

BEFORE THE JUDICIAL COUNCIL  
OF THE UNITED STATES COURT OF APPEALS  
FOR THE FEDERAL CIRCUIT

IN RE COMPLAINT NO. 23-90015

DEPOSITION OF AARON G. FILLER

DATE: Friday, June 20, 2025

TIME: 9:34 a.m.

LOCATION: New Civil Liberties Alliance  
4250 North Fairfax Drive, Suite 300  
Arlington, VA 22203

REPORTED BY: Sydney Browning

JOB NO.: 7411738

A P P E A R A N C E S

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ALSO PRESENT:

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Helen Boone, NCLA Summer Associate

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1 P R O C E E D I N G S

2 THE REPORTER: Good morning. My name  
3 is Sydney Browning; I am the reporter assigned by  
4 Veritext to take the record of this proceeding. We  
5 are now on the record at 9:34 a.m.

6 This is the deposition of Aaron G.  
7 Filler taken in the matter of In Re Complaint No.  
8 23-90015 on June 20, 2025, at 4250 North Fairfax  
9 Drive, Suite 300, Arlington, Virginia 22203.

10 I am a notary authorized to take  
11 acknowledgments and administer oaths in the state of  
12 Virginia.

13 Additionally, absent an objection on  
14 the record before the witness is sworn, all parties  
15 and the witness understand and agree that any  
16 certified transcript produced from the recording of  
17 this proceeding:

18 - is intended for all uses permitted  
19 under applicable procedural and  
20 evidentiary rules and laws in the  
21 same manner as a deposition recorded  
22 by stenographic means; and

1                   - shall constitute written stipulation  
2                   of such.

3                   At this time will everybody in  
4 attendance please identify yourself for the record,  
5 beginning with our witness.

6                   MR. FILLER:   Aaron G. Filler.

7                   MR. MORRIS:   Andrew Morris with New  
8 Civil Liberties Alliance.

9                   MR. DOLIN:   Gregory Dolin, New Civil  
10 Liberties Alliance.

11                  MS. NEVILLE:   Maeve Neville, New Civil  
12 Liberties Alliance.

13                  MS. BOONE:   Helen Boone, New Civil  
14 Liberties Alliance.

15                  MR. HARRINGTON:   Chase Harrington for  
16 The Judicial Council Federal Circuit.

17                  MR. PHILBIN:   Patrick Philbin also  
18 counsel for The Judicial Council Federal Circuit.

19                  THE REPORTER:   Okay.   Thank you.  
20 Perfect.   Hearing no objection, I will now swear in  
21 the witness.

22                  Please raise your right hand.



1 WHEREUPON,

2 AARON G. FILLER,

3 called as a witness and having been first duly sworn  
4 to tell the truth, the whole truth, and nothing but  
5 the truth, was examined and testified as follows:

6 THE REPORTER: Okay. Then you are all  
7 set to begin.

8 EXAMINATION

9 BY MR. PHILBIN:

10 Q Good morning. Could you please state your  
11 full name for the record?

12 A Aaron G. Filler.

13 Q Dr. Filler, my name is Pat Philbin. I'm an  
14 attorney for The Judicial Council of the Federal  
15 Circuit, and I'll be taking your deposition today.  
16 Have you been deposed before?

17 A Yes.

18 Q About how many times?

19 A Probably about 500.

20 Q About 500 times?

21 A Yes.

22 Q Okay. That's a lot, but I'm going to run

1 over some ground rules just to refresh your memory  
2 just in case. So I'll be asking you questions, and  
3 the court reporter will transcribe the answers. So  
4 it's important that you verbally respond to my  
5 questions, not with a head nod or an "mm-hmm," but  
6 verbally respond. Do you understand that?

7 A Yes.

8 Q Your answers will be given under oath,  
9 subject to penalty of perjury, the same as if you were  
10 testifying in court. Do you understand that?

11 A Yes.

12 Q And your testimony may later be used as  
13 evidence in this proceeding. Do you understand?

14 A Yes.

15 Q Okay. If at any time today you don't  
16 understand one of my questions, in whole or in part,  
17 please let me know. If you do, I'll rephrase or  
18 clarify the question. If you go ahead and answer, I'm  
19 going to assume that you understood the question. Is  
20 that fair?

21 A Yes.

22 Q Okay. There will be times today also where

1 in the middle of my question you might think you know  
2 what I'm asking, but I'd ask you to please wait until  
3 I finish my question before you answer, because if  
4 there's crosstalk, the court reporter can't get it  
5 down. Do you understand that?

6 A Yes.

7 Q Okay. Similarly, if any time today I start  
8 to ask you a question and you weren't finished with  
9 your answer, please let me know, and then I'll stop  
10 and let you finish your answer. Okay?

11 A Yes.

12 Q From time to time, your attorney may raise  
13 an objection. Unless he instructs you not to answer  
14 after he objects, you can go ahead and answer the  
15 question. Do you understand?

16 A Yes.

17 Q Okay. If you need to take a break at any  
18 time during the day, we can take a break. If there's  
19 a question pending -- like to get the answer to that  
20 question first, and then we can take a break whenever  
21 you want. Is that okay?

22 A Yes.

1           Q     Okay. Is there any reason, mental or  
2           physical or otherwise, that you would not be able to  
3           give truthful and accurate answers to questions today?

4           A     No reason.

5           Q     Okay. All right. Dr. Filler, I'd like to  
6           start with your professional background. Where did  
7           you go to college and medical school?

8           A     University of Chicago.

9           Q     And what year did you graduate from medical  
10          school?

11          A     Graduated from medical school in 1986.

12          Q     Okay. Did you do a postdoctoral residency?

13          A     Yes.

14          Q     And where was that?

15          A     Based at University of Washington in  
16          Seattle, about -- but about three and a half years in  
17          total were spent in England.

18          Q     Okay. And was that a neurosurgical  
19          residency?

20          A     Yes.

21          Q     Okay. Did you do a fellowship?

22          A     I did -- what was it like? Three

1 fellowships. One is complex peripheral nerve surgery.

2 One is neuroimaging. One is complex spine surgery.

3 Q Okay. And where do you practice primarily  
4 today?

5 A So I'm primarily in Santa Monica,  
6 California, but I also have an office in Houston,  
7 Texas, and I was just there for a few days.

8 Q And do you do surgeries in Texas as well?

9 A No. The surgeries are all done in Santa  
10 Monica.

11 Q Okay. So is the Houston office to see  
12 patients for purposes of scheduling surgeries in  
13 California?

14 A Well, I'm seeing and examining and imaging,  
15 so -- oh, and I'm -- and we also do transcranial  
16 magnetic stim, which is brain repair, which is  
17 non-surgical. It's done by neurosurgeons, so we're  
18 doing that both in Texas and in Santa Monica. And I  
19 also do MRI-guided procedures, so I'm working inside a  
20 person who's awake while I watch on the scanner, and  
21 we do that in Dallas and in Santa Monica.

22 Q Okay. Have you ever been suspended from

1 membership in a professional organization?

2 A No.

3 Q Have you ever been suspended from the  
4 practice of medicine?

5 A No.

6 Q Ever had your privileges at a hospital  
7 suspended or revoked?

8 A No.

9 Q Have you ever been under disciplinary  
10 investigation by any professional body, like a  
11 licensing board?

12 A No.

13 Q Have you ever been a plaintiff in a civil  
14 action?

15 A Yes.

16 Q Okay. What were those circumstances?

17 A One was a, you know, neighbor dispute about  
18 building -- you know, we got approved building permit.  
19 The opposite neighbor was architect, and they raised  
20 opposition to this, so that was what that was about.

21 Q Okay. Any other cases?

22 A There have been some, like, landlord

1       disputes. Sometimes, under -- under my practice  
2       identity, there would be some payment disputes.

3           Q       That went to litigation?

4           A       Well, there -- there would typically be.  
5       Sometimes it would be small claims actions. I had a  
6       manager that liked to do small claims action many  
7       years ago, so we -- that -- we haven't done any of  
8       that for more than 20 years.

9           Q       Okay. I think you've been involved in some  
10       patent infringement cases. Is that right?

11          A       Yes. We have extensive, extensive patent  
12       litigation done, you know, across the country over  
13       more than ten years with the defendants being Siemens,  
14       GE Philips, Hitachi [ph], Toshiba, Medtronic, and  
15       numbers of universities and other specialty centers  
16       with regard to this principal patent 5560360.

17          Q       And is that litigation ongoing?

18          A       There's no more patent infringement  
19       litigation, 'cause the patent was, you know, filed  
20       1992, 1993 for the file -- formal filing, so that --  
21       that was granted in '96, so expired in 2013, six years  
22       past that would be 2019, and you can't assert a new

1 claim past that point. There's no ongoing dispute  
2 about -- based on the claims of the patent.

3 Q Okay. Have you ever been a defendant in a  
4 civil action?

5 A I would say a couple of real estate actions  
6 that were early settled.

7 Q Real estate actions that were settled.  
8 Okay. Have you ever had a lawsuit against the IRS?

9 A I have, yes.

10 Q And what were those circumstances?

11 A Well, it's really part of the patent  
12 dispute, so basically the United States government  
13 extensively infringed the patent and did not do  
14 unusual in that I had no grant support from the United  
15 States. So there are litigations around that, some of  
16 which so come into, for instance, if the -- if you  
17 have a loss from a failure to pay patent infringement  
18 fees, is that a loss? Who is it recognized?

19 Q So you claimed a loss on your taxes?

20 A There was a loss with regard to nonpayment  
21 of the infringement while the litigation was going on,  
22 yes.



1           Q     Okay. And was there ever a tax lien on your  
2 house?

3           A     I don't -- I think there have been some  
4 liens filed, but nothing that's ever been, you know,  
5 active, meaning that they weren't very well founded.  
6 So once, you know, so I don't know if they're on the  
7 books or not, but it didn't really affect us.

8           Q     But my question is just was there a tax lien  
9 placed on your house?

10          A     Not necessarily on the house, but -- but  
11 there's basically -- there could be a lien for  
12 payment, yeah.

13          Q     All right. Let me put it this way. Has a  
14 tax lien been placed on your property?

15          A     No -- it's on a sum, so there's a -- there's  
16 a lien for a sum, which is a sum in dispute.

17          Q     Okay. Do you understand what a lien is?

18          A     It's a priority request for payment should  
19 funds be available.

20          Q     Okay.

21          A     If it were -- if it were active. So they're  
22 not enforceable because the only one that's there, you

1 know, the reason why it's in litigation is the --  
2 the -- they're not -- yeah, they're not actively  
3 enforceable. I should add for the patent litigations,  
4 it's mostly one of my entities, Neurographics [ph]. I  
5 wasn't generally a personal litigant in that.

6 Q And were any liens placed on Neurographics  
7 [ph]?

8 A No.

9 MR. PHILBIN: Okay. Could we have this  
10 marked as Exhibit 1? And we'll need a copy.

11 (Exhibit 1 was marked for  
12 identification.)

13 THE REPORTER: Okay.

14 MR. PHILBIN: Thank you.

15 BY MR. PHILBIN:

16 Q Okay. I've handed you what's been marked as  
17 Exhibit 1, which is listings of tax liens from public  
18 records. And I'd asks you to go to page 4 of this.  
19 At the top, it says page 13 of 170. And you see down  
20 on the bottom half of the page, it has debtor  
21 information, and it has the name Filler, Aaron G. Do  
22 you see that?

1           A     It's on page 4?

2           Q     Yeah. At the top right, it says "Page 13 of  
3     170." And it gives an address of 1356 Sunset Avenue,  
4     Santa Monica, California.

5           A     Mm-hmm.

6           Q     Is that --

7                     MR. MORRIS: I'm sorry. Take your time  
8     and look at it and make sure you --

9                     THE REPORTER: And also if you could  
10    remember to answer verbally --

11                    THE WITNESS: Okay.

12    BY MR. PHILBIN:

13           Q     Do you see the address there, 1356 Sunset  
14    Avenue?

15           A     Yes.

16           Q     Is that an address related to one of your  
17    properties or professional properties?

18           A     That's my home in Santa Monica.

19           Q     Okay. And then the filing information down  
20    below says that a lien for \$766,394 was filed?

21           A     Yes.

22           Q     Okay. Does this refresh your memory about

1 any liens?

2 A Well, I said that -- so what's happened with  
3 that is it was, you know, we assert it was an error.  
4 We sued in tax court, and that went up through the  
5 Ninth Circuit. And it should have -- it should have  
6 been resolved, but the key agreement that resolved it  
7 disappeared from the record. The attorney from the  
8 IRS admitted under questioning in front of the Ninth  
9 Circuit they appeared to have destroyed the record to  
10 mislead the judge, and that is under current  
11 litigation. The attorney would face criminal charges  
12 and imprisonment.

13 Q Okay.

14 A So that -- and the only thing that's -- and  
15 that's -- that's what's not resolved.

16 Q Okay. I understand you have an explanation  
17 for your litigation with the IRS, but my question is  
18 just is this a lien placed on your house? Does this  
19 refresh your memory?

20 A Well, I don't -- I don't think it's --  
21 that's the address. That's our address. I think it's  
22 a lien for an amount of money.

1 Q Okay.

2 A So there's not like -- so I -- I guess  
3 that's a -- a detail is there's amount that they want  
4 to collect, and it's in dispute. And they place a  
5 lien for the amount of money, meaning in the event of  
6 a -- it's not that they're seizing the house, it's  
7 that if you were to sell the house and there were  
8 money, that they would have a prior right claim of to  
9 the funds to that amount.

10 Q Okay. So we've talked about some of the  
11 patent litigation. We've talked about the tax  
12 litigation. Have you ever been a defendant in any  
13 other sort of civil action?

14 A As I said, there's different real estate  
15 disputes which are minor but have come and gone.

16 Q Okay. Have you ever been a defendant in a  
17 malpractice case?

18 A I've been a defendant in about 12 or 13  
19 malpractice cases.

20 Q Okay. And did any of those cases resolve  
21 with a payment to the plaintiff?

22 A No. We won every one of those, but they

1       were all dismissed.

2               Q       When you say that you "won every one of  
3       those," what -- do you mean that it was litigated to a  
4       judgment?

5               A       No. So basically, I would say eight of the  
6       thirteen were just grossly fraud on the part of the  
7       plaintiff, and once their fraud is exposed, they drop  
8       the case or the attorney dropped the client. And all  
9       the others, again, there was no real basis for the  
10      claim and they didn't go very far.

11              Q       Okay.

12              A       We could go through them one by one, but --

13              Q       But your testimony was that in all of the  
14      malpractice cases, the plaintiff dismissed the case  
15      without receiving any payment either from you or your  
16      insurer?

17              A       Absolutely. Nothing was paid him, anything.

18              Q       Okay. I'd like to turn to your involvement  
19      in this case, Dr. Filler. You submitted a declaration  
20      or an expert report in this matter, both dated  
21      September 17, 2024. Is that right?

22              A       Declaration and report, yes.

1           Q     Okay. And you also submitted a reply report  
2     in March of 2025. Is that right?

3           A     Yes.

4           Q     Did you review the report and the reply  
5     report to prepare for your deposition today?

6           A     Just cursorily, yes.

7           Q     Okay. What else did you do to prepare for  
8     the deposition?

9           A     Well, I looked for recent -- recent  
10    literature relevant to the use of Perfusion CT and to  
11    questions raised about the use of neuropsychology.

12          Q     So were you looking at articles that are not  
13    cited in your report?

14          A     Any updates. Yeah, I'm looking for, you  
15    know, because there may have been 1,000 publications  
16    since that report was written.

17               MR. PHILBIN: Okay. Well, we may come  
18    back to wanting a copy of anything that he looked at  
19    that's not in the report.

20               MR. MORRIS: Sure, we can discuss it.

21    BY MR. PHILBIN:

22          Q     Did you review any of the other expert

1 reports that have been submitted in this matter?

2 A Yes, briefly.

3 Q Which ones?

4 A Well, we have one from the neuroradiology  
5 side and one from the neuropsychology neurology, and  
6 neurology. So those three.

7 Q Okay. Other than looking at some articles,  
8 did you review any other documents?

9 A No, just articles, searches. Nothing else  
10 was really reviewed.

11 Q Did you speak to anyone other than the  
12 counsel here to prepare for your deposition?

13 A No.

14 Q Okay. Did you talk to Judge Newman?

15 A No.

16 Q Okay. Have you reviewed any of the  
17 transcripts of the depositions that have been taken in  
18 this case?

19 A No.

20 Q Okay. In reviewing either your own reports  
21 or other reports, did you make any annotations or  
22 notes in preparing for the deposition?



1           A     No. I did prepare a short PowerPoint to  
2 summarize the updated literature review.

3           Q     You created a PowerPoint to summarize the  
4 recent articles that you looked at?

5           A     Yes.

6           Q     Okay. And when did you create that?

7           A     This morning.

8           Q     And about how long did it take you to create  
9 that?

10          A     Well, I'd say the review of literature was  
11 three or four hours, and then the report was about an  
12 hour.

13          Q     Okay. I've had marked -- handed you what's  
14 been marked as Exhibit 2. Is that the declaration  
15 that you submitted in this case?

16                     (Exhibit 2 was marked for  
17 identification.)

18          A     Yes.

19          Q     Did anyone assist you in preparing that  
20 declaration?

21          A     I think it was probably reviewed by  
22 Mr. Dolin. Usually I prepare all these things myself,

1 but I think he had a look through this one.

2 MR. PHILBIN: Okay. Can I have that  
3 marked?

4 (Exhibit 3 was marked for  
5 identification.)

6 BY MR. PHILBIN:

7 Q Okay. I've handed you what's been marked as  
8 Exhibit 3. Is that the initial report that you  
9 submitted in this matter?

10 A Yes. It appears to be the original report.

11 Q And did anyone assist you in preparing that  
12 report?

13 A No.

14 Q Did you make any notes when you were  
15 preparing that report?

16 A Everything written. There may have been  
17 some progressive versions of it, but I just progressed  
18 those versions, so I don't think there's any  
19 additional -- there's no other notes.

20 Q You don't have a separate document that was,  
21 like, an initial outline or something like that?

22 A No. I just kind of get my thoughts

1       together, and then I just produce stuff like that.

2           Q     Okay. And then we're just going to get  
3       these all in the record now. Okay, I've handed you  
4       what's been marked as Exhibit 4. Is that the reply  
5       report you submitted in this case?

6                       (Exhibit 4 was marked for  
7                       identification.)

8           A     Yes.

9           Q     And a similar question: Did anyone assist  
10      you in preparing that reply?

11          A     No.

12          Q     Did you make any notes or other documents on  
13      the side when you were preparing that reply?

14          A     No.

15          Q     Okay. So, Dr. Filler, now I'd like to ask  
16      you some questions about your current practice, your  
17      current work. You have a clinical practice in which  
18      you are seeing and treating patients as a  
19      neurosurgeon. Is that correct?

20          A     Yes.

21          Q     Okay. And what sort of operations or  
22      treatments does that involve?

1           A       So I mentioned earlier MRI-guided  
2       procedures, so I have a patient in an MRI scanner.  
3       I've identified a pathology based on MR neurography,  
4       one of my inventions, that allows us to see nerves  
5       inside the human body and to see locations -- identify  
6       locations that are entrapped or irritated.

7                       And generally our first round of  
8       interventional treatment, generally successful, will  
9       be to go in with these titanium or MRI-guided needles,  
10      doing serial MRI scans where I advance the needle up  
11      to the point of entrapment and introduce a scar-  
12      dissolving agent around the nerve to accomplish a  
13      nerve release percutaneously.

14                     In patients where that's not sufficient, I  
15      will do a surgery, a minimal access surgery, and all  
16      of these surgeries were my own design, so I really  
17      reinvented this whole field. I'm the editor of one of  
18      the major textbooks in neurosurgery, and I write the  
19      textbook chapters, and my surgical methods are now  
20      generally the ones widely used by my colleagues --

21           Q       And I'm sorry. Is that what you're  
22      describing, would that be called "peripheral

1       neurosurgery"? Is that surgery on peripheral nerves?

2           A       Those are peripheral nerve surgeries. I  
3       still do some spine surgery, so I was a  
4       fellowship-trained complex spine surgeon. So for many  
5       years I did large complex, I would say revision  
6       surgeries, so someone who had multiple level fusion  
7       with pedicle screws and all of that, but it all fell  
8       apart and the implants spit out and the screws broke  
9       from some other surgeon.

10               And most of the docs just like to do fresh  
11       cases, but I would go in and take all that apart, put  
12       everything back together again, that kind of thing.  
13       Those are 18-hour surgeries. And I haven't done any  
14       of those for, I'd say, six or eight years. And  
15       then -- but I do do some complex spine that other  
16       surgeons aren't familiar with, such as releasing an  
17       autonomic ganglion from the sacrococcygeal joint.

18               It's another surgery I've described and  
19       discovered the utility for. And then additionally, I  
20       mentioned earlier our practice in transcranial  
21       magnetic stimulation, which is a process of brain  
22       repair. By example, we had a client who was a CNN

1       correspondent who'd been attacked and had her head  
2       pounded on the ground and developed slurring and  
3       stuttering of words. So she lost her career and we  
4       were able to repair this -- locate the brain injury by  
5       my advanced imaging methods and then repair and  
6       restore her speech via transcranial magnetic  
7       stimulation. So we used to do this type of work to  
8       locate the problems with an open brain.

9               We can now map and locate with TMS,  
10       transcranial magnetic stimulation, and now we can also  
11       do repair of a variety of injury problems. And so I  
12       have a fairly active practice in that as well.

13           Q       And about what percentage of your practice  
14       focuses on that latter category of things you said  
15       that involve the brain as opposed to the peripheral  
16       nerve surgery?

17           A       Right now it's about 80 percent  
18       brain-focused practice.

19           Q       Okay. And we've noticed from websites,  
20       Doctor, there are several legal entities that seem to  
21       be associated with your practice. The Institute for  
22       Nerve Medicine is one. Is that right?

1           A     Yes.

2           Q     Okay.  And the Neurography Institute, is  
3     that another?

4           A     Yes.

5           Q     And the Neurological Injury Specialist, is  
6     that a third?

7           A     Yes.

8           Q     And could you describe just briefly what  
9     each of those entities does?

10          A     So the Institute for Nerve Medicine is a  
11     d/b/a for Aaron G. Filler, MD, PhD, APC.  So it's a  
12     personal, professional corporation in California,  
13     which is my neurosurgical practice.  The Neurography  
14     Institute Medical Associates is what we call a  
15     electronically distributed subspecialty neuroimaging  
16     practice.

17                 So we will have maintained and operated on a  
18     lease basis imaging centers around the United States,  
19     and in some cases overseas.  We had a practice in the  
20     UK some -- for many years, maintained licensure in the  
21     United Kingdom as well.  So we had a image facility in  
22     London for many years.

1           And in these, basically, we're leasing time  
2           on a scanner. For many years, that corporation was  
3           under a neuroradiologist named Grant Heishima, who  
4           passed during the pandemic. And we still have some  
5           activities under that. The Neurological Injury  
6           Specialist is just a newer designation that pulls the  
7           entities together.

8           Q     It's like an umbrella entity for those?

9           A     It's -- yeah. Well, it's a newer -- it's a  
10          newer -- it's just a new entity that we set up with a  
11          different name that -- that includes all those  
12          activities and some of the new activities, like the  
13          transcranial magnetic stimulation repair. So it's  
14          just a -- it has just different parties involved in  
15          it.

16          Q     Okay. And you're also the managing partner  
17          of Tensor Law PC. Is that right?

18          A     Yes.

19          Q     And what work do you do there? Is that for  
20          your work as an expert witness?

21          A     So anything that we feel should be billed  
22          under a legal entity. So this is something like



1 the -- in different states, the Bar. So, for  
2 instance, they have concerns about companies that have  
3 both accountants and attorneys in them, that if  
4 attorney work is done, it should be billed by an  
5 attorney entity rather than having an accountant -- so  
6 to be absolutely careful about this, we -- I maintain  
7 the Tensor Law PC. And when we feel -- we feel  
8 something is attorney skill-based, we'll collect  
9 through the law corporation.

10 Q But that would not be all of your work as an  
11 expert witness?

12 A Most of it, yeah. Most of it we end up  
13 billing through that entity, just to be cautious about  
14 the California bar rules.

15 Q Okay. And is it correct that your work,  
16 your clinical work, where you're treating and seeing  
17 patients, that's sort of one set of patients, and is  
18 that distinct from your work where you're serving as  
19 an expert witness, that that's different people who  
20 have come to you for your expert witness capacity? Is  
21 that accurate?

22 A No.

1 Q Okay. Why not?

2 A I would say the vast, vast majority of my  
3 patients that are -- where I'm testifying, and are --  
4 they're all coming in through the -- the medical  
5 practice. So in Texas, it's a little different from  
6 in California. So in Texas, they rarely have an  
7 expert, even on the plaintiff's side, also see the  
8 patient.

9 So they like to separate medical  
10 relationships from testimony relationships, which is  
11 more typical in defense where they will have only a  
12 legal relationship. It's extremely rare for me to  
13 serve as an expert in a case where I have not seen --  
14 examined -- seen and examined the patient. I do not  
15 consider the patient as my patient, the person as my  
16 patient.

17 That is the kind of expert work where you  
18 just send some documents to review and you generate a  
19 report and testify. So every now and then, once every  
20 year or two, something like that comes up, which I do.  
21 The vast majority of it, I'm seeing and treating  
22 patients, and generally, I don't know in advance, but

1 I may, depending on the details of the case, I may be  
2 designated as an expert at some point later in time.

3 And I rarely prepare -- though I do them  
4 from some frequency, I very rarely prepare, like, a  
5 freestanding expert report. So generally, I just  
6 prepare a very detailed clinical report. So for  
7 instance, my brain DTI imaging reports tend to be 40  
8 pages. That's a routine diagnostic image. But if  
9 there's a admissibility challenge to the DTI, for  
10 instance, then I will write a -- a report defending  
11 the admissibility of DTI, for instance.

12 Q Okay. So in most cases where you end up  
13 being an expert, you are providing clinical care and  
14 treatment to the patient as well. Is that what you're  
15 saying?

16 A Yeah, 98 percent.

17 Q Okay. About how many hours a week do you  
18 spend on your medical work?

19 A The practice is all pretty much a single  
20 process, and it runs into, you know, 18 to 20 hours  
21 per day, 7 days a week.

22 Q Eighteen to twenty, seven days a week on a

1       sustained basis?

2           A       Yes.

3           Q       Okay. I had some questions to drill down a  
4       little bit more and make sure I understand about the  
5       sort of patients you see. So I'd like to distinguish  
6       a couple categories. One would be patients who have  
7       suffered some sort of brain injury, which I would  
8       refer to as having a traumatic brain injury or TBI.  
9       Is that fair for a category?

10          A       Yes.

11          Q       Okay. Do you see patients who have had  
12       stroke? Is that something that is part of your  
13       practice?

14          A       Occasional, so that's rare.

15          Q       Okay. So let's put TBI and stroke to one  
16       side. And I'm curious, in your regular practice, do  
17       you see patients who come to you because they want to  
18       find out, they want to determine whether they have a  
19       cognitive impairment related to aging?

20          A       We do some of that, yes. So it's -- it's a  
21       small but growing area of practice for us.

22          Q       Okay. What sort of percentage would you

1 say?

2 A I would say at present it's 2 or 3 percent,  
3 but we expect it to be 10 to 20 percent over the -- so  
4 we're -- we're in the active. We have a process of --  
5 of growing that.

6 Q So you're in the process of growing a  
7 practice to attract patients, to diagnose them as to  
8 whether or not they have an age-related cognitive  
9 impairment?

10 A No, I think we're just trying to respond to  
11 requests to do these image evaluations. So one thing  
12 that I do, which is a little unique, is to see and  
13 examine patients in detail and image and read the  
14 images. So, you know, I think -- so we just have --  
15 yeah, so that's -- it's -- it's been something we've  
16 always done. It's just there's a little more of that  
17 going on.

18 Q Okay. And when you see people in that  
19 category who are coming to you to find out if they  
20 have an age-related cognitive impairment, what is the  
21 workup that you do?

22 A Well, I -- I developed, with -- particularly

1 with regard to head injury, my own assessment system  
2 for symptoms, that is the way you break down or  
3 understand human thought and brain function. So, you  
4 know, there's been understandings of way the brain  
5 works and how we think that go back in written form to  
6 Socrates; right? and beyond.

7 But now, through my imaging and my work, and  
8 many others working in these fields, we can understand  
9 the brain from the point of view of actual circuits  
10 that have become known through neuroscience over the  
11 past 200 years, that we can now visualize. So you  
12 have to -- so we -- so the idea is to be able to break  
13 down function and look at the different underlying  
14 biology.

15 So I used to get referrals from head injury  
16 neurologists that would describe a patient as having a  
17 "concussion," whereas to me that's 250 different  
18 possible symptoms, each of which has a particular  
19 location in the brain. So -- and that method of  
20 analysis has proved to be fruitful, both to understand  
21 people's symptoms and to plan treatments now that we  
22 have methods like TMS available to do repair.

1           Q     Okay.  So when someone comes to you asking  
2     if they have an age-related cognitive impairment, do  
3     you do what -- are you familiar -- strike that and let  
4     me withdraw that question.

5                     Are you familiar with the term "cognitive  
6     screening test"?

7           A     Yes.

8           Q     And are you familiar with, for example, the  
9     MOCA or the MMSE, or those tests that are familiar to  
10    you?

11          A     Yes.

12          Q     Okay.  And those are cognitive screening  
13    tests, aren't they?

14          A     They are.

15          Q     Okay.  So when someone comes to you  
16    wondering if they have an age-related cognitive  
17    impairment, do you do anything that would be called,  
18    like, a cognitive screening test?

