

In The Matter Of:

Doll, et al. vs. University Hospitals, et al.
No. 297828

Deposition of Alan J. Lerner, M.D.
October 8, 1997

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Original File lerner.txt, 93 Pages
Min-U-Script® File ID: 1999315633

Word Index included with this Min-U-Script®

COURT OF COMMON PLEAS
CUYAHOGA COUNTY

PATTY DOLL, ET AL,)
Plaintiffs,)
vs.) Case No. 297828
UNIVERSITY HOSPITALS OF)
CLEVELAND, ET AL.,)
Defendants.)

DEPOSITION OF ALAN JAY LERNER, M.D.

Wednesday, October 8, 1997

Deposition of ALAN JAY LERNER, M.D., called by Defendant
University Hospitals of Cleveland for examination under
the Ohio Rules of Civil Procedure, taken before me, the
undersigned, Mary Ann Flynn, Registered Professional
Reporter, a Notary Public in and for the State of Ohio,
at the offices of Alan Jay Lerner, M.D., 12200 Fairhill
Road, Cleveland, Ohio 44120, commencing at 2:10 p.m. the
day and date above set forth.

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APPEARANCES:

On Behalf of the Plaintiffs:
Howard D. Mishkind, Esq.
Becker & Mishkind Co., L.P.A.
Skylight Office Tower, Suite 660
1660 West Second Street
Cleveland, Ohio 44113

On Behalf of Defendant University Hospitals
of Cleveland:
George M. Moscarino, Esq.
Mer & Hadden
1100 Huntington Building
Cleveland, Ohio 44115

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[1] **ALAN JAY LERNER, M.D.**
[2] called by Defendant University Hospitals of Cleveland
[3] for examination under the Ohio Rules of Civil
[4] Procedure, after having been **first** duly sworn, as
[5] hereinafter certified, was examined and testified as
[6] follows:

EXAMINATION
BY MR. MOSCARINO:

[7]
[8]
[9] **Q:** Would you state your name, please, for the
[10] record?

[11] **A:** Al Lerner.

[12] **Q:** You are a physician?

[13] **A:** Yes.

[14] **Q:** And I take it you are a neurologist. Is that
[15] right?

[16] **A:** Yes.

[17] **Q:** Dr. Lerner, I'm here to take your deposition
[18] today because I represent University Hospitals of
[19] Cleveland in a lawsuit brought by Patty Doll against
[20] UH and Dr. Michael Gyves, and we know by review of
[21] records and by conference with Mrs. Doll's attorneys
[22] that you've treated her and I'm here to ask you some
[23] questions about your treatment of her. Fair enough?

[24] **A:** Yes.

[25] **Q:** We have spoken on the phone before on other

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[1] cases, I believe?

[2] **A:** Yes, I believe so.

[3] **Q:** And we have never spoken on this case, correct?

[4] **A:** I don't believe we have.

[5] **Q:** Tell me what your practice is now. Where are we
[6] here and what basically do you do in your neurology
[7] practice?

[8] **A:** I'm attending neurologist here at the hospital
[9] and I've been here since July 1997. My practice is a
[10] mixture at this point of general neurology as well as
[11] subspecialty neurology mostly dealing with dementia
[12] and behavioral disorders in older people, and also I
[13] do hospital consultations and ward attending.

[14] **Q:** The facility that we are at today is called
[15] what?

[16] **A:** University Hospitals of Cleveland.

[17] **Q:** This is a portion of University Hospitals of
[18] Cleveland?

[19] **A:** Yes. Geriatric clinic is around the corner.

[20] **Q:** When I drove in it said Fairhill Institute for
[21] the Elderly.

[22] **A:** Fairhill Institute for the Elderly, which is
[23] part of University Hospitals and Benjamin Rose
[24] Institute. So there's a significant presence of
[25] University Hospitals here.

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[1] **Q:** How much of your time is spent here at this
[2] Fairhill location?

[3] **A:** 70 percent.

[4] **Q:** And the other 30?

[5] **A:** It's at Bolwell.

[6] **Q:** Do you attend to patients who are confined at
[7] any of the hospitals on the University Hospitals of
[8] Cleveland campus?

[9] **A:** Currently only consult service, patient consult
[10] service, yes.

[11] **Q:** And prior to July of 1997 were you on the staff
[12] at St. Luke's?

[13] **A:** Yes.

[14] **Q:** Are you still on the staff at St. Luke's?

[15] **A:** I have a courtesy position at St. Luke's at the
[16] moment.

[17] **Q:** So you're not actively seeing patients?

[18] **A:** I'm not actively admitting or seeing patients
[19] there at this point in time.

[mi] **Q:** Do you know Dr. Gyves?

[21] **A:** Yes.

[22] **Q:** You've worked with him before?

[23] **A:** Yes.

[24] **Q:** On other patients?

[25] **A:** Yes.

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[1] Q: And I assume that you've talked to him in some
[2] form or fashion during your mutual treatment of this
[3] patient and plaintiff, Patty Doll?
[4] A: Yes.
[5] Q: What have you reviewed, if anything, in
[6] preparation for me questioning you here today?
[7] A: I reviewed the chart that I have from my office
[8] and I reviewed some of the more recent records that
[9] Howard Mishkind had.
[10] Q: Can I see your file?
[11] A: Sure.
[12] Q: The file that you've handed to me, is this your
[13] private office chart on Patty Doll?
[14] A: That's correct. This is from my former
[15] practice.
[16] Q: Just so I understand, before you were in the
[17] private practice of neurology with an office, what, at
[18] the St. Luke's Medical Building there?
[19] A: At St. Luke's, and when I was seeing Patty, I
[20] had an office at Chagrin and Warrensville and I was
[21] also employed by St. Luke's Hospital as director of
[22] neurology.
[23] Q: And now since July of '97, do you still have a
[24] private practice in neurology?
[25] A: No, not separate. It's part of University

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[1] neurology.
[2] Q: Who is your employer then?
[3] A: Case Western.
[4] Q: Did you meet with Mr. Mishkind prior to today's
[5] deposition?
[6] A: We had a single meeting with -
[7] MR. MISHKIND: You mean today?
[8] You mean before the deposition as in today
[9] or sometime in the past?
[10] MR. MOSCARINO: Yes. I will reask
[11] it.
[12] Q: Did you meet with him today in preparation for
[13] today's questioning?
[14] A: Yes.
[15] Q: Had you met with him previous to that?
[16] A: We met about two years ago.
[17] Q: I take it that you know some of the other
[18] doctors who have treated Mrs. Doll such as Dr.
[19] Collins. Do you know him, Robert Collins?
[20] A: I believe I may have spoken to him on the phone
[21] on one occasion. I know Dr. Brodkey and Dr. Lystad.
[22] Q: Do you have an appointment to see Mrs. Doll
[23] again in followup?
[24] A: No.
[25] Q: Have you seen her in the calendar year 1997?

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[1] A: No.
[2] Q: When would be the last time that you would have
[3] seen her on a follow-up examination?
[4] A: I believe it was August of 1995. I would have
[5] to check the records.
[6] Q: Is she still a patient of yours or is she
[7] discharged from your care, or how do you put that?
[8] A: She can follow up on an as-needed basis. I have
[9] patients who I may not have seen for several years who
[10] seemingly feel free to call me and ask for all sorts
[11] of things. So if she called me and said that she
[12] wanted to see me, I would certainly make arrangements
[13] to see her in my current practice.
[14] MR. MISHKIND: George, so there is
[15] no question, I did talk to Dr. Lerner when
[16] we were setting up the deposition about the
[17] possibility of him seeing her, and we did
[18] not discuss it before today's deposition.
[19] I may request, prior to the trial, just for
[20] purposes of his testifying, that he see
[21] her, but the doctor and I have not
[22] discussed it as to whether he's willing to
[23] do so or whether there has been a formal
[24] request on my part.
[25] MR. MOSCARINO: Okay.

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[1] Q: You are board certified in neurology?
[2] A: Yes.
[3] Q: Have you done any writing on the issue of
[4] stroke, written any articles?
[5] A: I have published abstracts on the subject of
[6] stroke. I don't believe any of the lengthy articles
[7] that I have published have been on stroke.
[8] Q: Have you done any independent research in
[9] preparation for this deposition? Have you read any
[10] articles or texts?
[11] A: No.
[12] Q: During your treatment of Mrs. Doll did you do
[13] any independent research or -
[14] A: I'm sure I looked at the available resources at
[15] that time, yes, such as textbooks.
[16] Q: Are you able to tell me which ones you would
[17] have looked at back then?
[18] A: No.
[19] MR. MISHKIND: If you can recall.
[20] Don't guess.
[21] A: I don't recall.
[22] Q: What are the leading textbooks in the area of
[23] neurology?
[24] MR. MISHKIND: Objection as to the
[25] term "leading."

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[1] But go ahead.
[2] **A:** There are several leading textbooks. There are
[3] textbooks of general neurology that have chapters on
[4] stroke.
[5] **Q:** What would those be?
[6] **A:** Such as Neurology and Clinical Practice or Adams
[7] and Victor and there are specialized texts on stroke
[8] such as Caplins' text and other texts that are
[9] available in medical libraries.
[10] **Q:** Those are the types of texts that you would have
[11] looked at?
[12] **A:** Yes.
[13] **MR. MISHKIND:** Show an objection.
[14] **Q:** Have you done any research yourself or written
[15] any abstracts or articles on the risk or relationship
[16] between stroke and pregnancy and the postpartum state?
[17] **A:** I have not published specifically on that topic.
[18] I did, however, edit a small handbook of neurology
[19] which did have a small section on pregnancy-related
[20] disorders, so I have reviewed that.
[21] **Q:** What's the name of that handbook?
[22] **A:** It's called The Little Black Book of Neurology,
[23] third edition.
[24] **Q:** Is that contained somewhere in the CV that you
[25] gave us today?

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[1] **A:** Yes.
[2] **Q:** Did somebody else author that section on
[3] postpartum stroke?
[4] **A:** I believe somebody else authored it but I edited
[5] it.
[6] **Q:** Just so I'm correct, for today's proceeding you
[7] looked at your old office chart, and what other
[8] records did you look at from or were supplied by Mr.
[9] Mishkind?
[10] **A:** There **was** the neuropsychological reports. There
[11] **was** the MRI scan, the MRI report, that **was** from, I
[12] believe, November of '96.
[13] **Q:** Anything else?
[14] **A:** That **was** basically it.
[15] **Q:** Did you look or were you supplied with any of
[16] the reports by any of the experts?
[17] **A:** Oh, yes. I did look briefly at several letters
[18] from the experts, yes.
[19] **Q:** Were you given a report by a Dr. Margulies from
[20] Baltimore who is an expert on behalf of the plaintiff?
[21] **A:** Yes.
[22] **Q:** Were you actually given these things or you **just**
[23] looked at them and reviewed them?
[24] **A:** Looked at them and reviewed them.
[25] **Q:** And then were you furnished actual copies for

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[1] your own file?
[2] **A:** No, I didn't ask for those.
[3] **Q:** Were you provided with a report by a Dr.
[4] Millikan from Maumee, Ohio, also an expert for the
[5] plaintiff?
[6] **A:** I reviewed it, yes.
[7] **Q:** Did you review or were you supplied with a
[8] report by a Dr. Stockwell who **is** also an expert for
[9] the plaintiff?
[10] **MR. MISHKIND:** That's one I didn't
[11] show him. I can save you perhaps time.
[12] He's an OB/GYN.
[13] **THE WITNESS:** I think I may have
[14] actually seen that.
[15] **MR. MISHKIND:** I don't think so.
[16] **THE WITNESS:** Okay.
[17] **MR. MISHKIND:** There **was** another
[18] OB/GYN for the defense I did show you but I
[19] didn't bring Dr. Stockwell's report.
[20] **Q:** Did you look at a report by a Dr. Jeffrey King
[21] on behalf of the defendant, Dr. Gyves? He's from
[22] Beaver Creek, Ohio.
[23] **MR. MISHKIND:** That's the OB/GYN.
[24] **THE WITNESS:** That's the OB/GYN?
[25] **A:** Yes.

