

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 Wednesday, January 16, 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.

23 OFFICIAL REPORTER'S, INC.
24 201 EAST ADAMS STREET
25 JACKSONVILLE, FLORIDA 32202
(904) 358-2090

A P P E A R A N C E S

MARK A. GIBBS, Senior Investigating Officer,

USCG Marine Safety Office
100 W. Oglethorpe Avenue
Suite 1017
Savannah, Georgia 31401
Appearing on behalf of United States Coast Guard.

LIEUTENANT JOHN NEE, Senior Investigating Officer,

U.S. Coast Guard Sector Jacksonville
Prevention Department
4200 Ocean Street
Atlantic Beach, Florida 32233
Appearing on behalf of United States Coast Guard.

CWO DAN SAMMONS, Marine Inspector/Investigations,

USCG Marine Safety Office
100 W. Oglethorpe Avenue
Suite 1017
Savannah, Georgia 31401
Appearing on behalf of United States Coast Guard.

GRAHAM SYFERT, Esquire,

1529 Margaret Street, Suite 2
Jacksonville, Florida 32204
Appearing on behalf of Simone Joyce Solomon.

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P R O C E E D I N G S

January 16, 2013

10:00 a.m.

THE COURT: On the record, please.

Good morning, everybody. Thank you very much for being so prompt.

Okay. I have on my desk a curriculum vitae from Dr. Khella.

And are we going to mark this CV?

MR. GIBBS: 33.

THE COURT: Any objection to entering CG-33?

MR. SYFERT: No, Your Honor.

THE COURT: All right. The court will receive it.

Thank you. I'll put that with my book.

Okay. The other matter, I think, that was up for today prior to Mr. Syfert beginning his case, was a decision on his motion for summary disposition.

I took a look at your motion last night and I read it again this morning.

It seemed to me, Mr. Syfert, that initially your motion was directed toward the fact that there only -- wasn't there just three aliquots?

Is that what the motion initially was directed towards?

MR. SYFERT: Correct, Your Honor.

1 THE COURT: That's kind of what I thought. And
2 then after -- after Mr. LeBard had indicated no, no,
3 it was four, there was a -- there was some -- there
4 was a portion of the motion devoted to the fact that
5 no matter what happens, that basically -- even if
6 there were four, it wasn't the initial aliquot that
7 was tested pursuant to the requirements of 40.93.

8 Is that --

9 MR. SYFERT: Correct, Your Honor.

10 THE COURT: Is that correct?

11 MR. SYFERT: That was the argument.

12 THE COURT: Okay. The response, of course, from
13 the Coast Guard is that, look, you know, we couldn't
14 do the initial one. I think, that the initial thrust
15 of the motion would have been well taken.

16 I think that that in the present case, because
17 all four data points were given, there's a reasonable
18 explanation as to why the initial one didn't have
19 those confirmatory tests.

20 I mean, obviously the idea is to get the
21 information to you so that you can prepare your case.
22 So that you wouldn't be unfairly surprised that, you
23 know, you had that -- that each of the test results
24 were checked and then checked -- were given and then
25 checked again. I think that satisfies that provision.

1 The other thing I had thought about is, say that
2 -- say there was -- we took the aliquot out, it
3 dropped, it wasn't able to be tested, it would still
4 be considered to be an initial aliquot, but then not
5 being tested would probably lead to a result that
6 would be unanticipated in the regulations.

7 So while I did think when I read that initially
8 and then read it again last night, that the motion was
9 directed towards only not having sufficient tests
10 which I thought would have been an excellent motion, I
11 think that based on what we have today in that the
12 data was -- was delivered, that the initial aliquot
13 could not be given the confirmatory test because it
14 was so far out of range, and that the next two were
15 given both data points, the court is gonna
16 respectfully deny your motion for summary disposition.

17 Okay. I know I asked y'all to be back here at
18 1000. I'm so sorry I got here at 10:10 when I walked
19 in the courtroom. And I know that there are probably
20 witnesses standing by and if I've delayed that, I
21 apologize.

22 Mr. Syfert, it's your case at this point.

23 What's your first -- what is your pleasure?

24 MR. SYFERT: Your Honor, the first witness we'll
25 call is Simone Solomon.

1 We want to use the natural box up there.

2 THE COURT: Sure.

3 Ms. Solomon, if you can, please, before you sit
4 down, I need you to raise your right hand.

5 - - - - -

6 **SIMONE JOYCE SOLOMON**

7 Having been produced and first duly sworn as a witness,
8 testified as follow:

9 THE WITNESS: Yes.

10 THE COURT: Great. Please sit down.

11 And if you could, state your full name for the
12 court reporter, and I believe she has your spelling.

13 THE COURT REPORTER: Yes, sir.

14 THE COURT: State your full name, please.

15 THE WITNESS: Simone Joyce Solomon.

16 THE COURT: Thank you very much.

17 Mr. Syfert.

18 DIRECT EXAMINATION

19 BY MR. SYFERT:

20 Q. Ms. Solomon, what's your job?

21 A. I'm a merchant marine chief cook.

22 Q. And how long have you been aboard vessels being a
23 cook?

24 A. Nineteen years.

25 Q. Have you had any previous problems like this?

1 A. No.

2 Q. Have you had any random -- previous random drug
3 tests?

4 A. Yes.

5 Q. When were you first -- when did you first --
6 where were you when you first heard there was going to be
7 a drug test?

8 A. In the galley.

9 Q. Did you know it was gonna be a drug test --

10 A. No.

11 Q. -- at that point in time?

12 What -- explain what happened.

13 A. They came to -- the A.B. came to us, the steward
14 and I, and said we need to urine, a drug test, in the
15 hospital.

16 Q. Okay. And what did you do at that point? Did
17 you go up and visit?

18 A. Yes.

19 Q. Did you see Mr. Hualde there, the collector?

20 A. Yes.

21 Q. Could you leave his sight after the point that he
22 saw you?

23 A. No.

24 Q. Did you leave his sight momentarily to --

25 A. No.

1 Q. Do you urinate in front of him?

2 A. Not right in front. It's inside. The door was
3 open.

4 Q. Okay. So the door was open when you did that?

5 A. Yes.

6 Q. Did he search you before you went in?

7 A. I took out my pockets.

8 Q. Did he -- he just ask you to empty your pockets?

9 A. Yes.

10 Q. Let me point this down toward you a little bit.
11 Did you bring anything with you into that drug test
12 that day?

13 A. No.

14 Q. We've talked about that day. Do you remember
15 what you were wearing that day?

16 A. My cook uniform.

17 Q. Are there pockets in the cook uniform?

18 A. Two pockets.

19 Q. Okay. And there was nothing in there?

20 A. No.

21 Q. We've talked about that day a lot now. Do you
22 know how hot it was that day?

23 A. Very hot.

24 Q. Okay. If I told you it got up to 111 degrees
25 that day in Dubai, would that sound right to you?

1 A. Yes.

2 Q. Did you give Mr. Hualde your urine in this case?

3 A. Yes.

4 Q. Did it come out of your body?

5 A. Yes, it did.

6 Q. Did you introduce any substances to that urine?

7 A. No.

8 Q. Did they make your -- did they make you wash your
9 hands before going?

10 A. No.

11 Q. You're a cook. Did you have anything on your
12 hands that you know about?

13 A. Not that I know of.

14 Q. Did you add water to the sample?

15 A. No.

16 Q. Was there water available for you to add water?

17 A. No, it wasn't.

18 Q. Who first notified you of the problems with your
19 urine?

20 A. The captain.

21 Q. How did the whole procedure work from your end?

22 And at this time I'm just gonna ask you just To kind
23 of -- just explain to the court, you know, how this worked
24 as far as the captain notifying you, and you getting
25 pulled off and where you were, et cetera.

1 A. The captain called me out the galley and told me
2 he need to speak with me in the office. It was -- I need
3 to call the MRO 'cause he need to talk with me.

4 And we called the MRO. He stepped out and I talk to
5 the MRO and he said that there was -- I had a substitute
6 urine. And I said substitute urine? He said, yes.

7 Do you take any medication? I said I take a high
8 blood pressure pill and I take vitamins. And he said no
9 that won't do it. Do you take anything else? And I said
10 no. And he said, well, you're not telling me what I want
11 to hear. And I said what you want to hear?

12 He said okay, Ms. Solomon, I think I made my decision
13 and he hung up.

14 Q. Okay. Let's talk about you getting -- we'll get
15 back to that conversation with Dr. Khella a little later.

16 But for right, now let's talk about just getting
17 pulled off the ship. Were you -- where were you when you
18 got pulled off the ship?

19 A. Al Jordan.

20 Q. And where is that at?

21 A. The Middle East.

22 Q. Okay. Jordan, right?

23 A. Yes.

24 Q. And how many days after that, you know, from the
25 urinalysis test, to the day you got pulled off in Jordan?

1 How many days was that?

2 A. That was about day and a half or two days.

3 THE COURT: Wait a minute.

4 Let her answer the question again. Unless I
5 misunderstood your question.

6 Your question was: How long was it between the
7 day -- the time she gave the urinalysis until the time
8 she got the call.

9 THE WITNESS: Oh, that's June -- June the 2nd all
10 the way to July -- July the 2nd to July the 17th.

11 BY MR. SYFERT:

12 Q. July 17th.

13 So there was 14 days in between that?

14 A. Yes.

15 Q. Thank you.

16 A. Um-hum.

17 Q. Did you contact the -- you got back to
18 Jacksonville, you fly on a plane?

19 A. Yes.

20 Q. When you got back to Jacksonville, did you
21 contact a doctor?

22 A. Yes.

23 Q. What doctor did you contact?

24 A. Dr. Depadeau (phonetic)

25 Q. Did you go see a Dr. Haider?

1 A. Also, yes.

2 Q. Did he provide you with a report?

3 A. Yes.

4 Q. Do you recognize this report? The first -- the
5 next?

6 A. Yes. Yes.

7 MR. SYFERT: Okay. Your Honor, I'd ask to
8 approach.

9 THE COURT: Sure, of course.

10 MR. SYFERT: This is Respondent's Exhibit One,
11 which is the report of Dr. Haider.

12 BY MR. SYFERT:

13 Q. Did you give him the result from this test?

14 A. Yes.

15 THE COURT: Mr. Gibbs, you've seen that?

16 MR. GIBBS: No objection, Your Honor.

17 THE COURT: Okay. The court will receive
18 Respondent's Exhibit 1 into evidence at this time.

19 MR. GIBBS: Your Honor, there is some questions
20 we have about it, we don't have any objection to it
21 being entered.

22 BY MR. SYFERT:

23 Q. Who else did you contact regarding this case?

24 A. Corrine Brown.

25 Q. Okay. Who is she?

1 A. Our representative.

2 Q. Okay. Who else did you contact?

3 A. Dr. Haider, Dr. Depadeau.

4 Q. Anybody within Argent Marine?

5 A. Yes, my crew members to write a letter of
6 character.

7 Q. Um-hum. Did you contact anybody within Argent
8 Marine?

9 Did you contact anybody within your union?

10 A. Yes. Archie Wear, my report agent.

11 Q. About how many people roughly did you call to try
12 to get something resolved?

13 A. Numerous of people; numerous of people.

14 Q. Did you obtain a letter from a Martin Buck?

15 A. Yes.

16 Q. Did you obtain letters from your other members of
17 the -- well, you just said you did.

18 Of all the people that you asked, is there anyone who
19 didn't want to sign a letter representing your good
20 character?

21 A. No.

22 Q. Did you go and get previous tests for blood work
23 and urinalysis?

24 A. Yes.

25 Q. Do those look like the reports that you obtained?

1 A. Yes.

2 MR. SYFERT: Okay. Your Honor, at this point in
3 time, I'd like to enter --

4 MR. SAMMONS: Your Honor, the Coast Guard objects
5 to relevance on the blood work that he's presenting.

6 I don't know what the relevance would be in that
7 case. She submitted a urine sample for testing.

8 What's the correlation between urine and blood?

9 THE COURT: The difference between -- I mean, I
10 don't know if there is a correlation between serum
11 creatinine and urine creatinine, but I don't know if
12 that's where this is going.

13 What do we have here, Mr. Syfert?

14 MR. SYFERT: Your Honor, these will be only
15 offered -- the doctors who are gonna be testifying,
16 have reviewed these as medical records, and used them
17 to gain an overall physiological picture of
18 Ms. Solomon.

19 Other than that, there won't be any testimony
20 that comes directly from any of these exhibits other
21 than the fact that these were collected and these are
22 historical medical records that are used by the
23 doctors to review Ms. Solomon's physiological
24 condition.

25 THE COURT: Okay. Let's -- let me wait until

1 they come in and then if they testify from them, then
2 I will probably admit them, but for right now I'm
3 gonna sustain the objection.

4 Only because, number one, I don't know what's in
5 them other than her -- they're her medical reports.
6 Number two, I don't know what relevance they have to
7 this particular aspect, but maybe the experts can tell
8 me that as a result of their examinations, perhaps she
9 has been historically low and these -- this is what
10 these documents would tell us.

11 MR. SYFERT: That's exactly what it's gonna say.
12 But, Your Honor, we have the urinalysis which wasn't
13 objected to.

14 THE COURT: Okay. Let's have that.

15 What number is that?

16 MR. SYFERT: The Respondent's Exhibit 3(sic) now.

17 THE COURT: R3.

18 BY MR. SYFERT:

19 Q. What kind of medications are you on?

20 A. A pressure pill, Lispril.

21 Q. Lispril?

22 A. Yes.

23 Q. And what else are you on?

24 A. Nothing else.

25 Q. Are you on anything for your period?

1 A. Yes. I can't think of the name. I take that
2 once a month while I'm on my monthly.

3 Q. Is that something else other than Lispril?

4 A. No, just vitamins and Tums.

5 Q. But I'm talking about the -- that other pill; the
6 pill you take every month.

7 A. Yes.

8 Q. Okay. I mean, that's something else that's
9 over-the-counter medication, correct or not --

10 A. No, it's prescribed by the doctor.

11 Q. It's prescribed by the doctor, too.

12 THE COURT: What is that pill?

13 MR. SYFERT: Something else.

14 BY MR. SYFERT:

15 Q. You don't know the name of it?

16 A. Yeah, it's just --

17 THE COURT: It's okay. You can check on that
18 later and let Mr. Syfert know.

19 THE WITNESS: Okay.

20 THE COURT: He'll let us know. Because that may
21 be important as to whether or not that has any affect
22 on your urine -- your urine content.

23 BY MR. SYFERT:

24 Q. Lysteda. Lysteda. Does that sound right?
25 Tranexamic acid.

1 A. Yes.

2 THE COURT REPORTER: Do you mind spelling that,
3 Mr. Syfert.

4 MR. SYFERT: Lysteda. L-Y-S-T-E-D-A.

5 THE COURT REPORTER: Thank you.

6 BY MR. SYFERT:

7 Q. When you first spoke with Dr. Khella, did you
8 know that Lispril was a diuretic?

9 A. No.

10 Q. Yesterday I asked Dr. Khella about the over-the-
11 counter medication Tagamet.

12 Just so we're not misleading the court in any way, do
13 you take Tagamet?

14 A. No.

15 Q. Do you take anything else for heartburn?

16 A. Tums.

17 Q. How often do you eat Tums?

18 A. Quite often.

19 Q. How many in a day?

20 A. About six, seven; sometime ten a day.

21 Q. Is that to fight heartburn?

22 A. Heartburn and stomach acid.

23 Q. Have you previously suffered from yeast
24 infections?

25 A. Yes, previously.

1 Q. And did you at that time of the -- the urinalysis
2 as far as you know?

3 A. No.

4 Q. Have you ever suffered from a urinary tract
5 infection?

6 A. A while back.

7 Q. Did you at the time, as far as you know, that you
8 gave the urine?

9 A. No.

10 Q. Has any doctor ever warned you about diabetes?

11 A. Yes.

12 Q. Has any doctor ever warned you about kidney
13 disease?

14 A. No.

15 Q. Do you have any family history of any disease of
16 the kidneys?

17 A. Yes, my mother.

18 Q. Your who?

19 A. Mother.

20 Q. Your mother. And what's wrong with her kidneys?

21 A. She's on dialysis, no kidney.

22 Q. Let's go back to the day of the test.

23 How much water did you drink that day?

24 A. I drink a lot of water 'cause it's hot.

25 Q. Is it hot in the kitchen?

1 A. Yes, and hot there in Belize also.

2 Q. Is that -- did you drink anymore than usual?

3 A. I always drink a lot of water.

4 Q. Okay. What was your diet that day?

5 A. Boiled egg white and yogurt.

6 Q. What -- egg whites and yogurt?

7 A. Egg white. Egg white, yeah.

8 Q. Did you eat any meat that day?

9 A. No.

10 Q. How much exercise do you get on the ship?

11 A. Well, I walk a lot.

12 Q. Do you remember particularly going in this case,
13 that you remember particularly that drug test?

14 A. Yes.

15 Q. Do you remember how you urinated that day?

16 A. Yes, very small amount.

17 Q. It was a very small amount?

18 A. Yes.

19 Q. Did you have to strain?

20 A. A little 'cause I just went to the bathroom not
21 too long ago.

22 Q. Okay. So you went to the bathroom just before?

23 A. Yes.

24 Q. And -- I mean, you have -- you don't really know
25 how much you've -- how much urine you made, though, do

1 you?

2 A. It was a little under the line.

3 Q. The line. Whatever that line happened to be?

4 A. Yes.

5 Q. Did you ask him if it was enough?

6 A. Yes, he said it was enough.

7 Q. Is there anything else from the moment you peed
8 to the moment that you delivered the urine to Mr. Hualde,
9 that you can remember that think is important?

10 A. No, I think when I asked him was it enough, he
11 said it was 'cause I did a little under the line.

12 Q. And that was -- that was the only thing that you
13 really -- that stands out from that whole encounter?

14 A. And just 'cause he put the urine down, you
15 know -- he put the urine down and kind of walked away.

16 Q. Okay. Did you see the seal being put on?

17 A. Yes.

18 Q. On the cup?

19 A. To be honest, I didn't pay it attention.

20 Q. Okay. Do you remember first getting the call
21 from Dr. Khella?

22 A. Yes.

23 Q. Do you remember if he told you that conversation
24 was recorded?

25 A. Yes.

1 Q. If he did offer retest, would you have taken the
2 opportunity?

3 A. Yes.

4 Q. Did you request DNA testing?

5 A. Yes.

6 Q. You heard Dr. Khella testify as to what he said
7 to you. Do you remember him reading off that long script?

8 A. No.

9 Q. Were you ever given an opportunity for a retest
10 at a different laboratory?

11 A. No.

12 Q. How can you be sure you were never given that
13 option?

14 A. 'Cause I wasn't.

15 Q. You had that conversation and you spoke about
16 it. Did he advise you that you might want to take any
17 further action?

18 Is there anything that he said that you could do that
19 would help him out?

20 A. Maybe talk to drug rehab.

21 Q. Say that.

22 A. Drug rehab.

23 Q. Drug rehab? Did he suggest that you visit other
24 laboratories?

25 A. No.

1 Q. Did you visit another laboratory and subject
2 yourself to a urinalysis test?

3 A. Yes.

4 Q. And you provided me with those results, didn't
5 you?

6 A. Yes.

7 Q. From what you understand could you reproduce the
8 creatinine result we had here after this test?

9 A. No.

10 Q. Other than being -- one sample was taken on a
11 ship and one sample was taken in a laboratory, was there
12 anything particularly different between the two urine
13 tests?

14 A. No.

15 Q. You peed in a cup and that was it?

16 A. Yes.

17 Q. All right. Why is it important to you to work on
18 a ship instead of a cafeteria somewhere?

19 A. 'Cause I make decent money.

20 Q. Right.

21 A. And I like going to sea. It's my livelihood.

22 Q. Right. And for 19 years, have you ever had any
23 job on land?

24 A. No.

25 Q. Why -- why is your job important to you?

1 A. Like I said, it's my livelihood. It's the way I
2 eat. I like to travel. Mostly it's my livelihood; it's
3 where I eat.

4 Q. Does anyone else depend on you?

5 A. Yes.

6 Q. Who depends on you?

7 A. My mother.

8 Q. Okay. And why does she depend on you?

9 A. She is on a set income.

10 MR. SYFERT: Your Honor, at this time we have no
11 further questions.

12 I would like to reserve the ability to offer
13 letters from the Alliance Charleston that such letters
14 are not really of circumstance unless it becomes
15 necessary to actually mitigate the, you know, the
16 punishment that would be handed down in this case.

17 But other than that, we have no other questions
18 on direct.

19 THE COURT: That is entirely up to you whether
20 you wish to present them now or to withhold them.

21 The administrative rules have changed such that
22 mitigation is often times offered during the case in
23 chief because it's not a bifurcated procedure anymore.

24 And if you think it's character -- good character
25 evidence that might persuade a trier of fact.

1 MR. SYFERT: Your Honor, I don't really think
2 that there's gonna be much issue as to Ms. Solomon's
3 character. If I did, I would be offering them now.

4 THE COURT: Okay. All right.

5 MR. SYFERT: Thank you.

6 THE COURT: Thank you. Mr. Gibbs.

7 MR. GIBBS: Yes, Your Honor.

8 CROSS EXAMINATION

9 BY MR. GIBBS:

10 Q. Good morning, Ms. Solomon.

11 A. Good morning.

12 Q. Start out with the first question: On July 2nd,
13 the date of the test in question, were you hospitalized?

14 A. No.

15 Q. Did you go to the doctor for any reason? Were
16 you feeling ill that day?

17 A. No.

18 Q. And you said that you were told -- who told you
19 that you were having the test?

20 A. One of the A.B..

21 Q. One of the A.Bs.

22 Is that standard that ABs run around telling everybody
23 that they have a test, or does the ship's master notify
24 people; or how does that normally work?

25 A. They just say y'all come to the hospital. It's a

1 random test.

