

1 SANTA ANA, CALIFORNIA - MONDAY, JULY 22, 2013

2 BEFORE THE HONORABLE JAMES J. DI CESARE

3 DEPARTMENT C18

4 MORNING SESSION

5 * * * * *

6 (THE FOLLOWING PROCEEDINGS WERE HAD IN OPEN COURT IN
7 THE PRESENCE OF THE JURY:)

8 THE COURT ATTENDANT: COME TO ORDER. COURT IS
9 NOW IN SESSION.

10 THE COURT: MR. JACKSON, PLEASE ADDRESS THE
11 JURY.

12 MR. JACKSON: THANK YOU, YOUR HONOR.

13 LADIES AND GENTLEMEN OF THE JURY, THANK YOU FOR
14 SERVING THESE PAST TWO WEEKS. I WANT TO TALK TO YOU
15 ABOUT THE FACTS OF THIS CASE. I WANT TO TALK TO YOU
16 ABOUT THE EVIDENCE IN THIS CASE. BUT I ALSO WANT TO
17 SHARE WITH YOU WHAT I THINK THIS CASE HAS BEEN ABOUT OVER
18 THE LAST TWO WEEKS.

19 AND I THINK WHAT YOU'VE SEEN IS SOMETHING THAT I
20 CALL PRIVATE AMBULANCE RUSSIAN ROULETTE. YOU HAVE A
21 COMPANY AND DEFENDANTS WHERE THEY KNEW THERE WAS A TIME
22 WHEN THE SOFT RESTRAINTS WOULD NOT WORK TRANSPORTING A
23 PATIENT. THEY KEPT THEIR FINGERS CROSSED EVERY TIME THEY
24 USED THESE SOFT RESTRAINTS, HOPE THAT A BULLET WOULDN'T
25 KILL SOMEONE. AND UNFORTUNATELY AND TRAGICALLY THAT IS
26 EXACTLY WHAT HAPPENED. AND THAT IS WHY WE'RE HERE TODAY.

1 DURING THE COURSE OF THIS CASE WE TALKED ABOUT
2 TRAINING. WE TALKED ABOUT WHAT THE AMBULANCE COMPANY,
3 WHAT PACIFIC AMBULANCE DID OR DIDN'T DO WHEN IT CAME TO
4 TRAINING.

5 THIS IS EVIDENCE ITEM NUMBER 11, IT'S GOING TO
6 COME INTO EVIDENCE. IT'S IN EVIDENCE. AND I WOULD LIKE
7 TO SHARE WITH YOU THE STORY FOUND AT THE BOTTOM OF THIS
8 TRAINING BULLETIN. THIS TRAINING BULLETIN IS ONE OF TWO
9 PIECES OF PAPER THEY USE TO TRAIN EMPLOYEES ON 5150S.
10 WE'RE NOT TALKING FIVE OR SIX HUNDRED PAGES OF DOCUMENTS,
11 WE'RE TALKING ABOUT BULLETINS THAT CAN BE CHANGED,
12 MODIFIED, UPDATED ANY TIME THEY WANT TO EASILY
13 ACCOMMODATE THE SAFETY OF A PATIENT.

14 STORIES FROM THE FIELD, THERE IS A REASON WHY
15 THIS LANGUAGE IS DOWN HERE, IT'S NOT BEING INTRODUCED
16 INTO EVIDENCE TO PROVE THAT THIS CASE ACTUALLY HAPPENED.
17 THIS IS BEING USED TO TEACH EMTS EXACTLY HOW DANGEROUS IT
18 CAN BE TO TRANSPORT A 5150 PATIENT IN A GROSSLY NEGLIGENT
19 FASHION. IT'S SO DANGEROUS THAT IT CAN RESULT IN DEATH.

20 I THINK IT'S IMPORTANT THAT WE LOOK AT WHAT
21 STORIES FROM THE FIELD SAYS. I THINK IT'S SO IMPORTANT I
22 WANT TO READ IT TO YOU ONE MORE TIME.

23 "AUTHORITIES STILL DO NOT KNOW WHY A
24 36-YEAR-OLD NURSE JUMPED TO HER DEATH FROM A
25 MOVING AMBULANCE. MELISSA WATKINS WAS BEING
26 TRANSPORTED AS A PATIENT FROM PARKER HOSPITAL TO

1 ANOTHER HOSPITAL WHEN SHE JUMPED OUT THE BACK OF
2 THE AMBULANCE, SLAMMED ONTO THE PAVEMENT AND
3 ROLLED TO THE SIDE OF THE HIGHWAY. OTHER
4 VEHICLES BEHIND THE AMBULANCE WERE ABLE TO AVOID
5 HITTING HER. SHE DIED SUNDAY AFTERNOON FROM HER
6 INJURIES. AN EMERGENCY MEDICAL TECHNICIAN AND
7 PARAMEDIC WITH ACTION CARE WERE BOTH ON BOARD
8 THE AMBULANCE WHEN SHE JUMPED, AUTHORITIES SAID.
9 THEY WERE BOTH SHAKEN BY WHAT THEY SAW AND WERE
10 GIVEN TRAUMA COUNSELING."

11 NOW, HERE IS THE IMPORTANT PART,

12 "BOTH THE EMT AND PARAMEDIC ARE BEING
13 INVESTIGATED FOR PATIENT NEGLIGENCE AND COULD
14 FACE CRIMINAL CHARGES. ALL PATIENTS THAT HAVE
15 BEEN PLACED ON A 5150 SHOULD BE CONSIDERED A
16 DANGER TO THEMSELVES AND OTHERS. RESTRAIN ALL
17 PATIENTS."

18 THIS IS THE DEFENDANTS' TRAINING BULLETIN. THEY
19 ARE EMPHASIZING TO THEIR EMPLOYEES HOW IMPORTANT IT IS TO
20 SAFELY TRANSPORT A COMPROMISED PATIENT. THAT IS WHAT
21 BRETT WAS. HE WASN'T HIMSELF. HE WAS COMPROMISED. THE
22 FAMILY WAS COUNTING ON PACIFIC AMBULANCE AND THEIR
23 EMPLOYEES TO SAFELY TRANSPORT BRETT THAT MORNING. IT'S
24 NOT THE OTHER WAY AROUND. THIS WAS NOT THE EMPLOYEES
25 COUNTING ON BRETT TO TELL THEM WHAT TO DO, THEY WERE IN
26 CHARGE OF WHAT HAPPENED BACK IN THE AMBULANCE. AND THAT

1 IS WHY WE'RE HERE, LADIES AND GENTLEMEN. THAT IS WHAT
2 THE EVIDENCE HAS SHOWN.

3 BEFORE I GO INTO BITS AND PIECES OF WHAT I THINK
4 ARE THE HIGHLIGHTS OF THE EVIDENCE, BECAUSE YOU HAVE BEEN
5 PAYING ATTENTION, YOU'VE BEEN TAKING NOTES, AND I'M NOT
6 GOING TO GO BACK AND GO THROUGH EVERYTHING, I'M NOT GOING
7 TO DO THAT TO YOU. BEFORE I DO THAT, THOUGH, THERE IS A
8 COUPLE OF THINGS I WOULD LIKE TO SAY TO YOU, AND THE
9 FIRST THING I WOULD LIKE TO SAY IS MR. AND MRS. WEINER
10 WOULD LIKE ME TO THANK YOU FOR YOUR TIME OVER THE LAST
11 COUPLE OF WEEKS. THIS HAS BEEN A LONG JOURNEY. THERE
12 HAS BEEN A LOT OF WORK ON THIS CASE. AND YOU'VE BEEN
13 PAYING ATTENTION TO THE FACTS. YOU'VE BEEN PAYING
14 ATTENTION TO THE EVIDENCE. AND WE THINK YOU UNDERSTAND
15 THE SIGNIFICANCE OF WHY WE'RE HERE.

16 THIS IS BRETT WEINER, THIS IS MY CLIENTS' SON.
17 HE'S NOT HERE TO TELL YOU WHAT DID OR DIDN'T HAPPEN THAT
18 DAY. THAT IS MY JOB. THAT IS WHAT I'VE TRIED TO DO OVER
19 THE PAST COUPLE OF WEEKS.

20 IT MEANS THE WORLD TO ME THAT MR. AND
21 MRS. WEINER HAVE GIVEN THEIR TRUST TO ME TO SHARE THEIR
22 STORY, TO SHARE BRETT'S STORY, TO SHARE WITH YOU WHAT
23 HAPPENED A YEAR AND A HALF AGO. AND I HOPE I HAVEN'T LET
24 THEM DOWN. I'VE DONE MY BEST. I'VE TRIED TO PRESENT
25 EVIDENCE IN SUPPORT OF EVERYTHING I TOLD YOU WE WOULD
26 SHOW YOU DURING MY OPENING STATEMENT. THAT WAS MY JOB TO

1 TELL YOU WHAT THE EVIDENCE WOULD SHOW AND THEN STAND UP
2 AND PRESENT THE EVIDENCE IN COURT TO YOU. THAT IS WHAT
3 I'VE TRIED TO DO TO THE BEST OF MY ABILITY.

4 SO BEFORE WE GO ANY FURTHER, I WANT YOU TO KNOW
5 THAT REGARDLESS OF WHAT DECISION YOU COME TO, WE DO
6 APPRECIATE YOUR TIME. AND NORMALLY AT THIS POINT IN TIME
7 IN MY CLOSING STATEMENT I LIKE TO EMPHASIZE THE
8 IMPORTANCE OF WHY JURY SERVICE IS SO IMPORTANT, WHY OUR
9 SYSTEM IS SO IMPORTANT, THE WAY IT'S SET UP, BUT I'M NOT
10 GOING TO DO THAT TODAY. I'M NOT GOING TO DO THAT TODAY
11 BECAUSE THIS JUDGE DID A BETTER JOB OF EXPLAINING THE
12 IMPORTANCE OF OUR SYSTEM THAN I'VE EVER HEARD IN 27 YEARS
13 OF PRACTICE. I THINK WE ALL GET HOW IMPORTANT THE SYSTEM
14 IS AND WHY OUR JURY SYSTEM IS THE BEST IN THE WORLD. AND
15 I COULDN'T EXPLAIN IT AS WELL AS HE DID EVEN IF I TRIED.
16 I'M NOT THE SHARPEST KNIFE IN THE DRAWER, AND I JUST
17 DON'T HAVE THE ABILITY TO DO IT. SO I'LL MOVE RIGHT ON.

18 THIS IS A CASE ABOUT RESPONSIBILITY AND
19 ACCOUNTABILITY. MR. AND MRS. WEINER ARE NOT LOOKING FOR
20 YOUR SYMPATHY. THERE IS A JURY INSTRUCTION THAT SAYS
21 YOU'RE NOT ALLOWED TO ALLOW SYMPATHY TO COME INTO PLAY
22 DURING YOUR DELIBERATION PROCESS BACK IN THE JURY ROOM.
23 HAVING SAID THAT, THERE ISN'T A JURY INSTRUCTION THAT
24 SAYS YOU ARE REQUIRED TO LEAVE EMPATHY OUTSIDE THE
25 COURTROOM DOOR. AND THERE IS A DIFFERENCE. YOU CAN USE
26 YOUR LIFE EXPERIENCES AND YOU CAN USE YOUR COMMON SENSE,

1 WHICH IS WHAT THIS CASE IS ALL ABOUT. YOU CAN USE YOUR
2 INTERPRETATION OF THE FACTS AND THE EVIDENCE IN COMING TO
3 A DECISION. AND THAT IS ALL WE'RE ASKING YOU TO DO.

4 EMPATHY IS SO IMPORTANT ON THESE TYPES OF CASES
5 BECAUSE WHEN I GET TO THE PART ABOUT THE DAMAGES, WHEN I
6 TALK TO YOU A LITTLE BIT ABOUT MONEY DAMAGES, I REALLY
7 WANT YOU TO UNDERSTAND AND APPRECIATE THAT THIS IS A CASE
8 WHERE WE DON'T HAVE THE ABILITY TO SHUT DOWN AN AMBULANCE
9 COMPANY. NOBODY IS GOING TO JAIL IN THIS CASE. THE ONLY
10 REMEDY THAT I'M ALLOWED TO ASK YOU FOR IN THIS CASE ARE
11 MONEY DAMAGES. THAT IS THE ONLY REMEDY THE JUDGE IS
12 GOING TO INSTRUCT YOU THAT YOU HAVE THE ABILITY TO GIVE.
13 IF WE HAVE PROVEN OUR CASE, THAT IS WHAT I'M GOING TO ASK
14 YOU TO DO.

15 THE DEFENDANTS' EXPERT, MR. FLACK, TESTIFIED
16 THAT OVER THE COURSE OF 25 PLUS YEARS HE'S NEVER HAD A
17 5150 PATIENT ESCAPE FROM THE BACK OF AN AMBULANCE THAT HE
18 WAS IN CHARGE OF. MR. AND MRS. WEINER'S EXPERT, CAPTAIN
19 MATTHEWS, WHO IS IN COURT TODAY, TESTIFIED THAT IN 19
20 PLUS YEARS AS A CAPTAIN WITH THE FIRE DEPARTMENT, THE
21 LAST TEN WHILE SERVING AS AN EMT, WHILE SERVING AS A
22 PARAMEDIC, IN 19 YEARS NEVER HAD A PATIENT ESCAPE FROM
23 THE BACK OF AN AMBULANCE FROM HIS SOFT RESTRAINTS, RID
24 HIMSELF OR HERSELF FROM THE SOFT RESTRAINTS. THAT IS THE
25 STANDARD IN THIS CASE. IT'S INEXCUSABLE. IT SHOULD
26 NEVER HAPPEN. AND I'M GOING TO TALK TO YOU MORE ABOUT

1 WHY WE FEEL THAT IS THE CASE.

2 AS A MATTER OF FACT, WHEN I HEAR TESTIMONY FROM
3 THE DEFENDANTS THAT IN THIS PARTICULAR CASE PACIFIC
4 AMBULANCE BEFORE BRETT'S DEATH HAD ACTUALLY ALLOWED --
5 THEY ACTUALLY HAD BEEN AWARE OF 20 OTHER PATIENTS HAVING
6 RID THEMSELVES OF THEIR SOFT RESTRAINTS, THAT BOTHERS ME.
7 IT SHOULDN'T HAPPEN. IT SHOULDN'T HAPPEN ONCE. THIS IS
8 NOT A MAYBE IT WILL WORK, MAYBE IT WOULDN'T WORK TYPE OF
9 SCENARIO. THIS FAMILY COUNTED ON PACIFIC AMBULANCE TO
10 PROPERLY RESTRAIN BRETT AND DELIVER HIM SAFELY TO COLLEGE
11 HOSPITAL IN CERRITOS, AND THEY DROPPED THE BALL, THEY
12 DIDN'T DO IT.

13 AFTER I TOOK THE DEPOSITION OF MS. PETRONIS WHO
14 IS THE PERSON IN CHARGE OF TRAINING AT PACIFIC AMBULANCE,
15 SHE TESTIFIED THAT FROM NOVEMBER OF 2012 UP THROUGH
16 TODAY, UP THROUGH TRIAL, ANOTHER TEN PEOPLE HAD RID
17 THEMSELVES OF THE SOFT RESTRAINTS THAT WERE BEING
18 TRANSPORTED BY PACIFIC AMBULANCE. AND THEY STILL HAVEN'T
19 DONE ANYTHING ABOUT IT. THEY HAVEN'T MADE ANY CHANGES
20 WHATSOEVER.

21 I WOULD SUGGEST TO YOU THAT IF YOU WERE TO LOOK
22 UP THE DEFINITION OF GROSS NEGLIGENCE IN THE DICTIONARY,
23 WHAT YOU WOULD FIND WOULD BE THE CASE OF WEINER VERSUS
24 PACIFIC AMBULANCE AS THE DEFINITION. AND I DON'T THINK
25 I'M VERY OFF BASE BY MAKING THAT STATEMENT TO YOU.

26 THERE IS A LOT OF INFORMATION THAT I WANT TO

1 COVER, A LOT OF NUANCES. I'M GOING TO TRY TO MOVE
2 THROUGH IT AS QUICKLY AS I CAN. I WILL TELL YOU LAST
3 SATURDAY MORNING I WAS MAKING PANCAKES FOR MY SON -- AND
4 THIS IS ARGUMENT, I CAN TALK ABOUT THIS -- AND I DO THIS
5 EVERY SATURDAY MORNING. IT'S OUR FAMILY TRADITION. I
6 MAKE THE BEST PANCAKES IN THE WORLD. AND I WAS
7 EXPLAINING TO MY SON ABOUT THE CASE. HE WAS ASKING ME
8 ABOUT THE CASE. AFTER I EXPLAINED IT TO HIM -- HE'S 13
9 YEARS OLD -- HE LOOKED UP AT ME AND HE SAID, "DAD" --

10 MR. FOX: THIS IS NOT PROPER ARGUMENT.

11 MR. JACKSON: YOUR HONOR, IT'S ARGUMENT. MAY I
12 CONTINUE?

13 THE COURT: YOU KNOW, THERE WAS A DISCUSSION
14 ABOUT TALKING ABOUT PERSONAL ISSUES AND PERSONAL LIVES.
15 BUT YOU CAN TELL IT IN AN ANECDOTE, BUT WITH THE MIND
16 THAT WE HAD TALKED ABOUT NOT SHARING A LOT OF PERSONAL
17 EXPERIENCE, BUT ANECDOTAL YOU CAN.

