

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
GREENEVILLE

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

BETTY ROUSE, ET AL., . DOCKET NO. CIV-2-98-22
PLAINTIFFS, .
VS. . GREENEVILLE, TN
WELLMONT, INC., ET AL., . JULY 12, 1999
DEFENDANTS. .
.

CLOSING ARGUMENT OF MS. TATE
BEFORE THE HONORABLE THOMAS GRAY HULL
UNITED STATES DISTRICT JUDGE, AND A JURY

APPEARANCES:

FOR THE PLAINTIFFS: OLEN HAYNES, ESQ.
MARY TATE, ESQ.

FOR THE DEFENDANTS: JIMMIE MILLER, ESQ.
CHARLES T. HERNDON, ESQ.

COURT REPORTER: KAREN J. CULBRETH
RPR-RMR
U.S. COURTHOUSE
101 SUMMER STREET, WEST
GREENEVILLE, TN 37743

PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY, TRANSCRIPT
PRODUCED BY COMPUTER.

1 MS. TATE: THANK YOU, YOUR HONOR.

2 MAY IT PLEASE THE COURT, MEMBERS OF THE JURY.

3 ASHLEY ROUSE'S LAST HOUR OF LIFE DID NOT HAVE TO
4 BE HER LAST HOUR. ASHLEY'S PROBLEMS STARTED AT LEAST AN
5 HOUR AND A HALF BEFORE SHE FINALLY CRASHED WHEN HER BLOOD
6 PRESSURE BOTTOMED AND HER HEART RATE HIT 27 AT 2:50 IN THE
7 AFTERNOON, AT LEAST AN HOUR AND A HALF. HER DEATH WAS
8 GRADUAL, IT WAS PROGRESSIVE AND SHE WAS FIGHTING EVERY STEP
9 OF THE WAY. SHE WAS MISMANAGED. SHE WAS NOT GIVEN
10 APPROPRIATE MEDICAL CARE BY THE NURSE ANESTHETIST AT THE
11 HOSPITAL AND DR. AGUIRRE, THE ANESTHESIOLOGIST RESPONSIBLE
12 FOR HER CARE, THE LAST COUPLE OF HOURS.

13 WE CAN CHARACTERIZE THE CARE THAT SHE RECEIVED
14 BY THREE FACTS: NUMBER ONE, A BAD RECORD; NUMBER TWO,
15 MISSING RECORDS; AND NUMBER THREE, BAD EQUIPMENT; AND I
16 WANT TO TALK WITH YOU ABOUT EACH OF THESE ITEMS IN TURN A
17 BAD RECORD, MISSING RECORDS AND BAD EQUIPMENT.

18 AND I WANT TO BEGIN BY FOCUSING ON THE BAD
19 RECORD. ASHLEY'S VITAL SIGNS WERE NOT RECORDED PROPERLY.
20 NOW, WHY IS THAT IMPORTANT? EVEN DR. MOORE, THE
21 DEFENDANT'S EXPERT THAT THEY BROUGHT UP FROM ALABAMA, SAID
22 THIS RECORD IS TERRIBLE. THIS IS NOT THE CHARTING I
23 REQUIRE MY PEOPLE TO DO.

24 HER URINE OUTPUT WAS NOT CHARTED. WHY IS THAT
25 IMPORTANT? TO KNOW IF SHE'S MAKING URINE, TO KNOW IF SHE

1 HAS ENOUGH FLUID; BUT WHAT WERE THE PROBLEMS WITH THAT? IF
2 YOU LOOK AT THE CHART, AND WE'LL ZOOM IN ON THIS SO THAT
3 YOU CAN SEE EXACTLY WHAT WE'RE TALKING ABOUT, IN THIS LEFT
4 CORNER THERE'S THE ENTRY "URINE"; AND AS WE GO ACROSS THE
5 CHART FROM 9:00 TO NOON ON THIS FIRST PAGE, THERE'S AN
6 ENTRY AT 10:15 OF 200 CC'S OF URINE; AND IF WE GO ON ACROSS
7 THE CHART AT APPROXIMATELY 11:30 HERE'S THE ENTRY 100-300,
8 MEANING AT THAT POINT SHE HAD MADE A TOTAL OF 300 CC'S OF
9 URINE; BUT THEN IF YOU LOOK AT PAGE 2 OF THE CHART, THE
10 SAME ITEM IS ON THE LEFT, AND THERE ARE NO RECORDINGS,
11 ADMITTEDLY NO RECORDINGS ANYWHERE ELSE OF URINE OUTPUT.
12 THEY CLAIM THEY WERE USING A NEW DEVICE THAT DR. MOORE
13 DOESN'T EVEN HAVE IN ALABAMA CALLED A UROMETER. THEY CLAIM
14 THAT THIS UROMETER WAS USING PRECISE MEASUREMENTS AND COULD
15 GIVE THEM EXACT READINGS AT ANY TIME, INCLUDING THE
16 PREVIOUS HOUR AND A TOTAL; AND YET, THE MONITORS THAT ARE
17 LISTED ON THE CHART, EVEN WITH SOME ADDED, DON'T SHOW A
18 UROMETER; AND THEN THE NEXT QUESTION TO ASK YOURSELVES IS
19 IF THEY WERE USING A UROMETER TO GET PRECISE MEASUREMENTS,
20 WHY DON'T WE SEE 98 POINT SOMETHING? WHY DON'T WE SEE A
21 92? WHY DON'T WE SEE A 101? WHY DO WE SEE A BALL PARK
22 200, A BALL PARK 100, A TOTAL OF 300?

23 WERE THEY USING A UROMETER? LET'S GIVE THEM THE
24 BENEFIT OF THE DOUBT FOR A MINUTE. DID THAT ALLOW THEM THE
25 LUXURY OR THE NEGLIGENCE OF RELYING ONLY ON URINE OUTPUT?

1 NO, IT DIDN'T BECAUSE WHAT DID DR. HAMILL-RUTH EXPLAINED
2 AND EVERY OTHER DOCTOR WHO HAS TALKED ABOUT URINE OUTPUT,
3 YOU DON'T NECESSARILY KNOW IF WHAT YOU'RE SEEING IN THE
4 TUBE AT ANY GIVEN POINT IN TIME IS THE NEW URINE. BECAUSE
5 OF HER POSITION, URINE COULD HAVE POOLED IN THE BLADDER,
6 BAD URINE, BAD COLOR, AND IT COULD HAVE STAYED THERE
7 BECAUSE IT WOULD NOT NECESSARILY HAVE GOTTEN THE PUSH WITH
8 THE CATHETER. THERE'S NO MONITORING OF HER URINE OUTPUT ON
9 THIS RECORD AFTER 11:30 IN THE MORNING, AND THAT WAS
10 IMPORTANT ACCORDING TO DR. HAMILL-RUTH; AND HAD IT BEEN
11 MONITORED APPROPRIATELY, IN HER OPINION IT WOULD HAVE SHOWN
12 PROBLEMS.

13 WHAT ARE THE OTHER PARTS OF THIS BAD RECORD?
14 AND THIS IS EVEN MORE IMPORTANT. BLOOD LOSS. THERE'S NO
15 ESTIMATED BLOOD LOSS ANYWHERE ON THIS CHART; AND THE CHART
16 PREPRINTED HAS AN ENTRY FOR ESTIMATED BLOOD LOSS, AND THEY
17 DIDN'T RECORD IT.

