

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Diane Schafer Goodstein, Circuit Court Judge

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SC Court of Appeals

Case No. 2012-CP-07-03782

Rebecca Delaney, as Personal
Representative of the Estate of
Justin Nicholas Miller,

Appellant,

v.

CasePro, Inc.,

Respondent.

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1 A Yes, I was.

2 Q And do you actually recall doing that autopsy?

3 A Yes, I do.

4 Q Does this autopsy stand out among the more than
5 2,000 autopsies that you have conducted in your career
6 as a forensic pathologist?

7 A Yes, it does.

8 Q How soon after Justin's death, did you perform the
9 autopsy?

10 A I performed the autopsy the next day, on February
11 25, 2012. He passed away on February 24, 2012.

12 Q Before you began the dissection of Justin's body
13 there at MUSC, what did you do?

14 A Before the dissection, what -- what we did is, I
15 was informed by Mr. Edward Allen, who is the coroner of
16 Beaufort County, that he had accepted the jurisdiction
17 of Justin Miller's death, and that his body was going to
18 be transported up to -- I'll use MUSC for short -- up to
19 MUSC for an autopsy.

20 So then, what happened was that Justin Miller's
21 body was brought up for an autopsy. I don't remember
22 specifically whether it was brought up the night of the
23 24th or early morning the 25th. But I do know that,
24 beginning at around 9:00 o'clock in the morning on the
25 25th of February, we started the autopsy.

1 And so, before the dissection began, -- when we do
2 an autopsy, we document, really, by three complementary
3 ways. One is that we take photographs. And that
4 includes taking photographs of a person's body as they
5 were received, with the clothing on, without anything
6 being washed. So, we took full body photographs of
7 Justin Miller's body, with all of his clothing on.

8 Then, after the clothing was removed, then, we also
9 describe the clothing, and also, any personal items that
10 would have been contained as part of the clothing.

11 Then, when we -- after his -- the clothing was
12 removed, then, another set of photographs is taken of --
13 of the body. And then, the body is eventually washed.
14 And he had a lot of dirt on the clothing and on his
15 body. And then, it was washed. And the reason it's
16 washed is because, many times, dirt will obscure the
17 injuries or other, tattoos or other findings that are
18 present on the skin.

19 So, the external examination really began after all
20 of those procedures occurred; the body being clothed;
21 and then, unclad; and then, the dirt being removed.

22 And then, when we do the external examination,
23 which was the next part, I had -- I described all my
24 findings. And then, I had a -- a worksheet with a body
25 diagram, where I could document the various findings.

1 Then, -- and then, after that, all that -- all the
2 external injuries are documented. Then, at that point,
3 we were ready to begin the dissection, which would be
4 the internal examination.

5 Q Now, Doctor, did you, yourself, actually take
6 photographs of Justin Miller's body before the beginning
7 of dissection?

8 A Yes. I -- I know that, either myself and Eowyn
9 Corcrair, who was the pathologist assistant working with
10 me, I don't remember exactly which ones we took, but,
11 between the two of us, we took all the pictures.

12 Q And do you know how many photographs you took that
13 day?

14 A I don't know how many, but I would estimate that it
15 was extensive, probably well over a hundred.

16 Q Doctor, before we get a little further into your
17 work on this specific case, I want to get your help
18 defining a few terms. Okay?

19 A Okay.

20 Q Can you tell the jury what a hemorrhage is.

21 A Yes. So, a hemorrhage is just a fancy term for
22 bleeding. And all we mean by that is that, it's blood
23 that's not where it's supposed to be. Blood is supposed
24 to be inside of a blood vessel, where it travels.
25 Anytime blood is outside of a blood vessel, by

1 definition, that's hemorrhage, or bleeding.

2 Q And Doctor, what is a contusion?

3 A A contusion is hemorrhage that's created by a
4 direct blunt force. So, it's a bruise, but it's due to
5 a direct impact in that area of the body.

6 Q Now, Doctor, based on your education and training
7 and experience, does evidence of either a hemorrhage or
8 a contusion make it more likely than not that
9 circulation was present in the body when a particular
10 injury occurred?

11 A Yes, it does. The presence of bleeding hemorrhage
12 or contusion does make it more likely that circulation
13 was going on.

14 Q And certainly, Doctor, in your field, you don't
15 have the luxury of asking the decedent what happened or
16 didn't happen. Is that fair?

17 A That is correct. Not directly, that's correct.

18 Q I want to get a few more definitions, Doctor. What
19 does the term *avulsed* mean, or *avulsed*?

20 A Avulsion is a term which means an actual physical
21 separation of a part of the body from where it's
22 supposed to be. So, it can be a partial avulsion,
23 meaning where it's partially torn away from its
24 attachment, but still, something is still keeping it to
25 its original attachment in the body. Or a complete

1 avulsion is when that organ is completely separated from
2 the area, the anatomic area, where it's supposed to be
3 in the body. So, it's -- so, either partial or
4 complete, and it's -- and it's an extension of an injury
5 that we call a laceration, which is a tear in the skin
6 or a part of the -- or an organ in the body.

7 Q And last term, Doctor. Didn't realize you were
8 going to have to bring your dictionary with you. So, I
9 appreciate your patience here.

10 A Sure.

11 Q What does the phrase *traumatically absent* mean in
12 the context of forensic pathology?

13 A Traumatically absent means that, that organ or
14 tissue is not found in the body, because it was removed
15 by an injury, by trauma, as opposed to surgically
16 absent, such as the appendix, which is not there because
17 it was removed by a surgical procedure. So, we mean --
18 I mean specifically, that an injury was responsible for
19 a recent or immediate injury for that organ or tissue
20 not being present where it's supposed to be.

21 Q Now, Doctor, if a body part is avulsed, and there
22 is evidence of a hemorrhage or a contusion in a
23 particular part of the body, what does that mean to you
24 as a forensic pathologist?

25 A What that means to me is that, it's more likely

1 than not, that circulation was going on at the time
2 that, that avulsion occurred.

3 Q Now, Doctor, before we continue our examination, I
4 just want to ask you a foundational question about
5 Justin Miller. As the forensic pathologist at the
6 Medical University who did the medical, legal autopsy on
7 this young man, do you have an opinion as to whether or
8 not Justin Miller had anything other than a normal life
9 expectancy, prior to his tragic death?

10 A Yes, I do.

11 Q And what is that opinion, Doctor?

12 A My opinion is that -- that there was nothing, from
13 what I could examine that was available to me, or from
14 the history that I had, that indicated that he had any
15 other disease process that would have given him anything
16 other than a normal life span.

17 Q Doctor, you and I spoke a little while earlier, and
18 I understand that you have three, let me call, general
19 opinions with respect to this autopsy and this young
20 man. And I want to walk through, slowly, each of those
21 three opinions. Okay?

22 A Okay.

23 Q You told us a little bit about the connection
24 between hemorrhages and contusions and body parts being
25 avulsed.

1 A Yes.

2 Q Okay. In this particular case involving Justin
3 Miller, do you have an opinion, as a forensic
4 pathologist, as to whether or not blood was circulating
5 in his body when certain fractures and avulsions
6 occurred?

7 A Yes, I do.

8 Q And what is that opinion?

9 A My opinion is that, at least some of the injuries
10 that I'm seeing, because I'm seeing hemorrhaging, I'm
11 seeing bleeding, in my opinion, circulation was going on
12 when those injuries occurred.

13 Q In other words, blood was flowing.

14 A That's correct. That's the meaning of circulation.

15 Q And you're able to give us that opinion, to a
16 reasonable degree of certainty, meaning it's more likely
17 than not.

18 A That's correct.

19 Q What injuries do you believe occurred to Justin
20 Miller's body during the time frame in which blood was
21 continuing to circulate?

22 A The ones that I can say with the greatest degree of
23 -- of confidence would be, he had multiple bruises on
24 his scalp. And so, when we reflect the scalp, we do it
25 forward and backward, and that exposes a surface that we

1 call galea, g/a/l/e/a, and that's -- and I was able to
2 see contusions, bruises, on the deep surface of the
3 scalp in multiple areas, in the front, in the back, and
4 on the sides.

5 And other areas where I was able to see hemorrhages
6 or bleeding was, there was also bleeding that was coming
7 out of the left ear canal, and that was at the site
8 where there was a fracture of the base of his skull.
9 And the ear canal runs through the base of the skull.
10 And there was a fracture that we call -- I call a hinge
11 fracture, because it -- it went across both sides of the
12 base of the skull, and the middle ear -- ear canal was
13 contained within that area. We call that the temporal
14 bone. And there was blood that was coming out of that
15 -- that side, on the left. On the right side, there was
16 some dried blood.

17 Q All right. I want to stop you right there, and
18 we'll continue through the list of injuries in a moment.
19 I believe you told me earlier that you believe there are
20 more than a hundred photographs that you or someone at
21 your direction took during this autopsy? Did I hear
22 that correctly?

23 A That is correct.

24 Q Okay.

25 MR. HOYLE: Your Honor, may I approach the witness?

1 THE COURT: You may.

2 BY MR. HOYLE:

3 Q Doctor, I am approaching you with two photographs
4 that I have marked for identification purposes as
5 Plaintiff 5 and Plaintiff Number 7. I'm going to show
6 these to you.

7 I'm also bringing over, in case we need it, a big
8 stack of photographs that I've marked for identification
9 purposes as Plaintiffs Exhibit Number 4.

10 ITEMS IDENTIFIED AS COMPLETE SET
11 OF AUTOPSY PHOTOGRAPHS
12 MARKED PLAINTIFF'S EXHIBIT NUMBER 4,
13 FOR IDENTIFICATION.

14 Q With respect to the photographs that I've taken out
15 of the package and showed you, that being the
16 photographs I've marked for identification purposes as
17 Plaintiff's 5 and Plaintiff's 7, do you recognize these
18 photographs?

19 A Yes, I do.

20 Q And what are these photographs of?

21 A These are photographs of the body of Justin Miller,
22 identified by the autopsy number FA-12-00117. And this
23 is when he was still in his clothing and dirt was still
24 on his body. One is a view from the left side, a
25 profile where I'm looking at the left side of his -- his

1 face and his body. And one is a view from the right
2 side of his face and his body. He's lying on the
3 autopsy table, in the autopsy room at MUSC.

4 Q And do these fairly and accurately depict the
5 condition of Justin Nicholas Miller's body before you
6 began your dissection portion of the autopsy?

7 A Yes, they do.

8 Q And you were telling us earlier about being able to
9 see blood in one of the ears as part of your findings
10 and basis for conclusion that certain injuries took
11 place while his blood was still flowing. Do you recall
12 that?

13 A Yes, I do.

14 Q And does one of these photographs that I've marked
15 for identification purposes that I'm showing you here
16 today reflect that?

17 A Yes, it does.

18 Q Is that a photograph that you're relying on to
19 assist in explaining your opinions here today?

20 A Yes, it is.

21 MR. HOYLE: Your Honor, reluctantly, at this time,
22 I'm going to move to admit the photographs that have
23 been marked Plaintiff's 5 and Plaintiff's 7 into
24 evidence.

25 MR. LOVELL: Your Honor, we re-assert the objection

1 we made earlier.

2 THE COURT: At this time, I'm going to sustain that
3 objection.

4 MR. HOYLE: Thank you, your Honor.

5 THE COURT: Yes.

6 BY MR. HOYLE:

7 Q Doctor, returning to the list of injuries that we
8 have been discussing, you told us about the fracture in
9 the skull. Are there any other injuries that you
10 believe Justin Miller sustained while blood was still
11 flowing?

12 A Yes, there are.

13 Q What are those, sir?

14 A One of the other injuries that I observed in the
15 head, but this was under the microscope, was that there
16 was some bleeding hemorrhages in the brainstem. What I
17 had noted -- and the brainstem is the lower part of the
18 brain that connects the brain to the spinal cord,
19 controls all the involuntary movements. What I had
20 noted was that the brainstem was completely separated
21 from the upper part of the brain.

22 Now, because that can't be an artifact of just
23 removing the brain, it could be a post-mortem artifact,
24 one of the things I did is, I looked at the area that
25 was separated, that complete avulsion. I looked at the

1 area under the microscope, and I did see some bleeding
2 of -- of areas of red blood cells outside of blood
3 vessels at that site. That was another indication, in
4 my opinion, that circulation was going on, however
5 brief.

6 Moving down to the body, I saw that there was some
7 bruises in some of the neck muscles, the muscles that
8 attach the lower part of the neck up to the jaw that are
9 involved in swallowing. I also saw that there was a
10 fracture of the third cervical vertebrae. There are
11 seven cervical vertebrae in the neck, and at the third
12 one, there was a fracture. And then, around that
13 fracture, there was bleeding in the soft tissues of the
14 muscles and the connective tissues around there.

15 Moving down into the torso area, I noted that there
16 was some bleeding in multiple parts of the -- of the
17 torso. And I'm just going to refer specifically to -- I
18 just wanted to make sure that this was accurate. I saw,
19 specifically there, that there were multiple avulsions
20 of the organs. The heart was completely separated from
21 its position in the center of the chest, and was
22 actually sitting in the left lung cavity, below the left
23 lung.

24 I did not see any bleeding in the body cavities
25 themselves. I did see some small areas of bleeding in

1 the -- in the testes, in the testicular tissue down in
2 the pelvic region.

3 Q And what's the significance of the bleeding in the
4 pelvic region?

5 A The same -- the same significance. Again, that
6 there was more likely than not, that circulation was
7 going on at the time those injuries were sustained.

8 Q Injuries of the pelvic region.

9 A Correct.

10 Q Okay. Let's transition to the second broad
11 category of your opinion. We've been talking about
12 blood continuing to circulate through the body.

13 Doctor, do you have an opinion as to whether or not
14 Justin Miller remained conscious for some period of time
15 following the initial impact involved in this case?

16 A Yes, I do.

17 Q And did Justin Miller maintain consciousness for
18 some period of time immediately following impact?

19 MR. LOVELL: Your Honor, we object. There's been
20 no foundation laid as to the appropriate standard for
21 that.

22 ON-THE-RECORD BENCH CONFERENCE, OUT
23 OF HEARING OF JURORS. PRESENT: THE
24 COURT, MR. HOYLE, MS. CASTLEBERRY,
25 MR. LOVELL, MR. MACKELCAN.

1 MR. LOVELL: He's asking a causation, which
2 requires a more likely than not or a probable standard.
3 He hasn't qualified that at all.

4 THE COURT: Okay. I just want to make sure that's
5 what you're talking about instead of something else.
6 Okay.

7 MR. HOYLE: I'm not.

8 THE COURT: Got it. Okay.

9 MR. HOYLE: Sustained?

10 THE COURT: Sustained.

11 MR. HOYLE: Okay. So I understand the objection,
12 you want me to ask him more likely than not? I just
13 don't want to come back up here.

14 MR. LOVELL: I'm saying, he hadn't laid the
15 foundation.

16 MR. HOYLE: We may be coming back up here, Judge.

17 THE COURT: I don't care.

18 END BENCH CONFERENCE.

19 BY MR. HOYLE:

20 Q Doctor, I understand that you have formed an
21 opinion with respect to consciousness. Did I hear that
22 correctly?

23 A Yes, that's correct.

24 Q Okay. Let me stop you right there. With respect
25 to that opinion, is that an opinion that you, as a

1 board-certified, forensic pathologist, formed to a
2 reasonable degree of medical and professional certainty
3 under the more-likely-than-not standard?

4 A Yes, it is,

5 Q Okay. Doctor, is it your opinion that Justin
6 Miller remained conscious for some period of time
7 following the initial impact involved in this incident?

8 A Yes. A very, very, very short period of time.

9 Q And certainly, Doctor, I think we can all, on some
10 level, understand that. But let's make sure we all
11 understand it. Okay? What's the basis for that
12 opinion?

13 A The basis for that opinion is, unless death is
14 truly instantaneous, that -- that, unless that, when the
15 injury occurs, that there is absolutely no time in
16 between when the injury occurs and when consciousness is
17 lost, that's the only way that you could say, more
18 likely than not, that there was no awareness of
19 conscious -- of the injury.

20 Consciousness means awareness of one's self and
21 one's environment. There's no -- but there's no
22 specification as to the time of that awareness.

23 Q Is that a qualitative versus quantitative
24 assessment, Doctor?

25 A Yes, it is.

1 Q In accordance with the scientific method in your
2 training, education, and experience as a forensic
3 pathologist?

4 A That's correct.

5 Q Okay. Now, Doctor, we were talking a moment ago
6 about some of these injuries that took place to Justin
7 Miller while blood was still flowing. Okay. That was
8 Opinion 1. And then, in Opinion 2, you told us that,
9 for some brief period of time, Justin Miller is
10 conscious following initial impact.

11 Are you able to sequence for us the injuries that
12 you've described here today, the avulsion -- avulsion of
13 the various body parts, the fractures and everything,
14 and tell us, to a reasonable degree of medical
15 certainty, whether or not those injuries, although they
16 took place while blood was circulating, did or did not
17 take place while Justin Miller was still conscious?

18 A No, I am not.

19 Q And why is that, Doctor?

20 A It is because we're talking about such infinitely
21 small time periods that there is no reasonable way,
22 scientifically, to ever verify that. There's -- we're
23 talking about a much too narrow window of time to ever
24 be able to make a conclusion regarding sequence of
25 events there.

1 Q Doctor, can you go through a list for us of the
2 body parts that were avulsed from Justin Miller's body,
3 to the extent you've not described them thus far in your
4 testimony.

5 A Yes. So, some of the body parts that were
6 completely avulsed -- I mentioned that the heart was
7 completely avulsed, but it was found in the left lung
8 cavity. Other organs that were completely avulsed
9 included the liver; the -- the spleen, which, the liver
10 sits on the right side, the spleen on the left side; the
11 pancreas; the stomach; the entire small intestine; the
12 aorta; the part of the aorta carrying blood to the rest
13 of the body that sits in the abdomen; and also, one
14 kidney and one adrenal gland. I can't -- I could not
15 identify which one. One kidney and one adrenal gland
16 was in the body. The other kidney and other adrenal
17 gland was -- was out.

18 So, liver, spleen, pancreas, abdominal aorta, one
19 kidney, one spleen, one adrenal gland were all
20 completely outside of the body; and also, the entire
21 small intestine and a good part of the colon. The large
22 intestine. There was a small part of the large
23 intestine that remained in the body.

24 Q You were telling us earlier about some hemorrhaging
25 in the testes. Did I hear that correctly?

1 A That's correct.

2 Q Were there any other injuries in that part of the
3 body that you observed as part of your autopsy?

4 A Yes, there were.

5 Q What was that, Doctor?

6 A There were also multiple, multiple, fractures of
7 the pelvic bones, which includes -- the -- the --
8 includes the hip bones; includes the sacrum, which is
9 the lower part of the spine. Includes the pubic bone.
10 So, there were fractures of -- of, in essence, there was
11 -- we use a term -- I use the term *hemisection*, meaning
12 it was almost that the -- that the upper and the lower
13 parts were almost completely in half at the level of the
14 pelvis. There was also a complete fracture of -- of one
15 of the lumbar vertebral bodies in the lower spine.

16 Q And for these injuries that you've told us about,
17 even though you can tell us that some of those injuries
18 occurred while blood was circulating, you can't tell us
19 one way or the other as to whether or not Justin Miller
20 was conscious. Is that fair?

21 A That is fair.

22 Q More likely than not, Doctor, in this period of
23 consciousness, however brief, was Justin Miller
24 suffering?

25 MR. LOVELL: Objection. Calls for speculation on

1 the part of this witness.

2 THE COURT: Sustained.

3 BY MR. HOYLE:

4 Q I'll ask the question again. Doctor, as you sit
5 here today, as a board-certified, forensic pathologist,
6 have you developed any opinions on the more-likely-than-
7 not basis, as to whether or not Justin Nicholas Miller
8 suffered during a period of consciousness, however
9 slight, immediately following the initial impact?

10 MR. LOVELL: Objection. Speculation.

11 THE COURT: Let me see Counsel.

12 ON-THE-RECORD BENCH CONFERENCE, OUT

13 OF HEARING OF JURORS. PRESENT:

14 THE COURT, MR. HOYLE, MS. CASTLEBERRY,

15 MR. LOVELL, MR. MACKELCAN.

16 THE COURT: I thought I heard him say that he
17 cannot tell us if he was conscious or not, if he had a
18 period of consciousness or not. I thought I heard him
19 testify to that. Did I miss that? Did I get that
20 wrong?

21 MR. HOYLE: He said there was a period of
22 consciousness, is my recollection, Judge.

23 MR. LOVELL: Your Honor, he also said, though,
24 whatever, how very, very, very short it was, he couldn't
25 say, which, if the injuries occurred during that period

1 or not, before or after, and that's where the
2 speculation comes from.

3 THE COURT: I know. What the sequence was.

4 MR. LOVELL: He's already said I can't say one way
5 or another; and now, he's asking him was he suffering,
6 which will be him now coming back and say, oh, I can
7 say.

8 END BENCH CONFERENCE.

9 BY THE COURT:

10 THE COURT: Ladies and gentlemen, I need you to
11 step to your jury room for a moment. There is a matter
12 I need to hear outside your presence. Please remember,
13 do not discuss this matter, and do not allow anyone to
14 discuss it with you.

15 JURORS LEAVE COURTROOM.

16 THE COURT: Wanda, I need -- I need that last
17 statement.

18 MR. HOYLE: I would -- I would like to hear that,
19 too, Judge.

20 COURT REPORTER: Wait, don't say anything. We're
21 not on the record.

22 MR. HOYLE: I apologize.

23 COURT REPORTER: Was that on the record?

24 MR. HOYLE: It was not.

25 THE COURT: He did -- yeah.

1 BAILIFF: Jury's clear, your Honor.

2 COURT REPORTER: I'm going to go ahead and start
3 looking for it. Is that right? You want me to.

4 THE COURT: Yes, it was -- yes. Just before the
5 question was objected to.

6 COURT REPORTER: We're talking about fractures of
7 the pelvic bones, and then, okay, we go on up just a
8 second.

9 THE COURT: Just after that.

10 COURT REPORTER: Um-hmm. Um-hmm.

11 *And for these injuries that you've*
12 *told us about, even though you can tell us*
13 *that some of those injuries occurred while*
14 *blood was circulating, you can't tell us*
15 *one way or the other as to whether or not*
16 *Justin Miller was conscious. Is that fair?*

17 *Answer: That is fair.*

18 *Question: More likely than not, Doctor,*
19 *in this period of consciousness, however brief,*
20 *was Justin Miller suffering?*

21 *Objection. Calls for speculation.*

22 THE COURT: Okay. Sustained.

23 MR. LOVELL: Thank you, your Honor.

24 MR. HOYLE: Your Honor, if we could have just a
25 brief moment to re-focus before we bring the jury back?

1 THE COURT: Sure. Sure.

2 END BENCH CONFERENCE.

3 THE COURT: I want to be clear. I sustained your
4 objection. And everybody's clear about that.

5 MR. LOVELL: Yes, I did get that. Thank you.

6 THE COURT: Okay. Are you ready? Everybody ready?

7 MR. HOYLE: No, Judge. If I could just beg your
8 indulgence for one moment.

9 THE COURT: Yes, yes, yes, yes, yes. Why don't we
10 take a little comfort break, since the jury's out?

11 MR. HOYLE: That would be ideal.

12 THE COURT: Ideal? I like ideal. Would you like
13 to take a comfort break?

14 DR. CAPLAN: I'm fine, thanks.

15 THE COURT: That's what they call it in Beaufort
16 County, call it a comfort break. And I take it with me
17 all over South Carolina.

18 OFF THE RECORD.

19 BACK ON THE RECORD 3:35 P.M.

20 BY THE COURT:

21 THE COURT: We simply are where we are. That's one
22 question. It's an objection. It's been sustained.

23 MR. HOYLE: Thank you, Judge. I respect that.

24 THE COURT: Everybody clear about that? Yeah.
25 Okay. Great.

1 BAILIFF: You ready, your Honor?

2 THE COURT: I am ready.

3 JURORS ENTER COURTROOM 3:37 P.M.

4 BAILIFF: The jury is seated, your Honor.

5 BY THE COURT:

6 THE COURT: Thank you so much. All right. You may
7 proceed.

8 DR. MICHAEL JEFFREY CAPLAN

9 CONTINUE DIRECT EXAMINATION, BY MR. HOYLE:

10 Q Doctor, now that the jury is come back to the
11 courtroom, I just want to ask a few additional
12 questions, and then, allow Mr. Lovell to cross-examine
13 you.

14 Doctor, you traveled a long way to be here. You've
15 been a forensic pathologist for a good long while. As
16 you sit here today, as a board-certified, forensic
17 pathologist, who did the autopsy on Justin Nicholas
18 Miller the day after he died, do you have an opinion, to
19 a reasonable degree of medical certainty, under the
20 more-likely-than-not standard, one way or the other, as
21 to whether or not Justin Nicholas Miller experienced
22 conscious pain and suffering prior to death?

23 MR. LOVELL: Objection. Speculation.

24 THE COURT: Sustained.

25 BY MR. HOYLE:

1 Q Doctor, as you sit here today, I believe you may
2 have already told us this, as you sit here today, as a
3 board-certified, forensic pathologist who conducted the
4 autopsy on Justin Nicholas Miller, do you have an
5 opinion of reasonable medical certainty, under the more-
6 likely-than-not standard, as to whether or not Justin
7 Nicholas Miller was conscious for some period of time,
8 following initial impact?

9 MR. LOVELL: Objection. Asked and answered.
10 Speculation.

11 THE COURT: Not sustained on speculation. It has
12 been asked and answered, but I'll allow him to answer.
13 You may proceed.

14 BY MR. HOYLE:

15 A Yes, I do.

16 Q And what is that opinion, Doctor?

17 A That he was, in my opinion, and more likely than
18 not, that he was conscious for a very, very, very short
19 period of time.

20 MR. HOYLE: Doctor, those are all the questions
21 that I have. Please answer any questions that Mr.
22 Lovell has.

23 THE COURT: Cross-examination.

24 DR. MICHAEL JEFFREY CAPLAN

25 CROSS-EXAMINATION, BY MR. LOVELL:

1 Q Hi, Doctor. We meet again for the second time
2 today, but this is the first time I think we've met.

3 A A very, very, very short period of time. I think
4 another time you used the word *infinitesimal*. You're
5 talking milliseconds, right?

6 A That's correct.

7 Q So, if I had a stopwatch, I couldn't even click it
8 fast enough to show that, right?

9 A That's probably correct.

10 Q Brainstem is completely avulsed at the
11 pontomesencephalic junction, pons, and mid-brain.
12 That's in your autopsy report, right?

13 A Yes, it is.

14 Q And that's a part of the brain that's the
15 brainstem, that's right here. It sort of connects the
16 brain and the spinal court.

17 A Yes. I had testified to that.

18 Q And once that's avulsed, there's no signals going
19 from anywhere below that area to the brain, right?

20 A That's correct.

21 MR. LOVELL: Thank you, sir.

22 THE COURT: That concludes --

23 MR. LOVELL: I'm sorry. Yes, your Honor. I did
24 not mean to turn my back, your Honor.

25 THE COURT: That's okay. I just needed to know if

1 you were finished. All right. Re-direct?

2 MR. HOYLE: No re-direct from the Plaintiff, your
3 Honor.

4 THE COURT: Is this witness free to leave?

5 MR. HOYLE: He is excused for the Plaintiff.

6 THE COURT: Any objection?

7 MR. LOVELL: No.

8 THE COURT: Very well. Doctor, you are free to go.
9 Thank you.

10 Call your next witness, please.

11 MR. HOYLE: Your Honor, while the next witness is
12 approached, you asked me a question earlier. If Counsel
13 and I may briefly approach?

14 THE COURT: Sure.

15 OFF-THE-RECORD BENCH CONFERENCE, OUT
16 OF HEARING OF JURORS. PRESENT: THE
17 COURT, MR. HOYLE, MR. LOVELL.

18 THE COURT: Ready, set, go.

19 MS. LEYIMU: May it please the Court?

20 THE COURT: Yes.

21 MS. LEYIMU: Plaintiffs call our next witness, Ms.
22 Melanie Smith.

23 MADAM CLERK: Ms. Smith. Put your left hand on the
24 Bible, and raise your right. Do you solemnly swear or
25 affirm that the testimony you're about to give in this

1 matter is the truth, the whole truth, and nothing but
2 the truth, so help you God?

3 MELANIE SMITH: I do.

4 MADAM CLERK: Good. Have a seat here. Tell us
5 your name, and also, spell your name.

6 MELANIE SMITH: Okay. My name is Melanie Smith,
7 M/e/l/a/n/i/e. S/m/i/t/h.

8 MELANIE SMITH

9 DIRECT EXAMINATION, BY MS. LEYIMU:

10 Q It's afternoon, I suppose, now, Ms. Smith..

11 A Yes. Yes.

12 Q Could you tell us where you live.

13 A I live in Beaufort.

14 Q And could you tell us where you work.

15 A I work for the Beaufort County Sheriff's Office 911
16 Dispatch Center.

17 Q Okay. And how long have you worked for the
18 Beaufort County --

19 A Dispatch Center?

20 Q Dispatch Center?

21 A Seventeen years.

22 Q Okay. And what are your duties now, or what's your
23 job title?

24 A My job title now is, I'm the E-91 -- E-911 training
25 coordinator, so I do the training for the dispatchers.

1 Q And how long have you worked in this sort of
2 section or division?

3 A That, I have been doing for a year now.

4 Q And prior to that, what was your job role?

5 A My job role was E-911 records custodian.

6 Q And was that your job role on February 24, 2012?

7 A Yes.

8 Q Okay. And what did your duties include on February
9 24, 2012?

10 A The majority of it was, I would respond to requests
11 for either written reports or audio requests from the
12 911 center, and that includes phone calls and radio
13 transmission requests.

14 Q Okay. And this might be a sort of basic question,
15 but what is 911?

16 A 911 is the public safety, basically, answering
17 point. We answer emergency and non-emergency calls for
18 all of the county.

19 Q And when someone calls 911 from a telephone in
20 Beaufort County, where does that call go?

21 A It goes to the phone system, and then, it's
22 automatically routed, depending on where the call is
23 coming from, to our center, and it's -- it just comes
24 right in to us.

25 Q And what happens when it comes into the call

1 center?

2 A When it comes into the call center, it goes through
3 a 911 trunk line, and then, it hits our recording
4 system. We have a digital recording system, so it's
5 automatically recorded before it gets to the dispatcher,
6 who picks up the phone.

7 Q Okay. And what sort of actions do your dispatchers
8 take when someone calls 911?

9 A They promptly answer the phone. They process the
10 call. They find out the -- the problem, the main
11 complaint, the location. They put that information into
12 our CAD system. And CAD stands for Computer Aided
13 Dispatch, and that's how they keep track of everything.
14 And then, they dispatch appropriate response.

15 Q And are all of these sort of 911 telephone calls
16 that come into the call center that you've described for
17 us recorded?

18 A Yes, ma'am. Everything's recorded, anything
19 incoming our outgoing from the center.

20 Q And is it automatically recorded?

21 A Yes, ma'am.

22 Q So, in its original form, could it be altered in
23 any way?

24 A No.

25 Q And is it in the regular practice of the Beaufort

1 County Sheriff's Office to make these recordings, these
2 911 dispatches?

3 A Yes.

4 Q And that's in the regular course of your business?

5 A Yes.

6 Q And are these kept within the regular course of
7 your business, as well?

8 A Yes.

9 Q Was it the regular course of your business on
10 February 24, 2012, to do the same?

11 A Correct.

12 Q To record these automatic 911 dispatch calls?

13 A Yes.

14 MS. LEYIMU: Your Honor, may I approach the
15 witness?

16 THE COURT: You may.

17 BY MS. LEYIMU:

18 Q Ms. Smith, I am showing you now what has been
19 marked for identification purposes as Plaintiff's
20 Exhibit 1.

21 A Okay.

22 Q Do you recognize that?

23 A Yes.

24 Q And could you tell us what that tape is.

25 A It's a disc of the 911 calls that occurred on

1 February 24, 2012, concerning the -- Kevin -- I'm sorry,
2 Calvin Hunt case.

3 Q And did you listen to the recordings on that day,
4 February 24, 2012?

5 A Yes.

6 Q In their entirety?

7 A Yes.

8 Q Is this a true and accurate copy of the tapes from
9 that day?

10 A Yes, of the recordings.

11 Q Of the recordings. Okay. And one more thing about
12 these tapes, are they recorded in a sequential manner?

13 A Correct. They come in -- whatever time frame they
14 came -- come in, that's how they're recorded. So, if --

15 Q Could you tell us -- okay.

16 A So, -- because sometimes, we'll get a call right on
17 top of a call. Of course, you don't have a call; and
18 then, finish the call; and the next call comes in. The
19 recorder looks at the time the call comes in, and
20 whatever call comes first, that's the one it records
21 first. So.

22 Q Okay.

23 MS. LEYIMU: And your Honor, may I approach the
24 Bench, please?

25 THE COURT: Sure.

1 MS. LEYIMU: Thank you.

2 ON-THE-RECORD BENCH CONFERENCE, OUT
3 OF HEARING OF JURORS. PRESENT: THE
4 COURT, MS. LEYIMU, MR. HOYLE, MR.
5 LOVELL, MR. MACKELCAN.

6 MS. LEYIMU: We have the redacted version of the
7 call as we talked about, without the jury's presence.
8 And so, I just wanted to make sure I was entering --

9 THE COURT: This is what you're going to do.

10 MS. LEYIMU: Sure.

11 THE COURT: You will admit the one that she has
12 authenticated.

13 MS. LEYIMU: Okay.

14 THE COURT: That will be the Court's Exhibit. And
15 you will play the redacted one.

16 MS. LEYIMU: Understood.

17 MR. HOYLE: And we need to mark that for
18 identification.

19 THE COURT: Precisely. You'll mark both of them.
20 So, you mark the original, and she's identified the
21 original.

22 MS. LEYIMU: Yes, ma'am.

23 THE COURT: And then, what you'll do is, you will
24 play the one you'll play, and then, that will be marked
25 for the next number.

1 MS. LEYIMU: Great.

2 THE COURT: Okay?

3 MS. LEYIMU: Thank you.

4 THE COURT: And --

5 COURT REPORTER: We mark the redacted Court's --

6 no, we mark the original Court's 1; and the redacted,

7 Plaintiff's 1.

8 MR. HOYLE: Okay.

9 THE COURT: Perfect.

10 MR. HOYLE: Perfect.

11 THE COURT: You're so good. I think you should put

12 in for a raise.

13 MR. HOYLE: Does she need to do anything else with

14 the CAD sheet?

15 THE COURT: Now, the CAD sheet, where is -- what's

16 happened with the CAD sheet?

17 MS. LEYIMU: She brought -- she brought the CAD

18 sheet.

19 THE COURT: Yes, you need to put the CAD sheet in.

20 Go ahead and say, have you also brought a sheet called

21 the CAD. You've talked about what that is. Have you

22 brought the CAD sheet. And go ahead and get that

23 marked.

24 MS. LEYIMU: Okay.

25 THE COURT: Okay? Maybe -- and we'll call that

1 Plaintiff's 1-A.

2 MS. LEYIMU: Okay.

3 THE COURT: Okay?

4 MR. LOVELL: May we approach, your Honor?

5 THE COURT: Yes. The reason that we do it that
6 way, so, if it's Court, it won't go back to the jury.

7 END BENCH CONFERENCE.

8 BY MS. LEYIMU:

9 MS. LEYIMU: At this time, Plaintiffs move to offer
10 Court's 1 into evidence.

11 THE COURT: Yes. I won't go into evidence, but it
12 is marked as Court's 1.

13 MS. LEYIMU: Yes, your Honor.

14 THE COURT: Okay. This is now the Court's 1.

15 MS. LEYIMU: It is now the Court's 1? Thank you.

16 THE COURT: Just give it to Wanda. Perfect.

17 Perfect.

18 MS. LEYIMU: Thank you.

19 THE COURT: All right. Yes. And I believe you
20 also have now Plaintiff 1, correct?

21 MS. LEYIMU: We do, Plaintiff's 1. I took it up
22 here with me.

23 THE COURT: It may be in the machine, correct? It
24 may -- oh, you already have the --

25 MS. LEYIMU: I do.

1 THE COURT: Yes. Mark this. I don't know if it's
2 been marked. We'll mark that one as the Plaintiff's,
3 yes.

4 MS. LEYIMU: You'll mark, okay, mark this as
5 Plaintiff's 1, please.

6 THE COURT: Got it. Great. Very well.

7 ITEM IDENTIFIED AS REDACTED C.D. OF
8 AUDIO RECORDING OF 911 CALLS
9 MARKED PLAINTIFF'S EXHIBIT NUMBER 1
10 ADMITTED AS EVIDENCE.

11 ITEM IDENTIFIED AS UNREDACTED C.D.
12 OF AUDIO RECORDING OF 911 CALLS
13 MARKED COURT'S EXHIBIT NUMBER 1
14 RECEIVED BY THE COURT.

15 ITEM IDENTIFIED AS CAD SHEET
16 MARKED PLAINTIFF'S EXHIBIT NUMBER 1-A,
17 ADMITTED AS EVIDENCE.

18 BY MS. LEYIMU:

19 Q And Ms. Smith, I saw up there that you had with you
20 a series of papers.

21 MS. LEYIMU: Your Honor, may I approach the
22 witness?

23 THE COURT: You may.

24 BY MS. LEYIMU:

25 Q Now, you talked about a system called C.A.D., I

1 believe?

2 A Correct.

3 Q Could you, sort of, explain that to me and the
4 jury, please.

5 A Yes. CAD stands for Computer Aided Dispatch, and
6 it's the computer program that we use to basically
7 record everything. So, when a 911 call or a non-
8 emergency call comes in, the dispatcher will type in the
9 CAD; the -- like I said, the location of the call;
10 what's going on; the caller's name; the caller's phone
11 number; any remarks that a caller will say. That's all
12 time/date stamped. And then, the system will send it to
13 the appropriate dispatcher, depending on, like I said,
14 the call nature and the location of the call. And as
15 she dispatches response unit, she then types in her
16 actions; the officers' actions or the fire actions. And
17 then, we can run reports from that. And everything's
18 time/date stamped when it's entered into the system.

19 Q Okay. Great. I was just going to get to that.

20 A Okay.

21 Q So, the time/date stamp, now, does that correlate
22 with the video -- or the -- I'm sorry -- audio recording
23 of the 911 tape?

24 A It runs around the same time. It's -- this is all
25 manually entered, so as soon as the dispatcher -- it's

1 not as soon as she picks up the phone. The system
2 doesn't time/date stamp on the CAD report. The
3 dispatcher will enter the call, and that's when it's
4 time/date stamped, but normally, it run seconds apart.

5 Q Thank you.

6 MS. LEYIMU: Please mark this as Plaintiff's 1-A,
7 please.

8 And your Honor, at this time, Plaintiffs wish to
9 offer Plaintiff's Exhibit 1-A [sic] into evidence.

10 THE COURT: Any objection?

11 MR. MACKELCAN: No objection.

12 THE COURT: Very well.

13 ITEM IDENTIFIED AS REDACTED C.D.

14 AUDIO OF 911 RECORDINGS

15 MARKED PLAINTIFF'S EXHIBIT NUMBER 1,

16 ADMITTED AS EVIDENCE.

17 MS. LEYIMU: Your Honor, Plaintiffs now request
18 that Plaintiff's 1 be published.

19 THE COURT: It's going to be Plaintiff's 1.

20 MS. LEYIMU: No, just Plaintiff's 1.

21 THE COURT: Plaintiff's 1.

22 MS. LEYIMU: Plaintiff's 1.

23 THE COURT: With a pause.

24 MS. LEYIMU: That's right.

25 THE COURT: Be published to the jury.

1 MS. LEYIMU: Be published to the jury.

2 THE COURT: Any objection?

3 MR. LOVELL: None.

4 MR. MACKELCAN: None.

5 THE COURT: Very well. All right.

6 PLAINTIFF'S EXHIBIT NUMBER 1,

7 REDACTED C.D. AUDIO OF 911

8 RECORDING PLAYING.

9 END PLAYING PLAINTIFF'S EXHIBIT

10 NUMBER 1, REDACTED C.D. AUDIO

11 OF 911 RECORDING.

12 BY MS. LEYIMU:

13 BY MS. LEYIMU:

14 Q Okay. Ms. Smith, we've talked about the reports.

15 When was it the first call me in?

16 A I would have to look at the report. I don't know,
17 right off the top of my head.

18 Q All right. I'll get it for you.

19 THE COURT: And for our record, can you tell us the
20 exhibit you're reviewing.

21 A Yes, this is Plaintiff, P.L., Plaintiff 1-F -- or

22 A. Sorry. Looks like it came in 16 -- or 1609, which
23 is 4:09 p.m.

24 Q And could you tell us when the last call came in.

25 A The last call, that one came in at 1617, or 4:17

1 p.m..

2 Q Thank you for being here today with us, Ms. Smith.

3 A Okay.

4 MS. LEYIMU: Your Honor, I have no further
5 questions.

6 THE COURT: Cross-examination.

7 MELANIE SMITH

8 CROSS-EXAMINATION, BY MR. MACKELCAN:

9 Q Good afternoon, Ms. Smith.

10 A Hello.

11 Q Just a few questions. How many people work in the
12 call center?

13 A It varies. We are supposed to have a staff of 48,
14 so it depends on --

15 Q Is that 48 actual dispatchers?

16 A It's 12 per shift, but 48 total. So, 12 on a
17 shift.

18 Q Okay. So, at any given time, there should be 12
19 dispatchers at the call center.

20 A Correct.

21 Q Actually picking up the phone, talking to people.

22 A Correct.

23 Q Okay. How close do those 12 people sit to each
24 other?

25 A Roughly in a space that is probably this carpeted

1 area, and where the jury's sitting.

2 Q You were describing entry into the computer system
3 also talking to people. How does that work, in terms --
4 are they entering things in the computer while they're
5 talking to people?

6 A Correct.

7 Q Okay. Is it automatic that the police or fire are
8 dispatched when they enter it into the computer?

9 A Yes.

10 Q So, they don't have to make another call for that.

11 A No.

12 Q But you did say it was automatic, so when they put
13 it in the computer, whoever goes where they go.

14 A Right. When a dis -- when a call taker takes the
15 call, she determines the nature of the call. So, prime
16 examples of this would be, with the accident, if it was
17 an accident with injury, you put in the nature. So, it
18 would be accident with injury. You put the location.

19 The computer-aided dispatch is programmed to look at
20 what type of call and where the location is, and it
21 automatically goes to the department. And the
22 dispatcher that's working that radio will see it on
23 their screen, and dispatch response units to that call.
24 Does that clarify it more? Yeah.

25 Q Well, does it say on this CAD where they're

1 dispatched to?

2 A They're dispatched to the incident location that
3 was put in.

4 Q So, for the first call, for example, off -- M.A.
5 Merced, I believe, is how he introduced himself; he was
6 calling the Naval Hospital, Beaufort. So, they would be
7 dispatched to the Naval Hospital, Beaufort?

8 A Correct.

9 Q Even though he had told him that Calvin Hunt was
10 already gone?

11 A They would be dispatched and be in the area
12 looking. They'd be -- basically said the location of
13 the incident was at the Naval Hospital, and the subject
14 was in the area. Now, where the responders respond to
15 is up to the responder.

16 Q Would the same be true for Ms. Edward's call, the
17 second call? She was calling from the Laurel Hill
18 Apartments. Would the dispatch send the police or fire,
19 ambulance to the Laurel Hill Apartments?

20 A Correct.

21 Q When the call center folks are working together, is
22 there any communication among the two of them, or are
23 they sort of each with headphones and operating in a
24 vacuum?

25 A No, they're all in the same center, communicating,

1 via the information in the CAD. And as you can tell on
2 the recording, yelling across the room to each other.

3 Q If we look at the first page of this CAD, is the
4 time that you gave, 4:09, is that on that page?

5 A Actually, I don't have that call that you have in
6 your hand. I don't have that in this pack.

7 Q What are you looking at?

8 A You said you had one that says, Officer Merced.

9 MR. MACKELCAN: May I approach the witness?

10 THE COURT: Sure.

11 A Sorry.

12 MR. MACKELCAN: Make sure we're looking at the same
13 thing.

14 BY MR. MACKELCAN:

15 A Yeah. Yeah, the first I have is the Monique
16 Edwards call. Sorry.

17 MR. MACKELCAN: Your Honor, can we approach?

18 O-THE-RECORD BENCH CONFERENCE, OUT
19 OF HEARING OF JURORS. PRESENT: THE
20 COURT, MR. HOYLE MS. LEYIMU, MR.
21 MACKELCAN.

22 BY THE COURT:

23 MR. MACKELCAN: So, your Honor, I was given a
24 three-page document when she first took the stand. It
25 only has Merced on it. And when I approached the Bench,

1 she has Monique Edwards, but she also has a stack of CAD
2 papers. So, I think we're talking about two different
3 things.

4 MR. HOYLE: I apologize, your Honor. It's
5 completely my mistake. I was told that -- it was my
6 understanding that, that was a copy to give to Mr.
7 Mackelcan, and that's what I gave him. I did not
8 realize it was out of the original set.

9 THE COURT: Okay. What you want to do? You don't
10 have the exhibit.

11 MR. MACKELCAN: I don't have the exhibit. I'd like
12 a chance to look at the exhibit.

13 THE COURT: I'm not so sure she has the exhibit.

14 MR. MACKELCAN: I don't know what is -- is this the
15 exhibit?

16 THE COURT: I don't know. I don't think so. I
17 think yours might be more extensive than what she's got.
18 Uh, hmm, well.

19 END BENCH CONFERENCE.

20 THE COURT: Ladies and gentlemen, we're going to
21 need to take a very short break. Step to your jury
22 room. Do not discuss this matter. Do not allow anyone
23 to discuss it with you. Got a little sorting out, a
24 little bit of paperwork to do. We won't be long.

25 JURORS LEAVE COURTROOM 4:16 P.M.

1 CONTINUE BENCH CONFERENCE.

2 THE COURT: Now, you all can figure it out.

3 MR. HOYLE: Yes, Judge.

4 THE COURT: I'm concerned that -- I'm concerned she
5 doesn't have the first call, and then, she has the
6 exhibit.

7 MR. HOYLE: I think that's accurate.

8 THE COURT: And you have the first call.

9 MR. MACKELCAN: And nothing else.

10 THE COURT: Oh, my. I detect a bit of a snarl.
11 You all can figure it out.

12 MR. HOYLE: We'll go figure it out and solve it.

13 THE COURT: Yes. Thank you.

14 END BENCH CONFERENCE.

15 OFF THE RECORD 4:17 P.M.

16 BACK ON THE RECORD 4:35 P.M.

17 BY THE COURT:

18 THE COURT: I just want to be clear that Exhibit 1
19 is the original tape that was offered into evidence, to
20 which there were objections. Some of which, not all,
21 but some of which I sustained. And from my ruling,
22 there was a redacted tape that was entered as 1-A. And
23 I just wanted to --

24 COURT REPORTER: No. No, not --

25 THE COURT: No? That was Plaintiff's Exhibit 1.

1 The original tape was the Court's Exhibit 1. So, for
2 appellate purposes, it is part of the record. The
3 redacted version, which was played to the jury, is the
4 Plaintiff's Exhibit 1. And the CAD is Plaintiff's
5 Exhibit 1-A. I just wanted the record to be clear.
6 Does the Plaintiff agree that, that's correct, accurate?
7 Yes?

8 MS. LEYIMU: Yes, your Honor. Yes, your Honor.

9 THE COURT: And that's correct?

10 MR. MACKELCAN: Yes.

11 THE COURT: Okay, you agree, too. Now, have you
12 had an opportunity to review --

13 MR. MACKELCAN: I haven't seen it yet.

14 MR. HOYLE: The copies are still being made, your
15 Honor.

16 MR. MACKELCAN: The good news is, I don't have any
17 questions.

18 THE COURT: I'm sorry?

19 MR. MACKELCAN: I said, the good news is, I don't
20 have any questions for the witness.

21 THE COURT: Okay. Heaven forbid I should be
22 encouraging you to have questions. Okay. Wonderful.
23 So then, I can't release you until we get the exhibit,
24 in case there's a hiccup with that. But you might be
25 wanting to get your next witness ready.

1 MR. HOYLE: Your Honor, the next witness is going
2 to be played by videotape. It's a lady by the name of
3 Koren Pope. I do not believe there is any dispute as to
4 the page and lines for that deposition.

5 THE COURT: Okay.

6 MR. HOYLE: But I believe, once we play Ms. Pope,
7 we will be at a point where we'll have to discuss some
8 page and line issues for any further witnesses.

9 THE COURT: Did I hear -- I heard a harrumph? Was
10 that an inadvertent harrumph, maybe?

11 MR. LOVELL: I was looking at -- I think it -- give
12 me one minute, Judge. By the time they get all that
13 done, I'll have looked through this, and I can probably
14 say it's okay.

15 THE COURT: Not a problem at all.

16 MR. HOYLE: Judge, I think everyone in this room
17 knows the logistics sometimes are the hardest part of
18 trial.

19 THE COURT: I agree. I absolutely agree.

20 MR. HOYLE: Your Honor, for planning purposes --
21 and Mr. Knowles, I think, is trying to encourage the
22 copier that we brought with us and putting that little
23 ring faster than it might be capable of doing.

24 This next witness we're going to play by videotape.
25 I believe it's 20 minutes?

1 MR. KNOWLES: Twenty-six minutes.

2 MR. HOYLE: Twenty-six minutes, I'm told. The next
3 logical witness that we would play by videotape is in
4 excess of an hour. So, this, once we've played Ms.
5 Koren Pope's videotaped deposition, once Mr. Lovell --

6 MR. LOVELL: It is good.

7 MR. HOYLE: He says it's good.

8 THE COURT: Do we have any retract of our harrumph?

9 MR. LOVELL: I did. I apologize, your Honor.

10 THE COURT: That is absolutely not a problem.

11 MR. HOYLE: Then, I think we might be at a logical
12 stopping place.

13 THE COURT: I think you probably are. Now, you
14 want your harrumph back?

15 MR. LOVELL: No, there's no problem.

16 THE COURT: Okay.

17 MR. LOVELL: Just thinking that makes me go
18 harrumph.

19 MR. HOYLE: I hear beeping from the anteroom. I
20 hope that --

21 COURT REPORTER: I hear beeping, too. And I think
22 it's --

23 THE COURT: Well, I think -- this is what I think.
24 Because -- here's what we can do. Let's do this. Let's
25 do this. We've messed up your whole day, anyway, right?

1 MELANIE SMITH: I'm used to it.

2 THE COURT: You're so kind.

3 MELANIE SMITH: I've been doing this for how long
4 now?

5 THE COURT: I know you are, but typically not
6 civilly. On the criminal side.

7 MELANIE SMITH: I know. I was, like. I was, like,
8 oh, something new.

9 THE COURT: It really is. It really is. So, since
10 -- could we do this? Could we let the copies be made,
11 go ahead and play the tape. We'll pardon Ms. Smith to
12 stay here with us, in the event she's needed. And then,
13 whenever the copies are ready, you'll have the copies,
14 because you've already -- you already know what's going
15 to be on the tape. So, you can look at copies. And
16 then, if Ms. Smith is needed, she'll be here.

17 MR. MACKELCAN: Okay.

18 THE COURT: And then, you can question her at that
19 point. Is that okay?

20 MR. MACKELCAN: That's great. That's great. Yes,
21 that's perfect. Thank you.

22 THE COURT: Does that work?

23 MR. LOVELL: Yeah, that's great.

24 THE COURT: All right. Thank you for being so
25 kind. I'd like to have the option, but I don't. So,

1 you go and have a seat.

2 MELANIE SMITH: Okay.

3 THE COURT: Get comfy. And we'll have the jury, I
4 guess, when you're ready to fire up.

5 MELANIE SMITH: So, I stay here, or I can go out?

6 THE COURT: When you're ready to fire, as well. I
7 mean fire up the tape.

8 MR. HOYLE: John needs just a moment. And then,
9 your Honor, will you explain the logistical issue with
10 the -- not in detail, but the -- why this witness is --

11 THE COURT: I will.

12 MR. HOYLE: Okay.

13 THE COURT: And hopefully, I'll do it halfway
14 decent.

15 MR. HOYLE: May I approach, your Honor? I want to
16 return one of your cat toys.

17 THE COURT: Yes.

18 JURORS ENTER COURTROOM 4:35 P.M.

19 BAILIFF: The jury is seated, your Honor.

20 THE COURT: Ladies and gentlemen, let me tell you
21 what we're doing. We were needing to work on some
22 documents. Here's what I'm going to do. We're going to
23 still work on those documents, and Ms. Smith's been kind
24 enough -- she's going to stay with us, while we just
25 work through those documents, to see if there are any

1 additional questions of her, which there may be.

2 But while we're doing that, we wanted to continue
3 to work. And so, we are going to call the next witness,
4 which I understand is a witness who is called by
5 videotape, and we're going to do that now, while they
6 continue to work, we continue to work through the
7 documents. You all can continue to listen to testimony.
8 And as I understand, you are going to call this next
9 witness by video?

10 MR. HOYLE: Yes, your Honor. Mr. Knowles is
11 working to queue this up.

12 THE COURT: While he's doing this, I want to
13 explain to the jury what they'll be seeing.

14 MR. HOYLE: Thank you, your Honor.

15 THE COURT: Ladies and gentlemen, this is a de bene
16 esse deposition. Or is it discovery?

17 MR. HOYLE: Your Honor, it was a deposition taken
18 for all purposes under the rules and the parties have
19 agreed that this witness is unavailable, pursuant to
20 Rule 32 of the *South Carolina Rules of Civil Procedure*.

21 THE COURT: Yes. Yes. Ladies and gentlemen, there
22 is a process that occurs during a period of time called
23 the discovery. It happens after the filing of a summons
24 and complaint and a responsive answer, and the period is
25 called the period of discovery. It allows both sides to

1 discover the claim and the defenses. During that period
2 of time, lawyers can ask questions such as, who do you
3 believe your witnesses will be, to what do you believe
4 that they will say. And then, the lawyers are given an
5 opportunity to depose, is the term, to depose witnesses.
6 And what typically happens is that, the lawyers will
7 gather in one office or another office. Sometimes, if
8 it's a healthcare professional, maybe their office. And
9 a court reporter, very much like Ms. Rowe here, will be
10 present. That court reporter will place that witness
11 under oath, and the lawyers are given an opportunity to
12 ask questions of the witness, and to receive those
13 answers.

14 And under our rules, there are certain instances
15 when those depositions may be played for the jury.
16 Depositions can be in writing, solely. This is a
17 deposition that is solely in writing. They can be in
18 writing, and also, be videotaped. And what I understand
19 you are about to see is that, you are about to see a
20 videotaped deposition.

21 What's important for you to know is that the
22 witness is placed under oath, and that person is under
23 oath, same as someone is under oath here in the
24 courtroom. So, what you are about to see is sworn
25 testimony. Any objections or additions to my

1 explanation to the jury?

2 MR. HOYLE: No objections, your Honor.

3 THE COURT: Okay.

4 MR. MACKELCAN: No, your Honor.

5 THE COURT: Very well. And if you'd introduce who
6 this is the video deposition of and the witness who is.

7 MR. HOYLE: Your Honor, at this time, Plaintiffs
8 call, by videotape, Koren Pope.

9 THE COURT: Koren Pope. Great.

10 DVD OF VIDEOTAPED DEPOSITION

11 OF KOREN POPE PLAYING.

12 END PLAYING DVD OF VIDEOTAPED

13 DEPOSITION OF KOREN POPE.

14 ITEM IDENTIFIED AS DVD OF

15 VIDEOTAPED DEPOSITION OF KOREN POPE

16 MARKED COURT'S EXHIBIT NUMBER 3

17 RECEIVED BY THE COURT.

18 ITEM IDENTIFIED AS CLIP SHEET TO

19 9-8-14 KOREN POPE DEPOSITION

20 MARKED COURT'S EXHIBIT NUMBER 2

21 RECEIVED BY THE COURT.

22 MR. HOYLE: That ends the testimony, your Honor.

23 THE COURT: All right. Very well. Now, with
24 regards to the exhibit, Mr. Mackelcan, have you had a
25 chance now to look at it?

1 MR. MACKELCAN: I have, your Honor, and I believe
2 all my questions were answered by the document. So, I
3 have no further questions for the witness.

4 THE COURT: Very well. And is Ms. Smith then free
5 to go?

6 MS. LEYIMU: Yes, your Honor.

7 THE COURT: Any objection?

8 MR. MACKELCAN: No, your Honor.

9 THE COURT: Very well. You are free to go, and
10 thank you very much. All right.

11 Ladies and gentlemen, that will conclude the work
12 that we're going to do today. I'm going to ask you to
13 please leave your notebooks in your seat, and we will
14 collect them, and we will guard them over the evening.

15 Again, when you go home this evening, be mindful
16 that you must not discuss this matter. You must not let
17 anyone discuss it with you. And if the curiosity is
18 heightened, remember to put it on the judge. Don't you
19 let anybody get upset with you. I don't want you going
20 to work this evening. I need you to rest this evening,
21 again. And if your employer develops concern, please
22 get me a number, and I'm happy -- and a name -- and I'm
23 happy to speak to that person on your behalf. I need
24 you rested for tomorrow.

25 Ladies and gentlemen, we are going to begin in the

1 morning at 9:30. 9:30. And remember to leave your cell
2 phone or other communication devices away from the
3 courthouse tomorrow. If you forget, our bailiffs will
4 keep it for you.

5 Remember not to do any sort of investigation.
6 There may be some publicity about this matter, so please
7 be on the lookout, so that you do not read anything or
8 listen to anything about this matter on the radio, on
9 the television, or on the Internet.

10 You must receive all of the information from which
11 you will make up your minds here, while court is in
12 session.

13 And have a very pleasant evening. I'll see you in
14 the morning at 9:30.

15 JURORS LEAVE COURTROOM 5:07 P.M.

16 BAILIFF: Jury is clear, your Honor.

17 THE COURT: Thank you. Now, you have depositions
18 for which you have objections?

19 MR. LOVELL: Yes, your Honor. We did have some.

20 THE COURT: Great. I think what's appropriate is
21 -- have you got them just right, the ones you object to?

22 MR. HOYLE: Yes, your Honor.

23 THE COURT: Yeah? You all are so good. Well, the
24 best thing to do is just let me have them.

25 MR. HOYLE: Okay.

1 THE COURT: And let me do a review, and --

2 MR. LOVELL: This is just our objections. Judge,
3 our objections were combined with our line and page
4 designations, but our objections are in there, and I
5 think we've quoted the testimony that's relevant.

6 THE COURT: Okay.

7 MR. LOVELL: And then, the reason for the
8 objection, 403 or -- this is an ordinary case, a
9 standard ordinary care case, and this is the
10 professional testimony, et cetera, et cetera.

11 THE COURT: Okay.

12 MR. LOVELL: It's all kind of outlined in there.

13 THE COURT: I gotcha. So, where will I find the
14 objections?

15 MR. LOVELL: The way it's set up, Judge, is, it
16 will start with the evidence.

17 THE COURT: Okay.

18 MR. LOVELL: And then, the testimony we object to,
19 which is kind of level, and you don't have to go back to
20 the depo, but it runs, you know, it falls with the
21 objection. And then, you will go to the next testimony.

22 COURT REPORTER: I'm sorry. I can't hear.

23 MR. LOVELL: And then, it follows. That's a long
24 one, a really long one. Must be one big -- oh, I know,
25 that was -- yeah. And it does have an objection there

1 on -- but it encompasses everything, mine and -- the
2 main thing is, it's the very beginning.

3 THE COURT: Is this all the depositions, or just
4 one?

5 MR. LOVELL: That's everything that the Plaintiffs
6 told us they were going to do, so that's all of them.

7 THE COURT: Okay. Great. Have you seen it?

8 MR. HOYLE: Yes, yes, they've got it. These are
9 our objections to the Defendant's designations, and our
10 counters, as well. And this is going to be the first
11 one that we'll try to play tomorrow, Judge.

12 THE COURT: Okay.

13 MR. HOYLE: This will be the easiest way to read.
14 I apologize. I don't have this with the other
15 depositions, but I think this will be the only one we'll
16 try to get in, in the morning. This has everything that
17 we designated and they designated, an hour and 23
18 minutes.

19 MR. LOVELL: And that's from only, I think, two
20 areas of objections from our side. There was just a
21 couple of them on this deposition, so hers is relatively
22 short.

23 THE COURT: Okay. So, why do I need this, if I've
24 got it already in here?

25 MR. LOVELL: Either, or.

1 MR. HOYLE: That's everything that has been
2 selected.

3 THE COURT: Got you.

4 MR. HOYLE: I don't know if that's easier or not,
5 Judge.

6 THE COURT: Okay. I'll figure it out.

7 MR. HOYLE: And how would you -- do you want us to
8 give you the remaining transcripts? Do you want us to
9 give you the remaining clip sheets for those depositions
10 past Ms. Smith?

11 THE COURT: Yes. That's just Ms. Smith. I thought
12 that was for everybody.

13 MR. LOVELL: Well, no. You've got all of our
14 objections for every deposition.

15 THE COURT: Got you.

16 MR. HOYLE: You don't have the entire transcript,
17 is what I'm saying. Do you not.

18 THE COURT: I don't want the whole thing. I don't
19 need the whole thing.

20 MR. LOVELL: Those certain parts are in one of
21 them.

22 THE COURT: Right. Exactly. If I need anymore,
23 you all let me know.

24 MR. HOYLE: Okay.

25 THE COURT: Does that work?

1 MR. HOYLE: Judge, that works.

2 THE COURT: Perfect.

3 MR. HOYLE: We'll bring you a stack of all the clip
4 sheets tomorrow for the other witnesses.

5 THE COURT: Oh, okay.

6 MR. HOYLE: But I do intend -- I would like for Ms.
7 Smith to be our first witness tomorrow, before we get
8 into other witnesses.

9 THE COURT: Correct. Sure, sure, sure, sure.

10 MR. HOYLE: I anticipate tomorrow there will be
11 three witnesses to follow her, for planning purposes?

12 THE COURT: Okay. Sure. Great. So, we'll start
13 at 9:00, and jury's coming at 9:30. So, you all be
14 ready to go. So, you all are ready to go.

15 MR. HOYLE: Thank you. Judge.

16 THE COURT: Now, I have a concern, and the concern
17 is, I am concerned about 1-A, because I want to be sure
18 that the first phone call that was testified to is
19 included in 1-A. So, will you all just check on that
20 this evening for me, just to be sure it's in.

21 MR. HOYLE: I will go look.

22 THE COURT: That would be perfect. And that's all
23 that I have. And I will see you all in the morning at
24 9:00, and thank you all so much.

25 MR. LOVELL: Thank you, Judge.

1 THE COURT: Great work.

2 END DAY TWO, WEDNESDAY,

3 OCTOBER 7, 2015, 5:12 P.M.

4 BEGIN DAY THREE, THURSDAY,

5 OCTOBER 8, 2015, 9:32 A.M.

6 OBJECTIONS AND RULINGS:

7 BAILIFF: All rise. This court is in session. The
8 Honorable Diane Goodstein presiding.

9 THE COURT: Yes. Thank you so much. Everyone
10 please be seated. All right. Now, we're two jurors
11 short, at this moment.

12 And I'm sure that you all had a few moments that
13 you all have met and conferred and have agreements about
14 all of the lines and pages, right? No. I'm so sad.
15 Okay. Not a problem.

16 Now, tell me, after the first deposition this
17 morning, you're going to have two live witnesses. And
18 then, who is the next deposition?

19 MR. HOYLE: This morning, we would like to begin by
20 playing the deposition of Saundra Smith.

21 THE COURT: There are no objections to Saundra
22 Smith, as I understand.

23 MR. LOVELL: We have two short ones.

24 THE COURT: Oh, two short ones. Okay. I thought

1 that -- okay. Well, let me take a look at Saundra
2 Smith. I remember that.