18 MR. JACKSON: THANK YOU, YOUR HONOR.

19 WHY DID THIS COMPANY KEEP TRANSPORTING SICK
20 PEOPLE IF THEY -- THEIR KNOTS KEEP COMING UNDONE, FROM
21 THE LIPS OF A 13-YEAR-OLD. HE FIGURES IT OUT. HE GETS
22 IT. AND I TOLD HIM THAT'S WHY WE'RE HERE. THAT IS WHY
23 WE HAVE THIS CASE, THAT IS WHY WE'RE ASKING 12 PEOPLE TO
24 DECIDE WHETHER OR NOT THIS IS OKAY. AND I WOULD SUGGEST
25 TO YOU THAT IT'S NOT.

26 THE FACTS OF THIS CASE -- AND IT'S BEEN

1 STIPULATED, IT'S BEEN ADMITTED, YOU HEARD WITNESSES
2 TESTIFY FROM THE STAND IS THAT AT ALL TIMES THE EMPLOYEES
3 OF -- THE EMTS, MR. MOLLICONE AND MR. HOLGUIN, WERE
4 OPERATING DURING THE SCOPE AND COURSE OF THEIR
5 EMPLOYMENT. THAT IS NOT IN DISPUTE. THAT HAS BEEN
6 PROVEN IN THIS CASE.

7 ALSO IN THIS CASE WE'VE SHOWN YOU WE'VE MET OUR
8 BURDEN OF PROOF AND WE'VE SHOWN YOU THAT THE EMTS, WHEN
9 THEY PICKED UP BRETT WEINER THAT MORNING, THEY WERE
10 PLACED ON LEGAL NOTICE OF RISK OF HIS CONDITION, OF HIS
11 SYMPTOMS, WHY HE WAS A HIGH RISK TYPE OF TRANSPORT. IT
12 WAS CLEARLY MADE AVAILABLE TO THEM. WE TALKED ABOUT A
13 5150 DOCUMENT.

14 AND WHEN I HAD MR. MOLLICONE ON THE STAND WE
15 WENT THROUGH THE FACT THAT HE ADMITTED THAT HE WAS MADE
16 AWARE THAT A 21-YEAR-OLD MALE WAS BROUGHT TO MISSION
17 HOSPITAL BY THE E.R. -- INTO THE E.R. BY THE ORANGE
18 COUNTY SHERIFF'S DEPARTMENT AND THAT THE NIGHT BEFORE HE
19 EXPRESSED SUICIDAL THOUGHTS WITH A PLAN TO JUMP FROM A
20 BRIDGE. SO THESE DEFENDANTS KNEW THAT ABOUT BRETT BEFORE
21 THEY EVER ATTEMPTED TO TRANSPORT.

22 MOLLICONE ALSO TESTIFIED THAT HE WAS AWARE THAT
23 THE PATIENT WROTE SUICIDE NOTES WHICH WERE IN THE E.R.
24 CHART. THE PATIENT STATES HE HEARS VOICES, THESE VOICES
25 ARE CONTROLLING HIS MIND AND BODY. THE PATIENT STATED
26 THAT HE WAS ANXIOUS, GUARDED, AND PARANOID THE NIGHT

1 BEFORE. MOST IMPORTANT, MOLLICONE'S TESTIMONY WAS THAT
2 HE WAS AWARE THAT ON THIS WRITTEN FORM WAS A BOX THAT WAS
3 CHECKED THAT SAID THAT BRETT WAS A DANGER TO HIMSELF. HE
4 HAD NOTICE THAT IT WAS A -- HIS RESPONSIBILITY TO SAFELY
5 TRANSPORT BRETT FROM MISSION HOSPITAL TO COLLEGE HOSPITAL
6 IN CERRITOS. THOSE FACTS ARE NOT IN DISPUTE.

7 YOU ALSO HEARD EVIDENCE FROM MORE THAN ONE
8 WITNESS, FROM CAPTAIN MATTHEWS, FROM MR. FLACK, FROM
9 WITNESSES ON THE STAND ABOUT WHAT IS A SOFT RESTRAINT. I
10 WOULD SUGGEST TO YOU THE BEST DEFINITION OF A SOFT
11 RESTRAINT IS A DEVICE THAT RESTRAINS A PATIENT, SOMEONE
12 LIKE BRETT, A 5150 IN THIS PARTICULAR CASE, AND IT KEEPS
13 THAT PERSON FROM RELEASING HIMSELF. IT KEEPS THAT PERSON
14 FROM HARMING HIMSELF OR HARMING SOMEONE ELSE. THAT IS
15 THE PURPOSE OF THE SOFT RESTRAINT.

16 THERE ISN'T ANYTHING IN THE ORANGE COUNTY CODES
17 THAT TALKS ABOUT A KNOT, WHAT TYPE OF KNOT TO USE WHEN
18 APPLYING A SOFT RESTRAINT. IF YOU REMEMBER THE TESTIMONY
19 THAT DEFENSE COUNSEL WAS ASKING HIS WITNESSES, HE KEPT
20 BRINGING UP KNOTS AND TALKING ABOUT KNOTS. AND THE FACT
21 OF THE MATTER IS WHAT KIND OF KNOT IS USED UNDER THE EMS
22 CODES IN ORANGE COUNTY IS NOT SPECIFIED. YOU HEARD HERE
23 THAT CAPTAIN MATTHEWS TESTIFIED IT IS A KNOT THAT SHOULD
24 NOT BECOME RELEASED, BECAUSE WHEN A KNOT BECOMES RELEASED
25 BAD THINGS HAPPEN. BAD THINGS HAPPENED IN THIS CASE.

26 SECTION 3 WHICH DEFINES A QUICK RELEASE -- AND

1 THIS IS A PIECE OF EVIDENCE THAT YOU'LL BE ABLE TO LOOK
2 AT BACK IN THE DELIBERATION ROOM, IT'S A DOCUMENT. IT
3 DEFINES QUICK RELEASE AS A DEVICE THAT ALLOWS FOR RAPID
4 REMOVAL. BOTH EXPERTS IN THIS CASE -- MR. FLACK, IT TOOK
5 A LITTLE BIT OF WORK, BUT I GOT HIM TO ADMIT IT, QUICK
6 RELEASE CAN BE USING A PENNY SCISSOR OR KNIFE TO CUT A
7 RESTRAINT. THAT IS ONE OF THE KNOWN DEFINITIONS OF
8 RESTRAINT. IT MAY NOT HAVE ANYTHING TO DO WITH A KNOT.
9 IN FACT, CAPTAIN MATTHEWS TESTIFIED YOU USE AN OVERHAND
10 KNOT WITH A HALF HITCH SO IT CAN'T BE UNDONE. THE QUICK
11 RELEASE IS THE TYPE OF MATERIAL THAT YOU CAN EASILY CUT
12 THROUGH. I THINK THAT IS REALLY IMPORTANT TO REMEMBER.

13 LET'S TALK A LITTLE BIT ABOUT THE TESTIMONY IN
14 THIS CASE. IT'S MY JOB TO GO THROUGH EACH WITNESS. AND
15 I APOLOGIZE IF YOU ALREADY KNOW THIS, BUT TESTIMONY FROM
16 BRETT'S DAD, KEITH WEINER, HIS TESTIMONY, HE SHARED
17 THINGS THAT THEY DID TOGETHER WHILE BRETT WAS GROWING UP,
18 WHILE BRETT WAS IN SCHOOL, PLAYING SPORTS, GOING TO THE
19 MOVIES, ATTENDING HIS FOOTBALL PRACTICES, COACHING HIM IN
20 DIFFERENT SPORTS. YOU HEARD THE EVIDENCE. YOU TOOK
21 NOTES. I DON'T KNOW IF I HAVE EVER SEEN A JURY TAKE AS
22 MANY NOTES AS YOU HAVE. AND IT'S APPRECIATED BECAUSE
23 THIS IS A VERY IMPORTANT CASE.

24 KEITH ALSO SHARED WITH YOU A LITTLE BIT ABOUT
25 DENA'S RELATIONSHIP WITH HER SON, THE THINGS THAT THEY
26 DID TOGETHER, THE COMPETITIONS THEY DID TOGETHER, THE

1 MEMORIES THEY HAD TOGETHER. DENA, BRETT'S MOM, TESTIFIED
2 AND SHARED WITH YOU SOME OF HER STORIES. IT WAS
3 EMOTIONAL TESTIMONY, BUT SHE HAD TO GET UP THERE AND DO
4 THAT. IT'S A REQUIREMENT THAT I HAVE. BUT SHE TALKED TO
5 YOU ABOUT THE COMPETITIONS THAT THEY WERE IN TOGETHER,
6 THE CLOSE RELATIONSHIP THAT THEY HAD, THE COOKIES THAT
7 THEY BAKED TOGETHER EVERY YEAR.

8 AND YOU ALSO HEARD FROM KEITH AND DENA THE
9 THINGS THAT THEY WOULD NO LONGER BE ABLE TO DO TOGETHER
10 AS A FAMILY. THE TRIPS THEY TOOK EACH YEAR, THE HOLIDAY
11 MEALS THAT THEY SERVED TOGETHER AND SHARED TIME TOGETHER
12 WITH, GOING TO BASEBALL GAMES, GOING TO MOVIES. THESE
13 ARE ALL THINGS THAT MAKE UP LIFE EXPERIENCES, AND THESE
14 ARE ALL THINGS THAT I WANT TO TALK TO YOU A LITTLE BIT
15 LATER ON ABOUT THAT MAKE UP THE DAMAGES IN THIS CASE.

16 DEFENDANT MOLLICONE, WHO WAS THE PATIENT MAN ON
17 THE DAY OF THE ATTEMPTED TRANSPORT, TESTIFIED ABOUT THIS
18 PHOTO, THE BACK OF THE AMBULANCE. I WANT TO TALK TO YOU
19 A LITTLE BIT ABOUT IT. HE TESTIFIED THAT THIS WAS A
20 NON-EMERGENCY TRANSPORT. THEY WEREN'T IN A HURRY. THEY
21 HAD ALL THE TIME IN THE WORLD I WOULD SUGGEST TO PROPERLY
22 RESTRAIN BRETT, BUT THEY DROPPED THE BALL. THEY DIDN'T
23 DO IT. REMEMBER, PACIFIC AMBULANCE IS A PRIVATE
24 AMBULANCE COMPANY. THE WAY THEY MAKE MONEY IS BY
25 TRANSPORTING PATIENTS. IT'S NOT LIKE A PUBLIC FIREMAN,
26 NOT LIKE A PUBLIC POLICE DEPARTMENT. THIS IS A PRIVATE

1 COMPANY THAT IS IN BUSINESS TO MAKE MONEY. IT'S TO THEIR
2 ADVANTAGE TO GET THE PATIENT TRANSPORTED AS QUICKLY AS
3 POSSIBLE. IN THIS PARTICULAR INSTANCE, AND FRANKLY IN 30
4 OTHER INSTANCES THAT WE'VE HEARD ABOUT TODAY DURING THE
5 COURSE OF THIS TRIAL, THERE WERE PROBLEMS AND ISSUES.

6 MOLLICONE TESTIFIED THAT HE WAS IN THE SCOPE AND
7 COURSE OF EMPLOYMENT AT THE TIME OF THE ATTEMPTED
8 TRANSFER. HE ADMITTED THAT HE KNEW ABOUT BRETT'S
9 DIMINISHED MENTAL CAPACITY AT THE TIME OF TRANSFER. HE
10 ADMITTED HE KNEW ABOUT BRETT'S SUICIDE NOTES WHICH WERE
11 IN THE E.R. CHART. HE KNEW ABOUT BRETT HEARING VOICES,
12 SAYING EVIL THINGS TO HIM. HE KNEW BRETT STATED THESE
13 VOICES WERE CONTROLLING HIS MIND AND BODY.

14 HE TESTIFIED THAT THE NIGHT BEFORE HE WAS TOLD
15 THAT BRETT WAS ANXIOUS, GUARDED, AND PARANOID. AND HE
16 ALSO ACKNOWLEDGED READING THE LANGUAGE AT THE BOTTOM OF
17 THE 5150 FORM THAT INDICATED THAT BRETT WAS A DANGER TO
18 HIMSELF AND THAT HE MIGHT HARM HIMSELF. AND THAT IS
19 REALLY, REALLY IMPORTANT TO KNOW BECAUSE AS A TRAINED EMT
20 ON BEHALF OF THIS PRIVATE AMBULANCE COMPANY IT'S HIS JOB
21 TO TAKE IN THIS INFORMATION AND THEN BASED UPON THIS
22 INFORMATION DECIDE WHAT IS THE BEST WAY TO GET BRETT FROM
23 A SAFE HOSPITAL ROOM AT MISSION TO A SAFE HOSPITAL ROOM
24 AT CERRITOS COLLEGE HOSPITAL IN CERRITOS.

25 MOLLICONE TESTIFIED THAT HE AND HIS PARTNER
26 HOLGUIN WERE IN CHARGE OF THE PATIENT'S SAFETY DURING THE

1 TRANSPORT. IF YOU HAVE A PATIENT THAT IS COMPROMISED,
2 HE'S NOT HIMSELF, HE'S HAVING EMOTIONAL ISSUES, MENTAL
3 ISSUES, IT'S THE DEFENDANTS' JOB TO MAKE SURE THAT HE IS
4 SAFE AND THEY DO EVERYTHING THAT CAN BE REASONABLY DONE
5 TO TRANSPORT THAT PATIENT. IT'S NOT THE PATIENT'S JOB TO
6 MAKE SURE THAT THE DEFENDANTS DO THEIR JOB. AND THAT IS
7 WHAT I'M HEARING IN THIS CASE, AND IT'S KIND OF
8 OFFENSIVE. IN THIS PARTICULAR CASE IT WAS MOLLICONE'S
9 JOB AS THE PATIENT MAN TO PROPERLY RESTRAIN BRETT. IT
10 WAS HIS JOB TO MAKE SURE THE RESTRAINTS WERE PLACED
11 CORRECTLY ON HIM.

12 YOU HEARD TESTIMONY IN THIS CASE THAT THE BEST
13 PLACE TO APPLY THESE RESTRAINTS WOULD HAVE BEEN IN THE
14 HOSPITAL ROOM. YOU HAD PLENTY OF ROOM TO WALK AROUND THE
15 GURNEY, MAKE SURE THE RESTRAINTS ARE TIED CORRECTLY, MAKE
16 SURE THERE IS NOTHING INTERFERING WITH THE PROPER
17 APPLICATION OF THE RESTRAINTS. AND THAT IS NOT WHAT
18 HAPPENED IN THIS CASE.

19 AS A MATTER OF FACT, IN THIS CASE YOU HEARD THE
20 RESTRAINTS, IF THEY WERE APPLIED, I'VE BEEN ASSUMING THAT
21 THEY WERE, BUT IF THEY WERE APPLIED IT WAS IN THE BACK OF
22 THE AMBULANCE. MOLLICONE TESTIFIED HE LEANED OVER
23 BRETT'S TORSO, HE LEANED OVER IN BETWEEN THE WALL AND THE
24 GURNEY. HE LEANED OVER AND ATTEMPTED TO TIE THE
25 RESTRAINT TO THE GURNEY. THAT IS NOT THE WAY TO DO IT.
26 THAT IS GROSS NEGLIGENCE, ESPECIALLY WHEN YOU HAVE A

1 PATIENT WITH THESE TYPES OF KNOWN CONDITIONS.

2 HE TESTIFIED THAT HE UNDERSTOOD THE RISK OF
3 ESCAPE AS BEING A RISK OF TRANSPORTING A 5150 PATIENT AND
4 HE UNDERSTOOD THAT IF SOMEONE ESCAPED ON THE 5 FREEWAY
5 NEAR THE 55 INTERCHANGE THAT PARTICULAR MORNING THERE WAS
6 A CHANCE THEY WOULD GET HIT BY A CAR OR A TRUCK. HE
7 ADMITTED THAT IF HE HAD A CHANCE TO DO THINGS DIFFERENTLY
8 HE WOULD HAVE DONE THINGS DIFFERENTLY. HE WOULD HAVE
9 STAYED ON THE BENCH. LET'S TALK ABOUT THAT FOR A SECOND.

10 IN THIS PHOTOGRAPH -- THIS IS A PHOTOGRAPH OF
11 THE GURNEY BRETT WAS IN. IT WAS TAKEN AFTER -- AFTER HE
12 DIED. YOU'VE HEARD TESTIMONY THAT MOLLICONE SHOULD HAVE
13 BEEN SITTING RIGHT HERE WITH A CLEAR VIEW OF BRETT.
14 EVENTUALLY HE MOVED BACK TO THE AIRWAY SEAT, BACK HERE.
15 AND WITH BRETT'S TORSO HERE, HE COULDN'T SEE WHAT WAS
16 HAPPENING. HE TESTIFIED IF HE HAD A CHANCE TO DO IT ALL
17 OVER AGAIN, KNOWING WHAT HE KNOWS TODAY, HE WOULD HAVE
18 DONE THINGS DIFFERENTLY. BUT LET'S TALK ABOUT THAT FOR A
19 SECOND.

