

13. Deposition of Janine Arvizu, filed in *State v. Anderson*, Hillsborough County Case No. 87CF008047, taken on April 4, 2008

1 IN THE CIRCUIT OF THE THIRTEENTH JUDICIAL CIRCUIT
2 IN AND FOR HILLSBOROUGH COUNTY, STATE OF FLORIDA
3 CRIMINAL JUSTICE DIVISION

4 THE STATE OF FLORIDA

5 vs.

Case No.:87CF008047

Divison: "B"

6 RICHARD ANDERSON

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14 DEPOSITION OF:

JANINE ARVIZU

15 TAKEN:

Pursuant to Notice

16 TIME:

Beginning at 11:19 a.m.

Concluded at 12:39 p.m.

17

DATE:

April 4, 2008

18

PLACE:

State Attorney's Office

700 E. Twiggs Street

Sixth Floor

Tampa, Florida 33602

20

21 BEFORE:

JEANICE FREYRE SCHAFFER

22

Shorthand Reporter

Notary Public

State of Florida at Large

23

24

25

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1

JANINE ARVIZU

2

was called as a witness, and being duly sworn by the

3

notary, was examined and testified as follows:

4

DIRECT EXAMINATION

5

BY MR. HARMON:

6

Q. Please state your name.

7

A. Janine Arvizu.

8

Q. And how are you employed, ma'am?

9

A. I am a quality assurance consultant and

10

quality auditor.

11

Q. Okay. And who do you work for?

12

A. I work as a independent contractor in that

13

capacity.

14

Q. Okay. Are you incorporated or have a

15

business?

16

A. No, no.

17

Q. And my understanding is you're a resident

18

of New Mexico.

19

A. That's correct.

20

Q. And what city?

21

A. It's not really a city. Pijeras, it's the

22

outskirts of Albuquerque.

23

Q. Okay. And how do you pronounce your last

24

name again?

25

A. Arvizu.

1 Q. Arvizu, okay. Ms. Arvizu, my name is
2 Scott Harmon, I'm an Assistant State Attorney. And
3 you are sitting in a conference room in the homicide
4 unit of the Major Crimes Division of the State
5 Attorney's Office here in Tampa, Florida, and we're
6 set to take your deposition today. Also present are
7 attorneys from the Attorney General's Office. And
8 together, we represent the State of Florida in the
9 State of Florida versus Richard Anderson case.
10 Okay.

11 My understanding is that you've been
12 retained by the Office of Capital Collateral Relief
13 to give a consultation or opinion in this case.

14 A. Yes.

15 Q. All right. When were you retained?

16 A. In this particular case?

17 Q. Yes, ma'am.

18 A. I'm not sure of the exact date. The
19 records that were the basis for my review were
20 received I think for the first time in -- I received
21 them in November, if I recall. Yeah, November 13th.
22 I'm not sure when I actually received the letter
23 that I signed that retains me in the case.

24 Q. Okay. That's November 13th of '07?

25 A. That's correct.

1 Q. Have you worked on any other cases with
2 that office dealing with training methodology of the
3 Department of Corrections?

4 A. Yes.

5 Q. What cases?

6 A. Schwab.

7 Q. That's the only other one?

8 A. That's the only one I recall, yes.

9 Q. When were you retained on the Schwab case?

10 A. Again, I'd have to check the original
11 retainer letter. But I wrote a report in August so
12 it was prior to that period.

13 Q. August of '07?

14 A. Correct.

15 Q. All right. So it was some time before
16 that?

17 A. Yes.

18 Q. Was it before '07?

19 A. I don't think so.

20 Q. Okay. Have you ever testified before as a
21 expert in the area of quality assurance when it was
22 dealing with the issue of either lethal injection or
23 execution other than Schwab or this case?

24 A. No.

25 Q. Have you ever been consulted on any other

1 cases dealing with that issue?

2 A. No.

3 Q. Okay. And you have been employed or
4 retained in the past by the Office of Capital
5 Collateral Relief on dealing with other issues such
6 as D.N.A. analysis.

7 A. Yes.

8 Q. Okay. And when was the first time that
9 you worked for the Capital Collateral Relief Office?

10 A. I don't remember the first time but it's
11 been several years.

12 MR. CANNON: I think it's the Capital
13 Collateral Regional Counsel.

14 MR. HARMON: Okay. I'll just say C.C.R.C.

15 MR. CANNON: That's the best way.

16 BY MR. HARMON (RESUMING):

17 Q. I'm sorry. I didn't -- what was your last
18 response?

19 A. It's been several years. But I don't
20 remember the specific date.

21 Q. Okay. Has it been since 2000?

22 A. Yes, I believe so.

23 Q. Other than your work with the C.C.R.C.
24 office here in Florida, have you ever worked on any
25 other death penalty cases in any other states?

1 A. It's my understanding that some of the
2 cases that I've testified in were capital cases, but
3 my testimony came during the trial phase or
4 evidentiary phase rather than post conviction. I
5 think this was the only post conviction case.

6 Q. And you were retained by C.C.R.C. to do
7 work in the Sean Hector Smith a.k.a. Dolan Darling
8 case --

9 A. Yes.

10 Q. -- out of Orlando.

11 A. Yes.

12 Q. And you testified in a hearing in that
13 case?

14 A. Correct.

15 Q. When was the first time you consulted in a
16 forensic setting?

17 A. In the late nineties.

18 Q. And do you remember the first time you
19 testified as an expert in a criminal case?

20 A. I believe it was in a District Court in
21 New Mexico. It was a controlled substance case.

22 Q. And did your testimony have to do in that
23 case with the analysis of the controlled substance?

24 A. Yeah. It had to do with the quality
25 assurance of the measurement process.

1 Q. And you have testified in the State of
2 Florida in cases not involving C.C.R.C.

3 A. Yes.

4 Q. I'm aware of the Siebers, Siebers case,
5 whatever it's called, out of Panama City.

6 A. Yes.

7 Q. Any other cases?

8 A. Recently I've testified in Melbourne in a
9 blood alcohol case; in Plantation Keys, also a blood
10 alcohol; a breath alcohol case somewhere in the
11 Orlando area; and a blood alcohol case in the
12 Orlando area.

13 Q. Do you know the names of the defendants in
14 those cases?

15 A. I can probably remember. Let's see. The
16 one in Melbourne was Taylor-Christianson.

17 Q. Taylor-Christianson.

18 A. Uh-huh.

19 Q. Okay.

20 A. The breath alcohol case -- I don't even
21 know who the defendant was. It was before like ten
22 judges and it was a bunch of things rolled into one.
23 So I don't know who it was.

24 The blood case was Watts in the
25 Orlando area, W-A-T-T-S.

1 And Plantation Keys is -- was
2 Latorre, L-A-T-O-R-R-E.

3 Q. Okay. And you testified on behalf of the
4 defendant in those cases?

5 A. Yes.

6 Q. All right. Have you ever been retained
7 by -- in a criminal case, by the State or the
8 federal government?

9 A. No.

10 Q. And what is the rate that you're charging
11 in this case?

12 A. I bill at \$150 an hour.

13 Q. And how many hours have you accumulated up
14 to this point?

15 A. Again, I'd have to check my records. It's
16 been -- other than the time getting here and spent
17 here today, it's only been a few hours.

