

1 Officer."

2 Regarding this revised risk reduction order,  
3 what essential government functions do you recall?

4 MR. WALL: Object. Object to form.

5 THE WITNESS: So this is similar language to 14:50:16  
6 earlier health orders where governmental -- that  
7 goverment- -- "the governmental entity," not "the  
8 governmental health entity." But the governmental  
9 entity determines what would interfere with an  
10 essential governmental function. 14:50:38

11 BY MS. GONDEIRO:

12 Q. Okay. Did an essential government function  
13 at this time include law enforcement?

14 MR. WALL: Object to form.

15 THE WITNESS: So it was not my job to make a 14:50:54  
16 determination about what was an essential government  
17 function. That would be determined by the  
18 governmental entity, not by the health officer.

19 BY MS. GONDEIRO:

20 Q. Well, I'm asking what -- what do you recall? 14:51:11  
21 Do you recall law enforcement being deemed an  
22 essential government function at the time this order  
23 was issued?

24 MR. WALL: Object to form.

25 THE WITNESS: Just -- just for clarity, I 14:51:26

1 can recall what activities may have been going on,  
2 but I would not have been involved in determining  
3 what was -- what the government needed to do to  
4 perform their essential function.

5 BY MS. GONDEIRO:

14:51:45

6 Q. Okay. And so just to confirm, the  
7 government did not have to follow up with the county  
8 health officer to let them know what public health  
9 order they were not following?

10 MR. WALL: Object to form. Assumes facts.

14:51:59

11 THE WITNESS: The -- the way the health  
12 orders worked is the -- the governmental entity would  
13 determine what they could or couldn't do based on  
14 their -- their charge.

15 MS. GONDEIRO: Uh-huh.

14:52:20

16 THE WITNESS: And -- and -- and so the way  
17 that it would pertain to me, as health officer, would  
18 be in my hat with the Public Health Department in  
19 thinking about what the Public Health Department  
20 needed to do to -- to perform our essential function.

14:52:34

21 BY MS. GONDEIRO:

22 Q. Okay. Okay. But did the government  
23 officials -- they did not have to -- it was  
24 completely up to their discretion to determine  
25 whether any of the orders would impede or interfere

14:52:52

1 with their essential government function? You did --

2 MR. WALL: Object to --

3 BY MS. GONDEIRO:

4 Q. You were not a part of that determination;  
5 is that correct? 14:53:02

6 MR. WALL: Object to form. Order speaks for  
7 itself.

8 THE WITNESS: Yeah. All governmental  
9 entities were required to follow the health officer  
10 order just like everyone else. Everyone was required 14:53:11  
11 to follow these orders because they applied  
12 countywide --

13 MS. GONDEIRO: Uh-huh.

14 THE WITNESS: -- to everyone.

15 So, in government, we had to abide by the 14:53:21  
16 orders just like everyone else, and every other  
17 governmental entity within the County had to abide by  
18 the rules outlined in the order.

19 BY MS. GONDEIRO:

20 Q. But if a governmental entity determined that 14:53:36  
21 a requirement would impede -- impede or interfere  
22 with an essential government function, they did not  
23 con- -- have to confirm with you -- confer with you  
24 to determine whether they had to follow those  
25 requirements; is that correct? 14:53:53

1 MR. WALL: Object to form.

2 THE WITNESS: No. The order did not require  
3 them to personally confer with me, nor would it have  
4 been practical for them to personally confer with me.

5 BY MS. GONDEIRO:

14:54:09

6 Q. So then you're not aware, starting, you  
7 know, in this order -- since this order in October of  
8 2020, you're not aware of all the governmental  
9 entities that may have determined that a specific  
10 requirement would have impeded or interfered with any  
11 of their essential government functions; is that  
12 correct?

14:54:20

13 MR. WALL: Objection. Assumes facts.  
14 Object to form.

15 THE WITNESS: So each governmental entity  
16 was responsible for ensuring that they followed the  
17 rules, that they followed the health officer order.  
18 And to the extent that there was some activity that  
19 they did where they couldn't, they could make that  
20 determination.

14:54:29

21 MS. GONDEIRO: Okay. Court Reporter, can  
22 you please repeat my last question?

23 (Record read.)

24 MR. WALL: Object. Same objections and  
25 object as outside the scope.

14:54:50

14:55:33

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

2 THE WITNESS: So I would just observe that

3 there are many different governmental entities with

4 many different functions within the County. And so

5 just by way of example, if local law enforcement was 14:55:48

6 trying to arrest somebody, they would not be able to

7 comply with the 6-foot social distancing rule in

8 order to bring someone into custody. But it would be

9 them that would be able to determine, "I cannot

10 safely make an arrest while maintaining a 6-foot 14:56:09

11 distancing." And so they would be able to, for that

12 particular function, not abide by the social

13 distancing rule to carry out that function.

14 MS. GONDEIRO: Okay. We can stop here.

15 THE VIDEOGRAPHER: Alrighty. This marks the 14:56:34

16 end of Volume I, Media 2, in the deposition of

17 Dr. Sara Cody on August 18th, 2022.

18 Going off the record. The time is 2:56.

19 (Recess taken.)

20 THE VIDEOGRAPHER: All right. This marks 15:14:39

21 the start of Volume I, Media 3, in the deposition of

22 Dr. Sara Cody on August 18th, 2022.

23 The time on the monitor is 3:14.

24 MS. GONDEIRO: Dan, can you please scroll

25 down to Section 6(c)? Or 6(c). 15:14:56

1 THE VIDEOGRAPHER: Oh, sorry.

2 MS. GONDEIRO: 6(c), so I think it's up.

3 THE VIDEOGRAPHER: Okay.

4 BY MS. GONDEIRO:

5 Q. So this section defines what a gathering is 15:15:16  
6 and then defines what a gathering is not, pursuant to  
7 the County's definition.

8 Did the County have evidence -- and I'm  
9 going to be clear: When I say "evidence," I don't  
10 mean theories; I mean evidence like case reports -- 15:15:35  
11 that the entities deemed to be a gathering were  
12 spreading COVID-19 at a higher rate than the entities  
13 deemed to be a non-gathering?

14 MR. WALL: Object to form, including how  
15 you -- your reference to "entities" and "gatherings." 15:15:57

16 MS. GONDEIRO: Well, she lists some entities  
17 here.

18 MR. WALL: I -- the -- I won't -- I won't  
19 characterize the order for the witness, but I think  
20 the order speaks for itself. And I object to form. 15:16:18

21 But, Dr. Cody, you can answer the question  
22 if you -- if you understand it.

23 THE WITNESS: Okay. Would -- would you  
24 restate the question, and I'll do my best to answer.

25 ///// 15:16:25

1 BY MS. GONDEIRO:

2 Q. Okay. Well, first, I'm just going to  
3 preface with, when I say "evidence," I'm talking  
4 about case reports, you know, facts that the County  
5 had, data that the County had. 15:16:38

6 So I'm going to now repeat the question.

7 What evidence did the County have that the  
8 activities defined and/or entities defined as a  
9 gathering were spreading COVID-19 at an -- at a  
10 higher rate than the activities and/or entities 15:17:01  
11 defined as a non-gathering?

12 MR. WALL: Object to form.

13 THE WITNESS: The -- we did not -- we did  
14 not find a way to group data in that way to be able  
15 to give you the information that I -- that I think 15:17:32  
16 you're asking for. What we did know was many reports  
17 from elsewhere about outbreaks from gatherings. For  
18 whatever reason, groups of people coming together and  
19 creating super-spreader events, one I mentioned  
20 earlier with singing at a church performance, and 15:18:00  
21 they were also gathering for other reasons with  
22 reports of super-spreader events.

23 So we certainly had that evidence. And  
24 knowing what we know about how the virus spreads,  
25 when you bring groups of people together, you create 15:18:21

1 conditions where the virus can spread.

2 BY MS. GONDEIRO:

3 Q. Pursuant to this section, would a food  
4 processing plant be considered a non-gathering?

5 MR. WALL: Object to form to the extent it 15:18:39  
6 calls for a legal conclusion.

7 THE WITNESS: A food processing plant would  
8 be a worksite.

9 BY MS. GONDEIRO:

10 Q. Okay. And let's -- here. 15:18:49

11 Medical offices would also -- it says  
12 medical offices are also not a non-gathering.

13 What about day camps, were they considered a  
14 non-gathering as well?

15 A. Day camps were considered separately and did 15:19:10  
16 not fall under our definition of "gathering."

17 Q. And why is that?

18 A. We were thinking about them more similarly  
19 to schools or other programs serving -- serving  
20 children. 15:19:35

21 Q. Do -- were there outbreaks occurring at  
22 child care facilities since April of 2020?

23 A. There have been outbreaks at child care  
24 facilities between April 2020 and present.

25 Q. Okay. Is it true that COVID-19 is spread 15:20:08



1 mainly through respiratory droplets?

2 A. COVID-19 is spread, we now think, primarily  
3 through aerosols with some degree of spread from  
4 respiratory droplets. So it's mostly spread in the  
5 air by various-sized particles containing the virus. 15:20:26

6 Q. Okay. COVID-19 is considered a respiratory  
7 virus; correct?

8 A. Yes.

9 Q. Okay. If that is the case, does the air  
10 quality or ventilation system in a building 15:20:40  
11 contribute to the spread of COVID-19?

12 A. One of the ways to mitigate harms from  
13 COVID-19 is to improve ventilation, and outdoors  
14 provides a natural ventilation.

15 Q. What if -- what if a indoor facility had 15:21:06  
16 natural air flowing through its building, would that  
17 be considered an effective ventilation system?

18 A. One way that a -- so every facility is  
19 different; right?

20 Q. Uh-huh. 15:21:25

21 A. Different dimensions, ceiling height --

22 Q. Uh-huh.

23 A. -- extraordinary variety. The more that  
24 doors and windows are open and that natural  
25 ventilation can occur, the safer it would be from a 15:21:39

1 COVID perspective.

2 Q. What about how high the ceilings are in a  
3 building, does that contribute to the spread of  
4 COVID-19 or can it contribute to the spread of  
5 COVID-19?

15:21:55

6 A. A -- a high-risk situation for the spread of  
7 COVID-19 would be an enclosed space where there is  
8 little to no air movement because the aerosols would  
9 persist for longer and in a more concentrated  
10 fashion.

15:22:13

11 Q. Okay. So would high ceilings improve the  
12 air quality?

13 MR. WALL: Object to form.

14 THE WITNESS: High ceilings would contribute  
15 to additional air space --

15:22:28

16 MS. GONDEIRO: Okay.

17 THE WITNESS: -- yes.

18 BY MS. GONDEIRO:

19 Q. Sorry. I'm not a -- these medical terms are  
20 kind of -- kind of diffi- -- difficult for me.

15:22:37

21 Why didn't the County consider building  
22 space or occupancy space or the air quality of a  
23 building when implementing this order?

24 MR. WALL: Object to form. Assumes facts.

25 THE WITNESS: Broadly, the County did in

15:23:00

1 that, whenever possible, we either required or  
2 encouraged activities to be outdoors. The infinite  
3 variety of interiors of buildings is extraordinarily  
4 difficult to -- to define and make rules about.

5 BY MS. GONDEIRO:

15:23:30

6 Q. Okay. So just to summarize, the County did  
7 not consider building capacity for air quality for  
8 indoor facilities because it was difficult to  
9 regulate; is that correct?

10 MR. WALL: Objection. Misstates testimony.  
11 Assumes facts.

15:23:49

12 THE WITNESS: That's -- that's not a correct  
13 characterization of -- of what I said.

14 BY MS. GONDEIRO:

15 Q. Okay. So what did you mean?

15:23:56

16 A. That our -- our rules were guided by a  
17 number of different principles to improve safety and  
18 protect people. Ventilation is one of them.

19 Q. Uh-huh.

20 A. For that reason, we always either required  
21 or recommended outdoor activities over indoor  
22 activities.

15:24:13

23 Q. Uh-huh.

24 A. We went as far as to define what "outdoors"  
25 meant. For example, to define what outdoor dining

15:24:27

1 would look like --

2 Q. Uh-huh.

3 A. -- as to what it needs to look like. We  
4 talked a lot about improved ventilation. Not every  
5 building could change their ventilation.

15:24:48

6 Q. Uh-huh. Requiring indoor guidance, not  
7 outdoor, why didn't the County consider the air  
8 quality or building occupancy of build- -- of indoor  
9 facilities?

10 A. We did consider the -- the occupancy of  
11 indoor facilities through ca- -- first, density  
12 limits and then capacity limits.

15:25:11

13 Q. And what was that specific guidance that  
14 you're referring to?

15 A. So we would -- we would either earlier talk  
16 about the square footage of a space and how many  
17 people could be in a certain amount of square feet  
18 and later talk about capacity limits, which is a  
19 building's capacity and what percent of capacity  
20 could be occupied.

15:25:28

15:25:51

21 Q. Are you -- are you referring to the  
22 directive on capacity limitations right now?

23 A. There -- we had a directive on capacity  
24 limits.

25 Q. Okay.

15:26:09

1 A. And in early orders, we also talked about --  
2 and in other directives about the density and/or  
3 capacity of a space.

4 Q. Okay. So I'll go back to that later.

5 MS. GONDEIRO: Dan, can you scroll down to 15:26:23  
6 Section 5?

7 BY MS. GONDEIRO:

8 Q. So it says, "In addition to complying with  
9 the pro-" -- "all provisions of this Order, all  
10 individuals and entities, including all businesses 15:26:46  
11 and governmental entities, must also follow any  
12 applicable directives issued by the County Health  
13 Officer and any applicable 'COVID-19 Industry  
14 Guidance' issued by the California Department of  
15 Public Health." 15:27:03

16 Are you aware that starting in April of  
17 2020, California -- the State of California did not  
18 have -- or did not require entertainment studios to  
19 follow COVID-19 orders?

20 MR. WALL: Object to form. Object -- object 15:27:24  
21 to form.

22 You can answer the question, Dr. Cody.

23 THE WITNESS: So I'm aware that the State of  
24 California provided industry guidance for a number of  
25 different industries on their website and that that 15:27:36

1 guidance evolved over time.

2 BY MS. GONDEIRO:

3 Q. Are you aware of any industry guidance  
4 related to entertainment studios produced by the  
5 State of California?

15:27:54

6 A. Yes. I -- I do recall they did have a  
7 guidance that pertained to -- I can't recall the  
8 exact title of the guidance, but I believe it re- --  
9 it pertained to entertainment.

10 Q. What date was that guidance issued?

15:28:12

11 A. I don't -- I don't know.

12 Q. And what was the content of that, that you  
13 remember, of that guidance?

14 A. I don't recall much about the content of  
15 that guidance.

15:28:24

16 Q. What do you recall?

17 A. I mean, I can just recall that there was  
18 guidance that existed. We don't have a lot of that  
19 industry in our county, so I may not have paid as  
20 much attention to that guidance.

15:28:40

21 Q. Do you have some industry in the County,  
22 though -- some entertainment studios in the County?

23 MR. WALL: Object. Object to form. Beyond  
24 the scope.

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

15:28:52

1 THE WITNESS: You know, I can't think of one  
2 off the top of my head. Doesn't mean there aren't  
3 any. I can't -- I can't think of one.

4 BY MS. GONDEIRO:

5 Q. Did -- did the County follow the -- the  
6 State's guidance related to entertainment studios  
7 since October of 2020?