19          A     My own -- of my own design.  So I'm an  
20    inventor and developer.  I --I developed, like, an  
21    image method that now has a million publications and  
22    is life-saving around the world.  I don't -- so I'm

1 always looking to see how do we advance or improve our  
2 technology, not how can I do what's been done for 50  
3 years. So in this realm, there is vast criticism of  
4 MOCA or dementia, but no one knows what to do, how to  
5 break away from using them, because most doctors  
6 aren't in a position to have anything instead to put  
7 in place.

8 But now we have all this advanced imaging  
9 and information about patients that I'm deploying and  
10 that I'm in that position to develop it, publish about  
11 it, put it in our textbooks, put it in our board  
12 certification exams, and advance the field of  
13 knowledge in the area.

14 Q Okay. I'd like to distinguish between  
15 imaging studies, which I understand you use imaging  
16 studies and have placed a lot of reliance on those.  
17 But let's put imaging studies to one side and focus on  
18 other things that would be in the realm of a cognitive  
19 screening test that involves asking questions or  
20 asking the patient to do something. Is that a fair  
21 distinction? So that we have categories to talk  
22 about.



1           A     Yes, imaging versus questions, sure.

2           Q     So when you have someone who comes to you  
3 asking about whether they have a cognitive impairment  
4 related to aging, putting aside the imaging, do you  
5 do -- I take it you don't do a MOCA --

6           A     No, as I already just testified, I designed  
7 an image-based set of questions so that I'm looking at  
8 a structure called the fornix, and I know when it's  
9 impaired in one place, it'll cause a particular type  
10 of memory problem. So I'm asking the person, "Do you  
11 have this memory problem?"

12                     Because I know if they state they have that,  
13 I can look at their image of that spot and see, one,  
14 the veracity of the statement, the severity, or  
15 whether it's part of a global, because that's one of  
16 the big questions, is it a global deterioration of the  
17 brain, or is there a -- a specific injury, or is it  
18 the normal course of aging?

19                     So these are the type of questions. And my  
20 redesign of it, it's not something that we sell or  
21 market, it's just the way I do assess people for  
22 scientific reporting purposes, and then we have the

1       advanced imaging to investigate the pattern or what's  
2       the underlying nature of the problem. So this is  
3       what -- what my sort of duty or mission is.

4           Q       So, Doctor, do you -- you have a set of  
5       questions, I take it, that you have created to perform  
6       this evaluation of the patient. Is that correct?

7           A       Yes.

8           Q       Okay. And do you ask these questions before  
9       looking at the imaging, or do you direct the questions  
10      based on the imaging?

11          A       No, I -- we -- I will talk to the patient or  
12      obtain those answers to those questions as an initial  
13      evaluation.

14          Q       Okay. And do you have a particular form,  
15      like, you know that the MOCA has a sheet, a very  
16      standard sheet with questions on it; correct?

17          A       Yes.

18          Q       For the one that you've developed, do you  
19      have something similar that's like a template or a  
20      sheet that you go through?

21          A       Yes.

22          Q       Okay. And has that been introduced into the

1 record in this case?

2 A No, because in this case I did question  
3 Judge Newman on all -- went through this verbally and  
4 then made my assessment of abnormalities. There's not  
5 a completed form.

6 Q Okay. So in your ordinary clinical practice  
7 you have this form that you use. Yes?

8 A Yes.

9 Q Okay. But we don't have one of those in  
10 this case?

11 A Right.

12 Q Okay.

13 A And I always go through the patients, all  
14 those questions. We use the form for -- partly to  
15 efficiently handle a volume of patients so that we  
16 have -- it's faster if someone's already filled out  
17 the form to quickly go to their abnormal claim  
18 statements or normals as I interview them. So it's a  
19 matter of efficiency. But I don't have a written form  
20 completed by Dr. Newman, as she did not complete. I  
21 mean, Judge Newman, as she did not complete.

22 Q Everyone's been doing the titles wrong in

1 every deposition. So I think you just said -- is it a  
2 form that usually the patient fills out?

3 A They first fill it out, right, and then I do  
4 an interview through the form and make notes.

5 Q Okay. And does it have questions, like, I  
6 think you mentioned earlier, "Are you having this sort  
7 of memory loss?" Is that --

8 A Right. So it has, like, 23 different types  
9 of memory question.

10 Q Okay. And the patient -- you then  
11 self-reports what issues they're having?

12 A Yes.

13 Q Okay. And for this form and this approach  
14 that you have developed, have any studies been done to  
15 establish that it accurately determines whether or not  
16 a person has a cognitive impairment?

17 A Well, it's something that the study has done  
18 in the sense that we have, I guess, about 1,200 of  
19 those and 1,200 people that have had one or multiple  
20 imaging exams and one or -- and multiple follow-ups so  
21 that that data's there, but I haven't published it  
22 yet.

1           Q     Okay. So I take it that means no, there is  
2 no article in a peer-reviewed journal that discusses  
3 this. Is that correct?

4           A     That's correct.

5           Q     Okay. If we could look at page 14 of what I  
6 think is Exhibit 3, your report, the main report.

7                     MR. MORRIS: Two is -- three is the  
8 main report, yeah.

9                     MR. PHILBIN: Three is the main report.

10                    MR. MORRIS: Because 2 is the  
11 declaration -- sorry.

12                    MR. PHILBIN: Okay.

13                    THE WITNESS: That threw me off.  
14 Which -- which page did you say?

15                    MR. PHILBIN: Page 14. And this is in  
16 the paragraph just before the heading for part 4.

17                    MR. DOLIN: In this report --

18                    MR. MORRIS: In the original.

19                    MR. PHILBIN: Fourteen --

20 BY MR. PHILBIN:

21           Q     Okay. And there's a line -- I think it's  
22 the second sentence in that paragraph that says "I

1       carry out 10 to 12 similar evaluations per week on a  
2       wide variety of individuals with wide range of  
3       occupations and educational backgrounds." Do you see  
4       that?

5             A       Yes.

6             Q       Okay. And I just want to understand what  
7       that means. Does that mean ten to twelve evaluations  
8       a week on patients who present to you asking whether  
9       they have age-related cognitive impairment?

10            A       Just cognitive impairment in general, yeah.  
11       So there's different reasons -- people will want to  
12       know, is it age-related? Is it injury-related? When  
13       I see -- I mean, a classic case is a 70-year-old who  
14       was in an accident and the defense wants to claim that  
15       it's all age-related losses and I'm trying to  
16       determine are they traumatic versus age-related, so  
17       this is a common issue.

18            Q       Okay. But so I think you said earlier that  
19       the age-related people come to you that are just  
20       wanting to know if they've got the cognitive  
21       impairment that's age-related, about 2 percent to 3  
22       percent --

1           A     That's correct.

2           Q     So the rest would be people who have had  
3     some sort of brain injury or suspected brain injury.  
4     Is that right?

5           A     That's correct.

6           Q     Okay.

7           A     And it's also -- I think one thing I would  
8     like to add is just that although the -- many of  
9     the -- the assemblage of the whole form of my  
10    questions is more extensive and unique, it's similar  
11    to -- similar in some ways to various other standard  
12    questions that are questionnaires that are in use, not  
13    necessarily to MOCA or MMSE.

14          Q     But to other neuropsychological tests?

15          A     Or not -- they don't belong to  
16    neuropsychology. Neuropsychology is not done by  
17    doctors. It's generally done by psychologists or not  
18    physicians, so I tend to be looking at physician-based  
19    materials.

20          Q     Okay. But we don't have a copy in this case  
21    of that form showing the kind of questions you use?

22          A     That's correct.

1           Q     Okay. And then on page 14, it's in that  
2     same paragraph. The last sentence in that paragraph  
3     says "From this practice, which includes at least  
4     1,500 individuals evaluated by DTI imaging exam  
5     combined with a personal medical examination in a  
6     large clinical report under preparation, I have  
7     acquired a focus special expertise, which I'm relying  
8     on to address the question of Judge Newman's  
9     neurologic and cognitive capabilities." Do you see  
10    that?

11          A     Yes.

12          Q     Okay. So is that the 1,500 patients in a  
13    clinical report, is that what you were referring to a  
14    minute ago, that you have something under preparation  
15    that's not been published?

16          A     Yes.

17          Q     But those 1,500 patients include -- the vast  
18    majority of them are patients with some sort of brain  
19    injury rather than just wondering about age-related  
20    cognitive impairment. Is that correct?

21          A     I would say the majority, yes.

22          Q     Because only 2 to 3 percent of your practice



1 is the people who have just age-related cognitive  
2 impairment.

3 A That's correct.

4 Q Okay. And in your reply report, I'm just  
5 curious, at page 3, paragraph 4, I think there in  
6 paragraph 4, it says -- sorry -- page 3, paragraph 3,  
7 page 3, paragraph 3 "Currently I'm completing data  
8 analysis on a 3-year study of 1,200 brain injury  
9 patients."

10 A Right. And then the 1,500 versus 1,200 is  
11 because I think I spent the first -- some years,  
12 developing a fixed set of questions and methodology of  
13 analysis, and then that -- then use that over about  
14 1,200 patients. So the overall process is about 1,500  
15 patients on this project, but the number that would be  
16 in that paper is about 1,200.

17 Q Okay. And this is 1,200 brain injury  
18 patients. So is it -- really, it's almost entirely  
19 brain injury patients that are the subject of that?

20 A I think that the -- the publication would  
21 distinguish or publications would distinguish a brain  
22 injury assessment versus the use of the data in

1       general cognitive impairment. So there would be a  
2       separate publication about the purely cognitive  
3       papers -- patients, but it's a smaller number.

4           Q       So there would be a separate publication  
5       about patients that do just have questions about  
6       whether they've got an age-related cognitive  
7       impairment?

8           A       Yes.

9           Q       Okay. But that's also just in preparation  
10      that this is published?

11          A       Yes.

12          Q       Okay. If we go back to the main report, to  
13      page 9, under the heading Structure of the Report,  
14      there are three numbered paragraphs there. Do you see  
15      that?

16          A       Yes.

17          Q       Okay. In the first paragraph, the second  
18      sentence says that you are a neurosurgeon with  
19      subspecialty in this field and that you're fully  
20      qualified to conduct and have conducted thousands of  
21      such examinations. When you say "subspecialty in this  
22      field," what does that mean?

1           A     So within neurosurgery, in a sense, we don't  
2     have any subspecialties. That is, you get certified  
3     for the whole thing. Nonetheless, you may have a -- a  
4     particular area of interest. So, for instance, some  
5     neurosurgeons only do aneurysm surgery. Some only do  
6     tumor surgery. So I have a subspecialty interest in  
7     the use of imaging to diagnose and TMS to repair  
8     cognitive functions.

9                 So that means that I have a higher level of  
10    knowledge in it. I develop the technology and inform  
11    colleagues about it. So I, for instance, will have  
12    papers at meetings of radiologists or neurosurgeons  
13    where I explain the findings and how it will -- should  
14    affect their practices.

15           Q     Okay. But is this subspecialty recognized  
16    by any board or organization that certifies  
17    physicians?

18           A     No. I mean, for instance, there's no  
19    subspecialty for neuroradiology. They only have  
20    radiology, but they call themselves neuroradiologists.  
21    So in neurosurgery, we're very loathe to define  
22    subspecialties because we expect all neurosurgeons to

1 be capable of doing all aspects of neurosurgery, even  
2 though someone may hold themselves out as a  
3 subspecialist is -- is okay to indicate they have  
4 particular expertise, but it's not like there's a  
5 separate board or something like that.

6 Q Okay. I'm just curious. You had a  
7 fellowship in peripheral neurosurgery. Is that right?

8 A Peripheral nerve neurosurgery was one of my  
9 fellowships. And then I did one on neuroimaging, one  
10 in complex spine. And I would say that because of  
11 the -- my role in developing this -- the leading form  
12 of brain imaging now, which was a plan, you know, that  
13 I worked on for 20 years and now have employed for 30  
14 years, that I'm always in a position to lead in that,  
15 plus I'm fortunate to be recognized to teach and  
16 educate in my -- in neurosurgery generally.

17 Q Okay. When you have a patient who comes to  
18 ask you if they've got a cognitive impairment related  
19 to age, you have your form and your set of questions  
20 that you do; correct?

21 A Yes.

22 Q And then you also then use brain imaging.

1 Is that correct?

2 A Well, you skipped the part where I spend two  
3 hours meeting with them and discussing their symptoms  
4 and then do a neurologic examination, and then we also  
5 have imaging, yes.

6 Q Okay. And are those all of the parts of  
7 what you do, or is there something else that we  
8 haven't covered?

9 A Well, we talked about -- we didn't talk too  
10 much about brain repair, the TMS, which is important.

11 Q Sure, but that goes to treatment. I'm just  
12 wondering about the diagnosis in the first instance.

13 A Yeah, I mean, it's -- yeah, the forms,  
14 physical exam, so as you take that together. So, for  
15 instance, if somebody claims severe balance problems  
16 but my test doesn't reveal it, that's important  
17 information for me. If someone claims there's nothing  
18 wrong with them but they seem to have numerous  
19 problems, that's also informative.

20 Q Okay. So when you're diagnosing someone,  
21 what role does the imaging play? If, say, someone's  
22 questionnaire in their interview with you seems fine,

1 but you see something on the image.

2 A Well, you're -- we're interested in  
3 identifying symptoms. So if -- if they're complaining  
4 of abnormalities but the images are normal, this  
5 could -- like in a litigation, this could be someone  
6 who's overstating their injuries, and that's helpful  
7 to know.

8 On the flip side, I'm thinking -- thinking  
9 of this particular 70-year-old gentleman recently who  
10 had had a pretty severe head injury, and he would say,  
11 "Well, my wife claims my memory's bad, but I don't  
12 think so," and then you'd see an injury in the part of  
13 the brain that was consistent with the accident and  
14 would cause a memory formation problem. So I'm always  
15 trying to decide, "Okay, now" -- but if someone  
16 doesn't have a symptom, you know, we don't go around  
17 treating images if there's no symptom.

18 Now, up to a point, so let's say someone  
19 claims there's nothing wrong with them, but it looks  
20 like they have a leg deformity. They have a lot of  
21 pain if I touch it, and they can't walk. And my image  
22 shows a broken femur. I mean, sure, that's it --

1 well, this is a psychiatric issue, but I'm going to  
2 recommend treatment of his broken femur.

3 Q Okay. What --

4 A Yeah. So -- but -- but generally, if  
5 someone says their leg is fine and the imaging shows,  
6 let's say, some torn ligaments, I would take from that  
7 that, "Wow, maybe those ligaments aren't as important  
8 as we thought."

9 Q Okay. And what if the form and the  
10 interview suggest there's a problem, there are  
11 deficits, but you don't see anything on the imaging?

12 A Well, that's -- that means it's sort of a  
13 tick against them on a validity test. So basically  
14 the way the -- the neuropsychologists try to do  
15 validity tests by asking complex, trick, or repetitive  
16 questions, my validity is to see do they have the  
17 impairment that goes with a specific complaint that  
18 they claim.

19 And then we might see, well, they have 30  
20 complaints. And ten of which they really have the  
21 matching injury for. And I can actually generally  
22 tell, looking at these forms, "Okay. That's going to

1 be over-claiming because of the way I structure the  
2 form." And some questions like, do you experience  
3 total blindness?

4 And they've -- in this list, then just  
5 checked off yes on everything, and I can see they're  
6 obviously not blind. So these are, on the one hand,  
7 they're my own -- own validity test questions, and it  
8 helps if it does seem like a good, valid statement.  
9 We'll say -- you might say, "Well, this image finding  
10 is highly correlated with patient response, and this  
11 question seems to be only very lightly correlated with  
12 physical findings.

13 So maybe that physical image finding is not  
14 as important as we thought, or the brain has a  
15 workaround for this imageable injury."

16 Q So does that mean that there are  
17 circumstances in which you might see something on a  
18 brain image, but you would decide that actually the  
19 person seems to be functioning fine?

20 A Yeah, you would report, you'd say, you know,  
21 there is a fracture in the crus of the fornix.  
22 However, the patient states normal -- you know, normal



1 memory formation. You just would -- would note that.

2 Q Okay.

3 A And so then later, if you were reporting it,  
4 you might say that a fracture in the crus of the  
5 fornix appears to be related to a complaint of new  
6 memory formation in approximately 70 percent of  
7 individuals, as opposed to some severed optic nerve  
8 results in a complaint of one eye being blind in 100  
9 percent of patients -- this kind of thing.

10 Q Right. In your practice, do you ever  
11 conduct fitness for duty evaluations for people?

12 A Not formally in that -- on that basis.  
13 There's a -- I generally would -- am not asked to do  
14 that.

15 Q Okay. And I think we discussed earlier  
16 you've been an expert witness in many cases. If we go  
17 to page 4 of your report, actually let me make that a  
18 question. You have been an expert witness in many  
19 cases, haven't you?

20 A Yes.

21 Q And if we look at page 4 of your report, the  
22 paragraph at the top, right about the middle of the

1 paragraph, there's a sentence that starts towards the  
2 right-hand margin that says "I have been admitted as  
3 an expert in more than 100 cases in various state and  
4 federal courts, and my testimony has never been  
5 excluded." Do you see that?

6 A Yes.

7 Q Is that accurate?

8 A Yes.

9 Q Okay.

10 A There's one case that was a late file that  
11 they declared me an expert after a deadline. I was  
12 restricted to participant rather than expert testimony  
13 because of late filing of a designation, but I don't  
14 think there's been a limitation of testimony -- of  
15 expert testimony.

16 MR. PHILBIN: Okay. Could we mark  
17 that? Did you --

18 THE WITNESS: So in this Norwalk case,  
19 I wasn't --

20 MR. MORRIS: Wait for a question.

21 THE WITNESS: Okay.

22 //

1 BY MR. PHILBIN:

2 Q So, Dr. Filler, I've handed you what's been  
3 marked as Exhibit 5. Sorry. 5? Yeah. Okay. And  
4 this is an opinion that came out in the Klein vs.  
5 Norwalk Hospital case. Do you see that?

6 (Exhibit 5 was marked for  
7 identification.)

8 A Yes.

9 Q Okay. And it has some highlighting in it  
10 just so that we can easily get to particular spots.  
11 Could you read the highlighting that's on the first  
12 page there?

13 A Yeah. It says that the plaintiff was -- had  
14 engaged me as an expert. However, I don't have any  
15 record of being engaged. That it was basically -- it  
16 was a patient that we had imaged. They never  
17 contacted me about the case. I never knew there was a  
18 challenge. I was never designated. I was never paid.  
19 So that's an inaccurate statement.

20 Q Okay. So you're saying that you were not  
21 engaged as an expert in this case?

22 A That's correct.

1           Q     Do you remember the case?

2           A     I looked it up when I heard about it once,  
3     and I thought, "Well, I imaged this person, but I  
4     never was contacted to testify about it." If they had  
5     asked me, they wouldn't have got themselves -- you  
6     know, I would have written a report or something for  
7     them. But no, I mean, I was never engaged in this.  
8     There's no report.

9                     Other than I did a, you know, a one-page  
10    image report. The patient -- the guy had had a needle  
11    stuck into a nerve in his arm and was sent for  
12    imaging. He was imaged in Connecticut, I think, and  
13    did a report saying he had a nerve injury. But I was  
14    not aware they had designated me as an expert. They  
15    never contacted me. They never paid. I was not aware  
16    of the litigation. I only knew that I had done an  
17    image reading.

18          Q     Okay. But just so the record's complete, if  
19    you could look at page 2, and there's highlighting  
20    there that says "The defendant argued that the MR  
21    Neurography is not a scientifically valid tool for  
22    admission as testing and diagnosing a traumatic nerve

1 injury because the testing procedure itself is not  
2 generally accepted in the medical community and has  
3 not been approved as reliable." Is that right?

4 A It's a false statement. I mean, the  
5 radiologist --

6 Q Doctor, my question is, is that what this  
7 says?

8 MR. MORRIS: [Unintelligible response.]

9 THE WITNESS: That's what it says,  
10 yeah.

11 BY MR. PHILBIN:

12 Q Okay. And then if we go to page 6 at the  
13 bottom, the highlighted portion there says,  
14 "Therefore, the court finds that the plaintiff has  
15 failed to demonstrate an adequate peer review study  
16 that supports the admission of the scientific evidence  
17 of the MR Neurography performed at the Neurography  
18 Institute by Dr. Filler or his associates."

19 A And this --

20 Q Is that correct?

21 MR. MORRIS: Wait for the question.

22 //

1 BY MR. PHILBIN:

2 Q Is that what it says? Do you see that?

3 A That's what it says, but it's completely  
4 false.

5 Q Okay. Is there any other case in which your  
6 testimony or a report has been excluded?

7 A Not that I'm aware of other than, as I said,  
8 there's a case where that was late designated and it  
9 was limited to not -- you know, to percipient rather  
10 than expert testimony on the basis of late  
11 designation.

12 Q Okay.

13 A San Diego case.

14 MR. PHILBIN: Could we have that  
15 marked?

16 (Exhibit 6 was marked for  
17 identification.)

18 BY MR. PHILBIN:

19 Q Okay. I've handed you what's been marked as  
20 Exhibit 6, which is an opinion in the case of Orlando  
21 vs. Nelson. Do you see that?

22 A Yes.

1           Q     Okay. And again, the highlighted language  
2     in the right-hand column, it says "Appellant opposed  
3     respondents' motion and provided the declaration of  
4     Dr. Aaron Filler, a neurosurgeon." Do you see that?

5           A     Yes.

6           Q     Okay. And then the next highlighted portion  
7     says: "Before the hearing on respondents' motion for  
8     summary judgment, the trial court issued a tentative  
9     ruling sustaining some of respondents' objections to  
10    Dr. Filler's declaration and granting their motion.  
11    Both in the tentative ruling and in the subsequent  
12    hearing, the court identified what it considered to be  
13    major substantive flaws in Dr. Filler's declaration.  
14    The court found his opinions too conclusory." Do you  
15    see that?

16          A     Yes.

17          Q     Okay. Then on the next page, the opinion  
18     says that Appellant then filed a second declaration by  
19     Dr. Filler. Do you see that?

20          A     Yes.

21          Q     And on the right-hand column, it says "The  
22     trial court stated that Dr. Filler's second

1 declaration did not address many of the problems the  
2 court had identified, and in some respects, it was  
3 "almost like he ignored me." Do you see that?

4 A Yes.

5 Q Okay. On the next page, which is page 3  
6 down at the bottom, under the heading Analysis, the  
7 court says "The trial court did not abuse its  
8 discretion in striking portions of Dr. Filler's second  
9 declaration." And at the end of the paragraph, it  
10 says "Dr. Filler's opinions about each of these  
11 alleged injuries were conclusory and not properly  
12 supported." Is that correct, that that's what this  
13 says?

14 A Yes.

15 Q Okay. Does this refresh your memory?

16 A Yeah, I don't -- I don't really recall this  
17 one.

18 Q Okay.

19 A I have to look it up and see. But it sounds  
20 like they limited some parts of the report. I  
21 don't -- I was not aware of being excluded in that  
22 case, but I don't remember the details of it.



1 MR. PHILBIN: Okay.

2 Did you give them --

3 UNIDENTIFIED SPEAKER: Yeah.

4 MR. PHILBIN: Okay.

5 BY MR. PHILBIN:

6 Q Okay. I've handed you what's been marked as  
7 Exhibit 7, which is a report in the case of  
8 Belfiore-Braman vs. Rotenberg. Do you see that?

9 (Exhibit 7 was marked for  
10 identification.)

11 A Yes.

12 Q Okay. Do you remember this case?

13 A That one I do, and I discussed this one  
14 earlier.

15 Q Okay. On the first page there in the  
16 right-hand column, the highlighted language says "The  
17 issues on appeal center around the trial court's  
18 ruling in limine after a hearing under Evidence Code  
19 section 402, that excluded certain medical opinion  
20 testimony Plaintiff offered on issues of causation and  
21 damage, from her recently designated nonretained  
22 expert witness, Dr. Aaron G. Filler." Is that right,

1       that's what it says?

2             A       Yes.

3             Q       Okay. And if we could go to page 8 down in  
4       the right-hand corner. The highlighted language there  
5       on that page says "Using either formulation of  
6       Dr. Filler's opinions, the trial court had a  
7       reasonable basis to conclude that his views on  
8       causation were too speculative to present to the  
9       jury." Isn't that what it says?

10            A       Yes.

11            Q       Okay. Are there any other cases in which  
12       your opinions were excluded in whole or in part by the  
13       court?

14            A       So this is one where I said it was limited,  
15       and the problem was that it was a late designation.  
16       And then I was aware of the Norwalk one, but then  
17       again, I say it -- as far as I can determine, we did a  
18       report, but I never -- never was designated as an  
19       expert, so it's difficult for me to understand that.  
20       And I don't recall this. It sounds like this Orlando  
21       is one where they limited certain parts of the report,  
22       but I don't think I was excluded in that case.

1           Q     But you understand that portions of your  
2 testimony were excluded?

3           A     Well, apparently, yeah. I mean, I don't  
4 think the -- sometimes you don't even hear from the  
5 attorneys about it, so they're using some part of it.  
6 I don't think it's one that I testified in. I  
7 remember doing a report, but sometimes they don't  
8 even -- like something like this, it's very possible  
9 they -- they didn't let me know about the outcome of  
10 it or it didn't affect their -- their case.

11          Q     Okay. All right. Okay. If we go to page  
12 13 of your report, and if you look on page 13, the  
13 last sentence on that page, could you read that as a  
14 sentence starting with "My most recent" --

15          A     "federal court testimony was Haysbert vs.  
16 Bloomin' Brands," Rebecca Beach Smith is the judge.  
17 That was just on the date at which I wrote that  
18 report.

19          Q     Okay. And then there's a footnote there,  
20 footnote 7. Could you read what it says in footnote  
21 7?

22          A     "As in other cases, the Court rejected

1 defendant's motion to exclude my testimony."

2 Q Okay. I handed you what's been marked as  
3 Exhibit 8, which is an opinion in that Haysbert vs.  
4 Bloomin' Brands case. Do you see that?

5 (Exhibit 8 was marked for  
6 identification.)

7 A Yes.

8 Q Okay. Now, on the very first page, there's  
9 a footnote, footnote 1, and it says "Also pending was  
10 Defendants' Motion to Strike Dr. Filler's testimony on  
11 the basis of admissibility, and Plaintiff's Motion to  
12 Admit Work Orders as Subsequent Remedial Measures over  
13 Defendants' objections." Do you see that?

14 A Yes.

15 Q Okay. And then it says "Although these  
16 matters were briefed, the court did not make any  
17 rulings on these issues, and, consequently, these  
18 matters are not resolved further herein." Isn't that  
19 what it says?

20 A Yes. I mean, what's happening there is  
21 unusual.

22 MR. MORRIS: Wait for a question.

1 THE WITNESS: Okay.

2 BY MR. PHILBIN:

3 Q So what it says here is that the court did  
4 not rule on the merits of the motion to strike your  
5 testimony. Isn't that correct?

6 A Right. They went ahead and testified, yeah.

7 Q Well, no, Dr. Filler, what the court says is  
8 that it doesn't need to make a ruling on those because  
9 it's disposing of the case in another way.

10 A Right, but then they refiled it. So the  
11 background is that in that particular one, I had been  
12 hired by a doctor named Dr. Huma Haider just to read  
13 the report. And normally I give the history exam and  
14 the impression, but she liked me just to read the  
15 report and she would do the exam and the impression.

16 She failed to appear for court, and the  
17 attorney was severely sanctioned, and she was in  
18 trouble, so I appeared, and the -- the allegation was,  
19 "Well, I" -- "since I didn't give the whole history  
20 and the impression myself, that there wasn't a basis  
21 to consider just my findings." But the court decided  
22 then to let me go ahead and do the findings, but they

1       terminated the case because of the failure of  
2       Dr. Haider to appear.

3               That case subsequently was reinstated and  
4       then settled before trial, if you follow that case  
5       through.

6               Q       Okay.

7               A       So that's really what happened. But -- so  
8       I -- from my perspective, in fact, I argued that  
9       successfully that a physician is allowed to rely upon  
10      the opinions of other experts that are -- other  
11      physicians that are treating the patient. So I was  
12      allowed, even though my report didn't include the --  
13      my initial evaluation, because it was supposed to be  
14      Dr. Haider's, I was allowed to rely on other  
15      physicians whose reports were in evidence.

16              She struck Dr. Haider because she failed to  
17      appear, the doctor -- the judge did. So it's a little  
18      more complicated, but I would not say this resulted in  
19      exclusion of my --

20              Q       Understood, Doctor. I'm not suggesting it  
21      resulted in exclusion. But what the court says here  
22      is it doesn't need to rule on the motion to strike

1 your testimony because it's resolving the case on  
2 other grounds; correct?

3 A Right. She allowed me to -- she decided she  
4 allowed me to testify, and then ended up deciding  
5 to -- I think, was it a mistrial or something, because  
6 of the failure of Dr. Haider to appear. But she had  
7 not -- she just, I guess, first made an initial  
8 decision to let me go ahead and then subsequently  
9 decided that she was just going to stop the case.

10 Q Okay.

11 A So I did -- I did -- I testified for many  
12 hours.

13 Q Doctor, you're serving as an expert witness  
14 in this matter on a pro bono basis. Is that correct?

15 A Yes.

16 Q And about how many times do you think you  
17 have done that, been an expert on a pro bono basis?

18 A It's -- it's rare, but I mean, you know, as  
19 an attorney you're supposed to do some pro bono work,  
20 and this seemed like inappropriate case as far as I  
21 knew.

22 Q So do you view your work in this case as an

1 attorney?

2 A Well, the -- some of it is, because I'm  
3 testifying as to -- I appeared before her and I'm  
4 stating -- so it's not sufficient to say that she is  
5 not demented. We want to know, can she practice as a  
6 Federal Circuit Court of Appeals judge? That's a very  
7 high level, other than just "I'm not demented"; right?  
8 So therefore, I knew that I was going to be looking at  
9 my testimony and interactions with her in court.

