

IN THE CIRCUIT COURT OF ST. LOUIS
STATE OF MISSOURI

RACHELL BROWN, KEITH STRONG and KAEALAH
STRONG, a minor, by her Mother and next
friend, Rachelle Brown,

Plaintiffs,

vs.

SAINT LOUIS UNIVERSITY and JAMES P.
BOEDEKER, M.D.,

Defendants.

Case No. 022-11254

DEPOSITION OF

MARVIN D. NELSON, JR., III, M.D.

February 25, 2005
10:00 a.m.

Children's Hospital
4650 Sunset Boulevard
Los Angeles, California

Cynthia L. Varela, Certified Shorthand Reporter



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APPEARANCES

FOR PLAINTIFFS:

WALTHER/GLENN LAW ASSOCIATES

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(PRESENT BY TELEPHONE)

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ARMSTRONG & TEASDALE

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Deposition of Marvin D. Nelson, Jr. III, M.D.

February 25, 2005

MARVIN D. NELSON, JR., III, M.D.,

having been first duly sworn, testifies as follows:

EXAMINATION

BY-MR. ZWIBELMAN:

Q. Tell me your name, please.

A. Marvin D. Nelson, Jr.

Q. Where do you live, sir?

A. I live in La Canada, California.

Q. I have not been supplied with your curriculum vitae on this case, but I do have one from an old case dated 9/9 of '03. The last article on that was -- the author was Zee, Z-e-e.

Do you have a current CV?

A. Yes, I do.

Q. Can you tell me what needs to be added to the CV that I have to bring it up to date?

A. What was the date on it, 2003?

Q. 9/9/2003?

A. Well, I have 83 publications now.

Q. Let's see. Hold on. Just a



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1 minute. I have -- I have 80.

2 Well, let me ask you this. In
3 terms of the 83 publications -- first of all,
4 the first 80 -- No. 81, the lead author is
5 Wang?

6 A. No. On my current one that's No.
7 76. But none of these publications since
8 then have anything to do with this case.

9 Q. Do any of the publications -- do
10 any of the journal articles before September
11 9, 2003 have anything to do with this case?

12 A. No, I don't think so.

13 Q. Do any of the articles and
14 presentation, invited articles, posters,
15 abstracts, book chapters have any relevance to
16 this case?

17 A. Probably the only one that would
18 be of interest is -- just a second. Let me
19 find it in the book chapters. Just a
20 second. Somehow or another my secretary has
21 eliminated my book chapters.

22 Q. You were part of a seminar, I
23 believe, the neuroimaging of perinatal --

24 A. Yeah. That workshop. That's the
25 only thing that has anything to do with



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1 anything.

2 Q. Do you have a copy of the
3 book?

4 A. I don't have it handy.

5 Q. So that I understand, that is
6 chapter, that was one of a number of lectures
7 that were given you or one of them; is that
8 correct?

9 A. Correct.

10 Q. Okay. When were you first
11 contacted in this case?

12 A. October 2004.

13 Q. By whom were you first contacted?

14 A. Robert Rosenthal.

15 Q. When was the first time that you
16 talked to anyone from Mr. Gearin's office?

17 A. A couple of weeks ago.

18 Q. Who was it that you spoke with?

19 A. I don't recall.

20 Q. Have you ever been involved in any
21 medical/legal cases for Mr. Gearin's office
22 before?

23 A. No.

24 Q. On how many occasions have you
25 testified -- on how many occasions have you



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1 reviewed cases for attorneys in the
2 metropolitan St. Louis area?

3 A. Four or five.

4 Q. Have you ever reviewed cases, given
5 a deposition, or testified for anyone for
6 plaintiff in the metropolitan St. Louis area?

7 A. Not that I recall.

8 Q. When Mr. Rosenthal contacted you,
9 did he ask any particular questions?

10 A. No.

11 Q. Have you written any reports or
12 prepared any notes?

13 A. No.

14 Q. Why don't you tell me the material
15 that you reviewed.

16 A. I've reviewed the imaging studies
17 that were submitted to me on this child,
18 which include a CT; dated November 13, 2000,
19 a cranial ultrasound; dated 14 November 2000,
20 a CT; dated 20 November 2000, and an MRI;
21 dated 27, November 2000. I have the imaging
22 reports that go with that. In addition, I
23 have reviewed the deposition of Mary
24 Edwards-Brown.

