10439995 11

IN THE DISTRICT COURT OF CLEVELAND COUNTY
STATE OF OKLAHOMA

STATE OF OKLAHOMA, ex rel., MIKE HUNTER, ATTORNEY GENERAL OF OKLAHOMA, Plaintiff, v. PURDUE PHARMA L.P., *et al.*, Defendants.	Case No. CJ-2017-816 Judge Thad Balkman STATE OF OKLAHOMA } S.S. CLEVELAND COUNTY } **FILED** JUN 17 2019 In the office of the Court Clerk MARILYN WILLIAMS

DEFENDANTS JANSSEN PHARMACEUTICALS, INC. AND JOHNSON AND JOHNSON'S MOTION TO STRIKE TESTIMONY OF DR. ANDREW KOLODNY

"An expert witness should never become one party's expert advocate." *Selvidge v. United States*, 160 F.R.D. 153, 156 (D. Kan. 1995). But Dr. Andrew Kolodny, by his own admission, plays just that role for the State. The State has used Kolodny, an embedded member of its legal team rather than a traditional expert, to inject hearsay and speculation into this trial and to offer the State's gloss on the evidence for nearly every facet of its case. Courts consistently reject expert opinions "that are, in substance, the arguments of counsel." *Raley v. Hyundai Motor Co.*, 2010 WL 199976, at *4 (W.D. Okla. Jan. 14, 2010). For that reason, the Court should strike Kolodny's trial testimony as improper expert testimony.

Kolodny is a de facto member of the State's legal team who is deeply interested in the outcome of this case. The State's lawyers confirm that they asked Kolodny to "devote

all of [his] time to helping [the State] to prepare for"[1] trial and that Kolodny has been "basically living this case with us while we've been here."[2] They acknowledge Kolodny has spent "dozens of days" in Oklahoma and across the country "helping our legal team to help attend and prepare for depositions."[3] They admit Kolodny has reviewed document productions alongside the State's lawyers through seemingly unfettered access to the database "where all of J&J and the other defendants' documents have been produced."[4] Kolodny agreed to serve as the State's 3230(C)(5) corporate representative despite never having been employed by the State. On the witness stand, Kolodny has proudly displayed his partisanship, using incendiary language to malign the Janssen Defendants: He even described a third-party group as the "opioid mafia."[5]

A psychiatrist by trade, Kolodny lacks professional expertise in the pain-medicine issues at issue here. But by virtue of his admission as an expert on no fewer than eight topics[6]—and a percipient witness on others—the State has been able to use Dr. Kolodny to pollute the trial record with rampant hearsay, rank speculation, and the State's own take on the evidence.

For a glaring example of this impropriety, the Court need look no further than Kolodny's hearsay- and conjecture-laden argument regarding Noramco's and Tasmanian Alkaloids' purported ties to OxyContin. In its disclosure of Kolodny's opinions, the State never mentioned either company. Yet in Kolodny's deposition—taken two days after the

[1] Ex. 1, June 11, 2019 (AM) Trial Tr. 55:23-56:1.
[2] Ex. 2, June 12, 2019 Trial Tr. 164:17-20
[3] *Id.* 164:17-20; Ex.1, June 11, 2019 (AM) Trial Tr. 55:23-58:5.
[4] Ex. 1, June 11, 2019 (AM) Trial Tr. 57:25-58:5.
[5] *Id.* 93:17-94:6.
[6] *Id.* 48:23-54:9.

State's settlement with Purdue—he conveniently voiced the State's late-coming theory that Noramco and Tasmanian Alkaloids were the true cause of the opioid crisis. At trial, the State has used Kolodny to concoct a timeline—based on pure speculation, not on any expertise or specialized knowledge—suggesting that "Johnson & Johnson and Purdue had been planning for years prior to the launch, probably beginning in 1994, with the development of the thebaine poppy to meet anticipated demand" that would purportedly result from Purdue's "introduction of OxyContin."[7]

Equally improper, the State has several times used Kolodny to offer speculative and argumentative statements about the Janssen Defendants' intentions and purported culpability. For example, while openly admitting that he "could be wrong," Kolodny speculated that "Johnson & Johnson invented . . . [t]he idea that if you . . . don't give opioids to someone with acute pain that they will become chronic pain patients."[8] Kolodny also offered his unfounded "belie[f]" that pharmaceutical manufacturers viewed a report from the Institute of Medicine "as a business opportunity, and then once they got that report, they wanted to make the most of it."[9] And in discussing his access to the database of defendants' produced documents, Kolodny testified—without referencing any particular document, piece of information, or shred of expert analysis—that "Purdue Pharma and the Sacklers . . . have been stealing the spotlight, but Johnson & Johnson, in some ways, has been even worse."[10] On more than one occasion, the State has simply introduced a document, pointed to a portion of it, and asked Dr. Kolodny, open-endedly, "What do you

[7] Ex. 3, June 11, 2019 (PM) Trial Tr. 18:23-20:4.
[8] *Id.* at 133:21-134:4.
[9] Ex. 4, June 13, 2019 (AM) Trial Tr. 26:16-20.
[10] Ex. 1, June 11, 2019 (AM) Trial Tr. 59:15-60:5.

have to say about that?" Dr. Kolodny has taken this as an invitation to offer longwinded denunciations of Defendants' allegedly "deceptive" conduct,[11] or to contribute lay speculation that certain conduct may not be "legal" and "sounds kind of like bribery."[12]

This extended, free-form commentary about the State's evidence over which the witness lacks both personal knowledge and expertise is not testimony at all, much less expert testimony. It is advocacy, nothing more. An expert may not "participate as the alter-ego of the attorney who will be trying the case." *Occulto v. Adamar of New Jersey, Inc.*, 125 F.R.D. 611, 616 (D.N.J. 1989). And an expert is not allowed to do what Dr. Kolodny has repeatedly done here: "simply rehash otherwise admissible evidence about which he has no personal knowledge," "construct[] a factual narrative based upon record evidence," and "address lay matters which [the factfinder] is capable of understanding and deciding without the expert's help." *Wells v. Allergan, Inc.*, No. 12-973, 2013 WL 7208221, at *2 (W.D. Okla. Feb. 4, 2013) (citations and quotations omitted).

A courthouse is no place for a partisan advocate to play out speculative theories untethered to evidence for an international audience. And argument masquerading as expert testimony cannot aid the trier of fact. Having had the opportunity to see Kolodny's testimony for what it is—advocacy by an architect of the State's case, not dispassionate expertise—this Court should grant the motion and strike his improper expert testimony.

[11] *Id.* 70:15-71:15.
[12] Ex. 4, June 13, 2019 (AM) Trial Tr. 100:4-7.

