

STATE OF NORTH CAROLINA) IN THE GENERAL COURT OF JUSTICE
) SUPERIOR COURT DIVISION
 COUNTY OF CATAWBA) NO. 04 CVS 1183

TOM I. DAVIS, II,)
 Co-Administrator of the Estate of)
 Zachary Kyle Davis (Deceased);)
 and BOBBY BUFF, Co-Administrator)
 of the Estate of Zachary Kyle)
 Davis (Deceased),)

Plaintiffs,)

vs.)

SGT. PEPPERS RESTAURANT AND BAR,)
 INC.; O'CHARLEY'S, INC.; JOHN S.)
 BROWN; GREGORY A. BROWN; and)
 TERRY C. BROWN,)

Defendants.)

10:54 a.m.
 June 14, 2006
 Raleigh, North Carolina

VIDEOTAPE DEPOSITION

OF

PAUL GLOVER

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This is the videotape deposition of PAUL GLOVER, being taken by Notice, and in accordance with the North Carolina Rules of Civil Procedure before Rose M. Prater, RPR, Notary Public, in the offices of Hedrick, Eatman, Gardner & Kincheloe, 4011 Westchase Boulevard, Suite 300, Raleigh, North Carolina, on the 14th of June, 2006, beginning at 10:54 a.m.

COPY

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<p>1 PROCEEDINGS 2 --- 3 June 14, 2006 4 Morning Session 5 --- 6 THE VIDEOGRAPHER: This is the video deposition of 7 Paul Glover taken by the defense in the matter of 8 Tom I. Davis, II, Co-Administrator of the Estate 9 of Zachary Kyle Davis, Deceased; and Bobby Buff, 10 Co-Administrator of the Estate of Zachary Kyle 11 Davis, deceased, Plaintiffs, versus Sergeant 12 Peppers Restaurant and Bar, Inc., O'Charley's, 13 Inc.; John S. Brown; Gregory A. Brown; and 14 Terry C. Brown, Defendants; in the General Court 15 of Justice, Superior Court Division, State of 16 North Carolina, County of Catawba, Case No. 17 04-CVS-1183. 18 This deposition is being held at Hedrick, Eatman, 19 Gardner and Kincheloe, 4011 Westchase Boulevard, 20 Suite 300, Raleigh, North Carolina, on June 14th, 21 2006, at 10:54 a.m., as indicated on the video 22 screen. The Court Reporter is Rose M. Prafer for 23 the firm of Adams and Holt, Incorporated, of 24 Charlotte, North Carolina. The Videographer is 25 Gloria Meinel for the firm of Adams and Holt,</p>	<p>1 Incorporated, of Charlotte, North Carolina. 2 Would counsel now please introduce themselves and 3 then the Court Reporter will swear in the 4 deponent. 5 MR. GAROFALO: I'm Mel Garofalo. I represent the 6 Defendants, O'Charley's, Inc. 7 MR. JEFFRIES: John Jeffries for the Defendant, 8 Sergeant Peppers. 9 MR. HOOD: David Hood for Defendant John Brown. 10 MR. CURRIDEN: Dale Curriden, for Defendant Terry 11 Brown. 12 MR. FERRELL: Forest Ferrell. We represent the 13 Plaintiffs. 14 MR. WHITE: Jason White for the Plaintiffs. 15 (Witness placed under oath.) 16 --- 17 18 19 20 21 22 23 24 25</p>
<p>Page 7</p> <p>1 PAUL GLOVER 2 of lawful age, being by me first duly placed under oath, as 3 prescribed by law, was examined and testified as follows: 4 EXAMINATION (By Mr. Garofalo): 5 Q. Would you state your name, please? 6 A. My name is Paul, middle initial L. Glover. Spelling of 7 my last name is G-l-o-v-e-r. 8 Q. Mr. Glov- -- excuse me. Mr. Glover, have you ever had 9 your deposition taken before? 10 A. Yes, I have. 11 Q. Okay. So you're familiar with the basic ground rules, 12 I'll be asking you a series of questions, as will some 13 of the other attorneys here. If at anytime you don't 14 understand a question or you'd like me to repeat or 15 rephrase the question, let me know that, and I'll be 16 happy to do so. 17 A. Okay. 18 Q. If you don't do that, I'm going to assume that you 19 understood the question fully before you answered it. 20 A. Okay. 21 Q. What is your current business address? 22 A. My -- For my consulting business, it's 116 Lattimore 23 Lane, Durham, North Carolina, 27713. 24 Q. And what is your -- the name of your consulting 25 business?</p>	<p>Page 8</p> <p>1 A. It's just my name. 2 Q. Just Paul Glover? 3 A. Yes. 4 Q. Do you have another occupation besides consultant? 5 A. Yes, I do. 6 Q. What is that? 7 A. I'm employed by the State of North Carolina in the 8 Forensic Test for Alcohol Branch, which is a part of 9 the Department of Health and Human Services. I'm a 10 research scientist and training specialist for the 11 branch. 12 Q. And how long have you been employed with the State of 13 North Carolina in that capacity? 14 A. Almost nine years; it will be nine years August 31st of 15 this year. 16 Q. Okay. And you said you are a research scientist and 17 trainer; is that -- 18 A. Training specialist. 19 Q. Okay. And in forensic testing for alcohol? 20 A. That's correct. 21 Q. And can you explain exactly what your duties are in 22 those areas for the State of North Carolina? 23 A. I supervise 14 field staff, who are assigned to 24 different areas of the state. Their responsibilities 25 are to maintain the breath test instruments that are</p>

2 (Pages 5 to 8)

<p style="text-align: right;">Page 9</p> <p>1 used in cases where individuals are charged with 2 implied consent offenses. They also conduct classes 3 for chemical analysts or those individuals who want to 4 become chemical analysts. These are classes on the 5 Intoxilyzer 5000. They do a one-week operator school. 6 They do one-day recertification schools. I supervise 7 them. I provide in-service training for them. That's 8 one aspect. 9 The other aspect is that I evaluate the analysts in the 10 state who submit applications to become blood analysts. 11 Specifically, there are four individuals at the SBI and 12 three at the Charlotte-Mecklenburg Crime Lab. They 13 submit applications for a permit to analyze blood. I 14 review their credentials, their experience and 15 determine whether or not they will get a permit. 16 I provide in-service training for our field staff, for 17 prosecutors, for District Court judges, and review 18 issues that come up related to breath testing for 19 alcohol, blood testing for alcohol, blood testing for 20 drugs, and urine testing for drugs. 21 Q. Okay. And have those duties been consistent for the 22 nine years that you've worked for the State or have 23 they changed? 24 A. They have been. 25 Q. And in supervising the 14 field -- I don't know if you</p>	<p style="text-align: right;">Page 10</p> <p>1 call them agents or staff -- 2 A. Field staff. 3 Q. -- field staff, do you also have a hands-on role in 4 analyzing or evaluating blood samples, breath samples 5 in -- in various cases? 6 A. I do not analyze them as far as running them on 7 Headspace GC or anything like that. 8 Q. Okay. Do you -- Do you analyze the data that is 9 gathered in any particular case or any particular type 10 of case -- 11 A. Yes. 12 Q. -- or do you just supervise? 13 A. I will -- I review the results of the tests, look to 14 see if there are any drugs or drug metabolites there, 15 look at the particular drug to see what the 16 significance of it is with respect to that particular 17 case. I will look at hospital results, do a conversion 18 of a hospital serum -- serum result to a whole blood 19 result, but I don't do any hands-on work on the -- 20 Q. Okay. 21 A. -- blood. 22 Q. And you mentioned that beside the work you do for the 23 State of North Carolina, which you just told us about, 24 you have a consulting business under your own name, 25 Paul Glover; is that correct?</p>
<p style="text-align: right;">Page 11</p> <p>1 A. Yes, I do. 2 Q. How long have you maintained the consulting business? 3 A. I'm not certain how many -- I was contacted for the 4 first case I did probably 2003 or 2004. I've only done 5 about a dozen cases where I've been consultant. I 6 don't advertise. Typically, these are people who know 7 me or have encountered me at some point, and then they 8 contact me to see if I can work for them. 9 Q. Okay. And you said approximately 12 cases where you've 10 been retained or contacted as a consultant since 2003 11 or 2004; is that correct? 12 A. Yes. 13 Q. Okay. And what type of cases were those, criminal 14 cases or civil cases? 15 A. Well, these would all be civil cases, and typically, I 16 don't -- I won't get involved in a civil case until a 17 criminal case is completed, and most of the time they 18 don't even contact me until after the criminal case is 19 over. 20 Q. Okay. Do you keep an inventory or a list of the -- of 21 the cases that you have been consulted on or retained 22 in as a consultant? 23 A. Yes, I do. 24 Q. Do you have that with you? 25 A. No, I do not.</p>	<p style="text-align: right;">Page 12</p> <p>1 Q. Okay. Do you maintain that in your office? 2 A. Yes, I do. 3 Q. Okay. Is that something you could provide to us -- 4 A. Yes, I can. 5 Q. -- after this deposition? Of the twelve cases that 6 you've been retained in as a consultant, how many of 7 those have you been retained to consult for the 8 plaintiff? 9 A. It's about 50/50. 10 Q. So approximately six cases you were retained by the 11 plaintiffs and six by the defendants? 12 A. That's just off the top of my head, yes. 13 Q. Okay. And the list that you maintain or the inventory, 14 would that list include the name of the attorney or 15 attorneys who retained you? 16 A. Yes, it has the name of the case, the name of the 17 attorney or firm that contacted me, and the CVS number 18 for it also. Though, some of them were in Federal 19 Court, so I don't know that it's a CVS in that 20 situation. 21 Q. Of the twelve cases that you've been retained as a 22 consultant, how many of those are still pending? 23 A. This one. I was recently contacted about a case in 24 Surry County, but I've actually done nothing other than 25 have them call me and ask if I would -- would work for</p>

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1 them. All the others are over.
 2 Q. Okay. This Surry County case, were you retained by the
 3 plaintiff -- or contacted by the plaintiff or the
 4 defendant?
 5 A. I believe this was -- this is going to be the
 6 plaintiff.
 7 Q. Okay.
 8 A. I just don't recall exactly who the plaintiff is unless
 9 it's the estate of an individual.
 10 Q. Do you recall who the attorney was who contacted you?
 11 A. I don't recall his name. It's Womble, Carlyle is the
 12 firm --
 13 Q. Yeah.
 14 A. -- and it was an attorney out of Winston-Salem.
 15 Q. So this case is the only case that's active at the
 16 present time, where you've actually been retained as a
 17 consultant; is that correct?
 18 A. Yes.
 19 Q. Of the cases in the past, which I assume is about ten
 20 cases, which was -- Well, strike that.
 21 How many of those have you offered testimony by
 22 deposition?
 23 A. I believe it's only been two. It may have been three.
 24 I know of one from the Outer Banks I know there's a
 25 deposition in, and one from Winston-Salem is a

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1 Q. And in that case, were you retained by Mr. O'Donnell on
 2 behalf of the plaintiff or the defendant?
 3 A. The defendant.
 4 Q. Do you recall who the plaintiff's attorney was?
 5 A. No, I do not.
 6 Q. Okay. What type of case was that? What was your role
 7 in that case?
 8 A. It's essentially a social host liability case, where
 9 one of the defendants -- the issue was whether or not
 10 one of the defendants had provided alcohol to the other
 11 defendant who was ultimately the one who was criminally
 12 charged in the death.
 13 Q. And what -- Do you recall the opinion or opinions you
 14 offered in that case?
 15 A. Just it had to do with time and drinking and whether or
 16 not the amount that was missing from a particular
 17 bottle was sufficient to have gotten the defendant to
 18 the alcohol concentration that she was.
 19 They had seized a bottle that had a certain amount of
 20 Scotch missing from it, and it was whether or not that
 21 would have been sufficient.
 22 Q. And -- and do you re- -- Did you express an opinion
 23 that it was or was not sufficient?
 24 A. My recollection is that that was not a sufficient
 25 amount to have gotten her to the level that she was at,

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1 deposition. It seems like there may have been another
 2 one, but off the top of my head, I -- I don't recall.
 3 Q. Okay. The one you mentioned, you said was from the
 4 Outer Banks, I assume it was -- is that -- do you mean
 5 by that the case was filed or pending in the Outer
 6 Banks?
 7 A. Well, yeah, I tend to remember where my cases are by
 8 the counties.
 9 Q. Was that in Dare County?
 10 A. Yes, it was.
 11 Q. Okay. Do you remember the name of the case?
 12 A. It was -- The defendant was Ann Hampton, who had been
 13 convicted of, I believe, second degree murder, and
 14 there was another individual, who was a co-defendant,
 15 who owned property where she had a business. That was
 16 then Vanderveer and Black, I believe, was the name of
 17 the firm.
 18 Q. Vanderver and Black?
 19 A. That's -- Again, it's off the top of my head.
 20 Q. I mean, that --
 21 A. Bob O'Donnell was the attorney that I worked with in
 22 that one.
 23 Q. Okay. And is he an attorney in Dare County?
 24 A. I believe his office is in -- I think it's in Elizabeth
 25 City. They have a couple of offices out there.

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1 which would have indicated she had to have more prior
 2 to then.
 3 Q. Okay. Did that case go to trial, to your knowledge?
 4 A. It did not. I believe the defense moved for summary
 5 judgment, and then it was settled at some point after
 6 that.
 7 Q. Okay. And the other case you mentioned that you -- you
 8 recall giving a deposition was a Winston-Salem case; is
 9 that correct?
 10 A. Correct.
 11 Q. All right. Well, before I get to that, when did you
 12 give the deposition in the -- what you call the Outer
 13 Banks case, how long ago was that?
 14 A. I'm going to say three years. I -- I'd have to go back
 15 to my records to actually see.
 16 Q. Okay. And in the Winston-Salem case, do you recall the
 17 name of that case?
 18 A. I don't recall the -- I think Gordon and Son were the
 19 defendants. The attorney was Gystiger.
 20 Q. Gystiger?
 21 A. Mmm, hmm.
 22 Q. Do you know how to spell that?
 23 A. Something like G-y-s-t-i-g-e-r. The defense counsel on
 24 that one was -- or the plaintiff's counsel was Daggett.
 25 Q. And who retained you in that case?

1 A. The defense counsel retained me.
 2 Q. And what type of case was that?
 3 A. I -- I guess you might say it's a causation. It had to
 4 do with a crash where an individual was killed; though,
 5 the individual that was killed had the alcohol in their
 6 system. And the position of the plaintiff was that the
 7 defendants's truck had hit her vehicle and caused the
 8 crash, and it -- so the issue had to do with the amount
 9 of alcohol in the lady that was killed, the amount of
 10 alcohol in her system.
 11 Q. She was the passenger or the driver?
 12 A. She was the driver of the vehicle that crashed.
 13 Q. What opinion, if any, did you render in that case?
 14 A. That she did have sufficient amount of alcohol in her
 15 to cause impairment, and it was consistent with the
 16 driving behavior that had been articulated by
 17 witnesses.
 18 Q. And when you say sufficient alcohol, were you in that
 19 case basing your opinion on the blood alcohol testing
 20 or breath testing that was done?
 21 A. There was a blood test, and I believe it was -- I don't
 22 recall if it was a hospital -- I don't recall where the
 23 result came from off the top of my head, but it had to
 24 do with the concentration -- I guess it was a hospital
 25 blood -- and what the concentration would have been at

1 because the case occurred in Puerto Rico; so I went to
 2 Miami and the -- I was retained by the plaintiff in
 3 that particular case.
 4 Q. And what type of case was that?
 5 A. Again, it was a social host liability case. The issue
 6 had to do with the result of the breath test that was
 7 administered to the individual that caused the crash.
 8 There was injury but no death in that.
 9 The defendant had been at a company-sponsored event
 10 where there was free alcohol, essentially.
 11 Q. What opinions, if any, did you offer in that case?
 12 A. That -- Well, that he was impaired; that --
 13 Essentially, I think they were making an issue about
 14 the breath test because in Puerto Rico, at that time, I
 15 believe they only did one test and not two tests on
 16 breath tests. It had to do with the reliability and
 17 accuracy of the Intoxilyzer.
 18 Q. And you were retained by the plaintiff in that case; is
 19 that --
 20 A. Yes, I was.
 21 Q. Okay. Do you recall the plaintiff's attorney's name?
 22 A. I don't. It was -- It's a hyphenated Hispanic, and I
 23 always used to use the wrong name; so I don't recall
 24 the -- his name.
 25 Q. Okay. Do you recall the defense attorney?

1 the time of the crash.
 2 Q. Okay. And when did you give a deposition in that case?
 3 A. About two years ago.
 4 Q. Okay. And to your knowledge, did that case go to
 5 trial?
 6 A. Yes, it did.
 7 Q. Did you testify at trial as well?
 8 A. Yes, I did.
 9 Q. And when was the case tried?
 10 A. When was it tried? About a year and a half ago. It
 11 seems like it was the summer of '04, I believe.
 12 Q. And was it tried in Forsyth County?
 13 A. Yes, it was.
 14 Q. Do you know the result of the trial?
 15 A. Yes. The defendant was found not guilty, or I'm not
 16 sure if in the civil case if there's a verdict of not
 17 guilty, but the defendant was found not guilty by
 18 the --
 19 Q. Were you qualified and accepted as an expert witness --
 20 A. Yes, I was.
 21 Q. -- in that case? Now, you said there possibly was a
 22 third case that you've been deposed in?
 23 A. There is. I -- It was one in -- I was deposed in Miami
 24 and, again, that was probably one about three years
 25 ago. It had to do with -- it was a federal action

1 A. No. There were several defense attorneys, and I never
 2 got their names.
 3 Q. Okay. Do you know if that case went to trial?
 4 A. I never heard what happened with it. I did the
 5 deposition and never heard anything else after that.
 6 Q. Okay. And as I understand it, of the -- then of the
 7 twelve cases that you've been retained as an expert
 8 through your consulting business, these would be the
 9 only three that you've given sworn testimony either by
 10 deposition or --
 11 A. One -- One other one.
 12 Q. Okay.
 13 A. If I had known I was going to need to do this, I'd have
 14 reviewed it before I came. I -- I was deposed in
 15 Chapel Hill, again, about 18 months ago, and there was
 16 a crash that happened in Raleigh. I was hired by the
 17 plaintiff in this particular case. It had to do with
 18 essentially a road-rage event and an impaired driver
 19 and a subsequent crash.
 20 Q. And who was the plaintiff's attorney who retained you
 21 in that case?
 22 A. Hefner, I believe was the last name, and he has an
 23 office in Pittsboro and in Chapel Hill.
 24 Q. Okay. H-e-f-n-e-r, is that your best recollection?
 25 A. Something like that.

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<p>1 Q. And do you recall who the defense counsel was?</p> <p>2 A. No, I do not. Someone in Raleigh, I do remember that,</p> <p>3 but I don't recall his name.</p> <p>4 Q. And the case was pending in -- in Orange County?</p> <p>5 A. That one, far as I know, it was resolved. I was</p> <p>6 never -- In fact, I'm pretty sure it was resolved, but</p> <p>7 it never went to trial.</p> <p>8 Q. Okay. And you gave a deposition in that case?</p> <p>9 A. Yes, I did.</p> <p>10 Q. Do you recall what opinion, if any, you offered in that</p> <p>11 case?</p> <p>12 A. Again, it had to do with the alcohol concentration in</p> <p>13 the individual. The breath test was done a significant</p> <p>14 amount of time, as I recall, after the crash, and so</p> <p>15 there was some retrograde in there and some issues with</p> <p>16 respect to impairment.</p> <p>17 Q. Okay. Was your -- Were you asked to offer an opinion</p> <p>18 as to whether or not a party was or was not impaired</p> <p>19 based on those test results?</p> <p>20 A. Well, I believe so. I know it has -- Again, a lot of</p> <p>21 these go back to the accuracy of the results of the</p> <p>22 breath test and then going back, doing a retrograde to</p> <p>23 the time of the -- of that and is that an impairing</p> <p>24 amount.</p> <p>25 Q. Okay. So you gave a deposition but no trial testimony?</p>	<p>1 A. No trial. The only trial has been the one in</p> <p>2 Winston-Salem.</p> <p>3 Q. Okay. In the -- In the civil context?</p> <p>4 A. Correct.</p> <p>5 Q. Now, in your other work that you do for the State of</p> <p>6 North Carolina, have you testified as a -- as an expert</p> <p>7 witness in --</p> <p>8 A. Yes, I have.</p> <p>9 Q. -- in trials? How many times would you estimate you've</p> <p>10 testified as an expert witness in --</p> <p>11 A. Right at 170.</p> <p>12 Q. And have all those been in criminal trials?</p> <p>13 A. Yes.</p> <p>14 Q. And I assume in each of those cases you were called as</p> <p>15 an expert witness by the prosecutor or the district</p> <p>16 attorney's office?</p> <p>17 A. No. The defense on about a half dozen occasions has</p> <p>18 called me as their witness. Let's see. It's not clear</p> <p>19 why. It might be a strategic miscalculation. One -- I</p> <p>20 know at least one time they wanted to delay the trial</p> <p>21 in the afternoon. He didn't have any witnesses left;</p> <p>22 so he called me.</p> <p>23 Q. Okay. Of the 170 times, then, with the exception of</p> <p>24 approximately six, the remainder would be as a</p> <p>25 prosecution expert witness --</p>
<p>Page 23</p> <p>1 A. Yes.</p> <p>2 Q. -- is that correct?</p> <p>3 And in those cases, are you called in because you've</p> <p>4 done certain work on the case in advance of trial, or</p> <p>5 are you called in specifically to offer testimony</p> <p>6 because of your expertise?</p> <p>7 A. It -- It just depends on the particular case.</p> <p>8 Sometimes there's a real short notice and they know --</p> <p>9 the prosecutors know my background, and so they say</p> <p>10 we've got one -- the defense says to bring in a expert,</p> <p>11 can you come in; and so I get not much notice to</p> <p>12 prepare for it.</p> <p>13 Other ones may be a lot more complex; so they contact</p> <p>14 me at the very beginning, and I start working up that</p> <p>15 case, working toward trial.</p> <p>16 Q. Okay. In the cases that you've testified as an expert</p> <p>17 in the criminal context, have you testified as an</p> <p>18 expert on any other subjects other than alcohol testing</p> <p>19 or -- or intoxication?</p> <p>20 A. Well, I've -- The easiest way to answer it is I've</p> <p>21 testified as expert on breath alcohol testing, on the</p> <p>22 Intoxilyzer, on the AlcoSensor, on alcohol physiology,</p> <p>23 pharmacology and related research, the effect of drugs</p> <p>24 on human psychomotor performance, urine testing. I</p> <p>25 believe all those areas. I've qualified about 25 times</p>	<p>Page 24</p> <p>1 on drug impairment.</p> <p>2 Q. Okay. Tell me your educational background.</p> <p>3 A. I have a BS in biology that I got at Florida State</p> <p>4 University in 1974, and a Master's in biology that I</p> <p>5 got at Florida State University in 1978.</p> <p>6 Q. Okay. And prior to going to work for the State of</p> <p>7 North Carolina approximately nine years ago, tell me</p> <p>8 your employment history.</p> <p>9 A. When I finished my work at Florida State for my</p> <p>10 Master's degree, or at least finished the research</p> <p>11 portion, I went to the Oak Ridge National Laboratory,</p> <p>12 where I worked in an immunology group for about seven</p> <p>13 years.</p> <p>14 I then moved -- well, was hired by the National</p> <p>15 Institutes of Environmental Health Sciences, and we</p> <p>16 moved to Research Triangle Park, and I worked there in</p> <p>17 a cellular and genetic toxicology group for five years.</p> <p>18 Then went to work at Burroughs Wellcome Pharmaceutical,</p> <p>19 again in a cellular and genetic toxicology group for</p> <p>20 seven years.</p> <p>21 I left Wellcome. I have been a reserve police officer</p> <p>22 for 20 years, and at the time I left Wellcome, I ended</p> <p>23 up going full time with the Durham Police Department</p> <p>24 for a little less than a year, and then this position</p> <p>25 became available with the State, and I started with the</p>

6 (Pages 21 to 24)

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<p>1 State.</p> <p>2 Q. Okay. And seven years at Burroughs and then the</p> <p>3 National Institute of Environmental --</p> <p>4 A. Health Sciences.</p> <p>5 Q. -- Health Sciences, how long were you there?</p> <p>6 A. Four years at NIEHS.</p> <p>7 Q. And for those eleven years you were in the area of</p> <p>8 cellular and genetic toxicology?</p> <p>9 A. Yes.</p> <p>10 Q. What is that?</p> <p>11 A. Well, at NIEHS, we were working on retrovirus DNA, and</p> <p>12 what we would do is clone different fragments of a</p> <p>13 retrovirus genome. We would use restriction enzymes to</p> <p>14 cut out a specific portion, collect that or -- and</p> <p>15 you're basically -- you're -- you're building a</p> <p>16 retrovirus genome by cutting out selected sections and</p> <p>17 then adding back into it other selection -- other</p> <p>18 things you want to do; so it's a lot of cloning work.</p> <p>19 Did some mapping of lesion in a rat chromosome that had</p> <p>20 to do with a -- a particular carcinoma.</p> <p>21 At Burroughs Wellcome, we had the responsibility of</p> <p>22 evaluating drugs that were potential candidates for the</p> <p>23 company to market. Our responsibility was to evaluate</p> <p>24 them from the standpoint of their mutagenicity. So we</p> <p>25 would put the drug in a particular -- in a cell system</p>	<p>1 and determine whether or not it was mutagenic and the</p> <p>2 extent to which it was mutagenic.</p> <p>3 I did basic research, at the same time, where we would</p> <p>4 take some of the mutant colonies that we would</p> <p>5 generate, we'd take those, extract the DNA from those,</p> <p>6 and then determine whether or not the deletion on their</p> <p>7 chromosome was a small deletion or a large deletion.</p> <p>8 So I had -- basically I was mapping deletions on</p> <p>9 mouse -- a particular mouse chromosome.</p> <p>10 Q. Would it be a fair statement, then, that prior to going</p> <p>11 to work for the State of North Carolina approximately</p> <p>12 nine years ago, you had not had any experience in the</p> <p>13 fields of alcohol intoxication or Breathalyzers or</p> <p>14 Intoxilyzers, or things of that nature?</p> <p>15 A. That's correct.</p> <p>16 Q. And how did you get trained in those areas when you</p> <p>17 went to work for the State of North Carolina?</p> <p>18 A. Initially I attended a one-week class that one of our</p> <p>19 instructors was doing. I was -- Initially, I was hired</p> <p>20 on a grant. I was hired as a research scientist, and</p> <p>21 for the first year and a half I did not supervise</p> <p>22 individuals out there.</p> <p>23 The position of the person who supervised them went</p> <p>24 back into the field as an instructor; so I became</p> <p>25 supervisor over them. But initially I attended one of</p>
<p>Page 27</p> <p>1 their classes. I actually attended to several of the</p> <p>2 one-week classes by our instructors, and then went to</p> <p>3 Indiana University. There's a class that's put on at</p> <p>4 Indiana University, a week-long class for highway</p> <p>5 safety supervisors that deals with alcohol, how alcohol</p> <p>6 gets in humans, how it's distributed, how the body</p> <p>7 deals with it, how it impairs, and the various methods</p> <p>8 employed in testing individuals for alcohol.</p> <p>9 I did that class.</p> <p>10 Q. How long was that class?</p> <p>11 A. A week-long class. I also attended a week -- well, it</p> <p>12 wasn't a week, a four-day class on drugs and human</p> <p>13 psychomotor performance at Indiana University.</p> <p>14 The classes, both of them, have a -- probably a dozen</p> <p>15 faculty members and the majority of them are some of</p> <p>16 the most widely recognized individuals, I'll say, in</p> <p>17 the world in the case of alcohol, in alcohol testing</p> <p>18 and research. And so we had faculty that -- that's</p> <p>19 really well, well recognized.</p> <p>20 In addition to that, then, I would get -- I have some</p> <p>21 textbooks that I use, that I rely upon, and papers that</p> <p>22 are published in peer-review journals that deal with</p> <p>23 alcohol, the effects and the various methods for</p> <p>24 testing.</p> <p>25 I'm a member of an organization, the International</p>	<p>Page 28</p> <p>1 Association for Chemical Testing. We meet once a year</p> <p>2 and, again, you meet with some of these same</p> <p>3 individuals and, you know, gain additional information,</p> <p>4 knowledge on the subject.</p> <p>5 Q. And when you meet, is that in the context of a</p> <p>6 continuing education meeting or --</p> <p>7 A. Well, it's --</p> <p>8 Q. -- conference?</p> <p>9 A. -- it's a conference. We have people that will</p> <p>10 present, and I've presented some of the studies I've</p> <p>11 done. I've presented at the conference. So you -- you</p> <p>12 -- Not only do you have the informal situations where</p> <p>13 you sit and talk about different things, but there are</p> <p>14 the formal presentations that go on during the</p> <p>15 conference.</p> <p>16 Q. So the formal training would -- would consist of the --</p> <p>17 a one-week class when you were first hired by the State</p> <p>18 and then a one-week class at Indiana University, and</p> <p>19 then a four-day class, I didn't catch where --</p> <p>20 A. That was on alcohol -- I mean, excuse me, on drugs and</p> <p>21 human psychomotor performance.</p> <p>22 Q. And where was that offered?</p> <p>23 A. Indiana University.</p> <p>24 Q. Okay. So you had two different training programs --</p> <p>25 A. Yes.</p>

