A. I'm taking medication.

MS. BENEDETTO: No further questions.

THE COURT: You may step down.

Thank you.

(Witness excused.)

MR. GAZER: Judge, at this time plaintiff calls Dr. Gabriel Dassa.

G A B R I E L D A S S A, having been called as a witness is sworn and testifies as follows:

COURT OFFICER: Please state your name for the record.

THE WITNESS: My name is Gabriel Dassa.

COURT OFFICER: Please spell your name.

THE WITNESS: D-A-S-S-A.

COURT OFFICER: First name.

THE WITNESS: G-A-B-R-I-E-L.

COURT OFFICER: Thank you.

DIRECT EXAMINATION

BY MR. GAZER:

MR. GAZER: Could we have some stuff marked in on consent, these two boxes of medical records from Lincoln Hospital, both of them.

They can go in as one exhibit.

THE COURT: Is this on consent apparently?

MS. BENEDETTO: Yes. I'm consenting subject to

redaction.

THE COURT: Agreed.

MR. GAZER: Agreed.

THE COURT: So what numbers are we up to?

THE CLERK: Number 20.

COURT OFFICER: Plaintiff's 20A and 20B in evidence so marked and Plaintiff's 21 and 22 in evidence so marked.

MR. GAZER: Are we ready to go?

THE COURT: Yes.

Proceed.

Q. Dr. Dassa, tell the jury your business address?

A. I have two addresses in the Bronx.

I have one at 2772 Third Avenue in the Bronx, New York.

I also have an office 2488 Grand Concourse, which is in the Grand Concourse/Fordham Road, Bronx, New York.

Q. What is your profession?

A. I'm an orthopedic surgeon.

Q. Are you licensed?

A. Yes.

Q. Can you briefly describe to the jury your professional education?

A. Yes.

Well, in the education that I achieved I did a

four-year premed course at Fordham University in pre-med in biology.

I was accepted to medical school at New York College of Osteopathic Medicine.

I entered that training program in --

Q. Pick the microphone up so we can all hear you.

A. I entered that training program in 1986 and I concluded that in 1991. Upon graduating I was accepted to an orthopedic surgery residency program in the Albert Einstein College of Medicine program.

Q. Briefly tell the jury hat a residency is if case they don't know?

A. When you are a medical profess you have specialty training upon completing my medical school training I did a subspecialty severity in orthopedic surgery which is carrying for conditions an trauma to the musculoskeletal system.

Q. Have you published any articles in the professional journals?

A. Yes, sir.

Q. How many approximately?

A. I believe it's three.

Q. And would those in be in the field of orthopedic medicine?

A. Orthopedic surgery, yes.

Q. Orthopedic surgery you say is the specialization of

the musculoskeletal system.

Would that include the neck and pain?

A. Yes, it would.

Q. Do you currently practice and examine patients?

A. I do.

Q. Do you perform surgery?

A. Yes.

Q. Have you ever been qualified to testify as an expert in the orthopedic surgery in the courts in New York State?

A. Yes.

MR. GAZER: Judge, at this time I would ask that Dr. Dassa be qualified as an expert in the field of orthopedic medicine.

THE COURT: Any opposition to that?

MS. BENEDETTO: No on that signature.

THE COURT: He is deemed an expert.

Q. Dr. Dassa, are you being compensated for your time here today?

A. Yes.

Q. By whom?

A. By a firm called Getz & Braverman.

Q. I'm employed at that firm, to your knowledge?

A. Yes, sir.

Q. How much is that compensation?

A. $5,000.

Q. If you were not here today, tell the jury what you would be doing?

A. I would be in surgery this morning and patient visits in the afternoon.

Q. Now, in preparation for your testimony, did you review your All Med records?

A. Yes, sir.

Q. Did you also review records at Lincoln Hospital?

A. Yes.

Q. Bronx Lebanon hospital?

A. Yes.

Q. Doctor, have you treated both Olga Garcia and Herminio Pizzaro?

A. Yes.

Q. With respect to Olga Garcia, you began treating her prior to the incident on August 4th, 2007?

A. Yes.

Q. Do you recall when you started treating her?

A. I would have to refresh my recollection.

Q. Go ahead, and just tell us what you are looking at.

A. Okay, the first visit was April 19th, 2007.

Q. Now, before we get into the specifics and the treatment of Mr. Pizzaro and Ms. Garcia, I want to talk to you a little bit about the spine in general.

Is the spine broken up into sections?

A. Yes, it.

Q. Now, can you tell us what those sections are?

A. Well, you have the cervical spine which is the upper spine; the thoracic, which is the middle portion of the spine, and then the lumbar, which is the lower portion of the spine.

MR. GAZER: Judge, may I approach the witness?

THE COURT: Yes.

Q. If I showed you this, would it help you explain the different sections of the spine?

A. Yes.

MR. GAZER: Judge, I would ask that he be allowed to use this is a demonstrative.

THE COURT: Any opposition to that?

MS. BENEDETTO: No objection.

THE COURT: Granted.

A. Well, this is a model which is an anatomically correct model of the spine which includes all segments, as I explained, you have the cervical, which is the base, in laymen's terms, the neck.

You have seven cervical vertebrae, which is one from the base of the skull, two, three, four, five, six, seven, then have you twelve thoracic vertebrae, which is your midback, and you count them down to, three, four, five, six, seven, eight, nine, ten, eleven. Then have you a lumbar spine, which is the lower back, which is the lower five lumbar vertebrae one, two,

three, four, five, and that sits on a triangular platform called the sacrum, which is the base of the spine.

Q. Now, just so we are clear, when you hear people refer to C1-2 or L4-5, are they referring to the cervical one, two and the lumbar four, five; is that how you differentiate them?

A. Yes.

Q. Let's talk about Olga Garcia's medical history.

Were you aware she had prior surgeries prior to August 4th, 2007?

A. Yes.

Q. Were you aware that in September of 2003 she had an L3 to 5 facetectomy and foraminotomy?

A. Yes.

Q. Can you tell the jury what that is, briefly?

A. Well, if look at the different parts of the spine, you have the bigger part of the spinal column, which is called the vertebral body, which is this portion here.

Then you get into the middle portion of the spine. As the anterior part of the spine connects with the back or the posterior part of the spine, you have what's called the pars and that connect to small joints that are called faucets.

So they would be the small joints in the spine that connect, so in the front you have a large articulation or joint in the back. You have a small joint to that facet joint as described in this model here.

A fasciectomy is actually going in and cutting down to the spine and taking a chisel and actually chopping out the facet.

You are removing the facet with instrumentation to make room for the nerve roots.

Q. Is that done to alleviate back pain?

A. It's done to alleviate pressure on the nerves, which, in turn, causes back pain.

Q. Now, were you also aware in addition to that, that she had an anterior cervical fusion in January of 2004?

A. Yes.

Q. Tell the jury what that is very briefly.

A. Well, again, each part of the lumbar spine has a joint and what separates the joints in the discs.

So when you do a fusion you actually remove the disc and you place bone graft, which is supplemental bone, between the two pieces of spine, bone, and you place screws and plates across to make this one piece so bone grows between the two spinal segments.

Q. In December of 2005 she had a reversion of the lumbosacral spine?

A. A reversion is a procedure that is done to change or correct a failed prior surgery.

So if I took out this lumbar disc and put supplemental bone between two pieces, and put in screws, you follow that over

the course of time with x-rays.

That if that fusion does not take or does not fuse properly, the person continues to have pain, so the revision would be to go into that area where the surgery was, remove the hardware, and re-do the fusion operation over again with new screws and plates.

Q. Now, you are aware, and you testified to some of it, that Ms. Garcia had to total of four procedures to her spine prior to August 4th, 2007.

Were you familiar with her general state of health prior to August 4th, 2007?

A. Yes.

Q. Now, I want you to assume that she testified that she often danced and walked, dances.

Would this be consistent with someone who has had all these surgeries that you have talked about?

MS. BENEDETTO: Objection.

THE COURT: Overruled.

Go ahead.

A. Well, again, your ability to do that is dependent upon your pain level, you know. She wasn't in a wheelchair so you know she was functional, and should have been able to do those things on an intermittent basis.

Q. Do you recall the last time you had treated Ms. Olga Garcia prior to August 4th, 2007 was?

A. Can I refresh?

MR. GAZER: With the Judge's permission.

THE COURT: Yes.

A. It was July 19th, 2007.

Q. Do you recall if she complained of neck or back pain on that date?

A. Well, the note reflects she was following up for an injury to her right thumb and elbow. There was no mention of neck or back pain on the evaluation date.

Q. Now, I want you to assume there was testimony on August 4th, 2007 she was thrown to the ground and held there with at least one police officer holding her with his knee on her chest.

Would that have any effect on her preexisting condition to her spine?

MS. BENEDETTO: Objection.

THE COURT: Overruled.

Go ahead, doctor.

A. Yes.

Q. Can you tell me what that would be?

A. Well, you know, if you are dealing with the spine that has had surgery in two areas, you are dealing with not just one operation, but multiple surgeries to the neck and the back.

I look at the spine as an analogy, as a stepladder, and if have you a stepladder that has normal stairs, that ladder

is able to sustain weight and force normally.

Now, if you have surgeries and fusion and disc problems in that ladder where you are weakening the stairs, which is basically what the surgery does.

Now, if you tried to go up that ladder with the same force, the ladder is weak and it's susceptible to breaking.

So in a case where you have surgical fusion and surgeries to the neck and back, you have a weekend ladder there on that particular scenario.

So that type of pressure can absolutely cause damage and a disruption to the spine and the neck.

Q. Okay, now, is it your testimony that because of a preexisting neck and back and lumbar and cervical condition, she would have been more susceptible to injury?

MS. BENEDETTO: Objection.

THE COURT: Overruled.

A. Yes.

THE COURT: That stands.

Q. Would you expect circumstances that I just asked you to assume, that she was thrown onto the ground, would you expect that to exacerbate her conditions?

MS. BENEDETTO: Objection.

THE COURT: I'll allow that. You could answer that.

A. Again, every patient is different, but there would be

a high susceptibility for her to have exacerbation of symptoms. It would be something that would be expected.

Q. Do you recall the first time you examined Ms. Garcia was after August 4th, 2007?

A. I would have to refer.

MR. GAZER: With the Judge's permission.

THE COURT: Yes, yes.

A. August 13th, 2007.

Q. Do you recall what your findings were back then?

A. Well, she had presented with complaints of pain. Again, I didn't note her prior history of having prior neck and back complaints.

She had presented with pain in her neck and back, her right hand, her right elbow, and both knees.

Essentially, I did examine her and she was noted to have correlating physical findings that were abnormal and worsened her neck, back, knees, and elbows, as well as her hands were examined.

Would you like me to read the results?

Q. Yes.

A. If you did look at the cervical and lumbar spine, the exam was broken down into three components.

The first component was range of motion.

Range of motion is the ability of the joint to move. So for the neck or the cervical spine, there is flexion,

extension, rotation to the right, left, side, bending to the right and left.

So her ability to flex the neck was measured to be 50 degrees, and normal is 60. Her extension was 20 degrees measured and normal is 75.

Her sides bending or lateral bending was 25 degrees right and left. The normal is 45 and her rotation was ten degrees right and left, and normal is 80.

There was a palpation exam where you are actually physically touching the tissue, the muscles of the neck. She had muscle spasm that was noted from C1 to C7, and she had a positive Spurling Test, which is a projective test for a pinched nerve on the right side.

The lumbar spine was measured, range of motion. Her flexion, which is bending at the waist, was measured to be 40 degrees. Normal is 90. Her extension was 20 degrees which is extending back at the waist, and normal is 30.

Her lateral bending, which is side bending from side to side, was measured for 25. Normal is 40.

Her lateral rotation, which is rotating at the waist, was 15 degrees, and normal is 30.

There is additionally muscle spasm palpation from L1 to L5. She had a positive straight leg raising test on the right, which is another provocative test to test for any neurological compromise or a pinched nerve.

There were exams done of the knees, bruising on the right and left knee. Her range of motion was assessed to the knee. So if I used my knuckle as a representation, if the knee is straight and I bend it, that's called flexion.

If I straighten out the knee it's called extension, so her ability to bend or flex the knee is 125 degrees on the right and 130 degrees left, and normal is 140.

She could fully straighten the knee. There was no impairment to that right or left.

There was an elbow exam that documented some swelling over the right elbow with a bruise over the back or posterior aspect of the elbow.

The range of motion was assessed. So for elbow range of motion you are looking at bending, which is flexion, and extension, which is straightening the elbow.

So if her flexion was one third on the right and 140 left and normal is 140, and she was able to fully extend the elbow to zero degrees was normal for both elbows.

The thumb, there was some swelling over the base of her thumb. There was tenderness to palpation at the base of the thumb in this region, and there was no neurological compromise on that exam.

Q. Suffice to say, doctor, August 13th, 2007, Olga Garcia presented with multiple injuries to various symptoms of her body?

A. Yes.

Q. Doctor, tell the jury what an MRI is generally?

A. Well, in general, an MRI is a diagnostic study. It is a study that is done utilizing not x-ray radiation but magnetism. So a body part is placed into an MRI machine and is exposed to a magnetic field and that magnetism would give off an image that was read by a transducer, which is similar to reading part of the digital camera. It creates an image. What it does is slice through the body part to give you some detailed information regarding the anatomy.

Q. Is that used as a diagnostic tool?

A. Yes.

Q. Did Olga Garcia have an MRI of the lumbar spine?

A. Yes.

Q. Do you have those reports in your records?

A. I do.

MS. BENEDETTO: I have an objection, Judge.

