

1

1 IN THE COURT OF COMMON PLEAS
2 CUYAHOGA COUNTY, OHIO
3 RODNEY L. McCLENDON,
4 Plaintiff,
5 JUDGE McGINTY
6 -vs- CASE NO. 374136
7 KAISER FOUNDATION HEALTH
8 PLAN OF OHIO, et al.,
9 Defendants.
10 ---
11 Deposition of PETER O'DONOVAN, M.D., taken as if
12 upon cross-examination before Laura L. Ware, a
13 Notary Public within and for the State of Ohio, at
14 The Cleveland Clinic Foundation, Radiology
15 Department - Hb6, 9500 Euclid Avenue, Cleveland,
16 Ohio, at 4:15 p.m. on Wednesday, July 28, 1999,
17 pursuant to notice and/or stipulations of counsel,
18 on behalf of the Plaintiff in this cause.
19
20 ---
21 WARE REPORTING SERVICE
22 3860 WOOSTER ROAD
23 ROCKY RIVER, OH 44116
24 (216) 533-7606 FAX (440) 333-0745
25

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1 APPEARANCES:
2 Mark W. Ruf, Esq.
3 Hoyt Block Building, Suite 300
4 700 West St. Clair Avenue
5 Cleveland, Ohio 44113
6 (216) 687-1999,
7 On behalf of the Plaintiff;
8 Douglas G. Leak, Esq.
9 Mazanec, Raskin & Ryder
10 100 Franklin's Row
11 34305 Solon Road
12 Cleveland, Ohio 44139
13 (440) 248-7906,
14 On behalf of the Defendant
15 Kaiser Foundation Health Plan of Ohio;
16 Victoria L. Vance, Esq.
17 Nicholas M. Miller, Esq.
18 Arter & Hadden
19 1100 Huntington Building
20 925 Euclid Avenue
21 Cleveland, Ohio 44115
22 (216) 696-1100,
23 On behalf of the Defendant
24 The Cleveland Clinic Foundation.
25

WITNESS INDEX

PAGE

18 CROSS-EXAMINATION 3
19 BY MR. RUF
20 CROSS-EXAMINATION 40
21 BY MR. LEAK
22 RECROSS-EXAMINATION 48
23 BY MR. RUF
24 DIRECT EXAMINATION 54
25 BY MS. VANCE

3

1 PETER O'DONOVAN, M.D., of lawful age, called
2 by the Plaintiff for the purpose of
3 cross-examination, as provided by the Rules of Civil
4 Procedure, being by me first duly sworn, as
5 hereinafter certified, deposed and said as follows:
6 CROSS-EXAMINATION OF PETER O'DONOVAN, M.D.
7 BY MR. RUF:
8 Q. Could you please state your name and spell your
9 name.
10 A. Peter B. O'Donovan, O, apostrophe, D-O-N-O-V-A-N.
11 Q. What is your address, Dr. O'Donovan?
12 A. 2243 Tudor, T-U-D-O-R, Drive, Cleveland Heights,
13 Ohio, 44106.
14 Q. Doctor, my name is Mark Ruf. I represent Rodney
15 McClendon in a lawsuit that's been brought against
16 Kaiser and the Cleveland Clinic.
17 If at any time I ask you a question and you do
18 not understand my question, please tell me. If you
19 give me an answer to a question, I'll assume that
20 you understood the question. Okay?
21 A. (Indicating.)
22 Q. Also, you need to give verbal answers.
23 A. Yes.
24 Q. Who is your employer?
25 A. The Cleveland Clinic Foundation.

4

1 Q. How long have you been employed by The Cleveland
2 Clinic Foundation?
3 A. Twenty-four years.
4 Q. What is your position with the Cleveland Clinic?
5 A. I'm a thoracic radiologist in the department of
6 radiology.
7 Q. What does it mean to be a thoracic radiologist?
8 A. A radiologist is one who interprets images, a
9 thoracic radiologist is one who has a subspecialty
10 interest in radiology of the chest.
11 Q. Is your practice limited to evaluating x-rays of the
12 chest or do you also evaluate x-rays of other areas
13 of the body?
14 A. I also evaluate x-rays of other areas.
15 Q. It's just that thoracic radiology is of particular
16 interest to you?
17 A. It is of particular interest to me.
18 Q. Are you board certified in an area of medicine?
19 A. I'm board certified as a diagnostic radiologist.
20 Q. When were you board certified?
21 A. 1979.
22 Q. When were you licensed to practice medicine in the
23 State of Ohio?
24 A. 1977.
25 Q. Has your license ever been subject to any type of

5

1 disciplinary action?
 2 MS. VANCE: Objection. You can answer.
 3 Q. Go ahead.
 4 A. No.
 5 Q. Do you hold any other special certifications in
 6 radiology, other than being board certified in
 7 diagnostic radiology?
 8 A. No.
 9 Q. Do you know approximately how many films you read
 10 per day?
 11 A. Average, I'd say a hundred.
 12 Q. Generally, do you have any interaction with the
 13 patient?
 14 MS. VANCE: Now, you're not limiting
 15 yourself to an ER setting?
 16 MR. RUF: No.
 17 MS. VANCE: You're just throwing the
 18 question wide open.
 19 A. Obviously, when doing some procedures, I do some
 20 procedures, the answer would be yes. This would be
 21 a small number of cases in comparison to the number
 22 of films that I interpret.
 23 Q. Are you involved in the actual taking of the films
 24 or does someone else generally do that?
 25 A. Someone else generally does that.

6

1 Q. What's the title for the person that generally does
 2 that?
 3 A. Radiographer.
 4 Q. Were you involved --
 5 A. Some people would refer to them as a radiologic
 6 technologist.
 7 Q. Were you involved in the actual taking of films of
 8 Rodney McClendon?
 9 A. No.
 10 Q. Do you know who the radiographer was that was
 11 involved in that process?
 12 A. No.
 13 Q. Is there any way that that can be determined?
 14 A. Yes.
 15 Q. How would that be determined?
 16 A. It will be indicated on the radiographs.
 17 Q. How can you determine from the radiographs who the
 18 radiographer is?
 19 A. They each have a specific identifying letter or
 20 number or combination of numbers and letters that
 21 they're required to put on the film.
 22 Q. Is the radiographer also put on the written report?
 23 A. No.
 24 Q. I'm handing you what's been marked Plaintiff's
 25 Exhibits 1 through 3. I believe they're the films

7

1 of February 6th. Could you take a look at those and
 2 tell me the number for the radiographer?
 3 A. It was taken by a student, student number 16, and it
 4 was supervised, I believe, by there's a J on here
 5 and then on the side it's T.J. I don't know who that
 6 is, but the J would indicate an individual who would
 7 be responsible, I suspect, for supervising S16.
 8 Q. You said the student's number is S16?
 9 A. S for student, student number 16.
 10 Q. Do you know what type of student actually took the
 11 films?
 12 A. A student of radiologic technology.
 13 Q. So would that be an intern or resident?
 14 A. No, no, it's a student who is preparing to take
 15 board certification to become a technologist, not to
 16 become a radiologist, but to become a technologist.
 17 - - - -
 18 (Pager interruption.)
 19 - - - -
 20 MS. VANCE: Do you need to take that?
 21 THE WITNESS: I do, actually.
 22 - - - -
 23 (Thereupon, a recess was had.)
 24 - - - -
 25 Q. Before we took the break, I believe you said that a

8

1 student who was training to be a radiologic
 2 technician actually took the films?
 3 A. Uh-huh.
 4 Q. And that student was supervised by someone?
 5 A. Yeah, I believe that's what the U or the J that's on
 6 here -- T.J, looks like, T.J on here.
 7 Q. Do you know what the identifying number was for the
 8 supervising person?
 9 A. Well, the supervisors would be technologists that
 10 are on the staff. The training program is run out
 11 of Tri-C, I believe, so the letters would indicate
 12 one of our employees, technologists, who are
 13 employed by the department. And that's their
 14 identifying character is T.J. I don't know exactly
 15 who that is, but there would be a master list that
 16 would indicate who that is.
 17 Q. So T.J is the identification for the full-time
 18 Cleveland Clinic employee that was involved in to
 19 actual taking of the films?
 20 A. Correct.
 21 Q. Do you know how x-rays are ordered from the Clinic
 22 Radiology Department?
 23 MS. VANCE: Objection for relevance.
 24 A. From the typical radiology department, I mean, we
 25 wouldn't normally be ordering x-rays.

9

1 Q. Right. If another physician wants to order x-rays,
 2 how is that accomplished?
 3 A. I believe there's a system called order entry where
 4 the information is entered on the computer, but I'm
 5 not really familiar with it. It's not my area.
 6 Q. So you really don't have direct knowledge as to how
 7 x-rays are ordered and how the orders are carried
 8 out?
 9 A. Correct, that's not my area of expertise.
 10 Q. And so you are also not aware of what documentation
 11 is produced when x-rays are ordered?
 12 MS. VANCE: I'm going to object. We're
 13 talking generally, or do you want to talk about
 14 the Kaiser system? Because I'll tell you if
 15 you're talking about a Kaiser patient through
 16 the Kaiser ED, that changes things. Right now
 17 I think he's answering questions in-house if
 18 the patient was in the Clinic.
 19 Q. Let's go back. If there is a Kaiser patient in the
 20 Kaiser ER, do you know how x-rays are ordered from
 21 the Cleveland Clinic Radiology Department?
 22 A. No.
 23 Q. Do you know what documentation would be produced
 24 under that scenario?
 25 A. No. I don't know the full extent of it. I know

10

1 what I would receive when I interpret the films, so
 2 I know that that would be part of the documentation,
 3 but what else is available, I don't know.
 4 Q. What do you receive?
 5 A. A three-by-five index card with the patient's name,
 6 their Clinic number, the accession number of the
 7 case, the patient's age and sex, the examination
 8 itself, descriptors indicating what the examination
 9 is, and there's a space on there for some clinical
 10 information which is not always filled out but it's
 11 there.
 12 Q. Do you know what the three-by-five index card is
 13 called; is that a requisition form?
 14 A. Yeah, I suppose an electronically generated
 15 requisition form.
 16 Q. What information is put on the card about the
 17 examination itself?
 18 A. Descriptors.
 19 Q. What type of descriptors?
 20 A. To indicate what the examination is. For example,
 21 in this case it was a forearm, so it would say
 22 forearm, right, left, two views.
 23 Q. Is the information on the three-by-five index card
 24 kept in the Cleveland Clinic computer system?
 25 A. I mean, I'm sure that's -- the card is generated by

11

1 the computer. How long the records are kept in the
 2 computer, I don't know what the statute of
 3 limitations is on that, but I'm sure it's there for
 4 a while anyhow.
 5 Q. Do you know if there was a hard copy of the
 6 three-by-five index card kept anywhere?
 7 A. I don't think so.
 8 Q. Do you know what happens to the three-by-five index
 9 card after the films are read?
 10 A. I toss it in the trash.
 11 Q. Is there any other information that you receive,
 12 other than the films and the three-by-five index
 13 card?
 14 MS. VANCE: Same scenario, Kaiser
 15 patient?
 16 MR. RUF: Yes.
 17 A. Yeah, films come with an envelope and on the outside
 18 of the envelope is a little pocket and there may be
 19 a little piece of paper. If it's a Kaiser patient
 20 there's usually a little piece of paper on there
 21 which has a variable amount of information on it.
 22 Q. Is that kept with the films after you read the
 23 films?
 24 A. Yeah, it stays in the patient's folder because we
 25 put our interpretation on there to make, you know,

12

1 make sure the physician sees it, and we actually
 2 sign what we think and put our initials and slide it
 3 into the compartment on the front of the envelope.
 4 Q. And what information is on that document?
 5 A. Usually patient's name and maybe something like
 6 question mark fracture or rule out fracture,
 7 depending upon, question mark pneumonia, depending
 8 upon what the area that's been x-rayed is.
 9 Q. As the radiologist do you check to see whether the
 10 views that are ordered are actually taken?
 11 A. I assume the views that are -- do I check, no.
 12 Q. Do you know whose responsibility that is?
 13 A. Do I know whose responsibility it is to check to see
 14 that the views that are taken are the views that are
 15 ordered?
 16 Q. Yes.
 17 A. The individual that would take the films would take
 18 the films that were ordered. The technologist would
 19 take the films that were ordered.
 20 Q. As a radiologist, do you have any discretion in what
 21 views are actually taken?
 22 A. Do I have any discretion? Can you maybe --
 23 Q. In other words, say you have some films and you
 24 decide that some additional views might be
 25 warranted; is that something that you do as a

13

1 radiologist?

2 A. Oh, if I decide that additional views are warranted,

3 I have the opportunity to request them, yes.

4 Q. And what might cause you to decide that additional

5 views are warranted?