25 Q. Okay. Is that the sum total of



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1 everything you have reviewed?

2 A. Yes.

3 Q. Did you ask for any records?

4 A. No.

5 Q. Were any records offered to you,
6 but you decided not to review them?

7 A. Well, my opinions are based on the
8 imaging studies.

9 Q. I appreciate that.

10 But I know in previous cases where
11 you worked with Mr. Rosenthal, he supplied
12 you with all of the medical records.

13 Did he supply you with the medical
14 records in this case and you just decided not
15 to review them?

16 A. No. They were not sent to me.
17 And I did not request them.

18 Q. Now, in terms of -- you talked to
19 someone from Mr. Gearin's office for the
20 first time a couple of weeks ago?

21 A. I believe so, yes.

22 Q. Did you ever talk to Mr. Rosenthal
23 at a time where a representative of Mr.
24 Gearin was either present in the office or on
25 a conference call or anything like that?



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1 A. Probably. But I don't remember
2 the specifics.

3 Q. Do you remember when that
4 conversation was?

5 A. I don't remember specifically.

6 Q. Okay.

7 A. Several weeks ago.

8 Q. That was several weeks ago also?

9 A. Yeah. At least.

10 Q. Okay. How many times have you
11 talked with Mr. Gearin's office?

12 A. Prior to today?

13 Q. Yes, sir.

14 A. Once I think.

15 Q. How long did that conversation
16 last?

17 A. About 30 minutes.

18 Q. How long was your discussion today?

19 A. About 30 minutes.

20 Q. Do you believe you have sufficient
21 information to render opinions in this case?

22 A. Yes.

23 Q. In preparation for this deposition
24 or in preparation for your review of this
25 case, have you looked at any medical



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1 literature?

2 A. No.

3 Q. Again, you said you have not
4 written any reports.

5 Did you make any notes on Dr.
6 Edwards-Brown's deposition?

7 A. No.

8 Q. Did you highlight any part of her
9 deposition?

10 A. No.

11 Q. We'll get into it.

12 But is there any part of Dr.
13 Edwards' deposition testimony that you disagree
14 with?

15 A. Well, essentially I agree with the
16 timing. I think the injury is at least 48
17 to 72 hours old relative to the first CT
18 scan. I don't think that it is related to
19 forceps use.

20 Q. Okay. Doctor, would you be kind
21 enough to look at the CAT scan, the film
22 itself, dated 11/13/00?

23 A. Okay. I have that up.

24 Q. You review CAT scans of neonates
25 on a regular basis, do you not?



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1 A. Yes, I do.

2 Q. If you were to review this film
3 and you would have changed history of
4 intracranial hemorrhage, would you dictate to
5 the court reporter out loud how you would
6 interpret this film?

7 A. Okay. Well, I think that there is
8 hemorrhage in the scalp over the right
9 frontal region. There's no CT evidence of a
10 skull fracture. There's evidence of early
11 swelling in both frontal lobes and in the
12 left parietal region.

13 There's a small amount of
14 hemorrhage that's present between the
15 hemisphere and along the tentorium. So my
16 impression would be that this is an early
17 cerebral infarction involving both frontal
18 lobes and left parietal regions.

19 Q. Doctor, is there cerebral
20 infarction involving --

21 A. Both left and right frontal lobes
22 and left parietal lobes.

23 Q. If you look, sir, at the report on
24 that film, I have it as being on page 87 of
25 the Cardinal Glennon records.



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1 A. Well, I have a copy of the report
2 in front of me.

3 Q. Is there anything on the report
4 that you disagree with or that you would add
5 or delete?

6 A. Well, they don't seem to pick up
7 on the fact there's the swelling and early
8 infarction. They just talk about subarachnoid
9 and subdural hemorrhage. There may be a
10 little subarachnoid hemorrhage. There
11 certainly is a small amount of subdural
12 hemorrhage.

13 He talks about the scalp swelling,
14 but he doesn't really mention that there's
15 the early edema in both frontal lobes and
16 left parietal regions suggesting an early
17 infarct. But that's clearly present on the
18 films.

19 Q. It says on there, "the ventricles
20 are slightly small."

21 Did you find the ventricles are
22 small?

23 A. Yes. But that's a normal event
24 after birth.

25 Q. The early swelling that you



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1 described, can you render an opinion based on
2 reasonable medical certainty as to the cause
3 of that early swelling?

