

STATE OF RHODE ISLAND

PROVIDENCE, Sc.

SUPERIOR COURT

RICHARD SOUTHWELL, et al.)	
)	
VS.)	NO: PC-2021-05915
)	
DANIEL J. MCKEE, et al.)	

HEARD BEFORE THE HONORABLE
MR. JUSTICE JEFFREY LANPHEAR

Volume 1

SEPTEMBER 30, 2021

APPEARANCES:

GREGORY PICCIRILLI, ESQUIRE
FOR THE PLAINTIFFS

MICHAEL FIELD, ESQUIRE
CHRISANNE WYRZYKOWSKI, ESQUIRE
JON WHITNEY, ESQUIRE
MORGAN GOULET, ESQUIRE
FOR THE DEFENDANTS

Andrea Iacobellis, CSR
Certified Shorthand Reporter

I N D E X

<u>WITNESSES</u>	DIRECT	CROSS
JAMES MCDONALD, M.D.	10	

E X H I B I T S

<u>DEFENDANTS'</u>	<u>IDENTIFICATION</u>	<u>FULL</u>
A	50	51
B	65	
C	68	82
D	68	
E	70	84
F	85	87
G	92	94
H	97	98
I	99	105
J	99	105
K	99	105

C E R T I F I C A T I O N

I, Andrea Iacobellis, CSR, hereby
certify that the succeeding pages, 1 through 119
inclusive, are a true and accurate transcript
of my stenographic notes.

ANDREA IACOBELLIS, CSR
Court Reporter

11:54:26 1 MR. PICCIRILLI: Yes, we have an agreement.

11:54:28 2 The defense can call Dr. McDonald, yes.

11:54:32 3 THE COURT: So we're going to go to the State's
11:54:33 4 case in a few moments, Mr. Field?

11:54:36 5 MS. WYRZYKOWSKI: Ms. Wyrzykowski, your Honor.

11:54:36 6 THE COURT: I'm sorry.

11:54:37 7 MS. WYRZYKOWSKI: Your Honor, before we begin
11:54:39 8 we do ask that plaintiffs' expert be sequestered.

11:54:46 9 MR. PICCIRILLI: I object, Judge. There's no
11:54:47 10 basis for that.

11:54:48 11 MS. WYRZYKOWSKI: Your Honor, the plaintiffs
11:54:49 12 have the burden of proof here, not the State. For him to
11:54:52 13 be able to sit in and hear Dr. McDonald's testimony,
11:54:53 14 solely taken out of order because Dr. McDonald is a
11:54:56 15 practicing pediatrician and has patients to see tomorrow
11:54:59 16 is willfully unfair.

11:55:00 17 MR. PICCIRILLI: How is it possibly unfair,
11:55:03 18 Judge? The doctor has given an affidavit. I'm assuming
11:55:09 19 his testimony is conforming with the affidavit. I need
11:55:12 20 my expert to assist me. There may be medical issues that
11:55:16 21 come up that I'm not quite as conversive with as my
11:55:21 22 expert. I think it's totally appropriate that he remain
11:55:25 23 and there's absolutely no prejudice to the State.

11:55:27 24 MS. WYRZYKOWSKI: Your Honor, I'd direct your
11:55:29 25 attention to Rules of Evidence 615 that deals with this

11:55:31 1 matter.

11:55:35 2 THE COURT: But that allows the Court
11:55:35 3 discretion, correct?

11:55:38 4 MS. WYRZYKOWSKI: It is discretion, your Honor.

11:55:38 5 THE COURT: Okay.

11:55:39 6 MS. WYRZYKOWSKI: I don't dispute that. I'm
11:55:41 7 just simply saying that the prejudice is the defendants,
11:55:44 8 that our expert has to go first without knowing the
11:55:47 9 benefit of what Dr. Bostom is going to say, especially if
11:55:51 10 we don't have an affidavit from him. So we are being
11:55:54 11 prejudiced by allowing having Dr. Bostom be allowed to
11:55:56 12 sit in here and hear everything that our witness is going
11:55:59 13 to say and then testify in response to that.

11:56:00 14 I have no idea what Dr. Bostom's credentials are,
11:56:04 15 his qualifications are.

11:56:08 16 THE COURT: Almost out of habit, the Court will
11:56:10 17 allow sequestration of fact witnesses. I understand the
11:56:13 18 importance of making sure that you don't hear what the
11:56:17 19 other guy said happened first. That's very clear. But
11:56:20 20 on an expert witness, so much depends on one expert
11:56:24 21 coming to a different conclusion than the other, and
11:56:28 22 being asked do you agree with the conclusion of the last
11:56:28 23 witness.

11:56:32 24 I thought the parties were in agreement, and I
11:56:34 25 thought that the State actually wanted to go first with

11:56:36 1 Dr. McDonald. I could be wrong about that.

11:56:38 2 MS. WYRZYKOWSKI: We do, your Honor, but we
11:56:39 3 have no choice but to go first. That's because
11:56:41 4 Dr. McDonald is a practicing pediatrician and sees
11:56:45 5 patients on Fridays. That's the sole reason he's going
11:56:48 6 first today.

11:56:49 7 THE COURT: Okay.

11:56:51 8 MS. WYRZYKOWSKI: And just to be clear, the
11:56:53 9 benefit that Dr. Bostom already has, in addition to
11:56:56 10 plaintiff, is a copy of his affidavit. So he has an
11:56:59 11 opportunity to review that, and if different information
11:57:02 12 comes out today then obviously plaintiffs' counsel can
11:57:07 13 inform him about that.

11:57:08 14 MR. PICCIRILLI: Judge --

11:57:08 15 THE COURT: I don't see any inherent prejudice
11:57:11 16 to the State by having the expert, one expert hear the
11:57:14 17 other expert. I can be convinced otherwise on that and
11:57:18 18 perhaps I'll --

11:57:19 19 MS. WYRZYKOWSKI: Well, the problem is, sir,
11:57:20 20 that we don't have the opportunity for our expert to hear
11:57:23 21 Dr. Bostom because our expert will be practicing medicine
11:57:28 22 tomorrow when Dr. Bostom will be testifying.

11:57:30 23 THE COURT: So there are other doctors in the
11:57:32 24 state, there are other doctors in the Department of
11:57:34 25 Health, from my understanding. Nothing against

11:57:37 1 Dr. McDonald, you should be able to choose who goes first
11:57:41 2 but the fact that one expert hears the other, I can't
11:57:42 3 find is terribly prejudicial. Although I will reserve on
11:57:48 4 that and if it becomes prejudicial during the case or if
11:57:52 5 you want to renew your motion at any time you can.

11:57:55 6 And also it's my understanding, although I'm not
11:57:58 7 sure about today's setting, but it wouldn't surprise me
11:58:02 8 if this got some publicity what Dr. McDonald said in the
11:58:04 9 paper anyway or in some other media. So I'm not sure
11:58:09 10 that sequestration will be of assistance to the State.

11:58:14 11 At this point I see no prejudice. The Court denies
11:58:18 12 the request but reserves your right to request
11:58:18 13 sequestration at a later time.

11:58:23 14 MS. WYRZYKOWSKI: Thank you. Your Honor, did I
11:58:24 15 hear you correctly, you said the fact witnesses would be
11:58:27 16 sequestered?

11:58:28 17 THE COURT: No, you haven't asked that yet.

11:58:31 18 MS. WYRZYKOWSKI: Okay.

11:58:33 19 THE COURT: Although I will say the fact
11:58:34 20 witnesses, if we're going to go there, the fact witnesses
11:58:37 21 are all different from what I understand, and
11:58:39 22 Mr. Piccirilli may correct me if I'm wrong, but this fact
11:58:42 23 witness is talking about what's happening to this child
11:58:45 24 in this school or attempting to do so, and this parent is
11:58:49 25 talking about that. So that's a different issue. But

11:58:53 1 I'm not sure if it's contradictory testimony. If there
11:58:57 2 could be contradictory testimony or if there's a need for
11:59:00 3 sequestration.

11:59:04 4 MS. WYRZYKOWSKI: There's contradictory
11:59:04 5 testimony solely on the fact that there are different
11:59:05 6 children with different potential issues that are being
11:59:09 7 presented and I'm not necessarily sure if this qualifies
11:59:16 8 for this conversation now.

11:59:17 9 THE COURT: Okay. So the Court denies without
11:59:20 10 prejudice your motion, your request to sequester
11:59:24 11 plaintiff's expert, and why don't we get going so
11:59:27 12 Dr. McDonald can eventually get to his patients.

11:59:30 13 MS. WYRZYKOWSKI: Thank you, your Honor.

11:59:31 14 THE COURT: Thank you.

11:59:32 15 MS. WYRZYKOWSKI: Your Honor, the State calls
11:59:34 16 Dr. James McDonald.

12:00:01 17 THE CLERK: Sir, please raise your right hand.

12:00:01 18 **DR. JAMES MCDONALD, (Sworn)**

12:00:10 19 THE CLERK: Please state your full name for the
12:00:11 20 record and spell your first and last name.

12:00:14 21 THE WITNESS: My name is Dr. James, J-a-m-e-s,
12:00:14 22 McDonald, M-c-D-o-n-a-l-d.

12:00:27 23 THE CLERK: Thank you, sir.

12:00:28 24 THE WITNESS: You're welcome.

12:00:33 25 THE COURT: So, Counsel, I could hear him a lot

12:00:35 1 better than you, so you may want to use the microphone,
12:00:39 2 nothing against you but I don't know how they're hearing
12:00:39 3 in the back.

12:00:40 4 MS. WYRZYKOWSKI: Is that better, your Honor?

12:00:41 5 THE COURT: I think so but we'll give it a try.
12:00:41 6 Thank you.

12:00:45 7 MS. WYRZYKOWSKI: Please let me know.

12:00:45 8 **DIRECT EXAMINATION BY MS. WYRZYKOWSKI.**

12:00:46 9 Q Good morning, Dr. McDonald.

12:00:48 10 A Good morning.

12:00:49 11 Q Dr. McDonald, are you currently employed?

12:00:51 12 A Yes.

12:00:52 13 Q Could you please tell me where you're currently employed?

12:00:55 14 A I'm employed at the Rhode Island Department of Health,
12:00:58 15 and I also work for Day Kimball Pediatrics.

12:01:02 16 Q How long have you been employed by the Rhode Island
12:01:04 17 Department of Health, sir?

12:01:05 18 A I started working for the Rhode Island Department of
12:01:08 19 Health on February 26, 2012.

12:01:12 20 Q And you also indicated you have separate employment and
12:01:16 21 what is that, sir?

12:01:17 22 A I'm a pediatrician for Day Kimball Medical Group.

12:01:22 23 Q I'm sorry, I am not familiar with that. Where is that
12:01:25 24 located?

12:01:26 25 A In Plainfield, Connecticut.

12:01:27 1 Q And how long have you been practicing, sir, as a
12:01:31 2 pediatrician at Day Kimball Medical Group?
12:01:33 3 A I started there September 7, 2012.
12:01:37 4 Q Doctor, before we go into your employment history, I'd
12:01:42 5 like to talk to you a little about your educational
12:01:44 6 background. Can you please tell me where you attended
12:01:48 7 college?
12:01:48 8 A I went to Siena College.
12:01:51 9 Q And what type of degree did you obtain?
12:01:54 10 A I got a Bachelor of Science in Biology.
12:01:57 11 Q And after you obtained your Bachelor of Science in
12:02:01 12 Biology, did you further your education?
12:02:03 13 A I did.
12:02:03 14 Q How did you further your education, Doctor?
12:02:06 15 A I went to medical school.
12:02:07 16 Q Where did you attend medical school, Doctor?
12:02:10 17 A I went to Loyola University of Chicago. The school is
12:02:14 18 located in Maywood, Illinois.
12:02:16 19 Q And did you graduate from that program, sir?
12:02:19 20 A Yes.
12:02:19 21 Q Upon graduation from medical school, what degree do you
12:02:24 22 hold?
12:02:24 23 A An M.D. or Doctor of Medicine.
12:02:27 24 Q And upon achieving a Doctor of Medicine, what did you do
12:02:31 25 next?

12:02:31 1 A I then did an internship.

12:02:34 2 Q Where did you do an internship, sir?

12:02:36 3 A U.S. Naval Hospital, Oakland.

12:02:39 4 Q And, Doctor, what did you do your internship in?

12:02:42 5 A Pediatrics.

12:02:43 6 Q After had you completed your internship in pediatrics,

12:02:48 7 what did you do next, Doctor?

12:02:49 8 A I did a residency in pediatrics.

12:02:51 9 Q Where did you do a residency in pediatrics, sir?

12:02:55 10 A The National Naval Medical Center in Bethesda, Maryland.

12:02:59 11 Q Thank you, Doctor. How long was your residency in

12:03:02 12 pediatrics?

12:03:03 13 A Two years.

12:03:04 14 Q After you completed both your internship and your

12:03:10 15 residency in pediatrics, what did you do next with your

12:03:14 16 career, sir?

12:03:14 17 A I worked in the United States Navy as a pediatrician. I

12:03:19 18 was active duty.

12:03:20 19 Q How long were you active duty in the United States Navy

12:03:24 20 as a pediatrician?

12:03:25 21 A Six years, three months, two days.

12:03:29 22 Q Very specific?

12:03:31 23 A They give you a piece of paper when you leave that tells

12:03:35 24 you.

12:03:35 25 Q Doctor, after you completed working for the U.S. Navy,

12:03:39 1 what was your next employment in the field of pediatrics?

12:03:42 2 A I then went to Lewisburg Pediatrics in Lewisburg,
12:03:46 3 Pennsylvania.

12:03:46 4 Q And how long were you in that practice in Pennsylvania?

12:03:49 5 A I was there for seven years.

12:03:50 6 Q And what did you primarily practice?

12:03:54 7 A I was a pediatrician.

12:03:55 8 Q As a pediatrician, and I probably should have asked you
12:04:02 9 this before, what type of work do you do as a practicing
12:04:05 10 pediatrician?

12:04:06 11 A So I diagnose and prevent illness in children of all ages
12:04:11 12 from birth to generally 21. I do that in hospital
12:04:15 13 settings and in outpatient settings at various times in
12:04:20 14 my career. Currently, I work in the outpatient setting.

12:04:24 15 Q And when you say, "currently," you're referring to your
12:04:27 16 practice right now in Connecticut?

12:04:28 17 A Yes.

12:04:28 18 Q Doctor, after you worked as a pediatrician in
12:04:32 19 Pennsylvania, did you continue work as a pediatrician?

12:04:34 20 A I did.

12:04:35 21 Q Where, Doctor?

12:04:36 22 A I went to the Navajo Reservation and worked there in a
12:04:40 23 little town called Chinle, Arizona, and I worked with the
12:04:46 24 Indian Health Service.

12:04:47 25 Q How long did you work for the Indian Health Service for,

12:04:50 1 Doctor?

12:04:50 2 A Two and a half years.

12:04:51 3 Q And what was your primary practice area when working on
12:04:54 4 the Indian reservation?

12:04:55 5 A It was pediatrics.

12:04:56 6 Q And after you completed working on the Indian
12:05:02 7 reservation, Doctor, what was your next employment?

12:05:04 8 A I then went to Lawrencebug, Tennessee and worked as a
12:05:09 9 pediatrician.

12:05:09 10 Q And how long did you hold that position for, Doctor?

12:05:12 11 A Two years.

12:05:13 12 Q Doctor, as I stand here now I'm not sure what year we're
12:05:19 13 in, so do you remember what year you were a practicing
12:05:22 14 pediatrician in Tennessee?

12:05:24 15 A It would have been 2003 to 2005.

12:05:29 16 Q And upon completion of that employment in 2005, where did
12:05:35 17 you go next, Doctor?

12:05:35 18 A State University of New York. I did my preventative
12:05:39 19 medicine residency.

12:05:40 20 Q I'm sorry, Doctor, I didn't hear that?

12:05:42 21 A State University of New York, I did my preventive
12:05:46 22 medicine residency.

12:05:48 23 Q Doctor, what's preventative medicine?

12:05:52 24 A Preventive medicine, at least my residency, I was trained
12:05:56 25 in general public health and general preventative

12:06:00 1 medicine. So it's a broad-based discipline where you
12:06:03 2 learn about all different types of diseases, various
12:06:08 3 emergencies and disasters. I learned how to prevent
12:06:11 4 them, how to mitigate them and treat them.

12:06:14 5 Q Doctor, how did you wind up doing a residency in
12:06:17 6 preventative medicine in public health?

12:06:19 7 A I chose to do that because I wanted to get the highest
12:06:24 8 credential possible in public health.

12:06:25 9 Q Do you have any degrees in public health education?

12:06:28 10 A I have a Masters of Public Health from the University of
12:06:32 11 North Carolina.

12:06:32 12 Q And when did you obtain that degree, Doctor?

12:06:34 13 A 2005 to 2007.

12:06:40 14 Q Upon completion of your residency in preventative
12:06:44 15 medicine, where did you go next, Doctor?

12:06:46 16 A I went to the Department of Defense in Newport, Rhode
12:06:50 17 Island.

12:06:50 18 Q Age what position did you hold at the Department of
12:06:54 19 Defense?

12:06:54 20 A I was the Director of Health Services.

12:06:56 21 Q And what did that position entail, Doctor?

12:06:59 22 A It involved supervising all of the clinical activity at
12:07:04 23 the five outpatient sites, in addition I practiced as a
12:07:11 24 pediatrician.

12:07:11 25 Q And how long were you at the Department of Defense, sir?

12:07:14 1 A Four years.

12:07:15 2 Q And upon completion of your work at the Department of
12:07:20 3 Defense, where did you work next?

12:07:21 4 A I came to the Rhode Island Department of Health.

12:07:23 5 Q Doctor, cumulatively speaking, how many years have you
12:07:26 6 been a practicing pediatrician?

12:07:28 7 A Eleven years.

12:07:29 8 Q And that includes your current time in Connecticut,
12:07:33 9 correct?

12:07:33 10 A Yes.

12:07:34 11 Q And just to confirm, you received your masters degree in
12:07:40 12 Public Health in what year, Doctor?

12:07:42 13 A 2007.

12:07:44 14 Q Doctor, we talked a little bit about your employment
12:07:48 15 background, but one of the things we didn't address is if
12:07:51 16 there's any licensing requirement for you to hold the
12:07:53 17 positions that you held. Could you please tell us if
12:07:55 18 there's any type of licensing procedures to be a
12:07:58 19 practicing pediatrician?

12:07:59 20 A Yes.

12:08:00 21 Q What is that procedure, Doctor?

12:08:02 22 A You have to be able to be granted a license by a state to
12:08:06 23 practice medicine.

12:08:07 24 Q How did you get a license to practice medicine, Doctor?

12:08:11 25 A You have to meet the minimum qualifications, complete an

12:08:15 1 application and pay the fee. Have your credentials
12:08:19 2 verified and then you're granted a license.

12:08:21 3 Q And is that license good for as long as you seek to
12:08:24 4 practice?

12:08:25 5 A As long as you keep the license in good standing it is.

12:08:29 6 Q How many active medical licenses do you hold?

12:08:33 7 A Two.

12:08:34 8 Q In which states, Doctor?

12:08:35 9 A Rhode Island and Connecticut.

12:08:38 10 Q And, Doctor, are you a member of good standing in both
12:08:41 11 states?

12:08:42 12 A Yes.

12:08:42 13 Q Doctor, you also indicated that you practice in several
12:08:46 14 other states throughout the country. Are you a member of
12:08:48 15 good standing in those states for licensing purposes?

12:08:51 16 A I am.

12:08:51 17 Q Doctor, in addition to holding medical licenses in both
12:09:00 18 Connecticut and Rhode Island, are there any other
12:09:02 19 requirements for you to continue to practice as a
12:09:06 20 pediatrician, such as a certification process of any
12:09:10 21 type?

12:09:10 22 A So I am board certified in pediatrics and I'm also board
12:09:15 23 certified in preventative medicine.

12:09:17 24 Q I am not familiar with what it means to be board
12:09:20 25 certified. Could you please tell us what it means to be

12:09:22 1 board certified in pediatrics?

12:09:24 2 A So the American Board of Pediatrics is part of the
12:09:29 3 American Board of Medical Specialities, so in order to be
12:09:34 4 qualified to take the exam, one has to complete three
12:09:39 5 years of postgraduate training, which is called an
12:09:43 6 internship in residency.

12:09:46 7 One has to then successfully pass an exam, and then
12:09:52 8 in order to maintain certification, one has to meet the
12:09:56 9 requirements or maintenance of certification, which
12:10:00 10 include evidence of continued medical education, also a
12:10:07 11 license in good standing. It also includes submitting
12:10:10 12 evidence of quality improvement work and you have to pass
12:10:13 13 an exam.

12:10:15 14 Q And correct me, but I believe you said that you were
12:10:20 15 board certified in pediatrics?

12:10:22 16 A Yes. I am also board certified in preventative medicine.

