

1 UNITED STATES OF AMERICA
2 U.S. DEPARTMENT OF HOMELAND SECURITY
3 **UNITED STATES COAST GUARD**

4 -----
5 UNITED STATES COAST GUARD
6 Complainant

7 vs.

8 SIMONE JOYCE SOLOMON
9 Respondent

10 -----
11 Docket Number 2012-0351
12 Enforcement Activity No.4405978

13 -----
14 **TRANSCRIPT OF ADMINISTRATIVE HEARING**
15 **BEFORE THE HONORABLE DEAN C. METRY**
16 **ADMINISTRATIVE LAW JUDGE**

17 PROCEEDINGS on behalf of the Respondent beginning
18 at 10:00 a.m. on Tuesday, January 15, 2013, at U.S.
19 Courthouse, 300 North Hogan Street, 4th Floor, Courtroom
20 4C, Jacksonville, Florida, Duval County, before Michelle
21 Moore, Professional Reporter and a Notary Public in and
22 for the State of Florida at Large.

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P R O C E E D I N G S

January 15, 2013

10:05 a.m.

THE COURT: Be seated.

Okay. Court will call the case of Simone Joyce Solomon. Case number 2012-0351.

State your appearance, please. Let's start with the government.

MR. GIBBS: Mark Gibbs, investigating officer in the Marine Safety Unit, Savannah, Your Honor.

THE COURT: Mr. Gibbs, welcome to you.

Sir.

MR. SYFERT: Graham Syfert here on behalf of the respondent, Simone Solomon.

THE COURT: Mr. Syfert, welcome to you.

Ms. Solomon, welcome to you as well.

All right. This is the case of the United States Coast Guard versus Simone Joyce Solomon.

What we -- what I plan to do is -- obviously there's gonna be a lot of telephonic testimony. We have a phone, a speaker phone, up front for this.

What I would like to do is take care of preliminary matters if either of the parties or the litigants have those.

If not, or after those are done, we'll start with the government. If they want to make an opening

1 statement, that would be fine.

2 Mr. Syfert -- Syfert or Syfert?

3 MR. SYFERT: It's Syfert, Your Honor.

4 THE COURT: Mr. Syfert, take -- take it easy.
5 We're -- you know, we'll --

6 MR. SYFERT: Take it easy.

7 THE COURT: Relax a little bit. Yeah, you guys
8 relax a little bit.

9 And, Mr. Syfert, if you wish to make an opening
10 you can, and if you wish to reserve, you may also.

11 I know that there were some motions that you have
12 filed. I'd like to talk about those in terms of
13 discovery and make sure that everything -- that
14 everybody is prepared to go today. And then, we can
15 figure out what's going on as we go along.

16 Is that okay?

17 MR. GIBBS: Yes, Your Honor.

18 MR. SYFERT: Yes.

19 THE COURT: Great. Okay.

20 Mr. Syfert, you had filed some motions in regards
21 to some discovery matters. Have those been resolved
22 since -- since I've seen those?

23 MR. SYFERT: No, Your Honor. We -- we -- you
24 know, as we stated before, the US Coast Guard stated
25 that they were going to be presenting evidence that

1 all crew members aboard the Charleston Alliance did
2 not actually have any sort of problems with their
3 urinalysis. They were going to be using that to
4 bolster their position that everything was done
5 correctly with Ms. Solomon.

6 We have not been provided with the results of the
7 creatine on specific gravities of any of those
8 individuals. The only thing we have been provided
9 with is the simple signing off of the MRO on the
10 reports. And that doesn't give us the information
11 that we need to properly look at that evidence to be
12 considered, Your Honor.

13 And since we have not been provided that, we
14 believe it's a violation of due process for us to have
15 to continue with this hearing today, or we ask for a
16 stay in the alternative.

17 The stay has not been granted. We are here
18 today. We still have not been provided with that
19 information. We've only been provided with the
20 information saying that they passed, that the crew
21 members passed the urinalysis.

22 THE COURT: Okay. And I thought that was the
23 thrust of your motion prior to that. I mean, when I
24 received.

25 And what I had indicated was that I would have

1 preferred -- I mean, the court would have been tough
2 to get number one, which of course doesn't excuse any
3 -- would not cause me to violate any type of due
4 process rights for Ms. Solomon.

5 However, what my thinking was is that I want to
6 see the case unfold to see how that evidence would
7 play into your defense, or how you would rely on it.

8 If during the hearing I felt that -- that it
9 would impact your decision on how you would -- were to
10 proceed, I would at that point make a decision as to
11 whether or not the evidence is relevant, or how
12 relevant it is and whether or not it would be turned
13 over.

14 If there is -- and my thinking on it was this,
15 Mr. Syfert: If there's any reason to question the
16 Coast Guard assertions that those were properly --
17 that those were properly submitted and that there were
18 no other positives, then my question to you would be
19 -- you know, if you really don't question it, if you
20 think those are so, how would it play into your
21 defense?

22 If on the other hand there is -- you had a reason
23 to suspect there were positives, but that they're not
24 being disclosed, I would think that at that point, it
25 would become far more relevant and far more crucial to

1 your defense because then you have another test that
2 was obviously, at least from your assertion, there's
3 another test that was improperly scored or improperly
4 -- has an improper result. And then, of course, it
5 would be very, very relevant.

6 So that was my thinking when I did that. And
7 that I'd still like to stay with that at this point to
8 see how it played in, and if at any time -- if my
9 thinking is in error, you know, you'll of course bring
10 it to my attention.

11 You've been very professional and very diligent
12 in the defense of Ms. Solomon, but that was my
13 thinking just so I could lay it out for you.

14 So I would still prefer to go forward today, see
15 how that plays in, and if at any time during the
16 hearing -- I mean, you know what, we can take time and
17 figure it out from there.

18 But I will not foreclose that, it's just at this
19 point I think it's better if we go forward to see how
20 it comes -- how it plays out, okay?

21 MR. SYFERT: Yes, Your Honor. And what we would
22 actually intend to -- to get from those materials,
23 would be three things we're going to be talking a lot
24 about: pH, specify gravity and creatine.

25 And we would expect those numbers might reflect

1 certain things that would play into her defense and
2 actually help her out.

3 So that's --

4 THE COURT: I understand. I understand.

5 Like I said, I like to see how it unfolds and
6 that would probably be, I think, more clear for me,
7 and perhaps to the government as well as the case
8 unfolds.

9 There's nothing -- there's nothing that's gonna
10 indicate if that becomes something that's vital to her
11 defense that I'm going to just rush through, but I --
12 I understand where you're going with that.

13 MR. SYFERT: Yes, Your Honor.

14 THE COURT: And that's what I thought.

15 Okay. I guess that will take care of that.

16 Mr. Gibbs, anything from the government then that
17 we -- that you want to bring to my attention prior to
18 commencing the case?

19 MR. GIBBS: No, Your Honor. We attempted to get
20 the information from the lab. The only that person --
21 I apologize --

22 THE COURT: No, no. It's fine. It's just
23 habit. I understand that. You can relax around
24 here.

25 MR. GIBBS: We can't -- we can't get the creatine

1 levels because the other crew members weren't in
2 question.

3 What we did get is we received the negative tests
4 from the MRO and that's all -- that's what we did
5 provide --

6 THE COURT: Okay.

7 MR. SYFERT: -- to Mr. Syfert.

8 THE COURT: Okay. I understand.

9 MR. GIBBS: And Dr. Khella, I believe, will be
10 able to discuss any of those issues. I just can't get
11 their specific testing done.

12 THE COURT: Interesting. Isn't that kept as a
13 result -- if there's a test that's routine and not
14 positive, do they just not keep the results? Is that
15 what --

16 MR. GIBBS: Well, we did -- we do have the lab
17 litigation packet, Your Honor. And we actually have a
18 copy for yourself --

19 THE COURT: Right.

20 MR. GIBBS: -- also, but these are done in such
21 huge batches. You know, if the specimen ID in the --
22 the other crew members specimen IDs are in the lab kit
23 package that we received on Ms. Solomon, then you
24 could possibly cross reference them.

25 But the big key is that anything 20 and up

1 obviously is --

2 THE COURT: Right.

3 MR. GIBBS: Well, anything below that is where we
4 get in the --

5 THE COURT: That's where you get into it. Okay.

6 All right. Great.

7 Okay. Then in -- setting that aside, is there
8 anything else that either of you want to bring to my
9 attention prior to commencing?

10 MR. GIBBS: Your Honor, if I could, I just wanted
11 to -- Mr. Syfert and I spoke earlier and we have
12 stipulated the fact -- jurisdictional allegations, all
13 of them, and the factual allegations one and two.

14 THE COURT: That's great. Then you won't have to
15 do -- you won't have to produce any proof in terms of
16 those matters.

17 I'm assuming Mr. Syfert has a copy of your
18 exhibit lists because I see a binder on his desk as
19 well and it looks kind of like the ones you have.

20 MR. GIBBS: If I can approach the bench.

21 THE COURT: Sure. Thank you.

22 All right. Let the record show that I have
23 received a binder with the heading United States Coast
24 Guard versus Simone Joyce Solomon with a docket number
25 2012-0351.

1 It's got my name on it and I'm sure that we'll go
2 through it as -- as the case is.

3 I have the binder and will admit the exhibits as
4 they become relevant.

5 Okay. Mr. Gibbs, if there's nothing further in
6 that regard, are you prepared to make an opening
7 statement on behalf of the Coast Guard?

8 MR. SYFERT: Your Honor, we also have Ms. Simone
9 Solomon's credentials here. I believe she was
10 supposed to bring this with her.

11 THE COURT: Yeah, you can -- I'm sorry, so
12 Mr. Syfert. Thank you.

13 I'm assuming she's been working since this. You
14 haven't --

15 MR. SYFERT: Yes, Your Honor.

16 THE COURT: Okay. She on a ship now?

17 Are you on a ship -- I mean, not this very
18 second.

19 MS. SOLOMON: No.

20 THE COURT: Okay. Okay.

21 MR. GIBBS: Thank you, Your Honor.

22 Your Honor, through the course of this hearing,
23 the government will prove that the respondent,
24 Ms. Simone J. Solomon, the holder of a valid US Coast
25 Guard Merchant Mariner's document, number 1847809, did

1 wrongfully refuse to submit to a random urine test
2 collected on July 2nd, 2012.

3 The respondent provided a urine specimen in
4 accordance with random drug testing requirements of 46
5 CFR 16.230.

6 Ms. Solomon's urine specimen was collected by
7 Mr. Jezer Hualde of Anderson Kelly and the specimen
8 was ID'ed as ID Yankee 25425812 on the Federal Drug
9 Testing Custody and Control Form.

10 The specimen was properly collected in accordance
11 with the regulatory procedures and sealed with tamper-
12 proof seals in Ms. Solomon's presence as indicated by
13 her signature on the Federal Drug Testing Custody and
14 Control Form.

15 The specimen was sent for testing to MEDTOX
16 Laboratories, a substance abuse and mental health
17 services administration approved facility.

18 The specimen underwent an initial screening and a
19 confirmatory test and was found to be substituted.

20 The medical review officer, Dr. Hani Khella,
21 verified Ms. Solomon's urine specimen as substituted,
22 not consistent with human urine.

23 Dr. Khella verified the test results as
24 substituted after he conducted an interview with the
25 respondent and determined there was no valid medical

1 reason for the low creatine and high specific gravity
2 found in Ms. Solomon's urine.

3 Ms. Solomon was properly charged and explained
4 her due process rights on August 10th, 2012 by
5 Lieutenant John Nee as evidenced by Ms. Solomon's
6 signature on her answer sheet provided in the response
7 to the complaint as served by the Coast Guard.

8 Your Honor, the Coast Guard is ready to proceed
9 at this time.

10 THE COURT: Thank you, very much.

11 Mr. Syfert.

12 MR. SYFERT: Your Honor, we're here to save
13 Ms. Solomon's job. We have odd results and we don't
14 know why.

15 Coast Guard stated the respondent provided a
16 urine specimen; that's what happened. She did not
17 refuse.

18 We have strange results and hopefully we -- you
19 can explain that.

20 Thank you.

21 THE COURT: Thank you very much.

22 Mr. Gibbs, obviously the government is gonna go
23 first. Are you gonna -- are we gonna have any live
24 witnesses on behalf of the government?

25 MR. GIBBS: We -- to stipulate for the -- excuse

1 me, not stipulate, to verify the passport was used as
2 an identification, we're calling Lieutenant Brown, the
3 assistant chief of the inspection's division sector
4 Jacksonville to confirm that and the certificate of
5 documentation that requires Ms. Solomon to be a holder
6 of a valid Merchant Mariner's credential.

7 THE COURT: Okay. Great.

8 How do you wish to proceed then? I'm sorry go
9 ahead. Go ahead.

10 MR. GIBBS: Okay. We do have the jurisdictional
11 for that, but he would be verifying just the passport.
12 I apologize.

13 THE COURT: Okay. That's fine.

14 Okay. We have a phone up front. I'm assuming
15 we're gonna start with phone calls?

16 MR. GIBBS: Yes, Your Honor. We're going to call
17 the UAE hopefully.

18 Permission to approach.

19 THE COURT: Sure. Come on up.

20 Ms. Solomon, do you get to go to exciting
21 places?

22 MS. SOLOMON: Yes.

23 UNIDENTIFIED MALE SPEAKER: (Inaudible) good
24 evening.

25 MR. GIBBS: Good evening. This is Mark Gibbs

1 with the US Coast Guard. I'm hoping to get in contact
2 with Mr. Jezer Hualde, please.

3 UNIDENTIFIED MALE SPEAKER: Yes, sir. You want
4 to speak to him, sir?

5 MR. GIBBS: Yes, please.

6 UNIDENTIFIED MALE SPEAKER: Just one minute, sir.

7 MR. JEZER HUALDE: Hello. Good evening.

8 MR. GIBBS: Mr. Hualde?

9 MR. JEZER HUALDE: Yes, sir.

10 MR. GIBBS: Good morning. This is Mark Gibbs
11 with the US Coast Guard. I've spoken to you before.

12 MR. JEZER HUALDE: Yes. How are you, sir?

13 MR. GIBBS: I'm doing well.

14 We are in the proceedings as we speak that we
15 discussed and Judge Metry is going to speak to you for
16 a quick second and then I'll proceed with some
17 questions.

18 MR. JEZER HUALDE: Okay. Sure.

19 THE COURT: Hello. This is Judge Metry. What I
20 would like you to do for me, please, is to -- I know
21 you're on that side of the phone, but I need you to
22 raise your right hand for me.

23 MR. JEZER HUALDE: Okay. Yes.

24 THE COURT: And I need you to answer this
25 question.

1 MR. JEZER HUALDE: Okay.

2 THE COURT: Do you solemnly swear to tell the
3 truth, the whole truth and nothing but the truth?

4 MR. JEZER HUALDE: Yes.

5 THE COURT: Please if you would, state your full
6 name and spell your name for my court reporter,
7 please.

8 MR. JEZER HUALDE: Okay. My name is Jezer
9 Hualde. That would be J-E-Z-E-R. Second name is
10 H-U-A-L-D-E.

11 THE COURT: Thank you very, very much.

12 The next voice you're gonna hear is Mr. Gibbs and
13 he'll ask you some questions.

14 If we get cut off or anything screws up, we'll
15 call you back, okay?

16 MR. GIBBS: Mr. Hualde.

17 THE COURT: Hi, Mr. Hualde, you there?

18 MR. JEZER HUALDE: Yes, sir.

19 THE COURT: Okay. What I -- what I said was,
20 that if anything messes up, or if we get cut off,
21 we'll call you back, okay?

22 MR. JEZER HUALDE: Okay, sir.

23 THE COURT: Okay. Thank you very, very much.

24 MR. GIBBS: Your Honor, would you like somebody
25 to verify his identity?

1 THE COURT: I will -- are we gonna have
2 different -- are there gonna be different verifiers
3 for each witness, or are we gonna have one person
4 that's gonna do it for everybody?

5 MR. GIBBS: It would be verifiers for each
6 witness.

7 THE COURT: Okay. Please do.

8 MR. GIBBS: Okay. Mr. Hualde, this is Mark Gibbs
9 again, sir.

10 MR. JEZER HUALDE: Yes, sir.

11 MR. GIBBS: What I need you to do is locate
12 somebody at the facility, preferably one of the
13 security guards or somebody that you could hand some
14 identification to and they would be able to visually
15 identify you as the individual as Mr. Jezer Hualde.

16 THE WITNESS: Yes, sir. The reception(sic) can
17 do that.

18 MR. GIBBS: Okay. Could I speak to that
19 individual, please.

20 MR. JEZER HUALDE: One moment, sir.

21 MR. DIULO: Hello.

22 MR. GIBBS: Hello. This is Mark Gibbs with the
23 US Coast Guard. How are you, sir?

24 MR. DIULO: Fine, sir. Fine.

25 MR. GIBBS: Could I get your name, please.

1 MR. DIULO: Laorie.

2 MR. GIBBS: Okay. Sir, could you spell that,
3 please.

4 MR. DIULO: L-A-O-R-I-E.

5 MR. GIBBS: All right. Great.

6 And your last name, sir?

7 MR. DIULO: Diulo.

8 MR. GIBBS: And could you spell that, please?

9 MR. DIULO: D-I-U-L-O.

10 MR. GIBBS: Okay, sir. Do you have a Mr. Jezer
11 Hualde with you?

12 MR. DIULO: Sorry?

13 MR. GIBBS: Do you have a Mr. Jezer Hualde with
14 you?

15 MR. DIULO: Yeah, yeah, he is with me.

16 MR. GIBBS: Okay. What I'm asking you to do is
17 get a form of identification from him, tell me what
18 type of identification is it and confirm --

19 MR. DIULO: This one --

20 MR. GIBBS: -- and confirm that it matches.

21 MR. DIULO: This one is a UAE ID.

22 MR. GIBBS: It's a UAE ID?

23 MR. DIULO: Yes.

24 MR. GIBBS: Okay. Could you tell me the name on
25 it?

1 MR. DIULO: (No response).

2 MR. GIBBS: Could you tell me the name on the
3 identification, sir?

4 MR. DIULO: The name is Jezer (unintelligible)
5 Hualde.

6 MR. GIBBS: Okay. Is there a photograph -- a
7 photo ID on it?

8 Is there a picture of Mr. Hualde on it?

9 MR. DIULO: Yeah, yeah, there is a photo.

10 MR. GIBBS: Okay. And you're confirming that
11 that is the individual we're speaking to?

12 MR. DIULO: Yeah, yeah, yeah.

13 MR. GIBBS: Your Honor, do you have any other
14 questions?

15 THE COURT: No.

16 MR. GIBBS: All right. Thank you very much.

17 If you could give the phone back to Mr. Hualde,
18 please.

19 MR. DIULO: No problem, sir.

20 MR. JEZER HUALDE: Hello.

21 MR. GIBBS: Mr. Hualde?

22 MR. JEZER HUALDE: Yes, sir.

23 MR. GIBBS: Okay. Sir, we're going to proceed
24 with some questions and everything is checked out so
25 we appreciate your time this morning.

1 MR. JEZER HUALDE: No problem, sir.

2 - - - - -

3 **JEZER HUALDE**

4 Having been produced and previously sworn as a witness,
5 testified as follow:

6 DIRECT EXAMINATION

7 BY MR. GIBBS:

8 Q. All right. To start out with, Mr. Hualde, would
9 you please tell the court who your employer was on July
10 2nd, 2012.

11 A. The employer was -- what you mean
12 (unintelligible)?

13 Q. No. Who did you work for? Who was your
14 employer?

15 A. At that time it was Anderson-Kelly.

16 Q. Anderson-Kelly?

17 A. Yes, sir.

18 Q. And what were your duties?

19 A. My duties is a collecting officer. That would be
20 going on board vessel and doing unannounced drug and
21 alcohol test for the crew.

22 Q. Okay. And did you receive any training to be
23 qualified to do US Department of Transportation
24 collections?

25 A. Yes, sir.

1 MR. GIBBS: Your Honor, at this time, we'd like
2 to introduce the exhibit marked CG-07. A single page,
3 single-sided document that is a copy of the specimen
4 collection training certificate for Mr. Jezer Hualde.

5 It should be tab seven, sir.

6 BY MR. GIBBS:

7 Q. Mr. Hualde, do you have your training certificate
8 marked CG-07 in the lower right hand corner in front of
9 you, sir?

10 A. Yes, sir. I'm holding a copy right now.

11 Q. Do you recognize it?

12 A. Yes, sir. This is my -- a copy of my certificate
13 as a certified collector of Anderson-Kelly.

14 Q. Great. Sir, if you would could you please read
15 the docket for the court.

16 A. Okay. The heading says Anderson-Kelly
17 Certificate of Specimen Collector Training.

18 This is to verify that Jezer Hualde has successfully
19 completed a specimen collection training program pursuant
20 to the U.S. Department of Transportation Regulation 49
21 CRF(sic) Part 40 Section 40.33.

22 The program involved: A. Is basic information, B.,
23 Qualification training, C., Proficiency Demonstration
24 including five monitored, error-free mock specimen
25 collections.

1 The date is April 23; that is expiration date. And
2 one who give the training was Mr. Lawrence Beller.

3 Q. Yes, sir. Could you tell the court the
4 expiration date again, please?

5 A. Expiration date is April 23, 2015.

6 Q. 2015?

7 A. Yes, sir.

8 Q. And did you receive this training prior to July
9 2nd, 2012?

10 A. Yes, sir.

11 Q. Okay. There's no issue date on the certificate.
12 Do you recall when you received the training?

13 A. Again, sir.

14 Q. There's no date on the certificate that says when
15 you were issued that training, when you received it
16 initially.

17 And I was wondering if you could tell the court when
18 -- do you recall when you actually received the training,
19 what year?

20 A. Training was sometime in 2010 because the
21 expiration of the training is five years.

22 Q. Correct.

23 In your time as a collector, approximately how many
24 samples have you taken, sir?

25 A. Approximately, I would say around 400 to 500

1 samples like that.

2 Q. Okay.

3 A. 'Cause I was doing it for about two years
4 already.

5 Q. Very good.

6 To your knowledge have any of your samples you
7 collected resulted in correctable flaws or fatal flaws?

8 A. So far I have not encountered any fatal flaws
9 during those times I no knowledge.

10 Q. Have you ever been required to receive
11 re-training for the collection of samples?

12 A. Not so far, sir.

13 Q. Okay. And you identified earlier how long you've
14 been a collector. Did you say two or three years?

15 A. Two years.

16 Q. Two years.

17 A. I started 2010.

18 Q. Okay. Do you recall collecting samples from the
19 crew members on board the Alliance Charleston on July 2nd
20 2012?

21 A. Yes, sir, I do recall that time, the 2nd of July.

22 Q. Second of July, 2012?

23 A. 2012.

24 Q. How do you determine which personnel need to
25 be -- to provide samples on the vessel?

1 A. We determine that by the request being sent to us
2 by Anderson-Kelly. And then the request says that it
3 should be all crew on board.

4 Q. So 100 percent test on board the vessel?

5 A. Yes, 100 percent crew on board.

6 Q. And --

7 A. We get -- we get to know how many crew on board
8 once we are on board the vessel and get a copy of the crew
9 list from the master.

10 Q. Okay. So you receive a copy of the crew list
11 from the master?

12 A. Yes, sir.

13 Q. Okay. Did the master of the Alliance Charleston
14 provide one to you for the crew on that day in question?

15 A. Yes, sir. Upon my arrival of the vessel, I
16 introduce myself and after that, the master giving me a
17 copy of the crew list.

18 MR. GIBBS: Great.

19 Your Honor, at this time, the Coast Guard would
20 like to introduce the exhibit marked CG-03. A single
21 page, single-sided document that is a copy of the
22 Alliance Charleston crew list for July 2nd, 2012.

23 THE COURT: Okay. And the court hasn't done so,
24 and I don't think that I have court -- is there any
25 objection to CG-07?

1 MR. SYFERT: No objection, Your Honor.

2 THE COURT: All right. Court will admit CG-07.

3 MR. GIBBS: Did you just enter that, Your Honor?

4 THE COURT: I did.

5 MR. GIBBS: I was gonna enter at the end, but I
6 can do that at the -- it's however you --

7 MR. SYFERT: And I have no objection to CG-3
8 either.

9 THE COURT: All right. I'll admit that at this
10 time, too, then.

11 I prefer to take them one at a time.

12 MR. GIBBS: Yes, Your Honor.

13 THE COURT: Because if we do -- it's easier for
14 me to keep track.

15 All right. Court has received CG-07 and the
16 court will receive CG-03 into evidence at this time.

17 MR. GIBBS: Thank you, Your Honor.

18 BY MR. GIBBS:

19 Q. Mr. Hualde, do you have before you a paper marked
20 in the lower right hand corner as CG-03?

21 A. Yes, sir. Holding one right now. I believe this
22 is the crew list of the vessel.

23 Q. It looks like the crew list for the vessel?

24 A. Yes, sir.

25 Q. How do you know that this is for the Alliance

1 Charleston?

2 A. The heading says the name of the vessel.
3 Alliance Charleston Voyage Starting July 01, 2012. And
4 the printout is dated July, 02, 2012 --

5 Q. So it --

6 A. -- at 05 --

7 Q. -- was printed out on July 2nd, 2012?

8 A. Yes.

9 Q. Okay. And did --

10 A. At 05:24 in the morning, I believe.

11 Q. I'm sorry?

12 A. 5 -- 05:24 in the morning.

13 Q. Oh, okay. Right.

14 And does the crew list identify what voyage number
15 this was?

16 A. Voyage number 10.

17 Q. Thank you.

18 And what is the one visible crew member's name on the
19 list?

20 A. The one that is visible on the list is number
21 312, Solomon, Simone J.

22 Q. Are there any other identifiers in the row with
23 her name on it?

24 A. No, sir. All the other names are -- what you
25 call this? Are blocked.

1 Q. Are redacted out.

2 Right. Yes, sir, but across the sheet from
3 Ms. Solomon's name, are there any other identifiers on
4 that row?

5 A. Okay. That I think is the -- her social security
6 number and the passport number.

7 Q. Could you please read them, please?

8 A. The social security number is XXX-XX-6959.
9 Passport number 207543136.

10 Q. And is there anything else listed?

11 A. Sign and date that is 7th of January(sic), 2012.
12 Job number is 311 and rating is Chief Cook.

13 Q. Right. What was the sign on date?

14 A. Sign on date is -- I believe it is 7th of
15 January, or this is July 1st.

16 Q. Yeah, July 1st is --

17 A. July 1st. Okay.

18 Q. Do you have a bad copy?

19 (Off the record discussion)

20 BY MR. GIBBS:

21 Q. Okay. I apologize.

22 All right. Great. Did Simone Solomon present herself
23 to you on that day and provide a urine sample?

24 A. Yes, sir. She presented herself with her
25 passport and then the -- that's how I identified her. And

1 then give her -- she gave me a -- give her the cup and
2 everything and then after that she give me the sample --
3 urine sample.

4 Q. Okay. And during Ms. Solomon's urine collection,
5 did you follow the procedures outlined in 49 Code of
6 Federal Regulations Part 40?

7 A. Yes, sir. I followed everything before and after
8 doing that specific collection.

9 Q. Correct.

10 A. The one we were taught in the training.

11 Q. Okay. And, sir, when you take a specimen, do you
12 create a record for the urine samples that you collect?

13 A. Yes, sir. That is the CCF that we are filling
14 up.

15 Q. Could you, for the court, tell what a CCF is?

16 A. That is the collection form that we are using
17 under MEDTOX Anderson-Kelly.

18 Q. Right. The Federal Drug Testing Custody and
19 Control Form?

20 A. Yes, custody and control form under DOT
21 regulations.

22 Q. Right. Did you create one -- such a record for
23 Ms. Solomon's specimen?

24 A. Yes, sir, during the day I did.

25 MR. GIBBS: Okay. Your Honor, at this time, the

1 Coast Guard would like to introduce the exhibit CG-08,
2 a single page, single-sided document that is a copy of
3 the Federal Custody and Control Form for Ms. Simone --
4 I mean, excuse me, Ms. Solomon's urine sample.

5 MR. SYFERT: No objection, Your Honor.

6 THE COURT: Court will receive CG-08 into
7 evidence at this time.

8 MR. GIBBS: Thank you, Your Honor.

9 BY MR. GIBBS:

10 Q. Mr. Hualde, do you have before you a paper marked
11 in the upper right hand corner as CG-08?

12 A. Yes, I holding a copy that one, sir. I believe
13 this is a copy of the custody and control form
14 Ms. Solomon.

15 Q. Correct. Can you refer to step four of this
16 document and tell me if you recognize the document?

17 A. Step number -- which one, sir?

18 Q. Four.

19 A. Four. Okay.

20 Step four is there on that part, that to be my name
21 and my signature on it. And the time during that day is
22 2:14 in afternoon. The date 7, July -- July 2nd, I mean,
23 2012. And there is a tick mark on the local courier.

24 Q. And is there a donor's social security number, or
25 employee ID number on there?

1 A. The donor social security number would be on the
2 top -- on the top, sir, on step one.

3 Q. Step one. I apologize. You're right. I jumped
4 -- I jumped one on you.

5 For the -- now was that a social security number or a
6 passport ID that you used?

7 A. This is the passport ID, sir, that I used for all
8 of those -- all the crew.

9 Q. Could you read that number for me, please?

10 A. The number is 207543136.

11 Q. And how did you confirm this number?

12 A. I copied that number from the original passport
13 that Ms. Solomon has given to me.

14 MR. GIBBS: Okay. Your Honor, the Coast Guard
15 would like to introduce the exhibit marked CG-04, a
16 single page, single-sided document that is a copy of
17 Ms. Solomon's passport.

18 MR. SYFERT: No objection, Your Honor.

19 THE COURT: Court will receive --

20 MR. GIBBS: Thank you, Your Honor.

21 THE COURT: -- CG-08.

22 MR. GIBBS: 04, sir.

23 THE COURT: I'm sorry, 04.

24 BY MR. GIBBS:

25 Q. Mr. Hualde, at this time, I'd liked you to refer

1 to the exhibit marked CG-04. And can you describe the
2 document to the court?

3 A. Okay. I'm holding the copy documented -- a copy
4 of the document CG-04. And this is a copy of
5 Ms. Solomon's passport.

6 Q. Okay. Could you tell me the name -- full name on
7 the passport?

8 A. Okay. Surname is Solomon. Given name Simone
9 Joyce.

10 Q. Okay. And what I'd like you to do is look at the
11 passport ID number and confirm it with the CCF and tell me
12 if the number is the same and read the number.

13 A. Passport number would be 207543136.

14 Q. And the issue date and expiration date, please.

15 A. Issue date is 11, December, 2002, expiration date
16 is 10, December, 2012.

17 Q. All right. Mr. Hualde, do you have desk space in
18 front of you where you can lay CG-08 and CG-04 side by
19 side?

20 A. Yes, sir.

21 Q. Okay. Once again, I'd like you to confirm that
22 the passport ID numbers match the number you entered on
23 the Federal Custody and Control Form.

24 A. Yes, sir. I'm looking at both papers right now.

25 Q. Okay.

1 A. And the number is the same.

2 Q. Very good.

3 Let me draw your attention back to exhibit marked
4 CG-08.

5 A. Okay.

6 Q. The federal -- that should be the Federal Drug
7 Testing and Custody and Control Form, sir.

8 Do you have it, sir?

9 A. Hello, sir.

10 Q. Yes, do you have the Federal and Custody and
11 Control Form, CG-08, in front of you?

12 A. Yes, I'm holding the copy.

13 Q. Okay. The last block we left off on there was
14 step one.

15 Now, I'm looking for you to identify the next step --
16 wait a minute. I apologize. Entry C, the donor's social
17 number or employee ID, could you please identify the next
18 step that we'll to complete -- when completing the Federal
19 Custody and Control Form?

20 A. Okay. First is the C. That would be the
21 passport number.

22 Q. Correct.

23 A. B is the specified -- specify testing authority.
24 That would be DOT.

25 Q. D-O -- say that again, please.

1 A. Specified testing authority, the tick mark is on
2 DOT.

3 Q. DOT?

4 A. Yes.

5 Q. And what is the next step you complete?

6 A. The reason for test would be random.

7 Drug test to be performed is the THC, COC, PCP, OPI,
8 AMP.

9 Q. Okay. And then the next step.

10 A. The next would be the collector's phone number.
11 This is our phone number. I guess the one you're calling
12 right now. It is 97192228007. Next is the fax number.
13 97192228008.

14 And then the name of the vessel Alliance Charleston
15 and the port where the vessel was docked which Jebel Ali.

16 Q. In Jebel Ali.

17 Okay. Some of this information you told me that you
18 fill out in advance. Could you identify which areas you
19 fill out in advance prior to arriving at the collection
20 facility, or the site?

21 A. Yes, sir. As per our training, we are allowed to
22 prefill out some of the -- part of the custody and
23 collection form. That would be the letter D, which is the
24 DOT. The reason for test is random. The drug tests to be
25 performed, the phone number and the pass(sic) number, and

1 then the name of the vessel and the port. Because before
2 we go to the port where the vessel is located, those are
3 the parts which we can prefill -- we are allowed to
4 prefill out.

5 Q. Great. And how you did have this -- how did you
6 get this information prior to going to the vessel?

7 A. Through the request, sir, that was given -- that
8 was sent to us through mail.

9 Q. Very good.

10 Right now I'd like you to go ahead and explain step
11 two.

12 A. Okay. Step two would be temperature.
13 Temperature between 90 and 100. We take this one upon
14 receiving the specimen of the donor and checking the
15 temperature on the top. And we receive this one between
16 90 to 100. The collection time is split because we use
17 the split bottle. One is 20mL and the other one is a
18 minimum of 15mL.

