

Sara H. Cody, M.D. - 08-18-2022
CALVARY CHAPEL SAN JOSE vs GAVIN NEWSOM

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

**CERTIFIED
TRANSCRIPT**

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CALVARY CHAPEL SAN JOSE, a)	Case No.:
California Non-Profit Corporation;)	20-cv-03794-BLF
PASTOR MIKE MCCLURE, an individual;)	
SOUTHRIDGE BAPTIST CHURCH OF)	
SAN JOSE CALIFORNIA dba)	
SOUTHRIDGE CHURCH, a California)	
Non-Profit Corporation; PASTOR)	
MICAHIAH IRMLER, an individual,)	

Plaintiffs,

vs.

GAVIN NEWSOM, in his official)
capacity as the Governor of)
California; TOMAS ARAGON, M.D., in)
his official capacity as the Acting)
California Public Health Officer;)
SANTA CLARA COUNTY; SARA H. CODY,)
M.D., in her official capacity as)
Santa Clara County Public Health)
Officer; MIKE WASSERMAN, in his)
official capacity as Santa Clara)
County Supervisor; CINDY CHAVEZ, in)
her official capacity as a)
Santa Clara County Supervisor;)
DAVE CORTESE, in his official)
capacity as a Santa Clara County)
Supervisor; SUSAN ELLENBERG, in her)
official capacity as a Santa Clara)
County Supervisor; and JOE SIMITIAN,)
in his official capacity as a)
Santa Clara County Supervisor,)

Defendants.

VIDEOTAPED DEPOSITION OF
SANTA CLARA COUNTY'S PERSON MOST KNOWLEDGEABLE
PURSUANT TO RULE 30(B)(6) - SARA H. CODY, M.D.

Sara H. Cody, M.D. - 08-18-2022
CALVARY CHAPEL SAN JOSE vs GAVIN NEWSOM

1 DATE: Thursday, August 18, 2022
2 TIME: 9:04 A.M. to 6:52 P.M.
3 LOCATION: Remote Via Zoom Videoconference
4

5 REPORTED BY:
6 Michelle D. Knowles,
7 CSR No. 8979, RPR, CRR, CRC, CCRR
8 File No. 22-0818
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1 If you want to ask her about comments she made about
2 the County's rules, I guess you can ask her about
3 that.

4 MS. GONDEIRO: Okay. Well, her -- her
5 capacity regarding whether she was at a social 10:31:14
6 gathering or -- or it was during the workday is the
7 same. It -- you know, she's -- she's talking about
8 her response to COVID-19 --

9 MR. WALL: Look, Ms. Gondeiro, there's a --
10 there's a -- there's a critical -- 10:31:27

11 MS. GONDEIRO: -- that leads with her role
12 as capac- -- her -- her role once she's outside of
13 the building.

14 MR. WALL: The critical distinction here is
15 that Dr. Cody is appearing as a designee of the 10:31:39
16 County to testify on behalf of the County. She's not
17 here in her personal capacity to testify about her
18 social con- -- her social life.

19 And if you want to expand the scope of this
20 deposition to her personal capacity, we can -- we can 10:31:54
21 designate, say, until noon to talk about her personal
22 capacity and close any further deposition in that
23 capacity. If you want to talk to her as the designee
24 of the County, please ask questions about the County
25 and what it did and the basis for its actions during 10:32:12

1 the COVID-19 pandemic.

2 MS. GONDEIRO: Okay. What we'll do is --
3 we'll talk about this, Robin, over lunch because I
4 don't want to waste any more time, and we will --
5 we'll talk about this, and perhaps you can have 10:32:24
6 someone in your -- in your county office provide me
7 the case law that is warranting you precluding her
8 from -- from answering these questions.

9 MR. WALL: I'm not precluding her from
10 answering. I'm just saying that if we're going to 10:32:38
11 discuss private third-party identities and
12 information, we need appropriate confidentiality
13 protection.

14 MS. GONDEIRO: Well, I also need to know the
15 case law that requires that. She's already given me 10:32:50
16 other third-party information names. So I don't want
17 to waste any more time, so we're going to have to
18 talk about this over lunch break.

19 BY MS. GONDEIRO:

20 Q. Dr. Cody, what scientific literature did you 10:33:02
21 rely on, starting in January of 2020, to learn about
22 COVID-19?

23 A. There would have been multiple sources.

24 Q. Okay. Well, what were those -- what were
25 the sources you relied upon, starting in January of 10:33:24

1 2020, to learn about COVID-19?

2 A. I can give you examples. This will not be
3 exhaustive.

4 Q. Okay.

5 A. So official publications by the Centers for 10:33:39
6 Disease Control and their morbidity and mortality
7 reports, articles published in the medical literature
8 by medical journals, articles published in the
9 literature by other public health journals, articles
10 published in the literature from epidemiology 10:34:06
11 journals, and -- and other publications and -- and
12 preprints.

13 Q. Were there any specific studies you relied
14 upon regarding COVID-19 starting in January of 2020?

15 A. And what time period? 10:34:33

16 Q. Starting in January of 2020.

17 MR. WALL: Objection. Vague. Overbroad.

18 THE WITNESS: January 2020 through present?

19 BY MS. GONDEIRO:

20 Q. Let's say January of 2020 through -- through 10:34:43
21 March of 20-- of 2020, what specific studies did
22 you rely upon?

23 A. Between January 2020 and March 2020?

24 Q. Yes.

25 A. I -- I don't recall which specific studies 10:34:59

1 for that -- that time period. It was quite a while
2 ago.

3 Q. Okay. What about after -- from -- from
4 March 2020 to the present, what specific studies did
5 you rely upon regarding COVID-19? 10:35:12

6 MR. WALL: Objection. Vague. Overbroad.

7 THE WITNESS: I -- I -- I wouldn't be able
8 to give you specific citations for specific studies.

9 BY MS. GONDEIRO:

10 Q. You don't recall any specific studies you 10:35:25
11 relied upon regarding COVID-19 at all since January
12 of 2020 to the present?

13 A. There were many studies, as I mentioned, and
14 there were studies regarding clinical studies,
15 epidemiological studies, wastewater studies, 10:35:45
16 long-term COVID outcome studies, vaccination studies.
17 So there were -- there were -- there were many. And
18 there were studies in the CDC's MMWR. So there
19 were -- there were many.

20 Q. Well, let's start with the CDC. 10:36:13

21 So starting from January of 2020 to the
22 present, what CDC studies did you rely on?

23 A. I would have relied on many.

24 Do you want to know which -- some examples?

25 Q. Yes. 10:36:36

1 A. So one example would be there was a report
2 of a event in, I believe it was, Washington -- of a
3 super-spreader event at a choir in Washington. I
4 remember that one fairly well.

5 Q. Do you remember any other studies and the
6 details of those studies conducted by the CDC
7 regarding COVID-19 starting in January of 2020?

10:37:02

8 MR. WALL: Objection. Misstates testimony.
9 You can answer the question, Dr. Cody.

10 THE WITNESS: The CDC published many studies
11 of experiences from around the country with COVID-19
12 that were relevant and of interest to us.

10:37:17

13 BY MS. GONDEIRO:

14 Q. Okay. That didn't answer my question.

15 I asked you, can you explain to me what --
16 what other studies you relied upon from the CDC
17 starting from January of 2020 to the present?

10:37:35

18 A. So I don't -- I don't re- -- I can't bring
19 up specific citations of studies.

20 Q. I'm not asking for specific citations. I'm
21 just asking you to just give me a brief overview of
22 what you remember about that study.

10:37:58

23 A. Of -- of types of studies that I would have
24 relied on?

25 Q. Yes. Relat- -- regarding COVID-19 --

10:38:09

1 regarding COVID-19.

2 So let me -- let me restate the question:
3 What other studies did you rely upon from the CDC
4 regarding COVID-19 starting in January of 2020?

5 MR. WALL: Objection. Asked and answered. 10:38:28

6 You can answer the question, Dr. Cody, if
7 you understand it.

8 THE WITNESS: Yeah.

9 Yeah, your question is broad. The CDC would
10 regularly publish in MMWR experiences from other 10:38:40
11 jurisdictions across the country around COVID. Many
12 of their articles were around COVID. Those would
13 have been studies that I would likely have read
14 because they would have been relevant.

15 BY MS. GONDEIRO: 10:38:58

16 Q. Okay. Can you name the studies that you
17 remember from the CDC, starting in January of 2020?

18 A. I remember the study of the super-spreader
19 event in Washington from -- in a choir.

20 Q. Okay. Do you recall any other study from 10:39:20
21 the CDC?

22 A. There were volumes of studies from the CDC.
23 If you ask me about a specific one, I can tell you if
24 I can recall that specific one.

25 Q. I'm asking you, aside from the study of the 10:39:36

1 Washington choir, do you recall the contents of any
2 other study from the CDC, starting in January of
3 2020?

4 MR. WALL: Objection. Asked and answered.
5 Argumentative. 10:39:50

6 You can answer the question, Dr. Cody.

7 THE WITNESS: I can't remember a -- a
8 specific study. What I can remember is publications
9 around evidence for masking. I can remember studies
10 regarding multiple super-spreader events and the 10:40:11
11 circumstances. I can remember studies regarding --
12 or reporting out around vaccination coverage later in
13 the pandemic.

14 BY MS. GONDEIRO:

15 Q. Okay. Well, let's start with the studies 10:40:31
16 regarding the masks from the CDC. Can you please
17 explain to me -- or list those studies from the CDC
18 that you relied upon starting in January of 2020?

19 MR. WALL: Objection. Asked and answered.

20 THE WITNESS: I can't recall enough to list 10:40:51
21 studies for you.

22 BY MS. GONDEIRO:

23 Q. Can you recall the contents of any of those
24 studies regarding masks from the CDC starting in
25 January of 2020? 10:41:04

1 A. I can't recall any specific studies during
2 that time period from the CDC. If you presented it
3 to me, I could tell you if I recognized it and
4 recalled it.

5 Q. Do you recall any of the publications you --
6 you had reviewed from the CDC regarding COVID-19
7 starting in January of 2020?

10:41:20

8 A. Can you be a little bit more -- so can you
9 restate and be a little bit more specific so I can
10 make sure I answer your question?

10:41:42

11 Q. Well, earlier you testified that you had
12 reviewed publications from the -- from the CDC.

13 Do you remember that?

14 A. Yes.

15 Q. Okay. When you said "publications," what
16 publications did you review regarding COVID-19 from
17 the CDC starting in January of 2020?

10:41:53

18 A. So, as I mentioned, the CDC regularly
19 publishes in their MMWR various public health reports
20 of experiences. Many of these were regarding
21 COVID-19 during the pandemic; and they would come
22 out, depending on the publication, sometimes weekly.
23 And I would have been look- -- been looking at those
24 as well as other publications.

10:42:13

25 Q. Okay. So you're -- so what were those other

10:42:33

1 publications you're referring to from the CDC?

2 A. Right. So there would have been other --
3 the other -- when I say "other publications," I meant
4 other publications in the medical literature.

5 Q. So other pub- -- other publications outside
6 of the CDC? 10:42:54

7 A. Correct.

8 Q. Okay. So starting in January of 2020, what
9 other publications did you rely upon outside of the
10 CDC regarding COVID-19? 10:43:08

11 A. There were many.

12 Q. Okay. Well, what were those publications
13 about, starting in January of 2020, regarding
14 COVID-19 that you can remember?

15 MR. WALL: Objection. Vague. Overbroad. 10:43:25

16 You can answer the question, Dr. Cody.

17 THE WITNESS: So I -- I cannot give you a
18 comprehensive answer. I -- I can remember a
19 particular study around masking evidence that was a
20 large study from Bangladesh that had cases -- it was
21 a large retrospective cohort study that demonstrated
22 the efficacy of community-wide masking. I can't
23 remember exactly where it was published. It was not
24 published by the CDC.

25 /////
10:44:14

1 BY MS. GONDEIRO:

2 Q. So earlier I believe you had testified that
3 you didn't recall any mask studies.

4 Do you remember that?

5 A. No.

10:44:20

6 MR. WALL: Objection. Misstates testimony.

7 BY MS. GONDEIRO:

8 Q. Okay. So you -- that was just limited to
9 the CDC? You don't recall -- you don't recall any
10 mask studies from the CDC?

10:44:28

11 A. That's not correct.

12 Q. Okay. So you do recall mask studies from
13 the CDC starting in January of 2020?

14 A. The CDC would likely have published studies
15 regarding masking between January 2020 and present.

10:44:43

16 Q. And do you recall those studies?

17 A. What I -- what I'm telling you is I can't
18 specifically recall the details of a particular study
19 to recite for you.

20 Q. Sure. I'm not asking for specific details;
21 I'm just asking generally.

10:44:58

22 What do you recall about those studies from
23 the CDC?

24 A. The -- so I don't recall specific details
25 about the studies. What I -- what I do recall is

10:45:12

1 that the CDC published studies regarding masking.

2 Q. Okay. Regarding the study on the Bang- --
3 of Bangladesh, was that a randomized controlled
4 study?

5 A. That was a randomized controlled trial. 10:45:30

6 Q. Okay. Did that Bangladesh study show
7 that -- demonstrate that surgical masks are effective
8 at curtailing the spread of COVID-19?

9 A. I don't believe that was a specific question
10 that was asked in the study. 10:45:51

11 Q. You don't believe it was?

12 A. I don't -- I don't think that was a specific
13 question asked in the study.

14 Q. So did the study -- was the study just
15 limited to N95 masks? 10:46:04

16 A. No.

17 Q. Okay. So the study did include surgical
18 masks as well?

19 A. As I recall, yes.

20 Q. Okay. And how effective were the masks at
21 curtailing the spread of COVID-19 in this -- in this
22 Bangladesh study? 10:46:19

23 MR. WALL: Objection. Vague.

24 THE WITNESS: I -- I can't -- I can't recall
25 the statistics well enough to recite them for you. I 10:46:38

1 can recall the bottom line.

2 BY MS. GONDEIRO:

3 Q. Okay. What was the bottom line?

4 A. The bottom line was a randomized controlled
5 trial looking at large groups. Communities with 10:46:51
6 masking use and masking reinforcement and masking
7 messages had lower rates of COVID as compared to
8 those without those interventions.

9 Q. And what was the difference? Can you recall
10 the general percentage of how much the masks 10:47:10
11 prevented the spread of COVID-19?

12 A. It was a significant difference
13 demonstrating the protectiveness of community
14 masking.

15 Q. Okay. You don't recall the specific 10:47:28
16 percentage, though?

17 A. I don't.

18 Q. Even the general? Can you --

19 A. I wouldn't want to -- to hazard -- to hazard
20 a guess. 10:47:39

21 Q. Okay. Was it more than 10 percent?

22 A. That -- that's not the way the study would
23 have -- can you restate your -- that's not the way
24 the study was designed. Like, 10 percent of what? I
25 don't know your question. 10:47:57

1 Q. Did it -- did it reduce the -- the -- did
2 the people who wore masks in the study reduce the
3 spread of COVID-19 by more than 10 percent compared
4 to the individuals who were not wearing masks in the
5 Bangladesh study?

10:48:15

6 A. So I don't think that's how the question was
7 asked in the study, so I don't think I can accurately
8 answer your question.

9 Q. Okay. So how was --

10 A. It's all cov- -- it's covered in the study,
11 though. It's published. It's available.

10:48:26

12 Q. Okay. When did this study come out?

13 A. It came out in the fall, and I -- I don't
14 recall exactly when.

15 Q. Were you aware of any masking studies from
16 any source regarding COVID-19 before the fall of
17 2020?

10:48:52

18 A. Yes. I believe there were studies prior to
19 that, yes.

20 Q. And what were those studies?

10:49:10

21 A. I can't give you specifics. I -- I don't
22 recall specifics.

23 Q. Well, just generally, what can you recall
24 about those studies?

25 A. They would have been studies by -- around

10:49:23

1 aerosols and the behavior of aerosols and masks. I
2 recall a group of studies in that neighborhood.

3 There would have been studies around --
4 population-based studies. There would have been
5 studies around use and prevalence of mask use.

10:49:55

6 Q. I'm going to come back to these -- these
7 questions later.

8 Can you -- but, first, before I get onto the
9 next topic, can you please provide me the -- the
10 publications of the super-spreader events that you
11 relied upon regarding COVID-19 starting in January of
12 2020?

10:50:28

13 MR. WALL: Objection. Vague. Overbroad.

14 THE WITNESS: Do you want me to list the
15 studies that I relied on?

10:50:45

16 BY MS. GONDEIRO:

17 Q. That you recall, yes.

18 A. So I -- I don't -- without referring to
19 notes, I can't go back and list studies for you.

20 Q. Do you recall any details, anything about
21 those studies regarding super-spreader events,
22 starting in January of 2020?

10:50:58

23 A. What I recall is that there were multiple
24 reports of super-spreader events, all reaching the
25 same conclusion.

10:51:17

1 Q. Okay. And what -- and what was -- what was
2 that conclusion?

3 A. That indoor events where people were not
4 masked had risk of -- of sup- -- super-spreading
5 where multiple people became ill from a single 10:51:39
6 infected person. I also recall that those
7 super-spreader events would then have an impact on
8 the surrounding community and spread to others in the
9 community, including people in long-term care
10 facilities who then died. 10:52:01

11 Q. So you refer to long-term care facilities.

12 Where were those long- -- long-term care
13 facilities located? Do you recall?

14 A. I do remember a report from -- this was in a
15 state in the Midwest where there were outbreaks at a 10:52:29
16 university, and then the same -- the virus with the
17 same genomic sequence was then found in long-term
18 care facility residents in the community, some of
19 whom had very bad outcomes.

20 So it essentially was important because it 10:52:55
21 showed that the behavior in one part of the community
22 can have very, very serious adverse consequences in a
23 more vulnerable part of the community even though
24 there's not known contact between the, for example,
25 university students and residents in the long-term 10:53:19

1 care facility.