18 Q. How do you bill for your travel?

19 A. How do I bill for my travel?

20 Q. Yeah. Do you charge --

21 A. My charges plus my time.

22 Q. Plus your time. Okay. So you don't
23 charge like a flat rate as far as when your en
24 route, or anything like at that?

25 A. No.

1 Q. You charge per hour.

2 A. Per hour.

3 Q. Okay. Do you have any other source of
4 income other than your employment as a forensic
5 consultant or a consultant as far as quality
6 assurance?

7 A. Yes. I work for a local public utility in
8 New Mexico.

9 Q. And what's the name of that utility?

10 A. P.N.M.

11 Q. P-M-M?

12 A. P-N-M.

13 Q. And what does that stand for?

14 A. Public Service Company of New Mexico.

15 Q. And what do you do for them?

16 A. Quality Manager.

17 Q. How many hours a week do you do that work?

18 A. Forty.

19 Q. Is it a eight-to-five Monday through
20 Friday thing?

21 A. No. It's much more flexible than that.

22 But, yes, essentially a full-time staff position.

23 Q. And what is the title that you hold there?

24 A. Quality Assurance Manager.

25 Q. Okay. Do you supervise anyone in that

1 position?

2 A. About nine people.

3 Q. And are you supervised?

4 A. Am I supervised?

5 Q. Yes. Do you have a supervisor or boss
6 over you?

7 A. Yes.

8 Q. Okay. And who is that?

9 A. His name is Brent Rice.

10 Q. All right. And what's his position or
11 title?

12 A. He's the -- I'm not sure exactly what his
13 title is at this moment. It's customer -- customer
14 solutions executive director, or something close to
15 that.

16 Q. And do you work out of one office or do
17 you travel amongst different offices?

18 A. In that capacity, just one.

19 Q. Just one. All right. What percentage of
20 your annual income comes from your work as a
21 consultant?

22 A. A minor percentage. I actually am just
23 giving my stuff to my accountant right now. In
24 years past, it has been on the order of ten percent.

25 Q. I'm assuming you hold both secondary

1 school degrees. Can you tell me your educational
2 history.

3 A. I have a Bachelor of Science in
4 Biochemistry from California Polytechnic State
5 University at San Luis Obispo, and a B.D. in
6 chemistry from the University of New Mexico. That's
7 a designation that indicates that I completed all
8 the course work and examination for Ph.D and was
9 advanced to candidacy but did not complete my
10 dissertation.

11 Q. So you don't hold a doctorate of any kind?

12 A. No.

13 Q. Any do you have any background in
14 pharmacology?

15 A. No.

16 Q. And my understanding is -- well, why don't
17 you go ahead and tell me your employment history.

18 A. I started at EG&G Idaho, which was the
19 operating and maintenance contractor for the Idaho
20 National Engineering Laboratory. It's one of the
21 Department of Energy's National Laboratories that
22 are spread around the country.

23 And during my employment there, I
24 established and managed a full-service analytical
25 testing laboratory and became involved in large

1 scale interagency quality assurance initiatives.

2 Q. Okay. Interagency would be the Department
3 of Energy?

4 A. Department of Energy, Department of
5 Defense, Environmental Protection Agency.

6 Q. E.P.A.

7 A. Yeah.

8 Q. But while you were at that facility in
9 Idaho -- was it in Idaho?

10 A. It's in Idaho, yes.

11 Q. You established an analytical testing
12 facility, you said.

13 A. Analytical testing laboratory, yes.

14 Q. Laboratory -- okay. And what did they
15 test there?

16 A. Quite a variety of samples. It was a
17 full-service lab that did the full suite of organic,
18 inorganic, and classical testing on samples that may
19 or may not have contained radionuclide.

20 Q. And what is that, radionuclide?

21 A. Radioactivity.

22 Q. Radioactivity. So you're testing for
23 levels of radioactivity?

24 A. That was done in another lab, the
25 radiological testing. We handled samples that had

1 appreciable dose rates that had radioactivity
2 associated with them.

3 Q. And how long did you work at that
4 facility?

5 A. I'd have to check my resume, but I think
6 it was about eleven years.

7 Q. Okay. Did you work at any other facility
8 or in any other capacity with the Department of
9 Energy?

10 A. While I was employed by EG&G, at the end
11 of my service there, I accepted a detail -- what was
12 called a detailed assignment to D.O.E. Headquarters.
13 So I was still -- although I was still physically
14 located in Idaho, I worked on national analytical
15 issues on behalf of D.O.E. Headquarters.

16 Q. Is that in Washington, D.C.?

17 A. Yes.

18 Q. You said you worked on national --

19 A. Analytical.

20 Q. Analytical.

21 A. And quality assurances.

22 Q. Now, when you say analytical issues or
23 analytical -- what does that mean?

24 A. Chemistry.

25 Q. All right. So for the -- and would that

1 include the eleven years you were there?

2 A. Yes.

3 Q. Okay. So for those eleven years you were
4 dealing with analytical analysis, chemistry,
5 radioactivity, which is being also analyzed in a
6 laboratory setting.

7 A. Yes.

8 Q. Was most of your work dealing with the
9 laboratory setting?

10 A. A lot of it dealt with field operations,
11 the collection of samples, the quality assurance
12 associated with all steps of the process from
13 initial collection through transport analysis
14 ultimate reporting.

15 Q. Okay. So all the way up to testing,
16 analysis, and report.

17 A. Yes.

18 Q. And the samples are being collected from
19 nuclear facilities or --

20 A. Yes, Department of Energy facilities both
21 in Idaho and all over the country.

22 Q. And what did you do after that employment?

23 A. I started my own company doing quality
24 assurance consulting.

25 Q. That's the company you're doing now or

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1 what you're doing now?

2 A. That's -- that actually was a corporation.

3 Q. Okay.

4 A. And we had maybe as many as fifteen
5 full-time employees.

6 Q. Where was that located?

7 A. We had an office in Albuquerque and one in
8 Maryland.

9 Q. And you founded that company and started
10 it?

11 A. Yes.

12 Q. Were there any other quality assurance
13 auditors that worked under you in that company?

14 A. Yes.

15 Q. Okay. So you weren't the only one.

16 A. That's correct.

17 Q. And that fifteen employment -- fifteen
18 full employees included support staff, I'm assuming.

19 A. It did.

20 Q. Okay. And how long did you do that or had
21 that company?

22 A. Probably about ten years. I'm not sure
23 exactly when it went inactive. And since then I've
24 been working only as an independent consultant.

25 Q. Okay. But the company no longer exists.

1 A. That's correct.

2 Q. Okay. Do you remember when that occurred?

3 When you --

4 A. I don't. I'd have to go look it up.

5 Q. Okay. You said earlier that the first

6 criminal case you testified in was in the late

7 nineties; is that right?

8 A. Yes.

9 Q. Okay. Were you outside of that company at
10 that point?

11 A. Yes.

12 Q. Okay.

13 A. Well, no. Actually, when I -- I think the
14 first few times I gave testimony it was still under
15 the auspices of that company.

16 Q. Okay. Now in the case in Panama City, my
17 understanding is you testified about quality
18 assurance of laboratory testing of the victim's body
19 or parts of her body.

20 A. Yes. It was testing of autopsy samples.

21 Q. Of autopsy samples.

22 A. Right.

23 Q. Okay. And they were looking for a certain
24 chemical or toxic chemical of some type?

25 A. They were testing for the presence of

1 succinylmonocholine.

2 Q. Okay. And so you were testifying about
3 quality assurance measures that were followed in a
4 laboratory setting; is that right?