3 MR. LOVELL: They were on Pages 173, and the end of
4 175. And the first is Line 20.

5 THE COURT: Oh, okay.

6 MR. HOYLE: What pages, Gary?

7 MR. LOVELL: The first one started at 173, Line 20,
8 and ran through 174, Line 19.

9 THE COURT: Okay. Here it is. Okay. I do have
10 this one.

11 Okay. Right. Sir, I got your objection. Got it.
12 You don't think it's relevant information, relevant
13 testimony. All right. What about the first one as part
14 of the work-up on the patient?

15 MR. HOYLE: Yes. Good morning, your Honor.

16 THE COURT: Good morning.

17 MR. HOYLE: I would submit that, that information
18 is relevant. There's going to be testimony later,
19 hopefully, later today, from Dr. Jansen, that he
20 couldn't get a good history on this patient. It
21 certainly goes to this issue that Mr. Lovell raised in
22 his opening, that Calvin Hunt was calm, cool, and
23 collected, and this wasn't foreseeable. If you've got
24 someone who can't tell you what medication they're on,
25 they can't tell you all their problems, and a medical

1 provider just gives up, as opposed to looking at other
2 types of available information, we would submit that,
3 that is relevant, particularly to this case. I don't
4 think that, that's asking for any type of impermissible
5 opinion or anything of that sort in this testimony.

6 THE COURT: Let me ask you this question, Mr.
7 Hoyle. The jury is going to be asked to assess
8 carelessness in this case, negligence. And the act of
9 carelessness or negligence alleged by the Plaintiff,
10 articulate those.

11 MR. HOYLE: Oh, I think they're numerous, your
12 Honor. I think at a very 30,000-foot level, it's the
13 inability to supervise this patient, once a decision was
14 made that he needed to be admitted to a mental health
15 facility. But I also think, given that we have the
16 burden of proving that these were foreseeable acts,
17 there's information that comes right out of the Calvin
18 Hunt's medical records that goes to that foreseeability.
19 And I think with that, it's a knew-or-should-have-known
20 standard; that these medical providers could have looked
21 in Calvin Hunt's medical records, which he had with him
22 that day, and known that he had --

23 THE COURT: Stop.

24 MR. HOYLE: Yes, ma'am.

25 THE COURT: See, I don't know that.

1 MR. HOYLE: Okay. So, he came in with an-inch-and-
2 three-quarter stack of medical records. That's the
3 testimony, and in those medical records, there was
4 actually statements in there that he had persistent
5 thoughts, nightmares, and memories of his mother running
6 over his grandmother with an automobile when he was six
7 years old.

8 If foreseeability's an issue in this case, which I
9 think we all agree it is, I think that is certainly
10 relevant information that goes to that foreseeability.
11 And it goes to the heart of the case, because that
12 information was available, both on the computer and in
13 hard copy to persons at the Naval Hospital on this
14 particular day.

15 I think whether they looked or not, the witnesses
16 can tell us. But I think the -- whether others who were
17 involved in the sequence think they should have looked,
18 I think is also relevant.

19 THE COURT: Okay. Yes, sir.

20 MR. LOVELL: Your Honor, this case, as you pointed
21 out, is pled as an ordinary negligence case. This
22 testimony from this nurse goes specifically to standards
23 of care of nursing. The questions are asked, is it a
24 general rule of nursing and things like that. That goes
25 to a professional negligence standard, which is, at this

1 point, barred by the statute of limitations in this case
2 and the failure of the Plaintiffs to properly plead it.

3 Additionally, this is also personal preferences in
4 practices of an individual healthcare provider, which
5 have been deemed irrelevant. And I cited the case of
6 *Clark versus Ross* in that regard. So, this information
7 goes to a standard that's not in issue in this case.
8 Whether or not these records were available or not
9 available to the various healthcare providers is a fact
10 that can be elicited from those healthcare providers.
11 And if the Plaintiff brings witnesses in that can prove
12 what records were available to them, either
13 electronically, or, allegedly, in documentation brought,
14 that doesn't need to come out of these types of
15 witnesses. This would be speculation from this witness
16 as to what was actually available on the system to the
17 people in the E.R. at the time of this patient's care.

18 The standard in this case is what would an
19 ordinary, prudent person do, as the Plaintiff has chosen
20 to plead it.

21 THE COURT: Who is Saundra Smith?

22 MR. HOYLE: Saundra Smith is a registered nurse who
23 is a civilian employee of the Navy. She was the second
24 person at the Naval Hospital that Calvin Hunt saw. When
25 Calvin Hunt met with Ms. Smith, he began moaning,

1 rocking back and forth, and indicated he had thoughts of
2 hurting himself, and she is the one who took him to the
3 emergency room, as in her clinic, there was not a
4 licensed medical doctor present.

5 She met with him very, very briefly. But This
6 testimony -- I asked her is it important information to
7 have. Goes exactly to a factual issue. Is it
8 information you want; is it information you don't want.
9 And I think that the availability or desirability is
10 really a factual issue here. Again, going back to that
11 know-or-should-have-known standard, which is a part of
12 ordinary negligence. It's certainly a part of a case in
13 which negligence is pled, as well as part of a punitive
14 claim.

15 THE COURT: All right. Now, the case that you're
16 talking about, the Clark case, do you have it with you?

17 MR. LOVELL: Perhaps, your Honor. I will get you a
18 copy.

19 THE COURT: Okay.

20 MR. HOYLE: Your Honor, I have a copy, if you'd
21 like for me to hand it up.

22 THE COURT: Yeah. Let me look at that. Thank you.

23 MR. LOVELL: Your Honor, I believe the portion we
24 talked about is in part number 4 of that particular
25 opinion.

1 THE COURT: Okay. Have you got a page number that
2 you want to refer me to, just because --

3 MR. LOVELL: I'm sorry. It begins on Page 553, and
4 it runs over into the first part of 594.

5 THE COURT: Okay.

6 MR. LOVELL: Sorry, your Honor.

7 THE COURT: That is not a problem. Okay. And tell
8 me why you think this case has relevance.

9 MR. LOVELL: Well, your Honor, I think that goes to
10 show that the rule is the personal preference of an
11 individual healthcare provider. And of course, these
12 are all medical malpractice cases where the issue is
13 professional negligence.

14 THE COURT: Right.

15 MR. LOVELL: Don't set forth the standard of care,
16 necessarily. You have to talk about what would a
17 reasonably competent provider do under the circumstance.
18 That's not how this question's asked. It's like, what
19 would you do. Well, what I do or what some other nurse
20 does, it doesn't matter.

21 But the big picture on this, your Honor, is what
22 the Plaintiff is trying to do through this witness and a
23 whole bunch of others that we'll have for the following
24 rest of the day and tomorrow, who are healthcare
25 providers, is ask them what are the rules; what do

1 nurses do; what do doctors do; what do other healthcare
2 providers do under these circumstances. That's
3 professional negligence. That's not the case we've got
4 in front of us. So now, we're going to put in front of
5 a jury a standard that they're trying to elicit through
6 these witnesses that's not a standard that's applicable
7 in this case. So, this is irrelevant on the issue of
8 ordinary negligence.

9 It's highly prejudicial to my client to have these
10 witnesses giving their personal preferences, and I
11 suspect they're going to have an expert who is going to
12 come in and talk about standard of care and those
13 issues, to put that in front of the jury as the standard
14 by which they're to be judged, because that's not how
15 this case is pled.

16 We filed a motion to dismiss and summary judgment
17 on that. The judge said there may be issues of fact.
18 So, that's what we're here today to do.

19 But to allow this jury to hear testimony from
20 nurses, medical technicians, psychiatric technicians
21 about what the standards are in an E.R. under those
22 circumstances of these hypothetical questions, whether
23 it relates to the records or the symptoms or the signs,
24 is asking questions on the standard of care of a medical
25 professional that is not what this jury is going to

1 decide at the end of the day.

2 THE COURT: Mr. Lovell, the motion for summary
3 judgment, I spent not a lot of time, a little bit of
4 time just looking at it, because you all made reference
5 to it yesterday. As I understand it, it was not made on
6 the basis that you're arguing here. It was made on the
7 basis of an employment; that these people were not
8 employed by the Defendant; and therefore, summary
9 judgment ought be granted. There's some discussion in
10 there about this issue. This was not the underlying
11 basis of the motion for summary judgment.

12 MR. LOVELL: And you're correct on the written
13 pleas. We raised it as we were discussing it with the
14 judge at the hearing, your Honor. And in essence, she
15 felt that there were fact issues that --

16 THE COURT: No. As I understand it, you all said,
17 yeah, we'll bring a motion to dismiss on that basis.

18 MR. LOVELL: I'm sorry, your Honor. Excuse me.

19 THE COURT: That's okay. That's okay. But my
20 understanding is that conversation, you said, yeah,
21 yeah, yeah, we'll bring a motion to dismiss on that
22 basis.

23 MR. LOVELL: Right. And at this time, I think, for
24 purposes of where we are today, our argument is that
25 this case involves ordinary negligence. Any evidence

1 relating to professional negligence is not an issue in
2 this case. In their complaint, the Plaintiff
3 specifically said this case is not a case of medical
4 negligence. Medical negligence is professional
5 negligence, unless it's the ordinary negligence claim,
6 like a slip-and-fall thing. But in this case, when you
7 start asking questions about duties to review medical
8 records, duties to do assessments, duties to do
9 supervision, duties to do all these things of medical
10 providers, that is a medical negligence/professional
11 standard-of-care question, and it's just irrelevant to
12 the plea, to where we are today.

13 THE COURT: All right. Here's what I understand.
14 I understand that what is alleged: there's a duty; it's
15 negligent retention, negligent supervision, as well as
16 the ordinary negligence and alleged duty to supervise
17 this particular individual at the point in time he says,
18 I believe that -- or I have had thoughts of hurting
19 myself and others. That's how I understand this case.

20 Now, and the context in which these things
21 occurred, it happens to be in the medical context.
22 That's how I understand this case at this point.

23 Obviously, as I understand this testimony, this
24 first section of the testimony, it would be, is it
25 reasonable for you to know what you have the ability to

1 know about a person that information which is at hand.

2 And this person says, yeah, that's reasonable.

3 MR. HOYLE: I think that's fair, Judge.

4 THE COURT: I mean, I don't think what they're
5 asking is it the standard of care and that one would --
6 this person, obviously, has not testified as an expert
7 and qualified as an expert, at least, that I can tell in
8 this excerpt.

9 MR. LOVELL: Your Honor, I would point to Line 12,
10 the question:

11 *That's a general rule of nursing,*
12 *isn't it?*

13 *Answer: Yes, sir, that's a general rule*
14 *that any licensed, degreed, medical*
15 *practitioner should try to follow, correct?*

16 *If they're conscientious, it would be*
17 *a good rule to follow.*

18 That's standard care if ever. Rules of nursing,
19 the only people that know about rules of nursing are
20 people who have been trained in that field; not your
21 average, ordinary person on the street.

22 THE COURT: Well, conscientious could also mean to
23 care. I mean, that's the problem. I mean, that's
24 difficult with the fact that this is -- all right. So,
25 I'm going to -- with regards to the objection, number

1 one, I'm going to allow that testimony. Let's go on to
2 the next one.

3 MR. LOVELL: The next one, your Honor, beginning on
4 Page 175, Lines 24 through 25, and ending on 176, at
5 Line 2. She is now being asked to give an opinion about
6 what would be expected of a physician.

7 THE COURT: No, it says, *did* you. Who cares? Do
8 you know what I mean? That's interesting that she would
9 expect a doctor -- I agree with you completely. That's
10 irrelevant. Who cares what she expected a doctor to do?
11 That's interesting.

12 MR. LOVELL: Right.

13 THE COURT: But she'd have to be an expert for
14 that, though, to have any relevance.

15 MR. LOVELL: Sure. Yes, your Honor.

16 THE COURT: She's not an expert, and I'm going to
17 exclude that. I agree with you completely. That
18 doesn't have any relevance.

19 MR. HOYLE: So, for Mr. Knowles purposes, I'm just
20 going to repeat this, so that I think we're all on the
21 same page.

22 THE COURT: Sure. Page -- 24, 25, at 175-176; 1,
23 2, and 3 out.

24 MR. LOVELL: Just for the record, your Honor, we
25 would except that ruling.

1 THE COURT: The first part, but you love the
2 second.

3 MR. LOVELL: I love the second.

4 THE COURT: Yeah, two thumbs up on the second part.
5 Two thumbs down on the first part.

6 MR. HOYLE: 175, 24 and 25. And then, onto the
7 next page at 176, 1, 2, and 3 are out.

8 THE COURT: Yes.

9 MR. HOYLE: Maybe you can make those edits. I'm
10 sure everyone will be appreciative.

11 THE COURT: Yeah.

12 MR. HOYLE: Judge, we're in a bad spot, if Mr.
13 Knowles decides to get up and just run away. We'd be in
14 bad shape.

15 THE COURT: Oh, you should have never told him
16 that, because he grinned this wicked grin.

17 All right, now, -- all right, now, so, that gets
18 Smith, the first deposition, done. Two thumbs up. All
19 right. Let's go, because we've got one deposition, two
20 witnesses.

21 MR. HOYLE: And Judge, just briefly on that point,
22 we'll have some exhibits to admit after we play this
23 deposition. But your Honor, yesterday, you charged the
24 jury about deposition testimony, and you asked if we had
25 any exception to that charge. I forgot to stand up and

1 say, I don't have an exception to that charge, but I
2 have a suggestion.

3 The parties agreed, before we began trial, that,
4 rather than Plaintiff play their deposition page and
5 lines; and then, I stand up and say no more questions;
6 and then, the Defendant stand up, and they play their
7 page and lines, that we would just merge them into one
8 sequence, so that it was all in context and all logical.

9 I'm sure there were some jurors yesterday wondering
10 why there were certain things said by these persons, if
11 they were a part of my case in chief. And so, I would
12 respectfully ask that, perhaps, the Court, when it
13 explains that depositions are being played, state that
14 portions of this deposition transcript are being played
15 at the request of both the Plaintiff and the Defendant.

16 MR. LOVELL: That's fine.

17 THE COURT: Okay.

18 MR. HOYLE: I just think that will help them with
19 their understanding, because it was clear that it had
20 been edited.

21 THE COURT: Well, the only way that I would do that
22 is just explain to the jurors -- this is what I would
23 do, and you all tell me how you feel about it. What I
24 would do is that, I would do it in terms of praise for
25 both sides, and say, ladies and gentlemen, I want you to

1 know that, as you hear these depositions, that, one of
2 the options that Counsel has is to play what they want,
3 and then, in another side's case, and they can play what
4 they want. These lawyers have cooperated to make it
5 make sense to the jury, to you, and to put it all
6 together. And I commend them to doing that. They
7 wanted me to share that with you, is, rather than have
8 some of it in one case and some of it, perhaps, the
9 Defendant's case, they put them all together.

10 Any objection to that instruction?

11 MR. MACKELCAN: No objection.

12 MR. HOYLE: No objection. Very well-crafted, your
13 Honor.

14 THE COURT: Very well. I'd rather do it like that,
15 and just let them know that they're doing this for you
16 all. Okay. Ready to go. Yeah.

17 Jurors are concerned about whether we're going into
18 the weekend and next week. I'm going to go ahead and
19 share with them we're going into next week.

20 MR. HOYLE: I think that's patently obvious, Judge.

21 THE COURT: Oh, yes. Like shoes. Hopefully, we'll
22 be able to start on Monday.

23 You ready to go? Cool.

24 MR. HOYLE: And your Honor, just for housekeeping,
25 we will need to address not only moving some exhibits

1 into evidence, but there are one or two objections to
2 the exhibits we'll need to discuss after we play this
3 deposition before we call the next witness.

4 THE COURT: Okay.

5 BAILIFF: Jury is entering the courtroom, your
6 Honor.

7 JURORS ENTER COURTROOM 9:57 A.M.

8 BY THE COURT:

9 THE COURT: And as you have your seat or take your
10 seat, would you just confirm that the notebook is, in
11 fact, your notebook? Awesome.

12 Good morning, ladies and gentlemen.

13 RESPONSES BY JURORS.

14 THE COURT: I wanted to share with you, and it's
15 just a comment, just information. When the deposition
16 was played yesterday, and those depositions are playing
17 in the remainder of the trial, I wanted you to
18 understand what these lawyers have done. And part of
19 the work that they have done to work together to make
20 the trial move, perhaps, a little quicker, but probably,
21 more important to make these depositions be more
22 complete. What they have done is this. Under our rules
23 where depositions are played or read during the course
24 of a trial, the way that, that works is, the side that
25 wishes to use that deposition just tells the other side,

1 these are the pages and the lines that I want to use.
2 And obviously, even though we have a video, there's also
3 a writing, and that's how we know what the pages and the
4 lines are, and they share that with each other. And
5 when one side, irrespective of which side, says, I'd
6 like to play these pages and lines, then, the other side
7 can also say, well, I'd like to play these pages and
8 lines. And they inform each other.

9 One of the ways that can be played to a jury is
10 that, in each side's case, they can play those or read
11 those pages and lines to the jury, and they only get
12 part of it. And then, they'll wait, potentially,
13 several days, and then, get the other part. Well, while
14 it may have the jury focus on one side's case, and then,
15 the other sides's case, what happens to juries is, wait
16 a minute, I remember seeing this with this person
17 several days ago and remember hearing something. And
18 now, I'm hearing something else.

19 These lawyers -- and remember, they are
20 professionals. And while they are advocates, they are
21 advocates in the search for the truth and to assist you
22 in that regard. But they are advocates. So, when they
23 work together to help juries, I think juries need to
24 know that. And what they have done in this case, what
25 they have done in this case, rather than hold the parts

1 of depositions and play it, the parts that they, one
2 side wants, and then, wait; and then, play the parts
3 that the other side would want, rather than doing that,
4 these lawyers have gotten together and have agreed and
5 have worked together to put the pages and the lines
6 requested by each side. So that, when you're seeing the
7 deposition, you're seeing what both sides would put into
8 the deposition.

9 It is so much more efficient that way. I think it
10 makes it so much more understandable, and makes it
11 complete. But what you're doing, if you will, is,
12 you're getting pages and lines that both sides would
13 want.

14 I tell you that because I think it's helpful. I
15 think that's informative for you to know that. And I
16 also think -- and I would like for jurors to know when
17 lawyers work together, so that the presentation is
18 complete and more efficient in terms of time. And I
19 think it's important for jurors to know that, as well.
20 So, I share that with you. Any objection to my
21 comments?

22 MR. HOYLE: None from the Plaintiff, your Honor.

23 MR. LOVELL: None, your Honor.

24 THE COURT: Very well. And now, for the segue into
25 the next witness.

1 MR. HOYLE: Your Honor, at this time, Plaintiff
2 calls, by deposition, Sandra L. Smith.

3 THE COURT: Very well. By video deposition, yes.
4 And of course, Counsel, I want you to make the original
5 tape the Court's exhibit. Very well.

6 ITEM IDENTIFIED AS DVD OF VIDEOTAPED
7 DEPOSITION OF SAUNDRA LORRAINE
8 GREEN SMITH,
9 MARKED COURT'S EXHIBIT NUMBER 3-A
10 RECEIVED BY THE COURT.

11 DVD OF VIDEOTAPED DEPOSITION OF
12 SAUNDRA LORRAINE GREEN SMITH,
13 COURT'S EXHIBIT NUMBER 3-A, PLAYING.
14 END PLAYING DVD OF VIDEOTAPED
15 DEPOSITION OF LORRAINE GREEN SMITH,
16 COURT'S EXHIBIT NUMBER 3-A.

17 BY THE COURT:

18 THE COURT: All right. Is that the conclusion of
19 the deposition?

20 MR. HOYLE: That concludes the videotape deposition
21 of Sandra Smith, which has been played here at trial.
22 Your Honor, at this time, Plaintiff is going to move
23 Exhibit Number 7 from Ms. Smith's deposition. We will
24 mark it for identification as Plaintiff's 19. And I
25 understand the Defendant does not have any objection.

1 MR. MACKELCAN: No objection, your Honor.

2 THE COURT: Very well.

3 MR. HOYLE: We will move Exhibit Number 19 into
4 evidence, your Honor.

5 ITEM IDENTIFIED AS CHRONOLOGICAL
6 RECORD OF MEDICAL CARE
7 MARKED PLAINTIFF'S EXHIBIT NUMBER 19,
8 ADMITTED AS EVIDENCE.

9 THE COURT: Any other exhibits coming in from the
10 deposition?

11 MR. HOYLE: Not from Ms. Smith.

12 THE COURT: Very well. We will take a morning
13 break. Ladies and gentlemen, please step to your jury
14 room. Do not discuss this matter or allow anyone to
15 discuss it with you. Put your notepads in your seats.
16 We'll take about 15 minutes. Thank you.

17 JURORS LEAVE COURTROOM 11:27 A.M.

18 BAILIFF: Jury's clear, your Honor.

19 THE COURT: Anything?

20 MR. HOYLE: Your Honor, we do need to address two
21 matters before we call the next witness. We can either
22 do that now or immediately before that witness takes the
23 stand.

24 THE COURT: I'll see you all in ten minutes.

25 MR. HOYLE: Thank you, your Honor.

1 OFF THE RECORD 11:28 A.M.

2 BACK ON THE RECORD 12:07 P.M.

3 BY THE COURT:

4 BAILIFF: All rise, court is now in session.

5 THE COURT: Thank you, and please be seated. So,
6 yes. So, all right. All right. You were telling me,
7 before we called the next witness?

8 MR. HOYLE: We're going to call Janice McDonald.
9 But before we get to that, your Honor, I would like to
10 invoke sequestration. We have witnesses in the
11 courtroom. Yesterday, when we had witnesses, we asked
12 them to sit outside. They were under my subpoena. We
13 also have three witnesses here today that are under my
14 subpoena. I would respectfully ask the Court to invoke
15 the rule, and ask witnesses to leave, until such time as
16 they are called to the witness stand.

17 THE COURT: Okay. Now, I don't know who your
18 witnesses are or who your witnesses will be, but there
19 are, obviously, folks in the courtroom that I don't
20 know. Are you telling me that, at no point yesterday
21 did you have witnesses in the courtroom?

22 MR. HOYLE: Yes, Judge.

23 THE COURT: Okay.

24 MR. HOYLE: I will make that representation as an
25 officer of the Court. I knew the identity of all the

1 persons in the courtroom yesterday.

2 THE COURT: Okay. All right. What says the
3 Defense?

4 MR. LOVELL: The trial was started yesterday, your
5 Honor. The rule has to be invoked at the beginning, and
6 not mid-way through.

7 THE COURT: We don't have a rule of -- we do not
8 have a rule of sequestration. We really don't. There
9 isn't any rule.

10 MR. LOVELL: Well.

11 THE COURT: It's just --

12 MR. HOYLE: Custom?

13 THE COURT: It's just, lawyers make it, but there
14 is no rule of sequestration, and it happens as a matter
15 of course. I have no problem with the witnesses being
16 sequestered, other than, other than, you know, you've
17 got to be able to relay, because I can't stand that
18 let's wait 15 minutes while I go track down a witness.

19 MR. LOVELL: That shouldn't be a problem as far as
20 getting them here and there. We've told them what to
21 expect.

22 THE COURT: Absolutely. And the only other one is,
23 if you have a -- if you do an expert, and for whatever
24 reason, that person needs to hear whatever testimony,
25 for goodness sakes, let me we know about.

1 MR. LOVELL: Okay.

2 THE COURT: Because I certainly don't want you at a
3 disadvantage, if you are planning on having your
4 witness, your expert witness here or whatever. But
5 other than that, I'll sequester. But if it's sauce for
6 the goose, it's sauce for the gander. So, it would
7 apply to both. Okay?

8 MR. HOYLE: And we're certainly fine with that,
9 your Honor. Thank you.

10 THE COURT: Okay.

11 OBJECTIONS AND RULINGS:

12 MR. HOYLE: All right, we have issues with two
13 documents that I need to deal with before we call this
14 next witnesses.

15 THE COURT: Okay.

16 MR. HOYLE: I have marked for identification
17 purposes -- and Gary, if you just want to walk right up
18 there, that might be easier. Plaintiff's Exhibit Number
19 18 is an inch-and-three-quarter stack of documents that
20 there's been some concerns raised as to their
21 authenticity. These were documents that were originally
22 shown to Janice McDonald at her deposition.

23 THE COURT: Okay.

24 MR. HOYLE: And they were an exhibit to that
25 deposition. I have an affidavit that goes with this

1 witness from Solicitor Duffie Stone, explaining how he
2 got these documents; how they became a part of his
3 investigatory file; how they were maintained in ordinary
4 course of business; how they were subsequently produced
5 to us, pursuant to the *South Carolina Crime Victims'*
6 *Bill of Rights* and the state *Constitution*, as well as an
7 order of the Court of General Sessions. So, I think
8 that's a sufficient foundation for their admissibility,
9 for their authenticity and admissibility.

10 MR. LOVELL: Judge, here's our objection to these.
11 These records purport to be the medical chart that was
12 available on the AHTLA system at the time of this
13 patient's treatment. That's what they purport to be.
14 We know these aren't, because what we've got here are
15 some -- these contain medical records that post-date
16 this accident. This gentleman was seen at the Naval
17 Hospital twice after this on I think 29th and maybe the
18 28th. So, we know on the face these aren't the ones
19 that were there.

20 Secondly, I have questions about -- I don't recall
21 any witness that testified that this table of contents,
22 as it is set forth here, was part of the AHTLA record.
23 This table of contents references different page
24 numbers, which go on and on and on through the length of
25 these. But clearly, we know this table of contents

1 wasn't there, because it also references the two
2 subsequent visits that wouldn't have been there on the
3 24th. And I don't know that there's any proof that this
4 table of contents, as it sits here, was part of the
5 AHTLA record.

6 THE COURT: Well, all right, so, -- all right, so
7 let me -- first of all, here's what I understand the
8 issue to be. This was a stack of documents that were --
9 these documents, this stack, was shown to a witness,
10 yes?

11 MR. HOYLE: Correct.

12 THE COURT: And -- so? Who cares?

13 MR. HOYLE: Well, it does matter.

14 THE COURT: Okay.

15 MR. HOYLE: She said that the stack of medical
16 records in hard copy that were brought in with Calvin
17 Hunt were an inch-and-three-quarter inches, as are
18 these. She went through and found certain information
19 in the medical records that, when these were marked at
20 her deposition, and said I saw this, I saw this, but I
21 only spent 60 seconds that day, that fateful Friday,
22 looking through this stack of documents; I didn't read
23 all of it.

24 We know that these are Calvin Hunt's medical
25 records. We, you know, the Solicitor sets forth in his

1 affidavit that they came directly from the Navy. I
2 agree with Mr. Lovell that these were clearly printed
3 subsequent to the event, but certainly, there's
4 information contained herein that would have been
5 available on February 24, 2012, all of records from
6 2011, 2010, 2009, 2008, so on and so forth.

7 I think we can -- we've laid a sufficient
8 authenticity and admissibility basis in the Solicitor's
9 affidavit. And certainly, I'm not going to question her
10 about documents that post-date the date of this
11 incident. And I'll even consent to have those documents
12 removed from this exhibit, the records from, you know,
13 five days after Calvin Hunt was at the Naval Hospital
14 that brings the basis of this lawsuit.

15 THE COURT: Okay. So, let me ask this question.
16 Is the next witness -- are you talking about -- is
17 McDonald here, live?

18 MR. HOYLE: She's actually here in the courtroom
19 right now while we're having this argument.

20 THE COURT: Okay. Well, if she is sequestered, she
21 needs to leave, first and foremost. I mean, you know,
22 you're violating the rules of sequestration that you
23 just got.

24 Okay. Now, so. Okay. So, this witness testifies
25 that, at the time of this event, she was shown a stack

1 of documents that was approximately one-and-three-
2 quarters-inch thick?

3 MR. HOYLE: That were Calvin Hunt's past medical
4 records.

5 THE COURT: They were Calvin Hunt's past medical
6 records, and she knows that.

7 MR. MACKELCAN: Well, she said it was a stack of
8 documents that were handed to her that she flipped
9 through in 60 seconds. I mean.

10 THE COURT: Okay. And then, you showed her this
11 stack of documents.

12 MR. HOYLE: Yes, your Honor.

13 THE COURT: Well, that's two different things. I
14 mean, it's just two different things. And I gather, out
15 of the stack of documents that you showed her, that
16 there was a -- there were certain documents that she
17 could put her hands on that she knew she had reviewed.

18 MR. HOYLE: Correct. She knew that she was able to
19 identify what medications he'd previously had; that he
20 had a past suicide attempt; that he had thoughts --

21 THE COURT: Is that a yes or no?

22 MR. HOYLE: Yes.

23 THE COURT: Okay.

24 MR. HOYLE: Some, but not all.

25 THE COURT: Okay.

1 MR. HOYLE: Yeah.

2 THE COURT: All right. And okay. So, your
3 objection is, you have concerns about this stack being
4 represented to this jury as being the stack that was
5 brought in by Mr. Hunt on the date in February and given
6 to this witness.

7 MR. MACKELCAN: Correct.

8 MR. LOVELL: That one, and the -- the contents of
9 this particular stack were all available on this AHTLA
10 system.

11 THE COURT: I know that, but that's a whole
12 different issue.

13 MR. LOVELL: I understand that, but you're right.

14 THE COURT: You all have a tendency to put eight
15 issues in one question.

16 MR. HOYLE: I'm sorry.

17 MR. LOVELL: Issue number one, you're absolutely
18 correct.

19 THE COURT: Okay.

20 MR. LOVELL: This was -- we do not know that this
21 was the stack.

22 THE COURT: This document -- this stack is what the
23 stack is.

24 MR. HOYLE: Correct.

25 THE COURT: It's all it is.

1 MR. HOYLE: Correct.

2 THE COURT: This stack cannot be represented to
3 this jury as being the stack of documents that's the
4 stack that was handed to this person on this occasion.

5 MR. HOYLE: I understand that.

6 THE COURT: All right.

7 MR. HOYLE: But the issue is, she testified that he
8 had his past medical records that measured an inch-and-
9 three-quarters thick.

10 THE COURT: I don't care about that.

11 MR. HOYLE: Okay.

12 THE COURT: That's fine. That's testimony.

13 MR. HOYLE: That's testimony. I can get that by
14 testimony. And we have the affidavit of the Solicitor
15 setting forth how he got them and how he's maintained
16 them and how he produced them to us.

17 THE COURT: Wait. Stop.

18 MR. HOYLE: All right.

19 THE COURT: Stop. Okay. So, you've got that
20 testimony.

21 MR. HOYLE: Um-hmm.

22 THE COURT: So, are you attempting to put in this
23 stack of documents through this witness? Yes or no.

24 MR. HOYLE: Not through this witness, but prior to
25 this witness.

1 THE COURT: With an affidavit?

2 MR. HOYLE: Yes.

3 THE COURT: At trial? Well, how do you do that?
4 How does that happen?

5 MR. HOYLE: I agree with your Honor.

6 THE COURT: Okay. Great. Now, if the witness can
7 identify certain pages from this stack and says, yeah, I
8 recognize that, I saw it on that occasion, I don't care.

9 MR. HOYLE: Okay.

10 THE COURT: Yeah. Because she's authenticated,
11 yeah, I saw that document. Where it came from is of no
12 moment, if she's going to look at it and say, yep, I saw
13 it on that occasion and know that document.

14 MR. HOYLE: But I guess the only way for me to
15 establish that is to go through a number of these pages
16 and ask her did you see this that day.

17 THE COURT: Right.

18 MR. HOYLE: Okay.

19 THE COURT: Right.

20 MR. HOYLE: I can live with that, Judge.

21 THE COURT: Yeah. Absolutely. If she can
22 authenticate it, fine. If she can't, fine.

23 MR. LOVELL: And your Honor, I would have to ask
24 this question only from some of the other questioning.
25 But can we caution -- and I'll object at the appropriate

1 time, but when he is showing a document and saying did
2 you see this, not to read the whole thing into evidence
3 as he's handing it to her.

4 THE COURT: Well, it can't be published until it's
5 in evidence.

6 MR. LOVELL: Correct.

7 MR. HOYLE: But I can certainly ask the question.

8 THE COURT: No. You recognize that. Yeah. And
9 then, you ask a question. It isn't to be -- you don't
10 say, do you recognize Plaintiff's response to opposition
11 and Defendant's motion in limine. You can't identify
12 anything on this document until it's in evidence. I'm
13 going to show you what has been marked as Exhibit 14 for
14 identification. Right now, that's the most you can do.
15 Do not talk about what it is. Do not publish it until
16 it's in evidence.

17 THE COURT: Lawyers tend to do that, and I love it
18 when they do it, because it's like, oh, did you see
19 that; did you see that. No. You get called out on it,
20 so you've got to be careful about it. Okay? Cool?

21 MR. HOYLE: Okay. Okay.

22 THE COURT: Yeah? Right?

23 MR. LOVELL: Thank you, your Honor.

24 THE COURT: Okay. All right.

25 ITEM IDENTIFIED AS JOE MCDONALD

1 PERSONNEL FILE

2 MARKED PLAINTIFF'S EXHIBIT NUMBER 14,

3 ADMITTED AS EVIDENCE, BY AGREEMENT.

4 MR. HOYLE: Oh, we need to discuss an issue.

5 THE COURT: Oh, my, my.

6 MR. LOVELL: This is a little one, but.

7 MR. HOYLE: There's nothing little in this case,
8 Judge.

9 THE COURT: Thank you.

10 MR. MACKELCAN: This was one of our motions in
11 limine, so.

12 MR. LOVELL: Judge, on the bottom, these were
13 documents that were produced. We got all this from a
14 lot of different sources, but one set of them came from
15 the Fourteenth Circuit Solicitor's Office, and they have
16 their Bate stamp.

17 THE COURT: Oh, my, my.

18 MR. LOVELL: State versus Calvin Hunt.

19 THE COURT: Oh, my, my. Oh, my, my.

20 MR. LOVELL: We would just like for that to be
21 redacted.

22 THE COURT: You think? You think? Yeah. You
23 think? Absolutely.

24 MR. LOVELL: Thank you, your Honor.

25 THE COURT: Yeah, absolutely. It's got to be. Got

1 to get some white paint.

2 MR. HOYLE: I would just note for the record, your
3 Honor, we do intend, at a later point in time, prior to
4 the close of our case in chief, to seek judicial
5 admission of the order finding Calvin Hunt not guilty by
6 reason of insanity, for purposes of --

7 MR. MACKELCAN: We object to that.

8 MR. HOYLE: I knew you would.

9 THE COURT: Really? Seriously? Truly?

10 MR. HOYLE: Thank you, Judge.

11 THE COURT: Come here and I -- I feel like I need
12 to --

13 ON-THE-RECORD BENCH CONFERENCE, OUT
14 OF PRESENCE OF JURORS. PRESENT:
15 THE COURT, MR. HOYLE, MS. CASTLEBERRY,
16 MR. MACKELCAN, MR. LOVELL.

17 THE COURT: I only mention this to you because I
18 have this information, and because I have this
19 information, there are certain times when a judge has
20 information that you need to share it with Counsel. I
21 am aware that the 120-day review for this gentleman was
22 talked about being next week. It is no longer going to
23 be next week. I have that information. I got nothing
24 to do with that. I got no dog in that fight. I don't
25 care. But because that is information that I am privy

1 to, I believe that, that is information that I needed to
2 tell you guys.

3 Now, having said that, I have no earthly idea if it
4 would happen or not happen. So, hear me, I don't know.
5 I'm not in control. I just showed up here from
6 Dorchester County. But because I am aware that it may
7 have been scheduled, it may now be continued. I'm just
8 sharing that with everyone. Okay? Is everybody clear
9 about that?

10 MR. MACKELCAN: Yes, Judge.

11 MR. HOYLE: Yes, Judge.

12 THE COURT: Very good. All right.

13 END BENCH CONFERENCE.

14 COURT REPORTER: May I ask you? They put the video
15 in.

16 THE COURT: Oh, yeah.

17 COURT REPORTER: Also, doesn't the transcript need
18 to go in?

19 THE COURT: It needs to go in.

20 Let me ask you. Guys, let me ask you all this, and
21 this might be as much of a question as anything. When
22 we put in the video as a Court's exhibit, don't we also
23 put in -- shouldn't we also put in the original
24 transcript?

25 MR. HOYLE: The original transcripts have already

1 been filed with the clerk's office, but we can append
2 them to this record.

3 THE COURT: You don't have to do that, but they
4 have been filed?

5 MR. HOYLE: Yes, Judge.

6 THE COURT: Well, if they've been filed, they've
7 been filed. They're in the file. Then, that means you
8 don't have to deal with them. So, in the event -- is
9 that true for all of them? Is that true for all of the
10 original transcripts?

11 MR. HOYLE: All the original transcripts that
12 Plaintiff took and has custody of have been filed.

13 THE COURT: Okay.

14 COURT REPORTER: And there they are.

15 THE COURT: Can we bring the jury out?

16 MR. HOYLE: Judge, just beg the Court's indulgence
17 just to get us some white-out.

18 So, Judge, just to know, --

19 THE COURT: Okay. Let me have the jury.

20 BAILIFF: Yes, ma'am.

21 THE COURT: Yes.

22 MR. HOYLE: Your Honor, at this time, the Plaintiff
23 is going to move Exhibit Number 20 into evidence. It is
24 the medical records from February 24, 2012, from the
25 emergency department of the Naval Hospital, Beaufort. I

1 understand there is no objection from the Defendant, now
2 that Bates labels and other identifying information have
3 been redacted.

4 MR. LOVELL: That's true.

5 THE COURT: And you've looked at this particular
6 one?

7 MR. LOVELL: Yes, I have, your Honor. It's fine.

8 THE COURT: Okay. Very well. All right. Now, as
9 long as it has one sticker on it, how many pages is it?
10 Only because it is an important exhibit, I think it
11 needs to be --

12 COURT REPORTER: I'll fix it.

13 THE COURT: How many?

14 COURT REPORTER: Ten at first count, so. Double
15 check it. I'll mark each page. I'll mark on each page
16 that it's an exhibit.

17 THE COURT: Okay.

18 COURT REPORTER: You know, which one.

19 THE COURT: Yes. That's my purpose at this point.
20 It goes ten sheets of paper, with printed front and
21 back. Yes?

22 MR. HOYLE: Correct. It's not printed front and
23 back. It is single file.

24 COURT REPORTER: No, it's 12 sheets. Second count
25 was 12 sheets, so.

1 THE COURT: Oh, okay. Not front and back, but it's
2 10 sheets of paper.

3 COURT REPORTER: Twelve sheets.

4 THE COURT: Twelve sheets.

5 COURT REPORTER: Sorry..

6 ITEM IDENTIFIED AS KALVIN HUNT'S
7 2-24-12 NAVAL HOSPITAL MEDICAL
8 RECORDS, CONSISTING OF 12 PAGES,
9 MARKED PLAINTIFF'S EXHIBIT NUMBER 20,
10 ADMITTED AS EVIDENCE.

11 BY THE COURT:

12 THE COURT: May we have the jury?

13 BAILIFF: Yes, ma'am.

14 THE COURT: We're waiting on them. Yeah.

15 BAILIFF: Jury is entering the courtroom, your
16 Honor.

17 THE COURT: Wonderful.

18 JURORS ENTER COURTROOM 12:30 P.M.

19 THE COURT: All right. Thank you so much. Ladies
20 and gentlemen, we will continue now with today's case.
21 Start your next witness.

22 MR. HOYLE: Plaintiff calls Janice McDonald to the
23 stand.

24 THE COURT: All right.

25 BAILIFF: This way, ma'am.

1 THE COURT: Thank you, Ms. Saber.

2 BAILIFF: Go forward to be sworn, please.

3 MADAM CLERK: Would you raise your right hand. Do
4 you solemnly swear or affirm that the testimony you give
5 to the Court in this trial shall be the truth, so help
6 you God?

7 JANICE MCDONALD: I do.

8 MADAM CLERK: Would you state your name, for the
9 record.

10 JANICE MCDONALD: Janice McDonald.

11 MADAM CLERK: And would you spell your last name?

12 JANICE MCDONALD: It's capital M/c, capital D,
13 o/n/a/l/d.

14 MADAM CLERK: Thank you. Please be seated.

15 JANICE MCDONALD

16 DIRECT EXAMINATION, BY MR. HOYLE:

17 Q Good afternoon, ma'am.

18 A Good afternoon.

19 Q You've introduced yourself to the jury as Janice
20 McDonald, correct?

21 A That's correct.

22 Q What do you do for a living?

23 A I'm a registered nurse.

24 Q And where are you currently employed?

25 A Currently, I'm at Beaufort Memorial, and I also

1 just took another job at Navy PRN.

2 Q What are you doing at the Naval Hospital today?

3 A I haven't started yet. It will start probably
4 sometimes toward the ends of the month, but it will be
5 in their -- their clinic.

6 Q How long have you been employed at Beaufort
7 Memorial?

8 A Approximately a year and a half.

9 Q Where did you work before that?

10 A Prior to that, I worked at the Naval Hospital.

11 Q And how many years were you at the Naval Hospital?

12 A Nearly eight.

13 Q During the eight years that you were at the Naval
14 Hospital, did you work for the United States government,
15 the Department of Defense, or did you work for
16 contractors?

17 A We worked for the Naval Hospital.

18 Q Ma'am, in February of 2012, you were employed by a
19 company called CasePro, correct?

20 A That's correct.

21 MR. HOYLE: Permission to approach the witness,
22 your Honor.

23 THE COURT: Yes.

24 ITEM IDENTIFIED AS JANICE MCDONALD

25 PERSONNEL FILE FROM CASEPRO

1 MARKED PLAINTIFF'S EXHIBIT NUMBER 13

2 ADMITTED AS EVIDENCE BY AGREEMENT.

3 BY MR. HOYLE:

4 Q Ms. McDonald, I'm giving you what's been marked as
5 Plaintiff's Exhibit Number 13 to this trial.

6 A Okay.

7 Q I hand that big stack of documents to you. I
8 represent to you that, that is your personnel file from
9 CasePro, Incorporated.

10 A Okay.

11 Q When did you first become employed by CasePro, if
12 you know?

13 A It was July -- I believe I started -- oh, for
14 CasePro? Gosh. The first contract was by Fly America.
15 I really don't remember the year that CasePro took over.

16 Q Now, it sounds like when you started working at the
17 Naval Hospital, you worked for a company called Fly
18 America, correct?

19 A That's correct.

20 Q And then, at some point in time, the contract
21 transitioned between Fly America and CasePro. Is that
22 correct?

23 A That's correct.

24 Q When you were working for both Fly America and
25 CasePro, were you physically doing your work in the

1 emergency room at the Naval Hospital?

2 A That's correct.

3 Q How long have you been an E.R. nurse, ma'am?

4 A I was an E.R. nurse eight years.

5 Q Solely during the time you were at the Naval
6 Hospital.

7 A Yes.

8 Q Let's get a little bit of background about you.
9 Where did you grow up?

10 A I grew up in Philadelphia.

11 Q And give the Court and the jury the benefit of your
12 education.

13 A I started -- I got a late start going to school. I
14 had two young children. I didn't start school until the
15 early eighties. I proceeded to take college courses
16 ahead of time, because it was too difficult to go -- go
17 to college courses and take nursing classes, with having
18 young kids. So, I went back and got -- I went back and
19 got my nursing degree at -- it's not even a degree,
20 actually. It was like more like associates from a
21 Episcopal Hospital School of Nursing.

22 Since then, I've enrolled in R.N. to B.S.N. to
23 M.S.N. program online with Chamberlain College of
24 Nursing.

25 Q And do you currently hold either a bachelor of

1 science degree in nursing or a master of science in
2 nursing?

3 A No. I still -- I have nearly my bachelor's. I'm
4 shy probably about 18 credits.

5 Q And where do you currently live? Generally. What
6 community?

7 A We live on Lady's Island.

8 Q Here in Beaufort County?

9 A Yes.

10 Q And you say we. Who are you referring to?

11 A My husband and I.

12 Q And folks here in this courtroom have heard a
13 little bit about your husband. Tell us who your husband
14 is.

15 A My husband is Joseph McDonald. He's actually your
16 next witness.

17 Q That's what I hear.

18 A Yes.

19 Q When did you and Mr. McDonald move here to Beaufort
20 County?

21 A We moved here in April of 2005.

22 Q When you moved here in April of 2005, it doesn't
23 sound like you were working at the Naval Hospital at
24 that time.

25 A No, I was not.

1 Q Where did you start working in April of 2005?

2 A In 2005, I was in Beaufort Memorial's Intensive
3 Care Unit.

4 Q Now, it sounds like, at some point in time, you
5 went to work at the Naval Hospital, where you were
6 actually getting your paycheck from a company called Fly
7 America, correct?

8 A I got my paycheck from Fly America, yes.

9 Q And then, how is it that you came to be employed by
10 CasePro?

11 A When I was an employee of Fly America, you
12 automatically were just kind of grandfathered in as the
13 contractors changed. So, it went from one contract to
14 another.

15 Q Now, Ms. McDonald, isn't it true that you told me
16 at your deposition in this case that, when the contract
17 transitioned between Fly America and CasePro, that there
18 were some persons who didn't make that transition.

19 A There was one.

20 Q A lady by the name of Fran.

21 A Fran. That's correct.

22 Q And she was a registered nurse, correct?

23 A She was.

24 Q And Registered Nurse Fran, even though she had been
25 working for Fly America, she wasn't working for CasePro

1 when CasePro took over the contract, correct?

2 A No. No, she was not.

3 Q Ma'am, if you'll look at the document you have in
4 front of you, and there's some writing in the lower,
5 right-hand corner. We call those Bate stamps. Okay?

6 A Okay.

7 Q Turn to the Bate Stamp Page 713, in the exhibit you
8 have in front of you. Let me know when we're on the
9 same page.

10 A Okay. Got it.

11 Q This is an application for employment with CasePro,
12 Incorporated, correct?

13 A That's correct.

14 Q And is your handwriting contained on the
15 application, correct?

16 A It is.

17 Q And it has your name on it, and your address on
18 Lady's Island, correct?

19 A That's correct. Yeah.

20 Q If you would turn to the next page, it looks like
21 it's got some past employment history. And is that in
22 your handwriting, ma'am?

23 A That is. It is.

24 Q And turn to the page that follows, it looks like
25 you list your skills and qualifications, as well as your

1 educational background, correct?

2 A That's correct.

3 Q That's also part of your handwriting, correct?

4 A Correct.

5 Q If you will turn to the last page of that
6 application, the page with Bate Stamp 716, do we have a
7 signature on that page?

8 A Yes.

9 Q Whose signature is that?

10 A That's my own.

11 Q And according to the document, that's dated
12 September 5, 2007, correct?

13 A That is correct.

14 Q So, you actually applied to work for CasePro on
15 September the 5th, 2007, correct?

16 A Yes, yes.

17 Q If you will turn to the page in your personnel file
18 that is Bate stamped in the lower, right-hand corner,
19 Bates Page 685. We're going a little bit forward in the
20 document.

21 A Okay. Got it.

22 Q Now, it appears that CasePro made a written offer
23 of employment to you on August the 29th of 2007. Is
24 that correct?

25 A That's correct.

1 Q This offer of employment was to work at the Naval
2 Hospital here in Beaufort, correct?

3 A Correct.

4 Q If you'll look on the document, about mid-way
5 through the page, it says:

6 *By accepting employment with CasePro,*
7 *Incorporated, you will be subject to the*
8 *company's policies as set out in the 'Employee*
9 *Manual' and the requirements of the subject*
10 *contract.*

11 Did I read that correctly?

12 A That's correct.

13 Q That was your understanding when you signed this
14 document on September 5, 2007, correct?

15 A Correct.

16 Q And did you, in fact, ever receive a copy of the
17 *CasePro Employee Handbook*?

18 A I may have. I don't -- I don't quite remember.

19 MR. HOYLE: Permission to approach, your Honor.

20 THE COURT: Yes.

21 BY MR. HOYLE:

22 ITEM IDENTIFIED AS CASEPRO

23 EMPLOYEE MANUAL

24 MARKED PLAINTIFF'S EXHIBIT NUMBER 15,

25 ADMITTED AS EVIDENCE.

1 Q Ms. McDonald, I'm handing you what has been marked
2 as Plaintiff's Exhibit Number 15? And ask if you
3 recognize that document?

4 A Honestly, I don't.

5 Q For purposes of the Court and jury, can you read
6 the cover page on that exhibit, ma'am.

7 MR. LOVELL: Objection, your Honor.

8 THE COURT: Sustained.

9 BY MR. HOYLE:

10 A Case --

11 Q Going back to the earlier exhibit out of your
12 personnel file, to the page Bate that's stamped 685.

13 A Yes.

14 Q It sets forth the hourly compensation that you're
15 going to be paid, correct?

16 A Correct.

17 Q There's also language on that document that says
18 your employment with CasePro is at will, meaning it may
19 be terminated by you or CasePro, with or without cause,
20 at any time, correct?

21 A That's correct.

22 Q That was your understanding when you signed this
23 document on September 5, 2007, correct?

24 A Yes.

25 Q And with respect to that hourly compensation that's

1 set forth on the page, does this document also state
2 that all base wage and benefits allowance amounts are
3 earned and paid on actual hours worked and the hourly
4 rate?

5 A Yes.

6 Q And that was your understanding when you signed
7 this document.

8 A Yes.

9 Q Did you understand from this document and the
10 language that we've read here today, from the document
11 that you signed on September the 5th, 2007, that
12 CasePro, Incorporated, had the ability to fire you?

13 A Well, they -- they only fired people if it came
14 from the military. If -- say, if our head nurse had an
15 issue with -- it was basically at the military's
16 discretion.

17 Q But again, going back to the plain text of this
18 document, ma'am, you'll agree with me that CasePro had
19 the ability to terminate your employment.

20 A Yes.

21 Q At will, correct?

22 A Correct.

23 Q That's what the document you signed said, correct?

24 A Correct.

25 Q Correct?

1 A Um-hmm. Yes, correct. I'm sorry.

2 Q Now, as part of your employment with CasePro, you
3 had to fill out something known as a W-4, correct?

4 A That's right.

5 Q And if you turn to the page with Bate stamp 709 in
6 this stack of papers, --

7 A Okay. I have it.

8 Q I apologize.

9 A That's not it.

10 Q I sent you to the wrong page. I sent you to the
11 wrong page, ma'am. 682. I apologize.

12 A Okay.

13 Q We actually see a W-4 that bears your signature on
14 the date of September the 5th, 2007, correct?

15 A That's correct.

16 Q And this enabled CasePro, Incorporated, to withhold
17 income taxes from your paycheck, correct?

18 A Yes.

19 Q While we're on the subject of your paycheck, will
20 you turn to Page 697 of this document. We have some
21 benefit options that CasePro, Incorporated, provides its
22 employees, correct?

23 A That's correct.

24 Q And it bears your signature and the date of
25 September the 6th, 2007, correct?

- 1 A That's correct.
- 2 Q Some of the benefits offered included health
3 insurance, correct?
- 4 A Yes.
- 5 Q Dental insurance, correct?
- 6 A Yes.
- 7 Q Life insurance, correct?
- 8 A Yes.
- 9 Q Long-term disability, correct?
- 10 A Yes.
- 11 Q Short-term disability, correct?
- 12 A Yes.
- 13 Q And some of those benefits you actually
14 affirmatively elected to receive, correct?
- 15 A That's right.
- 16 Q Let's talk about some policies. Turn to the page
17 Bate stamped 708 in your personnel file, ma'am.
- 18 A Okay. I have it.
- 19 Q This purports to be an employee acknowledgment of
20 the alcohol and controlled substances policy of CasePro,
21 Incorporated, correct?
- 22 A That's correct.
- 23 Q And you signed this document, correct?
- 24 A I did.
- 25 Q You dated it October the 2nd, 2007, correct?

1 A Yes.

2 Q You provided your name and Social Security number
3 on that document, correct?

4 A That's right.

5 Q Similarly, turn to the page that's Bate stamped
6 711. We've got an acknowledgment of receipt and
7 understanding of CasePro, Incorporated, sexual abuse
8 policy, correct?

9 A That's right.

10 Q And it has your signature, correct?

11 A It does.

12 Q And a date of October the 2nd, 2007, correct?

13 A That's right.

14 Q Go to the next page. That being the page Bate
15 stamped up in the lower, right-hand corner 712, we have
16 a receipt and acknowledgment of CasePro HIPAA privacy
17 documents, correct?

18 A That's right.

19 Q And it has your name, correct?

20 A It does.

21 Q Your signature, correct?

22 A Yes, it does.

23 Q Your job title of R.N., correct?

24 A Yes.

25 Q And a date of October the 2nd, 2007, correct?

1 A Yes.

2 Q Turn with me to the page that's Bate stamped in the
3 right-hand corner, at 745 of this document.

4 A Okay.

5 Q And it looks like, at that time frame -- are we on
6 the document that has the logo of Wells Fargo on it?

7 A Yes.

8 Q It looks like at some period in time, you and your
9 husband were getting a mortgage or refinancing through
10 Wells Fargo, correct?

11 A That's right.

12 Q And on the pages that follow, we have a request for
13 verification of employment, correct?

14 A Yes.

15 Q And in fact, it looks like, when you were applying
16 for a mortgage, you told the lender that CasePro,
17 Incorporated, was your employer, correct?

18 A That's where our paycheck came from, but yes.

19 Q While you were working for CasePro, CasePro would
20 pay for your continuing education courses, correct?

21 A They offered compensation for BLS certificates,
22 cause we had to -- we weren't able to take those in the
23 hospital. BLS, ACLS, PALS, Pediatric, yes, they would
24 -- they would compensate us for that.

25 Q For the continuing education courses, correct?

1 A Right.

2 Q That's a yes?

3 A Yes.

4 Q All right, ma'am. Let's look at two additional
5 things from your personnel file, and then, we'll start
6 talking about something else. Go to the page that is
7 Bate stamped 758.

8 A Okay. I have it.

9 Q And does this appear to be an email from a contact
10 administrator at CasePro, Incorporated?

11 A Hermelynda.

12 COURT REPORTER: I'm sorry, your answer?

13 A Her name is Hermelynda.

14 Q An email from Hermelynda out of CasePro corporate
15 office to you concerning the future expiration of your
16 ACLS credentials?

17 A Yes. They would always remind us when it was
18 coming up, and when we needed to take another course.

19 Q They made sure your credentials were up to date,
20 correct?

21 A Yes.

22 Q And similarly, on the next pages, the pages Bate
23 stamped 759, Hermelynda wrote a letter to the State
24 Board of Nursing to certify that your employment with
25 CasePro began on September the 30th, 2007, correct?

1 A That's correct.

2 Q All right. Let's focus a little bit on the
3 emergency room at the Naval Hospital, Beaufort. Okay?

4 A Okay.

5 Q How many years, cumulatively, did you actually work
6 within the emergency room at the Naval Hospital,
7 Beaufort?

8 A Nearly worked eight years. In fact, it probably
9 was eight years.

10 Q And my understanding today is that the emergency
11 room at the Naval Hospital of Beaufort no longer exists,
12 correct?

13 A That's correct.

14 Q During the time that you were there in those eight
15 years in the emergency room, can you describe it for us?
16 How big was it?

17 A It was small. Couldn't have been more than
18 probably 800 square feet. It was a relatively very
19 small E.R., for an E.R.

20 Q Was it itty-bitty?

21 A It was.

22 Q I believe you've told me before that, if somebody
23 were to sneeze in one part of the emergency room,
24 somebody else in a different part could say bless you.

25 A That's probably correct.

1 Q Wasn't much privacy in that emergency room,
2 correct?

3 A No, there was not. We had one private room, and
4 that was the only privacy we actually had.

5 Q And that private room, which private room was that
6 referencing?

7 A What? I'm sorry?

8 Q You said there was one private room. Is that a
9 private room for a patient or a private room for a staff
10 member?

11 A No. It was a private room for a patient.

12 Q How many beds did this emergency room contain
13 during the years you were there?

14 A Initially, it had seven. It was cut back. They
15 took the back half of the E.R. and put their CAT scan
16 machine in there. So, it knocked us down to four beds
17 from seven.

18 Q Was it seven beds or four beds in February of 2012?

19 A In 2012, four.

20 Q So, on the day that brings us here in the Court
21 today, the emergency room at the Naval Hospital in
22 Beaufort had four beds, correct?

23 A That's right.

24 Q And my understanding is that you were working
25 February 24, 2012, correct?

1 A That's correct.

2 Q What time did you report to the Naval Hospital on
3 February 24, 2012?

4 A Approximately at 10 of 7:00, 6:50. Our shift
5 stopped at 7:00. We would have to get turnover.

6 Q My understanding is that, the two registered nurses
7 working in the emergency room that day were you and your
8 husband, correct?

9 A That's correct.

10 Q And your husband also would have reported to work
11 at 0700, correct?

12 A Yes.

13 Q Were there any other registered nurses in the
14 emergency room on February 24, 2012?

15 A No.

16 Q And on February 24, 2012, your husband was also
17 receiving his paycheck from CasePro, Incorporated,
18 correct?

19 A That's correct.

20 Q On February 24, 2012, was Christian Jansen the only
21 medical doctor in the emergency room?

22 A Yes.

23 Q We've heard reference in this courtroom, ma'am, to
24 something known as a triage nurse. Can you tell they
25 Court and the jury what a triage nurse is.

1 A A triage nurse actually take -- brings the patient
2 in; does a quick assessment; identifies the problem that
3 the patient, their complaint, their main complaint;
4 assigns something called an ESI number; and gets them
5 into the back as quickly as possible.

6 Q And what is the ESI?

7 A ESI stands for Emergency Severity Index. They use
8 it on battlefields; they use it for mass casualties; and
9 they use it pretty much in every emergency room in the
10 country.

11 Q Including at the Naval Hospital, Beaufort?

12 A That's correct.

13 Q And my understanding is that this is a five-point
14 scale, correct?

15 A That's right.

16 Q And with respect to that five-point scale, 3 would
17 be urgent, correct?

18 A 3 is urgent, non-emergent, yes.

19 Q Someone who has an Emergency Severity Index rating
20 of 3 would need to be seen within 30 minutes, correct?

21 A That's correct.

22 Q Fair to say that a patient with an ESI of 3 is not
23 someone who could go to the urgent care?

24 A Oh, certainly not. Hmm-um.

25 Q It's appropriate for someone with an Emergency

1 Severity Index scale to be seen in an emergency room,
2 correct?

3 A I'm sorry?

4 Q My question is, it's appropriate for someone with
5 an Emergency Severity Index scale of 3 --

6 A To be seen in the emergency room, yes, it is.

7 Q Okay. Let me direct your attention back to
8 February 24, 2012.

9 A Okay.

10 Q You were involved with the treatment of Calvin Hunt
11 that day, correct?

12 A That's correct.

13 Q At what time did you first encounter Mr. Hunt?

14 A He came in approximately 2:15 in the afternoon,
15 which is 1415, military time.

16 Q Now, around 2:00 o'clock that afternoon, were you
17 working as the triage nurse in the emergency room?

18 A Yes.

19 Q What was your husband, as the other registered
20 nurse in the emergency room, doing?

21 A He was the treatment nurse.

22 Q And what's the difference? You told us what the
23 triage nurse does. What is the treatment nurse going to
24 do?

25 A The treatment nurse, once they receive the patient,

1 would do whatever the physician orders. He may order
2 lab work, blood draws, I.V. fluids, urinalysis. He may
3 have to take the patient up to the X ray department or
4 ultrasound. It depend on what was ordered for that
5 particular patient.

6 Q And shortly after 2:00 o'clock on February 24,
7 2012, how many patients were in the emergency room at
8 the Naval Hospital, Beaufort?

9 A We had none at the time, when Mr. Hunt came in.

10 Q So, just to make sure I understand this. When
11 Calvin Hunt shows up, you don't have any other patients
12 in the emergency room.

13 A No. We had discharged someone. They went out by
14 ambulance to another institution. And no, at the time,
15 it was totally empty.

16 Q What time did you leave your shift that day at the
17 Naval Hospital?

18 A Our shift's over at 1900, 7:00 o'clock in the
19 evening.

20 Q In between the time Calvin Hunt arrived at the
21 Naval Hospital emergency room and the time he left, were
22 there any other patients in the emergency room at the
23 Naval Hospital, Beaufort?

24 A I -- I can only recall one, and he came in from an
25 accident outside, you know. He came in, and he had,

1 like, a -- a -- he had sprained his foot or something,
2 but nothing severe, nothing out of the ordinary.

3 Q And this other patient, ma'am, was that someone who
4 came into the emergency room before or after Calvin
5 Hunt?

6 A After.

7 Q Okay. So, fair to say then, that, during the time
8 Calvin Hunt was there in the emergency room at the Naval
9 Hospital, he was the only patient there?

10 A That's correct.

11 Q And on staff at that time would have been yourself
12 and your husband, correct?

13 A That's right.

14 Q Two registered nurses, correct?

15 A Um-hmm. Yes.

16 Q And one medical doctor, correct?

17 A That's right. There was also an LPN on duty, but
18 she was not in the E.R. at the time. She was there when
19 Calvin came in, but had gone upstairs to do training or
20 look at her schedule, because she also worked on the
21 fifth floor in the medical unit.

22 COURT REPORTER: Worked on what?

23 A The fifth floor.

24 COURT REPORTER: Floor medical unit?

25 A It's a medical unit, yeah.

1 Q And I don't think you've said it yet, so, tell the
2 Court and jury who the medical doctor was who was
3 present during the time Calvin Hunt was in the emergency
4 room at Naval Hospital, Beaufort.

5 A Dr. Jansen.

6 Q Could you explain the circumstances as to how Mr.
7 Hunt came to the emergency room on February 24, 2012. I
8 believe you said it was around 2:15.

9 A It was. He was brought down by someone. Now that
10 I know her last name, at time of my deposition, I didn't
11 know her last name, but her name was Sandra Smith. She
12 was from Family Practice. And she escorted him
13 downstairs. And also, Mr. Ray. So, it was Mr. Ray, Mr.
14 Hunt, and Ms. Smith.

15 Q Have you ever met Ms. Smith before?

16 A I've seen her, but you know, when you work in -- in
17 a closed unit such as that, a lot of times, you don't
18 know people's names, but you recognize faces.

19 Q Can you describe Ms. Smith for us.

20 A She was a middle-aged, like 40. Mid- to late
21 forties. Light-skinned, black woman. Average build.

22 Q And Mr. Ray, had you ever met him, prior to that
23 occasion?

24 A I had met him on several occasions, yeah.

25 Q And what were the occasions with which you had the

1 occasion to meet Mr. Ray previously?

2 A He was actually a patient.

3 Q At the Naval Hospital.

4 A Yes.

5 Q Did you ever know Mr. Ray separate and apart from
6 him receiving treatment at the Naval Hospital?

7 A I've seen him on the outside occasionally. I knew,
8 you know, where his off -- like, he was -- he was the
9 Veterans liaison or -- I knew of him, but -- and I'd
10 seen him, certainly, in stores. And we always would
11 speak, like hello, pleasantries, but no real
12 conversation.

13 Q About how old was Mr. Ray?

14 A Probably late -- late sixties, maybe seventies.

15 Q And how would you describe him to this Court and
16 jury?

17 A He's an African-American male. He was on the
18 shorter side. Just -- and he was -- he was dark-
19 skinned. That's all.

20 Q Your understanding was that these three persons
21 that came from upstairs, downstairs to the E.R.,
22 correct?

23 A That's correct.

24 Q How did you obtain that understanding?

25 A Well, our clerk had taken a phone call. Someone

1 apparently called the emergency room and said we're
2 going to bring a patient downstairs. And the clerk at
3 the time, I believe it was Dreama -- I'm not even sure.
4 There were two clerks. Change of shift. She told me
5 that they were going to bring a patient down from Family
6 Practice, and that was pretty much the extent of it.

7 Q What did you do when you learned that there was
8 going to be a patient coming from Family Practice, down
9 to the emergency room?

10 A Well, I looked for them. We had a large glass
11 window, and you could sit at the front desk, and you
12 could see everything that was going on, on the hallway.
13 You know, in the immediate hallway.

