TESTIMONY OF DR. ALI GUY; 1995 Trial Trans. LEXIS 588

SUPREME COURT OF THE STATE OF NEW YORK COUNTY OF KINGS: CIVIL TERM: PART 19

11349/90

June 15, 1995

Reporter
1995 Trial Trans. LEXIS 588 *

STEPHEN BROOKS, Plaintiff v. CATHOLIC MEDICAL CENTER OF BROOKLYN AND QUEENS INC AND JOHN ROE DENTON MD, Defendant

Expert Name: Dr. ERAJ GUY, M.D., F.A.A.P.M.R.

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Counsel

JEFFREY SAMEL, ESQ. Attorney for the Plaintiff, New York, New York BY: ROBERT SPEVACK, ESQ., SHAUB, AHMUTY, CITRIN & SPRATT Attorneys for the Defendant, Lake Success, New York BY: ARTHUR I. YANKOWITZ, ESQ., MORRIS, DUFFY, ALONSO & MARULLI, ESQS. Attorneys for Defendant Dr. Denton, New York, New York BY: GERARD J. MARULLI, ESQ.

Proceedings

2 THE COURT: Good morning. Counsel, you

[3]want to call your witness?

[4]MR. SPEVACK: Plaintiff calls Dr. Ali Guy

[5]to the stand.

[6]THE COURT: Members of the jury, **[*2]** we're

[7]taking a witness out of turn to suit the

[8]convenience of the lawyers and the witnesses.

[9]A L I G U Y, M.D., called as a witness
10- by the Plaintiff, upon having been duly sworn,

[11]was examined and testified as follows:

[12]THE CLERK: Please be seated. Your name,

[13]please?

[14]THE WITNESS: My name is Dr. Ali Guy.

[15]A-L-I G-U-Y.

[16]THE CLERK: Home address, please.

[17]THE WITNESS: Home address?

[18]THE CLERK: Yes.

[19]THE WITNESS: 7 Gramercy Park, New York,,

[20]New York, 10003.

[21]THE CLERK: You want his home address? You

[22]want the doctor's home address?

[23]THE WITNESS: 14 Thomas Street, Scarsdale,

[24]New York.

? 0

" 2 THE COURT: So your mother was clairvoyant.

[3]She named you doctor.

[4]Is that your first name?

[5]THE WITNESS: That's what I call myself.

[6]THE COURT: That's your real name?

[7]THE WITNESS: My name is Ali.

[8]THE COURT: When you were asked for your

[9]name you said "Doctor."

[10]What's your name?

[11]THE WITNESS: Ali Guy.

[12]THE COURT: That's what we're interested

[13]in.

[14]DIRECT EXAMINATION

[15]BY MR. SPEVACK:

[16]Q Good morning, Dr. Guy.

[17]A **[*3]** Good morning.

[18]Q Are you a physician -- well, I'll ask the

[19]question first. /

[20]Are you a physician duly licensed to

[21]practice medicine in the State of New York?

[22]A I am.

[23]Q When were you so licensed?

[24]A 1985.

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" 2 Q Dr. Guy, please tell the jury briefly a little

[3]bit about your medical training and your career in

[4]medicine.

[5]A The undergraduate training, I attended Queens

[6]College.

[7]Medical school I attended University of

[8]Northeast in the Dominican Republic.

[9]I started my residency in the field of

[10]internal medicine at Mount Sinai School of Medicine.

[11]In 1982, I did 18 months of internal

[12]medicine. I did one year of general surgery at Cabrini

[13]Medical Center. Three years of physical medicine and

[14]rehabilitation at Mount Sinai Medical Center.

[15]I'm Board. certified in the field of

[16]physical medicine and rehabilitation.

[17]I'm on staff at Cabrini Medical Center and

[18]Hospital for Joint Diseases Orthopedic Institute. I'm

[19]the director of the Neuromuscular Department in the,

[20]clinic at the Hospital for Joint Diseases.

[21]Q **[*4]** Doctor, what is physical medicine and

[22]rehabilitation?

[23]A The field of physical medicine and

[24]rehabilitation is a medical specialty started shortly

" 2 after World War II.

[3]THE COURT: Is that a subspecialty of

[4]internal medicine?

[5]THE WITNESS: No.

[6]A It's a separate medical specialty. And it deals

[7]with various medical, orthopedic, neurological problems,

[8]such as birth defects, amputation, strokes, internal

[9]medicine problems, orthopedic and neurological problems.

[10]The majority of the patients that a

[11]specialist in this field deals with are traumatic

[12]injuries.

[13]We rehabilitate traumatically injured

[14]patients, whether the trauma is from a car accident, from

[15]a sports injury, from spinal surgery, from tumors, from

[16]polio, from low-back pain, et cetera.

[17]We are not considered orthopedic surgeon6,

[18]nor neurologists. Our title is called a physiatrist.

[19]And we don't do surgery. We try to prevent surgery,
/

[20]prevent patient from undergoing surgery, especially in

[21]lower-back problems.

[22]Q And, Doctor, you said that you are -- what is

[23]your **[*5]** credentials in the area of physical medicine?

[24]A I'm a diplomate and a fellow of the American

[2]Board of Physical Medicine and Rehabilitation.

[3]Q Very good, Doctor.

[4]Doctor, did I ask you to examine Mr.

[5]Brooks?

[6]A Yes.

[7]Q In connection with this lawsuit?

[8]A Yes, you did.

[9]Q And is it fair to say that you only examined him

[10]on one occasion for me?

[11]A That is correct.

[12]Q And did I ask you to examine him to give an

[13]assessment of his condition?

[14]A Yes, you did.

[15]Q Doctor, you're not here to testify with regard

[16]to any aspect of the quality of care that he received

[17]from any of the defendants or anyone; is that correct?.

[18]A That is correct. Strictly to comment on his

[19]physical condition, present condition.

[20]Q Before or contemporaneous with the examination,

[21]did you have an opportunity to review any medical

[22]records?

[23]A Yes.

[24]Q What did you review?

[0]
" 2 A I reviewed medical records from Columbia

[3]Presbyterian Hospital and medical **[*6]** records from the Helen

[4]Hayes Hospital.

[5]Q And just very briefly, Doctor, can you just tell

[2]
[6]us what your understanding of that was of his past

[7]medical history as it pertains to your examination?

[8]A Basically, he's a 64-year-old gentleman with no

[9]significant past medical problems. He presented with
10. lower back pain, later found to be osteomyelitis of the

[11]seventh thoracic vertebra. And he became paraplegic, and

[12]then later became paraparetic. He regained some of his

[13]strength back.

[14]Initially he was wheelchair confined.

[15]Later he was able to improve his ability to walk but only

[16]for short distance.

[17]Q When did you see the patient?

[18]A The first time I saw him was on 3/9/94.

[19]Q And did you make notes of your examination? /

[20]A I did.

[21]Q And did those notes accurately reflect your

[22]examination?

[23]A Yes.

[24]Q Can you tell us basically what your examination
I-]
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[2]consisted of?

[3]A Basically the patient was disrobed. I examined

[4]his neck, his back. I took his blood pressure. I

[5]listened **[*7]** to his heart, listened to his lungs. I checked

[6]his range of motion. I checked his muscle power

[7]strength. I checked his neurological condition, his

[8]sensation, the way he walked.

[9]Q What did you find?

[10]A With reference to all of those above parameters?

[11]Q Yes.