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[1] **Q:** The answer, then, is "Yes," right?
[2] **A:** Yes.
[3] **Q:** Did you review the report by a Dr. Jack Riggs
[4] from Robert C. Bird Health Center of West Virginia?
[5] **A:** Yes.
[6] **Q:** How about a Dr. Thomas R. Price who is an expert
[7] for University Hospitals of Cleveland? Did you look
[8] at his report?
[9] **A:** Yes.
[10] **Q:** And then, finally, did you review a report from
[11] a Dr. Wechsler who also **was** an expert on behalf of
[12] University Hospitals of Cleveland? He's from
[13] Pittsburgh. Did you see that, too?
[14] **A:** I don't believe I saw that one.
[15] **Q:** Do you know any of these doctors or have you
[16] heard of any of these doctors?
[17] **A:** Dr. Riggs.
[18] **Q:** You know him?
[19] **A:** I don't know him personally.
[20] **Q:** Do you know of him?
[21] **A:** Yes.
[22] **Q:** How do you know of him?
[23] **A:** I believe he's professor of neurology. There's
[24] only a small number of such people.
[25] **Q:** Do **you** have any professional dealings with him

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[1] or you just know of his writings?

[2] **A:** I know of him by name. I don't know his
[3] particular area of expertise even.

[4] **MR. MISHKIND:** Just so you're
[5] clear on the full picture of items I showed
[6] him before, I also showed him Dr.
[7] Nemunaitis' report, the one referencing the
[8] MRI and MRA and then his previous report,
[9] all of which he glanced at in 15, 20
[10] minutes before the deposition.

[11] **Q:** Is that the sum and substance of what you looked
[12] at in preparation for today's deposition then?

[13] **A:** Right. That, and my office notes.

[14] **Q:** Can I see your chart again, please?
[15] Did you ask to be provided with any other
[16] medical records or studies or any information that you
[17] haven't received yet?

[18] **A:** None that I haven't received, no.

[19] **Q:** You have had **your** deposition taken before?

[20] **A:** Yes.

[21] **Q:** And you've served as an expert witness before in
[22] medical-legal cases?

[23] **A:** Yes.

[24] **Q:** Have you had your deposition taken in that
[25] context?

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[1] **A:** Yes.

[2] **Q:** I'm with the firm of Arter & Hadden. Have you
[3] served as an expert witness for any attorneys -

[4] **A:** I think it was for Arter & Hadden.

[5] **Q:** Do you know what that case was?

[6] **A:** It was with Vickie Vance. She worked you with
[7] you. It was a case also against University Hospitals,
[8] Malloy, et al.

[9] **Q:** And did you have your deposition taken in that
[10] case?

[11] **A:** Yes.

[12] **Q:** Did you testify at the trial?

[13] **A:** No.

[14] **Q:** Have you had your deposition taken in any other
[15] cases?

[16] **A:** Not that I recall.

[17] Yes, one other case.

[18] **Q:** Which one was that?

[19] **A:** It was a different - it was an outside case.
[20] Somebody was in a car accident.

[21] **Q:** And you were the treating physician?

[22] **A:** Yes.

[23] **MR. MISHKIND:** Excuse me one
[24] second.

[25] The name that you mentioned, was it

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[1] Malloy, M-A-L-L-O-Y?

[2] **THE WITNESS:** I believe, yes.

[3] **MR. MISHKIND:** Okay.

[4] **Q:** I take it by this correspondence that's in your
[5] file here that you had been asked to testify at the
[6] trial of this case in November?

[7] **A:** That's correct.

[8] **Q:** You have not written any letters to Mr. Mishkind
[9] regarding your treatment of Mrs. Doll?

[10] **A:** No, no formal letters.

[11] **Q:** Any memoranda of any sort?

[12] **A:** Nothing, no.

[13] **Q:** What was the sum and substance of the meeting
[14] that you had with Mr. Mishkind a couple years ago?

[15] **A:** He asked me about my impressions about what had
[16] been going on with Patty Doll at the time of her
[17] admission at St. Luke's Hospital, possible causes of
[18] her stroke and her hospital course and any follow-up
[19] that she had had. I don't recall the exact substance
[20] of that conversation.

[21] **Q:** And your response was what?

[22] **MR. MISHKIND:** To which issue?

[23] **MR. MOSCARINO:** I was just going
[24] by what his answer was.

[25] **MR. MISHKIND:** All of them?

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[1] **MR. MOSCARINO:** Yes, we can break
[2] it down.

[3] **Q:** What was your response to him regarding the
[4] possible causes of her stroke?

[5] **A:** Well, we talked about the issue of the retained
[6] foreign body and whether that contributed to her
[7] stroke and outlined the hospital course and the
[8] investigation that we had done, the interpretation of
[9] those tests, the nature of her neurologic deficits and
[10] that was about it.

[11] **Q:** And how about today? What was the sum and
[12] substance of your meeting with Mr. Mishkind today?

[13] **A:** Oh, we again reviewed it and we talked very
[14] briefly about some of the issues raised by the experts
[15] who had reviewed it.

[16] **Q:** Have you talked on the phone to Mr. Mishkind in
[17] between your meeting after a few years ago and your
[18] meeting today?

[19] **A:** No, only with regards to setting up this
[20] meeting.

[21] **Q:** Nothing of substance regarding the causes of the
[22] stroke or her disabilities or anything like that?

[23] **A:** No.

[24] **Q:** Has your opinion changed at all in between the
[25] meeting that you had with him a couple years ago and

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[1] what you told him today?

[2] A: No.

[3] Q: Did the review of any of these additional
[4] materials by way of expert reports on behalf of both
[5] the plaintiff and the defendant and this MRI and MRA
[6] and Dr. Nemunaitis' report and these other things in
[7] any way alter or change any of the opinions you have
[8] on the issues that I'm here to ask you about today?

[9] A: No.

[10] Q: Doctor, I looked at your office records and you
[11] have an office note of February 17, 1995?

[12] A: Uh-huh.

[13] Q: Where you say, quote, "Our extensive workup did
[14] not reveal the cause of Mrs. Doll's infarct."

[15] A: Uh-huh.

[16] Q: Is that still your feeling today?

[17] A: I think that that needs to be qualified. I
[18] believe that I did look that over and I think I
[19] qualified it in the next statement, that I think the
[20] statement needs to be viewed in the context of what it
[21] really says, and this was really in the context of her
[22] considering having another pregnancy and her risk for
[23] recurrent stroke. And the very next sentence is, "It
[24] is unlikely that this would recur again with no
[25] structural lesions or other predisposing factors to

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[1] cerebral ischemia were identified."

[2] The real issue that comes up is the relationship
[3] of the stroke to the retained foreign object and I
[4] think that at the time that was the obvious source of
[5] the stroke. I'm talking about back in November 1994.
[6] The additional workup did not reveal any other things,
[7] though.

[8] Although it says, "Did not reveal the cause of
[9] the patient's infarct," it means no other cause of the
[10] patient's infarct. The record is directed to Robert
[11] Collins who had been the obstetrician who had got her
[12] started with the in vitro fertilization and the
[13] family, Mr. and Mrs. Doll, were at that particular
[14] time following up with Dr. Collins.

[15] Q: And before I follow up, I want you to tell me,
[16] the word "infarct" there, is that the same as using
[17] the word "stroke"?

[18] A: Yes. Infarct is stroke.

[19] Q: So what role did this retained foreign body
[20] have, if anything, with respect to the stroke that
[21] Mrs. Doll suffered after her operation at St. Luke's?

[22] A: I feel that the retained sponge or tape or
[23] whatever it was contributed to an inflammatory
[24] condition creating a hypercoagulable state in addition
[25] to whatever other hypercoagulable state existed just

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[1] from the fact of having a baby and that this directly
[2] precipitated the stroke.

[3] MR. MOSCARINO: Read that back.

[4] (Record read.)

[5] Q: So you're saying that the retained foreign body
[6] was the cause of Mrs. Doll's stroke?

[7] A: It set up the pathological cascade that
[8] contributed to her stroke.

[9] Q: And is it your opinion or will it be your
[10] testimony at trial that Mrs. Doll wouldn't have
[11] suffered the stroke absent the retained foreign body?

[12] A: I think it is highly unlikely that she would
[13] have suffered the stroke absent the foreign body.
[14] Unlikely.

[15] Q: Have you ever put this opinion in writing before
[16] today in any of your treatment records either at the
[17] hospital or in your private chart or in correspondence
[18] to other treating physicians?

[19] A: Not those words, no.

[20] Q: Why not?

[21] A: Partly because nobody ever asked me the
[22] relationship. Dr. Gyves did not ever ask me. There
[23] really were no other treating physicians at that time
[24] when I was seeing her as an outpatient. There was Dr.
[25] Lystad who performed the neuro-ophthalmological

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[1] evaluation, but Dr. Broadkey was no longer part of the
[2] situation. Dr. Collins - it was more a theoretical
[3] statement than a letter to him or forward looking.

[4] Q: Did you ever talk about this issue with Dr.
[5] Gyves?

[6] A: We really didn't.

[7] Q: Before we get on to the reasons for your
[8] feelings regarding the relationship between the
[9] retained foreign body and the stroke, I want to ask
[10] you a couple other unrelated questions.

[11] I take it at the trial of this case you're not
[12] going to be giving any testimony regarding the
[13] standard of care and whether any of the care givers at
[14] University Hospitals of Cleveland or Dr. Gyves himself
[15] or anybody else failed to comply with that standard of
[16] care. Am I right?

[17] A: That's correct, as I understand it.

[18] MR. MISHKIND: I will stipulate to
[19] that.

[20] Q: When you met with Mr. Mishkind a couple years
[21] ago, did you tell him that you believed that the
[22] stroke was related to or caused by the retained
[23] foreign body?

[24] A: I believe I did, yes.

[25] Q: Have you discussed this issue with Mr. or Mrs.

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[1] Doll at any time in the past?
[2] **A:** I think it came up in the setting of those
[3] outpatients visits. I don't know if I actually
[4] commented on our discussion about that.
[5] **Q:** While you're looking for that -
[6] **MR. MOSCARINO:** - the record
[7] should reflect that Dr. Gyves' counsel, Joe
[8] Farchione, is not present today. I saw Mr.
[9] Farchione at Jacobson, Maynard, his law
[10] firm, this morning when I was there to take
[11] another deposition in another case. As he
[12] was hurriedly leaving the office, he told me
[13] he could not make this because he was
[14] running home. His wife was ill and had a
[15] second bout of some type of problem and he
[16] was either taking her to the doctor or the
[17] hospital, so he's not able to be here.
[18] He asked, for obvious reasons, that I
[19] reserve his rights to question Dr. Lerner at
[20] another time. I called Mr. Mishkind, told
[21] him of that, and we decided that we would go
[22] forward and that I would go ahead and
[23] question Dr. Lerner but I'm reserving his
[24] right to question this doctor at a later
[25] time as expressed to plaintiffs' counsel

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[1] over the phone.
[2] **MR. MISHKIND:** My only response is
[3] that I did receive a telephone call from
[4] Mr. Moscarino. I did not receive a
[5] telephone call from Mr. Farchione or anyone
[6] from his office, nor is anyone here on his
[7] behalf.
[8] So the statement that George made as
[9] to the telephone call and the recitation of
[10] what happened I don't dispute, but I'm
[11] certainly not going to stipulate to
[12] anything relative to any reservation for
[13] purposes of cross-examining the doctor
[14] further. But we can take it up with the
[15] Court as necessary.
[16] **MR. MOSCARINO:** I hear you, but if
[17] I had the feeling that you were going to
[18] object to this, I wouldn't have gone
[19] forward today, because if the guy's wife's
[20] either being seen or is being treated, I
[21] mean, I would have just simply rescheduled
[22] with Dr. Lerner because I believe Dr.
[23] Lerner would have made himself available
[24] sometime between now and November 18 for
[25] deposition so -

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[1] **MR. MISHKIND:** Well, the record
[2] should reflect that there has been nothing
[3] but difficulty in terms of scheduling
[4] depositions, and I'm not suggesting that
[5] the difficulty is your doing, George,
[6] although I'm still waiting for some dates
[7] on Samudio and the nurses, but the
[8] scheduling of depositions from the other
[9] side has been very difficult. So as to
[10] whether this could have been rescheduled
[11] between now and November 17, I don't know.
[12] So you've made your record. You've
[13] reserved Joe's opportunity to cross-examine
[14] and let's move on.
[15] **Q:** Doctor, while we were having that discussion,
[16] did you look in there?
[17] **A:** Yes. I looked in the record. I don't find any
[18] specific mention of this. They were obviously still
[19] in shock at the suddenness of this catastrophic
[20] illness that had befallen her, so it would have been
[21] natural that we would have talked about it and made
[22] reference without any specific other questions. I
[23] don't know that - I don't recall anything that they
[24] specifically asked me at that time.
[25] **Q:** Do you recall ever telling them that the stroke

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[1] was the result of the retained foreign body?
[2] **A:** I think we probably talked about the
[3] hypercoagulable state and the many reasons for strokes
[4] that occur after having babies.
[5] **Q:** What are those reasons?
[6] **A:** There are a number of reasons that can occur.
[7] Besides hypercoagulable state, there could be
[8] dehydration. There could be pre-existing structural
[9] lesions of the sort that we were looking for at the
[10] time. For example, arterial Venous malformations,
[11] large-scale dehydration in patients who already have
[12] narrowed vessels. They may have infections of the
[13] heart valves. So there are many reasons why those
[14] kinds of stroke can occur.
[15] **Q:** Did you review the deposition of Mrs. Doll or
[16] Mr. Doll?
[17] **A:** No.
[18] **Q:** Have you reviewed the deposition of Dr. Gyves?
[19] **A:** No.
[20] **Q:** Do you consider yourself an expert in the risk
[21] of stroke to postpartum women?
[22] **MR. MISHKIND:** Objection.
[23] Go ahead.
[24] **A:** Relative to whom?
[25] **Q:** I'm just asking you.

