

1 to give you a moment, Mr. Foreperson and Jurors 2 and 3,
2 to change seats actually. So that you can see better.
3 If you would do that for me. Then we'll proceed to hear
4 Ms. Zois' closing.

5 Mr. Foreperson, go ahead and move down as well.

6 I don't think it really matters if you're
7 seated in order. As long as you're seated clustered so
8 that we can see the TV so you're not peering over the end
9 of the box.

10 Everybody comfortable? All right. Thank you.

11 All right. Go ahead, Counsel.

12 MS. ZOIS: May it please the Court.

13 CLOSING ARGUMENT ON BEHALF OF THE PLAINTIFFS

14 MS. ZOIS: Since this is the first time I've
15 had an opportunity to address you directly I wanted to
16 make sure that I thanked you all on behalf of the Allen
17 family. They've waited three and half years to get
18 answers in this case. And I knew that you all have jobs
19 and families that you're taking time away from them to be
20 here to listen to Dennis Allen's story. And so for that
21 we're very grateful.

22 You might be wondering how it is that you get
23 so lucky to be selected for this jury. Luck probably
24 didn't have a whole lot to do with it. Fate maybe. But
25 it's because you're a member of this community. It's

1 because you have a driver's licences in Baltimore City or
2 you're registered to vote in Baltimore City. And cases
3 like this are decided by members of the community because
4 they affect the community.

5 You're going to go back to jury deliberation
6 tomorrow. And when you do that you're going to have a
7 couple of jobs to do. Her Honor just went over the
8 verdict sheet with you all. So the first job is you're
9 going to have to fill this out. And I will tell you now
10 that Plaintiffs would ask you to fill out yes, yes, yes,
11 yes, yes, yes to this verdict sheet.

12 The other job that you're going to have to do
13 is you're going to have be the finders of fact in this
14 case. You've heard two sides of this story. You all are
15 the ones that decide what the facts are in this case.

16 Once you decide what the facts are you're going
17 to have to apply the law to it. Her Honor gave you all
18 the instructions on the law. One of the ones that I want
19 to point out right now is the burden of proof because a
20 lot of people come in and they're little bit confused
21 about what that means.

22 Most of the time people think well the burden
23 of proof is I have to be beyond a reasonable doubt 100
24 percent. But in a civil case it's not like that. In a
25 civil case the plaintiff we have the burden of proof it

1 has to be more likely than not. It has to be 51 percent
2 to 49 percent. It doesn't have to be clear and
3 convincing. Nobody has to be positive. You don't have
4 to be absolutely sure. It's more likely than not. What
5 the plaintiff is saying makes a little more sense than
6 what the defense is saying.

7 That's another point. A lot of technical and
8 medical stuff going on in here. Bring your common sense
9 and your everyday life experiences in that jury
10 deliberation room. And I assure you that if you use
11 common sense and your everyday life experience the answer
12 on that verdict sheet are going to be yes, yes, yes, yes,
13 yes, yes, yes.

14 The other job that you're going to have when
15 you're back there is you're going to have to explain to
16 each other why it is you feel about the facts in the
17 case. So you're going to have to be able to support your
18 position if someone says, hmm, I don't know if Kayexalate
19 causes intestinal necrosis. You're going to have to be
20 able to respond to that.

21 So what I'm going to try and do is I am not
22 going to marshal the evidence. I am not going to go
23 through all the evidence in this case. We'd be here for
24 another eight days if I tried to do that. And I'm not
25 going to do that.

1 So what I am going to do though is I'm going to
2 talk about the things that I think you all are probably
3 going to be struggling with back in the jury deliberation
4 room. And that means I'm probably going to leave a lot
5 out. Which means I have to believe some things were just
6 so clear that I probably don't even need to bring it up
7 right now.

8 So I'm going to start with some of the things
9 that the defense said in their opening statement. I kind
10 of -- it was a long time ago. And I want to remind you
11 of some of the things that they said.

12 They said -- I took careful notes. Dr. Burks
13 used his very best efforts. He should be credited for
14 saving Dennis Allen's life. He followed the standard
15 order set. He took prompt action. He used every avenue
16 possible in this case.

17 So the first thing that I want to do with you
18 all is walk through how did defendant treat Mr. Allen.
19 And I'm going to start on the morning of the 18th.

20 Dr. Burks had an order in to have Mr. Allen's
21 blood drawn at 4:30 in the morning. That was the right
22 thing to do. Because we knew that Mr. Allen didn't have
23 hemodialysis the day before. He had it on the 13th, the
24 14th, the 15th, the 16th. He skipped a day. So his labs
25 that morning were going to be really important because he

1 didn't have hemodialysis the day before.

2 And Dr. Burks testified that it's his practice
3 when he gets to work that day he looks at the labs. Well
4 that makes sense because you've got all these patients
5 you need to treat. You need to know what their labs say
6 so you know what to do for them later that day. Because
7 a lot of what a doctor does is going to depend on what
8 these numbers say on the labs.

9 So what happened? We talked about why the labs
10 are important but -- we know the order was made to get
11 the labs drawn. And for some reason the hospital chart
12 says that the order was completed. Where are the labs?
13 We haven't seen the labs that were drawn at 4:30 in the
14 morning.

15 But what we do know --

16 MR. SHAW: I object to this whole line of
17 questioning -- I mean of argument, Your Honor.

18 THE COURT: Overruled.

19 MS. ZOIS: But what we do know is that
20 Demetrius Jones came in here and she told you she didn't
21 take his labs that morning. And she didn't take his labs
22 that morning because she was told by the nurse that he
23 was having dialysis done that day.

24 MR. SHAW: Objection, Your Honor.

25 MS. ZOIS: So they didn't need take the labs.

1 THE COURT: Overruled.

2 MS. ZOIS: So we know the labs weren't taken.

3 But what happens next? I'm fast-forwarding a
4 little bit. After Mr. Allen is being transferred to the
5 ICU for emergency surgery with a dead colon Dr. Burks
6 goes into his chart and writes a four page summary.
7 Which I sincerely doubt is not in that jury extract.

8 And he writes "Laboratory data is unavailable
9 as the patient had refused his labs in the morning."

10 MR. SHAW: Objection, Your Honor.

11 MS. ZOIS: What we know is --

12 THE COURT: Overruled.

13 MS. ZOIS: -- Dr. Burks didn't know what the
14 labs were at seven, eight, nine, 10, 11, 12.

15 Dr. Kaplan said something interesting. He
16 said, you know, Cynthia Allen was in the room with him
17 the whole time that night. And she was by his side this
18 entire hospitalization, by the way. And she brought it
19 to the nurse's attention that she was looking at the
20 numbers on the monitor and she went out and get the
21 nurse.

