

1 SUPREME COURT OF THE STATE OF NEW YORK
2 COUNTY OF NEW YORK : TRIAL TERM PART

3 - X

4
5 Plaintiff

6 - against -

7
8
9 X

10 Index No .

11 October 4, 2006
12 60 Centre Street
13 New York, New York 10007

14 B E F O R E : HON. EILEEN BRANSTEN, Justice,
15 and a jury of six plus two alternates.

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23
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Ted Lukew

25 Official Court Reporters

1 limine motion. I'm aware of it.

2 If there is a need, all I hear is ;
3 the word -- what is the word? :

4 MR. GARSON: "Objection," very i
5 quietly. ;'

6 (Following proceedings ensued in
7 open court): **1**

8 (Jurors Enter). :

9 THE COURT: All right. Mr. Awad, i
10 please conduct your cross-examination.

11 MR. AWAD: Thank you. Good
12 afternoon, jury.

13 CROSS EXAMINATION

14 BY MR. AWAD:

15 Q Sir, would you agree with the general
16 proposition, the general matter, that compression
17 caused by spinal hematoma can injure the nerves?

18 A Yes.

19 Q Would you agree with generally the
20 proposition that when there is a hematoma as a
21 result of a spinal bleed, that that hematoma itself
22 is capable of causing compression upon the thecal
23 sac?

24 A Can I have the question read back?

25 THE COURT: Read it back.

I - .

1 (Whereupon the record was read).

2 A Yes.

3 Q Would you agree with the general
4 proposition that when there is compression on the
5 thecal sac caused by a hematoma, that the nerve
6 roots are at risk for permanent damage if the
7 compression is not relieved, as a general matter?

8 A As a general matter, yes.

9 Q And, finally, as a general matter, sir,
10 would you agree that the idea of compression on
11 nerve roots caused by a hematoma, a clot of blood,
12 displacing the thecal sac is at times considered to
13 be a neural radiological emergency?

14 A It's a neurosurgical emergency, yes. Not
15 a neuroradiological.

16 Q The reason you say it's a neurosurgery
17 emergency, is that neuroradiology can only report
18 that to neurosurgery. It's neurosurgery that
19 generally makes the decision of when and how to
20 operate if there is going to be an operation?

21 A Yes. And they do the operation, yes.

22 Q And they do the operation.

23 So, as a general matter then, just
24 an overview of some of the medicine that has been
25 talked about here for two weeks now.

1 The idea that on the night of
2 October 31, 2002, the chief of neuroradiology or
3 her colleague, a neuroradiologist reported seeing
4 compression, in their opinion seeing a compression
5 on spine caused, as their
6 impression, by some spinal bleed, it would have
7 been consistent for them to have reported those
8 findings or opinions directly to neurosurgery as
9 soon as they could?

10 A I'm not sure I understand the question.

11 Q Are you aware of the report of Dr. Jahre
12 that was created contemporaneous with the patient's
13 care and treatment regarding her read of the CT
14 scan involved in this case?

15 A I'm aware of her report from November the
16 1st.

17 Q Now the report from November 1st, are you
18 referring to the MRI or the CT?

19 A Her CT report.

20 Q Can you recite, and I'll ask you to
21 recite, as best as you can, what it was that
22 Dr. Jahre wrote or dictated or signed off in her
23 report about the CT of
24 spine in relation to what, if anything, she did
25 regarding Dr. Holtzman?

1 A I will be better if I could review the
2 report. I reviewed the report, but not memorized
3 all the reports that I was given.

4 Q Do you have any memory as you are here on
5 the witness stand as to what neuroradiology did, if
6 anything, on the night of October 31st after the CT
7 scan was obtained?

8 A My recollection there was a handwritten
9 note that said some of the findings, and that was
10 discussed with Dr. Holtzman.

11 Q What about the official report by
12 Dr. Jahre, do you recall what it is that she
13 reported -- withdrawn.

14 Do you know who Dr. Jahre is?

15 A Based on my review of the records, she's
16 a neuroradiologist at the hospital that the
17 Plaintiff was being taken care of.

18 Q Do you know that she is the chief of
19 neuroradiology at Lenox Hill Hospital?

20 A I do now.

21 Q Do you know that she was in fact asked
22 questions under oath on September --

23 THE COURT: It was September 15th.

24 Q -- September 15th after this jury had
25 been drawn?

1 A Yes.

2 MR. GARSON: Judge, respectfully,
3 September 22nd.

4 Q September 22nd, after this jury had been
5 drawn?

6 A Yes.

7 Q Have you read her testimony?

8 A Yes.

9 Q Where is it?

10 A I'm not sure I understand the question.
11 Are you looking for this? It was sent to me by
12 e-mail.

13 Q Do you presently, or at any time have you
14 ever served as chief of neuroradiology at any
15 hospital?

16 A No.

17 Q At the present time do you hold --
18 withdrawn.

19 In the year 2002, did you hold any
20 position at any medical university where you will
21 be part of the teaching faculty?

22 A No.

23 Q When for the first time did you formulate
24 the opinions that you offered here this morning to
25 this jury?

1 A After I reviewed the CT and MRI scans.

2 Q When you formulated those opinions, those
3 opinions have been formulated some time after
4 September 1st and before September 15th of this
5 year?

6 A Approximately, yes.

7 Q Do you have a specific entry in your
8 office diary or manual noting whether or not you
9 met with Mr. Garson at that time?

10 A No.

11 Q Did Mr. Garson come to meet you?

12 A Yes.

13 Q By the way, doctor, I heard this
14 morning. Mr. Garson and his firm have served as
15 lawyers, or legal, for yourself and your
16 professional corporation in years past, correct?

17 A Yes.

18 Q So when Mr. Garson called you --
19 withdrawn.

20 How much time passed between the
21 time Mr. Garson called you and the time that he saw
22 you?

23 A Short time, a day or two. I can't recall
24 exactly. But a short time.

25 Q And he came to see you?

1 tell you I'm coming up to visit just for old -- I
2 don't mean to be disrespectful. He didn't call and
3 say he ' s coming up to visit because you were an old
4 time cl ient?

5 A No, no. He came up to show me some
6 films.

7 Q And when he came up, he brought the films
8 with him, correct?

9 A Yes.

10 Q And did he tell you at that time that he
11 was in 2006, in September, okay, involved in what
12 is call ed the legal defense of a medical
13 malpractice case in some sense?

14 A At some point that came up. He showed me
15 cases, he showed me the films, we went over the
16 films. At some point he said something like, this
17 is rega rding a medical malpractice case.

18 Q Specifically he must have told you, did
19 he not, that he was defending the case?

20 A Yes, at some point, yes.

21 Q Okay. And defending the case he also
22 told you at some point he would like to have your
23 help?

24 A Yes. Some point he said, he asked me to
25 testify in the case.

1 Q So at the time that you, yourself, were
2 formulating your opinions which you had available
3 to you as I understand it, as is Mr. Garson and
4 your relationship with him together with the films,
5 that he hand brought himself, correct?

6 A I'm not sure what you mean by
7 relationship with him. I met with him, and I had
8 the films to review.

9 Q In other words, he didn't have the films
10 sent up by courier or messenger himself so you can
11 look at them without him present. As I understand
12 it, he actually brought the films himself and was
13 in the office with his past client when he was
14 asking you certain things that you would see him?

15 A Yes, initially, yes, that's right.

16 Q And while he was in the office with you
17 asking you questions, that's when you formulated
18 your opinion about what could or couldn't be seen
19 on these images that all us lay people looked at
20 now for a couple of weeks, correct?

21 A To a degree, yes.

22 Q And on that day, on that day, is it not
23 true, sir, that on that day you responded in sum
24 and substance, I could help?

25 A I don't know if I used the to help. I

1 said I can testify in the case and report my
2 findings.

3 Q Did you at all have any conversations
4 with Mr. Garson at some time about coming here to
5 the court to trial?

6 A No.

7 Q Did he or his office at some time tell
8 you that the trial would be very imminent, very
9 near at hand?

10 A At some point they called me to tell me
11 when the trial was going on and approximately when
12 I will be testifying.

13 Q Well, on the day that Mr. Garson was
14 there, did he tell you, by the way, what is your
15 schedule look like for September because the
16 overwhelming certainty is that we will be trying
17 this case before the end of the month of September?

18 A Not on that day. But at some point
19 afterwards, yes.

20 Q Was it within days?

21 A We had the initial meeting, he then sent
22 some additional information that you have the
23 packet and the films. And at some point he said
24 can you testify in this case, and gave me the
25 approximate date. Whether it was the day before or

1 after, I don't recall.

2 Q Did you at all ask him, had he had any
3 consultation with any other neuroradiologists?

4 A No.

5 Q Did you ask him whether or not he had
6 consulted with the chief of neuroradiology at Lenox
7 Hill Hospital regarding the Lenox Hill Hospital
8 official interpretation of these films?