THE COURT: You are going to object?

MS. BENEDETTO: Yes.

THE COURT: Step over to the side.

(Discussion at bench.)

Q. Doctor, did you have an opportunity to review Ms. Garcia's lumbar spine MRIs?

A. Yes, sir.

Q. Can you tell me the date of the first one?

A. November 19th, 2007.

Q. And in the body of the document, did that indicate the presence of herniations?

MS. BENEDETTO: Objection.

THE COURT: Sustained.

Q. Did you learn that Ms. Garcia, based upon the MRI, did you learn Ms. Garcia had herniations?

MS. BENEDETTO: Objection.

THE COURT: The MRI that he reviewed personally.

MR. GAZER: Yes.

THE COURT: Sustained based on your side bar conference.

MR. GAZER: All right.

Q. Did you come to the opinion that Ms.Garcia suffered from herniations --

MS. BENEDETTO: Objection.

Q. -- based on your examination and treatment of her?

MS. BENEDETTO: Same objection.

THE COURT: Sustained.

Q. Did Ms. Garcia subsequently undergo surgery after August 4th, 2007?

A. Yes.

Q. And do you recall what surgical procedures she undergone?

Let's start with March of 2009.

THE COURT: Did you perform these surgeries, doctor.

THE WITNESS: No, I did not.

A. She had a surgery performed at Lincoln Medical Center at March 2nd of 2009.

Q. Just so we are clear, and the jury is clear --

MR. GAZER: Your Honor, may I approach?

THE COURT: Yes.

Q. What's been marked Plaintiff's 20A and B in evidence are Lincoln Hospital records as they pertain to Olga Garcia's treatment.

Did you have an opportunity, doctor, to review the operative report for that March procedure?

A. Yes.

Q. Can you tell us a little bit about that procedure?

A. Yes.

Well, basically, the treating surgeon who performed this procedure.

Q. Is that Dr. Sundaresan?

A. The March 2nd report?

Q. Yes.

A. I have Dr. Lyon as the surgeon.

Q. Okay, tell us what the procedure was.

A. The procedure was a disc replacement of the lumbar spine.

Q. Can you tell the jury what that entails?

A. Well, the procedure notes that she did have --

MS. BENEDETTO: Objection.

THE COURT: Objection as to?

MS. BENEDETTO: Reading from the report.

THE COURT: Granted.

MR. GAZER: The report is in evidence, Judge.

THE COURT: It's in evidence, is that is true?

MR. GAZER: I will withdraw my objection.

THE COURT: Overruled.

A. She did have a surgical procedure where an incision was made in the spine and essentially, as technology for surgical treatment of the spine has progressed, rather than fusing the spine for conditions that effect discs, they actually remove the disc material and they put in artificial discs now as a way to manage spinal problems.

So, if you look at the report at the, I -- I believe it's the two, three level, so if I use this as a representation, they remove the L-2, 3 disc and replace it with an artificial disc.

Q. Do you know why that basically was done?

A. It's to alleviate pain.

Q. Do you know why it was necessary for Ms. Garcia to undergo that procedure?

A. Yes.

Q. Why is that?

A. Well, again, if you note, she did give a history of having injuries sustained on August 4th, 2007.

She did have a change in her condition after that with an increased pain level.

Routine measures to manage that pain which include physical therapy, medications did not subside those symptoms, so she had to undergo a disc replacement because the reasonable nonsurgical measures did not successfully reduce her pain or control her pain.

Q. Now, I want to talk about the June 9th, 2009 surgery. You didn't perform that, but you have had the opportunity to look at the surgical report?

A. Yes, sir.

Q. That also took place at Lincoln Hospital?

A. Yes.

Q. So we are, again, clear, that is part of Plaintiff's 20A and 20B. Can you tell you what procedure she had?

A. In a similar way, although we are talking about a different part of the spine.

Q. Can you point to it so the jury sees what part of the spine you are talking about?

A. The first surgery is on the lower back. Now we are talking about the neck, which is the cervical spine.

She did have an anterior approach to the spine, which

means that they had to approach the spine through her neck on the front part of her neck; and, essentially, the first part of the procedure was to go in and to remove the hardware from her prior surgery, and they describe it as removal of old Zefhyl Instrumentation. Z-E-F-H-Y-L, I-N-S-T-R-U-M-E-N-T-A-T-I-O-N.

Decompression of the C-4 disc with removal of osteophytes, and an insertion of another artificial disc which they prescribe as a pro-disc.

So she had a disc replacement.

Q. Would that hardware, would that be the hardware that was inserted when she had her interior cervical fusion in 2004?

A. Yes, sir.

Q. Would you expect the hardware to be removed in five years' time or is that something out of the ordinary?

MS. BENEDETTO: Objection.

THE COURT: Overruled.

Go ahead.

A. Generally, when do you have spine surgery, these instrumentations are meant to stay in place during the entire life of the patient.

There are instances where they must come out if they loosen or if there are other procedures that in order to be done properly the metal has to be removed.

Q. Would the incident, as I asked you to assume that happened to Olga Garcia on August 4th, 2007, would that have any

effect on the hardware that was in the spine?

MS. BENEDETTO: Objection.

THE COURT: Overruled.

Could you answer?

A. Again, there was no breakage of the hardware. I think the issue for removing it was to have access to a new replacement, which was the issue which it could have had an effect, it could have broken the hardware, but it didn't.

Again, it was an access issue. They needed to remove the hardware to gain access to the knee replacement.

Q. Now, do you have an opinion within a reasonable degree of the medical certainty whether the March 6th, 2009 surgery was related to the incident of August 4th, 2007?

MS. BENEDETTO: Objection.

THE COURT: Overruled.

Go ahead.

A. I do.

Q. What is that?

A. I believe that the need for this surgery was directly related to the August 4th, 2007 incident.

Q. What is the basis for that opinion?

A. Well, again, she was known to me as a patient. She did have prior neck and back conditions, which she did retrieve treatment. That she was stable. There was no recommendation for the surgery for the neck and back prior to this incident,

and things significantly changed causing her symptom level to increase, and also the necessitation of surgical treatment for both the neck and lower back.

Q. Would you say, because you were the physician who was treating her even before August 4th, 2007, would you say that you were in a better position to diagnose her condition then, say, a physician who hasn't even seen her?

A. Yes.

Q. Let's talk about the June surgery.

Do you have an opinion with respect to that with a reasonable degree of medical certainty whether that was necessitated by the events of August 4th, 2007?

MS. BENEDETTO: Objection.

THE COURT: Overruled.

Go ahead.

A. I did.

Q. What is that?

A. Again, for the same reasons, I believe that the need for that surgery was precipitated by surgery she sustained on August 4th, 2007.

Q. Can you say to a reasonable degree of medical certainty that the incident of August 4th, 2007 exacerbated the conditions of both her lumbar and cervical spine?

MS. BENEDETTO: Objection.

THE COURT: Overruled.

Go ahead.

A. Yes.

Q. Now, do you have an opinion within a reasonable degree of medical certainty whether the exacerbated condition of both Ms. Garcia's lumbar and cervical spine, do you have an opinion as to the prognosis of those two areas?

A. I do.

Q. What is that?

A. I believe she has a poor prognosis and she has a highly susceptible, two highly susceptible, areas in her spine for deterioration and for future pain.

MS. BENEDETTO: Objection, Judge. Beyond the scope.

THE COURT: Overruled.

Go ahead, doctor.

A. Again, she has had multiple surgeries. The prognosis with each successive surgery, the additional scar tissue, things that form as a result of the surgeries and multiple injuries is cumulative, so it represents a very poor prognosis.

Q. In general, just in general terms, do subsequent surgeries of same area of the spine, does that cause a prognosis of success to decrease?

A. Yes.

Q. Is it fair to say that with each subsequent surgery Ms. Garcia has to her lumbar spine the prognosis has gotten

less?

A. Yes.

Q. Would that be the same case with respect to her cervical?

A. Yes, sir.

Q. Let's talk about Mr. Herminio Pizarro. You have had a chance to review his medical records, correct?

A. Yes.

Q. You have examined him several times?

A. Yes, sir.

Q. Do you recall when you first treated him?

A. I would have to refresh.

MR. GAZER: With the Judge's permission?

THE COURT: Yes, go ahead.

A. That would be July 21st, 2009.

Q. At that time you took a history?

A. Yes.

Q. You learned that he had two surgeries?

A. Yes.

Q. One was on February 1st, 2008, and the other on May 13th, 2009?

A. Yes.

Q. Let's talk about the first surgery.

Can you tell the jury what that was?

A. I have an operative report from Lincoln Hospital. It

was prepared by Dr. Sundaresan, S-U-N-D-A-R-E-S-A-N.

Q. Just so we are clear, you are reading an operative report which is contained in Herminio Pizzaro's Lincoln Hospital records, which are already in evidence as Plaintiff's 21?

A. Yes.

Q. Not that you knew about it, but I would just like the record to be clear.

Could you explain to the jury what this procedure was?

A. Well, again, it was a similar procedure as described earlier, the disc fusion, and if we speak of the specific level, if we go C-1, 2, 3, 4, 5, there was a corpectomy, so I will go down to a larger one so we can see what we are talking about. They actually remove the C-5 vertebrae, which is called the corpus, so it's a corpectomy.

So they remove this piece of spine and basically remove the disc as well between the 5-6 level, and they placed bone graft, which is supplemental bone, and they basically plated plates and screws across that segment in order to create a stable fixation of the spine.

MR. GAZER: Judge, may I approach the witness with this easel?

THE COURT: Yes.

Q. Is this a photostatic copy of the original you just read?

A. Yes.

Q. The original of it is in your records?

A. Yes.

MR. GAZER: Judge, I would ask that this come in as Plaintiff's 21A, just an enlargement of what's in as 21.

THE COURT: As a demonstrative or in evidence?

MR. GAZER: I would ask that it be brought in as evidence, Judge.

THE COURT: It's a blow up.

MS. BENEDETTO: No objection.

THE COURT: Granted.

COURT OFFICER: Plaintiff's 21A in evidence so marked.

Q. Now, tell the jury what is meant by preoperative diagnosis in general?

A. Well, in the course of performing a procedure, a person goes into the procedure with a problem, so that would be the pre-surgery diagnosis or the pre-surgery problem.

Q. In other words, in laymen's terms, if you will, the surgeon's opinion of what he thinks the problem is before he actually opens up the patient up?

A. Well, again, it's not an opinion it's a synthesis of history, physical objective testing.

Q. I didn't mean to water it down that much. I guess we are on the same page. It's the conclusion that the physician has come to based on everything up to the point of surgery?

A. Yes.

Q. In this case, what was Herminio's preoperative diagnosis?

A. The preoperative diagnosis states cervical spondylitic myelopathy. Possible trauma C5, C6.

Q. When we see C5, C6 we know where are talking about the cervical 5-6?

A. That is correct.

Q. Can you point to that for the jury so we know what we are talking about?

A. So if we couple 1, 2, 3, 4, 5, 6, it would be between these two bones, and that's specifically this disc space.

Q. That would be in somebody's neck?

A. That's correct.

Q. And, what is the condition spondylitic cervical, spondylitic myelopathy?

A. There are two terms mentioned there. Spondylitic means spondylosis. What is spondylosis? Something occurred to cause a narrowing of the disc space up on this area C-5 and C-6. There is insufficient disc space.

The word "myelopathy", meaning spinal cord dysfunction hence the word "myel", spinal cord, and "apathy", which is a pathological process of the spinal cord from compression.

Q. Could this be a painful condition?

A. Yes.

Q. Now, what's the significance of the cervical notation "possible trauma".

A. Again, it brings into the mix of the information that is provided that, you know, again, there is all different types of clauses of spondylosis and myelosis, and trauma is one of them, and there is non-traumatic reasons.

It takes into account that there could have been a traumatic episode to that level.

Q. Let's talk about trauma in general. What is trauma? When he quotes "possible trauma" what is he talking about?

A. Possible injury to the area.

Q. Something that happened at once as opposed to something that naturally happened over time?

A. That is correct.

Q. So the term possible trauma would denote some sort of external force aside from the natural aging process?

MS. BENEDETTO: Objection.

THE COURT: Sustained.

Let the doctor testify.

Q. Would "possible trauma" denote an external force?

MS. BENEDETTO: Objection.

THE COURT: What would it denote, doctor, in your words?

THE WITNESS: Again, when you say "possible trauma" it's raising the question that there was a single

event, an injury, as opposed to something that occurred over time as a degenerative process.

Q. And, tell us, generally, what is it when a surgeon puts postoperative diagnosis?

A. Well, what happens in the course of performing a surgery, the surgeon goes in with the presumptive of diagnosis and what he is seeing with his eyes, the part that he is performing surgery on, how it appears to him, the level of scar tissue, if there was evidence of things that could bring them to the conclusion that this is dramatically induced or degenerative. It basically gives you more concrete information regarding the condition.

Q. What was the surgeon's, in this case, postoperative diagnosis of Mr. Pizzaro?

A. It was traumatic spondylosis C5, C6.

Q. That would indicate it was something that happened at once?

A. Yes.

MS. BENEDETTO: Objection.

THE COURT: Overruled.

Q. That would indicate the cause of his condition. It was not a degenerative condition?

MS. BENEDETTO: Objection.

THE COURT: I'll allow that.

A. That is correct.

Q. Who would be in best determination to make that determination? It would be the surgeon, someone looking at the MRI report who would be in the best condition to determine the caution of that pathology?

A. Obviously nothing is more specific than actually being inside looking at a problem. So the treating surgeon is in the best position to make that call.