18 HERE'S WHAT THEY DID, THEY PUT ON THE LEFT SIDE
19 OF THE CHART EBL SUCTION. NOW WHAT THAT MEANS, AS YOU'VE
20 HEARD DR. MCKAY EXPLAIN, IS THEY WERE USING A CELL SAVER
21 KIND OF MECHANISM. NOW, THAT MEANS THAT IN THE OPERATIVE
22 SITE THEY HAD ONE SUCTION DEVICE, AND THAT ONE SUCTION
23 DEVICE WAS CONNECTED TO A CANISTER THAT WAS TO SAVE THE
24 BLOOD. THEY WERE GOING TO TREAT THAT BLOOD AND PUT IT BACK
25 IN THE BODY; BUT THAT DIDN'T TAKE INTO ACCOUNT THE SPONGES,

1 THE PADS, THE DRAPES. THEY DIDN'T HAVE TO KEEP ONE SIDE OF
2 THE OPERATIVE FIELD CLEAN AND FREE, THEY HAD THE WHOLE AREA
3 THAT HAD BLOOD IN IT THAT WAS BLEEDING, ALL OF IT HAD TO BE
4 KEPT CLEAN AND CLEAR SO THE SURGEONS COULD WORK. THERE'S
5 NO SPONGE COUNT. DR. MCKAY, FROM THE EVIDENCE THAT WE READ
6 TO YOU, SAID, WELL, YOU'RE SUPPOSED TO CONTINUE TO COUNT
7 THE SPONGES, I'M SURE THAT IT'S HERE SOMEWHERE; AND WHEN HE
8 LOOKED AT THE MEDICAL RECORD, HE SAID, OH, NO SPONGE COUNT,
9 IT'S NOT THERE. YOU CAN'T IGNORE IT BECAUSE SOME OF THOSE
10 SPONGES CAN BE SOPPING WET. ACCORDING TO DR. HAMILL-RUTH,
11 THEY'RE SUPPOSED TO PUT THEM IN A CANISTER AND THE NURSES
12 ARE SUPPOSED TO ESTIMATE HOW MUCH BLOOD IS THERE. THEY
13 DIDN'T DO IT. THEY MADE THE ASSUMPTION THAT ONE SUCTION
14 DEVICE TO A CELL SAVER CANISTER WOULD TAKE CARE OF THAT
15 RESPONSIBILITY, AND IT DIDN'T DO IT.

16 AND EVEN MORE IMPORTANTLY, THEY DID NOT COUNT
17 THE BLOOD LOSS FOR THE LAST TWO AND A HALF HOURS OF
18 SURGERY. REMEMBER DR. MCKAY SAID, JUST THIS MORNING, THE
19 BLOOD LOSS WAS CONTINUING THROUGHOUT THE ENTIRE SURGERY.
20 HE MADE THE DECISION AT 12:00 WHEN HE SAW TRENDING UP BLOOD
21 PRESSURES, EXCUSE ME, TRENDING UP HEART RATES, HE MADE THE
22 DECISION AT 12:00 TO GIVE CELL SAVER BLOOD. THAT BLOOD,
23 ACCORDING TO HIS DESCRIPTION EARLIER, HAD TO BE SPUN AND
24 CENTRIFUGED, CLEANED, PROCESSED AND PREPARED TO GO BACK IN
25 THE BODY. AT 12:30, 12:30 IN THE PROCEDURE, THEY STARTED

1 INFUSING THE FIRST CELL SAVER BLOOD. 12:30 THEY PUT 240
2 CC'S OF CELL SAVER BLOOD INTO ASHLEY'S BODY. AT 12:40 THEY
3 PUT 113 CC'S BACK IN HER BODY; AND THEN AT 13:00 OR 1:00,
4 THEY PUT AN ADDITIONAL 177 CC'S BACK INTO HER BODY.

5 NOW, THAT AMOUNT TOTALS 5 -- EXCUSE ME, IT
6 TOTALS 534 CC'S. NOW, THEY'VE RECORDED ON THIS CHART THAT
7 THEY PUT A TOTAL OF CELL SAVER OF 698. NOWHERE DOES THE
8 CHART TELL US WHEN THEY PUT THAT ADDITIONAL 164 CC'S BACK
9 IN; BUT THAT'S ONLY A SMALL PART OF THIS PROBLEM, YOU SEE,
10 BECAUSE FROM 12:00 WHEN DR. MCKAY MADE THE DECISION TO USE
11 THE AVAILABLE BLOOD AND PUT IT BACK IN, SHE DIDN'T STOP
12 BLEEDING. FROM 12:00 TO THE END OF THE PROCEDURE SHE WAS
13 STILL BLEEDING. WHERE IS IT? IT'S NOT IN THE CHART. IS
14 IT IN THE SPONGES? WAS IT IN THE BODY CAVITY? WAS IT
15 GOING INTO A SECOND CELL SAVER CANISTER? THERE IS NO
16 ACCOUNTING IN THIS RECORD FOR OVER HALF OF THE SURGICAL
17 TIME SHE WAS BLEEDING, NO EXPLANATION AT ALL, AND YET THEY
18 WANT YOU TO BELIEVE THAT SHE WAS NOT VOLUME DEPLETED. SHE
19 HAD NO VOLUME PROBLEMS, SHE HAD NO HYPOVOLEMIA; THAT'S
20 SIMPLY NOT THE CASE.

21 THE PROOF THAT THAT'S NOT THE CASE IS IN THE
22 BLOOD GAS STUDY AT THE END OF THE PROCEDURE. REMEMBER, DR.
23 HAMILL-RUTH SAID THE REASON I KNOW SHE WAS HYPOVOLEMIC IS
24 BECAUSE OF THE HEMOGLOBIN COUNT FROM THE BLOOD GAS, IT WAS
25 7.6, AND IT HAD STARTED AT 10 EARLIER IN THE DAY; AND DR.

1 HAMILL-RUTH SAID SHE WAS MORE THAN HALF VOLUME DEPLETED,
2 AND SHE DIDN'T GET THAT BACK.

3 WHAT ARE THE OTHER PROBLEMS WITH THE BAD
4 RECORD? THEY DIDN'T RECORD THE ABNORMAL CLINICAL SIGNS
5 THAT THEY WERE SEEING, BOTH IN TERMS OF HEART RATE AND
6 PULSE AND BLOOD PRESSURES. REMEMBER WHEN DR. AGUIRRE COMES
7 IN THE ROOM AT 1:40 AND TAKES OVER THE CASE AT THAT TIME?
8 HE SAYS, YES, AT THAT TIME SHE HAD HEART RATES OF 120.

9 YOUR HONOR MAY I APPROACH THE EXHIBITS IN THE
10 CENTER, PLEASE?

11 THE COURT: YES, MA'AM.

12 MS. TATE: LOOKING AT EXHIBIT 41, THIS IS PAGE 2
13 OF THE ANESTHESIA RECORD; AND IF WE LOOK AT THAT TIME
14 FRAME, HERE IS 13:00, 1:00, 1:15, 1:30, AND THESE LINES, AS
15 WE'VE EXPLAINED, ARE FIVE MINUTE INCREMENTS; AND IF WE LOOK
16 AT 1:35, 1:40 AND BRING THE LINE DOWN, THEY HAVE RECORDED
17 HER HEART RATE AT 110, NOT 120; AND THAT'S NOT THE ONLY
18 EXAMPLE. WE COME ON OVER, AND WE HAVE ENTRIES THAT ARE
19 ALONG THE LINES, THEY'RE NOT A HUNDRED OR LOWER, THEY'RE
20 STILL TACHYCARDIAC, WE'VE GOT ENTRIES THAT ARE ABOVE 100;
21 AND DURING THESE TIME FRAMES FROM 1:40 OVER UNTIL 2:40, WE
22 HAVE TESTIMONY FROM MR. MARCUM AND FROM DR. AGUIRRE THAT
23 THESE HEART RATES ON TWO OCCASIONS WERE IN THE 140 RANGE,
24 130 TO 140, HE SAYS; AND AT ONE POINT OVER HERE WHERE MR.
25 HAYNES AND THE WITNESSES HAVE ADDED THE TWO RED DOTS, THEY