9 A At some point I had that person's,
10 Dr. Jahre's report. I did not ask him if he
11 consulted with Dr. Jahre.

12 Q Did you have her reports when you first
13 looked at these films?

14 A No.

15 Q Did you have before you any part of the
16 Lenox Hill Hospital record when you first looked at
17 these films?

18 A No, that was sent subsequently.

19 Q So I want to carry on with some of your
20 opinions in a moment.

21 So to conclude this, it would be
22 fair for the jury to then conclude that Mr. Garson
23 came to you, brought the films with him, talked to
24 you while you were reviewing the film, told you
25 that you were defending the case, he was defending

1 the case, and then he left with the films that day,
2 is that correct?

3 A I don't think he told me in so many words
4 that he was defending the case.

5 The beginning part was correct, he
6 came, we reviewed the films. He asked me what I
7 thought, what I saw in the films, and what I saw on
8 the films. And then he left with the films.

9 Q Did you have any doubt that he was
10 defending, quote, the case?

11 A It became apparent at some point in the
12 discussion.

13 Q While you were reading the films for the
14 first time in his presence, correct?

15 A Probably at the end or subsequently.
16 Just talking about the case. It came up at the end
17 of the.

18 Q Would your office appointment book show
19 how much time you spent there that day?

20 A No.

21 Q Now, would you agree, doctor, that when a
22 neuroradiologist knows that another
23 neuroradiologist has already read and interpreted
24 the films and have reported it, that it's customary
25 for another radiologist to be curious, inquisitive

1 about what that first neuroradiologist had to say?

2 A Yes.

3 Q Often times before reaching any opinion,
4 I would suspect that it would be prudent in
5 accordance with the guidelines of the American
6 College of Radiology for a radiologist, such as you
7 to, before reaching opinions, to at least consider
8 what it was that the actual examining
9 neuroradiologist had to say about the case, about
10 the patient?

11 A That is incorrect. In fact, a recent
12 article that suggests in looking at films you
13 should not look at other peoples' reports,
14 preliminary reports, because it biases you to agree
15 with someone else. You should look at cases de
16 novo, make your impressions and then consult what
17 other people said. You are not biased, instead of
18 saying yeah, yeah, I agree in looking at what the
19 other person said.

20 Q Are you talking about the guidelines
21 regarding coming to court to testify as an expert?

22 A Absolutely not.

23 Q Okay. There are guidelines where you
24 come to court to testify as an expert, correct?

25 A Guidelines for expert witnesses, yes,

1 there are.

2 Q I believe you have some personal
3 experience with those guidelines regarding
4 radiology?

5 A Yes.

6 Q So to be clear here today then, in the
7 matter of, a visit at the office, you reached your
8 impressions without the benefit of the hospital
9 records, or the testimony of anybody, true?

10 A I gave him my impression of what I saw on
11 the films based on the information that I had at
12 the time.

13 Q Okay. And just to be clear in case the
14 jury wants a read back of any testimony so we know
15 exactly what you mean by that.

16 You met with your former attorney
17 sometime after September 1st, and on the basis of
18 that meeting with him with films in hand, you
19 agreed to serve as an expert here without ever
20 having reviewed anything in the Lenox Hill Hospital
21 record?

22 A No, that's not correct.

23 MR. GARSON: I didn't hear the
24 witness's response, judge.

25 THE COURT: Read it back.

1 MR. GARSON: Can I move over here
2 closer to the witness.

3 THE COURT: "No, that is not
4 correct".

5 I ask you to keep your voice up.
6 Okay.

7 THE WITNESS: I'm sorry.

8 MR. GARSON: Thank you, judge.

9 Q Did Mr. Garson just --

10 THE COURT: You know what.
11 Mr. Garson, do me a favor. Move over so I can
12 see your face.

13 MR. GARSON: You want to see my
14 face?

15 THE COURT: Yes.

16 I like to see everybody at all
17 times. Now he's going to speak up.

18 Q I'll see if I can approach it this way,
19 doctor.

20 When Mr. Garson left the office that
21 day, you did agree to serve as an expert witness in
22 this case, yes or no?

23 A No, not at that time.

24 Q When did you first agree to serve as an
25 expert in this case?

1 A Probably very soon thereafter. I think
2 he called me on the phone, like right after that,
3 the next day to say, can you come and would you be
4 willing to testify in the case.

5 Q Okay, So that next day -- and did you
6 say yes?

7 A Yes.

8 Q And so that next day, 24 hours later,
9 okay, it would be correct that you had not received
10 any Lenox Hill Hospital records, any radiology
11 records, any testimony of any of the doctors in the
12 case at the time that you agreed?

13 A Correct.

14 Q Now, when you said yes I will testify
15 that very next day, okay, when you said yes, I'll
16 testify the next day, you said, yes, I will, I'm
17 ready to testify, and I understand that you are
18 defending a medical malpractice lawsuit, is that
19 part of the words, or in substance?

20 A Part, part of the substance what was
21 discussed.

22 Q Now, could we, could I just ask you one
23 more time, doctor.

24 Do you know what it is that the
25 Lenox Hill Hospital neuroradiology said about the

1 CT scan itself?

2 A I don't know what they said.

3 Q Any idea?

4 A You are saying what they verbally said?
5 I don't know what verbally said.

6 Q What the report reported, can you give us
7 any highlights?

8 A I can't recall exactly.

9 Q Well, this morning, doctor, from
10 approximately 10:00 to 11 o'clock, you talked about
11 the epidural space, I believe, is that correct?

12 A Part of the discussion was about the
13 epidural space, yes.

14 Q Do you know if the CT scan, when it was
15 asked to be done, had any, had any requests
16 regarding the epidural space?

17 A I noted in the chart to do a CT scan to
18 rule out a hematoma and subdural or epidural
19 hematoma.

20 Q Subdural, epidural hematoma?

21 A Subdural or epidural hematoma.

22 Q Is that the, is that what the radiology
23 department at Lenox Hill Hospital reports in its
24 records?

25 A I don't recall exactly. If you got the

1 report to review it.

2 Q Had you had the benefit of reading any of
3 Dr. Abrahams's testimony?

4 A Yes .

5 O Did you note that he was chief of
6 neuroradiology at Yale?

7 A I noted the position that he had, yes.

8 (Continued on following page.)

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1 (Daniel Olarnick relieved Ted Lukew
2 as the official court reporter.)

3 Q Did you see anywhere in the presentation by
4 Dr. James Abrahams that the patient at all was contending
5 that there was a dura bleed or epidural bleed of any sort?

6 A I can't remember exactly what he referenced to it
7 this is reference in the medical record about evaluating for
8 a subdural epidural hematoma.

9 MR. AWAD: Let's display that record.

10 Permission, your Honor, to enhance, starting
11 at the date of the examination down to impression.

12 Q When did you read this report for the first time?

13 A I can't say exactly.

14 Q Did you read it last night in preparation for your
15 testimony here today?

16 A No.

17 Q Did you read it -- by the way, Doctor, when, for
18 the first time did you see this exhibit that was used this
19 morning by -- with you, we don't have it marked but it says
20 epidural space, when did you see this for the first time?

21 A It says epidural spinal anesthesia and I saw that
22 exhibit today when it was shown to me.

23 Q For the first time?

24 A I saw an e-mail preliminary version of that but
25 that was the first time I've seen that physical exhibit

1 today.

2 Q Now, when you saw this e-mail to you, did you go
3 back to the official record of Lenox Hill Hospital and check
4 and see whether or not the neuroradiologist at that time
5 were specifically looking or asked to look for an epidural
6 hematoma?

7 A The report says rule out hematoma. There's other
8 notes in the documentation about concern for a subdural and
9 epidural hematoma.

10 Q I'm just asking you about neuroradiology right now
11 it is neuroradiology that's doing the interpretation of the
12 films correct?

13 A And the neurosurgeon also came to look at the
14 films.

15 Q By the way, do you know what -- I'll withdraw
16 that.

17 Stay with that --

18 MR. GARSON: Move to strike counsel's
19 comment.

20 THE COURT: Sustained.

21 Q Information specifically note in their reference
22 do they not the reason why they're being asked to image
23 something and read that image?

24 A Usually they do and in this case, they did, yes.

25 Q In this case did Dr. Jahre who signed this and

1 authorized this report, did she, at all, indicate that
2 epidural was at all an issue that she was specifically
3 looking at when making this report?