15:29:05

8 MR. WALL: Object to form and beyond the  
9 scope.

10 You can answer, Dr. Cody.

15:29:18

11 THE WITNESS: We would always instruct that  
12 any guidance that the -- any sector or anyone would  
13 need to follow both County and State guidance and  
14 follow whichever was stricter and that that would  
15 dictate what needed -- needed to be done to be  
16 compliant.

15:29:37

17 BY MS. GONDEIRO:

18 Q. Yes, I -- I can read what the -- what this  
19 section says.

20 What I'm asking you is, did the County  
21 follow the State's guidance for entertainment studios  
22 starting in April of 2020?

15:29:45

23 MR. WALL: Object to form. Beyond the  
24 scope.

25 THE WITNESS: If the County had an

15:30:00

1 entertainment studio, they would have to -- we would  
2 have to follow the State guidance if that's --

3 BY MS. GONDEIRO:

4 Q. Okay. Thank you.

5 A. -- if that's the question.

15:30:10

6 Q. Thank you.

7 Are you aware that in the State's face  
8 covering guidance -- or, first of all, are you aware  
9 that the State implemented a face covering guidance  
10 around November of 2020?

15:30:25

11 A. Yes. I thought it was earlier.

12 Q. Yes.

13 Well, are you aware in that -- in that  
14 guidance that the State exempted persons for whom  
15 wearing a mask -- face covering guidance would create  
16 a risk to the person related to the work -- their  
17 work as determined by local, state, or federal  
18 regulators or workplace safety guidelines?

15:30:41

19 MR. WALL: Object to form. Beyond the  
20 scope.

15:30:58

21 THE WITNESS: I don't recall the particular  
22 language in the State's face covering guidance from  
23 November 2020.

24 BY MS. GONDEIRO:

25 Q. Did the County have any language like this

15:31:05



1 in their County face covering guidance that provided  
2 exemptions for people who wearing a face covering  
3 would create a risk to their work?

4 MR. WALL: Object to form. Vague as to time  
5 frame. 15:31:24

6 BY MS. GONDEIRO:

7 Q. At any point during the COVID-19 pandemic,  
8 did the County include in their face covering  
9 guidances or mandates an exemption for persons for  
10 whom wearing a face covering would create a risk to  
11 the person related to their work? 15:31:39

12 MR. WALL: Object to form.

13 THE WITNESS: What I do recall is that we  
14 did have some exceptions for face coverings. So, for  
15 example, if someone was very young, if they couldn't  
16 tolerate a mask for medical reasons, and/or if it  
17 would provide a safety issue like they were working  
18 with machine tools or something -- 15:31:56

19 MS. GONDEIRO: Okay.

20 THE WITNESS: -- and it was going to get in  
21 the way. I don't recall how we stated the language,  
22 but we could -- 15:32:18

23 BY MS. GONDEIRO:

24 Q. Okay. And so it was up to the -- the local  
25 regulators or workplace safety guidelines to 15:32:31

1 determine whether that person had to wear a face  
2 covering; is that -- is that correct?

3 MR. WALL: Object to form.

4 THE WITNESS: So in many industries, they  
5 would have been -- had to com- -- you know, comply 15:32:45  
6 with other -- you know, other regulations. So I  
7 can't detail how those -- how those would all -- all  
8 interact.

9 I mean, our -- our overall concern was that  
10 as many people as could safely wear a safe cover- -- 15:33:01  
11 a face covering when around others did so to protect  
12 themselves and those around them and the -- and the  
13 community.

14 BY MS. GONDEIRO:

15 Q. Uh-huh. Are there any other examples you 15:33:15  
16 can provide me, starting in April of 2020, of  
17 industries or people for whom wearing a face covering  
18 would create a risk to that person related to their  
19 work?

20 MR. WALL: Object to form. Beyond the 15:33:39  
21 scope.

22 THE WITNESS: You know, I think that if  
23 there was a risk of -- I can't -- create a fire  
24 hazard or create a strangulation hazard or, you know,  
25 some other -- some other safety hazard, they 15:33:58

1 wouldn't -- shouldn't wear them -- couldn't wear them  
2 or if they couldn't wear them with some other  
3 equipment that they were required to use.

4 BY MS. GONDEIRO:

5 Q. Can you provide me examples of -- of a 15:34:11  
6 worker who would not be able to wear a face covering  
7 because of the equipment they had to wear?

8 MR. WALL: Object to form, including beyond  
9 the scope and calls for speculation.

10 THE WITNESS: Yeah. 15:34:27

11 I can't -- I can't think of an example off  
12 the -- off the top of my head of the whole universe  
13 of workers who would need to wear a mask.

14 BY MS. GONDEIRO:

15 Q. Okay. Can -- can you recall -- you 15:34:38  
16 mentioned strangulation.

17 Can you recall the type of worker who would  
18 not have to wear a face covering due to the risk of  
19 strangulation?

20 A. No. I was thinking more of the -- perhaps I 15:34:58  
21 shouldn't have used that as an example, but if -- if  
22 a worker was doing some kind of work where the work  
23 would -- their face covering could come -- come in  
24 contact with some, you know, machinery of some kind.  
25 I don't know -- I don't know what that would be. 15:35:17

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

1 Again, it was not my job to think through or  
2 be able to know the unknowable about all of the  
3 different scenarios that might -- that might occur.

4 Q. Why was it not your job?

5 MR. WALL: Object to form. Argumentative. 15:35:35

6 THE WITNESS: My job was to think about,  
7 broadly, what did we need to do to protect the public  
8 from risk and to issue the guidance as clearly and as  
9 simply as we could.

10 MS. GONDEIRO: Okay. We'll -- we're going 15:36:04  
11 to go to the next slide.

12 Actually, no, that is not the next slide.

13 Wait. Yes, I think this is it. Can you  
14 scroll down? Yes.

15 MR. WALL: Which -- which exhibit is this, 15:36:30  
16 Mariah?

17 MS. GONDEIRO: I think -- what exhibit are  
18 we on? I think we're on 21.

19 THE VIDEOGRAPHER: 22 is this one. 21 was  
20 the last one. 15:36:40

21 MS. GONDEIRO: Yeah, 22.

22 THE VIDEOGRAPHER: Yeah, it is -- oh, wait.  
23 That was -- I'm all confused. This is -- the last  
24 one was 20, and then this is -- the next one is 21.  
25 This would be 22, I think. 15:36:55

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

1 MS. GONDEIRO: Okay.

2 (Exhibit 22 was marked for identification.)

3 MR. WALL: 22 is the State's COVID-19

4 Industry Guidance?

5 THE VIDEOGRAPHER: Yes. 15:37:07

6 MS. GONDEIRO: Yes.

7 MR. WALL: Okay.

8 BY MS. GONDEIRO:

9 Q. Dr. Cody, do you recall this State COVID-19

10 Industry Guidance for places of worship? 15:37:16

11 A. I don't recall it in -- in -- in any detail.

12 I do have it open.

13 Q. Okay. Do you recall it generally?

14 MR. WALL: Object to form.

15 THE WITNESS: Very generally, sure. 15:37:35

16 BY MS. GONDEIRO:

17 Q. Okay. Did the County have their own

18 specific guidance for places of worship during the

19 COVID-19 pandemic?

20 A. Our -- our guidance, as I -- as I mentioned, 15:37:44

21 we sought to be as -- as clear and simple and even as

22 possible. So to the extent that people were

23 gathering to -- to worship or practice their

24 religion, they would have fallen under our gatherings

25 directive. 15:38:08

1 Q. So was the -- were people in Santa Clara  
2 County required to follow this State industry  
3 guidance related to places of worship?

4 MR. WALL: Object to form, including  
5 outside -- beyond the scope and to the extent it  
6 calls for a legal conclusion. 15:38:19

7 THE WITNESS: Yeah. People in our county  
8 would have been required to follow whichever  
9 guidance -- the -- the stricter of the guidance  
10 would -- would control. So if our gatherings 15:38:37  
11 guidance -- they would -- was stricter in a scenario  
12 than the State guidance, then they would follow  
13 County gathering guidance.

14 If -- if they were gathering for purposes of  
15 worship, religious services, or some other cultural 15:38:53  
16 ceremony, they would fall under the gatherings  
17 guidance.

18 BY MS. GONDEIRO:

19 Q. Okay. So while at a gathering, people had  
20 to wear a mask at all times pursuant to the County's 15:39:08  
21 gathering directives; correct?

22 MR. WALL: Objection. Assumes facts.

23 THE WITNESS: For most of the -- it depends  
24 on the time period of the pandemic, but -- and  
25 depends on whether it was indoors or outdoors. 15:39:27

1 BY MS. GONDEIRO:

2 Q. Okay. Well, starting in July of 2020.

3 A. In July of 2020, per the gatherings  
4 guidance, no indoor gatherings were allowed.

5 Q. So even when -- when indoor gatherings were 15:39:51  
6 allowed, a gathering -- did the -- did the gatherings  
7 directive ever allow people to remove their masks  
8 during a gathering?

9 A. Indoor gatherings, masks required at indoor  
10 gatherings. And depending on the time, there were 15:40:10  
11 different limits on how many people could safely  
12 gather.

13 Q. Okay. But when gatherings were allowed  
14 indoors, people within Santa Clara County had to wear  
15 a mask? 15:40:31

16 MR. WALL: Objection. Object to form.

17 You can answer the question, Dr. Cody.

18 THE WITNESS: Yes, but during times when  
19 trans- -- so certainly in July, at times when  
20 transmission was high, there were no indoor 15:40:46  
21 gatherings. Later, when there -- they were  
22 permitted, there were different measures in place  
23 such as masking.

24 MS. GONDEIRO: Dan, did we skip over  
25 Exhibit 21? 15:41:12

1 THE VIDEOGRAPHER: We did.

2 MS. GONDEIRO: Okay.

3 THE VIDEOGRAPHER: Do you want to go back to  
4 it?

5 MS. GONDEIRO: Yes. 15:41:20

6 THE VIDEOGRAPHER: Okay. Sorry.

7 MS. GONDEIRO: That's okay.

8 THE VIDEOGRAPHER: Here we go.

9 (Exhibit 21 was marked for identification.)

10 MS. GONDEIRO: Can you go -- yes. There we 15:41:26  
11 go.

12 And could you scroll down to page 3?

13 And just for the record, this is the

14 Mandatory Directive for Construction Projects issued  
15 by Santa Clara County. 15:42:03

16 Okay. You can stop here.

17 BY MS. GONDEIRO:

18 Q. So, Dr. Cody, I'm going to direct you to the  
19 section highlighted as "Face Coverings."

20 A. This is within the construction projects -- 15:42:29

21 Q. Yes.

22 A. -- mandatory directive?

23 Okay.

24 Q. So it says, at the bottom, the last  
25 paragraph -- sentence, it says, "Face coverings must 15:42:42



1 be worn even while working at a construction project  
2 unless if it would create a risk to the person  
3 related to their work, in accordance with local,  
4 state, or federal workplace safety guidance [sic]."

5 Earlier you had mentioned that an example  
6 would be people using machinery; is that correct?

15:43:03

7 A. Yes.

8 Q. Would that include machinery that is used at  
9 a construction site?

10 A. I could -- I could -- I could only  
11 speculate. I don't -- I don't -- this is not a --

15:43:20

12 Q. Yeah.

13 A. -- an area I would have expertise.

14 Q. Yes. So in general, though, this -- this --  
15 this sentence right here allowed construction sites  
16 to determine for themselves whether they believed  
17 wearing a face covering would create a risk to their  
18 job; is that correct?

15:43:33

19 MR. WALL: Object to form.

20 THE WITNESS: No. Maybe state, local, or  
21 federal workplace safety guidelines that they would  
22 need to adhere to in addition to the guidance for use  
23 of face coverings.

15:43:48

24 BY MS. GONDEIRO:

25 Q. Okay.

15:44:03

1 A. So they would need to comply with both.

2 Q. Okay. But let's say local, state, or  
3 federal -- okay.

4 Was there any local workplace safety  
5 guidelines you can recall regarding construction  
6 sites? 15:44:20

7 MR. WALL: Object to form. Beyond the  
8 scope.

9 You can answer, Dr. Cody.

10 THE WITNESS: I cannot think of a local  
11 safety guideline that pertains to construction, but I  
12 am not -- that doesn't mean it doesn't exist. I  
13 can't think of -- think of -- 15:44:29

14 MS. GONDEIRO: Okay.

15 THE WITNESS: -- any local construction. 15:44:46

16 BY MS. GONDEIRO:

17 Q. Did you ever review any of these federal  
18 workplace safety guidelines before you issued this  
19 order?

20 A. Federal workplace safety guidelines with  
21 regards to construction? 15:44:58

22 Q. Local, state, or federal workplace safety  
23 guidelines in regards to construction, yes.

24 MR. WALL: Object to form. Beyond the  
25 scope. 15:45:11

1 THE WITNESS: I don't recall personally  
2 reviewing federal, state, or local construction  
3 safety guidelines.

4 BY MS. GONDEIRO:

5 Q. Did construction sites -- when this -- when 15:45:37  
6 this order was issued, did construction sites have to  
7 con- -- confer with the County to let them know if  
8 they believed wearing a face covering would create a  
9 risk to the person related to their work?

10 A. No. The requirement was that they follow 15:45:58  
11 the guidelines, was the requirement. Follow the  
12 state, local, and federal guidelines.

13 Q. In addition -- but also, they did not have  
14 to wear a face covering guidance if it would create a  
15 risk to that person; correct? 15:46:17

16 MR. WALL: Object. Object to form.  
17 Misstates testimony. The directive speaks for  
18 itself.

19 But you can answer, Dr. Cody.

20 THE WITNESS: Right. Face coverings were 15:46:27  
21 required at construction worksites unless it would  
22 create a -- a risk. So they had to comply with the  
23 face covering guidance and workplace safety  
24 guidelines as well.

25 ///// 15:46:58

1 BY MS. GONDEIRO:

2 Q. Did the County follow the State's guidance  
3 on personal care services, or did they have their own  
4 guidance for personal care services at any point  
5 during the COVID-19 pandemic? 15:47:08

6 MR. WALL: Object to form.

7 THE WITNESS: The -- we had a directive for  
8 personal care services in the County.

9 BY MS. GONDEIRO:

10 Q. Okay. Do -- do facial -- facial services 15:47:23  
11 constitute personal care services?

12 A. Yes.

13 Q. Okay. Do companies supplying makeup artists  
14 constitute fa- -- personal care services?

15 A. I don't -- I -- I don't recall whether they 15:47:47  
16 would fall under -- under that directive or not.

17 Q. Okay. What about -- what about a service  
18 that provides eyebrow waxing or -- would that be  
19 considered a personal care service?

20 MR. WALL: Object. Object to form, 15:48:04  
21 including incomplete hypothetical.

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

23 THE WITNESS: Yes. A business that provided  
24 eyebrow waxing, I think, would be considered a  
25 personal care service and fall under that directive. 15:48:18

1 BY MS. GONDEIRO:

2 Q. What about services that provide manicures  
3 and pedicures, would they be considered a personal  
4 care service pursuant to your guidance?

5 MR. WALL: Same objections.

15:48:31

6 BY MS. GONDEIRO:

7 Q. Pursuant to the County's guidance.

8 A. Pursuant to the County's -- the County's  
9 directive for personal care services, yes, I believe  
10 that would apply to businesses that provide manicures  
11 and pedicures.