12:10:25 17 Q And, Doctor, what's required to be board certified in
12:10:29 18 preventative medicine. Actually, Doctor, before you
12:10:31 19 answer that, I should have asked you this. What is
12:10:32 20 preventive medicine?

12:10:33 21 A So preventative medicine is a discipline where I was
12:10:39 22 trained in how to largely prevent any disease, and how to
12:10:45 23 deal with any disaster, and also learn how health
12:10:50 24 departments work or the county or the state health
12:10:53 25 department, all areas of public health, as well as areas

12:10:58 1 of occupational health, aerospace medicine, statistics,
12:11:04 2 epidemiology. It's really a very broad discipline.

12:11:10 3 Q And, Doctor, I understood most of what you said but
12:11:13 4 what's epidemiology?

12:11:15 5 A Epidemiology is the study of population health.

12:11:18 6 Q Could you break that down a little bit more?

12:11:21 7 A So when someone does epidemiology what you're really
12:11:26 8 doing is looking in groups of any size, and trying to
12:11:30 9 understand if there's a risk factor that affects that
12:11:34 10 group. If so, how to mitigate the risk factor, and then
12:11:39 11 more importantly, how to prevent that risk factor.

12:11:43 12 Q Okay. And you have indicated that you are board
12:11:47 13 certified in preventive medicine and that preventive
12:11:51 14 medicine by definition would also include epidemiology?

12:11:54 15 A Yes.

12:11:54 16 Q Doctor, we talked about the license that you hold in
12:11:58 17 order to practice as a pediatrician. In general, if you
12:12:02 18 can answer, do you have to have a license to practice
12:12:05 19 medicine in order to see patients?

12:12:06 20 A Yes.

12:12:07 21 Q Doctor, we briefly discussed your masters in public
12:12:14 22 health, outside of what you just discussed, we went over
12:12:19 23 the board certification. Is there anything else that's
12:12:22 24 required for you to obtain your master's degree in public
12:12:25 25 health?

12:12:25 1 A Well, a master's of public health requires taking
12:12:29 2 prescribed courses, successfully passing them and then
12:12:34 3 completing some type of capstone project.

12:12:37 4 Q What's a capstone project, Doctor?

12:12:38 5 A It's equivalent to transcripts. It's a way of
12:12:41 6 demonstrating to the university that you've mastered the
12:12:46 7 case and earned a degree.

12:12:50 8 Q And getting back, Doctor, to board certification, is that
12:12:53 9 a lifelong certification?

12:12:54 10 A No.

12:12:55 11 Q How does one go about becoming recertified?

12:13:00 12 A So one has to go through maintenance of certification
12:13:04 13 after a period of time. For the two boards that I'm a
12:13:08 14 member of each ten years long, so I have to fill the
12:13:12 15 maintenance of certification requirement in order to
12:13:14 16 maintain my board certification.

12:13:17 17 Q And I just want to review, and please correct me if I'm
12:13:30 18 saying anything incorrectly. You are currently a
12:13:31 19 practicing pediatrician?

12:13:33 20 A Yes.

12:13:33 21 Q You're licensed in both Connecticut and Rhode Island?

12:13:36 22 A Yes.

12:13:36 23 Q You hold a master's degree in public health?

12:13:38 24 A Yes.

12:13:39 25 Q You're board certified in preventative medicine and

12:13:43 1 pediatrics; correct?

12:13:43 2 A Yes.

12:13:44 3 Q And do you have any experience in public health?

12:13:47 4 A Yes.

12:13:48 5 Q Could you tell us what your experiences you had in the
12:13:51 6 public health forum?

12:13:53 7 A I worked at a public health services hospital in Chinle,
12:13:58 8 Arizona, when I was working with the Indian Health
12:14:01 9 Service, that was direct experience working with a public
12:14:04 10 health services hospital, and then my time with the
12:14:07 11 Department of Health has been only public health. So
12:14:12 12 those are two big areas of a wide breadth of experience.

12:14:16 13 Q Doctor, in addition to everything we just reviewed, do
12:14:19 14 you hold any faculty appointments?

12:14:21 15 A I do have faculty appointments.

12:14:23 16 Q Where would that be, Doctor?

12:14:24 17 A I'm on faculty at the Brown Alpert School of Medicine,
12:14:28 18 and also the Brown School of Public Health.

12:14:31 19 Q Doctor, I think we've covered your background history and
12:14:37 20 your education and work experience. I'd like to now talk
12:14:41 21 about your experience with the Department of Health?

12:14:44 22 Could you please tell us what your current position or
12:14:47 23 position is with the Department of Health?

12:14:50 24 A So I'm the Medical Director of the Covid unit. I'm also
12:14:56 25 medical Director of Health Policy, Informatics and

12:15:01 1 Communication. I'm also a Medical Director for the
12:15:06 2 Centers of Customer Services, in that role I run certain
12:15:11 3 boards, such as the Board of Medical Licensure and
12:15:14 4 Discipline, Physician Assistant Board and Podiatry Board.

12:15:24 5 MS. WYRZYKOWSKI: Thank you, Doctor. Your
12:15:25 6 Honor at this point in time, based on Dr. McDonald's
12:15:28 7 training, education and experience, I'd like to move him
12:15:31 8 in as an expert.

12:15:32 9 MR. PICCIRILLI: No objection.

12:15:33 10 THE COURT: The Court can find him qualified as
12:15:37 11 an expert in public health as well as pediatrics, without
12:15:37 12 objection.

12:15:41 13 MS. WYRZYKOWSKI: Thank you, your Honor.

12:15:44 14 THE COURT: So ordered.

12:15:45 15 MS. WYRZYKOWSKI: I would also like to request
12:15:47 16 at this time, as I move through Dr. McDonald's testimony
12:15:49 17 regarding his expert opinions, that each question doesn't
12:15:52 18 have to have the magic language of "based on your
12:15:56 19 training, education and experience," can we agree to
12:15:57 20 that, since we've already started questioning him as an
12:15:57 21 expert?

12:16:01 22 MR. PICCIRILLI: Certainly, Judge, no
12:16:03 23 objection.

12:16:07 24 THE COURT: Why don't you do this, why don't
12:16:09 25 you ask a question without that long preface, and then if

12:16:12 1 Mr. Piccirilli wishes to object he can.

12:16:16 2 MS. WYRZYKOWSKI: Thank you.

12:16:18 3 Q BY MS. WYRZYKOWSKI: Doctor, regarding your employment
12:16:20 4 and history, your education and your experience, you
12:16:22 5 identified yourself as the Medical Director of the Covid
12:16:25 6 unit. Could you please tell me when you took on that
12:16:28 7 position and what that position entails?

12:16:30 8 A So I took on that position at the request of the Director
12:16:36 9 in November 2020. The main reason was to have medical
12:16:42 10 leadership in the Covid unit, and to have one single
12:16:47 11 voice for the unit so it can carry out its mission
12:16:51 12 successfully.

12:16:51 13 Q I think we're all generally versed in what Covid is but
12:16:56 14 could you please explain for the record what Covid is?
12:17:01 15 Thank you.

12:17:04 16 A SARS-CoV-2 is an acronym for Severe Acute Respiratory
12:17:14 17 Syndrome Corona Virus Number 2. That caused the disease
12:17:20 18 that's called COVID-19, which is another acronym, which
12:17:25 19 just really means corona virus disease.

12:17:29 20 What that disease entails is an infectious
12:17:33 21 disease, meaning it's transmitted from one person to
12:17:36 22 another. Some people are infected, have symptoms, some
12:17:43 23 people don't. People who have symptoms range from a mild
12:17:49 24 cold like illness to those who succumb to the disease and
12:17:53 25 die.

12:17:54 1 Q Doctor, is it appropriate moving forward for me just to
12:18:00 2 use the phrase COVID-19 at this point in time?

12:18:03 3 A Yes, COVID-19 would be the appropriate term.

12:18:06 4 Q Doctor, could you please explain how Covid spreads?

12:18:12 5 A So Covid generally spreads through respiratory droplets,
12:18:17 6 and to a lesser extent aerosols and treated to a much
12:18:22 7 lesser extent contact from common surfaces.

12:18:26 8 Q What is the phrase "respiratory droplets" mean?

12:18:30 9 A So respiratory droplets I think are best illustrated by
12:18:35 10 anyone whose walked outside in a cold New England
12:18:39 11 morning, when they see their breath on exhale. They see
12:18:44 12 a vapor in front of them. That's just simply frozen
12:18:48 13 respiratory droplets.

12:18:50 14 So we all spread respiratory droplets throughout the
12:18:54 15 day, whenever we're talking or singing or simply
12:18:59 16 breathing next to someone. Those respiratory droplets
12:19:04 17 contain other things. Sometimes they contain viral
12:19:09 18 particles that cause COVID-19.

12:19:11 19 Q You also indicated that COVID-19 is spread through
12:19:17 20 aerosol. Can you explain that further?

12:19:20 21 A So aerosols are smaller particles that will travel faster
12:19:25 22 and farther, depending on relative humidity of the room
12:19:31 23 and ventilation of the room.

12:19:34 24 Q And you further indicated that Covid can also spread
12:19:39 25 through contact touching. Can you explain that, please?

12:19:41 1 A Yes. So contact touching means that the viral particles
12:19:46 2 would be on the surface. For example, if someone was
12:19:51 3 holding a pen and they sneezed on it, it's very likely
12:19:56 4 the pen would have viral particles on it. So, if someone
12:20:00 5 else picked up the pen, they might pickup the viral
12:20:05 6 particles from the pen.

12:20:06 7 Q Just so, just to be clear, Doctor, COVID-19, spreads
12:20:14 8 through droplets, respiratory droplets, and those are in
12:20:19 9 words, singing; is that what you're saying?

12:20:22 10 A Yes. The respiratory droplets are generally created when
12:20:25 11 we're talking, singing or simply just quite frankly
12:20:31 12 breathing. They occur every time we exhale.

12:20:34 13 Q So COVID-19 spreads through respiratory droplets, air
12:20:39 14 borne particles, viral particles and through touching.
12:20:41 15 Any other way that COVID-19 spreads?

12:20:43 16 A That's the main ways it spreads.

12:20:46 17 Q You had indicated that COVID-19 is spread through
12:20:53 18 respiratory droplets. How far can respiratory droplets
12:20:57 19 be projected from a person?

12:20:59 20 A They can generally go 6 feet.

12:21:03 21 Q Doctor, can you tell us when COVID-19 was first
12:21:10 22 identified?

12:21:12 23 A COVID-19 was first identified in Rhode Island on February
12:21:17 24 29, 2020. It was first identified in Wuhan, China in
12:21:24 25 December of 2019.

12:21:33 1 Q And, Doctor, given your current role as the medical
12:21:36 2 director of the COVID-19 unit at the Department of
12:21:39 3 Health, do you know how many Rhode Islanders have died
12:21:41 4 from COVID-19?

12:21:42 5 A I do.

12:21:43 6 Q Could you tell the Court that number, please?

12:21:45 7 A It's a little bit over 2,800 at this point.

12:21:49 8 Q And that's just within the state, Doctor?

12:21:51 9 A That is correct.

12:21:52 10 Q And, Doctor, given your role as the medical director of
12:21:57 11 the COVID-19 unit, do you know how many deaths there have
12:22:00 12 been within the United States due to COVID-19?

12:22:02 13 A It's a little over 680,000.

12:22:06 14 Q And, Doctor, do you know the number of deaths worldwide
12:22:10 15 due to COVID-19?

12:22:11 16 A It's around two and a half million.

12:22:13 17 Q That's the worldwide deaths, Doctor?

12:22:16 18 A Yes.

12:22:16 19 Q Doctor, you had indicated that you were appointed as the
12:22:31 20 Medical Director of the COVID-19 unit at the Rhode Island
12:22:34 21 Department of Health. Could you please tell us a little
12:22:36 22 bit about what that role entails?

12:22:38 23 A So it entails attending a lot of meetings, making
12:22:44 24 decisions about important matters of policy, working with
12:22:48 25 various stakeholders inside the department, throughout

12:22:51 1 state government and then outside of state government.

12:22:55 2 It involves coordinating with national public health
12:22:59 3 experts. It also involves interacting with the public.

12:23:03 4 Q You indicated that it involves, your current role
12:23:07 5 involves coordinating with national experts?

12:23:09 6 A Yes.

12:23:10 7 Q Could you explain with that means?

12:23:11 8 A So we take guidance from the Center of Disease Control
12:23:15 9 and Prevention, and to some extent we look at what's
12:23:18 10 going on at the World Health Organization.

12:23:21 11 Q Doctor, in your role as medical director of the COVID-19
12:23:24 12 unit, did you have any role in performing any rules and
12:23:29 13 regulations when Covid was first found in Rhode Island in
12:23:33 14 March of 2020?

12:23:34 15 A Yes.

12:23:35 16 Q Could you tell us about that?

12:23:37 17 A So I played a significant role in creating input for
12:23:44 18 almost every executive order and every emergency
12:23:47 19 regulation that was done and I still am in that role
12:23:51 20 today.

12:23:52 21 Q Could you please tell us about some of the executive
12:23:56 22 measures that you were involved in in helping to direct
12:23:59 23 when COVID-19 was introduced in the United States?

12:24:02 24 A The first one I was involved with was an executive order
12:24:06 25 that was declared on March 9, 2020, which was the

12:24:12 1 declaration of state of emergency.

12:24:15 2 I was then involved with one that created a stay at
12:24:18 3 home order. I was involved with one that required
12:24:22 4 quarantine and isolation, it was also required for the
12:24:25 5 one that required mask ing. I have been involved with
12:24:29 6 others as well and every regulation we've done.

12:24:34 7 One regulation that comes to mind that I was
12:24:37 8 involved with was off label prescribing of various
12:24:41 9 medications. I was also involved with our mask mandate
12:24:47 10 regulations. So I've really been involved with almost
12:24:50 11 every regulation we've done.

12:24:51 12 Q Doctor, given your educational background in public
12:24:54 13 health and the work performed in public health, outside
12:24:57 14 of the executive order that was issued in March, are you
12:25:00 15 aware of declaring a state of emergency? Have you been
12:25:03 16 involved in any other executive orders that declared a
12:25:05 17 state of emergency?

12:25:06 18 A Not that I know of.

12:25:08 19 Q And can you tell me why a state of emergency was declared
12:25:13 20 at the time?

12:25:13 21 A The state of emergency was declared in March of 2020
12:25:17 22 because Rhode Island was confronted with a novel virus
12:25:22 23 that caused a brand new disease. What that means is no
12:25:26 24 one in Rhode Island had immunity against this disease.
12:25:32 25 So everybody was susceptible to infections, becoming ill,

12:25:37 1 hospitalized or even passing away from the disease.

12:25:41 2 Because there was a concern about our medical health
12:25:44 3 care system being able to address those needs, because no
12:25:49 4 one had immunity, because there was no vaccine and there
12:25:54 5 was no treatment available, it was determined that like
12:25:57 6 other states in this country, a state of emergency was
12:26:01 7 warranted.

12:26:02 8 Q Doctor, you also indicated that you were involved in
12:26:07 9 procedures that dealt with masking?

12:26:10 10 A Yes.

12:26:10 11 Q Can you discuss that, please?

12:26:12 12 A So I was involved with looking at the information that we
12:26:16 13 had at hand in determining whether an executive order or
12:26:20 14 subsequent regulation was appropriate for whether or not
12:26:23 15 people should wear masks in various settings.

12:26:27 16 Q And do you know, was it decided that masks should be worn
12:26:32 17 in various settings back in March of 2020?

12:26:35 18 A So that was then Governor Raimondo that issued that
12:26:38 19 executive order.

12:26:39 20 Q Doctor, briefly, you just mentioned the word vaccine and
12:26:47 21 treatments, as it stands today are there any current
12:26:51 22 treatments for COVID-19?

12:26:53 23 A So, there is a treatment for COVID-19 for people who are
12:26:59 24 12 or older that's called monoclonal antibody. It's also
12:27:06 25 commonly referred to in the public as mAbs. There is

12:27:11 1 other treatments as well. Some that are used in the
12:27:16 2 hospital, like an intravenous infusion called Remdesivir.

12:27:23 3 Those are two examples of new treatments that have
12:27:28 4 been invented during the pandemic so we can use that to
12:27:33 5 treat COVID-19.

12:27:35 6 Other treatments that are used are generally
12:27:39 7 existing drugs, medical devices like ventilators that
12:27:45 8 have been adapted to treat this disease.

12:27:47 9 Q Doctor, you had indicated that children, excuse me,
12:27:52 10 people 12 and older are able to receive mAbs?

12:27:55 11 A Yes.

12:27:56 12 Q What about children under 12, can they receive mAbs
12:28:00 13 treatment?

12:28:00 14 A No.

12:28:00 15 Q Doctor, you further indicated there was an intravenous
12:28:04 16 option available. What is the age limit on the
12:28:07 17 intravenous option to treat COVID-19?

12:28:10 18 A So the intravenous drug Remdesivir, and that's only
12:28:13 19 approved for adults.

12:28:14 20 Q And what qualifies as an adult in the medical field?

12:28:18 21 A Eighteen or older.

12:28:19 22 Q Doctor, as it currently stands, do children under the age
12:28:22 23 of 12 have any pharmaceutical treatment available to them
12:28:26 24 for COVID-19?

12:28:27 25 A There's no specific approved pharmaceutical availability

12:28:31 1 for children under 12 with COVID-19.

12:28:33 2 Q Doctor, given that there's no pharmaceutical treatment
12:28:35 3 for children under the age of 12, are you aware of any
12:28:40 4 measures that are currently in place to protect children
12:28:43 5 from COVID-19?

12:28:45 6 MR. PICCIRILLI: Objection, Judge. There's
12:28:47 7 been no foundation that COVID-19 has any adverse affect
12:28:53 8 on children under the age of 12 to any significant
12:28:59 9 degree. There have been no Covid deaths in the State.
12:28:59 10 There's currently no --

12:29:06 11 THE COURT: Sustained.

12:29:06 12 Q BY MS. WYRZYKOWSKI: Doctor, in your field in pediatrics,
12:29:08 13 do you treat any patients with Covid?

12:29:13 14 A Yes.

12:29:13 15 Q Doctor, are you familiar with whether or not there are
12:29:16 16 any pediatric related deaths for COVID-19 in the country?

12:29:19 17 A Yes.

12:29:20 18 Q Doctor, do you know how many pediatric deaths there have
12:29:24 19 been related to COVID-19?

12:29:26 20 A In what area?

12:29:27 21 Q In the country, Doctor?

12:29:29 22 A I don't know off the top of my head.

12:29:31 23 Q Doctor, did you do an affidavit in connection with this
12:29:38 24 case?

12:29:38 25 A I did.

12:29:38 1 Q Doctor, if you can give me just one minute.

12:29:38 2 (Pause taken)

12:30:02 3 Q Doctor, did we discuss, excuse me, I'm sorry. So we
12:30:06 4 talked about COVID-19, we talked about it with respect to
12:30:09 5 children. And children currently do not have
12:30:12 6 pharmaceutical measures available to them; correct?

12:30:14 7 A That's correct.

12:30:15 8 Q And in your practice you have treated patients with
12:30:18 9 COVID-19?

12:30:19 10 A Yes.

12:30:19 11 Q And you are aware that children have died as a result of
12:30:22 12 COVID-19?

12:30:22 13 MR. PICCIRILLI: Objection, Judge. In the
12:30:24 14 world? In the country? In Rhode Island?

12:30:29 15 THE WITNESS: I'm sorry, I got a little
12:30:29 16 distracted.

12:30:31 17 MS. WYRZYKOWSKI: In the country?

12:30:32 18 THE WITNESS: I'm sorry, could I hear the whole
12:30:35 19 question again?

12:30:35 20 Q BY MS. WYRZYKOWSKI: Are you aware as to whether or not
12:30:37 21 there have been Covid related deaths of pediatric
12:30:41 22 patients within the United States?

12:30:43 23 MR. PICCIRILLI: I'm going to object. What's
12:30:44 24 the relevance, it should be Rhode Island. It's an
12:30:46 25 emergency order. These issues are with relevance to

12:30:49 1 Rhode Island, not to the world, not to the country.

12:30:51 2 THE COURT: We'll see where she goes.

12:30:51 3 Overruled. He can answer.

12:30:54 4 THE WITNESS: Yes, there are deaths of COVID-19
12:30:56 5 in the United States.

12:30:57 6 Q Are you aware of any COVID-19 deaths related to Rhode
12:31:00 7 Island?

12:31:00 8 A Yes.

12:31:01 9 Q From pediatric patients?

12:31:03 10 A Yes.

12:31:03 11 Q Doctor, how many pediatric patients have died as a result
12:31:06 12 of COVID-19 in Rhode Island?

12:31:08 13 A I'm only aware of three.

12:31:10 14 Q Thank you, Doctor. Doctor, based on your medical
12:31:13 15 experience, training and education, can you provide an
12:31:17 16 opinion as to why in the State of Rhode Island there has
12:31:21 17 been a relatively low COVID-19 death ratio with pediatric
12:31:26 18 patients?

