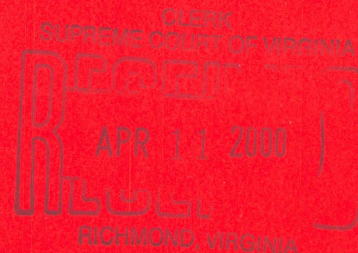

In The
Supreme Court of Virginia

RECORD NO. 992345



VIDA SAMI

Appellant,

v.

**MILES VARN, M.D. and
JULIAN ORENSTEIN, M.D.,**

Appellees.

APPENDIX

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Raighne Delaney
POMPAN, MURRAY,
& WERFEL, P.L.C.
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Counsel for Appellees

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The Honorable M. Langhorne Keith
entered July 14, 1999 383**

4-21-98

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IN THE CIRCUIT COURT OF FAIRFAX COUNTY

Vida Sami
6214 Frontier Drive
Springfield, VA 22100

JOHN T. FREY
CLERK-CIRCUIT COURT
FAIRFAX, VA

Plaintiff,

v.

Civil Action No.: 171034

Dr. Elisabeth Anton
Fairfax Hospital
3300 Gallows Road
Falls Church, VA 22042

Dr. Miles Varn
Fairfax Hospital
c/o Emergency Physicians of No. VA
3300 Gallows Road
Falls Church, VA 22042

Dr. Druckenbrod
Fairfax Hospital
c/o Emergency Physicians of No. VA
3300 Gallows Road
Falls Church, VA 22042

and

Dr. Julia Orenstein
Fairfax Hospital
c/o Emergency Physicians of No. VA
3300 Gallows Road
Falls Church, VA 22042

Defendants.

MOTION FOR JUDGMENT

Plaintiff Vida Sami ("Sami"), by and through counsel, moves for judgment against Defendants Dr. Elisabeth Anton, Dr. Miles Varn, Dr. Druckenbrod and Dr. Julia Orenstein on grounds and in the amounts set forth below:

1. Dr. Anton, Dr. Varn, Dr. Druckenbrod and Dr. Orenstein are emergency room physicians providing services at Fairfax Hospital which is a health care facility located at 3300 Gallows Road, Falls Church, Virginia 22042.

2. Defendant Dr. Elisabeth Anton is an employee of, or in the alternative, an independent contractor hired by Fairfax Hospital, to perform medical services and care to patients therein.

3. Defendant Dr. Miles Varn is an employee of, or in the alternative, an independent contractor hired by Fairfax Hospital, to perform medical services and care to patients therein.

4. Defendant Dr. Druckenbrod is an employee of, or in the alternative, an independent contractor hired by Fairfax Hospital, to perform medical services and care to patients therein.

5. Defendant Dr. Julia Orenstein is an employee of, or in the alternative, an independent contractor hired by Fairfax Hospital, to perform medical services and care to patients therein.

6. On January 26, 1994, Plaintiff Sami, then four months pregnant, went to Fairfax Hospital complaining of vaginal bleeding, backaches and flank pain. Treating physicians at Fairfax Hospital, Dr. Miles Varn and Dr. Elisabeth Anton, negligently and carelessly, failed to perform a sonogram or check the fetus to see if it was alive, but instead advised Sami that she had had a miscarriage. Hospital staff then advised Sami that they were going to "clean her up."

7. The next day, Plaintiff Sami called Fairfax Hospital complaining of pain. She told the hospital staff she believed she still had the fetus. She was advised that the fetus was removed during the operation of the previous day.

8. On or about February 7, 1994, Sami returned to Fairfax Hospital complaining of pain believing that she had not expelled the fetus. Defendant, Dr. Elisabeth Anton, along with members of Fairfax Hospital staff, negligently diagnosed her condition as an infection and

prescribed drugs for her. Defendant Dr. Anton and hospital staff did not perform a sonogram or any other diagnostic tests to determine if in fact plaintiff Sami had expelled the fetus.

9. On or about April 23, 1994, Sami returned to Fairfax Hospital still complaining of the same symptoms, and she was examined by Dr. Julia Orenstein. Still nothing was done to fully investigate or cure Sami's condition, as again no sonogram or other diagnostics were performed to determine if Sami had expelled the fetus.

10. On or about June 14, 1994, Sami was in extreme pain, complained of contractions and needed to call an ambulance to reach Fairfax Hospital. Upon her arrival, Fairfax Hospital personnel, negligently, carelessly and recklessly treated her with contempt. They accused her of acting, of not having any pain. Although Fairfax Hospital and Dr. Druckenbrod, the attending physician, negligently and recklessly performed no sonogram or test to determine whether she was pregnant, they told Sami she was not carrying a fetus.

11. On or about June 22, 1994, Sami visited Dr. Roberts at Arlington Hospital. Dr. Roberts believed there was some object or growth in her stomach, but based upon the Fairfax Hospital report, did not believe that Sami was pregnant. Sami underwent immediate surgery and Dr. Roberts found a dead fetus in her uterus, which had been there for five months. Dr. Roberts told her that she was the luckiest woman alive because the existence of the dead fetus in her uterus nearly killed her.

12. As a result of Dr. Roberts' efforts to save her life, Dr. Roberts had to remove Sami's fallopian tube on the right side of her body, and Sami suffered severe mental anguish upon learning that she was carrying a dead fetus for five months.

COUNT ONE: Dr. Elisabeth Anton's Negligence

13. Vida Sami reasserts and realleges allegations one (1) through twelve (12) of the Complaint.

14. Defendant Dr. Elisabeth Anton had a duty to exercise reasonable care and due diligence in treating as meritorious Plaintiff Sami's claims that she was still carrying a fetus, and in performing all diagnostic tests and a sonogram on January 26, 1994 and February 7, 1994 to determine the source of Sami's pain and suffering.

15. Defendant Dr. Elisabeth Anton breached her duty to Plaintiff Sami by not performing the sonogram and diagnostic tests and by not exercising due diligence in discovering the dead fetus in Plaintiff's uterus after Plaintiff's numerous complaints.

16. As a direct and proximate result of Defendant Dr. Anton's breach, in concert with the negligence of the other physicians named herein, Sami suffered damages of medical expenses, permanent injuries, lost wages, pain and suffering, impaired chance of pregnancy, mental anguish, and near death.

WHEREFORE, Plaintiff Vida Sami moves this Court to find Defendant Dr. Elisabeth Anton jointly and severally liable for Plaintiff's injury in the amount of \$750,000.00 compensatory and \$350,000.00 punitive damages.

COUNT TWO: Dr. Elisabeth Anton's Infliction of Emotional Distress

17. Vida Sami reasserts and realleges allegations one (1) through sixteen (16) of the Complaint.

18. The aforesaid negligence, carelessness and recklessness of Defendant Dr. Anton is extreme and shocks the conscious in that it caused Plaintiff Sami to carry a dead fetus for five months, and ultimately impaired her child bearing ability.

19. Each of the aforesaid acts were done maliciously, recklessly, or intentionally.

20. As a direct and proximate result of Defendant Dr. Anton's infliction of emotional distress upon Plaintiff Sami, in concert with the tortious conduct of the other physicians named herein, Sami suffered severe trauma, fear, pain, injury, distress and anxiety.

WHEREFORE, Plaintiff Vida Sami moves this Court to find Defendant Dr. Elisabeth Anton jointly and severally liable for Plaintiff's injury in the amount of \$750,000.00 compensatory and \$350,000.00 punitive damages.

COUNT THREE: Dr. Miles Varn's Negligence

21. Vida Sami reasserts and realleges allegation one (1) through twenty (20) of the Complaint.

22. Defendant Dr. Miles Varn had a duty to exercise reasonable care and due diligence in treating as meritorious Plaintiff Sami's claims that she was still carrying a fetus, and in performing all diagnostic tests and a sonogram on January 26, 1994 to determine the source of Sami's pain and suffering.

23. Defendant Dr. Miles Varn breached his duty to Plaintiff Sami by not performing the sonogram and diagnostic tests and by not exercising due diligence in discovering the dead fetus in Plaintiff's uterus after Plaintiff's numerous complaints.

24. As a direct and proximate result of Defendant Dr. Miles Varn's breach, in concert with the negligence of the other physicians named herein, Sami suffered damages of medical expenses, permanent injuries, lost wages, pain and suffering, impaired chance of pregnancy, mental anguish, and near death.

WHEREFORE, Plaintiff Vida Sami moves this Court to find Defendant Dr. Miles Varn jointly and severally liable for Plaintiff's injury in the amount of \$750,000.00 compensatory and \$350,000.00 punitive damages.

COUNT FOUR: Dr. Miles Varn's Infliction of Emotional Distress

25. Vida Sami reasserts and realleges allegations one (1) through twenty-four (24) of the Complaint.

26. The aforesaid negligence, carelessness and recklessness of Defendant Dr. Varn is extreme and shocks the conscious in that it caused Plaintiff Sami to carry a dead fetus for five months, and ultimately impaired her child bearing ability.

27. Each of the aforesaid acts were done maliciously, recklessly, or intentionally.

28. As a direct and proximate result of Defendant Dr. Anton's infliction of emotional distress upon Plaintiff Sami, in concert with the tortious conduct of the other physicians named herein, Sami suffered severe trauma, fear, pain, injury, distress and anxiety.

WHEREFORE, Plaintiff Vida Sami moves this Court to find Defendant Dr. Miles Varn jointly and severally liable for Plaintiff's injury in the amount of \$750,000.00 compensatory and \$350,000.00 punitive damages.

COUNT FIVE: Dr. Druckenbrod's Negligence

29. Vida Sami reasserts and realleges allegation one (1) through twenty-eight (28) of the Complaint.

30. Defendant Dr. Druckenbrod had a duty to exercise reasonable care and due diligence in treating as meritorious Plaintiff Sami's claims that she was still carrying a fetus, and in performing all diagnostic tests and a sonogram on June 14, 1994 to determine the source of Sami's pain and suffering.

31. Defendant Dr. Druckenbrod breached his duty to Plaintiff Sami by not performing the sonogram and diagnostic tests and by not exercising due diligence in discovering the dead fetus in Plaintiff's uterus after Plaintiff's numerous complaints.

32. As a direct and proximate result of Defendant Dr. Druckenbrod's breach, in concert with the negligence of the other physicians named herein, Sami suffered damages of medical expenses, permanent injuries, lost wages, pain and suffering, impaired chance of pregnancy, mental anguish, and near death.

WHEREFORE, Plaintiff Vida Sami moves this Court to find Defendant Dr. Druckenbrod jointly and severally liable for Plaintiff's injury in the amount of \$750,000.00 compensatory and \$350,000.00 punitive damages.

COUNT SIX: Dr. Druckenbrod's Infliction of Emotional Distress

33. Vida Sami reasserts and realleges allegations one (1) through thirty-two (32) of the Complaint.

34. The aforesaid negligence, carelessness and recklessness of Defendant Dr. Druckenbrod is extreme and shocks the conscious in that it caused Plaintiff Sami to carry a dead fetus for five months, and ultimately impaired her child bearing ability.