10 And then remember, I then give her -- I -- I  
11 tell her some technologies, have her explain the  
12 technologies back to me. I pose what I believe would  
13 be a complex patent law question, an admissibility of  
14 a particular claim to her, and had her spontaneously,  
15 with no clerk and no time to write it up, to then  
16 opine as if from the bench on a complex legal question  
17 about -- about allowance of a particular type of  
18 claim.

19 And so I believe -- this is -- my analysis  
20 usually is, does the test and the -- and potential  
21 billing rely in a way on my legal skills? Because if  
22 it does, then the California bar says that's the



1 practice of law. So, and I'm just -- so yeah, I would  
2 say it falls under that.

3 And I -- and I've been saying repeatedly,  
4 I'm just trying -- I'm a member of the bar of the  
5 court, and I know that -- and not -- I'm trying to  
6 just provide information to assure the court can make  
7 the best possible decision here. I have great respect  
8 for Judge Moore as well as for Judge Newman and -- and  
9 Judge Taranto, who I've been before. So --

10 MR. PHILBIN: Okay. I think we've been  
11 going about an hour and a half, and this is a good  
12 spot for a break.

13 MR. MORRIS: All right. Sounds good.

14 MR. DOLIN: Ten minutes?

15 MR. PHILBIN: Sure. Ten's good.

16 THE REPORTER: Okay. It is currently  
17 10:55 a.m., and we're going off the record.

18 (Off the record.)

19 THE REPORTER: We are back on the  
20 record, and the time is currently 11:10 a.m.

21 You're good to proceed.

22 //

1 BY MR. PHILBIN:

2 Q Dr. Filler, I'd like to discuss now your  
3 involvement in this case. If you look at page 3 of  
4 your report, in the middle paragraph there, it says "I  
5 volunteered to evaluate her, using modern and  
6 objective technology." Do you see that?

7 A Yes.

8 Q So how did that come about? How did you  
9 volunteer to become involved in the case?

10 A Well, you know, I see information about this  
11 in the Legal News and Law 360, so -- and I think I  
12 also get some of the patent organizations that send  
13 out newsletters. So I was aware of it, and, you know,  
14 I had appeared before Judge Newman a couple of times.  
15 So I just thought that I could be helpful, you know?

16 I thought, "Well, that's interesting,  
17 because I'd appeared before her, so obviously a very  
18 high-functioning individual, and I feel I have good  
19 objective tools to assess her, as well as experience  
20 at a high level." So I sent an email. I saw  
21 Mr. Dolin being, I think, quoted in something, and  
22 identified as counsel to him, so I think I sent an

1 email to him -- to him saying, "You know, I'm a member  
2 of the Bar of the Court, and I've been before this  
3 judge, so I could testify from experience about her  
4 function by comparison to my prior appearance, plus I  
5 could do an assessment. Let me know."

6 And so, I didn't hear back, I think, for  
7 quite a long time, as much as a year, and then he did  
8 say that they -- they were interested to take me up on  
9 that.

10 Q Okay. So you reached out first to Mr. Dolin  
11 by email?

12 A That's what I think, yeah.

13 Q Okay. Do you still have a copy of that  
14 email?

15 A Probably.

16 Q Okay. I think we'd like a copy.

17 MR. MORRIS: I'll look and see if we  
18 have it.

19 BY MR. PHILBIN:

20 Q And then, by what time frame do you think  
21 that was?

22 A So I would -- it was early on in this

1 process, because this -- yeah, I mean, I remember it  
2 being approximately a year from when I sent that to  
3 when I ended up filing this report.

4 Q Okay. So about a year elapsed from that  
5 first email to September of 2024?

6 A Yeah -- yeah, because this whole thing --  
7 yeah, it became public, yeah, May of 2023; right? Or  
8 May, yeah.

9 Q Okay. And then, so you sent the email, a  
10 while went by, and then what happened next?

11 A At some point, I think I got -- it was an  
12 email or a phone call. I can't say; I'd have to look  
13 back and see, from Mr. Dolin saying that was I still  
14 interested to do this, 'cause, you know, they were --  
15 they thought it might be helpful.

16 Q Okay. And at some point, did you execute a  
17 retention or engagement letter?

18 A Yes, I prepared a retention letter stating  
19 that I would, you know, carry out this medical  
20 evaluation and be prepared to compare her current  
21 function to my personal experience of her as an  
22 attorney, and that it would be on a pro bono basis.

1           Q     Okay. And before you were retained, before  
2     you did that letter, what were your discussions with  
3     Mr. Dolin?

4           A     Very limited. Just, as I said, I had  
5     written an email. I think there was definitely a call  
6     where I explained a little bit about myself and what I  
7     do, and, you know, just said, "If it would be helpful,  
8     I'd be interested to do that."

9           Q     And did Mr. Dolin tell you anything about  
10    the case? Why he hadn't contacted you for a year?

11          A     Just very vaguely, you know, "This is what's  
12    going on, you know." And that he thought -- you know,  
13    he told me there had been a couple of evaluations, I  
14    think was what he was saying, I think it was at that  
15    time point. And that it -- you know, that  
16    additional -- it seemed to him that additional  
17    evaluation would be helpful.

18          Q     Did he tell you anything else about what he  
19    would like you to do? What would be useful for the  
20    case?

21          A     No.

22          Q     Did you speak to Judge Newman before you

1       were retained?

2           A       No.

3           Q       Okay.  When did you first speak to Judge  
4 Newman in connection with this matter?

5           A       I think it was only just on the morning that  
6 I did the evaluation, so I totally -- I communicated  
7 with Mr. Dolin; arranged to do the evaluation in the  
8 D.C. area.  I went through a process, 'cause I  
9 would -- I was a licensed physician in Virginia, which  
10 is, you know, what you have is it's an adjacent state  
11 regulation.  You can see a patient in D.C. if you were  
12 a Virginia-licensed physician as long as you did not  
13 have an office in D.C.  But I went through the process  
14 of establishing a District of Columbia license, also  
15 just to be on the safe side with this medical license.

16          Q       Okay.  But so the first time you spoke with  
17 Judge Newman was the morning of the evaluation?

18          A       Yes.

19          Q       Which was August 24, 2024?

20          A       Yes.

21          Q       Okay.  So in preparing your report, did  
22 Judge Newman or her counsel provide you, other than

1 the medical records, what I'll refer to as the medical  
2 records, did Judge Newman or her counsel provide you  
3 with any other documents?

4 A I was able to look through the different  
5 affidavits and --

6 Q Okay. Anything else?

7 A And the opinions of the other doctors that  
8 evaluated her. That's just-- you had the neurology  
9 assessment and the neuropsychology assessment.

10 Q Are you referring to Dr. Rothstein and  
11 Dr. Carney?

12 A The ones on their own that were essentially  
13 supportive of her, the two that I had. I think I had  
14 all of them. I had both -- I had both -- I had all of  
15 them -- everything had been done, yeah.

16 Q Well, let's distinguish between the time  
17 that you prepared the initial report, then later  
18 there's the reply report. At the time you did the  
19 initial report in August of 2024, you had the reports  
20 of Dr. Rothstein and Dr. Carney. Is that correct?

21 A Yes.

22 Q Okay. All right. So the first time you

1 spoke with Judge Newman was the morning of August  
2 24th; correct?

3 A Yes.

4 Q Okay. But she had the CT perfusion scan  
5 performed at GW on August 22nd. Is that correct?

6 A Yes.

7 Q And I think you say in page 8 of your report  
8 that the CT scan was obtained at your direction. Is  
9 that correct?

10 A Right. So what happened is that my first  
11 original thought had been that we could do a DTI scan.  
12 And -- but then we were told that she had this  
13 pacemaker and it was an issue. So we said, "Well,  
14 maybe, maybe not." So let's get the -- so you have to  
15 get the manufacturer and the implantation information.

16 And then you contact the manufacturer to see  
17 if it's MR safe. And if it is, you get the  
18 documentation. And then when the patient goes to get  
19 their scan, you present the documentation to the scan  
20 site as to safety. But it turned out in this case  
21 that although historically it was a safe implant for  
22 MRI that the company had been purchased, St. Jude was



1 purchased by a competitor, and the competitor didn't  
2 renew the -- the MR approvals.

3 So therefore there were no usable MR  
4 approvals. And it may have been a commercial decision  
5 they made to make people get their pacemaker replaced  
6 if they wanted an MRI. But the bottom line was we  
7 couldn't do the MRI. And we have occasionally used  
8 perfusion CT. Like, a good example is a young woman  
9 where the airbag had exploded improperly and there was  
10 metal in her eye, so we could not get an MRI without  
11 risk of ripping up her retina.

12 So we used -- and -- the -- one of the  
13 groups I work with in Texas had actually purchased a  
14 system to do perfusion CT scanning for that purpose of  
15 either imaging patients that could not have an MR, or  
16 we also -- there's a big interest in using perfusion  
17 CT early after injury as - a -- it's a quick -- less  
18 expensive method to -- because it's -- it is useful  
19 for identifying patients likely to have persistent  
20 post-concussive syndrome.

21 So there are a couple of reasons why in our  
22 head injury practice it would be of use. And in the

1 course of deciding to advise on the purchase of that  
2 system, I educated myself about other uses.

3 MR. MORRIS: Just answer his question  
4 and then stop.

5 BY MR. PHILBIN:

6 Q I'd like to focus just on this case, just on  
7 the interactions with Judge Newman and the decisions  
8 that you made there. So how did you get the  
9 information about her pacemaker and evaluate that if  
10 you didn't speak to Judge Newman?

11 A Yeah, I think that these were mostly  
12 communications between my clinical staff and the clerk  
13 and one of the clerks in her office.

14 Q Okay. Do you know which clerk?

15 A I -- you know, I'd have to look back through  
16 those emails to see who they were communicating with.

17 Q Okay. And then you mentioned that you went  
18 through a procedure because you're licensed in  
19 Virginia to be able to do things in D.C. How did it  
20 work with getting GW to do the scan? Do you just  
21 write a prescription for a scan and Judge Newman takes  
22 it there and they do it, or how does that work?

1           A     Yes, you don't -- I don't need to be  
2     licensed in -- I don't need to be licensed in District  
3     of Columbia to order a test there, to be done there,  
4     as long as I'm writing the order while I'm in  
5     California, for instance. But once you get to  
6     examining -- even examining a -- a patient, the rules  
7     vary from state to state.

8                     And technically it looked like I would have  
9     been okay as an adjacent state physician, but in an  
10    abundance of caution I went through the D.C. licensing  
11    procedure 'cause they have a reciprocal relationship  
12    that accelerates the process.

13           Q     Okay.

14           A     Reciprocal with Virginia.

15           Q     Did you have any other medical records of  
16    Judge Newman's before you ordered the CT perfusion?

17           A     No.

18           Q     Okay. And you didn't talk to Judge Newman  
19    about getting the CT perfusion scan?

20           A     No. We just -- I think I -- I probably,  
21    whether it was verbal, I have to look back and see if  
22    I sent an e-mail, but said we provide the information

1 through the clerk that, in fact, we were not able to  
2 get her cleared for an MRI and that we had a  
3 recommendation for a -- my recommendation is that we  
4 would perform a perfusion CT, that it could be done in  
5 D.C., a convenient location, though we had some --  
6 identified two or three options 'cause not every  
7 center does them.

8 And noticing that, so -- yeah, so -- and  
9 I -- I provided, again, maybe -- it was the clerk or  
10 in the e-mail. I have to look and see the explanation  
11 of what -- what it was and that it would help provide  
12 objective data, which had, in my opinion, significant  
13 recognition in the literature relevant to the question  
14 at issue.

15 Q Okay.

16 A Which would -- which would be of age-related  
17 dementia, present or not, that there was a literature.  
18 Had shown that it was being used for this purpose and  
19 was considered to be better than useful and -- useful  
20 for that purpose and better than older methods in some  
21 regards.

22 Q Okay. So these e-mails with the clerk, the

1 clerk was providing you with facts and information so  
2 that you could decide what to do. Is that correct?

3 A No, we -- we're just saying I was going to  
4 recommend this advanced MRI, but based on our  
5 findings, the judge can't have an MRI. We're  
6 recommending a perfusion CT, which does have a  
7 contrast injection, but if she's agreeable to that, I  
8 think it would be helpful. And I think word came back  
9 that she said yes, she would -- the judge had decided  
10 yes, she would be agreeable to that, particularly if  
11 it could be done at GWU, which was convenient to her.

12 Q Okay. But to make the decision to do the CT  
13 perfusion instead of the MRI, you had to get  
14 information about the fact that Judge Newman had a  
15 pacemaker; correct?

16 A Right, we -- so we asked that.

17 Q Just -- so the information about the  
18 pacemaker came to you, I believe you said, through  
19 e-mail from one of Judge Newman's clerks. Is that  
20 correct?

21 A That's my recollection.

22 Q Okay. And you didn't have other medical

1 records?

2 A That's correct. We just asked for the  
3 document that they contact her. If they did not have  
4 it, they should contact the cardiologist. It's a  
5 routine thing. And my office does this all the time.  
6 And because we're imaging patients with MRI, we've  
7 been doing that for more than 30 years. And so we  
8 have a question, do you have a pacemaker? You have to  
9 ask people.

10 You don't want to just find out by accident  
11 later. And so they're trained to ask that question.  
12 And if the answer is yes, they ask for the  
13 documentation. And then we have -- there are a couple  
14 of people in the office who would -- were  
15 sophisticated to contact and -- and track down the  
16 approval or not from the manufacturer.

17 Q Okay. Did you know at the time that you  
18 ordered the CT perfusion scan that Judge Newman had  
19 kidney disease?

20 A Well, I knew that there would be an issue.  
21 You know, I think what usually happens --

22 MR. MORRIS: The question was, did you

1 know?

2 THE WITNESS: Yeah, I -- I'm not sure  
3 if I knew about it.

4 BY MR. PHILBIN:

5 Q Okay. But the contrast agent used for the  
6 CT perfusion can present risk to a patient with kidney  
7 disease, can't it?

8 A Right. You need that full -- you need the  
9 full -- that's another question. Once you come to  
10 giving contrast, the image center would have to know  
11 about that as well. Yeah.

12 Q Okay. But you didn't know about her kidney  
13 disease?

14 A I'd have to look back and see the sequence.  
15 I'm not sure.

16 Q Okay. So right now, as you are here today,  
17 you don't remember whether or not --

18 MR. MORRIS: That's what he answered,  
19 yeah.

20 MR. PHILBIN: He can testify, Counsel.

21 MR. MORRIS: Well, he had answered  
22 that.

1 BY MR. PHILBIN:

2 Q Are you saying that right now, as you sit  
3 here today, you can't remember whether or not you knew  
4 about the chronic kidney disease?

5 MR. MORRIS: Objection. Asked and  
6 answered.

7 Go ahead, you can answer again.

8 THE WITNESS: Yeah, so usually we have  
9 a -- we have questionnaire process that -- which  
10 addresses contrast agents. So I'd have to look back  
11 and see. It should -- the questionnaire should turn  
12 that up. But I just -- it's not that my -- not the  
13 main question I was speaking of. It's a pre-imaging  
14 questionnaire that asks those questions. I'll have to  
15 go back and see. I just can't recall. But that would  
16 have turned up.

17 BY MR. PHILBIN:

18 Q Okay. And in your ordinary clinical  
19 practice, when patients come to you, is it your  
20 ordinary practice to order some sort of imaging before  
21 you've seen the patient?

22 A Occasionally, yeah, 'cause neurosurgeons do



1       that all the time. Many of my colleagues refuse to  
2       see a patient unless they've already been imaged.

3                       MR. MORRIS: Again, he just asked if  
4       that was the practice. That was your practice.

5       BY MR. PHILBIN:

6               Q       Let's back up and focus on it. Is it your  
7       practice, in your clinical practice, to order imaging  
8       for a patient without seeing the patient?

9               A       It occurs occasionally for logistical  
10      reasons. But it's not my -- it's not my preferred  
11      practice, but occasionally we do that.

12              Q       Okay. All right. Dr. Filler, I've handed  
13      you what's been marked as Exhibit 9. Do you recognize  
14      this?

15                       (Exhibit 9 was marked for  
16                       identification.)

17              A       Yes.

18              Q       And this is the report from the George  
19      Washington University Hospital Radiology Department on  
20      the CT perfusion scan, isn't it?

21              A       Yes.

22              Q       Okay. Who signed the report?

1           A     Well, there's a note of signature under  
2     Dr. Reza Taheri, and it's also -- say it's dictated by  
3     Samuel Beloin and approved by Reza Taheri.

4           Q     Okay. Have you ever spoken to Dr. Taheri?

5           A     Yes.

6           Q     Okay. When?

7           A     When I got this report.

8           Q     And what was the substance of that  
9     conversation?

10          A     I said, "Well, this is a pretty simple,  
11     limited report. I gather that it has the key  
12     information, but you guys don't usually do a more  
13     extensive report?"

14          Q     And what was the response?

15          A     He said, "Well, you ordered the CT  
16     perfusion, but if you had ordered a CT and a CT  
17     perfusion, then I would have given a more extensive  
18     report. But because of the way you wrote it, we don't  
19     bill, so I don't do a big report."

20          Q     Okay. Any other substance to your  
21     conversation?

22          A     And he said, "You know, would you like to

1       order that?"   And I said, "No, that's fine.   I usually  
2       read these myself anyhow."

3               Q       Okay.   But you were concerned enough to ask  
4       him first about, "Hey, isn't there more to this  
5       report?"

6               A       Well, I just wanted to make sure we had  
7       everything that he -- that he said.

8               Q       Okay.

9               A       I thought, this, "Is this it?"   And --  
10       because we wanted to get the raw data and analysis,  
11       which was also only provided 'cause there's -- there's  
12       more.   You know, we have the -- the full i-RAPID  
13       analysis and you know --

14              Q       Okay.   Let's go to page 32 of your report.  
15       In your report, page 32.   And right in the very top  
16       line on page 32, it refers to Dr. Taheri's report.  
17       And it says -- it starts at the bottom of the previous  
18       page.   "This study was interpreted by a staff  
19       neuroradiologist, Dr. M. Reza Taheri, MD, PhD, as  
20       being completely normal."   Do you see that?

21              A       Yes.   That's what -- yeah, I asked him, is  
22       that what that means?   And he said, "Yes, it's normal

1 as to the test that you ordered, Dr. Filler."

2 Q Okay. So in the telephone conversation you  
3 had with Dr. Taheri, you asked him if this report  
4 meant that it was completely normal?

5 A Well, it says it's normal. I would just ask  
6 them, "Is there anything else you're planning to  
7 comment on, on this CT?"

8 Q Okay. Can you just point out to us, point  
9 out to me on the report where it says "completely  
10 normal"?

11 A So it says that the diagnostic value of the  
12 parameters provided can decrease as a result of  
13 artifacts. And the volume of tissue at CBF less than  
14 30 percent is zero. So basically, the -- that -- in  
15 the literature, volume of CBS being below -- 30  
16 percent below the contralateral would be an -- would  
17 be an abnormality. So it's saying --

18 Q So if I could just -- so we'll go through in  
19 order. If I could just stop you there. What that's  
20 saying, what you're reading, where it says "A equals  
21 volume of tissue with CBF less than 30 percent  
22 relative to contralateral side." CBF refers to

1 cerebral blood flow. Is that right?

2 A Yes.

3 Q And what that's saying is the volume of  
4 tissue that had cerebral blood flow less than 30  
5 percent relative to the contralateral side. That  
6 means relative to the other half of the brain. Is  
7 that right?

8 A Yes.

9 Q So it's reporting that there's not a  
10 mismatch in the flow between the two sides of the  
11 brain. Is that correct?

12 A That's correct. Let's say if it -- if one  
13 side were normal and one side were abnormal, then you  
14 would see that difference.

15 Q But if, for example, both sides had a low  
16 blood flow but they were the same, this would report  
17 here that there's not a difference relative to the  
18 contralateral side; correct?

19 A Right, yeah. I mean, it could be they  
20 were -- had a similar pathology on both sides, and so  
21 that that answer on A would only rule out an  
22 asymmetry.

1           Q     Okay. And so when you said that this is  
2 completely normal, I guess my question is, that's your  
3 interpretation of the fact that on these reports of A  
4 and B, it was saying there was no difference from one  
5 side to the other?

6           A     Well, that's A, but see B is also saying --  
7 it's giving you a -- an absolute value of a T-max  
8 greater than six seconds. So this is the transit  
9 time, which means there's no abnormality of transit  
10 times, no slowing. So basically if you have a  
11 typical -- one of the -- many of the typical  
12 conditions in dementia will impair blood flow, and the  
13 measure you get is an increase of T-max. I think that  
14 in this case that would be an absolute abnormality,  
15 even though it says relative to contralateral side.

16          Q     So you're saying that even though the report  
17 says that it's reporting something as relative to the  
18 contralateral side, do you think it's not actually  
19 just reporting relative T-max from one side to the  
20 other?

21          A     Yeah, I think it's also putting it into a  
22 normal -- a generally normal range.

1           Q     And why do you think that, since it says  
2 relative to contralateral side?

3           A     I didn't write the format of their report,  
4 but that's just what it says.

5           Q     Okay. So you think the report is wrong?

6           A     No, I don't think it's wrong.

7           Q     You think it's not accurate in what it's  
8 reporting?

9           A     It may be -- it may be accurate and  
10 otherwise significant.

11          Q     Because we do agree, though, that what the  
12 report says is that it's reporting volume of tissue  
13 with T-max less than six seconds relative to the  
14 contralateral side.

15          A     Yeah, so I did ask him. You know, I said --  
16 I said, "Well, I mean, I" -- I said, "I can go back to  
17 i-RAPID, and I go through the data, which I did. I  
18 can go to the company, but what I'd like to know,  
19 Dr. Taheri, is am I correct in reading this as saying  
20 that there's normal" -- "you found no flow  
21 abnormalities?" And he said "That's what it means."  
22 He was very not -- he didn't really want to talk very

1 much about it, but he was very clear, and I was very  
2 clear.

3 Q Okay. So now --

4 A And I report --

5 Q You had a more detailed discussion.

6 A That one call. It was one call. I would  
7 say, I mean, I wasn't irritated. I wasn't -- I  
8 thought that there would be more here, that he would  
9 be more -- and he just said, "Yeah, it's normal. You  
10 can look at the numbers yourself, but it's normal."  
11 As if I -- as if there was me asking a question  
12 comparable to yours, I was being crazy, you know?

13 So that was my impression of the call with  
14 him. But, I mean, maybe I misunderstood, but -- and  
15 then, I -- so I went through, and I looked at the  
16 values and the measurements and literature on it, and  
17 it did seem to be normal. And I agree that, you know,  
18 they use mismatch to -- so because if you were -- I  
19 think the reason it's written that way is that if you  
20 were looking at stroke, okay, the chances of having  
21 two strokes in the exact same place on two sides of  
22 the brain is very low at the same time.



1           So you're going to have one stroke, and  
2           therefore, putting it in this language of  
3           contralateral, and he basically said that's just  
4           how -- he doesn't, like, dictate or type this. It's  
5           just, I think, how radiologists like to do it is they  
6           just hit a button, and the report gets generated.

7           Q     Okay.

8           A     So --

9           Q     And do you know the way, this report was  
10          prepared using i-RAPID CT perfusion software --

11          A     Yes, and I talked to the i-RAPID company. I  
12          looked through their software. I examined their  
13          outputs. I went through the literature about what  
14          they measured and how they measured it, and some of  
15          which I cite and describe in the body of my report.

16               And I reached the conclusion, based on the  
17          image findings and the literature and the area  
18          assessed in determining these volumes and rates, that  
19          indeed this had come out normal. So I -- I was  
20          satisfied with it because we have our own software for  
21          doing perfusion analysis, although we possibly would  
22          have had to reimage her.

1           So I was trying to decide, is their analysis  
2           sufficient to answer the question, or do we need to  
3           reimage using my Nordic Neuro Lab perfusion software?  
4           And this i-RAPID software is very well accepted, and  
5           even for this use. So it was my impression, after  
6           talking to Dr. Taheri, reviewing the data, reviewing  
7           the literature, speaking with the manufacturer, that  
8           this was sufficient to demonstrate normality.

9           Q     Okay. When you say that this i-RAPID  
10          software is very well accepted, even for this use,  
11          what does that mean, "this use"? What are you  
12          referring to?

13          A     Well, you could use i-RAPID to look at  
14          perfusion for stroke, or it could be used in a  
15          dementia screen.

16          Q     Okay. So just to be more clear, your  
17          testimony is that it's very well accepted to use the  
18          i-RAPID software on CT perfusion to screen people for  
19          dementia?

20          A     Yes, I mean, I looked to see -- I asked them  
21          about it, the company -- I mean, I don't think it's --  
22          I'm not sure if they have a label indication, and the

1 way I like to explain that is, if you're going to  
2 release a medication that works for 15 different  
3 things, and most of them it's 80 percent effective,  
4 and one of them is 95 percent effective, you only put  
5 in -- and it's a -- and the 95 percent one is hugely  
6 common, you only put in for the one indication, 'cause  
7 that'll get it out in the market, and adding other  
8 indications doesn't help you.

9 And once it's out there, doctors could use  
10 it for whatever indicated. So I looked into this  
11 question, and I'm saying there that to Taheri it's --  
12 it's normal, nothing needs to be done.

13 Q Okay.

14 A And that his report sufficiently  
15 communicated that.

16 Q Okay. Then just one last question to make  
17 sure that I understand this. On that line where it  
18 says "B, volume of tissue with T-max," and it's  
19 reporting that, were you saying that when you  
20 contacted the i-RAPID company, you looked at the  
21 software, and that your understanding is that this  
22 line where it says "volume of tissue with T-max, less

1       than six point seconds relative to contralateral  
2       side," that it is not simply reporting whether there's  
3       a difference from one side to the other, and instead  
4       is reporting absolute values. Is that correct?

5           A       Right, it says "T-max greater than," so if  
6       the -- if it's -- if the T-max is greater than six  
7       seconds.

8           Q       Greater relative to what?

9           A       Just greater than.

10          Q       But it has to be greater than something,  
11       greater relative to what?

12          A       Greater than six seconds.

13          Q       Okay. Greater than six seconds.

14          A       Then it would be going slow.

15          Q       And so I guess my question is, you  
16       understand this to be saying that it's not measuring  
17       simply a difference from one side to the other, it's  
18       just giving you an absolute time measurement? Is that  
19       correct?

20          A       Yeah, so it -- it's giving an absolute time  
21       measurement, and then you can take the -- the two side  
22       measurements. I -- I didn't write this format, and

1 i-RAPID didn't write this report either. They simply  
2 are providing the measurements.

3 Q Okay. Let's move on to your in-person  
4 examination of Judge Newman. So where did you do that  
5 examination?

6 A In judge's chambers.

7 Q Okay. And that was on August 24th?

8 A Yes.

9 Q Which was a Saturday?

10 A Yes.

11 Q So why do it in the judge's chambers?

12 A It was her choice. I mean, I had arranged  
13 to -- I had a couple of options to arrange for space  
14 either in -- so originally in -- in Arlington. And so  
15 you run into the issue of, would that conflict with  
16 the rule that you can use a adjacent state license as  
17 long as you don't have an office in this state?

18 Because what they're trying to prevent is, I  
19 have a big office in D.C., but I only have a Virginia  
20 license, and I have a whole business. But as soon as  
21 I have an office, rather than following my Virginia  
22 patient into D.C. So at the time, I think my license

1       came through around that time anyhow, we contemplated  
2       having her go to an office.

3               But then they said, "Well, can you just do  
4       it in her chambers?" And I said, "Yeah, we can do  
5       that. I think that would be okay to do it."

6               Q       Okay. And why not do it at her home?

7               A       I also thought I might be going over to the  
8       location of her home. But it turned out she had  
9       suggested it be done in chambers.

10              Q       Okay. Let's look at page 28 of your report.  
11       And if you look under the heading General Physical  
12       Examination at the second paragraph, the second  
13       sentence there says "She is observed entering and  
14       exiting the vehicle by which we arrived at the  
15       Courthouse of the Court of Appeals of the Federal  
16       Circuit, and then observed walking to the elevator in  
17       the parking garage and from the elevator to her  
18       chambers." Is that correct?

19              A       Yes, and I stated the --

20                      MR. MORRIS: Wait for the question.

21                      THE WITNESS: Okay. Go ahead. Yes.

22       //

1 BY MR. PHILBIN:

2 Q Okay. That's what it says?

3 A Yeah.

4 Q So I'd just like to unpack that a little  
5 bit. So how did that work? Where did -- how did you  
6 get in the vehicle with her? And where was that? And  
7 where did you see her get in the vehicle? And how did  
8 you get to the court?

9 A So I stayed at The Hay-Adams; right? Which  
10 is where I usually will stay if I'm testifying in the  
11 Federal Circuit, Court of Appeals of the Federal  
12 Circuit, or the other court that's adjacent to that.  
13 The -- so the -- I think when I talked to the clerk  
14 that morning, or her clerk that morning, she said that  
15 the judge would prefer to do this in chambers.

16 I said, "Oh, I'll just walk over there."  
17 And she said, "Well, we can" -- "we're on our way.  
18 Why don't we just pick you up and take you over to the  
19 court? Because it's locked up on the weekend. You  
20 won't be able to get in."

21 Q And was that -- do you know the name of that  
22 clerk?

1           A     I'm not recalling right offhand, but I -- I  
2 have -- I have that in my records.

3           Q     Was it [REDACTED]?

4           A     I think so, yeah.

5           Q     Okay. So [REDACTED] and the judge picked  
6 you up at The Hay-Adams, and you drove over to the  
7 court building. Is that right?

8           A     Yes.

9           Q     Okay. And then did [REDACTED] drive the  
10 vehicle down underneath into the parking garage below  
11 the court building?

12          A     Yes, because it's -- that's all -- that's  
13 their point was it was locked up on the weekend, so  
14 the one -- but she could get entrance, and so they  
15 drove down in there.