12:31:26 19 A I think it has a lot to do with our counter measures. It
12:31:36 20 has a lot to do with the vaccine preventing disease and
12:31:40 21 those who have been able to get it, and I imagine to some
12:31:44 22 degree our case load in the state.

12:31:47 23 MR. PICCIRILLI: Your Honor, I move to strike.

12:31:48 24 I think that is pure speculation. It's not appropriate
12:31:52 25 testimony of an expert witness.

12:31:55 1 MS. WYRZYKOWSKI: Your Honor, may I reask,
12:31:56 2 rephrase?

12:31:57 3 THE COURT: Actually, that answer is stricken.
12:32:00 4 If you can rephrase.

12:32:02 5 Q Doctor, based upon your medical training, your medical
12:32:06 6 education, your medical experience, do you have a medical
12:32:09 7 opinion to a degree of reasonable certainty as to why
12:32:13 8 there's been a low number of COVID-19 related pediatric
12:32:18 9 deaths in the State of Rhode Island?

12:32:19 10 A Yes.

12:32:19 11 Q Doctor, what is that opinion?

12:32:21 12 A So, one reason is because we vaccinated 68 percent of the
12:32:26 13 population. Another reason is since March 9 of 2020,
12:32:31 14 we've instituted non pharmaceutical counter measures.
12:32:36 15 Those counter measures include things I mentioned before;
12:32:40 16 masking, social distancing, including ventilation in
12:32:46 17 spaces, some of the business closures and stay at home
12:32:51 18 orders.

12:32:52 19 It's also because we instituted isolation for those
12:32:55 20 who are ill and it's also because we have quarantined
12:32:58 21 those who are exposed. Those are some of the measures
12:33:01 22 that have made a significant impact of why we haven't had
12:33:06 23 pediatric deaths in Rhode Island.

12:33:07 24 Another one is even though we had 23 children in
12:33:11 25 Rhode Island with multisystem inflammatory syndrome or

12:33:16 1 MIS-C, and 12 of those requiring intensive unit level of
12:33:21 2 care, we have a really good children's hospital in our
12:33:24 3 state and really good doctors and nurses in our state who
12:33:27 4 have employed the treatments available to save these
12:33:31 5 children's lives.

12:33:33 6 MR. PICCIRILLI: I'm going to move the strike
12:33:35 7 the last part of that. I don't know what MIS-C is or how
12:33:41 8 it's relevant to COVID-19.

12:33:43 9 THE COURT: That was all part of the -- he
12:33:44 10 answered the same question, so it's overruled.

12:33:47 11 MS. WYRZYKOWSKI: I'm sorry, your Honor. That
12:33:49 12 was overruled?

12:33:50 13 THE COURT: That was overruled. The answer
12:33:51 14 stands.

12:33:54 15 MS. WYRZYKOWSKI: Thank you, Judge.

12:33:54 16 Q Doctor, let's help clarify something, you had asked --
12:33:59 17 you had made a reference to MIS-C, and you said it very
12:34:04 18 fast. Could you please tell us what that stands for
12:34:06 19 again?

12:34:06 20 A So MIS-C or MIS-C as it's referred to in the scientific
12:34:16 21 literature, stands for multisystem inflammatory syndrome
12:34:23 22 in children. It was first described in April of 2020 in
12:34:31 23 Europe. It's rare but it occurs from a Covid infection
12:34:37 24 in children, and to a lesser extent to adults, and
12:34:42 25 creates a serious shock, like an inflammatory situation

12:34:47 1 in children that can be life threatening. It currently
12:34:50 2 does not have a specific treatment but rather it's
12:34:54 3 sometimes treated with intensive care like strategies,
12:34:59 4 like ventilators, intravenous care, pressors and other
12:35:06 5 medications that are appropriate.

12:35:07 6 Q Doctor, you had further indicated that MIS-C has been
12:35:17 7 seen in the State of Rhode Island?

12:35:18 8 A Yes.

12:35:20 9 Q Doctor, how many patients have you -- are you aware of
12:35:26 10 those that contracted MIS-C? How many patients have
12:35:32 11 contracted MIS-C?

12:35:35 12 MR. PICCIRILLI: I'm going to object as to the
12:35:37 13 relevance, neither the executive order or the emergency
12:35:40 14 rule or even the gubernatorial proclamation of quarantine
12:35:46 15 makes any reference of MIS-C as a basis for their -- for
12:35:51 16 their, for the emergency order or the executive order.
12:35:54 17 Its never been -- there's no public statement. It's not
12:35:58 18 in the order. It's not attached to any of the orders or
12:36:01 19 rules, so it's irrelevant to the validity of those
12:36:04 20 orders.

12:36:06 21 THE COURT: I'll allow you to continue making
12:36:09 22 that argument later on but at this point we got the
12:36:11 23 answer. The question is fair. The objection is
12:36:15 24 overruled. You can answer now.

12:36:16 25 THE WITNESS: So I'm aware of 23 cases in Rhode

12:36:19 1 Island since the beginning of the pandemic. Twelve of
12:36:22 2 those children required care in the intensive care unit.

12:36:27 3 Q BY MS. WYRZYKOWSKI: Doctor, before we start talking
12:36:32 4 about MIS-C, you had made a reference with respect to the
12:36:36 5 spread of Covid and children with non pharmaceutical
12:36:41 6 counter measures. Do you remember that testimony?

12:36:43 7 A Yes.

12:36:44 8 Q And when you reference non pharmaceutical counter
12:36:48 9 measures, first off, what do you mean by the phrase "non
12:36:52 10 pharmaceutical counter measures?"

12:36:53 11 A So non pharmaceutical counter measures talks about things
12:36:58 12 that we can do to prevent one person from getting Covid
12:37:03 13 from another person, but doing it without medication, so
12:37:08 14 non pharmaceutical refers to no medicines involved.

12:37:13 15 What counter measure refers to is something we do to
12:37:18 16 prevent the spread of Covid from one person to another or
12:37:22 17 group of people.

12:37:25 18 Q And on the non pharmaceutical counter measures, you
12:37:31 19 specifically referenced, and please correct me if I'm
12:37:34 20 misquoting; masking, social distancing, ventilation;
12:37:39 21 correct?

12:37:39 22 A Yes. Those are three examples of non pharmaceutical
12:37:44 23 counter measures.

12:37:45 24 Q Can you please explain why masking is a non
12:37:50 25 pharmaceutical counter measure?

12:37:52 1 A So when we wear a mask, what it does is prevent
12:37:59 2 respiratory droplets from being exhaled. That's commonly
12:38:03 3 referred to as SARS control. Additionally, when you wear
12:38:08 4 a snug fitting mask, it offers protection from other
12:38:13 5 people's respiratory droplets being inhaled in someone's
12:38:17 6 nose or mouth, which can cause infection.

12:38:20 7 Q I'm going to get back to the MIS-C in a moment. You had
12:38:28 8 also referenced two other non pharmaceutical counter
12:38:31 9 measures to be used, and that's social distancing and
12:38:36 10 ventilation. Can you please explain why social
12:38:41 11 distancing is a non pharmaceutical counter measure with
12:38:43 12 respect to Covid?

12:38:44 13 A So social distancing refers to keeping ourselves a safe
12:38:49 14 distance away from other people. Throughout most of the
12:38:53 15 pandemic this was a 6 feet distance. In the current form
12:38:57 16 of the pandemic its been reduced to a 3 foot distance,
12:39:02 17 and the concept is simple, if you're not close to
12:39:06 18 someone, your less likely to be exposed to exhaled
12:39:10 19 respiratory droplets or to a lesser extent, airborne
12:39:14 20 particles.

12:39:14 21 Q And the third non pharmaceutical counter measure that you
12:39:21 22 referenced with respect to COVID-19 was ventilation; is
12:39:25 23 that accurate?

12:39:26 24 A Yes.

12:39:26 25 Q Can you please explain why ventilation is a non

12:39:32 1 pharmaceutical counter measure to help prevent the spread
12:39:35 2 of Covid?

12:39:36 3 A So respiratory droplets move faster and farther when the
12:39:41 4 relative humidity is lower than 40 percent. For example,
12:39:46 5 respiratory droplets would move farther in a desert like
12:39:51 6 environment or in the colder New England environment when
12:39:54 7 the air is really dry here. But they also do -- they
12:39:59 8 travel less when the humidity is between 40 and 60
12:40:03 9 percent, but ventilation also refers to air exchange per
12:40:08 10 hour. That just certainly refers to how many times the
12:40:12 11 air in a room is completely turned over. Four to six air
12:40:17 12 exchanges per hour is considered adequate ventilation for
12:40:20 13 a room.

12:40:21 14 If you're in a room with less air exchanges per
12:40:26 15 hour, the air gets still and respiratory droplets can be
12:40:31 16 suspended longer. So if someone is in that room for a
12:40:35 17 long period of time, they're more likely to inhale
12:40:39 18 respiratory droplets from someone who may or may not be
12:40:44 19 symptomatic with Covid.

12:40:45 20 Q Doctor, based on your training, education and experience,
12:40:49 21 can you offer a medical opinion, can you offer an opinion
12:40:53 22 to a reasonable degree of medical certainty as to whether
12:40:56 23 or not the non pharmaceutical counter measures that you
12:41:00 24 have outlined helped prevent the spread of COVID-19?

12:41:03 25 A Yes.

12:41:04 1 Q And could you please explain your opinion as to why the
12:41:08 2 non pharmaceutical counter measures that were enacted
12:41:11 3 helped prevent the spread of Covid, based upon your
12:41:14 4 training, education and experience?

12:41:15 5 A So when people wear a mask it repels exhalation of
12:41:22 6 respiratory droplets, so that stops at the source. So
12:41:28 7 one of the things about the virus that causes Covid is
12:41:32 8 it's common for people to be asymptomatic, so they
12:41:37 9 unknowingly are spreading viral particles, so the mask
12:41:41 10 helps to prevent that from happening.

12:41:44 11 Additionally, with other people wearing a mask
12:41:47 12 they're also afforded some protection so they're not
12:41:52 13 inhaling these particles. So that is how the mask works.

12:41:55 14 Ventilation just cleans up the air so the droplets
12:41:59 15 don't stick around for a long time, and by keeping
12:42:02 16 farther away from people, people aren't as exposed for as
12:42:07 17 long a time.

12:42:08 18 Another thing we do is keep our hands clean with
12:42:11 19 hand sanitizer and soap and water.

12:42:14 20 Q Doctor, in addition to these non pharmaceutical counter
12:42:18 21 measures that you opine are used to help prevent the
12:42:22 22 spread of COVID-19, you also indicate there was a
12:42:25 23 pharmaceutical measure in place?

12:42:28 24 A Yes.

12:42:28 25 Q Could you please tell us what that pharmaceutical measure

12:42:32 1 in place is?

12:42:32 2 A Monoclonal antibodies.

12:42:36 3 Q And you had indicated those are not available to children
12:42:40 4 under the age of 12; is that right?

12:42:41 5 A Children are not allowed to receive monoclonal antibodies
12:42:44 6 if they're less than 12 years old.

12:42:46 7 Q Doctor, you had also indicated prior to your testimony,
12:42:49 8 you made a passing reference to a vaccine?

12:42:51 9 A Yes.

12:42:51 10 Q Could you please tell us if vaccines are currently in
12:42:55 11 use?

12:42:55 12 A Yes, vaccines are currently in use in Rhode Island.

12:42:58 13 Q For COVID-19?

12:42:59 14 A Yes, for COVID-19.

12:43:01 15 Q And, Doctor, who is eligible to receive COVID-19
12:43:05 16 vaccinations?

12:43:05 17 A People 12 and older are eligible to receive the Pfizer
12:43:10 18 vaccine. People 18 and older are eligible to receive the
12:43:15 19 Moderna vaccine and the Johnson and Johnson vaccine.

12:43:18 20 Q Doctor, could you hold on for one moment, please.

12:43:25 21 THE COURT: I think we'll break. This may be a
12:43:25 22 good spot.

12:43:25 23 MS. WYRZYKOWSKI: Okay, your Honor.

12:43:27 24 THE COURT: We're going to break. We'll start
12:43:28 25 again at two o'clock. If you can be back here at about

12:43:31 1 five of I'd appreciate it. Thank you.

12:43:31 2 (Lunch break taken)

14:04:31 3 THE CLERK: The case before this Court is
14:04:32 4 **PC-2021-05915, Richard Southwell vs. Daniel McKee.**

14:04:41 5 THE COURT: Okay. Doctor, if you come back up,
14:04:44 6 please.

14:04:58 7 THE CLERK: Dr. McDonald, I'm just going to
14:05:04 8 remind you you're still under oath, okay?

14:05:07 9 THE WITNESS: Thank you.

14:05:07 10 THE CLERK: Thank you.

14:05:08 11 **CONTINUED DIRECT EXAMINATION BY MS. WYRZYKOWSKI**

14:05:08 12 Q Welcome back, Dr. McDonald.

14:05:17 13 A Thank you.

14:05:18 14 Q Dr. McDonald, I believe that when we left your direct
14:05:25 15 examination we were talking about masking; is that
14:05:27 16 accurate?

14:05:27 17 A We were talking about masks.

14:05:30 18 Q And, Doctor, you had indicated that you were involved in
14:05:34 19 the masking mandate imposed in April of 2020; is that
14:05:38 20 accurate?

14:05:38 21 A That's correct.

14:05:39 22 Q And can you tell us what role you have with respect to
14:05:43 23 the masking mandate from April of 2020?

14:05:46 24 A I was one of the people who approached the Governor and
14:05:50 25 her team with the Department of Health. We thought this

14:05:52 1 was a sound public health intervention, something we
14:05:56 2 needed to do.

14:05:56 3 Q I'm sorry, Doctor, what was a sound decision?

14:05:59 4 A The sound public health intervention is something that
14:06:00 5 will prevent the transmission of disease, and given the
14:06:03 6 nature of how Covid is spread I knew that mask, universal
14:06:09 7 masking would be something that would be effective.
14:06:11 8 Therefore, I was confident in recommending that we do
14:06:14 9 that.

14:06:14 10 Q So, Doctor, you indicated that you were part of the
14:06:21 11 advising process, with respect to the April 2020 mandate,
14:06:25 12 have you advised any other state agencies with respect to
14:06:30 13 Covid-19?

14:06:30 14 A Oh sure, I advise a lot of different state agencies. I
14:06:34 15 advised the Department of Education. I've advised the
14:06:38 16 Judiciary. I've advised the BHDDH, which stands for
14:06:44 17 behavioral health, hospitals and disabilities.

14:06:47 18 Q And, Doctor, could you tell us when you provided any type
14:06:52 19 of advisory guidance to the Department of Education?

14:06:56 20 A Yeah, earlier 2020, and all of 2020 and leading into
14:07:02 21 2021. I'm still providing guidance to them. Because the
14:07:06 22 Department of Health, we're giving a lot of guidance of
14:07:08 23 how schools should function.

14:07:10 24 Q And you also indicated that you provided advisory
14:07:13 25 information to the judiciary; is that accurate?

14:07:16 1 A I did.

14:07:16 2 Q And what type of information did you provide to the
14:07:16 3 judiciary?

14:07:19 4 A I came over --

14:07:21 5 MR. PICCIRILLI: Objection, your Honor. This
14:07:22 6 goes to relevance. I mean I know we have to wear these.
14:07:26 7 The Chief Judge's order, now I know why, but what
14:07:30 8 relevance does that have to our case?

14:07:33 9 MS. WYRZYKOWSKI: Your Honor, that is the
14:07:33 10 relevance. The fact that we're all standing here in
14:07:34 11 masks. And Dr. McDonald, based upon his training,
14:07:37 12 education and experience, was even sought out by the
14:07:39 13 court system to help provide instructions as to how to
14:07:41 14 proceed during a global pandemic.

14:07:44 15 THE COURT: But whether we should be wearing
14:07:45 16 masks is different from whether or not the school
14:07:47 17 students should be wearing masks, wouldn't you agree?

14:07:50 18 MS. WYRZYKOWSKI: No.

14:07:51 19 THE COURT: Well, then we'll see where the
14:07:53 20 Doctor goes with it. That's allowed but --

14:07:55 21 MS. WYRZYKOWSKI: I'm sorry, your Honor, could
14:07:55 22 you repeat.

14:07:55 23 THE COURT: It's allowed for a few minutes.
14:07:57 24 We'll see how far this goes.

14:07:58 25 Q BY MS. WYRZYKOWSKI: Doctor, what kind of advice did you

14:08:01 1 provide the judiciary with respect to COVID-19

14:08:03 2 A Well, they wanted to have a bar exam at Roger Williams,
14:08:06 3 so I gave them advice on how to do that safely, went over
14:08:10 4 their plan, gave my advice to them.

14:08:12 5 I came over to the court, was here, and a couple
14:08:15 6 other courts in the state, and I talked about what social
14:08:19 7 distancing would look like, plexiglas. Whether we should
14:08:22 8 wear masks or not. How far a part to put people. I
14:08:27 9 mean, Deb Saunders and others asked me to walk through
14:08:29 10 here, so I did, and gave them my advice, talked about the
14:08:32 11 ventilation, things like that. So they would actually
14:08:35 12 have a safe place to work.

14:08:37 13 What they wanted to do is get back to course, like
14:08:40 14 we're doing today, so I gave them advice on how to do
14:08:43 15 that.

14:08:43 16 Q Thank you, Doctor. You had also talked about very
14:08:45 17 briefly before we broke about the introduction of a
14:08:48 18 vaccine. Do you remember that testimony?

14:08:50 19 A Yes.

14:08:50 20 Q Is the vaccine readily available in Rhode Island?

14:08:53 21 A Yes, there's three vaccines available in Rhode Island.

14:08:56 22 Q For purposes of the record, what are they?

14:08:59 23 A The Pfizer vaccine, the Moderna vaccine and the Janssen
14:09:03 24 vaccine.

14:09:03 25 Q And in your position in the Department of Health, are you

14:09:06 1 aware of the percentage of Rhode Island's population that
14:09:09 2 is currently vaccinated against Covid-19?

14:09:12 3 A Yes.

14:09:12 4 Q And what is that percentage, Doctor?

14:09:14 5 A Sixty-eight percent of the State is fully vaccinated.

14:09:17 6 Q Doctor, you had indicated that you were involved in
14:09:20 7 expressing opinions to the judiciary and the Governor's
14:09:23 8 office, and one of them was with respect to the mask
14:09:26 9 mandate in April of 2020?

14:09:28 10 A Yes.

14:09:28 11 Q Are you aware of any points in time when that mask
14:09:31 12 mandate was lifted?

14:09:32 13 A Yes, the mask mandate was lifted in May of this year.

14:09:36 14 Q And, Doctor, could you tell us why the mask mandate was
14:09:40 15 lifted in May of 2021?

14:09:42 16 A When the mask mandate was lifted in May of 2021, it was
14:09:45 17 really soon before Memorial Day, and the reason it was
14:09:48 18 lifted was because the health care system could easily
14:09:52 19 handle all the cases we had, plus all the other work
14:09:56 20 health care systems have to do.

14:09:58 21 Our case counts were dropping quite a bit. There
14:10:00 22 were people in the hospital dropping quite a bit, median
14:10:03 23 deaths were decreasing.

14:10:04 24 So since the pandemic by all accounts was improving.
14:10:08 25 It seemed safe to let people know that they didn't need

14:10:12 1 to wear masks in all these settings. They weren't
14:10:15 2 required to recommend in different settings.

14:10:18 3 Q As you stand here today, are you aware as to whether or
14:10:21 4 not there's a mask mandate in place today?

14:10:23 5 A There is a mask mandate in place today.

14:10:27 6 Q And where is there a mask mandate in place, Doctor?

14:10:29 7 A Well, there is an executive order that was done recently,
14:10:33 8 and there's also regulations that requires masks be worn
14:10:36 9 in schools.

14:10:37 10 Q And do you know whether or not that regulation, as to
14:10:41 11 whether or not masks should be required in schools, is at
14:10:45 12 issue in this current case?

14:10:47 13 A Yes.

14:10:47 14 Q Doctor, could you explain, based upon your training,
14:10:54 15 education and experience, could you provide an opinion to
14:10:56 16 a reasonable degree of medical certainty, as to why a new
14:11:00 17 mask mandate has been imposed?

14:11:02 18 A Yeah, it's because of the Delta variant of Covid. It
14:11:07 19 changed everything over the summer in many ways. It
14:11:11 20 really ruined our summer. So soon after July 4th, the
14:11:16 21 Delta variant of Covid, in other words a mutated form of
14:11:20 22 Covid, became the dominant strain of Covid because it's
14:11:24 23 much more contagious, much more transmissible and makes
14:11:29 24 people just as sick, if not more so. We really started
14:11:32 25 to see a lot more cases, and we saw a lot more people

14:11:36 1 that got into the hospital.