19 Q. Very good. And please explain step three.

20 A. Step three, this is the collector affixes bottle
21 seal. Collector dates seals. Donor. That is the time
22 started when we transfer the urine to the small bottle,
23 then we seal it and affix the -- what you call it, the
24 time we seal it with the two seals located -- located at
25 the bottom part of the custody and control form.

1 Q. Right. The seals are already affixed to it at
2 the bottom.

3 A. Yes. Yes.

4 Q. Okay.

5 A. Step four would be -- this is collector's name,
6 that is me, Jezer Hualde. My signature is attached. The
7 time of the collection upon receiving this -- the donor's
8 urine sample would be 2:14 in the afternoon. The date is
9 July 2nd, 2012. And the tick also it local courier where
10 we send it going to Anderson-Kelly.

11 Q. Very good. Are there any identifier on the seals
12 themselves that would help it track with the same Federal
13 Custody and Control Form?

14 A. Yes, sir. On the original custody and control
15 form, the two seals -- the first one is seal 80, that is
16 printed in black and the number of the custody and control
17 form is there with some bar markings on it. Same as with
18 the seal letter B printed in red. And the same -- I
19 believe, the same custody and control form number is
20 printed there also.

21 Q. Okay. So the specimen ID is on the seal itself?

22 A. Yes, sir.

23 Q. With a bar code?

24 A. With a bar code, yes.

25 Q. Correct.

1 Now, I would ask that you explain step four, please.

2 A. Step four. You mean step five, sir?

3 Q. Step four where you seal it.

4 A. Step four where I seal it.

5 Once I transfer the urine to the small bottle, the
6 time I -- that's the time we seal those -- what you call
7 it, those small bottles, and then after that, enter --
8 enter the original form. After that, what you call it,
9 let the donor sign on that -- step five of the custody and
10 control form.

11 Q. Okay. So Ms. Solomon was present when you sealed
12 the box up?

13 A. Yes, sir, she was there in front of me when I was
14 transferring the urine to the small -- from the big cup to
15 the small bottle. And when I seal it with both seals, A
16 and B, she was in front of me.

17 Q. Okay. And what do you -- once all the specimens
18 are done, what do you do with the box of samples?

19 A. The box of samples, after all -- excuse me.
20 After all the collection has been done, we have the box
21 and all the donors can see the box because I -- the box is
22 beside me. Every time I finish and seal the pouch, I
23 enter the -- the pouch in the collection box. And one
24 copy, copy number five of the custody and control form, we
25 give to the donor and the rest of the copies we keep.

1 That is for the medical review officer, the donors. There
2 are three copies remaining.

3 Q. Okay. And where does the box go?

4 A. Again, sir.

5 Q. Where does the box go of the -- with the
6 specimen?

7 A. The box go.

8 Okay. Since there is a representative of Anderson-
9 Kelly in the Middle East, we send that box to local
10 courier together with all the papers all the documents.

11 And then after that, they'll be the one sending it
12 directly to Anderson-Kelly.

13 Q. Very good. And now I'm gonna ask you to read and
14 explain step five, please.

15 A. Step five is being completed by donor. This one
16 is the signature of the donor and also the name, Simone
17 Joyce Solomon with the date. And the date of the
18 collection that is July 2nd, 2012. And the date of birth
19 of the donor which is 22nd of June, 1970.

20 Q. Very good, sir.

21 MR. GIBBS: Your Honor, prior to closing, I'd
22 like to -- excuse me. Prior to ending Mr. Hualde, I
23 want to confirm that we've introduced and entered
24 CG-03, 04, 07 and 08.

25 THE COURT: Those without objection, Mr. Syfert?

1 MR. SYFERT: 3, 4, 7 and 8.

2 THE COURT: I have 3, 4, 7 and 8.

3 BY MR. GIBBS:

4 Q. Okay. Mr. Hualde, one last thing. On step five,
5 I would like for you to read the part that the donor is
6 required to read and sign.

7 A. Yes. After the medical -- which -- it here on
8 top, sir?

9 Q. Yes.

10 A. I certify that I provided my urine specimen to
11 the collector, that I have not adulterated in any matter;
12 each specimen bottle used was sealed with a tamper-evident
13 seal in my presence; and that the information provided on
14 this form and on the label affixed to each specimen bottle
15 is correct.

16 MR. GIBBS: Outstanding.

17 Your Honor, at this time, I have no further
18 questions for Mr. Hualde.

19 THE COURT: Thank you very much.

20 I have a quick question for him before Mr. Syfert
21 starts.

22 On CG-03, does he recognize -- is that the -- did
23 he say that was the master's signature on that
24 document, or did he not say anything?

25 MR. GIBBS: He did not say, Your Honor.

1 THE COURT: Okay. Thank you.

2 MR. GIBBS: Yes, Your Honor.

3 Coast Guard has no further questions.

4 THE COURT: Thank you.

5 MR. SYFERT: Thank you, Your Honor.

6 CROSS EXAMINATION

7 BY MR. SYFERT:

8 Q. Mr. Hualde, can you hear me?

9 A. Yes, sir.

10 Q. Okay. This July 2nd test, you said it was
11 unannounced; is that right?

12 A. Again, sir. Pardon.

13 Q. You said that this July 2nd test was unannounced?

14 A. Yes, unannounced.

15 Q. Okay. So as far as you know Ms. Solomon wasn't
16 expecting this test, was she?

17 A. I believe none of the crew knew.

18 Q. Okay. And did you prepare the area for testing
19 aboard the ship?

20 A. Yes, sir. The area is given to me by the master
21 was the hospital of the vessel.

22 Q. Okay. And was there any access to water that
23 Ms. Solomon had?

24 A. At the time all the tops were sealed in the
25 toilet.

1 Q. Okay.

2 A. Including the tops and the -- the flush of the
3 toilet also where they're not allowed to flush the toilet.

4 Q. Okay. And so did she have access to water?

5 A. No, sir.

6 Q. Okay. Was there access -- was there blue water
7 around that she could have done something with?

8 A. No, sir. Since I am the one keeping the
9 (inaudible) before the collection started. So it was only
10 me having (inaudible).

11 Q. Okay. Do you remember the temperature that day?

12 A. Again, sir?

13 Q. Do you remember the temperature on July 2nd?

14 A. Specifically with this sample, sir, I don't
15 remember.

16 Q. Not the sample, just outside. Was it a hot day?

17 A. Oh, outside. The temperature, I don't remember.

18 It was quite hot since July the summer month in the UAE.

19 Q. Right. Okay. And you said that you remember
20 taking the sample from Ms. Solomon; is that correct?

21 A. Yes, sir. She handed over the sample to me.

22 Q. Okay. And was she wearing a coat or anything
23 like that when she came in to see you?

24 A. Pardon, sir.

25 Q. Was she wearing a coat when she came in to see

1 you?

2 A. No, sir.

3 Q. Was she wearing a chef's outfit?

4 A. I think it was chef's outfit at the time.

5 Q. Okay.

6 A. If I can remember it right.

7 Q. Okay. Do you -- was there anything suspicious
8 with Simone Solomon? Did you notice anything?

9 A. During the collection, sir, no, I didn't notice
10 anything on her.

11 Q. Okay. And did you ask her to empty out her
12 pockets?

13 A. Before that, yes, sir.

14 Q. Before that. And did you see any sort of bottles
15 or anything like that that she might have had?

16 A. Nothing, sir.

17 Q. Okay. Did you wear gloves that day?

18 A. Again, sir.

19 Q. Did you wear gloves?

20 A. No.

21 Q. No. Is that something that's normally required
22 under Section 40?

23 A. Hello?

24 Q. Is that something that's required underneath
25 Section 40, your training, your certificate?

1 It said that is something you should do. Were you
2 wearing gloves that day?

3 THE COURT: Mr. Hualde, are you still there?

4 THE WITNESS: Yes, sir.

5 THE COURT: Okay. We may have lost -- lost that
6 question.

7 Mr. Syfert is gonna ask you that question again.

8 BY MR. SYFERT:

9 Q. The question is just: Where -- were you wearing
10 gloves that day?

11 A. At that time, no, sir.

12 Q. Okay. And is that required by your training?

13 A. On the training, it says that we can either wear
14 gloves or we choose not to wear gloves because the -- if
15 you -- during the sealing of the small bottles, this two
16 seals A and B, this seal get stick to the gloves, so hard
17 that when you -- when you stick it on the small bottles,
18 the sticker, this seal, sometimes are torn apart.

19 Q. Okay. And let's over -- can you look at CG-08
20 for me.

21 A. CG-08. Yes, sir.

22 Q. Okay. You said that you collected how many
23 samples in the past two years?

24 A. Around 400 to 500.

25 Q. And you said there were no fatal flaws that

1 you're aware of?

2 A. None, sir.

3 Q. Okay. And were there any correctable flaws that
4 you're aware of?

5 A. None, sir.

6 Q. Okay. Will you look at number -- or letter D on
7 that CG-08 for me.

8 A. Okay.

9 Q. Okay. Can you tell me what agency was supposed
10 to be checked on that box?

11 A. Agency. That is supposed to be under -- DOT
12 would be under US Coast Guard.

13 Q. Okay. Is that box checked over there?

14 A. No, sir.

15 Q. Is that a correctable flaw?

16 A. I -- I don't think so. I was not -- what you
17 call it? I was not informed by Anderson-Kelly that there
18 -- it has been questioned.

19 Q. So -- so you were going there to collect for the
20 DOT; is that correct?

21 A. Yes, sir, DOT.

22 Q. Okay. And you weren't informed by Anderson-Kelly
23 what agency underneath the DOT you were going to collect
24 for; is that correct?

25 A. On the request, I think it was not there. Only

1 DOT is being stated.

2 Q. Okay. So you didn't know who you were going to
3 collect for?

4 THE COURT: He didn't hear that.

5 BY MR. SYFERT:

6 Q. So you didn't know who you were gonna be
7 collecting for?

8 MR. SAMMONS: Objection, Your Honor, that was
9 asked and answer previously.

10 THE WITNESS: No, sir.

11 THE COURT: Okay.

12 THE WITNESS: Because it was not on the request.

13 BY MR. SYFERT:

14 Q. You say that you split the sample into the A cup
15 and the B cup; is that correct?

16 A. Yes, sir.

17 Q. Did you notice anything specific with
18 Ms. Solomon's urine?

19 A. Nothing, sir.

20 Q. If it was --

21 A. When I transferred the urine to each of the cups,
22 the colors were the same -- it was the same urine.

23 Q. Okay. And how many -- how many milliliters did
24 you put in sample A and how many milliliters did you put
25 in sample B?

1 A. Sample A I put 30, and sample B, I really can't
2 remember it specifically, but if there is enough urine, I
3 will also fill it at 30 milliliters.

4 Q. Okay. So you don't remember if you made a sample
5 B in this case?

6 A. I -- I can remember if I made a sample B, but on
7 how many MLs specifically, I can't really.

8 Q. Okay.

9 A. I do know that I fill it up. The A was 30 and
10 the remaining, I would put it all into sample B.

11 Q. Okay. Do you remember the color of Ms. Solomon's
12 urine?

13 A. Color, not really, sir.

14 Q. Okay. You don't remember if it was clear, or
15 yellow?

16 A. Something like that. It's a shade of yellow.

17 Q. Okay. Do you remember if it was cloudy?

18 A. No, sir, I can't remember that details anymore.

19 Q. If it was cloudy, would you have noted it?

20 A. Yes, I would have.

21 Q. If there was anything else out of the ordinary,
22 would you have noted it?

23 A. Yes, sir.

24 Q. Did anyone have trouble going that day?

25 A. Again, sir.

1 Q. Did anyone have trouble urinating that day?

2 A. During the day, not that I can remember.

3 Q. Would you have made notes of that?

4 A. Pardon, sir.

5 Q. Would you have made notes if someone had had
6 trouble going?

7 A. Yes, if in case someone is having trouble, we
8 have a -- like notation on that -- of that person, but
9 during the say, I -- no one I can remember.

10 Q. Okay. No one you can -- do you have those
11 documents around where you could actually look and see if
12 anybody had trouble going that day?

13 A. I have our file here. During the collection, so
14 far no notations -- no -- I didn't make any notations, so
15 I believe the -- for everybody there was none.

16 Q. Okay. How much urine is an acceptable amount for
17 you?

18 A. A minimum of 45 to 50.

19 Q. A minimum of -- I'm sorry?

20 A. A minium of 45 to 50 milliliters.

21 Q. Oh, 45 to 50.

22 A. Yes, sir.

23 Q. What efforts do you go through to avoid
24 contamination?

25 A. Again, sir.

1 Q. Contamination of urine, is that a problem?

2 A. No, so far I have not encountered any problem
3 like that.

4 MR. SYFERT: Okay. Thank you very much.

5 THE WITNESS: Welcome, sir.

6 THE COURT: Mr. Hualde, I have a couple questions
7 for you if you don't mind, okay?

8 THE WITNESS: Sure, sir.

9 THE COURT: This Judge Metry.

10 Before I do that, I'm going to ask Mr. Gibbs if
11 he has any recross -- excuse me, redirect based on
12 Mr. Syfert's cross-examination, but I don't want you
13 to get off the phone after that. I'm gonna ask you a
14 couple of questions.

15 Mr. Gibbs, any follow up after Mr. --

16 MR. GIBBS: Just a couple, Your Honor.

17 RE-DIRECT EXAMINATION

18 BY MR. GIBBS:

19 Q. Mr. Hualde, it's Mark Gibbs again.

20 I just want to reiterate a couple things. Number one,
21 are you required to wear gloves?

22 A. Again, sir. Pardon?

23 Q. Are you required to wear gloves?

24 A. We have an option not to wear gloves. Either we
25 can wear -- based on the training, either we can wear, or

1 we cannot wear.

2 Q. Okay. And were the samples that you took from
3 Ms. Solomon filled to the required level?

4 A. Yes, sir.

5 Q. Is urine color important?

6 A. Yes, we are looking at that one.

7 Q. What are you looking for?

8 A. If any -- any like cloudiness in the urine, or
9 any like, for example, if the urine has become very light
10 yellow or like very pale; or if you're seeing very dark
11 colored urine with tints of blue in it.

12 Q. Did you see any of this?

13 A. Nothing, sir, so far during that day.

14 MR. GIBBS: Your Honor, I would also like to take
15 -- take official note of 40 -- CFR 40.203, what actual
16 problems a drug test to be cancelled unless they are
17 corrected -- a correctable flaw. On the FCC that is
18 not a requirement that that be checked. That's not a
19 correctable flaw that's listed.

20 THE COURT: I'm aware of the -- I'm aware of that
21 and the court will take official notice that that is
22 not a correctable flaw.

23 However, I also take note that as Mr. Syfert
24 pointed out, this was not checked by Mr. Hualde,
25 however, he did indicate that he was told there would

1 be a DOT test. That that matter was filled out prior
2 to him actually arriving on the vessel if that's -- my
3 notes are correct.

4 MR. GIBBS: No further questions, Your Honor.

5 THE COURT: Okay. Hi, Mr. Hualde.

6 THE WITNESS: Hello, sir.

7 THE COURT: Hi, this is Judge Metry.

8 Hey, I have a few questions for you, okay?

9 THE WITNESS: Okay, sir.

10 THE COURT: Okay. You indicated that this was a
11 split specimen.

12 THE WITNESS: Yes, sir.

13 THE COURT: And a split specimen, what you do is
14 you take the -- the cup that's initially filled by a
15 donor and then --

16 THE WITNESS: Yes.

17 THE COURT: -- then pour it into two separate
18 viles; is that correct?

19 THE WITNESS: Yes, correct.

20 THE COURT: Okay. And the first vile is called
21 vile -- sample A?

22 THE WITNESS: Yes, correct.

23 THE COURT: All right. And that one you filled
24 to 15 -- excuse me, to 30 milliliters.

25 THE WITNESS: 30 milliliters, yes.

1 THE COURT: Okay. And that's required, correct?

2 THE WITNESS: Yes, sir.

3 THE COURT: Okay. Now, Mr. Syfert had asked you
4 if you recall about sample B. And I want to ask you
5 little bit about sample B.

6 You don't have a specific recollection as to how
7 much urine was supplied for sample B?

8 THE WITNESS: Specifically not how much, if I can
9 remember, it's 15, or more.

10 THE COURT: And is that because the nature of the
11 -- of the sample is such that the primary test is done
12 on the initial -- on the initial sampling, that being
13 sample A?

14 THE WITNESS: Yes. Upon transferring the urine,
15 if the first bottle is having already 30 milliliters,
16 then the second bottle should have at least 15 or
17 more.

18 THE COURT: Okay. And is that what -- is that
19 what you're training has told you? Is that what you
20 were taught?

21 THE WITNESS: Yes, sir.

22 THE COURT: Okay. Each -- each sample is then
23 capped and initialed by the donor, correct?

24 THE WITNESS: Yes, sir, correct.

25 THE COURT: All right. Do you have a specific

1 recollection of even taking a sample B?

2 THE WITNESS: Again, sir. Can you repeat that
3 one?

4 THE COURT: Yes. Do you have a specific
5 recollection that there is -- there was a sample B?

6 THE WITNESS: Yes, I remember there was a sample
7 B.

8 THE COURT: Okay. So there was a -- so you had
9 two viles. You had sample A, sample B.

10 THE WITNESS: Yes, sir.

11 THE COURT: You recall that sample A was 30
12 milliliters?

13 THE WITNESS: Yes.

14 THE COURT: But you don't recall how much was in
15 Sample B, but you do remember there was a sample B?

16 THE WITNESS: Yes, sir.

17 THE COURT: Is what I said correct?

18 THE WITNESS: Yes, correct, sir.

19 THE COURT: Okay. Now, I want to talk to you
20 about your notations as to the color or appearance of
21 the urine.

22 You're trained to observe the urine as it's given
23 to you, correct?

24 THE WITNESS: Yes, sir.

25 THE COURT: All right. Do you observe it in the

1 initial -- in the initial vile, or do you compare the
2 viles after you split samples?

3 THE WITNESS: First, upon receiving the urine, I
4 look at the -- the urine. And then when transferring
5 it, usually I will -- we will see also because it's a
6 plastic bottle, we will if there is any changes upon
7 transferring. So during that time, there was none.

8 THE COURT: Okay. And obviously the first thing
9 you do when you receive a sample, is you -- you put
10 the temperature strip on it, or is the temperature --
11 temperature strip attached to the bottle when it's
12 given to the donor for -- to provide the sample?

13 THE WITNESS: It's already attached, sir.

14 THE COURT: Okay.

15 THE WITNESS: The cup that we're using, it's
16 already attached.

17 THE COURT: Okay. And there was nothing unusual
18 in this particular sample in terms of color, in terms
19 of clarity, in terms of temperature that you had --
20 that you thought you should make note of?

21 THE WITNESS: None, sir.

22 THE COURT: Okay. In other words, if I were to
23 say this was a normal collections with nothing
24 unusual, would you say that's correct?

25 THE WITNESS: Correct, sir.

1 THE COURT: Okay. In section four, the bottle
2 was released to a local courier; is that correct?

3 THE WITNESS: Yes, correct, sir.

4 THE COURT: Do you remember who the local courier
5 was?

6 THE WITNESS: The local courier is Ramex.

7 THE COURT: Say that again, please.

8 THE WITNESS: Ramex.

9 THE COURT: Okay. And both bottles were released
10 to the local courier?

11 THE WITNESS: Yes, sir.

12 THE COURT: And did you do that in bulk sample,
13 or did you do it in an individual sample?

14 In other words, was this particular urine sample
15 placed in a box with other samples, or was it
16 individually given to the courier?

17 THE WITNESS: No. We are putting it in one box.
18 All the samples together with all of the paperwork in
19 it and seal the box.

20 THE COURT: Okay. And the box is sealed by you
21 and signed by you?

22 THE WITNESS: Yes, sir. Whoever is doing that
23 usually is the one doing the packing also and the
24 sending of the samples.

25 THE COURT: Okay. And have you used this

1 particular courier before?

2 THE WITNESS: Yes, sir. Every time we are using
3 this one.

4 THE COURT: And since that time, you've used the
5 same courier?

6 THE WITNESS: Yes, sir.

7 THE COURT: Okay. Okay. And is this courier on
8 board the vessel, or do you transport the box off the
9 vessel and deliver it to the courier?

10 THE WITNESS: We transfer it, sir, to our office,
11 and then we pack the sample and the paperwork and then
12 we call the courier for the pick up.

13 THE COURT: Okay. Do you maintain -- so you took
14 the box with you from the vessel out of the port to
15 your office, and at that point it was delivered by
16 someone in your office to the courier; is that
17 correct?

18 THE WITNESS: No, sir. We are taking all the
19 samples --

20 THE COURT: Unh-huh.

21 THE WITNESS: -- to our officers and then at the
22 time we -- we seal that one, pack it, and then we --
23 we are requesting the courier for pick up.

24 THE COURT: Okay. How long did that box stay in
25 your office prior to being picked up by the courier?

1 THE WITNESS: The next day the pick up was done.

2 THE COURT: Okay. Is it --

3 THE WITNESS: I finished in the afternoon of this
4 -- of July 2nd.

5 THE COURT: Okay. Is it kept in a refrigerated
6 box -- a refrigerated container overnight?

7 THE WITNESS: Not refrigerated, but with room air
8 conditioner.

9 THE COURT: Okay. Okay. I hear you. And
10 then -- okay. That's standard procedure?

11 THE WITNESS: Again, sir.

12 THE COURT: That is standard procedure. Standard
13 procedure. That's how you normally do it?

14 THE WITNESS: Yes, sir. We're having -- if we
15 have a sample, we have put there maintaining the
16 temperature at around 18 to 20 at least.

17 THE COURT: Centigrade?

18 THE WITNESS: Yes.

19 THE COURT: Okay. With a sample of this size,
20 you indicated that you -- well, let me ask you this:
21 Do you recall where Ms. Simone was in terms of the
22 order of submission?

23 I mean, was she first in a pack? Was she last in
24 the pack? Was she on -- did you take them in the
25 order on the -- on the list that was -- on the crew

1 list that was given to you that we've identified as
2 Coast Guard exhibit four? Excuse me. Coast Guard
3 Exhibit three.

4 THE WITNESS: It was coming to me and giving the
5 urine like that?

6 THE COURT: Yeah, what order did you get the
7 crew?

8 THE WITNESS: She was, I think, in the middle of
9 the -- of the whole pack.

10 THE COURT: Okay. Okay. Were there any other
11 females that's -- on that sample that you collected?

12 THE WITNESS: Female on that ship. I don't think
13 there was another female.

14 THE COURT: You do or do not think there was?

15 THE WITNESS: No, there is no -- I believe there
16 is no other female.

17 THE COURT: Okay. I'm assuming you have a crew
18 list in front of you; is that true? The -- what's
19 been marked as CG-03?

20 THE WITNESS: Yes, sir, I have a copy.

21 THE COURT: Is it all blacked out or do you have
22 an unredacted copy? Do you have a -- do you have a
23 clear copy so that you can see everybody on there?

24 THE WITNESS: One minute, sir. All of this, sir,
25 are blacked out.

1 THE COURT: All except for Ms. Simone?

2 THE WITNESS: Solomon, Simone, yes.

3 THE COURT: I mean, Ms. Solomon. Excuse me.

4 THE WITNESS: Yes.

5 THE COURT: Okay. So you're going off your
6 memory right now when you said you don't think there's
7 any -- there were any other females on board?

8 THE WITNESS: Actually, I'm not sure if there is
9 any other females.

10 THE COURT: Okay. That's good.

11 Okay. And there's a signature on that list. Do
12 you recognize that signature on that list, on the
13 bottom there?

14 THE WITNESS: Yes, that is the master signature.

15 THE COURT: Did you see him -- did you see him or
16 her sign it, or did you -- was it given to you that
17 way?

18 THE WITNESS: Upon making the copy, the master
19 affixed the signature --

20 THE COURT: Okay.

21 THE WITNESS: -- on the list.

22 THE COURT: Okay. I don't believe I have any
23 further questions.

24 You are -- since -- are you still collecting?

25 THE WITNESS: Now, sir?

1 THE COURT: Yeah, are you still a collector?

2 THE WITNESS: Not anymore. I was transferred
3 into ambulance dispatch since the last week of
4 December.

5 THE COURT: Still working for the same company?

6 THE WITNESS: But still working with the same
7 company.

8 THE COURT: Okay.

9 THE WITNESS: But I'm now with ambulance
10 dispatch.

11 THE COURT: Okay. Have you had any complaints at
12 any time over your collection procedures on any of the
13 urine samples you collected over the -- since you've
14 been trained since 2010?

15 THE WITNESS: None, sir.

16 THE COURT: Okay.

17 THE WITNESS: I can remember.

18 THE COURT: Okay. Okay. One second, please.

19 Based on my questions, Mr. Gibbs, any follow up?

20 MR. GIBBS: No, Your Honor.

21 THE COURT: Mr. Syfert?

22 MR. SYFERT: No, Your Honor.

23 THE COURT: Okay. Mr. Hualde, I want to thank
24 you, very, very much for your time. We don't think
25 we'll need you again, but you've been very helpful for

1 this procedure.

2 THE WITNESS: You're welcome, sir.

3 THE COURT: And we appreciate your time.

4 What time is it there?

5 THE WITNESS: Now it's 2015.

6 THE COURT: 2015.

7 THE WITNESS: Yes, sir.

8 THE COURT: Wow, you working late, huh?

9 THE WITNESS: No problem. No problem

10 THE COURT: Thank you very much.

11 THE WITNESS: You're welcome, sir.

12 THE COURT: All right. Have a good day.

13 MR. GIBBS: May I approach, Your Honor?

14 THE COURT: Sure. Thank you.

15 What's next on the list, Mr. Gibbs?

16 MR. GIBBS: Well, Your Honor, we were hoping we
17 could take a short recess because we -- since we
18 entered in the passport information, we don't need to
19 call Lieutenant Brown.

20 THE COURT: All right.

21 MR. GIBBS: Just a short one.

22 THE COURT: 15?

23 MR. GIBBS: That would be great.

24 THE COURT: Mr. Syfert, that work for y'all?

25 MR. SYFERT: Thank you. Yes, Your Honor.

1 THE COURT: Thank you very much. Court is in
2 recess.

3 (Short recess)

4 THE COURT: Thank you. Back on the record.

5 Back on the record in the matter of United States
6 Coast Guard versus Simone Joyce Solomon.

7 Mr. Gibbs.

8 MR. GIBBS: Yes, Your Honor. At this time the
9 Coast Guard would like to call Hersh Kohut who is the
10 DER for Argent Marine.

11 THE COURT: Okay.

12 UNIDENTIFIED FEMALE SPEAKER: Good morning,
13 Argent Marine. Can I help you?

14 MR. GIBBS: Good morning. This is Mark Gibbs
15 with the United States Coast Guard and I'm calling to
16 speak with Mr. Hersh Kohut, please.

17 UNIDENTIFIED FEMALE SPEAKER: Yes, may I put you
18 on hold for one moment?

19 MR. GIBBS: Absolutely.

20 UNIDENTIFIED FEMALE SPEAKER: Thank you.

21 MR. KOHUT: Hello. This is Hersh Kohut.

22 MR. GIBBS: Good morning, Mr. Kohut. It's Mark
23 Gibbs with the Coast Guard.

24 MR. KOHUT: Hello, Mark. How are you, sir?

25 MR. GIBBS: Doing fine, sir.

1 We're in the middle of these proceedings and as
2 soon as Judge Metry is finished speaking to you, I'm
3 going to be asking you some questions, and then the
4 defense would be able to cross examine if they have
5 any questions.

6 If you'll stand by one second, Judge Metry will
7 be speaking with you.

8 MR. KOHUT: All right, fine. Do you need someone
9 to be on the line to verify my --

10 MR. GIBBS: We're gonna get to that, sir.

11 MR. KOHUT: Okay. Fine.

12 THE COURT: Hello, Mr. Kohut. This is Judge
13 Metry. How are you today?

14 MR. KOHUT: Good morning, Judge, how are you?
15 I'm fine.

16 THE COURT: Very well. Thank you very much for
17 your time. I know it's late and I know -- well,
18 actually, it's not too late for you. It's early for
19 you.

20 MR. KOHUT: It's early for me, yes.

21 THE COURT: Oh, good. You're an early riser,
22 right?

23 MR. KOHUT: Yep.

24 THE COURT: Mr. Kohut, what I'm gonna do is, I'm
25 going to ask you to take an oath and then what will

1 happen is someone will ask someone to verify your ID
2 -- your identity.

3 MR. KOHUT: Okay.

4 THE COURT: Preferably it's someone that's -- you
5 know, what they'll do is they'll take a look at your
6 license or whatever it is you have and they'll verify
7 that it's you and that's all we need.

8 That person will not be needed to be -- to be put
9 under oath, but if you could, I know it strange 'cause
10 you're on that side of the phone, but we all do it, if
11 I could get you to raise your right hand and just
12 answer this question.

13 Do you solemnly swear to tell the truth, the
14 whole truth and nothing but the truth?

15 MR. KOHUT: Yes, I do.

16 THE COURT: Okay, great. Please state your full
17 name, spelling it for my court reporter, please.

18 MR. KOHUT: My name is Hershhal Kohut. First name
19 is spelled H-E-R-S-H-A-L. Last name is K-O-H-U-T.

20 THE COURT: Great. Thank you. And do you think
21 you can get someone standing by to -- just to take a
22 look at your ID for us?

23 MR. KOHUT: Certainly hang on just a second.

24 I'll have Ms. Pinney come do that.

25 THE COURT: Great. We'll get her name, too.

1 MR. KOHUT: Her first name is Sue, S-U-E. Last
2 name is Pinney. P-I-N-N-E-Y. And here she is.

3 THE COURT: Great. Ms. Pinney, are you there?

4 MS. PINNEY: I am.

5 THE COURT: Hi. Could you please tell us your
6 name?

7 MS. PINNEY: Sue, S-U-E. Pinney, P-I-N-N-E-Y.

8 THE COURT: Great. And do you have a gentleman
9 standing there next to you, or in front of you?

10 MS. PINNEY: Yes, I do.

11 THE COURT: And do you have a copy of -- could
12 you get his ID from him, preferably a driver's license
13 or identification badge of type.

14 MS. PINNEY: I have his driver's license in front
15 of me.

16 THE COURT: All right. And is it -- it is -- is
17 the name on it Hershhal Kohut?

18 MS. PINNEY: Yes.

19 THE COURT: All right. And there's a picture on
20 there?

21 MS. PINNEY: Yes.

22 THE COURT: And you know Mr. Kohut and he's
23 standing right there?

24 MS. PINNEY: Yes.

25 THE COURT: All right. Great. Thank you so

1 very, very much.

2 MS. PINNEY: You're welcome. Hold on.

3 THE COURT: Sure.

4 MR. KOHUT: Okay.

5 THE COURT: Thank you, Mr. Kohut. It's very nice
6 of you to be so cooperative.

7 The next voice you're gonna hear is Mr. Gibbs
8 again and he'll ask you questions to be followed up by
9 Mr. Syfert, and then if there's any areas that I'm
10 still unclear of, they'll be each given a chance to
11 ask you some follow ups, but if there's any area that
12 I'm still unclear of, I'll ask you a couple as well.

13 MR. KOHUT: All right, fine.

14 THE COURT: Thank you very much, Mr. Kohut.

15 MR. KOHUT: Not a problem at all.

16 THE COURT: Mr. Gibbs.

17 MR. GIBBS: Thank you, Your Honor.

18 - - - - -

19 **HERSHAL KOHUT**

20 Having been produced and previously sworn as a witness,
21 testified as follow:

22 DIRECT EXAMINATION

23 BY MR. GIBBS:

24 Q. Good morning, Mr. Kohut.

25 Again, my name is Mark Gibbs. I appreciate your time.

1 If we could start out with you state for the court who
2 your employer is.

3 A. I'm employed by Argent Marine Operations, Inc.

4 Q. And could you please describe your current
5 position and the duties with Argent Marine.

6 A. I'm the senior vice president of the company.
7 I'm responsible for, excuse me, coordinating and
8 overseeing the operation of the Alliance Charleston.

9 And as part of that responsibility, I'm also the
10 designated person for our substance compliance program.

11 Q. And how long have you been employed with them in
12 that capacity?

13 A. Three years.

14 Q. Three years.

15 Okay. Could you explain the relationship between
16 Argent Marine and the motor vessel Alliance Charleston.

17 A. Argent Marine is the bareboat charter of the
18 vessel. We are responsible for its operation and
19 (inaudible) chartered to another company.

20 The vessel operates carrying commercial and government
21 cargo between the United States and the Middle East.

22 Q. Could you, for the court, explain what a bareboat
23 charter is?

24 A. A bareboat charter is essentially like a
25 automobile lease where we, if you will, rent the vessel

1 from the owner, and are responsible for the maintenance
2 operation and crewing of the vessel.

3 Q. So the -- Argent Marine provides the crew for the
4 vessel Alliance Charleston?

5 A. Yes, we do provide the crew. They are our
6 employees.

7 Q. Do you employ any other entities to assist with
8 the drug testing program for Argent Marine?

9 A. We use American Maritime Safety to comply with
10 the substance testing requirements. And as part of that,
11 Anderson-Kelly does the -- the testing work and the
12 medically required portion of that.

13 Q. Okay. And are you the individual that is
14 contacted by American Maritime Safety when drug testing is
15 required?