16          Q     Okay. And did she stop and talk to the  
17 marshal or the guard to get entry into the garage?

18          A     I think so, yes.

19          Q     Okay. And because it was locked up and it's  
20 a federal building, did they have to identify who you  
21 were to get access to the garage?

22          A     I don't recall. I think it was sufficient



1       that the judge was there and indicated that -- and  
2       with [REDACTED], they should be admitted.

3           Q       Okay. Did you hear any conversation that  
4       [REDACTED] had with the marshal there at the garage  
5       entrance?

6           A       I don't recall.

7           Q       You don't recall any conversation?

8           A       There may have been, but I just can't recall  
9       what was -- some words were said, a few words, that  
10      was -- seemed to me very basic along the lines of --

11                   MR. MORRIS: If you don't --

12                   THE WITNESS: Yeah.

13                   MR. MORRIS: Go ahead.

14      BY MR. PHILBIN:

15           Q       So did -- you don't recall [REDACTED]  
16      identifying you for anyone?

17           A       I think she may have identified, but I just  
18      can't be sure.

19           Q       Okay. So did [REDACTED] mention anything  
20      to you about having to sign into the building in a  
21      visitor log?

22           A       I don't recall that.

1           Q     Okay. Did you have to show anyone an ID to  
2 get into the building?

3           A     I don't think so.

4           Q     Okay. I'm handing you what's been marked as  
5 Exhibit 10. Dr. Filler, this is a declaration signed  
6 by [REDACTED], who's the Security and  
7 Emergency Management Administrator at the U.S. Court  
8 of Appeals for the Federal Circuit. And can you see  
9 in paragraph 3, he says that "The attached document is  
10 a true, accurate, and complete copy of records  
11 generated by the Passage Point Visitor Management  
12 Software." Do you see that?

13                     (Exhibit 10 was marked for  
14 identification.)

15          A     Yes.

16          Q     And on the next page, it's a visitor log.  
17 And on the top line there, you can see there's a time  
18 in and time out column. And on the top line there, it  
19 gives a time in on August 24, 2024, at 1:03 p.m. Do  
20 you see that?

21          A     Yes.

22          Q     Okay. And the person there on that top line

1 is given as Ralph Fischer, and the person below that  
2 is [REDACTED]. [REDACTED] is the clerk, isn't she?

3 A Yes.

4 Q Okay. Was Ralph Fischer in the car with  
5 you, with [REDACTED], when you arrived?

6 A No, I was just -- I was the only passenger.

7 Q Okay. So and further down the last line on  
8 this page of the visit log shows Judge Newman. Do you  
9 see that?

10 A Yes.

11 Q And the times for all three, August 24,  
12 2024, at 1:03 p.m., for Ralph Fischer, for [REDACTED]  
13 [REDACTED], and for Judge Newman, they all arrived at  
14 1:03 p.m.; correct?

15 A Yes.

16 Q Okay. But the three people in the car that  
17 you arrived in were Judge Newman, [REDACTED], and  
18 you. Is that correct?

19 A Yes.

20 Q Okay. But [REDACTED] never talked to you  
21 about having to sign you into the building?

22 A No. I don't recall any -- I don't recall

1 anything -- it being sort of raised an issue -- as an  
2 issue.

3 Q Okay. All right. Then when you went up to  
4 Judge Newman's chambers to do the examination, was  
5 anyone else present?

6 A No.

7 Q [REDACTED] wasn't there?

8 A Well, she went up with me, and then she said  
9 she would be going out to, I think, work out or  
10 something like that, or run.

11 Q Okay. But during the examination, it was --  
12 you and Judge Newman were alone. Is that correct?

13 A That's correct.

14 Q Okay. All right. I'm going to hand you  
15 what's been marked as Exhibit 11. Do you recognize  
16 this?

17 (Exhibit 11 was marked for  
18 identification.)

19 A Yes.

20 Q And is this a copy of your notes from the  
21 examination of Judge Newman?

22 A Yes.

1           Q     Okay. And I just want to make sure that I  
2 understand some things on here. You see on the first  
3 page there's a heading that says "Review of DTIQ"?

4           A     Yes.

5           Q     What does DTIQ stand for?

6           A     That's that questionnaire with a couple  
7 hundred questions on it. So I'm, like, looking at  
8 this form, and I'm asking her questions off the form.

9           Q     So when you say that form with a couple  
10 hundred questions, that's the questionnaire that you  
11 have created for doing a screening of your patients?

12          A     Yes.

13          Q     And -- but Judge Newman had not filled that  
14 out; correct?

15          A     Correct.

16          Q     Did she have it in front of her?

17          A     No. So I'm -- so if -- if a patient showed  
18 up at my office, it happens all the time, and they  
19 didn't fill out their form, they have to sit out there  
20 and try to fill out the form. I have the choice  
21 always of just going through with the patient myself  
22 and just go through the whole questionnaire. But

1 often it's time-consuming, and I don't. But I think,  
2 you know, certainly in deference to the judge, I  
3 thought, "Well, I'll just ask her the questions."

4 Q Okay. So when you were talking with Judge  
5 Newman, you had in front of you your questionnaire of  
6 200 questions?

7 A Right, on a computer screen. So I'm going  
8 through, and I'm asking her.

9 Q And you asked her all of those questions?

10 A Yeah. And I do that pretty much in all my  
11 exams. I go through. I mentioned -- testified  
12 earlier, that I then go -- they fill it out, and then  
13 I go through, and I ask them, you know, the same  
14 questions.

15 Q Okay. But this time she had not filled it  
16 out?

17 A That's correct.

18 Q So you were basically administering the  
19 questions to her?

20 A Yes.

21 Q Is that accurate?

22 A Yes.

1           Q     Okay. Could you tell us -- just because I'm  
2 not good at handwriting sometimes or reading, what  
3 does it say on your notes, on your memory?

4           A     So firstly, we -- so the way that -- the  
5 form goes through, but I'll -- I'll just read out what  
6 it says, to answer your question. "So long-term  
7 memory, auditory tact, denies decrease in name  
8 recollection, denies decrease in recalling words to  
9 songs. Consistent scope of recall for oral argument  
10 cases.

11                     Long-term memory visual, denies decrease in  
12 face recognition, denies decrease in recall of  
13 landmarks. Long-term memory, time sequence of events,  
14 states as normal." And, you know, I'm just reading  
15 this rather than telling you what the questionnaire  
16 says.

17           Q     Yes, that's all I wanted.

18           A     Okay.

19           Q     That's perfect.

20           A     All right. So "new memory formation,  
21 recalls substance of phone conversation, recalls  
22 instructions." I think that last line is "recalls

1 intention." So it's "intention of travel." That  
2 is -- why did I -- why did I go to that other room?

3 Q Okay.

4 A Then it's "immediate memory, not repeating  
5 herself, not losing track of her train of thought as  
6 she speaks. Speech, word finding stated normal.  
7 Normal flow" --

8 Q I'm sorry. Doctor, but when stated normal,  
9 does that mean that Judge Newman stated that her word  
10 finding was normal?

11 A Yes. The question is, do you sometimes have  
12 trouble thinking of the word you want to say?

13 Q Okay.

14 A And she states, "Nope, word finding is  
15 normal, don't encounter that." Then I go through  
16 normal flow of speech, "denies any stuttering or  
17 slurring of words." And then "no impression of no  
18 impairment of understanding of speech responding to  
19 questions. Reading, no difficulty recognizing words,  
20 able to maintain attention during reading. Good  
21 recall of read texts."

22 Q If I could just stop you there, Doctor, did



1       you give her a text to read and then ask her questions  
2       about it?

3           A       Well, the test I did, no. What I -- the  
4       only test I did, which I described subsequently, is to  
5       describe a technology in a patent question. And then  
6       she had to explain back the technology, which is very  
7       complex. Two or three of them I gave. And then --  
8       and then to spontaneously comment on her impression of  
9       the -- what I believe to be a at least worthwhile  
10      question in patent law, where there might be  
11      difference of opinion among judges.

12          Q       Okay. But at this point in your evaluation  
13      or examination, when you noted "able to maintain  
14      fluency of reading and good recall of texts," was that  
15      based on just asking her?

16          A       Yes.

17          Q       Okay. She just self-reported this?

18          A       Yes. This is all -- just like -- that's how  
19      these questionnaires work. Just -- so writing states  
20      "good maintenance of" -- "good, you know, it's  
21      advanced technical legal writing."

22          Q       That's, again, her self-report?

1           A     Yes.

2           Q     Okay.

3           A     And I had reviewed several of her opinions  
4 recently. I had a stack of her recent last few  
5 opinions, you know, that I had read through. And you  
6 can see a problem, but I understand that clerks could  
7 have contributed to -- you know, to those. Okay. So  
8 cognitive. Okay. You know, on multi-step planning  
9 and multitasking. Navigation states no impairment.  
10 Simple math, normal, e.g., calculating tips, et  
11 cetera. Attention and -- and concentration, denies  
12 any impairment.

13          Q     And these are all, again, self-report?

14          A     Yes.

15          Q     Okay, great. I think that was very helpful.  
16 That's good for that form. In your interview or  
17 evaluation with her, did Judge Newman deny having any  
18 history of syncope?

19          A     I think I discussed that with her.

20                   MR. MORRIS: You take your time and  
21 look.

22           //

1 BY MR. PHILBIN:

2 Q Well, it'll probably expedite things. Let's  
3 go to page 4 of your report.

4 MR. DOLIN: -- on the report or still  
5 on --

6 MR. PHILBIN: Of the report.

7 BY MR. PHILBIN:

8 Q So on page 4 of the report, the paragraph  
9 that's about two-thirds of the way down the page,  
10 starting with the word "Prior to," there's a sentence  
11 in the middle of that paragraph that says "While the  
12 records" -- and this is referring to medical  
13 records -- "are described more fully below, nothing in  
14 the records shows that Judge Newman has ever suffered  
15 a heart attack," and then there's a parenthetical, "or  
16 had a fainting episode."

17 And then it goes on to say "The records  
18 reviewed by me do not shed light on Judge Newman's  
19 current condition." Do you see that?

20 A Yes.

21 Q Okay. And then on page 18 of the report, in  
22 the top paragraph under the heading Past Medical

1 History, the last sentence of that first paragraph  
2 says "Judge Newman denied having had a heart attack at  
3 any point in her life or any fainting episodes, and  
4 records do not reveal any such episodes." Do you see  
5 that?

6 A Yes.

7 Q So that's saying she denied having any  
8 syncope, and your review of the records did not reveal  
9 any fainting episodes?

10 A By which I mean the medical records, and I  
11 understand there's a report, an affidavit, I'm saying  
12 the medical records do not reveal.

13 Q The medical records don't reveal?

14 A Yeah.

15 Q Right. Okay. So let's take a look -- okay.  
16 I've handed you what's been marked as Exhibit 12. And  
17 this is a medical record that was among the set of  
18 medical records that you reviewed and were given to us  
19 by Judge Newman's counsel. And you can take a minute  
20 to look at that.

21 (Exhibit 12 was marked for  
22 identification.)

1 MR. MORRIS: Do we look at any  
2 particular part?

3 BY MR. PHILBIN:

4 Q Well, let's go to page -- there are Bates  
5 numbers in the bottom right-hand corner. Let's go to  
6 page 1676. And do you see there in sort of a --  
7 there's a gray bar near the top with text in it?

8 A Yes.

9 Q Near the top of the page there's a gray bar  
10 that says "04/19/2023 - ED to Hosp-Admission  
11 (Discharged) in [REDACTED] Hospital." Do you see  
12 that?

13 A Yes.

14 Q Okay. And actually, if you look at the  
15 Assessment section, there's a line there that says  
16 "Judge Newman is a 95-year-old female with a history  
17 of hypothyroidism, pacemaker placement by Dr. [REDACTED],  
18 presenting after a brief syncopal episode lasting a  
19 "split second." Admitted with syncope and AKI." Do  
20 you see that?

21 A Yes.

22 Q Okay. So she was admitted to [REDACTED]

1 Hospital, according to this record, on April 19, 2023,  
2 after an episode of syncope. Isn't that right?

3 A Yes.

4 Q Okay. And if you go to the Bates number,  
5 page 1681, and it's sort of in the bottom half of the  
6 page. There's a note there. Do you see where the  
7 author is Theresa Osuji?

8 A Yes.

9 Q And this was a note at 04/20/2023 at 6:39  
10 a.m. Do you see that?

11 A Yes.

12 Q And it says "Received patient from emergency  
13 department." And then towards the end "patient had a  
14 good night sleep." So do you see that?

15 A Yes.

16 Q So this shows that Judge Newman was in the  
17 hospital overnight. She was admitted overnight as a  
18 result of that syncope episode?

19 A Yes.

20 Q Okay. And then on page 1683, down in the  
21 bottom third of the page, there's a heading that says  
22 Prior to Treatment.

1           A     Yes.

2           Q     And then there's a line that says "Referral  
3     Diagnosis."

4           A     Yes.

5           Q     And it says "admitted for syncope episode,  
6     found to have AKI." Do you see that?

7           A     Yes.

8           Q     Okay. So is it fair to say this is -- I  
9     mean, it's a document that starts at page 1667 and  
10    goes through page 1685. This is a multi-page document  
11    about admission -- her admission to the hospital for  
12    an episode of syncope; correct?

13          A     Well, I think they're concerned about her  
14    cardiac rhythm. Yeah, that's -- that's the issue. So  
15    it's not that they're all examining her for the whole  
16    syncope workup or something. They're specifically --  
17    whoever -- whoever was the source of saying "a split  
18    second," enough to raise concern.

19          Q     But she had an episode of syncope, according  
20    to the records?

21          A     Yeah, but the records -- the most detail you  
22    get is "a split second." So I'm not sure why they --

1 does that mean she didn't fall to the ground or just,  
2 you know, it's hard to know.

3 Q Okay.

4 A And -- and, you know, it's not as if you --  
5 you don't have -- so you don't have an observed  
6 syncope, but absolutely it says what it says.

7 Q Is there a reason you didn't mention this in  
8 your report?

9 A I think I'm just indicating a -- the  
10 statement that they -- that she did not -- her  
11 statement that she did not have a blackout.

12 Q Well, let's go back to page 18 of your  
13 report. So under that first paragraph, under Past  
14 Medical History, again, the last sentence says "Judge  
15 Newman denied having had a heart attack at any point  
16 in her life or any fainting episodes, and records did  
17 not reveal any such episodes."

18 A Right. So, I mean, it's the difference  
19 between an actual faint where you're out unconscious  
20 somewhere being observed versus saying that you felt  
21 faint for a split second.

22 Q Yeah.



1           A     So -- and I think -- I think they're both  
2     fair descriptions, but, you know, I take your point.  
3     The record says -- has the word syncope in it.

4           Q     Well, at the time you prepared your report,  
5     did you not include a mention of these medical records  
6     we just went through because you didn't think they met  
7     the threshold for syncope?

8           A     No, I -- I mean, I reviewed the records, and  
9     at that point in the report I'm talking about her  
10    statement.

11          Q     Well, Doctor, you're also saying "and  
12    records do not reveal any such episodes."

13          A     Fainting episodes, yeah. I mean, a faint  
14    is -- is going to be more than a split second.

15          Q     Okay. So I just want to understand what you  
16    thought when you wrote this down. You knew about  
17    these medical records referring to the hospital  
18    admission for syncope?

19          A     Yes.

20          Q     But you decided they didn't count as a  
21    medical record showing a fainting episode --

22          A     Well, it's a diagnosis code that they're

1       trying to support to get a certain reimbursement. So  
2       sure, I mean, I guess the -- there might be a  
3       difference between saying someone fainted, like the  
4       period of blackouts comes up all the time in head  
5       injury where there was -- was there a moment of breach  
6       of memory? What is the description of this, you know?

7               And a split second might have been a sense  
8       of feeling, a moment of loss of sensorium. I -- you  
9       know, I don't know. But I think that a faint -- being  
10      fainted means that you should be seen unconscious,  
11      which I don't think that is what this is, which I  
12      don't think this -- but I -- I agree that you could  
13      use the word in many situations, syncope, to overlie  
14      a -- a faint, but there's -- they're not exactly the  
15      same thing.

16             Q       I'm just trying to find out what you meant  
17      when you wrote down "The records did not reveal any  
18      such episodes."

19             A       They did not reveal -- they did not reveal  
20      what I just -- I already testified on this. I'm not  
21      going to keep saying the same answer again.

22             Q       Okay. I just want to understand. You were

1       aware of this particular medical record when you wrote  
2       that sentence. Is that correct?

3           A       We can have the court reporter read back.  
4       If you already asked me that question, I already  
5       answered it.

6           Q       Doctor, I just want to know, were you aware  
7       of this medical record when you wrote that sentence?

8                   MR. MORRIS: Cumulative testimony.

9                   THE WITNESS: I'm waiting for her to  
10      read it back.

11                  MR. PHILBIN: Sure.

12                  THE REPORTER: Just one moment.

13                       (The reporter repeated the record as  
14                       requested.)

15      BY MR. PHILBIN:

16           Q       So you were aware of the records, and now I  
17      just want to understand. The reason you didn't  
18      mention them here is you thought they didn't count as  
19      a fainting episode. Is that your testimony?

20                  MR. MORRIS: Object to the form.

21                  THE WITNESS: Yeah, no, I just --

22                  MR. MORRIS: I'm sorry. That was not

1 his testimony.

2 MR. PHILBIN: Okay. I'll withdraw the  
3 question.

4 BY MR. PHILBIN:

5 Q Doctor, you've testified that you were aware  
6 of the medical records showing that she was admitted  
7 to the hospital for an episode of syncope. My  
8 question is, why did you say here that the records do  
9 not reveal any episodes of fainting?

10 A Yeah, I -- I just said and this is why I  
11 don't like to testify --

12 MR. MORRIS: Same objection.

13 THE WITNESS: That, again and again is  
14 that any little word difference, you can put the two  
15 of them -- "Well, here you said A, and here you said  
16 B," so I don't like to answer the same question twice.  
17 I feel I answered it, which was to say, and I'm going  
18 to repeat it, but it's an advanced objector. You're  
19 doing this is a way to get two different statements of  
20 the same thing.

21 But that a faint would be something  
22 like someone being witnessed to have been blacked out

1 and fallen, for instance. The description of a "split  
2 second" indicates maybe a brief moment of feeling a  
3 decrease in sensorium. I'm saying there not that she  
4 didn't have a brief moment of syncope. I'm saying she  
5 didn't have a faint.

6 BY MR. PHILBIN:

7 Q Okay. So --

8 A I did not read the past records into the  
9 note, I -- but I cited to the past records.

10 Q Okay. So are you saying that syncope is  
11 something different from fainting?

12 A Well, a full syncopal episode would be  
13 similar. That is, someone's witnessed to be  
14 unconscious, but they're not saying that's what  
15 happened.

16 Q Okay. I've handed to you what's been marked  
17 as Exhibit 13, and this is another medical record.  
18 Could you go to the page that's Bates marked 1436 in  
19 the lower right-hand corner?

20 (Exhibit 13 was marked for  
21 identification.)

22 A Okay.

1           Q     And can you see up towards the top where it  
2     says "BEGIN - Office Visit"?

3                     MR. MORRIS: I'm sorry to jump in. Can  
4     you give him a -- on the date too?

5                     MR. PHILBIN: Sure.

6     BY MR. PHILBIN:

7           Q     Just below where it says "BEGIN - Office  
8     Visit," it says "Date of Service Tue Apr 25 2023."

9           A     Yes.

10          Q     And it says "Chief Complaint Hospital f/u,"  
11     which is follow-up, I believe, "for syncope"?

12          A     Yes.

13          Q     Okay. So this is April 25th. It's a few  
14     days -- it's six days after the April 19th event when  
15     she was admitted to the hospital for syncope.  
16     Correct?

17          A     Yes.

18          Q     Okay. And under Subjective, can you read  
19     just the first four lines there?

20          A     It says: "She was working at home. She  
21     stood up from her chair and passed out and fell to the  
22     floor" -- or "feel to the floor. It did not have any

1 symptoms leading up to the syncope."

2 Q Okay.

3 A And -- below that --

4 Q And then a couple of lines below that, do  
5 you see where it says "Had similar episode prior to  
6 getting pacemaker"?

7 A Yes.

8 Q Okay. So where it reports that she passed  
9 out and fell to the floor, does that count as  
10 fainting?

11 A Yes.

12 Q Okay. So same question as before, why did  
13 you not mention this record in your report?

14 A I might have missed that line. I -- I think  
15 I saw the brief -- the thing that's saying it was a  
16 split second, but I don't think I saw that.

17 Q Okay. So -- and you see also it says that  
18 on that same page "Had similar episode prior to  
19 getting pacemaker"?

20 A Yes.

21 Q And then if you go to the page that's Bates  
22 marked 1441, in this same set of records, in this same

1 exhibit, if you see sort of in the middle of the page,  
2 it says "BEGIN - Office Visit"?

3 A Yes.

4 Q So this is a separate office visit, and it  
5 gives the date of service as Friday, March 17, 2023?

6 A Yes.

7 Q And if you look down under Subjective, the  
8 last sort of hashtag, the last section there, it says  
9 "Lung nodules on CT done when she was in the hospital  
10 for syncope."

11 A On 1441?

12 Q Yes.

13 A Yes.

14 Q So this is referring to an earlier episode  
15 when she was in the hospital for syncope?

16 A It's saying lung nodules were noted on the  
17 CT scan when she had the hospital admission for  
18 syncope.

19 Q So she was admitted to the hospital another  
20 time for syncope?

21 A I -- that doesn't say that. It just said --  
22 says "Lung nodules on CT scan when she was in the



1 hospital for syncope."

2 Q Okay. If we could look at page 23 of your  
3 report.

4 A Okay.

5 Q In the middle of the page there, there's a  
6 Problem List as of August 22, 2024. Do you see that?

7 A Yes.

8 Q So you included in your report the things  
9 that showed up on the problem list. Is that right?

10 A As far as I recall, yes.

11 Q Okay. Now, if memory impairment had showed  
12 up on her problem list, would that be relevant?

13 A It would be -- would be relevant. I'm not  
14 sure if this was a -- a problem list that I did or if  
15 it was -- if I'm reporting somebody else's problem  
16 list here.

17 Q I think you're reporting a problem list that  
18 showed up in the medical records. Does that seem  
19 familiar to you?

20 A Yes.

21 Q Okay. So let's -- okay. I've handed you  
22 what's been marked as Exhibit 14. And this is also

1 from the medical records. If you could turn to the  
2 page, it's the second page. It's got Bates number  
3 1359. And do you see that on this page there's a  
4 problem list?

5 (Exhibit 14 was marked for  
6 identification.)

7 A Yes.

8 Q If you go down -- I think it's in  
9 alphabetical order, if you go down to the M's, do you  
10 see that it says "memory impairment"?

11 A Yes.

12 Q Can you tell when that was noted on the  
13 problem list?

14 A Well, it says April 27, 2022.

15 Q Okay. And then-- I've handed you what's  
16 been marked as Exhibit 15, which is another medical  
17 record. Could you look to the page that's Bates  
18 number 1133?

19 (Exhibit 15 was marked for  
20 identification.)

21 MR. MORRIS: Can you let him get  
22 oriented about what it is?

1 MR. PHILBIN: Sure.

2 MR. MORRIS: And look at the date. And  
3 take your time and get whatever you need.

4 THE WITNESS: Okay.

5 BY MR. PHILBIN:

6 Q So if you look at Bates number page 1133, up  
7 in the top in the box, there's a list of Reviewed  
8 Problems. And this is -- you can see in the Date line  
9 that this is April 17, 2024. Do you see that?

10 A Yes.

11 Q And in the list of problems -- this one's  
12 not alphabetical entirely, but sort of the fourth from  
13 the bottom. Does that list memory impairment?

14 A Yes -- no, it doesn't say if that lasted for  
15 a day or an hour or if it was a permanent total memory  
16 deficit of -- no, and I think that the context of it  
17 seems to be a list of concerns, and then there's no  
18 detail, there's no examination. So I would take from  
19 that the impression it was taken by the clinician as  
20 minor rather than knowing who she was -- who  
21 writing -- the person writing this report. So --

22 Q Okay. Going back to the exhibit we had a

1 second ago, the other memory impairment, do you have  
2 that in front of you, page 1359?

3 A Yes.

4 Q And you said that you could tell the memory  
5 impairment there was noted on April 27, 2022?

6 A Yes.

7 Q Okay. But do you know who noted it?

8 A I didn't write this record.

9 Q I understand that.

10 A So it comes from the Virginia Hospital  
11 Center [REDACTED]. And the person -- so  
12 this -- you know, someone has entered in the medical  
13 record. So the problem list -- you know, anytime you  
14 mention a problem, even years later, something that  
15 lasted for an hour may pop up in your problem list.

16 They don't curate them, but they do attend  
17 to the ones they're concerned about. So I agree that  
18 it's -- appears in the list and we just don't know if  
19 it was just the day she had the -- a single episode or  
20 it happens continuously and she doesn't know where she  
21 is. I don't think that's accurate. So it's hard --  
22 there's no -- I don't know if there's any additional

1        qualitative information or any testing they did or --

2            Q        Would it be relevant to know those things?

3            A        Well, it would be helpful, but she states  
4        that she doesn't have a memory impairment, which, you  
5        know, I asked the person, at least in person directly  
6        as a physician. And didn't just ask memory  
7        impairment. I asked her a whole series of separate,  
8        different questions and situations and aspects that we  
9        all lump as memory. So I see it's there, but by my  
10       exam she denies memory impairment.

11          Q        Okay.

12          A        And I didn't find any during my exam.

13          Q        You did put a problem list from the records  
14        in your report; correct?

15          A        Yes.

16          Q        Okay.

17          A        Absolutely.

18          Q        Why did you not mention the memory  
19        impairment on the problem list?

20          A        Well, I'm looking at some problem list and  
21        whatever one I was looking at must not have had that  
22        on it. 'Cause I don't list -- I didn't copy all these

1 in, and the records, as far as I knew, would be  
2 occluded or attached.

3 Q So were you aware of the records putting  
4 memory impairment on the problem list when you  
5 prepared your report?

6 A No, I didn't -- I don't -- didn't do a  
7 line-by-line typed-up summary of this. So basically,  
8 I'm being her neurosurgeon, not her internist. So --  
9 and I did look through her records. She didn't have a  
10 prominent complaint. I don't know why that's in  
11 there. I agree that it would have been relevant to  
12 ask her about that, why it was there. I may have  
13 asked her, and she said she didn't know why it was  
14 there. I just don't know.

15 Q But you don't know if you asked her that?

16 A I presume I did, but I don't have a specific  
17 recollection of discussing that entry.

18 Q Okay. Because you could only have asked her  
19 about that when you saw her on August 24th if you had  
20 the medical records before you saw her that day?

21 A Right. I did the review on most -- I had --  
22 I had some records, but I did the full review

1 subsequently.

2 Q So you did have some medical records before  
3 you saw her on the 24th?

4 A I didn't have time to -- they were given, I  
5 think, at the -- I think on the same day, so I didn't  
6 really have time to do the full review at the time of  
7 the visit.

8 Q Okay. How were they given to you?

9 A My recollection is they were on a thumb  
10 drive.

11 Q Okay. So you think that on the morning of  
12 the exam you were given a thumb drive with the medical  
13 records?

14 A Yes.

15 Q Okay. Are you sure about that?

16 A Yes. It's possible it was sent to me  
17 before. I guess I'll have to go back and see if I  
18 have any notes about it if there were -- but I --  
19 that's my recollection of it, but I'll have to go back  
20 and see if I have any further notes about it.  
21 Somehow, I was given this set of records, which I then  
22 summarized, you know, for my report.

1           Q     Okay. Just -- okay. I'm going to hand you  
2           what's been marked as Exhibit 16. And, Doctor, these  
3           are UPS Second-Day Error mailing labels that are  
4           addressed to you. Do you see that on the first one?

5                     (Exhibit 16 was marked for  
6                     identification.)

7           A     Yes.

8           Q     Okay. And I will represent to you that [REDACTED]  
9           [REDACTED], Judge Newman's clerk, submitted a declaration  
10          in this case stating that she sent the medical records  
11          to you on a thumb drive by UPS.

12          A     Yes.

13          Q     And that these are the mailing labels  
14          showing that.

15          A     Yes.

16          Q     And if you look on page 2 of the exhibit of  
17          the mailing labels -- okay, on that second page there,  
18          do you see sort of right in the middle top it says  
19          "Hello, your package has been delivered"?

20          A     Yes.

21          Q     And what's the delivery date?

22          A     September 4th.



1           Q     Okay. So does that refresh your memory  
2 about when and how you got the medical records?

3           A     Yes. They obviously were sent to my office  
4 at that time.

5           Q     So you didn't have them on August 24th when  
6 you talked to Judge Newman?

7           A     I probably brought them with me.

8           Q     Okay. So, Doctor, we just looked at the  
9 label saying it was delivered on September 4th --

10          A     All right. I'm sorry. So the -- the  
11 visit -- the visit was August 24th. So this is after  
12 the visit.

13          Q     Correct. So does this refresh your memory  
14 that you did not have the medical records before  
15 talking to Judge Newman?

16          A     Well, it's possible that I was given  
17 something at the time, and this is an additional  
18 record. I don't know what she said about it. So --  
19 but I know I didn't review records on the date of the  
20 visit 'cause it's a lot to look through. But I -- I  
21 reviewed it. So the date of the report is not -- this  
22 is -- is the date of the visit, but it isn't

1 necessarily fully prepared, like, in ten seconds while  
2 I stand there at the end of the visit or something.

