

1 **Q See the line -- the words "too many**
 2 **factors," the top line?**

3 A Oh, yes, yes.

4 **Q So that would be the -- the blunt**
 5 **force trauma to the head and the chest**
 6 **compression in the mechanical restraint,**
 7 **correct?**

8 A I--

9 MR. MURPHY: Got to talk
 10 slower.

11 A I would have to say that the -- the
 12 "two main factors" are ADA Flanagan's words.

13 **Q Okay.**

14 **But are they consistent with**
 15 **your belief --**

16 A I think there's multiple factors.

17 **Q Well, you've -- okay.**

18 A I mean, even in that statement you
 19 have pointed out, I mean, that was my -- my
 20 editing, but there were three factors even in
 21 that one statement you pointed out.

22 **Q Okay.**

23 **And we're not going to go back**
 24 **over that, because I think we've already had**

1 **testimony about that.**

2 A But it is there. The agitated
 3 state is there, so it makes it that third
 4 factor and that one --

5 It's just me misspeaking,
 6 which when I say the two factors, there's
 7 multiple, multiple factors.

8 And even in my cause of death,
 9 there's more than two factors there.

10 **Q We've gone through that. We're not**
 11 **going to do it again.**

12 A All right.

13 **Q I think we've had testimony.**

14 **I'd like to go down --**

15 MR. MacLEISH: If we can just
 16 go to the point -- I think this is the part
 17 that you objected to, the last third of that,
 18 please, if we could highlight that, starting
 19 with "Dr. Hull," line above.

20 **Q Again, this is the press release**
 21 **that was put out by the district attorney's**
 22 **office and sent to you in advance, correct?**

23 A No.

24 **Q It was not sent to you?**

1 A No, it was not sent to me in
 2 advance, which is one of the reasons I was a
 3 little bit angry about the press release.

4 **Q Okay.**

5 **The press release was put out,**
 6 **you're correct. It was sent to you without**
 7 **your consultation?**

8 A It was sent to me -- as far as I
 9 know, it was sent to me after the fact.

10 **Q And then you see it states here**
 11 **"Dr. Hull stated to ADA Flanagan that based**
 12 **on her observation of the video, her review**
 13 **of the witness statements regarding the**
 14 **incident and observations of the victim at**
 15 **autopsy, in her opinion, it was the conduct**
 16 **of Joshua Messier in fighting and maintaining**
 17 **the struggle against the guards that caused**
 18 **his extremely agitated state and ultimately**
 19 **his death."**

20 **Do you see that statement?**

21 A I do.

22 **Q And you were upset about that**
 23 **statement; is that correct, Doctor?**

24 A I would not have written that

1 statement.

2 **Q It's not accurate?**

3 A I-- my problem with that statement
 4 is it's not my issue. I'm the medical
 5 examiner. It's not my -- it's not my issue
 6 to determine who is at fault, and this places
 7 a blame, and that's not my role.

8 **Q Doctor, this press release**
 9 **recounts, supposedly, what happened in a**
 10 **meeting in 2010 that we've already had**
 11 **testimony about here today, correct?**

12 A As far as I know, yes.

13 **Q Did you ever tell the district**
 14 **attorney's office, the state police or**
 15 **anybody else that it was Mr. Messier's**
 16 **fighting and maintaining struggling against**
 17 **the guards that caused his extremely agitated**
 18 **state and ultimately his death.**

19 **Did you ever say that, Doctor?**

20 A Those words in that way -- exactly
 21 that line was not written by me, no.

22 **Q So the answer is no?**

23 A Those words were written by someone
 24 else.

Q Are they consistent with your recollection of what you said at the meeting in 2010, Doctor?

A They're not -- the statement by itself is not -- it's not exactly inaccurate it's just not phrased correctly. It places blame where I wouldn't place blame.

Q In fact --

A That's the problem that I have with it. It's not -- it's not that there wasn't fighting and struggling or an agitated state and ultimately death.

The problem I have with that statement is the fact that it places blame on Joshua Messier, and I try -- that's not my role, and I maintain it's not my role, and those words are not my words.

Q And they would not be a fair characterization of what you said, correct, Doctor?

A As far as I know, I didn't state it that.

