TRIAL TRANSCRIPT OF DR. GEORGE VINCENT DIGIACINTO; 2005 Trial Trans. LEXIS 1580

SUPREME COURT OF NEW YORK, NASSAU COUNTY, TRIAL TERM, PART 19

Index No. 024830/1998

February 15, 2005

Reporter
2005 Trial Trans. LEXIS 1580 *

CECILIA GUERIN, as Administratrix of The Estate of THOMAS GUERIN And CECILIA GUERIN, Individually, Plaintiff, - against - NORTH SHORE UNIVERSITY HOSPITAL, ALAN MECHANIC, M.D., ST. FRANCIS HOSPITAL And ADEL HANNA, M.D., Defendants.

Expert Name: Dr. Vincent DiGiacinto, M.D.

Disclaimer

Counsel

[*1] TORGAN & COOPER, Attorneys for Plaintiff, BY: EVAN TORGAN, ESQ.

HEIDELL, PITTONI, MURPHY & BACH, LLP, Attorneys for Defendants North Shore Hospital, Drs. Mechanic & Hanna, BY: ROBIN R. DOLSKY, ESQ., Of Counsel.

GEISLER & GABRIELE, Attorneys for Defendant St. Francis, BY: GUIDO GABRIELE, ESQ.

Judges

Before THE HONORABLE ZELDA JONAS, Justice And a Jury.

Proceedings

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[2]THE COURT: We're ready to proceed.

[3]Ms. Dolsky, I believe you were examining this

[4]witness, yesterday.

[5] **[*2]** G E O R G E D I G I A C I N T O , M. D., previously duly

[6]sworn, resumed and testified further as follows:

[7]THE CLERK: Doctor, I remind you, you are

[8]still under oath.

[9]THE WITNESS: Thank you.

[10]DIRECT EXAMINATION

[11]BY MS. DOLSKY: (Cont'd.)

[12]Q Good morning, Dr. DiGiacinto.

[13]A Good morning.

[14]Q Yesterday you had explained to the jury why you

[15]believe that it would not have been proper to put a

[16]permanent ventriculoperitoneal shunt in this patient. I'd

[17]like you also to assume that Dr. Stein when he testified

[18]here said that not only should this permanent shunt have

[19]been put in in or around May 30 of 1997 but that it could

[20]have and should have been placed through the left side of

[21]the patient's brain.

[22]Do you have an opinion, with a reasonable

[23]degree of medical certainty, as to whether that would have

[24]been good practice in this patient?

[25]A I do.

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[2]Q And what is your opinion?

[3]A That it would have brought up problems which

[4]make it less than good practice.

[5]Q What type of problems?

[6]A Well, again, I think we've talked about judgment

[7] **[*3]** and decision making in terms of managing the patient. The

[8]problem with putting it in on the left side is that there

[9]was still debris, there was still blood in that side and

[10]there's a significantly higher risk in placing the drain on

[11]the left side that the tubing, which is completely buried,

[12]would obstruct.

[13]So I think given the choice of the clearer right

[14]sided ventricular system versus the more blood laden and

[15]debris laden left side the risk of obstruction is much

[16]higher in putting it in on the left side.

[17]Q There was also testimony that Mr. Guerin was

[18]ambidextrous and I think there was testimony earlier during

[19]the trial by Dr. Ragone, if not also by other witnesses,

[20]that the vast majority of people are left hemisphere

[21]dominant.

[22]Could you just explain to us whether this

[23]patient being ambidextrous would have any significance

[24]regarding which side of his brain was the dominant side

[25]here?

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[2]A It would not have any significance because,

[3]essentially, a hundred percent of patients who are

[4]righthanded are left brain dominant and approximately 95

[5]percent of patients who are **[*4]** left handed are left brain

[6]dominant. Statistically there's a high, high, high, high

[7]probability the patient was left hemisphere dominant.

[8]Q Is there any additional or increased risk in

[9]inserting a ventriculostomy through the side of someone's

[10]brain, the dominant side of their brain?

[11]A Well, there is because one of the potential

[12]risks any time you pass a catheter through the brain is

[13]hemorrhage, damaging surrounding tissue and your concern is

[14]in the left hemisphere or dominant hemisphere, the risk of

[15]hurting structures involved in speech and comprehension is

[16]higher than it is on the right side so unless there's an

[17]incredibly clear necessity of putting it on the left side,

[18]which is the dominant hemisphere, you would prefer,

[19]markedly, to put it on the right side.

[20]Q Dr. DiGiacinto, we went over the CT scan of June

[21]2 which was taken in the morning and, just to refresh your

[22]recollection, before the ventriculostomy was clamped later

[23]in that day, and we went over the changes from May 27 to the

[24]second with the jury. I'm not going to repeat that but, do

[25]you have an opinion as to whether or not **[*5]** the neuro surgeon,
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[2]Dr. Mechanic, the neuro radiologists, who read the scan,

[3]should have noted in their readings of this June 2 scan that

[4]there was mid line shift?

[5]A I do have an opinion.

[6]Q What is your opinion?

[7]A That there was no clear indication of mid line

[8]shift of brain structures. There was no reason to read mid

[9]line shift and that shift of the septum pellucidum, that non

[10]brain tissue structure bowing across was of no clinical

[11]significance whatsoever.

[12]Q Do you have an opinion as to whether or not the

[13]neuro radiologists, the neuro surgeon who was treating this

[14]patient should have noted or found hydrocephalus on this CT

[15]scan of June 2?

[16]A I do have an opinion.

[17]Q And what is your opinion?

[18]A That there was no indication of hydrocephalus.

[19]There was residual dilitation of that frontal horn because

[20]of the blood that had been in there but that's not

[21]consistent or definable as hydrocephalus.

[22]Q I would like you to assume there was a Dr. Denny

[23]who testified here and Dr. Stein, as well, that according to

[24]them that the fact that there is a dilated **[*6]** ventricle on the

[25]left-hand side, that that, in an of itself, is hydrocephalus

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[2]and should have been noted here or unilateral hydrocephalus

[3]and that should have been noted here by everyone treating

[4]this patient.

[5]Do you agree with that?

[6]A No, I don't.

[7]Q Why not?

[8]A Because this dilated ventricle is because of the

[9]previous damage, it's not a dynamic process indicative of

[10]the inability of the patient to reabsorb fluid. It's a

[11]residual of the patient having had a severe hemorrhage and

[12]significant bleeding into that side causing damage of the

[13]surrounding structures, so it's bigger because the tissue

[14]around it has been damaged not because there's an active

[15]process of fluid and pressure build up.

[16]Q How do we know that?

[17]A We know because it stayed that way and

[18]classically when a patient has a hemorrhage like that it's

[19]very characteristic that the ventricle will stay dilated

[20]maybe even forever. It may never return to normal looking

[21]but that does not define an active process of pressure.

[22]Q Talking about the readings by the neuro

[23]radiologists and the reports **[*7]** that are generated, the written

[24]reports, is there a custom and practice in hospitals, in

[25]general, regarding these reports and the time period in
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[2]which they are placed in the record?

[3]MR. TORGAN; Objection. Only this hospital,

[4]Judge, on this issue.

[5]THE COURT: All right. I'll sustain that

[6]objection.

[7]Q Is there a general standard of practice

[8]amongst hospitals?

[9]MR. TORGAN: Judge, on the radiology reports, on

[10]the reading, I would ask it be this case.

[11]THE COURT: Sit down. Let me think.

[12]I'm going to sustain the objection. Well,

[13]this doctor is not -- you have not ever worked

[14]at North Shore?

[15]THE WITNESS: That's correct.

[16]MS. DOLSKY: Your Honor, I think there was

[17]testimony --

[18]THE COURT: I am going to allow it as to

[19]his opinion as to other hospitals as to his

[20]experience but I'll let counsel determine what

[21]to cross examine on.

[22]MR. TORGAN: Thank you.

[23]Q Dr. DiGiacinto, I would like you to assume

[24]there was testimony by a Dr. Denny here that the general

[25]practice in hospitals, or, at least, in the hospitals that
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[2] **[*8]** he's worked in, is that there's usually a time lag of a day

[3]or more between the time of a reading of a CT scan and the

[4]time that that report is actually part of the patient's

[5]hospital chart, do you agree with that?

[6]A That's consistent with my personal experience,

[7]yes.

[8]Q And in this particular case I'd like to --

[9]MS. DOLSKY: Your Honor, I have an exhibit that

[10]was prepared that I'd like to have marked as

[11]Defendant's -- I'm not sure.

[12]COURT OFFICER: L.

[13]MS. DOLSKY: L for identification and if

[14]there's no objection into evidence to aid the

[15]jury. Mr. Torgan saw this this morning. It's

[16]basically a time line.

[17]MR. TORGAN: No objection.

[18](The above referred to item was received

[19]and marked as Defendant's Exhibit L in

[20]evidence as of this date.)

[21]Q Dr. DiGiacinto, have you had occasion this

[22]morning to look at what's been marked as Defendant's L into

[23]evidence?

[24]A Yes, I have.

[25]Q And is that just a very basic time line
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[2]regarding the CT scans taken May 27 through the night of

[3]June 3 in relationship to the time that the ventriculostomy

[4] **[*9]** was clamped and then discontinued?

[5]THE COURT: Wait, just one minute. I don't think

[6]the jury can see this. Can you all see this?

[7]Bob, set up the other easel and put it

[8]right there so that the doctor could see it and

[9]the jury and myself.

[10]MS. DOLSKY: I intend to have it in evidence

[11]later on so the jury --

[12]THE COURT: You are asking questions on

[13]this and I want them to be able to follow now.

[14]MS. DOLSKY: I'll repeat my question.

[15]Q Dr. DiGiacinto, does Defendant's L in

[16]evidence basically reflect a basic time line of the dates --

[17]dates and times of the CT scans that were taken from May 27

[18]through the evening of June 3 and when the ventriculostomy

[19]was clamped and then when the ventriculostomy was removed?

[20]A Yes, it does.

[21]Q And then I'll just refer to that if we need it.

[22]There is an indication of when the ventriculostomy was

[23]clamped, yes?

[24]A It's indicated ventriculostomy clamped at 5:50

[25]p.m. and that's sitting between the June 2 11 a.m. and the
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[2]June 3 10 a.m. scan so that is accurate.

[3]Q And when you say accurate you mean consistent

[4] **[*10]** with the hospital record in this case?

[5]A Yes.

[6]Q I'd like to go to that June 3 ten a.m. CT scan,

[7]and it would be fair to say that the ventriculostomy was

[8]clamped for approximately sixteen hours by then?

[9]A It's ten a.m. and it was clamped around six,

[10]yes.

[11]Q And that's also reflected on this time line?

[12]A Yes.

[13]Q Now, over that sixteen hour period that that

[14]ventriculostomy was clamped how much fluid, cerebral spinal

[15]fluid would be manufactured in the ventricular system, and

[16]we'll go by Dr. Stein's testimony, it's about 500 cc's a

[17]day?

[18]A I think we calculated it's around 300 or 320

[19]cc's of cerebral spinal fluid.

[20]MR. TORGAN: I'm sorry?

[21]THE WITNESS: 300 or 320.

[22]MR. TORGAN: Per?

[23]THE WITNESS: During that sixteen hour

[24]period. That was the question.

[25]Q The five hundred per day would come out to
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[2]approximately twenty cc's per hour?

[3]A Correct.

[4]Q And if this fluid that was being made in the

[5]ventricles was obstructed or there was something obstructing

[6]the flow of that fluid out of the ventricular system into

[7] **[*11]** its normal pathway, if anything, would you expect to see on

[8]on the cat scan on the morning of June 3?

[9]A 320 cc's of cerebral spinal fluid inside the

[10]ventricular system would be about twice the current volume

[11]of the ventricular system as viewed on the CT scan and it

[12]would show ventricular enlargement, ventricular dilitation.

[13]MS. DOLSKY; We'll go to the CT scan now. I'm

[14]sorry, Louise, if you can turn the light lower.

[15]THE WITNESS: May I go down, your Honor.

[16]THE COURT: Yes, you may. Just make sure

[17]the court reporter can hear you.

[18]MS. DOLSKY: How is that, Dr. DiGiacinto,

[19]can you see those?

[20]THE WITNESS: Pretty well, yes.

[21]MS. DOLSKY: If you'd rather get closer we can

[22]have the court reporter --

[23]MR. TORGAN: You can't read the dates or

[24]times on it.

[25]Q I would like you to assume this is June 3
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[2]in the morning and you had said something about the fact,

[3]well, 320 cc's of fluid would be seen on the CT scan.

[4]Is that the case here?

[5]A No, it is not.

[6]Q And when you say no it is not, what do you mean

[7]by that?

[8]A This ventricular **[*12]** system is not enlarged and it's

[9]certainly not changed compared to the study, the previous

[10]study, so there's no evidence that the ventricles are

[11]enlarged here and, again, I think normal volume inside the

[12]ventricular system is 120 or 130 cc's. This is almost three

[13]times that much or two and a half times that much.

[14]Q When you say this is almost three times that

[15]much, this, what we're seeing here?

[16]A The 320 cc's that we're accounting for as being

[17]formed during that 16 hour period of clamping is really more

[18]than twice as much as what's showing in the ventricular

[19]system as an average measurement, so the fact that there's

[20]no evidence of increasing size of the ventricles here means

[21]that the CSF that's been formed, that 320 cc's is being

[22]handled by the body, that is to say it's being reabsorbed by

[23]its usual pathway.

[24]Q Dr. DiGiacinto, you said in answer to my

[25]question just prior to this, these ventricles are in fact
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[1]

[2]enlarged, and that's inconsistent, there is no enlargement

[3]or there is enlargement?

[4]A The ventricles really appear essentially normal

[5]size except for the residual **[*13]** enlargement of the ventricle in

[6]the left frontal horn where the major hemorrhage was, but

[7]they have not enlarged, these are essentially normal

[8]ventricles.

[9]Q When you say they have not enlarged, they have

[10]not enlarged since when?

[11]A Comparing it to the previous scan and really

[12]there's not hydrocephalus on this scan.

[13]Q When you say it hasn't enlarged as compared to

[14]the previous scan, that would be the scan from June second,

[15]sixteen hours earlier, yes?

[16]A Yes.

[17]Q And what is the significance of the fact that

[18]there is no increase in the size of the left ventricle

[19]between June 2 and June 3, morning?

[20]A It means that the cerebro spinal fluid that's

[21]being formed within the ventricular system is being

[22]absorbed, that's true on the right side and it's true of the

[23]left side where the ventricle is larger because of the

[24]previous damage. There is no dynamic process of increasing

[25]ventricular size. There's no dynamic process with poor
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[2]absorption and the development of progressive hydrocephalus.

[3]Q When you say that is that what you mean when you

[4]say there is no **[*14]** hydrocephalus, there is no ongoing acute

[5]process?

[6]A Correct.

[7]Q And, in fact, if we can turn to -- I believe

[8]it's Dr. Ragone's note, and that's page 37.

[9]You can retake the stand, Doctor.

[10]Dr. Ragone on the morning of the third notes

[11]ventriculostomy was discontinued after clamping times 24

[12]hours without development of hydrocephalus.

[13]You agree with that?

[14]A Yes, I do.

[15]Q And is it custom and practice for a neurologist

[16]to review the patient's CT scans as well?

[17]A It's very commonly done, yes.

[18]Q Now, do you have an opinion as to whether Dr.

[19]Ragone, Dr. Mechanic, the neuro radiologists should have

[20]noted a finding, based on this June 3 CT scan of mid line

[21]shift in their notes, in any reports regarding this scan?

[22]A I do have an opinion.

[23]Q And what's your opinion?

[24]A That there was no indication of mid line shift

[25]that merited mention of any kind. I think we've discussed
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[1]

[2]that before with the only thing that might have been across

[3]mid line at all would be the septum pellucidum which is just

[4]the body out portion from the previous **[*15]** ventricular injury.

[5]Q Now, what about hydrocephalus, should -- well, I

[6]think we covered that, in your opinion that there is no

[7]hydrocephalus presented on this scan in terms of an ongoing

[8]process of concern, right?

[9]A That is correct.

[10]Q And when you, as a neurosurgeon, is treating a

[11]patient, such as Mr. Guerin, whose ventriculostomy has been

[12]clamped now for sixteen hours and you are looking at this CT

[13]scan what is it that you're looking for? What is a

[14]neurosurgeon looking for, within good and accepted practice,

[15]in reviewing this CT, ordering it and reviewing it?

[16]A Our critical piece of information is the

[17]ventricular size, we're we're very specifically looking to

[18]see if the ventricles have enlarged to see the patient is

[19]having difficulty reabsorbing CSF. The lack of change in

[20]that ventricular size, the lack of enlargement in the

[21]ventricular size indicates the patient is handling and

[22]reabsorbing cerebro spinal fluid.

[23]Q What about his transependymal flow? The jury

[24]has heard testimony about cerebro spinal fluid leaking out

[25]of the ventricles and into the brain tissue itself. Is
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[1]

[2] **[*16]** there any support for that in the CT scans here?

[3]A No, there's no support for that in the CT scans

[4]here.

[5]Q Is there any support for that type of a

[6]phenomena happening here based on your experience and

[7]knowledge as a neurosurgeon?

[8]A No, there is not.

[9]Q Why not?

[10]A Transependyraal flow is something that's

[11]theorized and minimal if anything. It, perhaps, absorbs cc's

[12]of fluid. It cannot absorb 320 cc's of fluid at all.

[13]Q Now, if there was some transependymal flow, like

[14]you just described, is that something that would appear or

[15]-- appear to be a diffuse cerebral edema in a CT scan?

[16]A Transependymal flow would only show change

[17]directly next to the ependyma so -- right next to the

[18]ventricles, so if there was transependymal flow visible it

[19]would show some, perhaps, very thin, one or two milimeters,

[20]of change right along the ventricular system. It's not a

[21]system where it diffuses all the way through the brain, no.

[22]Q What is interstitial edema?

[23]A Fluid between the cells of the brain tissue or

[24]the arm or anyplace.

[25]Q And what is the relationship of **[*17]** that to this
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[1]

[2]case, if any?

[3]A At this point, none. There is no evidence of

[4]interstitial edema.

[5]Q Now, in addition to the CT scan is the patient's

[6]clinical condition during the time period that the

[7]ventriculostomy is clamped also important?

[8]A Of course, it is.

[9]Q And I'd like to go to the nurses notes for the

[10]evening of June 2 through the morning hours of June 3 when

[11]this ventriculostomy was clamped and first off there's

[12]progress notes that are written by a nurse and I would refer

[13]you to, it's the second volume of the North Shore record and

[14]I believe there should be a red sticker on the June 2

[15]critical care flow sheet and there's a portion that's

[16]actually handwritten by the nurse as opposed to the vital

[17]sign recordings?

[18]A Am I looking for that sheet?

[19]Q Yes. And I believe it's an inside sheet.

[20]A Yes, I have it.

[21]Q According to the 4:30 note the nurse says, see

[22]flow sheet for complete assessment. There's an EEG in

[23]progress, vital signs stable and then we go to five o'clock

[24]and that says A line changed, site intact, good way form --

[25]what **[*18]** is that about, do you know what that's referring to?
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[2]What's an A line?

[3]A An arterial line is a catheter placed in a plug

[4]vessel, most often at the wrist, to give minute to minute

[5]abilities to follow, on a monitor, the blood pressure of the

[6]patient. So the changing means that for one reason or

[7]another it was moved from one blood vessel to another and

[8]reinserted.

[9]Q And then we have a note for 5:50 p.m., Dr.

[10]Mechanic at bedside to clamp ventriculostomy drain, will

[11]continue to follow.

[12]We discussed yesterday the reasons for clamping

[13]the drain on June 2. Was it good practice for Dr. Mechanic

[14]to be there when this decision was being made?

[15]A I think that is an appropriate maneuver since

[16]it's really his responsibility to make that decision, yes.

[17]Q And from the record here and from the testimony

[18]at trial you would agree that Dr. Mechanic was, in fact, the

[19]one who made that decision, yes?

[20]A Yes.

[21]Q And he testified that he was the one that made

[22]that decision, right?

[23]A Correct.

[24]Q And when -- it also says, will continue to

[25]follow.

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[1]

[2] **[*19]** In general hospital parlance or phrasing what

[3]does that mean?

[4]A Well, continue to observe a variety of

[5]parameters, to watch the patient, in this case they're

[6]talking about the issue of the ventriculostomy and they'll

[7]be watching the patient as time passes.

[8]Q And the note continues on, 1800 hours, that's

[9]six p.m., yes?

[10]A Yes.

[11]Q Intracranial pressure increased. See flow

[12]sheet?

[13]A Correct.

[14]Q MD Engelman paged to assess patient at bedside.

[15]We all know that's the PA David Engelman?

[16]A Yes.

[17]Q Family at bedside upset and asking questions.

[18]Questions answered. Dr. Mechanic called by PA Engelman.

[19]We'll stop right there for now.

[20]I'd like you to assume that we know that the

[21]ventriculostomy was clamped at 5:50 p.m. or maybe even a

[22]little later, yes?

[23]A Correct.

[24]Q And we have a note by the nurse at six p.m. that

[25]the intracranial pressure has increased, right?
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[1]

[2]A Yes.

[3]Q And we'll go to the flow sheet after, but I'd

[4]like you to assume that there was testimony by Dr. Stein,

[5]Dr. Bennett Stein, to this jury that, and **[*20]** I'm going to quote

[6]from his second day of testimony which was, I believe,

[7]February 3, 2005. In discussing the clamping of the

[8]ventriculostomy on June 2, I'm referring to page 229 and

[9]it's in answer to a question as to the fact that the ICP

[10]increased in this period of time immediately after the

[11]clamping.

[12]And Dr. Stein said, As I said you have to take

[13]everything into account. The CT scan picture, the amount of

[14]drainage, the pressure and the clinical state, all of these

[15]things have to be correlated to each other but there's no

[16]refuting this, it's almost instantaneous that the pressures

[17]start to go up but the drain is clamped, it's not allowing

[18]fluid to get out now.

[19]Do you agree with that statement?

[20]A No, I don't.

[21]Q And why not?

[22]A There's no way that the patient instantaneously

[23]would -- assuming, first of all, that the patient couldn't

[24]handle the CSF, there's no way instantaneously, in ten

[25]minutes or half an hour or an hour could accumulate enough
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[1]

[2]fluid to cause his pressure to go up substantially, if at

[3]all. It's impossible for the simple flow of dynamics to **[*21]** take

[4]such a short period of time, so that the rise in pressure

[5]had nothing to do with the clamping the drain at that point.

[6]Q Let's turn to that flow sheet then, which we

[7]have the intracranial pressure. It should be part of that

[8]same pull out section of sheets, Dr. DiGiacinto.

[9]Now, we know that there was, in fact, a rise in

[10]the intracranial pressure, according to the monitor, from 16

[11]at or around the time that it was clamped.

[12]Do you have that in front of you?

[13]A I'm sorry, I'm looking but I haven't --

[14]MR. TORGAN: It's before it, Doctor.

[15]THE WITNESS: I think I have it now. Yes, I

[16]do. I'm sorry.