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1 Q. -- at Indiana University?
 2 A. Yes.
 3 Q. Okay. And since that time, then your -- any additional
 4 training or education has been at these conferences
 5 that you attend?
 6 A. Conferences and consulting with some of the same
 7 people, and then again, I have a collection of about
 8 600 papers that deal with either drugs or alcohol and
 9 the effects, and so it's an ongoing process.
 10 Q. Okay. In your experience as -- in the field of alcohol
 11 analysis and the other areas that you've mentioned,
 12 have you ever been rejected by any courts or tribunal
 13 as an expert witness?
 14 A. No, I have not.
 15 Q. So every time you've been offered as an expert, you've
 16 been accepted?
 17 A. I have. There have sometimes been some lengthy voir
 18 dires, but ultimately I've been qualified.
 19 Q. Okay. Have you ever had your expert testimony limited
 20 in any respect by a trial judge?
 21 A. I had one involving drugs, where he essentially allowed
 22 me to testify with respect to the drugs as a fact
 23 witness. Basically, they argued I wasn't a
 24 pharmacologist and wasn't a pharmacist, and so he
 25 allowed me to testify as a fact witness with respect to

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1 company function where --
 2 A. Yes.
 3 Q. -- alcohol was being served --
 4 A. Yes.
 5 Q. -- for free?
 6 A. Yes.
 7 Q. Okay. So this -- Am I correct, then, this would be the
 8 first case where you've been asked to analyze and offer
 9 opinions in a case where one of the issues was whether
 10 or not a restaurant or -- or tavern served alcohol to
 11 someone who they knew or should have known was
 12 intoxicated?
 13 A. That's correct.
 14 Q. Okay. Now, you were served a subpoena, I believe, to
 15 appear at this deposition today and -- Well, strike
 16 that.
 17 You were -- You were -- Did you receive a subpoena
 18 prior to this deposition from my office?
 19 A. Yes, I did.
 20 Q. Let me show you what I'm going to mark as Exhibit 1 to
 21 your deposition.
 22 ---
 23 Thereupon, Deposition Exhibit No. 1 was marked for purposes
 24 of identification.
 25 ---

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1 the effects of the drugs that were in this particular
 2 individual.
 3 Q. Prior to this case -- when I say "this case," I'm
 4 talking about the Davis versus Sergeant Peppers,
 5 O'Charley's, et al. case -- have you ever been -- have
 6 you ever offered testimony in a matter, whether it be
 7 criminal or civil, that involved an issue of a -- what
 8 we call a Dram Shop liability?
 9 A. Well, the one in Dare County would have been -- and I
 10 said social host liability and that's essentially the
 11 same as Dram Shop, in a sense. That was one of --
 12 Q. Well, but in that case, there was not a commercial
 13 establishment --
 14 A. Correct.
 15 Q. -- involved?
 16 A. Correct. And the difference being that it wasn't a
 17 commercial establishment, but in a sense, the issue is
 18 still the same as far as providing alcohol to an
 19 individual -- individual who was, obviously,
 20 intoxicated. And so that, I believe, was the only --
 21 Well, the other one was the one from Puerto Rico, where
 22 it was a social host liability and the amount was
 23 provided to individuals; so a strict Dram Shop, I would
 24 say no.
 25 Q. And the Puerto Rico case, as I recall, involved a

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1 BY MR. GAROFALO:
 2 Q. Okay. Take a look at that. Do you recognize that as
 3 the subpoena that you received?
 4 A. This specific subpoena is not the one to appear. This
 5 is the one to produce records.
 6 Q. Okay. Well --
 7 A. But I did receive this subpoena.
 8 Q. I apologize. You were served with a -- that subpoena
 9 in advance of this deposition; is that correct?
 10 A. Yes, I was.
 11 Q. And that subpoena directed you to produce certain
 12 documents in advance of this deposition and to serve
 13 them to my office by this past Monday; is that correct?
 14 A. That's correct.
 15 Q. Okay. And did you -- Have you fully complied with that
 16 subpoena?
 17 A. I have -- I've prepared copies of everything in the
 18 folder. I forwarded it to the attorneys that I'm
 19 working with, and they in turn, as I understood,
 20 forwarded it to your office.
 21 Q. What prompted you not to comply with this subpoena to
 22 the extent it required you to send documents to my
 23 office directly?
 24 MR. WHITE: Objection to the form.
 25 BY MR. GAROFALO:

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<p>1 Q. You can answer.</p> <p>2 A. Well, I -- I called to make sure that they were aware</p> <p>3 of the request, and the -- I had not been -- have not,</p> <p>4 in the past, been asked to produce anything that was in</p> <p>5 the criminal file. And so I had a question about -- I</p> <p>6 won't say the appropriateness of that, but -- So I</p> <p>7 called their office, and they said just copy everything</p> <p>8 and send it to them.</p> <p>9 Q. Okay. And did you -- To your knowledge, was -- has</p> <p>10 everything that you produced to the attorneys who</p> <p>11 retained you, in turn, been produced to the Defendants</p> <p>12 in this case?</p> <p>13 A. Based on my conversations with the attorneys, yes.</p> <p>14 Q. Okay. Were you instructed, at the time you conferred</p> <p>15 with counsel, to not produce any documents that you</p> <p>16 might have had in your possession --</p> <p>17 A. No.</p> <p>18 Q. -- pertaining to this case?</p> <p>19 A. I was not.</p> <p>20 Q. Are there any documents that you have in your</p> <p>21 possession relating to either the criminal matter or</p> <p>22 the civil matter that you have not produced in response</p> <p>23 to this subpoena?</p> <p>24 A. No.</p> <p>25 Q. And did you bring with you any file material today to</p>	<p>1 the deposition?</p> <p>2 A. I brought the materials that I copied and provided. I</p> <p>3 also brought something that wasn't in the file at that</p> <p>4 time, and that was a copy of my CV because I didn't</p> <p>5 know if -- couldn't recall if one had been provided,</p> <p>6 and so I -- I made a copy of that.</p> <p>7 Q. Okay. If you have a copy of that, at some point, I'd</p> <p>8 like to get that and attach it as an exhibit.</p> <p>9 A. Sure.</p> <p>10 Q. I don't need it right now, but at some point during the</p> <p>11 course of your deposition.</p> <p>12 Are the -- Are there documents that you've not produced</p> <p>13 in response to this subpoena that you have reviewed in</p> <p>14 preparation for your deposition?</p> <p>15 A. Well, I may have -- Oh, and for the -- for the</p> <p>16 deposition, no.</p> <p>17 Q. Okay. Are there documents that you have not produced</p> <p>18 in response to this subpoena that you have reviewed in</p> <p>19 forming any opinions or doing any work in relation to</p> <p>20 forming your opinions in this case?</p> <p>21 A. No.</p> <p>22 Q. Okay. So is it -- Are you telling us here that every</p> <p>23 document that you've reviewed in relation to this case</p> <p>24 was produced in response to the subpoena that was</p> <p>25 served?</p>
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<p>1 MR. WHITE: Object to the form.</p> <p>2 THE WITNESS: So have I given you everything, is</p> <p>3 that your question?</p> <p>4 BY MR. GAROFALO:</p> <p>5 Q. Yes.</p> <p>6 A. Yes.</p> <p>7 Q. Okay. And I think what I'm asking a different way is,</p> <p>8 have you reviewed any material as part of your work on</p> <p>9 this case that you've not produce or didn't have to</p> <p>10 produce?</p> <p>11 A. No. In preparation for the original case, I have --</p> <p>12 again, I've got a number of different textbooks and</p> <p>13 peer-review articles that I typically will review</p> <p>14 before -- you know, in preparation, say, for the</p> <p>15 criminal case. And I am certain that I did that, but</p> <p>16 they are just part of my collection, and knowing</p> <p>17 exactly which ones I looked at or didn't look at is --</p> <p>18 you know, I don't keep records of that.</p> <p>19 Q. Okay. Do you have -- Do you maintain any handwritten</p> <p>20 notes or -- or a diary or any type of material that you</p> <p>21 write down impressions and thoughts as you work on a</p> <p>22 case?</p> <p>23 A. Well, not a diary. I -- I -- One of the documents I</p> <p>24 produced is a graph, and that's something that I --</p> <p>25 I've -- The way I approach virtually all of my cases is</p>	<p>1 I establish a time line, and then because there's so</p> <p>2 much information typically in so many different</p> <p>3 documents, it's much easier to keep it -- kind of get</p> <p>4 it all into one picture by doing a graph. And so that</p> <p>5 was something I did generate in reviewing the</p> <p>6 documents.</p> <p>7 Q. Okay. And I've pulled out a document from the</p> <p>8 materials that we were provided. Is this the -- the</p> <p>9 graph that you're referring to?</p> <p>10 A. Yes, it is.</p> <p>11 Q. Okay. Let me mark that as Exhibit 2 to your deposition</p> <p>12 so we know what we're talking about, if we could.</p> <p>13 A. I -- On some of the documents provided to me, like the</p> <p>14 deposition of John Spencer Brown and Dr. Mason's</p> <p>15 affidavit, I may have put an asterisk or circled</p> <p>16 something, but that was all copied; so I mean, those</p> <p>17 are the other kind of notes for myself.</p> <p>18 Q. Okay.</p> <p>19 MR. GAROFALO: Let's mark this as Exhibit 2.</p> <p>20 - - -</p> <p>21 Thereupon, Deposition Exhibit No. 2 was marked for purposes</p> <p>22 of identification.</p> <p>23 - - -</p> <p>24 BY MR. GAROFALO:</p> <p>25 Q. Let me just show you -- I think you've already</p>

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1 identified this, but now that it's been marked as
 2 Exhibit 2 to your deposition, can you tell us what that
 3 is?
 4 A. It's a copy of the graph that I prepared when I was
 5 reviewing the -- the various documents that had time
 6 points and other issues on it --
 7 Q. Okay.
 8 A. -- for this case.
 9 Q. And you said basically that this is a time -- time line
 10 or time points that helped you in analyzing the
 11 material as you reviewed it?
 12 A. Yes, it is.
 13 Q. And you have at the bottom, starting at zero, zero and
 14 going through, it looks like, 1400. I assume these
 15 are -- represent time; is that correct?
 16 A. Yes, it is.
 17 Q. And then you have a plus or one drink at zero, zero and
 18 then you have crash at 0800; hospital, slightly after
 19 0900; is that correct?
 20 A. That's correct.
 21 Q. Okay. And then what is this other column that you have
 22 here?
 23 A. That's the alcohol concentration.
 24 Q. Okay. And where did that information come from?
 25 A. The alcohol concentration?

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1 any of those faxes contained in the documents that you
 2 copied and provided to us?
 3 A. Yes, sir.
 4 MR. WHITE: Let me object to the form and to
 5 clarify for the record, those documents were
 6 provided on Monday, not -- not today.
 7 MR. GAROFALO: Correct.
 8 BY MR. GAROFALO:
 9 Q. With that clarification, the documents that were
 10 provided on Monday, I do see one fax to a Mike
 11 Vanburen. Is that one of the faxes that you were --
 12 A. Yes, it is.
 13 Q. -- referring to? And who was Mike Vanburen?
 14 A. He was, I'll say, like second-chair prosecutor in this
 15 particular case, but he was the prosecutor who
 16 contacted me initially. And so a lot of times they
 17 will give me information on the phone, I make notes on
 18 my phone log, and then work out whatever the numbers
 19 are that they give me.
 20 Q. Okay. And attached to that document -- at least in the
 21 materials as they were provided to us, they were
 22 attached together -- were several pages, one captioned
 23 Retrograde Extrapolation of Alcohol Concentrations. Is
 24 that another document that you would have faxed to --
 25 A. Yes.

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1 Q. Yes.
 2 A. It would have come from the SBI report -- Well, the
 3 vertical axis is alcohol concentration. I plot that on
 4 there. As far as the points that I end up putting on
 5 the graph, they came from either the hospital result or
 6 from the SBI result.
 7 Q. Okay. So just so I'm clear, the -- the left-hand
 8 column that you said is alcohol concentration basically
 9 is -- is a chart starting at 0.02 and going all the way
 10 up to 0.36, and then you plot the various blood alcohol
 11 readings that were available to you; is that correct?
 12 A. I plot those out in the main body, and then draw a line
 13 back that goes to that vertical --
 14 Q. Okay.
 15 A. -- axis.
 16 Q. Now, getting back to the documents that you produced,
 17 do you -- did you have any correspondence in the
 18 criminal case with either the investigators or the
 19 prosecutors who were handling that matter?
 20 A. I didn't have -- We didn't do correspondence in the
 21 sense of letters that were mailed back and forth. I
 22 faxed a couple of pages to them at one time or another,
 23 and I had several phone conversations with them.
 24 Q. Okay. And -- And in the documents you produced to us
 25 today, I did not see, and maybe I missed it, but were

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1 Q. -- Mr. Vanburen?
 2 A. Yes.
 3 Q. Then another document, Retrograde Extrapolation of
 4 Alcohol Concentrations. It looks like the same --
 5 another copy of the same docu- -- No, it's a
 6 different -- different results, apparently?
 7 A. Yes.
 8 Q. Okay. But that would have been faxed to Mr. Vanburen?
 9 A. Yes, it would have.
 10 Q. Then the third page, Conversion of Plasma or Serum
 11 Alcohol to Whole Blood Alcohol; is that another
 12 document, again, that you would have faxed to Mr. --
 13 A. Yes, it is.
 14 Q. Okay. And then there's a blank case sheet. It looks
 15 like it's just a information sheet. Is that --
 16 A. I have that. Usually I fill that in as I'm
 17 progressing. That one was in there. I put the
 18 information in there.
 19 Q. And then the last document in this packet that has a
 20 fax cover sheet at the start of it is captioned
 21 Conversion of Plasma or Serum Alcohol to Whole Blood
 22 Alcohol. I'm not sure if that's the same or a
 23 different document than the one we looked at before.
 24 It looks like it might be the same information?
 25 A. The same information, but I didn't -- When I did the

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<p>1 initial one, I didn't have the Defendant's name or the 2 case number, and once I got that, I either did a new 3 sheet and added it or added that to the original. 4 Q. Other than this information, did you provide any other 5 information by mail or by fax or by e-mail to the 6 prosecutors during the course of the criminal 7 proceeding against John Brown? 8 A. No -- Whatever I provided to them would have been in 9 this. 10 Q. Okay. Did you also provide them with some instructions 11 as to how they should question you when you testified? 12 A. Yes, I -- I will go over with them -- Obviously, I will 13 give them a copy of my CV and some direction as far as 14 -- Each case is different. If we have a hospital blood 15 case, then they need to go through a couple different 16 areas on hospital blood questions to do a conversion. 17 So we do do that. Typically nobody has enough time to 18 do it before trial; so sometimes it's, you know, during 19 a lunch break during the trial. 20 Q. Okay. So you would have provided certain documents to 21 the prosecutors to assist them in qualifying you as an 22 expert and also questioning you during the course of 23 the trial; is that correct? 24 A. Well, that's what I typically do. In this particular 25 case, I'm assuming that I did at some point.</p>	<p>1 Q. So if there's documentation in Agent Tally's file from 2 you, how would -- do you know how that would have 3 gotten there? 4 A. In Agent? 5 Q. Tally's file. 6 A. I don't know who Agent Tally is. 7 Q. You've never had any conversation with a ALE officer 8 named Tally? 9 A. No. 10 Q. When were you first contacted to serve as an expert 11 witness in this civil action? 12 A. I believe sometime like June or July of last year, but 13 that's -- I may have had some phone calls where I got 14 messages a couple of times and was never able to 15 connect with Forest, but I -- I think my first any kind 16 of official correspondence was sometime back in July, I 17 believe. 18 Q. Okay. And you mentioned Forest. Are you referring to 19 Mr. Ferrell, I assume? 20 A. Yes. 21 Q. Was he the attorney who contacted you initially? 22 A. He did initially, yes. 23 Q. And had you worked with Mr. Ferrell prior to his 24 contacting you about this case? 25 A. No.</p>
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<p>1 Q. Did you know him in any capacity? 2 A. Did not know him at all. 3 Q. Had you ever testified in his court when he served as a 4 Superior Court judge? 5 A. No. 6 Q. Do you know how he came to contact you? 7 A. I believe he got my name from someone at Governor's 8 Highway Safety, I believe. 9 Q. Okay. Had you ever testified or worked with -- Well, 10 strike that. 11 Had you ever worked with anyone at Mr. Ferrell's law 12 firm, Sigmon, Clark, Mackie, et al.? 13 A. Not to my knowledge. I've only done a few criminal 14 cases out there. I don't know if they do any criminal, 15 and, obviously, I wouldn't have worked with them in 16 that capacity. I might have encountered them in court, 17 but not to my knowledge. 18 Q. Okay. And when you were first contacted to work on 19 this case, what were you asked to do? 20 A. I don't know if I -- I don't know exactly. It's just 21 if I would work on this case with respect to the 22 alcohol issues that are in it. That's kind of a 23 generic -- I mean, I understood the nuances of the case 24 from my experience in criminal court; so since the -- 25 my assumption was it was basically to do what I did in</p>	<p>1 criminal court to do in civil court. 2 Q. And what you did in criminal court was what? 3 A. I testified to -- First, I did conversion of the 4 hospital value. We did a -- I calculated a rate of 5 elimination for the indi- -- for John Spencer Brown. 6 Since we had multiple blood samples, we could get his 7 own unique rate of elimination. 8 I testified about the effects of Benzodiazepines and a 9 limited amount with respect to ecgonine methylester, 10 which would have been in the cocaine metabolite that 11 was also found in him. 12 Q. Okay. 13 A. Actually, it would have been benzoylcegonine not 14 ecgonine methylester. 15 Q. And when you first were contacted and you said your 16 assumption was that you were going to be asked to do 17 similar tasks or -- or offer similar opinions to that 18 which you did in the criminal case, at some point, did 19 you -- were you asked more specifically to render 20 opinions in this civil matter? 21 A. Yes. Probably we did -- I know I had a couple of phone 22 conversations, where we discussed it, and ultimately, I 23 did an affidavit -- 24 Q. Okay. 25 A. -- with my opinions in it.</p>

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1 Q. And prior to doing an affidavit, what material were you
 2 provided to review?
 3 A. I was given, I believe, a copy of my testimony -- a
 4 transcript of my testimony from the criminal case; a
 5 copy of the SBI result; a copy of the -- three pages
 6 from the ALE officer's investigation or his -- his
 7 notes, I guess it is; a copy of John Spencer Brown's
 8 deposition; and, at some point, a copy of Dr. Mason's
 9 affidavit, but I don't remember if that was before or
 10 after I did my affidavit.
 11 Q. So you don't recall specifically whether you had
 12 reviewed Dr. Mason's affidavit at the time your
 13 affidavit was signed?
 14 A. My recollection is that I had not seen it at that time.
 15 I -- I just don't remember all the dates.
 16 Q. Okay. Other than reviewing the documents you just
 17 mentioned, did you have any conferences with any of the
 18 attorneys representing the Plaintiffs in this matter
 19 prior to drafting your affidavit?
 20 A. I don't know if I did. I did have a meeting with Jason
 21 and another attorney, and I don't remember if that was
 22 before or after my affidavit because I don't remember
 23 the date.
 24 Q. Okay.
 25 A. I know it was -- I believe it was in October. They

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1 that correct?
 2 A. That's correct.
 3 Q. Who drafted that affidavit?
 4 A. Someone in their office drafted it. However, that has
 5 been my experience in the past. I review it, if it is
 6 correct with respect to what it says as far as my
 7 opinions and what I relied upon. Sometimes I've made
 8 corrections in them. I don't know if I made
 9 corrections on this one or not --
 10 Q. Okay.
 11 A. -- but, ultimately, I printed it and signed it.
 12 Q. Okay. And you said that's your normal procedure, then,
 13 would be that you -- you would have the attorney you're
 14 working with draft it, and you would edit it?
 15 A. I don't know that I would say I have them do it. That
 16 has what has occurred in the past, and I would guess
 17 it's more because of I'm not -- I'm not in the habit of
 18 doing affidavits on a regular basis. I know there's a
 19 certain form for them; so....
 20 Q. Okay. Well, let me mark this, then, as Exhibit 3 to
 21 your deposition, Mr. Glover.
 22 ---
 23 Thereupon, Deposition Exhibit No. 3 was marked for purposes
 24 of identification.
 25 ---

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1 were in Raleigh, and I met with them for about a half
 2 an hour but that's -- that was it.
 3 Q. Okay. Do you have any notes from that meeting?
 4 A. I did not do any notes at that meeting.
 5 Q. And were you provided any additional information by
 6 Mr. White or the other attorney who you met with that
 7 you relied upon or used in your work on this case?
 8 A. No.
 9 Q. Okay. Were you provided any verbal information that
 10 was not previously known to you in the documents you
 11 reviewed during the course of that meeting?
 12 A. Not to my recollection.
 13 Q. What -- What were you provided at that meeting, if
 14 anything?
 15 A. I don't think that I was given anything. I think, at
 16 that point, I had not -- not met face to face.
 17 Everything had been phone calls, and they were in town,
 18 wanted to know if they could meet with me, and I said
 19 sure. And it was mainly just, I think, kind of a face
 20 meeting, if you will.
 21 Q. Okay. And you're not sure, at this point, whether that
 22 was before or after you signed your affidavit; is that
 23 correct?
 24 A. I -- I don't know when I met with them.
 25 Q. Okay. And you ultimately did execute an affidavit; is

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1 BY MR. GAROFALO:
 2 Q. Okay. I'll show you what we've marked as Exhibit 3 and
 3 ask if you can identify that.
 4 A. Yes, this appears to be a fax of the affidavit that I
 5 signed on October 24th.
 6 Q. Of 2005?
 7 A. Yes.
 8 Q. Okay. And do you recall what changes, if any, were
 9 made to the original draft of the affidavit before you
 10 signed it?
 11 A. I don't know that I made any changes. If changes were
 12 needed, then I would do them, but I do not recall if I
 13 did any on this particular one.
 14 Q. And how was this affidavit presented to you for review
 15 and signature by Mr. Ferrell or other attorneys in his
 16 office?
 17 A. It's sent as an e-mail attachment in -- in Microsoft
 18 Word.
 19 Q. And if there were revisions made, would you have made
 20 those yourself, or would you have asked his office to
 21 make those changes?
 22 A. I would have made the corrections myself. Sometimes
 23 you can -- you know, it might be a technical issue as
 24 far as the way the blood results are identified or
 25 referred to, and so those are the kind of things that

1 I'm looking for. And, obviously, if there had been
 2 something in there that was not my opinion, I would --
 3 Q. Okay.
 4 A. -- have issue with that.
 5 Q. Now, we don't have in the documents that I -- were
 6 produced on Monday, I did not see any e-mails,
 7 communication of any type either from Mr. Ferrell's
 8 office or anyone else. Do you maintain those as part
 9 of your file?
 10 A. I don't print them out. It's just, I do have an e-mail
 11 address and to get something like this, it facilitates
 12 it. But as far as communicating back and forth about a
 13 case through e-mail, I don't generally do that; and so
 14 it's more just a means of getting the document.
 15 Q. Okay. If you did receive an e-mail regarding this
 16 case, would it still be on your computer or --
 17 A. Yes.
 18 Q. -- your server?
 19 A. I believe it should be. It would be on my home
 20 computer if I still retained it.
 21 Q. Okay. Could you check, after this deposition, to see
 22 if there is any communication relating to this case
 23 that -- via e-mail, that would include any attachments
 24 or documents?
 25 A. Can I check and see?

1 Q. Yes.
 2 A. Certainly.
 3 Q. Will you let us know if you find any --
 4 A. Sure.
 5 Q. -- or let your attorney know?
 6 And it's my understanding that you don't have any
 7 specific recollection at this time as to whether any
 8 changes or modifications were made to the affidavit
 9 that was drafted and presented to you by counsel; is
 10 that correct?
 11 A. That's correct.
 12 Q. Do you recall if there were any phone conversations
 13 between Mr. Ferrell or Mr. White or anyone else in
 14 their office and you concerning this affidavit after it
 15 was drafted and presented to you?
 16 A. I do not recall any.
 17 Q. And as far as the affidavit itself is concerned, after
 18 the preliminary information and the recitation of
 19 information you reviewed, it appears Paragraph 7
 20 through 10 deal with opinions that you have reached
 21 with respect to this case; is that correct?
 22 A. Yes.
 23 Q. And are those opinions, opinions that you would expect
 24 to testify to at the trial of this matter, if this case
 25 goes forward to trial?