35. Each of the aforesaid acts were done maliciously, recklessly, or intentionally.

36. As a direct and proximate result of Defendant Dr. Druckenbrod's infliction of emotional distress upon Plaintiff Sami, in concert with the tortious conduct of the other physicians named herein, Sami suffered severe trauma, fear, pain, injury, distress, and anxiety.

WHEREFORE, Plaintiff Vida Sami moves this Court to find Defendant Dr. Druckenbrod jointly and severally liable for Plaintiff's injury in the amount of \$750,000.00 compensatory and \$350,000.00 punitive damages.

COUNT SEVEN: Dr. Julia Orenstein's Negligence

37. Vida Sami reasserts and realleges allegation one (1) through thirty-six (36) of the Complaint.

38. Defendant Dr. Julia Orenstein had a duty to exercise reasonable care and due diligence in treating as meritorious Plaintiff Sami's claims that she was still carrying a fetus, and in performing all diagnostic tests and a sonogram on April 23, 1994 to determine the source of Sami's pain and suffering..

39. / Defendant Dr. Julia Orenstein breached her duty to Plaintiff Sami by not performing the sonogram and diagnostic tests and by not exercising due diligence in discovering the dead fetus in Plaintiff's uterus after Plaintiff's numerous complaints.

40. As a direct and proximate result of Defendant Dr. Julia Orenstein's breach, in concert with the negligence of the other physicians named herein, Sami suffered damages of medical expenses, permanent injuries, lost wages, pain and suffering, impaired chance of pregnancy, mental anguish, and near death.

WHEREFORE, Plaintiff Vida Sami moves this Court to find Defendant Dr. Julia Orenstein jointly and severally liable for Plaintiff's injury in the amount of \$750,000.00 compensatory and \$350,000.00 punitive damages.

COUNT EIGHT: Dr. Julia Orenstein's Infliction of Emotional Distress

41. Vida Sami reasserts and realleges allegations one (1) through forty (40) of the Complaint.

42. The aforesaid negligence, carelessness and recklessness of Defendant Dr. Orenstein is extreme and shocks the conscious in that it caused Plaintiff Sami to carry a dead fetus for five months, and ultimately impaired her child bearing ability.

43. Each of the aforesaid acts were done maliciously, recklessly, or intentionally.

44. As a direct and proximate result of Defendant Dr. Orenstein's infliction of emotional distress upon Plaintiff Sami, in concert with the tortious conduct of the other physicians named herein, Sami suffered severe trauma, fear, pain, injury, distress and anxiety.

WHEREFORE, Plaintiff Vida Sami moves this Court to find Defendant Dr. Julia Orenstein jointly and severally liable for Plaintiff's injury in the amount of \$750,000.00 compensatory and \$350,000.00 punitive damages.

Jury Demand

Plaintiff, Vida Sami, hereby demands a trial by a jury.

Respectfully Submitted
by Counsel,
Vida Sami

A handwritten signature in black ink, appearing to read 'R. Murray', is written over a horizontal line.

Richard Murray, Esquire
V.S.B. No.: 24409
Raighne C. Delaney, Esquire
V.S.B. No.: 38787
POMPAN MURRAY & RUFFNER, P.L.C.
601 King Street
Suite 400
Alexandria, VA 22314
(703) 739-1340
Attorneys for Plaintiff

7-9-99
MLK

VIRGINIA

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

Vida Sami)

Plaintiff

VERSUS)

CASE NO. 171034

ELISABETH ANTON, M.D., et al.)

Defendant

~~FINAL~~ MLK.

ORDER

This case came before the Court on the 9th day of July, 1999, for DEFENDANT ELISABETH ANTON, M.D.'s PLEA IN BAR

It is ORDERED as follows: _____

DEFENDANT'S PLEA IN BAR IS GRANTED, AND DEFENDANT ELISABETH ANTON, M.D., IS DISMISSED FROM THIS ACTION WITH PREJUDICE.

ENTERED on 9 July, 1999.

SEEN AND AGreed:

R. C. Allen

Counsel for the Plaintiff

VSP 38787
203-739-1340

B. D. Schen

Counsel for the Defendant

934-1140

VSB 40023

M. Samuels Keen
JUDGE

CLERK
SUPREME COURT OF VIRGINIA
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SEP 29 1999
RICHMOND, VIRGINIA

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PARTIAL TRANSCRIPT 13:07

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

VIDA SAMI,

Plaintiff,

vs.

FAIRFAX HOSPITAL, et al.,

Defendants.

At Law No. 171033

Consolidated with

At Law No. 171034

Fairfax, Virginia

Tuesday, July 13, 1999

The trial commenced at 10 a.m.

BEFORE:

THE HONORABLE M. LANGHORNE KEITH and jury.

1 APPEARANCES:

2 RICHARD MURRAY, ESQ., and RAIGHNE C. DELANEY,
3 ESQ., Pompan, Murray & Ruffner, P.L.C., 601
4 King Street, Suite 400, Alexandria, Virginia
5 22314, counsel for the plaintiff.

6 BRIAN H. RHATIGAN, III, ESQ., Carr, Goodson, Lee
7 & Warner, 1301 K Street, N.W., Suite 400, East
8 Tower, Washington, D.C. 20005-3300, counsel
9 for the Defendants Miles Varn, M.D., and
10 Julian Orenstein, M.D.

11 WILLIAM L. CAREY, ESQ., and BRIAN R. SANDERSON,
12 ESQ., McCandlish & Lillard, P.C., 11350 Random
13 Hills Road, Suite 500, Fairfax, Virginia
14 22030-7429, counsel for the Defendant Fairfax
15 Hospital.
16
17
18
19
20
21
22

I N D E X

WITNESS	DIRECT	VOIR DIRE	CROSS	REDIRECT
Herbert Roberts, M.D.	12	24	69	105
Vida Sami	109		136	
Ahmad Fazli	154		167	
Miles Varn, M.D.	172		187	

EXHIBITS

PLAINTIFF'S	IN EVIDENCE
Nos. 1, 2, 3, 6 (Medical Records)	60

P R O C E E D I N G S

(The court reporter was sworn.)

THE COURT: This is Sami against Fairfax Hospital and Varn and Orenstein; is that correct?

MR. RHATIGAN: Yes, sir.

MR. CAREY: Yes, Your Honor. That is correct.

THE COURT: Are there any pretrial matters?

MR. CAREY: Your Honor, we have two preliminary motions: one from Mr. Murray and one from myself.

MR. RHATIGAN: I have one administrative matter, Your Honor, once you are done with that.

THE COURT: This was set at status for three days, and now it says four days.

MR. CAREY: Your Honor, I think we are going to be able to finish it in three days.

Do you agree with that?

MR. MURRAY: Yes.

THE COURT: All right. Who's got the first motion?

MR. MURRAY: Your Honor, we have the first motion in limine. It's basically that the hospital has designated two expert witnesses. If you look at the

1 qualifications of what they're supposed to testify to,
2 causation and opinions with regard to what happened,
3 what their testimony is, their designation is exactly
4 the same for both witnesses. Our position is it's
5 cumulative and doesn't add anything to it. It's
6 prejudicial too.

7 THE COURT: Why are you having two experts
8 saying the same thing?

9 MR. CAREY: Your Honor, they aren't going to
10 say exactly the same thing. The designation is a broad,
11 generic designation designed to cover every aspect of
12 the medical care in this case. These are very distinct
13 experts. One is coming up from Richmond who has many
14 years of experience as an OB-GYN. The other one is a
15 local expert who is closer to a residency program and in
16 fact is familiar with the residency program at Fairfax
17 Hospital. She is going to talk about issues having to
18 do with the residency program and the like. They will
19 offer distinct testimony, Your Honor.

20 THE COURT: All right. On that representation,
21 I will deny the motion in limine. If they start
22 repeating themselves, I'm not going to be loathe to leap

1 in and say let's move on.

2 MR. CAREY: I understand, Your Honor.

3 The motion I have, we are in a curious
4 situation. I want to bring it up preliminarily in order
5 to avoid perhaps a lot of objections and talk during
6 trial. We have three visits to -- actually, a total of
7 five visits to the Fairfax Emergency Room in the period
8 January of 1994 through June of 1994. Two of them were
9 simply for lab testing. Three were emergency room
10 visits. The expert that's going to testify on behalf of
11 the plaintiff has identified with respect to Fairfax
12 Hospital a breach of the standard of care that occurred
13 in January, on the January visit, 1994, with respect to
14 the performance of a pelvic examination, which he claims
15 was an inadequate pelvic examination.

16 As far as the hospital is concerned, that is
17 the case in a nutshell. I was very careful in his
18 deposition to inquire as to every other aspect of the
19 breach of the standard of care. That's the breach of
20 the standard of care, the failure to pick up a pelvic
21 mass on pelvic examination and to follow up with a
22 sonogram. That's it. Nothing with respect to nurses.

1 Nothing with respect to technicians.

2 The allegations in the pleading also in
3 plaintiff's testimony go far beyond that, particularly
4 with respect to the June 1994 visit. The people who
5 performed the pelvic examination in June are not
6 defendants in this case, Your Honor. They simply are
7 not defendants. It would be confusing, prejudicial to
8 have all of that brought into this case when we are
9 dealing simply with the January -- I understand the
10 medical records are not going to come into the case.
11 But with respect to the testimony that's going to be
12 offered, I would ask that we have some kind of
13 understanding that we are going to limit ourselves to
14 the issue in the case which is the performance of the
15 pelvic examination in January 1994 as far as the
16 hospital is concerned.

17 Most particularly, Your Honor, the plaintiff at
18 her deposition went on at some length concerning her
19 impression that she was treated with disrespect at the
20 hospital, statements by nurses, the way she was treated,
21 all kinds of things. I don't think that's proper in
22 this case. It's not an issue in the case. It doesn't

1 have to do with the issue in the case which is was the
2 pelvic examination performed properly.

3 THE COURT: All right.

4 MR. MURRAY: Your Honor, that's just not so.
5 The issue in the case involves -- as far as the hospital
6 is concerned, it does involve whether or not a pelvic
7 exam was done properly in January, but it also involves
8 whether or not a sonogram was performed.

9 Dr. Roberts, who was our expert witness, has
10 testified to all types of incidents that occurred during
11 her stay. They've had an opportunity to take his
12 deposition. The testimony was during the deposition.
13 There has been no specific -- he shouldn't be limited in
14 any way, and I think just the evidence should be able to
15 be presented by Dr. Roberts.

16 In addition to that, Your Honor, we have an
17 instruction which we are going to offer at some point on
18 the theory of apparent authority, and that is because of
19 the interaction here in this case between the emergency
20 room and with the hospital, the OB-GYN residents and
21 lack of contact, if you will, with the attending OB-GYN
22 physician --

1 THE COURT: I thought there's been a motion in
2 limine that the expert can't testify as to the lack of
3 supervision.

4 MR. CAREY: There has been.

5 MR. MURRAY: There has been, so what I'm
6 saying --

7 THE COURT: How can you testify about apparent
8 authority when there's been a motion in limine that the
9 expert can't testify as to any alleged duty of Dr. Varn
10 to supervise the resident and Dr. Roberts can't testify
11 to any obligation to verify the credentials?