4 A. No.

5 Q. Can you tell from this one film
6 how long that swelling has -- well, when the
7 incident occurred that gave rise to the
8 swelling?

9 A. Well, I would agree with Dr.
10 Edwards and say that it's at least one to
11 three days prior to the CT scan. And then
12 when you take into effect the other imaging
13 studies that were done --

14 Q. I'm talking about this particular
15 one.

16 A. Okay.

17 Q. Okay?

18 A. One to three days before.

19 Q. So your thought is that for the
20 first time -- that's 24 to 72 hours?

21 A. Correct.

22 Q. Okay. And I guess from the one
23 film -- strike that.

24 Is there anything else that you
25 would include in your report of the 11/13



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1 film other than what we have talked about
2 today?

3 A. No.

4 Q. Okay. If you look at the film,
5 does the film have a time on it?

6 A. Yes.

7 Q. What is the time on the various
8 films?

9 A. 15, 16 hours.

10 Q. Okay. So that's roughly 24 hours
11 post-birth?

12 A. 22.

13 Q. You're right. I'm sorry. Okay.
14 All right. If you look at --
15 well, let's go back a minute. The CAT scan
16 that was done on -- well, the film that was
17 done on 11/13 is a CAT scan; is that
18 correct?

19 A. Yes.

20 Q. How sensitive is a CAT scan at 22
21 hours of birth in picking up edema?

22 A. Fairly sensitive.

23 Q. Is it more or less sensitive than
24 to a neonatal ultrasound?

25 A. I would prefer an ultrasound



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1 looking for parenchymal injury.

2 Q. Was there parenchymal injury on
3 this film?

4 A. Yes.

5 Q. If you look, sir, at -- would you
6 put the film of 11/14, take a look at it?

7 A. The ultrasound?

8 Q. Yes, sir.

9 A. Okay.

10 Q. All right. Now, first of all, if
11 you would have read this ultrasound, would
12 you have compared it to the CAT scan?

13 A. Yes.

14 Q. Do you know if the doctor at
15 Cardinal Glennon compared it?

16 A. No.

17 Q. They did not or you do not know?

18 A. There's no indication in their
19 report that they did. So I don't know.

20 Q. If, in fact, a physician compares
21 it, would it be standard of care to mention
22 the comparison?

23 A. Depends on how they have their
24 services set up.

25 Q. Okay. How did they have their



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1 services set up, as far as you know?

2 A. I don't know.

3 Q. Okay. So will you, first of all,
4 look at the neurosonogram in isolation --
5 well, in terms of the report of the
6 neurosonogram, which appears in my records on
7 page 88 of the Cardinal Glennon records, is
8 there any indication that they compared the
9 two films?

10 A. No.

11 Q. Okay. If you, first of all, take
12 the 11/14 ultrasound and interpret it in
13 isolation for me, please.

14 A. Well, there is increased
15 echogenicity seen in the left parietal and
16 frontal regions, and also in the right
17 frontal region that's suggestive of parenchymal
18 injury. The ventricles are slit-like. And
19 there is some question of increased
20 echogenicity in the lamic region on the left.
21 I'm sorry. It's on the right.

22 Q. Anything else you see?

23 A. My impression would be this is an
24 evolving cerebral infarction. And in and of
25 itself it's at least 48 hours old on this



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stand to produce the echogenicity.

Q. Okay. Can you tell, sir -- first of all, now will you compare the ultrasound of 11/14 with the CT of 11/13 and tell me how you would interpret the two together?

A. Well, I think the ultrasound is consistent with what was seen on the CT in terms of the areas that are injured. The fact that there is already echogenicity means that it's at least 48 hours old or older.

Q. When you say "echogenicity," did you say 24 to 72 hours?

A. That's what I said on the CT.

Q. Okay.

A. The ultrasound is at least 48 hours old or probably several days beyond that.

Q. Okay. You're saying this was -- the 11/14 ultrasound was done at how many hours of life, sir?

A. Let's see. It was done at roughly 2:00 p.m. on the 14th. So, let's see.

Q. 45 hours of life?

A. Yes.

Q. Okay. Did you say that there was



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1 an increased echogenicity?

2 A. Yeah. Increased echogenicity in
3 the brain parenchyma.

4 Q. Based on the two films together,
5 can you render an opinion as to when it was
6 that the insult occurred that caused this
7 problem?