Q. In this case, based upon Plaintiff's 21A, the treating surgeon determined it was of traumatic origin; is that correct?

A. That is correct.

Q. Now, I want you to make an assumption of fact.

I want you to assume there has been testimony by several witnesses that stated on August 4th, 2007 Herminio Pizarro was thrown against the wall, thrown to the floor, and where he was beaten about the head and body for at least five minutes.

I want you to further assume that while on the floor, a police officer stepped on the back of his head while his neck was hanging off the curb.

I want you to further assume that he was dragged to a police car where he was continually punched in the face and body.

Further assume, doctor, that he was taken to the bathroom at the police station where she was kicked and punched and thrown to the ground, all transpiring within the course of

several minutes.

Do you have an opinion within a reasonable opinion of medical certainty whether those actions by the police officers were a substantial factor in bringing about the spondylitic myelopathy?

MS. BENEDETTO: Objection.

THE COURT: Overruled.

A. I do.

Q. What is that?

A. Again, if you are accurate in that description about any one of those events and then cumulatively, are perfectly capable of producing this problem. So I do think that the injuries, as you described, are causative.

Q. Is there an opinion in any way effective by the surgeons' conclusion of trauma?

A. Well, again, as I stated earlier, you could have spondylosis from several causes. If the surgeon is describing what he is seeing, dramatically induced spondylosis, then it confirms that there was some injury to the spine from trauma and you have to correlate that with the history.

Q. Did you have an opportunity to review my client's Bronx Lebanon records?

A. Yes, sir.

MR. GAZER: May I approach, Judge?

THE COURT: Yes.

Q. Have you reviewed the emergency physician record from August 4th, 2007?

A. Yes.

Q. That's part of Bronx Lebanon records?

A. Yes.

MR. GAZER: Judge, I would ask that this come in as 22A.

It's an enlargement of something already in 22.

THE COURT: Granted.

COURT OFFICER: Plaintiff's 22A in evidence so marked.

Q. Do you have a copy of the document in front of you?

A. I'm trying to find it.

MR. GAZER: Judge, may I approach?

THE COURT: Yes.

Q. This is Plaintiff's 22, which is the subpoenaed copy of those records.

Now, just generally describe for the jury what the emergency room record is of a patient?

A. Well, in caring for patients who attend a hospital in the emergency room it's a record that basically chronicles the reason that they are there.

Specifically, we are looking at a document dated 8/4, 2007 Bronx Lebanon Hospital Emergency Physician Record, multiple trauma/alleged assault.

Q. Now, you said it was dated August 4th, 2007?

A. Yes.

Q. That's the date of the incident; would you agree with me?

A. Yes, sir.

Q. Now, in the left center of the document where it says "location of pain/injuries," can you read for the jury where it says that Mr. Pizarro complained of pain?

A. Yes.

Q. Can you read that for the jury?

A. It says head, face, mouth, chest, and shoulder.

Q. What is the significance of the fact that he made neck complaints immediately after the alleged trauma?

A. Well, the significance is that he has a correlating complaint of pain that is early opening in this process, namely the date of the incident.

So there was obvious trauma sustained to the neck causing a symptom of neck pain.

Q. Now, it has been suggested in this trial that Mr. Pizzaro only complained of neck pain after he spoke with attorneys in this matter.

Does that record --

MS. BENEDETTO: Objection. Mischaracterization.

THE COURT: Sustained. Sustained.

MS. BENEDETTO: Thank you.

Q. Does that record comport with the idea that Mr. Pizzaro experienced neck pain immediately upon his admission to the hospital?

A. Yes, it does.

MS. BENEDETTO: Objection.

THE COURT: I'll allow that.

MR. GAZER: May I approach, Judge?

THE COURT: Yes.

Q. You said you reviewed the Lincoln records.

Did you also have an opportunity to review Mr. Pizzaro's triage record?

A. Yes.

Q. Is this a copy of it?

A. Yes, sir.

MR. GAZER: Judge, I would ask that this come in as Plaintiff's 21B. It, again, is an enlargement of something already in evidence.

THE COURT: Granted.

COURT OFFICER: Plaintiff's 21B in evidence so marked.

Q. Were you able to find it, doctor?

A. I have the whole record. I'm just trying to find the specific page.

Q. What I can do is give you a photocopy, and you will agree that what's been marked 21B is exactly the same as what

you have in your hand?

A. Yes.

Q. Now, doctor, this is Mr. Pizzaro's triage record upon being admitted to Lincoln Hospital on August 19th, 2008; am I correct?

A. Actually, it's not that date on here. Oh, yes, I see.

MR. GAZER: For the record, there appears to be two days on this, August 13th, 2007 and August 19th, 2007, by the triage.

Q. Date is August 13th, 2007, right?

A. Yes, sir.

Q. I read the wrong date. I misspoke.

Can you read for the jury "pain detail?"

A. "Location: Right neck, tongue, pain level two, control and measures nothing. Helps to relieve discomfort."

Q. Now, is the fact that -- does the fact, excuse me, that Mr. Pizzaro experienced pain at Lincoln on August 13th, 2007.

Does that effect your opinion as to the cause of his neck condition?

A. Yes.

Q. What is that?

A. It reinforces that he did sustain a neck injury on August 4th, 2007.

Q. Now, you know that we talked about May 13th, 2009. He

had sustained a second surgery.

Can you describe for the jury what that was?

A. I have an operative report by the same surgeon, Dr. Sundaresan.

Essentially he had to undergo additional surgery to his neck. He described the preoperative diagnosis C4-5 adjacent segment disease status post anterior fusion, and he did undergo removal of the old anterior instrumentation.

He also had, which would be removing the metal that was placed in the prior surgery, he also have a discectomy, which, as I described earlier, is removing the disc and placement of an artificial risk.

Q. Now, do you have an opinion within a reasonable degree of medical certainty whether that second surgery was necessitated by the event of August 4th, 2007?

A. I do.

Q. What is that opinion?

A. My opinion is, if you look at the details why the surgery was performed, it is related to the injury in the first surgery.

Q. What do you base that opinion on?

A. Well, if you look at the postoperative diagnosis, he had to remove the hardware because the first hardware became loose. That was the first reason for the second surgery, and when you do fuse a segment of the spine, because that segment

doesn't move anymore, it transposes the force of movement on the joint that are annexed to that fused joint and it creates problems within that joint.

And if you look at what he describes in his operative report, as segmental degeneration at the adjacent level, he calls that adjacent segmental disease, which is a consequence of the fusion that he had to have.

Q. Now, in your examination of Mr. Pizzaro, you took a history, correct?

A. Yes, sir.

Q. And did you learn whether or not prior to August 4th, 2007, Mr. Pizzaro had any problem with his neck?

A. I mean, nothing that ordered conditions that would require surgery. He did not give any significant history of having neck problems, any treatment for his neck, or any diagnostic studies done.

Q. I want you to assume that there has been testimony prior to this incident on August 4th, 2007 that Mr. Pizzaro was a weight lifter and body builder.

Would those activities lead to those conditions that he suffered to his neck?

A. Just engaging in the activities by themselves would not necessitate a need for a condition to develop like this. Every body builder doesn't walk around with cervical fusion if there is a history.

Again, I don't know if there is a history of that, but just by weightlifting by itself, I don't see how that has any impact opening the condition.

Q. Is it fair to say in Mr. Pizzaro's case weightlifting wasn't detrimental to the condition of his neck?

MS. BENEDETTO: Objection.

THE COURT: Overruled.

A. Again, if you are conditioning the muscles, you know, it's basically supportive of the spine. So you actually have less tendency to develop problems if you are making the muscles around your spine stronger, so I could agree with that.

Q. Assume, doctor, there was testimony that Mr. Pizzaro was no longer able to lift weights, is this consistent with the type of surgery that he suffered?

A. Yes.

Q. Can you explain?

A. Well, just as a precaution, the advice would be not to lift weights, because, again, he now has an unstable segment in his spine. He has other adjacent levels that can herniate if he performs anything too strenuous or has any injuries. He is at a susceptible level. Now that is consistent with his ability not to do it.

Q. You recall examining Mr. Pizzaro on June 15th, 2013?

A. Can you repeat the question?

Q. June 15th, 2013.

A. Yes, sir.

Q. Do you have the results of that examination?

A. I do.

Q. Can you tell us what they were?

A. The cervical spine was examined, noted surgical spine, his ability to bend the neck forward 20 degrees, and normal is 60. His extension was measured to be 30 and normal is 75.

His lateral bending to the right and left was measured to be 20 degrees, and normal is 45 degrees, and his rotation from the right to left was ten degrees, and normal is 80.

He was noted to have muscle spasm from C1 to C7 and the Spurling Test remained to be positive on the right which, again, suggested a neurological irritation.

His sensory examination did demonstrate some impairment to his ability to feel on the right arm along the C5 nerve dermatomes.

So, the area of the skin that the C-5 nerve root allows you have sensation at what you are not as strong on the right as the left, but he had good motor power and his reflexes were normal.

Q. Doctor, do you have an opinion within a reasonable degree of medical certainty of the prognosis of Mr. Pizzaro with respect to his neck injury?

A. I believe his prognosis is guarded.

Q. Would you consider his injury permanent?

A. Yes, I do.

MR. GAZER: Thank you, doctor.

I have nothing further.

THE COURT: We will take a break, jurors. We will have you back in five minutes.

Don't discuss the case.

Keep an open mind.

(Whereupon, the jury is excused for a recess.)

(Whereupon, a recess was taken.)

(Whereupon, court resumes.)

(Jurors entered the courtroom.)

THE COURT: Welcome back everybody. Please be seated.

Doctor, please retake the stand.

THE WITNESS: Thank you.

COURT OFFICER: Doctor, you are reminded that you are still under oath.

Be seated.

THE COURT: Miss Benedetto.

MS. BENEDETTO: Thank you, Judge.

CROSS-EXAMINATION.

BY MS. BENEDETTO:

Q. Good morning, doctor.

A. Good morning.

Q. My name is Michelle Benedetto. I'm going to be asking

you a few questions.

Doctor, do you have your CV or resume on you?

A. With me, no.

Q. Would you like me to show you a copy?

A. Please.

MS. BENEDETTO: May I approach?

THE COURT: Yes.

Q. Could you take a look to make sure it's accurate and up to date?

A. This is accurate up to 2010. You have an old copy.

Q. Now, doctor, taking a look at your resume, it says that you are currently the Attending Orthopedic Surgeon/Hand Surgeon at All Med, correct?

A. No, I'm not. I haven't been that since November 6th, of 2010.

Q. What's your current position?

A. I am in private practice at 2772 Third Avenue.

Also I have an off on the Grand Concourse. I was the Medical Director for All Med up to November 6th, 2010.

Q. Are you aware this is the resume I was provided back in 2013?

A. I'm not aware that is what you received, my resume is updated and on my website.

Q. Let talk about when you were a Medical Director at All Med Rehabilitation Center.

A. Yes.
Q. It's is a orthopedic surgeon/hand surgeon, correct?
A. Yes.
Q. It doesn't say anything about spinal surgeon?
A. Yes.
Q. Before that you were the Medical Director at Lincoln Medical Center?
A. Yes.
Q. Again, you were the Director of Orthopedics, spinal surgery?
A. I'm not a spine surgeon.
Q. You are not a spinal surgeon?
A. Yes.
Q. You didn't have training?
A. I did have training in spinal surgery. I don't do spinal surgery.
Q. You have spinal manipulation on your website.
A. I was trained in both.
Q. That's something chiropractors can do, right?
A. Again, the kind of spinal manipulation I do, it's not what chiropractors do.
Q. Did you do any specific Fellowships in spine surgery?
A. No.
Q. Your Fellowship was in hand surgery, correct?
A. Yes.

Q. And you also mentioned on direct examination that you published various articles, correct?

A. Yes.

Q. And those article don't have to do with spinal surgery, correct?

A. That is correct.

Q. Doctor, you also have a website?

A. Yes.

Q. You just mentioned the website?

A. Yes.

Q. On your website you list the orthopedic conditions you treat?

A. Yes.

Q. When does the website -- there is a section you could click on that says "orthopedic conditions?"

A. Yes.

Q. This is your own personal website?

A. This is my professional website.

Q. When you chick on orthopedic conditions there is a list of approximately two dozens conditions, various orthopedic conditions, correct?

A. Yes.

Q. There are knee conditions that are listed correct?

A. Again, they are surgical conditions that I commonly treat. It's just a list. That is part of my website. Not all

inclusive.

Q. But the list includes knee conditions, correct?

A. Yes.

Q. The list includes shoulder conditions, correct?

A. Yes.

Q. The list includes finger conditions, correct?

A. That would be hand conditions, yes.

Q. Hand conditions as well, right, and it includes knee conditions, correct?

A. Yes.

Q. But in the two dozen lists of conditions, it doesn't include any spinal conditions, correct?

A. From a surgical perspective, I don't do spine surgery. That would not be listed. That would not be appropriate.

Q. It's your testimony you don't do spine surgery?

A. I'm not a spine surgeon currently. I don't do spine surgery.

Q. So, all the surgery that you testified to on direct examination, it's fair to say you never performed any of them?

A. The spine surgeries?

Q. Yes.

A. I did in my training.

Q. When was that?

A. When I was at the Albert Einstein College and when I was also at the Hospital of Joint Diseases and NYU Medical

Center, but in my practice I'm not a trained Fellow in spinal surgery, so I don't do that.

Q. When was the last time you performed a spinal surgery?

A. I would say 1998.

Q. In the last almost 20 years, you haven't performed spinal surgeries?

A. That is correct.

Q. Doctor, it's common practice in the medical community to refer patients to different specialists, correct?

A. Yes.

Q. In fact, there is different orthopedic surgeon in the medical community that refer patients to you for the purpose of hand specialty; correct?