1 WERE ALMOST 150; AND THESE ARE NOT RECORDED PROPERLY BASED
2 ON THEIR OWN PHYSICIANS.

3 WHAT DID DR. AGUIRRE DO AT 1:40? HE GAVE A
4 BOLUS OF 300 CC'S; AND AS HE EXPLAINED IT, HE CONSIDERED
5 HYPOVOLEMIA PART OF HIS DIFFERENTIAL. HE KNEW IT WAS A
6 POSSIBILITY AT THAT POINT AND RECOGNIZED IT. WHAT DID HE
7 DO? HE DIDN'T ADJUST THE TOTAL INFUSION SPEED AND VOLUME
8 GOING INTO THAT ONE IV NEEDLE, HE GAVE A 300 CC BOLUS. HE
9 OPENED THE STOP COCK AND LET IT RUN IN, CLOSED IT; AND IT
10 GOES BACK TO THE PREVIOUS INFUSION SPEED. WHAT HE SHOULD
11 HAVE DONE ON THAT AND ON AT LEAST THREE OTHER OCCASIONS,
12 ACCORDING TO DR. HAMILL-RUTH, TO GET STABILITY WAS GIVE
13 MORE FLUID. HE NEVER MADE THE SIMPLE ADJUSTMENT THAT WOULD
14 HAVE TAKEN CARE OF STABILITY. HE ONLY TREATED, IN THE
15 WORDS OF DR. FERGUSON, TRANSIENTLY; AND DR. FERGUSON WHEN
16 ASKED, WHAT DO YOU MEAN BY TRANSIENTLY TREATED THE
17 HYPOVOLEMIA? HE SAID, WELL, INTERMITTENTLY BUT NEVER
18 FULLY. DR. AGUIRRE NEVER TREATED THIS PROBLEM FULLY.

19 IN ADDITION TO A BAD RECORD, AND THEY'VE
20 ADMITTED PORTIONS OF IT, WE CAN ONLY WONDER WHAT THE WORST
21 IS REALLY LIKE GIVEN THEIR ADMISSIONS OF PART OF WHAT
22 THEY'VE LEFT OUT, BUT WE'VE GOT A MISSING RECORD. WE'VE
23 GOT A MISSING RECORD IN AT LEAST THREE RESPECTS. FIRST,
24 DR. AGUIRRE'S NOTES. REMEMBER HIS TESTIMONY? HE SAID THAT
25 AFTER THE CARDIAC ARREST, AFTER ASHLEY'S DEATH, WITHIN

1 ABOUT 30 MINUTES I WENT AND SAT DOWN AND STARTED MAKING MY
2 OWN NARRATIVE NOTES ABOUT WHAT HAPPENED; AND I DID THAT
3 OVER A PERIOD OFF AND ON THROUGH THE NEXT FIVE OR SIX
4 HOURS. THOSE NOTES ARE NOT IN THE CHART. THERE'S NO
5 SUMMARY FROM DR. AGUIRRE A PART OF THIS OFFICIAL RECORD.
6 THERE'S NO SUMMARY IN THIS EVIDENCE.

7 WHAT HAPPENED TO HIS NOTES? HE TELLS US THAT HE
8 GAVE THEM TO THE HOSPITAL; AND HE WAS SUPPOSED TO TURN THEM
9 OVER, AND HE CLAIMS HE NO LONGER HAS A COPY. CAN YOU
10 IMAGINE A DOCTOR WITH A PATIENT THAT JUST DIED UNDER HIS
11 CARE NOT KEEPING A COPY OF HIS NARRATIVE VERSION OF WHAT
12 HAPPENED? CAN YOU IMAGINE THAT IT'S NOT IN HIS COMPUTER,
13 THAT IT'S NOT SOMEWHERE AVAILABLE TO HIM? WE CAN ONLY
14 INFER THAT WHATEVER WAS IN THOSE NOTES WOULD NOT HELP HIM
15 HERE BECAUSE I SUBMIT TO YOU IF THEY WOULD, THEY WOULD BE
16 HERE AND YOU WOULD HAVE GOTTEN TO READ THOSE NOTES.

17 BUT THERE WERE OTHER PAPERS, APPARENTLY. DR.
18 MCKAY IN THE TESTIMONY THAT WE READ TO YOU SAID THAT AT
19 SOME POINT DURING THIS TIME DR. MCKAY -- DR. AGUIRRE CAME
20 TO DR. MCKAY AND SAID THAT HE HAD LOST HIS NOTES AND SOME
21 OTHER PAPERS, BUT HE DIDN'T TELL DR. MCKAY WHAT HE MEANT BY
22 "OTHER PAPERS". NOW, DID HE MEAN -- AND THIS BRINGS ME TO
23 THE SECOND ITEM THAT'S MISSING -- DID HE MEAN MACHINE
24 TRACINGS FROM SOME OF THOSE MONITORS? WE DON'T KNOW THAT;
25 BUT WE DO KNOW THAT FROM THEIR TESTIMONY AND FROM THE

1 OPENING STATEMENT OF MS. MILLER, THOSE MACHINES ARE VERY
2 SOPHISTICATED AND AT ANY POINT IN TIME YOU CAN PUSH A
3 BUTTON AND GET A PRINTOUT FROM THE LAST HOUR, THE TOTAL,
4 WHATEVER IT IS, THE EKG, THE BLOOD PRESSURE, YOU CAN GET
5 THAT INFORMATION FROM THESE MACHINES. IT'S NOT IN THIS
6 RECORD. WHERE ARE THOSE TRACINGS? WHAT HAPPENED TO THE
7 RECORD THAT COULD HAVE BEEN MADE AND PERHAPS WAS MADE OF
8 WHAT HAPPENED TO ASHLEY'S LAST HOUR BEFORE THE CRASH? WE
9 DON'T KNOW THAT; BUT I SUBMIT TO YOU THAT IF IT WOULD HAVE
10 HELPED THEM, IT WOULD BE HERE AND YOU WOULD SEE IT.

11 THERE IS A MISSING TEE REPORT, IF ONE WAS EVER
12 MADE, AND THERE IS NO MENTION OF A TEE IN THIS MEDICAL
13 RECORD. THIS BLUE NOTEBOOK HERE ON THE END OF THE TABLE IS
14 PLAINTIFFS' EXHIBIT 1. THAT IS THE OFFICIAL MEDICAL RECORD
15 FOR ASHLEY ROUSE. THERE IS NO MENTION ANYWHERE IN THAT
16 MEDICAL CHART THAT ANYBODY BROUGHT AN ULTRASOUND INTO THE
17 OR AND DID AN ULTRASOUND, WHICH FOR THIS PROCEDURE IS
18 CALLED A TRANSESOPHOGEAL ECHOCARDIOGRAM; AND THEY
19 CONSIDERED THAT EXTREMELY IMPORTANT.

20 THEY DID THIS TEE, THEY SAY, FOR HELPING
21 RESUSCITATION AND FOR DIAGNOSIS PURPOSES. NOBODY WROTE A
22 REPORT. DR. BRASFIELD WROTE HIS DISCHARGE REPORT, DR. BURT
23 WROTE AN OPERATIVE REPORT, DR. MESSERSCHMIDT, MESSERSCHMIDT
24 WROTE HIS OPERATIVE REPORT. EVERYBODY'S WRITING REPORTS.
25 MR. GRAY WROTE A NARRATIVE AT THE END OF THE CASE. NOBODY

1 MENTIONED A TEE, AND I SUBMIT TO YOU THAT THEY HAD THE
2 VIDEO. THE VIDEO SHOWED AIR. THEY BELIEVED IT WAS ON THE
3 LEFT AT THAT POINT; AND, YES, IT WAS ON THE LEFT SIDE OF
4 THE HEART. THEY DIDN'T KNOW AT THAT POINT WHETHER IT WOULD
5 HELP THEM OR HURT THEM, AND I SUBMIT TO YOU THAT THAT'S WHY
6 IT'S NOT IN THAT RECORD; AND ONLY AFTER THE FACT HAVE THEY
7 BEEN ABLE TO SCRAMBLE AND DO MEDICAL RESEARCH AND COME UP
8 WITH A THEORY THAT EVEN THEIR OWN EXPERT DOESN'T BUY INTO
9 THAT THEY HOPE WILL HELP THEM.