16 A. Yes, I am.

17 Q. And that's because of your position as the
18 designated employee representative?

19 A. Yes, I -- that's correct.

20 Q. And were you contacted by AMS for the test
21 conducted on July 2nd, 2012?

22 A. Yes, I was.

23 MR. GIBBS: Your Honor, at this time, we'd like
24 the witness to reference the previously introduced
25 Coast Guard exhibit CG-03 --

1 THE COURT: Does he have it in front of him?

2 MR. GIBBS: -- for the Alliance Charleston.

3 THE COURT: Does he have it in front of him?

4 Does he have it in front of him?

5 BY MR. GIBBS:

6 Q. Mr. Kohut, do you have before you the Coast Guard
7 exhibit marked CG-03?

8 A. Yes, I do.

9 Q. Can you describe the document, please?

10 A. It is a crew list for the Alliance Charleston
11 dated July 2nd of 2012 with most of, all but one, being
12 redacted.

13 Q. And how many people are listed on the crew list?

14 A. Twenty-one.

15 Q. Did you receive 21 test results for all 21 crew
16 members?

17 A. Yes, we did -- I did.

18 Q. Do you remember what the results of those tests
19 were?

20 A. Twenty were negative and one was deemed to be
21 failure to participate.

22 Q. Refusal to submit to a test? Is that what you
23 mean?

24 A. Yes, refusal to submit, yes.

25 Q. Okay. In your role as the DER with Argent

1 Marine, how many drug tests have you come across that are
2 non-negative?

3 A. One.

4 Q. Would it be the one in question?

5 A. That's correct

6 Q. And how many samples would you say that you've
7 collected over in the UAE area?

8 A. Approximately 100.

9 Q. And of those 100 collections, how many resulted
10 in anything other than negative?

11 A. Just one.

12 Q. Again the same one in question?

13 A. Excuse me.

14 Q. The same -- the -- Ms. Solomon's test is what
15 you're referring to?

16 A. Yes, that's correct.

17 MR. GIBBS: Okay. Your Honor, at this time the
18 Coast Guard would like to introduce the exhibit marked
19 CG24, a 22 page, singled-sided document that is a copy
20 of the test results of all crew members with the
21 exception of the respondent.

22 BY MR. GIBBS:

23 Q. Mr. Kohut, do you have --

24 MR. SYFERT: Your Honor, we would have an
25 objection to this.

1 THE COURT: All right. Let me hear it.

2 MR. SYFERT: We would make the same objection now
3 that it's offered for the improper purpose of stating
4 that the -- all the tests were normal; trying to say
5 that Ms. Solomon's wasn't. It's the same thing I've
6 written about.

7 MR. GIBBS: Your Honor, we received this
8 information at the request of counsel for -- you know,
9 we could, like I explained, we couldn't get the
10 creatinine levels.

11 THE COURT: It does seem to me to be a little bit
12 inconsistent. The respondent wants the results --
13 excuse me, the respondent wants specific creatinine
14 levels and specific gravity tests of these crew
15 members. But at this point, Mr. Syfert, you would be
16 objecting to the simple -- the assertion that these
17 were negative without more.

18 Is that what you're -- is that what you're basing
19 our objection on?

20 MR. SYFERT: Your Honor --

21 THE COURT: Or do you think it's premature?

22 MR. SYFERT: I would think it premature. We have
23 not been allowed to see the chemistry behind this. We
24 haven't -- the pH, the creatinine, specific gravity or
25 just the first panel.

1 Like I said, if they had had this -- if this had
2 been in their CG-19, then we could look at it and say,
3 all right, this is what all -- all the pHs -- maybe
4 all the pHs were high.

5 It could very much show what we're trying to say
6 here, Your Honor, is that something was -- you know,
7 something might have happened with that whole box.

8 Just because the --

9 THE COURT: Go ahead.

10 MR. SYFERT: -- just because the indication --
11 the indications from this and the reason that they're
12 offering it now, this has nothing to do with
13 Ms. Simone Solomon's urine.

14 They're offering it to show that there was no
15 other problems with anything else in that box.

16 THE COURT: See, that's -- that's I think is
17 where I'm at at this point, Mr. Gibbs.

18 And let me tell you: I think that it's just not
19 relevant at this point because this hasn't been -- I
20 mean, we've talked about it, and it's like a -- I
21 think it's more like a -- like a preemptory shot by
22 the Coast Guard to take away an avenue of defense
23 from -- that Mr. Syfert may bring up, but until I
24 think Mr. Syfert brings up the fact in open court that
25 this is an element of his defense, I don't think the

1 Coast Guard has to prove anything at this point other
2 than the case in chief that -- that you're proceeding
3 on now with Ms. Solomon.

4 In other words, you can give me all 100 of the
5 other one -- all 99 of the other ones, and it doesn't
6 do the Coast Guard -- it doesn't do the Coast Guard
7 any good because it doesn't rebut anything as raised
8 by Mr. Syfert at this point.

9 Now it may be that he says, look, he says, you
10 know -- maybe later he says, look, you know, there
11 was -- another one was bad and then you bring this
12 and, no, they were all good. And then he'll come back
13 and say, well, you know, I want all those specifics.

14 You know, I'll make that determination at that
15 time, but right now I do not believe that this is a
16 relevant submission. And I am gonna uphold the
17 objection at this point until these documents become
18 relevant.

19 I don't think the fact that everybody else was
20 negative at this point on that ship is relevant to
21 your case against Ms. Solomon.

22 And while it may become relevant later, I don't
23 think it is at this time. So I am gonna sustain the
24 objection as to these documents to CG-20-24 at this
25 time.

1 MR. GIBBS: Yes, Your Honor.

2 THE COURT: Okay. Fair enough.

3 MR. GIBBS: Just to add: We did every effort we
4 could to get the levels, but it's --

5 THE COURT: I heard that.

6 MR. GIBBS: -- due to violations, we couldn't --
7 they wouldn't provide it.

8 THE COURT: And frankly, I mean, as I'm sitting
9 here, I'm not so sure it's your obligation to do so.

10 MR. GIBBS: Yes, sir.

11 THE COURT: But, you know, I mean, again, I'm not
12 gonna argue that point for or against Mr. Syfert.

13 I think at this point where we're at is that
14 Coast Guard need to prove their prima facie case
15 against Ms. Solomon.

16 And then at that point whatever -- Mr. Syfert
17 wants to put in for her defense, may make the
18 information that you have more relevant at a later
19 time.

20 So the court is going to not admit CG-24 at this
21 time, okay?

22 You want to get back with Mr. Kohut?

23 MR. GIBBS: Yes, sir.

24 THE COURT: I know I threw you off a little bit,
25 so take your time.

1 Hang on with us, Mr. Kohut, all right?

2 THE WITNESS: I'm here.

3 THE COURT: Okay.

4 MR. GIBBS: Actually, Your Honor, the Coast Guard
5 would like to reserve the right to call Mr. Kohut at a
6 later day if necessary -- at a later time if
7 necessary.

8 THE COURT: Okay. So that would have been the
9 purpose of Mr. Kohut's testimony is what we've all
10 discussed here?

11 MR. GIBBS: (Nods head in the affirmative).

12 THE COURT: Okay. That request is granted.
13 Since he's in the state, we'll be able to get ahold of
14 him.

15 Mr. Kohut, you're not going on leave any time
16 soon, are you?

17 THE WITNESS: No, I'll be available. I don't
18 think -- I don't have anything that will take me out
19 of the country for several weeks.

20 THE COURT: Okay.

21 MR. SYFERT: I just have one follow-up question,
22 Your Honor.

23 THE COURT: Sure. Go ahead.

24 MR. SYFERT: Hopefully it's just one.

25 THE COURT: It's never just one, but go ahead.

1 CROSS EXAMINATION

2 BY MR. SYFERT:

3 Q. Mr. Kohut, is the -- was Ms. Solomon the only
4 female aboard the Alliance Charleston?

5 A. Yes, she was.

6 MR. SYFERT: Thank you. No further questions.

7 THE COURT: I have some questions for you,
8 Mr. Kohut.

9 THE WITNESS: Okay.

10 THE COURT: And I'm sorry about this, but I know
11 that as the designated employee representative -- I
12 want to back you up a little bit as well.13 So the owner of the vessel is not Argent Marine;
14 is that correct?

15 THE WITNESS: That is correct.

16 THE COURT: You basically lease the vessel, staff
17 it, and make it available for eventual -- you have
18 customers that lease the -- that contract with the
19 vessel to transport things either cross the oceans, or
20 if it's a local transport, within the local transport
21 area?22 THE WITNESS: We don't do very much from one US
23 port to another. Most of the activity is from the
24 United States to the Middle East or back from the
25 Middle East to the United States, but that's correct.

1 THE COURT: Okay. If you would, would you please
2 describe the Alliance Charleston for me, like length
3 overall, beam, crew capacity; that type of thing.

4 THE WITNESS: Sure. The vessel is roll-on/roll-
5 off car carrier. It's 700 -- approximately 750 feet
6 long with a beam of about 105 feet. It has 13 cargo
7 decks, three of which are reinforced to carry heavy
8 cargo and are more often than not, used to carry
9 government equipment back and forth from the United
10 States to the middle east.

11 The crew count is 21.

12 THE COURT: Separate male, female quarters, I'm
13 assuming?

14 THE WITNESS: Each -- generally, each crew member
15 has their own quarter, their own accommodations.

16 There have been occasions where we have doubled
17 up, but never with mixing one male with female.

18 THE COURT: Okay. Great.

19 What year was the vessel commissioned?

20 THE WITNESS: The vessel was built in 2008, sir.

21 THE COURT: So it's basically a brand new vessel,
22 correct?

23 THE WITNESS: Yes.

24 THE COURT: And how many does Argent Marine --
25 how many vessels does Argent Marine lease?

1 THE WITNESS: This is the only vessel that we
2 have right now.

3 THE COURT: Where is it currently located?

4 THE WITNESS: Today it is in the port of
5 Baltimore.

6 THE COURT: Oh, very good.

7 Is Ms. Solomon still employed by Argent Marine?

8 THE WITNESS: No, she is not.

9 THE COURT: I'm assuming that was as a result of
10 the -- what we're talking about here today?

11 THE WITNESS: That's correct.

12 THE COURT: And when did her employment seize?

13 THE WITNESS: Shortly after I received those
14 results. I don't have that date in front of me.

15 I can look it up for you if you like.

16 THE COURT: Oh, it's okay. I'm assuming it's
17 been approx -- about six months since she's been
18 employed then?

19 THE WITNESS: Approximately, yes.

20 THE COURT: Have you -- have you ever spoken to
21 Ms. Solomon?

22 THE WITNESS: Not since this incident, no.

23 THE COURT: Not since 2, July?

24 THE WITNESS: Correct.

25 THE COURT: You were not responsible for

1 informing her that her employment was terminated?

2 THE WITNESS: She was informed of that by the
3 captain of the vessel.

4 THE COURT: While I'm assuming it was still in
5 port in Dubai, or don't you know?

6 THE WITNESS: I don't know if it was in Dubai.
7 It was in -- somewhere near the United Air Membrance.

8 THE COURT: Okay. And just -- I guess, this is
9 more out of curiosity than anything: How did she get
10 back?

11 Were you responsible for bringing her back?

12 THE WITNESS: Yes, the company is responsible --

13 THE COURT: Okay.

14 THE WITNESS: -- for bringing her back.

15 THE COURT: To your knowledge, did anybody in
16 management, except the master, speak to Ms. Solomon
17 about this incident?

18 THE WITNESS: As far as I know, the master was
19 the only one that spoke to her about it.

20 THE COURT: Okay. Okay. I have some questions
21 just about the -- the -- about the nature of the test.

22 The previous witness testified that this was a
23 random test, that 100 percent -- and random in terms
24 of -- when I think random, I think that the crew
25 members are randomly selected, but he indicated this

1 was a random test and he was requested to test 100
2 percent of the crew of the Alliance Charleston.

3 Where does that request come from; do you know?

4 THE WITNESS: Because we only operate one ship,
5 we are part of a pool of companies that have small
6 fleets, if you will.

7 To assure randomness the selection of the ships,
8 the random testing is done by selection from that
9 pool.

10 And it is the ship that is pulled randomly, not
11 members of the crew aboard any one ship.

12 THE COURT: Okay. So the chances of -- I mean, I
13 don't -- obviously don't have any idea how many ships
14 are in the pool, but the chances should logically be
15 one chance per number of the vessels that are in --
16 number of vessels that are in that pool or number of
17 employees that are in that pool?

18 THE WITNESS: I believe, it's number of vessels.

19 MR. GIBBS: Your Honor, we were prepared to ask
20 these questions if you --

21 THE COURT: Oh.

22 MR. GIBBS: -- but since we stipulated to the
23 factual and --

24 THE COURT: Yeah.

25 MR. GIBBS: -- jurisdictional...

1 THE COURT: That's fine.

2 MR. GIBBS: I just wanted to make sure you --

3 THE COURT: That's -- okay.

4 All right. I just got a -- I guess, that's all I
5 have in that regard, Mr. Kohut. Thank you. But it
6 was very kind of you to give me all that information,
7 all right.

8 THE WITNESS: Not a problem, Your Honor.

9 THE COURT: All right. If we need you later,
10 we'll get back in touch with you.

11 THE WITNESS: Okay, fine. Thank you.

12 THE COURT: One more second.

13 Based on my questions, Mr. Gibbs, do you have
14 anything to follow up with Mr. Kohut?

15 MR. GIBBS: No further questions.

16 THE COURT: Mr. Syfert?

17 MR. SYFERT: No, Your Honor.

18 THE COURT: All right.

19 MR. GIBBS: We would like to reserve the right to
20 follow up later, Your Honor.

21 THE COURT: That's fine.

22 All right. Well, thank you very much, Mr. Kohut.

23 THE WITNESS: You bet, Your Honor.

24 THE COURT: You take care.

25 MR. KOHUT: Good-bye. Thank you.

1 THE COURT: Bye-bye.

2 Okay. Well, thanks. You saved me some time.

3 What is your pleasure? We've been going --
4 actually, we've been 1:45 minutes. We took a -- we
5 started right at 10:00, took 15 minutes and now it's
6 12:00.

7 Do you want to take another witness before we
8 break for lunch?

9 What do y'all think? It's up to you guys.

10 MR. NEE: Another witness.

11 THE COURT: Another witness. Okay.

12 MR. GIBBS: Actually the next witness shouldn't
13 be very long at all, Your Honor.

14 THE COURT: All right.

15 MR. GIBBS: We will call Ms. Erin Beller of
16 Anderson-Kelly.

17 THE COURT: Great.

18 UNIDENTIFIED MALE SPEAKER: Thank you for calling
19 Anderson-Kelly. Your call will be answered by the
20 next available representative.

21 MS. LISA: Anderson-Kelly. This is Lisa. How
22 may I help you?

23 MR. GIBBS: Good morning, Lisa. This is Mark
24 Gibbs with the United States Coast Guard calling to
25 speak with Ms. Erin Beller, please.

1 MS. LISA: Sure. I'm sorry. You sound very far
2 away. I didn't catch your name.

3 MR. GIBBS: Mark Gibbs.

4 MS. LISA: Okay. One moment, please.

5 MR. GIBBS: Thank you.

6 MS. LISA: You're welcome.

7 MS. BELLER: Hello.

8 MR. GIBBS: Is this Ms. Beller?

9 MS. BELLER: This is Erin.

10 MR. GIBBS: Good morning, Erin. This is Mark
11 Gibbs. Now can you hear me?

12 MS. BELLER: Okay. A little bit. Yes, that's
13 fine.

14 MR. GIBBS: But you understand me fine?

15 MS. BELLER: Yes.

16 MR. GIBBS: Okay, great.

17 We're in the middle of these proceeding as
18 discussed and Judge Metry is about to ask you some
19 questions and go over some things with you. And after
20 that, I'll be asking you questions and then the
21 defense will cross if they want to.

22 MS. BELLER: Okay. Thank you.

23 MR. GIBBS: One second, please.

24 THE COURT: Hello, Ms. Beller. This is Judge
25 Metry. How are you today?

1 MS. BELLER: Doing well.

2 THE COURT: Great. Thank you very much for
3 standing by with us.

4 What I intend to do is I first need to swear you
5 in, and then I'm gonna ask someone that's standing
6 there to collect an ID from you and just identify you
7 -- they won't have to be sworn in, but they just have
8 to verify that you're you.

9 Is that okay?

10 MS. BELLER: That's fine.

11 THE COURT: Okay. Could I get you raise to your
12 right hand, please.

13 THE WITNESS: Yes.

14 THE COURT: And could you answer this question:
15 Do you solemnly swear to tell the truth, the whole
16 truth and nothing but the truth so help you God?

17 MS. BELLER: Yes.

18 THE COURT: Okay. Please state your full name,
19 spelling your name for my court reporter, please.

20 MS. BELLER: Erin Shea Beller. E-R-I-N S-H-E-A
21 B-E-L-L-E-R.

22 THE COURT: Thank you. Is there someone standing
23 next to you by any chance?

24 MS. BELLER: Yes.

25 THE COURT: Could you please hand them your ID?

1 MS. BELLER: Yes.

2 THE COURT: All right. And could you hand the
3 phone to that person, please.

4 MS. BELLER: Yes. His name is John Conway. I
5 handed him my TWIC card. Just one moment, please.

6 THE COURT: Perfect.

7 MR. CONWAY: Hi, this is John.

8 THE COURT: Hi. Hi, this is Judge Metry.

9 It's Mr. Conway?

10 MR. CONWAY: Yes, sir.

11 THE COURT: Mr. Conway, do have -- do you have an
12 ID card for Ms. Beller in front of you?

13 MR. CONWAY: Yes, I do.

14 THE COURT: All right. And is it made out to
15 Erin Beller?

16 MR. CONWAY: Yes, it is.

17 THE COURT: And is there a photo on it?

18 MR. CONWAY: Yes, it is.

19 THE COURT: And is that the photograph of that --
20 of the person standing next to you?

21 MR. CONWAY: Yes, it is.

22 THE COURT: All right. Great. Thank you very
23 much.

24 You can hand that back to Ms. Beller. And I want
25 to thank you, sir.

1 MR. CONWAY: No problem, any time.

2 MS. BELLER: Hello. You got me back.

3 THE COURT: Okay. All right. You're gonna hear
4 Mr. Gibbs ask you some questions and then Mr. Syfert
5 may ask you some when redirect(sic), okay?

6 MS. BELLER: Yes.

7 THE COURT: Excuse me. Cross. Excuse me.
8 Go ahead, Mr. Gibbs.

9 - - - - -

10 **ERIN SHEA BELLER**

11 Having been produced and previously sworn as a witness,
12 testified as follow:

13 DIRECT EXAMINATION

14 BY MR. GIBBS:

15 Q. Good morning, Ms. Beller. Thanks again for your
16 time.

17 A. No problem.

18 Q. For the court, I'd like you to start by stating
19 who your employer is.

20 A. Anderson-Kelly Associates.

21 Q. And how long have you been employed with them in
22 the capacity that -- well, what is your position? I
23 apologize.

24 A. Manager of the substance abuse prevention
25 program.

1 Q. And how long have you been employed in that
2 capacity?

3 A. Since February 1994.

4 Q. Can you briefly describe what the relationship
5 between Anderson-Kelly and Argent Marine is?

6 A. We are a service provider for Argent Marine for
7 random on site drug testing per the request of Argent
8 Marine.

9 Q. And do you coordinate the drug testing program
10 for Argent Marine?

11 A. No.

12 Q. Who does?

13 A. I'm sorry. Can you repeat the question?

14 Q. Who's responsible for the drug testing for Argent
15 Marine?

16 A. The employer is responsible for the drug testing,
17 but the random selection -- I don't -- I'm sorry. Repeat
18 the question.

19 Q. Let me rephrase. I apologize.

20 Who does the training?

21 A. I don't know.

22 Q. Okay. Are you the person that is contacted by
23 Argent Marine when random drug testing is required?

24 A. Yes.

25 Q. And who contacts you?

1 A. Hersh Kohut from Argent Maine -- or Hersh
2 Kohut.

3 Q. And what information does he provide you?

4 A. The vessel information, the vessel agent
5 information, the anticipated vessel arrival date to a
6 specified location, and a crew list of the members on
7 board the vessel.

8 Q. Were you contacted by Argent Marine on July 2nd
9 to coordinate a DOT urine collection aboard the Alliance
10 Charleston?

11 A. No, not on July 2nd.

12 Q. What was the date, ma'am?

13 A. I was contacted -- we arrange for the testing on
14 June 15th for the testing to occur on vessel arrival to
15 the port.

16 Q. And the reason that that test didn't go?

17 A. Pardon me.

18 Q. Well, the -- obviously the test ended up getting
19 bumped to a later date.

20 Could you please explain that?

21 A. Due to, I guess, port conditions, vessel arrival
22 time. Many factors impact the vessel arrival to a
23 specified port.

24 Q. And is that common?

25 A. Yes.

1 Q. What was the time and location for the scheduled
2 urine collection ultimately?

3 A. The collection was completed on July 2nd.

4 Q. And the --

5 A. And in Jebel Ali --

6 Q. Thank you.

7 A. UAE.

8 Q. Did this collection occur?

9 A. Yes.

10 Q. Who was the -- who conducted the sample
11 collection?

12 A. The specific collector's name?

13 Q. Correct.

14 A. Jezer Hualde.

15 Q. And is he a trained DOT collector?

16 A. Yes.

17 Q. Ms. Beller, do you have a document in front of
18 you marked in the lower right hand corner called CG-07?

19 A. Yes.

20 MR. GIBBS: Your Honor, we'll be -- referencing
21 the previously introduced CG-07.

22 BY MR. GIBBS:

23 Q. Ms. Beller, do you recognize the document in
24 front of you?

25 A. Yes.

1 Q. Could you please describe the document?

2 A. It's a certificate of training for Jezer Hualde.

3 Q. I notice that there's no issue date on the
4 qualification letter.

5 Do you know what the date was that it was issued?

6 A. Collector certification is valid for five years.
7 So the initial training was April, 23rd, 2010.

8 Q. Okay. If Mr. Hualde was involved in a collection
9 that suffered a correctable or fatal flaw, would you be
10 the person contacted?

11 A. Yes.

12 Q. And has he ever?

13 A. Not my knowledge.

14 Q. Ms. Beller, did you receive a box of urine
15 samples for all 21 crew members that were on board the
16 Alliance Charleston on 2, July, 2012?

17 A. Yes.

18 Q. And why did the shipments come to your office?

19 A. If the package is delayed or if the courier needs
20 further information, if I'm not declared the receiver, I
21 have no recourse and no ability to have the package
22 released from their custody.

23 Q. And what do you do once the box is received?

24 A. The shipments are stored in my office. We open
25 the package, the samples are counted. They're examined

1 for tampering. We remove the paperwork in the separate
2 envelopes.

3 We examine the paperwork to make sure the proper chain
4 of custody forms were used, that there weren't any
5 correctable or fatal flaws, or any apparent flaws to the
6 documents.

7 Q. So to summarize, after you inspected the box, you
8 confirmed that all specimens were sealed and properly
9 maintained?

10 A. Correct.

11 MR. GIBBS: Your Honor, at this time, we have no
12 further questions for Ms. Beller.

13 THE COURT: Mr. Syfert.

14 CROSS-EXAMINATION

15 BY MR. SYFERT:

16 Q. Hello, Mr. -- Ms. Beller. I'm Graham Syfert. I
17 represent Ms. Solomon.

18 A. Hello.

19 Q. I just have a few questions. And if I -- if you
20 don't understand me, please tell me.

21 You said that you received it. How did you receive
22 it, the packet?

23 A. FedEx.

24 Q. Okay. And where did that come from, FedEx?
25 Where did it originate?

1 A. From Jebel Ali or Dubai from the Plastic Powder
2 Coating Company.

3 Q. Okay. So you receive it -- and where is
4 Anderson-Kelly's office?

5 A. You want the city -- I'm sorry.

6 Q. Yeah, sure, city and state. Where --

7 A. You want the full address or just the --

8 Q. Just a -- I mean --

9 A. We're in Mount Olive, New Jersey.

10 Q. Okay. And so you actually received Ms. Simone
11 Solomon's sample in -- in New Jersey; is that correct?

12 A. I'm not too sure if I understand your question.

13 Q. You received -- at some point in time, Ms. Simone
14 Solomon's sample was in New Jersey?

15 A. I received 21 samples that day. I'm -- I'm
16 imagining that Ms. Solomon's -- they're not marked with
17 someone's name, only with a number.

18 So I would say if she was part of that group collected
19 that day, then we received Ms. Solomon's sample.

20 Q. Okay. There was a Federal Custody and Control
21 Form in that package as well?

22 A. A copy one goes with the sample to the laboratory
23 in --

24 Q. Okay.

25 A. -- individually wrapped plastic bags.

1 Q. So you opened the box; is that correct?

2 A. The box, correct.

3 Q. And you went through the urine tubes, or cups
4 whatever you want to call them?

5 A. No, they're individually sealed. So each sample
6 is packaged in a plastic bag with the two split samples.

7 Q. Okay. So you open up the box and you had the
8 plastic bags -- you had the box open in your office in New
9 Jersey, yes?

10 A. Correct.

11 Q. Okay. Was there any -- was the box -- did the
12 box have any sort of tamper-proving label on it or
13 anything like that?

14 A. The -- the cardboard box that it's shipped in,
15 has tape on the outside, but the specimens are
16 individually wrapped with -- and they have tamper-evidence
17 seals that are placed by the collector.

18 Q. Okay. So --

19 A. During the time --

20 Q. There is one on the box, yes?

21 A. No.

22 Q. Okay. No.

23 A. Not on the part -- not on the box, but on the
24 samples that are collected by the collector. They're the
25 tamper-evidence seals.

1 I just want to make sure I understand what you're
2 asking me.

3 Q. Okay. Thank you. And keep on doing that, yeah.

4 Do you know how long the package took to get from
5 Dubai to New Jersey, Mount Olive?

6 A. No.

7 Q. Okay. Do you refrigerate the samples when you
8 get them in Mount Olive?

9 A. It's not a requirement.

10 Q. What is that?

11 A. It's not a regulatory requirement to refrigerate
12 the samples. The samples are stored in my office, the
13 door is locked while they're in my office until they're
14 released to the courier --

15 Q. Okay.

16 A. -- for shipment to the laboratory.

17 Q. Okay. And what's the temperature for your
18 office?

19 A. I don't know.

20 Q. Room temperature?

21 A. I -- we're in an office building.

22 Q. Okay.

23 A. I don't know. We don't manage our temperature
24 individually within the offices.

25 Q. Okay. You don't have --

1 A. Nor do I have a thermostat.

2 Q. Do you have to go in wearing coats?

3 A. Pardon me?

4 Q. Do you have to wear a coat when you go into the
5 office? Is it that cold, or is it -- I mean, it's just --

6 A. I'm the wrong person to ask.

7 Q. All right.

8 A. I wear a coat in air conditioning regularly.

9 Q. All right. So you receive it -- what day did you
10 receive the -- the urine samples in this case?

11 A. July 10th.

12 Q. Okay. And what day were they collected?

13 A. July 2nd.

14 Q. Okay. And you don't know where it was between
15 July 2nd and July 10th; is that correct? Other than maybe
16 in the possession of FedEx?

17 A. Correct.

18 Q. Okay. You said it's not a requirement that they
19 be -- the samples be refrigerated?

20 A. Correct.

21 Q. Is it common?

22 A. I don't know.

23 Q. Do you guys have any sort of facilities there
24 where you could refrigerate urine?

25 A. Do we -- I'm sorry. Can you ask the question

1 again?

2 Q. Do you have facilities in Anderson-Kelly in Mount
3 Olive, New Jersey where you could refrigerate urine?

4 A. Are you asking if I have a refrigerator? It
5 would -- the samples would not be in my office if they
6 were in the refrigerator. They would be out with everyone
7 else.

8 Q. Do --

9 A. They are stored in my office in a secured area
10 until they are released to the courier.

11 Q. Do you ever refrigerate urine when it comes in?

12 A. No.

13 Q. Okay.

14 A. The samples are shipped out the same day that
15 they're received.

16 Q. Okay. And the same things happen in this case,
17 it was sent out the same day it was received?

18 A. Yes. It was received on July 10th, and we
19 shipped the sample to the laboratory July 10th.

20 Q. Okay. Are you the supervisor of Jezer Hualde?

21 A. Can you -- I'm sorry. Ask the question again.

22 Q. Are you the supervisor of Jezer Hualde?

23 A. No.

24 Q. What's the relationship between Anderson-Kelly
25 and Jezer Hualde?

1 A. Jezer Hualde worked our service provider in UAE.

2 Q. Okay. And who is that service provider that he
3 works for?

4 A. Plastic Powder Coating Company.

5 Q. Okay. Do you have a copy --

6 A. He's a subcontractor to Plastic Powder Coating
7 Company.

8 Q. Okay. And so you have relations with Plastic
9 Power Coating Company in Dubai?

10 A. Correct.

11 Q. Do they have refrigerators there where they
12 refrigerate urine?

13 A. I don't know.

14 Q. Do you know anything about the port -- port
15 clinic in Sujairah?

16 A. Sujairah?

17 Q. I don't know how to say. Yeah.

18 A. I'm sorry. Can you ask the question again?

19 Q. Yeah. Do you know anything about the port clinic
20 in Sujairah? Pardon my pronunciation.

21 A. I believe it to be the employer of Bezel Hualde.

22 MR. SYFERT: Okay. I have no further questions,
23 Your Honor.

24 THE COURT: Any follow up?

25 MR. GIBBS: Yes, Your Honor, we have a couple

1 more questions real quick.

2 THE COURT: Okay.

3 RE-DIRECT EXAMINATION

4 BY MR. GIBBS:

5 Q. Just to reiterate a couple things, Ms. Beller.

6 Did you -- is it common practice for you to open the
7 boxes when the specimens come in?

8 A. Yes.

9 Q. And you're opening the boxes for what purpose?

10 A. To examine the paperwork that's separate from the
11 samples, to examine the samples to make sure they haven't
12 leaked or have been tampered with during the shipment to
13 our office.

14 Q. Okay. Was anything tampered with or were any of
15 the bags opened, anything along those lines?

16 Anything unusual with this shipment?

17 A. Not to my knowledge.

18 Q. Did all the bags have seals?

19 A. Yes.

20 Q. How long has Anderson-Kelly done this process
21 where it's collected, it goes to Plastic Powder Coating,
22 you know, then to your office and so on?

23 A. For as far as I've been at Anderson-Kelly
24 Associates.

25 Q. Could you tell me how long that is, ma'am?

1 A. Since February 1994. I don't know if this policy
2 was in place prior to that.

3 Q. 1994?

4 A. Yes.

5 Q. And who do you forward -- who did you forward the
6 box to?

7 A. To the specified laboratory on the chain of
8 custody form. In this case it was MEDTOX.

9 Q. And did you receive any notification that there
10 was a problem with the shipment any time throughout the
11 process?

12 A. No.

13 MR. GIBBS: I have no further questions, Your
14 Honor.

15 THE COURT: Thank you.

16 Ms. Beller, this is Judge Metry. Hey, can I ask
17 some follow-up questions with you, please?

18 THE WITNESS: Yes.

19 THE COURT: Okay. You've been there since
20 February '94. So you -- have you been -- have you
21 been in that same position with the company for the
22 last 18 years -- or 19 now?

23 THE WITNESS: Yes.

24 THE COURT: Okay.

25 THE WITNESS: I'm getting older.

1 THE COURT: We all are. We all are.

2 Okay. And so you're -- you're the manager of the
3 program; is that it?

4 THE WITNESS: Yes, of the collections sites and
5 coordinating the testing at the request of the
6 employer, so, yes, is the short answer.

7 THE COURT: How many -- and we heard a little bit
8 from Mr. Kohut about the mechanics of the program.

9 How many people do you coordinate -- excuse me.
10 How many companies do you coordinate this collection
11 -- this collection procedure from?

12 THE WITNESS: I don't know an exact number. It's
13 a per request basis. I'm sorry. Can you ask the
14 question?

15 THE COURT: Sure. What I mean is: Anderson-
16 Kelly coordinates collections services for Argent
17 Marine, but there are other companies that you
18 coordinate collection procedures for as well, right?

19 THE WITNESS: Yes.

20 THE COURT: Okay. And what Mr. Kohut indicated
21 was that because he's a smaller -- because they only
22 have one vessel and have a limited number of the
23 employees, they're in a pool. And I'm assuming that
24 Anderson-Kelly manages collection for these -- these
25 companies that are in their pool, the smaller marines

1 that are in your pool services.

2 THE WITNESS: At the request of various AMS
3 members, American Maritime, we will arrange on-site
4 testing.

5 THE COURT: Okay. And so you -- so in this
6 particular case, you were requested -- it was a -- it
7 was a -- it was a request for a test on this specific
8 vessel?

9 THE WITNESS: Yes.

10 THE COURT: And who originated that request?

11 THE WITNESS: (No response).

12 THE COURT: I mean, it doesn't come from
13 Mr. Kohut. It came from another entity, right?

14 THE WITNESS: Yes. I just wanted to make sure I
15 followed your question.

16 The random notifications are generated by
17 American Maritime Safety, then they're sent to the
18 various employers.

19 If the employers choose to do so, they may ask
20 Anderson-Kelly to coordinate on-site services, DOT's
21 random drug testing. In this particular instance,
22 that's what we were requested to do.

23 THE COURT: Okay.

24 THE WITNESS: Did that answer your question?

25 THE COURT: Yeah, you did. You answered it real

1 well. And I want to back up.