[12]A That he had a few scars on his back right side,

[13]left side, left flank;

[14]That his strength in the lower extremities

[15]was approximately 4 over 5, which is approximately three

[1]grades weaker than normal;

[17]That he walked, was able to walk for a

[18]short distance, but only with a very spastic gait.

[19]Spastic means you have increased tone in your legs, so

[20]you don't have that fine movement and coordination. And
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[21]he had some sensation in his legs. And there was some

[22]reflex abnormality, as well.

[23]Q Doctor, did you, at that time, did you describe

[24]how he was able to ambulate; and by that I mean, did he

[0]
" 2 need any devices?

[3]A Yes, he did.

[4]THE COURT: What was the date of this

[5]examination?

[6]THE WITNESS: 3/9/94.

[7]A He was able to walk very slowly -- his **[*8]** gait was

[8]slow and antalgic, spastic -- with the use of a straight

[9]cane.

[10]Q Did you form an impression as to what his

[11]condition was at that time?

[12]A I did.

[13]Q What was your opinion?

[14]A He was suffering from a condition known as

[15]osteomyelitis of the thoracic spine with a paraparesis.

[16]He was suffering from traumatic myofascial pain

[17]syndrome, which means destruction to the muscle fibers:

[18]He was suffering from a bilateral lumbosacral

[19]radiculopathy. That's damage to the nerve roots in the

[20]lower back.

[21]And also he was status-post decompression

[22]surgery with vertebrectomy.

[23]THE COURT: You want to tell us what that

[24]is, sir?
" 2 MR. MARULLI: Judge --

[3]A Removal --

[4]MR. MARULLI: May we approach?

[5]THE COURT: You may.

[6]THE COURT: Definitely sustained. The jury

[7]will disregard the part about the radiculopathy.

[8]The objection is sustained.

[9]Q Doctor, you can finish, with the Court's

[10]permission, the rest of your findings.

[11]A That he was status-post neurogenic bowel and

[12]bladder with complete recovery. And **[*9]** status-post spinal
Q 13 osteomyelitis.

[14]Q What is status-posteurogenic bladder?

[15]A It means -- the condition "neurogenic" is when

[16]the nerve endings to the bladder which controls the

[17]voiding mechanism -- the bladder is where the urine is-

[18]connected -- that mechanism has been damaged so there is

[19]no proper nerve supply to the bladder to make you void,

[20]urine.

[21]That wa 'm roved with complete recovery.

[22]Q So he can --

[23]THE COURT: That's like he never had any

[24]problem?
" 2 THE WITNESS: That's correct.

[3]Q Doctor, other than that, that you said cleared

[4]up completely, did you have an opinion as to what his

[5]prognosis was?

[6]A With reference to his overall functional

[7]ability?

[8]Q His overall functional ability, yes.

[9]A My opinion is that he's left with a permanent

[10]partial disability. He's totally disabled for any type

[11]of a gainful occupation.

[12]Q Did you have an opinion as to a prognosis

[13]specifically with his ability to walk?

[14]A Yes. When I examined him, it was in 1994. The

[15]problem started sometime **[*10]** in '87. So I examined him

[16]approximately seven years later.
I

[17]So my opinion is if any further improvement

[18]was going to come in, would have come in by that time.

[19]So whatever you see now, he's left with that permanent

[20]disability.

[21]Q Doctor, can you explain for us briefly just

[22]physiologically what causes his difficulty in ambulating?

[3]
[23]A Well, he has the spasticity which means

[24]increased tones in the lower extremities. His muscles
" 2 are still weak. He has also a tremendous a ount of

[3]rigidity from the surgeries that were done, taking all

[4]those three conditions together preventing him from

[5]normal ambulation having normal strength

[6]If he stands for any prolonged period of

[7]time, his knees begin to buckle and he fatigues easily,

[8]especially because of the s asticit.

[9]MR. SPEVACK: Thank you, Doctor.
10- THE WITNESS: You're welcome.

[11]CROSS EXAMINATION

[12]BY MR. YANKOWITZ:

[13]Q Good morning, Doctor.

[14]A Good morning.

[15]Q My name is Arthur Yankowitz. I'm the attorney

[16]from the firm of Shaub, Ahmuty, Citrin & Spratt. We

[17]represent **[*11]** Catholic Medical Center in this action.

[18]Doctor, you examined the patient back in

[19]March, 1994, correct?

[20]A Correct.

[21]Q And you examined the patient pursuant to the

[22]request of Mr. Spevack's office, correct?

[23]A That's correct.

[24]Q And when you examined the patient, did you
I-]

[2]review any bill of particulars?

[3]A I did not.

[4]Q When you examined the patient, isn't it true

[5]that Dr. DeAngelis and Dr. Linkoff were still defendants

[6]in this action?

[7]A I have no idea. That was not the scope of my

[8]evaluation.

[9]Q You didn't know who the defendants were in this

[10]case?

[11]A No, I did not.

[12]Q Doctor, did you review the Mary Immaculate

[13]Hospital records before testifying here today?

[14]A Briefly.

[15]Q Did you review Dr. Linkoff's record before

[16]testifying here today?

[17]A No.

[18]Q Did you review Dr. DeAngelis' record before

[19]testifying here today?

[20]A Partially.

[21]Q Did you review Dr. Denton's record before

[22]testifying today?

[23]A I did not. **[*12]**
[24]Q Okay.
i
" 2 Doctor, how much are you being compensated

[3]for being in the courtroom today?

[4]A For canceling my patients, including pre-trial

[5]conference and time and court today, altogether $ 4, 000.

[6]MR. MARULLI: Move to strike.

[7]THE COURT: The motion to strike is

[8]granted. The jury will disregard the entire

[9]answer. The reporter will read back the

[10]question.

[11]Doctor, listen to the question and just

[12]answer the question.

[13]If you don't understand the question,

[14]please tell me.

[15](Reporter read back the requested portion

[16]of test'

[17](A ::A total of $ 4, 000.

[18]Q And when you examined the patient back in March

[19]of 1994, how much were you paid then?

[20]A 550.

[21]Q Doctor, did you bring with you any records?

[22]A I did.

[23]Q May I too take a look at them?

[24]A Sure.

" 2 MR. YANKOWITZ: May I approach the witne,

[3]your Honor?

[4]THE COURT: You may.

[5](Mr. Yankowitz approaches the witness.)

[6]Q Doct, you testified before in a courtroom.

[7]A I have.

[8]Q **[*13]** And y reviewed case id physical

[9]xaminations for attorneys?

[10]A I do.

[11]Q Doctor, did you ever give copies of these

[12]records to Mr. Spevack's office?

[13]A I do.

[14]Q You did?

[15]MR. YANKOWITZ: Your Honor, defense counsel

[16]never received any of these. I was only able to

[17]look at it this morning.

[18]May I have a moment to take a look at it?

[19]THE COURT: You may. /

[20]Q Doctor, when Mr. Brooks went to your office in

[21]March of 1994, he signed some documents for you; is that

[22]correct?

[23]A Assignment of benefits.

[24]Q Yes. Did he sign that?

[0]
[2]A Yes.

[3]Q Did you go over that with him?

[4]A I did not.

[5]Q Did someone in your office go over that?

[6]A Usually the office manager goes over that with

[7]the patient.

[8]Q And you would not let someone in your office let

[9]someone sign something unless he read it; isn't that

[10]correct?