14 Q When you first saw these three persons, were they
15 all together?

16 A Yes.

17 Q And what information did you obtain when all three
18 of those persons, Sandra Smith, Calvin Hunt, and Edward
19 Ray, first approached the emergency room?

20 A Well, I had difficulty hearing her, which wasn't
21 uncommon. We had a pretty thick pane of glass with just
22 a keyhole to speak through. And with it being
23 wintertime, with the heating system on, it was really
24 difficult. So, I motioned to her. I just put my finger
25 up, like, wait a minute; I'm going to come out and speak

1 to you.

2 Q So, you actually went out in the hallway.

3 A I went out in the hallway with them, yes.

4 Q And who did you speak to?

5 A Well, Ms. Smith started to tell me why she was
6 bringing him down, cause I had not a clue why he was
7 coming down there to begin with. She said --

8 Q And -- well, continue, ma'am.

9 A She said that he came in mainly for prescriptions.
10 That was his -- his chief complaint. And that his
11 grandmother had gotten a hold of Mr. Ray, and was
12 concerned about him. And that was pretty much the
13 extent of our interaction in the hall.

14 Q Did you have an understanding, from the
15 conversation in the hallway, as to whether or not there
16 was a mental health concern with respect to Calvin Hunt?

17 A Yes. She did say that the grandmother stated that
18 he -- she was afraid that he would hurt himself.

19 Q Calvin Hunt's grandmother was worried about him.

20 A Yes.

21 Q And as a result, Mr. Hunt came to the Naval
22 Hospital.

23 A Yes.

24 Q Following that initial conversation, you took
25 Calvin Hunt back to the triage room, correct?

1 A I took him immediately back, yes.

2 Q And when you first took Mr. Hunt into the triage
3 room, did Edward Ray come with you, or was it just you
4 and Mr. Hunt?

5 A No, Mr. Ray came along, as well, and I asked him to
6 step out into the hallway, because it's a HIPAA
7 violation, basically. But when I say the hallway, I
8 mean, like, right around the corner hallway.

9 Q It's an itty-bitty E.R.

10 A It is.

11 Q Okay. Let's focus on when you were in that triage
12 area with Calvin Hunt.

13 A Um-hmm.

14 Q How would you describe his presentation?

15 A He was remarkably -- for a psyche patient
16 presentation, he was calm, he was neat, he was well-
17 kept. His shirt was ironed. He was polite.

18 Q With respect to that triage -- strike that. When
19 you were in the triage room with Mr. Hunt, and this is
20 while Mr. Hunt is still in the hallway, did you ask Mr.
21 Hunt any questions?

22 A I did.

23 Q What question or questions did you ask him?

24 A Well, generally, we try to make them feel
25 comfortable. So, in my initial, you know, greeting with

1 him was him was hi, what can we do for you today, you
2 know; tell me what's going on. And he didn't respond at
3 first. But then, -- then, he started to talk.

4 Q Did you ask him if he was on any medications?

5 A I did.

6 Q And what was his response?

7 A He said, ma'am, I've been -- I -- that's why I'm
8 here; I have been out of my medication; I tried to make
9 them last as long as possible. He had been cutting his
10 pills in half.

11 Q Was Calvin Hunt able to tell you the name of the
12 medications he was on?

13 A No.

14 Q He didn't know the names of those pills?

15 A No, he did not.

16 Q When you're having this conversation with him, when
17 you describe him -- how would you describe his affect?

18 A He was flat. I mean, he had no -- he had lost,
19 like, the joy. You could tell he was just flat and a
20 little withdrawn, but he was appropriate when he spoke
21 to me. His, you know, speech was clear. It was not
22 slurred. Everything was strictly military -- yes,
23 ma'am; no ma'am.

24 Q But you described him now as withdrawn?

25 A He was withdrawn, yes. Slightly withdrawn. It was

1 difficult to have a, you know, conversation with him
2 without pulling it out of him, but he did speak, and he
3 answered everything that I asked of him.

4 Q When you were alone with Mr. Hunt in the triage
5 room, are you comfortable or uncomfortable?

6 A I was comfortable.

7 Q Being alone with him?

8 A And I was alone with him. I mean, even the clerks
9 had stepped away.

10 Q I just want to make sure. Let's focus on this
11 triage room. When you were interacting with Mr. Hunt in
12 that triage room, --

13 A Um-hmm.

14 Q -- who was closer to the door? You or Mr. Hunt?

15 A He was.

16 Q And I believe I heard this testimony, but I want to
17 make sure. Were you comfortable or uncomfortable with
18 Mr. Hunt sitting between you and the door?

19 A That part never crossed my mind. There was one
20 point in our -- towards the end of my triage time with
21 him where he put his hands over his ears and shook his
22 head. And I investigated further, and asked him if he
23 had any -- like, was he hearing voices, which is, you
24 know, it could be, like, a psychotic thing, and -- and
25 they would hear voices or see things that aren't there.

1 And his response to me was, no.

2 Now, I know they do that as well with -- with
3 frustration. Some people don't vocalize frustration,
4 but they have -- their body language does things like
5 that, like, they don't want to hear it anymore, you
6 know, whatever.

7 Q And I appreciate that answer, and we'll come back
8 to that in a moment. I want to go back to my question,
9 because I want to make sure.

10 It's your testimony as you sit here today that,
11 when Mr. Hunt was between you and the door of the triage
12 room, --

13 A Right.

14 Q -- that the thought never crossed your mind as to
15 whether you were comfortable or uncomfortable, correct?

16 A That -- it did not cross my mind until the very
17 end, and that's when I took him in the back. Because,
18 if he wanted to leave, he certainly had places to go.

19 Q And when you say, *until the very end*, did you
20 develop a sense of either being comfortable or
21 uncomfortable with him?

22 A I was just slightly afraid of him at that point.

23 Q You were uncomfortable?

24 A A little bit.

25 Q And what were you worried about when you say that

1 you were afraid or slightly afraid of him?

2 A I was afraid of my own safety. My head was, you
3 know, facing a brick wall, so. Or a concrete wall.

4 Q You didn't --

5 A Go ahead.

6 Q Sounds like you didn't want to be alone with this
7 man. Is that fair?

8 A No, that's when I began to feel a little
9 uncomfortable. And everyone has always told me, cause
10 they would say, don't do that up there by yourself, you
11 know, like, especially when you have a psyche patient,
12 because you never know. We saw lots of psyche patients,
13 but.

14 Q And with respect to this particular psyche patient,
15 did you think he was angry or not angry?

16 A I thought he was frustrated. That and -- and he
17 and -- and certainly, frustration. With frustration
18 comes anger.

19 Q Have you ever described Calvin Hunt's presentation
20 to you that day as being one of anger?

21 A I mentioned it to Dr. Jansen, and I said it to the
22 treatment nurse, Joe. I said --

23 Q That day, that Friday?

24 A That day. I said, when I'd finished my assessment,
25 I said, I don't believe he's suicidal; I think he's

1 angry and frustrated. And that was mainly over
2 medications, inability to get medications.

3 Q Medications he couldn't even tell you the names of,
4 correct?

5 A No, but that's not uncommon. That happens every
6 day.

7 Q My understanding is that there is a computer in the
8 triage room, correct?

9 A That's right.

10 Q Did you access that computer at all with Mr. Hunt
11 while you were in the triage room?

12 A The clerk apparently tried. Because he wasn't in
13 our system, it was very difficult. We couldn't even
14 access his files, anything on him at the time.

15 Q But you yourself made no attempt to do that,
16 correct?

17 A No, I did not, because the clerks are right on top
18 of it. If I ask them for something, and I'm triaging,
19 they generally will pull it up for me.

20 Q Now, were you able to consult any medical records
21 of Calvin Hunt on that Friday, February 24th? Yes or
22 no?

23 A Yes.

24 Q And we've already salvaged that those past medical
25 records did not come off the computer, correct?

1 A That's correct.

2 Q Those past medical records were in hard copy that
3 Kalvin Hunt or Edward Ray had brought with them,
4 correct?

5 A That's correct.

6 Q And you asked to see those records, correct?

7 A I did, because I tried to identify the medication
8 that he got last.

9 Q And my understanding is that those records were in
10 a file folder, correct?

11 A Yes.

12 Q And how thick was that file folder, ma'am?

13 A Between an inch, and an inch-and-three-quarters.
14 I, you know, I couldn't be certain. It was quite a
15 sizeable stack of papers.

16 Q It was a large stack of papers. Is that fair?

17 A Yes.

18 Q Based on your experience, do you agree that
19 military personnel often have a hard copy of their
20 military medical records, correct?

21 A Yes.

22 Q That's something they'll take with them from one
23 duty station to another, correct?

24 A Correct.

25 Q But with respect to an inch, to an inch-and-three-

1 quarter-inch file, you didn't go through that entire
2 file, did you?

3 A No. I couldn't possibly, and get him back there
4 within 30 minutes.

5 Q And that answer that you just gave is with respect
6 to when he's in the triage room. But at any point in
7 time that day, did you review that, in its entirety, the
8 one, to one-and-three-quarter-inch file of medical
9 records that had been brought with Mr. Hunt?

10 A No, sir. That's really not the nurse's
11 responsibility.

12 Q Whose responsibility is that?

13 A The physician or the psychiatrist.

14 Q A medical doctor?

15 A Right.

16 Q Not a nurse.

17 A Not a nurse.

18 Q Okay. But with respect to that file, you actually
19 held that file in your own hands, correct?

20 A I did.

21 Q Okay. And how much time do you believe you spent
22 looking at that stack of papers?

23 A I basically flipped through the beginning of the
24 chart, 'til I could find a record of the last
25 medications, which were some time in 2011. And I

1 believe it might have been August of 2011. I can't be
2 certain. It's been so long now, but.

3 Q From this brief review of Calvin Hunt's past
4 medical records, let's walk through what you were able
5 to figure out. Okay?

6 A Okay.

7 Q What medications for Calvin Hunt -- strike that.
8 What were you aware of Calvin Hunt's past medications?

9 A He was on Celexa, which is an anti-depressant. He
10 was on Levitra, which was for erectile dysfunction. He
11 was on the nicotine patch. And he also was on Seroquil,
12 which is -- they use it for several different kinds of
13 mental illness. Bipolar disorder, psychosis, like, with
14 schizophrenia. They use it for a massive, like, a major
15 depression, as well.

16 Q Fair to say that, by simply reviewing his
17 medication list, you knew that Calvin Hunt had been
18 prescribed anti-psychotic medications in the past,
19 correct?

20 A It could have been for that.

21 Q But Celexa, that's an anti-depressant. That's what
22 you told us, correct?

23 A That's correct.

24 Q And then, you told us a little bit about the
25 various things that Seroquil is used to treat, correct?

1 A That's right.

2 Q You knew what Seroquil was that day, correct?

3 A Yes.

4 Q And your testimony here today, is it fair to say
5 that all the understanding that have about Seroquil is
6 that it is used to treat some significant form of mental
7 health concern? Is that fair?

8 A Yes.

9 Q Okay. What else did you learn from your brief
10 review of the inch, to inch-and-three-quarter-inch stack
11 of medical records that Calvin Hunt brought with him?

12 A He was married; was now divorced. He had a young
13 son. He was stationed down in -- his last duty station
14 was in San Diego. He had a history of PTSD, and he had
15 alcohol and drug dependence. Depression. Prior suicide
16 attempt in 2010.

17 Q Anything else?

18 A He had -- he was -- he was in the process -- they
19 were in the process of separating him from the military,
20 or attempting to. I don't know the exact words, how
21 that's worded, but due to an altercation with his -- one
22 of his superior officers.

23 Q And by altercation, you mean he actually assaulted
24 his superior officer.

25 A No, it didn't -- it just said an altercation. It

1 could be a fight and -- certainly.

2 Q But nevertheless, it was an altercation, correct?

3 A That's right.

4 Q And was it with an officer? Did I hear that
5 correctly?

6 A With his superior. I don't know whether it was --
7 I would imagine it was a sergeant, at least.

8 Q Either an NCO or commissioned officer. Is that
9 fair?

10 A That's fair.

11 Q Do you agree that schizophrenics who aren't on
12 their medication can hallucinate?

13 A That's a possibility.

14 Q Schizophrenics that aren't taking their medicine
15 can see things that aren't there, correct?

16 A That's a possibility.

17 Q That's a yes?

18 A Yes.

19 Q Schizophrenics that aren't taking their medication
20 can hear things that aren't really happening, correct?

21 A Correct.

22 Q And if someone is hallucinating, if they're acting
23 out of context, if they're mumbling or talking to
24 themselves, that would concern you, correct?

25 A That -- that would concern me.

1 Q Just like you would be concerned about a patient
2 reporting seeing a werewolf on his bed, correct?

3 A Yes, unless he was telling a joke. I don't know.

4 Q Do you agree with me, it's probably not a good
5 thing for someone diagnosed with schizophrenia not to be
6 taking their medicine?

7 A I agree with that, yes.

8 Q Hearing voices is not a good thing, correct?

9 A That's correct.

10 Q Hallucinating's not a good thing, is it?

11 A No.

12 COURT REPORTER: I'm sorry, your answer?

13 A No.

14 MR. HOYLE: Permission to approach, your Honor.

15 THE COURT: Yes.

16 BY MR. HOYLE:

17 Q Ms. McDonald, I'm handing you a document that a
18 prior witness, a Saundra Smith prepared on February 24,
19 2012. I'm going to ask you some questions, ma'am.

20 A Okay.

21 Q Were you aware, on February 24, 2012, that Calvin
22 Hunt had a problem with delusional disorder?

23 A No, I was not.

24 Q Were you aware, on February 24, 2012, that Calvin
25 Hunt had a problem with personality disorder?

1 A I -- I didn't know what the extent of his
2 psychiatric history was, no.

3 Q On February 24, 2012, were you aware that Calvin
4 Hunt had a problem with adjustment disorder, with
5 disturbance of emotions and conduct?

6 A No, I did not.

7 Q On February 24, 2012, were you aware that Calvin
8 Hunt had had a problem with anxiety?

9 A No.

10 Q Would any of those conditions or problems that I
11 just read to you be of concern?

12 A Many people walk around with that. As long as they
13 -- they are on their medication, it's controlled. It
14 depends on their behavior at a particular time, so. It
15 wouldn't concern me if he were sitting in front of me
16 and was calm, no, it would not.

17 Q And on February 24, 2012, you knew that Calvin Hunt
18 was not on his medicine, correct?

19 A That's right.

20 Q And that medicine included both Seroquil and an
21 anti-depressant, correct?

22 A That's correct.

23 Q If someone presents to you with a past history of
24 committing violent acts, is diagnosed with
25 schizophrenia, and they report that they're out of their

1 medicine, is that a concern to you?

2 A It's concerning. I think he need quite -- you
3 know, would have to be seen. It depends on his behavior
4 at the time. I would certainly be concerned, though.

5 Q Do some of these anti-psychotic medications keep
6 someone with a mental health issue, like schizophrenia,
7 level or regulated?

8 A With schizophrenia, maybe they would need an
9 additional medication, certainly. From what I gather
10 here, he was really bi -- he was bipolar, or borderline
11 personality, and that's different than schizophrenia.
12 Certainly, they can have a break, but. I'm going to
13 look and see.

14 COURT REPORTER: I'm sorry?

15 A I'm going to look and see, because I don't remember
16 even seeing that. No, I don't see it on here.

17 Q Are there any other specific problems that you
18 recall for Calvin Hunt during the brief time that you
19 reviewed a substantial stack of medical records that he
20 had?

21 A That he had? No, I'm not aware of anything else.

22 Q You were telling me a moment ago, I think I heard
23 this, that, at some point in time, Mr. Hunt put his
24 hands over his ears.

25 A He did. Yes, he did.

1 Q Was he shaking his head when he did that?

2 A He just rocked it back and forth, like that. It
3 was brief, and that's when I questioned him, and the
4 behavior stopped.

5 Q And he was still in triage, or was he back in a bed
6 in the emergency room?

7 A You know, I don't -- I don't honestly remember. I
8 -- I believe it was up -- probably up front, because at
9 that point, I took him in the back; because everyone
10 else's voice kept telling -- you know, it's -- I
11 remember people that triage up there, and they said, you
12 should never sit up there by yourself, but. And at that
13 point, I took him in back.

14 MR. HOYLE: Judge, do you want us to keep going, or
15 is this a good stopping place?

16 THE COURT: Is this a good stopping place for you?

17 MR. HOYLE: I think so. I think it's a logical
18 place.

19 BY THE COURT:

20 THE COURT: Very well. Perfect. All right.

21 Ladies and gentlemen, we are now going to take our lunch
22 break. I'm going to ask you to be back in your jury
23 room, where we'll continue with this matter at 2:30.

24 Please be mindful, over the lunch break, do not
25 discuss this matter, or allow anyone to discuss it with

1 you. Do not do any sort of research. Don't listen to
2 anything. Don't read anything about this matter, radio,
3 television, Internet, newspaper.

4 Leave your communication devices, cells phones,
5 someplace other than the courthouse. Again, you must
6 receive all of the information from which you will make
7 up your minds here in court while court is in session.
8 And leave your notes in your seat. And I will see you
9 at 2:30. Have a very good lunch. We will secure your
10 notes over lunch.

11 JURORS LEAVE COURTROOM 1:21 P.M.

12 THE COURT: All right. Now, Ms. McDonald.

13 JANICE MCDONALD: Um-hmm.

14 THE COURT: I'm going to ask you to be very, very
15 mindful not to discuss your testimony with anyone over
16 lunch, since you're on the witness stand. Doesn't mean
17 you can't have a conversation. Doesn't mean you can't
18 talk about how sadly and pitifully the Yankees played
19 the other night or anything else.

20 A Oh, goodness.

21 THE COURT: But you cannot discuss your testimony,
22 and do have a pleasant lunch.

23 A Thank you.

24 THE COURT: And we'll see you right back here at
25 2:30.

1 A Okay. Thank you.

2 THE COURT: Thank you kindly. All right. Anything
3 from the Plaintiff?

4 MR. HOYLE: Not at this time, your Honor.

5 THE COURT: All right. From the Defense?

6 MR. LOVELL: Nothing, your Honor.

7 THE COURT: Let me ask this question, because I'm
8 trying to stay ahead of you on your video depositions.
9 Next witness is?

10 OFF-THE-RECORD DISCUSSION.

11 THE COURT: All right. I want to see you all for
12 just a moment. Just a moment.

13 OFF THE RECORD 1:23 P.M.

14 BACK ON THE RECORD 2:41 P.M.

15 BY THE COURT:

16 BAILIFF: All rise. This court is back in session.

17 THE COURT: Thank you so much. Please be seated.
18 All right. Ready?

19 MR. HOYLE: You got me with my mouth full, Judge,
20 but yes, yes, we are.

21 THE COURT: Ready?

22 MR. LOVELL: We are ready.

23 THE COURT: Wonderful. Oh, we need a witness. We
24 need a witness. Come on down.

25 BAILIFF: Are you ready, your Honor? The jury is

1 entering the courtroom, your Honor.

2 JURY ENTER COURTROOM 2:43 P.M.

3 THE COURT: Ladies and gentlemen, I certainly hope
4 that you had a very pleasant lunch. Take a moment and
5 check to be sure that your notepad is, in fact, the
6 notepad that you had. And at this time, we're going to
7 continue with the Plaintiff's case. You may proceed.

8 MR. HOYLE: Thank you, your Honor. Permission to
9 approach?

10 THE COURT: Yes.

11 JANICE MCDONALD,

12 CONTINUE DIRECT EXAMINATION, BY MR. HOYLE:

13 Q Mrs. McDonald, I'm handing you what has been moved
14 into evidence as Plaintiff's Exhibit Number 20. I'm
15 going to ask if you recognize that document.

16 A I do.

17 Q These are the medical records of Calvin Hunt on the
18 day in question, correct?

19 A That's correct.

20 Q I'm going to direct you specifically, for purposes
21 of the next line of questioning, to Pages 2 and Pages 3
22 of Exhibit 20.

23 A Okay.

24 Q Let's look at Page Number 2 first. Is that your
25 handwriting on that page?

1 A It is.

2 Q And same is true with respect to Page Number 3?

3 A Yes.

4 Q All right.

5 MR. HOYLE: Your Honor, may I publish via board and
6 screen?

7 THE COURT: In evidence?

8 MR. HOYLE: Yes.

9 THE COURT: Certainly.

10 BY MR. HOYLE:

11 Q Let's look at Exhibit Number 20, Page Number 2.

12 MR. HOYLE: Madam Clerk can you put it on the big
13 screens, as well, for the gallery and the Judge.

14 BY MR. HOYLE:

15 Q All right. Let's start at the top of the page.
16 That seems like the logical place to start. Is that
17 fair?

18 A That's fair.

19 Q We have an arrival time on here of 2:17 p.m.

20 A That's correct.

21 Q On 2/24/12, correct?

22 A Yes.

23 Q That's when Calvin came into the itty-bitty
24 emergency room at Naval Hospital, Beaufort?

25 A That's correct.

1 Q And you would have gotten that time of 2:17 p.m.
2 from either your watch or the computer, correct?

3 A That's correct.

4 Q So, you believe that would been the accurate time
5 that Calvin Hunt came into the emergency room at Naval
6 Hospital, Beaufort, correct?

7 A Yes.

8 Q Now, we talked earlier about the ESI Scale. Do you
9 recall that conversation?

10 A Yes.

11 Q And you told me that it was a 1-to-5 scale.

12 A Yes.

13 Q 1-to-5, with 1 being a patient who needs the most
14 urgent care, correct?

15 A Well, depends on the circumstance. If you had a
16 mass -- mass casualty, they would just tag them, because
17 there's not a whole lot that can be done for that
18 individual.

19 Q Is that a near-death-type situation?

20 A Yes.

21 Q Okay. How -- strike that. What are the most
22 common ESI triage categories that you would circle on a
23 day-to-day basis in the E.R. Naval Hospital?

24 A At Navy, most 4's and 5's.

25 Q But for Calvin Hunt, you rated him as a 3, correct?

1 A That's right.

2 Q So, this meant that Calvin Hunt was a patient that
3 needed urgent treatment, correct?

4 A That's correct.

5 Q Isn't that because you thought that, since Calvin
6 Hunt was without his medication and he had some
7 psychiatric problems, he was urgent and needed
8 attention, correct?

9 A We try -- that's correct.

10 Q All right. Immediately underneath that, we've got
11 a signature. And is that your signature?

12 A It is.

13 Q And coming down, we have something that says *chief*
14 *complaint*. Do you see that?

15 A Um-hmm.

16 Q That's a yes?

17 A Yes. I'm sorry.

18 Q It's all right. The court reporter occasionally
19 has to chastise me about things, too.

20 With respect to the nursing assessment that you
21 made on February 24, 2012, what was the chief complaint,
22 based on your observations and assessment of Calvin
23 Hunt? What's reflected in the record?

24 A He's had suicide ideation or suicidal thoughts.
25 And he needed his medication, which I don't have written

1 there, but.

2 Q Okay. And so, basically, what that means is, that
3 Kalvin Hunt had thoughts of killing himself, correct?

4 A He had thought about it, yes.

5 Q And you knew that, because the person who brought
6 Kalvin Hunt down to the emergency room told you. And
7 then, you confirmed that by asking Kalvin Hunt, correct?

8 A That's right. We always ask if they're going to --
9 if they have any idea if they're going to hurt
10 themselves or someone else.

11 Q And Kalvin Hunt told you, yes, he did have thoughts
12 about killing himself, correct?

13 A He has thought about it, yes.

14 Q And that would have concerned you, because you knew
15 that he had already tried to kill himself once before,
16 correct?

17 A Yes.

18 Q I believe you previously told me that it's your
19 belief that anytime anyone who has a previous attempt of
20 suicide, they're likely to follow through again,
21 correct?

22 A That's correct.

23 Q What else did you write, as far as nursing
24 assessment?

25 A Basically, what I saw in his chart: that he had a

1 history of depression, and previous suicide attempt, and
2 also, PTSD.

3 Q And I think most of our jurors know what that is,
4 but what is PTSD, ma'am?

5 A It's Post Traumatic Stress Disorder.

6 Q And that information, the history, the history of
7 the alcohol and drug dependency, depression, and PTSD,
8 that's information that you got from an inch, to an
9 inch-and-three-quarter-inch stack of paper medical
10 records, correct?

11 A That's correct.

12 Q And you thought that was important information,
13 didn't you?

14 A I did.

15 Q You believe, do you not, that depression and PTSD
16 makes a person prone to anxiety, correct?

17 A It does.

18 Q But you didn't write delusional disorder on this
19 assessment.

20 A No.

21 Q Correct?

22 A That's correct.

23 Q And you had read through most of the records --

24 A No.

25 Q -- that were available to you that day, correct?

1 A No, I didn't read through most of the records. I
2 skimmed through, primarily to find out his medications
3 and what he had been on. And that gave me some
4 indication, just turning a few of those pages, you know,
5 that he had a history of depression and so forth.

6 Q That there were some mental health concerns,
7 correct?

8 A There was, yes.

9 Q But you didn't write on this document that we're
10 looking at, the nursing assessment, you didn't write
11 adjustment disorder with disturbance of emotions and
12 conduct, correct?

13 A No.

14 Q But you believe that persons with schizophrenia
15 have adjustment disorder with disturbance of emotion and
16 conduct, correct?

17 A I do, but I didn't see anywhere in that chart, in
18 that record, on that day, that he was schizophrenic. I
19 saw bipolar.

20 Q In 60 seconds of looking at an inch, to an inch-
21 and-three-quarter-inch stack of medical records, you saw
22 the word *bipolar*, correct?

23 A I saw bipolar.

24 Q But in that cursory review, you didn't see the word
25 *schizophrenic*, correct?

1 A I did not.

2 Q Do you believe that the medication you told us
3 about earlier, specifically the medicine Seroquil,
4 alerted you to the possibility, or the reality, that
5 Calvin Hunt was a schizophrenic?

6 A It was a possibility, but like I said before,
7 Seroquil is also given for borderline personalities, as
8 well as severe depression.

9 Q Would you agree with me that -- by Calvin Hunt,
10 we're going to focus solely on what you knew.

11 A Okay.

12 Q Not what other things were in that big, old stack
13 of records you didn't look at, but solely on what you
14 knew. Will you agree with me that, based on the fact
15 that Calvin Hunt had previously been prescribed Seroquil
16 and Celexa, that he was a patient with multiple mental
17 health issues, not just one in particular?

18 A I thought he had mental health issues, yes,
19 certainly. But I -- to what extent, I really didn't
20 know.

21 MR. HOYLE: Permission to approach, your Honor.

22 THE COURT: Yes.

23 MR. HOYLE: Your Honor, I am approaching the
24 witness with a document that's been marked for I.D. only
25 as Plaintiff's Exhibit Number 18.

1 ITEM IDENTIFIED AS INCH-AND-THREE-
2 QUARTER STACK OF MEDICAL RECORDS
3 OF KALVIN HUNG
4 MARKED PLAINTIFF'S EXHIBIT NUMBER 18
5 FOR IDENTIFICATION.

6 MR. HOYLE: May I hand the witness a ruler, your
7 Honor.

8 THE COURT: You may.

9 BY MR. HOYLE:

10 Q I'm going to hand you a ruler, ma'am.

11 A Okay.

12 Q The document that's been marked for identification
13 as Plaintiff's 18 is in a manila folder, correct?

14 A That's correct.

15 Q And I handed you a ruler. And using the ruler, can
16 you tell the jury the thickness of the folder that
17 contains Plaintiff's 18?

18 A They're an inch and three-quarter.

19 Q I'm going to ask you to open that folder up,
20 please, ma'am. You can set the ruler aside.

21 A Sure.

22 Q And spend some time acquainting yourself with those
23 documents.

24 A Double-sided. Okay, how far do you want me to go
25 through this?

1 Q Well, I'm just going to ask you a question.

2 A Okay.

3 Q And I didn't time you, so I don't know if you spent
4 60 seconds with those documents or not, but do these
5 look like the stack of documents Mr. Hunt and Mr. Ray --

6 A Honestly, --

7 Q -- had with them on February 24, 2012?

8 A Some of the things in here do, certainly, but his
9 record was much smaller than this. Like, as far as, it
10 was not double-sided papers.

11 Q What looks familiar about those records to you,
12 ma'am?

13 A Well, some of the problems that are on here, I
14 remember seeing the alcoholism, and you know, that he
15 had some shoulder problems, some shoulder issues, and
16 family -- like, his family problems. And it does state
17 that he was from San Diego and Miramar.

18 Q Ma'am, as you go through those, there are little
19 numbers in the lower, right-hand corner. Don't read
20 anything about those little numbers, but do you see
21 there is a three-digit number on them, on each page?

22 A Yes.

23 Q Can you read those out for the record, as you turn
24 that exhibit, please, ma'am?

25 A 568, 569, 570, that's just his problems. 571, 572,

1 573, 574, through '76.

2 Q Through 576?

3 A Um-hmm.

4 Q That's a yes?

5 A Yes. I'm sorry.

6 Q Okay. Is there anything else in that big stack of
7 documents that's contained within the folder that's been
8 marked for identification only as Plaintiff's 18, that
9 looks familiar to you, ma'am?

10 A I did remember bursa, the knee bursa.

11 Q What page is that on, ma'am?

12 A 580. And the alcoholism, that was on 582. But I
13 don't remember sheets like this. They were not like
14 this, so.

15 Q And by *sheets like this*, you mean they weren't
16 printed on paper?

17 A They weren't in order like this. They were -- they
18 were just, like, a visit and what that visit contained,
19 and you know, whether he had gotten any kind of
20 medications or -- and so forth.

21 Q While we're on the topic of medication, if a
22 patient like Calvin Hunt is having problems getting his
23 pills, you'd agree with me that's something you just
24 can't stop, because you might end up with a poor result.

25 A He -- yeah, he -- he was even aware of that. He

1 knew he needed to get that medication.

2 Q And when you -- I'm sorry, ma'am.

3 A Even though he didn't know the name of it, he knew
4 he -- he needed it.

5 Q He knew he needed some pills.

6 A Yes.

7 Q And when you saw Calvin Hunt that fateful Friday,
8 you had no idea how long it had been since he had last
9 taken those anti-psychotic pills, correct?

10 A That's correct.

11 Q You specifically asked him, but he didn't know.

12 A I did.

13 Q Could be three months, six months, or a year. You
14 just didn't know.

15 A I didn't know.

16 Q When you were skimming through that stack of
17 documents that had Mr. Hunt's medical records in it, did
18 you see anything in there about impulse control issues?

19 A I did not, at the time. No, I didn't.

20 Q Do persons with impulse control issues act out and
21 have trouble regulating their behavior?

22 A Yes. Generally, they can't resist urges or
23 tendencies to act out.

24 Q And again, you didn't read all the hard copy
25 medical records that were there in front of you that

1 day, correct?

2 A I did not.

3 Q Even though you held them with your own two hands,
4 correct?

5 A I did.

6 Q Would you like to have known whether or not there
7 were reports in the medical records of impulse control
8 issues?

9 A I certainly would have liked to know a little more
10 about his history.

11 Q And why is that, ma'am?

12 A Well, it gives you a better understanding of what
13 they're actually -- what's going on, you know, with
14 them, and what -- what they potentially could do, even
15 though he didn't do anything that day, so, at the
16 hospital.

17 Q Let's go back to the triage records. I believe you
18 told us about this a little while earlier. Calvin Hunt
19 had a flat effect or affect, correct?

20 A Right. Right.

21 Q What does that mean?

22 A They're not -- there's no -- there's little or no
23 emotion. They're -- they're just not forthcoming. They
24 don't initiate -- initiate a conversation with you,
25 unless you specifically ask them something. They just

1 are -- a good way to describe it, like dead, flat.

2 Q You also noted that he was depressed, correct?

3 A Yes.

4 Q That meant that he was withdrawn and didn't want to
5 talk, correct?

6 A Right.

7 Q And you checkmarked that specific box on these
8 records, correct?

9 A Yes.

10 Q When Calvin Hunt was with you, and the two of you
11 alone in triage room, it's true that Calvin Hunt kept
12 his head down a lot and looked away most of the time,
13 correct?

14 A He kept his head down, but he would -- when I spoke
15 directly at him, he would lift his head and make eye
16 contact with me.

17 Q In addition to the triage papers that you filled
18 out, you also helped Mr. Hunt with a questionnaire,
19 correct?

20 A I did.

21 Q All right. Let's talk about that. And first off,
22 what page of the exhibit are we looking at? Are we
23 looking at Page 9?

24 A 3. Or hold on. I don't have that. I have so much
25 here. That would be Page 9, yes.

1 Q This is a questionnaire, correct?

2 A Um-hmm. Yes.

3 Q Can you read for us what the questionnaire asks.

4 A We ask: *have you been feeling down, depressed, or*
5 *hopeless within -- we usually state that within the last*
6 *one to two weeks.*

7 And the second question is: *little interest or*
8 *pleasure in doing things that you normally would enjoy.*

9 Q Now, Calvin Hunt didn't fill this out himself, did
10 he?

11 A No, no.

12 Q Did you ask him these questions, and then, circle
13 the box?

14 A I did.

15 Q And with respect to the question of whether or not
16 over the last two weeks has Calvin Hunt been bothered by
17 any of the following problems, which answers did you
18 circle?

19 A Yes.

20 Q Going back to the stack of medical records that you
21 looked at that day, you skimmed through them, were you
22 able to find a complete list of his medications therein?

23 A No. They were fragmented, as well. It went by
24 each -- it looked like it went by a particular visit.
25 So, I tried to retrieve the most recent that I could

1 find in the folder, which looked like, like I had stated
2 before, was August of 2011.

3 Q When you and Mr. Hunt are still in the triage room,
4 did you ask Mr. Hunt to change to any sort of gown or
5 change out of his street clothes?

6 A No. No, he was fully dressed.

7 Q And yet, when you were alone with him in that
8 triage room, you got afraid of him, correct?

9 A Towards the end, I was slightly frightened. I
10 can't say I was afraid of, you know, of him, where I
11 would call, like, Joe to come up front, or the physician
12 to come up front. I just felt a little uncomfortable,
13 and that's when I moved him to the back.

14 Q Did you move him to the back at that moment because
15 you were afraid of him, or because you were done with
16 your triage?

17 A Well, I was pretty much finished with the triage.
18 However, I -- like I stated before, I was slightly, you
19 know, uncomfortable around him at that point, after that
20 one episode where he put his hands to his ears. And he
21 answered me, you know. It certainly wasn't his answer.
22 And I -- like I said, I know that, when people are
23 frustrated, they can also have -- they can like, try to
24 block out whatever. So, I figured it would be best if I
25 put him in the back. At least I would have someone else

1 up there besides myself.

2 Q You'd be a little safer.

3 A I -- yeah.

4 Q Now, after you completed your triage of Calvin
5 Hunt, you took him to Stretcher Bay Number 4, correct?

6 A That's correct.

7 Q And I believe you told us earlier that the itty-
8 bitty emergency room at the Naval Hospital in Beaufort
9 back in 2012 was only about 800 square feet, correct?

10 A That's approximately right, yeah.

11 Q So, really, where you were going, to Stretcher Bay
12 Number 4, was really only a few steps away from where
13 you'd been in the triage room, correct?

14 A Yes.

15 Q And you specifically chose Bay Number 4. I presume
16 the other bays were empty, based on your choice.

17 A They were empty, yes.

18 Q You put him in Stretcher Bay Number 4 because that
19 was the closest stretcher bay to the doctor's office and
20 the E.R. nurse, correct?

21 A Well, all those bays are directly across from the
22 nurse. Room Number 4 is directly across from the
23 physician's office, as well. But yeah. There was
24 really no rhyme or reason why I chose 4. They were all
25 empty, and I -- we never use 1. 1 is an OB/GYN room,

1 and we put pediatrics in there, just because it has a
2 closed door. But the other three are just separated by
3 a curtain, and they're right on top of each other, so.

4 Q Ma'am, you've previously told me that you placed
5 Mr. Hunt in the bed closest to the doctor and nurse
6 because you believed that, anytime you have a psyche
7 patient, you want to put them somewhere where they can
8 be seen by everyone involved. Isn't that correct?

9 A Well, we -- we -- we do. There are certainly many
10 times that we have people in Bay Number 4, already, but
11 we put them in 2 or 3, but they're all right across from
12 each other. They're right there in front of the
13 physician and Joe or whoever's back there.

14 Q Now, on that particular day, the physician was Dr.
15 Jansen, correct?

16 A That's right.

17 Q And on that day, was Dr. Jansen's office door open
18 or closed?

19 A It was slightly ajar. That's all I remember. It
20 was open when I got back there, and I had to go in his
21 office, so it was partially open. It wasn't completely
22 open, wide open.

23 Q But if you were in any of those bays, you would
24 have been able to hear what Dr. Jansen was saying,
25 correct?

1 A Not necessarily. He would -- if he had a
2 conversation with anyone, he would close the door.
3 Their doors were rather thick. They weren't just, you
4 know, like, a plywood door. It was a solid wood door.
5 So, if you kept your voice down, not everything could be
6 heard. But certainly, if he talked in a louder voice
7 with the door ajar, you know, then, it would be -- then,
8 everyone would be able to hear it, right in the
9 immediate area.

10 Q You specifically ask Calvin Hunt, as part of your
11 triage, as to whether or not he was hearing voices,
12 correct?

13 A I did.

14 Q In other words, you had a concern that he might be
15 hallucinating, correct?

16 A When he put his hands up to his ears, yes.

17 Q Which really isn't that far out of a question to
18 ask when you know that someone had presented for a need
19 for refill of medications associated with various mental
20 health disorders, such as bipolar disorder,
21 schizophrenia, so on and so forth.

22 A Correct.

23 Q That's a reasonable question to ask, correct?

24 A Yes.

25 Q And when you took Calvin Hunt to Stretcher Bay

1 Number 4, did he remain fully dressed?

2 A Yes.

3 Q Did there come a time when you left Calvin Hunt in
4 Bay Number 4 alone?

5 A I -- I left him -- I left the bedside. Joe was in
6 the back, and Dr. Jansen was in his office.

7 Q When you leave Mr. Hunt in Stretcher Bay Number 4,
8 what do you do next?

9 A I go back to triage.

10 Q You didn't talk to your husband Joe?

11 A Oh, I did. I'm sorry. Yeah. I went to Dr. -- I
12 spoke to Joe and I spoke to Dr. Jansen. And I said that
13 my perception of the patient was that he was not
14 suicidal, but angry.

15 Q What made you think that Calvin Hunt was angry, and
16 not suicidal?

17 A Just from his -- he was frustrated, and certainly,
18 frustration, with that, comes anger. It wasn't what he
19 spoke or said. He never raised his voice or anything
20 like that. It was pretty much -- it was his body
21 language. He like, bit on his bottom lip. He put his
22 hands to his ears, which is body language consistent
23 with frustration, so.

24 Q When we spoke previously, I believe you
25 characterized Calvin Hunt as a slow simmer, as far as

1 anger goes. Is that true?

2 A Yeah, I think that's probably pretty accurate.

3 Q What did that mean, a slow simmer?

4 A I think he -- you know, from what he told me that
5 day, he was -- he had tried many, many -- well, he -- I
6 don't know how many, but he told me he tried several
7 times to get his medications filled. He told me -- I
8 told -- about cutting pills in half. And he had made a
9 call to the hospital earlier that day, and he still
10 wasn't able to get his medication, so, and he knew he
11 needed them. And I think at that point, he was -- he
12 was just angry with the whole system.

13 Q You would agree with me that too much heat, too
14 much time, a slow simmer could still burn?

15 A It could. Yes, it could.

16 Q Now, what, specifically, did Calvin Hunt say to you
17 to make you believe he was frustrated with the system?

18 A Well, he voiced his -- you could tell by the -- the
19 way he said it; that he had called several times; he had
20 gone to different places; and was unable to get his
21 medication. You know, about cutting them in half. This
22 is a guy who, to me, really wanted to get well. He --
23 he knew he needed that medication to stay level. And he
24 was he was frustrated. That's all I can say, just from
25 the way his mannerisms were, his body language.

1 Q And at that day, you didn't know how long it had
2 been since he had last had his medicines?

3 A I do not know.

4 Q But you would agree with me, if a person has a
5 prescription to take a whole pill for something, it's
6 not a good idea to cut that pill in half.

7 A Well, I know people do it. Even the elderly do
8 that nowadays, so, unfortunately.

9 Q Well, let me ask it this way. If a person is
10 prescribed Seroquil for some psychotic disorder, they're
11 prescribed a whole pill, a whole tablet, is it a good
12 idea or a bad idea to take just half?

13 A It's a bad idea to take half, but it's also -- if
14 you -- you have -- if you have to be on the medication,
15 and you don't have access to it, you're going to make it
16 last. And probably half would be better than none, so.

17 Q Did you warn Calvin Hunt that he shouldn't do that?

18 A I told him he should not do that. But he, you
19 know, was long gone, I don't know how long out of the
20 medication to begin with.

21 Q So, you tell your husband, Nurse Joe, that you
22 think he's angry.

23 A Um-hmm.

24 Q Did you relay any additional information to Nurse
25 Joe McDonald at that time?

1 A I told him that he had a previous suicide attempt;
2 that his -- that Mr. Ray was called by his grandmother.
3 I basically told him the whole -- the whole story that I
4 -- of what I knew. That his grandmother had called Mr.
5 Ray, either that day or the previous day. And I don't
6 know what their relationship was, but she knew him, and
7 knew that he was with the Veterans Affairs, and he could
8 possibly either get him through the front gate.

9 I don't even know whether he had his I.D. card,
10 because you can't get in without a CAC card. So, I
11 don't know if his capacity was to get him through the
12 front gate, or to get him through the system, somehow.
13 But you know, I told -- I told him that, and that his
14 grandmother was frightened that he would hurt himself.

15 Q So, your husband knew that there was an issue, with
16 respect to Calvin Hunt's thoughts of self harm, correct?

17 A Yes.

18 Q You've just told us information you told your
19 husband, Nurse Joe. What specific information did you
20 tell Dr. Jansen?

21 A Basically, the same thing.

22 Q You told him he was suicidal?

23 A I told him that his grandmother was afraid that he
24 would harm himself, and that he had thought about
25 harming himself when I asked him, but had no specific

1 plan.

2 Q On February 24, 2012, in the 12 hours that you were
3 working that day, for all of the patients who reported
4 there that day, patients who were ultimately were seen
5 by Dr. Jansen?

6 A Yes. Well, I don't know about the night shift. It
7 starts at midnight, but.

8 Q I'll ask my question again, so I make sure we're on
9 the same page.

10 A From 7:00, yeah. From 7:00 to 7:00.

11 Q From 7:00 to 7:00.

12 A Yes.

13 Q Okay. And the 12 hours that you were there, was
14 there somebody came in at 7:01, or left at 6:59 p.m.,
15 Dr. Jansen was the doctor that they treated with?

16 A That's right.

17 Q While you were doing your triage of Calvin Hunt,
18 was there anybody wearing a military uniform physically
19 present, watching over you as you did that?

20 A No.

21 Q While you were doing your triage of Calvin Hunt
22 that day, was there any civilian employee of the United
23 States government, the Department of Defense, the Navy,
24 who was in there watching over you, do that triage?

25 A Do the triage? No.

1 Q Did you ever receive any instruction from Dr.
2 Jansen to keep Calvin Hunt in the emergency room on
3 February 24, 2012?

4 A No.

5 Q Dr. Jansen never told you that it was a bad idea
6 for Calvin Hunt to leave the emergency room on that day,
7 correct?

8 A That's correct, but they typically don't talk to
9 the triage nurse after the patient's in the back, so.

10 Q Did Dr. Jansen ever tell you that you needed to
11 tell Calvin Hunt, if you saw him walking towards the
12 door, to stay put?

13 A No.

14 Q So, I take it, then, that Dr. Jansen never told
15 you, as one of the two nurses there that day, that
16 Calvin Hunt should not leave, because he had thoughts of
17 hurting himself, correct?

18 A That's correct.

19 Q Ma'am, thank you very much for coming in today.

20 A You're welcome.

21 MR. HOYLE: Those are all the questions I have at
22 this time. Thank you.

23 A Thanks. Thank you.

24 THE COURT: All right. Cross-examination.

25 MR. LOVELL: Thank you, your Honor.

1 THE COURT: Yes.

2 JANICE MCDONALD

3 CROSS-EXAMINATION, BY MR. LOVELL:

4 Q Ms. McDonald, tell us your employment history
5 before you came here to the Beaufort area. Had you ever
6 worked in situations involving mental health patients,
7 or people with mental health challenges?

8 A I worked in -- well, like, the beginning of my
9 career was just a med-surg floor, but we had a lot of --
10 it was -- it was in a very poor, depressed neighborhood.
11 We had a lot of drug-addicted, alcohol-addicted
12 individuals that lived on the poverty level. A lot of
13 them were HIV-positive. So, that was the beginning of
14 my career.

15 And then, after that, I went to an intensive care
16 unit that in a specialty hospital, a cancer institute,
17 much like Sloan-Kettering or MD Anderson. And I was
18 there for nearly 17 years.

19 And as you all probably know, you're not just
20 dealing with the cancer patient, you're not dealing with
21 the patient; you have the family. They have financial
22 issues, childcare issues. They're depressed. They're
23 going through these horrible treatments.

24 So, I think, really, every aspect of nursing you
25 touch some kind of psychological cord. Everyone has an

1 issue, so.

2 Q And in your training as a nurse, as you were coming
3 up to become licensed as you are, were you also trained
4 on recognition of mental health issues?

5 A Yes.

6 Q When you came here to Beaufort, before you went to
7 the working at the E.R. at the Naval Hospital, you
8 mentioned you worked at Beaufort Memorial Hospital?

9 A I worked in their intensive care unit, as well.

10 Q How many years over there?

11 A Well, I spent my year and a half down in Beaufort,
12 at Beaufort Memorial. And then, I transferred over to
13 the Navy. And now, I'm back at Beaufort, so.

14 Q Let me ask you just a couple of questions about
15 your employment situation. As I heard you said earlier,
16 when you first went from the Beaufort Memorial Hospital
17 to working in the Naval Hospital, you worked through a
18 placement company called, was it?

19 A Fly America.

20 Q Okay. Fly America. And they wrote your paychecks.
21 They wrote the checks for you.

22 A Yes.

23 Q As far as, though, when you were with Fly America,
24 who controlled what you did in the E.R.; how you could
25 do it? Who did you report to as far as the nursing

1 things that you did in the emergency department?

2 A That was our lieutenant, who was our head nurse.

3 Q A lieutenant employed by the Department of the
4 Navy?

5 A Department of Defense, yes.

6 Q Department of Defense.

7 A Whatever.

8 A And when the Fly America contract ended, did you
9 then start getting your paychecks from CasePro?

10 A Yes. It was just a matter of filling out -- we
11 didn't have to re-apply for the job. Like I said, we
12 had to fill out a form, you know, basically do an
13 employment -- re-apply for our -- our employment, but we
14 were grandfathered in.

15 Q And as far as when you were working at CasePro, up
16 until even including February 24, 2012 time frame, when
17 you were working at the hospital through CasePro, who
18 controlled the day-to-day operations that you did as a
19 registered nurse? Who did you report to?

20 A Our lieutenant. Actually, there were two, I think,
21 when CasePro was there. Would have been Lieutenant Red
22 and Lieutenant Johnson.

23 Q Same employees of the Department of Defense, Navy?

24 A Um-hmm. Yes.

25 Q Had you ever met Mr. McCabe before today in the

1 courtroom?

2 A I don't believe I have. Hmm-um.

3 Q Could the Navy folks terminate your position, if
4 they wanted to?

5 A Most definitely.

6 Q While you worked there through CasePro or Fly
7 America?

8 A Yes. And it happened recently with the new
9 contract, DeLuke and Associates, so.

10 Q Now, before February 24, when Mr. Hunt came under
11 your care at the hospital, had you seen patients who
12 presented with similar complaints as he had?

13 A Unfortunately, more times than I can count. At
14 least -- we saw at least three to four psyche patients a
15 week.

16 Q And we talked; you were asked a lot of questions
17 about this ESI Triage Category Number --

18 A Um-hmm.

19 Q -- 3 that you assigned to this patient. Is that an
20 unusual category to assign to someone who presents as he
21 came through the door of your triage area, with the
22 complaints that he had?

23 A No. Just because someone doesn't have a physical
24 symptom, like, a physical ailment, certainly, any kind
25 of psychological problem, you can't see it, and you have

1 to adjust, assume that, you know, Grandmom says he has a
2 -- he could hurt himself. Well, certainly, he could
3 have, and you have to just take it like that.

4 Q Now, you had also mentioned that, with an ESI 3,
5 the goal is to have the patient in front of the doctor
6 within half an hour. Did I hear that correctly?

7 A That's correct.

8 Q He came in, according to your note, at least at
9 what?

10 A 417.

11 Q 1417?

12 A 1417, yeah.

13 Q And then, according to the second page of what you
14 have in front of you --

15 A I believe I put him in the back close to 4:30 -- or
16 2:30. I'm sorry. I'll get it right.

17 Q So, was he in front of Dr. Jansen within that half
18 an hour window of time?

19 A Yes.

20 Q I hate to ask it, but I've been hearing you talk
21 about the layout of the emergency room. I'm going to
22 ask you if you could draw a picture. So, let me grab
23 easel real quick.

24 A Hmm. I'm a really bad artist.

25 Q We've talked about it, and I think people may have

1 different pictures in their heads. It might be just
2 easiest --

3 MR. LOVELL: Your Honor, may she step down?

4 THE COURT: She may.

5 A Oh, I'm sorry.

6 THE COURT: When you speak, you've got to be
7 mindful that you don't have benefit of a microphone.
8 And our court reporter, Ms. Rowe, must be able to hear
9 you. So, keep your voice way up.

10 MR. LOVELL: Let me move this back a little bit,
11 and flip this over a couple of sheets.

12 BY MR. LOVELL:

13 A I apologize. I'm a really bad drawer.

14 Q She has to hear you, so.

15 A Okay. All right.

16 Q Whenever you say something, I'm going to -- I may
17 even just ask you, just please turn there. All right.
18 If you want me to do the drawing, I'll do it.

19 A Okay. You draw.

20 Q So, you tell me what to draw.

21 A So, the E.R. opens from the hall, the main hallway.
22 There's an -- there's an entry door there. And then,
23 when you walk into the E.R., to the left would have been
24 triage. Okay. It's a room where the clerk sits. And
25 then, in the back of that is a little desk for the

1 triage nurse, with a chair, which is actually a chair
2 scale, and you know, blood pressure cuff. Just basic
3 nursing things.

4 Q Is the room generally rectangular in shape?

5 A The -- the triage area?

6 Q No, I'm talking about the E.R. area in general,
7 with the triage.

8 A It's a weird -- it's rectangular, yes.

9 Q All right. So, tell me if I draw it incorrectly,
10 but I'm drawing a rectangular box.

11 A Okay.

12 Q Is that generally correct?

13 A Yeah. Um-hmm.

14 Q All right, now, point us to landmarks here.

15 A So, you have a door here, an entry door.

16 Q Let me put a little -- I'll put a little circular
17 thing.

18 A Then, you have an ambulance bay on the back of this
19 wall.

20 Q I'm going to put --

21 A Oh, and then, this goes this way. Sorry about
22 that..

23 Q I'm sorry?

24 A It would have to come out this way. This is the
25 hall that -- the entrance and the ambulance bay. This

1 is triage.

2 Q Triage is on the left side, as you face our --

3 A As you walk into the door. No, as you walk into
4 the main door.

5 Q Okay.

6 A Over here, when you come out of this -- this
7 hallway goes -- there's another hallway that goes that
8 way. There's a bathroom here. Maybe I should draw it.

9 Q Maybe you should draw it. Let's do that.

10 A Maybe I should.

11 Q This is not working very well. I apologize. I'm
12 not a good artist.

13 A Okay. So, it's --

14 Q Speak up a little for our court reporter.

15 A All right. Let me -- let me just draw first. This
16 is the ambulance bay. And -- so, there's a big exit
17 here, like a big exit out for the trucks. And then,
18 this would be -- this is your door from the hall. This
19 is the hallway. And then, this is triage. It's not
20 quite that big, though.

21 Q Okay.

22 A And so, if you continue down this hallway, this
23 here, there's a bath -- a very small bathroom here. And
24 then, you hit the nurses' station. This is the nurses'
25 station. Okay. And directly across from here, this is

1 -- there's a -- oh, and there's Room 1, that room I told
2 you about, that just -- we put GYN patients in and
3 children, pediatric. So, this is Room 1.

4 Q I'm going to ask a question about Room 1 while
5 you're there. Room 1, does it have a door that closes?

6 A Yes.

7 Q And why does it have a door that closes?

8 A Mainly cause we're doing OB/GYN exams in there.
9 And we put little children in there, and they tend to
10 make a large noise when you have a 700-foot space.

11 Q So, --

12 A So, this would be Bay 2. And then, 3. And then,
13 over here is the physician's office, so I'll put M.D.
14 And this is Bay 4.

15 Q And does the doctor's office have a door on it, as
16 well?

17 A Yes.

18 Q Show us where the door is.

19 A The door faces out to Bay 4.

20 Q So, thank you, ma'am. Let me make sure that --

21 A That's really horrible, though.

22 Q That's okay. It's perfect. So, when a patient
23 comes in to see you in the triage area, can you draw us
24 a little bit about where your -- how that room would be
25 set up, please.

1 A This room, you have the main window here that faces
2 out to the hallway. Again, this is the hall. This is a
3 big glass window, with a keyhole. And then, behind that
4 glass, you have two clerks. And then, there's a little
5 space in between here with some supplies that we might
6 need, if we have someone who's bleeding or whatever.
7 And there's a cot, like a stretcher over here, in case
8 we have someone that comes in that can't sit. So, this
9 is a cot. And then, right across from that, there's the
10 nurses' desk and a scale chair that they can actually
11 sit in, and we can get their weight without them
12 standing.

13 Q When Mr. Hunt was under -- when you were talking
14 with him, can you put an X where he was, and maybe a Y
15 where you were?

16 A He would have been in -- this is the nurses' desk,
17 which around in that direction. We had a chair, but in
18 order to actually visualize and talk to the patient, who
19 was sitting over here, I would turn my chair against the
20 wall.

21 Q So, he would have been sitting to your right, and
22 you would have been sort of facing caddy-corner towards
23 him?

24 A I would -- I would have been sitting -- let's see.
25 Yes, he would have been to my right.

1 Q Okay. Thank you.

2 A Um-hmm.

3 Q You can go back. All right. So, the clerk that
4 was out front, you mentioned there might have been two.

5 A There was two.

6 Q Are they employees of somebody other than
7 affiliated with CasePro?

8 A Yes. They had a different contract.

9 Q You've told us earlier what you were told by the
10 folks that brought this gentleman down from upstairs.
11 Did that person tell you he had been -- put his hands
12 over his ears and had moaned up there?

13 A Yes, she did.

14 Q Did they tell you that he came down -- or came up
15 there specifically to get medications refilled?

16 A No. But I knew that, that's what he had, cause as
17 we were talking further in the hallway, she mentioned
18 that.

19 Q So, she told you he needed medication refilled; you
20 knew that.

21 COURT REPORTER: Is that yes?

22 A Yes.

23 Q I'm sorry. Did that person who you interacted with
24 that brought Mr. Hunt down from -- the nurse from
25 upstairs, did she tell you anything about whether she

1 felt threatened by him or concerned about being around
2 him? Anything of that sort?

3 A Not -- not at all. She -- she said she had -- she
4 had tried to make him an appointment, but he couldn't
5 get in until Monday, and he wanted his medications. So,
6 she brought him down.

7 Q And she told you, also, that, when she had talked
8 to him, he had expressed having had suicidal ideations,
9 correct?

10 A Yes.

11 Q Now, Mr. Ray, we've kind of left him out of the
12 picture, but was he there, standing next to Mr. Hunt
13 when you were talking with the person from upstairs?

14 A Yes.

15 Q Ms. Smith. And when you went back into the triage
16 area, you mentioned that Mr. Ray sat somewhere outside
17 of the room.

18 A Well, yeah. He had initially come in, and I asked
19 him to step out, just because it's a HIPAA violation to.

20 Q And you and I may know what HIPAA is, but our jury
21 may not.

22 A It's the Privacy Act. You know, it's -- you want
23 to protect patients' information, so you don't really
24 have them talk.

25 Q Do patients who come into a hospital E.R. triage or

1 the treatment area, from your experience as an E.R.
2 nurse, do they have some rights as a patient?

3 A Yes.

4 Q And you mentioned privacy. Is that one of them?

5 A It is.

6 Q And when they voluntarily come in -- first, I'll
7 ask. Did this gentleman come in voluntary?

8 A Most definitely.

9 Q Did he come into your triage area voluntarily?

10 A Yes, he did.

11 Q And when you were with him and you walked him over
12 to the E.R. treatment area, did he go voluntarily with
13 you?

14 A Yes, he did.

15 Q And as far as you know, from your interaction that
16 day, was he in the E.R. on his own free will and his own
17 volition?

18 A He could have left anytime he wanted, because we
19 have a no-restraints policy. He didn't act out. He sat
20 on the bed. And there were two exits he could surely
21 just run, but he didn't.

22 Q The no-restraint policy, is that part of a
23 patients' right?

24 A It is.

25 Q And tell us what that is. At that time, --

1 A Well, the only patients that we are required, if
2 they come in and we -- we've had patients we've had to
3 put restraints on, and we've had to use chemical
4 restraints, as well. But he certainly did not require
5 that at all.

6 Q Chemical restraints means?

7 A Drugs.

8 Q Is that something a doctor has to do?

9 A The doctor would order it. I would put the I.V. in
10 and give it.

11 Q So, in addition to what we've talked about -- and
12 you've been asked a lot of questions. I'm going to walk
13 every -- through them again. But when you went to the
14 triage room, back to the treatment room, did Mr. Ray
15 then go into the treatment area to Bay Number 4?

16 A He did.

17 Q Did he, from your recollection, go sit with Mr.
18 Hunt in Bay Number 4?

19 A He -- he talked with him, chatted with him.

20 Q Sitting in that room? Or, I guess it's that room?

21 A Yeah, they were just sitting on -- I mean, cause
22 Mr. Hunt never actually got in the bed. He was just
23 sitting on that side of the bed.

24 Q I did mean to ask one other question. I hate to do
25 it on this. But you've drawn in sort of lines between

1 2, 3, and 4.

2 A Right.

3 Q Are those walls?

4 A They're curtains.

5 Q So, other than a curtain separating those, is there
6 a curtain at the front?

7 A No.

8 Q All right.

9 A I mean, it pulls around, certainly, for privacy,
10 but we -- we leave them open if -- especially if we have
11 someone who is a psyche patient, we keep them open, so
12 we can actually visualize what's going on with them.

13 Q So, when a doctor or maybe a psyche tech is in
14 there?

15 A They close it up, yeah.

16 Q And then, when they walk out, they open it back up?

17 A Yes.

18 Q When you were in the room with this gentleman, I
19 want to go into some of the things that you've written
20 down on your notes. And I'm going first, ma'am, to the
21 first part of the triage note, which was, I think, the
22 first page you were asked about earlier. And it's
23 Exhibit 1, but I don't know the sub-page.

24 A Found it.

25 Q We've got the time. We've got your assessment. Up

1 here, I have highlighted barriers to communication. Did
2 he exhibit any problems in communicating with you?

3 A No. His speech was clear. He didn't slur his
4 speech. He was appropriate. He didn't speak in word
5 salads, which a lot of psyche patients do. They call it
6 word salads. Just, they can't organize their -- their
7 speech.

8 Q You noted *arrival via*, and you have checked what
9 appears to be ambulatory.

10 A Um-hmm.

11 Q What's the significance of that with a mentally
12 health-challenged patient?

13 A Well, he -- he walked in on his own accord, so that
14 tells you something right there.

15 Q Now, you have written under, chief complaint, it
16 says, *nursing assessment: suicidal ideation*. Tell us
17 what ideation means, as you used it.

18 A Suicidal thoughts.

19 Q Is there a difference between a suicidal thought or
20 ideation and a plan to do something?

21 A Yes. Because you -- nurses always ask, do you have
22 -- do you have any intentions, do you have any thoughts
23 about hurting yourself or hurting someone else. That
24 comes up immediately. If they have a plan, that means
25 they've given it great thought, and they're likely to

1 carry it out. But when I asked Calvin, he said that he
2 had thought about it, but had no specific plans.

3 Q Did you ask him if he had thoughts of hurting
4 anyone else?

5 A I did.

6 Q And his response?

7 A With -- he had not.

8 Q You write up here, H.O. What does that mean,
9 history of?

10 A History of.

11 Q Alcohol, drug dependence, depression, and PTSD.
12 Where did that information come from?

13 A From the chart that Mr. Ray carried.

14 Q Okay. Under here -- and I'm apologizing that ours
15 are a little bit marked out. But can you read the two
16 blocks that are checked on the one you have.

17 A Oh. Flu vaccine and --

18 Q Last tetanus?

19 A Last tetanus.

20 Q Where did you get that info?

21 A He actually -- I know he's active -- he was active
22 duty up 'til 2011, so I knew his tetanus was fine. And
23 they -- they make them all get flu vaccine.

24 Q And did he tell you that he was current on those
25 things?

1 A He told me he was current on the flu vaccine. He
2 wasn't sure about the tetanus, but he had -- I mean, if
3 he was still active duty military, and at that point he
4 was, they got their tetanus.

5 Q You keep using the word he. Is that Mr. Hunt?

6 A Yes.

7 Q You've made some vital sign notations here. Tell
8 us what those mean and what the significance of those
9 were.

10 A That was his -- the first is his temp. He had,
11 like, a low-grade temperature. It was 99.5. That can
12 be from a variety of things. His heart rate was a
13 little on the elevated side. It was 103. Normal is
14 between 60 and 100. But really not much to be concerned
15 about, because a lot of individuals get upset when they
16 have to come to an E.R.

17 His blood pressure was normal. He was 120 over 64.
18 His sat -- oxygen saturation was a hundred percent on
19 room air. And his respiratory rate was 18, which is
20 normal.

21 Q In your experience in seeing patients with
22 psychiatric challenges or mental health challenges, if
23 they are in an agitated state, do these vital signs look
24 like these you see here?

25 A No.

1 Q What would you expect to see different, if they
2 were in an agitated state?

3 A His heart rate would be very high. Generally
4 around -- at least 120.

5 Q What about blood pressure?

6 A Blood pressure would be higher, as well. And the
7 respiratory rate, as well, because they're anxious.

8 Q You have the medications you were asked about
9 earlier. That information came from where?

10 A The chart.

11 Q And this chart thing you were looking at, do you
12 know what else was in there, besides medical records?

13 A No.

14 Q Could there have been other documents about whether
15 he's eligible to come to your hospital, or other things
16 in there?

17 A No. They strictly carry, you know, they carry that
18 paper chart with them, especially when they're on --
19 like, stationed on the opposite side of the country. I
20 mean, they carry it -- most of them carry them, anyway,
21 but especially, that's an important reason to carry it.
22 Because like, we had a very difficult time that day,
23 even putting him in the system, finding him.

24 Q West coast, east coast difference?

25 A Right.

1 Q All right. Past medical history that you listed.
2 You told us about depression. Now, you've written
3 something else, cigarettes, and there's a squiggly mark.
4 What is that?

5 A That's a one-pack-per day for seven years.

6 Q Where did that come from?

7 A He did. He gave it to me.

8 Q Above it, there are checkmarks by HTN, and what
9 appears to be D.M. What are those?

10 A I'm trying to find what you're talking about.

11 Q It's right up above depression wording.

12 A Oh. Hypertension. That just stands for -- D.M. is
13 a medical abbreviation for diabetes mellitus. And CVA
14 is a stroke. HTN is hypertension. And then, of course,
15 FC. Seizure. Cancer.

16 Q Which ones did you check that day?

17 A He had -- he had a family history of diabetes and
18 hypertension.

19 Q And where did you get that info?

20 A From his chart.

21 Q Now, you've got under here, airway, and checked
22 patent. What does that mean in your assessment?

23 A He had no problems breathing. His sat was a
24 hundred percent. He could speak.

25 Q You've got his breathing effort as unlabored. What

1 is the significance of that as you're assessing this
2 gentleman with a mental health issue?