5 A. That's correct.

6 Q. What laboratory was that?

7 A. There were two laboratories involved in
8 that testing. It was National Medical Services in
9 Pennsylvania, which is a private commercial
10 laboratory, and the F.B.I. laboratory in D.C.

11 Q. And then the other cases that you
12 testified in, here in Florida, dealing with
13 either -- well, dealing with blood draws. I'm
14 assuming that's, again, quality assurance in the
15 laboratory setting dealing with the analysis of
16 blood for ethyl alcohol.

17 A. It doesn't -- it doesn't just constraint
18 to the testing at the point it's received by the
19 laboratory, because the quality of the final result
20 is dependent on the integrity of the sample received
21 by the lab. So it also addresses all the control
22 points prior to receipt by the laboratory.

23 Q. So you start with the legal blood draw
24 kit. How it was administered --

25 A. Exactly.

1 Q. -- how they drew the blood, and the
2 maintenance of the blood from the point of draw
3 until it got to the laboratory, that type of thing.

4 A. Yes, sir.

5 Q. Okay. And then the D.N.A. case that you
6 testified in -- I've read some of the transcripts
7 from the Darling case. It appears you testified to
8 quality assurance measures that are followed in the
9 laboratory.

10 A. That's correct.

11 Q. Where the D.N.A. was analyzed.

12 A. That's correct.

13 Q. Prior to being consulted in this case and
14 in Schwab, had you ever worked or consulted with any
15 Department of Correction in any state, or the
16 Federal Department of Correction?

17 A. No.

18 Q. When you worked with the Department of
19 Energy did you ever visit or do a review of any
20 facility owned by the Department of Correction --
21 Federal Department of Correction --

22 A. No.

23 Q. -- or whatever it's equivalent is. I'm
24 not sure that's the correct reference.

25 MR. NUNNELLEY: Bureau of Prisons.

1 MR. HARMON: What's it called?

2 MR. NUNNELLEY: Bureau of Prisons.

3 MR. HARMON (RESUMING):

4 Q. Bureau of Prisons.

5 A. No.

6 Q. Prior to your consultation on this case
7 and Schwab, had you ever worked or given any
8 consultation or review of any other execution
9 method?

10 A. No.

11 Q. Or any training dealing with executions?

12 A. No.

13 Q. Okay. And I'm assuming you've never
14 worked at any Department of Corrections or a prison
15 system anywhere.

16 A. That's correct.

17 Q. Okay. Have you ever worked or given a --
18 well, let me start with working. Have you ever
19 worked or given a review of any hospital analysis?

20 A. Yes.

21 Q. Okay. Hospital laboratories?

22 A. I have not worked in a hospital
23 laboratory, but I have done quality assessments of
24 work performed by hospital laboratories.

25 Q. Other laboratories?

1 A. Yes.

2 Q. Okay. Have you ever given reviews or
3 assessments of quality assurance when it comes to
4 phlebotomy in a hospital or drawing of the blood or
5 introduction of any kind of medicine into a person's
6 body through an I.V.?

7 A. I'm not sure I understand your question --

8 Q. Okay --

9 A. -- I have --

10 Q. -- it was compound. Go ahead.

11 A. I have addressed issues relating to
12 collection of blood samples for blood alcohol
13 testing. Would that conform to what you were asking
14 me?

15 Q. In a hospital setting?

16 A. Not in -- those are generally not in the
17 hospital setting. Those are more typically in the
18 field, although in some cases they have been in a
19 hospital.

20 Q. Okay. Other than those, though, you have
21 never dealt with or assessed the quality assurance
22 measures when you're dealing with, like, a
23 phlebotomist, a person that's drawing blood in a
24 hospital?

25 A. That's correct; that's correct.

1 Q. You've never done that.

2 A. No.

3 Q. Okay. Or with any type of procedures used
4 for I.V.s in a hospital?

5 A. No.

6 Q. Like the introduction of, say, liquid
7 antibiotics or anesthesia or anything like that?

8 A. No.

9 Q. Have you ever done or consulted on quality
10 assurance in a non-laboratory setting?

11 A. Yes.

12 Q. Okay. Can you tell me about that.

13 A. As an example, for high-tech clients that
14 do manufacturing and that have very specific
15 preparation controls that are necessary to ensure
16 that their ultimate product meets specifications.

17 In this case, they're actually --
18 they were actually manufacturing powders with very
19 specific chemical and physical composition and so
20 controlling aspects of the process was very
21 important to them.

22 Q. Okay. What type of powders were they?

23 A. They had some very special proprietary
24 applications related to their electrical and
25 physical properties.

1 Q. Okay.

2 A. Micro powders, very, very, small powders;
3 very small spheres.

4 Q. All right. Any other non-laboratory
5 quality analysis?

6 A. Yeah. Over the course of my career --
7 when you -- when you conduct a quality assessment,
8 even if it's at the laboratory, part of that is an
9 evaluation of sort of the back office systems, if
10 you will, that go into ensuring the qualifications
11 of the individuals that participate. So that's a
12 routine part of the quality assessment process.

13 For the utility, it's a question of
14 ensuring that the meters are appropriately making
15 the measurements and then the bill that's produced
16 conforms to the metered amount, and so forth.

17 So the quality assessment process,
18 that is having complete and accurate procedures and
19 protocols that describe, practice, describe the
20 control points and the criteria that must be met in
21 order to ensure the acceptable production of a
22 product at the back end of the process. That's
23 pretty much independent of the type of process that
24 it's applied to.

25 Q. Okay. What percentage of your work in

1 your career has been outside of the laboratory
2 setting, would you say?

3 A. Would you call outside of the laboratory
4 setting including things in the field that
5 ultimately may end up in the laboratory?

6 Q. Like a collection of samples?

7 A. Yes. Field measurements and collections
8 of samples, that's really outside of the laboratory.

9 Q. Yeah. Let's go outside of anything
10 laboratory-related, okay --

11 A. Okay.

12 Q. -- and that means collection of samples,
13 and that would include in a forensic setting,
14 collection of blood or breath.

15 A. Okay. It has probably -- well, over the
16 course of my career it's probably been a minor but
17 significant percentage. It's less than half, but I
18 would say maybe thirty, forty percent. I don't know
19 if that helps.

20 Q. Okay. You started out with this high tech
21 manufacturing of very small powders or micro
22 powders. Any other quality analysis outside of a
23 laboratory setting, meaning outside of analysis of
24 the sample or collection of the sample in a
25 manufacturing setting like that, other than what

1 you've told me about, other than the powders?

2 A. Other than manufacturing outside --

3 Q. Actually, any outside manufacturing is
4 what I'm talking about. Have you ever consulted
5 with or reviewed any other manufacturer's situation?

6 A. No. No. I -- part of -- part of testing
7 laboratory substances is assessing procurement
8 quality of material specs. So I often will, for
9 example, review the manufacturing protocols for the
10 people. For example, who prepare blood kits or
11 something like at that. I don't know if that's what
12 you're referring to.

13 Q. Okay. With the Department of Energy --
14 you may have already answered this question. It
15 seemed as if what you were telling me was most of
16 your work was a laboratory setting.