[17]Thank you.

[18]Q So we know it went from 16 to 28, yes?

[19]A We're talking about -- yes, I see it.

[20]Q And then the pressure remains high up until --

[21]when we say high how high is 28 in the context of this

[22]patient?

[23]A If we set 20 as a normal, which is an arbitrary

[24]normal, it's higher than normal but it's certainly not a

[25]massively increased intracranial pressure that is going to
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[1]

[2]worry us tremendously. It's higher than what we arbitrarily

[3] **[*22]** set as a normal but not spectacularly high.

[4]Q What about a patient in this setting? Is it

[5]spectacularly high for a patient, such as Mr. Guerin, who

[6]has suffered the complication of thrombolytic therapy that

[7]he has?

[8]A I think I'll answer it the same way.

[9]Q Okay.

[10]Now, are there other things that cause an

[11]increase in intracranial pressure or could be responsible

[12]for causing an increased intracranial pressure reading in

[13]this patient during this period of time?

[14]A Yes, there are.

[15]Q And such as what?

[16]A A variety of things, such as positioning of the

[17]patient, such as treatment of the patient, such as level of

[18]attempted activity by the patient, turning, all of these

[19]things will have a significant effect on the minute to

[20]minute intracranial pressure reading.

[21]Q Well, during this period of time; six, seven,

[22]eight, to eight o'clock, if we once again direct our

[23]attention to the nurses flow sheet during -- not the flow

[24]sheet, the progress record, there was a period of time, and

[25]I want to get the timing right, I think it was around six
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[2]o'clock, and we're **[*23]** going to go back to that page we were

[3]talking about where the family is at bedside and upset and

[4]asking questions, questions answered, MD Mechanic called by

[5]PA Engelman, ventriculostomy to remain clamped, it continues

[6]on the next page, I believe.

[7]A Yes.

[8]Q Let's wait until we get to the next page.

[9]It continues clamped, ICP monitored, support

[10]provided to family, patient's vital signs stable, no signs

[11]or symptoms of distress, right?

[12]A Correct.

[13]Q Now, first of all, the support provided to

[14]family, I'd like you to assume that there was testimony that

[15]there were a number of family members at the bedside at this

[16]point in time. I think that's reflected in the notes and it

[17]was also reflected in Mrs. Guerin's trial testimony, is that

[18]something that can have an affect on the patient's

[19]intracranial pressure?

[20]A If there's active family interaction it may

[21]cause the patient some degree of agitation, possibly.

[22]MR. TORGAN: Objection. Move to strike to

[23]possibilities. I move to strike, Judge.

[24]THE COURT: All right. As to form.

[25]MS. DOLSKY: I'll withdraw the question. **[*24]**

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[2]Q Dr. DiGiacinto, does activity around a

[3]patient such as this or stimulation of a patient in this

[4]type of a neurological condition by either stroking or

[5]touching or verbalizing, how does that affect a patient's

[6]intracranial pressure, if at all?

[7]A It can certainly affect it.

[8]Q Now, we know that -- well, we know that at 2000

[9]we have another note by the nurse and that's at eight p.m.?

[10]A Yes.

[11]Q And that note says, vital signs remain stable,

[12]ICP steady readings noted. Neurological status unchanged.

[13]What is the significance of that note, if any,

[14]in the context of this patient at that time with the

[15]ventriculostomy clamped?

[16]A It indicates that there's no change, especially

[17]no deterioration in the neurological status of the patient,

[18]meaning that the ventriculostomy clamping is being tolerated

[19]well.

[20]Q Now, at 2100 hours, that's at nine p.m., the

[21]note indicates MD Mechanic at bedside, CSF drainage obtained

[22]by MD Mechanic. CSF sent to lab for culture, patient

[23]tolerated.

[24]Again, what is the significance of that, if any,

[25]that note?

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[2] **[*25]** A Well, it indicates that Dr. Mechanic was there

[3]observing the patient, again, with the desire to make sure

[4]that the patient is stable and then it speaks for itself. He

[5]obtained some spinal fluid for testing.

[6]Q By the way, I'd like you to assume that Dr.

[7]Stein had testified that this was obviously cerebro spinal

[8]fluid that had been in the drainage bag before the clamping,

[9]and you would agree with that, yes?

[10]A I can only read the note and say CSF drainage

[11]obtained.

[12]Q I'd like you to assume that Dr. Stein testified

[13]that if this cerebro spinal fluid that was sent to the lab

[14]had been in the drainage bag --

[15]MR. TORGAN: I think he said the tube, I'm not

[16]sure.

[17]MS. DOLSKY: I'll withdraw the question.

[18]Q I'd like you to assume that Dr. Stein

[19]testified that if CSF was removed from the drainage bag on

[20]that night and sent to the lab or maybe it was even on June

[21]3 that he said that the cultures were in the drainage bag

[22]and sent to the lab but, in any event, that the glucose

[23]being lower than it had been, lower from June 1st on June 2,

[24]lower from -- on the third than it was on **[*26]** the second that

[25]that can be caused by the CSF having been in this drainage
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[2]bag for a while?

[3]MR. TORGAN: Objection. If it's clamped it can't

[4]be in the bag, Judge. I don't believe that was

[5]the testimony.

[6]THE COURT: Again, I'm going to leave the

[7]testimony up to the jury. They can ask for a

[8]reading of that testimony if they wish and

[9]they'll get it immediately, well, at the end of

[10]the trial, while you are deliberating.

[11]MS. DOLSKY: I'll try to be clear with my

[12]question or avoid that. Withdraw it and ask

[13]another question.

[14]Q Dr. DiGiacinto, can the fact that cerebro

[15]spinal fluid be in a drainage bag for a period of time

[16]before it's sent to the lab for culture and cell count, et

[17]cetera, can that affect the glucose reading?

[18]A It should not.

[19]Q And I'd like you to assume that Dr. Stein

[20]testified that it's a departure from good and accepted

[21]practice for an attending neuro surgeon to clamp a

[22]ventriculostomy and just walk away from the patient.

[23]Is there any support in the record for

[24]Dr. Mechanic having done that here?

[25]A No, there is not.

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[2] **[*27]** Q Is there support that he did not do that here?

[3]A Yes, there is.

[4]Q And what is that?

[5]A We have notations that he saw the patient at the

[6]time of clamping, around six o'clock and then saw the

[7]patient again, by the record, I think, around nine o'clock,

[8]indicating that he did specifically follow up and observe

[9]the patient's progress.

[10]Q Now, I'd like you also to assume that there was

[11]testimony by this same Dr. Stein that Dr. Mechanic,

[12]obviously, or assumedly did not give adequate instructions

[13]to the nurse following or nurses following this patient

[14]during the evening hours of June 2 and the early morning

[15]hours of June 3.

[16]Is there any support for that statement in this

[17]record?

[18]A Not that I can see.

[19]Q And why not?

[20]A The nurses are monitoring, following the

[21]patient, they're measuring pressure, they're observing his

[22]neuro status which is what must be done, so there is

[23]certainly no abandonment of the patient by the nursing staff

[24]and no failure to appropriately monitor the patient.

[25]Q I'd like to go through those notes now, starting
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[2]with **[*28]** 2300 hours. That would be eleven p.m.?

[3]A Yes.

[4]Q And the nurse notes vital signs stable. No signs

[5]or symptoms of distress, complete routine, bed bath care

[6]provided.

[7]What is that routine bed bath care? You have

[8]patients in surgical ICU setting all the time, yes?

[9]A Yes.

[10]Q Are you familiar with what -- where it says bed

[11]bath care provided what that means?

[12]A Yes, I am.

[13]Q What is that?

[14]A The patient, obviously, is unable to get up and

[15]take a shower or bathe and hygiene is very important so that

[16]the patient will be sponged, toweled, cleaned, turned so

[17]that their back can be cleaned, so they basically stay as

[18]clean as possible. That's fairly routine and important care

[19]in the intensive care unit.

[20]Q Can that have an affect on a patient's

[21]intracranial pressure at the time that's being done?

[22]A I think we already mentioned any stimulus to the

[23]patient, any change in position, any turning of the patient

[24]can have an affect on intracranial pressure, yes.

[25]Q And continuing on with that same note, Nurse
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[2]Krausse notes, skin intact -- her **[*29]** name is there in the

[3]record and I'm going by that. Skin intact, then there's a

[4]zero with a slash through it.

[5]Do you know what that means?

[6]A Without.

[7]Q Without break down noted and again that's what

[8]you were talking about with the skin?

[9]A Yes.

[10]Q Patient tolerated well. Patient positioned for

[11]comfort and this is what you were explaining?

[12]A That's correct.

[13]Q And then we have a note from 1 a.m. and that

[14]says, vital signs stable, status unchanged, ICP readings

[15]decreased noted.

[16]What's the significance of that?

[17]A I think, again, we're watching the patient for

[18]any change as a result of having the drain clamped and we're

[19]seeing no change in his status, neuro status, and we're

[20]actually seeing the cerebro spinal fluid pressure as

[21]measured getting lower down from the high of 29 or 30, I

[22]think it went down to 16.

[23]Q Vital signs stable is also noted at three a.m.

[24]and what's the significance of that?

[25]A One of the things that can indicate a problem
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[2]with fluid reabsorption, which is what we're talking about

[3]here, is a change in **[*30]** the vital signs, so the fact the vital

[4]signs are stable along with all the other information we

[5]have, again, indicates the patient is tolerating the

[6]clamping well.

[7]Q Then we have a note from five a.m. and, again,

[8]partial skin care is provided and tolerated well. Seven a.m.

[9]patient resting, appears comfortable, no signs or symptoms

[10]of distress. Vital signs stable, ICP monitored per flow

[11]sheet, no adverse effects from treatment or medications

[12]given. Remains afebrile, neuro status unchanged.

[13]What's the significance of that note at seven

[14]a.m. on June 3?

[15]A I think it reflects the same thing we're talking

[16]about all along. The patient is showing no ill effects from

[17]having the ventricular drain clamped.

[18]Q I'd like you to assume that Mrs. Guerin

[19]testified that she was in the hospital with her husband

[20]overnight, the night of June 2 through the early morning

[21]hours of June 3 up until, I believe the testimony was, about

[22]six a.m., and that his neuro status appeared unchanged and

[23]did not deteriorate during this period of time.

[24]What is the significance of that, if any, in

[25]light of **[*31]** these other notes?

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[2]A It, again, corresponds with everything else

[3]we've been talking about that the patient is tolerating the

[4]clamping very well.

[5]Q And just to go back to those pressures, the

[6]intracranial monitor pressures and, again, I think

[7]Mr. Torgan pointed out, it's the first page of that flow

[8]sheet.

[9]A Yes.

[10]Q And going to the morning time period, let me

[11]just -- it appears that during that overnight period of time

[12]that the -- this is what you were referring to about -- or

[13]the nurse was referring to when she said that the

[14]intracranial pressure first was steady and then actually

[15]decreased?

[16]A That's correct.

[17]Q Now, on June 3, in the morning, we went through

[18]the CT scan findings and, again, I believe your testimony

[19]was that the scan showed that there was no increase or build

[20]up of fluid in this patient's ventricles on the morning of

[21]June 3, yes?

[22]A That's correct.

[23]Q The decision was made to remove the

[24]ventriculostomy at that time, right?

[25]A Correct.

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[2]Q And in terms of that decision I believe there's

[3]a note **[*32]** by the neuro surgical PA in the chart from the

[4]morning of the third.

[5]Down at the bottom of the page. That's the other

[6]volume. Do you have that?

[7]A Yes.

[8]Q Do you see at the very bottom?

[9]A I do see it, yes.

[10]Q And CT scan re-reviewed with Dr. Mechanic, event

slit like, ventriculostomy discontinued. Fluid sent,

culture, gram, cell count, protein, glucose.

Is there any clear meaning to that note as to

whether Dr. Mechanic was there or not at this point in time?

A It certainly indicates that Dr. Mechanic was

directly involved with the evaluation and determination of

removing the ventriculostomy, yes.

Q Now, at the time that the ventriculostomy is

removed the intracranial pressure monitor is also removed,

correct?

A That is correct.

Q And isn't that a risk to the patient not having

the intracranial pressure monitored from that point on?

A I think at this point it's not a risk because a

decision has been made that the patient no longer needs a

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ventriculostomy. It's been proven by the overnight clamping

and the lack of change **[*33]** in ventricular size as well as the

lack of change clinically so that the patient -- the risk

benefit ratio now balances toward the side of not having

anything in because the patient has tolerated the clamping.

Q There was also testimony, before I forget, by

Dr. Stein that this period of time where the monitor had

indicated -- this period of time I'm talking about the night

of June 2 -- that there was increased intracranial pressure

that that would produce severe headaches in a patient.

Do you agree with that?

A At this level it's highly, highly unlikely that

that would be the case.

[15]Q What, if anything, would you expect it to

[16]produce if it was -- if there was, in fact, a high level of

[17]intracranial pressure?

[18]A Change in vital signs, change in a neuro status.

[19]Q We went through the June a.m. CT scan, correct?

[20]A Which one, I'm sorry.

[21]Q The June a.m., the one that was taken before the

[22]ventriculostomy was actually removed?

[23]A Yes.

[24]Q I'd like to concentrate on the period of time

[25]now between that morning after the ventriculostomy was
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[2]removed, **[*34]** the morning of June 3 and that's also reflected on

[3]our time line there, yes, the time that the ventriculostomy

[4]was removed?

[5]A Yes.

[6]Q And also the time of the CT scan that was taken

[7]before it was removed?

[8]A Yes.

[9]Q And we know that there was another CT scan taken

[10]at 6:30 p.m. on the night of June 3, yes?

[11]A That is correct.

[12]Q And I'd like to concentrate then on the period

[13]of time between the two CT scans taken on June 3. You have

[14]the doctor's notes and the nurse's flow sheets for that

[15]period of time?

[16]A I'm starting with the note following the one we

[17]just looked at.

[18]Q Stay there with that. And then on the nurses'

[19]flow sheet there should be another red flag for the June 3

[20]nurse's flow sheet.

[21]A I have the first page of that in front of me.

[22]Q Okay. And, let me get that as well?

[23]MR. TORGAN: Can we have a side bar, your Honor?

[24]THE COURT: Certainly.

[25]MR. TORGAN: Sorry.
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[2](Whereupon, an off-the-record discussion

[3]ensued among the attorneys and the Court

[4]out of the presence of the jury)

[5]THE COURT: **[*35]** Ladies and gentlemen, we're

[6]going to take a fifteen minute break. I have one

[7]matter to take care of in between this break. I

[8]hope I'm completed by that time, but I don't

[9]think it should take more than fifteen minutes.

[10]Thank you very much.

[11]Doctor, you are excused as soon as the jury

[12]steps out.

[13](After a recess, Court reconvened with the

[14]following in the presence of the jury:)

[15]THE COURT: Ms. Dolsky, you can continue.

[16]MS. DOLSKY: Thank you.

[17]Q Dr. DiGiacinto, I believe we were looking

[18]at the nurses' flow sheet for June 3 when we took a break

[19]and I'd like to direct your attention to the morning hours

[20]through the 7:00 p.m. that would be the first half of the

[21]sheet?

[22]A Yes, I have it in front of me.

[23]Q And there's an indication that at the time the

[24]ventriculostomy was removed the intracranial pressure was 30

[25]and the CPP which, I believe, the jury has already heard is
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[2]the cerebral profusion pressure was 99.

[3]Can you discuss the significance of the cerebral

[4]profusion pressure, particularly in this context, for the

[5]jury, please?

[6] **[*36]** A The cerebral profusion pressure is an important

[7]number which indicates the abilities of blood to flow

[8]through the brain so that it can deliver oxygen to the

[9]brain. So that it's a balance, if you will, in saying how

[10]significant is the intracranial pressure measurement. The

[11]most important thing is the fact that blood is able to get

[12]through the brain. So that's why it's significant.

[13]Q And cerebral profusion pressure of 99, what does

[14]that indicate?

[15]A I think that's well within normal range.

[16]Q Now, during the day time of June 3 the vital

[17]signs that are recorded on this sheet in terms of the

[18]patient's blood pressure and his heart rate and his

[19]temperature, for instance, are those -- what are the

[20]significance of those vital signs, if anything?

[21]A The readings are, I'm just going over them,

[22]150, 140, there's a bump around five o'clock which then

[23]comes back down by seven o'clock it's 129. Those are fairly

[24]stable.

[25]Q And particularly for a patient in this
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[2]situation?

[3]A I think so, ye+s.

[4]Q I'd like you to assume, because I don't want to

[5]take the time to **[*37]** go through the progress records with you

[6]now, that there are various doctors notes in the chart for

[7]June 3 that indicate if not the same neurological status a

[8]change, a deterioration in Mr. Guerin's neurological status

[9]from June 2 and I'd like you to assume that on the evening

[10]of June 2 or late afternoon -- I'm sorry, of June 3, the

[11]late afternoon hours of June 3, that Mrs. Guerin was at the

[12]hospital and that she noticed a deterioration in her

[13]husband's neurological condition, and that based on that the

[14]physician's assistant, David Engelman, called Dr. Mechanic

[15]and the decision was made to have an emergency CT scan done.

[16]You are aware of that, yes, from your review of

[17]the chart?

[18]A Yes, I am.

[19]Q By the way, before testifying here yesterday in

[20]court when had you last reviewed the North Shore University

[21]Hospital record pertaining to this patient?

[22]A Over the weekend, Saturday and Sunday. So the

[23]day before yesterday.

[24]Q A CT scan was, in fact, taken on the night of

[25]June 3, yes?

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[2]A Yes.

[3]Q Was that good practice?

[4]A Yes.

[5]Q Now, I'd like **[*38]** to just briefly go to that CT

[6]scan, I'm not even going to ask you to get up or to go

[7]through it in any detail, you've reviewed that CT scan

[8]before?

[9]A Yes, I have.

[10]Q I think it's fair for us to say, the jury as

[11]well has seen that CT scan before.

[12]MS. DOLSKY: May we have the lights dimmed.

[13]Thank you.

[14]Q So we know that this CT scan was done

[15]because of a report of a change in this patient's

[16]neurological status, yes?

[17]A Yes.

[18]Q And what, if anything, is the significance of

[19]this CT scan taken at approximately 6:30 at night on June 3,

[20]which is approximately 24 or a little bit more hours, after

[21]the ventriculostomy had been clamped?

[22]A The significance of the scan and the most

[23]important thing noted is that the ventricles have not

[24]changed in size. There's no evidence of hydrocephalus,

[25]there's no evidence of increasing ventricular size, again,
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[2]indicating that the patient is handling this now five or 600

[3]cc's of spinal fluid by reabsorbing it rather than

[4]accumulated into the ventricular system.

[5]Q Now, can there be or are there, in this, again, **[*39]**

[6]clinical setting, in this patient in the surgical ICU, can

[7]there be other reasons for a decrease in neurological status

[8]other than an increase in fluid in the ventricles?

[9]A Yes, there can be.

[10]Q And what?

[11]A One of the things that we're seeing is

[12]significant elevation in temperature which can in anyone of

[13]us and certainly in a patient who's already neurologically

[14]compromised cause a significant decrease in their level of

[15]function. Other issues, such as infection, other systemic

[16]problems if there were any change in oxygenation or any of

[17]the other vital signs there may be impact, but the main one

[18]you look at, if it's not ventricular dilitation, would be

[19]fever and the consideration of infection.

[20]Q And can we say, with a reasonable degree of

[21]medical certainty, that any change in the patient's

[22]neurological condition, deterioration, is certainly not

[23]being caused by a build up of fluid in the patient's

[24]ventricles here?

[25]A Certainly the one hard fact, one hard piece of
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[2]information we have is that the ventricles are not dilated

[3]up, therefore we can say it's not due to **[*40]** build up of fluid

[4]in the brain.

[5]Q I'd like to jump to the morning CT scan of June

[6]4th, if I may. We know that at some time during the late

[7]night of June 3, the early morning hours of June 4 and in

[8]particular the morning -- the morning hours of June 4th that

[9]something happened to cause an acute deterioration in Mr.

[10]Guerin's condition, according to the chart, yes?

[11]A Yes.

[12]Q Now, this CT scan that was taken at about eleven

[13]a.m., right?

[14]A I believe that was the time, yes.

[15]Q And the ventriculostomy had been reinserted by

[16]Dr. Mechanic, I think, at about 7:30 a.m. that morning?

[17]A That's my recollection.

[18]Q Now, we'll leave this here, but going back to

[19]the ventriculostomy that was reinserted, there was an

[20]indication, and it's in the chart and in the testimony by

[21]Dr. Mechanic, that when he reinserted a ventriculostomy

[22]after this acute deterioration in Mr. Guerin on the early

[23]morning of June 4 that there was was approximately three to

[24]four cc's of cerebral spinal fluid which he was able to get

[25]from the patient's ventricular system.

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[2]I'd like you to **[*41]** assume also there's a note by a

[3]PA Joseph that it was 30 to 40 cc's of fluid. So there's an

[4]inconsistency there. She describes it as foul smelling

[5]fluid.

[6]What is the significance, if any, of the fact

[7]that when a ventriculostomy was reinserted on the morning of

[8]June 4 that that amount of fluid was obtained through the

[9]ventriculostomy?

[10]MR. TORGAN: Objection, Which amount? Three to

[11]four or 30 to 40?

[12]MS. DOLSKY: Let me back up.

[13]Q In your assessment of this case is there

[14]any difference -- would there be any difference to your

[15]opinion whether it was three to four cc's that was removed

[16]or 30 to 40 cc's that were removed?

[17]A No, there wouldn't.

[18]Q And what would be the significance, if any, of

[19]let's say 30 to 40, that's a bit more than three to four,

[20]cc's of fluid being removed from this ventriculostomy at

[21]that time? When I say significance, I mean significance in

[22]terms of this case?

[23]A There are several issues to be dealt with. No. 1

[24]the amount of fluid relates to the fact that the ventricles

[25]were severely compressed down by what the CT scan
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[2]subsequently **[*42]** showed was diffusely swollen brain, secondary

[3]to cerebritis.

[4]MR. TORGAN: Objection, your Honor. I object to

[5]the last comment about cerebritis.

[6]THE COURT: Let's take a side bar.

[7]MR. TORGMT; I'm sorry to do that, Judge.

[8](Whereupon, an off-the-record discussion

[9]ensued among both attorneys and the Court

[10]out of the presence of the jury)

[11]THE COURT: The objection is overruled

[12]pursuant to the direction of the Court.

[13]MR. TORGAN: I thought it was sustained.

[14]THE COURT: It's sustained in conjunction

[15]with the Court's order.

[16]Q Dr. DiGiacinto, you --

[17]MS. DOLSKY: May I have the last question and

[18]answer read back before the question that

[19]Mr. Torgan objected to.

[20]THE COURT: I overruled it subject to the

[21]direction I gave to counsel. I'll let this

[22]question and answer stand and you may proceed.

[23](Whereupon, the record was read by the

[24]Reporter).

[25]Q Doctor, when you say compressed down are
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[2]you talking about something that is happening from the

[3]inside of the ventricles out or from the outside of the

[4]ventricles in?