14:11:37 2 Q Can you break that down a little bit? You had just
14:11:41 3 testified that the Delta is a variant of Covid; is that
14:11:45 4 accurate?

14:11:46 5 A Yes.

14:11:46 6 Q And I believe you also testified that the Delta variant
14:11:50 7 is more transmissible?

14:11:51 8 A That's right.

14:11:52 9 Q What does that mean?

14:11:53 10 A So transmissible means it's more likely to spread from
14:11:57 11 one person to another. In other words, it's more
14:12:01 12 contagious. There was a study out of China, for example,
14:12:05 13 that showed that people who have the Delta variant have a
14:12:09 14 viral load that's 1,000 times higher than the wild type,
14:12:13 15 or the original type of Covid.

14:12:15 16 Q Okay. You threw out a lot there, so let's just break
14:12:22 17 that down a little bit. You had indicated that the Delta
14:12:24 18 variant has a higher viral load. What does that mean?

14:12:28 19 A So when people are infected, whether they're symptomatic
14:12:34 20 or asymptomatic with the Delta variant, in other words, a
14:12:39 21 mutated form of the original Covid. The number of viral
14:12:44 22 particles they have is more than the original.

14:12:49 23 And when I talk about the viral load, I'm simply
14:12:52 24 talking about a number, more viral particles.

14:12:56 25 Q What does it mean to have more viral particles?

14:13:00 1 A What it means when someone has more viral particles, it
14:13:04 2 means that if they were to be around other people,
14:13:07 3 they're more likely to spread the infection of the Delta
14:13:11 4 variant to other people, and this is something I've seen
14:13:13 5 with the Delta variant. It caused more disease. It did
14:13:19 6 so over the summer. Covid is not a seasonal disease yet
14:13:25 7 but during the summer when people are outdoors we still
14:13:29 8 saw an escalation of this disease, cases, admissions and
14:13:34 9 deaths because of the Delta variant.

14:13:37 10 Q Is there any other reason that the Delta variant is more
14:13:41 11 transmissible outside the viral load?

14:13:44 12 A Well, it's the higher viral load, but that's part of what
14:13:49 13 makes a variant a concern, a variant of concern. In
14:13:54 14 other words, not every variant of the wild type of Covid
14:14:00 15 is more contagious. This one happens to be.

14:14:03 16 Q And how do you know that this version of Delta, I'm
14:14:09 17 sorry, this version of Covid is more contagious?

14:14:13 18 A Well, we can measure that by the increase in cases,
14:14:17 19 there's published literature on this as well. And we
14:14:20 20 actually track this at the Rhode Island Department of
14:14:24 21 Health and our state health laboratory as well.

14:14:28 22 MS. WYRZYKOWSKI: Your Honor?

14:14:29 23 THE COURT: Yes.

14:14:30 24 MS. WYRZYKOWSKI: May I approach the clerk to
14:14:32 25 have something marked?

14:14:32 1 THE COURT: Of course.

14:14:33 2 MS. WYRZYKOWSKI: I'm giving an exact copy to
14:14:38 3 counsel.

14:14:50 4 THE CLERK: Defendant's A for identification.

14:14:50 5 **(DEFENDANTS' EXHIBIT A WAS MARKED FOR**
14:14:50 6 **IDENTIFICATION)**

14:15:27 7 MS. WYRZYKOWSKI: Your Honor, may I approach
14:15:28 8 the witness?

14:15:29 9 THE COURT: Of course.

14:15:30 10 Q BY MS. WYRZYKOWSKI: Doctor, I just handed you an
14:15:36 11 exhibit, it's marked as Defendants' Exhibit A. Do you
14:15:40 12 see that?

14:15:40 13 A I do.

14:15:40 14 Q Do you recognize that exhibit, Doctor?

14:15:42 15 A I do.

14:15:43 16 Q Could you tell -- how do you recognize that exhibit?

14:15:47 17 A It's a document that references the Department of Health.

14:15:49 18 It's something-- it's data that we have from our
14:15:52 19 database called Salesforce from September 29, 2021.

14:15:57 20 Q Is that record produced in the ordinary course of
14:16:00 21 business at the Department of Health?

14:16:02 22 MR. PICCIRILLI: I have no objection to the
14:16:03 23 document.

14:16:04 24 MS. WYRZYKOWSKI: Thank you.

14:16:04 25 THE WITNESS: Yes.

14:16:05 1 Q Doctor, I would like you to take a look at that document
14:16:08 2 that's before you. Could you please tell the judge
14:16:11 3 what --

14:16:11 4 THE COURT: Do you want that full?

14:16:14 5 MS. WYRZYKOWSKI: I would like it full. He has
14:16:15 6 no objection.

14:16:16 7 THE COURT: If you would like it full, it's
14:16:19 8 full.

14:16:20 9 THE CLERK: May I have the exhibit back?
14:16:25 10 Defendants' A is now marked full. Thank you.

14:16:25 11 **(DEFENDANTS' EXHIBIT A WAS MARKED FULL)**

14:16:27 12 MS. WYRZYKOWSKI: Your Honor, do you want a
14:16:29 13 copy.

14:16:29 14 THE COURT: If you have one, I'd appreciate it.

14:16:32 15 MS. WYRZYKOWSKI: If I may, your Honor. Thank
14:16:33 16 you, your Honor.

14:16:34 17 Q Alright, Doctor, you're now looking at an exhibit that
14:16:38 18 has been marked full. You've indicated that's a record
14:16:42 19 kept in the ordinary course of business at the Department
14:16:45 20 of Health. What is that document that you're looking at?

14:16:47 21 A So it's a list of new cases by date, and then how many
14:16:51 22 people are currently hospitalized in Rhode Island.

14:16:53 23 Q And, Doctor, do you know the time frame that that
14:16:57 24 document covered?

14:16:58 25 A Yes. It's from July 1st, 2021 until September 28, 2021.

14:17:05 1 Q And there are three columns in this document, and it's
14:17:10 2 very self-explanatory; is that accurate?

14:17:10 3 A Yes.

14:17:12 4 Q Doctor, you had indicated that the Delta variant became
14:17:16 5 the dominant strain in the summer of 2021; correct?

14:17:19 6 A Yes, it was around July 4th.

14:17:22 7 Q Doctor, you further indicated that the number of positive
14:17:25 8 Covid cases increased at roughly the same time as the
14:17:30 9 Delta variant became dominant; correct?

14:17:32 10 A Yes.

14:17:32 11 Q Could you tell us by looking at this document that's in
14:17:35 12 front of you, how the numbers increased or decreased and
14:17:39 13 then increased starting in the summer of 2021. Don't go
14:17:44 14 through every line but to give a general overview,
14:17:47 15 please.

14:17:47 16 A Well, sure. So what you see as a trend is really very
14:17:51 17 few cases, even up until July 4th, July 5th, there are
14:17:55 18 only 12 cases.

14:17:56 19 But when you look at a trend over time is you see
14:18:01 20 the number of new cases, the middle column, which sort of
14:18:03 21 is gradually increasing. It's really quite striking when
14:18:07 22 you get to the end of July where you're in now high
14:18:11 23 triple digits where you're up to, you know, 210 cases on
14:18:16 24 July 29th. It continues to gradually go up a little bit,
14:18:20 25 367 cases on the 12th of August. And it still keeps

14:18:25 1 going up quite a bit even through August and into
14:18:29 2 September.

14:18:29 3 September 13th, for example, we're at 468 cases.
14:18:36 4 Excuse me, the 28th of September we're down to 254 cases
14:18:40 5 and you see it's starting to trend down a little bit
14:18:44 6 towards that week.

14:18:45 7 Hospitalizations are covered in the third column.
14:18:49 8 And you see we only had 23 people in the hospital, July
14:18:54 9 3d, but it gradually increases up 'till we have, you
14:18:59 10 know, triple digits worth of patients. You see, for
14:19:02 11 example, on August 25th, there's a 150 patients, and it
14:19:08 12 goes up a little bit further then decides to drop down a
14:19:12 13 lit bit once we get to September 9th or so. But it stays
14:19:16 14 stable you know on the high 120's low 130's, just where
14:19:20 15 we are today.

14:19:21 16 Q Doctor, I might have already asked this question, and if
14:19:24 17 I have I apologize, but based upon your training,
14:19:26 18 education and experience, can you render an opinion, with
14:19:29 19 a degree of medical certainty, as to why these Covid
14:19:32 20 numbers had been increasing?

14:19:34 21 A Oh, it's because of the Delta variant, without a doubt.

14:19:38 22 Q Why do you see that, Doctor?

14:19:40 23 A Because our state health labs does whole genomic
14:19:46 24 sequencing on a specific number of specimens we get, and
14:19:49 25 soon after July 4th, the whole genomic sequencing shows

14:19:54 1 that it was the Delta variant that was showing up in
14:19:57 2 Rhode Island.

14:19:58 3 In other words we have other variants, namely the
14:20:02 4 Alpha variant before then. But really what you saw come
14:20:06 5 July 4th is overwhelming, and even to now, all of our
14:20:14 6 specimens show that it's the Delta variant that's in
14:20:16 7 Rhode Island.

14:20:16 8 Q You had used a fancy word that I'm not familiar with, and
14:20:22 9 if I get it wrong I apologize in advance, "whole genomic
14:20:22 10 sequencing?"

14:20:27 11 A I said, "whole genomic sequencing."

14:20:30 12 Q What is that, Doctor?

14:20:31 13 A So whole genomic sequencing is a technique that we do in
14:20:36 14 our state health lab where we sequence the entire genome
14:20:42 15 of the SARS-CoV-2 virus, and when you sequence it you can
14:20:48 16 see is this particular sequence of genes similar or
14:20:53 17 identical to past?

14:20:55 18 When you talk about a variant of Covid, what variant
14:21:02 19 simply means is the gene sequence is different than the
14:21:06 20 original wild type Covid.

14:21:09 21 Q Given the increase in numbers that we've observed through
14:21:14 22 Exhibit A over the summer, what, if anything, did the
14:21:17 23 Department of Health do in response to that?

14:21:19 24 A Well, we were concerned about this over the summer. Our
14:21:25 25 biggest effort, we're trying to get more and more people

14:21:27 1 vaccinated because that's a really important thing to do
14:21:30 2 is to get people vaccinated.

14:21:32 3 We also promote a treatment, specifically monoclonal
14:21:37 4 antibodies. The mask mandate was no longer in affect,
14:21:41 5 but we did start talking about when it was appropriate
14:21:43 6 for people to wear masks. One of the things we talked
14:21:46 7 about in particular was people who weren't vaccinated
14:21:50 8 really should be wearing a mask indoors, so we made that
14:21:54 9 recommendation to people.

14:21:55 10 Q You testified earlier that children under the age of 12
14:22:00 11 cannot get vaccinated. And you just testified that one
14:22:03 12 of the keys things that you were trying to do is increase
14:22:06 13 vaccination rates. Given that children could not get
14:22:09 14 vaccinated, what, if any, measures were taken with
14:22:13 15 respect to children within the state?

14:22:14 16 A Well, during the summer the best children could do is
14:22:16 17 stay apart from other people, to the extent that that's
14:22:20 18 possible. They could wear masks if they wanted to but it
14:22:25 19 wasn't a requirement to do so. But for school camps or
14:22:30 20 summer school, for example, kids could wear masks if they
14:22:31 21 wanted to.

14:22:31 22 Q With the approach of the upcoming academic school year,
14:22:36 23 was any further action taken with respect to the Covid-19
14:22:38 24 and children?

14:22:39 25 A Well, that's when the mask mandates come into play.

14:22:43 1 There was a new declaration of a state of emergency that
14:22:46 2 we did over the summer. One of the things that we also
14:22:50 3 did though was a mask mandate for schools that occurred
14:22:53 4 in August of 2021.

14:22:56 5 Q Let's talk about the mask mandate in schools, Doctor.
14:22:59 6 Were you part of that committee to discuss at the
14:23:04 7 executive level the issuance of a masking mandate?

14:23:07 8 A Yes.

14:23:07 9 Q And do you recall what your recommendation was at that
14:23:12 10 time?

14:23:12 11 A That masks be required in schools for the beginning of
14:23:15 12 the school year.

14:23:16 13 Q And, Doctor, can you please explain, based upon your
14:23:20 14 training, education and experience to a degree of medical
14:23:24 15 certainty, as to why you opined that masks were needed in
14:23:29 16 academic settings?

14:23:30 17 A We really wanted kids back in school --

14:23:34 18 MR. PICCIRILLI: I have an objection, your
14:23:35 19 Honor. She mentioned a committee --

14:23:37 20 THE COURT: I'm not sure whether the "you" that
14:23:39 21 she referenced is referring to him singularly or to the
14:23:42 22 committee. And you've mentioned -- you used that phrase
14:23:45 23 several times. Is that the concern you have?

14:23:47 24 MR. PICCIRILLI: Yes, your Honor. And what is
14:23:48 25 this committee she's referring to? I think this is a

14:23:50 1 person that anybody in the State here knew that there was
14:23:52 2 a committee advising the Governor.

14:23:54 3 THE COURT: Why don't we allow counsel to back
14:23:54 4 up.

14:23:57 5 Q BY MS. WYRZYKOWSKI: Just to clarify, Doctor, you
14:23:59 6 indicated that you had been involved to provide guidance
14:24:04 7 to people of the executive branch; is that accurate?

14:24:07 8 A Yes.

14:24:08 9 Q I use the phrase committee, that's my own verbiage, I
14:24:14 10 apologize. What would you call the group of people who
14:24:17 11 provided guidance to the executive branch?

14:24:20 12 A Well, there's people in the Department of Health who are
14:24:23 13 a part of the Covid initiative team, and there's also
14:24:26 14 people in the Governor's Office. Those are the people
14:24:29 15 that I provided my opinion to.

14:24:31 16 MR. PICCIRILLI: The Covid what team?

14:24:34 17 MS. WYRZYKOWSKI: Leadership.

14:24:34 18 Q That's a new phrase for us today. Could you please
14:24:38 19 explain what the Covid leadership team is?

14:24:39 20 A It's generally people who lead the Department of Health
14:24:45 21 response dealing with the Covid pandemic. It includes
14:24:48 22 the leadership team in our Covid unit. We have an entire
14:24:51 23 unit of people who are solely devoted to direct the
14:24:54 24 pandemic and provide guidance. I am merely a member of
14:24:55 25 the leadership team.

14:24:57 1 Q Who else is on the leadership team?

14:25:00 2 A There's a lot of people, including the Director of
14:25:03 3 Health, Tom McCarthy, the executive director, Kristine
14:25:10 4 Campagna, the chief operating officer. There's also Matt
14:25:14 5 Stark, who is the chief financial officer for the Covid
14:25:17 6 leadership team. There's also Jacqueline Rodriguez, who
14:25:22 7 works with quarantine and isolation. There's also Leanne
14:25:27 8 Lasher, whose the head of our data team. And there's
14:25:31 9 several other people, including Alysia Mihalakos, who is
14:25:36 10 in charge of our emergency preparedness and response.
14:25:40 11 Those are most of the people that come to mind.

14:25:42 12 Q Thank you, Doctor. And what is the purpose of the Covid
14:25:46 13 leadership team?

14:25:47 14 A Well, we work as a team to try and come up with the best
14:25:51 15 decisions for the State and so we work together, share
14:25:54 16 information, gather expertise and come up with decisions
14:25:57 17 that make the most sense for the State. It is
14:26:00 18 collectively. We meet every day.

14:26:02 19 Q I'm sorry, you said you meet daily?

14:26:04 20 A We meet daily.

14:26:05 21 Q And is the Covid leadership team the one that advises the
14:26:10 22 executive branch? I used the phrase committee earlier?

14:26:14 23 A Yes. Primarily it's the Covid leadership team which
14:26:17 24 would offer recommendations to the Governor's office.

14:26:20 25 Q As a member of the Covid leadership team, were you part

14:26:25 1 of advising the Governor's Office with respect to the
14:26:28 2 August 2021 mask mandate?

14:26:31 3 A Yes.

14:26:32 4 MR. PICCIRILLI: I'm going to object, your
14:26:34 5 Honor. There's nothing in the executive order, in the
14:26:38 6 emergency rule, in the gubernatorial proclamation of
14:26:44 7 quarantine that says that a Covid leadership team advised
14:26:51 8 the Governor for this. And there's no statutory basis
14:26:54 9 for it and there's no constitutional basis for it. Where
14:26:58 10 and when did this Covid leadership team become the entity
14:27:07 11 that governs public health policy in Rhode Island?

14:27:11 12 MS. WYRZYKOWSKI: Objection, your Honor.

14:27:12 13 THE COURT: It goes to the advisory that was
14:27:12 14 used.

14:27:14 15 MS. WYRZYKOWSKI: Exactly. Your Honor, it's an
14:27:16 16 advisory committee. They sought live testimony.

14:27:18 17 THE COURT: They gave recommendations through
14:27:20 18 the executives.

14:27:22 19 MS. WYRZYKOWSKI: Exactly. In addition to
14:27:22 20 that, any questions he has Dr. McDonald is available for
14:27:25 21 cross-examination.

14:27:26 22 THE COURT: Absolutely. The objection, if
14:27:29 23 there is one, is overruled.

14:27:29 24 MS. WYRZYKOWSKI: I'm sorry, could you read
14:27:29 25 back the last question?

14:27:29 1
14:27:53 2
14:27:53 3
14:27:56 4
14:27:59 5
14:28:02 6
14:28:04 7
14:28:07 8
14:28:09 9
14:28:16 10
14:28:19 11
14:28:22 12
14:28:25 13
14:28:29 14
14:28:31 15
14:28:35 16
14:28:38 17
14:28:42 18
14:28:47 19
14:28:51 20
14:28:54 21
14:28:59 22
14:29:02 23
14:29:05 24
14:29:08 25

(Record read)

THE WITNESS: Yes.

Q BY MS. WYRZYKOWSKI: And what was your role, Doctor.

A Medical Director of the Covid unit. So I would provide medical direction as a physician, and a public health expert I provide those opinions.

Q Do you recall what type of opinions you provided with respect to the August 2020 order?

A I do. I recognize that the 2021 school year was going to be different than the 2020 school year. We knew that getting kids in school was very important. We knew that's important for their physical health, their social health, their emotional health and their education, that kids being in school is very important.

We also knew that this year was qualifiedly different because of the Delta variant. We knew that students would either be sitting closer together, 3 feet apart. So masks were much more important in 2021 than they were in 2020. Because we knew that more kids were going to be on buses, more kids would be in classrooms and the virus had mutated to become more contagious.

So it was overwhelming obvious that we were going to have more cases and therefore more hospitalizations and risk of children dying from Covid. Therefore we needed to make recommendations to prevent this, and one of these

14:29:12 1 recommendations was masking, and it was important to know
14:29:14 2 we already done some changes last year that still
14:29:18 3 persisted. Like we had funds available for every school
14:29:20 4 to improve the ventilation, and lot of schools took
14:29:25 5 advantage of that through Arden Engineering and other
14:29:27 6 resources.

14:29:28 7 But masking is something we did last year and was
14:29:31 8 effective, so we did it again this year. Even though
14:29:35 9 Delta is more contagious.

14:29:37 10 Q Doctor, we've already talked about how masking is
14:29:40 11 effective. We also indicate that there were other forms
14:29:43 12 of non pharmaceutical measures that were used, masking,
14:29:46 13 social distancing, ventilation.

14:29:50 14 Can you opine, based upon your training, education
14:29:52 15 and experience, to a degree of medical certainty, as to
14:29:57 16 which of these three, counter pharmaceutical measures are
14:30:01 17 most imperative at this time?

14:30:04 18 A So what I consider non pharmaceutical counter measures, I
14:30:07 19 think of them in this order of importance: Universal
14:30:10 20 masking is the most important. A close second is
14:30:14 21 appropriate ventilation, and then third is social
14:30:18 22 distancing and then four is proper handwashing.

14:30:20 23 Q Why did you opine, to a reasonable degree of medical
14:30:25 24 certainty, that masking is most important with the Delta
14:30:29 25 -- with the Delta variant or in general, I'm sorry?

14:30:31 1 A Well, masking is really important for the Delta variant,
14:30:35 2 but it was true for the entire pandemic. I have been
14:30:38 3 able to read scientific studies, specifically in the
14:30:41 4 Center for Disease Control and Prevention publication
14:30:45 5 called Morbidity and Mortality Weekly Report, and they
14:30:47 6 have demonstrated studies that show masks are effective
14:30:53 7 in various settings.

14:30:56 8 MR. PICCIRILLI: I'm sorry, I'm going to object
14:30:59 9 to any reference to any materials that's not included in
14:31:04 10 any of the executive orders or the emergency rule. I
14:31:08 11 don't know what an MMWR is and I don't know what studies
14:31:13 12 he is referring to. Are they studies of children? Are
14:31:16 13 they randomized controlled studies?