3 Q Understood. The date of your report is  
4 September 17th; correct?

5 A Yes.

6 Q Okay.

7 A That's -- that's what I was looking at. So  
8 we -- I have them by the time I'm writing the report.  
9 I reviewed them to do a summary. This set, at least,  
10 I didn't have. I have some recollection about there  
11 being some thumb drives, and they may have said, "Oh,  
12 what? You know what? We'll just send them to your  
13 office," or something. I -- I -- you know what? I --  
14 I don't know. But I didn't have time that day to  
15 review records. And I think it was a good choice to  
16 send them with a documented e-mail just for this very  
17 purpose. When did they arrive? How were they  
18 delivered? Et cetera.

19 Q So on the day you spoke to Judge Newman on  
20 August 24th, you had not reviewed the medical record;  
21 correct?

22 A As I think about it, there were some

1 records, and I said, "You know, there's no time to do  
2 this today. Let's go through with this, and please  
3 send them to my office."

4 Q Okay. But --

5 A It seems to be what it was. So there were  
6 records there. I remember something about that, but  
7 saying, "There's not going to be time to go through  
8 all this. I don't know what all's there, and let's  
9 just address the present situation, and then I will  
10 look at the records."

11 Q So you had not reviewed them before your --

12 A No, absolutely not. No, I didn't have an  
13 extensive review of records. And I -- I will  
14 typically scan records, if available, immediately  
15 prior to seeing a patient. I will allot five to ten  
16 minutes to get the major gist of it. And then in  
17 doing a report, I will just -- I'll go through it.  
18 But I'm not being the internist, but I do want to know  
19 the major contours.

20 Q So just -- I'm just trying to focus back on  
21 this specific record about memory impairment, because  
22 a minute ago you said that you thought you might have

1       asked her about that in the interview. And I just  
2       want to see if now, if your recollection is refreshed,  
3       that you couldn't have asked her about that in the  
4       interview because you hadn't reviewed the records.

5           A       I hadn't done a detailed review. I think  
6       I'd had a -- a quick look at it. And -- but I did not  
7       do a review of records. I never do a review of  
8       records with a patient during a visit because it's a  
9       separate issue. So I have my interview, and I have my  
10      examination. And in the course of a report -- and  
11      patients should declare their prior medical  
12      conditions, so that I can be aware of them in  
13      examining and discussing with them. So my impression  
14      here is I did not -- I -- I had some quick look at it,  
15      but I said, "Well, I'm not going to review these now.  
16      Please send them."

17           Q       Okay. So now having seen these documents,  
18      having had a chance to refresh your recollection on  
19      some of these things, I just want to make sure, why  
20      did you not mention the memory impairment medical  
21      records?

22           A       Well, I -- 'cause I did a -- I don't know.

1 I did a detailed evaluation of it. I don't -- I don't  
2 remember specifically excluding it, but I talked -- I  
3 went through -- it's such a very general term. I  
4 don't know, was it her memory formation? Was it her  
5 auditory tag long-term memory for songs, you know? So  
6 I've really covered that ground in detail in terms of  
7 her present status. But I don't -- but I don't think  
8 that I did a page-by-page, line-by-line summary of her  
9 medical record.

10 Q I understand you didn't do a page-by-page  
11 summary. I'm just trying to find out, when you  
12 prepared the report, were you conscious and aware of  
13 the medical records listing memory impairment, and did  
14 you decide not to mention them for some reason?

15 A No, I think somehow, I may have missed that  
16 line in there.

17 MR. PHILBIN: Okay. Should we break  
18 for lunch?

19 MR. MORRIS: Any time is fine. That's  
20 fine with us.

21 MR. PHILBIN: Okay.

22 MR. MORRIS: This is a good stopping

1 point.

2 MR. PHILBIN: Yep.

3 THE REPORTER: The time is currently  
4 12:39 p.m., and we're going off the record.

5 (Off the record.)

6 THE REPORTER: We are back on the  
7 record, and the time is currently 1:39 p.m.

8 And you are good to go ahead.

9 MR. PHILBIN: Thank you.

10 BY MR. PHILBIN:

11 Q Dr. Filler, I just want to go back briefly  
12 to a couple of the hospital records we discussed  
13 concerning the event of syncope in April of 2023. And  
14 do you remember if there was -- the second one we  
15 looked at, I'm pretty sure it's Exhibit 13, which  
16 has --

17 MR. MORRIS: Hold on. Let me get the  
18 exhibit. Thirteen?

19 MR. PHILBIN: Mm-hmm.

20 MR. MORRIS: Oh, one came up right  
21 here. That's 14 --

22 MR. PHILBIN: It might be under what he

1 has there.

2 MR. MORRIS: We'll get there -- 13.

3 Organize these.

4 BY MR. PHILBIN:

5 Q And does that have down in the bottom  
6 right-hand corner Bates number 1434?

7 A Okay, I see the one with 1434, yes.

8 Q Okay. So if you go to page 1436, this is  
9 the one we discussed. We're under subjective. It  
10 says "Syncope was working at home, stood up from her  
11 chair and passed out and fell to the floor." Do you  
12 remember that?

13 A Yes.

14 Q Okay. And I think you said that you missed  
15 this one in going through the records?

16 A Yes.

17 Q Okay. So then the other one, which I think  
18 was Exhibit 12, I was asking you about why didn't you  
19 note that in your report?

20 MR. MORRIS: Okay. Hang on, and let's  
21 get the exhibit. Which page, please?

22 MR. PHILBIN: Well, it's Exhibit 12. I

1       just want to get the exhibit in front of him. The  
2       Bates number at the bottom right is 1667.

3                   MR. MORRIS: Okay, 1667, okay. And  
4       look at whatever else you need to look at. 1667.

5       BY MR. PHILBIN:

6           Q       Do you have the exhibit, Doctor?

7           A       I have the Exhibit 12 here, yeah.

8                   MR. PHILBIN: Okay. So if we could  
9       play back the earlier testimony.

10                   THE REPORTER: Okay. If you'll give me  
11       one moment here.

12                   (The reporter repeated the record as  
13       requested.)

14                   Okay. Go ahead.

15       BY MR. PHILBIN:

16           Q       All right. Doctor, I'd like to direct your  
17       attention now on Exhibit 12 to the page Bates-numbered  
18       1670. Do you have that page?

19           A       Yes.

20           Q       Okay. And up at the top, do you see where  
21       it says "Reason for Visit"?

22           A       Yes.



1 Q And then Chief Complaint?

2 A Yes.

3 Q And then could you read what it says there?

4 A It says: "Loss of Consciousness (Patient  
5 ambulatory to ED, 1 hour post witness, syncopal  
6 episode after standing up out of a chair. Denies head  
7 injury."

8 Q Okay. So that says this was a witness  
9 syncopal episode; correct?

10 A Yes.

11 Q Okay. If you could go to page 1672. And in  
12 the middle of the page, there's an area that says  
13 "History of Present Illness." Do you see that?

14 A Yes.

15 Q Okay. And in the large paragraph there,  
16 right sort of in the middle of that paragraph, there's  
17 a sentence that starts "She experienced no  
18 lightheadedness," do you see that?

19 A Yes.

20 Q Okay. And then it says: "She experienced  
21 no lightheadedness or dizziness prior to her syncopal  
22 episode, which lasted a "split second." She was told

1       that she had her eyes open prior to falling to the  
2       floor without hitting her head." Do you see that?

3           A       Yes.

4           Q       Okay. So that also describes that she fell  
5       to the floor, doesn't it?

6           A       Yes.

7           Q       And that someone else told her about that?

8           A       Yes.

9           Q       So someone else saw it.

10          A       Well, she would have been aware of it  
11       because she was on the floor.

12          Q       Okay. And then if you go to page 1680, in  
13       the middle of the page under ED Case Management Social  
14       Work Consult, there's a line towards the end of the  
15       second line there. It says "Patient reports that her  
16       fall was an isolated incident and the last fall she  
17       had was ten years ago." Do you see that?

18          A       Yes.

19          Q       Okay. So in light of those aspects of the  
20       record, do you want to modify, say anything else about  
21       why you didn't mention this in your report?

22          A       No, I think I've acknowledged that I

1 obviously missed the -- detail -- some of the details  
2 of that so -- issue, I -- I think, is that she needed  
3 the pacemaker, which was the correct thing to do.

4 Q Okay. Doctor, in your clinical practice,  
5 when you are seeing a patient to determine if someone  
6 has an age-related cognitive impairment, which I think  
7 you said earlier, that's a small part of your  
8 practice; correct?

9 A Yes.

10 Q Do you seek -- are you familiar with the  
11 term "collateral source information"?

12 A All right. So the --

13 MR. MORRIS: [Unintelligible response.]

14 THE WITNESS: I'm not sure how that  
15 applies in medicine. Yeah, I mean, I think in law  
16 maybe, but collateral source information, I'm not sure  
17 how that'd apply in this.

18 BY MR. PHILBIN:

19 Q Okay. So in terms of trying to determine  
20 whether someone has a cognitive disorder, you're not  
21 familiar with the term "collateral source  
22 information"?

1           A     I guess I just -- 'cause you're trying to  
2     get every and any type of information you can, but, I  
3     mean, in the course of our neurosurgical practice,  
4     which is not assessing people for, like, a contested  
5     will or something like that, it just -- we see -- I  
6     see patients. I have about two hours to fully examine  
7     them and review their records.

8                     MR. MORRIS: I'm sorry. But the  
9     question was just if you're familiar with the term.  
10    Is that right?

11                    MR. PHILBIN: That was the question.

12                    THE WITNESS: No, I -- I am not  
13    familiar with the term.

14                    MR. MORRIS: Okay.

15    BY MR. PHILBIN:

16           Q     Okay. So when you're trying to determine if  
17    someone has an age-related cognitive impairment, is it  
18    part of your regular workup to try to get information  
19    directly from, say, family members about that person's  
20    behavior?

21           A     No, I'm -- my focus is going to be the scan.

22           Q     Okay.

1           A       So I want to know, do you need a scan? And  
2       if there's a concern about loss of consciousness and  
3       there's no cardiac cause. So that's -- so I'm not a  
4       general doctor and I'm not a neurologist. So I'm  
5       oriented to saying, is there something here that's  
6       focal that we can fix? That's really how -- what the  
7       neurosurgical thinking.

8                       So and I'm -- I'm interested in the ability  
9       of the imaging test, because they help convert a  
10      generalized impression from 1,000 sources into a  
11      specific lesion that's maybe treatable, and also in  
12      distinguishing specific treatable causes from  
13      generalized dementia. So I'm really -- I'm looking  
14      for an indication to evaluate, and I think it was a  
15      good indication to do the evaluation of Judge Newman.

16                      And that we did the best image evaluation,  
17      which was reasonable to the information, and that was  
18      indicated by the situation.

19           Q       Okay. So I understand you focus on the  
20      images, because the image can potentially show you  
21      something that as a surgeon you can fix.

22           A       That's how surgeons do.

1 Q Correct? Yes?

2 A Yeah.

3 Q Okay. But say someone comes to you just  
4 because they have a general concern, "I'm getting on  
5 in years. I think I might have a cognitive  
6 impairment," it's a general concern just about  
7 cognitive impairment, is that someone that you see and  
8 then evaluate whether they have a cognitive  
9 impairment?

10 A No. I'm asking -- so the -- the cognitive  
11 impairment is a symptom. That -- so what you're  
12 trying to do is reach a diagnosis of a disorder that  
13 allows us to either prognosticate, "Oh, I can see from  
14 what you have here, you are involved in a relentless  
15 progressive deterioration. It's not a bad idea to  
16 think about winding up your affairs," versus, "Oh, but  
17 you got here. Did you have a fall?"

18 "Oh, yeah, I just bumped my head the other  
19 day in the car." "Well, look, you have damage in the  
20 crus of the fornix, which is causing you to have this  
21 memory impairment, and the rest of your brain is in  
22 very good shape. I can give you a medication that

1 fixes that. If you want to start a new business,  
2 yeah, you're probably going to be okay. I don't see a  
3 progressive decline."

4 So my purpose in this is to say, is there  
5 sufficient indication to proceed with this image  
6 evaluation? And does the image evaluation identify a  
7 treatable syndrome, or does it identify a -- an  
8 untreatable progressive problem? So I'm looking for  
9 sufficient information to, one, indicate whether I  
10 should image, and two, the most -- whatever  
11 information is available to help me reach the  
12 diagnosis.

13 But typically the neuropsychologists will  
14 proceed to a diagnosis without imaging, which I think  
15 is the flaw of and -- and I guess -- and you try to  
16 reach the correct diagnosis by intensive detail and  
17 multiple specialties and other family members and  
18 work-relate, but this goes beyond the scope of the  
19 underlying question of, is the person in a progressive  
20 state of decline, which I think the image answer is  
21 better, should has a -- have a major effect on one's  
22 diagnosis, than talking to neighbors and family

1 members, which are helpful, you know for -- but it's  
2 not something that I would do in my practice.

3 Q Okay. So talking to those other people,  
4 family members, neighbors, is not something you would  
5 do?

6 A Yeah, if they've come in with the patient,  
7 fine, but I can't go out and do investigations and  
8 call people in. I just am not able to do that.  
9 But --

10 Q But if they come in with the patient, you  
11 would ask them?

12 A Yeah, I mean, sure. Usually the -- the  
13 family members that come in the exam room will comment  
14 on issues, and yeah, we'll talk with them.

15 Q Okay. So you met [REDACTED] in the  
16 morning --

17 A Well, she didn't participate at all in the  
18 evaluation, yeah, and I did not question her at all.

19 Q Okay. You didn't think it would be relevant  
20 to find out something from her about Judge Newman?

21 A Well, she's not a family member, so it might  
22 not have been proper as a physician, so I wouldn't



1 normally go to someone's work associates. I'm not  
2 doing an investigation for -- I mean, I can see why it  
3 has the effect of being an investigation for the  
4 court, but from my perspective, although there's  
5 lawyer skills involved, I'm trying to make a medical  
6 diagnosis from the patient. I would have been -- if  
7 they had a statement from [REDACTED] for me to look  
8 at, I would have looked at it, but it -- I did not  
9 question her.

10 Q Do you think it would have been useful to  
11 have a statement from [REDACTED]?

12 A It would be useful, but it would be very  
13 unusual in medicine for somebody to comment on another  
14 person's health condition. Maybe in this situation it  
15 would be reasonable, but no, I didn't do it.

16 Q Okay. And this might save some time, are  
17 you aware that [REDACTED] is listed as the point of  
18 contact for Judge Newman in multiple of her medical  
19 records?

20 A Right. And she acted in this case to  
21 help -- help be a communication point between my  
22 office and the judge.

1           Q     Okay. So if we could get -- and I'll hand  
2     you what's been marked as Exhibit 17.

3                     (Exhibit 17 was marked for  
4                     identification.)

5           MR. MORRIS: Thank you.

6     BY MR. PHILBIN:

7           Q     Do you recognize that document?

8           A     Yes.

9           Q     And what is it?

10          A     So this is the patient -- one of the -- one  
11     of the forms. We have eight -- eight forms that we  
12     give out, and this is a form that asks for past  
13     medical history and various other administrative  
14     issues.

15          Q     And this is the form that was filled out for  
16     Judge Newman; correct?

17          A     One of the forms, yes.

18          Q     Okay. And if you look at the email address  
19     box there, can you see whose email is given? It's on  
20     the first page.

21          A     [REDACTED].

22          Q     Okay. And then the phone number provided on

1 the form, do you see that? That's (708) 848-4756?

2 A Yes.

3 Q Okay. And are you aware that that -- are  
4 you aware of whose phone number that is?

5 A I'll have to look it up and see.

6 MR. MORRIS: Well, you don't -- don't  
7 look it up. I mean, just ask --

8 THE WITNESS: Not offhand, but could --  
9 it could be [REDACTED].

10 MR. MORRIS: -- might have it.

11 MR. PHILBIN: Right.

12 MR. MORRIS: He'll let you know.

13 BY MR. PHILBIN:

14 Q Let's look at the bottom of the page at the  
15 emergency contact. Who's listed there as the name of  
16 nearest relative or friend?

17 A That's [REDACTED] with the same number.

18 Q Okay. So it's the same phone number as the  
19 contact number for Judge Newman up above; correct?

20 A Yes.

21 MR. PHILBIN: Okay.

22 MR. MORRIS: Oh, thank you.

1 BY MR. PHILBIN:

2 Q I'm handing you what has been marked as  
3 Exhibit 18. And you can see that this is a medical  
4 record that lists up in the left-hand corner the team  
5 member, the medical team member is Elizabeth Gannon?

6 (Exhibit 18 was marked for  
7 identification.)

8 A Yes.

9 Q Okay. And for patient contacts, can you see  
10 there that the second patient contact listed is [REDACTED]  
11 [REDACTED]?

12 A Yes.

13 Q And it shows the same phone number again,  
14 that 708 phone number.

15 A Yes.

16 Q And under Relationship to Patient, what does  
17 it say?

18 A Legal Guardian, Emergency Contact.

19 Q Okay. So -- but in light of the records  
20 showing, you know, [REDACTED] is the emergency  
21 contact, on other records, on your intake, she gave  
22 her email and her phone number as the contact for the

1 judge. She's listed on other records as a legal  
2 guardian in some instances. You did not decide that  
3 it would be useful to talk to [REDACTED] about her  
4 experience with Judge Newman?

5 A Yeah, usually, unless the person's really  
6 incompetent or unable to speak, I will just deal with  
7 the patient directly. If the patient asks me to talk  
8 to someone else -- but in the medical record, you  
9 don't -- if you've ever seen any medical reports, they  
10 don't -- a general medical report doesn't have a  
11 discussion with another person and family the members.

12 Now, some of them would be if it's a -- if  
13 the person's not competent to speak, but I don't think  
14 there was an allegation that Judge Newman had an  
15 impairment that severe. But I saw her, you know, and  
16 I felt like she was able to describe her condition.  
17 But in the normal course of the practice, it is rare  
18 that I have information from family members unless the  
19 person's unable to communicate something --

20 Q Okay.

21 A If it's severe, then absolutely, all the  
22 information comes from the family members and

1 guardians if that person can't communicate.

2 Q Okay. Let's look at page 24 of your report,  
3 Exhibit 3.

4 A Not Exhibit 3 of the report, just page --

5 Q Yeah, just page 24 of the report.

6 MR. MORRIS: Particular place? He  
7 looks like he's got the page.

8 BY MR. PHILBIN:

9 Q It's right in the middle of the page.  
10 There's a text that's in bold and italics. Could you  
11 just read that?

12 A "The overall current assessment of her One  
13 Medical Group providers as of 7/31/2024 is: 'Able to  
14 carry on normal activity; minor signs or symptoms of  
15 disease.'"

16 Q Okay. And is there a reason that you put  
17 that in bold and italics?

18 A I think it was a general assessment from  
19 coming out of the records.

20 Q Did this have particular significance for  
21 you?

22 A I think it was a good, useful general

1       assessment coming from the records 'cause I'm  
2       moving -- I'm transitioning from the record review to  
3       my summary.

4           Q       Okay. And this was -- I think you said this  
5       is an overall assessment of Judge Newman's health. Is  
6       that how you understood it?

7           A       Yeah, it was an overall assessment of July  
8       31, 2024.

9           Q       Okay. I've handed you what's been marked as  
10      Exhibit 19. And do you recognize this?

11                   (Exhibit 19 was marked for  
12                   identification.)

13          A       I don't have a specific recollection, but it  
14      looks like a report to do with Pauline Newman.

15          Q       And the date on it up in the upper  
16      right-hand corner is 07/31/2024. Is that right?

17          A       Yes.

18          Q       And that is the date of the overall  
19      assessment that we just looked at on page 24. Is that  
20      right?

21          A       Yes.

22          Q       Okay. And this is a document -- you said

1       that assessment was the One Medical Group providers,  
2       and this is a One Medical document; correct?

3           A       Yes.

4           Q       And so under performance status there, can  
5       you read that line?

6           A       "Karnofsky: 90 percent Able to carry on  
7       normal activity; minor signs or symptoms of disease."

8           Q       Okay. So is that the language starting with  
9       the word "able" that you quoted on page 24 of your  
10      report?

11          A       Yes.

12          Q       Okay. And the first two words in that line,  
13      "Karnofsky 90 percent," you didn't quote in the  
14      report. And why is that?

15          A       I don't know. Well, because it -- the -- I  
16      was trying to quote the statement, the conclusion. I  
17      think if you say Karnofsky 90 percent, then I imagine  
18      people want to know what is Karnofsky, what's 90  
19      percent. So I think that the statement, which is  
20      supposed to be a summary statement of their condition,  
21      is what I wanted to put in a narrative report.

22          Q       Okay. What is the Karnofsky?



1           A     Well, it's a rating scale used for different  
2     degrees of ability to carry on normal life activities,  
3     you know? So say someone has a brain tumor and  
4     they're gradually deteriorating, you have a Karnofsky  
5     rating. That would describe whether they're not able  
6     to feed themselves, you know? Not able to take  
7     themselves to the bathroom, this kind of thing, and  
8     there'd be a -- they'd put a -- a percentage score  
9     like this.

10          Q     Okay. And does the Karnofsky score of 90  
11     percent serve as a measure of decision-making  
12     capacity?

13          A     Well, I think that that's incorporated in  
14     it, but I didn't rely on this. I'm just stating  
15     that's the -- that's a summary here.

16          Q     Okay.

17          A     So it's not my decision-making that's  
18     informed by this, and it's not the only summary, and  
19     it doesn't substitute for all of this and the imaging,  
20     but it's a statement that I'm quoting.

21          Q     Okay. I understand that, but it's a  
22     statement you quoted in bold and italics. I'm just

1       trying to understand what significance you put on it.  
2       Do you think that the 90 percent Karnofsky is giving  
3       an indication that Judge Newman has perfectly fine  
4       decision-making capacity? Does it bear on that in  
5       your understanding or not?

6           A       Well, I did not rely on this. That is  
7       not -- I actually have a large report. I actually  
8       examined the patient, did extended numerous questions,  
9       discussed in detail what she can -- what she does.  
10      And carried out an advanced imaging evaluation to try  
11      to address the question. It isn't -- the whole  
12      examination and the answer are not confined to the one  
13      line, but I think it's fair to quote that line from  
14      here. And I didn't --

15           Q       Doctor, I --

16           A       And it would not be a good -- I mean, we  
17      could -- I don't think if I just said Karnofsky 90  
18      percent and left off the words, it would mean anything  
19      to a court, for instance, or an attorney.

20           Q       I understand that you did a large report.  
21      You had a lot of other things you relied on. My very  
22      specific question is, what is your understanding of

1        what the Karnofsky 90 percent means? Does it convey  
2        anything as to decision-making capacity?

3            A        Well, I think it's a - it's a contributory  
4        statement -- you know, it's just a -- there are  
5        numerous factors that go into it. Obviously, you  
6        could be 100 percent, which might be better than being  
7        90 percent.

8            Q        Okay. I'm handing you what's been marked as  
9        Exhibit 20. Okay. And, Doctor, this is a record from  
10       Virginia [REDACTED]. Can you see that?

11                            (Exhibit 20 was marked for  
12                            identification.)

13            A        Yes.

14            Q        And the date on it is August 19, 2024?

15            A        Yes.

16            Q        Okay. Then if you go to the Bates-numbered  
17        page in 1936, you see down in the lower part of the  
18        page it says "PERFORMANCE STATUS"?

19            A        Yes.

20            Q        And then can you read what it says there?

21            A        It says "Karnofsky: 80 percent Normal  
22        activity with effort; some signs or symptoms of

1 disease."

2 Q Okay. So from July 31st to August 19th,  
3 this indicates that Judge Newman's Karnofsky rating  
4 went down from 90 percent to 80 percent. Is that  
5 correct?

6 A That's what that -- at least that person's  
7 assessment is different. Yeah, I don't know if I had  
8 this record. But it looks like it's from right around  
9 the time the record set was transmitted; right?

10 Q Well, this was in the set of records that  
11 was provided to us as the set of records that was  
12 given to you. That's why it has the Bates stamp on  
13 the bottom there. So to our understanding, based on  
14 representations from counsel, this was among the  
15 records that you had. Okay. Dr. Filler, in your  
16 practice, when you're seeing someone to determine  
17 whether they have a cognitive impairment, I think we  
18 went over earlier, you've developed a questionnaire  
19 that you use to go over with the patient. Is that  
20 correct?

21 A Yes.

22 Q So is it fair to say then that you do not

1 administer any of the, what we discussed earlier, as  
2 cognitive screening tests, things like the MOCA, the  
3 mini-MOCA, the MMSE, things like that. You use your  
4 own bespoke questionnaire instead?

5 A Well, I'm going to be relying on the  
6 imaging, and if those tests were done, I -- I usually  
7 will look at them if they're available.

8 Q So if --

9 A But I wouldn't administer those because  
10 neurosurgeons basically don't administer MOCAs and  
11 MMSEs, you know? So, you know, there's probably, from  
12 practice neurosurgeons, 99 percent of their patients,  
13 they could administer them, but we don't. So we're  
14 often looking for the treatable or identifiable  
15 pathology.

16 And I think that a lot of different  
17 pathologies get lumped together, and the imaging is  
18 underused, and it would be helpful, but all this is  
19 helpful as well. But I wouldn't be administering  
20 those tests, no.

21 Q Okay. So before you diagnose someone as  
22 having a cognitive impairment, do you ever refer them

1 to someone else to get some kind of a cognitive  
2 screening test?

3 A No, I'm looking for specific symptoms. I  
4 don't want to use what was used 50 years ago. I want  
5 to look at specific symptoms that doctors have  
6 generally failed to identify, and look for brain parts  
7 that demonstrate damage that correlates with those  
8 symptoms. So it's a different process, which I think  
9 proves to be a valuable process, 'cause there's vast  
10 criticisms of MOCA and MMSE and their unreliability  
11 and their subjectivity.

12 And in my practice, with head injury, as I  
13 say in here, on 99 percent of the cases, there's a  
14 defense neuropsychologist and a plaintiff  
15 neuropsychologist. They disagree on every single  
16 point and on their conclusions, as if there's no basis  
17 at all of reliability, and I don't find that  
18 attractive about those tests, such as the Karnofsky.

19 You could see if there was a plaintiff  
20 specialist giving a Karnofsky and a defense, they  
21 would probably be different, because you don't have  
22 any -- for a lot of these things, you just don't have

1 a good objective anchor on the significance or the  
2 range of questions to ask.

3 Q Okay. So, Doctor, I just want to make sure  
4 that I understand the steps you take, the things you  
5 do before diagnosing someone with cognitive  
6 impairment. And I think that the steps are, you have  
7 this bespoke questionnaire that you have developed.  
8 You use that in an interview with the patient. You  
9 have imaging. Those are two major steps. Is there  
10 another part to it?

11 A Well, I examine -- I examine the patient.  
12 Like, they may not check for balance. All those  
13 tests, they don't check for smooth pursuit motion.  
14 They --

15 Q So a neurological, a standard neurological  
16 exam?

17 A Yes.

18 Q And is that it, those three parts?

19 A Well, there's a neurological exam. There's  
20 the interview that I do. And then there's an imaging  
21 test, yeah. And then review of records for  
22 information such as this that's available.

1           Q     Okay. But you don't do what would be called  
2     a "cognitive screening test"? I think we covered  
3     that. Correct?

4           A     Right. I mean, there are -- as in this  
5     case, they're done -- they were done previously. And  
6     so I'm trying to add something more definitive or  
7     objective.

8           Q     In what percentage of cases would you  
9     diagnose someone as having a cognitive impairment  
10    without anyone, without there being in the record a  
11    cognitive screening test?

12          A     But I'm not going to --

13                   MR. MORRIS: Go ahead and answer.  
14    That's a confusing question. What's the universe  
15    you're asking -- the all those diagnosed with it or  
16    those you evaluate?

17    BY MR. PHILBIN:

18          Q     We're talking about patients who come to  
19    you, Doctor, who want you to tell them whether they  
20    have an age-related cognitive impairment.

21                   MR. MORRIS: Okay.

22                 //



1 BY MR. PHILBIN:

2 Q So that's the universe of people I'm going  
3 to ask you a question about.

4 A Yeah, so I'm not --

5 Q I'm going to ask you a question in just a  
6 minute about those people.

7 A You had a pending question I was in the  
8 middle of answering.

9 Q Well, that -- withdrawn.

10 MR. MORRIS: -- he's breaking it down  
11 because I was -- it was too hard me to understand.

12 BY MR. PHILBIN:

13 Q Okay. So we're talking about the universe  
14 of people who come to you who say, "Doc, I'm  
15 concerned. I'm losing a step. I'm getting old. I  
16 want to know if I have a cognitive impairment."  
17 That's the question presented by the patient.

18 A Yes.

19 Q And so my question is, how often will it  
20 happen that a patient comes to you with that question?  
21 There's no cognitive screening tests like a MOCA or an  
22 MMSE or anything in the file. No one has done that on

1 the patient. And then you do the steps that we talked  
2 about. You do your bespoke interview questions, you  
3 do a neurological examination, you review the medical  
4 records, you order a scan, and you make a diagnosis of  
5 cognitive impairment.

6 A I'm never going to do that because I'm not  
7 going to make a general diagnosis like that. I'm  
8 going to say, "You have a problem with short-term  
9 memory that's caused this specific lesion here and it  
10 will respond to this medicine. I recommend this  
11 treatment."

12 Because that global statement reflects the  
13 inability of these doctors to be able to say  
14 specifically what's wrong with the person. You could  
15 assess cognitive impairment from somebody who's going  
16 to be just fine tomorrow. They're going to get over  
17 their viral syndrome and be unimpaired tomorrow. Or  
18 it could be somebody with a -- with a just diffuse  
19 deterioration of their whole brain who from -- and I  
20 could say, "Oh, you have this condition. This is your  
21 diagnosis. You have, you know, Lewy body," L-E-W-Y,  
22 body -- "disseminated, type 4, whatever. And

1       therefore this is your treatment."