20 THERE ARE NO NEW FACTS AS WE SIT HERE TODAY. HE
21 KNEW ALL THE FACTS WHEN HE FIRST ATTEMPTED TO RESTRAIN
22 AND TRANSPORT BRETT. THERE ARE NO NEW FACTS. ALL THE
23 FACTS I JUST READ OFF TO YOU AND HE TESTIFIED TO ARE THE
24 FACTS THAT HE WAS AWARE OF THE MORNING HE ATTEMPTED THE
25 TRANSPORT. THERE ARE NO NEW FACTS.

26 NOW, HE MAY NOT HAVE BEEN AWARE OF THE 20 OTHER

1 PATIENTS THAT HAD RELEASED THEMSELVES, OKAY. AND IF HE
2 HAD BEEN AWARE OF THAT, HE MIGHT HAVE PAID MORE ATTENTION
3 OR MAYBE THEY WOULD HAVE USED DIFFERENT PROCEDURES. BUT
4 THE FACT OF THE MATTER IS EVEN IN HINDSIGHT HE KNEW ALL
5 THE FACTS, HE KNEW BRETT'S CONDITION THE MORNING HE
6 ATTEMPTED TO RESTRAIN HIM AND TRANSPORT HIM.

7 HE ADMITTED FROM THE STAND THAT HE KNEW THAT
8 THESE RESTRAINTS DIDN'T WORK ALL THE TIME. THAT IS GROSS
9 NEGLIGENCE. IT'S GROSS NEGLIGENCE TO NOT DO EVERYTHING
10 YOU CAN PROPERLY RESTRAINING A CALM AND COOPERATIVE
11 PATIENT, WHICH BY THE WAY IS WHAT THE EVIDENCE SHOWED
12 THAT MORNING, AND INSTEAD OF TRYING TO DO IT IN A
13 HALF-ASS WAY IN THE BACK OF AN AMBULANCE, NOT EVEN
14 KNOWING IF YOU ARE PROPERLY TYING IT TO THE GURNEY. AND
15 I THINK AS WE ALL LEARNED THROUGH THE COURSE OF THIS
16 TRIAL, ESPECIALLY AFTER LISTENING TO CAPTAIN MATTHEWS'
17 TESTIMONY, EVEN IF HE HAD TIED IT OFF ON THE BACK SIDE OF
18 THE GURNEY USING A SHOESTRING LACE, THAT IS NOT THE WAY
19 TO DO IT. IT'S NOT A SAFE WAY TO DO IT. BAD THINGS
20 HAPPEN TO PEOPLE.

21 WHEN I ASKED MOLLICONE WHILE HE WAS ON THE STAND
22 WHY IN THE WORLD DID YOU TRY TO USE THE SHOESTRING -- WHY
23 IN THE WORLD DIDN'T YOU CHANGE HOW YOU GO ABOUT
24 RESTRAINING BRETT AND OTHER PATIENTS WHEN YOU KNEW THEY
25 DIDN'T WORK ALL THE TIME. HIS RESPONSE WAS -- I HOPE YOU
26 HAVE THIS IN YOUR NOTES, HIS RESPONSE WAS, WELL, THAT IS

1 COMPANY POLICY. I KNOW THEY DIDN'T WORK ALL THE TIME,
2 BUT IT'S JUST COMPANY POLICY, THAT IS WHY I'M DOING WHAT
3 I'M DOING. HE'S BEEN TOLD BY THE COMPANY TO ACT A
4 CERTAIN WAY.

5 BASED UPON ALL THE INFORMATION YOU'VE HEARD ON
6 THIS CASE, THE FACT THE COMPANY IS TELLING THEIR
7 EMPLOYEES TO TRANSFER 5150 PATIENTS LIKE THIS, AND THIS
8 IS A COOPERATIVE PATIENT, A CALM PATIENT, AND THIS STILL
9 HAPPENS WITHOUT MAKING ANY CHANGES IN THE TYPE OF KNOTS,
10 THE TYPE OF PROCEDURES, THAT IS GROSS NEGLIGENCE.

11 ON EXAMINATION BY DEFENSE COUNSEL MR. MOLLICONE
12 BROKE DOWN. AND I DIDN'T ASK HIM THE QUESTIONS, DEFENSE
13 COUNSEL DID. BUT YOU NEED TO ASK YOURSELF WHY THAT
14 HAPPENED. I MEAN, DOES HE FEEL BAD FOR DROPPING THE
15 BALL? DOES HE FEEL BAD FOR CAUSING BRETT'S DEATH? OR
16 WAS IT FROM -- FOR SOME OTHER REASON. AND I DON'T KNOW.
17 BUT YOU NEED TO THINK ABOUT THAT, YOU KNOW, WHY.

18 I HAVE SOMETHING ELSE TO TALK TO YOU ABOUT.
19 REGARDLESS OF HOW MR. MOLLICONE FEELS TODAY, THIS WEEK
20 DURING TRIAL, MULTIPLY THAT BY A HUNDRED, MULTIPLY THAT
21 BY A THOUSAND AND YOU'LL START TO HAVE AN IDEA OF --

22 MR. FOX: IT'S IMPROPER ARGUMENT, YOUR HONOR, TO
23 THE JURY. GOLDEN SHOES -- GOLDEN RULE.

24 THE COURT: I DON'T KNOW THAT IS EXACTLY WHAT
25 WAS SAID, BUT IF THAT IS WHAT YOU HAD IN MIND, I'LL
26 SUSTAIN IT.

1 IF NOT, CONTINUE.

2 MR. JACKSON: I WAS GOING TO TALK ABOUT DAMAGES.

3 THE COURT: YEAH, GO AHEAD.

4 MR. JACKSON: YOU'LL ONLY THEN HAVE A SLIGHT
5 UNDERSTANDING OF WHAT KEITH AND DENA HAVE GONE THROUGH
6 AND THE HARM THAT THEY'VE EXPERIENCED IN THIS CASE.

7 LET'S TALK ABOUT DEFENDANT HOLGUIN. HE ALSO
8 TESTIFIED THIS WAS A NON-EMERGENCY TRANSPORT. THEY
9 WEREN'T IN A HURRY. THERE WASN'T ANY REASON WHY THEY
10 COULDN'T HAVE APPLIED THESE RESTRAINTS THE CORRECT WAY.
11 HE ADMITTED THAT THEY WERE IN THE SCOPE AND COURSE OF THE
12 EMPLOYMENT AT THE TIME OF THE ATTEMPTED TRANSPORT. HE
13 WAS NEVER TOLD UNTIL THIS TRIAL THAT THEY HAD 20 OTHER
14 PATIENTS BEFORE BRETT'S ATTEMPTED TRANSPORT WHO HAD RID
15 THEMSELVES OF THE SOFT RESTRAINTS. THAT WAS NEWS TO HIM.
16 HE LEARNED THAT DURING THIS CASE.

17 YOU HAVE TO ASK WHY WASN'T AN EMPLOYEE TOLD OF
18 THESE OTHER 20 PEOPLE THAT HAD RID THEMSELVES OF THE SOFT
19 RESTRAINTS? WOULDN'T YOU WANT TO IMPROVE THE PROCESS OR
20 DOES THAT ACTUALLY SLOW THE PROCESS DOWN OF TRANSPORTING
21 PATIENTS AND MAKING MONEY BECAUSE YOU HAVE TO CHANGE YOUR
22 PROCEDURES, YOU HAVE TO CHANGE YOUR PROTOCOL, YOU HAVE TO
23 RETRAIN ALL THESE EMTS.

24 HE STOOD NEXT TO MOLLICONE AT THE ADMISSION DESK
25 THERE AT MISSION HOSPITAL, AND HE OVERHEARD HER TELL
26 BRETT (SIC) -- THIS WAS HIS TESTIMONY -- THAT BRETT WAS

1 HEARING DEMONIC VOICES, THAT HE HAD HEARD THAT BRETT HAD
2 SUICIDAL TENDENCIES THE NIGHT BEFORE, THAT HE KNEW BRETT
3 WAS A POSSIBLE DANGER TO HIMSELF AND THAT HE HAD OBSERVED
4 THE NURSE GIVE MOLLICONE THE 5150 PAPERWORK. THE REASON
5 I'M SHARING THAT WITH YOU IS AS A CO-EMPLOYEE THAT
6 MORNING, AND AS THEY BOTH TESTIFIED HE WAS RESPONSIBLE
7 ALSO FOR THE SAFE TRANSPORT, IT'S HIS JOB TO ALSO MAKE
8 SURE BRETT WAS SAFELY TRANSPORTED. HE WAS ALSO PLACED ON
9 LEGAL NOTICE OF BRETT'S CONDITION AND FRANKLY DIDN'T DO
10 ANYTHING ABOUT IT.

11 HE TESTIFIED THAT THE BEST PLACE TO APPLY THESE
12 SOFT RESTRAINTS WERE IN THE HOSPITAL ROOM. HE TESTIFIED
13 THAT -- WHEN I ASKED HIM WHOSE RESPONSIBILITY IS IT TO
14 MAKE SURE THE SOFT RESTRAINTS WERE APPLIED CORRECTLY,
15 HOLGUIN SAID BOTH OF US. AND THAT IS IMPORTANT, I WANT
16 YOU TO REMEMBER THAT.

17 NEITHER ONE OF THESE GUYS HAD ANY TRAINING BY
18 PACIFIC AS TO HOW OFTEN THEY SHOULD CHECK SOFT
19 RESTRAINTS. YOU HEARD TESTIMONY ABOUT WELL EVERY 15
20 MINUTES WHEN WE'RE CHECKING VITALS, WHICH MAY OR MAY NOT
21 HAVE BEEN DONE IN THIS CASE, WE ALSO AT THAT POINT IN
22 TIME CHECK THE CONDITIONS OF THE KNOTS WE USE AND CHECK
23 THE SOFT RESTRAINTS. BUT WHEN I ASKED HIM ABOUT WHETHER
24 OR NOT HE WAS SPECIFICALLY TRAINED, HIS ANSWER WAS THEY
25 WEREN'T. THEY WEREN'T TRAINED TO CHECK SOFT RESTRAINTS.

26 HE ADMITTED MOLLICONE AND HE, WHEN HE'S A

1 PATIENT MAN, HAS A BETTER VIEW FROM THE SIDE BENCH OF THE
2 PATIENT TO CHECK THE SOFT RESTRAINTS, TO CHECK THE
3 PATIENT'S CONDITION, TO MAKE SURE THERE WEREN'T ANY
4 PROBLEMS THAN HE WOULD EVER HAVE IN THE AIRWAY SEAT BACK
5 BEHIND THE PATIENT.

6 HE TESTIFIED -- AND THESE ARE HIS WORDS, NOT
7 MINE, THAT WHILE BACK IN THE AIRWAY SEAT YOU CAN'T SEE
8 BOTH WRISTS AND SOFT RESTRAINTS FROM BEHIND THE PATIENT.
9 THE PERSON THAT IS IN CHARGE OF THE PATIENT WHO MOVES
10 BACK TO THIS AIRWAY SEAT ON A 5150 IS PLACING HIMSELF IN
11 A POSITION, AS CAPTAIN MATTHEWS TESTIFIED, OF NOT BEING
12 ABLE TO OBSERVE THE PATIENT. THAT'S NOT OKAY. IT'S NOT
13 A COMPLICATED JOB TO GET FROM MISSION TO COLLEGE HOSPITAL
14 IN CERRITOS WHEN YOU HAVE A RESTRAINED PATIENT WHO IS
15 CALM AND COOPERATIVE. THIS SHOULD NOT HAVE HAPPENED.

16 MS. PETRONIS, WHO IS IN CHARGE OF ALL THE
17 TRAINING AT PACIFIC, WHO WENT THROUGH HER TWO TRAINING
18 BULLETINS AT PACIFIC, SHARED WITH YOU WHY THEY TRAIN
19 THEIR EMTS, INCLUDING THE DEFENDANTS -- HOW THEY TRAIN
20 THEIR EMTS, INCLUDING THE DEFENDANTS. SHE TESTIFIED THIS
21 WAS A NON-EMERGENCY TRANSPORT. SHE TESTIFIED THAT SHE IS
22 IN CHARGE OF ALL THE TRAINING AT PACIFIC AMBULANCE AND
23 THAT SHE WAS RESPONSIBLE FOR HELPING PUT TOGETHER THE TWO
24 BULLETINS THAT ARE GOING TO COME BACK INTO EVIDENCE. AND
25 THIS IS ONE OF THE TWO. WE WENT THROUGH ALL OF THESE
26 ITEMS IN DETAIL.

1 NOW, I FIND IT INTERESTING THAT ACCORDING TO THE
2 ORANGE COUNTY EMS CODES, WHICH YOU'LL HAVE BACK IN THE
3 JURY ROOM, IT DOESN'T SAY WHAT TYPE OF KNOT TO USE. SO
4 THEY SAY IT'S OKAY TO USE THE TYPE OF KNOT THAT WE'RE
5 USING, THE TYPE OF KNOT THAT CONTINUOUSLY COMES UNDONE
6 RESULTING IN 20 PATIENTS BEFORE BRETT AND 10 PATIENTS
7 AFTER BRETT. IN THEIR OWN TRAINING BULLETIN IT VERY
8 CLEARLY SAYS WHERE DO WE SIT. SIT ON THE BENCH SEAT SO
9 YOU CAN PROPERLY MONITOR THE PATIENT, PERIOD. THAT IS
10 WHAT THEIR DOCUMENTATION SAYS. SO NOW WE HAVE SOMETHING
11 THAT SPECIFICALLY INSTRUCTS THE EMPLOYEES WHERE TO SIT.
12 AND NOW SHE TESTIFIES EVEN THOUGH IT'S IN WRITING AND
13 THAT IS WHAT IT SAYS, IT'S OKAY IF THEY SIT SOMEPLACE
14 ELSE, THAT IS OKAY WITH US.

15 SO WE HAVE AN UNWRITTEN RULE THAT THEY ARE
16 INTERPRETING ONE WAY. WE HAVE A WRITTEN RULE IN BLACK
17 AND WHITE, SIT ON THE BENCH SEAT SO YOU CAN PROPERLY
18 MONITOR THE PATIENT. AND FRANKLY, TO COVER THEIR
19 BACKSIDES IN THIS CASE, THEY ARE SAYING BUT YOU DON'T
20 HAVE TO FOLLOW THIS WRITTEN RULE. AND THAT IS NOT OKAY.
21 IT'S NOT OKAY WHAT PACIFIC IS DOING AND WHAT THEY HAVE
22 BEEN DOING AND WHAT THEY DID TO BRETT WEINER.

23 SHE TESTIFIED THAT ONE OF THE RISKS OF
24 TRANSPORTING A 5150 PATIENT -- AND THIS ONCE AGAIN TOOK A
25 LITTLE BIT OF WORK ON MY SIDE BECAUSE THE RISKS WERE TO
26 THE EMTS. THE RISKS WERE BEING SPIT ON. THE RISKS WERE

1 BEING HIT. AND AFTER I KEPT ASKING HER THIS QUESTION SHE
2 FINALLY ADMITTED, OH, AND ONE OF THE OTHER RISKS IS IF
3 THE PATIENT ESCAPES FROM THE SOFT RESTRAINTS. AND A
4 LITTLE MORE PRODDING SHE ADMITTED, AND IF THAT PATIENT
5 ESCAPES OUT THE BACK OF AN AMBULANCE DOOR, THAT PATIENT
6 COULD BE STRUCK AND HIT BY A CAR, ESPECIALLY ON THE 5
7 FREEWAY THAT MORNING.

8 FRANKLY, WHY WASN'T THAT THE FIRST RISK SHE
9 DISCUSSED WITH ME. THAT IS THE MOST IMPORTANT RISK IF
10 YOU ASK ME. I WOULD SUGGEST TO YOU THERE IS A REASON.
11 THERE IS A REASON WHY THEY ARE BEING SO EVASIVE. AND WE
12 CAN'T LET THAT HAPPEN ANYMORE.

13 SHE TESTIFIED THAT -- THIS ISN'T AT ISSUE. SHE
14 TESTIFIED THAT 20 PATIENTS BEFORE BRETT HAD RID
15 THEMSELVES OF THESE SOFT RESTRAINTS. SINCE HER
16 DEPOSITION IN NOVEMBER OF 2012 UP THROUGH THIS TRIAL 10
17 MORE PATIENTS HAVE RID THEMSELVES OF THE SOFT RESTRAINTS.
18 SHE TESTIFIED THAT WHEN YOU RUN THE NUMBERS, BECAUSE THEY
19 LIKE TO RUN NUMBERS SO MUCH, AND I'LL TALK ABOUT THAT IN
20 A FEW MINUTES, IT WORKS OUT TO ABOUT FOUR OR FIVE
21 PATIENTS A YEAR FOR THE PERIOD OF THREE TO FOUR YEARS
22 BEFORE BRETT'S DEATH. AND THAT IS NOT AN OKAY NUMBER.