22 And there's a note at 12 o'clock that does say
23 numbers are a little off. And what happened after that
24 is Mr. Allen went into bardycardia. He started to have a
25 life threatening event with his heart. Because his

1 potassium levels had gotten so out of whack and had been
2 allowed to get so high that it was impacting his heart.

3 So I would suggest that a doctor using his best
4 efforts in taking every possible avenue and using
5 everything available to him would have followed up on
6 those labs that morning ==

7 MR. SHAW: Objection. Move to strike, Your
8 Honor.

9 MS. ZOIS: == would have figured out earlier ==

10 THE COURT: Can Counsel == Counsel, approach.

11 (Counsel approached the bench, and the
12 following ensued:)

13 THE COURT: So ==

14 MR. SHAW: I object. There was absolutely no
15 evidence that it was a breach of the standard of care by
16 Dr. Burks that morning. No evidence from anybody.

17 So for her to make this suggestion that he
18 wasn't using his best care is implicating and implying
19 that he breached the standard of care.

20 It's totally inappropriate. And there's no ==
21 and there's no testimony beyond that that any failure to
22 get the labs cost him injury. There's no expert opinion
23 on that. So there's not expert opinion to buttress this
24 == to support this. It's objectionable.

25 I == I == I move for a mistrial on it, Your

1 Honor.

2 MS. ZOIS: This is -- I am incredibly -- I'm
3 not even sure where to start.

4 I am not going to -- thank you, Your Honor. I
5 am not going to argue that his failure to check the labs
6 was a breach of the standard of care.

7 THE COURT: So where are we headed?

8 MS. ZOIS: What are we doing? We're showing
9 that when defense counsel claims that this doctor used
10 every effort possible and did everything he could do and
11 should be credited of saving his life but that is
12 incorrect. And that even by the defendant's own
13 testimony he said he was too busy with other patients to
14 check the labs.

15 So it goes to their defense in the case. And
16 it goes to the defendant's credibility when he takes the
17 stand and says I did everything possible. I was trying
18 to (indiscernible at 4:04:59).

19 I mean, none of what I have said has suggested
20 that this was a breach of the standard of care. But it's
21 all factually accurate pieces of what happened. And that
22 this testimony that the experts didn't say, including Dr.
23 Seneth (phonetic), that had treatment been initiated
24 earlier the cardiac event would have never occurred.

25 So there has been expert testimony to that

1 effect.

2 MR. SHAW: The testimony --

3 MS. ZOIS: And I --

4 MR. SHAW: I'm sorry. Go ahead.

5 MS. ZOIS: Frankly, I find the objections
6 (indiscernible at 4:05:31). I -- this is beyond
7 obstructive. It's argument. It's closing.

8 MR. SHAW: It's based upon improper -- it's
9 based on something that's not in evidence. I am very
10 reluctant to object during closing. But when Plaintiffs'
11 Counsel stands up in front of the jury and essentially
12 says, in so many words, Dr. Burks didn't do his best
13 duty. Didn't do what he was supposed to do. That by
14 implication is a breach of the standard of care.

15 THE COURT: Overruled.

16 And I will also add that it is perfectly
17 appropriate for Plaintiffs' Counsel to draw the jury's
18 attention back to promises made by Counsel at opening to
19 say that the evidence did not fulfil the promises of
20 Counsel at opening.

21 MR. SHAW: Okay.

22 THE COURT: The objection is overruled.

23 MR. SHAW: So I'm going to continue to object -

24 -

25 MS. ZOIS: Your Honor.

1 THE COURT: Mr. Shaw.

2 MR. SHAW: -- because otherwise how do I
3 preserve it? I'm going to object to every question or
4 every statement unless the Court gives me a continuing
5 objection.

6 THE COURT: I'm sure the jury will be
7 delighted.

8 Do whatever you feel is appropriate to preserve
9 your record.

10 MR. SHAW: All right. Thank you, Your Honor.
11 Will you give me a continuing objection?

12 THE COURT: I will give you a continuing
13 objection as to what particular issue?

14 MR. SHAW: Any issue about --

15 THE COURT: I want to be clear. No. I will
16 not give you a continuing objection because it's not
17 (indiscernible at 4:06:53). Usually there's no evidence.
18 The evidence is up to my eyeballs. So no.

19 MR. SHAW: Okay.

20 THE COURT: Come on.

21 MR. SHAW: All right. Thank you.

22 (Counsel returned to the trial table, and the
23 following ensued:)

24 THE COURT: Overruled.

25 Go ahead, Ms. Zeis.

1 MS. ZOIS: Thank you.

2 As I was saying, a doctor using his best
3 efforts going above and beyond the call of duty in trying
4 to save their patient's life would have checked those
5 labs.

6 MR. SHAW: Objection.

7 MS. ZOIS: And --

8 THE COURT: Overruled.

9 MS. ZOIS: -- the defendant I'm not really sure
10 what he did. He was a little bit all over the place. I
11 called the lab. I didn't call the lab. I checked the
12 lab. I asked the nurse. Nobody is really sure.

13 But what we do know is that after Mr. Allen has
14 a dead colon and is on his way to get it taken it
15 hopefully he writes this note in his discharge report.
16 That the patient refused his labs.

17 Now let's get to --

18 MR. SHAW: Objection.

19 MS. ZOIS: -- what happens when he --

20 THE COURT: Overruled.

21 MS. ZOIS: -- has a cardiac event.

22 The testimony from the defendant is he did use
23 his best efforts. He did everything possible. Did
24 everything to a tee. But what we know is that in the
25 record there's absolutely no evidence that any form of

1 calcium was ever administered to Mr. Allen --

2 MR. SHAW: Objection, Your Honor.

3 MS. ZOIS: -- to control his heart.

4 THE COURT: Overruled.

5 MS. ZOIS: So what we do know -- based on
6 evidence provided by the defendant hospital what we do
7 know -- well before I even get there.

8 Calcium is the thing that stabilizes the heart.
9 It's the thing that gets into the heart and it stabilizes
10 the heart. It's arguably the most important drug to give
11 when you have a patient that has a cardiac event.

12 What we know from the chart, and now I'm going
13 backwards, is that according to Dr. Burks note he writes
14 calcium gluconate unavailable per pharmacy. That's in
15 his note.

16 His testimony was well I ordered the calcium
17 chloride and that was a verbal order. And not in the
18 chart. Verbal orders are supposed to be in the chart.
19 It's supposed to be charted by the doctor and by the
20 nurse. Again, not in the chart.

21 What we also know --

22 MR. SHAW: Objection.

23 MS. ZOIS: -- is that the hospital had --

24 THE COURT: Overruled.

25 MS. ZOIS: -- only 253 doses of calcium

1 gluconate that was available to patients in their
2 hospital.