8 A. Yes.

9 Q. What is your opinion, sir?

10 A. I think that this is a -- the
11 ultrasound establishes that this is already an
12 ongoing well-established injury. I would say
13 that it's at least -- that it occurred at
14 least 24 to 48 hours before birth.

15 Q. Based on those two?

16 A. Yes.

17 Q. Tell me why you come up with the
18 24 to 48 hour figure based upon these two?

19 A. Based on the echogenicity on the
20 parenchyma. Based on the fact that the
21 ventricles are still closed. They're not
22 opening up. Based on the attenuation values
23 on the CT scan from the day before.

24 Q. The first one is normal in terms
25 -- you say the first film shows normal



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1 ventricles, and these show slit-like
2 ventricles; is that correct?

3 A. No. I said the ventricles were
4 small on the first CT.

5 Q. But didn't you say that was a
6 normal variance?

7 A. They can be. It's normal to have
8 small ventricles right after birth.

9 Q. Now, they're slit-like; is that
10 right?

11 A. Yeah. They remain small.

12 Q. Well, would you say that the
13 ventricles have decreased in size or are the
14 same size?

15 A. I think they have remained small.

16 Q. One is described as slightly small
17 and one is described by you slit-like. But
18 you're interpreting those as being the same?

19 A. Yes.

20 Q. Okay. If, in fact, you were
21 interpreting the CT scan of 11/13, you would
22 have used the phrase "slit-like ventricles"?

23 A. No. I usually only use that term
24 "slit-like ventricles" on ultrasounds.

25 Q. Okay. You said "it was an



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1 evolving cerebral infarct." Are you in an
2 position to render an opinion as to the cause
3 of that cerebral infarct?

4 A. No.

5 Q. Can hypoxia ischemia cause a
6 cerebral infarct?

7 A. (No response)

8 Q. Or would that be beyond your field
9 of expertise?

10 A. Well, I'm not going to render an
11 opinion as to the cause of the infarction.

12 Q. Okay. And then your interpretation
13 of the CT of 11/20, which is roughly seven
14 and a half days old; is that right?

15 A. Yes. Go ahead.

16 Q. This is a CT that's done at
17 roughly seven and a half days of life; is
18 that right?

19 A. Well, seven hours short of eight
20 days.

21 Q. Okay. Can you render your
22 interpretation of this film?

23 A. Yes. I think it's consistent with
24 the prior scans in terms of evolving
25 infarctions in the frontal lobes and left



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1 parietal regions.

2 Q. Do you see, sir, on that any
3 permanent damage?

4 A. Yes.

5 Q. Okay. And based upon what you see
6 on this film of almost eight days, is your
7 opinion that it occurred at least 48 -- I'm
8 sorry. At least 24 to 48 hours before birth
9 remain the same?

10 A. Yes.

11 Q. Okay. And then the film -- the
12 MRI of 11/27, did that modify your opinion at
13 all?

14 A. No. I think it's consistent with
15 the timing of what we previously stated.

16 Q. Doctor, it is your opinion based
17 upon all of the films that you read that
18 this is a cerebral infarct that occurred
19 between 24 and 48 hours before birth; is that
20 right?

21 A. Correct.

22 Q. Okay. Now, you are not going to
23 render any opinions as to the cause of the
24 cerebral infarct; is that correct?

25 A. That's correct.



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1 Q. Are you going to render any
2 opinions as to the kind of injuries you would
3 expect this child to have with the cerebral
4 infarct that you see on these films?

5 A. You mean the neurologic outcome?

6 Q. Yes, sir.

7 A. No. I'll leave that for the
8 appropriate experts.

9 Q. I don't mean to cut you off, but
10 basically your opinion is purely and simply a
11 cerebral infarct 24 to 48 hours before birth,
12 nothing more, nothing less; is that correct?

13 A. Yes.

14 Q. Okay. Those are all of your
15 opinions in this case?

16 A. And that this is not consistent
17 with a forceps injury.

18 Q. Okay. There was a mention in one
19 of the films about a subarachnoid hemorrhage.

20 Did you see that?

21 A. Yes.

22 Q. Sir?

23 A. Yes.

24 Q. Would a subarachnoid hemorrhage
25 injury be consistent with a forceps injury?



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1 A. Not in and of itself. A
2 subarachnoid hemorrhage occurs virtually with
3 every delivery.