1 A. I would expect that that's something I would be asked.
 2 Q. Okay. And what procedure or method did you -- Well,
 3 strike that.
 4 What -- Exactly what were you asked or what were you
 5 trying to offer in the course of these opinions as it
 6 relates to this case? What was the -- the objective of
 7 the opinions that you were offering in this affidavit?
 8 A. Would be the concentration of alcohol at the time of
 9 the crash and the concentration of alcohol at a
 10 particular time prior to the crash.
 11 Q. Okay. And to do that -- Well, strike that.
 12 Is that something that you have done in the past in the
 13 course of your work, both for the State of North
 14 Carolina and as a private consultant?
 15 A. Yes.
 16 Q. And is there -- Is there a name for this type of
 17 calculation or -- or review of information?
 18 A. Yes. As far as, you know, converting serum to whole
 19 blood, that's simply a conversion of serum to whole
 20 blood.
 21 As far as going back to an earlier point in time,
 22 that's called retrograde extrapolation.
 23 Q. Okay. And is that something you've been -- you've been
 24 trained to do and have expertise in?
 25 A. Yes.

1 Q. And in lay terms, tell us what retrograde extrapolation
 2 really means?
 3 A. That's when you have a -- in a case of alcohol, you
 4 have a result at a particular point in time. You go
 5 back to an earlier point in time and calculate how much
 6 or what the alcohol concentration would have been at
 7 the earlier point in time.
 8 You do that by taking the amount of time that has
 9 elapsed and multiplying that times the rate of
 10 elimination, either using an average rate or using a
 11 particular rate for a particular defendant.
 12 Q. And at the criminal trial, you testified and we have --
 13 You've provided us with a transcript as part of the
 14 materials that you've produced in response to this
 15 subpoena. But you testified at the criminal trial in a
 16 similar vein and using extrapolation from the two blood
 17 alcohol tests that were conducted following Mr. Brown's
 18 arrest; is that correct?
 19 A. That's correct.
 20 Q. And you extrapolated back, for the purposes of the
 21 criminal trial, to offer an opinion as to what his
 22 blood alcohol content would have been at the time of
 23 the accident that's the subject of this lawsuit --
 24 A. Correct.
 25 Q. -- is that correct? And in the criminal context,

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1 that's essentially what you're normally asked to do, is
 2 to provide an opinion as to what a -- a suspect or a
 3 criminal defendant's blood alcohol content was at a
 4 time of arrest or at the time of an accident; is that
 5 correct?
 6 A. Yes. I mean, it depends on the nature of a particular
 7 case. Sometimes there may be a huge gap in time
 8 between the time of the crash or the arrest and the
 9 sample, and so we need to see what it's going to be.
 10 Sometimes, I believe, and the prosecutors haven't told
 11 me this, but I believe that there are times when the
 12 egregiousness of it is something that they want to
 13 bring out.
 14 And so while the measured value at the time of the test
 15 may more than satisfy the per se limit for North
 16 Carolina, if the concentration was twice as much at the
 17 time of the crash, that's something that they like to
 18 bring out.
 19 Q. You would agree, would you not, Mr. Glover, that in the
 20 criminal context, where you have offered the vast
 21 majority of your testimony, it's seldom, if ever, asked
 22 of you to extrapolate back beyond the point of a crash
 23 or the point of an arrest when a -- when a suspect is
 24 -- is pulled by the officer?
 25 A. That's correct because, typically, we aren't concerned

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1 beginning at Page 8, that --
 2 MR. FERRELL: Page 8, you say?
 3 BY MR. GAROFALO:
 4 Q. Excuse me, Paragraph 8, that, in your opinion, John
 5 Spencer Brown's blood alcohol content at 7:57 a.m. on
 6 August 9th, 2002, was 0.17 grams per 100 milliliters of
 7 whole blood; is that correct?
 8 A. That's correct.
 9 Q. And you arrived at that opinion by doing what you
 10 called a retrograde extrapolation?
 11 A. That's correct.
 12 Q. And to do the retrograde extrapolation, I believe you
 13 testified at the criminal trial, that you would have to
 14 to determine Mr. Brown's rate of elimination of
 15 alcohol; is that correct?
 16 A. I don't have to do that. I will use an individual's
 17 rate, if it's available. If their rate is not
 18 available, then we use an average rate that has been
 19 accepted by the courts since 1995.
 20 Q. And that average rate is what?
 21 A. .0165 BAC per hour.
 22 Q. And that has been accepted by courts as a -- as an
 23 average rate of elimination in cases where you don't
 24 have sufficient data to calculate a specific rate for a
 25 specific individual; is that correct?

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1 about what it was prior to that event, the vehicle stop
 2 or the crash.
 3 Q. And to the extent you're asked to extrapolate in a
 4 criminal context, you're extrapolating from the point
 5 in time following the crash or the arrest, until the
 6 time when the first blood sample or breath sample was
 7 taken; is that correct?
 8 MR. WHITE: Object to the form.
 9 THE WITNESS: We're -- We're going from the time
 10 of the test back to the time of the crash or
 11 the -- or the vehicle stop.
 12 BY MR. GAROFALO:
 13 Q. And it would be seldom, if ever, under those
 14 circumstances, that any additional alcohol could be
 15 consumed by a suspect or a criminal defendant; isn't
 16 that true?
 17 A. The majority --
 18 MR. WHITE: Objection.
 19 THE WITNESS: The majority of the time. We do
 20 have times when individuals have claimed what's
 21 called post-crash consumption, and we do have to
 22 look at those and consider what influence that
 23 would or wouldn't have on the result.
 24 BY MR. GAROFALO:
 25 Q. Okay. And in your affidavit you offered opinions

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1 A. That's correct.
 2 Q. In this case, you were fortunate enough to have two
 3 separate samples that were taken following the
 4 accident; is that correct?
 5 A. That's correct.
 6 Q. And was that sufficient data for you to formulate a
 7 specific rate of elimination for Mr. Brown rather than
 8 using the average rate?
 9 A. Yes.
 10 Q. Okay. And I believe at the criminal trial you
 11 testified that the rate of elimination you used, based
 12 on those two test results, was 0.023 per hour; is that
 13 correct?
 14 A. I would have to look at my -- either the testimony or
 15 I -- or the -- I have a work sheet on it. That sounds
 16 right.
 17 Q. Okay. Well, let's -- I can give you your transcript,
 18 if you want to look at it. I thought you had reviewed
 19 that. Here's a copy of the transcript that was
 20 produced to us, and we have other copies marked or
 21 typed, but I believe that's your criminal trial
 22 testimony.
 23 (Witness reviewing documents.)
 24 A. This is John Brown.
 25 Q. Oh, I'm sorry.

1 MR. HOOD: It's on his worksheet, too. That might
 2 be faster.
 3 MR. GAROFALO: Is it on this?
 4 BY MR. GAROFALO:
 5 Q. Yeah. I'll show you what we've previously marked as
 6 Exhibit 2 to your deposition, if that helps?
 7 A. Yes, I did use a defendant's rate of .023 per hour.
 8 Q. And that was based on the blood alcohol level that was
 9 found in the second test that was done at approximately
 10 2:00 p.m., I believe?
 11 A. That's correct.
 12 Q. And comparing that to the blood alcohol level to the
 13 first test that was done at approximately 9:00 -- I
 14 believe it was 9:20 a.m.; is that -- 9:15 --
 15 A. 9:15.
 16 Q. -- a.m.; is that correct?
 17 A. Yes, that's correct.
 18 Q. Okay. And, again, that's sufficient data for you to
 19 formulate a rate of elimination as you did in this
 20 case?
 21 A. It is, in that those are the two measurements we have.
 22 Obviously, if we have more points on there, it would be
 23 nice. But my experience has been that when we're in
 24 this range, they are in a linear rate of elimination,
 25 and so it's -- and we're looking at two different blood

1 tests, not a blood and a breath, which can sometimes
 2 make you have to look at it harder.
 3 Q. And getting back to your affidavit, Paragraph 8, the
 4 opinion you express there is essentially the same
 5 opinion you offered at the criminal trial when you
 6 testified in that proceeding; is that correct?
 7 A. Yes.
 8 Q. Okay. And that opinion, again, is based on your work
 9 and analysis of the readings that Mr. Brown exhibited
 10 on the two tests and the calculation of his rate of
 11 elimination, and that's how you came up with the 0.17
 12 grams per 100 milliliters of whole blood?
 13 A. That's correct.
 14 Q. And you were not asked to do anything more than that in
 15 the criminal trial, as far as forming any additional
 16 opinions as far as his rate of -- of his blood alcohol
 17 content at any other times; is that correct?
 18 A. To my recollection, I did not and was not asked to do
 19 that.
 20 Q. And, again, as we mentioned earlier, in the criminal
 21 context, there really is -- really no need to go back
 22 any further than the time of the accident?
 23 MR. WHITE: Objection.
 24 THE WITNESS: That's correct.
 25 BY MR. GAROFALO:

1 Q. Okay. And when you were retained to offer expert
 2 opinions and testimony in this civil case, you were
 3 asked to -- to offer additional opinions with respect
 4 to John Brown's blood alcohol levels at earlier times
 5 that --
 6 A. That's correct.
 7 Q. -- that evening or that prior day; is that correct?
 8 A. That's correct.
 9 Q. And Paragraph 9 of your affidavit states that based on
 10 your review of the same reference materials, and
 11 including your training, experience and your
 12 calculations, you expressed an opinion that Mr. John
 13 Spencer Brown's blood alcohol content at 11:30 p.m. on
 14 August 8th of 2002 was approximately 0.30 grams per 100
 15 milliliters of whole blood; is that correct?
 16 A. That's correct.
 17 Q. And how did you arrive at that calculation when you
 18 prepared this affidavit in October of 2005?
 19 A. I would have taken the amount of time that elapsed and
 20 his rate of elimination, added that to the reported
 21 result, which is how I typically do that.
 22 Q. Okay. And is it your testimony here today that you
 23 used the same elimination rate of 0.023 when -- when
 24 you expressed the opinions found in Paragraph 9 of your
 25 complaint?

1 MR. WHITE: Objection. It's not 0.23.
 2 MR. GAROFALO: 0.023, excuse me.
 3 MR. JEFFRIES: I think you said it right.
 4 MR. GAROFALO: I thought I did.
 5 (Witness reviewing documents.)
 6 THE WITNESS: I believe that is correct.
 7 BY MR. GAROFALO:
 8 Q. So it's your testimony here today is you used the same
 9 rate of elimination in forming the opinions in
 10 Paragraph 9 that you did use at the criminal trial?
 11 A. I believe that's correct.
 12 MR. WHITE: Objection.
 13 BY MR. GAROFALO:
 14 Q. And, again, Paragraph 10 of your affidavit expresses an
 15 additional opinion, essentially, that at 1:45 a.m. on
 16 August 9th of 2002, that John Spencer Brown's blood
 17 alcohol content was approximately 0.27 grams per 100
 18 milliliters of whole blood; is that correct?
 19 A. Yes.
 20 Q. And, again, did you use the same elimination rate of
 21 0.023 to arrive at that conclusion that you had used
 22 when you offered testimony at the criminal trial in
 23 this matter?
 24 A. Just looking at my graph here, I may have actually used
 25 the average rate on that -- on both of those.

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<p>1 Q. Why would you have used a different elimination rate in 2 forming the opinions you've expressed in this affidavit 3 than the elimination rate that you used when you 4 testified under oath at the criminal trial in this 5 matter? 6 A. I'm not sure on that. I mean, just looking at my graph 7 here, I see that I plotted out using an average rate; 8 that I'm seeing essentially an 03 at 11:30 and an 027 9 at 1:45. 10 Q. Now, in forming the opinions you formed and express in 11 this affidavit, you essentially did a -- what I think 12 you called retrograde extrapolation back to the two 13 time periods referenced in Paragraphs 9 and 10; is that 14 correct? 15 A. Yes. 16 Q. Did you make any assumptions or take into account any 17 other information other than the blood alcohol readings 18 and results that were taken by the SBI and also the 19 police following the accident? 20 A. I believe -- well, a couple of things. Did I use any 21 of that information in my assumption or additional 22 information; is that what your question was? 23 Q. Yes. Did you use any additional information in 24 extrapolating back to 11:30 p.m. on August 8th and 1:45 25 a.m. on August 9th, other than the rate of elimination</p>	<p>1 that you chose to use and the blood alcohol readings 2 that were taken at 9:15 a.m. and again at, I believe, 3 2:00 p.m.? 4 A. I would have used -- The assumption would have been, 5 well, a couple of things. One, that the amount that 6 was stated to have been consumed at O'Charley's was 7 what it was, as I recall from the testimony, like a 8 beer and a shot, or a beer and a half a shot, or 9 something like that. 10 And as far as the concentration at those times, I had 11 to -- In order to calculate the concentration at a time 12 prior to the consumption of those; in other words, if I 13 look at my line as it's plotted out, I go back to a 14 particular point in time and I have a particular 15 concentration. What would have been added into that 16 would have been the drinks that were consumed after 17 midnight. 18 And so in adjusting the -- this calculated 19 concentration, I have to subtract out the drinks that 20 were consumed after this particular point in time. 21 Those would have influenced this line; so that's where 22 -- I believe when I was doing this, essentially what I 23 did, I'm going to 11:30 and I'm looking at the effect 24 of -- or subtracting out the value of the drinks that 25 would have been consumed after 11:30.</p>
<p>Page 63</p> <p>1 Q. And what evidence do you have with respect to any 2 drinks that were consumed after 11:30? What is your 3 understanding? 4 A. My understanding is that -- and this was from the 5 testimony at the criminal trial and also in, I believe, 6 the deposition that -- of John Spencer Brown, that when 7 he went to O'Charley's, he had a shot. In fact, he 8 ordered a shot and a beer, according to my -- again, 9 the criminal case. 10 And the bartender gave him the shot but didn't give him 11 the beer because they won't give him both at the same 12 time. He drank the shot and then he started drinking 13 on -- drinking the beer, and then at some point after 14 that, they took it from him. So that was the 15 information about any alcohol consumption after this 16 particular point in time. 17 Q. Is it your testimony that that consumption that you 18 just referenced took place after 11:30 p.m.? 19 A. That's my recollection because I didn't think he got to 20 O'Char- -- to O'Charley's until after then. 21 Q. Okay. So how did you factor that into the calculation 22 you arrived at with respect to Paragraph 9, that his 23 blood alcohol level at point -- of point -- of 0.30 24 existed at 11:30 p.m.? 25 A. Well, that's -- But the best way to explain it is if</p>	<p>Page 64</p> <p>1 the concentration was .30 at that time, and then 2 additional alcohol was consumed, his alcohol 3 concentration would have been greater after that point. 4 And so what you -- When you do the retrograde, you'll 5 be coming up to the point where you would be, I'll say, 6 involving that alcohol that was consumed after. 7 So if I'm going back before he had something to drink, 8 then you have to adjust it down, typically taking 02 9 off per drink is something that -- that we do kind of. 10 Generally, in the criminal stuff we're always 11 restricted to two digits not three digits; so we do a 12 fair amount of truncation. We also do, in the case of 13 if a drink was going to add .015 to a person's alcohol 14 concentration, I might be inclined to subtract 02 from 15 it, just again because rather than sub- -- truncating 16 it to 01, then that makes it look more egregious; so 17 it -- 18 Q. So the opinion expressed in Paragraph 9 that his blood 19 alcohol level at 0.30 at 11:30, that would have been an 20 alcohol level prior to his consumption of a shot and 21 portion of a beer at O'Charley's; is that correct? 22 A. Again, based on my recollection that -- that what was 23 consumed at O'Charley's was after that point in time, 24 and that's again my recollection from the transcript 25 and from the testimony.</p>

16 (Pages 61 to 64)

1 Q. And if that's accurate, would you have also assumed
2 that his blood alcohol level would have increased
3 following his consumption of a shot of alcohol plus a
4 portion of a beer?
5 A. Yes.
6 Q. Okay. But the next opinion you render in Paragraph 10
7 was that by 1:45 a.m. his blood alcohol had decreased
8 from his high of 0.30 before he consumed the shot and
9 the portion of a beer, to 0.27 at 1:45 a.m.; is that
10 correct?
11 A. Yes, and we're looking at a difference in time of two
12 and a quarter hours and two and a quarter times the --
13 His rate of elimination is going to give you about an
14 05 that's going to come off of the value; so --
15 Q. Is that his rate of elimination as you testified to at
16 the criminal trial or the rate of elimination that you
17 used in your affidavit?
18 A. Oh, I've used his rate of elimination.
19 Q. I thought you said a minute ago that in reviewing
20 Paragraphs 9 and 10 it appeared that you've used the
21 average rate of elimination as opposed to --
22 A. Well, in -- in looking at this, initially that's what I
23 thought, but I don't know why I would have. And then
24 when I realized that the -- there was consumption after
25 that, you have to -- You can't just draw this straight

1 other than the material that you had previously
2 reviewed and relied upon in your criminal testimony?
3 A. Is there anything else I've relied upon other than what
4 I had in the criminal case and the material provided at
5 deposition?
6 Q. Correct.
7 A. No, there isn't any other material that I relied upon.
8 Q. Okay. And to make this assumption, which -- Is another
9 name for what you're doing called straight-line
10 extrapolation?
11 A. I've not heard it called straight-line.
12 Q. Okay.
13 A. In a --
14 Q. You call it retrograde extrapolation?
15 A. Yes. And -- and it is a straight line until you get
16 down to about .02 concentration, and then it's called a
17 hockey stick graph because it's straight line. You get
18 down to about a .02 and the line takes on a different
19 slope; so it looks more like a hockey stick. And so
20 the true graph is a hockey stick, but the
21 concentrations that we're looking at here, we are in
22 the straight-line portion.
23 Q. And in conducting this type of analysis, as an expert
24 in this field, would you agree that in order for it to
25 be accurate, a subject has to be in a post-absorptive

1 line back and say this is what it was at 11:30, since
2 there was stuff consumed after 11:30.
3 And so in coming up with my final numbers here, that
4 would have been in -- You go back to that point in
5 time, then you have to subtract out what was
6 contributed by what he drank afterward. If that makes
7 sense.
8 Q. So you -- you have adjusted not only for what he
9 consumed between 11:30 p.m. on August 8th and 1:45 a.m.
10 on August 9th, but also what his rate of elimination
11 would have been during that same period of time?
12 A. Well, you have to consider the rate of elimination in
13 that time.
14 Q. Okay. So even though he had continued to drink
15 alcohol, according to your understanding of the
16 evidence, after 11:30 but before 1:45, he still would
17 have had a lower blood alcohol content at 1:45 than he
18 had at 11:30?
19 A. Likely.
20 Q. Other than factoring in what you just told me about the
21 consumption of a shot and one -- and a portion of a
22 beer and also factoring his rate of elimination during
23 that period of time, was there any other information
24 that you used to formulate the opinions that you've
25 expressed in Paragraph 9 and 10 -- Paragraphs 9 and 10

1 state at the time the measurements were taken?
2 A. We assume that they are in a post-absorptive state.
3 The -- The rate of elimination is going to be the same
4 whether they're still drinking -- they're going to be
5 metabolizing the same amount of alcohol.
6 The influence of alcohol consumed, say, after 11:30 is
7 something that's going to affect the concentration.
8 You might have a -- a blip in your curve, but that's
9 something that you can -- again, if you know or if you
10 assume the amounts that were consumed, you can deal
11 with that.
12 Q. But to be in a post-absorptive state, that essentially
13 takes into account the fact that after someone finishes
14 drinking alcohol, there was a -- there is a gap in time
15 from the last sip of the alcohol to the point in time
16 when your body has completely absorbed the alcohol from
17 your stomach into the bloodstream; is that correct?
18 A. Well, there is some time. However, when you look at
19 social drinking studies that have been done, they see
20 that a person reaches peak concentration an average
21 about 17 minutes after their last sip, and they're
22 fully in the post-absorptive, or in the downhill part
23 of the slope, 24 minutes after that, and that's an
24 average value.
25 If they look at individuals, again, in social drinking

1 situations, something like about 92 to 95 percent are
 2 at their peak before they finish drinking. And if they
 3 look at people killed in crashes, they see the same
 4 thing, that 92, 93, 4, 5 percent of drivers killed in
 5 crashes are post peak, and they do that by comparing
 6 alcohol in the urine and alcohol in the blood.
 7 And so while there are -- were studies done many, many
 8 times with bolus dose, so you drink a great big screw
 9 driver, we watch the concentration; we look how long it
 10 takes to go to peak; that's a -- almost like laboratory
 11 tests when -- and they do see ranges of times to get to
 12 peak.
 13 In a social drinking situation that spans many, many
 14 hours, it's different.
 15 Q. But you would agree that in -- in doing this type of
 16 extrapolation backwards, that it's -- it's important or
 17 it's -- for accuracy, that the subject is in a
 18 post-absorptive state at the time the sample is taken?
 19 A. At the time these samples are taken on what -- he would
 20 certainly be post-absorptive.
 21 Q. Well, my -- my question was not whether he was or not.
 22 My question is: Would you agree that it's important to
 23 the accuracy of your -- your extrapolation that he was
 24 in a post-absorptive state?
 25 A. It is, but again, the -- all the data would indicate

1 that the vast, vast majority of people are at that
 2 point.
 3 Q. And I'm not debating that with you.
 4 A. And -- and the differences, unless someone were to
 5 pound down a pint of Jim Beam, the impact of a single
 6 additional beer or similar drink is very, very
 7 insignificant on that concentration.
 8 Q. Would you also agree that for an extrapolation of this
 9 type to be accurate, that the subject must also be in a
 10 post-absorptive state at the time either the incident
 11 occurs or at the time you're attempting to -- to offer
 12 an opinion as to the blood alcohol?
 13 A. Again, it is important.
 14 Q. Okay.
 15 A. However, the difference is very small.
 16 Q. Okay. Would you also agree it's important to the
 17 accuracy of the test that during the interim period of
 18 time between when these samples are taken and the point
 19 in time when you're attempting to offer an opinion as
 20 to the blood alcohol content, that the subject never
 21 had reached a zero blood alcohol level in between?
 22 A. Well, yes, that would be important, but that would --
 23 the only way -- let me -- The only way you could have
 24 someone get to a zero and have a later result would be
 25 for there to be additional consumption.

1 Q. Right. And so the last question I was going to ask
 2 you, it's also important for the accuracy of this type
 3 of extrapolation that there not be any additional
 4 consumption between the point in time of the testing
 5 and the time that you're attempting to accurately
 6 convey an opinion as to the blood alcohol content?
 7 A. That's correct, and -- and in doing my opinion in here,
 8 it was based on the information provided, which would
 9 be the deposition and that information, as it is, was
 10 that there was no drinking past a particular point in
 11 time. And so we do consider that but, again, the
 12 assumption is that there was nothing because that's
 13 what has been said.
 14 Q. Okay. And you relied on the accuracy of the
 15 information presented to you for review that no alcohol
 16 was consumed beyond the shot and the partial beer at
 17 O'Charley's; is that correct?
 18 A. That's correct.
 19 Q. Did you also review the test or the evidence with
 20 respect to the amount of alcohol that had been consumed
 21 by John Spencer Brown prior to the shot and partial
 22 beer consumption at O'Charley's?
 23 A. I did review, again, what was I believe in his
 24 deposition, where he indicated he has had, I think,
 25 four shots and two beers, or something to that effect,

1 at Sergeant Peppers.
 2 Q. Okay.
 3 A. So that was in his deposition. I did look at that.
 4 Q. And as you did with the post-O'Charley's evidence, did
 5 you rely on the accuracy of that evidence in reaching
 6 any opinions you reached in this case?
 7 A. I'm -- I'm going to say no in -- in the -- I mean, I
 8 guess the best way of answering that is that that can't
 9 be all the alcohol that was consumed that night. I do
 10 use what was said to be the last consumption as the
 11 last consumption, but I think the recitation of what
 12 was consumed prior to that is not consistent with the
 13 alcohol concentration that he was at.
 14 Q. Okay. And that's based on your assumption that the
 15 alcohol concentration that you opined at 11:30 of 0.30
 16 was actually the alcohol content that he had at that
 17 time?
 18 A. It is -- It's also just that to get to be at the level
 19 that he was at the time the hospital blood was drawn --
 20 well, let's just say the crash, the .17, the amount of
 21 alcohol that would have to have been consumed just to
 22 get to that is huge.
 23 Q. And the other potential explanation for that is
 24 continued alcohol consumption beyond the shot and
 25 partial beer at O'Charley's; is that correct?

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1 MR. WHITE: Objection.
 2 THE WITNESS: Is your question could he have
 3 consumed more after that?
 4 BY MR. GAROFALO:
 5 Q. No, my question is: Could the -- could the explanation
 6 for the blood alcohol levels at the time of the
 7 accident be the result of a continued alcohol
 8 consumption beyond the shot and partial beer?
 9 MR. WHITE: Objection.
 10 THE WITNESS: It could be, but I'm saying there's
 11 been no evidence that I've seen either from
 12 anyone's testimony where -- that there was any
 13 additional, and so not having any evidence of
 14 that, then I do -- I'm assuming there is none. I
 15 mean, that's kind of a stated assumption.
 16 BY MR. GAROFALO:
 17 Q. Well, you haven't reviewed any evidence of additional
 18 alcohol consumption beyond what was shown at
 19 O'Charley's and Sergeant Peppers, have you?
 20 MR. WHITE: Objection.
 21 THE WITNESS: No. I mean I -- what was in the
 22 deposition --
 23 BY MR. GAROFALO:
 24 Q. Okay. So --
 25 A. -- and testified to at trial.

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1 BY MR. GAROFALO:
 2 Q. What behavior are you referring to?
 3 A. Well, the bartender testified that they gave him the
 4 shot. He -- he turned. I don't know, shot his shot,
 5 got the beer, started to go over to a table. One
 6 bartender said to the other one: Hey, this guy's got
 7 problems, we need to take it from him. They went over,
 8 took it from him; so that's a level of impaired
 9 behavior at that point.
 10 Even the conversations when they went outside with him,
 11 out to his truck, there -- my recollection is there was
 12 a good bit of testimony that showed significant,
 13 significant impairment. It would not be consistent
 14 with the four beers and two shots. Four beers and two
 15 shots in, I believe it was about maybe a two-hour
 16 window, he would eliminate two. He would have had four
 17 left in him. If that was all that was there, then
 18 that's not a behavior that was consistent with that
 19 amount of alcohol.
 20 Q. And a .17 blood alcohol reading at almost 8:00 the next
 21 morning is not consistent with someone who stopped
 22 drinking at 12:00 or 12:30 the night before; is -- is
 23 that correct?
 24 MR. WHITE: Objection.
 25 THE WITNESS: It's not consistent with it?