2 So what I remember -- I remember this
3 because it demonstrated how important it is to keep
4 the overall community prevalence low in order to
5 protect people who are most vulnerable. 10:53:35

6 Q. Okay. Did you ever read Tomas Pueyo's
7 argument -- or article called "The Hammer or Dance"
8 around March of 2020?

9 A. That does sound familiar.

10 Q. And what do you recall about this "Hammer or 10:53:51
11 Dance" article?

12 A. Not a lot of detail apart from that I --
13 I -- I know that I read it, and it was early in the
14 pandemic, as I recall.

15 Q. Okay. What do you remember about that 10:54:13
16 article generally?

17 A. I -- I would have to review it to -- to tell
18 you.

19 Q. You don't remember anything about that
20 article -- 10:54:26

21 A. I re- --

22 Q. -- related to COVID-19?

23 A. I remember it was an article -- what do I
24 remember about that article? I wish -- I don't -- I
25 just -- I don't remember much about the article. I 10:54:47

1 re- -- I remember that I -- that -- I remember that I
2 read it. I remember his name. I remember that
3 others had read it.

4 Q. Do you know who Tomas Pueyo is?

5 A. I don't know much about Tomas Pueyo, no. 10:55:08

6 Q. Oh. Does Tomas Pueyo have a medical degree?

7 A. I don't know.

8 Q. Well, when you reviewed this article that
9 he -- he wrote, did you look to see if -- or did you
10 research whether he had a medical degree? 10:55:27

11 A. I don't recall.

12 Q. Okay. Did you know that Tomas Pueyo is
13 the -- is the vice president of growth for an online
14 educa- -- education company called "Course Hero"?

15 A. No. 10:55:48

16 Q. Okay. Did you -- did -- did you ever review
17 any other article from Tomas Pueyo regarding COVID-19
18 starting in March of 2020?

19 A. I don't recall.

20 Q. Did the public -- did the County Public 10:56:05
21 Health Department activate the department's
22 operations center in preparation for COVID-19 in
23 January of 2020?

24 A. Yes.

25 Q. And who was director of the department's 10:56:20

1 operations center at -- starting in January of 2020?

2 MR. WALL: Objection. Assumes facts.

3 THE WITNESS: So who was the director of the
4 department's operations center in January 2020?

5 BY MS. GONDEIRO:

10:56:38

6 Q. Yes.

7 A. Who -- so this -- I can't remember who our
8 first incident commander would have been. I don't --
9 I don't remember who our first incident commander
10 was. And this was the -- Medical Health Joint
11 Operations Center was the correct title.

10:56:58

12 Q. Starting in January of 2020, what role did
13 James Williams have in the de- -- department
14 operations center?

15 MR. WALL: Objection. Beyond the scope.

10:57:13

16 THE WITNESS: James is County Counsel.
17 His -- his --

18 BY MS. GONDEIRO:

19 Q. Are you aware that he also had a role in the
20 department operations center starting in January
21 2020?

10:57:26

22 MR. WALL: Objection. Assumes facts and
23 beyond the scope.

24 THE WITNESS: Oh, the initial activation was
25 the Public Health Department's Medical Health Joint

10:57:36

1 Operations Center, which was just within the Public
2 Health Department. It was not a countywide
3 activation in January.

4 BY MS. GONDEIRO:

5 Q. Okay. Well, at any time during the COVID-19
6 pandemic, from -- from January of 2020 to the
7 present, did James Williams work in the department
8 operations center?

10:57:51

9 A. No. James Williams did not work in the
10 department operations center. James Williams did not
11 work in the Medical Health Joint Operations Center,
12 which is part of the Public Health Department.

10:58:09

13 Q. Okay. Well, outside of his role as County
14 Counsel, did James Williams ever have any other role
15 related to COVID-19 starting in January of 2020?

10:58:25

16 MR. WALL: Objection. Beyond the scope.
17 You can answer, Dr. Cody.

18 THE WITNESS: Yes.

19 BY MS. GONDEIRO:

20 Q. And what was that role?

10:58:35

21 A. The Emergency Operations Center of the
22 County had directors. James was one of those
23 directors.

24 Q. Okay. Did the County also activate the
25 Emergency Operations Center starting in January of

10:58:56

1 2020 in response to COVID-19?

2 A. No.

3 Q. When did they activate the Emergency

4 Operations Center regarding COVID-19?

5 A. February of 2020. 10:59:09

6 Q. Okay. And in -- what was the role of the

7 Emergency Operations Center starting in February of

8 2020 as it relates to COVID-19?

9 A. To coordinate the countywide response to

10 COVID-19. 10:59:30

11 Q. What were -- what was the specific tasks of

12 the Emergency Operations Center starting in January

13 of 2020 as -- or February as it related to COVID-19?

14 MR. WALL: Objection. Beyond the scope.

15 But you can answer, Dr. Cody. 10:59:45

16 THE WITNESS: The -- the tasks changed

17 throughout the pandemic. They would change

18 frequently depending on what was going on.

19 BY MS. GONDEIRO:

20 Q. Okay. What were the tasks at the beginning 10:59:57

21 of the pandemic, starting in February of 2020?

22 MR. WALL: Same objection.

23 THE WITNESS: What were the specific tasks

24 of the Emergency Operations Center --

25 ///// 11:00:17

1 BY MS. GONDEIRO:

2 Q. Yes.

3 A. -- in February of 2020?

4 Q. Yes.

5 A. You know, I don't recall our specific tasks
6 and objectives at that point in the pandemic. I
7 would just be -- I would -- it would be -- I would be
8 speculating.

11:00:20

9 Q. Okay. Well, what specific tasks do you
10 recall the Emergency Operations Center conducting
11 after February 2020 as it relates to COVID-19?

11:00:33

12 MR. WALL: Objection. Beyond the scope.

13 THE WITNESS: Tasks? Objectives? Goals?
14 Can you restate your question?

15 BY MS. GONDEIRO:

11:00:58

16 Q. Do you know what I mean when I say "task"?

17 A. Not -- no, I don't.

18 Q. Okay. I mean, what was their job duty?
19 What was -- what did they -- what were their -- were
20 their daily activities as it related to COVID-19?

11:01:11

21 That -- that's what I mean when I say -- when I say
22 "task." And so let me -- let me repeat this
23 question.

24 What were the -- what was the job duty of
25 the Emergency Operations Center at -- after February

11:01:26

1 of 2020 as it relates to COVID-19?

2 MR. WALL: Objection. Beyond the scope.

3 THE WITNESS: There were many -- there were
4 many, many jobs; so I don't -- I can't answer your
5 question because I don't --

11:01:46

6 BY MS. GONDEIRO:

7 Q. What job --

8 A. -- it doesn't make sense.

9 Q. What job duties do you remember?

10 A. Whose job?

11:01:53

11 Q. Let's start with James Williams. What was
12 his job duties at the Emergency Operations Center as
13 it related to COVID-19?

14 MR. WALL: Objection. Beyond the scope.

15 THE WITNESS: James served as one of the
16 directors of the EOC.

11:02:13

17 BY MS. GONDEIRO:

18 Q. Okay. What was his job duties as director
19 of the Emergency Operations Center starting in
20 February of 2020?

11:02:24

21 MR. WALL: Same objection.

22 THE WITNESS: The job of the director is to
23 oversee all of the various components of the
24 response.

25 /////

11:02:41

1 BY MS. GONDEIRO:

2 Q. How often did you consult with James
3 Williams in his capacity as the director of the
4 Emergency Operations Center starting in February of
5 2020 regarding COVID-19?

11:02:50

6 A. It would depend on the time.

7 Q. Okay.

8 A. James Williams was not always the director,
9 so it would have depended on whether he was serving
10 as director or not.

11:03:11

11 Q. Was James Williams director of the Emergency
12 Operations Center in February?

13 A. Not for all of February, no.

14 Q. Okay.

15 A. For some days.

11:03:22

16 Q. Okay. Was he -- was he the Emergency Op- --
17 director of the Emergency Operations Center during
18 the summer of 2020?

19 A. At -- at -- on some days, yes.

20 Q. Well, on the days that he was director of
21 the Emergency Operations Center, from February
22 through the summer of 2020, how often did you consult
23 with him regarding COVID-19?

11:03:36

24 A. On the days that he was director, I would
25 have consulted with him on those days.

11:03:55

1 Q. Okay. And what were those discussions
2 about?

3 MR. WALL: Objection. Vague.

4 You can answer the question, Dr. Cody.

5 THE WITNESS: They would have been about all 11:04:08
6 manner of the County's COVID response.

7 BY MS. GONDEIRO:

8 Q. Can you -- can you get -- be a little bit
9 more specific when you say "matters of the" -- "of
10 the COVID-19 response"? 11:04:25

11 A. The -- we were looking at data to understand
12 the impact. We were in contact with hospitals
13 regarding the impact. There were many components of
14 the response to -- to ensure the safety of the
15 community. 11:04:52

16 MS. GONDEIRO: Okay. I'm going to pull up
17 Exhibit 8, Dan.

18 (Exhibit 8 was marked for identification.)

19 THE VIDEOGRAPHER: All right. Stand by.

20 MR. WALL: I'm sorry. Mr. -- was that 11:05:13
21 Mr. DeFrank? We can't --

22 THE VIDEOGRAPHER: Yeah.

23 MR. WALL: -- hear you.

24 I'm sorry. You -- you were -- you didn't --
25 I didn't hear what you said. Could you please repeat 11:05:18

1 yourself?

2 THE VIDEOGRAPHER: Yeah. I -- I -- I just
3 said, "Stand by."

4 MR. WALL: Okay. Thank you.

5 THE VIDEOGRAPHER: Yep. 11:05:24

6 There you go.

7 BY MS. GONDEIRO:

8 Q. Do you recognize this order, Dr. Cody?

9 A. I can't see the date on the order.

10 MR. WALL: Is there a way that we can drop 11:05:42
11 the exhibit into the chat so that Dr. Cody can open
12 it locally?

13 THE WITNESS: I can just see about --

14 THE VIDEOGRAPHER: Yeah, yeah.

15 THE WITNESS: -- half a -- half a page. 11:05:56

16 THE VIDEOGRAPHER: Right.

17 THE WITNESS: That's better.

18 MS. GONDEIRO: And then --

19 MR. WALL: Again, can we -- if we're going
20 to ask the witness questions about the exhibit, I'd 11:06:14
21 like to drop a copy into the chat --

22 THE VIDEOGRAPHER: All right.

23 MR. WALL: -- so she can open it locally and
24 look at all the pages so she's familiar with what the
25 document is. 11:06:22

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1 MS. GONDEIRO: Okay.

2 THE VIDEOGRAPHER: All right.

3 MS. GONDEIRO: I can actually just go to the
4 specific page, but...

5 THE VIDEOGRAPHER: Let me get out of share 11:06:27
6 so I can put it in the chat, and then I'll open it.
7 So just -- it's going to take an extra step. That's
8 all.

9 MR. WALL: No. Thank you. I appreciate it.

10 THE VIDEOGRAPHER: No problem. 11:06:35

11 MR. WALL: Thanks, Mr. DeFrank.

12 THE VIDEOGRAPHER: Yeah, no problem.
13 Okay. And it's in chat, and it's on the
14 screen.

15 MR. WALL: Thank you. 11:07:14

16 Dr. Cody, can you -- can you find the
17 document in chat? You can open it there.

18 THE WITNESS: Whoops.

19 MR. WALL: I don't -- I don't want to hear
20 "oops." 11:07:26

21 THE WITNESS: No. I -- I'm not --

22 MR. WALL: If you -- if you click on the
23 chat icon at the bottom of your window --

24 THE WITNESS: Right.

25 MR. WALL: -- for me, it pulls up a window 11:07:36

1 that has Exhibit 8.pdf.

2 THE WITNESS: Right.

3 MR. WALL: You can --

4 THE WITNESS: And I have opened it, and
5 then -- whoops. I'm not -- this is -- this is a 11:07:44
6 little bit of a difficult interface. If you'd just
7 give me a minute.

8 MR. WALL: Sure. We'll get it right the
9 first time, and it will be easier every time after
10 that. 11:08:00

11 THE WITNESS: Okay. I now have it available
12 from the chat.

13 MS. GONDEIRO: Okay.

14 MR. WALL: Oh, it's not opening.

15 THE WITNESS: I have it on -- on my screen 11:08:18
16 where I can --

17 BY MS. GONDEIRO:

18 Q. Okay. Do you recognize this order,
19 Dr. Cody?

20 A. Yes. 11:08:25

21 Q. What was the purpose of this order?

22 A. To protect the public.

23 Q. To protect the public?

24 A. To protect the public from infection and
25 hospitalization and death. 11:08:44

1 Q. Why did you believe, starting in March of
2 2020, that a shelter-in-place order was necessary?

3 A. We had evidence of exponential growth of the
4 virus and infections.

5 Q. And where did you get this evidence from
6 that demonstrated this -- this exponential growth of
7 COVID-19?

11:09:03

8 A. From reports of cases.

9 Q. Reports of cases -- when you say "reports of
10 cases," are you talking about reports of cases in
11 Santa Clara County?

11:09:22

12 A. Yes.

13 Q. Okay. What entities were considered
14 essential pursuant to this shelter-in-place order?

15 MR. WALL: Objection. The document speaks
16 for itself.

11:09:37

17 THE WITNESS: Do you want me to read from
18 the document?

19 BY MS. GONDEIRO:

20 Q. Well, I don't -- I don't believe it lists
21 all -- all the entities that were essential.

11:09:47

22 I'm just asking you, what -- what entities
23 were essential -- did you declare were essential
24 in -- in this shelter-in-place order?

25 MR. WALL: Same objection.

11:10:07

1 THE WITNESS: We -- we didn't -- we had
2 definitions of essential business and essential
3 infrastructure, and there was one other definition.

4 BY MS. GONDEIRO:

5 Q. It says in the title that this order 11:10:33
6 prohibited nonessential gatherings.

7 What was an essential gathering pursuant to
8 this shelter-in-place order?

9 A. I'm just reviewing the title of the order.
10 Just one moment. 11:10:51

11 MR. WALL: Objection to the extent it calls
12 for a legal conclusion.

13 But, Dr. Cody, you can answer the question
14 if you understand it.

15 THE WITNESS: The title of this order does 11:11:10
16 not refer to gath- -- no. Pardon me. I -- can you
17 ask your question one more time?

18 BY MS. GONDEIRO:

19 Q. Yes.

20 You'll see in the title there that it -- 11:11:22
21 that it prohibits all nonessential gatherings of any
22 numbers of individuals.

23 You see where it says that --

24 A. Yes.

25 Q. -- at the end? 11:11:33

1 Okay. What --

2 A. Yes.

3 Q. What did the County consider to be an
4 essential gathering at this time?

5 MR. WALL: Same objection.

11:11:41

6 THE WITNESS: The -- the purpose of the
7 order was to limit contact between people to the
8 greatest degree possible; however, I also -- I did
9 understand that people needed food, shelter, and
10 basic medical care. And that -- that was really how
11 this was organized.

11:12:04

12 BY MS. GONDEIRO:

13 Q. Okay. You didn't answer my question.

14 I'm asking, what constituted an essential
15 gathering pursuant to this order?

11:12:19

16 MR. WALL: Objection. Asked and answered,
17 to the extent it calls for a legal conclusion, and
18 argumentative.

19 THE WITNESS: I'm going to look in the order
20 so I can be precise and look for the definition.

11:12:33

21 So number 4, "All public and private
22 gatherings for any number of people occurring outside
23 a household or living unit are prohibited, except for
24 the limited purposes as expressly permitted in
25 Section 10. Nothing in this Order prohibits the

11:13:14

1 gathering of members of a household unit or living
2 unit."

3 And Section 10. So Section 10 -- Section 10
4 would detail the -- the limited pur- -- the limited
5 purposes for which people could come together outside 11:13:50
6 of their household.

7 BY MS. GONDEIRO:

8 Q. Okay. Why did the County determine that
9 critical infrastructure -- infrastructure was
10 essential in this order? 11:14:11

11 A. Which section are you looking at? Just -- I
12 want to make sure that I'm precise.

13 Q. Okay. Well, it just says that in the -- in
14 the title. It says that critical infrastructure was
15 essential. 11:14:29

16 What included -- what did critical
17 infrastructure -- infrastructure include?

18 MR. WALL: Objection. The order speaks for
19 itself.

20 THE WITNESS: I'm trying to look at the 11:14:43
21 definition so that I can be precise for you.

22 The -- the general idea would be that there
23 were services that everyone in the community would
24 need. For example, have their electricity on, to
25 have water come into their place of habitation, to be 11:15:09

1 able to access food. Food, shelter, medical care,
2 and anything necessary to have, you know, a safe -- a
3 safe place to live.

4 MS. GONDEIRO: Uh-huh.

5 THE WITNESS: So -- and to the extent that
6 something supported or is needed to ensure food,
7 shelter, and medical care would have been included.

11:15:29

8 BY MS. GONDEIRO:

9 Q. Why did the County not consider religious
10 services to be essential?

11:15:42

11 A. We were thinking about really basic services
12 that everyone living in the County would need, and
13 that would include food, shelter, medical services,
14 and anything to support that, would apply to everyone
15 living in the County.

11:16:07

16 Q. Okay. Why did the County then include
17 government agencies as essential in this order?

18 MR. WALL: Objection. The order speaks for
19 itself.

20 MS. GONDEIRO: No. I'm asking her why.

11:16:22

21 MR. WALL: No, I understand. The question
22 has embedded an interpretation or -- of the order.
23 That's just for the purposes of preserving the
24 objection. I apologize.

25 Go ahead. You can answer the question,

11:16:33

1 Dr. Cody. The objection stands.

2 THE WITNESS: Sure.

3 So government agencies, for example, provide
4 health and safety, law enforcement; so they would be
5 necessary to continue. Fire --

11:16:49

6 BY MS. GONDEIRO:

7 Q. What else would you --

8 A. Fire, law, you know, bas- -- sort of, again,
9 within the realm of basic health and safety.

10 Q. Okay. So you -- you -- you determined that
11 County -- when you say "law," what do you mean?

11:17:00

12 A. Law enforcement.

13 Q. Okay. What about the legal department?

14 A. To the extent that that's needed to support
15 food, shelter, medical care, basic health and safety,
16 and law, then -- then -- then -- then yes.