12 MR. MURRAY: Well --

13 THE COURT: Fairfax Hospital's employees are
14 the residents; right?

15 MR. MURRAY: That's correct, Your Honor. But
16 the apparent authority stems from the actions of the
17 hospital. That's just as a matter of law. That's not
18 what the expert is going to testify to. It's just a
19 matter of law that there is apparent authority when
20 there is interaction between emergency room physicians
21 and the hospital staff. But basically I think
22 Dr. Roberts should testify to everything he testified to

1 in his deposition, that they have had an opportunity to
2 examine, including these additional lab tests and
3 everything else.

4 THE COURT: I don't think I can rule on these
5 objections in a vacuum. You are going to have to make a
6 relevance objection or it's beyond the scope of his
7 designation or whatever or it violates the motion in
8 limine ruling.

9 MR. MURRAY: Thank you.

10 THE COURT: Is that all the pretrial matters?

11 MR. RHATIGAN: I just had an administrative
12 matter, Your Honor. Dr. Orenstein, one of the two
13 emergency room physicians who I represent, is needed at
14 the hospital at 4 o'clock this afternoon. If it's
15 acceptable with Your Honor, I'd like to just allow him
16 just to sort of slide out at about 3:30, either during
17 your break or discreetly slide out.

18 THE COURT: That's fine.

19 MR. RHATIGAN: And he will be back tomorrow
20 morning.

21 THE COURT: All right. Who represents
22 Dr. Varn?

1 MR. RHATIGAN: I do, Your Honor. Both Dr. Varn
2 and Dr. Orenstein, yes, sir.

3 THE COURT: Fairfax Hospital is represented by?

4 MR. CAREY: William Carey, Your Honor, and
5 Brian Sanderson.

6 THE COURT: Carey and Sanderson. And the
7 plaintiff, is it Sami? Is that the right way to
8 pronounce it?

9 MR. DELANEY: Yes, Your Honor.

10 MR. MURRAY: Richard Murray and R-A-I-G-H-N-E
11 Delaney.

12 THE COURT: All right. Are we ready for the
13 jury, then?

14 MR. RHATIGAN: Yes, sir.

15 MR. CAREY: Yes, Your Honor.

16 Your Honor, I would request a rule on witnesses
17 prior to opening.

18 THE COURT: All right. If there are persons
19 present who are going to be testifying in this case who
20 are not parties, I will ask them to step outside.
21 Please don't discuss your testimony with any other
22 witness.

1 (The jury was duly impaneled and sworn.)

2 (Opening statements were made.)

3 THE COURT: All right. Mr. Delaney and
4 Mr. Murray, call your first witness.

5 MR. DELANEY: I call Herbert Roberts, Your
6 Honor.

7 Whereupon,

8 HERBERT ROBERTS, M.D.,
9 was called as a witness on behalf of the plaintiff, and
10 after having been first duly sworn, was examined and
11 testified as follows:

12 DIRECT EXAMINATION

13 BY MR. DELANEY:

14 Q Good morning, Dr. Roberts. My name is Raighne
15 Delaney, as you know.

16 Would you please state your full name?

17 A Herbert Roberts. Herbert Ray Roberts.

18 THE COURT: Can I see counsel a moment?

19 (Counsel approached the bench and the following
20 proceedings were held:)

21 THE COURT: I should have said this at the
22 beginning of trial. When you are addressing the jury,

1 except for opening and closing, I want you at the
2 podium.

3 (The bench conference was concluded.)

4 BY MR. DELANEY:

5 Q You stated your full name, Dr. Roberts. What
6 line of business are you in?

7 A I'm an obstetrician-gynecologist.

8 Q What is your business address?

9 A 1715 North George Mason Drive, Arlington,
10 Virginia.

11 Q Are you licensed to practice medicine anywhere?

12 A Yes. I have an active license in Virginia,
13 inactive license in D.C. and Maryland.

14 Q How long have you had a license to practice
15 medicine in the Commonwealth of Virginia?

16 A Since 1980.

17 Q Since 1980? Do you have any privileges at any
18 local hospitals?

19 A Yes. I currently have privileges at Arlington
20 Hospital and Reston Hospital.

21 Q Have you ever testified as an expert against
22 another doctor before?

1 A No, I haven't.

2 Q Where did you go to college?

3 A I graduated from West Point in 1970.

4 Q Where did you go to medical school?

5 A University of Missouri, graduated in 1976.

6 Q Did you have any internships or residencies?

7 A Yes. I did a one-year internship and a
8 three-year residency at Walter Reed Army Medical Center
9 in Washington, D.C.

10 Q Can you tell us what an internship is?

11 A It's the first year after you leave medical
12 school. It's a supervised position in which you're
13 still learning. And then it's required, I believe, by
14 all 50 states that you have an internship finished
15 before you are allowed to practice.

16 Q Was that internship in any kind of specialty?

17 A Mine was categorically OB-GYN. Some people do
18 rotating internships.

19 Q You said you also had a residency. Can you
20 explain to the jury what a residency is?

21 A Three years of specialized training in
22 obstetrics and gynecology.

1 Q Where was your residency?

2 A At Walter Reed.

3 Q Do you have any certifications?

4 A Yes. I finished my residency in 1980 and
5 became board certified in OB-GYN in '83, became a fellow
6 of the American College of OB-GYN in 1984.

7 Q What does it mean to be certified?

8 A When one finishes a residency, one is
9 considered trained, and then come oral exams and written
10 exams. You are first given the written exam usually at
11 the time you finish the residency. In obstetrics and
12 gynecology you have to practice for a while, collect
13 cases, and then appear before a board and be examined on
14 your method of practice and the results of your surgical
15 cases, surgical and obstetrical cases.

16 Q After you finished your residency, that was in
17 what year?

18 A 1980.

19 Q Could you summarize for us what your employment
20 history was after that?

21 A From -- I was in the Army. And I retired from
22 the Army in 1990. I was stationed three times at Fort

1 Belvoir, Virginia, and twice in Korea. And during the
2 times I was at Fort Belvoir, Virginia, I also did some
3 moonlighting for Group Health Association working at
4 George Washington University Hospital and Washington
5 Hospital Center and Columbia Hospital for Women.

6 Q Have you ever worked as an emergency room
7 doctor?

8 A In the Army I was required to work in the
9 emergency room as an emergency room doctor.

10 Q And you did shift work as an emergency room
11 doctor for about ten years; is that right?

12 A Yeah.

13 Q When was that?

14 A That was between 1980 and 1990 at Fort Belvoir.

15 Q Okay. Since you left the Army in 1990, could
16 you describe for us what you've been doing?

17 A Yes. I went into private practice in the
18 District of Columbia with privileges at Columbia
19 Hospital for Women, Washington Hospital Center, and
20 Sibley Hospital. And from '90 to '93, I was in practice
21 there. In '93 I left and joined the practice I am
22 presently in at Arlington Hospital, stopped going to the

1 District and began practicing exclusively in Virginia.

2 Q Okay. I want to focus for a second
3 specifically on the years 1993 and 1994. That's about
4 one year before and after the incident in this case.
5 Could you tell us did you supervise any residents during
6 that time period?

7 A Yes. I was joining a new practice, and I was
8 hired by Georgetown and Arlington to supervise residents
9 at Arlington Hospital. They paid me to take call one
10 day a week and to supervise residents and give lectures
11 on the days that I was assigned to.

12 Q Did you also function as an OB-GYN attending
13 physician?

14 A Well, yes. I was an OB-GYN attending physician
15 all the time in all of these hospitals, but I did have
16 direct paid supervisory power over the residents while I
17 was at Arlington for that year.

18 Q Just so the jury understands, could you tell
19 them what OB-GYN means?

20 A Obstetrics and gynecology. It's the medicine
21 dealing with the female reproductive organs.

22 Q Now, between the years 1993 and 1994, you also

1 consulted with emergency room physicians; is that
2 correct?

3 A Well, yes. And during my time with each one of
4 the hospitals, I have consulted with emergency room
5 physicians. It's not been just during that time. If a
6 patient is a private patient, that is, she has an
7 established relationship with a doctor and she arrives
8 in the emergency room, the emergency room physician
9 usually calls the private attending and consults with
10 him. In cases where the patient has no private doctor,
11 then if a consultation is necessary, it's usually with
12 someone who is on call from the OB-GYN department. Or
13 in cases where it's a teaching hospital, the physician
14 is assigned to supervise the residents for that day.

15 Q Have you also supervised residents working in
16 an emergency room?

17 A Yes, I have.

18 Q Would you describe for us when that was?

19 A Well, that was while I was in the Army and
20 also -- these are not emergency room residents
21 specifically, but residents who have been called to the
22 emergency room to see people in the emergency room,

1 mostly OB-GYN residents.

2 Q That's the specific situation to analogize in
3 this case where Dr. Dill was an OB-GYN resident working
4 or visiting, consulting with the emergency room at the
5 Fairfax Hospital?

6 A Precisely the situation.

7 Q Now, you have also said you consulted with
8 emergency room doctors in 1993 and in 1994. I want to
9 ask you could you specifically describe for us what your
10 consultations consisted of?

11 A Well, typically the emergency room doctor would
12 call and say there's a patient in the emergency room. I
13 think it's an OB-GYN problem. Would you see the
14 patient? If it were necessary, I would go see the
15 patient myself. Sometimes the resident would see the
16 patient and talk to me.

17 Q And you also said you had ten years of
18 experience working in emergency rooms; is that correct?

19 A That's right.

20 Q Are you familiar with or do you have experience
21 in the interactions between emergency room physicians
22 and OB-GYN residents?

1 A Yes.

2 Q Would you describe that?

3 A Well, typically in a teaching situation -- I
4 have been in a teaching situation in several of the
5 hospitals I've worked at -- if the emergency room
6 physician feels that a level of expertise beyond what he
7 has to offer is needed, then he will call on someone
8 else. In a teaching program if it's a patient who
9 doesn't have a private physician, it's customary to call
10 the resident staff. The resident staff then examines
11 the patient and discusses it with their attending and
12 then they give their opinion to the emergency room
13 doctor as to what should be done.

14 Q Are you also familiar with interactions between
15 OB-GYN residents and their supervisors?

16 A Very.

17 Q Now, do you know what the standard of care is
18 for a doctor in Virginia?

19 A A doctor has to do what a reasonable and
20 prudent physician would do under the same circumstances.

21 Q Would you agree with me that the standard of
22 care in Virginia is that a doctor has the duty to use

1 the degree of skill and diligence in the care and
2 treatment of his patient that a reasonably prudent
3 doctor in the same field of practice or specialty in
4 this state would have used under the circumstances of
5 the case?

6 A Yes.

7 Q Now, Dr. Varn is an emergency room physician.
8 How is it that you are able to express an opinion about
9 Dr. Varn's standard of care?