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1 Q. So it's equally as speculative to say there was more
 2 alcohol consumption before the shot and partial beer,
 3 as it is to say there was no alcohol consumption after
 4 he left O'Charley's; isn't it?
 5 MR. WHITE: Objection.
 6 THE WITNESS: Well, I guess it gets very
 7 speculative in the sense that you could start
 8 coming out with all kinds of hypotheticals about
 9 what was consumed there or that an amount was
 10 consumed at noon the day before. I mean, you can
 11 come up with a hundred different hypotheticals for
 12 it, and so I work within the confines of what has
 13 been presented.
 14 BY MR. GAROFALO:
 15 Q. Okay. And what has been presented is insufficient to
 16 justify a blood alcohol level of 0.30 at 11:30 p.m.;
 17 isn't that correct?
 18 MR. WHITE: Objection.
 19 THE WITNESS: The -- The amount that he says that
 20 he drank at Sergeant Peppers is inconsistent with
 21 that level. The behavior, as was testified to by
 22 the bartender in the trial, is consistent with
 23 someone with a far, far greater amount of alcohol
 24 in his system than two beers and four shots,
 25 particularly looking at the time frame for that.

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1 BY MR. GAROFALO:
 2 Q. Yes.
 3 A. If he drank sufficient amounts prior to that,
 4 certainly.
 5 Q. Okay. But we don't know how much he drank before then,
 6 do we?
 7 A. No, we don't.
 8 Q. Okay. So either way, we're speculating. You're either
 9 speculating as to whether he had more alcohol than the
 10 evidence presented to you shows, or we're speculating
 11 that he continued to drink after he left O'Charley's;
 12 isn't that correct?
 13 MR. WHITE: Objection.
 14 THE WITNESS: I'm not speculating that he
 15 continued to drink after he left. When I --
 16 Whenever I do a retrograde, I look at the
 17 information that's presented as far as the
 18 concentrations are concerned.
 19 I look at -- if it's the case of a driving
 20 situation, at the driving that was demonstrated,
 21 and I look at the level of impairment as is
 22 articulated by the people who are present at the
 23 person -- with the person at that time.
 24 That -- I look to see if that is consistent with
 25 what's been calculated, and that's one of the

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1 things that I have to be able to see in order to
 2 feel comfortable with my opinion as to a
 3 concentration. Is the apparent impairment
 4 consistent with the concentration that has been
 5 calculated.
 6 BY MR. GAROFALO:
 7 Q. Okay.
 8 A. And that's -- that's crucial whether it's drugs or
 9 whether it's alcohol.
 10 Q. And the apparent impairment you're talking about is the
 11 -- the testimony you just referenced from the bartender
 12 that after he drank the shot and part of the beer, they
 13 felt he shouldn't be served any more alcohol; is that
 14 correct?
 15 A. That's correct. I believe he had -- John Spencer Brown
 16 also had some of his own statements with respect to his
 17 level of impairment at -- at various points in there.
 18 While that might not be -- you might not be able to
 19 infer a particular number of drinks consumed, he did
 20 talk about his level of impairment himself.
 21 Q. Would you agree, Mr. Glover, that if you were retained
 22 as an expert in this case and asked to analyze the
 23 amount of alcohol that the evidence shows Mr. Brown
 24 consumed at Sergeant Peppers and O'Charley's on that
 25 evening, that you would not be able to express an

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1 reviewed with respect to the amount of alcohol consumed
 2 by Mr. Brown and also the time frame during which this
 3 alcohol was consumed. Does that --
 4 A. That's right.
 5 Q. -- kind of bring us back to where we stopped?
 6 A. Yes.
 7 Q. And you indicated that you -- you considered, excuse
 8 me, and reviewed as part of your analysis of this case
 9 John Spencer Brown's deposition; is that correct?
 10 A. Yes.
 11 Q. Did you also review certain receipts or bar tabs from
 12 Sergeant Peppers and O'Charley's that showed alcohol
 13 purchase at each establishment?
 14 A. I did not -- I have not seen those, did not review
 15 those. I do know that they were brought into evidence
 16 in the criminal trial; so I know that they exist, and
 17 my recollection is that -- that it did show four shots
 18 and two beers.
 19 Q. Okay. And then is it your recollection that John
 20 Spencer Brown's deposition testimony was consistent
 21 with that?
 22 A. It was with the exception, I believe, he said that he
 23 always chases a shot with a beer; so it didn't make
 24 sense to him that he would have had four shots and only
 25 two beers, and something to that effect.

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1 opinion, based on your analysis of that amount of
 2 consumption, that Mr. Brown would have had a 0.30 blood
 3 alcohol content?
 4 MR. WHITE: Objection.
 5 THE WITNESS: Are you asking if my opinion would
 6 be that he could have a .30 based on the
 7 essentially eight different drinks that have been
 8 testified in?
 9 BY MR. GAROFALO:
 10 Q. Right.
 11 A. And my opinion would be no.
 12 Q. Okay.
 13 MR. GAROFALO: Why don't we take a break. We've
 14 been going about an hour and a half.
 15 THE VIDEOGRAPHER: Going off the record. The time
 16 is 12:25.
 17 (Discussion held off the record.)
 18 (Whereupon, Mr. Hood exited the deposition.)
 19 THE VIDEOGRAPHER: Back on the record. The time
 20 is 12:41.
 21 BY MR. GAROFALO:
 22 Q. Okay. Mr. Glover, we're back on the record after
 23 taking a short break, and we were talking about the --
 24 the information that you reviewed in forming your
 25 opinions and, in particular, information that you

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1 Q. Okay. Other than your recollection of the criminal
 2 trial evidence with respect to the bar receipts and
 3 your review of John Spencer Brown's deposition
 4 testimony, have you been provided with or reviewed any
 5 other information relative to the amount of alcohol
 6 consumed by Mr. Brown?
 7 A. No.
 8 Q. Have you reviewed any other information relative to the
 9 time frame in which alcohol was or was not consumed by
 10 Mr. Brown?
 11 A. No.
 12 Q. So his testimony and the bar receipts would be the only
 13 evidence that you've been provided or reviewed; is that
 14 correct?
 15 A. Correct.
 16 Q. You mentioned in your affidavit and again in your
 17 testimony today, your review of excerpts from the
 18 report of Investigator SA Tally of the North Carolina
 19 Alcohol Law Enforcement Agency. Do you -- Do you
 20 recall who provided you with those pages?
 21 A. The firm I'm working for.
 22 Q. Okay. Did you ever ask to see any additional portions
 23 of the investigative material?
 24 A. No, I did not.
 25 Q. Have you reviewed any statements or depositions from

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<p>1 any other witnesses relative to this case? 2 A. No, I have not. 3 Q. Okay. Did you ever ask for a review of statements from 4 any other witnesses or depositions of any other 5 witnesses? 6 A. No, I have not. 7 Q. Okay. And you referenced the -- your recollection of 8 the testimony of the bartender from O'Charley's, I 9 believe -- 10 A. Yes. 11 Q. -- is that correct? And did you review that testimony 12 in writing? 13 A. In writing? 14 Q. Yes. 15 A. No, it's -- I was at the trial for -- I don't know if I 16 was there for jury selection, but was there -- I think 17 I had to stay overnight three nights, and so I sat 18 through virtually all of the testimony, and I do recall 19 that. 20 Q. Okay. So you -- you have -- 21 A. That is my recollection from the -- 22 Q. You have -- 23 A. -- trial. 24 Q. You have -- just have independent recollection or 25 memory of what that individual testified to?</p>	<p>1 A. Yes. I don't remember -- I know there were two 2 bartenders involved. I don't remember if it was the 3 one that served him who then said: We gotta cut him 4 off, or if it was the other one who -- and I don't 5 remember their names, but -- 6 Q. Okay. But you've not reviewed any written summaries or 7 any written transcripts of any testimony that anyone's 8 offered in this case, other than John Spencer Brown? 9 MR. WHITE: Objection, asked and answered. 10 THE WITNESS: That's correct and the ALE, three 11 pages of ALE report. 12 BY MR. GAROFALO: 13 Q. And the only transcript of the criminal trial that you 14 reviewed was your own testimony; is that correct? 15 A. That's correct. 16 Q. Did you ever ask to review any additional parts of it? 17 A. No. 18 Q. Now, have you reviewed an affidavit that was prepared 19 and signed by Dr. Andrew Mason? 20 A. Yes, I have. 21 Q. When did you -- I think you said you weren't sure when 22 you reviewed that. Is that still your testimony? 23 A. Yes, I -- Off the top of my head, I don't recall when I 24 reviewed it. 25 Q. Okay. But at some point, during the course of your</p>
<p>Page 83</p> <p>1 work on this case as a retained expert, you have 2 reviewed this affidavit; is that -- 3 A. Yes, I have. 4 Q. Did you also review any supporting or attached 5 documentation? 6 A. Only cursory. I believe he had Widmark's Formula 7 spread out over several pages on there and I did not go 8 through to see if he -- his calculations were correct. 9 It's a fairly straightforward formula. 10 Q. Did you review any other attachments that were part of 11 Dr. Mason's affidavit besides Widmark's formula? 12 A. I don't recall what else was attached. I know he had 13 his CV attached to it, and the other attachments I'm -- 14 I'm not sure what else was attached. 15 Q. Okay. And do you know Dr. Mason? 16 A. Yes, I do. 17 Q. Have you worked with him or worked against him in the 18 past? 19 A. We -- 20 MR. WHITE: Objection. 21 THE WITNESS: We have worked on cases where we 22 were representing or affiliated with opposite 23 sides in a case. We may have been involved in one 24 where we were both working for the State. I don't 25 recall what case that would have been.</p>	<p>Page 84</p> <p>1 BY MR. GAROFALO: 2 Q. And you're aware that in his career he was Chief 3 Toxicologist and also Deputy Chief Toxicologist for the 4 office of the Chief Medical Examiner for the State of 5 North Carolina? 6 A. I am aware of that. 7 Q. Okay. Did you have an opportunity to work with him in 8 that capacity while you were in your position with the 9 State? 10 A. No. 11 Q. Do you consider Dr. Mason to be qualified as -- in the 12 field of toxicology? 13 A. In toxicology, at least as far as the analysis of 14 fluids for compounds. My -- My knowledge with respect 15 to his experience specifically with alcohol and dosing 16 and testing individuals, that his experience is very, 17 very limited. 18 Where we dose people regularly, I probably dosed over 19 1,000 people with known amounts of alcohol to observe 20 their impairment and to see how much it takes to get 21 them to a particular point. And breath tests, I've 22 tested thousands of people in breath tests; and so his 23 experience in that area is fairly limited. 24 Q. Do you have a copy of his affidavit in front of you? 25 A. I've got it in my file.</p>

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1 Q. Ill just mark one as an exhibit, if I could.
 2 ---
 3 Thereupon, Deposition Exhibit No. 4 was marked for purposes
 4 of identification.
 5 ---
 6 BY MR. GAROFALO:
 7 Q. I show you what is marked as Exhibit 5 -- 4 to your
 8 deposition, and ask if you have seen that affidavit
 9 before?
 10 MR. WHITE: Objection.
 11 THE WITNESS: Yes, I have.
 12 BY MR. GAROFALO:
 13 Q. And is that the affidavit of -- of Dr. Andrew P. Mason
 14 that you reviewed at some point during the course of
 15 your work on this case?
 16 A. It appears to be.
 17 Q. Okay. And the affidavit, in part, talks about
 18 Dr. Mason's qualifications. And you said you don't
 19 feel he is as qualified in studying the effects of
 20 alcohol, and based on dosing testing than you might be,
 21 correct?
 22 MR. WHITE: Objection.
 23 THE WITNESS: I'm just saying that his on-hands
 24 experience as far as dosing individuals with
 25 alcohol and measuring them is very, very limited.

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1 I'm just saying with respect to being certified in
 2 North Carolina, he never has been.
 3 BY MR. GAROFALO:
 4 Q. Okay. To your knowledge?
 5 A. No, he has never been.
 6 Q. Okay.
 7 A. Our records don't reflect that he's ever held a permit
 8 issued by our agency.
 9 Q. Okay. And with respect to this affidavit, have you
 10 reviewed the opinions and conclusions that Dr. Mason
 11 has reached?
 12 A. Yes.
 13 Q. Okay. And to the ex- -- I'm not going to go through
 14 every paragraph with you to the -- in the course of
 15 this deposition, but what -- what objections or
 16 differences do you have with respect to any of the
 17 opinions that he expresses in this affidavit?
 18 MR. WHITE: Objection.
 19 BY MR. GAROFALO:
 20 Q. If any?
 21 MR. WHITE: Objection.
 22 THE WITNESS: I don't know that I have any. I
 23 know that he uses a rate of elimination that's
 24 between 15 and 20 milligrams per DL per hour, and
 25 in fact -- so he did not calculate the rate for

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1 I think he has no experience in breath testing
 2 whatsoever, and his experience in actually, again,
 3 dosing individuals is -- I'm not aware of any
 4 experience; though, he may have had some.
 5 BY MR. GAROFALO:
 6 Q. Is that based on conversations you've had with him
 7 or --
 8 A. Umm, just --
 9 Q. -- what is that based on?
 10 A. -- my general knowledge. I know he's never been
 11 through our breath test program. I know that
 12 certainly. And, again, as far as doing controlled
 13 drinking exercises, I'm not aware of him doing any.
 14 Q. Okay. You see in Paragraph 6 of his affidavit that he
 15 states under oath that he has been certified as a
 16 Breath Alcohol Technician, which included completing
 17 the Chemical Tests For Intoxication Training Program
 18 under 49 CFR Part 40 on the Intoxilyzer Model 5000
 19 breath analysis instrument at National Medical
 20 Services; is that correct?
 21 A. I do --
 22 MR. WHITE: Objection.
 23 THE WITNESS: I do see that on there, but I don't
 24 know what their particular program is for having
 25 people use it or get certified.

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1 Brown; so he used an average. That's not a -- I
 2 don't find fault with it, I'm just saying he
 3 didn't use Brown's rate. And --
 4 BY MR. GAROFALO:
 5 Q. And just to interject, you didn't use Brown's rate in
 6 your affidavit either?
 7 MR. WHITE: Objection.
 8 THE WITNESS: I -- I did use his rate. What I
 9 said was when -- when I use that, I go back to
 10 this point in time. That's -- That's saying, if
 11 everything that was totally -- that was consumed
 12 happened before this point in time, that's what we
 13 would have. But we know at least that there was a
 14 claim of some consumption afterwards, then I have
 15 to reduce it down to accommodate that.
 16 BY MR. GAROFALO:
 17 Q. Okay. And, again, I was asking about any things you
 18 disagree with. And up to the point I interrupted you,
 19 you hadn't really -- other than saying he didn't use
 20 the specific rate of elimination, anything else in this
 21 affidavit that you feel is inaccurate or you would take
 22 issue with?
 23 MR. WHITE: Objection.
 24 THE WITNESS: I don't believe there are any.
 25 BY MR. GAROFALO:

1 Q. Okay. Now, in Paragraph 16 of the affidavit, Dr. Mason
2 states that: Whether or not Mr. Brown's self-reported
3 drinking history is consistent with his measured BAC's
4 can be evaluated using Widmark's equation for alcohol
5 distribution.

6 And you previously mentioned Widmark's equation as an
7 attachment that you briefly reviewed; is that correct?

8 MR. WHITE: Objection.

9 THE WITNESS: Yes.

10 BY MR. GAROFALO:

11 Q. Just for the layperson, tell us what Widmark's equation
12 is?

13 A. Widmark's equation is essentially -- it's a very simple
14 formula, but you take an individual, you -- You can
15 work it two different ways. If I want to get a -- an
16 individual to a particular alcohol concentration, I can
17 take their gender, their weight, and the concentration
18 of alcohol that I'm going to give them, and I can
19 calculate how much I have to give them to get them to a
20 particular concentration.

21 If you work it the other way, you take a given result
22 in a person, you take their weight and their gender,
23 and you're able to calculate how much alcohol was in
24 them at that particular point in time.

25 Q. Okay. Is that a tool or a methodology that you use,

1 yourself, in performing analysis in the type of work
2 you do?

3 A. Yes, it -- I do use it. It's a valuable tool. It at
4 least gives you a good -- I'll say, good estimate when
5 you're going to be doing something like this, but
6 it's -- it's not one hundred percent exact.

7 Q. Okay. And do you agree with Dr. Mason's conclusion in
8 Paragraph 17 that based upon the reported drinking
9 history, any calculations that he described earlier, in
10 his opinion, was that Mr. Brown's reported alcohol
11 consumption did not account for his measured blood
12 alcohol concentration at either 9:15 a.m. or 2:00 p.m.
13 on August 9th, 2002?

14 MR. WHITE: Objection.

15 THE WITNESS: Yes.

16 BY MR. GAROFALO:

17 Q. Okay. And do you also agree with Paragraph 18 in which
18 Dr. Mason gave an opinion that had John Spencer Brown
19 consumed only the alcoholic drinks listed on the bar
20 tabs at Sergeant Peppers and O'Charley's, that his
21 blood alcohol content would have been undetectable at
22 the time of the motor vehicle accident, 7:57 a.m., on
23 August 9th, 2001?

24 MR. WHITE: Objection.

25 THE WITNESS: Yes, that is correct.

1 BY MR. GAROFALO:

2 Q. Okay. And he goes on to state that it would also have
3 been undetectable later, at either the time of his
4 blood was collected from -- at either of the times his
5 blood was collected for analysis; do you also agree
6 with that?

7 MR. WHITE: Objection.

8 THE WITNESS: Yes.

9 BY MR. GAROFALO:

10 Q. Now, in Paragraph 19, Dr. Mason states his opinion that
11 similar calculations would show that in order to reach
12 the blood alcohol level measured in Mr. Brown's blood
13 when it was drawn at either 9:15 a.m. or 2:00 p.m.,
14 that Mr. Brown would have had to consume between nine
15 and 14 additional alcoholic drinks. Do you agree with
16 that?

17 MR. WHITE: Objection.

18 THE WITNESS: Well, in part. It would have been a
19 significant number. It may well have been in the
20 range of nine to 14. It may have been even closer
21 to maybe 18 additional, but there aren't any
22 really time frames in this, and that would impact
23 on it.

24 BY MR. GAROFALO:

25 Q. Okay. And I believe in your trial testimony, you

1 stated towards the end of your testimony that the blood
2 alcohol levels that you reviewed would have been
3 consistent with the consumption of possibly 15 to 18
4 beers; is that correct?

5 A. If that was in my testimony, that would be correct.
6 And that would have been, again, assuming that the
7 consumption stopped when he said that it stopped in
8 order to have that concentration at the time of the
9 crash, yes.

10 Q. So am I accurate, then, that at least in the event this
11 case goes to trial and you are called as an expert
12 witness to testify on behalf of the plaintiffs, you
13 would not debate or take issue with any of the opinions
14 expressed by Dr. Mason in this affidavit?

15 MR. WHITE: Objection.

16 THE WITNESS: Only that it might have been
17 additional -- more than his noted -- his range of
18 nine to 14. I think that's probably about the
19 only....

20 BY MR. GAROFALO:

21 Q. As far as the additional drinks it would have taken?

22 MR. WHITE: Objection.

23 THE WITNESS: Yes. And I know that the -- some of
24 the things that are in here, we, as a practice,
25 never can do, and that's using the third digit.

1 And that's not an issue with that, but those
 2 things can tend to shift numbers a little bit one
 3 way or the other. But, I mean, that's not really
 4 an issue with that, but....

5 BY MR. GAROFALO:
 6 Q. Okay. And towards the end, Paragraph 21 of the
 7 affidavit, Dr. Mason references the presence of Al- --
 8 Alprazolam?
 9 A. Alprazolam.
 10 Q. Alprazolam, which is -- is the generic name for Xanax;
 11 is that correct?
 12 A. Yes.
 13 Q. And is that consistent with your interpretations of the
 14 -- the blood samples that were reviewed?
 15 MR. WHITE: Objection.
 16 THE WITNESS: That he had Alprazolam in his
 17 system? Yes.
 18 BY MR. GAROFALO:
 19 Q. Okay. And what is -- What is your opinion as to the
 20 effect, if any, that Alprazolam or Xanax can have when
 21 consumed in conjunction with alcohol consumption?
 22 A. It is -- It can be impairing by itself, and it can be
 23 additionally impairing in the presence -- or that the
 24 sum of the two can be even greater. Alcohol and a
 25 Benzodiazepine, they go for very similar receptors in

1 the brain, and so you can have a greater impairment.
 2 It does depend on what the concentration is, and in
 3 this situation, I don't believe there was a
 4 concentration determined at that particular time. So
 5 it -- it may have added to it if it was there in
 6 sufficient concentration.
 7 Q. Okay. But at least based on the information you
 8 reviewed, you don't have enough information to
 9 determine how significant the concentration was; is
 10 that correct?
 11 A. Correct. There are -- we know the way the tests are
 12 done that there was at least a -- a minimum amount.
 13 There's a threshold or a cutoff. There has to be more
 14 than that cutoff amount in a person to get a positive
 15 on it.
 16 And so you could take that as a minimum level at that
 17 time, you take the elimination rate for Alprazolam, and
 18 go back and get a feel for the concentration that would
 19 have been there, but that's about all you're going to
 20 do, is get a feel for it.
 21 Q. And if -- if a subject has been drinking and then after
 22 they stop drinking alcohol, they begin or continue to
 23 take Alprazolam, would that increase or would that
 24 effect their level of impairment to the extent they are
 25 impaired?

1 A. Would Alprazolam make someone more impaired --
 2 Q. Yes.
 3 A. -- if they're taking it with alcohol?
 4 Q. Yes.
 5 A. Yes.
 6 Q. And have you reviewed any information in this case,
 7 other than the -- the blood sample results with respect
 8 to Mr. Brown's use or possession of Alprazolam?
 9 A. In the criminal case there was testimony by an
 10 individual that was, I believe, at Sergeant Peppers,
 11 who said that he showed him -- he showed her some
 12 tablets in his wallet, and then at some later point in
 13 time, the tablets were no longer in his wallet. I
 14 don't remember who testified to that, if she did or if
 15 someone else.
 16 Q. Do you remember specifically if that testimony, if
 17 that -- those events took place at Sergeant Peppers
 18 versus O'Charley's?
 19 A. My recollection was that it was at Sergeant Peppers
 20 when he displayed it to whoever this woman was, and it
 21 may have been one of the -- I don't know if it was
 22 someone he knew or a waitress. But, again, that's my
 23 recollection from the criminal case.
 24 Q. Okay. And you --
 25 A. But there's -- No one ever said, well, and then he took

1 three or he took any. It was just that he had some in
 2 his possession.
 3 Q. Okay. And were you aware that when the accident
 4 occurred, they were no longer in his possession?
 5 A. That's -- That's -- I knew at some point no one found
 6 any on him. I didn't recall when that was.
 7 Q. Okay. But there's nothing about the -- the presence of
 8 Alprazolam in the blood, as evidenced by the blood
 9 test, that would in any way change the readings or
 10 the -- of blood alcohol content; is that correct?
 11 A. That's correct. The elimination of alcohol would not
 12 be impacted by the presence of Alprazolam. There are
 13 very few things that you can do that would influence
 14 the rate of elimination.
 15 Q. Okay. And, again, I believe you've answered this, but
 16 you don't have any issues with Dr. Mason's opinion that
 17 John Spencer Brown's blood alcohol content would have
 18 been 0.0 or non-detectable if he had consumed only the
 19 alcohol that is reported in the evidence that you've
 20 been presented for review in this case --
 21 MR. WHITE: Objection.
 22 BY MR. GAROFALO:
 23 Q. -- at the time of the accident at 7:57 a.m.?
 24 MR. WHITE: Objection.
 25 THE WITNESS: Correct. If he had had the -- the

1 four shots and two beers at Sergeant Peppers in
 2 the time frame that was there, and then the shot
 3 and half a beer, he should have been fully
 4 eliminated in the morning --
 5 BY MR. GAROFALO:
 6 Q. Okay.
 7 A. -- at the time of the crash.
 8 Q. And the only way he could have been at the blood
 9 alcohol levels that he was and that you've expressed
 10 opinions that he was at the time of the accident, would
 11 have been to either have consumed more alcohol between
 12 the time he started drinking that evening and the time
 13 he left O'Charley's, or to have continued drinking
 14 after he left O'Charley's; is that correct?
 15 MR. WHITE: Objection.
 16 THE WITNESS: He could have had more after
 17 O'Charley's; he could have had more than the
 18 receipt showed at Sergeant Peppers; and he
 19 certainly could have consumed before he ever got
 20 to Sergeant Peppers.
 21 BY MR. GAROFALO:
 22 Q. And based on what you've reviewed, we have no evidence
 23 to establish either of those scenarios; isn't that
 24 true?
 25 MR. WHITE: Objection.

1 THE WITNESS: That's correct.
 2 BY MR. GAROFALO:
 3 Q. Okay. Do you have any, or have you reviewed any
 4 information with respect to John Spencer Brown's
 5 alcohol history -- alcohol-consumption history?
 6 A. Only as he referred to it in his deposition, and I
 7 don't recall everything he was saying, how frequently
 8 he drank or if he drank to excess on a regular basis.
 9 I don't -- There was -- There were questions about
 10 that, and I don't recall exactly what he said.
 11 I don't believe he was a first-timer, based on my
 12 recollection.
 13 Q. In forming opinions in a case of this, is it important
 14 to know whether someone's a chronic alcohol consumer
 15 versus an occasional drinker or a moderate drinker?
 16 A. It's not really important to know, and in a situation
 17 like this -- Let me back up.
 18 If we look at a person who's essentially inexperienced
 19 with alcohol, we'll see a very low elimination rate,
 20 maybe .012, .014, the low end.
 21 If we look at drivers who have been arrested for DWI,
 22 which tend to be a unique population, we see a rate
 23 that's in the range of .018 for males, .020 for
 24 females. Females eliminate about 10 percent faster
 25 than males.