[5]A From **[*43]** the outside of the ventricles in.

[6]Q And I believe you said something about a diffuse

[7]edema occuring here?

[8]A There's diffuse process in the brain. The

[9]entire brain is swollen, the ventricular system is

[10]compressed, there's a loss of the differentiation between

[11]gray matter and white matter indicating a very diffuse

[12]process involving the substance of the brain. It's not the

[13]ventricular system.

[14]Q Now, the left ventricle we can still see on

[15]these CT scans, yes?

[16]A Yes.

[17]Q And what is the significance of that, if any?

[18]THE WITNESS: May I go down, your Honor?

[19]THE COURT: Certainly.

[20]Q We'll do the first six images if that's

[21]okay.

[22]My question was, what is the significance, if

[23]any, of the size of the left ventricle here?

[24]A Recall we mentioned earlier that there was

[25]damage in the substance of the brain around --
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[2]THE COURT: One minute. Could you continue to

[3]inquire and could you continue to testify and

[4]could you continue to type, which is more

[5]important, if all the lights were turned off?

[6]Let's see what happens if we turned **[*44]** off all

[7]these lights.

[8]MS. DOLSKY: Is that okay, Judge?

[9]THE COURT: Is it okay for counsel?

[10]Q Dr. DiGiacinto, what's the significance, if

[11]any, to the size of the left ventricle in these CT scans?

[12]A You recall we discussed the size of the left

[13]ventricle relative to damage of the brain so there's more

[14]space around that ventricle. It hasn't gotten compressed to

[15]the point that it disappears as essentially has happened to

[16]the rest of the ventricular system even posteriorly where

[17]there's still blood inside the ventricle, the blood hasn't

[18]been pushed out so that you're still seeing that, but the

[19]rest of the ventricular system is very, very compressed down

[20]and, essentially, invisible. You see a little remnant there

[21]but, the majority of the ventricular system has been

[22]collapsed down from pressure outside the ventricles causing

[23]them to collapse.

[24]Q Well, can that pressure outside the ventricles

[25]causing it to collapse, do you have an opinion, with a
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[2]reasonable degree of medical certainty, as to whether that

[3]process that's going on is caused by a build up of cerebro

[4]spinal **[*45]** fluid in the brain?

[5]A I do have an opinion.

[6]Q And what's your opinion?

[7]A That it's not caused by a build up of cerebral

[8]spinal fluid in the brain.

[9]Q Why not?

[10]A The brain is not capable of absorbing

[11]significant amounts of cerebro spinal fluid, we use the term

[12]transpendymal absorption which really is a process that

[13]penetrates, perhaps, to a millimeter or two of depth, it is

[14]not a recognized process to have CSF, cerebro spinal fluid

[15]diffuse through the entire brain.

[16]Q Have you ever heard of that?

[17]A No, I have not.

[18]Q And this diffuse cerebral edema that we have

[19]here is outside the ventricular system?

[20]A Yes, it is.

[21]Q Now, what if anything -- and here we have the

[22]ventriculostomy has already been placed back in the

[23]patient's skull, yes?

[24]A Yes.

[25]Q And I'd like you to assume that at that time
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[2]cerebro spinal fluid was sent to be -- for culture and gram

[3]stain, et cetera, okay?

[4]A Yes.

[5]Q And would it be good and accepted practice given

[6]this patient's acute deterioration, or deterioration that he

[7]had **[*46]** suffered in the morning of June 4 to send that fluid to

[8]pathology?

[9]A Absolutely.

[10]Q I'd like to go back in time now to the night of

[11]June 3 of 1997.

[12]MR. TORGAN: I'm going to withdraw my objection

[13]to the infectious process. I'm sorry I did that

[14]to you. I'm sorry to take the side bar.

[15]MS. DOLSKY: It's all right, Judge.

[16]THE COURT: We'll go into that when it's

[17]necessary but we put it on the record in the

[18]middle of something completely different that

[19]you're withdrawing your objection.

[20]MR. TORGAN: Sorry, Judge.

[21]Q During the evening, Dr. DiGiacinto, of June

[22]3, I know we went through the nurses' notes up until

[23]approximately 7:00 p.m., that nurse's flow sheet?

[24]A Correct.

[25]Q And I'd like to now go to the later part of June
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[2]3 through the morning hours of June 4, and if you want to

[3]refer to the chart in front of you you can do that or look

[4]on with the blowup, but we know that during the night and

[5]the early morning hours we -- the patient's temperature

[6]increases, yes?

[7]A Correct.

[8]Q And what is the significance of that, if any, **[*47]** in

[9]this patient?

[10]A There are two issues that that brings up.

[11]No. 1 an increase in temperature, as we

[12]mentioned earlier, in a debilitated patient or even in a

[13]healthy patient will be accompanied by depression,

[14]deterioration of neurological function. I'm talking about

[15]any of us that gets the flu and gets a temperature to 104,

[16]but taking a debilitated, comatose patient and inflicting a

[17]temperature of 104 on top of that is certainly going to

[18]depress his neurological function.

[19]Secondly, it brings up very, very acutely the

[20]issue of infection in this patient and it certainly,

[21]absolutely consistent with infection that a temperature

[22]would go up to the levels of about 104 or anything close to

[23]that.

[24]Q As a matter of fact, at approximately two a.m.

[25]the record indicates that his temperature is what? You have
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[2]the original in front of you, that might be?

[3]A At two a.m. it's listed as 39.4 which I think,

[4]our cheat sheet, which I don't have, is a spec under 104.

[5]39.4 on our sheet corresponds to 103.

[6]Q Now, at the same time it appears that the

[7]patient's heart rate **[*48]** is increasing. What is the significance

[8]of that, if any?

[9]A That, again, is very consistent with a markedly

[10]increased temperature as certainly 103 is.

[11]Q And during the course of these evening hours,

[12]I'd like to turn to that handwritten portion of the nurses

[13]flow sheet?

[14]A Further back or -- I have it.

[15]Q It's in the middle there.

[16]A Yes.

[17]Q Okay.

[18]There are notes up until eleven p.m. and just

[19]quickly from 6:10 p.m. on that talks about that the patient

[20]was transferred for the emergency CT scan after Mrs. Guerin

[21]spoke with Dr. Mechanic, yes?

[22]A Correct.

[23]Q Now going to the next page of those nurse's

[24]progress notes, there's a note beginning at 4:45 a.m. which

[25]basically recaps events that happened during the course of
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[2]the early morning hours of June 4, yes?

[3]A Correct.

[4]Q Now, first of all, there's a note by the nurse

[5]that last p.m. at eleven o'clock ooze on pillow noted,

[6]Dr. Yi aware, and that the site was redressed and that the

[7]neuro PA was called. There was approximately 100 cc's

[8]altogether and that more staples were applied. **[*49]**

[9]First of all, assuming Dr. Mechanic was called

[10]and came to the hospital and inserted a ventriculostomy in

[11]this patient at 1 a.m. in the morning on June 4, 1997 do you

[12]have an opinion, with a reasonable degree of medical

[13]certainty, as to if that would have changed the course of

[14]events earlier in that morning and the outcome with this

[15]patient?

[16]A I do have an pin.

[17]Q What is your opinion?

[18]A That it would not have changed the course of

[19]events or course of the patient.

[20]Q Why?

[21]A There's clearly a very devastating process

[22]evolving at this point in time. I have to bounce back and

[23]forth from what we know later to what we know then. We're

[24]talking about sanguinous ooze. It's not even being

[25]I described as cerebro spinal fluid, remember that.
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[2]Secondly, later on, when the drain is put in

[3]fluid comes out which is described as having an odor. This

[4]is -- both of these are very consistent with horribly

[5]infected cerebro spinal fluid.

[6]Q Let me stop you for a minute. Are they

[7]consistent with an acute hydrocephalus, a build up of fluid

[8]within the ventricles? **[*50]**

[9]A There's no relationship between the two.

[10]Q Why not?

[11]A Well, No. 1, the character of the fluid is

[12]independent of the ventricular size.

[13]Secondly, we know from the CT scan done several

[14]hours earlier that the ventricles had not enlarged. So that

[15]what we're dealing with here is a very fulminant, acute

[16]process. The ooze, again, sanguinous ooze is yellowish fluid

[17]draining out of the site.

[18]Q Let me stop you, again. I apologize, but we

[19]know that the ventriculostomy had been clamped on June 2 at

[20]about six o'clock at night and that another CT scan had been

[21]taken at about 6:30 on the night of June 3?

[22]A Correct.

[23]Q And this is now about four or five hours after

[24]that?

[25]A Yes.
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[2]Q Five hours after that?

[3]A Correct.

[4]Q How -- if the patient was not absorbing, if his

[5]ventricular system, his body was not properly absorbing

[6]cerebro spinal fluid how much cerebro spinal fluid would be

[7]in the ventricular system?

[8]A Well, we think -- we've been using the number,

[9]which I think we've agreed on, around hundred or 120 or 130

[10]cc's. We're **[*51]** then talking about a period of -- help me with

[11]the time again.

[12]Q The clamping was at six p.m.

[13]A five hours.

[14]Q And then we have the CT scan approximately 24

[15]hours later after the ventriculostomy had been removed for

[16]about seven hours, right?

[17]A Yes.

[18]Q And that was 24 hours after clamping and if that

[19]was 6:30 now we're talking at a time about 11:30 so five

[20]hours later, a total of 29 hours after the ventriculostomy

[21]had initially been changed?

[22]MR. TORGAN: Objection. I object to the

[23]testimony. Objection.

[24]THE COURT: What was your objection based

[25]on?
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[2]MR. TORGAN: It was a statement. It wasn't

[3]a question.

[4]MS. DOLSKY: I'll withdraw it and I'll make

[5]the question clear.

[6]Q My question, Dr. DiGiacinto, in that 29

[7]hour period of time how much cerebro spinal fluid would be

[8]in the ventricles if it wasn't being properly absorbed by

[9]the body?

[10]A We'll say five hundred cc's a day which would be

[11]five hundred cc's for the 24 hours and four -- five more

[12]hours would be another hundred cc's so six hundred cc's of

[13]CSF.

[14]Q And **[*52]** at the time that this patient's CT scan was

[15]taken at 6:30 p.m. on June 3, that night, we don't see any

[16]such building up of fluid, correct?

[17]A That's correct.

[18]Q And here we now have one hundred cc's of this

[19]sanguinous ooze.

[20]I'm not sure I asked you this already or not.

[21]What is the significance of that here?

[22]A Well, it's something draining out of the wound.

[23]It's described not as clear fluid which would be the normal

[24]description of the cerebro spinal fluid, it's described as

[25]II sanguinous ooze which, again, if it's coming from the head

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[2]is very consistent with an infected collection of fluid.

[3]Q is it consistent with an acute hydrocephalus or

[4]build up of fluid in the ventricles?

[5]A Wo, it's not.

[6]Q Now, there were staples applied to the patient's

[7]scalp after this. Why is -- and is that within good and

[8]accepted practice?

[9]A It was, according to the chart, done once and

[10]then, I guess, some more staples were added in an effort to

[11]prevent the wound from being open to prevent back and

[12]forward flow of bacteria and it would be good and accepted

[13]practice. **[*53]**

[14]Q Does that happen sometimes that a

[15]ventriculostomy site where the drain has been removed leaks

[16]fluid?

[17]A Yes, it does.

[18]Q Now, during this period of time there's

[19]treatment which is being rendered to the patient, we talked

[20]about the ooze and then there was a dry dressing in place

[21]and the patient -- it says, continued to monitor. There's

[22]the high temperature we discussed and then it says, Dr. Yi

[23]here to assess patient. Placed on cooling blanket and ice

[24]packs to axilla and groin. Tylenol given. And then it talks

[25]about respiratory problems.

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[2]What's the significance of this note to you as

[3]to what's going on at that time?

[4]A They're very concerned about the severity or the

[5]height of the temperature which can damage a normal person

[6]or debilitated person and they're making efforts to control

[7]that temperature with medication, Tylenol, which is a very

[8]good medication to lower fever, and applying ice literally

[9]to the patient in an attempt to relieve this severely

[10]elevated fever.

[11]Q This severely elevated fever, regardless of the

[12]source, is the fever itself dangerous **[*54]** to the patient?

[13]A Yes, it is.

[14]Q And why is that?

[15]A Patients with damaged neuro tissue experiencing

[16]a very high fever is going to have further damage to that

[17]neural tissue, it's going to affect his vital signs,

[18]potentially, and the real impact, though, is the origin of

[19]the fever. What is it reflective of? And in this case it

[20]was reflective of infection, which is the major problem.

[21]Fever, in this case, was infection.

[22]Q Now, is that an indication or is there any

[23]indication during the course of this night, early morning of

[24]June 4 to reinsert a ventriculostomy?

[25]A At some point one of the questions that would
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[2]come up is whether or not there was something we could

[3]discover inside the head, whether it was hydrocephalus,

[4]which it wasn't, whether we'd learn anything from inserting

[5]the drain, certainly the probability that given the

[6]information we have up to this point, the probability that a

[7]ventricular drain at any point from the night before through

[8]when it was finally done was going to have any significant

[9]impact is essentially zero.

[10]Q Now, at the time that **[*55]** the patient is having this

[11]fever and, I believe that there's notice of that, the breath

[12]sounds are tight, the patient's respirations at this point

[13]in time, how are they?

[14]A I would have to look at the --

[15]Q Flow sheet.

[16]A Respirations, June 3 going into June 4 the

[17]patient was breathing at a rate of 25, 26 and then higher,

[18]to 31, 34, 30 and it fluctuated up and down during that

[19]period of time until later in the morning.

[20]Q And is that consistent with the patient's heart

[21]rate and fever?

[22]A Yes, they're all consistent with that.

[23]Q Now, in the early morning hours of June 4 after

[24]the ventriculostomy was placed there was a CT scan taken and

[25]we discussed those -- the signs that were there.
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[2]In terms of the diffuse cerebral edema, does a

[3]ventriculostomy treat that type of diffuse cerebral edema?

[4]A No, it does not.

[5]Q And why not?

[6]A The only thing a ventriculostomy can do in terms

[7]of treating the inside of the head is to drain fluid out of

[8]the head. It can't treat the edema. It's not designed to

[9]treat it.

[10]Q When you say fluid out of **[*56]** the head can it get

[11]fluid out of the brain tissue?

[12]A No, it can not.

[13]Q And what is the mechanism -- you used the word

[14]swollen brain and edema, what is it about infection, for

[15]instance, which causes the brain to swell?

[16]A It will cause a very diffuse interstitial, we've

[17]used that term, between the cells, out pouring of fluid,

[18]reaction of the brain to infection. Similar to what we'd see

[19]if we have an arm that's infected. We know how swollen and

[20]red it gets well, exactly the same thing happens to the

[21]brain.

[22]Q Now, that fluid, that out pouring of fluid that

[23]you just mentioned, is that cerebral spinal fluid?

[24]A No.

[25]Q Is that fluid from the ventricular system?
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[2]A No.

[3]Q What -- where is the fluid from?

[4]A It's fluid that's coming from the vascular

[5]system, from the blood vessels and the blood circulating

[6]through the body.

[7]Q When you say that the cells, another fluid,

[8]would that be if someone develops a blister let's say from a

[9]burn and something like that?

[10]A It's somewhat similar to that, yes.

[11]Q If the cerebral spine -- **[*57]** if cerebral spinal

[12]fluid was not being properly absorbed by this patient during

[13]June 3 and June 4th what would we see on that CT scan?

[14]A We'd see a persistence and probable enlargement

[15]of the size of the ventricles.

[16]Q I'd like you to assume that Dr. Stein said that

[17]there was ongoing hydrocephalus here. Is there any support

[18]for that in any of the records or in the CT scans?

[19]A No.

[20]Q Where would -- where is that cerebro spinal

[21]fluid if we credit his testimony?

[22]A It's been absorbed by the normal pathways.

[23]Q I'd like to just go to some testimony by Dr.

[24]Stein on the last day he was here in front of the jury and

[25]there is questions by Mr. Torgan on redirect examination.
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[2]THE COURT: Excuse me, Ms. Dolsky, are we going

[3]to turn on the rest of the lights?

[4]MS. DOLSKY: We can, your Honor.

[5]Q I'm referring to pages 974 to 975 of the

[6]record.

[7]"Question: Did the increase intracranial

[8]pressure that Tom Guerin had from the

[9]hydrocephalus after the discontinuance of his

[10]ventriculostomy cause the brain edema that we

[11]see on June 4?

[12]"Answer: **[*58]** I believe it does.

[13]"Question: Why is that?

[14]"Answer: Because the fluid is trying to

[15]get out of the ventricles and it gets out into

[16]the brain tissue and it causes swelling

[17]throughout the brain."

[18]Do you agree with that?

[19]A No, I don't.

[20]Q And when I say, do you agree with that and you

[21]say you don't, have you ever heard of that occuring in a

[22]patient in your years off experience as a neurosurgeon?

[23]A No, I have not.

[24]Q Does it make any neurological or neuro

[25]anatomical sense to you?
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[2]A No, it doesn't.

[3]Q And is there anything in this case which would

[4]support such a theory here?

[5]A No, there's not.

[6]Q We know that when that ventriculostomy was

[7]inserted by Dr. Mechanic on the morning of June 4 Dr.

[8]Mechanic noted in his operative report and he told this jury

[9]that there was a high opening pressure, meaning that there

[10]was an increased intracranial pressure at the time of this

[11]ventriculostomy.

[12]Does that mean that there was hydrocephalus?

[13]A No, it does not.

[14]Q What does it mean?

[15]A It means there was diffusely **[*59]** increased pressure

[16]secondary to the swelling of the brain that is later

[17]demonstrated on the CT scan.

[18]Q And during the course of this night when Tylenol

[19]was given to the patient and he was placed on ice and on

[20]cooling blankets there was also antibiotics, I think

[21]vancomycin and gentamycin started, yes?

[22]A That's correct.

[23]Q Why would the staff do that? What, if anything,

[24]would be their concern at that time, at approximately three

[25]a.m. or so in the morning when they're treating this
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[1]

[2]patient, what would be their concern that would lead them to

[3]give those antibiotics to this patient?

[4]A We've been talking about the significant risk

[5]all along of infection. We've been talking about the

[6]markedly rising fever, a decision was made by the team that

[7]was taking care of the patient to empirically cover the

[8]patient for infection by giving him two broad spectrum

[9]antibiotics.

[10]Q And was in fact that risk of infection one of,

[11]if not the primary reason, for Dr. Mechanic wanting to

[12]remove that ventriculostomy drain on June 3?

[13]A Yes, it was.

[14]MS. DOLSKY: I have no **[*60]** further questions, your

[15]Honor.

[16]Thank you, Doctor.

[17]MR. GABRIELE: I have no questions at this

[18]time, your Honor.

[19]THE COURT: Thank you.

[20]Mr. Torgan.

[21]CROSS EXAMINATION

[22]BY MR. TORGAN:

[23]Q The whole ventricular system. Doctor, at one

[24]time contains only 30 cc's of cerebro spinal fluid, correct?

[25]A It varies from patient to patient and age but
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[2]it's somewhere between 50, 70 or hundred in patients or even

[3]120.

[4]Q I'm sorry?

[5]A It can't vary a great deal in terms of total

[6]volume; 50, 70, 100.

[7]Q Doctor, as a general rule, anybody's ventricular

[8]system contains only 30 cc's of cerebro spinal fluid at any

[9]one time, true?

[10]A I have to answer it the way I just answered it.

[11]Q You've heard of Youman's?

[12]A Yes, I have.

[13]Q That's a neuro surgical textbook, right?

[14]A Yes, sir.

[15]Q Well known to you?

[16]A Yes, sir.

[17]Q Something that you referred to in the past?

[18]A I can't remember the last time I opened it.

[19]Q Well, you certainly know that Bennett Stein was

[20]a contributor to that textbook, right? **[*61]**

[21]A I would trust that if you said so, yes.

[22]Q Well, Bennett Stein is somebody known to you,

[23]right?

[24]A Yes, sir.

[25]Q And his name has come up, what, dozens of times
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[2]just today?

[3]A Correct.

[4]Q And you even took the time to read his

[5]testimony, didn't you?

[6]A Yes, sir.

[7]Q Now, you trained at Columbia Presbyterian,

[8]didn't you?

[9]A Yes, I did.

[10]Q And shortly after you left Bennett Stein became

[11]the chairman of the neuro surgical department, true?

[12]A That's correct.

[13]Q And you actually know him personally, don't you?

[14]A Yes, I do, sir.

[15]Q He's a good neuro surgeon, right?

[16]MS. DOLSKY: Objection.

[17]THE COURT: Sustained.

[18]Q He's a world reknown neuro surgeon, true?

[19]MR. GABRIELE: Objection.

[20]THE COURT: Sustained.

[21]Q Are you familiar with him personally?

[22]A Yes, sir.

[23]Q Do you know of his work?

[24]MS. DOLSKY: Objection.

[25]MR. TORGAN: Withdrawn.
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[2]Q Do you know that he specializes in brain

[3]surgery specifically, correct?

[4]A That's one of his major **[*62]** areas, yes. I'm not

[5]familiar enough with his practice to know that, but I

[6]believe that's one of his major areas, yes.

[7]Q AVM, matter of fact, something you mentioned

[8]yesterday, you couldn't rule out on a cat scan,

[9]arteriovenous malformations were his specialty or is his

[10]specialty before he retired, correct?

[11]A I believe that's correct, yes.

[12]Q Now, you have a specialty within neuro surgery,

[13]correct?

[14]A If you ask me what most of my practice is I

[15]would say yes.

[16]Q And your specialty is different within neuro

[17]surgery than Dr. Stein's, right?

[18]A Yes.

[19]Q As a matter of fact your practice primarily

[20]involves surgery on the spine, right?

[21]A I would say that 70 percent of the surgery I do

[22]involves the spine, that's correct.

[23]Q And when we talk about the spine much of your

[24]surgery involves slipped discs, true.

[25]A That's correct.

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[1]

[2]Q Herniated discs, right?

[3]A That's correct.

[4]Q You do a lot of spinal fusion, right?

[5]A That's correct.

[6]Q Now, -- incidentally, you have privileges at

[7]Columbia Presbyterian?

[8] **[*63]** A No.

[9]Q Did you at one time?

[10]A Yes.

[11]Q At the time you had privileges Bennett Stein was

[12]the chairman of the department, correct?

[13]A For a portion of that time, yes.

[14]Q Now, you are at St. Lukes Roosevelt now?

[15]A That's correct.

[16]Q And you are not on call for any type of brain

[17]surgery, right?

[18]A I still take emergency call.

[19]Q I'm talking about brain surgery?

[20]A If there's trauma to the brain then I'm on call

[21]for brain surgery, yes.

[22]Q Are two physicians primarily on call for

[23]traumatic brain injury at your hospital, right?

[24]A I make the schedule, I'm not aware of that

[25]differentiation, no.

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[1]

[2]Q You make the schedule?

[3]A Yes.

[4]Q First of all, before we get into the schedule.

[5]Seventy-five percent of your practice you've said in the

[6]past involves surgery on discs, right?