2 So what happens is: AMS notifies, in this case,
3 Argent Marine that one of their vessels is due for a
4 random test. Argent Marine then contacts you and says
5 would you please arrange for the testing of, in this
6 case, the Alliance Charleston?

7 THE WITNESS: Yes.

8 THE COURT: But you said something. You said if
9 they want to follow up they do?

10 THE WITNESS: No. They don't have to use my --
11 not every AMS member uses Anderson-Kelly Associates.
12 I guess, is what I was trying to --

13 THE COURT: Okay. You don't mean that they have
14 the choice to disregard --

15 THE WITNESS: A random notice -- they have a
16 certain amount of time to return, you know, confirm
17 receipt, etc. They must follow up when an employer is
18 notified of a random test selection, but they don't
19 have to use Anderson.

20 This is specific to the AMS Anderson-Kelly
21 relationship, they don't have to use Anderson-Kelly or
22 its subcontractors to arrange for their testing.

23 THE COURT: I hear you. I hear you.

24 So once you were notified by Mr. Kohut that their
25 vessel had been -- had popped up for the AMS random

1 testing, that put your program in motion to have the
2 vessel tested, correct?

3 THE WITNESS: Yes.

4 THE COURT: Okay. So would Mr. Kohut have
5 contacted you, or someone else in your department?

6 THE WITNESS: He contacted me.

7 THE COURT: Okay. And that's how it always is,
8 he always contacts you?

9 THE WITNESS: I would say -- well, I have a group
10 of other staff members, but this particular
11 communication was sent to me directly.

12 THE COURT: Okay. And in then to back up, to
13 follow up with Mr. Gibbs, originally there was some
14 talk about the date of the June 15th.

15 THE WITNESS: Right.

16 THE COURT: Is that -- was the target date or was
17 that the request date?

18 THE WITNESS: That was the request date when we
19 initially started communicating and trying to narrow
20 it down to where we had a DOT certified collector,
21 etc. But that's when the -- and I think that's when
22 the job was originally scheduled for when the port --
23 I'm sorry, when the vessel arrives back into the
24 particular port.

25 THE COURT: Got you. So then the vessel -- the

1 target vessel arrived port 1, July. It was tested 2,
2 July; is that your understanding?

3 THE WITNESS: I don't know the arrival date, but
4 I do know the collection date was July 2nd

5 THE COURT: Okay. And are you familiar
6 personally with Mr. Hualde, or only through
7 correspondence and -- or is it a long distance
8 relationship to us, that for lack of a better word?

9 THE WITNESS: I am not familiar with Mr. Hualde.

10 THE COURT: When training is given to -- what was
11 his name, the transport company?

12 What was the name of the company that --

13 THE WITNESS: The Plastic Powder Coating Company.

14 THE COURT: The power(sic) coating company. Was
15 the training provided to their employers overseas? Is
16 that how the training --

17 THE WITNESS: Yes. Yes. We flew in a
18 collector -- a qualified trainer to UAE to meet the
19 person with Plastic Powder Coating Company and their
20 subcontractor or -- for lack of a better word, but --

21 THE COURT: Yeah.

22 THE WITNESS: -- to do the training with that
23 person. (Inaudible) Plastic Power Coating Company,
24 Mr. Hualde being one of the participants amongst other
25 people.

1 THE COURT: Great.

2 The certificate that was issued Mr. Hualde bears
3 your -- bears your company's name across the top.

4 THE WITNESS: Yes.

5 THE COURT: Is that prepared on site, or do you
6 receive a list of everybody that passed, prepare the
7 certificates in New Jersey and then send it out that
8 way?

9 THE WITNESS: Exactly, the latter. They're
10 prepared thereafter the training.

11 THE COURT: Okay. And I understand that these
12 are valid for five years. And so you just back -- go
13 backwards from five years from the expiration date as
14 to the valid date, but is it standard there's no --
15 there's no issuance date on -- on the certificates of
16 completion?

17 Is that just something you do, or is that
18 standard as far as you know throughout the industry?

19 THE WITNESS: I think that's something that we
20 do. 49 CFR 40 part 33, I know that you have to have
21 it in writing, but I don't know if it needs to include
22 the date of issue. I'm sorry, the date of training.

23 THE COURT: Great. Okay. That's -- that answers
24 the question.

25 I want to get to the specific box that you --

1 that's in question here, the -- specific samples.

2 On an average, how many such shipments would you
3 receive in any given month?

4 THE WITNESS: From Plastic Powder Coating Company
5 or from any international company?

6 THE COURT: I want to do both. I want to do
7 both.

8 First generally, how many do you receive on a
9 monthly basis.

10 THE WITNESS: On average three.

11 THE COURT: Three boxes per month?

12 THE WITNESS: Correct.

13 THE COURT: Okay. There is no requirement to
14 refrigerate the sample when it's given to you. Is
15 there a time as to how long it remains in your
16 possession before it's shipped out?

17 THE WITNESS: We try -- we try to have it sent
18 out the same business day that it's received. And in
19 49 CFR, they do say by the next business day.

20 THE COURT: Right.

21 THE WITNESS: Though in the guideline handbook,
22 it then elaborates when -- what to do if you're not
23 able to ship the sample immediately thereafter. But
24 they like it to remain in a secure area until it can
25 be released to the courier.

1 THE COURT: Which is why it's in your office
2 because it's a secured area?

3 THE WITNESS: Yes.

4 THE COURT: Okay. Do you specifically recall
5 this shipment that you received or are you looking at
6 some documents that help refresh your recollection?

7 THE WITNESS: I would be looking at -- before
8 when I was questioned, I was looking at the documents
9 that were presented to me.

10 I don't recall this shipment in particular, but I
11 do know that every box for every shipment that's
12 delivered to Anderson-Kelly, is examined in that
13 fashion.

14 Again, just sure that everything is tact, nothing
15 has leaked, that we have the paperwork that the
16 collection was conducted appropriately and the
17 paperwork was completed.

18 THE COURT: And that was your recollection as to
19 this particular box?

20 THE WITNESS: Yes.

21 THE COURT: And are you the person designated to
22 receive the boxes and perform that test, or is just
23 this particular one that you did 'cause you were
24 there?

25 THE WITNESS: I -- I'm usually the point person.

1 So I would say it would go to me. I think it may have
2 been addressed to someone else at my office, but it
3 ends up my office.

4 THE COURT: 'Cause you have the secured space?

5 THE WITNESS: Yes.

6 THE COURT: And -- okay. Do you have to have a
7 certification yourself --

8 THE WITNESS: No.

9 THE COURT: -- to examine these boxes.

10 THE WITNESS: No certification is required to
11 examine the boxes, but I am a certified professional
12 collector training and a breath alcohol technician.

13 THE COURT: Okay. Okay.

14 Is there a checklist that you fill out when the
15 box is delivered to you so that you -- you certify
16 that the -- the box was received in undamaged
17 condition, that the collection bags were intact and
18 not leaking?

19 THE WITNESS: No, checklist, no, sir.

20 THE COURT: Okay. If there were any leaks,
21 that's when you make the notification?

22 In other words, if there are a leak -- if there
23 was a leak, you would make a notification, an absence
24 of notification -- absent notations.

25 THE WITNESS: Yes, we make a note or a mark

1 regarding the integrity of the sample. I need to make
2 the employer aware although we initiated a random
3 collection, the potential or the likelihood that a
4 sample might not be able to be processed because it
5 wasn't received in tact.

6 The other thing is, we don't invoice for
7 something that's not completed properly. So we need
8 to be aware when samples are not -- cannot be
9 processed for that reason because we don't think
10 someone should pay for something that isn't done
11 properly.

12 THE COURT: All right. And in this particular
13 instance there was nothing unusual about the sample,
14 correct?

15 THE WITNESS: No, nothing noted; nothing noted.

16 THE COURT: Okay. And the sample was sent out on
17 the same date that it was received which was 10, July
18 2012 and received in the lab in Minnesota.

19 Do you have a receipt?

20 THE WITNESS: I was presented with one. It is, I
21 think CG-22.

22 THE COURT: So it was received on the 13th?

23 THE WITNESS: It was -- it looks like it was
24 delivered on July 11th.

25 THE COURT: Oh, I'm sorry, the 11th, yes.

1 THE WITNESS: No. No problem.

2 THE COURT: Okay. Do all your samples go to
3 MEDTOX?

4 THE WITNESS: No, some sample are shipped to
5 Quest.

6 THE COURT: Any particular reason why one is
7 shipped one place and one is shipped to the other?

8 THE WITNESS: It's employer driven. It's -- you
9 know, it depends on what chain of custody, or what for
10 whatever the lab might use, but that's where they're
11 shipped.

12 THE COURT: When you examine and I understand
13 that, you know, you give several -- you get three
14 boxes a month and, you know, you had to review
15 paperwork to look at this one.

16 When you examine samples, do you examine -- at
17 that point they're out of range, of course, in terms
18 of temperature.

19 THE WITNESS: Yes.

20 THE COURT: Do you -- do examine for anything
21 other than leaks. Do you look for -- I mean, do you
22 make any comparison at all?

23 As I understand it, basically these things come
24 in individual sealed top baggies and that's -- that's
25 an individual's urine sample; is that right?

1 THE WITNESS: Is it -- let's see. The samples
2 are packed to bottles because it's split samples, with
3 the tamper-evidence seal across the top.

4 Copy number one, the laboratory copy, and then
5 there is, the best description would be a Ziploc baggy
6 or like a baggy that can't be -- can't be opened and
7 resealed.

8 THE COURT: Hold on. Say that one more time.

9 One of the Ziptop -- those baggies can or cannot
10 be --

11 THE WITNESS: Cannot.

12 THE COURT: -- opened?

13 THE WITNESS: Cannot. So it's baggy, but it's
14 not -- it's a one-time only adhesive over the top once
15 you fold it in over the paperwork.

16 I don't know if I'm explaining it properly.

17 THE COURT: No, that's fine.

18 And so when the lab gets the -- gets the box,
19 when they open that baggy, that particular baggy is
20 unable to be resealed?

21 THE WITNESS: Correct.

22 THE COURT: And you examine each one by taking
23 the baggy out or visually looking at it inside the
24 box?

25 THE WITNESS: We count them and then we examine

1 them.

2 THE COURT: Visually?

3 THE WITNESS: And then we pack them into another
4 cardboard box so they're protected during shipment.

5 THE COURT: Oh, I see. So you actually lift them
6 out of boxes they're in --

7 THE WITNESS: Yes.

8 THE COURT: -- put them in another box with --
9 and they're all packed jointly again with popcorn or
10 some type of --

11 THE WITNESS: They're wrapped in a die -- like a
12 laboratory diagnostic overlap issued by FedEx or UPS.
13 That is an additional plastic bag that's used during
14 shipment.

15 And then those are then placed in a cardboard box
16 and we put air pillow packs or popcorn in there to
17 protect them during shipment. We don't want anything
18 to happen to them on the way to the laboratory.

19 THE COURT: And in each individual baggie that
20 sealed, is there individual paperwork associated with
21 that particular --

22 THE WITNESS: Yes.

23 THE COURT: -- split sample?

24 THE WITNESS: Yes.

25 Again, there are two bottles with split samples.

1 They both have separate tamper-evidence seals and then
2 the seal match the paperwork which is placed in this
3 plastic bag separate.

4 So one person would have, I guess, two samples in
5 one bag.

6 THE COURT: Okay.

7 THE WITNESS: Does that --

8 THE COURT: That's excellent.

9 And then I'm assuming that in the box itself
10 there's -- you'll have a crew list as to the number of
11 the samples that are supposed to be in included?

12 THE WITNESS: Yes. Yes. And then they also --
13 we count the samples and we count the paperwork to
14 make sure that the paperwork that's submitted matches
15 the number of samples that was submitted.

16 THE COURT: Okay. All right. I don't have
17 anything further.

18 Thank you very much, Ms. Beller.

19 THE WITNESS: No problem. Thank you.

20 THE COURT: Okay. Now, I'm gonna ask -- hold on
21 and let me -- I'm gonna ask Mr. Gibbs and Mr. Syfert
22 if they have any questions based on my mine.

23 THE WITNESS: Sure.

24 THE COURT: Okay. Mr. Gibbs, any follow up based
25 on my --

1 MR. GIBBS: No further questions, Your Honor.

2 THE COURT: Mr. Syfert.

3 CROSS EXAMINATION

4 BY MR. SYFERT:

5 Q. It's not based on yours, but I would just like to
6 ask about whether or not Mr. Hualde collected for
7 Anderson-Kelly would be required to wear gloves?

8 A. No, it's not -- it's a recommendation and not a
9 requirement.

10 MR. SYFERT: All right. Thank you.

11 THE WITNESS: No problem.

12 THE COURT: Well, thank you very much,
13 Ms. Beller. You've been very, very helpful.

14 THE WITNESS: No problem. You take care and have
15 a great day.

16 THE COURT: You too.

17 THE WITNESS: Bye.

18 THE COURT: Okay. I know having been in private
19 practice for about 25 years, if my schedule -- was
20 usually more demanding than the government's, however,
21 I think it is time we break for lunch and then go on
22 in the afternoon.

23 But how much days did you give us for this
24 Mr. Syfert?

25 MR. SYFERT: It was -- the order I believe said

1 -- and I got in slightly after it was set as far as I
2 know, but it was -- it looked like three days
3 potential.

4 THE COURT: Potentially. Okay.

5 Your schedule is okay with that?

6 MR. SYFERT: It could always be better, but,
7 yeah.

8 THE COURT: Okay. I didn't ask you 'cause I know
9 you guys are here.

10 Now the way this is going, I'm just starting that
11 this thing -- I mean, it will be at least two days.
12 We'll be here tomorrow.

13 Okay.

14 MR. GIBBS: We have two witnesses left to call,
15 Your Honor.

16 THE COURT: But I think his -- I mean, he's got
17 medical testimony that's gonna be very interesting.

18 MR. GIBBS: Yes.

19 THE COURT: And he -- of course, Mr. Syfert, I'm
20 pointing at you. I'm sorry. Please excuse me for not
21 specifying that Mr. Syfert -- Mr. Syfert is gonna have
22 medical evidence, and there's gonna be specific
23 medical evidence, as I understand, looking at the
24 exhibit that he submitted on behalf Ms. Solomon in
25 regards to specific creatinine level that Ms. Solomon

1 possessed.

2 MR. SYFERT: Well, I'm hoping that we can get
3 into some of that with their MRO as well.

4 THE COURT: Okay. All right. Then we'll plan --
5 we'll plan for two days.

6 MR. GIBBS: Yes, Your Honor.

7 THE COURT: Okay. We'll break for lunch. It's
8 currently 12:30 hours. I certainly don't want it to
9 be any later than 1400.

10 If y'all could be back here by 1330. I can't
11 promise we'll start right you 1330, but we will
12 definitely -- if y'all are here, I'll make an effort
13 to start by 1345.

14 Good enough?

15 MR. SYFERT: Yes. Thank you, Your Honor.

16 THE COURT: Court is in recess

17 (Short recess)

18 THE COURT: Thank you for being so prompt.

19 Back on the record, please.

20 Okay. We last ended up with Ms. Beller.

21 Mr. Gibbs, I'm assuming you -- you indicated
22 there were more. We're talking the MRO and the lab
23 tech -- or the lab --

24 MR. GIBBS: Director.

25 THE COURT: Okay. Who are you gonna take?

1 MR. GIBBS: Your Honor, we're going too call
2 Mr. Mitch LeBard with MEDTOX.

3 THE COURT: Great.

4 MR. GIBBS: Prior to making the phone call, Your
5 Honor, we like for you to take official notice in the
6 back of your binder, it's the -- I've lost my train of
7 thought.

8 THE COURT: Take your time.

9 Are we talking about the rags, or we talking
10 about another tab?

11 MR. GIBBS: It's -- it's in the back pocket
12 actually. The very, very back. We didn't have a
13 document protector for it, but we just request that
14 you take official order.

15 It's the NTSD opinion and order EM-185 basically
16 say -- stating that paragraph four is where it mainly
17 outlines the -- pretty much anybody who does this type
18 of a job, can attest to the lab results.

19 THE COURT: Oh, right. I think that -- and I
20 don't know, I didn't hear an objection, of course, out
21 of Ms. Syfert and I don't that --

22 MR. GIBBS: I've provided him a copy.

23 THE COURT: Yeah. Certainly I can take a look at
24 that if and when it becomes relevant, but it seems to
25 that there are certainly -- oh, I don't know, maybe a

1 business records exception, or perhaps authentication,
2 but when -- if and when that becomes relevant, I'll --
3 we'll make a decision -- a ruling at that time.

4 Are you anticipating not having one of the
5 signatures to -- to the lab report?

6 MR. GIBBS: I'm sorry, Your Honor?

7 THE COURT: Are you anticipating not having one
8 of the authors of the lab report to testify? Is that
9 we're -- what I'm looking at this for?

10 MR. GIBBS: The certified scientist, Mr. Van
11 Phan, is not going to testify. Ms. LeBard is the
12 director of the entire program.

13 THE COURT: Okay. Okay.

14 Let's cross that bridge when we come to it, but I
15 certainly have that in front of me.

16 MR. GIBBS: Right. Who we're questioning is the
17 individual that did sign the lab litigation packet.

18 May I proceed, Your Honor?

19 THE COURT: Of course. Please.

20 UNIDENTIFIED FEMALE SPEAKER: Thank you for
21 calling MEDTOX Laboratory. How may I direct your
22 call?

23 MR. GIBBS: Good afternoon. This is Mark Gibbs
24 with the Coast Guard, and I'm looking to speak with
25 Mitchell LeBard, please.

1 UNIDENTIFIED FEMALE SPEAKER: Thank you. Just a
2 moment.

3 MR. LEBARD: This is Mitch speaking. How may I
4 help you?

5 MR. GIBBS: Mr. LeBard?

6 MR. LEBARD: Yes.

7 MR. GIBBS: How are you doing, sir. It's Mark
8 Gibbs with the US Coast Guard.

9 MR. LEBARD: Yes, sir.

10 MR. GIBBS: Calling -- we're in the middle of the
11 proceedings right now and you're up next.

12 We're going to -- I'm gonna introduce you to
13 Judge Metry and he's going to swear you in and have
14 your identity checked. And then I'm going to proceed
15 with some questions if you're prepared.

16 MR. LEBARD: Okay. One moment please while I get
17 one of my personnel to help me with the
18 identification.

19 MR. GIBBS: Okay.

20 MR. LEBARD: Thank you.

21 Okay. Go ahead, please.

22 THE COURT: Hi, Mr. LeBard.

23 MR. LEBARD: Yes.

24 THE COURT: Hi, this is Judge Metry. How are you
25 today?

1 THE WITNESS: Well fine, thank you, sir.

2 THE COURT: Great. Thank you very much for
3 standing by and helping us out here.

4 THE WITNESS: No problem.

5 THE COURT: The first thing I'm gonna do is I'm
6 gonna swear you in. And then the next time I'm gonna
7 do is I'm ask the person -- I don't have to swear that
8 person in, but hopefully you have someone standing by.
9 They'll check your ID and then they'll just verify you
10 are who you say you are.

11 Fair enough?

12 THE WITNESS: Fair enough.

13 THE COURT: Okay. Can I get you to raise your
14 right hand, please.

15 Do you swear to tell the truth, the whole truth
16 and nothing but the truth?

17 THE WITNESS: I do.

18 THE COURT: Okay. Great. Would you please spell
19 -- state your full name and spell your name for my
20 court reporter, please.

21 THE WITNESS: Yes, sir. Mitchell,
22 M-I-T-C-H-E-L-L F, as in Frank, LeBard, L-E, capital
23 B-A-R-D.

24 THE COURT: Thank you. Is there someone standing
25 right next to you by any chance?

1 THE WITNESS: Yes, there is.

2 THE COURT: Could you please have that -- hand
3 the person the phone.

4 THE WITNESS: Yes, sir.

5 THE COURT: Great. Who is it?

6 UNIDENTIFIED FEMALE SPEAKER: Hi, I'm Susula
7 Marzitelli.

8 THE COURT: Ms -- one more time.

9 MS. MARZITELLI: Marzitelli.

10 THE COURT: Ms. Marzitelli. Thank you very much
11 for helping us out.

12 Can you do me a favor and take -- take a look at
13 an identification for Mr. LeBard, who hopefully is
14 standing right next to you.

15 MS. MARZITELLI: Yes, I'm looking at it right
16 now.

17 THE COURT: And what is that that you're looking
18 at?

19 MS. MARZITELLI: His driver's license.

20 THE COURT: Wonderful. And there's a picture on
21 it?

22 MS. MARZITELLI: Yes.

23 THE COURT: And does that picture look like
24 Mr. LeBard?

25 MS. MARZITELLI: Yes, it does.

1 THE COURT: And so you're convinced that's
2 Mr. LeBard sitting -- standing next to you there?

3 MS. MARZITELLI: Yes, I am.

4 THE COURT: All right. Thank you very, very
5 much.

6 Could you please hand that back to him and if
7 you've got other things to do than to listen to him
8 testify by phone, you can go do them; or if you want,
9 you can stay there.

10 MS. MARZITELLI: Okay.

11 THE COURT: Okay. Thank you.

12 Mr. LeBard, you back with us?

13 THE WITNESS: Yes, I am.

14 THE COURT: All right, great.

15 Well, the next voice you're gonna hear is
16 Mr. Gibbs again. He's gonna ask you some questions.
17 And then, Mr. Syfert is gonna ask you a few questions,
18 and then maybe Mr. Gibbs will ask you a few and if I
19 have any question, I'll probably end up rounding out
20 your testimony.

21 Is that all right?

22 THE WITNESS: That the fine. Thank you, sir.

23 THE COURT: Great. Thank you so much.

24 Mr. Gibbs.

25 - - - - -

MITCHELL F. LEBARD

1
2 Having been produced and previously sworn as a witness,
3 testified as follow:

DIRECT EXAMINATION

4
5 BY MR. GIBBS:

6 Q. Good afternoon, Mr. LeBard. Thanks again for
7 your time.

8 I'd like you start out with --

9 THE COURT: Oh, I did -- excuse me.

10 MR. GIBBS: Excuse me one second, sir.

11 THE COURT: He was sworn in?

12 THE COURT REPORTER: Yes, sir.

13 MR. GIBBS: Yes.

14 THE COURT: I'm sorry. Go ahead, please.

15 Go ahead, Mr. Gibbs.

16 BY MR. GIBBS:

17 Q. Okay. Mr. LeBard, you still with you?

18 A. Yes, I am.

19 Q. All right. I apologize for that.

20 Could you, for the court, please state your
21 occupation, please.

22 A. I am the associate director for forensic
23 toxicology. A person -- one of the responsible persons
24 that MEDTOX Laboratory in St. Paul, Minnesota.

25 Q. Very good.

1 How long have you worked in this field for this
2 company?

3 A. I've been here at MEDTOX for approximately 16
4 years, the last 12 of them have been as the associate
5 director and responsible person.

6 Overall, I have over 30 years of toxicology related
7 experience.

8 MR. GIBBS: Your Honor, at this time the Coast
9 Guard like to introduce the exhibit CG-19. A 114 page
10 single-sided document that is a copy of the laboratory
11 data package for specimen ID Yankee 25425812.

12 THE COURT: I do --

13 MR. GIBBS: Also the curriculum vitae for the
14 assistance lab director, a copy of the custody and
15 control form, as well as the computer generated
16 laboratory report.

17 THE COURT: Okay. I have under CG-19, and not I'm
18 going through all these pages, of course, but page 1
19 is MEDTOX Laboratories. I'm assuming that's the
20 summary signed by Mr. LeBard. After that, is a number
21 of the pages and --

22 MR. GIBBS: Page six is the custody and control
23 form, Your Honor.

24 THE COURT: Page six. That's what I was looking
25 for.

1 And, of course, I'm assuming Mr. Syfert has had
2 an opportunity to review that prior to today.

3 MR. GIBBS: Yes, Your Honor.

4 MR. SYFERT: Yes, Your Honor.

5 THE COURT: Mr. Syfert, any objections to any of
6 the documents contained in CG-19?

7 MR. SYFERT: No, Your Honor.

8 THE COURT: All right. Court will receive CG-19
9 into evidence at this time.

10 Go ahead, Mr. Gibbs, please.

11 BY MR. GIBBS:

12 Q. Mr. LeBard, do you have the exhibit marked CG-19
13 in front of you?

14 A. Yes, I do.

15 Q. Could you briefly describe to the court the
16 purpose of the document?

17 A. This is document is what we call a litigation
18 packet. It contains all of the documentation and data
19 associated for testing for the specimen identified as Y,
20 as in Yankee, 25425812.

21 It also includes a brief description in regards to
22 procedures of policies for each section of the testing
23 process.

24 By that I mean, the overall chain of custody, the
25 custody control, initial immunoassay screening, any

1 confirmatory work that they perform along with -- again my
2 vitae and the laboratory proficiency and accreditations.

3 Q. Okay. Could you please turn to page 102 and
4 explain your training and education as it pertains to your
5 position at MEDTOX, please.

6 A. Pardon me. I'm trying to get over a little bit
7 of cold.

8 Q. I understand. It's a little colder there than it
9 is here.

10 A. Yeah, much colder.

11 This is a copy of the current curriculum vitae
12 indicating my past educational experience, as well as my
13 current position and experiences in regards to my
14 management and my career in forensic toxicology.

15 Q. Were the testing procedures for specimen ID
16 Yankee 25425812 conducted in accordance with 49 CFR part
17 40?

18 A. Yes, sir, they were.

19 Q. Could you explain -- please explain to me the
20 procedures that were used in the testing of the sample ID
21 Yankee 25425812?

22 A. Well, as soon as they are received from the
23 collection sites here at MEDTOX Laboratories via courier
24 system, once they're received into our secured processing
25 area, this area is confined to only those individuals

1 that have access to it for those that work there as far as
2 restrictions are concerned.

3 Samples then -- once they're received in the
4 transportation pouches, are open and received one sample
5 at a time.

6 The process, sir, we'll put up that container. We'll
7 then -- or packet, I should say. We'll remove the sample
8 containers and the custody control form. They are to
9 review the containers to ensure that the tamper-evidence
10 seals are in tact and the specimen identification of the
11 container matches that of the custody control form.

12 That's there's sufficient volume to perform testing.
13 And that the custody control form has been completed
14 appropriately and signed with a signature and printed name
15 of the collector.

16 If any of these are not consistent with our standard
17 operating procedures, by that I mean, the tamper-evidence
18 seals are broken, ID is missing or mismatched,
19 insufficient sample log in, or if the custody control form
20 is not executed by the collector, the sample is considered
21 to be fatally flawed and no testing is performed.

22 During this receipt process, they fix a unique
23 internal accession number. In this case it's J, as in
24 John, 0561861.

25 Q. He's referring to page six.

1 A. We use two pieces of information to help us
2 identify the sample throughout our testing process. That
3 would be the specimen identification number. Again,
4 Yankee 25425812. And our accession number J, as in John,
5 0561861.

6 Q. Mr. LeBard.

7 A. Yes..

8 Q. As you're referencing these different documents,
9 if you would for the court, please state what page number
10 you're referring to just so they can follow along with
11 you.

12 You -- you're a wealth of knowledge, but we're not as
13 quick as you are.

14 A. Yep, not a problem, sir. I'm sorry.

15 Q. Okay.

16 A. That would be on page six, which would be the
17 original custody control form.

18 Again, they match the container, they affix the
19 accession number and they find it in their computer
20 system.

21 They then execute the custody control form under four,
22 indicator received at laboratory or ITN. In this case,
23 received from courier, the accession is transferred into
24 temporary storage. Saada Hashi is the individual that
25 received the sample on July 11th, 2012.

1 Indicated in that area also is that the primary seals
2 of the container were in tact.

3 So again the sample does meet all of our criteria for
4 acceptability into our system.

5 Then we'll enter other demographic information such as
6 the account number in there which drives our testing
7 codes. In this case, because this is a federal drug
8 testing program, quality -- custody control form only
9 those tests that are mandated under the Department of the
10 Transportation, or CFR 49 part 40 are to be tested for
11 those particular sample.

12 Once everything has been completed and the -- meets
13 all of our receiving criteria as set forth by our standing
14 operating procedures, then we will proceed to the next
15 sample.

16 They are receiving samples in groups of ten. Once
17 they have completed their receipt process and data entry
18 into their system for those ten samples, they place them
19 on a conveyer built which then goes down to an area where
20 a -- another individual will receive the samples from
21 temporary storage.

22 They're assigned to, what we call a batch. In this
23 particular case it's page seven and it indicates the
24 master custody control form. This sample is assigned to
25 that batch.

1 Bear with me here for a second. It is position 54 on
2 that chain of custody with the assigned accession number.

3 That individual that received those samples from
4 temporary storage, then creates loan, if you will, that
5 consists of 60 builder samples.

6 Q. Mr. LeBard, let me stop you for one second.

7 MR. GIBBS: Your Honor, I just want to make sure
8 you understood. The accession is at the top right
9 hand side of the custody and control form.

10 THE COURT: Correct. The J number or the Y
11 number?

12 THE WITNESS: The J number. And that's the
13 number he's gonna be referring to when he's talking
14 about on page 7, number 54. That would be the
15 accession number for this custody and control form.

16 THE COURT: Okay. Got you.

17 MR. GIBBS: Thank you.

18 BY MR. GIBBS:

19 Q. Please proceed, Mr. LeBard.

20 A. Okay. What that individual's responsibility is
21 to do is we place the samples on an instrument that will
22 do an aliquot or a take a portion from the original
23 container that then transfer that small portion into a
24 bar-coded tube that is again related back to the accession
25 number. Again, in this case J, as in John, 0561861.

1 Once that batch has been completely aliquotted, small
2 portions or aliquots are then transferred out into our
3 testing laboratory under chain of custody.

4 The original containers are then kept in the
5 processing area, in the compliance storage area, for
6 limited accessibility.

7 So once that aliquot then goes out into the testing
8 laboratory, that would be continued in the data set
9 starting on page 18. That whole section there in 18
10 through -- where am I now? 18 through 76 is actually the
11 testing that's being performed on that -- this particular
12 group of samples.

13 On page 72, bottom of the form it should be sample
14 that is circled. You can see right above it where the
15 accession number is J, as in John, 0561861. These are
16 results of that testing.

17 What the operator's responsibility to do in that
18 process is to ensure that the instrument is calibrated,
19 that all of the quality control are set up with these
20 samples. Again under federal criteria, ten percent of the
21 run needs to be quality control and that quality control
22 consists of a negative with no drug in it, a subthreshold
23 control that does contain drug, or it's 25 below the cut
24 off. The positive threshold control that contains drug,
25 25 percent above the threshold.

1 Once the operation has been completed on the analyser,
2 it is up to that technician to perform any additional
3 testing that's required.

4 In this particular case, because of the urine
5 creatinine is low, below 5 milligrams per deciliter. Then
6 we are required again under federal criteria to perform
7 additional testing which is form -- a specific gravity
8 test which measure the amount of salts and solutes in a
9 urine sample. That data is located on page 79.

10 Also in accordance with the with that process, we are
11 required to perform a urine pH on that sample. And the ph
12 data -- I thought I had it marked here. I apologize.

13 It's located on page 35.

14 Once that instrument operator has completed all their
15 tasks, they then pass off the packet to what we call a
16 certified technician.

17 That certified technician will then go through the
18 batch, review all of the external custody control forms,
19 all the internal chain of custody documentation including
20 the master chain from the original container and the
21 aliquot chain.

22 They review all the quality control for the batch, all
23 of the calibrations to ensure that the data that they're
24 looking at, meets criteria.

25 The will also include the additional testing for the

1 pH and the four (inaudible) specific gravity.

2 Once that has been completed, they are responsible for
3 releasing those samples that meet the criteria being
4 negative. Anything that is non-negative or presumptively
5 positive either for drugs or validity testing.

6 That reflux in our laboratory information system, a
7 aliquot to be tested for confirmatory procedures.

8 Page eight of the litigation package indicates the
9 sample in sequence 54. Again, J, as in John, 0561861 was
10 removed from its original hold tray. We then place that
11 original container into a freezer box for long term
12 storage as indicated on page nine.

13 The sample is aliquoted for the additional testing,
14 again of specific gravity. In this case, confirmatory for
15 the creatinine testing.

16 Those results are indicated on page 82 of specific
17 gravity. In this case, it's 1.0223. And the confirmatory
18 creatinine, which is located on page 86. I apologize.
19 And there is 1.3.

20 So what happens to this confirmatory data is it comes
21 back to a certified scientist. Who then reviews all the
22 other the data associated with this test. That would be
23 mean all external custody control forms, all internal
24 custody control forms. (Inaudible) confirmatory testing
25 and for initial testing.

1 They will then review all of the data that has been
2 generated by this testing.

3 All the initial immunoassay screening testing and any
4 confirmatory testing that's required by the federal
5 program.

6 Once they have reviewed all of that data, the data
7 will go back into our computer system, enter the results
8 into the system and then sign the custody control form.
9 Again on page six, indicating what the results were for
10 the testing.

11 In this case the specimen identified as Y, as in
12 Yankee, 25425812, with the accession number of J, as in
13 John, 0561861 has been identified as meeting the criteria
14 (inaudible) the federal workplace drug testing program of
15 being substituted.

16 Because the creatinine is less than two, in this case,
17 it's 1.3, and the specify gravity is greater than 1.0200.
18 In this case, 1.0223.

19 Once that has been completed on electronically form
20 and a copy of the custody control form is sent to the
21 medical review officer of record for final deposition.