3 A Well, it would be -- they would be tachypneic,
4 which means they would be breathing at a much faster
5 rate.

6 Q Did you check tachypneic?

7 A No.

8 Q All right. Further down, you've got pulse is
9 present. What's the significance of that as you're
10 assessing this gentleman?

11 A Well, in addition to checking their pulse. It's
12 like checking their heart rate. And if they have them
13 bilaterally in both arms, you can visualize any bruising
14 or cuts or whatever, so.

15 Q Did he have any of that?

16 A No, he did not.

17 Q Skin coloring, you have checked WNL. What does WNL
18 mean?

19 A Within normal limits for his race..

20 Q Race. All right. Is there anything about looking
21 at a person's skin color that might give you some idea
22 about their mental health state?

23 A Well, if they were flushed, they could, you know --
24 it's an idea that there's something going on; they're
25 anxious; they're blood pressure's high, you know.

1 Whether their skin turgor is good. Certainly, imbalance
2 of electrolytes can cause mental conditions.

3 Q Did he have any of those things that day?

4 A No, he did not. No.

5 Q All right. Further down you have, under
6 disability, you've got, alert checked.

7 A Right.

8 Q As opposed to verbal pain on response. What was
9 the significance of that as you assessed this gentleman?

10 A He was awake, alert. He was oriented. He knew the
11 president. He knew -- he knew where he was, like, in
12 the hospital at Beaufort Naval Hospital. There were
13 things that he didn't remember, but there were things
14 that some other people probably would have difficulty
15 with, as well.

16 Q What would those kind of things be?

17 A Well, he didn't remember his medication. I see --
18 I can't tell you how many people we see that really
19 don't know what meds they're taking, and they don't know
20 the doses. And they'll say, well, the doctor gave me
21 this for my blood pressure; what is it; I don't know.
22 So, that's kind of a common -- that's a common thing.

23 And he didn't know his whole entire Social Security
24 number, which is -- hmm, some people don't know the
25 whole thing, you know.

1 Q Over next, you've got oriented to -- you checked
2 person, place, time. What's the significance of that
3 with this gentleman's assessment?

4 A He knew where he was. He was -- he was cognitive
5 of where he was, and he knew who he was. He knew his
6 name. He knew he had come from -- he lived in Sumter.
7 I mean, he -- he gave me enough information. He knew
8 that his -- he was married. He was -- he's now
9 divorced. And he had a young son.

10 Q Was there anything on this particular page of your
11 note that suggested to you that this gentleman was, at
12 that time, a risk to you or anybody else, as far as
13 doing anything to harm himself or others, as he sat in
14 front of you?

15 A As he sat in front of me, no, not at all that day.
16 And I did question -- I got a little fear -- fearful at
17 the end of our triage about when he put his ears --
18 hands up to his ears. But that was for my own safety,
19 and I had been warned several times, don't sit up there
20 by yourself, so that kind of crossed my mind.

21 Q But when he put his hands up to his ears, how long
22 was that gesture that he did that?

23 A It was brief, because, when I questioned him, when
24 I went further to ask him if he was hearing anything, he
25 -- he said, no, and he immediately stopped the behavior.

1 But he -- and then, he walked freely back with me to Bay
2 4.

3 Q When you asked him, are you hearing voices, and he
4 said, no, did he look you in the eye when he answered?

5 A Yes. For sure, he did that time.

6 Q I want to ask you some questions about this sheet.
7 Now, this one is the second page, Nurse McDonald.

8 A Okay.

9 Q What do you all call this second page of the two-
10 page triage sheet?

11 A This is basically a more -- like, a -- a checklist
12 for neuro and different systems of the body.

13 Q All right. Under neurologic mental status, you've
14 checked alert and awake.

15 A That's correct.

16 Q And person, place, and time, you've already told us
17 about those. I notice that you do not have checked,
18 agitated, combative, stuporous, unconscious,
19 uncooperative, or ETOH, alcohol odor. Are those things
20 you ask or assess the patient about?

21 A You don't even have to ask. You can assess those
22 just pretty much by looking at them. And he was totally
23 with it that day, and his speech was clear. He never --
24 he didn't slur his speech at all.

25 Q And just to cover the part of speech, you checked

1 clear, but not coherent, slurred, or silent, correct?

2 A That's right. You really by omission what you
3 leave out.

4 Q Under the respiration, you've again checked that it
5 was unlabored.

6 A Right.

7 Q Was that for the reason you told us about earlier?

8 A Yes.

9 Q If he had been in extreme distress or anxious or
10 whatever, would those findings have been different?

11 A They would have been different. I would have
12 checked tachypneic.

13 Q And we talked a minute ago about the skin color,
14 that, when you did your formal exam, you checked that
15 it's normal for race.

16 A Yes.

17 Q Nothing else --

18 COURT REPORTER: I'm sorry, normal for?

19 A Race.

20 Q Race. Excuse me, Madam Court Reporter.

21 Nothing about the way he looked. He wasn't sweaty
22 or?

23 A He wasn't diaphoretic or sweaty. He, you know, had
24 no bruising. He didn't -- he had good skin turgor,
25 which is when you pull -- if they're -- someone's

1 dehydrated, and you pull up their skin, it sticks. It
2 stays together, and you count the seconds, how long it
3 takes to go back to normal.

4 Q In the right-bottom corner of this document, it
5 says, psycho social, and it has several things: escort,
6 security, standby, contract for safety. What do those
7 mean in terms of what you're doing with the patient at
8 that time?

9 A Escort is that they have to be escorted. They --
10 that's just a given there, that they were not -- they
11 had to be with someone. It didn't have to be military
12 at the time, but someone had to be with -- with the
13 patient.

14 Contact for safety, you usually ask if someone has
15 an active plan to commit suicide, you know. Say, well,
16 you know, and we want you to stay here, be examined, and
17 if they're willing to do that, they'll contract for
18 safety.

19 And a lot of recruits, we would actually see and
20 needed a psyche eval, and say it was a Friday night, you
21 would give them their medication, but they had an
22 appointment for the following morning over at Parris
23 Island to see a psychiatrist. So, then, we would get
24 them to contract for safety, they promise they won't
25 hurt themselves in that 24-hour period.

1 Q And does that come back into play when they have
2 expressed a plan?

3 A When they have a plan, generally, we do that. But
4 with the recruits and, you know, when they were -- we
5 always did it with them, no matter what.

6 Q And you didn't feel it necessary to check any of
7 those with this gentleman. Is that fair?

8 A No.

9 Q You mentioned and talked about his affect was flat,
10 but I also noticed you didn't check broad or blunted.
11 Why not have checked those two things with him?

12 A Well, he wasn't like -- manics will go all over the
13 place. They will be, you know, talking about one thing,
14 and then, the next. They can't even follow what they're
15 trying to tell you. He was -- he was appropriate in
16 every way when he spoke.

17 Q Mood, you have depressed, and we talked about it.
18 But you didn't check hyper or labile. What do those
19 mean, and why weren't those applicable to this
20 gentleman?

21 A He wasn't labile where he wouldn't speak to me at
22 all. He wasn't catatonic where some psyche patients
23 won't speak or whatever, And he was not hyper at all,
24 either, so. He was a little withdrawn; not real
25 forthcoming with speech; but he did speak and answer

1 questions.

2 Q And under behavior, you have checked and told us
3 about the withdrawn part; but you didn't check
4 cooperative, uncooperative, agitated, or restless. Tell
5 us what significance those had on that day.

6 A Well, I should have checked cooperative. He was
7 cooperative. He was not restless at all. He wasn't
8 agitated. He sat in the chair. He never tapped his
9 foot. He never spoke loudly, or he wasn't abrasive in
10 any way. He was polite. I can only describe him as
11 polite. He was cooperative. He was not fidgeting. He
12 was not anxious, and just was appropriate.

13 Q Under the last column here, ideations, you've
14 checked, suicidal, but not homicidal, no previous
15 attempt, and not has a plan. Tell us why those weren't
16 --

17 A Well, I should have also checked previous attempt.
18 He was not -- he -- he denied being -- he denied any
19 kind of homicidal thoughts. He did discuss that he had
20 thought about hurting himself, so.

21 Q No plan?

22 A No plan.

23 Q When we use the word *homicidal thoughts*, what does
24 that encompass? Hurting others?

25 A Hurting others.

1 Q So, at the conclusion of this documentation -- and
2 I do need to ask, were you doing the documentation as
3 you were talking with him?

4 A Oh, most definitely. We do that all day. All day
5 long, yeah.

6 Q Do you come back after the fact and fill this back
7 in or anything?

8 A Generally, I try not to.

9 Q Okay. And at the very top, I overlooked. The top
10 corner has that he was in the room 1430, Room Number 4.
11 Is that when you walked into Bay 4?

12 A That's when I put him in Bay 4. Um-hmm.

13 Q And it has provider at bedside 1450, Jansen. Did
14 you write that in?

15 A No, I didn't.

16 Q Would that have been Joe?

17 A Either Joe or Dr. Jansen. Let me see it again
18 right here. It looks like -- actually, it looks like it
19 might be Dr. Jansen.

20 Q We probably should have asked you this question
21 earlier, but how is it you and your husband both are
22 working in the same E.R.?

23 A Well, it's a long story. Nursing, as you know, has
24 all different shift work, and we had had -- well, we
25 spent more than 20 years in nursing, and never would get

1 the same weekend. You know, it was hard to get the same
2 weekends and days off, or -- so, a lot of times, we
3 would pass each other. In fact, his last job, he worked
4 3:00 p. to 3:00 -- 3:00 a. to 3:00 p., and I worked --
5 he worked -- I'm sorry. He worked 3:00 p. -- 3:00 a. to
6 3:00 p.; and I worked 7:00 a. to 7:00 p. So, we, like,
7 passed each other asleep, and it was kind of crazy. So,
8 I went to Navy first, and he started there with the PRN
9 position. And they asked him, if he -- there was an
10 opening, would he be willing to work, and they'd switch
11 us so we could work the same -- basically, the same
12 schedule. There were days that we didn't work together,
13 but for the most part, we did.

14 Q And when you all were working together, you were at
15 triage this day; he was treatment nurse this day.

16 A Right.

17 Q Sometimes, would those roles reverse?

18 A Um, yeah.

19 Q All right. And spouses sometimes can communicate
20 in ways without using words. When you and your husband
21 were working and interacting with patients, like this
22 patient, I mean, would you all talk to each other about
23 safety concerns or things like that, if it occurred?

24 A Certainly. Certainly.

25 Q Now, I'm almost done, ma'am. I'm going to ask you

1 one question. You were asked about Seroquil, and I
2 believe one of the other medications he was on --

3 A Celexa?

4 Q Celexa. Can some people who have mental health
5 challenges be placed on more than one of these mental
6 health medications, so that the medications work
7 together?

8 A Yes. See, sometimes they -- potential, they help
9 certain things. You know, like some of the side effects
10 from one drug might not be ideal, and they put you on a
11 different drug, and the two --

12 Q The Seroquil that you told us about can be used for
13 more things than just psychosis, correct?

14 A It can be done -- used for schizophrenia, bipolar
15 disorder, or borderline personality, they call it,
16 sometimes, or a major depression.

17 Q And the Celexa anti-depressant, is for, obviously,
18 anti-depression. Can it also cover other mental health
19 challenges?

20 A Not as much as, like, the Seroquil has broad use.

21 Q When Dr. Jansen, from your working with him, when
22 he would be in that little room in his office, if he was
23 on the phone talking to the psychiatrist or some other
24 hospital, would he generally close the door?

25 A He would close the door.

1 Q And if the door is closed, can people standing
2 outside in the area hear what's going on?

3 A No, not unless he screamed.

4 Q Did this patient ever tell you at any point in time
5 while he was there in that E.R. that he saw things that
6 were not there?

7 A No, he did not.

8 Q Heard things that were not there?

9 A No. He denied it.

10 Q Was having any issues of hallucinating or acted in
11 a way that made you think he might be hallucinating?

12 A No, he told me none of that.

13 Q Anything out of context while he was there?

14 A Not while he was there.

15 Q Ever mumbling to himself?

16 A Not while he was there.

17 Q Ever hearing voices while you were with him?

18 A He denied it. I have to believe him, because he's
19 the patient.

20 Q Now, when he came in and interacted with you, and
21 when you walked him over to the E.R. Bay Number 4, you
22 walked away from him, and were finished from your
23 interaction, was there any doubt in your mind that, (1)
24 he came in there for help?

25 A Yes, he did.

1 Q (2) that he came there voluntarily?

2 A For sure.

3 Q And (3) that, when you took him to the E.R., that
4 he still wanted to be there for help and voluntarily?

5 A He could have left at anytime of his own
6 recognizance.

7 Q And you know, I have young kids, and sometimes when
8 I have to take them to the doctor, you got to drag them
9 into the doctor's office. Did you have to do that with
10 him?

11 A No. And he, you know, he was an adult, a
12 responsible -- although he was an adult, I don't know if
13 he was responsible. I don't know that much about the
14 man, but he had every right to -- to refuse care, but he
15 didn't. He stayed voluntarily.

16 MR. LOVELL: Thank you, ma'am. That's all the
17 questions I have. Thank you.

18 THE COURT: Okay. Before we break -- let's take
19 ten minutes for our afternoon break. Ladies and
20 gentlemen, step to your jury room. Leave your notebooks
21 in your seat. Do not discuss this matter or allow
22 anyone to discuss it with you. We'll take about ten
23 minutes.

24 JURORS LEAVE COURTROOM 3:55 P.M.

25 THE COURT: Ms. McDonald, this is just ten minutes.

1 Do not discuss --

2 JANICE MCDONALD: Can I go out?

3 THE COURT: Do not discuss your testimony.

4 JANICE MCDONALD: Sure. Sure. Sure.

5 THE COURT: Go take a break. This is just ten
6 minutes. All right. Everyone, ten minutes.

7 BAILIFF: Jury's clear, your Honor.

8 THE COURT: You all be at ease. I'm going to stay
9 here. You all be at ease. Go take a break.

10 OFF THE RECORD 3:55 P.M.

11 BACK ON THE RECORD 4:17 P.M.

12 BY THE COURT:

13 THE COURT: Let me have the jury. Is everybody
14 ready? And my witness. Got to have a witness.

15 JURY ENTERS COURTROOM 4:19 P.M.

16 THE COURT: All right, ladies and gentlemen. At
17 this time, we will continue with Plaintiff's case. You
18 may continue, sir.

19 MR. HOYLE: Thank you, your Honor.

20 JANICE MCDONALD

21 RE-DIRECT EXAMINATION, BY MR. HOYLE:

22 Q Mrs. McDonald, you were kind enough to assist prior
23 Counsel in drawing a diagram of the emergency room at
24 the Naval Hospital, Beaufort, correct?

25 A Correct..

1 Q And this is the ambulance bay here, correct?

2 A Yes.

3 Q We've got some exam rooms, and we've got a nurse's
4 desk and a doctor's office, correct?

5 A That's right.

6 Q Okay. And then, a hallway, correct?

7 A Um-hmm.

8 Q That's a yes?

9 A Yes.

10 Q Actually, within the walls of the emergency room
11 itself, okay? The four walls of the emergency room.

12 A Right.

13 Q Were there -- you mentioned, I think, earlier,
14 somebody by the name of Lieutenant Brannon. Did I hear
15 that correctly?

16 A She was -- yeah, she was our lieutenant at the
17 time.

18 Q Was Lieutenant Brannon's office within the four
19 walls of the emergency room?

20 A No.

21 Q So, Lieutenant Brannon, she didn't have an office
22 there. Did you have to check in with her somewhere else
23 in the Naval Hospital every time you showed up to work a
24 shift?

25 A No.

1 Q What about when you left for the day? Did you ever
2 have to check in the Naval Hospital with Nurse
3 Lieutenant Brannon?

4 A No, I did not.

5 Q Would there be days during the shift where you'd
6 have no interaction with Lieutenant Brannon at all,
7 whatsoever?

8 A There were days like that, yes.

9 Q And Lieutenant Brannon, she didn't have a decision-
10 making role with you, as to how you treat a patient when
11 a patient comes into the E.R. Is that fair?

12 A That's fair. She -- basically, the policies and
13 procedures of the institution. And she was available,
14 if we had any questions.

15 Q Now, available if you had any questions. Now, when
16 Calvin Hunt was there in the emergency room of the Naval
17 Hospital, Beaufort, did you call Lieutenant Brannon on
18 the telephone and ask her any questions about Calvin
19 Hunt?

20 A No. We called her after -- after he had left.

21 Q After he was gone.

22 A Yes.

23 Q But while Calvin Hunt was still there, within the
24 four walls of the emergency room, did you call
25 Lieutenant Brannon and ask her any questions about how

1 to treat this patient?

2 A No. No, we did not.

3 Q Didn't ask her how to do the triage, correct?

4 A No, that's correct.

5 Q Didn't ask her any questions about the forms that
6 both prior and I Counsel showed you earlier, that you
7 filled out that paper Friday, correct?

8 A That's correct.

9 Q Are you aware of whether or not your husband or Dr.
10 Jansen called Lieutenant Brannon that fateful Friday,
11 and ask her any questions about what they should have
12 done or not done with respect to Calvin Hunt?

13 A No, they did not.

14 Q Okay. Just so this record's clear, at any time
15 between 1417 and 1612 that day, did you yourself have
16 any reason whatsoever to call Lieutenant Brannon? Yes
17 or no?

18 A No.

19 Q And just so we're clear, did anybody working along
20 beside you, Dr. Jansen or your husband, Nurse Joe, in
21 between 1417 and 1612, that fateful Friday, call
22 Lieutenant Brannon for any reason, to your knowledge?
23 Yes or no.

24 A Not to my knowledge.

25 Q We'll broaden things out to any date prior to

1 February 24, 2012. Okay? So, we're looking backwards.
2 Prior to that fateful Friday, had you ever had the
3 occasion during a shift in which you were earning a
4 paycheck for each hour that you worked there, did you
5 ever have occasion to call Lieutenant Brannon to seek
6 some sort of advice or consultation during one of your
7 performances of your licensed obligations as a nurse?
8 Yes or no.

9 A I probably have, but I couldn't tell you the
10 instance. But basically, no. We had a lot in that E.R.

11 Q And who, within the four walls of the emergency
12 room, on that fateful Friday, between you, your husband,
13 Nurse Joe, and Dr. Jansen, was ultimately responsible
14 for the patient or patients that were in there?

15 A Who was responsible?

16 Q Yes, ma'am.

17 A For treatment?

18 Q Yes, ma'am.

19 A It would be the physician who orders the treatment.

20 Q That was Dr. Jansen.

21 A Correct.

22 Q Now, there were some questions by prior counsel
23 about whether or not Mr. Hunt knew that he was in
24 Beaufort. Do you recall that?

25 A Yes.

1 Q Could Mr. Hunt, on February 24, 2012, tell you
2 exactly how long he'd been here?

3 A No. I didn't -- in fact, I didn't ask him. He
4 said he had been -- because he voluntarily said he had
5 come to visit his grandmother, and he had been there a
6 few days. That's all he gave me, so I didn't ask what
7 day did you get here. I know that he knew he was in
8 Beaufort, and he came to visit his grandmother.

9 Q Did he volunteer to you, on that fateful Friday,
10 that he couldn't remember exactly how long he had been
11 here?

12 A No, he did not.

13 Q That's your testimony as you sit here today?

14 A That's what I remember of it.

15 Q Do you recall giving a deposition in this case?

16 A I do.

17 Q Do you recall that deposition being on August the
18 19th, 2014?

19 A I know it was in the summer months. That's all I
20 know.

21 Q And you recall, when you gave that deposition, just
22 like we have a court reporter here today taking down
23 everything that's said, and just like you took an oath
24 here today in open court, do you recall subscribing an
25 oath before that deposition began?

1 A Yes.

2 Q And you swore that day, on August the 19th, 2014,
3 in your deposition, to give an accurate testimony. You
4 recall that?

5 A I do.

6 Q And you were given a copy of your deposition by the
7 court reporter, after it all got typed up into a nice,
8 little book. Do you recall that?

9 A I do.

10 Q Did you review that deposition transcript that you
11 were provided to see if it was accurate or inaccurate?

12 A I honestly read some of it. I didn't -- I didn't
13 read any more, because I was in school full-time, and
14 working full-time, and no, I didn't read the whole,
15 entire deposition.

16 Q Ma'am, on Page 94 of your transcript, I asked this
17 question to you.

18 A Okay.

19 Q *Question: What else did Mr. Hunt tell you*
20 *during that time frame?*

21 Your answer, beginning at Line 12, was as follows:

22 *Just that he had -- I asked him what*
23 *-- what his -- did he have a wife, did he*
24 *have a family. And he told me he was here*
25 *visiting his grandmother. I believe he*

1 *said he came from Sumter.*

2 A Sumter.

3 Q *He must have been staying in Sumter, and*
4 *came down to visit his grandmother, but*
5 *couldn't remember exactly how long he had*
6 *been here.*

7 Question: --

8 -- had been there.

9 Question: 'There' being Beaufort?

10 Answer: Yes.

11 Do you recall giving that testimony?

12 A Yes.

13 Q Is it fair to say that Calvin Hunt couldn't
14 remember exactly how long he had been in Beaufort?

15 A No, he really didn't know. He said a few days, so
16 I'm assuming -- that's what he told me.

17 Q Your testimony here today is that he told you a few
18 days?

19 A Said he didn't know exactly how long it was, right.

20 Q Well, ma'am, there's a difference between not
21 remembering and not being precise. You agree with that?

22 A There is.

23 Q On that day, did Calvin Hunt just couldn't
24 remember, like you told me in your deposition, or was he
25 just not precise, like you're telling us here today?

1 A Well, he wasn't precise. He knew he was in
2 Beaufort. He come -- he came to -- from Sumter to visit
3 his grandmother, but he didn't know what day that he
4 came here. So, yes, I guess I wasn't being precise, but
5 he was here for a few days.

6 Q Do you recall, in your deposition, that my next
7 question was:

8 *Did that concern you that he didn't*
9 *know how long he'd been in Beaufort, South*
10 *Carolina?*

11 And your answer was:

12 *A little bit, yes.*

13 Do you recall that question and answer in your
14 deposition?

15 A Yes. Yes. I do.

16 Q So, your concerns at that time, on that fateful
17 Friday in February of 2012, was because he was imprecise
18 with when he got here, or was it a concern, because he
19 couldn't remember?

20 A He couldn't -- he was imprecise in exactly how long
21 he had been here, which is a little upsetting. It can
22 be a little upsetting, but his stress level could have
23 been high, as well, so.

24 Q Ma'am, with respect to a mental health patient, if
25 you were aware that, that patient was going to be

1 admitted, an in-patient admission of some sort, and you
2 saw that person walking towards the door of the
3 emergency room, would you let them go, or take steps,
4 even as simple as talking to them, to not let them go?

5 A It would depend -- seriously, it would really
6 depend on their demeanor and what they were doing. Some
7 -- if you keep someone -- you try to keep them as
8 relaxed as possible. You don't want them to act out.
9 There's no T.V.; there's nothing there. He had been
10 there for several hours, but I would have probably let
11 him go, as long as -- it wasn't my choice.

12 Doctor -- or, you know, or, Mr. Ray went with him,
13 to the outside. He was escorted. He wasn't alone. He
14 wanted to, from my idea, he wanted to walk in the
15 hallway. There's vending machines there. It's -- he
16 had -- it wasn't unreasonable, because he was there for
17 nearly two hours, already.

18 Q As the only patient in the E.R., correct?

19 A Correct.

20 Q And when Mr. Hunt left the emergency room that day,
21 did you know or did you not know that he was going to be
22 admitted? Yes or no.

23 A No, I did not.

24 Q You didn't know he was going to be admitted.

25 A No.

1 Q Let me ask my question. If you had known that he
2 was going to be admitted, and you had seen what you saw
3 that day of Calvin Hunt walking out the door of the
4 emergency room, would you have taken any affirmative
5 step to tell him to stop?

6 A No. Because at the time, he was just like you and
7 I.

8 Q Even though, when he was sitting between you and
9 the door in triage, you got a little afraid of him,
10 correct?

11 A Well, that's normal. I was told not -- not to
12 triage someone up there by myself.

13 Q Have you ever triaged a patient in this triage area
14 of the emergency room by yourself before?

15 A Yes, on occasion, I have. I was notorious for
16 that, and I never had any problems with it. I never
17 felt uncomfortable.

18 Q Until that day, with Calvin Hunt?

19 A Well, I was slightly afraid of him, just because of
20 that behavior. But you know, like I said, frustration
21 can do that, as well. And he had -- if he wanted to go,
22 he could have went through -- I mean, triage is right
23 there. There's no one, except in the back. He could
24 have run out the ambulance back or the hall door, which
25 is right across there.

1 Q But you thought he was following directions that
2 day.

3 A He was.

4 Q You asked him to come from the hallway to the
5 triage, correct?

6 A I did.

7 Q You asked him to go to Bay Number 4, correct?

8 A That's correct.

9 Q You asked him to sit on the side of the bed in
10 Bay Number 4, correct?

11 A That's right.

12 Q Based on your dealings with Calvin Hunt that day,
13 did you believe he would adhere to the instructions of
14 the other folks working in there?

15 A Yes.

16 Q Do you have any reason to believe otherwise?

17 A I do not.

18 Q There was discussion earlier about how Mr. Hunt had
19 come in voluntarily. Do you know who had driven him
20 that day to the Naval Hospital, Beaufort?

21 A Well, I found out last week that his sister drove
22 him there. I had no idea. I thought Mr. Ray brought
23 him in.

24 Q Will you agree with me, ma'am, when patients come
25 into an emergency room voluntarily, they may need to be

1 warned against leaving, if they may post a danger of
2 harm to themselves?

3 A They -- no, you wouldn't warn them, because they
4 wouldn't listen to you. You know, they -- they're not
5 -- he was competent at the time. If they're incompetent
6 or they're acting out or they're belligerent, you would
7 call the front gate, and we would send the -- well, the
8 guards and the PMO. Or you know, you could get an order
9 from the physician that, that was -- for restraints or
10 chemical restraints. But that wasn't required that day.

11 Q So, you believe no warning was required, correct?

12 A Right.

13 Q If Calvin Hunt, who was waiting on admission to a
14 psychiatric bed, had asked you if he could leave, would
15 you have warned him not to leave the premises of the
16 Naval Hospital?

17 A You cannot stop him. He was not committed at that
18 time. He was not -- I would let him go out. With the
19 knowledge that I had at that moment, I didn't know he
20 was going to be admitted. He needed blood work yet. He
21 needed orders for lab work and urinalysis, which were
22 not done and not ordered. And that doesn't happen until
23 the physician speaks with the psychiatrist, and she
24 says, okay, we're going to admit him. You know, we'll
25 try to get a bed. That's -- that process doesn't even

1 start 'til after the fact.

2 Q Ma'am, it's been a long day.

3 A It has.

4 MR. HOYLE: I have no -- I have no further
5 questions.

6 BY THE COURT:

7 THE COURT: Okay. Re-cross?

8 MR. LOVELL: No, your Honor.

9 THE COURT: All right. And is this witness free to
10 leave?

11 MR. HOYLE: This witness is released from her
12 subpoena, your Honor.

13 THE COURT: Very well. Any objection?

14 MR. LOVELL: No.

15 THE COURT: Very well. You are free to go.

16 Ladies and gentlemen, we are about 25 minutes until
17 5:00, and we have two choices: to begin the next
18 witness, which we will not --

19 JANICE MCDONALD: I'm sorry.

20 THE COURT: I know, it's very gracious of you not
21 to walk in front of the jury while I was speaking. I
22 appreciate that.

23 And we would not, of course, conclude that.

24 I do need you to stop for that, if you would. If
25 you'd wait for me just one second, please. Just one

1 second, please.

2 But and there are matters that I need to attend to.
3 So, in scheduling the next witness or scheduling the
4 rest of our day, it seems, rather than begin a witness,
5 and probably not complete the direct examination, it
6 just makes sense for us to do some work that we must do,
7 and let you begin when you can hear the entire testimony
8 of the witness in the morning. It just makes sense.
9 And we'll take it up early.

10 There are some things that I can attend to that
11 you'd have to probably wait a little bit of time while
12 we did that. We would probably come in early, but you
13 might need to wait a little bit, also, while we
14 accomplish that work. So, scheduling this matter, it
15 just makes sense to let you all go just a few minutes
16 early, and beat the 5:00 o'clock traffic, maybe.

17 So, with that in mind, ladies and gentlemen, we're
18 going to be back at 9:00 o'clock. At 9:00 o'clock.

19 Oh, yeah, people want to know are we coming in
20 Saturday. We're not going to come in Saturday. Let me
21 tell you why. Because the lights and the heat and the
22 air conditioning are controlled in Tahiti in this
23 building. I'm teasing. It's not Tahiti, but it's done
24 by a computer guru in, like, Atlanta somewhere. Yeah,
25 like, Atlanta. A computer in Atlanta, and the computer

1 in Atlanta thinks we won't be here on Saturday. So, you
2 know, it would kind of be interesting for us to have
3 trial by candlelight or flashlight, you know. It's
4 October, I suppose. But it never works out well. It
5 really doesn't, so, to get a building of this size up
6 and operational, is just, honest to goodness, not worth
7 it. Because it just doesn't seem to work very well.

8 So, we will not be here Saturday. We will be here
9 Monday, probably. And so, for those of you that wanted
10 to know that information, there you have it. We will
11 not be here over the weekend, because it's practically,
12 if not impossible, it's extraordinarily difficult. So,
13 I share that with you.

14 Now, curiosity, of course, is going to be high.
15 And remember, put it on the judge. I don't want anybody
16 upset with my jurors. You must not discuss this matter
17 or allow anyone to discuss it with you. You must not
18 read anything. You must not listen to anything about
19 this case as to radio, the television, the newspaper,
20 Internet. You must not do any investigation. You must
21 not do any Columbo. Do not go to the Internet looking
22 up words, looking up phrases, doing any sort of
23 investigation. You must receive all of this information
24 from which you will make up your minds, all of it, here
25 in court, while court is in session.

1 So, ladies and gentlemen, with that admonition,
2 please remember to leave your notebooks in your seat.
3 We will secure them over the evening, and we will return
4 them to you in the morning. Have a lovely evening. I
5 look forward to seeing you in the morning at 9:00
6 o'clock.

7 JURORS LEAVE COURTROOM 4:39 P.M.

8 BAILIFF: Jury is clear, your Honor.

9 THE COURT: Wonderful, wonderful. Ms. McDonald?

10 JANICE MCDONALD: Yes?

11 THE COURT: I need to -- we are really not putting
12 you in a very comfortable situation, because obviously,
13 your husband is our next witness, and it's not
14 appropriate for you to talk about your testimony, and
15 that's just awkward. I'm going to take the blame bus in
16 a minute, because I'm going to explain that to him,
17 instead of causing you to have to do that.

18 JANICE MCDONALD: You know, to be honest, Judge, he
19 doesn't really want -- he doesn't talk about it.

20 THE COURT: I understand that, but you know what?
21 I just don't want to be -- I'm uncomfortable putting you
22 in that position, so I'd rather be the one to say,
23 honey, we can't talk about that this evening. So, I'll
24 be doing that.

25 JANICE MCDONALD: Okay.

1 THE COURT: Instead of you. Not -- exactly, not --
2 it's just unfair to you, and I'm going to do that. I'm
3 going to be the person to deliver that exciting news to
4 him. And again, it puts you in a difficult position,
5 but I am sure that, in your lives together, you have a
6 lot more that you can talk about than this.

7 JANICE MCDONALD: This is true.

8 THE COURT: I could offer up a number of topics.
9 The sadness at which the Yankees played in that game two
10 nights ago. It was so sad. It could -- it's worthy of
11 conversation for many hours. It was so sad that the
12 Yankee fans themselves, who are true blue, began to boo
13 their own players. It was so very sad. That's
14 heartbreaking. It was heart-wrenching. But in any
15 event, I'm just going to invite him to come on in. And
16 you can stay here, too. Yeah, absolutely.

17 MR. HOYLE: Your Honor, may I personally be excused
18 for a comfort break?

19 THE COURT: Of course.

20 MR. HOYLE: Thank you.

21 THE COURT: Anybody else can, too. I'm just -- Mr.
22 McDonald, how are you?

23 JOE MCDONALD: Fine. How are you?

24 THE COURT: You look remarkably fresh to have been
25 here all day, let me say.

1 JOE MCDONALD: I took a catnap out there.

2 THE COURT: I'm Diane Goodstein. Obviously, I am
3 the presiding judge in this trial, and your lovely bride
4 has been with us, obviously, for a while, and she still
5 looks remarkably beautiful and fresh. So, we haven't
6 caused her too much angst, because she looks lovely and
7 wonderful. But because we are about to -- you all are
8 about to leave for the evening. You will return in the
9 morning. She will not, because she doesn't want to come
10 back. She hasn't told me that, but I just presume she
11 has other things to do. You, on the other hand, we're
12 just so excited to see you in the morning at 9:00
13 o'clock.

14 JOE MCDONALD: Yes.

15 THE COURT: Because I am mindful that we are
16 putting a couple in a really kind of creepy position
17 where you cannot talk to your wife about something
18 that's just happened in her life that she's testified in
19 this case. And I wanted to be the person to take that -
20 - to do that, to say, honey, we can't talk about that
21 tonight. In other words, you are not -- she is not
22 allowed to discuss with you her testimony today. And I
23 wanted to be the one to deliver that, instead of her,
24 just so you would know it's coming from me, and not from
25 her.

1 And the reason for that, just so you know, is that
2 I issued an order earlier today sequestering witnesses,
3 which is at my discretion. And so, that puts the two of
4 you in a really awkward situation. But as I mentioned,
5 before you walked in here, I am quite confident that the
6 two of you have many other topics that you can talk
7 about, rather than her testimony today or this
8 particular trial. I am quite confident of that.

9 I even -- I offered up a topic, the miserable
10 nature in which the Yankees played two nights ago, to
11 the extent that their own loyal, true-blue fans were
12 booing their own players. It was -- it was really sad.
13 I witnessed it all. I saw it all. I offer that up as a
14 topic for you this evening, but I'm quite confident for
15 you all can come up with that, or many other topics.

16 But you may even be asked under oath tomorrow
17 morning whether or not you all discussed this case, so I
18 wanted to just let you know in every way that I knew
19 that it is not appropriate for you all to talk about
20 your testimony, the two of you to talk about your
21 testimony.

22 JOE MCDONALD: Okay.

23 THE COURT: Having said that, I know of nothing
24 that would keep Counsel, if they choose to talk to you,
25 talk to you. I think that's -- there's no prohibition

1 in that at all. But the witnesses are sequestered,
2 whether or not lawyers -- you choose to talk to lawyers
3 is up to you. So, I did want to share that with you.
4 But with regard to your bride, you all cannot talk about
5 this case or this testimony, her testimony here today,
6 this evening. So, please keep that in mind.

7 JOE MCDONALD: Okay. See you tomorrow.

8 THE COURT: You all have a lovely day. I'll see
9 you in the morning.

10 JANICE MCDONALD: Good night.

11 THE COURT: All right. Any additions or exceptions
12 from the Plaintiff?

13 MR. HOYLE: None from the Plaintiff.

14 THE COURT: From the Defense?

15 MR. LOVELL: None for the Defense, your Honor.

16 DEPOSITION OBJECTIONS:

17 THE COURT: All right. Depositions. All right.
18 Okay. Page and line designations. All right,
19 which one do you all -- you want to go to the
20 Plaintiff's or the Defendant's first? Let's do the
21 Defendant's objections to the Plaintiff's first. That
22 way, we'll get the Plaintiff's.

23 MR. MACKELCAN: Your Honor, should we just go in
24 order of the document?

25 THE COURT: I think so, because you all have got --

1 well, no. Let's just do it -- let's just all give out.
2 Let's go with who the order of witness, order of battle,
3 as it's called.

4 MR. HOYLE: And with the caveat that we may need to
5 deviate from this.

6 THE COURT: Absolutely.

7 MR. HOYLE: And I just don't like being in boxes.

8 THE COURT: Not a problem. Not a problem.

9 MR. HOYLE: So, I think that the logical person to
10 start with would be Arthur Manning.

11 THE COURT: Who, now? Mr. Manning?

12 MR. HOYLE: Mr. Manning.

13 MR. MACKELCAN: It didn't happen.

14 THE COURT: Huh?

15 MR. MACKELCAN: It didn't happen.

16 THE COURT: Okay. Who's next? Oh, yeah. So, with
17 Mr. Manning, with the designations that Defendant gave
18 you for Mr. Manning, do you have -- does the Plaintiff
19 have any objections to the designations that the
20 defendants have propounded for Mr. Manning's deposition?

21 MR. HOYLE: And that's what we're trying to
22 ascertain right now, Judge.

23 THE COURT: I know. I know.

24 COURT REPORTER: Mr. Hoyle, I didn't understand
25 that. Do you what? I didn't understand what you said.

1 MR. HOYLE: I said, no. I said, no, that's the
2 easiest answer here, no.

3 THE COURT: Okay. Good. That works.

4 MR. HOYLE: And just for planning purposes, we do
5 not have a video of Mr. Manning. I think, in the 30-
6 plus depositions taken in this, this is the only one not
7 on video. And so, it will need to be read.

8 THE COURT: Sounds good. All right.

9 MR. HOYLE: This will be the first time we've
10 agreed on anything.

11 MR. MACKELCAN: You didn't find any? You don't
12 have that, either? I'm kind of flipping.

13 THE COURT: Shh, shh, shh, shh. Don't ask again.
14 Next.

15 MR. HOYLE: There are objections to Dr. Hendelman,
16 your Honor.

17 THE COURT: Do what, now?

18 THE COURT: There are objections with respect to
19 Dr. Hendelman.

20 THE COURT: Okay. That would be the next witness,
21 then, is Doctor?

22 MR. HOYLE: Beverly Hendelman.

23 THE COURT: Hendelman. Dr. Beverly Hendelman.
24 Gotcha. Gotcha.

25 MR. HOYLE: It's late in the day. I apologize,

1 Judge. I'll speak up.

2 THE COURT: No. No problem. Do you have the --
3 I'm looking for the page.

4 MR. LOVELL: It's on Page 47 of -- I think I gave
5 you our one yesterday.

6 THE COURT: Got it. Yes. I'm there. All right.

7 MR. LOVELL: And Judge, these all go to sort of
8 what we talked about earlier, that is an ordinary
9 negligence case, and that this doctor is being asked
10 repeatedly through all this line of testimony to give an
11 opinion as a psychiatrist of either what she would do
12 individually in her office, if someone showed up; or,
13 what she, as a psychiatrist, you know, would do, under
14 the certain twist of hypothetical that are sort of asked
15 in this line of questioning.

16 And again, the standard of care of a medical doctor
17 or psychiatrist is not the standard for which or by
18 which this case is going to be decided. So, our
19 objection to, really, the whole line of testimony with
20 Dr. Hendelman in general was that she's asked a lot of
21 questions about whether it's appropriate to admit this
22 guy, or should he be admitted, or what she would do if
23 security, if somebody, presented in her office like
24 this. And it's all a psychiatrist giving opinions on
25 what a psychiatrist would do, not an ordinary person.

1 THE COURT: Okay. I got it.

2 On Page 26 it says:

3 *Based on this document alone, is it*
4 *your testimony that it was a requirement*
5 *that Calvin Hunt be admitted?*

6 What document are you referring to?

7 MR. HOYLE: It is the physician record, your Honor,
8 where -- where when --

9 THE COURT: Okay.

10 MR. HOYLE: -- when Dr. Jansen -- I'll show it to
11 you, if you want, but it's come to me. That, when Dr.
12 Jansen writes, *and thoughts of hurting others*, that's
13 what is being referenced.

14 THE COURT: Okay. Is it testimony in this case
15 when Dr. Jansen wrote that note?

16 MR. HOYLE: The testimony is that he wrote that
17 note beginning at 1450, or 2:50 in the afternoon, on
18 this Friday.

19 THE COURT: Okay.

20 MR. HOYLE: And Dr. Hendelman was actually
21 consulted by Mr. Jansen on the telephone that Friday.
22 And Dr. Jansen subsequently writes in the records that
23 Dr. Hendelman had told me the patient obviously needed
24 to be admitted.

25 There's a line of questioning that begins a few

1 pages earlier about, you know, well, what does obvious
2 mean?

3 THE COURT: Oh, clear.

4 MR. HOYLE: Clear.

5 THE COURT: Clear.

6 MR. HOYLE: You know, what's the opposite of
7 obvious?

8 MR. LOVELL: The psychiatrist knows it's clear.
9 I'm not so sure that somebody off the street would think
10 so, but that's the whole point we're trying to make.

11 THE COURT: Yeah, I got it.

12 MR. LOVELL: There's only one that's a little bit
13 outside of that, and it's the reptile thing.

14 THE COURT: Reptile?

15 MR. LOVELL: The needless endangerment question at
16 the very end of all this.

17 THE COURT: Gotcha. Gotcha. Gotcha.

18 MR. HOYLE: And Judge, I think that the issue there
19 is, if you go back to Hardee, Chief Justice Toal talks
20 about the duty to the patient -- or, excuse me, the duty
21 to the foreseeable third party being the same as the
22 duty to the patient. And the line of questioning there
23 goes directly to that, about whether or not you would
24 keep somebody in there to protect others.

25 And Dr. Hendelman says, yes, you don't want to let

1 him out, because they can needlessly endanger the
2 public, but they can also hurt themselves. She makes
3 clear, at that point, that it's a -- you're doing those
4 -- you're keeping the mental health person present
5 within the facility to protect not only the themselves,
6 but also to protect those foreseeable third persons.

7 THE COURT: I gotcha. And tell me where that is.

8 MR. HOYLE: Bear with me, your Honor.

9 THE COURT: All right.

10 MR. HOYLE: This is here. Can you help me with the
11 page and line.

12 MR. LOVELL: Page 61, I think, at Line 7. This is
13 when they are talking about impulsiveness. The question
14 was asked:

15 *Would you proceed differently,*
16 *regardless of whether you recommend*
17 *admittance or not, would you proceed*
18 *differently if you knew he had a history*
19 *of impulsiveness, a history of violence,*
20 *multiple personality disorders? Would you*
21 *proceed differently with respect to the*
22 *patient who has all of those problems?*

23 *My concern would be to get them*
24 *admitted as soon as possible for*
25 *treatment.*

1 Then, it continues on over. I mean, she kind of --
2 in fairness to the doctor, she just basically says, I
3 admit, I admit, I admit, over and over and over and
4 over, regardless of what question you ask. But she was
5 asked this:

6 *Would it have been a safe thing to do*
7 *to have kept Calvin Hunt under close*
8 *supervision?*

9 Her answer:

10 *I would prefer to keep my patients*
11 *under close supervision when they tell*
12 *me that kind of information.*

13 And that was the hurt myself or others.

14 *When they say they have thoughts of*
15 *hurting others, --*

16 Yes.

17 *-- would it be a reasonable thing to*
18 *do to take precautions to prevent someone --*

19 THE COURT: Slow down a little bit.

20 MR. LOVELL: I'm sorry.

21 THE COURT: That is okay.

22 MR. LOVELL: It's on 77 at 8, your Honor.

23 *Would it be reasonable and the safe*
24 *thing to do to take precautions to prevent*
25 *someone like Calvin Hunt from leaving the*

1 *facility, prior to him being admitted,*
2 *after he has indicated thoughts of harming*
3 *others?*

4 *She says:*

5 *I prefer to keep them under close*
6 *supervision, and stay right with them when*
7 *they have suicidal or homicidal thoughts.*

8 *And I think what you're talking about is on the*
9 *next page of my document at, it looks Line 211, Number*
10 *16. I'm sorry, Page 211, Line 16.*

11 *Should Kalvin Hunt have been allowed*
12 *to leave the facility prior to being*
13 *admitted in Beaufort Memorial?*

14 *Answer: No, he shouldn't have been*
15 *allowed to leave.*

16 *Question: If someone comes to your*
17 *office and says that they have thoughts of*
18 *hurting others, and they have a history of*
19 *depression and a history of violence, been*
20 *in the psyche ward for prior occasions of*
21 *striking individuals, would you let that*
22 *person walk right out of your office*
23 *and go out to the public?*

24 *Answer: No.*

25 *Question: Because that would be*

1 *needlessly endangering the public, wouldn't*
2 *it?*

3 *Answer: Yes. And the persons themselves.*

4 Of course, that's what she would do in her office.
5 That's a professional opinion.

6 THE COURT: Okay. In the prior sections, where
7 she's talking about I would admit them; I would admit
8 them; I believe that person should be admitted; I think
9 the person should be admitted; in the predicate
10 question. And there are a number of them. Such as, if
11 somebody is suicidal; somebody is suicidal/homicidal;
12 somebody is suicidal/homicidal/has PTSD; if somebody is
13 suicidal/homicidal/PTSD, and has anti-social behaviors.
14 I mean, there are a number of those questions for
15 predicates. Are there any that you object to because
16 the predicate includes something that is not shown in
17 terms of a record or something else in this case?

18 MR. LOVELL: No, your Honor.

19 THE COURT: Okay. Okay.

20 MR. LOVELL: The last set of the questions I read
21 were that he was -- the endangerment question was asked;
22 does have information that's not in the chart.

23 THE COURT: Okay. Well, no need to talk about
24 that.

25 MR. LOVELL: Right.

1 THE COURT: So, the first part there in -- they are
2 asked in terms of reasonable -- the questions are not
3 asked, interestingly enough, as you would an expert.
4 They're at is it reasonable, which is what's important.

5 Now, now, let me ask you this question. Did you
6 qualify the doctor as an expert, or is the doctor a fact
7 witness? And take some time to look at the deposition,
8 if you need to.

9 MR. HOYLE: Yeah.

10 OFF-THE-RECORD DISCUSSION.

11 END OFF-THE-RECORD DISCUSSION.

12 THE COURT: Was she qualified as an expert?

13 MR. LOVELL: Your Honor, I will start out just
14 saying, at the very beginning, Mr. Berlinsky was the
15 attorney for her.

16 THE COURT: Okay.

17 MR. LOVELL: She was asked:

18 *Did Mr. Berlinsky tell you any*
19 *questions you may be asked here today?*

20 Her answer was:

21 *Only that I would be asked about the*
22 *case, and asked what I know about the case,*
23 *and that's pretty much what he told me.*

24 And then, Page 19, Line 8, question:

25 *Dr. Hendelman, is it your understanding*

1 *you're here testifying today regarding --*

2 THE COURT: Yes, you know you have to slow down.

3 See? Remember brilliance?

4 MR. LOVELL:

5 *-- regarding the events that transpired*
6 *involving Calvin Hunt on February 24, 2012 at*
7 *the Naval Hospital?*

8 And she said yes. And she goes on to talk about
9 what her job was. But more importantly, at several
10 different times and occasions, she was asked about what
11 the E.R. people should have done.

12 THE COURT: Yes.

13 MR. LOVELL: There's a couple of them. I'll just
14 go to Page 78, Line 12. She goes -- she was asked the
15 question:

16 *Based upon your knowledge, training,*
17 *and experience as a licensed medical doctor,*
18 *and as a psychiatrist, can you tell me*
19 *everything that Dr. Jansen should have done,*
20 *from the moment he learned that Calvin Hunt*
21 *had thoughts of harming others?*

22 There was an objection.

23 Her answer was:

24 *I can only tell you what I would do.*
25 *I can't tell you what he should have done.*

1 He functions -- functions as an emergency
2 room doctor, and has a protocol that he
3 functions with. My function as a
4 psychiatrist, we have a protocol under
5 which I function with. So, I cannot tell
6 you what he should have done. He was an
7 emergency room doctor. I am a psychiatrist.

8 So. That kind of goes back to my objection. She's
9 testifying about what psychiatry would do, which is a
10 standard of care issue that, if this was a med mal case,
11 I'd probably be objecting she's not qualified to testify
12 about E.R. actions, because she doesn't know what they
13 do. And this is not a med/mal case, but she certainly
14 doesn't know what the common person does, because she's
15 not a common person. So, I don't think that --

16 THE COURT: Neither is Dr. Jansen either. Neither
17 is the nurse. Nurses aren't, either, common persons,
18 based on your objection.

19 MR. LOVELL: That's right. That's basically why
20 we've objected to all of this testimony.

21 THE COURT: Yeah, I get it. Yeah. So, she would
22 -- I don't know, would she qualify as an expert or not
23 qualify as an expert? I don't know. Survey says?

24 MR. HOYLE: Your Honor, I think, certainly --
25 certainly, I think we can agree she's a fact witness.

1 THE COURT: Exactly.

2 MR. HOYLE: She gave --

3 COURT REPORTER: I'm sorry, *certainly you all think*
4 *she?*

5 THE COURT: A fact.

6 MR. HOYLE: We can agree she is a fact witness.

7 THE COURT: Yes.

8 MR. HOYLE: I'll slow down. I'm sorry, Judge. I'm
9 sorry, Madam Court Reporter.

10 But this line of questioning that Mr. Lovell just
11 referenced on Page 78 about can you tell me everything
12 that Dr. Jansen should have done from the moment he
13 learned Calvin Hunt had thoughts of hurting others. I
14 think, based on her answer, any answer that she gave in
15 response to that may not have the appropriate
16 foundation. But I think there are other areas within
17 this transcript in which, even though she was not
18 formally qualified, we didn't stop the deposition and,
19 you know, say, at this time we move to qualify her as an
20 expert. That was not done.

21 I think that there are times here, based on her
22 education, training, and experience, she could be
23 qualified to render an expert opinion, if that was even
24 necessary. But I think what we've heard earlier today,
25 if I remember correctly, when we were talking about

1 these issues, was Saundra Smith, is that people can
2 comment about what their expectations are. And I don't
3 know that, that expectation is the same thing as a
4 standard of care. It's not the setting forth this is
5 the professional standard by which all other baseball
6 players or nurses or psychiatrists must hold themselves
7 out in order to be a competent professional. They can
8 offer what their expectation is, as to whether or not
9 another person involved had a particular factual
10 scenario, would or would not do.

11 THE COURT: Let me ask you this question. It
12 happened, somebody told me, at some point, that this
13 doctor was consulted?

14 MR. HOYLE: Yes. Dr. Jansen -- Dr. Jansen called
15 her on the telephone. He was relying on her expertise
16 as a consultant. That's how he refers to her, as a
17 consultant.

18 THE COURT: Okay. And so, she's a doctor. She's
19 there. She's -- okay. So, here's what -- here's what I
20 think that she absolutely can testify to. She's there.
21 She is a fact witness. And as a fact witness, she has
22 expectations about what should be happening. She's
23 called, she asked. She says this guy should have been
24 admitted. That's coming in.

25 What I'm concerned about, and I'm hoping that you

1 all can help me in this regard, I don't think it
2 matters, and I don't think it's admissible what some guy
3 walking in off the street some day in her office that
4 might say this and might say that, that might be
5 appropriate. Then, I think you have morphed into her
6 being an expert witness, and I don't know if she's
7 qualified to be an expert witness.

8 However, she is there; she has been consulted; she
9 is a doctor; that she is a fact witness. She can
10 absolutely testify, I was there; I was called; I knew
11 what was -- I knew this guy was on the premises; I got
12 called; he should have been admitted; he should have
13 been admitted; he should have been admitted. He should
14 have been admitted; he should have been watched; he
15 should have been admitted. And I think that's what
16 she's saying.

17 And so, that testimony, I think it's appropriate to
18 come in. I think it comes in under what -- and at one
19 point, the question is -- I love the question that says
20 what is reasonable and safe. All right. What's
21 reasonable? What's safe is okay. What is reasonable
22 and safe? If you've got somebody who's this guy, Calvin
23 Hunt, and she says, he's got to be admitted; he's got to
24 be admitted, so. And then, so, I hope you all -- with
25 that, I'm going to let you all sort of work through

1 this, this business about somebody come into your
2 office. How about the guy that comes, you know, in my
3 office, he's going to be admitted, I don't care about
4 that.

5 But based on your recollection of the events of
6 February 24, 2012, is it obvious to you that Calvin Hunt
7 needed to be admitted? It was clear that he had a
8 danger to self. Therefore, he needed to be admitted.
9 It was also clear that he presented a danger to others,
10 correct? I was aware of danger of self. I had not
11 heard of danger to others. Danger to self, danger to
12 others, gravely disabled requires admission to the
13 hospital.

14 So, I, you know, that's just ought to be admitted,
15 and that is my ruling.

16 Now, let me tell you -- let me go into what I --
17 based on this document alone -- you meant that document
18 right there, correct? When it says Page 26:

19 *Based on this document alone, is it*
20 *your testimony it would be a requirement*
21 *that Calvin Hunt be admitted?*

22 *Yes.*

23 *Based on the fact that he was a danger*
24 *to himself and danger to others, he needed to*
25 *admitted.*

1 Yes.

2 Why?

3 Because he was a danger to self and a
4 danger to others by his own admission. That
5 makes him in need of hospitalization. Somebody
6 comes into the E.R. with suicidal ideations,
7 and they have thoughts of hurting others,
8 it is obvious to you that the person needs
9 to be kept under close supervision.

10 I have no control over what goes on in
11 the emergency room. All I can do is say that he
12 needs to be admitted.

13 All right. Now, look at Page 27. We start talking
14 about this hypothetical person:

15 Now, ma'am, let me ask you this
16 question. I'm not asking about the emergency
17 room.

18 Then, when you start doing that, this person
19 becomes an expert. See what I'm saying? See the
20 difference?

21 Now, ma'am, let me ask you the question,
22 so it's clear. Let's say a patient came to
23 you and has thoughts of hurting others, has a
24 history of depression.

25 All of the sudden, we've got a hypothetical, and I

1 don't believe that you can ask -- and I might need to go
2 back and look, quite frankly. It's been a while since
3 I've looked it up, hypothetical. I know that each of
4 the facts has to be established, or will be established.
5 But I think hypotheticals being asked of experts, that's
6 the piece of it, that, that -- and I think that's
7 correct.

8 Remember when we used to play that game -- you all
9 don't remember that; you weren't born. You might have
10 been around.

11 MR. LOVELL: I was probably around.

12 THE COURT: We had to -- remember, you had to ask
13 the hypothetical, because you couldn't ask the ultimate
14 issue?

15 MR. LOVELL: Oh, yeah.

16 THE COURT: Yeah. So, you spent half a day arguing
17 over whether or not it had been established. Now that's
18 not the rule.

19 MR. LOVELL: I was so glad when that rule changed.

20 THE COURT: Yeah, me, too. So. All right. And
21 then, we go through if a patient came to my office. No,
22 I don't care about the patient in the office.

23 And then, 27, the truth is, when he really starts
24 to examine it, you could have even had an objection to
25 asked and answered. What is clear, and clearly

1 admissible, is when, after the point where it says,
2 based on this document alone, at Page 26, to:

3 *Yes, based on the fact that he was a*
4 *danger to himself and a danger -- that he*
5 *needed to be admitted, yes.*

6 Okay? Got it? Why? Because he is a danger to
7 himself and a danger to others by his own admission.

8 MR. HOYLE: And that continues, your Honor.

9 *And that's pretty obvious, correct?*
10 *because it is by his own admission.*

11 *Answer: That makes him in need of*
12 *hospitalization.*

13 THE COURT: Yep.

14 MR. HOYLE: So, we draw the line there.

15 THE COURT: Well, and you know, I don't know that,
16 that's where I'm going to stop the testimony, but what
17 I'm trying to explain to you all and trying to go
18 through it, is this business about this mythical patient
19 that's going to show up in her office. But when she's
20 talking about him and what ought to happen with regards
21 to his hospitalization; and he probably finds himself
22 talking about the fact, if she doesn't -- she doesn't
23 control his emergency room. Okay? But her testimony
24 that he needed to be admitted; he needed -- and she says
25 that in about 45 different ways. But when she is

1 referring to him that he needed to be admitted, and
2 she's talking about him, she is a fact witness. That
3 testimony is admissible.

4 If someone comes to a medical facility with
5 thought, hmm, out, because she's not -- again, because
6 she hasn't been qualified as an expert. And all of the
7 sudden, we're starting with these mythical people.

8 MR. HOYLE: In the future, we'll name our mythical
9 people. I'm teasing.

10 THE COURT: Call them Goodstein. Or Goldstein.
11 Both will work just fine.

12 Okay. Now. And of course, you're down in here on
13 Page 14. I mean, on 51 in Defendant's objections. It
14 really is shifted. Can you tell me what was discussed.
15 I gather these are conversations between the witness and
16 Jansen? Yes? No? Maybe? At Line 14, can you tell me
17 what was discussed.

18 MR. HOYLE: What is the page, Judge?

19 THE COURT: 44 in the depo.

20 MR. HOYLE: 44. I apologize. We're on the wrong
21 page.

22 THE COURT: I did that to you.

23 MR. MACKELCAN: I'm sorry. I think it's probably
24 Manning.

25 THE COURT: Oh, now, I've turned to somebody else.

1 MR. MACKELCAN: No, no. I think the person that
2 she is referring to is the psyche tech, Manning; not Dr.
3 Jansen.

4 MR. LOVELL: The psyche tech came to her; gave her
5 a history; she made the decision. And then, she talked
6 to Dr. Jansen, and said he needs to be admitted.

7 MR. HOYLE: And for predicate purposes, Judge, it
8 would be my intentions that we would read Mr. Manning's
9 transcript before we dealt with Hendelman, before we
10 played Hendelman.

11 THE COURT: Okay.

12 MR. LOVELL: So, your Honor, I think we can
13 probably withdraw that one on 44, Lines 14 through 25,
14 so.

15 THE COURT: Okay. And what significance -- see,
16 now, here we go. Let me ask you, what significance is
17 it that someone has a history of impulsiveness when they
18 have thoughts of harming? You're back to being an
19 expert. She's back to being an expert at this point.
20 She ain't going to qualify as an expert. What's the
21 significance of it? It's like, well, who cares? I'm
22 sorry, that's not fair to you, is it? Page 16. I think
23 everybody's arguing with me.

24 MR. HOYLE: 16. Your Honor, we could hook you up
25 to the big T.V., if you want, and then, we could all see

1 it.

2 THE COURT: I know. Then, we can all see what I'm
3 looking at. Exactly. See, did you all think -- I got
4 this cute little cheat sheet, and it's all the -- it
5 really is great. I would have never thought to have
6 done this when I practiced law with you all, I'm so
7 embarrassed to tell you. It makes all the sense in the
8 world. These are all the -- hello -- these are all the
9 lines and pages that I want; and then, these are my
10 objections to what you have. It's like, so brilliant.
11 You put it in one place, I don't know how to handle it.
12 I'm telling you, it really is --

13 MR. LOVELL: It's the world of E-Tran. You can
14 really do it, you can use the E-Tran cut-and-paste. It
15 works.

16 THE COURT: Oh, it's ridiculous, you all. I don't
17 even know what that is. Right. You have to understand
18 that, when I left, the word processor was still pretty
19 hot. That's not quite true, but Westlaw was a baby.

20 MR. LOVELL: Oh, yeah.

21 THE COURT: And laptops were remarkable, yeah. And
22 couldn't type. But I can now, a little bit.

23 MS. CASTLEBERRY: Your Honor, what page are you on?

24 MR. HOYLE: Can you tell us the page number of
25 Defendant's brief you're looking at?

1 THE COURT: Yeah. Have you got that? 52.

2 MR. HOYLE: Yes. So, we'll literally be on the
3 same page.

4 THE COURT: Literally.

5 MR. HOYLE: Literally.

6 THE COURT: All right. And then, see where it says
7 on Page 60.

8 MR. HOYLE: Judge, I would just note that the
9 Defendants have also designated similar testimony,
10 asking about what significance prior problems in the
11 medical records would have on the fact that someone who
12 presents a danger to others.

13 THE COURT: Got it. But guess what? You're out.
14 And then, look on -- see here, on Page 60, Line 25?
15 What significance is it that someone has a history of
16 impulsiveness, where they have thoughts of harm? That
17 really is asking for an expert opinion, and she's not
18 qualified as an expert. So, those will come out.

19 MR. HOYLE: Judge, I think, in light of these
20 rules, I think we can confer as --

21 THE COURT: I think so, too. I think you can, too.
22 In other words, if it has to do with, he should have
23 been admitted; he should have been watched; I knew it; I
24 was there; they called me; I tried to tell them; this is
25 what -- I don't control his emergency room; however, he

1 should have been admitted, should have been watched.

2 MR. HOYLE: That's what I expected.

3 THE COURT: That's what I expected; that's what I
4 thought would happen. That's what ought to happen.
5 Should have happened. Didn't happen. Okay.

6 MR. HOYLE: A mythical Joe Blow coming in off the
7 street as to someone, --

8 THE COURT: Right.

9 MR. HOYLE: We'll cut all that out.

10 THE COURT: And then, where it says, well, okay,
11 what if you knew this, what if you knew that, what if
12 you knew this. She's not qualified to as an expert.

13 MR. HOYLE: But conversely, just so we're all
14 clear, if someone said, did you know this about Calvin
15 Hunt, that would be in?

16 THE COURT: Absolutely.

17 MR. HOYLE: Okay. I think we're all on the same
18 page.

19 THE COURT: He's just a fact witness. Remember,
20 she is a fact -- whatever it is that she knew from her
21 five senses, whatever it was that she knew from having
22 been there that day clearly comes in.

23 MR. HOYLE: Judge, we've got a clip sheet of the
24 entire -- for Dr. Hendelman, it's an hour and 28 minutes
25 and 50 seconds. We will provide this to them, and we'll

1 go through and mutually agree what Mr. Knowles will cut
2 out tonight, so there will be no issue or delay.

3 THE COURT: That's sounds great. And let me tell
4 you what I think we need to do, because this was a
5 little bit of an issue, and my wonderful bailiffs helped
6 me again today. During the longer deposition this
7 morning, which I thought was a good idea to have a
8 longer deposition to play in the morning, to keep people
9 from getting groggy; but I thought, if you ever want to
10 keep them awake, that's the best time. So, I thought
11 that was smart planning.

12 I have absolutely no problem with -- and I think
13 that you should, both sides, because I know you all will
14 be in this situation, as well. About 45 minutes into
15 it, you can look at them, and when people start looking,
16 you know, like they've been out too late, it's time to
17 stop the deposition, even if they just stop, and just
18 say, your Honor, pursuant to your instruction yesterday,
19 we're pausing the deposition, just to let everyone
20 breathe for a minute. You know, blame it on me.

21 In other words, put it up here, because I don't
22 want the jurors to have an opinion about you doing that
23 from your instruction. So, 45 minutes or so, for you
24 all to just stop and let everybody -- because I mean,
25 just have them stop and stand up, and move around a

1 little bit, and sit back down. I'm not saying we're
2 going to take a big break, unless they need to.

3 MR. HOYLE: Judge, without dealing with any of the
4 objections, I think the longest deposition is Angelina
5 Brannon. She's the lieutenant you heard about earlier
6 this morning. We actually took her deposition on a
7 Sunday.

8 THE COURT: Okay.

9 MR. HOYLE: Two Sundays ago, before the flood.
10 She's an hour and 46 minutes currently. Hopefully, when
11 we go through and work through some of those objections,
12 that we'll trim down.

13 THE COURT: Okay. And just keep a watch out.

14 MR. HOYLE: That's why we brought this monitor,
15 because we do worry about their comfort.

16 THE COURT: Yeah. Yeah. Right. Well, unless that
17 monitor zaps little electrical currents or whatever,
18 probably need to stop.

19 MR. HOYLE: Can we install that in the chairs,
20 Judge? As long as I control the button, I'm fine with
21 it.

22 THE COURT: No. However, having said that, we can
23 make them stop and break, which will be great. I just
24 noticed that day, and our bailiffs were just kind enough
25 to remind them, please don't concentrate with your eyes

1 closed. You all like that one?

2 MR. HOYLE: I thought that was wonderful judicial
3 parlance, your Honor. And I think every judge in the
4 state should be required by the order of the Chief
5 Justice to use those same words.