10 BAD EQUIPMENT. AT LEAST THREE PROBLEMS WERE
11 ENCOUNTERED DURING THIS PROCEDURE WITH BAD EQUIPMENT; AND
12 YOU'VE HEARD THESE, I DON'T NEED TO GO THROUGH THEM IN ANY
13 DETAIL. BLAINE GRAY SAYS ON SEVERAL OCCASIONS, THE A-LINE
14 WAS NOT WORKING, THE A-LINE WAS NOT WORKING WELL, THE
15 A-LINE WAS NOT WORKING WELL ENOUGH TO GIVE HIM GOOD
16 READINGS AND HE CONVERTED TO CUFF PRESSURES; AND DR.
17 AGUIRRE ACKNOWLEDGES THAT WITH A CUFF TO GIVE YOU BLOOD
18 PRESSURES AND WITH HEART RATES IN THE 120 TO 140 RANGE,
19 THOSE CUFF PRESSURES ARE GOING TO BE SPURIOUS; AND THAT'S
20 NOT MY WORD, THAT'S WHAT DR. HAMILL-RUTH SAID; AND THAT'S
21 ALSO WHAT DR. MOORE, THEIR EXPERT FROM ALABAMA, SAID, THOSE
22 READINGS WITH HEART RATES THAT HIGH ARE GOING TO BE
23 SPURIOUS; AND THAT SIMPLY MEANS YOU CAN'T RELY ON THEM.
24 THEY'RE NOT RIGHT, YOU CAN'T ASSUME THEY'RE RIGHT, YOU'VE
25 GOT TO ASSUME YOU'VE GOT THE PROBLEM.

1 THE A-LINE DIDN'T WORK, THE CUFF DIDN'T WORK.
2 WAS THERE A SINGLE MENTION OF, LET'S GO GET ANOTHER UNIT;
3 LET'S HAVE A NURSE PUT ON A CUFF, A MANUAL CUFF, AND SEE IF
4 WE'VE GOT A PRESSURE? WE ARE TALKING ABOUT 30 TO 45
5 MINUTES HERE, NO ATTEMPT TO FIX THE PROBLEM. DR. AGUIRRE
6 SAYS, AT 2:00 I DID FLUSH THE A-LINE AND THEN IT STARTED
7 WORKING; AND THEN THE NURSE ANESTHETIST SAID, WELL, NO, IT
8 STOPPED AGAIN. AT LEAST ON TWO OCCASIONS IN THE NOTES, IT
9 STOPPED AGAIN. DID THE NURSE CALL DR. AGUIRRE BACK? DID
10 DR. AGUIRRE DO ANYTHING ELSE TO CHECK ON THAT WHEN HE CAME
11 BACK IN? HE GAVE ANOTHER BOLUS BECAUSE THERE WERE PROBLEMS
12 AGAIN, ANOTHER INSUFFICIENT BOLUS TO STABILIZE THIS
13 PATIENT; AND THEN AT A GIVEN POINT IN TIME HE SIMPLY SAID
14 TO THE NURSES, DEAL WITH IT, TALKING ABOUT THE PRESSURES
15 AND THE HIGH PULSE RATE, AND HE LEFT THE ROOM; AND DR.
16 MOORE ON THE WITNESS STAND, THEIR EXPERT FROM ALABAMA, WHEN
17 HE WAS ASKED, WHAT WOULD YOU DO WHEN YOU WERE CONFRONTED
18 WITH THESE PRESSURES AND THIS HEART RATE, HEART RATES IN
19 THE 130 TO 140 RANGE; HE SAYS, THIS WOMAN, THIS YOUNG GIRL
20 WAS IN SERIOUS MEDICAL TROUBLE. HE DIDN'T REMEMBER THAT
21 THAT WAS THE POINT WHEN DR. AGUIRRE WALKED OUT OF THE
22 ROOM.

23 SERIOUS MEDICAL TROUBLE, AND THEN THEY HAD ONE
24 IV. THEY HAD ONE 16 GAUGE IV IN THIS YOUNG LADY'S BODY TO
25 DO EVERYTHING THAT NEEDED TO BE DONE, THE CONTINUING

1 FLUIDS, THE MEDICATIONS. THE CELL SAVER HAD TO BE
2 PIGGYBACKED ONTO THIS IV TO GET IT IN; AND MARCUM, THE
3 FIRST NURSE, RECOGNIZED HE HAD A PROBLEM, AND HE ATTEMPTED
4 TO START A SECOND IV; AND THE RESULT WAS THAT HE COULDN'T
5 DO IT. A 14 YEAR OLD THAT'S SUPPOSED TO HAVE GOOD VEINS,
6 BIG VEINS, EASY TO GET INTO, GOOD VASCULAR SYSTEM, GOOD
7 VOLUME, HE COULDN'T DO IT. DID HE ASK AGUIRRE TO DO IT?
8 NO. DID HE ASK ANY OTHER DOCTOR TO DO DID? NO. DID HE
9 ASK ANY OTHER NURSE TO DO IT? NO; BUT THE FACT THAT HE
10 COULD NOT DO IT WAS INDICATIVE OF THE FACT THAT SHE ALREADY
11 HAD VOLUME DEPLETION PROBLEMS BECAUSE HER VEINS COULD NOT
12 BE GOTTEN INTO AT THAT POINT; AND DR. HAMILL-RUTH EXPLAINED
13 THAT WAS ANOTHER INDICATOR AND SHOULD HAVE BEEN A RED LIGHT
14 TO THEM THAT THIS CHILD WAS IN TROUBLE.

15 A BAD RECORD, SOME MISSING RECORDS, BAD
16 EQUIPMENT. LET ME LIST WHAT WE CONTEND AND WE BELIEVE THE
17 RECORD SHOWS IS DR. AGUIRRE'S NEGLIGENCE IN THIS
18 SITUATION. HE FAILED TO TREAT THE HYPOVOLEMIA TO ITS
19 STABLE STATE. HE GAVE SEVERAL BOLUSES AND LEFT WITHOUT
20 WAITING TO SEE IF HE HAD ACHIEVED THE APPROPRIATE RESULT.
21 HE NEVER CHANGED THE INFUSION RATE A SINGLE TIME, EVEN
22 THOUGH HE STILL HAD THE PROBLEMS OF THE ELEVATED PULSE AND
23 THE BLOOD PRESSURES GOING DOWN.

24 WHAT WAS, WHAT WAS HE SUPPOSED TO DO? WHAT
25 SHOULD HE HAVE DONE? DR. HAMILL-RUTH EXPLAINED THAT WHEN

1 YOU'VE GOT THIS PROBLEM, EVEN IF YOU DON'T KNOW ITS PRECISE
2 CAUSE, REALIZING IT CAN BE AN EMBOLISM AT THAT POINT, IT
3 CAN BE A PROGRESSIVE PROBLEM, YOU'RE SUPPOSED TO STOP THE
4 SURGERY, HAVE THE SURGEONS FLOOD THE OPERATIVE FIELD,
5 REINFLATE THE LUNG AND GIVE A HUNDRED PERCENT OXYGEN; AND
6 THEY DIDN'T DO THAT. THEY DID THAT 30 MINUTES TO 45
7 MINUTES TOO LATE. THEY DIDN'T DO IT WHEN THEY HAD THE
8 PROBLEM, WHEN THEY HADN'T NOTICED THE PROBLEM AND SHOULD
9 HAVE DONE IT.