Q And, in fact, you determined

And in particular, it's the placing blame on Mr. Messier piece of it that I don't like. That's not my role. That's not my job.

Q And then you're aware that a series of articles came out in The Boston Globe in 2014 that quoted from this section of the press release and stated that you had changed your opinion.

Do you recall that, Doctor?

MR. BRENNAN: Objection.

A I --

THE COURT: Mr. Murphy?

MR. MURPHY: Your Honor, I know it's within the court's discretion to decide what it views this as relevant.

THE COURT: I don't -- I still don't think this is relevant.

MR. MacLEISH: Well, I can explain, your Honor.

We had state police investigators come in here and testify that they did an investigation, and the result of the investigation was not to proceed.

1 homicide, which for a medical examiner determination, means death at the hands of another, correct?

2 A It, again, without placing a blame. It's not my --

3 Q I understand that.

4 A Well, I mean, that's an important distinction, because it's not my role as medical examiner to decide who is to blame for a situation.

5 Q I think that's clear.

6 A And I draw a wall with that. And that's the reason I don't like the statement. It's not particularly that, okay, this is not -- if this was said without stating me in it, you know, if this was, okay, in conclusion of everything, I don't know.

I mean, if somebody else concluded that, I don't know how much I would argue with each and every piece of it. There's pieces in this that -- that aren't directly inaccurate. It's just the way that it phrases it, I don't -- I don't like it.

1 And now we have Dr. Hull stating that one of the key grounds on which they decided not to proceed was a statement by Dr. Hull that she never made about Joshua Messier contributing to the death, to his own death.

2 THE COURT: But that's -- if relevant at all, it has marginal relevance. My job here today, as I tried to reiterate over and over again, is to gather the opinions of the medical experts today to determine if a crime has occurred, not -- not a coverup or anything else. It's --

3 MR. MacLEISH: I understand that, your Honor.

4 THE COURT: So I'm interested in her medical --

5 MR. MacLEISH: Okay. I just would like to state, your Honor, if I could --

6 THE COURT: Sure.

7 MR. MacLEISH: I would take it that the statements of the police, Captain

1 that language in it. Upon Murphy's review,
2 there was no training of positional asphyxia
3 in any of the training venues.

4 So I would -- there was a --
5 the 505 has a sister policy, the 503.

6 The 503 is entitled Forced
7 Movement of Inmates.

8 Q Correct.

9 A Contained within that policy is
10 language similar to that in the Standard
11 Operating Procedure.

12 I'm not sure if that's what
13 Superintendent Murphy is referencing there.

14 Q Okay.

15 But --

16 A Because that language is in the
17 body of the 503 policy, whereas in the 505,
18 it's located within the Standard Operating
19 Procedure.

20 Q It's in the addendum.

21 But he says there was no
22 training in positional asphyxia in any of the
23 training venues.

24 That's different than what

1 A Correct.

2 Q And you also interviewed my client,
3 Derek Howard; did you not?

4 A Yes.

5 Q And he said he didn't recall having
6 any training in positional asphyxia, correct?
7 Page 41 of your report.

8 MR. ANDERSON: Want to turn to
9 page 41, five or six lines from the bottom.

10 Q Howard doesn't also recall
11 receiving use of force training during
12 in-service -- ever receiving training in
13 positional asphyxia?

14 A Mm-hmm.

15 Q That's what he told you, correct?

16 A Well, he also said, though, that
17 he -- he has received use of force training.

18 Q But he says on page 43 that if
19 someone's on their stomach in restraints, you
20 can't put pressure on them, and also that you
21 have to roll somebody over or sit them up who
22 has been restrained, correct?

23 A I'm looking for it.

24 Q It's on page 43 up near the top.

1 you -- that's a different question than what
2 you're answering?

3 A I don't know how Superintendent
4 Murphy would know that. He's -- he's the
5 superintendent of one facility, so...

6 Q Now, you were asked when you
7 interviewed the people that you interviewed,
8 the staff, you asked all of them what their
9 training was in positional asphyxia, correct?

10 A Yes.

11 Q And Lieutenant Billadeau told you
12 that he was trained not to pile on top of
13 somebody who was face down on the ground, and
14 that's what his training was in positional
15 asphyxia, correct?