3 MR. SHAW: Objection.

4 MS. ZOIS: What we also know --

5 THE COURT: Overruled.

6 MS. ZOIS: -- is that one of those doses went
7 to some other patient on the very same day that Dennis
8 Allen needed it after Dennis Allen needed it on March the
9 18th.

10 And the testimony that you heard today from the
11 hospital representative said this is from omnicell. This
12 represents every bit of calcium gluconate that was used
13 at the hospital. Those 253 vials, one dose on March the
14 18th.

15 MR. SHAW: Objection.

16 THE COURT: Overruled.

17 MS. ZOIS: We also know that doctors have
18 access to crash carts. They're the carts that are on the
19 floor that you actually have to bust open to break the
20 seal to get into to use the drugs.

21 And what we know is that the crash cart had
22 calcium chloride on it.

23 MR. SHAW: Objection.

24 MS. ZOIS: And we know that the crash cart
25 wasn't opened.

1 THE COURT: Overruled.

2 MS. ZOIS: So in response to this cardiac event
3 Dr. Burks orders the cocktail. I find that offensive.
4 When I hear the word cocktail I'm thinking about Happy
5 Hour. I'm not thinking about lifesaving beverages.

6 But what he says is he went to the order set
7 and went eliek, eliek, eliek, eliek, eliek, eliek.
8 That's what he did. Click, eliek, click, eliek, click.
9 So without really thinking about Dennis Allen as an
10 individual and Dennis Allen's issues and his issues that
11 he has with renal problem, with his kidney problem, with
12 all the reasons that he's in there he just goes click,
13 click, click, click, click.

14 And one of the things that was interesting that
15 you heard today was allegedly accessibility to the
16 calcium stuff wasn't even on the order set because they
17 pulled it off because there was a shortage. So I don't
18 know how he clicked on the calcium. But he says he did.

19 Now when he's ordering all of these drugs
20 obviously if he's click, click, click, click he's not
21 thinking about the Kayexalate. He's not thinking about
22 how giving the Kayexalate to a patient like Dennis Allen
23 is going to affect Dennis Allen. He's just following the
24 set. He's not thinking, hmm, Dennis Allen probably has
25 renal issues. He already has problems processing things.

1 He's not thinking I shouldn't give this man this drug
2 because he might be more susceptible to an injury.

3 In fact, Dr. Burks doesn't even know that a
4 major complication associated with Kayexalate is exactly
5 what Dennis Allen died from. Major complications of
6 ischemic colitis and bowel perforation. He doesn't even
7 know that information. He should have known that
8 information.

9 So this is the hospital's guidelines. And I
10 kind of want to talk about this for a minute. The very
11 first witness that you heard from, Ms. Young, who came in
12 the very first day. Long time ago. She went through how
13 they came up with the guideline. And it wasn't willy-
14 nilly. They put three years into this.

15 The 2009 FDA warning came out about Kayexalate
16 so the hospital did the right thing. They said well we
17 need to figure this out. And we need to come up with
18 some guidelines on how to deal with this. So what did
19 they do? They did the literature survey. They read all
20 of the literature. Not just this piece here or that
21 piece there. They read through the entire literature.

22 What else did they do? They consulted the
23 experts in the hospital. University of Maryland Medical
24 System is a huge hospital. They've got lots of people
25 they can talk to about this.

1 So they form a committee. They come up with
2 the guidelines based on what the literature says. And
3 then they circulate it to the experts in the departments
4 who are going to have to deal with hyperkalemia. That's
5 how these guidelines were formed. They were formed by
6 the experts at the University of Maryland Medical System.
7 And they were supposed to be done for best practices.
8 Which means patient safety. All that makes sense.

9 Except Dr. Burks never pulled this guideline
10 up. His medical training didn't even tell him major
11 complications are intestinal necrosis and bowel
12 perforation. He didn't have this information.

13 When Mr. Gaston said, well, why didn't you just
14 look at the guidelines. Well I relied on my own medical
15 training. And I relied on my own literature. And I
16 relied on my own research. And stepped in. He said I
17 rely on up to date. Well ironically the up to date
18 article on this issue says you don't prescribe Kayexalate
19 when hemodialysis is readily available.

20 MR. SHAW: Objection. That was not in the
21 evidence, Your Honor.

22 THE COURT: Sustained.

23 MS. ZOIS: So going back a little bit. So
24 those are the guidelines.

25 And it's what he knew or should have known. He

1 should have known that giving Kayexalate has major
2 complications of intestinal necrosis and bowel
3 perforation. He should have known that.

4 Now the research that the hospital consulted,
5 the very first piece of literature, that's in these
6 guidelines says it's a -- it's a one -- up to a 1.8
7 percent of occurrence that a person is going to end up
8 with these major complications. That's not a small
9 number. That's almost two out of 100 people are going to
10 have intestinal necrosis and bowel perforation. And this
11 is the literature that the hospital was using.

12 So the administration of the Kayexalate it
13 sucked. The defendants want to say it was in the middle
14 of an emergency. It was his crisis, he -- his heart was
15 going out of control, it was we had to get it done. But
16 the truth of it is his cardiac event was over. He had it
17 under control. And he administered the Kayexalate after
18 Mr. Allen had the nebulizer on.

19 And we know that -- I'm sure that if it's a
20 life threatening emergency and as Defense Counsel said in
21 opening he gave him the Kayexalate so that he didn't die
22 right before his very eyes you would think that Dr. Burks
23 would have brought that Kayexalate in. Dr. Burks wasn't
24 in the room.

25 The Kayexalate was brought in by a nurse with a

1 Styrofoam cup and a straw in it. And Mr. Allen was given
2 the instruction, here, drink this. Does that sound like
3 at the time Dr. Burks' patient is going have a cardiac
4 event and there's some emergency that he should be
5 attending to?

6 Because if that's the case then Dr. Burks
7 should have been in that room. Not sending a nurse in
8 there to give the Kayexalate.

9 Before Dr. Burks leaves from the hospital he
10 doesn't know what the major risks are. But he should
11 have known. And if he should have known he should have
12 told the night nurse, Shamir (phonetic).

13 And he should have told the doctor on duty that
14 night, Caleb (phonetic), I gave this guy Kayexalate. And
15 I want you to be on the look out for a couple things.
16 The signs and symptoms of that are bloody stools and
17 abdominal pain. So I want you to make sure that if any
18 of that happens you take care of it, you page me, because
19 we've got to figure that out quick. Dr. Burks didn't do
20 that.

21 And what happened that night was horrible. It
22 was absolutely horrible. Mr. Allen was having blood
23 bowel movement after bloody bowel movement after blood
24 bowel movement. Was in excruciating pain. Was crying
25 out in pain. And you know this is a man that broke his

1 leg, strapped on some two by fours with a belt and drove
2 himself to the hospital.