15:48:41

12 Q. What about services that provide massages,  
13 would they be considered a personal care service  
14 pursuant to the County's guidance?

15 MR. WALL: Same objections.

15:49:07

16 THE WITNESS: I don't specifically recall,  
17 but I -- I don't think that they fell under that  
18 directive.

19 BY MS. GONDEIRO:

20 Q. What directive would they have fallen under?

15:49:18

21 A. I don't -- I don't recall. There were so  
22 many details during -- during the pandemic, and  
23 that's a detail I -- I don't recall.

24 Q. Okay. Did the County follow the State's  
25 guidance on hair salons at any point during the

15:49:35

1 COVID-19 pandemic, or did they have their separate  
2 guidance?

3 MR. WALL: Object to form. Out- -- outside  
4 the scope.

5 THE WITNESS: Again, I don't -- I don't 15:49:47  
6 recall, but I think that salons may have fallen under  
7 the personal care directive.

8 BY MS. GONDEIRO:

9 Q. Okay. And so when personal care services  
10 were open in the County during the COVID-19 15:50:02  
11 pandemic -- or were allowed to be open during the  
12 COVID-19 pandemic, were workers who perform  
13 haircutting services allowed to stand within 6 feet  
14 of distance to perform their service?

15 MR. WALL: Object to form. 15:50:19

16 THE WITNESS: They were required to wear  
17 face coverings. There were limitations on how many  
18 people could be in the space, as I recall. But they  
19 would not be able to perform the service and maintain  
20 a 6-foot distance given the normal length of 15:50:40  
21 someone's arms.

22 BY MS. GONDEIRO:

23 Q. Sure. So just to confirm, when personal --  
24 when hair salons were allowed to be open, they were  
25 allowed to stand within 6 feet of distance, because 15:50:53

1 no one's arms are longer than 6 feet, while they were  
2 cutting hair?

3 A. That's right. And so there would need to be  
4 other mitigation and safety measures in place to  
5 ensure the safety of a client and -- and the worker  
6 in the hair salon.

15:51:09

7 Q. Did the County -- during the COVID-19  
8 pandemic, did the County allow -- and when  
9 restaurants were open indoors, did the County allow  
10 individuals to remove their mask while eating and  
11 drinking?

15:51:34

12 A. So the indoor dining was not permitted until  
13 fairly late and only briefly in 2020, as I recall.

14 Q. Okay.

15 A. And there were many rules in place that  
16 governed indoor dining. Because someone cannot eat  
17 and drink with a mask on, they were permitted to  
18 remove their mask to eat and drink but keep their  
19 mask on during any other time in the -- in the dining  
20 facility, including when waiting for food and after  
21 finishing eating.

15:51:59

15:52:23

22 Q. Did the County have evidence, starting in  
23 March of 2020 or at any point during the COVID-19  
24 pandemic, that people who are sitting to eat and  
25 drink at a restaurant do not spread COVID-19 as

15:52:43

1 easily as people who are standing up and walking  
2 around?

3 MR. WALL: Object to form. Incomplete  
4 hypothetical. Beyond the scope.

5 But you can answer the question, Dr. Cody, 15:52:54  
6 if you understand it.

7 THE WITNESS: Yeah, I don't quite understand  
8 the question. If you could restate it.

9 BY MS. GONDEIRO:

10 Q. Did the County have evidence during the 15:53:02  
11 COVID-19 pandemic that people who are sitting and  
12 just eating and drinking do not spread COVID-19 as  
13 easily as people who are walking around or -- or  
14 standing up in a restaurant and just walking around?

15 MR. WALL: Same objections. 15:53:30

16 THE WITNESS: Yeah. We wouldn't have had  
17 any way to collect evidence to compare the two  
18 scenarios that you describe, and I don't know quite  
19 how to quantify people who are up and walking around  
20 because it's sort of -- it entirely would depend on 15:53:47  
21 the context as to what the COVID risk would be.

22 MS. GONDEIRO: Uh-huh.

23 I think we can go to -- I think it would be  
24 Exhibit 23. Must be.

25 (Exhibit 23 was marked for identification.) 15:54:10



1 MS. GONDEIRO: Okay. Go ahead and scroll  
2 down to Figure 8.

3 MR. WALL: Let the -- I just want the record  
4 to reflect that Exhibit 23 appears to be two pages  
5 from a larger document. 15:54:29

6 MS. GONDEIRO: Yes. It's -- it's from a  
7 special investigation report.

8 BY MS. GONDEIRO:

9 Q. Dr. Cody, do you recall ever seeing this --  
10 this figure, Figure 8 -- 15:54:39

11 A. Yeah, I'm just --

12 Q. -- the distribution of outbreaks by month in  
13 Santa Clara County?

14 A. I'm just -- I've just got it -- just got it  
15 pulled up so I can see the whole document or part 15:54:51  
16 of -- part of the document.

17 And so, I'm sorry, can you ask your  
18 questions again? I'm now ready.

19 Q. Yeah.

20 Do you recall this -- this -- this graph,  
21 Figure 8? 15:55:00

22 A. Generally.

23 Q. Generally?

24 A. Yeah, generally.

25 Q. So -- so based upon this -- this graph, 15:55:15

1 would you say that the entities that were spreading  
2 more COVID-19 cases were factory and manu- --  
3 manufacturing plants and retail?

4 MR. WALL: Object to form.

5 THE WITNESS: I -- I couldn't make that 15:55:41  
6 conclusion from looking at this graph.

7 BY MS. GONDEIRO:

8 Q. So in -- in January of 2020, do you see --  
9 do you agree that this graph demonstrates that there  
10 were COVID-19 cases in food service and restaurants? 15:56:09

11 A. Food service is the peach color.

12 Q. Yes.

13 A. What this graph shows us is the distribution  
14 of reported outbreaks, as defined there, as reported  
15 to us through a particular portal. And so that means 15:56:40  
16 that someone has to recognize that it's there and to  
17 report it to us. So what's reported and what's  
18 actual can be different. So I just want to be  
19 precise that these are reported outbreaks.

20 Q. Okay. 15:57:02

21 A. They may not represent the whole of  
22 outbreaks or transmission.

23 Q. Okay. Well, based off of the reported  
24 outbreaks, in January of 2020, there were reported  
25 outbreaks at food service and restaurants; is that 15:57:17

1 correct?

2 A. There were reported outbreaks, as -- as we  
3 can see in the pale orange, correct.

4 Q. Okay. Were restaurants open or allowed to  
5 be open in January of 2020? Or no. Sorry. January  
6 2021.

15:57:33

7 A. What is the year of this?

8 Q. I think above it says "2021."

9 A. 2021.

10 MR. WALL: Object. Object to form.

15:57:55

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

12 THE WITNESS: So food service/restaurant, in  
13 January 2021, indoor dining would not have been open.  
14 So these might be like among kitchen workers who are  
15 preparing food for takeout and pickup, for example.

15:58:17

16 BY MS. GONDEIRO:

17 Q. Okay. What about in -- in February of 2021,  
18 were restaurants open then?

19 A. No. Indoor dining would not have been open  
20 then.

15:58:35

21 Q. When was -- when was indoor dining open?

22 A. Well, January and February, we still had a  
23 lot of COVID. I don't recall exactly when indoor  
24 dining opened. It certainly would not have been in  
25 January, February, and -- and likely not in March

15:58:55

1 either.

2 MS. GONDEIRO: Okay. I think -- what time  
3 is it? Is it -- is it -- have we -- how long have we  
4 been going?

5 MR. WALL: It's 4:00. I'm sure the witness  
6 and counsel and the reporter and everyone would enjoy  
7 a break.

15:59:09

8 MS. GONDEIRO: Yeah. We'll take a sh- --  
9 we'll take a ten-minute break.

10 Is that okay with everyone?

15:59:18

11 MR. WALL: That's fine. Thank you, Mariah.

12 MS. GONDEIRO: Okay.

13 THE VIDEOGRAPHER: All right. We're going  
14 off the record. The time is 3:59.

15 (Recess taken.)

16:16:35

16 THE VIDEOGRAPHER: We're back on the record.  
17 The time is 4:16.

18 You're muted, Mariah.

19 MR. WALL: Mariah, can you hear us?

20 MS. GONDEIRO: Sorry. I was taking a nap.  
21 No, I'm just kidding.

16:17:09

22 MR. WALL: So back on the record.

23 Dr. Cody has some testimony that she'd like  
24 to clarify from the prior hour.

25 MS. GONDEIRO: Sure.

16:17:20

1 We're not on the record right now, are we?

2 MR. WALL: We are on the record.

3 MS. GONDEIRO: Oh, yes. Okay.

4 THE WITNESS: Yes. I wanted to clarify  
5 regarding my response to one of your questions around 16:17:27  
6 the gathering directive where you were asking about  
7 instances where face cov- -- was there any instances  
8 where face coverings could be removed at an indoor  
9 gathering?

10 And there actually was one exception which 16:17:44  
11 is, at an indoor gathering, face covering could be  
12 removed for a religious ceremony where it was  
13 necessary to remove a face covering for that. So,  
14 for example, communion would require you to remove a  
15 face covering and -- and that would be allowed per 16:18:04  
16 the gathering directive.

17 BY MS. GONDEIRO:

18 Q. Okay. Did it allow -- did the gatherings  
19 directive allow congregants to remove their mask  
20 while singing and chanting? 16:18:25

21 A. No, not indoors, because of the risks of  
22 COVID.

23 Q. Uh-huh.

24 MS. GONDEIRO: Can you please go to the next  
25 slide -- or the next exhibit, Dan? 16:18:47

1 (Exhibit 24 was marked for identification.)  
2 THE WITNESS: Which exhibit number is this?  
3 THE VIDEOGRAPHER: This is Exhibit 24.  
4 MS. GONDEIRO: Can you scroll down? I  
5 think -- oh, yeah, keep scrolling down. I don't know 16:19:16  
6 what section. Keep going, keep going.  
7 Okay. So --  
8 THE VIDEOGRAPHER: Keep going?  
9 MS. GONDEIRO: Yeah, keep going just a  
10 little bit more. 16:19:46  
11 THE VIDEOGRAPHER: Okay.  
12 MS. GONDEIRO: I thought -- I actually don't  
13 think this is the right one. I thought that -- can  
14 you go back up?  
15 I thought that this -- that this one said 16:20:25  
16 that religious services were allowed to gather at a  
17 hundred people or 25 percent of the building  
18 capacity. I don't think this is the right one.  
19 You know what? For the sake of time, I  
20 don't -- I don't think we need this exhibit. 16:20:41  
21 Can we move on to the next one?  
22 (Exhibit 25 was marked for identification.)  
23 BY MS. GONDEIRO:  
24 Q. Okay. And this is a Special Investigations  
25 Weekly Summary from October 15th through 16:20:51

1 October 21st, 2020.

2 Dr. Cody, did Santa Clara County issue  
3 weekly summaries every single week starting in April  
4 of 2020?

5 A. Weekly summaries -- 16:21:15

6 MR. WALL: Sorry. Excuse me. I'm sorry.  
7 Object to form. It's outside the scope.

8 But you can answer, Dr. Cody.

9 THE WITNESS: Yeah. And, I'm sorry, which  
10 exhibit is this? Because I would like to pull it up 16:21:25  
11 as well.

12 MS. GONDEIRO: It's Exhibit 25.

13 THE WITNESS: Exhibit 25?

14 MS. GONDEIRO: Yes.

15 THE WITNESS: Okay. Thank you. 16:21:33

16 Okay. I am ready, yes.

17 BY MS. GONDEIRO:

18 Q. Do you recall receiving Special  
19 Investigation Weekly Summaries like this one?

20 A. Yes. I don't recall the exact dates when 16:21:56  
21 these began and when they ended, but -- but yes --

22 Q. Okay.

23 A. -- I do recall receiving them.

24 Q. Did the County issue weekly summaries every  
25 single week starting in April of 2020? 16:22:13

1 MR. WALL: Object to form. Outside the  
2 scope.

3 You can -- you can answer, Dr. Cody.

4 THE WITNESS: Issue -- internally issue  
5 what? Issue to whom? Can you be more specific so I  
6 can answer correctly?

16:22:27

7 BY MS. GONDEIRO:

8 Q. Did the County issue these types of Special  
9 Investigation Weekly Summaries for -- or -- for the  
10 County Public Health Department?

16:22:46

11 A. Yes.

12 Q. Okay. And when did they start issuing these  
13 weekly summaries?

14 MR. WALL: Object. Object to form. Outside  
15 the scope.

16:22:57

16 But if you recall, you can answer, Dr. Cody.

17 THE WITNESS: I don't recall when we -- they  
18 started generating Special Investigations Weekly  
19 Summaries. I don't recall exactly when that started.

20 BY MS. GONDEIRO:

16:23:16

21 Q. When did the County stop issuing these  
22 Weekly Special Investigation Summaries?

23 MR. WALL: Same objection.

24 THE WITNESS: I -- I can't recall the exact  
25 date.

16:23:31



1 MS. GONDEIRO: Can you scroll down? Just  
2 scroll down a little bit.

3 You can keep going.

4 Okay. You can stop right here. You can  
5 stop at Table 8. 16:24:12

6 Actually, no, not Table 8. Keep going.  
7 Sorry. I thought that was...

8 THE VIDEOGRAPHER: That's the bottom of the  
9 page right there.

10 MS. GONDEIRO: Wait. Yeah, keep going up. 16:24:31  
11 I think I missed it.

12 Okay. Table 6. There we go.

13 BY MS. GONDEIRO:

14 Q. Dr. Cody, in -- in Table 6, which reads,  
15 "Number of worksite investigations by Setting Type," 16:24:47  
16 if you go down to where it says "Places of worship,"  
17 it says "3."

18 Does that include only the -- the  
19 investigations for the week specified in this  
20 investigations report or all numbers -- or all 16:25:08  
21 worksite investigations up to October 21st, 2020?

22 MR. WALL: Objection. Beyond the scope.

23 But, Dr. Cody, you can answer.

24 THE WITNESS: So I note that these are  
25 worksites where they were reported to the special 16:25:30

1 investigations group, and I would have to spend some  
2 more time with the document in order to tell you what  
3 that time period was.

4 BY MS. GONDEIRO:

5 Q. Okay.

16:25:42

6 A. So I -- I actually can't quite tell the way  
7 this is labeled. In the first table, it's pretty  
8 clear which are cumulative and which are weekly  
9 reported.

10 Q. Uh-huh.

16:26:31

11 A. And then, of course, the figures with cases  
12 over time, it's pretty clear the time frame within  
13 long-term care facilities, and it's pretty clear  
14 Table 2 is cumulative.

15 Q. Uh-huh. So you're not sure about Table 6?

16:26:55

16 A. Yeah, it's not -- it's not -- the time  
17 period is not labeled for Table 6.

18 Q. Okay. Were -- were religious services open  
19 on or around -- or allowed to meet indoors on or  
20 around October 13th, 2020?