6 A. For example, if you questioned whether or not there

7 was an abnormality on, say, a bone film, because

8 we're all a little different and subject to our own

9 genetic makeup, one might sometimes request the

10 complementary view of the other -- the opposite body

11 part, in this case the other arm, for example, to

12 see if what you were saying was -- what you were

13 seeing was a normal anatomic variant or truly

14 represented a pathologic entity.

15 Q. Do you review the clinical symptoms of a patient?

16 A. Do I read the information that's on the

17 three-by-five card before I read the film? Yes.

18 Q. Is there information on the three-by-five card about

19 the patient's clinical symptoms?

20 A. Sometimes yes, sometimes no.

21 Q. Do you know if there was any clinical information

22 for Rodney McClendon on the three-by-five card for

23 him?

24 A. I couldn't tell you off the top of my head.

25 Q. Do you agree that a fracture line is the most

14

1 visible if it is parallel to the x-ray beam?

2 A. Do I agree that if a fracture line is parallel to

3 the x-ray beam it is most visible? I think

4 fractures that are most readily apparent on x-ray

5 are fractures that are comminuted, where there are

6 multiple fragments, you know, the easiest to

7 recognize, which is, I assume, is the direction that

8 you're going. Am I correct?

9 Q. Well, let me ask this. Can a fracture be invisible

10 when it is 90 degrees to the x-ray beam?

11 A. Can it be invisible when it's 90 degrees to the

12 x-ray beam? Now, obviously I haven't tested this

13 theory, but I suspect that it could be.

14 Q. Well, do you agree that --

15 A. You can certainly have a fracture and be unable to

16 see it on the x-ray.

17 Q. Okay. Well, let's talk about an elbow specifically

18 then.

19 A. Okay.

20 Q. For an elbow do you believe that a fracture may be

21 visible on one view but it may not be visible on

22 another view?

23 A. Correct.

24 Q. And what views are available for the elbow?

25 A. The standard radiographic examination of the elbow

15

1 would be an AP and lateral projection.

2 Q. And when you talk about an AP view, could you

3 describe what view that is?

4 A. That would be with the forearm placed flat on the

5 table, the beam centered over the elbow joint, the

6 film placed behind the elbow joint and the beam

7 coming down this way.

8 Q. Okay.

9 A. That would be the AP.

10 Q. Could you take a look at Plaintiff's Exhibits 1

11 through 3 and tell me if any of those would show the

12 AP view of a forearm?

13 MS. VANCE: Forearm now?

14 A. Yeah. That's an AP view of the forearm right

15 there.

16 Q. I want to go back to the elbow. Could you describe

17 how a lateral view is taken of the elbow?

18 MS. VANCE: I think he just did.

19 A. The lateral view is taken generally --

20 MS. VANCE: I'm sorry.

21 A. -- with 90 degrees flexion.

22 Q. Do you agree that a fracture of a radial head may

23 not be visible on a view of the forearm?

24 A. I do.

25 Q. Do you have the ability to check on an order for

16

1 x-rays by accessing that information through the

2 Clinic computer system?

3 A. Yes.

4 Q. Is that something that you regularly do?

5 A. No.

6 MS. VANCE: Again, are you talking

7 about a Kaiser patient or a regular house --

8 MR. RUF: A Kaiser patient.

9 MS. VANCE: Let's ask the question

10 again.

11 Q. Let's assume for the rest of the deposition we're

12 talking specifically about Kaiser patients.

13 MS. VANCE: Can you ask that question

14 again then just so it's clear on the record.

15 MR. RUF: Could you read back the

16 question, please.

17 - - -

18 (Thereupon, the requested portion of

19 the record was read by the Notary.)

20 - - -

21 Q. For a Kaiser patient.

22 A. I --

23 MS. VANCE: That's calling for does the

24 Clinic computer interface with Kaiser

25 information, that's sort of what he's asking.

17

1 A. I don't know the answer to that.
 2 Q. Have you ever had a Kaiser patient come down to the
 3 radiology department and you actually checked on the
 4 views that were ordered by the Kaiser physician?

5 MS. VANCE: Objection.

6 A. No.

7 Q. Do you know if it is the standard practice of the
 8 radiology department only to take the views that are
 9 ordered by Kaiser physicians or the Kaiser emergency
 10 room?

11 MS. VANCE: Laura, can you just repeat

12 that.

13 - - - -

14 (Thereupon, the requested portion of
 15 the record was read by the Notary.)

16 - - - -

17 MS. VANCE: Objection.

18 MR. LEAK: Objection.

19 Q. Go ahead.

20 A. I really am not sure that I know the answer to
 21 that.

22 Q. Would you agree that the standard of care for the
 23 Clinic Radiology Department requires the radiology
 24 department to take the x-rays that are ordered?

25 MS. VANCE: I'm going to object.

18

1 You're asking about the standard of care for
 2 the department. I'm not sure if there is such
 3 a thing. He's a radiologist, he can speak to
 4 his standard of care.

5 Q. If you need to qualify your answer, go ahead.

6 A. I mean, I think what you're looking for is the
 7 standard of care for a technologist, which I'm not
 8 really qualified to speak to. I can speak to the
 9 standard of care from the radiologist's standpoint.

10 Q. Please do that.

11 A. Which is, I mean, my job is to interpret the
 12 radiographs, define whether or not an abnormality is
 13 present and report on it.

14 Q. So the standard of care for you as a radiologist is
 15 only to interpret the films that have been given to
 16 you, correct?

17 A. Correct. I leave out the only. I would say the
 18 standard of care for the radiologist is to interpret
 19 the films that have been given to him.

20 Q. Does the standard of care also require you to
 21 determine if the views that have been taken need to
 22 be supplemented?

23 A. In your interpretation, you know, if you feel that
 24 you need more information, you can ask for more
 25 views.

19

1 Q. How often do you do that?

2 A. Infrequently.

3 Q. Out of 100 films that you view, how often would you
 4 do that?

5 A. I read 100 films today and I didn't ask for it
 6 once. I didn't ask for additional views once.

7 Q. Do you know how often it would happen out of a
 8 thousand films?

9 A. I would be surprised if it was once out of a
 10 thousand. Now, this is, you know, I'm going to
 11 further qualify this by saying this is going to vary
 12 depending upon what the makeup of the thousand films
 13 is.

14 For example, if you're reading a thousand
 15 mammograms, you know, you're going to request
 16 follow-up on a lot more than one in a thousand. You
 17 may request an additional view, a different
 18 projection on a number of them.

19 Q. But for a view of an upper extremity you don't very
 20 often ask for supplemental views?

21 A. Right, right, probably less than one in a hundred
 22 then.

23 Q. Do you know if you compared Rodney McClendon's
 24 clinical information from -- compared his clinical
 25 information to the information you obtained by

20

1 reviewing the x-ray films?

2 MS. VANCE: Objection. I'm not sure I
 3 understand the question.

4 A. Well, I think you're asking me if I read the
 5 information on the three-by-five card --

6 Q. Yes.

7 A. -- before I read the films. You know, can I
 8 specifically remember doing it? No. Is it my
 9 standard practice? Yes. Therefore, I would assume
 10 that I did it.

11 Q. When a patient comes down from the Cleveland Clinic
 12 emergency room are you provided with that patient's
 13 medical record?

14 A. No.

15 Q. Other than the three-by-five index card and the
 16 document that's in the envelope, do you receive any
 17 other information about the patient?

18 A. No.

19 Q. Would you agree that it's common sense that if a
 20 patient has severe elbow pain that an x-ray should
 21 specifically be taken of the elbow?

22 MS. VANCE: Objection.

23 MR. LEAK: Objection. Go ahead.

24 MS. VANCE: Common sense on whose
 25 part?

21

1 Q. Did you understand the question, Doctor?

2 A. Yeah, I think so. I mean, you're asking if a

3 patient comes in and says my elbow hurts, what are

4 you going to x-ray. You're going to x-ray the

5 elbow.

6 Q. Would you agree that if a patient is suffering from

7 elbow pain it makes more sense to x-ray the elbow

8 than the forearm?

9 MS. VANCE: Objection. I'm objecting

10 to the question. You're leaving out a lot of

11 other clinical information that might be

12 available that would enter into that answer,

13 and also he's not the -- he's a radiologist and

14 is not the ED doctor, the person doing the

15 ordering.

16 Q. Doctor, do you understand the question?

17 A. I think so, but why don't you state it again for

18 me.

19 Q. Sure.

20 MR. RUF: Could you read back the

21 question, please.

22 - - - -

23 (Thereupon, the requested portion of

24 the record was read by the Notary.)

25 - - - -

22

1 MS. VANCE: Objection.

2 A. Yeah, that would seem to make more sense.

3 Q. If you take an x-ray of the forearm is there any

4 difficulty in viewing any area of the radial head?

5 A. The radial head is best evaluated by radiographs of

6 the elbow joint.

7 MS. VANCE: I'm going to go back and

8 show another objection to the preceding

9 question that asked about whether if a patient

10 came in complaining of elbow pain does it make

11 sense to order an elbow x-ray versus a

12 forearm. I made objections earlier.

13 In addition to those objections, again,

14 this individual, Dr. O'Donovan, is not a

15 clinical physician from the standpoint of

16 evaluating such patients in an ED setting and

17 ordering x-rays. He's not here for that

18 purpose and doesn't have any other information

19 about this patient's clinical presentation.

20 A. That's very true.

21 Q. Doctor, you have had training in the clinical

22 symptoms for elbow fractures, correct?

23 A. Correct, some 25 years ago.

24 Q. Could you take a look at Plaintiff's Exhibits 1

25 through 3, please, and tell me if any fracture of

23

1 the radial head is visible.

2 A. I do not see a fracture of either the right or left

3 radial heads.

4 Q. If Rodney McClendon was subsequently diagnosed with

5 a nondisplaced fracture at the head of the right

6 radius, that is not shown on Plaintiff's Exhibits 1

7 through 3, correct?

8 A. Correct. Yeah, I don't see a fracture.

9 Q. Is that the type of fracture that potentially could

10 not show up on a view of the forearm?

11 MS. VANCE: Objection.

12 A. Yeah. It may be invisible on the view of the elbow,

13 never mind the forearm.

14 Q. On Plaintiff's Exhibits 1 through 3 do you observe a

15 slight buckle in the cortical margin of the head of

16 the left radius?

17 A. Well, I just looked at them and I didn't see it.

18 Q. Do you know why x-rays were only taken of Rodney

19 McClendon's forearm?

20 A. No.

21 Q. Do you know why x-rays were not taken of his right

22 or left elbow?

23 A. No.

24 Q. When you're interpreting films, do you realize that

25 the clinician is relying on your expertise in

24

1 radiology in interpreting the films?

2 MS. VANCE: Objection.

3 A. Do I realize that the clinician is relying on my

4 expertise? Yes.

5 Q. You do not expect the clinician to double check your

6 reading by examining the films himself, correct?

7 A. Well, I can't speak for the standard *modus operandi*

8 of the physician. I know many physicians look at

9 their own films.

10 Q. But you don't expect the clinician to do that, do

11 you?

12 MS. VANCE: Objection. I don't want

13 Dr. O'Donovan's expectations one way or the

14 other to be interpreted as tantamount to or

15 equivalent to the standard of care for any

16 other clinician.

17 Q. Please answer the question, if you can, Doctor.

18 THE WITNESS: Read it back for me,

19 please, could you, Laura.

20 - - - -

21 (Thereupon, the requested portion of

22 the record was read by the Notary.)

23 - - - -

24 MS. VANCE: Objection.

25 A. Do I expect the clinician to look at his own films?

25

1 I don't really have an opinion one way or the
2 other.
3 Q. Do you know whether it is the obligation of the
4 clinician to determine if the appropriate views have
5 been taken or it's the determination of the
6 radiologic technician?

7 MR. LEAK: Objection.

8 MS. VANCE: Objection.

9 Q. And if you don't know, that's fine.

10 A. I guess I don't know. I'm not quite sure where
11 you -- could I have the question read back again.
12 Sorry.

13 - - - -
14 (Thereupon, the requested portion of
15 the record was read by the Notary.)
16 - - - -

17 MS. VANCE: Objection.

18 A. I don't know.

19 Q. Do you know whose obligation it is to see that the
20 views that are ordered are actually done?

21 MS. VANCE: Objection. I think that's
22 just another way of stating the same question.

23 A. Yeah, I don't know the answer to that.

24 Q. Do you know who Todd Richards is?

25 A. No.

26

1 Q. Do you remember Todd Richards coming down and asking
2 you for a second read of Rodney McClendon's x-rays?

3 MS. VANCE: Objection.

4 A. I don't remember anybody asking me for a second read
5 of Todd Richards' x-rays. I don't know who -- or of
6 Rodney McClendon x-rays, and I don't know who Todd
7 Richards is.