3 We know this is a man that doesn't know fear.
4 This is a man that when gunshots ring out in front of his
5 house he doesn't run away, he runs towards the gunshots.
6 So this man is calling his children and saying, you think
7 I'm crazy, do you love me. No, Pop, we don't think
8 you're crazy. Of course, Pop, we love you. Then get me
9 out of here.

10 Because he was dying and he knew it. And
11 nobody else did. Not the nurse on duty that night. Not
12 the doctor on duty that night. Not his wife that sat by
13 his bed and, honey, everything's going to be okay.
14 You're where you need to be. You're in the hospital.
15 Not Dennis, not Daniel. They said, Pop, you've spent the
16 better -- you get better and we'll get you out of there.
17 You're going to get better. I'm going to pick you up and
18 I'm going to take you out of there. But we can't take
19 you out.

20 Mr. Allen couldn't get himself out of that bed
21 if he wanted to. He was in this vulnerable position
22 where there was nothing he could do to help himself. He
23 couldn't convince his family to take him out of there.
24 And, frankly, that would have been the wrong thing to do.
25 But they're plagued with guilt to this very day about

1 that.

2 So that night was horrible. And we're going to
3 come back to that. As much as I don't want to. And I
4 don't think you want me to do that. We're going to come
5 back to that.

6 So what happens the next morning? Dr. Burks
7 gets to work that next morning and he's advised by an
8 intern that major complications associated with ischemic
9 colitis are necrosis and the bowel perforation.

10 And I missed a slide.

11 What we also know is that Dennis and Daniel
12 were taking care of their father (indiscernible at
13 4:20:40). They were changing him themselves. Cynthia
14 said I don't want the rectal tube. I'm going to do this
15 myself. And Daniel and Dennis would help him. And three
16 times they're trying to get the nurse's attention.
17 They're saying, uh, I think there's blood in here. Uh,
18 there's more blood in here.

19 And by the third time Dennis runs out and says
20 this is full of blood. This is crimson. You need to get
21 this tested. Because the first two ended up in the
22 toilet.

23 So we know that the night before at 9:55 p.m.
24 somebody at the hospital knew. Because somebody tested
25 occult blood feces. So that happened the night before.

1 So we know that his bowels are dying. And his colon is
2 bleeding as of earlier than this. Because is about the
3 time he got to (indiscernible at 4:21:42).

4 So what happens the next day? Oh. I forgot
5 this part. In the response to Mr. Allen's tears and
6 crying out in pain they gave him a little gauze, put
7 something on his belly. No pain medication. The man has
8 a colon inside of him that's dying by the second. They
9 give him something for gas. Basically the equivalent of
10 Tums. And they do this at 1:27. So we know they knew
11 that he was in pain.

12 But the chart from that night doesn't have a
13 whole lot of information on it. But the chart for the
14 next morning does.

15 Dr. Burks gets to the hospital and is advised,
16 again like I said, by the intern that major complications
17 associated with Kayexalate are ischemic colitis and bowel
18 perforation.

19 So what does Dr. Burks do? Again, he's now
20 figured out that he gave Kayexalate that has these major
21 complications. His patient is on his way to emergency
22 surgery to have his colon removed. This is part of his
23 four page report that he writes after the fact.

24 On the morning of March 19th, not true, he was
25 noted to copious bloody bowel movements. It wasn't the

1 morning of March 19th. Because as you just saw the lab
2 from the night before. And again, remember this is after
3 he's figured out, oh, I think I made a mistake.

4 So he starts off doing the right thing. He
5 does. He starts off doing the right thing because he
6 pulls Cynthia Allen out of the room and says, Ms. Allen,
7 can I talk you for a minute. Cynthia comes out in the
8 hallway. I'm sorry. I made a mistake, I gave your
9 husband a drug that's injured his colon. He's going to
10 need to go surgery. It will only take a couple hours.
11 Everything is going to be okay. We caught it in time.

12 And Ms. Allen was not comfortable with that.
13 She said you know what, Dr. Burks, we've got a room full
14 of kids down the hallway. You need to go tell them that.
15 I'm not doing that. You need to go tell them that.

16 So Dr. Burks walks down the hallway and tells
17 the family this information. And Dennis is like, what,
18 what. What are you talking about. Like break it down
19 for me. Like I don't -- you're going to have to tell me
20 this in lay-people terms. I don't understand all this
21 medical Kayexalate, ischemic colitis, necrotic bowel,
22 perforation. Huh. Break it down for me.

23 And he did. And he said I made a mistake. I
24 gave your dad a drug that injured his colon. He's going
25 to be in surgery for a couple of hours. We caught it in

1 time. And Dennis said okay. I understand.

2 So that's what the family is told. One to two
3 hours. It's all going to be okay.

4 It wasn't okay. It wasn't okay. Dr. Burks
5 never spoke to that family again.

6 One of the things I think you're going to be
7 talking about back in the jury deliberation room is did
8 Kayexalate cause Mr. Allen intestinal necrosis. The
9 answer to that, folks, is absolutely it did. Yes, it
10 did. And you don't need to look any further than what
11 the hospital says about it. The defendant hospital.

12 Let's take a look at what they said before they
13 load it up.

14 MR. SHAW: Objection.

15 THE COURT: Basis?

16 MR. SHAW: Offensive actually.

17 MS. ZOIS: Intestinal ischemia --

18 THE COURT: Overruled.

19 MS. ZOIS: -- due to conflict with Kayexalate.

20 This is not that is. That's Dr. Burks note.

21 Bowel necrosis due to Kayexalate. Guess whose
22 note that is. That's the ICU team that took him over.

23 Given the constellation of symptomocology we
24 were considering -- mesenteric ischemia or ischemic
25 colitis. The medical Intensive Care Unit team had

1 pointed out that the patient had received Kayexalate the
2 night before and there were several case reports of
3 mucosa level ischemia.

4 That's the crew that was taking care of him
5 before he went up to the ICU.

6 Dr. T. The guy that's actually operating on
7 him. The one that's elbow deep into belly trying to get
8 rid of all the necrotic tissue. Trying to get rid of all
9 the dead issue in this colon. Says given overall
10 statement of patient's profusion this may have likely
11 been induced by the Kayexalate.

12 The autopsy. The hospital autopsy report says
13 "the findings may be suggestive of Kayexalate colitis."

14 Nothing there about low blood pressure, low
15 blood flow. Nothing. These doctors got it right. They
16 knew the Kayexalate killed his colon and they put it in
17 their report.

18 So these guidelines are a little bit of
19 surprise when we sent -- the Allen family sent questions
20 to the hospital because they have questions. And they
21 wanted answers. They still want answers. One of the
22 questions was, hey, Hospital, what guidelines do you have
23 in place for this condition. What are your policies
24 about that.