17 A. It was either a laboratory setting or
18 related in some measure to a laboratory.

19 Q. And are you talking about going out and
20 assessing the quality assurance as far as collection
21 of samples --

22 A. Yes.

23 Q. -- or collection of --

24 A. Yes.

25 Q. -- items that were being analyzed?

1 A. Yes, sampling designs.

2 Q. Now let's go to this case. You were
3 retained -- and how were you retained, by someone
4 calling you?

5 A. By a letter.

6 Q. By a letter. Okay.

7 A. Well, actually, I probably got the phone
8 call first, but it was followed up by a letter.

9 Q. Who retained you by phone?

10 A. Peter Cannon.

11 Q. Okay. And Mr. Cannon retained you by
12 phone and then he confirmed his retaining you by
13 letter form.

14 A. Correct.

15 Q. Okay. And is there any type of a contract
16 between you and C.C.R.C.?

17 A. There's a letter that I had to sign that
18 talked about rates, that type of thing.

19 Q. All right. By the State.

20 A. I guess that's a contract. You'd know
21 better than I would.

22 Q. Okay. Other than that though, you don't
23 have any contract that you enter into where you
24 bring a contract to the table?

25 A. No, I don't.

1 Q. Okay. What items or documents were you
2 provided for your work in this case?

3 A. In this case?

4 Q. Yes, ma'am.

5 A. There are approximately twenty pages of
6 records from training scenarios that were conducted
7 on August 15th and August 22nd of 2007. In
8 addition, there are a number of records from a
9 training scenario that was conducted on August 1st
10 that I had previously received and looked at under
11 Schwab. In addition, there was a report by G.D.
12 Lunsford relating to the statistical analysis in
13 this case.

14 And I had previously reviewed the
15 protocol, the lethal injection protocol, both the
16 August 1st version and the previous -- I believe it
17 was May version.

18 Q. Okay. Protocol that's promulgated by the
19 Department Of Corrections.

20 A. Correct. That was essentially context for
21 my review.

22 Q. Prior to Schwab, was that your first
23 exposure to a lethal injection protocol?

24 A. Yes.

25 Q. You said there was a number of pages

1 provided from the August 1st training scenario, I
2 believe you said under Schwab.

3 A. Yes.

4 Q. Did you see that?

5 A. Yes.

6 Q. Okay. All of those pages and documents
7 are all Department Of Corrections documents or
8 pages?

9 A. I believe so. The protocol, I understand,
10 is not Department Of Corrections. But the training
11 records, it's my understanding, are Department Of
12 Corrections' records.

13 Q. So those are all training records that you
14 received?

15 A. Yes. Logs of training attendance and the
16 records generated during the course of training
17 exercises.

18 Q. And then you received the report from G.D.
19 Lunsford, you said?

20 A. Yes.

21 Q. Okay. And that's a statistical analysis
22 of some type.

23 A. Yes.

24 Q. Do you hold yourself out as a
25 statistician?

1 A. I do not. I've had college courses in
2 statistics as part of my certification as a quality
3 auditor. The test that you take to achieve that
4 certification does include an assessment of sampling
5 statistics and descriptive statistics.

6 So I have a -- the typical chemist's
7 familiarity with the subject of statistics. I'm not
8 a statistician. I do, however, have a lot of
9 experience over the years working with
10 statisticians.

11 Q. Okay. You talked about certification.
12 Who you are certified by?

13 A. The American Society for Quality, A.S.Q.

14 Q. Okay. And you're certified as a --

15 A. Quality auditor.

16 Q. Quality auditor. Okay. Is that an annual
17 certification?

18 A. There is a recertification requirement
19 every three years. There's -- initially you're
20 required to sit for a five-hour, I believe,
21 examination that has an appreciable failure rate.

22 If your successful in that, then
23 there are recertification requirements dealing with
24 experience and professionalism and continuing
25 education.

1 Q. What's the continuing education
2 requirement?

3 A. There are actually a number of -- I
4 suppose it's quite analogous to -- you have to get
5 C.L.E credits, you have to accumulate a certain
6 number of points or units. And you can get that by
7 delivering instruction, by receiving instruction, by
8 publishing, by employment; a variety of types of
9 experiences.

10 Q. And you report those every three years?

11 A. I believe it's every three years, yes.

12 Q. When was the first time you were
13 certified?

14 A. I don't remember. I -- in the nineties
15 sometime, I don't remember the first time I got my
16 certification.

17 Q. Is that the only certification you hold?

18 A. That's correct.

19 Q. Okay. All right. So those are all the
20 materials you were sent by C.C.R.C. on this case,
21 that you've already told me.

22 A. Yes.

23 Q. Did you review those?

24 A. Yes.

25 Q. All right. And then my understanding is

1 you generated a letter -- I've got a letter here
2 dated April 1st of '08 and a type of a graph.

3 A. Payroll attachment, yes.

4 Q. Okay. What did Mr. Cannon ask you to do
5 in this case when he first retained you?

6 A. I'm trying to remember if it was any
7 different than essentially what I was asked to do in
8 Schwab but just for a different set of records. My
9 recollection is just that we got additional training
10 records.

11 And so I was asked to essentially
12 conduct the same kind of a quality assessment on
13 those records that I had earlier done on the July
14 records for Schwab.

15 Q. For Schwab. Okay.

16 A. Yeah.

17 Q. So before you -- give me one moment.

18 Before you wrote this letter, you
19 reviewed these documents given to you by Mr. Cannon.

20 A. Yes.

21 Q. And that's what you based your opinions on
22 in this letter --

23 A. Yes.

24 Q. -- your findings.

25 A. Yes.

1 Q. Did you ever talk to any of the people
2 involved in the training or contact them by phone or
3 meet with them?

4 A. No. As you can see from the record,
5 they're not identified by name.

6 Q. Okay. There's no names identified --

7 A. That's correct.

8 Q. -- I've never seen the records.

9 A. That's correct.

10 Q. Okay.

11 MR. HARMON: Do you have anything?

12 MR. NUNNELLEY: Yes.

13 **DIRECT EXAMINATION**

14 BY MR. NUNNELLEY:

15 Q. Ms. Arvizu, you don't have any medical
16 training, do you?

17 A. No.

18 Q. Do you have any -- I guess you've never
19 attended an execution, have you?

20 A. No.

21 Q. And other than the procedures that you
22 have reviewed that were prepared by the Department
23 Of Corrections, the training logs that you've
24 reviewed, is that the only source of your
25 information about how an execution is carried out by

1 lethal injection?

2 A. Yes. The records I've received in this
3 case and in Schwab represent my entire exposure to
4 this subject.

5 Q. And you have no particular knowledge of
6 the mechanism of action of any of the drugs employed
7 to carry out an execution by lethal injection, do
8 you?

9 A. Certainly not an expert's knowledge. The
10 other questioner had asked me about the case in
11 Panama City that was succinylmonocholine, which is
12 chemically, mechanistically very similar to the
13 pancuronium bromide.

14 So I'm familiar with them from a
15 chemistry perspective, but not -- I'm not a
16 medical -- have no medical expertise, per se.

17 Q. So your familiarity is not from the
18 perspective of pharmacology or pharmacokinetics, is
19 it?

20 A. That's correct.

21 Q. You said that a drug, that I'm not going
22 to try to pronounce, from your Panama City case was
23 similar to pancuronium bromide in mechanism of
24 action.