8 Q. I'm handing you what's been marked as Plaintiff's
9 Exhibit 33. Were you the radiologist who actually
10 reviewed and interpreted Rodney McClendon's x-rays
11 of his forearm?

12 A. Yes.

13 Q. Is there any other radiologist who would have done
14 that?

15 MS. VANCE: Who could have or did?

16 MR. RUF: Who could have or did.

17 A. One of our residents, a radiologist in training, was
18 there with me on that particular evening and we both
19 looked at Rodney McClendon's films.

20 Q. If Todd Richards had come down to the radiology
21 department and asked for a reread, would you have
22 been the person that he would have spoken to?

23 A. He could have spoken either to myself or to the
24 resident.

25 Q. Were you present with the resident at all times or

27

1 would the resident read films without you being
2 present?

3 A. I see all the films.

4 Q. I would guess that you have no independent
5 recollection of reading Rodney McClendon's films on
6 February 6th, 1998?

7 A. I do have a memory of it.

8 Q. What do you have a memory of?

9 A. I have a memory of it being around 5:00, which was
10 the time that I started in the emergency room on
11 that particular day, and it being the first case
12 that I looked at. And I recall the reason I
13 remember it is because it's unusual to get bilateral
14 forearms in rule out fracture.

15 Q. What do you mean it's unusual?

16 A. Well, usually you get a single joint or a single
17 long bone or, you know, but to get both forearms.

18 Q. When you said bilateral forearms rule out fracture,
19 what are you referring to?

20 A. The radiographic examination was comprised of both
21 forearms.

22 Q. Was that the differential diagnosis that you
23 received for Rodney McClendon?

24 MS. VANCE: Objection.

25 A. You know, that may have been what was on the

28

1 three-by-five card, because my recollection seems to
2 be rule out fracture, but, you know, I can't --
3 that's when I think back and think of, you know, the
4 films I seem to recall it was rule out fracture, but
5 I'm not 100 percent sure that that's what was on the
6 three-by-five card, but I suspect it was.

7 Q. Did it only say rule out fracture or did it say rule
8 out fracture of forearms or elbows?

9 A. I'm not a hundred percent sure that it's even on the
10 three-by-five card.

11 Q. And since it's February of 1998 you can't say for
12 sure what was on that card?

13 A. That's true.

14 Q. What else do you remember about this case?

15 A. Just that.

16 Q. Do you remember speaking to anyone about this case?

17 A. To the resident.

18 Q. Who was the resident?

19 A. Eunice Moon.

20 Q. Is she still here at the Clinic?

21 A. Yes.

22 Q. What did you say to Eunice Moon about this case?

23 A. Something to the effect of, well, what do you think
24 of this. We looked at the films, we decided that
25 there was no fracture. But I remember we both

29

1 looked at the case.
 2 Q. Now, after you reviewed the films and decided there
 3 was no fracture, did you produce a written report?
 4 A. Yeah. Yes.
 5 Q. Would that written report be put with the x-rays or
 6 does it take time for the report to be transcribed?
 7 A. It takes time for the report to be transcribed.
 8 Q. Do you dictate the report?
 9 A. There are actually two written reports. There is a
 10 report dictated, but we also put a note on the
 11 little piece of paper that's in the plastic folder
 12 on the front of the x-ray folder which we talked
 13 about earlier, so there would have been something
 14 written there and then there would have been a
 15 dictated, formal dictated report which is right
 16 here.
 17 Q. If the x-ray -- I'm sorry, if the emergency room
 18 physician wants to review your reading of the films,
 19 how does the x-ray or how does the emergency room
 20 physician do that?
 21 A. They all have different styles, but usually they'll
 22 come back with the film and they might say something
 23 like can you take another look at this.
 24 Q. Well, for somebody in the Cleveland Clinic emergency
 25 department -- I'm sorry, for somebody in the Kaiser

30

1 emergency department how would they know what your
 2 reading is if the patient is waiting there in the
 3 emergency room?
 4 A. They would come and pick up the films and on the
 5 front of the film jacket is a small piece of paper
 6 that's stuck in a plastic folder and on that it has
 7 the patient's name and it may have some clinical
 8 data, such as rule out fracture. And also on that
 9 there would be a handwritten note by either me or
 10 the resident which was our interpretation of the
 11 film, a summary of our interpretation. In this case
 12 it probably said something like negative for, no
 13 fracture.
 14 Q. Do you write on the x-ray jacket what your findings
 15 are?
 16 A. No, just on this piece of paper that's actually in
 17 the folder on the front of the jacket.
 18 MS. VANCE: I don't think his answer is
 19 complete. You had asked him what are the ways
 20 that the physician will know the
 21 interpretation. He's talked about the written
 22 piece of paper.
 23 Q. Yeah, how else could the physician find out what
 24 your reading is?
 25 A. He could pick up the telephone and dial 55800 and

31

1 then plug in the patient's number, and he could
 2 actually hear the dictation.
 3 Q. Do you know what happens to the dictation after it's
 4 transcribed?
 5 A. I'm assuming that as it's -- it's stored on some
 6 sort of disk or tape and after the transcriptionist
 7 has typed it and it's been proofread and finalized,
 8 that then --
 9 MS. VANCE: I would caution you not to
 10 assume how long it lasted on the computer.
 11 A. Yeah, I'm assuming and I'm not going to do that.
 12 Q. So you have no idea how long those tapes are kept,
 13 correct?
 14 A. Correct.
 15 Q. Is there anything on the x-ray jacket that indicates
 16 what views have been ordered for a patient?
 17 A. I'm not sure.
 18 Q. For Rodney McClendon would there have been anything
 19 on his x-ray jacket that would indicate what views
 20 were ordered?
 21 A. I'm not sure.
 22 MS. VANCE: You're distinguishing the
 23 jacket from that slip that's inside the
 24 pocket --
 25 MR. RUF: Yes.

32

1 MS. VANCE: -- on the jacket?
 2 MR. RUF: Yes.
 3 A. There would be nothing on the jacket. There would
 4 be nothing on the x-ray jacket. There might be
 5 something on the slip, but I'm not sure.
 6 MS. VANCE: Okay.
 7 Q. Do you know if the x-ray jacket for Rodney McClendon
 8 is here in the radiology department?
 9 A. I have no idea.
 10 MS. VANCE: I can tell you that I've
 11 checked and I've been told that it's -- it does
 12 not -- it's not here at The Cleveland Clinic
 13 Foundation, that that entire jacket is gone and
 14 not part of our film library or inventory of
 15 films for this patient.
 16 Q. Are the x-rays and the x-ray jackets for Kaiser
 17 patients kept at the Cleveland Clinic Radiology
 18 Department or are they sent to Kaiser?
 19 A. I have no idea.
 20 Q. So you have no idea what happens to the actual films
 21 and jacket after you read the films?
 22 MS. VANCE: For a Kaiser patient?
 23 Q. For a Kaiser patient.
 24 A. When I read the films they're in a temporary jacket,
 25 they're not in the patient's master folder. The

33

- 1 master folder may not even be on campus at the time
 2 the patient appears in the emergency room.
 3 Q. What's the master folder?
 4 A. It's pretty much what it says, it's the master
 5 folder, it's the folder in which all radiographic
 6 examinations pertaining to that particular
 7 individual are kept on a full-time basis.
 8 Q. Do you know where the master folder is kept for
 9 Kaiser patients?
 10 A. No.
 11 Q. Were you aware that there was a request for x-rays
 12 of both the forearm and elbows for Rodney
 13 McClendon?
 14 MS. VANCE: Objection.
 15 A. No.
 16 Q. If x-rays for Rodney McClendon's forearm and elbows
 17 were requested, would you expect the x-ray
 18 technician to take x-rays of both the forearm and
 19 elbows?
 20 MS. VANCE: Objection.
 21 A. Yes.
 22 Q. Based upon your experience here at the Clinic, does
 23 the x-ray technician use their own determination in
 24 what views to be taken or do they follow the
 25 doctor's order for certain views?

34

- 1 MS. VANCE: Objection.
 2 A. Follow the doctor's order.
 3 Q. Does the radiologic technician have authority to
 4 override a doctor's order for certain views?
 5 MS. VANCE: Objection. He said earlier
 6 he's not a technologist, and I don't want him
 7 to venture into standard of care territory as
 8 it relates to technologists.
 9 A. Yeah.
 10 Q. Well, have you worked with radiologic technicians
 11 here?
 12 A. Uh-huh, I have.
 13 Q. And you're familiar with what they do here at the
 14 Cleveland Clinic?
 15 A. Yes.
 16 Q. Do you know the scope of the authority for a
 17 radiologic technician?
 18 A. By far the vast majority of the cases, I suspect,
 19 that the technologist takes the film that is
 20 requested. Now, if the technologist has a question
 21 pertaining to the radiographic examination, then
 22 they might seek clarification of the order, but more
 23 than that I really can't say.
 24 Q. A radiologic technician is not a doctor, correct?
 25 A. Correct.

35

- 1 Q. A doctor has more medical training than a radiologic
 2 technician, correct?
 3 A. Medical training, correct.
 4 Q. Is it your understanding that the role of the
 5 radiologic technician is to take the views that are
 6 ordered and then submit the films to you for
 7 reading?
 8 MS. VANCE: Objection.
 9 A. That's my understanding, unless they have a question
 10 in which case they might seek clarification.
 11 Q. Do radiologic technicians ever come to you and ask
 12 for a consultation as to whether additional views
 13 should be taken?
 14 A. Occasionally.
 15 Q. Do you have any way of determining whether a
 16 radiologic technician has actually taken the views
 17 that have been ordered by the clinician?
 18 MS. VANCE: Objection. I think we've
 19 gone over this before.
 20 A. Yeah, this sounds familiar. It's not something I
 21 do.
 22 Q. Do you have any way of determining that?
 23 MS. VANCE: Objection.
 24 A. I'm not a hundred percent sure.
 25 Q. Is that something that you have done in the past

36

- 1 here at the Cleveland Clinic?
 2 MS. VANCE: Objection.
 3 A. I don't know that I've done it in the emergency room
 4 for Kaiser examinations. I don't know. I don't
 5 think I've done that.
 6 Q. Do you consider any radiologic texts to have
 7 accurate, reliable information?
 8 MS. VANCE: Objection.
 9 A. Do I consider any radiologic texts, as in
 10 textbooks?
 11 Q. Yes.
 12 MS. VANCE: Objection.
 13 Q. I'm sorry, is there some confusion about what I'm
 14 asking?
 15 A. You're asking --
 16 MS. VANCE: Sounds like you're
 17 asking --
 18 A. Are you asking about textbooks written on radiology
 19 to have reliable information?
 20 Q. Yes.
 21 A. Yes.
 22 Q. What textbooks do you consider to have accurate and
 23 reliable information?
 24 MS. VANCE: Objection under the
 25 evidence rules.

37

- 1 Q. Go ahead, Doctor.
 2 A. Most of those you see behind me you would have faith
 3 in.
 4 Q. And the library here contains a number of radiology
 5 textbooks?
 6 A. Correct.
 7 Q. Do you consult those textbooks during your
 8 practice?
 9 MS. VANCE: Objection.
 10 A. Correct.
 11 Q. And the textbooks include Merrill's Atlas of
 12 Radiographic Positions and Radiographic Procedures.
 13 A. I don't know if it's here.
 14 Q. It's over there.
 15 A. Yeah, it's here.
 16 Q. Have you ever consulted that textbook?
 17 MS. VANCE: Objection.
 18 A. Yeah, I believe I have, although not in a long
 19 time.
 20 Q. And your library also contains Eisenberg's Atlas of
 21 Signs and Radiology?
 22 A. I believe so.
 23 Q. And it also contains Taveras and Ferrucci Radiology?
 24 A. Yes.
 25 Q. And Grainger and Allison Diagnostic Radiology?