Dated: June 17, 2019

Respectfully submitted,

By: _____

Benjamin H. Odom, OBA No. 10917
John H. Sparks, OBA No. 15661
Michael W. Ridgeway, OBA No. 15657
ODOM, SPARKS & JONES PLLC
HiPoint Office Building
2500 McGee Drive Ste. 140
Norman, OK 73072
Telephone: (405) 701-1863
Facsimile: (405) 310-5394
Email: odomb@odomsparks.com
Email: sparksj@odomsparks.com
Email: ridgewaym@odomsparks.com

Larry D. Ottaway, OBA No. 6816
Amy Sherry Fischer, OBA No. 16651
FOLIART, HUFF, OTTAWAY & BOTTOM
12th Floor
201 Robert S. Kerr Avenue
Oklahoma City, OK 73102
Telephone: (405) 232-4633
Facsimile: (405) 232-3462
larryottaway@oklahomacounsel.com
amyfischer@oklahomacounsel.com

Charles C. Lifland
Sabrina H. Strong
O'MELVENY & MYERS, LLP
400 S. Hope Street
Los Angeles, CA 90071
Telephone: (213) 430-6000
Facsimile: (213) 430-6407
Email: clifland@omm.com
Email: sstrong@omm.com

Stephen D. Brody
David K. Roberts
O'MELVENY & MYERS LLP
1625 Eye Street NW

Washington, DC 20006
Telephone: (202) 383-5300
Facsimile: (202) 383-5414
Email: sbrody@omm.com

Counsel for Janssen Pharmaceuticals, Inc., Johnson & Johnson, Janssen Pharmaceutica, Inc. n/k/a Janssen Pharmaceuticals, Inc., and Ortho-McNeil-Janssen Pharmaceuticals, Inc. n/k/a/ Janssen Pharmaceuticals, Inc.

CERTIFICATE OF MAILING

Pursuant to OKLA. STAT. tit. 12, § 2005(D), this is to certify on June 17, 2019, a true and correct copy of the above and foregoing has been served via email to the following:

Mike Hunter
Attorney General for
The State of Oklahoma
Abby Dillsaver
Ethan Shaner
General Counsel to
The Attorney General
313 NE 21st
Oklahoma City, OK 73105
Telephone: (405)521-3921
Facsimile: (405) 521-6246
Email: mike.hunter@oag.ok.gov
Email: abby.dillsaver@oag.ok.gov
Email: ethan.shaner@oag.ok.gov

Michael Burrage
Reggie Whitten
J. Revell Parrish
WHITTEN BURRAGE
Suite 300
512 North Broadway Avenue
Oklahoma City, OK 73102
Telephone: (405) 516-7800
Facsimile: (405) 516-7859
Email: mburrage@whittenburragelaw.com
Email: rwhitten@whittenburragelaw.com
Email: rparrish@whittenburragelaw.com

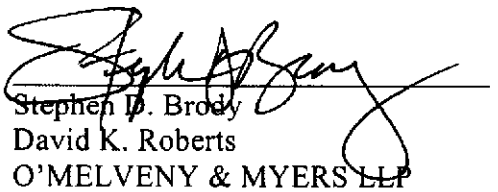
Bradley Beckworth
Jeffrey Angelovich
Lloyd Nolan Duck, III
Andrew Pate
Lisa Baldwin
Brooke A. Churchman
Nathan Hall
NIX, PATTERSON, LLP
Suite 200
512 North Broadway Avenue
Oklahoma City, OK 73102

Telephone: (405) 516-7800
Facsimile: (405) 516-7859
Email: bbeckworth@nixlaw.com
Email: jangelovich@nixlaw.com
Email: tduck@nixlaw.com
Email: dpate@nixlaw.com
Email: lbaldwin@nixlaw.com
Email: bchurchman@nixlaw.com
Email: nhall@nixlaw.com

Robert Winn Cutler
Ross Leonoudakis
Cody Hill
NIX, PATTERSON, LLP
Suite B350
3600 North Capital of Texas Highway
Austin, TX 78746
Telephone: (512) 328-5333
Facsimile: (512) 328-5335
Email: winncutler@nixlaw.com
Email: rossl@nixlaw.com
Email: codyhill@nixlaw.com

Glenn Coffee
GLENN COFFEE & ASSOCIATES, PLLC
915 North Robinson Avenue
Oklahoma City, OK 73102
Telephone: (405) 601-1616
Email: gcoffee@glenncoffee.com

ATTORNEYS FOR PLAINTIFF



Stephen D. Brody
David K. Roberts
O'MELVENY & MYERS LLP
1625 Eye Street NW
Washington, DC 20006
Telephone: (202) 383-5300
Facsimile: (202) 383-5414
Email: sbrody@omm.com

Charles C. Lifland
Sabrina H. Strong
O'MELVENY & MYERS, LLP
400 S. Hope Street
Los Angeles, CA 90071
Telephone: (213) 430-6000
Facsimile: (213) 430-6407
Email: clifland@omm.com
Email: sstrong@omm.com

ATTORNEYS FOR DEFENDANTS JANSSEN PHARMACEUTICALS, INC., JOHNSON & JOHNSON, JANSSEN PHARMACEUTICA, INC. N/K/A JANSSEN PHARMACEUTICALS, INC., AND ORTHO-MCNEIL-JANSSEN PHARMACEUTICALS, INC. N/K/A/ JANSSEN PHARMACEUTICALS, INC.

EXHIBIT 1

IN THE DISTRICT COURT OF CLEVELAND COUNTY

STATE OF OKLAHOMA

STATE OF OKLAHOMA, ex rel., MIKE HUNTER ATTORNEY GENERAL OF OKLAHOMA,	)	
Plaintiff,	)	
vs.	)	Case No. CJ-2017-816
(1) JOHNSON & JOHNSON; (2) JANSSEN PHARMACEUTICALS, INC.; (3) ORTHO-McNEIL-JANSSEN PHARMACEUTICALS, INC., n/k/a JANSSEN PHARMACEUTICALS; (4) JANSSEN PHARMACEUTICA, INC., n/k/a JANSSEN PHARMACEUTICALS, INC.,	)	
Defendants.	)	

PORTIONS OF TRANSCRIPT MAY BE COVERED UNDER PROTECTIVE ORDER

TRANSCRIPT OF PROCEEDINGS
HAD ON JUNE 11, 2019 (MORNING SESSION)
AT THE CLEVELAND COUNTY COURTHOUSE
BEFORE THE HONORABLE THAD BALKMAN
DISTRICT JUDGE

REPORTED BY: ANGELA THAGARD, CSR, RPR

publish at Page 3.

THE COURT: Yes, you may.

MR. BECKWORTH: Thank you.

Mr. Medina, could you blow up there, where it says -- well, let's just go back a little bit, to the top, Mr. Medina?

Q (By Mr. Beckworth) If you'll go to the second paragraph, Dr. Kolodny. You see where it says: The nine-member commission chaired by Attorney General Hunter, conducted a variety -- contained a variety of stakeholders?

Do you see that part?

A Yes.

Q And it discusses, in the next one, that over the course of six public meetings, members focused on the scope of the epidemic and specifically on problems Oklahoma's facing?

A Yes.

Q And then below that, it says: Numerous medical professionals, victims, state and federal agencies delivered presentations and provided information.

Do you see that?

A Yes.

Q Now, you were one of those professionals, correct?

A Yes.

MR. BECKWORTH: And if we can blow up the part that says, The epidemic, Mr. Medina.

Q (By Mr. Beckworth) Here, it says: Dr. Andrew Kolodny, a

nationally recognized expert on the opioid epidemic, spoke to the Commission and explained that in 1996, the culture of prescribing opioids began to change dramatically.