2 Q. And does everybody go to the hospital at one
3 time?

4 A. Yes.

5 Q. Who's driving the ship, or were you in port?

6 A. Well, it might be a mate.

7 Q. Okay. So everybody doesn't go to the -- but
8 everybody is required to report right then?

9 A. Yes.

10 Q. And you were just -- you had just peed or
11 urinated, excuse me. And then you reported to the --

12 A. Yes.

13 Q. Right. And how soon did you -- after you
14 reported did you have to pee in a cup?

15 A. I was like in the middle. It was a line. I was
16 drinking water.

17 Q. Okay. How long did you wait there with
18 Mr. Hualde?

19 A. About 20 minutes.

20 Q. Okay. One moment, please.

21 Okay. After you -- after you got notified by the
22 A.B., what did -- what exactly did you do?

23 A. Me -- Steward and I gone to the hospital and
24 stood in line.

25 Q. You went straight to the hospital?

1 A. Yes.

2 Q. Do you -- how did you identify yourself to
3 Mr. Hualde?

4 A. Our passport. The captain is right there handing
5 it to us.

6 Q. Okay. Because the captain keeps them up in --

7 A. Yes.

8 Q. -- his state room?

9 Okay. And you waited approximately --

10 MR. GIBBS: Excuse me. I'm sorry, Your Honor.

11 THE COURT: Sure.

12 BY MR. GIBBS:

13 Q. You waited approximately 20 minutes before you
14 urinated a small amount in the vile, correct?

15 A. Yes.

16 Q. If you urinated such a small amount in the vile,
17 could you explain to me why you think the specific gravity
18 went down, if there was a small amount of urine in it?

19 MR. SYFERT: Objection, Your Honor.

20 THE COURT: If she doesn't know, she doesn't
21 know.

22 THE WITNESS: I don't know.

23 BY MR. GIBBS:

24 Q. Okay.

25 THE COURT: Wait a minute. Although, I do want

1 to ask about the question.

2 You said that the specific gravity went down.
3 Because I remember the creatinine was low and the
4 specific gravity was high, which indicated this was a
5 substituted sample.

6 MR. GIBBS: Did I say down, or -- I apologize.
7 It went up. The specific gravity went up and --
8 because we had such a concentrated level.

9 THE COURT: Okay. Thank you.

10 MR. GIBBS: I apologize.

11 THE COURT: Oh, it's fine. But I don't know. I
12 mean, this might be the wrong -- you can ask her, but
13 I don't if she's got any background to answer it.

14 BY MR. GIBBS:

15 Q. You were stating earlier when Mr. Syfert asked
16 you that -- you know, how long after were you notified of
17 the termination, and you said two days.

18 What was --

19 A. I thought it was two days from when they told me
20 my termination to Jordan.

21 Q. You had two days to get to Jordan; is that what
22 you're saying?

23 A. Yes.

24 Q. Okay.

25 A. To get off the ship. That's what I was...

1 Q. All right. And what is your age?

2 A. Forty-two.

3 Q. And you were in Mr. Hualde's presence for 20
4 minutes. And what is this -- I'm -- I apologize if I say
5 it wrong, Lysteda? What is that for?

6 A. My monthly. I take every month. I heavy bleed.

7 Q. I'm sorry?

8 A. I bleed heavy every month.

9 Q. Oh, oh, oh. I'm sorry. I understand now.

10 I find it interesting you remembered your breakfast
11 that morning.

12 A. Yeah.

13 Q. That's a good memory.

14 Do you eat the same thing every morning for breakfast
15 or...

16 A. I was trying to because of health problems.

17 Q. Okay. And you always drink a lot of water, you
18 said?

19 A. Yes.

20 Q. Always?

21 A. Yes.

22 Q. But you've never had a substituted sample
23 before?

24 A. No.

25 Q. Have you ever had a dilute sample?

1 A. No.

2 THE COURT: Mr. Gibbs, could you inquire of her
3 -- I can.

4 We -- were you taking your Lysteda that day that
5 you were -- or any time near the time you submitted
6 your urine test?

7 THE WITNESS: My pressure pill?

8 THE COURT: No.

9 MR. GIBBS: Your monthly.

10 THE WITNESS: Yes.

11 THE COURT: The monthly?

12 THE WITNESS: Um-hum.

13 THE COURT: Do you take it one time per month?
14 Do you take it the week before? Do you take it every
15 Day?

16 THE WITNESS: A week before and during the time
17 I'm on my monthly.

18 THE COURT: Okay.

19 MR. SYFERT: Your Honor, if I may, I don't
20 believe that's going to become an issue. As far as I
21 know, it has no affect -- could have an affect, but
22 probably doesn't.

23 THE COURT: Thank you.

24 Okay. Thanks, Mr. Gibbs.

25 BY MR. GIBBS:

1 Q. Okay. Now, also you stated earlier that you went
2 and had urinalysis test conducted after you were
3 terminated from the vessel; is that correct?

4 A. Yes.

5 Q. Were these DOT tests?

6 A. Yes.

7 Q. Five panel DOT tests?

8 A. Yes.

9 Q. And those results are in this package?

10 MR. SYFERT: No.

11 THE COURT: Why? They're not in here?

12 MR. SYFERT: No, Your Honor. This is -- we put
13 forth the history.

14 Your Honor, if we put forth the tests that
15 they're talking about right now, they would just be
16 saying, well, if you could pee normal then, why
17 couldn't -- why didn't you pee normal back then.

18 MR. GIBBS: That's exactly right.

19 THE COURT: Okay. When was the test that -- when
20 did you take a test? When was the next time you took
21 a urine test after the test of 2 July?

22 THE WITNESS: When I got home.

23 THE COURT: Is that still in the month of July?

24 THE WITNESS: Yes.

25 THE COURT: Okay.

1 THE WITNESS: Um-hum.

2 BY MR. GIBBS:

3 Q. You said you got back --

4 THE COURT: Let's just assume that's --

5 MR. GIBBS: I apologize.

6 THE COURT: Go ahead.

7 BY MR. GIBBS:

8 Q. You said you got back to Jacksonville on the
9 14th; is that accurate?

10 A. No, the 17th or the 18th I got back.

11 Q. The 14th is the day you were terminated then, is
12 that --

13 A. Yes.

14 Q. Is that accurate?

15 Okay. Just making sure I have my numbers right.

16 MR. GIBBS: I'm sorry, Your Honor, did you --

17 THE COURT: No, go ahead.

18 BY MR. GIBBS:

19 Q. So let me -- I want to reask the question: They
20 were not DOT tests?

21 MR. SYFERT: They were DOT tests.

22 THE WITNESS: They were DOT.

23 MR. GIBBS: Okay. I thought you just said that
24 they weren't.

25 MR. SYFERT: I said we don't offer them.

1 BY MR. GIBBS:

2 Q. Okay. So they -- you didn't offer them.

3 How do you know they were DOT tests?

4 A. 'Cause I did it at Quest and asked for a DOT.

5 Q. You specifically went in there and asked for a
6 DOT?

7 A. Yes.

8 Q. And the results of these tests were normal?

9 A. Yes.

10 Q. Specific gravity was good? Creatinine was good?
11 Creatine was good?

12 A. Yes.

13 Q. Can you tell me how soon after you were notified
14 of your termination that you took your test?

15 A. From June the 2nd all the way to the 13th.

16 THE COURT: I think she meant July.

17 THE WITNESS: July.

18 BY MR. GIBBS:

19 Q. Okay. I think I -- let me rephrase the question.
20 After you were terminated --

21 A. Um-hum.

22 Q. -- on the 14th, correct?

23 A. Yes.

24 Q. When did you take your next DOT test under your
25 own request?

1 A. The 17th or 18th when I got home. When I flew
2 home, I took them.

3 Q. And that was around the 18th or 19th?

4 A. Yes.

5 Q. You immediately went and tested?

6 A. Yes.

7 Q. Did you test at the same facility?

8 A. At Dr. Depadeau office, my union doctor.

9 Q. Is that Dr. Nador?

10 A. No, Dr. Depadeau. That's our union doctor.

11 Q. Can you spell that name, please?

12 A. D-E-P-A-D-E-A-U.

13 Q. And that's the union doctor?

14 A. Yes.

15 Q. You said that you watched the individual seal it;
16 is that accurate, or that you did not?

17 A. No, I did not.

18 MR. GIBBS: Okay. Your Honor, permission to
19 approach?

20 THE COURT: Of course.

21 BY MR. GIBBS:

22 Q. Could you please for the court describe the
23 document in front of you?

24 A. My tox -- a urinalysis.

25 Q. Is that the urinalysis you took on the day in

1 question?

2 A. Yes, and I signed it.

3 Q. Ma'am, is that your signature?

4 A. Yes.

5 Q. Can you please read the top of the -- the part
6 that you're required to read prior to signing this?

7 A. The top, the top number?

8 Q. Right above your name. Could you start right
9 here (indicating).

10 A. Oh. I certify that I provided my urine specimen
11 to the collector. That I have not adulterated it in any
12 manner. Each specimen bottle used, was sealed with a
13 tampered-evidence seal in my presence and that is the
14 information provided on this form on the label to each
15 specimen bottle is collected.

16 Q. Thank you. So you -- by signing that document,
17 confirmed that that was properly collected, it was
18 properly sealed and packaged, correct?

19 A. Yes.

20 Q. You appear distraught about that. Is -- I mean,
21 are you saying you did or --

22 A. Yes, I did.

23 Q. Thank you.

24 Okay. Bear with me. I won't be too much longer.

25 Now, you were notified by the A.B.

1 Do you know the A.B.'s name?

2 A. A Filipino. I don't know his real name.

3 Q. A Filipino guy?

4 A. Yes.

5 Q. And let me get back here to -- if I show you his
6 name, can you tell me if it was -- which name it was?

7 A. Yes.

8 MR. GIBBS: Your Honor, request permission to --

9 THE COURT: Sure, please.

10 BY MR. GIBBS:

11 Q. First of all, is that the crew list that you --
12 is that the crew you were on board with on the Alliance
13 Charleston on the day in question?

14 A. Yes.

15 Q. Thank you.

16 A. I think it's this right here (indicating).

17 Q. Silvio Lino?

18 A. Yes.

19 Q. That's who you think it was?

20 A. Yes.

21 MR. GIBBS: Okay. For the record, she's saying
22 Silvio -- Silvio -- Sierra, India, Lima, Victor,
23 India, Oscar. Last name: Lima, India, November,
24 Oscar.

25 THE COURT: Silvio Lino.

1 MR. GIBBS: You did it a lot better than I could
2 have done it.

3 BY MR. GIBBS:

4 Q. Okay. So the A.B. came to you. Were you
5 actively cooking at the time? What time of day was this?

6 A. Just before -- no, a little after lunch. I was
7 breaking down.

8 Q. I'm sorry. It was after lunch?

9 A. Yes.

10 Q. What is breaking down mean?

11 A. Putting my pots in the --

12 Q. Oh, okay. So you're securing from the meal?

13 A. Yes.

14 Q. Okay. So he came into the galley and told you
15 this?

16 A. Yes.

17 Q. And is this -- was this your first trip on the
18 Alliance Charleston?

19 A. No.

20 Q. How many trips have you made?

21 A. It would have been my third.

22 Q. Your third.

23 And how long are the trips for normally?

24 A. Seventy to ninety days.

25 Q. And when did you join the ship on this --

1 A. The third time?

2 Q. Yes, ma'am. This -- obviously, when the test was
3 conducted, when did you join the vessel, what date?

4 A. June 1st.

5 Q. June the 1st. And the test was on the 2nd?

6 A. Yes.

7 Q. Okay. You're in the galley and Mr. Lino --

8 THE COURT: Wait a minute. Just one second.

9 She said she joined the crew on June 1st.

10 MR. GIBBS: July.

11 THE COURT: She said June and then you said the
12 test was on June 2nd.

13 Did you join the crew on June 1st or July 1st?

14 THE WITNESS: June 1st.

15 THE COURT: The test was 30 days later on July
16 2nd, right?

17 Am I right or wrong?

18 MR. GIBBS: Bear with me one second, Your Honor.

19 THE COURT: Sure. I just want to make sure it's
20 clear 'cause I --

21 LIEUTENANT NEE: Your Honor, if I may.

22 The join date on the crew list you were looking
23 at earlier, is the voyage date of July 1st. That's
24 what you're referencing right there. That's the
25 voyage date.

1 MR. GIBBS: Okay. So her join date is --

2 THE COURT: Wait, guys. Stop.

3 LIEUTENANT NEE: Your Honor, I know where you're
4 going with this.

5 THE COURT: Did you get everybody's conversation?

6 THE COURT REPORTER: I did. That was Mr. Nee,
7 yes.

8 THE COURT: Okay. That's what I want to make
9 sure that my court reporter has it.

10 Now, keep the conversation to each other at a
11 minimum. Our court reporter has tough times
12 following.

13 Now, do you need to talk for a second so you --

14 MR. GIBBS: May I?

15 THE COURT: Take a break.

16 MR. GIBBS: I apologize.

17 THE COURT: No, don't apologize. Go ahead.

18 MR. GIBBS: Thank you, Your Honor.

19 THE COURT: No problem.

20 BY MR. GIBBS:

21 Q. Okay. Back to the galley.

22 Mr. Lino comes and tells you you have to test. You
23 immediately drop everything and go straight to the
24 hospital, correct?

25 A. Yes.

1 Q. Okay. You said that you waited 20 minutes to
2 urinate, roughly?

3 A. Yes.

4 Q. Not -- was it a little more, a little less?
5 'Cause you're drinking a lot of water and I'm trying to
6 figure out...

7 A. Yes.

8 Q. Was is -- was it first come, first serve basis,
9 or as you got there and said, okay, I can go?

10 A. No, the line.

11 Q. Okay. So you actually waited in line?

12 A. Yes.

13 Q. Okay. So you waited in line 20 minutes. Would
14 it surprise you if I told you you actually waited 70
15 minutes before you were -- your test?

16 A. Yes.

17 Q. Okay. And also you stated that you urinated
18 prior to this, and you're telling the court that you drank
19 copious amounts of water.

20 If you waited in line for 70 minutes, I think you'd
21 have to go pretty bad. So I'm just -- I'm trying to get
22 the times correct here.

23 A. No, I didn't wait in no line no 70 minutes.

24 Q. You didn't?

25 A. No.

1 MR. GIBBS: Okay. One second, Your Honor.

2 THE COURT: Sure.

3 MR. GIBBS: Okay. Your Honor. I'm going to
4 attempt one more time to introduce exhibit 24.

5 This identifies the times that the tests were
6 conducted. She was number 15 in the line. And if you
7 look, the times are from -- I think she's number 15
8 and it's 1530 to -- 1440. Identifying 70 minutes.

9 THE COURT: Okay. Now, I think there's a
10 relevant reason for 24.

11 MR. GIBBS: I'm getting there. Yes, Your Honor,
12 24.

13 THE COURT: Okay. Now --

14 MR. GIBBS: CG-24.

15 THE COURT: Which one of these reports were
16 related to what we're talking about?

17 MR. GIBBS: That would be --

18 THE COURT: Now, my order may be different than
19 yours, so why don't you just tell me which one we got
20 here.

21 MR. GIBBS: I'm getting to the numbers.

22 THE COURT: Sure. Hopefully she's not one of the
23 blacked out ones, right?

24 MR. GIBBS: She's not.

25 Your Honor, request permission to approach?

1 THE COURT: Sure. Perfect.

2 MR. GIBBS: Thank you, Your Honor.

3 THE COURT: Okay. Let's make sure that
4 Mr. Syfert knows what we're talking about.

5 For the record, I have in front of me two test
6 forms which have been removed from CG-24. One is
7 blacked out, that is the names, collection date is
8 7/2/12, and the collection time of 1330 for specimen
9 number.

10 Also on there in the lower right hand corner is
11 -- oh, actually that's -- did we admit CG-17 already?

12 MR. GIBBS: I believe so, Your Honor. 17?

13 THE COURT: CG-17 was admitted.

14 And that is the urinalysis collection report for
15 Ms. Solomon. And indicates that the collection was
16 taken on 2 July '12, but at 2:40 p.m. So the time of
17 70 minutes.

18 MR. SYFERT: Is it just this one page, Your
19 Honor?

20 THE COURT: I'm assuming that's what he -- that's
21 what Mr. Gibbs wants to enter. So I'm assuming
22 they're offering --

23 MR. GIBBS: Your Honor, I was hoping to enter
24 exhibit 24 which would identify the time frames
25 between collection 1 and collection 21.

1 THE COURT: If it's for the purpose to establish
2 that, Mr. Syfert.

3 MR. SYFERT: If it's only for that purpose, Your
4 Honor, we have no objection.

5 THE COURT: Okay. Court will receive the exhibit
6 for that purpose. And the Court will receive the
7 entire 24 exhibit for the limited purpose to establish
8 the time period between the initial collection and the
9 time existing between -- to Ms. Solomon's, which is a
10 period of, according to exhibit 24, a period of 70
11 minutes; or I should say that the time between the two
12 would be 70 minutes.

13 Also in there was an unredacted copy of the crew
14 list.

15 Did you intend to enter that, Mr. Gibbs?

16 MR. GIBBS: Your Honor, that was received from
17 Mr. Kohut. It's the company's crew list that was on
18 board that vessel that day and that's how we did
19 identify the A.B. that Ms. Solomon was stating told
20 her for the urinalysis, Mr. Lino, L-I-N-O.

21 THE COURT: Great. Any objection to the court
22 receiving the unredacted crew list, Mr. Syfert?

23 MR. SYFERT: No, Your Honor.

24 THE COURT: All right. Court will see receive
25 them for the reasons I stated. So therefore 24 is

1 admitted.

2 Is the -- was the crew list part of 24,
3 Mr. Gibbs?

4 MR. GIBBS: Yes, Your Honor.

5 THE COURT: Okay. It will be admitted as well.
6 Thank you.

7 The activity report in CG-24.

8 MR. GIBBS: Yes, sir.

9 THE COURT: That's just informational as to --

10 MR. GIBBS: It's how we received it, so we didn't
11 want to --

12 THE COURT: I got you.

13 MR. GIBBS: -- compromise the document.

14 THE COURT: Okay. I'll receive that as well.
15 Okay. Thank you very, very much.

16 MR. GIBBS: Thank you, Your Honor.

17 Permission to proceed, Your Honor?

18 THE COURT: Please.

19 MR. GIBBS: Thank you.

20 BY MR. GIBBS:

21 Q. Okay. So, Ms. Solomon, between the time that you
22 were notified to donate and the actual donation, were you
23 able to use the bathroom during that time?

24 A. Yes.

25 Q. I'm -- what I'm asking is: Not in the cup, did

1 you actually void your bladder while waiting?

2 A. No.

3 Q. So you stood in 70 minutes -- in line for 70
4 minutes after drinking all this water and then you -- you
5 weren't able to urinate enough but just a little bit?

6 A. I use -- I used it before. I used it previous
7 before he came and got me.

8 Q. Okay. You used it just before you got in the
9 line for 70 minutes?

10 A. Yes, previous before. When he called, I just got
11 finished using the rest room.

12 Q. I thought you were breaking down the --

13 A. I was, but I -- you can break and use the rest
14 room and I came back and I was washing my pots and he said
15 we have a drug test. You got to come to the hospital
16 immediately.

17 Q. Okay. And so after waiting in that line for 70
18 minutes and you drink copious amounts of water, you were
19 barely able to fill up the cup?

20 A. Well, I went a little under the line.

21 Q. A little under the line?

22 A. Yes.

23 Q. Again, I'd like to reiterate: You've been doing
24 this job for 19 years. You're known for drinking copious
25 amounts of water. And you take Lisinopril, correct?

1 A. Yes.

2 Q. Which has -- does it have a diuretic in it?

3 A. Not that I know of.

4 Q. So you're -- okay. Your blood pressure medicine
5 does not have a diuretic in it.

6 Do you understand what a diuretic is?

7 A. No.

8 Q. Okay. It actually --

9 THE COURT: Does it make you go to the bathroom?

10 MR. GIBBS: Yes.

11 THE WITNESS: Yes.

12 THE COURT: Do you have to go to the bathroom
13 when you take the pill?

14 THE WITNESS: Yes.

15 THE COURT: Okay.

16 MR. GIBBS: Thank you, Your Honor.

17 THE COURT: You're welcome.

18 BY MR. GIBBS:

19 Q. We actually share the same medication. I take
20 Lisinopril myself, but that's because I have an 18-year-
21 old child.

22 You went to the bathroom just before.

23 Okay. I lost my train of thought.

24 So you've done this for 19 years. You always drink a
25 lot of water.

1 How long have you been on blood pressure medicine?

2 A. Not quite a year yet.

3 Q. Not quite a year yet. But you've always drank
4 lots of water?

5 MR. SYFERT: Your Honor, the water thing at this
6 point --

7 THE WITNESS: When I'm on the ship.

8 THE COURT: He'll move on.

9 BY MR. GIBBS:

10 Q. Right. What I'm -- what the relevance of this
11 is, is that, you know, we pressed, pressed the other day
12 with, you know, diluting a sample due to copious amounts
13 of water intake.

14 And you've always taken in a lot of water and you've
15 never had a substituted sample before; is that accurate?

16 A. Yes.

17 Q. Okay.

18 THE COURT: I have one question. Have you had a
19 urinalysis during the time you were taking the blood
20 pressure medication?

21 THE WITNESS: Yes.

22 THE COURT: And that came back normal as well?

23 THE WITNESS: Yes.

24 THE COURT: Was that with the Alliance or --

25 THE WITNESS: With my union doctor. Before you

1 get on the ship, I take a physical.

2 THE COURT: Oh, okay. When was the last -- when
3 was the test that you took previous to this one of 2
4 July?

5 THE WITNESS: It had to be in May just before I
6 went in in May.

7 THE COURT: Just before you went in?

8 THE WITNESS: Yes.

9 THE COURT: No problems that you're aware of?

10 THE WITNESS: Yes.

11 THE COURT: There were no problems that you were
12 aware of?

13 THE WITNESS: No problems.

14 THE COURT: Okay.

15 MR. GIBBS: Your Honor, at this time the Coast
16 Guard has no further questions.

17 THE COURT: Okay. Mr. Syfert.

18 RE-DIRECT EXAMINATION

19 BY MR. SYFERT:

20 Q. When you arrived in the hospital area, was there
21 anybody peeing in a cup at that point in time in front of
22 you?