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[1] A: Insofar as I'm a neurologist, I consider myself
[2] to be knowledgeable about the subject knowing how to
[3] proceed in the evaluation of such patients. I feel
[4] comfortable taking care of such patients.

[5] Q: Are all neurologists experts in the risk and the
[6] treatment of strokes to postpartum women?

[7] MR. MISHKIND: Objection.

[8] Go ahead.

[9] A: I think most neurologists would feel
[10] comfortable. There are certainly people who are
[11] cerebral vascular disease experts.

[12] Q: What do you mean cerebral vascular disease
[13] experts?

[14] A: Either by training or by practice they may
[15] confine a variable amount of their practice to
[16] cerebral vascular disease so that they would have
[17] additional expertise in the issue of the causes and
[18] evaluation of patients with this kind of stroke.

[19] Q: Are those people neurologists who have a
[20] subspecialty, then, in cerebral vascular disease?

[21] A: Right. It's not a board certified specialty but
[22] they are recognized stroke experts as it were.

[23] Q: Are you in that subspecialty of recognized
[24] stroke experts? In other words, do you confine your
[25] practice to or do you hone your practice into this

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[1] type of specialty?

[2] A: I would not consider myself a stroke expert in
[3] the sense that my practice is not limited. At the
[4] time I was seeing large numbers of stroke patients
[5] because I was the head of neurology at a large
[6] teaching hospital and, therefore, was seeing several
[7] hundred patients per year with stroke.

[8] Q: How many of those patients that you saw with
[9] stroke back at the time you were head of neurology at
[10] St. Luke's were women in the postpartum period?

[11] A: I think Ms. Doll may have been the only one.

[12] Q: Do you know if you ever treated another patient
[13] who suffered a stroke in the postpartum period?

[14] A: Perhaps one or two out of many hundreds of
[15] patients with stroke.

[16] Q: Those one or two others, would that be while you
[17] were an attending or during your training?

[18] A: Both.

[19] Q: Have you ever treated a patient before who you
[20] concluded suffered a stroke that was either caused or
[21] set in motion by a retained foreign body?

[22] A: In a sense, yes, I would say that I have seen
[23] people who have - yes, the answer to that is a
[24] definite yes,

[25] Q: How many would that be?

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[1] A: I have seen two or three where the question of
[2] foreign bodies or invasive procedures set off strokes.

[3] Q: Are you able to tell me any of the factual
[4] medical backgrounds of those two or three patients?

[5] MR. MISHKIND: Without violating
[6] any physician/patient relationship, keep it
[7] generic.

[8] THE WITNESS: Sure.

[9] A: One was a patient who had a bullet that went to
[10] the brain, embolized to the brain.

[11] Q: So this person was shot in the head?

[12] A: No, they were shot in the lung and the bullet
[13] went to the brain physically.

[14] Q: Through the blood stream?

[15] A: Yes.

[16] Q: And what happened with that person?

[17] A: They eventually recovered.

[18] I dealt with one patient who had self-injected
[19] himself with heroin in his neck. And I have dealt
[20] with a fair number of perisurgical strokes, strokes
[21] occurring after surgery, and a variety of different
[22] surgical types, heart surgery, orthopedic surgery,
[23] general surgery, things of that sort.

[24] Q: I asked you a while back whether you had ever
[25] put this feeling or opinion you have regarding the

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[1] cause of the stroke as it relates to the foreign body
[2] in any documents, and you told me "No," and I think
[3] part of your response was no one really had ever asked
[4] you that before. Am I quoting you right?

[5] A: That's correct.

[6] Q: If I quote you wrong on this, I need you to
[7] correct me.

[8] When Mr. Mishkind met with you a couple years
[9] ago, did he ask you that specific question?

[10] A: I believe he did.

[11] Q: And was that the first person that ever asked
[12] you that question before?

[13] A: In a formal way, yes.

[14] Q: Who had asked you, if anybody?

[15] A: I mean, we talked about the issue of whether Mr.
[16] and Mrs. Doll had asked me, and the answer would have
[17] to be "Yes, in a way," though, certainly I didn't
[18] write them a letter to that effect. Mr. Mishkind
[19] never asked me to write a formal opinion.

[20] Q: I just want to confirm what the dates are of
[21] your treatment of Mrs. Doll. You saw her in the
[22] hospital, I think, in between November 16 and December
[23] 2 of 1994. Is that correct?

[24] A: I believe that's correct. Those are the correct
[25] dates.

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[1] **MR. MISHKIND:** Here's the entire
[2] chart if you want to -
[3] **Q:** There is a blue binder on your desk here.
[4] **MR. MISHKIND:** Those are my
[5] records which I brought with me.
[6] **MR. MOSCARINO:** If I could ask
[7] him, it would be easier.
[8] **Q:** Did you have a copy of the hospital chart for
[9] your review for today's deposition?
[10] **A:** No.
[11] **MR. MISHKIND:** In fact, until I
[12] said that blue binder is sitting there, I
[13] don't think he knew what it **was**.
[14] **THE WITNESS:** I knew what it **was**.
[15] **A:** I saw her November 16, 1994, that **was** correct.
[16] **Q:** And then -
[17] **A:** 7:00 p.m.
[18] **Q:** I think you will agree with me she **was** then
[19] discharged on December 2 to Meridia Euclid Hospital?
[20] **A:** That's correct.
[21] **Q:** Did you see her at all at that facility?
[22] **A:** No.
[23] **Q:** And then, as far as the dates of your actual
[24] follow-up office visits, I have records for visits of
[25] December 16 of 1994, February 17 of 1995 and August 11

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[1] of 1995. Can you just check and make sure that's
[2] right?
[3] **A:** Yes, although the second page of that has a
[4] **typo**. My secretary said "1995." Please note that.
[5] **Q:** Okay.
[6] **MR. MISHKIND:** That's the December
[7] 16, 1994?
[8] **THE WITNESS:** Right. It's a
[9] **typo**.
[10] **A:** August 11, 1995; February 17, 1995. That's
[11] correct.
[12] **Q:** Those are your three office visits?
[13] **A:** Yes.
[14] **Q:** You sent that February 17, 1995 progress note, I
[15] believe, to Dr. Collins?
[16] **A:** That's what it says, yes.
[17] **Q:** How does that go? Did you just send him that or
[18] did you also send him a cover letter?
[19] **A:** If there was a cover letter, I would have kept a
[20] copy. So in this case, since he **was** not the referring
[21] physician, I probably just sent him a carbon copy. I
[22] believe I also spoke to him on the phone on one
[23] occasion.
[24] **Q:** I take it, based on my reading from the lay
[25] perspective, there are different types of stroke. Am

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[1] I right?
[2] **A:** That's correct.
[3] **Q:** Was this an embolic event or thrombus event or
[4] hemorrhagic or a combination, or do you know?
[5] **A:** Well, it certainly was hemorrhagic. The CT
[6] scan, the initial CT scan, showed a hemorrhagic
[7] transformation in the bed of the infarct or stroke, as
[8] it were, and because of the distribution of that, it
[9] **was** most likely judged to be embolic in nature.
[10] **Q:** And what's the difference between an embolic and
[11] a - well, what's an embolus and a thrombus, first of
[12] all?
[13] **A:** They are both blood clots or clotting off of
[14] vessels. The embolism is generally thought to be a
[15] blood clot that may travel from another source and
[16] then become lodged in an artery or vein, whereas a
[17] thrombus usually implies local clot formation such as
[18] within the distribution of the carotid artery. Now,
[19] there may **be stroke** in which there is both local
[20] clotting and friable embolic fragments that then
[21] travel downstream.
[22] **Q:** ~~So~~ what did you tell me this **was**, an embolus or
[23] thrombus?
[24] **A:** Most likely embolus.
[25] **Q:** From where?

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[1] **A:** I think that she, again, had a hypercoagulable
[2] state, had some signs of intravascular coagulation and
[3] that there were lots and lots of clots. The concept
[4] of clotting is a very complex one. However, it is
[5] likely not just to be one little clot. We are
[6] probably talking about millions of little clots that
[7] went and plugged up her artery.
[8] **Q:** Plugged up which artery?
[9] **A:** The left middle cerebral artery.
[10] **Q:** Are you able to tell me or do any tests confirm
[11] where any of these emboli or embolus came ~~from~~
[12] **A:** It did not come from the carotid artery or the
[13] heart valves, to the best of our knowledge at **this**
[14] time. The other predisposing factor that we come back
[15] to **is** the retained foreign body and whether that set
[16] up a state of excess clotting, the hypercoagulable
[17] state.
[18] **Q:** And what tests that were done at the hospital
[19] support your conclusion that she **was** hypercoagulable?
[20] **A:** Several tests, one, that showed there to be an
[21] inflammatory mass; two, that there was a positive
[22] D-Dimer test, and we also documented on the CT scan
[23] the presence of local clotting in the pelvic veins.
[24] **Q:** There were three things you said, One **was** that
[25] there **was** what **type** of mass?

[1] **A:** The inflammatory **mass**.
 [2] **Q:** Where?
 [3] **A:** At the site of the foreign body.
 [4] **Q:** And that is noted where in the record? **Is** that
 [5] in the operative report or tests or what?
 [6] **A:** I believe that **was** in the discharge summary.
 [7] **Q:** Who authored the discharge summary?
 [8] **A:** Dr. Gyves.
 [9] **Q:** At the time that he authored that discharge
 [10] *summary*, did you have any conversation with him at all
 [11] about what the cause of the stroke **was**?
 [12] **A:** No.
 [13] **Q:** The second thing you told me **was** this positive
 [14] D-Dimer test?
 [15] **A:** That's correct.
 [16] **Q:** First of all, what is that?
 [17] **A:** D-Dimer is a measure of - has to do with
 [18] breakdown products of fibrin, which **is** one of the
 [19] last steps in the clotting cascade.
 [20] **Q:** And what **was** the result of that D-Dimer test?
 [21] **A:** It **was** positive.
 [22] **Q:** Is that a test that is **just** positive or
 [23] negative? It's not numerically ranked?
 [24] **A:** I don't recall whether it's numerically ranked.
 [25] St. Luke's reported it only as positive or negative.

[1] I don't recall that they reported - I can look in the
 [2] chart.
 [3] **Q:** No, if you can't recall, that's fine. I can get
 [4] back to it later if I have to.
 [5] **A:** Okay.
 [6] **Q:** What **was** the third thing that you said supported
 [7] the conclusion?
 [8] **A:** The pelvic vein thrombosis on the CT scan,
 [9] There **was** also a question about the infected - there
 [10] **was** one positive blood culture that indicated that she
 [11] **was** infected. She **was** treated for that, though it **was**
 [12] later felt to be a contaminant.
 [13] **Q:** So did Mrs. Doll have an infection at the time
 [14] she **was** hospitalized at St. Luke's?
 [15] **A:** We did have one positive blood culture, but
 [16] there is no other real evidence of an infection per
 [17] se, of an infectious organism.
 [18] **Q:** Was there ever a source of any infection
 [19] identified?
 [20] **A:** Well, there is the possible source of the
 [21] retained object, but that presumably **was** sterile when
 [22] it went in, but that's a potential source of
 [23] infection. Of course small bowel obstruction and
 [24] peritonitis, but to that extent there **was** an
 [25] inflammation.