You with me?

A Yes.

Q And that is something that you, in fact, talked about, right?

A Yes.

Q And is it true that you have spent much of the last decade investigating and researching and learning about this opioid crisis and what you believed to be are the causes, the origin, and, potentially, the remedies for dealing with it?

A That's correct.

Q Okay. Sir, do you believe that you have expertise, specialized skill, education, training, and knowledge regarding addiction, prescription opioids, the prescription opioid crisis, the pharmaceuticals industry, pharmaceutical industry's marketing practices, and the role of key opinion leaders and industry-funded advocacy groups in causing this crisis and what also we may do to solve it?

A I do.

Q Okay.

MR. BECKWORTH: Your Honor, at this time, I would like to tender Dr. Kolodny as an expert on the following issues. I'll just list them. One, defendants' multifaceted

campaign to influence the medical community, policy makers, and the public about the risk and benefits of opioids.

Two, the impact of defendants' campaign to increase prescription opioid prescribing.

Three, actions taken by Janssen, Johnson & Johnson, to preserve the status quo of aggressive in its excessive opioid prescribing.

Four, the nature and science of opioids and prescription opioids.

Five, adverse effects of opioid use, including physiological dependents, tolerance, opioid use disorder, addiction, dysfunction, immune suppression, withdrawal symptoms, and hyperalgesia.

Six, the appropriate treatment of opioid use or substance use disorder, and opioid addiction.

Seven, the lack of high quality evidence supporting the effectiveness of long-term opioid use and the likelihood of iatrogenic addiction.

And eight, certain measures that we believe will be required to abate the opioid crisis in Oklahoma and the amount of time it will take to take those steps and have them be effective.

And at this time, we would tender Dr. Kolodny and all these issues, which we've already dealt with in a motion in limine.

THE COURT: Mr. Yoder?

MR. YODER: Yes, your Honor. I would definitely renew the objections and issues we raised in our pretrial motion. With the Court's permission, though, there are just a couple of points I would like to make that really follow both from what we've heard so far from Dr. Kolodny, and then the areas identified by Mr. Beckworth.

THE COURT: Why don't we have you go to the podium?

MR. YODER: Thanks so much.

THE COURT: Okay.

MR. BECKWORTH: Your Honor, should we approach?

THE COURT: No. Just -- that's fine.

MR. YODER: I don't plan to say much, your Honor. But the main point that I would make is that we've certainly heard that Dr. Kolodny has looked at the opioid issue, certainly, has thoughts about it, has been asked to share those thoughts to various bodies, as best I could tell from what I heard three times in Oklahoma, he's been asked to come and talk.

But we are in a court of law. And although the descriptions of the areas in which counsel has offered Dr. Kolodny give us some guidance, as your Honor knows from the briefing and argument on the pretrial motions, one of the real questions is whether Dr. Kolodny really has any expertise and whether he has done the type of work that would be required to

present, in a court of law, which is where we are now. There's different rules than testifying before a senate or a state commission on causation, to be able to tie observations he made that may well be within his expertise, to an ultimate conclusion that the cause of this crisis are items that he observed.

And I think Dr. Kolodny has been very candid about things, in terms of he's not a statistician, he's done no type of statistical analysis. He relies primarily on correlation, which is not the same as causation. And it's just not his area. And so we do object to questions that would go beyond observations and opinions that really are based upon his expertise as a psychiatrist and as a public health specialist.

And there's no question that he has a background in that, and I'm confident there are things he can say that would be of assistance to the Court. But we do think it inappropriate to try to go beyond that and to do try to take those observations into opinions on causation as to what caused some of the things that I'm sure that he'll be talking about.

So on that basis, we would object to the offer because several of those items, I think, potentially, invite the witness to offer that type of testimony, notwithstanding that he doesn't have the qualifications to do that, and equally important, he really hasn't done the work that a true causation expert would do in order to offer those opinions. So thank

you, your Honor.

THE COURT: Thank you, Mr. Yoder.

You want to respond to that?

MR. BECKWORTH: Sure, I'll respond very -- as short as I can. We did have a hearing, lasted an hour, hour and a half. I think they were telling you to please make me stop, I talked so long on that where this exact issue was raised.

I would bring up one thing that we have developed in evidence, that you didn't have to your benefit at that hearing, which was that this company or these companies, actually took bachelors of arts and bachelor of science majors and trained them online and in person for like six to eight weeks, and then put them into doctor's offices in the state of Oklahoma and held them out to be, literally, pain experts.

So if that's the standard for qualification for the drug company here to be able to tell doctors what they should do with opioids and also their addictive qualities, I cannot imagine that someone like Andrew Kolodny wouldn't be able to talk about it. But also, this idea of correlation not being causation, that's lawyer talk. The evidence in this case shows that this company actually compensated these same "pain experts" based solely upon the idea of whether they could get enough prescriptions to meet their quotas.

And so we're dealing with an overprescription crisis, and that's the whole way they ran their business. So I think all

this has been done already. And I would, again, say, if this person is not qualified to talk about these issues, no one in the United States of America is. Thank you.

THE COURT: Mr. Yoder.

MR. YODER: Just briefly, your Honor.

THE COURT: Sure.

MR. YODER: You know, Mr. Beckworth's argument really doesn't address the question of Dr. Kolodny's expertise and the work that he's done as to whether any opinions on causation would be reliable. The evidence is what the evidence is.

And, again, we're in a court of law, so we can argue as to what the evidence indicates as to sales representatives, and what was said or not said about what they knew or didn't know, but that's very different than a witness coming into a court of law, under oath, and testifying as an expert.

And our point is not that there are not things that Dr. Kolodny shouldn't be allowed to talk about. We're not saying that at all. What we're saying, though, is to take those items and then to convert them into an opinion on causation without the expertise to do that, and without the work that would be done by a true expert to opine on those matters, you know, in this court of law, it shouldn't be allowed. So that's really the note of our objection.

THE COURT: Thank you. And both you gentlemen are correct. Prior to the beginning of the trial, we did have a

hearing where the defendants moved to exclude Dr. Kolodny's testimony or portions of it, at least.

Taking that into consideration, together with the foundation that Mr. Beckworth has laid, I'm going to overrule the objection to the State's offer to tender Dr. Kolodny as an expert and find that he's qualified to render expert opinion on the eight areas that Mr. Beckworth laid out, including abatement and any testimony regarding causation that Mr. Yoder objected to.

MR. BECKWORTH: Thank you very much, your Honor. May we proceed?

THE COURT: Yes.

MR. BECKWORTH: Thank you, Mr. Yoder.

Q (By Mr. Beckworth) Dr. Kolodny, you were here when Dr. Mazloomdoost testified?

A Yes.

Q You remember you heard the drug company asked him questions about compensation?

A Yes.

Q You're being compensated for your time and preparing for and testifying in this trial, correct?

A Yes.

Q And -- okay. So let's just go back through the history of you and I for a moment.

Do you recall when you and I first met?