23 BUT IT GETS WORSE, FROM NOVEMBER 2012 TO THE
24 DATE OF THIS TRIAL WE'RE LOOKING AT ABOUT 10 MORE
25 PATIENTS. THAT IS TWICE THEIR ANNUAL NUMBER OF PATIENTS
26 THAT RELEASE THEMSELVES. THAT IS NOT FOUR TO FIVE A

1 YEAR, THAT IS MORE THAN TEN A YEAR IF WE KEEP GOING. THE
2 PROBLEM WITH THE GROSS NEGLIGENCE OF THESE DEFENDANTS
3 IT'S NOT GETTING BETTER, IT'S GOTTEN TWICE AS BAD THESE
4 PAST EIGHT MONTHS.

5 PETRONIS TESTIFIED -- AND THIS IS NOT AT ISSUE,
6 THE EMT IS IN CHARGE AT ALL TIMES, NOT THE PATIENT.
7 MOLLICONE AND HOLGUIN ARE IN CHARGE OF THE SAFETY OF
8 BRETT WEINER ON THE MORNING OF THIS ATTEMPTED TRANSPORT.
9 I USE THE WORD ATTEMPTED TRANSPORT BECAUSE THEY NEVER
10 MADE IT TO CERRITOS HOSPITAL. THIS WAS AN ATTEMPTED
11 TRANSPORT THAT WENT BAD. SHE TESTIFIED THE EMT IS
12 RESPONSIBLE FOR THE SAFETY; THAT IN HER TRAINING CLASSES
13 SHE TEACHES HER EMPLOYEES TO SIT ON THE SIDE BENCH AND TO
14 OBSERVE THE PATIENT. AND THIS, BY THE WAY, WOULD NOT
15 HAVE HAPPENED ACCORDING TO CAPTAIN MATTHEWS HAD MOLLICONE
16 SIMPLY SAT ON THE SIDE BENCH AND OBSERVED THE PATIENT.
17 IT COULD HAVE BEEN AVOIDED. SHE ALSO TEACHES, AND I'VE
18 JUST SAID THIS, BUT SHE ALSO TEACHES EMTS WHY THEY NEED
19 TO SIT DOWN TOWARD THE FEET LOOKING UP ON THE SIDE BENCH.

20 NOW, YOU WERE READ A JURY INSTRUCTION ABOUT
21 EXPERTS. LET'S TALK ABOUT MR. FLACK, THE DEFENDANTS'
22 EXPERT IN THIS CASE. YOU HAVE THE ABILITY TO PUT AS MUCH
23 WEIGHT ON WHAT AN EXPERT HAS TO SAY AS YOU CHOOSE. YOU
24 ARE THE ONES THAT MAKE THESE DECISIONS. IT'S NOT ME,
25 IT'S NOT DEFENSE COUNSEL, IT'S NOT THE JUDGE. IF YOU
26 DON'T FEEL THAT A WITNESS HAS COME INTO COURT AND SAID

1 THE THINGS HE OR SHE HAS SAID FOR ALL THE RIGHT REASONS,
2 YOU CAN COMPLETELY DISCOUNT THAT TESTIMONY, YOU CAN PUT A
3 QUESTION MARK NEXT TO IT. BUT YOU CAN CERTAINLY TALK
4 ABOUT IT WHEN YOU'RE DELIBERATING BECAUSE I THINK WITH
5 MR. FLACK IT'S VERY, VERY IMPORTANT.

6 THE REASON I'M BRINGING THIS TO YOUR ATTENTION
7 IS THAT HE TESTIFIED THAT HE WAS RETAINED AND MONEY WAS
8 EXCHANGED ON OCTOBER 17, 2012. THAT WAS HIS RETAINMENT
9 AGREEMENT. TWO MONTHS LATER HE GAVE HIS FIRST EXPERT
10 OPINIONS TO THE DEFENDANT. COUNSEL NEVER EVEN MET
11 MR. FLACK UNTIL THE DAY OF HIS DEPOSITION, WHICH WAS
12 MARCH 21, 2013, WHICH IS FOUR MONTHS BEFORE TRIAL.

13 THE PROBLEM I HAVE IS THAT YOU GOT AN EXPERT
14 THAT IS BEING PAID A LOT OF MONEY WHO DOES KNOW WHAT THIS
15 CASE IS ABOUT AND THEN AFTER THE FACT OFFERING EXPERT
16 TESTIMONY. AND WITH RESPECT TO MR. FLACK, WHAT IS
17 INTERESTING IS ON CROSS-EXAMINATION I CHATTED WITH HIM
18 ABOUT A MEETING HE HAD WITH MR. FOX TWO WEEKS AGO, TWO
19 WEEKS BEFORE TRIAL, AND THEN HE TALKED ABOUT HIS
20 TESTIMONY. AND THEY WENT OVER WHAT HE WAS GOING TO SAY
21 AND HOW HE WAS GOING TO SAY IT.

22 AND THE REASON I HAVE A PROBLEM WITH THAT IS
23 THAT AT FIRST DURING MR. FLACK'S TESTIMONY, IF YOU
24 RECALL, HE ONLY WOULD COMMIT TO THE FACT THAT A SOFT
25 RESTRAINT, A QUICK RELEASE SOFT RESTRAINT, ONLY HAD TO DO
26 WITH WHAT KIND OF KNOTS WERE USED AND THAT THE KNOTS THAT

1 THESE PEOPLE USE, THE SHOESTRING TYPE OF KNOT WAS OKAY.
2 WHAT HE PROBABLY DIDN'T REMEMBER IS I HAD A DECLARATION
3 FROM HIM ON A MOTION THAT HAS BEEN RESOLVED IN THIS CASE
4 FROM MONTHS AND MONTHS AGO. AND IN HIS SWORN DECLARATION
5 HE SAID A QUICK RELEASE SOFT RESTRAINT IS HOW EITHER THE
6 KNOT IS USED OR -- OR A RESTRAINT THAT CAN BE CUT. THAT
7 IS HIS DEFINITION OF A SOFT RESTRAINT. WHY DIDN'T HE
8 TALK ABOUT THAT RIGHT UP FRONT WITH YOU IF HE WANTED ALL
9 OF THE FACTS TO BE ON THE TABLE?

10 YOU KNOW, I WOULD SUGGEST THAT, YOU KNOW,
11 \$16,000 FOR TESTIMONY FROM MR. FLACK -- AND HE ONLY GETS
12 A PART OF THAT MONEY, THE OTHER PART OF THAT MONEY GOES
13 TO THE REFERRAL COMPANY \$125 AN HOUR GOES TO THE REFERRAL
14 COMPANY THAT SENDS HIM THE BUSINESS. THE ATTORNEYS FIND
15 THE COMPANY ON LINE, THE COMPANY FINDS FLACK, PUTS THE
16 TWO TOGETHER, MONEY IS EXCHANGED AND OPINIONS ARE GIVEN
17 IN COURT.

18 FOR ME WHAT IS EXTREMELY CONCERNING, AND I
19 SUPPOSE MR. FLACK HAD 16,000 REASONS TO GIVE THIS
20 TESTIMONY, BUT WHAT WAS EXTREMELY DISCONCERTING TO ME IS
21 THE FACT THAT HE STOOD UP THERE AND TOLD YOU UNDER OATH
22 THAT IF A SOFT RESTRAINT IS APPLIED, IT DOES NOT ALLOW A
23 PATIENT TO RELEASE HIMSELF, THEN THAT SOFT RESTRAINT WAS
24 NOT PUT ON PROPERLY. I WOULD SUBMIT TO YOU THAT IS JUST
25 RIDICULOUS. TO SUGGEST THAT A SOFT RESTRAINT SHOULD BE
26 ALLOWED TO BE RELEASED BY A PATIENT IS CONTRARY TO WHAT

1 CAPTAIN MATTHEWS TOLD YOU. IT'S CONTRARY TO WHAT COMMON
2 SENSE TELLS YOU. IF THEY ARE APPLYING SOFT RESTRAINTS IN
3 A WAY THAT ALLOWS PATIENTS TO RELEASE THEMSELVES, WHICH
4 FRANKLY THE NUMBERS PROBABLY INDICATE THEY ARE, THAT IS
5 GROSS NEGLIGENCE. IT SHOULD NEVER BE ALLOWED TO HAPPEN
6 AGAIN.

7 WRAPPING UP WITH MR. FLACK, HE AGREED THAT THERE
8 WASN'T ANYTHING INDICATING ANYTHING OTHER THAN BRETT
9 BEING CALM AND COOPERATIVE IN THE BACK OF THAT AMBULANCE.
10 HE AGREED IT WAS THE DEFENDANTS' JOB TO SAFELY APPLY THE
11 SOFT RESTRAINTS AND IT WAS THE DEFENDANTS' JOB TO
12 TRANSPORT BRETT TO COLLEGE HOSPITAL. HE AGREED THAT IF A
13 SHEET WAS USED TO COVER BRETT, BECAUSE IT WAS DECEMBER
14 23, IT MIGHT HAVE BEEN A LITTLE COLD THAT MORNING, THAT
15 THE SHEET NEEDS TO BE PULLED BACK SO THAT THE EMT, THE
16 DEFENDANT, CAN OBSERVE THE CONDITION OF THE RESTRAINTS.

17 HE TRIED TO HEDGE AROUND IT. WELL, IF THE SHEET
18 IS OVER THE WRIST, YOU CAN STILL SEE THE PATIENT
19 FIDGETING. BUT I THINK WHEN THE DUST SETTLES AND YOU
20 LISTEN TO WHAT MR. FLACK FINALLY ADMITTED TO IS THE SHEET
21 NEEDS TO BE PULLED AWAY FROM EACH WRIST. THAT IS WHAT
22 CAPTAIN MATTHEWS TESTIFIED TO. IF YOU ARE SITTING HERE
23 AT THE END OF THE BENCH YOU CAN WATCH A PLAINTIFF TRY TO
24 FIDGET WITH THE SOFT RELEASE. AS CAPTAIN MATTHEWS
25 TESTIFIED, YOU STAND UP, TIGHTEN IT, AND YOU'RE DONE.
26 IT'S NOT A BIG DEAL.

1 LET'S TALK ABOUT CAPTAIN MATTHEWS. CAPTAIN
2 MATTHEWS HAS 19 PLUS YEARS AS AN ACTIVE FIREMAN WITH
3 SANTA ANA AND NOW THE ORANGE COUNTY FIRE AUTHORITY. HE'S
4 A CAPTAIN WITH THE ORANGE COUNTY FIRE AUTHORITY, EMS
5 COORDINATOR WITH THE SANTA ANA FIRE DEPARTMENT, TRAINING
6 OFFICER WITH THE SANTA ANA FIRE DEPARTMENT, EMT AND
7 PARAMEDIC. HE'S RESPONSIBLE -- THROUGH HIS TESTIMONY HE
8 TOLD YOU HE'S RESPONSIBLE FOR RESEARCH, PLANNING, AND
9 INSTRUCTION OF ALL PERSONNEL IN AREAS OF EMS AND EMT
10 TRAINING. HE WENT THROUGH HIS CERTIFICATIONS AND
11 ASSIGNMENTS.

12 HE TALKED ABOUT HOW WITH THE ORANGE COUNTY EMS
13 COMMITTEE AND THE ORANGE COUNTY TRAINING OFFICERS
14 COMMITTEE WHAT HE DID TO TEACH AND CONTINUES TO DO TO
15 TEACH OTHER FIREMEN, OTHER PARAMEDICS AND EMTS HOW TO
16 PROPERLY RESTRAIN AND TRANSPORT A 5150 PATIENT. HE
17 TESTIFIED UNDER OATH IN HIS OPINION HE WAS THE MOST
18 QUALIFIED ACTIVE FIREMAN IN ORANGE COUNTY TO DO THIS, AND
19 I DIDN'T HEAR ANY EVIDENCE TO THE CONTRARY. THEY --
20 THEIR EXPERT DIDN'T SAY THAT HE WASN'T, BECAUSE HE IS.

21 IF CAPTAIN MATTHEWS CAME ACROSS A LITTLE BIT
22 CONFIDENT IN WHAT HE HAD TO SAY, WELL, THAT IS THE WAY
23 ACTIVE FIREMEN ARE. THAT IS WHAT YOU WANT IN A FIREMAN.
24 THAT IS WHAT YOU WANT IN A FIRE CAPTAIN. YOU WANT
25 SOMEONE THAT IS CONFIDENT ABOUT WHAT THEY SAY AND YOU
26 WANT SOMEONE THAT IS CONFIDENT IN WHAT THEY DO.

1 I SUBMIT TO YOU THE EVIDENCE CAPTAIN MATTHEWS
2 TESTIFIED TO DURING THIS TRIAL WAS DEAD ON. IT WAS
3 ACCURATE. YOU DON'T APPLY SOFT RESTRAINTS SO THAT THEY
4 CAN COME UNDONE. YOU USE A KNOT THAT THE PATIENT CAN'T
5 QUICKLY RELEASE. THAT IS NOT WHAT SOFT RESTRAINTS ARE
6 ALL ABOUT. IF YOU NEED TO RELEASE A SOFT RESTRAINT
7 QUICKLY, YOU USE A PENNY SCISSOR. THAT IS HOW YOU GET
8 OUT OF A SOFT RESTRAINT. IF SOMETHING HAPPENS AND THERE
9 IS AN ACCIDENT AND A PARAMEDIC GETS KNOCKED UNCONSCIOUS,
10 FIRST RESPONDERS ARRIVE AT THE SCENE, THEY HAVE KNIVES,
11 PENNY CUTTERS. THEY ARE THE ONES THAT RELEASE EVERYBODY.
12 YOU DON'T WANT TO BE IN A SITUATION WHERE YOU HAVE
13 SOMEBODY WITH PSYCHOLOGICAL ISSUES RELEASING THEMSELVES
14 AND RUNNING OFF. THAT JUST DOESN'T MAKE SENSE.

15 THE FACT THAT THESE PEOPLE USE SHOESTRING LACES
16 AND TIES TO TRY TO RESTRAIN A 5150 WAS GROSSLY NEGLIGENT.
17 AND I THINK CAPTAIN MATTHEWS WAS VERY, VERY CLEAR ABOUT
18 HIS TESTIMONY ON THAT PARTICULAR TOPIC.

19 LET'S TALK ABOUT CAPTAIN MATTHEWS' TESTIMONY FOR
20 A SECOND. HIS TESTIMONY, HIS EXPERT OPINION HAD TO DO
21 WITH THE FACT THAT THESE SOFT RESTRAINTS CAME UNDONE IN
22 AND OF ITSELF TELLS HIM THEY WERE NOT APPLIED CORRECTLY.
23 IF THEY ARE APPLIED CORRECTLY THEY SHOULD NOT COME
24 UNDONE. THEY SHOULD HAVE BEEN APPLIED IN THE HOSPITAL
25 ROOM UNDER A CONTROLLED ENVIRONMENT. YOU DON'T TRY TO
26 APPLY THE SOFT RESTRAINTS IN THE BACK OF THE AMBULANCE

1 WHEN YOU HAVE EQUIPMENT, THE GURNEY IS UP AGAINST THE
2 WALL, YOU'RE LEANING OVER A TORSO. THAT IS NOT THE WAY
3 TO DO IT. HIS TESTIMONY WAS CLEAR ON WHERE THE SOFT
4 RESTRAINTS SHOULD HAVE BEEN APPLIED TO BRETT'S WRIST.

5 ALONG THOSE SAME LINES AND ACCORDING TO THE
6 ORANGE COUNTY EMS RULES AND AS CAPTAIN MATTHEWS
7 TESTIFIED, FOUR POINT RESTRAINTS SHOULD HAVE BEEN USED ON
8 BRETT. HIS ANKLES SHOULD HAVE ALSO BEEN RESTRAINED. AND
9 THEY ARE QUICK RELEASES JUST LIKE THESE. BUT IF THE
10 ANKLES HAD ALSO BEEN RESTRAINED, IT WOULD HAVE SLOWED
11 BRETT DOWN. HE WOULDN'T HAVE BEEN ABLE TO JUST POP UP
12 AND START WORKING HIS WAY OUT THE BACK OF THE AMBULANCE.
13 THE EMT WOULD HAVE SEEN BRETT POP UP AND THEN LEAN OVER
14 TO START TO TRY TO SOMEHOW UNDO THESE SOFT RESTRAINTS,
15 WHICH APPARENTLY IF THEY WERE TIED WITH SHOELACE STRINGS
16 AND WITH A BOW, THIS PROBABLY WOULDN'T HAVE TAKEN SO
17 LONG. BUT THEY SHOULD HAVE BEEN USED.