4 Q. Okay. Sir, in your practice --
5 well, let's go back.

6 When you interpreted these films
7 for me, part of your interpretation, your
8 formal interpretation did not include the
9 timing of when it occurred; is that correct?

10 A. Correct.

11 Q. As part of your regular dictation
12 of films on neonates, do you normally not
13 include the time?

14 A. That's correct. I normally do
15 not.

16 Q. Under what circumstance in your
17 practice would you discuss timing with a
18 referring physician?

19 A. Only if it has any particular
20 significance into the care and treatment of
21 child. That's not normally something that
22 comes up.

23 Q. Okay. So basically the terms of
24 timing of an injury is really something that
25 occurs primarily in medical/legal matters but



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1 not as part of your regular daily practice?

2 A. That's correct.

3 Q. Okay. Do you know a Dr. Robert
4 C. McKinstry III?

5 A. What kind of a doctor is he?

6 Q. He's a pediatric neuroradiologist
7 at Mallinckrodt Institute of Radiology?

8 A. I don't recall having met him.

9 Q. Okay. In terms of your
10 medical/legal involvement, it's my
11 understanding that you have been reviewing
12 cases since 1987 through -- 1987-'88; is that
13 right?

14 A. Correct.

15 Q. How many cases a year do you
16 review?

17 A. About 50 cases a year.

18 Q. And you give about ten depositions?

19 A. That's correct.

20 Q. What is your charge for your
21 review?

22 A. 500 an hour.

23 Q. And for deposition?

24 A. The same.

25 Q. Well, you're going to be giving



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1 your testimony next Wednesday, I be'
2 -- Wednesday or Thursday. Will it
3 hour?

4 A. Yes.

5 Q. Give me some idea, sir, as to ho..
6 much time you have spent on this case?

7 A. Up until now?

8 Q. Yes, sir.

9 A. Two, two and half hours.

10 Q. And that includes talking for --

11 A. That includes this morning.

12 Q. Okay. In terms of your
13 consultation cases, about 75 percent are for
14 the defendants?

15 A. Correct.

16 Q. Your depositions are about 90
17 percent; is that right?

18 A. Defense, yes.

19 Q. And almost all of your trials have
20 been for the defendants; is that right?

21 A. Except for five or six.

22 Q. Okay. In terms of your current
23 work, approximately 10 or 15 percent of your
24 time is spent interpreting images of neonates;
25 is that right?



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1 A. My daily practice?

2 Q. Yes, sir.

3 A. That's a fair statement. But I do
4 100 percent neuroradiology.

5 Q. I understand. I'm not trying to
6 -- I just want to find out of pediatric
7 radiology you do, most of it does not involve
8 neonates; right?

9 A. (No response)

10 Q. 85 to 90 percent is not neonates;
11 is that correct?

12 A. Right. A neonate defined as a
13 child up to 30 days old.

14 Q. I hear you.

15 I don't have anything else, sir.

16 MS. BYRD: Okay. Our court
17 reporter is smiling.

18 BY MR. ZWIBELMAN:

19 Q. I have another question, Doctor.
20 You have given me all of your opinions, have
21 you not.

22 A. Yes, I have.

23 MR. ZWIBELMAN: Thanks.

24 MS. BYRD: Are you okay to waive
25 your signature, Doctor?



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1 THE WITNESS: Yes.

2 MS. BYRD: Is that okay with you,
3 Myron?

4 MR. ZWIBELMAN: I have no
5 objection to waiving signature.

6 If the court reporter has any
7 questions on the spelling, would she please
8 ask the doctor before she leaves.

9 That's fine.

10 MS. BYRD: We'll do that.

11 MR. ZWIBELMAN: Thank you.

12 (The deposition was concluded at
13 10:35 a.m.)
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REPORTER'S CERTIFICATE

STATE OF CALIFORNIA)

)SS

COUNTY OF LOS ANGELES)

I, CYNTHIA L. VARELA, a Certified
Shorthand Reporter No. 5917 do hereby certify:

That the foregoing proceedings were
taken before me at the time and place therein
set forth, at which time the witness, MARVIN
D. NELSON, JR., M.D., was put under oath by
me;

That the testimony of the witness
and all objections made at the time of the
examination were recorded stenographically by
me and were thereafter transcribed;

I further certify that I am
neither counsel for nor related to any party
to said action.

Dated this 28 day of

February, 2005.

Cynthia L. Varela

Cynthia L. Varela, CSR No. 5917

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