6 THE COURT: To use those exact same words. Well,
7 you know, when she starts -- when she joins the business
8 for it and gets to try cases, you never know what might
9 happen. She may get Chief Justice Pleicones to do that
10 for her. Okay. Now. Yes.

11 That matter that I was discussing with you all this
12 morning has been moved.

13 Okay, next. Our next deposition or next -- help
14 me, you guys. What's next?

15 MR. HOYLE: Probably --

16 THE COURT: Who's going to be our next person after
17 --

18 MR. HOYLE: Logically, it would probably be the
19 next clip that we play.

20 MR. MACKELCAN: I didn't see anything.

21 MR. HOYLE: I think Martin's easier. Let's do
22 Martin.

23 THE COURT: I think Martin had no --

24 MR. HOYLE: I know. That's why I said let's --

25 THE COURT: Yeah, with Martin, you didn't have any

1 concerns?

2 MR. MACKELCAN: We have some objections to Martin.

3 THE COURT: Manning is the one you didn't have any
4 concerns. Oh, Chris Craig Martin. Oh. Okay. Yeah. I
5 was going to say. Okay. All right. Let me take --
6 okay. I get the objection, but here's the problem.
7 There is, as I understand it, it is contested whether or
8 not these individuals worked for the Defendant, or they
9 worked for the U.S. Navy, right?

10 MR. MACKELCAN: I think the contention is that
11 they, CasePro, should not -- if respondeat superior
12 should apply to CasePro, it should apply to the Navy.

13 THE COURT: Okay.

14 MR. MACKELCAN: Based on the contract. But I don't
15 know that we acknowledge that they are employees and
16 that they're getting paid.

17 THE COURT: Well, if it --

18 MR. MACKELCAN: It's not a factual issue. It's
19 more a legal issue.

20 THE COURT: Well, let me -- can I ask you this
21 question? If that's true, if that's true, then, isn't
22 that an instance of this has got to be handled between
23 the U.S. Navy and the Defendant? Why do they care about
24 that? The law is the law of respondeat superior, and
25 you have a contractual relationship with the U.S. Navy

1 that turns that world upside down, isn't that an issue
2 between the Defendant and the U.S. Navy? Why is it
3 their problem, if the law gives the respondeat superior?
4 See what I'm saying?

5 MR. MACKELCAN: I do. I think our position is that
6 CasePro is not, while the --

7 THE COURT: You're bound by the contract, too.

8 MR. MACKELCAN: No, while the, you know, while
9 those CasePro workers are working at the hospital, the
10 Navy is the entity responsible for their actions.

11 THE COURT: Okay.

12 MR. MACKELCAN: And so, CasePro can't be
13 responsible to the extent that there was any negligence
14 by Joe McDonald, Janice McDonald, Dr. Jansen.

15 THE COURT: Because they were not working for
16 CasePro.

17 MR. MACKELCAN: Not at that time.

18 THE COURT: Gotcha. So, some of the time, they
19 work for CasePro; and then, some of the time, they don't
20 work for CasePro?

21 MR. MACKELCAN: For the purposes of controlling
22 their actions.

23 THE COURT: Yeah.

24 MR. MACKELCAN: Supervision and control, and the
25 language that's used in the contract. It's a unique

1 situation.

2 THE COURT: Gotcha. Gotcha. Okay. Then, I think
3 it comes in, because if you're asking this jury that
4 they have to make a determination who these folks work
5 for, I think they have to know the degree of control. I
6 don't know how you work, like, somebody -- if I'm like,
7 paying you --

8 MR. MACKELCAN: It's not the -- it's not the fact
9 that they're getting paid; it's the amount. There were
10 questions about the gap, how much CasePro is making
11 between what Dr. Jansen gets paid by CasePro and what
12 the government pays CasePro. And our position is that
13 would go more towards punitive damages, if it got to
14 that point, because the jury is going to be able to say,
15 oh, CasePro's making this amount of money for every hour
16 Dr. Jansen works. The actual fact that CasePro is
17 paying Dr. Jansen is not the objection. It's the
18 ability for the jury to calculate profits, essentially,
19 from CasePro.

20 THE COURT: I understand your concern, but that's
21 -- if it was -- let me say this. And this is because I
22 don't want to be arm twisting, but here's my issue with
23 it. I would agree with you completely that there wasn't
24 an issue who all these people are and who these people
25 work for. I think that, because the issue is alive, who

1 do these people work for, the fact that they negotiated
2 this doctor's vacation; that they negotiated his
3 vacation time; that, that actually made more money from
4 the U.S. Navy than this guy got paid, is about as clear
5 evidence as there is of who's working for whom.

6 In other words, it shows trickle-down economics.
7 That CasePro is getting paid X, and not X; that Case,
8 the Defendant, was paying the doctors. They were paying
9 them Y. So, here's my profit; here's what I'm paying my
10 doctor; here's what I'm paying my nurse.

11 And, and then, there's the other testimony in here,
12 like, for Dr. Moore, that he keeps -- and this is my
13 characterization; I just happened to look at these
14 excerpts -- that Dr. Moore is going back to CasePro and
15 saying, you've got to do something about this guy; you
16 have got to do something about this guy. Well, that's
17 clearly evidence in who's controlling these employees
18 and who they work for. So, I mean, because I don't know
19 what's strong indicia of employment, other than who's
20 negotiating the salary, who's paying you, and who people
21 think they've got to go to, to get rid of you. I think
22 that's pretty strong evidence that -- at least it's
23 evidence that this person -- for example, certainly Dr.
24 Moore thought Dr. Jansen worked for CasePro, clearly,
25 because he kept trying to go to Dr. Jansen and say,

1 Houston, we have a problem. I say he kept going; he
2 talks about it a couple times. I think that, that's
3 clear evidence of employment, if that's an issue in this
4 case, I think it's a problem.

5 MR. MACKELCAN: Okay. And I will probably raise
6 the objection again, when we start talking about what
7 the government pays CasePro

8 THE COURT: Yeah, yeah, yeah. Sure.

9 MR. MACKELCAN: Because, as I said, my concern
10 really is about the profits. It's not so much
11 specifically what Dr. Jansen's getting paid, because I
12 think that came in earlier in terms of what Janice
13 McDonald was getting paid. The concern is that the jury
14 can determine CasePro's wealth and profit.

15 THE COURT: I know. I know. I get it. But again,
16 it's relevant, because it establishes that the real
17 relationship here is between the Navy and CasePro. Not
18 the Navy and, for example, Dr. Jansen. I mean, that is
19 evidence, and I'm not going to say it's conclusive
20 evidence, but it is evidence that shows that, that
21 relationship really is between the U.S. Navy and
22 CasePro.

23 MR. MACKELCAN: Well, and we don't -- the contract
24 isn't in evidence yet, and I assume it won't be in
25 evidence until we put up our case. But it's --

1 THE COURT: But why would the Plaintiff be bound by
2 your contract?

3 MR. MACKELCAN: Well, the contract identifies
4 numerous responsibilities that Dr. Jansen, Joe McDonald,
5 and Janice McDonald have to the Navy, and
6 responsibilities that the Navy have to Joe McDonald,
7 Janice McDonald, and Dr. Jansen. It just goes directly
8 to what you're saying. It identifies who's responsible
9 for what; what they have to report to; who's buying
10 medical malpractice insurance. You know, all these
11 things are identified in the contract in terms of
12 responsibility of each party.

13 THE COURT: Who is the contract between?

14 MR. MACKELCAN: Naval Medical Logistics Command and
15 CasePro.

16 THE COURT: Okay.

17 MR. HOYLE: Judge, I think I just heard the word
18 *medical malpractice insurance*. We had a discussion in
19 one of these depositions. It wasn't one we did on a
20 Saturday. I think we did it on a Thursday. To the
21 extent that Mr. Mackelcan and Mr. Lovell are going to
22 elicit testimony from any witness about whether or not
23 this contract that they have with the government says
24 they don't have to have insurance, I want a ruling now,
25 or least some thoughts now, as to whether or not that

1 opens the door to the fact that they do have insurance,
2 and how much insurance they might have. Because I don't
3 think they get to hide behind --

4 THE COURT: Who's the they?

5 MR. HOYLE: CasePro, Incorporated.

6 THE COURT: Oh. Okay.

7 MR. LOVELL: We won't be asking those questions.

8 MR. HOYLE: I felt certain that was going to be the
9 answer, but I wanted it said in open court.

10 THE COURT: I'm with you. I'm with you. Now, if
11 -- let me just say that, if the position of the
12 Defendant should change, and that, on this issue of
13 employment and respondeat superior, or -- on the issue
14 of superior, please let me know, because that makes a
15 difference. Come here and let me ask you a question.

16 MR. HOYLE: Are we going off the record?

17 THE COURT: No, you don't have to do that, but --

18 COURT REPORTER: Want me to go off? Go off?

19 THE COURT: Yeah, just for a second. If anybody
20 wants me to put this on the record, I will, by the way.

21 **END DAY THREE, THURSDAY,**

22 **OCTOBER 8, 2015, 5:40 P.M.**

23 **BEGIN DAY FOUR, FRIDAY,**

24 **OCTOBER 9, 2015, 9:30 A.M.**

STATE OF SOUTH CAROLINA
14TH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT
COURT OF COMMON PLEAS
CASE NUMBER 2012-CP-07-03782

REBECCA DELANEY, AS PERSONAL
REPRESENTATIVE OF THE ESTATE
OF JUSTIN NICHOLAS MILLER

PLAINTIFF

VOLUME TWO

ORIGINAL

VERSUS

CASEPRO, INCORPORATED

DEFENDANT

OCTOBER 7 THROUGH 16, 2015
PRETRIAL MOTIONS AND TRANSCRIPT OF TRIAL
BEAUFORT, SOUTH CAROLINA

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Wanda H. Rowe, CVR-M
Official Court Reporter

1 BY THE COURT:

2 BAILIFF: All rise. Court is now in session. The
3 Honorable Diane Goodstein presiding.

4 THE COURT: Still? Good morning, everyone. All
5 right. Now, Plaintiff, anything before the jury comes
6 out?

7 MR. HOYLE: Nothing from the Plaintiff, your Honor.

8 MR. LOVELL: Your Honor, the only thing I would
9 state is, we worked on the designations on the first
10 video.

11 THE COURT: Wonderful.

12 MR. LOVELL: And there are a couple of little
13 issues that we didn't resolve.

14 THE COURT: Oh, wonderful.

15 MR. LOVELL: But now, we're ready to go, and I
16 think the witness is out in the hallway.

17 MR. HOYLE: And for purposes of clarification, the
18 two issues that aren't solved, one of which is a
19 foundational issue, we'll see if we can get something
20 into evidence with this witness. If we can't, I'll
21 concede that, that needs to be cut, and Mr. Knowles can
22 make that. And the other one is something that we can
23 briefly talk to you about it in 30 seconds.

24 THE COURT: Good. Sounds perfect. Wonderful, you
25 all. Thank you so much.

1 MR. HOYLE: Thank you, Judge.

2 THE COURT: Let's have the jury.

3 They're having a comfort break, so I think you all
4 can chill.

5 MR. HOYLE: And I take it that Counsel can have a
6 comfort break, as well?

7 THE COURT: Indeed. Absolutely.

8 OFF THE RECORD 9:31 A.M.

9 BACK ON THE RECORD 9:35 A.M.

10 BY THE COURT:

11 JURORS ENTER COURTROOM 9:35 A.M.

12 BY THE COURT:

13 THE COURT: Good morning, ladies and gentlemen.

14 RESPONSES FROM JURORS.

15 THE COURT: I hope you had a pleasant evening. At
16 this time, we will continue with the Plaintiff's case.
17 Call your next witness, please.

18 MR. HOYLE: Plaintiff calls Joe McDonald to the
19 stand.

20 THE COURT: Counsel, I notice that there are three
21 photographs on your squeegee board. You just need to
22 mark those for identification purposes. There's been no
23 objection from Counsel. So, I presume there's no
24 objection, because they've obviously been published
25 continuously to the jury, but they haven't been marked.

1 MR. LOVELL: That's fine, your Honor.

2 THE COURT: All right. Very well. Yes.

3 ITEM IDENTIFIED AS PHOTOGRAPH OF
4 JANICE MCDONALD WITH SEQUENCE BOARD
5 MARKED COURT'S EXHIBIT NUMBER 4
6 RECEIVED BY THE COURT.

7 ITEM IDENTIFIED AS PHOTOGRAPH OF
8 JOE MCDONALD WITH SEQUENCE BOARD
9 MARKED COURT'S EXHIBIT NUMBER 5
10 RECEIVED BY THE COURT.

11 ITEM IDENTIFIED AS PHOTOGRAPH OF
12 DR. CHRISTIAN JANSEN WITH SEQUENCE BOARD
13 MARKED COURT'S EXHIBIT NUMBER 6
14 RECEIVED BY THE COURT.

15 MADAM CLERK: Please raise your right hand. Place
16 your left hand on the Bible. Thank you. Do you
17 solemnly swear or affirm that the testimony you're about
18 to give today in this matter is the truth, the whole
19 truth, and nothing but the truth, so help you God?

20 JOSEPH J. MCDONALD, JR.: I do.

21 MADAM CLERK: Okay. Please take your seat here,
22 state and say your name for us. Spell your name.
23 Sorry.

24 JOSEPH R. MCDONALD, JR.: All right. Joseph J.
25 McDonald, Jr. Joseph, J/o/s/e/p/h, J., M/c/D/o/n/a/l/d.

1 THE COURT: You've got to mess with that
2 microphone. Would you just state your -- this is a
3 sound check now.

4 JOSEPH J. MCDONALD, JR.: All right. Joseph J.
5 McDonald, Jr.

6 THE COURT: That's perfect. Your witness.

7 JOSEPH J. MCDONALD, JR.

8 DIRECT EXAMINATION, BY MR. HOYLE:

9 Q Mr. McDonald, good morning.

10 A Hi.

11 Q You've already stated your name for the record.
12 Tell us where you live.

13 A Lady's Island, Beaufort County.

14 Q And how long have you lived here in Beaufort
15 County?

16 A This is my eleventh year.

17 Q Where did you move from when you moved here to
18 Beaufort County eleven years ago?

19 A It was be -- would have been New Jersey, Burlington
20 Township, New Jersey.

21 Q And what is your occupation, sir?

22 A Registered nurse.

23 Q How long have you been a registered nurse?

24 A This is my 23rd year.

25 Q And can you give the Court and jury the benefit of

1 your education.

2 A Bachelor's degree in nursing, Thomas Jefferson
3 University Hospital in Philadelphia.

4 Q And what year did you obtain your bachelor's degree
5 in nursing?

6 A 1992.

7 Q Where do you currently work?

8 A Beaufort Memorial Hospital.

9 Q And what do you do at the Beaufort Memorial
10 Hospital?

11 A I'm in the cardiac catheterization at the
12 Interventional Radiology Department.

13 COURT REPORTER: I'm sorry, at the, what, radiology
14 department?

15 A Interventional.

16 COURT REPORTER: Interventional.

17 A Um-hmm.

18 Q And how long have you been working there at
19 Beaufort Memorial?

20 A A year and a half.

21 Q Where did you work prior to going to Beaufort
22 Memorial a year and a half ago?

23 A Navy Hospital Beaufort.

24 Q Were you working at the Navy Hospital here in
25 Beaufort County in February of 2012?

1 A I was.

2 Q And at that time, you were doing your work for a
3 company called CasePro, correct?

4 A Yes.

5 Q How was it that you came to be employed at CasePro,
6 Incorporated?

7 A My wife had went to work at Navy Hospital first.
8 They solicited me twice to come and work for them. At
9 that time, it was a different contractor. So, they
10 asked me twice. I figured they weren't going to ask me
11 the third time. The benefit was is that we'd both be on
12 the same shift, which was always an issue for us.

13 Q And you referenced a different contractor. We're
14 talking about some entity other than CasePro. Is that
15 fair?

16 A When I first went, yes, it was a different
17 contractor.

18 Q It was Fly America, correct?

19 A Correct?

20 Q Okay. And then, at some point in time, you became
21 an employee of CasePro, Incorporated, correct?

22 A Yes.

23 MR. HOYLE: Permission to approach, your Honor?

24 THE COURT: Yes.

25 BY MR. HOYLE:

1 Q Mr. McDonald, I'm handing you a document that has
2 been marked as Plaintiff's 14. And it's already been
3 previously moved into evidence by agreement, sir. I'm
4 going to represent to you that this is your personnel
5 file from CasePro, Incorporated. Have you seen that
6 document before?

7 A Yes, I did.

8 Q Okay. And it looks like, from the very first page
9 of this document, that you went to work for CasePro,
10 Incorporated, on September the 30th, 2007, correct?

11 A That sounds correct, yes.

12 Q Okay. Turn with me a few pages forward to a page
13 that has Bates labels in the lower, right-hand corner of
14 834. Do you see those little numbers in the lower,
15 right-hand corner of the page?

16 A I do.

17 Q All right. And this appears to be what's known as
18 a W-4, correct?

19 A It is.

20 Q And does that have your signature on it?

21 A It does.

22 MR. HOYLE: Your Honor, may we publish these as we
23 go along?

24 THE COURT: They're in evidence without objection,
25 this exhibit is, yes?

1 MR. MACKELCAN: Yes. Yes, your Honor.

2 THE COURT: You may.

3 BY MR. HOYLE:

4 Q And this reflects that you gave some information to
5 CasePro, on September the 6th, 2007, correct?

6 A Yes.

7 Q And that was ultimately so you could get a
8 paycheck, correct?

9 A I'm sorry?

10 Q And that's so you could ultimately get a paycheck
11 from CasePro, correct?

12 A Yes.

13 Q In that paycheck, certain deductions were made for
14 things like FICA, Social Security, and other types of
15 withholdings, correct?

16 A Yes.

17 Q We'll just keep going forward to the page labeled
18 846. Are we on the same page, sir?

19 A We are now.

20 Q You actually got your paycheck direct deposited,
21 correct?

22 A Yes.

23 Q You filled out paperwork so that a company out in
24 Texas could wire money electronically to your bank
25 account here in Beaufort County, correct?

1 A That's correct.

2 Q All right. Let's keep going forward in this packet
3 of documents. Let's go the page that is Bates stamped
4 in the lower, right-hand corner 858. Are we on the same
5 page, sir?

6 A Getting there.

7 Q Okay. Take your time.

8 A 858 it is.

9 Q All right. And up at the top of the page, it just
10 looks like some sort of enrollment application with Blue
11 Cross Blue Shield health insurance, correct?

12 A Yes.

13 Q You were actually getting health insurance as a
14 result of getting work every day from CasePro,
15 Incorporated, correct?

16 A I was paid for it, but yes.

17 Q Okay. There was some cost sharing there. Is that
18 fair?

19 A To a degree.

20 Q Okay. I apologize for having to do all of this,
21 sir. Let's keep going in the packet. Let's keep going
22 to Page 876 in this packet. We'll skip a few pages.

23 A 876 it is.

24 Q All right. And that looks like one of the
25 benefits, in addition to health insurance, you were

1 getting from your employer, that being CasePro, was some
2 long-term disability insurance, correct?

3 A Yes.

4 Q And you filled out paperwork so you could get that
5 benefit, correct?

6 A Yes. Correct.

7 Q Okay. Let's keep going forward. Let's go to the
8 page that says 879.

9 A Got it.

10 Q And it looks like --

11 MR. HOYLE: It just went off. Madam Clerk?

12 A Did I hit the button by mistake? Keep my hand off
13 the button.

14 Q Oh, you're fine, Mr. McDonald. There we are.
15 These high-tech courtroom sometimes get a little
16 confusing.

17 A I'm sorry. I thought I hit the push button while I
18 was flipping pages. That's all.

19 Q That's why they don't have a microphone over here.
20 They probably keep hitting the button for that, as well.

21 Q Let's look at 879.

22 A Okay.

23 Q We got the letterhead of CasePro, Incorporated,
24 correct?

25 A Yes, we do.

1 Q Shows an address out in San Antonio, Texas. And
2 this says: *Employee Acknowledgment of Alcohol and*
3 *Controlled Substances Policy*, correct?

4 A Yes.

5 Q That's what the document says, and it has a
6 signature on it. Is that your signature?

7 A It is.

8 Q And it's dated October the 2nd, 2007, correct?

9 A Yes.

10 Q And you acknowledge, by that document, you've
11 received a copy of CasePro, Incorporated's *Alcohol and*
12 *Controlled Substances Policy*, correct?

13 A Yes.

14 Q All right. We'll turn the page, so the next one,
15 that being the page Bates stamped in the lower, right-
16 hand corner 880.

17 A I have it.

18 Q And this is a receipt and acknowledgment of CasePro
19 HIPAA privacy documents, correct?

20 A Yes.

21 Q Okay. And it has a signature on it, correct?

22 A It does.

23 Q Is that your signature?

24 A It is.

25 Q This is dated October the 2nd, 2007, correct?

1 A Correct. Yes.

2 Q Okay. Let's turn the page, to Page 881.

3 A Got it.

4 Q And we've got an acknowledging receipt and
5 understanding of the sexual abuse policy for CasePro,
6 Incorporated, correct?

7 A Yes.

8 Q And this says:

9 *I acknowledge that I have received*
10 *and read the sexual abuse policy, and/or*
11 *had it explained to me. I understand*
12 *that CasePro will not tolerate any*
13 *employee or third part who commits sexual*
14 *abuse.*

15 Did I read that correctly?

16 A You did.

17 Q And this document bears your signature, correct?

18 A It does.

19 Q And the date of October 2, 2007.

20 A Correct.

21 Q Okay. Let's go a few pages forward to Page 884.

22 A I'm there.

23 Q All right. There we are. And this appears to be
24 an application for employment, correct?

25 A Yes.

1 Q And there's some information filled out on here in
2 handwriting. Do you know whose handwriting that is?

3 A That's mine.

4 Q Okay. So, you filled out some information here,
5 because you wanted to go to work for CasePro, correct?

6 A Yes.

7 Q All right. And we've got your name and address,
8 position applied for, and some dates that you're
9 available to start work, correct?

10 A Yes.

11 Q All right. And we turn the page, we've got some
12 past employment history, correct?

13 A Yes.

14 Q And we go to the page that comes after that. We
15 even have a listing of some of your skills and
16 qualifications and educational history, correct?

17 A Correct.

18 Q And if we turn to the page after that, the page
19 that's Bates stamped 887, down at the bottom we've got a
20 signature, correct?

21 A Yes.

22 Q Whose signature is that?

23 A Mine.

24 Q Okay. And you signed this in September the 6th,
25 2007.

1 A Yes.

2 Q Because you wanted a job getting a paycheck from
3 CasePro, Incorporated, correct?

4 A Yes.

5 Q Okay. We'll go back to a series of documents. I
6 missed something earlier. I apologize. I was trying to
7 be expeditious. Well, let's go to Page 855. It's about
8 smack-dab in the middle of this big stack of papers.

9 A 855 it is.

10 Q Okay. Let's go up to the top of the page. This is
11 letterhead of CasePro, Incorporated?

12 A It is.

13 Q It bears an address out in Texas, and a phone
14 number?

15 A Yes.

16 Q All right. And it has your name on it, correct?

17 A Yes.

18 Q And an offer date of August 29, 2007, correct?

19 A Yes.

20 Q And it actually reflects some information on there,
21 reflecting some compensation that CasePro is offering to
22 pay you, correct?

23 A Correct.

24 Q All right. Let's go down to about the mid-point of
25 the page. There's a paragraph that begins, *by accepting*

1 employment.

2 A I see it.

3 Q All right.

4 By accepting employment with CasePro,
5 Incorporated, you will be subject to the
6 company's policies as set out in its
7 employee manual, and the requirements
8 for such conduct.

9 Did I read that correctly?

10 A You do. I do. We do.

11 Q Do you recall ever receiving an employee manual
12 from CasePro, Incorporated?

13 A Do not recall.

14 Q Could have, could not have. Just don't remember.

15 A Don't recall.

16 Q Okay. Let's go down to the next paragraph.

17 A Okay.

18 Q Your employment with CasePro is at will, meaning it
19 may be terminated by you or CasePro with our without
20 cause at any time. Did I read that correctly?

21 A You did.

22 Q Okay. And you understood that, when you received
23 this document, that CasePro could terminate your
24 employment at any time with or without cause, correct?

25 A Yes.

1 Q And similarly, you could terminate your employment,
2 or quit and leave at any time, as well, correct?

3 A With proper notice.

4 Q Okay. And then, down at the bottom of the page,
5 we've got a signature, correct?

6 A We do.

7 Q Whose signature is that?

8 A Mine.

9 Q Okay. And we've got a date of 10/16/09, correct?

10 A '07.

11 Q '07. I apologize. What was your E.R. experience,
12 prior to February 24, 2012?

13 A I started off in the emergency room at Burlington
14 County Memorial Hospital. I guess it was a year a half
15 or so. It was a community hospital about the size of
16 Beaufort Memorial Hospital here. Same community, same
17 resources. Decided to move down to South Carolina, and
18 got employed with Beaufort Memorial E.R. So, the total
19 there, at that time, was three years.

20 Q Now, when you were actually working at the Naval
21 Hospital in the emergency room, how many nurses and
22 doctor or doctors, would be available on each shift?

23 A Initially, two R.N.s, one LPN, one doctor, and one
24 clerk.

25 Q And later on, I take it, those numbers, did they

1 change?

2 A They did.

3 Q Okay. How did they change, sir?

4 A At one point in time, they eliminated the LPN, but
5 that was after this episode.

6 Q Okay. How long were the shifts when you were doing
7 your work in the emergency room at the Naval Hospital?

8 A They were 12 hours.

9 Q And did you always work with your wife?

10 A Yes..

11 Q If she was there, you were there?

12 A Yes.

13 Q And since you're both registered --

14 A Well, unless we swapped a shift with somebody at
15 their request.

16 Q Generally speaking, more likely than not, if she
17 was there, you were there.

18 A Yes.

19 Q Okay. So, if there's two registered nurses per
20 shift, and you're there, and she's there, would you all
21 just talk amongst yourself, and figure out who was going
22 to do triage and who was going to do treatment?

23 A Yes.

24 Q Okay. Now, I know that these were 12-hour shifts,
25 but did the emergency room at the Naval Hospital ever

1 close?

2 A No.

3 Q It was open 24/7/52?

4 A Correct.

5 Q Okay. Is it fair to say that, when you were
6 working in the emergency room at the Naval Hospital in
7 2012 as a registered nurse, you would be taking
8 direction from the E.R. physician?

9 A Yes.

10 Q And at that point in time, in 2012, that would have
11 also been a CasePro employee, correct?

12 A I believe so.

13 Q On February 24, 2012, who was the emergency room
14 physician working there that day?

15 A It would have been Dr. Jansen.

16 Q How long have you known Dr. Jansen?

17 A Since working at Navy E.R. I -- I -- I assume or
18 presume he was there around the same time I was, but I
19 have not known him prior to that. Whether he started
20 before or after, I'm not sure.

21 Q Okay. The only context with which you knew him was
22 through the doctor/nurse relationship that you all had
23 there in the emergency room. Is that fair?

24 A Correct.

25 Q Okay. On February 24, 2012, the date that brings

1 us all to this courtroom, what time did you arrive to
2 work?

3 A Quarter 'til 7:00 or so.

4 Q 7:00 in the morning?

5 A Yes.

6 Q And you were going to work a 7:00 a.m. to 7:00 p.m.
7 shift, correct?

8 A Yes.

9 Q Who is treated in the emergency room back in 2012?
10 I know things might be different now, but in 2012, who
11 was getting treated at the emergency room at the Naval
12 Hospital, Beaufort? What was the population that was
13 being served?

14 A Primarily recruits, active duty, retirees,
15 dependents, and anybody else who presented to the
16 window. Did not necessarily need to be military-
17 related.

18 Q Do you recognize the name Calvin Hunt?

19 A I do.

20 Q How do you recognize the name Calvin Hunt?

21 A He's why we're here today.

22 Q Had you ever met Calvin Hunt prior to February 24,
23 2012?

24 A No. Not that I recall.

25 Q Do you recall that date, February 24, 2012?

1 A I do.

2 Q Were you busy that day in the emergency room?

3 A We were busy earlier in the day. It had honed down
4 to nothing, 'til Mr. Hunt came in. When he was -- when
5 he was there, he was the only patient.

6 Q I had the pleasure of asking your wife some
7 questions yesterday. But how did you learn that Calvin
8 Hunt was there in the emergency room?

9 A I heard that there was a patient up in triage.
10 After she had done the triage, she brought the patient
11 back to treatment area.

12 Q And then, we had some testimony yesterday
13 describing the E.R. I'll ask you, is this a big E.R., a
14 small E.R., an itty-bitty E.R.? How would you describe
15 it?

16 A I'd say it's small.

17 Q The kind of thing that, if somebody in one part of
18 the E.R. is doing something, somebody else in a
19 different part of the E.R. is going to be able to hear
20 part of it?

21 A Pretty much.

22 Q Not too much privacy in there, is there?

23 A No.

24 Q When did you first see Calvin Hunt that day?

25 A When triage nurse brought him back to Bay 4.

1 Q And where were you located when that happened?

2 A The nurses' station.

3 Q What did you observe when your wife, the triage
4 nurse, brought Mr. Hunt back to Bay Number 4?

5 A I observed my wife. I observed the patient. He
6 was tall, thin, very clean, pressed shirt, bluish-black
7 jeans pressed. Well presented.

8 Q Now, you yourself didn't do any sort of triage or
9 assessment with Mr. Hunt, correct?

10 A Correct.

11 Q It's fair to say the triage nurse is -- strike
12 that. Fair to say that you were the treatment nurse,
13 not the triage nurse, correct?

14 A Yes, correct.

15 Q And we got some testimony from your wife yesterday
16 about what a triage nurse does. Tell the Court and jury
17 what a treatment nurse does.

18 A It would be the interventions as prescribed by
19 physician or protocol. Assess the patient, monitor the
20 patient, discharge the patient, send for X rays, draw
21 blood. Nursing things.

22 Q You told us some good information there. I'm going
23 to ask you about two of them. What's the purpose of
24 monitoring a patient?

25 A To keep them safe; keep them stable.

1 Q And what's the purpose of doing a nursing
2 assessment on a patient?

3 A To evaluate their status.

4 Q Based on your years that you've been working as a
5 registered nurse in emergency rooms, have you observed
6 the status of an E.R. patient change from the time they
7 show up, between the time they -- and the time they
8 leave?

9 A Yes.

10 Q That's something you've seen.

11 A Oh, yes.

12 Q Is that a common thing?

13 A It happens. I'm not sure -- I'm not sure of the
14 definition of common, but it's happened.

15 Q Some you've seen.

16 A Correct.

17 Q Okay. Is that one of the reasons that, as the
18 treatment nurse, you're going to be continually
19 assessing a patient while he or she is there in the
20 emergency room?

21 A At least have eyes on the patient, yes, depending
22 on what the situation is.

23 Q And those eyes on the patient also help you monitor
24 the patient, correct?

25 A Correct.

1 Q Okay. What was Mr. Hunt's demeanor like when you
2 first saw him?

3 A He was very -- very calm, quiet-spoken.

4 Q Now, Stretcher Bay Number 4, this is the closest
5 stretcher bay to the doctor's office, correct?

6 A Correct.

7 Q And I honestly don't know if I asked you or not.
8 Who was the doctor working that day?

9 A Dr. Jansen.

10 Q Okay. After you saw your wife, Nurse Janice
11 McDonald, place Mr. Hunt in Bay Number 4, what did she
12 do?

13 A I'm sorry?

14 Q After you saw your wife place Mr. Hunt in Stretcher
15 Bay Number 4, what did she do next?

16 A Well, she spoke to Dr. Jansen and she spoke to me.
17 Then, she went back down to the triage area.

18 Q Now, when she went and spoke to Dr. Jansen, where
19 was -- where did the conversation take place?

20 A In his office.

21 Q And when she went in there to speak with Dr. Jansen
22 in his office, was the door to that office open or
23 closed?

24 A I don't know. I -- I can't see the door from where
25 I was sitting.

1 Q Were you able to overhear part of their
2 conversation?

3 A I did not.

4 COURT REPORTER: I'm sorry. I did not, or I could
5 not?

6 A I did not hear.

7 Q And then, when your wife came and spoke with you,
8 where did that conversation take place?

9 A It was -- she was on the other side of the nurses'
10 station, walking past me.

11 Q Did she actually stop and have a conversation with
12 you, or was this a walk-and-talk kind of thing?

13 A No, she stopped right here and spoke to me.

14 Q What did she tell you about Calvin Hunt? This is
15 right after she's placed him in Stretcher Bay Number 4,
16 and before she goes back up front to triage. What did
17 she tell you?

18 A She told me that he's here for his prescription
19 refills; that he had been upstairs; they sent him down
20 here; that he is not suicidal; he's just more angry.

21 Q Did she tell you that he had been out his
22 medications for some period of time?

23 A Yes.

24 Q Did your wife tell you that Calvin Hunt's
25 grandmother wanted him seen by the medical provider,

1 because she was afraid he would take his own life?

2 A Did not.

3 Q Did you know that day that Calvin Hunt was having
4 suicidal thoughts when he entered the emergency room?

5 A Did not.

6 MR. HOYLE: Permission to approach, your Honor?

7 THE COURT: Yes.

8 BY MR. HOYLE:

9 Q Mr. McDonald, I'm showing you what's been
10 previously moved into evidence as Plaintiff's Exhibit
11 Number 20. Have you seen these documents before?

12 A I have.

13 Q Okay. And what are these documents of?

14 A I'm sorry?

15 Q And what are these documents of? What do these
16 papers show us?

17 A These are the emergency room documents that we use
18 for each and every patient.

19 Q Okay. And if you'll turn to the second page of
20 that exhibit. It looks like we've got a triage record,
21 correct?

22 A Yes.

23 Q And do you recognize the handwriting on that triage
24 record?

25 A I do.

- 1 Q Whose handwriting is it?
- 2 A It looks like Nurse Janice.
- 3 Q It looks like your wife's writing.
- 4 A Correct.
- 5 Q Okay. Are these papers that you would have had
- 6 with you, once your wife brought Mr. Hunt back to
- 7 Stretcher Bay Number 4? The triage records?
- 8 A Yes.
- 9 Q Okay.
- 10 A Well, they would have been with me or Dr. Jansen.
- 11 Q These are documents that your wife, after she
- 12 filled them out up in the front of the emergency room,
- 13 would have brought to the back, correct?
- 14 A Correct.
- 15 Q Okay. And just to ask a foundational question, did
- 16 you read the triage record?
- 17 A Yes.
- 18 Q Okay. And you read it that day?
- 19 A Yes.
- 20 Q While Calvin Hunt was still in the emergency room?
- 21 A Yes.
- 22 Q Okay. And you told us earlier what an assessment
- 23 was.
- 24 A Um-hmm.
- 25 Q What nursing assessment had your wife made?

1 A It says there is suicidal ideation.

2 Q On that particular day, on that fateful Friday,
3 February 24, 2012, did you have an understanding as to
4 whether or not those suicidal ideations were then
5 occurring, or whether or not they occurred in the past,
6 or what was your understanding, if any?

7 A They had occurred in the past.

8 Q Did you ask your wife to seek any clarification as
9 to whether or not those ideations were there that day,
10 or some time in the past, or were you making an
11 assumption?

12 A No. I'm going by what she had said, was that he's
13 not suicidal; that he's more angry.

14 Q So, you took that to mean that the ideations were
15 not then present, correct?

16 A Correct.

17 Q So, when Calvin Hunt gets there to the emergency
18 room, Stretcher Bay Number 4, directly across from your
19 view of the nurses' station, what you know about Calvin
20 Hunt is that he's angry, correct?

21 A To a degree, yes.

22 Q On the triage record, which you told us your wife
23 filled out and you read, we've got a history of alcohol
24 and drug dependence.

25 A Um-hmm.

1 Q Do you see that?

2 A I do.

3 Q Did you read that information contemporaneously on
4 February 24, 2012?

5 A I did.

6 Q Okay. And did you know that he had a history of
7 alcohol and drug dependence on that day?

8 A Yes.

9 Q And what follows is he also has a history of
10 depression.

11 A Yes.

12 Q And PTSD.

13 A Yes.

14 Q Did you know on February 24, 2012, while Calvin
15 Hunt is still there in Stretcher Bay Number 4 of the
16 emergency room, that he had a history of alcohol and
17 drug dependence, depression, and PTSD?

18 A That he had a history of those symptoms? Yes.

19 Q You knew all that. Okay. And you knew that Mr.
20 Hunt was needing some pills, correct?

21 A He had come in for refills of his prescriptions,
22 yes.

23 Q And did you specifically know what pills it was
24 that he was seeking?

25 A Not specifically, no.

1 Q There is a list of some medications on that nursing
2 assessment that your wife filled out. Do you see that
3 over here?

4 A I do.

5 Q In the medications section?

6 A Yes.

7 Q When you had this document in front of you on
8 February the 24th, 2012, while Calvin Hunt was still in
9 Stretcher Bay Number 4, did you read that list of
10 medications?

11 A I did.

12 Q Okay. Are there any medications on that list that
13 have anything to do whatsoever with either depression or
14 some sort of mental health issue?

15 A There are.

16 Q Which ones are they?

17 A That would be the first one and the fourth one.

18 Q And what's the first one for, sir?

19 A Depression.

20 Q All right. And what's the fourth one?

21 A It could be used for depression, bipolar, possibly
22 schizophrenia, but mental health drugs.

23 Q And the trade name of the fourth drug, what is
24 that?

25 A Seroquil.

1 Q Okay. But on February 24, 2012, when you had those
2 triage records in front of you that your wife had filled
3 out, did you ask your wife specifically which
4 medications it was Mr. Hunt was needing refilled?

5 A I did not.

6 Q Under *Past Medical History*, we have a word here.
7 Can you tell us what that word is.

8 A That's depression.

9 Q Let's turn to the next page of this triage record.

10 A I have it.

11 Q Is this a document that you would have looked at on
12 February 24, 2012, while Calvin Hunt was still across
13 from you in Stretcher Bay Number 4?

14 A It is. Um-hmm.

15 Q That's a yes?

16 A That's a yes.

17 Q Okay. And there is a section down here called
18 *Psychosocial*. Do you see that?

19 A I do.

20 Q Okay. And were there times when you and your wife
21 were working together at the emergency room that you'd
22 be the triage nurse and she would be the treatment
23 nurse?

24 A Oh, yes.

25 Q Okay. So, you've filled forms out like this

1 yourself in the past. Is that fair?

2 A Correct.

3 Q Okay. When somebody's going through and checking
4 boxes on this, are these about conditions that are then-
5 existing or conditions in the past?

6 A Conditions as they exist when the patient is in
7 front of you.

8 Q So, this would be current information, correct?

9 A Yes.

10 Q Okay. Compared to things like here that say *Past*
11 *Medical History*.

12 A Correct.

13 Q Okay. So, on the psychosocial, these would be
14 current psychosocial assessments of Mr. Hunt, correct?

15 A That's correct.

16 Q Done at about, oh, a little bit after 2:00 in the
17 afternoon, on Friday, February 24, 2012, correct?

18 A Yes.

19 Q All right. So, at that time, there is a section
20 here called affect, correct? Or affect. Do you see
21 that?

22 A Yes.

23 Q And which box of the three is checked?

24 A Flat.

25 COURT REPORTER: I'm sorry?

1 A Flat.

2 COURT REPORTER: Flat.

3 Q And what does that mean when a patient at a
4 specific, current, then-occurring point in time has a
5 flat affect?

6 A Just no exuberance, no depression. Just flat.
7 That's flat.

8 Q And then, underneath that, we have something that
9 says mood. You see that?

10 A Yes.

11 Q What box of the one, two, three moods are checked?

12 A Excuse me. Depressed.

13 Q Okay. And let's see here. Under behavior, we've
14 got one, two, three, four, five possibilities, correct?

15 A We do.

16 Q And which of those five boxes is checked?

17 A Withdrawn.

18 Q What does it mean on this nursing assessment when
19 the box withdrawn is checked?

20 A A little difficult getting questions answered. Not
21 forthwith. Some people are very talkative. Withdrawn
22 would be the opposite of that.

23 Q So, currently, at that point in time, when your
24 wife filled this out, before she brought Mr. Hunt back,
25 he had a flat affect; he was depressed; and he was

1 withdrawn, correct?

2 A Correct.

3 Q And those were observations about Calvin Hunt at
4 that point in time, correct?

5 A Yes.

6 Q Okay. And now, we've got this section down here
7 that says ideations. You see that?

8 A Yes.

9 Q Can you tell the Court and jury what an ideation
10 is.

11 A Thoughts of --

12 Q Something.

13 A Yes.

14 Q Okay.

15 Q So, for the ideations, we've got one, two, three,
16 four, options, with boxes. Do you see that?

17 A I do.

18 Q And which box is checked?

19 A Just suicidal.

20 Q And based on your testimony, that would have been
21 an assessment that, on that day, that February 24, 2012,
22 Calvin Hunt then had existing suicidal ideations,
23 correct?

24 A To some degree, yes.

25 Q That's what the record that your wife filled out

1 shows.

2 A Yes.

3 Q And you read this record, correct?

4 A I did.

5 Q But going back to an earlier question, you told us
6 that you didn't know, on February 24, 2012 that Calvin
7 Hunt was having thoughts that day of self-harm, correct?

8 A When he was there, I was told that he had -- he was
9 more angry; no thoughts of suicide; no plan.

10 Q Did your wife ever tell you that she was afraid of
11 Calvin Hunt when he was in the triage room?

12 A She had mentioned that.

13 Q On that day?

14 A Yes.

15 Q Okay.

16 A Was it on that day? I'm not sure. I know it came
17 up. It might have been on her -- talking later. I -- I
18 -- sitting here, I can't recall exactly when she had
19 told that.

20 Q Okay. Did your wife ever tell you that Calvin Hunt
21 had some mannerisms about him that made her feel
22 uncomfortable?

23 A No. I know after the fact that he had put his
24 hands up to his ears, but this is the second or third
25 person that's been asking him the same question over and

1 over.

2 Q So, let me make sure I understand this. On
3 February 24, 2012, while Calvin Hunt is still there in
4 Stretcher Bay Number 4, you didn't have any knowledge
5 from your wife about him doing anything with his
6 mannerisms that made her uncomfortable? Is that
7 correct?

8 A I don't recall that, that came up at that time.

9 Q Okay. Did she tell you anything while he's still
10 there? While Calvin Hunt's still there within the four
11 walls of the emergency room at the Naval Hospital, did
12 she tell you anything about Calvin Hunt putting his
13 hands over his ears?

14 A I don't recall that it came up at that time.

15 Q That's something you heard subsequent.

16 A I heard -- I can't tell you right now when I heard
17 that.

18 Q All right. Now, you've been talking a little bit
19 about what you knew and what you didn't know. When
20 Calvin Hunt was placed in Stretcher Bay Number 4, and
21 your wife heads back up to the front, do you become the
22 nurse responsible for Calvin Hunt?

23 A Yes.

24 Q Okay. And you told us earlier some things that you
25 had to do with it. You had to be responsible for

1 interventions and assessments and monitoring, correct?

2 A Yes.

3 Q Okay. So, that was going to be your responsibility
4 for Calvin Hunt sitting there in Stretcher Number 4?

5 A That's correct.

6 Q And I've heard a lot of testimony about this
7 Stretcher Bay Number 4. But sometimes, a picture --
8 sometimes, a picture is worth a thousand words. Sir, --

9 MR. HOYLE: Permission to approach, Judge?

10 THE COURT: Yes. Is this picture in evidence?

11 MR. HOYLE: It is in evidence.

12 THE COURT: And what is the number?

13 MR. HOYLE: It is 16-A through J.

14 MR. LOVELL: No objection, your Honor.

15 THE COURT: Very well.

16 MR. HOYLE: All right.

17 ITEMS IDENTIFIED AS PHOTOGRAPHS

18 MARKED PLAINTIFF'S EXHIBIT NUMBERS 16,

19 A THROUGH J, ADMITTED AS EVIDENCE.

20 BY MR. HOYLE:

21 Q Sir, I'm approaching you with an exhibit that has
22 been moved into evidence by consent. It's labeled
23 Plaintiff's 16, and it goes A through I [sic]. I want
24 to specifically direct your attention to E and F. Okay?

25 A Let me re-orient myself here, cause it's been

1 awhile.

2 Q Okay. Yes, sir. Take as much time as you need.

3 A Okay. because

4 Q We'll get the right one up on the screen. Let's
5 stop right there.

6 And you have that exhibit in front of you, correct?

7 A I do now.

8 Q Okay. We're looking at some sort of hallway here,
9 correct?

10 A Yes.

11 Q Okay. And on the right side of the photograph,
12 we've got a wall and a door in the foreground. Do you
13 see that?

14 A Yes.

15 Q Okay. And what's that a door to?

16 A That looks like it's probably the door to the
17 bathroom.

18 Q Okay. And directly in front of that, as you're
19 standing there in the hallway, looking at this
20 photograph, there's a door down at the end of this
21 hallway. Do you see that?

22 A There is. I do.

23 Q And what does that door go to?

24 A That goes into the CAT scan room.

25 Q Okay. And to the left of that door, there appears

1 to be the area with a curtain and a sink that's visible
2 in this photograph, correct?

3 A Correct.

4 Q What is that area that we're looking at there, to
5 the left of the door that goes to the C.T. machine?

6 A That's Bay Number 4.

7 Q Bay 4. All right. Let's look at the next
8 photograph. All right. We've got a different view of
9 Bay Number 4. Are you with me so far?

10 A I am.

11 Q And you've got that photograph up there with you on
12 the witness stand, correct?

13 A I do.

14 Q Okay. And about how big is Bay Number 4?

15 A I guess it's maybe six, seven foot wide, and
16 stretcher deep. So, it'd be maybe eight foot.

17 Q So, about eight by six or eight by seven?

18 A Yes.

19 Q And how far away from this stretcher or bay are you
20 when you're physically sitting at the nurses' station?

21 A Maybe from here, to the gentleman here on the left.
22 Probably no further. A little bit shorter, perhaps.

23 So, it's maybe what, twelve foot?

24 Q And --

25 A Excuse me. But this picture's a little different.

1 That doesn't have a regular stretcher on there. But it
2 still looks like Bay 4.

3 Q Okay. On February 24, 2012, there would have been
4 one of those stretchers or beds that has wheels on it,
5 that you could roll in and out of the bay?

6 A Correct.

7 Q Okay. All right. We'll take the photographs down,
8 sir.

9 We've got Calvin Hunt in Stretcher Bay Number 4.
10 You're about twelve feet away, at the nurses' station,
11 correct?

12 A Yes.

13 Q You're now the nurse responsible for Calvin Hunt's
14 interventions, assessments, and monitoring, correct?

15 A Correct.

16 Q What do you do once your wife goes back up to the
17 front?

18 A I stay at the nurses' station, cause I knew that
19 Dr. Jansen was going to go in and do his evaluation.

20 Q And an evaluation's different than an assessment,
21 correct?

22 A Evaluations, assessment, be the same.

23 Q Okay. And are you doing any type -- filling out
24 any type of paperwork once all this begins and you're
25 now responsible for Mr. Hunt?

1 A No, not really. I mean, I'm making notes on there,
2 just so that it looks like I'm doing something other
3 than nothing. I mean, you chart by exception. So, if
4 there's nothing exceptional to write, it kind of looks
5 like you're not doing anything.

6 Q Let's go back to Exhibit Number 20, the E.R. record
7 from that day.

8 A Done with these?

9 Q We're done with these. In fact, you can hand them
10 to me, so we can hand them back to the court reporter,
11 so they don't walk out of the courtroom and go to
12 Tahiti.

13 What are we looking at on this piece of paper of
14 the E.R. records from that day?

15 A This would be my portion of the documentation.

16 Q All right. We've got up at the top some language
17 that says nursing notes.

18 A Correct.

19 Q Do you see that?

20 A I do.

21 Q And some handwriting follows underneath nursing
22 notes, all the way down to a box that says name and
23 signature.

24 A Yes.

25 Q Okay. Whose handwriting is contained within that

1 area?

2 A That's mine.

3 Q And there's a signature down there that says name
4 and signature. You see that?

5 A I do.

6 Q And there's a signature right there.

7 A That's mine.

8 Q That's your signature. Okay. So, you're the right
9 man to talk to about with respect to a time line, going
10 from 14 -- what does that look like to you?

11 A 1430.

12 Q 1430. So, 2:30 in the afternoon to, looks like,
13 about 1635?

14 A Correct.

15 Q Okay. So, we've got some notes here that
16 correspond with a time to the left. Do you see that?

17 A I do.

18 Q Were you writing these in real time, or were you
19 going back through after the fact and estimating or
20 guesstimating what time certain things happened?

21 A The one, two, three, four were pretty much real
22 time, give or take a couple. Beyond that, it was a post
23 note.

24 Q All right. So, where do our contemporaneous
25 entries end? It's one, two, three -- it's after the

1 fourth one, you said?

2 A Yes.

3 Q Okay. So, we'll just draw a line on this copy,
4 this board that I've got up here to my left. Let's
5 start at 2:30. What do your notes reflect happened at
6 2:30 in the afternoon?

7 A *Received report from triage and the eval pending.*

8 Q Okay. You've told us a little bit about receiving
9 the report from your wife, correct?

10 A Correct.

11 Q Can you tell us everything that you can recall, as
12 you sit here today, she told you during that initial
13 report.

14 A As I recall, yes.

15 Q Nothing else you want to add to that at this time?

16 A At this time.

17 Q Okay. And you have had some records, and I think
18 we went over those records fairly sufficiently. Is that
19 fair?

20 A Yeah.

21 Q Okay. An M.D. eval pending. What does that mean?

22 A That the physician was going to do his evaluation;
23 it has not happened at that moment.

24 Q Now, 1430, what's our next entry?

25 A 1500.

1 Q And what happens at 1500, according to your notes?

2 A It's just a note of an observation I made, that the
3 representative from Veterans Affairs with patient, and
4 he's in -- and he is cooperative. E.R. M.D. eval in
5 progress.

6 Q So, by 3:00 o'clock, there was a doctor in there,
7 evaluating Mr. Hunt.

8 A Correct.

9 Q And that was Dr. Jansen, correct?

10 A Correct.

11 Q There's a person we've not really talked about thus
12 far. You and I haven't, at least, today. There's a rep
13 from the Veterans Affairs. Who is that?

14 A Mr. Ray.

15 Q Okay. And tell -- strike that. Have you ever met
16 Mr. Ray before, prior to this day?

17 A I don't know. I mean, he may have been a patient,
18 but wouldn't have recognized him as such, until after
19 this event. He had been in after this event. Of
20 course, we recognized each other. But if we had met
21 prior, it was just another patient.

22 Q And Mr. Ray, was he an older gentleman?

23 A Yes.

24 Q Okay.

25 A Well, wait a minute. What do you mean older? I

1 mean older? I'd say retirement age.

2 Q He was retirement age.

3 A Yes.

4 Q Okay. All right. So, we're now up to 3:00 o'clock
5 in our time line. Now, we've got a time line here that
6 says 1530. That'd be 3:30 in the civilian world,
7 correct?

8 A Yes.

9 Q Okay. What do your notes reflect happened at 3:30?

10 A Dr. Jansen wanted to speak to mental health
11 department over at Beaufort Memorial. I am noting that,
12 that -- well, that telephone call was made.

13 Q Okay. And telephone call to BMH 2-E. What is 2-E?

14 A 2-E is the mental health ward at Beaufort Memorial.

15 Q And it says here, to *inquire bed availability*. Did
16 I read that correctly?

17 A Correct. And spoke with Marilyn.

18 Q All right. And who, specifically, spoke with
19 Marilyn?

20 A Dr. Jansen.

21 Q Okay. And that's 3:30, correct?

22 A Yes.

23 Q All right. What's the next time entry that we
24 have?

25 A Excuse me. That's not 3:30. That's before 1525.

1 Q So, is that 1520?

2 A That looks like a 1510 or a 1520.

3 Q Okay. What time do you think that was, that
4 telephone call? 1510 or 1515?

5 A Either one. It was in that neighborhood. Yeah, I
6 wasn't in on the conversation. I know it was made.

7 COURT REPORTER: I'm so sorry. Let's get you in
8 here. I don't think that they're hearing you.

9 A Is that better?

10 COURT REPORTER: Yes.

11 Q So, either at ten minutes after the hour of 3:00,
12 or 20 minutes after the hour of 3:00, or somewhere in
13 that neighborhood, a telephone call gets made by Dr.
14 Jansen over to the mental health ward, the psyche ward,
15 of the Beaufort Memorial Hospital?

16 A Correct.

17 Q Okay. Whether it was 1510 or 1520, we know it's
18 before this next entry that we're about to talk about,
19 correct?

20 A Yes.

21 Q Okay. Because at least the first one, two, three,
22 four entries in our time line on the nursing notes were
23 in sequential order, correct?

24 A Yes.

25 Q Okay. 1525. Did I read those numbers correctly?

1 A You did.

2 Q Okay. What happens at 1525?

3 A The psyche tech by the name of Manning was in doing
4 his evaluation with Mr. Hunt.

5 Q Okay. So, it's not a trick question, okay? I know
6 people think that, that's going to happen, but. Before
7 whoever this fellow is, Psyche Tech Manning, is doing an
8 evaluation, before that even happens, Dr. Jansen makes a
9 telephone call to the psyche ward of the Beaufort
10 Memorial Hospital to see if they have an available bed,
11 correct?

12 A Apparently.

13 Q That's what your notes reflect.

14 A Um-hmm.

15 Q Is that a yes?

16 A It is.

17 Q And as you sit here today, here in this courtroom
18 today, in front of this Court and this judge, you have
19 no reason to believe that these entries are anything
20 other than correct. Is that fair?

21 A That's fair.

22 Q Okay. So, let's talk a little bit about a psyche
23 tech. You currently work in Beaufort -- at Beaufort
24 Memorial. You've worked previously at some civilian
25 hospitals. Does either Beaufort Memorial or any other

1 civilian hospital that you've ever worked at have
2 something known at a psyche tech?

3 A Not that I'm aware of.

4 Q The only place you've ever seen a psyche tech is
5 where?

6 A Navy E.R.

7 Q Okay. You've got something on here, it says Psyche
8 Tech Manning.

9 A Yes.

10 Q Psyche Tech Manning, did he wear a uniform
11 indicating that he was in the service, or was he a
12 civilian, or do you know?

13 A Oh, he had a Navy uniform on. Blue cammies.

14 Q That indicate to you that he was active duty?

15 A Yes.

16 Q Tell us what a psyche tech is. What does a psyche
17 tech do?

18 A Can't really tell you. They come down, they do
19 their evaluation. They'll go upstairs and talk to, I
20 guess, it's the psychiatrist or a psychologist. What
21 happens between them, I've never been involved with.

22 Q That's not something that impacts what you do with
23 respect to your intervention assessment or monitoring of
24 a patient in the E.R., correct?

25 A Correct.

1 Q Do you know who, if anyone, asked Psyche Tech
2 Manning to come down to the emergency room?

3 A Yes. It would have been Dr. -- I believe Dr.
4 Jansen asked for a psyche tech, but I don't know for
5 sure how that happened.

6 Q Probably Dr. Jansen's a better person to talk to
7 about that?

8 A I believe so.

9 Q Okay. How long was psyche tech --

10 A It wasn't -- it wasn't me; it was the triage nurse.
11 So, there aren't too many other players in the field.

12 Q Okay. I heard some talk earlier about how, at
13 various times, there was an LPN there, and other times,
14 there wasn't an LPN there. On this particular Friday
15 afternoon, February 24, 2012, was there an LPN present
16 within the four walls of the emergency room?

17 A There was.

18 Q For the entire time Calvin Hunt was there?

19 A No.

20 Q What about for any of the time that Calvin Hunt was
21 there?

22 A That person was there initially.

23 Q And I take it he or she left?

24 A No. She also worked up on the fifth floor. There
25 was nothing going on with -- currently. I think she had

1 some training or a schedule issue up on the fifth floor.
2 She was -- she went up there to take care of whatever.

3 Q Let's go back to the interaction that Mr. Manning
4 had in the emergency room. Did you actually see Mr.
5 Manning go into Stretcher Bay Number 4 where Calvin Hunt
6 was?

7 A I did.

8 Q Did you go in with him?

9 A Did not.

10 Q Were you able to hear what was transpiring in
11 between Mr. Manning and Calvin Hunt while you were
12 sitting, I believe you told us, some twelve feet away?

13 A I was not able.

14 Q And some point in time, I take it, Mr. Manning went
15 into Stretcher Bay Number 4, correct?

16 A Yes.

17 Q Did you speak with Mr. Manning, either before he
18 went in there, or after he came out?

19 A On his way out, he said, we're going to go upstairs
20 and do our thing.

21 Q And you didn't really know what all that involved.
22 Is that fair?

23 A Correct.

24 Q All right. Let's go back to our time line. What
25 happens next, sir?

1 A Well, somewhere around 4:00 o'clock, Mr. Hunt comes
2 over to me and says, can I make a head call. I said,
3 absolutely. I said, and it's right there to the left.
4 So, I see him walk past. He goes in the bathroom, and I
5 can hear everything that goes on in the bathroom.

6 Q Okay.

7 A I'm -- I'm -- I'm listen -- I always listen to make
8 sure that people stay -- they stay safe, don't fall
9 down, hit their head, whatever.

10 Q So, somewhere around 4:00 o'clock, Mr. Hunt goes to
11 the bathroom.

12 A Correct.

13 Q Okay. Now, at that point in time, is Mr. Hunt
14 wearing the street clothes he came in with, or is he
15 wearing a hospital gown, or what's he wearing?

16 A The street clothes that he wore -- came in with.

17 Q You, as his nurse, hadn't asked him to change into
18 a gown or anything like that?

19 A No need to.

20 Q Okay. Now, when he goes to the bathroom, did you
21 actually accompany him in there?

22 A I did not.

23 Q Let's talk a little bit about the bathroom that
24 Calvin Hunt was using. He went in there with the
25 clothes he came in off the street with, correct?

1 A Correct.

2 Q Could he have used the clothes he came in with to
3 harm himself while he was in there in the bathroom?

4 A Perhaps.

5 Q Do you know one way or the other as to whether or
6 not he had a belt on that day?

7 A I believe he did.

8 Q And again, at least by the records that day, there
9 was an indication by your wife that Calvin Hunt, on that
10 day, that particular day, was having suicidal ideations.

11 A He had suicide ideations. Maybe not particularly
12 at that moment, but he had suicide ideations.

13 Q Did Mr. Hunt speak to you after he exited the
14 restroom?

15 A I asked him if he wanted something to drink. We
16 have Gatorade and ginger ale. He just said, you know,
17 matter of factly, no, pleasantly.

18 Q Did Dr. Jansen ever tell you -- before the time
19 that Calvin Hunt makes the head call, so, with our time
20 line we would be up to here, the bathroom. Prior to Mr.
21 Hunt going to use the bathroom, did you have any
22 information from Dr. Jansen as to whether or not Calvin
23 Hunt was going to be admitted?

24 A No. The only thing that was said is that he may be
25 going over to Beaufort Memorial Emergency Room.

1 Q But you knew from your own time line that you'd
2 been making here that the phone call had been to 2-E,
3 correct?

4 A To see if there was bed availability, yes.

5 Q In the psyche ward at the Beaufort Memorial
6 Hospital.

7 A Yes.

8 Q Okay. Whether or not he was actually going to be
9 put in the bed over there, you didn't know.

10 A Or even go there.

11 Q Okay. Dr. Jansen didn't tell him.

12 A Correct.

13 Q And did Dr. Jansen tell you anything that he had
14 learned from his interactions with Mr. Hunt when he was
15 in there doing his evaluation?

16 A He did not.

17 Q Didn't say one word to you, did he?

18 A Hmm-um. No.

19 Q There are some records in from that day that Dr.
20 Jansen filled out. Did you have the opportunity, while
21 Calvin Hunt was still within the four walls of the
22 emergency room -- so, somewhere in this time frame
23 before 4:00 o'clock, did you have the opportunity to
24 actually see with your own eyes any medical records that
25 Dr. Jansen had filled out in his own writing?

1 A No. They would have been with him in his office.

2 Q He was holding onto them.

3 A Yes.

4 Q After Mr. Hunt returned from the bathroom, and you
5 asked him whether or not he wanted something to drink,
6 and he politely declined that offer, what happened next?

7 A Oh, two or three minutes after that, Mr. Ray come
8 over and asked if they could step out for a breath of
9 fresh air.

10 Q We'll talk about this very slowly. Okay. Did I
11 hear you say two minutes later?

12 A A few minutes.

13 Q A few minutes later. Mr. Ray leaves the bathroom,
14 and where does he go back to after he leaves the
15 bathroom?

16 A Bay 4.

17 Q He's about twelve feet away from you.

18 A About.

19 Q He's within your line of sight.

20 A Yes.

21 Q With the exception of him making the head call, had
22 he been within your line of sight ever since 1430, when
23 he became your patient?

24 A Except when the curtain was closed when Dr. Jansen
25 and Psyche Tech Manning spoke to him.

1 Q So, with the exception of the bathroom visit or
2 head call.

3 A Yes.

4 Q Beginning at 1430, or 2:30 in the afternoon, Calvin
5 Hunt had either been within your sight, or been within
6 arm's length of some medical personnel. Is that fair?

7 A Yes.

8 Q Okay. A few minutes after the head call, Mr. Ray,
9 the older gentleman, retirement-age gentleman, comes and
10 asks you a question.

11 A Yes.

12 Q When that question is asked, do you have your eyes
13 on Calvin Hunt?

14 A He's sitting right over there, yes.

15 Q Not too far away.

16 A Correct.

17 Q I want to make sure we're all clear. Can you tell
18 the Court and jury the exact words Edward Ray said.

19 A Can we step out for -- could we step out for some
20 fresh air.

21 Q That was a question.

22 A Yes.

23 Q Directed to you.

24 A Yes.

25 Q And what was your answer?

1 A Yes.

2 Q That's all you said.

3 A Um-hmm.

4 Q That's a yes?

5 A Yes.

6 Q At this point in time, did you talk to Calvin Hunt
7 at all?

8 A Not since I offered him the refreshments.

9 Q Did you tell Mr. Hunt that he should not leave the
10 premises of the Naval Hospital?

11 A I did not.

12 Q Did you tell him or warn him that he shouldn't do
13 that, because he might be a danger to himself?

14 A I did not.

15 Q Where was Dr. Jansen when that question and answer
16 were exchanged?

17 A He was in his office.

18 Q And the office sits right next door to the nurses'
19 station?

20 A Yes.

21 Q Do you know one way or the other as to whether the
22 door to Dr. Jansen's office was open or closed when that
23 exchange took place?

24 A I don't know one way or another.

25 Q If the door was open in that itty-bitty E.R., would

1 he have been able to hear the exchange of that question
2 and that answer?

3 A Yes.

4 Q Dr. Jansen typically leaves that door open, doesn't
5 he?

6 A Typically, yes.

7 Q And at that time, when that exchange took place,
8 the question and the answer, there was no other patient
9 in the emergency room, correct?

10 A That's correct.

11 Q There was nobody in Dr. Jansen's office, other than
12 Dr. Jansen?

13 A Correct.

14 Q I believe you've told me before that, based on all
15 that information, you believe the door was probably
16 open.

17 A Probably open.

18 Q That's a yes?

19 A I've -- I've only known it to be closed when he's
20 on the telephone with another physician or with whoever.

21 Q And in that itty-bitty E.R., would you be able to
22 maybe not hear word for word, but know if he's talking
23 on the telephone?

24 A Typically.

25 Q Let's talk about other things that might make noise

1 in the emergency room. Did you have something known as
2 a scanner there at the nursing station?

3 A CAT scanner?

4 Q Not the CAT scanner, but a radio scanner.

5 A Oh, yes. That was right behind my -- right here.
6 The two-way radio to the medics' EMS services.

7 Q Was that radio scanner tuned to a frequency that
8 was specific for the Naval Hospital, or specific for the
9 wider Beaufort County community?