[7]A 70 or 75 percent.

[8]Q Okay. So that's approximately three-quarters,

[9]right?

[10]A Yes.

[11]Q And when physicians refer, I take it you get a

[12]lot of referrals from physicians, true?

[13]A Yes.

[14]Q Those referrals **[*64]** are primarily cases involving

[15]back injuries or back problems, right?

[16]A Well, again, it would be pretty much the same

[17]break down, 70 percent back, 30 percent problems involving

[18]the brain.

[19]Q Now, you testified yesterday that you're the

[20]director of the neuro surgical department at St. Luke's

[21]Roosevelt, right?

[22]A That is correct.

[23]Q You didn't mention at that time that there's

[24]actually a chairman of the department now, right?

[25]A There's a chairman of the department of all

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[1]

[2]continuum.

[3]Q There's a chairman of the department at

[4]St. Luke's Roosevelt by the name of Dr. Sen, true?

[5]A He's chairman of the department. All of the

[6]continuum hospitals which includes Beth Israel, St. Luke's,

[7]Long Island College Hospital.

[8]Q Sir, you would agree with me that there's

[9]something known as the medical directory, right?

[10]A Yes, sir.

[11]Q And the medical directory lists who the

[12]directors and the chair people are, correct?

[13]A I believe that's correct.

[14]Q Have you seen the 2004 medical directory?

[15]A I don't believe I have.

[16]Q Would **[*65]** it suprise you to know that it's Dr. Sen

[17]who is listed -- I'll find it later -- as the director of

[18]neuro surgery at St. Luke's Roosevelt? Does that surprise

[19]you?

[20]A No, it doesn't, sir.

[21]Q And it doesn't suprise you because it happens to

[22]be true?

[23]A He's the one that appointed me chairman of the

[24]department.

[25]Q I thought you were the director?
167

[1]

[2]A Director, I'm using the wrong term, I'm sorry.

[3]Q Getting back to the spinal fluid that came out

[4]at the time of the second ventriculostomy, Doctor, there's a

[5]big difference between physician assistant Joseph's

[6]determination that it was 30 to 40 cc's and Dr. Mechanic

[7]that there was three to four cc's, true?

[8]A I think it's a ten fold difference, yes.

[9]Q And by ten fold you mean that's a significant

[10]difference?

[11]A Potentially 26 cc's difference, yes.

[12]Q I want you to assume there's been testimony by

[13]Dr. Ragone in the case that the entire ventricular system

[14]holds only 30 cc's of cerebral spinal fluid at one time.

[15]If what Physician Assistant Joseph found 30 to

[16]40 cc's, well that's as much **[*66]** as Tom Guerin's entire

[17]ventricular system could have possibly have had at the time

[18]they did that second ventriculostomy, right?

[19]A By your numbers, that's true.

[20]Q And Physician Assistant Joseph not only said

[21]that there were 30 cc's or more but she said that it was

[22]cerebro spinal fluid, CSF, true?

[23]A I believe that's how she labeled it, yes.

[24]Q And she said that it came out under pressure,

[25]right?

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[1]

[2]A Correct.

[3]Q And I don't remember the exact term but

[4]significant pressure is what that chart indicated, right?

[5]A Yes.

[6]Q And that was the North Shore chart, right?

[7]A Yes.

[8]Q That's in evidence here?

[9]A Yes, sir.

[10]Q That you reviewed over the weekend?

[11]A Again, over the weekend, yes.

[12]Q Now, you also said that your interpretation of

[13]that record was that it was a sanguinous ooze not

[14]necessarily CSF, remember that?

[15]A No, I don't think that was my testimony, sir.

[16]Q About ten, fifteen minutes ago you said the

[17]sanguinous meant yellow, right?

[18]A But I don't believe I said it wasn't CSF, sir.

[19]Q First **[*67]** of all, sanguinous means bloody, right?

[20]A It means kind of yellowish.

[21]Q Sanguinous means bloody was my question?

[22]MS. DOLSKY: Objection.

[23]A It does, yes.

[24]THE COURT: Objection is overruled. The

[25]answer stands.

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[1]

[2]Q You said I was right?

[3]A Sanguinous by definition means bloody, yes.

[4]Q It doesn't suprise you that there was a

[5]sanguinous CSF if there was still blood in Tom Guerin's

[6]ventricular system on June 3 and June 4 of 1997, right?

[7]A That's probably correct, yes.

[8]Q And you know, beyond a shadow of a doubt that on

[9]June 3 and June 4 of 1997 Tom Guerin's ventricular system

[10]still had blood in it, right?

[11]A Yes, sir.

[12]Q And you know that beyond a shadow of a doubt,

[13]because of the cat scans that are in evidence, right?

[14]A Yes, sir.

[15]Q And you know, also, that that blood that was in

[16]his ventricular system had been there since May 23, 1997,

[17]right?

[18]A Yes.

[19]Q In other words, that wasn't a re-bleed that he

[20]had at some point, was it?

[21]A I think that the majority of the bleed occurred

[22]at one time.

[23] **[*68]** Q And that was the same old blood that had been

[24]sitting in the ventricular system since he had that bleed at

[25]St. Francis Hospital on May 23, right?

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[1]

[2]A That's correct.

[3]Q That's old blood, isn't it?

[4]A Yes, sir.

[5]Q And old blood has a certain odor, doesn't it,

[6]Doctor?

[7]A Not usually in a setting of CSF, no.

[8]Q Just in other settings?

[9]A It doesn't usually smell, no.

[10]Q Old blood?

[11]A Old blood in CSF does not, in my experience,

[12]give off an odor.

[13]Q Doctor, you actually brought with you yesterday

[14]a letter from my colleague's law firm retaining you in this

[15]case, correct?

[16]A Yes.

[17]Q And I had asked for your entire chart or notes

[18]or report on this case yesterday and all you produced was

[19]that letter, right?

[20]A I don't think you asked me for anything. I think

[21]Ms. Dolsky handed you the letter.

[22]Q Yes, and you have it with you?

[23]A Yes, I do.

[24]MR. TORGAN: May I? Sorry to raise my voice to

[25]you, by the way, I just get carried away.
171

[1]

[2]Shall I mark this for Identification before

[3]I use it, your **[*69]** Honor?

[4]THE COURT: Yes.

[5](The above referred to item was marked as

[6]Plaintiff's Exhibit 40 for identification

[7]as of this date.)

[8]Q Now, through -- not your lawyer, but

[9]through Robin Dolsky, my colleague, you were basically asked

[10]if you had any notes regarding your work on this case,

[11]right?

[12]A That's correct.

[13]Q And this is -- what I'm holding here on the back

[14]is the totality that you produced, correct?

[15]A Yes.

[16]Q And all it says, basically, is the transcripts

[17]of the depositions that you read, right?

[18]A That's listed on there, yes.

[19]Q Meaning the names of the people you read, true?

[20]A Yes.

[21]Q The names of the trial testimony you read,

[22]correct?

[23]A Correct.

[24]Q The names of the hospital records you read,

[25]true?

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[1]

[2]A Correct.

[3]Q And the cat scans that you looked at?

[4]A That's correct.

[5]Q And also the OR, I guess that means office

[6]records?

[7]A Yes.

[8]Q Doctor, you would agree that this is a pretty

[9]big hospital record, isn't it?

[10]A Yes, sir.

[11]Q I mean, this isn't **[*70]** one of those cases involving

[12]one day of treatment, is it?

[13]A No, it's not.

[14]Q As a matter of fact, it's a lot of treatment,

[15]just at North Shore alone, correct?

[16]A Yes, sir.

[17]Q I'm sure that you're a brilliant surgeon, but to

[18]recollect everything from that without taking notes that's

[19]quite an achievement, isn't it?

[20]A I made no attempt to recollect everything from

[21]the chart, sir, that would be impossible.

[22]Q I was here for your testimony and you seem to

[23]have good recall of the chart. My question is, I take it you

[24]must have taken some notes on it?

[25]A I did not, sir.

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[1]

[2]Q Not one note?

[3]A I highlighted, I didn't take any notes.

[4]Q Did you bring the chart with you?

[5]A No, sir.

[6]Q Did you make notes on it?

[7]A No, sir.

[8]Q Now, you read a lot of the testimony, didn't

[9]you?

[10]A Yes, sir.

[11]Q And you actually read a lot of my examination of

[12]the witnesses, correct?

[13]A As indicated on there, yes. That's the listing

[14]of what I read.

[15]Q So you read Mechanic's testimony it says, right?

[16]A Yes, sir. **[*71]**

[17]Q Dr. Ragone?

[18]A Yes, sir.

[19]Q Hanna?

[20]A Yes, sir.

[21]Q Engelman?

[22]A Yes, sir.

[23]Q Denny?

[24]A Yes, sir.

[25]Q And Stein's?

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[1]

[2]A Yes, sir.

[3]Q Sir, did you read your lawyers questioning, when

[4]I say your lawyer that's a misstatement. Did you read my

[5]colleague's testimony of both Dr. Denny and Dr. Stein where

[6]she asked if I asked them not to write a report, did you

[7]read that?

[8]A I don't recall specifically, know I read it. If

[9]it's in there I read it but, again, I didn't take notes so I

[10]don't recall it specifically.

[11]Q Do you recall the answer was no, that I didn't

[12]ask them not to write a report?

[13]MS. DOLSKY: Objection.

[14]THE COURT: Sustained.

[15]Q Sir, you were specifically asked in this

[16]case -- we ask that you do not write a report at this time,

[17]you were actually asked that by the lawyer, right?

[18]A The only --

[19]Q My question was simple, Doctor. I don't mean to

[20]interrupt you. My question was, you were specifically

[21]asked -- thank you, Bob -- you were specifically asked by

[22]the lawyers for North **[*72]** Shore, Dr. Hanna and Dr. Mechanic, not

[23]to write a report?

[24]A That's what it says, yes.

[25]Q Not only does it say it, it was underlined,
175

[1]

[2]wasn't it?

[3]A Yes.

[4]Q It was highlighted?

[5]A Underlined.

[6]Q Well, did you ask the lawyers at Heidell Pittoni

[7]why in the whole wide world they wouldn't want you to write

[8]a report on this case?

[9]A No, sir.

[10]Q Never asked that?

[11]A No, sir.

[12]Q Never crossed your mind?

[13]MS. DOLSKY: Objection.

[14]THE COURT: Sustained.

[15]Q Sir, you saw that Ms. Dolsky asked Dr.

[16]Stein whether he testified in court before, correct?

[17]A Yes, he did -- she did.

[18]Q You satisfied she asked if Dr. Denny ever

[19]testified in court as well?

[20]A I believe that question was there, yes.

[21]Q Well, did you ask her why she asked that?

[22]A No, sir.

[23]Q Well, you've testified in court before, haven't

[24]you?

[25]A Yes, I have.
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[1]

[2]Q You've testified a lot more than Dr. Denny has,

[3]right?

[4]A I don't recall Dr. Denny's numbers so I can't

[5]answer that question.

[6]Q It **[*73]** was three.

[7]A I would have testified a lot more than him then.

[8]Q You've testified even a lot more than Dr. Stein

[9]has, haven't you?

[10]You read his testimony?

[11]A I believe his numbers were lower than mine, yes.

[12]Q His numbers were substantially lower than yours,

[13]right?

[14]A I don't recall the specifics, sir.

[15]Q Well, sir, the point I'm making is that you have

[16]been confronted with that very question before in court to

[17]produce the records, the writings, the report that you made

[18]in evaluating the case, right?

[19]A I believe I have, yes.

[20]Q And you knew, certainly to a reasonable degree

[21]of certainty, that that would come up here, right?

[22]A I don't think I thought about it that much, sir.

[23]Q You are thinking about it now, right?

[24]A You are asking me the questions so I have no

[25]choice.

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[1]

[2]Q The opinion about the infection was a recent

[3]opinion, by you, true?

[4]A No.

[5]Q Now, in reading Dr. Mechanic's testimony I take

[6]it you read the totality of it, right?

[7]A I read everything that was sent to me which I

[8]think was his **[*74]** entire testimony, if I missed a day I can't

[9]be certain.

[10]Q It was approximately portions of eight days, the

[11]jury could tell you that. Does that sound right?

[12]A I don't remember the numbers, sir.

[13]Q Did you see that your testimony was totally

[14]consistent with his opinions in the case?

[15]A I don't think I compared it one for one.

[16]Q Let's do it now.

[17]He says that Tom Guerin died from an infection,

[18]right?

[19]A I believe he did, yes.

[20]Q And that's what you said, true?

[21]A Yes.

[22]Q He said that there was no hydrocephalus in the

[23]ventricular system by June 3 and June 2, right?

[24]A Correct.

[25]Q And that's what you said, true?
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[1]

[2]A Yes, sir.

[3]Q He said that the ventricles were damaged from

[4]having been expanded by the blood so they weren't able to

[5]shrink up, right, and I'm talking colloquially but that's

[6]the sum and substance of what he said, right?

[7]A Yes, sir.

[8]Q That's what you said, true?

[9]A Yes, sir.

[10]Q Tell me something, he's a board certified neuro

[11]surgeon, Dr. Mechanic, isn't he?

[12]A I believe **[*75]** he is.

[13]Q He operates on brains, right?

[14]A I believe so, yes.

[15]Q And he's an expert, isn't he?

[16]A I don't know if I can personally qualify him as

[17]an expert.

[18]Q Well, he's board certified, correct? He

[19]graduated from medical school, right?

[20]A Yes, sir.

[21]Q He was certainly expert enough to operate on my

[22]client's brain, right?

[23]A Yes, sir.

[24]Q My question is, did you ever ask the lawyers at

[25]Heidell Pittoni what they need a neurosurgeon for to be an
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[1]

[2]expert if they have Dr. Mechanic?

[3]MS. DOLSKY: Objection, Judge. And I would ask

[4]for a curative instruction.

[5]THE COURT: Sustained.

[6]Q You saw he gave his opinions on causation,

[7]correct?

[8]A Causation?

[9]THE COURT: The law does not require a defendant

[10]doctor to be his own expert.

[11]MR. TORGAN: Thank you. May I proceed, Judge.

[12]Q He gave expert opinions on the issue of the

[13]cause of death, true?

[14]A He gave opinions. I'm not legally adebt enough

[15]to know if that's called an expert.

[16]THE COURT: I think that is a legal conclusion,

[17]and I'm not going **[*76]** to allow it as to who and who

[18]may not be an expert at the time of trial. It's

[19]not within the purview of this witness'

[20]expertise.

[21]Q Did you see that he was asked questions to

[22]a reasonable degree of medical certainty, did you see that?

[23]A I think all questions are asked in that fashion,

[24]sir.

[25]Q And that's a term familiar to you, reasonable
180

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[2]degree of medical certainty, right?

[3]A Yes.

[4]Q And another one is a reasonable degree of

[5]medical probability, true?

[6]A I think they're kind of interchangeable. Again,

[7]I'm not familiar enough with the legal system to know if

[8]there's a difference.

[9]Q Well, did you see that he was asked whether or

[10]not there were departures from accepted standards of medical

[11]practice, did you see that?

[12]A I don't specifically, but I'm not disputing it

[13]was there, sir.

[14]THE COURT: Ladies and gentlemen, these are all

[15]legal terminologies that will be explained to

[16]you in full and at length at the end of the

[17]trial when I give you may charge. Nothing that

[18]either the attorneys say or the witnesses say

[19]can sway you as far **[*77]** as the law. The law comes

[20]from me and I will be the one to give you the

[21]definition and the explanation of those terms.

[22]You may continue.

[23]Q Now, in looking at the totality of the

[24]chart, Doctor, you saw that within 24 hours of the

[25]ventriculostomy Tom Guerin had purposeful movements as
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[1]

[2]documented in the North Shore record, right?

[3]A Such notations were present, yes, sir.

[4]Q Notations by nurses, right?

[5]A I don't recall if it was nurses, doctors or

[6]PA's.

[7]Q There's no question that within 24 hours of

[8]ventricular drainage Tom Guerin was becoming responsive

[9]according to that record, true?

[10]A He was showing some purposeful movement, I

[11]believe. I'm not sure about your definition of responsive.

[12]Q Okay.

[13]Well, we're going to use the definition that's

[14]been used throughout the trial.

[15]First of all, to be responsive to voice you have

[16]to hear the voice, correct?

[17]A Correct.

[18]Q And to be responsive to voice not only do you

[19]have to hear the voice you have to process it in your brain,

[20]correct?

[21]A Well, there are two ways of **[*78]** reacting. One is a

[22]noise and one is a command.

[23]Q Let's talk about command. Responsive to command

[24]has a certain meaning in medicine, doesn't it?

[25]A Yes, it does.

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[1]

[2]Q It's not susceptible to interpretation from one

[3]institution to another, that is being responsive to

[4]commands, correct?

[5]A Correct.

[6]Q Being responsive to command means that the

[7]patient is hearing the command, correct?

[8]A Correct.

[9]Q He or she is understanding the command, true?

[10]A Correct.

[11]Q And he or she is actually reacting to the

[12]command, right?

[13]A Correct.

[14]Q And there's no question that the North Shore

[15]record documents within a day of that intraventricular

[16]hemorrhage, that thalamic bleed he was responding to

[17]command, right?

[18]A I'd have to look at the specific words but, I

[19]believe, such words are in the chart, sir.

[20]Q Now, being able to hear is a brain function,

[21]isn't it?

[22]A Yes, sir.

[23]Q It actually involves, first of all, cranial

[24]nerves, doesn't it?

[25]A Yes, sir.

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[1]

[2]Q It involves the brain stem, right?

[3] **[*79]** A Yes, sir.

[4]Q That was a good sign for Tom Guerin that he

[5]could hear on May 24, 1997, true?

[6]A Yes, sir.

[7]Q As a matter of fact somebody made a decision to

[8]treat him, didn't they?

[9]A Of course.

[10]Q well, what I'm saying is nobody said oh, Tom

[11]Guerin, poor Tom, he's not going to make it. He had a

[12]terrible bleed. They undertook to treat him at North Shore,

[13]didn't they?

[14]A Yes.

[15]Q They took the time of having a surgeon come in,

[16]some time in the evening, who was on call, correct?

[17]A I don't know about the on call.

[18]Q You don't know that part, okay. Put it this way,

[19]he had nurses, right?

[20]A Yes, sir.

[21]Q He had attending physicians, true?

[22]A Yes, sir.

[23]Q There was some residents, correct?

[24]A Yes, sir.

[25]Q PA's, physician's assistants?
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[1]

[2]A Correct.

[3]Q Now, not only, Doctor, was there cranial nerve

[4]function in Tom Guerin on the 24th but he was able to have

[5]motor or muscle movement as well, right?

[6]A There was movement of his extremity, yes.

[7]Q when you say of his extremity it was the

[8] **[*80]** extremity on his left, correct?

[9]A That's correct.

[10]Q And that's because there was virtually little

[11]damage, if any, to the right side of Tom Guerin's brain,

[12]right?

[13]A That's correct.

[14]Q And that certainly was a good thing for Tom

[15]Guerin, wasn't it?

[16]A Yes, sir.

[17]Q It was good because the fact that the right side

[18]of his brain was spared meant, in terms of motor activity,

[19]that he would be able to move the left side of his body,

[20]right?

[21]A That would be the hope, sir.

[22]Q And he was able to move the left side of his

[23]body, wasn't he?

[24]A The chart indicated, yes.

[25]Q Within a day, right?

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[1]

[2]A Again, you are tying me down to my memory which

[3]is not that good but I'll trust that if it's in the chart

[4]that you're representing it appropriately.

[5]Q Well, not only did he have that ability within a

[6]day he had it throughout the course of his treatment at

[7]North Shore, right?

[8]A My recollection is that he was observed at times

[9]to have movement in his left arm.

[10]Q Now, you mentioned on cross-examination -- I'm

[11]sorry, you mentioned **[*81]** on direct examination the fact that

[12]Cecilia Guerin, his wife, who was there on the evening of

[13]June 2 after the clamping, correct?

[14]A I believe Ms. Dolsky mentioned it and I said,

[15]yes, I was aware of that.

[16]Q You used her observations to answer what's known

[17]as a hypothetical question, didn't you?

[18]A I'm not sure which questions, sir.

[19]Q Sure, you were basically asked to assume that

[20]Ceil Guerin didn't see any neurological decline on June 2,

[21]that therefore the clamping of the ventriculostomy wasn't

[22]necessarily a bad thing, remember that whole series of

[23]questions back and forth?

[24]A I understand your question now and I do recall

[25]that, yes.

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[1]

[2]Q Well, so, therefore, on June 2 your crediting

[3]what Cecilia Guerin said, right?

[4]A Reacting to what you call the hypothetical and

[5]if it's true, yes.

[6]Q Well, you are assuming that what she said was

[7]true before you volunteered an opinion based upon that to

[8]the jury, correct?

[9]A The question was asked based on the assumption

[10]that it was a true statement and then I responded.

[11]Q Did you see that not only **[*82]** was he responsive to

[12]the command but he was, according to the nurses, aware of

[13]the ventriculostomy, did you see that?

[14]MS. DOLSKY: At what time, your Honor?

[15]MR. TORGAN: May 24, your Honor.

[16]Q Did you see that?

[17]A I'd have to be shown it in the chart, sir.

[18]Q You don't remember?

[19]A I don't remember it clearly, that statement, no.

[20]Q Do you remember seeing it anywhere in the chart?

[21]A As you made note of I didn't take notes and I

[22]don't have an encyclopedic memory of the chart but I'd be

[23]glad to look at it if you would like to show it to me, sir.

[24]MR. TORGAN: I'll show it to you in due course.

[25]I just don't want to waste time looking for the
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[2]blowups because I haven't arranged them.

[3]Q Now, I take it it's your opinion that the

[4]nursing staff at North Shore was a competent nursing staff,

[5]right?

[6]A There is nothing in the chart that made me think

[7]otherwise, sir.

[8]Q Well trained to be in a surgical ICU?

[9]A I don't know how to answer that question.

[10]Q You offered your opinion as to custom and

[11]practice based upon your experience. **[*83]** Nurses in a surgical

[12]ICU are generally well trained nurses, right?

[13]A As in generalization yes.

[14]Q And they're competent?

[15]A As a generalization, yes.

[16]Q And as a generalization they're caring nurses,

[17]true?

[18]A I think that's very reasonable.

[19]THE COURT: We're going to break now and we'll

[20]come back, instead of quarter after two, we'll

[21]come back at two o'clock. Let's come back at two

[22]o'clock sharp. Everybody be here and we'll start

[23]promptly at two o'clock.

[24]THE CLERK: Doctor, you may step down.

[25]
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[2](Whereupon, the jury left the courtroom,

[3]and the following took place in the

[4]absence of the jury:)

[5]THE COURT: I offered the jurors time

[6]limitations on the 21st that will try to assist

[7]the attorney for St. Francis but we have to

[8]remember that this trial is on it's 48th day and

[9]I do not want to lose these jurors and they are

[10]beginning to get, quote, antsy. So I worked out

[11]a compromise myself, not discussing it with the

[12]jurors, I had the Court Officer discuss whether

[13]or not this would be agreeable with them, and

[14]they agreed tremendously. **[*84]** They agreed

[15]unanimously, I should say.