38

- 1 A. I'm not sure about Grainger and Allison. Have you
 2 seen it there?
 3 Q. Go ahead and look, Doctor.
 4 MS. VANCE: Well, rather than play a
 5 guessing game --
 6 Q. Well, it's the blue book there, Doctor.
 7 A. The Diagnostic Radiology, the blue book.
 8 Q. And your library also contains Sutton, a Textbook of
 9 Radiology and Imaging?
 10 A. Yes.
 11 Q. And Gunderman, Essential Radiology?
 12 MS. VANCE: We'll stipulate that the
 13 Clinic has a very complete radiology library.
 14 A. Comprehensive.
 15 MS. VANCE: Comprehensive, with
 16 journals and texts.
 17 Q. And those radiology textbooks are here for your
 18 consultation, correct?
 19 A. Correct.
 20 MS. VANCE: We won't stipulate,
 21 however, that any of the books or texts in this
 22 library are admissible under the Evidence Rules
 23 of Ohio. In fact, we'll specifically refute
 24 that and debate that and dispute that point.
 25 MR. RUF: Well, that's up to the Judge

39

- 1 to decide that issue.
 2 MS. VANCE: Just so it's clear that
 3 through this witness' testimony he has not
 4 given any imprimatur of authoritativeness to
 5 any of these texts such that they should be
 6 admissible in evidence under the Rules of
 7 Evidence for cross-examination purposes.
 8 MR. RUF: That's not required under the
 9 current rule.
 10 MS. VANCE: Under the current rules.
 11 Same point is being made here, that Dr.
 12 O'Donovan's comments regarding the library
 13 contents are not to be interpreted as any
 14 assent to the basic requirements of the
 15 evidence rules to enable any of these books to
 16 be admissible for cross-examination purposes.
 17 Q. Do you remember conversations with anyone other than
 18 Eunice Moon about Rodney McClendon's case?
 19 A. No.
 20 Q. Did you ever meet Rodney McClendon?
 21 A. No, not that I recall.
 22 MR. RUF: That's all I have for now,
 23 Doctor. I believe that Mr. Leak may have some
 24 questions for you.
 25 MR. LEAK: Doctor, my name is Doug

40

- 1 Leak. We just met. I represent Kaiser.
 2 - - -
 3 CROSS-EXAMINATION OF PETER O'DONOVAN, M.D.
 4 BY MR. LEAK:
 5 Q. The three-by-five index card, that's different from
 6 what is put in the compartment that goes with the
 7 x-ray jacket?
 8 A. Yes.
 9 Q. Do you know if there's any other copies of the
 10 three-by-five index card, other than the one that
 11 you get that you dispose of?
 12 A. I don't think there is.
 13 Q. And is that a computer printout or is it handwritten
 14 information?
 15 A. It's computer generated.
 16 Q. And you don't know how long that's kept in the
 17 Cleveland Clinic computer system?
 18 A. I don't know.
 19 Q. In this case you're not really privy to what was
 20 ordered because you really don't have a recollection
 21 as to what was on the card, correct?
 22 A. Correct.
 23 Q. Can nurses at the Cleveland Clinic in the emergency
 24 room department place an order for particular
 25 films?

41

1 MS. VANCE: In the Kaiser emergency
 2 room?
 3 MR. LEAK: Yes.
 4 A. I believe so.
 5 Q. You said that if there's an order for elbow films
 6 you would expect elbow films, correct?
 7 MS. VANCE: Objection. Wait a minute.
 8 Say the question again.
 9 Q. Okay. I thought your testimony was earlier when Mr.
 10 Ruf asked you if there's an order for forearm and
 11 elbow films you would expect separate films of the
 12 elbow; is that correct?
 13 MS. VANCE: Objection.
 14 MR. RUF: To actually be taken?
 15 MR. LEAK: To be taken.
 16 A. Yeah, I would expect that.
 17 Q. Okay. Does that mean you would expect a PA and a
 18 lateral view of the elbow if there was a specific
 19 order for elbow films?
 20 A. Correct.
 21 Q. Will all radial head fractures show up on PA and
 22 lateral views of the elbow?
 23 A. No.
 24 Q. Can you explain why?
 25 A. There is an incidence of fractures being invisible

42

1 immediately after they've been sustained. Exactly
 2 what the figure is, I couldn't say, but it's
 3 certainly not uncommon and most, I'm sure all,
 4 emergency room physicians would be aware of that and
 5 would know that should, you know, should
 6 symptomatology persist for a week after a fracture,
 7 that -- or a week after an injury that no fracture
 8 was -- when no fracture was found that that would be
 9 good grounds for repeating the radiographic
 10 examination.
 11 Q. Does the radiology department receive the triage
 12 notes from the nurses, whether it's the radiology
 13 tech or you?
 14 A. Certainly the physician doesn't -- the radiologist
 15 doesn't. I believe that the technologist does, but
 16 again, you know, you need to ask the technologist
 17 that.
 18 Q. If you looked at the three-by-five, and I'm talking
 19 about in general, not this particular case, if you
 20 look at a three-by-five index card and the
 21 descriptors, I think you called it for the films?
 22 A. Uh-huh.
 23 Q. If it says forearm, elbow and then you get the films
 24 and there's no elbow, will you as the radiologist
 25 ask the tech to then take the elbow films?

43

1 MS. VANCE: Objection.
 2 Q. Do you understand what I'm saying?
 3 A. I do understand what you're saying. There would be
 4 two separate cards. You wouldn't get an index card
 5 with forearm, elbow. There would be -- each would
 6 be a specific radiographic examination and each
 7 specific radiographic examination has a separate
 8 accession number and a computer generated card --
 9 Q. Got you.
 10 A. -- is made for each accession number.
 11 Q. Let's assume that there were, in this case, there
 12 was an order for forearm, wrist and elbow. Does
 13 that mean you would expect to see three different
 14 three-by-five index cards?
 15 A. Yes.
 16 Q. And so if you have three different index cards and
 17 you only have a set of forearms, will you then speak
 18 to the tech and say, hey, where's the rest of the
 19 films?
 20 A. Where's the rest of the exam, yeah.
 21 Q. You mentioned something about this case. You recall
 22 this case because bilateral films were taken of the
 23 forearm for a suspicion to rule out fracture?
 24 A. Usually when you get a case that says rule out
 25 fracture, you get one body part or you may get, you

44

1 know, a wrist, an elbow, a shoulder, or one
 2 extremity. But to get both forearms, rule out
 3 fracture is an unusual request. That's the reason
 4 that I remember it.
 5 Q. Did you do any further investigation to find out,
 6 you know, why are we getting this particular set of
 7 films for this rule out fracture?
 8 A. That brings me back to the question that I was asked
 9 earlier, which is my recollection. My recollection
 10 is one of thinking that this was unusual and the
 11 reason now that it, you know, that I'm thinking back
 12 on it, the reason I thought it was unusual was
 13 because it was rule out fracture.
 14 So that's why I think that the three-by-five
 15 card stated rule out fracture. But do I remember
 16 actually reading rule out fracture off the
 17 three-by-five card? I wish I could tell you that I
 18 did, but I don't.
 19 Q. I want to talk about after you have reviewed the
 20 films. If a PA came back in this case to speak to
 21 someone, it could have been you or it could have
 22 been your resident; is that correct?
 23 A. Correct.
 24 Q. Is it unusual to have either the PA or the emergency
 25 room physician bring the films to you and say, hey,

45

1 look, you know, the patient's complaining of this,
2 can we take another look at that; is that unusual?
3 A. Not that unusual.
4 Q. If someone came back from the emergency room
5 department, whether it is the emergency room
6 physician or the PA, and gave you a clinical
7 presentation, can you assess that clinical
8 presentation or make a determination as to whether
9 or not the proper films were taken as a radiologist?

10 MS. VANCE: Objection.

11 Q. In other words, can you take that clinical
12 information and then make a determination as to
13 whether or not the proper views were taken?

14 MS. VANCE: Objection. Just based on
15 that very, very general question?

16 MR. LEAK: Yeah.

17 A. It is a very general question. You know, I mean, if
18 they came back with an x-ray of the foot and told me
19 the patient had abdominal pain, well, then, I would
20 say, well, I think you x-rayed the wrong body part.
21 Q. Let's assume that someone came back and discussed
22 the clinical presentation of Mr. McClendon and said
23 that this man is still having pain upon extension.
24 From a radiological standpoint, what suspicions
25 would that raise for you?

46

1 MS. VANCE: Objection. I'm objecting
2 just because I think that's limited information
3 sort of in a vacuum, and you're asking this
4 witness to render some sort of impression or
5 opinion or thought process about just that
6 information.

7 I'm not sure that that represents a
8 realistic scenario of what might have happened
9 or, in fact, did happen in this case. That's
10 my objection.

11 Q. Well, I guess basically, Doctor, then in general if
12 someone presented a case to you clinically of pain
13 upon extension as a radiologist what suspicions
14 would you raise?

15 A. Pain upon extension would suggest pain on motion at
16 a joint and therefore you would, you know, your
17 suspicion would center on the joint.

18 Q. And what joint is that --

19 MS. VANCE: Objection.

20 Q. -- that you're talking about?

21 A. Well, the -- well, if the extension is in the case
22 of the forearm, then the joint would be the elbow
23 joint.

24 Q. And if that was the presentation and you didn't have
25 views of the elbow, would you then request

47

1 additional films to include elbow films?

2 MS. VANCE: Objection.

3 A. I mean, this is conjecture and I really don't know.
4 You know, I can't answer these questions insofar as
5 it's conjecture.

6 Q. I guess I'm just trying to determine if you had a
7 suspicion of some problem with the elbow joint and
8 you don't have those films available or they weren't
9 taken, can you as the radiologist ask to bring the
10 patient back and have additional films taken?

11 MS. VANCE: Objection. That just
12 presupposed so much more of what the role of
13 the radiologist is to even have such suspicion
14 in the first place.

15 Q. I'm trying to find out what your role is as a
16 radiologist.

17 A. It's the interpretation of the films. I mean, if
18 somebody came after the films had been taken and
19 said, look, can you go over this again, I would look
20 at the films and say, you know, either look there's
21 something here I didn't see or, you know, I still
22 don't see anything.

23 Q. And whose responsibility would it be if the films
24 didn't include the elbow and there was a suspicion
25 for a problem with the elbow?

48

1 MS. VANCE: Objection.

2 Q. And I'm talking about in the context if someone came
3 back and gave you back the films.

4 A. In that scenario there would be a conversation
5 between the individual that came back and myself.
6 You know, and if the films were of the forearm and
7 the individual came back and said, well, you know,
8 my concern is for an area that's not well seen on
9 the film, you know, my question would be, well, why
10 did you order this in the first place, you know.

11 Q. Assuming that was the person who placed the order
12 then, correct?

13 A. Well, you know, I mean, that would be the individual
14 to talk to, yeah.

15 Q. The person that ordered the films?

16 A. Yeah, the person that evaluated the patient and
17 decided what should be x-rayed, yeah.

18 MR. LEAK: Thank you, Doctor, I have
19 nothing further.

20 MR. RUF: Doctor, I have a follow-up
21 question or two.

22 - - -

23 RECROSS-EXAMINATION OF PETER O'DONOVAN, M.D.

24 BY MR. RUF:

25 Q. I want you to assume that Todd Richards testified as

49

1 to the following about the conversation with the
 2 radiologist at the Cleveland Clinic.
 3 A. I'm sorry, who's Todd Richards?
 4 Q. Todd Richards is the PA that saw Rodney McClendon in
 5 the ER.
 6 A. Okay.
 7 Q. Todd Richards has given the following testimony:
 8 "What I remember about the conversation of this
 9 radiologist is that I told him that Mr. McClendon is
 10 a 42-year-old male who is having pain in his right
 11 upper extremity upon, you know, greater than or the
 12 latter ten degree extension and the pain is
 13 nonspecific. And I told him that despite the x-ray
 14 being negative he has no point tenderness or any
 15 kind of sign of a specific or localized swelling
 16 over the bony prominences, so I asked him to reread
 17 the x-ray, and that's where it was left."
 18 Assuming that did occur, would you make any
 19 recommendation as to additional views to be taken or
 20 would you only reread the x-ray?
 21 MS. VANCE: Objection.
 22 A. I would, again we're talking conjecture here and I
 23 don't recall any conversation with any individual
 24 other than my resident with regard to this
 25 particular case, but I, again, we're talking

50

1 conjecture, but I would assume in that situation I
 2 would say, you know, if this discomfort that the
 3 patient has persists then the area should be
 4 re-x-rayed in seven to ten days. It's kind of
 5 standard.
 6 Q. Why is it standard?
 7 A. For the reasons that I mentioned earlier, that is
 8 that a significant number of fractures are not
 9 visible on x-rays taken immediately after the
 10 fractures are sustained. They may become visible at
 11 seven to ten days by virtue of the healing process,
 12 the callus that's laid down at the site of the
 13 fracture is radiographically visible.
 14 Q. Now, if Todd Richards, the PA, testified to the
 15 following: "So you told the radiologist your
 16 concern based on the clinical findings and then you
 17 left it up to his discretion what to do at that
 18 point?" And he answered, "Absolutely."
 19 Would he have been mistaken in the role of the
 20 radiologist?
 21 MS. VANCE: Objection.
 22 MR. LEAK: Objection.
 23 MS. VANCE: Go ahead, Doctor.
 24 A. Yes.
 25 Q. And why do you say that?