2               So I'm trying to -- rather than a global  
3       statement that a psychologist might make, that you're  
4       impaired. They know they're impaired. That's why  
5       they're coming to see me, you know? So -- so, no, I  
6       would not be -- they would be fine to go to those  
7       other doctors. If -- I'm more concerned with  
8       advancing the whole field by reducing this to  
9       subcomponents, many of which are treatable and don't  
10      get treated.

11             So that's really my objective with it. So I  
12      feel that the term "cognitive impairment" sweeps up  
13      multiple different diagnoses that should not be  
14      confounded and that cannot be distinguished with the  
15      methods that are in current use.

16             Q     And so are you familiar with the term "mild  
17      cognitive impairment" or MCI?

18             A     Sure.

19             Q     Okay. And is that -- that is used as a  
20      diagnosis by others?

21             A     Sure. I'm not saying that they don't use it  
22      or that they can't. I'm just saying that it's not --

1       those are not the perfect -- everyone agrees this is  
2       100 percent perfect. Everybody loves it. We don't  
3       want to do any better because this is the ultimate  
4       fantastic way to describe people, no.

5               There's enormous frustration in all of those  
6       fields that they can't get past that. They can't  
7       really -- that doesn't prognosticate for a person.  
8       Yeah. Suppose they're saying, "You have mild  
9       cognitive impairment." "Does this mean I'm going to  
10      get Alzheimer's and die and need to sell everything?"

11             Or does that mean that "Yeah, I'm having a  
12      little trouble with new memory formation, but you can  
13      see it's due to the fact that I hit my head in the --  
14      the other day, you know?" And that can -- that will  
15      get better or you can treat it and therefore it's not  
16      the end of -- the end of my life.

17             So that kind of breakdown is not the way  
18      it's been done for 100 years. And there are lots of  
19      doctors happy to do things the way it's been done for  
20      100 years. And as lawyers, you want to enforce that  
21      because it fits into historical cases. But it doesn't  
22      mean it's wrong for us to advance medicine all the

1 time. Medicine advances all the time.

2 If it was your heart, you wouldn't want to  
3 say, "You've got heart disease, therefore you're going  
4 to die and nothing can be done." You want us to say,  
5 "Well, wait a second. Is there an electrophysiology  
6 study you can do? How about a high-resolution digital  
7 injection cardiogram with an MRI with DTI of your  
8 heart and therefore X?" So this is really -- the  
9 issue is how do we see?

10 And -- and I think this is an excellent  
11 case, and I'm going to make that point, because if we  
12 find, for instance, that Judge Newman did get upset  
13 and yelled at somebody, does that mean that, "Oh, this  
14 is Alzheimer's and she's wrecked? Or does it mean she  
15 got frustrated one day like all of us do, you know?"  
16 And what is the overall picture?

17 Q So, Doctor, are those the only alternatives,  
18 like it's either Alzheimer's or she's not cognitively  
19 impaired?

20 A Well, we all know there's gradations, but  
21 the gradations aren't fine enough.

22 Q Are the alternatives she's got Alzheimer's

1 or she's fine? Are those the only alternatives?

2 A No, I mean, I didn't say that.

3 Q Okay. But let's go to then -- you mentioned  
4 you know, did she get angry at someone, some of the  
5 affidavits that were collected by the special  
6 committee. And I'll see if I can just ask you so that  
7 we don't have to introduce a bunch of affidavits into  
8 the record if you remember some of the things in  
9 those. Do you remember there were affidavits from  
10 people who worked in the IT, the Information  
11 Technology department?

12 A Yes.

13 Q And they described situations in which Judge  
14 Newman said that she was going to have one of her  
15 clerks named [REDACTED] arrested and removed from the  
16 building. Do you remember that?

17 A Yes.

18 Q Okay. And she said that she was going to  
19 make a big fuss and go to the Supreme Court. And  
20 it'll be on the front page of the Washington Post.

21 MR. MORRIS: I'm going to object. If  
22 you're going to ask him about the [REDACTED] affidavit,

1       for example, I think you should put it in front of  
2       him.

3                       MR. PHILBIN:   Okay.

4                       MR. MORRIS:   Let him see the other  
5       content of the affidavit.

6       BY MR. PHILBIN:

7               Q       All right.  We'll do all of them.  Let's  
8       start with -- okay.  I've handed you what's been  
9       marked as Exhibit 21.  Do you recognize this?

10                      (Exhibit 21 was marked for  
11                      identification.)

12               A       Yes.

13               Q       Okay.  And this is the affidavit of [REDACTED]  
14       [REDACTED], isn't it?

15               A       Yes.

16               Q       Who works in the IT department at the  
17       Federal Circuit.

18               A       Is he a neurologist also?

19               Q       No, he works in the IT --

20               A       I know.

21               Q       -- okay.  Department at the Federal Circuit

22               A       Okay.

1           Q     Okay. If you look at paragraph 6, at the  
2 top of page 2 in paragraph 6, do you see it says "At  
3 that point, Judge Newman began to discuss her  
4 relationship with [REDACTED]"? Do you see that?

5           A     Yes.

6           Q     Okay. And "She said that [REDACTED] no longer  
7 wanted to work for her and that she was not taking it  
8 well." Do you see that?

9           A     Yes.

10          Q     Can you read the next sentence?

11          A     "Judge Newman then said that she was going  
12 to make a big fuss and planning to go to the Supreme  
13 Court and that she'll hear more about this because it  
14 was going to be on the front page of the Washington  
15 Post."

16          Q     That is a sentence there, but if you could  
17 skip two sentences earlier. The sentence starts  
18 "Judge Newman then said."

19          A     "Judge Newman then said that she was going  
20 to have [REDACTED] 'removed from the court' or 'arrested.'"

21          Q     Okay. I'm handing you what's been marked as  
22 Exhibit 22. And do you recognize this?



1 (Exhibit 22 was marked for  
2 identification.)

3 A Yes.

4 Q This is another affidavit of [REDACTED],  
5 isn't it?

6 A Yes.

7 Q Okay. If you look in paragraph 3, the  
8 second sentence, this is [REDACTED] explaining that  
9 he went to Judge Newman's chambers and he says "I told  
10 Judge Newman that I was there to help retrieve some of  
11 her files and I asked what she was looking for"?

12 A Yes.

13 Q Do you see that?

14 A Yes.

15 Q And then can you read the next sentence?

16 A "Judge Newman looked angry that I was there  
17 and said she needed her financial disclosure files."

18 Q Okay. And then could you read the last  
19 sentence in that paragraph?

20 A "I started to walk toward Judge Newman's  
21 computer so that I could show her where the files were  
22 located, but Judge Newman angrily said no."

1           Q     And then if we go to paragraph 5, could you  
2 read the last sentence on page 1 and it carries over  
3 onto page 2?

4           A     "She was clearly upset and frustrated and  
5 was walking back and forth mumbling about how her  
6 computer and phone had been taken away from her when  
7 that was not the case."

8           Q     And then can you read the first sentence of  
9 paragraph 7?

10          A     "At that point, I got worried that Judge  
11 Newman was getting so angry that she might collapse or  
12 have a heart attack if the conversation continued. I  
13 told Judge Newman that we would get back to her and  
14 told [REDACTED] that we should go."

15          Q     Okay. Handing you what's been marked as  
16 Exhibit 23. Do you recognize this?

17                     (Exhibit 23 was marked for  
18 identification.)

19          A     Yes.

20          Q     And this is an affidavit from [REDACTED],  
21 isn't it?

22          A     Yes.

1           Q     And in the first paragraph, he says he's  
2     been employed in the Information Technology Office of  
3     the Federal Circuit since February 28, 2022. Do you  
4     see that?

5           A     Yes.

6           Q     Okay. Can you read paragraph 4?

7           A     "When I asked Judge Newman about the problem  
8     that she was having, Judge Newman said that she  
9     believed that her computer was being monitored,  
10    hacked, and reviewed. She also mentioned her phone in  
11    that same conversation. However, she did not specify  
12    if she meant her personal landline or court-issued  
13    iPhone or any specific issues or events regarding her  
14    phone. She sounded annoyed, agitated, paranoid, and  
15    upset."

16          Q     Okay. Then in paragraph 8, can you see that  
17    it says "She told me she would not elaborate on things  
18    disappearing"? It refers to paragraph 7 -- things  
19    disappearing -- "she was under the impression that the  
20    court may have been responsible for messing with her  
21    computer." Do you see that?

22          A     Yes.

1           Q     "She also suggested at one point that the  
2     court was interfering with her mail at her residence."  
3     Do you see that?

4           A     Yes.

5           Q     And then can you read the next sentence?

6           A     "I would describe Judge Newman's response as  
7     nonsensical because there was no reason to believe any  
8     of that was happening. She seemed to be in attack  
9     mode and mentioned litigation."

10          Q     Okay. And then if we go to paragraph 19,  
11     about four lines down. In paragraph 19, in the middle  
12     of the line there's a sentence that says "After  
13     briefly discussing the situation regarding the phones,  
14     Judge Newman started to talk about [REDACTED]." Do  
15     you see that?

16          A     Yes.

17          Q     And then if we skip a couple sentences, it  
18     says "Judge Newman stated that she would have [REDACTED]  
19     removed from the court or arrested." Do you see that?

20          A     Yes.

21          Q     Okay. And can you read the last sentence of  
22     that paragraph 19?

1           A       "I would describe the call as bizarre and  
2 unnecessarily hostile toward [REDACTED]."

3           Q       Okay. Handing you what's been marked as  
4 Exhibit 24? Do you recognize this?

5                       (Exhibit 24 was marked for  
6 identification.)

7           A       Yes.

8           Q       And this -- [REDACTED] was -- he worked in  
9 Judge Newman's chambers. Remember that?

10          A       Yes.

11          Q       Okay. You see -- let's go to paragraph 31.  
12 And you see in the first sentence it says "On April  
13 13, 2023, I brought my concerns that Judge Newman was  
14 being abusive and retaliating against me to the  
15 Director of Workplace Relations and filed a request  
16 for assisted resolution"?

17          A       Yes.

18          Q       Okay. All right. And in paragraph 33,  
19 Mr. [REDACTED], he starts off saying on April 18, 2023, he  
20 called Judge Newman for a routine 9:30 a.m. call. Do  
21 you see this?

22          A       Yes.

1           Q     And then he explains that she made comments  
2     along the lines of: "You deserted chambers. When are  
3     you returning to chambers? This isn't going to work.  
4     When are you going to be back? You're not doing  
5     anything for chambers. None of the staff can get any  
6     of their work done because you're not in chambers."  
7     Do you see that?

8           A     Yes.

9           Q     And then down at the bottom, could you read  
10    the last two sentences on this page starting with "I  
11    would"?

12          A     "I would describe Judge Newman's behavior on  
13    the call as aggressive, angry, combative, and  
14    intimidating. The call made me feel very  
15    uncomfortable, anxious, and insecure because I had no  
16    idea what Judge Newman was going to do or what her  
17    response was going to be. And I felt that if I  
18    responded, she would get angrier and more upset."

19          Q     Okay. And then on paragraph 37 at the  
20    bottom of that page, could you read the first sentence  
21    of paragraph 37?

22          A     "I would like to say that I love, revere,

1 and admire Judge Newman personally and professionally  
2 for all her accomplishments and who she is as a  
3 person, which makes the last few months so much more  
4 difficult."

5 Q Okay. All right. I hand you what's been  
6 marked as Exhibit 25. And do you recognize this?

7 (Exhibit 25 was marked for  
8 identification.)

9 A Yes.

10 Q And this is an affidavit of [REDACTED],  
11 isn't it?

12 A Yes.

13 Q And in the first line, he says that he works  
14 as a law clerk for Judge Newman?

15 A Yes.

16 Q Let's go to paragraph 14. Sorry. First,  
17 let's look at 13. In the first sentence there, it  
18 says that Judge Newman, at a meeting with her clerk,  
19 said that she was not happy that [REDACTED] had asked  
20 the chief to place him outside of chambers. Do you  
21 see that?

22 A Paragraph number 13?

1 Q Thirteen.

2 A Yeah.

3 Q First sentence.

4 A Mm-hmm.

5 Q See, it says that Judge Newman said she was  
6 not happy that [REDACTED] had asked the Chief to  
7 place him outside of chambers?

8 A Yes.

9 Q Okay. And then paragraph 14. Can you  
10 please read the first sentence?

11 A "At that point in the meeting, I informed  
12 Judge Newman that working in her chambers was hurting  
13 my ability to complete my work and taking a toll on my  
14 mental health and harming my relationships at the  
15 court."

16 Q Okay. In the next sentence, he says "I then  
17 reiterated that I would like to be loaned out to  
18 another judge." Is that right?

19 A Yes.

20 Q Okay. And then, could you please read  
21 paragraph 17?

22 A "The next day, April 19, 2023, I brought my



1 concerns to the Chief and indicated that I could no  
2 longer work in this environment and requested to be  
3 moved to another chambers."

4 Q Okay. I've handed you what's been marked as  
5 Exhibit 26. Do you recognize this?

6 (Exhibit 26 was marked for  
7 identification.)

8 A Yes.

9 Q And this is the affidavit of [REDACTED],  
10 isn't it?

11 A Yes.

12 Q And he says in the first paragraph that he's  
13 worked in the Information Technology Office at the  
14 Federal Circuit for 17 years. Do you see that?

15 A Yes.

16 Q Let's look at paragraph 2. Do you see the  
17 second sentence there says "When I first started, I  
18 was amazed that someone in her 80s, like Judge Newman  
19 was at the time, could pick things up so quickly and  
20 easily"? Do you see that?

21 A Yes.

22 Q Can you read the next sentence?

1           A       "However, particularly over the last few  
2       years, I have noticed a significant increase in Judge  
3       Newman forgetting how to perform basic tasks that used  
4       to be routine for her."

5           Q       Okay. And then could you read the first  
6       sentence in paragraph 3?

7           A       "Judge Newman routinely blamed her inability  
8       to find a file or email on someone hacking her  
9       computer."

10          Q       And then the next sentence?

11          A       "I would describe her on these calls as  
12       sounding paranoid."

13          Q       All right. And then in paragraph 5,  
14       Mr. [REDACTED] says that "Judge Newman was unable to  
15       complete an annual security awareness training two  
16       years ago." Do you see that?

17          A       Yes.

18          Q       And he says "The training required a user to  
19       watch a short 10-20-minute video presentation and  
20       answer a series of questions based on the information  
21       provided in the video." Do you see that?

22          A       Yes.

1           Q     Okay. And then skip over one sentence.  
2     There's a sentence that begins "I believe," could you  
3     read that?

4           A     "I believe Judge Newman tried and failed  
5     multiple times to answer enough questions to pass the  
6     training because she was unable to retain the  
7     information from the video she had just watched."

8           Q     And then he says "I had to sit with her and  
9     help feed her answers to the questions in order for  
10    her to pass the training." Is that right?

11          A     Yes.

12          Q     Okay. Let's go back to Exhibit 21, which  
13    was the first affidavit of [REDACTED]. Do you have  
14    that exhibit?

15          A     Yes.

16          Q     If you go to page 2 to paragraph 8, could  
17    you just read paragraph 8, please?

18          A     "Over the last year, I've noticed my  
19    interactions with Judge Newman that seems to be  
20    significant mental deterioration. Judge Newman  
21    routinely states that her computer is being "hacked"  
22    even though her concerns seem to be easily explained

1 by Judge Newman forgetting what she was doing or not  
2 realizing that the network disconnected her based on  
3 inactivity."

4 Q And then the last sentence says "She seems  
5 agitated and paranoid and we frequently have to calm  
6 her down in order to be able to help her with her  
7 problem." Do you see that?

8 A Yes.

9 Q Okay. If we look now at paragraph 9, he's  
10 describing that Judge Newman frequently requests help.  
11 And in the third sentence, he says "Many of these  
12 requests are a result of Judge Newman not being able  
13 to remember where she saved a file or email or Judge  
14 Newman forgetting the steps to remotely access into  
15 the court's computer network." Do you see that?

16 A Yes.

17 Q And then there's a sentence starting "These  
18 are things," can you read that sentence and the  
19 following sentence?

20 A "These are things that Judge Newman has done  
21 for years and these processes have not changed. She  
22 never used to have a problem with these routine tasks

1 but now seems to repeatedly forget how to do them."

2 Q And then the next sentence says "We have to  
3 walk her through the same steps over and over and she  
4 does not seem to remember them from day to day." Is  
5 that right?

6 A Yes.

7 Q Okay. And if we go back to Exhibit 24,  
8 which was the affidavit of [REDACTED], and look at  
9 paragraph 14, can you read the first sentence of  
10 paragraph 14?

11 A "Over the last year, Judge Newman would make  
12 statements to me that her phone and computer were  
13 being "bugged" and "hacked" and that bloggers at the  
14 media were out to get her and bring her down" -- "and  
15 media. These would seem to occur at least once a week  
16 and most frequently on our Monday calls."

17 Q Okay. Now, on page 27 of your report, if we  
18 could take a look at that. If you look under DEMEANOR  
19 at the second full paragraph there, it says that  
20 you've reviewed the affidavits of various court staff.  
21 And then the second sentence, Could you read the  
22 second sentence there?

1           A       "While I understand that Judge Newman  
2       recollects several episodes differently than the  
3       affiants, I do not endeavor to resolve which  
4       recollection is more accurate, and, for the purpose of  
5       my evaluation, take affiants' statements at face  
6       value."

7           Q       Okay.

8           A       "I do note that most of the reports of Judge  
9       Newman's outbursts concerns events that occurred  
10      following the launch of the present investigation and  
11      thus may be explained by the stress occasioned by this  
12      process. At the same time, if there was any  
13      inappropriate behavior towards colleagues or  
14      subordinates by Judge Newman, I do not seek to justify  
15      or excuse it."

16          Q       Okay. So you note there that Judge Newman  
17      recollects several episodes differently. What did  
18      Judge Newman tell you about these episodes?

19          A       She just minimized the degree of agitation.  
20      She said she might have been irritated or she might  
21      have had a moment of forgetfulness, but that it had  
22      been magnified in these reports. And I would say,

1 "You know, working, having employees, I've seen this  
2 kind of thing with people of all ages.

3 I've seen it between Harvard faculty  
4 members. I've seen it." So one, those happen, and  
5 two, I think another -- one of the -- so the three  
6 things they're complaining of are impairment of new  
7 memory formation, excess anger and irritability, and  
8 some paranoia. So -- and the one that's -- one of the  
9 ones that's most concerning, say, about work would be  
10 impairment of new memory formation.

11 And maybe that syncopal fall, she did have  
12 an impact and the crus of the fornix was injured  
13 'cause we don't have the MRI, and Aricept would fix  
14 that if she took -- because that is a very focal  
15 problem that responds well to a medication. But it's  
16 not -- those -- now, it is true that people with  
17 Alzheimer's deterioration could have those symptoms,  
18 among other things, but those symptoms by themselves  
19 in an older senior employee with a lot of authority  
20 don't add up to --

21 Q I asked a specific question.

22 A -- degenerative dementia.

1 MR. MORRIS: [Unintelligible response.]

2 BY MR. PHILBIN:

3 Q Okay. Please try to just answer the  
4 question that I ask you.

5 MR. MORRIS: Understood. But he --  
6 fair enough, he's entitled to finish his answers.

7 MR. PHILBIN: We'll be here a long  
8 time.

9 MR. MORRIS: Well, he's entitled to  
10 finish his answers.

11 MR. PHILBIN: [Unintelligible  
12 response.]

13 BY MR. PHILBIN:

14 Q Did Judge Newman deny to you that she had  
15 complained about her computer being hacked?

16 A I didn't discuss it in detail, but my  
17 understanding of it was she felt that her comments  
18 were exaggerated in an unfavorable light.

19 Q Okay. And when you say that for purposes of  
20 your evaluation you "take the affiants' statements at  
21 face value," what does that mean? You say you're not  
22 trying to resolve the dispute; you take them at face



1 value. Does that mean you're not disputing that these  
2 things happen?

3 A So I have to get involved in HR 'cause I  
4 have employees. If an employee comes in and says,  
5 "This is what I experienced from that other person."  
6 Now, I may accept that is true, that person did behave  
7 badly and these episodes happen from time to time.

8 And then you have to try to, you know, try  
9 to balance, was there a particular episodic reason?  
10 Do you need to terminate the person? What's the level  
11 of the misbehavior? What's the frequency? Is she  
12 doing this constantly? Is she unable to do her work?  
13 So it has -- it -- it has context. So I'm not in a  
14 position to determine the accuracy of the -- the  
15 statements.

16 I understand their affidavits and I state  
17 that. But they don't -- so let's say if a Harvard  
18 professor was doing that, okay? Who's producing  
19 important academic work and books that are widely  
20 read, but he's paranoid, he's nasty, and he forgets  
21 stuff all the time. Do we need to remove him from his  
22 faculty position? Do we need just to counsel his

1 graduate students?

2           So these are -- you know, this is -- these  
3 are the questions. Is it dementia? Well, based on  
4 his work, how is somebody demented and still doing the  
5 work that we see? Or you might find another person  
6 who's very nice, but no longer is able to produce  
7 anything as a professor. And then, you know, so  
8 they're not doing their job of producing, of teaching  
9 and producing research, and that's -- you know, that  
10 is what you look at.

11           So these are behavior concerns for sure, and  
12 they're very common problems for HR departments, I can  
13 assure you. Whether they prove dementia, warranting  
14 removal of a judge, again, is beyond my scope. That  
15 is -- I don't know what the rules are on that. But  
16 they are each describing specific isolated types of  
17 behavior, which I just characterized: memory  
18 impairment, paranoia, and excess aggression, which --  
19 which they do say is episodic.

20           It's not all the time, but, you know,  
21 that -- those could be going on absent, let's say  
22 Alzheimer's or, you know? So -- so those are --

1 and -- and they may be actionable. So it may be that  
2 if you yell at one clerk once, you have to be  
3 terminated from the court. I -- I don't know.

4 Q Okay. But just in terms of do these  
5 statements provide evidence? I think you said it was  
6 behavioral issues. Do they provide evidence, some  
7 evidence, some evidence of potential cognitive  
8 impairment?

9 A Not cognitive impairment. Those are  
10 specific. I can tell exactly where in the brain each  
11 of those is occurring, and it doesn't -- this idea of  
12 a global cognitive, like the whole brain gets better  
13 or worse. There -- the brain is not like a computer  
14 that has thousands of identical transistors, each of  
15 which can do whatever is assigned to them at any  
16 moment.

17 Different parts of the brain do different  
18 things. And there are conditions where the whole  
19 brain is deteriorating, a virus or certain types of  
20 Alzheimer's that are just dramatic global  
21 deterioration of the brain. And there are other  
22 things where the brain looks fine, but there's a

1 particular circuit that's impaired and that's fixable.

2 So right now what I'm getting from these is  
3 they're not saying that she's mentally incompetent.  
4 No one's addressing how these opinions are -- court  
5 opinions are being produced. The types of behavior  
6 being addressed here, as I said, are very, very common  
7 in HR, as I've seen it again and again.

8 Q Do these statements provide some evidence of  
9 memory impairment?

10 A Well, some of it are -- they're stating they  
11 believe it's memory impairment. So maybe when she  
12 fell, she hit her head, and she's got that memory  
13 formation problem.

14 Q I have a specific question. Do these  
15 statements provide some evidence of memory impairment?  
16 Do you think they provide some evidence of memory  
17 impairment or not?

18 A I already answered that. I just answered it  
19 again.

20 Q Well, I don't think you did, Doctor, so  
21 please just answer the -- is there some evidence?

22 A It's new -- it's -- new memory formation is

1 different from recall, and the types of recall  
2 implicate different parts of the brain. So they seem  
3 to be saying, for instance, that she takes a course,  
4 she looks at it, and then is not able to report back  
5 what the course said.

6 So she has an impairment of new memory  
7 formation, which I asked her about. She denies.  
8 They're stating they've seen signs of it. It's hard  
9 to know if it's episodic, that is, she comes in and  
10 out, or she continually is unable to form new  
11 memories. If that's the case and she had a head  
12 impact, I would suspect that it's a focal problem in  
13 that memory formation circuit, and it would respond  
14 to, say, Aricept. Not -- it doesn't fix dementia. It  
15 just fixed new memory formation.

16 Q Is that something, since you raised that she  
17 did have a falling episode, and it could be something  
18 that's treatable, is that something that should be  
19 explored?

20 A Yes. I mean, I think that's -- you know,  
21 pointing that out. But she denies it. You know, she  
22 had denied she had -- I thought she would acknowledge

1 problems in new memory formation because that's very  
2 common, and she's very firm that she was not having  
3 that problem. And I did test her, which is I gave  
4 her, you know, I described to her a complex  
5 technology, one in matter-antimatter physics, another  
6 in complex genetics, and another to do in patent  
7 history about the printing press, and asked her to  
8 repeat back to me the technology that I just described  
9 to her, and she did that accurately.

10 So while she may have demonstrated poor  
11 memory formation at some episodes, I directly examined  
12 that in an intensive way that many people could not  
13 pass, and she was able to describe back what I  
14 verbally described to her. And I don't think they're  
15 saying -- everyone's globally saying, she doesn't  
16 remember anything anymore. But they do cite some  
17 episodes where she appears to have had a problem with  
18 memory formation, and if she did hit her head when she  
19 fell, that may be the explanation.

20 Q Okay. So you acknowledge there is a  
21 possibility that she does have a problem with new  
22 memory formation?

1           A     She denies it. I didn't find it. But these  
2 people are making affidavits saying that she has such  
3 a problem, not that she's caught -- so you want to  
4 take that and say, obviously this is a severely  
5 cognitive impairment, but they're really very specific  
6 to three individual functional issues, and -- which,  
7 for whatever reason, she doesn't exhibit continuously  
8 because she certainly was not acting paranoid or  
9 hyperaggressive. Or even I gave her opportunities to  
10 open up and criticize her colleagues, and she did not  
11 do so.

12           Q     Okay. But, Doctor, I just want to  
13 understand your opinion in this case, have you ruled  
14 out that she has any problem with new memory  
15 formation?

16           A     Well, she says she didn't. She didn't have  
17 it when I tested her. And this is different from  
18 usual medicine where you have somebody who maybe has a  
19 conflict with her under outside pressures. They don't  
20 want to get the judge more angry at them, are making  
21 the statements confidently as affiants. And they may  
22 be describing a failure to remember something that

1 occurred under the stress of the investigation, or it  
2 may be going on all the time.

3 I'm just saying I did examine her for this  
4 issue. I'm not able to do an MRI to see that  
5 particular mechanically sensitive structure involved  
6 in new memory formation. If a patient denies a  
7 symptom, they're not going to take the medicine. But  
8 that -- there are several of these that can be  
9 specifically treated, but they don't add up to global  
10 cognitive failure.

11 Q Okay. I understand, Doctor, you just went  
12 through sort of all the pieces of evidence that are  
13 available to you. But what I want to understand  
14 clearly is your conclusion. Are you ruling out that  
15 she has an impairment with new memory formation, or  
16 are you holding open the possibility that given these  
17 affidavits that might very well be a problem?

18 A Yes, and it's one of those that's  
19 fortunately easy to fix.

20 Q Yes, you're holding open that that might be  
21 a problem?

22 A Based on these affidavits, but as I said at



1 the time, she denies that these are accurate. And so  
2 you really can't get a person to take a medicine for a  
3 problem that they claim they don't have. That's --  
4 you know --

5 Q Okay.

6 A So -- or if I tested them and found --you  
7 know, you -- rather than say, "Can you, you know,  
8 count backwards and forwards, or remember a story I  
9 just told you," I gave her a complex judge, you know,  
10 patent judge level, detailed presentation of new  
11 technology she could not have known about, and she was  
12 able to describe back the substance and also to  
13 appreciate the legal issue.

14 And I don't think these clerks are saying  
15 she couldn't do that 'cause they're not addressing  
16 that kind of issue. So that we have conflicting  
17 information, and as you know as an attorney, one  
18 always has conflicting attorneys, that's why we have  
19 trials and that's why we have these litigation  
20 processes. And we have to try to adjudicate fairly  
21 and equal -- evenly how do these different competing  
22 sets of informations lead us to a correct assessment

1 and action.

2 Q Okay. Is it always the case that some  
3 impairment in new memory formation could be treated?  
4 You mentioned Aricept. Is the cause of that problem  
5 always treatable?

6 A That particular feature is usually  
7 treatable, yes.

8 Q The particular feature, if she had an injury  
9 to a particular part of her brain that --

10 A Well, they -- they use that medication to  
11 treat people who have Alzheimer's and develop that  
12 impairment as part of a global brain -- brain  
13 functional loss. Okay? However, we also have found  
14 it far more effective in patients, even young  
15 patients, who suffer that as a -- as a specific loss  
16 that comes from some head impacts or accelerations  
17 because it's extremely mechanically sensitive and it  
18 has that striking feature of impaired new memory  
19 formation even when global recall of the past seems to  
20 be intact.

21 Q So is it your testimony that anyone who has  
22 a problem with new memory formation, that's treatable?

1           A     Well, most people, yeah. I mean, it's --  
2     when I can get a -- if I get an image of their fornix,  
3     it shows they have a fracture there, and there are  
4     implants that are done now to treat this.

5           Q     I don't want to limit it to people who have  
6     a fracture in their fornix. I want to say anybody  
7     who's got a problem with new memory formation, which  
8     could include people with Alzheimer's, could include  
9     people with other kinds of dementia. All right.  
10    Could involve people I know you don't like the  
11    diagnosis, but MCI that's been diagnosed by a  
12    neurologist, are you saying that all of them get  
13    treated and it can be fixed with this Aricept?

14          A     Well, they're all worth a trial in the  
15    medicine.

16          Q     Okay.

17          A     So in most -- many -- I would say that the  
18    majority of people will improve on new memory  
19    formation with Aricept or Donepezil as a generic. So  
20    it's worth a try. Now, if she has that and  
21    acknowledges a problem and takes the medicine and  
22    finds out, "Wow, my memory's better, therefore I'm not

1       angry and paranoid because information isn't missing."  
2       So it could be something as simple as that.