[1] There is a difference between inflammation and
 [2] infection. Infection being a bacterial infection is
 [3] what you're referring to.
 [4] **Q:** Why don't we define it **so** we are clear. What **is**
 [5] an inflammation, first of all?
 [6] **A:** Inflammation **is** the body's reaction to foreign
 [7] material. Infection **is** the presence of an organism
 [8] within the body, Inflammation may occur in response
 [9] to many different things, chemicals, toxins, an
 [10] allergy, whereas an infection implies the presence of
 [11] a microorganism.
 [12] **Q:** And based on what you know, is it your opinion
 [13] that Mrs. Doll had an infection when she **was** confined
 [14] at St. Luke's Medical Center?
 [15] **A:** We did have the one positive blood culture, the
 [16] *strip viridens*, but other than that, to the best of my
 [17] recollection, there **was** no other evidence of
 [18] infection.
 [19] **Q:** **You** told me at one point in time a couple
 [20] questions ago that at one **time** somebody concluded that
 [21] **was** thought to be a contaminant?
 [22] **A:** Right. This is important because *strip viridens*
 [23] is one of the organisms that can grow on heart valves
 [24] and, therefore, be another cause of stroke. So that
 [25] **was** why we took it very, very seriously.

[1] **Q:** So what evidence is there in her medical records
 [2] of an infection or infectious process, other than that
 [3] one positive blood culture?
 [4] **A:** None.
 [5] **Q:** If that one positive blood culture **was**, indeed,
 [6] a contaminant, what opinion do you have, then, as to
 [7] whether or not she had an infection?
 [8] **A:** There is no opinion. No evidence of infection.
 [9] **Q:** So knowing everything you know about this
 [10] patient and looking backward **from** 1997 to 1995, do you
 [11] feel that she had an infection? Yes or no?
 [12] **A:** I never felt she had an infection.
 [13] **Q:** Okay. So it's your opinion she didn't have an
 [14] infection?
 [15] **A:** That's correct.
 [16] **Q:** And your reason for saying that is what?
 [17] **MR. MISHKIND:** Objection. Asked
 [18] and answered.
 [19] **You** can answer it again, Doctor.
 [20] **A:** We only had the one blood culture and we did get
 [21] an infectious disease service in to look at her and
 [22] they did appropriate tests to rule out endocarditis.
 [23] And, unfortunately, contaminant blood cultures can
 [24] occur. **So** we did have some evidence of infection but
 [25] we ruled that out as a major cause of the pathology

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[1] here.

[2] Q: Is there a higher risk of stroke for women

[3] during pregnancy and during the postpartum period?

[4] A: Relative to other people of the same age, yes,

[5] particularly in the postpartum period there is a

[6] slight increase risk of stroke of the kind that we saw

[7] here.

[8] Q: What do you mean "of the kind we saw here"?

[9] A: I mean, there are many different kinds of stroke

[10] as we talked about earlier. There is a slight bump

[11] that is quite rare, as indicated by my clinical

[12] experience, in the overall world of stroke. It

[13] accounts for a very small portion. However, because

[14] you're dealing with young patients who are in the

[15] childbearing years, the risk relative to the rest of

[16] the population is very low risk. So even a small

[17] increase might be noticeable. I mean, compared to

[18] other non-pregnant 33 year old women, there is a

[19] slight increase in risk.

[20] Q: And what is the percentage chance increase

[21] between the non-pregnant women of Mrs. Doll's age and

[22] the postpartum person of her age of similar

[23] characteristics?

[24] A: I can't give you a specific number. I think

[25] you're going from a very infinitesimal number to a

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[1] very small number.

[2] Q: Is there literature that deals with this

[3] specific topic?

[4] A: I'm sure there is medical literature reviewing

[5] the topic of peripartum stroke, that's correct.

[6] Q: Are you able to tell me which are the leading

[7] articles on this topic, if there are such?

[8] A: Not off the top of my head. I would have to

[9] review that subject myself.

[10] Q: Do you know if any of the experts, either for

[11] the plaintiff or the defendant in this case, are

[12] recognized authorities on the subject of the risk of

[13] postpartum stroke?

[14] MR. MISHKIND: Objection.

[15] Go ahead.

[16] A: Since I don't know them personally, I certainly

[17] don't know what they have published or experienced.

[18] Q: You used the word "peripartum" before. Is there

[19] a difference between "peripartum" and "postpartum," or

[20] did I mishear you?

[21] A: I think you heard correctly. Peripartum

[22] includes the period right before delivery.

[23] Q: Okay. As opposed to postpartum, which is after

[24] delivery?

[25] A: After delivery. There was a fibrinogen level

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[1] done on November 16, the result of which was 340, and

[2] I note that the lab says that the normal values are

[3] 188 to 496.

[4] A: Uh-huh.

[5] Q: Does that sound right?

[6] A: That's correct.

[7] Q: What is the significance, if anything, of this

[8] study?

[9] A: I think it's a very limited significance. The

[10] fibrinogen is the precursor of fibrin, which is the

[11] precursor of D-Dimer. The problem with interpreting

[12] fibrinogen levels is that they may rise actually

[13] before falling in the case of intravascular

[14] coagulation. So it's more the changes in fibrinogen

[15] levels than the absolute number, so that the

[16] information obtained from a single number, unless it's

[17] markedly abnormal, is not that helpful.

[18] Q: The fibrinogen level done the following day of

[19] November 17 of 1994 was 540. What's the significance

[20] of that finding, if anything?

[21] A: Again, you're seeing it rise suggesting an acute

[22] inflammatory state. Fibrinogen levels will rise when

[23] there is an acute inflammatory state in the body.

[24] Q: Was Mrs. Doll dehydrated?

[25] MR. MISHKIND: At what point in

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[1] time, George?

[2] Q: Well, was she dehydrated when she came to St.

[3] Luke's?

[4] A: May I review the chart?

[5] Q: Sure.

[6] MR. MISHKIND: It starts here, the

[7] emergency room record.

[8] THE WITNESS: She was admitted

[9] November 15?

[10] MR. MISHKIND: Yes, I think in the

[11] evening.

[12] A: The results at November 15, electrolytes do not

[13] show much in the way of significant imbalance.

[14] Q: So what does that mean?

[15] A: So the answer is "No."

[16] Q: What specific tests are you looking at labs

[17] from?

[18] A: The Chem 7 from 1845 on November 15.

[19] Q: What part of the Chem 7 then?

[20] A: All of it.

[21] Q: Okay.

[22] a Potassium was mildly elevated, but beyond that

[23] sodium carbon dioxide, the sugar, the ratio of the

[24] BUN to the creatinine are all acceptable.

[25] Q: What was the result of the D-Dimer, since you're

[1] at the lab, to get back to that other question?

[2] **A:** Greater than one with a reference range **zero** to
[3] one, so essentially positive or negative. **So** they did
[4] not further quantitate it greater than one. **Zero**, I
[5] assume, means abnormal. It's outside of the reference
[6] range. It can't be outside zero.

[7] **Q:** Getting back to my question, do they go 1.1,
[8] 1.2, greater than two? It's either greater than one
[9] or less than one, this lab's interpretation, or -

[10] **A:** I don't know how they normally report them.

[11] **Q:** Were you familiar with that test prior to Mrs.
[12] Doll's hospitalization?

[13] **A:** Yes.

[14] **Q:** And I knew that you had worked with St. Luke's
[15] for a while, so **I was just** wondering, do you know how
[16] they did it?

[17] **A:** My understanding is it **was** either present or
[18] absent and that the circulating presence of
[19] significant amounts of D-Dimer is significant.

[20] **Q:** Was Mrs. Doll septic when she **was** admitted to
[21] St. Luke's?

[22] **A:** What do you mean by "septic"?

[23] **Q:** Why don't you define what it is for me since I'm
[24] not the physician witness? In the abstract, what does
[25] it mean to be septic, and, Number two, was she?

[1] **A:** I think it means to be severely ill. In the
[2] sense of having what **was** later documented to be an
[3] infection, no. She **was** clearly very, very sick when
[4] she **was** admitted. She had a small bowel obstruction.
[5] She **was** nauseated, vomiting.

[6] **Q:** Who **was** the ID consult in this case?

[7] **A:** Stephen Bass.

[8] **Q:** Did you ever confer with Dr. Bass regarding the
[9] relationship, if any, between the retained foreign
[10] body and the stroke?

[11] **A:** I think we reviewed the case as it existed. I
[12] don't know that we went anywhere beyond that.

[13] **Q:** How often would you see or did you see Mrs. Doll
[14] during the course of her admission to St. Luke's?

[15] **A:** I would probably have to assume that I had seen
[16] her every day.

[17] **Q:** For me to look for your notes, would they both
[18] be in the progress notes and the consultant notes?

[19] **A:** My **initial** note from November 16 would be in the
[20] consultant notes. At that time, I believe she **was**
[21] transferred to my care. I **was** her attending physician
[22] for the remainder of her hospital stay. **So** that there
[23] is my initial note from November 16, 1900 hours, and
[24] then the progress notes commence.

[25] **Q:** Before you do that, let's look at your first

[1] consult note.

[2] **A:** Okay.

[3] **Q:** That would be the first thing that you wrote in
[4] her chart then?

[5] **A:** That's correct.

[6] **Q:** The second page of that, is this in your
[7] writing?

[8] **A:** Yes.

[9] **Q:** Will you read the impression for me?

[10] **A:** Probable embolic left MCA infarct with
[11] hemorrhagic transformation. Multiplicity of
[12] hemorrhage also makes cortical venous thrombosis a
[13] possibility. Discussed with Dr. Gyves and Brodkey.
[14] Plan to transfer to MICU.

[15] **Q:** And then next is the plan?

[16] **A:** Plan, right.

[17] **Q:** What does it say there with respect to RO?

[18] **A:** Rule out.

[19] **Q:** What does it say? Rule out what, cardiac **mass**?

[20] **A:** And right to left shunting.

[21] **Q:** Were those both ruled out?

[22] **A:** Yes.

[23] **Q:** And the next one **was** a chest X-ray to rule out
[24] pulmonary embolism?

[25] **A:** Right.

[1] **Q:** Was pulmonary embolism ruled out?

[2] **A:** Yes.

[3] **Q:** Was a carotid ultrasound done?

[4] **A:** I believe it **was**.

[5] **Q:** What **was** the result of that?

[6] **A:** I believe it **was** normal.

[7] The carotid evaluation -

[8] **Q:** Excuse me?

[9] **A:** The carotid evaluation **says** this examination
[10] demonstrates no evidence of significant carotid
[11] stenosis in the segments visualized.

[12] **Q:** So that means what?

[13] **A:** It's normal.

[14] **Q:** Can you look at the progress note for November
[15] 16? It says "Acceptance note" at the top. I believe
[16] it's MICU acceptance note?

[17] **A:** Progress notes.

[18] **Q:** Okay.

[19] **A:** Yes, acceptance note?

[20] **Q:** Yes.

[21] **A:** Uh-huh.

[22] **Q:** Do you know who wrote this?

[23] **A:** It **looks** like Tajour, who was one of the
[24] residents. It **was** written by a resident and it's
[25] beeper number 1347 at St. Luke's, so you may be able

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[1] to trace it back by that.
[2] **MR. MISHKIND:** You pronounced the
[3] pi name -
[4] **THE WITNESS:** Tajour,
[5] T-A-J-O-R.
[6] **A:** I truly don't remember which residents were on
[7] in the intensive care unit that month.
[8] Yes, it is B-M T-A-J-O-R because he signed a
[9] progress note on the 17th much clearer.
[10] **Q:** So are you telling me that once you saw Mrs.
[11] Doll, then you became the attending physician of
[12] her record?
[13] **A:** That's correct.
[14] **Q:** And then when she was confined to the ICU, then
[15] you worked with the ICU physicians but you were the
[16] lead physician on the case?
[17] **A:** I was the lead physician on the case.
[18] **Q:** Can you look at the second page of that at the
[19] bottom? I think it's the assessment plan or AI.
[20] **A:** Uh-huh.
[21] **Q:** What is that, MCA infarction?
[22] **A:** Uh-huh, with hemorrhage and mass effect. MCA,
[23] middle cerebral artery.
[24] **Q:** CVA and young adult thinning emboli?
[25] **A:** Right, CVA.