A I do.
Q Where was it?
A Kansas.
Q Okay. And did Mr. Pate and Mr. Duck and Mike Burrage, all of us travel up there to see you talk?
A You did.
Q And prior to that, you had had conversations with Mr. Whitten, correct?
A I did.
Q And when we got done, we had dinner together, right?
A We did.
Q And do you recall that I asked you to come work on this case?
A You did.
Q And did I express to you that we had a pretty short timeframe to get to trial and that we believed we needed your help?
A You did.
Q Over time, did you agree to come work with us?
A I did.
Q And what did you -- I don't want to get into things that might be privileged about what you and I talked about.

But is it true that I asked you to devote all of your time to helping us prepare for this day?
A You were honest with me about the time commitment this

would entail.
Q And is it true that I told you this couldn't be a hobby?
A Yes, you did.
Q What did I ask you to do?
A You asked me to devote a very large portion of the next year or so of my life to helping you with this case.
Q Okay. And over time, did you come to agree to do that?
A I did.
Q And since then, have you spent any time in Oklahoma prior to this trial?
A I've spent lots of time in Oklahoma.
Q Lots of time?
A Yes.
Q Okay. Days and days?
A Yes.
Q Okay. You've been here for almost every day of this trial, right?
A Yes.
Q And when you had to go somewhere else, did you watch the trial online and read about it?
A I did.
Q You also have traveled down to Texas?
A I have.
Q And worked with us there when we were taking a break to be with our families --

A Yes.
Q -- those of us who lived in Texas, right?
A Yes.
Q And you've been to depositions in this case, right?
A I have.
Q Do you recall seeing Dr. Gilson testify?
A Yes, I do.
Q Were you there in the room with me when he testified?
A I was.
Q And you helped me get ready for that deposition, right?
A I did.
Q What about Dr. Portenoy? Now, you knew Dr. Portenoy long before you ever knew me, right?
A Yes.
Q Did you travel to New Hampshire to be in that deposition with me?
A Yes.
Q And have you traveled to places like Albany, New York and Chicago to be with other parts of our legal team to help attend and prepare for depositions?
A I have.
Q Okay. Now, you also are looking at documents in this case, right?
A Yes.
Q In fact, you have access to the database where all of J&J

and the other defendants' documents have been produced, correct?

A I do.

Q You spend a lot of time looking at those documents?

A Yes, I do.

Q Let's just stop for a second about that.

As you just testified, you've been doing public health investigation research on the opioid crisis, going back to 2003, 2005, right?

A Yes.

Q Have you ever had the opportunity, in all those years prior to being involved in this litigation, to actually see all the internal documents of Janssen and Johnson & Johnson?

A No.

Q Could you tell the Court: Is it beneficial for people who do what you do to get to see the actual documents that are behind the scenes?

A It's certainly beneficial to me, but I think it's also beneficial to the public. I think there's an important positive public health impact when we learn about the lies that have been told. I think that Big Tobacco would be a good example. The litigation against Big Tobacco, yes, there was settlement money, which I think has had a public health impact, but I think the greater impact from the litigation against Big Tobacco was that when the public learned about how Big Tobacco

lied when they learned about manipulation of nicotine levels, when they learned about targeting of adolescents, when they learned about how Big Tobacco lied about addiction and cancer. All of that, I believe, helped change attitudes in this country about smoking and had an enormous positive public health impact.

So I believe that we can see the same benefit from the opioid litigation. I think it's happening right now. It's been happening for the past couple of weeks because the Court has made this proceeding public.

Q And is it beneficial to folks who do that type of research and investigatory work that you're trying to do, have access to the documents that have been published already in this case?

A Yes, it is.

Q Okay. And without access to this type of information like you've had in our case, you would never have known the extent or depth of involvement of Janssen and Johnson & Johnson, other than what you had from other sources, correct?

A I have been much more aware of Purdue's misdeeds and wrongdoing because a lot of that had been made public. I had a sense of Johnson & Johnson's role in the supply chain. I had seen some of their deceptive materials. But until I had an opportunity -- opportunity to review discovery documents you've shown me or documents I've found on my own, I really was not aware of how bad Johnson & Johnson was or how big a player

they've been in this whole crisis.

And I think that that's probably true for many people. Purdue Pharma and the Sacklers steal the spot -- have been stealing the spotlight, but Johnson & Johnson, in some ways, has been even worse.

Q So let's go back to this idea of you working on this case.

In addition to helping us, in addition to working with the Opioid Commission here in the state, you also have had a chance to lecture to leaders in this state, correct?

A That's correct.

Q In fact, did you have an opportunity to speak for a program that Ms. Kelly Dyer Fry did on addiction that was sponsored by the Oklahoman?

A I did.

Q Were you a keynote speaker?

A I was.

Q And during that time, did you have a chance to talk to and meet doctors and leaders from our community here in Oklahoma?

A Yes, I did.

Q Now, you also have had the opportunity to speak with folks at a program sponsored by the Oklahoma State University Wellness Center, correct?

A I did.

Q You met Dr. Kayse Shrum?

A I did.

Q And I believe that at either that one or the Oklahoma one, you presented with Gary Mendell as well, correct?
A At the Oklahoma one with Gary, yes.
Q Now, Mr. Mendell is someone you know?
A Yes.
Q And you actually are involved with something he runs called Shatterproof, correct?
A Yes. I think I'm on his advisory board.
Q Okay. And in addition to all that -- and you've also been trying to carry out your job with Brandeis and your teaching responsibilities as well, correct?
A Yes.
Q Okay. Now, why does this all matter to you? Why are you willing to work with us, help all these investigators, research this, still teach, do your other jobs? Why are you doing it?
A The opioid crisis is, I think, the most significant public health problem our country has faced, possibly, in its history. I certainly, since the Spanish flu epidemics, the death toll is enormous, the number of individuals and families and communities that have been impacted. And I suppose that having a front seat to watching this problem get worse, slowly over many years, has made me eager to play a role in tackling the problem.
Q Have you been -- you feel like you've been out there on your own, some, on the front line of this crisis?

tapentadol, and fentanyl. With opiates and the semisynthetic opioids, most of the routine testing will pick them up.

Q So we've heard a lot of testimony about DAWN data. You just mentioned emergency room?

A That's correct.

Q So traditionally, would it be hard to pick up fentanyl on an emergency room analysis?

A Yes. And so, in fact, SAMHSA which administered DAWN made very clear, they put in writing that when it comes to fentanyl, that DAWN estimates -- that DAWN is underestimating because hospitals do not routinely test for fentanyl.

Q Okay. Now, we'll come back to DAWN here in a little bit in the next day or so. Where would -- tapentadol, just to make sure, that falls under tramadol?

A Yeah, should have been on the list.

Q Okay. Now, let's go back to some of the big picture concepts. The Court has heard a lot about addiction. We've had Dr. Rojas talk about that. And we've heard dependence and tolerance. Can you explain to the Court the difference between those three? We can break it down or just get started.