[16]Monday we have off. They have agreed to

[17]work and make child care arrangements from nine

[18]to four on Tuesday and Thursday.

[19]MS. DOLSKY: If I may, I didn't bring a pad

[20]up with me.

[21]THE COURT: Tuesday and Thursday I'll tell

[22]them 9:30. Monday we have off. Tuesday is the

[23]22. Wednesday we have that juror that has to go

[24]into the City to the doctor who probably will

[25]not be back here until about 2.-30 so it doesn't
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[1]

[2]pay that day. That day is going to be off and

[3]the 24th until one o'clock, that's Friday.

[4]MR. GABRIELE: Tuesday a full day, Thursday

[5]a full day and Friday a half day. Friday is

[6]nine to one.

[7]THE COURT: Monday is a legal holiday,

[8]Wednesday we'll be off, which they will get

[9]credit, and then we'll have Tuesday and

[10]Thursday, which was not an easy thing to get,

[11]from nine until four, and Friday nine to one.

[12]MR. GABRIELE: Judge, I don't think I'll

[13]have any problem getting witnesses Tuesday and

[14]Thursday but I'm going to have a problem putting

[15]an expert on for half a day.

[16]THE COURT: You have to do it. **[*85]** This is the

[17]way this trial has been going and you'll have to

[18]do it. That's it. I'm not giving up another day.

[19]I'm not going to let this jury take another day.

[20]MS. DOLSKY: As long as we're discussing

[21]scheduling there had been a question regarding

[22]Candace Friedland Katz that Mr. Torgan said he

[23]would speak to them, if possible, Thursday

[24]afternoon. If that can be arranged.

[25]MR. TORGAN: I'll do my best.

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[1]

[2]THE COURT: Now, Mr. Torgan, this is going

[3]on three weeks now, I want those departures.

[4]MR. TORGAN: I'll ask my office. I hope to

[5]get them to you today.

[6]THE COURT: There are two outstanding

[7]motions and I can not decide those motions nor

[8]do I intend to decide them without your

[9]departures. I have no idea and I want the

[10]departures prepared and I'm willing to attach it

[11]as an exhibit although I don't need it. The

[12]departures you gave --

[13]MR. TORGAN: I never saw them. I just

[14]dictated them on Friday.

[15]THE COURT: I'll give them to you, they're

[16]convoluted, they don't give any individuals who

[17]are responsible for the departures and I cannot

[18]make a determination **[*86]** and I want them here by

[19]Thursday because I want to start working on that

[20]motion.

[21]MR. TORGAN: Thanks for giving the time.

[22]MS. DOLSKY: I'll have all the cites and my

[23]memorandum of law also.

[24]THE COURT: I want everything Thursday and

[25]I want the memorandums of law exchanged and I

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[1]

[2]want the departures.

[3]MR. GABRIELE: The memos by Thursday.

[4]MR. TORGAN: They're making memos?

[5]MS. DOLSKY: Memos of law in support of the

[6]motion that was already made.

[7]THE COURT: In addition to which, because I

[8]need the pages, we have like 5,000 pages easily

[9]and you know exactly where you are going, the

[10]attorneys, and I want to know exactly where you

[11]are going, as well. I want everything exchanged

[12]Thursday.

[13]See you at two o'clock.

[14](Whereupon, the Court took a luncheon

[15]recess.)

[16]* * * * * *

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[1]192

[2]AFTERNOON SESSION

[3]

[4]THE CLERK: Please come to order, remain

[5]seated.

[6]THE COURT: Would you excuse the witness

[7]for a few seconds. Just a few seconds.

[8]THE CLERK: Out in the hall?

[9] **[*87]** THE COURT: Yes. Just for a few seconds.

[10]THE CLERK: If you don't mind, you can

[11]stand out here.

[12](Whereupon, the witness exited the

[13]courtroom.)

[14]THE COURT: I just want to put on the

[15]record that there was an indication that this

[16]case might come to some settlement, fruition,

[17]and I had --

[18]MS. DOLSKY: Your Honor, the Plaintiff

[19]isn't here yet. I don't know whether you wanted

[20]Mrs. Guerin to be here.

[21]THE COURT: Yes. Is she outside?

[22]MS. DOLSKY: They just went to get her.

[23]THE COURT: Oh. Okay. Fine. Thank you.

[24]THE COURT: I would prefer her to be here.

[25]THE CLERK: Come to order please.

[1]193

[2]THE COURT: I wanted to put on the record

[3]that I had the permission of all counsel to meet

[4]with them individually and together, as well as

[5]Mr. Horvath from the insurance carrier,

[6]regarding a potential settlement of this case,

[7]and I've spoken to Mr. Torgan. He wants time to

[8]speak to his client, and I need some sort of a

[9]response so that I could see what I can do. In

[10]the meantime, we're going to continue this

[11]trial, and until I hear from Mr. Torgan, in

[12] **[*88]** either case, we're just going to keep going.

[13]Okay?

[14]Thank you.

[15]THE CLERK: Okay, Doctor, you may take the

[16]stand please.

[17](Whereupon, the witness resumed the stand.)

[18]THE COURT OFFICER: Ready for the jury?

[19]THE COURT: Yes, I am.

[20]THE COURT OFFICER: Jury entering.

[21](Whereupon, the jury panel reentered the

[22]courtroom.)

[23]THE CLERK: I remind you, Doctor, you're

[24]still under oath.

[25]THE WITNESS: Thank you.

[1]194

[2]THE COURT: Good afternoon, ladies and

[3]gentlemen. We were all here at 2 o'clock. I

[4]just want to assure you -- it always bothers me

[5]that perhaps the jury thinks we went for a five

[6]martini lunch or something like that, but trust

[7]me, we were all here.

[8]Thank you.

[9]You can continue, Mr. Torgan.

[10]Q. Doctor, before the break, well before the break,

[11]I asked you if you were familiar with the Medical

[12]Directory. It's just a photocopy of it. The book was too

[13]heavy to bring in. 2003, 2004.

[14]THE COURT OFFICER: Is this marked?

[15]MR. TORGAN: I'm sorry. Could we mark that

[16]for identification?

[17]THE COURT: Yes, please **[*89]** do.

[18](Above-referred to item marked for

[19]identification as Plaintiff's Exhibit Number

[20]41.)

[21]THE COURT: It's been marked.

[22]Q. Now, the Medical Directory basically lists

[23]physicians in New York State, correct?

[24]A. Yes, sir.

[25]Q. And it also lists hospitals at the back of the

[1]195

[2]book, true?

[3]A. Yes, it does.

[4]Q. And it specifically lists St. Luke's-Roosevelt,

[5]right?

[6]A. Correct.

[7]Q. And it lists who the Director of Neurosurgery

[8]is, correct?

[9]MS. DOLSKY: I have to object to this,

[10]Judge. Hearsay.

[11]MR. TORGAN: Well --

[12]THE COURT: I'm going to sustain it.

[13]MR. TORGAN: I offer that in evidence, your

[14]Honor.

[15]MS. DOLSKY: Your Honor, you know I have to

[16]object on legal grounds. It's not admissible in

[17]evidence.

[18]MR. TORGAN: I withdraw the offer.

[19]THE COURT: Okay. The offer's been

[20]withdrawn.

[21]Q. Sir, Dr. Sen is the Chairman of Neurosurgery for

[22]St. Luke's-Roosevelt; is that correct?

[23]A. That's his title, yes.

[24]Q. And he came here a few years ago?

[25]THE COURT: Just a minute. You want **[*90]** to

[1]196

[2]give that back to counsel please.

[3]THE COURT OFFICER: (Handing.)

[4]Q. And he came to St. Luke's a few years ago,

[5]correct?

[6]A. Three or four years ago, yes.

[7]Q. From another institution, true?

[8]A. That's correct.

[9]Q. And prior to his coming you were the Director of

[10]Neurosurgery, correct?

[11]A. At that time I was the Director of the Division

[12]of Neurosurgery.

[13]Q. Which I think you tried to tell us yesterday was

[14]under the auspices of surgery, correct?

[15]A. Correct.

[16]Q. And when Dr. Sen came there became a whole

[17]neurosurgical department, true?

[18]A. That is correct.

[19]Q. And he's the man, right?

[20]A. I'm not sure how to answer that.

[21]Q. That was very colloquial.

[22]He's the person in charge of the Neurosurgery

[23]department, right?

[24]A. He is in charge of the Department of

[25]Neurosurgery over all the hospitals. He designated me

[1]197

[2]personally as Director of Department of Neurosurgery at

[3]St. Luke's-Roosevelt Hospital. I can't answer the

[4]question beyond that.

[5]Q. Are you a salaried employee of the hospital? **[*91]**

[6]A. Yes, I am.

[7]Q. Do people refer to him as the director?

[8]A. I can't answer that question.

[9]Q. Okay. Now, you opined to this jury before

[10]lunch, which seems like hours ago, basically, that my

[11]client died from a rampant bacterial infection, correct?

[12]A. That's correct.

[13]Q. And it was just a really fast moving infection,

[14]true?

[15]A. Yes, sir.

[16]Q. That nobody could control, right?

[17]A. I agree with that.

[18]Q. And it was obvious to everybody in the hospital

[19]I take it, right?

[20]A. Not at that time, no.

[21]Q. Well, it was obvious at some point -- well,

[22]Doctor, it's never a surprise when somebody on ventricular

[23]drainage gets an infection, right?

[24]A. I'm not sure how to answer, It's never a

[25]surprise.

[1]198

[2]Q. Well, it's a risk of the procedure you told us,

[3]right?

[4]A. That's correct.

[5]Q. You told us that a few hours ago, true?

[6]A. Yes.

[7]Q. Five or six times.

[8]A. I don't remember.

[9]Q. In any event, Doctor, many neurosurgeons

[10]prescribe antibiotics for the entire course of ventricular

[11]treatment, **[*92]** correct?

[12]A. That's true.

[13]Q. Well, that wasn't done here, was it.

[14]A. That's correct.

[15]Q. As a matter of fact, the people at North Shore

[16]decided that Tom Guerin shouldn't be on antibiotics,

[17]right?

[18]MS. DOLSKY: Objection, your Honor, to

[19]people at North Shore.

[20]MR. TORGAN: Withdrawn.

[21]MS. DOLSKY: Excuse me, Judge.

[22]THE COURT: Sustained.

[23]Q. He had a whole team of infectious disease

[24]experts, true?

[25]A. That is correct.

[1]199

[2]I'm sorry. I have to amend that. I'm not sure

[3]the whole team. I remember one or maybe two names, and I

[4]can't --

[5]Q. David Brieff would be one?

[6]A. That's the one I recall.

[7]Q. Dr. Tannenbaum would be another, right?

[8]A. I don't recall that name. I'm not disputing it,

[9]but I don't recall it.

[10]Q. In any event, they were on the case, right?

[11]A. At least Dr. Brieff, yes.

[12]Q. Well, and Tom Guerin at some point had these

[13]high fevers, didn't he?

[14]A. Yes.

[15]Q. And in order to treat a fever the best medical

[16]practice is to determine what's causing the fever, true?

[17] **[*93]** A. Correct.

[18]Q. And probably the worst case scenario for

[19]somebody is to have an E, coli infection causing a fever,

[20]right?

[21]A. That's correct -- it's a bad case. I'm not sure

[22]if it's the worst case, but --

[23]Q. It's very bad for the patient, right?

[24]A. Yes.

[25]Q. So they were taking cultures not on a daily

[1]200

[2]basis but every couple days, right?

[3]A. That's correct.

[4]Q. And they took cultures certainly well prior to

[5]June 4th, true?

[6]A. Correct.

[7]Q. And without getting into the nitty-gritty of it

[8]all, before June 4th they were all negative, true?

[9]A. CSF cultures, yes.

[10]Q. Well, that's what we're talking about, right?

[11]A. Yes, sir.

[12]Q. So when you're concerned about an infection in

[13]the brain it's the cerebrospinal fluid you're concerned

[14]about, true?

[15]A. Yes.

[16]Q. And certainly at some point Infectious Disease

[17]ruled out infection, true?

[18]A. As best they could, yes.

[19]Q. According to that record Infectious Disease

[20]insisted Tom Guerin not be placed on antibiotics at that

[21]time, right?

[22]A. I don't **[*94]** know about the word, insisted. I'm not

[23]sure how to --

[24]Q. When the ventriculostomy was placed he was on

[25]antibiotics; Tom Guerin, right?

[1]201

[2]A. I believe he received a dose or two, yes.

[3]Q. And that's good practice, right?

[4]A. It's a way of doing it.

[5]Q. Well, that could kill any gram-negative or

[6]gram-positive bacteria that might get into the drain,

[7]true?

[8]A. It depends on which antibiotic you're on.

[9]Q. Well, you want to be on a broad spectrum

[10]antibiotic that will kill all types of bacteria, right?

[11]A. There are risks -- there are benefits and risks

[12]to using that much coverage. As with everything else

[13]you're always balancing one against the other, and there's

[14]a benefit and a risk in covering with antibiotics, which

[15]is why there's more than one way to do it.

[16]Q. Okay. In any event, at some point Infectious

[17]Disease decided not to cover him any longer with

[18]antibiotics, true?

[19]A. That's correct.

[20]Q. And that's because they had ruled out any kind

[21]of infectious process causing his fever, correct?

[22]MS. DOLSKY: Objection. Asked and

[23] **[*95]** answered.

[24]THE COURT: Overruled.

[25]A. To the best of their ability, yes.

[1]202

[2]Q. Well, they checked CSF and that was negative,

[3]correct?

[4]A. Correct.

[5]Q. They checked blood and that was negative, right?

[6]A. For the most part I believe there was one

[7]positive culture of some kind.

[8]Q. But they found it was contaminant, right?

[9]A. They believe it was contaminant.

[10]Q. And they ruled it out. That's my question.

[11]A. And again, I'm answering to the best of their

[12]ability they ruled it out, yes, sir.

[13]Q. Well, that's all I'm asking you.

[14]And they did sputum cultures. Those were

[15]negative, right?

[16]A. The sputum had a variety of organisms in them

[17]which were not considered unusual, but they were not

[18]negative.

[19]Q. They determined that he didn't have any kind of

[20]pneumonia or infection in his lung, correct?

[21]A. To the best of their ability, yes.

[22]Q. And to the best of their ability they ruled out

[23]urine also as a source of infection.

[24]A. Correct.

[25]Q. Now, you did look at the totality of this record

[1]203

[2]over **[*96]** the weekend, true?

[3]A. Again, yes.

[4]Q. The only person who actually said specifically

[5]that Tom Guerin succumbed to an E. coli infection or an

[6]E. coli ventriculitis was Alan Mechanic, M.D., right?

[7]A. I would really have to look very hard through

[8]the chart to agree with that, I don't know for sure.

[9]Q. Well, you just gave an expert opinion, Doctor,

[10]that in your expert opinion Tom Guerin died from an

[11]infection, right?

[12]A. That's correct.

[13]Q. And to come to that opinion you reviewed the

[14]chart, didn't you?

[15]A. That's correct.

[16]Q. And you reviewed the CAT scans, right?

[17]A. That's correct.

[18]Q. And you reviewed the lab results?

[19]A. That's correct.

[20]Q. The discharge summary?

[21]A. I believe I did.

[22]Q. The progress notes?

[23]A. Yes.

[24]Q. The only person in the entire hospital who said

[25]Tom Guerin died or succumbed to an E. coli fulminant

[1]204

[2]gram-negative ventriculitis was Alan Mechanic, true?

[3]A. Again, I know that record is in the chart. I

[4]just cannot trust my memory as to whether anyone else

[5]wrote that, sir. **[*97]**

[6]Q. Well, take a look, Doctor.

[7]A. It's going to take a long time.

[8]Q. Well, has anybody pointed out to you that

[9]somebody else made the diagnosis besides Dr. Mechanic?

[10]A. No, sir.

[11]Q. Did anybody from Infectious Disease make the

[12]diagnosis?

[13]A. They brought up the question but did not make

[14]the diagnosis.

[15]Q. They what?

[16]A. The question was brought up, but the diagnosis

[17]was not specifically made.

[18]Q. Exactly. Infectious Disease, my question was,

[19]never made the diagnosis that Tom Guerin died from an

[20]E. coli ventriculitis, true?

[21]A. For the most part true, yes.

[22]Q. Incidentally, did you see how Dr. Stein was

[23]cross examined on the fact that Alan Mechanic was fired on

[24]the 4th, so how could he have known of the rampant E. coli

[25]infection on the 6th? Did you see that whole area of

[1]205

[2]cross examination?

[3]A. I remember that as being part of the issue, and

[4]I do recall testimony around that area, yes.

[5]Q. And do you remember the redirect of me

[6]confronting Dr. Stein with a June 6th and June 7th note by

[7]Alan Mechanic not mentioning **[*98]** anything about an E. coli

[8]infection. You remember that?

[9]A. Again, not specifically, sir. I can certainly

[10]look through the chart and find it.

[11]Q. June 6th, Doctor -- let me help you. Doctor, I

[12]want you to take a look. June 7th -- June 7th, the day

[13]after the diagnosis -- withdrawn.

[14]The day after the lab results showing that it

[15]grew out of bacteria Alan Mechanic writes a note and

[16]mentions nothing about E. coli ventriculitis, correct?

[17]A. He doesn't mention the cause of death here.

[18]Q. He's not dead yet. It's June 7th. He doesn't

[19]die until the 13th.

[20]A. I'm sorry. He doesn't mention a cause of his

[21]demise. He doesn't give any diagnosis there.

[22]Q. He writes, Remains comatose, unresponsive to

[23]voice or pain. Pupils fixed and dilated. No corneals, or

[24]oculocephalic -- I can't pronounce it -- brain death

[25]determination as per neurologist. Alan Mechanic.

[1]206

[2]June 6th was the day this lab result came back,

[3]and Dr. Mechanic didn't think to comment on that as a

[4]result of his brain condition either, did he?

[5]A. Not in the chart, no, sir.

[6]Q. Now, you saw, **[*99]** Doctor, that -- well, you read his

[7]testimony, true?

[8]A. Yes, I did, sir.

[9]Q. And you read Dr. Mechanic's testimony that he

[10]had left specific instructions for the staff to call him,

[11]basically -- and I'm paraphrasing it -- any little thing

[12]that might happen on the evening of the 3rd into the 4th.

[13]Remember that?

[14]A. As a paraphrase I can agree to that, yes.

[15]Q. And you saw that he was called at 7 PM by

[16]Physician's Assistant Engelman. You saw that, right?

[17]A. Yes.

[18]Q. You saw he was called at 1 o'clock in the

[19]morning by a Physician's Assistant Joseph. You saw that,

[20]right?

[21]A. Yes, sir.

[22]Q. Now, you've been a neurosurgeon on call many

[23]times, haven't you?

[24]A. Yes.

[25]Q. In fact, many, many times.

[1]207

[2]A. Yes, sir.

[3]Q. 1 o'clock call in the morning to a neurosurgeon

[4]is not a little event, is it.

[5]A. Depends on the call, sir. I receive calls at

[6]10, 11, 12, 1, 2, 3, 4, 5, rather routinely.

[7]Q. And the 1 AM calls, those are to tell you your

[8]patient's stable, doing well, is okay?

[9]A. No. I think each call will be **[*100]** individualized

[10]depending on the information that's transmitted.

[11]Q. I'm sorry. I didn't mean to step on your words.

[12]A. Depending on the information that's transmitted.

[13]Q. Doctor, that 1 o'clock call was about a 100 cc's

[14]of cerebrospinal fluid oozing out onto the pillow, right?

[15]A. I think that was the 1 o'clock call, yes.

[16]Q. And if I'm right, if I'm right, first of all,

[17]that there's only 30 cc's --

[18]MS. DOLSKY: Objection, your Honor. This

[19]is so inappropriate; if I'm right.

[20]THE COURT: Sustained whether or not you're

[21]right.

[22]Q. Let's say you're right and there's how many cc's

[23]in the ventricular system at one time?

[24]A. Depending on the patient, on the order of a 100,

[25]130.

[1]208

[2]Q. Let's split the difference and say a 115. If

[3]there's a 115 cc's in the ventricular system at one time,

[4]Tom Guerin is down a 100 of them at 1 o'clock in the

[5]morning, right?

[6]A. I don't know what the question is, sir.

[7]Q. Well, the chart says he oozed a 100 cc's out

[8]onto the pillowcase. You're not disputing that, are you?

[9]A. It says approximately -- **[*101]** the two squiggles -- a

[10]100 cc's. It's not measured as a volume, sir.

[11]Q. Could have been more, could have been less,

[12]right?

[13]A. Correct.

[14]Q. You don't know?

[15]A. Correct.

[16]Q. But the nurse documented a 100 cc's. That's in

[17]the chart, right?

[18]A. She documented approximately a 100 cc's, I

[19]think, on the pillow was the statement.

[20]Q. He documented.

[21]A. I'm sorry.

[22]Q. That's okay.

[23]In any event, if Tom Guerin lost a 100 cc's of

[24]cerebrospinal fluid, and that was true, that's basically

[25]his entire ventricular system of CSF, right?

[1]209

[2]A. It's a significant portion of it, yes.

[3]Q. And assuming Dr. Mechanic got a call about that,

[4]that was a serious phone call, wasn't it?

[5]A. It was something he should be informed of, yes.

[6]Q. Well, actually, that's what it says in the

[7]chart; Dr. Mechanic informed, right?

[8]A. Yes, sir.

[9]Q. You'd agree that's something that he should have

[10]responded to, right?

[11]A. Well, I mean, he got the call and he reacted to

[12]it. I'm not sure what you mean by responded to, sir.

[13]Q. I **[*102]** mean, gone to the hospital to see his patient.

[14]A. I don't think that that necessarily is true,

[15]sir.

[16]Q. You think a 100 cc's on a pillowcase is --

[17]withdrawn.

[18]You think approximately a 100 cc's on the

[19]pillowcase is an emergency situation for a patient?

[20]A. Not necessarily.

[21]Q. That had a ventriculostomy removed?

[22]A. Not necessarily, sir.

[23]Q. When you say not necessarily, that leaves open

[24]the possibility that it is an emergency, right?

[25]A. I think the patient was in a situation where

[1]210

[2]that wasn't one thing that would push one way or the

[3]other.

[4]Q. As you sit here today, Doctor, as a Board

[5]certified neurosurgeon who's the Director of Neurosurgery

[6]at St. Luke's-Roosevelt, is a 100 cc's of cerebrospinal

[7]fluid coming through a scalp post-ventriculostomy removal

[8]an emergency?

[9]A. I really don't know how to answer the question,

[10]sir. It's an observation which combined with everything

[11]else is part of the whole picture, but I'm not sure how to

[12]answer it beyond that.

[13]Q. Take a look at Physician's Assistant Joseph's

[14]note.

[15]A. **[*103]** Okay.

[16]Q. It's dated June 4th, 8:50 AM. Retrospectively

[17]written about the evening before.

[18]A. Um, let me see a little better, sir.

[19]Q. (Indicating.) It's after Dr. Yi's note.

