr and gave them to Dr. Levounis?

A. I do not.

Q. Did you see that when you reviewed Dr. Levounis's testimony?

Mr. Koskoff. Guilty.

Q. Did you see that when you reviewed the testimony of Dr. Levounis? Sir, can you think of any reason why Propofol or Diprivan wouldn't have been in this 2009 pdr?

A. Yes. Lots of medications are not in the PDR. Especially ones that are not usually used. So as I said earlier, cancer drugs, antineoplastic drugs, specialty drugs are usually not in the PDR, because PDRs are for generalists. So oftentimes things like Propofol, other anesthetic agents, aren't in the PDR, either.

Q. Sir, I want to clear something up. Propofol is the most widely-used anesthetic in the world; correct?

A. Correct.

Q. It is not some obscure drug; correct? It is the most widely-used anesthetic in the world?

A. PDR is not designed for anesthesiologists.

Q. Okay. Just on -- setting aside the PDR. Propofol is an extremely widely-used drug; correct?

A. Correct.

Ms. Cahan. Objection. Asked and answered.

Judge. Overruled.

Q. It's not obscure; correct?

A. Correct.

Q. All right, sir. I would -- oh, you mentioned yesterday that you thought that Michael Jackson had sort of a private pet name for Propofol. You remember that?

A. Yes.

Q. And I think you testified that that was his private little nickname for Propofol; right?

Ms. Cahan. Objection. Misstates the testimony.

Judge. Overruled.

A. No. I did say that he had a name that he used for Propofol, and I don't remember using the word "private." if I did, I meant to say it was his.

Q. Okay. But that testimony was a little misleading, wasn't it?

Ms. Cahan. Objection. Argumentative.

Mr. Putnam. And vague.

Judge. Vague, sustained.

Q. Well, sir, isn't the term "milk" for Propofol a commonly-used term, both in the field of anesthesia and by lay people?

A. It is now.

Q. Commonly used; right?

A. Today it is, yes.

Q. Did you read the trial testimony of David Fournier?

A. I did.

Q. Did you see where Dr. Fournier said that you'll find it even in Wikipedia and everywhere else that Propofol is called milk of magnesia?

Mr. Putnam. Objection, objection. Misstates the testimony.

Mr. Boyle. "milk of amnesia."

Mr. Putnam. He's not a doctor.

Mr. Boyle. Oh. Mr. Fournier.

Q. But Mr. Fournier administers Propofol; right?

A. Yes.

Q. And you read his testimony; right?

A. Yes.

Q. And you read you'll find it even in Wikipedia and everything else, that Propofol is called "milk of amnesia"; right?

A. I don't know about Wikipedia, but I'll take his word for it. It might be interesting to look it up.

Q. So it's not some private name that Michael made up. I mean, that's the kind of common usage name for the drug; right?

A. I have -- in hundreds of anesthesiologists I've treated, I've never heard them refer to it that way. But it might be in the general literature -- general parlance. I don't know.

Q. And, doctor, how many times in your career have you administered Propofol?

A. Zero.

Q. So you don't commonly handle the drug, the physical drug bottles, and everything like that?

A. I don't today. When I was an operating room technician, I handled it all the time.

Q. But you never administered it?

A. I never was -- I never directly administered the drug.

Q. And, sir, I'd like to show -- sir, you reviewed the coroner's report, as you told us, in this case; correct?

A. Correct.

Q. And you reviewed the drugs or metabolites of those drugs that were found in Mr. Jackson's system after he died; correct?

A. Correct.

Mr. Boyle. Okay. I'd like to show to counsel first exhibit 11,371. If I could get a copy of that for counsel and the judge, please. Any objection to showing this?

Ms. Cahan. Yeah. I don't know what this part of the slide is meant to do, but there was testimony yesterday about not being able to --

Mr. Panish. That's the source right there.

Mr. Boyle. I'll do it a different way. I'll bring it back together.

Mr. Putnam. Okay.

Q. Okay. Dr. Earley, I'll represent to you that this slide was prepared based on evidence in this case, the toxicology findings, which is exhibit 13,362.0013, about the prescription drugs in Michael Jackson's system at death. Can you read those, sir?

A. Yes, I can. "Propofol, Lidocaine, Lorazepam, Diazepam, Midazolam and Ephedrine."

Q. And Propofol, I think we all know what that is by now; right?

A. Right.

Q. What is Lidocaine?

A. Lidocaine is a local anesthetic used to numb the skin, or it's used in cardiovascular resuscitation.

Q. And what is Lorazepam? That's a Benzodiazepine?

A. Lorazepam is commonly known as valium. It's a Benzodiazepine.

Q. And what about midazolam?

A. Midazolam is an intravenous-only Benzodiazepine. The trade name is versed.

Q. And what is ephedrine?

A. Ephedrine is a drug used most likely in resuscitation. One of the most common drugs used, when people die, in resuscitating someone.

Q. And, sir, then --

Mr. Boyle. I would like to show counsel first exhibit 1138-1.

Ms. Cahan. And what is this from?

Mr. Boyle. From LAPD.

Ms. Cahan. I don't think it's from anything in evidence. If you block the photo or get it in evidence -- I don't think it's in evidence.

Q. Sir, did you review any of the photios -- photos in the LAPD. Or the coroner's files?

A. No photos and no photios.

Q. No photios? No photos?

A. No.

Mr. Boyle. All right. We'll just block out the photo, and we can put that up, I think.

Q. And so, Dr. Earley, you also reviewed in the coroner's file the inventory of the drugs that were found at Carolwood that were prescribed by Dr. Murray; correct?

A. Correct.

Q. And I'll represent to you that this is a slide, based on trial exhibit 13,362.06 through 13,362.012, the medical evidence from the coroner's report, of the drugs that were found in -- that were found that were prescribed to Michael Jackson by Dr. Murray; okay?

A. So these are the only drugs prescribed by Dr. Murray, not by other physicians?

Q. Correct. These are drugs prescribed by Dr. Murray; okay?

A. Okay.

Q. Now, could you read those all into the record?

Ms. Cahan. Before we do that, do you have the underlying exhibit? I just want to check that.

Mr. Boyle. Sure.

Ms. Cahan. Can you take that down, actually? There's an issue with the characterization of it being prescribed by Dr. Murray.

Mr. Putnam. You want to discuss this on the side or do you want to --

Judge. Well, yeah.

Mr. Panish. Why don't we --

Judge. Well, let's let the jury go. We'll have a meeting about this. So I'll see you at 1:30.

(the jury exited the courtroom at 11:55 a.m.)

Mr. Putnam. It appears that some of the prescriptions don't have, actually, Dr. Murray. So I'm checking to make sure.

Ms. Cahan. it looks -- and I didn't want to interrupt. I was accepting the representation. But the Propofol does not have prescriber information; the Benoquin does not have prescriber information. Still checking. There's a long list. But I don't think this exhibit gives information for anything as prescribed by Dr. Murray. If they want to call it drugs found in Mr. Jackson's house, I think that's probably okay, but the characterization in the question about them being prescribed by Dr. Murray, I don't think, is supported in this exhibit.

Judge. Well, this police report, does he say -- why don't you take some time -- why don't you talk to plaintiffs' counsel?

Mr. Panish. Can I see that exhibit for a second?

Mr. Putnam. Okay.

Judge. Go ahead and meet.

Mr. Putnam. We'll do so. Thank you, your honor.

Judge. Thank you.

Mr. Panish. Can we stay in here for five minutes?

Judge. Yes

LUNCH.....

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