A. Again, I get referrals for things I do in community practice, which is sports and hand conditions and trauma because I don't do spine surgery I refer those patients out.

Q. Doctor, I'm not asking you that.

My specific question is: Different orthopedic surgeons refer their patients to you because you are a hand specialist, correct?

A. They are patients for several reasons, not because I am a hand surgeon.

Q. But that's been done before in the past, correct?

A. Again, I get referrals for several reasons, and it has been done in the past, yes.

Q. And on the flip side, you refer patients to other specialists, correct?

A. Yes, I do.

Q. So, doctor, you would agree with me that a spinal surgeon would be in a better position to testify as to the plaintiff's injuries, correct?

A. I disagree with that.

Q. Well, doctor, is it your testimony then that a spinal surgeon would be in a better position to testify as to hand injuries over you?

A. Again, if you are speaking in general, a spine surgeon is trained in hand as well.

Orthopedic surgeons, which I am, can comment and assess all injuries.

If you want to speak specifically about the operation that was done by the surgeon, obviously he would be better to speak about this surgery, but the workup and the management of the patient leading up to that surgery, any orthopedic doctor can do. That's what I do as part of my practice. I treat patients non-surgically to for back and neck injuries, and once they do not recover from those measures, they get referred to the spine surgeon for a surgical component.

I don't do that.

Q. You don't advertise yourself on your website as a spinal surgeon?

A. I do not advertise myself as that.

Q. You advertise yourself as a hand specialist.

A. I advertise myself as an orthopedic surgeon and also spinal hand surgeon.

Q. All over your website you list your qualifications and training in hand surgery, correct?

A. Yes.

Q. You testified on direct examination that plaintiff's spinal surgeons performed their surgery at Lincoln Hospital and they would be in the best position to determine the conditions of their back, correct?

A. Again, I think I answered that.

Any orthopedic surgeon can determine their condition. If it's to speak specifically about the operation that they performed, then the answer would be the surgeon would be better for that.

Q. Before coming here today, did you consult with the surgeons that performed the plaintiff's back surgeries?

A. No, I did not.

Q. In the last seven years since August 4th, 2007, have you spoken to the surgeons who performed their back surgeons?

A. Again, I do recall speaking to the spine surgeon at the request of Ms. Garcia when she was thinking about having additional surgery to her neck and back, and she was afraid because disc replacements at that time were relatively new, and

it was something I was a bit concerned about; but beyond that, again, I did speak to him. I do recollect, regarding Ms. Garcia.

On Mr. Pizzaro, he had already had the surgery once he came to see me.

Q. When did that conversation take place?

A. Again, I don't recall.

Q. How long did you speak to that certain surgeon?

A. I don't recall. It has been a long time.

Q. Was it limited to one conversation?

A. To my knowledge, yes.

Q. Did you take notes of that conversation?

A. No.

Q. Did you note in your report you had this conversation with the spinal surgeon?

A. I don't know if I noted it on the records. I don't have it specifically written down. Again, I don't maintain control of all records. I am not sure what they sent me is complete. I may not have the records of what I have in my possession. I don't have anything that I wrote down that I spoke to him.

Q. Let's talk about that for a little bit. The records in front of you, are you saying they are not complete?

A. Again, my records are complete.

Q. What was that, I'm sorry?

A. My records are complete.

I did request records from All Med from the time that I treated her because they didn't maintain control of those records, they sent me records.

Again, I didn't have the physical chart. I'm no longer there, so they may be complete, they may not. Those records are from All Med.

Q. You don't know, as you sit here today, whether Ms. Garcia's records from All Med are complete?

A. Again, to my understanding of the records, they are -- I don't guarantee 100 percent. I don't maintain those records.

Q. You can't say for sure they are complete?

A. Exactly.

Q. After you left All Med you continued to treat Miss Garcia?

A. Yes, ma'am.

Q. Doctor, would you agree with me that the standards of care in treating patients would require you to keep records of patients that you are still treating?

A. Again, the standard of care is to maintain records. I was an employee of All Med. Their obligation as a custodian of those records is with them. I was an employee. That was not my private practice.

I have no obligation to maintain All Med's records. I have an obligation to maintain records that I prepared

independent of that contact which I have.

Q. Doctor, you just told this jury you were still treating Ms. Garcia's after you left All Med, correct?

A. Yes.

Q. You didn't think it was a good idea to refer to prior records of your treatment to Ms. Garcia and keep those in the file?

A. I did.

Q. What about the rest of the records of All Med, you didn't think it was a good idea to make sure you had all those records of a patient you were still treating?

A. Again, the records that I have, my initial evaluations and subsequent evaluations, my personal notes, the information in those records were perfectly sufficient to refresh my memory regarding her treatment and also to draw conclusions regarding her outcome from her injuries and surgeries.

Q. But you don't know if they are complete you just testified?

A. Again, I can't tell you if they sent me every page in the chart. I don't know. I don't control those records. They sent me my records in the records. I don't know if I wrote down that I spoke to Dr. Sundaresan or not, but I do remember speaking with him.

Q. We left that topic a while ago.

MR. GAZER: Objection, Judge.

THE COURT: Overruled.

Go ahead.

Q. I was just asking you how you can't say for sure that your file was complete of the prior records, correct?

A. My file for my notes are complete.

Q. Doctor, besides speaking to one of the plaintiff's surgeons only once, did you every view Ms. Garcia's prior records from Lincoln Hospital?

A. I did not, no.

Q. But yet you are testifying here today that this accident caused her condition to get worse, but you never reviewed her prior treatment records?

A. Again, I was well acquainted with her condition prior to this accident on a clinical basis. She had a significant deterioration in her condition after this incident. The Lincoln Hospital records, with or without them, does not change the fact that she significantly worsened after she was injured on the August 4th, 2007 event.

There was a significant change in her condition so that information does not change anything.

Q. Doctor, did you review every single page of records in Plaintiff's Exhibit 20 A and B for Miss Garcia's treatment at Lincoln Hospital from the day of the incident up until today?

A. Again, I don't know. I have records from Lincoln hospital pertinent to her surgical treatment. I just reviewed

what was provided to me.

Q. Okay, and are you -- do you know if the records that are in evidence contain records of her prior treatment at Lincoln Hospital?

A. I don't know.

Q. You never reviewed those records, correct?

A. Again, I may have when I was at All Med, but I don't remember at this point.

Q. But they are not in your file?

A. That is correct.

Q. You don't have notes of what those records say; correct?

A. I do have notes chronicling she had prior surgeries. If they were done at Lincoln Hospital I did refer to that information because there are dates of that procedure, but I don't have them in my chart.

Q. You don't know of any other complaints Ms. Garcia may have made to Lincoln Hospital after those surgeries, correct?

A. Again, specifically about those records, no, I don't remember.

Q. Well, doctor, are you aware that she was still complaining of back pain at Lincoln Hospital in March of 2007?

A. I am not aware of that, but she was also complaining of back pain in March of 2007 with me to my recollection.

Q. You are also aware that in April of 2005 she was still

showing radiculopathy symptoms in her lower back?

A. Again, if it's Lincoln Hospital records specifically, I don't have the recollection of that, but I do recall her having radicular symptoms, yes.

Q. Again, doctor, just to be clear you don't know if the records from All Med in front of you are complete?

You never once reviewed any of her records from Lincoln Hospital. You are still testifying here under oath that this incident caused worsening of her neck and back injuries, correct?

MR. GAZER: Asked and answered; objection.

THE COURT: Overruled.

A. Again, I never said I never reviewed her records. They are not in my current record packet. I was treating her for conditions prior to this incident. I made specific notations regarding objective testing, so the records had to have been reviewed. This has been a long time ago. I don't recall what I saw and what I didn't see.

So, specifically, as far as my records, my chart notes are complete. There is a lot of information that is in the medical chart. I don't know if they sent me every piece of paper that is in that chart. I may have written something down by hand if I spoke to somebody. That's not in this record, but the records that I have that are my notes are complete.

Q. Okay, and you didn't request these prior records at

Lincoln Hospital before testifying today, correct?

A. No, I did not.

Q. By the way, doctor, this isn't the first time you are testifying in court, correct?

A. That is correct.

Q. You just told this jury on, I think you told this jury on direct that you have been qualified as an expert before correct?

A. Yes, sir.

Q. That's in orthopedic surgery?

A. Yes.

Q. You have been testifying, you agree with me, you have been testifying from 1996 to present?

A. That is correct.

Q. And in those approximately 17 years, you have been testifying, I may be off with that number, would you agree with me, that you have been testifying the majority of times for plaintiff's; correct?

A. Again, I don't know the breakdown. I testify for plaintiff and defendants.

As far as the breakdown, I couldn't tell you an exact number. If I had to speculate, it's probably a little more for plaintiffs than defendants, yes.

Q. Do you recall giving prior testimony as recently as 2013 that you testified the majority of the time for the

plaintiff?

A. I just stated that, yes.

Q. Also, doctor, how many times do you testify a year?

A. Again, it averages out to five to six times a year. Over the last ten years, if I took an average, I don't know or quantify it unless I'm the treating doctor.

Q. Do you recall testifying back in 2013 that you testified about seven to ten times per year?

A. Again, I'm just taking the average. 2014 changes the information. So, again, five, six, seven, it's all the same ballpark.

Q. Doctor, would I be accurate in saying that since 1996 since you have been testifying -- you only testified in court seven times for the defense?

A. I don't know.

Q. Does that number seem right to you?

A. Again, I don't know. I don't quantify those things. I'm the treating doctor.

Q. Doctor, would you agree with me that just as recently as a week-and-a-half ago, you testified in the same building, correct?

A. Yes.

Q. In that case too you testified for the plaintiff, correct?

A. Yes, I did.

Q. In that case too, the City of New York represented by my office was a defendant, correct?

A. I don't remember who the defendant was.

Q. Now, this also isn't the first time you were retained by plaintiff's counsel, correct?

A. Can you repeat the question?

Q. This isn't the first time you were retained by plaintiff's counsel, correct?

A. That is correct.

Q. Now, doctor, your website also lists that you treat traumatic conditions, correct?

A. Yes, ma'am.

Q. And traumatic conditions, we can agree, are conditions that arise out of trauma correct?

A. Yes.

Q. Trauma could be some type of accident, correct?

A. Yes.

Q. Maybe a fall?

A. Correct.

Q. Your website also lists that you treat degenerative conditions, yes?

A. Yes, ma'am.

Q. Degeneration is opposite of trauma, correct?

A. Again, degeneration can occur without trauma or with, so it's not the same.

Q. Degeneration that means over time, correct?

A. Again, you could have a degeneration as a consequence of time, or you could have degeneration as a consequence of trauma. You have to take historical details into account.

Q. But you would agree with me, though, that degeneration could mean wear and tear over time, correct?

A. Again, if the historical details indicate that, then, yes, that would be the case.

Q. Would you also agree with me that degeneration is oftentimes, it's associated with the aging process in general?

A. Again, as a general process of degeneration, I mostly associate with aging.

THE COURT: With what?

THE WITNESS: Aging.

Q. I think you testified that degeneration, depending on different factors, could develop with wear and tear?

A. Again, if you are talking about, specifically about a joint, could you have degeneration that develops from wear and tear?

Q. Okay --

A. I'm not finished.

Again, you could correlate that with the history.

Q. Okay.

A. If a person has degeneration and doesn't have a history of an insidious onset, you can say it's from wear and

tear.

If have you a traumatic history associated with that degeneration, then it would not be wear and tear. It could be from the trauma. The trauma hastens the degeneration.

Q. When you say "history", do you also mean someone's lifestyle?

A. No, I'm talking about the specific details about their complaints.

Q. Okay.

A. If I had a woman complain of neck pain, which has gotten progressively worse on 30 years, I see an MRI, I see degenerative changes from wear and tear, if I take that same woman who got hit in the neck, and she had an MRI, and there is a disc abnormality, and there is some degeneration that developed six months after that MRI was done, it could be related to the trauma.

You can't assume because it's degeneration that it's wear and tear, and you have to take the historical details into account.

Q. Some of those historical details could include someone's occupation, correct?

A. Again, occupation could contribute to degeneration, yes.

Q. Someone's weight?

A. Weight can contribute to degeneration.

Q. And strenuous activity?

A. Depends on the frequency and repetitiveness of it. You do see some increased degeneration in the construction workers, so that would be yes.

Q. So you would agree with me that there is different factors that could contribute to degeneration, correct?

A. Definitely.

Q. Would you also agree with me that arthritis isn't something that happens overnight?

A. Again, just like degeneration, arthritis can occur from wear and tear and insidious onset over a long-term process or you could develop traumatic arthritis.

Q. Let's talk about the wear and tear of arthritis.

Could you agree with me that could occur as people get older?

A. Again, arthritis does generally occur when people get older.

Q. Part of the natural aging process of the body?

A. Again, some component of it, yes, but not 100 percent is from aging.

Q. Would you agree with me arthritis can potentially lead to pain in areas of the body?

A. Yes.

Q. Arthritis can lead to swelling in different parts of the body, correct?

A. Yes.

Q. Arthritis can lead to stiffness in different areas of the body, correct?

A. Yes.

THE COURT: We are going to break for lunch in a few minutes, so pick a moment.

Q. Okay, doctor, I want to talk about the treatment of Miss Garcia. If ever you need to refer to your records to refresh your memory, please do so.

You testified on direct that the first time you saw Ms. Garcia after this incident was on August 13th of 2007, correct?