[20]A. Again, I'm still -- I'm still not sure if I'm

[21]seeing it.

[22]Q. Signed by Joseph at the bottom, and Dr. Brieff,

[23]Infectious Disease, is right under it.

[24]A. Okay. Maybe that will help me find it.

[25]I have it, sir. 8:50 AM, yes.

[1]211

[2]Q. Called by a nurse about 1 AM. That's a squiggly

[3]line, right?

[4]A. Yes.

[5]Q. Patient oozing CSF from ventric site. Towel

[6]saturated. Staples applied. You see that?

[7]A. Yes, sir.

[8]Q. Staples. That's pretty clean, isn't it?

[9]Withdrawn.

[10]That's pretty antiseptic; staples going into

[11]somebody's scalp, right?

[12]A. I'm not sure how to answer the question. We

[13]apply staples at the end of operations all the time under

[14]aseptic conditions.

[15]Q. Towels also, right?

[16]A. He's not applying towels, sir.

[17]I'm not sure what you're asking me.

[18]Q. It says the towel was saturated with CSF.

[19]A. Okay.

[20]Q. **[*104]** See that?

[21]A. Yes.

[22]Q. You think E. coli could have been on that towel?

[23]A. Yes, sir.

[24]Q. Then it says, Dr. Mechanic was informed, so we

[25]know for a fact he's informed at 7 and at 1 in the

[1]212

[2]morning, correct?

[3]A. Yes, sir.

[4]Q. And then, he's informed again at 3:40 AM. See

[5]that?

[6]MS. DOLSKY: Objection, your Honor. May we

[7]approach for a moment?

[8]THE COURT: Certainly.

[9](Whereupon, a conference was held off the

[10]record outside the courtroom.

[11](Back in open court:)

[12]THE CLERK: Please come to order.

[13]MR. TORGAN: May I proceed, your Honor?

[14]THE COURT: Yes, you may.

[15]Q. Sir, it says: 3:40 AM, spiked -- I can't read

[16]that -- some temperature. It says, Dr. Mechanic again

[17]informed. CSF post-ventriculostomy discontinued -- oh. I

[18]see. CSF -- I don't know. What is that?

[19]A. CSF post-ventriculostomy discontinued, thus far

[20]negative, yes.

[21]Q. Well, we have him informed again at 3:40 AM,

[22]right?

[23]A. Yes, sir.

[24]Q. And we have him informed again at 6:30 AM, true?

[25]A. I don't know if it says informed again **[*105]** at 6:30.

[1]213

[2]He's writing a note at 6:30.

[3]Q. See, it says, Dr. Mechanic notified by phone,

[4]about four lines down?

[5]A. I don't know what time that is though, sir.

[6]It's probably around then, but I can't tell you exactly.

[7]Q. Well, it's the third phone call to him after 1

[8]in the morning, right?

[9]A. Yes, sir.

[10]Q. Then you see where it says, About 30 cc foul

[11]smelling bloody fluid sent off for culture and gram stain,

[12]See that?

[13]A. Yes, sir.

[14]Q. You see that?

[15]A. Yes, sir.

[16]Q. Okay. Now, when something's sent off to a lab

[17]to determine whether there is an infection of some kind,

[18]first of all, you send it to Culture, correct?

[19]A. Yes, Sir.

[20]Q. Hematology, true?

[21]A. Yes, sir.

[22]Q. And Chemistry, right?

[23]A. If there's enough fluid, yeah.

[24]Q. Did I ask you about fluid? I'm asking you what

[25]the protocol is in a hospital. Protocol is you send it

[1]214

[2]out to make that diagnosis to three places, true?

[3]A. But the protocol is prioritized by the amount of

[4]fluid that you have.

[5]Q. Well, 30 cc's is plenty **[*106]** of fluid to send off for

[6]that evaluation, right?

[7]A. It certainly would be, but --

[8]Q. As a matter of fact --

[9]MS. DOLSKY: Your Honor --

[10]THE COURT: Wait just a minute. You have

[11]to -- you're asking the questions. You have to

[12]allow the witness to answer the questions.

[13]A. Yes, it would be, but three or four cc's would

[14]not be enough, and the primary important lab result that

[15]you need is the culture and gram stain.

[16]Q. All you need is one cc to send it out, first of

[17]all, for a culture, true?

[18]A. The more you have the better, but one cc might

[19]be adequate, yes.

[20]Q. And so you got -- even if Dr. Mechanic's memory

[21]of the event is better than Physician's Assistant

[22]Joseph's, he still had three cc's, right?

[23]A. That's what the -- his recollection says, yes.

[24]Q. There was no chemistry on that culture, or on

[25]that sample. How about that, correct?

[1]215

[2]A. Correct.

[3]Q. It wasn't sent to Hematology, right?

[4]A. I'm not aware that it was, that's correct.

[5]Q. But it was sent for a culture, right?

[6]A. Which, again, is the most important **[*107]** thing to

[7]send it for.

[8]Q. Well, I don't make a diagnosis based upon just

[9]one sample, correct?

[10]A. I'm not sure --

[11]Q. That's outside your area of expertise?

[12]A. No, no. I'm not sure what the question is. On

[13]one sample --

[14]Q. On one sample out of three.

[15]A. You mean on one test?

[16]Q. Yes.

[17]A. You said, on one sample. You mean on one test,

[18]sir.

[19]Q. Sir, protocol is it gets sent to those three

[20]places, correct?

[21]A. Yes.

[22]Q. This was only sent to one, right?

[23]A. Correct.

[24]Q. It was never reevaluated, true?

[25]A. Reevaluated --

[1]216

[2]Q. In other words, they never did another culture

[3]of cerebrospinal fluid after the 4th, correct?

[4]A. Not that I'm aware of, sir.

[5]Q. Well, look at the chart.

[6]A. No. I said not that I'm aware of by having

[7]looked at the chart.

[8]Q. Now, there's no doubt in your mind that Tom

[9]Guerin did not need a ventriculostomy on June 3rd or June

[10]4th, right?

[11]MS. DOLSKY: Judge, I object to, There's no

[12]doubt.

[13]THE COURT: Sustained as to form.

[14]Q. Well, **[*108]** you testified that Tom Guerin did not need

[15]a ventriculostomy on the evening of the 3rd, early morning

[16]of the 4th, correct?

[17]A. I think I testified that it would not have had

[18]any impact on his outcome. I think that's the terminology

[19]used.

[20]Q. Okay. When Dr. Mechanic arrived at the hospital

[21]in the morning he did a ventriculostomy, correct?

[22]A. Yes, sir.

[23]Q. And he dictated a report based on that

[24]ventriculostomy, didn't he?

[25]A. Yes, he did.

[1]217

[2]Q. And that's good practice; to dictate a report,

[3]right?

[4]A. Yes, it is.

[5]Q. Now, he did it on the 4th, meaning the

[6]procedure?

[7]A. Correct.

[8]Q. Did you see when he dictated it?

[9]A. I don't recall, sir.

[10]Q. Incidentally, he didn't mention in his report

[11]that Tom Guerin had an E. coli gram-negative

[12]ventriculitis, did he?

[13]A. At the time of doing the procedure he wouldn't

[14]have known that, and at the time of dictating his job is

[15]to dictate what he does and what he sees at that time.

[16]Q. Oh. And not to give any history?

[17]A. A history, yes, but not subsequent events

[18]wouldn't **[*109]** be involved.

[19]Q. I want you to assume he didn't dictate the

[20]report until June 9th.

[21]A. Yes, sir.

[22]Q. Certainly by June 9th he would have had enough

[23]information to know whether or not there was an E. coli

[24]ventriculitis in his patient's brain, right?

[25]A. I don't know the date that he became aware of

[1]218

[2]that, so I don't think I can answer the question.

[3]Q. Do you know the date that the cultures came

[4]back?

[5]A. I believe that the gram stain which showed gram

[6]negative rods and multiple white cells was available that

[7]day or the next. I don't know with certainty the day the

[8]culture actually came back to the chart, or when

[9]Dr. Mechanic became aware of it, sir.

[10]THE COURT: Doctor could you keep your

[11]voice up a little so that the two last jurors

[12]could hear you?

[13]THE WITNESS: I'm sorry.

[14]Q. Did you see that the lab results came back that

[15]grew out on the 6th? Do you know that?

[16]A. I know it grew out. I have to look in the chart

[17]to find out the date that it came back. I just don't

[18]recall, sir. I'm not saying it's not correct. I'm not

[19]saying it's **[*110]** not there, I just don't recall that on the

[20]6th people knew that. I know there was an Infectious

[21]Disease note on the 6th.

[22]Q. Doctor, there's no question there.

[23]MS. DOLSKY: Let him answer the question,

[24]Judge.

[25]THE COURT: Let's give the opportunity to

[1]219

[2]answer and then you can ask your next question.

[3]Q. Doctor, take look at the chart, June 4th.

[4]MS. DOLSKY: Objection.

[5]MR. TORGAN: I'm trying to help him out.

[6]MS. DOLSKY: Just right away he just

[7]continues on.

[8]MR. TORGAN: Just trying to help him out,

[9]Judge.

[10]THE COURT: Wait just a minute. If he

[11]needs help I'm sure that you'll be able to help

[12]him.

[13]Have you completed your answer?

[14]THE WITNESS: No.

[15]A. The question was asked when awareness -- when

[16]there was awareness of the culture, and there is a report

[17]in the chart that indicates, Test culture CSF -- I'm

[18]reading it from Mr. Torgan's hand -- gram stain, numerous

[19]red cells --

[20]Q. I'm asking for the date. It says, 6/6, right?

[21]A. I'll get to that.

[22]Numerous red cells, numerous white cells --

[23]MS. DOLSKY: **[*111]** Objection.

[24]THE COURT: Whoa, whoa, whoa.

[25]MR. TORGAN: I'm just asking him for the

[1]220

[2]date, Judge.

[3]THE COURT: Just a minute.

[4]Do you have that report in front of you?

[5]THE WITNESS: I'd have to dig it out.

[6]MS. DOLSKY: I can find it, Judge. I think

[7]that will be much easier than --

[8]THE COURT: Just a minute. Just a minute.

[9]Can you find that report?

[10]THE WITNESS: If someone tells me first or

[11]second volume it would help.

[12]THE COURT: Bob, do you want to give it to

[13]Ms. Dolsky and see if you could find that

[14]report.

[15]THE WITNESS: You think it's the second

[16]volume or --

[17]MS. DOLSKY: In Volume 1.

[18]And, Bob, I can find it.

[19]Thank you (handing).

[20]THE COURT OFFICER: (Handing.)

[21]A. I believe I'm looking at the sheet which you

[22]were showing us, and it has on that sheet dates of

[23]specimen 6/2, 6/3 and 6/4, and there's a term that says

[24]last release 6/6/97. I don't know what that means. For

[25]example, the 6/3 the last release is 6/8/97, so I don't

[1]221

[2]know how to interpret what those dates mean, sir, in terms

[3] **[*112]** of reporting of the specimen.

[4]Q. Okay. Doctor, you've actually told us on direct

[5]examination that you've testified for the firm of Heidell,

[6]Pittoni before, correct?

[7]A. That's correct.

[8]Q. And you said four or five times, right?

[9]A. That was a guesstimate on my part.

[10]Q. You've testified for them eight times, Doctor.

[11]Would that be more accurate?

[12]A. I would have to see each case. I wouldn't

[13]refute it. I just don't recall specifically.

[14]Q. Well, did you notice that every -- you read

[15]Dr. Denny's testimony you said, right?

[16]A. Yes, I did.

[17]Q. And Dr. Stein's, right?

[18]A. Yes.

[19]Q. Did you notice that my colleague asked whether

[20]they've ever testified on my behalf before?

[21]A. I believe that was in there, yes.

[22]Q. Eight times, Doctor.

[23]Now -- withdrawn.

[24]Doctor, obviously not every case that you review

[25]comes to trial, does it.

[1]222

[2]A. No, sir.

[3]Q. As a matter of fact, you've reviewed cases for

[4]Ms. Dolsky's firm well beyond the eight times that you've

[5]testified, correct?

[6]MS. DOLSKY: Objection. That's **[*113]** not the

[7]testimony. He said maybe eight, maybe five --

[8]THE COURT: Sustained.

[9]MR. TORGAN: Whatever amount, Judge. He

[10]said --

[11]THE COURT: Sustained.

[12]MR. TORGAN: I asked him eight. He said he

[13]wouldn't dispute it, so I'm using eight.

[14]THE COURT: I think that everybody heard

[15]what his testimony was. I'm going to sustain

[16]the objection.

[17]Q. Aside from the times you've testified you've

[18]reviewed cases for them, correct?

[19]A. That's correct, sir.

[20]Q. You've actually been in depositions, aside from

[21]trial testimony, haven't you?

[22]A. I have, yes.

[23]Q. And you've given depositions in other states as

[24]well as New York, right?

[25]A. On cases in other states -- I'm trying to

[1]223

[2]remember if -- yes. The answer's yes.

[3]Q. And you were asked in those depositions

[4]approximately how many cases you reviewed for various

[5]firms, correct?

[6]A. I believe so. Probably.

[7]Q. Well, why don't you give us a ballpark of how

[8]many cases you've reviewed for Heidell, Pittoni prior to

[9]today?

[10]A. I would really be fishing for a number. It

[11] **[*114]** might be 15 or 20. It's totally a fishing number. I

[12]don't recall.

[13]Q. Now, you're an independent expert in this case,

[14]aren't you?

[15]A. Yes, sir.

[16]Q. In other words, you have no ax to grind one way

[17]or another for one side or another, right?

[18]A. That's correct.

[19]Q. You just want to give honest, factual testimony,

[20]true?

[21]A. Correct.

[22]Q. Now, you saw Dr. Stein was asked how much he was

[23]being paid to be in court, right?

[24]A. I do recall that, yes.

[25]Q. And you saw that they asked his hourly rate too,

[1]224

[2]right?

[3]A. Yes.

[4]Q. Now, you get paid to review the cases, don't

[5]you?

[6]A. Yes, sir.

[7]Q. And you get paid to testify in court, don't you?

[8]A. Yes, sir.

[9]Q. Now, you have a relationship with certain

[10]lawyers at Heidell, Pittoni that you deal with on a

[11]regular basis, correct?

[12]A. I don't know how you define relationship. There

[13]are lawyers who I --

[14]Q. I'm talking about business relationship, Doctor.

[15]A. There are lawyers who I have seen cases with

[16]more than one time.

[17]Q. And they call you, **[*115]** first of all -- withdrawn.

[18]Ms. Dolsky calls you George, right?

[19]MS. DOLSKY: Objection, Judge.

[20]THE COURT: Sustained. Sustained. You

[21]know, what relevance does that have? Sustained.

[22]Let's go.

[23]MS. DOLSKY: He calls me Robin, Judge.

[24]THE COURT: All right. That's equally

[25]irrelevant. Let's go.

[1]225

[2]MS. DOLSKY: Exactly.

[3]Q. You have a business relationship with Heidell,

[4]Pittoni dating back to at least 1986, true?

[5]A. I think I've been involved in cases with them

[6]since around that time.

[7]Q. And aside from reviewing files and testifying

[8]for them you've had other business with them as well,

[9]true?

[10]A. Correct.

[11]Q. And you've had what's known as a fiduciary

[12]relationship with them, correct?

[13]A. You'd have to define that for me. I don't

[14]understand that term.

[15]Q. You've had a privileged relationship with them,

[16]true?

[17]A. I'm still not sure what the question is.

[18]THE COURT: Either am I, counselor.

[19]MR. TORGAN: Sure.

[20]Q. They've represented you as a client?

[21]MS. DOLSKY: Objection.

[22]THE COURT: Sustained. **[*116]** Sustained. I want

[23]a side bar.

[24](Whereupon, a conference was held off the

[25]record outside the courtroom.

[1]226

[2](Back in open court:)

[3]THE CLERK: Please come to order.

[4]THE COURT: All right. The objection has

[5]been sustained and the answer's stricken. Let's

[6]go.

[7]Q. You testified on direct that you do 75 percent

[8]defense work and 25 percent for, I guess you'd say,

[9]patients, right?

[10]A. For plaintiffs.

[11]Q. Well, people who were patients at one time.

[12]A. No, not necessarily. Not my patients.

[13]Q. Fine. When you talk about doing 75 percent for

[14]defendants and 25 percent for plaintiffs, Doctor, would

[15]you agree with me that you're talking about including all

[16]types of cases, in that personal injury cases, like

[17]automobile accidents where somebody might be injured or a

[18]slip and fall or a products liability case; that's what

[19]you're including in that calculation of 75 percent, 25

[20]percent, correct?

[21]A. That was my intention, yes, sir.

[22]Q. Well, let's just talk about medical negligence

[23]cases, Doctor. You'd agree with me that the ratio is much

[24]different **[*117]** in a medical malpractice or medical negligence

[25]case, true?

[1]227

[2]A. I don't have the numbers broken down, sir. It

[3]wouldn't surprise me if it was more for the defense than

[4]the plaintiff, but I don't have it broken down at all.

[5]Q. Doctor, can you find one case in here --

[6]MS. DOLSKY: Oh, objection.

[7]Q. -- where you testified for a plaintiff in a

[8]medical malpractice case?

[9]THE COURT: Well, I don't know what that

[10]is.

[11]MR. TORGAN: It's Jury Verdict, Judge.

[12]MS. DOLSKY: Objection, Judge.

[13]THE COURT: Excuse me. If the witness can

[14]answer I'm going to let him answer it.

[15]A. The question was can I find one in there? I

[16]haven't seen it.

[17]THE COURT: Well, why don't we -- he hasn't

[18]seen it, he hasn't looked at it, I have no idea

[19]what that is. Put it down, ask the question

[20]again, maybe the witness has -- can answer that

[21]question without the use of something that I

[22]have no idea what it is, and it's hearsay to

[23]begin with.

[24]All right. Let's start. Do you want to

[25]reask your question?

[1]228

[2]MR. TORGAN: Without respect to that or

[3] **[*118]** with respect to it?

[4]THE COURT: Yes. It can be asked without

[5]respect to that.

[6]MR. TORGAN: Sure.

[7]Q. Doctor, there are records that people keep --

[8]withdrawn.

[9]You saw Dr. Stein was asked about his billing

[10]records. You saw that?

[11]A. Vaguely remember that.

[12]Q. Well, do you know that he brought them in? Did

[13]you see that part?

[14]A. I don't recall that part.

[15]Q. You obviously have billing records too, don't

[16]you?

[17]A. Billing records --

[18]Q. Yes. How much you bill on a case?

[19]A. Except for initial review I haven't billed since

[20]then. I have a bunch of piles of paper that list hours

[21]when I was reading that I haven't added up yet.

[22]Q. Doctor, would you agree with me that you've

[23]never criticized the care of another neurosurgeon in a

[24]medical malpractice case in New York State; would you

[25]agree with that?

[1]229

[2]A. New York State, I believe that in testimony I

[3]never have, that's correct.

[4]Q. You are a neurosurgeon, right?

[5]A. Yes, sir.

[6]Q. That's your area of expertise, isn't it?

[7]A. Yes, sir.

[8]Q. **[*119]** When you told us that you do 25 percent

[9]plaintiff's work and 75 percent defendant's work --

[10]withdrawn.

[11]Have you ever testified for Ms. Dolsky before?

[12]A. No. I don't believe so.

[13]Q. You don't believe so or no?

[14]A. I'm pretty sure I haven't.

[15]Q. Ever review a case for her before?

[16]A. I believe I have, yes.

[17]Q. How many?

[18]A. Can't recall, sir.

[19]Q. Going back how many years?

[20]A. Ten or fifteen, something like that.

[21]Q. How many other firms, Doctor -- withdrawn.

[22]Heidell, Pittoni is one of the premiere defense

[23]medical malpractice cases in the City of New York,

[24]correct?

[25]MS. DOLSKY: I'll take the compliment, but

[1]230

[2]I object to the question.

[3]THE COURT: Sustained.

[4]Q. There are other defense medical malpractice

[5]cases that you have done reviews for, correct?

[6]MS. DOLSKY: Objection.

[7]THE COURT: No. I'll allow that.

[8]A. Yes, sir.

[9]Q. Defense firms in the city, right?

[10]A. Correct.

[11]Q. Aarons and Rappaport (phon.), for example?

[12]A. Yes, sir.

[13]Q. The old Bower and Gardner. **[*120]**

[14]THE COURT: Okay, counsel. Let's go. Now

[15]I think you have the numbers, you have the

[16]statistics. You have everything in evidence.

[17]We're not going to name every single firm. It's

[18]3:30.

[19]Q. Now, you said, Doctor --

[20]MR. TORGAN: I'm going to go to the CAT

[21]scans now, your Honor, if I may.

[22]Q. You said that the reason the left ventricular

[23]system was still large was because of injury, correct?

[24]A. Yes, sir.

[25]Q. Not because -- not because of hydrocephalus,

[1]231

[2]right?

[3]A. Correct.

[4]Q. And did you see that Dr. Mechanic testified to

[5]the same thing?

[6]A. I recall something like that, yes, sir.

[7]Q. How many times have you spoken to Dr. Mechanic

[8]about this case?

[9]A. Never.

[10]Q. Never once?

[11]A. Never.

[12]Q. How many times have you spoken to Ms. Dolsky

[13]about the case?

[14]A. Numerous.

[15]Q. In person?

[16]A. In person and on the phone more often.

[17]Q. And did you go over what I was going to ask on

[18]cross examination?

[19]A. We discussed the case. I'm not sure if we

[20]specifically predicted your questions, but **[*121]** we talked about

[21]the case, which I think would cover that.

[22]Q. Well, you certainly read enough testimony,

[23]right?

[24]A. I think so, yes.

[25]Q. Did you go over the direct examination?

[1]232

[2]THE COURT: All right. Now we're going to

[3]cut these things short. I'm going to allow your

[4]examination on this. We're not going to go over

[5]every little microcosm of it. You can get your

[6]questions in and you can get your answers in.

[7]MR. TORGAN: Thank you, Judge.

[8]Q. Did you go over the direct examination?

[9]A. We discussed the areas we'd be talking about. I

[10]don't think we went question by question in any sense.

[11]Q. Now, I'm going to show you --

[12]MR. TORGAN: Your Honor, can I ask that he

[13]come down so we can go over these films

[14]together?

[15]THE COURT: Do you want the --

[16]MR. TORGAN: Yes, maybe.

[17]THE COURT: Let's use this one. I think

[18]it's better.

[19]MR. TORGAN: We can put them side by side

[20]on this if you don't mind.

[21]THE COURT: All right. Let's bring it

[22]over.

[23]THE WITNESS: Should I go down there or --

[24]THE COURT: Just wait until **[*122]** it's set up.

[25]Q. Doctor, do you mind coming down and discussing

[1]233

[2]these scans?

[3]THE COURT: I want to do the set up please.

[4]Q. Okay. These are the CAT scans from St. Francis

[5]Hospital, true?

[6]A. Yes, sir.

[7]Q. May 23rd?

[8]A. Correct.

[9]Q. And those actually are axial cuts of the skull

[10]and brain, correct?