16 A Sounds about right.

17 Q And he had also seen a video on
18 positional asphyxia, correct?

19 A Yes.

20 Q And have you ever seen that video?

21 A No.

22 Q But basically, his knowledge, it's
23 always in the context of someone that's
24 laying on ground, correct?

1 A Yes.

2 Q So that's what Derek Howard told
3 you?

4 A Mm-hmm.

5 Q He hadn't been trained in it, but
6 he knew it just because he had come across it
7 out there, basically?

8 A Okay.

9 Q And Mr. Howard never told you that
10 he saw this video that Lieutenant Billadeau
11 saw, correct?

12 A I don't believe so, no.

13 Q Do you know how the Department of
14 Corrections determined who was going to see
15 this video?

16 A It's my understanding that it was
17 part of the training in that area.

18 Q And, by the way, when you
19 interviewed my client, he answered each and
20 every one of the questions that you asked,
21 correct, as best he could?

22 A Yes.

23 Q He didn't assert his Article 12
24 rights and refuse to answer like some of the

1 correction officers did?

2 A No.

3 Q In fact, Officers Barker, Soares
4 and Foster all declined to answer any
5 questions about using any force, correct?

6 A That's my recollection.

7 Q But Derek Howard answered
8 everything you asked?

9 A He did.

10 Q And at the end of the interview,
11 you thanked him for his cooperation; do you
12 recall that?

13 A I did.

14 Q And similar to Derek Howard, John
15 Raposo told you that he didn't recall any
16 training on positional asphyxia or four-point
17 restraints, but he had the same understanding
18 of if as Derek Howard did, correct?

19 A As we sit here today, I don't
20 remember that, but specifically -- but I have
21 a vague recollection of it.

22 MR. ANDERSON: If I could
23 just -- for the record, it's on page 56 and
24 60 of the reports.

1 You don't need to go back
2 through it, but I just want that on the
3 record.

4 A Okay.

5 Q And to your memory, do you recall
6 if Officer Raposo mentioned ever seeing this
7 video?

8 A I'm not sure I even asked him that.
9 I don't recall.

10 Q Now, in your time working for the
11 Department of Corrections, how much was
12 actually spent relating to Bridgewater State
13 Hospital?

14 A So I worked there for two years
15 doing the commitment hearings. I --
16 certainly during those two years, I was -- I
17 was -- I was there.

18 Q Okay.

19 And you agree that when you're
20 working there, walking around, you can't tell
21 the difference between a patient and an
22 inmate, correct?

23 A That's not correct. They wear
24 different -- different uniforms.

1 Q I'm not talking about the -- are
2 you referring to the cadres?

3 A Yes.

4 Q Okay.

5 Set the cadres -- the cadres
6 are people who wear uniforms who are
7 prisoners who do the basic --

8 They do the work at the
9 Bridgewater State Hospital?

10 A That's correct.

11 Q The cooking, cleaning, that stuff?
12 Set them aside.

13 The people who were on B1, B2,
14 that part of Bridgewater State Hospital, you
15 can't tell a patient from an inmate, correct?

16 A No.

17 Q They both wear civilian clothing?

18 A I mean, I think they're all
19 classified as inmates. I'm sorry, as
20 patients.

21 Q Right.

22 But there could be somebody
23 who got arrested, had a bad episode and gets
24 sent to see if they're fit for trial,

1 competent for trial, and then there could be
2 someone who is doing 20 to life at Walpole
3 who says they're going to kill themselves who
4 also gets sent there, correct?

5 A Yes.

6 Q So there are people that are
7 serving sentences and there are people that
8 just go there for competency evaluations and
9 legal issues correct?

10 A Correct.

11 Q And you can't tell the armed
12 robber, the rapist from the poor person who's
13 there for a competency evaluation?

14 A Correct.

15 Q And nothing is done to the staff to
16 let them know, you know, this person in
17 yellow is here for armed robbery and is doing
18 20 years and this person is here for 15 days
19 for evaluation, correct?

20 A That's my understanding.

21 Q And Bridgewater State Hospital
22 employees don't have any training at all
23 related to mental health issues?

24 A I wouldn't -- I wouldn't say that,