23 A. Yes, it was a male in the rest room.

24 Q. Okay. So someone was already there by the time
25 you reached there?

1 They had already been conducting testing?

2 A. Um-hum.

3 Q. Okay.

4 THE COURT: That's a yes.

5 Go ahead I'm sorry. She can't take down the
6 unh-unh's and the unh-huh's.

7 THE WITNESS: Okay.

8 THE COURT: So I just made sure that she knew
9 that was an affirmative answer.

10 BY MR. SYFERT:

11 Q. And you just mentioned that you had physicals
12 before you got on the ship?

13 A. Yes.

14 Q. At any point in time during your history, has
15 there ever been a time when you didn't pass a physical?

16 A. No.

17 MR. SYFERT: Okay. That's all I have, Your
18 Honor.

19 THE COURT: Thank you, Mr. Syfert.

20 Ms. Solomon, I just have some background
21 questions for you if you would, please.

22 THE WITNESS: Okay.

23 THE COURT: Ms. Solomon, your date of birth is
24 1970, correct?

25 THE WITNESS: Yes.

1 THE COURT: June?

2 THE WITNESS: Yes.

3 THE COURT: Were you born in the Jacksonville
4 area?

5 THE WITNESS: Yes.

6 THE COURT: Did you attend high school?

7 THE WITNESS: Yes.

8 THE COURT: Did you graduate?

9 THE WITNESS: Yes.

10 THE COURT: When did you graduate?

11 THE WITNESS: '89, June of '89.

12 THE COURT: Did you ever take any college, any
13 technical school?

14 THE WITNESS: Yes.

15 THE COURT: Tell me.

16 THE WITNESS: Gupton Jones Mortuary Science.

17 THE COURT: Really. Did you complete that
18 course?

19 THE WITNESS: No.

20 THE COURT: Was that a college -- was that a --
21 were you planning to become a mortician?

22 THE WITNESS: Yes.

23 THE COURT: How much college did you have on your
24 -- was it a -- were you actually going to become a
25 mortician, or were you gonna be an assistant?

1 THE WITNESS: Mortician.

2 THE COURT: Okay. So you started college for
3 that?

4 THE WITNESS: Yes.

5 THE COURT: What school?

6 THE WITNESS: Gupton Jones Mortuary Science.

7 THE COURT: And how long a course would that have
8 been?

9 THE WITNESS: Two and a half years.

10 THE COURT: And how far did you get into it?

11 THE WITNESS: About a year.

12 THE COURT: And then you decided it wasn't for
13 you?

14 THE WITNESS: No, just was young and...

15 THE COURT: Had other things to do?

16 THE WITNESS: Yes.

17 THE COURT: Okay. And -- now, you've had your
18 merchant mariners credentials since 1993?

19 THE WITNESS: Yes.

20 THE COURT: Did you start with a AB card?

21 THE WITNESS: No.

22 THE COURT: What did you start out with?

23 THE WITNESS: A regular credential SA, steward
24 department.

25 THE COURT: I'm sorry?

1 THE WITNESS: SA, Steward assistant.

2 THE COURT: Oh, you were SA.

3 Okay. And then you've progressed from there
4 until you're -- you've become chief cook on the
5 vessels?

6 THE WITNESS: Yes.

7 THE COURT: Over that period of time, how many
8 urinalysis do you think you've taken?

9 THE WITNESS: Numerous.

10 THE COURT: Have you ever failed?

11 THE WITNESS: No.

12 THE COURT: Have you ever been told that your
13 sample was not -- was either substituted or
14 adulterated?

15 THE WITNESS: No.

16 THE COURT: As far as you know every test that
17 you've taken, you've completed successfully?

18 THE WITNESS: Yes.

19 THE COURT: Okay. Are you normally, as in this
20 case, you were the only female aboard?

21 THE WITNESS: Yes.

22 THE COURT: In this particular case, was there
23 anything unusual with the collection of the urine
24 sample that you said, oh, didn't seem right with all
25 the other ones that you've taken?

1 I'm talking about the collection itself, not the
2 results.

3 THE WITNESS: Didn't pay attention.

4 THE COURT: Okay. So it wasn't anything that
5 drew your attention to anything being different?

6 THE WITNESS: Nothing but he didn't use gloves
7 and he had a lot of urine laying around, but I didn't
8 pay attention.

9 THE COURT: You heard what he said yesterday
10 about why he didn't have on gloves?

11 THE WITNESS: Yes.

12 THE COURT: Okay. Was the ship -- did the ship
13 make port at the time the test was given?

14 THE WITNESS: Yes, in July.

15 THE COURT: The day before?

16 THE WITNESS: No, the same day.

17 THE COURT: Oh, the same day.

18 THE WITNESS: Yeah, he came aboard.

19 THE COURT: Okay. Do you recall at what time the
20 ship made port?

21 THE WITNESS: No. That morning.

22 THE COURT: Was it early in the morning? Was at
23 after 0800, before 0 --

24 THE WITNESS: Late -- late morning.

25 THE COURT: Late morning. So within the hour of

1 the ship making port, you were notified that there
2 would be a urinalysis?

3 THE WITNESS: Yes.

4 THE COURT: Okay. I have nothing further for
5 Ms. Solomon.

6 Let me check with Mr. Syfert first.

7 Mr. Syfert, any redirect, any questions based on
8 mine?

9 MR. SYFERT: No. I have nothing further for
10 Ms. Solomon.

11 THE COURT: Mr. Gibbs?

12 MR. GIBBS: Yes, Your Honor.

13 Just to confirm, exhibit three was entered for
14 the respondent, correct?

15 THE COURT: RX3 was admitted.

16 MR. GIBBS: Great. Thank you.

17 RE-CROSS EXAMINATION

18 BY MR. GIBBS:

19 Q. Just a couple of other questions. Several of
20 these documents are interesting to me.

21 Are you non-African American?

22 A. (Shakes head negatively).

23 Q. Okay. Because that's stated on numerous ones of
24 these tests.

25 Are you 124 years old 'cause this one says that you

1 were born in 1885?

2 THE COURT: I saw that as well and I was gonna
3 ask Mr. Syfert those questions as opposed to this
4 witness.

5 MR. GIBBS: Yes, Your Honor.

6 THE COURT: But if you want to go ahead and bring
7 it now, we can -- we can -- we'll clear it up
8 afterwards.

9 MR. GIBBS: I mean, that's really what I was
10 trying to get at, that we have numerous --

11 THE COURT: Inconsistences.

12 MR. GIBBS: Yes, Your Honor.

13 THE COURT: I was gonna ask that same question,
14 but I was gonna direct that to Mr. Syfert.

15 So -- but if you want to finish up with her since
16 it's on the record, you can.

17 BY MR. GIBBS:

18 Q. For the court, could you repeat the date of your
19 birth again?

20 A. June 22nd, 1970.

21 MR. GIBBS: Really that's all the Coast Guard
22 wanted to do was point out the inconsistencies, Your
23 Honor.

24 The Coast Guard has no further questions.

25 THE COURT: Thank you very much.

1 MR. GIBBS: Yes, Your Honor.

2 THE COURT: I know she didn't generate the
3 report, but I'm gonna ask you because you noticed it
4 too, I'm sure.

5 FURTHER RE-DIRECT EXAMINATION

6 BY MR. SYFERT:

7 Q. Ms. Solomon, did you generate these reports, the
8 ones he just showed you?

9 A. No.

10 Q. Okay. Did you have any input into the content of
11 those reports?

12 A. No.

13 Q. And did you obtain those reports later on?

14 A. No.

15 Q. I mean, later on you obtained the report after
16 they were generated?

17 I mean, these are old reports, correct?

18 A. Yes.

19 Q. Sure -- are you trying to mislead this court in
20 any way by saying there's -- that you -- are you trying to
21 pretend you're 115 years old?

22 A. No.

23 MR. SYFERT: Thank you.

24 THE COURT: No. I understood that.

25 I think the point that Mr. Gibbs was making was

1 that if there are errors in the report, how reliable
2 are the reports themselves.

3 I certainly don't think he was implying that
4 Ms. Solomon had anything to do with it.

5 Okay. You can stand down.

6 And before we get to our other witness, I wanted
7 to ask Mr. Syfert something 'cause I wrote it down and
8 of course we discussed your initial motion.

9 You made a motion for discovery for a tape
10 recording from the initial phone conversation.

11 MR. SYFERT: Yes.

12 THE COURT: I understand why you made the
13 motion. I understand now the information where it
14 came from, but when I -- obviously when I heard
15 Dr. Khella, I wasn't quite clear.

16 Here is it -- I mean, and the Coast Guard has
17 indicated that there was no tape recording.

18 Is it still your position that there was a tape
19 recording, or only that if there was, you're entitled
20 to it; or are you going to withdraw it all together?

21 MR. SYFERT: It was there up until trial. We
22 asked for the recording. The recording was supposedly
23 made.

24 THE COURT: On the first call.

25 MR. SYFERT: On the first call. But the Coast

1 Guard hasn't provided it to us.

2 THE COURT: Okay. Mr. Gibbs, my understanding of
3 the testimony was that it was not recorded.

4 MR. GIBBS: That's correct.

5 THE COURT: Does the Coast Guard have any
6 information that there was a recording?

7 MR. GIBBS: If I could, Your Honor, I'm gonna let
8 Lieutenant Nee, John Nee, explain this to you.

9 THE COURT: Lieutenant. Sure.

10 LIEUTENANT NEE: Your Honor, originally when I
11 talked to Dr. Khella, when we started the
12 investigation, he said he normally records one, but
13 there was not one of this -- the initial phone call.

14 There was one of the union doctor at a later date
15 and he had that. There was a large file. We did not
16 gather that because of the relevance.

17 And the motion that Mr. Syfert asked for, was the
18 initial phone call, the documents.

19 I have the e-mails. If the court wants that, I
20 will definitely get that to you.

21 From a previous date, we did not pursue it
22 because it doesn't exist as far as from Dr. Khella.

23 THE COURT: Okay. If it exists then, of course,
24 the Government is aware that that would constitute
25 error in these proceedings, however, since the

1 Government's witness and the representations by
2 Lieutenant Nee indicate that it doesn't exist, I'm
3 obviously not gonna order any type of -- you can't
4 turn it over.

5 So for that portion of the motion, I would
6 address it in that fashion.

7 If at any time, Mr. Syfert, you learn otherwise,
8 I think clearly it's -- you know, it certainly would
9 interject error into the proceedings.

10 But at this point, I'm going to motion -- at that
11 point would be moot.

12 Okay. What I think we need to do is, since we've
13 had Ms. Solomon on the stand, we -- next, Mr. Syfert,
14 you are going to contact one of your telephonic
15 witnesses?

16 MR. SYFERT: Dr. Syfert, yes, Your Honor.

17 THE COURT: Wait. Can we -- is he standing by,
18 or do you want to take a few minutes?

19 MR. SYFERT: I told them we would be probably
20 calling around 11:30.

21 THE COURT: Great. Let's --

22 MR. SYFERT: And so we could take a quick ten and
23 then --

24 THE COURT: And then saddle up and make sure you
25 get in touch with him.

1 Okay. We'll go in recess for ten minutes.

2 MR. SYFERT: Thank you, Your Honor.

3 (Short recess)

4 THE COURT: Okay. Back on the record.

5 MR. SYFERT: Thank you, Your Honor.

6 THE COURT: You're quite welcome.

7 MR. SYFERT: Before we begin, I did want to
8 introduce two learned treatises both from the Journal
9 of Analytical Toxicology. I've provided both to the
10 U.S. Coast Guard.

11 One called Urine pH: the Effects of Time and
12 Temperature after Collection. And another one called
13 Normalization of Urinary Drug Concentrations with
14 Specific Creatinine -- Gravity and Creatinine.

15 Your Honor, may I approach?

16 THE COURT: Of course, please.

17 Any objection, Mr. Gibbs?

18 MR. GIBBS: No, Your Honor.

19 THE COURT: Okay. The Court will receive --
20 we're going to make these five and six.

21 MR. SYFERT: Yes, Your Honor.

22 THE CLERK: We have five and six.

23 THE COURT: We do have a five and six?

24 MR. SYFERT: Oh, yeah, we have a six.

25 THE COURT: So we're going to make one RX-5 and

1 7? How about RX-4 and RX-5.

2 And for the record, the Normalization of Urinary
3 Drug Concentrations with Specific Gravity and
4 Creatinine will be RX-4 for identification. I will
5 admit that. And Urine pH: the Effects of Time and
6 Temperature after Collection, I'll mark RX-5 for
7 identification and I will also admit that.

8 Okay. Both exhibits without objection are
9 admitted -- I mean, excuse me. Both exhibits without
10 objection are admitted.

11 Okay.

12 MR. SYFERT: And, Your Honor, before we call the
13 witness, here is the curriculum vita of Dr. Syfert.

14 THE COURT: Wonderful. I was gonna ask for it.

15 MR. SYFERT: That is an old one from 2007. It
16 does need updating, but the background is there.

17 THE COURT: Great. And how about if I mark this
18 -- since we have a 6, can I mark it RX-7?

19 MR. SYFERT: Yes, Your Honor.

20 THE COURT: And any objection, Mr. Gibbs?

21 MR. GIBBS: No, Your Honor.

22 THE COURT: Okay. RX-7 will be admitted.

23 DR. SYFERT: Hello.

24 MR. SYFERT: Hello, Dr. Syfert.

25 DR. SYFERT: Hello.

1 MR. SYFERT: Can you hear me?

2 DR. SYFERT: Yes, I can.

3 MR. SYFERT: This is Graham. I'm gonna turn you
4 over to the judge right now.

5 DR. SYFERT: Very well.

6 THE COURT: Hello, Doctor. How are you?

7 DR. SYFERT: I'm doing fine. Thank you.

8 THE COURT: That's good to hear. How are things
9 in Chili?

10 DR. SYFERT: Absolutely beautiful.

11 THE COURT: I -- I -- you know what, I'm very
12 jealous. I want you to know that. Doctor --

13 DR. SYFERT: Well...

14 THE COURT: Go ahead.

15 DR. SYFERT: That's all.

16 THE COURT: Doctor, as the other Mr. Syfert
17 probably told you, my name is Judge Metry. And I'm
18 the judge that's hearing this matter.

19 DR. SYFERT: Yes.

20 THE COURT: I want to thank you for the time that
21 you're taking to help us figure things out here and
22 doing it telephonically as well, and being so prompt
23 on that end of the phone.

24 What I need to do, is I need to just basically
25 verify who you are and then -- and swear you in. And

1 then what I'll ask you to do is give us your full name
2 and spell your last name.

3 I also have been presented with your curriculum
4 vita. I understand that it's a little old, but I'm
5 sure that one of the two attorneys will figure that
6 out for us.

7 So to begin with, can I get you to -- I know
8 you're on that end of the phone, but can I get you to
9 please raise your hand for me.

10 DR. SYFERT: Yes.

11 THE COURT: Okay.

12 - - - - -

13 **DALE F. SYFERT, M.D.**

14 Having been produced and first duly sworn as a witness,
15 testified as follow:

16 THE WITNESS: I do.

17 THE COURT: Great.

18 Okay. Now, there is a -- there is an
19 identification process that we have to take. And
20 what -- normally how this is done, if someone is
21 standing by, we won't need to swear that person in.

22 What you need to do is just hand the person some
23 type of picture identification. I'll have the person
24 pick up the phone and just ask them to identify their
25 selves -- themselves, and identify what type of -- and

1 describe what kind of identification you've given
2 them.

3 And then if everything -- I'm sure they'll say
4 yes, yes, and yes, and then they'll hand you the phone
5 and then we can start on with the testimony.

6 Is there someone standing there nearby that can
7 help identify you?

8 THE WITNESS: Unfortunately, no. I'm in a hotel
9 room alone, so...

10 MR. GIBBS: Your Honor, there should be --
11 objection. We -- there should be somebody in the
12 lobby, or somebody that could, you know...

13 MR. SYFERT: Your Honor, I can identify him.
14 He's my father. I can identify him by the voice and
15 this is Dale Syfert.

16 MR. GIBBS: Even more reason to object, Your
17 Honor.

18 THE COURT: Well, I don't know about that. I
19 mean, you can object as to -- as to perhaps some type
20 -- we can talk about some type of bias or anything.

21 But in any event, I'm assuming you have a -- I'm
22 assuming you have a -- you still have a United States
23 driver's license, Doctor?

24 THE WITNESS: I have -- I can give you my
25 passport number.

1 THE COURT: Even better.

2 Do you have that with you?

3 THE WITNESS: I do. It is 488030342.

4 THE COURT: And it's made out to Dale Syfert --
5 Syfert?

6 THE WITNESS: Yes.

7 THE COURT: Great. And that's your son that's
8 here in court with us today?

9 THE WITNESS: I believe so, yes.

10 THE COURT: Do you recognize his voice?

11 THE WITNESS: Yes, sir.

12 THE COURT: Okay. And I'm sure he recognizes you
13 -- yours.

14 All right. Well, okay. Here's what we're gonna
15 do, we're gonna go forward and if the Coast Guard
16 still has some objection, which they may, I'll -- I'll
17 -- we'll verify your identification somehow.

18 Besides that, someone may walk around that you
19 can hand your passport to.

20 THE WITNESS: That's fine.

21 THE COURT: Does that sound okay?

22 THE WITNESS: That's fine.

23 THE COURT: Okay. Wonderful.

24 All right. What we'll do is hold the matter for
25 identification. I do have Mr. Syfert's --

1 Dr. Syfert's passport number. I also have
2 verification from Mr. Syfert, the attorney, who is
3 with us today that is -- that he's familiar with
4 Dr. Syfert and that he knows his voice; and that he's
5 his father.

6 I mean, the idea is to make sure that we know
7 whose on the phone and that there is the assurance
8 that the person testifying, is the person who they
9 claim to be.

10 At this point I am willing to go forward with the
11 testimony. We'll deal with this issue, if it still
12 exist, at the end of the -- at the end of the
13 testimony.

14 Hopefully it will resolve itself by someone
15 showing up and then Dr. Syfert can hand them the ID.

16 Okay. Okay. Next voice you're gonna hear is
17 gonna be of young Mr. Syfert. And if at any time
18 there's a break up in the transmission or there's a
19 problem, you just let us know and we'll -- we'll
20 clarify things for you okay, Doctor?

21 THE WITNESS: Yes, sir.

22 THE COURT: Great.

23 DIRECT EXAMINATION

24 BY MR. SYFERT:

25 Q. Will you please state your name for the record?

1 A. Dale Frank Syfert. S-Y-F-E-R-T.

2 Q. And where are you currently employed?

3 A. I'm currently employed at the Malcom Randall VA
4 Hospital in Gainesville, Florida.

5 Q. And what was your major in college?

6 A. My major in college was chemistry.

7 Q. Okay. What is Lispril?

8 A. Lispril is a blood pressure medication. Actually
9 it's a -- it tends to a combination of Lisinopril and
10 Hydrochlorothiazide.

11 Q. Does it have any effects with -- which would lead
12 to a situation of a low creatinine?

13 A. It -- the diuretic portion of that medication,
14 produces a more dilute urine. And if someone -- and
15 inhibits the reabsorption of water in the kidney and
16 that's what puts more water out there for -- to make a
17 more dilute urine, yes.

18 Q. Have you reviewed documents relating to
19 Ms. Solomon's medical history?

20 A. I have.

21 Q. What does it show about the specific gravity of
22 her urine?

23 A. She normally runs -- of course, the specific
24 gravities vary, but she normally runs specific gravity in
25 to the mid range about 1.02 or thereabouts. There have

1 been some variation over the years.

2 Q. Are you aware of any medical conditions such as
3 -- or any medical conditions at all that can have an
4 affect on the creatinine and the specific gravity?

5 A. Well, anything -- that's a pretty broad
6 question. Let me take that in pieces.

7 Anything -- creatinine is produced by the break down
8 of muscle. And so any -- anything which would accelerate
9 break down of muscle and certainly raise the amount of
10 creatinine being eliminated.

11 For example, someone who has been in a major accident
12 or even played a game of football and been tackled, will
13 raise the serum creatinine.

14 Things that, from the disease point of view, would
15 lower that. Anything which is a muscle -- a muscle
16 wasting disease and incubates something, for example, old
17 POLO victims that had very low muscle mass, would lower
18 their serum creatinine.

19 But for most people serum creatinine unless you've got
20 a -- an underlining kidney problem, runs fairly stable.
21 The main thing we see are people with kidney problems
22 where their kidneys are not eliminating creatinine.

23 Q. Okay. Do you know the affect of Tagamet, the
24 over-the-counter medication, on creatinine?

25 A. Tagamet actually can lower the serum creatinine.

1 Q. Okay.

2 A. It -- not -- I'm sorry. Not the serum, the urine
3 creatinine.

4 Q. Is there any relationship between blood serum
5 creatinine and urine creatinine?

6 A. Well, there is. It's such a stable relationship
7 that in most people, it's used as a way of measuring blood
8 flow through the kidney.

9 And, in fact, there is a thing called creatinine
10 clearance that we use all the time to evaluate kidney
11 function.

12 So it's -- it's basically -- for most people it's a
13 representation of how much blood is being processed by the
14 kidney at any one time.

15 MR. SYFERT: Your Honor, at this point and time,
16 I'd like to seek to introduce the blood tests that
17 were previously objected to.

18 THE COURT: Let me see those for a second.

19 Are you -- well, I guess, let me ask.

20 MR. SYFERT: Actually, Your Honor, never mind.
21 Never mind about all the blood work. We'll do without
22 that. We'll do without that.

23 THE COURT: Okay.

24 MR. SYFERT: We'll just go without it.

25 THE COURT: Okay. Thank you.

1 BY MR. SYFERT:

2 Q. Does diet affect creatinine?

3 A. It can if you have someone who, for example, is a
4 -- a very strict vegetarian with a low protein intake.
5 They can come up with a lower serum creatinine.

6 I presume the opposite in the case, but I don't know
7 anyone that eats that much meat.

8 Q. What about exercise, does that have an affect on
9 creatinine, urinary creatinine?

10 A. It can depending again on how much -- it's a
11 process -- creatinine is produced by the break down of
12 muscle, and if muscle breaks down, more creatinine is
13 released.

14 In most people it tends to be pretty stable. So it
15 has to be a fairly extreme amount of exercise, but, yes.

16 Q. Could obesity be a factor?

17 A. Obesity can be a factor, with it, yes.

18 Q. In your opinion, as a professional physician,
19 could the analysis of Simone Solomon in this case be
20 explained through her taking medication?

21 A. It could, although, I don't believe that they --
22 the creatinine -- the urinary creatinine can be low as a
23 result of the diuretic.

24 I mean, there are any number of medicines that can
25 affect it, but the one that she was taking seems most

1 likely would the Hydrochlorothiazide in the Lisinopril.