11:17:21

17 Q. Why didn't the County consider the spiritual
18 benefits of attending a religious service in this
19 shelter-in-place order?

20 MR. WALL: Objection. Assumes facts.

11:17:43

21 THE WITNESS: The shelter-in-place order was
22 to protect people from hospitalization and death,
23 which was extremely important to protect -- to
24 protect people from dying.

25 MS. GONDEIRO: Uh-huh.

11:18:08

1 THE WITNESS: And I wanted, and felt it was
2 necessary, to limit contact between people from
3 different households to prevent spread and prevent
4 death.

5 BY MS. GONDEIRO:

11:18:22

6 Q. Sure.

7 Are there people from different households
8 contacting -- that were con- -- within -- within
9 contact of one another in these essential government
10 agencies that were deemed essential pursuant to this
11 health order?

11:18:33

12 MR. WALL: Objection. Assumes facts.

13 THE WITNESS: Can you restate your question?

14 BY MS. GONDEIRO:

15 Q. You said that you -- that this -- the goal
16 was to prevent hospitalizations; correct?

11:18:45

17 A. (Nodding head.)

18 Q. And you also said that that was by
19 preventing contact between people with different
20 households; correct?

11:19:02

21 A. Yes.

22 Q. Okay. Well, do people within gover- -- are
23 there people from different households who work for
24 government -- the essential government agencies
25 pursuant to this order?

11:19:12

1 MR. WALL: Objection. Vague. Assumes
2 facts.

3 THE WITNESS: Yes. As -- as I stated, some
4 activities have to continue to ensure that people
5 have their basic needs met. 11:19:25

6 BY MS. GONDEIRO:

7 Q. Okay.

8 A. Yeah.

9 Q. So you were determining that what was
10 important -- you -- so you determined that church or 11:19:33
11 religious services were not important enough to be
12 considered essential?

13 MR. WALL: Objection. Vague. Misstates
14 testimony.

15 You can answer the question, Dr. Cody. 11:19:46

16 THE WITNESS: Yeah. The purpose of the
17 order -- the top-level purpose of the order was to
18 present -- prevent spread of infection and resulting
19 hospitalization and death. And everyone -- however,
20 everyone in the County still needs to eat, have 11:20:04
21 shelter, and -- and obtain health care for -- you
22 know, broadly.

23 And any other activity that didn't support
24 that and might contribute to community spread and
25 exponential spread, we didn't want to occur because 11:20:28

1 we wanted to protect everyone in the County from
2 hospitalization and death.

3 BY MS. GONDEIRO:

4 Q. Are you aware that religious services have
5 religious functions outside of religious gatherings? 11:20:45

6 MR. WALL: Objection. Vague.

7 THE WITNESS: Can -- can you ask your
8 question a bit more specifically?

9 BY MS. GONDEIRO:

10 Q. Yeah. 11:20:56

11 I'm just asking, are you aware that, you
12 know, religious services, you know, have functions in
13 addition to church -- in addition to religious
14 gatherings? Like, there are other ways that people
15 exercise their religion outside of religious 11:21:14
16 gatherings?

17 A. Yes.

18 Q. Okay. What are those ways that you're aware
19 of?

20 MR. WALL: Objection. Beyond the scope. 11:21:25

21 You can answer, Dr. Cody.

22 THE WITNESS: A sense -- sense of community.

23 Are you talking about times -- ask your
24 question again.

25 ///// 11:21:43

1 BY MS. GONDEIRO:

2 Q. Sure.

3 Are you aware that religious services have
4 functions -- religious functions outside of religious
5 gatherings such as a prayer meeting? 11:21:56

6 MR. WALL: Objection. Vague. Outside the
7 scope.

8 But you can answer, Dr. Cody.

9 THE WITNESS: Yeah. I'm still not sure I --
10 I'm not quite sure about your question. 11:22:08

11 So religious -- a church might gather for a
12 prayer meeting or inside a church building. Is that
13 your question?

14 BY MS. GONDEIRO:

15 Q. Yes. 11:22:22

16 Are you -- are you aware that -- that there
17 are religious services that will con- -- that -- that
18 conduct prayer services or prayer meetings?

19 MR. WALL: Objection. Beyond the scope.

20 THE WITNESS: Are you asking if -- if I'm
21 aware that churches would conduct services outside of
22 a church building? 11:22:39

23 BY MS. GONDEIRO:

24 Q. No. Prayer meetings, whether in -- in the
25 meeting -- in the church or outside the church. 11:22:49

1 A. Yes, I'm aware that -- that some churches
2 might conduct prayer meetings outside of their church
3 building.

4 Q. Okay. Can we go to Section (d)?

5 So it says -- in Section (d), starting on 11:23:24
6 line 4, it says, "Further, nothing in this Order
7 shall prohibit any" -- "any individual from
8 performing or accessing 'Essential Government
9 Functions,' as determined by the governmental entity
10 performing those functions. Each governmental entity 11:23:39
11 shall identify and designate appropriate employees or
12 contractors to continue providing and carrying out
13 any Essential Government Function."

14 Why did the County give governmental
15 entities discretion to follow the shelter-in-place 11:23:59
16 order?

17 MR. WALL: Objection to the extent it calls
18 for a legal conclusion. The document speaks for
19 itself.

20 You can answer the question, Dr. Cody. 11:24:10

21 THE WITNESS: And can you repeat your
22 question?

23 BY MS. GONDEIRO:

24 Q. Yes.

25 Based upon what I read, I'm asking, why did 11:24:16

1 the County give essential government -- or
2 governmental offic- -- government -- governmental
3 entities discretion to follow the shelter-in-place
4 order?

5 MR. WALL: Same objections.

11:24:33

6 THE WITNESS: We can't possibly know the
7 details of operations to be able to give more
8 specific direction.

9 BY MS. GONDEIRO:

10 Q. So it says here that each government -- that
11 the essential government function is determined by
12 the governmental entity performing those functions.

11:24:50

13 So I'm just trying to figure out how -- how
14 did that work? Did the -- did -- did the
15 government -- governmental entities have to reach out
16 to the County and explain why they believed they were
17 essential?

11:25:06

18 A. No.

19 Q. Okay. So how is this applied, then?

20 MR. WALL: Objection. Vague. And objection
21 to the extent it calls for a legal conclusion.

11:25:24

22 Dr. Cody, you can answer the question if you
23 understand.

24 THE WITNESS: So, for example, city law
25 enforcement --

11:25:38

1 MS. GONDEIRO: Uh-huh.

2 THE WITNESS: -- would know better than the
3 County about what they needed -- what they could and
4 couldn't do. Like, how -- how to perform an arrest,
5 for example, is one of their functions. We couldn't
6 know what they could -- what they could and couldn't
7 do in order to perform an arrest. So that would be
8 one of their functions.

11:25:53

9 MS. GONDEIRO: Uh-huh.

10 THE WITNESS: Right?

11:26:11

11 BY MS. GONDEIRO:

12 Q. Were they required, though, to follow up
13 with you to let you know -- to explain why they
14 believed that they could not fully comply with this
15 order to do this -- to perform their job function,
16 or -- or did you just give the government officials
17 discretion to determine whether they had that -- they
18 need -- they -- they needed to abide by this order
19 without the need to follow up with the County?

11:26:20

20 MR. WALL: Objection. Vague. Objection to
21 the extent it calls for a legal conclusion.

11:26:42

22 You can answer the question, Dr. Cody.

23 THE WITNESS: Right. So "nothing in this
24 Order shall prohibit any individual from performing
25 or accessing 'Essential Government Functions,' as

11:26:50

1 determined by the governmental entity performing
2 those functions."

3 BY MS. GONDEIRO:

4 Q. Okay. So aside from enforcement, what other
5 governmental functions were essential in the County
6 starting in March of 2020?

11:27:03

7 MR. WALL: Objection. Vague. Objection to
8 the extent it calls for a legal conclusion.

9 THE WITNESS: Yeah. So I -- I can't
10 define -- you want me -- what is it that you want me
11 to define?

11:27:20

12 BY MS. GONDEIRO:

13 Q. I want you to -- that you can recall, what
14 governmental functions were determined to be
15 essential starting in March of 2020, that you can
16 recall?

11:27:33

17 A. So these would have been governmental
18 entities within the County, which would largely have
19 included city governments, portions of county
20 governments, or other, you know, other -- other
21 governments; right? So the idea was scope down as
22 much as you can, no -- you know, as few interactions
23 as possible; however, governments have to perform
24 some functions such as law enforcement that's
25 essential to the functioning of society.

11:27:54

11:28:18

1 Q. Sure.

2 Okay. You didn't answer my question.

3 So I'm asking, in addition to law
4 enforcement, what specific government functions were
5 determined to be essential starting in March of 2020?

11:28:30

6 I'm asking for specific government functions.

7 A. Right.

8 MR. WALL: Objection to the extent it calls
9 for a legal conclusion. Objection. The order speaks
10 for itself.

11:28:44

11 Dr. Cody, you can answer.

12 THE WITNESS: Yeah.

13 Essential governmental functions as
14 determined by the governmental entity performing
15 those functions.

11:28:51

16 BY MS. GONDEIRO:

17 Q. Yes. I'm asking you, though, to -- to
18 explain to me what -- what government -- what
19 government functions were determined to be essential,
20 that you can recall, starting in March of 2020.

11:29:03

21 A. Right.

22 MR. WALL: Same objections. Also objection
23 on the basis to the extent it calls for speculation.

24 THE WITNESS: We did not define the
25 essential governmental functions; they were

11:29:17

1 determined by the governmental entity performing the
2 function.

3 BY MS. GONDEIRO:

4 Q. No. I -- I understand that. I'm just --
5 you -- you recall that that -- law enforcement. You
6 gave an example of law enforcement.

11:29:26

7 A. Uh-huh.

8 Q. So -- so you're aware that they were
9 determined to be -- that they determined that they
10 were essential; correct?

11:29:38

11 MR. WALL: Objection. Misstates testimony.
12 Calls for speculation. To the extent it calls for a
13 legal conclusion as well. And the order speaks for
14 itself.

15 You can answer, Dr. Cody.

11:29:48

16 THE WITNESS: Right. So the governmental
17 entity would determine what services they had to
18 provide for health and safety.

19 BY MS. GONDEIRO:

20 Q. Okay. So in addition to law enforcement,
21 I'm asking for specific government functions that
22 were determined to be essential by those governmental
23 entities, that you can recall.

11:30:03

24 MR. WALL: Same objection -- same
25 objections. Excuse me.

11:30:22

1 THE WITNESS: I recall that most cities
2 would have preserved the fire, their capacity to
3 respond to fire or other emergencies.

4 BY MS. GONDEIRO:

5 Q. What about the County? What County 11:30:39
6 government -- governmental functions were determined
7 to be essential starting in March of 2020?

8 MR. WALL: Objection. Same objections.

9 THE WITNESS: It wouldn't have been my -- I
10 wouldn't have determined the County functions. I 11:31:01
11 don't run the County.

12 BY MS. GONDEIRO:

13 Q. I'm not asking you if you determined.

14 I'm asking, what -- what governmental
15 entities, that you can recall, were determined to be 11:31:13
16 essential from -- by the County regardless of whether
17 that decision was made by you?

18 MR. WALL: Objection. Asked and answered.
19 Otherwise, same objections as stated before.

20 THE WITNESS: Our Emergency Operations 11:31:32
21 Center and the -- the County resources needed to
22 staff the Emergency Operations Center to respond to
23 the COVID pandemic --

24 BY MS. GONDEIRO:

25 Q. Okay. 11:31:46

1 A. -- would be one example.

2 Q. What other examples do you remember?

3 A. Within the Public Health Department, we
4 continued to register births and deaths. You know,
5 our -- like our very, very, very core
6 responsibilities to serve the community were
7 preserved.

11:32:12

8 Q. Okay. What other examples do you remember?

9 A. County fire, county sheriff, county
10 hospital --

11:32:39

11 Q. Okay.

12 A. -- a subset of county clinics, parts of
13 behavioral health services.

14 Q. When you say "behavioral health services,"
15 what type of services do you mean?

11:32:59

16 A. They oversee provision of mental health care
17 and care for persons with substance use disorders.

18 Q. And did you determine -- or did the County
19 determine that these behavioral services were
20 essential because you -- because they predicted that
21 there were going to be people who needed these
22 services during the COVID-19 pandemic?

11:33:28

23 MR. WALL: Objection. Misstates testimony.

24 THE WITNESS: Yeah.

25 MR. WALL: Assumes facts. Calls for

11:33:40

1 speculation. The order speaks for itself. And I'd
2 object to the extent it calls for a legal conclusion.

3 You can answer, Dr. Cody.

4 THE WITNESS: Many of the services that I
5 have described, if not most, were not performed in
6 person. So many of these services, to the greatest
7 extent possible, were performed remotely.

11:33:52

8 BY MS. GONDEIRO:

9 Q. Sure. But if the gov- -- if the
10 governmental entity determined that they needed to be
11 in person, based upon this order, could they meet in
12 person?

11:34:07

13 MR. WALL: Objection to the extent it calls
14 for a legal conclusion, objection based on the fact
15 that the order speaks for itself, and objection on
16 the grounds of speculation.

11:34:20

17 You can answer, Dr. Cody.

18 THE WITNESS: Could you restate your
19 question?

20 BY MS. GONDEIRO:

11:34:29

21 Q. Yes.

22 If -- if the behavioral services department
23 determined that they needed to be in person, pursuant
24 to this order, would they have the permission to meet
25 in person?

11:34:41

1 MR. WALL: Same objections.

2 THE WITNESS: So I don't recall how
3 behavioral services went. I -- I do recall that most
4 of the work that they did, wherever possible, was
5 done remotely, and that would be true throughout the
6 County, to protect the workforce and the community.

11:34:58

7 BY MS. GONDEIRO:

8 Q. Okay. So you don't recall --

9 MR. WALL: Ms. Gon- -- Ms. Gondeiro, just
10 when you finish this line of questioning, can we take
11 a break, please? It's been -- it's been more than an
12 hour.

11:35:10

13 MS. GONDEIRO: Yes. I just want to get
14 through just one really quick exhibit.

15 MR. WALL: Well, I think an exhibit is
16 actually the perfect point for a break.

11:35:20

17 THE WITNESS: I would love a break.

18 BY MS. GONDEIRO:

19 Q. Okay. But one -- one last question. I just
20 want to make sure we went through all the examples.

11:35:29

21 Do you recall any other examples of
22 essential government functions starting in March of
23 2020?

24 MR. WALL: Objection. Misstates testimony.
25 Vague. The order speaks for itself. Calls for

11:35:42

1 speculation.

2 You can answer the question, Dr. Cody, if
3 you understand it.

4 THE WITNESS: Yeah. The essential
5 government function would have been determined by the 11:35:54
6 governmental entity within the bounds of doing
7 everything possible to do things remotely to limit
8 interactions between people to prevent spread and
9 protect the community.

10 BY MS. GONDEIRO: 11:36:13

11 Q. Okay. You didn't answer my question.

12 I'm aware of what the order says now. I'm
13 asking you to provide me specific examples, other
14 examples that you can recall of essential government
15 functions starting in March of 2020. 11:36:25

16 MR. WALL: Same objections. Additionally,
17 argumentative and asked and answered.

18 THE WITNESS: And you're asking me about
19 within the County government?

20 BY MS. GONDEIRO: 11:36:37

21 Q. Yes. Within -- within the County
22 government, yes.

23 A. Those -- those are the examples that -- that
24 I can think of. I would not have been -- and I don't
25 recall detail of, you know, exactly how 11:36:50

1 departments -- I can tell you more about my
2 department than other departments.

3 Q. Okay. What about the County Counsel's
4 office, were they determined to be a essential
5 government function starting in March of 2020?

11:37:09

6 MR. WALL: Same objection. The order speaks
7 for itself. To the extent it calls for -- excuse
8 me -- a legal conclusion and to the extent it calls
9 for speculation.

10 THE WITNESS: To -- to the extent that
11 County Counsel was needed to advise regarding the
12 pandemic response, they -- yes. We needed counsel to
13 help advise in the pandemic response.

11:37:26

14 BY MS. GONDEIRO:

15 Q. And do you recall, starting in March of
16 2020, that they provided advice in person to the
17 Department of Public Health?

11:37:44

18 MR. WALL: Ob- -- objection to the
19 relevance. The order speaks for itself. To the
20 extent it calls for speculation.

11:38:02

21 You can -- and outside the scope.

22 But you can answer the question, Dr. Cody.

23 THE WITNESS: As I recall, most County
24 Counsel were remote and were not in person.

25 /////

11:38:15

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1 BY MS. GONDEIRO:

2 Q. Okay. So you said "most." Were there some
3 times where -- that you can recall where officials
4 from the County Counsel's office met in person to
5 provide advice to the County Public Health Department 11:38:26
6 starting in March of 2020?

7 MR. WALL: Objection to the extent it calls
8 for speculation. Relevance.

9 You can answer the question, Dr. Cody.

10 THE WITNESS: Yes. 11:38:39

11 MS. GONDEIRO: Okay. We can stop there.

12 THE VIDEOGRAPHER: All right. This marks
13 the end of Volume I, Media 1, in the deposition of
14 Dr. Sara Cody on August 18th, 2022.

15 Going off the record. The time is 11:38. 11:38:58

16 (Recess taken.)

17 THE VIDEOGRAPHER: All right. This marks
18 the start of Volume I, Media 2, in the deposition of
19 Dr. Sara Cody on August 18th, 2022.

20 We are back on the record. The time is 11:58:31

21 11:58.

22 MS. GONDEIRO: Dan, can you please pull up
23 Exhibit 9?

24 THE VIDEOGRAPHER: Sure.

25 (Exhibit 9 was marked for identification.) 11:58:42

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1 MS. GONDEIRO: And, Dr. Cody, it is al- --
2 provided in the chat; so you can pull that up.