4 A The indication that's written on her report says
5 rule out hematoma.

6 Q Now, just to be clear, Doctor, this document, did
7 you have any input into how this thing was crated?

8 A No. That's upside down.

9 Q Do you know who it is that came up with the
10 drawing here?

11 A No.

12 Q Doctor, I want you to assume that the jury has
13 heard that when we talk about the spinal cord itself, the
14 cord, that around the cord as I understand it there are
15 three coverings the pia, the arachnoid, and the dura; is
16 that in a simplistic manner, is that correct.

17 A Yes.

18 Q The pia we have not talked about much here that's
19 the one closest around the spinal cord correct it is almost
20 adherent to it is it not?

21 A It is like your skin.

22 Q I think would it be correct to say it is even a 13
23 membrane than our skin?

24 A Yes, but you're trying to describe the location to
25 it; it is adherent like your skin.

J

1 Q It is a very thin membrane and then next to that
2 is this other covering called the arachnoid?

3 A Next to that is fluid and then the next covering
4 is the arachnoid.

5 Q After the arachnoid and that's also a membrane
6 that wraps around the cord true?

7 A Wraps around the spinal cord the nerves the
8 arachnoid and everything else we talked about that's inside
9 the dura, yes, the dura wraps around that.

10 Q In this case the reason we're talking about
11 subarachnoid "sub" means below the arachnoid space, correct?

12 A Yes.

13 Q So no mystery really to it, in this case,
14 everybody was concerned, as it starts to unfold, people
15 became very concerned about a bleeding that's between the
16 arachnoid covering and the pia covering, correct?

17 A Well, initially the initial concern as outlined by
18 the surgeon in the surgeon's note was to rule out an
19 epidural or subdural hematoma.

20 Q Okay.

21 At 8:30 at night when the shoring came back to the
22 hospital and found his patient couldn't stand on her own two
23 feet; he got worried, didn't he?

24 MR. GARSON: I object as to form. Also, can
25 we identify the individuals?

1 THE COURT: Sustained.

2 Q Doctor, you've talked about the surgeon. Do you
3 know who the surgeon is?

4 A It is a difficult pronunciation?

5 Q Dr. Dolgoplov I've stumbled, but they are
6 actually beautiful names, if you get the rhythm?

7 A It is a little difficult, to pronounce if you
8 haven't heard it before. He was the surgeon who operated on
9 the patient. That's what I'm saying.

10 Q Did you read his them at some point?

11 A Yes.

12 Q Would you say he, in layman's terms, was real
13 worried about the state of events involving his patient?

14 MR. GARSON: Objection, outside the scope of
15 direct.

16 THE COURT: No, I'll allow it. It is
17 cross-examination.

18 THE WITNESS: It is very hard to determine
19 what somebody's state of mind was, but clearly by his
20 actions, and I'm sure a reasonable medical person would
21 be, yes, very concerned about the patient.

22 Q If you read his testimony, did you read where he
23 said he felt as of 8:30 this was an emergency evaluation
24 that would ultimately go on to require emergency treatment;
25 did you read that testimony?

1 A Yes.

2 Q In this material?

3 (Indicating.)

4 A Yes.

5 Q So it would be fair to say that, in a very simple
6 manner, he was worried about his patient?

7 A Yes.

8 Q And the reason why he was worried about his
9 patient, in part, is it not, is that if there is blood
10 inside the arachnoid space, between the arachnoid and the
11 pia, that blood could be causing compression?

12 A He was concerned about the patient because the
13 patient's neurologic findings had drastically changed,
14 that's why he was concerned about the patient.

15 Q Did there come a time when you read his entire
16 deposition?

17 A Yes.

18 Q Did you read all of his notes in the hospital
19 record?

20 A Yes.

21 Q And are you aware he wrote decompression surgery
22 in the hospital record?

23 A If you could point out the specific note that would
24 be helpful.

25 Q Ooh, you know, Doctor --

1 MR. GARSON: Objection to the "ooh."

2 THE COURT: Sustained.

3 MR. GARSON: Judge, can we approach for a
4 minute, a very quick sidebar?

5 THE COURT: Come up.

6 MR. AWAD: Doctor, I'm going to ask you --

7 THE COURT: Wait a second, I did say come up.
8 Nobody listens.

9 (Discussion held at the bench, off
10 the record.)

11 (The discussion off the record
12 concluded, and the following occurred in open
13 court:)

14 Q I believe you offered a variety of opinions here
15 this morning that, in sum and substance, told this jury that
16 you didn't think compression was an issue. Is that a fair
17 summation?

18 THE COURT: Yes or no?

19 Q I'm going to probe it in detail later, sir?

20 MR. GARSON: Objection.

21 THE COURT: No statements, all right, please.

22 MR. AWAD: I'm sorry, your Honor.

23 THE COURT: Is that yes or no to that
24 question?

25 MR. AWAD: Yes.

faM^-.

1 I'll withdraw the question and ask it in
2 another way.

3 Q Doctor, would it be a fair interpretation of your
4 testimony here this morning that you are of the opinion, and
5 you told this panel of jurors that compression was not an
6 issue for in your opinion; yes or no?

7 A I can't answer that the way it is phrased.

8 Q I'll ask you this: Was compression an issue in
9 at all?

10 A We talked about compression.

11 Q Yes or no, was it an issue?

12 A It certainly is an issue, yes, it is an issue.

13 Q Is the -- is compression, in your opinion, a
14 matter that affected after 7 p.m. on
15 October 31, 2002?

16 A My opinion is it is not causing significant
17 compression.

18 Q I've heard you say that a number of times this
19 morning, significant, so let's examine that word significant
20 for a moment.

21 It is true, is it not, that . was experiencing
22 compression from the spinal bleed; yes or no?

23 A You can't answer that.

24 Q You can offer an answer that there wasn't
25 significant compression, but you can't offer an answer that

1 there was some compression.

2 A There was some displacement and some compression,
3 that's not what you asked before. Yes, there was some
4 displacement and some compression; yes, there was.

5 Q So is your quarrel with neuroradiology, and at
6 Lenox Hill then, based on the degree of compression that was
7 present?

8 MR. GARSON: I object as to form, judge,
9 quarrel.

10 THE COURT: Sustained.

11 Q Right here, Doctor, do you see here on October 31,
12 2002, when the patient is in the hospital and there are no
13 lawyers around, what does neuroradiology say at that time?

14 A Where would you like me to read from?

15 Q What does this say (indicating)?

16 A "Significant."

17 Q What does that report say by neuroradiology?

18 A "Midline with significant cord compression."

19 Q Is your disagreement with the neuroradiologist at
20 Lenox Hill Hospital based, not on whether there was cord
21 compression but how one or more neuroradiologist's interpret
22 the quality of the cord compression?

23 A I'm not sure what quality of cord compression is.
24 I think the answer to the question is I disagree. I don't
25 have a quarrel with them on the degree of cord compression

1 that they describe in their report.

2 Q Now, you know, of course, right, because you were
3 provided the documents, that the patient's complaint
4 involving Dr. Holtzman is that he did not relieve the --
5 I'll use the words, "significant cord compression," in a
6 timely manner, correct?

7 A Yes.

8 MR. GARSON: Objection to form.

9 There never has been such a complaint, judge.
10 I just objected to the form.

11 THE COURT: I'll allow it. Anyway, it has
12 been answered.

13 THE WITNESS: Yes.

14 Q And you also note, do you not, before you offered
15 these opinions here this morning, that when Dr. Jahre, four
16 years later, was given the opportunity to retract, modify or
17 change her position, by the questioning of either lawyer,
18 that she specifically gave sworn testimony that four years
19 later, looking at the films, there is significant cord
20 compression present.

21 Did you see that testimony?

22 A Yes.

23 Q Are you aware that Dr. Jahre works at Lenox Hill
24 Hospital, a place where Dr. Holtzman, himself practices
25 neurosurgery?

1 A Yes .

2 MR. AWAD: Your Honor, going to Dr. Jahre's
3 sworn testimony, page 58, line ten.

4 THE COURT: Give me a second.

5 Is it 58 at the bottom?

6 MR. AWAD: Lines ten through 17, your Honor.

7 THE COURT: Are you telling me the page
8 number at the bottom or in the middle of the page?

9 MR. AWAD: You know, judge --

10 THE COURT: It is probably 58 in real time.

11 MR. AWAD: Your Honor, perhaps we should
12 get --

13 THE COURT: Never mind, I have it, I think.

14 MR. AWAD: Your Honor, if I may approach,
15 here are the pages I have been referring to. It was
16 typed up in a different way.

17 Mr. Garson, if you need the updated version
18 we have a copy for you, so that we would all be on the
19 same page.

20 MR. GARSON: Thank you.

21 THE COURT: All right, moving onwards.

22 MR. AWAD: May we display that now.

23 I want you, Doctor, I want you to assume this
24 is the testimony that Dr. Jahre gave on the 22nd of
25 September 2006, a question by me.