A. Yes.

Q. And you continued to treat her until October of 2010, would that be accurate?

A. Again, I did treat her after 2010 because she came to my private office.

Q. That was in September of 2013?

A. November of 2010 -- I mean, I'm saying the treatment.

Q. Yes.

A. I do have a visit from September of 2013.

Q. Before that, when was the last time she treated with you?

THE COURT: We will get the answer to this question and break for lunch. It's almost ten to one.

MS. BENEDETTO: That's fine, okay.

A. I have it as October 4th, 2010.

Q. And you didn't treat her in 2011, correct?

A. That is correct.

Q. You didn't treat her in 2012; correct?

A. That is correct.

Q. The only time you saw her in 2013 was in September, correct?

A. Yes, ma'am.

Q. You haven't seen her since then, correct?

A. Yes, ma'am.

Q. That was almost a year ago?

A. Yes.

MS. BENEDETTO: Do you want to break here?

THE COURT: Yes, I do.

All right, jurors, it's ten minutes to one, I will ask you to report back at two, at which time we will continue.

Enjoy lunch.

(Whereupon, the jurors were excused for a luncheon recess.)

THE COURT: Doctor, please don't discuss the facts with anyone during lunch.

THE WITNESS: Yes, Your Honor.

THE COURT: See everybody back here at two.

MS. BENEDETTO: Thank you, Your Honor.

(Whereupon, a luncheon recess was taken.)

A-F-T-E-R-N-O-O-N S-E-S-S-I-O-N

(Whereupon, court resumes.)

THE COURT: Anything to discuss preliminarily?

MS. BENEDETTO: No.

THE COURT: For a change?

MS. BENEDETTO: Yes.

THE COURT: Jurors, please.

Doctor, step up.

(Whereupon, the doctor resumes the stand.)

(Whereupon, the jury is seated and present.)

THE COURT: All right, please be seated everybody.

Welcome back, jurors.

Doctor, you are reminded you are still under oath.

You may proceed, Ms. Benedetto.

MS. BENEDETTO: Thank you, Your Honor.

CROSS EXAMINATION (Cont.)

BY MS. BENEDETTO:

Q. Good afternoon, doctor.

A. Good afternoon.

Q. When we left off after the lunch break, the first time you saw Miss Garcia was 2013?

A. Yes.

Q. You testified on direct that before August, 2007 you were treating Ms. Garcia before that date, correct?

A. Yes.

Q. Besides yourself, other doctors at All Med were treating Ms. Garcia, correct?

A. Yes.

Q. Before August of 2007, I would be correct in saying that doctors at All Med treated her for different conditions, correct.

A. Yes.

Q. They treated her before August of 2007, she was treated at All Med for her prior neck condition, correct?

A. Yes.

Q. And prior lower back conditions, correct?

A. Yes.

Q. And prior right knee condition, correct?

A. Yes.

Q. Prior left knee condition, correct?

A. Yes.

Q. Prior elbow condition?

A. Yes.

Q. Prior hand condition, correct?

A. Yes.

Q. Now, just going back to the ER records from Lincoln

Hospital, you testified on direct that you reviewed those records for Ms. Garcia, correct?

A. Yes.

Q. And according to the records, the first time she went to Lincoln Hospital following August 4th, 2007 was on August 13th, 2007, correct?

A. Yes.

Q. And on the date, August 13th, she went to the ER, correct?

A. Yes.

Q. She made complaint of lower back pain, correct?

A. That is correct.

Q. On August 13th, 2007 her pain level of her back pain was above a "3" according to the records?

A. Yes.

Q. There was also an examination at that time, correct?

A. Yes.

Q. And as part of the examination, a neurological exam was done, correct?

A. Correct.

Q. And the exam was normal, correct?

A. Correct.

Q. And the diagnosis that day was lower back pain, correct?

A. Yes, ma'am.

Q. Okay, now, doctor, I want to direct your attention to your narrative report of Ms. Garcia, dated September 13th -- I'm sorry, September 14th, 2014.

Now, in your report dated September 14th, 2013, you stated that Ms. Garcia was stabilized with her pain complaints before August of 2007, correct?

A. Yes.

Q. And you also noted that she didn't have increased pain after August 4th, 2007, correct?

A. Yes.

Q. You also noted that the patient told you, Ms. Garcia told you, that she never returned to a level of comfort that she had prior to August 4th, 2007, correct?

A. That is correct.

Q. Well, can we agree, doctor, that is not accurate?

A. I'm not understanding the question.

Q. Well, do you agree with me that she was still making complaints, various complaints, before August 4th, 2007?

A. That is correct.

Q. She was making complaints of neck pain before August of 2007?

A. Yes.

Q. She was making complaints of back pain before August 4th, 2007?

A. That is correct.

Q. She was still getting treated at All Med for her back pain before August 7th, 2007; is that correct?

A. Yes.

Q. She is still being treated in August of 2007 for this incident of neck and back pain; is that correct?

A. That is correct.

Q. I want to direct your attention to the records of Ms. Garcia's prior treatment at All Med.

A. Okay.

Q. I want to direct your attention to an entry from May of 2006. I have a copy if that would be easier.

A. Yes, please.

MS. BENEDETTO: May I approach, Your Honor?

THE COURT: Yes.

Q. Directing your attention to that record, would you agree with me, doctor, that in May of 2006 Ms. Garcia made complaints of numbness and tingling sensation; is that in the record?

A. Yes.

Q. And she made that complaint in May of 2006, which was about 14 months, 15 months before this incident in August of 2007, correct?

A. Yes, ma'am.

Q. And you agree that tingling sensation in your bilateral feet could be evidence of radiculopathy in your lower

back, that's one of the symptoms, correct?

A. Well, again, if you are asking me in general, or you are asking me about this note that says "bilateral numbness and tingling", here there is a podiatry note that talks about vascular insufficiency.

It doesn't say anything about radiculopathy. If you are asking me in general, numbness and tingling can be as a result of a pinched nerve or radiculopathy, but in this particular note it doesn't relate it to her back. It relates it to vascular insufficiency.

Q. We will get to the radiculopathy, but I want to direct your attention to the orthopedic follow-up appointment from October of 2006.

A. The date of Mitchell Kaplan?

Q. Yes, that's another orthopedic surgeon at All Med?

A. Yes.

Q. You worked with him?

A. Yes, that was another supervisor.

Q. March of 2007, that was a few months before the August of 2007 incident?

A. Yes.

Q. In that history it says "History of Chief Complaint". It indicates that Ms. Garcia recently sustained an injury, correct?

A. Yes.

Q. Is that a yes?
A. Yes.
Q. And it also says that she has spinal stenosis?
A. Yes.
Q. What is spinal stenosis?
A. Narrowing of the spinal canal in the absence of spinal surgery. It would be degenerative, but you could get stenosis changes from surgery. So there is many causes.

You know, you can't assume that that stenosis is degenerative.

Q. That record also says that Ms. Garcia was making complaints of difficulty in her neck, correct?
A. Yes.
Q. And there was spasm, and -- I'm sorry, there was spasm movement in her neck, correct?
A. Yes.
Q. There was tenderness noticed in her neck?
A. Yes.
Q. There was decreased range of motion noted in her neck?
A. Yes.
Q. She was referred for pain management, correct?
A. Yes.
Q. It also indicates that she had an appointment in the hospital for a possible neck surgery?
A. Yes.

Q. And directing your attention to November of 2006, correct?

A. November 22nd, 2006.

Q. That was about eight months before the August incident, correct?

A. That is correct.

Q. According to that record, it's noted that Ms. Garcia has osteoarthritis?

A. Yes.

Q. And then it also notes that she is complaining of pain to her neck and to her back?

A. That is correct.

Q. Would you agree that the osteoarthritis is referring to neck and back?

A. Again, I don't know. She is also talking about wrist pain. It doesn't specify to what part.

You know it says that, "she comes with osteoarthritis," and it says "she had surgery to her cervical and lumbar spine, continues to have neck and back pain."

But he states she has pain in the region of her hand and wrist.

You know, generally, if you have arthritis, you have it all over. You don't really have it in one spot. He could be talking to the neck and back. I mean, she had multiple surgeries by that point. It wouldn't be surprising if she had

arthritis in the neck and back.

Q. You already testified earlier on direct examination that arthritis can cause pain?

A. Yes.

Q. It could also cause stiffness; is that correct?

A. That is correct.

Q. It also says in that record, November of 2006, that Ms. Garcia is continuing with conservative treatment; is that correct?

A. That is correct.

Q. I want you to look at the next record of December of 2006. That record was also with your colleague Mitchell Kaplan; is that correct?

A. That is correct.

Q. Again, that is dated only eight months before the August incident; is that correct?

A. That's correct.

Q. On that date she made complaints of her right knee; is that correct?

A. Yes.

Q. Also her right breast; is that correct?

A. Yes.

Q. It's noted in the record. She had prior surgery due to hardware failure, correct?

A. Again, it keeps making reference to the same surgeries

that she had. It wasn't a new surgery. I guess she got more details pertinent to why the surgery was done.

Q. It specifically says "hardware failure," right?

A. Yes.

Q. And Tylenol 3 was tried that day?

A. Yes.

Q. That's Tylenol with Codeine?

A. Yes.

Q. That's a narcotic medication?

A. Yes.

Q. You can't go to CVS and buy it?

A. You need a prescription.

Q. You can't go up to the counter and buy it?

A. That is correct.

Q. It also notes in that record that she continues to have discomfort in the neck and lower back, correct?

A. That is correct.

Q. And that she is continuing physical therapy, correct?

A. Correct.

Q. It also notes that Ms. Garcia is disabled, correct?

A. Yes.

Q. Then there came a time that you saw Ms. Garcia in March of 2007, correct?

A. Yes, ma'am.

Q. The title of that report is titled orthopedic

evaluation, correct?

A. Yes.

Q. That report was five months before this incident, correct?

A. That is correct.

Q. And you noted in your report that she is under your care for cervical and lumbar radiculopathy, correct?

A. Yes.

Q. Can you explain what cervical and lumbar radiculopathy is to the jury?

A. Well, basically it's a sensation of pain that is related to nerve injury or nerve sensitivity. It causes pain to shoot down the legs and arms.

Radiculopathy is that technical term for radiating pain, numbness and tingling.

That occurs with nerve injuries.

Q. You noted that her physical examination remains unchanged from when she was last seen in December of 2006?

A. That is correct.

Q. You also noted she had osteoarthritis in both knees, correct?

A. Yes.

Q. And you described more physical therapy, correct?

A. Yes, ma'am.

Q. You also prescribed some more Tylenol with Codeine?

A. Yes.

Q. Directing your attention to your record, dated July 19th, 2007.

A. Yes.

Q. That was two weeks before this incident that occurred on August 4th, correct?

A. That is correct.

Q. You treated Ms. Garcia that day?

A. Yes.

Q. And, again, you noted -- withdrawn.

You titled that report, "Follow-up Orthopedic Evaluation," correct?

A. Yes, ma'am.

Q. You noted in the report that she was still under your care for radiculopathy to her neck and lower back, correct?

A. Yes.

Q. And you also noted in your report that she came to see you because she sustained a fall, correct?

A. That's correct.

Q. She injured her thumb and right elbow, correct?

A. That is correct.

Q. Would you agree with me, doctor, that at this time you prescribed her Tylenol with Codeine, correct?

A. Yes.

Q. That was for her neck and back pain, correct?

A. It was a continuation of the prescription she was taking prior. In addition to the neck and back she was having complaints of pain in her right thumb. So it would be used for that also.

Q. It was still for the neck and back, correct?

A. Yes, ma'am.

Q. Also on that day, July 19th, 2007, two weeks before this incident, you prescribed her more physical therapy?

A. Yes.

Q. On that day you didn't tell her "I don't need to see you anymore," correct?

A. I told her I didn't need to see her anymore?

Q. You didn't say that?

A. No, I did not.

Q. You didn't tell her to "follow-up on an as needed basis;" is that correct?

A. Yes.

Q. In fact, you scheduled an appointment for her to come back and see you?

A. That is correct.

Q. You told her to come back in four weeks; is that correct?

A. Yes.

Q. She did come back to see you in four weeks, correct?

A. The next visit I have is August 13th, '07.

Q. That is, give or take, four weeks after you saw her on July 19th?

A. Yes, sir.

Q. That was the follow-up appointment you made with her?

A. Yes.

Q. Doctor, you titled that report "Initial Orthopedic Evaluation," correct?

A. That is correct.

Q. Would you agree that is misleading?

A. No.

Q. Well, doctor, you saw her on July 19th, 2007, for a follow-up evaluation, correct?

A. Yes.

Q. When you saw her on March 5th, 2007, you said "Follow-up Orthopedic Evaluation," correct?

A. Yes.

Q. When Dr. Kaplan saw her on those appointments in 2006 he wrote "Follow-up Orthopedic Evaluation"; correct?

A. Yes.

Q. She was under your care before that?

A. Yes.

Q. You still wrote "Orthopedic Evaluation?"

A. Again, doctors' files are divided by complaints or issues or injuries. If you look at her chart, if a new episode occurs, a person has an initial evaluation because of the new

injury. It's really not misleading because I do clearly chronicle her prior conditions in the notes, and we do make reference to a new injury, hence an initial orthopedic evaluation for the new injuries.

Q. Let's go through this, doctor.

You said on August 14th, 2007, she complained of bilateral knee pain, correct?

A. Yes.

Q. That means knee pain in her right knee, correct?

A. Both sides.

Q. So right and left knees?

A. Yes.

Q. You would agree with me that is not the first time she complained of bilateral knee pain, correct?

A. None of her pains were the first time. I think we made that clear already.

Q. We did make it clear, but you just said because there were new injuries claimed you titled it "Initial Orthopedic Evaluation?"