3 THE WITNESS: Thank you.

4 MR. WALL: Thanks. Thanks, Mariah.

5 MS. GONDEIRO: Uh-huh.

11:58:53

6 BY MS. GONDEIRO:

7 Q. Dr. Cody, do you remember getting a thank
8 you letter via email around -- or on April 30th,
9 2020, from the Associated Builders and Cons- --
10 Contractors Northern California Chapter?

11:59:11

11 A. I don't recall receiving the email, but I do
12 see it here.

13 Q. Okay. Do you know why you received a thank
14 you letter from the Associated Builders and
15 Contractors Northern California Chapter and its
16 nearly 500 essential construction and
17 construction-related firms?

11:59:29

18 A. I do not.

19 Q. Okay. Did the County consider construction
20 to be essential during the COVID-19 pandemic or
21 starting in March of 2020?

11:59:43

22 MR. WALL: Objection. Vague as to
23 "essential." Objection to the extent it calls for a
24 legal conclusion.

25 You can answer the question, Dr. Cody.

11:59:53

1 THE WITNESS: Can you restate your question?
2 BY MS. GONDEIRO:
3 Q. Yes.
4 Did the County consider construction to be
5 essential anytime on or around March of 2020? 12:00:02
6 MR. WALL: Same objections.
7 THE WITNESS: No.
8 BY MS. GONDEIRO:
9 Q. Do you know why, then, this -- this email
10 says "essential construction"? 12:00:20
11 A. No.
12 Q. Do you know why you were included on this
13 email?
14 A. I'm a Bay Area health officer.
15 Q. Okay. So at no point -- did the -- did the 12:00:40
16 County consider construction or any
17 construction-related firms to be essential in April
18 of 2020?
19 MR. WALL: Objection. Vague as to meaning
20 of "essential." Vague to the extent it calls for a 12:00:54
21 legal conclusion.
22 THE WITNESS: Ask your -- restate your
23 question.
24 BY MS. GONDEIRO:
25 Q. Yes. 12:01:05

1 Did the County ever consider any con- -- any
2 construction-related firm to be essential in April of
3 2020?

4 MR. WALL: Same objections.

5 THE WITNESS: At some time, and I would have 12:01:17
6 to refer to my documents to tell you exactly,
7 construction that would support, like, basic needs
8 was allowed. Right. So if there was a project that
9 was, again, within the -- as I spoke before, that
10 would support a basic need, as I recall, we enabled 12:01:43
11 some of that to take place with safety measures in
12 place.

13 BY MS. GONDEIRO:

14 Q. When you say "safety measures," what were
15 those safety measures that were required to be in 12:01:58
16 place?

17 A. Specific to?

18 Q. Specific to the construction sites.

19 A. So anything that we allowed, we would have
20 been requiring implementation of the safety measures 12:02:19
21 that we knew to be protective at the time, which
22 would have fallen under categories of how to improve
23 ventilation, how to ensure proper mask use.

24 Q. Uh-huh.

25 A. Later, testing. Symptom checks. 12:02:38

1 Q. Uh-huh.

2 A. Exclusion of people who were ill.

3 Q. Uh-huh.

4 A. Maintaining a distance between people.

5 Safety measures.

12:02:56

6 Q. Were construction workers that -- that were
7 deemed essential, starting in April of 2020, required
8 to follow social distancing and masking requirements
9 at all times while they were working?

10 MR. WALL: Objection. Assumes facts.

12:03:12

11 THE WITNESS: Any entity that was
12 functioning to support, you know, basic health and
13 safety would have been required to implement the
14 safety measures that we knew to be protective at the
15 time. So any -- and that would be to protect the
16 workers and protect the community around them. So
17 distancing, masking, improving ventilation, excluding
18 ill workers, that sort of thing.

12:03:37

19 BY MS. GONDEIRO:

20 Q. If an essential construction company or --
21 or firm decided that it was just not feasible for
22 them to be able to perform their job function while
23 wearing a mask and/or social distancing, were they
24 given the discretion to remove their mask or not
25 socially distance?

12:03:58

12:04:19

1 MR. WALL: Objection. Assumes facts.

2 Incomplete hypothetical. Calls for speculation and
3 calls -- and to the extent it calls for a legal
4 conclusion.

5 But you can answer, Dr. Cody. 12:04:28

6 THE WITNESS: So we would have had specific
7 instructions for safety for -- and if a particular
8 sector needed more specific instructions as to how to
9 stay safe, they would have been required to implement
10 those instructions. 12:04:46

11 BY MS. GONDEIRO:

12 Q. And so you're saying "instructions."

13 Were they required? Were essential
14 construction companies, starting in April of 2020,
15 required to always socially distance and wear a mask? 12:05:00

16 MR. WALL: Objection. Assumes facts. Calls
17 for a legal conclusion as addressed in the orders.

18 But you can answer the question, Dr. Cody.

19 THE WITNESS: Yes, they would have been
20 required to adhere to the guidance that pertained to
21 their sector. 12:05:18

22 BY MS. GONDEIRO:

23 Q. So did the guidance that pertained to
24 construction companies, starting in April of 2020,
25 require essential construction companies at all times 12:05:30

1 to wear a mask and socially distance?

2 MR. WALL: Same objections.

3 THE WITNESS: Yes. I -- I -- those
4 instructions changed over time. And I believe, by
5 April, they would have required masking, social
6 distancing, handwashing, sanitation, and other
7 measures to keep the workers and those around them
8 safe.

12:05:51

9 BY MS. GONDEIRO:

10 Q. Were you aware, starting in April of 2020,
11 that there were COVID-19 outbreaks occurring at
12 construction sites?

12:06:06

13 MR. WALL: Objection. Assumes facts.

14 THE WITNESS: There were outbreaks reported
15 from multiple sectors, and I don't recall timing.

12:06:20

16 BY MS. GONDEIRO:

17 Q. I'm asking specific to construction sites.
18 Were you aware that there were COVID-19 outbreaks
19 occurring at construction sites starting in March --
20 or April of 2020?

12:06:38

21 MR. WALL: Same objection.

22 THE WITNESS: I don't specifically recall
23 when I became aware of outbreaks at construction
24 sites. There were outbreaks at many, you know --
25 many different places.

12:06:50

1 BY MS. GONDEIRO:

2 Q. Well, at any time after April of 2020, did
3 you become aware that there were outbreaks occurring
4 at construction sites -- or COVID-19 outbreaks
5 occurring?

12:07:04

6 A. At any time after April 2020, were there
7 outbreaks at construction sites --

8 Q. Were you --

9 A. -- that I was aware of?

10 Q. Yes.

12:07:09

11 A. Yes.

12 (Exhibit 10 was marked for identification.)

13 BY MS. GONDEIRO:

14 Q. Okay. Can we move on to the Exhibit --
15 actually, before we move on to Exhibit 10, Dr. Cody,
16 do you know what a seroprevalence study is?

12:07:14

17 A. Yes.

18 Q. What is it?

19 A. It's a measure -- a study to draw blood and
20 measure antibodies in a population to see what -- as
21 a marker of what the prevalence of the disease might
22 be.

12:07:35

23 Q. Were you aware of the seroprevalence study
24 Dr. Bhattacharya conducted in April of 2020, or
25 sometime around that time, regarding COVID-19 in

12:07:55

1 Santa Clara County?

2 A. Yes.

3 Q. What was the conclusion of
4 Dr. Bhattacharya's seroprevalence study?

5 A. I don't recall the -- the -- the specific 12:08:09
6 conclusions of the study.

7 Q. Well, what do you recall about the study?

8 A. The study was looking at what was the
9 seroprevalence at a point in time in the County. I
10 recall they were trying to -- I don't recall about 12:08:34
11 their -- I think there was an issue with their
12 sampling, which would make it difficult to draw
13 conclusions. I recall that the seroprevalence that
14 they documented in their sample was fairly low.

15 Q. And so what does that mean? 12:08:57

16 A. That would mean that only a small portion of
17 people in the study and, by extension, people in the
18 County, would have been infected with COVID at that
19 time.

20 Q. Okay. Did you agree with the findings in 12:09:19
21 Dr. Bhattacharya's seroprevalence study?

22 A. I can't -- I can't -- I can't speak to the
23 findings. I don't know what you mean by "agree."
24 They found what they found.

25 Q. Well, did you agree with it, or did you -- 12:09:38

1 did you have any issue with it? Did you think there
2 were issues with the studies? Did you think it was
3 inaccurate?

4 A. I actually didn't think it was particularly
5 relevant. 12:09:53

6 Q. Okay. That didn't answer my question.

7 Did you think the study was inaccurate?

8 MR. WALL: Objection. Asked and answered.

9 Argumentative.

10 THE WITNESS: So the -- the -- I can't 12:10:07
11 remember about how they chose their sample. I think
12 there were some questions around the sampling, and
13 there may have been questions -- at that time, there
14 was a lot of work going on regarding antibody tests
15 and what we could conclude from antibody tests, but 12:10:28
16 depending on what kind of antibody tests. So I
17 remember there was discussion around that, and I
18 remember there was discussion around the sampling.

19 But the -- the purpose, as I recall, was to
20 understand the prevalence of COVID in the population. 12:10:45

21 BY MS. GONDEIRO:

22 Q. So you mentioned "relevant" earlier.

23 Why did you believe that the seroprevalence
24 study was not -- that Dr. Bhattacharya conducted was
25 not relevant? 12:11:01

1 BY MS. GONDEIRO:

2 Q. Yeah.

3 Starting in April of 2020, did you become
4 aware of any other seroprevalence studies that were
5 conducted in California?

12:12:41

6 A. April 2020 through when?

7 Q. Since April of 2020.

8 A. Through present?

9 Q. Yes, through -- through present.

10 A. There certainly have been seroprevalence
11 studies since then in California, and -- but it
12 depends on the time; right? Because now, in
13 California, the seroprevalence looks quite different
14 than it would have in the spring of 2020.

12:12:52

15 Q. Uh-huh. Okay. So what -- what studies do
16 you remember?

12:13:17

17 A. There's a study looking at seroprevalence
18 among dialysis patients, and I believe part of the
19 sample includes California. I don't specifically
20 recall.

12:13:38

21 Q. And what was the -- when was that study
22 conducted?

23 A. It was conducted after April of 2020. It
24 may have been conducted at several points in time.
25 I -- I don't have those details. I don't recall

12:13:52

1 those details.

2 Q. Was it around the summer of 2020?

3 A. I think it would have been later.

4 Q. What were the findings of that dialysis
5 seroprevalence study? 12:14:09

6 A. As I mentioned, I don't recall specific
7 details.

8 Q. Are you aware of any other seroprevalence
9 study that was conducted around the summer of 2020
10 regarding COVID-19? 12:14:23

11 A. I -- I -- I don't recall any at the -- at
12 the moment.

13 MS. GONDEIRO: Okay. We're going to skip
14 Exhibit 10 and move on to Exhibit 11.

15 (Exhibit 11 was marked for identification.) 12:14:44

16 MR. WALL: Dr. Cody, that's in the chat too.
17 If you -- if you look, you'll be able to pull up a
18 copy.

19 THE WITNESS: Okay. Hold on. This is
20 Exhibit -- what number? 12:15:05

21 MS. GONDEIRO: Well, Exhibit 11.

22 And, Dan, while she's pulling that up, can
23 you please put the next three exhibits in the chat
24 box just so we can conserve time?

25 THE VIDEOGRAPHER: Sure. 12:15:23

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1 MS. GONDEIRO: Okay.

2 THE VIDEOGRAPHER: I'll need to get out of
3 chat here to do that -- I mean the share.

4 THE WITNESS: I have the exhibit.

5 MS. GONDEIRO: Okay. You can pull it up, 12:16:04
6 Dan, the...

7 Okay. Can you scroll down to -- there we
8 go.

9 BY MS. GONDEIRO:

10 Q. Dr. Cody, do you remember receiving a -- 12:16:20

11 MS. GONDEIRO: Actually, this is not the
12 correct -- is this Exhibit 11 or Exhibit 12?

13 THE VIDEOGRAPHER: This is --

14 MR. WALL: This is -- this is -- what I have
15 is Exhibit 11, Mariah. 12:16:43

16 THE VIDEOGRAPHER: This is 11. It's the one
17 that you sent me earlier.

18 MS. GONDEIRO: Okay.

19 THE VIDEOGRAPHER: Is there a new version?

20 MS. GONDEIRO: Well, there was a -- there 12:16:53
21 was a corrected version of the let- -- of Exhibit 11.

22 THE VIDEOGRAPHER: After the ones you sent
23 to me?

24 MS. GONDEIRO: Yeah, but --

25 MR. WALL: Okay. I can get out and track it 12:17:03

1 down if you want me to.

2 MS. GONDEIRO: Yeah, but I guess in the --
3 in the meantime, we can -- we can talk about this
4 specific email.

5 BY MS. GONDEIRO:

12:17:14

6 Q. Dr. Cody, around April 3rd or on April 3rd,
7 2020, do you recall getting this email from Sandy
8 Schwarcz?

9 A. I don't -- I don't recall this email. I can
10 see the email, but I would not have been able to
11 recall it.

12:17:28

12 Q. Okay. Who is Sandy Schwarcz?

13 A. I don't know. Someone at Alameda County.

14 Q. Okay. It reads -- she -- she writes to you
15 that, "If controls were left through March, then the
16 second wave would start in August and peak in
17 October. Earlier lifting means a second wave in June
18 and peak at end of August."

12:17:45

19 Did you agree -- or did you agree at that
20 time with that conclusion?

12:18:08

21 A. So this email wasn't sent to me by Sandy.
22 It looks like it was sent to me by Erica Pan. And it
23 looks like she is summarizing some studies that she
24 reviewed and sending along Sandy -- and I don't know
25 whether Sandy is a him or her -- their conclusions

12:18:40

1 based on the -- based on the studies.

2 Q. So during Octo- -- or April of 2020, did you
3 believe that if you delayed in lifting your
4 shelter-in-place order, that you could delay a
5 resurgence? 12:19:09

6 A. What -- what I knew from various models and
7 discussions and observations about the way the virus
8 was behaving in other, you know, places was that
9 anything that allowed more contact between people --
10 more opportunity to share air space and additional 12:19:30
11 contacts between people would create more infections
12 and a resurgence.

13 Q. Why did the County extend their April
14 shelter-in-place -- or their March shelter-in-place
15 order? 12:19:54

16 A. To prevent a resurgence of COVID and to
17 prevent spread and to prevent severe illness and to
18 prevent death and to prevent long-term disability
19 among our residents.

20 Q. So to delay a -- you mentioned -- just so I 12:20:11
21 get this right, you extended the shelter-in-place
22 order to delay a resurgence.

23 And when did you expect a resurgence to
24 occur?

25 MR. WALL: Objection. Misstates testimony. 12:20:31

1 Vague as to "resurgence."

2 But you can answer the question, Dr. Cody.

3 THE WITNESS: Can you restate your question?

4 BY MS. GONDEIRO:

5 Q. Starting -- so you said that you extended 12:20:40
6 the shelter-in-place order to delay another
7 resurgence.

8 When did you want to delay the resurgence
9 by, or when did you expect the delay to expire?

10 MR. WALL: Objection. Misstates testimony. 12:20:56

11 THE WITNESS: In -- in spring of 2020, in
12 March and April, there were very few tools to protect
13 the public.

14 MS. GONDEIRO: Uh-huh.

15 THE WITNESS: We didn't have widespread 12:21:11
16 testing. We had a nationwide shortage of masks.
17 We -- we didn't understand a lot of properties of the
18 virus, and there were very few tools available to
19 protect the public and to prevent disease and

20 hospitalization, overwhelm of the hospitals, death, 12:21:36
21 and long-term disability.

22 So we lacked a lot of information, and we
23 lacked a lot of tools. And so our job was to protect
24 the public from these very bad outcomes until such
25 time as we could reasonably put in other mitigation 12:21:55

1 measures and protect them.

2 BY MS. GONDEIRO:

3 Q. By extending the shelter-in-place order in
4 April of 2020, was it the County's goal to delay
5 another resurgence -- resurgence after -- until after
6 the summer of 2020?

12:22:11

7 A. Our -- we did not know what would happen
8 next as that was unknowable; however, what we did
9 know was, at that time, we had very few resources or
10 tools or strategies available. We had no treatments.
11 We had no vaccines. We had a nationwide shortage of
12 masks. We had no -- very few tests available.

12:22:37

13 There were very few tools to ensure people's
14 protection and to ensure that our hospitals wouldn't
15 be overrun with COVID, and we -- people need access
16 to medical care for COVID and for any other things,
17 and we had very, very few tools.

12:22:59

18 What we did know was that the more that
19 people interacted with each other without protections
20 in place, the more infections, the more
21 hospitalizations, and the more deaths would result.

12:23:18

22 MS. GONDEIRO: Okay. Dan, I would like to
23 go to Exhibit 12.

24 (Exhibit 12 was marked for identification.)

25 MR. WALL: And, Dr. Cody, that's in the

12:23:32

1 chat.

2 MS. GONDEIRO: Can you go -- can you scroll
3 down to the bottom, Dan?

4 BY MS. GONDEIRO:

5 Q. Okay. Dr. Cody, do you recall reviewing a 12:23:55
6 study by the Johns Hopkins University showing that
7 COVID-19 was spreading rapidly and easily?

8 A. I don't remember this particular one, but I
9 remember seeing a lot of data showing rapid spread.

10 Q. Well, what studies do you recall, during 12:24:26
11 January of 2020, demonstrating that COVID-19 was
12 spreading rapidly and easily?

13 A. I'm having a hard time opening this exhibit,
14 so just give me a minute.

15 Okay. I've got the exhibit up. Can you 12:24:59
16 restate your question?

17 Q. Yes.

18 What -- what studies did you review in
19 January of 2020 showing that COVID-19 was spreading
20 rapidly and easily? 12:25:11

21 A. I recall looking at reports from Northern
22 Italy where they were seeing exponential growth and
23 an overwhelming number of hospitalizations and, just
24 in general, reports from around the world where COVID
25 was spreading. Where there were reports, you could 12:25:43

1 see the -- it was behaving in a very worrisome
2 fashion. The viral spread was very worrisome with
3 exponential growth.