3               It doesn't mean that their brain is gone.  
4       Mild cognitive impairment is a broad term. It would  
5       include someone who is grossly -- you know, relatively  
6       generally demented globally. It could include  
7       somebody who just has a little memory -- clear memory  
8       formation problem. You can call them mildly cognitive  
9       impaired. It covers many, many, many things, just  
10      calling like somebody somewhat disabled. What's wrong  
11      with them? Well, a lot of things could be wrong with  
12      them.

13           Q       Okay. I had a couple questions about  
14      Dr. Rothstein's report and your references to it. On  
15      page 41 of your report -- if you could go to page 41  
16      of your report.

17           A       Yes.

18           Q       In the paragraph sort of in the middle,  
19      maybe the lower half of the page that begins with the  
20      word "Ultimately."

21           A       Yes.

22           Q       It says "Ultimately, the central point at

1 issue here is the need for testing." Do you see that?

2 A Yes.

3 Q And then it says "Judge Newman already has  
4 the opinion of her senior respected neurologist,  
5 Dr. Ted Rothstein." Do you see that?

6 A Yes.

7 Q So is it fair to say that here you are  
8 relying in part on Dr. Rothstein's report to support  
9 your conclusion that no further testing is needed?

10 A Yeah. I mean, I'm saying that they found  
11 she's fine and then my analysis did. So, yeah, it  
12 seems like there's sufficient findings --

13 Q Okay. And similarly on page 40, the  
14 previous page, if you look at -- there are numbered  
15 paragraphs there at numbered paragraph 4, it says "I'm  
16 confident in stating" -- and there's an open  
17 parenthetical -- "(consistent with the opinions  
18 rendered by Dr. Ted L. Rothstein and Dr. Regina  
19 Carney) that there is no material concern that  
20 requires further medical testing." Do you see that?

21 A Yes.

22 Q And so, again, are you pointing in part to

1 Dr. Rothstein's report to support your conclusion that  
2 no further testing is required?

3 A Yes. I mean, normally if I send someone to  
4 a neurologist or a neuropsychologist and they both say  
5 the person seems fine, I do the evaluation imaging,  
6 they seem fine. I mean, if you have an investigation  
7 and you're determined -- to get a certain result, you  
8 will ignore opinions inconsistent and just keep  
9 testing until you find a result that's consistent with  
10 your -- with your predisposition. Courts shouldn't do  
11 that. That's not how medicine is practiced.

12 Q Okay. I think you just said if you send  
13 someone to a neurologist or a neuropsychologist. In  
14 what circumstances do you send a patient to a  
15 neurologist?

16 A If I believe they have a condition that  
17 neurologists treat as opposed to a neurosurgeon. So  
18 there are a number of conditions they'll treat, like  
19 management of non-surgical epilepsy. So if they have  
20 epilepsy, we'll look and see if there's a lesion that  
21 we can treat and repair. If it's not, then they're  
22 going to be on medications and need a lot of

1 follow-ups. Migraine typically is handled by -- by  
2 neurologists.

3 Q Alzheimer's?

4 A A number of degenerative disorder --  
5 disorders that have medical treatment are handled by  
6 neurologists.

7 Q Would Alzheimer's be one?

8 A Well, if they don't have any treatment, then  
9 they don't -- you know, they just check on them, you  
10 know, just check for stroke and seizure. But they,  
11 you know -- there's not -- there isn't a cure or  
12 treatment or even an excellent, really super excellent  
13 diagnosis for Alzheimer's. There's a lot going on in  
14 that field.

15 Q If you had a patient who came to you wanting  
16 to find out if I've got some kind of age-related  
17 cognitive impairment, and you did your workup and you  
18 thought they had Alzheimer's, is that a patient you  
19 would send to a neurologist, or what do you do?

20 A Well, they may be -- they might go back to  
21 their general practitioner. They could go to a  
22 neurologist, who neurologists may not treat or take

1       care of Alzheimer's. They may get another opinion,  
2       you know, based on their test, it seems like  
3       Alzheimer's.

4               But if you have an image diagnosis and a  
5       biological diagnosis from a blood test, then, you  
6       know, the person may want to wind up their affairs,  
7       look at what's the best care situation, whatever  
8       medical people they need to help them. I mean, a  
9       neurosurgeon at that point can't really do very much  
10      to fix up the Alzheimer's, if that's what it is.

11             That's a particular degenerative disorder  
12      that's only just so well understood, but it's  
13      certainly a common cause of progressive dementia. But  
14      we should -- I don't think that's what we're seeing  
15      here.

16             MR. PHILBIN: Okay. You know, it might  
17      make sense to take a ten-minute break now, if you want  
18      a break.

19             MR. MORRIS: All right.

20             THE REPORTER: Okay. Then the time is  
21      currently 3:01 p.m., and we're going off the record.

22             (Off the record.)



1 THE REPORTER: Okay. We are back on  
2 the record, and it is currently 3:13 p.m.

3 You're good to begin.

4 BY MR. PHILBIN:

5 Q Dr. Filler, before the break, we were  
6 talking about some of the affidavits that court  
7 employees have submitted in this case. Do you  
8 remember that?

9 A Yes.

10 Q And when did you receive those affidavits?

11 A My general -- general recollection was  
12 around the date of the visit. I can't remember  
13 specifically, because I got the prior reports and the  
14 affidavits, I think, in a packet.

15 Q When you say the "prior reports" --

16 A I mean the evaluation by the neuropsych and  
17 the neurology, Rothstein.

18 Q So you received the report from  
19 Dr. Rothstein and the report from Dr. Carney and the  
20 affidavits together in one set?

21 A Yeah. I can't be extremely specific, but I  
22 feel like they came together and I had to look through

1       them.

2           Q       And you think that was before the day that  
3       you saw Judge Newman?

4           A       It might have been on that day.

5           Q       It might have been on --

6           A       And sometimes they -- something might have  
7       come in my office, and the thing is I'm so busy taking  
8       care of so many people that I tend to wait until I'm  
9       focused on a particular person to start going through  
10      their -- their things.

11          Q       Okay. So you think you might have reviewed  
12      those when the morning of the day that you saw Judge  
13      Newman?

14          A       If they were in my position, that was when I  
15      would have looked at them.

16          Q       Okay.

17          A       Otherwise then, or if I hadn't had a chance  
18      to look thoroughly, I would have looked at them, as I  
19      note here, at the time of preparing the report.

20          Q       But you're not sure which it was?

21          A       Or it might have been both.

22          Q       Okay. But do you recall specifically

1 discussing those affidavits with Judge Newman?

2 A Yeah. I remember having some trepidation  
3 about it, but I -- you know, I wanted to bring that  
4 up, you know, and say, "I understand there are some  
5 employee issues that have been raised. What's your  
6 impression about this?"

7 Q Okay. Then I'd like to turn to your report.

8 A And I don't know if any of them are under  
9 litigation as of their workplace complaints against  
10 the court or --

11 Q Yeah. If there is, it's something separate  
12 from this proceeding. So if we could look in your  
13 report at page 16.

14 A Yes.

15 Q In the full paragraph towards the top of  
16 that page, the last sentence of that paragraph says  
17 "There is substantial medical literature that  
18 convincingly supports the proposition that high-speed  
19 perfusion brain imaging supplants the inevitably  
20 subjective practice of neuropsychology in the  
21 fundamentals of cognitive assessment." Is that right?

22 A Yes.

1           Q     That's what it says. Okay. And then on  
2     page 3 of your report, in the paragraph in the middle  
3     of the page, there's a sentence in sort of the middle  
4     of the paragraph that says "As a result of these  
5     stunning advances in spatial and temporal resolution,  
6     there is now a widespread medical understanding that  
7     Perfusion CT can be used to identify or rule out the  
8     presence of dementia or cognitive impairment on a  
9     reliable, objective basis." Is that what it says?

10          A     Yes.

11          Q     Okay. And I just want to level set some  
12     terms and understand what you're saying. This  
13     sentence seems to distinguish or to acknowledge that  
14     there is a distinction between dementia and  
15     potentially other forms of cognitive impairment. Is  
16     that right?

17          A     Well, I mean, dementia is a broad term. So,  
18     you know, it kind of says something's wrong with your  
19     brain and we don't know what it is. Because if you  
20     talk just like I listened to those reports and didn't  
21     say dementia, I said, "Oh, well, we have new memory  
22     formation. We have excess anger. We have some

1       paranoia."

2               So these are specific symptoms with specific  
3       locations in the brain. So you might say "It's the  
4       approach to the patient who is a generalist or  
5       non-physician thinks may have dementia. So what do we  
6       do? We should interview and examine the patient, try  
7       to sort out the symptoms, and do, when available,  
8       appropriate imaging to identify a diagnosis we can  
9       treat and/or medications we should use. So as opposed  
10      to classifying them as normal or demented and not  
11      knowing what to do to treat."

12           Q     Okay. Doctor, what I'm trying to get at is  
13      basically this. You made claims about imaging and  
14      perfusion CT being able to identify or rule out, sort  
15      of rule in or rule out some things. Sometimes it's  
16      phrased as they can identify or rule out dementias.  
17      Other times it's phrased as they can identify or rule  
18      out dementias or all forms of cognitive impairment. I  
19      just want to understand what is the claim you're  
20      making. Are you distinguishing between dementias and  
21      cognitive impairment or not?

22           A     Okay. So -- and I -- I had put together a

1 PowerPoint with a bunch of, you know, literature  
2 searches and all that, which I was just advised not  
3 to -- I wanted to have it sent to you, but -- this  
4 moment would come. But there are very substantial  
5 literature, so you're looking into hundreds and even  
6 thousands of publications. Okay?

7 So -- and some, you're shaking your head,  
8 but all right -- so there are certain named dementias,  
9 so Alzheimer's, dementia. There are, and several of  
10 those have unique image characteristics, and you can  
11 run the image and say, "That person has Alzheimer's  
12 dementia. Or, no, no, that person has this other type  
13 of dementia."

14 So a number of them turn out to have  
15 extremely specific image findings. So you can run the  
16 image and say, "Yeah, they have that disease, and this  
17 is what we can expect their course to be to the extent  
18 we know, once we have somebody with that diagnosis."  
19 Sometimes a diagnosis can be made by a blood test.  
20 Sometimes it's made on purely clinical grounds.

21 So one is -- is the -- and -- and then  
22 similarly with cognitive impairments, as long as it's

1 a black box and we don't know what's inside the brain,  
2 and we do a bunch of tests and come up with a score,  
3 that says, "Oh, cognitive impairment," as opposed to  
4 saying, "Oh, well, this is new memory formation. This  
5 is a failure to recall faces in a person who remembers  
6 other types of visual information. We should look at  
7 what part of that image recall process has got some  
8 little, you know, stroke in it or something."

9 So it's that process. And the fact is, when  
10 you see 1,000 publications, okay, if we don't add them  
11 up, I agree, but it does mean that there is  
12 substantial -- when a number of them and reviews of  
13 them state that they are -- and compare to older  
14 methods and show that they are reliable in identifying  
15 correct and effective treatments.

16 Q Doctor, I'm just trying to understand so  
17 we're using the same terms the same way. I'm just  
18 trying to understand. You're saying that the imaging  
19 can rule in or rule out, at least let's just start  
20 with, dementias; correct? And there could be  
21 Alzheimer's dementia, could be Lewy body dementia,  
22 frontal temporal dementia. There are several types of

1       dementias. And your claim is that the imaging can  
2       rule in or rule out each of those types of dementias.  
3       Is that much true?

4             A       Yes.

5             Q       Okay.

6             A       Yes. And they're actually showing they can  
7       show people, looking at people with the genetics of  
8       the disorder, that you can identify when it starts  
9       earlier than the tests can. So it's -- it's very  
10      helpful.

11            Q       Okay.

12                   MR. MORRIS: His question for now is  
13      rule in or rule out.

14                   THE WITNESS: Yeah, in some cases, yes.

15                   MR. MORRIS: Terminological, I think.

16      BY MR. PHILBIN:

17            Q       In some cases or in all cases?

18            A       Well, I didn't say every known condition  
19      known to man is now immediately identified by imaging.  
20      But I did say that several of the major dementias can  
21      be identified by specific image abnormalities and that  
22      account for the vast majority of dementias. So it's



1 well, well worth doing before you start turning back  
2 on tests that go back centuries. If you have nothing  
3 else you can do.

4 Q Okay. So I think you just said you are not  
5 saying that the imaging can rule in or out all forms  
6 of dementia. Is that correct?

7 A Yeah, I would say it's the major ones that  
8 have been studied, yes.

9 Q Okay. Then putting dementias aside, I think  
10 you were acknowledging that there can be somebody who  
11 has, in a general way, some kind of cognitive  
12 impairment that is not qualified or classified as one  
13 of those dementias. Is that fair?

14 A Yes.

15 Q Okay. So then my question is, are you  
16 claiming, is it part of your claim here, that the  
17 imaging can also rule out any of those types of  
18 non-dementia cognitive impairment?

19 A I would say, let's not say all, but let's  
20 say many or most of the major types of cognitive  
21 impairment now have identifiable image  
22 characteristics.

1 Q Okay. But not all?

2 A Right. There's maybe one person who has  
3 something that no one else has, so "all" would be a  
4 broad term.

5 Q Okay. So if you could look at your reply  
6 report, which I think was Exhibit 4, on page 15,  
7 paragraph 29.

8 A Yes.

9 Q At the end of that paragraph 29, it says  
10 "Perfusion CT is newer, but it does work to  
11 effectively, objectively, and conclusively, rule out  
12 the known forms of dementia." Do you see that?

13 A Yes.

14 Q So should that be more qualified, that it's  
15 most dementias, not necessarily all?

16 A By known forms, I'm talking about they --  
17 there are studies in, I think, virtual, I can't say  
18 100 percent, but all the different named subcategories  
19 that have identified genetics or identified behavior  
20 patterns. So the -- let's just say the major known  
21 forms of dementia would be better. But I say rule out  
22 the known forms of dementia. There may be those that

1 are not known because we don't -- you know, we know  
2 they're demented, but we don't know -- we can't figure  
3 out how to describe it or something. So I would say  
4 that, yeah, you could qualify it a little bit. The  
5 better-known forms of dementia. How about that?

6 Q Okay. Then I'd like to ask you a couple of  
7 questions about a couple of the academic articles, the  
8 studies cited in your report. Okay. So this is 27,  
9 Exhibit 27. And do you recognize this?

10 (Exhibit 27 was marked for  
11 identification.)

12 A Yes.

13 Q This is an article or a study prepared by  
14 Dash et al.? Is that right?

15 A Yes.

16 Q Okay. And if you look under methods there  
17 under the abstract, it says this was a study enrolling  
18 25 dementia patients. Is that right?

19 A Yes.

20 Q So this study involved, and then in the  
21 parenthetical there, 15 cases of -- lost where the  
22 definition of that is. It's vascular dementia.

1 Fifteen of vascular dementia and ten of Alzheimer's  
2 dementia. Is that right?

3 A Yes.

4 Q Okay. And I think that in your report on  
5 page 17, you describe this report as saying that  
6 "perfusion CT is a reliable imaging modality for early  
7 diagnosis of dementia and differentiating vascular  
8 dementia from Alzheimer's dementia." Is that right?

9 A Yes.

10 Q Okay. But it didn't examine any subjects  
11 with any other form of dementia --

12 A Not this study.

13 Q Okay.

14 A But remember, there's hundreds of studies  
15 like this.

16 Q So if we could look at page 324 in the last  
17 paragraph before the conclusion, it begins with the  
18 word "certain."

19 A Right. And they -- they always put that,  
20 you know, reservation in public -- published articles.  
21 All the things that they haven't looked at yet and --  
22 because if you're reviewing an article, they'll say,

1 "Oh, well, you guys should acknowledge it doesn't do  
2 this, it doesn't do that." But it doesn't mean that  
3 this study is worthless or something.

4 Q My question, Doctor, is just that this says  
5 there are certain limitations that they must  
6 acknowledge; correct?

7 A Of this particular study, yes.

8 Q Right. And they say that their sample size  
9 was small because it was only 25 people; right?

10 A Yes.

11 Q And second, we only evaluated the two most  
12 common forms of dementia, that is Alzheimer's dementia  
13 and vascular dementia. Correct?

14 A Yes.

15 Q Okay. So this study didn't involve forms of  
16 cognitive impairment that were non-dementia; correct?

17 A Right. No, it's just about those two.

18 Q Okay.

19 A There's no contention about that.

20 Q Okay.

21 A But there's not a contention this is the  
22 only -- are you contending this is the only study ever

1 done about perfusion?

2 Q I'm just asking questions, Doctor.

3 A Well, you're making contentions.

4 Q So on the first page, if you could look at  
5 that, that's page 318 of the publication, the very  
6 first page of the exhibit. Down in the right-hand  
7 corner, the second to last sentence on the page starts  
8 with the word "however." And can you read that  
9 sentence and the next sentence?

10 A "The role of PCT in evaluation of dementias  
11 is still at a nascent stage. Few studies in this  
12 context have shown conflicting results regarding the  
13 areas of brain affected and which are the most  
14 reliable parameters. Most of these studies also had  
15 limited coverage of the brain as they used lower slice  
16 count CT scanners."

17 Q Okay. And what was the date of this  
18 publication?

19 A This is 2024.

20 Q I think it's --

21 A '23 -- sorry.

22 Q '23. Okay. So just a year before you did

1 your report in this case; correct?

2 A Or it was -- it was released in 2022,  
3 January 2022.

4 Q Okay. Then if we could --

5 MR. MORRIS: It was accepted in 2021,  
6 at the bottom it says. Fill out the dates. Accepted  
7 December 31, 2021.

8 BY MR. PHILBIN:

9 Q Okay. So the study was completed then in  
10 2021. Is that fair?

11 A Yes.

12 Q Okay. All right. I've handed you what's  
13 been marked as Exhibit 28. Do you recognize that?

14 (Exhibit 28 was marked for  
15 identification.)

16 A Yes.

17 Q Which is an article by Jian et al?

18 A Yes.

19 Q Okay. And you cited this study in your  
20 report, didn't you?

21 A Yes.

22 Q Okay. And this study conducted a perfusion

1 CT scan on 180 different patients. If you look at the  
2 methods there. And they were grouped into categories  
3 of there was a control, there were 30 patients with  
4 MCI, 35 with mild Alzheimer's disease, 35 with  
5 moderate Alzheimer's dementia, and 30 with severe  
6 Alzheimer's dementia. Do you see that?

7 A Yes.

8 Q Okay. Now let's turn to table 2, which is  
9 on page 4761. Are you familiar with the term p-value?

10 A It's a probability assessment.

11 Q And do you see down at the bottom of this  
12 table, it says that -- there's an asterisk against the  
13 entries on the table with a p-value of less than .05?

14 A Yes.

15 Q And that means where there was less than a 5  
16 percent chance that the results were due to random  
17 chance; correct?

18 A Right.

19 Q Okay.

20 A Or stated positively, 95 percent confidence  
21 interval that that's -- that they're the normal is  
22 separate from the finding.



1           Q     So in this table, the columns are divided up  
2     NC for the normal control; right? That's the first  
3     column.

4           A     Yeah.

5           Q     And then the next column is MCI. And then  
6     there's a column for mild Alzheimer's disease, a  
7     column for moderate Alzheimer's disease, and a column  
8     for severe Alzheimer's disease. Do you see that?

9           A     Yes.

10          Q     Okay. So for the column that's MCI, mild  
11     cognitive impairment, do you see any asterisk on any  
12     of the readings in that column?

13          A     No.

14          Q     Okay. So doesn't that mean that the authors  
15     here are reporting that there was no finding, no value  
16     for mild cognitive impairment with the CT perfusion  
17     being done here that had a p-value of less than .05?

18          A     Not yet. This assessment was not able to  
19     distinguish them.

20          Q     Okay. But so there's no asterisk in that  
21     column, no p-value less than .05?

22          A     Yeah, not in this study.

1 Q Okay.

2 A Which is from 2015, 10 years ago. Or  
3 received 2016. Sorry.

4 MR. PHILBIN: Could you hand me --  
5 okay. All right.

6 BY MR. PHILBIN:

7 Q I'm handing you what's marked as Exhibit 28  
8 [sic].

9 (Exhibit 29 was marked for  
10 identification.)

11 MR. MORRIS: Twenty-nine.

12 MR. PHILBIN: Twenty-nine, yeah.

13 MR. MORRIS: Twenty-nine.

14 MR. PHILBIN: I think we've -- I think  
15 it should be 29.

16 MR. MORRIS: Yeah.

17 THE REPORTER: Oh, yeah --

18 BY MR. PHILBIN:

19 Q Okay. Actually, first I'd like to go back  
20 to pages 16 and 17 of your report.

21 A The main report?

22 Q The main report.

1           A     Okay.

2           Q     Okay. And down at the bottom of page 16, it  
3 refers to the article, the exhibit I just handed you,  
4 the Metting article. Do you see that?

5           A     Yes.

6           Q     And it says it was -- in the report here, it  
7 says it was based on a study of 191 patients?

8           A     Yes.

9           Q     And then on the top of page -- well, and let  
10 me just read this "where a variety of  
11 neuropsychological batteries are used and then  
12 compared to CT results," -- I'm reading from your  
13 report there at page 16 -- "impairments in executive  
14 functioning and emotion perception assessed with  
15 neuropsychological tests during follow-up were related  
16 to differences in cerebral perfusion at admission in  
17 mild traumatic brain injury cases." Is that correct?

18          A     Yes.

19          Q     And it says "It further concludes that the  
20 focal cerebral perfusion data provides an objective  
21 basis for assessing the same functions that the  
22 neuropsychological testing such as facial expression

1 of emotional stimuli and tests, the zoom app test for  
2 behavioral assessment of dis-executive syndrome, the  
3 ADS battery, the trail-making test, immediate recall,  
4 Rey auditory verbal learning test, and two-hour  
5 battery of various neuropsychological tests."

6 Correct? That's what it says?

7 A Yes.

8 Q Okay. So I'm still just on your report. I  
9 just want to understand what your report says for now.  
10 Doctor, you're with me?

11 A Yeah.

12 Q Okay. And so in your report, you list seven  
13 neuropsychological tests there, I think. And I'd like  
14 you just to focus on what's in the report so I  
15 understand what you're saying.

16 A Mm-hmm.

17 Q So in the report, you're saying that the CT  
18 perfusion is an objective way to test the same thing  
19 as Facial Expression of Emotional Stimuli and Tests,  
20 which is called also FEEST, isn't it? You're familiar  
21 with that?

22 A Mm-hmm.

1 Q Is that a "yes"?

2 A Yes. Sorry.

3 Q Okay. It also tests the zoom app test for  
4 behavioral assessment of dysexecutive syndrome;  
5 correct?

6 A Is any of this in contention?

7 Q Doctor, just --

8 A Because eventually we're going -- we're  
9 going to time out here.

10 MR. MORRIS: Let him get through the  
11 question.

12 THE WITNESS: So --

13 MR. MORRIS: Just let him get through  
14 the question.

15 BY MR. PHILBIN:

16 Q Doctor, if we could just focus on your  
17 report.

18 MR. MORRIS: Just let him get through  
19 the question --

20 BY MR. PHILBIN:

21 Q Okay. On the top of page 17, you list seven  
22 things, seven neuropsychological tests.

1           A     You've been saying that over and over again.  
2     Come on. What's the question?

3           Q     I just want to confirm that these are the  
4     seven. One is the --

5           A     Yeah, it's written in there. It's written  
6     here. Those are the tests they're talking about --

7                     MR. MORRIS: Just hear the question and  
8     move on.

9     BY MR. PHILBIN:

10          Q     Doctor, you have to just answer the  
11     questions that I ask.

12          A     Well, but at some point, I'm going to have  
13     to leave, so let's try to move it along a little bit.

14                     MR. MORRIS: Let's take a five-minute  
15     break. I think that'll be helpful in moving this  
16     along.

17                     THE REPORTER: Okay.

18                     MR. PHILBIN: Okay.

19                     THE REPORTER: So the time is currently  
20     3:42 a.m. -- p.m., and we are going off the record.

21                     (Off the record.)

22                     THE REPORTER: We are back on the

1 record, and it is currently 3:44 p.m.

2 BY MR. PHILBIN:

3 Q Okay. Doctor, we were just on page 17 of  
4 your report at the top. And I just want to make sure  
5 that I understand the statement here about the Metting  
6 article, which is that the article concludes that  
7 focal cerebral perfusion data provides an objective  
8 basis for assessing the same functions as  
9 neuropsychological testing, such as --

10 MR. MORRIS: I'm sorry. We're just  
11 getting on your page. You're back on page 17 of the  
12 report; right?

13 MR. PHILBIN: Yes.

14 MR. MORRIS: Okay --

15 BY MR. PHILBIN:

16 Q Okay. Such as, and then it lists some  
17 tests. I want to make sure that we're talking about  
18 the same thing. So one is facial expression of  
19 emotional stimuli in tests. That's number one;  
20 correct?

21 A I think you did. He already asked these  
22 questions. He asked them one by one.

1 THE WITNESS: Can you read that back?

2 MR. PHILBIN: Doctor?

3 MR. MORRIS: Just answer and we'll --

4 BY MR. PHILBIN:

5 Q We had to take a break because you weren't  
6 answering the questions. Are you going to answer the  
7 questions now?

8 A Yes. I'm just pointing out that you're  
9 repeating yourself over and over again. And I've  
10 already said that I don't like to answer the same  
11 question twice because the point is just to get a  
12 slightly different word expression.

13 Q I'm trying to get the first answer, Doctor.  
14 So I just want to go through these. Is the first test  
15 there facial expression of emotional stimuli in tests?

16 A Yes.

17 Q Okay. Second is the zoom app test for  
18 behavioral assessment of dysexecutive syndrome;  
19 correct?

20 A Yes.

21 Q The third test is the ADS battery; correct?

22 A Yes.



1           Q     Okay. The fourth test is the trail-making  
2 test; correct?

3           A     Yes.

4           Q     The fifth test is immediate recall; correct?

5           A     Yes.

6           Q     The sixth test is the Rey Auditory-Verbal  
7 Learning test. Is that right?

8           A     Yes.

9           Q     And the seventh thing that you list is a  
10 two-hour battery of various neuropsychological tests;  
11 correct?

12          A     Yes.

13          Q     Okay. So let's look at the Metting article.  
14 Okay. In the Metting article, if you look at the  
15 ABSTRACT, at the end of the first paragraph, it says  
16 "As the admission computed tomography (CT) often is  
17 normal, perfusion CT imaging may be a useful indicator  
18 of brain dysfunction in the acute phase after injury  
19 of these patients." Do you see that?

20          A     Yes.

21          Q     Okay. And so what this study was looking at  
22 is patients who had mild traumatic brain injury and a

1 CT perfusion was done on them in the acute phase right  
2 near the time of the injury; correct?

3 A Yes.

4 Q And then neuropsychological testing was done  
5 as a follow-up some months later?

6 A Yes.

7 Q Okay. And then -- okay. Let's look at page  
8 25 of the article. And if you look at the top  
9 right-hand column, there's a paragraph there that says  
10 "In total, 191 patients were screened for inclusion."

11 A Yes.

12 Q Okay. But then you see it talks about  
13 several -- a lot of the subjects had to be excluded,  
14 and the conclusion is, at the end of the paragraph, 18  
15 patients were suitable for further analysis."

16 A Yes.

17 Q So isn't it correct that this study actually  
18 reported results and was a study, ultimately, of 18  
19 people?

20 A Yes.

21 Q Okay. Now, let's look at --

22 A And I'm not submitting this as proof of the

1       entire field. As I've said, there are hundreds of  
2       articles which I cite, you know, explain how to locate  
3       them, so that I don't think -- I mean, I understand --  
4       I don't know where you're going with this.

5               Q       Well, let me ask you --

6               A       My frustration is that by pointing out a  
7       particular word or a small error on one study, it  
8       doesn't eradicate the whole field.

9               Q       I understand that, Doctor.

10              A       So I think it's enough to say that this  
11       study supports that, and it's one of many more.

12                      MR. PHILBIN: Counsel, there is no  
13       question pending, and so I'm not going to have this  
14       count against my time.

15                      MR. MORRIS: Got it.

16       BY MR. PHILBIN:

17              Q       The purpose here, Doctor, is for me to ask  
18       questions to get information from you. It's not to  
19       argue the case. Okay?

20              A       [No audible response.]

21                      MR. MORRIS: Go ahead and ask a  
22       question, and he'll answer it.

1 BY MR. PHILBIN:

2 Q So let's look at page 26, and right at the  
3 top in the left-hand column, there's a heading 2.4,  
4 Neuropsychological test measures.

5 A Yes.

6 Q Okay. And then there are headings there  
7 that show the test measures. The first one is 2.4.1,  
8 which is the words test. Do you see that?

9 A Yes.

10 Q And it says the 15 words test is a verbal  
11 memory test.

12 A Yes.

13 Q Okay. And then the next test is the  
14 trail-making test.

15 MR. MORRIS: We'll just wait for a  
16 question.

17 BY MR. PHILBIN:

18 Q Do you see that?

19 A Yes. But didn't you just --

20 THE WITNESS: Didn't he just run  
21 through those three times?

22 MR. MORRIS: Just answer the question.

1 THE WITNESS: He's just trying to  
2 harass --

3 MR. MORRIS: Just answer the question.  
4 BY MR. PHILBIN:

5 Q The third test is the Zoo Map Test. Do you  
6 see that?

7 A Yes, as I testified previously three times.

8 Q Okay. Well, let's look at page 17 of your  
9 report. What you put here is a "zoom app test." Do  
10 you see that?

11 A It might be a typo or from -- some -- some  
12 other shift in the lettering.

13 Q Okay. But then the Zoo -- in article it  
14 explains the Zoo Map Test is a subtest of the  
15 behavioral assessment of the dis-executive syndrome or  
16 BADS battery." Do you see that?