10 A Well, someone has to do a physical exam on a
11 patient and give an opinion about the physical exam and
12 sign off that this is what is acceptable. Apparently
13 Dr. Varn was the attending physician in the emergency
14 room at the time. And I'm sympathetic to the fact that
15 he asked for an opinion from OB-GYN, but he got a bad --

16 MR. RHATIGAN: Your Honor, I'm going to object.
17 The question is how is it that he is qualified to offer
18 an opinion with respect to Dr. Varn.

19 THE COURT: I sustain the objection. He hasn't
20 been qualified yet.

21 A I read Dr. Varn's deposition, read the
22 deposition of Dr. Dill, looked at the emergency room

1 records, used my experience as an obstetrician-
2 gynecologist to form a judgment on that.

3 BY MR. DELANEY:

4 Q Have you also spoken with other doctors about
5 this case?

6 A Yes, I have.

7 Q Who are those doctors that you spoke with?

8 A Dr. Elliott, Jeffrey Elliott, Dr. Herbert
9 Hopwood, Dr. Jean-Gilles Tchabo.

10 Q You also read medical journals in studying for
11 this case; is that correct?

12 A Yes. I looked up this kind of thing in medical
13 journals and textbooks.

14 Q You also performed surgery on the plaintiff; is
15 that right?

16 A Yes, I did.

17 Q Now, is there a separate standard of care for
18 residents at a teaching hospital?

19 A No. The standard of care is that you do a good
20 job as what you are doing. And residents are supervised
21 physicians. Their work has to be certified by someone.
22 And it is the attending physician who is in charge of

1 them. And he has to form a judgment on what their
2 capabilities are, how much to trust what they say, what
3 he has to physically examine, what he can take from
4 listening to them. And that's based on his knowledge of
5 that particular resident, the degree of their training
6 and so on.

7 Q Is there more than one standard of care for
8 when a doctor makes an OB-GYN diagnosis?

9 A No. If you're going to make an OB-GYN
10 diagnosis, you go through the standards of everyone
11 else, same standards.

12 Q If any kind of doctor is going to perform a
13 pelvic exam, what standard is he held to?

14 A He's held to the same standard.

15 Q As what?

16 A As an obstetrician-gynecologist.

17 MR. DELANEY: Your Honor, I offer him as an
18 expert with all three defendants.

19 MR. CAREY: No objection with respect to
20 Fairfax Hospital.

21 MR. RHATIGAN: I'd like to voir dire the
22 witness, Your Honor.

1 THE COURT: All right.

2 VOIR DIRE EXAMINATION

3 BY MR. RHATIGAN:

4 Q Dr. Roberts, would you agree with me that the
5 field of medicine in general recognizes certain
6 specialties such as your own, obstetrics and gynecology?

7 A Yes, I would.

8 Q Would you agree with me that the field of
9 medicine recognizes a separate specialty known as
10 emergency medicine?

11 A Yes.

12 Q Would you agree with me that there are
13 residency training programs dealing with emergency
14 medicine?

15 A Yes.

16 Q Would you agree with me that there is a board
17 certification separate and apart from any other board
18 certification in emergency medicine?

19 A Yes, I would.

20 Q Indeed, would you agree with me that within the
21 board certification of emergency medicine there are
22 subcategories such as pediatric emergency medicine?

1 A Yes.

2 Q You are none of those; is that correct?

3 A That's correct.

4 Q You indicated that you have instructed
5 residents from time to time and indeed were
6 contractually responsible for residents when you first
7 went into private practice in 1993, 1994; correct?

8 A Yes.

9 Q Those residents over whom you had supervisory
10 responsibilities were OB-GYN residents; is that not so?

11 A Yes.

12 Q You did not have supervisory responsibility,
13 nor were you involved in the training of residents who
14 were seeking a specialty in emergency medicine, were
15 you?

16 A That's correct.

17 Q You indicated to counsel that you have never
18 testified as an expert witness in an OB-GYN case. I
19 would assume the same would be true that you have never
20 been qualified to testify as to the standard of care for
21 an emergency department physician; is that right?

22 A That's right.

1 Q You indicated to counsel that you conducted a
2 literature search in this case. The literature search
3 that you conducted was in fact confined to the
4 obstetrics and gynecology medicine involved in this
5 case, right, particularly the phenomenon known as the
6 bicornuate uterus?

7 A Yes.

8 Q Your literature search did not involve in any
9 sense emergency medicine or any of its subdisciplines,
10 did it?

11 A It did not.

12 Q The colleagues that you enumerated,
13 Dr. Elliott, Dr. Tchabo and Dr. Hopwood, that you have
14 consulted with about this case, all three of those
15 doctors are obstetrician-gynecologist physicians; is
16 that correct?

17 A That is correct.

18 Q In point of fact, you have not consulted with
19 any emergency department physicians in the formulation
20 of your opinion in this case; is that correct?

21 A That's right.

22 Q You are in possession of privileges both at the

1 Reston Hospital and at the Arlington Hospital; is that
2 right?

3 A Yes.

4 Q These are admitting privileges at both?

5 A Yes.

6 Q And at neither hospital did you consult with
7 any of the emergency department physicians that are
8 available at those hospitals; is that right?

9 A Yes.

10 Q Now, you've indicated that from time to time
11 you consulted with emergency room physicians. Is it an
12 accurate statement that these consultations were
13 requests by emergency department physicians for you to
14 come in on a particular patient and consult because of
15 your expertise as an OB-GYN?

16 A Yes.

17 Q You did not consult with these emergency
18 department physicians as to emergency department
19 performance; is that correct?

20 A That's correct.

21 Q You indicated that when you were in the United
22 States Army from 1980 to 1989, you worked from time to

1 time in an emergency department setting. In point of
2 fact, it was earlier in the '80s that you did that,
3 right, because by the time 1980 rolls around, you were a
4 colonel and colonels didn't have to pull shifts in the
5 emergency department. Isn't that so?

6 A I was promoted to colonel in January of 1990.

7 Q Were you still on active duty?

8 A No. I retired in January, the same month I got
9 promoted.

10 Q Okay. As a lieutenant colonel, did you have to
11 pull shifts in the emergency department?

12 A I think I did, up until 1989.

13 Q The work that you did while you were in the
14 military, you were at that point a licensed
15 obstetrician-gynecologist; is that right?

16 A Yes, I was.

17 Q So as far as any of the nonmilitary hospitals
18 in the Commonwealth of Virginia, you have never worked
19 as an emergency department physician, have you?

20 A That's correct.

21 Q How is it, Doctor, that you are familiar with
22 the standard of care for an emergency department

1 physician in the Commonwealth of Virginia?

2 A Standard of care never allows someone to do an
3 incomplete exam.

4 Q Doctor, let me specifically ask you with
5 respect to the two defendants who are involved in this
6 case who are admittedly emergency department physicians,
7 how is it that you are familiar with the specific
8 standard of care that applies to emergency department
9 physicians when you recognize that that is a separate
10 discipline that you do not possess credentials in?

11 A Well, you'd have to speak to a particular act.
12 You can't speak generally about everything. If you
13 asked me on a particular act is there a standard of
14 care, I can tell you, yes, there's a standard of care on
15 doing a pelvic exam. If you ask me about the standard
16 of care for everything in emergency medicine, no, I
17 can't.

18 Q Have you, Doctor, in the calendar years 1993,
19 1994 and 1995 had an active clinical practice in
20 emergency medicine?

21 A No.

22 MR. RHATIGAN: Nothing further, Your Honor.

1 I'd like to approach.

2 THE COURT: All right.

3 (Counsel approached the bench and the following
4 proceedings were held:)

5 MR. RHATIGAN: Based upon the voir dire of this
6 witness, Your Honor, I would respectfully submit to the
7 Court that as a matter of law this witness is not
8 qualified to offer opinions on the standard of care
9 relating to the two emergency department physicians in
10 this case. The requirements of Section 8.01-581.20 have
11 not been met by this physician. The only assertion that
12 this physician has made is that he is familiar with the
13 standard of care because he has read their depositions
14 and the medical records and that a doctor is not
15 supposed to do something that is wrong. That is
16 essentially and as a matter of fact a close paraphrase
17 of what he said.

18 That does not come close to the requirement
19 that the statute contains with respect to having an
20 active clinical practice in the same or a related
21 specialty. There has been no indication that emergency
22 medicine and obstetrics and gynecology are related

1 specialties. Further, this witness's qualifications are
2 by his own testimony restricted to and admittedly
3 appropriate for obstetrics and gynecology but not for
4 emergency medicine.

5 THE COURT: Mr. Delaney?

6 MR. DELANEY: I disagree, Your Honor, because
7 the statute, there's two things that we need to get him
8 in. The first is he has to know the standard of care,
9 demonstrate the standard of care. He's not saying I
10 know the standard of care for every single thing in
11 emergency medicine. What he's saying is that in two
12 situations, when an emergency room physician makes a
13 OB-GYN diagnosis -- and that's what I asked him -- and
14 when an emergency room physician performs a pelvic exam,
15 they're held to the exact same standard of care as an
16 OB-GYN.

17 He knows this in several ways. First, he
18 worked as an emergency room physician for ten years.
19 Specifically, in the years of 1993 and 1994 --

20 THE COURT: He doesn't satisfy the statute that
21 it's got to be within one year.

22 MR. DELANEY: But in 1993, which is one year

1 prior to the incident in this case, he worked actively
2 as a consultant with emergency room physicians. He does
3 not have to -- the statute says he does not have to have
4 a clinical practice in the specialty. He has to have
5 one in the related field. By working directly with
6 emergency room physicians, he is working in a related
7 field of medicine.

8 THE COURT: Anybody could come in and be an
9 expert on emergency room physicians if he's ever
10 consulted with an emergency room physician. He said he
11 consulted during 1994 with emergency room OB-GYNs. How
12 does that make him a specialist who can testify as an
13 expert on what an ER doctor ought to do?

14 MR. DELANEY: He is saying he knows from his
15 experience that when an ER doctor performs a pelvic exam
16 or any doctor performs a pelvic exam, they are held to
17 the same standard of care as an OB-GYN. That's exactly
18 what he is. And he's saying that when they make an
19 OB-GYN diagnosis, and you are going to see the discharge
20 instructions which Dr. Varn signs off on the OB-GYN
21 diagnosis that there's a complete miscarriage, he's held
22 to the same standard of care as an OB-GYN. That's why

1 he qualifies, Your Honor.

2 THE COURT: Well, then that would mean you
3 never have to bring in an ER expert because you could
4 always bring in an orthopedic surgeon who says I know
5 what orthopedists have to do and that's what an ER has
6 to do.

7 MR. DELANEY: The statute does not require us
8 to bring in someone who is specifically an emergency
9 room doctor. All we are required to do is bring in
10 someone --

11 THE COURT: The only thing you can qualify him
12 on, it seems to me, is the last phrase. If he
13 demonstrates expert knowledge of the standards of
14 defendant's specialty, which he doesn't --

15 MR. MURRAY: But Your Honor, he does.

16 THE COURT: And what conduct conforms. He says
17 he knows what conduct conforms or fails to conform. He
18 has maybe satisfied the second. And if he's had an
19 active clinical practice in the field of defendant's
20 specialty or related field of medicine.