[11]A. Correct.

[12]Q. And these are the soft tissue images --

[13]MS. DOLSKY: Objection, your Honor. May we

[14]approach for a moment?

[15]MR. TORGAN: Judge, can I just do my

[16]examination?

[17]THE COURT: All right. No. I'll -- let me

[18]see where this goes.

[19](Whereupon, the witness exited the stand.)

[20]Q. Doctor, there is, first of all, what I'm showing

[21]here, can you read that cut for me? I think it's Number

[22]7.

[23]A. Correct.

[24]Q. Where that blood is, that's in the fourth

[25]ventricle, right?

[1]234

[2]A. That's correct.

[3]Q. And we have the fourth ventricle in the next cut

[4]showing blood, correct?

[5]A. Correct.

[6]Q. Now, in the same cut as the fourth ventricle we

[7]see the temporal horn, left and right, **[*123]** on Image 8,

[8]correct?

[9]A. You were pointing to Image 7, sir.

[10]Q. I'm sorry. Thank you.

[11]And we see it on Image 8 as well.

[12]A. Yes.

[13]Q. And you'd agree with me that those are dilated

[14]temporal horns, correct?

[15]A. True.

[16]Q. They're hypodense, unlike the blood which is

[17]hyperdense, true?

[18]A. Correct.

[19]Q. Meaning they're low in density rather than the

[20]blood that's high in density, right?

[21]A. Correct.

[22]Q. Now, I want to move up to the higher cuts in the

[23]brain where we see the ventricular system, but I'm talking

[24]about the lateral horns now. The lateral ventricles. Can

[25]you see?

[1]235

[2]A. Yes.

[3]Q. Now, there's blood in the left lateral ventricle

[4]in Image 13, correct?

[5]A. Yes.

[6]Q. And there's blood in the right lateral ventricle

[7]as well in that image?

[8]A. Correct.

[9]Q. And the same would be true of Image 14 and 15 as

[10]well, correct?

[11]A. Yes, sir.

[12]Q. Now, that was an intraventricular hemorrhage

[13]into the entire ventricular system, correct?

[14]A. Correct.

[15]Q. Both ventricles were **[*124]** dilated, right?

[16]A. Correct, sir.

[17]Q. And when I say both, the left lateral and the

[18]right lateral, true?

[19]A. Asymmetrically, but yes.

[20]Q. The left was worse than the right, yes?

[21]A. Yes.

[22]Q. But the right was pretty bad too, wasn't it?

[23]A. Yes.

[24]Q. In later scans the right lateral ventricle

[25]recovered to relatively normal size, correct?

[1]236

[2]A. Correct.

[3]Q. There's no question about that, right?

[4]A. Right.

[5]Q. While I have it up here, I'm going to move on,

[6]would you agree that this is a scan that appears to be

[7]done with contrast rather than without contrast?

[8]A. No, sir.

[9]Q. You disagree with that?

[10]A. It's hard to say on this scan because the blood

[11]can look like contrast. The patient, I believe, had had

[12]vascular studies sometime before, which would be contrast,

[13]but I can't truly see anything on here where I could

[14]differentiate --

[15]Q. Over here (indicating)?

[16]A. That may be contrast in a vessel.

[17]Q. Right.

[18]A. Not certain, but it's very possible.

[19]Q. That's actually a blood vessel **[*125]** that we can see

[20]on the CAT scan, right?

[21]A. It may well be, yes.

[22]Q. Middle cerebral artery?

[23]A. I believe so, yes.

[24]Q. Looks pretty normal, right?

[25]A. Right side, yes.

[1]237

[2]Q. Stay right here. You don't mind waiting here,

[3]do you?

[4]A. I'll stay right here if you want me to.

[5]Q. Did you happen to see Dr. Ragone's testimony

[6]about all these things?

[7]THE COURT: All right. Doctor, you want to

[8]resume the stand?

[9]MR. TORGAN: I was going to go to the next

[10]set, Judge.

[11]THE COURT: We're not going to go through

[12]all these CAT scans.

[13]MR. TORGAN: Only the ones that are

[14]important, Judge.

[15]MS. DOLSKY: Objection.

[16]MR. TORGAN: Well, Judge, he went through

[17]them all this morning.

[18]THE COURT: Let's have a side bar.

[19]MR. TORGAN: He went through --

[20]THE COURT: No. Let's have a side bar.

[21](Whereupon, the witness resumed the stand.

[22](Whereupon, a conference was held off the

[23]record outside the courtroom.

[24](Back in open court:)

[25]THE CLERK: Please come to order.

[1]238

[2]THE COURT: All **[*126]** right. You may continue,

[3]Mr. Torgan.

[4]MR. TORGAN: Thank you, your Honor.

[5]Q. Now, you've commented on the May 27th CAT scans

[6]today or yesterday. Remember that?

[7]A. Yes, sir.

[8]Q. Yesterday?

[9]A. I don't recall which day, sir.

[10]Q. Now, the May 27th CAT scans were taken

[11]two-and-a-half days post-hemorrhage, approximately?

[12]A. Yes -- my math is off. Two-and-a-half or

[13]three-and-a-half.

[14]Q. And you commented that there were these hyper --

[15]MS. DOLSKY: Objection, your Honor. I

[16]can't even see.

[17]THE COURT: All right. Ms. Dolsky, get

[18]where you can see.

[19]THE WITNESS: May I step down again, your

[20]Honor?

[21]Q. Sure.

[22]THE COURT: If it's necessary.

[23]THE WITNESS: It's up to her.

[24]MR. TORGAN: Be easier.

[25]MS. DOLSKY: Mr. Torgan, can you turn it

[1]239

[2]around please?

[3]THE COURT: Be easier.

[4](Whereupon, the witness exited the stand.)

[5]Q. Now, we're looking at the anterior horns of the

[6]lateral ventricles here, right, and I'm pointing to Images

[7]13 and 14, true?

[8]A. True.

[9]Q. You'd agree **[*127]** with me that the interior horn of

[10]the right lateral ventricle is considerably smaller than

[11]the anterior horn of the left lateral ventricle, right?

[12]A. Yes.

[13]Q. I want you to assume it was the right lateral

[14]ventricle that had the drain in it. You'd agree with

[15]that, right?

[16]A. Yes.

[17]Q. I want you to assume that Dr. Ragone testified

[18]that the right lateral ventricle was overdrained. Would

[19]you agree with that?

[20]A. I'm not sure what he means by overdrained.

[21]Q. Well, there's something that you mentioned to

[22]the jury yesterday called slit ventricle syndrome. You

[23]didn't say it in those words, but you were talking about

[24]people who were permanently shunted, correct?

[25]A. I don't believe the term split ventricle applied

[1]240

[2]in that setting.

[3]Q. You've heard the term, yes?

[4]A. Yes.

[5]Q. And you've seen at some point in the hospital

[6]record Physician's Assistant Lloret refer to the ventricle

[7]as a slit?

[8]A. Yes.

[9]Q. My question is would you agree that the right

[10]lateral ventricle in 12, 14 -- I guess that's -- 12, 13,

[11]14 looks slit like? **[*128]**

[12]A. Including Image 15 --

[13]Q. I didn't ask about 15. I asked about --

[14]A. You can't make a judgment based on two slices of

[15]the scan.

[16]Q. That's three I asked you to make a judgment on.

[17]A. You can't make a judgment without looking at the

[18]entire scan.

[19]Q. But these are different cuts?

[20]A. Right. But they're one ventricle.

[21]Q. You'd agree with me that even if you include 15

[22]the right ventricle is substantially smaller than the

[23]left.

[24]A. Yes, sir.

[25]Q. I want you to assume that Dr. Ragone testified

[1]241

[2]at Page 315, without having to go to the transcript, that

[3]the right ventricle was overdrained?

[4]MS. DOLSKY: Objection. Asked and

[5]answered.

[6]THE COURT: Sustained. Sustained.

[7]Q. Right? Right here we see blood (indicating).

[8]THE COURT: If you get right in front of

[9]that I don't think the jury can see it.

[10]MR. TORGAN: Pointing to Image 14, correct?

[11]A. Yes, sir.

[12]Q. Now, there's something known as the foramen of

[13]Monro?

[14]A. Yes.

[15]Q. You didn't mention the foramen of Monro one time

[16]on direct **[*129]** examination, did you?

[17]A. I don't think so.

[18]Q. Now, the foramen of Monro connects the lateral

[19]ventricles to the third ventricle, correct?

[20]A. Correct.

[21]Q. And that's what allows the cerebrospinal fluid

[22]to funnel down to the third and ultimately to the fourth

[23]ventricle, correct?

[24]A. Yes.

[25]Q. And if there's a blockage, whether full or

[1]242

[2]partial, that can make a ventricle enlarge, right?

[3]A. That is correct.

[4]Q. You'd agree with me that there's blood on May

[5]27th in the area of the foramen of Monro, right?

[6]A. Near it, yes.

[7]Q. I want you to assume that Dr. Ragone testified

[8]that there was a partial obstruction of the foramen of

[9]Monro on May 27th. Would you agree with that?

[10]A. It would be difficult to make that judgment on

[11]the basis of this scan without a dynamic study showing

[12]flow.

[13]Q. Well, one of the ways to determine is if the

[14]right ventricle is normal and the left ventricle is

[15]dilated or expanding, that's one of the ways to make a

[16]determination as to whether or not there's an obstruction

[17]in the foramen of Monro, correct? **[*130]**

[18]A. In this case, sir, or in general?

[19]Q. General.

[20]A. In general that would be an important piece of

[21]information, yes.

[22]Q. I want to jump ahead to the June 2nd scans

[23]before you go back to sitting down. Fair enough?

[24]A. Yes.

[25]Q. Now, June 2nd was the day that the

[1]243

[2]ventriculostomy was clamped, true?

[3]A. I have to remember my dates. I believe that was

[4]the date, sir.

[5]Q. What I'm pointing to in Image 13, right here

[6](indicating), leading to the third ventricle, that's the

[7]foramen of Monro right there, little squiggly line, right?

[8]A. That's part of it; the lateral ventricle going

[9]toward the foramen of Monro. I don't know if I can

[10]absolutely be certain, but it's right in that vicinity.

[11]Q. You don't see the same image on the left side,

[12]do you?

[13]A. Not on that slice, no, sir.

[14]Q. You don't see it on any slice, do you?

[15]A. The damaged tissue is pushing toward that from

[16]the other side, which is distorted on that side of the

[17]brain, and making it difficult to see.

[18]THE COURT: Doctor, you have to keep your

[19]voice up.

[20] **[*131]** THE WITNESS: I apologize.

[21]Q. Showing you Image 13, see where it says F?

[22]A. Yes, sir.

[23]Q. That's -- that's where the foramen of Monro is,

[24]right?

[25]A. It's generally in that area. The foramen is an

[1]244

[2]opening and not a long tube --

[3]Q. I want you to assume --

[4]MS. DOLSKY: Objection.

[5]MR. TORGAN: I'm letting him finish. I

[6]apologize.

[7]A. What's depicted there is a long passage.

[8]Foramen is a simple opening. It's a flat oval.

[9]Q. I want you to assume that Dr. Mechanic wrote and

[10]said that was the foramen of Monro. Would you disagree

[11]with him?

[12]A. I think that's the area of the foramen, yes.

[13]Q. Image 14, right before Dr. Mechanic clamped the

[14]ventriculostomy, there was still blood in the lateral

[15]ventricle, right?

[16]A. Correct.

[17]Q. And we see it in the occipital horn, true?

[18]A. On the left side primary, yes.

[19]Q. That blood never escaped from the lateral

[20]ventricle either through the foramen of Monro or out

[21]through the ventriculostomy, true?

[22]A. The portion of the blood that was there was

[23]still there, yes.

[24] **[*132]** Q. And you'd agree with me that Image 15 has a

[25]larger anterior horn on the left than the right, correct?

[1]245

[2]A. Yes, sir.

[3]Q. Would you agree with me that another way of

[4]saying -- I'm sorry -- enlarged is dilated, correct?

[5]A. We could use that term, yes.

[6]MR. TORGAN: I'm just looking for one other

[7]term. Oh.

[8]Q. And another way of saying it would be expanded,

[9]correct?

[10]A. I think English would allow that, yes.

[11]Q. And an expanded temporal horn is a sign of

[12]hydrocephalus, correct?

[13]A. I don't think we were talking about the temporal

[14]horn, sir.

[15]Q. I'm talking about it now.

[16]A. An expanded temporal horn could be a sign of

[17]hydrocephalus, yes.

[18]Q. Well, you'd agree with me, Doctor, that on June

[19]2nd, just looking for the cuts with the temporal horns,

[20]which I can't find -- you'd agree with me cut 8 shows

[21]right here an expanded temporal horn on the left

[22](indicating), right?

[23]A. Minimally, if at all, but you can see --

[24]Q. You hardly see one on the right at all, correct?

[25]A. I do see it on the right, and it's very

[1]246

[2] **[*133]** difficult to look at a single cut, again, because,

[3]remember, these are five to ten millimeters apart, and on

[4]this particular picture there's an asymmetry in the way

[5]the slice is made. We're seeing into the orbit here

[6](indicating), we're not seeing it here (indicating).

[7]We're seeing more over here (indicating) and less over

[8]here (indicating), so that it's not a perfect cut. The

[9]head is slightly tilted, which will give you a different

[10]view of the temporal horns at different levels making it

[11]impossible to compare one side to the other.

[12]Q. Is a dilated temporal horn in 9, right?

[13]A. Minimally, if at all, dilated.

[14]Q. How about 10?

[15]A. Again, I think I can answer the same thing,

[16]although I'm not -- I suspect that is the temporal horn.

[17]I'm trying to see if it's around the brain stem, but it

[18]appears to be the temporal horn, yes.

[19]Q. There's something known as unilateral

[20]hydrocephalus, correct?

[21]A. Yes.

[22]Q. There's no question about that, right?

[23]A. No, sir.

[24]Q. Did you see Dr. Mechanic said there was no such

[25]thing as unilateral hydrocephalus in his testimony? **[*134]**

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[2]A. I don't recall that specifically.

[3]Q. Assuming he said that, he would be wrong,

[4]correct?

[5]MS. DOLSKY: Objection.

[6]MR. TORGAN: I can find the site, Judge.

[7]THE COURT: Sustained. Let's go.

[8]Q. Well, unilateral hydrocephalus, that's something

[9]well-known to neurosurgeons, that concept, correct?

[10]A. There can be dilatation of the ventricular

[11]system just on one side, yes.

[12]Q. That could be because of a trapped ventricle,

[13]correct?

[14]A. Among other things, yes.

[15]Q. And that's a term well-known to you as a

[16]neurosurgeon; trapped ventricle, correct?

[17]A. Yes.

[18]Q. I want you to assume Dr. Mechanic said there was

[19]no such thing. Do you recall reading that?

[20]MS. DOLSKY: Objection.

[21]Q. Do you recall reading that in the testimony?

[22]A. I don't specifically, sir, no.

[23]Q. Have you ever used the term pinched ventricle?

[24]A. I don't think so.

[25]MR. TORGAN; Judge, could we have a 10

[1]248

[2]minute break please so I can reorganize?

[3]THE COURT: Okay. We'll have a 10 minute

[4]break.

[5]THE COURT OFFICER: **[*135]** Ladies and gentlemen,

[6]please follow me.

[7](Whereupon, the jury panel exited the

[8]courtroom.

[9](Recess held. After recess:)

[10]THE CLERK: Please remain seated and come

[11]to order.

[12]THE COURT OFFICER: Ready for the jury,

[13]your Honor?

[14]THE COURT: Yes.

[15]THE COURT OFFICER: Jury entering.

[16](Whereupon, the jury panel reentered the

[17]courtroom.)

[18]THE COURT: You may continue.

[19]MR. TORGAN: I'm going to try to keep

[20]everybody awake if I can this time, Judge. I

[21]don't know if I can.

[22]THE COURT: They're doing all right.

[23]MR. TORGAN: I was watching.

[24]Q. I want to get off the radiological studies and

[25]move to the clinical aspect of the case, and did you

[1]249

[2]notice in reading the chart that many of the team were

[3]under the impression that the ventriculostomy was going to

[4]be changed on June 2nd. Did you see that?

[5]A. I noted notation change ventriculostomy, yes.

[6]Q. And there was a physician's assistant who noted

[7]that, correct?

[8]A. There were several notations. I can't remember

[9]which particular physicians.

[10]Q. Well, Doctor, **[*136]** one was a nurse who noted that?

[11]A. Well, again, I recall notations. I just can't

[12]remember the specifics; whether it was a doctor, a nurse

[13]or a physician's assistant, sir.

[14]Q. But it was clear from the totality of the record

[15]that people involved in the care and treatment of Tom

[16]Guerin thought it was going to be changed, right?

[17]A. Various people, yes.

[18]Q. One was Dr. Ragone, wasn't it?

[19]A. I do recall a note by him mentioning change,

[20]yes.

[21]Q. As a matter of fact, on June 1st, the day before

[22]it was clamped, he wrote, Await ventriculostomy change,

[23]true?

[24]A. Yes, sir.

[25]Q. And a physician's assistant in neurosurgery

[1]250

[2]specifically wrote that as well, right?

[3]A. I don't have that one in front of me, sir.

[4]Q. Did you see that Dr. Mechanic testified that he

[5]was talking with Cecilia Guerin about actually doing a

[6]permanent shunt; did you see that in his testimony?

[7]A. I recall at one time he was discussing that with

[8]her, yes.

[9]Q. Did you see that on June 2nd that was Tom

[10]Guerin's best day?

[11]A. I don't know how to answer that question, **[*137]** sir.

[12]Q. You don't know -- you don't know how to answer

[13]that. Okay.

[14]A. In other words --

[15]Q. Did you see that on June 2nd -- and I don't want

[16]to bore the jury with this because I've done it before --

[17]but did you see on June 2nd that the nurse taking care of

[18]him, Tom Guerin, wrote that he got emotional when he heard

[19]a tape of his children singing. Did you see that?

[20]A. I do recall that, yes.

[21]Q. Did you see also that Dr. Mechanic, in his last

[22]note before clamping the ventriculostomy, wrote, At times

[23]alert.

[24]A. Yes, sir.

[25]Q. Did you see that the note right before that by

[1]251

[2]Dr. Ragone also on June 2nd wrote, Improving intracranial

[3]hemorrhage. Did you see that?

[4]A. Yes, sir.

[5]Q. Did you read Dr. Ragone's testimony where he

[6]testified under oath before the jury that he had no idea

[7]the ventriculostomy was going to be clamped. Did you see

[8]that?

[9]A. I just can't be absolutely certain of that, sir.

[10]I would not dispute it if you read it to me. I don't

[11]remember specifically, no.

[12]Q. Did you see where he testified that he didn't

[13]know **[*138]** it was going to be discontinued either; did you see

[14]that?

[15]A. Again, I'd have to answer the question the same

[16]way. It was sometime ago that I read that testimony.

[17]Q. Well, I want you to assume the following is

[18]true: I want you to assume that Dr. Ragone, the

[19]neurologist who was treating my client, testified under

[20]oath before this jury that he had no idea the

[21]ventriculostomy was going to be clamped, and I want you to

[22]further assume that he never saw my client when it was

[23]clamped and the next time he came in after seeing him

[24]prior to clamping the ventriculostomy had been

[25]discontinued. Do you have an opinion to a reasonable

[1]252

[2]degree of medical certainty as to whether Dr. Mechanic

[3]should have told Dr. Ragone that he was going to both

[4]clamp and discontinue the drain?

[5]MS. DOLSKY: Objection. Relevance.

[6]THE COURT: I'm going to sustain that on

[7]relevance.

[8]Q. Well, there was a whole medical team treating

[9]Tom Guerin, wasn't there?

[10]A. That's true.

[11]Q. That's why he was in the hospital, true?

[12]A. Yes, sir.

[13]Q. He needed intensive care, right?

[14] **[*139]** A. Yes, sir.

[15]Q. He needed Infectious Disease, right?

[16]A. Yes, sir.

[17]Q. He needed a neurologist, obviously, true?

[18]A. Yes, sir.

[19]Q. He needed a neurosurgeon as well.

[20]A. Yes, sir.

[21]Q. Don't you think it was important for

[22]Dr. Mechanic to communicate to the neurologist that he was

[23]going to clamp and discontinue the drain?

[24]A. Important in what sense, sir? It was

[25]Dr. Mechanic's --

[1]253

[2]Q. In Tom Guerin's sense in saving his life,

[3]Doctor.

[4]A. It was Dr. Mechanic's decision and a

[5]neurosurgeon's obligation to maintain and make decisions

[6]about drainage, keeping it in, taking it out, putting a

[7]permanent shunt in. That's really a neurosurgeon's

[8]territory, not the neurologist.

[9]Q. Do you think it would have been good care to

[10]tell the neurologist that he intended to clamp and

[11]discontinue?

[12]A. I'm not sure that it would have impacted his

[13]care, so I'm not sure how to answer that question, sir.

[14]Q. In any event, did you see the note right after

[15]Dr. Mechanic's note where he had my client alert, that he

[16]was then poorly responsive in **[*140]** the immediate doctor's note

[17]after that?

[18]A. The Infectious Disease note says, Poorly

[19]responsive.

[20]Q. That was my question. You saw that, right?

[21]A. Yes.

[22]Q. Now, that's a mental status change; alert to

[23]poorly responsive, correct?

[24]A. It's very difficult to judge in one observer

[25]versus the other.

[1]254

[2]Q. Assuming that both observers are correct in what

[3]they --

[4]THE COURT: Sustained.

[5]Q. You'd agree with me that going from alert to

[6]poorly responsive would be a sign of neurological decline,

[7]right?

[8]A. If it were one examiner comparing his own exam I

[9]would agree. If it's two different examiners with a

[10]different concept of alert, responsive, poorly responsive,

[11]there's no way to answer the question, sir.

[12]Q. Think it would have been a good idea for them to

[13]talk to each other about it?

[14]MS. DOLSKY: Objection.

[15]THE COURT: Sustained.

[16]Q. Take a look at the very next note. What's that?

[17]Whose note is that?

[18]A. I'm turning the page over and it says 9/3 --

[19]Q. 6/3?

[20]A. 6/3. I'm sorry.

[21]And I don't know whose **[*141]** note that is , sir.

[22]MR. TORGAN: May I see it, your Honor, so I

[23]can --

[24]THE COURT: Certainly.

[25]THE COURT OFFICER: (Handing.)

[1]255

[2]Q. If you can't read it it's a good bet it's

[3]cardiology.

[4]MR. TORGAN: Pardon my back everybody.

[5]I can't read that.

[6]Q. Take a look at the next note. I can't read

[7]that. June 3rd in the morning, Dr. Hanna's note, right?

[8]A. June 3rd, '97, ICU note.

[9]Q. I want you to assume that's Dr. Hanna's

[10]signature.

[11]A. I think I can make that out, yes.

[12]Q. He says, Still unresponsive, correct?

[13]A. It says, Still non-responsive ICP 15.

[14]Q. Okay. What I'm driving at is it says, Still

[15]non-responsive, right?