25 A. In effect.

1 Q. Okay. And so the affects of this drug is
2 similar to pancuronium bromide.

3 A. Yes.

4 Q. What do you understand the affect of
5 pancuronium bromide to be?

6 A. Essentially immobilizing the muscles.

7 Q. Do you know how it does that?

8 A. Mechanistically, no.

9 Q. Do you know how rapidly it acts?

10 A. Again, it's really not my area of
11 expertise. I've heard a lot of testimony about
12 succinylmonocholine in that regards. But my
13 understanding is it's quick. But that's not my area
14 of expertise.

15 Q. Do you understand what order the drugs
16 that are used in carrying out an execution by lethal
17 injection are injected into the condemned inmate?

18 A. Do I understand the order? Yeah, I've
19 read the procedure.

20 Q. And what is that order?

21 A. The first -- do you want by each specific
22 syringe?

23 Q. I'm asking you if you remember without
24 looking at the protocols.

25 A. Yeah. The first is the depressant; the

1 second is the pancuronium bromide; and the third is
2 the potassium chloride.

3 Q. And what is the depressant, as you call
4 it, that's used?

5 A. Yeah. Give me minute and I'll think of
6 it. Please continue, and if you'll give me a
7 minute, I'll think of it.

8 BY MR. NUNNELLEY: Let us chat for just a
9 second here.

10 THE WITNESS: Sure.

11 [A brief discussion was held off
12 record.]

13 BY MR. NUNNELLEY (RESUMING):

14 Q. How many members does the American Society
15 for Quality have? Do you have any idea?

16 A. I don't. It's the primary professional
17 society for practicing quality professionals, so I'm
18 guessing it would be on the order of tens of
19 thousands. I just don't know.

20 Q. Is that something I could, like, find that
21 off the internet?

22 A. ISQ.org.

23 Q. Okay. Are you opposed to capital
24 punishment, Ms. Arvizu?

25 A. I am.

1 Q. Well, let me ask you this. It sounds to
2 me as if your forensic work is relatively limited;
3 it's not a big part of what you do. Is that a fair
4 assessment?

5 A. That's fair. Over the -- especially over
6 the course of my career.

7 Q. Let me get back -- do you have to be a
8 member of the American Society for Quality to hold
9 your position that you hold in your day job working
10 for the utility in New Mexico?

11 A. Do you have to? I don't know that it's a
12 mandatory prerequisite. It probably says something
13 like desired.

14 Q. Have you ever lived in Florida?

15 A. No.

16 Q. Do you advertise your services?

17 A. No, I do not.

18 Q. Do you have any idea how Mr. Cannon
19 located an expert in New Mexico to come to Florida?

20 A. I don't. You'd have to ask him.

21 MR. HARMON: Can I jump in real quick?

22 MR. NUNNELLEY: Sure.

23 **FURTHER DIRECT EXAMINATION**

24 BY MR. HARMON:

25 Q. Have you ever spoke to any defense

1 attorney associations?

2 A. Yes. Quite a number all over the country.
3 I've lectured on the subject of analytical quality
4 assurance to trial lawyers, to defense lawyers, and
5 to federal and state appellate judges at a
6 continuing education session for judges.

7 Q. And when you spoke to trial lawyers, are
8 you talking about personal injury attorneys or civil
9 attorneys or criminal attorneys?

10 A. I understand it was a little bit of
11 everything.

12 Q. Okay. But you have spoke directly to
13 criminal defense attorney groups.

14 A. Yes. Defense attorney -- when they have
15 their C.L.E. sessions, yeah.

16 Q. Okay.

17 A. And I don't -- some of them are only
18 defense attorneys. My understanding is that some of
19 them let everybody in, but that's pretty much their
20 call, not mine.

21 Q. All right. But you've lectured to them at
22 their seminars.

23 A. Yes.

24 Q. Okay. And what were the subject matters
25 of what you've lectured about?

1 A. In general, my subject matter is always
2 the same, the subject of laboratory quality
3 assurance. I attempt to cater the content to the
4 interest of the particular group. So I always ask
5 what kinds of forensic evidence are relevant to the
6 audience in question so that I can use examples that
7 are meaningful to them.

8 But, in general, the subject is
9 quality assurance to ensure -- what is necessary to
10 ensure the consistent reliable production of
11 acceptable quality data and how you know whether
12 that's the case in any one given example.

13 Q. Acceptable quality data, meaning coming
14 out of a laboratory?

15 A. Yes. The product or service coming out of
16 a laboratory. And for the most part, it is data.
17 And so quality assurance is designed to ensure that
18 all the controls are in place to ensure consistent,
19 reliable production of good quality data that meets
20 the needs of the data user and that the quality
21 control points are all in place to prevent problems
22 from occurring. And in the event that problems do
23 occur, to be able to identify them.

24 Q. Okay. So, it sounds like for the most
25 part what you're talking about is you've lectured

1 about issues involving laboratory testing --

2 A. Yes.

3 Q. -- would that be fair?

4 A. Yes.

5 Q. And I would assume the majority of what
6 people are asking you to talk about are blood draws,
7 breath samples in D.U.I. cases, drugs and drug
8 sampling.

9 A. Drugs, drug sampling, toxicology, D.N.A.,
10 gunshot residue.

11 Q. D.N.A. Have you ever testified in a
12 fingerprint or gunshot residue --

13 A. Yes.

14 Q. -- case?

15 A. Yes.

16 Q. Okay. How many times?

17 A. I testified in the Plaza hearing in
18 Federal Court in Philadelphia before Judge Pollak.
19 It was a fingerprint case.

20 I testified in gunshot residue cases.
21 Let's see -- one was Baltimore. And there was a
22 Dauberts hearing in Houston last fall.

23 Q. Federal court?

24 A. I think that was state court.

25 Q. Okay.

1 A. -- about the admissibility of the F.B.I.'s
2 gunshot residue evidence.

3 Q. Gunshot residue, not --

4 A. Yes, gunshot residue.

5 Q. -- bullet lead analysis?

6 A. Not bullet lead. This was gunshot
7 residue.

8 Q. Okay. So how many times have you
9 testified, total, as to gunshot residue?

10 A. I'm trying to remember if I testified
11 twice in Baltimore or not. But there was a
12 Baltimore case and the case in Houston. Those are
13 the two gunshot residue cases.

14 Q. And prior to that, had you ever had
15 experience with gunshot residue or the collection of
16 gunshot residue --

17 A. No.

18 Q. -- or the science of gunshot residues?

19 A. No.

20 Q. Okay. Are you familiar with how gunshot
21 residue was analyzed --

22 A. Yes.

23 Q. -- in the laboratory?

24 A. Yes.

25 Q. Were you familiar with that prior to

1 your --

2 A. Yes. That's a conventionally applied
3 analytical technique that's used in a variety of
4 different analytical --

5 Q. Electron microscope?

6 A. Yes.

7 Q. Okay. And your testimony in those two
8 cases was dealing with quality assurance as far as
9 collection of samples.

10 A. And analysis.

11 Q. And analysis.

12 A. That's correct.

13 Q. Okay.

14 A. And specifically dealing with the
15 contamination control issues that are relevant to
16 that subject.

17 Q. And that was in Baltimore and in Houston,
18 Texas.

19 A. Yes.

20 Q. How were you retained in those cases?

21 A. I'm sorry. I don't understand the
22 question.

23 Q. Or how did they know about you, find out
24 about you as a witness?

25 A. I'm trying to think of the first time I

1 met these people. Usually I just get a phone call.
2 I just don't remember how the guys in Baltimore
3 found out about me. I think the one in Houston was
4 a personal referral, probably from Fred Whitehurst.