10 BUT NOW WHAT IS THEIR EXCUSE? DR. AGUIRRE SAYS,
11 WELL, I EXPECTED THESE HIGHER PULSE RATES AND I EXPECTED
12 THIS BLOOD PRESSURE PROBLEM, THE BLOOD PRESSURE GOING DOWN,
13 BECAUSE SHE WAS ON LIGHT ANESTHESIA. LET'S EXAMINE THAT
14 EXCUSE FOR JUST A MINUTE; AND I'M SHOWING YOU PAGE 1 OF THE
15 ANESTHESIA RECORD, AND AT THE TOP OF THE PAGE 1 WHERE I'VE
16 MARKED IN YELLOW HIGHLIGHTER, THIS IS THE BEGINNING OF THE
17 SUFENTANIL DRIP, THE OTHER MEDICATIONS. THE LIDOCAINE WAS
18 ALREADY INFUSING; AND ALL ACROSS THIS GRAPH THERE'S NOT A
19 SINGLE BLOOD PRESSURE PROBLEM THAT WAS NOTED. THERE'S NOT
20 A SINGLE PULSE RATE THAT EVEN GETS TO 100 OR GOES OVER 100.
21 SHE'S NOT TACHYCARDIAC.

22 AND THEN ON PAGE 2 OF THE GRAPH I'VE MADE THE
23 SAME YELLOW LINE ACROSS THE TOP SHOWING THE POINT THAT THIS
24 MEDICATION WAS STOPPED, THE DRIP WAS STOPPED; AND AS YOU
25 CAN SEE, LONG BEFORE THAT SHE'S HAVING TACHYCARDIA. SHE'S

1 GOT PULSE RATES ABOVE 100; AND EVEN BEFORE THAT SHE'S GOT
2 PULSE RATES AS HIGH AS 120 AND 130 TO 140 AND 140 TO 150
3 THAT HAVE BEEN MARKED ON THIS CHART. IS THAT A VIABLE
4 EXCUSE FOR THE TACHYCARDIA? I DON'T THINK SO.

5 DR. HAMILL-RUTH EXPLAINS THAT IF THERE WAS GOING
6 TO BE A RESPONSE FROM THE LIGHT ANESTHESIA, IT WOULD NOT
7 HAVE BEEN A DROPPING BLOOD PRESSURE. THE BLOOD PRESSURE
8 WOULD HAVE GONE UP WITH THE HEART RATE GOING UP, SO IT'S
9 NOT AN APPROPRIATE EXCUSE; AND EVEN DR. MCKAY, REMEMBER
10 THIS MORNING, HE TESTIFIED, MY GOAL, EVEN WITH LIGHT
11 ANESTHESIA, WAS TO KEEP HER HEART RATE BELOW 100; SO THEY
12 KNEW THE TACHYCARDIA WAS A PROBLEM.

13 HE FAILED TO PROVIDE PROPER WORKING EQUIPMENT IN
14 THE FACE OF AT LEAST TWO MALFUNCTIONS, AND I'VE LISTED
15 THOSE AGAIN; AND HE FAILED TO STAY WITH ASHLEY UNTIL SHE
16 WAS STABLE.

17 WHAT ABOUT THE NURSES' NEGLIGENCE? THEY'RE
18 CHARGED WITH THE RESPONSIBILITY TO RECORD THE CLINICAL
19 SIGNS DURING THIS PROCEDURE, AND THEY WERE NEGLIGENT IN AT
20 LEAST SIX DIFFERENT WAYS. THEY DIDN'T RECORD THE VITAL
21 SIGNS. THEY DIDN'T MONITOR HER APPROPRIATELY TO SEE
22 EXACTLY WHAT WAS HAPPENING TO HER. THEY DIDN'T REPORT THE
23 BAD SIGNS TO THE DOCTOR. HE ONLY GOT THAT NEWS ON TWO
24 OCCASIONS WHEN HE CAME IN, AND THEY HAD NOT CALLED HIM
25 BACK. THE NURSES DID NOT REPORT AND REPLACE THE EQUIPMENT

1 WHEN IT WAS MALFUNCTIONING OR GET IT REPAIRED OR GET HELP
2 WITH IT OR GET SUBSTITUTES, AND THEY DID NOT TELL DR.
3 AGUIRRE WHEN THE FLUIDS HE HAD GIVEN DID NOT SUSTAIN STABLE
4 SIGNS. THEY ON THEIR OWN COULD ALSO HAVE GIVEN FLUID
5 THERAPY WHEN IT WAS NEEDED, AND THEY DIDN'T DO THAT.

6 INSTEAD, WHAT WE HAVE IS A PICTURE OF A 14 YEAR
7 OLD WITH TACHYCARDIA FOR AN ALMOST CONTINUOUS PERIOD OF TWO
8 HOURS. SHE GOES WAY UP TO 140 AND 150, AND THEN AT 2:50
9 SHE FINALLY CRASHES; THAT WAS NOT SUDDEN, THAT WAS NOT
10 UNEXPECTED, THAT WAS PROGRESSIVE. IT WAS GRADUAL, AND IT
11 WAS ABOUT AN HOUR AND A HALF TIME PERIOD, AND THEY DIDN'T
12 DEAL WITH IT.

13 I NEED TO TALK TO YOU FOR JUST A FEW MINUTES
14 ABOUT WHAT I WILL CHARACTERIZE AS SOME VERY SERIOUS,
15 SERIOUS PROBLEMS WITH THE CREDIBILITY OF THE DEFENDANTS'
16 CASE, CREDIBILITY PROBLEMS OF THEIR EVIDENCE. REMEMBER
17 THAT DR. BRASFIELD CAME IN HERE AND SAID, THE LEADING
18 DIAGNOSIS WAS ALWAYS VENOUS AIR EMBOLISM. NOW, THEY
19 BROUGHT AN EXPERT FROM ALABAMA WHO SAID, NO WAY. THIS WAS
20 NOT A MASSIVE VENOUS AIR EMBOLISM; AND WHY? HE HAD A
21 SPECIFIC REASON, AN OBJECTIVE REASON THAT WE CAN SEE FROM
22 THE PATHOLOGIST'S REPORT AND FROM THE TEE FILM. IF THIS
23 HAD BEEN A MASSIVE VENOUS AIR EMBOLISM, ACCORDING TO THEIR
24 OWN EXPERT, HER RIGHT HEART WOULD HAVE BEEN DAMAGED. IT
25 WOULD HAVE BEEN DILATED. WE WOULD HAVE BEEN ABLE TO SEE

1 THAT ON THE TEE; AND DR. KAUL FROM THE UNIVERSITY OF
2 VIRGINIA, THE ONLY CARDIOLOGIST TO TESTIFY IN THIS CASE,
3 SAID THE RIGHT HEART IS NORMAL. THERE'S NO AIR. THERE'S
4 NO DILATATION. THERE'S NO EVIDENCE THERE OF A MASSIVE
5 VENOUS AIR EMBOLISM. IT JUST DOESN'T EXIST.

6 THE PATHOLOGIST'S REPORT SAYS THE ONLY EMBOLI
7 THAT HE FOUND EVIDENCE OF WAS A TINY BONE MARROW EMBOLI
8 THAT WAS -- COULD BE SEEN IN HIS EXAMINATION ONLY UNDER THE
9 MICROSCOPE; AND THAT IS CONSISTENT WITH DR. HAMILL-RUTH'S
10 EXPLANATION. SHE SAID THIS CHILD WAS HYPOVOLEMIC AND EVEN
11 A TINY BONE MARROW EMBOLI SUCH AS THIS COULD HAVE
12 EXASPERATED HER CONDITION TO THE POINT AS SHE BEGAN THIS
13 SPIRAL; THAT IT WAS PROGRESSIVE, BUT IT WAS NOT SUDDEN. IF
14 THAT WERE THE LEADING DIAGNOSIS, YOU'D THINK THEY WOULD
15 HAVE FOUND AT LEAST ONE EXPERT NOT FROM BRISTOL, NOT
16 ASSOCIATED WITH THE HOSPITAL AND NOT IN DR. AGUIERRE'S
17 GROUP TO TELL YOU THAT; AND THEY DIDN'T DO IT.