2 Q. Assuming that Ms. Solomon on this one occasion --
3 is it possible for a human to produce a creatinine level
4 of 1.3 and a specific gravity of 1.0223?

5 A. Yes. Yes.

6 Q. Would you be surprised if Ms. Solomon wasn't able
7 to reproduce urine having that level?

8 A. If she was not able to reproduce it?

9 Q. Correct.

10 A. No, it wouldn't surprise me. She does have a
11 history of, looking at her records, of usually running a
12 fairly low urinary creatinine and that's records going
13 back ten years.

14 So, no, it wouldn't surprise me if she was not able
15 to.

16 Q. Why is urine refrigerated before testing?

17 A. Urine is refrigerated before testing to cut down
18 or reduce the biodegrading of some of the components of
19 the urine. It's also refrigerated to stop or dramatically
20 slow bacteria.

21 Q. Can creatinine degrade underneath high
22 temperatures?

23 A. Yes, it can.

24 Q. You stated earlier that you reviewed the medical
25 records of Simone Solomon. Did you see evidence of

1 contamination in previous tests?

2 A. She has a long history of urinary tract
3 infections. Many are urine -- urine tests over the
4 previous ten years, some of them demonstrated
5 contamination with yeast. Others demonstrated
6 contamination with bacteria.

7 Q. Can contaminants such as yeast or bacteria in the
8 proper incubation temperature lead to the degrading of
9 creatinine?

10 A. Yes, it can.

11 Q. What happens to specific gravity over time when
12 exposed to high temperatures?

13 A. Over time, specific gravity can actually -- well,
14 it will remain pretty much the same.

15 Q. Would you say that the average human urine is
16 acidic or basic?

17 A. The average human urine runs just very slightly
18 on the basic side.

19 Q. And did you look at the -- there's previous
20 testimony that the pH of Ms. Solomon's urine was 8.8.
21 What can you tell me about the pH of an 8.8 level?

22 A. That -- that's almost non-physiologic. I mean,
23 that's -- that is almost impossible for an otherwise
24 normally functioning person with an average diet to
25 produce a urine like that. I mean, that's really outside

1 the norm.

2 Q. And do you know what the average pH of human
3 urine over a considerable time in heat is?

4 A. There are studies that reference a pH of 9.0 over
5 a period of time with heat. I mean, it can obviously vary
6 whether they're exposed to heat for a short time or a long
7 period.

8 Q. 8.8 is close enough to 9, maybe it should be
9 considered part of that; is that correct?

10 A. It's very close to nine. I -- if it's -- if I
11 got that back on a urinalysis, I would tend to not -- I
12 would tend to believe there was an error in the testing.

13 Q. In your opinion as a professional physician,
14 could the urinalysis of Simone Solomon be explained
15 through exposure to heat over a length of time?

16 A. There are certainly studies that show a
17 degradation of creatinine over a long period of time
18 particularly if there's bacterial contamination.

19 But, of course, there's been documentation that this
20 particular specimen had bacterial contamination, but we
21 don't know and we'll never know that. We do know she's
22 had it in the past. And even clean urines degrade
23 creatinine over a period of time. That's pretty well
24 documented in the literature.

25 Q. If I told you that the urine spent three days in

1 a truck with temperatures raising -- ranging from 90 to
2 110 degrees, could that possibly lead to a 1.3 creatinine?

3 A. It could certainly lead to a drop in creatinine
4 from whatever it was to begin with, yes. And I -- a 1.3
5 would not be out -- outside the realm of possibly.

6 Q. If I told you that it spent six days, would that
7 be enough time, maybe?

8 A. I -- I think that that would be -- if three days
9 was enough, then six days would be enough, too, yes.

10 Q. If Simone Solomon substituted tap water for her
11 urine, what would the expected readings have been?

12 A. If I see a patient that had substituted tap
13 water, and I have seen those on more than one occasion,
14 what I tend to look for is a low urine creatinine and a
15 low specific gravity.

16 In this case, no. I would have expected her to have a
17 low creatinine and a low specific gravity. And she didn't
18 have -- she just had a low creatinine, just that by
19 itself. She had a fairly normal or upper end specific
20 gravity, and then she had this pH problem which is kind
21 of, you know, very much the upper end of what's normal.

22 Q. What temperature would you expect it to be when
23 it came out of the human body?

24 A. 98.6 if they don't have a fever.

25 Q. Right. Ms. Solomon's sample had a specific

1 gravity of 1.0223. Is this consistent with water?

2 A. No, not at all.

3 Q. Is this consistent with her previous urine over
4 the past years?

5 A. It's -- yes, she's certainly had urine -- she's
6 had urinalysis with various specific gravities, but this
7 is consistent with what the urine specimen that she had
8 that have been submitted to, what I assume, her regular --
9 regular physician.

10 Q. Does Ms. Solomon's sample suggest that she added
11 water to your -- her urine in an effort to beat a drug
12 test?

13 A. No. It suggests that there's something --
14 there's something wrong with the testing, but it doesn't
15 suggest that -- it would be difficult to add water and
16 come up with that specific gravity which is a pretty
17 normal specific gravity for human urine.

18 Q. Are you familiar with any substances which would
19 produce the specific gravity of 1.0223 and a creatinine of
20 1.3?

21 A. You can -- I thought about it quite a bit since
22 you first brought this to me to look at. And I mean,
23 certainly if one added -- there are many things.

24 You can add anything with water to make it, you know,
25 slightly higher specific gravity.

1 For example, salt, baking soda, sugar, but, you know,
2 if I were to set out to do that, personally, as someone
3 who trained in chemistry, I'd have to have very accurate
4 calibrating burets, scales. I'd have to make a solution.

5 I would have difficulty doing that in a -- except --
6 anywhere except in a chemistry laboratory. And the idea
7 that I could just mix something up and dump it in and
8 still come out with on-target specific gravity, a high pH
9 and a low serum creatinine, I think that would give the
10 average biochemist a good test question.

11 Q. In your professional opinion, did Simone Solomon
12 offer a substance other than her urine in this case?

13 A. I have no reason to believe that she did.

14 Q. Do you know why -- why would it be important to
15 have a retest on this; or would it be important to have a
16 retest on this?

17 A. Well, the unfortunate thing is that none of us
18 can go back to that specific day and get another urine
19 from that day.

20 So the only thing that's left, there are two -- there
21 are three assumptions as far as I'm concerned.

22 One is, that the urine was very skillfully and
23 cleverly altered in some way, which I can't imagine, as I
24 said outside a chemistry laboratory.

25 The second, is that there was biological

1 deterioration.

2 And the third is there was some inaccuracy in the
3 testing instruments.

4 And I know, in a clinical situation, what we would
5 frequently do is ask the lab to run the test again usually
6 on a different machine, or with a different operator, or
7 different reagents just to be certain that, in fact, the
8 results were what we got the first time. It's a very
9 standard medical procedure.

10 MR. SYFERT: And that's all the questions that I
11 have for you.

12 Next you're gonna speak with a Mr. Gibbs.

13 Has anybody come nearby you in the past half hour
14 that --

15 THE WITNESS: No.

16 MR. SYFERT: Okay. Thank you.

17 CROSS EXAMINATION

18 BY MR. GIBBS:

19 Q. Good morning, Mr. Syfert. Thank you for your
20 time.

21 A. Thank you.

22 MR. GIBBS: Real quick to confirm with you, Your
23 Honor, we did enter all of exhibit 24?

24 THE COURT: All of it.

25 MR. GIBBS: Thank you.

1 BY MR. GIBBS:

2 Q. Dr. Syfert, are you -- I apologize.

3 MR. SYFERT: Syfert.

4 BY MR. GIBBS:

5 Q. I want to make sure I pronounce your name
6 correctly, sir.

7 Are you a certified medical review officer currently?

8 A. No, I'm not. No, I'm not.

9 THE COURT: Certified what?

10 MR. GIBBS: He's not.

11 THE COURT: Of what?

12 MR. SYFERT: Medical review officer.

13 THE COURT: Oh, he's not a MRO. Okay.

14 BY MR. GIBBS:

15 Q. And did you say that there is or is not any
16 correlation between creatinine found in blood and urine?

17 A. There is -- there is a correlation. I don't
18 think that's the question that was asked of me directly.

19 Q. Okay.

20 A. If -- if people that run low serum creatinines,
21 will also tend to run low urinary creatinines. They just
22 deal with what is filtered out of the urine.

23 Q. Okay.

24 A. The point is it's a very -- we assume that it's
25 standard as a means of measurement. It's so standard, we

1 use it as a means of measuring a kidney function, but even
2 those studies go back to that and look at what the serum
3 creatinine is over a period of time relative to what the
4 urine concentration of creatinine.

5 So, yes, there is a definite relationship there.

6 Q. Thank you, Doctor.

7 So if your creatinine level in urine goes down, what
8 would you -- what would you expect the specific gravity to
9 do?

10 A. It would go -- you would expect it to actually go
11 down also.

12 Q. What if it went up?

13 A. If it went up, you can expect the specific
14 gravity to go down.

15 Q. I'd like to reask that question.

16 If the creatinine level --

17 A. I'm sorry. I believe I have that confused.

18 If the specific -- if the creatinine concentration
19 went down, you would expect the specific gravity of the
20 urine to go down.

21 If the serum creatinine concentrated urine -- if the
22 urine creatinine concentration went up, you'd expect the
23 serum creatinine -- the specific gravity to go up also.

24 Q. Thank you. And, Your Honor --

25 A. I'm sorry.

1 Q. I mean, Doctor -- I'm sorry?

2 A. I'm sorry.

3 Q. What is the creatinine -- the normal range in
4 blood?

5 A. I don't have that figure right off the top of my
6 head. I could get it for you.

7 Q. Okay. Do you know -- do you know what it is in
8 urine?

9 A. Normally in urine, I think it runs about 1.0 --
10 about 1.5 and it can be much higher. I believe up in the
11 200.

12 Q. Okay. And you did review Ms. Solomon's test
13 results, correct?

14 A. Yes, I did.

15 Q. Okay. And I did hear you earlier say two
16 different answers about the pH. That it was towards the
17 high side and then you referred to it as high.

18 Is 8.8 within normal range?

19 A. 8.8 is the upper end of normal, yes.

20 Q. Okay. So it is in the normal range.

21 And -- and was it -- was this test conducted -- was --
22 do you know what type of test this was?

23 A. No, I don't.

24 Q. Okay. Are you familiar with the DOT regulations?

25 A. I've reviewed them, but not -- I can't say that

1 I'm familiar with them.

2 Q. Okay. So you're telling me that 1.15 is normal
3 for a creatinine in urine? How is --

4 A. It can be, yes.

5 Q. How is it measured?

6 A. Well, the ones that I did are usually measured
7 with a dip stick technique, the colorimetric reaction and
8 then done on a force -- a device that uses light
9 reflection and quantifies that.

10 I don't know what one this was done with.

11 Q. Is it done in parts per million or what?

12 A. Oh, I believe -- I believe it's done in mg/dL, I
13 believe.

14 Q. In your capacity as an addiction specialist, did
15 you ever review test results of other patients?

16 MR. SYFERT: Objection, Your Honor. He's not an
17 addiction specialist.

18 MR. GIBBS: It says it right on his --

19 MR. SYFERT: That was the other one. The other
20 doctor.

21 MR. GIBBS: Oh, I grabbed the wrong one. I
22 apologize. Strike that.

23 BY MR. GIBBS:

24 Q. As a -- as a medical officer, excuse me.

25 As a medical officer have you reviewed test results of

1 other patients?

2 A. Yes.

3 Q. When the test results were received, did you turn
4 -- did you turn around and call the lab if it had -- if it
5 was normal or in, you know, dilute, positive or anything?

6 Did you ever call and question the laboratory on their
7 techniques?

8 A. Yes.

9 Q. Could you give me an example of why you would
10 call the lab?

11 A. Frequently if -- again I work at a VA hospital
12 and we get laboratory specimens that come in from outside
13 clinics. And after hours, which is when I work, I'm
14 expected to respond to those.

15 And if we get one back that is, you know, incompatible
16 with life or borderline unusual, we call back and ask the
17 lab to repeat it because there's no way to get the person
18 in to get the test results -- tests redone at 2:00 in the
19 morning.

20 Q. I'm sorry. I missed that last part.

21 A. These are done in our hospital evenings and
22 nights. If there is something dramatically abnormal, the
23 lab calls me with results. It's my responsibility to
24 follow up on those results and to take appropriate action.

25 If the lab results that I get back are

1 non-physiologic, I will frequently ask the lab to retest
2 them and rerun them.

3 So, yes, I do that occasionally. That is not
4 infrequently.

5 Q. You were stating earlier that -- oh, actually let
6 me jump back to this.

7 You said creatinine level is normal at 1.5 mega --
8 mg/dL?

9 A. I think that's the lower end of normal; 1.5, yes.

10 Q. And what would be the upper end?

11 A. In fact, a patient has had them much higher than
12 that. You get them sometimes in the 150, 200 range.

13 You have to understand, we don't see these except
14 really as part of urine drug tests. They're not a
15 standard test done on an average patient.

16 Q. Okay. All right.

17 You stated earlier that lack of protein could affect
18 the creatinine levels; is that accurate?

19 A. That is correct as I understand it, yes.

20 Q. If an individual ate egg whites in the morning
21 and tested at 13 -- 1:30 p.m. that day, would you expect
22 there to be a protein issue with a creatinine level?

23 A. No, sir.

24 Q. Can you tell me approximately what temperatures
25 degrade creatinine?

1 A. Well, the test results that I've seen, talk about
2 you know, temperatures above normal in the 100 to 120
3 range.

4 Q. Would you say it was -- I actually spoke to the
5 medical review officer yesterday in court and he said it
6 would be in the 500 degree range to degradate the
7 creatinine level.

8 Would you say that that's accurate or inaccurate?

9 A. I think that's -- there's degrading and there's
10 degrading. I think 500 degrees --

11 Q. I apologize, sir. He said melting; did he not?
12 I think he said melting. You're melting it at that
13 point. So I apologize. Not degrading, melting it.

14 A. Yes.

15 Q. Okay. So that's reasonable?

16 A. I think you're talking apples and oranges here.

17 Q. Okay. Well, then you're saying that it could
18 degrade at 100 degrees in temperature over two, three
19 days?

20 A. Yes.

21 Q. Also you stated that there were three reasonable
22 causes for her levels to be at that.

23 Number one -- actually, could you repeat them, please?

24 A. I think I -- what I said was: That -- that
25 someone had actually, you know, diluted the urine with

1 water. Another one -- that varied up with an
2 appropriately valid solution to give you that.

3 The other is that her, you know, kidney function was
4 bad, I believe I said.

5 And the third one is just a low serum creatinine.

6 THE COURT: Doctor.

7 THE WITNESS: I'm sorry.

8 THE COURT: Let me -- let me go over my notes
9 with you.

10 What I think you said was: Number one, the urine
11 was altered. Two, there was biological degradation or
12 degrading.

13 THE WITNESS: You're right.

14 THE COURT: And then three was testing error.

15 THE WITNESS: Testing error, right.

16 THE COURT: No problem. Does that sound about
17 right?

18 THE WITNESS: Yes, sir.

19 THE COURT: Okay.

20 BY MR. GIBBS:

21 Q. Okay. So one of the forms was being diluted with
22 water, correct?

23 A. No, I don't think you can get a urine that looked
24 like Ms. Solomon's by diluting it with water.

25 Q. Right. Are you aware of any products that are

1 for sale out anywhere that are actual adulterants that are
2 utilized where somebody tried to adulter a specimen?

3 A. I'm sure there are. If they're selling plastic
4 penises in catalogs, I'm certain there are people that
5 sell adulterants.

6 Q. You're accurate.

7 THE COURT: What was that? I didn't --

8 MR. GIBBS: I'm not gonna repeat it, Your Honor.

9 THE COURT: I didn't think anything was --

10 BY MR. GIBBS:

11 Q. Could you repeat that, Doctor?

12 A. There are such extensive list of things that are
13 currently being sold in an attempt to bypass the alter
14 urinalysis, up to and including plastic, fake penises,
15 that I would not be surprised if someone told me that
16 there was something available to dump in the urine.

17 So, no. I was answering his question no and
18 explaining my reason.

19 THE COURT: Okay. Thank you.

20 MR. GIBBS: I think that's the best answer I've
21 ever heard in court.

22 BY MR. GIBBS:

23 Q. Thank you, Doctor.

24 So is it possible that this sample was substituted
25 with something? With -- whether it was purchased, whether

1 it was mixed, whatever; is it possible?

2 A. In medicine the answer to the question of is
3 something possible is almost always yes.

4 Now, is it possible that a police officer gives
5 someone a speeding ticket for going 500 miles an hour?
6 It's possible, but is it very likely?

7 And in the answer to this one, I would have to say,
8 while it's not very likely, it is possible.

9 Q. Okay. May -- for the court, would you please
10 explain why you would say it's not likely?

11 A. Because it's -- you have to have, to accomplish
12 this, to dilute this, to get a urine that has a -- almost,
13 almost normal, but not quite urinary creatinine, to get
14 the specific gravity that's right on target, you would
15 have to have an appropriate solution as it is titrated
16 very carefully to give you just this amount.

17 You have to have -- you have to measure it accurately
18 with the urine that is being submitted. You have to
19 measure the volume of the solution that you're going to
20 blend.

21 If you make the solution yourself out of say, baking
22 soda or salt or sugar, you would have to weigh and measure
23 that very, very carefully.

24 I'll tell you, it was -- I would -- I would be -- I
25 would struggle. As someone who majored in chemistry --

1 Q. Right.

2 A. -- I would struggle to do the calculations. And
3 I, with all due respect to Ms. Owens(sic), I doubt that
4 she did that herself.

5 Q. I understand that completely and you're solely
6 addressing the part of mixing ability.

7 What I'm more or less -- there's packs you can put
8 under your armpit and dump into a sample. There's a, for
9 lack of a better word, there's this one thing called a
10 whizzinator and it actually --

11 A. Exactly.

12 Q. So what I'm asking you specifically is: Is it
13 possible in this situation that the defendant actually
14 poured an adulterant into the specimen and didn't mix
15 anything?

16 A. Again, the answer to is it possible, is always
17 yes, anything is possible.

18 Q. Okay. Would you find it odd that the same sample
19 traveled with 21 other samples and none of these results
20 came --

21 MR. SYFERT: Objection, Your Honor.

22 THE COURT: I want to hear what the -- I'll
23 overrule that. Go ahead.

24 BY MR. GIBBS:

25 Q. Would you find it unusual that this sample in

1 question with these results, also traveled with 20 other
2 specimens that were collected off the same vessel with the
3 respondent and received at the lab, left -- left Dubai in
4 tact and were received at the lab in tact, were tested in
5 accordance with 49.CFR 40 and all of the tests were
6 negative with the exception of Ms. Solomon's?

7 MR. SYFERT: Objection, Your Honor.

8 THE COURT: Okay. You can ask that question, but
9 you gotta lay a better foundation for him.

10 So, yes, I'm gonna uphold that. I think as an
11 expert, it may be within his realm, but I need you to
12 lay a better foundation for him to answer that
13 question. And the reason I'm saying that is this: Is
14 that --

15 MR. SYFERT: I would just ask him to suggest a
16 hypothetical, Your Honor.

17 THE COURT: Okay.

18 MR. SYFERT: If he wants to prove that point --

19 THE COURT: That's -- that's -- yeah, just give
20 it -- lay a better foundation for him. Lay a better
21 hypothetical.

22 MR. GIBBS: I think, I --

23 THE COURT: You get what I'm talking about?

24 MR. GIBBS: Yeah, I think so.

25 THE COURT: Okay.

1 BY MR. GIBBS:

2 Q. Addressing the heat and the degradation issue,
3 Mr. Syfert.

4 A. Yes.

5 Q. There were 21 samples pulled off that vessel and
6 20 of the samples were negative, one was positive -- or
7 excuse me, one was treated as a refusal to submit, not
8 consistent with human urine. And they all traveled in the
9 same box together.

10 Would you say that the environment, the heat issue
11 here would have affected one sample versus the other 20?

12 A. Well, the -- respectfully, the problem with your
13 hypothetical is you have no idea what the urine creatinine
14 was to begin with in the rest of the urine specimens or
15 Ms. Owens' (sic).

16 Ms. Owens' (sic) urines over the last decade, and I
17 mean, many urines that are consistently are medical
18 records, have always run at the low end of normal.

19 So it wouldn't take much to bump her down below
20 normal; not much at all.

21 Now if most people run at a high -- significantly
22 higher creatinine, if they lose ten percent, it's still
23 gonna come off on your test as a normal urine. And you're
24 gonna say it's normal. None of these others were normal.

25 But if Ms. Owens loses ten percent of the creatinine

1 in her urine due to the heat, it's gonna flip up as
2 abnormal. You can't expect them to come back abnormal.

3 I can tell you, and this not a urine test, but it's a
4 similar heat-related thing. Many years ago, I was in a
5 situation where a -- some blood specimens sat out for a
6 long period of time in the car in Florida sunshine and
7 about a third of them back with traumatically abnormal lab
8 work.

9 So did it affect all of them, no.

10 Q. Right. I understand that part.

11 A. Did it affect some of them, yes.

12 Q. I understand completely.

13 I'm actually looking at one of the exhibits that your
14 son introduced: Normalization of Urinary Drug
15 Concentrations with Specific Gravity and Creatinine.

16 Are you familiar with this document?

17 A. Yes, I've looked at it.

18 Q. Okay. I'm reading on -- actually on page three.
19 And it says "Histograms of specific gravity and creatinine
20 values from 10,899 pain patient -- pain patient urine
21 specimens are illustrated in Figure 1". And then it
22 breaks down all of the -- you know, the differences
23 between them.

24 And it says " Out of that 10,899, a total a 5 urine
25 specimens that were .05 percent had creatinine measures of

1 less than 2.0 mega -- or milligrams to dekaliters(sic) and
2 the specific gravity measures of these specimens were in
3 the range of 1.004 to 1.0178.

4 Thus, none met the current Department of Health and
5 Human Services criteria. And none of them were reported
6 as substituted.

7 Does that sound accurate, sir?

8 A. If that's what that page read, yes, sir.

9 MR. GIBBS: Your Honor, at this time, the Coast
10 Guard has no further questions.

11 MR. SYFERT: No further questions.

12 THE COURT: Doctor, I have a couple questions for
13 you; is that okay? Could you spend a minute with me?

14 THE WITNESS: Absolutely.

15 THE COURT: I know you're probably on vacation.

16 THE WITNESS: I am.

17 THE COURT: Well, thank you. We don't mean to
18 interrupt your vacation.

19 And assuming the Coast Guard has -- is still
20 maintaining their objection to who you are, is there
21 any chance anybody can ID you?