1 "Question: Having had the opportunity to
2 review these films recently, Doctor, do you have an
3 opinion as to whether or not you need to modify or
4 change your opinion at all, as to the report that
5 states that there was moderate, severe compression of
6 the cauda equina nerve roots with deviation to the
7 left?

8 "Answer: There's nothing to be changed."

9 Are you aware of that testimony as well?)

10 A Yes.

11 Q And, are you here today offering opinions to this '
12 jury, that the neuroradiologist, who is chief of)
13 neuroradiology at Lenox Hill, who recorded contemporaneously {
14 in 2002, and, again, was offered an opportunity to review j
15 the films, is it your opinion that she is just wrong when j
16 she reads the films? |

17 A Yes. \

18 Q Have you at any time called or spoken to her about \
19 your insight into the care and treatment to this patient's !
 i
20 evaluation, after you met with Mr. Garson and knew that you t
21 would be coming as a defense witness? t

22 A I have never spoken to her. |

23 Q By the way, Doctor, if, in fact, she was right and j
24 you're wrong, hypothetically, the severe compression of the ;
25 cauda equina nerve roots, with deviation to the left, could v

1 potentially be the mechanism causing the clinical
2 presentation of this patient, correct?

3 A Yes.

4 Q So, the issue then presented, as I understand by
5 your testimony is: In looking at these various films --
6 withdrawn.

7 Much of Dr. Abrahams testimony was read to you
8 this morning towards the end; do you remember that?

9 A Whatever was read, yes.

10 Q Do you remember that Dr. Abrahams basically
11 offered testimony -- withdrawn.

12 In reviewing Dr. Abrahams testimony out of his
13 opinions, did you find that he supported or criticized the
14 opinions of Lenox Hill Hospital?

15 A He concurred with the interpretation.

16 Q Now, this morning, just to complete this -- we can
17 take that down.

18 Just to come back to this for a moment.

19 I'd like this exhibit --

20 THE COURT: May I have the easel, please.

21 Q Doctor, how would you describe the distance in the
22 human anatomy that is covered from the arachnoid to the pia?

23 A Small. I would say a few millimeters.

24 Q I want you to assume one witness here said that it
25 could be as thin as one millimeter.

1 I want you to assume that.

2 You said a few millimeters?

3 A Yes, I said that.

4 Q A few millimeters, correct.

5 Could you please, on this ruler-, on this ruler, I
6 could only get this one color, your Honor, it was at Duane
7 Reade, this afternoon.

8 Could you please, please show the jury what one
9 millimeter is on that ruler?

10 A (Indicating) I hope they can see it, there's an
11 inch scale and a centimeter scale. The centimeter scale
12 divided into millimeters, so it would be between two of
13 these lines that represent one millimeter.

14 Q So, on the top portion -- well, I'm sorry if I
15 didn't follow.

16 Doctor, am I correct, when you look at this ruler,
17 at the top of the ruler, it is divided into millimeters and
18 into centimeters.

19 A Yes, every ten millimeter is one centimeter.

20 Q And as we look at the top of this ruler, at the
21 top of it, I know the measurements; the other day I started
22 to ask a physician to compute how many millimeters there
23 were in a centimeter, and we didn't get to get that done.

24 A 2.54 centimeters in an inch.

25 Q In an inch; but how many millimeters?

1 A 25.4 millimeters in an inch.

2 Q So, 25.4 millimeters in an inch, correct?

3 A Yes.

4 Q Now, if we were to take 25.4 millimeters on this
5 ruler we would come to basically the halfway point between
6 number two and number three on that side, correct?

7 A Yes.

8 Q But, if we were to actually talk about the
9 distances in the human anatomy, it would be somewhere
10 between one and three of these lines at the top of the
11 ruler, correct?

12 A It depends what you're talking about.

13 Q The distance between the pia and the arachnoid,
14 the two coverings, and I'm not holding you to exact, but I
15 thought you said several of them?

16 A It would be at least several millimeters, and we
17 can measure it on the film. It would be several
18 millimeters.

19 Q So several means, let's say about three?

20 A Three to five, yes.

21 Q You say three to five.

22 I just want to know, Doctor, where -- here is the
23 arachnoid membrane, right, is this the arachnoid membrane?

24 A Yes, that's labeled arachnoid membrane.

25 Q Do you think this whole drawing here is drawn in

1 what we sometimes refer to, to scale?

2 A It is hard for me to calculate. I have to
3 calculate how far that big -- how far the dura is, the
4 lamina is. In average patients, patients are different
5 size, adults and kids. I can't answer that question
6 exactly.

7 Q A neuroradiologist reading the real films is
8 aware, she or he is aware, are they not, that the distance
9 that we have discussed between the pia and the arachnoid on
10 this ruler, would be three or four of these little digits at
11 the top of the ruler, correct?

12 A Every film has a scale on it, as I mentioned,
13 showing exactly how far something is on this film, not
14 exactly, but close to what it is, right on the film.

15 Q This morning -- this morning, I thought that you
16 spent a considerable amount of time on this exhibit, talking
17 about the epidural space, correct?

18 A I spent very little time on that exhibit. I tried
19 to concentrate on the films.

20 Q Would you say that this exhibit was created,
21 according to a physician's recommendation, as to how the
22 anatomy of _____ was being affected on the
23 night of October 31?

24 A It can't be directly related to the plaintiff
25 because she had findings in her spine, with the lamina were

1 pronounced and with the extra bone formation -- you can see
2 on the CAT scan, as reported by the neurosurgeon; so this
3 was not related directly to the patient.

4 If this is anything, it is called a normal
5 patient.

6 Q As I understand it, where is the needle going
7 here, this epidural catheter?

8 A It is extending through the inner spinous space
9 into the epidural space.

10 Q Now, is this epidural space, is this, in your
11 opinion, drawn to scale here as well; or is that off?

12 A The drawing is for illustrative purposes. I don't
13 know if it is exactly drawn to scale.

14 Q Wait a minute. You offered testimony this
15 morning. I don't recall the specifics of it, but you
16 offered answers to Mr. Garson's questions. We spent time
17 looking at this.

18 A We spent very little time on that exhibit.

19 Q I'll let the record reflect how much time.

20 By the way, Doctor, speaking of exhibits, this is
21 one that Mr. Garson and Dr. Holtzman have been showing to
22 the jury, it is not in evidence.

23 MR. GARSON: Objection to that, judge.

24 THE COURT: I don't think it is in evidence.

25 It is based on something that's in evidence. That we

1 can agree on.

2 MR. AWAD: All right.

3 Q First of all, Doctor, I just want to make sure I
4 have this right. This is not an enlargement, merely an
5 enlargement of one of these films, okay; it is more than
6 that, is it not?

7 A (There was no verbal response.)

8 Q Is that a positive?

9 A You're referring to the way it is shown, so it is
10 a film that either the light hits the film and reflects off
11 compared to a negative X-ray, where you view the light
12 through it.

13 Q Yes, exactly.

14 A So, yes.

15 Q Viewing the light is some consideration in
16 neuroradiology, is it not?

17 A You have to have enough light to view the film.

18 Q But the film you're reviewing is not, quote, a
19 positive; like here it is actually a negative; that's put up
20 on some sort of shadowbox, as we lawyers refer to them,
21 correct?

22 A You have to be careful with your terminology, with
23 positive and negative. As you know, on a film, if you look
24 on the black and white pictures, the black and white will
25 look one way. If you take the film negative that the

1 picture was generated from, that, as you probably are aware,
2 has the opposite image, black and white. You shine through
3 it to create the photograph. So that negative looks
4 opposite, in terms of black and white. We're talking black
5 and white only. And then the picture, this is not a
6 negative, this is different in the way it is viewed, that
7 the light is not coming from behind, but this is,
8 essentially, grey on there, grey on the picture, things are
9 white on this, and are white on the picture.

10 Q Oh, the shading is different on Exhibit A; the
11 shading between black, white and grey is different; is that
12 not what would actually be seen on the film?

13 A No, I didn't say that. I said it is very similar,
14 trying to reproduce what is on the film. You used the term
15 positive/negative in those situations, that is opposite.
16 This is not -- this is trying to reproduce, exactly, what's
17 on the film.

18 Q You said trying?

19 A That's why, most of the times, I referred to the
20 films. I didn't use the exhibit very much. I didn't use
21 this. I concentrated on the film. That's the issue in the
22 case.

23 (Ted Lukew relieved Daniel Olarnick
24 as the official court reporter.)

25

1 Q Would you agree, doctor, that this
2 Exhibit may be less reliable to look upon as a
3 neuroradiologist than the films that we have here
4 that the treating neuroradiologist was looking at
5
6 on the evening of October 31?