22 The original container is then moved into a long term
23 storage where it remains for a minimum of one year and
24 that is 20 degrees Celsius.

25 That essentially is the drug testing process.

1 Q. Well, Mr. LeBard, now I know why you said to let
2 go 'cause you basically answered every one of my questions
3 I believe.

4 Pages five and six.

5 A. Yes, sir.

6 Q. Page five, can you please explain that?

7 A. This is a copy the electronic reporter, our
8 computer generated report that we send to the medical
9 review officer.

10 Under federal regulation, CFR 49 Part 40, the final
11 report technically is a signed copy by the certified
12 scientist, which is page six of this data package.

13 Q. Thank you.

14 The custody and control form page six, did you --

15 A. Yes, sir.

16 Q. -- did you send that -- did you also send a copy
17 of that to the MRO?

18 A. Yes, sir, we do. That is required under the
19 federal workplace drug testing program guidelines.

20 Q. Okay. Although you stated numerous safeguard
21 that are in place here to make sure the tests are
22 accurately completed and -- or if it's even valid to test
23 the specimen, are there any additional safeguards that are
24 in place?

25 A. Well, again, during our process in order to test

1 for any federally mandated workplace drug testing, we are
2 inspected by the National Laboratory Certification
3 Program, which is a (inaudible) on a semi-annual basis.

4 Every six months we have a team of inspectors that
5 come in to review our standard operating procedures to go
6 over all our testing processes.

7 They physically go in the lab and observe all of the
8 people performing their duties and tasks.

9 Also during that time and every three months, I have a
10 team of auditors come through where we pull litigation
11 packages, such as yours here, to these auditors for
12 review, again, to ensure that we are in full compliance of
13 all results under the Department Health and Human
14 services, substance abuse and mental health services
15 administration, and the Department of Transportation
16 Guidelines.

17 We also are required on a quarterly basis to perform
18 proficiency testing in which again the National Laboratory
19 Certification (inaudible) 25 samples every quarter.
20 They're unknown to me.

21 We have to analysis those, test them and report,
22 again, in accordance with the federal criteria. And we
23 have been evaluated against our peers, as well as the
24 (inaudible) concentration from the program.

25 So we are inspected, reinspected, analyzed and

1 challenged.

2 Q. Very good. I want to bring your attention to
3 section -- step one, section D on the custody and control
4 form.

5 A. Yes, sir.

6 Q. Under the DOT, there's no -- no agency is
7 specified.

8 Is there any differences that would be done with test
9 without Coast Guard or anything being checked there?

10 A. No. Actually under the federal program, we're
11 not required to monitor or collect any of the specific
12 agency at this point in time. We communicate that this a
13 regulated a test that falls under the Department of
14 Transportation Guidelines.

15 And that's the testing that is being -- to be
16 performed.

17 Q. And on July 2nd, 2012, was MEDTOX Laboratory
18 certified to meet federal standards to engage in urine
19 drug testing for federal agencies?

20 A. Yes, sir, we were.

21 MR. GIBBS: Your Honor, at this time, the Coast
22 Guard would like for the court to take official notice
23 of federal register for July and August 2012
24 specifically as to identify certified SAMHSA labs.

25 This document is marked as exhibit CT-10.

1 THE COURT: All right. I have a list of -- in
2 CG-10, the court does note that the list of approved
3 laboratories is a -- is it a five-page document?

4 MR. GIBBS: I'm pretty -- yes, sir, it's five.

5 THE COURT: It's a five-page document. And on
6 top of page 39502, upper -- upper column to the left
7 and the first -- first laboratory listed is MEDTOX
8 Laboratories at 402 West County Road D, St. Paul,
9 Minnesota and the following phone number.

10 Mr. LeBard, that's the address of your -- at the
11 -- of the -- of your laboratory?

12 THE WITNESS: Yes, sir, it is.

13 THE COURT: All right. Court will admit -- any
14 objection, Mr. Syfert?

15 MR. SYFERT: No objection, Your Honor.

16 THE COURT: Court will admit Exhibit CG-10 into
17 evidence at this time indicating that this laboratory
18 a SAMSHA approved laboratory.

19 Thank you, Mr. LeBard.

20 Any further questions, Mr. --

21 MR. GIBBS: Mr. LeBard, I'd like to thank you
22 also. You saved me the time of having to ask you to
23 number questions.

24 So at this time, Your Honor, I have completed my
25 questions for Mr. LeBard.

1 CROSS EXAMINATION

2 BY MR. SYFERT:

3 Q. Mr. LeBard, this Graham Syfert.

4 Can you hear me okay?

5 A. Yes, sir, I can.

6 Q. Okay. I'm gonna ask you some questions. If you
7 don't understand, just ask me to repeat, okay?

8 A. I will do so.

9 Q. All right. How many times have you been called
10 to testify in matters such as this?11 A. Oh, numerous times. Under the US Coast Guard,
12 I've probably done four or five of these types of
13 testimonies. And --14 Q. And with all the agencies within the DOT, how
15 many have you done?16 A. I can't begin to even count. I've done testimony
17 in regards to workplace matters in Pennsylvania, New York,
18 New Jersey, Florida, Georgia, Alabama, Minnesota, Ohio,
19 California.

20 Q. More than 100 maybe?

21 A. More than 100. Probably three or four a month.

22 Q. Okay. And how many of those involved a low
23 creatinine level, less common?24 A. It's not unusual, but it is not that common of a
25 scenario where it meets the criteria of being substituted.

1 Q. Okay. And how many of those involve a high
2 specific gravity? Is that that also common?

3 A. Again, it happens. We here at MEDTOX do about
4 15,000 samples a day. Probably less than two percent of
5 all of our non-negatives fall within the category of being
6 substituted.

7 Q. Okay. Have you ever been able -- have you ever
8 testified in a case that involved both a low creatinine
9 and a high specific gravity.

10 A. Yes, I have.

11 Q. And how many times have you done that before?

12 A. I don't really have a collection.

13 Q. And do you --

14 A. Several times.

15 Q. Do you know what DOT that was with, or what
16 agency that was for?

17 A. Under the Department of Transportation, I do not
18 believe I have done any, or any under the US Coast Guard.

19 It's either gonna be under FAA for the federal
20 airlines under (inaudible) Motor Vehicle Transit
21 Authority.

22 Q. Okay. Does the -- the first that was run on --
23 on that sample, and I'm just gonna call it Ms. Solomon's
24 sample, the J0561861.

25 A. Yes, sir.

1 Q. Did you -- what kind of test were run on that at
2 the very first -- the very outset?

3 A. That process is described as immunoassay
4 procedure. What we are looking -- or doing for those
5 drugs of abuse, pardon me, are -- is an antibody/antigen
6 type of reaction where they were looking for cross
7 activity between the drugs -- specific drugs that are in
8 that classification of drugs.

9 Also included under the Department of Transportation
10 Guidelines, is specimen validity testing or testing the
11 sample to ensure it's a valid urine test of which we look
12 for urine creatinine, specific gravity when indicated by
13 the creatinine result, as well as urine pH.

14 Q. And when you say the specific gravity is
15 indicated by the creatinine result, what do you mean?

16 A. Under the federal guidelines, if the creatinine
17 level falls under 20 mg/dL, the laboratory is responsible
18 for running the specific gravity testing to make determine
19 whether it meets different criteria such as acceptable.

20 The creatinine is less an 20, specific gravity is
21 greater than 1.003, the sample is considered to be
22 acceptable.

23 Q. Okay. So did the first panel screen for drugs?

24 A. Yes, sir.

25 Q. And were there any drugs found in the sample?

1 A. No, sir.

2 Q. And so you -- how many aliquots were totally --
3 were taken in total from her sample?

4 A. There would be the original aliquot for the
5 primary for the initial screening, there would be an
6 aliquot for confirmation for the creatinine, as well as
7 specific gravity.

8 Q. So how many aliquots were created?

9 A. So that would be a total of three.

10 Q. And -- so the initial test you tested for
11 creatinine and that was page -- was that on page --
12 actually you flipped to page 24 of the -- CG-19.

13 A. Yes, sir.

14 Q. Okay. And does that have the -- Ms. Solomon's
15 sample on there, the J065611861(sic)?

16 A. Yes, it does, sequence 114.

17 Q. Okay. And over on the right-hand column there,
18 there's an 8.8. What does that represent?

19 A. That is the urine pH.

20 Q. Okay. And there's a 1.4. What does that
21 represent?

22 A. That was the original -- or initial screening
23 creatinine value.

24 Q. Okay. Is there a -- any specific gravity value
25 there?

1 A. For that particular sample, no.

2 Q. So that was one aliquot, yes?

3 A. Yes.

4 Q. Okay. Now, when you turn to page 34 in CG-19,
5 can you explain to me what this.

6 A. What that is is a worksheet for samples that have
7 -- that need additional specimen validity testing.

8 Q. Okay. And is Ms. Solomon's sample on that list?

9 A. Yes, sir, it is.

10 Q. Okay. Is there any specific gravity noted there?

11 A. No, sir.

12 Q. Okay. So earlier you testified that there was a
13 page that had the initial -- it was supposed to be initial
14 specific gravity test.

15 Can you tell me what page that was on?

16 A. That would be page 79.

17 Q. Okay. There is some divisions in this -- what
18 aliquot was used for that page 79?

19 A. That would be a second aliquot.

20 Q. Okay. And when was that aliquot made?

21 A. According to the sheet here, the sample was run
22 on -- on July the 12th, 2012.

23 Q. Okay. And when was the first -- so -- on page
24 34, when was that one run?

25 A. On July the 11th, 2012.

1 Q. Okay. So you have one run on the 11th and one
2 run on the 12th?

3 A. Correct.

4 Q. And those were two separate aliquots, yes?

5 A. Yes.

6 Q. And were there other aliquots that were created?

7 A. Yes, sir.

8 Q. So there's one -- how many more?

9 A. It would be one more aliquot that was created for
10 the confirmatory testing.

11 Q. Okay.

12 A. Which would be page 82 in regards to the specific
13 gravity, and page 86 in regards to the urine creatinine.

14 Q. So this initial test on the specific gravity,
15 took place a day after the specific -- the test on the
16 creatinine on page 34?

17 A. Yes, sir.

18 Q. Okay. And with two separate aliquots?

19 A. That is correct, yes, sir.

20 Q. So is there a reading at all of specific gravity
21 on the first aliquot?

22 A. No, sir. Under federal guidelines, it requires
23 any creatinine less than two, be tested by specific
24 gravity on a four digit refractometer.

25 Q. Okay. Let's go back to back to page 34.

1 We have some other samples that above Ms. Solomon's
2 sample, yes?

3 A. Yes.

4 Q. And there's some lines there and there's
5 handwritten in there --

6 A. Yes.

7 Q. -- numbers.

8 A. Yes, sir.

9 Q. And is that the specific gravity of four other
10 random samples?

11 A. Yes, sir.

12 Q. Is that based off of the same aliquot of the
13 previous -- were those samples tested previously?

14 A. Yes, sir.

15 Q. And they had an initial test?

16 A. Yes, sir.

17 Q. And so you could have gotten a specific gravity
18 from Ms. Solomon's sample, yes?

19 A. No.

20 Q. Why not?

21 A. Because under the federal requirements, we can
22 do -- if the creatinine is less than 20 and greater than
23 five, we can do a three digit refractometer differentiating
24 with the sample that meets the criteria of being dilute,
25 or acceptable.

1 Q. Okay.

2 A. If we did a three-digit refractometer of those
3 other four samples because the -- the sample provided for
4 J, as in John, 0561861 was less than five, it requires a
5 four digit refractometer.

6 Q. Okay. So there's a line out to the side of that
7 number?

8 A. Yes, sir.

9 Q. And why is that line there?

10 A. That indicates pH.

11 Q. Okay. And is that essentially what page 35 does?

12 A. Yes, sir.

13 Q. Just kind of fill that in.

14 Okay. So page 35, it gives a 8.8 result for the pH,
15 yes?

16 A. That is correct.

17 Q. How often -- you know, you're talking about the
18 refractometer and all that, and I'm gonna try to bother
19 saying all of it, but you -- you put in the
20 refractometer -- what sort of -- why was the pH test? Why
21 is that important?

22 A. Again under the federal criteria, excuse me,
23 anything with a urine creatinine less than 2.0 because of
24 the ionic strength of that urine and the amount of solutes
25 that are in there, they require the laboratory to perform

1 a pH by meter, which is (inaudible) rather than done by
2 chemical analysis which is done during initial screening
3 procedure.

4 The pH meter is more sensitive and more specific.

5 Q. What's the -- the rate of error on that? Is
6 there an acceptable range of error for the pH measurement?

7 A. I'm sorry. I don't quite understand your
8 question, sir.

9 Q. The machines, is there an acceptable range --
10 this says -- looking at page 35. Is says 8.8.

11 Is that accurate?

12 A. In accordance with this reading, yes, sir.

13 Q. Is it maybe off by a couple of points up or down,
14 or .0 points or -- you know, what is the range of error
15 for that machine?

16 A. Well, really is not range of error because it's
17 an unknown. Because you don't know what -- what that
18 value is, you really cannot predict the error.

19 However, if leave just (inaudible) we have a series of
20 quality control that are run with these samples. And
21 there is an acceptable range for those sample, of them as
22 long as they fall within that -- those ranges, it's deem
23 that the sample we're testing, meets the acceptance
24 criteria for calling it in this case, 8.8.

25 Q. Okay. Let's look at the first one out there

1 then. Have you the result of 10 and acceptable range of
2 9.8 to 10.2.

3 Does that mean there's a .2 give that's acceptable?

4 A. For the calibration, yes, sir.

5 Q. For the calibration.

6 Okay. So we one have one -- well, let's go back to
7 the -- let's talk about the third aliquot.

8 A. Okay.

9 Q. Okay. And the third aliquot that you guys
10 measured, what reading were taken off of that third
11 aliquot?

12 A. That would -- the third aliquot?

13 Q. Yes.

14 A. Would be the confirmatory specific gravity, which
15 would be page 82. And a confirmed creatinine level which
16 again is on page 86.

17 Q. Okay. What time of day was that -- the one on
18 page 82, what time of day was that run?

19 A. That was generated out of the refractometer into
20 our interface, pardon me, on July the 12th, 2012 at
21 8:17 a.m.

22 Q. Okay. Is there a way that you can find out
23 exactly when that happened?

24 From the lab report, will it tell you when it happened
25 during the day?

1 A. Yes, this was generated -- when testing is
2 performed, it goes into the analyser and then the results
3 are uploaded into our laboratory information system.

4 So when the testing was completed that upload time
5 here is 8:17:14 -- 8 -- 0800, 17 minutes and 14 seconds on
6 the 12th of July 2012.

7 Q. Okay. Can you turn to page 86?

8 A. Yes, sir.

9 Q. And want to answer(sic) the same question. When
10 was this one run?

11 A. Again this was run on the July the 12th. This
12 was uploaded into our computer system on July the 8th --
13 July the 12th, 2012 at 8:28:17 in the morning.

14 Q. And this was one aliquot that got tested at two
15 different times that morning?

16 A. Yes, sir.

17 Q. So on the initial test, you do not have a reading
18 from one aliquot of both the creatinine and the specific
19 gravity; is that correct?

20 A. According to the federal guidelines, you are
21 correct, sir.

22 Q. So after the initial test, you didn't know
23 whether the sample was substituted or if it was dilute; is
24 that correct?

25 A. No, sir, we do not. You're correct.

1 Q. And you actually made the second specific --
2 never mind.

3 Do you screen for natural containments?

4 A. Under the federal requirement, we are required to
5 test for specimen validity, urine creatinine, pH, specific
6 gravity in relationship to the creatinine, and oxidizing
7 agent.F

8 The oxidizing agent in this case is Nitrite.

9 Q. Okay. So do you -- I mean, do you screen for
10 natural contaminants? Do you screen for bacteria?

11 A. No, sir.

12 Q. Do you screen for yeast?

13 A. No, sir.

14 Q. Do you screen for unnatural adulterants?

15 A. The unnatural adulterants -- under the federal
16 requirement, is an oxidizing agent. Again in this case,
17 it's Nitrite.

18 Q. So are you saying that someone added Nitrite to
19 it?

20 A. No, I'm saying that that's the only adulterant
21 that we do test for.

22 Q. That you screen for? Okay.

23 A. Yes.

24 Q. Okay. How many tests for specific gravity were
25 run total?

1 A. On this sample?

2 Q. Yeah, on any aliquot on that sample.

3 A. On this particular specimen, there were two
4 specific gravities that were perform performed.

5 Q. Were they both performed on the same machine?

6 A. Yes, sir, they were.

7 Q. Were he both performed on the same day?

8 A. Yes, sir, they were.

9 Q. That aliquot that was tested on both those times,
10 when was that made?

11 A. They were made on -- hang on a second here. The
12 initial was made on July 7th -- on July 11th, excuse me
13 For the initial screening. The second confirmatory was
14 done on July the 11th, also.

15 Q. That was done on the Rudolph J57 Refractometer;
16 is that right?

17 A. That's correct.

18 Q. Can you tell me when that was last calibrated?

19 A. According to the documentation here on -- for the
20 initial (inaudible) the refractometer was calibrated on
21 July the 9th, 2012.

22 Q. Does MEDTOX refrigerate the urine samples they
23 receive?

24 A. Upon completion of testing in the process, yes,
25 we do?

1 Q. When you receive it, do you refrigerate it?

2 A. It's received in our testing area. Once the
3 initial screening has been done, all the negative samples
4 are rotated into our refrigerator. And once all the
5 aliquots for confirmation have been processed and assigned
6 to a freezer box, they are then moved into refrigeration.

7 Q. Why is it necessary to refrigerate urine.

8 A. It helps with the stability of the sample.

9 Q. And the stability of what exactly?

10 A. Well, if there's any potential for breakdown of
11 that sample (inaudible) time, refrigeration and ultimately
12 freezing helps to prevent or retard that action from
13 happening at an immediate -- expeditable manner.

14 Q. Yeah, and what kind of things degrade over time?

15 A. Well, all -- all drugs can degrade over time. So
16 I mean, anything, you know, is -- is possible; any one of
17 the analytes tested.

18 Q. Okay. What happens to specific gravity over
19 time?

20 A. It will remain relatively the same. It depends
21 on how it's frozen or kept as far as a water vapor is
22 concerned. But all the sample are relatively, if you
23 will, consistent as far as that's concerned.

24 Q. Okay. What about pH?

25 A. Again, depending on how it is handled, or if

1 there is some mecronmial action, the pH can rise over
2 time.

3 Q. Does it generally rise over time?

4 A. Yes, sir.

5 Q. And it becomes more alkaline, correct?

6 A. Yes, sir.

7 Q. And that gets -- you can stop that process by --
8 by refrigerating. That's what you're saying?

9 A. Not necessarily stop, but retard, yes.

10 Q. Okay. And the hotter it is, the more likely it
11 is that those things can degrade; is that correct?

12 A. Potentially, yes, sir.

13 Q. And what about the creatinine, what happens to
14 creatinine over time?

15 A. Relatively stable. Again, you know, it depends
16 on what you're trying to -- to measure against.

17 Q. Page number 72.

18 A. Yes, sir.

19 Q. It shows a 1.4 creatinine; is that correct?

20 A. That is correct, yes, sir.

21 Q. And what day did that happen?

22 A. That happened on July the 11th, 2012.

23 Q. Okay. And why was there a 1.3 that was reported?

24 A. The 1.4 is the initial screening result. A
25 second aliquot is used to confirm that and the

1 confirmation value is one that was reported.

2 Q. Okay. What day did the 1.4 happen?

3 A. On July the 11th.

4 Q. And what day did the 1.3 happen?

5 A. On July the 12th.

6 Q. Who received the materials at the MEDTOX
7 facility?

8 A. I'm sorry, sir.

9 Q. Who received the materials at the MEDTOX
10 facility?

11 A. Materials or the specimen?

12 Q. The specimens.

13 A. Okay. Specimen was received by, pardon me,
14 spelled: S-A-A-D-A. Last name H-A-S-A-I.

15 Q. Do you have an employee there with the last name
16 starts with Z, as like Zeulske?

17 A. Yes, we do.

18 Q. Is there a possibly he received the specimens
19 when they first arrived?

20 A. He signed for the shipment as it arrived at the
21 laboratory. By that, I mean all the samples that come
22 through our UPS, FedEx for other courier services.

23 Q. Okay. And did he deliver that to Hashi then?

24 A. Well, he again -- we have trucks that come in
25 with bags of samples. And he signs for the delivery of

1 those bags, those samples.

2 Once those bags have been received in the laboratory,
3 they are distributed out into your processing area.

4 And in this particular case, the bag that was received
5 and processed by Hashi was one that she processed.

6 Q. What's the pH of water?

7 A. That would depend on (inaudible). Normally
8 speaking, it should be around 7.

9 Q. Okay.

10 A. 7.0.

11 Q. And what's the specific gravity of water?

12 A. 1.0000?

13 Q. And what's the creatinine level in water?

14 A. Zero.

15 Q. Do you believe Ms. Solomon substituted water for
16 her urine sample in this case?

17 A. I do not know what it is. It meets the federal
18 criteria of being reported as substituted. The creatinine
19 was less than 2, specific gravity is greater than 1.0200.

20 Q. Is there anything other than the fact it doesn't
21 meet the federal guidelines, is there anything that would
22 lead you to believe that it didn't come from Simone
23 Solomon?

24 A. Again, if the sample is received, tested in
25 accordance with the federal guidelines.

1 Q. Do you think it was urine?

2 A. The responsibility of the laboratories make the
3 determination whether the sample received meets the
4 criteria of being positive, negative adulterated,
5 substituted, or invalid.

6 It's up to the medical review officer to make the
7 determination whether the donor is positive, negative, or
8 has substituted their sample.

9 Q. What's the cut off for pH?

10 A. pH is going to range depending on where you're at
11 in regards to whether it's going to be adulterate or
12 invalid. Adulterate samples -- anything greater than 11
13 or less than 3, are consider to be adulterated. Anything
14 greater than a 9 or less than 4.45 are considered to be
15 invalid.

16 Q. Do we have an valid sample here?

17 A. No, sir, not for pH.

18 Q. And how close was that?

19 A. Again, the measurement is less than nine, so
20 therefore it is considered to be within the acceptable
21 range.

22 Q. There's a -- you know, we talked earlier about
23 the margin of error of that machine that was used to test
24 the pH.

25 A. Yes, sir.

1 Q. And that was on page 72 -- or was that -- that
2 was page 35. Sorry.

3 A. Yes, sir.

4 Q. And that had an acceptable error range of .2.
5 Does that sound right to you?

6 A. Yes, .2 in regarding --

7 Q. On the calibration.

8 A. -- calibration.

9 Q. Okay. So if it had been within .2, it would have
10 been calibrated on those samples, correct?

11 A. I'm sorry. I don't understand your question.

12 Q. If that first sample on page 35 had come back as
13 a 10.2, it would have been acceptable for the purposes of
14 calibration, correct?

15 A. Yes, sir.

16 MR. SYFERT: I have no further questions at this
17 time, Your Honor.

18 THE COURT: Mr. Gibbs.

19 RE-DIRECT EXAMINATION

20 BY MR. GIBBS:

21 Q. Mr. LeBard, how long do you store samples for?

22 A. All positive, or non-negative samples are stored
23 for one years in accordance with federal guidelines.

24 Q. How much time -- we were referencing earlier on
25 time it takes for -- for the pH to raise.

1 Do you have a time frame? What -- how much time are
2 talking about for it to actually elevated.

3 A. The samples that are collected are not what we
4 call clean catch. They're not a sterile collection.

5 So it depends on if there is bacteria present, and
6 what type of bacteria is present, the quantity of that
7 bacteria that would react in that urine sample that would
8 cause it to increase.

9 So there's too many variables to make a decision as
10 to, you know, what it was, what it could be depending on
11 how it was collected and then transferred to the
12 laboratory.

13 Q. Okay. Were these tests conducted in accordance
14 with 49 CFR Part 40?

15 A. Yes, sir, they were.

16 Q. No doubt in your mind?

17 A. No doubt in my mind.

18 Q. Can we go back to page 35 Mr. LeBard?

19 A. Yes, sir.

20 Q. Okay. When we're looking at the calibration,
21 the result -- we have a target of 10.0 and a result of
22 10.0.

23 So was it put in as a 10 and came out as a 10?

24 A. That a calibrator that has a target value of
25 10.0.

1 What we do is we calibrate the instrument and then we
2 read the calibrators back to ensure that it's meeting its
3 calibration criteria.

4 In this particular case, when we calibrated and
5 reanalyzed that calibrator itself, it read as 10.0.

6 Q. So --

7 A. The target is 10.0, the acceptable range for that
8 calibrator was re-assay to fall between 9.8 and 10.2.

9 Q. Correct. But that day, its target was perfect?

10 A. That is correct, yes, sir.

11 Q. It was three times on that test, correct?

12 A. There's two calibrators and then there's a
13 separate series of quality control further down on the
14 page that are run to validate the calibration of the
15 instrument.

16 Again, those we have the acceptable range for those.
17 They're not calibrated. They are quality control as long
18 as when we assay those samples, it falls within that
19 range, then they -- the sample other testing is considered
20 to be acceptable.

21 Q. Thank you.

22 Mr. LeBard, one more question for you and I'm gonna
23 make sure I get to the right page right here.

24 Can you go to 34 for me again more time, sir?

25 A. Yes, sir.

1 Q. And for the court, would you please explain one
2 more time why there is no specific gravity or creatinine
3 level for Ms. Solomon's test?

4 A. Excuse me. Under federal requirements, if the
5 creatinine is less than five mg/dL, we have to
6 automatically do a four-digit refractometer, okay?

7 In this particular instance, on the other samples that
8 are identified on there, all have creatinines that are
9 greater than five, but they are less than 20.

10 In that case, under the federal requirements, we can
11 do a preliminary screening, if you will, via a three digit
12 or a hand held refractometer to indicate that they meet
13 their criteria of being acceptable; or if they're less
14 than 1.003, the sample is considered to be dilute.

15 In this case, because the creatinine was less than
16 five, no specific gravity is performed, however, because
17 the creatinine is less than two, we are required under the
18 federal guidelines to perform a pH testing. And that is
19 what was performed on page 35.

20 MR. GIBBS: Thank you for your time, Mr. LeBard.

21 The Coast Guard has no further questions, Your
22 Honor.

23 THE COURT: Okay.

24 MR. SYFERT: No, Your Honor. No further
25 questions.

1 THE COURT: Okay. Mr. LeBard, how are you
2 feeling?

3 THE WITNESS: I'm feeling fine, sir. Thank you.

4 THE COURT: Okay. Because here's your choice --
5 here's your chance -- here's your choice: We can take
6 a break, let you drink some water and lemon and get
7 your voice back in shape, or I can proceed to ask you
8 some questions.

9 I don't think I'm gonna be as long as either
10 counsel. I think I have a very good handle on this,
11 but I just want to make sure I'm clear with your
12 testing results and everything I have heard.

13 So do you want to go on, or do you want to take a
14 break and we can call you?

15 THE WITNESS: No, let's continue, please.

16 THE COURT: Okay. Great.

17 Okay. It seems to me that the -- that the
18 documents that we have in question here that -- that
19 at least both counsel have been hitting on, obviously
20 page one is your report that you signed in which
21 you've reported creatinine at 1.3 and specific gravity
22 as 1.0223. Both of which were low; is that correct?

23 THE WITNESS: That is correct, yes, sir.

24 THE COURT: Okay.

25 MR. SYFERT: Your Honor, if I may. The specific

1 gravity is high. The creatinine is low.

2 THE COURT: Oh, I'm sorry. The creatinine was
3 low, the specific gravity was high; is that correct?

4 THE WITNESS: That is correct, yes, sir.

5 THE COURT: Thank you, Mr. Syfert.

6 However, why then -- why on page one does it --
7 is there an L in parenthesis right after the specific
8 gravity reading?

9 THE WITNESS: Really that is part of the
10 creatinine and specific gravity at the -- it's a low
11 or out of range creatinine value. It's just a flag
12 that was used to identify the creatinine --

13 THE COURT: Okay.

14 THE WITNESS: -- being out of the range.

15 THE COURT: Right. And when you were basing --
16 and I'll ask you now because I'll probably come back
17 to this. You are basing your results on section 40.93
18 to determine whether or not it was a dilute or
19 substitute specimen?

20 THE WITNESS: That is correct, yes, sir.

21 THE COURT: Do you have that open in front of
22 you, or you know it?

23 THE WITNESS: I pretty know it. I don't have
24 those regulations. I can open them.

25 THE COURT: No, no. That's fine. I just --

1 'cause that's where I'm getting my info from. I just
2 want to make sure that you and I are talking about the
3 same -- the same section. And I want to make sure
4 that the parties have it.

5 Mr. Gibbs, I know you have it in front of you.

6 MR. GIBBS: Yes, sir, and I was going to offer it
7 to Mr. Syfert.

8 MR. SYFERT: And I have it as well.

9 THE COURT: Mr. Syfert, do you have it, or I'll
10 give you my copy?

11 MR. SYFERT: 40.93 and I have it right here.

12 THE COURT: Okay. Cool. All right. Great.
13 Okay.

14 MR. GIBBS: It's also listed in our exhibits
15 number 26, Your Honor.

16 THE COURT: Thank you.

17 So then when I read it, it would appear to me
18 that the low was referring to the specific gravity,
19 but that's not correct. The low reading read was for
20 the creatinine. And according to 40.93, at point --
21 1.0223, it then -- it was a high reading on the
22 specific gravity, correct?

23 THE WITNESS: That is correct, yes, sir.

24 THE COURT: Okay. Those are the two results that
25 are listed on page six which is a CCF?

1 THE WITNESS: That is correct, yes, sir.

2 THE COURT: Okay. Let's flip past there.

3 Now -- oh, I have a question just from -- again
4 from curiosity. The sample comes in to you with an
5 identifier. In this case, it was Yankee 25425812.
6 And then your internal control number was a J number.

7 Is that just for -- I mean, is that just because
8 your database is not set up to take those J numbers?

9 Why don't you just take the specimen number at
10 least for ease of reading later, or -- is it because
11 your J number then is done sequentially so that it's
12 easier for you -- for y'all to keep track of?

13 THE WITNESS: Well, what we do is we both those
14 numbers for identification purposes.

15 The accession number is what we routinely use
16 throughout our testing process.

17 When it comes to confirmatory testing, this is
18 predominately more towards analytes such as cocaine,
19 or THC.

20 Those chain of custody forms we also will list
21 the specimen accession number.

22 When you're going through the data and going
23 through the testing process, that you have those two
24 pieces of identification on the chain of custody to
25 ensure that you're doing the correct test.

1 If you'd refer as an example to page 81.

2 THE COURT: Okay. I'm here.

3 THE WITNESS: Page 81 is an aliquot for specific
4 gravity and as you can see on there, we have that
5 accession number that is in place, the second one
6 down, as well as the specimen identification number on
7 that chain of custody.

8 Again, two pieces of information to help make
9 sure that we're identifying the correct sample when
10 we're performing the testing.

11 THE COURT: Okay. It's an in turn control, it's
12 not -- is that required by any of the federal
13 controls?

14 THE WITNESS: No, under the federal program, we
15 could use the specimen identification number, as well
16 as the ID number and as our internal accession number
17 or monitoring number.

18 THE COURT: Fair enough.

19 Okay. I want to flip and, I think Mr. Gibbs
20 cleared this up for me. I want to flip to page 34.

21 Where -- oh. Before I get on that too, you
22 received -- for this sample, you received a two viles
23 of what was submitted to be samples of urine, correct?

24 THE WITNESS: That is correct, yes, sir.

25 THE COURT: All right. Where, unless I missed it

1 on this exhibit, or I missed it on your testimony, the
2 first sample -- do you sample from vile A first?

3 Is that standard procedure?

4 THE WITNESS: Okay. Under the federal
5 guidelines, we can only do any testing in our
6 laboratory from the A bottle or the primary container.
7 All testing in this data pack came from that vile.

8 The B bottle, or the split specimen belongs to
9 the donor. If they wish to have that result
10 challenged, they could have that sample sent to
11 another DHHS certified laboratory for analysis to
12 either reconfirm or fail to reconfirm the findings of
13 the primary lab.

14 THE COURT: Okay. So all of your aliquots were
15 withdrawn from sample -- from the A bottle?

16 THE WITNESS: That is correct.

17 Once we receive them, we -- they basically are
18 married together. They follow each other throughout
19 our entire storage process.

20 THE COURT: But the seal is not broken on the B
21 sample?

22 THE WITNESS: That is correct, yes, sir.

23 THE COURT: And if I were ask you today, the B
24 sample, I'm assuming, is in freezer or refrigerator
25 and is still sealed?

1 THE WITNESS: It is in our freezer, and, yes,
2 sir, it is still sealed.

3 THE COURT: Is that an expensive process to get
4 that shipped somewhere and tested?

5 THE WITNESS: No, it's -- well, what we do is we
6 charge a shipping and handling fee for that and then
7 whatever pricing that the second laboratory of
8 choosing charges for their testing process.

9 THE COURT: Okay. And that -- but it has to go
10 to another certified lab, and we(sic) both would be
11 identified on -- on the list of approved SAMHSA labs;
12 is that correct?

13 THE WITNESS: That is correct, yes, sir.

14 THE COURT: Have you ever done that?

15 THE WITNESS: Under federal guidelines --

16 THE COURT: I'm sorry. Go ahead.

17 THE WITNESS: Under federal guidelines, a primary
18 laboratory cannot retest a sample. That's why they
19 send it to a second independent laboratory for that
20 re-testing and re-confirmation process.