21 MR. DELANEY: Your Honor, he's not saying he
22 knows every single standard of care for an ER physician.

1 He is limiting himself to two situations where he has
2 direct knowledge of what the standard of care is for
3 that ER physician. That's when a ER doc. does a pelvic
4 exam and when an ER doc. makes an OB-GYN diagnosis.
5 That's it, Your Honor. Under the statute, we meet the
6 minimum requirements.

7 THE COURT: Will you tell me how? I don't
8 understand how. He doesn't have an active clinical
9 practice in ER. That's a given. What's the related
10 field of medicine to ER?

11 MR. DELANEY: He is consulting as an OB-GYN
12 with ER doctors in the emergency room. That's the
13 related field of practice. He's in there every day. He
14 knows when they can and cannot do a pelvic exam or make
15 an OB-GYN diagnosis. That's the related field of
16 medicine. He doesn't have to be an ER doctor.

17 Under the statute, we meet the minimum
18 requirements for the two specific areas in which we want
19 Dr. Roberts to testify, which is that when they perform
20 a pelvic exam, they're held to the same standard of care
21 as an OB-GYN. When they make an OB-GYN diagnosis,
22 they're held to the same standard of care as an OB-GYN.

1 That's it, Your Honor.

2 THE COURT: I don't think you've got an expert
3 on ER.

4 MR. RHATIGAN: Your Honor, based upon your
5 ruling, the only expert designated by the plaintiffs
6 against my clients is Dr. Roberts. As you know, it is a
7 fundamental prerequisite that the standard of care and
8 breach thereof be established through expert testimony.
9 Based upon the fact there is now no expert who is going
10 to testify against Dr. Varn and Dr. Orenstein, I would
11 move they be dismissed from this case right now.

12 MR. MURRAY: I object, Your Honor. One of the
13 things that Mr. Delaney didn't mention, he certainly is
14 capable to testify that when Dr. Varn signed the sheet
15 in advance without ever seeing it, that that is improper
16 practice, whether it be emergency room medicine or
17 anything else. In other words, it's such limited
18 testimony --

19 MR. RHATIGAN: It's an ER issue.

20 THE COURT: I sustain the motion.

21 MR. RHATIGAN: Thank you, Your Honor. If
22 you'll give us a couple minutes to pack up. I don't

1 know whether you want to let the jury go.

2 (The bench conference was concluded.)

3 THE COURT: Ladies and gentlemen, I'm going to
4 have to discuss some things with counsel. I'm going to
5 ask you to step outside into the jury room.

6 (The jury left the courtroom.)

7 MR. CAREY: Your Honor, I think the doctor
8 needs to know his testimony has been limited.

9 THE COURT: Doctor, I've sustained a motion
10 that Drs. Varn and Orenstein made that despite your
11 sterling credentials, that you don't satisfy the
12 requirements of the Virginia Code to testify as to ER
13 doctors. So your testimony is going to be limited to
14 what Fairfax Hospital and the resident OB-GYN did or
15 didn't do in accordance with the standard of care. All
16 right.

17 Now, I will just tell the jury that I have
18 granted a motion as to Drs. Varn and Orenstein and they
19 are no longer a part of this case. I wouldn't say I
20 have dismissed them or anything. I will say they're no
21 longer a part of this case. All right.

22 MR. CAREY: Your Honor, there was a witness

1 subpoenaed by plaintiffs whose testimony -- he is a
2 corporate designee of Fairfax Hospital. His testimony
3 was dependent upon this. I would like to release him.
4 He came up from North Carolina, his beach vacation, in
5 order to be with us. I'd like to get him back down
6 there.

7 MR. MURRAY: All right, Your Honor.

8 THE COURT: To authenticate the records?

9 MR. CAREY: No, to talk about the relationship
10 between the ER physicians.

11 THE COURT: Is that agreeable to counsel?

12 MR. MURRAY: Yes, sir.

13 MR. RHATIGAN: Shall I step out, sketch out the
14 order, sneak up the side and pass it to Your Honor
15 rather than hold things up?

16 THE COURT: That will be fine.

17 (The jury returned to the courtroom.)

18 Ladies and gentlemen, I've granted a motion as
19 to Drs. Varn and Orenstein, and they're no longer part
20 of this case. All right, sir.

21 DIRECT EXAMINATION (resumed)

22 BY MR. DELANEY:

1 Q Dr. Roberts, why don't we start by talking
2 about June 20, 1994, when Mrs. Sami came to your office.
3 Do you have any recollection of that date?

4 A Yes. She was crying, holding herself, moaning.
5 She was in considerable pain. And the nurses rushed
6 into my office and said you have to see this lady right
7 away. And I examined her. I was surprised to find a
8 mass, a pelvic mass, somewhat surprised, because she had
9 had several recent exams in Fairfax Hospital, according
10 to what she told me. I sonogrammed the mass and saw
11 that it had calcifications in it, was quite worried that
12 it was something that had grown up fast, because I
13 understood she had exams which had shown no mass
14 recently, thought that perhaps it was malignant, perhaps
15 a dermoid tumor, and scheduled her for an exploration.
16 But in anticipation of it being a malignancy, asked her
17 to do a bowel prep., and so that delayed the surgery for
18 a day or so until we could get the bowel prep. done. I
19 then operated on her.

20 Q Let's stick with June 20 now. What was her
21 prior treatment history at the time she came to your
22 office?

1 A She told me that she had been to the emergency
2 room several times, but she had been having the pain off
3 and on, waxing and waning, worse and sometimes better at
4 some times, but that she had recently been taken by the
5 emergency rescue squad or something to the hospital.
6 She had had a pregnancy about the beginning of the year,
7 but that she had had pregnancy tests done recently which
8 were negative. She never saw the baby come out. She
9 couldn't understand what happened to the baby because
10 she had never seen one.

11 Q Did you have any of the medical records from
12 Fairfax Hospital at that point?

13 A At that time I didn't.

14 Q So what you had at this point were her
15 statements to you about what had happened earlier.

16 A Right.

17 Q What kind of exam did you conduct on her on
18 June 20?

19 A I did a physical exam. I felt her abdomen and
20 put one hand in the vagina and one hand on the abdomen
21 and felt a mass about the size of an orange. And it was
22 on the right side of her abdomen. And moving the mass

1 seemed to cause the same kind of pain that she had been
2 complaining of.

3 Q Could you stand up and show the jury where you
4 found it?

5 A Approximately right here (indicating). This
6 area.

7 Q What was your diagnosis at that time, if you
8 had one?

9 A Well, I had a differential diagnosis. I
10 thought perhaps on the benign side, it might be a
11 pedunculated fibroid, that is, a smooth muscle tumor of
12 the uterus. But against that was with a history of
13 several exams. Things usually take time to grow. A
14 recent exam saying no mass was there led me to think it
15 was less likely than an ovarian mass, which sometimes do
16 grow very fast, especially if they're malignancies. And
17 so I was afraid at the time that I had a very aggressive
18 ovarian malignancy.

19 Q She told you that she thought that was still
20 her baby; is that right?

21 A She said she thought the baby was still inside
22 her.

1 Q What did you tell her about that?

2 A I told her I didn't think it was very likely
3 because she had had a negative pregnancy test. I
4 thought she was giving me a history of a miscarriage
5 that she just didn't see the baby.

6 Q Based upon your examination, what did you
7 decide to do about what you had learned?

8 A Well, I decided she needed to be operated on
9 very quickly. I got a rapid CA-125, which is a tumor
10 marker for ovarian cancer, and it was normal. I got a
11 pregnancy test, which was normal. I had the results of
12 my sonogram. I could see calcifications in this mass,
13 although I couldn't make out exactly why it was
14 calcified. There are many reasons -- there are not many
15 but several different reasons for calcifying mass.

16 Q What does it mean for something to be
17 calcified?

18 A Well, in this particular case the body had
19 deposited some calcium deposits in the tissue. It
20 usually happens in relatively avascular areas. In
21 retrospect, it happened in this case because the fetus
22 was there. And after it had died, of course, the

1 pregnancy test went to negative, and the body has a
2 tendency to do this to some kinds of things to deposit
3 calcium.

4 Q Did you give her any instructions between June
5 20th and June 22nd about what she should do to prepare
6 for surgery?

7 A I don't specifically recall other than the
8 bowel prep. I mechanically cleansed her bowel, because
9 if you are operating on an ovarian cancer case, it
10 sometimes spreads to the bowel. It might have required
11 opening the bowel. And if the contents of the bowel
12 still had bacteria and feces in it, then it would have
13 been a difficult case. Whereas if it's been cleansed,
14 then you can open it, repair it and not have to perform
15 a colostomy.

16 Q Just so we understand, what was it she was
17 supposed to do to prepare her bowel?

18 A She should drink about a gallon of electrolyte
19 solution, one glass at a time about every 15 minutes,
20 until it worked as a cathartic to completely cleanse her
21 out. It gave her diarrhea to the point that there was
22 nothing but clear water coming out by the time she

1 finished it.

2 Q Okay. Let's turn to June 22, 1994, the date of
3 this surgery. Could you tell us what you observed as
4 you were opening her up?

5 A Yeah. I made the kind of incision that could
6 be extended further in case it was a malignancy to give
7 adequate operating room. And upon opening her, I found
8 that there was a mass about the size of my closed fist
9 in the right adnexa, which is the right pelvic region.
10 And at first I thought it was a tumor because of the
11 consistency of it. It felt like one. As I explored, I
12 found that there was an almost diaphanous connection
13 between that and the other portion of the uterus. And
14 the round ligament -- there's usually one on each side
15 and one fallopian tube on each side -- seemed to run
16 into it on the right. And I cross-clamped all these
17 pedicles and removed the mass, isolated the vasculature
18 to the area, removed the mass and then cut it open, went
19 away from the operating table to another table, opened
20 it up, changed gloves and gown and went back, so that I
21 could see what was in it to see if it looked malignant.
22 And what I found was that it had a fetus in it.

1 Q Approximately how old was the fetus?

2 A Well, it was approximately four to five
3 centimeters in length, and that's consistent with
4 somewhere between a twelve and fifteen-week pregnancy.
5 When things die inside like that, they usually shrink a
6 little, so probably at some time it was slightly larger
7 than that.

8 Q You said you made an incision. Can you tell us
9 from where on the body to where on the body you made an
10 incision?

11 A Vertical midline incision from symphysis to
12 umbilicus.

13 Q Is that the belly button?

14 A Down to the synthesis bones of the pelvis.

15 Q How long was the incision?

16 A Oh, approximately ten inches.

17 Q Now, the uterus, the strange uterus that you
18 talked about, could you explain to the jury what kind of
19 uterus you found in Mrs. Sami?