18 THE TEE FINDINGS WERE NOT COMMUNICATED TO THE
19 PATHOLOGIST. ACCORDING TO THE PATHOLOGIST.

20 YOUR HONOR, MAY I APPROACH THE EXHIBITS AGAIN,
21 PLEASE?

22 THE COURT: YES, YOU CAN.

23 MS. TATE: THIS EXHIBIT 4E, LADIES AND
24 GENTLEMEN, IS THE PATHOLOGIC REPORT OF DR. JERE FERGUSON,
25 WHO WAS ONE OF THE FIRST DOCTORS TO TESTIFY; AND HE SAYS

1 SOMETIME FOLLOWING THE POST-MORTEM EXAMINATION THERE WAS
2 COMMUNICATION REGARDING A FINDING OF AIR IN THE LEFT SIDE
3 OF THE HEART BY ECHOCARDIOGRAPHY DURING RESUSCITATION
4 ATTEMPTS. DR. FERGUSON, AS THE SAYING GOES, HAD NO DOG IN
5 THIS FIGHT. DR. FERGUSON HAD NO REASON TO MISLEAD US,
6 MISLEAD THE RECORD, MISLEAD YOU, MISLEAD ANYBODY ABOUT WHAT
7 HE WAS TOLD AND WHEN HE WAS TOLD; AND HE SAID THEY CAME TO
8 THE AUTOPSY, THE TWO ANESTHESIOLOGISTS, AND EVEN DR. BURT,
9 WHO WAS ONE OF THE NEUROSURGEONS, BUT NOBODY TOLD HIM THEY
10 HAD DONE A TEE AND THAT THEY HAD SEEN AIR IN THE LEFT SIDE
11 OF THE HEART. WHY? THEIR LEADING DIAGNOSIS WAS NOT
12 COMMUNICATED TO THE PATHOLOGIST, WHOSE JOB IT WAS TO FIND A
13 CAUSE OF DEATH, IF ONE COULD BE FOUND. THE LEADING
14 DIAGNOSIS, ACCORDING TO BRASFIELD, WAS NOT COMMUNICATED TO
15 THE PARENTS. THIS LEADING DIAGNOSIS WAS KEPT UNDER WRAPS,
16 IF YOU WILL, UNTIL THEY FIGURED OUT WHAT THE TEE MEANT; AND
17 THEN THEY DID THE RESEARCH THEY TALKED ABOUT AND THEN THEY
18 LOBBIED THE PATHOLOGIST. THEY WENT BACK TO DR. FERGUSON TO
19 TRY TO SHOW HIM THAT THIS WAS A POSSIBLE EXPLANATION; AND
20 HE SAYS, I CAN'T RULE IT OUT BECAUSE OF THE PROGRESS OF THE
21 AUTOPSY, AND I CAN'T RULE OUT HYPOVOLEMIA; BUT HE ALSO
22 WRITES IN HIS CLINICAL SUMMARY, A SUMMARY OF THE EVENTS
23 THAT TOOK PLACE JUST BEFORE HER DEATH, AND HE SAID, SHE
24 TRANSIENTLY RESPONDED TO SOME FLUIDS BUT NEVER FULLY
25 RESPONDED.

1 SO DR. MOORE, THEIR EXPERT, SAYS, THIS WAS NOT A
2 MASSIVE VENOUS AIR EMBOLISM. HE SAYS, IN MY OPINION IT WAS
3 NOT A PARADOXICAL VENOUS AIR EMBOLISM BECAUSE THAT'S
4 INCREDIBLY, INCREDIBLY RARE; AND YET, DR. MOORE GAVE AN
5 OPINION TO YOU AND THEN HE SAID, MY OPINION ABOUT THE
6 EXISTENCE OF HYPOVOLEMIA IS BASED ON THE GRAPH PORTION OF
7 THIS ANESTHESIA CHART. IN OTHER WORDS, HE SAYS, I CHOOSE
8 TO BELIEVE WHAT IS RECORDED RIGHT HERE RATHER THAN
9 BELIEVING THE NARRATIVE HERE FROM BLAINE GRAY. HE SAYS,
10 THEY'RE SO DIFFERENT, I CANNOT RECONCILE THE TWO; AND HE
11 SAYS, I'M GOING TO CHOOSE TO BELIEVE WHAT THEY PUT DOWN ON
12 THIS PIECE OF PAPER, NOT WHAT THEY SAID IN THEIR
13 DEPOSITIONS AND NOT WHAT BLAINE GRAY WRITES IN A NARRATIVE
14 ANESTHESIA SUMMARY; AND HE THEN ADMITS THAT IF IN FACT THE
15 NARRATIVE AND THE DEPOSITIONS ARE TRUE, ASHLEY WAS IN
16 SERIOUS MEDICAL TROUBLE AT 2:15.

17 HE ALSO CONFIRMS THAT THERE ARE OTHER SOURCES
18 FOR THE AIR IN THE LEFT HEART, AT LEAST TWO: INJECTION
19 DURING RESUSCITATION INTO THE HEART AND A POSSIBLE BARREL
20 TRAUMA WHEN THEY REINFLATED THE LUNG, BOTH ARE POSSIBLE
21 EXPLANATIONS FOR AIR IN THE HEART; BUT IT WAS NOT, HE
22 CONTENTS, AN AIR EMBOLISM BECAUSE THERE WAS NO DAMAGE
23 ANYWHERE IN THE RIGHT HEART AND NO EVIDENCE OF EMBOLISM IN
24 THE RIGHT HEART; AND SO THE QUESTION REMAINS THEN, WHICH
25 WITNESS ARE THEY ASKING YOU TO BELIEVE, THE ONES THAT SAY

1 IT'S AN AIR EMBOLISM OR THE ONE THAT SAYS IT'S NOT AN AIR
2 EMBOLISM? THE DOCTOR HIMSELF, DR. AGUIRRE HIMSELF WHO
3 SAYS, YES, I SUSPECTED HYPOVOLEMIA, I TREATED FOR
4 HYPOVOLEMIA, BUT APPARENTLY HE DIDN'T TREAT APPROPRIATELY;
5 OR THE DOCTOR FROM ALABAMA WHO SAID, NO, IT WASN'T. I
6 SUBMIT TO YOU THAT THE ONLY CREDIBLE BELIEVABLE ASSESSMENT
7 IS FROM DR. HAMILL-RUTH WHO SAYS THIS CHILD WAS IN TROUBLE
8 EARLY FROM THIS RECORD, FROM THESE CLINICAL SIGNS.

9 NOW, I THINK THERE'S A REASON THAT THE HEART
10 RATES AND THE BLOOD PRESSURES ARE FRONT AND CENTER IN AN
11 ANESTHESIA CHART, AND I THINK THAT'S BECAUSE THOSE TWO
12 INDICATORS ARE OF PRIMARY IMPORTANCE; BUT THE DEFENSE HAVE
13 SUGGESTED REPEATEDLY THE END TIDAL CO2 WAS OKAY; THE SEP
14 WAS OKAY; THE EKG WAS OKAY, WE THINK, AT LEAST UNTIL THE
15 HEART RATE GOT UP TO THE 120 TO 140 AREA, AND THEN THEY
16 STOP RECORDING THE EKG FINDINGS; BUT WHAT DO THEY HAVE TO
17 DO WHEN THEY'RE DEALING WITH A PATIENT.

18 DR. HAMILL-RUTH SAYS, YOU CANNOT IGNORE TWO
19 ABNORMAL FACTORS SIMPLY BECAUSE THE OTHER SIX OUT OF EIGHT
20 APPEAR TO BE NORMAL. YOU HAVE TO ASSUME THIS PATIENT IS IN
21 TROUBLE FIRST AND TREAT THIS PATIENT AND THEN WORK ON
22 MECHANICAL PROBLEMS OR OTHER PROBLEMS, AND THEY DIDN'T DO
23 THAT. THEY DIDN'T DO THAT.