4 Q. When you became aware of this knowledge in
5 January of 2020, why didn't you implement your
6 shelter-in-place order then? 12:26:01

7 A. We -- in January 2020, we lacked a lot of
8 information, primarily because we didn't have testing
9 available --

10 Q. Uh-huh. 12:26:22

11 A. -- to understand what the scope and
12 magnitude of the problem was.

13 Q. Sure.

14 Earlier it was your testimony that
15 Santa Clara County had become an early hot spot for
16 COVID-19. 12:26:32

17 Do you remember saying that?

18 A. Yes.

19 Q. And that was in January of 2020?

20 A. Yes. 12:26:43

21 Q. And how did you -- what studies did you rely
22 upon or what evidence did you rely upon to show that
23 Santa Clara County had become an early COVID-19 hot
24 spot in January 2020?

25 A. What I was referring to when I used that 12:26:59

1 word was that we were one of the first jurisdictions
2 in the country to report cases.

3 Q. Uh-huh.

4 A. So one of the first jurisdictions to report
5 a case, and then we had subsequent cases after that. 12:27:11

6 But I also just want to underline there was --
7 testing was not widely available, so it was very
8 difficult to understand how many infections they were
9 and what the pattern looked like. So this was a
10 little bit of information with -- that was very 12:27:36
11 worrisome.

12 Q. But in January of 2020, you were aware that
13 COVID-19 was a disease that spread rapidly and
14 easily; correct?

15 A. By January 2020, we were getting reports 12:27:50
16 from other places in the world, and those patterns
17 looked quite worrisome, that's correct.

18 Q. You didn't answer my specific question.

19 I'm asking, were you aware in January of
20 2020 that COVID-19 was a disease that spread rapidly 12:28:04
21 and easily?

22 MR. WALL: Objection. Asked and answered.

23 THE WITNESS: Yeah. By late January, there
24 was so much that was unknown. I think there was
25 still a lot of uncertainty about how rapidly it 12:28:24

1 spread and how it spread, a lot of uncertainty at
2 that time.

3 BY MS. GONDEIRO:

4 Q. You mentioned, though, in January of 2020
5 you reviewed a report from Northern Italy showing
6 that COVID-19 was spreading rapidly and easily.

12:28:35

7 Do you re- -- recall?

8 A. No. Actually, I -- if I can just correct
9 that. I don't think that would have -- I can't
10 remember, but that probably wasn't January. That was
11 probably later that things really took off in
12 Northern Italy. So I -- I -- I think that may have
13 been later and not in January. I'm trying to recall
14 what we knew in January.

12:28:50

15 Q. So regarding this Johns Hopkins study that
16 was sent to you in January of 2020, do you re- -- do
17 you recall reviewing this study?

12:29:07

18 A. So this was not a study. This was a map
19 that Johns Hopkins was producing.

20 Q. Uh-huh. And what did the map demonstrate?

12:29:31

21 A. The map -- the -- it was mapping where cases
22 were occurring in the United States and in other
23 places in the world.

24 Q. Did it demonstrate that COVID-19 was fast --
25 was growing rapidly and easily?

12:29:52

1 A. At what -- in what time?

2 Q. At the time this was published.

3 A. At the time this was -- so at the time that
4 I got this email on Thursday, January 23rd, what did
5 the map show? 12:30:09

6 Q. Yeah.

7 Did -- did the map -- you were just telling
8 me that you're clearly aware that -- you know, that
9 this was a map showing COVID-19 cases.

10 And what I'm -- what I'm asking is, at the 12:30:20
11 time that this map was published, did it demonstrate
12 that COVID-19 was spreading rapidly and easily?

13 MR. WALL: Objection.

14 THE WITNESS: Um --

15 MR. WALL: Objection. Vague. 12:30:31

16 You can answer the question, Dr. Cody.

17 THE WITNESS: Yeah.

18 So I don't remember -- I remember looking --

19 I remember following the maps that Johns Hopkins
20 produced. I remember -- I remember them. I do not 12:30:41

21 remember what the map would have looked like on
22 Thursday, January 23rd, 2020, to have known what I
23 would have concluded from the pattern I saw on the
24 map. This would have been before we reported our
25 first travel-associated case. 12:31:02

1 BY MS. GONDEIRO:

2 Q. Were you aware at -- from -- in early
3 February or around February that COVID-19 was
4 spreading rapidly and easily?

5 MR. WALL: Objection. Vague. 12:31:17

6 THE WITNESS: By early February 2020, we had
7 reported two travel-associated cases and our first
8 case of community transmission, an individual who got
9 COVID and we didn't know where they got it.

10 So by early February, we were seeing some 12:31:46
11 very concerning signals. Unfortunately, there was
12 very little testing in the United States and very
13 little available to us to be able to document just
14 how it was spreading. So we had early bad signs and
15 a lot of missing data. 12:32:11

16 BY MS. GONDEIRO:

17 Q. Okay. But this -- this map from Johns
18 Hopkins University demonstrates that -- based upon
19 this email, it demonstrated that COVID-19 was growing
20 faster than -- than people had expected; is that 12:32:28
21 correct?

22 MR. WALL: Objection. Assumes facts. The
23 document speaks for itself.

24 THE WITNESS: So it looks like the news
25 article concludes that the numbers may be growing 12:32:45

1 faster than national sources had known. And, again,
2 this would have been cases that we could ascertain,
3 and you could only ascertain a case if you can test
4 for it. So it would have been concerning.

5 BY MS. GONDEIRO:

12:33:10

6 Q. Were you concerned when you read this --
7 when you looked over this map by the Johns Hopkins
8 University at this time?

9 A. Yes, I -- I would have been concerned.

10 Q. And why were you concerned?

12:33:23

11 A. That we had a novel virus that seemed to be
12 spreading quickly across the world and that we had a
13 lot of -- a lot of missing information.

14 Q. Okay. So then that -- so you -- so you
15 stated that it was spreading rapidly.

12:33:45

16 So your -- you believed, in January of 2020,
17 COVID-19 was spreading quickly?

18 MR. WALL: Objection. Vague.

19 THE WITNESS: Yeah.

20 MR. WALL: Asked and answered.

12:34:01

21 You can answer the question, Dr. Cody.

22 THE WITNESS: Yeah.

23 In January 2020, there was a lot of
24 information that we did not have and -- because there
25 wasn't very much testing. We looked at the

12:34:15

1 information that we did have to try to discern what
2 the patterns were and to try to understand what this
3 meant and what the impact would be.

4 MS. GONDEIRO: Sure. Earlier you -- you
5 mentioned that the -- that it was spreading quickly, 12:34:32
6 but we'll -- we'll move on to the next exhibit.

7 (Exhibit 13 was marked for identification.)

8 BY MS. GONDEIRO:

9 Q. This is a field report regarding "Crisis
10 decision-making at the speed of COVID-19." 12:34:50

11 Dr. Cody, do you recall putting together
12 this field report with other county health officers
13 in the Bay Area?

14 A. Yes.

15 Q. What was the purpose of this field report? 12:35:10

16 A. To share our experience with -- with others
17 primarily in the public health community.

18 Q. Did you want to be able to provide insight
19 to people in the future as to what to do when there
20 is another -- or if there is ever another pandemic? 12:35:33

21 A. Our goal was really to share -- share our
22 experience in the Bay Area with others in the public
23 health community.

24 MS. GONDEIRO: Okay. Dan, can you scroll
25 down to 031198? That's the Bates number page. 12:35:52

1 Okay. I think -- go up a little bit.

2 Okay. That's -- that's good. Actually, up
3 a little bit more. There we go.

4 BY MS. GONDEIRO:

5 Q. So about the third paragraph, it starts 12:36:20
6 with, "As a team, we decided to issue
7 shelter-in-place orders within 24 hours."

8 Do you see that paragraph?

9 A. Yes.

10 Q. And it said, "The shelter-in-place orders 12:36:35
11 achieved important objectives: flatten the curve of
12 cases, hospitalizations; provide time for hospital
13 systems to prepare for future sur-" -- "surges;
14 provide time to learn about SARS-CoV-2; (4) provide
15 time to build capacity for wide-" -- "widespread 12:36:54
16 testing, case investigation, contact tracing; and (5)
17 provide time for study and development of
18 pharmaceutical therapeutics and" -- "and vaccines."

19 Does this summarize the -- the County's goal
20 for their shelter-in-place order that was implemented 12:37:14
21 in March of 2020?

22 A. For the most part.

23 Q. Is there any other goal, aside from the --
24 the factors that were listed here, that -- that the
25 County hoped to achieve through their 12:37:32

1 shelter-in-place order?

2 A. I -- I think -- I think this is -- you know,
3 pretty -- pretty much -- pretty much covers it. It's
4 a lot of that there was so much unknown, and there
5 needed to be more time to ensure that we could 12:37:55
6 effectively protect the public, and this -- this
7 details it.

8 Q. Okay. Did the County have a backup if
9 that -- the vaccines did not work?

10 MR. WALL: Objection. Vague. 12:38:11

11 You can answer the question, Dr. Cody, to
12 the extent you understand it.

13 THE WITNESS: Yeah. I don't -- I don't
14 think I quite understand your question.

15 BY MS. GONDEIRO: 12:38:20

16 Q. It says here -- on number 5, it says,
17 "provide time for study and development of
18 pharmaceutical therapeutics and vaccines."

19 Was the County prepared for the event that
20 vaccines were not able to be developed or were not 12:38:32
21 effective at curtailing the spread of COVID-19?

22 A. Well, I think it's important to remember
23 that we weren't man- -- the entire country was at
24 risk, the entire state, the entire country. It was
25 not a -- unfortunately, County can't develop 12:38:51

1 pharmaceuticals or vaccines.

2 Q. Okay. That didn't answer my question.

3 I'm asking, did you -- did the County have a
4 backup in the event that the COVID-19 vaccines were
5 never developed? 12:39:09

6 A. Our goal at the County was to protect the
7 people living and working in Santa Clara County with
8 the tools that we had available and to learn as much
9 as we could about how the virus was evolving and
10 behaving and adjusting as necessary to ensure 12:39:31
11 protection of the population.

12 Q. Okay. You're still not answering my
13 question.

14 I'm asking, did the County have a backup
15 plan in the event that the State or whoever was not 12:39:42
16 able to develop a COVID-19 vaccine?

17 MR. WALL: Objection. Asked and answered.
18 Argumentative.

19 THE WITNESS: The County and the entire
20 country didn't know what was ahead, you know. This 12:40:03
21 virus was spreading everywhere.

22 BY MS. GONDEIRO:

23 Q. That doesn't answer my question.

24 I'm just asking, did you -- did you have a
25 backup plan if the COVID-19 vaccines did not work? 12:40:13

1 MR. WALL: Objection. Asked and answered.
2 Argumentative.

3 MS. GONDEIRO: Well, she -- she hasn't
4 answered my question yet.

5 THE WITNESS: The other nonpharmaceutical 12:40:27
6 interventions to protect the population: testing,
7 masking, ventilation, social distancing, improving
8 ventilation. All of those things were what we would
9 have had available to use and would have -- would
10 have had to continue to use, in some form or fashion, 12:40:49
11 to protect the population absent other measures to
12 protect people.

13 MS. GONDEIRO: We can move on to the next
14 slide -- or the next exhibit.

15 (Exhibit 14 was marked for identification.) 12:41:09

16 MS. GONDEIRO: You can scroll down.

17 BY MS. GONDEIRO:

18 Q. This is an email from Sara Cody to Tomas
19 Aragon and other health officials.

20 So, in the middle of paragraph 2, it 12:41:22
21 reads -- or you write, Dr. Cody, "Done early, we
22 could maximize benefit. Done even a little bit
23 later, we would get the same harms but much less
24 benefit. So if we were going to do something that
25 drastic, the sooner the better." 12:41:42

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1 MR. WALL: So if we could find a lunch --

2 MS. GONDEIRO: We can stop after this --

3 MR. WALL: -- an appropriate lunch break.

4 MS. GONDEIRO: Yeah, after this exhibit.

5 I'm almost done.

12:43:06

6 MR. WALL: Thanks.

7 BY MS. GONDEIRO:

8 Q. In hindsight, because hindsight is to 20/20,
9 do you believe the County should have been

10 implemented their shelter-in-place order earlier?

12:43:14

11 A. There was a balance of -- of data. There
12 needed to be enough data and enough evidence in order
13 to act.

14 Q. Do you believe if the County implemented
15 their shelter-in-place order earlier, they would have
16 saved more lives?

12:43:34

17 MR. WALL: Objection to the extent it calls
18 for speculation.

19 But you can answer the question, Dr. Cody.

20 THE WITNESS: Uh-huh.

12:43:49

21 Restate your question.

22 BY MS. GONDEIRO:

23 Q. Do you believe, looking back and with the
24 information you have now, that if -- that if the
25 County implemented their shelter-in-place order

12:43:58

1 earlier, let's say in January when -- when you were
2 aware that COVID-19 was a disease that spread
3 rapidly, would it have prevented more deaths?

4 MR. WALL: Same objection. Assumes facts.
5 Misstates testimony. 12:44:16

6 THE WITNESS: Yeah, this is -- this is --
7 what -- what -- I would -- I would just be
8 speculating. There has to be weighing, ha- -- having
9 evidence to do something in order to do it. So there
10 was, as I mentioned -- 12:44:37

11 BY MS. GONDEIRO:

12 Q. I'm just asking for your opinion.

13 A. There was no testing available to know what
14 was happening in January of Feb- --

15 Q. Well -- 12:44:44

16 A. -- or February.

17 Q. Sure.

18 But looking back, you know --

19 A. Uh-huh.

20 Q. -- you had stated earlier that you were 12:44:47
21 aware that COVID-19 was a disease that spread
22 quickly.

23 Did you state that earlier?

24 A. Yes. We have learned that COVID-19 spreads
25 quickly. 12:45:00

1 Q. Okay. So with that knowledge, do you
2 believe that -- if you had implemented your
3 shelter-in-place order in January of 2020, would you
4 have prevented more deaths?

5 A. Possibly. We would not have been able to 12:45:17
6 implement a shelter in place with having only
7 identified one or two travel-associated cases. It
8 would have been impossible to implement, so it's just
9 a hypothetical. We would not be able to implement
10 without evidence to show as to why it was necessary. 12:45:34
11 We could not see those patterns in January of 2020.

12 Q. Sure. I'm not asking what you saw in 2020.
13 I'm asking what you know now.

14 What you know now, if you would have
15 implemented a shelter-in-place order in 20- -- 12:45:54
16 January of 2020, would you have prevented more
17 deaths?

18 MR. WALL: Objection. Incomplete
19 hypothetical. Assumes facts. Calls for speculation.

20 You can answer the question, Dr. Cody. 12:46:08

21 THE WITNESS: Yeah.

22 The reason I'm having difficulty answering
23 your question is because there is an interplay of an
24 action and then what you can tell people so they
25 understand why you're doing the action. 12:46:25

1 So if everyone would have acted as they did
2 in March and acted the same way as they did in
3 January, yes, more lives could -- would have been
4 saved. But I don't know that people would have acted
5 the same way without having documented that there was
6 ex- -- that there was exponential growth occurring.

12:46:39

7 BY MS. GONDEIRO:

8 Q. Okay. When you refer to "social harms" in
9 this email, what social harms are you referring to?

10 MR. WALL: Objection. Misstates the email
11 which speaks for itself.

12:47:02

12 MS. GONDEIRO: The email doesn't speak for
13 itself. I -- she doesn't list what social harms
14 she's talking about.

15 MR. WALL: It says -- it says "same harms."

12:47:11

16 MS. GONDEIRO: Or -- or -- sorry.

17 BY MS. GONDEIRO:

18 Q. Well, what do you mean by "harms"?

19 A. When people shelter in their place of
20 residence, they can't participate in, you know, other
21 activities in life apart from those that are, you
22 know, the very basic necessities.

12:47:22

23 Q. Okay. When you -- when you refer to
24 "harms," are you also referring to mental harms?

25 A. Well, people who -- the -- humans like to be

12:47:46

1 with other humans.

2 Q. Uh-huh.

3 A. And so keeping -- you know, not being able
4 to be with other humans is -- is -- is difficult.

5 The trade-off is that being with other humans can put
6 people at risk of hospitalization and death. So --

12:48:02

7 Q. Uh-huh.

8 A. -- it was a very, very, very difficult --
9 difficult time.

10 Q. Were you concerned at this time, when you
11 implemented the shelter-in-place order, that there
12 would be a spike in -- in mental health issues in the
13 County?

12:48:18

14 A. My -- my concern was that without shelter in
15 place, there would be a sharp uptick in
16 hospitalizations and death, and that would have quite
17 significant harm in addition to the hospitalizations
18 and deaths because of what family and community and
19 loved ones would experience when so many people were
20 so sick or -- or dying. So that -- that was
21 certainly a concern that I was quite worried about.

12:48:39

12:49:00

22 Q. Were you concerned that the shelter-in-place
23 orders would increase depression in the County?

24 A. I was concerned -- and I understood that we
25 were making a very difficult decision and very

12:49:19

1 difficult trade-offs and that our -- my top concern
2 was about immediate loss of life from infection in a
3 population that had really essentially no -- no
4 protection at all and that it felt -- it felt urgent
5 and extraordinarily difficult.

12:49:51

6 Q. When the County implemented their
7 shelter-in-place order in March of 2020, did they
8 implement any measures to combat any -- any mental
9 health issues that may be -- have been increasing
10 because of the shelter-in-place orders?

12:50:07

11 A. You know --

12 MR. WALL: Objection. Outside the scope.

13 But you can answer the question.

14 And -- and, Mariah, again, the urgency of
15 our lunch needs are growing as well.

12:50:17

16 MS. GONDEIRO: Okay. Yeah, and I'm almost
17 done. I just -- I want to end off on this exhibit.

18 THE WITNESS: I'm sorry. Just one more time
19 with your question.

20 BY MS. GONDEIRO:

12:50:27

21 Q. Yes.

22 When the County implemented their
23 shelter-in-place order in March of 2020, did they
24 implement any -- any measures to combat the increase
25 in mental health issues?