[16]A. Yes.

[17]Q. And the next note is whose?

[18]A. Next note, Neurology.

[19]Q. Is that Dr. Ragone's?

[20]A. I believe it is, yes.

[21]Q. May I see it?

[22]MR. TORGAN; I'm sorry, Bob. Running you

[23]around.

[24]THE COURT OFFICER: (Handing.)

[25]Q. It says, Ventriculostomy was discontinued post

[1]256

[2]clamping times 24 hours without development of

[3]hydrocephalus. At present he **[*142]** is unresponsive.

[4]See that?

[5]A. In a second.

[6]THE COURT OFFICER: (Handing.)

[7]A. Yes, sir.

[8]Q. Well, whose note is the next note?

[9]A. 6/3/97 ID Dr. -- what's his name; B --

[10]Q. Brieff?

[11]MR. TORGAN: May I see it, Bob? Sorry.

[12]Sorry, Judge.

[13]A. I can't make Brieff out of that, but it may be.

[14]THE COURT OFFICER: (Handing.)

[15]Q. No, Bulban (phon.). Okay.

[16]It says, Patient remains without purposeful

[17]movement, correct?

[18]A. It says, Patient remains without purposeful

[19]response.

[20]Q. Okay. And the next note in terms of -- you know

[21]what? Let me just see it and then I'll move on to another

[22]area.

[23]THE COURT OFFICER: (Handing.)

[24]Q. It says, Neuro unresponsive, for the very next

[25]note, and let me just look so I don't have to keep doing

[1]257

[2]this.

[3]MS. DOLSKY: Is that the 6/3 note?

[4]MR. TORGAN: Yes.

[5]A. Is there a question, sir?

[6]Q. Yes. This says, Neuro unresponsive, right?

[7]A. On that line it says, Extrem, which I guess is

[8]extremities, neuro unresponsive.

[9]Q. Fine. Well, there's **[*143]** something known as the

[10]continuity of care in medicine, isn't there?

[11]A. Yes, sir.

[12]Q. And that has to do with the concept of members

[13]of the medical team knowing what's going on for the

[14]patient, correct?

[15]A. Yes, sir.

[16]Q. And it has to do with charting appropriately,

[17]true?

[18]A. Yes, sir.

[19]Q. And people have to be able to read the chart and

[20]evaluate it, right?

[21]A. Yes, sir.

[22]Q. Especially within the same institution, true?

[23]A. Yes.

[24]Q. From the time of the clamping, Doctor, up until

[25]that point, that's five medical people who just found that

[1]258

[2]he was now unresponsive, right?

[3]A. In various words, yes.

[4]Q. Well, that's certainly a decline in neurological

[5]status, isn't it?

[6]A. It may represent that, yes. It's very

[7]difficult, again -- I'm sorry.

[8]Q. Different examiners, I know.

[9]A. One examiner to --

[10]Q. I guess we can look at Dr. Ragone from the 2nd

[11]to the 3rd.

[12]A. Yes, sir.

[13]Q. Dr. Ragone on the 2nd -- I don't have it in

[14]front of me -- he's got improving, right?

[15]A. He does say that **[*144]** after he writes after

[16]examination about moving fingers maybe to command or

[17]possibly on command.

[18]Q. He now appears to arouse and move left fingers

[19]possibly on commands.

[20]That's what it says, right?

[21]A. Yes, sir.

[22]Q. And then it says, Impression: ICH, which is

[23]intracerebral hemorrhage, true?

[24]A. Yes.

[25]Q. Improving clinically, right?

[1]259

[2]A. Yes.

[3]Q. And clinically means based upon his physical

[4]examination, right?

[5]A. Yes.

[6]Q. And his very next exam, Dr. Ragone's, is June

[7]3rd, isn't it?

[8]A. Yes, sir.

[9]Q. And he has him, At present he is unresponsive,

[10]true?

[11]A. Yes.

[12]Q. And it says, Except for mild left grasp and

[13]triple flexion on left.

[14]That's not a good sign, is it, neurologically

[15]speaking?

[16]A. It's indicative of the damage that he suffered,

[17]yes.

[18]Q. And it's indicative of the fact that he's gotten

[19]worse from the time that Dr. Ragone saw him on the 2nd,

[20]before it was clamped, to the time he saw him on the 3rd,

[21]after it was discontinued, true?

[22]A. Again, I can only read the words. **[*145]** There is with

[23]the same observer a difference in the examination and his

[24]statement, Transient clinical improvement yesterday. He

[25]doesn't state distinctly worse today.

[1]260

[2]Q. He has him unresponsive, doesn't he?

[3]A. Yes, sir. But he doesn't define to what;

[4]verbal, painful, et cetera, et cetera.

[5]Q. Now, intracranial pressure isn't something that

[6]you spent a lot of time on on direct, is it; ICP.

[7]THE COURT: All right. Let's get to the

[8]questions. That's exactly what I don't want.

[9]MR. TORGAN: I apologize.

[10]Q. Intracranial pressure has been kept on an hourly

[11]basis from the time Tom Guerin came into the hospital

[12]until they discontinued the drain, true?

[13]A. Yes.

[14]Q. And the one thing about that ventriculostomy

[15]prior to clamping was it kept the intraventricular

[16]pressure or the intracranial pressure within normal

[17]limits, didn't it?

[18]A. It measured it. I'm not sure what you mean by

[19]it kept the pressure within normal limits.

[20]Q. Well, ICP is measured a certain way, true?

[21]A. Yeah. Yes. I'm sorry.

[22]Q. Did you know that there was --

[23] **[*146]** MR. TORGAN: I'm showing the witness 9 in

[24]evidence.

[25]MS. DOLSKY: Can I see what that is please?

[1]261

[2]MR. TORGAN: Yes (indicating).

[3]Q. There was actually an ICP monitor, not exactly

[4]like this one, from the testimony, but a monitor that

[5]digitally read out the intracranial pressure. You heard

[6]that or you read that in the testimony, true?

[7]A. Yes.

[8]Q. And it was set at different times at various

[9]points to siphon off cerebrospinal fluid once it reached a

[10]certain pressure, right?

[11]A. I'm sorry. You were talking about the monitor,

[12]then you said it was set. The monitor wasn't set.

[13]Q. Sure. Did you see in the physician's orders

[14]that Dr. Mechanic ordered that it be set first at 12

[15]centimeters, then at 13, and then finally at 18?

[16]A. Yes.

[17]Q. And what that meant was once intracranial

[18]pressure reached a certain level, whether it be 12, 13 or

[19]18, it would siphon it off if it went any higher, true?

[20]A. That's partly true. The other part is that I

[21]think I testified earlier that in changing position, in

[22]stimulating the patient, because it's the least path **[*147]** of

[23]resistance, that fluid will spill over and that system,

[24]even if the pressure is zero, two, three, four, five, ten,

[25]twelve -- in other words, frequently with the drain in

[1]262

[2]it's my experience that a patient with low pressure will

[3]still put out significant quantities of CSF because of

[4]bucking during suctioning, because of coughing, because of

[5]change in position, so it's not strictly correct that the

[6]drain is keeping the intracranial pressure at that level.

[7]Q. Ideally, to protect the patient, it is designed

[8]to keep the intracranial pressure within normal limits,

[9]correct?

[10]A. Yes.

[11]Q. And my question was it was doing that for Tom

[12]Guerin, wasn't it.

[13]A. I tried to answer it as best I could, sir.

[14]Q. Well, was it or wasn't it? Was it or wasn't it?

[15]A. Whether it was the process that was keeping the

[16]pressure down or whether absorption of CSF was what was

[17]keeping the pressure down is unknown, and which is why I

[18]cannot answer your question.

[19]Q. Oh. I see. In other words, it's your position

[20]that it might be that his pressure was down normally

[21]without the **[*148]** benefit of the ventriculostomy.

[22]A. That's correct.

[23]Q. I see. Okay.

[24]Well, first of all, normal pressure, Doctor, you

[25]testified before, was 20 centimeters of water, correct?

[1]263

[2]A. That's the upper limit of what we call normal,

[3]yes.

[4]Q. As a matter of fact, normal would be less than

[5]15, true?

[6]A. Yes.

[7]Q. And you'd agree with me that a significant

[8]elevation would be anything over 28 eight, true?

[9]A. By the time you get to 28 or 30 you're getting

[10]concerned, yes.

[11]Q. Well, my question is specifically significant.

[12]Would you agree 30, say 30, is a significant elevation of

[13]intracranial pressure?

[14]A. I think, yes.

[15]Q. You see that at 1700 hours -- actually, it's

[16]noted at 1700 but it was 1750 by the nurse's notes -- that

[17]Dr. Mechanic clamped the ventriculostomy. You know that,

[18]right?

[19]A. Yes, sir.

[20]Q. And the record says that at 1800 hours the ICP

[21]was 28, true?

[22]A. I believe it does, yes.

[23]Q. And then at 1900 hours, according to this

[24]record, it was still 28, right?

[25]A. Yes, sir.

[1]264

[2]Q. **[*149]** That's elevated intracranial pressure, true?

[3]A. Yes, sir.

[4]Q. And then at 8 o'clock it's 29, right?

[5]A. Yes, sir.

[6]Q. And at 2100 hours, which would be 9 o'clock, it

[7]was up to 30, true?

[8]A. Yes, sir.

[9]Q. That's four hours of elevated intracranial

[10]pressure according to the North Shore record, right?

[11]A. It was four hours where it was at 30, which

[12]we've agreed is elevated, yes.

[13]Q. I'm sorry. What?

[14]A. I said yes.

[15]Q. Did you ever hear the term -- and I'm being

[16]colloquial -- cooking the patient?

[17]A. I don't think so.

[18]Q. How long do you suppose Tom Guerin could

[19]withstand intracranial pressures above 28; how many hours?

[20]A. At 30, probably for very prolonged period of

[21]time.

[22]Q. You think it was appropriate to put him through

[23]four straight hours above 28?

[24]A. We've seen him fluctuate up and down even with

[25]the drain in, and that level --

[1]265

[2]Q. You've seen who fluctuate up and down?

[3]A. There had been fluctuations in his pressure at

[4]points where he went up that high and went back down.

[5]Q. Can **[*150]** you show me?

[6]A. I think right there he went back down to 15.

[7]Q. Prior to clamping. I'm sorry.

[8]A. I don't recall, sir. I was talking about this

[9]sequence here (indicating).

[10]Q. Okay. Well, sir, you're not saying during his

[11]hospital stay he had fluctuations up and down like that,

[12]are you?

[13]A. I think he did have fluctuations up and down.

[14]Q. With the intracranial pressure?

[15]A. Yes.

[16]Q. Could you point that out to us, please, and I'm

[17]talking about elevated intracranial pressure while he was

[18]on the ventriculostomy prior to clamping.

[19]MS. DOLSKY: Objection. Different

[20]question.

[21]THE COURT: Which question do you want to

[22]ask?

[23]MR. TORGAN: It was the same question.

[24]THE COURT: Didn't sound the same to me.

[25]You want to clarify?

[1]266

[2]MR. TORGAN: I'm talking about intracranial

[3]pressure.

[4]THE COURT: When?

[5]MR. TORGAN: Prior to clamping.

[6]THE COURT: Prior to clamping.

[7]THE WITNESS: Okay.

[8]A. I stand corrected, sir. At least from viewing

[9]6/1 on the first fluctuation where he reached 29, then 30,

[10] **[*151]** then 21, then 25 was on 6/2 between 1800 and 2100 and then

[11]he went back down lower again.

[12]Q. And then he went back up, right?

[13]A. Yes.

[14]Q. Now, you saw in the chart, and you were asked a

[15]hypothetical question on this, that Ceil Guerin was there

[16]on the evening of June 2nd, right?

[17]A. Yes.

[18]Q. And the family was very concerned about the

[19]clamping, according to the chart, right?

[20]A. I recall somewhere in the testimony or in the

[21]chart that that was stated, yes.

[22]Q. It says: 1750 -- this is how we know that it

[23]was clamped at ten to six -- it says: M.D. Mechanic at

[24]bedside to clamp ventriculostomy drain. Will continue to

[25]follow-up. See that?

[1]267

[2]A. Yes, sir, I've seen that.

[3]Q. And do you see up at 9:30 AM, at the top of the

[4]same page by Nurse Burford (phon.), she writes:

[5]Dr. Mechanic in to see patient. Head CAT scan schedule

[6]and ventriculostomy to be changed. Do you see that?

[7]A. You're ahead of me now, sir.

[8]Q. Sure. Going up to the --

[9]A. I'm not at that sheet.

[10]Q. Oh. I'm sorry. You're not there yet?

[11]A. I'm sorry. I'm **[*152]** one day off. We're going from

[12]6/2 to 6/3, sir?

[13]Q. I'm on 6/2.

[14]A. Yeah. Okay. I have the right sheet. Where are

[15]we now?

[16]Q. Why don't we start at the top. You see 9:30?

[17]A. Yes, sir.

[18]Q. You see the second line after that, it says,

[19]Schedule and ventriculostomy to be changed. You see the

[20]delta sign?

[21]A. There's a delta, then there's something crossed

[22]out next to it. It looked like a delta, yes.

[23]Q. And delta in medicine means change, right?

[24]A. Yes.

[25]Q. Did you see that Dr. Mechanic testified that the

[1]268

[2]reason he clamped it was because he was hopeful, based

[3]upon the clinical examination of Mr. Guerin on June 2nd.

[4]Did you see that?

[5]A. He was hopeful of what?

[6]Q. Recovery.

[7]A. I don't recall the specifics. You'd have to

[8]show it to me, sir. Was it a June 2nd progress note?

[9]Q. I'm talking about his testimony. You read all

[10]his testimony, right?

[11]A. Yes, but I honestly admit I can't recall every

[12]word of it.

[13]Q. Anyway, 1800 hours, it says ICPs increase,

[14]doesn't it?

[15]A. Yes.

[16]Q. It says, M. **[*153]** D. Engelman paged and made aware and

[17]at bedside to assess. Patient's family at bedside upset

[18]and asking questions. Questions answered. M.D. Mechanic

[19]called by P.A. Engelman. You see that?

[20]A. Yes, sir.

[21]Q. And then it says, Ventriculostomy to remain.

[22]A. Yes, sir.

[23]Q. Did you read any of Ceil Guerin's testimony in

[24]the case?

[25]A. No, I did not, sir -- you mean, during the

[1]269

[2]trial? No.

[3]Q. You just read her deposition?

[4]A. I read her deposition ages ago. I believe I

[5]did.

[6]Q. Did you see that she testified that Dr. Mechanic

[7]had told her that the plan was to internalize the shunt

[8]and do a permanent ventricular peritoneal shunt. Did you

[9]see any of that testimony?

[10]A. I just can't remember specifically, sir.

[11]Q. Did you see any of Dr. Mechanic's testimony

[12]where he said that they were talking about that as well?

[13]A. I believe that he was considering that along the

[14]way if necessary, yes.

[15]Q. Do you think clamping and discontinuing a drain,

[16]a ventriculostomy, was something that should have been

[17]discussed with the wife of the patient **[*154]** before doing it?

[18]MS. DOLSKY: Objection.

[19]THE COURT: I'm going to sustain that.

[20]Q. Do you know if Dr. Mechanic ever discussed with

[21]Ceil Guerin the fact that he was going to either clamp the

[22]ventriculostomy or discontinue it?

[23]THE COURT: I'm going to sustain that as

[24]well.

[25]If this witness knows. The testimony has

[1]270

[2]been given by Dr. Mechanic and by Mrs. Guerin as

[3]to any discussions that had or had not been had.

[4]MR. TORGAN: I'm sorry. I'm not following.

[5]I apologize.

[6]THE COURT: There has been testimony on

[7]this issue --

[8]MR. TORGAN: Right.

[9]THE COURT: -- from Dr. Mechanic and from

[10]Mrs. Guerin.

[11]MR. TORGAN: Yes. I'm just asking if he's

[12]aware of what the discussions were.

[13]THE COURT: Relevance.

[14]Q. Well, isn't it good practice. Doctor, to inform

[15]the next of kin whether a ventriculostomy is going to be

[16]discontinued?

[17]MS. DOLSKY: Objection.

[18]THE COURT: Sustained.

[19]MR. TORGAN: On that whole issue, Judge?

[20](Whereupon a conference was held off the

[21]record outside the courtroom.

[22](Back in open court: **[*155]**)

[23]THE CLERK: Please come to order.

[24]THE COURT: All right. You may continue.

[25]The objection has been sustained.

[1]271

[2]Q. Do you know why -- withdrawn.

[3]See at 9 o'clock in the morning on June 3rd his

[4]ICP was 26?

[5]A. YeS, sir.

[6]Q. And then there's no evaluation at 10 o'clock,

[7]right?

[8]A. There's no recorded note, that's correct.

[9]Q. And then there's an evaluation of 30, right?

[10]A. Yes, sir.

[11]Q. And at that time that the intracranial pressure

[12]showed 30 the ventriculostomy was removed from Tom

[13]Guerin's head, right?

[14]A. Yes, sir.

[15]Q. And 30, you already told us not ten minutes ago,

[16]was a significantly elevated intracranial pressure, true?

[17]A. I think that what I stated was we are worried at

[18]30, and significant takes on various meanings, but I think

[19]it's elevated and were aware of that.

[20]Q. So you didn't say significant ten minutes ago?

[21]A. I think I agreed with you, yes.

[22]Q. Do you still agree that 30 is significantly

[23]elevated?

[24]A. Well, again, we're talking --

[25]THE COURT; We're not going to get into

[1] **[*156]** 272

[2]this. Let's go. Let's go with the next

[3]question.

[4]Q. Do you know from reading the chart that

[5]Dr. Mechanic was not the person who discontinued the

[6]drain?

[7]A. I am not absolutely certain whether it was him

[8]or one of the PA's. I believe it was one of the PA's.

[9]Q. Well, there was a PA by the name of Lloret,

[10]correct?

[11]A. Yes.

[12]Q. And she wrote a note in the progress record,

[13]didn't she?

[14]A. I'll find it in a second, sir.

[15]What date are we, sir?

[16]Q. June 3rd.

[17]A. Turn that again so I can see it?

[18]Q. (Indicating.)

[19]A. I have it, sir, yes. I'm sorry. Is there a

[20]question? I apologize.

[21]Q. It says, CAT scan reviewed with Dr. Mechanic.

[22]MS. DOLSKY: Rereviewed it says.

[23]Q. CAT scans either rereviewed or reviewed with

[24]Dr. Mechanic. Vents slit like. See that?

[25]A. I know it's here. I'm just not finding it, sir.

[1]273

[2]Q. Because it's late in the day, right?

[3]A. Might have something to do with it.

[4]Q. I know the feeling.

[5]A. Point me --

[6]Q. (Indicating.)

[7]A. Oh, down at the bottom. **[*157]** I was looking at the

[8]top note.

[9]Yes, I see it.

[10]Q. You see it says, Vents slit like.

[11]A. Yes, sir.

[12]Q. Now, you looked at the June 3rd CAT scans in the

[13]morning, correct?

[14]A. Yes.

[15]Q. And those vents were not slit like, true?

[16]A. They were small but not slit like.

[17]Q. My question was they were not slit like, and the

[18]answer's yes, right?

[19]MS. DOLSKY: Objection.

[20]THE COURT: That's not the testimony of the

[21]witness.

[22]MR. TORGAN: I'm sorry.

[23]Q. My question is --

[24]MR. TORGAN: I'm sorry, Judge.

[25]A. The ventricles were small.

[1]274

[2]Q. They were not slit like?

[3]A. Not expanded, but not what I would define as

[4]slit like.

[5]Q. And the left ventricle was bigger than the right

[6]ventricle at that time on June 3rd, correct?

[7]A. As it had been, yes.

[8]Q. As it had been the entire time he was in the

[9]hospital, right?

[10]A. Yes.

[11]THE COURT: All right. I think if this is

[12]a good place for you to stop --

[13]MR. TORGAN: Whatever's good for you,

[14]Judge.

[15]THE COURT: Okay. Fine. We are going **[*158]** to

[16]adjourn now. 9:30 tomorrow morning. Thank you

[17]very much. You're excused. Do not discuss the

[18]case.

[19]THE COURT OFFICER: Ladies and gentlemen,

[20]please follow me.

[21](Whereupon, the jury panel exited the

[22]courtroom.)

[23]MS. DOLSKY: Judge, he was here Monday, he

[24]was here Tuesday. He has surgery tomorrow.

[25]I'll find out when he can come back later this

[1]275

[2]week. I also have another witness,

[3]Dr. Woldenberg, who I had clear her schedule for

[4]tomorrow. It was the neuroradiologist at North

[5]Shore.

[6]THE COURT: Okay.

[7]MS. DOLSKY: And I had a voice mail message

[8]from them at lunchtime to tell me that they did

[9]-- that she will be available.

[10]THE COURT: So the neuroradiologist is

[11]coming tomorrow.

[12]MS. DOLSKY: Yes.

[13]THE COURT: And then Dr. --

[14]THE WITNESS: I have to work on my schedule

[15]and see when I can do it.

[16]THE COURT: We have to get this case done.

[17]MS. DOLSKY: I agree.

[18]THE WITNESS: I should be able to do it

[19]either Thursday afternoon or Friday afternoon.

[20]I just can't tell you sitting here right now.

[21]THE COURT: Well, **[*159]** that's no good because

[22]Thursday afternoon and Friday afternoon is going

[23]to be half days. We have to get this case done.

[24]MS. DOLSKY: Judge, I wonder -- I don't

[25]know why -- this is the second day. Maybe I

[1]276

[2]would hope that a half day would be sufficient.

[3]MR. TORGAN: It's my first day. It's my

[4]first afternoon. I just started this afternoon,

[5]later in the morning. I had like 15, 20

[6]minutes.

[7]MS. DOLSKY: An hour in the morning. I

[8]would think an afternoon, that would be --

[9]THE COURT: Well, an afternoon should do

[10]it. That's three hours.

[11]MS. DOLSKY: Right.

[12]THE COURT: So that should do the cross and

[13]any response to the cross, and that's going to

[14]be it, so you pace yourself, Ms. Dolsky, and you

[15]pace yourself, Mr. Torgan, because I'm not going

[16]to permit it any longer than that.

[17]THE CLERK: So you want the doctor to try

[18]for Thursday afternoon?

[19]THE WITNESS: I will make Thursday -- I

[20]should be able to arrange my schedule. I'll

[21]tell Ms. Dolsky tomorrow --

[22]THE COURT: Okay. Fine.

[23]THE WITNESS: -- during the day.

[24]THE CLERK: And **[*160]** the other witness will take

[25]the full day tomorrow.

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[2]THE WITNESS: Can I go, your Honor?

[3]MS. DOLSKY: I can't venture to guess. If

[4]not I can have somebody on call for later in the

[5]afternoon tomorrow. I'll try.

[6]THE COURT: Okay.

[7]THE CLERK: Okay, Doctor. Hopefully we'll

[8]see you Thursday afternoon.

[9]THE WITNESS: Thank you.

[10](Whereupon the trial was adjourned to 9:30

[11]AM, Wednesday, February 16, 2005.)

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