1 If we look at chronic abusers, then we'll see a rate
 2 that's up in the upper 20s and up to .030 per hour.
 3 And so if you knew somebody was one, you might assume
 4 that they had a higher rate. If you see a higher rate
 5 in someone, it is suggestive of someone who has more
 6 experience with alcohol than -- than a -- I'll say, an
 7 average person.
 8 Q. Okay. And is it also important when you're looking at
 9 the ability of a subject to function under the
 10 influence of alcohol, to know their level or -- or the
 11 frequency of consumption?
 12 A. Not really, in that people who -- who, I'll say, use it
 13 on a regular basis, more than just a glass of wine at
 14 supper, will develop an ability to function, in some
 15 respects, better than those who don't typically drink.
 16 They may learn better how to walk or to do certain
 17 physical things because they know they take a little
 18 bit more time.
 19 Their impairment, though, is occurring in the brain,
 20 and you cannot learn how to not be impaired; so even
 21 those who have vast experience with alcohol will still
 22 have impaired mental function, and essentially, nothing
 23 that they can do about that.
 24 Q. One of the opinions you've expressed in your affidavit,
 25 based on your extrapolation, was that at 11:30 p.m. on

1 August 8th, 2002, that Mr. Brown's blood alcohol
 2 content was 0.30.
 3 You would agree, would you not, based on your
 4 experience, that's a high level of intoxication that
 5 some people might not be able to function or stay
 6 conscious at?
 7 MR. WHITE: Objection.
 8 THE WITNESS: That an inexperienced drinker would
 9 probably have a very difficult time -- If they
 10 look at teenagers who have gotten to that level,
 11 they frequently see people that are unconscious.
 12 But that's -- That is a high level, but if someone
 13 has experience with it, they can still function.
 14 And I mean by function, they may still may be
 15 conscious and be able to locomote, walk, and do
 16 certain things. But it's -- it's still -- it's a
 17 lot of alcohol.
 18 MR. GAROFALO: Okay. We need to change the tape;
 19 so let's go off the record.
 20 THE VIDEOGRAPHER: This marks the end of Tape
 21 No. 1 in the deposition of Paul Glover. Going off
 22 the record. The time is 1308.
 23 (Discussion held off the record.)
 24 THE VIDEOGRAPHER: Back on the record. This
 25 begins Tape No. 2 in the deposition of Paul

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<p>1 Glover. The videographer is Gloria Meinel for the 2 firm of Adams and Holt, Incorporated, of 3 Charlotte, North Carolina. The deposition is 4 being held at Hedrick, Eatman, Gardner and 5 Kincheloe in Raleigh, North Carolina, on 6 June 14th, 2006. The time is 1311. 7 BY MR. GAROFALO: 8 Q. Thank you. Before we switched tapes, Mr. Glover, we 9 were talking about the effects that a blood alcohol 10 level of 0.30 might have on an individual, and you 11 said, and I'm not going to repeat your answer, but I 12 think the -- at the end of the answer was, either way, 13 it's a lot of alcohol; is that right? 14 A. Yes, it is. 15 Q. And, again, the opinion you express in your affidavit, 16 based on your extrapolation methodology, as well as 17 your review of some of the materials in this case, was 18 that at 11:30 p.m. on August 8th, 2002, John Spencer 19 Brown had a blood alcohol level of 0.30; is that 20 correct? 21 A. That's correct. 22 Q. And would you agree with me that if the evidence in 23 this case ultimately shows that -- or if a jury 24 concludes that John Spencer Brown continued to drink 25 alcohol after he left O'Charley's, that you wouldn't be</p>	<p>1 able to offer an opinion under those facts that his 2 blood alcohol was 0.30 at 11:30 p.m.? 3 MR. WHITE: Objection. 4 THE WITNESS: You're saying if a jury found that 5 he had continued, that I couldn't offer that 6 opinion. It would depend on how much additional 7 alcohol was consumed. 8 BY MR. GAROFALO: 9 Q. Okay. But to reach the conclusion you've reached, you 10 had to assume that he -- he did not drink anything 11 further after the shot and partial beer at O'Charley's; 12 is that right? 13 A. That's correct. 14 Q. And if he -- If you don't make that assumption, you 15 can't come to this conclusion; isn't that correct? 16 MR. WHITE: Objection. 17 THE WITNESS: If I assumed that he drank more than 18 that, then I would have to adjust that figure. 19 BY MR. GAROFALO: 20 Q. And if you adjusted that figure at all, based on any 21 additional consumption, you would adjust it downward to 22 a lower blood alcohol level; is that correct? 23 A. That's correct. 24 Q. And the conclusion you reach that at 1:45 a.m. on 25 August 9th that his blood alcohol had decreased to</p>
<p>Page 103</p> <p>1 0.27, that would also change in the event it was 2 determined that additional alcohol was consumed after 3 1:45 a.m.; is that correct? 4 MR. WHITE: Objection. 5 THE WITNESS: Yeah, I would have to adjust it, but 6 in this situation, this takes out his -- this 7 accommodates the shot and the half of beer at this 8 point; so any additional would have to be factored 9 in. 10 BY MR. GAROFALO: 11 Q. Okay. But if you -- if you adjusted it, it would again 12 be adjusted to a lower level; is that correct? 13 A. Well, if there was -- if there was drinking after that 14 1:45 or -- 1:45, it was? I believe. 15 Q. Correct. 16 A. Yes, if there was drinking after that, then, yes, it 17 would adjust it down. 18 Q. And unless you knew specifically how many drinks he had 19 after 11:30 p.m. on that evening, up until the time of 20 the first blood test, you could not give an opinion to 21 any degree of certainty as to what his blood alcohol 22 level was either at 11:30 a.m. -- p.m. or 1:45 a.m.; is 23 that correct? 24 MR. WHITE: Objection. 25 THE WITNESS: If -- If the situation were that, an</p>	<p>Page 104</p> <p>1 open-ended amount of alcohol was consumed after 2 that point, I mean, without any kind of definition 3 on it all, yes, you couldn't do -- you couldn't 4 come up with that number. 5 BY MR. GAROFALO: 6 Q. But -- And even if there was -- There would be a 7 difference in what your calculation would be if he had 8 two more beers or two more drinks after that time 9 versus six more drinks after that time; isn't that 10 correct? 11 MR. WHITE: Objection. 12 THE WITNESS: It would be, but it would still be 13 -- it still would be a significant amount of 14 alcohol on board because you can subtract those 15 drinks out and see what you would get, and -- and 16 it's still going to be, in the case of six instead 17 of two, then we're going to be looking at somebody 18 who's at .20, .21, just doing it roughly in my 19 head. 20 BY MR. GAROFALO: 21 Q. Okay. But you agreed earlier that based on the amount 22 of alcohol that the evidence shows was consumed up to 23 11:30, or make -- make that up to 1:45 a.m. on that 24 morning, that if that's all the alcohol that was 25 consumed, then Mr. Brown's blood alcohol level at the</p>

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1 time of this accident would have been negligible or
 2 nonexistent; is that correct?
 3 MR. WHITE: Objection.
 4 THE WITNESS: That's correct.
 5 BY MR. GAROFALO:
 6 Q. So there's no way of knowing, if we're going to
 7 speculate, whether the additional alcohol that may have
 8 been needed to reach this level was consumed after 1:45
 9 or before; isn't that correct?
 10 MR. WHITE: Objection.
 11 THE WITNESS: Not totally correct, because there
 12 were witnesses who observed his behavior, and it
 13 was the behavior that was consistent with
 14 significant impairment or significant intoxication
 15 at that time.
 16 And so you -- Let me -- As I said before, I always
 17 look at what was observed in the individual, what
 18 are the results. And if they're, you know -- if
 19 he was -- appeared to be stone cold as a preacher
 20 at the time that he was at O'Charley's, then there
 21 would be a real issue with the concentration, but
 22 the behavior was not consistent -- the testimony
 23 that I heard was not consistent with somebody who
 24 was stone cold sober.
 25 BY MR. GAROFALO:

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1 parcel of alcohol floating around in his body to
 2 be consumed -- or eliminated at a unique time.
 3 If at -- If at the time he drank it, it was 10
 4 percent of -- and I'm just using this as an
 5 illustration -- 10 percent of the total amount of
 6 alcohol in him, then at the time of the crash, it
 7 would still be 10 percent of what was remaining in
 8 him would have been what was consumed at
 9 O'Charley's.
 10 BY MR. GAROFALO:
 11 Q. Okay. And is there -- There's no way to prove that
 12 objectively in any way; is that correct?
 13 MR. WHITE: Objection.
 14 THE WITNESS: I -- I -- Well, how do you mean
 15 objectively? I mean, there's no test that was
 16 done, but the fact is that the alcohol -- it --
 17 It's like having a bucket of water, adding a drop
 18 of water to that bucket and then taking a drop out
 19 and saying this is the one I just added. It's
 20 impossible -- I will say virtually impossible to
 21 take that same drop back out, and it would be
 22 virtually impossible for that specific -- those
 23 specific alcohol molecules to be selectively
 24 eliminated before the crash.
 25 BY MR. GAROFALO:

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1 Q. So for witnesses, you only reference the bartender's
 2 testimony is one witness that you're relying on; isn't
 3 that correct?
 4 MR. WHITE: Objection.
 5 THE WITNESS: I don't recall if it was one or two
 6 that testified, but that was -- whoever was
 7 there -- whoever testified to the -- the events at
 8 O'Charley's. And I don't recall if the -- the --
 9 I believe it was a waitress at Sergeant Peppers.
 10 I don't recall her testimony with respect to
 11 impairment.
 12 BY MR. GAROFALO:
 13 Q. Is there any way, based on your experience in this
 14 field, that you can prove, based on the information
 15 that you've reviewed and the information that's
 16 available in this case, that any of the alcohol that
 17 Mr. Brown consumed at O'Charley's on the evening in
 18 question was still in his system at the time of this
 19 accident?
 20 MR. WHITE: Objection.
 21 THE WITNESS: I can only prove it based on my
 22 knowledge of what happens with alcohol when it's
 23 consumed, and that is, that it would be
 24 distributed throughout his body; that it would --
 25 would be -- It's not going to stay as a unique

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1 Q. Okay. But the amount of alcohol that you have reviewed
 2 and that was -- all the facts seem to agree was
 3 consumed at O'Charley's, by itself, would have been
 4 eliminated long before this accident in question?
 5 MR. WHITE: Objection.
 6 THE WITNESS: If he was alcohol free at the time
 7 that he drank at O'Charley's, then that alcohol
 8 would have been eliminated way before the crash,
 9 if he was alcohol free at the time he consumed it.
 10 BY MR. GAROFALO:
 11 Q. And at least based on your affidavit, your opinions are
 12 that his level of intoxication was less when he left
 13 O'Charley's than it was when he arrived there; is that
 14 correct?
 15 A. Based on the time frame -- If that's the 1:45 was when
 16 he left O'Charley's, based on that time frame and the
 17 limited amount that he consumed there, it would --
 18 would have been lower.
 19 Q. Okay. And the extrapolation that you did goes back in
 20 time to 11:30 p.m. Is there a reason you were -- you
 21 selected that as the last time or the earliest time
 22 that you extrapolated back to?
 23 A. I was probably asked what it would have by the counsel
 24 I'm rep -- or I'm working for what it would have been
 25 at that time.

1 Q. Okay. How far back would you be prepared to
 2 extrapolate in this case to continue offering opinions
 3 as to Mr. Brown's blood alcohol levels at earlier times
 4 that evening?
 5 A. Umm, I'm going to say not very, and -- and the reason
 6 for that is if I -- if I draw this line out far enough,
 7 I can show that he's made up of 100 percent alcohol.
 8 That's not true.
 9 What I did with this was look at a specific point in
 10 time, and it's a point in time between two different
 11 drinking events, and that would be to look at the
 12 concentration at a point in time between two different
 13 drinking events.
 14 And so you can go back to there and, again, assuming
 15 these are two different drinking events and there's --
 16 there is time between them, then you can go to that
 17 point and say this is what we're looking at.
 18 Q. You -- you mentioned on several times that part -- at
 19 least in part your opinions expressed in your affidavit
 20 and again expressed here today in your deposition, are
 21 based on the bartender's testimony with respect to his
 22 observations of Mr. Brown; is that correct?
 23 A. That, and I believe, again, Mr. Brown indicated in his
 24 deposition that he was significantly impaired a number
 25 of different times.

1 Q. Okay. And could -- based on your experience, could
 2 that level of impairment be affected in any way by any
 3 alleged consumption of Xanax or cocaine?
 4 MR. WHITE: Objection.
 5 THE WITNESS: Impairment can be influenced by the
 6 Xanax. Cocaine, when we look at cocaine in
 7 non-recreational doses, and we're looking at very
 8 low concentrations of alcohol, say less than .08,
 9 they actually can see an improvement in certain
 10 skills.
 11 But at this concentration of alcohol, cocaine --
 12 and in this situation, we only see
 13 benzoylecgonine, the metabolite present, there's
 14 no indication of parent compound. A parent
 15 compound would have been -- it's -- it's going to
 16 be 95 percent eliminated in roughly four to five
 17 hours after use. It just -- The cocaine is not a
 18 factor, is essentially what I look at.
 19 BY MR. GAROFALO:
 20 Q. And it's not a factor because the -- the results that
 21 showed up are really the byproduct or the waste product
 22 of cocaine versus cocaine itself; is that correct?
 23 MR. WHITE: Well, objection.
 24 THE WITNESS: It's a metabolite. It's a
 25 metabolite that has a half-life of six hours;

1 whereas, cocaine, the parent compound, has a
 2 half-life of about .8 hours; so say 45 minutes.
 3 It takes five half lives to lose essentially 95
 4 percent.
 5 Well, if a subject did cocaine at midnight, I
 6 would not expect a blood test that was done 14
 7 hours later to show the presence of any parent
 8 compound. It's going to be gone. He would still
 9 have the metabolite there.
 10 BY MR. GAROFALO:
 11 Q. Okay. So when you say cocaine is not a factor here,
 12 what did you mean by that?
 13 A. I don't see it -- I mean, there -- We don't have a way
 14 of knowing what was present, but it's also -- the
 15 behavior that's seen in individuals when they are under
 16 the influence of cocaine is essentially
 17 high-risk-taking behavior when it comes to driving.
 18 And I would say that the level of alcohol in here
 19 would -- would essentially mask anything that might be
 20 impairment that you would see from the cocaine. And,
 21 again, we don't see parent compound; though, it is --
 22 there's a significant amount of time.
 23 Q. What is your understanding, from your review of the
 24 evidence that's been provided to you, with respect to
 25 Mr. Brown's consumption of food on the night in

1 question or the morning in question?
 2 A. He had something in the afternoon. I don't recall
 3 what. But at the morning before the crash, he had his
 4 liver mush sandwich and a ham, tomato and egg sandwich
 5 that he bought prior to the crash.
 6 Q. Okay. Are you aware of any consumption of food during
 7 the course of the evening while any alcohol consumption
 8 was taking place?
 9 A. Not -- I don't recall any. There -- there may have
 10 been, but I don't recall it at this point.
 11 Q. And whether or not he ate food would not affect the
 12 elimination of alcohol; is that correct, the rate of
 13 elimination of alcohol?
 14 A. Yeah, it does in that if we take an individual and give
 15 them alcohol IV and measure the rate of elimination and
 16 then we gave them food, we will see a higher rate of
 17 elimination. But that's when we're looking at --
 18 essentially when we're looking at third digit, and when
 19 we're looking at a very controlled situation, looking
 20 at low -- low concentrations of alcohol.
 21 And the thought is that there may be a little faster
 22 elimination in the -- with -- when the body is
 23 metabolizing food. No one's really figured out what's
 24 going on, but it's not significant. It's not like you
 25 get a 20 percent increase or a 50 percent increase or

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<p>1 something like that. It's measurable, but essentially, 2 only in the lab.</p> <p>3 Q. Okay. Is the absorption of alcohol affected by whether 4 or not the subject is eating at the time of drinking?</p> <p>5 A. It is to a degree. Again, if you look at an individual 6 who drinks on an empty stomach, we'll see the overall 7 height of the peak will be higher; we'll get a sharper 8 peak. 9 If they have food in their stomach, we'll see a rounder 10 one. We'll see absorption through the walls of the 11 stomach rather than through the pyloric sphincter, but 12 again, these are studies where they were looking at 13 people in the range of a .04. 14 Once we get into concentrations of alcohol that are out 15 there, .10, .15, on out that way, they've not looked -- 16 they really can't do the studies and it's really not 17 thought that there's going to be a huge, huge 18 influence.</p> <p>19 Q. Now, going back to your criminal testimony. During the 20 course of your testimony, there were several exhibits 21 that were prepared and offered into evidence, and I 22 think they're referenced in your trial testimony as 23 Exhibits 25, 26 and 27, and I don't have copies. 24 Do you recall what exhibits you prepared and that were 25 offered to illustrate your testimony at the criminal</p>	<p>1 trial?</p> <p>2 A. I probably did a chart that would show across the top 3 probably alcohol, Benzodiazepines, cocaine, and on the 4 vertical side of the chart, kind of like a 5 multiplication table, the potential effects on an 6 individual and whether or not you see these effects 7 from the presence of these different compounds. It's a 8 drug chart.</p> <p>9 Q. Do you --</p> <p>10 A. No.</p> <p>11 Q. -- have those?</p> <p>12 A. No.</p> <p>13 Q. Does this --</p> <p>14 A. That would --</p> <p>15 Q. Okay.</p> <p>16 A. That would be it.</p> <p>17 Q. So those would be -- Off the record. Those are in the 18 criminal trial, right? 19 And are those in the file material that you provided to 20 us, then? I just want to make sure I know we're 21 talking about the same thing.</p> <p>22 A. It appears that it is.</p> <p>23 Q. Okay.</p> <p>24 A. At least that -- that particular one that was still in 25 my files. The other charts, I believe, I probably drew</p>
<p>Page 115</p> <p>1 on a flip chart. I don't -- I don't know that I 2 prepared a chart ahead of time. A lot of times I do it 3 on the flip chart, and it's admitted into evidence for 4 illustrative purposes.</p> <p>5 Q. Okay.</p> <p>6 A. It would be in the criminal packet, with the CR in the 7 corner.</p> <p>8 Q. Would any of these --</p> <p>9 A. Oh, those were -- Probably the last page, the one where 10 I have his name on it, I would expect that --</p> <p>11 Q. That would have been an exhibit as well?</p> <p>12 A. Correct. May have been the conversion sheet on the 13 retrograde.</p> <p>14 MR. GAROFALO: Where is that one?</p> <p>15 MR. WHITE: It might just be a copy here that I 16 got.</p> <p>17 BY MR. GAROFALO:</p> <p>18 Q. Okay. I'll go through those, and I just want to attach 19 those as exhibits when I clarify if we have them or 20 not. 21 You did, during the break, give me a copy of your CV. 22 I want to mark that as an exhibit to your deposition.</p> <p>23 MR. GAROFALO: That's it. Mark this as Exhibit, 24 is it, 5? 25</p>	<p>Page 116</p> <p>1 Thereupon, Deposition Exhibit No. 5 was marked for purposes 2 of identification. 3 ---</p> <p>4 BY MR. GAROFALO:</p> <p>5 Q. And just, can you identify that for the record? 6 Mr. Glover, is that your current CV?</p> <p>7 A. Yes, it is.</p> <p>8 Q. We'd offer that as an exhibit to your deposition. 9 Do you intend to do any further work on this case 10 between now and the time you are called to testify at 11 the trial of this matter?</p> <p>12 MR. WHITE: Objection.</p> <p>13 THE WITNESS: I at -- With the -- Unless I'm 14 provided with additional stuff, if -- if there 15 were any additional information that would be 16 generated, I guess, and it was presented and they 17 asked me, What do you think about this, then I 18 would, but at this point, I'm essentially -- this 19 is what I've done.</p> <p>20 BY MR. GAROFALO:</p> <p>21 Q. Okay. As we sit here today, you've not been asked to 22 review any additional material or form any additional 23 opinions other than what you've testified to here 24 today? 25 A. Correct.</p>

1 MR. WHITE: Objection.
 2 BY MR. GAROFALO:
 3 Q. Are there any other opinions that you've formed with
 4 respect to this case you've not been asked, thus far,
 5 in your deposition?
 6 A. I don't believe so.
 7 Q. Okay. Are there any opinions that you anticipate you
 8 may offer at trial that I've not asked you about?
 9 MR. WHITE: Objection.
 10 THE WITNESS: I -- I can't think of any at this
 11 point.
 12 MR. GAROFALO: That's all the questions I have at
 13 this time.
 14 ---
 15 EXAMINATION (By Mr. Jeffries):
 16 Q. All right. Good afternoon, Mr. Glover. My name is
 17 John Jeffries, and I represent the Sergeant Peppers
 18 Defendant in the lawsuit. And I know we're probably
 19 going to rehash some points, but I'll try not to plow
 20 too much of the same ground that Mr. Garofalo's already
 21 gone over with you.
 22 Let me just follow up on that last line of questioning
 23 first. The opinions you've expressed in your
 24 deposition today and the opinions that you've expressed
 25 in the affidavit, which I believe was marked as

1 Exhibit 4 to your dep- -- to your deposition, is it
 2 fair to say that those opinions are based on your
 3 review of excerpts of the criminal trial transcript
 4 from the John Brown case, your review of the State
 5 Bureau of Investigation laboratory report, excerpts
 6 from the report of Investigator Shon Tally with the
 7 Alcohol Law Enforcement Division, and the deposition
 8 testimony of John Spencer Brown?
 9 A. Correct.
 10 Q. And I -- I assume that you've expressed the opinions
 11 you've expressed, both in this affidavit and in your
 12 testimony here today, that those are your opinions to a
 13 reasonable degree of scientific probability to the best
 14 of your knowledge?
 15 MR. WHITE: Objection.
 16 THE WITNESS: Yes.
 17 BY MR. JEFFRIES:
 18 Q. And you feel comfortable, under oath, offering those
 19 opinions as you have here today and as you did in this
 20 affidavit?
 21 A. Yes, with -- you know, with the stated, I'll say,
 22 limitations or the -- you know, the basis of them being
 23 the information in the material provided.
 24 Q. Okay. You were present for much of the criminal trial
 25 with regard to the murder prosecution; is that right?

1 A. That's correct.
 2 Q. And during your course of observing the criminal trial
 3 or preparing for the criminal trial, did you review any
 4 portions or any excerpts from the Hickory Police
 5 Department's homicide investigative file?
 6 A. No. I really, basically, got the information that's
 7 here with respect to times and results, and that was
 8 it. I -- I heard their testimony.
 9 I -- I know that I taught a class a week after this
 10 crash occurred, and one of the officers that was
 11 involved in investigating the crash came to me after
 12 the class and said: Boy, I wish I'd had this class a
 13 week before; this is what happened.
 14 I had a conversation with that officer. I don't recall
 15 who he was and -- but beyond that, I never really had
 16 any interaction with the officers.
 17 Q. Do you know whether the police investigative file or
 18 portions of it were admitted into evidence during the
 19 criminal trial?
 20 A. I do not recall.
 21 Q. Okay. Did you ever see the Hickory Police Department's
 22 investigative file?
 23 A. Not to my knowledge.
 24 Q. Okay. All right. And you have relied, at least in
 25 part, on Mr. Brown's deposition testimony; is that

1 correct?
 2 A. Yes.
 3 Q. I want to ask you some questions about the -- the copy
 4 of his deposition that you have -- that you have
 5 brought, or that's part of your file. And I have --
 6 I've kind of highlighted on the copy that you gave me.
 7 I don't know if -- if you've got another.
 8 I'm going to ask you about some portions of the
 9 testimony that you have -- have marked up and others
 10 that you haven't.
 11 If I can get you to first look with me on -- on Page 7
 12 of Mr. Brown's deposition, beginning with Lines --
 13 Lines 5 through 9.
 14 A. Oh, I'm sorry, I'm looking at the wrong page number.
 15 Q. All right.
 16 A. Sorry. Good.
 17 Q. And in that testimony, Mr. Brown has indicated that he
 18 did not visit any other restaurant, establishments or
 19 tavern establishments prior to going to Sergeant
 20 Peppers; is that correct?
 21 A. That's correct.
 22 Q. Did you accept that testimony as credible and truthful,
 23 or did you rely on facts conveyed in that particular
 24 testimony in forming any opinions in this particular
 25 case?

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1 MR. WHITE: Objection.
 2 THE WITNESS: I'm -- I'm going to say no in the
 3 sense that -- that the concentration of alcohol in
 4 him -- There had to be additional consumption
 5 and -- and -- at some point, and so it -- I would
 6 say that there's -- is every -- there's a
 7 reasonable chance that he drank more at Sergeant
 8 Peppers or there's a reasonable chance that he
 9 drank before he went to Sergeant Peppers. I mean,
 10 there's -- He's saying that it -- The thing that's
 11 the most -- lacks the most credibility is the fact
 12 that there's this limited number of drinks
 13 consumed.
 14 BY MR. JEFFRIES:
 15 Q. And in your mind, why does it lack credibility?
 16 MR. WHITE: Objection.
 17 THE WITNESS: Well, again, because he would have
 18 had to have had probably, over the course of the
 19 whole drinking event, three times --
 20 two-and-a-half to three times as many consumed as
 21 he is saying that he consumed.
 22 BY MR. JEFFRIES:
 23 Q. And what I'm trying to get at, Mr. Glover, is what --
 24 what was the basis, or what was the basis for your
 25 opinion that he consumed that alcohol prior to

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1 his statement that he had not patronized any other
 2 establishment prior to Sergeant Peppers --
 3 A. I'm not --
 4 Q. -- as opposed to assuming that he drank the additional
 5 alcohol after leaving O'Charley's?
 6 MR. WHITE: Objection.
 7 THE WITNESS: I was not --
 8 BY MR. JEFFRIES:
 9 Q. Or -- or are you now saying that this may be credible
 10 testimony?
 11 MR. WHITE: Objection.
 12 THE WITNESS: I'm not -- I'm just -- I'm saying he
 13 doesn't account for everything that he drank.
 14 Because he said he didn't drink prior to that,
 15 doesn't mean he didn't.
 16 BY MR. JEFFRIES:
 17 Q. Would the converse be true, that because he said he
 18 didn't drink after that, doesn't mean that he didn't?
 19 MR. WHITE: Objection.
 20 THE WITNESS: No. But there's an accounting to a
 21 certain extent of where he was and, again, I have
 22 to go back to what I said earlier with respect to
 23 impairment. There's a level of impairment that's
 24 demonstrated that's consistent with having had to
 25 have consumed significantly more than he's said he

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1 patronizing Sergeant Peppers as opposed to subsequent
 2 to leaving O'Charley's?
 3 A. Well, I'm not saying that he did drink prior to going
 4 there. I'm just saying that that's certainly --
 5 there's nobody who can account for where he was or what
 6 he was doing prior to that.
 7 Q. But according to your testimony in reaching your -- in
 8 forming your opinion, you reach the conclusion that
 9 this sworn testimony Mr. Brown provided here on
 10 Page 7 of his deposition was not credible and should
 11 not be considered in your analysis; is that a fair
 12 statement?
 13 MR. WHITE: Objection.
 14 THE WITNESS: Well, I guess -- I guess that's --
 15 I'm just saying that -- that it's -- he had to
 16 drink more, and if -- if we have -- if the
 17 receipts are there that show one thing, that
 18 doesn't mean that's all he drank, say, at Sergeant
 19 Peppers. That's what he paid for. It doesn't
 20 mean that's all that he drank. It doesn't mean he
 21 drank the ones he paid for. I'm just saying there
 22 was a lot more alcohol consumed at some point in
 23 time.
 24 BY MR. JEFFRIES:
 25 Q. Okay. So my question is simply: Why did you discount

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1 consumed. And that would be before he left
 2 O'Charley's. He had to have consumed
 3 significantly more to get to that level of
 4 impairment.
 5 BY MR. JEFFRIES:
 6 Q. Okay. We're going to talk about that in a minute, but
 7 let's go through this. It probably would be easiest to
 8 go through this in order.
 9 If you look ahead on Page 8 of his deposition, Lines 5
 10 through 10, and he has given sworn testimony that he
 11 would only consume alcohol once or twice a week and
 12 rarely would he drink any more frequently than that.
 13 Did you, in any way, consider that particular testimony
 14 in formulating any opinions that you've expressed
 15 either today or in your affidavit or in your criminal
 16 testimony?
 17 MR. WHITE: Objection.
 18 THE WITNESS: No.
 19 BY MR. JEFFRIES:
 20 Q. Why not?
 21 MR. WHITE: Objection.
 22 THE WITNESS: Well, I guess I don't have to demon-
 23 -- I don't have to show what a person's behavior
 24 or typical drinking pattern is. It's not
 25 something that I have to do.