10 A It was general dispatch for the whole county.

11 Q Now, my understanding is that, in some communities,
12 like the one I live in, and I think some places maybe
13 down here that, sometimes, if somebody has a call for
14 help, and they need an EMT, that, instead of an
15 ambulance showing up, a fire truck might show up. Do
16 you have that understanding?

17 A I have that understanding. I don't know what the
18 practice is in Beaufort. My impression is, it's always
19 an ambulance.

20 Q Was the scanner on that day?

21 A Oh, yes.

22 Q Was the scanner on in our time frame, before the
23 head call?

24 A It was on -- it was on throughout the day.

25 Q Now, you said it was right behind you. How far

1 away would that scanner have been to Stretcher Bay
2 Number 4?

3 A The same distance. I mean, I'm up against the
4 wall. The scanner is placed on the wall, so it's right
5 behind my head.

6 Q Was it turned down real low, or real loud, or just
7 a normal volume?

8 A No, it's -- it's loud enough so that the physician
9 can hear it. So that, if I was not sitting there, and
10 the emergent call came through, the physician would know
11 that something is in the mix.

12 Q We've talked about a question and an answer. After
13 you give the answer of yes, what happens next?

14 A Mr. Hunt and Mr. Ray walk past the nurses' station,
15 and they go out the doorway, heading to the hallway. As
16 opposed to the double door that goes out to the
17 ambulance bay.

18 Q Do you actually watch them walk down the long
19 hallway towards the door?

20 A Yes.

21 Q Is that the last time you saw Calvin Hunt?

22 A Yes.

23 Q At some point in time, does Edward Ray come back
24 into the emergency room?

25 A He does.

1 Q At the time Mr. Ray comes back into the E.R., have
2 you heard anything on the scanner sitting behind your
3 head?

4 A Oh, yes.

5 Q About some wrecks on Ribaut Road?

6 A Oh, yes. It was busy and chaotic. I was trying to
7 decide what was going on. I knew there was at least one
8 wreck. I thought, perhaps two. But what I -- what I
9 hear is general dispatch going out to the fleet. I
10 don't hear the corresponding information, unless they
11 specifically call Navy E.R. So, I essentially get a
12 one-way conversation.

13 Q Of Dispatch talking --

14 A Correct.

15 Q -- to emergency personnel out in the field.

16 A Yes.

17 Q When you start hearing those dispatch calls on the
18 scanner sitting right behind you, how long had Calvin
19 Hunt been gone?

20 A I think they started before Calvin Hunt had gone.
21 I believe they -- I think the accidents out there
22 started before this -- before he had went out for some
23 fresh air. I knew there was activity out there on
24 Ribaut. Didn't know to what degree.

25 Q Okay. When Mr. Ray comes back in, how much time

1 has elapsed between the question-and-answer exchange
2 we've talked about and his return?

3 A I'm going to guess 20, 25 minutes.

4 Q And you say a guess. What makes you use that word?

5 A My time line there is not accurate. I think they
6 really went for the head call five of 4:00 or so.
7 Because, if I believe Mr. Manning came back looking for
8 him maybe five after 4:00. So, that's perhaps five, ten
9 minutes' lapse, and that's when we discovered that
10 perhaps he was missing. It was ten, fifteen minutes
11 after that, that Mr. Ray had come in and told me that
12 he'd gotten away from him.

13 Q So, everything after the fourth entry on your time
14 line you've got some doubts about the accuracy of the
15 time.

16 A Correct.

17 Q Do you have any doubt about the accuracy of the
18 information contained within the note?

19 A No.

20 Q So, Mr. Ray returned to the E.R. That's what your
21 note reflects.

22 A Yes.

23 Q And the note reflects he took off through the gate.

24 A Correct.

25 Q And he's referring to Kalvin Hunt.

1 A Oh, yes.

2 Q You've got a later entry down here at 1635. Again,
3 not so sure that, that's the right time. Is that fair?

4 A I'd say that is within a couple of minutes.

5 Q And that would be 4:35?

6 A Pretty much.

7 Q And what do you write happened at that time?

8 A Just noting that the officer of the day, PMO, which
9 is the military police, the E.R. physician, the E.R.
10 nurse manager, were all notified of the event. So.

11 Q And it actually says --

12 A That says AMA. That's not correct. It's not
13 against medical advice. It was actually elopement.

14 COURT REPORTER: *It was actually?*

15 A An elopement.

16 Q What does the word *elopement* mean?

17 A Left. Left the premises.

18 Q And what, in contrast, does AMA mean?

19 A Left without -- left against medical advice.

20 Q But you already told us that you didn't tell Calvin
21 Hunt not to leave the premises of the hospital, correct?

22 A Correct.

23 Q So, you could not have given him any advice or
24 warnings not to leave, correct?

25 A Correct.

1 Q So, just so we're all clear, despite what that
2 record says, Calvin Hunt was not acting against medical
3 advice, was he?

4 A No.

5 Q And I believe you said this, but I just want to
6 make crystal clear. The word AMA here and here on this
7 record is incorrect.

8 A Correct.

9 Q You believe the proper word would be elope.

10 A Correct.

11 Q An elopement means left without instruction.

12 A Yes.

13 Q Or advice.

14 A Or just left.

15 Q If Dr. Jansen, the only doctor who was there that
16 day, had told you not to let Calvin Hunt leave the
17 emergency room, would your answer to the question we
18 talked about earlier about a breath of fresh air have
19 been different or the same?

20 A If he had told me not to let him leave, it would
21 have been different.

22 Q What word would you have said instead of yes?

23 A I would've said let's check with Dr. Jansen and see
24 what progress we're making. He wants to leave. What
25 arrangements can we make? I mean, here's a guy who's

1 been there two hours. Had already been upstairs, asked
2 questions. He had been down here, asked questions, to
3 Janice, psyche tech, Dr. Jansen. He's been sitting
4 there pleasantly, cooperative, minding his own business.
5 Just wants his prescriptions. Now, he just wants to get
6 out and -- and shake the dust off. If he wanted to go,
7 and Dr. Jansen said no, then, we have to make
8 arrangements for someone to go with him, psyche tech,
9 me, whatever would be necessary.

10 Q You weren't going to just let him go out by
11 himself, correct?

12 A If it was deemed that it would be inappropriate,
13 yes.

14 Q If Dr. Jansen had told you that you needed to warn
15 Kalvin Hunt not to leave the Naval Hospital, would you
16 have followed that instruction?

17 A Absolutely.

18 Q Have you had the occasion since that fateful Friday
19 to look at Dr. Jansen's note for the day?

20 A I did.

21 Q If Dr. Jansen had asked you to obtain some
22 information about Kalvin Hunt, some additional
23 information, would you have done that?

24 A Yes.

25 Q If he'd said, I can't get a sufficient history for

1 this patient; can you find out some information about
2 him; would you have gone and looked somewhere?

3 A Sure.

4 Q Could you have gotten -- strike that. Where would
5 you have looked?

6 A The only place I would have the ability to look
7 would be in an AHTLA note.

8 Q And you know how to do that?

9 A Yes. To a degree.

10 Q And AHTLA notes contain past medical records,
11 correct?

12 A They do. I'm not sure if they're all inclusive. I
13 mean, we only use it in the emergency room in between
14 the E.R., the branch medical at the air station, and
15 also, Parris Island. I'm not so sure that it also
16 includes visits from, you know, the whole United States.
17 I don't -- I don't know what's all inclusive.

18 Q Don't know one way or the other.

19 A No. We don't -- we don't use it to document. It's
20 just there as a resource.

21 Q As a resource to consult, in the event you need it.

22 A Yes.

23 Q All right.

24 MR. HOYLE: Permission to approach, your Honor.

25 THE COURT: Yes.

1 BY MR. HOYLE:

2 Q Mr. McDonald, I'm showing you what was marked here
3 yesterday and moved into evidence by consent as
4 Plaintiff's Exhibit Number 19. I'm going to ask Mr.
5 Knowles to publish it on the screen.

6 We're looking at a record from February 24, 2012,
7 for a Calvin Dante Hunt, correct?

8 A Yes.

9 Q It looks like somebody by the name of Saundra L.
10 Smith generated this record about 1430 that day.

11 A Um-hmm.

12 Q Correct?

13 A Yes.

14 Q That's 2:30 in the afternoon.

15 A It is.

16 Q That's before you answered the question yes,
17 correct?

18 A Yes to which question?

19 Q Yes to the question can we go out and get some
20 fresh air.

21 A Yes.

22 Q By a good 90 minutes, correct?

23 A Yes.

24 Q When you've got a medical record, and you're
25 looking at it, and you see the word *problems* on it, what

1 are those things? What are those problems?

2 A Problems are a stated problem of what the patient
3 comes in to see the physician for.

4 Q Let's just look at some of these problems on here.
5 We'll go down to something that says adjustment disorder
6 with disturbance of emotions and conduct. Do you see
7 that?

8 A Still looking. Halfway down? Where are we at?

9 Q We're one, two, three, four, five, six, seven,
10 eight, nine bullets down.

11 A I see it. Yes, I see it.

12 Q And is that something that -- a problem in a
13 medical record, are those things that are current,
14 ongoing, things in the past?

15 A No idea, based on this.

16 Q Let's scroll down the document, if we can, Mr.
17 Knowles. There we go. And underneath that adjustment
18 disorder entry, we've got an entry for what?

19 A Anxiety.

20 Q And if we were to go one, two, three, four, five,
21 six, seven, eight, nine bullets down, we've got
22 something that says what, sir?

23 A It looks like anxiety disorder NOS, non-specific.

24 Q And so, you told us about anxiety disorder NOS.

25 A Yes.

1 Q And above that, one, two, three, four bullets
2 above, we have something that says adjustment disorder
3 with anxious mood, correct?

4 A Yes.

5 Q And then, further down, we've got something that
6 says delusional disorder, and another bullet that says
7 personality disorder.

8 A We do.

9 Q But on February 24, 2012, you didn't go look at any
10 of Calvin Hunt's medical records from the past, correct?

11 A Correct.

12 Q The only thing you consulted that day were the two-
13 page triage record that your wife filled out, that we
14 talked about here today, correct?

15 A That's correct.

16 Q And even though that triage record, under the
17 psychosocial box, was to suicidal ideations, you didn't
18 have an understanding that day as to whether or not
19 those ideations were then occurring, or in the past. Is
20 that your testimony?

21 A Was -- had no knowledge that it was occurring.

22 Q If someone has suicidal thoughts or ideations, is
23 it a concern that they could harm themselves?

24 A Not always. I mean, there is -- there's -- people
25 get depressed, can have thoughts, never have an action

1 on it. If they have actions on it, that's a different
2 issue. I mean, we all get depressed. I'm not so sure
3 we all have ideation, but again, may have a thought
4 about it. Not a plan in doing it, but a thought about
5 it.

6 Q If you knew, when the question can we get a breath
7 of fresh air was asked, that Calvin Hunt had expressed
8 to others that he had thoughts of hurting other people
9 when you were his triage nurse, would that have changed
10 your answer from a yes to a no?

11 A You mean when -- you mean when I was his treatment
12 nurse.

13 Q When you were his treatment nurse. I apologize.

14 A Perhaps.

15 Q But again, your testimony here today is that, even
16 though you were the treatment nurse tasked with
17 monitoring this patient, that the emergency physician
18 records that Dr. Jansen was charged with filling out
19 stayed in his possession and you didn't have access to
20 them.

21 A I had access to them. I believe they were in his
22 office with him.

23 Q He never showed them to you before Calvin Hunt
24 left.

25 A Correct.

1 Q And I take it you didn't go ask for them, either.

2 A Correct.

3 Q Do you believe that Dr. Jansen gave you all the
4 information that you needed in order to do your job and
5 monitor this patient?

6 A Up until the end of the -- the visit, yes. With
7 what he would -- what the patient was presenting
8 correlated with the actions that we were doing.

9 Q Should Calvin Hunt have been allowed to leave the
10 premises at the Naval Hospital?

11 A At that time, yes.

12 MR. HOYLE: Those are all the questions I have for
13 this witness at this time.

14 THE COURT: All right. Cross-examination.

15 MR. LOVELL: Thank you, your Honor.

16 Could I see the easel, please.

17 JOSEPH J. MCDONALD, JR.

18 CROSS-EXAMINATION, BY MR. LOVELL:

19 Q Good morning, Mr. McDonald.

20 A How are you doing?

21 Q Get myself situated here.

22 A Excuse me.

23 MR. LOVELL: Will you turn off the overhead,
24 please?

25 BY MR. LOVELL:

1 Q Ready to go?

2 A Oh, yeah.

3 Q You were asked a lot of questions about yourself at
4 the very beginning. It's been awhile, but I wanted to
5 walk through a couple of points about your E.R.
6 experience itself. Now, you told us that you were in an
7 E.R. up north for about a year and a half as a
8 registered nurse up there.

9 A Correct.

10 Q Was that your first experience in nursing
11 whatsoever, though?

12 A Oh, no.

13 Q Tell us what you had done, prior to that.

14 A When I first got out of school, I started at Keenes
15 King Hospital Intensive Care Unit, and I was there for
16 about a year and half. Janice actually worked in the
17 hospital across the driveway at the cancer center.
18 Along the way, we moved over to New Jersey. And between
19 the travel and the schedule, it got -- it got crazy.
20 So, I decided to get into home care, to help smooth out
21 the schedule. Home care was Monday to Friday, sometimes
22 a weekend, home at nights. So, at least we were home
23 together. It was more of a schedule accommodation.

24 I'd been in home care for probably ten, twelve
25 years. Start off as, you know, home care staff nurse.

1 Got involved with management. I was a team manager for
2 a New Jersey Morristown Visiting Nurse. Wanted to get
3 into Philadelphia. So, I opened up an office in
4 Philadelphia. I was primarily the branch manager.

5 Left there, went over to Hahnemann Hindman
6 Hospital, which is a tenant group. Headed the Hahnemann
7 Hindman Group, which was the biggest area that they --
8 that they had. Unfortunately, tenant decided to uproot
9 their home care; so, I went back to Morristown Visiting
10 Nurse as a team manager.

11 Had my fill of home care management, so I decided I
12 wanted to get back into doing nursing care, as opposed
13 to administrative. That's how an opportunity came up
14 with Burlington County E.R. So, that's how I got back
15 into the hospital system.

16 Q So, prior to your E.R. experience, had you had
17 experience in seeing patients who came in with mental
18 health challenges?

19 A Mental health challenges, no.

20 Q In the E.R. world, when you started there, did you
21 have experience with patients in the mental health
22 challenges in the year and a half you were up north
23 before you moved south?

24 A Yes.

25 Q And were you trained as a nurse on how to deal with

1 patients with mental health challenges?

2 A No. The exposure I had to mental health was
3 Philadelphia Psychiatric Institute in the main line. It
4 was probably eight to ten weeks as a student nurse.

5 Q When you came down here, you worked three years,
6 you told us, at the E.R. over at Beaufort Memorial. Did
7 I get that right?

8 A It's probably about a year and a half there at
9 Beaufort Memorial.

10 Q Did you have experience there in interaction with
11 the patients with mental health challenges?

12 A Oh, yes.

13 Q And then, at the Naval Hospital, prior to February
14 24, 2012, you were at the Naval Hospital E.R. for what,
15 roughly five years?

16 A Up to this point, yes.

17 Q Okay. So, you would have had five, three units.
18 So, roughly ten years of E.R. experience, plus or minus,
19 when you saw this patient?

20 COURT REPORTER: I'm sorry, *plus or minus*, when
21 you?

22 Q Saw this patient.

23 COURT REPORTER: And your answer was?

24 A Yes.

25 Q We can't talk at the same time, otherwise, she

1 can't get it all down. That's my bad.

2 A Sorry.

3 Q So, in that patient population at any of those
4 E.R.s, up north, down here, Beaufort Memorial, in this
5 area, was it common to see military folks come in who
6 have mental health challenges?

7 A Oh, yes. All the time.

8 Q And at the Naval Hospital, in particular, was that
9 something you regularly saw?

10 A In the Navy E.R.?

11 Q Yes.

12 A Oh, yes.

13 Q I have to ask you a few questions about the
14 employment situation. You were asked a question earlier
15 about coming to work at the Naval Hospital, and you said
16 they asked you to come repeated times, and you finally
17 conceded and started working there. Who was the they
18 that you were talking about?

19 A That was Nicole. She did the schedule for CasePro.
20 They had --

21 Q How about when you were at Fly America? Who was it
22 asked you to come then?

23 A It was -- I think it was Nicole.

24 Q Okay. So, Nicole was Fly America and CasePro?

25 A Correct.

1 Q And she was a part of the Navy, as well? The Naval
2 --

3 A Same group that we were, yes.

4 Q When you were with Fly America, what was your
5 understanding of what role they played in making it
6 where you could go work at the Navy Hospital as a nurse?

7 A Fly America was just a paycheck. Paycheck and
8 benefits.

9 Q Did they recruit you to go in and do this military
10 work?

11 A No. I was asked twice by Nicole that there's an
12 opening. The benefits were that it solves our schedule
13 problem.

14 Q Sure.

15 A Then I got paperwork that got sent to me one way or
16 another from Fly America, which got me onto the payroll.

17 Q And when you started getting a paycheck from
18 CasePro, was it any different than when you had gotten
19 it previously?

20 A No difference. Just different name on the check.

21 Q And you were asked questions about your arrangement
22 with CasePro, and I think Fly America about the rules
23 and regulations you had to agree with them. But were
24 there rules and regulations that the Naval -- the
25 Department of the Navy imposed upon you when you're

1 working in the E.R.?

2 A Yes.

3 Q Give us an example of those.

4 A All the examples that we had here, the HIPAA,
5 sexual assault, thorough annual documents that we have
6 to sign annually.

7 Q Okay. And when you were working in the E.R. on a
8 day-to-day basis, if an issue arose about what you were
9 to do as a nurse, did the Navy -- had the Department of
10 the Navy put policies and procedures in place that you
11 had to follow?

12 A Yes.

13 Q And were those some things that the Navy trained
14 you on what to do, under their policies and procedures?

15 A Yes.

16 Q And when you were working on a day-to-day basis in
17 the E.R., if a medical issue came up or a problem came
18 up with what you were doing in the E.R., who did you
19 report to, to raise a question or raise a concern or
20 anything of that, as far as your day-to-day activities?

21 A Chain of command would have been the E.R. director.
22 At that time, it was Lieutenant Brannon. If she
23 couldn't solve the problem or was not available, it
24 would be the officer of the day, whoever it was that
25 day. And if I had to go up higher than that, it would

1 be the medical director, which, I believe, was Commander
2 Thayer.

3 Q Are all those Department of Navy employees?

4 A They are all active military.

5 Q Did you ever call CasePro with day-to-day questions
6 about what you were doing in the E.R. with work?

7 A Only related to paycheck and benefits.

8 Q Could the Navy have terminated you if they wanted
9 to?

10 A Absolutely.

11 Q And when I say Navy, I mean Department of the Navy.

12 A Yes, sir.

13 Q Were there any CasePro administrators or
14 supervisors that were resident at the facility?

15 A No.

16 Q When this event occurred, did you ever notify
17 people up that chain of military command about what had
18 occurred and all of those things?

19 A For the military?

20 Q Sure.

21 A Yes. They were all aware.

22 Q And you were asked a question about one of these
23 documents. I'm going to grab it. If you would flip to
24 your note, Mr. McDonald, which I think it Plaintiff's
25 20. I'm not a hundred percent sure which of their pages

1 it is, but -- you got it?

2 A Which one are we looking at?

3 Q Your note that looks like --

4 A Yes. I have it here.

5 Q At the very bottom, you were asked questions about
6 this 1635 entry.

7 A Yes.

8 Q A bunch of letters of who you all called. You
9 mentioned that you called, I think, the officer of the
10 day. But you also called a -- the nurse director and
11 told her of those events.

12 A That's right.

13 Q Who was that?

14 A Lieutenant Brannon.

15 Q Is there a note that you called anybody at CasePro
16 about it on that day?

17 A There's no note, because they were not contacted.

18 Q All right. Let's move on. I'm going to ask you
19 this question, based on your knowing everything you
20 knew. I want you to move yourself back to February 24,
21 2012. At that time, in your mind, did you have the
22 training and experience necessary to serve in the role
23 as the treatment nurse involved in patients coming in,
24 presenting like this man did, with medication to refill
25 and all the things you saw on the triage sheet that was

1 prepared by Ms. McDonald, were you comfortable assessing
2 him, watching him, doing the things you did that day?

3 A Comfortable for a patient with his presentation,
4 which is benign. Good presentation. Spoke well.
5 Clean-shaven. No issues.

6 Q Had you been involved with other patients who came
7 in with mental health challenges who were not those
8 conditions?

9 A Yes.

10 Q And had you been able to respond to them in
11 whatever roles you were serving, triage or treatment
12 nurse, with those folks?

13 A Yes.

14 Q In that military hospital, when a patient under
15 these protocols that were in existence back then that
16 the Navy told you, when a patient came in, and during
17 the course of being assessed by either triage nurse,
18 treatment nurse, E.R. doctor, if they said I have
19 thoughts of hurting myself, suicidal ideations, was
20 there a protocol about bringing the psychiatric people
21 into the process of evaluating them?

22 A There's no protocol that I'm aware of.

23 Q Okay. But in this case, we do know that the
24 psychiatric people were brought in, correct?

25 A Yes.

1 Q That was Mr. Manning, initially. And then, a call
2 to Dr. Hendelman from Dr. Jansen. Is that right?

3 A I guess.

4 Q And you obviously weren't part and parcel to that.

5 A Correct.

6 Q Let's back up, then. I'm just asking this question
7 from you as a nurse. When a patient comes in front of
8 you in the same scenario like this gentleman did, with
9 the information you had, do you have an opinion whether
10 a person who has no nursing training, no medical
11 training at all, just an average person on the street,
12 ordinary person, would be able to assess and determine
13 how to supervise or observe or be involved in their
14 care?

15 MR. HOYLE: Objection, your Honor.

16 THE COURT: Sustained.

17 A Does that mean I ignore that one?

18 THE COURT: That means hold up.

19 A Okay.

20 BY MR. LOVELL:

21 Q I'm going to ask you some questions about our
22 diagram. It won't take but one second. We were here.
23 You were not in the courtroom yesterday when your wife
24 Janice drew us a diagram of the E.R. And we've seen
25 some pictures, and I'd like to get a little orientation

1 on that. She drew what I'll represent to you is the way
2 the layout of the inside of the actual E.R. room is.
3 Does that look relatively accurate, if you assume that
4 one, two, three, and four are the various rooms?

5 A She done good.

6 Q Okay.

7 COURT REPORTER: I'm sorry. I didn't hear you.

8 A She did good.

9 Q Now, she told us that Number 1 was the room where
10 obstetric and pediatric patients were seen, where they
11 had some privacy. Is that right?

12 A That would be a regular room with a closing door,
13 yes.

14 Q And Number 2, 3, and 4 were these bays that we saw
15 the picture that are just separated by the curtain?

16 A That's right.

17 Q She had nurse station where, presumably, you would
18 have been --

19 A Um-hmm.

20 Q -- positioned here, across from 4?

21 A Yeah. It goes longways, separation in the middle
22 for, you know, two people. But right there.

23 Q Okay. And then, the doctor's office right here
24 with what we drew as a line as a door?

25 A Yes. That's correct.

1 Q And then, this bathroom that we saw in the picture,
2 is that what we're looking at here?

3 A That's right.

4 Q All right. Now, the triage area where the patient
5 comes in and looks through some little hole or they talk
6 through a hole, is that what is over here? That's how
7 she drew it.

8 A Pretty much.

9 Q All right. And then, we've got ambulance bay and a
10 hallway.

11 A That's right.

12 Q The hallway that you saw Mr. Ray and Mr. Hunt exit
13 to do whatever they were going to go do, was that this
14 one?

15 A That would be main hallway, yes.

16 Q And is this hallway, does it run all the way up and
17 down from ambulance bay, down to whatever exit door?

18 A It does. Direct line.

19 Q And how do you get from this area to the triage
20 area? Are they separated by the hallway?

21 A There's no separation. It's -- it's -- it's fluid.
22 It's doesn't show real clear, but it's fluid back and
23 forth.

24 Q Okay. So, as far as the date of this, all this
25 going down, this is sort of what we look like, plus the

1 pictures we saw.

2 A Yeah. It's pretty close.

3 Q Perfect. When you're doing your triage -- or when
4 you did your triage -- I'm sorry. When you did your
5 treatment assessment -- strike all of that. Let me
6 start over. I'm sorry. My words are confusing.

7 In your role as a treatment nurse, are you just
8 sitting there doing nothing as it relates to the
9 patient?

10 A No. I'm treating their -- paying attention to
11 what's going on.

12 Q Are you trained to observe with your eyes and your
13 ears and whatever other senses you have, what's going on
14 with a patient like Mr. Hunt that's sitting in front of
15 you?

16 A No, not really, because it wasn't anything going
17 on, not that I could see. But I've had no formal
18 training in mental health, if that's what the question
19 is.

20 Q Really, my question is, what are you doing when
21 you're observing him? What are you looking for to
22 suggest that something else might be needed to be done?

23 A Oh. His presentation, his demeanor, his actions,
24 his subtle motion. Is he tapping his feet, is he
25 mumbling, is he pacing back and forth.

1 Q And why are you looking for those things?

2 A Because they would be telltale signs that there's
3 an issue to be dealt with.

4 Q When Mr. Hunt came into your presence, either
5 through your eyes or what you could hear with your ears,
6 any of those things going with him?

7 A No. He was a ideal patient.

8 Q At any point in time, from when you first started
9 your involvement in his care at around 2:30, to the time
10 that he and Mr. Ray departed the facility, any of those
11 things that you've told us that you're looking and
12 listening for, did they ever occur with this patient?

13 A You could invite this kid home to dinner on Sunday
14 afternoon. He was that nice and pleasant.

15 Q Did his demeanor ever change while he was there?

16 A No.

17 Q And did his conversation with you, and by that, I
18 mean, when you spoke with him or overheard him speaking
19 with other people, did the tone of his voice ever
20 change?

21 A No. Nice, calm, quiet.

22 Q Volume of his voice ever go up or down?

23 A No.

24 Q Did he make any noises or any other non-words that
25 caused you to think something had changed with Mr. Hunt?

1 A Sat there patiently with Mr. Ray.

2 Q Was Mr. Ray in the room with him from the time at
3 the beginning of your observation around 2:30-ish, up
4 until the time they walked out, with the exception of
5 when the gentleman went to the restroom?

6 A He was. When Mr. Manning and Dr. Jansen spoke with
7 the patient, Mr. Ray was on the opposite side of the --
8 the curtain. Now, he was next to me talking to the LPN
9 for a brief period of time. They were chitchatting
10 about whatever.

11 Q But the majority of the time, when the curtain was
12 open, was Mr. Ray sitting there with Mr. Hunt?

13 A Oh, yes. Right there on the other side of the
14 curtain, on the Stretcher Bay 3.

15 Q When you're in there at the nurses' station, and
16 you're observing everything, even when the curtain is
17 closed, can you kind of hear what's going on?

18 A I can kind of hear the mannerisms going on. I
19 can't particularly hear the conversation, but I can hear
20 the tone.

21 Q Did you hear anything in any of those times of the
22 tone or mannerisms or whatever you want to describe it,
23 that suggested that, when this patient was interacting
24 with Mr. Ray while they were there for that period of
25 time, Dr. Jansen, while he was with him, or Mr. Manning

1 while he was with him, that anything had changed with
2 him?

3 A Not at all.

4 Q I'm going to ask you some questions about these
5 medical records. If I heard you correctly, you said
6 that you all only use the AHTLA, the electronic medical
7 records, to look at records that are input from the E.R.
8 at the Naval Hospital, Branch Medical, or Parris Island?
9 Did I hear that correctly?

10 A That's correct.

11 Q All right. And when you say *Branch Medical*, what
12 do you mean by that?

13 A Well, it's the Tri Command. You've got the Navy
14 E.R., you have the air station -- excuse me -- and the
15 Parris Island. Those two facilities also have their own
16 medical. So often, particularly with the follow-up
17 visits that come to the emergency room, we want to
18 access what was done the day before, so we're not
19 repeating it, you know. If their labs were done, throat
20 swabs, whatever. Did they get --

21 A lot of the recruits will come in, particularly on
22 weekends, where they'll have heat stroke symptoms, high
23 temperatures. Check their lab values; see if they did
24 or did not get I.V. fluids; and why are they here for
25 repeat visit. And a lot of times, they just forget or

1 don't know.

2 Q We heard, I think yesterday or earlier this week
3 from Nurse Saundra Smith, who authored that note that
4 you were shown, that she's not sure what of the note
5 that she started at 1430, but ended at 1556, would have
6 been available to be viewed, if it had been pulled up.
7 In your experience with the AHTLA system, is the record
8 only viewable once the person doing the entry has gotten
9 out of it?

10 A I believe you have to hit the enter key for it to
11 be inputted into the system, and then, it can be viewed
12 elsewhere after that point.

13 Q Thank you.

14 A But you have -- you have to go looking for it.

15 Q Plaintiff implied that you didn't really do any
16 kind of an assessment on the patient. Is this visual
17 observing and the listening part of him sort of an
18 assessment of how the patient is doing by you as a
19 treatment nurse?

20 A Based on what the patient came in for, yes.

21 Q And are you continuing to listen and look to see if
22 your assessment changes because his demeanor or
23 appearance or noises he's making changes?

24 A Yes.

25 Q In terms of the suicidal ideation question that you

1 were asked, is there a difference between an ideation by
2 someone and a plan of suicide or for suicide?

3 A Oh, yes.

4 Q And tell us what that difference is.

5 A Well, an ideation is somebody who has thought about
6 suicide. You know. Nothing more than that. Suicidal
7 ideation with a plan. It says, yeah, I'm asked; I was
8 thinking about, you know, taking a gun or taking pills,
9 or stepping in front of a train; have actually thought
10 about the process, with a plan to take actions upon
11 theirself.

12 Q And when Nurse Janice, your wife, told you that
13 this patient, she did not think was suicidal, did that
14 mean no plan?

15 A Absolutely.

16 Q Had he had a plan, would you have treated Mr. Hunt
17 a little differently in your assessment and visual and
18 audibles, watching him?

19 A Yes. Yes.

20 Q You were asked a lot of questions about what was on
21 the triage note, and I'd ask you to flip to that. So,
22 I'm going to try to put it to where maybe you can see
23 it, and all of us can look at it together.

24 A Give me a moment. I've got it right here. Got it.

25 Q So, if I understood what you said correctly, Mr.

1 McDonald, when the note is given to you by Nurse Janice,
2 you glance at it, look at it, see what all's on there.
3 Is that right?

4 A Yes.

5 Q Is it important, also, to see the things that
6 aren't checked as being positives, or things that are
7 found?

8 A Oh, well, yes.

9 Q All right. So, when you looked and you saw that
10 the nursing assessment said suicidal ideation, history
11 of alcohol and drug dependence, depression, and PTSD,
12 did that give you an idea of what you've got sitting in
13 front of you?

14 A It could. You know, there again, the history of
15 could have been three days ago, three years ago.

16 Q All right. And from your perspective as a
17 treatment nurse, what's important is that you look at
18 the totality of both pages of the documents, seeing
19 what's going on now, and maybe what's not going on now.
20 Is that fair?

21 A And does it match what I'm seeing.

22 Q All right. You were asked a bunch of questions,
23 but did you know when you saw this gentleman that he
24 also was an active smoker?

25 A Yes.

1 Q All right. A pack a day, for seven years or so.

2 A Yes.

3 Q Is that somebody who smokes, but maybe not the
4 heaviest smokers?

5 A It's usually more than what they say, but.

6 Q So, when the conversation was had that these
7 gentlemen wanted to go outside, they had been there for,
8 as you said, some period of time, is it unusual to get
9 that kind of request from somebody who is accompanying a
10 smoker at this level?

11 A Yeah, there's no smoking signs at the front gate,
12 but that doesn't seem to turn off the stimuli. It's an
13 issue.

14 Q As you look at the front page of this document
15 where it was completed, where the patient is alert,
16 oriented to person, place, and time, as a treatment
17 nurse who's got Mr. Hunt sitting in front of you, what
18 does that do for your thought process about him?

19 A He knows where he is and everything about him. So,
20 I have -- he's not having any memory lapses.

21 Q Would you please flip to the second page of that.

22 A I have it.

23 Q Got it?

24 A I do.

25 Q Now, we've got the time in room at the top. It's

1 1430. It's Number 4. Does that mean in the E.R., Bay
2 Number 4?

3 A Correct.

4 Q And then, the 1450, bedside, Jansen. Was that when
5 Dr. Jansen went in to see the patient?

6 A Correct.

7 Q All right. Now, when you look at what was checked
8 here by Nurse Janice, alert to person, place, time;
9 speech clear; when you read those, what does that tell
10 you about the person sitting in front of you and as the
11 treatment nurse?

12 A He's answering the questions as best that he can.
13 He's not slurring his speeches -- his speech. He's
14 audible.

15 Q Would you also have made note that not checked are
16 agitated, combative, stuporous, unconscious,
17 uncooperative or ETOH or alcohol odor, would that be
18 something you would have been looking at, also?

19 A Yes.

20 Q All right. Any time you observed this gentleman,
21 did he exhibit to you any agitation, combativeness,
22 stuporousness, unconsciousness, uncooperative behavior,
23 or ETOH odor?

24 A No. Quite the opposite.

25 Q Jumping on over, we'll just go straight over to

1 some of the other things. When looking at the skin
2 observations that Nurse Janice made that it was normal
3 for his race, when you see that, what is it telling you,
4 as you're looking at him, eyeballing him yourself?

5 A I'm sorry. The question again?

6 Q When you looked at the patient, was his appearance
7 consistent with what Nurse Janice wrote on this note?

8 A Yes.

9 Q Normal color, all of the other things she describes
10 about how he's presenting.

11 A Oh, yeah.

12 Q Did he ever look sweaty to you?

13 A No.

14 Q Did he ever look like he was flushed because he was
15 upset or agitated?

16 A I -- I was impressed with his pressed shirt off
17 shirt and jeans and combed hair. But there was no skin
18 problems.

19 Q Why were you impressed about those things?

20 A You don't -- you don't see it all that often,
21 particularly, if you have like, mental health -- mental
22 health people. May be generalization, but disheveled.
23 You know, he -- he -- he presented with what he said he
24 came in for; I want some -- my medication refilled.
25 Simple as that.

1 Q When you saw that, that's what he presented for on
2 that day, did that suggest to you that this patient is
3 there trying to help himself?

4 A Oh, absolutely.

5 Q And did he come in voluntarily, to your knowledge?

6 A Yes.

7 Q Did anybody have to coerce or drag him into the
8 E.R.?

9 A Not that I'm aware of.

10 Q When we look at the pages on this deal about how
11 people come to the E.R., -- I think it's on the first
12 page, or maybe the second page, I might be missing it --
13 when he says that he's ambulatory, he's not brought in
14 by ambulance or some other way, does that reinforce he
15 wants to be there on his own?

16 A Yes.

17 Q And at any point in your interactions with Mr.
18 Hunt, or even Mr. Ray's comments to you about Mr. Hunt,
19 was it ever suggested to you that this gentleman wasn't
20 there on his own free will and volition?

21 A No, not at all.

22 Q And when a patient comes in, even with mental
23 health challenges, on their own free will and their own
24 volition, do they have certain rights that you, as a
25 treatment nurse, have to respect and abide by?

1 A They do.

2 Q All right. And what would those be?

3 A I can't restrain anybody. Unless told or indicate
4 otherwise, I can't prevent them from leaving. They have
5 -- they have the rights to choose purely on their own
6 behalf, unless deemed not able to by psychiatric,
7 involuntary commitment.

8 Q So, when a patient comes in, like Mr. Hunt, and
9 gets up and says, I need to take a head call, or
10 whatever word you use, is there any way you can say, no,
11 I don't think you can do that, as he presented at that
12 time?

13 A In this instance, no. I'd -- I'd be wrong in
14 saying no.

15 Q And when they present later on and inquire about
16 going out and getting air, when Mr. Hunt does that --
17 and first, let me ask, did you talk to Mr. -- I said it
18 backwards. Strike that.

19 A Um-hmm.

20 Q Did you talk to Mr. Hunt about going out to get
21 air?

22 A Did not.

23 Q Did that conver -- those words come out of Mr.
24 Ray's mouth?

25 A That was Mr. Ray.

1 Q Okay. But was Mr. Hunt, after the conversation you
2 had with Mr. Ray about going out and getting air, did
3 Mr. Hunt get up and walk out with Mr. Ray to go out and
4 do whatever?

5 A They went out together, yes.

6 Q Did you observe his walking?

7 A Yes.

8 Q Was he running? Was he dragging along? How did he
9 look when he walked out with Mr. Ray to go get air?

10 A He just walked out nonchalantly, the -- the same
11 way that he walked in.

12 Q Okay. I'm going to bump back over to this, and
13 then, I'm going to be done with it. Under the
14 psychosocial, you were asked quite a few questions about
15 a couple of the deals. But when you looked at this form
16 back on the 12th of February, as you're beginning your
17 involvement with the patient, did you look at the areas
18 where his mood is not described as being hyper or
19 labile? Would that have been something important that
20 you would have noted?

21 A It would have been something that I would have
22 observed and noted.

23 Q Did he ever look those ways?

24 A Not at all.

25 Q Under the behavior, whether he was cooperative or

1 uncooperative or agitated, restless, or withdrawn, did
2 you look at those to see how he really was appearing,
3 versus what's written there?

4 A I took the withdrawn only in the mannerism that he
5 spoke, which was quiet.

6 Q Okay. And under the last part, where it has the
7 ideations, where it says, *suicidal, homicidal, previous*
8 *attempt, and has plan*, was that information you would
9 have reviewed? Those boxes?

10 A Yes.

11 Q All right. When you see that it's not checked that
12 he has a plan, and at this point, not checked homicidal,
13 is that information you would have compared to what
14 you're looking at with the gentleman?

15 A Yes. Absolutely.

16 Q Anything you saw about him suggested that these are
17 wrong?

18 A Indicative of somebody coming in for a prescription
19 refill.

20 Q I'm going to ask you one more question before I
21 forget to do it.

22 A Yes.

23 Q Let me do it the right way.

24 MR. LOVELL: Your Honor, may I approach the
25 witness?

1 THE COURT: Yes.

2 BY MR. LOVELL:

3 Q I show you what has been marked as Defendant's
4 Exhibit 2. And just ask you first to look at that, and
5 do you recognize what's depicted in that?

6 A I do.

7 Q What does that look like?

8 A That's the Navy E.R. Beaufort.

9 Q Is that accurate as to how it looked back in
10 February 2012, as far as the layout of the building and
11 the roads, et cetera?

12 A Yes.

13 MR. LOVELL: Your Honor, we'd move to introduce
14 Exhibit 2.

15 MR. HOYLE: Without objection, your Honor.

16 THE COURT: Very well.

17 ITEM IDENTIFIED AS PHOTOGRAPH
18 OF LAYOUT OF NAVY E.R. BEAUFORT,
19 MARKED DEFENDANT'S EXHIBIT NUMBER 2,
20 ADMITTED AS EVIDENCE.

21 BY MR. LOVELL:

22 Q So, let me put up my little picture of Exhibit 2,
23 and maybe you could have a look on.

24 MR. LOVELL: Could I ask that he walk down. It
25 might be a little --

1 THE COURT: You may. You have to keep your voice
2 up. And I'm going to roll out the laser pointers,
3 because they'll work on this. The reason I do that is
4 because, there, it is impossible for him to point, and
5 not block.

6 MR. LOVELL: Sure. I may have one I can use, your
7 Honor.

8 THE COURT: All right. Well, I've got two, if you
9 need them. Let me know. Just be mindful you don't have
10 benefit of the microphone. And that the jury is able to
11 hear you, our court reporter cannot. So, you've got to
12 have a lot of volume.

13 A All right.

14 THE COURT: All right.

15 A Does he want me down there or here?

16 BY MR. LOVELL:

17 Q Yeah, come on down. It'll just take a second.
18 What I'm going to do is switch places with you, because
19 your voice is a little softer than mine. Why don't you
20 stand over there, and that way, you're facing the court
21 reporter.

22 All I want you to do, using this thing, you just
23 push that little button and it makes a little, red dot.
24 Can you stand back just a smidgen? I'm going to turn
25 this sideways, so we can all see.

1 A I've got my back to you. Is that all right?

2 Q What's important is that you and they see it, not
3 what we see. Show me the area where the E.R. is located
4 on this diagram. Stand wherever you want, and I'm going
5 to get out of the way.

6 A Let me orient myself here.

7 Q We've marked the roads, just to kind of let you
8 know. Here's Ribaut.

9 A All right. This would be the parking lot. It
10 would be --

11 Q Stand over here. Right there. That's perfect.

12 A It's right here at the crosswalk.

13 Q Okay. So, sort of in the middle of what we're
14 looking at, the building. Is that the entrance to the
15 emergency department?

16 A Well, there's an entrance here.

17 Q Okay.

18 A There's an entrance here at the front.

19 Q Okay.

20 A Entrance at the far end, and there's one back here,
21 which is more to the cafeteria. But typically,
22 everybody uses the parking lot that comes through this
23 doorway here.

24 Q Now, when you asked, or were asked if they could go
25 out, and you saw them exit the door that we showed over

1 there, where was that doorway coming out on this
2 picture?

3 A The doorway out the hallway would be right here,
4 which is a crosswalk.

5 Q Okay.

6 A So, it would be north. It's north, east, south,
7 and west is how the hospital is oriented. Yeah, there's
8 --

9 Q Just say north --

10 A There's a -- right outside the doorway is the
11 crosswalk. So, the hospital's oriented north, south,
12 east, and west. So, we would be on the east corner, I
13 believe?

14 Q So, if I'm looking at my little roads here, would
15 they have gone out in the direction of Pinckney
16 Boulevard?

17 A Well, I'm assuming that right here is a little
18 courtyard. There used to be a smoker's hut. There is
19 still a hut there, but it's --

20 Q That's all we've got to do on this thing. Thank
21 you, sir. You ready?

22 A I am.

23 Q The records that you kept, and we've been through
24 them voluminously, I'd like to go through them again.
25 Just flip over to those, if you don't mind. And your

1 first record at roughly 1430, that's the first entry you
2 made in this chart about this patient. Am I right?

3 A Correct.

4 Q And then, the last note you made was at about 1635,
5 or 4:35 in the afternoon. Is that right?

6 A It is.

7 Q And that time may be off a little bit, because
8 you're not staring at your watch, right?

9 A Correct. Um-hmm.

10 Q As far as the entries that you're making, would you
11 look at the 1500 one? I'm going to ask you to read for
12 me or help me interpret. You said it says report from
13 Veterans Affairs.

14 A That was representative from Veterans Affairs with
15 patient; cooperative; E.R. M.D. eval in process.

16 Q Who was cooperative? Who are you referencing
17 there?

18 A The patient.

19 Q Not Mr. Ray.

20 A No. No. He was, but --

21 Q And at the next one down, where it's talking about
22 a telephone call to the Beaufort Memorial Hospital 3-E
23 to inquire about the availability; M.D. or doctor spoke
24 with Marilyn. Is that you doing it, or somebody else
25 doing it?

1 A No. Dr. Jansen had come out and said I'd like to
2 talk to Two East. I let the clerk know, which I
3 believe, at that time, was Dreama, cause she's got all
4 the phone numbers. She would have made the phone call
5 to Two East, and transferred it back to Dr. Jansen.

6 Q Okay. So, the communication between Two East and
7 Dr. Jansen would have occurred over in his little
8 office?

9 A Correct.

10 Q Over here. And he normally -- does he normally
11 close his door when he's talking to other medical people
12 or hospitals or things like that?

13 A Correct.

14 Q As far as the next entry down, where you talk about
15 the Psyche Tech Manning evaluation in progress, and it's
16 timed at 1525, that's when you observed Mr. Manning in
17 there, going in and doing stuff with the patient, right?

18 A Yes. I'm not noting when it started and when it
19 ended. I'm noting that it took place.

20 Q Okay. And that's sort of your job, is to observe
21 what's going on, and make records of important things
22 that are happening as far as patient being seen by other
23 folks.

24 A Yes.

25 Q But also, are you still looking at him and watching

1 him and listening to see is anything changing?

2 A He's right -- he's right there in my eyesight.

3 Yes, sir.

4 Q Well, when the window's closed, when he's in there
5 with Mr. Manning or Dr. Jansen, are you still listening?

6 A Yeah, I can see their feet. I can see where they
7 are.

8 Q On this particular day, were you distracted by
9 having to take care of other patients?

10 A There were no other patients.

11 Q So, as you're listening to what's going on, when
12 the window or the curtain is closed, why are you doing
13 that? Why are you listening to hear whatever you can
14 hear and looking to see what little bit you can see?

15 A Part of my ongoing evaluation, assessment.

16 Q Important to you?

17 A If there's a change, then, get Dr. Jansen; we have
18 a change; what are you going to do.

19 Q When the Veterans Affairs -- strike all that. When
20 Mr. Manning completed his evaluation, did he come out,
21 and I think you told us he said I'm going upstairs to do
22 whatever it is they do, right?

23 A Correct.

24 Q Did he say anything to you to the effect that, hey,
25 why is this guy being observed by Mr. Ray, sitting in

1 this 4-E bed over here?

2 A He didn't raise the question at all. Not to me.

3 Q Did he say anything about why is this guy sitting
4 in his street clothes?

5 A Did not.

6 Q Do you all normally put these people at this point
7 of an evaluation in some sort of hospital gown?

8 A No, we don't.

9 Q Patient privacy, patient rights?

10 A Yes.

11 Q Did Mr. Manning, when he came out of his
12 evaluation, say anything like, you better watch him; you
13 better not let him out; you better keep a close eye on
14 him? Did he say anything to that effect?

15 A He did not.

16 Q Did his mannerisms, that being Mr. Manning, suggest
17 that he was, you know, ready to get out of there and
18 run, run, run, and go get some something because
19 something concerning was going on?

20 A No.

21 Q Did Mr. Manning, to your knowledge, walk in and
22 talk to Dr. Jansen before he went upstairs to go see Dr.
23 Hendelman, the psychiatrist?

24 A I don't know if he went from Mr. Hunt back to Dr.
25 Jansen. I didn't note that he did or didn't. He may

1 have. I'm not sure.

2 Q Okay. As I remember your testimony, the next thing
3 you knew was, Mr. Hunt comes over to you and says can I
4 go to the bathroom.

5 A Um-hmm.

6 Q You say sure. He goes in Number 4. You mentioned
7 that you can hear what's going on in Room Number 4.

8 A Oh, yeah.

9 Q Why are you listening?

10 A You mean in -- you mean in -- you mean in the
11 bathroom?

12 Q I mean, why are you -- yeah. I'm sorry.

13 A That's all right.

14 Q You got me mixed up. I got myself mixed up. When
15 he's in the bathroom, are you listening?

16 A Yes. To everybody who goes in there.

17 Q But why? Why do you listen?

18 A To make sure they're safe, make sure nothing
19 happens, make sure they don't fall down and hurt
20 themselves, have an issue.

21 Q When a patient presents as this gentleman did, as
22 you knew him, and wants to go to the bathroom, do you
23 ever go in there with them?

24 A I've never accompanied somebody to the bathroom.

25 Q When you're concerned about the safety that they

1 might hurt themselves, why wouldn't you go in there with
2 them?

3 A If there was concern that they might help
4 themselves -- hurt themselves, I'd use an alternative
5 method, which would be a urinal bottle.

6 Q And a patient who presents with mental health
7 challenges with suicidal ideations, is it the plan that
8 makes you think I need to do alternative methods, if
9 they have a plan of hurting themselves?

10 A Yes.

11 Q Did he have a plan?

12 A Did not.

13 Q You were asked a question about couldn't he hang
14 himself with his belt or his underwear or whatever.
15 You're sitting there in the nurses' station; the
16 bathroom's over there; you've told us the walls must be
17 thin; you can hear things. Would you have heard any of
18 that kind of stuff, had it been going on?

19 A Oh, yeah. I hear the seat going up, doing
20 business, the seat going down. The water on, the water
21 off. The paper towel. If there was an issue going on,
22 I would have heard something.

23 Q If the patient had been in there huffing or puffing
24 or breathing heavy or anything abnormal, would you have
25 heard that, as well?

1 A Yes.

2 Q And would you have done something, if you had heard
3 it?

4 A Yes.

5 Q All right. Look at that note that you have entered
6 at, I believe, 1612. And I want to get you to read this
7 as you wrote it on the day of February the 24th.

8 THE COURT: And we're going to have you do that in
9 just a moment.

10 MR. LOVELL: Sure. Thank you.

11 THE COURT: Put your finger there.

12 A I got it.

13 THE COURT: And we're going to take our morning,
14 break, ladies and gentlemen. Please step to your jury
15 room. Do not discuss this matter or allow anyone to
16 discuss it with you. We'll take about 15 minutes. Keep
17 your notepads, please, in your seat.

18 A Am I supposed to stand? I don't know what
19 protocols are.

20 JURY LEAVES COURTROOM 11:50 A.M.

21 THE COURT: Don't discuss your testimony with
22 anyone during the break, but enjoy your break, too.

23 A Thank you.

24 BAILIFF: Jury's clear, your Honor.

25 THE COURT: All right. Sorry to do that to you,

1 Mr. Lovell, but I kept looking at our breaking spot.

2 MR. LOVELL: Oh, no, no.

3 THE COURT: And there wasn't a more natural way.
4 So, I figured you could -- going back to a note would be
5 a good place to know where to get back to.

6 MR. LOVELL: Absolutely, Judge. Thank you, Judge.

7 THE COURT: Take 15.

8 MR. HOYLE: Thank you, Judge.

9 A Good timing, Judge, good time.

10 THE COURT: Thank you, sir.

11 OFF THE RECORD 11:51 A.M.

12 BACK ON THE RECORD 12:20 P.M.

13 BAILIFF: Are you ready, your Honor?

14 THE COURT: Ready, ready.

15 BAILIFF: Jury's entering the courtroom, your
16 Honor.

17 JURORS ENTER COURTROOM 12:20 P.M.

18 THE COURT: All right, Mr. Lovell.

19 MR. LOVELL: Thank you, your Honor.

20 THE COURT: Yes, sir.

21 JOSEPH J. MCDONALD, JR., CONTINUE

22 CROSS-EXAMINATION, BY MR. LOVELL:

23 Q Mr. McDonald, on the break, I made a little cheat
24 sheet of some time lines I'm going to run through to
25 make sure I've got it right. Can you see that, where

1 you all -- let me angle it just a little bit better.

2 A Good.

3 Q At 2:30, or 1430, you're receiving from triage; the
4 doctor's assessment was pending, correct?

5 A Yes.

6 Q 1500, 3:00 o'clock, you observed Mr. Hunt was with
7 Mr. Ray, and that Mr. Hunt was cooperative, right?

8 A Yes.

9 Q At 1510, you told us about the call that was being
10 made to the Beaufort Memorial Hospital, correct?

11 A Yes.

12 Q In the military situation, if a patient comes in,
13 military active duty guy like Mr. Hunt, and he has
14 mental health challenges, and there's any thought that
15 he is going to be anything other than continuing to be
16 voluntary and cooperative in his care, especially if he
17 needs to be transferred, is there going to be a thought
18 we're going to transfer him to a civilian place, if he's
19 going to be uncooperative or involuntary?

20 A Yes.

21 Q Where would he go? Military hospital or civilian
22 hospital?

23 A Well, if he was a threat?

24 Q Violent, uncooperative, not going to continue to
25 cooperate.

1 A But mental health?

2 Q I'm sorry.

3 A Could be Fort Stewart.

4 Q Our court reporter's going to fuss, cause you
5 talked when I was talking. What was your answer to the
6 question?

7 A Military could go to, also, to Fort Stewart.

8 Q All right. Back to our time line. At 3:25, 1525,
9 you had noted Psychiatric Tech Manning was evaluating
10 Mr. Hunt, right?

11 A Yes.

12 Q All right. I want to point you to a document
13 you've got in front of you, on one little time line that
14 we haven't talked about yet. Look at the record from
15 Dr. Jansen, in the E.R., in that Plaintiff's Exhibit
16 Number 20. Do you see it? And it's the one where he's
17 got a bunch of times and things on it. I apologize. I
18 don't know what page it is of that particular document.
19 Looks like --

20 A I've got it.

21 Q Look down on the bottom-right, where it talks about
22 his little progress notes where he has his times. And
23 we're going to hear from him later. But I want you to
24 look at the one that says, *discussed with Dr. Hendelman*.
25 You see that? Time 1605?

1 A Is it the second entry?

2 Q No. It's actually below the handwritten stuff,
3 right next to the typed-up thing. It says, typed up:
4 *discussed with doctor*. And then, you see, Hendelman,
5 handwritten, 1605.

6 A I don't see where you're --

7 Q Right. That part of the document.

8 A Oh. Okay.

9 Q See it?

10 A Yes.

11 Q Would that have been a phone call that occurred
12 after Psyche Tech Manning had completed his evaluation
13 of Mr. Hunt?

14 A I could assume so, but I can't be for sure.

15 Q All right. 1605. Would have been after for sure.

16 A Usually.

17 Q All right. And then, according to your time line
18 where you said the time lines get a little bit
19 approximate, cause you're not sure, we have the bathroom
20 trip or visit by Mr. Hunt, correct?

21 A Um-hmm.

22 Q And then, the next thing -- and we're going to come
23 back to this. Well, let's come to it right now. This
24 is kind of where we left off. Look at your entry. Now,
25 I'm back to your stuff. And I'd like to get you to go

1 to the entry that you wrote on the 24th of February,
2 2012, at 1612. We talked about the part where you said,
3 *patient ambulate*. Ambulate means what? Walk?

4 A Walk.

5 Q To bathroom.

6 A Correct.

7 Q And he returned, correct?

8 A Um-hmm.

9 COURT REPORTER: That's a yes?

10 WITNESS MCDONALD NODDED HEAD.

11 Q And now, read for me the next lines, the next two
12 lines, where you start talking about him being with the
13 Veterans Affairs rep.

14 A Mr. Ray returned to E.R., stating that he --

15 Q No. Go back up. You're two lines too far down.
16 I'm still on the 1612 entry. Right below *patient*
17 *ambulated to bathroom; returned*.

18 A *Patient ambulate to bathroom; returned.*

19 *Patient with Veterans Affairs Representative,*
20 *Edward Ray; states we need some -- some air.*

21 Q Is it we need, or is it we're getting some air?

22 A Asked if they could go out for a breath of fresh
23 air.

24 Q My question is, what are the words you've written
25 on this document on that day?

1 A What I wrote there is *we're getting some air.*

2 Q Okay. Now, to me, and you help me if I'm wrong,
3 that's a statement, not a question.

4 A Yes.

5 Q Okay. And you wrote this back within hours of all
6 this going on?

7 A Yes.

8 Q Within minutes, actually, probably, at that
9 particular entry, right?

10 A Minutes, more than hours.

11 Q Just so we can complete my time line over here, at
12 some point after that communication with Mr. Ray where
13 they go out, does Mr. Manning, the psyche tech, return
14 to the E.R.?

15 A Yes.

16 Q All right. When he comes back in, tell us what he
17 said to you, you said to him, about what was going on
18 and what he's doing back there.

19 A Well, those two events were within five or so
20 minutes apart. And I said to Mr. Manning, I said, you
21 should have just passed them in the hallway.

22 Q Did Mr. Manning make any comments to you when he
23 came back into the emergency department about why he was
24 there or where -- or Mr. Hunt?

25 A He said he -- he indicated he was not out in the

1 hallway.

2 Q Okay. Did he come in asking you or telling you why
3 he was coming back?

4 A No.

5 Q Mr. Manning walked in, and when you told him you
6 should have passed him in the hallway, what were you
7 trying to explain to him?

8 A That I thought that he was either right there in
9 the hallway or in that little courtyard that they had.

10 Q And what did Mr. Manning do after you told him
11 that?

12 A Came back in, and he said he's not there.

13 Q How long a period of time from when you first see
14 Mr. Manning come back in the E.R., and you tell him you
15 should have just passed them in the hallway, or
16 whatever, him leaving, and then, him coming back in and
17 saying, well, he's not out there?

18 A Couple minutes, maybe.

19 Q At any point, does Mr. Manning say, well, why did
20 you let him leave, or I can't believe you let him go out
21 the door?

22 A That was the only conversation I had with Mr.
23 Manning.

24 Q And then, to complete our time line, according to
25 your note, and we know the times are not, perhaps,

1 accurate in terms of exact time, 1625, 4:25, is when Mr.
2 Ray came back and informed you that he, meaning Mr.
3 Hunt, took off through the gate, right?

4 A That's correct.

5 Q And then, the next thing, you called the, as you
6 told us, the Q -- quarterdeck and the security people.

7 A That's right.

8 Q Thank you, sir. Almost done. When this gentleman
9 went to the restroom, could he have taken off at that
10 point, if he wanted to elope?

11 A Oh, by either of two -- the two doors.

12 Q At any point in time, and I'll break it down into
13 this, when Dr. Jansen first went in to see Mr. Hunt and
14 then, walked out, at any point in time, did you get the
15 impression from your observations of Mr. Hunt that,
16 after Dr. Jansen had initially seen him, that he didn't
17 want to be there anymore and he wanted to leave?

18 A No.

19 Q Did you get any impression from your observations
20 of him at that time, after Dr. Jansen had seen him, that
21 this patient didn't want to continue to cooperate with
22 getting evaluated and getting the healthcare that he
23 came there for?

24 A No.

25 Q At the point in time when Psychiatric Tech Manning

1 came and saw the patient, and spent however long he was
2 in there with him, and then, walked out, did you get any
3 impression from your observations or interactions with
4 Mr. Hunt that he didn't want to stay in the E.R. and
5 continue to cooperate with his evaluation and getting
6 treatment that he came there for?

7 A There was no indication verbally or non-verbally at
8 all.

9 Q Did he look frustrated or irritated about what was
10 going on, anything that made you think this guy doesn't
11 want to be here?

12 A There was no indication at all.

13 Q And when the gentleman went to the bathroom and you
14 talked to him, or when he and Mr. Ray came up and you
15 had the discussions with them, at any point at that
16 point, did you get a feeling that Mr. Hunt was not going
17 to continue to be cooperative, participate in the
18 evaluation process, and do whatever the doctors
19 suggested to him?

20 A No. If he wanted to leave at that time, he -- all
21 he had to do was push a button. The door would have
22 opened. He could have went out to the parking lot and
23 be gone, or went out the other door to the cross work --
24 crosswalk, north, east, south, or west.

25 Q Anything about his presentation or the way he

1 looked, acted, whatever, the way he walked, however you
2 want to put it, that suggested that he didn't want to
3 get the help he came there for?

4 A He -- he left with the same presentation that he
5 came in with. There was no change at all.

6 Q You were asked some questions about the patient
7 perhaps overhearing conversations in the E.R., either
8 when Dr. Jansen came out and said whatever he said about
9 calling Beaufort Medical 3, or when Mr. Manning finished
10 his evaluation, or even phone calls that might have been
11 made in Dr. Jansen's office. At any point in time, did
12 you get the impression that this patient overheard any
13 of those conversations, and changed what he was -- had
14 been doing? I mean, staying there, being cooperative.
15 Did anything make you think that his mental condition
16 had changed at all?

17 A Not at all.

18 Q So, Mr. Ray was with him, in his presence, in that
19 same room the whole time?

20 A Yes, he was.

21 Q Did Mr. Ray, at any point, make any comments to you
22 that led you to the conclusion that he was concerned
23 that this guy was not going to continue to cooperate,
24 not be in the condition that you saw him in?

25 A No, he didn't make any -- any mention or any

1 gestures at all. He primarily was just staying over
2 there, keeping Mr. Hunt company.

3 Q After Mr. Manning came back, and you were asked
4 questions about the radio chatter and all, did it cross
5 your mind that Mr. -- and this is before Mr. Ray came in
6 and says they guy's taken off -- did it cross your mind
7 that it was Mr. Hunt that was doing all of that stuff?

8 A You know, it crossed my mind, by I figured -- it
9 crossed my mind.

10 Q Why?

11 A You just get into that -- that E.R. mind set that,
12 you know, that could it happen. How could somebody
13 steal a fire truck. That one kid that kind of came out
14 -- came in and said that somebody stole a fire truck. I
15 can't imagine how somebody stole a fire truck, but it
16 just crosses your mind.

17 Q Well, when you were sitting there with Mr. Hunt, in
18 any of that time, did you ever have the thought cross
19 your mind that this is a guy that doesn't want to stay
20 here; that's going to leave under any circumstance and
21 go do something to hurt anybody or do anything?

22 A No. He -- he came in looking for his refills. He
23 knew there was a process. Up until that point, he was
24 willing and able to go through the duration.

25 Q When Mr. Ray walked in and said he took off on you,

1 did you do what was, at that point, required to be done
2 to locate the patient?

3 A Yes.

4 Q When Mr. Ray came back, did he look winded or tired
5 or anything of that sort?

6 A Not particularly.

7 Q Did Mr. Ray tell you anything about the
8 circumstances of how the gentleman took off or any of
9 that.

10 COURT REPORTER: The answer, please?

11 A No, he didn't. And I know that Mr. Ray was not in
12 the kind of shape to be chasing after a 20-some-year-old
13 person.

14 Q Now, as a trained, registered nurse, with all of
15 the experience you've told us about, on February the
16 24th, from the knowledge that you had, both from your
17 review of the triage sheets and your interaction with
18 everybody that was in the E.R. that day, did you think
19 it was necessary to do anything other than what you did
20 that day, as it relates to Mr. Hunt and your observation
21 and supervision of him?

22 A No. There was no indication to do anything other
23 than -- than what was done.

24 Q If you had been told that he had indicated to Dr.
25 Jansen that he had thoughts of hurting himself, and also

1 had thoughts of, perhaps, hurting others, but no plan to
2 do either, would you have changed anything in the way
3 you observed this man or reacted to him?

4 A Ask me the question again.

5 Q Sure. If you had been told that this patient had
6 told Dr. Jansen he had suicidal ideations, but he also
7 had some thoughts of hurting others, according to the
8 record of the reasons that things had occurred, but he
9 had no plan to do either, hurt himself or hurt anybody
10 else, would you have changed anything in the way you
11 dealt with him?

12 A If he had acted on going thoughts, yes.

13 Q If he had no plan.

14 A No plan? No plan is no plan.

15 Q Right. So, if he has no plan, are you going to
16 change anything in the way you deal with him?

17 A No.

18 MR. LOVELL: I think that's it. Thank you.

19 THE COURT: All right. Re-direct.

20 MR. HOYLE: Thank you, your Honor.

21 JOSEPH J. MCDONALD

22 RE-DIRECT EXAMINATION, BY MR. HOYLE:

23 Q Let's start at the beginning of your examination by
24 prior counsel -- or let's start at the ending of your
25 examination by prior counsel.

1 If a patient is not being forthcoming, and he's
2 suicidal or homicidal, he might not tell you if he has a
3 plan, correct?

4 A Perhaps.

5 Q Perhaps. When you found out that your wife was
6 afraid on that fateful Friday of being alone in a room
7 with Calvin Hunt, how did you react?

8 A I didn't react, because the E.R. environment is not
9 conducive -- you're sitting backed up in a corner.
10 People come in the E.R. all the time. I say all the
11 time -- frequently unhappy. They've waited too long,
12 they went through doctors, they can't get an
13 appointment. That's the first place they're going to
14 vent.

15 And where you are sitting, with your back to the
16 wall, with the patient between you and the outlet, so,
17 the feeling of uncomfortableness or afraid, whatever
18 term you want to use, it's -- it's -- the environment is
19 not conducive to safety for the nurse. You have no way
20 out if something happens. To go in from the triage area
21 to the -- to the bay in the back is not uncommon.

22 Q Yet, the thought crossed your mind when you heard
23 the radio chatter about mayhem out on Ribaut Road, that,
24 perhaps, just maybe that mayhem was being caused by none
25 other than Calvin Hunt, correct?