A It's really important for the Court to understand the distinction between a physical dependence and addiction and psychological dependence. And these terms come up. You'll see them in the continuing medical education programs that are sponsored by opioid manufacturers. You'll see the term --

you'll usually see it broken down, physical dependence, tolerance, addiction, pseudoaddiction, and the educational content will generally emphasize the distinction between what's termed physical dependence and addiction. And the content will usually describe physical dependence as totally benign, something that's going to happen to everybody that takes opioids. It means don't stop the drug abruptly, but that it's clinically unimportant. Whereas addiction, or sometimes it's referred to as psychological dependence, is described in these materials that are designed to promote more prescribing -- addiction is described as rare and something that is serious, but is unlikely to happen in patients who are prescribed opioids.

And the reality is that we don't have a bright line between so-called physical dependence and addiction. In fact, physical dependence is not even the appropriate term because when somebody's going into withdrawal, the symptoms are not just physical. They're not just flu-like. One of the more distressing symptoms when people are going into withdrawal is anxiety, severe anxiety. It feels like a panic attack. If you've ever wondered why people do such desperate things to maintain their opioid supply once they become physiologically dependent, it's not that they're afraid to feel like they have the flu. It's because when you're talking opioids around the clock, one of the things they do is they suppress a region of

the brain called the locus coeruleus. That region of the brain is responsible for our fight or flight response. So if you were in the jungle and there was a lion there ready to tear you to pieces, the locus coeruleus starts firing so that you -- your adrenaline, you can run for your life. When you take an opioid, it inhibits, it quiets the locus coeruleus which is one of the reasons why people feel relaxed when they take an opioid. If you're taking opioids around the clock and you're suppressing the locus coeruleus, when you stop taking opioids, the locus coeruleus wakes up with a vengeance and people start to feel like they're going to die. They feel panicked. It's been described as a sense of impending doom.

So physical dependence is not even the right term because there are psychological symptoms. The correct term is physiological dependence. But we still don't have a bright line between physiological dependence and addiction. They're very closely related so that, you know, anybody who takes an opioid for just a few days starts to become physiologically dependent if they're doing it every day. And we wouldn't necessarily call that addiction. But if you've been taking an opioid for weeks or months or years, there's a very significant physiological dependence begins to set in. And when that patient -- let's say a perfect pain patient who always took her opioids exactly as prescribed, she's been on them for a while and now she wants to come off, when she tries to come off,

she's going to have withdrawal symptoms, but even after you get the patient over the acute withdrawal symptoms which can last a few days, that patient is going to have up to six months of leg kicks in the middle of the night, insomnia, fatigue, depression, and because that patient knows in the back of her mind all she would have to do to feel better again would be to take one pill, she starts to have cravings.

And so the physiological dependence and addiction are closely related and the reason that opioids are so highly addictive is because of the physiological dependence, the fact that you feel so awful when you try and stop. That's one of the main reasons people keep using. The reason that opioid manufacturers in their educational materials for prescribers, the reason that they emphasized the distinction is because doctors are very worried about addiction.

And so the way in which they were able to convince doctors that opioids are not really addictive was to rely on sort of this half-truth that physiological dependence and addiction are not the same thing. And so that was -- what they told doctors is you've been making this mistake of thinking about addiction as this physical dependence and you were all wrong about it. They're totally different. The physical dependence you don't have to worry about. Addiction is rare.

Q Thank you, Doctor. So we've talked about the opioid crisis, and one of the categories we've asked you to testify

Q And were you here when I asked Johnson & Johnson and Janssen that very question, what the rate of addiction is, even as we sit here today?
A Yes.
Q And what did they say?
A They said, they don't know.
Q So let's turn our attention and talk about where we are in Oklahoma. You've gone through, kind of, the big, high-level concepts that we'll be covering in our testimony. Here in Oklahoma, we've discussed issues about how you spoke at the Opioid Commission and other things.
Have you had a chance to work with Jason Beaman?
A I have.
Q And he's a doctor here in Oklahoma?
A Yes, he is.
Q Works with Oklahoma State University?
A Yes.
Q You've worked with him on issues related to opioid addiction and the crisis we have here in Oklahoma, correct?
A Yes, I have.
Q You've also had a chance to meet and get to know Commissioner White and work with her?
A Yes.
Q Have you had a chance to meet and get to know Jessica Hawkins?

A I have.
Q And you've worked with the State, as we showed, in the Opioid Commission and other areas, for quite some time now?
A Yes. And other doctors on projects with the State.
Q Now, you also -- as we talk about your work and your investigatory work, you've had an opportunity to talk to doctors from various parts of the country, right?
A Yes, I have.
Q Are opioids different in New York than they are in Oklahoma?
A No. The molecule is the molecule.
Q Is addiction different for a patient in New York than in Oklahoma?
A Opioid use disorder, the disease is the same. It may sometimes look different in different -- in people with different lifestyles, but the disease is the disease.
Q Now, you've spent quite a bit of time looking at the national marketing strategies of Janssen and Johnson & Johnson, right?
A I have.
Q Did they have a strategy that applied everywhere but Oklahoma?
A No. Their Oklahoma strategy was similar to their -- was the same as their national strategy.
Q We've seen examples of things they did here in Oklahoma

that were part of their bigger picture national strategy, right?

A Yes.

Q Okay. Do you believe, in your experience and work here in the state, that Oklahoma has been hit hard by this opioid crisis?

A Yes. Oklahoma's one of the hardest hit states in the country, in terms of overdose deaths, the rate of overdose death, and in opioid prescribing and types -- certain types of opioid prescribing, Oklahoma's at the very top of the list.

Q Okay.

MR. BECKWORTH: Your Honor, I'm going to approach, if I may, with Court's Exhibit 1?

THE COURT: Yes, you may.

MR. BECKWORTH: Thank you.

THE WITNESS: It's upside down.

MR. BECKWORTH: Well, it certainly is today.

THE COURT: Making sure I'm paying attention.

MR. BECKWORTH: Okay. There we go.

Q (By Mr. Beckworth) Now, you know Dr. Courtwright, correct?

A I do.

Q How do you know him?

A We wrote a paper together.

Q You were here when he testified?

A Yes, I was.
Q Now, you've asked me to go over this with you.
Why is this depiction of a dam of narcotic conservatism, why is that important to you?
A You know, the first time I saw this graphic was during Dr. Courtwright's testimony, and it does make a lot of sense to me, based on my understanding of our nation's history with opioid addiction. And so as Dr. Courtwright very nicely testified to, we had an opioid addiction epidemic in the past, very similar to the one we're dealing with today. Particularly, in the latter half of the 19th century.
And as Dr. Courtwright testified, that epidemic came to an end because of what was termed narcotic conservatism, that as the medical community learned that we need to be very cautious with this dangerous class of drug. As we learned to be careful, narcotic conservatism really kept the public safe.
Q In 1995, based on the work that you've done and you've heard Claire Nguyen testify, did Oklahoma have an opioid crisis?
A In 1995, I would refer to it as it looks like a dam. So I would say that the dam of narcotic conservatism, in 1995, was still intact.
MR. BECKWORTH: Now, your Honor, may I approach with a blowup from State's Exhibit 0906.
THE COURT: Yes, you may.