20 A Yes. During embryological development, there
21 are two tracks running parallel on the back wall of the
22 abdomen. And as they get to the lower part of the body,

1 during the embryological development they fuse together
2 to become one structure. In the upper portions that
3 form the kidneys and the collecting system to lead down
4 to the bladder, which is one of the fused structures in
5 the middle, and then the reproductive system which is
6 directly parallel to it, it forms an ovary on each side
7 and a fallopian tube and usually one uterus, one hollow
8 organ that's shaped like a pear. Sometimes
9 developmental anomalies occur and a person can have two
10 separate uteruses, two separate cervixes, two separate
11 vaginas. But in most people it's one vagina, one
12 uterus, two tubes, two ovaries. So this was a
13 developmental anomaly in this particular lady. It is
14 fairly rare.

15 Q Now, did this rare uterus in any way impact
16 upon your ability to find a mass?

17 A No. The mass was found at pelvic exam. The
18 diagnosis, the specific diagnosis was made at surgery.
19 But the mass, a mass is simply a mass. It is something
20 that you can feel, and you can't tell what it is until
21 you look at it.

22 Q Did the strange uterus impact your ability on

1 pelvic exam to find the mass?

2 A No.

3 Q Did the strange uterus impact your ability with
4 the sonogram to find the mass?

5 A No.

6 Q Let's talk about what you actually found again.
7 Could you explain exactly what it was that you found
8 inside Mrs. Sami?

9 A Well, it was a muscular mass about the size of
10 my closed fist with the fallopian tube and a round
11 ligament attached to it. And then connecting it to the
12 other portion of the uterus was a thin, diaphanous
13 membrane, which was so thin and transparent it made it
14 appear almost as if there were no real connection
15 between the two.

16 And I am a little surprised that she was able
17 to get pregnant in that horn. Usually the way a person
18 gets pregnant is the sperm come up through the cervix,
19 through the uterus, out the fallopian tube and meet the
20 egg. And then the egg once it's fertilized, it goes
21 into the tube, and it continues to divide as it comes
22 down the tube.

1 Apparently what happened is the sperm came up
2 on the left side, came out and fertilized an egg, and
3 then the egg was picked up and taken into the right
4 side. And then it couldn't go down any further because
5 it was in a blind pouch, a uterus, a portion of the
6 uterus that had never developed an opening into the
7 other portion of the uterus.

8 Q Now, at this point I think you said the mass is
9 now on the table. Did you proceed with the surgery at
10 that point?

11 A Well, the surgery was virtually finished except
12 for closing the patient. Once I made sure there was no
13 malignancy, it didn't appear to be anything else to do
14 except close. Yes, I did close up.

15 Q Did you remove any part of Mrs. Sami's anatomy?

16 A Well, I removed a portion of the round ligament
17 and fallopian tube on the right and this rudimentary
18 uterine structure on the right.

19 Q After you performed that surgery, what was your
20 next step?

21 A Postoperative care for Mrs. Sami.

22 Q Now, I'm going to ask you about some opinions

1 that you may have in this case about Dr. Dill. That's
2 the OB-GYN resident that Fairfax Hospital has taken
3 responsibility for. Have you formed an opinion about
4 whether Dr. Dill was negligent and whether her
5 negligence proximately caused Mrs. Sami to suffer
6 damages?

7 A Yes, I did.

8 MR. CAREY: Your Honor, I'm going to object.
9 Negligence is not the standard. Breach of the specific
10 standard of care is the standard.

11 THE COURT: Sustained.

12 BY MR. DELANEY:

13 Q Have you formed an opinion about whether
14 Dr. Dill has breached the standard of care and whether
15 the breach of the standard of care proximately caused
16 Mrs. Sami to suffer damages?

17 A Yes.

18 Q How positive are you of that opinion?

19 A Very certain.

20 Q With what degree of certainty do you hold that
21 opinion?

22 A Very certain.

1 Q Do you hold that opinion within a reasonable
2 degree of medical certainty?

3 A Yes.

4 Q Can you tell us what is the basis for that
5 opinion?

6 A There was a mass. It wasn't found at the time
7 of the examination. It seems extremely likely that this
8 was the very same mass, that the mass that I found was
9 present at the time that she was examined in January.
10 She had had 15 weeks of amenorrhea. No fetus had
11 passed. Beta HCGs declined for several weeks after exam
12 there. I can't imagine it being anything else but the
13 fetus and the same mass, and it was missed.

14 Q Would a proper pelvic exam have revealed the
15 mass?

16 A I think so, and not only that, I think a
17 sonogram would have too.

18 Q Could you describe for the jury what a sonogram
19 is?

20 A A sonogram is an imaging technique using
21 ultrasound or sonar. A transducer is placed on the
22 body, sends out sound waves. They're reflected off the

1 tissue and come back to the same transducer which then
2 creates a TV picture. It's a very good system for
3 imaging the internal female organs and is very widely
4 available.

5 Q Was it a breach of the standard of care for
6 Dr. Dill to perform a pelvic exam which failed to find
7 this mass?

8 A I think it was a breach of the standard of care
9 not to find the mass.

10 Q Why is that?

11 A Well, it was there. It should have been found.
12 It wasn't. I can only conclude that the exam was not
13 conducted properly or failed to reveal what it should
14 have revealed.

15 Q Was it a breach of the standard of care not to
16 order a sonogram?

17 A I think so, yes. The diagnoses that Dr. Dill
18 was considering were ectopic pregnancy, spontaneous
19 abortion completed, missed abortion. These are by her
20 own writing in the chart.

21 If no fetus had been passed -- for a fetus that
22 was approximately 15 to 16 weeks -- the cervix was

1 closed by her exam -- the cervix would have been opened
2 if the fetus had come out recently. She couldn't tell
3 whether this was a missed abortion or completed abortion
4 without doing a sonogram. She couldn't really tell
5 whether it was ectopic or not. As it turns out, this is
6 sort of a weird ectopic. But in either case a sonogram
7 would have ruled out the very things that were entered
8 in the differential diagnosis that she didn't rule out.

9 Q Now, do you have an opinion about whether
10 Dr. Dill should have been supervised by somebody?

11 MR. CAREY: Your Honor, I'm going to object.
12 May we approach?

13 THE COURT: Yes.

14 (Counsel approached the bench and the following
15 proceedings were held:)

16 MR. CAREY: I object, Your Honor. I was very
17 careful in deposition to elicit from this witness every
18 opinion that he intended to testify at trial. There
19 were two: the failure to palpate the mass on pelvic
20 examination; the failure to order an ultrasonic
21 examination. I was very clear that he was not aware of
22 the residency program at Fairfax Hospital. And in fact,

1 he has no opinion that the residency program breached
2 the standard of care. And also there were questions
3 about the supervision. Now, there was supervision with
4 respect to Dr. Varn and that group. And that opinion he
5 was going to express. But this is the first I've heard
6 of this.

7 THE COURT: That was expressed in the
8 deposition but not in the designation. That's why Judge
9 Klein signed the order.

10 MR. MURRAY: That's right.

11 MR. CAREY: I specifically examined this
12 witness to be very clear about it in the deposition,
13 what were the breaches of the standard of care. With
14 respect to Fairfax Hospital, he identified Dr. Dill and
15 the two that we've already heard and nothing other than
16 that.

17 MR. MURRAY: The problem is, Judge, that
18 Fairfax Hospital put forth a corporate designee. That
19 was Mr. Rick Flynn. He testified that Dr. Varn was
20 responsible for supervising Dr. Dill. Mr. Carey on
21 Friday, two days ago, took a deposition of Dr. Dill de
22 bene esse. She testified that Dr. Varn is not

1 responsible for her supervision, that in fact the chief
2 OB-GYN resident and the OB-GYN attending are. I don't
3 know who those people are. So Mr. Carey with a de bene
4 esse deposition of Dr. Dill opened the door to this
5 testimony. What changed is now Dr. Roberts' opinion
6 changed based upon the change of Fairfax Hospital's
7 position.

8 MR. CAREY: Your Honor, that's unfair. They
9 deposed Dr. Dill months ago in a discovery deposition
10 and they know the exact words she said.

11 THE COURT: What did she say in that
12 deposition? That she was supervised by the OB-GYN
13 person?

14 MR. MURRAY: I think she said she wasn't sure
15 it was supervisory. That's why he deposed Mr. Flynn who
16 said she was supposed to be supervised by Dr. Varn.
17 Even if she did say that, the reason he deposed the
18 Fairfax Hospital corporate designee was because he is
19 the person responsible on behalf of the hospital to say
20 who is responsible for who. And so again, I mean that's
21 the problem.

22 THE COURT: We are sort of in a blind alley

1 here because Judge Klein has ruled he can't testify
2 about Varn. Now, does the designation have supervision?

3 Tell me some more about why you can get this in
4 now.

5 MR. DELANEY: Our position now is that it
6 appears that Fairfax Hospital's position has changed
7 from the deposition of Rick Flynn, who was the corporate
8 designee, to the de bene esse deposition of Dr. Dill.

9 THE COURT: Dr. Dill was in Fairfax Hospital;
10 right?

11 MR. MURRAY: Yes.

12 THE COURT: She is in New Jersey.

13 MR. CAREY: She is in New Jersey, Your Honor.

14 MR. DELANEY: She is going to testify by
15 videotape. She is going to say Dr. Varn is not
16 responsible for my supervision, that it was the OB-GYN
17 attending, which we don't know who that is, and the
18 chief resident. That's the problem. She is going to
19 say that in her deposition. Mr. Flynn took the exact
20 opposite view, so there are two people from Fairfax
21 Hospital contradicting each other. It's fair for
22 Dr. Roberts to comment on that.

1 MR. CAREY: Your Honor, Mr. Flynn, he is not
2 even here to testify. I feel like I'm getting
3 bushwhacked here, Your Honor. Dr. Dill's deposition
4 testimony was taken months ago. She laid it out. She
5 said yeah, I'm supervised by the chief resident and I'm
6 supervised by the attending OB-GYN. I said who were
7 those people? She said I don't remember who those
8 people are. That's the line of authority. I asked over
9 and over again in the deposition to find out what the
10 allegations were, so I'd have fair notice of them and be
11 prepared to respond to them.

12 MR. DELANEY: I think he can note the change on
13 cross-examination.

14 MR. CAREY: It's a question of witnesses, Your
15 Honor. If I have to defend the residency program at
16 Fairfax Hospital, then it's a complete different change
17 than two specific medical allegations of breach of the
18 standard of care. That's what we were dealing with up
19 until about five minutes ago.

20 THE COURT: I don't see how when your doctor
21 thought -- the issue or the designation is whether
22 supervision was in this case, as I understand it. And

1 if I'm wrong there, then Judge Klein -- and then he
2 testified in his deposition it was Varn. Let's not
3 focus on Varn. Let's just call it supervision. Judge
4 Klein said because there was no designation in the
5 designation, written designation, that he was going to
6 talk about supervision, that he couldn't testify to
7 that. I don't think the ruling changes because you've
8 got a different supervisor. The issue is whether he had
9 revealed that he had a question about supervision in his
10 designation. Judge Klein ruled he did not, so he
11 couldn't testify to that. So I sustain the objection.