24 AND WHERE DOES THAT LEAVE US? AND THAT BRINGS
25 ME TO THE NEXT SUBJECT I HAVE TO TALK TO YOU ABOUT, AND

1 THIS IS SOMETHING THAT THE JUDGE WILL INSTRUCT YOU ABOUT,
2 AND THIS IS AN AREA OF DAMAGES. WE CAN'T PUT DOCTORS OR
3 NURSES OR HEALTH CARE PROVIDERS IN JAIL IF THEY'RE
4 NEGLIGENT. WE CAN'T PUNISH THEM IN A CRIMINAL SYSTEM. OUR
5 CIVIL SYSTEM IS THE ONLY REMEDY FOR MEDICAL NEGLIGENCE OF
6 THIS SORT, AND THE ONLY REMEDY FOR CIVIL DAMAGES IS MONEY;
7 SO THAT BRINGS US TO THE QUESTION WHAT IS THE LIFE --

8 MS. MILLER: YOUR HONOR, WE OBJECT TO THIS
9 ESTIMATE. THE PLAINTIFFS SUBMITTED A LIST OF DAMAGES IN
10 THE PRETRIAL PROCEEDING, LIKE WE HAD TO --

11 THE COURT: LET'S JUST LET IT GO ON. WHAT
12 EITHER SIDE SAID IS NOT EVIDENCE. YOU JUST TAKE IT AND
13 LISTEN TO IT AND GIVE IT SUCH WEIGHT AS IT DESERVES. I
14 DON'T KNOW WHETHER IT'S RIGHT OR WRONG, BUT YOU DECIDE
15 WHETHER IT'S RIGHT OR WRONG UP TO THE POINT IN THIS CASE;
16 BUT OVERRULED, I'M GOING TO LET HER MAKE HER STATEMENT AND
17 YOU CAN MAKE YOURS.

18 MS. TATE: AS I WAS SAYING, THE COURT WILL
19 INSTRUCT YOU ON WHAT THE FACTORS ARE THAT MUST GO INTO AN
20 ASSESSMENT OF DAMAGES. NOW, THE QUESTION HERE IS WHAT IS
21 THE LIFE OF THIS 14 YEAR OLD WORTH? YOU'LL BE INSTRUCTED
22 THAT YOU SHOULD INCLUDE A REASONABLE NUMBER FOR FUNERAL
23 EXPENSES; AND THE ONLY EVIDENCE OF THAT WE'VE PLACED HERE,
24 IT WAS \$6,730 ROUGHLY; AND THEN THE COURT WILL TELL YOU
25 THAT YOU MUST CONSIDER SOMETHING WE CALL PECUNIARY VALUE

1 FOR THIS PERSON'S LIFE. NOW, THAT INCLUDES A NUMBER OF
2 THINGS, AND YOU CONSIDER A NUMBER OF THINGS; BUT ONE OF THE
3 THINGS THAT YOU'RE TO CONSIDER IS THE LOST EARNING
4 CAPACITY.

5 NOW, WHAT I'M GOING TO TO DO HERE IS GIVE YOU
6 ONLY ONE ESTIMATE OF LOST EARNINGS, AND THIS ONE ESTIMATE
7 IS BASED ON AN ASSUMPTION OF MINIMUM WAGE. IF WE WERE TO
8 ASSUME THAT THIS YOUNG LADY WOULD GO TO WORK, HAVE A
9 PRODUCTIVE LIFE, AT THIS POINT IN TIME SHE WOULD BE EARNING
10 \$5.15 PER HOUR. THE EVIDENCE IS THAT HER LIFE EXPECTANCY
11 WAS 63.04 YEARS. NOW, I'M NOT GOING TO ASK YOU, AND
12 WOULDN'T ASK YOU, TO ASSUME THAT SHE'S GOING TO WORK ALL 63
13 YEARS; BUT LET'S ASSUME FOR THE PURPOSE OF THE ESTIMATE
14 THAT SHE WOULD WORK 50 OF THOSE 63 YEARS. I HAVE
15 MULTIPLIED 40 HOURS A WEEK BY THE MINIMUM WAGE, AND I HAVE
16 MULTIPLIED THAT TOTAL PER WEEK BY 50 WEEKS IN A YEAR, NOT
17 52, AND THAT COMES TO \$10,300 PER YEAR, ASSUMING SHE COULD
18 ONLY BE MAKING MINIMUM WAGE; AND TIMES 50 YEARS, THAT GIVES
19 US A TOTAL OF \$515,000. NOW, THAT'S ONLY ONE ESTIMATE, AND
20 THAT'S A MINIMUM WAGE ESTIMATE.

21 REMEMBER, I TOLD YOU THAT ASHLEY HAD A PLAN.
22 THIS YOUNG LADY WAS ALREADY IN TECHNICAL SCHOOL. SHE WAS
23 ATTENDING HOLSTON HIGH SCHOOL AND THE NEV CENTER TECHNICAL
24 SCHOOL THAT'S LOCATED IN ABINGDON, VIRGINIA; AND IN THAT
25 TECHNICAL SCHOOL SHE WAS TAKING THE COURSES NECESSARY TO

1 BECOME A HAIRDRESSER; AND ACCORDING TO WHAT SHE HAD ALREADY
2 DISCUSSED WITH HER PARENTS AND HER GRANDFATHER, THAT'S WHAT
3 SHE WANTED TO DO; AND SHE HAD EVEN DISCUSSED PLANS TO HAVE
4 HER OWN SHOP AS A HAIRDRESSER. NOW, YOU KNOW BETTER THAN I
5 WHAT A HAIR CUT COSTS, AND YOU KNOW BETTER THAN I HOW LONG
6 IT TAKES TO GET A HAIR CUT; BUT I WOULD THINK A REASONABLE
7 ESTIMATE WOULD BE \$10 A CUT, PERHAPS MORE FOR WOMEN, MORE
8 FOR WOMEN'S SERVICES; AND I THINK IT'S REASONABLE THAT A
9 HAIRDRESSER, A SKILLED HAIRDRESSER, A TRAINED HAIRDRESSER,
10 CAN DO A HAIR CUT IN 15 MINUTES; SO PERHAPS -- AND AS THE
11 COURT INSTRUCTION WILL READ, YOU'RE TO LOOK AT THE MOST
12 OPTIMISTIC SCENARIO AND THE MOST PESSIMISTIC IN ARRIVING AT
13 A DAMAGE NUMBER; AND IF WE LOOK AT AN OPTIMISTIC SCENARIO,
14 IT'S POSSIBLE THAT SHE WOULD BE MAKING \$40 AN HOUR RATHER
15 THAN \$5.15 AN HOUR; AND IF THAT NUMBER IS MULTIPLIED OUT
16 OVER THE LIFETIME AND THE WEEKS THAT ARE IN THIS FORMULA
17 FOR MINIMUM WAGE, WE WOULD BE TALKING ABOUT LIFETIME
18 EARNINGS OF SOMETHING MUCH GREATER THAN \$515,000, OR
19 BETWEEN \$515,000 AND TO \$4,000,000, IF IT WERE IN FACT
20 SOMETHING CLOSER TO \$40 AN HOUR; BUT THOSE ARE YOUR
21 DECISIONS TO MAKE. WHAT COULD WE EXPECT THIS YOUNG WOMAN
22 TO BE EARNING?