25 And the hospital says objection, legal jargon.

1 UMMS had a hyperkalemia order set. You know, the click,
2 click, click, click, click. That thing. That's it.
3 Didn't tell us about the guidelines. Just this. Just
4 told us about the order set.

5 And then specifically the Allen family question
6 was "Recommendation or warnings for administering
7 Kayexalate to patients such as Dennis Allen."

8 What was the answer? Hmm. "Order set."
9 That's it. Not the major complications. Just the order
10 set.

11 So that was not information either that was
12 given to any of the defendants' experts before they
13 testified. Did you notice that? We asked every single
14 one of them why didn't you get these guidelines. Why
15 didn't you get them. Did you have these before you gave
16 your sworn testimony and your opinion under oath. Did
17 you have this information. Did you know about it. No.
18 They didn't have it.

19 I don't know when they got it. None of them
20 wouldn't answer the question. The closest I got was when
21 Dr. Seneth said well I think they were Broppox and I know
22 I looked at them last night.

23 But back to the rate 1.8 percent of patients
24 have bowel perforation according to the hospital. This
25 is not me. This is the literature searched at the

1 hospital.

2 So the question is did Defendant breach the
3 standard of care. Did Dr. Burks act as a reasonable and
4 prudent doctor that a same doctor under a similar
5 circumstances would do. And we say absolutely he
6 breached that standard of care. Absolutely he did.

7 He prescribed Dennis Allen Kayexalate when he
8 absolutely should not have done this. There's a 1.8
9 percent chance he's going to have bowel perforation or
10 ischemic colitis. Which is exactly what happened in this
11 case. And which is why you shouldn't do it.

12 And one of the jury instructions that Your
13 Honor told you about is the susceptibility to injury
14 instruction. You have to consider someone has other
15 issues going on. And they would be more susceptible or
16 at a higher risk of developing a problem. You need to
17 think about that.

18 You can't do click, click, click, click.
19 That's not going to work. You need to think about the
20 patient. You need to apply the order set to the patient.
21 You need to think about these things before you just
22 start ordering drugs.

23 So he does order the shifting agents. And I'm
24 putting this up here for a reason. Because the shifting
25 agents are the things that get potassium away from the

1 heart. It bides them time. Because they need to get the
2 potassium out; right? So the shift agents are given can
3 last a pretty long time.

4 Again, this is the hospital guidelines. This
5 isn't me telling you this. This is the hospital
6 guidelines telling you this.

7 The insulin and dextrose at the block of six
8 hours. The nebulizer can last up to three hours. Sodium
9 bicarbonate can last up to six hours. So that gives you
10 enough time to get hemodialysis. That's plenty of time
11 to get hemodialysis.

12 They got hemodialysis after it was ordered in
13 an hour and 15 minutes.

14 And Dr. Leo came in and told you you give
15 Kayexalate as a last resort. You do not give this toxic
16 drug to a patient when hemodialysis is readily available.
17 Hemodialysis is the gold standard. Kayexalate has
18 problems. Hemodialysis, again it's the hospital it's not
19 me, this is what the hospital says, rapidly removes large
20 amounts of potassium.

21 Most importantly, treatment of choice for
22 patients with life threatening hyperkalemia. It is the
23 gold standard in eliminating potassium in renal failure
24 patients.

25 We heard a whole lot about the condition that

1 Mr. Allen was in when he got the hospital. They talked
2 about that for hours. We knew -- you know, we know he
3 was in renal failure. That was the right choice.
4 Hemodialysis was the right choice.

5 And yet the -- the claim of, oh, we didn't know
6 when the hemodialysis guy was going to get there.
7 Whether the machines could break. We didn't know if had
8 the -- that whole song and dance.

9 I've got to go back to this one. Just wait.
10 Just wait. We have time. And these can be repeated.
11 You can do these again. Take whatever time is necessary
12 to avoid giving this man Kayexalate who is in renal
13 failure. Who you know is more susceptible to this
14 injury. They didn't do that. Dr. Burks didn't do that
15 because (indiscernible at 4:33:24).

16 So this brings me to this. Informed consent.
17 Before a doctor is allowed to do something to a patient
18 that has material risks they have to get what is called
19 informed consent. They have to have a conversation with
20 the patient. They need to say, hey look, let's talk
21 about this. This thing I'm about to do has got some
22 problems. Let's talk about it and then you decide. You
23 have to consent. You have to understand it and then give
24 me your consent before I do this.

25 That piece never happened. He failed to obtain

1 informed consent. They're not disputing that. They
2 haven't said oh yeah we gave it. They haven't said that.
3 Because they can't say that because Dr. Burks didn't know
4 enough to even properly get Mr. Allen's informed consent.

5 So the five elements that are required are
6 there. And we know Dr. Burks didn't bother to look at
7 the guidelines to find out what the material risks even
8 were. So we know he didn't give this. Because he wasn't
9 capable of giving this.

10 Which is why the defense is well this was an
11 emergency. We didn't have time to do that. We didn't
12 have to do that. This was an emergency situation. Whose
13 got time for that. Who has time to talk about all these
14 things. We don't have time for that. So that's why they
15 say they didn't do it.

16 But we know is the Kayexalate ordered on a
17 routine basis. Not STAT. Not I need this in here now.
18 It was hey whenever you can get to it. (Indiscernible at
19 4:35:19).

20 More importantly than that is the albuterol.
21 One of those potassium shifting agents. The thing that
22 he was on right before they brought the Kayexalate into
23 the room, routine priority.

24 So what we know now it wasn't click, click,
25 click because this was ordered after all the other

1 medications were at 12:37. This was ordered at 12:55.
2 And it was ordered routinely. Emergency was over. There
3 was no cardiac strips that were printed out. The bells
4 and whistles didn't go off again. Ms. Allen was there
5 and said his color came back into his face. There's no
6 cardiac alarm going off to point that Kayexalate was
7 still (indiscernible at 4:36:03).

8 And again, I'll just bring you back to if Dr.
9 Burks truly thought that Mr. Allen was in a life
10 threatening event at that very moment do you think he's
11 sending the nurse in to deliver the Kayexalate. He
12 should be in that room. If his patient is about die
13 because of a life threatening event, cardiac event, he'd
14 be in that room. Or at least I hope he would.

15 So next question. Was the defendants breach in
16 the standard of care a cause of Mr. Allen's death. It
17 doesn't have to be the cause. It has to be a cause of
18 Mr. Allen's death.

19 And what do we have? We say yes. We know what
20 the hospital told us. What did he die of. He died of
21 ischemic colitis. This is the hospital's official death
22 certificate for vital records. They didn't write kidney
23 disease, they didn't write cirrhosis, they didn't write
24 sleep apnea, they didn't write congestive heart failure,
25 They wrote ischemic colitis within 24 hours of his death.