12:50:35

1 MR. WALL: Same objection. Outside the
2 scope.

3 THE WITNESS: We were mindful of the many
4 different impacts of shelter in place and sought to
5 do whatever we could to mitigate those impacts to the 12:50:53
6 extent that we had ability to do so.

7 BY MS. GONDEIRO:

8 Q. Okay. Well, what did you do to mitigate the
9 impacts of a rise in mental health issues?

10 MR. WALL: Same objection. 12:51:08

11 THE WITNESS: At -- at the time that we
12 issued the shelter in place, I don't recall that we
13 had a -- a knowledge of a rise in mental health
14 issues specifically.

15 BY MS. GONDEIRO: 12:51:22

16 Q. Sure.

17 But I think earlier didn't you say that you
18 were -- you were concerned about mental health
19 issues?

20 A. No. I -- I was concerned broadly about a 12:51:29
21 whole host of impacts that -- that people would
22 experience when they were not doing their usual
23 activities that they're accustomed to broadly. So
24 mental health would be part -- you know, potentially
25 part of that. 12:51:53

1 Q. Okay. So -- and specific to mental health,
2 were you concerned that there would be an increase in
3 mental health issues when you implemented the
4 shelter-in-place order?

5 MR. WALL: Objection. Asked and answered. 12:52:05

6 THE WITNESS: I would have been concerned
7 about mental health as well as other impacts that
8 people would experience as a result of sheltering in
9 place.

10 BY MS. GONDEIRO: 12:52:18

11 Q. Okay. What other impacts in addition to
12 mental health were you worried about?

13 A. How people behave when they are at home and
14 not able to do their usual activities, people -- just
15 all the usual activities of daily living that people
16 are not able to do with the, you know, enormous
17 change. 12:52:41

18 Q. Sure.

19 Were -- were you concerned that there
20 would -- that people would feel lonely due to the
21 shelter-in-place orders? 12:52:51

22 A. I was concerned about these extraordinarily
23 difficult trade-offs. I was concerned that people
24 would be -- were feeling afraid of a virus and of
25 people who were ill and dying. I was concerned about 12:53:12

1 people not being able to do their daily routines and
2 daily activities. You know, there were many, many
3 extremely -- it was a very, very difficult time.

4 Q. Okay.

5 MR. WALL: Mariah, can we take our lunch 12:53:32
6 break now? I don't --

7 MS. GONDEIRO: I just want an answer because
8 she hasn't --

9 MR. WALL: I hate to ask for -- three times.
10 I know, but I -- 12:53:35

11 MS. GONDEIRO: I know, but she hasn't
12 answered my question.

13 BY MS. GONDEIRO:

14 Q. So, Dr. Cody, you --

15 MR. WALL: She's answered about a dozen 12:53:39
16 questions.

17 MS. GONDEIRO: No.

18 MR. WALL: I'm concerned about the lack of
19 courtesy here when we need breaks on this side.

20 MS. GONDEIRO: Robin -- 12:53:46

21 MR. WALL: We're entitled to the courtesy of
22 a break.

23 MS. GONDEIRO: -- I'm going to give you a
24 break after this -- I'm going to give you a break
25 after this email. I would like to finish this email. 12:53:51

1 MR. WALL: This -- this is --

2 MS. GONDEIRO: So the next -- so -- and the
3 next exhibit, we can move on to the next exhibit.

4 MR. WALL: How many more questions do you
5 have? 12:53:58

6 MS. GONDEIRO: Well, she keeps --

7 MR. WALL: I'm asking you a question: How
8 many more questions?

9 MS. GONDEIRO: Well, she's not directly
10 answering my question. 12:54:05

11 BY MS. GONDEIRO:

12 Q. Dr. Cody --

13 MR. WALL: So answer your -- ask your
14 question one more time, and then we're taking a lunch
15 break. 12:54:08

16 BY MS. GONDEIRO:

17 Q. Dr. Cody --

18 MR. WALL: It's almost 1:00.

19 BY MS. GONDEIRO:

20 Q. Dr. Cody, early -- okay. You had just -- 12:54:10

21 you stated earlier that among the things that you
22 were concerned about, you were concerned about mental
23 health issues.

24 So what measures did the County put in place
25 to address the mental health issues that you were 12:54:25

1 concerned about?

2 MR. WALL: Objection. Vague as to time
3 frame. Asked and answered. Beyond the scope.

4 You can answer the question, Dr. Cody.

5 THE WITNESS: As I mentioned, we were 12:54:37
6 concerned about a whole host of impacts in addition
7 to COVID, and the County, as part of responding to
8 COVID, sought to mitigate some of those impacts
9 broadly.

10 BY MS. GONDEIRO: 12:54:58

11 Q. How did they -- what measures did they put
12 in place to mitigate the impacts of mental health
13 issues starting in March of 2020?

14 MR. WALL: Same objections.

15 BY MS. GONDEIRO: 12:55:10

16 Q. You're not answering my question.

17 MR. WALL: Add argumentative to the list.
18 Same objections.

19 BY MS. GONDEIRO:

20 Q. I'm not asking -- asking you to restate the 12:55:18
21 fact that the County generally put in measures to
22 mitigate impacts.

23 I'm asking you, what specific measures did
24 the County put in place to mitigate the effects of
25 mental health issues? 12:55:30

1 MR. WALL: Same objections.

2 THE WITNESS: I -- I -- I would observe that
3 in our shelter-in-place order, we enabled health care
4 operations broadly construed so that people could
5 continue to receive mental health care if -- if they 12:55:50
6 sought it and -- and needed it, among -- among other
7 measures.

8 BY MS. GONDEIRO:

9 Q. Sure.

10 And did you consider that religious services 12:56:02
11 would be important for people's mental health?

12 A. People would be able to consult with
13 their -- with their religious community. There was
14 nothing to keep them from doing that if that was
15 going to be helpful to them. 12:56:23

16 Q. But were religious services considered
17 essential in your shelter-in-place order?

18 A. We sought to ensure that everyone was safe.
19 People could -- many activities were conducted
20 remotely to ensure everyone's safety. So a lot of 12:56:41
21 activities continued in remote fashion. They just
22 couldn't occur in person.

23 Q. We can -- we can get to lunch if you just
24 answer my question.

25 MR. WALL: No, Mariah. You've gone three 12:56:55

1 questions beyond your question.

2 MS. GONDEIRO: No, because the problem is --

3 MR. WALL: The deposition -- let me --

4 MS. GONDEIRO: -- is that Dr. Cody is not
5 answering my question. 12:57:01

6 BY MS. GONDEIRO:

7 Q. Dr. Cody, I'm asking you, were religious
8 services considered essential in your
9 shelter-in-place order? It's a very simple question.

10 MR. WALL: Ms. Gondeiro, asked and answered. 12:57:08
11 It's three --

12 BY MS. GONDEIRO:

13 Q. It's "yes" or "no."

14 MR. WALL: Are you going to let me talk on
15 the record and state my objection for the record? 12:57:11
16 And you're not going to interrupt me, both because
17 it's impolite, it's unprofessional, and because the
18 reporter needs to take this down.

19 This deposition is not an endurance contest
20 for counsel or the witness. It's inappropriate to 12:57:23
21 drag us past a polite and professional request for a
22 break until you've decided that we should stop. It's
23 almost 1:00 now.

24 Dr. Cody can answer the question that she's
25 answered before, and then we are going to take a 12:57:38

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1 break.

2 BY MS. GONDEIRO:

3 Q. Okay. Dr. Cody, in March of 2020, in the
4 shelter-in-place order, were religious services
5 considered essential?

12:57:50

6 MR. WALL: Asked and answered.

7 BY MS. GONDEIRO:

8 Q. It's a simple question.

9 A. Right. In the shelter-in-place order, we
10 define the basic services that everyone living in the
11 County needs to have for food, for shelter, and for
12 medical care. And medical care is construed very
13 broadly to include physical and mental health care,
14 and there was nothing that would prevent anyone from
15 seeking health care for their body or for their
16 mental health.

12:58:00

12:58:26

17 Q. Was religious services considered to be
18 health care pursuant to the shelter-in-place order?

19 MR. WALL: Objection. Asked and answered.

20 Let's take a break, Mariah, and you can come
21 back and ask this question four more times after the
22 break. But she's -- you've asked it three times,
23 she's answered it as many times, and it's time for a
24 lunch break. It's 1:00.

12:58:39

25 MS. GONDEIRO: No. This -- no.

12:58:50

1 BY MS. GONDEIRO:

2 Q. Dr. Cody, I've asked you this question, and
3 you're not answering it.

4 Were religious services considered health
5 care in the shelter-in-place order? This is a really 12:58:57
6 simple question.

7 MR. WALL: It's also the sixth new question.
8 You can ask it after --

9 MS. GONDEIRO: No, it's not because she's
10 not answering the question. 12:59:05

11 BY MS. GONDEIRO:

12 Q. Are religious services considered health
13 care in the shelter-in-place order?

14 MR. WALL: Please mark the transcript as --
15 please mark this section of the transcript. This is 12:59:13
16 inappropriate behavior.

17 I'm instructing the witness not to answer.
18 She can answer after we take a lunch break. Thank
19 you.

20 MS. GONDEIRO: Robin, that is inappropriate. 12:59:23
21 You cannot instruct her not to answer a question.

22 MR. WALL: Mariah, this is not an endurance
23 contest. You -- you need --

24 MS. GONDEIRO: Robin, this deposition would
25 go by easier if she answered the questions. These 12:59:33

1 are very simple questions.

2 MR. WALL: And she's been answering them
3 question after question.

4 Fifteen minutes ago, you said we were ready
5 to break. You've now departed far beyond the email. 12:59:47

6 You've departed far beyond the one additional
7 question that you wanted an answer to. You've

8 departed on a new track, which is fine, and we have
9 no objection to you asking these questions. I have

10 object- -- 12:59:58

11 MS. GONDEIRO: I just -- I just want her to
12 answer.

13 Okay. Here's the thing: We can go on lunch
14 break if she answers whether religious services were
15 considered health care. 13:00:04

16 MR. WALL: You can ask that when she gets
17 back.

18 MS. GONDEIRO: Do you get to decide when the
19 breaks are? Is that how this works?

20 MR. WALL: Yes. In part, yes. Absolutely. 13:00:14
21 Absolutely, in part. Counsel on both sides and the
22 witness, the court reporter, the videographer, we all
23 get to decide when there are breaks when we need
24 them.

25 MS. GONDEIRO: No. I have -- 13:00:25

1 MR. WALL: It's 1:00.

2 MS. GONDEIRO: I am asking her to come back
3 on and answer this question, and then we can go on
4 break. I just want an answer to the question.

5 MR. WALL: Take it up with the judge if you 13:00:29
6 need to, Mariah. The witness is not coming back.
7 We're taking a lunch break now. It's 1:00. I've
8 been asking for 15 minutes. Come on.

9 MS. GONDEIRO: Okay.

10 THE VIDEOGRAPHER: We can go off the record? 13:00:45

11 MS. GONDEIRO: Yes.

12 THE VIDEOGRAPHER: All right. This -- we
13 are going off the record. The time is 1:00.

14 (Lunch recess taken.)

15 (Exhibit 15 was marked for identification.) 13:48:55

16 THE VIDEOGRAPHER: Okay. We're back on the
17 record. The time is 1:49.

18 BY MS. GONDEIRO:

19 Q. Dr. Cody, in the March 2020 shelter-in-place
20 order, were in-person worship gatherings considered 13:49:24
21 essential?

22 A. The March 2020 shelter-in-place order
23 describes functions that can occur regardless of who
24 is doing them, and gatherings are not -- not allowed
25 because of the risk of -- of COVID in the community 13:49:48

1 at the time.

2 Q. Okay. And when you say "gatherings," does
3 that include religious gatherings?

4 A. It includes gatherings of any type for
5 any -- for any reason. 13:50:04

6 Q. Okay. How effective was the suppression
7 strategy in March of 2020 in protecting Santa Clara
8 County during the summer of 2020?

9 A. How protective was the March order?

10 Q. How effective was that suppression strategy 13:50:26
11 that you applied in the -- in the March
12 shelter-in-place order in protecting Santa Clara
13 County during the summer of 2020?

14 MR. WALL: Objection. Vague as to which
15 March shelter-in-place order. 13:50:38

16 But you can answer the question, Dr. Cody.

17 THE WITNESS: Right. That -- the time frame
18 between, like, a shelter-in-place order and when you
19 would see an effect is generally a few weeks. So
20 it's -- I'm not -- that's why I'm having a hard time 13:50:56
21 answering your question because you're talking about
22 an action in March and what would happen in the
23 summer because you would see the effect from a March
24 action within the weeks that followed rather than the
25 months. 13:51:12

1 BY MS. GONDEIRO:

2 Q. Okay. Did you extend the -- the March 2020
3 shelter-in-place order to prevent a surge during the
4 summer of 2020?

5 A. I extended the March shelter-in-place 13:51:26
6 order -- the March 16th was extended the end of
7 March, and the March orders were extended in April
8 and then again in -- in May.

9 MS. GONDEIRO: Madam Court Reporter, can you
10 please repeat my question? 13:51:43

11 (Record read.)

12 THE WITNESS: I extended the March
13 shelter-in-place order to pre- -- to prevent a surge
14 in the following weeks. I would not have -- it would
15 have been difficult to project out much further than 13:52:13
16 that.

17 BY MS. GONDEIRO:

18 Q. How effective was the shelter-in-place
19 orders you implemented in April and May at protecting
20 people in South San Jose? 13:52:28

21 A. The shelter-in-place orders, of course, were
22 issued broadly across the population. The population
23 in Santa Clara County is highly variable depending on
24 where, a different makeup of the population, and so
25 we could see -- you know, the patterns were not 13:52:52

1 exactly equal across -- I -- I cannot recall
2 specifically at that time what the patterns looked
3 like with respect to location.

4 Q. Well, regarding the -- the patterns, what --
5 what do you recall seeing during March and April of 13:53:09
6 2020?

7 A. Well, there were many different patterns
8 that we were looking at in our data to understand
9 specific populations that were seeing higher case
10 rates or higher positivity rates or higher 13:53:32
11 hospitalization rates. And we would look at it by
12 age, race, ethnicity, location, and sometimes other
13 variables.

14 Q. Okay. Well, what -- what ethnicities were
15 experiencing more COVID-19 cases during March and 13:53:55
16 April of 2020?

17 A. A pattern that we began to see -- I think it
18 wasn't totally clear until April, maybe late March,
19 early April. I don't recall exactly where -- was a
20 disproportionate impact among Hispanic/Latino 13:54:19
21 communities in the County.

22 Q. Was there inequality between wealthy
23 neighborhoods and less privileged neighborhoods
24 regarding COVID-19?

25 A. Many of the patterns of COVID-19 that we saw 13:54:40

1 reflected what we call "social determinants of
2 health." And with COVID, a lot reflected housing.
3 So more crowded housing would put a community at
4 risk, or multigenerational households where there are
5 a lot of people working and living with other
6 household members who are particularly vulnerable,
7 particularly those who may have an underlying illness
8 or vulnerable because of their age. So we did tend
9 to see higher rates in -- in -- in those communities.

13:55:04

10 Q. When you implemented your shelter-in-place
11 orders in April and -- or in March and then the
12 extended shelter-in-place order in April of 2020, did
13 you consider the fact that poor working-class
14 families could not work from home?

13:55:24

15 A. Yes.

13:55:39

16 Q. And in what -- did you allow them to work?

17 A. One of the extraordinarily difficult parts
18 of the pandemic was that some people needed to work
19 outside and couldn't shelter at home because they
20 needed to run things like health care operations or
21 food operations or some basic services, and they
22 would be, you know, without other protections in
23 place, at greater risk of COVID.

13:56:00

24 And that, I would say, is one of the reasons
25 why keeping the overall prevalence in the community

13:56:24

1 as low as possible was one and a very important way
2 of protecting everyone, including and especially
3 those types of workers.

4 Q. Were you concerned, at the time you
5 implemented your shelter-in-place orders in March and 13:56:43
6 April, that child abuse would increase?

7 A. I was concerned about all kinds of impacts
8 of the shelter -- of the shelter in place and mindful
9 of those as well as the impact on transmission if we
10 weren't sheltering in place, which would include 13:57:08
11 hospitalization, deaths, and long-term disability.

12 MS. GONDEIRO: Madam Court Reporter, can you
13 please repeat my question?

14 (Record read.)

15 MR. WALL: Is there -- 13:57:32

16 THE WITNESS: You're asking --

17 MR. WALL: Is there a question?

18 THE WITNESS: Well, I'm just -- the --

19 MR. WALL: Dr. Cody, you only have to -- you
20 need to ask -- respond to Ms. Gondeiro's questions. 13:57:46

21 I'm asking Ms. Gondeiro if there's a
22 question --

23 MS. GONDEIRO: Yes. She --

24 MR. WALL: -- to the witness.

25 MS. GONDEIRO: She just an- -- asked it. 13:57:54

1 MR. WALL: You just -- so you're asking her
2 to -- to answer the question that the reporter just
3 read?

4 MS. GONDEIRO: Uh-huh.

5 MR. WALL: Objection. Asked and answered. 13:57:59

6 But you can go ahead and answer again,
7 Dr. Cody.

8 THE WITNESS: Yeah. The -- we were and I
9 was concerned about a whole host of issues that would

10 arise with the shelter in place and with the 13:58:13

11 requirement that people stay isolated in their place

12 of residence. And -- and we had to weigh all of

13 those concerns against the concern of spread of

14 COVID, hospitalizations, deaths from COVID, and

15 long-term disability from COVID. So there are a lot 13:58:35

16 of extraordinarily difficult trade-offs and impacts.

17 MS. GONDEIRO: Madam Court Reporter, can you
18 please repeat the question again?

19 (Record read.)