A. No. I titled it "Initial Orthopedic Evaluation", because she was never beat up by the police before this, so she had no change in her symptoms.

Q. So, only when you get beat up by the police you write "Initial Orthopedic Evaluation?"

A. If she was hit by a car, fell down the stairs, or if

she was mugged, this represents a change in her condition and symptom level.

Q. Doctor, whether or not you saw her on July 19th, 2007 you noticed that she sustained a fall, correct?

A. She wasn't complaining of an increased level of neck or back pain at that time.

Q. I didn't ask you that. I just asked you if you noted in your report, two weeks before the incident, that she sustained a fall; yes or no?

A. Yes.

Q. That's a new episode, correct?

A. Again, but there was not a change to her symptoms. She was already having pain in her thumb and hand prior to that. There was no change.

Q. You are confusing me right now because on August 13th, 2007, all those injuries that she complained of, she complained of before August of 2007, correct?

A. Yes.

Q. You said the only difference was that she complained she got beat up by police on August 13th, correct?

A. Again, she had a new injury and a significant change in her symptoms.

Q. What's the new injury?

A. Injuries to her neck and back after what she stated already. She was pressed on the ground. She had an increased

level in her pain symptoms in her neck and back.

Here we did x-rays. The x-rays were visualized July 19th of '07. There was no significant change in her condition. This is a distinct injury with distinctly new symptoms. Distinct symptoms that were higher and greater intensity than she had compared to anything prior.

And it was my judgment, based upon the change of her symptoms, that this was a new issue. This wasn't an aggravation. This is a new injury superimposed on prior complaints that she did have.

Nobody inquired that her spine was perfect prior to this. Just because you have a damaged spine doesn't mean you can't be injured again.

Q. Doctor, on July 19th when you saw her, you were still providing her narcotic pain medication for her neck and back; correct?

A. Yes.

Q. You still felt it was necessary to prescribe pain medication; correct?

A. To the same level she was receiving prior. There was no change in her medication representing no change in her conditions.

Q. You indicated on the report that she sustained a fall?

A. Yes.

Q. Again, you didn't title it "Follow-up Orthopedic

Evaluation," correct?

A. That is correct.

Q. Then back in November of, I'm sorry, October of 2006 in your colleague's report, it was noted that she sustained another injury, that she recently injured herself, correct?

A. Yes.

Q. Again, that's not titled "Initial Orthopedic Evaluation," correct?

A. Again, I can't speak for my colleague how he titles his notes. All I could tell you is there was no change in her condition to warrant it to be clarified as a new injury.

Again, we are dealing with the science of medicine. There was a clear, distinct, change in her symptoms which warranted new MRIs to be done, which warranted a proper, complete, full, evaluation of this patient.

So there is no mystery here she had neck and back complaints prior.

If she said: You know what, this happened, but I really wasn't changed, then it would have been a follow-up evaluation.

Q. Doctor, are you aware she saw an attorney three days before?

A. I'm not aware of any attorney visits. I'm not.

Q. Doctor, you just testified that she was still under your car before August of 2007 for radiculopathy, correct?

A. Yes.

Q. But it's your testimony that her symptoms got worse after she allegedly was beat up by the police, correct?

A. Those were her words. That's what she told me, yes.

Q. From August of 2007 -- so you are relying on her own complaints, you are relying on her word?

A. Who do I listen to? Do I listen to my patient or do I just write things down?

Q. Doctor, when you treated her on August of 2007 up until October of 2010, not one of those reports say Initial Orthopedic Examination?

A. Again, everything was follow-up.

Q. It was one complaint where she said she was assaulted by the police, only one entitled Initial Orthopedic Evaluation?

A. For every specific problem you could only have a first time visit.

Q. You told this jury that everything she complained of on August 13th, 2007 she was previously treated before by you and others at your facility, correct?

A. Oh, yes.

Q. I want to direct your attention now to your treatment of --

MS. BENEDETTO: Well, at this time the City would like to introduce into evidence the All Med records for Ms. Garcia's prior treatment with Dr. Dassa and All Med.

THE COURT: What's the application again? I'm sorry?

MS. BENEDETTO: To introduce into evidence Ms. Garcia's prior treatment at All Med before August 14th, 2007.

THE COURT: Any objection to that?

MR. GAZER: None, Judge.

THE COURT: Granted.

(Whereupon, an item was received and marked as Defendant's Exhibit I in evidence.)

COURT OFFICER: Defendant's I in evidence so marked.

Q. Doctor, I want to direct your attention to your treatment of Mr. Pizzaro.

Unlike Ms. Garcia, Mr. Pizzaro wasn't a patient of yours before this incident; is that correct?

A. That is correct.

Q. You first saw Mr. Pizzaro on July 21st, 2009?

A. Yes, ma'am.

Q. That was about two years after the incident on August 4th, 2007?

A. That is correct.

Q. Doctor, it's fair to say that you weren't familiar with any medical conditions Mr. Pizzaro had before August of 2007, correct?

A. That is correct.

Q. You also weren't -- withdrawn.

You asked him, like you testified on direct, you asked him about his history, correct?

A. Yes.

Q. And he told you that he had no issues with his neck before August 7th, 2007?

A. That is correct.

Q. You relied on the history that he gave you; correct?

A. Yes.

Q. As a doctor you are trained to take a patient's word for what they tell you, correct?

A. Well, no, it's not that you are trained. You assume a person, if they are giving you historical details, if you don't find them not to be incompetent as a historian, you accept what they tell you.

Q. So you assume what they are telling you is the truth, correct?

A. They also train you to look at things that may make that not something that correlates with reality.

So, again, it is a thing where history is important. A person has, they know that they are making important treatment decisions, so they know the importance of that, and most of the time they are accurate.

Q. So you took Mr. Pizzaro's word for it too that he had

problems to his neck in 2007?

A. In part, yes.

Q. You didn't consult with his treating doctors to verify this?

A. Again, there were no treating doctors for neck problems. I didn't consult with anybody for neck problems.

Q. Did you request to see any prior medical treatment prior to August 4th, 2007?

A. If he didn't relate any medical problems before that, I didn't request anything.

Q. You told this jury earlier on cross-examination that added stress on the body could cause wear and tear in addition to a number of factors, correct?

A. Again, if we are talking specifically about degenerative conditions, part of the degenerative process is the forces of wear and tear, yes.

Q. When you took a history from Mr. Pizzaro.

Did you ask him about any prior work history he might have had?

A. Again, anything that we spoke about regarding the neck injury or neck pain, he denied having any history of any conditions, whether it was work related or, you know, recreational.

Q. That's not my question, doctor.

My question is very specific:

When you took a history from him, did you ask him about his prior work experience?

A. I did not specifically ask about his work experience, no.

Q. So you don't know if he has any prior work experience that entails strenuous activity, correct?

A. Again, I didn't take his work history, so I don't know.

Q. You testified earlier that someone who did heavy labor or construction, that could add to stress in the body, wear and tear, correct?

A. Again, in laborers you find degenerative findings in your spine, yes.

Q. That's because laborers, they lift heavy objects, correct?

A. It's not the fact of lifting heavy objects. It also relates to the repetitive nature of their heavy job. They are bending a lot, stooping a lot, lifting heavy things a lot. It all contributes to it a lot.

Q. So the repetitive nature is what causes it?

A. Yes.

Q. Repetitive nature of lifting heavy objects?

A. Yes, ma'am.

Q. That could put strain on the neck and wear and tear, correct?

A. Again, it depends. If the person has that developing, they will have symptoms. If it's in their neck, it could cause it on their neck. If it's on the lower back, it doesn't necessarily have to be in the specific part, it's the part that the person feels pain in, if they feel that pain.

Q. Besides the fact that you didn't ask him about his prior work history.

Did you also fail to ask Mr. Pizzaro about his exercise habits?

A. Again, I do recall him saying that he was a weight lifter. He never reported any injury while lifting weights, so that information wasn't pertinent to his complaint.

Q. Did you bother to ask him how long he has been weightlifting?

A. Again, he never injured his neck while lifting weights. As I stated earlier, lifting weights actually lends more support to the spine because of muscle development.

Again, he did not relate any injuries or pain in his neck from weightlifting, so it wasn't a question I asked him.

Q. Doctor, you already told the jury that you took his own subjective complaints, his own word, that he didn't have these prior neck complaints.

All I'm asking you is: Did you even bother to develop and discuss with him about his prior exercise habits?

For example, did you ask him: How long did you weight

lift before this incident?"

A. Again, beyond the fact of him telling me he was a weight lifter, when he tells me he has no injury pertinent or pain pertinent to those functions, what am I asking him further about?

He never reported having a neck problem from weight lifting. If he did say: Yes, three years before I had pain in my neck, I'm going to dig deeper.

If he had never had a neck problem pertinent to weight lifting, what questions am I going to ask him?

He already clarified there was no history of a neck problem prior to this incident.

Q. You would agree with me that you didn't know that he had squatted 300 pounds before this incident, correct?

A. Again, specifically I don't recall knowing that before, and I don't know that right now.

Q. You know he was still doing that when he was in his 50s; correct?

A. Again, I know he was a weight lifter. Specifically, I didn't know that.

Q. You also didn't know he was bench pressing 250 pounds before this incident, correct?

A. Again, specifically, I don't remember that.

Q. You also didn't know that he was still doing body building competitions before this incident, correct?

A. Yes, I did know that.

Q. Did you also know that he used to do body building competitions in the 70s?

A. Again, I know he was body builder. I don't know to what extent he was competing and when he started competing.

Q. You didn't bother to find out about his employment history.

You didn't ask any questions in detail about his exercise habits, but it's still your testimony, under oath, that this causes injuries?

MR. GAZER: I'm going to object. Compound question.

THE COURT: Sustained.

Q. You first saw Mr. Pizzaro on July 29th, 2009, correct?

A. July 21st, 2009.

Q. Next time you saw was July 24th, 2009?

A. Yes.

Q. You didn't see him again until two months later until, October of 2009, correct?

A. Yes.

Q. You didn't treat him for the rest of 2009?

A. That is correct.

Q. You didn't see him at any time in 2010, correct?

A. Correct.

Q. You didn't treat him at any time in 2011, correct?

A. That is correct.
Q. You didn't treat him at any time in 2012 correct?
A. That is correct.
Q. The next time you saw him was in June of 2014; correct?
A. That's June 15th, 2013.
Q. That was almost six years after the August 7th incident?
A. That is correct.
Q. You didn't see him since?
A. That is correct.
Q. Would you agree with me your treatment of Mr. Pizzaro was limited four times over a five-year period?
A. That is correct.
Q. Now, I just want to talk about when you saw Mr. Pizzaro on July 21st, 2009.
On that date he made complaints of neck pain, correct?
A. Yes.
Q. That's why he came to see you was for his neck, correct?
A. Yes.
Q. And he denied any radiculopathy symptoms to his neck, correct?
A. That is correct.
Q. So there was no numbness in the neck?

A. Again, radiculopathy is not in the neck, it's in the extremity. Although he was having neck pain, he wasn't feeling tingling or numbness in his arms on that date.

Q. He also denied weakness to his arm; correct?

A. Again, no complaints of weakness.

Q. He denied taking any medications, correct?

A. That is correct.

Q. You also performed a physical examination of his neck on that date, correct?

A. Yes, ma'am.

Q. There was no tenderness to his neck?

A. That is correct.

Q. And sensation was back to normal?

A. Yes.

Q. And the reflexes in his neck were normal?

A. Yes.

Q. You only found a slight decrease of range of motion; correct?

A. That is correct.

Q. You didn't feel it was significant enough to note the degree in your report, correct?

A. There were no measurements required on that date on the report.

Q. So, again, it wasn't significant to note that?

A. Again, loss of movement is significant. It was

slight, so we didn't record the numbers.

Q. On this day you didn't find Mr. Pizzaro to be temporarily disabled, correct?

A. I don't see any disability statement in his chart.

Q. So you didn't make any disability determinations, correct?

A. Again, I wasn't asked to. There was no assessment with regard to his assessability. I did not make a comment as to whether he was disabled on not.

Q. If you found he was disabled, would you have noted it on the report?

A. As to if it was specifically noted?

Q. As to who his attorney was.

A. There are work indexes involved, but if I don't specifically, if I'm not asked specifically, I generally don't put it in the report.

Q. Then you saw Mr. Pizzaro in August of 2009, correct?

A. Yes, ma'am.

Q. And you performed a physical examination?

A. Yes.

Q. You said it was unchanged, correct?

A. That is correct.

Q. Again, you didn't note any radiculopathy symptoms in his neck, correct?

A. That is correct.

Q. And, again, you also didn't make a determination as to his disability status; is that correct?

A. That is correct.

Q. Now, besides seeing you for a total of four times over the five years, Mr. Pizzaro also treated at Lincoln Hospital for his injuries related to this incident, correct?

A. Yes.

Q. According to your review of the Lincoln Hospital records, Mr. Pizzaro first went to Lincoln Hospital following this incident on August 14, 2007, correct?

A. Yes.

Q. On that day, again, he made complaints of neck pain, correct?

A. Yes, ma'am.

Q. And the pain level was a level two?

A. Yes, that's what they documented.

Q. It was also documented that he was in no distress, correct?

A. Yes.

Q. It was also documented that he was walking normal; correct?

A. Yes.

Q. And physical exam was also done on that day?

A. Yes.

Q. And you noted his neurological exam was normal;

correct?