<p style="text-align: right;">Page 125</p> <p>1 BY MR. JEFFRIES: 2 Q. Okay. You gave testimony in the criminal trial, 3 specifically on Page 323 of the transcript, that this 4 gentleman eliminated alcohol from his system at about 5 30 percent faster than the average person. 6 What is -- What opinions, if any, did you form as to an 7 explanation for why Mr. Brown's elimination rate for 8 alcohol was significantly higher than the average 9 person? 10 A. Most likely, because of greater experience with 11 alcohol. 12 Q. Okay. Now, considering that, why would you discount -- 13 Well, considering that, you chose to discount his 14 statement about his history of alcohol consumption of 15 once to twice weekly; is that correct? 16 MR. WHITE: Objection. 17 THE WITNESS: I don't know if you asked me if I 18 discounted it, but I don't -- At -- At his age, I 19 wouldn't see that as something that would have 20 influenced his rate of elimination to the -- to 21 the degree that it seems his rate is. 22 BY MR. JEFFRIES: 23 Q. So you would have thought that somebody who only drank 24 once or twice a week would have a slower elimination 25 rate than that demonstrated by Mr. Brown; is that</p>	<p style="text-align: right;">Page 126</p> <p>1 correct? Is that what you're saying? 2 A. I would expect that, yes. I mean, again, if they -- It 3 can also go to how much they're drinking on these one 4 or two times a week, but it's just -- it's not 5 consistent with a moderate drinker. 6 Q. Is it, considering your investigation, your experience 7 and your analysis of the case, you would not accept 8 that portion of Mr. Brown's testimony as credible or 9 believable, would you? 10 MR. WHITE: Objection. 11 THE WITNESS: I -- I question it, and I think one 12 of the other aspects of that I'd look at is for 13 someone who says that their drinking behavior is 14 one where they always chase a shot with a beer, a 15 shot and a beer is as not a -- and from my 16 experience, that -- that's a different drinking 17 behavior than somebody who's going to go have a 18 beer someplace. That's just -- that's different. 19 BY MR. JEFFRIES: 20 Q. Okay. So you discount that aspect of the testimony -- 21 MR. WHITE: Objection. 22 BY MR. JEFFRIES: 23 Q. -- as useful? 24 MR. WHITE: Objection. 25 THE WITNESS: Yes.</p>
<p style="text-align: right;">Page 127</p> <p>1 BY MR. JEFFRIES: 2 Q. Okay. Look with me, if you would, on Page 13 of his 3 deposition, Lines 7 through 12. 4 A. Mmm, hmm. 5 Q. And you have actually circled and put an asterisk by 6 this particular testimony, haven't you? 7 A. Right. 8 Q. And in this testimony, Mr. Brown suggests that he was 9 at the Randolph's establishment between 12:00 and 1:00. 10 And did you consider those facts in your analysis or 11 your plotting of blood alcohol content or any of the 12 opinions that you have expressed in this case? 13 MR. WHITE: Objection. 14 THE WITNESS: I believe the reason that I circled 15 it and considered it is I don't think that's 16 consistent with the times that was in evidence 17 with respect to when he was at O'Charley's. 18 BY MR. JEFFRIES: 19 Q. Okay. So you discounted this aspect of his testimony? 20 MR. WHITE: Objection. 21 THE WITNESS: His ability to recall the time, yes. 22 BY MR. JEFFRIES: 23 Q. Okay. Turn with me, if you will, to Page 26 of his 24 deposition. And, again, he testifies here at Lines 16 25 through 25, that Sergeant Peppers was the first</p>	<p style="text-align: right;">Page 128</p> <p>1 establishment he had visited; is that right? 2 MR. WHITE: Objection. 3 THE WITNESS: Correct. 4 BY MR. JEFFRIES: 5 Q. The second time he's testified to this under oath, and 6 you still did not accept that as a credible statement 7 as to his pattern of alcohol consumption on this 8 particular evening? 9 MR. WHITE: Objection. 10 BY MR. JEFFRIES: 11 Q. Is that correct? 12 MR. WHITE: Objection. 13 THE WITNESS: Well, again, I -- I -- The reason 14 that's a flag for me is that I don't believe that 15 the receipts were indicating that that was the 16 time frame for when he was purchasing or paying 17 for alcohol there. That's, again, my 18 recollection. And so that -- that time doesn't 19 fit. 20 BY MR. JEFFRIES: 21 Q. But you don't have any other objective evidence, 22 testimony, statement, affidavit, trial testimony, 23 deposition testimony, or anything else to suggest that 24 the gentleman had frequented or visited any other 25 establishment prior to Sergeant Peppers, do you?</p>

<p style="text-align: right;">Page 129</p> <p>1 MR. WHITE: Objection. 2 THE WITNESS: I don't have any information, no. 3 BY MR. JEFFRIES: 4 Q. Okay. And even though on two separate occasions in his 5 deposition, under oath, he testifies it was the first 6 place he went to, you discount that in your analysis; 7 is that correct? 8 MR. WHITE: Objection. 9 THE WITNESS: No, I'm -- Again, I mark it. I flag 10 it because it's inconsistent with people who -- 11 either the records or the -- the information 12 it's -- that was at trial. 13 BY MR. JEFFRIES: 14 Q. It's also inconsistent with the opinion that you were 15 paid to provide, isn't it? 16 MR. WHITE: Objection. 17 THE WITNESS: All right. Repeat your question. 18 BY MR. JEFFRIES: 19 Q. It's also inconsistent with the opinion you were paid 20 to provide, isn't it? 21 MR. WHITE: Objection. 22 THE WITNESS: That what is inconsistent? 23 BY MR. JEFFRIES: 24 Q. That he had not visited other establishments prior to 25 Sergeant Peppers.</p>	<p style="text-align: right;">Page 130</p> <p>1 MR. WHITE: Objection. 2 BY MR. JEFFRIES: 3 Q. That doesn't fit with your linear analysis of the 4 charting of the blood alcohol content on the night in 5 question, does it? 6 MR. WHITE: Objection. 7 THE WITNESS: Well, I don't go back to this 8 earlier time. I'm looking at alcohol in his 9 system at 11:30. 10 BY MR. JEFFRIES: 11 Q. Okay. Are these times that he testifies that he 12 consumed the various drinks important to you in your 13 analysis? 14 A. They are, to a degree, and I guess I'd say to the -- to 15 the extent that they are corroborated. 16 Q. Now, looking a little farther on Page 27, Mr. Brown was 17 asked if he went anywhere between the time he was at 18 Sergeant Peppers and the time he was at O'Charley's. 19 Did you -- Do you recall reviewing that testimony? 20 A. Yes. 21 MR. WHITE: Objection. 22 BY MR. JEFFRIES: 23 Q. And did you accept that as a credible statement in 24 terms of how you conducted your analysis and the facts 25 you relied on in forming your opinions?</p>
<p style="text-align: right;">Page 131</p> <p>1 MR. WHITE: Objection. 2 THE WITNESS: I -- I don't -- I believe there was 3 good information as to the time that he got to 4 O'Charley's, but as far as the time that he's 5 saying he left, I don't know that there's -- that 6 the facts agree with what he said. 7 BY MR. JEFFRIES: 8 Q. Okay. Now, did you -- Do you know who Terry Brown is? 9 A. Terry Brown? 10 Q. Mmm, hmm. 11 A. It doesn't ring a bell. 12 Q. Okay. So you're not aware that Terry Brown was John 13 Brown's mother? 14 A. I -- I don't know. 15 Q. And you haven't -- I take it you haven't been provided 16 with her deposition testimony in the case, have you? 17 A. No, I have not. 18 Q. And so you're unaware that her deposition testimony 19 suggests that Mr. Brown returned to his home between 20 the time he visited Sergeant Peppers and the time he 21 visited O'Charley's? 22 MR. WHITE: Objection. 23 THE WITNESS: I -- If that's in there, I'm not 24 aware of it. 25 BY MR. JEFFRIES:</p>	<p style="text-align: right;">Page 132</p> <p>1 Q. Would that be an important fact for you to consider in 2 your analysis, in trying to piece together his activity 3 and drinking activity on the evening in question? 4 MR. WHITE: Objection. 5 THE WITNESS: Oh, it would account for time. 6 That's -- 7 BY MR. JEFFRIES: 8 Q. He could have also gone home and consumed more alcohol, 9 couldn't he? 10 MR. WHITE: Objection. 11 THE WITNESS: True. 12 BY MR. JEFFRIES: 13 Q. He could have ingested the narcotics, he could have 14 ingested the prescription medication; couldn't he? 15 MR. WHITE: Objection. 16 THE WITNESS: True. 17 BY MR. JEFFRIES: 18 Q. Wouldn't you want to know all those types of facts as 19 an expert forming an opinion in a case like this? 20 MR. WHITE: Objection. 21 THE WITNESS: It could provide additional 22 information. Though, simply going home doesn't 23 mean that there's anything necessarily consumed 24 there. And I don't know if in her testimony that 25 there's any indication that anything was consumed</p>

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1 at that time; so I mean, I don't have the
 2 information.
 3 BY MR. JEFFRIES:
 4 Q. On Page 28, Lines 10 through -- Well, before I ask that
 5 question. You don't have that information because it
 6 wasn't provided to you by the lawyers that hired you;
 7 is that correct?
 8 MR. WHITE: Objection.
 9 THE WITNESS: No, it's not been provided to me.
 10 BY MR. JEFFRIES:
 11 Q. Okay. Now, looking on Page 28, Lines 10 through 14,
 12 Mr. Brown states that he was at O -- at O'Charley's
 13 between 40 minutes and an hour. Did you consider those
 14 facts in any opinions you formed in the case?
 15 MR. WHITE: Objection.
 16 THE WITNESS: It's not terribly significant other
 17 than the fact that the people that were there
 18 could observe him.
 19 BY MR. JEFFRIES:
 20 Q. Okay. How -- In -- In reaching the opinions you've
 21 rendered, how long did you assume that Mr. Brown was at
 22 O'Charley's?
 23 A. I don't recall off -- off the top of my head, from
 24 either the trial or from the other information what
 25 length of time he was there. I just remember that he

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1 A. I --
 2 Q. Were you given any information, other than Mr. Brown's
 3 testimony, that let you --
 4 A. No, they did not.
 5 Q. Okay. Now, would that be important in any way with
 6 regard to your analysis?
 7 MR. WHITE: Objection.
 8 THE WITNESS: Well, if I'm looking at the time
 9 11:30 for when -- when I -- we're looking at an
 10 alcohol concentration. Beyond that, the amount of
 11 time that he's there, it's significant from the
 12 standpoint of people being able to observe his
 13 behavior. Aside from that, they say he had a
 14 shot, part of a beer, that's pretty
 15 self-contained.
 16 BY MR. JEFFRIES:
 17 Q. What about the amount of time within which he had had
 18 to consume the alcohol that he did drink; is that
 19 important?
 20 A. You mean how much time is available to him to drink?
 21 Q. I mean, if I drink four shots and two beers in 45
 22 minutes, is that going to have a different effect on me
 23 than if I drink four shots and two beers in three
 24 hours?
 25 MR. WHITE: Objection.

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1 was -- that they took the drink from him; someone went
 2 out in the parking lot with him. I believe someone
 3 offered to call a cab for him.
 4 Q. Is it important in your analysis as to what particular
 5 times he was at these various establishments and what
 6 particular conduct he engaged in at those times?
 7 MR. WHITE: Objection.
 8 THE WITNESS: To a certain degree. Just as I've
 9 indicated before, the fact that he was -- the
 10 level of intoxication was observed by people at
 11 O'Charley's at a particular time is significant.
 12 BY MR. JEFFRIES:
 13 Q. Did you make any effort to ascertain precisely the time
 14 periods that Mr. Brown was at the various
 15 establishments?
 16 A. Did I independently try to do anything like that? I
 17 just --
 18 Q. Or is there anything in your analysis or in the
 19 information that was provided to you by the lawyers
 20 that hired you that enabled you to do that?
 21 MR. WHITE: Objection.
 22 THE WITNESS: On -- Did it enable -- enable me to
 23 do that?
 24 BY MR. JEFFRIES:
 25 Q. Yeah.

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1 THE WITNESS: Certainly.
 2 BY MR. JEFFRIES:
 3 Q. Okay. So isn't it important then for you, in putting
 4 together your analysis, to figure out a time line for
 5 when he may have purchased the various drinks, when he
 6 may have consumed the various drinks, and when he may
 7 have been at the various establishments?
 8 A. In one sense, but again, the drinks were not consistent
 9 with the level of impairment or the concentration of
 10 alcohol. There's records that indicates that it was
 11 paid for at a particular time. That doesn't mean
 12 that's all that was consumed.
 13 Q. Let's talk about that. You have -- Did you review the
 14 records that indicate what time the drinks were paid
 15 for?
 16 A. I don't know that I ever saw the record. That would
 17 have been in the criminal trial. I don't think I ever
 18 saw the receipts. That's off the top of my head. I
 19 don't recall the time.
 20 Q. And I take it that you do not know anything about the
 21 procedures at these various establishments in terms of
 22 how they process client billings, how they run credit
 23 cards, how they charge out open tabs; is that a fair
 24 statement?
 25 MR. WHITE: Objection.

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1 THE WITNESS: That would be correct.
 2 BY MR. JEFFRIES:
 3 Q. So relying on the times that you see on credit card
 4 receipts or on bar tabs may not necessarily allow you
 5 to accurately document the times at which drinks were
 6 consumed and the times at which the individual may have
 7 been in the various establishments; is that a fair
 8 statement?
 9 MR. WHITE: Objection.
 10 THE WITNESS: That's fair, it --
 11 BY MR. JEFFRIES:
 12 Q. Okay.
 13 A. -- it provides a document showing date, time and place
 14 of a person being there. I don't know that it would
 15 show -- it may or may not show the span of time he was
 16 there. But, again, I don't know their billing
 17 practices, but I would doubt that he would have been
 18 billed for the drinks before he -- he would have paid
 19 for them before he got them if he was running a tab.
 20 Q. But the tab or the credit card certainly could have
 21 been run or processed sometime after he had consumed
 22 the drinks or after he had even left the establishment,
 23 couldn't it?
 24 MR. WHITE: Objection.
 25 THE WITNESS: Well, I don't think they would run

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1 out that a lot of these things aren't significant
 2 once you get further in the transcript.
 3 BY MR. JEFFRIES:
 4 Q. You also mark him being asleep between 2:30 and 6:30 on
 5 Page 34, Line 1. In forming the opinions that you've
 6 expressed today, particularly the opinion you've
 7 repeatedly expressed with regard to his lack of alcohol
 8 consumption after leaving O'Charley's, did you use
 9 these times he provided in support of that opinion, or
 10 did they form the basis of that opinion in any way?
 11 MR. WHITE: Objection.
 12 THE WITNESS: No, I've -- I've used the -- the
 13 times of drinking that have been documented as
 14 start/stop points, if you will, because there's no
 15 evidence that there was more afterwards.
 16 BY MR. JEFFRIES:
 17 Q. There's no evidence there was any before either, is
 18 there?
 19 MR. WHITE: Objection.
 20 THE WITNESS: That's correct.
 21 BY MR. JEFFRIES:
 22 Q. Okay. Looking ahead at Page 38, Lines 10 through 20,
 23 these are also lines that you've had marked. And in
 24 this testimony, Mr. Brown indicates being in
 25 O'Charley's -- in Sergeant Peppers for a period of

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1 it after he left. They'd have to run his card
 2 before he left.
 3 BY MR. JEFFRIES:
 4 Q. Okay. But, again, you don't have any familiarity with
 5 those processes and that information wasn't provided to
 6 you, was it?
 7 MR. WHITE: Objection.
 8 THE WITNESS: That's correct.
 9 BY MR. JEFFRIES:
 10 Q. Okay. Now looking ahead, Page 33, Lines 16 through 20
 11 in his deposition. This is another one that you
 12 have -- that you have an asterisk by and have it
 13 circled. He indicates that he slept for two to four
 14 hours. Is that information of any significance to you
 15 in terms of the analysis that you did?
 16 A. Not at all.
 17 MR. WHITE: Objection.
 18 BY MR. JEFFRIES:
 19 Q. Okay. Why did you circle it and mark it?
 20 MR. WHITE: Objection.
 21 THE WITNESS: I don't know that I can tell you
 22 exactly why I circled it and marked it. I read
 23 the transcript. Things that stand out to me, I
 24 may mark. It -- It's an accounting for some time,
 25 but, you know, as you go through it, then you find

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1 time, followed by 40 minutes to an hour at O'Charley's,
 2 and then 15 minutes at Randolph's, 15 to 20 minutes at
 3 Randolph's.
 4 Did you consider this testimony in any way in forming
 5 the opinions that you've expressed?
 6 MR. WHITE: Objection.
 7 THE WITNESS: I don't believe so.
 8 BY MR. JEFFRIES:
 9 Q. Okay. If you'll look, I believe it's Mr. Garofalo who
 10 was asking the questions at that point. This
 11 recounting of events that Mr. Brown provides does not
 12 take us up to 2:30 in the morning, when he allegedly
 13 went to sleep.
 14 Did you review any other information or testimony or
 15 documents to suggest what Mr. Brown may have been doing
 16 in the interim during this time that's unaccounted for
 17 by his testimony?
 18 MR. WHITE: Objection.
 19 THE WITNESS: No.
 20 BY MR. JEFFRIES:
 21 Q. On Page 39, Lines 8 through 9, this is also something
 22 that you've got circled. Mr. Brown suggests that he
 23 may have been at Randolph's longer than he initially
 24 recalled; do you see that?
 25 MR. WHITE: Objection.

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1 THE WITNESS: He said possibly, yes.
 2 BY MR. JEFFRIES:
 3 Q. Did you consider whether or not he might have consumed
 4 any alcoholic beverages at Randolph's?
 5 MR. WHITE: Objection.
 6 THE WITNESS: I did not. I believe he's never
 7 indicated that he had anything there.
 8 BY MR. JEFFRIES:
 9 Q. Do you know what kind of establishment Randolph's is?
 10 A. I -- I assume it's a place where you can purchase
 11 alcohol. I believe when he was at the O'Charley's
 12 parking lot, he asked somebody, well, what else is open
 13 where I can get more alcohol or drink more or
 14 something, and they may have been the place identified,
 15 I'm not certain.
 16 Q. Okay. Now, you -- On Page 40, Lines 14 and 15, he --
 17 Mr. Brown was asked whether he talked to anyone while
 18 in prison about the events on the night of August 8th
 19 or the morning of August 9th, 2002, and he replied that
 20 he had not.
 21 During your participation in the criminal trial, did
 22 you become aware of the fact that he did, in fact, give
 23 statements to other individuals and other inmates while
 24 he was incarcerated?
 25 MR. WHITE: Objection.

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1 MR. WHITE: Objection.
 2 THE WITNESS: The amount that he is credited with
 3 drinking there doesn't have a lot to do with the
 4 opinion. This is not a -- an amount that's
 5 consistent with what the tab showed, or I believe
 6 what he stated in his interview with the ALE
 7 agent; so he also says he can't remember a whole
 8 lot.
 9 BY MR. JEFFRIES:
 10 Q. Yeah. So you said earlier that the tab only shows what
 11 he was charged for, not necessarily what he consumed;
 12 is that right?
 13 A. I'm just saying there's a potential for other people to
 14 buy people something to drink, or he could have used
 15 some cash. I -- I'm saying that what was paid for is
 16 not an absolute certainty that that's what he drank or
 17 that that was all that he drank.
 18 Q. Okay. And here he says maybe he had a beer and a shot,
 19 and your recollection is that that is inconsistent with
 20 what he told the ALE officer?
 21 MR. WHITE: Objection.
 22 THE WITNESS: At -- In some point, I believe it is
 23 with the ALE officer, where he said he had four
 24 beers -- or four shots and two beers.
 25 BY MR. JEFFRIES:

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1 THE WITNESS: I do not recall that.
 2 BY MR. JEFFRIES:
 3 Q. So you didn't perform any further investigation or look
 4 at any other evidence about what statements he may have
 5 made while he was in prison?
 6 MR. WHITE: Objection.
 7 THE WITNESS: That's correct.
 8 BY MR. JEFFRIES:
 9 Q. Did you consider this testimony credible when you read
 10 it and just move on, or did you choose not to follow up
 11 on that; did you forget to follow up on it --
 12 MR. WHITE: Objection.
 13 BY MR. JEFFRIES:
 14 Q. -- or did you consider it at all?
 15 MR. WHITE: Objection.
 16 THE WITNESS: Well, I didn't follow up on any of
 17 it. I wasn't aware that he testified that -- or
 18 that anyone testified that he talked to them in
 19 prison. So I didn't do anything with it.
 20 BY MR. JEFFRIES:
 21 Q. Okay. He testifies here on Page 40, Lines 17 through
 22 21, that all he had at Sergeant Peppers was a beer and
 23 a shot; not a whole lot. Is that consistent with the
 24 assumptions you made in forming the opinions that
 25 you've expressed?

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1 Q. Okay. Now, that was not sworn testimony, was it?
 2 MR. WHITE: Objection.
 3 THE WITNESS: Probably was not.
 4 BY MR. JEFFRIES:
 5 Q. Any reason that you chose to believe a statement, not
 6 even a recorded statement but a -- but notes from a
 7 statement that he may have given an ALE officer, as
 8 opposed to his sworn deposition testimony, in your
 9 analysis of the case?
 10 A. I --
 11 MR. WHITE: Objection.
 12 THE WITNESS: I believe the receipt showed --
 13 BY MR. JEFFRIES:
 14 Q. How many times --
 15 A. -- four shots.
 16 Q. How many times are we going to go through that the
 17 receipt doesn't demonstrate conclusively what he drank?
 18 A. Well --
 19 Q. I'm asking you what assumptions you made about what he
 20 drank, and I'm asking you why you ignored the sworn
 21 testimony and -- and accepted the hand -- the written
 22 notes from the ALE officer?
 23 MR. WHITE: I object. This is getting a bit
 24 argumentative. He's answered those questions.
 25 You've asked them. He's answered them.

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1 BY MR. JEFFRIES:
 2 Q. You can go ahead, Mr. Glover.
 3 A. I don't -- I didn't look at it from the standpoint of
 4 sworn statements. I think -- And I did not analyze his
 5 testimony with respect to what might be a self-serving
 6 statement. I'm just -- I read the information in here.
 7 I apply my knowledge, my training to the facts.
 8 Q. Okay. So getting a conclusive statement or -- or a --
 9 a conclusion about what precisely he consumed at
 10 Sergeant Peppers was not a significant part of your
 11 analysis?
 12 MR. WHITE: Objection.
 13 THE WITNESS: I don't know that that can be
 14 gotten. He even said here: Maybe a beer or a
 15 shot. I can't remember.
 16 BY MR. JEFFRIES:
 17 Q. Okay. So my question is simply: Did what he drank at
 18 Sergeant Peppers and when he drank it, factor into your
 19 analysis, and -- and did it form the basis in any way
 20 of the opinions that you've expressed in this case?
 21 MR. WHITE: Objection, asked and answered.
 22 THE WITNESS: I would say no, with the exception
 23 that it does not account for all the alcohol in
 24 his system.
 25 BY MR. JEFFRIES:

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1 anything else after leaving O'Charley's and ignore
 2 everything else?
 3 MR. WHITE: Objection.
 4 BY MR. JEFFRIES:
 5 Q. That's my question. That's my only question.
 6 MR. WHITE: Objection.
 7 THE WITNESS: I'm saying that I don't have
 8 anything to indicate that he did, and I also, as
 9 I've said several times, the level of impairment
 10 that was demonstrated is consistent with a high
 11 level of alcohol --
 12 BY MR. JEFFRIES:
 13 Q. Okay.
 14 A. -- prior to then.
 15 Q. Let's talk about precisely what -- what is the level of
 16 impairment demonstrated that you're talking about?
 17 A. The level of impairment that -- My recollection is that
 18 he had problems, as far as stumbling or running into
 19 people, at O'Charley's and that --
 20 Q. Well, what's the source of that information?
 21 A. That would have been the information from the
 22 bartenders who ultimately cut him off.
 23 Q. Do you remember which bartender said he ran into
 24 someone?
 25 A. I do not. I just recall that that was in some part

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1 Q. I want to make sure I understand what you just said.
 2 It is not important to you what he drank at Sergeant
 3 Peppers, how much he drank at Sergeant Peppers, or when
 4 he drank it, other than your drawing the conclusion
 5 that the drinks he allegedly consumed at Sergeant
 6 Peppers did not account for all the alcohol in his
 7 system?
 8 MR. WHITE: Objection.
 9 THE WITNESS: I'm saying that there was a
 10 concentration of alcohol and a level of impairment
 11 at a particular point in time that had to come
 12 from prior consumption.
 13 There is no way, that I'm aware of at this point
 14 in time, to document each and every drink that was
 15 consumed at each and every point prior to that
 16 time.
 17 And I'm saying that those four shots and two beers
 18 cannot account for the sum total of alcohol in his
 19 system and the level of impairment that he had.
 20 BY MR. JEFFRIES:
 21 Q. Well, what I'm trying to really figure out, Mr. Glover,
 22 is why in reviewing this deposition testimony, which is
 23 the only testimony you have reviewed about his alcohol
 24 consumption on the night in question, why is it that
 25 you choose to accept his testimony that he didn't drink

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1 of -- some part of this whole thing. That's my
 2 recollection.
 3 Q. Do you know who Amber Starnes is?
 4 A. Excuse me?
 5 Q. Do you know who Amber Starnes is?
 6 A. No.
 7 Q. I take it you haven't reviewed her testimony or her
 8 statements?
 9 A. No.
 10 Q. Okay. So would it surprise you to know that she has
 11 given sworn testimony suggesting that when she saw
 12 Mr. Brown at Randolph's, after he left O'Charley's,
 13 that she does not -- did not observe any behavior that
 14 indicated to her that he was in any way impaired?
 15 MR. WHITE: Objection. That's not -- that's not
 16 in evidence.
 17 MR. JEFFRIES: Save it -- You can save it for your
 18 closing argument.
 19 MR. FERRELL: Wait, wait, wait a minute.
 20 BY MR. JEFFRIES:
 21 Q. Would it surprise you to learn that she has given
 22 testimony to suggest that when she observed Mr. Brown
 23 at Randolph's, that she did not detect any evidence
 24 that he was impaired?
 25 MR. WHITE: Objection. I'm going to ask him not