6 A I prefer to look at the films that was
7 taken, not any -- nothing else.

8 Q By way, did you suggest to Mr. Garson at
9 all that maybe this would be an effective 1
10 illustration to show the jury? ;

11 A In fact I said the opposite. I said ?
12 let's just stick to the films because the films are i
13 the films that was taken that's at issue, nothing I
14 else.]

15 Q Most respectfully, sir, have you read \
16 anything that Dr. Holtzman has said here? 1

17 A Yes. I

18 Q Okay. Did you read his testimony from 1
19 yesterday, did you get a chance to scan it at all? f

20 A I read from Friday, not yesterday. \
21

21 Q Do you know whether or not Dr. Holtzman
22 was holding this in front of the jury for 15 or 20 \
23 minutes at one time yesterday? 1

24 A Couldn't tell from the transcript where \
25 that was. {
 i

1 Q Now, this morning when you became --

2 MR. AWAD: Your Honor, if I could
3 just have a moment.

4 Q Doctor, this morning I believe that the
5 first films you displayed to the jury about the MRI
6 of November 1st, I think you showed series image
7 12, image 16 and image 17. Those are the first
8 images that were displayed to the jury, do you
9 recall that?

10 A I recall showing the jury the images from
11 the MRI. I don't recall the number, the specific
12 image number of each one.

13 Q Who decided, was it you, Mr. Garson, or
14 somebody else, who decided the order of the images
15 that you were going to display to the jury?

16 A I suggested -- me.

17 Q You. Now, I want you to assume that the
18 first images you displayed were images 12, 16 and
19 17.

20 Do you recall that at all?

21 A On the patient's MRI?

22 Q Yes.

23 A I know we showed at least two or three
24 sheets. So there are a lot more images that were
25 up there than just two or three that you mentioned,

1 two or three sheets.

2 Q Did you read Dr. Jahre's deposition about
3 her interpretation of the MRI, once again, four
4 years later?

5 A Yes,

6 Q And when you said that you disagreed with
7 her, did you see her specific testimony as to what
8 she said were the specific images that showed the
9 severe compression, do you recall her testimony on
10 that point?

11 A I recall the sum and substance of her
12 testimony. I don't recall which image she said
13 this or which image she said that.

14 Q It was a coincidence then that you chose
15 the first images, images 12, 16 and 17, and which
16 she had specifically said it was series C -- series
17 6, number 6, 7, 8, 9, 10 and 11, would that be a
18 coincidence?

19 A Those numbers aren't the same you just
20 said before as the ones that I used.

21 Q That's what I'm asking. Is it a
22 coincidence that you chose to display to the jury
23 12, 16 and 17 which Dr. Jahre never indicated was
24 the proof of the severe compression?

25 A I showed initially the MRI that we all

1 saw, the sagittal T1 and the sagittal T2 that were s
2 there. There were multiple images on those two f
3 series. I didn't just show three images. >

4 Q I could ask the court reporter to read I
5 this stuff back. You have no memory that you
6 deliberately used 12, 16 and 17?

7 MR. GARSON: I'm going to object !
8 now. I'm trying not to object this
9 afternoon. But I'm objecting now. v

10 THE COURT: Let's not make -- let's 5
11 just keep it question and answer. All right? 1

12 A I can answer the question now. I

13 THE COURT: You can. I

14 He said he can answer the question. \
15 Let him answer. \
16

17 A One of the questions I recall was to \
18 circle some nerve roots. I selected three images f
19 that showed some nerve roots. f

20 The question was not what did I
21 Dr. Jahre say. The question was not directed at
22 where the cone was. The question was my !
23 recollection, could you circle the nerve roots. I f
24 circled a few sample nerve roots. I

25 Q Do you recall, doctor, that I was asking I
for the film to be specifically identified by you J

1 as you were placing them up on the screen?

2 A Yes.

3 Q Do you recall, doctor, that Dr. Jahre --
4 did you read her deposition in which she
5 specifically identified the films on the MRI that
6 showed the severe compression with the
7 displacement?

8 A Yes.

9 Q Tell the jury what images Dr. Jahre said
10 show the severe compression on MRI?

11 A I would be more accurate if I had her
12 deposition. I don't recall. I read her deposition
13 and looked at the films. The images where the
14 conus medularis is, depending on the series vary,
15 on the axial T2 weighted sequences. The distal
16 spinal cord was in the lower images, 2, 3, 4, 5, 6
17 and 7. I don't recall the specific ones that she
18 made reference to.

19 Q How much time did you spend reading her
20 deposition on that?

21 A An hour to two. An hour. Somewhere
22 between an hour and two hours.

23 MR. AWAD: Could we please display
24 Dr. Jahre's testimony beginning on Page 43,
25 - line 17 through line 24.

1 THE COURT: All right. There is a
2 comment that should not be displayed.

3 MR. AWAD: I have just the lines,
4 your Honor, 17 through 24.

5 THE COURT: Okay.

6 MR. AWAD: Could we please display
7 that for the jury.

8 Q Doctor, do you recall this testimony?

9 "QUESTION: And if I could, doctor,
10 could I ask you to tell us which slices or
11 portions of the MRI examination depict the
12 severe compression of the nerve roots of the
13 cauda equina?

14 "ANSWER: Yes. The series is 6 and
15 the images are number 6, number 7, number 8,
16 number 9, number 10, number 11."

17 Do you recall reading that
18 testimony?

19 A Yes.

20 Q Would you agree, doctor, that reference
21 to images 12, 16 and 17, if there is any -- if
22 there is any implication that images 12, 16 and 17
23 were used by Dr. Jahre to support the severe
24 compression, that that would be a wrong
25 implication?

1 A We didn't spend an hour on that. The
2 purpose again was to try to show what normal was so
3 I can explain what abnormal was. We then went and
4 discussed those images or several of those images

6 Q Do you agree then, doctor, sir, that
7 series 6, number 6, 7, 8, 9, 10 and 11 do show
8 compression of the spinal cord?

9 A The spinal cord is not even in those
10 images. It shows some displacement of the nerve
11 roots of the cauda equina.

12 Q Okay. You're right. And it's the cauda
13 equina syndrome that we're dealing with, isn't
14 that?

15 A Yes.

16 Q The jury is well aware that the cord and
17 at some point, once it ends, the nerve roots
18 continue first in terms of a cona, and then in
19 terms of the cauda equina.

20 Okay. That is the area specifically
21 that you would expect to see something, if in fact
22 blood is causing a compression effect on the cauda
23 equina, yes or no?

24 A One place you can see it is at that
25 level, yes.

1 Q That specifically is the level that the
2 chief of neuroradiology at Cornell, the chief of
3 neuroradiology at Yale, and themselves said it was
4 located.

5 You have no quarrel with that, do
6 you?

7 A Not the chief at Cornell.

8 Q You're right. She only graduated number
9 one in her class at Cornell. You're right.
10 She's the chief of neuroradiology at Lenox Hill and
11 she got a position at New York Cornell on the
12 faculty. You're right. I misspoke.

13 A Restate the question then.

14 Q You agree, right, doctor, that any
15 neuroradiologist looking at series 6, images 6, 7,
16 8, 9, 10 and 11 could not offer an opinion that
17 states that there is no compression there and have
18 that opinion reviewed by any colleague or peer
19 group, correct?

20 MR. GARSON: Objection to form.

21 THE COURT: Yes, sustained.

22 Rephrase it.

23 Q Doctor, you agree that a neuroradiologist
24 could not look at these images and then offer
25 expert testimony that compression was not present

1 on those images?

2 MR. GARSON: Same objection.

3 THE COURT: No, I'll allow that.

4 A I'm a neuroradiologist. I'm a board
5 certified neuroradiologist. I'm a CAO
6 neuroradiologist, we have a certificate of added
7 qualification. And I looked at these images and do
8 not appreciate significant compression of the nerve
9 root at that level.

10 Q You keep using that word significant. I
11 asked you specifically is there compression, is
12 there compression there, sir?

13 A No; displacement without compression.

14 Q There is no compression there, none,
15 zero, that's what you are offering here?

16 THE COURT: Yes or no.

17 A There's minimal, if any.

18 Q. Minimal if any.

19 That's a little bit different than
20 this morning. I think this morning you used the
21 term they are crowded, the nerve roots are
22 crowded. Do you recall using that?

23 A Crowded in location. Compression is
24 being squished and flat.

25 Q I just want to ask you. I know I'm

1 jumping. It's late. Withdrawn.

2 You use the term this morning there
3 was displacement with crowding. That was the word
4 that I heard you use this morning, crowding, is
5 that correct?

6 A Yes, I believe so.

7 Q Does crowding imply that there is some
8 increased pressure within the thecal sac?

9 A It implies that there is increased
10 pressure pushing the nerve roots together or that
11 the nerve roots are scarred together and adhered
12 together.