20 MR. WALL: Objection. Asked -- 13:59:06

21 THE WITNESS: So --

22 MR. WALL: Objection. Asked and answered.

23 You can answer it for a third time,

24 Dr. Cody.

25 THE WITNESS: Right. So at the time that I 13:59:11

1 issued the shelter in place on March 16th, 2020,
2 COVID was -- seemed to be moving rapidly. My top
3 concern was the immediate need to prevent people from
4 dying, and I also understood that there would be
5 many, many other impacts, some of which I could think 13:59:34
6 of, some of which I could not think of, some of which
7 would be measurable, many of which would not be
8 measurable, especially at that time.

9 My overwhelming concern when I issued the
10 shelter in place was to prevent death and 13:59:50
11 hospitalization and any disabilities or other things
12 unknown about the virus.

13 BY MS. GONDEIRO:

14 Q. And regarding the many issues that you were
15 concerned about, did that happen to include an 14:00:02
16 increase in child abuse?

17 A. I -- I don't recall at that time which of
18 those issues I was thinking about. It's difficult
19 because, as the pandemic progressed, of course, we
20 learned about, you know, many different aspects and 14:00:20
21 trade-offs. I do not specifically recall what I did
22 and didn't know at the time that I issued the shelter
23 in place.

24 Q. Regarding the many issues you were concerned
25 about, were you concerned about domestic violence? 14:00:34

1 A. Again, at the time that I issued the shelter
2 in place, I can't specifically recall which issues I
3 was thinking about and worrying about at the -- you
4 know, at the moment that I issued the -- the
5 shelter-in-place order.

14:00:53

6 Q. Earlier you had stated that there were many
7 issues that you were concerned about; correct?

8 A. Yes.

9 Q. Okay. Well, among those many issues that
10 you were concerned about and that you recall, did
11 that also -- did that happen to include increase in
12 alcoholism?

14:01:02

13 A. Again, I don't -- I cannot enumerate for you
14 the specific issues I was thinking about in mid-March
15 because they are mixed up with all the issues that
16 then presented over the course of the pandemic. So I
17 don't -- I cannot tell you which specific issues I
18 was thinking about in mid-March.

14:01:21

19 Q. Well, at any time from, let's say, March of
20 2020 through July of 2021, were you concerned
21 about -- let's start with child abuse?

14:01:39

22 A. Of -- of course. And we learned during the
23 pandemic that there was all of the challenges that
24 humans have when they are staying at home and
25 particularly when it's more difficult -- you know,

14:02:01

1 lots of things are more difficult during the
2 pandemic, and there's enormous stress because people
3 are concerned about illness and health and a whole
4 host of other things.

5 And so, you know, we -- we -- we -- we would 14:02:15
6 be learning about those, and of course we were
7 concerned about all of the impacts of -- of the
8 pandemic, you know, very broadly.

9 Q. Were you aware throughout the COVID-19
10 pandemic that child abuse was increasing in 14:02:36
11 Santa Clara County?

12 MR. WALL: Objection.

13 THE WITNESS: Um --

14 MR. WALL: Objection. Assumes facts.

15 But you can answer, Dr. Cody. 14:02:43

16 THE WITNESS: Yeah.

17 I don't recall getting specific reports
18 about child abuse, you know, specific reports in the
19 County or, you know, spec- -- yeah, I don't recall
20 getting specific reports. 14:02:58

21 BY MS. GONDEIRO:

22 Q. Do you -- do you recall alcoholism
23 increasing during the COVID-19 pandemic?

24 MR. WALL: Same objection.

25 THE WITNESS: We don't have a way to measure 14:03:11

1 alcoholism. We don't have a surveillance system for
2 alcoholism, per se; so I wouldn't have a way to get
3 those reports.

4 BY MS. GONDEIRO:

5 Q. Okay. Were you aware of mental health
6 issues increasing during COVID-19?

14:03:26

7 MR. WALL: Same objection.

8 THE WITNESS: What -- what time period are
9 you asking about?

10 BY MS. GONDEIRO:

14:03:42

11 Q. Through the COVID-19 pandemic. So from when
12 COVID-19 started in January of 2020 until the
13 present.

14 A. At any time during the pandemic?

15 Q. Uh-huh.

14:03:52

16 A. An increase in mental health issues?

17 Q. Yes.

18 A. With the -- with the available data that we
19 had, yes.

20 Q. Okay. And -- and where did that -- was that
21 County data that you put -- that the -- did the
22 County put that together, or did another entity put
23 that together?

14:04:04

24 A. The County data that would have been
25 available to us would have been related to emergency

14:04:16

1 department visits, potentially hospitalizations.

2 Those are the kinds of data that we would have had
3 available to us in the County.

4 Q. Did this data show that there was an
5 increase in suicidal ideation? 14:04:39

6 A. I don't recall, and I would need to see the
7 data and look at the particular time period.

8 Q. Is this -- is this data put together in,
9 like, reports?

10 A. The data would be data that's accessible 14:04:59
11 County data that might be put together in a -- you
12 know, some kind of consolidated fashion where we
13 could look at it and review it. There's not a formal
14 cadence of reports that I can think of.

15 Q. Okay. But it's -- it's documented somewhere 14:05:20
16 that the County has access to?

17 A. These are the -- the -- a subset of these
18 data are ones that are available and we would be able
19 to access. And that would include reasons for
20 emergency department visits, hospitalizations, 14:05:36
21 although those data lag quite a bit and often are not
22 quite as timely so can be less -- less useful, but we
23 would look at those as well.

24 Q. Okay. What other -- what other data were
25 you looking at outside of the -- the County? 14:05:51

1 MR. WALL: Objection. Vague.

2 THE WITNESS: So I would have access to data
3 collected by the County, and those would be the data
4 that would be most likely -- most -- you know, most
5 easily accessible and most likely that I'd be looking
6 at.

14:06:11

7 BY MS. GONDEIRO:

8 Q. Did you review any other data conducted by
9 anyone outside of the County regarding mental health
10 issues during the COVID-19 pandemic?

14:06:21

11 MR. WALL: Objection. Vague. Overbroad.

12 But you can answer the question, Dr. Cody.

13 THE WITNESS: I would have looked, you know,
14 broadly again at CDC reports and the MMWR that might
15 have measured these sorts of impacts, and that would
16 have been, you know, nationwide data or a report on a
17 particular location and -- you know, just in general,
18 those would be the kinds of places that I -- that I
19 would have looked.

14:06:40

20 BY MS. GONDEIRO:

14:06:53

21 Q. Do you remember the specific authors of any
22 of those studies?

23 A. (Shaking head.)

24 Q. Okay. Do you -- do you remember the title
25 of any of the studies?

14:07:04

1 A. I do not.

2 Q. Do you remember the content of any of the
3 studies?

4 A. Not specifically.

5 Q. Do you remember anything about the studies? 14:07:13

6 A. Well, what I can tell you is that these
7 types of questions about the -- the overall health
8 impact of the pandemic would have been likely to have
9 been published in CDC publications. Those CDC
10 publications might have national data, or they might 14:07:36
11 document the experience of a particular geographic
12 location or jurisdiction.

13 MS. GONDEIRO: Okay. Dan, can we pull up
14 the next exhibit?

15 THE VIDEOGRAPHER: Yep. 14:07:58

16 16?

17 MS. GONDEIRO: Yes.

18 THE VIDEOGRAPHER: Okay.

19 (Exhibit 16 was marked for identification.)

20 MS. GONDEIRO: This is the Mandatory 14:08:08

21 Directive for Gatherings. It was issued in July --
22 July 14th, 2020.

23 Can you please scroll down to Section 5?

24 THE WITNESS: And I'm having a difficult
25 time opening this from the chat for some reason. 14:08:25

1 MS. GONDEIRO: Can you -- can you see -- can
2 you see it on the screen, Sara -- or Dr. Cody?

3 THE WITNESS: I can only see what's
4 scrolling past, but I cannot -- I'm not able to open
5 the exhibit from the chat. 14:08:39

6 MS. GONDEIRO: Okay. Well, can you go to
7 the first page, Dan? Because --

8 THE WITNESS: Which exhibit is this? I'll
9 see if I can try one more time.

10 MS. GONDEIRO: This is the exhibit. It 14:08:49
11 says, "Mandatory Directive for Gatherings."

12 THE WITNESS: Okay.

13 MR. WALL: And, Dr. Cody, it's Exhibit 16.

14 THE WITNESS: Right. I'm just clicking on
15 the exhibit in the chat, and it's not popping up, 14:08:57
16 which is --

17 MS. GONDEIRO: Okay.

18 THE WITNESS: -- challenging.

19 MR. WALL: If you don't pull it up, I
20 just -- 14:09:18

21 THE WITNESS: Okay.

22 MR. WALL: I just printed a copy if you
23 can't pull it up.

24 THE WITNESS: Okay. I've -- I've got it.
25 No, I've got it. 14:09:23

1 Okay. I'm ready.

2 MS. GONDEIRO: Can you please scroll down to
3 Section 5, Dan?

4 BY MS. GONDEIRO:

5 Q. So under Section 5, under the -- on -- in 14:09:42
6 bullet point 2 -- or the second bullet, it says, "No
7 singing or shouting is allowed at gatherings because
8 these activities significantly increase the risk of
9 COVID-19 transmission."

10 Did day camps constitute a gathering 14:10:04
11 pursuant to this gatherings directive?

12 MR. WALL: Objection. Vague as to "day
13 camps."

14 But you can answer if you understand,
15 Dr. Cody. 14:10:18

16 THE WITNESS: I'm -- I'm not quite sure I
17 understand -- I'm not sure that day camps were
18 considered -- met the definition of "gatherings."

19 MS. GONDEIRO: You know what? I think what
20 I'm going to do, if you guys don't mind, I'm just 14:10:35
21 going to go off the record and have you review the
22 next three exhibits so that we're not wasting time on
23 the record having you review them and familiar [sic]
24 yourself. I had thought, you know, you had probably
25 reviewed these orders. 14:10:49

1 So why don't we just take a short
2 five-minute break. You review the next exhibits.
3 Okay?

4 THE WITNESS: You would like me to review
5 Exhibits -- which exhibits? 14:11:01

6 MS. GONDEIRO: The next three, so 16 --
7 16 -- actually, let's do 16, 17 --

8 MR. WALL: No, no, no. If you want us to do
9 something on break, this is going to be deposition
10 time. If you want to show the exhibit -- a witness 14:11:14
11 an exhibit, then she has a chance to look at the
12 exhibit. You can ask her questions. She either
13 recalls or she doesn't recall.

14 MS. GONDEIRO: Hey, Dan, can you please take
15 us off the record real -- so we can talk about this? 14:11:24

16 THE VIDEOGRAPHER: Okay. We are going off
17 the record. The time is 2:11.

18 (Recess taken.)

19 THE VIDEOGRAPHER: We're back on the record.
20 The time is 2:14. 14:14:23

21 MS. GONDEIRO: Can you pull up Exhibit 16
22 and scroll down to Section 5?

23 BY MS. GONDEIRO:

24 Q. So we'll just start off where we left off.
25 It says, "No singing or shouting is allowed at 14:14:46

1 gatherings."

2 Dr. Cody, did day camps constitute a
3 gathering pursuant to this gatherings directive?

4 A. So I know the gathering directive did not
5 apply to school classrooms. I believe that we -- 14:15:00
6 that we had a separate direct- -- a separate
7 directive to help describe the safety measures for
8 youth programs and camps separate than the gathering
9 directive.

10 Q. Was -- was singing allowed at these -- at 14:15:22
11 day camps at this time --

12 MR. WALL: Objection. Vague as to time
13 frame.

14 BY MS. GONDEIRO:

15 Q. -- during -- during July of 2020? 14:15:30

16 A. So could we look at that directive?

17 Q. I guess we'll have to pull it up later. I
18 don't have that specific directive as a exhibit.

19 Do you recall whether singing and -- or --
20 or shouting was allowed at recording studios during 14:15:58
21 July of 2020?

22 A. That's not within the gathering directive.

23 Q. Yes. I'm just -- I --

24 A. Your --

25 Q. Were -- were recording studios -- did they 14:16:14

1 constitute a gathering pursuant to this gatherings
2 directive?

3 A. No. Recording studios would not have been a
4 gathering because they would not have been gathering
5 a number of people in the same place for an organized
6 event. 14:16:28

7 Q. Okay. Did you have separate guidance for
8 recording studios at any --

9 A. Did we have separate --

10 Q. -- during the COVID-19 pandemic? 14:16:38

11 A. Did we have a specific directive for
12 recording studios? They may have -- I -- I don't
13 recall. They would have had guidance. I can't
14 recall whether it was guidance specific just for them
15 or whether they would have fallen under -- I don't
16 recall which -- which they would have fallen under. 14:16:56

17 What I can tell you about is the general --
18 the general intent about how these directives work,
19 if that would be helpful.

20 Q. No, that's okay. 14:17:14

21 Was singing or chanting allowed at recording
22 studios in July of 2020?

23 A. When we did allow activity, it would have
24 been with everyone masked and distanced except for
25 the person who was performing -- 14:17:36

1 Q. Okay.

2 A. -- to en- -- to ensure safety. So it
3 wouldn't -- it would only have been quite -- it would
4 have been quite limited, not -- not like a gathering.

5 Q. Okay. So if it was -- okay. So if it was
6 not a gathering, there could be singing or chanting
7 as long as other safety measures were followed --

14:17:49

8 MR. WALL: Objection. Vague as to time
9 frame.

10 You can answer.

14:18:03

11 BY MS. GONDEIRO:

12 Q. -- in July of 20- -- in July of 2020?

13 A. So the -- the -- the gatherings directive,
14 of course, applied to groups of people from various
15 different households all coming together for some
16 sort of organized activity.

14:18:14

17 And some of the other more specific
18 directives would have had many more mitigation
19 measures in place to ensure protection such as fewer
20 people, longer distances, masks, testing, illness
21 reporting, ventilation, things of -- things of that
22 nature. So they were, you know, quite -- quite
23 different than -- than -- than the activities that
24 would have fallen under the gatherings directive.

14:18:31

25 Q. In July of 2020, were non-gatherings allowed

14:18:53

1 to sing or chant so long as other safety measures
2 were followed?

3 A. I think it would depend on the directive.

4 Q. Okay. The directive for schools, I believe
5 you had mentioned earlier you reviewed that. 14:19:13

6 Did it allow singing and chanting as long as
7 safety measures were followed?

8 A. So we --

9 MR. WALL: Vague as to time frame.

10 THE WITNESS: We didn't have a -- so after 14:19:31
11 July, we did not have specific requirements for
12 schools. We relied on the State's guidance for
13 schools.

14 BY MS. GONDEIRO:

15 Q. Okay. What about restaurants? After -- or 14:19:45
16 in July of 2020 or anytime after that, was -- was
17 live music allowed or singing or chanting so long as
18 other safety measures were followed?

19 A. We did not allow live music or entertaining
20 at dining establishments. 14:20:09

21 Q. At any point after July of 2020?

22 A. There were times -- so for the most part --
23 so we did have dining directives to provide guidance
24 for dining establishments. Initially, it was just
25 outdoor dining. Much later, and I would have to 14:20:30

1 refresh my memory to remember the exact timing,
2 briefly indoor -- indoor dining.

3 But the overall intent was to not have any
4 activity that would put diners -- that would increase
5 risk. So there were -- we would not -- it -- you 14:20:50
6 know, having -- having entertainment would not have
7 been part of that.

8 Q. Okay. Was any type of singing or chanting
9 allowed after July of 2020 at dining establishments?

10 A. Was any singing allowed at any time? Like 14:21:11
11 up till -- up till present, or up till when?

12 Q. Yes. Since -- since July of 2020 to the
13 present.

14 A. So at present, we don't have any
15 restrictions. 14:21:27

16 Q. So let's start in July, then.

17 Was any type of singing or chanting allowed
18 at dining establishments?

19 A. In July 2020, we would not have allowed
20 singing or chanting at dining establishments, and 14:21:43
21 dining establishments were not open.

22 Q. Uh-huh. Okay. When they were allowed to be
23 open or at any time during the fall of 2020, were --
24 was any type of singing or chanting allowed at dining
25 establishments? 14:22:04

1 A. So, if I may, we had many, many directives,
2 and they changed over time depending on their risk in
3 the community.

4 And so that I can be precise for you, if you
5 could display the directive that you're referring to, 14:22:21
6 I can be much more specific in answering your
7 questions.

8 Q. We will -- we will come back to those
9 specific directives.

10 MS. GONDEIRO: Dan, can you please pull up 14:22:35
11 the next exhibit?

12 (Exhibit 17 was marked for identification.)

13 MS. GONDEIRO: This is a Public Health
14 Department response to the George -- George Floyd
15 protests. 14:22:54

16 MR. WALL: I'm sorry. I don't mean to
17 interrupt, Mariah. What exhibit number is this?

18 MS. GONDEIRO: It should be Exhibit 17.

19 MR. WALL: Okay. Oh, thank you.

20 BY MS. GONDEIRO: 14:23:10

21 Q. I'll give you a moment to read it, Sara.

22 A. Okay. I'm just trying to pull it up.

23 MR. WALL: If it's -- if you're having
24 trouble, Dr. Cody, the -- the full -- it's a one-page
25 exhibit, and the full text aside from the address -- 14:23:38

1 THE WITNESS: Yeah.

2 MR. WALL: -- information is on the screen.

3 THE WITNESS: Okay. I'll just read it on
4 the screen because it's --

5 MR. WALL: Okay. 14:23:46

6 THE WITNESS: -- it's giving me trouble.

7 Yes, I do see the exhibit.

8 BY MS. GONDEIRO:

9 Q. Did this summarize -- did this email
10 summarize the County's response to the protests that 14:23:52
11 occurred during the summer of 2020?

12 MR. WALL: Objection. Vague.

13 THE WITNESS: This email summarizes the
14 Public Health Department's response.

15 BY MS. GONDEIRO: 14:24:13

16 Q. Okay. Was there any specific guidance or
17 orders that Santa Clara County issued in response to
18 the protests that were occurring during the summer of
19 2020?