22 THE WITNESS: No, there's not, Your Honor. I'm
23 sorry. I --

24 THE COURT: That's okay.

25 THE WITNESS: I arranged to be alone so there

1 would be no distractions of noise hoping would benefit
2 this phone conversation.

3 THE COURT: Well, that's true, too. So we
4 appreciate that as well.

5 Okay. Let me -- first, I just need to ask you a
6 couple of questions.

7 I think that everybody agrees that pH will be
8 affected by time and temperature and urine.

9 Is that pretty -- you're pretty comfortable with
10 that?

11 THE WITNESS: Yes.

12 THE COURT: Okay. Now, I think where we're
13 coming up with some type of disagreement is the fact
14 -- the affect of time and heat in urine on creatinine
15 levels.

16 And what I heard you say was, and I'll go back to
17 my notes, is that over time heat can cause a reduction
18 in the creatinine level.

19 Is that -- is that a fair synopsis of what you
20 said?

21 THE WITNESS: Yes.

22 THE COURT: Okay. Now, in your professional
23 opinion, can you tell me under what perimeters you are
24 talking about in two separate instances? Number one,
25 time and number two, heat.

1 And then, as an ancillary tell me if the increase
2 of one would -- if increasing one, would have the
3 similar affect as if both were constant.

4 Do you understand what I'm asking?

5 THE WITNESS: Not, exactly, Your Honor.

6 THE COURT: Okay. Let's try it one at a time.

7 Number one, you -- your testimony is that heat --
8 that exposing urine to heat would cause a reduction in
9 the creatinine level.

10 THE WITNESS: It can, yes.

11 THE COURT: It can. Okay. It can.

12 THE WITNESS: It can.

13 THE COURT: And now when you talk about -- I want
14 to be specific, when you talk about exposure to heat,
15 do you mean anything above zero degrees Celsius?

16 THE WITNESS: Yes, actually, it's documented as
17 being temperature related. When things get warmer --
18 when it gets warmer, the reactions that lead to the
19 degradation tend to speed up.

20 THE COURT: Okay. The degradation --

21 THE WITNESS: The other -- the other --

22 THE COURT: Go ahead. I'm sorry.

23 THE WITNESS: The other thing that makes it --
24 and I think -- well, if I understand correctly, you're
25 looking for a pretty linear response. If it gets

1 warmer and warmer, is there more degraded?

2 THE COURT: Correct.

3 THE WITNESS: Right. And the answer is, no,
4 unfortunately because there is -- some of the
5 degradation is due to bacterial or contaminate
6 reaction in the urine; a urinary tract infection, for
7 example.

8 And if the bacteria -- there's more rapid
9 degradation until you get to the point that the
10 bacteria are simply cooked off; they're pasturized, if
11 you will. And then the degradation is by a different
12 mechanism.

13 So I can't give you a direct linear answer to
14 that question. Say the hotter it got, the more likely
15 this would be to happen.

16 THE COURT: Okay. Fair enough.

17 THE WITNESS: And in terms of giving you an
18 actual number.

19 There is evidence that the longer -- more days
20 that this is exposed, the greater the incidents of a
21 lower serum creatinine. That's pretty well
22 documented.

23 THE COURT: Okay. Now, is it the action of the
24 bacteria that degrades the creatinine, or is it the
25 passage of time and the application of heat, or all of

1 them?

2 THE WITNESS: All of them.

3 THE COURT: Okay. Is it --

4 THE WITNESS: It's a biological system and they
5 -- they -- time and, you know, we all get old and so
6 does the creatinine in them.

7 THE COURT: Okay. That's -- I understand that.

8 Now, I want to talk specifically this particular
9 case.

10 I'll give you a -- I'll give a hypothetical. So
11 if you want to, please -- if you want to jot down a
12 note, I want you to do so.

13 I want you to assume --

14 MR. GIBBS: Your Honor, are we speaking about
15 serum or are we talking about urine because --

16 THE COURT: Did I say serum? I meant, urine.

17 MR. GIBBS: No, no. The -- Dr. Syfert said serum
18 a couple of times.

19 THE WITNESS: I'm sorry. I meant urine.

20 THE COURT: If he said serum, I missed it. I
21 thought it was understanding urine.

22 Okay. I want to give a -- I want to give you a
23 hypothetical, okay?

24 THE WITNESS: Yes.

25 THE COURT: Okay. Now I'm gonna give you some

1 dates. I want you to assume that on 2 July 2012, a
2 urine specimen that had a temperature range of between
3 90 and 100 degree Fahrenheit was submitted.

4 I want you to assume that that urine sample was
5 not refrigerated for -- I wasn't ready for this, so
6 it's gonna take me a second to get this date, for nine
7 days.

8 I want you to assume that for the first three
9 days, it was kept in temperatures that range between
10 90 degrees at the low and 110 at the high. After
11 that, it was maintained in temperatures which would be
12 20 degree Celsius.

13 And I want you also to assume that on January
14 11th, the serum creatinine level --

15 MR. GIBBS: July.

16 THE COURT: Excuse me. The urine creatinine
17 level was 1.3 and it had a pH of 8.8 and had a
18 specific gravity 1.0223. Got all that?

19 THE WITNESS: Yes.

20 THE COURT: Okay. Now, can you tell me whether
21 or not that was human urine -- that those results
22 could be reasonably obtained from a sample of human
23 urine?

24 THE WITNESS: Yes, I believe they could
25 reasonably be obtained from a sample of human urine,

1 yes.

2 THE COURT: Okay. Now, I want you to assume that
3 those values are true. Is there any way to back that
4 up in terms of giving me a -- oh, and by the way,
5 that's without adulterants, right, that's a pure
6 sample of human urine?

7 THE WITNESS: I -- if you say so, yes.

8 THE COURT: No, I mean, would -- could -- you --
9 can you state that that --

10 THE WITNESS: Oh, yes, yes.

11 THE COURT: Okay.

12 THE WITNESS: I was assuming it was an
13 adulterant, yes.

14 THE COURT: Okay. Okay. Fair enough.

15 Now, based on those facts and circumstances that
16 I gave you, can you tell me what percentage of human
17 -- okay.

18 Does that assume -- does your answer assume that
19 there was no degradation of any -- of either the
20 creatinine, a change in the specific gravity, or the
21 change in the pH; or is that unimportant to -- were
22 those factors unimportant to your conclusion?

23 THE WITNESS: If you're asking me -- no, I do not
24 assume that at the time this urine specimen -- the
25 hypothetical urine specimen, you're talking about was

1 donated, had it been obtained fresh, run that day and
2 the specimen maintained in safe condition, I do not
3 think you would have gotten these results, no.

4 But I think these results are compatible with the
5 way the specimen was handled over the following, you
6 know, nine to twelve days.

7 THE COURT: Okay.

8 THE WITNESS: They're not incompatible. Let me
9 say that.

10 THE COURT: I understand. And can you tell me,
11 if you can, would you have expected -- what percentage
12 loss would you -- what percentage change would you
13 have expected in each of the three categories that I
14 gave you, or are you not in a position to say so?

15 THE WITNESS: I'm not in a position to say so
16 because there are a lot of other factors.

17 I can say that there are -- there's documented
18 evidence in the literature that the creatinine
19 diminishes if it's not refrigerated as opposed to a
20 refrigerated specimen.

21 THE COURT: Okay.

22 THE WITNESS: And we just don't know how much.

23 THE COURT: Right. Okay. I understand.

24 And you're not in a position to estimate that for
25 me?

1 THE WITNESS: No, I'm not really.

2 THE COURT: No, that's okay.

3 THE WITNESS: Not with any -- not with any
4 reasonable degree of accuracy and medical certainty,
5 no.

6 THE COURT: Okay. I'm good with that.

7 It seemed to me, and I'm assuming you have the --
8 we marked this as Respondent's Exhibit 4. It's called
9 Normalization of Urinary Drug Concentrations with
10 Specific Gravity and Creatinine.

11 THE WITNESS: Yes.

12 THE COURT: Do you have that with you?

13 THE WITNESS: Yes.

14 THE COURT: Okay. Great.

15 Is it fair to say that that article was -- oh, I
16 beg your pardon. I gave -- I got you the wrong one.
17 Go to the other one, the -- pH, urine pH.

18 THE WITNESS: Yes.

19 THE COURT: Okay. The title of that is Urine pH:
20 the Effect of Time and Temperature after Collection.

21 Is it fair to say that the primary purpose of
22 that article was to document the affect on urine pH
23 after time and temperature?

24 THE WITNESS: Yes.

25 THE COURT: Okay. That really didn't have

1 anything to do with the affect of either temperature
2 or time on creatinine?

3 THE WITNESS: You asked about the primary
4 purpose. That obviously was the title, so I assume
5 that was their primary purpose.

6 The researcher, though, did test the creatinine
7 and found that it diminished with time particularly
8 with exposure to heat and other perimeters.

9 THE COURT: I understand that. In looking at the
10 conclusion 'cause that's where I want you to look at,
11 the second sentence.

12 THE WITNESS: Right.

13 THE COURT: Urine pH and creatinine concentration
14 are used as criteria in specimen validity testing.
15 Both are unstable at higher temperatures, with urine
16 pH increasing and creatinine concentration decreasing.

17 THE WITNESS: Exactly.

18 THE COURT: Okay.

19 THE WITNESS: I'm sorry. Are you still there?

20 THE COURT: I am. I just want to make sure that
21 I understand.

22 Obviously, I've just seen this and I want to take
23 a look at it.

24 THE WITNESS: I mean, the conclusion of their
25 article is that with the passage of time and the

1 exposure to heat, pH increases and creatinine
2 decreases, which is exactly what you have with this
3 lady's urine.

4 THE COURT: Right I understand that.

5 What period of time were they -- were they -- was
6 -- and that's what I'm looking for.

7 What period of time were they talking about in
8 this study? Was it just a matter of days?

9 THE WITNESS: They did them at one, two, three,
10 seven, eight, nine, ten and fourteen days post point.

11 THE COURT: Okay.

12 THE WITNESS: With the specimens being handled in
13 different ways.

14 They are very specific on their methodology. It
15 starts on page 488.

16 THE COURT: Okay. Okay. I want to just update
17 your curriculum vita for me if you would, Doctor.

18 THE WITNESS: Yes, certainly.

19 THE COURT: The last -- the last employment I
20 have and it says 2003 to present, you're the emergency
21 -- you're an emergency department physician, primary
22 care division at Randall VA Medical Center.

23 Is that still true today?

24 THE WITNESS: Yes, sir.

25 THE COURT: Okay. Everything else on that

1 curriculum vita is as it is written, it's still true
2 today?

3 THE WITNESS: As far as I know, yes, sir.

4 THE COURT: Okay.

5 THE WITNESS: I haven't reviewed it in a while,
6 but it's -- there's no significant abnormalities
7 there.

8 THE COURT: Okay. Okay.

9 Mr. Syfert, based on my questions, any questions
10 of Dr. Syfert?

11 MR. SYFERT: No, Your Honor.

12 MR. GIBBS: Yes, Your Honor.

13 THE COURT: Mr. Gibbs, go ahead.

14 BY MR. GIBBS:

15 Q. Dr. Syfert, Judge Metry stopped reading. I'd
16 like to continue on to the next couple of sentences.

17 It says: When the decreasing urine creatinine
18 concentration was combined with the stable specific
19 gravity measurements, none of the incubation temperatures
20 produced results that would be classified as either
21 substituted or dilute.

22 A. Yes.

23 MR. GIBBS: Okay. Thank you very much.

24 The Coast Guard has no questions.

25 THE WITNESS: That was in their study.

1 MR. GIBBS: Right.

2 The Coast Guard has no further questions, Your
3 Honor.

4 Your Honor, the Coast Guard does request that we
5 ask the same hypothetical questions of Dr. Khella.

6 THE COURT: That's fine.

7 Okay. Hey, Doctor, thanks so much. Enjoy your
8 vacation. We'll look forward to you coming back home.

9 THE WITNESS: Thank you, sir.

10 THE COURT: Thank you very much.

11 Okay. Since we have an identification issue, is
12 the Coast Guard -- I mean, it's something we can clear
13 up, of course, post -- post hearing when he returns.

14 Does the Coast Guard wish to persist --

15 MR. GIBBS: Yes, Your Honor.

16 THE COURT: -- in the identification issue?

17 Okay. We'll have to do that. I'll have to look
18 at that, but I'm pretty sure that we're still gonna
19 have to get some type of identification.

20 I think we can do it probably by -- even
21 interrogatory or something which I could draft up.

22 MR. SYFERT: However we can do it, we'd be happy
23 to do --

24 THE COURT: Sure.

25 MR. SYFERT: -- anything. We could make a phone

1 call after lunch and see if someone was gonna --

2 THE COURT: That, too.

3 MR. SYFERT: -- be available.

4 THE COURT: That, too. You know, we can do it
5 anytime, but I will take a look at that issue.

6 Okay. It's 12:30. How many more witnesses are
7 we gonna have?

8 MR. SYFERT: One, Your Honor. And we're planning
9 on doing him about 1:30. I told him I was gonna call
10 him between 1:30 and 2:00. So it looks like we're all
11 set.

12 THE COURT: Okay. We'll all meet back here at
13 1345. Does that work for the Coast Guard?

14 MR. GIBBS: Yes, Your Honor.

15 THE COURT: Okay. And you're gonna have
16 Dr. Khella on re-direct?

17 MR. GIBBS: Yes, Your Honor.

18 THE COURT: Or rebuttal?

19 Okay. Court is in recess. We'll see you at
20 1345.

21 MR. SYFERT: Thank you, Your Honor.

22 THE COURT: Thank you.

23 (Short recess)

24 THE COURT: Okay. How are we doing here -- back
25 on the record, please.

1 MR. SYFERT: Yes, Your Honor, if I may, we can
2 call Dr. Syfert. I believe, he's got someone with him
3 now who can verify his identity.

4 THE COURT: Oh, beautiful. Thank you.

5 DR. SYFERT: Hello.

6 MR. SYFERT: Hello, Dr. Syfert.

7 DR. SYFERT: Yes.

8 MR. SYFERT: I'm gonna turn you back over to the
9 judge. Do you have someone near you that can verify
10 your identity?

11 DR. SYFERT: I do. Just a moment.

12 Hello.

13 THE COURT: Hi, Doctor.

14 DR. SYFERT: Yes, sir.

15 THE COURT: Hi. It's Judge Metry again.

16 Hey, you have someone there that you can hand
17 your ID to?

18 DR. SYFERT: I do. Just a moment, please. I'm
19 gonna actually give her my passport card.

20 THE COURT: Great. And hand her the phone, too,
21 or if you're speaker, that's great.

22 DR. SYFERT: I will. I will. The passport card
23 has a slightly different number. And here she is.

24 THE COURT: Great.

25 MS. MARY SYFERT: Hello.

1 THE COURT: Hello. How are you?

2 MS. MARY SYFERT: I am fine.

3 THE COURT: Great. Hey, this is Judge Metry.
4 And what I need you to do is -- could you please --
5 we're not gonna swear you in, but we please -- could
6 you please tell me your name?

7 MS. MARY SYFERT: Yes, Mary Elizabeth Syfert.

8 THE COURT: Okay. Ms. Syfert, could you -- do
9 you have -- do you know the gentleman sitting next to
10 you?

11 MS. MARY SYFERT: Yes.

12 THE COURT: Okay.

13 MS. MARY SYFERT: I do.

14 THE COURT: Okay. And you've known him for how
15 long?

16 MS. MARY SYFERT: I knew you were gonna ask that
17 question. I think 42 years.

18 THE COURT: Okay. So there's no doubt in your
19 mind that's Dr. Syfert there sitting next to you?

20 MS. MARY SYFERT: No, there's no doubt in my
21 mind.

22 THE COURT: Okay. You okay with that?

23 MR. GIBBS: Yes, Your Honor.

24 THE COURT: All right. The Coast Guard is
25 satisfied.

1 Hey, could you please pass the phone back to
2 Dr. Syfert, please.

3 MS. MARY SYFERT: Okay. Just a minute.

4 DR. SYFERT: Yes, sir.

5 THE COURT: Dr. Syfert, this -- we just called
6 you back just for the -- the purpose of the
7 identification matter.

8 But, you know, I had one other question for you
9 and I thought about it after I let you hang up.

10 THE WITNESS: Yes, sir.

11 THE COURT: Do you remember that hypothetical I
12 gave you?

13 THE WITNESS: Yes.

14 THE COURT: What would happen in that instance to
15 the specific gravity of that urine sample?

16 Would it go up, or would it go down?

17 THE WITNESS: It would stay about the same,
18 perhaps go up a little depending on whether the urine
19 specimen was unsealed at any time.

20 THE COURT: Because of the increase in bacteria
21 count?

22 THE WITNESS: Right. It's -- it's somewhat
23 variable.

24 THE COURT: Is the increase in pH at all related,
25 in your opinion, to the decrease in the creatinine

1 level?

2 THE WITNESS: To the decrease in the creatinine
3 level?

4 THE COURT: Right. 'Cause you said -- you told
5 me that the --

6 THE WITNESS: Yes. Yes. Because the break down
7 product from the creatinine will give you amino --
8 will give you -- will change the acidity of the urine.

9 THE COURT: Which would cause the pH to go up?

10 THE WITNESS: Right.

11 THE COURT: And would that also cause the
12 specific gravity to rise, or would the break down in
13 the creatinine cause the specific gravity to drop?

14 THE WITNESS: It would work out to be -- it's not
15 totally predictable, but it's about a wash.

16 THE COURT: So we wouldn't expect any change in
17 specific gravity under my -- under that hypothetical I
18 gave. We would expect the increase in the pH and a
19 decrease in the creatinine.

20 Is that fair?

21 THE WITNESS: Right. But you can't -- but you
22 can't -- what I'm saying is, not that you wouldn't
23 expect, you can't predict exactly what it's gonna be.

24 THE COURT: You can't expect which part?

25 THE WITNESS: The change in specific gravity.

1 THE COURT: Oh, you cannot predict the change in
2 the specific gravity?

3 THE WITNESS: Not -- you can't -- you cannot
4 predict a specific change.

5 THE COURT: You mean --

6 THE WITNESS: It depends on whether there's
7 bacterial contamination or not and a bunch of other
8 things.

9 THE COURT: So the specific gravity may go up, or
10 it may go down, or it may stay the same?

11 THE WITNESS: Or stay the same, yes.

12 THE COURT: Okay. Okay.

13 DR. SYFERT: All right.

14 THE COURT: I believe that's all I have.

15 I'm gonna ask, Mr. Gibbs, anything from -- Mark,
16 anything from --

17 MR. GIBBS: One second, Your Honor.

18 THE COURT: Just one second, Doctor. We're gonna
19 ask that hypothetical again, but I just want to make
20 sure we're -- I was clear on that -- that portion,
21 Doctor, because you were very clear that the
22 creatinine would drop. You were very clear that the
23 pH would rise.

24 THE WITNESS: Yeah, it would go up.

25 THE COURT: But I didn't ask you about the

1 specific gravity. And what you've indicated, it may
2 rise, it may go up, or it may stay the same; is that
3 correct?

4 THE WITNESS: That's my understanding, yes.

5 THE COURT: Okay. And that's based on the
6 hypothetical that I gave you?

7 MR. SYFERT: Yes.

8 THE COURT: Okay.

9 MR. GIBBS: Just one question, Dr. Syfert.

10 You said that the specific gravity would go up.
11 Did you say in a sealed or unsealed?

12 THE WITNESS: It -- one of the variables is
13 whether due to bacterial action or not.

14 And in the other variable, if it were unsealed
15 and water evaporates, then you expect a specific
16 gravity to go up.

17 So how long the thing sat unsealed.

18 MR. GIBBS: Right.

19 DR. SYFERT: And that's what's verified or not.

20 MR. GIBBS: No further questions.

21 THE COURT: And if it was sealed, what would you
22 expect?

23 THE WITNESS: You would be more inclined to
24 expect it to stay about the same.

25 THE COURT: Okay. Young Mr. Syfert.

1 MR. SYFERT: I have no questions, Your Honor.

2 THE COURT: All right. Thank you again, Doctor.

3 THE WITNESS: Thank you.

4 THE COURT: If we need you, I'm sure -- I'm sure
5 young Mr. Syfert can get ahold of you if we need you
6 for anything.

7 THE WITNESS: I'm sure he will.

8 THE COURT: Thank you, bye-bye.

9 Thank you. Okay. Who do you have, Mr. Syfert?

10 MR. SYFERT: We also -- we would now like to call
11 Dan Logan, Dr. Dan Logan, who sent -- I have his CV,
12 which I already provided the Coast Guard, and I'm
13 hoping to get him on my first shot.

14 DR. LOGAN: Hello.

15 MR. SYFERT: Hello. Is this, Dr. Logan?

16 DR. LOGAN: Yes.

17 MR. SYFERT: This is Graham Syfert. I have you
18 in the courtroom here in Duval County and I'm gonna
19 turn you over to the judge.

20 DR. LOGAN: It will take me a couple of minutes.
21 I have a patient in my office right now. Can you hold
22 on?

23 MR. SYFERT: Yeah.

24 THE COURT: Call him back.

25 DR. LOGAN: Okay. I'd appreciate it. Just give

1 me about five minute here and call me back.

2 MR. SYFERT: Okay. Thank you.

3 DR. LOGAN: I'm sorry. All right.

4 MR. SYFERT: No problem. Bye-bye.

5 THE COURT: Well, we could have used that patient
6 to ID him, but, I guess, we can wait.

7 Okay. All right. It's 1355. I'm assuming
8 Dr. Logan is gonna test -- well, he'll testify and
9 give what testimony he does.