5 Q. Who's that?

6 A. Fred was the F.B.I. laboratory
7 whistleblower who has since --

8 Q. Okay.

9 A. -- become an attorney and gone into
10 private practice.

11 Q. All right.

12 A. Oft-times it's just people who heard me
13 speak at a C.L.E. session some time prior.

14 Q. Fingerprints, how many times have you
15 testified concerning fingerprint analysis?

16 A. I think the one in federal court was the
17 only time.

18 Q. And what jurisdiction was that in, in
19 federal court?

20 A. It was in Philadelphia, if that helps --

21 Q. Philadelphia.

22 A. -- I don't know.

23 Q. Okay. You said the Plaza hearing.

24 A. Yeah.

25 Q. Okay. And was that a defense attack upon

1 the reliability of the science of fingerprint
2 analysis?

3 A. Yeah. Essentially -- I don't know if it
4 was some special kind of hearing or anything, but it
5 was basically about admissibility of fingerprints.
6 And I was speaking about the efficacy of their
7 proficiency testing program.

8 Q. Efficiency of the examiners, the latent
9 print examiners?

10 A. That's correct, what objective evidence
11 was the laboratory able to produce to demonstrate
12 the proficiency and qualifications of the people who
13 conducted the analysis.

14 Q. So your testimony did not deal with the
15 science or, let's make it even more specific, with
16 the discrimination of fingerprint analysis?

17 A. It dealt with the rigor of the proficiency
18 programs, but not to the underlying, if you can call
19 it, science of latent print identification.

20 Q. So you've testified concerning D.N.A.,
21 lethal injection in the Schwab case, fingerprints,
22 gunshot residue, blood draws, breath sampling, and
23 D.N.A. -- or D.U.I. cases; is that right?

24 A. And controlled substance testing.

25 Q. And I was going to get to that. And

1 controlled substance testing.

2 Anything else in forensic work you've
3 testified about?

4 A. I think that's pretty much it. If I think
5 of anything else, I'll tell you.

6 Q. Okay. How about blood pattern analysis?

7 A. No.

8 Q. Okay.

9 A. You mean blood spatter --

10 Q. Blood spatter --

11 A. -- patterns?

12 Q. -- blood patterns.

13 A. No.

14 Q. How about firearm and tool mark
15 examinations?

16 A. I've assessed it. In the case in Oklahoma
17 City -- Terry Nichols case.

18 Q. Uh-huh.

19 A. I don't remember if that actually came up
20 during the course of my testimony. I don't think it
21 did. I believe my testimony dealt more with the
22 classical testing of the ammonia nitrate.

23 Q. Okay. That's laboratory testing.

24 A. That was laboratory testing, yes.

25 Q. And you testified on behalf of the defense

1 in that case?

2 A. Yes.

3 Q. In all these cases we've talked about up
4 to this point in this statement, have you -- all of
5 those include testifying on behalf of the defense;
6 is that right?

7 A. Yes.

8 Q. Have you ever lectured or spoke to any
9 prosecuting organizations? Whether it be the United
10 States Attorney's Office or any state prosecuting
11 agency.

12 A. No. But I'd be happy to.

13 Q. Okay.

14 A. Judges -- does that count? I mean,
15 they're not --

16 Q. Well, you said you've talked -- you've
17 lectured to appellate judges.

18 A. Judging science, yeah.

19 Q. Okay. Would it be fair to say that the
20 speeches or lectures you give at these seminars to
21 defense attorneys, to trial attorneys, maybe even
22 possibly the judges, to some extent is a marketing
23 aspect for your business; isn't it?

24 A. It certainly happens that that's how a lot
25 of my clients have found out about me was as a

1 result of those -- as a result of those lectures.

2 I'm a frustrated teacher at heart. I
3 just -- if you'll give me a podium and blackboard,
4 I'll speak to anybody that will sit through and
5 listen to an hour of chemistry.

6 Q. Do you focus -- when you speak to the
7 trial attorneys or defense attorneys, do you focus
8 on any particular area of forensic science?

9 A. No. I generally try -- it's part of the
10 argument. It's part of understanding the
11 principles. But the principles of quality assurance
12 are largely independent of the arena to which it's
13 applied. So the principles of understanding sample
14 integrity and controlling elements of the
15 measurement process, are independent and ensure the
16 qualifications of the people conducting the work,
17 are independent of whether or not it's fingerprint
18 testing, D.N.A., toxicology, or controlled substance
19 testing.

20 So I try -- unless it's a very
21 specific audience, like unless it's just a D.U.I.
22 conference in which case I only talk about alcohol,
23 then I try to give a little bit of a variety of
24 different applications.

25 Q. Okay. So you have lectured at seminars

1 that deal specifically with certain areas of
2 forensics?

3 A. I think just one. I think -- well, no --
4 two. One in Las Vegas and one in Arizona on that
5 were just --

6 Q. D.U.I.?

7 A. -- about, yeah, D.U.I.

8 Q. And what group was that to?

9 A. It was a state association in Arizona --

10 Q. Okay.

11 A. -- and the initials A.A.C.G. stick in my
12 head. C.J. sticks in my head, but I'm not sure what
13 it stands for.

14 Q. Okay.

15 A. And the one in Las Vegas was some kind of
16 a national thing for D.U.I. lawyers. I don't
17 remember the name of the association. Sorry.

18 Q. For the most part, when you consult, these
19 defense attorneys are looking to either exclude
20 evidence or to attack scientific evidence; is that
21 true? Wouldn't that be a fair characterization?

22 A. Yeah, I think that's fair.

23 Q. Okay. You mentioned Fred Whitehurst, he
24 had referred you to someone.

25 A. He gets a lot of calls from attorneys

1 looking to look into forensic evidence and if it's
2 something that would benefit from an independent
3 quality assessment audit, then he will refer them to
4 me sometimes.

5 Q. All right. How long have you known
6 Mr. Whitehurst?

7 A. I -- he's how I got into the business of
8 forensics, I suppose. Because I read the Inspector
9 General's report on the problems in the F.B.I.
10 forensic laboratory. I downloaded them and read the
11 entire multi-volume set. And after I read that, I
12 contacted Fred, and he responded. And we met and
13 have worked together since then.

14 Q. Have you ever worked on a case together
15 with him?

16 A. Yes.

17 Q. What case was that?

18 A. The Terry Nichols case. It was all
19 very -- we both showed up at the airport. And he
20 didn't know I was going to be there and I didn't
21 know he was going to be there. They had kept us
22 very separate. But we were both there at that same
23 time.

24 Q. Oh, okay. And the Terry Nichols case was
25 the Oklahoma bombing of the Fred --

1 A. Murrah Building, yes.

2 Q. -- Murrah Building. Okay.

3 A. Oh -- we also worked on the Ressam case
4 in -- the one about bringing explosive materials
5 across the border from Canada in 2000.

6 MR. NUNNELLEY: Can you spell that,
7 please.

8 THE WITNESS: R-E-S-S-A-M.

9 MR. CANNON: I don't mean to interrupt
10 you. Is that the Washington case where they
11 came --

12 THE WITNESS: Yes.

13 MR. CANNON: Okay.

14 THE WITNESS: The customs inspector, I
15 guess, noticed and found stuff in his trunk.

16 MR. CANNON: I think that's the Millennium
17 case.

18 THE WITNESS: Millennium Bombing, yeah.

19 MR. NUNNELLEY: Oh, okay.

20 MR. HARMON: Can we take a break for a
21 second.

22 (A brief discussion was held
23 off the record.)