[11]A That's the normal pattern, yes.

[12]Q And you also have here a document which -- with

[13]the signature -- can you tell me what this document **[*14]** is?

[14]A This is standard lien policy to protect any

[15]medical bills unpaid in case there are any outstanding

[16]medical bills. But there were no outstanding medical

[17]bills.

[18]Q So, Doctor, when you examined Mr. Brooks, you

[19]had a monetary interest in the outcome of this case; /

[20]isn't that correct?

[21]A That's true.

[22]Q Well, Doctor, were you paid up front for the

[23]physical examination?

[24]A Yes.
LJ

[2]Q When were you paid for the physical examina io ?

[3]A I believe the same date.

[4]Q Well, Doctor, when you examined Mr. Brooks in

[5]March of 1994, you took a history from him; is that

[6]correct?

[7]A That's correct.

[8]Q And you also took a history from your review of

[9]the record; is that correct?
10. A That is correct.

[11]Q And the first page and a couple of lines of your

[12]physical examination report discusses the history from

[13]the review of the various records you looked at, correct?

[14]A That is correct.

[15]Q And in the records that you looked at, it said

[16]somewhere that the patient had **[*15]** neurogenic urinary bladder

[17]and bowel with complete recovery; is that correct?

[18]A That is correct.

[19]What did Mr. Brooks tell you regarding the

[20]history concerning his bowel and bladder?

[21]A The only history that I was interested in was --

[22]Q My question is what did he tell you. Not what

[23]u're interested in; what did he tell you?

[24]A That there was no problem with that area.
" 2 Q Where does it say he had no problem with that

[3]area?

[4]A The mere fact that it's not listed.

[5]Q Okay. Well, Doctor, if I told you that Mr.

[6]Brooks testified that he never had any problem with his

[7]bowel in the courthouse yesterday, that would be an

[8]incorrect history; would that be correct?

[9]MR. MARULLI: Correction, three days ago.

[10]Q Three days ago. I'm sorry.

[11]A That he had no problem with his bowel ever?

[12]Q Correct. That would be incorrect history?

[13]A If that's what he said, and the records show

[14]that earlier there was a problem, yes, that would be

[15]inconsistent.

[16]Q And doctors rely on histories from patients when **[*16]**
[17]they examine them; isn't that correct?

[18]A For the most part, yes.

[19]Q I'm not talking about coming into the courtroom /

[20]and giving testimony. I'm talking about --

[21]A That's what I'm talking about.

[22]Q Let me finish the question. I'm talking about

[23]when you're examining the patient, someone walks into the

[24]office and tells you A, B, C, D, the doctor is relying on
.7

[2]what the patients tell them; isn't that correct?

[3]A To a degree, yes.

[4]Q Well, Doctor, your note indicates regarding some

[5]portion of the history that the patient began having the

[6]complaints of pain in the summer of 1987.

[7]Isn't it true that the complaints of pain

[8]in the patient's back began around June of 1987?

[9]A Could be. That's what I have in my record.

[10]June, July. Summer. In my opinion, close enough.

[11]Q So you don't have the exact date of when it

[12]began in this record, do you?

[13]A I do not.

[14]Q So the summer could have been at the end of May,

[15]too, potentially?

[16]A In my opinion, summer. At the end of summer is

[17]sometime **[*17]** in August.

[18]THE COURT: I always learned when I went to

[19]school that summer began June 21st, and it ended

[20]on September 21st. And spring was before June

[21]21st, at least according to the way the sun and

[22]the earth reacted to each other.

[23]Q So summer is sometime, with his Honor's judicial

[24]notice, sometime in the end of June of 1987; is that

[2]correct?

[3]A Yes.

[4]Q So the patient had complaints concerning his

[5]back since the end of June of 1987; isn't that correct?

[6]MR. SPEVACK: Objection to the form.

[7]THE COURT: Sustained.

[8]Q Doctor, in your report, you come to certain

[9]opinions in the end; isn't that correct?

[10]A Yes.

[11]Q And part of your opinion was that the patient

[12]needs physical therapy; isn't that correct?

[13]A On an as-needed basis.

[14]Q To prevent contractures and further weakness of

[15]the lower extremities?

[16]A Yes.

[17]Q Did you tell that to Mr. Brooks?

[18]A I believe I did. I also put it in his report.

[19]Q Did you tell that to his lawyers?

[20]A It's in his report. His lawyers **[*18]** got it.

[21]Q Did you speak to his lawyers on the phone?

[22]A At the same time I saw the patient that

[23]particular day or later?

[24]Q Or a couple of days later, or a couple of weeks

[41]2 later?

[3]A It may have been a few days, a few months later.

[4]Q So it was your recommendation that this patient,

[5]who potentially improved his condition, should undergo

[6]physical therapy?

[7]A On an as-needed basis.

[8]Q Are you aware if Mr. Spevack told Mr. Brooks to

[9]go for physical therapy to improve his condition?

[10]MR. SPEVACK: Objection.

[11]THE COURT: Overruled.

[12]A No, I have no knowledge of that.

[13]MR. YANKOWITZ: Thank you, Doctor.

[14]THE WITNESS: You're welcome.

[15]THE COURT: Mr. Marulli.

[16]CROSS-EXAMINATION

[17]BY MR. MARULLI:

[18]Q Good morning, Doctor.

[19]A Good morning.

[20]Q My name is Gerard Marulli. I represent Dr.

[21]Denton who is sitting here in the courtroom, and I'm

[22]going to be asking you some questions. If you don't

[23]understand the question, let me know. Okay?

[24]A Sure.

[0] **[*19]**
[2]Q Now, Doctor, you testified to this jur that as

[3]part of the things that you do is to prevent, qu to

[4]"prevent surgery." And I mean you know, as a do tor,

[5]that sometimes surgery is necessary, correct?

[6]A That is correct.

[5]
[7]Q But you try to manage patients conservati ely?

[8]A That is correct.

[9]Q So that they don't have to undergo the ri ks and
10. complications of surgery, correct?

[11]A That is correct. ??

[12]Q Because, Doctor, would you agree with me that
? 13 even if you have the most skillful surgeon doing he most

[14]skillful surgery, right, you can still have risks and

[15]complications, correct?

[16]A That is correct.

[17]Q And sometimes even when surgery is done

[18]correctly, a patient dies, correct?

[19]A That is correct.,

[20]Q A patient can die, a patient can be rendere

[21]paraplegic; correct?

[22]A That is correct.

[23]Q There is a whole panoply of complications and

[24]risks that can occur to a patient during surgery even

[0]
[2]when it's done most skillfully, correct?

[3]A That **[*20]** is correct.

[4]Q And so you try to do your job, you try to

[5]prevent surgery if possible so these patients don't have

[6]to face the risks, and some of those risks are terrible,

[7]correct?

[8]A That is correct.

[9]Q Now, you were paid to do a physical examination

[10]$ 550, and they paid you the same day as the exam,

[11]correct?

[12]A Yes. That's pretty much correct.
? 13 Q Now, you got $ 4, 000 on June 13th, and if you

[14]can't remember, look at your chart?

[15]A That sounds -- That's correct.

[16]Q You got that last week?

[17]A That's correct.

[18]MR. YANKOWITZ: Two days ago.

[19]THE COURT: Two days ago. This week.,

[20]MR. MARULLI: Two days ago.

[21]Q Doctor -- withdrawn.