EXHIBIT 2

IN THE DISTRICT COURT OF CLEVELAND COUNTY
STATE OF OKLAHOMA

STATE OF OKLAHOMA, ex rel., MIKE HUNTER ATTORNEY GENERAL OF OKLAHOMA,	)	
Plaintiff,	)	
VS	)	Case No. CJ-2017-816
(1) JOHNSON & JOHNSON; (2) JANSSEN PHARMACEUTICALS, INC.; (3) ORTHO-MCNEIL-JANSSEN PHARMACEUTICALS, INC., n/k/a JANSSEN PHARMACEUTICALS; (4) JANSSEN PHARMACEUTICA, INC. n/k/a JANSSEN PHARMACEUTICALS, INC.;	)	
Defendants.	)	

TRANSCRIPT OF PROCEEDINGS
HAD ON THE 12TH DAY OF JUNE, 2019 (AFTERNOON SESSION)
BEFORE THE HONORABLE
THAD BALKMAN, DISTRICT JUDGE

REPORTED BY: Tanya Burcham, CSR, RPR

Mr. Yoder doing earlier that day, I'd say, well, he was in court in a trial against me. And I wouldn't have to have a document from this court to do it, I would just be able to testify to it. And if the other side had a problem with that, then they would cross-examine me and say, well, you weren't in court, you were at lunch. And that's how it's done.

So I think you'll have an opportunity to cross-examine him, and I'm sure the Judge will allow you all the time you need to do that, but this is a witness who knows more about this topic than anybody in the country.

MR. YODER: Two things, Your Honor. No. 1, I don't believe there's been any evidence that my clients attacked Dr. Kolodny. Part of the problem here is that we're talking about opioids generally, the opioids industry on this chart that he just -- he's got Teva and Purdue, he's got their money, which really isn't part of the case at this point in time. So that's just point No. 1. There's no evidence of that, and I think it's really, really important to separate out a lot of what we've been hearing about the opioid industry. And then sometimes he says defendants, and it's clear he's still talking about Teva and Purdue. But having said that --

MR. BECKWORTH: No.

MR. YODER: -- if Mr. Beckworth was going to testify that he saw -- I didn't mean to do that, I apologize.

MR. BECKWORTH: Okay. Thank you. Sure.

MR. YODER: -- that he saw an accident before he was allowed to do that, there would have to be a foundation laid that he was there, that he was in a position to see it, and that he did see it, and then he would be allowed to testify as to what he saw. And right now, we're not hearing any of that. We've heard it on some things, and that evidence has come in, but in this last question-and-answer session, he's working in a lot of stuff that we've never heard anything about at this point in time, never heard anything about it.

MR. BECKWORTH: Again, Your Honor, he's been doing that. I'll continue to ask him if he has facts to back up these statements; and if he says no, then I guess he shouldn't talk about them. But, I mean, I've been doing this for ten hours now, I don't know what else you could do with the gentleman. But if they want me to go get every volume of document that's in the 90 million that's been produced in this case, we can. In fact, he testified under oath that he's on our system looking at the documents that they produced, and he's been in Oklahoma dozens of days, and basically living this case with us while we've been here. I know they don't want to hear it. It may be prejudicial to them, but that's not what 403 is. It's unfairly prejudicial and that's always balanced against the probative value. And these comments that were just made about how this isn't an issue of Purdue or Teva, what the heck is that? You all were on the Pain Care Forum since 2005.

You all collaborated to attack this man and his integrities.

THE COURT: Well, let's cut off -- the point one, I mean, that's the whole issue that I, as fact finder, will have to determine is whether or not the State's arguments/evidence that's presented, whether or not it ties in your client to the nuisance that they're trying to cause. I get that. That's the central issue of this whole trial. So I'm not going to make a decision right now on that. That's just not what I'm going to do.

To your second point, I'm not going to make a blanket ruling. I think Dr. Kolodny has been questioned that has -- I'm convinced that he has knowledge about these things. Maybe I need to listen a little more carefully because I did not hear, Mr. Yoder, in these last few questions, where he was injecting new knowledge. But to the extent that he is testifying of things that he doesn't have knowledge of, I'm going to expect you to bring that up on cross-examination and try to dent his credibility if he's testifying to things that he does not have knowledge of. Mr. Brody.

MR. BRODY: If I may just add one point, Your Honor, because I think Mr. Beckworth's last argument there really illustrates the underlying problem, and the argument was, well, he's been living with the State's legal team for a year studying the documents that were produced in discovery. That's not proper expert testimony.

EXHIBIT 3

IN THE DISTRICT COURT OF CLEVELAND COUNTY
STATE OF OKLAHOMA

STATE OF OKLAHOMA, ex rel., MIKE HUNTER ATTORNEY GENERAL OF OKLAHOMA,	)	
Plaintiff,	)	
VS	)	Case No. CJ-2017-816
(1) JOHNSON & JOHNSON; (2) JANSSEN PHARMACEUTICALS, INC.; (3) ORTHO-MCNEIL-JANSSEN PHARMACEUTICALS, INC., n/k/a JANSSEN PHARMACEUTICALS; (4) JANSSEN PHARMACEUTICA, INC. n/k/a JANSSEN PHARMACEUTICALS, INC.;	)	
Defendants.	)	

TRANSCRIPT OF PROCEEDINGS
HAD ON THE 11TH DAY OF JUNE, 2019 (AFTERNOON SESSION)
BEFORE THE HONORABLE
THAD BALKMAN, DISTRICT JUDGE

REPORTED BY: Tanya Burcham, CSR, RPR

MR. YODER: Objection, Your Honor. Lacks foundation. He's asking a factual question about something that happened that he wasn't involved in without any foundation as to the source of his knowledge that he can testify based upon.

MR. BECKWORTH: Your Honor, can I respond?

THE COURT: Yes.

MR. BECKWORTH: I can ask him a very simple question about it.

THE COURT: Please do.

Q. (By Mr. Beckworth) In the Fisk article, did it say the 80/20 rule did not apply to Johnson & Johnson's holding and subsidiary Tasmanian Alkaloids?

A. It did.

Q. All right. Now, let's talk about where we are in the timeline.

MR. BECKWORTH: Your Honor, may I approach the witness?

THE COURT: Yes, you may.

MR. BECKWORTH: I've prepared a Court's exhibit for Your Honor.

Q. (By Mr. Beckworth) Dr. Kolodny, have we prepared a summary timeline of some of the events that we've gone over so far today and that we will cover here in a moment?

A. Yes.

Q. Would it assist you in kind of shortening and explaining your testimony to the Court if we were able to publish this and go over it together?

A. Yes.

Q. Okay.

MR. BECKWORTH: Your Honor, we'd ask we be able to publish this at this time.

MR. YODER: As a demonstrative, Your Honor, I suppose that's fine.

THE COURT: We'll mark this Court's Exhibit 52 and grant you permission to publish.

(Court's Exhibit 52 admitted.)

MR. BECKWORTH: Thank you, Your Honor.

Q. (By Mr. Beckworth) Dr. Kolodny, we're going to do this quickly and I don't want to belabor any of these points.

MR. BECKWORTH: May I approach the board, Your Honor?

THE COURT: You may.

Q. (By Mr. Beckworth) Okay. So we saw Mr. Ottaway talk about this in opening statement and he had a timeline. We know that J&J launched Duragesic sometime in 1991. Right?