21 THE COURT: Have you ever done that on behalf of
22 a request by a litigant?

23 THE WITNESS: Yes, sir, we have.

24 THE COURT: Okay. You've not -- you have
25 personally not seen these samples; is that fair?

1 THE WITNESS: Yes, sir, that is correct.

2 THE COURT: Okay. Okay. Going back to 34 then.

3 It was listed on page -- and I said 34. I mean,
4 page 34. That sample was listed along with the other
5 -- with the other samples.

6 THE WITNESS: Yes, sir.

7 THE COURT: But it was not reported -- it was not
8 reported out as to creatinine; is that correct?

9 THE WITNESS: Well, in this particular case, this
10 is a worksheet.

11 THE COURT: Unh-unh.

12 THE WITNESS: -- for specimen validity testing,
13 for additional testing that's required by the primary
14 aliquot.

15 So this one includes the calibration and the
16 quality control for the three-digit refractometer.

17 THE COURT: Correct.

18 THE WITNESS: We also have the listing of all
19 those samples that are going to require a three digit
20 specific gravity.

21 This sheet was originally designed when we were
22 doing manual pHs. Since federal regulations now
23 require that the pH meter be interfaced with our
24 laboratory information system.

25 Pardon me. The pH itself, was tested as a result

1 and it's listed on page 35.

2 THE COURT: Right. And I have that flagged, so I
3 was gonna ask you that.

4 So is it fair to say to then that there's no
5 purpose other than to show what -- was there really no
6 purposed then to list it on page 34?

7 THE WITNESS: Well, page 34 allows our instrument
8 operator or analyst to identify those sample in that
9 batch that they're working with that need additional
10 testing. In this case additional validity testing.

11 THE COURT: Got you.

12 THE WITNESS: That sample -- that last sample
13 under identified as our accession number, did require
14 additional testing.

15 THE COURT: Okay.

16 THE WITNESS: It required pH. But the actual
17 analysis of that pH is performed on page 35.

18 THE COURT: Correct. And that was with a
19 different machine?

20 THE WITNESS: Right. Is that is with a -- a pH
21 meter.

22 THE COURT: Right.

23 THE WITNESS: It has been calibrated and run for
24 that specific purpose.

25 THE COURT: Okay. And I see that. And that was

1 the only sample tested for that particular machine?

2 THE WITNESS: For that machine for pH, yes, sir.

3 THE COURT: Okay. What's the range for normal
4 for human urine?

5 THE WITNESS: Under the federal workplace
6 guidelines, anything between 4.5 and 9 is considered
7 to be acceptable. Normal urine runs around 7.

8 THE COURT: So would this have been considered to
9 be a normal sample then?

10 THE WITNESS: Under the criteria, it's considered
11 to be a normal sample.

12 THE COURT: Okay. Under the federal guidelines
13 that you -- that you operator under, had this been
14 9.1, it would have been a high sample for pH,
15 correct?

16 THE WITNESS: That is correct. The second -- or
17 an additional aliquot would have been created to
18 verify that pH level would then meet the criteria of
19 being invalid.

20 THE COURT: And the higher the number, the more
21 acidic the sample?

22 THE WITNESS: The more basic the sample.

23 THE COURT: More basic. I'm sorry. 7.5 is
24 neutral.

25 THE WITNESS: 7.0 is neutral.

1 THE COURT: Okay. Is there any relationship
2 between creatinine, specific gravity or pH levels?

3 In other words, when I ask that, if one number is
4 abnormal, does that necessarily correlate to any of
5 the other numbers being abnormal?

6 THE WITNESS: The relationship is between the
7 creatinine and the specific gravity. The reason we
8 run a pH meter is that has -- when we're doing a
9 normal routine testing on these samples that it's done
10 by an auto analyser. And the chemical reaction for pH
11 is a calorimetric procedure.

12 It has been shown those samples that have low
13 creatinines can affect that chemical pH.

14 So under the federal guidelines, we are
15 required when we see a low creatinine, that we need to
16 perform a specific pH reading by the meter.

17 THE COURT: Okay. Back me up a little bit as to
18 the -- I'm not a chemist.

19 THE WITNESS: Okay.

20 THE COURT: And I'm going back to probably, I
21 don't know, maybe grade school chemistry when I'm
22 talking to you about this.

23 So what you're saying is that you -- there must
24 be a reason that the government requires you -- or
25 requires the lab to test the pH when there's a low

1 creatinine.

2 What's that reason?

3 THE WITNESS: Well, that calorimetric procedure
4 because there is -- the sample is so dilute with lack
5 of creatinine, the ionic strength of that sample
6 itself, has a tendency of interfering with that
7 calorimetric reaction.

8 So they mandate that we perform a pH meter to
9 validate what that initial screening value or
10 calorimetric value really means.

11 THE COURT: So in other words, the pH may
12 indicate to you that the creatinine level that you
13 have read, may be incorrect?

14 THE WITNESS: No. The creatinine level is
15 correct, but pH that was measure by the calorimetric
16 or the original testing, could possibly be inaccurate.

17 THE COURT: Okay. I hear you.

18 So it -- so you don't -- so low creatinine could
19 affect -- could affect your test results for the pH?

20 THE WITNESS: That is correct, yes, sir.

21 THE COURT: Okay. So which is why you did a pH
22 -- why is lab is required as far as you know, to run a
23 pH test when there's a low creatinine, or when your
24 creatinine is off?

25 THE WITNESS: That is correct, yes, sir.

1 THE COURT: Okay. In this particular case, the
2 pH level was within normal limits?

3 THE WITNESS: That is correct, yes, sir.

4 THE COURT: Would you have expected the pH level
5 to be other than normal in this particular sample with
6 the reading you came up with?

7 THE WITNESS: In this sample, no, there would be
8 no expectation of the pH reading being anything other
9 than acceptable unless it was indicated by the
10 additional testing.

11 THE COURT: Okay. The fact that the pH level was
12 within normal range, indicates -- tell me what
13 indicates to you?

14 THE WITNESS: Essentially, it means that the pH
15 was within normal range. The creatinine is not
16 affected by the pH. The creatinine measurement is not
17 affected by the pH. The specific gravity is not
18 really affected by the pH under normal circumstances.

19 However, the pH reading chemically can be
20 affected by the ionic strength of the -- of the urine
21 sample itself because it has a real low urine
22 creatinine.

23 THE COURT: I under --

24 THE WITNESS: Creatinine is actually a
25 metabolized muscle movement. It is also an indication

1 of hydration state of the donor.

2 So it is amount of salts and solutes and other
3 compounds that are in urine, create its validity, if
4 you will, as far as the sample is concerned.

5 So if those values are low for creatinine, it
6 means that there's a disproportion amount of water,
7 essentially, that has been released by the body in
8 this urine sample. And that can affect that
9 calorimetric pH reading.

10 THE COURT: Okay. Does the pH level -- can the
11 pH level indicate to you whether or not it's human
12 urine or some other type of liquid?

13 THE WITNESS: No, sir.

14 THE COURT: Okay. And in any case, this was --
15 this was normal.

16 All right. So let's turn to the two abnormal --
17 I mean, to the abnormal readings.

18 All right. Your creatinine was initially on page
19 36 reported at 1.4, which is low, correct?

20 THE WITNESS: That is correct, yes, sir.

21 THE COURT: Normal range is what? What did you
22 tell me?

23 THE WITNESS: Anything greater than five.

24 The acceptable creatinine is greater than 20.
25 Anything between 5 and 20 is considered to be

1 potentially dilute.

2 Depending on what the specific gravity value is,
3 anything less than 2 and a specific gravity greater
4 than 1.0200 or less than 1.010 is considered to be
5 substituted based on the criteria set forth by the
6 regulations.

7 THE COURT: Okay. Here we have a creatinine
8 level at 1.04 which is -- I'm assuming not as specific
9 a test as when it was reported at 1.3.

10 This was a -- was this a screening test? Is that
11 what it was as reflected on page 36?

12 THE WITNESS: It's the same testing procedure
13 that's done. It's using the same reagents that are
14 done.

15 What it's really doing -- the confirmatory test
16 is just verifying the result that the original test
17 are correct.

18 THE COURT: Okay. And under the statute -- under
19 the regulations and your guidelines, is there -- I'm
20 on speaking about the creatinine level.

21 Is there a difference between a creatinine level
22 of 1.3 and 1.4.?

23 THE WITNESS: No.

24 THE COURT: Its' below five, so anything under
25 five, would be outside your range?

1 THE WITNESS: That is correct, yes, sir.

2 THE COURT: Okay. Now, you were just about to
3 give -- or you did give me some brief explanations.

4 Creatinine level measures the amount of
5 creatinine as released in a human -- in person's
6 urine; is that correct?

7 THE WITNESS: That is correct.

8 THE COURT: All. Mammals secrete creatinine in
9 their -- well, do you know that? Do all mammals
10 secrete creatinine in their urine?

11 THE WITNESS: Yes. Creatinine is a metabolite or
12 a byproduct of muscle movement. So as long as they
13 have muscles, ie., mammalians, yes, they will release
14 a creatinine product in their urine. It's going to
15 vary depend on muscle mass.

16 For somebody that's a petite individual, may have
17 less creatinine because of their muscle mass as
18 compared to -- let's say a tackle on the football
19 team. Again, a larger individual containing much more
20 higher muscle mass.

21 But federal government said has basically said
22 that as long as you're releasing creatinine and that
23 the creatinine is greater than 20 mg/dL, that the
24 sample is considered to be sufficiently concentrated
25 that the laboratories can't find drugs at or above

1 those administrative thresholds.

2 THE COURT: Okay. That's what I was gonna get a
3 next.

4 In other words, the cut off was set forth so that
5 if there's a creatinine level below five, is it -- is
6 it impossible for the lab to detect drug levels in a
7 urine sample with less than five -- with less than a
8 level five for your creatinine?

9 THE WITNESS: Probably analogy that I can best
10 explain. Again, creatinine being a metabolite of
11 muscle movement and measure the hydration state of a
12 donor. Let's envision three vessels of water.

13 Four ounce glass, twelve ounce tumbler, and a one
14 quart pitcher. Okay. They're filled full of water.
15 We're going to add a teaspoon of drug to each one of
16 those vessels of water.

17 In this particular case, that drug is sugar.
18 We're gonna mix it up and then we're gonna analyze it
19 for the presence of sugar, or we're just gonna taste
20 it with our tongue.

21 Taste the four ounce glass. That's really pretty
22 sweet. The twelve ounce tumbler, while you can still
23 taste the sugar, but it's definitely not as sweet as
24 the four ounce glass. The one quart pitcher, pretty
25 much tastes a lot like water, whatever water taste

1 like.

2 My analogy here would be that four ounce glass
3 would have a urine creatinine level of 200. It is a
4 concentrated sample. The individual has not consumed
5 copious amounts of fluids prior to that collection.

6 The twelve ounce will give an arbitrary number of
7 20. Again, concentrated meets our criteria, however,
8 it's not as concentrated as the four ounce glass.

9 The one quart pitcher will give an analogy of
10 ten.

11 So you can see the same amount of drug is in each
12 one of those vessels of water, however, by over --
13 over drinking with fluids, the amount of drug is
14 diluted up in that sample.

15 Drugs are bigger than (inaudible) liter of urine
16 produced.

17 So if you're producing more urine by consuming
18 more fluids, then the concentration of that drug in
19 the urine can be below those administrative
20 thresholds.

21 In regards to the creatinine levels, what the
22 federal government has basically said is anything
23 between five and twenty, can be dilute depending on
24 the specific gravity.

25 Anything between two and five, can fall into,

1 what we call, an invalid relationship between the
2 urine creatinine and specific gravity.

3 Anything with a creatinine less than 2, specific
4 gravity less than 1.0010 or great than 1.0200 is
5 considered to fall into the category of being
6 substituted.

7 Now, originally that substitution was defined as
8 being not consistent with what a normal human urine
9 would be.

10 THE COURT: A person couldn't drink enough water
11 to get their creatinine level -- I mean, or could
12 they?

13 Could a person drink enough water to dilute a
14 sample -- naturally dilute a sample to get it below
15 five?

16 THE WITNESS: There is the potential, yes, sir.

17 THE COURT: Okay. If that happens, then your
18 confirmatory test as to whether or not it's human
19 urine or some -- or an actual substituted sample,
20 would be the specific gravity test?

21 THE WITNESS: Yes, sir.

22 THE COURT: Okay. Does the amount of fluid a
23 person drinks, affect the specific gravity?

24 THE WITNESS: It can, yes, sir.

25 THE COURT: But for our federal guidelines,

1 that's not your determination. Your determination is
2 whether or not those numbers are inside or outside
3 your federal guidelines?

4 THE WITNESS: That is correct, yes, sir.

5 THE COURT: Okay. Can you tell me what are
6 common -- I'm looking at your -- I was glancing
7 through your -- your logs here and of course there's
8 more -- there are more reports -- more numbers
9 reported than just the one in question.

10 The creatinine in this case is 1.4. Is that
11 abnormally low?

12 THE WITNESS: Again, what is considered to be
13 acceptable, is greater than 20.

14 THE COURT: Right.

15 THE WITNESS: We do see them ranging all over the
16 board, if you will.

17 THE COURT: Yeah.

18 THE WITNESS: The vast majority that we routinely
19 test, obviously are greater than 20.

20 It's not unusual to have samples that meet this
21 criteria being substituted. Although it's not as
22 common as it would be a drug of abuse such as THC or
23 amphetamines or cocaine.

24 THE COURT: Now, when you say a substitute or a
25 dilute, I want to take those separate although dilute

1 is not in question.

2 Let's just talk about a substitute. When you
3 talk about a substitute, that's a definition as --
4 under the federal guidelines.

5 Is a substitute in your mind adding water to a
6 sample or adding a fluid to the sample?

7 THE WITNESS: The reasons for that substitute
8 criteria can be numerous. It could be a situation
9 where an individual would bring in a sample that does
10 not meet the criteria for acceptability.

11 Saltwater as an example, or saline would have no
12 creatinine, however, it would have a specific gravity
13 of approximately of 1.007.

14 A salty solution, again, no creatinine because
15 there's no muscle associated with, can then drive up
16 that specific gravity to meet that criteria.

17 There could be situations where an individual may
18 overcompensate their selves by drinking copious
19 amounts of fluids.

20 The reason for the specific gravity elevation
21 could potentially be considered under medical
22 conditions. Again, I'm not a physician, I don't know
23 those scenarios. But really the -- the process of a
24 laboratory is to make the determination whether the
25 sample meets criteria for reporting. It's up to the

1 medical review officer to make the determination if
2 the donor fits the criteria as the laboratory
3 reported.

4 THE COURT: That's -- and I understand that. And
5 I appreciate that.

6 Could medications effect either or your -- either
7 of the two measurements in question here, that of the
8 creatinine or that of the specific gravity?

9 THE WITNESS: If an individual, and as an
10 example, is on diuretics.

11 THE COURT: Right. Okay.

12 THE WITNESS: And what that does is holds fluids
13 from the human body. So any excessive fluids are
14 removed from the body and of course would be
15 eliminated as urine. So that could contribute to a
16 dilute or more dilute sample.

17 THE COURT: Okay. Okay. Well, I had some other
18 pages flagged. I just want -- there was some circles
19 on -- oh, I know what it was.

20 On page 66, you have just some circles on
21 numbers. That has nothing to do with this particular
22 case?

23 THE WITNESS: No. These would be other samples
24 that were on that load, or the batch that was analyzed
25 for testing.

1 Under the federal workplace program criteria, we
2 have -- we're (inaudible) litigation all of the data.
3 We do not deduct anything in that regards.

4 So these are other samples that were on that
5 particular batch that were tested indicating that they
6 were positive.

7 On page 66, as an example, the first one for
8 cocaine metabolite, the second one is for THC.

9 THE COURT: Okay. Thank you.

10 Now, on page 72, that's your test that was run on
11 7/11 which reports a low creatinine for our particular
12 case of interest of 1.4 which corresponds with your
13 test run on page 36 that's 1.4.

14 Is that the same test?

15 THE WITNESS: Yes, sir.

16 THE COURT: Okay. Just reported in two different
17 spots?

18 THE WITNESS: Well, the -- page 34 -- let me go
19 back. One moment, please.

20 THE COURT: 34, or 36.

21 THE WITNESS: Okay. 36 is a summary of all the
22 data that was run on that test.

23 On page 72, that's the actual data that was
24 generated on that sample.

25 THE COURT: Okay.

1 THE WITNESS: So it indicates, you know, the PCP,
2 THC sections are all negative. The creatinine was
3 abnormal because it was flagged as a low at 1.4.

4 THE COURT: I see. So that's why those two
5 numbers correspond?

6 THE WITNESS: Yes, sir.

7 THE COURT: So it's the later test that you
8 reported which is shown on page 86 for 1.3?

9 THE WITNESS: That is correct.

10 THE COURT: And then there was a subsequent
11 analysis on that particular -- excuse me, yet another
12 aliquot run on page 99 that says .13(sic)?

13 THE WITNESS: Right that --

14 THE COURT: Are those two separate aliquots?

15 THE WITNESS: No, one is -- the summary of again
16 is on page -- hang on a second, Judge.

17 THE COURT: Sure.

18 THE WITNESS: I have to go through the data here
19 as I go.

20 Page 99 is the actual printout form for that
21 particular sample.

22 THE COURT: Which page?

23 THE WITNESS: Let me double check here. There's
24 two sets of numbers.

25 THE COURT: Take your time.

1 THE WITNESS: I'm sorry. It's page 97.

2 THE COURT: Unh-unh.

3 THE WITNESS: Those are the actual results again
4 for the testing where it says 1.3, low. And you can
5 see the accession number of J, as in John, 050561861.

6 THE COURT: Correct.

7 THE WITNESS: Page 86 is a summary of that
8 report.

9 THE COURT: Oh, okay.

10 THE WITNESS: But really the hard data or that
11 that was generated from the instrument, is on page
12 97. The summary from that data from your list system
13 is on page 86.

14 THE COURT: Okay. So 86 is the summary of the
15 data captured by the test which is run on page 97?

16 THE WITNESS: That is correct, yes, sir.

17 THE COURT: Okay. And the report on page 91 is a
18 confirmatory test then?

19 THE WITNESS: Again, that is the summation of the
20 -- okay.

21 When we do our analysis, page 97 is actually the
22 hard data.

23 THE COURT: Okay.

24 THE WITNESS: Once it comes of the instrument,
25 the instrument itself will print up a summary --

1 THE COURT: Okay.

2 THE WITNESS: -- of data that is out of range for
3 the batch that was -- the samples that were run. That
4 is page 91.

5 THE COURT: Yeah.

6 THE WITNESS: Then our laboratory information
7 system once this has been uploaded into the computer
8 system, then we'll generate this other worksheet on
9 page -- starting on page 86.

10 THE COURT: Right.

11 THE WITNESS: Which again, is a listing of all
12 the samples that were run on that analyzer at that
13 point in time.

14 THE COURT: Okay. I got you.

15 And is the 1.3 number -- 1.3 creatinine level,
16 run with a test that is more specific than the test
17 which was initially run which is reflected on page 72?

18 THE WITNESS: No, sir. It is the same -- same
19 procedure that's run. It's the same reagents that's
20 used. It's just repeated a second time, again to
21 confirm the presence -- or the result of the initial
22 testing.

23 THE COURT: Okay. And under federal guidelines,
24 there's no statistical difference between 1.4 and 1.3
25 then?

1 THE WITNESS: That is correct, yes, sir.

2 THE COURT: Okay. Fair enough.

3 Okay. Now, I think I've beaten creatinine just
4 about to death.

5 You've tested for nitrates in this particular
6 sample, correct?

7 THE WITNESS: That is correct, yes, sir.

8 THE COURT: And that is a common -- is -- why is
9 that one commonly tested? What is that -- what is --
10 give me a nitrite? That's a salt, right?

11 THE WITNESS: Well, in this particular case,
12 under the federal criteria, we have to test for
13 adulterant. That adulterant is usually an oxidizing
14 agent. Predominately it will affect a THC more than
15 any other compound.

16 What it is is a specific compound that is added
17 to the urine when the donor is awaiting their sample
18 and it's used to circumvent the drug testing results.

19 Again, under the federal program, for validity
20 we're required to look at -- and the specific gravity,
21 pH which can be also an acid or a base added to the
22 sample at collection, again to circumvent the testing;
23 or -- and an oxidizing agent.

24 In this particular case, MEDTOX Laboratories has
25 chosen to look for nitrate equivalents, or nitrate in

1 regards to this oxidant that it can be tested for.

2 THE COURT: Fair enough.

3 And it was not present in this particular case?

4 THE WITNESS: In this particular case, anything
5 that is greater than 200 micrograms per mill, but less
6 an 500 is considered to be invalid because of the
7 potential for oxidant activity. Anything over 500
8 micrograms per mill has been confirmed is considered
9 the sample to be adulterated.

10 THE COURT: Okay. Give me that first number
11 again. What was that range?

12 THE WITNESS: Anything between 200 and 500.

13 THE COURT: Okay. This well below that. The
14 nitrate you found in this particular sample was 41?

15 THE WITNESS: That is correct.

16 THE COURT: All right. Is that something
17 consistent with normal human --

18 THE WITNESS: That would be -- actually that
19 level is below what we all our limits of quantation.

20 So essentially, it's a value that is generated,
21 but it's not a number that can be, what do I want to
22 say, used. (inaudible) meets that criteria of being
23 negative.

24 THE COURT: Okay.

25 THE WITNESS: Below our lowest level of

1 quantation which in this case is 65 micrograms per
2 mill.

3 THE COURT: Okay. So that would indicated that
4 person might even be on a restricted salt diet for all
5 we know?

6 THE WITNESS: Well, this particular case just
7 indicates there was no addition of nitrite compounds
8 added to the sample at the time of collection.

9 THE COURT: Fair enough. If -- a -- okay.
10 Okay. Fair enough.

11 Okay. Now, I want to talk to you about the
12 specific gravity. It's a very narrow -- I mean, I
13 know it's -- the machinery is very precise, but in
14 order to qualify as a specific -- as a substituted
15 sample, the creatinine must be less than 2, which
16 we've gone over here ad nauseum. However, the
17 specific gravity has to be greater than 1.0200 on both
18 tests, correct?

19 THE WITNESS: Yes, sir.

20 THE COURT: Okay. In this particular case, on
21 page 82, we have 1.0223.

22 THE WITNESS: Yes, sir.

23 THE COURT: It's point -- it's 23 one thousandths
24 over the level needed to qualify as a substituted
25 sample?

1 THE WITNESS: That is correct, yes, sir.

2 THE COURT: Okay. Have -- did -- was -- and I
3 don't know what the federal guidelines require because
4 I'm -- is there a requirement for a confirmatory for
5 the specific gravity?

6 THE WITNESS: Well, again, what requirements are
7 two separate aliquots that we test for specific
8 gravity by four digit refractometer.

9 THE COURT: Okay. And I have that on page 82.
10 Where is other one?

11 THE WITNESS: 79.

12 THE COURT: Oh, that's what I was looking. Oh, I
13 didn't tab it.

14 You know what, that was my fault. I didn't tab
15 it. I see it on page 79. And it was the same
16 reading, correct?

17 THE WITNESS: That is correct. Two separate
18 tests, two separate aliquots. The same analyser, but
19 given as basically consistent results. So therefore
20 if those agree with each other, and they have to agree
21 within .0004 -- we take the two replicates, then we
22 can call it off the confirmation as a value that
23 indicated. In this case, 1.0223.

24 THE COURT: And your sample -- the test was
25 calibrated and passed on the test as -- as shown on --

1 on page 79, as well as the refraction, I guess, it's a
2 defraction machine, on page 82, correct?

3 THE WITNESS: That is correct.

4 Under our current requirements as standard
5 operating procedures, we calibrate the instrument once
6 a week, however, excuse me, we also will run a series
7 of quality control with every batch to validate that
8 calibration.

9 If the quality control do not pass their
10 requirements, then the instrument will be recalibrated
11 and reanalyzed until it does meet criteria, or if it
12 needed repair.

13 In this particular case, on page 79, we ran a
14 series of four controls. Again, water, which has a
15 specific gravity of 1.000. Again, it has range --
16 acceptable range that we must meet our criteria to
17 pass. Again, low, normal and high specific gravity
18 just so it can show that we're functioning (inaudible)
19 of the instrument.

20 And then again, receive those quality control
21 again on a separate batch. Basically at a different
22 time.

23 Indicating, again, these are separate control.
24 They are showing the precision of the analyser because
25 of the reproducibility of that QC.

1 THE COURT: And these temperatures when I first
2 looked at them -- I'm assuming now they're all in
3 centigrade, correct?

4 THE WITNESS: That is correct, yes, sir.

5 THE COURT: All right. We can centigrade here in
6 the United States for all this stuff?

7 THE WITNESS: Yes, sir.

8 THE COURT: Okay. Thank you very much.

9 Now, I have no further questions, Mr. LeBard,
10 however, I'm gonna turn over to counsel and make sure
11 that they don't have any questions in response to the
12 questions that I have asked you.

13 Mr. Gibbs, any questions -- anything for the
14 government?

15 MR. GIBBS: The Coast Guard has no further
16 questions, Your Honor.

17 THE COURT: The Coast Guard's got not further
18 questions, Mr. LeBard. So you're half way home.
19 Actually, you're two third of the way home.

20 Mr. Syfert.

21 MR. SYFERT: One or two, Your Honor.

22 THE COURT: Well, go ahead.

23 CROSS-EXAMINATION

24 BY MR. SYFERT:

25 Q. If -- you said earlier that creatinine and

1 specific gravity were related.

2 A. The testing under the federal guidelines requires
3 us to put those two in a relationship for reporting
4 purposes.

5 Q. Okay. If I had a high creatinine level, will you
6 expect a high specific gravity or low specific gravity?

7 A. High.

8 Q. If I had a low creatinine, will you expect will
9 you expect a low creatinine -- will you expect a low
10 specific gravity or a high specific gravity?

11 A. It would be a low specific gravity.

12 Q. Okay. Do you have an explanation for why in this
13 case, it is a low creatinine and a high specific gravity?

14 MR. SAMMONS: Objection, Your Honor.

15 THE COURT: Are you gonna say calls for
16 speculation?

17 MR. SAMMONS: Exactly, speculation.

18 THE COURT: All right. But he's an expert. For
19 what it's worth, I want to take this answer 'cause
20 that would have mine, and I know you would have wanted
21 to object then, but decorum may have prevented you so.

22 I want to -- 'cause I want to know that answer.

23 THE WITNESS: Well, this particular case, all
24 we're doing is reporting them and --

25 THE COURT: Hold on. Let me -- let me give it to

1 you so everybody is -- do you know -- are you in a
2 position with your expertise -- I know what you expect
3 -- I'm assuming that you expect those results simply
4 because of your experience of what you've seen,
5 correct?

6 THE WITNESS: That is correct, yes, sir.

7 THE COURT: Okay. Are you in a position, as an
8 expert, to give us an opinion with reasonable
9 scientific certainty as to why the specific gravity
10 might be high and why the creatinine maybe low?

11 THE WITNESS: No, sir.

12 THE COURT: Okay. Would another witness -- would
13 a medical expert -- would that be the witness to get
14 that from?

15 THE WITNESS: There's a potential for that, yes,
16 sir.

17 THE COURT: Okay. Okay. I'm going assume this,
18 and again you can correct me -- and I'll let you ask
19 some more questions, Mr. Syfert.

20 MR. SYFERT: I was done, Your Honor.

21 THE COURT: I will probably stop you along that
22 line.

23 Your testimony is limited to what's required by
24 the federal regulations and because the federal
25 regulations require the lab to test like this, and say

1 if the results are in those ranges, that's what you're
2 going to report?

3 THE WITNESS: That is correct, sir, yes.

4 THE COURT: Okay. But you're not -- and I'm
5 gonna ask you this because I want to be clear, because
6 I mean, we got -- I want to be fair here to everybody.

7 You're not in a position to explain why one might
8 be high, one might be low, when your expectation would
9 be that they be in tandem.

10 THE WITNESS: Well, that is the reason why it's
11 considered to an abnormal result. Because the
12 creatinine is so low and the specific gravity is high,
13 that, again, in accordance with the federal program,
14 we're to designate that as meeting the criteria of
15 being substituted.

16 THE COURT: And the --

17 THE WITNESS: As an example, if that specific
18 gravity was less than 1.0 -- 1.0200, the sample would
19 have been reporter as being invalid because the
20 relationship between the creatinine and the specific
21 gravity are not -- was considered to be a normal
22 perimeter.

23 THE COURT: I see. Thank you.

24 And going back to Mr. Syfert's questions to you
25 -- I don't want to go through my notes. I've taken a

1 lot of notes here.

2 One of his questions to you in the beginning
3 were: Have you testified in cases in which the
4 creatinine was low and the specific gravity was high.
5 I believe, your answer was in the affirmative; is that
6 correct?

7 THE WITNESS: That is correct, yes, sir.

8 THE COURT: Okay. And what your answer was, if a
9 remember without going through is: It's not common,
10 but it does happen, or words to that effect.

11 Is that a fair summary of what you've indicated?

12 THE WITNESS: Yes, sir.

13 THE COURT: Were you ever asked in any other
14 proceedings why those results came in that way?

15 THE WITNESS: No, sir.

16 THE COURT: Okay. And would you have given them
17 the same answer that you gave us today had someone
18 asked you for that?

19 THE WITNESS: Yes, sir.

20 THE COURT: You're not in a position to give us
21 an opinion with any type of medical certainty as to
22 why?

23 THE WITNESS: That is correct, yes, sir.

24 THE COURT: Okay. Then I will sustain the
25 objection based on my question.

1 After that, Mr. Syfert, do you have any further
2 questions?

3 MR. SYFERT: No, I don't, Your Honor.

4 THE COURT: Okay. Mr. LeBard, you've been very,
5 very helpful, and you've given us a lot of your time.
6 I know that you're not feeling that well. I want to
7 express the gratitude of all the parties here, the
8 litigants and myself for your time.

9 You may -- you will probably not be recalled, but
10 you're not planning on leaving the -- you'll be around
11 for the next couple of days in case someone needs to
12 get ahold of you?

13 THE WITNESS: Yes, sir. I have no -- no
14 expectation of being out of the office. I may not be
15 here at my desk at the time, but I'll be more than
16 happy to answer any further questions.

17 THE COURT: Are you on eastern time or central
18 time there?

19 THE WITNESS: Central time.

20 THE COURT: Okay. All right, great.

21 All right. Then you're excused. Thank you very,
22 very much.

23 THE WITNESS: Thank you, sir. Have a good day.

24 THE COURT: You're welcome.

25 I'm gonna assume the MRO is next?

1 MR. GIBBS: Yes, Your Honor.

2 THE COURT: Obviously my questions are -- have
3 been put out towards Mr. LeBard.

4 What I would have wanted to know from him, and I
5 don't think he was in a position to answer this, is --
6 and I'm not sure that the MRO is, but where I think
7 Mr. Syfert was going and certainly where I was going
8 was: If temperature or time, or those things in terms
9 of liquefied samples would have an effect on any of
10 these levels. I'm assuming the MRO would probably
11 have the answers to that.

12 Do we want to take the MRO today, Mr. Gibbs?

13 MR. GIBBS: It's fine with me.

14 THE COURT: Mr. Syfert, are you prepared for --

15 MR. SYFERT: That's fine with me. I would
16 actually like a recess.

17 THE COURT: Oh, sure. I don't mind taking --
18 'cause I want to take another look at this.

19 So it's 1525 -- 1535.

20 MR. SYFERT: Your Honor, based on -- based on the
21 testimony of Mr. LeBard and the requirements of 40.93,
22 the tests need to be on two separate aliquots, both
23 specific gravity and creatinine, there's different
24 ways to read that statute.

25 I don't know what the correct pronunciation -- or

1 the correct way of thinking about it is, but I know
2 that I have filed a motion for summary judgment based
3 on the fact that the initial tests did not actually
4 have any sort of specific gravity.

5 It, you know, I talk about the two aliquots is
6 what's required. He says that was three. And I would
7 ask Your Honor to look at that and to look
8 specifically at the language of 40.93 and then
9 possibly rule on. I could have waited until
10 afterwards, but I wanted to bring that up now because
11 it seems relevant.

12 THE COURT: You know, it does seem relevant, but
13 I'm gonna have to do a lot more -- obviously I have
14 statute here. I'm gonna have to do a lot more
15 research as to that particular aspect.

16 I am not going -- I'm gonna consider that to be a
17 motion. Probably I would consider that to be a motion
18 for a directed verdict at the close.

19 Hopefully, if the MRO goes in and out today, I'll
20 consider that motion made, will not require you to
21 make it again at the close of the people's -- at close
22 of the government's case.

23 However, unless I gain a lot of knowledge between
24 now and the close of their case, I probably will
25 reserving on that motion until after your case, but I

1 will consider it in the light that I am required to
2 for such motions made.

3 And I have to think and make sure that I can
4 actually do that according to the regulations and
5 rules of procedure.

6 I want to take a better look at the statute.

7 All right. Let's do this: That motion is made.
8 I saw it before and I think I've also reserved on it
9 before -- reserved my decision on that.

10 Why don't we take until 1600 and then we'll --

11 MR. SYFERT: Thank you, Your Honor.

12 THE COURT: -- come back.

13 Okay. Is that good with the government? It was
14 a long witness, but it was all due to me, so y'all can
15 take a break.