14:31:19 14 MS. WYRZYKOWSKI: Your Honor, give me a moment
14:31:21 15 I can rectify that confusion. If you give me a moment, I
14:31:25 16 can rectify his confusion with respect to the study.

14:31:27 17 THE COURT: Okay.

14:31:27 18 Q BY MS. WYRZYKOWSKI: Doctor, you had just indicated there
14:31:28 19 was a series of studies that you had relied upon. Could
14:31:34 20 you please tell me the name of some of the studies you
14:31:37 21 relied upon?

14:31:38 22 A Well, there were several studies and treaties that I
14:31:41 23 looked at. One is just a review, the Center For Disease
14:31:44 24 Control and Prevention website, where they look at the
14:31:48 25 effectiveness of community masking. That website in

14:31:51 1 particular, it's well over 60 references on why masking
14:31:56 2 is necessary and effective, and it supports the universal
14:31:58 3 recommendation for masking in K-12 settings.

14:32:02 4 So that is one source. But there's another
14:32:04 5 publication from Arizona, that was really interesting, it
14:32:09 6 was published last Friday night. And there was other
14:32:12 7 studies from different parts of the country like
14:32:15 8 St. Louis that show about the effectiveness of masking.

14:32:17 9 So in some of the studies I've shared with you, if
14:32:19 10 you share them with me I can talk more about them.

14:32:23 11 MS. WYRZYKOWSKI: Yes. We just need to pause
14:32:24 12 for one second.

14:32:28 13 MR. PICCIRILLI: Maybe while we are pausing I'm
14:32:30 14 going to object to anything before August 19th, a study
14:32:34 15 that came out Friday.

14:32:36 16 THE COURT: After August 19th?

14:32:38 17 MR. PICCIRILLI: After August 19.

14:32:41 18 MS. WYRZYKOWSKI: Your Honor, this is a newly
14:32:43 19 emerging disease. It began 18 months ago, people are
14:32:46 20 constantly trying to keep our society at large safe. Of
14:32:49 21 course there are going to be new studies. To cut off the
14:32:52 22 Doctor now and say he can only testify to what happened
14:32:54 23 on the 18th and not within the last six weeks.

14:32:57 24 THE COURT: You asked him his expert opinion.

14:32:59 25 MS. WYRZYKOWSKI: I did.

14:32:59 1 THE COURT: And then he gave -- he was in the
14:33:01 2 process of explaining the advisory commission giving
14:33:04 3 recommendations to the executives, and then you asked him
14:33:06 4 the basis for his, as I understand it, the basis for his
14:33:10 5 recommendation to the executives.

14:33:11 6 MS. WYRZYKOWSKI: I did. And we have studies,
14:33:13 7 and the studies he's specifically referencing right
14:33:15 8 now --

14:33:16 9 THE COURT: I know. But the basis for those
14:33:17 10 studies is not a September study.

14:33:20 11 MS. WYRZYKOWSKI: That is correct.

14:33:20 12 THE COURT: Okay.

14:33:21 13 MS. WYRZYKOWSKI: But they are -- we'll get to
14:33:22 14 that battle next. I do have studies that he's
14:33:26 15 referencing now from May of 2021. May I approach?

14:33:31 16 THE COURT: I'm just trying to figure out what
14:33:34 17 we're focussing on. Are we focussing on his overall
14:33:35 18 expertise for which you have right to give a basis or his
14:33:39 19 recommendation?

14:33:41 20 MS. WYRZYKOWSKI: At this particular moment in
14:33:42 21 time, and I'm not saying go back to it, I'm focussing on
14:33:46 22 the information that he had available to him to help a
14:33:49 23 member of the -- I forget the name of it. Covid
14:33:54 24 Leadership Advisory Board for the August 2021 order.

14:33:58 25 So what studies he relied upon to help form his

14:34:02 1 opinions.

14:34:02 2 THE COURT: So --

14:34:04 3 MS. WYRZYKOWSKI: So anything -- September at
14:34:05 4 this point is out, but anything pre August would be
14:34:08 5 relevant for this specific line of questioning. That's
14:34:09 6 my position.

14:34:11 7 MR. PICCIRILLI: And I just want to point out to
14:34:12 8 your Honor, the witness is a little bit vague when he
14:34:15 9 references studies. He doesn't say the date. He doesn't
14:34:18 10 say the name. Except that he mentions the study out of
14:34:22 11 Arizona from last Friday, which clearly is not responsive
14:34:26 12 to that question.

14:34:26 13 THE COURT: I was going to say I wasn't sure
14:34:28 14 which way she was going on her question, and therefore, I
14:34:29 15 didn't want her to be specific about the article. But if
14:34:31 16 you want specificity about the basis you're entitled to
14:34:34 17 it. You're entitled to know the identity of all the
14:34:37 18 articles, if you wish.

14:34:38 19 MR. PICCIRILLI: Yes, your Honor. And again,
14:34:40 20 just to be clear, we're asking prior to August 19th.

14:34:44 21 MS. WYRZYKOWSKI: At this particular moment in
14:34:45 22 time.

14:34:46 23 THE COURT: Thank you, Mr. Piccirilli.

14:34:49 24 MS. WYRZYKOWSKI: Your Honor, may I approach?

14:34:50 25 THE COURT: Sure.

14:35:00 1 THE CLERK: This is Defendants' B for
14:35:02 2 identification.

14:35:02 3 (DEFENDANTS' EXHIBIT B WAS MARKED FOR
14:35:06 4 IDENTIFICATION)

14:35:06 5 MS. WYRZYKOWSKI: Your Honor, may I approach
14:35:07 6 the witness?

14:35:08 7 THE COURT: Yes.

14:35:12 8 Q BY MS. WYRZYKOWSKI: Dr. McDonald, do you recognize what
14:35:16 9 I've handed you as Defendants' Exhibit B?

14:35:18 10 A Yes.

14:35:19 11 Q Could you please tell us what it is that you are looking
14:35:23 12 at when you see Defendants' Exhibit B?

14:35:25 13 A This is a publication by the Center For Disease Control
14:35:29 14 Prevention, also known as the CDC.

14:35:32 15 Q Is that -- I'm sorry, Doctor, I apologize.

14:35:35 16 A It's called a science brief, and it really talks about
14:35:39 17 the literature, support, community use of cloth masks to
14:35:43 18 control the spread of SARS-CoV-2.

14:35:46 19 Q Is that the study you were referencing before?

14:35:49 20 A Yes, it's one of the studies I was just referencing.

14:35:52 21 Q Doctor, you had indicated that there were additional
14:35:57 22 studies with respect to the spread of Covid-19; is that
14:36:02 23 accurate?

14:36:03 24 A Yes.

14:36:03 25 Q You had referenced that there was a specific study that

14:36:06 1 came out from Arizona?

14:36:08 2 A Right.

14:36:10 3 MR. PICCIRILLI: Judge, I'm sorry, I may have
14:36:12 4 missed it. Is this Defendants' B?

14:36:15 5 MS. WYRZYKOWSKI: Yes.

14:36:15 6 MR. PICCIRILLI: Was it offered as a full
14:36:17 7 exhibit?

14:36:17 8 MS. WYRZYKOWSKI: No.

14:36:19 9 MR. PICCIRILLI: Um....

14:36:21 10 MS. WYRZYKOWSKI: Do you have any objection?

14:36:23 11 MR. PICCIRILLI: So is the purpose of this to
14:36:25 12 focus on the paragraph called mask wearing? Is that
14:36:28 13 where the footnotes to different studies, because those
14:36:32 14 studies are not included. There's footnotes to a study,
14:36:36 15 but the factual study itself doesn't appear.

14:36:39 16 For example I know I put into my complaint, I know,
14:36:43 17 for example, I don't know if it's in this document. One
14:36:45 18 of the studies that's cited is a Facebook survey. It was
14:36:50 19 literally a survey done on a Facebook where people
14:36:55 20 voluntarily gave their stores about wearing a mask, and
14:36:58 21 in the study, the limitation part of the study, it says
14:37:01 22 of course, you know we have -- we can't control response
14:37:05 23 by it so the study is basically crap. It's useless.

14:37:09 24 So just a statement that, you know, we cite you
14:37:14 25 know, masks work and here's a study that proves it, and

14:37:17 1 without the actual study that shows the limitation this
14:37:19 2 document is useless.

14:37:21 3 THE COURT: Mr. Piccirilli, the question was
14:37:24 4 did he rely on it for his recommendation? And this is
14:37:27 5 what he relied on. If you question the reliability of
14:37:31 6 the document those are all proper areas for
14:37:34 7 cross-examination and you're welcome to do it.

14:37:37 8 MR. PICCIRILLI: Fair enough, Judge.

14:37:39 9 THE COURT: So the right to question on that
14:37:40 10 are reserved.

14:37:41 11 MS. WYRZYKOWSKI: Your Honor, may I approach
14:37:44 12 again?

14:37:44 13 THE COURT: Sure.

14:37:45 14 MS. WYRZYKOWSKI: Thank you.

14:39:00 15 THE CLERK: Defendants' C is marked for
14:39:00 16 identification.

14:39:00 17 **(DEFENDANTS' EXHIBIT C WAS MARKED FOR**
14:39:00 18 **IDENTIFICATION)**

14:39:02 19 MR. PICCIRILLI: I don't have C.

14:39:03 20 MS. WYRZYKOWSKI: I need to see which ones,
14:39:06 21 give me a second, but there's three separate ones that
14:39:09 22 will be coming to you and I just need to organize them

14:39:13 23 MR. PICCIRILLI: Okay.

14:39:44 24 THE CLERK: Defendants' D for identification.

14:39:44 25 **(DEFENDANTS' D WAS MARKED FOR IDENTIFICATION)**

14:40:09 1 THE COURT: Counsel, I'm not trying to confuse
14:40:11 2 you before you get to a new field but --

14:40:14 3 MS. WYRZYKOWSKI: Yes.

14:40:15 4 THE COURT: -- when an expert doctor comes in
14:40:16 5 from another state, I always want to make sure that the
14:40:20 6 other side as has an opportunity to cross-examine him
14:40:24 7 before he leaves the state.

14:40:25 8 I know Dr. McDonald is from Rhode Island, but I also
14:40:29 9 know he's not going to be here tomorrow. So we
14:40:32 10 understand he's going to return; is that right?

14:40:34 11 MS. WYRZYKOWSKI: Return when, your Honor?

14:40:35 12 THE COURT: He will be available next week for
14:40:38 13 continued testimony?

14:40:39 14 MS. WYRZYKOWSKI: Yes. Friday is the only off
14:40:42 15 limit day, your Honor, just because he practices.

14:40:44 16 THE COURT: I just want to make sure that
14:40:46 17 Mr. Piccirilli has an opportunity to cross-examine. It
14:40:49 18 doesn't need to be today but so long it's understood that
14:40:52 19 Dr. McDonald will come back.

14:40:54 20 MR. PICCIRILLI: I'm sure he's coming back
14:40:56 21 unless he decides to suddenly quit from the Department of
14:40:56 22 Health.

14:40:57 23 THE COURT: Sometimes a doctor comes in from
14:40:58 24 out-of-state and they don't tell you until about 3:30
14:41:01 25 that they're leaving on a plane and not coming back.

14:41:05 1 MR. PICCIRILLI: I don't think the good doctor
14:41:07 2 is going anywhere.

14:41:20 3 THE CLERK: This is Defendants' E for
14:41:22 4 identification.

14:41:22 5 **(DEFENDANTS' E WAS MARKED FOR IDENTIFICATION)**

14:42:03 6 Q Doctor, I'm going to approach you. May I approach?

14:42:07 7 THE COURT: Yes.

14:42:07 8 Q Doctor, I'm handing you what has been marked as
14:42:11 9 Defendants' Exhibit C. Do you recognize that?

14:42:14 10 A I do.

14:42:14 11 Q Would you please tell me what that is?

14:42:18 12 A Yes. It's a publication from the Center of Disease
14:42:20 13 Control and Prevention called morbidity and mortality
14:42:24 14 weekly report.

14:42:24 15 Q I'm sorry, say that last part again.

14:42:25 16 A It's a publication from the CDC morbidity and mortality
14:42:30 17 report. It's a peer review journal.

14:42:32 18 Q And do you know the dates of this publication?

14:42:35 19 MR. PICCIRILLI: I'm going to object. This is
14:42:38 20 not a peer review journal. It's just a monthly report.

14:42:43 21 THE WITNESS: Oh no, you are wrong. This is
14:42:45 22 one of the top public health journals in the world. It's
14:42:50 23 exactly a peer review journal.

14:42:50 24 MR. PICCIRILLI: And this is cited in the
14:42:51 25 emergency order where?

14:42:53 1 MS. WYRZYKOWSKI: Objection, your Honor.

14:42:54 2 That's not what we're talking about right now and he has
14:42:57 3 an opportunity to cross-examination.

14:42:58 4 MR. PICCIRILLI: Well, the Rhode Island public
14:43:02 5 has a right to know when an emergency order was issued.
14:43:06 6 It says we rely on certain things. Those certain things
14:43:10 7 that they're relying upon are not secret.

14:43:12 8 MS. WYRZYKOWSKI: That's not the argument.

14:43:13 9 MR. PICCIRILLI: This is the first time I've
14:43:15 10 seen this. This is the first time I've heard about this.
14:43:17 11 I imagine it's the first time the public has heard about
14:43:20 12 this.

14:43:22 13 THE COURT: Counsel, I don't even know why it's
14:43:25 14 offered. If it was offered it should have been produced
14:43:27 15 and the discovery rule definitely talks about that.

14:43:29 16 MS. WYRZYKOWSKI: Your Honor, there was no
14:43:31 17 discovery. This is a TRO hearing requesting information.
14:43:33 18 These documents are all publically available.

14:43:37 19 THE COURT: It's a preliminary injunction.

14:43:37 20 MS. WYRZYKOWSKI: It's preliminary injunction.
14:43:37 21 These documents are all publically available. The issue
14:43:40 22 is what information was the Doctor using to help advise
14:43:44 23 other members of the executive branch.

14:43:46 24 So we're bringing in documents and peer reviewed
14:43:50 25 studies that he used to help formulate his opinion.

14:43:54 1 MR. PICCIRILLI: That goes to the crux of the
14:43:55 2 problem in this case, Judge. If this was done in the
14:43:57 3 normal regulatory process, this would all have been
14:43:59 4 public record. They would have to post it. The same
14:44:03 5 goes through with an emergency rule, you have to post
14:44:05 6 your evidence.

14:44:06 7 As the basic case I gave you says, that case has
14:44:09 8 200 pages of documents that were produced to support the
14:44:14 9 emergency rule. This emergency rule doesn't cite this.
14:44:18 10 It doesn't site anything, nor does the emergency order
14:44:23 11 cite anything. You have people secretly meeting --

14:44:27 12 MS. WYRZYKOWSKI: Objection, your Honor. Objection.
14:44:28 13 That is not about what was said today?

14:44:31 14 THE COURT: Mr. Piccirilli, the question posed
14:44:34 15 to the Doctor was, what is it? He said at one point it
14:44:38 16 was a peer review journal. And then you objected, it's
14:44:41 17 not a peer journal, to which he respectfully disagreed
14:44:45 18 with you. But I'm not sure what your objection is now,
14:44:49 19 except that you have a concern that the injunction should
14:44:53 20 be issued. I get that. And I get what your legal
14:44:55 21 arguments are.

14:44:56 22 But I suggest that we allow her to introduce the
14:44:59 23 exhibit. If you want to voir dire on the exhibit you
14:45:02 24 may, if you want to ask questions before it's admitted
14:45:05 25 full. But the last one she didn't even ask to be

14:45:08 1 admitted full, so I'm not sure exactly sure where she's
14:45:11 2 going.

14:45:12 3 MR. PICCIRILLI: Okay. I understand. Thank
14:45:14 4 you.

14:45:27 5 THE COURT: All set, Counsel?

14:45:28 6 MS. WYRZYKOWSKI: Can I have one moment,
14:45:32 7 please?

14:45:32 8 THE COURT: Yes.

14:45:54 9 Q Doctor, I'm sorry, I forgot where we were. Could you
14:45:59 10 please turn the document around and tell me what we're
14:46:02 11 looking at right now.

14:46:02 12 A Yes, I have it right here.

14:46:03 13 Q Exhibit marked. What letter is that, I'm sorry?

14:46:06 14 A It says Exhibit C.

14:46:10 15 Q Thank you, Doctor.

14:46:12 16 A Oh, Sorry, DEFF C. Defense C.

14:46:15 17 Q Yes, Doctor. Thank you. Okay.

14:46:20 18 Doctor we are going to go back to the studies in a
14:46:23 19 second, but right now what I am just trying to go through
14:46:26 20 with you is you stated that you relied and formulated
14:46:30 21 your opinion based on some of the scientific studies that
14:46:34 22 you testified?

14:46:34 23 A Yes.

14:46:34 24 Q And so it was scientific studies in part, based upon your
14:46:38 25 training, education and experience and your medical

14:46:40 1 opinion, to help formulate opinions with respect to
14:46:43 2 masking in academic settings; is that accurate?

14:46:46 3 A Yes.

14:46:47 4 Q Doctor, I'm going to approach you now with another
14:46:51 5 exhibit. It's Exhibit D. Doctor, could you, for the
14:47:04 6 record, just read the title of that exhibit.

14:47:06 7 A This one is called SARS-CoV-2, transmission mask and
14:47:13 8 unmasked close contacts by university students with
14:47:18 9 COVID-19, St. Louis, Missouri, January through May 2021.

14:47:22 10 Q And could you please tell me the date of that study?

14:47:25 11 A It was published on September 10, 2021.

14:47:27 12 Q Okay. We're going to put that one aside, because that
14:47:31 13 one was a pre -- I need it back, please. That was
14:47:34 14 pre the August 2021 order --

14:47:39 15 MR. PICCIRILLI: I think you mean post.

14:47:41 16 MS. WYRZYKOWSKI: Right. Thank you.

14:47:42 17 Q Okay. Doctor, I'm going to hand you one more exhibit,
14:47:49 18 and this is Exhibit E. Could you please tell us the
14:47:52 19 title of that document?

14:47:53 20 A This study is called Maximizing Fit For Cloth and Medical
14:47:59 21 Procedure Masks to Improve Performance and Reduce
14:48:05 22 SARS-CoV- 2 Exposure 2021.

14:48:07 23 Q And can you please tell us the date of that study?

14:48:09 24 A It was published on February 19, 2021.

14:48:12 25 Q And can you tell us whether or not that study was peer

14:48:15 1

reviewed?

14:48:15 2

A Yes, it was peer reviewed.

14:48:16 3

Q We talked briefly about peer review, or at least that

14:48:20 4

phrase has been uttered. Could you please tell us what

14:48:22 5

it means to be peer reviewed?

14:48:24 6

A Peer reviewed means that other experts who have similar

14:48:28 7

background, education and training reviewed what you're

14:48:31 8

submitting as your research and verified that your

14:48:35 9

methodology was appropriate, that your conclusions were

14:48:40 10

appropriate, and that your discussion was appropriate and

14:48:44 11

that your article is worth publishing. And if there are

14:48:49 12

problems with it, it had to be fixed before its

14:48:52 13

published.

14:48:53 14

Q Forgive me for not knowing this, Doctor, but is there

14:48:58 15

such a thing as a non peer reviewed published article?

14:49:01 16

A Yes.

14:49:02 17

Q Does that make a difference in terms of whether or not

14:49:05 18

you, based upon your training, education and experience,

14:49:08 19

would rely upon a non peer reviewed published article?

14:49:11 20

A Yes. I don't tend to rely on non peer reviewed articles.

14:49:16 21

Q And why is that, Doctor?

14:49:17 22

A Because they haven't been through an appropriate vetting

14:49:20 23

process, and therefore, the results may not be worth

14:49:24 24

noting. They're too preliminary.

14:49:28 25

Q Is there a specific term that's used to refer to articles

14:49:34 1 studies that are not peer reviewed?

14:49:36 2 A Yes, some of them are called pre print.

14:49:40 3 Q Thank you, Doctor. Doctor, in front of you now are
14:49:44 4 several studies, could you please tell me which ones are
14:49:47 5 in front of you at this moment?

14:49:48 6 A Yes. So right now I have the St. Louis study from MWR,
14:49:54 7 and then right now I have in front of me the restaurants
14:50:00 8 study about mask mandates from March to December of 2020.

14:50:05 9 Then I have this review article from the Center For
14:50:08 10 Disease Control and Prevention, the science brief.

14:50:10 11 Q And so --

14:50:12 12 MS. WYRZYKOWSKI: May I approach and see what
14:50:13 13 you have, Doctor?

14:50:14 14 THE COURT: Yes.

14:50:15 15 Q Doctor, before we introduce these exhibits we had
14:50:43 16 discussed that you had relied on medical information from
14:50:48 17 peer reviewed journal articles, among other things, to
14:50:52 18 help formulate some of your opinions; is that accurate?

14:50:55 19 A Yes.