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[1] **Q:** Then there are various different items listed
[2] there. Vasculitis?
[3] **A:** Vasculitis; SLE, systemic lupus
[4] erythematosus; rheumatoid arthritis.
[5] **Q:** Were those conditions ruled out?
[6] **A:** We did look at the antinuclear antibody, I
[7] believe. Postpartum.
[8] **Q:** Was that ever ruled out?
[9] **A:** Not completely.
[10] **Q:** How does one rule out that the stroke was not
[11] caused simply by her postpartum state and the
[12] recognized risk of hypercoagulability from that?
[13] **A:** I think at the time this was written we didn't
[14] have this kind of information to rule out - I mean,
[15] this is a laundry list so that the answer really
[16] doesn't necessarily relate to what's written here.
[17] **Q:** Okay.
[18] **A:** Ask the question again, if you wish.
[19] **Q:** Sure. I think you told me -
[20] **A:** I have to stop reading and start thinking.
[21] **Q:** I think you told me before that there is a
[22] recognized risk of stroke for postpartum females in
[23] Mrs. Doll's age group?
[24] **A:** That's correct.
[25] **Q:** And although you describe it as small, there is

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[1] a recognition in the medical literature that certain
[2] individuals have strokes that are linked to this
[3] postpartum state absent having some type of foreign
[4] body, right?
[5] **A:** That's correct.
[6] **Q:** And what goes on with those postpartum females
[7] that causes them to have strokes in this postpartum
[8] state?
[9] **A:** That could be a result of several different
[10] things. Again, it's not one entity. Some people do
[11] have hypercoagulable states. Sometimes that is made
[12] worse if there is another underlying illness such as
[13] lupus or an arthritic condition or vasculitis.
[14] The physiologic changes, the changes in blood
[15] volume and circulation that occur with the stress of
[16] labor and delivery, for example, may precipitate an
[17] aneurysm to burst, so the increased pressure of
[18] straining. So that those are the sorts of things.
[19] There are many physiologic changes occurring at that
[20] time, particularly in patients with an underlying
[21] disease. One needs to look for those other underlying
[22] causes.
[23] The feeling, and this was really the gist of our
[24] whole evaluation here, was to not just blame it on the
[25] sponge, to really, you know, to the best of our

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[1] ability at St. Luke's, to evaluate the heart, to
[2] evaluate - you know, we did evaluate her for
[3] vasculitis. We evaluated her for native clotting,
[4] genetic clotting abnormalities. I saw that we tested
[5] antithrombin III levels, protein-S and protein-C
[6] levels.
[7] So we cast our net very widely at this point to
[8] see what else we could haul in. Our approach was not,
[9] you know, it-is-therefore-it-was kind of approach. It
[10] was to - you know, cast a wide net. If we had, you
[11] know, convinced ourselves at that point that the
[12] foreign body was the cause, then we wouldn't have
[13] bothered with the carotid ultrasound. There was no
[14] point.
[15] The point was, we were not convinced. We were
[16] in a state of ignorance. This occurred late at night.
[17] By the time I came, it was 7:00 o'clock.
[18] **Q:** Well, getting back to these individuals that
[19] have strokes in the postpartum state, are they all the
[20] result in some form or fashion of a hypercoagulable
[21] state?
[22] **A:** In some form they all are clotting of cerebral
[23] blood vessels. Whether we are able to specify it or
[24] not, something has to set that off. They have to have
[25] an embolism, which I feel is responsible for many

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[1] strokes. It has to come from somewhere. You know,
[2] many different pathological causes can contribute to
[3] that.
[4] Q: Getting back to this progress note where there
[5] is this kind of laundry list by this doctor here, the
[6] next one is "postpartum"?
[7] A: Right.
[8] Q: And my question that started this whole kind of
[9] line of discussion was, what was done, if anything,
[10] that ruled out that Mrs. Doll suffered this stroke
[11] because of her postpartum state?
[12] A: Well, that's the sum and substance of the
[13] remainder of the hospital workup.
[14] Q: Okay.
[15] A: She obviously had had the baby. She is, by
[16] definition, in the postpartum state, so we can't - it
[17] may be in the form of a diagnosis of exclusion to say
[18] that, you know, "Well, gee, these things happen. You
[19] know, you had the baby and these things happen."
[20] At that point, that was the sum and substance of
[21] the remainder of the workup. The MRI, the carotid
[22] ultrasound, two echocardiograms, pelvic CT,
[23] antithrombin III levels, all the rest of the
[24] evaluation really focuses my evaluation, which was why
[25] she was on the neurology service, because, I mean, it

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[1] was the request of Dr. Gyves, but the issues were more
[2] neurologic than obstetric.
[3] Q: And so what you're telling me is all those
[4] tests -
[5] A: Were performed.
[6] Q: And all those tests pointed you to what
[7] conclusion?
[8] A: Back to the hypercoagulable state. And, now,
[9] certainly postpartum may play some role, but there was
[10] the, you know, other inciting factor, which was the
[11] retained foreign body.
[12] Q: What's this next word on this progress note,
[13] "anti"?
[14] A: Antiphospholipid.
[15] Q: Antibody?
[16] A: Yes.
[17] Q: Was that looked into?
[18] A: I would have to check the records. I could see
[19] whether we actually looked into that.
[20] Q: How about DIC? Was that looked into?
[21] A: Yes.
[22] Q: And what was the result of that query?
[23] A: Well, that had the D-Dimer, the fibrinogen and
[24] things of that sort.
[25] Q: DIC means what?

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[1] A: Disseminated intravascular coagulation.
[2] Q: And did she have that condition?
[3] A: She certainly had some findings consistent with
[4] that.
[5] Q: But if I ask you, yes or no, does she have DIC,
[6] what's your answer?
[7] A: Yes, she had a form of DIC.
[8] Q: And the support or the basis for your feeling
[9] that she had DIC is what, other than the positive
[10] D-Dimer?
[11] A: That's the primary, and the evidence of
[12] inflammation, acute inflammation, that she had
[13] locally. She had local clotting. She had the DIC.
[14] Q: How about this dural sinus occlusion? What is
[15] that?
[16] A: The dural sinuses, because of the outflow for
[17] the cerebral veins, that was looked at, but there was
[18] no evidence of that on the MRI scan. So that was
[19] looked at.
[20] Q: Do you know what that last initial is there on
[21] the bottom of that page?
[22] A: Yes.
[23] Q: ASD, what is that?
[24] A: Atrial septic defect.
[25] Q: Was that looked into?

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[1] A: Yes. That was with the heart.
[2] Q: That was negative?
[3] A: Correct.
[4] Q: I understand some of these questions are a
[5] little bit repetitive, but I apologize.
[6] A: That's okay.
[7] Q: Just so I understand, the office note that I
[8] looked at before and I had you look at, the February
[9] 17, 1995 office note, you talked about the extensive
[10] workup that was done -
[11] A: Uh-huh.
[12] Q: - during the course of the hospitalization?
[13] A: Right.
[14] Q: And I just want you, just for the record, to
[15] list for me, if you would, please, the tests that were
[16] conducted that are this extensive workup in order to
[17] find out what either the cause of this was or, as you
[18] said before yourself, this diagnosis by exclusion.
[19] A: We started with a history. I interviewed the
[20] family at length to try and identify any previous
[21] episodes of clotting or abnormalities in her history.
[22] Looks like I even took a family history of the brother
[23] with a heart valve replacement, but there was no
[24] previous history of stroke, hypertension, diabetes,
[25] serious systemic disease. So that's where I start.

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[1] We looked at the CT scan, I will go to the
[2] radiology notes. We did the CT with and without
[3] contrast.
[4] Q: The result of that **was** what?
[5] A: Left-sided hemorrhagic infarct. We did the
[6] carotid evaluation. We did the echocardiogram. We
[7] did the - I don't know why we did a left renal artery
[8] ultrasound, but that was done. I don't recall why
[9] that was done. We did the transesophageal
[10] echocardiogram.
[11] Q: What **was** the result of that?
[12] A: It **was** normal.
[13] And finally we did the CT of the abdomen and
[14] pelvis. That's the radiology studies.
[15] In terms of the antiphospholipid syndrome, we
[16] measured what are called the cardiolipin antibodies,
[17] IGG and IGM. Both negative.
[18] Q: If positive, what do those tests point to?
[19] A: The cardiolipin antibodies or antiphospholipid
[20] syndrome is associated with spontaneous clotting, may
[21] be associated with abortions, spontaneous abortions,
[22] clotting in the venous system as well as stroke in the
[23] young.
[24] We did basic left blood tests of the sort that
[25] are done. I don't know if that counts. We did

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[1] specialized tests. We did a toxicology screen. There
[2] **was** no cocaine metabolites or anything else of that
[3] sort. That's a cause of **stroke** in the young. We
[4] checked the antithrombin III level, the D-Dimer. We
[5] did platelet aggregation studies.
[6] Q: What did those reveal?
[7] A. Normal. Reviewed by the pathologist.
[8] Q: What relationship, if any, do the platelet
[9] aggregation studies have to the hypercoagulable state?
[10] A: Well, there could be genetic abnormalities of
[11] platelet aggregation that may predispose to clotting
[12] since platelets are formed, one of the major sources
[13] of the clotting cascade.
[14] Q: What does it mean to say she had a
[15] hypercoagulable state?
[16] A: That there **was** an increased tendency to
[17] clotting. It's not better defined than that.
[18] Q: **Is** there a test that supports that she had a
[19] hypercoagulable state or is there a way to test that?
[20] A: There **is** not a unitary test for that.
[21] Q: What tests would be relevant -
[22] A: I mean, only in the sense that she had a stroke
[23] and she also had pelvic vein thromboses.
[24] Q: Can you have pelvic vein thromboses without
[25] being in a hypercoagulable state?

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[1] A: I think that's a question you should ask the
[2] obstetricians. I don't know the answer to that.
[3] Q: Can you have the infarct or an infarct like Mrs.
[4] Doll had without having a hypercoagulable state?
[5] A: Certainly.
[6] Q: What would be examples of having a stroke
[7] without a hypercoagulable state?
[8] A: Somebody had an infection on the heart valves.
[9] An older person might have carotid artery disease.
[10] There may be genetic abnormalities of the carotid
[11] arteries. So there are a number of different
[12] conditions that need to be thought about. With stroke
[13] in the young, you're dealing with unusual disorders.
[14] This is a very rare syndrome no matter what you're
[15] looking at, so that's why we had to do this extensive
[16] workup. We also studied protein-S and protein-C. I
[17] think that's the basic **sum** of it.
[18] Q: Getting back -
[19] A: We also did test ANA. We did test that. It **was**
[20] negative.
[21] Q: What **was** that?
[22] A: Antinuclear antibodies.
[23] Q: Getting back -
[24] A: We tested blood culture, which gets us back to
[25] the positive culture to look for evidence that might

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[1] consider vegetations on the heart, heart valve
[2] infection.
[3] Q: Okay. You have now given me kind of the laundry
[4] list of all the multiple tests and exams?
[5] A: We covered the ground **we** set out in Dr. Tajour's
[6] note in summary form.
[7] Q: Getting back to this hypercoagulable state, you
[8] told me there is no unitary test for that; is that
[9] right?
[10] A: That **is** correct.
[11] Q: What tests are relevant to determining whether
[12] or not somebody has a hypercoagulable state?
[13] A: There are many tests that are relevant in any
[14] individual patient. Some of these include platelet
[15] aggregation, clotting times, platelet count, some of
[16] the other things that we have talked about this
[17] afternoon.
[18] Q: And do any of those tests in this case support
[19] the conclusion that Mrs. Doll had a hypercoagulable
[20] state?
[21] A: Some of them are ruled out. I mean, the things
[22] we have covered already, the antinuclear antibody, the
[23] cardiolipin antibody. We seemed to rule out the most
[24] common genetic causes of blood clotting abnormalities.
[25] She **was** anemic. That's not uncommon after having

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[1] a baby to be mildly anemic. And also having had an
[2] operation, she had a lot of intravenous fluids, but
[3] certainly anemia can be part of the - she required
[4] blood transfusions. I mean, she was anemic to the
[5] point that that could be a cause of hypercoagulable
[6] state. With the destruction of red blood cells,
[7] anemia is part of that. The rise in the fibrinogen is
[8] certainly consistent with an acute inflammatory state
[9] associated with hypercoagulability. The platelet
[10] count and the prothrombin time and the PTT were all
[11] normal.

[12] Q: So the clotting times were normal?

[13] A: That's correct.

[14] Q: And are normal clotting times consistent with
[15] hypercoagulable state?

[16] A: They may be, yes.

[17] Q: Do you usually have normal clotting times with a
[18] hypercoagulable state?

[19] A: You may or you may not. The presence of normal
[20] clotting times doesn't rule out a hypercoagulable
[21] state.

[22] Q: I assume that you were working with some
[23] residents in the treatment of Mrs. Doll?

[24] A: There were residents on the intensive care unit.

[25] Q: How about neurology residents? Were there

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[1] neurology residents covering in this case?

[2] A: There are no neurology residents at St. Luke's.
[3] I will look to see whether any of the notes that I
[4] wrote were actually cosigned. I don't recall there
[5] being a resident until possibly the end of her
[6] hospital stay. I may have a way to look that up if
[7] you - it looks like on November 29 a neurology note
[8] is written by a resident and then I wrote my own note
[9] later in the day. So it does look like there was a
[10] neurology resident who was seeing her along with me.