A. Correct.

Q. So let's focus and kind of wrap up the Noramco discussion for a moment. When we looked at the Fisk article, in 1994 what was -- what was happening?

A. It says there -- well, in 1994 we have the new drug application for OxyContin. And in 1994 Tasmanian Alkaloids begins development of high thebaine poppy to meet, quote, anticipated demand.

Q. Okay. Now, '96, Purdue launched OxyContin. It was actually December of '95 but we always use '96. Right?

A. Yes.

Q. All right. Then and we saw from Mr. Fisk, what happened in 1998?

A. In 1998 J&J created the Norman poppy.

Q. And then we saw that in '98 there was a discussion between Purdue Fredrick and Noramco that said what? We're up here.

A. Okay. Oh, so this was the -- the letter to Purdue, Fredrick laboratories, from Johnson & Johnson talking about -- mentioning that we have been discussing this for many years.

Q. And if you go back to the Fisk article, the '94, does it help you see where many years began?

A. Yes, it does. So it looks -- it does appear that Johnson & Johnson and Purdue had been planning for years prior to the launch, probably beginning in 1994, with the development of the thebaine poppy to meet anticipated demand. The anticipated demand that they're referring to in 1994 is the introduction of OxyContin.

Q. Okay. And again, we covered this. It will be the

last we ask this for now. But we see over here in '99, after all of this has occurred, Purdue is saying that their supply is their principal barrier to higher sales. Right?

A. That's correct.

Q. Okay. So let's step back a moment. We've heard Ms. Deem-Eshleman state that Johnson & Johnson did not market Duragesic for -- broadly for chronic noncancer pain until some time after the '97 timeframe. Do you recall that testimony?

A. Yes.

Q. Okay. So in 1996 we have something that's coming up with Purdue launching OxyContin. What is that?

A. It's a consensus statement that was issued by the American Pain Society and the American Academy of Pain Medicine.

MR. BECKWORTH: Your Honor, this is Exhibit 0900. It's already in evidence. I believe there's no confidentiality issues and I would like it publish it with the Court's permission. If that's okay.

THE COURT: You may do so.

MR. YODER: Do you have a copy?

MR. BECKWORTH: I mean, I --

MR. YODER: May I ask for a copy, Your Honor?

THE COURT: Yeah, before you publish it, let him look at it.

MR. BECKWORTH: Although I don't know that I have

copies of everything that's in evidence with me, but -- okay.

00 --

MR. YODER: We didn't bring all of the boxes behind us, so if you could, that would be appreciated.

MR. BECKWORTH: We'll see what we have.

0900. May we publish, Your Honor? That's in evidence.

MR. YODER: That's fine, Your Honor.

THE COURT: Yes, you may.

Q. (By Mr. Beckworth) So what is this?

A. That is a document, a consensus statement that was issued by two pain organizations calling for much greater use of opioids.

MR. BECKWORTH: Your Honor, may I approach the board?

THE COURT: You may.

Q. (By Mr. Beckworth) Now, I'm sure that everybody would like to hear more of what you have to say about this document than me, so I'm going to kind of guide you through it. Would you please tell the Court what's important to you about this first paragraph?

A. So -- well, actually even just to be clear, because the document refers to pain treatment, the heading is The Use of Opioids for the Treatment of Chronic Pain. So where you see pain mentioned or undertreatment of pain, the treatment that's

Q. So let's go down here about that. What does it say on the last bullet?

A. To understand the connection, if any, of the educational campaign to the tapentadol, TPP.

Q. Okay. So let's step forward a little bit to page 12, which is 0013. These are P3 program, the value. Do you see this?

A. Yes.

Q. So these are the results after these messages have been taken to the field and see what doctors have. First, what does it say the reaction was?

A. Well, some of the doctors here clearly saw through the P3 program. I think the P3 program involved enrolling physicians in what would seem like a clinical trial and -- where they would be working with Johnson & Johnson. And it looks as though some of the doctors saw through that and recognized that it was a marketing tool. Like it says, the last bullet, there is a few mentions to sell drugs is the reason for the program.

Q. Okay. So let's skip -- go ahead. Did you have something more to say?

A. No. No.

Q. Okay. So let's go forward to page 0016, where they analyze the messaging that occurred. So if you see over on the top, The Undertreatment of Pain, what is the key takeaway? Do

you see where they're --

A. Yes. Old info but important.

Q. About that same messaging. Right?

A. Yes.

MR. BECKWORTH: Okay. And, Your Honor, may I approach?

THE COURT: You may.

MR. BECKWORTH: Okay. Thanks. May help if we just kind of walk through this.

Q. (By Mr. Beckworth) So when you look over at the impact of this, what does it say?

A. Thought-provoking and potential behavior change.

Q. So is this an example of how messages could be sent into the field by sales reps to doctors to do what to their behavior?

A. To change their behavior to get them to prescribe more.

Q. Okay. Now, over here one of the messages we see is the consequences of not treating pain. Right?

A. Correct.

Q. And one of the key takeaways that comes from that messages is what about acute pain?

A. That if you don't treat acute pain aggressively, if you don't give an opioid for acute pain, that it can turn into chronic pain. This was a new marketing tactic or a new

so-called educational message. I think that Johnson & Johnson invented this. I could be wrong. The idea that if you didn't -- if you don't give opioids to someone with acute pain that they will become chronic pain patients. That aggressive opioid prescribing can actually prevent chronic pain. There was no adequate science to support that idea, but it was a message that I had an idea that took off like a virus, as -- as Dr. Mazloomdoost described it. So many doctors began to think, and I began even hearing from colleagues that, oh, well, you have to give opioids for acute pain or the patient will become a chronic pain patient.

Now, the exact opposite is true, as I mentioned. If you prescribe opioids aggressively for acute pain, you are much more likely to turn that person into a long-term chronic pain patient. It's the opposite of what happens here.

Q. So when they talk about the potential behavior change, what do they write here?

A. Potential behavior change is -- potentially more aggressive approach to treating (stronger dosing in meds). Change in evaluation and consideration approach. Increase in sympathy to complaints. A desire to spread the message to other physicians.

That did happen. That idea really took off.

Q. So do you have any concerns at all about more aggressive or stronger dosing?

A. Again, for many people with acute pain, if you are going to treat them with an opioid, you would use the lowest dose for the shortest period of time. And for many people with acute pain we don't have to expose them to opioids. And for many people with acute pain, the pain will get better on its own. Here, this idea that somehow acute pain turns into chronic pain without stronger dosing is just not true.

Q. Okay. Great. Now, let's turn to the next page and kind of finish up these recap messages. We see here one of the messages is, Concerns that hinder effective pain management. Right?

A. Yes.

Q. And one of the barriers or impediments we've seen is this idea that people would get in trouble with regulators. Right?

A. Yes.

Q. Okay. And then we see here another statement about addiction. What does it say?

A. Numbers -- addiction (numbers new info).

Q. And then over on the most common reactions part of this, what does it say about the addiction percentages?

A. About half believe the addiction percentages (For the most part, the rep was successful with refocusing them from addiction to side effect concerns).