[22]Doctor, Mr. Spevack spoke to you either in

[23]person or on the phone and discussed what you were going

[24]to say to this jury before he paid you that money,
r]
" 2 correct?

[3]A No. That's not correct.

[4]Q Are you saying --

[5]A I spoke to Mr. Spevack yesterday for the first

[6]time regarding this case.

[7]Q They sent you a check, and then you **[*21]** just spoke

[8]to him about the case?

[9]A That's correct.

[10]Q Did they have any idea what you were going to

[11]say today?

[12]A Who?

[13]Q The plaintiff's attorney.

[14]A It's in my record.

[15]Q It's in your record?

[16]A That's correct.

[17]Q Let's talk about your record.

[18]Now, Doctor, when you examined the

[19]patient -- now, you didn't examine this patient to treat

[20]him, to make him better; you examined this patient

[21]because a law firm asked you to, correct?

[22]A That is correct.

[23]Q And you knew, sir, that some day., sometime in

[24]the future you might be called upon to testify in a court is

[2]of law as you're doing before this honorable judge and

[3]before this jury?

[4]A There is always that possibility, yes.

[5]Q Yes. And you were prepared to do that when you

[6]took upon yourself the obligation and the responsibility

[7]to examine the patient, correct?

[8]A That thought of testifying in court never

[9]crossed my mind. I was trying to render an impartial

[10]evaluation on the case.

[11]THE COURT:. I'm **[*22]** sorry.

[12]MR. YANKOWITZ: Objection move to strike.

[13]THE COURT: The motion is granted.

[14]This Court never hired you?

[15]THE WITNESS: No.

[16]THE COURT: The defendants never hired

[17]you?

[18]THE WITNESS: That's correct.

[19]THE COURT: The defendants aren't paying /

[20]your fee?

[21]THE WITNESS: That's correct.

[22]THE COURT: The plaintiff is paying your

[23]fee?

[24]THE WITNESS: Yes.

[0]
" 2 THE COURT: You knew that the plaintiff is

[3]paying the fee?

[4]THE WITNESS: Yes.

[5]THE COURT: You knew that your report was

[6]in connection with a lawsuit that was pending?

[7]THE WITNESS: That is correct.

[8]THE COURT: The plaintiff's lawyer told you

[9]that?

[10]THE WITNESS: That's correct.

[11]THE COURT: He didn't tell you to do an

[12]impartial? He told you that he wanted a

[13]report?

[14]THE WITNESS: I try to do an impartial.

[15]THE COURT: That's what you try to do is

[16]one thing. But you were not hired to do an

[17]impartial, were you?

[18]THE WITNESS: I call it impartial.

[19]THE COURT: I'm not saying what you call.

[20]If a judge calls you to do a physical for the

[21]court, you're called to do an impartial. **[*23]**
[22]THE WITNESS: Okay.

[23]THE COURT: If the two lawyers agree for

[24]you to examine a patient, you do an impartial,
fe

[2]true?

[3]THE WITNESS: Yes.

[4]THE COURT: If one side and not the other

[5]side asks you to do an examination, that's no

[6]longer impartial so far as that lawyer is

[7]concerned; isn't that true?

[8]THE WITNESS: Yes.

[9]THE COURT: All right. Go ahead.
10. Q Doctor, you've testified before, have you not?

[11]A I have.

[12]Q And you've testified for plaintiffs' attorneys

[13]before?

[14]A I testified for both sides.

[15]Q Both sides?

[16]A Yes.

[17]Q You're sure about that?

[18]A Yes.

[19]Q How many times have you testified in the last /

[20]five years?

[21]A On the average, I testify about seven to ten

[22]t mes a year.

[23]Q Seven to ten times a year?

[24]A That's right.

[0]
[2]Q So you testified from 35 to 40 times per year,

[3]correct?

[4]A In '85, '86, '87.

[5]THE COURT: I think your arithmetic is

[6]wrong, Mr. Marulli.

[7]Sustained.

[8]MR. MARULLI: I'm sorry.

[9]Q **[*24]** You've testified 35 to 45 times over the last

[10]five years more or less?

[11]A Yes, more or less.

[12]Q Are you saying you testified for a defendant, on

[13]behalf of a defendant, in the last five years?

[14]A I have.

[15]Q Well --

[16]MR. MARULLI: With the Judge's permission.

[17]Q Do you remember testifying in the case of Crumes

[18]v. Santillo in Supreme Court, New York County before

[19]Judge Rose, and the plaintiff's attorney was Crispi,

[20]James Crispi, of Frank Mangiatordi's office?

[21]And you testified and you were paid by the

[22]plaintiff in that case, were you not?

[23]A Yes.

[24]Q And do you remember the case of Moran v. Weiner?
.7
S 2 It was before Judge Coppola in Westchester, and the

[3]plaintiff's attorney was Sweeney & Calabrese.

[4]And you testified on behalf -- you were

[5]paid by the plaintiff and testified for the plaintiff?

[6]A That is correct.

[7]Q And --

[8]MR. SPEVACK: Objection.

[9]THE COURT: Overruled.

[10]Q Doctor, the case of Perez v. Con Edison, that

[11]was before Judge Phyllis Gangel-Jacob, New York Supreme

[12]Court. **[*25]**
[13]THE COURT: Gangel.

[14]MR. MARULLI: Gangel. I'm sorry, Judge.

[15]I mispronounced a colleague's name, I

[16]apologize.

[17]Q And you testified on behalf of the firm of

[18]Dinkes & Morelli? That's a well-known plaintiff's firm?

[19]A Is that the case where the man died because of /

[20]carbon monoxide?.

[21]MR. YANKOWITZ: Motion to move to strike.

[22]THE COURT: Motion to move to strike is

[23]sustained.

[24]If you don't understand the question, tell

.

[2]me.

[3]If you understand the question, answer it

[4]if you can.

[5]If it calls for a yes or no answer, and you

[6]can answer it yes or no, please do so.

[7]If the answer would be misleading or for

[8]any other reason you can't answer it yes or no,

[9]please tell us.

[10]The questions are put by the attorneys.

[11]They have the .right to ask the questions the

[12]way they choose to.

[13]A I don't remember the names of the cases.

[14]Q If you don't recall it, it's okay. And I will

[15]show this to you. Okay?

[16]A Fine.

[17]Q Do you remember the case of Durante v. Logan

[18]Plaza Associates against -- this is in the Bronx, **[*26]** Supreme

[19]Court in the Bronx, for a Tod Fichtelberg. I

[20]And again you testified and were paid by

[21]the plaintiff?

[22]A Yes. I remember the case.

[23]Q The case of Sarah Sales Odilo and Angelina

[24]Arias, Queens Supreme Court, in Queens County.

[0]
[1]
[2]Do you remember testifying on behalf of a

[3]plaintiff's firm by the name of Jeffrey A. Block? It's

[4]for Jeffrey Block of Block & Ferro?

[5]A Yes.

[6]Q Let me --

[7]Doctor, I'm going to show you these papers.

[8]You can go through these papers.

[9]MR. MARULLI: May I approach the witness,

[10]Judge? I'm sorry.

[11]Q And to make it easier for you, at the end of

[12]every case, it says plaintiff's expert and defendant's

[13]expert.

[14]I'd like you to point to the jury one case,

[15]one case in that chart, where you testified for the

[16]defendant and not for the plaintiff?

[17]MR. SPEVACK: Objection, your Honor.