24 MR. HARMON (RESUMING):

25 Q. How many times do you think you spoke to

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1 defense attorney associations or groups?

2 A. I don't know. There is some years when I
3 won't do it and there is some years when I'll do it
4 three or four times. So maybe -- maybe fifteen
5 times. I don't know.

6 Q. You had stated that you would agree that
7 you were opposed to capital punishment --

8 A. Yes, I am.

9 Q. -- as a form of punishment. Do you
10 participate in any kind of organizations or groups
11 that advocate against the death penalty?

12 A. No.

13 MR. HARMON: Do you have anything?

14 MR. NUNNELLEY: Okay.

15 MR. HARMON: Come on up.

16 **FURTHER DIRECT EXAMINATION**

17 BY MR. NUNNELLEY:

18 Q. Just real quickly -- just to try to make
19 sure we're clear on this. You testified that you
20 reviewed the execution procedures, right?

21 A. Two different versions of the procedure.

22 Q. July 2007 procedures and August -- May
23 2007 and August 2007 procedures.

24 A. Right.

25 Q. Training logs --

1 A. Yes.

2 Q. -- and the Lunsford letter.

3 A. Yes.

4 Q. Is there anything else that you reviewed
5 in connection with your work in this case?

6 A. No.

7 Q. Is there anything else that you intend to
8 review in connection with your work in this case?

9 A. Well, I'd hoped to get training records
10 from training after August to be more reflective of
11 current practice in the event that they change. But
12 I understand that that's something I don't have any
13 control over.

14 Q. So there's nothing else that you intend to
15 review?

16 A. Not unless -- not unless those records are
17 produced.

18 Q. Is your opinion -- are your opinions and
19 conclusions, to the extent that they're stated in
20 your April 1 letter, final as of this time or do you
21 expect to change them?

22 A. They are final, based on the records
23 received to date. As I've indicated, I reserve the
24 right to update those or change my conclusion if
25 later records are received.

1 Because you always hope for
2 continuous improvement. You always hope they're
3 doing a better job. And if the subsequent records
4 would so indicate, I would be prepared to change my
5 conclusion.

6 MR. NUNNELLEY: I don't have anything
7 else. No other questions.

8 MR. HARMON: You got anything, Peter?

9 MR. CANNON: Yeah, just real quick.

10 (Mr. Harmon exits the deposition
11 room.)

12 **CROSS EXAMINATION**

13 BY MR. CANNON:

14 Q. I'll touch on your experience here.

15 Ms. Arvizu -- and just for the
16 record, this is Peter Cannon. I'll just ask you
17 some real quick questions.

18 You indicated that you work in some
19 capacity for the Department of Energy. Any other
20 governmental agencies or labs?

21 A. I worked for the U.S. Navy and managed
22 their national laboratory evaluation program. And
23 in that capacity, I authored the standards, the
24 quality standard that served as the basis for
25 approval of those laboratories; conducted audits,

1 on-site audits, of the laboratories to evaluate
2 their compliance with the standard; and then, on an
3 ongoing basis for approved labs evaluated the
4 quality of the data produced by the laboratories.

5 Q. And that's, again, in a sense related to
6 this issue of quality assurance.

7 A. Yes. For both government and commercial
8 laboratories providing analytical work to the U.S.
9 Navy.

10 Q. Okay. And just so it's clear, have you
11 been accepted as an expert in federal courts?

12 A. In quality assurance, yes.

13 Q. Okay. State courts?

14 A. Yes.

15 Q. Courts with military jurisdiction or
16 military courts?

17 A. Yes. I testified in military hearings
18 related to the subject of quality assurance.

19 Q. And any international courts not within
20 the jurisdiction of the United States?

21 A. Yes, in the Supreme Court of Palau.

22 Q. And you were tendered in these cases as an
23 expert witness?

24 A. Yes.

25 Q. And have you ever not been accepted as an

1 expert witness after being tendered?

2 A. No.

3 Q. And could you just, real quick, what's the
4 definition of quality assurance? What we're all
5 talking about.

6 A. What are we all talking about? Quality
7 assurance is a system wherein, through quality
8 control and quality assessment, you put in place the
9 practices that are necessary to ensure consistent
10 and reliable production of acceptable quality work.

11 And the controls are designed to
12 prevent problems and to identify them in the event
13 that they occur. And the quality assessment piece
14 is necessary to constantly monitor and assess the
15 quality of the work that's being produced.

16 So quality assurance, as a practice,
17 is really important and disciplines where it's
18 really important to control the variables and ensure
19 the outcome of the results.

20 So, as a result, it's a discipline
21 that is universally applied in industries where
22 those kinds of considerations are important. From
23 the environmental industry, the food industry,
24 manufacturing, the automotive industry, the airline
25 industry; virtually any industry where controlling

1 variables and ensuring consistent acceptable
2 production of reliable results is important.

3 Q. So when you say it's universally applied,
4 the same principles that are applied in
5 manufacturing would be consistent with those quality
6 assurance principles applied in laboratory testing,
7 non-laboratory testing, or any other field that --
8 the basic quality assurance?

9 A. Yes. Quality auditors are, by virtue of
10 training and experience, able to conduct assessments
11 of quality systems in any discipline. The value
12 added -- and in my case, my specialization in the
13 laboratory side is because of my chemistry
14 background and expertise.

15 But the principles of making the
16 assessment, judging whether or not the protocols and
17 the procedures that are in place will serve the
18 desired result, and then whether they actually
19 adhere to their own procedures is a universal
20 practice in the quality field.

21 Q. And those principles that you talked about
22 are the same principles that you applied in your
23 work on the Richard Anderson case?

24 A. Yes.

25 Q. And if you ever were called to testify,

1 you would be able to testify to issues that are not
2 contained, I guess, in your report dealing with, I
3 guess, the general principles of quality assurance
4 and so forth?

5 A. Yeah. I didn't attempt in my report to
6 address the body of knowledge of quality principles.
7 It was really just the conclusion that was
8 discretely applicable to this case.

9 Q. Right. So those conclusions in your
10 report deal with what you were asked to do in the
11 Richard Anderson case.

12 A. Yeah. They're based on the foundational
13 principles of quality assurance.

14 Q. Okay. And those foundational principles
15 are not explained in the report.

16 A. That's correct.

17 Q. Okay. But that is something that you can
18 testify about.

19 A. Yes.

20 Q. I guess that's it.

21 One real quick question. With
22 regards to the additional records, you were in the
23 courtroom during that hearing with the D.O.C. and
24 Counsel; is that correct?

25 A. Yes.

1 Q. And do you recall his arguing or --

2 MR. NUNNELLEY: Object to the form; object
3 to the relevancy. You can answer it, if you
4 can. It's legally improper.

5 MR. CANNON: Right.

6 MR. NUNNELLEY: And you know it is.

7 MR. CANNON: Thank you.

8 MR. NUNNELLEY: This is outside the scope
9 of this deposition. It's my deposition; not
10 yours.

11 MR. CANNON: This goes to the records.
12 She's been asked about it.

13 MR. NUNNELLEY: Well, the records have
14 been ruled on. The records are outside the
15 scope of the hearing. It's improper.

16 BY MR. CANNON (RESUMING):

17 Q. Real quick. Mr. Changis testified that
18 the trainings occur, and that, in itself is good and
19 therefore we don't need the records.