20 A. We were -- we -- I can't remember exactly 14:24:33
21 how, but we were encouraging testing and
22 mask-wearing --

23 Q. Uh-huh.

24 A. -- to ensure safety.

25 Q. Did the County require everyone attending a 14:24:50

1 gathering to wear a mask -- or let me repeat the
2 question.

3 Did the County require people attending a
4 protest, during the summer of 2020, to wear a mask?

5 A. So coming together for an organized activity 14:25:09
6 would be a gathering; and -- and any activity like
7 that that is a gathering, they would need to follow
8 the gatherings rules.

9 Q. So -- so did you req- -- did you require
10 protesters to wear a mask, or did you just encourage 14:25:31
11 them to wear a mask during the summer of 2020?

12 A. So, during the summer of 2020, we would
13 have -- if any -- like, we would have -- I'm trying
14 to remember. Indoors, absolutely masking was
15 required. And, as I recall, outdoors, when people 14:25:50
16 were close together, masking would also be required
17 because of the -- the concerns of -- for people's
18 safety.

19 Q. Sure.

20 So if masking was required for these 14:26:03
21 protests, why did the County release to the public
22 that they encouraged those to follow the orders
23 instead of saying, "You are required to wear a mask"?

24 MR. WALL: Object to form.

25 THE WITNESS: Can you repeat the question? 14:26:28

1 I'm trying to match the question to the exhibit.

2 BY MS. GONDEIRO:

3 Q. Sure.

4 So on the second-to-last sentence, it says,
5 "We also encourage those who are in" -- or, actually, 14:26:38

6 it's the -- the third to last: "As residents of the
7 County exercise this right, we respectfully remind
8 everyone that COVID-19 is still present and to keep
9 in mind the important practices, such as face
10 coverings and, to the extent possible, maintaining 14:26:59
11 social distancing."

12 A. Right. So this is -- this is reminding that
13 they need to use face coverings. So reminding them
14 that face coverings are required and also encouraging
15 testing and maintaining social distancing. 14:27:23

16 Q. But instead of saying the -- "to keep in
17 mind the important practices," why didn't the County
18 say, "You are required to wear a face covering at
19 protests," during the summer of 2020?

20 MR. WALL: Object to form. 14:27:40

21 THE WITNESS: So this document is not a
22 public health order outlining requirements. This
23 document is a statement of response to the incidents
24 occurring at the time. It's -- it's not a -- it's
25 not an order listing requirements. 14:27:58

1 BY MS. GONDEIRO:

2 Q. And so it says here that you -- that the
3 County was encouraging, to the extent possible,
4 social distancing.

5 So the County was okay with the fact that 14:28:10
6 there would be some protesters who would be within
7 6 feet of distance during the summer of 2020?

8 MR. WALL: Object to form.

9 Can you also show the witness the date of
10 this email, Ms. Gondeiro? It's not visible on the 14:28:21
11 screen.

12 MS. GONDEIRO: It's --

13 MR. WALL: Thank you.

14 MS. GONDEIRO: It's -- it's June 2nd.

15 THE WITNESS: June 2nd. 14:28:39

16 MS. GONDEIRO: Yes.

17 THE WITNESS: And -- and so can you repeat
18 your question?

19 BY MS. GONDEIRO:

20 Q. It says here that, to the extent possible, 14:28:48
21 protesters must maintain social distancing.

22 Did you intend for this to mean that if --
23 if -- that there -- that protesters could be within
24 6 feet of distance during the summer of 2020?

25 MR. WALL: Object to form, including the 14:29:08

1 "you."

2 THE WITNESS: So at this time -- this is
3 before July, and I think the gatherings directive
4 didn't become effective until July. So this is in
5 June.

14:29:27

6 MS. GONDEIRO: Uh-huh.

7 THE WITNESS: And so this is during the time
8 that -- so there wouldn't have been a directive
9 that's -- that's defining this as a gathering and
10 outlining exactly the requirements. So there
11 wouldn't have been a way to reference the
12 requirements because we didn't have the gathering
13 directive until July, as I recall. Right. This is
14 in early June.

14:29:42

15 BY MS. GONDEIRO:

14:29:57

16 Q. Okay. So at this time, in June of 2020,
17 protesters were not required to socially distance?

18 A. We -- protesters should protect themselves
19 by wearing face coverings and by -- by keeping a
20 distance from each other.

14:30:14

21 Q. Yeah. I'm not asking "they should."

22 Were they required to socially distance in
23 June of 2020?

24 A. I believe that, at this time, they would
25 have been under the last shelter-in-place order,

14:30:26

1 which would have required everyone to use face
2 coverings and maintain social distancing especially
3 indoors, and outdoors as well, to the extent that
4 they could.

5 Q. Okay. To the extent that they could. 14:30:50

6 Okay. Why did the County consider these
7 protests to be a fundamental right but did not ever
8 consider religious gatherings to be a fundamental
9 right --

10 MR. WALL: Objection. Assumes facts. 14:31:08

11 BY MS. GONDEIRO:

12 Q. -- during the COVID-19 pandemic?

13 MR. WALL: Objection. Assumes facts.

14 THE WITNESS: I -- this exhibit that you
15 have up is the Public Health Department's response to 14:31:21
16 George Floyd. It's not a countywide response -- a
17 countywide statement. It's coming from the Public
18 Health Department leadership team.

19 BY MS. GONDEIRO:

20 Q. Did you ever -- did you ever publicly say 14:31:39
21 that protesters had a fundamental right to protest
22 during the summer of 2020?

23 MR. WALL: Object. Outside the scope.

24 You can answer the question, Dr. Cody.

25 THE WITNESS: So I don't -- I don't -- I 14:31:53

1 don't recall whether I made public comments about
2 protesting and -- I don't recall.

3 BY MS. GONDEIRO:

4 Q. In June of 2020, were you concerned that
5 these protests were going to significantly increase
6 the spread of COVID-19? 14:32:09

7 A. In June of 2020, we -- we were concerned
8 that any event that brought people together in close
9 proximity could be a risk.

10 Q. Uh-huh. 14:32:31

11 A. In June of 2020, we were also beginning to
12 understand that outdoors was much safer than indoors
13 because of the natural ventilation outdoors.

14 Q. Uh-huh. Were you specifically concerned
15 that the protests that were occurring in the summer
16 of 2020 would significantly increase the transmission
17 of COVID-19? And I'm talking specifically in regards
18 to the protests. 14:32:48

19 A. So the protests in early June, we were
20 concerned, which is why we were urging people to get
21 tested and to watch for symptoms because of the
22 potential for spread given that there were groups of
23 people from different households that were together. 14:33:07

24 Q. Sure.

25 Do you remember -- or do you recall that 14:33:33

1 COVID-19 cases significantly increased during the
2 months of June and July of 2020?

3 A. I would need to look at our epidemic curve,
4 but I recall that cases did not begin to increase
5 until July. We began to see a rise in July. 14:33:57

6 MS. GONDEIRO: Dan, can you please pull up
7 the next exhibit?

8 (Exhibit 18 was marked for identification.)

9 BY MS. GONDEIRO:

10 Q. Does this protest -- or does this graph look 14:34:16
11 familiar, Dr. Cody?

12 A. Yes, it does.

13 Q. Okay. And does this graph display that
14 COVID-19 cases were significantly increasing,
15 starting in the beginning of June of 2020? 14:34:34

16 A. Yes. This graph shows that cases were
17 beginning to increase from the previous baseline
18 beginning in, you know, early/mid-June.

19 Q. Okay. And what did -- what do you believe
20 contributed to that significant increase in COVID-19 14:34:58
21 cases starting in mid-June of 2020?

22 MR. WALL: Object to form.

23 THE WITNESS: I think that there were a
24 number of factors. One, it had -- we were then five
25 months into the pandemic. People's behavior was 14:35:26

1 beginning to change. People were traveling. It was
2 summertime, and people were having social gatherings
3 in spite of the risks and in spite of the
4 requirements. And there was, in general, increases
5 in activity, not just in our county but in 14:35:56
6 surrounding counties and states as well, which, of
7 course, impacts our county.

8 BY MS. GONDEIRO:

9 Q. When did the County lift their second
10 shelter-in-place order? 14:36:12

11 A. In early July, I rescinded the last
12 shelter-in-place order and put in place a risk
13 reduction order.

14 Q. Okay. So -- I actually wasn't aware of
15 that. I was not aware the shelter-in-place order 14:36:39
16 lasted through July.

17 A. It lasted through -- until early July.

18 Q. It lasted through early July.

19 Did the County expect, considering they had
20 the shelter-in-place order in effect, that there 14:36:56
21 would be a resurgence starting in June of 2020?

22 A. There were a number of challenges, and among
23 them -- not an exhaustive list -- is that
24 jurisdictions around us were allowing more
25 activities, and residents of our county were 14:37:22

1 traveling because we live in a -- in a region, not
2 just in a county. And there -- so we couldn't, of
3 course, control the amount of activity and the
4 opportunities for exposure that everyone living in
5 our county may have. And that was occurring in --
6 in -- you know, in many different sectors and in --
7 and in many different ways.

14:37:46

8 MS. GONDEIRO: Okay. Dan, can you pull up
9 the next exhibit?

10 THE VIDEOGRAPHER: Okay. I'm going to have
11 to load that up in chat here. That's going to be
12 Exhibit 19.

14:38:05

13 MS. GONDEIRO: Yes. We're just whipping
14 through.

15 MR. WALL: Thank you.

14:38:13

16 (Exhibit 19 was marked for identification.)

17 THE VIDEOGRAPHER: Do you want me to add any
18 more while I'm here?

19 MS. GONDEIRO: And, Dan, while you're
20 doing -- once you do this, can you -- can you -- can
21 you please include the next exhibit, Exhibit 20?

14:38:27

22 THE VIDEOGRAPHER: Sure.

23 (Exhibit 20 was marked for identification.)

24 BY MS. GONDEIRO:

25 Q. Dr. Cody, you can go ahead and just download

14:38:39

1 that exhibit as well. You can download both 19 and
2 20.

3 A. Yeah. Unfortunately, I'm having difficulty
4 downloading from the chat, but I am going to try.

5 Okay. Got it.

14:38:59

6 Q. Dr. Cody, do you remember doing an interview
7 with Paul Costello in October of 2020?

8 A. Yes.

9 Q. What did you mean when you said it was an
10 extraordinarily humbling event?

14:39:17

11 A. What I meant was that responding to the
12 pandemic was an ex- -- was extraordinarily humbling
13 because there were so many difficult decisions and
14 difficult trade-offs and that it was humbling. I
15 was --

14:39:45

16 Q. Sure.

17 A. -- felt enormous responsibility, and I was
18 concerned and trying to make the best decisions that
19 I could to protect our hospitals and to make sure
20 that people didn't die and didn't lose family. It
21 was very difficult.

14:39:58

22 Q. Okay. Understood.

23 Was it also humbling because you were not
24 prepared for a June resurgence in 2020?

25 A. No. That is not what I was referring to in

14:40:14

1 this interview at all.

2 MS. GONDEIRO: Okay. Dan, can you scroll
3 down to page 2?

4 BY MS. GONDEIRO:

5 Q. Costello asks, "Is this moment an inflection 14:40:34
6 point of COVID-19?"

7 You respond, "It certainly is. I have to
8 tell you, to be candid, June was an incredibly
9 depressing month for us here in the local response
10 because I had my set" -- "my heart set on full 14:40:47
11 containment."

12 What did you mean by that?

13 A. That, in our county, our community, for the
14 most part, really came together and did many
15 extraordinarily difficult things to protect each 14:41:05
16 other and to protect families and to protect the
17 community. And we did work really, really well
18 together and got our rates really, really low.

19 But it was really the realization that we
20 were not an island, and we could do everything we 14:41:21
21 could, but we couldn't control what people around us
22 were doing or not doing.

23 Q. Uh-huh.

24 A. And that was having an influence on our case
25 rates. 14:41:36

1 Q. Sure.

2 A. So...

3 Q. So you said here, you know, "I had my heart
4 set on full containment."

5 So with you reviewing this answer, did -- 14:41:43
6 did you anticipate a June resurgence in 2020?

7 A. Did I in 2020? I mean, did I antici- --

8 Q. Yep, yep.

9 Did you anticipate a June resurgence in
10 2020? 14:42:03

11 A. As I -- as I mentioned earlier, it was
12 always difficult to look ahead around the corner and
13 to know how this pandemic was going to be moving.

14 Q. Uh-huh.

15 A. And so, you know, we had done -- our 14:42:18
16 community had done, you know, very well given the
17 tools that we had, and so to see cases rise again was
18 very difficult to see. You know, I had hoped that we
19 could hold things low and not have that resurgence.

20 Q. Yeah. So your goal was that there would not 14:42:43
21 have been a resurgence starting in June of 2020?

22 A. That had been my goal, yes.

23 Q. Okay. Can you go to the bottom of page 2,
24 please?

25 Costello asks -- or states that, you know, 14:43:06

1 "Nursing homes and assisted living facilities have
2 been hit hard in Santa Clara County and" --
3 "and around the country."

4 What measures did Santa Clara County put
5 into place to protect the most vulnerable like 14:43:20
6 nursing homes?

7 A. What measures did we put in place during
8 which time period?

9 Q. Starting in -- I guess that would be April.

10 A. Right. So starting in April 2020, what 14:43:41
11 measures did we have in place to protect vulnerable
12 people in nursing homes and assisted living?

13 Q. Yes.

14 A. That's your question? Okay.

15 Q. Yes. 14:43:55

16 MR. WALL: Objection. Outside the scope.

17 Dr. Cody, you can answer the question.

18 Sorry to interrupt.

19 THE WITNESS: Yeah.

20 We worked incredibly hard to do everything 14:44:01

21 that we could to protect people in nursing home and

22 assisted living facilities by providing -- by

23 collecting data to understand what was happening; by

24 providing guidance and technical assistance on

25 infection control, on testing policies, on policies 14:44:21

1 around personal protective equipment, around
2 visitors, protections for staff, staffing; and by --
3 I can't recall what month, but we had a team that was
4 dedicated to working directly with long-term care
5 facilities with vulnerable residents to -- to protect
6 them.

14:44:56

7 BY MS. GONDEIRO:

8 Q. Okay. Were there a lot of -- or were there
9 COVID-19 cases occurring in nursing homes starting in
10 April of 2020?

14:45:14

11 A. Yes.

12 Q. Okay. Would you say that that was a hot bed
13 for COVID-19 transmission starting in April of 2020?

14 MR. WALL: Object to form.

15 You can answer the question.

14:45:27

16 THE WITNESS: The pattern that we saw in
17 long-term care facilities, which includes skilled
18 nursing facilities, assisted living facilities, and
19 it's, you know, a large group, was people vulnerable
20 to severe illness, hospitalization, and death are
21 clustered in those facilities.

14:45:47

22 So any introduction of infection into a
23 facility like that can be quite serious. And so, you
24 know, keeping the overall prevalence in the community
25 as low as possible was one of the best ways to

14:46:10

1 protect infection coming into a facility
2 inadvertently.

3 BY MS. GONDEIRO:

4 Q. Do you recall ever -- or in -- during the
5 summer of 2020 ever publicly saying that protests
6 probably contributed to the rise in COVID-19 cases?

14:46:23

7 MR. WALL: Object. Object to form.

8 THE WITNESS: In the summer of 2020, we did
9 not have evidence or a way to discern which -- which
10 activities were contributing, and I don't believe
11 other jurisdictions did either.

14:46:46

12 BY MS. GONDEIRO:

13 Q. Did you ever publicly say, though, that --
14 in COVID-19 cases?

15 A. You froze there for a moment. You're --
16 you're back on. But you were frozen, so I didn't
17 catch --

14:47:07

18 Q. Can you hear me now?

19 A. I can hear you now. I didn't -- you cut out
20 in the middle of your question.

14:47:20

21 Q. Okay. Thank you.

22 During the summer of 2020, do you recall
23 ever publicly saying that you believed the protests
24 contributed to the rise in COVID-19 cases?

25 MR. WALL: Object to form. Object as

14:47:30

1 outside the scope.

2 You can answer the question.

3 THE WITNESS: I don't recall.

4 BY MS. GONDEIRO:

5 Q. Okay. Do you recall, during the summer of 14:47:35
6 2020, speaking to reporters about the protests?

7 MR. WALL: Same objections.

8 THE WITNESS: I don't specifically recall,
9 but -- but I -- I may have answered a question from a
10 reporter if -- if asked. 14:47:49

11 BY MS. GONDEIRO:

12 Q. Do you remember the company that this
13 report- -- that the reporter worked from?

14 A. I -- I don't remember ask- -- answering a
15 question, so I don't remember who the reporter would 14:48:02
16 have been or where they were from.

17 Q. Do you --

18 A. I may have. I don't recall.

19 Q. Okay. Do you recall speaking to any
20 reporter about the protests during the summer of 14:48:11
21 2020?

22 A. I don't recall. I may have, but I don't
23 recall.

24 Q. Okay. We're going to go to the next
25 exhibit. 14:48:23

1 MR. WALL: While we're pulling that up,
2 Mariah, we've been going for about an hour; so if you
3 could keep an eye on the clock and give us a break in
4 the next few minutes, that would be great.

5 MS. GONDEIRO: Okay. Sure. I think we can 14:48:40
6 get through this exhibit.

7 THE WITNESS: And which exhibit is this?

8 MS. GONDEIRO: This is Exhibit 20. It's the
9 revised risk reduction order.

10 THE WITNESS: Okay. I've got it. 14:48:55

11 MS. GONDEIRO: Could you scroll down to
12 Section 2?

13 And, actually, can you scroll down to the
14 next page? I think -- okay.

15 So scroll up a little bit because the -- 14:49:25
16 the -- the sentence is between page 2 and 3.

17 There we go.

18 BY MS. GONDEIRO:

19 Q. It says, "Governmental entities and their
20 contractors are not required to follow these 14:49:36
21 requirements to the extent that such requirements
22 would inter-" -- "would impede or interfere with an
23 essential government function, as determined by the
24 governmental health [sic] entity, unless otherwise
25 specifically directed in the Order or by the Health 14:49:52