1 A It was a thought that it was a possibility. No
2 rationale for the thought.

3 Q Just an instinct?

4 A Just a thought.

5 Q If your wife had been afraid of Mr. Hunt in the
6 triage room, was that information you would have liked
7 to have known before you began your responsibilities as
8 the treatment nurse, which, in part, included monitoring
9 Mr. Hunt?

10 A If I had known it or not known it, I still would
11 have monitored the situation the same as I did.

12 Q Wouldn't have changed anything.

13 A Correct.

14 Q There were some questions a moment ago about when
15 Mr. Ray returned. Do you recall that?

16 A Yes.

17 Q Prior counsel asked you about Mr. Ray coming back
18 in the room, and I heard some testimony about Mr. Ray's
19 appearance. Let me ask you this. Will you agree with
20 me that you've previously told Mr. Ray was breathing a
21 little heavy when he returned?

22 A Yeah.

23 Q You told me that?

24 A Not huffing and puffing, but breathing a little
25 heavy. Not diaphoretic.

1 Q And while we're on the subject of Mr. Ray, you've
2 been on the witness stand the better part of the day
3 thus far, here in this courthouse, and you previously
4 gave a deposition in this case, correct?

5 A Oh, yeah.

6 Q Okay. I just want to make sure we're clear on
7 something. The quote, *can we step out for a breath of*
8 *fresh air*, is that a specific recollection you have of
9 words coming out of Edward Ray's mouth?

10 A Yes. Yes.

11 Q That's a quote, correct?

12 A Correct.

13 Q And your response to him that you've told us here
14 today of yes, that, too, is a specific recollection.

15 A Yes.

16 Q And we talked earlier, and prior counsel asked you
17 questions about patients' rights. Do you recall some of
18 that line of questioning?

19 A Yes.

20 Q Do you agree with the statement that a patient has
21 the right to be warned of risk of harm if their behavior
22 could lead to that harm?

23 A I don't think we discussed that.

24 Q We were talking about patient rights. Do you
25 recall that?

1 A I remember talking about patient rights.

2 Q Do you think the patient has a right to be warned
3 of harm that can fall to him or others if certain
4 actions aren't taken?

5 A Yes.

6 Q For instance, thinking of someone like Calvin Hunt,
7 do you believe he has the right to know if a medical
8 believer [sic] believes that he should be refrain from
9 certain conduct in order to protect himself?

10 A I believe he has the right that, if he believes
11 he's not going to get what he came for, was his
12 prescription refills.

13 Q But my question is a little bit different. Do you
14 believe a patient has the right to have a medical doctor
15 who's evaluated him to give him the information that he
16 should refrain from certain conduct, in order to protect
17 himself or herself? Yes or no.

18 A Yes or no. I'd have to say yes.

19 Q We've gone through, both in my prior examination
20 and my cross-examination, what you knew that day and
21 what you didn't know about this man, about Calvin Hunt.
22 Will you admit on this witness stand here today that you
23 didn't have all of the available information about this
24 patient, about Calvin Hunt, prior to granting him
25 permission to leave the emergency room?

1 A Correct. I didn't have all of the information at
2 deposition time.

3 Q On that day, you didn't know that Dr. Jansen had
4 written in the medical records that Calvin Hunt had
5 thoughts of harming others, correct?

6 A I'm sorry?

7 Q You didn't know on that day that Dr. Jansen had
8 written in the medical records that the patient had
9 thoughts of harming others, correct?

10 A That's correct.

11 Q You didn't know information that had been provided
12 to others, including your own wife, that Calvin Hunt's
13 grandmother was worried that he was going to or might
14 take his own life.

15 A Hadn't heard that until today.

16 Q And with respect to the note that Sandra Smith was
17 busy typing away on up there around 2:30 in the
18 afternoon, including moaning and groaning and things
19 like that, you didn't read that note that day, did you?

20 A Correct.

21 Q But even without that information, just knowing
22 what you did know, when you hear on the scanner these
23 calamities taking place out on Ribaut Road, the thought
24 crosses your mind, well, this could be Calvin Hunt,
25 correct?

1 A The thought crossed my mind.

2 Q It wasn't beyond the realm of possibility.

3 A Could have been anybody. Could have been
4 everybody. It could have been him. I did not have a
5 rational thought as to why it was him. It crossed my
6 mind.

7 Q Now, let's turn back a little bit to who it is you
8 were working for that day. Will you admit on this
9 witness stand that you were working for CasePro that
10 day?

11 A I was working for the Department of the Navy.

12 Q Department of the Navy didn't issue you a paycheck,
13 correct?

14 A CasePro would. CasePro gives me the paycheck.

15 Q You didn't get a W-2 each January from the
16 Department of the Navy, did you?

17 A I get a W-2 from CasePro.

18 Q Okay. And with respect to -- we looked earlier at
19 a sheet of paper telling you how much you're going to
20 get paid per hour. Do you remember that piece of paper?

21 A Um-hmm.

22 COURT REPORTER: Is that yes?

23 Q That's yes?

24 A That's a yes.

25 Q That piece of paper, did it come on letterhead

1 bearing indicia that it came from the Department of the
2 Navy or from CasePro?

3 A Came from CasePro.

4 Q Okay. And we're talking about things like health
5 insurance that came from who? The Department of the
6 Navy or CasePro?

7 A From CasePro.

8 Q Things like your supplemental disability insurance,
9 who'd that come from? Navy or CasePro?

10 A CasePro.

11 Q Okay. And you used a term, or I think I heard it,
12 called *chain of command*. Did I hear you say that in
13 response to a prior question?

14 A You did.

15 Q Okay. Did you ever serve in the military, sir?

16 A Did not.

17 Q All right. What's your understanding of what that
18 term means, chain of command?

19 A Who you go to and what pecking order for what
20 situation you need to have resolved.

21 Q You'll agree with me that, as far as the military
22 is concerned, there may be a chain of command that
23 starts all the way at the top with the president as the
24 civilian command authority, and goes all the way down to
25 the bottom to someone who might have the rank of

1 private. Is that fair?

2 A Yes.

3 Q And depending on where people fall in that pecking
4 order, they may either have to salute someone else or
5 return a salute, correct?

6 A Yes.

7 Q You've seen that, because you've actually set foot
8 on the Naval Hospital grounds as part of your going to
9 work every day, correct?

10 A Yes.

11 Q Did you ever salute anybody while you were at the
12 Naval Hospital?

13 A No.

14 Q Did you ever return a salute from any person in
15 uniform at the Naval Hospital here in Beaufort?

16 A No.

17 Q Let's talk about who was there that day. You, your
18 wife, Dr. Jansen, correct?

19 A Clerk, LPN.

20 Q The persons who interacted with Calvin Hunt that
21 day, who were they, there in the E.R.? You, your wife,
22 Dr. Jansen, correct?

23 A Yes.

24 Q All of you all were getting paychecks from CasePro,
25 having deductions made and monies being remitted to the

1 federal government, correct?

2 A Correct.

3 Q You weren't a federal employee, were you, sir?

4 A No.

5 Q You didn't have federal benefits.

6 A No.

7 Q And there's been some suggestions or discussions
8 about supervision. Let me make sure I get these
9 questions precise.

10 When you showed up to work every day at the Naval
11 Hospital, for example, on February 24, 2012, at 0700,
12 did you have to go report to someone who was a direct
13 employee of the United States government?

14 A No.

15 Q I heard a name earlier of a lady by the name of
16 Angelina Brannon. Did you mention her name earlier?

17 A I did.

18 Q And at that point in time, back in 2012, my
19 understanding is she was a lieutenant. I mean, she wore
20 a uniform and served this country in the military, in
21 the United States Navy, correct?

22 A Yes.

23 Q I believe she's on the verge of getting another
24 promotion as we speak. But back in 2012, did you have
25 to go consult Lieutenant Brannon about how to care for a

1 particular patient?

2 A A particular patient? No.

3 Q Did Lieutenant Brannon stand there over you when
4 you were the treatment nurse, telling you, okay, go take
5 this vital sign; go administer this fluid; go do this
6 with respect to this specific patient? Yes or no.

7 A No.

8 Q She never did that, did she?

9 A Did she ever on this patient? Not on this patient.

10 Q And with respect to the four walls of the emergency
11 room on February 24, 2012, you were taking orders and
12 instruction from one person, and that's Dr. Christian
13 Jansen, correct?

14 A Yes.

15 Q He was the only licensed medical doctor there that
16 day, correct?

17 A In the E.R., yes.

18 Q On February 24, 2012, if you needed some direction
19 about what to do with a patient, you were going to ask
20 Dr. Jansen, correct?

21 A That would be my first.

22 Q There have been some discussions about the kind of
23 clothes that Calvin Hunt was wearing. Did you ever
24 search his pockets or search the possessions he brought
25 with him that day?

1 A Did not.

2 Q Don't know what he had in his pockets or what
3 possessions he had, do you?

4 A Did not.

5 Q Just know his clothes were neat and pressed.

6 A Yes.

7 Q Like a good military man's clothes should be,
8 correct?

9 A I thought he was ex-military, but that's tomato or
10 tomato.

11 Q While we're on the subject of tomato/tomato, and
12 perhaps cats and dogs, Army and Navy, will you agree
13 with me that there's a fundamental difference between
14 someone being angry and someone being calm?

15 A Yes.

16 Q Those are different concepts, aren't they?

17 A I believe so.

18 Q As different as Carolina and Clemson.

19 A I guess. I'm not holding that up there.

20 Q We'll do something easy, then. As different as the
21 Navy and the Air Force. How about that?

22 A That sounds good.

23 Q All right. Good to me, too.

24 MR. HOYLE: I think we're at a good time to stop.
25 Thank you very much for your time. I have no further

1 questions.

2 THE COURT: All right. Re-cross.

3 MR. LOVELL: Very briefly, your Honor.

4 JOSEPH J. MCDONALD, JR.

5 RE-CROSS-EXAMINATION, BY MR. LOVELL:

6 Q Nurse McDonald, you were asked questions about
7 whether a patient can be not forthcoming in describing
8 history, but let me ask you this. When this patient was
9 interviewed by Nurse Pope, or Medical Technician Pope
10 upstairs, to your knowledge, did he tell her that he had
11 a plan to hurt himself or hurt others?

12 A At that time?

13 Q Correct.

14 A No.

15 Q When he was interviewed by Nurse Smith, who brought
16 him downstairs, do you have any information that he told
17 her he had a plan to hurt himself at that point or
18 others?

19 A Did not. Was not aware.

20 Q He was interviewed by your wife, who's a registered
21 nurse, and I assume you know her qualifications.

22 A Um-hmm.

23 Q Did he tell her he had a plan to hurt himself?

24 A There was no plan.

25 Q Okay. When he was assessed by Dr. Jansen, a board-

1 certified E.R. doctor, did he tell that physician, in
2 all the time that was spent there, that he had a plan to
3 hurt himself or to hurt others?

4 A Not that I'm aware of.

5 Q When he was assessed by Psychiatric Technician
6 Manning, employed by our federal government, did he tell
7 him he had a plan to hurt himself or others, to your
8 knowledge?

9 A Not that I'm aware of.

10 Q And in your presence, another R.N. trained and all
11 the schooling that you had, did he tell you he had a
12 plan to hurt himself or others?

13 A He did not.

14 Q You were asked questions about patients' rights and
15 to know what's going on. With regard to mental health
16 patients with suicidal, or even homicidal ideations,
17 does the right to know what's going on change when they
18 express a plan, as opposed to when they have said I
19 don't have a plan to do something to hurt myself or hurt
20 others?

21 A As far as the rights to know?

22 Q Or to do things that you could do to them.

23 A No.

24 Q A plan change things as far as what you all do?

25 A Yes.

1 Q On February 24, when you saw this gentleman, and
2 you said okay to going out and having -- get a breath of
3 fresh air, was it foreseeable to you that this man, who
4 had been at the hospital, on the grounds since about
5 2:30; had voluntarily gone downstairs with Nurse Smith
6 to the E.R. when she asked him to do so; and gone
7 through the triage process with your wife and the
8 questions that she asked; had gone through into the E.R.
9 Bay Number 4; voluntarily walked over; interacted with
10 you for the period of time he interacted with you; who
11 had participated in an evaluation that Dr. Jansen did
12 with him, as you observed; participated in the
13 evaluation with Mr. Manning that you observed; gone to
14 the restroom; asked permission to go to the restroom;
15 and then, came back and talked with you about getting
16 something to drink; went back to Bay 4; sat with Mr.
17 Ray; and then, got up; and the two of them come over;
18 had the conversation with you; was it in any way in your
19 mind foreseeable that, when he walked out of the door of
20 the E.R. to go outside and smoke or whatever it was,
21 that he wasn't going to come back and continue to
22 getting care?

23 A I thought he was going out for a cigarette and come
24 on back in and get his medications.

25 MR. LOVELL: Thank you. That's all, your Honor.

1 THE COURT: Okay. Very well. Is this witness
2 released?

3 MR. HOYLE: This witness is released from his
4 subpoena, your Honor.

5 THE COURT: Very well. Any objection?

6 MR. LOVELL: No, your Honor.

7 THE COURT: Very well. You are free to go, sir.

8 BY THE COURT:

9 THE COURT: All right, ladies and gentlemen, it is
10 now five minutes until 1:00. We are now going to take
11 our lunch break. During the lunch break, please do not
12 discuss this matter or allow anyone to discuss it with
13 you. Don't read anything. Don't listen to anything
14 about this matter. That, of course, means the radio,
15 the television, the Internet, newspapers. You must
16 receive all the information from which you will make up
17 your mind while court is in session.

18 Do not bring a cell phone or other communication
19 device with you when you return to the courthouse after
20 your lunch break. Of course, if you forget and do, just
21 give it to our bailiffs, who will take good care of it
22 until our afternoon break or at the conclusion of the
23 day. And leave your notebooks, please, in your seats.
24 We will safeguard them over the lunch break.

25 Ladies and gentlemen, do you think you can get your

1 lunch and get back by 2:00 o'clock? Be a good hour,
2 about an hour and five minutes? Okay. Very well. 2:00
3 o'clock. Thank you, ma'am.

4 JURORS LEAVE COURTROOM 12:57 P.M.

5 BAILIFF: Jury is clear, your Honor.

6 THE COURT: All right. Great. Tell me what plans
7 for this afternoon in terms of depositions, what I need
8 to look at as far as depositions?

9 MR. HOYLE: I think we've already got Craig Martin
10 resolved for this afternoon.

11 THE COURT: All right.

12 MR. MACKELCAN: I don't think we have Craig Martin
13 resolved.

14 THE COURT: You don't.

15 MR. MACKELCAN: I don't think so.

16 THE COURT: He doesn't think you have Craig Martin
17 resolved.

18 MR. HOYLE: Okay.

19 MR. MACKELCAN: We touched on the first objection,
20 but we didn't hit on anything beyond that.

21 THE COURT: Beyond that.

22 MR. MACKELCAN: We had some other designations we
23 objected to.

24 THE COURT: Okay. You just didn't get a chance to
25 see. All right. Will you all do that over the lunch

1 break. And so, Craig Martin is next?

2 MR. HOYLE: I don't know that he's next, your
3 Honor.

4 THE COURT: Got you. So, given the order of
5 battle, if you will, for this afternoon, tell me, are
6 they live witnesses or depositions?

7 MR. HOYLE: We will have live witness, and then,
8 later in the day, as time permits, depositions.

9 THE COURT: Got it. Okay. Great. And so, you all
10 are meeting about Craig Martin over the lunch break, and
11 then, --

12 MR. HOYLE: And that should give us, I think, three
13 depositions ready to go in the event that we need them.

14 THE COURT: Very well. Thank you all so very much.
15 Have a good lunch.

16 MR. HOYLE: We'll need them at some point.

17 THE COURT: Yeah.

18 OFF THE RECORD 1:00 P.M.

19 BACK ON THE RECORD 2:03 P.M.

20 BY THE COURT:

21 BAILIFF: All rise. Court is back in session.

22 THE COURT: All right. Everybody ready?

23 MR. HOYLE: Just a moment. It's like organized
24 chaos here, Judge. John Knowles gets the gold star.

25 THE COURT: The next witness is nearby, yes?

1 MR. HOYLE: Yes, he is.

2 THE COURT: Okay. Ready? Ready? Ready, ready,
3 ready?

4 MR. HOYLE: We might need Mr. Lovell.

5 THE COURT: Might what?

6 MR. HOYLE: We should wait on Mr. Lovell.

7 THE COURT: You're going to go get him?

8 MR. MACKELCAN: I'm going to go get him.

9 THE COURT: All right.

10 MR. LOVELL: Sorry, your Honor.

11 THE COURT: That's not a problem at all. And we're
12 ready for them.

13 BAILIFF: Are you ready, your Honor?

14 THE COURT: Ready.

15 BAILIFF: Jury is entering the courtroom.

16 THE COURT: Wonderful.

17 JURY ENTERS COURTROOM 2:07 P.M.

18 THE COURT: All right. Ladies and gentlemen, I
19 hope you had a very pleasant lunch. At this time, we
20 will continue the Plaintiff's case.

21 MR. HOYLE: Your Honor, at this time, Plaintiff
22 calls Michael Allen McCabe to the stand.

23 THE COURT: Very well. Yes, sir. Come along,
24 please, and be sworn.

25 MADAM CLERK: Place your left hand on the Bible,

1 and raise your right. Do you solemnly swear or affirm
2 the testimony you're about to give in this matter is the
3 truth, the whole truth, and nothing but the truth, so
4 help you God?

5 MICHAEL MCCABE: Yes, I do.

6 MADAM CLERK: Please be seated here, sir. Please
7 say and spell your name for us.

8 MICHAEL MCCABE: Michael McCabe. Last name,
9 M/c/C/a/b/e.

10 THE COURT: Your witness.

11 MR. HOYLE: Thank you, your Honor.

12 THE COURT: Yes.

13 MICHAEL MCCABE

14 DIRECT EXAMINATION, BY MR. HOYLE:

15 Q Good afternoon, sir.

16 A Good afternoon.

17 Q You've introduced yourself to the jury. Can you
18 tell us, the Court and jury, where you currently live.

19 A Current address is San Antonio, Texas.

20 Q And I understand that you are the president of
21 CasePro, Incorporated, correct?

22 A Correct.

23 Q You're also a shareholder of that company, correct?

24 A Correct.

25 Q In fact, you own the majority interest of the

1 shares in that company, correct?

2 A That's not technically correct, no.

3 Q Is there any other natural person that owns more
4 shares of the company than you?

5 A No other natural person.

6 Q Is there a trust that you control that owns shares
7 of stock in CasePro, Incorporated?

8 A Yes.

9 Q So, between the trust that you control and you
10 personally, what percentage of the shares of stock of
11 CasePro, Incorporated, do you believe you might have
12 some say in with respect to voting on things?

13 A Approximately 74.

14 Q Percent?

15 A Percent.

16 Q Okay. Other than the trust and you yourself, how
17 many other persons or entities own shares in the
18 company?

19 A One other person.

20 Q And that's your late mother's former husband,
21 correct?

22 A Correct. My stepfather.

23 Q And he owns, I take it, about 26 percent?

24 A Roughly.

25 Q Roughly. Now, the corporate headquarters of

1 CasePro, Incorporated, you told us is out in San
2 Antonio. I believe the street address was 21738 Hardy
3 Oak Boulevard, San Antonio, Texas, 21738, correct?

4 A The area code didn't sound right. 78258.

5 Q I apologize. I think zip codes that start with a 2
6 are down here. I'm just not used to Texas. Say that
7 zip code one more time for me.

8 A 78258.

9 Q All right. Now, my understanding, and you can
10 correct me if I'm wrong, is that your late mother
11 founded CasePro back in 1996, and incorporated it under
12 the laws of the State of Texas, correct?

13 A Correct.

14 Q And your mother was Shirley Hill, correct?

15 A Correct.

16 Q And at that time, back in 1996, almost 20 years
17 ago, the focus of the company, CasePro, Incorporated,
18 was medical and disability case management, correct?

19 A Correct.

20 Q In other words, helping insurance companies, self-
21 insured employers, third-party administrators keep costs
22 down after someone had some sort of injury, correct?

23 A Correct.

24 Q But in 2001, the company began to diversify,
25 correct?

1 A Correct.

2 Q And in that year, the company began providing
3 medical personnel to work in federal government
4 facilities, correct?

5 A The initial contract was medical transcription, and
6 it was a little bit different than medical personnel.

7 Q When did the company start hiring doctors and
8 nurses?

9 A Probably in 2003 or '04.

10 Q And I understand, when I took your deposition, that
11 you actually joined the company that your mom had
12 founded in 2002, correct?

13 A Correct.

14 Q And I understand your mother, her education led to
15 her being licensed as a registered nurse, correct?

16 A Correct.

17 Q You have a little bit different background. Is
18 that fair?

19 A That's fair.

20 Q Okay. You don't have a medical doctor degree,
21 correct?

22 A Correct.

23 Q Don't have a registered nursing license, correct?

24 A Correct.

25 Q In fact, don't have any training, experience, or

1 licensure in any of the health science professions,
2 correct?

3 A Correct.

4 Q You're a businessman, correct?

5 A It's a little different than that. I'm a -- by
6 training, I'm originally an engineer, and then, I
7 expanded into business, so.

8 Q Okay. But you hold a master's of business
9 administration degree, correct?

10 A Correct.

11 Q That's the highest level of your education,
12 correct?

13 A Correct.

14 Q And with your background, prior to joining the
15 company in 2002, was that you worked as a plant manager
16 for Unilever, a large consumer products company,
17 correct?

18 A Before -- pardon? Can you re-state that?

19 Q Sure. Before you came to work at CasePro,
20 Incorporated, in 2002, you worked as a plant manager for
21 Unilever, a large consumer products company, correct?

22 A Correct.

23 Q Specifically, you were involved in managing the
24 production of products such as I Can't Believe It's Not
25 Butter, Country Crock, Ragu Pasta Sauce, correct?

1 A Correct.

2 Q And you left that line of work and went to work for
3 the company your mother formed. And then, I believe you
4 became a shareholder two years later in 2004. Did I
5 hear that? Is that my understanding?

6 A That sounds correct.

7 Q And that's an accurate understanding, correct?

8 A Correct.

9 Q Okay. So, it sounds like, about the time you
10 became a shareholder in the company is about the time
11 that CasePro, Incorporated, started hiring doctors and
12 nurses to go do things like provide healthcare to our
13 men and women in uniform. Is that fair?

14 A Our initial contracts were strictly registered
15 nurses.

16 Q When did you all start hiring doctors?

17 A 2006, I would think. Maybe 2005.

18 Q And just as you get to know -- just so the members
19 of the jury get to know you, did you ever serve in any
20 branch of the armed services?

21 A No.

22 Q At any time, has any shareholder of CasePro,
23 Incorporated, since its inception 19 years ago, ever
24 been either an active-duty military person or a veteran
25 of the Armed Forces?

1 A Any of the owners?

2 Q Yes, sir.

3 A No.

4 Q And that's a good point. We'll just use common
5 terms. Okay? Sometimes, lawyers get too technical.
6 You're one of the owners of CasePro. Is that fair?

7 A Correct.

8 Q Okay. You actually hold yourself out as one of the
9 owners of CasePro.

10 A Correct.

11 Q Okay. So, the company began diversifying away from
12 case management work, and specifically started getting
13 into employing persons with the health science
14 background to go do contracting work. Is that fair?

15 A Correct.

16 Q And why did the company decide to do that?

17 A Basically, the laws were changing. This is -- goes
18 back to the original case management company. The laws
19 were changing pretty radically at that point in time,
20 meaning, the way that third-party providers and
21 insurance companies approached their case management was
22 changing. We had a business in Colorado, Texas, some of
23 the southwest, and they were changing the laws pretty
24 radically. So, Ms. Hill, my mother, she was
25 anticipating that the business would struggle going

1 forward. So, through, you know, contacts that she had
2 through business, the idea of going into federal
3 contracting came up. So, they decided, they, being Ms.
4 Hill and my stepfather, Mr. Hill, they decided to try to
5 approach government contracting as a way to diversify
6 off of the case management.

7 Q Thought it would be a good way to make some money.
8 Is that fair?

9 A I don't know that they're driven that way. But
10 certainly, we keep the business going forward.

11 Q And has the business kept going forward since that
12 decision was made in the early 2000s?

13 A That -- that's debatable. The -- it's had its ups
14 and downs, and some good and bad. And so, it's been --
15 moved forward at times; it's moved backwards at times.
16 So, like a lot of small businesses, it's a struggle.

17 Q All right. And I understand that, after a couple
18 of years of doing some government contracting work, the
19 company decided to diversify even further. Is that
20 fair?

21 A I'm not sure what you're referring to.

22 Q Sure. Back in 2012, when the incident that we're
23 all here in this courthouse to talk about took place, in
24 addition to the case management work and the federal
25 contracting work, your company also had a significant

1 business activity involved in some ice cream franchise.

2 Is that correct?

3 A That's correct. We own two Baskin-Robbins stores.

4 Q But that's not true today, correct?

5 A The Baskin-Robbins Stores? Yes, that's correct.

6 Q In fact, I believe, two days after I took your
7 deposition as the corporate designee in the company,
8 back in August of 2014, title to those two franchises
9 got transferred to a brand new entity, correct?

10 A That's correct. The -- basically, it was required
11 by Baskin-Robbins to have a -- have it in a different
12 entity, so that -- it's part of their franchise
13 agreement. So, that was -- that had been in the works
14 for literally years. They had -- we would prefer,
15 because of the simplicity of things, to not have it
16 together. They required, in their franchise, for it to
17 be separated, so it occurred somewhere in that time
18 frame. I don't remember what exact day.

19 Q But certainly, if there were records in this,
20 records available to me from the Texas Secretary of
21 State, saying that an entity named BRCPI, LLC., was
22 formed under the laws of the State of Texas on August
23 the 7th, 2014, you wouldn't dispute that.

24 A That -- that -- that name was ultimately rejected,
25 so that -- that entity doesn't exist. It's slightly

1 different than that.

2 Q What was the name changed to, sir?

3 A I don't have it in front of me, but it -- it's
4 something along the lines of CPI Cold Ventures.

5 Q But all that took place after I came out there to
6 San Antonio and took your deposition, correct?

7 A That had been in the works for months and months,
8 so I don't recall the dates. It was a independent thing
9 going on.

10 Q Okay. But regardless, back in 2012, CasePro,
11 Incorporated, had employees that were doing a couple of
12 different things. One was the original purpose of the
13 company, doing case management work, correct?

14 A Correct.

15 Q Two was the Baskin-Robbins work, which we've
16 briefly talked about, correct?

17 A Correct.

18 Q And then, the third thing was having people,
19 doctors and nurses and things like that, go do work in
20 government health care facilities, correct?

21 A Correct.

22 Q Okay. For all of your employees, regardless of
23 which of those three things they were doing, the company
24 had an employee handbook back in 2012 that was
25 applicable, correct?

1 A Correct.

2 Q All right. Let's see here.

3 MR. HOYLE: Madam Court Reporter, Exhibit 15.

4 Permission to approach, your Honor?

5 THE COURT: Yes.

6 BY MR. HOYLE:

7 Q Mr. McCabe, I'm showing you a document that's
8 previously been moved into evidence by agreement, and it
9 is Exhibit -- Plaintiff's Exhibit Number 15. Do you
10 have that document in front of you, sir?

11 A Yes.

12 Q Okay. And we'll publish it, so we can read along.
13 By its plain text, this is the CasePro, Incorporated,
14 Employee Manual, correct?

15 A Correct.

16 Q Okay. And let's flip to a couple of pages. And
17 we've got the first page that says, *Welcome to CasePro*.

18 A Okay.

19 Q All right. And there are several paragraphs of
20 text here, but this appears to be some type of letter
21 addressed to an employee, correct?

22 A This is the third page.

23 Q The third page.

24 A Correct.

25 Q It says, at the top, *Welcome to CasePro*. And then,

1 it says, *Dear Employee*. Is that what it says?

2 A Yes.

3 Q And then, in the third paragraph of this letter, it
4 says:

5 *You are responsible for reading and*
6 *understanding the employee manual, and your*
7 *employee evaluations will reflect your*
8 *adherence to CasePro policies.*

9 Did I read that correctly?

10 A Correct.

11 Q Now, you're been sitting here in the courtroom.
12 You've seen prior examinations of Janice McDonald and
13 Joe McDonald, correct?

14 A Correct.

15 Q And you'll recall that we actually went over their
16 very personnel files from the company you own, correct?

17 A Correct.

18 Q And as part of their personnel files, we saw some
19 paperwork that they had signed, including
20 acknowledgments that they had gotten an employee
21 handbook. Do you recall that?

22 A Yes.

23 Q Okay. Any reason, as you sit here today, as owner
24 of the company, to think that Joe McDonald and Janice
25 McDonald didn't get what we're looking at here as

1 Exhibit Number 15?

2 A I have no reason to believe they did not receive
3 it.

4 Q In fact, fair to say that your expectation as owner
5 of the company is that, all your employees, whether
6 they're working at the Baskin-Robbins, working in
7 Beaufort at the Naval Hospital, working out in Colorado
8 at maybe an Air Force base, working in California at
9 perhaps an Army installation, or working right there at
10 San Antonio at a Baskin-Robbins, they're going to have
11 this employee handbook, correct?

12 A Correct.

13 Q All right. Let's keep reading. Let's see what
14 else we can learn from this document. This paragraph --
15 this paragraph, after it tells a new employee that he or
16 she is responsible for reading and understanding this
17 employee manual, it says:

18 *In addition to clarifying*
19 *responsibilities, we hope this employee*
20 *manual also gives you an indication of*
21 *CasePro's interest in the welfare of all*
22 *who work here.*

23 Did I read that correctly?

24 A Yes.

25 Q And that's CasePro's intent, is it not, that they

1 want to have an interest in the welfare of all of their
2 employees, correct?

3 A Correct.

4 Q And that would include Janice McDonald and Joe
5 McDonald, correct?

6 A Correct.

7 Q And I believe you -- we heard some testimony
8 yesterday that, I believe you met those two folks just
9 this very week, correct?

10 A This is the first time I had met them.

11 Q But it's not the first time you've been to
12 Beaufort, right?

13 A I have been here once or twice. Maybe twice.

14 Q Okay. And we'll talk more about that in a little
15 bit. And if we just finish up this introductory page,
16 we've got a sentence, the next five sentences:

17 *CasePro is committed to doing its part*
18 *to assure you of a satisfying work experience.*
19 Did I read that correctly?

20 A Correct.

21 Q And that, again, would be true of CasePro's
22 expectations and commitments to person like Janice
23 McDonald, Joe McDonald, and Chris Jansen, correct?

24 A Correct.

25 Q Okay. All right. I'm going to go two pages

1 forward, and there's something called a Table of
2 Contents. And it looks like, according to the Table of
3 Contents, this is a 22-page set of policies and
4 procedures. Is that fair?

5 A There -- there's items listed as 22, yes.

6 Q Okay. All right. Well, I think we've just got to
7 start at the beginning. Let's go to the mission
8 statement found on the page numbered at the bottom as 1.
9 Okay. We can go up there to the mission statement, and
10 blow that text out. There we go. And it says:

11 *CasePro's mission is twofold. CasePro*
12 *will assist ill/injured individuals to*
13 *return to their pre-illness/injury lifestyle*
14 *and/or income level, while reducing the cost*
15 *via proper medical vocational management.*

16 Did I read that correctly?

17 A Correct.

18 Q That sentence seems to me like it would apply to
19 the employees who were doing kind of the case
20 management-type part of the business. Is that fair?

21 A Yes.

22 Q All right. And then, there's a second part of the
23 mission as stated. It says:

24 *Secondly, CasePro will provide*
25 *exceptional entrepreneurial management*

1 and administrative services exceeding
2 customer expectations.

3 Did I read that correctly?

4 A Yes, that's correct.

5 Q Okay. It just seems, by reading that sentence, the
6 second part of the mission would more go to the folks
7 like Janice, Joe, and Dr. Jansen, who are doing work in
8 government facilities. Is that fair?

9 A The reason that's not really fair is that this pre-
10 dated any of that business. So, this was referring also
11 to the case management.

12 Q Has there been an employee manual updated since you
13 all started doing contracts with the government?

14 A Generally, what we did was, for anything that was
15 an exception to this, we would send an additional letter
16 explaining that, here's our employee manual; here's some
17 differences because your actions are governed by a
18 federal contract, and there would be some differences.
19 And we would say what those differences were.

20 Q Let's turn -- if you'll turn to about two-thirds of
21 the way back, sir. I see such a document I think you
22 might be talking about. It says, *Addendum to Employment*
23 *Manual, U.S. Navy Contracts*. Let me know when you find
24 that, sir.

25 A I got it.

1 Q Okay. And this is an addendum to the employee
2 manual, meaning that it literally, just like it is here,
3 in this book, that's Exhibit 15, is appended to the
4 back, correct?

5 A Correct.

6 Q Okay. And while we're on the subject of contracts,
7 let me ask this question. The contracts that CasePro
8 enters into, in order to have some of its employees go
9 to work at various government facilities, those are
10 contracts that are solely between some branch of the
11 federal government and CasePro, Incorporated, correct?

12 A The -- the -- the contracts can be multiple awards.
13 I don't -- do you want the explanation of that?

14 Q No, no. Let me ask it a different way. There's no
15 contract out there between the U.S. Navy and Janice
16 McDonald, correct?

17 A Not directly, no. That I know of. That I'm aware
18 of.

19 Q Similarly, there's no contract between the U.S.
20 Navy and Joe McDonald, correct?

21 A Not that I'm aware of.

22 Q And the same is true, with respect to Dr. Chris
23 Jansen and the U.S. Navy, correct?

24 A Correct.

25 Q And that was certainly true back in 2012, when

1 those three persons were doing work on a fateful Friday,
2 in February of 2012, correct?

3 A As far as I know, we were their employer, but
4 often, doctors and nurses can work for other people.
5 And that occurred. We have a staff that work for us and
6 work for someone else.

7 Q All right. We'll come back to this addendum,
8 because, again, an addendum is just something that gets
9 put in the back of something, right?

10 A Correct.

11 Q All right. Let's go back to the very first page of
12 the manual. There's a heading that says, *What CasePro*
13 *Expects from You.*

14 A Okay.

15 Q *Your first responsibility is to know your*
16 *own duties and how to do them properly,*
17 *correctly, and pleasantly.*

18 That's what the document says, correct?

19 A Correct.

20 Q *Secondly, you are expected to cooperate*
21 *with management and your fellow employees,*
22 *and maintain a good team attitude.*

23 Did I read that correctly?

24 A Correct.

25 Q And it goes on with some other kind of

1 expectations. These were expectations that CasePro,
2 through this document, communicated to Nurse Janice,
3 Nurse Joe, and Dr. Jansen, correct?

4 A Correct.

5 Q And we've got, underneath that, on the first page,
6 some employment classifications. Do you see that?

7 A Yes.

8 Q Okay. And we've got some discussion in here, full-
9 time employees, part-time employees, temporary
10 employees. To your understanding, in February of 2012,
11 were these three persons, Nurse Janice, Nurse Joe, and
12 Dr. Jansen, were they full-time employees of the company
13 you own, or part-time employees of the company you own,
14 or how were they so classified?

15 A I'm -- I'm sure that Janice McDonald was full-time.
16 Joe McDonald, I believe, was PRN, or part-time, or as
17 needed. And Dr. Jansen, I'm not sure. The -- the
18 schedule that the E.R. for the physicians was erratic, I
19 guess, if you will. So, those classifications were more
20 driven by a 30-hour standard, whether they worked 30
21 hours, above or not. I would guess -- I hate to guess,
22 but I would guess that Dr. Jansen worked more than that,
23 because that would be three shifts. He most likely was
24 considered full-time.

25 Q As you sit here today, as owner of the company, you

1 believe that Nurse Janice was your company's full-time
2 company employee; Nurse Joe was your company's part-time
3 employee; and Dr. Jansen was your full-time employee.
4 Did I hear that correctly?

5 A You're talking about on October 1st.

6 Q Oh, I apologize. I apologize. Let's go back. On
7 February 24, 2012.

8 A They were all full time. I'm sorry. Originally,
9 they weren't all -- on February 24, they were -- they
10 were all full-time.

11 Q Of your company, correct?

12 A At the Navy Hospital, yes.

13 Q Okay. Let's keep going through this document here.
14 Let's go to the third page. We get to skip a page.
15 Let's go to the third page of the employment policies of
16 your company. And again, these employment policies,
17 they'd be applicable to your employees, correct?

18 A Correct.

19 Q All right. And I don't really care about
20 anniversary date or business hours, but let's talk about
21 at-will employment.

22 Will you highlight that text, Mr. Knowles. Thank
23 you, sir.

24 This employee policy of your company, it states:

25 All employment and compensation with

1 CasePro is at will, which means that your
2 employment can be terminated with or
3 without cause, and with or without notice,
4 at any time, at the option of either CasePro
5 or yourself, except as otherwise provided
6 by law.

7 Did I read that correctly?

8 A Correct.

9 Q I don't want to put this jury to sleep after lunch.
10 So, is it fair to say that, in the next couple of pages,
11 we've got some policies about sexual harassment,
12 violence in the workplace, drug abuse policy, use of
13 computers, conflict of interest. Is that fair?

14 A Correct.

15 Q Those were in your company's book, correct?

16 A Yes.

17 Q They were applicable to the three employees,
18 Janice, Joe, and Dr. Jansen, correct?

19 A Yes.

20 Q Okay. Turn to Page 9 of this document. Let's go
21 to the bottom of the page. Always important to know how
22 you can get paid when you're working for somebody else.
23 Do you agree with that statement?

24 A Yes.

25 Q When you were working for Unilever, you wanted to

1 know when you were going to get a paycheck, didn't you?

2 A Sure.

3 Q Okay. So, looks like, by this document, that
4 CasePro, Incorporated, paid every two weeks. Is that
5 correct?

6 A That -- that's correct. But the actual pay was
7 generally determined by the contract cycle. So, this is
8 really more talking about the corporate employees, if
9 you will. The people out on the contract were more
10 governed by the government's cycle. So, generally, it
11 was two weeks, but it could be twice a month.

12 Q Could have been the 1st and the 15th? Is that what
13 you're telling me?

14 A It could be the 1st and the 15th.

15 Q And as you sit here today, do you know whether or
16 not Nurse Joe, Nurse Janice, and Dr. Jansen got their
17 paycheck every two weeks, or on the 1st or the 15th, or
18 don't know?

19 A Theirs was two weeks, but we were running several
20 cycles of two weeks.. But generally, two weeks, yes.

21 Q Okay. So, they were getting their paychecks every
22 two weeks, just like it says here in the book, correct?

23 A Correct.

24 Q Let's go to lucky number 13.

25 A Can I correct that a little bit?

1 Q Sure. Yes, sir.

2 A This is, again, talking about the corporate
3 employee, so it has a Monday-through-Sunday cycle;
4 whereas, the government generally ran a Sunday-through-
5 Saturday cycle. So, it was a different cycle, specified
6 by the contract.

7 Q Let's go the Page 13, lucky 13. Sorry. And I
8 really just want to highlight one heading, the benefits
9 package. Fair to say that CasePro, Incorporated, in
10 2012, provided its employees benefits?

11 A Yes.

12 Q Things like health insurance?

13 A Correct.

14 Q Dental insurance?

15 A Yes.

16 Q Long-term disability?

17 A Yes.

18 Q Short-term disability?

19 A Yes.

20 Q And I should have asked this. These paychecks that
21 these folks were getting every two weeks, were
22 deductions taken out of those paychecks?

23 A Yes.

24 Q For things like FICA and Social Security?

25 A Yes.

1 Q Things like remittance of estimated income tax to
2 the Internal Revenue Service?

3 A Yes.

4 Q To things like remittance of estimated state income
5 tax to the South Carolina Department of Revenue?

6 A Yes.

7 Q By CasePro was going to comply with the laws of
8 employers, correct?

9 A Yes.

10 Q Every deduction that the law requires to be taken
11 out of those paychecks, you all did, didn't you?

12 A Yes.

13 Q Okay. Workers' Compensation. Did CasePro provide
14 Workers' Compensation coverage for Nurse Janice, Nurse
15 Joe, and Dr. Jansen?

16 A Is this in here, or is this another --

17 Q We'll go to Page 20. I'm sorry, sir.

18 As you sit here today, do you know one way or the
19 other as to whether or not CasePro provided Workers'
20 Compensation insurance for Nurse Janice?

21 A Yes.

22 Q Okay. And that's a, yes, we did provide or
23 employees Workers' Comp coverage?

24 A Yes.

25 Q Even though they're doing that work here in South

1 Carolina at the Naval Hospital?

2 A Correct.

3 Q Okay. And hopefully, to many people's relief,
4 we're all the way up to Page 23 now. And the heading on
5 the page before is something that says *Dress Code*, but
6 we're just going to skip to Page 23 for the meat of that
7 substance, substantive policies contained. Okay. Are
8 you on the same page with me?

9 A Page 23?

10 Q Yes, sir.

11 A Okay.

12 Q It looks like the policy of CasePro is that a well-
13 groomed look is essential. Is that correct?

14 A Correct.

15 Q Things like neat hair, correct?

16 A Correct.

17 Q Clean skin, clean nails, correct?

18 A The -- the actual dress code and requirements were
19 actually included in the contract. So, this is
20 CasePro's general policy, yes. There would be a
21 contract clause that would talk to the requirements of
22 the providers.

23 Q And those contracts, again, that's between your
24 company that you own and the federal government,
25 correct?

1 A Correct.

2 Q Not between Nurse Janice, Nurse Joe, and Dr.
3 Jansen, correct?

4 A Correct.

5 Q Now, did, as part of -- you all send them this book
6 when they start getting their paycheck, correct? You
7 told us that.

8 A Correct.

9 Q Did you all send them the contract between your
10 company and the federal government to provide persons to
11 do work at the Naval Hospital?

12 A We sent them the scope of work that was related to
13 their position.

14 Q And is that something that would have come out of
15 the task order?

16 A It -- well, they're -- it could come out of either
17 the main contract or the task order. The main contract
18 governed the scope of work that the employees were
19 required to do. And then, a particular task order was
20 releasing us to actually do that work, and it could
21 contain additional requirements.

22 Q And again, just so this record's clear, this
23 contract that you've talked about that would have been
24 applicable back in 2012 at Naval Hospital, my client,
25 Ms. Delaney, her name wasn't anywhere on that contract,

1 correct?

2 A Correct.

3 Q Similarly, her late son, Justin Miller, his name
4 wasn't on this contract, was it?

5 A Correct.

6 Q This was solely a way for your company to do a
7 service for the government in exchange for compensation,
8 correct?

9 A Correct.

10 Q Okay. And I take it that -- when did CasePro,
11 Incorporated, first obtain a contract to provide persons
12 to do work here in Beaufort, South Carolina?

13 A I believe our contract started October 1, 2007.

14 Q And it was around that time, I understand, that you
15 actually got on an airplane and came here to South
16 Carolina, correct?

17 A There was a -- I'm trying to search for the name of
18 it -- a post-award meeting. So, after they award the
19 contract, then, they invite, as I was alluding to
20 earlier, it's a multiple-award contract, so there's more
21 than one contractor in this -- on this contract. So, we
22 would -- they would invite the group here, and then,
23 they would give us presentations and a tour of the
24 facility, just meet the contracting officer, things like
25 that.

1 Q And did you actually come and do that?

2 A I came to Beaufort, yes.

3 Q Did you meet with any of the folks that were your
4 employees?

5 A No.

6 Q This was prior to the start of our contract.

7 Q After your contract started, and people doing work
8 at the Naval Hospital, and you were getting a paycheck
9 every two weeks from your company, did you ever come
10 here to Beaufort County and meet with them at that point
11 in time?

12 A I did not.

13 Q Now, I've actually been to your corporate
14 headquarters, correct?

15 A Correct.

16 Q Okay. And we've taken a few other depositions out
17 there in Texas, correct?

18 A Correct.

19 Q And I understand that your company employs persons
20 whose job title is that of program manager. Is that
21 correct?

22 A Correct.

23 Q Okay. It took me a minute there with that word.
24 What is a program manager at CasePro? If you were at a
25 cocktail party, and someone asked you what does a

1 program manager in your company do, what would you tell
2 them?

3 A Like in the case of the Beaufort contract, the
4 program manager would be the person, and we would
5 actually -- it's a formal title. We would actually
6 transmit that person's name to the contracting officer,
7 and who's located in Maryland. And then, they would
8 appoint what's called a contractor's officers'
9 representative, which would be your local contract
10 administrator. And then, they would -- the program
11 manager would be the primary person talking to the COR,
12 called contracting officers representative, and those
13 two would be the main contacts for the contract, and he
14 would also be the main contact to the contracting
15 officer in Maryland, Fort Detrick.

16 Q You told us a lot of information there.

17 A Okay.

18 Q Let's make sure the folks understand this. You
19 actually have persons sitting out there at the corporate
20 headquarters in San Antonio who kind of serve as a
21 liaison between Fort Detrick, Maryland, which is Naval
22 Medical Logistics Command, correct?

23 A Correct.

24 Q And your office, correct?

25 A Correct.

1 Q And that same person will also be a liaison to some
2 civilian G.S. employee who has the job title contracting
3 officers representative, at various sites throughout the
4 country, correct?

5 A It could be civilian or military. It could be.

6 Q And with respect to here in Beaufort at the Naval
7 Hospital, do you know who, in 2012, was the COR?

8 A I believe it was Deb Mayo.

9 Q And we'll hear from her later in this trial, sir.
10 But with respect to programmers, back in February of
11 2012, who's sitting out there in the corporate office
12 down the hall from your office in San Antonio, Texas,
13 was the program manager dealing with the contract having
14 to do with Janice, Joe, and Dr. Jansen?

15 A Who was the programmer? It was Trasie Braswell.

16 Q And before Ms. Braswell transitioned into that
17 role, what was the gentleman's name who had done that
18 job before?

19 A Craig Martin.

20 Q Okay. And we'll hear from Mr. Martin later on in
21 this trial, as well. We were talking a little bit about
22 the contract and task orders. Do you recall that?

23 A Earlier.

24 Q Earlier.

25 A Yes.

1 Q And we discussed that the only parties to the
2 contract at issue had nothing to do with my client or
3 her family, correct?

4 A Correct.

5 Q Would the same also be true of the task order?

6 A Let -- let me clarify the --

7 Q Sure.

8 A The -- the reason that they came into contact with
9 each other was because of the contract. So, the
10 contract itself had nothing to do with them -- I'm not
11 sure what you're asking, I guess.

12 Q Okay. All right.

13 MR. HOYLE: Your Honor, we have a question of law.

14 THE COURT: Okay.

15 ON-THE-RECORD BENCH CONFERENCE, OUT
16 OF HEARING OF JURORS. PRESENT: THE
17 COURT, MR. HOYLE, MS. CASTLEBERRY,
18 MR. MACKELCAN, MR. LOVELL.

19 THE COURT: Okay.

20 MR. MACKELCAN: So, your Honor, I object to the
21 numbers that are on this document. We talked earlier
22 about compensation paid to the employees. I understood
23 your ruling to be limited to that, but this is
24 different. This is compensation paid by the government
25 to CasePro, which is not required to determine any sort

1 of employee/employer issue, and this should be, this
2 information, should be redacted, and only relevant if
3 punitive damages become an issue. I have a redacted
4 copy available.

5 THE COURT: Are you going to put in -- what, if any
6 other, contracting documents do you intend to offer?

7 MR. HOYLE: I don't know at this time. My argument
8 as to Mr. Mackelcan's statement would be the testimony
9 that has been elicited by counsel for the Defendant with
10 these witnesses is, oh, I just got my paycheck from
11 CasePro; the suggestion being that there was just a
12 conduit of paperwork between the federal government,
13 CasePro, and the employees.

14 They are the ones who refuse to admit that they
15 were their employees, and that they are responsible
16 under master/servant principles, respondeat superior.
17 I'm not going to, you know, make a big theatrical
18 production out of it, but I think it's relevant to see
19 how much they are getting paid by the government to have
20 a physician, and then, look in the personnel file and
21 see how much they're paying Dr. Jansen for purposes of
22 whether or not what these persons were doing on February
23 24, 2012 is in furtherance of the master's business.

24 THE COURT: I understand. I don't want him
25 speculating, and I think they just -- that is an issue

1 in this case. It all needs to be out there. They need
2 to understand that this is the relationship, because
3 what's -- I don't want them speculating on whether it's
4 zero, something; what is it; what is the deal. This is
5 the deal. This is the contract. I think it's an
6 integral part of the contract.

7 There is a contest that these people worked for the
8 defendant, and I think that, because the position of the
9 Defendant is that these people worked for the Navy, the
10 entire relationship ought to come in, and that includes
11 the amount of money and how this money is paid to --
12 this is the amount of money that gets paid to this
13 contractor to provide these people, rather than him
14 looking like, I agree, rather than it looking like -- I
15 agree, rather than it looking like -- and maybe it will
16 look like a conduit to them, but whatever it is, it is.
17 But I think they're entitled to have all of that
18 information. I think it's relevant, and I think it's a
19 part of what this jury is going to have to make a
20 decision. I note your exception for the record.

21 Overruled.

22 MR. HOYLE: Thank you, your Honor.

23 THE COURT: Yeah.

24 END BENCH CONFERENCE.

25 MR. HOYLE: Permission to approach, Judge?

1 THE COURT: Indeed.

2 END BENCH CONFERENCE.

3 BY MR. HOYLE:

4 ITEM IDENTIFIED AS TASK ORDER FOR

5 CONTRACT

6 MARKED PLAINTIFF'S EXHIBIT NUMBER 21,

7 FOR IDENTIFICATION.

8 Q Mr. McCabe, I have been -- approaching you and
9 handing you what has been marked for identification
10 purposes only at this time as Plaintiff's Exhibit Number
11 21. Have you seen that document prior to today?

12 A It's part of the contract, it looks like.

13 Q We were talking earlier about something known as
14 the task order, correct?

15 A Correct.

16 Q Is this the task order for the contract that your
17 company was engaged in at the Naval Hospital, Beaufort,
18 on February 24, 2012?

19 A I would say yes.

20 Q Okay.

21 MR. HOYLE: Your Honor, at this time, we would ask
22 that Exhibit -- Plaintiff's Exhibit Number 21 be moved
23 into evidence and published to the jury.

24 MR. MACKELCAN: Objection, your Honor.

25 THE COURT: Indeed. Very well. The objection is

1 overruled, and the document is admitted as Plaintiff's
2 Exhibit Number?

3 MR. HOYLE: Blackjack. 21.

4 THE COURT: 21.

5 MR. HOYLE: All right.

6 ITEM IDENTIFIED AS TASK ORDER FOR
7 CONTRACT

8 MARKED PLAINTIFF'S EXHIBIT NUMBER 21,
9 ADMITTED AS EVIDENCE.

10 BY MR. HOYLE:

11 Q There we go. All right, sir, we've got language up
12 at the top of the page that says order for supplies or
13 services. You see that?

14 A Yes.

15 Q Okay. And you've got a date in Box Number 3 of
16 October 1, 2011, correct?

17 A Correct.

18 Q And that, for anybody who's ever had any dealings
19 with the federal government, October the 1st is the
20 beginning of the federal government's fiscal year,
21 correct?

22 A Correct.

23 Q Okay. So, on February 24, 2012, that would fall
24 within the federal government's fiscal year that
25 commenced on October 1, 2011, correct?

1 A Correct.

2 Q Okay. And I asked that question earlier about who
3 this contract was between. So, let's look at Box Number
4 6 and Box Number 9. Who is this task order for supplies
5 or services that's been marked and moved into evidence
6 as Plaintiff's 21 between?

7 A Is that a question? The Naval Medical Logistics
8 Command and CasePro.

9 Q Inc.?

10 A Inc.

11 Q Okay. And Justin Miller's name's not on here,
12 correct?

13 A Correct.

14 Q Nor is Rebecca Delaney's name on here, correct?

15 A Correct.

16 Q This is a task -- nor is Nurse Janice, Nurse Joe,
17 or Dr. Jansen's name on here, correct?

18 A Correct.

19 Q This is solely a contract between the company that
20 you own and the Naval Logistics Command with the federal
21 government, correct?

22 A Correct.

23 Q Okay. So, let's see what you all agreed. Turn to
24 the third page of this document, the document I've
25 marked as Exhibit Number 21. It is Bates labeled in the

1 lower, right-hand corner with a 2.0 on it, with 2.0.

2 And it looks like we've got some supplies/services that
3 are being discussed, correct?

4 A Correct.

5 Q And we've got on here a service of a physician.
6 Did I see that, down here in Item Number 1.A.A.?

7 A Yes.

8 Q Okay. That's something the federal government and
9 the company that you own agreed to do, correct?

10 A Correct.

11 Q All right. And specifically, this has said that
12 there will be a position at the Naval Hospital, Beaufort
13 for a specified number of hours, and the government's
14 going to pay you all \$165.29 per hour, correct?

15 A Correct.

16 Q That's money that's going to go into CasePro's bank
17 account, correct?

18 A Correct.

19 Q Okay. Let's turn to the next page, the page that
20 has got a Bates stamp, lower, right-hand corner, ending
21 in a 2.1?. It looks like we've got a registered nurse
22 on here. Do you see that? In Item Number 4.A.A.?

23 A Oh. Okay.

24 Q And it looks like the company you own and the
25 federal government are contracting that you all are

1 going to provide a registered nurse at the Naval
2 Hospital, Beaufort, for a specified number of hours, at
3 the hourly rate of \$52.51 an hour, correct?

4 A Correct.

5 Q Okay. And again, that \$52.51 per hour is money
6 that the federal government's going to pay directly to
7 CasePro, correct?

8 A Correct.

9 Q All right. With respect to the compensation set
10 forth for the physician, on the previous page that we
11 looked at, that being \$165.29 per hour, that's not money
12 that is directly going to be paid by the government to
13 Dr. Jansen, correct?

14 A Correct.

15 Q And similarly, with the \$52.51 per hour that the
16 federal government's agreeing to pay for a registered
17 nurse per hour, that's not money that's directly going
18 to be paid to Nurse Janice or Nurse Joe, correct?

19 A Correct.

20 Q That's money that's going to your company, correct?

21 A Correct.

22 Q Okay. All right. Let's go to a few pages forward,
23 to Section C. All right. This says, *Emergency Room*
24 *Services*, looks like, *Naval Hospital, Beaufort, South*
25 *Carolina*. It says that up at the top?

1 A Yes.

2 Q And in fact, the contractor, that means you, your
3 company, shall provide personnel for service in the
4 emergency room at Naval Hospital, Beaufort, South
5 Carolina, correct?

6 A Correct.

7 Q And specifically, we're talking about doctors and
8 nurses being provided there in Section 2, correct?

9 A Yes.

10 Q All right. And we go down to Paragraph 4 of these
11 descriptions and specifications, we learn that your
12 company is going to provide emergency room services with
13 that doctor and the two nurses, 24 hours a day, correct?

14 A Correct.

15 Q And we go to the next page. We've actually got a
16 box showing the schedule of one physician, two
17 registered nurses, one LPN or a licensed practical
18 nurse. looks to me, 24/7/52, correct?

19 A Correct.

20 Q Monday through Sunday, correct?

21 A Sunday through Saturday.

22 Q Sunday through Saturday. Sounds good to me. But
23 regardless of whether or not somebody goes in there at
24 2:00 in the morning or 2:00 in the afternoon, whether
25 they go in on a Tuesday or a Thursday, there's going to

1 be one medical doctor and at least two registered nurses
2 there from your company, correct?

3 A Correct.

4 Q Just like there was on February 24, 2012, correct?

5 A Correct.

6 Q Okay. Exhibit 8.

7 Sir, we'll start with Nurse Janice. I'm handing
8 you Plaintiff's Exhibit Number 13.

9 MR. HOYLE: Permission to approach, your Honor?

10 THE COURT: Yes.

11 BY MR. HOYLE:

12 Q I'm going to direct you to the page that we looked
13 at with Ms. McDonald earlier, pages Bates stamped 685.
14 You see that?

15 A Yes.

16 Q All right. And this is from early on in Ms.
17 McDonald's employment with your company, correct?

18 A Correct.

19 Q That was back in 2007, correct?

20 A Just before she started, yes.

21 Q Okay. And back in 2007, how much per hour was your
22 company agreeing to pay Ms. Nurse Janice McDonald?

23 A The base wage was \$31.00 an hour. And then,
24 there's a health and welfare allowance of \$2.57 per
25 hour. And then, additional to that, there's weekend and

1 holiday shift differential.

2 Q What does her base compensation add up to per hour?

3 A \$33.57.

4 Q Is that about \$19.00 less per hour than the federal
5 government is paying CasePro, Incorporated, to have a
6 nurse at the Naval Hospital every hour of the day?

7 A The -- the actual compensation is a blended rate of
8 their -- their overtime, their base wage, and whatever
9 shift differentials and weekends they work. So, the
10 differential would be between -- and that would vary by
11 the pay period, depending on what they actually worked.

12 Q What would that differential be? What would the
13 range be?

14 A If they worked, like, for instance, if they worked
15 on a holiday, we would pay them the holiday, and we
16 would automatically pay them overtime for any holiday
17 they worked. So, that would be time and a half. So,
18 you had pretty radical differences in the per-hour
19 compensation, depending on what week it was, so. They,
20 you know, if I'm looking at this, you know, you're at
21 36 or '7 dollars an hour for a overnight shift.
22 Weekend, you might be at \$38.00. It just varied.

23 Q What about a Friday between the hours, I don't
24 know, 7:00 in the morning and 7:00 at night?

25 A Yeah, that -- that would be, then, broken down.

1 Maybe you'd get the day shift base pay, the health and
2 welfare allowance; and then, they would get a partial of
3 the -- the night shift differential. And on a Friday,
4 -- well, if they were off by 7:00, they wouldn't get the
5 weekend differential. So, \$35.00 an hour.

6 Q Okay.

7 A I'm loosely guessing at \$35.00 an hour.

8 Q So, that \$17.00 difference between what the federal
9 government sends to your company and what you're putting
10 in Janice McDonald's pocket, do you all send that back
11 to Washington?

12 A Well, then, beyond this -- beyond this, we would
13 pay for, you know, taxes. There would be employment
14 taxes, the Workers' Comp insurance, et cetera. So,
15 there would be quite a bit, maybe a burden as high as
16 20, 25 percent for benefits, if you will. But benefits
17 broadly defined as the taxes and any insurances, that
18 kind of thing.

19 Q Sir, we've looked at the personnel file of Janice
20 McDonald. Do you have any reason to believe that her
21 husband's compensation would have been any different
22 than what she was making?

23 A No. It would be -- I believe they were all
24 consistent. All the nurses were the same. The
25 differentials came from when they worked and their

1 schedules.

2 Q One person's personnel file that we've not looked
3 at is that of Dr. Jansen's.

4 MR. HOYLE: Your Honor, I believe we're going to
5 have some questions of law.

6 THE COURT: Okay.

7 ON-THE-RECORD BENCH CONFERENCE,
8 OUT OF HEARING OF JURORS. PRESENT:
9 THE COURT, MR. HOYLE, MS. CASTLEBERRY,
10 MR. MACKELCAN, MR. LOVELL.

11 MR. HOYLE: Your Honor, this is Dr. Jansen's
12 personnel file.

13 THE COURT: It's been marked as?

14 MR. HOYLE: I will pre-mark it as 22, for
15 identification purposes at this time.

16 ITEM IDENTIFIED AS PERSONNEL
17 FILE OF DR. CHRISTIAN JANSEN
18 FROM CASEPRO, INCORPORATED
19 MARKED PLAINTIFF'S EXHIBIT NUMBER 22,
20 FOR IDENTIFICATION.
21 END BENCH CONFERENCE.

22 THE COURT: Ladies and gentlemen, let's take our
23 afternoon break, and that way, you can -- this is not
24 going to take me long, but it's going to take me a few
25 minutes.

1 Please step to your jury room. Do not discuss this
2 matter or allow anyone to discuss it with you. And
3 leave your notebooks in your seat. And we'll take a
4 break, a short break. Step to your jury room, please.

5 JURORS LEAVE COURTROOM 3:09 P.M.

6 CONTINUE ON-THE-RECORD BENCH CONFERENCE,

7 OUT OF PRESENCE OF JURORS. PRESENT:

8 THE COURT, MR. HOYLE, MS. CASTLEBERRY,

9 MR. MACKELCAN, MR. LOVELL:

10 MR. HOYLE: So, your Honor, this, what has been
11 marked for identification only as Exhibit 22, is Dr.
12 Christian Jansen's personnel file. It was produced in
13 the course of discovery. I took it in my suitcase out
14 to San Antonio. I showed it to Mr. McCabe while we were
15 out there. I have every expectation he's going to tell
16 us here today that this, in its entirety, is a true and
17 accurate copy of Dr. Jansen's personnel file.

18 Dr. Jansen ceased his employment with the company
19 in 2012, shortly after this incident involving Mr. Hunt,
20 and -- well, I think -- I think I've addressed the
21 authenticity issue, and I'm happy to hear the objection.

22 MR. MACKELCAN: There are documents --

23 THE COURT: I feel like we all should have
24 calisthenics, just like, you know.

25 MR. HOYLE: The stamina of this trial is --

1 THE COURT: Is something else, yes.

2 MR. MACKELCAN: I appreciate the laughter before my
3 objection and not after.

4 THE COURT: You have to have a honey cough drop.
5 You just do. That's just the way it is. That was a
6 present. All right. Go ahead.

7 MR. MACKELCAN: The objection relates to a handful
8 of documents in the personnel file that involve a very
9 limited number of peer-review-type documents that are
10 not actual peer review documents. They come in two --

11 THE COURT: Love it.

12 MR. MACKELCAN: Okay. They come in -- there's one
13 that is before this incident, and it's an email where a
14 peer review finding was referenced in it. So, that is
15 an objection. It's not complete information. It's
16 hearsay, at this point, and CasePro doesn't do the peer
17 review. So, part of the issue here with the peer review
18 is, none of us have any peer review information. The
19 government has refused to give it to us, so what is in
20 the file is incomplete, and -- but it is a reference to
21 peer review.

22 And then, the second part of it is documentation
23 that has nothing -- neither have anything to do with the
24 treatment in this case. The documents after this
25 incident deal with another peer review months after this

1 --

2 THE COURT: You're talking about Moore's emails,
3 right?

4 MR. MACKELCAN: Moore's email is before.

5 THE COURT: Um-hmm.

6 MR. MACKELCAN: After it are some other, some other
7 information, again, unrelated to this incident.
8 Different patients, different circumstances.

9 THE COURT: Let me say this. It's admissible.
10 However, if you want a limiting instruction, I'm happy
11 to give one, if you help me craft one.

12 MR. MACKELCAN: Okay.

13 THE COURT: Because it is -- it's admissible on the
14 issue of control, and for no other issue. Certainly is
15 no indication -- at this juncture, it could ultimately
16 become maybe an issue of notice, but not at this point.
17 It is only on the issue of control at this point. Okay?

18 MR. MACKELCAN: Okay.

19 THE COURT: And so, if you'll craft for me a
20 limiting instruction, you all work on that. I'm happy
21 to give them that.

22 MR. MACKELCAN: Okay.

23 THE COURT: And I think that's appropriate, but
24 it's admissible on that issue. And the reason is, is, I
25 saw one with Moore, and what they're -- the people that

1 the complaint's about, this particular -- the
2 performance of this particular individual, the fact that
3 the complaints are going in his personnel file, which
4 finds itself as the personnel file of the Defendant, is
5 issue of control. And obviously, the issue of control
6 goes to the heart of the issue about who does this
7 gentleman work for.

8 MR. MACKELCAN: Okay.

9 THE COURT: But I have absolutely no problem with a
10 limiting instruction at all.

11 MR. MACKELCAN: All right.

12 THE COURT: If you'll help me with one, and you all
13 work on it together.

14 MR. HOYLE: We will gladly work on that. Thank
15 you, your Honor.

16 END BENCH CONFERENCE.

17 OFF THE RECORD 3:14 P.M.

18 BACK ON THE RECORD 3:28 P.M.

19 BY THE COURT:

20 BAILIFF: Are you ready, your Honor.

21 THE COURT: Yeah.

22 BAILIFF: Jury is entering the courtroom, your
23 Honor.

24 JURY ENTERS COURTROOM 3:28 P.M.

25 THE COURT: All right. So, you're going to offer

1 it now?