[18]THE COURT: Sustained. Sustained.

[19]/
Q Doctor, are you aware that there wasn't a case

[20]that I could find on record from 1990 to 1995 where you

[21]testified for anyone but the plaintiffs' attorneys?

[22]A **[*27]** That's because you don't have the complete

[23]records.

[24]MR. MARULLI: Move to strike.

s

[2]THE COURT: The motion is granted. The

[3]jury will disregard the answer.

[4]The reporter will read back the question,

[5]and the witness will answer the question

[6](The court reporter read back the requested

[7]question.)

[8]MR. SPEVACK: Note my objection before,

[9]your Honor.
10. THE COURT: Objection is overruled.

[11]A The answer is, the way the question is phr sed,

[12]the answer is yes, that I'm aware that they were a 1

[13]plaintiffs.

[14]THE COURT: Have you testified before on

[15]behalf of defendants?

[16]THE WITNESS: Yes.

[17]THE COURT: In the courts of this state or

[18]any other state?

[19]THE WITNESS: Yes, your Honor. /

[20]THE COURT: How many times have you

[21]testified for plaintiff, and how many times for

[22]defendant, approximately?

[23]THE WITNESS: Majority has been for

[24]plaintiff, because I was a treating physician.

[2]THE COURT: As a treating physician, you c:
would, of course, be testifying for your

[4]patients, your own patients?

[5]THE WITNESS: That's correct.

[6] **[*28]** THE COURT: Now, with regard to being

[7]retained for the purpose of doing examinations

[8]and evaluations for attorneys that are involved

[9]in litigation, you've done that you say for

[10]both plaintiffs and defendants?

[11]THE WITNESS: That's correct.

[12]THE COURT: Certainly for plaintiffs as a

[13]treating physician?

[14]THE WITNESS: Yes.

[15]THE COURT: How many times have you be n

[16]called upon to testify in those situations or

[7]
[17]the plaintiff, and how many times for the

[18]defendant?

[19]MR. MARULLI: In the last five years?

[20]THE WITNESS: The majority has been f r he

[21]plaintiff. For defense, maybe a couple o

[22]times.

[23]THE COURT: About two?

[24]THE WITNESS: Two.

[2]Q A couple of times in five years?

[3]A That's correct.

[4]Q Now, Doctor, we know that you, and you've told

[5]us, you didn't examine this patient to make him better,

[6]to help him? You did it because you knew a lawsuit was

[7]pending, correct?

[8]A Well, I can answer that question as basically.

[9]Q You did it to make a report for the plaintiff's

[10]attorney, and you were paid for that; is that **[*29]** correct?

[11]A That's correct.

[12]Q Now, even so, did you have an obligation to

[13]elicit as complete and thorough and accurate a history as

[14]possible?

[15]A To the best of my ability, yes.

[16]Q And would you agree with me that it would be

[17]equally important to get as many of the hospital records

[18]and past treating records as possible, so that you would.

[19]be as accurate as possible in your prognosis, correct? /

[20]A Yes.

[21]Q Now, Doctor, you told this jury on direct

[22]examination when Mr. Spevack asked you what you reviewed,

[23]you said, "I reviewed records from Helen Hayes Hospital

[24]and Columbia Presbyterian."

[7]2 That's it?

[3]A That's it.

[4]Q Was that a truthful and honest answer when you

[5]told that to Mr. Spevack?

[6]A As far as I can remember, yes.

[7]Q When Mr. Yankowitz asked you a question when he

[8]specifically asked you, well, did you review the Mary

[9]Immaculate chart, you said partially.

[10]A This morning. This morning.

[11]Q You reviewed that this morning?

[12]A That's right.

[13]Q **[*30]** Now, let me just -- okay. I got you. You

[14]reviewed that.

[15]And you were speaking to Mr. Spevack this

[16]morning?

[17]A Yes.

[18]Q You were discussing what you were going to say

[19]on the witness stand? /

[20]A We were discussing many things. We were

[21]discussing my findings.

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

[23]THE COURT: The motion to strike is

[24]granted.

LJ

[2]The jury will disregard the answer. The

[3]reporter will read back the question.

[4]Doctor, listen to the question. If you

[5]don't comprehend the question, tell us. If you

[6]do, just let us know.

[7](Reporter read back the requested

[8]question.)

[9]A Are you asking me to explain?

[10]Q I'm asking for a yes or no.

[11]A I can't answer that with a yes or no.

[12]Q You can't answer that yes or no?

[13]A No, I can't.

[14]Q In any event, Doctor, we set aside what you

[15]discussed with Mr. Spevack in preparation for trial.

[16]Let's talk about what you had before you did your report.

[17]All right?

[18]A Now, you're asking me what I had before me at

[19]the time when I was **[*31]** doing the report? /

[20]Q When you did the report, okay?

[21]A All right. Fine.

[22]Q Doctor, you wanted this report -- even though

[23]the plaintiff was paying you, you wanted this report to

[24]be as accurate and thorough as possible, correct?

[0]

[2]A To the best of my ability, yes.

[3]Q And you had the ability to review records,

[4]medical and hospital records?

[5]A Right. Whatever records that were provided to

[6]me, yes.

[7]Q Now, let me go again. When Mr. Spevack asked

[8]you what did you review, let me change the question and

[9]ask you.
10_ What did you review before you did the

[11]report?

[12]A Okay. Helen Hayes Hospital record and the

[13]record from Columbia Presbyterian.

[14]Q You never looked at Dr. Denton's records,

[15]correct?

[16]A That's correct.

[17]Q You never looked at the plaintiff's examination

[18]before trial, correct?

[19]A Plaintiff's examination before trial?

[20]Q Yes.

[21]A Is that a record'?

[22]Q Did you look -- it's not a medical record,

[23]Doctor._ I mean -- you and I can agree **[*32]** that's not a

[24]medical record?
" i r

[2]A Then I didn't look at it, no.

[3]Q Doctor, you've been in court before. You know

[4]what an EBT is, correct?

[5]A Correct. That's not something that I normally

[6]look at.

[7]Q You know someone who claims an injury is

[8]examined by lawyers, and he tells them about his history,

[9]okay. Did you look at that?

[10]A I did not.

[11]Q Okay. And you didn't look at the Mary

[12]Immaculate Hospital, did you?

[13]A I did not.

[14]Q But, let me ask you this, Doctor: In your

[15]report you say, "I had the opportunity to evaluate the

[16]above patient for the first time on consultation on

[8]
[17]3/9/94. I also had the opportunity to review past

[18]medical records obtained from the Helen Hayes Hospital."

[19]Correct?

[20]A Correct.

[21]Q Is there anything else in this report about any

[22]other record including Columbia Presbyterian in your

[23]report?

[24]A Yes. On the bottom it says, "I also reviewed
" 2 hospital record from the Columbia Presbyterian Center.

[3]Q Is that **[*33]** where you put where he refused further

[4]medical intervention, and you underlined that in your

[5]report, didn't you?

[6]A That's where I put --

[7]MR. SPEVACK: Objection, your Honor.

[8]THE COURT: No, the objection is sustained.

[9]The objection is sustained.

[10]The jury will disregard that.

[11]Q Now, Doctor --

[12]MR. SPEVACK: Your Honor, may we approach?

[13]THE COURT: You may.

[14](Conference at the bench, off the record.)

[15]Q Doctor, it's in your report, but may I approach

[16]the witness?