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<p>1 to answer that because that's not the 2 characterization of the testimony that she gave. 3 That's not into evidence. 4 MR. JEFFRIES: You can redirect him and ask him. 5 It's a discovery deposition. 6 MR. WHITE: My objection is on the record. 7 BY MR. JEFFRIES: 8 Q. You don't know who Amber Starnes is? 9 A. No, I don't. 10 Q. Your lawyers have never given you copies of her 11 statements? 12 A. No. 13 Q. You never reviewed any of the information she provided 14 to Agent Tally, have you? 15 A. No. 16 Q. Okay. If the jury should find testimony from other 17 witnesses suggesting that, after leaving O'Charley's, 18 Mr. Brown was observed in a condition that did not 19 suggest that he was in any way impaired, assuming that 20 testimony to be true, would that have any effect on the 21 opinions that you've expressed in this case? 22 MR. WHITE: Objection. There is no such 23 testimony, but you can answer. 24 THE WITNESS: I would have to, obviously, either 25 read or hear the testimony, and also, we'd want to</p>	<p>1 know the condition of the individual at the time 2 that they made their observations and the degree 3 to which they interacted with the individual. All 4 of that comes into play. 5 BY MR. JEFFRIES: 6 Q. But you haven't been made aware of any testimony to 7 suggest -- or any witness who may suggest that 8 Mr. Brown was observed after leaving O'Charley's and 9 that he did not appear intoxicated at that time? 10 MR. WHITE: Objection. 11 BY MR. JEFFRIES: 12 Q. Have you been made aware of the existence of any such 13 statement or testimony? 14 MR. WHITE: Objection. 15 THE WITNESS: I'm not aware of it. There may have 16 been something at the trial, but I don't recall 17 it. 18 BY MR. JEFFRIES: 19 Q. Have you been made aware of any -- the existence of any 20 statement or testimony to suggest that any individual 21 observed Mr. Brown before he went to Sergeant Peppers? 22 A. No. 23 Q. And test- -- You're aware of no such testimony? 24 MR. WHITE: Objection. 25 THE WITNESS: No.</p>
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<p>1 BY MR. JEFFRIES: 2 Q. Okay. So your conclusions are based upon the 3 statements of the bartenders that they saw Mr. Brown 4 stumble, and -- and I think you said stumbling into 5 people at the O'Charley's establishment? 6 A. It was either -- 7 MR. WHITE: Objection. 8 THE WITNESS: Yes. It was either into people or 9 maybe there was a glass that was a partition 10 between one area and another. There was something 11 that went on in his ability to locomote without -- 12 I say locomote normally, that got their attention, 13 and it's sort of like they paid -- again, my 14 recollection from the testimony in the trial -- 15 that they actually paid closer attention at that 16 point. 17 And that was when they said, okay, he's cut off. 18 Took his beer from him, and someone went outside 19 with him. I don't remember if there was an issue 20 about either getting his truck keys or calling a 21 cab. It was something along those lines, but -- 22 but there was additional -- there was interactions 23 with him at O'Charley's. 24 BY MR. JEFFRIES: 25 Q. Do you know whether or not those individual bartenders</p>	<p>1 have given sworn deposition testimony in this case? 2 A. I have no idea. 3 Q. Okay. So that hasn't been provided to you for your 4 review? 5 A. No. 6 Q. As that appears to be such a central focus of the 7 opinions that you've expressed, would you be interested 8 in reviewing that testimony? 9 MR. WHITE: Objection. 10 BY MR. JEFFRIES: 11 Q. Would you think it would be important, as an expert 12 expressing opinions in this case, for you to review 13 that testimony? 14 MR. WHITE: Objection. 15 THE WITNESS: It could have value. 16 BY MR. JEFFRIES: 17 Q. Okay. Look with me at Mr. Brown's deposition, Page 43, 18 Lines 20 and 21. He's asked was he drunk when he got 19 to Sergeant Peppers. He responds no. 20 Did you -- Did you consider that particular testimony 21 in your analysis or as the basis for any opinions that 22 you've expressed? 23 MR. WHITE: Objection. 24 THE WITNESS: No. 25 BY MR. JEFFRIES:</p>

38 (Pages 149 to 152)

<p style="text-align: right;">Page 153</p> <p>1 Q. Why not?</p> <p>2 MR. WHITE: Objection.</p> <p>3 THE WITNESS: Because he's also indicated he</p> <p>4 doesn't recall what he had to drink, and I believe</p> <p>5 there are statements to the ALE agent about his</p> <p>6 level of impairment. He said he was either drunk</p> <p>7 or something like that, but not unconscious.</p> <p>8 BY MR. JEFFRIES:</p> <p>9 Q. You would agree that, based on that answer you've just</p> <p>10 provided, that at the very best, Mr. Brown has given</p> <p>11 inconsistent statements?</p> <p>12 MR. WHITE: Objection.</p> <p>13 THE WITNESS: I would say there are inconsistent</p> <p>14 statements in here, yes.</p> <p>15 BY MR. JEFFRIES:</p> <p>16 Q. Okay. Have you seen any statement or reviewed any</p> <p>17 testimony to confirm whether or not Mr. Brown actually</p> <p>18 even consumed the shot of Tequila at O'Charley's?</p> <p>19 MR. WHITE: Objection.</p> <p>20 THE WITNESS: Only from the criminal trial when it</p> <p>21 was testified that he took the shot and then came</p> <p>22 back and got the beer.</p> <p>23 BY MR. JEFFRIES:</p> <p>24 Q. Did somebody testify that he actually drank the shot?</p> <p>25 MR. WHITE: Objection.</p>	<p style="text-align: right;">Page 154</p> <p>1 THE WITNESS: I don't recall absolutely, but I</p> <p>2 believe that they did.</p> <p>3 BY MR. JEFFRIES:</p> <p>4 Q. On Page 50 of Mr. Brown's deposition testimony, Lines 2</p> <p>5 through 6, he claims that he didn't have anything to</p> <p>6 drink at Randolph's.</p> <p>7 Did you accept that testimony as credible, or did that</p> <p>8 testimony form the basis of any of the opinions that</p> <p>9 you've expressed?</p> <p>10 MR. WHITE: Objection.</p> <p>11 THE WITNESS: I -- I didn't use it in forming my</p> <p>12 opinion. He also says he doesn't exactly --</p> <p>13 remember exactly what he did, and so I can't</p> <p>14 factor in one drink and two drinks because</p> <p>15 there's -- or three or four or whatever because</p> <p>16 there's nothing in there to indicate that there</p> <p>17 was any.</p> <p>18 BY MR. JEFFRIES:</p> <p>19 Q. Okay. Now, you -- he says here that he didn't have</p> <p>20 anything to drink at Randolph's, which would be</p> <p>21 consistent with the opinion that you've expressed.</p> <p>22 Considering what you've just described as the</p> <p>23 unreliability of his statements, did you consider that</p> <p>24 he might have, in fact, consumed additional alcoholic</p> <p>25 beverages at Randolph's?</p>
<p style="text-align: right;">Page 155</p> <p>1 MR. WHITE: Objection, mischaracterizes his</p> <p>2 opinion.</p> <p>3 THE WITNESS: I didn't consider that he did. He</p> <p>4 has inconsistencies in here. The reason for his</p> <p>5 inconsistencies could be his ability to recall or</p> <p>6 his intentional inconsistencies. I can't divine</p> <p>7 which of it it is.</p> <p>8 BY MR. JEFFRIES:</p> <p>9 Q. So it's certainly possible that he could have consumed</p> <p>10 significant additional amounts of alcohol at</p> <p>11 Randolph's, isn't it?</p> <p>12 MR. WHITE: Objection.</p> <p>13 THE WITNESS: Assuming that they sell alcohol, and</p> <p>14 that he was there for a length of time that he</p> <p>15 could do it.</p> <p>16 BY MR. JEFFRIES:</p> <p>17 Q. Did you ever ask for any information or any further</p> <p>18 information about the events that may have transpired</p> <p>19 at Randolph's, or additional statements about what</p> <p>20 transpired at Randolph's, or did you ask your lawyers</p> <p>21 about whether they had any further information about</p> <p>22 the events that transpired there while Mr. Brown was</p> <p>23 present in that establishment?</p> <p>24 MR. WHITE: Object to the form of the question.</p> <p>25 THE WITNESS: No.</p>	<p style="text-align: right;">Page 156</p> <p>1 BY MR. JEFFRIES:</p> <p>2 Q. Okay. So even after considering the possibility that</p> <p>3 his testimony may be inaccurate and that he may have</p> <p>4 consumed alcohol at Randolph's after leaving</p> <p>5 O'Charley's, you didn't look into any further</p> <p>6 information or evidence about those issues?</p> <p>7 MR. WHITE: Objection.</p> <p>8 THE WITNESS: I have not looked at any other</p> <p>9 information.</p> <p>10 BY MR. JEFFRIES:</p> <p>11 Q. Let me ask you, Mr. Glover, about the excerpts from</p> <p>12 Agent Tally's report that you reviewed. And I'm</p> <p>13 assuming that, in your present employment, you were</p> <p>14 familiar with the North Carolina Alcohol Law</p> <p>15 Enforcement Division; is that a fair statement?</p> <p>16 A. To a certain extent I am.</p> <p>17 Q. Do you work with those individuals and those agents</p> <p>18 frequently?</p> <p>19 A. No. Some of the ABC guys we provided ethanol gas</p> <p>20 canisters for them to calibrate their AlcoSensors with,</p> <p>21 but that's the limit and --</p> <p>22 Q. So you didn't -- I'm sorry. I didn't mean to interrupt</p> <p>23 you.</p> <p>24 A. That's all right. And some of them are chemical</p> <p>25 analysts, and so that's the limit of it.</p>

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1 Q. So you've helped train some of them and supervise some
 2 of them?
 3 A. Well, I don't supervise them. And since I don't teach
 4 the Intoxilyzer class, I personally would not have
 5 taught them. But the ones that would hold permits,
 6 obviously, would have to go -- would have to have gone
 7 through our class.
 8 Q. Okay. So you -- maybe a better characterization is
 9 that you supervise the program that they were trained
 10 in --
 11 A. Yes.
 12 Q. -- some of them? Okay. Okay. Now, you were provided
 13 with an excerpt of this report. Are you familiar with
 14 the reporting practices of the ALE agents who
 15 investigate matters like this?
 16 A. No.
 17 Q. Okay. If you look at the report that you've got there,
 18 what was provided in the materials that you had sent to
 19 Mr. Garfalo's office was an excerpt of three pages,
 20 and at the top of those pages, it's indicated that they
 21 are Pages 11, 12 and 13 of 13?
 22 A. That's correct.
 23 Q. Did you ever see the other ten?
 24 A. No, I did not.
 25 Q. Did you ever ask to see the other ten?

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1 they've testified in the trial, I heard their
 2 testimony, but I've not reviewed anything other
 3 than having heard their testimony, if I did.
 4 BY MR. JEFFRIES:
 5 Q. Do you recall Miss Hardyman's testimony at the criminal
 6 trial?
 7 MR. WHITE: Objection.
 8 THE WITNESS: No, I don't.
 9 BY MR. JEFFRIES:
 10 Q. And I -- Have you reviewed her testimony in any way in
 11 conjunction with forming the opinions that you've
 12 expressed here?
 13 MR. WHITE: Objection.
 14 THE WITNESS: No.
 15 BY MR. JEFFRIES:
 16 Q. Okay. If you look on Page 13 of -- of Agent Tally's
 17 report, about halfway down he says he asked Brown what
 18 else he had to drink that night, and Brown said he
 19 might have had half a beer, and that was it.
 20 MR. WHITE: Objection.
 21 BY MR. JEFFRIES:
 22 Q. Do you recall reading that statement?
 23 MR. WHITE: Objection.
 24 THE WITNESS: I -- I see it. I've read it.
 25 BY MR. JEFFRIES:

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1 A. No, I did not.
 2 Q. Do you think that it would be important to review as
 3 much evidence as possible about the events in question
 4 prior to forming your opinion?
 5 MR. WHITE: Objection.
 6 THE WITNESS: If there was relevant information,
 7 but I don't know what the scope of this whole
 8 investigation was and how much of this would have
 9 involved strictly interviewing him. I --
 10 BY MR. JEFFRIES:
 11 Q. And that's something that was never provided to you; is
 12 that right?
 13 MR. WHITE: Objection.
 14 THE WITNESS: That's correct.
 15 BY MR. JEFFRIES:
 16 Q. Do you know who Freddie Robinson is?
 17 A. No, I do not.
 18 Q. Do you know who Tanya Hardyman is?
 19 A. No, I do not.
 20 Q. Don't mean to ask a stupid question, but I guess it's
 21 fair to assume you've never reviewed statements or
 22 testimony from those individuals?
 23 MR. WHITE: Objection.
 24 THE WITNESS: If they -- I see here that they were
 25 bartenders at one of the places that night. If

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1 Q. What, if anything, did your review of that information
 2 suggest to you with regard to your investigation of
 3 this case?
 4 MR. WHITE: Objection.
 5 THE WITNESS: That particular statement?
 6 BY MR. JEFFRIES:
 7 Q. Mmm, hmm. Yes, sir.
 8 MR. WHITE: Objection.
 9 THE WITNESS: Umm --
 10 MR. JEFFRIES: Is yes, sir, objectionable?
 11 MR. WHITE: In the form that it's a follow-up
 12 question --
 13 MR. JEFFRIES: All right.
 14 MR. WHITE: -- it deserves an objection.
 15 THE WITNESS: What does it mean to me?
 16 BY MR. JEFFRIES:
 17 Q. Yes, sir.
 18 MR. WHITE: Objection.
 19 MR. JEFFRIES: I'll try to stop saying: Yes, sir,
 20 Jason.
 21 MR. WHITE: It's okay.
 22 THE WITNESS: Probably from vagueness, if anything
 23 else -- if anything, but from the alcohol
 24 concentration, it's not significant.
 25 BY MR. JEFFRIES:

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<p>1 Q. Well, it is an admission, is it not, that he at least 2 had more alcohol to drink that night after he left 3 O'Charley's? 4 MR. WHITE: Objection. It calls for a legal 5 conclusion. 6 THE WITNESS: I would have to read to see if -- to 7 see what it says. 8 BY MR. JEFFRIES: 9 Q. Okay. I mean, I know you'd probably want to read the 10 whole report, but that hasn't been provided to you, 11 right? 12 MR. WHITE: Objection, argumentative. 13 MR. JEFFRIES: Do you dispute it? Did you give 14 him the whole report? 15 MR. WHITE: I'm sorry? 16 MR. JEFFRIES: I mean, do you dispute that? Did 17 you give him the whole report? 18 MR. WHITE: I object -- I object to the question 19 that -- 20 MR. JEFFRIES: I don't have any problem if 21 Mr. Ferrell speaks. 22 THE WITNESS: Well, I think that this particular 23 statement in here doesn't really say anything. I 24 asked Brown what else he had to drink that night. 25 Brown said he might have had a half a beer, and</p>	<p>1 that was it. 2 There's no indication of any time at all. It's 3 that night, and so I don't see that as being 4 significant at all. 5 BY MR. JEFFRIES: 6 Q. Okay. Where does that occur in the course of the 7 statement that the agent is taking? 8 MR. WHITE: Objection. 9 BY MR. JEFFRIES: 10 Q. Hasn't -- I mean, hasn't the agent already asked him 11 about what he drank at O'Charley's and what he drank at 12 Sergeant Peppers, and then at the -- near the 13 conclusion of the report, he asked him what else he had 14 to drink that night? 15 MR. WHITE: Objection. 16 BY MR. JEFFRIES: 17 Q. And my question is simply: What, if anything, does 18 that suggest to you? 19 MR. WHITE: Objection. 20 THE WITNESS: To me, it -- it -- his recollection, 21 he's saying a half a beer, but he's saying that 22 night. It's not saying whether it was 8:00 that 23 night or 4:00 in the morning that night. It 24 doesn't -- it doesn't say anything at all to me. 25 BY MR. JEFFRIES:</p>
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<p>1 Q. But when you read this report, did you see that it was 2 kind of tracking the statement chronologically? 3 MR. WHITE: Objection. 4 THE WITNESS: I do see that it is. I'm still 5 saying that he said what else he had to drink that 6 night. He's not saying before the crash, after 7 the crash, during the crash, before O'Charley's, 8 after Sergeant Peppers. He says that night. 9 BY MR. JEFFRIES: 10 Q. Oh, sure, he is. He's asking him -- he's gone into two 11 paragraphs above, he's asking him about O'Charley's; 12 he's asking him about Sergeant Peppers; he's asking him 13 where he spent the night; and then he asked him what 14 else he had to drink that night. 15 MR. WHITE: Objection. 16 THE WITNESS: And then he just had gone through 17 the chronology of the liver mush sandwich, the 18 crash, who his friend was, and then what else did 19 you have to drink that night, maybe half a beer. 20 There is nothing that suggests any kind of time 21 reference with that. 22 BY MR. JEFFRIES: 23 Q. In your chart that you did, which I think Mr. Garofalo 24 had marked as Exhibit 2, according to the way you've -- 25 you've tracked this here, your -- your chart begins at</p>	<p>1 midnight, and I assume that's midnight on the morning 2 of August 9, 2002; is that correct? 3 A. Well, it goes back. It would be -- The vertical axis 4 would be midnight. 5 Q. Okay. And is it fair to say, or is it accurate to say 6 that you didn't do any calculations or computations or 7 draw any conclusions about his blood alcohol content at 8 any point prior to that? 9 A. That's cor- -- well, 11:30, but that's not -- not back 10 behind 11:30. 11 Q. And so other than this calculation at 11:30, you 12 haven't formed any opinions or -- or done any 13 calculations to determine Mr. Brown's blood alcohol 14 content at anytime prior to 11:30 p.m. on the night of 15 August 8th; is that correct? 16 A. That's correct. 17 Q. Do you know when Mr. Brown was served his last drink at 18 Sergeant Peppers? 19 A. I do -- 20 Q. Or more importantly, when he was sold his last drink at 21 Sergeant Peppers? 22 A. I do not know that. Now, my understanding is it would 23 have been prior to his getting to O'Charley's; so that 24 makes it -- and there was -- there was some limit, some 25 time window in there. I don't recall the exact time</p>

1 window.
 2 Q. Okay. So is it fair to say that you have not performed
 3 any calculation or formed any conclusion about
 4 Mr. Brown's blood alcohol content at the time he
 5 purchased his last drink at Sergeant Peppers?
 6 A. That's correct.
 7 Q. Is it fair to say that you would be unable to express
 8 any such opinion, based on the investigation you've
 9 done and the information you've reviewed up to this
 10 point?
 11 MR. WHITE: Objection.
 12 THE WITNESS: You could do it. I would not be
 13 inclined to.
 14 BY MR. JEFFRIES:
 15 Q. Why not?
 16 MR. WHITE: Objection.
 17 THE WITNESS: It's just the further out you go --
 18 It's just not something I would be inclined to do.
 19 BY MR. JEFFRIES:
 20 Q. The further out you go, what?
 21 A. Well, I'm just saying, we -- we end up with points in
 22 time, and like this 11:30 is a point in time when he is
 23 not at Sergeant Peppers, based on the information.
 24 Q. Okay.
 25 A. And so going further back, some of those time points

1 may not be real good time points. Is it when the tab
 2 was paid? Is it when the drinks were purchased? All
 3 of those kind of things. And so I guess you could say
 4 it would be more -- the further out you go that way,
 5 the more speculative it would become.
 6 Q. Okay. Why -- Why do you draw the line at 11:30? Why
 7 do you stop there?
 8 A. I was asked what it would have been at 11:30.
 9 Q. Do you recall who asked you to formulate those
 10 particular opinions?
 11 A. They asked me to formulate an opinion, I guess, what
 12 would the concentration -- can I calculate what would
 13 it be. That would have been Mr. Ferrell's firm.
 14 Q. Okay. Do you believe that you had to engage in any
 15 level of speculation in forming these opinions about
 16 the blood alcohol content at the various times in the
 17 evening?
 18 MR. WHITE: Objection.
 19 THE WITNESS: I -- I don't see it as speculation
 20 in that I do have certain assumptions, and those
 21 being that what was consumed at O'Charley's was
 22 the last alcohol consumed. With putting that in
 23 as the caveat, then it, I'll say, makes it less
 24 speculative, if you will.
 25 BY MR. JEFFRIES:

1 Q. Okay. So you -- And I don't think I've heard it
 2 characterized this way before today. It is your
 3 assumption that the last alcohol consumed was at
 4 O'Charley's?
 5 MR. WHITE: Objection.
 6 THE WITNESS: I have -- I have assumed that in
 7 looking at this because I don't have information
 8 about additional alcohol.
 9 BY MR. JEFFRIES:
 10 Q. Okay. And is it fair to say that without that
 11 assumption, or should that assumption be proven to be
 12 inaccurate, that you would be unable to express those
 13 opinions that you've expressed here today in your
 14 deposition or that you've expressed in your affidavit?
 15 MR. WHITE: Objection.
 16 THE WITNESS: If I were provided with specific
 17 amounts and specific times, I'll say after
 18 O'Charley's, then I can adjust the calculations to
 19 accommodate those.
 20 BY MR. JEFFRIES:
 21 Q. Okay. I understand that. I'm not asking about could
 22 you form new opinions because I'm sure that you could,
 23 but my question is: Is it fair to say that if that
 24 assumption is inaccurate or if the evidence should be
 25 presented to contradict that assumption, is it fair to

1 say that you would not be able to express these
 2 opinions to a reasonable degree of scientific
 3 probability?
 4 MR. WHITE: Objection.
 5 THE WITNESS: I would not be able to express the
 6 opinions as I have expressed them, but I would
 7 still be able to form an opinion.
 8 BY MR. JEFFRIES:
 9 Q. But it would be a different opinion from the ones
 10 you've already expressed?
 11 A. Granted.
 12 Q. All right. Do you believe that Mr. Brown -- Based on
 13 the analysis you performed and the information you
 14 reviewed, do you believe that Mr. Brown was a chronic
 15 abuser of alcohol?
 16 MR. WHITE: Objection.
 17 THE WITNESS: I guess the best way of answering is
 18 that it would not surprise me and that would be
 19 one when I'd look at the rate of elimination and
 20 when I'd look at what he has said was his habit,
 21 to chase a shot with a beer. I -- I see that as
 22 -- those two things as being suggestive of it, or
 23 at least I would say it wouldn't surprise me.
 24 BY MR. JEFFRIES:
 25 Q. Okay. You indicated in some of the earlier responses

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1 that you would expect -- had the cocaine use been a
 2 factor, you would have expected to see some high-risk
 3 driving behavior. Did I hear that correctly? I don't
 4 want to mischaracterize it.
 5 A. What I said was when we look at cocaine and drivers --
 6 Q. Mmm, hmm.
 7 A. -- the thing that stands out the most when people are
 8 abusing cocaine, is we see high-risk behavior. We
 9 either see chases, we see 80, 100 mile-an-hour, that
 10 kind of behavior. That's when we're looking at cocaine
 11 by itself and, again, at recreational levels.
 12 This situation, you know, when you -- when you're
 13 looking at, I'll say poly drug abuse or poly -- the
 14 presence of multiple drugs, you've got to look at it,
 15 and sometimes you're going to have one, and I'm
 16 considering alcohol to be a drug, to have just -- just
 17 an overwhelming effect that's -- that's going to mask
 18 anything else. And so that's why I don't see the
 19 cocaine as being significant with respect to the events
 20 that night.
 21 Q. Okay. And I think you said that even if -- even
 22 assuming he had used the cocaine on the night in
 23 question, that within four or five hours, 95 percent of
 24 the parent compound would have been out of his system?
 25 A. That's correct.

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1 and I don't believe we went into that with the
 2 prosecutor.
 3 BY MR. JEFFRIES:
 4 Q. Okay. What types of effect would -- Well, would the
 5 concentration of that be, in any way, relevant to you
 6 in reviewing the issues you've been asked to review and
 7 express -- and the opinions that you've expressed in
 8 this case?
 9 MR. WHITE: Objection.
 10 THE WITNESS: Not really. I mean, there's --
 11 Again, we have so much alcohol on board, that with
 12 something like that, you could -- you could take a
 13 ton of it, and it would be significant. But I --
 14 I think we're seeing so much alcohol there, that
 15 that's really the most relevant thing.
 16 The other thing is that, well, there is a
 17 phenomenon that is observed, and that's with
 18 people abusing cocaine, their use at the same time
 19 of Alprazolam to ameliorate the cocaine crash.
 20 And so they -- they take them both at the same
 21 time; so it's not something where we see people
 22 doing tons of it at once. You take one, they
 23 smoke a rock, whatever, and that gives them a
 24 better ride for the money.
 25 BY MR. JEFFRIES:

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1 Q. Okay. So you wouldn't have been able to detect the
 2 presence of the parent compound at the time, for
 3 example, that the -- that the blood test was taken at
 4 about --
 5 A. 2:00 in the morning.
 6 Q. -- 9:00 in the morning?
 7 A. Well, 2:00 is when the SBI one was done.
 8 Q. Okay.
 9 A. And so, I mean, that's -- that's so far after
 10 everything, that -- I mean, even the benzoylecgonine
 11 would -- you're looking at about -- about 24 hours,
 12 maybe 30 hours, and you wouldn't detect any
 13 benzoylecgonine because it has such a long half-life.
 14 Q. Okay.
 15 A. So it being there is not a surprise. Cocaine not being
 16 there is not a surprise either, given the amount of
 17 time.
 18 Q. Did you -- Were you ever asked by the DA's office or --
 19 or by Mr. Ferrell's office to try and make a
 20 calculation as to the concentration of the -- I don't
 21 want to mispronounce it --
 22 A. Alprazolam?
 23 Q. -- Alpra- -- yeah, exactly. Thank you.
 24 MR. WHITE: Objection.
 25 THE WITNESS: I was not by Mr. Ferrell's office,

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1 Q. Come down easier?
 2 A. Exactly. Instead of feeling rotten, you feel mellow.
 3 Q. Okay. All right. And you -- I guess from your review
 4 of the criminal evidence, you were aware that he was
 5 found in possession of at least one of the pills?
 6 A. It -- It may have been. I don't recall.
 7 Q. Okay.
 8 A. It seems like there was an analysis done by the SBI to
 9 show that, in fact, it was; so....
 10 Q. There's a witness who has testified that at or about
 11 the time he left O'Charley's, he was seen in possession
 12 of nine to ten similar pills?
 13 A. Yes.
 14 MR. WHITE: Objection.
 15 BY MR. JEFFRIES:
 16 Q. And then we know from the criminal testimony that he
 17 was found in possession of one of the pills at the time
 18 of the accident. So I ask you to assume that he
 19 consumed those remaining pills during that time period.
 20 What effect, if any, would that have had on his
 21 condition or his behavior or his level of functioning?
 22 MR. WHITE: Objection.
 23 BY MR. JEFFRIES:
 24 Q. And I realize that's a purely hypothetical question,
 25 and there's some evidence and not --

1 A. You know --
 2 Q. -- all conclusive.
 3 A. I -- and I don't recall the size of them, but I would
 4 say if he had consumed eight or nine of those,
 5 essentially, if it was all throwing them down the
 6 hatch, or if it was over an hour's time, that probably
 7 within an hour that he would have been laid out
 8 someplace, and it might even rise to the level of being
 9 an overdose of it.
 10 Q. Okay.
 11 A. I mean, that's -- that's serious stuff to be doing like
 12 that.
 13 Q. Assuming again, you know, that he took the medication
 14 that way and that he didn't overdose and -- and die,
 15 how long would those effects last, based on your
 16 experience and your training?
 17 A. I --
 18 MR. WHITE: Objection.
 19 THE WITNESS: I'd have to look it up because we --
 20 with Benzodiazepines we have ultra-short-acting,
 21 short-acting, medium- and long-acting, and I do
 22 not recall off the top of my head where it falls.
 23 I believe it's probably in the mid-range because
 24 Valium is more like the long-acting and Versed
 25 would be the ultra-short. I believe this is in

1 the mid-range and so I'd really have to look it
 2 up.
 3 BY MR. JEFFRIES:
 4 Q. And that's just something you weren't asked to look at
 5 either by the --
 6 A. No.
 7 Q. -- DA or Mr. Ferrell's office?
 8 A. No, it's just because I've done this so much, that I
 9 know some of it.
 10 Q. Okay. What kind of behavior would you expect to see
 11 from someone with a blood alcohol concentration of .30,
 12 an average male, about 200 pounds?
 13 A. What we would see would be -- We'd see impairment of
 14 their cognitive skills. That occurs as low as .02; so
 15 up there in that range, we'd see impairment of
 16 cognitive skills. We would see impairment of gross
 17 motor skills, slurred speech, you know, difficulty
 18 walking.
 19 Just in that range, and the people I've seen in that
 20 range before, we would be looking at somebody who's in
 21 the range of like Otis, Andy. I mean, what people
 22 would think of as a drunk. I've seen some before at
 23 that range who did not look like that, but again, it's
 24 opinion. And this other individual that that would
 25 clearly have been the chronic abuser and this other guy

1 because he stood there and paid his money for his bond
 2 with no problem.
 3 And so we -- we can see behaviors, not normal behavior,
 4 but it's not gross. But I would expect to see fairly
 5 obvious signs of not just impairment but intoxication.
 6 Q. Okay.
 7 MR. GAROFALO: Do you want to take a break?
 8 MR. JEFFRIES: I'm almost done. Yeah, we can take
 9 a short break.
 10 MR. GAROFALO: Oh, you're almost finished?
 11 MR. JEFFRIES: Almost.
 12 MR. GAROFALO: All right. Then keep going.
 13 (Pause.)
 14 BY MR. JEFFRIES:
 15 Q. You had indicated, Mr. Glover, at one point, a kind of
 16 a generic elimination rate that's accepted within the
 17 field. What was that rate?
 18 A. .0165 BAC per hour.
 19 Q. Okay. Is that -- I was looking -- looking in your
 20 criminal testimony. Is there -- Is that the figure
 21 that's used as opposed to the .018 that you referenced
 22 in your criminal testimony?
 23 A. You say, is that the rate that I used in the criminal?
 24 Q. No, sir. I think in your criminal testimony you were
 25 being asked about a study for average elimination rate.