51

1 A. That conversation that, you know, that data that Mr.
 2 Richards claims that he conversed with the
 3 radiologist about, he should be conversing with the
 4 clinician, you know, he should be looking at the
 5 x-rays and saying, well, the clinical information is
 6 this and this is the radiographic picture, what
 7 should we do here. That's the clinician's call, you
 8 know, or Mr. Richards' call, depending upon who's
 9 responsible for the care of the patient.
 10 Q. If Mr. Richards wanted to have additional views
 11 taken, do you know how that would be accomplished?
 12 A. Yeah, he orders them, the same way as he ordered the
 13 first set.
 14 Q. Would a Kaiser PA or a Kaiser physician have the
 15 authority to go to the radiologic technician and ask
 16 for additional views to be done?
 17 A. I'm not sure what the pecking order is over there,
 18 who orders what, how these things are accomplished.
 19 It's really not my area of expertise. I don't work
 20 in the Kaiser emergency room, I don't know how the
 21 chain of command works over there.
 22 Q. Well, do you know if Kaiser employees, whether
 23 they're physicians, nurses or other employees, have
 24 the authority to ask a radiologic technician to take
 25 additional views?

52

1 A. They can order more x-rays, I think. I mean, that's
 2 my sense of the question that I was asked.
 3 MS. VANCE: Well, sure, they ordered
 4 them in the first instance, so they can order
 5 more if they want more.
 6 THE WITNESS: Yes.
 7 Q. Did you review anything before your deposition
 8 today?
 9 A. Did I review anything? I met with -- I did have a
 10 look at copies of this report here, yeah. And I met
 11 with my attorney, the attorney in this case, yeah.
 12 Q. Did you actually review any films?
 13 A. No.
 14 Q. And did you look for either the master folder or the
 15 x-ray jacket for Rodney McClendon?
 16 A. No.
 17 Q. Do you consider any radiology textbooks to be
 18 authoritative?
 19 MS. VANCE: Objection. How do you
 20 define authoritative, unquestionably accepted
 21 from cover to cover without debate or
 22 question?
 23 If that's the definition, do you find
 24 any of these textbooks to be authoritative to
 25 the point where you would accept it

53

1 unquestionably from cover to cover without
 2 question?
 3 MR. RUF: Well, I would object to you
 4 giving a definition.
 5 MS. VANCE: That's how it's been widely
 6 interpreted and that's how the case law is
 7 determined.
 8 Q. Doctor, for the previous textbooks that were listed
 9 do you consider those textbooks to have accurate and
 10 reliable information?
 11 MS. VANCE: Objection.
 12 A. By and large, yes.
 13 Q. And is that why they're kept here in the Cleveland
 14 Clinic radiology library?
 15 MS. VANCE: Objection.
 16 A. They're kept here as a reference.
 17 Q. Well, you're not going to have textbooks here that
 18 contain inaccurate and unreliable information, are
 19 you, Doctor?
 20 MS. VANCE: Objection.
 21 A. I don't think you can look at any textbook and say
 22 everything that's in this is gospel, you know. I
 23 mean, everything has to be taken at face value. But
 24 the textbooks that are here, the majority of the
 25 material that's in them is good.

54

1 MR. RUF: Okay. Thank you, Doctor.
 2 MS. VANCE: Doctor, I have one further
 3 question I'd like to ask of you just to clarify
 4 some of the earlier testimony.
 5 MR. RUF: Objection.
 6 - - -
 7 DIRECT EXAMINATION OF PETER O'DONOVAN, M.D.
 8 BY MS. VANCE:
 9 Q. Doctor, would you also have an expectation that a
 10 clinician who's examining a patient and appreciating
 11 the patient's symptomatology and expressions of
 12 discomfort, who also has available the x-ray views
 13 that have, in fact, been taken, if that clinician
 14 has any question or concern about whether the
 15 appropriate views have been taken or additional
 16 views ought to be taken, would you expect that that
 17 clinician has the authority or the ability to obtain
 18 additional views as part of their examination and
 19 evaluation of the patient?
 20 MR. LEAK: Objection.
 21 A. Yes.
 22 MS. VANCE: No waiver of signature.
 23
 24 PETER O'DONOVAN, M.D.
 25

55

CERTIFICATE

1
 2
 3 The State of Ohio,) SS:
 4 County of Cuyahoga.)

5
 6 I, Laura L. Ware, a Notary Public within and
 7 for the State of Ohio, do hereby certify that the
 8 within named witness, PETER O'DONOVAN, M.D., was by
 9 me first duly sworn to testify the truth, the whole
 10 truth, and nothing but the truth in the cause
 11 aforesaid; that the testimony then given was reduced
 12 by me to stenotypy in the presence of said witness,
 13 subsequently transcribed into typewriting under my
 14 direction, and that the foregoing is a true and
 15 correct transcript of the testimony so given as
 16 aforesaid.

17
 18 I do further certify that this deposition
 19 was taken at the time and place as specified in the
 20 foregoing caption, and that I am not a relative,
 21 counsel or attorney of either party or otherwise
 22 interested in the outcome of this action.

23
 24 IN WITNESS WHEREOF, I have hereunto set my
 25 hand and affixed my seal of office at Cleveland,
 Ohio, this day of , 1999.

Laura L. Ware, Ware Reporting Service
 3860 Wooster Road, Rocky River, Ohio 44116
 My commission expires May 17, 2003.

<p>1</p> <p>1 6:25; 15:10; 22:24; 23:6,14 100 2:7; 19:3,5; 28:5 1100 2:0 16 7:3,9 17 55:0 1977 4:24 1979 4:21 1998 27:6; 28:11 1999 1:16; 55:16</p> <p>2</p> <p>2003 55:0 216 1:23; 2:4,14 2243 3:12 248-7906 2:0 25 22:23 28 1:16</p> <p>3</p> <p>3 2:6; 15:11; 22:25; 23:7,14 300 2:0 33 26:9 333-0745 1:23 34305 2:0 374136 1:0 3860 1:22; 55:19</p> <p>4</p> <p>40 2:20 42-year-old 49:10 440 1:23; 2:0 44106 3:13 44113 2:0 44115 2:0 44116 1:55 44139 2:8 48 2:0 4:15 1:16</p> <p>5</p> <p>533-7606 1:23 54 2:23 55800 30:25 5:00 27:9</p> <p>6</p> <p>687-1999 2:4 696-1100 2:14 6th 7:1; 27:6</p> <p>7</p> <p>700 2:3</p> <p>9</p> <p>90 14:10,11; 15:21 925 2:13 9500 1:15</p> <p>A</p>	<p>abdominal 45:19 ability 15:25; 54:17 abnormality 13:7; 18:12 Absolutely 50:18 accept 52:25 accepted 52:20 accessing 16:1 accession 10:6; 43:8,10 accomplished 9:2; 51:11,18 accurate 36:7,22; 53:9 action 5:1; 55:14 actual 5:23; 6:7; 8:19; 32:20 actually 7:10,21; 8:2; 12:1,10,21; 17:3; 25:20; 26:9; 29:9; 30:16; 31:2; 35:16; 41:14; 44:16; 52:12 addition 22:13 additional 12:24; 13:2,4; 19:6,17; 35:12; 47:1,10; 49:19; 51:10,16,25; 54:15,18 address 3:11 admissible 38:22; 39:6,16 affixed 55:0 aforesaid 55:55 Again 16:6,10,14; 21:17; 22:13; 25:11; 41:8; 42:16; 47:19; 49:22,25 against 3:15 age 3:1; 10:7 agree 13:25; 14:2,14; 15:22; 17:22; 20:19; 21:6 ahead 5:3; 17:19; 18:5; 20:23; 37:1; 38:3; 50:23 al 1:0 Allison 37:25; 38:1 although 37:18 always 10:10 amount 11:21 anatomic 13:13 and/or 1:17 answer 3:19; 5:2,20; 17:1,20; 18:5; 21:12; 24:17; 25:23; 30:18; 47:4 answered 50:18 answering 9:17 answers 3:22 anybody 26:4 anyhow 11:4 anyone 28:16; 39:17 anything 31:15,18; 47:22; 52:7,9 anywhere 11:6 AP 15:1,2,9,12,14 apostrophe 3:10 apparent 14:4 APPEARANCES 2:1 appears 33:2 appreciating 54:10 appropriate 25:4; 54:15 approximately 5:9 area 4:18; 9:5,9; 12:8; 22:4; 48:8; 50:3; 51:19 areas 4:12,14 arm 13:11 around 27:9 Arter 2:12 ask 3:17; 14:9; 16:9,13; 18:24; 19:5,6,20; 35:11; 42:16,25; 47:9; 51:15,24;</p>	<p>54:3 asked 22:9; 26:21; 30:19; 41:10; 44:8; 49:16; 52:2 asking 16:25; 18:1; 20:4; 21:2; 26:1,4; 36:14,15,17,18; 46:3 assent 39:14 assess 45:7 assume 3:19; 12:11; 14:7; 16:11; 20:9; 31:10; 43:11; 45:21; 48:25; 50:1 assuming 31:5,11; 48:11; 49:18 Atlas 37:11,20 attorney 52:11,11; 55:0 authoritative 52:18,20,24 authoritativeness 39:4 authority 34:3,16; 51:15,24; 54:17 available 10:3; 14:24; 21:12; 47:8; 54:12 Avenue 1:15; 2:3,13 Average 5:11 aware 9:10; 33:11; 42:4</p> <p>B</p> <p>back 9:19; 15:16; 16:15; 21:20; 22:7; 24:18; 25:11; 28:3; 29:22; 44:8,11,20; 45:4,18,21; 47:10; 48:3,3,5,7 Based 33:22; 45:14; 50:16 basic 39:14 basically 46:11 basis 33:7 beam 14:1,3,10,12; 15:5,6 become 7:15,16,16; 50:10 behalf 1:18; 2:5,2 behind 15:6; 37:2 believe 6:25; 7:4,25; 8:5,11; 9:3; 14:20; 37:18,22; 39:23; 41:4; 42:15 best 22:5 bilateral 27:13,18; 43:22 Block 2:0 blue 38:6,7 board 4:18,19,20; 5:6; 7:15 body 4:13; 13:10; 43:25; 45:20 bone 13:7; 27:17 bony 49:16 book 38:6,7 books 38:21; 39:15 break 7:25 bring 44:25; 47:9 brings 44:8 brought 3:15 buckle 23:15 Building 2:2</p> <p>C</p> <p>call 51:7,8 called 3:1; 9:3; 10:13; 42:21 calling 16:23 callus 50:12 campus 33:1 can't 24:7; 28:2,11; 34:23;</p>	<p>47:4 caption 55:13 card 10:5,12,16,23,25; 11:6,9,13; 13:17,18,22; 20:5,15; 28:1,6,10,12; 40:5,10,21; 42:20; 43:4,8; 44:15,17 cards 43:4,14,16 care 17:22; 18:1,4,7,9,14,18,20; 24:15; 34:7; 51:9 carried 9:7 CASE 1:10; 10:21; 13:11; 27:11; 28:14,16,22; 29:1; 30:11; 35:10; 39:18; 40:19; 42:19; 43:11,21,22,24; 44:20; 46:9,12,21; 49:25; 52:11; 53:6 cases 5:21; 34:18 cause 1:18; 13:4; 55:8 caution 31:9 center 46:17 centered 15:5 certain 33:25; 34:4 certainly 14:15; 42:3,14 certification 7:15 certifications 5:5 certified 3:5; 4:18,19,20; 5:6 certify 55:55 chain 51:21 changes 9:16 character 8:14 check 12:9,11,13; 15:25; 24:5 checked 17:3; 32:11 chest 4:10,12 Civil 3:3 claims 51:2 Clair 2:3 clarification 34:22; 35:10 clarify 54:3 clear 16:14; 39:2 Cleveland 1:14,15; 2:2,2; 3:12,16,25; 4:1,4; 8:18; 9:21; 10:24; 20:11; 29:24; 32:12,17; 34:14; 36:1; 40:17,23; 49:2; 53:13; 55:0 Clinic 1:14; 2:3; 3:25; 4:2,4; 8:18,21; 9:18,21; 10:6,24; 16:2,24; 17:23; 20:11; 28:20; 29:24; 32:12,17; 33:22; 34:14; 36:1; 38:13; 40:17,23; 49:2; 53:14 clinical 10:9; 13:15,19,21; 19:24,24; 21:11; 22:15,19,21; 30:7; 45:6,7,11,22; 50:16; 51:5 clinically 46:12 clinician 23:25; 24:3,5,10,16,25; 25:4; 35:17; 51:4; 54:10,13,17 clinician's 51:7 combination 6:20 comes 20:11; 21:3 coming 15:7; 26:1 command 51:21 comments 39:12 comminuted 14:5 commission 55:0 COMMON 1:1; 20:19,24 compared 19:23,24</p>
----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

comparison 5:21
compartment 12:3; 40:6
complaining 22:10; 45:1
complementary 13:10
complete 30:19; 38:13
Comprehensive 38:14,15
comprised 27:20
computer 9:4; 10:24;
 11:1,2; 16:2,24; 31:10;
 40:13,15,17; 43:8
concern 48:8; 50:16;
 54:14
confusion 36:13
conjecture 47:3,5; 49:22;
 50:1
consider 36:6,9,22; 52:17;
 53:9
consult 37:7
consultation 35:12; 38:18
consulted 37:16
contain 53:18
contains 37:4,20,23; 38:8
contents 39:13
context 48:2
conversation 48:4;
 49:1,8,23; 51:1
conversations 39:17
conversed 51:2
conversing 51:3
copies 40:9; 52:10
copy 11:5
Correct 8:20; 9:9; 14:8,23;
 18:16,17; 22:22,23; 23:7,8;
 24:6; 31:13,14; 34:24,25;
 35:2,3; 37:6,10; 38:18,19;
 40:21,22; 41:6,12,20;
 44:22,23; 48:12; 55:0
cortical 23:15
couldn't 13:24; 42:2
counsel 1:17; 55:0
COUNTY 1:2; 55:4
COURT 1:1
cover 52:21,21; 53:1,1
cross-examination 1:12;
 2:2; 3:3,6; 39:7,16; 40:3
current 39:9,10
CUYAHOGA 1:2; 55:4