16:27:18

21 A. In Octo- -- there was a period in October  
22 where -- a period during October when, as I recall,  
23 indoor gatherings were permitted for a brief period  
24 in October --

25 Q. Okay.

16:27:43

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CALVARY CHAPEL SAN JOSE vs GAVIN NEWSOM

1 A. -- as I recall.

2 MS. GONDEIRO: Now I recall why I have  
3 the -- can you go -- Dan, can you go back to the  
4 prior exhibit? Now I -- now I remember why I  
5 included the exhibit. 16:27:53

6 You can scroll down to the section where it  
7 says "Issued."

8 No, this is issued November -- no, this is  
9 not November 15th. Oh, shoot.

10 Okay. You can scroll up. Sorry. Oh, wait. 16:28:22  
11 Scroll up where it says "religious gatherings."

12 So religious gatherings -- yeah. Yep. You  
13 can stay on page 4.

14 BY MS. GONDEIRO:

15 Q. Religious gatherings were prohibited in 16:28:48  
16 November of 2020; is that correct?

17 A. I --

18 MR. WALL: Object to form.

19 You can answer, Dr. Cody.

20 THE WITNESS: Yeah. The document that we're 16:29:00  
21 looking at was issued November 15th, 2020, and  
22 revised February 26th. So this would have been a  
23 document from February 26, 2021.

24 BY MS. GONDEIRO:

25 Q. Okay. Do you recall in -- if -- if 16:29:12

1 religious gatherings were allowed indoors on or  
2 around October 13th, 2020?

3 A. As I mentioned before, any gathering, for  
4 whatever reason, whether it was religious or secular  
5 or celebratory or what have you, would have been  
6 under the gatherings directive. As I recall, there  
7 was a brief period in October where case counts were  
8 low and indoor gatherings were permitted.

16:29:39

9 Q. Okay.

10 A. But this -- this -- this is from --

16:29:58

11 Q. Yeah.

12 A. -- February, so it doesn't reflect what  
13 would have been permitted in October 2020.

14 Q. Okay. Was the County prepared for a  
15 COVID-19 surge in late November of 2020?

16:30:28

16 A. Can you tell me more what you mean by "was  
17 the County prepared"?

18 Q. Was the County prepared for COVID-19 cases  
19 to increase significantly starting in or around  
20 November of 2020?

16:30:52

21 A. I don't think there was any way to be fully  
22 prepared for what we experienced in November,  
23 December, and January. We had so many people in the  
24 hospital and in the intensive care unit, and it was a  
25 devastating time. I don't think there's really a way

16:31:18

1 to prepare for that.

2 Q. Did the County use any buildings or space  
3 outside of hospitals to -- to place people with --  
4 who were -- who were hospitalized due to COVID-19?

5 MR. WALL: Object to form. Outside the  
6 scope.

16:31:41

7 THE WITNESS: All hospitals have surge plans  
8 if the demand on the hospital from patients  
9 exceeds -- exceeds their beds. As I recall, at this  
10 time, some hospitals had to move some of their  
11 operations outdoors to tents in order to manage the  
12 influx of ill persons coming to seek care.

16:32:03

13 BY MS. GONDEIRO:

14 Q. Did the County rent out any space, starting  
15 in -- in March of 2020, to hold -- to house COVID-19  
16 patients?

16:32:25

17 MR. WALL: Same objection.

18 THE WITNESS: I would like a clarification.  
19 I -- are we talking about March 2020? Are we talking  
20 about November 2020?

16:32:43

21 BY MS. GONDEIRO:

22 Q. At any point --

23 A. What time period are we talking about?

24 Q. At any point since March of 2020, did the  
25 County rent out outdoor space to hold COVID-19

16:32:51

1 patients -- or indoor space, for that matter?

2 MR. WALL: Same objection.

3 THE WITNESS: I don't know. This would have  
4 been within the health care delivery sector with our  
5 county hospital and -- and clinics. So I don't know  
6 whether they rented space or would be able to  
7 accommodate, within existing county facilities, a  
8 surge in patients given the outdoor space that would  
9 be available outside a county facility.

16:33:17

10 BY MS. GONDEIRO:

16:33:41

11 Q. Why did the County reinstate their ban on  
12 indoor gatherings on or around February 12th of 2021?

13 MR. WALL: Objection. Object to form.  
14 Assumes facts.

15 THE WITNESS: I'm honestly a little confused  
16 by the timeline. We're jumping to different times.

16:34:01

17 So your question regards what was happening  
18 in February 2021?

19 BY MS. GONDEIRO:

20 Q. February 12th of 2021, why -- why did the  
21 County reinstate their ban on indoor gatherings?

16:34:13

22 MR. WALL: Object to form.

23 THE WITNESS: The -- in February 2021, as I  
24 recall, we still had significant transmission of  
25 COVID in the community, and so gatherings -- indoor

16:34:36

1 gatherings, in general, would have created a risk for  
2 spread.

3 MS. GONDEIRO: Can -- Dan, can you please  
4 pull up the next -- the next exhibit?

5 (Exhibit 26 was marked for identification.)

16:35:05

6 BY MS. GONDEIRO:

7 Q. Dr. Cody, does this graph look familiar?

8 A. Yes.

9 Q. What does it show?

10 A. This shows the reported case counts over  
11 time since the beginning of case reporting, the  
12 inception of the pandemic -- so January 27, 2020, to  
13 February 7, 2021 -- and it shows case counts broken  
14 out by -- reported from a case in the community or  
15 reported from a long-term care facility resident or  
16 staff. So it allows us to see that.

16:35:25

16:35:49

17 It also shows a seven-day rolling average of  
18 the case counts over time, and it shows that the  
19 surge in the winter of 2020-2021 peaked in early  
20 January and then began to decline over the months of  
21 January and February 2021.

16:36:20

22 Q. Okay. And by -- so does this graph -- graph  
23 reveal that by early February of 2021, cases were  
24 about -- case rates were about the same as the end of  
25 October or early November?

16:36:53

1 A. It looks to me that the end of the yellow  
2 line in early February, if you drew that across, you  
3 would be in late November.

4 Q. Okay. You would be in -- does it look  
5 like -- so late November? 16:37:13

6 A. Uh-huh.

7 Q. I'm seeing more of like the middle of  
8 November, but...

9 A. I'm -- I'm seeing more late November.

10 Q. Okay. 16:37:36

11 A. The data are there.

12 Q. Okay.

13 A. They can be --

14 Q. But starting in early January, COVID-19  
15 cases were significantly dropping; correct? 16:37:46

16 MR. WALL: Object to form.

17 THE WITNESS: In early January, cases were  
18 higher than they had ever been at any point in the  
19 pandemic.

20 BY MS. GONDEIRO: 16:38:01

21 Q. Yes.

22 A. Yes.

23 Q. And were they significantly dropping since  
24 then until February of 2020 -- or 2021?

25 A. Right. So the daily reported case count 16:38:13



1 dropped between, I think, the first week in January  
2 and the date in February that's covered on this  
3 graph.

4 Q. But from -- I mean, from Febru- -- from  
5 January to -- to February of 2021, would you consider  
6 that to be a significant drop in COVID-19 cases?

16:38:28

7 A. The -- the rate of drop -- yes, it dropped,  
8 but I -- the -- the -- the main point that I would  
9 see here is that there was still a lot of COVID  
10 transmission in the community because the daily case  
11 count is as high as it was at the end of November and  
12 higher than it had been at any other point in the  
13 pandemic, you know, prior to late November.

16:38:56

14 So, yes, down from a very high high but  
15 still pretty high.

16:39:15

16 Q. Okay. What -- did the COVID-19 cases  
17 continue to decrease in February of 2021 as well?

18 A. Yes. As I recall, they continued to  
19 decrease.

20 Q. Okay. Were you concerned, even with this  
21 significant decline in COVID-19 cases starting in  
22 January of 2021, that COVID-19 cases could start to  
23 increase again in February of 2021?

16:39:41

24 A. Well, I was certainly hoping the decline  
25 would continue. I think there was a question as to

16:40:05

1 whether it would continue at the same rate or whether  
2 it would begin to -- the rate of decrease would begin  
3 to slow and -- and so I think at that moment it was  
4 difficult to know.

5 Q. Uh-huh.

16:40:27

6 MS. GONDEIRO: I'm going to take a little  
7 bit of a short break here and put together my  
8 remaining exhibits.

9 So can we go off the record?

10 THE VIDEOGRAPHER: All right.

16:40:38

11 MR. WALL: How long?

12 THE VIDEOGRAPHER: We're going off the  
13 record. The time is 4:40.

14 (Recess taken.)

15 THE VIDEOGRAPHER: This marks the start of  
16 Volume I, Media 4, for the deposition of Dr. Sara  
17 Cody.

16:56:58

18 Back on the record. The time is 4:57.

19 BY MS. GONDEIRO:

20 Q. Dr. Cody, can you pull up the next exhibit,  
21 or do you have that -- access to that on your end?

16:57:11

22 A. The exhibit that's showing right now on my  
23 screen?

24 Q. Yes.

25 A. Yeah. I don't have it pulled up, but I

16:57:26

1 think I can see it well enough.

2 Q. Okay. Okay.

3 MR. WALL: It's -- Dr. Cody, it's just one  
4 page. It's just this one excerpt.

5 THE WITNESS: Yeah. 16:57:31

6 MS. GONDEIRO: Yes.

7 THE WITNESS: Yeah, I will -- I can -- I can  
8 see it -- I can see it well. Thank you.

9 BY MS. GONDEIRO:

10 Q. Yes. 16:57:35

11 And -- and so this is a -- a similar graph  
12 to what you just saw in the last exhibit. It  
13 reflects COVID-19 cases from January 27th, 2020,  
14 through February 21st of 2021.

15 So -- so based upon this graph, would you 16:57:56  
16 agree that it continues to show COVID-19 cases  
17 declining throughout February of 2021?

18 A. What I see on this graph is that the  
19 seven-day rolling average of case counts continue to  
20 decline, although the rate of decline had begun to 16:58:19  
21 slow a bit.

22 Q. Okay. So in -- I think it ends on  
23 February 18th.

24 A. It ends on February 21.

25 Q. Or February 21, yeah. 16:58:37

1           So February 21, would you say, based upon  
2 this graph, that the COVID-19 cases were around the  
3 same rate as what the COVID-19 cases were at the  
4 beginning of November of 2020?

5           A.     Give me a minute. 16:58:57

6           They look to be around early/mid-November,  
7 eyeballing it. About the same, yeah.

8           Q.     Okay. When did the County eventually lift  
9 their ban on indoor gatherings in early 2021 or --  
10 yeah. 16:59:25

11          A.     Indoor gatherings, I don't -- so your  
12 question is, when were indoor gatherings allowed in  
13 2021?

14          Q.     Yes, in early 2021.

15          A.     I think they contin- -- I think it may not 16:59:46  
16 have been until March that indoor gatherings were  
17 allowed.

18          Q.     Why did the County wait until March of 2021  
19 to lift the ban on indoor gatherings?

20          A.     We would have lifted the ban -- the 17:00:04  
21 prohibition on gathering indoors until conditions  
22 were such that we felt it was safe for the community  
23 to -- to -- to gather indoors.

24          Q.     Well, based upon the fact that COVID-19  
25 cases continued to decline from early January and 17:00:23

1 through February of 2021, were you concerned that  
2 there was going to be increases -- another increase  
3 in COVID-19 cases?

4 A. The various factors that we would have been  
5 looking at and considering would have included the 17:00:50  
6 case counts, the positivity rate, the hospital  
7 capacity, the -- what we were seeing in terms of  
8 deaths. So sort of the -- how this all translated to  
9 impact with severe illness and hospitalization, and  
10 so there were many things that we would be thinking 17:01:16  
11 about in addition to the case counts and case rates.

12 Q. Uh-huh. Well, in regards to case counts,  
13 were you concerned that case counts would increase at  
14 any point in February of 2021?

15 A. If I look at patterns over time, cases would 17:01:44  
16 increase and then decrease. We would have waves.

17 Q. Uh-huh.

18 A. So -- and so this very large winter wave was  
19 abating --

20 Q. Uh-huh. 17:02:06

21 A. -- and so it would -- you know, the virus --  
22 it's always difficult to predict the behavior.

23 Q. Uh-huh.

24 A. But it probably -- so I don't think I would  
25 have -- I don't think I would have predicted at a 17:02:18

1 moment in time what was going to be happening --  
2 happening next.

3 Q. Were hospitalization rates also de- --  
4 decreasing from January to February of 2021?

5 A. The hospitalization rates usually lagged the 17:02:37  
6 case rates, and the lag has varied depending on  
7 different times in the pandemic. So this would be  
8 mid-February, you know, five, six weeks out from the  
9 peak; so I think we would seeing a decrease in  
10 hospitalization. And that would be reflected also in 17:03:03  
11 the data that we would have had publicly on our  
12 website.

13 Q. Uh-huh. Dr. Cody, what -- what factors  
14 contribute to a COVID-19 particle being inhaled by  
15 someone? 17:03:37

16 A. What factors contribute to a viral particle  
17 being inhaled by someone?

18 Q. A COVID-19 viral particle being inhaled by  
19 someone.

20 A. Right. So they would be -- if you think 17:03:53  
21 about the probability that you might be exposed to or  
22 inhale air with -- with -- with viral SARS-CoV-2  
23 virus in it, it would have to do with prevalence of  
24 COVID in the community, the number of people that you  
25 are with. So the probability would go up the more 17:04:15

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CALVARY CHAPEL SAN JOSE vs GAVIN NEWSOM

1 people you're in contact with. The probability  
2 increases that one of those people might be  
3 infectious, particularly since around 40 percent of  
4 people have no symptoms at all.

5 Q. Uh-huh.

17:04:29

6 A. The probability would increase if the people  
7 around you were not wearing face coverings. The  
8 probability would increase if you were indoors. The  
9 probability would increase if the people that you  
10 were with hadn't recently tested and didn't know  
11 their status.

17:04:42

12 Those would all increase the probability  
13 that you might -- that there might be virus in the  
14 air that you might be exposed to. The probability  
15 would also increase if you weren't wearing a face  
16 covering.

17:04:58

17 Q. Sure.

18 Would the building size of an indoor space  
19 contribute to or be a factor in a COVID-19 spread?

20 MR. WALL: Object. Object to form.  
21 Incomplete hypothetical.

17:05:17

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

23 THE WITNESS: A smaller space, so less air  
24 space, would also increase the probability. If  
25 someone was exhaling and there were viral -- viral

17:05:32

1 particles, if you were in a smaller indoor space, it  
2 would increase the chance that you would breathe it  
3 in and that it would be more concentrated because  
4 there wouldn't be -- there would be less ability for  
5 dilution.

17:05:54

6 BY MS. GONDEIRO:

7 Q. Okay. Would air circulation or -- or  
8 ventilation system also contribute to whether a  
9 COVID -- COVID-19 would spread?

10 MR. WALL: Same objection.

17:06:07

11 THE WITNESS: Yes. A less -- a  
12 less-ventilated area would increase the risk of  
13 exposure.

14 BY MS. GONDEIRO:

15 Q. How long does a COVID-19 air -- air particle  
16 stay -- or how long does a COVID-19 particle stay in  
17 the air?

17:06:20

18 A. That largely depends on the environmental  
19 conditions. So it would have to do with the size of  
20 the particle. Smaller would be able to stay  
21 aerosolized for longer. Have to do with temperature,  
22 humidity, UV light. There would be a lot of  
23 different factors that would come into play.

17:06:45

24 Q. You're aware that there were COVID-19  
25 outbreaks at grocery stores during the pandemic;

17:07:08



1 correct?