10 Government, at that point -- you're gonna rest,
11 Mr. Syfert?

12 MR. SYFERT: Yes, Your Honor.

13 THE COURT: At that point is the government going
14 to call any rebuttal witnesses?

15 MR. GIBBS: We're gonna call Dr. Khella. And
16 we've already confirmed with him.

17 THE COURT: Great. So will we finish today?

18 MR. GIBBS: I think so.

19 MR. SYFERT: That's my hope, Your Honor.

20 THE COURT: Mine, too. Okay.

21 Let's go off the record.

22 (Short Break)

23 DR. LOGAN: Hello.

24 MR. SYFERT: Hello, Dr. Logan.

25 DR. LOGAN: Yes.

1 MR. SYFERT: Are you free now?

2 DR. LOGAN: Yes, I am. Thank you.

3 MR. SYFERT: Okay. Thank you very much for
4 appearing here today by phone.

5 I'm gonna turn you over to the judge. He's gonna
6 ask you some questions.

7 Do you have someone there handy that you could
8 grab to verify your identity?

9 DR. LOGAN: Sure. Hang on a second.

10 MR. SYFERT: Okay. I'm gonna turn you over to
11 the judge now.

12 DR. LOGAN: All right.

13 THE COURT: Hi, Doctor.

14 DR. LOGAN: Yes, sir.

15 THE COURT: Hi. This is Judge Metry. Thank you
16 very, very much, and I want to let you know that all
17 of us appreciate your time here. The Coast Guard, of
18 course, Mr. Syfert and myself.

19 There's a couple of things that we need to do,
20 and you know what, since you have someone there, we'll
21 do that first.

22 Could you put that person on the phone --

23 DR. LOGAN: Of course. No problem.

24 THE COURT: And I'll just ask him or her a couple
25 of questions.

1 DR. LOGAN: Okay.

2 MS. ALLISON TAYLOR: Hi.

3 THE COURT: How are you?

4 MS. ALLISON TAYLOR: I'm well.

5 THE COURT: Good. This is Judge Metry.

6 MS. ALLISON TAYLOR: Yes, sir.

7 THE COURT: Could you please tell me your name?

8 MS. ALLISON TAYLOR: My name is Allison Taylor.

9 THE COURT: Hello, Ms. Taylor.

10 Ms. Taylor, you're in the office with a gentleman
11 right now?

12 MS. ALLISON TAYLOR: I am.

13 THE COURT: And can you tell me that person's
14 name?

15 MS. ALLISON TAYLOR: Dr. Daniel Logan.

16 THE COURT: And how long have you know Dr. Logan?

17 MS. ALLISON TAYLOR: Over a year.

18 THE COURT: Okay. With that, do you want ID?

19 You want ID?

20 MR. GIBBS: Yes, Your Honor.

21 THE COURT: Okay. Could you do me a favor and
22 ask him to -- does he wear a name tag or a badge or
23 anything?

24 MS. ALLISON TAYLOR: Yes, he does.

25 THE COURT: Okay. Is that -- and is the picture

1 on that the same as Dr. Logan's?

2 That's Dr. Logan's ID he's wearing?

3 MS. ALLISON TAYLOR: Yeah, it a University of
4 Florida ID with Daniel P. Logan, MD on it and his
5 picture.

6 THE COURT: All right. And that's -- okay.
7 Thank you very, very much.

8 Could you please hand the phone back to
9 Dr. Logan?

10 MS. ALLISON TAYLOR: Certainly. Here you go.

11 THE COURT: Thank you, ma'am.

12 DR. LOGAN: Yes, sir.

13 THE COURT: Thank you, Doctor.

14 Doctor, you're the final witness -- the final new
15 witness in this matter. So we probably heard a lot of
16 testimony, but one thing I need to do is I'm going to
17 swear you in, and then I'm gonna ask you to state your
18 full name and spelling it for my court reporter here.

19 DR. LOGAN: Okay.

20 THE COURT: And then after that, Mr. Syfert will
21 ask you some questions, after that, the Coast Guard
22 representative, Mr. Gibbs, may ask you some questions,
23 and then I may or may not after that, if there is
24 anything that needs to be -- you know, anything that's
25 unclear.

1 If at anytime you need to ask us something or you
2 need to take a break, you just let us know and we'll
3 work with you as much as we can, okay?

4 DR. LOGAN: Okay. Sounds fine.

5 THE COURT: I know you're on that side of the
6 phone, but I need you anyway to raise your right hand
7 for us and just answer this question.

8 - - - - -

9 **DANIEL PHILIP LOGAN, M.D.**

10 Having been produced and first duly sworn as a witness,
11 testified as follow:

12 THE WITNESS: I do.

13 THE COURT: Great. Your full name, sir.

14 THE WITNESS: Daniel Philip Logan.

15 THE COURT: And could you spell it for us,
16 please?

17 THE WITNESS: D-A-N-I-E-L P-H-I-L-I-P L-O-G-A-N.

18 THE COURT: Thank you very, very much, Doctor.
19 And the next voice you'll hear will be Mr. Syfert's,
20 okay?

21 THE WITNESS: Okay. Thank you.

22 THE COURT: Thank you.

23 DIRECT EXAMINATION

24 BY MR. SYFERT:

25 Q. Hello again, Dr. Logan.

1 A. Yes, sir.

2 Q. You provided me with CV; is that correct?

3 A. Yes, I did.

4 Q. And is that CV that you provided me, true and
5 correct to the best of your knowledge?

6 A. Yes.

7 Q. Okay. I'm just gonna go straight into it here.
8 What is Lispril?

9 A. I'm sorry?

10 Q. What is Lispril?

11 A. Lisinopril.

12 Q. Yeah, that's it, Lisinopril.

13 A. Lisinopril. It's what's called an ace
14 inhibitor. The -- it has to do with a blood pressure
15 medication.

16 Q. Okay. Does it have any affects which would lead
17 to a situation of low creatinine?

18 A. It conceivably could cause some -- some
19 delusional effects.

20 Q. Is this because it's a diuretic?

21 A. Well, there's some diuretic effect. It causes
22 the body to hold onto -- it prevents the body from holding
23 on to salt which causes more fluid loss, and that's how it
24 affects blood pressure.

25 So it is -- you can have a more dilute urine with

1 that. So it's a diuretic in that regard.

2 Q. Okay. Are you aware of any medical conditions
3 that can have an effect on creatinine and specific
4 gravity?

5 A. Sure. There are a whole variety of them both
6 increasing and decreasing that are things that cause
7 abnormalities and diuretic hormone. Things like head
8 injury, for example. Meningitis can cause changes there.

9 The changes in muscle mass can cause changes in the
10 creatinine. It can make it lower or higher. Renal
11 failure can cause changes or renal insufficiency.

12 So there are a whole variety -- a whole spectrum of
13 things that can affect it in both directions.

14 Q. Can diet affect creatinine?

15 A. Yes, particularly -- it kind of depends upon the
16 -- it is a muscle metabolite, and so the things that cause
17 increase in muscle mass can do that.

18 Q. What about exercise?

19 A. Again, the greater the muscle mass, that would --
20 would make a difference in terms of increasing the
21 creatinine. Decreasing is lack of exercise and loss of
22 muscle mass.

23 People who are -- don't exercise much or are pretty
24 sedentary will have a lower creatinine, and as a result
25 lowers urinary creatinine.

1 Q. Thank you. And you have training as an MRO; is
2 that correct?

3 A. Yes.

4 Q. You were an MRO; is that correct?

5 A. That's correct.

6 Q. You're no longer an MRO?

7 A. My last certificate expired a couple of years ago
8 and because of my board certification, there is such cross
9 over that I didn't get the certificate again.

10 But I -- previously my practice involved lots of --
11 mostly transportation companies, trucking companies.
12 That's before I went into training at University of
13 Florida.

14 Q. Okay. And during your -- your time as an MRO,
15 did you have time to review creatinine levels or, you
16 know, potentially substituted samples?

17 A. Sure.

18 Q. And during that time, have you ever had a case
19 with a low creatinine and a high specific gravity?

20 A. I cannot recall a single case. That is such an
21 unusual combination that it is -- I mean, I can't frankly
22 think of a physiologic process that would do that. Nor --
23 nor is it hard -- it's really difficult to imagine a --
24 even a substituted process where someone could manufacture
25 a urine -- a specimen -- not a urine, but a specimen, that

1 would look like that. It would be pretty difficult to do
2 it.

3 Q. Why do you refrigerate urine?

4 A. Well, you don't have evaporation. You don't have
5 metabolism. There could be bacteria. Conceivably it
6 could be yeast, things like that. If you want to slow
7 down any kind of break down of materials in the urine.

8 Q. And can creatinine degrade under a temperature of
9 115 degrees?

10 A. Yes.

11 Q. In urine?

12 A. I believe, it can, yes.

13 Q. Yes. And let's just talk about -- do you have --
14 when you were an MRO, did you have to deal with substance
15 -- or people trying to cheat you?

16 A. Oh, all the time.

17 Q. Okay. And can you tell me if you're aware of any
18 process by which they -- someone could have produced this
19 sample other than -- other than throughout -- through
20 urination?

21 A. Well, what I -- I've tried to think about it. Is
22 that producing the -- having a very low creatinine, you'd
23 almost have to have a premixed specimen in order to do
24 that.

25 I suppose it's possible that you can add salt to a

1 normal urine specimen and raise the specific gravity,
2 while keeping a -- you could dilute it, raise the specific
3 gravity by putting in the salt, but it -- I mean, that's a
4 pretty complicated process plus it is -- you have to be
5 awfully lucky to get just the right amount of salt in it
6 to be able to do it.

7 So it is -- it just seems just implausible that
8 someone could actually manufacture a urine specimen or a
9 -- I'm sorry, a specimen that would look like this.

10 It's just a -- even in looking at MRO books that they
11 -- they almost discount it as if it doesn't exist.

12 Q. If I wanted to cheat your system and I could
13 control the pH, would it be better for me to come in there
14 with a -- with a 9 or 8.8 -- or 9. -- you know, 9.5 or an
15 8.8?

16 A. On the -- on the pH?

17 Q. Yes, on the pH.

18 A. Probably the -- the 8.8. You know, that it is --
19 urine is typically more acidic. There are certain kinds
20 of infections that you see with -- with more alkaline
21 kinds of specimen, but it's -- it's just different. It's
22 just different things.

23 Q. Okay. Can contaminants, such as yeast or
24 bacteria, lead to the degradation of creatinine?

25 A. That's harder to say. I -- I -- it can cause --

1 I don't know for sure that it could, but it is -- it can
2 stop -- it certainly causes changes in other proteins.
3 And so I don't -- I just don't know for sure about
4 creatinine.

5 Q. Okay. What happens to pH over time as the urine
6 is in high heat?

7 A. I'm not sure I can answer that. I don't know.

8 Q. You don't know. What is pH of pure water?

9 A. Seven.

10 Q. And is the average pH of human urine?

11 A. Average pH is just above seven. I'm sorry. It's
12 below seven. What it is, is that usually is a little bit
13 more of the acidic nature. So if you -- you really
14 wouldn't expect that -- that most urines have more acidic
15 substances in them. I'm sorry.

16 Q. Do you what know the average pH of human urine
17 after a few days of sitting around in high heat and high
18 temperature?

19 A. I would expect that it would be in a range around
20 nine.

21 Q. In your opinion, as a professional physician,
22 could the urinalysis of Simone Solomon in this case be
23 explained through an exposure of heat and length of time?

24 A. I think that's possible.

25 Q. Would three days in a box truck -- I guess, you

1 just answer the question.

2 If Simone Solomon had substituted tap water for her
3 urine in this matter, what would the expected readings
4 have been?

5 A. You end up with a creatinine of zero and a
6 specific gravity that would be one. I mean, it is -- it
7 is basically specific gravity is relevant to water.

8 So the more diluted it becomes, the lower the specific
9 gravity. So it would be the opposite of what the specific
10 gravity she had.

11 Q. Okay.

12 A. So tap water -- if she just added tap water even
13 to her own urine, you wouldn't get a specific gravity like
14 what she's got. That's part of the problem here. She has
15 a high specific gravity and that -- that's not compatible
16 with dilution.

17 Q. Are you familiar with any substances which would
18 produce a specific gravity of 1.0223 and a creatinine of
19 1.3?

20 A. I am not. I am not. I've been trying to puzzle
21 over that and ask colleagues if they can think of anything
22 and even the university's toxicologist couldn't come up
23 with anything to help me.

24 So I -- sincerely, I can't think of something that
25 would do that.

1 Q. Could urine do that?

2 A. Could you have a urine that would have that kind
3 of thing? What -- I'll tell what my concern is with that
4 particular specific gravity, is that it is so close to the
5 boarder there of what is possible for physiologic urine.

6 That that's possible, but the -- if you simply
7 concentrated a urine, if you did something to concentrate
8 that urine, that that would be possible.

9 You know, boiling it, that sort of thing that would
10 diminish the volume. That might be possible because it's
11 awfully close to what is -- we would consider a
12 physiologic cut off.

13 Q. Okay. And you just told us about specific
14 gravity. What about the creatinine of 1.3?

15 A. Well, I mean -- now, there are physiologic
16 processes that can cause low -- a low creatinine. What
17 that is is -- it is, you know, much more variable. It is
18 -- typically where you would see a low creatinine like
19 that, would be in a dilute urine. That you would be --
20 you would be seeing two factors there.

21 But the reason is you have someone with a normal
22 urine, but they diluted it, you have a low specific
23 gravity and a low creatinine. That's a very common
24 occurrence. That one we see all the time. No question.
25 I see that day to day. That's what most people try to

1 do.

2 Q. Okay. But that's not this case, is it?

3 A. No, no. That's the point is that -- is that --
4 that's why it's so confusing and because you've got
5 exactly the opposite. This is not something you can
6 produce by dilution. And yet you have a very low specific
7 gravity -- I'm sorry, a very low creatinine, which is --
8 which is much harder to produce physiologically.

9 Q. While you were working as an MRO for the DOT,
10 what would you have done when this reading came across
11 your desk?

12 A. Typically what I would have requested is retest.
13 I mean, there are two options. One is that you just test
14 sample B. It would to get the second specimen so that you
15 -- and run it through another machine.

16 You have to be concerned about calibration with the
17 other machine because you're awfully close here. Is there
18 a -- was there a problem with calibration?

19 So run it through another machine with that second
20 sample. If you're still right on that borderline, I
21 would -- typically would request an observed second
22 specimen.

23 Q. If -- if another MRO stated to you that
24 creatinine will not change in urine in high temperature,
25 would you agree with that statement?

1 A. As an MRO, I would -- that would be my
2 responsibility to communicate that it would -- that I
3 would cancel the test and request retest.

4 Q. Okay. But how would you report this test?

5 A. I'm sorry. I'm having trouble hearing you.

6 Q. I'm sorry. We actually moved the mike so we
7 weren't like -- when we're talking. I apologize.

8 As a DOT qualified medical review officer --

9 A. Yes.

10 Q. -- if you get a specimen ID that is -- has this
11 creatinine level and this specific gravity level, you are
12 mandated to report this. And who would you report it to
13 if it was another mariner holding a Coast Guard
14 credential?

15 A. That would be the Coast Guard from my
16 understanding.

17 Q. Have you ever --

18 A. I have to admit that I -- I have never dealt with
19 the Coast Guard system. I was in Kansas City so it was --
20 it was always with the trucking companies. But...

21 Q. Okay. Would you notify the trucking company from
22 this -- for that test, this one test, would you notify
23 them of the results of this test?

24 A. I would notify them of my request for a retest.

25 Q. Okay. And if the retest came back with the same

1 results, how would you report it?

2 A. I would report it then as a substituted specimen,
3 a failure to test.

4 Q. Not consistent with human urine?

5 A. Correct.

6 MR. GIBBS: Your Honor, the Coast Guard has no
7 further questions.

8 THE COURT: Doctor, I just have a -- well, first
9 let me ask Mr. Syfert.

10 MR. SYFERT: Oh, no, questions, Your Honor.

11 THE COURT: Doctor, I just have a couple.
12 Because -- what I see here that seems to be the
13 problem with all the witnesses -- all the expert
14 witnesses is that we have a high -- higher specific
15 gravity with a low creatinine level.

16 THE WITNESS: Right.

17 THE COURT: Now, this is 1.3 mg/dL, correct?
18 That's what we're talking about?

19 THE WITNESS: This is on the creatinine, yes.

20 THE COURT: And the creatinine -- or creatinine.
21 And in the creatinine level the normal human
22 range is what?

23 THE WITNESS: Typically, it's about 20 would be
24 the most normal, but about 5.

25 THE COURT: Oh, it can -- you mean the normal --

1 the range can be as low as 5 or the normal range is --

2 THE WITNESS: Normal range can be as low as 2,
3 but it is -- it typically is the 5 to 20 is the range
4 that we see it most commonly and above that.

5 THE COURT: Now, I know that you've indicated
6 that you bounced it around your friends in toxicology
7 to figure out what could lead to this type of a
8 result.

9 I don't think anybody is suggesting that
10 Ms. Solomon premixed a sample and said this is what
11 it's gonna turn out to be. I don't think that's what
12 anybody is saying.

13 But let me ask you something. I mean, I'm not a
14 toxicologist, I'm not a chemist, but the problem is
15 the low creatinine and the high specific gravity.

16 THE WITNESS: Right.

17 THE COURT: And I want you to understand this:
18 This urine came out in range, okay?

19 You know what I mean by that, right, temperature
20 wise?

21 THE WITNESS: Oh, okay. Unh-huh.

22 THE COURT: So if it was to be diluted, and
23 again, that's only if, how about something like salt
24 water? Would that account for this?

25 I mean, you know, it's a guess. You know, you

1 toss a little salt water in with your urine. Is that
2 -- could that account for this?

3 THE WITNESS: The dilemma with that is the
4 precision. Is -- is that the likelihood of -- you
5 have to be just incredibly lucky. And I asked that of
6 the toxicologist as well. And they said, boy you --
7 you just almost have to be down to measuring it with a
8 micro scale to be lucky enough to hit right on that
9 number.

10 That -- you know, that you -- you go from a urine
11 and adjust enough salt to be able to do it and stay
12 and -- and come back close to the boarder.

13 It just seems very implausible to me.

14 THE COURT: So you're saying that if a person --
15 and we'll just take me. You know, I -- I give a
16 sample, and then I say you know what, I don't know
17 what's going on. I take -- I got a vile, a thimble
18 full of -- full of salt water and I dump it in there.

19 THE WITNESS: Right.

20 THE COURT: The water is gonna give you a zero on
21 the -- on the creatinine level, correct?

22 THE WITNESS: Correct.

23 THE COURT: The salt is gonna give you a higher
24 specific gravity?

25 THE WITNESS: Correct.

1 THE COURT: Now obviously I don't know the
2 mixture of any salt water. I don't know the mixture
3 of any of this stuff. I'm just saying is that
4 something that could account for what you're doing?

5 And we don't deal in coulds. I just want to know
6 if that could account for it, and would I be -- or
7 would it be so improbably lucky to put that in and get
8 something in that range?

9 THE WITNESS: I just think it's so improbable
10 that I -- I just -- I would find that hard to imagine.

11 THE COURT: Your opinion as a former MRO is that
12 give me the -- give me the possibilities here.

13 Number one, that this is human urine. Is that a
14 possibility?

15 THE WITNESS: Right. And that for some reason
16 that the specific gravity has been increase by
17 evaporation, for example.

18 THE COURT: Well, you know the -- okay. I want
19 you to assume that this is a sealed -- that this was
20 sealed.

21 THE WITNESS: Right. I mean, I -- so it is
22 anything that would cause the -- a rise in the
23 specific gravity and that's much harder to imagine.

24 I mean, you know, there are, again, calibration
25 issues with the machine, markings of error, those

1 kinds of things. That's why when you're right on the
2 boarder, it always is -- it is always uncomfortable.

3 THE COURT: Okay. Two separate aliquots, two
4 separate -- you know, four separate data points. I
5 don't know if they were the same machine.

6 You would not have been the --

7 THE WITNESS: That would be the issue is if it's
8 the same machine that read -- all you do is repeat the
9 same error if you -- if the machine had some kind of
10 problem.

11 But I certainly understand that there were
12 multiple aliquots. I understand that that was done.

13 THE COURT: And as the MRO, would you have been
14 -- if you recall, would you have been -- would you
15 been able to request a sample -- I mean, an aliquot
16 from sample -- from vile B, or would you not have been
17 able to?

18 Would that have been solely the province of the
19 donor?

20 If you remember. If you don't remember, just say
21 so.

22 THE WITNESS: Yeah, I believe that I could. I
23 think that in the past I -- there were times that I
24 would request a sample B study.

25 And I don't know if this is a particular -- is

1 one of those situations under which you're allowed to
2 do that, or if it has to be the donor.

3 THE COURT. Okay. Thank you, very, very much.

4 THE WITNESS: Certainly.

5 THE COURT: Any questions, Mr. Gibbs -- or excuse
6 me, Mr. Syfert, based on my mine?

7 MR. SYFERT: No, Your Honor.

8 THE COURT: Mr. Gibbs.

9 MR. GIBBS: One question, Your Honor.

10 THE COURT: Sure.

11 BY MR. GIBBS:

12 Q. Doctor, you -- did I understand you correctly
13 when you said that the normal range is 5 to 20?

14 A. It actually can be much higher than that, but I
15 mean, we certainly see it in a higher range, but it is at
16 the lower end of the scale. It can be as low as --
17 actually, can be as low as 2, but it is -- normally we
18 would see it in the 5 to 20 range.

19 Q. What would be your definition of a dilute sample?

20 A. A dilute sample?

21 Q. Correct.

22 A. It would be basically with a specific gravity of
23 less than 1001.

24 Q. What about the creatinine.

25 A. Again, it would be -- typically it's something

1 less than between five and two.

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

3 THE COURT: I have one.

4 Doctor, I just want to make sure you understand
5 what Mr. Gibbs has asked and I have asked.

6 I asked you about the normal range. And, again
7 I'm not -- the range -- the normal range can go from 5
8 to 200?

9 THE WITNESS: Sure. Sure. I mean, we see it
10 higher. In a -- you know, they can be -- it can be
11 much higher.

12 THE COURT: Right. You're talking about a
13 clinical setting --

14 THE WITNESS: Right.

15 THE COURT: -- when you see a patient come in --

16 THE WITNESS: Right.

17 THE COURT: -- it normally runs from that 5 to
18 20?

19 THE WITNESS: Right. Right. And I've got a
20 urine drug screen, I think, on my desk here that has a
21 creatinine of 250.

22 THE COURT: Okay. Is that more normal -- or
23 that's in the normal range you mean?

24 THE WITNESS: We would consider that to still be
25 in the normal range. That's not considered to be

1 abnormal.