18 CAPTAIN MATTHEWS TESTIFIED BOTH MOLLICONE AND
19 HOLGUIN AS A TEAM WERE RESPONSIBLE FOR BRETT'S SAFE
20 TRANSPORT. THEY WERE RESPONSIBLE FOR HIS CARE AND SAFETY
21 AT ALL TIMES AND NOBODY ELSE. HE TESTIFIED -- CAPTAIN
22 MATTHEWS TESTIFIED THAT MOLLICONE WAS REQUIRED TO SIT ON
23 THE BENCH TOWARDS THE FEET TO OBSERVE BRETT DURING THE
24 TRANSPORT. ARE THEIR EXCEPTIONS, IF A PATIENT IS
25 SPITTING, IF SOMETHING ELSE IS GOING ON, OF COURSE THE
26 PARAMEDIC HAS THE ABILITY TO MOVE, TAKE CARE OF THE

1 PROBLEM AND THEN COME BACK TO THE SIDE BENCH. BUT THAT
2 DIDN'T HAPPEN IN THIS CASE.

3 CAPTAIN MATTHEWS TESTIFIED IF A SHEET WAS USED
4 IT SHOULD NOT BE USED TO COVER THE RESTRAINTS FOR OBVIOUS
5 REASONS THAT WE'VE ALREADY TALKED ABOUT. AND HE ALSO
6 TESTIFIED UNDER OATH THAT APPROXIMATELY OVER THE COURSE
7 OF 19 PLUS YEARS HE'S NEVER HAD A PATIENT RELEASE HIM OR
8 HERSELF FROM SOFT RESTRAINTS. THIS IS NOT A 20, 30, 40,
9 50 TIME TYPE OF THING. ONE TIME IS TOO MUCH. TWICE,
10 THREE TIMES, FOUR TIMES, FIVE TIMES, THAT IS WHEN IT
11 STARTS TO BECOME GROSS NEGLIGENCE.

12 LET'S TALK ABOUT OFFICER SMITH. OFFICER SMITH
13 CAME INTO COURT AND TESTIFIED THAT HE INTERACTED WITH
14 BRETT FOR ABOUT THREE TO FIVE MINUTES ON THE SIDE OF THE
15 FREEWAY. WHEN HE FIRST SAW BRETT HE SAW BRETT WORKING
16 HIS WAY SOUTHBOUND TOWARD THE EXIT. WHEN HE HAD A
17 CONVERSATION WITH BRETT, BRETT SAID SOMETHING ABOUT I
18 NEED TO GET OVER THERE. HE DIDN'T SAY I WANT TO KILL
19 MYSELF. HE DIDN'T SAY LET ME JUMP IN FRONT OF A CAR. HE
20 SAID, "I NEED TO GET OVER THERE." HE WAS COOPERATIVE
21 WITH OFFICER SMITH. AND OFFICER SMITH, THANK GOD HE
22 TRIED TO HELP, BUT WHEN BRETT PULLED AWAY OFFICER SMITH'S
23 TESTIMONY, HERE IS A TRAINED SHERIFF DEPUTY WHO IS
24 TRAINED TO DO INVESTIGATIONS, WHO IS TRAINED TO HANDLE
25 PEOPLE TESTIFY FROM THAT WITNESS STAND THAT BRETT BROKE
26 AWAY, TURNED WITHOUT LOOKING, STARTED TO TAKE A COUPLE OF

1 STEPS AND WAS HIT BY A CAR.

2 THE REASON THAT IS IMPORTANT IS DEPUTY SMITH --
3 I SAID OFFICER SMITH, HE IS AN OFFICER OF THE LAW, BUT
4 IT'S DEPUTY SMITH. THE REASON THAT IS IMPORTANT IS
5 BECAUSE THE FACT OF THE MATTER IS BRETT DIDN'T STAND NEXT
6 TO THE ROAD, LOOK AT ONCOMING TRAFFIC AND TIME HIMSELF
7 LIKE MOLLICONE AND HOLGUIN TESTIFIED TO -- IT MIGHT HAVE
8 BEEN BOTH OF THEM, BUT I KNOW ONE OF THEM TESTIFIED TO
9 THIS -- AND THEN JUMPED OUT IN FRONT OF A CAR AND WAS
10 KILLED. THIS WAS NOT A SUICIDE.

11 THE BEST PERSON TO GIVE YOU ACCURATE TESTIMONY
12 WITHOUT ANY BIAS IN THIS CASE OTHER THAN TO JUST TELL THE
13 TRUTH WOULD BE DEPUTY SMITH. BRETT BROKE AWAY WITHOUT
14 LOOKING, STARTED TO RUN BACK INTO THE FREEWAY, WHICH YOU
15 KNOW WHAT, THAT IS WHAT A 5150 PATIENT MIGHT DO, THEY
16 DON'T THINK LIKE YOU AND ME, AND WAS HIT BY A CAR.

17 THE FACT OF THE MATTER IS WHATEVER HAPPENED
18 AFTER BRETT LEFT THE BACK OF THE AMBULANCE RESULTED IN
19 HIS TRAGIC DEATH. IT WOULDN'T HAVE HAPPENED HAD HE NOT
20 BEEN ALLOWED TO BE RELEASED, TO RID HIMSELF FROM THE SOFT
21 RESTRAINTS. IT DOESN'T MATTER IF IT WAS AN ACCIDENTAL
22 DEATH OR SUICIDE BECAUSE BOTH OF THOSE ARE KNOWN RISKS OF
23 A 5150 PATIENT BEING GROSSLY NEGLIGENTLY TRANSPORTED AND
24 EXITING THE BACK OF A FREEWAY (SIC) -- ON THE 5 FREEWAY.
25 THAT IS WHAT HAPPENS.

26 HE WAS SAFE IN HIS HOSPITAL ROOM AT MISSION

1 HOSPITAL. HE WOULD HAVE BEEN SAFE IN HIS HOSPITAL ROOM
2 AT COLLEGE HOSPITAL IN CERRITOS. HE ENDED UP IN THE 5
3 FREEWAY AT THIS LOCATION BECAUSE THAT'S WHERE THEY
4 BROUGHT HIM TO. THEY KNEW THEY WOULD BE DRIVING ON THE 5
5 BY THE 55 INTERSECTION. THEY KNEW EXACTLY WHAT TYPE OF
6 TRAFFIC WOULD BE THERE ON A SUNDAY MORNING AROUND 7:00,
7 7:30. AND I WOULD SUGGEST TO YOU WHEN YOU'RE BACK
8 TALKING ABOUT WHAT DID OR DIDN'T HAPPEN ON THE SIDE OF
9 THE ROAD I WOULD PLACE GREAT EMPHASIS ON WHAT DEPUTY
10 SMITH HAD TO SAY.

11 THEY DID BRING IN A DRIVER, AMANDA MCCARTHY.
12 I'M NOT REALLY SURE WHY THEY BROUGHT HER IN. AND SHE
13 TESTIFIED TO WHAT SHE THOUGHT SHE SAW. AND ON
14 CROSS-EXAMINATION I THINK SHE HONESTLY ADMITTED SHE HAS
15 NO IDEA WHAT BRETT WAS THINKING, SHE HAS NO IDEA WHAT
16 BRETT WAS OR WASN'T LOOKING AT. I TALKED TO HER A LITTLE
17 BIT ABOUT DEPUTY SMITH'S TESTIMONY. AND I'LL LET YOU,
18 THE TRIER OF FACT, DECIDE WHO MAY HAVE BEEN PROVIDING THE
19 MOST ACCURATE TESTIMONY.

20 BUT ONCE AGAIN AT THAT POINT IN TIME THE HARM
21 HAD ALREADY BEEN DONE. WE ARE NOT CONCERNED ABOUT OR
22 HAVE NEVER SUGGESTED THAT THESE GUYS, THESE EMTS, CHASED
23 BRETT OUT THE BACK OF THE AMBULANCE AND CHASED HIM DOWN
24 THE FREEWAY. YOU NEVER HEARD ME SAY THAT. I DIDN'T SAY
25 THAT IN OPENING STATEMENT. BUT FRANKLY WE DON'T BELIEVE
26 THEY WERE REQUIRED TO. BUT WE HAVE A PROBLEM WITH THEM

1 BOTH FABRICATING TESTIMONY ABOUT WHAT THEY SAID THEY SAW
2 BRETT DO ON THE SIDE OF THE ROAD.

3 YOU HAVE TO ASK YOURSELF WHY DID THEY SAY THEY
4 OBSERVED BRETT ON THE SIDE OF THE ROAD AND STAND THERE
5 AND TIME HIMSELF -- THIS IS ACROSS AN ENTIRE FREEWAY --
6 TIME HIMSELF SO HE WOULD STEP OUT IN FRONT OF A TRUCK?
7 WHY WOULD THEY COME UP WITH THAT TESTIMONY? IS IT A
8 COINCIDENCE? I DON'T THINK IT IS.

9 IT'S NOT EASY POINTING FINGERS AT SOMEBODY. I
10 DON'T ENJOY DOING THAT, BUT I HAVE TO MAKE SURE YOU AT
11 LEAST UNDERSTAND WHAT WE THINK HAPPENED.

12 YOUR HONOR, I'M NOT GOING TO FINISH BEFORE
13 LUNCH, SO YOU TELL ME WHEN YOU WANT ME TO STOP.

14 THE COURT: I THINK WE CAN PROBABLY GO AHEAD AND
15 TAKE A BREAK NOW. I THINK THIS IS PROBABLY A CONVENIENT
16 STOPPING POINT.

17 LADIES AND GENTLEMEN, ENJOY YOUR LUNCH. WE'LL
18 SEE YOU AT 1:30. PLEASE REMEMBER ALL MY ADMONITIONS.
19 I'LL REMAIN ON THE BENCH, SO GO AHEAD AND FOLLOW LORETTA
20 OUT.

21 (NOON RECESS)

22 (UNRELATED PROCEEDINGS WERE HAD WHICH ARE NOT
23 TRANSCRIBED HEREIN)

24 THE COURT ATTENDANT: COME TO ORDER. COURT IS
25 NOW IN SESSION.

26 THE COURT: WELCOME BACK, LADIES AND GENTLEMEN.

1 MR. JACKSON, PLEASE CONTINUE.

2 MR. JACKSON: THANK YOU, YOUR HONOR.

3 BEFORE LEAVING OUR EXPERT WITNESSES, THE LAST
4 THING I WOULD LIKE TO COMMENT ABOUT IS I BELIEVE ON
5 OPPOSING COUNSEL'S CLOSING ARGUMENT HE'S GOING TO TALK TO
6 YOU ABOUT HOW THIS NON-EMERGENCY INTERFACILITY TRANSPORT
7 CAN TURN INTO AN EMERGENCY JUST LIKE THAT. I WOULD LIKE
8 YOU ALL TO BE AWARE OF THE TESTIMONY IN THIS TRIAL IF IT
9 MATTERS IF THIS TURNED INTO AN EMERGENCY. THE QUESTION
10 IS WHY IS THAT THE CASE, IS IT BECAUSE OF SOMETHING THE
11 DEFENDANTS DID INCORRECTLY THAT ALLOWED BRETT TO GO OUT
12 THE BACK OF THE AMBULANCE. AND IF THEY HAD DONE THINGS
13 DIFFERENTLY, WOULD IT HAVE PREVENTED BRETT IN GOING OUT
14 THE BACK OF THE AMBULANCE. WE SUGGEST THE ONLY EMERGENCY
15 THAT HAPPENED IN THIS CASE WAS THE ONE CAUSED BY
16 DEFENDANTS' OWN NEGLIGENCE.

17 LET'S GET PAST THE WITNESSES AND LET'S TALK
18 ABOUT SOME OF THE FINAL THINGS I NEED TO COVER WITH YOU
19 IN THIS CASE. IN OUR OPENING STATEMENT MR. FOX AND I
20 EACH PROMISED YOU THAT WE WOULD TELL YOU AND SHOW YOU
21 CERTAIN TYPES OF EVIDENCE. AND IN REVIEWING MR. FOX'S
22 OPENING STATEMENT THIS WEEKEND I NOTICED HE MADE A COUPLE
23 OF PROMISES TO YOU THAT HE DIDN'T KEEP. ONE PROMISE IS
24 HE TOLD YOU HE WOULD LET YOU SEE AND LISTEN TO THE 911
25 TAPE. PERSONALLY, THE 911 TAPE TOOK PLACE THE NIGHT
26 BEFORE THE MORNING OF THIS INCIDENT. I'M NOT SURE HOW

1 MUCH RELEVANCY IT HAS IN THIS CASE, BUT IT DIDN'T COME
2 INTO EVIDENCE. AND YOU HAVE TO ASK YOURSELF WHY.

3 THE SECOND THING THAT MR. FOX INDICATED TO YOU
4 THE EVIDENCE WOULD SHOW IS THAT YOU WOULD HEAR EVIDENCE
5 OR TESTIMONY THAT BRETT WOKE UP AGITATED AND
6 NON-COOPERATIVE. AND THAT IS NOT THE CASE. THE ONLY
7 EVIDENCE IN THIS CASE, THE CREDIBLE EVIDENCE IS BY ALL
8 ACCOUNTS BRETT WAS CALM AND COOPERATIVE WHEN MOLLICONE
9 AND HOLGUIN CAME INTO HIS ROOM THAT MORNING. BRETT WAS
10 CALM AND COOPERATIVE WHEN WALKING OVER TO THE GURNEY. HE
11 WAS CALM AND COOPERATIVE WHEN BEING TAKEN DOWN TO THE
12 AMBULANCE, AND HE WAS CALM AND COOPERATIVE DURING THE
13 ATTEMPTED TRANSPORT.

14 YOU DIDN'T HEAR TESTIMONY FROM ANY E.R. NURSES
15 TO TELL YOU WHAT BRETT'S DEMEANOR WAS JUST BEFORE THE TWO
16 GUYS SHOWED UP INTO HIS ROOM. YOU DIDN'T SEE ANY MEDICAL
17 RECORDS THAT COULD HAVE COME INTO EVIDENCE THAT
18 CORROBORATE THIS AGITATED ALLEGATION. NONE OF THAT CAME
19 INTO EVIDENCE. THE NEXT QUESTION IS WHY IS THAT THE
20 CASE. WELL, THE CASE WAS HE WAS CALM AND COOPERATIVE.
21 THAT WAS BRETT'S DEMEANOR ON THAT MORNING. BEFORE THAT
22 MORNING, IT REALLY DOESN'T MATTER BECAUSE THAT IS NOT
23 WHAT THESE TWO DEFENDANTS ENCOUNTERED ON DECEMBER 23,
24 2011.

25 I WOULD LIKE TO THANK AND I CHALLENGE MR. FOX IF
26 THERE IS ANYTHING THAT I PROMISED YOU IN MY OPENING THAT

1 I HAVEN'T SHOWN YOU TO HOLD ME TO THAT. IF I MISSED
2 SOMETHING, I CHALLENGE COUNSEL TO BRING IT UP.

3 THE BURDEN OF PROOF IN THIS CASE IS BY A
4 PREPONDERANCE OF THE EVIDENCE. IT'S A SLIGHT TIPPING OF
5 THE SCALES. FIFTY-ONE PERCENT, THAT IS MY BURDEN OF
6 PROOF. THAT IS MR. AND MRS. WEINER'S BURDEN OF PROOF IN
7 THIS CASE. THIS IS NOT A CRIMINAL CASE. AS THE JUDGE
8 INSTRUCTED YOU, THIS IS NOT A CASE WHERE EITHER SIDE HAS
9 THE BURDEN OF PROOF BEYOND A REASONABLE DOUBT. IF THE
10 EVIDENCE PRESENTED IS BY A SLIGHT TIPPING OF THE SCALE
11 THAT WE'VE SHOWN ONE OR MORE OF THE DEFENDANTS WAS
12 GROSSLY NEGLIGENT, ONE OR MORE OF THE DEFENDANTS ARE
13 RESPONSIBLE FOR BRETT'S DEATH, THEN WE'VE PROVEN OUR
14 CASE.

15 WHEN DISCUSSING WHAT THE FACTS ARE, WHEN
16 DISCUSSING WHAT THE ISSUES ARE, IT SEEMS TO ME, AND IT
17 MAY SEEM TO YOU THAT THERE HAS BEEN A LOT OF CAMOUFLAGE
18 GOING ON WITH NUMBERS AND STATISTICS, SOME SMOKE AND
19 MIRRORS. IN OTHER WORDS, WHAT IS IMPORTANT IN THIS CASE,
20 WHAT FACTS IN THIS CASE WILL ALLOW YOU TO DETERMINE
21 WHETHER OR NOT ONE OF THE DEFENDANTS WAS GROSSLY
22 NEGLIGENT AND WHETHER OR NOT ONE OR MORE OF THE
23 DEFENDANTS' CONDUCT, WHETHER IT'S BY TRAINING OR PRIOR
24 NOTICE OF THESE PROBLEMS, NOT DOING ANYTHING ABOUT IT,
25 WHETHER OR NOT THAT CAUSED BRETT'S DEATH. IT'S CALLED A
26 SUBSTANTIAL FACTOR.