1 It's very near the end of your -- near the end of your
 2 testimony, Page 322 and 323, and you referenced an
 3 average elimination rate of .018 in males.
 4 A. That was in individuals -- individuals arrested for
 5 DWI.
 6 Q. Okay. So those would be the types of people you would
 7 expect to have a higher elimination rate because of
 8 chronic use or --
 9 A. It -- it's not in the chronic range, but it is a rate
 10 of elimination that's greater than what we see in a
 11 non-drinking population.
 12 Q. Okay. And in terms of in the criminal case, on
 13 Page 318 you were asked to express an opinion as to
 14 what amount of alcohol fully absorbed in the system
 15 would a 210-pound man have to have consumed to reach a
 16 blood alcohol content of .017, and you indicated 15 to
 17 18 beers. Do you see that near the bottom of Page 318?
 18 A. I'm just trying to read the -- the question.
 19 (Witness reviewing documents.)
 20 Okay. So your question is?
 21 Q. My question is: That would be the amount of
 22 consumption necessary to get someone like Mr. Brown
 23 from zero to .017; is that correct?
 24 A. No, that's -- If you look in here, fully absorbed in
 25 their system. That's not how many you drink, but

<p style="text-align: right;">Page 177</p> <p>1 that's how many are still remaining in your body. 2 Q. Okay. 3 A. If you start drinking -- If I give you a six-pack an 4 hour -- 5 Q. Right. 6 A. -- you're going to eliminate one before you finish the 7 six-pack. 8 Q. I got you. 9 A. So you've got five left; so we have to -- We look at it 10 that way. 11 Q. We have 15 to 18 in the system? 12 A. Correct. 13 Q. Even though you may have had 21 to drink -- 14 A. Because it will take you time to drink -- 15 Q. Right. 16 A. -- and it's -- We always use the bathtub analogy. 17 Filling the tub with the drain open, there's always 18 alcohol being eliminated. 19 Q. Mmm, hmm. 20 A. And so if you're drinking something that's a low 21 concentration of alcohol, which is beer, as opposed to 22 doing shots, it takes time just to process that, 23 physically drink that volume. 24 Q. The reason I ask you that question is kind of for my 25 own education. We all have heard, I think, that adage</p>	<p style="text-align: right;">Page 178</p> <p>1 or that saying that one beer equals one shot equals one 2 glass of wine in terms of alcohol content? 3 A. Essentially, yes. 4 Q. Okay. So and would it be fair to apply that 5 assumption to -- 6 A. Yes. 7 Q. -- this conclusion that you've reached here? 8 A. Yes. 9 Q. Okay. I think this is the last thing, Mr. Glover. 10 Are you familiar with a study that was done in the mid 11 to late '90s by Joanne Wells, Michael Green, Robert 12 Voss, Susan Ferguson and Allen Williams, dealing with 13 drinking drivers missed at sobriety check points? 14 A. Yes. I am familiar with that one. I believe they said 15 that something like 62 percent of the people that were, 16 I believe, at .10 or higher were missed at DWI check 17 points. That was the gist of the whole thing. 18 Q. And have you, in conjunction with your work and your 19 consulting business and your work for the State, have 20 you reviewed that study or read that article? 21 A. I've read it. It's been sometime since I've read it. 22 Q. To the best of your knowledge, is that a study that's 23 widely accepted within your particular field as 24 credible and reliable? 25 A. I would say it probably is. And -- and it's realistic.</p>
<p style="text-align: right;">Page 179</p> <p>1 Q. Okay. 2 A. I mean, I've been -- I've worked DWI check points 3 myself, and you have ten seconds to essentially 4 interview a person and try to make a determination, and 5 that's -- that's difficult to do when we're looking at 6 certain of these levels. I mean, when somebody comes 7 up and they -- they can't pick up their wallet and 8 they're doing like this (indicating) -- 9 Q. Mmm, hmm. 10 A. -- then it's a good clue, but these other folks when 11 we're looking at 08 to 10's, it's easy to see that it 12 can happen. It's also easy to see with some of the 13 officers who they have working the check points who 14 really don't have experience in doing an evaluation in 15 that ten-second time. 16 MR. JEFFRIES: All right. I don't think I have 17 anything else. Thank you. 18 MR. GAROFALO: Dale, do you have any questions? 19 MR. CURRIDEN: Yeah, just a couple. 20 MR. GAROFALO: Why don't we take a short break. 21 You've been going for a pretty good while. Take 22 about a five -- five-minute break? 23 MR. CURRIDEN: That's fine, but I really only have 24 probably two or three questions. 25 MR. GAROFALO: Okay. Well, I have a few</p>	<p style="text-align: right;">Page 180</p> <p>1 follow-ups. 2 MR. CURRIDEN: Okay. Yeah, let's take a break. 3 THE VIDEOGRAPHER: Going off the record. The time 4 is 1440. 5 (Recess taken.) 6 THE VIDEOGRAPHER: Back on the record. The time 7 is 1446. 8 --- 9 MR. CURRIDEN: Am I up? 10 MR. GAROFALO: You're up. 11 --- 12 EXAMINATION (By Mr. Curriden): 13 Q. All right. Mr. Glover, my name is Dale Curriden. I 14 represent Terry Brown in this case. 15 A. Okay. 16 Q. Do you know how Mr. Brown paid for the alcohol he 17 purchased at Sergeant Peppers and O'Charley's? 18 A. My understanding from the trial was that it was with a 19 credit card, and I believe it was his mother's credit 20 card, if I'm not mistaken. 21 Q. And am I correct in understanding that -- that other 22 than Mr. Brown's blood alcohol content the following 23 morning or the following afternoon, when he was tested, 24 you don't have any other evidence of alcohol he 25 consumed or purchased prior to the accident other than</p>

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1 what -- what is indicated he bought at O'Charley's and
 2 Sergeant Peppers; is that correct?
 3 A. No other information other than that, that's correct.
 4 Q. So would it be fair, then, to say that based upon the
 5 evidence that -- that you've considered for this case,
 6 you're not aware of any information suggesting that he
 7 purchased any other alcohol with his mother's credit
 8 card besides what he purchased at Sergeant Peppers and
 9 O'Charley's?
 10 A. Well, I have no information that would suggest that.
 11 Q. And so would it be fair to say, based upon the prior
 12 testimony you've given and that information, that in
 13 order for him to have had any detectable alcohol in his
 14 system by 7:57 the next morning or the morning of
 15 August 9th, he would have had to have obtained such
 16 alcohol by some means other than his mom's credit card?
 17 MR. WHITE: Objection.
 18 THE WITNESS: Well, I can't say that. I -- I'm
 19 not aware of any other purchases that were made
 20 with it, but I mean, I don't know that somebody --
 21 if somebody's reviewed her whole credit card
 22 record, and it shows that nothing else was
 23 purchased with it, then I guess the answer would
 24 be it would have to have been purchased some other
 25 way.

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1 happened exactly which times, and so we're into a
 2 drinking window that makes it difficult.
 3 Q. Okay. And in the criminal case, when you were asked to
 4 do the work you did, the extrapolation that you were
 5 asked to carry out, basically, went from the two blood
 6 tests that were done, one at approximately 2:- -- I
 7 believe it was 2:30 p.m.; is that correct?
 8 A. I went from, I believe, 2:00.
 9 Q. 2:00 p.m. and the other at approximately 9:15 a.m. to
 10 the time of the accident, which was 7:57?
 11 A. Correct.
 12 MR. WHITE: Objection, asked and answered.
 13 BY MR. GAROFALO:
 14 Q. And that's certainly not an unusual period of time to
 15 go backwards in your line of work and in your area of
 16 expertise in performing an extrapolation; is that
 17 correct?
 18 MR. WHITE: Objection, asked and answered.
 19 THE WITNESS: That's correct.
 20 BY MR. GAROFALO:
 21 Q. Now, you've never been asked before this case to
 22 extrapolate back some nine hours and 45 minutes from
 23 the time of the alleged last drink to the time of the
 24 accident, have you --
 25 MR. WHITE: Objection.

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1 BY MR. CURRIDEN:
 2 Q. All right. And, again, you don't have any information
 3 suggesting he -- he purchased anything else with his
 4 mom's credit card besides what was purchased at
 5 Sergeant Peppers and O'Charley's?
 6 A. I don't have any information that would indicate that,
 7 correct.
 8 MR. CURRIDEN: All right. Those are my only
 9 questions. Thanks.
 10 MR. WHITE: No questions.
 11 MR. GAROFALO: Mr. Glover, I have just a few
 12 questions in follow up. I'll try to be brief.
 13 - - -
 14 FURTHER EXAMINATION (By Mr. Garofalo):
 15 Q. You -- You indicated in response to some questions that
 16 Mr. Jeffries asked you about whether or not you had
 17 extrapolated farther back than 11:30, and I believe one
 18 of your answers was that you had not done that because
 19 the farther out you go in extrapolating, the more
 20 speculative it becomes; is that correct?
 21 A. That's correct, and part of that is the fact that we
 22 are -- or, if you will, we're between drinking windows
 23 at 11:30, and -- as far as all the information is.
 24 And so if we're going back into the first drinking
 25 window, if you will, I don't know exactly which things

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1 BY MR. GAROFALO:
 2 Q. -- or the time of the blood test, have you?
 3 MR. WHITE: Objection, asked and answered.
 4 THE WITNESS: I've -- I've not gone back nine
 5 hours. I believe, if we may have -- I may have
 6 gone back as far as five-and-a-half or six hours
 7 because of the crash and the test time, but --
 8 BY MR. GAROFALO:
 9 Q. And as I calculate it, the time from the -- the first
 10 test at 9:15 a.m. to the time of your first -- or your
 11 farthest extrapolation backwards of 11:30, would be
 12 nine hours and 45 minutes; is that correct?
 13 MR. WHITE: Objection.
 14 THE WITNESS: Yes.
 15 BY MR. GAROFALO:
 16 Q. And the time from the first blood test at 9:15 a.m. to
 17 the second, or the more recent extrapolation at 1:45,
 18 would be seven hours and 30 minutes; is that correct?
 19 A. Correct.
 20 Q. So before this case, you had never extrapolated back
 21 that far in offering opinions in either a criminal case
 22 or civil case; isn't that true?
 23 MR. WHITE: Objection, asked and answered.
 24 THE WITNESS: I don't believe I've gone back that
 25 far. I know, like I say, it's been between five

1 and six hours, and I may have had a couple close
 2 to that or, you know, maybe an hour longer but
 3 they're pretty rare.
 4 BY MR. GAROFALO:
 5 Q. And the farther out you go, the more speculative it
 6 becomes; isn't that true?
 7 MR. WHITE: Objection, asked and answered.
 8 THE WITNESS: Yes.
 9 BY MR. GAROFALO:
 10 Q. Now, I know you've -- you've put a lot of emphasis in
 11 your testimony here today in concluding that more
 12 alcohol had to have been consumed by Mr. Brown beyond
 13 what's shown on the bar tabs, based on what you say his
 14 level of impairment as demonstrated by the comments or
 15 testimony of the bartender; is that correct?
 16 A. That's correct.
 17 Q. If you eliminate the testimony of the bartender and
 18 only look at the amount of alcohol that's reflected on
 19 the bar tabs and in Mr. Brown's testimony, what blood
 20 alcohol content would you have expected him to exhibit
 21 at 11:30 a.m. that evening --
 22 MR. WHITE: Objection.
 23 BY MR. GAROFALO:
 24 Q. -- excuse me, 11:30 p.m. that evening?
 25 MR. WHITE: Objection.

1 THE WITNESS: Well, I -- the calculation would
 2 give the same result, would still be at a .30.
 3 What I'm saying is that their observations,
 4 testimony corroborate that level.
 5 BY MR. GAROFALO:
 6 Q. Okay. My -- My question is: If you assume he only
 7 consumed the amount of alcohol shown on the bar tabs --
 8 A. Oh, I'm sorry.
 9 Q. -- what level of impairment would that amount of
 10 alcohol in that period of time translate to?
 11 MR. WHITE: Objection.
 12 THE WITNESS: The amount at Sergeant Peppers and
 13 the observed behavior that would have been --
 14 BY MR. GAROFALO:
 15 Q. No, I'm saying, eliminate the observed behavior.
 16 A. Oh, okay. Okay.
 17 Q. You just look at the evidence, the objective evidence
 18 we have of four shots and two beers at Sergeant
 19 Peppers --
 20 A. Okay.
 21 Q. -- what level of impairment would you have expected or
 22 what level of blood alcohol content would you have
 23 expected Mr. Brown to exhibit at 11:30 before he
 24 consumed the shot and partial beer at O'Charley's?
 25 MR. WHITE: Objection.

1 THE WITNESS: The alcohol concentration would have
 2 been very, very low. From drinking the six
 3 drinks, as you've described, and with his weight,
 4 if he did all those in one hour, his peak would
 5 probably be about an 06. He's going to lose, you
 6 know, .0165, or if we use his rate, 02 an hour.
 7 So he would be very close to zero, very minimal,
 8 or I'd say, essentially no gross intoxication
 9 observed at 11:30.
 10 BY MR. GAROFALO:
 11 Q. Okay. If -- If he only consumed the amounts that the
 12 record --
 13 A. Those six, correct.
 14 Q. And if he consumed the additional shot at O'Charley's
 15 and the partial beer, as the bar tab and his testimony
 16 indicate to, what additional level of impairment, if
 17 any -- or strike that -- what additional level of blood
 18 alcohol content, if any, would you have expected him to
 19 exhibit by 1:45 a.m.?
 20 MR. WHITE: Objection.
 21 THE WITNESS: I'd say essentially none.
 22 BY MR. GAROFALO:
 23 Q. So the only thing you're relying on in concluding that
 24 there had to have been more alcohol consumed is the
 25 fact that the bartender decided he was impaired and

1 stopped serving him alcohol; is that correct?
 2 MR. WHITE: Objection.
 3 THE WITNESS: Well, if we're looking at the -- the
 4 whole time frame, because of his level at the time
 5 of the crash, there is no way that he could have
 6 gotten to that level simply from what he consumed
 7 based on the tabs. And --
 8 BY MR. GAROFALO:
 9 Q. But your testimony earlier in disputing -- or refuting
 10 the possibility that the level at the time of the crash
 11 was due to continued consumption of alcohol, was based
 12 on, it was more likely he had drank greater amounts
 13 based on the observations of the bartender?
 14 A. Yes, that's --
 15 MR. WHITE: Objection.
 16 THE WITNESS: That's correct.
 17 BY MR. GAROFALO:
 18 Q. And the observation of the bartender essentially that
 19 they served him a shot and then determined that he --
 20 based on your recollection, and then determined that he
 21 should not be served any more alcohol?
 22 A. That's correct.
 23 Q. That doesn't give you any indication as to what his
 24 specific level of alcohol content was, does it?
 25 MR. WHITE: Objection.

<p style="text-align: right;">Page 189</p> <p>1 THE WITNESS: It -- it -- Only in the sense of 2 someone who's in a bar atmosphere and this person 3 stands out as someone that has had too much, and 4 that's significant, I'd say, in a bar setting. 5 I'd say that is significant. 6 BY MR. GAROFALO: 7 Q. Okay. Now, you reviewed, and Mr. Jeffries walked you 8 through certain portions of Mr. Brown's testimony. I 9 won't go back through that, but part of his testimony 10 was that he drank at least one and maybe more glasses 11 of water while at O'Charley's. 12 What effect, if any, would drinking water after 13 drinking alcohol have on the blood alcohol content? 14 MR. WHITE: Objection. 15 THE WITNESS: I can calculate what it would be, 16 but I can tell you by example. Let's say we -- 17 Let's say he was at a .300 and he drank a pint of 18 water. He would then be about a .297. 19 I mean, it's just -- It, in theory, could have an 20 effect, but you're only adding an amount of water 21 that would be equivalent to .75 percent of his 22 body weight -- that's drinking a pint, mind you -- 23 of his body water. And so you're only affecting 24 that alcohol concentration by not even one 25 percent, but less than one percent; so it's</p>	<p style="text-align: right;">Page 190</p> <p>1 insignificant. 2 BY MR. GAROFALO: 3 Q. Okay. You mentioned several times that you have recall 4 of certain pieces of evidence from your observations at 5 the criminal trial; is that correct? 6 A. Yes. 7 Q. And I believe your testimony was you sat through most, 8 if not all the criminal trial, except jury selection? 9 MR. WHITE: Objection, asked and answered. 10 THE WITNESS: Yeah, I -- I was there several 11 nights. It seems like it was three nights. I 12 don't know if I got there for jury selection, but 13 I was there for a tremendous amount of it. 14 BY MR. GAROFALO: 15 Q. Did you take any handwritten notes at the trial? 16 A. I did take some notes at that trial. 17 Q. Did you maintain those notes? 18 A. No. 19 Q. So you've not reviewed those -- 20 A. No, I -- 21 Q. -- as part of your work on the civil case? 22 A. I tend -- In trials, I take notes so that I'm paying 23 attention; so that I have things written down if I'd go 24 back and review it. And sometimes I have to -- you 25 know, I hear testimony that will be related to my</p>
<p style="text-align: right;">Page 191</p> <p>1 testimony, and so it makes me pay attention, sort of, 2 too and once a case is -- and also, sometimes we have 3 hung juries, and so if we go and re-try one, then I 4 have a -- my own little transcript. 5 Once I've done that, then I purge my files of a lot of 6 that stuff just because it takes up so much space. 7 Q. So as far as any recollection or review of testimony 8 from any witnesses, it's based on your -- the strength 9 of your memory some two or -- and, I believe, three 10 years after the trial of the criminal matters; is that 11 correct? 12 MR. WHITE: Objection. 13 THE WITNESS: Yes. 14 BY MR. GAROFALO: 15 Q. Okay. We've asked you a lot of questions, and 16 basically Mr. Jeffries in particular asked you a lot of 17 questions about things you have not reviewed in 18 preparation for your opinions in your affidavit and 19 your deposition today. 20 Would it be a fair statement that essentially what you 21 were asked to do was to take the information that was 22 provided to you by the attorneys and apply the 23 extrapolation formula that you're familiar with and 24 that you use on a regular basis, to come up with a 25 blood alcohol content at 11:30 p.m. and 1:45 a.m. on</p>	<p style="text-align: right;">Page 192</p> <p>1 the night and morning in question? 2 MR. WHITE: Objection. 3 THE WITNESS: Yes, and again, based on the 4 information that was provided. 5 BY MR. GAROFALO: 6 Q. Okay. And you were not asked to perform any additional 7 work or additional investigation that would have 8 necessitated you to review other information; is that 9 correct? 10 A. That's correct. 11 MR. WHITE: Objection. 12 BY MR. GAROFALO: 13 Q. So essentially, you were taking a limited amount of 14 information and applying the formula to it to come up 15 with the numbers that you did in your affidavit? 16 A. Yes. 17 MR. WHITE: Objection. 18 BY MR. GAROFALO: 19 Q. And there was no reason for you to ask questions or to 20 seek additional information because that was a very 21 limited assignment, wasn't it? 22 MR. WHITE: Objection. 23 THE WITNESS: Yes. 24 BY MR. GAROFALO: 25 Q. Okay. And essentially, you're -- you're crunching the</p>

1 numbers using what your knowledge as to how to crunch
 2 those numbers to get to the conclusion you've reach?
 3 MR. WHITE: Objection.
 4 THE WITNESS: That's kind of a short version of
 5 it, but yeah.
 6 BY MR. GAROFALO:
 7 Q. Okay. What -- What do you charge for your time as an
 8 expert witness?
 9 A. \$150 an hour.
 10 Q. Okay. And do you charge any additional hourly rate for
 11 deposition time or trial time?
 12 A. No, I -- I kind of came up with a value that makes
 13 accounting of it all a lot easier. I know there's some
 14 of the experts that will charge, you know, \$300 for
 15 any, you know, deposition or trial time, and half that
 16 rate for travel, and it's a real -- like a Gordian Knot
 17 and, to me, it's much more straightforward. I keep my
 18 hourly rate as the same with a limit on a day charge of
 19 eight hours.
 20 Q. Okay. How much have you charged to date to Mr. Ferrell
 21 and his law firm for your expert services in this case?
 22 A. I haven't submitted an invoice to them yet.
 23 Q. How much time have you spent?
 24 A. I've got four or five hours. I have to go back and
 25 look and see.

1 Q. And that was before today?
 2 A. Yes.
 3 Q. Okay. Did that include preparation for this
 4 deposition?
 5 A. Yes, but I mean --
 6 Q. Or did you prepare for this deposition?
 7 A. -- I prepared to a certain extent. I've had so many
 8 trials in the last few weeks that I've been in and out
 9 of town. I did review the -- the transcript, my
 10 affidavit, Dr. Mason's, and basically the materials
 11 that were provided, I reviewed those.
 12 Q. The -- The letter that was the first document that you
 13 produced from your file was a July 19th, 2005, letter
 14 from Mr. Ferrell to you in which he encloses an
 15 agreement for you to provide expert testimony, and he
 16 asks that you execute the agreement and return it to
 17 him. Did you keep a copy of that agreement?
 18 A. You know, I looked -- I read that the other day when I
 19 was making the copies, and I don't have a copy of it.
 20 I don't know if I signed it and sent it and didn't make
 21 a copy. I actually don't recall if I -- I can't find
 22 it if I did.
 23 Q. But that was an agreement that Mr. Ferrell's law firm
 24 prepared and sent to you?
 25 A. Yes.

1 MR. GAROFALO: That's all I have. Thank you.
 2 MR. CURRIDEN: I have no more questions.
 3 MR. GAROFALO: Let me just -- Just to clarify,
 4 clarify the record since we asked you a lot of
 5 questions about it. I'm going to mark this as an
 6 exhibit. It's a transcript of your criminal
 7 testimony, and offer it as an exhibit. And you're
 8 free to review it, if you want to for accuracy,
 9 but I assume you've reviewed it before today --
 10 THE WITNESS: I have.
 11 MR. GAROFALO: -- but let's mark that as an
 12 exhibit to your deposition.
 13 ---
 14 Thereupon, Deposition Exhibit No. 6 was marked for purposes
 15 of identification.
 16 ---
 17 MR. GAROFALO: Okay. I have no further questions.
 18 Anybody else?
 19 MR. JEFFRIES: Nothing else.
 20 MR. GAROFALO: Okay.
 21 MR. CURRIDEN: That's it.
 22 MR. GAROFALO: We're off the record.
 23 THE VIDEOGRAPHER: This concludes the deposition
 24 of Paul Glover. The number of tapes used was two.
 25 The time is 1503.

1 ---
 2 (Thereupon, the deposition was concluded at 3:03 p.m. on
 3 June 14, 2006.)
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VERIFICATION OF DEPONENT

I, PAUL GLOVER, have read the foregoing testimony, which was reported by ROSE M. PRATER, RPR, Notary Public in and for the State of North Carolina, on June 14, 2006.

I find the transcript of my testimony to be true and accurate according to my testimony on that date, with the exception of _____ corrections as listed on the attached errata page, which was completed by me.

PAUL GLOVER

Sworn to and subscribed before me this _____ day of _____, 2006.

NOTARY PUBLIC

My Commission Expires: _____

DESIRED CHANGES

Page # Line # Change/Correction (& Explanation)

The above changes were noted by me on this errata page before signing the attached verification of deponent. I have retained a copy of this errata page for my records, and the court reporter is to attach this page and my verification to the original transcript.

Dated: _____
PAUL GLOVER

STATE OF NORTH CAROLINA)
) CERTIFICATE
COUNTY OF MECKLENBURG)

I, ROSE M. PRATER, RPR, Notary Public, do hereby certify that PAUL GLOVER was duly sworn by me prior to the taking of his deposition; that said deposition was taken and transcribed by me and that the foregoing one hundred and ninety-eight (198) pages are a true and accurate transcript of the testimony of said PAUL GLOVER.

I further certify that I am not of counsel for or in the employment of any of the parties to this action, nor am I interested in the result of said action.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 23rd day of June, 2006.