13 MR. AWAD: Could I hear the question
14 and answer back, your Honor?

15 THE COURT: Read it back.

16 (Whereupon the record was read) .

17 Q Would you agree, doctor, that that
18 description of the nerve roots is considered to be
19 an abnormal state of events for the nerve root of
20 the cauda equina; yes or no?

21 A Can I hear the question again?

22 MR. AWAD: Sure.

23 THE COURT: Read it .

24 (Whereupon the record was read) .

25 A Yes, that's abnormal.

1 Q Would you agree, doctor, that that
2 abnormal state of affairs from •
3 cauda equina deserve
4 neurosurgical attention following the MRI of
5 November 1st?

6 A That's up to the neurosurgeon who treated
7 the patient, not up to me.

8 Q Do you recall what it is that Dr. Jahre
9 said in her report of a MRI regarding Dr. Holtzman?

10 A I believe there's an entry discussed with
11 or discussed results with Dr. Holtzman.

12 MR. AWAD: Page 2 of the MRI.

13 Q Now, may I ask you, sir, this last
14 sentence:

15 These findings were reported to
16 Dr. Holtzman upon conclusion of the examination.

17 Let's stop there. Do you see those
18 words?

19 A Yes.

20 Q Would a fair reading of those words mean
21 that Dr. Holtzman was told by neuroradiology that
22 they thought there was mildly severe compression of
23 the cauda equina after the MRI was done?

24 A No. It will be a fair interpretation,
25 yes.

1 Q When you report your findings, do you
 2 always say, words in sum and substance, these
 3 findings were reported to Dr. Smith or to Dr. Jones
 4 upon the conclusion of the examination?

5 A Not every case. It's interpreted at the
 6 time of the examination. If it was, yes, the
 7 report will say these results were reviewed with
 8 doctor so and so at the time of the examination, or
 9 equivalent verbiage.

10 Q Would you consider that in this case that
 11 to be a medically significant event, that
 12 neuroradiology told Dr. Holtzman, according to this
 13 report, that there was severe compression of the
 14 cauda equina and deviation to the left, sometime at
 15 the conclusion of the examination, which apparently
 16 was around 2:30 a.m. on November 1st?

17 A Just not sure what the question means.
 18 The standard and accepted practice,
 19 you report results. For example, in our practice,
 20 all studies, CT scans done at night, you get a
 21 preliminary reading at the time of the
 22 examination. Is that medically significant. I'm
 23 not sure exactly what that means.

24 The CT's done with not yet a
 25 preliminary result. If you can explain to me what

1 you mean what is medically significant. The result
2 was given to him. I could answer the question a
3 little better.

4 Q Perhaps I'm not clear.

5 These findings were reported to
6 Dr. Holtzman upon conclusion of the examination.

7 Neuroradiology interpreting, reading
8 this report told him about 2:30 in the morning in
9 their opinion this is moderately severe compression
10 in the cauda equina, correct?

11 A Yes.

12 Q Fair reading of that?

13 A Yes.

14 Q Now, and then it goes, additional note,
15 and at 9:30 a.m. on November 1, that's another
16 significant time?

17 A Yes.

18 Q In reading the hospital record, did you
19 have any doubt that the Defendant in this case had :
20 gotten neuroradiology advice about compression by
21 2:30 in the morning, do you have any doubt about
22 that?

23 THE COURT: Yes or no?

24 A I don't know exactly what time that
25 report was given. But he got a result after the

1 examination. Doesn't say what time that was.

2 Q Did you read Dr. Holtzman's deposition,
3 the one that I took of him maybe a year or so ago?

4 A Yes.

5 Q Did you see that I asked Dr. Holtzman
6 specifically about the communication?

7 A Yes.

8 Q Did you see that Dr. Holtzman stated in
9 reading of the neuroradiologist was given to him in
10 one fashion or another consistent with that note?

11 A Yes. I don't remember what time he got
12 the note he indicated.

13 MR. AWAD: Please display the CAT
14 scan report. Please enhance the last, the
15 impression. Thank you.

16 THE COURT: Can it be made larger?

17 MR. AWAD: I think we can live with
18 this, your Honor.

19 Q Doctor, do you see again these findings,
20 right after the word where I got the red dot. Is
21 this blocking you?

22 Do you see this before: These
23 findings were discussed with Dr. Robert Holtzman
24 upon completion of examination?

25 Do you see that?

1 A Yes.

2 Q Would a fair reading of that mean that at
3 the end of the CT exam, when it was completed, the
4 neuroradiology told him, okay, that there was
5 diffuse acute hemorrhage, and that there were
6 significant displacement and compression of the
7 cauda equina, is that a fair reading?

8 A In general, yes.

9 Q Do you have any reason to believe that
10 what the chief of neuroradiology said in 2002 in
11 the hospital record is at all inaccurate as to when
12 and where Dr. Holtzman was given the information
13 regarding how her spine, spine was
14 appearing to neuroradiology, any doubt about that
15 at all?

16 A No.

17 Q Now, would you agree, sir, would you
18 agree that if the CT was performed -- I think you
19 gave the time of the film, shortly after 10:00 p.m.
20 that night?

21 A Yes.

22 Q Would you agree, sir, that sometime after
23 10:00 p.m. that night, and before the MRI patient
24 was taken for the MRI, that it is likely that
25 Dr. Holtzman knew that?

1 A Dr. Holtzman had the results?

2 Q Yes.

3 A Yes, at some point after that, yes.

4 Q Now, if Lenox Hill and Yale are correct
and you're wrong, they are right and you're wrong.
6 would you agree, sir, if they are correct and
7 you're wrong, that at that point the compression of
8 the cord/cauda equina possibly was presenting an
9 issue of paralysis becoming permanent at that
10 point?

11 MR. GARSON: Objection.

12 THE COURT: Yes. Sustained. \

13 Q Do you agree, doctor, that that)
14 compression of the cauda equina is significant, \
15 could be presented to the patient an issue in which I
16 the neural tissue is becoming permanently damaged? j

17 MR. GARSON: Objection. I

18 Calls for speculation, could be j
19 presented. \

20 THE COURT: Rephrase it. Make it an \
21 opinion question. I

22 Q Doctor, you would agree, would you not, 1
23 that significant displacement and compression of \
24 the cauda equina does present a risk of permanent I
25 neural damage, does it not? \

1

1 A If it is present, yes.

2 Q So two weeks ago or three weeks ago,
3 Mr. Garson comes to you and tells you that he's
4 defending a case concerning a neurosurgeon, right?

5 A In general, yes.

6 Q If you take the hospital record on its
7 face value, if you take the chief of neuroradiology
8 in what she says at the hospital where Dr. Holtzman
9 practices at, at her word, and her opinion, okay,
10 there would be, in your opinion, sir, no excuse for
11 Dr. Holtzman at any time, at any time to be ;
12 thinking, to be thinking at any time about tumor? \

13 A That's incorrect. \

14 Q This morning you brought up tumor, right? \

15 A Yes. \

16 Q You brought up tuberculosis? j

17 A Yes. ;

18 Q Nothing in the hospital record about
19 tuberculosis, right? j

20 A The patient had an abnormal chest X-ray
21 i
22 with calcified lymph nodes. And one of the common ;
23 causes of calcified lymph nodes is having i
24 tuberculosis. \

25 Q And that's what you think was causing the]
 loss of her motor function below her waist after

1 failed spinal attempts, five, six times?

2 A No. What I thought is when I looked at
3 the images as I discussed, is a differential
4 diagnosis for the findings. And I have to be able
5 to tell the neurosurgeon reasonably confident, if
6 he's going to operate and consider operating on the
7 patient, what's going on with the patient.

8 Tuberculosis will have a different
9 treatment. Multiple myeloma of the spine will have
10 a different treatment. So I have to be confident
11 of the findings and what they mean in order to tell
12 the surgeon to decide what treatment if any surgery
13 or otherwise needs to be done.

14 Q Let me be clear about this then.

15 It's your suggestion that if the
16 surgeon was going to do an operation to relieve the
17 compression, that it would be your recommendation
18 with after the CT and MRI,
19 don't do it yet, let's figure out whether or not
20 there's a tumor there, is that what you are
21 offering?

22 A No. My offering is what I said --

23 Q Thank you.

24 A -- that's the finding on the film that
25 are there.

1 THE COURT: Would you mind just
2 standing over there.

3 MR. AWAD: I'm sorry. Sorry.

4 Q Again, my question, sir, is, are you at
5 all offering to this jury, okay, that the presence
6 of tuberculosis or tumor would need to be further
7 worked up by you before you would say to the
8 surgeon, you might want to consider operating to
9 relieve that compression?

10 MR. GARSON: Objection. Asked and
11 answered twice.

12 Q Yes or no, doctor, you withhold your
13 opinion until you worked that up?

14 MR. GARSON: Same objection, judge.

15 THE COURT: I'm sorry, Ted. Read it
16 back.

17 (Whereupon the record was read).