1 By a doctor that presumably would have the entire medical
2 chart available to them.

3 So the hospital tells us that's what he died
4 of. The story is different now. But right after he died
5 that doctor said he died of ischemic colitis.

6 We also know the pathology report said that the
7 appendix is normal. And (indiscernible at 4:37:48) for
8 all that means.

9 The defenses' theory in the case is that on the
10 13th for a couple of minutes, nobody can really say for
11 how long, and on the 15th for a couple of minutes, nobody
12 can really say for how long, that he had low blood flow.
13 And the low blood flow impacted his colon to the point
14 where it killed it. Really? When the colon can go six
15 hours without blood supply and rebound.

16 So the doctors that they brought in here,
17 although they all confuse me and they all said something
18 a little bit different and I'm not entirely sure they're
19 all on the same page, but they're trying to convince you
20 that the short periods of low blood flow to the colon are
21 what caused Mr. Allen's death.

22 All right. Well if that's true the low blood
23 flow only affected that one organ. The one organ that
24 the Kayexalate went through. Common sense, folks. Like
25 I said before, use your common sense when you get back

1 there.

2 Because what we know -- Dr. Odze, he's a beast
3 by the way, came in here. His job is to determine cause
4 of death. That's what he does. He's a pathologist.
5 He's a professor at Harvard Medical School.

6 He came in and told you not more likely than
7 not. He said I am 100 percent sure that this man died of
8 Kayexalate induced colitis. 100 percent. He didn't mean
9 to go there but he did.

10 And you know what else he did? He also told
11 you he looked at all the pathology slides from his body.
12 He had liver problems to begin with. But guess what? No
13 dead tissue in the liver. No dead tissue in the kidney.
14 No dead tissue in the heart. No dead tissue in the
15 brain. No dead tissue in the appendix.

16 Appendix is important because the appendix is
17 the area -- oh. This is what we were supposed to Google,
18 by the way. \$100,000 expert that's telling us to Google
19 information.

20 Mr. Gaston went and asked him and asked him and
21 asked him well don't you agree that the appendix shares
22 the same blood supply as the colon. Right? The artery
23 that comes down to the colon. The same artery that comes
24 down to the appendix; right? So if you're losing blood
25 flow to the colon you've got a problem with the appendix

1 too. The appendix is normal.

2 So the only areas that Mr. Allen had dead
3 tissue are the areas that the Kayexalate went through;
4 right? Common sense.

5 But this is what they want you to be convinced
6 of, you know. Even though the defense experts came in
7 they didn't talk about, well, you know the hospital's own
8 records say it was Kayexalate induced. And the surgeon
9 said it was Kayexalate induced. And the critical care
10 team said it was Kayexalate induced. No. They didn't
11 talk about that.

12 They came up with this new theory that is not
13 anywhere in the medical records. Nobody says this in the
14 medical records from defendant hospital. The theory they
15 come up with is -- and I'm being generous here. Because
16 nobody could say it was (indiscernible at 4:41:21).

17 15 minutes during hemodialysis on the 13th. 15
18 minutes on hemodialysis on the 15th. One more minute on
19 the 18th. Oh that's what did it. That's what did it.
20 That's what caused the low blood flow. These little box
21 of hypotension are what caused Dennis Allen's colon to
22 deteriorate in 24 hours. And just happened to start --
23 just happened to start on the night of the 18th. That's
24 just a coincidence. That's just a coincidence that it
25 started there.

1 Or maybe -- again, common sense. Maybe you
2 drink the Kayexalate. It starts to go through your
3 system. At first you only see a little bit of blood in
4 the feces. Next one we see a little bit more. And then
5 by the third one it's crimson. It is a bedpan of blood.

6 That's when the (indiscernible at 4:42:22)
7 starts. That's when the man that has never shown fear or
8 pain in his life is screaming out to his children to get
9 him out of the hospital.

10 What makes more sense? That all of this
11 started way back here or that all this started within
12 hours of drinking the Kayexalate? Common sense, folks.

13 That's how long your colon can survive without
14 blood without irreversible damage. That's why I put that
15 up there. Six hours. But they're blaming a couple
16 little times where he got hemodialysis to kill his colon.

17 The Hail Mary of all defenses. Was is Mr.
18 Allen going to die anyway. Really? Does that mean his
19 life wasn't worth saving? Does that mean that his life
20 wasn't worth looking at the guidelines to figure out the
21 major complication of Kayexalate is what he died of?
22 (Indiscernible at 4:43:36).

23 By the time he gets into the hospital, and we
24 heard all about how sick he was before he got there. He
25 had been the University of Maryland before. They

1 prescribed statin. He took it. He's in the hospital for
2 rhabdomyolysis which is statin induced. And he's in
3 trouble.

4 So they need to give him hemodialysis. They
5 need to help him out; right? But while he's there he
6 speaks with the nephrology department. And at the
7 nephrology department in a consult ultimately will need
8 long term dialysis to optimize condition in preparation
9 for liver/kidney transplant if the patient wishes to go
10 to transplant.

11 Oh the patient wishes to go to transplant.

12 We will initiate transplant evaluation process
13 while inpatient per patient's wishes.

14 So the nephrology department doesn't think he's
15 going to die anyway. The nephrology department says
16 we're going to do something that nobody's done for him
17 because nobody's tried this yet. So we're going to get
18 him on long term hemodialysis. We're going to give him
19 hemodialysis every day that he's here that he needs it.
20 They did. 13th, 14th, 15th, 16th. Didn't get it on the
21 17th.

22 But on the very day that this incident the
23 nephrologist is in there at 11:30, tapping that toe,
24 where are the labs, we're ready. Right. Are we doing
25 this today?

1 Dr. Burks in the transfer note (indiscernible
2 at 4:45:23). This is after his surgery when he's in the
3 acute care after the surgery. On transplant list. These
4 are their records. These are the hospital's records.
5 Not he's going to die anyway. He's terminal. Let's get
6 him into hospice. Let's do palliative care for immediate
7 family. Let's talk about that. Let's see how he wants
8 to go. Let's see how -- if he has any last wishes.

9 None of that.

10 They did not have an end of life care plan for
11 him. You know what? They didn't give the family that
12 choice. The last time they saw him was the morning of
13 the 19th. And what he was saying was (indiscernible at
14 4:46:18). He wasn't given the opportunity to have that
15 discussion with his family. They took that away from
16 them. They did not give him that opportunity.

17 There's nothing in this chart to say that he
18 was terminally ill. Nothing. He's not in ICU. No
19 hospice recommendation. Not palliative care. If they
20 thought he was going to die anyway that's the right thing
21 to do.