12 (The bench conference was concluded.)

13 BY MR. DELANEY:

14 Q Dr. Roberts, I want to go back a little bit and
15 talk about the operation that you did, which is called a
16 laparotomy; am I right?

17 A Yes.

18 Q Now, if Dr. Dill had found a mass on January
19 26, January 27, 1994, was there another surgery that
20 could have been performed on her?

21 A Yes.

22 Q What was the name of that surgery?

1 A Laparoscopy.

2 Q Now, will you tell the jury what the
3 differences are between laparoscopy and a laparotomy?

4 A Laparotomy means make a big incision and look
5 and see what's there. Laparoscopy means make a very
6 small incision, insert a little telescope through and
7 look inside and see what's there and then decide what to
8 do after looking through the telescope.

9 Q How do you get that telescope inside?

10 A Well, you initially make an incision just big
11 enough to put something the size of my finger in.

12 Q So one of the differences is that with a
13 laparoscopy you would have had a finger-size incision
14 and with a laparotomy you have a ten-inch incision; is
15 that right?

16 A Yes.

17 Q Now, if a laparoscopy would have been performed
18 on January 26, 1994, as opposed to your surgery with the
19 laparotomy, is there a difference with the amount of
20 time a patient has to stay in the hospital?

21 A Yeah. It's conceivable she would have gone
22 home in less than 24 hours.

1 MR. CAREY: Your Honor, I want to object to
2 conceivable. We are dealing with reasonable
3 probabilities here.

4 MR. DELANEY: I will just ask the question.

5 THE COURT: All right.

6 BY MR. DELANEY:

7 Q Is it your opinion within a reasonable degree
8 of medical certainty that she would have gone home
9 within 24 hours after a laparoscopy?

10 A Yes.

11 Q Now, let's talk about the patient's recovery.
12 from the two different types of surgery. You gave her a
13 laparotomy. If she had a laparoscopy, would there have
14 been any difference in her ability to recovery from the
15 surgery?

16 A Yes. The recovery from a laparoscopy is much
17 more rapid.

18 Q And how much more rapid is it within a
19 reasonable degree of medical certainty?

20 A People who have laparoscopic procedures are
21 often back to work in two or three days after the
22 surgery. When they have a laparotomy, they're usually

1 off for two weeks to a month.

2 Q Now, is it your opinion that within a
3 reasonable degree of medical certainty, the presence of
4 this rare uterus did not interfere with the proper
5 diagnosis in this case?

6 MR. CAREY: Your Honor, that's been asked and
7 answered. It's repetitious.

8 THE COURT: Established.

9 BY MR. DELANEY:

10 Q Mrs. Sami is a large person. Did her size in
11 any way interfere with your ability to find the mass,
12 the dead baby that you found in here?

13 A The thinner a person, the easier it is to do a
14 pelvic exam. But I didn't really have any trouble
15 finding it. I think perhaps she is maybe just a tad bit
16 heavier now than she was back in 1993, '94.

17 Q Is it your opinion within a reasonable degree
18 of medical certainty that Ms. Sami's size in this case
19 was not an impediment in finding the mass for Dr. Dill?

20 A It was not an absolute impediment. It was to
21 some degree an impediment.

22 Q Now, in this case --

1 MR. DELANEY: Your Honor, I'd like to move to
2 admit Plaintiff's Exhibits 1 through 6. I think that
3 will be about it, Judge.

4 THE COURT: Is that --

5 MR. DELANEY: The medical records.

6 THE COURT: Any objections to Plaintiff's 1
7 through 6?

8 MR. CAREY: Your Honor, I'm not sure as to the
9 relevancy any longer with respect to 4 and 5 due to the
10 Court's earlier ruling.

11 MR. DELANEY: That's fine, Your Honor. We
12 don't need those.

13 THE COURT: All right. Plaintiff's Exhibit 1,
14 2, 3 and 6 are admitted.

15 (The medical records previously marked for
16 identification as Plaintiff's Exhibit Nos. 1,
17 2, 3 and 6 were received in evidence.)

18 BY MR. DELANEY:

19 Q Dr. Roberts, in front of you there's a black
20 book that contains the various exhibits in this case.
21 I'd ask you to look on Exhibit 1 -- Exhibits 1, 2 and 3.
22 If you can tell me what was the beta HCG level on

1 January 26th.

2 A It's recorded in handwriting on the Bates page
3 2 as 3,776.

4 Q What is the significance of a beta HCG test in
5 general?

6 A Beta HCG is the beta subunit of human chorionic
7 gonadotropin. It's a chemical that is specific to
8 pregnancy. And it usually rises at a fairly steep level
9 early in the pregnancy and then levels off later in the
10 pregnancy.

11 Q What does the number 3,776 on January 26 mean
12 to you, if anything?

13 A Well, it means a pregnancy existed. It's
14 somewhat lower than one would expect for a 15-week
15 pregnancy, which is what's recorded, 15 weeks at the top
16 of the same page.

17 Q On January 26, 1994, what inferences could
18 Dr. Dill have drawn from the level, the HCG level on
19 that date?

20 MR. CAREY: Your Honor, I'm going to object to
21 the speculation on the witness's part as to inferences
22 another witness might draw.

1 THE COURT: I will sustain the objection to the
2 question as posed.

3 BY MR. DELANEY:

4 Q With a beta HCG level of 3,776, what should
5 Dr. Dill have done with this beta HCG level? What
6 should she have inferred from this?

7 A Since the beta HCG is inconsistent with the
8 length of amenorrhea, it has to be explained in some
9 way. There are several possible explanations. One is
10 that the patient had already miscarried and the beta HCG
11 level was going down rapidly and we've caught it on a
12 downward trend. Another is that there's a pregnancy
13 still inside, but the pregnancy has died or is dying.
14 That sometimes happens with ectopic pregnancies. They
15 don't all have to be removed operatively. Sometimes
16 they will resolve themselves and you can watch the beta
17 HCG levels fall.

18 It indicates probably a pregnancy in trouble of
19 some kind, and you can't really say where the pregnancy
20 is based on the numbers.

21 Q If you look at Exhibits 2 and 3, those are the
22 follow-up tests on February 1st, which is about one week

1 later, and February 7, which is about two weeks later.
2 Could you tell us what the beta HCG tests were for
3 February 1st and February 7?

4 A February 1st it was 800 and -- no, I'm sorry --
5 1,148.

6 Q Then again on February 7th?

7 A 311.

8 Q What does the falling beta HCG level indicate
9 to you?

10 A That the body is clearing rapidly the beta HCG
11 that was in it. It doesn't absolutely say there's no
12 production concurrently. But one would assume from how
13 fast it's going down that there's probably no more
14 production of it.

15 Q Does that indicate that the dead baby has been
16 expelled?

17 A No.

18 Q I also want to talk to you about the status of
19 Ms. Sami's cervix when Dr. Dill examined her. I think
20 if you refer to Exhibit 1, it's Bates stamp page number
21 0008, titled Physicians Progress Notes. Have you found
22 that page, Doctor?

1 A Yes.

2 Q According to the medical records, to what
3 degree, if any, was the cervix opened when Dr. Dill
4 examined Mrs. Sami?

5 A It says L/C next to the word cervix.

6 Q Are you reading the line that says cervix L/C
7 zero CMT?

8 A Yes.

9 Q What does the zero CMT mean?

10 A That's a symbol for without, and CMT means
11 cervical motion tenderness.

12 Q What does that mean in English?

13 A Well, if you touch the cervix with your finger
14 and it causes the patient to hurt, that will be sort of
15 a motion tenderness. They were able to move the cervix
16 around without causing much discomfort. Long and closed
17 is the normal condition of the cervix.

18 Q Does that mean the cervix is open to some
19 extent or to a large extent or what does that mean?

20 A No. It means it's closed.

21 Q It means it's closed. Now, if Mrs. Sami had a
22 miscarriage and delivered a 15-week size fetus, would

1 that cervix have been closed?

2 A It depends on the time frame. If it had been
3 recent, you would expect the cervix to be a little bit
4 dilated. If it had been sometime ago, it could be long
5 and closed again.

6 Q Now, if the medical chart records at 2145 that
7 she had passed a clot, and this examination was at 2400,
8 so in the space of those two hours, would you expect the
9 cervix to be closed after passing a 15-week fetus?

10 A No.

11 Q I want to refer you to the discharge
12 instructions which are at page 0005 on Exhibit 1.

13 A Yes.

14 Q The evidence will reveal that that's Dr. Dill's
15 handwriting when she testifies on the instructions, at
16 least the top part, the part that says completed
17 miscarriage. Should Dr. Dill have written completed
18 miscarriage on the discharge instructions before she
19 received the lab results that are Exhibits 2 and 3?

20 A I don't see how she could be sure of that. In
21 retrospect, it was the wrong diagnosis. I'm sure that's
22 what she suspected.

1 Q Now, on Exhibit 3, Bates stamp page 0017, which
2 is the results of the lab tests on February 7, do you
3 see that, Doctor?

4 A Yes.

5 Q Where it says history, could you tell us what
6 it says?

7 A It says follow-up on missed abortion.

8 Q Do you have any idea what that means?

9 A Yes. The medical diagnosis of missed abortion
10 means that the baby has died and is still inside.

11 Q How can it be that if Exhibit 3 says that the
12 baby is still inside, that they didn't do anything about
13 it?

14 MR. CAREY: Objection, Your Honor. It calls
15 for speculation.

16 MR. DELANEY: I withdraw the question.

17 THE COURT: All right.

18 BY MR. DELANEY:

19 Q Let's talk about -- again, you said this dead
20 baby is in the rudimentary horn and somehow connected to
21 the rest of the uterus. How does that work again?

22 A Well, it was connected by a very filmy,

1 membraneous kind of attachment, not very well supported.

2 Q Now, is Mrs. Sami's claim that she suffered an
3 incredible amount of pain, is that consistent with the
4 kind of uterus that you found?

5 A Yes. Structures like this that are heavy on a
6 very diaphanous kind of support often twist with
7 movement. A typical history is that the pain will come
8 as it twists on a stalk and then disappear as it
9 untwists. So very bad pain and then no pain for a while
10 and then very bad pain again at some later time. It's
11 called tortuous.

12 Q Mrs. Sami claims that the pain was so bad, that
13 she was unable to move at points. Is that consistent
14 with your evaluation?

15 A It could be that bad. And it seemed to be very
16 bad the day she came into the office.

17 Q In fact, what was the state that she presented
18 to you?

19 MR. CAREY: Your Honor, it's repetitious. I
20 object.

21 BY MR. DELANEY:

22 Q I just have a couple more questions for you,

1 Doctor. Mrs. Sami also claims she was unable to work
2 for several months. Is that claim consistent with your
3 evaluation?

4 A It is possible, yes.

5 Q Is it your opinion within a reasonable degree
6 of medical certainty that this kind of pain would cause
7 her to be unable to work for several months?