14:50:55 20 Q Looking at Exhibit C that you have before you now, which
14:51:01 21 was published March 12, 2021, could you please direct the
14:51:09 22 Court's attention as to what portion of this study you
14:51:14 23 relied upon in helping to formulate your opinion?

14:51:17 24 MR. PICCIRILLI: Objection, your Honor. This
14:51:19 25 doesn't say it's a study. It says on March 5, 2021 this

14:51:24 1 report was posted. This is a report, not a study,
14:51:27 2 according to what it stays at the top there.

14:51:29 3 MS. WYRZYKOWSKI: Doctor, the correct term is
14:51:32 4 report?

14:51:33 5 THE WITNESS: This is a study. I think what
14:51:35 6 we're getting hung up on here is tradition. The Center
14:51:39 7 For Disease Control has been around over 100 years. This
14:51:42 8 publication has been around over 100 years.

14:51:45 9 They happen to call morbidity and mortality a weekly
14:51:49 10 report, because it comes out weekly, and it's a name
14:51:53 11 associated with their brands. However, it's obvious that
14:51:56 12 this look like a study, follows a scientific method and
14:52:01 13 draws scientific conclusions, and it's peer reviewed.
14:52:04 14 It's obviously a study.

14:52:06 15 MR. PICCIRILLI: Where does it say it's peer
14:52:08 16 reviewed?

14:52:10 17 THE WITNESS: Every publication from the Center
14:52:11 18 for Disease Control is peer reviewed. They wouldn't let
14:52:15 19 it out if it wasn't peer reviewed. I am someone who
14:52:15 20 submitted articles --

14:52:17 21 MS. WYRZYKOWSKI: Objection, your Honor. At
14:52:19 22 this point he's doing a cross-examination of a witness
14:52:21 23 during my direct. He has an opportunity to question the
14:52:25 24 Doctor. He didn't ask for voir dire with respect to this
14:52:25 25 particular exhibit.

14:52:27 1 THE COURT: Sustained. If he's referring to
14:52:28 2 the document as a document.

14:52:31 3 MS. WYRZYKOWSKI: Yes, your Honor, I'll use the
14:52:33 4 word document. Thank you.

14:52:34 5 Q Doctor, do you recall the last question asked of you.

14:52:41 6 THE WITNESS: No, if you could repeat it, that
14:52:41 7 would help.

14:52:41 8 MS. WYRZYKOWSKI: Would you mind?

14:52:41 9 (Record read)

14:53:21 10 THE COURT: What portion of that document, sir.

14:53:23 11 MS. WYRZYKOWSKI: Thank you.

14:53:24 12 THE WITNESS: So they actually have a summary
14:53:26 13 here that's quite useful, and that's the part that I
14:53:30 14 think offers a really nice review of the entire article.

14:53:35 15 Q Doctor, could you please direct your attention, our
14:53:38 16 attention, to what your referencing, page, line?

14:53:41 17 A So it's on Page 353. It's in the upper left-hand corner.
14:53:47 18 It's a blue colored box and it's titled summary.

14:53:51 19 Q Doctor, outside of the summary that's listed on Page 353,
14:54:07 20 did you read the document in its entirety?

14:54:10 21 A Yes, I did. But you asked what portion I relied on, and
14:54:14 22 the easiest way to communicate that to you was to point
14:54:18 23 you to the summary, because I obviously relied on the
14:54:20 24 entire document.

14:54:20 25 Q Could you please read allowed, Doctor, what portion of

14:54:23 1 the summary you relied upon in helping to formulate your
14:54:29 2 opinion?

14:54:29 3 MR. PICCIRILLI: He doesn't have to read the
14:54:31 4 whole summary. I understand what he's saying. It's
14:54:33 5 getting late here.

14:54:34 6 MS. WYRZYKOWSKI: The Doctor has already
14:54:36 7 indicated he would come back next week, your Honor.

14:54:40 8 THE COURT: What portion of the summary did you
14:54:41 9 rely on, sir?

14:54:43 10 THE WITNESS: So there's sections that are
14:54:45 11 really, I think good summaries. One is titled, "What is
14:54:48 12 Added By This Report." And it says "mandating masks was
14:54:54 13 associated with a decrease in daily COVID-19 cases and
14:54:57 14 death growth rates within 20 days of implementation.

14:55:01 15 Allowing on-premise restaurant dining associated
14:55:05 16 with an increase in daily COVID-19 case growth rates,
14:55:08 17 41-100 days after implementation and an increase in daily
14:55:13 18 growth rates 61-100 days after implementation."

14:55:17 19 And then the website says "What are the implications
14:55:19 20 for public health practice?" What it says is "Mask
14:55:24 21 mandates and restricting any on-premise dining at
14:55:28 22 restaurants can help limit community transmission of
14:55:31 23 COVID-19 and reduce case and death growth rates. These
14:55:35 24 findings can inform public policies to reduce the
14:55:41 25 community spread of COVID-19."

14:55:42 1 Q Doctor, you had indicated that you relied on this
14:55:47 2 document in helping to formulate your opinion that was
14:55:51 3 part of the Covid leadership team. And you read from the
14:55:55 4 summary. Could you just explain in the simple --

14:55:58 5 THE COURT: I'm sorry, I've missed something.
14:56:00 6 He's reading from a document that's for identification
14:56:03 7 only. He should only be reading from a full exhibit.

14:56:03 8 MS. WYRZYKOWSKI: We ask to move it in full,
14:56:03 9 your Honor. Thank you.

14:56:10 10 THE COURT: Any objection to C being full?

14:56:11 11 MR. PICCIRILLI: Absolutely. First of all, as
14:56:13 12 the summary says, this is a study of masks in
14:56:17 13 restaurants. What's the relevance to masks? I'm not
14:56:22 14 objecting to my restaurant being closed or requiring me
14:56:24 15 to have mask wearing in a restaurant, which by the way
14:56:27 16 the State has not imposed.

14:56:29 17 And if you look at the limitations on this, it's
14:56:31 18 convenient he just read from the summary, but if you look
14:56:33 19 at the limitations, which appear just below the summary,
14:56:37 20 it says, for example, the limitations of -- the three
14:56:46 21 limitations -- " First, although models controlled for
14:56:46 22 masks mandates " --

14:56:47 23 MS. WYRZYKOWSKI: Excuse me, can you just
14:56:47 24 clarify where you're reading from?

14:56:50 25 MR. PICCIRILLI: If you go two paragraphs below

14:56:52 1 the summary where it says "Limitations."

14:56:54 2 MS. WYRZYKOWSKI: I'm sorry. Okay.

14:57:06 3 MR. PICCIRILLI: And by the way, this is the
14:57:08 4 first time I've seen this document, Judge. I'm glancing
14:57:10 5 through it real quick.

14:57:11 6 MS. WYRZYKOWSKI: Again, you'll have the
14:57:12 7 opportunity on cross.

14:57:15 8 MR. PICCIRILLI: The limitation, three
14:57:16 9 limitations doesn't control "For mask mandates,
14:57:19 10 restaurant and bar closures, stay-at-home orders and
14:57:23 11 gathering bans, the models did not control for other
14:57:25 12 policies that might affect case and death rates,
14:57:26 13 including other types of business closures, physical
14:57:30 14 distancing recommendations," etc.

14:57:34 15 Second limitation, "Compliance with and enforcement
14:57:35 16 of policies" --

14:57:35 17 THE COURT: Slowly.

14:57:37 18 MR. PICCIRILLI: I'm sorry. I always do that
14:57:40 19 when I read, sorry.

14:57:41 20 Second, "Compliance with and enforcement of policies
14:57:45 21 were not measured.

14:57:47 22 Finally, the analysis did not differentiate between
14:57:51 23 indoor and outdoor dining, adequacy of ventilation, and
14:57:55 24 adherence to physical distancing and occupancy
14:57:58 25 requirements."

14:57:59 1 It's not a study. It's observational. It's not
14:58:06 2 peer reviewed. It's not a randomized controlled trial.
14:58:09 3 And most importantly, it has nothing to do with masks in
14:58:12 4 schools.

14:58:12 5 MS. WYRZYKOWSKI: Your Honor --

14:58:13 6 THE COURT: There's no need. First off, he was
14:58:15 7 reading from Page 3.

14:58:17 8 MS. WYRZYKOWSKI: I'm sorry.

14:58:18 9 THE COURT: He's reading from Page.

14:58:18 10 MS. WYRZYKOWSKI: I'm sorry.

14:58:21 11 THE COURT: To help the stenographer later on.
14:58:24 12 The witness has authenticated the document saying this is
14:58:28 13 the document that he was relying on. He indicated that
14:58:33 14 he was relying on it, and therefore, and that's the
14:58:38 15 relevance of the document. Therefore, the document is
14:58:42 16 proper to be admitted full. C is full.

14:58:46 17 THE CLERK: Counsel, may I have that document
14:58:48 18 back so I can mark it?

14:58:50 19 MS. WYRZYKOWSKI: Of course. Doctor, may I
14:58:52 20 have the document back, please. This is C.

14:58:58 21 THE COURT: I have concerns about it being read
14:59:00 22 into the record, acknowledged, and the prior answer
14:59:05 23 stands.

14:59:06 24 THE CLERK: Defendants' C is now marked full.

14:59:13 25 **(DEFENDANTS' EXHIBIT C WAS MARKED FULL)**

14:59:13 1 Q Doctor, correct me if I'm wrong, but you have another
14:59:15 2 exhibit in front of you, I believe it's marked for
14:59:18 3 identification as E?

14:59:24 4 A Yes, I have this Exhibit E.

14:59:27 5 Q Doctor, for the record, could you please read the title
14:59:29 6 of this exhibit and the date of publication?

14:59:32 7 A It's "Maximizing Fit For Cloth and Medical Procedure
14:59:37 8 Masks and Reduce SARS-CoV-2 Transmission and Exposure,
14:59:48 9 2021". It was published on February 19th.

14:59:48 10 Q Doctor, was this document peer reviewed?

14:59:51 11 A Yes.

14:59:52 12 Q Doctor, was this document also used to help you formulate
14:59:59 13 your opinions with respect to the Covid leadership team,
15:00:02 14 and the implementation of the August 20, 2021 executive
15:00:06 15 order?

15:00:06 16 A Yes.

15:00:07 17 MS. WYRZYKOWSKI: Your Honor, I ask that this
15:00:09 18 exhibit be moved in full.

15:00:12 19 THE COURT: I'm sorry?

15:00:12 20 MR. PICCIRILLI: And, again, I won't belabor
15:00:15 21 the point, but for the record under the limitations,
15:00:17 22 which appear on Page 256, the very last sentence on the
15:00:21 23 bottom. "Third, these findings might not be generalized
15:00:27 24 to children." Again, not relevant.

15:00:33 25 THE COURT: So noted. It's relevant because he

15:00:35 1 indicated he relied upon it in his talks with the
15:00:40 2 committee. And, therefore, it is authenticated and has
15:00:45 3 probative value. E is full.

15:00:48 4 THE CLERK: Counsel, I'm going to grab E so I
15:00:51 5 can mark it, okay?

15:00:52 6 MS. WYRZYKOWSKI: Please, thank you. And I
15:00:54 7 will give you have another one in a second.

15:00:58 8 THE CLERK: Defendants' E is now marked full.

15:01:12 9 **(DEFENDANTS' EXHIBIT E WAS MARKED FULL)**

15:01:12 10 Q Doctor, similar to what we did with the prior exhibit, is
15:01:23 11 there any particular portion of the exhibit before you,
15:01:28 12 Exhibit E, that you helped -- that you relied upon in
15:01:32 13 helping to formulate your opinion with respect to the
15:01:35 14 Covid leadership team in advising on the executive order
15:01:38 15 that was issued in August of 2021?

15:01:41 16 A Well, I relied on the entire document but, you know, this
15:01:45 17 is a study that shows what's the difference between
15:01:48 18 basically how well a mask fits on a person, whether it's
15:01:53 19 knotted or tucked, whether someone wears a double mask,
15:01:56 20 or whether they're wearing unknotted medical procedure
15:02:00 21 mask.

15:02:00 22 So this -- the public was following universal
15:02:02 23 masking recommendations that were known to be out there
15:02:06 24 to control the spread. But this is a study that actually
15:02:09 25 showed that different interventions actually were more

15:02:12 1 effective. And this is one of the studies that showed a
15:02:15 2 well fitting mask, it was a more effective mask.

15:02:19 3 If you double mask, that was even more effective,
15:02:22 4 and not just source control or someone spreading
15:02:27 5 respiratory droplets, but also offered protection for
15:02:29 6 that person as well. So it was a relevant study of what
15:02:33 7 we were doing.

15:02:35 8 MR. PICCIRILLI: I'm going to repeat my
15:02:36 9 objection and move to strike, at least keep referencing
15:02:40 10 it as a study. Again, it's a report that your Honor said
15:02:44 11 let's refer to when reading the document.

15:02:46 12 I understand the Doctor wants to refer to it as a
15:02:49 13 study. But I think for purposes of the record, it should
15:02:52 14 be introduced as document not as a study.

15:02:55 15 THE COURT: Counsel should try to refer to it
15:02:57 16 as a document. I don't want to put words in the
15:03:00 17 witness's mouth but your objection is noted.

15:03:05 18 MS. WYRZYKOWSKI: Your Honor, may I approach
15:03:06 19 the clerk?

15:03:07 20 THE COURT: Yes.

15:03:40 21 THE CLERK: Defendants' F for identification.

15:03:45 22 **(DEFENDANTS' F WAS MARKED FOR IDENTIFICATION)**

15:03:45 23 Q Doctor, I'm approaching you with a document that has been
15:03:52 24 marked as Defendants' Exhibit F. Could you please read
15:03:55 25 aloud the title of that document?

15:03:56 1 A It's called 'Mask Use and Ventilation Improvements to
15:04:00 2 Reduce Covid-9 incidents in Elementary Schools.'

15:04:02 3 Q And could you please read the date associated with the
15:04:04 4 publication of that document?

15:04:05 5 A It was published on May 28, 2021.

15:04:09 6 Q And could you please tell the journal that that document
15:04:13 7 was published in?

15:04:15 8 A From the CDC Morbidity and Mortality Weekly Report.

15:04:19 9 Q And do you know whether or not that document was peer
15:04:21 10 reviewed?

15:04:21 11 A Yes, it was peer reviewed.

15:04:23 12 Q And, Doctor, was this also one other document that was
15:04:26 13 used by you to help formulate your opinion with respect
15:04:31 14 to the Covid leadership team and to assist in advising
15:04:36 15 with respect to the executive order in August of 2021?

15:04:39 16 A Yes.

15:04:40 17 Q Doctor, looking at the document before you, is there a
15:04:44 18 particular portion -- hold on.

15:04:47 19 MS. WYRZYKOWSKI: Your Honor, I ask that this
15:04:48 20 be moved in full.

15:04:50 21 THE COURT: Objection and reserving his right
15:04:54 22 to cross-examine --

15:04:55 23 MR. PICCIRILLI: That's fine. Actually, Judge,
15:04:56 24 I have no objection because I cite this in my complaint.

15:04:59 25 THE COURT: Then F is full. Thank you,

15:05:01 1 Mr. Piccirilli.

15:05:04 2 MS. WYRZYKOWSKI: Doctor, she's just going to
15:05:06 3 take that from you for a second.

15:05:09 4 THE CLERK: Defendants' F is now marked full.

15:05:11 5 **(DEFENDANTS' EXHIBIT F WAS MARKED FULL)**

15:05:11 6 Q Doctor, I'm going to do with this exhibit what we have
15:05:21 7 done with the prior ones. Is there a particular portion
15:05:23 8 of this exhibit that helped you to formulate your opinion
15:05:27 9 on the Covid leadership team with respect to advising the
15:05:32 10 executive branch on the executive order that was issued
15:05:36 11 August of 2021?

15:05:37 12 A Yeah, I mean I reviewed the entire document. It's done
15:05:41 13 in Georgia and they looked at various school districts,
15:05:45 14 and really, you know, what really was important here is
15:05:47 15 you look at kindergarten, you know, through grade 5
15:05:51 16 schools, talked about, you know, why this is important
15:05:54 17 for kids to be in school, and it really is important for
15:05:57 18 kids to physically be in school. But we really do want
15:06:01 19 to prevent transmission in school.

15:06:03 20 So that's why this was an important study to look at
15:06:07 21 what they looked at, and they looked at whether the
15:06:10 22 incidents were lowered in schools. They required
15:06:12 23 teachers and staff members to wear masks and also what
15:06:16 24 the effective ventilation was, and what they showed was
15:06:20 25 COVID-19 incidents was 37 percent lower in schools that

15:06:24 1 required teachers and staff members to use masks, and it
15:06:28 2 was 39 percent lower in schools that improved
15:06:33 3 ventilation.

15:06:33 4 So those were important things. You know, the
15:06:36 5 implications were pretty apparent though. In other
15:06:40 6 words, when there's a mask requirement for teachers,
15:06:42 7 staff members and students, it really does help to
15:06:46 8 alleviate the spread. This was a study that showed that,
15:06:49 9 so it was relevant to me.

15:06:50 10 Q Thank you, Doctor. We just spent a significant amount of
15:06:57 11 time reviewing materials that you used to help formulate
15:07:01 12 opinions for the Covid leadership team prior to the
15:07:06 13 August 2021 executive order.

15:07:11 14 Now, I'm just going to shift lanes and I want to
15:07:14 15 talk about the Rhode Island Department of Health
15:07:16 16 regulation that was issued in September of 2021.

15:07:23 17 Doctor, are you familiar with the Rhode Island
15:07:25 18 Department of Health regulation that was issued in
15:07:28 19 September of 2021?

15:07:29 20 A I am.

15:07:35 21 MR. PICCIRILLI: Just to clarify the record,
15:07:37 22 she means the emergency regulation?

15:07:41 23 MS. WYRZYKOWSKI: Yes.

15:08:27 24 Q All right, Doctor. Returning to the emergency regulation
15:08:30 25 that was issued in September of 2021, were you part of

15:08:37 1 any -- were you involved at all in the issuance of that
15:08:41 2 emergency regulation? I'm focussing now on the
15:08:43 3 regulation by the Department of Health in September of
15:08:46 4 2021?

15:08:47 5 A Yes.

15:08:47 6 Q Could you please tell me, tell the Court, excuse me, what
15:08:52 7 role you had with respect to the emergency regulation
15:08:55 8 issued by the Department of Health in 2021?

15:08:57 9 A I'm a medical director, so I offer advice and people
15:09:02 10 listen to me.

15:09:03 11 Q Doctor, could you please tell us what type of advice you
15:09:09 12 offered with respect to the emergency regulation that was
15:09:13 13 issued by the Department of Health in September of 2021,
15:09:16 14 and for shorthand, I'm going to refer to it as the Rhode
15:09:20 15 Island Department of Health regulation?

15:09:21 16 A My advice was that requirement for children to wear masks
15:09:25 17 in K-12 settings, move from an executive order to a
15:09:30 18 regulation. So emergency regulation at that point,
15:09:34 19 because in my opinion this is an effective way to prevent
15:09:38 20 transmission of SARS-CoV-2 in K-12 settings.

15:09:42 21 Q And your opinion, just to be clear about wearing masks,
15:09:44 22 is based upon your training, education and experience,
15:09:47 23 and you hold that opinion to a degree of medical
15:09:50 24 certainty; correct?

15:09:51 25 A Indeed. And there's a fair amount of studies that

15:09:55 1 demonstrate this is the right thing to do.

15:09:56 2 Q We're going to talk about those studies now. Did you
15:10:00 3 rely on any studies to help formulate your opinion with
15:10:03 4 respect to the Department of Health September 2021
15:10:06 5 emergency order?

15:10:07 6 A Yes.

15:10:08 7 Q Do you recall what those studies were?

15:10:13 8 A Well, the CDC science brief was a big one. It really is
15:10:17 9 one of the best publications out there on the
15:10:19 10 effectiveness of masks in community settings, and it does
15:10:23 11 address a lot of the issues that I thought were relevant,
15:10:27 12 whether or not we should require masks in schools.

15:10:28 13 Q Any other studies that you relied upon, Doctor?

15:10:33 14 MR. PICCIRILLI: I'm sorry, I apologize. First
15:10:37 15 of all, is this an exhibit?

15:10:40 16 THE COURT: I'm not sure what science brief
15:10:42 17 he's talking about.

15:10:43 18 MS. WYRZYKOWSKI: We can make it an exhibit,
15:10:44 19 that's fine.

15:10:45 20 MR. PICCIRILLI: No, no. He just mentioned a
15:10:45 21 science brief.

15:10:47 22 THE COURT: But he talked about a CDC brief
15:10:49 23 before, so I'm not sure which one he's talking about now.

15:10:51 24 MR. PICCIRILLI: We are focussed solely on
15:10:54 25 anything he used with respect to after the executive

15:10:56 1 order that was issued in August. And now we're moving
15:11:01 2 forward to material that he could have relied on, did
15:11:02 3 rely on, with respect to issuing the Department of Health
15:11:07 4 emergency order.