[11] Q: Do you know who that person is?

[12] A: If you need to know, I may be able to figure
[13] that out.

[14] Q: You can't figure it out?

[15] A: I don't know who that was and I can't read their
[16] signature.

[17] Q: Look at November 18. There is a neurology note.
[18] Do you see it at the bottom of that page?

[19] A: Yes.

[20] Q: That carries on to the next page?

[21] A: Yes.

[22] Q: Do you know who that doctor is?

[23] A: I would have to find that out for you. I have a
[24] way to find that out.

[25] Q: I'm trying to understand just the way it works

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[1] at St. Luke's. There was no neurology residency
[2] program?

[3] A: There is no neurology residency program.

[4] Medical residents would take a month with me so that
[5] they would perform the actions that might be expected
[6] of a first-year neurology resident. Some of them were
[7] very good and some of them were fair.

[8] Q: Did they round with you then?

[9] A: Yes, they would round with me.

[10] Q: Follow the patients under your direction then?

[11] A: Right.

[12] Q: The second page of that note has an assessment
[13] plan. Do you see that?

[14] A: Yes.

[15] Q: Can you read that Number one for me?

[16] A: Left parietal temporal hemorrhagic infarct,
[17] etiology unclear. Possibly peripartum - looks like
[18] versus CNS vasculitis.

[19] Q: Was that that doctor speaking there or was that
[20] doctor speaking with you telling him what to say, or
[21] do you know?

[22] A: That doctor was speaking for himself.

[23] Q: Was that your feeling as of November 18, that
[24] the etiology was unclear?

[25] A: Etiology was still unclear. My note is on the

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[1] bottom of that page. It goes on to the next page.

[2] Q: I didn't see anything in that note that talks
[3] about the etiology.

[4] A: I was still waiting for the results.

[5] Q: Okay. Where is there a note in this chart that
[6] has your comment on the etiology of the stroke?

[7] While you're looking for that, what does
[8] etiology mean?

[9] A: Cause.

[10] Well, I think you asked me this question before.

[11] In the sense of did I ever write down or communicate
[12] to the chart what I felt, and I think we discussed
[13] this earlier, at this point in time I was really up to
[14] my hands in taking care of her. You know, she came
[15] very close to dying and so that I was kind of taking a
[16] let's-wait-and-see attitude.

[17] Q: Okay.

[18] A: Since we didn't have all the information, I was
[19] dealing really more with the - especially at the time
[20] of November 18 - dealing more with the practical
[21] issues while trying to assure that the patient was
[22] well taken care of and that the workup was ongoing,
[23] and I think the workup continued to go until
[24] essentially the end of her hospitalization. I mean,
[25] Dr. Savrin, for example, was brought in only at the

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{1} very end as a consultation because he **was** a vascular
{2} surgeon.

{3} **Q:** I think my original question was, did you ever
{4} write down what the etiology of the stroke was, and I
{5} guess the answer is "No."

{6} **MR. MISHKIND:** Again, it's the
{7} same answer that he's given you before.

{8} **A:** I would say, no. The answer is "No."

{9} **Q:** When did you reach the conclusion that the
{10} stroke **was** caused by the retained foreign body?

{11} **A:** Well, again, that was the obvious concern of
{12} everybody right from the get-go. The rest of the
{13} evidence that we required to really exclude all that,
{14} that information had to be accomplished during the
{15} rest of her hospital stay, *so* that probably not until
{16} I started really seeing her as an outpatient, by that
{17} point we had all the studies that we needed.

{18} **Q:** *ALL* right. Let me **just** take it one step at a
{19} time. Tell me if I'm right.

{20} You didn't reach the conclusion that the
{21} retained foreign body was the cause of her stroke
{22} until after all the tests had been completed and she
{23} came to see you on an outpatient basis?

{24} **A:** I would say sometime in that interval. I mean,
{25} I had a several-week period of time to process all the

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{1} data, put the chart together and then begin seeing the
{2} patient, and I thought it was very important not to -
{3} you know, I think we have talked about some of these
{4} issues.

{5} You know, Dr. Gyves was my colleague, that I
{6} didn't want to say the sorts of things that - you
{7} know, reach conclusions that may not be warranted by
{8} the data, *so* that I really needed the specialized
{9} laboratory testing, the scans, the ultrasounds and all
{10} that in order to begin to come back to the issue of
{11} the foreign body.

{12} You know, obviously everybody was concerned
{13} about that. When I say "everybody," I mean both the
{14} physicians as well as the family was concerned about
{15} the issue of the foreign body. It's almost as if it
{16} didn't need discussion.

{17} **Q:** *So* are you telling me that basically this was a
{18} **diagnosis** by exclusion, and because of all of the
{19} other negative results, the conclusion you're left
PI with is that this was caused by the retained foreign
{21} body?

{22} **MR. MISHKIND:** Objection.
{23} Go ahead, Doctor.

{24} **A:** Well, I think we put it together with the issues
{25} of the hypercoagulable state and the presence of the

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{1} foreign body contributing to that, as we talked about
{2} earlier, hence my note to Dr. **Collins** saying that I
PI felt that she **was** safe to undergo another pregnancy
{4} because the question, the way the family asked it to
{5} me, was, you know, "What's Patty's chance of having
{6} another stroke if she should get pregnant again? Is
{7} that safe?"

{8} And if we presume that she is not going to have
{9} another sponge left inside of her, then I felt that it
{10} was safe because I felt the risk of recurrence **was**
{11} very, very low because I felt that she did not have
{12} any other tendency toward clotting except as explained
{13} by the foreign body, that she would have only the risk
4 of a pregnant woman, which is as we talked about.

{15} **Q:** Can you rule out that she would not have had
{16} this stroke absent the retained foreign body?

{17} **MR. MISHKIND:** Objection. Are you
{18} asking him opinions to a reasonable degree
{19} of medical certainty?

{20} **MR. MOSCARINO:** I'm asking **him** the
{21} same question - I'm asking him can he rule
{22} out she wouldn't have the same event absent
{23} the retained foreign body?

{24} **A:** I think it's highly unlikely that she would have
{25} had such **an** event.

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{1} **Q:** Which means you can't rule it out? It's your
{2} opinion that it wouldn't have happened?

{3} **MR. MISHKIND:** Well, let me show
{4} an objection because his opinion has to be
{5} based upon a reasonable degree of medical
{6} probability and he said "More likely than
{7} not" is what he said. As to what is
{8} possible, that's not -

{9} **MR. MOSCARINO:** I don't think he
{10} said "More likely than not."

{11} **A:** Highly unlikely means to a reasonable degree -
{12} if somebody came to me, her twin sister came to me and
3 said, "Should I have a baby at this point?" I would
{4} say, "Yes, there is no medical reason not to." That
{5} this **is** a foreseeable outcome of pregnancy, yes, it
{6} does occur but it's highly unlikely and, therefore,
{7} the benefits greatly outweigh the risks.

{8} **Q:** And this February 17 note, this is a regular in
{9} the course of your practice progress note that you
{10} would write or dictate after the visit?

{11} **A:** I believe **so**, yes.

{12} Excuse me.

{13} (Discussion had off the record.)

{14} (Recess taken.)

{15} **Q:** Does your chart show a letter from Dr. **Collins**

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[1] to you inquiring regarding the cause of the stroke and
[2] the ability for Mrs. Doll to get pregnant again?
[3] **A:** Yes, January 5 letter.
[4] **Q:** And he asks you there, could you provide me with
[5] a summary of her evaluation, diagnostic studies and
[6] your opinion as to the possible etiology of her
[7] cerebral hemorrhage, right?
[8] **A:** Right.
[9] **Q:** He is also asking you to comment on the
[10] probability of recurrence and whether you have an
[11] opinion as to whether it's advisable for her to even
[12] consider the possibility of pregnancy again, right?
[13] **A:** Right.
[14] **Q:** Did you actually write to him a letter in
[15] response or did you just send him that February 17
[16] progress note?
[17] **A:** I called him.
[18] **Q:** And what did you tell him?
[19] **A:** I told him the **sum** and substance of what had
[20] happened to her. I don't really recall what the
[21] content of that conversation was, and I sent him the
[22] next progress note. I don't recall whether I gave any
[23] records. There is no release of information but I
[24] don't remember if I gave the records to him.
[25] **Q:** Do **you** know if you told Dr. **Collins** that the

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[1] cause of the stroke was the foreign body?
[2] **A:** I think the only thing he got was the letter of
[3] February 17.
[4] **MR. MISHKIND:** The office note?
[5] **THE WITNESS:** The office note.
[6] **A:** I really do not recall anything of the
[7] conversation.
[8] **Q:** And I know you answered this before but I don't
[9] understand this portion of the note. You say, I feel
[10] that her extensive workup did not reveal the cause of
[11] the patient's **infarct**. Then you say, it's unlikely
[12] this would recur again with no structural lesions or
[13] other predisposing factors to cerebral ischemia were
[14] identified.
[15] **A:** Right.
[16] **Q:** I asked you about that sentence right at the
[17] beginning of the deposition and you told me that I
[18] have to look at both of those sentences together?
[19] **A:** That's correct. I mean, this really addresses
[20] the issue of her future pregnancies and the risk of
[21] recurrent stroke. I would not presume that the same
[22] thing that happened to her the first time would happen
[23] to her a second time.
[24] **Q:** Have you ever looked at Dr. Gyves' office notes?
[25] **A:** From her pregnancy?

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[1] **Q:** From any of her treatment.
[2] **A:** No.
[3] **Q:** I'm just going to read you a section from Dr.
[4] Gyves' office notes. It's from January 5, 1995. He
[5] says, I quote, "There has been no explanation proposed
[6] yet for her stroke. Not due to high BP or related to
[7] the pregnancy itself. It may have been due somewhat
[8] to the second anesthetic. Neurologist is uncertain."
[9] Do you know if prior to January 5, 1995 you had
[10] any conversation with Dr. Gyves where you told him you
[11] were uncertain as to the cause of the stroke?
[12] **A:** I don't recall talking to him about the issue of
[13] the second anesthetic. We would talk about it and he
[14] would mostly ask me if I had heard from Patty Doll and
[15] what she was up to.
[16] **Q:** Did you ever tell Dr. Gyves that you were
[17] uncertain as to what the cause of the stroke was?
[18] **A:** I don't recall.
[19] **Q:** Do you know if you ever told Dr. Gyves you were
[20] uncertain what role, if any, the laparotomy pad or
[21] retained sponge had in the cause of the stroke?
[22] **A:** I think he was very concerned about that.
[23] **Q:** Okay. But that doesn't answer my question as to
[24] whether or not you had any conversation with him as to
[25] whether or not you were uncertain.

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[1] **A:** I said before I don't recall any specific
[2] conversations with Dr. Gyves other than him asking if
[3] I had seen Patty Doll back in follow-up and I just
[4] would give him - basically he got copies of most of
[5] those office notes, so I did keep him informed of what
[6] was going on.
[7] **Q:** Did you ever get a copy of a letter that Dr.
[8] Gyves wrote to Dr. **Collins** dated January **26** of 1995?
[9] **A:** No.
[10] **Q:** He says in this letter, and I quote, "One of the
[11] most disturbing issues is that no one has been able to
[12] explain the cause of her stroke." Do you disagree
[13] with that statement?
[14] **MR. MISHKIND:** Objection.
[15] Go ahead, Doctor. You can answer.
[16] **A:** I don't know if Dr. Gyves found all this talk
[17] about hypercoagulability convincing. I can see where
[18] he's coming from and I can see his reasons for wanting
[19] to state that.
[20] **Q:** **His** reasons would be what?
[21] **A:** I think he was devastated by this. I think he
[22] was totally and completely devastated emotionally by
[23] this event.
[24] **Q:** Tell me if I'm wrong. There is no writing
[25] anywhere in your office chart, the hospital chart or

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[1] to any physician or to the Dolls or to their attorney
[2] that says that the cause of the stroke was the
[3] retained foreign body.
[4] **A:** No, you're correct in that.
[5] **Q:** Was it the working assumption as soon as she had
[6] this foreign body removed that this foreign body
[7] played some role in the stroke?
[8] **A:** I think that's correct.
[9] **Q:** Was that your working assumption?
[10] **A:** That **was** the working assumption.
[11] **Q:** Was that the working assumption of the entire
[12] team that **was** taking care of her or are you **just**
[13] speaking for yourself?
[14] **A:** I'm speaking mostly for myself. I'm speaking
[15] entirely for myself.
[16] **Q:** You're not speaking for Dr. Gyves?
[17] **A:** No. I mean, there were many physicians involved
[18] in her care. Most of them made reference to it but
[19] that **was**, you know, only in the sense of restating the
[20] history and how they got involved, the infectious
[21] disease consult or vascular disease consultant, and I
[22] don't know if Dr. Gyves informed Dr. Collins about
[23] what had transpired.
[24] Did he mention the foreign body in his letters?
[25] **Q:** To?