16 Court is in recess.

17 (Recess)

18 THE COURT: Okay. Back on the record in Ms.
19 Ms. Solomon's case, please.

20 Mr. Gibbs, that was an informative witness.

21 MR. GIBBS: Yes it was, Your Honor.

22 THE COURT: Okay. I'm assuming that we're ready
23 for the MRO.

24 MR. GIBBS: Yes, Your Honor.

25 Your Honor, prior to making the phone, we would

1 like to bring your -- make official notice on exhibit
2 31. It is the urinary Creatinine Concentrations in
3 the U.S. population: Implications for Urinary
4 Biological Monitoring Measurements.

5 And this was published by -- yeah, the National
6 Institute of Health.

7 Last exhibit.

8 THE COURT: From February of '06?

9 MR. GIBBS: I got --

10 THE COURT: It's in upper left hand corner. Is
11 that -- it's January 14th on the bottom. That's when
12 it was printed.

13 MR. GIBBS: Yes, Your Honor.

14 THE COURT: But actual article.

15 MR. NEE: Published on mine in 2004.

16 MR. GIBBS: Do you have that publish date?

17 THE COURT: I do. I have that right here.

18 Mr. Syfert, any objection to that?

19 MR. SYFERT: Your Honor, I am familiar with the
20 writing. I guess, I'm not really sure exactly they
21 would be wanting to take judicial notice of.

22 THE COURT: I think more than anything, it's -- I
23 think that we had spoken on this, I think, on a
24 prehearing conference.

25 This is material that's out there that I think

1 without reading it, of course, I haven't read it yet,
2 the government is gonna say it supports their -- their
3 -- you know, it's more like a learned treaty or
4 information that's available for general consumption
5 on the internet.

6 I had assumed that you also had some material
7 that you were gonna ask me to look at in terms of
8 levels of creatinine, medical histories, medical
9 conditions; that type of thing, too.

10 Didn't we talk --

11 MR. SYFERT: I was -- I was -- we never had a
12 conversation about that. I was counting on the
13 testimony of the --

14 THE COURT: Medical?

15 MR. SYFERT: The physicians --

16 THE COURT: Yeah.

17 MR. SYFERT: -- to do that.

18 I mean, we -- if they want to present this, I
19 mean, I can present a --

20 THE COURT: Treatis.

21 MR. SYFERT: -- something. But I -- I mean, for
22 the purpose of things going, I have to problem
23 consenting to the fact that the normal human US
24 population has a higher creatinine than 1.4 and
25 anything below a 20 is abnormal.

1 THE COURT: Well, since haven't read it, does
2 that -- will that --

3 MR. GIBBS: Your Honor, I think if you -- when we
4 get with the MRO, it's going to be discussed in a
5 great deal.

6 If you go to the last page, which is really
7 specifically where we're going, is table one blown
8 up.

9 We actually had to open the table and blow it and
10 make it the last page. And you're gonna see the
11 different creatinine levels for different age groups
12 and years.

13 THE COURT: I see that.

14 MR. SYFERT: And, Your Honor, we would object
15 just because we don't see the relevance of this.

16 We already had testimony saying what was a normal
17 creatinine range.

18 We have no objection to it being admitted at the
19 same time, but at the same time, we -- you know...

20 THE COURT: Why don't I admit it -- I mean, I'm
21 not asking a question, I guess. But would you have an
22 objection if I admitted and it and then took a look at
23 it as to weight?

24 MR. SYFERT: Absolutely not, Your Honor.

25 THE COURT: All right. The court will then admit

1 exhibit CG-31.

2 Specifically I'm gonna be interested in that last
3 page myself. It's gonna be admitted, however, it is
4 gonna to be subject to weight. So I want the
5 government to be aware, as well as you, Mr. Syfert,
6 that this is confirmative that it will probably give
7 me a basis for questioning the MRO as to what his
8 understanding of the biological monitoring system are
9 in the human body.

10 But, obviously I think that -- at least from my
11 questions, I certainly have -- I want to know, you
12 know, what's going on with this creatinine level along
13 with a specific -- along the specific gravity level as
14 well.

15 MR. SYFERT: I have no objection to the court
16 using it as a guide.

17 THE COURT: Okay. I'll admit that then.

18 Great.

19 MR. GIBBS: Permission to, Your Honor.

20 THE COURT: Please.

21 While we're waiting, we spoke before the break
22 about your motion for summary disposition. I told you
23 I would consider that. Mr. Syfert, as to that, I
24 would consider to be made at the close of their case.

25 When they close, I am gonna -- I won't -- you

1 won't have waived the motion, but I am gonna want to
2 -- and make a note, I am gonna want you to restate the
3 motion so I'm clear.

4 I know what you had in your written motion, but
5 I'm gonna want to know if your motion is directed to
6 the fact -- the language itself that there were not
7 two separate samples made -- or two separate tests
8 with the primary sample.

9 Just be real specific with me because I'm trying
10 to figure out if it's linguistic that you're making it
11 or there was legal -- that it was legally insufficient
12 because the number of samples -- the number of
13 aliquots tested didn't comply with that section.

14 MR. SYFERT: And --

15 THE COURT: You don't need to tell me know. Just
16 tell me what -- make sure I know later.

17 MR. SYFERT: Okay.

18 UNIDENTIFIED FEMALE SPEAKER: Good afternoon, IT

19 MR. GIBBS: Hi. Good afternoon. This is Mark
20 Gibbs with the United States Coast Guard. And I'm
21 looking for Dr. Khella, please.

22 UNIDENTIFIED FEMALE SPEAKER: Okay. In regards
23 to what specimen ID?

24 MR. GIBBS: That would be -- he's -- he's waiting
25 on our phone call, ma'am. This is a hearing.

1 UNIDENTIFIED FEMALE SPEAKER: Oh, okay. Yeah,
2 was waiting on that. Okay. Hold on one second.

3 DR. KHELLA: Hi. This is Dr. Khella.

4 MR. GIBBS: Good afternoon, Doctor. It's Mark
5 Gibbs with the US Coast Guard.

6 DR. KHELLA: Good afternoon.

7 MR. GIBBS: I apologize. We've run a little long
8 today. I know you were probably expecting our phone
9 call bit earlier.

10 DR. KHELLA: About four hours earlier.

11 MR. GIBBS: Well, I apologize and I appreciate
12 your patience and your assistance in this matter.

13 DR. KHELLA: Sure, no problem.

14 MR. GIBBS: Okay. Doctor, I'm gonna put the
15 Honorable Judge Metry on the line. He's going to
16 actually swear you in and validate your
17 identification. So if you could have somebody come
18 into the who could -- you could hand over some
19 identification who could tell the court that you're
20 who you say you are.

21 DR. KHELLA: Okay. Give me a minute and let me
22 put you on hold.

23 MR. GIBBS: Yes, sir.

24 DR. KHELLA: Okay.

25 UNIDENTIFIED FEMALE SPEAKER: Hello.

1 THE COURT: Hello. Hi, this is Judge Metry.

2 Hey, can I -- thank you for coming in.

3 Can I -- could put Dr. Khella on real fast, but
4 please don't leave.

5 DR. KHELLA: Yes.

6 THE COURT: Hi, Doctor. How are you?

7 DR. KHELLA: Good afternoon.

8 THE COURT: Good afternoon.

9 Hey, I'm -- I'm really sorry we ran over. I
10 think -- I apologize. We were trying to get you in a
11 few hours ago.

12 But listen, I do appreciate you standing by.

13 Listen, what I need to do is just follow some
14 procedures with you. So the first thing I'm gonna ask
15 you to do is -- and I know you're on that side of the
16 phone and it seems kind of silly, but I need you to
17 raise your right hand and just to answer this question.

18 DR. KHELLA: Sure.

19 THE COURT: Do you swear to tell the truth, the
20 whole truth and nothing but the truth?

21 THE WITNESS: I do.

22 THE COURT: Great. Would you please tell us,
23 Doctor, your -- your full name and spell your name for
24 my court reporter here, please.

25 DR. KHELLA: Certainly. It's Hani, H-A-N-I. J.

1 Khella, K-H-E-L-L-A, MD.

2 THE COURT: Great. Thank you, Doctor.

3 Doctor, now what I'm gonna ask you to do and I
4 know the person there knows you as well, but could you
5 please hand that person some type of governmental
6 identification.

7 And then -- we don't have to swear her in, but I
8 just need to ask her to look at the ID to verify that
9 it's you and then I can let her go about her.

10 Would that be all right?

11 DR. KHELLA: Yeah, not a problem.

12 THE COURT: Okay. Great.

13 DR. KHELLA: I'm going to give her my driver's
14 license number.

15 THE COURT: Perfect. Thank you.

16 THE WITNESS: Or my driver's license.

17 MS. SCHMIDT: Hello.

18 THE COURT: Hi, ma'am. This is Judge Metry.

19 Hey, could you do me a favor and please tell us
20 your full name.

21 Ma'am. Did I lose you?

22 MS. SCHMIDT: Hello.

23 THE COURT: Hello. Can you hear me?

24 MS. SCHMIDT: Now, I can, yes. I'm sorry.

25 THE COURT: I'm so sorry.

1 Could you please tell us your full name.

2 MS. SCHMIDT: Kalen Schmidt.

3 THE COURT: And, Ms. Schmidt, do you have a
4 driver's license in your possession?

5 MS. SCHMIDT: Yes.

6 THE COURT: And it is -- could you tell us the
7 name on that driver's license, please?

8 THE WITNESS: Hani Khella.

9 THE COURT: Great. And is the picture on that
10 driver's license the same as the person standing next
11 to you there?

12 MS. SCHMIDT: Yes, it is.

13 THE COURT: All right. Well, thank you very
14 much. That's all I need. Could you please --

15 MS. SCHMIDT: Okay.

16 THE COURT: -- hand that back to him and then put
17 him back on the line?

18 MS. SCHMIDT: Sure.

19 THE COURT: Great. Thanks.

20 DR. KHELLA: Okay. How can I assist you?

21 THE COURT: Thank you, Doctor.

22 DR. KHELLA: Sure.

23 THE COURT: All right. Now, Doctor, the next
24 question -- the next voice you're gonna hear, is gonna
25 be Mr. Gibbs and he's just gonna ask you some

1 questions about the -- about the -- about Ms. Simone's
2 -- Simone Solomon's sample.

3 And if you don't --

4 DR. KHELLA: Sure.

5 THE COURT: -- or if you don't understand us,
6 just let us know. We'll make it as clear and concise
7 as possible 'cause we know -- well, actually we know
8 how valuable your time is and we do appreciate it.

9 DR. KHELLA: Not a problem.

10 THE COURT: Okay. Mr. Gibbs.

11 - - - - -

12 **HANI KHELLA**

13 Having been produced and previously sworn as a witness,
14 testified as follow:

15 DIRECT EXAMINATION

16 BY MR. GIBBS:

17 Q. Good afternoon, Doctor.

18 Real quick. We had some difficulties getting through
19 to you. Is there a direct phone number we can call you
20 back on in the event that this phone line drops off?

21 A. No, because our phone system will shut down at
22 4:30.

23 Q. Oh, my.

24 A. It's on an electronic system. I can give you --
25 I can give you my cell number.

1 Q. I mean, as in, we're not gonna be able to talk to
2 after 4:30?

3 A. No, no.

4 Q. Okay.

5 A. The phones disconnect. If you call back this
6 number, the phone won't go through. It's an automated
7 system.

8 Q. Okay.

9 A. I can give you my cell phone.

10 Q. That would great, sir.

11 A. And you can call me on that number. It's 941 --

12 Q. Yes, sir.

13 A. -- 400-8954.

14 Q. Thank you very much, Doctor.

15 A. Sure.

16 Q. To start out for the court, could you state who
17 your employer is please?

18 A. I'm self-employed. My company is Industrial
19 Medical Testing; IMT.

20 Q. And how long have you been working with that
21 company?

22 A. Since 1998.

23 Q. And what is your current position and duties?

24 A. I'm the medical director of the company. And I'm
25 the primary MRO; medical review officer.

1 Q. All right. Doctor, I'm gonna use MRO from here
2 on out. I'm getting a bad reading.

3 Are you hearing me okay?

4 A. I can hear you fine.

5 MR. GIBBS: Okay. If it's all right with you,
6 Your Honor, I'm going to use MRO as opposed to...

7 THE COURT: (Nods head in the affirmative).

8 BY MR. GIBBS:

9 Q. How long have you been an MRO?

10 A. I've been a certified MRO since 1995.

11 MR. GIBBS: Your Honor, at this time, the Coast
12 Guard would like to introduce exhibit marked CG-13. A
13 single page, single-sided document that is a copy of
14 the doctor's -- Dr. Khella's MRO certification.

15 MR. SYFERT: No objection, Your Honor.

16 THE COURT: Court will he receive CG-13 into
17 evidence.

18 BY MR. GIBBS:

19 Q. Dr. Khella, do you have before you the document
20 labeled in the upper right-hand corner as CG-13?

21 A. I do.

22 Q. Do you recognize this document?

23 A. Yes, I do.

24 Q. And could you tell the court what this document
25 is, please?

1 A. This document is the recertification of my MRO
2 certification as a certified medical review officer.

3 Q. And the day it was issued?

4 A. It was issue January 12th, 2010.

5 Q. And when does it expire?

6 A. It expires January 12th, 2016.

7 MR. GIBBS: Your Honor, at this time, the Coast
8 Guard would like to enter -- we already did that. I
9 apologize.

10 BY MR. GIBBS:

11 Q. Dr. Khella, did you review the drug test results
12 from specimens collected on 2, July 2012, aboard the
13 Alliance Charleston?

14 A. I did.

15 Q. Did he receive any documents related to
16 Ms. Solomon's?

17 A. I did.

18 Q. Can you explain the documents, please?

19 A. Absolutely.

20 I received -- for starters, I received the laboratory
21 report for her drug test. I'm actually trying to pull it
22 up so I can give more detail.

23 Q. We can wait. That's fine

24 A. Specimen ID number?

25 Q. Do you need the ID?

1 A. Yes, please. Y something --

2 Q. It's Yankee 25425812.

3 A. Perfect.

4 Okay. I received the laboratory document, which is
5 lab copy one, from the laboratory on July 14th at 8:32 in
6 the morning. I

7 Also received the chain of custody document for the --
8 for Simone Solomon on July 16th at 11:43 in the morning.

9 MR. GIBBS: Your Honor, at this time, the Coast
10 Guard would like to introduce the exhibit marked
11 CG-14. A one page, single-sided document that is a
12 copy of the MRO copy of the federal custody and
13 control form with a specimen ID of Yankee 25425812.

14 MR. SYFERT: No objection, Your Honor.

15 THE COURT: The court will receive Cg-14 into
16 evidence at this time.

17 BY MR. GIBBS:

18 Q. Dr. Khella, do you have in your possession a
19 document numbered in the bottom right-hand corner with
20 CG-14?

21 A. I do.

22 Q. Do you recognize this document?

23 A. I do.

24 Q. Can you please describe the document?

25 A. Sure. This is the MRO copy of the chain of

1 custody. It's the second page of a stack of five
2 different documents that are in unison.

3 And they act as a change of custody for the specimen
4 that's collected.

5 MR. GIBBS: Your Honor, at this time, the Coast
6 Guard would like introduce the exhibit marked CG-11.
7 A one page, single-sided document that is a copy of
8 the laboratory custody and control form with specimen
9 ID Yankee 25425812.

10 MR. SYFERT: No objection, Your Honor.

11 THE COURT: Court will receive a CG-11 without
12 objection.

13 BY MR. GIBBS:

14 Q. Dr. Khella, do you have in your possession a
15 document numbered in the bottom right-hand corner with
16 CG-11?

17 A. I do.

18 Q. Do you recognize the document?

19 A. Yes, I do.

20 Q. Is there a specimen ID associated with these
21 results?

22 A. Yes, there is.

23 Q. Would you please state it for the court?

24 A. Sure. It's Y, as in Yankee, 25425812.

25 Q. And what was the date that this was collected?

1 A. This was collected on the 2nd of July 2012.

2 Q. And the results?

3 A. The results as per the -- by the laboratory on
4 copy one of the chain of custody reads: Creatinine, 1.3
5 mg/dL, specific gravity equals 1.0223.

6 Q. And this was a determination of a MEDTOX
7 laboratory?

8 A. That's correct.

9 Q. Could you please explain to me how these results
10 qualify Ms. Solomon's test to be substituted?

11 A. Sure. The Department of Transportation has set
12 forth in CFR 40, that clearly defines the perimeters that
13 an acceptable sample would be considered.

14 And if the sample is -- has a the following criteria,
15 it must be considered as a substituted sample.

16 And the sample -- the Department of Transportation has
17 set forth that if the specific gravity -- that if the
18 creatinine is less than 2 and the specific gravity is
19 greater than 1.020, or the specific gravity is less than
20 1.0010 with a creatinine less than 2, it must be
21 considered a substituted sample, not consistent with
22 normal human urine.

23 Q. Very good. Was -- was document, the CG-11, was
24 it identified on the form as substituted?

25 A. Correct. It was identified as substituted,

1 correct.

2 Q. And are you required to contact the donor to
3 discuss results?

4 A. Absolutely.

5 Q. Did you contact Ms. Solomon?

6 A. I did.

7 Q. How was contact made with Ms. Solomon?

8 A. Telephone.

9 Q. And is there a standard procedure that you use
10 when discussing test results with a donor?

11 A. I do.

12 MR. GIBBS: Your Honor, at this time, the Coast
13 Guard would like to introduce the exhibit marked
14 CG-15. A one page, single-sided document that is a
15 copy of the MRO's standard interview script.

16 THE COURT: I do have a copy of CG-15.

17 MR. SYFERT: Is it 5?

18 THE COURT: 15.

19 MR. SYFERT: 15. No objection, Your Honor.

20 THE COURT: Court will receive it without
21 objection.

22 BY MR. GIBBS:

23 Q. Dr. Khella, do you have in your position a
24 document numbered in the bottom right-hand corner with
25 CG-15?

1 A. I do.

2 Q. You recognize the document in front of you?

3 A. Yes, I do.

4 Q. Did you utilize this document when speaking to
5 Ms. Solomon regarding her test results?

6 A. I did.

7 Q. Can you read the document for the court, please?

8 A. Of course.

9 My name is Dr. Khella. I'm a medical review officer
10 representing, in this case I said it would Argent Marine
11 Operations.

12 Is this a good time to speak with you. I need to
13 identify you as the person I have to speak so I am not
14 discussing or disclosing this confidential information
15 with someone who claims to be. When you took a test
16 recently, you gave a social security and date of birth.
17 And I asked for the individual to recite that.

18 And I continued by saying I'm reviewing your drug test
19 that was collected on, and I provided the date of test as
20 being July, 2nd.

21 The laboratory has determined that your test was
22 substituted. The purpose of the interview is to determine
23 if a legitimate medical explanation exists. You as the
24 employee will have the burden of proof to demonstrate that
25 the specimen you did produce or could have produced urine

1 through a physiological means meeting a creatinine
2 concentration of 1.0223 and a specific gravity of -- wait
3 a second. Creatinine of 1.3 mg/dL and a specific gravity
4 of 1.0223.

5 I'll decide whether to verify the test results as a
6 refusal to test based on the information that you'll
7 provide during this interview.

8 You must comply with my request if further medical
9 evaluation is needed for this verification process.

10 Failure to comply means you do not wish to discuss the
11 drug test result.

12 Do under -- and I typically pause and I ask: Do you
13 understand what I've said so far.

14 Failure to comply is expressly declining to discuss
15 the drug test results. And if further medical evaluation
16 is needed, I nor your employer are responsible for
17 arranging, conducting, or paying for any studies,
18 examinations or analyses to determine whether a legitimate
19 medical explanation exists.

20 And I'm also authorized to provide to your employer,
21 the Department of Transportation or any other federal
22 safety agency any positive test result or medical
23 information that you'll provide during this interview.

24 All stated under circumstances in Section 40.327 of
25 the Federal Registry.

1 And this may include providing information to your
2 employer concerning medication, or medical condition that
3 could adversely affect your safety-sensitive duty.

4 Finally, you'll have the right, up to 72 hours, to
5 request to have the original sample retested at another
6 laboratory.

7 So is there a legitimate medical explanation you'd
8 like to provide as to why your test was substituted.

9 Q. Thank you, Doctor.

10 Did Ms. Solomon offer any medical explanation for her
11 results?

12 A. She did.

13 Q. I'm sorry. Repeat.

14 A. Yes, she did.

15 Q. Okay. And could you please tell the court what
16 that was?

17 A. Sure. She mentioned that she takes -- that she
18 takes blood pressure medicine, diuretic pills and
19 vitamins.

20 And I asked her -- specifically I said: Did you
21 attempt -- do you have any other medical problems and she
22 said, no.

23 And that was basically the conversation that I have
24 documented.

25 Q. All right. Would a diuretic, blood pressure

1 medicine affect her creatinine and specific gravity levels
2 to this degree?

3 A. No.

4 Q. Did she request to have her split specimen
5 retested?

6 A. No, she did not.

7 MR. GIBBS: Your Honor, at this time, the Coast
8 Guard would like to enter -- I apologize. I keep
9 wanting to enter.

10 BY MR. GIBBS:

11 Q. In the case of Ms. Solomon's test, what was your
12 determination?

13 A. My determination is that this was a substituted
14 sample and it's not consistent with normal human urine and
15 it's to be treated as a refusal to test.

16 Q. Where did you record these results?

17 A. I record them on my document -- on my internal
18 MRO worksheet -- or in my computer system that's able to
19 generate the MRO worksheet.

20 Q. I'm sorry. I missed it.

21 Did you say that you also put it on the custody and
22 control form?

23 A. Of course, yes.

24 Q. Okay.

25 A. As well as the MRO report.

1 MR. GIBBS: Correct.

2 Your Honor, at this time the Coast Guard would
3 like to reference the previously introduced exhibit
4 marked CG-14

5 THE COURT: I have that.

6 BY MR. GIBBS:

7 Q. Dr. Khella, do you have in your possession a
8 document numbered in the bottom right-hand corner with
9 CG-14?

10 A. I do.

11 Q. Do you recognize the document in front o you?

12 A. I do.

13 Q. Can you please read the specimen ID from the top?

14 A. Sure. Y25425812.

15 Q. Did you make any entries on this form?

16 A. I did.

17 Q. Where?

18 A. On the bottom portion step six it says:
19 Completed by medical review officer-primary specimen. I
20 marked it as refusal to test. Marked of substituted.
21 Signed my name, printed my name and dated it.

22 MR. GIBBS: Your Honor, at this time, the Coast
23 Guard would like to introduce the exhibit marked
24 CG-17. A one page, singled-sided document that is a
25 copy of the MRO's report.

1 MR. SYFERT: No objection, Your Honor.

2 THE COURT: The court will admit CG-17 without
3 objection.

4 BY MR. GIBBS:

5 Q. Dr. Khella, do you have in your possession a
6 document numbered in the bottom right-hand corner with
7 CG-17?

8 A. I do.

9 Q. Do you recognize the document in front of you?

10 A. I do.

11 Q. Can you please read the data from the form?

12 A. Of course. This is the standard MRO report that
13 my office generates. On the left side are the demographic
14 information. On the right side is the sample that -- the
15 sample the subject concerning the testing.

16 In the top section it reads: MRO report. It's a
17 federal form. And towards the bottom it reads: Verified
18 test results: Refusal substituted with a comment of
19 specimen substituted, not consistent with normal human
20 urine. Treated as a refusal to test with signature and
21 date.

22 Q. Okay. What is the name of that document?

23 A. That is the MRO report that we generate.

24 Q. And the name of the donor?

25 A. The donor is Simone Solomon. Simone I -- I think

1 it's I Solomon.

2 Q. Maybe a J?

3 A. It's a J, yes.

4 Q. And could you read the ID number that was on the
5 report?

6 A. Sure. It's Y2542812. Yeah.

7 Q. The urine specimen -- I apologize.

8 A. Let me enlarge it. Let me enlarge it.

9 Y25425812.

10 Q. And also do you see a social security number or
11 an ID number?

12 A. Yes, the social 207-54-3136.

13 MR. GIBBS: For the record, Your Honor, that is
14 the same as Ms. Solomon's passport that was introduced
15 earlier.

16 THE COURT: I see that.

17 MR. GIBBS: Your Honor, at this time, the Coast
18 Guard would like to introduce the exhibit marked
19 CG-24. For the second time, it's a 22-page single-
20 sided document that is a copy of the test results of
21 all the other crew members with the exception of the
22 respondent.

23 THE COURT: I don't -- well, it's up to you.

24 MR. SYFERT: Your Honor, same objection as --

25 THE COURT: Yeah, I don't -- I don't see yet why

1 it's relevant. I mean --

2 MR. GIBBS: Your Honor, the relevance is is that
3 the specimens traveled with Ms. Solomon's specimen and
4 all of them came back not substituted.

5 THE COURT: I understand that, but we're also
6 talking about individual -- we're talking about
7 individual specimens that may have different
8 physiological, different physical, different
9 measurement.

10 I mean, each one is so individual that unless --
11 unless they were somehow relevant to this one in terms
12 of specifics such as, for example, height, weight,
13 sex.

14 I mean, these are -- those are just three of the
15 major differences that I can just -- that I come up
16 with off the top of my head.

17 I don't see how they're relevant 'cause for that
18 matter, I think, it would be equally as relevant as if
19 I allowed the Coast Guard to put in -- I mean,
20 obviously the similarity is these were collected,
21 these were held in the same condition and therefore
22 that makes them marginally relevant to Ms. Solomon's
23 case.

24 That's an attractive proposition. It's just that
25 I think in other than that aspect, Mr. Gibbs, other

1 than the fact that they were collected and were stored
2 in the same manner, the materiality, as we would say,
3 or the relevance to this particular case, isn't made
4 yet.

5 I mean, one of the first questions we asked
6 Mr. Hualde and -- and I believe it was --

7 MR. GIBBS: Kohut.

8 THE COURT: Yeah. There's not even another
9 female in there.

10 And from the documents that you've provided,
11 apparently creatinine level is different by sex, as
12 well as genetic make up. And I think that -- that
13 they're not relevant at this point.

14 So I'm gonna maintain my earlier ruling. And I,
15 you know, I'll allow the Coast Guard to take an
16 exception to that.

17 But again at this point I still think my earlier
18 ruling is correct based on the fact that other than
19 the fact that they collected and stored, they just
20 don't bear any correlation, or similarity to
21 Ms. Solomon's sample.

22 So I'm gonna -- I'm gonna sustain the -- the
23 respondent's objection on that particular matter. Par

24 Do you have questions -- more questions for
25 Dr. Khella?

1 MR. GIBBS: Your Honor, I would like to go ahead
2 and reserve the right to call him back later --

3 THE COURT: Of course.

4 MR. GIBBS: -- as a rebuttal witness.

5 Okay. Great.

6 THE COURT: Dr. Khella, we are gonna get some
7 questions -- I believe that Mr. Gibbs is done.

8 MR. GIBBS: I've got a few more.

9 THE COURT: Oh, I get your pardon. I am so
10 sorry, Doctor. I got you excited there.

11 In the event, we're going to --

12 THE WITNESS: No problem.

13 THE COURT: -- we were talking about some --
14 about the admission of an exhibit and that's why we
15 got a little bit far off --

16 THE WITNESS: I understand. I understand
17 totally.

18 THE COURT: So Mr. Gibbs still has some more
19 questions for you.

20 THE WITNESS: Okay.

21 BY MR. GIBBS:

22 Q. Dr. Khella, if an individual was to drink so much
23 water that it would drop their creatinine level to 1.3,
24 would the specific gravity drop as well?

25 A. Absolutely.

1 Q. Okay. Then can you explain to the court why it
2 went up in this case?

3 A. I can't. That's -- that's not physiologically
4 positive to have a very, very, very low creatinine with
5 specific gravity of 1.0223. It's just -- it's not
6 physiologically possible.

7 Q. What would the condition of the individual that
8 -- that, you know, yielded these results?

9 A. For starters, you probably have someone with
10 absolutely minimal to no body mass. Because creatinine is
11 a -- is a compound that generated by the body. It's
12 basically whenever muscle -- it's a muscle breakdown
13 product is what creatinine is.

14 When muscle is functioning, whether we move our
15 fingers, whether we move our arms or legs, we move about,
16 whatever, we breathe, we're constantly using muscles to
17 function.

18 And in turn muscles are constantly breaking down
19 creatine into creatinine. And it's a pretty stable
20 compound. It's constantly being produced and generated.

21 So when there's someone who has absolutely no muscle,
22 which is very unusual, you'll produce very little
23 creatinine.

24 If -- so -- so that's one possibility. The other
25 possibility is if the kidney isn't functioning. So if the

1 individual is going into renal failure. And you can
2 thinking of simply -- I mean, the easiest way that I can
3 define how it -- what a kidney does: It's nothing more
4 than a filter. So think of your colander.

5 And if you move fluid through it, you're going to get
6 quite a bit of fluid on the other end. If you don't move
7 fluid through it, you're gonna have opacity of substance
8 on the other end.

9 So if the kidney is shutting down and it's going into
10 renal failure, you very well may find a creatinine as low
11 as -- less than -- less than 2. But at the same time, you
12 also will see the that specific gravity will also be
13 limited because there is very little flow going through
14 the kidney.

15 Q. Excellent. I'd like you to refer back to -- I'm
16 losing my tabs here; CG-14.

17 A. Okay.

18 Q. And can you tell me whether this is -- this
19 collection was observed or not observed?

20 A. There was not an observed collection.

21 Q. And, Dr. Khella, could you please explain to the
22 court also the difference that we're looking at in -- to
23 the best of your ability for males and females and
24 variances between the two?

25 A. Sure. In fact, there is a very good study in

1 terms of creatinine production. It was put out by the --
2 Dena Barr. It's a document that was put out in 2005 from
3 the National Institute of Health. And I -- it's a very
4 reputable study.

5 And it was looking urine -- urinary creatinine
6 concentration of the US population.

7 Q. Dr. Khella --

8 A. And it clearly shows that the standard urine
9 creatinine is about 130 mg/dL, the mean, if you look at
10 it.

11 They also broke down the urine creatinine based on
12 gender, based on race and they found that there was
13 definitely a variance between the two, between males and
14 females. And that females produce a little bit less
15 creatinine than males.

16 But we're still all in the order of approximately, you
17 know, all -- within the range still of 130.

18 They also looked at the non-Hispanic white versus non-
19 Hispanic black and they found -- and also Mexican
20 Americans.

21 And they found that the highest producers of urine
22 creatinine, were non-Hispanic blacks of approximately 34
23 mg/dL higher than the standard.

24 So there is absolutely a difference male and female,
25 and there is absolutely a slight difference between

1 different races as well.

2 Q. On a sample like the one in question, Doctor,
3 would you suspect drugs to be found in a sample like this
4 one?

5 A. Would I suspect drugs to be found?

6 Q. Correct.

7 A. Generally when someone is substituting their
8 sample, they don't want you to look -- to see their actual
9 urine. That's why people go through the effort
10 substituting their sample.

11 And in so doing, you would have to assume that is
12 attempting to hide something. And when you're doing drug
13 testing and you're looking to find drugs of abuse, there's
14 a good chance that the individual is probably doing one of
15 these drugs.

16 And, in fact, that's why the Department of
17 Transportation set out these guidelines. And the
18 Department of Transportation was very clear and said look:
19 If the specific gravity is within this perimeter -- is
20 outside of the standard that they are willing to accept
21 and the creatinine is less than a certain quantity, that
22 must be considered a substitute of sample, and it must be
23 treated as a refusal to test.

24 And, in fact, from their prospective this is kind of a
25 little bit worse than even a positive drug test. Because

1 in a positive drug test -- here's the situation: The
2 Department of Transportation clearly said, look, this is
3 substituted and if you're gonna -- we're not even going to
4 give you the chance to take another drug test because this
5 is -- we're going to treat it though you're refusing to
6 take the drug test because you're undermining the process.

7 Q. And in reference to this test, the race and the
8 age of the individual that's submitted to the specimen,
9 what would you say a normal creatinine level would be
10 roughly, an approximate?

11 A. I would say approximately around 130 based -- on
12 the information that I provided. And based on this
13 reputable study that was done in 2005 at NIH.

14 MR. GIBBS: Your Honor, at this time, the Coast
15 Guard has no further questions for Dr. Khella.

16 THE COURT: Thank you, Mr. Gibbs.

17 Mr. Syfert. Hey, Doctor.

18 THE WITNESS: Yes.

19 THE COURT: That's all that the government
20 counsel is gonna ask you. The respondent's counsel
21 got some questions for you and then I may have a few
22 after that depending if they cover everything that i
23 think I need to know.

24 Is that okay?

25 THE WITNESS: Absolutely.

1 THE COURT: All right. The next voice you'll
2 hear will be Mr. Syfert. He's the counsel for
3 Ms. Solomon.

4 CROSS EXAMINATION

5 BY MR. SYFERT:

6 Q. Good morning -- good afternoon, actually. I'm
7 Graham Syfert, counsel for Ms. Solomon.

8 A. Good afternoon.

9 Q. How do you make a determination that the sample
10 is substituted?

11 A. Based on the criteria set forth by the DOT in
12 Section 40.93.

13 Q. And how are you --

14 A. And then --

15 Q. How are you given the results from the lab?

16 A. By lab copy one.

17 Q. Okay. Is that this CG-11?

18 A. Let me pull it up for you. I presume you're
19 correct -- you're calling the correct -- yes, CG-11.

20 Q. CG-11?

21 A. And this is where the -- the certified scientist
22 has signed the document.

23 Q. Yeah, and that's Van Phan; is that correct?

24 A. Correct.

25 Q. Okay. And what about CG-12, do you also get

1 that?