Q. Is there anything wrong with that?

EXHIBIT 4

IN THE DISTRICT COURT OF CLEVELAND COUNTY

STATE OF OKLAHOMA

STATE OF OKLAHOMA, ex rel., MIKE HUNTER ATTORNEY GENERAL OF OKLAHOMA,	)	
Plaintiff,	)	
vs.	)	Case No. CJ-2017-816
(1) JOHNSON & JOHNSON; (2) JANSSEN PHARMACEUTICALS, INC.; (3) ORTHO-McNEIL-JANSSEN PHARMACEUTICALS, INC., n/k/a JANSSEN PHARMACEUTICALS; (4) JANSSEN PHARMACEUTICA, INC., n/k/a JANSSEN PHARMACEUTICALS, INC.,	)	
Defendants.	)	

PORTIONS OF TRANSCRIPT MAY BE COVERED UNDER PROTECTIVE ORDER

TRANSCRIPT OF PROCEEDINGS
HAD ON JUNE 13, 2019 (MORNING SESSION)
AT THE CLEVELAND COUNTY COURTHOUSE
BEFORE THE HONORABLE THAD BALKMAN
DISTRICT JUDGE

REPORTED BY: ANGELA THAGARD, CSR, RPR

organization of pain patients, but really advocates for the drug companies that fund it.

It was receiving -- we know from an investigation by the Senate Homeland Security Committee that the U.S. Pain Foundation in recent years had been receiving a very large amount of money from an opioid manufacturer called Insys which made a drug called Subsys. The CEO of that company and other executives were recently convicted of -- criminally convicted for their role marketing the Subsys spray, and they had been a major funder of the U.S. Pain Foundation.

Q And we see here that Johnson & Johnson or Janssen had funded at least $58,500 from the records we have, right?

A That's correct.

Q Now, yesterday we looked at something called the PAINS report on the Institute of Medicine report, right?

A Yes.

Q And we -- can you talk here for the Court about what the Center for Practical Bioethics is?

A So the Center for Practical Bioethics, the individual who had been running that organization has been involved in opioid advocacy for many years. And in fact, I think even in 2002, 2001, she had a letter to the editor of the New York Times defending Purdue when OxyContin was beginning to get some -- some bad press.

This is an organization that has received quite a bit of

funding from Purdue Pharma and clearly some funding from Johnson & Johnson as well. As it was becoming clear that the increase in opioid prescribing was resulting in adverse public health consequences.

The Center for Practical Bioethics' role was to help opioid manufacturers preserve that status quo by trying -- by helping them frame all of the harms associated with the increase of prescribing as being limited to abuse and by promoting the idea that we have an epidemic of pain. The head of this organization was involved in lobbying Congress so that the Affordable Care Act or Obama Care would include a provision that -- requiring a panel formed by IOM that would put out a report on pain in America, and that same individual sat on that panel and created pains to try and leverage the recommendations from that panel.

Q As we saw yesterday, did the defendants try to use the IOM report as a way to market their drugs?

A Yes. I believe they wanted a report because they saw this as a business opportunity, and then once they got that report, they wanted to make the most of it.

MR. YODER: Your Honor, just very briefly, may I approach very briefly?

THE COURT: Yes.

(The following proceedings took place at the bench:)

MR. YODER: I appreciate your Honor giving me this

chance, and I'm trying to be very selective in doing it. But I think the last answer, again, just demonstrates the issue here.

It's one thing for Dr. Kolodny to testify to facts that a particular organization did or didn't do something, and I understand the Court's view that he may testify to that without a particular foundation to establish the basis of his knowledge for that. But when he goes beyond that and he makes statements such as: The purpose of doing this was to assist the drug manufacturers to do X, Y, and Z, he's just arguing.

He's arguing from those facts, and it's not something that he has any particular expertise on. He's just making an argument that I assume we're going to hear in closing argument from counsel.

And I think it's very prejudicial to allow him to do it even though I understand, your Honor, you'll be sifting through it. But it also -- the way he mixes it, it's very difficult to tell what he's testifying to as a fact versus what is his speculation as to what the underlying purpose was. So that's just point one.

Point two is: He continues to mix what my clients have done with what other opioid manufacturers have done. He even confused the number on the board as to the amount of money that was given to a particular organization, and counsel had to correct him that it was something different.

So I do think that, you know -- I understand your Honor's

Q So do you see that has good or problematic?
A This call note is very problematic because it looks like the doctor is -- the doctor is being told that if they prescribe more, then they can get money from the drug company to be on the speakers bureau, basically. That's what it means by, The doctor wants to speak.

And also, the fact that concern is expressed about abuse and even nurses having a problem and using old patches. And the response there is that it's worse with some other drug.
Q Okay. So let's look at another example here. So this is one from Eric Thornhill in 2005. And here it says: Asked Linda at the front desk to dispense the coupon and police the DAWs on each script.

Now, remind the Court: DAW means what?
A Dispense as written. That's to make sure, if a doctor doesn't write DAW on the prescription, the -- a generic is likely to be filled.
Q And we've heard a lot of testimony about coupons and return on investment on those, right?
A Yes, we did.
Q What does it say next about that?
A Asked Linda at --
Q No. You've already that.

She gets.
A She gets a Powerade Sonic when five coupons are done.

Q Okay. And then: Follow up on the dinner with Dr. Nguyen, first, on June?

A Yes.

Q What do you have to say about that, based on your experience, training, qualifications?

A Well, I'm not a lawyer, but that I would wonder whether or not that's legal. That also sounds kind of like bribery. The front desk person at a doctor's office is going to be given something of value if -- when more coupons are given out that leads to more people using them. And I think these were the coupons that said, Get your first 15 days free of Duragesic. So all of this is disturbing.

MR. YODER: Your Honor, I object and I move to strike the testimony about speculating as to what might or what might not be bribery. As Dr. Kolodny said, he's not a lawyer. He has no expertise that would allow him to offer that opinion. If he wants to offer testimony about his reactions, as a physician, to these types of things, that's one thing, but going beyond that and suggesting that there's some type of illegality or unlawfulness, when he doesn't know anything more than what he's reading on the screen, it's not relevant. It's -- I think should be barred by 2403 as well. And I just don't think it's within the scope of any expertise he has. It would be of any value to the Court.

MR. BECKWORTH: Your Honor, may I respond?

THE COURT: Yes.

MR. BECKWORTH: I believe Dr. Kolodny was very clear in saying he's not a lawyer and he's not saying it's bribery. He said it sounded like getting something of benefit in exchange for prescribing. So I think we cleared it, but I can ask him a follow-up question.

THE COURT: I'll move to strike the testimony referencing the possible commission of a crime.

MR. YODER: Thank you, your Honor.

Q (By Mr. Beckworth) And, Dr. Kolodny, pursuant to what the Court's saying, let's keep it in your wheelhouse, right?

You're a doctor?

A I am.

Q Public health expert?

A Yes.

Q Scholar in the field of the opioid crisis?

A Yes.

Q Just in your opinion as a medical doctor dealing with these issues, do you find it good or problematic to be offering folks something of value in return for giving out coupon to increase prescribing? Limit it to that.

A It is a problem and we are talking about a highly addictive drug for which coupons are being given out for a patient to take this highly addictive drug for free. And this is all occurring in 2004, where we are already, as a nation and