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[1] **A:** To Dr. Collins.
[2] **Q:** I don't know. I mean, I'm assuming that you
[3] told Dr. Collins that there **was** a foreign body, or am
[4] I missing the whole import of your -
[5] **MR. MISHKIND:** No. You were
[6] asking about assumptions made by Dr. Gyves
[7] and he said he doesn't know what Dr. Gyves
[8] said or specifically what Dr. Gyves may have
[9] said to Dr. Collins I think **was** what Dr.
[10] Lerner's reference **was**.
[11] **A:** Your assumption that everybody's working
[12] hypothesis **was** foreign body infused inflammation and
[13] subsequent stroke is correct. Well, it says in my
[14] letter of February it's the **first** small bowel
[15] obstruction due to retained surgical instrument. So
[16] Dr. Collins -
[17] **Q:** What's that mean?
[18] **A:** That means that there **was** a foreign body, the
[19] one we have been talking about. So that's my first
[20] note. **So** if Dr. Collins didn't know about it from Dr.
[21] Gyves, he did know about it from me.
[22] **Q:** What knowledge do you have as to what type of
[23] recovery Mrs. Doll has made?
[24] **A:** I have the eight months of follow-up until
[25] August 1995. I had very briefly glanced at Mr.

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[1] Mishkind's current records including the
[2] neuropsychological evaluation and the MRI scan. Was
[3] there a repeat visual field?
[4] **THE WITNESS:** I see you have a
[5] visual fields paper.
[6] No, there is another one, the report
[7] I showed you.
[8] **A:** There **was** no change in the visual fields from
[9] Dr. Lystad. No significant change from the first to
[10] the second evaluation and she made a very good motor
[11] recovery, so the rest of it **was** her cognitive and
[12] language examination, and I did get a chance to look
[13] very, very briefly at her neuropsychological
[14] assessment by Dr. Layton.
[15] **Q:** Who is her treating neurologist now, if she does
[16] have one?
[17] **A:** Unknown to me. I believe that part of it **was**
[18] that I **was** not providing active treatment and I think
[19] there may have also been an insurance issue at that
[20] time.
[21] **Q:** I take it that you're not going to be testifying
[22] at trial as to the current status of her health?
[23] **MR. MISHKIND:** Let me **just** - as I
[24] said before, if he does, it's only based
[25] upon an examination that he does at the

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[1] request of the attorney for purposes of
[2] testifying at trial, and that's something
[3] that Dr. Lerner and I need to discuss. But
[4] as he sits here right now, he's not seen
[5] her since 1995, and other than reading Dr.
[6] Layton's reports really has no other
[7] current information relative to her
[8] neurological condition or the residuals of
[9] the stroke.
[10] **THE WITNESS:** That's correct.
[11] **Q:** Have you conferred with Dr. Collins regarding
[12] his observations as to how much Mrs. Doll has returned
[13] to normal?
[14] **A:** No.
[15] **Q:** Do you have any reason to dispute his
[16] observations regarding her recovery?
[17] **MR. MISHKIND:** Objection. Dr.
[18] Collins is not a neurologist and he doesn't
[19] know specifically what Dr. Collins'
[20] conclusions are or the context within which
[21] those conclusions have been expressed. So
[22] there **is** a multitude of reasons for my
[23] objection.
[24] **Q:** I'm just going to show you this letter that Dr.
[25] Collins wrote in January of 1996. You can read it

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[1] yourself.

[2] **MR. MISHKIND:** Let me show an
[3] objection to references, again, to Dr.
[4] Collins' expression that have anything to do
[5] with the neurological condition or recovery
[6] from a neurological condition considering
[7] he's an obstetrician and not a neurologist.

[8] **MR. MOSCARINO:** Your objection is
[9] noted anyway.

[10] **Q:** He's talking about these neurological deficits
[11] and he writes a to-whom-it-may-concern letter on
[12] January 5 which says that these deficits over the
[13] months have completely reversed. She has returned now
[14] to her functional status prior to the operative
[15] procedure. I have had an opportunity to observe Mrs.
[16] Doll throughout this entire process. Her examination
[17] now is completely normal and she has returned back to
[18] full activities including her former employment.

[19] Do you have any reason to dispute what Mrs.
[20] Doll's doctor says there?

[21] **MR. MISHKIND:** Let me show an
[22] objection.

[23] But, Doctor, you go right ahead and
[24] answer his question from a neurological
[25] standpoint.

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[1] **A:** Repeat the question.

[2] **Q:** Do you have any reason to dispute his
[3] observations regarding your patient and his patient?

[4] **A:** Yes.

[5] **Q:** And your reasons are?

[6] **A:** Two. First, this is a letter to an adoption
[7] agency and certainly you would want to put it in as
[8] favorable a light as possible. As a physician, you're
[9] sympathetic to your patients and you want to present
[10] them - you know, certainly as a patient advocate you
[11] want to put a positive spin on it, so to speak.

[12] But more to the point, what data is this based
[13] on? I mean, you know, this is not - I think this is
[14] based on a very different set of assumptions than a
[15] neurologist's or a neuropsychologist's maybe. I mean,
[16] I don't see the primary data that he tested her
[17] language ability or anything else. I mean, I might
[18] write a letter to a - you understand what I'm saying
[19] with regards to letter writing.

[20] **Q:** But as far as your firsthand observation of Mrs.
[21] Doll, they would be over two years old since you
[22] haven't seen her since August of '95?

[23] **A:** That's correct. I do know what I did observe in
[24] August of 1995. She was then eight months after her
[25] stroke and I note that most neurologic deficits that

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[1] are present at that time are likely to continue,
[2] although they may get more mild in degree with time.
[3] **Q:** Would you agree with me that you cannot testify
[4] at trial regarding her current condition without
[5] having a more detailed review of the records and an
[6] examination of her?

[7] **A:** Absolutely.

[8] **Q:** And, I mean, I'm trying to be fair to you but I
[9] take it -

[10] **A:** I would not feel comfortable stating what
[11] somebody's functional status was in 1997 based on an
[12] exam in 1995.

[13] **Q:** And, although it's obvious you conducted the
[14] hospitalization and you commandeered a lot of
[15] different tests, your review of certain materials
[16] today with Mr. Mishkind was more of a cursory fashion;
[17] am I right?

[18] **MR. MISHKIND:** Objection. I'm not
[19] sure what you're trying to suggest in that
[20] question.

[21] **MR. MOSCARINO:** What I'm trying
[22] to suggest is that he doesn't have
[23] sufficient information right now to testify
[24] as to what her current status is and what
[25] her prognosis is absent taking a more

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[1] detailed look at all these records and
[2] examining the patient.

[3] **MR. MISHKIND:** Unless I give him
[4] hypotheticals based upon Dr. Layton's
[5] reports, because that's really the only
[6] thing that he has relative to her current
[7] neurological condition, other than what he
[8] would testify to at eight months post
[9] stroke is likely to be permanent
[10] irrespective of any improvement.
[11] So certainly he can testify as to
[12] what aspects of her neurological condition
[13] may get somewhat better - I think he's
[14] already commented on that - but are not
[15] likely to disappear.

[16] **Q:** Let me ask you this, Doctor. Do you feel
[17] comfortable testifying at trial about this lady's
[18] prognosis and her current condition without examining
[19] her?

[20] **A:** I would certainly prefer to examine her. It
[21] would give me the opportunity to bring my observations
[22] up to date and I think I could - any basis of
[23] truthful observation would have to make reference to
[24] the fact that natural history of stroke is what it is
[25] and my observations are two years old. Certainly it

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[1] is always better to have current data than not have
[2] data.

[3] **Q:** To be fair to the hospital and Dr. Gyves and to
[4] give an accurate recitation of any opinion you have,
[5] don't you think you need to take a history from her as
[6] to what her progress has been in between February of
[7] 1995 when you last saw her and today or the day of the
[8] trial being November of 1997?

[9] **MR. MISHKIND:** Let me object to
[10] that because I can certainly present to
[11] this doctor hypotheticals. The jury is
[12] ultimately to decide the weight to give to
[13] those things, but I've already told you
[14] that I may have him examine her, and even
[15] if I don't, that doesn't mean that the
[16] doctor can't testify as to what aspects are
[17] permanent. He may not be able to talk
[18] about the functional disabilities that she
[19] has, but he can certainly testify as to the
[20] degree of permanent injury to the brain
[21] that **was** caused by the stroke. It's never
[22] going to get better. I think it's an
[23] improper question.

[24] **MR. MOSCARINO:** I think it's
[25] improper for you keep interrupting. I'm

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[1] asking him if he feels comfortable. This
[2] is very discoverable and probative. If he
[3] doesn't feel comfortable, I'm able to
[4] cross-examine him and ask him that
[5] question.

[6] **Q:** Don't you think, to be able to testify at trial
[7] regarding Mrs. Doll's current status of disability, if
[8] any, and her prognosis, that you need to sit down with
[9] her and talk to her and gain a history as to what has
[10] happened to her since February of 1995?

[11] **A:** The operative word is "current." Certainly you
[12] can. Based on what we know about stroke, I would not
[13] be surprised if many of her deficits are permanent.
[14] It would serve mostly to check that those deficits are
[15] still present.

[16] **Q:** Do you know if she is working now?

[17] **A:** I've been informed that she has returned to
[18] work.

[19] **Q:** And you were informed by?

[20] **A:** Dr. Collins' note, Mr. Mishkind.

[21] **Q:** Do you know if she has adopted again?

[22] **A:** I think I saw that in one of the records.

[23] **Q:** Do you know if she has additional children?

[24] **A:** I believe she adopted this child.

[25] **Q:** Do you know what her job duties are now?

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[1] **A:** I believe she returned to the work that she had
[2] previously done in some form.

[3] **Q:** Do you know what her daily routine is?

[4] **A:** I have no idea of her daily routine.

[5] **Q:** And I guess my whole point to this, if you don't
[6] agree with me that's fine, do you believe you need to
[7] examine her and take a history from her own mouth and
[8] perhaps her own husband's mouth in order to comment on
[9] her current health status and her prognosis?

[10] **MR. MISHKIND:** Objection. Asked
[11] and answered.

[12] Go ahead, Doctor.

[13] **A:** I think in terms of some of it, it would
[14] certainly help. I could answer the question with
[15] regard to the prognosis based partly on the August
[16] 1995 evaluation. Certainly prognosis is always a
[17] statistical endeavor and, therefore, it would
[18] certainly help to evaluate her.

[19] **MR. MISHKIND:** I have to make a
[20] telephone call.

[21] **MR. MOSCARINO:** Okay.

[22] (Recess taken.)

[23] **Q:** Doctor, you told me at the beginning of the
[24] deposition that you feel that the retained foreign
[25] body contributed to an inflammatory condition creating

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[1] a hypercoagulability state which directly precipitated
[2] the stroke. Did I quote you correctly?

[3] **A:** That's correct.

[4] **Q:** Was the fact that Mrs. Doll was two weeks
[5] postpartum a cause or contributing factor to her
[6] stroke?

[7] **A:** It **was** a potential contributing factor. Yes, it
[8] **was** a contributing factor.

[9] **Q:** What other contributing factors were there,
[10] other than the **fact** that she **was** two weeks postpartum..

[11] **MR. MISHKIND:** Objection. **Other**
[12] than what he's already said **was** the cause?

[13] **A:** The foreign body.

[14] **Q:** Were there any other causes or contributing
[15] factors?

[16] **A:** Not that we can identify.

[17] **Q:** To what degree **was** the fact that Mrs. Doll **was**
[18] two weeks postpartum a **cause** or contributing factor to
[19] her stroke?

[20] **A:** I don't feel that that **was** a major contributing
[21] factor.

[22] **Q:** I want to make sure that I understand what your
[23] opinion is. The foreign body caused an inflammatory
[24] condition, correct?

[25] **A:** Right.