2 MR. HOYLE: Yes, your Honor. At this time,
3 Plaintiff offers Plaintiff's Exhibit 22.

4 MR. MACKELCAN: Objection.

5 THE COURT: All right. Very well. Overruled, with
6 a limiting instruction.

7 MR. MACKELCAN: Thank you, your Honor.

8 THE COURT: Ladies and gentlemen, Plaintiff's
9 Exhibit Number 22, at this time, is being offered solely
10 for your determination of the issue of control, of
11 control, and you should not consider it for any other
12 purpose, unless and until I instruct you otherwise.

13 Now, what just happened? It's just been some
14 evidence which has been admitted into evidence, but at
15 this time, it is limited, and your consideration of it
16 is limited. When I give you the concluding instruction,
17 I'm going to give you some instruction about the issue
18 of employment, who does somebody work for, for example,
19 is an issue in this case. One of the issues that you
20 may choose to consider as you consider whether or not
21 someone works for someone else is the issue of control.
22 The issue of control. So, at this time, Plaintiff's
23 Exhibit 22 is being offered solely for your
24 determination of the issue of control, and you would not
25 consider it for any other purpose, unless and until I

1 instruct you otherwise.

2 Everybody got that? Wonderful. Thank you.

3 You may continue.

4 ITEM IDENTIFIED AS PERSONNEL FILE

5 OF DR. CHRISTIAN JANSEN FROM

6 CASEPRO, INCORPORATED,

7 MARKED PLAINTIFF'S EXHIBIT NUMBER 22,

8 ADMITTED AS EVIDENCE.

9 MR. HOYLE: Permission to approach, your Honor?

10 THE COURT: Yes.

11 BY MR. HOYLE:

12 Q Mr. McCabe, I'm handing you what has been moved
13 into evidence as Plaintiff's 22. And grab it with both
14 hands. It's heavy.

15 And sir, you and I looked at this exact same stack
16 of papers in San Antonio, correct?

17 A As far as I know.

18 Q Okay. And this document, which has been moved into
19 evidence, is Dr. Jansen's personnel file from CasePro,
20 Incorporated, correct?

21 A Correct.

22 Q Okay. And on the very first page -- do we have
23 this ready, Mr. Knowles? Up at the top of the page, it
24 says, *CasePro, Incorporated*. And we've got a date of
25 termination down here. What's that date of termination,

1 sir?

2 A September 5, 2012.

3 Q And the comment that follows?

4 A He resigned.

5 Q Okay. And I think we'll get to speak to Dr. Jansen
6 maybe on Monday. Let's see here. We looked at similar
7 type documents with other employees, but since this is
8 an issue, we'll just go through some of these in Dr.
9 Jansen's file. Let's go to the next page, Mr. Knowles.
10 Looks like we've got a request for verification of
11 employment from Fannie Mae. Do you see that?

12 A Yes.

13 Q Looks like Dr. Jansen wanted to get a mortgage to
14 buy or build a house, and needed to verify who it was he
15 worked for. And who verified that employment, which
16 company?

17 A CasePro.

18 Q Okay. And the next page of the fax cover sheet,
19 were turned in some paperwork for that process, correct?

20 A Correct.

21 Q All right. Let's go to the page Bates stamped 253,
22 in the lower, right-hand corner.

23 A Okay.

24 Q And again, this document came out of Dr. Jansen's
25 personnel file. Looks like we've got some emails, and

1 you know, when email gets printed out of the computer,
2 onto a piece of paper, you actually read from the bottom
3 to the top. Are you familiar with that concept?

4 A Yes.

5 Q All right. So, let's read the bottom email first.
6 It looks like we've got us an email, looks like, April
7 27, 2011. Is that when it appears this email was sent,
8 the bottom one?

9 A April 27th.

10 Q Did I say the wrong date? I'm sorry, April 27,
11 2011.

12 A Yes.

13 Q Okay. That was before we were dealing with --
14 strike that. That's before Calvin Hunt went to the
15 Naval Hospital, correct?

16 A Correct.

17 Q Okay. And we've got an email, looks like it's sent
18 from Chris Jansen, M.D., to Craig Martin. Do you see
19 that?

20 A Yes.

21 Q Okay. And who is Craig Martin? Remind the Court
22 and jury who Craig Martin was, and what he was doing for
23 your company in April of 2011.

24 A He would have been the program manager.

25 Q Okay. And we've got us an email to Craig from Dr.

1 Jansen, that says:

2 Please check for me if I have
3 received the three percent matching
4 contribution in my 401(k).

5 Did I read that correctly?

6 A Correct.

7 Q And it goes on to say:

8 I --

9 meaning Dr. Jansen,

10 -- have been contributing three
11 percent of my pay, but my account doesn't
12 show the matching contributions.

13 Is that what that says?

14 A Yes.

15 Q And Dr. Jansen was concerned about where his
16 employer match was, wasn't he?

17 A Correct.

18 Q That employer match, who was going to provide that
19 match up to the three percent? Was that going to be
20 CasePro, or some entity or person?

21 A CasePro.

22 Q Okay. Sounds like a pretty good 401(k) you all
23 got. All right. Let's keep going. Let's go to page,
24 oh, how about page Bates stamped 257.

25 Will you get to that page, Mr. Knowles?

1 A Okay.

2 Q All right, sir. We've got something up at the top
3 of the page, if we can blow that out, please, that says,
4 CasePro, Inc., New Hire Form.

5 Is this some new form you all use out there at
6 CasePro in the corporate office?

7 A Yes.

8 Q And would one of your employees working there in
9 the corporate office down the hall from your office be
10 the person filling this out?

11 A Yes.

12 Q Okay. And there's a whole bunch of signatures on
13 it down here at the bottom. Let me plug that box up.
14 Looks like we've got a place for Craig to sign. Would
15 that be Mr. Martin who we talked about?

16 A Yes.

17 Q And we've got a place for a Mike M. to sign on it.
18 Do you see that?

19 A Yes.

20 Q Whose signature or initials are next to the words
21 Mike M., on page 257 of the exhibit that we're looking
22 at.

23 A Those are my initials.

24 Q And you actually signed this?

25 A Yes.

1 Q All right. So, up at the top, it looks like we've
2 got us a new employee who started July the 21st, 2008.

3 A Correct.

4 Q Okay. And for those of us who weren't paying
5 attention earlier, July the 21st is not the start of the
6 fiscal year, correct?

7 A Correct.

8 Q So, if CasePro, Incorporated, had taken over a
9 contract at Naval Hospital, Beaufort on October 1, 2007,
10 July the 21st would be some ten months later?

11 A Yes.

12 Q Okay. So, Dr. Jansen didn't get hired when you all
13 took over the contract there at the Naval Hospital to
14 provide a doctor and some nurses in the emergency room,
15 correct?

16 A There -- there was a special circumstance around
17 Dr. Jansen. He -- when -- in the old contracts, Dr.
18 Jansen was not an American citizen. He was from Canada,
19 a Canadian citizen. And so, our contract didn't allow
20 us to hire him directly, until he became a citizen. So,
21 he had worked at the Naval Hospital for 15 or so years.
22 They didn't allow us to hire him. And then, he got his
23 -- his citizenship. And then, we immediately hired him
24 after that.

25 Q Okay. In July of 2008?

1 A Correct.

2 Q All right. And look underneath that date of hire.
3 There's a pay rate reflected. You see that?

4 A Yes.

5 Q And tell us what that current pay rate was, back in
6 July of 2008.

7 A \$104.50.

8 Q And when we were looking earlier at the task order,
9 we were looking at Item 1.A.A., on the page that's Bates
10 stamped 20, and I believe that the amount of money the
11 federal government paid your company to have a doctor in
12 the emergency room in 2012 was \$165.29. Does that sound
13 about right?

14 A That sounds about right.

15 Q Okay. That's a good bit more money than \$104.50 an
16 hour, isn't it?

17 A That's a -- that's a -- a little bit of a mismatch.
18 You're talking about 2008 versus 2012. His compensation
19 would have been significantly different in 2012.

20 Q Well, we'll come to that document, and figure out
21 exactly how much it was in 2012. But regardless, back
22 in 2008, you personally signed off on this new-hire
23 form, that, among other things, set forth Dr. Jansen's
24 current pay rate, correct?

25 A As of that date, yes.

1 Q Okay. Did you personally sign off on all of the
2 pay rates for all of the physicians doing work for
3 CasePro?

4 A Yes.

5 Q What about the nurses? Did you personally sign off
6 on that, too?

7 A Yes.

8 Q What about every single employee who works for
9 CasePro? Did you sign off on how much they were going
10 to get paid per hour?

11 A Not -- not necessarily. Under the government
12 contracts, I would have signed everything.

13 Q But maybe not for the folks at Baskin-Robbins?

14 A Or the case management.

15 Q Okay. All right. On this next page, we've got
16 some sort of computer printout, looks like from some
17 sort of database. Is this the database you all maintain
18 out there at corporate headquarters in Texas?

19 A It looks familiar, yes.

20 Q Okay. And do you know what this is on this page
21 we're looking at? It looks like some licenses and
22 certifications. Do you know what this is?

23 A Yes. It's a -- it's a list of his credentials that
24 we track for the government.

25 Q So, you want to make sure you're giving a paycheck

1 every two weeks to somebody who's got a license in good
2 standing with the appropriate authorities, correct?

3 A Correct.

4 Q Okay. Let's go two pages forward to the Bates
5 stamp in the right-hand corner 260. We've got something
6 known as an Employee Data Sheet. Yeah, we'll go to
7 that. Is this a piece of paper that you ask all your
8 employees to fill out?

9 A Yes.

10 Q And Dr. Jansen filled this out?

11 A Yes.

12 Q Okay. And submitted it to you all for the
13 personnel file?

14 A Yes.

15 Q All right. Turn to the next page, sir, and we've
16 got a Form W-4. What's your understanding of what a
17 Form W-4 is?

18 A It's the withholding for the federal taxes.
19 Sometimes -- in some cases, there might also be a state
20 withholding certificate. Sometimes the state uses the
21 W-4.

22 Q This is so you all would know how much money to
23 take out of Dr. Jansen's paycheck, and either send to
24 Washington or send to Columbia, correct?

25 A Correct.

1 Q Okay. All right. Turn to Page 263. It was a
2 document out of Dr. Jansen's personnel file, and it
3 says, *Acceptance of Job Offer*. You see that up there at
4 the top?

5 A Yes.

6 Q Okay. And there's a signature on here. You have
7 any reason to dispute that, that would not be Dr.
8 Jansen's signature?

9 A No.

10 Q It's dated August, looks like the 10th, 2009,
11 correct?

12 A Correct.

13 Q And there's some additions on there, such as the
14 IRA matching contribution after one year, which we
15 talked about, correct?

16 A Correct.

17 Q And a CME expense reimbursement of \$2,000.00.
18 What's that, sir?

19 A Continuing medical education. So, we might pay for
20 things like his license, updates, things like that.

21 Q Okay. And if we go two pages forward, to 266 --
22 all right -- we've got some typewritten information up
23 at the top of the page, says, *Dr. Jansen*, correct?

24 A Correct.

25 Q And it says, *okay for \$2,000.00 CME annually*,

1 correct?

2 A Correct.

3 Q That has something to do with what we saw a few
4 pages earlier, that this is something that CasePro was
5 going to provide to Dr. Jansen as an employee benefit,
6 correct?

7 A Yes.

8 Q And then, we've got something says, *okay for*
9 *401(k)*. You see that?

10 A Yes.

11 Q And then, underneath it:

12 *Okay for two weeks of leave, put*
13 *under vacation leave in system, hours*
14 *earned as work.*

15 What was that about?

16 A Because they don't work a regular schedule, you
17 wouldn't give them two weeks of vacation. You would
18 give them -- if they only worked a thousand hours, you
19 would give them -- they would earn it at a two-week
20 rate, but they would only earn part of it, if they don't
21 actually work the hours.

22 Q But they're still getting paid for not being there.

23 A Yes.

24 Q Up to two weeks.

25 A Yes.

1 Q Okay. Kind of like vacation, but not exactly. Is
2 that what I'm hearing?

3 A It's -- it's not vacation for people that work
4 those sporadic vacations, because they have a lot of
5 time off, so.

6 Q A lot of time between those 12-hour shifts. Is
7 that fair?

8 A Yes.

9 Q Okay. Mr. Knowles, we can go down that document.
10 There's something that's circled in red over here. And
11 there's something that says, *Dr. Jansen compensation*
12 *change*, and it's got a date of 3/31/10. And it's
13 circled, and it's got some squiggles around that. What
14 are those squiggles?

15 A That's my initials.

16 Q So, you personally approved Dr. Jansen getting pay
17 raise in 2010?

18 A Correct.

19 Q Okay.

20 A Well, I don't think this addresses a pay raise. It
21 adds --

22 Q These benefits.

23 A These benefits.

24 Q Because you would agree with me that part of being
25 an employee isn't necessarily just getting a paycheck;

1 it's also getting benefits like health insurance and
2 disability insurance and a 401(k), and a matching
3 401(k), and things that may look or sound like vacation,
4 correct?

5 A Correct.

6 Q And you all did that for Dr. Jansen, correct?

7 A Yes.

8 Q Okay. And turning to the next page. We got us
9 here a letter to Dr. Jansen, dated April the 12th of
10 2010, and it's addressed to a Christian Jansen, who
11 lives here in Beaufort County, correct?

12 A Correct.

13 Q And it has little subject line that says additional
14 full-time benefits, correct?

15 A Correct.

16 Q That seems to suggest to me that Dr. Jansen was a
17 full-time employee of your company, correct?

18 A Correct.

19 Q Okay. And this letter says that:

20 *Per your discussions with Ms. Martin,*
21 *CasePro is pleased to offer you addition [sic]*
22 *full-time employment benefits for working as*
23 *an E.R. physician at N.H., Beaufort, S.C.,*
24 *effective with the pay period beginning 3/28/10.*
25 Correct?

1 A Correct.

2 Q And those additional benefits were the vacation,
3 the CME allowance, the 401(k) that we just talked about,
4 correct?

5 A Correct.

6 Q And presumably, Ms. Lin Keen would have signed her
7 name, printed this on the letterhead, and put it in the
8 United States mail, correct?

9 A That, I'm not a hundred percent sure of, but.

10 Q But this is in his personnel file, correct?

11 A Yes.

12 Q Okay. And who's Lin Keen? Tell the Court and jury
13 who Lin Keen is.

14 A She's the director of contract administration.

15 Q Okay. Actually, we can go to the next page. Ms.
16 Keen is very good at keeping records. It looks like
17 this is a Federal Express receipt showing Dr. Jansen got
18 sent a FedEx from Lin Keen out there in San Antonio,
19 Texas, from your company on April the 14th, 2010. Is
20 that what that shows?

21 A Yes.

22 Q Okay. All right. We'll skip some pages. All
23 right. Let's go to Page 282, Bates stamped in the
24 lower, right-hand corner. Let me know when you get
25 there, sir.

1 A Okay.

2 Q All right. It's a big, big document, I know. And
3 we've got some words at the top. Is that your company's
4 letterhead?

5 A Yes.

6 Q Okay. And it looks like we've got some benefit
7 options involving some health insurance, correct?

8 A Correct.

9 Q And down at the bottom of the page, we've got some
10 signatures and things. And do you think those would
11 belong to Dr. Jansen?

12 A That's -- I think they do, yes.

13 Q Okay. Let's go to -- we'll just go up to 300.
14 That skips a few pages, to make this less painful. You
15 on the same page with me, sir?

16 A Okay.

17 Q We've got a receipt and acknowledgment of CasePro
18 HIPAA privacy documents, correct?

19 A Correct.

20 Q And then, down here at the bottom, who signed that?

21 A Chris Jansen.

22 Q Your employee, correct?

23 A Correct.

24 Q Okay. We go to the next page, being Page 301.

25 Looks like we've got an acknowledging receipt and

1 understanding of the sexual abuse policy for CasePro,
2 Incorporated. Is that true?

3 A True.

4 Q And we've got a signature on there that purports to
5 be that of Dr. Jansen, correct?

6 A Correct.

7 Q And we'll go a little forward to the next page.
8 There we go. It says, an *Application for Employment for*
9 *CasePro*, out there on Hardy Oak Boulevard out there in
10 San Antonio, Texas, correct?

11 A Correct.

12 Q And Dr. Jansen's applying for a job to be an E.R.
13 physician with your company, correct?

14 A Correct.

15 Q Okay. Well, sir, I'm trying to find something to
16 help expedite things, but we'll just keep moving
17 forward, I guess.

18 Let's get back to Dr. Jansen's application,
19 actually. Let's do that. All right, sir. And we'll
20 just go through the application. We've got the first
21 page of the application and certain things, information,
22 is filled out, correct?

23 A Correct.

24 Q All right. Let's go to the next page, the second
25 page. We've got some employment history. Is this

1 information that Dr. Jansen provided to CasePro,
2 Incorporated, before he became an employee of the
3 company?

4 A Yes. It looks like.

5 Q Okay. Where saying he's previously been at the
6 Naval Hospital; and that there had been a break of
7 employment, and he went to the hospital in Hampton,
8 correct?

9 A Correct.

10 Q Hampton Regional Medical Center in Varnville, South
11 Carolina, correct?

12 A Correct.

13 Q And then, for some reason, he left there; he went
14 to a hospital in Sylvania, Georgia, correct?

15 A Correct.

16 Q And when you all hired him, he was actually working
17 at the hospital in Sylvania, not the Naval Hospital,
18 correct?

19 A I -- I think he might have been working at both of
20 those facilities, but he wasn't working at the hospital,
21 at the Naval Hospital.

22 Q And then, go to the next page, Mr. Knowles. We've
23 got the educational information, showing that Dr. Jansen
24 had gone to medical school up in Ottawa, in Canada,
25 correct?

1 A Correct.

2 Q And that's also where he attended a college program
3 in high school, correct?

4 A I'm not sure about the high school, where that is,
5 but.

6 Q It's unclear from the plain text of the document
7 where Lisgar Collegiate High School is. Is that fair?

8 A Well, at the bottom, he says all above was -- okay.
9 That later note clarifies it.

10 Q Okay. That it was in Ottawa?

11 A Yes.

12 Q So, without going through this whole big stack of
13 documents page by page, after this application got made,
14 will you agree with me that CasePro, Incorporated,
15 attempted to verify some of the employment information
16 contained on that information by writing to some of the
17 hospitals listed, correct?

18 A That's correct.

19 Q And similarly, CasePro, Incorporated, attempted to
20 verify some of the educational information contained on
21 this application, that being the college medical school
22 and high school, correct?

23 A I don't believe we were required to go to the high
24 school. So, it would be --

25 Q College and medical school?

1 A Probably just medical school, but I'm not an expert
2 at that.

3 Q But you actually have people working out there at
4 corporate headquarters in Texas that do that, correct?

5 A Yeah, the credentialing is defined by the contract,
6 and it tells us what degrees and what things that --
7 licenses, et cetera, that we need to verify.

8 Q All right, sir. Let's go to Page 333 of Dr.
9 Jansen's personnel file.

10 A Okay.

11 Q You found it in that big stack of documents?

12 A Yes.

13 Q Mr. Knowles, are we on that page?

14 MR. KNOWLES: I'm sorry, what?

15 Q 333. And let's start at the top, please. All
16 right.

17 Q All right. We've got an email that got printed out
18 by somebody by the name of Craig Martin, correct?

19 A Correct.

20 Q Craig Martin used to work for your company as a
21 program manager, correct?

22 A Correct.

23 Q We'll hear from Mr. Martin later in this trial.
24 But looks like Mr. Martin printed out an email between
25 himself and some other people, correct?

1 A Correct.

2 Q Back in the April of 2010 time frame, correct?

3 A Correct.

4 Q And April 2010, well, my goodness, that's almost
5 two years prior to the events involving Calvin Hunt,
6 here in Beaufort County, correct?

7 A Correct.

8 Q All right. Let's see what information we can learn
9 from this email. Let's go down to this. Okay. This
10 appears to be an email from Craig Martin to an Amanda
11 Rutten, correct?

12 A Correct.

13 Q On a Wednesday, April 28, 2010, at 9:37 p.m.,
14 correct?

15 A Correct.

16 Q And Amanda Rutten is who? Tell the Court and jury
17 who she is.

18 A She was the contracting officer that was managing
19 that contract that we had at Beaufort.

20 A And did Ms. Rutten work here in Beaufort County, or
21 did she work up in Maryland?

22 A Maryland.

23 Q Okay. So, she would have had a counterpart here on
24 the ground at the Naval Hospital in Beaufort, correct?

25 A It's not a counterpart. She would -- they would

1 designate a contractors officers rep, but they're not
2 equal. The contracting officer's responsible, legally,
3 for the contract.

4 Q Okay. All right, sir. And the subject of this
5 email is Dr. Chris Jansen, correct?

6 A Correct.

7 Q And there's a CC on here. CC means carbon copy,
8 and CC'd to something called CasePro. Where would that
9 email be going that's carbon copied to something known
10 at CasePro?

11 A That would go to Lin Keen.

12 Q So, that she could print it out and put in this
13 file?

14 A Correct.

15 Q All right. Let's see what we can learn from this
16 email. The email begins, *Good evening, Amanda*, correct?

17 A Correct.

18 Q *Thank you for letting CasePro provide you*
19 *with information regarding the unfortunate*
20 *death of a Marine in November of 2009.*

21 Did I read that correctly?

22 A Correct.

23 Q *I offer the following information for NMLC's*
24 *consideration.*

25 Did I read that correctly?

1 A Correct.

2 Q And NMLC is the Navy Medical Logistics Command,
3 correct?

4 A Correct.

5 Q Okay. And CasePro is providing the Naval Medical
6 Logistics Command some information for the Navy to
7 consider, correct?

8 A Correct.

9 Q And Dr. -- excuse me -- Mr. Martin actually numbers
10 his paragraphs in his email, correct?

11 A Correct.

12 Q All right. We'll just start at the beginning and
13 work our way down. Number 1:

14 *Dr. Scott Moore, one of our E.R.*
15 *physicians for D.O. Number 0103 was asked*
16 *by the Navy to conduct a peer review of a*
17 *case in which Dr. Jansen was the attending*
18 *physician, and the patient died.*

19 Did I read that correctly?

20 A Yes.

21 Q *Dr. Scott Moore, one of our E.R. physicians.*

22 Who employed Dr. Scott Moore in April of 2010? Was
23 that CasePro?

24 A Yes.

25 Q And D.O. Number 0103, would that be the Naval

1 Hospital here in Beaufort?

2 A That's the delivery order number.

3 Q A delivery order. Okay. But Dr. Moore, does he
4 live here in the Beaufort area?

5 A I'm not sure where he came -- regionally, yes, but
6 I don't know, specifically.

7 Q He might live on the other side of the river and be
8 in Georgia. Is that fair?

9 A He could even -- he was -- he was rarely here. He
10 primarily did the peer reviews for the Navy, so he
11 couldn't travel. I'm not sure.

12 Q Okay. But that's, so far, what we know, by this
13 first paragraph, is that there was a patient death in
14 which Dr. Jansen was the attending physician, correct?

15 A Correct.

16 Q All right. Let's read Paragraph Number 2:

17 *This peer review is not unusual, as*
18 *Dr. Moore is our physician tasked with*
19 *conducting the reviews required of CasePro,*
20 *under the task order.*

21 Did I read that correctly?

22 A Yes.

23 Q And the task order was previously an exhibit that
24 we looked at here today, correct?

25 A Correct.

1 Q All right.

2 However, --

3 Paragraph 2 goes on to read:

4 However, when Dr. Moore was asked
5 to conduct the review, he communicated
6 to me that he felt uncomfortable in this
7 particular case. Because of the resultant
8 death, and given that both he and Dr.
9 Jansen work for CasePro, this could be a
10 conflict of interest.

11 Did I read that correctly?

12 A Yes.

13 Q The COR at the time said it is CasePro's
14 responsibility to do all peer reviews.
15 So, Dr. Moore conducted the review.

16 Did I read that correctly?

17 A Yes.

18 Q Paragraph 3:

19 Dr. Moore completed his peer review
20 in the January/February time frame. His
21 finding was the standard of care was not
22 met.

23 Did I read that correctly?

24 A Yes.

25 Q So, at this point, three paragraphs into this

1 email, we knew that there was an unfortunate death of a
2 Marine, correct?

3 A Correct.

4 Q That Dr. Jansen was the attending physician at the
5 time of the patient's death, correct?

6 A Correct.

7 Q That Dr. Scott Moore, a CasePro employee, and Dr.
8 Jansen were both employees of CasePro, correct?

9 A Correct.

10 Q And that a peer review had been completed, and the
11 finding was the standard of care was not met, correct?

12 A Correct. According to this email, you know?

13 Q Okay.

14 A According to this email.

15 Q Okay.

16 A That's what the email says.

17 Q According to this email that got printed out and
18 stuck in Dr. Jansen's personnel file out in Texas,
19 correct?

20 A Correct.

21 Q That's a yes?

22 A Correct. Yes.

23 Q Okay. Paragraph 4:

24 *Excluding a short break in service, Dr.*

25 *Jansen has worked at N.H. Beaufort for nearly*

1 20 years. At no time was CasePro informed of
2 or provided any documentation that there had
3 ever been any standard of care concerns with
4 Dr. Jansen. I have not yet spoken to Dr.
5 Jansen about the C.O.'s decision.

6 Did I read that correctly?

7 A Correct.

8 Q In Paragraph Number 4, there's a reference to a
9 C.O.'s decision. Do you have an understanding of what a
10 C.O. is, sir?

11 A Commanding officer.

12 Q That's a military term?

13 A Military term.

14 Q Paragraph Number 5:

15 The COR asked CasePro yesterday to
16 terminate Dr. Jansen immediately, by direction
17 of the C.O.

18 Did I read that correctly?

19 A Yes.

20 Q And the COR would be the contracting officers
21 representative, correct?

22 A Correct.

23 Q And the C.O. would be the commanding officer of the
24 Naval Hospital, correct?

25 A Correct.

1 Q The commanding officer of the Naval Hospital wanted
2 Dr. Jansen terminated, and the COR had to ask CasePro,
3 correct?

4 A Correct.

5 Q Let's skip down to Paragraph Number 6:

6 *I, Mr. Martin, requested documentation*
7 *in writing as to the C.O.'s direction and*
8 *reasons for termination. Have not received*
9 *documentation to date.*

10 Did I read that correctly?

11 A Correct.

12 Q The email continues on to the next page. Paragraph
13 Number 7, which is Page 334, in the lower, right-hand
14 corner. Paragraph 7 says:

15 *The American Academy of Emergency*
16 *Physicians considers due process one of the*
17 *crucial issues facing emergency physicians*
18 *today.*

19 Did I read that correctly?

20 A Yes.

21 Q And Mr. Martin goes on to provide his cell phone
22 number, so that Ms. Rutten can contact him, if she so
23 desires, correct?

24 A Correct.

25 Q In April of 2010, the commanding officer wanted Dr.

1 Jansen gone. That's what these documents tell us,
2 correct?

3 A Correct.

4 Q And Dr. Jansen, his continued employment at the --
5 coming to work every day at the Naval Hospital, whether
6 that was going to continue or not continue, somebody at
7 the Naval Hospital here in Beaufort felt like they
8 needed to call out to Texas and talk to your people,
9 correct?

10 A Correct.

11 Q And in that time frame, April of 2010, almost two
12 years before the events that bring us here today with
13 Calvin Hunt, who, out there in Texas, was aware of these
14 concerns expressed by the commanding officer at the
15 Naval Hospital about Dr. Jansen? Was it just Craig
16 Martin?

17 A It was Craig Martin. I'm not sure who else was
18 aware. I was aware. I'm not sure if anyone else was.

19 Q You knew about this. Is that fair?

20 A Yes.

21 Q You knew that there was a dead United States Marine
22 here in Beaufort, South Carolina, and that another one
23 of your employee physicians found out that Dr. Jansen
24 hadn't met the standard of care, correct?

25 A I don't think that's a fair representation of what

1 happened.

2 Q Did you take any action upon receipt of this
3 information in April of 2010, one way or the other, to
4 terminate Dr. Jansen? Yes or no.

5 A I didn't take any action either way.

6 Q Were those the last concerns that you had voiced to
7 you about Dr. Jansen in 2010?

8 A I'm not aware of any others in 2010.

9 Q What about the next year?

10 A I mean, that's five years. I don't know
11 sequentially, I don't know.

12 Q All right. Sequentially. Okay. Other than this
13 dead United States Marine, who died under Dr. Jansen's
14 care, which there's --

15 MR. MACKELCAN: Objection, your Honor. This is
16 getting beyond control.

17 MR. HOYLE: I haven't asked the question yet.

18 THE COURT: Well, hold on. Don't answer until I've
19 heard the whole question.

20 MR. HOYLE: I'll start over, because I've obviously
21 forgotten what the question was, Judge.

22 THE COURT: I know.

23 BY MR. HOYLE:

24 Q Mr. McCabe, did other people at other times come to
25 you with concerns about Dr. Jansen?

1 A I don't recall specifically. They could have.
2 I've heard lots of stories and things that were
3 happening all over the place.

4 Q With a whole bunch of your doctors and nurses?

5 A We had more than doctors and nurses. We had
6 pharmacy techs, lab techs, medical assistants, et
7 cetera.

8 Q I've heard varied numbers, based upon who it is
9 I've been deposing since this case got filed. In the
10 time frame that we're talking about, let's just say,
11 from the time this contract started at the Navy Hospital
12 in 2007 -- was it 2007?

13 A 2007.

14 Q -- 'til today, what's the largest number of
15 employees that CasePro, Incorporated, has had?

16 A Possibly 900. But I don't have an exact count.

17 Q And were all those persons doing work in just Texas
18 and South Carolina, or were they elsewhere?

19 A Obviously, they were in Beaufort, to west coast,
20 east coast. About 18 states, I would say.

21 Q So, as you sit here today, you're not sure whether
22 or not you specifically recall any other concerns being
23 brought to your attention about Dr. Jansen? Is that
24 your testimony?

25 A I just don't recall specifically.

1 Q In 2012, we've already seen a document that
2 indicates that Dr. Jansen resigned. Do you recall
3 seeing that?

4 A Yes.

5 Q And that resignation took place in September of
6 2012, correct?

7 A Correct.

8 Q Did CasePro, Incorporated, ask Dr. Jansen to
9 resign?

10 A We -- we -- the Navy was working with him, and we
11 were involved in it, trying to get information from what
12 the government was -- what their reasoning was, what
13 they had. And ultimately, he, through discussions,
14 resigned. I don't know that you would say we asked him
15 to resign, but he decided, ultimately, to resign.

16 Q Well, I'm asking you, sir, here today, under oath,
17 on this witness stand, in this courthouse, did you, as
18 the owner of the company, in September of 2012, or
19 immediately before then, ask Dr. Jansen to resign?

20 A I -- I'd never spoken to Dr. Jansen.

21 Q When was the first time you met Dr. Jansen?

22 A This week, out in the hall.

23 MR. HOYLE: Judge, now, I think, is a good time for
24 a stop and stand.

25 THE COURT: Okay. Ladies and gentlemen, we're

1 going to take just a break. As we go through --
2 particularly, when we go through documents, they can get
3 to be a little bit, you know, weighty. We're just going
4 to stand up.

5 sNow, anybody need to take a comfort break? No?
6 Yeah. Here's what we're going to do. Everybody's going
7 to step to your jury room with the same admonition, do
8 not discuss this matter. Do not let anyone to discuss
9 it with you. And leave your notebooks in your seats.

10 When you all take your comfort break, when you all
11 are ready to come back, just (knock, knock, knock) on
12 the door, and you'll come on back in. We'll sort of
13 wait for you. It's much better when we're waiting on --
14 we're waiting on the jury, than the jury waiting on us.

15 JURORS LEAVE COURTROOM 4:11 P.M.

16 THE COURT: All right. If you all want to run and
17 take a quick comfort break, I'll go ahead and do the
18 same, because I didn't do that last time. Great. And
19 of course, you can take a break, too, Mr. McCabe. Just
20 be mindful not to discuss your testimony with anybody.

21 OFF THE RECORD 4:11 P.M.

22 BACK ON THE RECORD 4:23 P.M.:

23 BAILIFF: All rise. This court is back in session.

24 THE COURT: Thank you so much, and please be
25 seated. Jury, please.

1 BAILIFF: You ready, your Honor?

2 THE COURT: Ready.

3 BAILIFF: Jury is entering the courtroom, your
4 Honor.

5 THE COURT: Thank you so much.

6 JURY ENTERS COURTROOM 4:24 P.M.

7 THE COURT: All right. You may continue.

8 MICHAEL MCCABE

9 CONTINUE DIRECT EXAMINATION, BY MR. HOYLE:

10 Q Mr. McCabe, good afternoon again.

11 A Good afternoon.

12 Q As you sit here today, you have no knowledge that
13 either Joe McDonald, Janice McDonald, Christian Jansen
14 were working for anybody other than CasePro,
15 Incorporated, on February 24, 2012, correct?

16 A I have no knowledge, yes.

17 Q Back on February the 24th, 2012, how many
18 government contracts did CasePro, Incorporated, have?

19 A I'm going to guess seven master contracts. I'm
20 guessing. I'd have to count.

21 Q I think you already testified to this, but I just
22 want to make sure. Those contracts with the federal
23 government, there were folks that your company was
24 paying, other than these three, correct?

25 A There were other contractors that we -- yes.

1 Q And CasePro, Incorporated, had employees, I think
2 you said, from the west coast to the east coast, across
3 this country, not just here in Beaufort County, correct?

4 A Correct.

5 MR. HOYLE: Those are all the questions I have for
6 you at this time, sir. Thank you.

7 THE COURT: Cross-examination.

8 MICHAEL MCCABE

9 CROSS-EXAMINATION, BY MR. MACKELCAN:

10 Q Mr. McCabe, how did CasePro find out about this
11 incident involving Calvin Hunt?

12 A We were served papers from a registration company,
13 and they call -- we register in a state, and they --
14 they provide an address for you. It's a legal --
15 lawyers company, I guess, if you will, and they were
16 served papers in around August of 2012. And then, they
17 alerted us that there was something filed. And then,
18 they -- they FedEx'd the documents to us.

19 Q You said August. Did you mean November?

20 A I believe we received the first notice was, I
21 believe it was in August or September. That's my
22 recollection.

23 Q Let me ask you this. Was it before or after Dr.
24 Jansen resigned from CasePro?

25 A I -- I don't recall. I would -- I would guess that

1 it was -- we were actually served after that September
2 5th date.

3 Q When Dr. Jansen resigned, did CasePro have any
4 knowledge of the resignation having anything to do with
5 the Calvin Hunt incident?

6 A We had knowledge that it -- I don't know that it
7 did today, that it had anything to do with that case.

8 Q Mr. Hoyle asked you a little bit about how CasePro
9 came to be and how CasePro got into government
10 contracting. At the time CasePro got into government
11 contracting, had some of the officers had government
12 contracting experience?

13 A The -- the -- Mrs. Hill's husband, my stepfather,
14 had worked for a government contractor prior, and it was
15 through those contacts was how they ultimately got it.
16 I, also, had, immediate out-of-school, worked five years
17 for a government contractor. So, before I went to
18 Unilever, I had worked for a Army contract.

19 Q Let's talk about how CasePro gets into a contract
20 with the government. How does that work?

21 A Yeah, the -- when we -- well, the first thing we
22 did was decide what area that we could even compete in.
23 And so, when you look through the government registries,
24 you want things that align with what you do. So, we
25 were a -- we had the medical case management. We had

1 R.N.s doing those jobs. And so, we went to the
2 government, and looked for contracts that would be close
3 to that.

4 So, we were looking in the medical field, and we
5 look on -- for instance, this particular contract,
6 there's two main sources. There's FedBizOpps, which has
7 a lot of contract information. There's Navy-particular
8 websites. So, we search for particular ones that we can
9 qualify for.

10 Q Specifically, this contract with the Navy that
11 we're talking about today placed CasePro workers at the
12 Beaufort Naval Hospital. How does CasePro know that
13 there's a contract out there to even bid on?

14 A Yeah, the two main sources we're looking at there
15 would be this FedBizOpps website, which lists all
16 procurement opportunities. And then, we would look at
17 -- there's some Department of Defense websites. The
18 other thing that we might do is, they would publish
19 invitations to seminars, and you might go to those to
20 find those contracts.

21 So, this specific one, we had -- had called the
22 Navy and talked to them about upcoming procurements.
23 And so, they had put us on a list, and then, they would
24 alert us when a procurement was coming by. So, we would
25 look for the ones. And there's a particular designation

1 called NAICS code, and it -- it's NAICS Code, and it
2 narrows down the list of what you're looking for to a
3 specific area. So, the ones that we look at
4 specifically deal with medical personnel.

5 Q Did I just hear you say that the Navy contacted
6 CasePro to tell you about this contract?

7 A They would have sent us on -- yes.

8 Q Okay.

9 A The short answer is yes.

10 Q So, once CasePro decides that it is going to bid
11 for a contract, what happens next?

12 A So, then, we would -- we would go to the -- they
13 would publish it on their Navy site, and it would have
14 the solicitation itself on it. So, we would go into the
15 solicitation and print it out. And so, that might be --
16 well, he had shown you 130-page document called the
17 contract. The solicitation would be -- include all of
18 that. So, we would look and see if we were qualified to
19 do it. We would look at the line items, et cetera, to
20 see if we had background information that we could
21 provide the Navy to prove that we could do that.

22 So, we would go through a process of breaking down
23 the bid to see if we were qualified to do it, so that we
24 could then solicit a bid. Cause, if you're not
25 qualified, you're wasting everyone's time. A lot of

1 people do that. We only tried to bid on ones that we
2 thought we could win.

3 Q What goes into putting a bid together?

4 A So, then, they -- along with the proposal, there's
5 a long list of items that they want from you, and it
6 includes references for your company. They like --
7 okay, you really have to be a -- have some commercial
8 business before you can get the federal contracts. You
9 can't just show up and say, hey, I want a federal
10 contract. So, you have to have some past performance.
11 And then, hopefully, you have even some other
12 performance with the government itself. So, you -- so
13 they'll have a specific list of what you need to submit
14 that gets to your -- your competence as a company.

15 You would also submit pricing. You would submit,
16 you know, even resumes of people working for your
17 company, so that you could let them know who Shirley
18 Hill is, who Mike McCabe is. So, you would send them a
19 resume of you, so that they would know your business
20 experience and your medical experience.

21 Q And not to change subjects, but you mentioned that.
22 You said *who is Shirley Hill*. Tell us who Shirley Hill
23 was.

24 A Shirley Hill was the founder of CasePro. She was
25 also my mother. She -- she kind of got there through

1 the school of hard knocks. She didn't get her nursing
2 degree 'til she was about 40. Then, she went through
3 and -- and went through all the similar things that I
4 heard Joe and Janice talk about, the E.R. rooms. She
5 had a specialty a little bit in cardiology, a lot of --
6 a lot of hospital and shift work. And after a while,
7 she was -- got -- it was too much for the shift work
8 eventually. So, she got into the case management piece
9 of it.

10 So, she started doing the case management, and she
11 was working for an insurance company, and CasePro came
12 about. She was the manager of their case management
13 division. They decided to end -- they -- they were
14 going to end -- they were going to try to sell the
15 division. They were going to end it. And she went to
16 the management and said, hey, if I can get the workers
17 and the relationship with the customers, do you care.
18 And they -- since they couldn't sell it, they said no.
19 She went out and created CasePro over that, and then,
20 just started operating, basically, immediately.

21 Q And you were asked earlier about the ownership of
22 CasePro and it's being partially owned by a trust. Was
23 that trust created when your mother passed away?

24 A Yes. Shirley originally owned a hundred percent of
25 the company, and her husband, strangely enough, didn't

1 own any of it. And then, when I came, I was working for
2 another company, Unilever out in Atlanta at the time.
3 And when they started the government business, they
4 asked me to come. They were getting a little older, so
5 they said, hey, give it a shot.

6 And that was my -- I had always worked for large
7 corporations, so there's my window to try to be more
8 entrepreneurial. So, I came along in 2002, after they
9 had won their first small contract in 2001. So, I came
10 and worked with them.

11 And Shirley -- so, after a couple of years, we
12 transferred some of the ownership to me. And then, when
13 she passed away in 2011, she wanted to, of course, take
14 care of my stepfather, so we -- we agreed to just work
15 together after that. And so, through the probate
16 process and all that and their will, and we came up with
17 a ownership. They gave me 49 percent of the ownership,
18 gave me a -- a sign-off on a trust, and him a piece of
19 it, 20 -- 25 or 6 percent, whatever it is. So, we broke
20 it down that way, so that he could continue to own part
21 of it. And he, in fact, is -- we've been partners ever
22 since. So, he and I still operate the company.

23 Q Your stepfather, Mr. Hill?

24 A My stepfather and I still operate the company
25 together. He's a CPA and a -- a financial guy. And so,

1 I guess that's -- kind of answers how we got to the
2 ownership.

3 Q Okay. Let's go back to the bid. So, you've
4 decided that you want to put in the bid. You put the
5 bid together. What happens next?

6 A Yeah. So, one of the key things that we're doing
7 when we -- when we're looking for a bid is, and we want
8 to get a personal services contract. And so, in the
9 federal world, a personal services contract is -- is --
10 it's literally a legal definition, and this is -- gets
11 to the heart of some of this. The -- it -- it defines
12 the employer/employee relationship between CasePro and
13 the employees, and between the federal government and
14 the employees.

15 So, with regard to the issues such as basic
16 personnel issues, what time you're going to be at work,
17 what your qualifications are prior to the government
18 accepting it, we get -- we are responsible for that.
19 So, you know, give you an example, if one of our
20 employees was on the -- the reason we do the -- a
21 workplace violence policy, for instance, if a person
22 were to hit his supervisor at work, then, the government
23 would tell us that; we would suspend the person; do the
24 -- do the -- document what happened. And then, we could
25 -- we would terminate the person, based on our policies

1 as a company.

2 The -- the personal services contract establishes
3 an employee/employer relationship between the Navy and
4 the -- and our personnel. It's called employee/employer
5 relationship. They -- they then go to the -- the site,
6 and they're under the control of the federal government
7 employees, so they answer to --

8 MR. HOYLE: Objection, your Honor.

9 THE COURT: Okay.

10 MR. HOYLE: I believe the witness is offering a
11 legal conclusion.

12 MR. MACKELCAN: We're going to enter the contract
13 shortly, and it speaks directly to what the contract
14 states.

15 THE COURT: Well, then, the best evidence rule
16 would be the contract itself, rather than having him
17 potentially --

18 MR. MACKELCAN: He's the president of the company.

19 THE COURT: I'm sorry?

20 MR. MACKELCAN: He's the president of the company.
21 He can talk about his understanding of the difference
22 between the responsibilities of the government and the
23 responsibilities of CasePro under the contract.

24 THE COURT: Okay. Well, if he's talking about --
25 is he talking about the contract? What are we -- I

1 mean.

2 MR. MACKELCAN: He's talking about the relationship
3 between CasePro and the government.

4 THE COURT: Okay. Well. And he's talking about a
5 contract, which would speak for itself. Yes? At this
6 point, I'm going to sustain the objection, because --
7 come here.

8 ON-THE-RECORD BENCH CONFERENCE, OUT OF
9 HEARING OF JURORS. PRESENT: THE COURT,
10 MR. HOYLE, MR. CASTLEBERRY, MR.
11 MACKELCAN, MR. LOVELL, MS. SABER.

12 THE COURT: Okay. I don't have any problem with
13 him talking about his relationship with the government,
14 but it's -- I'm a little uncomfortable with it being --
15 my daddy used the term *bass backwards*, because the
16 contract is not in, and the contract is what dictates
17 the relationship. And so, what I don't want to do is
18 get into a situation where I've got him talking about
19 the relationship is, when there's a document that
20 establishes that relationship, and that doesn't come in.
21 I'm uncomfortable about him just sort of carrying on
22 about what the relationship is, with no foundation in
23 terms of the contract being in evidence, when that is.
24 What he thinks it is, is interesting. What it is,
25 is what the contract says it is. So, what I'm

1 uncomfortable about where we are, so. And the objection
2 is that he's getting into giving his legal opinion. I'm
3 going to sustain it, but really, more so, because I
4 don't -- I don't think this is the appropriate way to go
5 about it. I think you need a foundational document if
6 you're going to talk about the relationship, in that it
7 is a contractual relationship, it needs to be in. And
8 then, if he wants to talk about, well, what did you
9 understand about Paragraph 5 or Paragraph 6, what was
10 dictated then. But I'm uncomfortable with that.

11 MR. MACKELCAN: Okay.

12 MR. HOYLE: And I would also like to note, for
13 purposes of the record, that I believe the *Constitution*
14 provides that you are the sole judge of the law, not a
15 witness on the witness stand.

16 THE COURT: Really? That's so nice to know from
17 lawyers every once in a while, because it's so often
18 disagreed with.

19 END BENCH CONFERENCE.

20 MR. MACKELCAN: Your Honor, I'd like to mark, for
21 identification.

22 THE COURT: Very well.

23 ITEM IDENTIFIED AS UNSIGNED CONTRACT
24 BETWEEN NAVY MEDICAL LOGISTICS
25 COMMAND AND CASEPRO

1 MARKED DEFENDANT'S EXHIBIT NUMBER 4,
2 FOR IDENTIFICATION.

3 COURT REPORTER: Defendant's Exhibit 4 for I.D.

4 BY MR. MACKELCAN:

5 Q Mr. McCabe, I'm handing you a document that's been
6 marked for identification as Defendant's Exhibit 4. Mr.
7 McCabe, do you recognize this document?

8 A Yes.

9 Q What is it?

10 A It's the contract. It's the contract for the
11 Carolina MATO contract, which governs Beaufort.

12 Q Who are the parties to that contract?

13 A The -- it's between the Naval Logistics Command and
14 CasePro.

15 Q Is there any question in your mind today whether or
16 not that is an accurate copy of the contract in place
17 governing the relationship between the government and
18 CasePro's operations at Naval Hospital, Beaufort?

19 A No. This is the contract.

20 MR. MACKELCAN: Your Honor, at this time, I'd move
21 to admit the contract into evidence.

22 THE COURT: Any objection?

23 MR. HOYLE: May we approach, your Honor?

24 THE COURT: Sure.

25 ON-THE-RECORD BENCH CONFERENCE, OUT OF

1 HEARING OF JURORS. PRESENT: THE COURT,
2 MR. HOYLE, MS. CASTLEBERRY, MR. MACKELCAN,
3 MR. LOVELL, AND MS. SABER.

4 MR. HOYLE: Briefly, your Honor. The document that
5 has been shown to the witness, for starters, has
6 redactions on it. Second, it does not bear a signature
7 of the party listed as contractor. There's a signature
8 for the United States of America, but there's not a
9 signature for the contractor itself. In Mr. McCabe's
10 deposition as a 30(b)(6) witness, I asked him if he'd
11 ever seen such a contract, if he'd ever signed such a
12 contract. He was unable to tell me that information.
13 So, I think, for authenticity reasons, we have concerns
14 about the document that's being attempted to be moved
15 into evidence as to whether or not it is the actual
16 contract between Naval Medical Logistics Command and
17 CasePro, Incorporated.

18 MR. MACKELCAN: First, I think we should say, we've
19 been working on this case for three years, and this is
20 the first time that it's been raised as an issue. We've
21 taken dozens of depositions, hundreds of hours of them,
22 and it's never been raised as an issue. This is what
23 was in the file. I think the witness has testified that
24 he believes it's an accurate representation of the
25 contract.

1 THE COURT: Okay.

2 MR. MACKELCAN: We think he has authenticated it.

3 MR. HOYLE: We had similar issues with Calvin
4 Hunt's medical records yesterday, Judge.

5 THE COURT: Well.

6 MR. HOYLE: And on his deposition, he didn't know.

7 THE COURT: Okay. Here's a good place for us to
8 stop, because I'm going to take that testimony outside
9 the presence of the jury, and let you cross-examine him
10 outside the presence of the jury and clean it up, and
11 see where we are in that issue. Okay? But I'm going
12 ahead and let them leave. All right.

13 END BENCH CONFERENCE.

14 BY THE COURT:

15 THE COURT: All right. Ladies and gentlemen, in a
16 moment, there is a matter that I'm going to take up
17 outside your presence, and guess what? It's a quarter
18 'til 5:00. I'm going to give you some quick
19 instructions so you can beat the traffic. But don't go
20 fast.

21 Now, ladies and gentlemen, you're going to be
22 leaving me now for two days, Saturday and Sunday, and
23 we'll be back together Monday morning. Monday morning.
24 We are going to start a little bit later, 10:00 o'clock,
25 Monday morning, just because it always takes a little

1 bit longer on a Monday, when you've been away for the
2 weekend to get documents back out that have been secured
3 and locked up, and to just -- you might as well be doing
4 your thing, because we probably will be closer to 10:00
5 o'clock being ready to begin than 9:00 o'clock. So, on
6 Monday, we're going to start at 10:00.

7 Please be mindful, over the weekend, you must not
8 discuss this matter or allow anyone to discuss it with
9 you. Leave it, leave it here. Just leave it out of
10 your mind. Just don't think about it. Don't be
11 concerned about. Monday is time enough for you to begin
12 your concentration with regards to these matters.

13 It's going to be very tempting to do some kind of
14 research. That would be inappropriate. Maybe drive to
15 look at whatever locations, that would be completely
16 inappropriate. Now, having said that, if that's the way
17 you got to go home, that's the way you got to go home.
18 And I'm not going to tell you to alter your lifestyle,
19 but don't do any kind of investigation, please, with
20 regards to this matter.

21 Don't read anything. Don't listen to anything
22 about this matter. It's going to be so tempting, but
23 don't. If you do, then, the whole case is going to have
24 to be scrapped. And it will be ascertained at some
25 point, if you do. So, don't do any research. Don't

1 listen to anything about this case. Don't read anything
2 about this case. That would be the television, the
3 radio, the newspaper, and, of course, the Internet. You
4 must receive all of the information from which you will
5 make up your minds here in court while court is in
6 session.

7 Your notebooks, for your informational purposes,
8 are going to be secured over the weekend. They're going
9 to be locked up, and they will be replaced in your seats
10 on Monday morning. If anybody needs additional paper or
11 additional book, if you're getting -- or you're afraid
12 your pencil or pen are needing to be replenished, you
13 need only to let us know, and we'll certainly be so
14 happy to do that. So, as you leave, just let our
15 bailiff know, I need another notebook, please; or I'm
16 going to need some on Monday; or my pen's run out of ink
17 or whatever. We'll be sure and get that for you Monday.

18 Remember, also to leave your cell phone or other
19 communication device away from the courthouse on Monday
20 morning. Of course, if you forget, just simply let us
21 know, and one of our bailiffs will keep control and
22 possession of it until our morning break or afternoon
23 break, at which time, you can take it to your car, or
24 the lunch break, when you can certainly take it
25 somewhere else, if you choose.

1 Have a wonderful weekend, and I look forward to
2 seeing you Monday morning at 10:00 o'clock. Have a
3 lovely weekend.

4 JURORS LEAVE COURTROOM 4:50 P.M.

5 BAILIFF: Jury is clear, your Honor.

6 THE COURT: All right. All right. Now. Go ahead
7 and cross-examine him, just on the issue of
8 authenticity.

9 MR. HOYLE: And for purposes of the record, what
10 exhibit does the witness have in front of him?

11 MR. MACKELCAN: 4.

12 MR. HOYLE: Defendant's 4?

13 MR. MACKELCAN: Your Honor, I have some additional
14 questions, too.

15 THE COURT: Yeah, absolutely. You want to lay some
16 additional foundation?

17 MR. MACKELCAN: I'll lay additional foundation.

18 MR. HOYLE: That's fine.

19 THE COURT: Absolutely. Absolutely.

20 MICHAEL MCCABE, PROFFER

21 DIRECT EXAMINATION, BY MR. MACKELCAN:

22 Q Mr. McCabe, the document you have in front of you,
23 Defendant's Exhibit 4, which you have identified as the
24 contract between Naval Medical Logistics Command and
25 CasePro; did CasePro and Navy Medical Logistics Command

1 operate for years under the terms of the contract, which
2 that is a copy of?

3 A Yes. We operated since the end of September of
4 2007, specifically September 28, 2007.

5 Q To your knowledge, did CasePro comply with the
6 terms of the contract that is in front of you today?

7 A Yes.

8 Q To your knowledge, did the United States
9 government, through the Naval Medical Logistics Command,
10 comply with the terms of the contract that is in front
11 of you today?

12 A Yes.

13 MR. MACKELCAN: Nothing further on that issue, your
14 Honor.

15 THE COURT: Absolutely. Yes, sir.

16 MICHAEL MCCABE, PROFFER

17 CROSS-EXAMINATION, BY MR. HOYLE:

18 Q Good afternoon, Mr. McCabe. How are you?

19 A Good.

20 Q We're looking at a 130-page document that's been
21 marked as Defendant's 4, correct?

22 A Correct.

23 Q The very first page of this document has places at
24 the bottom for name and title of signer in Box 19(a). Do
25 you see that?

1 A Yes.

2 Q And is 19(a) filled in, or is it blank?

3 A It's blank.

4 Q Okay. Over on the other side, we have 20(a), *Name*
5 *and Title of Contracting Officer*. Is that filled in, or
6 is it blank?

7 A It's filled in.

8 Q Okay. And it looks like there's a name on there.
9 Can you tell the judge and the Court who the name and
10 title is in that Box 20(a).

11 A It looks like it's Nancy L. Lavigne/Contracting
12 Officer.

13 Q And there's a telephone number and email address,
14 correct?

15 A Correct.

16 Q And underneath it, at Box 23, there's actually a
17 signature that purports to be Nancy L. Lavigne, correct?

18 A Correct.

19 Q And it bears a date, correct?

20 A Correct.

21 Q And this is on the standard Form 26, as you can
22 see, in the lower, right-hand corner, correct?

23 A Yes.

24 Q But over here, where there's supposed to be a
25 signature by the other party to the contract, is there a

1 signature, or not a signature?

2 A No signature.

3 Q Okay, sir. You recall, I came out to San Antonio
4 on August the 5th, 2014, and took your deposition as the
5 Rule 30(b)(6) corporate witness?

6 A Yes.

7 Q Okay. And I showed you this exact same document at
8 your deposition, on Line -- on Page 50. Do you recall
9 that? I'll give you a copy of your transcript, if you
10 want it.

11 A I mean. Question again, just so I can know what
12 you're saying.

13 Q Sure. Do you recall me showing you this contract
14 out there in San Antonio when we were sitting in your
15 fancy conference room as part of your Rule 30(b)(6)
16 deposition?

17 A I'm not sure about a fancy conference room.
18 However, we were in our conference room, yes.

19 Q Okay. And I asked you, at Line -- at Page 50 of
20 your deposition:

21 *Question: All right. Is there a*
22 *signature on this document on behalf of*
23 *CasePro, Incorporated?*

24 And you answered: No.

25 Does that comport with your memory?

1 A I don't remember that specific question.

2 Q Okay.

3 A I don't have a doubt that I would answer that.

4 Q Okay. Because it doesn't have one, correct?

5 A Correct.

6 Q All right. I went on to ask you:

7 *As you sit here today as the corporate*
8 *designee of the company, are you aware of*
9 *the company maintaining a copy of the contract*
10 *that has been marked as Exhibit Number 2 --*
11 *-- this is Exhibit Number 2 to your deposition --*

12 *in which an authorized representative*
13 *of CasePro, Incorporated, has signed on*
14 *behalf of CasePro, Incorporated?*

15 And you answered, according to the court reporter:

16 *I don't know, to be honest with you.*

17 I continued with the questioning:

18 *You have no knowledge, as you sit here*
19 *today as the corporate designee of the company*
20 *that a signed copy of this contract exists*
21 *within the files of CasePro, Incorporated?*
22 *Is that fair?*

23 And you answered, according to the court reporter:

24 *I would have to look.*

25 My next question was:

1 And as you sit here today in your
2 deposition, you've not undertaken that effort
3 to look. Is that fair?

4 And you answered, according to the court reporter:

5 That's fair.

6 Do you have any reason to dispute that was, in
7 fact, your testimony that you gave under oath on August
8 the 5th, 2014?

9 A No.

10 Q All right. That was over a year ago. Since August
11 5, 2014, have you gone through the files out there at
12 the Hardy Oak Drive offices of CasePro, Incorporated,
13 and looked for a fully-executed copy of the contract
14 between Naval Medical Logistics Command and CasePro,
15 Incorporated, that pertains to the Beaufort Naval
16 Hospital here in Beaufort? Yes or no.

17 A I have not.

18 Q Fair to say, then, to your knowledge, sir, the
19 company is not in possession of any fully-executed
20 contract between itself, as a corporation, and the
21 United States government as it pertains to Naval
22 Hospital, Beaufort?

23 A I don't know the answer to that question. CasePro
24 -- there would be a signed contract somewhere, but I
25 don't know.

1 Q But this ain't it. Is that fair?

2 A It's not signed.

3 Q We're looking at an unsigned contract, correct?

4 A Signed by the government.

5 Q Okay. Okay. You agree with me, a contract is
6 definitely going to have two or more parties, correct?

7 A Correct.

8 Q Okay. Can't contract with yourself. That's
9 probably not a good idea. But at least as far as this
10 contract is between two parties, the Navy and your
11 company, correct?

12 A Correct.

13 Q Okay. And there's no signature on behalf of your
14 company, correct?

15 A Correct.

16 Q And you can't tell me that one exists, correct?

17 A Correct.

18 Q And this is 130-page document. Can you honestly
19 look through all 130 pages and tell me from memory that
20 there were no additional negotiations or modifications
21 or revisions as part of the contract formation process
22 between your company and Naval Medical Logistics Command
23 that could have resulted before there was a fully-
24 executed, signed contract than what we have here today,
25 as marked for identification Defendant's 4? Yes or no.

1 A I can say that there would be no modifications.

2 Q And what's that based upon, sir?

3 A The way that they go about these contracts, then,
4 they would -- based on this central contract, they would
5 then enter the delivery orders, which would come out as
6 a separate change to the contract. So, you would have a
7 delivery order specific to -- to Beaufort, for instance.
8 I think we looked at one earlier.

9 Q All right, sir. I don't have Mr. Knowles for this
10 up on the screen, so you're just going to have to bear
11 with me with the little print. Look up here in Box 17.
12 Okay?

13 A Okay.

14 Q And it looks like there's a box checked that says,
15 *Contractor's Negotiated Agreement*. Do you see that?
16 Are those the words that follow the box that's checked
17 with an X?

18 A Not really.

19 Q Can you not see it, or you don't think that's what
20 it say?

21 A No, I can't see it.

22 Q And Mr. Knowles put this thing up on the screen for
23 the Court and witness's benefit.

24 A Okay. I got it. Okay.

25 Q Okay.

1 A Small print.

2 Q Hold on. It's going to be put on the big screen.
3 I need to wheel this thing up here real close to you. I
4 want this Box 17. All right. Can you see? Can you see
5 that far?

6 A Yes.

7 Q Okay.

8 Contractor is required to sign this
9 document and return one copy to an issuing
10 office.

11 That's what it says, correct?

12 A Agree.

13 Q Okay. And this is a negotiated agreement, meaning
14 it was negotiated at arm's length between the federal
15 government for the Navy Medical Logistics Command and
16 your company, correct?

17 A Yes.

18 Q And by the plain text of the document stating that
19 it's a negotiated agreement, it requires that there
20 would be a signature from your company, correct?

21 A Correct.

22 Q And the document we have in front of us is
23 Defendant's 4, which has been marked for identification
24 purposes only, does not bear such a signature, correct?

25 A Correct.

1 Q In contrast, -- Mr. Knowles, can you highlight Box
2 18 for us, or show us Box 18?

3 Box 18 could have been checked, calling this an
4 award contract, in which case, the information on the
5 plain text of the document tells us, *contractor is not*
6 *required to sign this document.* You see that?

7 A Yes.

8 Q And Box 18, is it checked or not checked?

9 A Not checked.

10 MR. HOYLE: Your Honor, that's all I have at this
11 time for this witness on this issue. Thank you.

12 THE COURT: All right. Any re-direct on that
13 issue?

14 MR. MACKELCAN: Yes.

15 THE COURT: All right.

16 MICHAEL MCCABE, PROFFER

17 RE-DIRECT EXAMINATION, BY MR. MACKELCAN:

18 Q Mr. McCabe, looking at 18, where we were just
19 looking at, is that number the same number that is
20 listed as a contract number in Number 2?

21 A Yes.

22 Q Okay. And 18 states:

23 *Your offer on Solicitation Number*
24 *N62645-06-R-1010-0005, including the*
25 *additions or changes made by you, which*

1 *additions or changes are set forth in full*
2 *above, is hereby accepted.*

3 Then, it's signed underneath that by the
4 government. Is that correct?

5 A Correct.

6 Q Okay. Would have CasePro have sent the original
7 signature back to the government? What's the timing of
8 that?

9 A Yes. We would turn around and sign it. In this
10 case, in that time frame, it would have been Shirley
11 Hill would have signed it. And then, we would have sent
12 it back to the government.

13 Q With the government's signature on it, already?

14 A Yes.

15 Q Sitting here today, you just don't know if CasePro
16 kept a copy signed by both parties.

17 A I'm -- I'm one hundred percent sure that CasePro
18 kept a copy. I would assume that they couldn't find it
19 at the time of -- when all this started.

20 Q Mr. Hoyle asked you about the central contract, and
21 you said you were sure that it was not modified. Is
22 that because the bid includes the contract that's
23 prepared by the government?

24 A The contract includes the bid, yes.

25 Q Okay. So, the central contract does not change.

1 You either accept it, its terms, or you don't accept its
2 terms, in terms of CasePro.

3 A Yes. And then, the modifications later are -- any
4 modifications later are added by change orders.

5 Q Are those separate documents?

6 A Separate documents, signed separately. So, there
7 would be no other original document signatures. There
8 would only be change orders, which would be like a
9 delivery order.

10 MR. MACKELCAN: Nothing further, your Honor.

11 THE COURT: Yeah. Re-cross?

12 MICHAEL MCCABE, PROFFER

13 RE-CROSS-EXAMINATION, BY MR. HOYLE:

14 Q Mr. Mackelcan asked you if you would have sent a
15 signed copy back to the federal government. Did I hear
16 that?

17 A Yes.

18 Q How is it, then, that you have this copy that only
19 has one signature on it? Do you know, or are you
20 speculating?

21 A Well, they -- no, they -- they would have sent us
22 this one. And then, we would have looked to make sure
23 it was the same. And then, when we would send it back.

24 Q But if you signed it and sent it back to the Navy,
25 you wouldn't still have it, would you?

1 A We should still have it.

2 Q How can you still have it, if you signed it?

3 A Well, you would -- you would obviously make a copy,
4 for your records.

5 Q Okay. Which seems like a reasonable thing to do.
6 Where is the copy from your company's records of a
7 fully-executed contract, with signatures from both
8 parties to the contract?

9 MR. MACKELCAN: Objection, your Honor. It's
10 argumentative. It's been asked and answered.

11 BY MR. HOYLE:

12 Q Do you know?

13 THE COURT: No, he doesn't.

14 MR. HOYLE: Thank you.

15 ARGUMENT:

16 THE COURT: Okay. Let me ask this question. Is
17 this a general contract, or is this just the one from
18 Beaufort? This is the general one, right?

19 MR. MACKELCAN: It includes other sites, yes.

20 THE COURT: Yeah, yeah, yeah, yeah, yeah.

21 MR. HOYLE: Yeah. Yes, it does. And I'll also
22 add, for argument purposes, not for cross-examination
23 purpose of the witness that Mr. McCabe's deposition, but
24 we went through this; he didn't remember some of the
25 states that were listed on this contract as being states