A. That is correct.

Q. Also noted that his neck was supple, meaning flexible; correct?

A. It represents no stiffness.

Q. The next time you saw Mr. Pizzaro was August 28th, 2007, correct?

Do you need another copy?

A. It would be helpful because the records are not in order.

MR. GAZER: May I approach?

THE COURT: Yes.

Q. He also complained about neck pain on that day, correct.

A. Yes, ma'am.

Q. His neck pain was a Level 3 out of ten, correct?

A. Yes.

Q. Again, his neurological exam was normal, correct?

A. Yes.

Q. And, on that day, an x-ray was taken of his neck, correct?

A. Is that a separate report that you want me to refer to?

Q. You reviewed the records through, correct?

A. I did, but you gave me records. I'm just trying to

facilitate where we are.

MR. GAZER: I'm going to object to that. She gave him the record and she is insinuating that he reviewed the records.

MS. BENEDETTO: I'm not insinuating anything.

THE COURT: Go ahead, approach.

Q. That x-ray was August 27th, 2007?

A. Yes, sir.

Q. That was only three-and-a-half weeks after the August 4th, 2007 incident?

A. Yes.

Q. You would agree with me that the x-ray noted findings of significant degenerative disease of the neck?

A. Yes.

Q. You would agree with me that is evidence of wear and tear, correct?

A. Again, there is discogenic disease in the absence of trauma. You know, you would assume, yes. You can't assume that is the case. You have to take historical details into account for face value. It's discogenic disease at C-6 and 7.

Q. It also says "narrowing disc space C-6 and 7"; is that correct?

A. Yes.

Q. Again, that's also evidence of wear and tear; correct?

A. It's difficult to tell. He did have traumatic

spondylosis C-5 and C-6, a different level we are talking about, an adjacent level C-6 and 7, which is not where he had the surgery. You have to take into account the trauma.

Does he have disc space narrowing because of the disc injury or does he have it because of degeneration? You can't exclude the trauma when you are looking at these reports and historical details.

Q. You just told the jury earlier, degeneration doesn't happen overnight, it's due to wear and tear, correct?

A. My specific answer is: If you have no history of trauma, degeneration could be from wear and tear.

Again, you cannot cut history out as if it doesn't exist. If there was no trauma, I could tell you that I would say "yes", it would be degeneration, but these findings, and the history of what I was told by Mr. Gazer occurred.

You can't say that this is from degenerative disease. You have to include the "trauma" word in there.

Q. So the only thing you relied on is what Mr. Pizzaro told you, correct?

A. No. I also relied on the surgeon who opened up his neck, who said "traumatic spondylosis."

Q. That was in February of 2008, correct?

A. Again it doesn't change. If it occurred in August and the operation occurred in February it doesn't change the cause.

Q. Do you see the word "traumatic" in that report?

A. Again, it's nonspecific. It doesn't say traumatic or degenerative. It says "discogenic disease", which only states that there is narrowing. It doesn't say there is osteophytes. It doesn't give you the typical explanation.

You would see weakness in a degenerative spine.

Q. But it says "osteopenia"?

A. Osteopenia means loss of bone density. It has nothing to do with trauma. That's osteoporosis.

Q. Again, osteoporosis, is that is something that occurs with age?

A. Osteoporosis can occur with age and without age. There are many 35 year old females that have osteopenia. It's not an angulated condition.

In this particular case, osteopenia has no correlation with pain or degeneration or trauma. That's basically an isolated finding.

Q. Again, yes or no, the word "traumatic" isn't included in that x-ray?

A. In this x-ray report, no.

Q. Going to Plaintiff's next treatment at Lincoln Hospital on September 4th, 2007, that was the next time Mr. Pizzaro treated at Lincoln, correct?

A. Yes.

Q. Doctor, would you agree with me -- well, that was exactly one month after the accident, correct?

A. Yes.

Q. You would agree with me that record of September 14th, 2007, the diagnosis was: "Degenerative changes in the neck," correct?

A. Well, the diagnosis doesn't say degenerative changes. It says "cervical", which is the primary diagnosis, which is neck pain.

Q. Then there is an entry that says "Assessment and Plan." There is says "Degenerative Changes, C-spine changes," correct?

A. It says "Assessment and Plan," and it does state that she does have degenerative C-spine changes with paresthesia.

Q. Then I want you to go to the next entry from September 11th, 2007.

It's not the next page, it's the page after.

A. Okay.

Q. That was a little bit over a month after this incident?

A. Yes.

Q. Would you agree with me that the Assessment Plan specifically states he has degenerative disc disease of the cervical spine, meaning degenerative disc disease of the neck, correct?

A. Yes.

Q. Doctor, you mentioned something a little earlier

called osteophytes, right?

A. Yes.

Q. And would you agree with me that there was another CAT scan taken of his neck on September 13th of 2007?

A. Again, I don't know of another CAT scan. You told me that was an x-ray that we were speaking about earlier.

Q. Do you know the package I sent you with the original x-ray of August of 2007, just turn the page right there.

A. But you said another CAT scan. I didn't look at a CAT scan prior to this one. So this is the only CAT we are talking about.

Q. Yes, the CAT scan from September 30th, 2007?

A. Okay.

Q. You just testified earlier that osteophytes are evidence of degeneration, correct?

A. Yes.

Q. Would you agree with me that this CAT scan from September 13th, 2007 showed extensive anterior osteophyte formation in the neck?

A. That's what the report states, yes.

Q. It also notes moderate degenerative changes, correct?

A. That's what the report states.

Q. Doctor, would you agree with me that evidence of disc herniations and bulges could be evidence of a degenerative condition, correct?

A. Again, you could have bulges and herniations for several reasons. If you have no history of the trauma, degenerative conditions could be the cause of that.

Again, you have to look at the historical details.

Q. Disc herniations and bulges can also be caused due to trauma, correct?

A. Yes.

Q. You would agree with me that in the same CAT scan of Mr. Pizzaro's neck of September of 2007, there was no herniated or bulging disc, correct?

A. Yes.

Q. Now, doctor, just one last x-ray from Lincoln Hospital from September 18th of 2007.

That entry was a month-and-a-half after the August 4th, 2007 incident, correct?

A. September 18th?

Q. Yes. On that it says "back and neck pain?"

A. Yes.

Q. They noted at Lincoln Hospital there was no neurological deficits, correct?

A. This is for his -- a different complaint lump in his super pubic region. So what ever they examined neurologically pertinent to that, the complaint was normal. There wasn't a spine evaluation.

Q. That day you just told us he still complained of neck

pain?

A. His evaluation was for a super pubic lump. He had an agenized hematoma at the agenized super pubic bump of his penis he wasn't there for evaluation. It was a surgical clinical visit.

So, again, his neurological exam was not done from that perspective of his spine. He was there for a lump in his spine.

Q. So what you are saying is there was no examination of the neck that day?

A. That I could see from the note.

Q. When you remember Mr. Pizzaro in July of 2009, did you ask him how he sustained injuries for the neck?

A. Yes.

Q. Did he tell you what happened?

A. Yes, he did.

Q. What did he tell you?

A. He told me he was beaten by the police.

Q. Did he tell you he was kicked by the police?

A. Again, I have to go to my note.

I just don't remember exactly the wording. Let me just find the note.

Q. Okay, well, doctor, take a look at your report from July 21st, 2009.

You don't include anything about the assault, correct?

A. That's correct. I didn't state that in the report.

Q. You include it in your note of June 15th, 2013, correct?

A. Yes.

Q. That's the report that you created for purposes of this lawsuit to send to plaintiff's counsel?

A. Well, one is a treatment note for somebody who is coming for complaints. This is a note that was prepared at the request of counsel to render opinions regarding causality and disability. That's two different type of notes.

So, as far as the historical details, I had to include those in this note.

Q. Okay, and did you indicate in your report that he was kicked by the police?

A. Which note are you talking about?

Q. Where you indicated that he was assaulted by the police officer?

A. The 2013 note.

Q. The report that was created for this lawsuit?

A. Yes.

Q. Did you indicate how many times he was kicked?

A. No.

Q. Did you ask him that?

A. I don't recall.

Q. And did you ask him how long he was kicked for?

A. I did not.

Q. Did you ask him how long people kicked him?

A. Did not.

Q. And did you ask him if he was punched by police?

A. I think the note speaks for itself. I mean, basically that's the history he gave me.

Q. Okay, so your report doesn't indicate that he was punched by police, correct?

Let me withdraw that.

You didn't ask for the details of how many times he was punched by the police, correct?

A. Whatever detail that is in the report is what he offered to me as historical details. You know, it's not information that changes my opinion. I mean, if he got punched ten times and stepped on your neck once, I mean, there was a lot of trauma sustained on that date.

Q. Are you aware there are witnesses in this case who testified he wasn't stomped on the neck once, his neck was on the curb, and he was stomped on multiple times; is that correct?

MR. GAZER: Objection to other people's testimony.

THE COURT: Overruled.

MS. BENEDETTO: It's in evidence.

A. Again, I'm not aware of anybody's testimony. I don't know about that.

Q. Besides the medical records, did you review any of the testimony in this case?

A. No.

Q. You knew you were going to be testifying as an expert; right?

A. Yes.

Q. Did you feel it was important to review prior sworn testimony?

A. Again, I'm a medical expert, I'm not an attorney. I don't need to look at anybody's testimony that would render less than an objective opinion.

Q. You didn't want to look at plaintiff's testimony about what happened?

A. Again, it's an objective assessment. I would not want to cloud my assessments based upon what people said. I'm looking at medical facts, not subjective facts.

All I could know is if a person's injuries correlate with their historical details, and if the severity of the injury is there to justify the need for an operation, which was done. Again, I don't, as a routine part of my business, ever look at anybody's testimony.

Q. You are saying the details of what happened aren't important to you?

A. It was. It's in my report.

Q. But it's not in your report how many times he was

kicked, correct?

A. That's a different issue.

MR. GAZER: Asked and answered, Judge.

THE COURT: Overruled.

A. No.

Q. It's not in your report that the plaintiff was stomped on his neck multiple times while he was on the curb?

A. It's also not in my report that his neck was flexed on the curb and stepped on by the police either. That's not for me to discuss in my report. My report indicates a neck injury. It's for the Court to work out those details. I'm not here for that process. He was injured, that's all I know.

Q. Did you review the ambulance report in this case?

A. Yes.

Q. Would you like a copy?

A. Yes.

Q. Please take a look at the second page when you get a chance.

A. Okay.

Q. Doctor, do you agree with me that according to the ambulance call report the ambulance first got to the scene at, I'm sorry, look at the first page, I apologize.

The ambulance first got on the scene at 2027, which is about 8:27 in the evening?

A. Yes.

Q. And they left the scene at 2123, which is approximately 9:23. You would agree with me that plaintiff was examined by the EMT?

A. Yes.

Q. He made certain complaints?

A. Yes.

Q. He made complaints to his face?

A. Yes.

Q. He made complaints to his tongue, correct?

A. Yes.

Q. He denied any other injury of pain, correct?

A. Again, about a specific complaint other than that, no.

Q. No shortness of breath was noted, correct?

A. That is correct.

Q. No dizziness was noted, correct?

A. Yes.

Q. And there was no loss of consciousness noted, correct?

A. That is correct.

Q. And then after the plaintiff left the precinct, they went to the emergency room at Bronx Lebanon Hospital, correct?

A. Yes.

Q. And do you have those records in front of you or would you like a copy?

A. I will take a copy if you don't mind.

MS. BENEDETTO: May I approach?

THE COURT: Yes.

Q. According to the Bronx Lebanon records, they arrived at -- Mr. Pizzaro arrived at the hospital at 9:30, correct?

A. 9:45 p.m. I have on the note here.

Q. Okay 9:45 p.m. is when he was first seen in triage, correct?

A. Yes.

Q. And that was a little bit over two hours after the incident, correct?

A. Yes.

Q. And, according to those records, he was discharged at 1:30, correct?

A. Yes.

Q. All right, so he spent a total of approximately four hours at the emergency room?

A. Yes, ma'am.

Q. When you look at the ER records his pain was moderate, correct?

A. Yes.

Q. According to the ER records, again, plaintiff didn't -- Mr. Pizzaro didn't lose consciousness, correct?

A. That is correct.

Q. Again, and a CAT scan was done of the head, correct?

A. Yes, ma'am.

Q. This CAT scan was done at 11:03 p.m., right?

A. I see 11:05.

Q. Okay, but it was done some time after 11; is that correct?

A. Correct.

Q. That is three-and-a-half hours after the incident?

A. That is correct.

Q. And the CAT scan does show mild soft tissue swelling on top of the head, correct?

A. Yes.

Q. But found no skull fractures, correct?

A. Correct.

Q. By "skull fractures" that means that the skull wasn't cracked; correct?

A. That is correct.

Q. It doesn't show any intracranial hemorrhage, correct?

A. That is correct.

Q. That means the skull; correct?

A. Correct.

Q. Besides the CAT scan of the head, the CAT scan was done of the neck?

A. Yes.

Q. That was at 11:05?

A. Yes.

Q. Again three-and-a-half-hours after the incident?

A. Yes.

Q. According to the CAT scan of the neck, no acute fractures are found, correct?

A. Yes.

Q. By "acute" that means nothing abrupt; right?

A. That means no new fractures, fresh fractures.

Q. Doctor, the spinal cord is in the neck; correct?

A. Yes.

Q. The spinal cord is protected by vertebra?

A. Yes.

Q. To "acute" fractures means that the bone was in the vertebrae, not broken?

A. There was no broken bones.

Q. They also found an acute subluxation; is that correct?

A. That is correct.

Q. That means that the vertebrae were still aligned in the neck, correct?

A. Yes, correct.

Q. Again, mild degenerative changes in the neck?

A. Yes.

Q. And osteophytes also found in the neck, correct?

A. That's what the report states, yes.

Q. And, again, you testified under oath that osteophytes is evidence of wear and tear, correct?

A. Again, I answered it already. You have to take into account the historical details. Osteophytes by itself do not

include or exclude degeneration. You have to take the historical detail. If you look at the first study there was no osteophytes on that x-ray.