2 THE COURT: Is there an upper limit to normal?

3 THE WITNESS: I don't know the answer to that.

4 THE COURT: Okay.

5 THE WITNESS: I don't know.

6 THE COURT: Okay. Thank you very much, Doctor.

7 THE WITNESS: I apologize if I haven't been able
8 to help.

9 THE COURT: No, no. You've done fine, Doctor.
10 You've give us the best testimony you know and we --
11 believe me, we all appreciate it.

12 We know your work schedule. We know you're busy.
13 You've given us some of your time here and I -- I,
14 myself personally and both Mr. Syfert and Mr. Gibbs,
15 appreciate your efforts here.

16 THE WITNESS: Of course. My pleasure.

17 THE COURT: Take care.

18 THE WITNESS: All right. Well, thank you very
19 much.

20 THE COURT: Thank you very much, sir.

21 THE WITNESS: Certainly.

22 THE COURT: Okay. Mr. Syfert. The defense will
23 rest then at this point?

24 MR. SYFERT: Yes, Your Honor.

25 THE COURT: Go ahead and take a look. I wanted

1 to have a -- I wanted to mark, while you're thinking
2 on that, I wanted to mark Dr. Logan's curriculum vitae
3 as Respondent's Exhibit 8.

4 Is that okay?

5 MR. SYFERT: Yes, Your Honor.

6 THE COURT: Okay. Any objections, Mr. Gibbs, to
7 the court admitting Respondent's Exhibit 8?

8 MR. GIBBS: No objection, Your Honor.

9 THE COURT: All right. Court will receive RX8.
10 Give him just a second before you -- before he
11 rests. He's gonna look at his notes, but I'm assuming
12 Dr. Khella would be probably --

13 MR. GIBBS: We thought we would start around
14 2:30. So we're money on right now.

15 THE COURT: Sounds good.

16 MR. SYFERT: Your Honor, the only thing left is
17 the judicial notice that I had for the temperatures
18 and the distance that were traveled, and for that,
19 Coast Guard exhibit 20, 21 and 22, the information
20 about the Fed Ex and UPS, we would ask that those be
21 admitted.

22 THE COURT: I think I admitted --

23 MR. GIBBS: Your Honor, the Coast Guard strongly
24 objects to that.

25 THE COURT: Okay. Hold on one second.

1 Okay. 20 and 21 -- first let me make sure that
2 20 and 21 were the two that you wanted admitted?

3 MR. SYFERT: 20 and 21 would be good, yes, Your
4 Honor.

5 THE COURT: Okay. Tell me why you don't want 20
6 and 21. I mean, it seems to me that those are --
7 those are weigh bills that are just --

8 MR. GIBBS: We don't have anybody to verify that
9 information. We've established that the samples were
10 taken, were stored halfway through the transit, they
11 were opened, checked, stored.

12 THE COURT: Okay. What you mean is that you
13 object to his characterization as opposed to the
14 distance that the sample came?

15 Is that what you're -- I mean, if that's what
16 you're telling me -- I just wasn't sure.

17 I don't think there's any question that the
18 samples were taken in UAE, in Dubai, and then they
19 were shipped to New Jersey and then from New Jersey
20 they were shipped to Minnesota, and then they were
21 tested. And it took --

22 MR. GIBBS: Your Honor, I guess, I wouldn't
23 understand the purpose of entering them.

24 MR. SYFERT: The only reason for doing that is to
25 show the length of time that it was in --

1 THE COURT: Unrefrigerated.

2 MR. SYFERT: -- transit. In transit, yes.

3 THE COURT: I thought the testimony was they were
4 not refrigerated until they went to Minnesota. That
5 was my understanding.

6 Mr. Gibbs, is that your -- is that the Coast
7 Guard's understanding?

8 MR. GIBBS: In air conditioning.

9 THE COURT: I'm not gonna make any finding as to
10 what the -- what the temperature situation was.

11 MR. GIBBS: Right.

12 THE COURT: But I think that it is fair --

13 MR. SYFERT: Your Honor, if the testimony clearly
14 establishes that and Your Honor seems to have a grasp
15 of that, we don't need to enter it in evidence.

16 THE COURT: No, what I'm saying is I -- but I do
17 think that we need some indication as to -- well,
18 yeah, I mean, they were taken clearly. Clearly they
19 were taken in Dubai and clearly they were shipped to
20 New Jersey. They weren't refrigerated until they got
21 to -- until they got to Miami.

22 I was just hoping someone could tell me what
23 distance -- I mean, and I know it took 11 days from --
24 excuse me, that they arrived.

25 The samples were taken on 2nd of July, and they

1 arrived in Minnesota at MEDTOX Laboratory on July
2 11th. That much I know. But can I ask both parties:
3 Is that agreeable? I'm gonna -- is that what you're
4 trying to --

5 MR. SYFERT: Yes, Your Honor.

6 THE COURT: Okay.

7 MR. GIBBS: Well, my only apprehension is that --
8 Your Honor, is that, you know, that's what we were
9 trying to establish with exhibit 24. That it did --
10 all these other samples actually ran around in the
11 same time frame, in the same heat.

12 THE COURT: And we do have that in.

13 MR. GIBBS: Yes, but you said solely to establish
14 the time that Ms. Solomon's was in --

15 THE COURT: That's true, but does that mean that
16 there weren't other samples with them?

17 I mean, no, these samples were together. I mean,
18 I'm with you there.

19 MR. GIBBS: They were together.

20 THE COURT: They were all together. I'm with you
21 there.

22 MR. GIBBS: They all traveled together and they
23 were whatever -- whatever conditions existed, existed
24 for the box as a whole.

25 Mr. Syfert is not saying that. He's just saying,

1 as far as I know, look, we took them on July 2nd, they
2 weren't refrigerated until they got to Minnesota on
3 July 11th. They were packed however they were
4 packed. I'm not finding that they were overheated,
5 under heated, frozen. I mean, all I know is that they
6 went there and they were not refrigerated until that
7 time.

8 I think that's fairly clear from the testimony,
9 but I just want to make sure that you're okay with
10 that before I just -- I mean, I want -- are you okay
11 with what I just --

12 MR. GIBBS: Your Honor, and please tell me if I'm
13 out of line, but --

14 THE COURT: Go ahead.

15 MR. GIBBS: I'd be more okay with this if we
16 entered exhibit 24 as a whole, not just to establish
17 the time that Ms. Solomon was in.

18 It's identifying that those did travel with them,
19 and that there were 20 negatives and one non-negative
20 -- excuse me, one refusal to submit. That's what that
21 establishes.

22 And that's why -- that's our contention with this
23 heat issue.

24 MR. SYFERT: And my objection --

25 THE COURT: Okay. Let me -- let me -- I

1 understand what you're saying.

2 MR. GIBBS: Yes, Your Honor.

3 THE COURT: But listening to the testimony of
4 Dr. Syfert, and again, you know, I'm taking everything
5 as to weight of course. If I knew -- go ahead. Go
6 ahead. Go ahead, you two talk.

7 LIEUTENANT NEE: Your Honor, the government filed
8 the tracking numbers in response to your order.

9 THE COURT: Right.

10 LIEUTENANT NEE: So we established this, but we
11 never called these as witnesses. We got general
12 information and then our response to the government --
13 to you, was the times and dates and phone numbers, but
14 refrigeration, but we never questioned. We never got
15 that information because we just looked for tracking
16 numbers in regard to the responses -- the Respondent's
17 request.

18 THE COURT: I understand that. What -- I think
19 that's all he's asking for.

20 MR. SYFERT: Your Honor, if I may.

21 THE COURT: Sure.

22 MR. SYFERT: I would move to admit the answers to
23 the interrogatories. We propounded interrogatories.
24 They weren't signed or under oath or anything like
25 that.

1 They filed something. It gave these weigh bills.
2 Basically all the information from these weigh bills
3 is already part of the record, and I would actually
4 move to admit those. Those were interrogatories
5 supposed to be answered underneath the rules.

6 THE COURT: I haven't seen them.

7 MR. GIBBS: I'm sorry?

8 THE COURT: I haven't seen them.

9 MR. GIBBS: Okay.

10 THE COURT: Here's what I'm thinking though:
11 Think on that for a second. Here's the problem that I
12 have with your negatives -- with the other negatives.

13 The other negatives to be relevant to me, would
14 have to be urine that was the same as Ms. Solomon's at
15 the time that it was produced.

16 There's a difference. I mean, right off, she's
17 the only female on board, therefore, based on the
18 charts that you've given me and exhibit -- oh, that
19 study. But at any rate, it shows that females
20 generally have a lower creatinine output.

21 It could be muscle mass. It could be, you know,
22 100 factors related to differences and sex.

23 African Americans may have a lower or higher
24 output depending on, you know, racial or genetic
25 makeup.

1 So your urine may have been -- if you and
2 Ms. Solomon were on the ship and you both dropped
3 urines at the same time, your urine level as given,
4 would be different than hers.

5 MR. GIBBS: I agree.

6 THE COURT: So if there was uniform -- if there
7 was uniform changes, your -- say it was a ten percent
8 difference, your ten percent may have still kept you
9 in a normal range, whereas her ten percent may have
10 kept -- kicked her to the bottom.

11 That's why I don't think that the actual results
12 are relevant. That's why.

13 Because even if I said, okay, I'll take them in
14 for that, they're all normal, I don't what the basis
15 is, so it doesn't help me.

16 I think what Mr. Syfert wants to -- wants to tell
17 me is, look, I don't know that I need this to do it,
18 so I'll -- the urine was taken in Dubai and it was
19 sent here.

20 I think the testimony from Mr. Hualde said I kept
21 them. I turned them over. They were -- they weren't
22 refrigerated. They went from there to New Jersey,
23 kept in her office at reasonable temperature, room
24 temperature, and then was shipped out the same day and
25 got to MEDTOX. MEDTOX ran them on the 11th and then

1 they froze the B sample, and I believe, they froze the
2 A sample as well.

3 I think that's all he wants me to do. And I --
4 what I'm trying to say is: What is it that you don't
5 want me to do -- I mean, what is it about that
6 information that you feel is inaccurate, or if there
7 is something there that you think is prejudicial, tell
8 me.

9 I mean, what am I missing? I'm -- if I'm -- I'm
10 missing something, but I don't know what it is.

11 MR. GIBBS: No, I understand, Your Honor, and I'm
12 trying -- I definitely don't want to upset the court.

13 THE COURT: You don't upset me.

14 MR. GIBBS: Okay. My thing is, is that, I think
15 24 is well more established and more -- well more
16 needing to be entered than these shipping bills.

17 I mean, I understand what he's trying to do.
18 He's trying to say that it took a long time and over
19 that time, it degraded. That there was --

20 THE COURT: Right.

21 MR. GIBBS: -- a contamination. And we've beat
22 that to death. And I understand that completely, but
23 it's like you just said, if me and Ms. Solomon both
24 voided our bladders at the same time, no matter what,
25 our creatinine levels are most likely gonna be

1 different.

2 But hers didn't go -- her creatinine and her
3 specific gravity didn't go down -- or didn't go up.

4 THE COURT: Right.

5 MR. GIBBS: It went the opposite directions.
6 And, I guess, with the fact that the other 20, none of
7 that occurred, I do not want heat being something -- I
8 want to establish that we had a similar -- something
9 consistent -- consistent is not the word.

10 THE COURT: I do think I know what you mean.
11 What I'm holding onto here is a, I'm assuming this is
12 in response to a discovery request for -- actually, it
13 was in response to my order of November 16th.

14 Is this gonna help anybody?

15 MR. GIBBS: Yes, Your Honor, I believe this is
16 the response to that Mr. Nee submitted.

17 Was this for the extension? Yeah, it's discovery
18 and motion for extension.

19 LIEUTENANT NEE: This was the first half, Your
20 Honor. There's one that came back because we had
21 problems from the clinic getting ahold of PPC. We
22 missed the deadline. You granted us seven days and we
23 got it the following Wednesday.

24 THE COURT: Show that -- if you don't --
25 Mr. Syfert has seen that, right?

1 MR. SYFERT: Yeah, I'm aware of that one.

2 THE COURT: Okay.

3 MR. SYFERT: Yes, and there is another one. And
4 when you put them all together, then you can finally
5 get a picture of how -- I mean, it took me hours to
6 piece it all together and pulling weigh bills and
7 those sorts of things to get a map of where the urine
8 was on what day.

9 THE COURT: Can I -- is there a -- here take a
10 look at this (indicating). Show this to Lieutenant
11 Nee and to Mr. Sammons, and then see if there's any
12 problem -- and check with Mr. Syfert. Maybe that will
13 do everybody --

14 MR. SYFERT: Your Honor, they have -- those
15 interrogatories should already be part of the record.
16 I don't need the weigh bills, if they don't want the
17 weigh bills in. If you put it altogether -- the
18 information is already on the record and I didn't --

19 THE COURT: Okay.

20 MR. SYFERT: -- think of it until I sat here and
21 started reviewing everything.

22 THE COURT: Could I just enter that in evidence?
23 Would that be okay?

24 Can I just enter that in evidence? Would that be
25 all right?

1 MR. GIBBS: Absolutely.

2 THE COURT: Can I enter that in evidence? Would
3 that be okay?

4 MR. SYFERT: Yes, Your Honor.

5 THE COURT: Okay. You know what -- 'cause they
6 are on the record, but with the rules of evidence,
7 we -- please. With the rules of evidence, we don't
8 have -- this has not been admitted as an exhibit.

9 So I'm gonna give -- what I'm gonna do is I'm
10 gonna take these two sheets and I am going to identify
11 this as RX or -- Coast Guard Exhibit?

12 I tell you what, can I -- I can do that, right?
13 I'm gonna make an AL exhibit. I'm gonna make this
14 AL-X1.

15 And for the record, this is a two page --
16 actually, it's two pages with printing on front and
17 back. It's response -- first page is entitled
18 response to ALJ's order for discovery and motion for
19 extension.

20 On the back of that, it is dated November 30th,
21 2012. Page two is dated -- you know what, let's take
22 them, too. I'm gonna make ALX-1 the one dated 30
23 November, and I'm gonna make ALX-2 the one dated
24 December 5th of 2012. And these are responses to
25 ALJ's order granting motion for additional -- for

1 additional discovery.

2 Two separate documents. One is dated November
3 30th and one is dated December 5th. And I'm gonna
4 admit these into evidence. And that should take care
5 of it. So -- now --

6 MR. SYFERT: Thank you, Your Honor. The
7 Respondent rests its case.

8 THE COURT: Yes, sir.

9 MR. GIBBS: We -- I didn't -- I don't know what
10 my supposed to be response is.

11 THE COURT: Well, this I've taken in. 24 has
12 come in for the purpose that I indicated. If you want
13 to put it in -- if you want to renew your motion to
14 put it in so that I can see those are negatives.

15 MR. GIBBS: I would love to.

16 THE COURT: You would like to make that motion?

17 MR. GIBBS: I would like to make that motion.

18 THE COURT: Okay. My ruling is gonna be the same
19 on that. You can take exception to that and then if
20 we can, if there's no other paperwork, let's get
21 Dr. Khella on the phone, okay.

22 MR. GIBBS: Permission to approach?

23 THE COURT: Please.

24 UNIDENTIFIED FEMALE SPEAKER: Good afternoon,
25 IT.

1 MR. GIBBS: Hey, good afternoon. This is Mark
2 Gibbs with the United States Coast Guard and I'm
3 looking for Dr. Khella, please. He's expecting a call
4 from me.

5 UNIDENTIFIED FEMALE SPEAKER: Okay. Hold on one
6 moment.

7 MR. GIBBS: Thank you very much.

8 UNIDENTIFIED FEMALE SPEAKER: Mark.

9 MR. GIBBS: Yes, ma'am.

10 UNIDENTIFIED FEMALE SPEAKER: It's gonna be a
11 minute, okay?

12 MR. GIBBS: Not a problem at all.

13 UNIDENTIFIED FEMALE SPEAKER: All right.

14 MR. GIBBS: Thank you.

15 I don't hear music anymore.

16 Your Honor, permission to approach?

17 THE COURT: Sure. Did we get cut off?

18 MR. GIBBS: I don't hear music anymore.

19 THE COURT: Oh, yeah. Sorry.

20 UNIDENTIFIED FEMALE SPEAKER: Afternoon. IT.

21 MR. GIBBS: Good afternoon. This is Mark Gibbs
22 with the Coast Guard again. I think we got cut off.

23 UNIDENTIFIED FEMALE SPEAKER: Did
24 Dr. Surling(phonetic) accidentally pick you up?

25 MR. GIBBS: Nobody picked up. It just -- your

1 lovely music went away when we were on hold.

2 UNIDENTIFIED FEMALE SPEAKER: Okay. Hold on one
3 moment. He's ready.

4 MR. GIBBS: Thank you.

5 DR. KHELLA: Good afternoon. This is Dr. Khella.

6 MR. GIBBS: Good afternoon, Doctor. It's Mark
7 Gibbs with the Coast Guard.

8 Thank you for your time once again.

9 DR. KHELLA: Sure. No problem.

10 MR. GIBBS: Great. Real quick I'm gonna turn the
11 telephone back over to the Honorable Judge Metry.
12 He's going to ID you again, swear you in and then he's
13 gonna ask you a hypothetical question.

14 If you're ready, and this is a good time, we'd
15 like to proceed, sir.

16 DR. KHELLA: Sure.

17 MR. GIBBS: Stand by, please.

18 THE COURT: Hello, Doctor. How are you again?

19 DR. KHELLA: I'm well. Thanks.

20 How are you?

21 THE COURT: Great. Listen, I don't have to swear
22 you in again because I just want to remind you you're
23 still under oath.

24 And unless you can disguise your voice, you sound
25 like the same person that was talking to me

1 yesterday.

2 DR. KHELLA: I am.

3 THE COURT: So I think for the record, that would
4 be sufficient to identify you as Dr. Khella.

5 And I have received your curriculum vita. Thank
6 you very much for e-mailing that to us.

7 THE WITNESS: Sure, no problem.

8 THE COURT: Okay. Dr. Khella, I -- do you want
9 me to ask, or do you want to ask?

10 MR. GIBBS: Oh, please, Your Honor.

11 THE COURT: Okay. Let me go back and find it.

12 Doctor, I have a hypothetical for you.

13 THE WITNESS: Sure.

14 THE COURT: And I'm going to do the best I can to
15 assure that it was -- well, I tell you what, I'm gonna
16 give you a hypothetical, okay?

17 And what I want you just to assume what I'm
18 telling -- what I'm telling you is true, please, and
19 then I'm gonna ask you a question.

20 THE WITNESS: Okay.

21 THE COURT: I'm gonna ask you to assume that a
22 sample of urine was provided on 2 July 2012. That the
23 sample was within range.

24 THE WITNESS: Okay.

25 THE COURT: I'm going to also ask you to assume

1 that for the first -- that for the first three days,
2 this sample was kept in temperatures ranging between
3 90 degrees and 115 degrees.

4 THE WITNESS: Okay.

5 THE COURT: That these samples were sealed
6 according to the regulations.

7 THE WITNESS: Sure.

8 THE COURT: That after that period of time, they
9 were kept in temperatures averaging 20 degrees
10 Celsius.

11 THE WITNESS: Okay.

12 THE COURT: That they were tested on July 11th,
13 2012 and on two separate aliquots, from the same vile,
14 that being vile A, specific gravity was 1.0223.

15 THE WITNESS: Okay.

16 THE COURT: Creatinine was 1.3 and the pH was
17 8.8.

18 THE WITNESS: Okay.

19 THE COURT: Can you tell me if that is consistent
20 with human urine?

21 THE WITNESS: No. It can't -- it cannot be
22 consistent with normal human urine.

23 THE COURT: Okay. And can you tell me why?

24 THE WITNESS: Sure. Absolutely. Because of the
25 urine creatinine of being 1.3 mg/dL, that is

1 exquisitely, exquisitely, exquisitely abnormal.

2 THE COURT: The other --

3 THE WITNESS: And --

4 THE COURT: -- the other factors --

5 THE WITNESS: And the other --

6 THE COURT: Are the other -- go ahead.

7 THE WITNESS: And there's factors as well because
8 of the elevated specific gravity.

9 So, you know, is it possible that a human being
10 with -- with -- generating a urine that is a normal
11 range urine of specific gravity showing concentration,
12 yes, showing dilution at the same time, they're two
13 polar opposites.

14 So if I was to drink lots of fluids, I can alter
15 my urine creatinine by diluting it out in essence.

16 But at the same time, you're going to also see a
17 reflection of that specific gravity being lowered as
18 well. But it's not physiologically possible to have a
19 concentrated urine and with absolutely no creatinine
20 present. It's just not physiologically possible to
21 do.

22 THE COURT: I understand. And would any of the
23 conditions and, I know you testified to this, but
24 we've had some testimony in the meantime, would the
25 fact that heat and time for unrefrigerated urine, have

1 any affect on any of those three markers I gave you;
2 that being pH, that being creatinine and that being
3 specific gravity?

4 THE WITNESS: Okay. Heat will not alter the
5 creatinine. And the reason behind it is if you look
6 up the chemistry of creatinine and you look up to see
7 what the melting point of creatinine is, in terms of
8 it -- creatinine starts to decompose because of the
9 result of heat. So that's called the melting point.
10 You'll find that it's 300 degrees Celsius.

11 So heat is a -- creatinine is very heat stable is
12 the way we would define that, okay?

13 Specific gravity is not going to be affected by
14 heat because specific gravity just looking at the
15 components of the molecules that are in that solution.

16 And so whether you have one big component or that
17 component is broken down into tiny pieces, nonetheless
18 the aggregate sum of them will reflect the specific
19 gravity of those molecules in that solution. So
20 that's not affected by the heat.

21 The only thing that may be affected by heat of
22 those three, perimeters is the pH. And the reason
23 behind that is dependant on if there are bacteria in
24 that sample, and bacteria that will grow as a result
25 of the heat that's provided.

1 And in terms, the bacteria may multiple and may
2 very well alter the pH of the sample.

3 THE COURT: Now, would the bacteria cause the
4 specific gravity to go up?

5 THE WITNESS: The bacteria will not cause the
6 specific gravity to go up to any measurable degree.

7 THE COURT: Okay. I had --

8 THE WITNESS: I mean, there may be some minuscule
9 altercation of it, but you're not going to see any
10 measurable degree to say, oh, my gosh, look at the
11 specific gravity rise as such.