22 What's the right thing to do? You say, family,
23 this is what's going on and you have a meeting. Your dad
24 is sick. And we don't feel he's going to make it out of
25 the hospital. So what we need to do is figure out -- you

1 guys figure out with him. Ask him. What does he want to
2 do. (Indiscernible at 4:47:08).

3 So he's not dying from the inside out and
4 suffering and in pain. Do you think the congregation
5 might want to come up and say good bye to him. Can you
6 think of anybody else that he'd want to talk to before he
7 passes. Do you think there's anything that he might want
8 to say to you before he dies other than get me out of
9 here. They took that away from this family.

10 So if that's true they didn't tell this family
11 that. And they took that opportunity away from this
12 family. What this family is stuck with is the last
13 moments of this man's life were horrible. And those are
14 the memories they have with him. The memories they have
15 with him is Daniel wishing he had thrown him over his
16 shoulder and driven him in his truck out of that
17 hospital. That's the memories they are left with.

18 Not I love you, we're going to be good, we're
19 going to carry on with your legacy and tradition in the
20 church. You were the best father ever. You are an
21 amazing human being. Mom's going to be okay. We get --
22 mom's going to be okay. We've got this. Go home. We'll
23 be okay. And we're going to live everyday of our life
24 honoring your legacy and living the life that you taught
25 us. We are going to love people. We are going to love

1 every person whether they love themselves or not. And
2 we're going to continue to do everything you taught us to
3 do.

4 That didn't happen. Didn't happen.

5 I put this up here -- this man loved Baltimore.
6 And he loved his church. And he formed this church in
7 2012. During the middle of all this oh he's so sick. Oh
8 he's (indiscernible at 4:49:25). He's in and out of the
9 hospital. He can't think straight. He can't walk. He
10 can't do anything. He's on death's door. He's got one
11 foot in the grave. That's the man who started this
12 church.

13 So I hate this part. And I hate to do it to
14 this family. But in order for me to my job and tell
15 Dennis Allen's story I've got to go there. I've got to
16 do it. I've got to it. I've got to it you. I've got it
17 to them. I don't want to. It's hard.

18 But Dennis Allen after drinking the Kayexalate
19 was completely immobile. Could not get himself out of
20 the hospital bed on his own. Could not get anyone to
21 listen to him. Could not get the message across to his
22 family I'm dying. I know I'm dying. My colon is dying.
23 It's time for me. He couldn't get the attention of the
24 nurse. Couldn't get attention of the doctor.

25 He's got bloody bowel movements. He's crying

1 in pain. All night long. The last 24 hours of this
2 man's real life were horrible. They were horrendous. He
3 screaming out, can't get anyone's attention. And his
4 family is going through it with him.

5 They're thinking the doctors have got to help
6 or do something. We're in the hospital. We're where
7 we're supposed to be. These people are supposed to know
8 what they're doing in here. They didn't know Dennis
9 Allen. This hospital did not know Dennis Allen. Dr.
10 Burks did not know Dennis Allen.

11 Dennis Allen was a strong man who did not show
12 fear. Who did not complain. And for him to have broken
13 down to the point where he's looking at his family and
14 saying get me out of here. If you love me and you don't
15 think I'm crazy get me up out of here. This is what he
16 kept saying to them. They're left with that for the rest
17 of their lives.

18 These 24 hours are the unimaginable horror. So
19 that's his claim. That's Dennis Allen's claim.

20 And there's a line I put on the verdict sheet
21 for him. So those 24 hours that's for him. That's the
22 estate claim.

23 With respect to the family, His wife, 35
24 years. Soul mates. She came down to Baltimore to take
25 of care of her sick aunt. Met him on the steep when she

1 was with Shelly. That was it. That was it. They built
2 their life together. They built their church together.
3 They have beautiful children together. She said he was
4 my best friend. He was my everything to me.

5 She didn't sleep in their bed for almost three
6 years after he passed away. There's no man on this
7 planet I don't think whose shoes are biggest enough to
8 fill Dennis Allen's shoes.

9 His children, and I'm including Shelly, that
10 was her father. I don't care what anybody says. That
11 was her dad. His eight children got up on that stand and
12 told you about this man. And what I can absolutely
13 guarantee you is I can stay up here for days and days and
14 days and nights and never even be able to scratch the
15 surface of what an amazing human being this man was. I
16 cannot do this man justice.

17 If I pulled in every single person whose life
18 he's touched in the last 35 years we'd be here for a
19 really long time. And you hear from the people that he
20 reached out to. You hear from the people that everybody
21 gave up on that he helped. You hear from the young men
22 at the Hickey School that were touched by his story.
23 Because someone gave him a second chance.

24 And each one of his children are amazing people
25 because of who he was. He taught them work ethic. He

1 taught them to love people. He taught them to give back
2 to the community. And raise your children that way too.

3 He's selfless. Help people that can't help
4 themselves. And that's what they continue to do. But
5 they continue to do it and they miss him. They miss him
6 a lot. And just because you're a 48 year old woman or
7 younger than that doesn't mean that you don't need your
8 dad anymore. It doesn't mean you don't love your dad and
9 miss your dad and want your dad's advice every day you
10 need it.

11 So for this family you have to understand their
12 loss because of how amazing of a man that he was. Pop-
13 Pop.

14 So when Mr. Gaston in his opening said to you
15 at the end of this case you're going to understand why
16 this case we're going to be asking for fair compensation
17 in the amount of \$10 million. Now you understand.

18 And what we're going to ask you to do on the
19 verdict sheet is for his estate, for him, for those
20 horrible 24 hours we're going to ask you to give him two
21 million dollars for the very worst day of his life for a
22 very amazing man who spent 35 years loving people and
23 taking care of other people. And this was so bad that it
24 broke him down to the point of fear.

25 And for each one of the children, and I'm not

1 saying this is fair, you give to one or give them all
2 (indiscernible at 4:55:58). For each one of the children
3 we're going to ask you to give them one million dollars.
4 And his wife also.

5 THE COURT: Thank you very much.

6 Counsel, would you please approach.

7 MR. SHAW: Your Honor, it's going to take me
8 about four minutes or so to set -- set up.

9 THE COURT: Ladies and gentlemen, would you
10 like a bathroom break or would you like to keep going
11 through? Anybody -- we're going keep going through.

12 All right. Mr. Shaw, why don't you go ahead
13 and take the time to set up.

14 And, Counsel, please approach briefly.

15 (Counsel approached the bench, and the
16 following ensued:)

17 THE COURT: You finished like on the dot hour.
18 I was impressed. So I just want to be clear that before
19 when Mr. Shaw objected (indiscernible at 4:56:57) that,
20 Counsel, that were a Motion for Mistrial. And I'm not
21 going to leave threads untied at the close of the case or
22 at any other point in time.