1 AND WHEN WE LOOK AT THESE NUMBERS, THESE 4,000
2 TRANSPORTS THAT THE DEFENDANT TALKS ABOUT, WE TALKED
3 ABOUT 6,000 TRANSPORTS, WHATEVER THE NUMBERS ARE, AND
4 YOU'VE WRITTEN THEM DOWN, THE ANALOGY THAT I WOULD LIKE
5 TO MAKE TO TRY TO PUT THINGS INTO PERSPECTIVE WOULD BE
6 THE JULY 6 CRASH OF THE ASIANA AIRLINES FLIGHT 214 AT
7 SAN FRANCISCO INTERNATIONAL AIRPORT. AND THE REASON I
8 THINK IT'S IMPORTANT IS WE HAD CRASH WHERE 133 PEOPLE
9 INJURED AND 3 PEOPLE KILLED, BUT ACCORDING TO THE
10 NATIONAL -- I'VE GOT THE INITIALS DOWN, BUT I WANT TO
11 MAKE SURE THE AGENCY IS CORRECT, THE NATIONAL
12 TRANSPORTATION SAFETY BOARD, NTSB, YOU HAVE ABOUT A 1 OUT
13 OF 90 CHANCE IN YOUR LIFETIME OF BEING KILLED IN AN
14 AUTOMOBILE ACCIDENT, 1 OUT OF 7,000 CHANCE BEING KILLED
15 IN AN AIRPLANE ACCIDENT.

16 SO WHEN THEY'RE TALKING ABOUT 4,000 TRANSPORTS
17 6,000 TRANSPORTS, AIRLINE CASES 1 OUT OF 7,000, THE POINT
18 IS YOU DON'T HEAR THE NTSB TALKING ABOUT WELL, THIS IS A
19 1 OUT OF 7,000 INCIDENT, SO WE'RE NOT GOING TO WORRY
20 ABOUT IT. AS A MATTER OF FACT, YOU SEE THEM
21 INVESTIGATING WHAT IS GOING ON, WE HAVE TO FIND OUT WHAT
22 CAUSED THIS CRASH. THE PRELIMINARY FINDINGS IS THE PLANE
23 WAS COMING IN TOO LOW AND TOO SLOW AND IT WAS CRASHED.
24 IT'S IMPORTANT FOR THE INVESTIGATORS TO FIND OUT WHY THIS
25 CRASH TOOK PLACE EVEN THOUGH YOU ONLY HAVE A 1 OUT OF
26 7,000 CHANCE OF BEING KILLED IN A PLANE ACCIDENT.

1 I WANT YOU TO TALK ABOUT BACK IN DELIBERATIONS
2 WHAT DO YOU THINK WOULD HAPPEN IF DURING THE
3 INVESTIGATION THEY FOUND OUT JUST BEFORE THIS CRASH
4 DURING A THREE- TO FOUR-YEAR PERIOD THERE WERE 20 OTHER
5 SIMILAR INCIDENTS, ALTHOUGH ALBEIT THERE WASN'T A CRASH.
6 WHAT DO YOU THINK THIS AGENCY WOULD DO WITH THIS
7 AIRLINES? WHAT IF AFTER THIS CRASH THERE WERE 10 MORE
8 SIMILAR INCIDENTS? WHAT DO YOU THINK THIS AGENCY WOULD
9 DO WITH THIS AIRLINES? THEY WOULD NEVER LET THIS AIRLINE
10 FLY ANOTHER PASSENGER IN AN AIRPLANE. BOTTOM LINE, IT'S
11 A BIG DEAL.

12 IN THIS PARTICULAR CASE THERE ISN'T A SIMILAR
13 TYPE OF AGENCY THAT HAS REGULATED PACIFIC AMBULANCE.
14 THEY DON'T HAVE TO REPORT PEOPLE WHO ARE RIDDING
15 THEMSELVES OF SOFT RESTRAINTS. AND WE TALKED A LITTLE
16 BIT ABOUT THAT. THERE WAS A LITTLE BIT OF EVIDENCE IN
17 THIS CASE ABOUT THAT. SO THERE IS NO OVERSIGHT. WHAT
18 MR. AND MRS. WEINER DIDN'T KNOW IS NOT GOING TO HURT
19 THEM, OKAY, IT'S PRIVATE AMBULANCE, RUSSIAN ROULETTE.
20 THEY ARE SPINNING THE CYLINDER AND TAKING A RISK EVERY
21 TIME THEY TRANSPORT A PATIENT BECAUSE THERE ISN'T AN
22 ISOLATED INCIDENT. THEY KNOW THERE IS A PROBLEM, YET
23 THEY KEEP TRANSPORTING A PATIENT OVER AND OVER AND OVER.
24 THEY NEVER HAD TO EXPLAIN THEMSELVES TO ANYBODY,
25 CERTAINLY NOT THE NTSB.

26 AND FOR THE FIRST TIME, FOR THE FIRST TIME THEY

1 NOW HAVE TO EXPLAIN THEMSELVES TO YOU IN THIS TRIAL.
2 THEY HAVE TO EXPLAIN THEMSELVES BY WAY OF THIS CASE AND
3 MR. AND MRS. WEINER AS TO WHAT HAPPENED THAT MORNING.
4 AND WE'VE CHALLENGED THEM TO DO SO.

5 DURING THIS CASE I QUOTED YOU SOMETHING THAT
6 ALBERT EINSTEIN SAID, I THINK I SAID IT WRONG, BUT WHAT
7 ALBERT EINSTEIN SAID IS THE DEFINITION OF INSANITY IS
8 DOING THE SAME THING OVER AND OVER AND GETTING THE SAME
9 RESULT. THAT IS WHAT THEY'VE BEEN DOING. THEY HAVE BEEN
10 TRANSPORTING PATIENTS AND APPLYING SOFT RESTRAINTS OVER
11 AND OVER AND OVER AND GETTING THE SAME RESULT.

12 AND NOW WE KNOW 1 OUT OF 30 TIMES THE FACTS ARE
13 THERE IS A DEATH. WHAT ABOUT 1 OUT OF 60? WHAT ABOUT
14 THE NEXT 30? WHAT ABOUT THE NEXT 40? IT'S NOT OKAY.
15 THAT IS WHAT MAKES THIS A GROSS NEGLIGENCE CASE. THIS
16 ISN'T A SITUATION WHERE SOMEBODY MADE A MISTAKE, SOMEBODY
17 DROPPED THE BALL AND A YOUNG MAN WAS KILLED. THIS IS A
18 SITUATION WHERE THEY KNEW SOMETHING WASN'T WORKING, YET
19 THEY DID IT AGAIN, AND THEY DID IT AGAIN, AND THEY DID IT
20 AGAIN, AND THEY KEPT DOING THE SAME PROCESS OVER AND OVER
21 AND OVER UNTIL SOMEBODY IS POINTING THE FINGER AT THEM
22 AND SAYING THIS IS NOT OKAY. IT'S TIME TO STOP. AND
23 THAT IS WHY WE'RE HERE.

24 THEY HAVE TO ANSWER TO KEITH AND DENA BECAUSE OF
25 THE CASE THAT WE BROUGHT. WHEN IT'S ALL SAID AND DONE
26 THEY ARE GOING TO HAVE TO ANSWER TO YOU. YOU ARE THE

1 NTSB OF ORANGE COUNTY.

2 MR. FOX: YOUR HONOR, THAT IS IMPROPER ARGUMENT.

3 MR. JACKSON: I'LL REDRAFT IT.

4 THE COURT: IT'S ANALOGY ANYWAY. IT'S JUST
5 ARGUMENT. THE JURY HAS BEEN INFORMED WHAT THE ATTORNEYS
6 SAY IS NOT EVIDENCE. THEY ARE ARGUING.

7 MR. JACKSON: THANK YOU, YOUR HONOR.

8 IT'S GOING TO BE UP TO YOU. IT'S GOING TO BE UP
9 TO YOU TO TELL PACIFIC WHETHER OR NOT WHAT HAPPENED ON
10 THAT MORNING WITH BRETT WEINER WAS OKAY, COULD IT HAVE
11 BEEN PREVENTED, WAS IT GROSS NEGLIGENCE.

12 ONE OF THE PURPOSES OF OUR LEGAL SYSTEM IS TO
13 HOLD WRONGDOERS ACCOUNTABLE, ESPECIALLY THIS TYPE OF
14 CASE. AND THAT IS WHY WE'RE HERE. AS MY CLIENTS
15 TESTIFIED, THIS WAS TAKEN -- THIS PHOTOGRAPH OF BRETT WAS
16 TAKEN SHORTLY BEFORE HIS DEATH. AND, YOU KNOW, HE'S NOT
17 HERE TODAY TO TELL HIS SIDE OF THE STORY. AND MY CLIENTS
18 FOR THE REST OF THEIR LIVES ARE GOING TO BE DEPRIVED OF
19 EVER INTERACTING WITH THEIR SON AGAIN.

20 AND THE QUESTION IS IN THIS PARTICULAR CASE IN
21 THE LAW THAT THE JUDGE READS YOU WHAT ARE THE REMEDIES?
22 WHAT IS THE RECOURSE OF SOMEONE LIKE KEITH AND DENA? DO
23 THEY JUST RAISE THEIR HANDS AND SAY WELL, IT'S THE
24 SYSTEM, IT'S JUST ANOTHER CASE, THERE IS NOTHING WE CAN
25 DO ABOUT IT? WELL, THAT IS NOT THE WAY THIS COUNTRY IS
26 BUILT. THAT IS NOT WHAT OUR JURY SYSTEM IS ABOUT AND

1 CIVIL CASES ARE ABOUT. THERE ARE REMEDIES.

2 THE JUDGE READ YOU THE JURY INSTRUCTIONS. THIS
3 IS A SITUATION WHERE DESPITE THE 20 SOFT RESTRAINT
4 RELEASES BEFORE AND 10 MORE AFTER AND GOD KNOWS HOW MANY,
5 YOU KNOW, SINCE THEN, THE FACT OF THE MATTER IS WHEN I
6 ASKED THEIR WITNESSES ON THE STAND WHAT NUMBER WAS BRETT,
7 THEY DIDN'T EVEN KNOW WHICH NUMBER HE WAS. THEY DIDN'T
8 KNOW IF HE WAS NUMBER 21. THEY DIDN'T KNOW IF HE WAS
9 NUMBER 25, IF HE'S NUMBER 15. THEY DON'T KNOW. THEY
10 STILL DON'T KNOW TODAY. AS A MATTER OF FACT -- LET ME
11 HOLD OFF ON THAT FOR A SECOND.

12 SO HERE IS WHAT WE'RE PROPOSING THAT WE DO, WHAT
13 WE'RE PROPOSING HAPPENS IS TO SIMPLY ASK YOU TO FOLLOW
14 THE LAW. WE'RE SIMPLY ASKING YOU TO TRY TO FIX WHAT CAN
15 BE FIXED, TO HELP WHAT CAN BE HELPED. AND WHAT CAN'T BE
16 FIXED OR WHAT CAN'T BE HELPED, WE'RE ASKING YOU TO STEP
17 UP AND COMPENSATE THE WINNERS FOR. THERE ISN'T ANY OTHER
18 OPTION.

19 ALL I'M ALLOWED TO DO IS ASK FOR MONEY DAMAGES
20 ON THE PART OF KEITH AND DENA. AND IN THIS CASE YOU'RE
21 GOING TO BE ASKED TO FILL OUT A FORM. AND THE FUNERAL
22 EXPENSES, THEY ARE ACTUALLY MORE THAN THIS, YOU HEARD
23 MR. WEINER TESTIFY TO THIS, BUT WE'VE STIPULATED, TO KEEP
24 THINGS SIMPLE, AS THE FUNERAL EXPENSES RELATED TO BRETT'S
25 FUNERAL AT SADDLEBACK AND EVERYTHING ELSE ASSOCIATED WITH
26 THAT IS GOING TO COME INTO EVIDENCE, IT'S \$7,486.53.

1 THOSE ARE WHAT WE CALL ECONOMIC DAMAGES.

2 THE NON-ECONOMIC DAMAGES IN THIS CASE FOR THE
3 LOSS OF LOVE, COMPANIONSHIP, SOCIETY, AND AFFECTION,
4 THOSE ARE LIFE HARMS. THOSE ARE DAMAGES THAT YOU WILL
5 HAVE TO DETERMINE ASSUMING THAT YOU FIND THE DEFENDANTS
6 ARE GROSSLY NEGLIGENT AND THAT MR. AND MRS. WEINER HAVE
7 BEEN HARMED. THAT IS YOUR JOB, IT'S NOT MY JOB. LIFE
8 DAMAGES FOR THIS TYPE OF HARM FOR THE LOSS OF LOVE,
9 COMPANIONSHIP, SOCIETY, AND AFFECTION ARE REALLY TOUGH TO
10 WRAP YOUR HEAD AROUND. AN EXAMPLE MIGHT BE WITH PEOPLE
11 WHO HAVE TEENAGE DRIVERS IN THE FAMILY AND THAT PHONE
12 RINGS AT 2:00 IN THE MORNING, THE FIRST THING YOU THINK
13 ABOUT WHEN YOU PICK UP THAT PHONE IS YOU DON'T THINK
14 ABOUT IF THERE WAS AN ACCIDENT HOW MUCH DAMAGE WAS THERE
15 TO MY CAR, YOU DON'T THINK WHAT ARE THE MEDICAL BILLS
16 GOING TO BE, THE FIRST THING THAT GOES THROUGH YOUR HEAD
17 IS, IS SHE ALL RIGHT. IS HE AT THE HOSPITAL. IS HE
18 ALIVE. THOSE ARE THE THINGS THAT GO THROUGH YOUR MIND.

19 IN THIS PARTICULAR CASE WHEN KEITH GOT THE PHONE
20 CALL, THOSE WERE THE THINGS THAT WENT THROUGH HIS MIND.
21 HE DIDN'T KNOW WHAT WAS GOING ON UNTIL THE CORONER OF
22 ORANGE COUNTY TOLD HIM. YOU DIDN'T HEAR ANY EVIDENCE IN
23 THIS CASE THAT PACIFIC AMBULANCE EVER CALLED MY CLIENT TO
24 EXTEND CONDOLENCES.

25 MR. FOX: THAT IS IMPROPER EVIDENCE.

26 MR. JACKSON: THERE IS NO EVIDENCE --

1 THE COURT: OVERRULED. IT'S ARGUMENT.

2 MR. JACKSON: THANK YOU, YOUR HONOR.

3 YOU DIDN'T HEAR ANY EVIDENCE IN THIS CASE THAT
4 PACIFIC AMBULANCE EVER CALLED MY CLIENT TO APOLOGIZE WHAT
5 HAPPENED. WHAT YOU DID HEAR IS THE COUNTY OF ORANGE AND
6 THE CORONER SHOWED UP AT MR. AND MRS. WEINER'S HOUSE AND
7 SHARED WHAT HAD HAPPENED. THE PARENTS' WORST NIGHTMARE.
8 AND I'M NOT GOING TO GO THROUGH THE DETAILS. YOU SAT
9 HERE AND LISTENED TO WHAT HAPPENED. ONCE IS ENOUGH.

10 WE'RE TALKING ABOUT MONEY DAMAGES ON A CASE LIKE
11 THIS. THE NEXT QUESTION IS IF YOU FIND THAT THE WEINERS
12 HAVE BEEN HARMED, HOW DO YOU FIGURE OUT WHAT THESE MONEY
13 DAMAGES ARE. AND A COUPLE OF EXAMPLES MAYBE TO GET YOU
14 TALKING BACK IN THE JURY DELIBERATION ROOM WOULD BE NOT
15 TOO LONG AGO THERE WAS A PAINTING, I THINK IT WAS A
16 VAN GOGH PAINTING THAT I READ ABOUT IN EUROPE THAT WAS
17 SLASHED BY SOMEBODY. AND THE DAMAGE TO THAT PAINTING --
18 IT WAS A \$40 MILLION PAINTING, AND THE SLASH ON THE
19 PAINTING OBVIOUSLY COMPROMISED THE VALUE OF THIS
20 PARTICULAR ARTWORK.

21 THERE WAS A SITUATION WHERE A RACEHORSE OUT OF
22 SAN BERNARDINO VALUED AT \$15 MILLION WAS IMPROPERLY
23 TRAINED AND BROKE ITS LEG AND CAN NEVER RUN AGAIN. AND
24 THE QUESTION WAS WHAT TYPE OF LOSS OR VALUE DOES SOCIETY
25 PUT ON THIS ANIMAL THAT HAD BEEN DAMAGED.

26 THE COURT SYSTEM HAS A COMPUTER SYSTEM THAT

1 APPARENTLY WORKS MOST OF THE TIME, AND IF THIS \$20
2 MILLION COMPUTER SYSTEM GOES DOWN AND IT TAKES \$5 MILLION
3 TO FIX IT, BUT AN ESTIMATE IS GIVEN FOR ONLY \$3 MILLION,
4 THAT IS INADEQUATE COMPENSATION TO REPAIR THE COMPUTER
5 SYSTEM. \$5 MILLION IS NEEDED, NOT \$3 MILLION.