17 A Yes.

18 Q Okay. In your report on page 17, you listed  
19 the ADS battery as a separate test. Do you see that?

20 MR. MORRIS: On page 17 here.

21 THE WITNESS: Okay.

22 //

1 BY MR. PHILBIN:

2 Q Okay. So it's not -- there wasn't really a  
3 separate ADS test, was there?

4 A It looks like a -- that it should be -- it's  
5 a sub -- sub aspect of the BADS test.

6 Q Right. The only test that was given was the  
7 Zoo Map Test, which is a sub aspect of the BADS  
8 battery; correct?

9 A Yes.

10 Q Okay. And then the last test listed here on  
11 page 26 is the FEEST, the facial expression of  
12 emotional stimuli in tests; correct?

13 A Yes.

14 Q Okay. So there were only four  
15 neuropsychological tests actually administered in this  
16 study. Isn't that right?

17 A Sure.

18 Q Okay. Let's look at page 27. If you look  
19 in the left-hand column under the heading  
20 Neuropsychological tests and cerebral perfusion, do  
21 you see that heading?

22 A Yes.

1           Q     Okay.  If you go down to the second  
2 paragraph, it says "There were significant ( $P < 0.05$ )  
3 differences in cerebral perfusion between those with  
4 normal and abnormal scores on the Zoo Map test and the  
5 FEEST."  Do you see that?

6           A     Yes.

7           Q     Okay.  And then if you look on the next  
8 page, on page 28, there's a figure in figure 1.  It  
9 shows a bar graph showing the results of correlation  
10 between the cerebral perfusion tests and the Zoo Map  
11 Test and the FEEST.  Do you see that?

12          A     Yes.

13          Q     And the caption below the figure says  
14 "Cerebral perfusion in relation to neuropsychological  
15 tests.  Significant" -- again -- " $P < 0.05$ )  
16 differences in cerebral blood volume, mean transit  
17 time, and cerebral blood flow between those with  
18 normal (dark bars) and abnormal (light bars)  
19 neuropsychological test results on the Zoo Map test  
20 and the FEEST."  Do you see that?

21          A     Yes.

22          Q     So -- but this is not reporting any

1       significant correlations for the other two  
2       neuropsychological tests that were done?

3           A       Yes.

4           Q       And one of those was a memory test; correct?

5           A       Yes.

6           Q       Okay. And similarly, if we go to page 29,  
7       in the left-hand column, there's a paragraph right  
8       before the heading 4.3. There's a paragraph that  
9       starts with the words "explanation."

10          A       Yes.

11          Q       And it says "An explanation for the absent  
12       relation between cerebral perfusion and the 15 Words  
13       test and the Trailmaking test part B, could be that  
14       these tests contain more structure compared to the  
15       FEEST and Zoo Map tests." Do you see that?

16          A       Yes.

17          Q       So this is acknowledging that there was no  
18       statistically significant relation between the  
19       cerebral perfusion results and the 15 Word test and  
20       the Trailmaking test part B; correct?

21          A       Yes.

22          Q       Okay. So this article doesn't provide any



1 evidence for a conclusion that CT perfusion can  
2 provide a substitute for those tests, does it?

3 A Not for those tests.

4 Q Okay.

5 A It says "In conclusion, impairments in  
6 executive functioning and emotion perception were  
7 related to the cerebral perfusion tests." So it says  
8 it right in the conclusion. You're not -- you're  
9 trying to assert it says things that they didn't  
10 conclude and they didn't conclude them. You are  
11 right. And that took about 15 minutes. And my  
12 position feeling is that you're running out the clock.

13 MR. MORRIS: Just answer the question,  
14 and then we'll move on.

15 THE WITNESS: Because, you know, this  
16 is just one of many, many papers, so -- but it -- it  
17 does show a utility for this.

18 MR. PHILBIN: All right. Do we have --  
19 yeah.

20 THE WITNESS: Sometimes it turns out  
21 that the neuropsychological tests weren't very good,  
22 and that is why they don't get confirmed by biology.

1 BY MR. PHILBIN:

2 Q All right. I've handed you what's been  
3 marked as Exhibit 30, I believe, which is an article  
4 by Latchaw. Is that correct?

5 (Exhibit 30 was marked for  
6 identification.)

7 A Yes.

8 Q And this is cited at page 27 of your report.  
9 And the paragraph starts on page 26 of your report,  
10 which says "Current reports indicating the relevance  
11 of Perfusion CT (and ASL-MRI), and their role in  
12 replacing neuropsychology evaluations as a result of  
13 the perfusion studies' much higher relevance and  
14 accuracy, are set forth in" -- and then it says "Dash  
15 and Zhang." We've looked at those. And then on the  
16 next page it cites Latchaw.

17 And I just want to understand, because I  
18 couldn't find it in here, where in this article is  
19 there the conclusion that the CT perfusion can replace  
20 neuropsychological evaluations?

21 A So what they're doing is they're looking at  
22 the results of a number of different studies. And

1       they're trying to decide on a guidelines basis if  
2       there's sufficient information to recommend replacing  
3       the test. So in the course of that, they cite a  
4       number of studies where the perfusion CT proves  
5       sufficient or helpful.

6               And, you know, to do a segment-by-segment  
7       analysis, which I would like to do, it will take me  
8       several hours now before answering your question,  
9       because, you know, there's a lot going on in this  
10      paper. However, it clearly concludes not that the  
11      studies are useless, but that they -- a number of  
12      different types of studies are helpful in a number of  
13      ways and more research should be done.

14             It's a -- it's a very typical summary. I  
15      think it was useful to cite because it provides an  
16      overview to the field and shows a number of areas  
17      where the imaging test is helpful. If they found it  
18      was not helpful, they would have recommended no  
19      further work. So it's an attempt to -- to present a  
20      guidelines. It has not -- and I don't say that it's  
21      been decided that all neuropsychology and MOCA should  
22      have to be abandoned as of today or you're

1 practicing -- or engaging in malpractice.

2 But I'm saying that there's evidence from  
3 that whole literature, some of which appears or -- or  
4 is recited in this article, that shows that this is a  
5 useful way and an objective. See, the other thing  
6 that has to do is it's more objective than when a -- a  
7 party engaged in litigation hires someone to do a  
8 talk-based analysis on their behalf.

9 So if the court hires a neuropsychologist in  
10 order to try to disprove the person's claims that  
11 they're fine, they feel an obligation to perform for  
12 those -- for their employer. So whereas if you have  
13 an objective test, it's more immune to those biases.

14 Q Okay. So I just had a simple question  
15 because this article was cited for the proposition  
16 that studies show that imaging can replace  
17 neuropsychological testing. And I couldn't find a  
18 sentence in here that seemed to suggest that.

19 A No, I think --

20 Q I take it that, as you sit here today, you  
21 can't point me to a sentence in here --

22 A Well, I can --

1 MR. MORRIS: Object to the  
2 characterization of the report --

3 THE WITNESS: -- I can stop for an hour  
4 and I'll -- I'll find a number of answers. It's a  
5 complex report. I read through it and reached that  
6 conclusion. My -- my citation isn't fine enough. I  
7 can find those if you want to stop, but I am going to  
8 have to leave at a certain point, and it's on your  
9 clock.

10 MR. MORRIS: Okay. Just answer the  
11 questions, and we'll move forward.

12 BY MR. PHILBIN:

13 Q Okay.

14 A I've not answered yet. I told you I was  
15 going to go through and do the analysis, but it's on  
16 your clock.

17 Q No, no, my question was --

18 MR. MORRIS: There's no question  
19 pending.

20 THE WITNESS: Unless you're going to  
21 withdraw the question.

22 MR. MORRIS: Dr. Filler, there's no

1 question pending.

2 BY MR. PHILBIN:

3 Q My next question, Dr. Filler, is back to  
4 your report at page 40.

5 UNIDENTIFIED SPEAKER: Forty?

6 MR. PHILBIN: Yes.

7 MR. MORRIS: Okay. Let's go on to the  
8 next exhibit, Dr. Filler, because he's on to the next  
9 question.

10 THE WITNESS: Okay. Thank you.

11 BY MR. PHILBIN:

12 Q On page 40 of your report where you have the  
13 summary of evaluation and testing --

14 A Yes.

15 Q -- under the second numbered paragraph,  
16 there's a sentence about in the middle that begins  
17 with the word "moreover." And it says "Moreover,  
18 there is exceptionally high flow bilaterally in the  
19 hippocampus which rules out all of the known causes of  
20 MCI, mild cognitive impairment, and any dementias."  
21 Do you see that?

22 A Yes.

1           Q     Okay. So I think -- and I just want to  
2     confirm this, because I think we discussed that  
3     earlier, that I think you said you're not saying that  
4     the imaging rules out necessarily all forms of  
5     dementia or all forms of cognitive impairment. So I  
6     just want to understand, given this sentence, should  
7     this be modified a little bit to say all the major  
8     forms of dementia? All the major forms of mild  
9     cognitive impairment?

10          A     Sure.

11          Q     Okay. And then one question related to this  
12     statement that on the CT perfusion results, there is  
13     exceptionally high flow bilaterally in the  
14     hippocampus. So does that mean that the CT perfusion  
15     results that you got allows you to compare the  
16     cerebral blood flow on Judge Newman to other people?  
17     Is that what it means by exceptionally high,  
18     exceptionally high compared to other people?

19          A     Yes. So in the tests that found utility  
20     for -- for hippocampal flow studies, they indicated  
21     that in several forms of dementia, the value of the  
22     flow was abnormally low. So in this case, for Pauline

1 Newman's scan, the -- the flow parameters were normal  
2 or high normal. So these did not show the decreased  
3 flow that's found in those patients demonstrating  
4 dementia in those studies that found the difference.

5 Q Okay. If I could direct you to page 35, it  
6 might help to look at the image.

7 A And there's a more complete set of that  
8 images in the supplement --

9 Q So on page 35, this is an image that has the  
10 label rCBF, which is cerebral blood flow. Is that  
11 right?

12 A Yes.

13 Q And this is the one with the arrows on the  
14 right and the left sides that say "High Focal Blood  
15 Flow" --

16 A And remember, this is one slice of a volume.

17 MR. MORRIS: Let him get his question  
18 out.

19 THE WITNESS: So I included this slice  
20 as a demonstration, but you have to look at the whole  
21 set to see the volume of the region that has the flow  
22 assessment. So basically the problem is that if you



1       were to measure the -- the flow at just one moment,  
2       you wouldn't get all the flow. But if you cover a  
3       sufficient volume, you'd get the entire volume that  
4       passes through the region in the period that's being  
5       assessed for flow.

6                   MR. PHILBIN: Okay.

7                   THE REPORTER: If we could just  
8       remember to wait for other people to stop talking  
9       before we start talking. I'm getting a lot of cross  
10      talk right now.

11                  MR. MORRIS: Understood.

12      BY MR. PHILBIN:

13           Q       What I'd like to understand is the data that  
14      you get from this -- I think it's ischemia from the  
15      software that's used on this. Is this showing you,  
16      whether by virtue of the red color or some other way,  
17      is it giving you an absolute measure of flow, which I  
18      would think is something like milliliters per second  
19      or something like that? Is it an absolute measure of  
20      flow? Or is it just comparing the left and the  
21      right-hand sides of her brain?

22           A       No. It --it's the -- the actual reported

1 report, which, you know, again, I put in I think this  
2 PowerPoint, but -- and I have it more extensively  
3 demonstrated. So we attach the actual images. Okay.  
4 So you're just -- this -- so what we did in the report  
5 was just did a few frame grabs, but the images are the  
6 images. And what you see in the images is that they  
7 have quantitative metrics, and the color is used not  
8 to compare right and left, but to provide a  
9 quantitative metric.

10 Q So the color is something like different  
11 colors suggest different levels of milliliters per  
12 second or something like volume per unit of time?

13 A Yes.

14 Q And so it's on an absolute scale, the color.  
15 So if you've got red on this person's CBF, that's the  
16 same flow as red on that person's CBF scale?

17 A Right. And you may compare different -- you  
18 may compare different parts of the brain that may or  
19 may not be affected by a particular condition. So  
20 let's say you have a condition that causes impaired  
21 flow in just the hippocampus, which several of these  
22 conditions did, then you would see in the report that

1       they see in those patients, although normal flow in  
2       other parts of the brain, that there's a lower flow  
3       indicated by a different color in those patients in  
4       the parts of the brain that have the impairment.

5               Whereas in a person that does not have the  
6       flow impairment, they're seeing a similar rate of flow  
7       in the hippocampal tissues as in the other tissues not  
8       known to be affected by the disorder.

9               Q       Okay. Then on page 41 of your report,  
10       Doctor, in the paragraph that begins with the word  
11       "Second."

12              A       Yes.

13              Q       There in sort of in the middle of the  
14       paragraph, there's a line that says "Perfusion CT" --  
15       "the Perfusion CT results should be determinative."  
16       Do you see that?

17              A       Okay.

18              Q       And I just want to understand, in your  
19       opinion, in the opinion you've given in this case, how  
20       different parts of what -- of your evaluation fit  
21       together. Are you saying here that the perfusion CT  
22       results on their own, if all there is is the perfusion

1 CT, that's determinative? That's all you need to see?

2 A So what I'm trying to say is that, you know,  
3 based on my overall -- okay. So I found that she had  
4 excellent recall. She seemed to demonstrate -- legal  
5 capability to, when I -- argued before her as an  
6 attorney, in terms of identifying the relevant patent  
7 issues so that I would not be surprised if it were  
8 shown that she did indeed write her opinions, which  
9 seemed to be not -- not conceivably coming from a  
10 demented person.

11 I mean, when I showed doctors those reports  
12 and said, they're saying someone with dementia could  
13 write this, and they just laugh, you know, so --  
14 because it's a misunderstanding of dementia. So I'm  
15 saying that, based on the exam and an objective test,  
16 that the underlying concern. So let's say their  
17 underlying concern is that there is a dementia taking  
18 place that jeopardizes the court and its -- and the  
19 parties that come before it.

20 So I would say, based on the things that  
21 I've looked at, this is part of this whole summary,  
22 which includes her opinions, the review of her

1       opinions by others who have reviewed them, my  
2       interview with her on complex technology and patent  
3       law, my neurologic examination, and an objective  
4       imaging test showing that she does not at least  
5       demonstrate any one of the major common forms of  
6       dementia.

7               That this information should be sufficient  
8       for them to halt the suspensions because it appears  
9       she is able to do her job. And that's -- that's my  
10      opinion, but I understand that that's just my opinion.

11             Q       Okay. But what I'm trying to get at -- I  
12      understand we talked about earlier, in the part of  
13      your report that says "structure of the report," you  
14      set out sort of three areas: neurologic exam,  
15      neurological exam, the interview involving these three  
16      hypothetical cases that you gave her in evaluating her  
17      responses to those, and then the imaging. Is that  
18      right? Do you remember that?

19             A       Yes.

20             Q       And what I'm trying to get at is, let's say  
21      that somebody looking at your opinion said "I don't  
22      really buy this stuff about asking her the

1       hypothetical questions, and the neurological exam. I  
2       don't know. It was unconventional." And they were  
3       not persuaded by those. Is what you're saying here,  
4       the perfusion CT scan in itself, that you would have  
5       this result, you can stand alone just on the image?  
6       Or for you to have your opinion, do you need the image  
7       and the other parts as well?

8           A       Well, let's say it was impossible to get an  
9       interview with her. And let's say it was impossible  
10      to do a neurologic exam. And impossible -- and all  
11      you had was, "We wonder if this judge is okay, and  
12      we've done a test." The test does not demonstrate any  
13      abnormality. So if you couldn't get any information  
14      on the other things, and the only basis you had was  
15      this objective test, it looks like she's fine.

16                 Now the fact is that their opinion is going  
17      to be based on a number of things that I also address.  
18      So I don't think that they should be taken - I -- I  
19      did the other parts 'cause I understand they each play  
20      a role.

21           Q       You think they each play a role. But I'm  
22      just trying to get your opinion. Would it be your

1 opinion that you could rely on the image alone?

2 That's all I want to know is your opinion.

3 A No, if I would have -- could have done that,  
4 I would have just got the image, and I wouldn't bother  
5 to examine her or look at her work output. I've done  
6 all those things, including the interview examination,  
7 because I believe that taken together, you know, for  
8 this is not just to say she is not suffering from a  
9 particular dementia, this is to say can she be a  
10 practicing Court of Appeals Federal Circuit judge,  
11 which is far -- goes far beyond the level of  
12 competence that the usual dementia evaluation pursues  
13 and whether you can draw a zebra or, you know --

14 Q Okay. On page 36 of your report, towards  
15 the bottom, there's the heading there, COGNITIVE  
16 INTERVIEW FOR TECHNOLOGY AND PATENT LAW.

17 A Yes.

18 Q And in the first paragraph there, you  
19 acknowledge that written output is often dependent on  
20 assistance of law clerks and other staff members.

21 A Yeah. It's going to vary from judge to  
22 judge how they use them, but -- and I have no idea

1        what the process is in this court, because they --  
2        they keep that -- unless you've actually been a clerk  
3        there, so I don't know. I mean, for some reason, the  
4        court -- the Judicial Council is treating her opinions  
5        as of not -- no convincing value. And I don't know.  
6        I -- have to guess why they -- it doesn't -- they  
7        don't consider that.

8            Q        Okay. But you, for purposes of your  
9        evaluation, it seems like you didn't want to rely on  
10       her opinions either because you don't know how much  
11       help she gets with them.

12           A        Well, I assume that they didn't -- that  
13       didn't convince -- it obviously didn't convince her  
14       colleagues, and I -- I'm only just suspecting because  
15       I thought, "How would that not be convincing? How do  
16       you write opinions that win in the Supreme Court if  
17       you're actually demented?" I mean, so I don't think I  
18       can imagine, and I'm just -- I admit I'm just  
19       guessing, is that they wonder if maybe she had  
20       assistance in writing them, and therefore that's not  
21       convincing to them.

22           'Cause really, if you were at the -- at --



1 looking at Harvard faculty and they were producing  
2 brilliant papers, I don't think we'd assume it would  
3 be coming from a graduate student say that that guy,  
4 that's what he's done all his life, and I don't see  
5 who could do that.

6 But here I don't know, so it occurred to me  
7 that I should question her directly, both with regard  
8 to recall and with regard to legal analysis, as if she  
9 had no time to prepare, which would be this situation,  
10 that it would be useful. So whether that's convincing  
11 or not, I don't know, but I felt it was helpful for me  
12 in reaching my conclusions.

13 Q Okay. And so then in the cognitive  
14 interview, I think you gave her some hypothetical  
15 situations that required some analysis involving  
16 patent law. Is that correct?

17 A Yes, which I think I outlined there.

18 Q And you were also comparing her responses to  
19 your prior experience with her as an advocate in cases  
20 you had argued in the Federal Circuit. Is that  
21 correct?

22 A Yes.

1           Q     Okay. In your clinical practice, your  
2 regular practice, have you ever evaluated a patient  
3 based on some kind of similar analysis of that  
4 patient's performance to hypotheticals compared to  
5 your past experience with that patient?

6           A     I don't think so. That is -- I'm not  
7 usually trying -- so the only time it comes up, and I  
8 maybe do this a little bit, is say somebody is the  
9 managing partner of a law firm and actively involved  
10 in litigation, and it's -- because it's an ethical  
11 issue, and he's coming to say, "I really want to  
12 continue my practice, and I know I'm having trouble."

13                So -- 'cause you might want to say, "Well,  
14 if you're representing clients and you're having  
15 trouble, you need to stop. Okay? And let me just  
16 deal with your personal medical condition." And, you  
17 know, I'll make that point, okay. And then I don't  
18 know that there's a -- a -- particularly with an  
19 attorney, with a group of attorneys, how you really  
20 sort out what that person does.

21                But here it seemed to me that -- that what  
22 they do is to take a complex technology in a patent

1 and in pleadings, generate an opinion. That's the  
2 job. So I thought it would be valuable. So I think  
3 it's hard to know that I would have enough prep -- I  
4 would take the time to prepare a test like that for a  
5 particular patient, but it has come up a few times.

6 And I will ask targeted questions to  
7 somebody to see if I believe that they should or  
8 should not be continuing their profession while  
9 treatment goes on.

10 Q But those would not involve comparing the  
11 person's performance and response to your prior  
12 experience with that person, would they?

13 A Yeah. So it's occasionally the case that  
14 a -- that I have prior experience with a person,  
15 because let's say they came in for a nerve problem,  
16 injury in their leg, and then they turn up 15 years  
17 later concerned about a cognitive. I still don't know  
18 if I have a close enough assessment. 'Cause here --  
19 it's because here I see her twice in a row as late as  
20 2022, when this is just before this is supposed to  
21 have started.

22 So also had an assessment of their cognitive

1 function, which if someone came for their leg, I might  
2 sort of remember they seemed okay. But I really went  
3 through a high -- you know, a high-performance  
4 cognitive activity, I believe, when a judge, you know,  
5 deals with a matter in open court on an appeal,  
6 complex appeal.

7 So that there -- there was, I think,  
8 certainly a possibly unique opportunity to make that  
9 comparison if I devised a useful test, and I don't  
10 think it's perfect, but I felt it was helpful.

11 MR. PHILBIN: Okay. I think if we take  
12 a break, and I can go over my notes, we might be done.

13 MR. MORRIS: All right. How long do  
14 you need?

15 MR. PHILBIN: Ten -- yeah, ten to  
16 fifteen. But I also then -- are we off the record?

17 THE REPORTER: No -- okay. So the --  
18 we are -- the time is currently 4:23 p.m., and we're  
19 going off the --

20 (Off the record.)

21 THE REPORTER: We are back on the  
22 record, and the time is currently 4:41 p.m.

1                   You're good to begin.

2       BY MR. PHILBIN:

3           Q     Okay. Dr. Filler, just a few more  
4       questions. I think earlier you described that you  
5       have created a questionnaire that you use with  
6       patients whom you're evaluating to see if they have a  
7       cognitive impairment. Is that correct?

8           A     Yes.

9           Q     And in this case, you had that questionnaire  
10      up on a computer screen as you were talking to Judge  
11      Newman and used it to guide your interview with her.  
12      Is that correct?

13          A     Yeah. I said I want to -- among other  
14      things, I said, "I would like to just run through  
15      these questions 'cause it's helpful for me to just  
16      address these points, even if they're all negative."

17          Q     Okay. And is that -- that's something that  
18      you created?

19          A     Yes. I mean, it -- it -- there are  
20      components that are similar to some other, but they're  
21      much smaller forms. So, for instance, they're sort of  
22      the tests that you're supposed to use for sidelines

1       where kids are playing soccer and things like that.  
2       So they ask for the different categories, but this is  
3       based on my talking to, you know, I guess, thousands  
4       of patients over years.

5               And then mostly where, you know, I'll ask  
6       them a certain question, and they'll say, "No, I don't  
7       have that, but here's what I experience." And then  
8       you -- so eventually I have it sorted out and have  
9       organized it and then gone through a few iterations.  
10       But now over the past four years or so, I've -- I've  
11       used a -- a fixed set of questions for purposes of  
12       consistency for a big analysis.

13           Q       And as far as you're aware, does anybody  
14       else use that, your set of questions?

15           A       Well, no, we haven't really released it for  
16       general use, but there's -- they're -- they're out  
17       there. I mean, I occasionally see something that  
18       looks very similar because they've been used in many,  
19       many, many cases, and so many physicians and attorneys  
20       have seen them.

21           Q       Have seen them in the context of litigation  
22       where they've been used?

1           A     Yes.

2           Q     I see. Okay. And then I think you said  
3     that before the CT perfusion scan was performed, you  
4     had gotten some information from someone you thought  
5     may be a clerk for Judge Newman, including things like  
6     that she has a pacemaker, that there were emails or  
7     something. Is that right?

8           A     Right. We just have -- the front desk in my  
9     office for anybody that we image, will ask those --  
10    will inquire those things. So we don't want someone  
11    to travel, let's say, to a place for imaging and then  
12    find out they can't be imaged. So we -- and a lot of  
13    times you can head that off if -- if you can obtain  
14    the notes from the surgeon who implants it and then  
15    the matching statement from the manufacturer.

16          Q     So those communications would just be about  
17    factual or medical record information about Judge  
18    Newman?

19          A     Yes.

20          Q     Okay. So we'd like to get a copy of those.

21                   MR. MORRIS: We'll follow up.

22                   MR. HARRINGTON: I will just tell you

1       that in that email that I found, my first response to  
2       Dr. Filler, back in September something, 2023, I  
3       advised him that the judge wanted the pacemaker in the  
4       reporter and -- so he's known that for quite some  
5       time. Was there any additional emails, that's -- and  
6       he hasn't --

7                       MR. PHILBIN: Okay. I think those are  
8       all the questions I have.

9                       MR. MORRIS: Okay. We do not have any  
10      questions. We are set.

11                      THE REPORTER: Okay. And before we go  
12      off the record, I just need to clarify orders. I  
13      already have one in here for -- to be sent to you,  
14      Mr. Philbin. A normal transcript, normal turnaround  
15      time, ten days. Do you want exhibits included?

16                      MR. PHILBIN: Yes, exhibits included.

17                      THE REPORTER: Okay. And normal  
18      turnaround time is okay?

19                      MR. PHILBIN: Yes.

20                      THE REPORTER: Perfect.

21                      Mr. Morris, would you like to place an  
22      order with a copy as well?



1 MR. MORRIS: Same thing we've ordered  
2 before. Normal turnaround is fine.

3 THE REPORTER: And exhibits?

4 MR. MORRIS: Yes, with exhibits  
5 included, please.

6 THE REPORTER: Okay. Perfect.

7 Then the time is currently 4:46 p.m.,  
8 and we're going off the record.

9 (Signature reserved.)

10 (Whereupon, at 4:46 p.m., the  
11 proceeding was concluded.)  
12  
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CERTIFICATE OF DEPOSITION OFFICER

I, SYDNEY BROWNING, the officer before whom the foregoing proceedings were taken, do hereby certify that any witness(es) in the foregoing proceedings, prior to testifying, were duly sworn; that the proceedings were recorded by me and thereafter reduced to typewriting by a qualified transcriptionist; that said digital audio recording of said proceedings are a true and accurate record to the best of my knowledge, skills, and ability; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this was taken; and, further, that I am not a relative or employee of any counsel or attorney employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.




SYDNEY BROWNING

Notary Public in and for the  
Commonwealth of Virginia

☒ Review of the transcript was requested.

CERTIFICATE OF TRANSCRIBER

I, RAVINNA WILLS, do hereby certify that this transcript was prepared from the digital audio recording of the foregoing proceeding, that said transcript is a true and accurate record of the proceedings to the best of my knowledge, skills, and ability; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this was taken; and, further, that I am not a relative or employee of any counsel or attorney employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

A handwritten signature in cursive script that reads "Ravinna S. Wills". The signature is written in dark ink and is positioned to the right of the main text block.

RAVINNA WILLS

1 Andrew Morris, Esquire  
2 andrew.morris@ncla.legal

3 July 7, 2025

4 RE: In Re Complaint No. 23-90015  
5 6/20/2025, Aaron G Filler (#7411738)

6 The above-referenced transcript is available for  
7 review.

8 Within the applicable timeframe, the witness should  
9 read the testimony to verify its accuracy. If there are  
10 any changes, the witness should note those with the  
11 reason, on the attached Errata Sheet.

12 The witness should sign the Acknowledgment of  
13 Deponent and Errata and return to the deposing attorney.  
14 Copies should be sent to all counsel, and to Veritext at  
15 cs-midatlantic@veritext.com.

16 Return completed errata within 30 days from  
17 receipt of testimony.

18 If the witness fails to do so within the time  
19 allotted, the transcript may be used as if signed.

20  
21  
22 Yours,

23 Veritext Legal Solutions  
24  
25

1 In Re Complaint No. 23-90015

2 Aaron G Filler (#7411738)

3 E R R A T A S H E E T

4 PAGE\_\_\_\_\_ LINE\_\_\_\_\_ CHANGE\_\_\_\_\_

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6 REASON\_\_\_\_\_

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9 REASON\_\_\_\_\_

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21 REASON\_\_\_\_\_

22 \_\_\_\_\_

23 \_\_\_\_\_

24 Aaron G Filler

Date

25 \_\_\_\_\_

1 In Re Complaint No. 23-90015

2 Aaron G Filler (#7411738)

3 ACKNOWLEDGEMENT OF DEPONENT

4 I, Aaron G Filler, do hereby declare that I  
5 have read the foregoing transcript, I have made any  
6 corrections, additions, or changes I deemed necessary as  
7 noted above to be appended hereto, and that the same is  
8 a true, correct and complete transcript of the testimony  
9 given by me.

10  
11 \_\_\_\_\_  
12 Aaron G Filler

\_\_\_\_\_ Date

13 \*If notary is required

14 SUBSCRIBED AND SWORN TO BEFORE ME THIS  
15 \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_.

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19 NOTARY PUBLIC  
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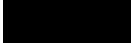

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Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

DISCLAIMER: THE FOREGOING FEDERAL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY.

THE ABOVE RULES ARE CURRENT AS OF APRIL 1, 2019. PLEASE REFER TO THE APPLICABLE FEDERAL RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.



## VERITEXT LEGAL SOLUTIONS

### COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

Veritext Legal Solutions is committed to maintaining the confidentiality of client and witness information, in accordance with the regulations promulgated under the Health Insurance Portability and Accountability Act (HIPAA), as amended with respect to protected health information and the Gramm-Leach-Bliley Act, as amended, with respect to Personally Identifiable Information (PII). Physical transcripts and exhibits are managed under strict facility and personnel access controls. Electronic files of documents are stored in encrypted form and are transmitted in an encrypted

fashion to authenticated parties who are permitted to access the material. Our data is hosted in a Tier 4 SSAE 16 certified facility.

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