23 But I should be clear that I obviously
24 overruled the objection.

25 But I'm denying the Motion for Mistrial. I

1 don't (indiscernible at 4:57:12) as to the argument up to
2 defendants based on the argument provided by Plaintiff
3 during her closing. Nothing has denied the defense a
4 fair trial.

5 I also do just note that the standard of care
6 question in the jury's verdict sheet specifically
7 mentions standard of care of the Kayexalate and not
8 anything else to the extent that that (indiscernible at
9 4:57:36) of Dr. Burks.

10 Okay. All right.

11 MR. SHAW: I had one more concern. The
12 plaintiffs used the statement that was stricken from
13 evidence that Mr. Allen had refused the blood draw. We
14 went through the jury extract and removed that. And then
15 they turn around and used it.

16 THE COURT: (Indiscernible at 4:57:58).

17 MR. SHAW: So I object to that.

18 THE COURT: I reversed my ruling on the Motion
19 in Limine because I found pursuant to your argument that
20 it was pathologically germane.

21 MR. SHAW: Well then I --

22 THE COURT: So that was admissible.

23 MR. SHAW: Then that has to be put back in the
24 jury extract. So I have to -- because that's still where
25 the line is drawn on that.

1 THE COURT: I bet (indiscernible at 4:58:15).
2 So --
3 MR. SHAW: I'm sorry?
4 THE COURT: We're on to closing.
5 MR. SHAW: Can I have a break.
6 THE COURT: I'm sorry?
7 MR. SHAW: Can I go to a comfort break while
8 we're setting up?
9 THE COURT: Yes, absolutely.
10 I'll just have the jury wait.
11 MR. SHAW: All right.
12 (Counsel returned to the trial table, and the
13 following ensued:)
14 (Brief pause.)
15 THE COURT: Mr. Shaw, whenever you are ready.
16 Before you proceed to closing if Counsel will approach
17 for --
18 MR. SHAW: I'm sorry. I can't hear you.
19 THE COURT: Would counsel -- before you --
20 finish what you're doing. But before you proceed to
21 closing I would ask that Counsel approach just for a
22 brief moment. I know you wish to use the restroom and
23 that's fine.
24 (Brief pause.)
25 MR. SHAW: Your Honor, we can come up right

1 now.

2 THE COURT: Yes. Would you approach just for a
3 moment. And you don't all have to approach. But
4 somebody from each side.

5 (Counsel approached the bench, and the
6 following ensued:)

7 THE COURT: Sorry. Okay. I just -- I just
8 wanted to be clear. The issue of what was redacted was
9 about IV drug use. There was never any redaction that
10 pertained to a blood draw or an IV because I reversed my
11 original ruling in limine. And so that has been
12 obviously throughout the case has been in evidence. I
13 just -- I think we were getting confused.

14 But the issue of redaction in the jury extract
15 had to do with the decedent's past IV drug use. Not with
16 respect to the blood draw or any IV itself.

17 MR. SHAW: So I --

18 THE COURT: Just wanted to be clear.

19 MR. SHAW: -- distinctly remember asking that
20 first day and the Court denied a motion -- or granted the
21 plaintiffs Motion --

22 THE COURT: Are you -- I originally granted the
23 plaintiffs' motion in limine to exclude evidence that the
24 decedent was alleged to have declined to get blood draw
25 or to have an IV then,

1 I think within -- I think the next day, I might
2 be mistaken, I reversed myself finding that I had to
3 vacate the summary judgment order and then ordering --
4 and I said that that causes me to reconsider the motion
5 in limine. And I reversed myself allowing evidence of
6 those issues in as pathologically germane,

7 MR. SHAW: My -- my belief is that before that
8 reversal that statement that he refused the blood draw is
9 redacted from each jury extract.

10 THE COURT: Okay. Well in as much as there's
11 no contributory negligence issue I'm not sure what's that
12 going to do. But at this point --

13 MR. SHAW: I'm not just speaking (indiscernible
14 at 5:04:41). That wasn't in evidence because I thought
15 it was redacted. And it was also --

16 THE COURT: Okay. But what I'm saying is that
17 since I gave everybody notice at the front end that it
18 was no longer going to be inadmissible if the correction
19 wasn't made that's not on the Court.

20 And in any event, there's no basis for
21 contributory negligence instruction has been given. It's
22 not in the verdict sheet.

23 You're welcome to talk about until you're blue
24 in the face if you feel like that's appropriate.

25 MR. SHAW: I don't want --

1 THE COURT: I don't mean that to be smart. I
2 just mean, you know, it's fair game.

3 MR. SHAW: I didn't want to talk about it. And
4 I thought it was out of evidence. And that's why I was
5 objecting. One of the reasons I objected --

6 THE COURT: I appreciate that.

7 MR. SHAW: -- she brought it up.

8 THE COURT: I just wanted to be sure we were
9 clear. Okay. All right. Thank you.

10 MS. ZOIS: The defendant also mentioned it in
11 his testimony.

12 THE COURT: I'm quite sure that's the case. I
13 just don't recall. Okay.

14 Thank you.

15 (Counsel returned to the trial table, and the
16 following ensued:)

17 THE COURT: Mr. Shaw, whenever you are ready.

18 I know that there's some technology you're
19 setting up. So whenever you're ready, sir.

20 MS. ZOIS: Your Honor, with Court's permission
21 to step out in the hall?

22 (Brief pause.)

23 THE COURT: All right. Mr. Shaw, every good,
24 go ahead.

25 MR. SHAW: Your Honor, can we wait for -- Dr.

1 Burks has stepped out for moment. Can we wait for him?

2 THE COURT: Okay. Do you have any idea how
3 long he'll be gone?

4 MR. SHAW: Pardon me?

5 THE COURT: Any idea how long he'll be gone?

6 MR. SHAW: I think just for a moment.

7 THE COURT: Okay.

8 (Brief pause.)

9 MR. SHAW: Your Honor, I'm going to start
10 without him.

11 THE COURT: Okay.

12 MR. SHAW: Because I have some introductory
13 things.

14 THE COURT: That's fine. Go ahead.

15 MR. SHAW: May I go ahead and start?

16 THE COURT: Yes, you may.

17 MR. SHAW: May it please the Court,

18 CLOSING ARGUMENT ON BEHALF OF THE DEFENDANTS

19 MR. SHAW: Good afternoon, ladies and
20 gentlemen.

21 THE JURORS: Good afternoon.

22 MR. SHAW: This is my last chance to talk to
23 you directly. And I do want to tell you that we are very
24 grateful for your service. Grateful for your attention,
25 And I'll thank you more and a little bit better detail at