15:11:07 5 THE COURT: He just said he relied on a CDC
15:11:10 6 science brief. I don't know which one. Its already an
15:11:14 7 exhibit?

15:11:14 8 MS. WYRZYKOWSKI: No.

15:11:14 9 THE COURT: Okay.

15:11:14 10 MS. WYRZYKOWSKI: I have several of them.

15:11:14 11 THE COURT: Then go ahead.

15:11:16 12 MS. WYRZYKOWSKI: All at once, so we can do all
15:11:19 13 of his objections at once or we can do it piecemeal?

15:11:22 14 MR. PICCIRILLI: It's not my case.

15:11:23 15 THE COURT: Okay.

15:11:23 16 MS. WYRZYKOWSKI: Okay.

15:11:26 17 MR. PICCIRILLI: Is this G, the regulation, or
15:11:29 18 is this not marked?

15:11:33 19 THE CLERK: One second. Counsel, I'm also
15:11:34 20 missing D. And for the record, I have marked A through F
15:11:44 21 so far, that's it.

15:11:45 22 MR. PICCIRILLI: Okay.

15:11:53 23 THE CLERK: I still am missing Exhibit D.

15:11:59 24 THE COURT: D was marked. I have it as SARS 2
15:12:03 25 transmission, September 10th.

15:12:13 1 MS. WYRZYKOWSKI: I apologize.

15:12:14 2 THE CLERK: No worries.

15:12:16 3 Q MS. WYRZYKOWSKI: Doctor, do you have a date that the
15:12:21 4 Department of Health issued the emergency regulation in
15:12:25 5 September?

15:12:25 6 A I don't know the exact date. It was sometime -- it was
15:12:29 7 sometime last week. I want to say it was Thursday but
15:12:34 8 I'm not 100 percent sure?

15:12:36 9 Q Thank you, Doctor.

15:12:37 10 MS. WYRZYKOWSKI: Your Honor, may I approach?

15:12:38 11 THE COURT: Yes.

15:12:41 12 MS. WYRZYKOWSKI: G.

15:12:44 13 THE CLERK: Defendants' G is now marked for
15:12:48 14 identification. Defendants' G is marked for I.D.

15:12:48 15 **(DEFENDANTS' EXHIBIT G WAS MARKED FOR**
15:12:48 16 **IDENTIFICATION)**

15:13:31 17 MS. WYRZYKOWSKI: Your Honor, I'm approaching
15:13:32 18 the witness with what has been marked as Defendants'
15:13:35 19 exhibit, is this G?

15:13:41 20 THE CLERK: You should have G. That's G.

15:13:44 21 Q Doctor, in front of you is what has been marked for
15:13:57 22 identification Defendants' Exhibit G. Do you recognize
15:13:59 23 this?

15:14:00 24 A Yes.

15:14:00 25 Q How do you recognize this document?

15:14:05 1 A Well, I gave it to you. I read this and this is a study
15:14:08 2 I reviewed.

15:14:09 3 Q Doctor, do you know when you reviewed this study?

15:14:13 4 A Soon after it was published. It was published September
15:14:18 5 3rd, 2021, and I'm on an e-mail list service, so whenever
15:14:22 6 the CDC publish anything, I see it. So I probably looked
15:14:26 7 at it that day or the next day.

15:14:28 8 Q Doctor, do you know whether or not this is a peer
15:14:30 9 reviewed document?

15:14:31 10 A Yes, this is a peer reviewed journal.

15:14:34 11 Q Doctor, did you use this document to help formulate any
15:14:42 12 medical -- any advice that you provided with respect to
15:14:46 13 your role in Rhode Island Department of Health emergency
15:14:52 14 regulation?

15:14:52 15 A Yes.

15:14:55 16 MS. WYRZYKOWSKI: Your Honor, I ask that this
15:14:57 17 document be moved in full.

15:15:01 18 MR. PICCIRILLI: Same objection as to C and E,
15:15:05 19 which is that publication, the relevance, et cetera. But
15:15:10 20 I understand, your Honor. It formed his opinion, so I
15:15:10 21 understand.

15:15:14 22 THE COURT: It's now authenticated. Its
15:15:16 23 probative so it is full.

15:15:19 24 THE CLERK: May I, Doctor?

15:15:21 25 THE WITNESS: Sure.

15:15:22 1 THE CLERK: Defendants' G is now marked full.

15:15:31 2 (DEFENDANTS' EXHIBIT G WAS MARKED FULL)

15:15:31 3 Q Doctor, looking at Exhibit G that has just been marked
15:15:36 4 into evidence, is there any portion of that document that
15:15:39 5 you specifically relied upon, understanding you read the
15:15:44 6 entirety, in helping to formulate any opinions that you
15:15:47 7 provided with respect to the Rhode Island Department of
15:15:50 8 Health emergency regulation that was issued in September?

15:15:52 9 A This document is important because of when it was
15:15:56 10 published, and the time frame that was involved and where
15:16:02 11 it was done. So in Marin County, California, the Delta
15:16:06 12 variant was the dominant variant at the time, and I've
15:16:10 13 already established that Delta is the dominant strain in
15:16:13 14 Rhode Island in the summer.

15:16:14 15 So what was compelling about this study was it was
15:16:18 16 looking at an outbreak in an educational setting, an
15:16:22 17 elementary school in particular, when Delta variant was
15:16:25 18 the dominant strain.

15:16:28 19 What was most compelling was you have a classroom
15:16:31 20 with not a lot of kids in it quite frankly, and they're
15:16:35 21 sitting reasonably distanced apart. They're all six feet
15:16:38 22 apart. But what you see here is although there's 24
15:16:40 23 students in the classroom and one teacher and there's an
15:16:43 24 air filter, they're really trying their best here.

15:16:46 25 What happened in this study was the teacher was

15:16:50 1 symptomatic. She didn't know it was Covid. She thought
15:16:53 2 she had allergies, but it turned out she was symptomatic
15:16:57 3 in the classroom for two days, and she was walking around
15:16:59 4 the class lecturing, not wearing a mask. So even though
15:17:03 5 the students were wearing a mask, the teacher wasn't
15:17:06 6 wearing a mask.

15:17:07 7 So this illustrates one, something we've known from
15:17:10 8 the beginning of the pandemic that symptomatic adults is
15:17:14 9 really very powerful at spreading disease. One of the
15:17:19 10 things that it also illustrated to me was the Delta
15:17:24 11 variant is extremely contagious because the attack rate
15:17:26 12 in the classroom was 50 percent, so that's a lot of kids
15:17:30 13 who ended up getting Covid from this exposure.

15:17:34 14 The other interesting thing about this study in
15:17:36 15 particular was they did whole genomic sequencing, as many
15:17:41 16 specimens as they could, and that's hard to do but they
15:17:44 17 went through that trouble to do that, and they identified
15:17:47 18 the Delta variant was the strain infected in most of the
15:17:50 19 students, if not all of them that they were able to get
15:17:54 20 it from.

15:17:54 21 So this is a pretty impressive review that I think
15:17:57 22 shows that if the teacher had worn a mask she probably
15:18:02 23 wouldn't have spread the infection as much to the
15:18:05 24 students. And as importantly, when someone is
15:18:07 25 symptomatic they really should be tested and not be in

15:18:10 1 school. So it was an important study for us.

15:18:13 2 Q Doctor, in addition to the studies that we have already
15:18:18 3 gone over, do you in your role at the Rhode Island
15:18:22 4 Department of Health, continue to be advised of documents
15:18:28 5 as they come forward from various agencies with respect
15:18:32 6 to COVID-19 and Delta and/or Delta?

15:18:36 7 A Yes, I see documents all day long every day.

15:18:40 8 Q Before we talk about that, Doctor, just to make the
15:18:43 9 record clear, your Honor, I would like to introduce the
15:18:46 10 Rhode Island Department of Regulation, the emergency
15:18:49 11 order.

15:18:51 12 MR. PICCIRILLI: Yes, as long as I -- Judge, we
15:18:53 13 earlier conferenced what was an additional brief
15:18:57 14 statement, that the State gives us a brief statement of
15:19:02 15 eminent peril that apparently was on a separate page from
15:19:06 16 this.

15:19:06 17 I just want to be clear, is it just this document
15:19:09 18 we're doing or is the brief statement of eminent peril
15:19:14 19 going to be added to this or?

15:19:16 20 THE COURT: Is H a complete document?

15:19:18 21 MS. WYRZYKOWSKI: I'm sorry, your Honor?

15:19:20 22 THE COURT: Is H a complete document?

15:19:23 23 MR. PICCIRILLI: It doesn't include, as far as
15:19:25 24 the one I can see, it doesn't have the brief statement,
15:19:28 25 so I just want to be clear. I'll take it they don't want

15:19:33 1 to add a brief statement. That's fine with me.

15:19:36 2 MS. WYRZYKOWSKI: I'm introducing simply this
15:19:38 3 version of the emergency regulation just because we
15:19:41 4 talked about it, and I wanted to make it a part of the
15:19:44 5 record. We can do it at this or --

15:19:46 6 MR. PICCIRILLI: No objection.

15:19:47 7 MS. WYRZYKOWSKI: Okay.

15:20:03 8 THE CLERK: This is Defendants' H for
15:20:06 9 identification.

15:20:06 10 **(DEFENDANTS' EXHIBIT H WAS MARKED FOR**
15:20:06 11 **IDENTIFICATION) .**

15:20:23 12 Q Doctor, I'm approaching you with a document. We talked
15:20:26 13 about the emergency declaration but could you please
15:20:30 14 identify what that document is before you?

15:20:32 15 A This is 216-RICR-20-10-7. It's a regulation from the
15:20:42 16 Rhode Island Department of Health about masking in
15:20:46 17 schools.

15:20:47 18 MS. WYRZYKOWSKI: Your Honor, I just ask that
15:20:49 19 that document be moved in full.

15:20:51 20 MR. PICCIRILLI: No objection.

15:20:54 21 Q Doctor, you don't have to do anything else with that
15:20:56 22 document.

15:20:57 23 THE COURT: If I may, see I'm not sure that
15:21:07 24 it's complete, and I don't want to ask the witness
15:21:10 25 whether it's complete. I'll allow it as a full exhibit

15:21:15 1 for what it is but I'm not exactly sure what it is.

15:21:17 2 And if the Court is going to rely on it, shouldn't
15:21:20 3 it be relying on the law, whatever it is?

15:21:23 4 MR. PICCIRILLI: I'm sorry, Judge.

15:21:25 5 THE COURT: With that concern, it's full.

15:21:28 6 MS. WYRZYKOWSKI: I'm sorry, your Honor, what's
15:21:29 7 your concern with respect to the exhibit?

15:21:31 8 THE COURT: Well, there was something indicated
15:21:33 9 that it may not be the full regulation. I'm not sure
15:21:38 10 what the full regulation is but any law the Court has to
15:21:42 11 rely upon, in it entirety, so I'll admit it as full for
15:21:49 12 what it is, although what the Court really needs to rely
15:21:52 13 on is the law, wherever it is.

15:22:00 14 Q Doctor --

15:22:04 15 THE CLERK: Defendants' H is now marked full.

15:22:08 16 **(DEFENDANTS' EXHIBIT H WAS MARKED FULL)**

15:22:08 17 THE COURT: You may be able to recover that in
15:22:11 18 your legal briefing.

15:22:13 19 Q Doctor, with respect to Exhibit H that's before you, do
15:22:17 20 you know whether or not that's a full and complete copy
15:22:19 21 of the emergency declaration? Emergency regulation,
15:22:22 22 excuse me, that was issued by the Department of Health in
15:22:24 23 September?

15:22:24 24 A Yes, this is a full and complete copy.

15:22:27 25 Q Doctor, in your position at the Rhode Island Department

15:22:32 1 of Health, you had indicated that you keep apprised of
15:22:38 2 medical documents as they become available; is that
15:22:43 3 accurate?

15:22:43 4 A Yes.

15:22:44 5 Q To this day, Doctor, you're continuing to review medical
15:22:47 6 documents with respect to COVID-19?

15:22:49 7 A Yes.

15:22:50 8 Q You had testified earlier that to a reasonable degree of
15:22:56 9 medical certainty, that masking is the most effective
15:23:00 10 measure to help curb the spread of the Delta variant in
15:23:05 11 an academic setting?

15:23:06 12 A Yes.

15:23:06 13 Q Did you rely on documents to help formulate that medical
15:23:12 14 opinion?

15:23:12 15 A Yes.

15:23:50 16 THE CLERK: Defendants' I for identification.

15:24:06 17 MS. WYRZYKOWSKI: J.

15:24:29 18 THE CLERK: Defendants' J for identification.

15:24:49 19 Defendants' K for identification.

15:24:49 20 (DEFENDANTS' EXHIBITS I, J and K WERE MARKED
15:24:49 21 FOR IDENTIFICATION)

15:25:06 22 MS. WYRZYKOWSKI: Your Honor, may I approach
15:25:07 23 the witness?

15:25:08 24 THE COURT: Yes.

15:25:09 25 Q Doctor, I'm handing you -- do you have any other exhibits

15:25:13 1 up there? Can I have them back, please.

15:25:13 2 (Documents given back to the Clerk)

15:25:22 3 Q Doctor, I'm handing you three new exhibits that have been
15:25:25 4 marked for identification. I'm handing you Exhibit I,
15:25:31 5 and just look at the back of that document, Doctor. Is
15:25:33 6 that Exhibit I?

15:25:34 7 A It is.

15:25:35 8 Q Doctor, I am handing you Exhibit K for identification
15:25:39 9 purposes and Exhibit J for identification purposes.

15:26:01 10 Doctor, starting with Exhibit I, do you have it in front
15:26:12 11 of you, Doctor?

15:26:13 12 A I've got it right here.

15:26:14 13 Q Great. In your role, Doctor, as the -- excuse me, I'm
15:26:26 14 sorry. In your role as the medical director of the Covid
15:26:35 15 unit for the Rhode Island Department of Health, do you
15:26:39 16 continue to keep apprised of documents related to
15:26:42 17 COVID-19 and the Delta variant?

15:26:46 18 A Yes.

15:26:46 19 Q Did these documents that you relied upon help to form
15:26:50 20 your medical opinion?

15:26:51 21 A Yes.

15:26:52 22 Q Looking at Exhibit I, could you please tell me the title
15:26:57 23 of Exhibit I and the date that it was reported?

15:27:01 24 A It was reported on September 24, 2021. It's titled
15:27:09 25 "Pediatric Covid-19 cases in Counties With and Without

15:27:14 1 School Mask Requirements - United States July 1 -
15:27:20 2 September 4, 2021."

15:27:24 3 Q Have you read this document, Doctor?

15:27:26 4 A Yes, I have.

15:27:27 5 Q Have you relied on this document in helping to formulate
15:27:32 6 Exhibit I, in helping to formulate your medical opinion
15:27:34 7 to a reasonable degree of medical certainty with respect
15:27:37 8 to COVID-19 and or Delta, the variant of COVID-19?

15:27:42 9 A Yes.

15:27:43 10 MS. WYRZYKOWSKI: Your Honor, I ask that this
15:27:45 11 document be moved in full.

15:27:46 12 MR. PICCIRILLI: I'm confused again, Judge.
15:27:50 13 September 24th of this year, for all three of these
15:27:54 14 exhibits, the emergency rule, Exhibit H was issued on
15:28:01 15 September 23rd, and could not have been relying upon this
15:28:05 16 in enacting the emergency rule.

15:28:07 17 MS. WYRZYKOWSKI: I at no point said he was
15:28:07 18 relying upon them for the emergency rule. The argument
15:28:10 19 that I'm trying to put forth is that he's the infectious
15:28:13 20 disease expert. He's an expert in COVID-19. In order to
15:28:16 21 keep abreast and to be current with the training,
15:28:17 22 education and experience that is needed to hold those
15:28:20 23 positions and that title, he needs to keep abreast of the
15:28:23 24 current medical literature. And this is the current
15:28:25 25 medical literature that the Doctor has relied upon to

15:28:28 1 formulate his opinion as he stands here today, exclusive
15:28:31 2 of the executive order and the emergency declaration.

15:28:34 3 THE COURT: I was confused because you had,
15:28:36 4 about an hour ago you went into a segment that you
15:28:38 5 referred to, now we're talking about your basis for
15:28:42 6 recommendations to the executive. So now we are off of
15:28:46 7 that.

15:28:46 8 MS. WYRZYKOWSKI: We are off of that. As
15:28:48 9 co-counsel I am well aware it's past the date that that
15:28:51 10 emergency regulation was issued by the Rhode Department
15:28:53 11 of Health. But, nonetheless, him being certified as an
15:28:57 12 expert in infectious diseases in Covid, these are the
15:29:00 13 materials which he relied upon to formulate his opinion
15:29:03 14 to a reasonable degree of medical certificate that he is
15:29:06 15 offering in this court today after the executive order
15:29:09 16 and the emergency regulation issued.

15:29:14 17 THE COURT: If I have Mr. Piccirilli's
15:29:24 18 complaint correct, that the executive order was in affect
15:29:27 19 because it was -- the wrong one passed. It was improper
15:29:31 20 when passed. I'm not sure what his basis for today's
15:29:35 21 opinion is. What difference does that make?

15:29:38 22 MS. WYRZYKOWSKI: Because the document that's
15:29:41 23 put forth by plaintiff in their case is that masks are
15:29:45 24 not effective.

15:29:46 25 So here we are showing that not only were masks

15:29:51 1 effective when we issued -- when the State issued the
15:29:54 2 executive order in August, not only are masks effective
15:29:56 3 when the Rhode Island Department of Health emergency
15:29:58 4 regulation went into effect. Masks were still effective
15:30:01 5 as I stand here today as a way to help prevent the
15:30:04 6 transmission of Covid.

15:30:06 7 The Doctor in his position right now as the head of
15:30:08 8 the Covid unit, coupled with the fact that he's an
15:30:13 9 infectious disease person, would need to testify as to
15:30:13 10 this. So his opinion today is the same as it was in
15:30:17 11 August, and as it was last week.

15:30:20 12 THE COURT: We haven't established that. How
15:30:21 13 can he be relying on this for his prior input on the
15:30:25 14 executive order and what Mr. Piccirilli's concern was the
15:30:29 15 prior -- the way the order and the regulation had passed?

15:30:32 16 MS. WYRZYKOWSKI: I am not arguing these
15:30:35 17 documents in helping to formulate his opinion for the
15:30:39 18 emergency regulation in September 24 or for the executive
15:30:41 19 order that was issued in August.

15:30:43 20 My position is that these are the documents, that
15:30:46 21 even after these two things went into effect that are
15:30:49 22 still being relied upon by our Rhode Island Department of
15:30:52 23 Health to help formulate opinions moving forward.

15:30:56 24 THE COURT: So, Mr. Piccirilli, you're not just
15:31:06 25 arguing whether or not it was improperly established

15:31:11 1 procedurally, whether the regulations in the executive
15:31:12 2 order were improperly established, but also whether or
15:31:15 3 not they make sense today; correct?

15:31:18 4 MR. PICCIRILLI: Yes, you know what, Judge,
15:31:20 5 yes, in fairness, you know, with that dichotomy, if I can
15:31:24 6 accept these documents, as long as it's clear, because
15:31:27 7 I'm going to be presenting evidence that, for example, in
15:31:29 8 the executive order, they claim that the hospitalizations
15:31:34 9 were going to exceed capacity, and that's certainly
15:31:37 10 proven not even close to being true. They claim that
15:31:40 11 they're going to open a field hospital in Cranston. They
15:31:43 12 never did that.

15:31:44 13 So I'm going to be introducing evidence as well.
15:31:47 14 I'm going to show they relied on the fact that Florida,
15:31:48 15 which didn't have mask mandates, cases were going through
15:31:51 16 the roof. And since school started the cases have
15:31:55 17 dropped 75 percent in Florida.

15:31:57 18 So this is cherry picking. It's fair enough. He
15:32:00 19 wants to talk about these, and I'll question him on it.
15:32:03 20 There's going to be a lot of evidence that masks don't
15:32:06 21 work, and so I'll get into that.

15:32:09 22 In summary, I won't object to their entry as long as
15:32:12 23 it's clear that he couldn't have relied upon this and
15:32:16 24 enacted either the emergency rule or the executive order.

15:32:19 25 MS. WYRZYKOWSKI: The State is in complete

15:32:21 1 agreement with that. He did not rely upon it --

15:32:21 2 THE COURT: He indicated that. I is full.

15:32:27 3 THE CLERK: Doctor, may I have I back.

15:32:44 4 MS. WYRZYKOWSKI: It's the same for all?

15:32:45 5 MR. PICCIRILLI: Yes, it's the same for all
15:32:48 6 three, Judge. I mean, again, I don't want to object to
15:32:49 7 that on the basis that he couldn't have relied upon it at
15:32:49 8 the time but he's relying now on that.