18 MR. AWAD: Perhaps -- it's 20 after
19 and I know everybody, we are going to finish
20 the witness absolutely. Perhaps if I took a
21 five minute recess, get myself -- five minute
22 recess.

23 THE COURT: That's an excellent
24 idea. I think you all need it this
25 afternoon.

1 Okay. Please, don't discuss the
2 case amongst yourselves. Keep it down to,
3 I'll be more generous, just five minutes.
4 Make it seven and a half minutes. All right.

5 (Jurors Exit) .

6 (Whereupon a recess was taken) .

7 (Continued on following page)

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1 (Daniel Olarnick relieved Ted Lukew
2 as the official court reporter.)

3 THE COURT OFFICER: The jury is entering.
4 Watch your step; take your places, please.
5 Please remember you remain under oath.

6 THE COURT: Jurors, we took a little extra
7 time trying to see where we are going to go. We're
8 definitely finishing Dr. Schwartz this afternoon. If
9 it is exactly at five, or a few minutes after, it will
10 be before 5:30. That's a guarantee, otherwise major
11 punishment will happen, done personally by me.

12 Mr. Awad, please go ahead.

13 MR. AWAD: Rapidly.

14 BY MR. AWAD:

15 Q I'd like to display and read to the jury Dr.
16 Jahre's testimony at page 58, lines 18 to 22.

17 Doctor, did you see and read this testimony of Dr.
18 Jahre that, with respect to the MRI exam, as to whether or
19 not there was anything that suggested a tumor, what her
20 answer was?

21 A Yes.

22 Q Would you state what her answer was, under oath?

23 A "Answer: There no evidence of tumor."

24 MR. AWAD: Could we please display Dr.
25 Holtzman's 3 o'clock note.

1 Could we please enhance the note, Mr. Rojas,
2 stopping at the words "CT myelogram."

3 Q Are you familiar with this note?

4 A Yes.

5 Q Did you discuss this note with Mr. Garson? ;

6 A I don't recall if I specifically discussed this
7 note with Mr. Garson.

8 Q Doctor, this is the defendant in the case, this is ,
9 his note. He wrote on November 1st about the MRI.

10 Are you suggesting you did not have a conversation
11 about this note to this jury? '

12 A I don't recall having a conversation about this j
13 note. .;

14 Q Did you, yourself, read it and decide not to bring
15 it up to Mr. Garson? f

16 A I'm not sure what a yes or no answer will imply. \
17 I read that as part of the documents.

18 Q Well, specifically, Doctor, you know that Dr. \
19 Abrahams was here, right, and Dr. Abrahams, I think, \
20 specifically offered testimony that there is no such thing \
21 as a question of a conus syrxinx; do you recall Dr. Abrahams \
22 said his reading of the films doesn't raise a question of \
23 that, correct? \
24 A Yes. f

25 Q Did you see what Dr. Jahre said about that? Do i

1 you recall her exact testimony?

2 A I do not recall her exact testimony.

3 MR. AWAD: Could we please then show -- could
4 we do a side-by-side.

5 Would you please just display 17 through the
6 bottom of the page.

7 Can you move it over just a bit.

8 Doctor, here we have a question of conus
9 syrinx written by Dr. Holtzman, apparently on
10 November 1st.

11 Does this refresh your recollection what Dr.
12 Jahre said?

13 THE WITNESS: Yes.

14 Q Could you please read the question and answer
15 about the conus syrinx?

16 "Question: Doctor, with respect to a
17 question of conus syrinx, is there any indication on
18 thees films of that?

19 "Answer: No."

20 Q Would her answer be consistent with the specific
21 neuroradiology report in the record regarding MRI?

22 A Yes.

23 Q No one on MRI in neuroradiology report raised the
24 issue of this thing called conus syrinx, correct?

25 A We don't know what was verbally said at the time

1 of the exam, but certainly by the written document there's
2 no reference to that.

3 Q I will probe that for a moment.

4 We do know what attending neuroradiology said
5 because we have their statement that they reported specific
6 findings to Dr. Holtzman, correct, that's the one we went
7 over?

8 A Yes, you showed me that we reviewed that.

9 Q So by inference we do know what neuroradiology
10 attending said, because it was recorded in the hospital
11 record; it was reported by the patient, still in the
12 hospital, and it was recorded in the hospital record while
13 Dr. Holtzman was seeing the patient postoperatively, right?

14 A This is no exact transcript of what was said at
15 that time. In fact, at our institution, we always send the
16 reports in writing, just to make sure there is no confusion
17 about what is said at night, or in a preliminary reading, to
18 make sure we know exactly. In her report she said these
19 results were reviewed and she did not say she mentioned a
20 syrxinx at that time. We don't know exactly what was said.

21 Q Are you suggesting to the jury, Dr. Jahre or
22 another board certified neuroradiologist would have
23 whispered that to Dr. Holtzman and then not write it down in
24 the hospital record?

25 MR. GARSON: Objection.

1 THE WITNESS: Not in the slightest.

2 MR. GARSON: Did you rule on the objection?

3 THE WITNESS: I --

4 THE COURT: I'll allow it.

5 THE WITNESS: I didn't answer the question.

6 Q I didn't hear you.

7 MR. GARSON: I guess there's an open
8 question.

9 THE COURT: Wait, wait, I thought you
10 answered it.

11 THE WITNESS: I didn't answer it.

12 THE COURT: You didn't?

13 THE WITNESS: I did not.

14 THE COURT: Read back the question so we can
15 get an answer.

16 (The testimony as requested was
17 read by the reporter.)

18 THE WITNESS: Not in the slightest.

19 Q As I recall this morning, Doctor, you didn't offer
20 any testimony about the question of conus syrx, is that
21 true

22 A That's correct.

23 Q Is that your decision, not to offer any testimony
24 about that note?

25 A It was not appropriate to answer the questions

1 that were posed.

2 Q Did you tell Mr. Garson -- let's stay away from
3 that note because I really can't support that.

4 A Absolutely not.

5 Q How about this one, Doctor, this other condition,
6 this diplomyelia.

7 Can you tell the jury what diplomyelia is?

8 A The spinal cord is separated, so you have,
9 essentially, two spinal cords.

10 It is an uncommon congenital anomaly.

11 Q I'll go to the next page, page 59 through 60, only
12 through line five.

13 Doctor, would you agree with Dr. Jahre that there
14 is no duplication of the spinal cord?

15 A Yes.

16 Q There's no diplomyelia, correct?

17 A Yes.

18 Q Can we go back, take both of those off and show
19 the jury, again, Dr. Holtzman's note.

20 Now, Doctor, this note here, complete CT
21 myelogram, you offered no testimony about that this morning
22 either?

23 A That's correct.

24 Q Now, Doctor, do you see whether neuroradiology
25 ever thought that a complete CT myelogram should be done?

1 A There's no record of that.

2 Q How about Dr. Jahre's testimony on that?

3 A I think she said that would not be helpful.

4 Q That would not add any information to the
5 diagnosis, I think, very specifically her words?

6 A That was the sum and substance of what he said.

7 Q By the way, Doctor, if there was any consideration
8 about something called an AVM, an arteriovenous
9 malformation, any consideration about that at all, is there
10 another type of imaging that was available on 2002 regarding
11 the neuroradiological evaluation of the presence or the
12 quality or the issue of AVM at all?

13 A Yes.

14 Q Can you tell the jury what that technology was?

15 A That's called a spinal angiogram. An angiogram is
16 a picture of the blood vessels, you've seen it all on TV,
17 they never called it that. She showed a picture of a heart,
18 they injected red dye, you saw the blood flow, it made
19 pictures of the artery, or they injected blue dye, and
20 that's a picture of the blood vessels. That may be with a
21 model or sample.

22 A A spinal angiogram is where you actually do a
23 similar process on a live patient, where you put a catheter,
24 usually into the groin up into the aorta, that's the main
25 blood vessel, you inject contrast into the aorta or into the

1 branches and you take X-ray pictures, follow it along. It
2 is not red, like on the demonstrations.

3 You follow it along and look at the arteries and
4 see if there's abnormality, abnormal communication between
5 the arteries and veins. If you can show that, that's how
6 you diagnose an arteriovenous malformation. An aneurism
7 could also be shown by that, that's an abnormal artery
8 that's ballooned and dilated, that's abnormal. You do this
9 on a live patient at multiple levels, looking for the blood
10 supply to the spinal cord.

11 Q Would you agree likely, not certain, that Lenox
12 Hill Hospital here in New York City, in 2002, had the
13 facility for angiography?