D

D-O-N-O-V-A-N 3:10
data 30:8; 51:1
day 5:10; 27:11; 55:16
days 50:4,11
debate 38:24; 52:21
decide 12:24; 13:2,4; 39:1
decided 28:24; 29:2;
 48:17
Defendant 2:2
Defendants 1:0
define 18:12; 52:20
definition 52:23; 53:4
degree 49:12
degrees 14:10,11; 15:21
Department 1:15; 4:5;
 8:13,22,24; 9:21;
 17:3,8,23,24; 18:2; 26:21;
 29:25; 30:1; 32:8,18; 40:24;
 42:11; 45:5
depending 12:7,7; 19:12;
 51:8
deposed 3:5

Deposition 1:11; 16:11;
 52:7; 55:12
describe 15:3,16
descriptors 10:8,18,19;
 42:21
despite 49:13
determination 25:5;
 33:23; 45:8,12
determine 6:17; 18:21;
 25:4; 47:6
determined 6:13,15; 53:7
determining 35:15,22
diagnosed 23:4
diagnosis 27:22
diagnostic 4:19; 5:7;
 37:25; 38:7
dial 30:25
dictate 29:8
dictated 29:10,15,15
dictation 31:2,3
didn't 19:5,6; 23:17;
 46:24; 47:21,24
different 13:8; 19:17;
 29:21; 40:5; 43:13,16
differential 27:22
difficulty 22:4
DIRECT 2:23; 9:6; 54:7
direction 14:7; 55:10
disciplinary 5:1
discomfort 50:2; 54:12
discretion 12:20,22;
 50:17
discussed 45:21
disk 31:6
dispose 40:11
dispute 38:24
distinguishing 31:22
Doctor 3:14; 21:1,14,16;
 22:21; 24:17; 34:24; 35:1;
 37:1; 38:3,6; 39:23,25;
 46:11; 48:18,20; 50:23;
 53:8,19; 54:1,2,9
doctor's 33:25; 34:2,4
document 12:4; 20:16
documentation 9:10,23;
 10:2
does 4:7; 5:24,25; 6:1;
 16:23; 18:20; 22:10;
 29:6,19,19; 32:11; 33:22;
 34:3; 41:17; 42:11,15;
 43:12
doesn't 22:18; 42:14,15
doing 5:19; 20:8; 21:14
done 25:20; 26:13; 35:25;
 36:3,5; 51:16
double 24:5
Doug 39:25
Douglas 2:6
down 15:7; 17:2; 20:11;
 26:1,20; 50:12
Dr 3:11; 22:14; 24:13;
 39:11
Drive 3:12
duly 3:4; 55:0
during 37:7

E

earlier 22:12; 29:13; 34:5;
 41:9; 44:9; 50:7; 54:4
easiest 14:6
ED 9:16; 21:14; 22:16

effect 28:23
Eisenberg's 37:20
either 23:2; 26:23; 30:9;
 44:24; 47:20; 52:14; 55:0
elbow 14:17,20,24,25;
 15:5,6,16,17; 20:20,21;
 21:3,5,7,7; 22:6,10,11,22;
 23:12,22;
 41:5,6,11,12,18,19,22;
 42:23,24,25; 43:5,12; 44:1;
 46:22,25; 47:1,7,24,25
elbows 28:8; 33:12,16,19
electronically 10:14
else 5:24,25; 10:3; 28:14;
 30:23
emergency 17:9; 20:12;
 27:10; 29:17,19,24; 30:1,3;
 33:2; 36:3; 40:23; 41:1;
 42:4; 44:24; 45:4,5; 51:20
employed 4:1; 8:13
employee 8:18
employees 8:12; 51:22,23
employer 3:24
enable 39:15
enter 21:12
entered 9:4
entire 32:13
entity 13:14
entry 9:3
envelope 11:17,18; 12:3;
 20:16
equivalent 24:15
ER 5:15; 9:20; 49:5
Esq 2:2,6,11,0
Essential 38:11
Euclid 1:15; 2:13
Eunice 28:19,22; 39:18
evaluate 4:12,14
evaluated 22:5; 48:16
evaluating 4:11; 22:16
evaluation 54:19
evening 26:18
everything 53:22,23
evidence 36:25; 38:22;
 39:6,7,15
exactly 8:14; 42:1
exam 43:20
EXAMINATION 2:23;
 10:7,8,17,20; 14:25; 27:20;
 34:21; 42:10; 43:6,7;
 54:7,18
examinations 33:6; 36:4
examining 24:6; 54:10
example 10:20; 13:6,11;
 19:14
Exhibit 26:9
Exhibits 6:25; 15:10;
 22:24; 23:6,14
expect 24:5,10,25; 33:17;
 41:6,11,16,17; 43:13; 54:16
expectation 54:9
expectations 24:13
experience 33:22
expertise 9:9; 23:25; 24:4;
 51:19
expires 55:0
explain 41:24
expressions 54:11
extension 45:23;
 46:13,15,21; 49:12
extent 9:25
extremity 19:19; 44:2;

49:11

F

face 53:23
fact 38:23; 46:9; 54:13
faith 37:2
familiar 9:5; 34:13; 35:20
far 34:18
FAX 1:23
February 7:1; 27:6; 28:11
feel 18:23
Ferrucci 37:23
figure 42:2
filled 10:10
film 6:21; 13:7,17; 15:6;
 29:22; 30:5,11; 32:14;
 34:19; 48:9
films 5:9,22,23; 6:7,25;
 7:11; 8:2,19; 10:1;
 11:9,12,17,22,23;
 12:17,18,19,23; 18:15,19;
 19:3,5,8,12; 20:1,7; 23:24;
 24:1,6,9,25; 26:19; 27:1,3,5;
 28:4,24; 29:2,18; 30:4;
 32:15,20,21,24; 35:6; 40:25;
 41:5,6,11,11,19;
 42:21,23,25; 43:19,22;
 44:7,20,25; 45:9;
 47:1,1,8,10,17,18,20,23;
 48:3,6,15; 52:12
finalized 31:7
find 30:23; 44:5; 47:15;
 52:23
findings 30:14; 50:16
fine 25:9
first 3:4; 27:11; 47:14;
 48:10; 51:13; 52:4; 55:0
flat 15:4
flexion 15:21
folder 11:24; 29:11,12;
 30:6,17; 32:25; 33:1,3,5,5,8;
 52:14
follow 33:24; 34:2
follow-up 19:16; 48:20
following 49:1,7; 50:15
follows 3:5
foot 45:18
forearm 10:21,22;
 15:4,12,13,14,23; 21:8;
 22:3,12; 23:10,13,19; 26:11;
 33:12,16,18; 41:10; 42:23;
 43:5,12,23; 46:22; 48:6
forearms 27:14,17,18,21;
 28:8; 43:17; 44:2
foregoing 55:10,13
form 10:13,15
formal 29:15
found 42:8
FOUNDATION 1:7,14;
 2:10,3; 4:2; 32:13
fracture 12:6,6; 13:25;
 14:2,9,15,20; 15:22; 22:25;
 23:2,5,8,9; 27:14,18;
 28:2,4,7,8,25; 29:3; 30:8,13;
 42:6,7,8; 43:23,25;
 44:3,7,13,15,16; 50:13
fractures 14:4,5; 22:22;
 41:21,25; 50:8,10
fragments 14:6
Franklin's 2:7
front 12:3; 29:12; 30:5,17
full 9:25

<p>full-time 8:17; 33:7 further 19:11; 44:5; 48:19; 54:2; 55:12</p> <p>G</p> <p>game 38:5 gave 45:6; 48:3 general 42:19; 45:15,17; 46:11 Generally 5:12,24,25; 6:1; 9:13; 15:19 generated 10:14,25; 40:15; 43:8 genetic 13:9 getting 44:6 giving 53:4 going 9:12; 14:8; 17:25; 19:10,11,15; 21:4,4; 22:7; 31:11; 53:17 gone 32:13; 35:19 good 42:9; 53:25 gospel 53:22 Grainger 37:25; 38:1 greater 49:11 grounds 42:9 guess 25:10; 27:4; 46:11; 47:6 guessing 38:5 Gunderman 38:11</p> <p>H</p> <p>Hadden 2:12 hand 55:0 handing 6:24; 26:8 handwritten 30:9; 40:13 happen 19:7; 46:9 happened 46:8 happens 11:8; 31:3; 32:20 hard 11:5 haven't 14:12 Hb6 1:15 head 13:24; 15:22; 22:4,5; 23:1,5,15; 41:21 heads 23:3 healing 50:11 HEALTH 1:7; 2:10 hear 31:2 Heights 3:12 hereby 55:0 hereinafter 3:5 hereunto 55:15 hey 43:18; 44:25 hold 5:5 house 16:7 however 38:21 Hoyt 2:0 hundred 5:11; 19:21; 28:9; 35:24 Huntington 2:0 hurts 21:3</p> <p>I</p> <p>I'll 3:19; 9:14 I've 32:10,11; 36:3,5 idea 31:12; 32:9,19,20 identification 8:17 identifying 6:19; 8:7,14 images 4:8 Imaging 38:9</p>	<p>immediately 42:1; 50:9 impression 46:4 imprimatur 39:4 in-house 9:17 inaccurate 53:18 incidence 41:25 include 37:11; 47:1,24 independent 27:4 index 10:5,12,23; 11:6,8,12; 20:15; 40:5,10; 42:20; 43:4,14,16 indicate 7:6; 8:11,16; 10:20; 31:19 indicated 6:16 indicates 31:15 Indicating 3:21; 10:8 individual 7:6; 12:17; 22:14; 33:7; 48:5,7,13; 49:23 information 9:4; 10:10,16,23; 11:11,21; 12:4; 13:16,18,21; 16:1,25; 18:24; 19:24,25,25; 20:5,17; 21:11; 22:18; 36:7,19,23; 40:14; 45:12; 46:2,6; 51:5; 53:10,18 Infrequently 19:2 initials 12:2 injury 42:7 inside 31:23 insofar 47:4 instance 52:4 interaction 5:12 interest 4:10,16,17 interested 55:14 interface 16:24 intern 7:13 interpret 5:22; 10:1; 18:11,15,18 interpretation 11:25; 18:23; 30:10,11,21; 47:17 interpreted 24:14; 26:10; 39:13; 53:6 interpreting 23:24; 24:1 interprets 4:8 interruption 7:18 inventory 32:14 investigation 44:5 invisible 14:9,11; 23:12; 41:25 involved 5:23; 6:4,7,11; 8:18 issue 39:1 itself 10:8,17</p> <p>J</p> <p>jacket 30:5,14,17; 31:15,19,23; 32:1,3,4,7,13,21,24; 40:7; 52:15 jackets 32:16 job 18:11 joint 15:5,6; 22:6; 27:16; 46:16,17,18,22,23; 47:7 journals 38:16 JUDGE 1:5; 38:25 July 1:16</p> <p>K</p> <p>KAISER 1:7; 2:10; 3:16;</p>	<p>9:14,15,16,19,20; 11:14,19; 16:7,8,12,21,24; 17:2,4,9,9; 29:25; 32:16,18,22,23; 33:9; 36:4; 40:1; 41:1; 51:14,14,20,22 kept 10:24; 11:1,6,22; 31:12; 32:17; 33:7,8; 40:16; 53:13,16 kind 49:15; 50:4 knowledge 9:6</p> <p>L</p> <p>laid 50:12 large 53:12 lasted 31:10 lateral 15:1,17,19; 41:18,22 latter 49:12 Laura 1:12; 17:11; 24:19; 55:6,0 law 53:6 lawful 3:1 lawsuit 3:15 Leak 2:6,17; 20:23; 25:7; 39:23,25; 40:1,4; 41:3,15; 45:16; 48:18; 50:22; 54:20 leave 18:17 leaving 21:10 left 10:22; 23:2,16,22; 49:17; 50:17 less 19:21 Let's 9:19; 14:17; 16:9,11; 43:11; 45:21 letter 6:19 letters 6:20; 8:11 library 32:14; 37:4,20; 38:8,13,22; 39:12; 53:14 license 4:25 licensed 4:22 limitations 11:3 limited 4:11; 46:2 limiting 5:14 line 13:25; 14:2 list 8:15 listed 53:8 little 11:18,19,20; 13:8; 29:11 localized 49:15 long 4:1; 11:1; 27:17; 31:10,12; 37:18; 40:16 look 7:1; 15:10; 22:24; 24:8,25; 29:23; 38:3; 42:20; 45:1,2; 47:19,19,20; 52:10,14; 53:21 looked 23:17; 26:19; 27:12; 28:24; 29:1; 42:18 looking 18:6; 51:4 looks 8:6 lot 19:16; 21:10</p> <p>M</p> <p>M.D 3:6; 40:3; 48:23; 54:7,0 M.D. 1:11; 3:1; 55:7 majority 34:18; 53:24 make 11:25; 12:1; 22:2,10; 45:8,12; 49:18 makes 21:7 makeup 13:9; 19:12 male 49:10</p>	<p>mammograms 19:15 man 45:23 margin 23:15 Mark 2:2; 3:14; 12:6,7 marked 6:24; 26:8 master 8:15; 32:25; 33:1,3,4,8; 52:14 material 53:25 may 11:18; 14:20,21; 15:22; 19:17; 23:12; 27:25; 30:7; 33:1; 39:23; 43:25; 50:10; 55:0 maybe 12:5,22 Mazanec 2:0 McCLENDON 1:3; 3:15; 6:8; 13:22; 23:4; 26:6; 27:23; 31:18; 32:7; 33:13; 39:20; 45:22; 49:4,9; 52:15 McClendon's 19:23; 23:19; 26:2,10,19; 27:5; 33:16; 39:18 McGINTY 1:5 mean 4:7; 8:24; 10:25; 18:6,11; 21:2; 27:15; 41:17; 43:13; 45:17; 47:3,17; 48:13; 52:1; 53:23 medical 20:13; 35:1,3 medicine 4:18,22 meet 39:20 memory 27:7,8,9 mentioned 43:21; 50:7 Merrill's 37:11 met 40:1; 52:9,10 Miller 2:0 mind 23:13 minute 41:7 mistaken 50:19 modus 24:7 Moon 28:19,22; 39:18 motion 46:15 multiple 14:6</p> <p>N</p> <p>name 3:8,9,14; 10:5; 12:5; 30:7; 39:25 named 55:7 need 3:22; 7:20; 18:5,21,24; 42:16 negative 30:12; 49:14 Nicholas 2:0 nondisplaced 23:5 nonspecific 49:13 normal 13:13 normally 8:25 Notary 1:13; 16:19; 17:15; 21:24; 24:22; 25:15; 55:6 note 29:10; 30:9 notes 42:12 nothing 32:3,4; 48:19; 55:8 notice 1:17 number 5:21,21; 6:20; 7:2,3,8,9; 8:7; 10:6,6; 19:18; 31:1; 37:4; 43:8,10; 50:8 numbers 6:20 nurses 40:23; 42:12; 51:23</p> <p>O</p>
-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