23 BUT NOW RECALL ALSO THAT ASHLEY WAS A WRITER,
24 SHE WROTE POETRY. SHE WAS A GOOD STUDENT. HER MOTHER SAID
25 SHE GOT B'S IN SCHOOL. NOW, HER MOTHER SAID THAT'S

1 AVERAGE. I THINK A B STUDENT IS ABOVE AVERAGE; BUT SHE GOT
2 B'S IS WHAT THE EVIDENCE IS, SO SHE WAS A GOOD STUDENT.
3 SHE WAS A LEADER AMONG HER FRIENDS. SHE WAS AN ALL STAR
4 SOFTBALL PLAYER, SHE WAS A BASKETBALL PLAYER. FOR HER
5 SIZE, THAT'S UNDERSTANDABLE. SHE WAS A VOLLEY BALL
6 PLAYER. SHE WAS A PARTICIPANT IN LIFE. SHE DIDN'T SIT ON
7 THE SIDE LINES; AND SHE WAS AN ALL STAR IN SOFTBALL AND SHE
8 WAS A COCAPTAIN OF THE CHEERLEADING SQUAD AND SHE WROTE;
9 AND IF YOU WERE TO CONSIDER THE MOST OPTIMISTIC SCENARIO
10 FOR HER, YOU KNOW, MAYBE SHE WOULD BE ON THE, THE NATIONAL
11 WORLD CUP SOFTBALL TEAM OR THE OLYMPIC TEAM. I MEAN, WE
12 ALL HEARD AND SAW OVER THE WEEKEND ABOUT THE LARGEST
13 ATTENDED WOMEN'S SPORTS EVENT IN HISTORY, THE WORLD CUP
14 SOCCER GAME. ASHLEY WAS A SKILLED ATHLETE AND VERY
15 ACTIVE. SHE WAS ALSO A WRITER. MAYBE SHE WOULD HAVE BEEN
16 A PUBLISHED POET.

17 IN CONSIDERING THE MOST OPTIMISTIC OUTCOME FOR
18 ASHLEY, MAYBE SHE WOULD HAVE WRITTEN ABOUT LIFE AND LOVE
19 AND NATURE. MAYBE SHE WOULD HAVE WRITTEN SOMETHING ABOUT
20 THE MEANING OF LOVE. MAYBE SHE WOULD HAVE PUBLISHED
21 SOMETHING ABOUT WHAT LOVE IS, WHAT LIFE IS. SOMEONE WHO
22 MAKES YOU FEEL GOOD ABOUT LIVING, WHO BRINGS OUT THE BEST
23 IN YOU, WHO IS JOYFUL AND GIVING. THIS IS THE MEANING OF
24 LOVE. OR SOMEWHERE THAT YOU FEEL LIKE YOU'VE BEEN FOREVER,
25 A PLACE WHERE YOU'RE GROWING AND LEARNING TOGETHER. THIS

1 IS THE MEANING OF LOVE. ASHLEY'S WORDS, WHICH THOSE WERE,
2 MAY HAVE BEEN PUBLISHED, WE DON'T KNOW.

3 BUT WE DO KNOW THAT IF WE WERE TO LOOK AT THE
4 HOLSTON HIGHSCHOOL YEARBOOK FOR 1997 THAT'S IN FRONT OF ME
5 ON MY COUNSEL TABLE, IF WE WERE TO GO TO THE YEARBOOK, WE
6 WOULD NOT FIND ASHLEY'S PICTURE WITH THE SOFTBALL TEAM, WE
7 WOULD NOT FIND ASHLEY'S PICTURE WITH THE BASKETBALL TEAM,
8 WE WOULD NOT FIND ASHLEY'S PICTURE WITH THE VOLLEY BALL
9 TEAM OR WITH THE CHEERLEADERS BECAUSE THEY DO THOSE THINGS
10 IN THE SPRING, AND SHE DIED IN JANUARY OF 1997. WE WOULD
11 FIND A FULL PAGE MEMORIAL TO HER MEMORY. WE WOULD FIND
12 THAT HER CLASSMATES, AS THEY DID BY ELECTING HER COCAPTAIN
13 OF THE CHEERLEADERS, RECOGNIZED HER AS A LEADER AND
14 RECOGNIZED HER POPULARITY.

15 NOW, I HAVE TO MENTION, AS WE ALL DISCOVERED
16 BECAUSE OF THIS CASE, THAT ASHLEY WAS FOUND ON AUTOPSY TO
17 BE EIGHT WEEKS PREGNANT. NOW, I DON'T KNOW WHAT WOULD HAVE
18 COME OF THAT. WE CAN'T KNOW WHETHER SHE WOULD HAVE
19 PHYSICALLY CARRIED, BEEN ABLE TO CARRY A PREGNANCY TO TERM.
20 WE DON'T KNOW IF SHE WOULD HAVE GIVEN A CHILD UP FOR
21 ADOPTION. WE DON'T KNOW IF SHE WOULD HAVE KEPT THAT CHILD
22 AND HAVE BEEN ITS MOTHER. EVEN AT A YOUNG AGE, WE KNOW
23 ASHLEY WAS A CARETAKER. WE KNOW SHE TOOK CARE OF HER BABY
24 SISTER, TONYA. WE KNOW SHE HELPED AROUND THE HOUSE; AND
25 NOW WE HAVE TO CONSIDER WHAT, WHAT IS THIS LIFE WORTH?

1 AND THERE'S SOMETHING ELSE IN THE INSTRUCTIONS
2 ON DAMAGES THAT THE JUDGE WILL MENTION TO YOU AND TELL YOU
3 TO CONSIDER, AND THAT IS SOMETHING WE CALL EXPECTANCY OF
4 LIFE. ASHLEY HAD A RIGHT TO LIFE. SHE HAD A RIGHT TO LIVE
5 IT, TO ENJOY IT, TO HAVE HER FRIENDS, TO BE A MOTHER, TO BE
6 A WIFE, TO BE A FRIEND; THAT WAS HER RIGHT. SHE HAD A
7 RIGHT TO GO THROUGH THE GOOD EXPERIENCES AND THE BAD. THAT
8 LIFE WAS CUT SHORT BECAUSE OF THE NEGLIGENCE OF DR. AGUIRRE
9 AND TWO NURSES, JACK MARCUM AND BLAINE GRAY. THEY WERE
10 NEGLIGENT, AND THAT NEGLIGENCE LOST THIS LIFE; AND IT WILL
11 BE UP TO YOU TO SAY WHAT WAS THAT LIFE WORTH, AND IT WILL
12 BE UP TO YOU TO SAY THIS KIND OF MEDICAL CARE IS NOT --

13 MS. MILLER: YOUR HONOR, I'M GOING TO OBJECT.
14 AGAIN, EXPECTANCY OF LIFE IS NOT AN ELEMENT OF DAMAGES.
15 IT'S NOT IN YOUR CHARGE.

16 THE COURT: MS. MILLER, I DON'T LET ANYBODY
17 OBJECT -- OVERRULED, AND DON'T INTERRUPT HER ANYMORE; AND
18 AT THE END OF THE DAY IF YOU WANT TO BRING SOMETHING ABOUT
19 IT, DO IT. I'M NOT GOING TO LET HER INTERRUPT YOU EITHER
20 WHEN YOU'RE GOING. SAME RULE FOR EVERYBODY. YOU MAY
21 PROCEED; AND YOU CAN TELL THE JURY THAT SHE DOESN'T KNOW
22 WHAT SHE'S TALKING ABOUT AND YOU DID, AND PICK THAT AND
23 CHOOSE; SO GO AHEAD.

24 MS. TATE: IT WILL BE UP TO YOU TO SAY WHAT THIS
25 LIFE WAS WORTH; AND IN THE MEMORIAL THAT THE CLASS GAVE TO

1 ASHLEY THEY SIMPLY SAID, NOW SHE'S FREE, NOW SHE CAN FLY;
2 AND IT WILL BE UP TO YOU, AND WE URGE YOU TO SAY BY YOUR
3 VERDICT THAT THIS LEVEL OF MEDICAL CARE IS NEGLIGENT AND
4 IT'S NOT ACCEPTABLE IN OUR COMMUNITY. THANK YOU.
5 I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM
6 THE RECORD OF PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

7
8 *Karen J. Culbert*
9 SIGNATURE OF COURT REPORTER

7/29/99
DATE

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25