You are looking at a CAT scan, which is a more sensitive test, and can look at an area of trauma and interpret that as an osteophyte. We tend to look for fractures and dislocations of the spine, and for fractures, so, you know, that fact that there is an osteophyte, there could support the diagnosis of degeneration; but you have to take the historical details, and if you told me there was no neck trauma, it's absolutely degeneration. You can't definitively state the type of trauma that he said sustained that degeneration.

Q. The CAT scan says the word "degeneration" there, correct?

A. Again, this is a radiologist who does not treat the patient and does not know the historical details. He is looking for traumatic finding. If you look at the operative surgeon's report, who was the most specific assessment of that process, it's clearly traumatic. There is no degeneration going on here relevant to this injury.

Q. That was on the date of the incident, correct?

A. Again, this is a radiology report, and it states, again -- I'll read it to you.

Q. You don't have to read it to me. I'm just asking you.

A. You keep saying the word. I'm sorry not to be loud.

I'm looking for degeneration. I don't see that word. I see osteophytes. I see discogenic disease. I don't see anything that says "degeneration".

Q. You didn't see the word "trauma" in the reports; correct?

A. They are both not there. In this particular report I don't see either word. So it's there, and they didn't say it, or it's not there.

Q. Doctor, besides the CAT scans that were taken of the neck and the head on August 4th, 2007, there were no x-rays done, correct?

A. That is correct.

Q. You would agree with me that none of the records revealed any broken bones in Mr. Pizzaro's body, correct?

A. That is correct.

Q. There was no broken jaw; is that correct?

A. Yes.

Q. There was no broken arms, correct?

A. That is correct.

Q. There was no broken knees; correct?

A. Correct.

Q. There was no broken legs; correct?

A. Correct.

Q. There was no broken neck, correct?

A. That is correct.

Q. His back wasn't broken, correct?

A. Correct.

Q. They didn't even bother to take any x-rays at any part of his body, correct?

A. No.

Q. There was no bleeding in the brain, correct?

A. Correct.

Q. He was given Motrin, correct?

A. Yes, ma'am.

Q. Motrin, unlike Tylenol or Codeine, you could actually go buy Motrin at any drug store without a prescription, correct?

A. Yes.

Q. You would agree with me, doctor, that at the emergency room only two hours after this incident, the only treatment that was performed was two stitches to the tongue and a loose tooth was fixed, correct?

A. Yes.

MS. BENEDETTO: Thank you.

No further questions.

MR. GAZER: Can I see the evidence, please?

THE COURT: Yes.

REDIRECT EXAMINATION

BY MR. GAZER:

Q. Doctor, you talked about discogenic disease.

Does trauma hasten discogenic disease?

A. Yes.

Q. Can you explain to the jury how it happens?

A. If you look at a disc, I use the analogy of a jelly doughnut. A disc is a solid wall of connective tissue. In the center there is a central liquid, so there is the nucleus, which is the fluid, and the outer wall is the connective tissue.

If I use the analogy of a jelly doughnut, if you ever bite into a jelly doughnut you see the jelly squirting out from the side, there has to be a tear in that wall.

Now, if there is damage to the disc, and there is a tear, you could have a rapid loss of fluid where you would have a big herniation or you could have a slow loss of fluid over time which could cause you to develop discogenic disease.

Again, you have to look at the context of the history. You don't know unless you speak to a person to know what is the details of the context of their complaint.

So if you have trauma to a disc, you do see narrowing of the disc space because of loss of fluid. It will come out as degenerative or outer disc, which is --

Q. In your opinion, based on reasonable degree of medical certainty, do reference to Herminio Pizzaro and those changes both in the ER an CAT scans, was that caused by trauma?

A. Again, definitively, after reading the surgeon's notes, and that's the only way you know definitively because he saw the trauma in the spine, it's from trauma.

Q. It's not from the natural aging wear and tear?

A. Again, based upon the surgeon's assessment who sees this all the time. It's not from wear and tear. He clearly states it's traumatic spondylosis.

Q. Let's move away from discogenic changes and talk about degenerative changes.

In general, same thing, does trauma hasten or bring about degenerative changes?

A. You could develop degenerative changes from many causes. Trauma is one of the causes. You develop what's called post-traumatic degeneration if the injury occurs in the joint. That is one of the reasons you could have degeneration.

Q. Let's assume those same facts I asked you to assume earlier; that is, my client was thrown to the ground, his neck was hanging off the curb and he was punched or kicked for at least five minutes by the police.

Let's assume further he was dragged to a police car and repeatedly punched about the face and body.

Let's assume further he was taken to a bathroom in the precinct where for approximately five minutes police officers punched him, and knowing that, and knowing the medical records that you looked at, that you were asked about on cross-examination, could you say with a reasonable degree of medical certainty whether the degenerative changes were caused by the trauma?

MS. BENEDETTO: Objection. Based on the scope.

THE COURT: I'll allow it on that basis.

Go ahead.

A. You are assuming those changes were degenerative. Those are dramatically induced changes to the spine. There is nothing to suggest that those findings are anything but due to trauma. It was clearly seen by the treating surgeon. There is not even speculation. He has a history of a trauma. He has no history of neck pain or treatment for a neck problem. He has an injury, whatever the cause is. I'm not giving in to what the cause was, he had an injury, had a complaint, very close to the cause of, or whatever the injury date was, and he continued to have that pain.

As a matter of fact, if you look in one of the notes there, in addition to having paresthesia, they also make the note of paralysis, paresis, which represents that there was definitely some kind of a spinal cord problem going on at the time.

So there is no question, especially looking at the operative report that this is a trauma.

Q. Now, I'm going to show you what's been previously marked in evidence as Plaintiff's 15 in evidence, the picture of my client.

He has testified that this is how he looked after the event of August 4th, 2007.

Have you seen this picture before?

MS. BENEDETTO: Objection. Beyond the scope.

THE COURT: No, it isn't.

Overruled.

A. No, I have not.

Q. You were asked on cross-examination whether or not you took a full history of how many times he was punched and how many times he was kicked.

Now, I show you this picture and those injuries. You know they speak for themselves.

Doctor, what I'm going to ask you now, seeing this picture on how Herminio Pizzaro looked on August 4th, 2007, does that reinforce your opinion that any neck injury was traumatic in origin?

MS. BENEDETTO: Objection.

THE COURT: About the neck injury, sustained.

Q. Looking at this picture, and taking in the assumptions of facts as I asked you to assume, does that support your opinion that the changes were traumatic in origin?

MS. BENEDETTO: Objection.

MR. GAZER: On what ground?

THE COURT: What changes, all three different areas that we just discussed, all three?

You went through three different areas.

MR. GAZER: Let me break it down.

Q. Look at this picture which shows injury to his face. I want you to assume further that there has been testimony that he was kicked and punched about the face several times.

Looking at those two facts that he was kicked and punched, and this photograph, does that support your opinion that the injury to his neck was traumatic in origin?

MS. BENEDETTO: Objection.

THE COURT: Looking at nothing else, doctor. Go ahead, try it.

THE WITNESS: Yes.

Q. You were asked on cross-examination about whether or not you took Herminio Pizzaro's subjected word about his condition and his prior history.

Do you recall being asked that?

A. Yes.

Q. Are you familiar with the concept of a SOAP note?

A. Yes.

Q. Can you explain to the jury what a SOAP note is?

A. SOAP note is the way notations are currently done in medicine. There is the Subjective part. The A part of the soap, that's what the patient tells you about, the condition. Then there is the objective physical findings. Then there is the assessment which is the diagnosis, and then the plan, the treatment plan.

Q. So, as subjective/objective A, assessment, and P,

plan.

Now in everything Mr. Pizzaro told you, did you attempt to verify whether or not that was the case?

A. Yes.

Q. I want to show you a picture that has been marked as Plaintiff's 1 in evidence.

Have you seen this picture before?

A. No, never.

Q. Mr. Pizarro testified that this is a picture of him body building around 2005 and 2006.

Would you expect someone that had a long history of degenerative cervical spine condition to be able to body build in the condition Mr. Pizzaro is in, this condition?

MS. BENEDETTO: Objection.

THE COURT: Overruled.

Go ahead.

A. No.

Q. So, objectively speaking, he told you that he had no prior neck conditions is objectively verified by this picture?

MS. BENEDETTO: Objection.

A. Again, you cannot lift weights to the extent of having that much --

THE COURT: Objection overruled.

Q. Is that what we call muscle hypertrophy?

A. Hypertrophy.

Q. Would you expect that kind of hypertrophy in someone that has a cervical/neck condition?

A. Again, hypertrophy is related to lifting heavy weights. If have you a degenerative-painful neck condition, you could not lift to that extent to have that much muscular development or hypertrophy.

Q. I want to go back to Plaintiff's 15.

On cross-examination the attorney asked you about whether or not you observed the triage report at Bronx Lebanon Hospital that Mr. Pizarro had some soft tissue swelling to the head.

Do you recall being asked that?

A. Yes.

Q. Can you tell the jury what that soft tissue swelling is?

A. Basically it's a collection of fluid under the skin as a result of trauma.

Q. Now, I show you this picture again.

We are talking about Plaintiff's 15, and Mr. Pizzaro testified that that's how he looked back on August 4th.

Whenever he got out of jail they Took a picture. Is this picture consistent that with injuries that could cause soft-tissue injury to the head?

MS. BENEDETTO: Objection.

THE COURT: Go ahead, doctor.

Do you understand?

THE WITNESS: Yes.

THE COURT: Go ahead.

A. Yes, it is.

Q. I know we got into this. I don't want to beat a dead horse.

When we talked about the origin of the condition, whether it's traumatic or degenerative in cause, tell us the position between a radiologist's perspective and a surgeon?

A. Generally a radiologist is given a diagnostic test to interpret. They are generally given some sparse historical details, and they interpret the results of the test.

When a surgeon is seeing the patient, they are actually having physical contact with a patient that a radiologist never has.

You actually have the ability to get into the historical detail in depth as far as the cause and the nature of the complaint.

Q. So you would agree that the surgeon who filled out Plaintiff's 21A, and determined Mr. Pizzaro's injury to be traumatic, you would agree he was in a better position to determine the cause of injury than a radiologist?

A. Yes.

Q. In fact, he did determine the cause to be traumatic?

A. Yes, he did.

Q. Now, I want to talk briefly on Ms. Garcia.

You talked about on cross that she was diagnosed with arthritis prior to August 4th, 2007.

The injuries that she sustained on August 4th, 2007, could that have complicated or contributed to the arthritis?

MS. BENEDETTO: Objection.

THE COURT: Overruled.

Go ahead, doctor.

A. Well, again, if she had arthritis in her spine, she has had multiple surgeries in her spine prior to August 4th, 2007 incident. Any insult on top of arthritis can cause arthritis to worsen.

Q. Let me ask you specifically: Being held on the floor by police officers, several police officers, one of them was on her chest, would that exacerbate arthritis?

A. I don't think exacerbation of arthritis is the issue here. She had a susceptible, two susceptible segments in her spine, her neck, and lower back. I think we are talking about creating instability. She didn't have surgery because of arthritis. She had further neurological compromise because, again, a trauma superimposed on her prior condition.

You know, pressing on her chest is not going to cause her to have arthritis, but if it did cause a trauma, that upsets the balance of what she had going on before.

It contributed to the worsening that she would develop

over time.

Q. Now, you talked about -- you were asked about why you called the August 13th, 2007 note, why you called it an Initial Orthopedic Consultation.

Can you further elaborate to the jury why you did that?

A. Again, when you are caring for patients you take into account historical details that make it a continuation of the prior problem or is it a new problem.

I mean, this is clearly a new episode with a change in the symptoms that she was exhibiting from 2006.

Yes, she had neck and back pain from 2006. The record speaks for itself. I mean, who doesn't have pain in their neck and back with all the surgery she had prior to this episode, but now, if the person has been at the same level and being maintained by treatments and medication, and now they are coming to you saying that, you know what, I'm feeling different now and the pain is worse, and not even the therapy is working anymore. That now becomes a different issue, and it becomes a new problem.

Q. You consider this a distinct injury?

A. Yes.

Q. Now, just again, in your professional medical opinion, was Olga Garcia's back worse after the events of August 4th, 2007?

A. It was clearly worse off.

MR. GAZER: Thank you, doctor.

MS. BENEDETTO: No, nothing.

THE COURT: Thank you, doctor.

(Witness excused.)

THE COURT: Do we have any other witnesses for this afternoon, either one of you?

MR. GAZER: May we approach?

THE COURT: Yes. That usually means no.

(Discussion at bench.)

THE COURT: Jurors, we are going to be in recess now. Today being Monday, we are in recess until Wednesday morning at 9:30 at which time we will continue with this trial.

Again, we are having problems scheduling some of the witnesses. We have turned a corner. Continue to be patient with us.

We expect the trial to continue on Thursday, on Friday, on Monday, and, hopefully, I will have this case to give to you for final deliberations on Tuesday.

We may not meet on Friday -- I stand corrected. Please keep that in mind. This case will be in your hands by the latest on Tuesday for final deliberations.

Continue to be patient with us.

Don't discuss the case.