O'DONOVAN 1:11; 3:1,6,10,11; 22:14; 40:3; 48:23; 54:7,55
O'Donovan's 24:13; 39:12
object 9:12; 17:25; 53:3
objecting 21:9; 46:1
Objection 5:2; 8:23; 17:5,17,18; 20:2,22,23; 21:9; 22:1,8; 23:11; 24:2,12,24; 25:7,8,17,21; 26:3; 27:24; 33:14,20; 34:1,5; 35:8,18,23; 36:2,8,12,24; 37:9,17; 41:7,13; 43:1; 45:10,14; 46:1,10,19; 47:2,11; 48:1; 49:21; 50:21,22; 52:19; 53:11,15,20; 54:5,20
objections 22:12,13
obligation 25:3,19
observe 23:14
obtain 54:17
obtained 19:25
Obviously 5:19; 14:12
Occasionally 35:14
occur 49:18
off 13:24; 44:16
office 55:0
often 19:1,3,7,20
OH 1:13
OHIO 1:2,1,16; 2:2,10,3; 4:23; 38:23; 55:55,16,19
Okay 3:20; 14:17,19; 15:8; 32:6; 41:9,17; 49:6; 54:1
once 19:6,6,9
one 4:8,9; 8:12; 13:9; 14:21; 19:16,21; 24:13; 25:1; 26:17; 40:10; 43:25; 44:1,10; 54:2
open 5:18
operandi 24:7
opinion 25:1; 46:5
opportunity 13:3
opposite 13:10
order 9:1,3; 15:25; 22:11; 33:25; 34:2,4,22; 40:24; 41:5,10,19; 43:12; 48:10,11; 51:17; 52:1,4
ordered 8:21; 9:7,11,20; 12:10,15,18,19; 17:4,9,24; 25:20; 31:16,20; 35:6,17; 40:20; 48:15; 51:12; 52:3
ordering 8:25; 21:15; 22:17
orders 9:7; 51:12,18
otherwise 55:0
ought 54:16
outcome 55:14
outside 11:17
override 34:4
own 13:8; 24:9,25; 33:23

P

p.m 1:16
PA 41:17,21; 44:20,24; 45:6; 49:4; 50:14; 51:14
PAGE 2:0
Pager 7:18
pain 20:20; 21:7; 22:10; 45:19,23; 46:12,15,15; 49:10,12
paper 11:19,20; 29:11; 30:5,16,22

parallel 14:1,2
part 10:2; 13:11; 20:25; 32:14; 43:25; 45:20; 54:18
particular 4:15,17; 26:18; 27:11; 33:6; 40:24; 42:19; 44:6; 49:25
party 55:0
past 35:25
pathologic 13:14
patient 5:13; 9:15,18,19; 11:15,19; 13:15; 16:7,8,21; 17:2; 20:11,17,20; 21:3,6; 22:9; 30:2; 31:16; 32:15,22,23; 33:2; 45:19; 47:10; 48:16; 50:3; 51:9; 54:10,19
patient's 10:5,7; 11:24; 12:5; 13:19; 20:12; 22:19; 30:7; 31:1; 32:25; 45:1; 54:11
patients 16:12; 22:16; 32:17; 33:9
pecking 51:17
people 6:5
per 5:10
percent 28:5,9; 35:24
persist 42:6
persists 50:3
person 6:1; 8:8; 21:14; 26:22; 48:11,15,16
pertaining 33:6; 34:21
PETER 1:11; 3:1,6,10; 40:3; 48:23; 54:7,55
physician 9:1; 12:1; 17:4; 22:15; 24:8; 29:18,20; 30:20,23; 42:14; 44:25; 45:6; 51:14
physicians 17:9; 24:8; 42:4; 51:23
pick 30:4,25
picture 51:6
piece 11:19,20; 29:11; 30:5,16,22
place 40:24; 47:14; 48:10; 55:0
placed 15:4,6; 48:11
Plaintiff 1:4,18; 2:5; 3:2
Plaintiffs 6:24; 15:10; 22:24; 23:6,14; 26:8
PLAN 1:2
plastic 29:11; 30:6
play 38:4
PLEAS 1:1
please 3:8,18; 16:16; 18:10; 21:21; 22:25; 24:17,19
plug 31:1
pneumonia 12:7
pocket 11:18; 31:24
point 38:24; 39:11; 49:14; 52:25
point? 50:18
portion 16:18; 17:14; 21:23; 24:21; 25:14
position 4:4
Positions 37:12
potentially 23:9
practice 4:11,22; 17:7; 20:9; 37:8
preceding 22:8
preparing 7:14
presence 55:9
present 18:13; 26:25;

27:2
presentation 22:19; 45:7,8,22; 46:24
presented 46:12
presupposed 47:12
pretty 33:4
previous 53:8
printout 40:13
privy 40:19
probably 19:21; 30:12
problem 47:7,25
Procedure 3:4
procedures 5:19,20; 37:12
process 6:11; 46:5; 50:11
produce 29:3
produced 9:11,23
program 8:10
projection 15:1; 19:18
prominences 49:16
proofread 31:7
proper 45:9,13
provided 3:3; 20:12
Public 1:13; 55:6
purpose 3:2; 22:18
purposes 39:7,16
pursuant 1:17
put 6:21,22; 10:16; 11:25; 12:2; 29:5,10; 40:6

Q

qualified 18:8
qualify 18:5; 19:11
question 3:17,18,19,20; 5:18; 12:6,7; 16:9,13,16; 20:3; 21:1,10,16,21; 22:9; 24:17; 25:11,22; 34:20; 35:9; 41:8; 44:8; 45:15,17; 48:9,21; 52:2,22; 53:2; 54:3,14
questioned 13:6
questions 9:17; 39:24; 47:4
quite 25:10

R

radial 15:22; 22:4,5; 23:1,3; 41:21
Radiographer 6:3,10,18,22; 7:2
radiographic 14:25; 27:20; 33:5; 34:21; 37:12,12; 42:9; 43:6,7; 51:6
radiographically 50:13
radiographs 6:16,17; 18:12; 22:5
radiologic 6:5; 7:12; 8:1; 25:6; 34:3,10,17,24; 35:1,5,11,16; 36:6,9; 51:15,24
radiological 45:24
radiologist 4:5,7,8,9,19; 7:16; 12:9,20; 13:1; 18:3,14,18; 21:13; 26:9,13,17; 42:14,24; 45:9; 46:13; 47:9,13,16; 49:2,9; 50:15,20; 51:3
radiologist's 18:9
Radiology 1:14; 4:6,10,15; 5:6,7; 8:22,24; 9:21;

17:3,8,23,23; 24:1; 26:20; 32:8,17; 36:18; 37:4,21,23,25; 38:7,9,11,13,17; 42:11,12; 52:17; 53:14
radius 23:6,16
raise 45:25; 46:14
Raskin 2:0
rather 38:4
re-x-rayed 50:4
read 5:9; 11:9,22; 13:16,17; 16:15,19; 17:15; 19:5; 20:4,7; 21:20,24; 24:18,22; 25:11,15; 26:2,4; 27:1; 32:21,24
readily 14:4
reading 19:14; 24:6; 27:5; 29:18; 30:2,24; 35:7; 44:16
realistic 46:8
realize 23:24; 24:3
really 9:5,6; 17:20; 18:8; 25:1; 34:23; 40:19,20; 47:3; 51:19
reason 27:12; 44:3,11,12
reasons 50:7
recall 27:12; 28:4; 39:21; 43:21; 49:23
receive 10:1,4; 11:11; 20:16; 42:11
received 27:23
recess 7:23
recognize 14:7
recollection 27:5; 28:1; 40:20; 44:9,9
recommendation 49:19
record 16:14,19; 17:15; 20:13; 21:24; 24:22; 25:15
records 11:1
RECROSS-EXAMINATION 2:48
reduced 55:0
refer 6:5
reference 53:16
referring 27:19
refute 38:23
regard 49:24
regarding 39:12
regular 16:7
regularly 16:4
relates 34:8
relative 55:13
relevance 8:23
reliable 36:7,19,23; 53:10
relying 23:25; 24:3
remember 20:8; 26:1,4; 27:13; 28:14,16,25; 39:17; 44:4,15; 49:8
render 46:4
repeat 17:11
repeating 42:9
report 6:22; 18:13; 29:3,5,6,7,8,10,15; 52:10
REPORTING 1:55
reports 29:9
represent 3:14; 40:1
represented 13:14
represents 46:7
request 13:3,9; 19:15,17; 33:11; 44:3; 46:25
requested 16:18; 17:14; 21:23; 24:21; 25:14; 33:17; 34:20

require 18:20
required 6:21; 39:8
requirements 39:14
requires 17:23
requisition 10:13,15
reread 26:21; 49:16,20
resident 7:13; 26:24,25; 27:1; 28:17,18; 30:10; 44:22; 49:24
residents 26:17
responsibility 12:12,13; 47:23
responsible 7:7; 51:9
rest 16:11; 43:18,20
review 13:15; 29:18; 52:7,9,12
reviewed 26:10; 29:2; 44:19
reviewing 20:1
Richards 25:24; 26:1,7,20; 48:25; 49:3,4,7; 50:14; 51:2,10
Richards' 26:5; 51:8
Right 9:1,16; 10:22; 15:14; 19:21,21; 23:2,5,21; 29:15; 49:10
RIVER 1:55
ROAD 1:22; 2:55
ROCKY 1:55
RODNEY 1:3; 3:14; 6:8; 13:22; 19:23; 23:4,18; 26:2,6,10,19; 27:5,23; 31:18; 32:7; 33:12,16; 39:18,20; 49:4; 52:15
role 35:4; 47:12,15; 50:19
room 17:10; 20:12; 27:10; 29:17,19; 30:3; 33:2; 36:3; 40:24; 41:2; 42:4; 44:25; 45:4,5; 51:20
Row 2:7
Ruf 2:2,19,22; 3:7,14; 5:16; 11:16; 16:8,15; 21:20; 26:16; 31:25; 32:2; 38:25; 39:8,22; 41:10,14; 48:20,24; 53:3; 54:1,5
rule 12:6; 27:14,18; 28:2,4,7,7; 30:8; 39:9; 43:23,24; 44:2,7,13,15,16
Rules 3:3; 36:25; 38:22; 39:6,10,15
run 8:10
Ryder 2:0