[17]THE COURT: Don't read from a record in

[18]that fashion.

[19]Q Doctor, you reviewed the Helen Hayes record, /

[20]correct?

[21]A Yes.

[22]THE COURT: That's in evidence. I think

[23]that's in evidence.

[24]THE CLERK: Not yet.

[2]MR. MARULLI: I offer the Helen Hayes

[3]Hospital record in evidence. I'll offer them.

[4]THE COURT: Any objection?

[5]MR. YANKOWITZ: No objection.

[6]MR. SPEVACK: Your Honor, I believe it is

[7]certified and, as such, I have no objection.

[8]THE COURT: What if it's not?

[9]MR. SPEVACK: As long as it conforms with

[10]my copies, I have no objection.

[11]THE COURT: **[*34]** . Take a look at it. Tell me if

[12]you have an objection or not.

[13]MR. SPEVACK: If counsel wants to put the

[14]portion in, I have no objection at this time.

[15]THE COURT: Let's mark it as Exhibit E in

[16]evidence. Defendant Denton's E.

[17]MR. MARULLI: It's not a hospital.

[18]THE COURT: It says hospital. I thought it

[19]was a rehabilitation facility. /

[20]MR. MARULLI: I agree with you. But it's

[21]called hospital.

[22]THE CLERK: Counsel, do you have it?

[23]MR. MARULLI: To save time, I would like to

[24]approach the witness with two pages.

[2]THE COURT: In the meantime, would you mark

[3]the original that we have? Does somebody have

[4]the original?

[5]Has the original come in? Do you have any

[6]objection to him proceeding this way?

[7]MR. SPEVACK: No, your Honor. I don't.

[8]Q Doctor, I ask you to look at this page. This

[9]page up here.

[10]THE COURT: See if it's in the record.

[11]A Okay.

[12]Q Doctor, isn't it a fact that on two occasions at

[13]that hospital, the doctors there -- the patient was

[14]recommended for the surgery which is reflected in your

[15]report?

[16]A Yes.

[17]Q **[*35]** And you refused to do so?

[18]A That's correct.

[19]Q Now, Doctor, the patient refused to undergo the /

[20]surgery, correct, Doctor?

[21]A Just give me one second. Let me find out if

[22]there was a special procedure that he refused.

[23]MR. YANKOWITZ: Objection. Move to strike,

[24]your Honor.

[2]THE COURT: The objection is sustained.

[3]The jury is to disregard it.

[4]Take a look at that document. The reporter

[5]will read the question back. Listen carefully

[6]to the question. Look at the document, and then

[7]answer the question.

[8]A Yes, your Honor.

[9](Reporter read back question.)

10. THE COURT: That calls for a yes or no

[11]answer, Doctor.

[12]THE WITNESS: Yes, that's correct.

[13]A Yes.

[14]Q Twice?

[15]A I only see it once.

[16]MR. MARULLI: May I approach, Judge?

[17]THE COURT: You may.

[18]Q 12/30/87?

[19]A That's basically the same note. That's the

[20]summary. That's the note where the patient refuses.

[21]Q Well, Doctor, what's the date on the summary?

[22]A Let me look at -- there is no date on the

[23]summary.

[24]Q Were **[*36]** you with Helen Hayes back in 1987 or 1988?

[0]
" 2 A There was no date on the piece of paper that you

[3]gave me.

[4]MR. MARULLI: Move to strike.

[5]THE COURT: Motion granted. The jury will

[6]disregard the answer. The reporter will read

[7]the question back.

[8]MR. MARULLI: May I rephrase it?

[9]THE COURT: We will get nowhere, Doctor,

[10]if you want to answer what you want to say.

[11]You know any question that you feel

[12]warrants further comment, Mr. Spevack, who is a

[13]very competent lawyer, will have an opportunity

[14]to ask questions about it if Mr. Spevack thinks

[15]it's important.

[16]I want you to listen to the question, and

[17]don't just tell us what you feel like telling

[18]us. We're here in a very formal proceeding. I

[19]expect you to listen carefully to the

[20]questions.

[21]I think if'you don't comprehend the

[22]questions, that's something else. But if you

[9]
[23]do, just answer it.

[24]Q Doctor, let me ask you this: They offered --

[0]
[2]would you agree after reviewing that record -- you /

[3]reviewed that record carefully, correct?

[4]A Yes.

[5]Q **[*37]** Would you agree with me that they offered i

[6]the surgery because they felt it would help him imp ?ve?

[7]A Yes.

[8]Q And he refused it, correct?

[9]A Yes.

[10]Q And, Doctor, isn't it a fact that his refusal

[11]was a contributory factor to his incomplete recovery?

[12]A I can't comment on that, because I'm not sure.

[13]' Q Is that because, Doctor -- withdrawn.

[14]Now, Doctor, let me ask you this: You

[15]wrote in your report you examined the patient. You wrote

[16]in your report, "Manual muscle power testing is within

[17]normal limits for upper extremities."

[18]A Yes.

[19]Q Bilateral -- before we get to the next sentence,

[20]he has no bowel and bladder dysfunction now; does he?

[21]A That's correct.

[22]Q And he can feel in his extremities, can he?

[23]A Yes.

[24]Q He can feel down his lower -- his 1 gs, down to
fl
J

[2]his feet to his toes, correct?

[3]A Yes.

[4]Q And that's an importan -- that's an important

[5]ability, correct?

[6]A Yes.

[7]Q Because when we talk about the lower extremities

[8]in **[*38]** function, you talk about motor and sensory, correct?

[9]A That's correct.

[10]Q So he has full motor and sensory function of his

[11]upper extremities and he. has full sensory function --

[12]full sensation in his lower extremities?

[13]A Not full.

[14]Q He can feel down to his toes, can't he?

[15]A He can feel, but not fully.

[16]Q Sensation -- okay. "Bilateral lower extremities

[17]at 4-5."

[18]Doctor, when you write 4-5, you're talking

[19]about the muscle strength, correct? I

[20]A Yes.

[21]Q By the way, did you measure his thigh and his

[22]calves?

[23]A I did not.

[24]Q Doctor, you knew that for a period of time he

[0]
" 2 was paraplegic, did you not?

[3]A Yes.

[4]Q And you know that when a man is paraplegic, or a

[5]woman is paraplegic -- I know the judge is going to -- a

[6]man or a woman, a person is paraplegic for a period of

[7]time, they can't use their muscles; and they can't

[8]exercise their muscles; and they can't flex and extend

[9]the muscles as they would normally; correct?

[10]A That's correct.

[11]Q And **[*39]** when that happens, Doctor, doesn't the

[12]muscle strength weaken? That's because the muscle

[13]strength -- but don't the muscles atrophy?

[14]A Yes.

[15]Q And wouldn't an important consideration, an

[16]important thing for you to do would be to measure the

[17]muscles of his calves and his thighs?

[18]A If the problem is unilateral, you're correct.

[19]If the problem is bilateral, it has no bearing.

[20]Q It has no bearing?

[21]A No.

[22]Q Doctor, when you put 4-5 muscle strength, you

[23]know that --

[24]First of all zero is paraplegic, right?

[2]A That's correct.

[3]Q One -- you got 1, you specialists cal a trace,

[4]correct?

[5]A Yes.

[6]Q You can have a contraction of a mus le, but you

[7]can't move at all, correct?

[8]A That's correct.