12 THE COURT: Even taking it out to the number of
13 factions of -- what do they call it?

14 THE WITNESS: That's right. You're talking
15 about -- you know, what are we talking about? We're
16 talking 1.0233. So the first digit is the tenth,
17 right?

18 THE COURT: Right.

19 THE WITNESS: The second one is the hundredths,
20 then the thousandths.

21 THE COURT: Okay.

22 THE WITNESS: You're -- you're not dealing with
23 any measurable degree of the bacteria sitting there in
24 the sun at 115 degrees, is going to cause may change
25 to any measurable degree.

1 It will cause, yeah, of course, but any
2 measurable degree, no.

3 THE COURT: Okay. I have one further question
4 for you and I'm just asking you this because I asked
5 the other experts as well.

6 Everybody is trying to figure out how this could
7 be if it wasn't -- this -- how this could be.

8 Let me ask you something: You take a vile of
9 human urine, you dump in a quantity of salt water.
10 The salt water would lower your creatinine. Would the
11 salt increase your specific gravity?

12 THE WITNESS: Yes, absolutely because of the --
13 again the molecules that you're adding to the sample.

14 THE COURT: Now, you would -- could a person get
15 lucky and drop in just the right amount to make this
16 come, out or is it -- would it be impossible for me to
17 -- as I'm offering a urine sample to keep it in range,
18 dump some salt water on there and hope that it comes
19 out like something like this?

20 THE WITNESS: You know, that's a great question.
21 I -- I -- it -- to be perfectly honest with you, I
22 couldn't honestly answer that without having to --
23 without doing some test in front of me.

24 It's not a common thing that I would sit there
25 and do.

1 THE COURT: Okay.

2 THE WITNESS: So truthfully, I wouldn't be able
3 to intelligently respond to that question.

4 THE COURT: It would not be a probable occurrence
5 though, is what you're saying?

6 THE WITNESS: It's not, no.

7 THE COURT: Okay. All right.

8 THE WITNESS: I mean, you know, is it possible --
9 is it possible to drop the right amount, of course,
10 it's a numbers game.

11 I mean, it's -- it is a possibility, you know.
12 Is that what she did, I don't know, but basically my
13 guidance to the court as an MRO, is that you have to
14 follow the regulation set forth by the Department of
15 Transportation.

16 And to make it as simple as possible. I mean,
17 without second guessing and saying, well, what is it,
18 what is it not. I mean, why --

19 THE COURT: Yeah, right. I understand.

20 THE WITNESS: You know.

21 THE COURT: Now, one more question. You took a
22 look at the lab results themselves at the -- at
23 litigation package by any chance or did you just --

24 THE WITNESS: I didn't get the litigation --

25 THE COURT: -- or did you just look at the

1 report?

2 THE WITNESS: -- package.

3 I've only seen the documents that were presented
4 to me and obviously I did my own work.

5 THE COURT: Sure.

6 THE WITNESS: In my standard of practice, you
7 know, looking at the chain of custody and such.

8 THE COURT: Okay. That's fine. You wouldn't
9 know, if I just asked you and I'm not going -- you
10 wouldn't know if these were run on two separate
11 machines, the different aliquots, or if they would
12 have been run on the same machine, but at different
13 times?

14 THE WITNESS: Yeah, that's a question that's
15 properly --

16 THE COURT: Okay.

17 THE WITNESS: -- for the laboratory than myself.

18 THE COURT: Okay. Thank you very, very much,
19 Doctor. We appreciate your time again.

20 Hold on. I'm gonna make sure that -- first,
21 Mr. Gibbs, do you have any questions for the doctor?

22 MR. GIBBS: Just a couple quick ones, Your Honor.

23 THE COURT: Okay. You're not off the hook yet,
24 Doc.

25 THE WITNESS: Of course.

1 So it's a very respectable study. And

2 It clearly documents that the average urine creatinine
3 is 130 mg/dL.

4 Anything, you know -- and normal -- now keep in mind,
5 urine creatinine is absolutely a -- can be affected by how
6 much an individual drinks, or doesn't drink. So urine
7 creatinine can change.

8 And we're talking -- and the typical normal range that
9 you can go outside of that is -- I would add maybe, you
10 know -- I would go probably 60 mg/dL on the lower end of
11 normal, up to about maybe 180 on the upper end of normal.

12 So certainly anything over 300 is abnormal. Anything
13 less than 20 is -- is abnormal.

14 So you -- I would never ever say in medicine that a
15 urine creatinine of 2, is a normal range.

16 And in fact, the Department of Transportation does
17 many, many, many studies before they finally came to this
18 conclusion that a sample had to be determined to be a
19 dilute sample if it met a criteria of creatinine less than
20 20 mg/dL and a specific gravity less than 1.0030.

21 Q. Thank you, Doctor.

22 A. So it -- when you meet those two criterias that's
23 called a diluted sample. To go down all the way to 2, is
24 absolutely not normal.

25 Q. Very good. Thank you, Doctor.

1 Let me ask you a quick question. When you received
2 the results of Ms. Solomon's test, why didn't you call the
3 lab and ask for a retest?

4 A. Why would I?

5 Q. Well, because one of their expert witnesses said
6 that that's exactly what they would normally do.

7 A. I'll tell you, I've been doing this for 17 years.
8 I've been reviewed by the Department of Transportation,
9 I've testified numerous times. My standard of practice is
10 on par with what we're supposed to do when presented with
11 a -- now you show me where in the regulations the
12 Department of Transportation has set forward if a sample
13 is submitted to you substituted, everything is properly
14 completed with no issues with it, that my responsibility
15 is to call the laboratory and run it again.

16 I'd like to love to see where it says so in the DOT
17 guidelines. It doesn't because the laboratory is supposed
18 to be a reputable lab. They are overseen by the
19 Department of Transportation or by SAMHSA.

20 It's a SAMHSA certified laboratory. They have certain
21 procedures when they release a test.

22 And before they can release a test, they have to test
23 it. If they first initially subject the sample to
24 immunoassay, when that comes up positive, they have to
25 then go to confirmation testing and those set of standards

1 set forth.

2 But never do I sit there and say, oh, on every
3 positive or every substitute I get, I have to call the lab
4 and tell them to run it again. That's ridiculous.

5 Q. Thank you, Doctor.

6 What about the correlation between blood and urine
7 creatinine levels.

8 A. There isn't any. How could there be?

9 Keep in mind, there can't be because urine creatinine
10 is directly effected by the amount of fluids we consume.

11 So it -- there -- there is a direct relationship. The
12 more you drink, the more dilute your sample will be. The
13 less you drink, the more concentrated your urine sample
14 will be.

15 Now, the more you drink and the less you drink, your
16 serum fluid will not change. Otherwise we'll -- we'll be
17 going, you know, we would never be able to sustain, you
18 know, going outside in the sun for two, three, four, six,
19 eight hours a day. We would absolutely collapse. we
20 would go in to shock if that was the case.

21 So there is something called homeostasis where the
22 body must maintain its -- its fluid state in a stable
23 state.

24 So we're not going to be directly impacted by drinking
25 lots of fluids because our kidneys will maintain our

1 volume of blood at a certain level.

2 If we don't drink, our body will still maintain a
3 certain level of blood at a certain level by having the
4 kidneys hold on to as much fluid as possible. And that's
5 called homeostasis.

6 So there is no correlation between urine creatinine
7 and serum creatinine. Absolutely not. I mean, there is
8 -- if that was the case, you wouldn't be able to find --
9 it doesn't make any -- it doesn't make any sense
10 physiologically when you think about it.

11 So if you just understand that simple concept of we
12 have to maintain a homeostasis -- a state of homeostasis
13 of blood volume.

14 So if I drink a lot of fluids, my blood volume isn't
15 going to triple, it's going -- if I drink lots of fluids,
16 what's gonna happen is my -- a lot of volume is going to
17 go into my body, but my kidneys are gonna kick it out
18 right away.

19 And that's to maintain that volume of blood that we --
20 that we have. And if I don't drink, my blood volume will
21 still stay about the same. And the volume is usually
22 about 80 mL/kg of body of weight. So that's the average
23 volume of blood that we have.

24 That's not going to alter a whole lot, otherwise we'd
25 never be able to sustain normal functionality. We'd have

1 to be indoors all day long staying cool.

2 Q. Thank you, Doctor.

3 Quick question: Are you familiar with the drug
4 Lisinopril?

5 A. Lisinopril, of course, yes.

6 Q. Can you tell me what it's used for?

7 A. Of course, it's a blood pressure medicine.

8 Q. Thank you.

9 Can -- does it have any affect on creatinine levels in
10 urine?

11 A. No. It -- will it have a direct affect, no.

12 Lisinopril is an angiotensin converted enzyme
13 inhibitor, okay? That's a functionality of that
14 medicine.

15 As a result, it's not going to cause your urine
16 creatinine to drop to -- of any measurable degree, or to
17 increase of any measurable degree.

18 Q. Okay. And my final question for you, Doctor,
19 unless this one generates any: Is there a different
20 creatinine level for dilute or substitute samples in males
21 and females as far as DOT?

22 A. Is there a difference between genders for
23 creatinine level --

24 Q. The threshold level.

25 A. -- in the urine?

1 Q. Yeah, the threshold levels.

2 A. No, of course not because the numbers are just --
3 keep in mind, there is -- specifically there have been
4 found to be differences between genders for urine
5 creatinine, but, when you -- when you get down to the less
6 than 20, which is way outside of the normal range, then
7 there is no difference between the two.

8 So there is a difference -- for example, as I said
9 yesterday, there -- the average, the mean, for a human
10 urine creatinine is 130 mg/dL. Non-Hispanic, blacks have
11 been found -- females have been found to have --
12 non-Hispanic blacks, all, have been found to have a higher
13 urine creatinine level by about 34 mg/dL than the mean.

14 But we're not talking about 300 more. We're not
15 talking about 300 less. We're talking about a range
16 within that number.

17 Once you get a low as 20, there is no difference
18 between genders.

19 MR. GIBBS: Excellent. Thank you, Doctor.

20 And, Your Honor, we have no further questions at
21 this time.

22 THE COURT: Mr. Syfert.

23 CROSS-EXAMINATION

24 BY MR. SYFERT:

25 Q. Dr. Khella.

1 A. Yes.

2 Q. Would it surprise you if you heard that
3 Mr. LeBard, of MEDTOX Laboratory, said that creatinine
4 could be affected by heat in urine?

5 A. Yes, I would be very surprised.

6 Q. Did you happen to look up what the affect of
7 Tagamet can be on creatinine?

8 A. No, I did not. And what is the affect of Tagamet
9 on creatinine?

10 MR. SYFERT: I'm not answering that.

11 All right. And -- I have no further questions,
12 Your Honor.

13 THE COURT: Doctor, I'm taking a look at that
14 study that Coast Guard offered in evidence and you
15 just referenced.

16 THE WITNESS: Yes, sir.

17 THE COURT: It has, using their terminology,
18 non-Hispanic black has a higher creatinine -- urine
19 creatinine level than females generally.

20 THE WITNESS: Correct.

21 THE COURT: Can you -- has there been a study for
22 -- that's all females, I'm assuming, not white
23 females?

24 THE WITNESS: Yeah, they're breaking it down by
25 just gender for male and female, and then they're also

1 breaking it down been race; by non-Hispanic white and
2 non-Hispanic black.

3 And within the -- those break downs, they don't
4 make a difference -- there is no difference between
5 males and females.

6 THE COURT: Okay. So is there any way -- I mean,
7 obviously there's a normal range, but non-Hispanic
8 black females is not broken out in that study?

9 THE WITNESS: No, it's not.

10 THE COURT: Based on your -- are you in a
11 position to be able to -- that's okay.

12 Okay. That answered the question.

13 All right, Doctor. I don't have anything
14 further.

15 Thank you for giving us a couple of your days
16 here, huh.

17 THE WITNESS: No problem.

18 THE COURT: Thank you very much. All right.

19 THE WITNESS: All right.

20 THE COURT: Bye-bye now.

21 THE WITNESS: You take care. You're welcome.

22 THE COURT: Okay.

23 MR. GIBBS: The Coast Guard rests, Your Honor.

24 MR. SYFERT: Nothing further Your, Honor.

25 THE COURT: Closing.

1 MR. GIBBS: Sorry, Your Honor. For some reason,
2 I like that side.

3 Your Honor, the Coast Guard has presented you a
4 substantial evidence of a reliable and probative
5 nature to prove the charge in specification of
6 providing a substitute specimen by Ms. Solomon.

7 On July 2nd, 2012, Ms. Solomon, the holder of a
8 valid merchant mariner's document, provided a urine
9 specimen to the designated collector from Anderson
10 Kelly as required by 46 CFR 16.230 for a random test.

11 Mr. Jezer Hualde, the collector, testified that
12 Ms. Solomon's urine specimen was collected in
13 accordance with government regulations and was
14 properly sent to MEDTOX Laboratories for testing.

15 MEDTOX Laboratory's is a Substance Abuse and
16 Mental Health Services Administrations, SAMHSA,
17 certified lab.

18 Mr. Mitch LeBard, laboratory manager at MEDTOX
19 Laboratories, testified that the sample was received
20 in tact and was properly processed for testing.

21 Mr. LeBard further explained that two tests were
22 conducted on the specimen and that there were very
23 stringent safeguards in place in ensure the accuracy
24 and validity of the tests.

25 Portions of the urine specimen were subjected to

1 an initial test using enzyme immunoassay and a second
2 confirmatory test using a validity testing technique.

3 These two tests revealed and confirmed that
4 Ms. Solomon's specimen was substituted, not consistent
5 with human urine.

6 MEDTOX Laboratories sent their findings to the
7 medical review officer, Dr. Hani Khella.

8 Dr. Khella testified and reviewed the results --
9 that he reviewed the results, conducted an interview
10 with the respondent and determined there's no valid
11 medical reason for Ms. Solomon's urine specimen should
12 be substituted.

13 Your Honor, the evidence is submitted and
14 testimony presented here today by the collector, the
15 testing laboratory director and the medical review
16 officer, all indicate that the urine specimen
17 Ms. Solomon provided was properly collected, tested
18 and determined to be substituted.

19 Ms. Solomon has provided no proof to the contrary
20 that the test is invalid.

21 Providing a substituted specimen constitutes a
22 refusal to test and a refusal to test is misconduct
23 under these regulations -- under the regulations.

24 Your Honor, based on the substantial evidence
25 provided here today, the Coast Guard requests that you

1 find the charge and specification proved.

2 Thank you, Your Honor. The Coast Guard rests.

3 THE COURT: Thank you very much, Mr. Gibbs.

4 Mr. Syfert.

5 MR. SYFERT: Your Honor, Ms. Solomon peed in a
6 cup on a ship and it got shipped halfway around the
7 world.

8 It was in the desert for a few days in conditions
9 we don't know what. It wasn't refrigerated for
10 approximately eight days.

11 We had one MRO we put forth who said he never
12 seen anything like it.

13 In fact, the only person who had seen something
14 like it is Mitch LeBard of the MEDTOX Laboratory
15 facility.

16 Mitchell LeBard testified that they refrigerate
17 creatinine -- or they refrigerate urine to help
18 creatinine stability, or the stability of any sort of
19 substances within the urine.

20 He stated that creatinine can degrade. Now, he
21 did state that he didn't expect things to degrade that
22 much that it would cause a reduction down to a 1.3
23 like happened with Ms. Simone.

24 We have Dr. Syfert who testified that creatinine
25 degrades over time when exposed to heat. And we have

1 another MRO who acknowledged that these were issues,
2 but wasn't certain about the affect on creatinine.

3 In fact, the only person who has testified that
4 yes, creatinine is going to be stable at any
5 temperature has been the MRO.

6 Dr. Syfert testified that Tagamet will cause a
7 decrease in creatinine. He testified that a diuretic
8 will cause a decrease in creatinine -- urinary
9 creatinine.

10 We had no such testimony from Dr. Khella.
11 Dr. Khella, we believe missed his mark when it came to
12 this case. And that he certainly was following the
13 guidelines of the -- the DOT regulations. He was
14 following the guidelines of what is a substituted
15 sample, but my client never had the opportunity to
16 challenge or review the test, therefore, she was
17 fundamentally denied due process from the very
18 beginning.

19 She requested the DNA test. She called a
20 congressman. She called her union representative.
21 She called everybody she could to try to get another
22 answer that was going to help her get back to work.

23 She was not able to get a retest. She was not
24 able to get anything done when it came to that.

25 I believe that Dr. Khella didn't read that entire

1 script. It was obvious when Dr. Khella was reading
2 that script out loud, and he testified to the fact
3 that he doesn't use that script very often. Maybe
4 once a month he said he has to use the script.

5 That script would have been the way that he would
6 have informed Ms. Solomon that -- that this -- that
7 she had an opportunity for retest.

8 I don't believe she was ever given that
9 opportunity 'cause given that opportunity, she would
10 have jumped on it.

11 You know, the truth of the matter is, we don't
12 know why this happened. We can't reproduce it. We've
13 tried to reproduce it. We've done everything we
14 possibly can.

15 And right now Ms. Solomon is stuck in a position
16 where she has to accept drug treatment or -- the
17 sufficiency of which can be argued, but a drug
18 treatment for drugs she's not taking and also give up
19 her credentials for a year because she had one bad
20 test with no opportunity to retest. No opportunity
21 for a sample B test.

22 These options were not given to her. She has
23 looked at all those options. We have time in the
24 eight days that it took to get, at least eight days,
25 maybe twelve, that it took to get from Dubai to

1 Minnesota.

2 We have the hot temperatures in Dubai at that
3 time of year. We have the fact that Ms. Solomon was
4 on a diuretic. We have the fact that Ms. Solomon
5 consistently urinates with a high specific gravity and
6 we have it that she has a consistently low blood
7 serum.

8 Now their expert says that the blood serum can't
9 relate. Well, obviously it's going to relate if you
10 have more creatinine in your blood, you're gonna have
11 a better ability to get that into your urine as well.

12 We have the fact that Jezer Hualde says this was
13 her urine. It was clear. It wasn't cloud. It wasn't
14 mixed. Nothing seemed off about it to him. Nothing
15 was of note. He didn't note anything that happened.
16 She peed in that cup.

17 Now the US Coast Guard is trying to say that it
18 was substituted. She has no explanation for that, but
19 she knows that she didn't substitute anything.

20 Your Honor, we're here to try to save
21 Ms. Solomon's job, at least that's why we're here. We
22 want to save these credentials.

23 As far as I understand it, misconduct -- the
24 range of potential punishable is a year or two years.
25 But Ms. Solomon will do anything. She'll subject

1 herself to random tests -- random drug tests any
2 time. I mean, we just want her to work. We don't
3 have any -- we have a problem with her not working,
4 but other than that, you know, she'll do anything that
5 the Coast Guard asks.

6 You know, we're here because something funny
7 happened. The Coast Guard was involved in an incident
8 about 1991, I believe. And there was a Coast Guard
9 vessel named Tomora. And it was called the perfect
10 storm. And here we -- you know, I'm not gonna say we
11 have the perfect storm of urine, but that's basically
12 what we have. We have no other explanation. There
13 are doctors who didn't have any explanation.

14 For her to have substituted this sample, she
15 would have had, I think almost expert agrees, for her
16 to hit these numbers, she would have had to have taken
17 a real concerted effort. And this was a random test.
18 Everybody has testified, this is a random test. She
19 did not expect this coming. She had no time to
20 prepare any sort solution. This just didn't happen.

21 And so, the DOT regulation state one thing: That
22 the specific gravity has to be -- it can't be above a
23 certain amount and that the creatinine can't be below
24 a certain amount. And right now, we're at the --
25 we're at the last resort. This is the only place

1 where she can get the redress that she's looking for.

2 Because, you know, hate to admit it, she
3 urinated. Those are the results of the test. Now
4 what happened in between then and what happened to
5 produce those tests, we can't explain it, but she
6 shouldn't lose her job based on one fluke of
7 something.

8 Whatever caused this, I don't know. Like I said,
9 the perfect storm. I don't know. But I do know
10 Ms. Solomon at this point in time, and I know how
11 important this is to her. I know how confused she is.
12 I know how frightened she is. I know how she wants to
13 have something accomplished. And that when she wants
14 to accomplish something like making sure she can still
15 work, she pulls out all the stops, calls congressmen.

16 Your Honor, whatever happens, we ask that
17 Ms. Solomon be allowed to work and that is the reason
18 that we're here. Thank you very much.

19 THE COURT: You're welcome, Mr. Syfert. Thank
20 you.

21 Okay. Thank you both very, very much. That
22 concludes the case. The proof and the arguments are
23 now over.

24 I have to read this transcript again. I have
25 notes that I've taken. I have documents I have to go

1 over. I am unable to issue a decision at this time.

2 Okay. It will take me three to four weeks to get
3 the transcripts. It will take a couple of weeks for
4 me to run it through.

5 In the meantime, this is not a case in which
6 presumptive drug use has been established.

7 Does the Coast Guard have an objection to -- I
8 don't think there's any way -- any objection to court
9 returning the credentials to Ms. Solomon?

10 MR. GIBBS: No, Your Honor.

11 THE COURT: All right.

12 MR. SYFERT: Thank you, Your Honor.

13 THE COURT: Okay. Thank you.

14 Does the Coast Guard wish post hearing
15 submissions?

16 MR. GIBBS: Your Honor, we don't require them.

17 THE COURT: Okay. Mr. Syfert. Defense.

18 MR. SYFERT: Given the opportunity to write
19 something, I'll always choose to do so, but...

20 THE COURT: Okay. Look, you two have done an
21 excellent job. I honestly have never seen a case
22 organized so well from the Coast Guard representative,
23 and I've never seen a case defended so passionately by
24 a defense counsel.

25 I got a lot of work to do. I want to thank both

1 of you gentlemen.

2 Ms. Solomon you've done well by check -- by
3 having Mr. Syfert as your attorney.

4 I'll get this decision out just as soon as I
5 possibly can.

6 Thank you-all very, very much. All right.

7 MR. SYFERT: Thank you, Your Honor.

8 MR. GIBBS: Thank you, Your Honor.

9 (Whereupon, the proceedings were concluded.)

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C E R T I F I C A T E

STATE OF FLORIDA)

)

)

COUNTY OF DUVAL)

I, Michelle Moore, hereby certify that the foregoing transcript is a true and accurate transcript of my stenograph notes taken at the time and place indicated therein.

Dated this _____ day of _____, 2013

MICHELLE MOORE