6 ALL I'M TRYING TO SAY IS WHEN WE'RE DEALING WITH
7 PAINTINGS, AND ANIMALS, AND COMPUTER SYSTEMS, THERE ARE
8 DIFFERENT WAYS TO FIGURE OUT WHAT THE NUMBER SHOULD BE.
9 YOU BRING AN ESTIMATE OR AN APPRAISER IN. THERE ARE
10 PROFESSIONALS THAT CAN COME IN AND TELL YOU WHAT THAT
11 DOLLAR AMOUNT IS. IN THESE TYPES OF CASES I CAN'T BRING
12 SOMEBODY IN TO TELL YOU WHAT THE DAMAGES ARE. THAT IS
13 WHAT YOU'RE HERE FOR. THAT IS YOUR JOB AS JURORS. YOU
14 FOLLOW THE JURY INSTRUCTIONS, YOU TALK ABOUT THIS, AND
15 YOU TRY TO FIGURE OUT WHAT TYPE OF HARM, WHAT TYPE OF
16 DAMAGES, IF ANY, KEITH AND DENA HAVE EXPERIENCED.

17 AND THAT IS SOMETHING THAT IS PROBABLY ONE OF
18 THE MOST DIFFICULT THINGS THAT A JURY COULD EVER BE ASKED
19 TO DO. BUT IN A CASE LIKE THIS, IN A CASE WHERE THE
20 DEATH COULD HAVE BEEN AVOIDED, IN A CASE WHERE YOU HAVE
21 20 SITUATIONS THAT HAVE GONE BAD AND YOU HAVE ANOTHER 10
22 THEREAFTER AND NOTHING HAS BEEN CHANGED, THIS IS A TYPE
23 OF CASE WHERE A JURY CAN GET TOGETHER AND THEY CAN WORK
24 TOGETHER TO COME UP WITH A FAIR NUMBER.

25 WHAT I WOULD LIKE TO DO IS SHARE WITH YOU THE
26 SPECIAL VERDICT FORM THAT YOU'LL BE ASKED TO FILL OUT AT

1 THE END OF THIS CASE. I'M GOING TO PUT IT UP ON THE
2 OVERHEAD. AND WE'RE GOING TO GO THROUGH IT TOGETHER.

3 THE COURT: DID YOU WANT TO MOVE THAT BOARD? I
4 DON'T KNOW THAT EVERYONE CAN SEE.

5 MR. JACKSON: IT'S RIGHT IN YOUR WAY, ISN'T IT?

6 THE COURT: JUST PUT IT OFF TO THE SIDE SO
7 EVERYONE CAN SEE.

8 MR. JACKSON: OKAY. THANK YOU, YOUR HONOR.

9 YOU KNOW, BEFORE I GO OVER TO THE PAPERWORK OVER
10 HERE, THERE IS SOMETHING YOU NEED TO THINK ABOUT AND THAT
11 IS THOSE LITTLE EXAMPLES THAT I GAVE YOU, YOU'RE FREE TO
12 COME UP WITH YOUR OWN EXAMPLES SO YOU CAN TALK ABOUT
13 THIS. BUT I WANT YOU TO THINK ABOUT THE FACT WHEN IT
14 COMES TO BEING A MASTERPIECE, BRETT WAS A MASTERPIECE TO
15 HIS MOTHER AND FATHER. WHEN IT COMES TO BEING A
16 RACEHORSE, BRETT WAS A RACEHORSE ON THE FOOTBALL,
17 BASKETBALL, AND BASEBALL FIELDS.

18 AND THIS THING REALLY HIT HOME FOR A LOT OF
19 PEOPLE. YOU NOTICED DURING JURY SELECTION A LOT OF
20 PEOPLE HEARD ABOUT THIS CASE. IT SHOULDN'T HAVE
21 HAPPENED. WHEN WE LEAVE HERE, AT THE END OF THIS CASE,
22 WHEN IT'S ALL DONE, IF WE WIN THE CASE, IF WE LOSE THE
23 CASE, THIS IS SOMETHING YOU'RE ALLOWED TO TALK TO YOUR
24 NEIGHBORS AND FRIENDS ABOUT THIS ONCE THE CASE IS DONE.
25 YOU CAN TALK TO THEM ABOUT WHAT THE FACTS OF THIS CASE
26 ARE. YOU CAN TALK TO THEM ABOUT WHAT DECISIONS YOU MADE

1 AND WHY YOU MADE THOSE DECISIONS. THIS CASE CAN HAVE
2 SOME LASTING REPERCUSSIONS.

3 MR. FOX: YOUR HONOR, THAT IS IMPROPER ARGUMENT.

4 MR. JACKSON: I'LL WITHDRAW THE LAST STATEMENT,
5 YOUR HONOR.

6 THE COURT: I DON'T THINK HE GOT TO FINISH HIS
7 SENTENCE. I DON'T KNOW IF YOU WERE GOING TO SAY LASTING
8 REPERCUSSIONS ON THE BEHALF OF THE PLAINTIFFS. SO I
9 DON'T KNOW WHAT YOU'RE GOING TO SAY, SO IT'S IMPOSSIBLE
10 FOR ME TO RULE ON IT.

11 MR. JACKSON: LET'S MOVE ON. THANK YOU, YOUR
12 HONOR.

13 THIS IS THE SPECIAL VERDICT FORM THAT IT'S
14 AGREED YOU'LL BE LOOKING AT WHEN YOU GET BACK INTO THE
15 JURY DELIBERATION ROOM. AND YOU'RE ASKED TO ANSWER THE
16 ALL THE QUESTIONS. THE ANSWERS YOU GIVE TO THESE
17 QUESTIONS ARE ENTIRELY UP TO YOU BASED UPON THE EVIDENCE
18 PRESENTED. WHAT I WOULD LIKE TO DO IS SUGGEST HOW WE
19 FEEL THE ANSWERS SHOULD BE GIVEN, THESE QUESTIONS SHOULD
20 BE ANSWERED BASED UPON THE EVIDENCE.

21 WAS JUSTICE -- JUSTIN MOLLICONE NEGLIGENT? WAS
22 MATTHEW HOLGUIN NEGLIGENT? AND WAS PACIFIC AMBULANCE
23 NEGLIGENT? IF YOU ANSWER NO, NO, NO, YOU'RE DONE.
24 MR. AND MRS. WEINER LOSE THE CASE AND THEY GO HOME.
25 DONE. IF YOU ANSWER YES TO ONE OR ALL THREE OF THESE --
26 AND WE WOULD SUGGEST THAT THE EVIDENCE SHOWS THAT ALL

1 THREE DEFENDANTS WERE GROSSLY NEGLIGENT IN THIS CASE,
2 ESPECIALLY BECAUSE OF THE REPETITIVE DISREGARD FOR PEOPLE
3 RELEASING THEMSELVES FROM THESE RESTRAINTS, BY THEIR
4 FAILURE TO TAKE ACTION AND CORRECT THE PROBLEM, BY
5 FOLLOWING PROTOCOL SUCH AS WHAT CAPTAIN MATTHEWS
6 TESTIFIED TO OF APPLYING A KNOT THAT CAN NEVER BECOME
7 UNDONE, YOU SOLVED THE PROBLEM.

8 IS THERE A REASON WHY THE EXPERTS ARE ABLE TO
9 TRANSPORT PEOPLE WITHOUT INCIDENT BUT THIS PRIVATE
10 AMBULANCE COMPANY SEEMS TO FIND IT A CHALLENGE?

11 IF YOU ANSWER YES TO ONE OR MORE OF THESE
12 QUESTIONS, AND IT ONLY TAKES NINE PEOPLE TO ANSWER YES TO
13 QUESTION ONE, YOU THEN GO TO THE NEXT QUESTION. THE SAME
14 NINE OR NINE DIFFERENT PEOPLE CAN ANSWER QUESTION 2. THE
15 QUESTION 2 IS WAS JUSTICE -- JUSTIN MOLLICONE'S GROSS
16 NEGLIGENCE A SUBSTANTIAL FACTOR IN CAUSING HARM TO EITHER
17 DENA ANNE WEINER OR KEITH WEINER. WE BELIEVE THE ANSWER
18 IS SUBSTANTIALLY MORE THAN 51 PERCENT. REMEMBER, A
19 SLIGHT TIPPING OF THE SCALES IS YES.

20 WORK YOUR WAY THROUGH THE FORM. NUMBER 3, WAS
21 HOLGUIN'S NEGLIGENCE A SUBSTANTIAL FACTOR IN CAUSING THE
22 HARM? THE ANSWER IS YES.

23 SAME QUESTION WITH RESPECT TO PACIFIC AMBULANCE.
24 WAS PACIFIC AMBULANCE'S GROSS NEGLIGENCE A SUBSTANTIAL
25 FACTOR IN CAUSING HARM TO DENA ANNE WEINER AND/OR KEITH
26 WEINER? THE ANSWER IS YES. IF YOU ANSWER YES TO THOSE

1 QUESTIONS, YOU THEN GO TO NUMBER 4.

2 WHAT ARE THE FUNERAL AND BURIAL EXPENSES? AND
3 I'VE GIVEN YOU THAT NUMBER. YOU WRITE THOSE NUMBERS IN.
4 IT'S A NUMBER THAT WE HAVE STIPULATED TO. IT'S NOT IN
5 QUESTION.

6 NEXT, WHAT ARE DENA ANNE WEINER'S TOTAL
7 NON-ECONOMIC DAMAGES? DO NOT REDUCE THE DAMAGES ON THE
8 FAULT, IF ANY, OF BRETT WEINER OR OTHERS. IT THEN ASKS
9 YOU TO CALCULATE THE PAST NON-ECONOMIC LOSS OF LOVE,
10 COMPANIONSHIP, COMFORT, CARE, ASSISTANCE, PROTECTION,
11 AFFECTION, SOCIETY AND MORAL SUPPORT. THEN IT GOES ON TO
12 ASK YOU THE SAME QUESTION FOR FUTURE DAMAGES OF THE LIFE
13 EXPECTANCY OF DENA GOING FORWARD.

14 WE WOULD SUGGEST THAT FRANKLY THERE IS NOT
15 ENOUGH MONEY IN THE WORLD TO RIGHT THIS, TO FIX THIS
16 HARM. BUT A NUMBER IS NECESSARY. IF YOU FIND THE
17 DEFENDANTS WERE GROSSLY NEGLIGENT, IF YOU FIND THAT BRETT
18 WEINER DID NOT SUBSTANTIALLY CONTRIBUTE TO HIS DEATH,
19 THEN WHAT IS THE NUMBER, THAT NUMBER THAT WE'VE BEEN
20 TALKING ABOUT SINCE LUNCH? WE WOULD RESPECTFULLY SUGGEST
21 THAT A REASONABLE NUMBER FOR DENA WEINER RELATIVE TO THE
22 DEATH OF HER SON, AND I'M NOT ASHAMED TO ASK FOR THIS
23 NUMBER, IN FACT I WOULD BE EMBARRASSED TO ASK FOR
24 ANYTHING LESS, WOULD BE FOR PAST AND FUTURE DAMAGES TO BE
25 A COMBINATION OF 1.5 MILLION.

26 WHETHER YOU ATTRIBUTE PART OF THAT TO THE PAST

1 FROM THE DATE OF BRETT'S DEATH UP TO THE FUTURE AND THEN
2 FROM THIS POINT FORWARD FOR THE NEXT 20 TO 30 YEARS,
3 WHATEVER THAT NUMBER IS, WE THINK THAT IS A VERY
4 REASONABLE NUMBER.

5 SAME APPROACH FOR KEITH, DIFFERENT SET OF FACTS,
6 DIFFERENT SPOUSE, A DAD, BEEN THROUGH DIFFERENT
7 SITUATIONS. BUT WHEN YOU TAKE INTO CONSIDERATION THE
8 EVIDENCE, WHEN YOU LOOK AT WHAT HAS HAPPENED, WHEN YOU
9 TELL KEITH AND DENA THAT IT'S NOT OKAY WHAT HAPPENED AND
10 THAT THEY WERE HARMED AND THEY ARE ENTITLED TO BE
11 COMPENSATED FOR THE LOSS BECAUSE THAT IS THE ONLY REMEDY
12 THEY HAVE, WE WOULD SUGGEST FOR BOTH PAST AND FUTURE, IN
13 OTHER WORDS A COMBINED TOTAL, A TOTAL OF 1.5. HOW YOU
14 APPORTION IT IS COMPLETELY UP TO YOU.

15 IF MR. AND MRS. WEINER HAVE PROVEN DAMAGES THEN
16 YOU GO TO THE NEXT QUESTION. THE NEXT QUESTION WAS IS
17 BRETT WEINER NEGLIGENT, NUMBER 4. WE WOULD SUGGEST THAT
18 WE GOT A COMPROMISED PATIENT IN THE BACK OF THIS
19 AMBULANCE, 5150 PATIENT. ONE HUNDRED PERCENT OF HIS
20 CARE, ONE HUNDRED PERCENT OF HIS SAFE TRANSPORT WAS THE
21 DEFENDANTS' RESPONSIBILITY. WE WOULD SUGGEST THAT BRETT
22 WAS NOT NEGLIGENT AT ALL. HE WAS A VICTIM, LIKE ANYONE
23 ELSE. IF YOU'RE TRANSPORTING A 5150 PATIENT YOU ASSUME
24 RESPONSIBILITY FOR HIS OR HER SAFETY. IT'S BEEN SET
25 FORTH IN DETAIL THAT THESE GUYS KNEW THAT IF THEY DIDN'T
26 DO THEIR JOB BRETT COULD LOSE HIS LIFE AND THAT IS

1 EXACTLY WHAT HAPPENED.

2 IF YOU FIND FOR SOME REASON THAT BRETT HAD BEEN
3 SOMEWHAT PARTIALLY RESPONSIBLE, HE WAS NEGLIGENT, WE
4 WOULD RESPECTFULLY SUGGEST THAT IF YOU GO TO THE NEXT
5 QUESTION THAT ANY NEGLIGENCE THAT BRETT HAD WAS NOT A
6 SUBSTANTIAL FACTOR. OKAY? IF YOU FIND THAT BRETT'S
7 NEGLIGENCE WAS A SUBSTANTIAL FACTOR, THEN YOU GO TO THE
8 NEXT QUESTION.

9 AND THE NEXT QUESTION TALKS ABOUT ISSUES OF
10 GROSS NEGLIGENCE AND NEGLIGENCE, COMPARATIVE NEGLIGENCE.
11 AND THE BOTTOM LINE IS IT'S WHERE YOU TALK ABOUT THIS
12 BACK IN THE DELIBERATION ROOM AND YOU TRY TO FIGURE OUT
13 WHO'S PRIMARILY AT FAULT FOR THIS BEING ALLOWED TO
14 HAPPEN. WHO'S PRIMARILY AT FAULT FOR THE 20 PRIOR
15 RESTRAINTS NOT BEING DONE PROPERLY AND PATIENTS BEING
16 RELEASED AND THEN THE 10 THEREAFTER AFTER MS. PETRONIS'S
17 DEPOSITION.

18 WE WOULD SUGGEST THAT THE NUMBER HAS TO COME UP
19 TO 100. AND YOU ARE TO ASSIGN A PERCENTAGE OF FAULT ON
20 MOLLICONE, ON HOLGUIN, AND PACIFIC AMBULANCE, ALSO ON
21 BRETT WEINER. WE DON'T FEEL BRETT DID ANYTHING WRONG
22 THAT MORNING. SO WE WOULD SAY ZERO. WITH RESPECT TO
23 PACIFIC AMBULANCE, WE WOULD SUGGEST SOMETHING AROUND 60
24 PERCENT, AND SOMETHING AROUND 20 PERCENT FOR MOLLICONE
25 AND HOLGUIN. THAT TOTALS 100 PERCENT OF FAULT.

26 ONCE AGAIN YOUR -- THIS IS YOU, THIS IS

1 SOMETHING THAT IT'S A HEAVY BURDEN TO BEAR, BUT IT NEEDS
2 TO BE DONE. AND SO PLEASE TALK ABOUT THIS BACK IN THE
3 DELIBERATION ROOM AND PLEASE DO WHAT YOU THINK IS FAIR
4 WHEN IT COMES DOWN TO APPORTIONING OUT FAULT, WHEN IT
5 COMES OUT TO APPORTIONING OUT MISTAKE. THE SAME APPROACH
6 APPLIES WITH RESPECT TO KEITH WEINER. AND WE WOULD
7 RESPECTFULLY SUGGEST THAT THE SAME PERCENTAGES SHOULD
8 APPLY. THE PRESIDING JUROR SIGNS THE FORM AND LET'S THE
9 CLERK KNOW AND THEN THE CASE IS DONE.