15:32:54 9 THE COURT: By agreement of counsel, which I
15:32:56 10 always appreciate, I, J and K are all full.

15:33:00 11 THE CLERK: Defendants' I, J and K are all now
15:33:10 12 marked full.

15:33:10 13 **(DEFENDANTS' EXHIBITS I, J AND K WERE MARKED FULL)**

15:33:22 14 Q Doctor, you have been handed a series of exhibits that
15:33:24 15 have been marked in full. I'll first direct your
15:33:28 16 attention to Exhibit I. I believe you've already read
15:33:30 17 the title but now I don't remember. Could you just
15:33:33 18 please read the tile of Exhibit I and the date of
15:33:36 19 publication?

15:33:36 20 A So Exhibit I is entitled "Pediatric Covid-19 Cases in
15:33:42 21 Counties With and Without School Mask Requirements -
15:33:45 22 United States, July 1st-September 4, 2021." It was
15:33:50 23 published September 24, 2021.

15:33:52 24 Q And, Doctor, now looking at Exhibits J and K, which has
15:33:58 25 also been marked in full. Could you please read the

15:34:00 1 title of Exhibit J and the date of publication?

15:34:03 2 A J is titled, "Covid-19 Related School Closures and
15:34:09 3 Learning Modality Changes - United States, August 1 -
15:34:13 4 September 17, 2021." It was published in the Morbidity
15:34:20 5 and Mortality Weekly Report, September 24, 2021. This
15:34:25 6 exhibit, which is titled K --

15:34:28 7 Q Thank you, Doctor.

15:34:28 8 A Is "Association Between K-12 School Mask Policies and
15:34:35 9 School-Associated Covid-19 Outbreaks - Maricopa and Pima
15:34:41 10 Counties, Arizona, July-August 2021." It was published
15:34:47 11 in Morbidity and Mortality Weekly Report on September 24,
15:34:51 12 2021.

15:34:53 13 Q Doctor, all three of these exhibits; I, J and K, were
15:34:58 14 published in Morbidity and Mortality Weekly Report; is
15:35:01 15 that accurate?

15:35:02 16 A Yes.

15:35:03 17 Q Looking at all three exhibits, I-K, could you please tell
15:35:07 18 me whether or not these documents were peer reviewed?

15:35:09 19 A Yes, they were.

15:35:10 20 Q Doctor, in formulating your opinion now, based upon your
15:35:14 21 training, education and experience, can you, as you stand
15:35:17 22 here today, can you form an opinion to a reasonable
15:35:22 23 degree of medical certainty, as to whether or not masking
15:35:26 24 is effective in a K-12 setting?

15:35:30 25 A Yes, masking is effective in K-12 settings. I don't

15:35:35 1 think there's any debate about that.

15:35:37 2 Q Looking at these documents, Doctor, is there any
15:35:40 3 particular portion of Exhibit I that you relied upon to
15:35:44 4 help formulate your opinion as you stand here today on
15:35:47 5 the effectiveness of masking in a K-12 setting?

15:35:50 6 A Yeah, with Exhibit I it's an ecological study, so you
15:35:56 7 can't draw causations from ecological studies. But it
15:35:59 8 does draw some interesting points here, and one of the
15:36:02 9 points in the study was they showed that when you look at
15:36:06 10 schools that didn't have masking policies, compared to
15:36:11 11 schools that did, schools that had mask requirements have
15:36:16 12 a lower number of cases in their counties.

15:36:20 13 So when you looked at county schools, what you saw
15:36:23 14 was the counties that actually had masks requirements
15:36:26 15 have less cases of Covid. Admittedly, it's an ecological
15:36:30 16 study, but it does show some relevance to what we're
15:36:33 17 looking at, so I thought it was important.

15:36:35 18 Q Thank you, Doctor. Doctor, looking at Exhibit J, you've
15:36:41 19 already indicated that that document had helped you
15:36:44 20 formulate your medical opinion with respect to masking in
15:36:48 21 a K-12 setting. Is there any particular portion of that
15:36:51 22 document that helped formulate your medical opinion?

15:36:53 23 A One of the things about this exhibit is it highlights a
15:36:58 24 national trend and something that everyone else has
15:37:01 25 noticed, is that kids really belong in school in person.

15:37:05 1 And one of the things it showed is that 96 percent
15:37:08 2 of these schools are meeting in person. And it did talk
15:37:11 3 about school closures, were they are more common in
15:37:15 4 certain parts of the country in the south, in the west.
15:37:18 5 But it really highlighted that it's important for kids to
15:37:22 6 one be in school, that's what it meant by learning
15:37:25 7 modality changes.

15:37:26 8 Last year a lot of kids were doing education
15:37:30 9 remotely, or in a hybrid where that was part going to
15:37:36 10 school. So this looked at school closures, and clearly
15:37:39 11 school closures occur when there's more cases of Covid in
15:37:42 12 certain regions. So it looked at that in particular.

15:37:45 13 But it was relevant because you really see, nobody
15:37:49 14 recognized kids need to be back in school, that's really
15:37:52 15 important, and when there's more cases, schools are going
15:37:56 16 to close.

15:37:57 17 Q Doctor, I'm sorry, why are more schools closed if there's
15:38:01 18 more Covid cases?

15:38:02 19 A Schools close when there's more Covid cases because you
15:38:06 20 don't want to spread the disease inside the school. The
15:38:08 21 other problem that schools have sometimes is so many
15:38:11 22 teachers and staff are sick. They can't function. So
15:38:14 23 that's partly why schools close when there's an increase
15:38:17 24 in cases.

15:38:18 25 Q Doctor, you have one final exhibit that is left before

15:38:22 1 you, what exhibit is that, Doctor?

15:38:24 2 A This is Exhibit K.

15:38:26 3 Q Doctor, just for clarity, could you please read the title
15:38:32 4 of Exhibit K?

15:38:33 5 A This is the "Association between K-12 School Mask
15:38:38 6 Policies and School-Associated COVID-19 outbreaks -
15:38:43 7 Maricopa and Pima Counties, Arizona, July-August 2021."

15:38:50 8 Q Doctor, some of the things that we did with the other
15:38:57 9 exhibits -- when looking at this document is there a
15:38:59 10 particular portion of this document, or something
15:39:01 11 relevant about this document, that helps you formulate
15:39:03 12 your opinion with respect to masking in K-12 settings as
15:39:08 13 you stand here today, based on a reasonable degree of
15:39:12 14 medical certainty?

15:39:12 15 A Yes, this is something that's looked at, admittedly it's
15:39:16 16 a crude analysis but it says "The odds of
15:39:19 17 school-associated COVID-19 outbreak in schools with no
15:39:22 18 mask requirement were 3.7 times higher than those in
15:39:26 19 schools with an early mask requirement."

15:39:29 20 It goes on to say, "After adjusting for potential
15:39:35 21 described confounders, the odds of a school-associated
15:39:37 22 COVID-19 outbreak in schools without a mask requirement
15:39:41 23 were 3.5 times higher than those in schools with an early
15:39:45 24 mask requirement."

15:39:46 25 This was an article that was in the media last week,

15:39:49 1 as well, it came out on the 24th. It was in the media on
15:39:53 2 the 24th. It says -- it does show something that I think
15:39:55 3 a lot of people are just interested in, gee, not every
15:39:59 4 state in the country has done mask requirements. Is it a
15:40:02 5 good idea or not? This was a study from Arizona that
15:40:06 6 shows what they found out.

15:40:07 7 Q And what did they find in that study from Arizona?

15:40:10 8 A Well, if the school actually had a mask requirement then
15:40:15 9 there were 3. -- schools without mask requirement were
15:40:19 10 3.5 times more likely than those who didn't have a mask
15:40:25 11 requirement to have on outbreak of COVID-19.

15:40:28 12 MS. WYRZYKOWSKI: Excuse me, your Honor, may I
15:40:29 13 have one moment, please?

15:40:30 14 THE COURT: Yes.

15:41:30 15 Q Doctor, one of the comments made by counsel was an
15:41:37 16 indication that Rhode Island hospitals did not exceed or
15:41:43 17 come close to exceeding capacity with respect to treating
15:41:47 18 COVID-19 patients and or the variant. Do you remember
15:41:51 19 him saying that?

15:41:52 20 A It was said just a few moments ago. I remember it quite
15:41:52 21 well.

15:41:56 22 Q Doctor, based upon your training, education and
15:41:58 23 experience, can you offer an opinion to a reasonable
15:42:02 24 degree of medical certainty, as to why that is the case?

15:42:06 25 A We didn't open -- we didn't open the alternate hospitals

15:42:12 1 because we didn't need to. We were looking to see a
15:42:16 2 number around 175 cases of Covid per day throughout the
15:42:20 3 State. We got close, but we didn't.

15:42:23 4 One of the things we saw from our modeling team at
15:42:26 5 the Rhode Island Department of Health was we could
15:42:29 6 actually predict the cases were trending down, and so we
15:42:34 7 were able to determine it was unlikely we were going to
15:42:36 8 need it. Since we didn't need it, we moved it to what's
15:42:40 9 called a cold status, as opposed to a warm or hot status.
15:42:45 10 Cold means we still have it. We can open it again in
15:42:49 11 four weeks if we need it. Warm means we have it. We can
15:42:53 12 open it sooner. Hot means we're using it, patients are
15:42:56 13 in there now.

15:42:57 14 So it was really quite a lengthy decision, a lot of
15:43:00 15 us were involved with it, but after looking at all the
15:43:04 16 data we had, we decided we didn't need to open it so we
15:43:07 17 didn't.

15:43:07 18 Q Doctor, based upon your training, education and
15:43:11 19 experience, can you offer an opinion to a reasonable
15:43:14 20 degree of medical certainty as to why those facilities
15:43:18 21 did not need to be opened?

15:43:19 22 A It was just last week we did this, but it was based on
15:43:24 23 our modeling data from our epidemiologist from the Rhode
15:43:28 24 Island Department of Health. We really could see that
15:43:30 25 the number of people admitted to the hospital was

15:43:33 1 stabilizing, and so we only have so many staff in our
15:43:36 2 health care system.

15:43:37 3 So even though Delta is Delta, the cases were
15:43:40 4 stabilizing. It's because we vaccinated 68 percent fully
15:43:45 5 of the population in the State. It's because we're doing
15:43:48 6 all these non pharmacological counter measures. In other
15:43:52 7 words cases are coming under control, because one of the
15:43:54 8 things we did over the summer was recommend people move
15:43:58 9 towards just unvaccinated people wearing a mask to
15:44:02 10 everyone wearing a mask indoors. You've seen this in
15:44:05 11 various business like Wal-Mart, Dave's Marketplace, even
15:44:09 12 in this courtroom everyone is wearing a mask.

15:44:13 13 Other things that we really see is that one of the
15:44:16 14 things that's new in the State is post exposure
15:44:21 15 prophylactics with monoclonal antibodies. We're one of
15:44:24 16 the top states in the United States that actually treats
15:44:27 17 people, not just with monoclonal antibodies, but also
15:44:29 18 goes to the part of preventing those that were exposed.

15:44:32 19 One of the other things that I think made that less
15:44:35 20 likely was because of quarantine and isolation, that
15:44:40 21 executive order helped us out quite a bit as well because
15:44:42 22 there's still about 300,000 people in the State who are
15:44:45 23 susceptible to Covid, that's still a large number of
15:44:48 24 people.

15:44:48 25 So all those non pharmaceutical counter measures

15:44:51 1 covered with our vaccine strategy, covered with really
15:44:56 2 excellent doctors and nurses who are getting well cared
15:44:59 3 for in our hospitals, and then discharged safely home,
15:45:02 4 has made it so we don't need to open the alternate
15:45:06 5 hospital.

15:45:06 6 Q Thank you for explaining that, Doctor. I appreciate
15:45:09 7 that.

15:45:10 8 Doctor, you had indicated and, your Honor, I just
15:45:13 9 wanted to let you know that I do still have a substantial
15:45:16 10 portion of questioning left.

15:45:19 11 THE COURT: I just looked at the clock to see
15:45:21 12 what time it was. I do have to talk you about the
15:45:23 13 scheduling soon but go ahead.

15:45:25 14 Q Going back now to the executive order that was put in
15:45:31 15 place in August of 2021, we talked about your role with
15:45:36 16 respect to that executive order. Do you recall that
15:45:39 17 testimony?

15:45:39 18 A Yes.

15:45:39 19 Q And for the record, the executive order that I'm
15:45:45 20 referencing is 2194. I'm sorry, I do not have a copy but
15:45:49 21 it was attached to the State's response.

15:45:52 22 MR. PICCIRILLI: Okay. That was actually I
15:45:54 23 think enacted in September 2 of --

15:45:56 24 MS. WYRZYKOWSKI: Yes, thank you. I'm sorry.

15:45:59 25 MR. PICCIRILLI: That's the quarantine order.

15:46:01 1 MS. WYRZYKOWSKI: It mentions quarantine
15:46:03 2 isolation order.

15:46:04 3 Q Were you involved, Doctor, in any capacity to provide
15:46:14 4 guidance with respect to Executive Order 2194, issued on
15:46:19 5 September 2, 2021 entitled "Amended Quarantine and
15:46:23 6 Isolation Order?"

15:46:24 7 A Yes.

15:46:25 8 Q Could you please tell the Court what your role was with
15:46:30 9 respect to Executive Order 2194?

15:46:33 10 A I helped create a lot of the content. I reviewed a lot
15:46:36 11 of the feedback from others on the content. And I was
15:46:39 12 the one who looked at the final draft before it was
15:46:42 13 submitted to the Governor to make sure it was accurate,
15:46:45 14 so I had a lot to do with it.

15:46:46 15 Q With respect to the contents of the order, do you recall
15:46:54 16 whether or not the amended quarantine and isolation order
15:46:57 17 referenced masking in an academic setting?

15:47:01 18 A It does reference masking in an academic setting.

15:47:04 19 Q Does the Executive Order 2194 also reference quarantine
15:47:11 20 in the executive -- excuse me, in an academic setting?

15:47:16 21 A It does.

15:47:16 22 Q Could you please tell the Court what executive order 2194
15:47:23 23 says with respect to masking and quarantining in a K-12
15:47:29 24 setting?

15:47:30 25 A Yes. So one of the issues is children who are exposed

15:47:34 1 may need to quarantine, so we'd like to avoid
15:47:39 2 quarantining children if at all possible. As I've
15:47:40 3 already established, we really want to keep kids in
15:47:43 4 school. So there's exemptions to institute when a
15:47:47 5 student is quarantined. We list several exemptions.

15:47:50 6 One of them is if the student was exposed whose
15:47:53 7 wearing a mask, and the student who ended up having a
15:47:56 8 positive test was wearing a mask. So if they're both
15:48:00 9 wearing a mask and they were at least 3 feet apart, and
15:48:03 10 the exposure was in a K-12 setting, those are exemptions
15:48:07 11 so that the student would not need to quarantine.

15:48:10 12 Q Doctor, based upon your training, education and
15:48:14 13 experience, can you offer an opinion to a reasonable
15:48:17 14 degree of medical certainty, as to the ramifications,
15:48:22 15 based on all the journals we talked about today, can you
15:48:26 16 render an opinion to a reasonable degree of medical
15:48:28 17 certainty with respect to what would happen with the
15:48:34 18 masking rule and quarantine if masks were removed from
15:48:38 19 children? That was a very wordy question. Would you
15:48:44 20 like me to try again?

15:48:45 21 A No, I got your question. He just stood up so I think he
15:48:50 22 wants to object. I was going to let him.

15:48:51 23 MR. PICCIRILLI: Objection. All the journals
15:48:53 24 that were just introduced? This was September 2nd. He's
15:49:03 25 being asked -- is he being asked what his opinion was

15:49:07 1 when he recommended this order on September 2nd, when he
15:49:11 2 referenced to -- she mentioned all the journals, which
15:49:14 3 would include journals that came after September 2nd.
15:49:17 4 The question is very --

15:49:20 5 THE COURT: If you want to reword it again, but
15:49:21 6 my understanding was she gave a hypothetical and then
15:49:25 7 asked what was the opinion now based on the hypothetical.

15:49:25 8 MS. WYRZYKOWSKI: Correct.

15:49:25 9 THE COURT: But perhaps we should hear it
15:49:25 10 again.

15:49:29 11 MS. WYRZYKOWSKI: Yes, that was really poorly
15:49:31 12 worded. It's the end of the day, I apologize.

15:49:33 13 Q Doctor, based upon your training, education and
15:49:38 14 experience, can you profer an opinion to a reasonable
15:49:43 15 degree of medical certainty as to what would result in a
15:49:48 16 K-12 setting, if we removed a masking mandate with
15:49:54 17 respect to quarentine and school closure?

15:49:57 18 A Yes, I can offer an opinion.

15:50:00 19 Q What is that opinion to a reasonable degree of medical
15:50:03 20 certainty?

15:50:04 21 A So because children are generally in the same seat, in
15:50:10 22 the same classroom, or even if they move to classrooms,
15:50:14 23 they're in a fixed setting. It's not like they're
15:50:17 24 running around Wal-Mart shopping. In other words, the
15:50:20 25 duration of exposure is prolonged. So if you remove

15:50:23 1 masks and there's someone who is infected in the
15:50:26 2 classroom, and keep in mind one of the really important
15:50:29 3 things to remember about this virus is that a substantial
15:50:33 4 number of people can be asymptomatic or presymptomatic
15:50:38 5 and still be spreading the virus.

15:50:41 6 So if you're in the classroom and there's no mask,
15:50:44 7 we already established it spreads by respiratory droplets
15:50:48 8 and to a lesser extent aerosols. So, therefore, more
15:50:52 9 kids are going to be quarantined, a lot more kids, and
15:50:55 10 more kids are going to become infected.

15:50:59 11 MR. PICCIRILLI: I'm going to object and move
15:51:01 12 to strike that we've established anything. It's his
15:51:04 13 opinion that respiratory droplets can spread the virus.
15:51:07 14 That hasn't been established.

15:51:09 15 MS. WYRZYKOWSKI: Your Honor, he was qualified
15:51:11 16 as an expert in the field of infectious diseases and
15:51:11 17 Covid. He runs the Covid unit at the Rhode Island
15:51:15 18 Department of Health. He has testified at length as to
15:51:19 19 how Covid is spread through respiratory droplets and
15:51:22 20 airborne particles. His opinion is based on all the
15:51:25 21 information that has been testified to prior to that last
15:51:28 22 answer.

15:51:29 23 THE COURT: Well, Mr. Piccirilli's objection is
15:51:33 24 right as to basis. What's the basis for your opinion on
15:51:38 25 that last question, sir? Mr. Piccirilli has a right to

15:51:42 1 know the basis.

15:51:43 2 THE WITNESS: So my basis for the opinion, it's
15:51:44 3 well-established that SARS could be spread by respiratory
15:51:48 4 droplets and aerosols. That's not debated in the
15:51:53 5 scientific literature. It's not even debated in the news
15:51:55 6 media. So that's why they accept it as true.

15:51:58 7 MR. PICCIRILLI: I'm sorry, respiratory
15:51:59 8 aerosols or respiratory droplets?

15:52:02 9 THE WITNESS: So respiratory droplets and
15:52:04 10 aerosols are different. Respiratory droplets are bigger
15:52:08 11 particles. I kind of gave the illustration earlier today
15:52:11 12 that if you walked outside in the cold in the morning --

15:52:14 13 MR. PICCIRILLI: Doctor, I'm sorry to cut you
15:52:16 14 off because we're running late here. I just want to
15:52:19 15 clarify, what I asked to strike was you said it has been
15:52:23 16 established that respiratory droplets spread Corona
15:52:27 17 virus, and I'm suggesting to this Court that that does
15:52:30 18 not -- you're not the be all and end all of making that
15:52:34 19 decision. People may disagree with you, okay. So I
15:52:38 20 don't think its been established as an undisputed fact in
15:52:38 21 this case.

15:52:43 22 THE WITNESS: So can I respond to that?

15:52:43 23 MS. WYRZYKOWSKI: Yes.

15:52:45 24 MR. PICCIRILLI: I'm asking the Judge to strike
15:52:47 25 that on that basis.

15:52:48 1 THE COURT: You asked him a question and he
15:52:50 2 answered it.

15:52:51 3 MR. PICCIRILLI: I understand.

15:52:51 4 THE COURT: I understand why you asked, but I
15:52:54 5 just asked him the basis. He said his basis. You're
15:52:57 6 entitled to the basis. Nothing is stricken.

15:53:01 7 MR. PICCIRILLI: Okay.

15:53:02 8 THE COURT: It's a great place to end the day.

15:53:05 9 MS. WYRZYKOWSKI: Thank you, your Honor.

15:53:05 10 MR. PICCIRILLI: On that note.

15:53:07 11 THE COURT: Doctor you're excused. You can
15:53:10 12 step down. Thank you.

15:53:11 13 **A-D-J-O-U-R-N-E-D**

15:53:11 14

15

16

17

18

19

20

21

22

23

24

25