[9]Q Two. When you have a 2, you're just about in a
10. wheelchair, right, because you can't move aga nst

[11]gravity? You can't move against gravity?

[12]A That's correct.

[13]Q So if it's 2 over 5, the only way yo 're going

[14]to be able to ambulate is in a wheelchair, co rect? **[*40]**
[15]A That's correct.

[16]Q Three over five, you cou a- a against

[17]gravity, correct?

[18]A No. Not yet. Not yet. Three plus over five.

[19]Q 3-5?

[20]A Three plus over five.

[21]Q Three-five, you can resist gravity? Three plus

[22]five you can overcome it?

[23]A No. Can I explain?

[24]Q No, Doctor.

[2]A Okay.

[3]Q Let's get to 4.

[4]4-5 means there is just some weakness there?

[5]A T ire

[6]Q Weakness?

[7]A Yes.

[8]Q And, Doctor, haven't you examined patients with

[9]weakness that can ambulate with a cane?

[10]A Yes.

[11]Q And 5 is normal?
I

[12]A Yep/.

[13]Q Now, Doctor, you just told this jury that he was

[14]4-5, and that was three grades weaker than normal. You

[15]know that is not correct?

[16]A That is correct.

[17]Q That is not correct, Doctor?

[18]MR. SPEVACK: Objection, argumentative.

[19]THE COURT: Don't argue, Counsel.

[20]MR. MARULLI: I'm sorry, Judge.

[10]
[21]Q Doctor, there are six grades, zero through five,

[22]aren't there?

[23]A That is **[*41]** not correct. There is plus and minuses.

[24]Q Let me ask you something, Doctor: Is that

[2]something that a reputable expert would disagree with, or

[3]is that universal in plus or minuses? Is it universal or

[4]is it something that reputable experts can disagree on?

[5]MR. YANKOWITZ: Objection. Move to strike.

[6]Yes or no question.

[7]THE COURT: Motion denied. You can answer

[8]it.

[9]A Yes, they can disagree with some of those

[10]findings, yes.

[11]Q Have you ever heard of the Frankel's class of
12nal cord function?

[13]A Yes.

[14]Q You've heard of that?

[15]A Yes.

[16]Q Now, if you're a class A, you have no motor and

[17]no sensory function, correct?

[18]A I on't recognize that class if 1-cza-4?

[19]Q You don't classification?

[20]A No.

[21]Q. You've heard of it?

[22]A I

[23]Q Are you aware of it?

[24]A I'm aware of it.

U
" 2 Q So you know that "A" you can't move and you

[3]can't feel, correct?

[4]A I'm not familiar with classification of A or B.

[5]Q Doctor, are you telling **[*42]** this jury that I know

[6]something that you don't?

[7]THE COURT: Sustained as argumentative.

[8]Q And so, Doctor, you don't know that class B

[9]means no motor function and a little bit of sensory

[10]function?

[11]MR. SPEVACK: Objection.

[12]THE COURT: Overruled.

[13]MR. SPEVACK: He says he's not familiar

[14]with it.

[15]Q Do you know about class B?

[16]A I'm not familiar with the Frankel's

[17]classification.

[18]Q You just said you were familiar with it.

[19]THE COURT: He's not familiar with it.

[20]Go onto something else.

[21]MR. MARULLI: He initially said he's

[22]familiar with it.

[23]THE COURT: He said he doesn't recognize

[24]it.

[0]
" 2 Do they teach it in medical school?

[3]THE WITNESS: No.

[4]THE COURT: Did they teach it while you

[5]were taking a residency program?

[6]THE WITNESS: The Frankel's

[7]classification -- they taught us several

[8]classifications and told us why each one is not

[9]valid but it exists.

[10]THE COURT: When you studied it, the school

[11]who taught you didn't like it?

[12]THE WITNESS: At Mount Sinai School of

[13]Medicine, they did not use it.

[14]THE COURT: **[*43]** Are there schools that do use

[15]it?

[16]THE WITNESS: Not that I'm aware of.

[17]THE COURT: Very good. Go ahead, Counsel.

[18]Q Doctor, if you had taken the time to look at the

[19]Mary Immaculate record, you would have known, and you,

[20]know about the surgery that was done at Columbia

[21]Presbyterian, correct?

[22]MR. SPEVACK: Objection to form.

[23]THE COURT: Sustained as to form as

[24]argumentative.

" 2 MR. MARULLI: I don't think I was

[3]argumentative. I'll rephrase it.

[4]THE COURT: You can't help yourself,

[5]Counsel.

[6]MR. MARULLI: I'll try to rephrase it.

[7]Q You reviewed the Columbia Presbyterian record at

[8]some time?

[9]A Yes.

1Q Q Even though it's not in your report?

[11]A Yes.

[12]Q So you know what kind of surgery was done on

[13]September 26th, 1987, correct?

[14]A Yes.

[15]Q You know he was paraplegic before that surgery,

[16]correct?

[17]A That's correct.

[18]Q You know the condition of this gentleman now

[19]today?

[20]A Yes.

[21]Y agree with me that given the c dit'on that

[22]he was in at Mary Immaculate and Columbia **[*44]** Presbyterian,

[23]that the condition he is in today is remarkable?

[24]A Yes.
Is

[2]Q He made a remarble recovery, correct?

[3]A Yes.

[4]Q Now, Doctor, just one other thing: ' ou t ld

[5]this jury he's only partially permanently di?'jabled,

[6]correct? %

[7]A Yes.

[8]Q You told him he was completely dis bled from

[9]work?

[10]A That's correct.

[11]Q Were you aware that he retired, no on

[12]disability, he retired February 1st, 1988? ere you

[13]aware of that?

[14]A I was not.

[15]MR. MARULLI: Thank you very mu h, sir. I

[16]have no other questions.

[17]THE COURT: Redirect.

[18]REDIRECT EXAMINATION

[19]BY MR. SPEVACK:

[20]Q Doctor, you said that counsel asked you some

[21]questions about atrophy. What's atrophy?

[22]A Atrophy means muscle mass loss or a loss of the

[23]size of a muscle.

[24]THE COURT: From disuse?
C]

[2]THE WITNESS: It could be from disuse or

[3]from nerve damage.

[4]THE COURT: Okay.

[5]Q And would there be atrophy if a person was

[6]paralyzed?

[7]MR. MARULLI: Objection.

[8] **[*45]** THE COURT: Overruled.

[9]A Yes, there should be some atrophy.

[10]Q In response to counsel's question, you said

[11]atrophy might be noted where there is a unilateral

[12]problem but not a bilateral problem.

[13]Can you explain what you mean by that?

[14]A Yes. If you have atrophy on both sides, by

[11]
[15]measuring it, you can't tell which has shrunk because

[16]they're both the same size. They both have shrunk. You

[17]have nothing to compare it with. You can't compare the

[18]right side to the'left side to see what is normal. So

[19]you have no parameters. Therefore, there is no value in '

[20]having to measure it.

[21]Q Doctor, in the hospital records that you

[22]reviewed, that is the Columbia Presbyterian records and

[23]the Helen Hayes Hospital record, did they use your system

[24]of evaluation of motor strength or some other system?

[2]MR. YANKOWITZ: Objection to what "they

[3]used."

[4]THE COURT: Overruled.

[5]A Yes. They used my system.

[6]THE COURT: Not yours. Someone else's?

[7]Who designed it?

[8]THE WITNESS: I don't know, your Honor.