14 MR. GARSON: Objection, no foundation,
15 because the witness -- there's no foundation.

16 THE COURT: Rephrase it.

17 MR. AWAD: I'll approach it this way.

18 Q In everything you read here, Doctor, anywhere in
19 the hospital record, anywhere in any deposition, did the
20 issue of -- did the issue or request for angiography ever
21 raise itself?

22 A There was no request for an angiogram, that I saw.

23 Q By the way, Doctor, post surgery, this was some
24 discussion, both with yourself and with others about, I
25 think, on the 3rd of November, there's this signal issue

1 that you spoke about this morning, right?

2 A Can you be specific; we talked about a lot of
3 abnormal signals.

4 Q The enhanced signal on the MRI.

5 A Are you talking about the T2 hyperintensity in the -
6 spinal cord.

7 Q The one you talked about to the jury, a
8 differential diagnostic possibility, in comparison to the
9 report on 11/2, is the possibility of a preexisting spinal
10 vascular malformation; do you recall that?

11 A Yes.

12 Q Without the jury, please, how many times between
13 November 3rd, the date of this report, and the date
14 was discharged, how many times anybody discussed in the
15 record, wrote in the record, or considered doing
16 angiography?

17 A I don't think I found -- I don't recall any.

18 Q Do you note whether or not anybody ever diagnosed
19 or even seriously included a differential diagnosis of AVM?

20 A Dr. Jahre, in that report, mentions a dural AVM.

21 Q Did you read her testimony on that?

22 A I read her testimony.

23 Q What does she say about what she meant about that
24 possibility?

25 A I can't recall exactly. I prefer to review it.

1 Q In reviewing the hospital record, Doctor, would
2 you please tell the jury on how many occasions anybody at
3 Lenox Hill Hospital wrote the word infarct?

4 A I remember at least once.

5 Q Could you show us when that is?

6 MR. GARSON: Judge, while the witness is
7 looking, can we approach?

8 THE COURT: Come up.

9 (Discussion held at the bench, off
10 the record.)

11 (The discussion off the record
12 concluded, and the following occurred in open
13 court:)

14 Q Doctor, when you say you believe you saw the word
15 infarct in the record once --

16 A -- yes.

17 Q --do you know who wrote that word?

18 A No, I don't.

19 Q Do you recall whether it was a nurse, a doctor;
20 was it before or after the surgery?

21 A It was before the surgery. I believe it is on one
22 of the reports or one of the requisitions.

23 Q On the requisition slip, is that what you are
24 referring to?

25 A I can't recall exactly what piece of paper it was

1 on.

2 Q Just to be clear about it, Doctor, in the official
3 hospital record of Lenox Hill Hospital the word infarct
4 doesn't appear, right?

5 A I think that was part of the official Lenox Hill
6 Hospital record.

7 Q I'm not going to quarrel with you on that right
8 now. It is too late in the day for both of us.

9 THE COURT: Never mind.

10 Go ahead.

11 Q You read Dr. Jahre's testimony, did you not, about
12 that requisition slip?

13 A Yes.

14 Q It could have been a first year resident?

15 A Yes.

16 She did not know, who, exactly wrote that note.

17 Q Of course that word didn't appear in the
18 handwriting, in the hospital record by Dr. Holtzman, at any
19 time?

20 A No.

21 Q Dr. Holtzman did the operation, right?

22 A He did an operation on her. There were two
23 operations on the patient.

24 Q He did a major spinal surgery, right?

25 A Yes.

1 Q Major spinal surgery. And what did he find?

2 A He found that there was blood in the subarachnoid
3 space. There was adhesions between the nerve roots. And
4 that there was no puncture of the dura, no puncture of the
5 arachnoid, that the bones in the laminae were fused together
6 due to bony, productive changes.

7 Q Did he specifically use the word infarct anywhere
8 in his report?

9 A No.

10 Q Did he specifically use the word decompression in
11 his report?

12 A I believe so, yes.

13 Q And in fact, Doctor, did he specifically describe
14 how it looked to him before he opened up the dura.

15 A Yes.

16 Q Did he describe it as bulging?

17 A He described it as bulging with no puncture sites,
18 yes.

19 MR. AWAD: May we display -- by the way,
20 doctor, bulging, in layman's terms, does that indicate
21 protrusion?

22 MR. GARSON: Judge, none of this was gone
23 into on direct. I asked the witness about the films, I
24 di dn't ask about the report. I respectfully except.

25 THE COURT: You don't want to make a speech.

1 MR. GARSON: No.

2 THE COURT: The word was objection.

3 Overruled.

4 THE WITNESS: Can I have the question read
5 back, please.

6 Q I'll restate the question.

7 Bulging, does that identify to you protrusion?

8 A Not really, no.

9 Q Does it imply to you expansion.

10 A It implies to me a degree of tension.

11 Q Would bulging imply to you the idea of an entity,
12 like a swelling?

13 A Well, things that are swollen bulge out. Like if
14 you hurt your toe it will swell up and bulge out.

15 Q Bulging is a description that Dr. Holtzman,
16 himself recorded that day, when he opened, correct?

17 A Yes.

18 Q You have no reason to doubt that description, do
19 you?

20 A Not at all.

21 Q In addition to which, Doctor, would you agree with
22 Dr. Jahre's testimony that in infarction is a completely
23 separate pathological process from compression?

24 THE COURT: Yes or no?

25 THE WITNESS: Yes.

1 Q Would you agree with Dr. Jahre; okay, when she
2 says she never used the word stroke or infarct herself, at
3 any time, to discuss or describe what was contained on the
4 films?

5 A Yes, she did not use those words.

6 Q Now, other than yourself, who is the only other
7 person involved, either in the medical or legal case of this
8 , other than yourself, to use the word
9 stroke or infarct?

10 A Dr. Holtzman:

11 Q Now, did you see the discharge summary?

12 A Yes.

13 Q I will complete with this:

14 You would agree, Doctor, would you not, if a
15 doctor thought the patient, . had had a
16 stroke or an infarct, that in the course of the usual
17 practice of medicine, somebody would have told her or her
18 family that that was their opinion?

19 A Usually that's accepted practice.

20 Q Do you know if anyone, before was discharged
21 from Lenox Hill Hospital, ever said to her , or to her
22 son-in-law or to her daughter, or anyone, "We think
23 the reason why you're paralyzed is not because of the spinal
24 bleed, we think it is because of this separate pathological
25 process called stroke or infarct; do you know anybody who

1 anywhere hinted about that, before the patient left the | I
2 hospital? | I
3 A I saw no documentation of that. | i
4 Q There's no documentation by Dr. Holtzman with | I
5 that, contemporaneous with his care and treatment of the | I
6 patient while she was -- | f
7 A Not in my review of the records. | I
8 Q Last but not least, I'm going to go back to -- did %
9 you read Dr. Hall, Anthony Hall's testimony? | !
10 A Yes. | 1
11 (Ted Lukew relieved Daniel Olarnick | I
12 as the official court reporter.) > | f
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1 Q Did you read his testimony regarding what
2 the CT showed?

3 A I read it but did not memorize it.

4 Q Do you think that it was consistent
5 with -- I'm finishing with this, your Honor, and
6 sitting down.

7 Page 23, line 11 through line 23 of
8 Dr. Jahre's deposition.

9 THE COURT: What Page, 23?

10 MR. AWAD: Beginning at line 11.
11 And just go to line 23. Read into the record
12 the following, your Honor.

13 "QUESTION: Have you looked at the
14 films, CT films, recently and have you seen
15 imaging that suggests and shows acute
16 hemorrhage?

17 "ANSWER: Yes.

18 "QUESTION: Would you be able to
20 specific image which ones show that?

21 "ANSWER: I can, although it's
22 present on every single slice of that study.

23 "QUESTION: Every slice on that
24 study shows an increased density of the thecal
25 sac consistent with acute hemorrhage?

1 "ANSWER: Yes."

2 Do you agree with that testimony?

3 A I agree with that. And I said that
4 previously, yes.

5 Q Doctor, in order for the thecal sac to be
6 displaced, to move, all right, in order for it to
7 be moved, okay, there has to be some force placed
8 upon it, is that not true?

9 A There are forces on it or there's tension
10 and adhesion pulling it. It can be either pushed
11 one way or being pulled from the other direction.

12 Q In this particular case, the force that
13 was being placed on the thecal sac was the spinal
14 hematoma?

15 A Yes, from within, yes.

16 MR. AWAD: I have no further
17 questions. Thank you.

18 THE COURT: All right. Redirect.

19 Q "DT?'nT'DTrr'zr¹ T ? Y A M T M A rpTnia

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20 BY MR. GARSON:

21 Q Dr. Schwartz, you mentioned earlier --

22 THE COURT: The easel?

23 MR. GARSON: I don't need it.

24 THE COURT: You don't need the
25 easel.