S

S16 7:7,8
saw 49:4
saying 13:12; 19:11; 43:2,3; 51:5
says 21:3; 33:4; 42:23; 43:24
scenario 9:24; 11:14; 46:8; 48:4
scope 34:16
seal 55:0
second 26:2,4
seeing 13:13
seek 34:22; 35:10
seem 22:2; 28:4
seems 28:1
seen 38:2; 48:8
sees 12:1

sense 20:19,24; 21:7; 22:2,11; 52:2
sent 32:18
separate 41:11; 43:4,7
SERVICE 1:55
set 43:17; 44:6; 51:13; 55:15
setting 5:15; 22:16
seven 50:4,11
severe 20:20
sex 10:7
shoulder 44:1
show 15:11; 22:8; 23:10; 41:21
shown 23:6
side 7:5
sign 12:2; 49:15
signature 54:22
significant 50:8
Signs 37:21
single 27:16,16
site 50:12
situation 50:1
slide 12:2
slight 23:15
slip 31:23; 32:5
small 5:21; 30:5
Solon 2:0
somebody 29:24,25; 47:18
someone 5:24,25; 8:4; 44:21; 45:4,21; 46:12; 48:2
something 12:5,25; 16:4; 28:23; 29:13,22; 30:12; 32:5; 35:20,25; 43:21; 47:21
sometimes 13:9,20,20
sorry 15:20; 25:12; 29:17,25; 36:13; 49:3
sort 16:25; 31:6; 46:3,4
sounds 35:20; 36:16
space 10:9
speak 18:3,8,8; 24:7; 43:17; 44:20
speaking 28:16
special 5:5
specific 6:19; 41:18; 43:6,7; 49:15
specifically 14:17; 16:12; 20:8,21; 38:23
specified 55:0
spell 3:8
spoken 26:22,23
SS 55:0
St 2:3
staff 8:10
standard 14:25; 17:7,22; 18:1,4,7,9,14,18,20; 20:9; 24:7,15; 34:7; 50:5,6
standpoint 18:9; 22:15; 45:24
started 27:10
State 1:13; 3:8; 4:23; 21:17; 55:55
stated 44:15
stating 25:22
statute 11:2
stays 11:24
stenotypy 55:9
stipulate 38:12,20
stipulations 1:17
stored 31:5

stuck 30:6
student 7:3,3,9,9,10,12,14; 8:1,4
student's 7:8
styles 29:21
subject 4:25; 13:8
submit 35:6
subsequently 23:4; 55:0
subspecialty 4:9
suffering 21:6
suggest 46:15
Suite 2:0
summary 30:11
supervised 7:4; 8:4
supervising 7:7; 8:8
supervisors 8:9
supplemental 19:20
supplemented 18:22
suppose 10:14
surprised 19:9
suspect 7:7; 14:13; 28:6; 34:18
suspicion 43:23; 46:17; 47:7,13,24
suspicious 45:24; 46:13
sustained 42:1; 50:10
Sutton 38:8
swelling 49:15
sworn 3:4; 55:0
symptomatology 42:6; 54:11
symptoms 13:15,19; 22:22
system 9:3,14; 10:24; 16:2; 40:17

T

T-U-D-O-R 3:12
table 15:5
taken 1:11; 7:3; 12:10,14,21; 15:17,19; 18:21; 20:21; 23:18,21; 25:5; 33:24; 35:13,16; 41:14,15; 43:22; 45:9,13; 47:9,10,18; 49:19; 50:9; 51:11; 53:23; 54:13,15,16; 55:0
takes 29:7; 34:19
taking 5:23; 6:7; 8:19
talk 9:13; 14:17; 15:2; 44:19; 48:14
talked 29:12; 30:21
talking 9:13,15; 16:6,12; 42:18; 46:20; 48:2; 49:22,25
tantamount 24:14
tape 31:6
tapes 31:12
Taveras 37:23
tech 42:13,25; 43:18
technician 8:2; 25:6; 33:18,23; 34:3,17,24; 35:2,5,16; 51:15,24
technicians 34:10; 35:11
technologist 6:6; 7:15,16; 12:18; 18:7; 34:6,19,20; 42:15,16
technologists 8:9,12; 34:8
technology 7:12
telephone 30:25
tell 3:18; 7:2; 9:14; 13:24; 15:11; 22:25; 32:10; 44:17
temporary 32:24
ten 49:12; 50:4,11
tenderness 49:14
territory 34:7
tested 14:12
testified 48:25; 50:14
testify 55:0
testimony 39:3; 41:9; 49:7; 54:4; 55:55
textbook 37:16; 38:8; 53:21
textbooks 36:10,18,22; 37:5,7,11; 38:17; 52:17,24; 53:8,9,17,24
texts 36:6,9; 38:16,21; 39:5
Thank 48:18; 54:1
that's 3:15; 8:5,5,13; 9:9; 10:25; 12:8; 13:16; 15:14; 16:23,25; 20:16; 22:20; 25:9,21; 28:3,5,13; 29:11; 30:6,16; 31:23; 35:9; 38:25; 39:8,22; 40:5,16; 44:3,14; 46:2,9; 48:8; 49:17; 50:12; 51:7; 52:1,23; 53:5,6,22,25
theory 14:13
there's 7:4; 9:3; 10:9; 11:20; 40:9; 41:5,10; 42:24; 47:20
Therefore 20:9; 46:16
Thereupon 7:23; 16:18; 17:14; 21:23; 24:21; 25:14
they'll 29:21
they're 6:21,25; 32:24,25; 51:23; 53:13,16
they've 42:1
thing 18:3
things 9:16; 51:18
think 9:17; 11:7; 12:2; 14:3; 15:18; 18:6; 20:4; 21:2,17; 25:21; 28:3,3,23; 30:18; 35:18; 36:5; 40:12; 42:21; 44:14; 45:20; 46:2; 52:1; 53:21
thinking 44:10,11
thoracic 4:5,7,9,15
thought 41:9; 44:12; 46:5
thousand 19:8,10,12,14,16
three 43:13,16
three-by-five 10:5,12,23; 11:6,8,12; 13:17,18,22; 20:5,15; 28:1,6,10; 40:5,10; 42:18,20; 43:14; 44:14,17
throwing 5:17
time 3:17; 27:10; 29:6,7; 33:1; 37:19; 55:0
times 26:25
title 6:1
TJ 7:5; 8:6,6,14,17
today 19:5; 52:8
Todd 25:24; 26:1,5,6,20; 48:25; 49:3,4,7; 50:14
told 32:11; 45:18; 49:9,13; 50:15
took 7:10,25; 8:2
top 13:24
toss 11:10
training 8:1,10; 22:21; 26:17; 35:1,3
transcribed 29:6,7; 31:4; 55:0

transcript 55:0
transcriptionist 31:6
trash 11:10
Tri-C 8:11
triage 42:11
true 22:20; 28:13; 55:10
truly 13:13
truth 55:55,8
trying 47:6,15
Tudor 3:12
Twenty-four 4:3
two 10:22; 29:9; 43:4; 48:21
type 4:25; 7:10; 10:19; 23:9
typed 31:7
typewriting 55:0
typical 8:24

U

Uh-huh 8:3; 34:12; 42:22
unable 14:15
uncommon 42:3
understand 3:18; 20:3; 21:1,16; 43:2,3
understanding 35:4,9
understood 3:20
unless 35:9
unquestionably 52:20; 53:1
unreliable 53:18
unusual 27:13,15; 44:3,10,12,24; 45:2,3
upon 1:12; 12:7,8; 19:12; 33:22; 45:23; 46:13,15; 49:11; 51:8
upper 19:19; 49:11
use 33:23
usually 11:20; 12:5; 27:16; 29:21; 43:24

V

vacuum 46:3
value 53:23
Vance 2:11,5; 5:14,17; 7:20; 8:23; 9:12; 11:14; 15:13,18,20; 16:6,9,13,23; 17:5,11,17,25; 20:2,22,24; 21:9; 22:1,7; 23:11; 24:2,12,24; 25:8,17,21; 26:3,15; 27:24; 30:18; 31:9,22; 32:1,6,10,22; 33:14,20; 34:1,5; 35:8,18,23; 36:2,8,12,16,24; 37:9,17; 38:4,12,15,20; 39:2,10; 41:1,7,13; 43:1; 45:10,14; 46:1,19; 47:2,11; 48:1; 49:21; 50:21,23; 52:3,19; 53:5,11,15,20; 54:2,8,22
variable 11:21
variant 13:13
vary 19:11
vast 34:18
venture 34:7
verbal 3:22
versus 22:11
Victoria 2:11
view 13:10; 14:21,22; 15:2,3,12,14,17,19,23;

19:3,17,19; 23:10,12; 41:18
viewing 22:4
views 10:22; 12:10,11,14,14,21,24; 13:2,5; 14:24; 17:4,8; 18:21,25; 19:6,20; 25:4,20; 31:16,19; 33:24,25; 34:4; 35:5,12,16; 41:22; 45:13; 46:25; 49:19; 51:10,16,25; 54:12,15,16,18
virtue 50:11
visible 14:1,3,21,21; 15:23; 23:1; 50:9,10,13

W

Wait 41:7
waiting 30:2
waiver 54:22
want 9:13; 15:16; 24:12; 34:6; 44:19; 48:25; 52:5
wanted 51:10
wants 9:1; 29:18
Ware 1:12,55; 55:55
warranted 12:25; 13:2,5
ways 30:19
We'll 38:12,23
We're 9:12; 13:8; 16:11; 49:22,25
we've 35:18
Wednesday 1:16
week 42:6,7
weren't 47:8
West 2:3
where's 43:18,20
WHEREOF 55:15
whether 12:9; 13:6; 18:12; 22:9; 25:3; 35:12,15; 42:12; 45:5,8,13; 51:22; 54:14
who's 49:3; 51:8; 54:10
whole 55:0
whose 12:12,13; 20:24; 25:19; 47:23
why 21:17; 23:18,21; 41:24; 44:6,14; 48:9; 50:6,25; 53:13
wide 5:18
widely 53:5
will 6:16; 30:20; 41:21; 42:24; 43:17
wish 44:17
within 1:13; 55:6,7
without 27:1; 52:21; 53:1
WITNESS 7:21; 24:18; 46:4; 52:6; 55:7,9,15
witness' 39:3
won't 38:20
WOOSTER 1:22; 55:19
words 12:23; 45:11
work 51:19
worked 34:10
works 51:21
wouldn't 8:25; 43:4
wrist 43:12; 44:1
write 30:14
written 6:22; 29:3,5,9,14; 30:21; 36:18
wrong 45:20

X

x-ray 14:1,3,4,10,12,16; 20:1,20; 21:4,4,7; 22:3,11; 29:12,17,19; 30:14; 31:15,19; 32:4,7,16; 33:17,23; 40:7; 45:18; 49:13,17,20; 52:15; 54:12
x-rayed 12:8; 45:20; 48:17
x-rays 4:11,12,14; 8:21,25; 9:1,7,11,20; 16:1; 17:24; 22:17; 23:18,21; 26:2,5,6,10; 29:5; 32:16; 33:11,16,18; 50:9; 51:5; 52:1

Y

Yeah 8:5; 10:14; 11:17,24; 15:14; 21:2; 22:2; 23:8,12; 25:23; 29:4; 30:23; 31:11; 34:9; 35:20; 37:15,18; 41:16; 43:20; 45:16; 48:14,16,17; 51:12; 52:10,11
years 4:3; 22:23
you're 5:14,17; 9:15; 14:8; 18:1,6; 19:14,15; 20:4; 21:2,4,10; 23:24; 31:22; 34:13; 36:15,16; 40:19; 43:3; 46:3,20; 53:17