2 A. I don't recall documenting an outbreak in a  
3 grocery store.

4 Q. Do you recall COVID-19 cases being  
5 documented in -- in grocery stores or retail stores,  
6 for that matter, during COVID-19 -- during the  
7 COVID-19 pandemic? 17:07:25

8 A. I do remember it was challenging, in many  
9 cases, to know where an exposure occurred. So, for  
10 example, many people are frequently in a grocery  
11 store. 17:07:45

12 Q. Uh-huh.

13 A. Or many people are frequently in a retail  
14 space or like a pharmacy. And so to -- it was  
15 extraordinarily difficult to understand where an  
16 exposure may have occurred, particularly if someone  
17 had -- if it was a place like a grocery store because  
18 that's something that many, if not all, people are  
19 commonly in spaces like grocery stores. 17:08:02

20 Q. Okay. During the COVID-19 pandemic, did the  
21 County ever document cases traced to grocery stores  
22 or retail stores? 17:08:19

23 MR. WALL: Object to form.

24 THE WITNESS: I don't recall that we ever  
25 were able to isolate a cluster of cases to patrons in 17:08:36

1 a grocery store or retail store. It may have been  
2 the case that, you know, workers in some -- somewhere  
3 under that umbrella, there would have been an  
4 outbreak reported, but it would be extraordinarily  
5 difficult to document an outbreak for the reasons  
6 that I mentioned.

17:09:03

7 BY MS. GONDEIRO:

8 Q. Sure. So I'm not asking for clusters of  
9 COVID-19 cases. I'm just asking any COVID-19 case.

10 Did the County document any -- any COVID-19  
11 cases to -- to retail stores or -- or grocery stores  
12 from patrons?

17:09:16

13 MR. WALL: Objection. Object to form and  
14 outside the scope.

15 But, Dr. Cody, you can answer.

17:09:31

16 THE WITNESS: Yeah. There's, unfortunately,  
17 not a way to trace an individual or, what we say, a  
18 sporadic case to something as broad as retail or  
19 grocery.

20 BY MS. GONDEIRO:

17:09:58

21 Q. Why do you think there were so many  
22 outbreaks at construction sites during the COVID-19  
23 pandemic?

24 MR. WALL: Objection. Assumes facts.  
25 Outside the scope.

17:10:08

1 THE WITNESS: I -- I am not -- one challenge  
2 of understanding how COVID was moving is that there's  
3 what we call "reporting bias." So, as I mentioned  
4 before, we're looking at reported outbreaks. And  
5 only if the entity reports the outbreak do we know it 17:10:38  
6 exists.

7 MS. GONDEIRO: Uh-huh.

8 THE WITNESS: So we would have trends in  
9 reports of outbreaks and try to understand, you know,  
10 the setting in which those outbreaks were reported. 17:10:51  
11 But, again, it's -- it's sometimes very difficult to  
12 interpret because there's a -- a not always  
13 consistent reporting.

14 BY MS. GONDEIRO:

15 Q. Well, what trends did you see in 17:11:06  
16 construction sites during the COVID-19 pandemic?

17 A. I -- I don't recall specifically trends  
18 in -- in construction. It would have been one of  
19 many areas that we would have been trying to  
20 understand to -- to see whether there was additional 17:11:23  
21 precautions, but I don't -- I don't remember anything  
22 specific about trends in construction.

23 Q. You are aware, though, that there were  
24 outbreaks at COVID-19 -- of COVID-19 at construction  
25 sites during the COVID-19 pandemic; correct? 17:11:39

1           A.    I am aware that construction sites did  
2 report outbreaks of COVID.

3           Q.    Are you not aware of what contributed to  
4 those outbreaks?

5           A.    I do recall that it was always difficult to 17:11:57  
6 know, and we would have to sometimes hypothesize  
7 about the contributors. So, for example, if there  
8 was carpooling by workers to get to a construction  
9 site, that could be a contributor because that's a  
10 smaller space inside a car, or if a cons- -- if 17:12:21  
11 workers needed to use public transportation that  
12 would put them in contact with more people or some  
13 such thing.

14                    But I don't recall that we could ever  
15 understand whether there was something about the 17:12:42  
16 worksite itself that was facilitating --

17           Q.    Okay.

18           A.    -- transmission.

19           Q.    In most of these, did the construction  
20 worksites -- were they -- were they mostly outdoors 17:13:00  
21 during the COVID-19 pandemic?

22                    MR. WALL: Object to form. Object to form.  
23 Outside the scope.

24                    THE WITNESS: I really can't tell you how --  
25 you know, under the universe of construction sites, 17:13:13

1 there would have been, of course, outdoor  
2 construction sites and indoor construction sites. I  
3 can't describe the universe of that.

4 BY MS. GONDEIRO:

5 Q. Did the -- did the County document outbreaks  
6 during the COVID-19 pandemic at offices?

17:13:30

7 A. To my recollection, there would have been  
8 outbreaks defined, I believe, as three or more cases  
9 that would have been reported from worksites apart  
10 from construction sites.

17:13:53

11 Q. Uh-huh.

12 A. But...

13 Q. What is the purpose -- did the County have  
14 any evidence that 6 feet of social distancing was  
15 effective at curtailing the spread of COVID-19 during  
16 the COVID-19 pandemic?

17:14:20

17 A. The -- the -- the standard practice since  
18 the beginning of the pandemic was the 6 feet was  
19 designed for the respiratory route with large  
20 droplets, that most large droplets that are emitted  
21 by someone that's infectious are large enough to fall  
22 to the ground before they can go 6 feet. And so  
23 6 feet would provide some protection from those large  
24 respiratory droplets. And this was a convention that  
25 was used across the United States.

17:14:42

17:15:01

1 Q. The 6 feet social distancing -- didn't the  
2 County, though, implement the 6 feet social  
3 distancing for all business types during the COVID-19  
4 pandemic?

5 MR. WALL: Object to form.

17:15:17

6 THE WITNESS: The -- the 6 feet social  
7 distancing was implemented widely across many  
8 different sectors here and in other parts of the  
9 state and country. That was very standard distancing  
10 really across the board.

17:15:41

11 BY MS. GONDEIRO:

12 Q. If -- if -- if COVID-19 air particles are  
13 all, you know, contributed by air space and air  
14 quality, why didn't the County then consider whether  
15 more space was -- was needed depending on the  
16 building type?

17:16:02

17 A. Because COVID can be transmitted by  
18 aerosols, that is the reason why masking indoors  
19 is -- is particularly important to protect against  
20 that. That's also why our rules around capacity --  
21 initially density and then capacity -- about how many  
22 people could be in a space, were -- were implemented  
23 for just that reason to limit the number of people  
24 that could be together in an indoor space. So that  
25 combined with masks to help mitigate aerosol spread.

17:16:24

17:16:47

1 Q. Did the County rely on any specific studies  
2 that showed that 6 feet of social distancing was  
3 effective at curtailing the spread of COVID-19?

4 A. As -- as I mentioned before, the 6 feet of  
5 social distancing was a practice across sectors,  
6 across jurisdictions, and across -- really across the  
7 country. That was a standard that was adopted  
8 throughout.

17:17:13

9 Q. So the County just adopted this standard  
10 without looking at any actual studies that --  
11 demonstrating that it was actually effective?

17:17:32

12 A. The --

13 MR. WALL: Object to form.

14 THE WITNESS: The social distancing practice  
15 had started quite early in the pandemic, and there  
16 was a lot that was not understood about dominant form  
17 of transmission, whether it was large respiratory  
18 droplets, fine aerosols, contaminated surfaces, or  
19 what have you. And so many different mitigation  
20 measures were implemented to ensure protection  
21 from -- from spread and from contact with the virus.

17:17:47

17:18:10

22 BY MS. GONDEIRO:

23 Q. Did you review, at any point during the  
24 COVID-19 pandemic, any studies that showed social  
25 distancing -- or 6 feet of social distancing was

17:18:31

1 effective at curtailing the spread of COVID-19?

2 A. So to the extent that 6 feet of social  
3 distancing accomplishes bringing together fewer  
4 people in a space and also prevents transmission with  
5 respiratory droplets, yes, there are -- there are 17:18:51  
6 data to support that because it would keep people far  
7 enough apart from -- and it would -- from exposure  
8 from one of the possible modes of transmission, and  
9 it would accomplish having fewer people gather  
10 together or having the people that were gathered 17:19:15  
11 gathered in a less dense fashion. And that -- that  
12 would protect them as well.

13 Q. What data are you referring to?

14 A. Really all the evidence that accumulated  
15 about that COVID is spread through the air by 17:19:31  
16 particles of various sizes. So really sort of all of  
17 that together. Many, many, many studies looking --  
18 looking at that.

19 Q. So what -- what studies?

20 A. Everything from studies of how aerosols and 17:19:51  
21 droplets move in the air, what happens when you cough  
22 and sneeze, sort of like ballistics studies, to  
23 descriptive or documentation of particular  
24 circumstances or contexts where there were  
25 super-spreader events. 17:20:19



1 Q. Can you -- do you -- do you recall the  
2 titles of any of these -- these studies?

3 A. I don't think I could produce a title of a  
4 study at this -- at this moment.

5 Q. Do you recall the authors of any of these 17:20:30  
6 studies?

7 A. Not right off the top of my head.

8 Q. Do you recall who published these studies?

9 A. Some of these would likely have been  
10 published in the MMWR, particularly those that would 17:20:47  
11 document a -- an event, document a super-spreader  
12 event, and the -- and the circumstances that would  
13 have facilitated a super-spreader event.

14 Q. What does "MMR" stand for?

15 A. It's the CDC's morbidity and mortality 17:21:10  
16 reports -- weekly morbidity and mortality reports.

17 Q. Are you aware of any other publications?

18 MR. WALL: Object to form. Asked and  
19 answered.

20 But you can -- you can answer, Dr. Cody. 17:21:29

21 THE WITNESS: Yeah.

22 The number of COVID publications grew  
23 exponentially, much like the virus. There were  
24 literally tens of thousands of studies that were  
25 published during the pandemic, and it -- and it grew 17:21:44

1 with every month.

2 BY MS. GONDEIRO:

3 Q. Were there any specific publications you can  
4 recall that you felt really helpful for you in -- in  
5 drafting your own -- in drafting the County COVID-19  
6 orders? 17:22:02

7 A. The studies that I found most helpful were  
8 ones that tended to complement each other where we  
9 could get different types of data all sort of  
10 moving -- moving in the same direction. In other 17:22:26  
11 words, a way of -- a study design of one type  
12 confirming findings of a study design from a very  
13 different type. I would find that very helpful --

14 Q. Okay.

15 A. -- you know, rather than one study by 17:22:42  
16 itself.

17 Q. Sure.

18 What studies are you -- that you can recall  
19 complemented each other?

20 A. So, for example, a study that would document 17:22:51  
21 how -- how many particles of what kind are produced  
22 when someone is talking versus breathing versus  
23 singing versus shouting, those type of studies that  
24 just really -- like the -- the physics of how those  
25 particles move. 17:23:15

1 Q. Uh-huh.

2 A. That kind of study complemented with, say, a  
3 description of what happened, you know, in a  
4 particular event in the real world.

5 So, for example, the singing at -- I think 17:23:30  
6 it was a choir practice in Oregon that -- in  
7 Washington that resulted in a number of cases,  
8 including extremely severe ones, that then -- and  
9 then understanding, you know, why that happened. So  
10 pairing that with a study to better understand how 17:23:55  
11 respiratory droplets and aerosols behave. That  
12 pairing would be -- would be very helpful.

13 Q. Sure.

14 Are you aware of any other studies that --  
15 that complemented each other? 17:24:09

16 A. There would have been many, many, many,  
17 many. So we would have been looking for studies that  
18 would really help us fully understand how the virus  
19 was behaving and particularly how the virus was  
20 behaving in conditions that we might find in our own 17:24:30  
21 community.

22 MS. GONDEIRO: Dan, can you pull up the next  
23 slide -- the next exhibit?

24 THE VIDEOGRAPHER: This is the Danish study?

25 MS. GONDEIRO: No. The one before that. 17:24:56

1 THE VIDEOGRAPHER: Oh, okay. Sorry.

2 There we go.

3 (Exhibit 27 was marked for identification.)

4 BY MS. GONDEIRO:

5 Q. Dr. Cody --

17:25:18

6 MR. WALL: Excuse me. I'm sorry. What --

7 what exhibit number is this?

8 THE VIDEOGRAPHER: 27. Sorry.

9 MR. WALL: 27?

10 THE VIDEOGRAPHER: Yeah. It's up in the  
11 upper left-hand corner, if you can see it.

17:25:26

12 MR. WALL: I can't find it in the --

13 THE VIDEOGRAPHER: Oh.

14 MR. WALL: Is this more than one page? I  
15 can't find it in the chat. I apologize.

17:25:34

16 THE VIDEOGRAPHER: Oh, it's all right.

17 You know what? I don't think I uploaded  
18 that one. So let me -- let me do that right now.

19 MR. WALL: Thank you.

20 MS. GONDEIRO: And, Dan, how much time do we  
21 have left?

17:25:59

22 THE VIDEOGRAPHER: We've got right around an  
23 hour.

24 MS. GONDEIRO: Okay.

25 THE VIDEOGRAPHER: Sixty minutes.

17:26:08

1 MS. GONDEIRO: Okay.

2 THE VIDEOGRAPHER: All right. Let me put  
3 this up for you.

4 It is in chat now.

5 MR. WALL: Thank you. 17:26:14

6 THE VIDEOGRAPHER: You're welcome.

7 MR. WALL: For the record, this is an  
8 excerpt from a document produced by the County.

9 MS. GONDEIRO: Yes.

10 BY MS. GONDEIRO: 17:26:37

11 Q. Dr. Cody, does this graph look familiar?

12 A. Yes.

13 Q. Who -- who put together this graph?

14 A. Public Health Department staff.

15 Q. Who? What -- what -- what staff members? 17:26:56

16 A. The Public Health Department and other  
17 County staff working on behalf of the Public Health  
18 Department working in our department operations  
19 center.

20 Q. Can you name those individuals? 17:27:13

21 A. It would have been a team. This would have  
22 been the team that was conducting interviews with  
23 cases, doing the case investigation work.

24 Q. Okay. Can you name individuals within that  
25 team? 17:27:43

1           A.     So the individuals within the team would  
2     have been Dr. Sarah Rudman; a number of different  
3     public health nurses rotated through; a number of  
4     different epidemiologists would have been supporting  
5     that team. I wouldn't know, at the time this was  
6     produced, who was on the team at the time. And I  
7     don't know the date of when this was created.

17:28:13

8           Q.     Okay. Can you give me -- would it have been  
9     created after June of 2021?

10           MR. WALL: Object to form. Again, this is a  
11     partial document. It was part of a presentation that  
12     would have had a date.

17:28:45

13           MS. GONDEIRO: Yes.

14     BY MS. GONDEIRO:

15           Q.     Do you remember generally when this -- the  
16     general time frame of when this graph was put  
17     together?

17:28:55

18           A.     Honestly, I don't. I think it would have  
19     been earlier than June.

20           Q.     Would it have been in 2021?

17:29:08

21           A.     Honestly, I don't -- I -- I don't know.

22           Q.     Okay. So it says here that the indoor  
23     settings that reported the most COVID-19 cases were  
24     social visits to another person's home; is that  
25     correct?