10 YOUR HONOR, COULD WE HAVE THE LIGHTS BACK ON,
11 PLEASE?

12 THE COURT: LIGHTS, MADAM.

13 MR. JACKSON: THANK YOU.

14 I'M ALMOST DONE. MY FINAL THOUGHTS. WE'VE DONE
15 OUR BEST TO TRY TO SHARE THE FACTS WITH YOU, THE
16 IMPORTANT ISSUES WITH YOU, WHY WE'RE HERE. I THINK THE
17 HARM IS SELF-EVIDENT, IT'S SELF-EXPLANATORY. THE PROBLEM
18 THAT HAS BEEN TAKING PLACE FOR THE LAST THREE AND FOUR
19 YEARS MAGNIFIED BY WHAT HAPPENED TO BRETT IS WHAT BRINGS
20 US HERE TODAY. YOU'RE GOING TO HAVE A CHANCE TO GO BACK
21 INTO THE JURY DELIBERATION ROOM AND YOU'RE GOING TO HAVE
22 A CHANCE TO INTELLIGENTLY DISCUSS WHAT HAS HAPPENED,
23 INTELLIGENTLY DISCUSS WHY THEY THINK IT'S OKAY FOR THIS
24 TO HAPPEN OVER AND OVER AND OVER, PLAY PRIVATE AMBULANCE
25 RUSSIAN ROULETTE.

26 AND WE'RE HERE TODAY BECAUSE IT KILLED THEIR

1 SON. THAT IS WHY WE'RE HERE. THEY ARE NOT REQUIRED TO
2 BURY THEIR HEAD IN THE SAND. THEY ARE NOT REQUIRED NOT
3 TO DO ANYTHING. THEY ARE ASSERTING THEIR RIGHTS TO BE
4 HERE TODAY. AND IT'S BEEN A LONG, HARD FOUGHT JOURNEY,
5 AND HERE WE ARE, AND WE'RE GLAD THAT YOU'RE OUR JURY.
6 LIKE I SAID, YOU GUYS HAVE BEEN TAKING NOTES, YOU'VE BEEN
7 ATTENTIVE. AS A TRIAL LAWYER, I CAN'T ASK FOR ANYTHING
8 MORE THAN THAT, BUT NEITHER, MORE IMPORTANT, CAN MY
9 CLIENTS. EVERYTHING THEY WANTED THEY GOT IN THIS TRIAL.
10 THEY GOT 12 PEOPLE PLUS AN ALTERNATE TO LISTEN TO THEIR
11 FACTS, TO HEAR THEIR CASE, TO HEAR THEIR SIDE OF THE
12 STORY. FRANKLY, IN OUR JURY SYSTEM THAT IS IT, THERE IS
13 NOTHING BETTER THAN HAVING 12 JURORS LISTEN TO THE FACTS.

14 WE WOULD LIKE YOUR VERDICT TO REPRESENT A
15 LASTING LEGACY FOR BRETT WEINER. WE WOULD LIKE YOUR
16 VERDICT TO PROPERLY COMPENSATE KEITH AND DENA FOR WHAT
17 THEY'VE BEEN THROUGH AND WHAT THEY ARE GOING TO GO
18 THROUGH THE REST OF THEIR LIFE WITHOUT THEIR SON. IT'S
19 SOMETHING THAT YOU PROMISED US THAT YOU COULD DO WHEN WE
20 PICKED YOU AS A JURY, AND I THINK IT'S SOMETHING AFTER
21 TWO WEEKS OF EVIDENCE YOU CAN SEE WHY I'M STANDING HERE
22 ASKING YOU TO DO WHAT I'M ASKING YOU TO DO. WE'RE ASKING
23 YOU TO BRING IN A JURY VERDICT THAT IS SANCTIONED BY THE
24 FACTS, SANCTIONED BY THE LAW AND SUPPORTED BY YOUR
25 UNDERSTANDING AND EMPATHY IN THIS CASE.

26 NOW, I'M GOING TO HAVE A CHANCE TO TALK TO YOU

1 FOR A COUPLE MORE MINUTES AFTER MR. FOX IS DONE WITH HIS
2 CLOSING ARGUMENT, BUT JUST IN CASE I DON'T, THAT IS MY
3 OPTION, ONCE AGAIN ON BEHALF OF KEITH AND DENA I WANT TO
4 THANK YOU FOR YOUR ATTENTION, THANK YOU FOR YOUR JURY
5 PARTICIPATION, AND THANK YOU FOR ALLOWING US TO PRESENT
6 THIS CASE TO YOU. I REALLY DO APPRECIATE IT. THANK YOU.

7 THANK YOU, YOUR HONOR.

8 THE COURT: THANK YOU, MR. JACKSON.

9 ALL RIGHT. EVERYONE STAND UP PLEASE. STRETCH.
10 MR. FOX IS GOING TO HAVE AN OPPORTUNITY TO ADDRESS YOU.
11 I'M GOING TO LEAVE THE ROOM FOR A MOMENT. YOU GUYS
12 CONTINUE TO STRETCH AND STAND. WHEN I COME BACK, MR. FOX
13 WILL TALK TO YOU.

14 (RECESS)

15 (WHEREUPON, MR. FOX PRESENTS HIS CLOSING ARGUMENT
16 WHICH IS NOT TRANSCRIBED HEREIN)

17 THE COURT ATTENDANT: COME TO ORDER. COURT IS
18 NOW IN SESSION.

19 THE COURT: LADIES AND GENTLEMEN, WELCOME BACK.
20 IT IS NOW MR. JACKSON'S OPPORTUNITY TO PRESENT HIS
21 REBUTTAL ARGUMENT ON BEHALF OF HIS CLIENT.

22 YOU MAY ADDRESS THE PANEL.

23 MR. JACKSON: THANK YOU, YOUR HONOR.

24 BRIEFLY, LADIES AND GENTLEMEN, THAT IS BRETT
25 WEINER, THAT IS WHY WE'RE HERE TODAY. BRETT'S PICTURE
26 HAS BEEN IN MY OFFICE SINCE I TOOK THIS CASE. I LOOKED

1 AT HIM EVERY SINGLE DAY. I'M NOT GOING TO APOLOGIZE FOR
2 SHOWING YOU THE PICTURE OF THE PERSON THAT WAS KILLED
3 BECAUSE OF DEFENDANTS' GROSS NEGLIGENCE. AND I'M UPSET
4 WITH THE -- MAYBE DEFENSE COUNSEL WOULD RATHER ME PUT UP
5 SPREADSHEETS AND NUMBERS, MAYBE THAT IS WHAT HE WANTS ME
6 TO DO. BUT I DON'T WORK FOR HIM, I DON'T WORK FOR HIS
7 LAW FIRM, AND I DO THINGS MY OWN WAY. THIS IS WHY WE'RE
8 HERE, AND I'M NEVER GOING TO APOLOGIZE FOR SHOWING YOU
9 THE YOUNG MAN THAT HAD SUCH AN IMPACT ON KEITH AND DENA.
10 THERE IS NOTHING WRONG WITH THAT.

11 THE JURY INSTRUCTIONS THAT COUNSEL SHARED WITH
12 YOU HAPPENED TO BE THE SAME JURY INSTRUCTIONS THIS JUDGE
13 READ TO YOU FOR ABOUT AN HOUR THIS MORNING. IT'S THE
14 SAME SET THAT EACH AND EVERY ONE OF YOU HAS A COPY OF ON
15 YOUR LAP. YOU DON'T NEED ME TO REVIEW WITH YOU SOMETHING
16 THAT WAS JUST GONE OVER WITH YOU BY HIS HONOR. I THOUGHT
17 IT WAS MORE IMPORTANT THAT WE TALK A LITTLE BIT ABOUT
18 WHAT HAS HAPPENED OVER THE LAST TWO WEEKS.

19 WITH RESPECT TO TRIAL TRICKS, THINGS LIKE THIS,
20 I'M SPEAKING TO YOU FROM THE HEART, I'M TRYING TO MAKE
21 A POINT, DENA LEANED OVER AND WHISPERED IN MY EAR IF --
22 SHE KNEW I WAS GETTING UPSET, "DON'T WORRY ABOUT IT, THE
23 JURY GETS IT." AND SO I'M NOT GOING TO WASTE MY TIME
24 RESPONDING TO SOME OF THE THINGS THAT WERE SAID. THAT IS
25 NOT WHY WE'RE HERE. THIS IS ABOUT MR. AND MRS. WEINER,
26 IT'S NOT ABOUT MR. FOX OR ME.

1 THE ORANGE COUNTY EMS POLICIES AND PROCEDURES
2 THAT MR. FOX TALKED ABOUT IN HIS CLOSING ARGUMENT THAT HE
3 CLAIMS THAT THEY FOLLOWED, A RESTRAINT, THIS IS IN
4 EVIDENCE, ITEM NUMBER 13 MEANS ANY DEVICE MADE OF PADDED
5 LEATHER OR SOFT MATERIAL, EXAMPLE VELCRO, ET CETERA, THAT
6 IS SPECIFICALLY DESIGNED TO RESTRAIN A PATIENT FOR THE
7 PURPOSE OF PREVENTING PHYSICAL HARM TO THE PATIENT OR
8 OTHERS. THAT IS THE DEFINITION. THE DEFENDANT IN THIS
9 CASE DID NOT USE A PROPER RESTRAINT ON BRETT. IF THEY
10 HAD, IT WOULDN'T HAVE MATTERED IF HE WAS COOPERATIVE, IT
11 WOULDN'T HAVE MATTERED IF HE ACTED OUT, AND IT WOULDN'T
12 HAVE MATTERED IF HE WAS A TICKING TIME BOMB BECAUSE IF HE
13 WAS PROPERLY RESTRAINED HE WOULD NEVER HAVE BEEN ABLE TO
14 BE RELEASED FROM THE RESTRAINTS, HE WOULD HAVE NEVER
15 EXITED THAT AMBULANCE DOOR AND HE WOULD HAVE MADE IT TO
16 COLLEGE HOSPITAL IN CERRITOS ALIVE AND WELL. THAT IS THE
17 ISSUE HERE. IT'S THE SMOKE AND MIRRORS THAT I'M HEARING
18 ABOUT REALLY HAVE NO PLACE IN THIS COURTROOM.

19 WITH RESPECT TO NEGLIGENCE, GROSS NEGLIGENCE,
20 GROSS NEGLIGENCE, AN EXTREME DEPARTURE FROM WHAT A
21 REASONABLY CAREFUL PERSON WOULD DO. IN THIS PARTICULAR
22 CASE HAD THE DEFENDANT BEEN TOLD THAT A PATIENT RELEASED
23 HIMSELF OR HERSELF FROM THE RESTRAINT AND DID NOTHING
24 ABOUT IT, IF SOMEBODY WAS HURT, THE EMTS DROPPED THE
25 BALL.

26 IT HAPPENED ONCE, THAT IS NEGLIGENCE. BUT WHEN

1 YOU ARE AWARE OF A PROBLEM, WHEN YOU FAIL TO ACT, A
2 PERSON CAN BE GROSSLY NEGLIGENT BY FAILING -- OR BY
3 ACTING OR FAILING TO ACT. WHEN YOU MAKE A CONSCIOUS AND
4 VOLUNTARY DISREGARD TO THE USE OF REASONABLE CARE THAT IS
5 WHERE IT BECOMES GROSS NEGLIGENCE. GROSS NEGLIGENCE
6 HAPPENS WHERE YOU KNOW THERE IS A PROBLEM AND THEN FOR
7 WHATEVER REASON, WHETHER IT'S MONEY, WHETHER IT'S TOO
8 MUCH TROUBLE TO EDUCATE YOUR EMPLOYEES, THAT IS WHERE IT
9 TURNS INTO GROSS NEGLIGENCE.

10 THE FIRST TIME SOMETHING HAPPENS YOU HAVE
11 NEGLIGENCE, WHEN IT HAPPENS A SECOND TIME, A THIRD TIME,
12 A FOURTH TIME, A FIFTH TIME, A SIXTH TIME, A SEVENTH
13 TIME, AN EIGHTH TIME, A NINTH TIME, A TENTH TIME, AN
14 ELEVENTH TIME, A TWELFTH TIME, A THIRTEENTH TIME, A
15 FOURTEENTH TIME, A FIFTEENTH TIME, A SIXTEENTH TIME, A
16 SEVENTEENTH TIME, AN EIGHTEENTH TIME, A NINETEENTH TIME,
17 AND A TWENTIETH TIME, THAT IS GROSS NEGLIGENCE. WHEN YOU
18 HEAR IT'S CONTINUING TO HAPPEN AT TWICE THE FREQUENCY
19 SINCE MISS PETRONIS'S DEPOSITION OVER THE LAST EIGHT
20 MONTHS, THAT IS GROSS NEGLIGENCE TIMES TEN AND IT'S NOT
21 OKAY. AND THAT IS WHY WE'RE HERE.

22 PLEASE GO BACK AND DISCUSS THE FACTS AND THE
23 EVIDENCE. THAT IS ALL MR. AND MRS. WEINER ARE ASKING YOU
24 TO DO. PLEASE GIVE IT SOME THOUGHT AND DON'T RUSH THE
25 DECISION. AND WHATEVER, WHATEVER YOU DECIDE AS A JURY,
26 MY CLIENTS FEEL LIKE THEY'VE ALREADY HAD THEIR DAY IN

1 COURT. THEY'VE BEEN ABLE TO TELL THEIR STORY. THAT HAS
2 BEEN THE MOST IMPORTANT THING TO THEM. SO THIS CASE IS
3 IN YOUR HANDS. WHAT HAPPENS NEXT IS COMPLETELY UP TO
4 YOU. AND ONCE AGAIN, YOU KNOW, THERE IS NO SMOKE AND
5 MIRRORS HERE.

6 I APPRECIATE YOUR TIME, AND I APPRECIATE YOU
7 LISTENING. AND ON BEHALF OF MR. AND MRS. WEINER, THANK
8 YOU FOR YOUR TIME AND SERVICE AS JURORS. I APPRECIATE
9 IT.

10 THANK YOU, YOUR HONOR.

11 THE COURT: THANK YOU, MR. JACKSON.

12 MADAM, WOULD YOU PLEASE SWEAR OUR COURT
13 ATTENDANT.

14 (THE CLERK SWEARS THE COURT ATTENDANT TO TAKE CHARGE
15 OF THE JURY:)

16 THE COURT: OKAY, FOLKS. I PUT YOU IN THE GOOD
17 HANDS OF LORETTA. GET ALL YOUR STUFF TOGETHER, ALL YOUR
18 NOTES, ALL YOUR JURY INSTRUCTIONS. THE ALTERNATE PLEASE
19 STAY WITH US, JUST THE TWELVE ARE GOING TO GO BACK AT
20 THIS TIME.

21 THANK YOU AGAIN, LADIES AND GENTLEMEN.

22 (THE JURY DELIBERATE)

23 (END OF PARTIAL TRANSCRIPT)

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE - CENTRAL JUSTICE CENTER
DEPARTMENT C18

KEITH R. WEINER, AN INDIVIDUAL;)
DENA ANNE WEINER, AN INDIVIDUAL,)
)
 PLAINTIFFS,)
)
 VS.) CASE NO.
) 30-2012-00550614
)
 JUSTIN THOMAS MOLLICON, AN)
 INDIVIDUAL; MATTHEW JOSEPH)
 HOLGUIN, AN INDIVIDUAL; PACIFIC)
 AMBULANCE, INC., A CALIFORNIA)
 CORPORATION; AND DOES 1 THROUGH)
 30, INCLUSIVE,)
)
 DEFENDANTS.)
)

HONORABLE JAMES J. DI CESARE, JUDGE PRESIDING

REPORTER'S PARTIAL TRANSCRIPT

MONDAY, JULY 22, 2013

APPEARANCES OF COUNSEL:

FOR PLAINTIFFS:

JACKSON & WILSON
BY: JON MITCHELL JACKSON, ESQ.

FOR DEFENDANTS:

LEWIS BRISBOIS BISGAARD & SMITH LLP
BY: DANA ALDEN FOX, ESQ.
MONA TASHROUDIAN, ESQ.

RANDI TAYLOR, CSR 6208
OFFICIAL COURT REPORTER

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WITNESS INDEX

PLAINTIFFS' : DIRECT CROSS REDIRECT RECROSS VOIR
DIRE

(NONE)

DEFENDANTS' : DIRECT CROSS REDIRECT RECROSS VOIR
DIRE

(NONE)

WITNESSES
ON REBUTTAL : DIRECT CROSS REDIRECT RECROSS VOIR
DIRE

(NONE)

WITNESSES ON SURREBUTTAL :

(NONE)

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EXHIBIT INDEX

PLAINTIFFS' EXHIBITS:

IDENT EVID

(NONE)

DEFENDANTS' EXHIBITS:

IDENT EVID

(NONE)

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REPORTER'S CERTIFICATE

STATE OF CALIFORNIA)
) SS.
COUNTY OF ORANGE)

I, RANDI TAYLOR, CSR NO. 6208, OFFICIAL COURT
REPORTER, DO HEREBY CERTIFY THAT THE WITHIN AND FOREGOING
TRANSCRIPT IS A FULL, TRUE, AND CORRECT TRANSCRIPT OF MY
SHORTHAND NOTES THEREOF AND A FULL, TRUE, AND CORRECT
STATEMENT OF THE PROCEEDINGS HAD IN SAID CAUSE.

DATED: AUGUST 4, 2013

RANDI TAYLOR, CSR NO. 6208
OFFICIAL COURT REPORTER