[1] **Q:** And the inflammatory condition is supported by
 [2] what tests or -
 [3] **A:** Well, the inflammatory condition is essentially
 [4] synonymous with the hypercoagulable state. It's not
 [5] the foreign body. It's the body's reaction to the
 [6] foreign body, the pattern of inflammation and
 [7] thromboses that set up and hypercoagulability that set
 [8] up. Certainly she is predisposed to that being in the
 [9] two-week postpartum state, but I think that this
 [10] greatly exacerbated it.
 [11] **Q:** And is that what you mean when you told me that
 [12] the foreign body set up the pathological cascade that
 [13] caused the stroke?
 [14] **A:** That's correct.
 [15] **Q:** What would you expect Mrs. Doll's condition to
 [16] be, based upon your examination of February 17, 1995,
 [17] as it relates to what Mr. Mishkind said he would be
 [18] asking you at trial?
 [19] **MR. MISHKIND:** Objection. He
 [20] doesn't know the specifics. You mean
 [21] concerning her current disability?
 [22] **MR. MOSCARINO:** Right.
 [23] **MR. MISHKIND:** Well, the question
 [24] is so objectionable.
 [25] But if you can answer it as put, go

[1] ahead, Doctor.
 [2] **Q:** Wait a minute, Doctor. I'm not trying to put
 [3] words in your mouth. I'm not trying to ask you tricky
 [4] questions. I thought Mr. Mishkind said all this stuff
 [5] about you could give me some commentary based on what
 [6] you think she would be. If you can't, then you can't.
 [7] **A:** I think my last evaluation was August 1995.
 [8] **Q:** Well, I will give you the same question based on
 [9] August 1995.
 [10] **MR. MISHKIND:** What did you say?
 [11] Did you say a different date than August
 [12] '95?
 [13] **MR. MOSCARINO:** I said "February."
 [14] **A:** She had difficulty with naming. She had
 [15] language problems. Her reading comprehension was
 [16] fair. She had a visual field deficit. I wrote she
 [17] has obvious difficulty finding correct nouns. Speech
 [18] is empty but at times is fluent. One item which she
 [19] could not remember on confrontation was recalled 20
 [20] minutes later. So I showed her a picture. She could
 [21] not name it. 20 minutes later she said, "Oh, yes.
 [22] That's a clock," or whatever it was. I don't say
 [23] which item it was, and she had a visual field deficit.
 [24] She was partly blind.
 [25] Excuse me.

[1] (Recess taken.)
 [2] **Q:** Just before that break I think I asked you what
 [3] you would expect, if you can tell me what Mrs. Doll's
 [4] current status would be based on your last exam of
 [5] August 11 of 1995. You told me in part what her
 [6] August 11, 1995 history showed.
 [7] **A:** Well, that was maybe pretty much rambling and I
 [8] got cut off in the middle for the break, but the major
 [9] problems that she is having are language difficulties,
 [10] problems with verbal comprehension, word-finding
 [11] difficulties and a visual field deficit. She is
 [12] partly blind.
 [13] **Q:** As of August 11 of 1995?
 [14] **A:** That's correct.
 [15] **Q:** What resolution of those deficits, if any, would
 [16] you expect in the ensuing two years and how many
 [17] months?
 [18] **A:** Two months. It's likely that with detailed
 [19] testing we would be able to demonstrate many of the
 [20] same deficits. The neuro-ophthalmologist felt that -
 [21] he saw her back six months later, also had seen her in
 [22] April and then saw her back and did not find any
 [23] significant change in her visual field deficit. And
 [24] the language problems were partly compensated for but
 [25] were clearly present. Now, they had additional

[1] information, the part of it that I didn't test,
 [2] because I actually had additional information brought
 [3] to me on this August 11, '95 visit which showed her
 [4] progress in her language.
 [5] **Q:** So what does that tell me?
 [6] **A:** It shows that she is still having significant
 [7] problems, particularly with auditory comprehension,
 [8] with fluency, and you can see also the rate of change
 [9] of these things. So that she had clearly improved
 [10] over a period of time, however, she was particularly
 [11] in auditory comprehension, verbal comprehension, the
 [12] commands, she was still having particular difficulty
 [13] in many of these things. So it depends partly on the
 [14] degree to which one really tested her. This is just
 [15] language. There are other aspects of cognition that
 [16] would need to be evaluated separately, things like
 [17] planning, organization, judgment, et cetera.
 [18] **Q:** So -
 [19] **A:** So I would not be terribly surprised if she
 [20] continued to have mild to moderate cognitive deficits.
 [21] **Q:** Is that an opinion you can hold to a reasonable
 [22] degree of medical probability without examining her
 [23] and without looking at her history and these other
 [24] tests that you say should be done?
 [25] **A:** Based on the present nine months after the

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[1] stroke, I think they could be held up to a reasonable
[2] degree of medical certainty.

[3] Q: And to what extent do you expect her to have
[4] these difficulties or what improvement do you expect
[5] in the ensuing two years and two months?

[6] A: It's variable. Some people feel that people can
[7] continue to improve after a stroke up to two years
[8] afterwards, but I would not be surprised if the
[9] deficits remain largely unchanged.

[10] Q: Can someone continue to improve even after two
[11] years from a stroke?

[12] A: I suppose anything is possible, but, in general,
[13] the earlier and quicker the improvement, the better
[14] the overall prognosis is.

[15] Q: If I was to say that Mrs. Doll has made a
[16] remarkable recovery, would you disagree with that?

[17] MR. MISHKIND: Objection, because
[18] your use of the term "remarkable" is a
[19] subjective term and I'm not sure that one
[20] can quantify what the term "remarkable" is.
[21] I will even stipulate that she has made a
[22] good recovery, but that doesn't mean that
[23] well, let me just leave it at that.

[24] Go ahead.
[25] A: Considering where she was on November 16 or 17,

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[1] 1995, she has made a remarkable recovery.

[2] Q: Is that as of August 11 of 1995?

[3] A: At that point she was reasonably stable. We
[4] were beginning to see some plateauing of the rate of
[5] change of her improvement. The most remarkable
[6] recovery had occurred in the immediate
[7] hospitalization, the loss of her weakness of the left
[8] arm and the loss of her third nerve palsy. She is
[9] very lucky to have not suffered motor damage because
[10] of the extensive nature of her stroke.

[11] Q: Physically range of motion wise has she
[12] completely recovered as of August 11, 1995?

[13] A: She appeared normal to casual inspection. Yes,
[14] gait and coordination, Motor examination is basically
[15] a normal examination. So that is right. Patty has
[16] recovered gait and coordination.

[17] Q: Is the recovery of stroke victims at all related
[18] to the age when they have the stroke?

[19] A: Certainly there are changes across the life
[20] span. Certainly patterns of recovery appear to be
[21] better in younger patients, particularly children.

[22] Q: Do you belong to any societies or memberships
[23] regarding stroke?

[24] A: I'm a member of the National Stroke Association.

[25] Q: Are you on the editorial boards regarding stroke

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[1] publications or stroke texts?

[2] A: No.

[3] Q: What portion of your current patients are stroke
[4] patients?

[5] A: I would say about five percent.

[6] Q: I take it your patient population stroke-wise
[7] was higher when you were at St. Luke's?

[8] A: I was doing much more inpatient work.

[9] Q: What percentage of your patient population were
[10] strokes in between the time that you started at St.
[11] Luke's and when you left there?

[12] A: On an inpatient or outpatient basis?

[13] Q: Why don't you just give me one and then the
[14] other.

[15] A: Inpatient we would probably be at least 20 to 30
[16] percent. On an outpatient basis, it's, again,
[17] probably about five percent. Many of these patients
[18] are lost to follow-up from a neurologic standpoint.

[19] Q: Was this an ischemic stroke?

[20] A: I think initially it was ischemic and then later
[21] hemorrhaged into the stroke. I don't believe that this
[22] was actually first a hemorrhage. I think it was an
[23] ischemic stroke which later developed hemorrhagic
[24] transformation.

[25] Q: What happens in an ischemic stroke as opposed to

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[1] a hemorrhagic stroke?

[2] A: Well, the world of stroke can be divided into
[3] ischemic strokes in which a blood vessel is clotted
[4] off and some time after that - there is generally no
[5] blood associated with that. Sometimes occasionally
[6] after that you will find that there is bleeding into
[7] it, which is what I felt happened with Patty Doll as
[8] opposed to, for example, in somebody who is
[9] hypertensive, there may be actual bleeding as a
[10] primary event, as the first event, without their
[11] necessarily being a blockage of a vessel. Very
[12] different pathological entities. So she had an
[13] ischemic event and then with hemorrhagic
[14] transformation.

[15] Q: So what you're saying in layman's terms is she
[16] had some type embolus that traveled from some other
[17] uncertain area of her body that lodged in the, what,
[18] middle cerebral artery?

[19] A: Middle cerebral artery.

[20] Q: And that was an ischemic event?

[21] A: Right.

[22] Q: And then after that she had some type of
[23] bleeding?

[24] A: Right.

[25] Q: Into this or outside of that middle cerebral

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[1] area?
[2] **A:** In the middle territory, the brain watershed,
[3] that territory or that area of the brain that is
[4] served by the left middle cerebral artery.
[5] **Q:** Do you have any understanding as to when in time
[6] this emboli or embolus traveled to her middle cerebral
[7] artery?
[8] **A:** It would appear clinically that that **was** on the
[9] day of the 16th, during the course of the day on the
[10] 16th.
[11] **Q:** After the surgery?
[12] **A:** Surgery **was**, I believe, the 15th.
[13] **Q:** Okay. ~~So~~ the answer is after the surgery?
[14] **A:** Right. There **was** no evidence of neurologic
[15] dysfunction at the time of admission to the hospital,
[16] to St. Luke's Hospital.
[17] **Q:** **As soon** as this embolus travels to the middle
[18] cerebral artery, do you have neurologic dysfunction or
[19] **is** there a delay?
[20] **A:** There may be a short delay but it's essentially
[21] synchronous with it.
[22] **Q:** And just ~~so~~ I'm clear before I leave here,
[23] you're not able to tell me where this embolus came
[24] from?
[25] **A:** There is no specific site.

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[1] **Q:** And you don't have an opinion as to where it
[2] came from?
[3] **A:** Except insofar as what we have reviewed today in
[4] setting up a systemic condition in the blood that
[5] caused it to clot, the answer **is no**. If you're
[6] thinking about, for example, a patient who might have
[7] a problem with their heart valves or shunting or
[8] narrowing of the carotid artery, there is no evidence
[9] of that.
[10] **MR. MOSCARINO:** That's all the
[11] questions I have at this time other than to
[12] reserve counsel for Dr. Gyves' right to
[13] question this witness at a later time.
[14] Also I reserve my right, obviously,
[15] to receive a report from him if he decides
[16] or you decide or you both decide that he's
[17] going to examine this patient and he's
[18] going to give any opinions regarding her
[19] current state of health or prognosis other
[20] than what he's said so far and other than
[21] what is contained in his records.
[22] **MR. MISHKIND:** Trial is a little
[23] over a month or **40** some days. What do you
[24] want to do relative to signature? Can we
[25] agree upon -

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[11] **MR. MOSCARINO:** I'm not going to
[12] have him waive his signature. I will
[13] submit it to him and I'm not going to
[14] insist he do it in seven days like the
[15] crazy rule says.
[16] **MR. MISHKIND:** Off the record.
[17] (Discussion had off the record.)
[18] **MR. MOSCARINO:** Let the record
[19] reflect **28** days for signature, and I assume
[20] that somehow one of us will get the
[21] transcript to him to read?
[22] **MR. MISHKIND:** Yes, absolutely.
[23]
[24] (Deposition concluded at 4:44 p.m.)
[25]
[1] Alan J. Lerner, M.D.

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The State of Ohio,)
) SS: CERTIFICATE
County of Cuyahoga.)
I, Mary Ann Flynn, Notary Public within and for the
State of Ohio, duly commissioned and qualified, do hereby
certify that the within-named ALAN JAY LERNER, M.D. was by me
first duly sworn to testify the truth, the whole truth, and
nothing but the truth in the cause aforesaid; that the
testimony then given by him/her was by me reduced to
stenotypy in the presence of said witness, afterwards
transcribed upon a computer, and that the foregoing is a true
and correct transcript of the testimony so given by him/her
as aforesaid.
I do further certify that this statement was taken at
the time and place in the foregoing caption specified and was
completed without adjournment.
I do further certify that I am not a relative, counsel
or attorney of either party or otherwise interested in the
event of this action.
IN WITNESS WHEREOF, I have hereunto set my hand and
affixed my seal of office at Cleveland, Ohio on this 16th
day of October, 1997.
Mary Ann Flynn, Notary Public
in and for the State of Ohio.
My commission expires 10-22-01.

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