17:29:38

1 A. That's correct.

2 Q. Did -- did the lockdowns have any effect  
3 of -- in preventing social visits to other people's  
4 homes?

5 A. Again, I don't know -- I don't know the date 17:29:59  
6 of this. I really don't recall the date of this, so  
7 I don't know whether this was done while we were  
8 under a shelter-in-place order or a risk reduction  
9 order. So I can't answer your question.

10 I also -- 17:30:20

11 Q. Didn't you say earlier you thought it would  
12 have been sometime in 2021?

13 A. No. I believe I said I don't -- I -- I  
14 don't know if it was in 2021. I don't -- I don't --  
15 I really don't know what year this was. I know 17:30:33  
16 there's a date attached to it, but I don't know the  
17 date.

18 Q. Do you believe it could have been created in  
19 early 2020?

20 A. What I do know is this would not have been 17:30:47  
21 created in the first half of 2020 because we did not  
22 have a robust case investigation and a contact team,  
23 and so it could not have been created then. So it  
24 would have been created later that year or sometime  
25 the next year, but I -- 17:31:04

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CALVARY CHAPEL SAN JOSE vs GAVIN NEWSOM

1 Q. Sure.

2 A. -- I don't know when it was created.

3 Q. So the earliest it could have been created  
4 would have been July of 2020; is that correct?

5 MR. WALL: Object to form.

17:31:13

6 THE WITNESS: I know there's a date attached  
7 to the document. I don't know what the date is --

8 BY MS. GONDEIRO:

9 Q. Sure. And -- and --

10 A. -- or the month or even the year.

17:31:23

11 Q. I mean, I could go back and find that date,  
12 but you just said that it couldn't have been created  
13 during the first half.

14 So what I'm asking is, is the earliest this  
15 could have been created during July of 2020?

17:31:35

16 A. Yes, but I would -- I would guess that it  
17 would have been created later because I don't think  
18 that our team would have been large enough to do that  
19 in July.

20 Q. Okay. So then it would have been after  
21 July?

17:32:01

22 A. That is my -- these are only guesses. I  
23 don't know when the document was created.

24 Q. Okay. Okay. Well, given that it was most  
25 likely put together after July of 2020 and the

17:32:15



1 lockdown orders were lifted in July, how did the  
2 lockdown orders -- based upon this graph, how  
3 effective were they at stopping the spread of  
4 COVID-19 in people's homes?

5 MR. WALL: Object to form.

17:32:48

6 THE WITNESS: These data can't answer that  
7 question.

8 BY MS. GONDEIRO:

9 Q. Why can't it not answer this question?

10 A. These -- these data are asking a subset of  
11 people what they were doing during their exposure  
12 period, but they are numerators, not denominators.  
13 So there's no comparison.

17:33:03

14 So they're just -- there's no -- there's no  
15 context around them to understand what is the  
16 relative risk of exposure from being in one setting  
17 versus another because they're -- there's no --  
18 they're not -- there's no context. There's no rates.  
19 There's no denominators. It's just individual cases  
20 reporting the different places that they were.

17:33:27

17:33:47

21 So the -- unfortunately difficult to  
22 conclude much from these data.

23 Q. Okay. Were the lockdown orders intended to  
24 prevent people from going to other people's homes?

25 MR. WALL: Object to form.

17:34:10

1 THE WITNESS: The orders to shelter in place  
2 were designed to keep people -- to limit the number  
3 of interactions that people had with each other to  
4 prevent the spread of COVID.

5 BY MS. GONDEIRO:

17:34:32

6 Q. Okay. Did the shelter-in-place orders  
7 specifically say that people could not go to someone  
8 else's home?

9 MR. WALL: Object to form. The orders speak  
10 for themselves.

17:34:47

11 But, Dr. Cody, you can answer.

12 THE WITNESS: The shelter-in-place orders  
13 that were in place in various forms between March  
14 2020 through June 2020 directed people to shelter in  
15 their place of residence except to perform particular  
16 activities or access services that they needed to  
17 access.

17:35:08

18 After that, we transitioned to risk  
19 reduction orders --

20 MS. GONDEIRO: Uh-huh.

17:35:26

21 THE WITNESS: -- which had a very -- a very  
22 different frame.

23 BY MS. GONDEIRO:

24 Q. But the lockdown orders directed people not  
25 to go to someone else's home; is that correct?

17:35:42

1 MR. WALL: Object to form. Asked and  
2 answered.

3 THE WITNESS: The shelter-in-place orders  
4 which were in place between March 2020 through June  
5 2020, I don't know whether the data that you're 17:35:55  
6 showing to me corresponded to that time period or  
7 not. I don't know the date that these data were  
8 collected.

9 MS. GONDEIRO: Okay. That didn't answer my  
10 question. 17:36:17

11 Court Reporter, can you please repeat the  
12 question?

13 (Record read.)

14 MR. WALL: Object to form. Asked and  
15 answered as well. 17:36:39

16 THE WITNESS: The shelter-in-place orders  
17 that were in place between March and June directed  
18 people to stay in their place of residence unless  
19 they needed to perform -- you know, unless they  
20 needed to visit -- obtain food or medical care or the 17:37:00  
21 other things that we have talked about. And those  
22 were just in place through June.

23 BY MS. GONDEIRO:

24 Q. I'm going to move on to the next question.

25 Dr. Cody, how big is a COVID-19 particle in 17:37:19

1 comparison to influenza?

2 A. How big is the SARS-CoV-2 virus compared to  
3 the influenza virus?

4 Q. Yes.

5 A. I don't -- I don't know how the size of the  
6 virus -- I don't know.

17:37:38

7 An individual viral particle of SARS-CoV-2?

8 Q. Is in- -- is influenza bigger than a  
9 SARS-CoV-2 virus particle?

10 A. I don't know what the size of the SARS-CoV-2  
11 virus is compared to the size of the influenza virus.

17:37:58

12 Q. I'm just asking, is it -- do you know if the  
13 influenza virus particle is bigger than the SARS-V-2  
14 [sic] virus particle?

15 A. Well --

17:38:16

16 MR. WALL: Object. Object to form. Asked  
17 and answered.

18 THE WITNESS: Because I don't know the size  
19 of either, I can't tell you which one is larger than  
20 the other.

17:38:22

21 I'm not able to see anyone other than the  
22 court reporter and Robin Wall for some reason. Let  
23 me -- okay. There we go.

24 BY MS. GONDEIRO:

25 Q. Why -- did you ever think to, like, research

17:38:41

1 how big the SARS-V-2 COVID-19 particle was in  
2 comparison to influenza?

3 MR. WALL: Object to form.

4 THE WITNESS: The size of the virus would  
5 not have been an important fact for me to know to  
6 make the decisions that I was making.

17:39:02

7 BY MS. GONDEIRO:

8 Q. Okay. Did you ever read the Cochrane  
9 Review? Are you aware of what the Cochrane Review  
10 is?

17:39:22

11 A. The Cochrane Review, as I recall, is a  
12 publication that pulls together data from other  
13 publications.

14 Q. Okay. Generally, what is it about?

15 MR. WALL: Object. Object to form. Scope.  
16 Outside the scope.

17:39:40

17 THE WITNESS: The Cochrane Review could be  
18 about a variety of topics.

19 BY MS. GONDEIRO:

20 Q. Okay. What are those topics?

17:39:53

21 MR. WALL: Same objection.

22 BY MS. GONDEIRO:

23 Q. Did you ever review a Cochrane -- do you  
24 ever recall looking over a Cochrane Review discussing  
25 the size of a COVID-19 particle?

17:40:07

1 A. I don't recall.

2 Q. Do you ever recall looking at a meta review  
3 of a COVID-19 particle?

4 A. I don't -- I don't recall reviewing anything  
5 that discussed the size of the virus, the size of the 17:40:26  
6 individual virus.

7 Q. In your opinion, what is the most effective  
8 mask at curtailing the spread of COVID-19?

9 A. Right now, the mask with the -- the best  
10 fit/infiltration, which would be an N95 mask would 17:40:47  
11 provide the most protection.

12 Q. Okay. So N95 masks are more effective than  
13 surgical masks; is that correct?

14 A. N95 masks have a better filtration and  
15 better fit and a higher chance of protecting from 17:41:06  
16 COVID-19 as compared to a surgical mask.

17 Q. Why didn't the County then require  
18 individuals to wear an N95 mask?

19 A. What time period are you --

20 Q. The COVID-19 pandemic. 17:41:32

21 Since April of 2020, when face masks were  
22 required, why didn't the County require people to  
23 wear N95 masks?

24 A. N95 masks were in very short supply. In  
25 fact, we were quite worried that we didn't have 17:41:46

1 enough N95 masks for health care workers.

2 MS. GONDEIRO: I'm going to take a short  
3 break right now. Okay? Is that okay? And then --  
4 we can go off the record.

5 MR. WALL: Just how much -- before -- before 17:42:11  
6 we take a break -- it's getting late. It's almost  
7 5:45. How much longer do you anticipate this  
8 deposition lasting, Mariah?

9 MS. GONDEIRO: Well, until -- until the end.  
10 Can we go off the record, please? 17:42:21

11 MR. WALL: Well, what --

12 THE VIDEOGRAPHER: Okay. Going off the  
13 record. The time is 5:42.

14 (Recess taken.)

15 THE VIDEOGRAPHER: We're back on the record. 17:49:27  
16 The time is 5:49.

17 BY MS. GONDEIRO:

18 Q. Dr. Cody, earlier you -- you stated that N95  
19 masks were more effective than surgical masks;  
20 correct? 17:49:43

21 A. Yes.

22 Q. Are N95 masks more effective than cloth  
23 masks?

24 A. Yes.

25 Q. Okay. Does the size -- does the color of a 17:49:55

1 cloth mask make a difference? Does -- does one color  
2 increase the spread of COVID-19 more than another  
3 color cloth mask?

4 MR. WALL: Objection. Scope.

5 THE WITNESS: Not -- not to my knowledge. 17:50:12

6 The color of cloth in a cloth mask, does  
7 that matter?

8 BY MS. GONDEIRO:

9 Q. Yeah.

10 A. No. 17:50:20

11 Q. What were the findings of the Bangladesh  
12 study?

13 MR. WALL: Objection. Vague.

14 THE WITNESS: What -- what study are you  
15 referring to? 17:50:33

16 BY MS. GONDEIRO:

17 Q. The Bangladesh study.

18 A. Are you referring to --

19 MR. WALL: Same objection.

20 BY MS. GONDEIRO: 17:50:39

21 Q. The Bangladesh mask study.

22 MR. WALL: Same objection.

23 THE WITNESS: The -- the -- the study looked  
24 at community conditions and whether interventions to  
25 increase mask use and resultant increase in mask use 17:50:55



1 made a difference --

2 MS. GONDEIRO: Okay.

3 THE WITNESS: -- in -- in levels of COVID in  
4 a community, and masking lowered COVID --

5 MS. GONDEIRO: Okay.

17:51:13

6 THE WITNESS: -- levels.

7 BY MS. GONDEIRO:

8 Q. Did it demonstrate that the red masks worked  
9 but -- or worked better than the purple masks?

10 MR. WALL: Objection. Outside the scope.

17:51:23

11 You can answer the question to the extent  
12 you recall.

13 THE WITNESS: I don't -- I don't remember  
14 details about colors of masks in that -- in that  
15 study.

17:51:35

16 BY MS. GONDEIRO:

17 Q. Okay. Are you aware -- or did you review  
18 any other articles that discussed biases in --  
19 regarding the -- the -- the Bangladesh mask study?

20 MR. WALL: Object to form. Outside the  
21 scope.

17:51:55

22 THE WITNESS: I don't recall.

23 BY MS. GONDEIRO:

24 Q. You don't recall any -- any -- reviewing  
25 anything?

17:52:03

1 A. I --

2 MR. WALL: Object to form.

3 You can answer the question.

4 THE WITNESS: I don't recall reading -- I  
5 don't recall reading particular follow-up regarding 17:52:14  
6 that particular study.

7 BY MS. GONDEIRO:

8 Q. Okay. You're not aware of anyone in the  
9 County discussing any of the flaws within the  
10 Bangladesh study? 17:52:50

11 MR. WALL: Objection. Outside the scope.

12 THE WITNESS: I don't recall having  
13 discussions about limitations of the study with  
14 County colleagues.

15 BY MS. GONDEIRO: 17:53:09

16 Q. Are you aware of -- of any flaws within the  
17 Bangladesh study?

18 MR. WALL: Objection. Assumes facts.  
19 Outside the scope.

20 THE WITNESS: Most studies publish methods, 17:53:24  
21 results, conclusions, discussions, and limitations.  
22 It's fairly standard for a scientific report.

23 BY MS. GONDEIRO:

24 Q. Do you know who a Jason Abaluck is?

25 A. I do not. 17:53:44

1 Q. Okay. That -- that name doesn't ring a bell  
2 at all in relation to the Bangladesh study?

3 A. Jason Abaluck?

4 Q. Uh-huh.

5 A. No, but there were a number of authors on 17:53:58  
6 that study, as I recall.

7 Q. Okay. Well, what authors do you recall?

8 MR. WALL: Objection. Outside the scope.  
9 Relevance.

10 But you can answer the question. 17:54:10

11 THE WITNESS: I know one of the senior  
12 authors was Steve Luby. I can't recall the name of  
13 other -- other authors other than I do recall that  
14 there were a number of them because it was a large  
15 study. 17:54:28

16 BY MS. GONDEIRO:

17 Q. Okay. Did you -- do you recall reviewing  
18 any mask study that was conducted in Finland?

19 MR. WALL: Object to form. Outside the  
20 scope. 17:54:50

21 THE WITNESS: I don't, no. Not  
22 specifically.

23 BY MS. GONDEIRO:

24 Q. Do you recall in general?

25 A. No. 17:55:00

1 Q. Was there any other mask study that you  
2 recall reviewing at any time during the COVID-19  
3 pandemic regarding masks?

4 MR. WALL: Object. Objection. Outside the  
5 scope. Asked and answered a bunch of times. 17:55:14

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

7 THE WITNESS: Yeah. As I -- as I have  
8 mentioned several times, there are a number of  
9 different studies regarding masks, and they would  
10 range from studies from aerosol engineers looking at 17:55:29  
11 how what happens when you breathe, talk, sing, shout,  
12 sneeze, cough, and the various sizes of particles  
13 emitted and how might they move, and ranging from  
14 that all the way to descriptive reports of outbreaks  
15 or super-spreader events commenting on level of mask 17:56:03  
16 use in -- in the circumstances described.

17 BY MS. GONDEIRO:

18 Q. Okay. What publications do you specifically  
19 recall?

20 MR. WALL: Objection. Asked and answered. 17:56:22  
21 Outside the scope.

22 You can answer the question.

23 BY MS. GONDEIRO:

24 Q. I'm going to go to a more specific question.  
25 Dr. Cody, are randomized studies considered 17:56:30

1 the gold standard for effective medical research?

2 A. In many cases, it's not possible to conduct  
3 a randomized controlled trial. There may be a number  
4 of reasons why you can't randomize. So for a subset  
5 of questions of the infinite number of questions that 17:56:58  
6 we might ask, you might be able to randomize; and for  
7 some, you -- you can't for a variety of -- of  
8 reasons.