20 Would you be able to add to that as
21 to whether that's correct or incorrect --

22 MR. NUNNELLEY: Objection. This is
23 improper. This is why we asked the witness to
24 be excluded from the courtroom. You objected
25 to it, and now you're trying to use it against

1 us. That is absolutely improper, Mr. Cannon,
2 and I object to it.

3 BY MR. CANNON (RESUMING):

4 Q. Okay. If you can answer the question.

5 A. Okay. Based on my experience as a quality
6 auditor, the mere fact that training occurs does not
7 mean it's sufficient to ensure the qualifications of
8 the individuals, particularly in the event that the
9 training provides objective demonstration of the
10 fact that the individuals are not performing in
11 accordance with the standard.

12 MR. CANNON: Okay.

13 MR. NUNNELLEY: You done?

14 MR. CANNON: Yes.

15 MR. NUNNELLEY: Now I have a few more for
16 her, since you opened it up.

17 **REDIRECT EXAMINATION**

18 BY MR. NUNNELLEY:

19 Q. How many times have you testified as an
20 expert witness, Ms. Arvizu?

21 A. Just over thirty, I believe.

22 Q. You testified, I believe, and you said
23 under oath just now, that you have testified in
24 state court, federal court, military court, and in
25 the Supreme Court of Palau; is that correct?

1 A. Yes.

2 Q. What states have you testified in?

3 A. I've testified here obviously, in Florida,
4 in Texas, Arizona, Wisconsin, Oklahoma,
5 Pennsylvania, District of Columbia's Superior Court
6 in District of Columbia, Maryland, one of the
7 Carolinas -- I think South Carolina, Arkansas.

8 I probably have missed some, but I
9 think that's a pretty fair representation.

10 Q. Okay. And these states that you just
11 listed are states where you testified in the state
12 court, correct?

13 A. Not all of them. I forgot New Mexico in
14 there. Most of them were state court. Philadelphia
15 was federal court. Some of my testimony -- two of
16 my -- the two times I've testified in New Mexico, it
17 was in federal court. I think all the rest of those
18 were state. Sometimes I've done it telephonically.

19 Q. Okay. Well, let me ask it this way.

20 A. Okay.

21 Q. Maybe I can get this kind of focused a
22 little bit here.

23 How many times have you testified in
24 a federal court?

25 A. Three times, that I'm aware of.

1 Q. Well, I mean surely you know whether you
2 went to the federal courthouse or the state
3 courthouse.

4 A. You know, I have learned that it's a
5 really important thing to the lawyers whether it was
6 federal or state. I didn't know that when I started
7 doing this --

8 Q. Okay.

9 A. -- and I just go to the courthouse they
10 tell me to.

11 Q. Were you ever, in connection -- you
12 testified, I believe you said three times in federal
13 court.

14 A. Yes.

15 Q. In any of those three federal cases, were
16 you ever required to generate a list of other cases
17 in which you had testified?

18 A. I have generated such lists. I don't know
19 that it was in those federal cases. I think more
20 typically it was in other state cases when I've been
21 asked to provide such a list.

22 Q. When was the last time you completed such
23 a list?

24 A. That I provided one to somebody?

25 Q. Yes, ma'am.

1 A. It may have been a year or so ago. A year
2 or two ago. I don't remember exactly.

3 Q. Can you provide one to me?

4 A. Yes, sir, I can. May I have a business
5 card?

6 MR. NUNNELLEY: And for the record, I'm
7 delivering a business card that has my email
8 address and fax address on it to Ms. Arvizu and
9 I would ask that she provide a copy of her list
10 of cases in which she has testified to me via
11 either fax or email.

12 MR. CANNON: Do you want one to go the
13 State, too?

14 MR. NUNNELLEY: I'll just send it later.

15 MR. CANNON: Okay.

16 BY MR. NUNNELLEY (RESUMING):

17 Q. Okay. We got three federal cases, three
18 federal court cases.

19 A. Yes.

20 Q. How many times have you testified in
21 military proceedings?

22 A. Once.

23 Q. Where was that?

24 A. I did it on the phone. My understanding
25 was that the hearing was in New Mexico. I don't

1 remember where I was at the time, but I did it over
2 the phone.

3 Q. Was it a military court martial?

4 A. No. I'm not sure what they called it. It
5 was the National Guard and it was relevant to a
6 urine drug test.

7 Q. You testified for the person who
8 presumably failed the drug test?

9 A. Yes, that's correct.

10 Q. Do you have the outcome?

11 A. I don't. I'm sorry.

12 Q. So -- okay. Let me make sure I've got
13 this right. We've got the Supreme Court of Palau.
14 That was also a defense testimony, correct?

15 A. Correct.

16 Q. And what was the substance of that
17 testimony?

18 A. That was controlled substance testing that
19 had been performed by the Guam Police Department.

20 Q. And this was your testimony related to
21 what?

22 A. The quality assessment of the results
23 reported by that laboratory.

24 Q. And your testimony in the military case
25 for the National Guardsman, the failed the drug

1 test, also related to the quality assessment?

2 A. That's correct.

3 Q. What about the three times you testified
4 in federal court? What did your testimony relate to
5 there?

6 A. The two in New Mexico were both drug
7 cases, controlled substance testing. The one in
8 Philadelphia was fingerprint, F.B.I. fingerprint.

9 Q. But you're not a fingerprint examiner, are
10 you?

11 A. I'm not. It was the quality assurance.

12 Q. So -- okay. And based on this, you
13 testified about twenty-five times in state court; am
14 I right?

15 A. Probably right.

16 Q. Have you ever testified about any subject
17 matter other than quality assurance or quality
18 assessments?

19 A. I was a fact witness in a trial one time.
20 But as an expert, no. My area of expertise is
21 quality assurance.

22 Q. You don't hold yourself out to be an
23 expert in any other field?

24 A. No, I don't.

25 MR. NUNNELLEY: Anybody else got anything

1 for her?

2 MR. CANNON: I'm done.

3 (The witness was excused.)

4 (The deposition was concluded at

5 12:39 p.m.)

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It was stipulated by and between counsel for
the respective parties herein that:

1. Reading and signing of the deposition by
the deponent before filing ARE waived.

CERTIFICATE OF OATH

STATE OF FLORIDA

COUNTY OF HILLSBOROUGH

I, the undersigned authority, certify that JANINE ARVIZU personally appeared before me and was duly sworn.

WITNESS my hand and official seal this 17th
day of April, 2008.

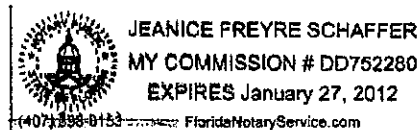
JEANICE FREYRE SCHAFFER

JEANICE FREYRE SCHAFFER

Notary Public, State of Florida

Commission No. DD752280

Expires: January 27, 2012



CERTIFICATE OF REPORTER

STATE OF FLORIDA

COUNTY OF HILLSBOROUGH

I, JEANICE FREYRE SCHAFFER, certify that I was authorized to and did report the foregoing deposition of JANINE ARVIZU; that a review of the transcript was requested; and that the transcript is a true and complete record of my stenographic notes thereof.

I further certify that I am not a relative, employee, attorney, or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action.

DATED this 17th day of April, 2008.

Jeanice Freyre Schaffer
JEANICE FREYRE SCHAFFER