[9]Q Does it have a name of a system? **[*46]**
[10]A It's called the manual muscle testing.

[11]THE COURT: Did they use the manual method

[12]at the Helen Hayes?

[13]THE WITNESS: Yes.

[14]THE COURT: How about at Columbia?

[15]THE WITNESS: Yes, your Honor.

[16]THE COURT: And when you looked at the Mary

[17]Immaculate, did they use one there, too?

[18]THE WITNESS: I don't recall.

[19]THE COURT: But those two places?

[20]THE WITNESS: Yes.

[21]THE COURT: Used the manual method?

[22]THE WITNESS: Yes.

[23]THE COURT: Using numbers and not letters?

[24]THE WITNESS: That's correct.
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[2]Q Doctor, what was the surgery that Mr. Brooks

[3]declined to have?

[4]A From the -- from my understanding of the records

[5]is any further -- any future surgical proceedings.

[6]Q Okay. Does it say specifically what procedures

[7]those might be?

[8]A I believe it was an anterior fusion.

[9]Q Doctor, what's an anterior fusion?

[10]A Well, a fusion is --

[11]MR. MARULLI: Note my objection, Judge.

[12]THE COURT: Overruled. You entered it,

[13]Counsel.

[14]MR. MARULLI: I'm not objecting on that

[15]basis. He said he wasn't qualified **[*47]** as a

[16]surgeon.

[17]THE COURT: He doesn't have to be

[18]qualified. He went to medical school.

[19]They learn about anterior fusion in medical

[20]school?

[21]THE WITNESS: Yes.

[22]THE COURT: Could you tell us about it?

[23]THE WITNESS: There are two types of

[24]fusions, anterior fusion which is a fusion

[2]grafting from the front and posterior fusion.

[3]The way a fusion is done, you take a piece

[4]of bone from the ileac crest, which is the hip

[5]bone and you use it to cement the two vertebrae

[6]so there is no movement.

[7]There is an additional form of

[8]stabilization procedure. You sort of cement

[9]the bones together. You can do it from the
10. front or you can do it from the back.

[11]Q. Doctor, is that kind of surgery -- does it have

[12]any effect on the spinal cord itself?

[13]A Well, any kind of surgical -- it has some

[14]potential effect on the spinal cord, as well.

[15]Q Doctor, you understand that I am the attorney

[16]for the plaintiff in this case, and I'm an advocate; is

[17]that correct? Is that your understanding?

[18]A You're an advocate to whom?

[19]Q For Mr. Brooks. **[*48]** ,

[20]MR. MARULLI: He's leading the witness,

[21]Judge.

[22]THE COURT: Sustained.

[23]Q Doctor, when I --

[24]THE COURT: Doctor, Doctor, there is a
?j

[2]lawyer who represents each side, right?

[3]THE WITNESS: Yes.

[4]THE COURT: The lawyer in each side would

[5]like it if the jury would find in favor of

[6]their respective side?

[7]THE WITNESS: Yes.

[8]THE COURT: An advocate, you know what an

[9]advocate is?

[10]THE WITNESS: I understand, yes.

[11]THE COURT: He's the advocate for the

[12]plaintiff, just as Mr. Marulli is the advocate

[13]for Mr. Denton, and Mr. Yankowitz is the

[14]advocate for the hospital.

[15]THE WITNESS: Because I was confused

[16]because that was an obvious question.

[17]THE COURT: But you have to listen.

[18]THE WITNESS: I listened.

[19]Q When I sent Mr. Brooks over to you, did I tell,

[20]you what to say?

[21]A You did not.

[22]MR. MARULLI: Objection, Judge.

[23]THE COURT: Overruled.

[24]Q When we spoke this morning, did I tell you what
?' 2 to testify to?

[3]A No.

[4]THE COURT: You discussed what was going to

[5]happen. You **[*49]** weren't talking about the Mets this

[6]morning?

[7]THE WITNESS: We were.

[8]THE COURT: You were talking about the

[9]Mets.

[10]THE WITNESS: Not the Mets, the medicals.

[11]THE COURT: Not "meds."

[12]You weren't talking about baseball?

[13]THE WITNESS: No.

[14]THE COURT: You were talking about what was

[15]going to happen today?

[16]THE WITNESS: To a degree, yes.

[17]THE COURT: I mean, Mr. Spevack is a

[18]bright man and he would be a damn fool if he

[19]didn't talk to you about that?

[20]THE WITNESS: Yes.

[21]THE COURT: All right.

[22]Q Doctor, is your testimony in any way to the best

[23]of your knowledge substantially different than what's

[24]contained in your report?

[2]MR. MARULLI: Objection.

[3]THE COURT: Sustained.

[4]Anything else?

[5]MR. SPEVACK: No.

[6]THE COURT: Redirect -- recross, Mr.

[7]Yankowitz?

[8]MR. YANKOWITZ: No.

[9]THE COURT: Mr. Marulli, on the three

[10]areas.

[11]MR. MARULLI: Two, Judge.

[12]THE COURT: You could go over three areas,

[13]atrophy, manual method and the conversation

[14]this morning.

[15]RECROSS EXAMINATION

[16]BY MR. MARULLI:

[12]
[17]Q Doctor, whatever surgery was **[*50]** proposed at the

[18]hospital, they proposed it to help this patient recover,

[19]correct?

[20]A Yes.

[21]Q And he refused it, correct?

[22]A Yes.

[23]Q Doctor, are you telling this jury that when you

[24]have cord compression in the thoracic spine, and then you

[0]
[2]have the remarkable recovery that this man had, that th %

[3]muscle strength in both legs are going to be the same?

[4]A That the compression was even, yes.

[5]Q Doctor, isn't it a fact that they don't know if

[6]it was even, number 1?

[7]MR. SPEVACK: Objection. What do we mean

[8]by "they"?

[9]Q That you don't know if it was even?

[10]A It was when I examined the patient or before?

[11]Q Doctor, let me ask you this When function

[12]comes back after the kind of trauma hat occurred to this

[13]man's spine from this osteomyelitis which occurred over a

[14]long period of time --

[15]A Right.

[16]Q Isn't it a fact that you c n't predict,

[17]prognosticate about whether the le t leg will be stronger

[18]than the right, the right leg will be stronger than the

[19]left or they'll be equal? **[*51]**
[20]A With the way --

[21]Q Isn't that a fact, sir?

[22]A That's a fact.

[23]Q And, Doctor, even if you measure the strength as

[24]four on the right and four on the left, in March of 1994,
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[2]you didn't know, you didn't know the condition of those

[3]legs, each and every day prior to that for the five years

[4]before he saw you, correct?

[5]A No.

[6]Q And so you don't know, unless you measure, if

[7]there was atrophy -- more atrophy on one side as opposed

[8]to the other or no atrophy at all; isn't that a fact,

[9]sir?

[10]A No. That question cannot be answered with a yes

[11]or no.

[12]MR. MARULLI: I have no other questions.

[13]THE COURT: Thank you very much, Doctor.

[14]We'll take a five-minute recess, members of

[15]the jury. And then we'll resume with further

[16]testimony.

[17]Don't discuss the case during the recess.

[18](Jury exits the courtroom.)

[19](Witness excused from the stand.) I

[20](Recess)

[21](Whereupon, the jury enters the courtroom,

[22]and the following takes place in the presence

[23]and the hearing of the jury:)

[24](Whereupon Dr. Denton resumes **[*52]** the stand.)

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