9 Q. Sure. Okay. But you didn't answer my  
10 question. 17:57:13

11 I'm aware that there may be times that you  
12 can't randomize studies. What I'm saying is, are  
13 randomized studies the gold standard for effective  
14 medical research?

15 MR. WALL: Objection. Outside the scope. 17:57:24  
16 Vague.

17 THE WITNESS: Yeah, I don't -- I don't think  
18 I can really answer that. It's so context-dependent.

19 BY MS. GONDEIRO:

20 Q. Are randomized studies the most effective 17:57:33  
21 research tool for new treatment?

22 MR. WALL: Objection. Outside the scope and  
23 vague.

24 THE WITNESS: For clinical treatment? For  
25 population studies? For -- I don't know -- are 17:57:44

1 you --

2 BY MS. GONDEIRO:

3 Q. For -- let's say for viruses.

4 MR. WALL: Ms. Gondeiro, please let the  
5 witness finish her question before you ask the next 17:57:53  
6 one. Please don't interrupt her.

7 THE WITNESS: So a study of --

8 MR. WALL: And the same -- and I'm going to  
9 interrupt you, Dr. Cody, to assert my objection.

10 The same objection. Outside the scope and 17:58:03  
11 vague.

12 THE WITNESS: So studies of viruses. A  
13 study of virus could be everything from in a  
14 laboratory to see how viruses behave in a laboratory,  
15 to see how they behave in an animal population, or a 17:58:24  
16 study of how a virus moves in a community or a study  
17 of antiviral treatments in patients in a clinic.

18 So that's a pretty infinite universe, study  
19 of viruses.

20 BY MS. GONDEIRO: 17:58:53

21 Q. Okay. Are -- are randomized studies more  
22 effective than nonrandomized studies regarding the  
23 research of viruses?

24 MR. WALL: Objection. Outside the scope.  
25 Incomplete hypothetical. Vague. 17:59:06

1 THE WITNESS: Yeah. That's not a question I  
2 can answer because it more has to do not with that  
3 it's a virus but whether it's a study to understand  
4 the benefit of medical intervention, like a  
5 treatment, or whether it's to understand community 17:59:22  
6 conditions or whether it's to understand a laboratory  
7 animal. So I -- I don't have -- I'm not able to --  
8 to answer that question. I apologize.

9 BY MS. GONDEIRO:

10 Q. Okay. Are -- I'll be more specific. 17:59:41

11 Are randomized studies more effective -- a  
12 more effective tool -- research tool than  
13 nonrandomized studies for the research of new  
14 treatment?

15 A. So -- 18:00:02

16 MR. WALL: I'm sorry. I'm sorry, Dr. Cody,  
17 I was on mute.

18 Objection. Outside the scope. Vague.  
19 Incomplete hypothetical. And relevance.

20 But you can answer the question. 18:00:09

21 THE WITNESS: Okay. Can -- can you  
22 repeat -- can you repeat the question? I'm listening  
23 for something to see if --

24 BY MS. GONDEIRO:

25 Q. Well, you mentioned treatment earlier -- 18:00:17

1 A. Uh-huh.

2 Q. -- is that correct?

3 A. Yes.

4 Q. New treatment.

5 Okay. So what I'm asking you, are 18:00:22  
6 randomized studies more effective than nonrandomized  
7 study -- studies for new treatment?

8 MR. WALL: Same objections.

9 THE WITNESS: Yeah. Honestly, it's so  
10 broad. So if you're trying to understand whether a 18:00:42  
11 specific treatment for a specific condition is better  
12 than no treatment, if you are able to randomize  
13 and -- and randomly put the treatment-eligible group  
14 into one pot or the other and they're blinded so they  
15 don't know, yes, you can -- you can get results 18:01:08  
16 that -- that are more believable.

17 But the -- the context is quite important  
18 to -- to know. So I can't -- I can't -- I can't give  
19 you a blanket -- a blanket answer. It's a -- it's  
20 about the question that you're asking. The question 18:01:28  
21 that the researcher is asking is -- is quite  
22 important.

23 BY MS. GONDEIRO:

24 Q. Okay. Are you aware, though, of just people  
25 in the medical field, you know, saying that, you 18:01:41



1 know, randomized studies are the gold standard? Are  
2 you aware of them saying that?

3 MR. WALL: Objection. Outside the scope.  
4 Vague.

5 BY MS. GONDEIRO:

18:01:51

6 Q. In what context would they --

7 MR. WALL: Relevance.

8 BY MS. GONDEIRO:

9 Q. In what context would one say that  
10 randomized studies are -- are a more effective -- or  
11 are the gold standard for research?

18:01:55

12 MR. WALL: Objection. Outside the scope.  
13 Relevance. Vague.

14 THE WITNESS: So, for example, in clinical  
15 research, if you're trying to understand whether a  
16 particular antihypertensive treatment is more  
17 effective than another antihypertensive treatment,  
18 you would want to have two groups who are as equal as  
19 possible in age and risk factor and other lifestyle  
20 factors and body mass index and gender and, you know,  
21 is equal as in many ways, and then you could  
22 randomize them.

18:02:15

23 BY MS. GONDEIRO:

24 Q. Okay. When you -- when you say  
25 "hypertensive re-" -- "treatment," what do you mean

18:02:41

18:02:55

1 by that?

2 A. If someone has high blood pressure.

3 Q. Okay. What if someone has COVID-19?

4 MR. WALL: Object to form.

5 THE WITNESS: I'm having difficulty

18:03:12

6 following your questions. I -- I apologize.

7 BY MS. GONDEIRO:

8 Q. Okay. So you just mentioned hypertensive

9 treatment. Okay? So now I'm talking about COVID-19

10 treatment. Okay?

18:03:29

11 Are randomized studies in regards to

12 COVID-19 treatment more effective -- a more effective

13 research tool than nonrandomized studies?

14 MR. WALL: Object. Objection. Object to

15 form. Outside the scope. Relevance. Vague.

18:03:44

16 Incomplete hypothetical.

17 You can answer the question, Dr. Cody.

18 THE WITNESS: So when -- when COVID

19 treatments came online, were the tri- -- I don't

20 recall whether they were randomized controlled trials

18:04:06

21 for the COVID treatments that -- that came online.

22 Honestly, I -- I just don't recall.

23 MS. GONDEIRO: That doesn't -- that doesn't

24 answer my question.

25 Court Reporter, can you please repeat my

18:04:20

1 question?  
2 (Record read.)  
3 MR. WALL: Same objections.  
4 THE WITNESS: I guess I want to understand  
5 what you mean by "more effective research tool." 18:04:56  
6 BY MS. GONDEIRO:  
7 Q. Are they more accurate?  
8 MR. WALL: Same objections.  
9 THE WITNESS: Are they more accurate at --  
10 at -- at what? 18:05:09  
11 BY MS. GONDEIRO:  
12 Q. At determining -- at determining -- well,  
13 whatever the topic of that study would be regarding  
14 COVID-19 treatment. I mean --  
15 A. Right. So -- 18:05:25  
16 MR. WALL: Same -- same -- same objections.  
17 Counsel, the day is growing late, and we're  
18 talking about COVID-19 research --  
19 MS. GONDEIRO: No, I know I --  
20 MR. WALL: -- and the COVID-19 treatment, 18:05:35  
21 which has no bearing on this case whatsoever.  
22 MS. GONDEIRO: Sure.  
23 BY MS. GONDEIRO:  
24 Q. Are there any circumstances related to the  
25 COVID-19 virus where you believe a randomized study 18:05:45

1 would be better than a nonrandomized study?

2 MR. WALL: Objection. Beyond the scope.  
3 Vague. Relevance.

4 You can answer the question, Dr. Cody.

5 THE WITNESS: The study that asked the 18:05:59  
6 question about the benefits of community-wide mask  
7 use that was done in Bangladesh asked a question, and  
8 randomized community groups -- this is as I recall,  
9 so this is broad -- and was able to show that groups  
10 that had a masking intervention had less COVID than 18:06:25  
11 groups that did not have a masking intervention.

12 And -- and -- and that was enormously  
13 helpful especially because it was a large study, and  
14 it was measuring conditions -- real conditions on the  
15 ground, how people behave in -- in real life. 18:06:48

16 MS. GONDEIRO: Okay.

17 THE WITNESS: So, yes, that was --

18 BY MS. GONDEIRO:

19 Q. Are there any other studies you can recall?  
20 Any other randomized studies I mean. 18:07:01

21 MR. WALL: Object to form.

22 THE WITNESS: I can -- there are many, you  
23 know, many randomized controlled studies in the  
24 universe of publications in the -- in the medical  
25 literature, many of which I might have come across 18:07:16

1 during my medical training or in the years since.

2 BY MS. GONDEIRO:

3 Q. Are there any other randomized studies that  
4 you're aware of regarding -- with regards to COVID-19  
5 and masks solely?

18:07:30

6 MR. WALL: Object. Object to form.

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

8 Sorry.

9 THE WITNESS: Yes. This study is the one  
10 that -- that I most remember because it was  
11 remarkable in both its size and in the fact that it  
12 was studies under -- under real -- real conditions in  
13 which people live.

18:07:40

14 So it would -- it was helpful in that -- in  
15 that regard because it was large and community based.

18:07:59

16 BY MS. GONDEIRO:

17 Q. Do you recall the Danish study that was  
18 conducted by the American College of Physicians  
19 around the summer of 2020?

20 A. I -- I do not.

18:08:17

21 Q. Okay.

22 A. And the American College of Physicians  
23 wouldn't probably be conducting a study.

24 MS. GONDEIRO: Okay. Dan, can you pull up  
25 the last exhibit?

18:08:29

1 (Exhibit 28 was marked for identification.)  
2 MR. WALL: Is this Exhibit 28?  
3 MS. GONDEIRO: Yes. I guess it's --  
4 THE WITNESS: I don't see Exhibit 28 in the  
5 chat. 18:08:52  
6 MR. WALL: It's -- Dr. Cody, for your  
7 reference, I think it's labeled "Danish study.pdf" in  
8 the chat.  
9 THE VIDEOGRAPHER: Correct.  
10 THE WITNESS: Thank you. 18:09:01  
11 Okay. I have it. I have it pulled up.  
12 BY MS. GONDEIRO:  
13 Q. Does this study look familiar to you?  
14 You can -- I mean, if you need a couple  
15 minutes to review it, you can. It is the 18:09:29  
16 "Effectiveness of Adding a Mask Recommendation to  
17 Other Public Health Measures to Prevent SARS-CoV-2  
18 Infection in Danish Mask Wearers."  
19 A. Thank you.  
20 I -- I don't recall reading the study. I've 18:10:17  
21 been able to scan the first page and the second page.  
22 Q. Okay. Okay. Just to confirm, you never --  
23 you never reviewed this study?  
24 A. I --  
25 MR. WALL: Objection. Misstates testimony. 18:10:36

1 THE WITNESS: I don't recall looking --  
2 reviewing this study.

3 BY MS. GONDEIRO:

4 Q. Okay. But after -- after looking at it now,  
5 do you believe that you would have reviewed this 18:10:49  
6 study?

7 MR. WALL: Objection. Calls for  
8 speculation.

9 THE WITNESS: I don't know. As I -- as I  
10 mentioned, there was really an explosion of 18:10:58  
11 publications regarding COVID during the pandemic.

12 BY MS. GONDEIRO:

13 Q. Well, in specific to randomized control --  
14 controlled trials.

15 MR. WALL: Is there a question? 18:11:16

16 BY MS. GONDEIRO:

17 Q. Do you -- after -- after reviewing this --  
18 this -- this study, do you believe you -- that you  
19 reviewed it during the summer of 2020?

20 MR. WALL: Objection. Outside the scope. 18:11:29  
21 Calls for speculation.

22 THE WITNESS: As I mentioned, I -- I -- I  
23 don't recall whether I reviewed the study or did not.  
24 And just now, I was able to scan the first and second  
25 page of the exhibit, but -- but I have not read the 18:11:44

1 study.

2 BY MS. GONDEIRO:

3 Q. You have not read the study ever? Is that  
4 what you mean?

5 MR. WALL: Objection. Misstates testimony. 18:11:56  
6 Calls for speculation.

7 THE WITNESS: I don't recall whether I have  
8 reviewed this study in the past.

9 BY MS. GONDEIRO:

10 Q. Okay. Well, after reviewing or scanning 18:12:05  
11 through the documents -- or scanning through the --  
12 do you know, generally, what the findings are of this  
13 study?

14 MR. WALL: Let the record reflect that this  
15 is a 23-page study with what looks like 24 -- 18:12:19  
16 34 pages, excuse me, of comments or responses to the  
17 study. I don't know if any person on Earth could  
18 have digested the study in the time that Dr. Cody has  
19 been provided.

20 BY MS. GONDEIRO: 18:12:35

21 Q. I'll give you more time to review it to  
22 confirm, if you need that, whether you have reviewed  
23 this study, if you need a couple more minutes.

24 A. Yeah, I -- I've scanned the first two pages,  
25 and I don't recall reviewing -- I don't recall 18:12:49



1 whether I reviewed this study or not.

2 Q. If you want to scroll through more pages,  
3 you can do that as well to see if you will remember  
4 reviewing this document -- or this study.

5 MR. WALL: Is there -- is there a question 18:13:09  
6 pending that I can evaluate for potential objections?

7 MS. GONDEIRO: No. I'm just allowing her to  
8 refresh her memory.

9 THE WITNESS: Yeah, I -- I --

10 MR. WALL: Dr. Cody, there's no question 18:13:23  
11 pending.

12 BY MS. GONDEIRO:

13 Q. Okay. Do you need any more time, or are you  
14 still not able to remember reviewing this study?

15 A. I don't recall it. 18:14:13

16 MR. WALL: Object. Objection. Outside the  
17 scope. Calls for speculation. Relevance.

18 But you can answer the question that  
19 Dr. -- that Ms. Gondeiro just asked, to the extent  
20 you understand it. 18:14:25

21 THE WITNESS: I -- I don't recall whether I  
22 did or didn't review this study, and I am not able to  
23 review the study in the last five minutes. I can't  
24 read that fast.

25 ///// 18:14:41

1 scope and irrelevant.

2 BY MS. GONDEIRO:

3 Q. You can answer, Dr. Cody.

4 A. So I would have had conversations with  
5 people outside the County, and they would have been 18:33:42  
6 from various sectors. So the likelihood or chance  
7 that I would have spoken with someone who was not in  
8 the academic sector, not in the government sector,  
9 but was in the private sector, which I think would  
10 mean "any company," sure, I probably spoke to people 18:33:59  
11 that were outside the academic or governmental sector  
12 and would have worked at a company.

13 Q. Who -- well, who do you recall?

14 A. I don't recall.

15 Q. Do you recall it being anyone in a 18:34:12  
16 technology company?

17 A. I don't recall.

18 Q. Okay. But you re- -- you do recall that you  
19 spoke to someone at a company. You just don't recall  
20 the specifics? 18:34:27

21 MR. WALL: Objection. Misstates testimony.  
22 Calls for speculation.

23 You can answer this question.

24 THE WITNESS: In a two-and-a-half-year  
25 period, the likelihood that I would have spoken to 18:34:37

1 someone who was not a County person, not in the  
2 governmental sector, or not in the academic sector  
3 would be close to a hundred percent probability that  
4 I would have had a conversation with someone who  
5 worked at a company.