2 A. We absolutely -- no, we typically don't get it
3 because it's an electronic document that comes to us from
4 the laboratory.

5 Q. Okay.

6 A. And it comes into our -- into our server.

7 Q. So that's in your system. So other than --

8 A. Yes.

9 Q. -- CG-11 and CG-12, is there any other way that
10 you get that information?

11 A. This is our standard way of receiving
12 information.

13 Q. Okay. So that's the -- there is no other way,
14 correct?

15 A. There are other ways. I mean, you could call the
16 laboratory and ask for the -- for document.

17 Q. Okay. Did you do that in this case?

18 A. No.

19 Q. Okay. So you made your determination that the
20 sample was substituted based on two values, correct?

21 A. That is correct.

22 Q. The creatinine which was 1.3; is that correct?

23 A. 1.mg/dL, correct.

24 Q. Okay. 1.2 mg/dL. Deciliter or deciliter? Deci?

25 A. No, deciliter.

1 Q. Right.

2 A. D-E-C-I.

3 Q. Right. And the specific gravity of a 1.0223,
4 correct?

5 A. That's correct.

6 Q. Was there any other creatinine number ever
7 reported to you?

8 A. No.

9 Q. Okay. Do you have a copy of Section 40.93 in
10 front of you?

11 A. I do.

12 Q. And does it say that you need to have a -- an
13 aliquot -- or two aliquots and two tests and four data
14 points total?

15 A. You're asking the question of the laboratory not
16 the MRO.

17 Q. I'm just saying does the -- is that what the
18 requirement of 40.93 is?

19 A. If that's a requirement, that is correct.

20 Q. Okay. And so you made that determination that it
21 was substituted, but ultimately it lands on you to make
22 that determination as to whether it was substituted,
23 correct?

24 A. I go by what the laboratory releases to me by the
25 certifying scientist, yes.

1 Q. Okay. But you were not released any other
2 numbers, correct?

3 A. That's correct.

4 Q. Are you familiar with CG-19, the litigation
5 package, that the full report that MEDTOX gave out?

6 A. No, I didn't see it.

7 Q. Okay. Was there any evidence of drug metabolites
8 in the sample?

9 A. Was there any evidence of drug metabolites in the
10 sample? I don't know. I did not see the results -- I
11 didn't -- all I saw was what I've explained to you.

12 What the laboratory has is something that I have not
13 seen.

14 Q. Okay. So you --

15 A. Aside from lab copy one and lab copy two.

16 Q. Okay. Thank you.

17 What's the pH of water?

18 A. pH of water is neutral, 7.0.

19 Q. Okay. And what's the specific gravity of water?

20 A. 1.0000.

21 Q. And what's the creatinine level in water?

22 A. There is no creatinine in water.

23 Q. That would be a zero, correct?

24 A. That's correct.

25 Q. Is urine generally acidic or basic?

1 A. It depends. It depends on -- there's a
2 variance.

3 Q. What's the average range of human urine of --

4 A. It ranges. It ranges between acidic and basic.

5 Q. Okay. What's the DOT, or SAMHSA acceptable range
6 for pH for urine?

7 A. For urine, I believe, it is 3.9 to 9.0.

8 Q. Okay. Did you ever ask anybody what the pH of
9 Ms. Solomon's urine was in this case?

10 A. Absolutely not.

11 Q. Would it be up to you to decide if the case was
12 invalid -- of the sample was invalid?

13 A. The laboratory's responsibility is -- if the pH
14 is abnormal is to report it to me. If the laboratory does
15 not report it to me -- and that's a certified laboratory,
16 this is not a local hospital lab. It a certified
17 laboratory that's overseen by FANTA.

18 They must report to me an abnormal pH if it falls
19 outside of the normal range that they have set forth.

20 If it doesn't fall outside of the normal range, they
21 do not report it and I do not ask for.

22 Q. But on a substitute sample, they're not required
23 to give you...

24 A. Unless they found that the sample could be
25 outside of the normal pH, they will report it.

1 Q. Okay. What about the confirmatory and initial
2 tests on the specific gravity and creatinine, do you just
3 take their word for it on that?

4 A. I'm gonna sit there and ask them for the sample
5 and then do my own testing. Of course, I have to take
6 their word for it.

7 Q. But they're required to do an initial test and a
8 confirmatory test under the statute, isn't that correct?

9 A. Of course, absolutely.

10 Q. Okay. But you've never requested the confirm --
11 the other data points, correct?

12 A. The confirmation is what you're going with. What
13 the -- the immunoassay is a screening test. It's a cheap
14 inexpensive test false positive.

15 So anytime that the sample goes through an
16 immunoassay, that test is positive, they have to confirm
17 at through GCMS.

18 So if you're to choose which of the -- which of the
19 two is a better test that you would believe, you would
20 always choose the GCMS.

21 It's a much more elaborate test. It's a fingerprint
22 of whatever compound you're looking for and it -- the
23 false positive rates are basically negligence.

24 So I had -- would have no reason to turn around and
25 say, oh, show me the less valuable test. You go with the

1 more -- the more accurate tests, rather than the less
2 accurate test.

3 Q. Okay. You read an entire script regarding your
4 phone call that you need to Simone Solomon.

5 Do you always follow that script?

6 A. Because I don't see -- because we don't typically
7 see, you know, ten substitutes every day, I wind up going
8 to the script whenever I deal with a substitute, yes.

9 Q. Okay. And you -- your testimony today is that
10 made the offer for her to do a retest?

11 A. Of course.

12 Q. And that she never took you up on that offer?

13 A. That's correct. And we a 24 hour phone system
14 that even if you're call after hours, we can at least
15 record that you're interested in having your sample
16 re-confirmed and we would follow through on that.

17 We never received any call from Ms. Solomon to request
18 to have her sample reconfirmed at a different laboratory.

19 Q. So you don't use that script very often?

20 A. I use it often enough that when I need it -- it's
21 not a daily thing that I use such that I've memorized it.

22 Q. Okay. Did you tell Simone Solomon that you were
23 making a recording of that conversation?

24 A. No, I did not make a recording of that
25 conversation. And -- but I did tell her whatever was in

1 the document, or that verbiage that you heard -- that you
2 read.

3 Q. Is --

4 A. There was a follow-up conversation that I told
5 her that there was a recording, but that original
6 conversation, there is no recording of that conversation.

7 Q. Okay. Did you tell her that you were making a
8 recording? That was my original question.

9 A. Yes, if a recording is made, they are informed of
10 it.

11 Q. How do you generally -- how do people generally
12 act when you make those phone calls?

13 A. Oh, I see everything from those that are, you
14 know, feel embarrassed, they come right forward and say,
15 okay, you got me. To those that I ask them -- they don't
16 know what I'm talking about.

17 I deal with a whole spectrum.

18 Q. Do you what category Ms. Simone Solomon fell
19 into?

20 A. She was clearly saying she did not believe it and
21 would give me an explanation for why -- for what she was
22 taking in terms of taking blood pressure medicine, such as
23 diuretic pill and vitamins. And denied having any other
24 medical problems.

25 Q. What's the effect of a diuretic on specific

1 gravity?

2 A. It dilutes it. It gives you a very low specific
3 gravity because it's a diuretic.

4 Q. Okay.

5 A. It pushes a lot of fluid the kidneys, and
6 ultimately you wind of getting a very diluted samples.

7 Q. And what's the effect of a diuretic on
8 creatinine?

9 A. It also will give you a low creatinine, but
10 generally -- but generally even diuretics will never give
11 you a creatinine less than 2.

12 Q. Right. Did Ms. Solomon request a DNA test?

13 A. She -- I believe, she did, yes.

14 Q. But she didn't ask for a retest of her, you know,
15 sample B, the urine test?

16 A. That's correct.

17 Q. How many times have you made a call with someone
18 with a substituted sample?

19 A. How many -- I apologize. Can you repeat your
20 question. I didn't hear you.

21 Q. Yes. How many times have you made a call for
22 somebody with a substituted sample?

23 A. How many times -- I'm not quite clear. How many
24 times in a year do I --

25 Q. Yes.

1 A. -- call someone for a substituted sample?

2 Q. Yes.

3 A. I don't know. I mean I'd be happy to search my
4 database.

5 Q. Not a positive, not a negative, just a --

6 A. No, I understand, yes.

7 Q. Not dilute, just substituted.

8 A. Yeah.

9 Q. How often does it --

10 A. Correct.

11 Q. In a year roughly.

12 A. Maybe 12 times.

13 Q. That's about how often you need to pull out that
14 script, right?

15 A. Yeah.

16 Q. Yeah. Okay.

17 How many of those calls have been for a low creatinine
18 and a high specific gravity in a year?

19 A. This is the first one.

20 Q. You asked her what kind medication she was
21 taking?

22 A. Yes.

23 Q. And what did she tell you about?

24 A. I didn't ask. She volunteered.

25 Q. Okay. So did she volunteer about Lisinopril?

1 A. She volun -- she told me all she -- here's what
2 she told me: I think blood pressure medicine, diuretic
3 pills and vitamins.

4 If she had mentioned to me exactly the name of the
5 medicines, I would have been happy to document it. At the
6 time, she didn't -- she didn't tell me the Lisinopril and
7 I didn't document it.

8 Q. Could the diuretic explain her low creatinine?

9 A. Not that low.

10 Q. Can a diuretics explain a low creatinine, not as
11 low as her, but the lowering of creatinine?

12 A. Sure, yeah, absolutely.

13 Q. Okay. And what about diet.

14 A. What about diet?

15 Q. Yes, on creatinine.

16 A. What about it?

17 Q. Can it affect creatinine?

18 A. No, not -- it's a -- again, creatinine is muscle
19 breakdown product. And it's relatively stable. And in
20 fact that's what we use to measure the functioning of a
21 kidney.

22 So if we're going to use a measure -- if we're going
23 to use a measure, or -- or a device that is constantly
24 fluctuating, we would never be able to intelligently
25 assess the functioning of the kidney.

1 Q. So you -- you can't say that a vegetarian and
2 carnivore are gonna have --

3 A. No, they're not going to have such wide varying
4 changes to their creatinine.

5 Q. Okay. What about exercise?

6 A. Because again it -- it's a muscle -- it's a
7 muscle breakdown product. It's not a function of diet.
8 It's a function of the creatinine that is causing the
9 energy for a muscle to function.

10 Q. Okay. What about exercise.

11 A. Again, it's not going to cause any massive
12 variance to creatinine. Creatinine is going to be
13 relatively stable.

14 Q. Okay.

15 A. So, yes, that's -- now, can you dilute -- can you
16 drink lots of fluids and cause your creatinine to go down,
17 of course, you can.

18 Q. Okay. Just exercise, if someone exercises a lot,
19 okay, is it safe to say that their creatinine levels would
20 be higher?

21 A. It's possible that it will move a little bit, but
22 nothing dramatic.

23 Q. Okay. And I understand that.

24 Could obesity be a factor?

25 A. For creatinine?

1 Q. Yes.

2 A. No. It's more -- more of muscle mass.

3 So now if the individual because, you know, they're
4 like Arnold Schwarzenegger 20 years ago, sure, that's
5 possible.

6 Q. Okay.

7 A. I wouldn't call him obese. I would call him
8 pretty fit.

9 But it's more related to muscle mass. It's not
10 related to adipose cells. It's not related to diet. It's
11 more related to muscle mass, and this what you're seeing
12 in of the function of that muscle mass.

13 Q. Do you believe Ms. Simone Solomon diluted her
14 sample with water?

15 A. All I -- I can't make any conjecture in terms of
16 what she may have done, or she may not have done.

17 I know for a fact of what she presented as her urine.
18 And that urine was outside of the normal range of what the
19 Department of Transportation is willing to accept.

20 Q. Okay. Do you believe that she substituted water
21 for her urine sample?

22 A. That's not water. No, because water has -- it's
23 outside of those perimeters.

24 Q. Okay. Okay. Do you believe that she diluted her
25 sample with water?

1 A. I can't -- you're asking me to --

2 Q. Okay.

3 A. -- come up --

4 Q. Let's say this.

5 A. I'm not going to answer -- I'm not going --

6 Q. If you have --

7 A. I can't answer you.

8 Q. If you have a typical -- you have a typical urine
9 with a normal specific gravity and you add water to it,
10 what's that going to do to the specific gravity of the
11 urine?

12 A. It will -- it depends on the amount of water that
13 you have.

14 Q. Okay.

15 A. It becomes a solutes and solvents ratio. How
16 much -- you know, so if you're going to take a glass of
17 water and you're going to add five drops of blue ink
18 substance, the -- the glass is going to turn relatively
19 blue. Therefore the concentration will be high.

20 If you take the five drops and you put them in said
21 swimming pool, you're not going to see any changes.

22 So it all depends on, you know, on how much dilution
23 you're adding.

24 Q. Okay. If I start out with normal urine and I add
25 any amount and water to it, the specific gravity should

1 decrease; is that correct?

2 A. That certainly possible, yes.

3 Q. Okay.

4 A. Sure.

5 Q. As long as the specific gravity wasn't less than
6 water, correct?

7 A. Correct.

8 Q. Of urine --

9 A. You can't get a -- you get any lower than water.
10 Water is 1.000.

11 Q. Okay. So if you add water to a sample, you
12 expect to have low specific gravity; is that correct?

13 A. That's correct.

14 Q. Okay. Thank you.

15 A. A lower. You'd expect the specific gravity --
16 the specific gravity will drop.

17 Q. Okay. And here we have a high specific gravity;
18 is that correct?

19 A. Correct.

20 Q. Okay. Why do you refrigerate urine?

21 A. To maintain its stability.

22 Q. Okay. The stability of what compounds?

23 A. The drugs that are in the sample.

24 Q. Okay. Prior to this hearing today, I asked that
25 Coast Guard provide you with some MRO examples.

1 A. Okay.

2 Q. Do you know what I'm talking about?

3 A. Yes, I do. I absolutely do. If you can just be
4 kind enough to give me -- is it this one?

5 Do you have the CG hyphen -- or it's not one of
6 those.

7 I can pull it up. If you give me a second, I'll be
8 more than happy to pull it up.

9 Q. It was an e-mail from Dan Sammons.

10 A. Yeah, exactly. Give me a second.

11 Q. And MRO case study.

12 A. Yeah, I remember looking at it, absolutely.

13 Q. Have you ever -- have you --

14 A. I found it.

15 Q. -- ever looked at this case studies before?

16 A. You know, if I've come across them, I don't -- I
17 very well may have, I -- to honest with you, I don't
18 say -- oh, I can't say, oh, yeah, I remember reading this
19 on this day.

20 Q. Okay. But these scenarios aren't used in your
21 training as an MRO?

22 A. My experience is part of my training.

23 Q. Okay.

24 A. I -- I mean, I see this information. I'm
25 constantly reading what -- what's coming about.

1 Q. Okay. But what -- what happens to the pH of
2 urine when exposed to heat over time?

3 A. It rises -- it may rise, not always rises.

4 Q. Right.

5 A. It may rise.

6 Q. It may rise.

7 A. That's right.

8 Q. Does it generally rise?

9 A. As I said, may rise. And here's the reason --
10 let me explain -- let me make it simple for you.

11 The reason the pH may rise is because of bacterial
12 contamination. And ultimately the bacteria will cause
13 fermentation and the Ph to rise.

14 And therefore when a sample has been collected and
15 sits in the heat and time passes between time of
16 collection and time that it arrives at the laboratory, and
17 it has not properly been maintained, you will very well
18 find that the pH rises. And they rise right about 9.1,
19 9.2, right over the threshold where the DOT feels that 9.0
20 is the maximum.

21 Q. Okay.

22 A. That's why I say it rise because of bacteria, not
23 always. It's just not -- because the urine is all of a
24 sudden changing due to heat. It's changing because of
25 other components that may be present.

1 Q. Okay. And what happens to the creatinine level
2 of those conditions?

3 A. Nothing happens to the creatinine in these
4 conditions.

5 Q. So --

6 A. Let me tell you why. Creatinine -- the chemical
7 compound in creatinine is -- it's heat stable. For
8 creatinine to decompose, it's 300 degrees centigrade,
9 okay. That's 500 degrees -- or 300 degrees Celsius.
10 That's 500 and 70 some degrees Fahrenheit.

11 Q. What about bacterial contamination?

12 A. What about it?

13 Q. Can that have an affect on creatinine level?

14 A. No.

15 Q. Okay.

16 A. Creatinine is produced by the -- by the muscle
17 breakdown. Bacteria are not gonna produce -- they don't
18 use creatinine or creatine in their metabolism.

19 So therefore bacteria will not produce creatinine nor
20 will they degrade creatinine?

21 Q. Okay. What happens to the specific gravity under
22 those conditions?

23 A. Specific gravity won't change unless the bacteria
24 -- are increasing in numbers.

25 So if you let it sit there and bacteria are

1 multiplying, well, then obviously you're increasing
2 solutes, aren't you?

3 So you may find a change in the specific gravity, but
4 that would require quite a bit of bacteria overgrowth.

5 Q. What's the affect of refrigeration when a sample
6 has been contaminated?

7 A. When the sample has been contaminated by
8 bacteria, what is the affect of refrigerating it? It
9 stops the bacteria from multiplying.

10 Q. If Ms. Solomon was gonna testify that you used
11 the phrase: You're not telling me what I want to hear, or
12 something of that sort, would you be surprised?

13 A. Quite surprised.

14 Q. Do you generally say a phrase like that?

15 A. Never.

16 Q. Is there any amount of combinations or
17 medications -- are there any combinations or medications
18 or conditions that Ms. Solomon could have listed off
19 during that phone call, that would have explained the
20 result here?

21 A. No. You can't achieve a creatinine of 1.3 and a
22 specific gravity of 1.0223 through combinations of
23 medications.

24 Q. Okay. Now, I talk to you before about that --
25 that Sammons -- Dan Sammons sent you that email and we

1 have --

2 A. Yes.

3 Q. -- page 29 and page 30.

4 Do you believe that anything in 29, 30, 31, or 32
5 conflicts with your earlier statement that said that
6 creatinine is unaffected by high temperature over time?

7 A. Nope. Can you -- would you be kind enough to
8 point out to me?

9 Q. Are you looking at case number 25?

10 A. What page is that?

11 Q. So page 29.

12 A. Okay. I'm looking at page 29.

13 Q. Okay.

14 A. Is that the second -- is that towards the
15 bottom?

16 Q. Yeah, let's look at this. It's gonna be second
17 specimen test result that actually goes on to page 30
18 here.

19 A. Sure.

20 Q. And will you read the top of that page, of page
21 30?

22 A. Sure. The MRO knows the expected time four days
23 between a collection and received by the laboratory. She
24 first contacts the collector to discuss time and
25 temperature. Informed the MRO they placed the sealed

1 specimen package in the refrigerator until Friday awaiting
2 pickup by a local courier. And if the courier has not
3 arrived by 5:00 p.m. the collector placed this and other
4 sealed specimen packages in a locked type container for
5 pickup.

6 Collection site was closed on Monday due to 4th
7 holiday. When staff arrived at the collection site
8 Tuesday morning, (malfunction of phone) were still locked
9 in the box.

10 Outside temperature is over -- for the proceeding four
11 days was in the high 90's. Collection site (inaudible)
12 call lab. The laboratory courier --

13 Q. Okay. You can stop there. And time and
14 temperature were an issue in that case, yes?

15 A. Yes.

16 Q. Okay. And --

17 MR. GIBBS: Objection, Your Honor. That case is
18 for an abnormal pH also, though.

19 THE WITNESS: That's the cause for the sample to
20 be cancelled.

21 THE COURT: Okay. Hold on.

22 THE WITNESS: It's because of the creatinine.
23 It's because of the pH of 9.4

24 THE COURT: Okay. I want to get an answer as to
25 what he -- why there -- I just want to know what he

1 has to say.

2 I'm gonna overrule the objection. And if you can
3 clear that up on cross --

4 MR. GIBBS: Sure.

5 THE COURT: -- that's more in terms of -- to
6 answer that objection, Mr. Gibbs.

7 So I'm gonna overrule that. I want you to ask
8 the doctor you question, though, Mr. Syfert.

9 BY MR. SYFERT:

10 Q. The question is: Does a high pH -- would a high
11 pH would have been -- would a -- Hum? Let's see.

12 Would a pH have been important for you to know if
13 there had been a high pH?

14 A. Yes. It would been important, but it would be
15 also -- it would not have been the only determining
16 factor, but there -- but it -- of course, it would be
17 important. Absolutely, if the pH was abnormal.

18 Q. Okay. If I told you that the pH was an 8.8 or
19 very close to nine, would that be important?

20 A. No. If it's over nine, then I have to consider
21 it. If it's under -- if it's nine or less, no.

22 Q. In Ms. Solomon had had a urinary tract infection,
23 could that have explained the result here?

24 A. No.

25 Q. Did you ask her about over-the-counter

1 medications?

2 A. She said she taking vitamins.

3 Q. Are you familiar with Tums antacid?

4 A. Yes.

5 Q. Do you know the affect of Tums on specific
6 gravity?

7 A. Why don't you tell me.

8 Q. I'm asking you do you know the affect of Tums on
9 specific gravity?

10 THE COURT: Doctor, he -- he'd love to tell you,
11 but he really can't, so you -- is there a -- I think
12 he's asking if you know.

13 BY MR. SYFERT:

14 Q. If you know. If you say, no, that's fine.

15 A. No, I don't know --

16 Q. Okay. That's fine.

17 A. -- the affects on specific gravity that.

18 Q. That's fine. Maybe if you can Google it when
19 we're done here today.

20 But anyway, are you familiar Tagament?

21 A. Yes, I am.

22 Q. Are you familiar with the -- Tagament -- the
23 affect of Tagament on specific gravity?

24 A. No.

25 Q. Are you familiar with the affect of Tagament on

1 gravity -- specific gravity?

2 A. On Tagament and the specific -- and it's affect
3 on urine specific gravity?

4 Q. Yes.

5 A. No.

6 Q. And did I already ask you about creatinine? I'm
7 sorry, I'm gonna do it again anyway.

8 A. No problem.

9 Q. Do you know the affect of Tagament on creatinine
10 level?

11 A. I can tell you that Tagament will not affect the
12 creatinine level.

13 Q. Okay. Did you make any mistakes in this case?

14 A. Did I make any mistakes? No.

15 Q. What about the name on your report there, or did
16 that come from someone else?

17 A. Help me out.

18 Q. I'm looking here. It's gonna take me a bit.

19 CG-12.

20 A. Okay.

21 Q. Did you make that report, or did someone else
22 make that report?

23 A. Hold on. Let me pull it up.

24 No, that's not my report.

25 Q. Okay.

1 A. The CG-12?

2 Q. Yes.

3 A. Yeah, that's the laboratory's report.

4 Q. Okay. Is it ever -- did you ever make follow-up
5 calls to whoever collected the sample?

6 A. No. Why?

7 Q. Because it might be important I would guess in
8 some cases.

9 A. Only when their -- absolutely. I absolutely do
10 when I find that there is a collection error, of course.

11 Q. Okay.

12 A. But when there's no collection error and the
13 paperwork is documented appropriately, no need to contact
14 the collector.

15 Q. If I told you that this urine was sitting in the
16 desert for three days in a box truck and temperatures of
17 150 degrees, would that maybe have had an effect on this
18 case?

19 A. No. As I said -- reason being that I'm saying
20 no, is creatinine is heat stable and it has a melting
21 point of 300 degrees Celsius. Unless you're in a volcano,
22 you're not gonna see that kind temperature.

23 So sitting in a desert is not going to cause the urine
24 to degrade and cause the creatinine to -- the creatinine
25 to disappear, or to break down.

1 Q. Do you believe that this substance test came from
2 Ms. Solomon's body?

3 A. According to the Department of Transportation,
4 this is not consistent with normal human urine. So the
5 answer therefore would be, no. It did not come from her
6 body.

7 Q. Where did it come from?

8 A. You have to ask Ms. Solomon.

9 Q. What was it?

10 THE COURT: I think he's answered that.

11 THE WITNESS: It's not consistent with normal
12 human urine.

13 BY MR. SYFERT:

14 Q. It --

15 A. What is it? I didn't do any analysis to tell you
16 what it is. I know what a normal human is.

17 Q. Okay.

18 A. That I can certainly tell you. And I can tell
19 you as a physician: That's not consistent with normal
20 human urine.

21 Q. Okay. And the last question: Is there any
22 substance that you can imagine that she could have brought
23 in that would have, you know, had this result?

24 Is there any way that she could have mixed this
25 together herself?

1 A. All I can tell you is that: What she presented
2 as her urine, is not acceptable.

3 In terms of what she mixed or what she did, I don't
4 know. It's just not consistent with normal human urine.

5 You can produce a urine of -- creatinine -- and -- and
6 she was given an opportunity, just to let you know, that
7 she was given an opportunity to regenerate this to -- you
8 know, through no expense, to reproduce that's she capable
9 of reproducing the perimeters of creatinine of 1.3 mg/dL
10 and a specific gravity of 1.0223.

11 And if that's your normal urine, it shouldn't be
12 difficult to present it, and say, yeah. I went to my
13 doctor and here's the proof.

14 So what is it that she presented? I don't know, but
15 it's not consistent with normal human urine and the
16 Department of Transportation clearly indicates that.

17 MR. SYFERT: Okay. Thank you for putting up me,
18 Doctor.

19 THE WITNESS: With pleasure. No problem.

20 THE COURT: Doctor, Mr. Gibbs may have some
21 follow for you. Would that be okay?

22 THE WITNESS: Absolutely.

23 RE-DIRECT EXAMINATION

24 BY MR. GIBBS:

25 Q. Thank you, Doctor. Just a couple.

1 When they were talking about 49 CFR 40.93, does that
2 speak to the lab or to the MRO?

3 A. No, that speaks to the laboratory.

4 Q. Correct.

5 A. In terms what they're supposed to be doing in
6 terms of the number of aliquots and how they managed that
7 and what have you.

8 Q. Did you follow procedures in accordance with 49
9 Part 40 in making your determination?

10 A. To the T.

11 Q. To the T.

12 A. That is a yes for the court report.

13 Q. Doctor, could a yeast infection by any chance
14 affect the creatinine or specific gravity levels?

15 A. If -- I apologize. I didn't hear the first part
16 of your question.

17 Q. A yeast infection.

18 A. No. It will not cause a change in creatinine.

19 MR. GIBBS: Your Honor, we have no further
20 questions for Dr. Khella.

21 THE COURT: Doctor, I just have a couple for you
22 just because --

23 THE WITNESS: Sure.

24 THE COURT: I always have questions, I guess.

25 Okay. I just want to clear up some of the

1 testimony, I think, as much as anything.

2 THE WITNESS: Sure.

3 THE COURT: Doctor, I want you to assume that the
4 original sample that was collected was within
5 temperature range.

6 THE WITNESS: Okay.

7 THE COURT: I want you also to assume that there
8 was 45 milliliters of sample produced.

9 THE WITNESS: Okay.

10 THE COURT: I want you to assume that expect for
11 human urine, the only other ingredients was salt
12 water.

13 Could that salt water have given the results that
14 you -- that are presented here?

15 THE WITNESS: So you're asking if you were to add
16 salt water to your urine, could you get this -- could
17 you see such a sample?

18 THE COURT: And, Doctor, that it's in range.

19 THE WITNESS: Well, I mean, is that possible? I
20 guess, if you were to -- to dilute it, yes, that is a
21 possibility.

22 THE COURT: I mean --

23 THE WITNESS: And the reason -- and the reason I
24 say that yes, it's a possibility is because adding
25 some compound, possibly salt water or something with a

1 high solute concentration, would cause -- would dilute
2 the sample and therefore you would see the creatinine
3 being diluted.

4 And it would cause the specific gravity to rise
5 because it's a solute issue.

6 So it that a possibility, yes, that's possible.

7 THE COURT: I'm not asking for probability. I'm
8 asking -- 'cause apparently from the testimony that we
9 received both from you, and to a certain extent, from
10 Mr. LeBard, tap water would not have that affect,
11 would it?

12 THE WITNESS: No, it would not. It would cause
13 the -- it would cause the urine creatinine to drop, as
14 well as the specific gravity to drop.

15 THE COURT: Okay. All right.

16 THE WITNESS: Specific gravity is nothing more
17 than just -- you know, if you think of different
18 pebbles in a glass, and if add one pebble, that's a
19 low specific gravity and if you add more pebbles into
20 the glass -- in a glass water, you -- you'll find that
21 the more number -- the high the number of pebbles that
22 you have, the higher the specific gravity becomes.
23 So it's a solute/solvent ratio.

24 THE COURT: Okay.

25 THE WITNESS: The molecules you have, the higher

1 the specific gravity. Fewer molecules you have, lower
2 specific gravity.

3 THE COURT: I understand that.

4 Okay. Oh, Doctor, you have some documents there
5 which we don't have here. You've testified that -- to
6 a conversation that you with Ms. Solomon.

7 We have the script you used. Did you -- do you
8 actually have the notes you made of that conversation?

9 THE WITNESS: I did. I submitted them and I
10 think you have them. Let me see.

11 THE COURT: Hold on 'cause I'm looking at
12 Mr. Gibbs. Because I have your script and I put that
13 in. I don't have --.

14 MR. GIBBS: 23, Your Honor?

15 THE COURT: Which one?

16 MR. GIBBS: 2-3.

17 THE COURT: 2-3.

18 Oh, I beg your pardon. He did give those to me.
19 I just -- he didn't admit them and I didn't see them.

20 I beg your pardon, Doctor.

21 THE WITNESS: No problem.

22 MR. GIBBS: We didn't plan --

23 THE COURT: And --

24 MR. GIBBS: -- on introducing them, Your Honor.

25 THE COURT: Sorry.

1 MR. GIBBS: We don't plan on introducing them.

2 THE COURT: You don't. Well, that's good to
3 know.

4 And, Doctor, did I hear you in response to
5 Mr. Syfert's question say that you had a subsequent
6 conversation with Ms. Solomon?

7 THE WITNESS: I did. I received a call from, I
8 guess, her representative or someone to that effect
9 who called asking for guidance. And I went through
10 the process of explaining, you know.

11 I tried to answer as many questions -- as many of
12 his questions as possible.

13 THE COURT: Okay.

14 THE WITNESS: That was, I think, on the -- what,
15 the -- that was July something, I think.

16 I had received -- I had received the call from
17 her adviser -- something to that effect, I think.

18 THE COURT: Okay. Fair enough.

19 So you never spoke to Ms. Solomon a second time,
20 you spoke to --

21 THE WITNESS: It was conference call. She was
22 present with him.

23 THE COURT: Okay, I got you.

24 THE WITNESS: Yeah, because I'm not going to sit
25 there and discuss someone else's conversation -- or

1 someone else's test results without her approval.

2 THE COURT: Right. And was that conversation
3 recorded.

4 THE WITNESS: That conversation was recorded,
5 correct.

6 THE COURT: Okay. Okay. Okay. I gonna think on
7 that for a second.

8 You have a CV handy, Doctor.

9 THE WITNESS: Yeah, I can email it to you or I
10 can fax if you like.

11 THE COURT: Well, assuming that -- well, let me
12 ask Mr. Gibbs.

13 You can still get your email and print it out,
14 right, or someone in your office can?

15 MR. GIBBS: Yes, sir, we can bring it in.

16 THE COURT: Okay. You know what, why don't you
17 email it to Mr. Gibbs, he'll get it to me tomorrow.

18 MR. GIBBS: One second, Your Honor.

19 THE WITNESS: Okay.

20 THE COURT: My computer is in Savannah, Georgia.
21 If we can have that -- Doctor, if you can email that
22 to Lieutenant John Nee and Chief Warren Officer Dan
23 Sammons. You've got the e-mails.

24 THE WITNESS: I do. I have the correspondence
25 from them.

1 MR. GIBBS: Perfect.

2 THE WITNESS: Not a problem. Sure. That's not a
3 problem at all.

4 THE COURT: Doctor, as -- as a medical doctor --
5 what's your specialty?

6 THE WITNESS: I'm a family physician.

7 THE COURT: Can I ask you something? How long --
8 if a person presented with this creatinine level and
9 that specific gravity, and also I want you to assume a
10 pH of 8.8.

11 I mean, is that a -- it may indicate kidney
12 failure.

13 THE WITNESS: Okay.

14 THE COURT: It may, correct? No, because of --

15 THE WITNESS: You still -- because of the
16 specific gravity, that means that the kidneys are
17 functioning effectively.

18 THE COURT: Okay. Is that -- would that -- would
19 those -- if that was the urine that a person produced,
20 is that an indication of a healthy, functioning
21 individual?

22 THE WITNESS: Absolutely not. I mean, it -- as I
23 said, to produce such low, low, low, low creatinine
24 and such -- I mean, this is just way -- this is just
25 too low, one of two things. You know, one of the

1 common things is either the individual into renal
2 failure. If you were just looking at the creatinine,
3 or the individual has absolutely no muscle mass
4 whatsoever and, you know, is on death's door.

5 Typically you may see that. I don't know if
6 you've had the unfortunate experience of experiencing
7 someone who is, you know, is in stage cancer.

8 You know, they're all shriveled up. There's no
9 muscle mass. It's just skin and bones. You know,
10 there's nothing that's there.

11 You -- you obviously -- I'd be very alarmed to
12 see that. And if I was just presented that and that's
13 a patient that I'm about to see that I have yet to
14 see, you know, I would, in my mind, envision someone
15 with -- you know, skinny as a rail and is literally in
16 stage.

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