18:34:55

6 MS. GONDEIRO: Okay. Dan, how much time do  
7 we have left? Dan?

8 THE VIDEOGRAPHER: Ten minutes. Ten  
9 minutes. Sorry.

10 BY MS. GONDEIRO:

18:35:13

11 Q. Dr. Cody, I'm going to give -- you can pull  
12 up the exhibit again.

13 A. Which exhibit?

14 Q. The last exhibit.

15 MR. WALL: The Danish study?

18:35:23

16 THE WITNESS: The Danish study?

17 BY MS. GONDEIRO:

18 Q. The Danish study.

19 Okay. So this Exhibit 28 is titled the  
20 "Effectiveness of Adding a Mask Recommendation to  
21 Other Public Health Measures to Prevent SARS-CoV-2  
22 Infection in Danish Mask Wearers."

18:35:44

23 Dr. Cody, I'm going to give you seven  
24 minutes to review this -- this randomized controlled  
25 style -- trial regarding Danish mask wearers to see

18:36:03

1 if you remember reviewing it.

2 MR. WALL: Mark -- please mark the  
3 transcript. This is an abusive attempt to keep the  
4 witness here until the tail end of the time allotted  
5 to Plaintiffs' counsel under the rules. It's wholly 18:36:17  
6 inappropriate. It's a waste of everyone's time. And  
7 I reserve the right to bring this to the magistrate  
8 at an appropriate time to discuss this discovery  
9 abuse.

10 MS. GONDEIRO: This is not a discovery 18:36:31  
11 abuse. This is a very important study and an actual  
12 significant study. So I'm actually being respectful  
13 and accommodating to allow her enough time to -- to  
14 review this study because this is a very important  
15 study for Plaintiffs. 18:36:44

16 MR. WALL: We -- we can -- we can let the  
17 magistrate review your comments on the record about  
18 ten minutes remaining and then giving her seven  
19 minutes to review.

20 MS. GONDEIRO: She can -- 18:36:54

21 MR. WALL: The instructions speak for  
22 themselves, and we reserve all rights.

23 BY MS. GONDEIRO:

24 Q. Okay. Dr. Cody, you don't need to take the  
25 full seven minutes. If you -- if you, at any point 18:37:00

1 before that, recall the study, you can let me know at  
2 any -- at any point you recall the study.

3 MR. WALL: That doesn't -- okay. That  
4 doesn't mitigate the abuse.

5 So she's supposed to sit here for seven 18:37:11  
6 minutes reading it, and after -- and if, at any point  
7 up -- before the seven minutes is up, she recalls,  
8 she's report to back; and if not, we're just supposed  
9 to sit here for seven minutes while she stares at  
10 this document? 18:37:26

11 MS. GONDEIRO: Yes. I'm giving her adequate  
12 time to be able to review this document to see if she  
13 re- --

14 MR. WALL: So noted. Objections so  
15 reserved. 18:37:35

16 MS. GONDEIRO: Okay.

17 MR. WALL: Mr. DeFrank, can you please tell  
18 us when the seven arbitrary minutes are up and we  
19 have three minutes remaining --

20 THE VIDEOGRAPHER: Sure. 18:38:07

21 MR. WALL: -- in the deposition for  
22 Plaintiffs' counsel?

23 THE VIDEOGRAPHER: Sure.

24 MR. WALL: Thank you, sir.

25 MS. GONDEIRO: Dan, can you please advise 18:39:18

1 when there is one minute left?

2 MR. WALL: One minute of the seven?

3 MS. GONDEIRO: No. I believe it's one  
4 minute of eight.

5 MR. WALL: What? I don't even know what -- 18:39:35

6 MS. GONDEIRO: One minute left of the seven,  
7 yes.

8 THE VIDEOGRAPHER: Okay. We're there.

9 MS. GONDEIRO: How much time do we have  
10 left, Dan? 18:42:22

11 THE VIDEOGRAPHER: We actually have two  
12 minutes.

13 MS. GONDEIRO: Two minutes total for the  
14 entire deposition?

15 THE VIDEOGRAPHER: Correct. 18:42:31

16 MS. GONDEIRO: Okay. So about seven minutes  
17 have already passed?

18 THE VIDEOGRAPHER: Yep.

19 BY MS. GONDEIRO:

20 Q. Okay. Well, after the seven minutes, 18:42:36  
21 Dr. Cody, does -- does reviewing this Danish study  
22 refresh your memory whether you had previously read  
23 this study?

24 MR. WALL: Objection. Outside the scope.  
25 Asked and answered. Abuse of process. I move to 18:42:53

1 strike this testimony and the question, the testimony  
2 that -- any testimony that follows and the question  
3 that precedes it.

4 BY MS. GONDEIRO:

5 Q. You can still answer the question,  
6 Dr. Cody.

18:43:07

7 A. I -- I don't recall having reviewed this  
8 study prior to just now.

9 MR. WALL: I hope it was an interesting read  
10 for the past seven minutes, Dr. Cody.

18:43:17

11 THE WITNESS: I didn't get very far.

12 MS. GONDEIRO: Okay. Thank you.

13 MR. WALL: We have some questions for the  
14 witness.

15 EXAMINATION

18:43:30

16 BY MR. WALL:

17 Q. Dr. Cody, is it the County's view that the  
18 ability of its -- of its community members or the  
19 residents of the County -- their ability to exercise  
20 their right to participate in religion is a  
21 fundamental right?

18:43:43

22 A. Yes.

23 MR. WALL: I'm going to show you a document.  
24 It will be marked as Exhibit 29. It's in the chat  
25 feed. It's labeled "8 - Appendix C-2: Additional" --

18:43:53

1 something.

2 (Exhibit 29 was marked for identification.)

3 BY MR. WALL:

4 Q. If you want to take a look at that.

5 Can you open that up, or can you take a  
6 look?

18:44:03

7 A. I can -- I can see it on the screen.

8 Q. This is -- it's labeled "Appendix C-2:  
9 Allowed Additional Activities Effective June 5,  
10 2020."

18:44:14

11 Are you aware? Did the County issue an  
12 order on or about June 5th, 2020, with respect to  
13 shelter in place?

14 A. Yes.

15 Q. Do you recall generally what that order did  
16 or said?

18:44:20

17 A. This was a revision of an earlier  
18 shelter-in-place order that had a number of changes  
19 and a few appendices for further clarification.

20 Q. Now, this is Appendix C-2 to that order; is  
21 that correct?

18:44:37

22 A. Yes.

23 Q. If you -- if you go down --

24 MR. WALL: I am -- how -- is there a way --  
25 I don't know how to scroll.

18:44:47



1 Can you -- oh, thank you. Thank you.

2 THE VIDEOGRAPHER: I can do it. I can do  
3 it.

4 MR. WALL: Yeah, if you could scroll down to  
5 page 4. 18:44:54

6 Thank you, sir.

7 BY MR. WALL:

8 Q. Do you see Section 5 there, Dr. Cody? It  
9 refers to "Small Outdoor Ceremonies and Religious  
10 Gatherings." 18:45:05

11 A. Yes.

12 Q. Under "(a) Basis for Addition," the appendix  
13 reads, "Although ceremonies and religious gatherings  
14 carry a substantial risk of transmission, they are  
15 vital to people's social and spiritual well-being." 18:45:15

16 Does that accurately communicate the  
17 County's understanding that religious ceremonies --  
18 ceremonies and religious gatherings are vital to its  
19 residents' social and spiritual well-being?

20 A. Yes, very much. 18:45:32

21 Q. Thank you.

22 MR. WALL: You can take the exhibit down.

23 Thank you.

24 BY MR. WALL:

25 Q. Dr. Cody, do you recall testifying earlier 18:45:40

1 today about the factors that contribute to COVID-19  
2 transmission? In particular, Ms. Gondeiro asked you  
3 questions about the factors that contribute to the  
4 likelihood that someone might inhale a viral particle  
5 of -- related to COVID-19?

18:45:58

6 A. Yes.

7 Q. The factors that contribute to transmission  
8 or inhalation of viral particles, does that include  
9 duration of exposure?

10 A. Yes, most definitely.

18:46:09

11 Q. Thank you, Dr. Cody.

12 One question regarding -- do you recall  
13 testifying earlier regarding the application of the  
14 COVID-19 -- the County's COVID-19 rules to protest  
15 activity?

18:46:21

16 A. Yes.

17 Q. Did all of the County's COVID-19 rules apply  
18 to protests?

19 A. Yes.

20 Q. Thank you, Dr. Cody.

18:46:31

21 Final questions.

22 We talked -- you obviously -- you lead a  
23 team at the Public Health Department for the County  
24 of Santa Clara; is that correct?

25 A. That's correct.

18:46:42

1 Q. How -- how large is that team? How many  
2 people on it?

3 A. Hundreds.

4 Q. And can you briefly describe the categories  
5 of expertise of your team members?

18:46:51

6 A. They would cover a range from  
7 epidemiologists and other analysts that would be  
8 looking at incoming data to clean, analyze,  
9 interpret, and present. They include teams that  
10 would be investigating cases and contacts, teams that  
11 would be supporting long-term care facilities, a  
12 health care branch that would be supporting  
13 hospitals, a pharmacy team managing therapeutics and  
14 vaccines, a very large communications team helping to  
15 ensure that information was updated and accurate and  
16 presented to the public. Other teams in charge of  
17 technical content for particular groups. Other teams  
18 working specifically with schools. Many teams.

18:47:16

18:47:43

19 Q. Now, were those teams and the individuals on  
20 them -- were they responsible for making  
21 presentations to you regarding the areas of their  
22 expertise?

18:48:10

23 A. Yes, they were.

24 Q. Were they -- was -- were they or any of  
25 those teams or the individuals on those teams

18:48:21

1 responsible for analyzing or processing or otherwise  
2 presenting to you published scientific data and  
3 reports regarding COVID-19 during the pandemic?

4 A. Yes.

5 Q. Did they help synthesize this information  
6 for you, the scientific data and published reports?

18:48:37

7 A. Yes, because there was so much data and  
8 publications coming in on a wide variety of topics.  
9 So I did rely on teams to digest and synthesize and  
10 present information to me.

18:48:57

11 Q. So you weren't the only one reading,  
12 analyzing, and processing published science and  
13 reports regarding COVID-19 at the County; is that  
14 correct?

15 A. That is correct.

18:49:08

16 Q. Is -- is -- was the -- was -- were the  
17 published public health orders and directives issued  
18 by the County of Santa Clara to address the public  
19 health emergency that was COVID-19 -- were those  
20 orders and directives based solely on your personal  
21 knowledge regarding the science and data regarding  
22 COVID-19?

18:49:23

23 A. I relied on -- on hundreds of people to  
24 gather and collate and -- information and to inform  
25 the decisions that I made.

18:49:41

1 MR. WALL: Thank you, Dr. Cody. I have no  
2 further questions.

3 MS. GONDEIRO: I would -- I would like to  
4 follow up with that.

5 MR. WALL: You don't have -- you don't  
6 have -- you've used your seven hours. I object to  
7 any further questions, particularly the abusive end  
8 of your seven hours, and I'm going to instruct the  
9 witness not to answer.

18:49:51

10 Well, how many questions do you have,  
11 Mariah?

18:50:01

12 MS. GONDEIRO: Oh, no. Actually, I don't  
13 need it. I -- I forgot that I didn't have -- I --  
14 for some reason, I thought that I was allowed after  
15 your -- after your questions --

18:50:10

16 MR. WALL: Well, if you -- if you have a  
17 question, you can ask a question, but that -- you  
18 know, how many questions do you have?

19 MS. GONDEIRO: I just have a couple  
20 questions related to protests.

18:50:21

21 MR. WALL: Go ahead, please.

22 FURTHER EXAMINATION

23 BY MS. GONDEIRO:

24 Q. During the summer of 2020, were you aware  
25 that there were protesters not social distancing at

18:50:30

1 all times?

2 MR. WALL: Objection. Vague as to time  
3 frame. Scope. Relevance.

4 You can answer the question.

5 THE WITNESS: There were protests in the 18:50:41  
6 summer of 2020.

7 BY MS. GONDEIRO:

8 Q. And are you aware of those protests during  
9 the summer of 2020 -- that protesters were not always  
10 socially distancing? 18:50:52

11 MR. WALL: Same objections.

12 THE WITNESS: Yes. I believe that  
13 protesters were not always 6 feet from one another.

14 BY MS. GONDEIRO:

15 Q. Okay. And are you aware, during that same 18:51:01  
16 time period of the summer of 2020, that protesters  
17 were not always wearing a mask?

18 A. That is correct. They -- some were not  
19 masked, and some were not distanced. As I'm aware, I  
20 believe all of them were outside. 18:51:21

21 MS. GONDEIRO: Okay. That's all. Thank  
22 you.

23 THE VIDEOGRAPHER: Okay. Before everybody  
24 leaves, make sure you give the orders to Michelle and  
25 myself. 18:51:37

1                   And this concludes --

2                   MR. WALL: Before -- before -- no. Before  
3 the deposition concludes, we'd like our opportunity  
4 under the federal rules to review the deposition  
5 transcript before it's finalized. 18:51:44

6                   THE VIDEOGRAPHER: Okay. I will take us off  
7 the record.

8                   This concludes today's deposition of  
9 Dr. Sara Cody on August 18th, 2022. Total number of  
10 media units are four. The video masters of today's 18:51:59  
11 deposition will remain in the custody of Media  
12 Frontier Video Productions.

13                   Going off the record. The time is 6:52.

14                   MR. WALL: Thank you.

15                   THE REPORTER: Mr. Wall, do you want the 18:52:18  
16 same order that you had last time?

17                   MR. WALL: The same -- yes. Yes, please.  
18 Thank you, Ms. Knowles.

19                   THE REPORTER: You're welcome.

20                   (The deposition proceedings were  
21 concluded at 6:52 P.M.

22                   Declaration under Penalty of Perjury on  
23 the following page hereof.)

24  
25

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

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DECLARATION OF WITNESS UNDER PENALTY OF PERJURY

I, SARA H. CODY, M.D., hereby declare I am the deponent in the within matter; that I have read the foregoing transcript and made any corrections, additions, or changes, if any, on the errata sheet. The testimony is now a full, true, and correct transcript of my testimony.

I declare under the penalties of perjury of the State of California that the foregoing is true and correct.

Executed this \_\_\_\_\_ day of \_\_\_\_\_  
20\_\_\_\_, at \_\_\_\_\_, \_\_\_\_\_.  
(City) (State)

\_\_\_\_\_  
SARA H. CODY, M.D.



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

1 STATE OF CALIFORNIA )  
2 ) SS.  
3 COUNTY OF SANTA CLARA )

4 I, MICHELLE D. KNOWLES, CSR No. 8979 and  
5 Deposition Officer in the State of California, do  
6 hereby certify that prior to being examined, the  
7 witness in the foregoing deposition was duly sworn to  
8 testify the truth, the whole truth, and nothing but  
9 the truth;

10 That the testimony of the witness and all  
11 objections made at the time of the examination were  
12 recorded stenographically by me;

13 That the foregoing transcript is a true  
14 record of the testimony given and all objections made  
15 at the time of the examination.

16 Pursuant to Rule 30(e) of the Federal Rules  
17 of Civil Procedure, a request was made for review and  
18 signature by the witness.

19  
20 Dated: August 30, 2022

21   
22  
23 Michelle D. Knowles, California CSR No. 8979

24  
25