8 A Yes. She had intermittent severe pain.

9 MR. DELANEY: Just give me one second.

10 Your Honor, I have no further questions for
11 Dr. Roberts.

12 THE COURT: Can you give me an estimate of your
13 length of your cross-examination? Because we are just
14 about at lunchtime.

15 MR. CAREY: More than a few minutes. Half an
16 hour or 45 minutes perhaps.

17 THE COURT: Let's go to lunch and be back at 2
18 o'clock.

19 (At 12:55 p.m. the trial was recessed to
20 reconvene at 2 p.m.)
21
22

1 AFTERNOON SESSION (2 p.m.)

2 THE COURT: All right. Are you ready for the
3 jury?

4 MR. CAREY: Yes, Your Honor.

5 (The jury returned to the courtroom.)

6 THE COURT: All right. Dr. Roberts, if you'd
7 retake the stand, sir.

8 Whereupon,

9 HERBERT ROBERTS, M.D.,
10 resumed the witness stand, and having been previously
11 sworn, was further examined and testified as follows:

12 THE COURT: All right. Cross-examination.

13 MR. CAREY: Thank you, Your Honor.

14 CROSS-EXAMINATION

15 BY MR. CAREY:

16 Q Dr. Roberts, first let's talk about the
17 presentation of Mrs. Sami at Fairfax Emergency Room on
18 January 26, 1994. Do you have those records in front of
19 you, sir? It would be Exhibit No. 3, I think, in the
20 book. I'm sorry. Exhibit No. 1.

21 Can you tell what time the patient came into
22 the emergency room?

1 A 2004.

2 Q This would be about 8 o'clock in the evening
3 then?

4 A Yes.

5 Q Are you looking at the face sheet, Doctor, what
6 we call the face sheets --

7 A Bates 2.

8 Q Let's look at Bates 1.

9 A Okay. Time register 2037. Time in 2035.

10 Q So she was registered at about 8:30. I think
11 what you referred to earlier was the triage at 8:04?

12 A Right. Noted arrival to triage times 2004.

13 Q Okay. Looking at this Bates stamp number 1,
14 are you familiar with this kind of a sheet?

15 A Somewhat.

16 Q You don't practice at Fairfax Hospital, do you?

17 A No, I don't.

18 Q Do they use a similar sheet like this at
19 Arlington Hospital?

20 A Yes.

21 Q The information that's contained in there is
22 information that's put in during registration. Is that

1 true?

2 A Yes.

3 Q The history that's taken there, do you see the
4 history? Can you read that?

5 A Vaginal bleeding since 10 a.m. or 10 o'clock.

6 Q Is that put in by a clerk in the registration
7 department from information received either from the
8 patient or from the patient's family?

9 A I suppose you're asking me about Arlington
10 rather than Fairfax, because I don't know who put this
11 in but --.

12 Q Well, at Arlington is that entry made by a
13 clerk in the registration portion of the emergency
14 department and the information received either from the
15 patient or from the patient's family?

16 A It was either by a nurse or a clerk, and I'm
17 not sure which.

18 Q Does it indicate whether this patient had a
19 private physician or not?

20 A It says Ragaie, R-A-G-A-I-E, as private
21 physician.

22 Q Dr. Rajae?

1 A Rajae.

2 Q That would have been information received from
3 him?

4 A Probably from the patient.

5 Q Let's go ahead then to the emergency room
6 sheet. This patient was triaged at approximately 8
7 o'clock?

8 A Um-hum.

9 Q Would you explain to the jury what triage is?

10 A It's an attempt by someone to determine the
11 order of priority for the patient to be seen, putting
12 the least urgent patient last and the most urgent
13 patient first. Those in danger of losing life or limb
14 have to be seen immediately.

15 Q Was this patient in danger of losing life or
16 limb?

17 A No.

18 Q The triage assessment says vaginal bleeding
19 since 10 a.m. this morning?

20 A Um-hum, yes.

21 Q What are the circles next to the portion that
22 comes after that? Do you see the circle and the minus

1 sign?

2 A I am not absolutely sure what that meant. I
3 would take it to mean no clots, no cramping, positive
4 backache.

5 Q Essentially on presentation the patient said
6 she had been bleeding vaginally since that morning, but
7 at the current time she is reported to only have a
8 backache.

9 A That's what this person recorded, yes.

10 Q Does it indicate in here that the patient had
11 been seen by her primary care physician earlier that
12 day?

13 A Yes, it does. On the physical -- physician
14 history and physical exam, the second line, appointment
15 with OB this a.m., no fetal heart tones.

16 Q What would no fetal heart tones mean?

17 A It means either he listened and couldn't find
18 any or that he didn't listen. You have to ask the
19 physician who wrote it. I would have taken it, without
20 having any other information, to mean that he listened
21 and didn't hear anything.

22 Q Does this face sheet indicate or this sheet in

1 the emergency room indicate that there was a physical
2 examination performed on the patient?

3 A Yes. Just under 2145 on the same page,
4 physical exam, eyes, ears, nose, throat, chest,
5 extremities, speculum, and bimanual exams are the
6 listings down the side.

7 Q What is the speculum?

8 A It's a medical instrument used to open the
9 vagina so that a doctor can see in the vagina.

10 Q So you are actually visualizing it at that
11 point.

12 A Right.

13 Q What did this examination show upon
14 visualization? Can you read that?

15 A Large amount of blood with clots, without
16 tissue, calcified millimeters, I think.

17 Q What is the os?

18 A That's the opening to the cervix.

19 Q What is the bimanual?

20 A It's an exam where the doctor uses two hands,
21 putting one inside the vagina -- and one set of fingers
22 inside the vagina and one hand on the abdomen to try to

1 palpate masses.

2 Q That was performed in the emergency room before
3 Dr. Dill arrived?

4 A Well, I can't testify to that. I wasn't there.
5 I can testify it's on the sheet, and it would appear
6 that someone did examine the patient. I put that down.

7 Q Do you know whose handwriting that is?

8 A I'm not absolutely sure. But it looks very
9 much like the signature under emergency department staff
10 physician, which I took to be Dr. Casper, the one on the
11 left.

12 Q So you would take it Dr. Casper is the one who
13 performed that pelvic exam?

14 A It looks like to me, although I couldn't
15 testify to it.

16 Q What was his clinical analysis?

17 A Spontaneous abortion.

18 Q Was there a pelvic exam also performed by
19 Dr. Dill later that evening?

20 A There was one recorded by a medical student on
21 Bates page 8 and cosigned by someone, and I assume
22 that's Dr. Dill's signature.

1 Q Are you aware Dr. Dill testified she had the
2 medical student write the note for training purposes but
3 she performed all the examination? Are you aware of
4 that?

5 A No. I may have read that, but I didn't recall
6 it.

7 Q You would not expect a medical student to be
8 doing the bimanual pelvic exam, would you?

9 A They do sometimes, but they should be followed
10 up by someone else doing it too.

11 Q What do you mean followed up? You mean
12 somebody goes and does it again?

13 A Someone else does it in addition to the medical
14 student.

15 Q Does this sheet -- and I assume you are looking
16 at Bates stamp 6?

17 A I was looking at 8.

18 Q I'm sorry.

19 A Back to 6.

20 Q Okay. On 6, do you see where the pelvic exam
21 is recorded there?

22 THE COURT: 6 is authorization.

1 A 6 is an authorization for medical procedures.

2 MR. CAREY: I'm sorry, Your Honor. We don't
3 have our exhibits the same between plaintiffs and
4 defendants.

5 THE COURT: All right.

6 BY MR. CAREY:

7 Q On Bates 8 can you read the pelvic examination
8 that was done there, Doctor?

9 A There is one word I can't read, the first word.
10 Then it says external genitalia without lesions.
11 Vagina: thick, moist, blood engorged. Cervix: Long
12 and closed with no cervical motion tenderness. Uterus:
13 8 weeks, nontender, anteverted. Adnexa: Without
14 masses, nonenlarged, nontender.

15 Q Was there an abdominal exam also performed at
16 that time?

17 A Yes. Above the pelvic exam there's a note
18 about an abdominal exam.

19 Q So this is the second abdominal and pelvic exam
20 that the patient received that day? Is that true?

21 A It would appear so.

22 Q Was there also a pelvic exam performed at least

1 one other time between the time she left Fairfax
2 Hospital and the time you saw her in June?

3 A Yes.

4 Q That was by Dr. Orenstein?

5 A Yes.

6 Q Did he palpate a mass?

7 A No.

8 Q Do you know whether the physician that examined
9 her in England when she was traveling in May performed a
10 pelvic examination or not?

11 MR. DELANEY: I would object to that, Your
12 Honor, because there's no evidence in the record she saw
13 a physician.

14 THE COURT: Let me see counsel up here.

15 (Counsel approached the bench and the following
16 proceedings were held:)

17 THE COURT: When Mr. Carey asked about the
18 examining, your client sat there and shook her head in
19 front of the jury. If she does it again, I will mention
20 it to the jury, instruct her she is not to make a
21 comment visually or in any other way on what questions
22 are being asked.

1 Now, on the objection, what is the grounds?

2 MR. DELANEY: The grounds is that the heart of
3 the matter is that on one of the medical records which
4 is not in evidence, it says that she saw some doctor in
5 England. She testified in deposition that she did not
6 see a doctor in England. So I mean I'm not sure where
7 the evidence is going to be she saw a doctor in England.
8 They say the chart says she saw a doctor in England.
9 She is going to say I didn't see a doctor in England.

10 MR. CAREY: It's in the chart twice.

11 THE COURT: These charts are in evidence?

12 MR. CAREY: Not the ones they put in but the
13 ones I intend to put in.

14 THE COURT: I think you can ask questions about
15 it. That's cross-examination, not the basis for an
16 objection.

17 (The bench conference was concluded.)

18 BY MR. CAREY:

19 Q Doctor, you are not aware of whether a
20 physician she may have seen in England performed a
21 pelvic examination on her?

22 A No.

1 Q When you performed a pelvic exam in June, you
2 did not diagnose the bicornuate uterus at that time, did
3 you?

4 A No.

5 Q Now, that bicornuate uterus had been diagnosed
6 previously by your partner, Dr. Falo?

7 A Yes, when he performed her cesarean section
8 some several years ago.

9 Q Do you recall how he described it in her
10 records?

11 A No, I don't.

12 Q Do you recall that he described it as a unicorn
13 uterus?

14 A I don't recall.

15 Q Do you recall testifying in -- well, do you
16 recall testifying that he may have missed the
17 rudimentary horn upon that cesarean section?

18 A Yes, I think I did see that.

19 Q It's not below the standard of care not to
20 diagnose a bicornuate uterus upon physical examination,
21 upon a pelvic examination. The standard of care does
22 not require a physician who is performing the pelvic

1 examination to tell just by the pelvic examination that
2 he or she is dealing with the bicornuate uterus with a
3 rudimentary horn.

4 A You are asking a very general question to cover
5 a very specific case. The general question doesn't
6 cover the specific case.

7 Q Well, let me ask you this. You performed a
8 pelvic examination on her on June 20, 1994.

9 A Right.

10 Q As a result of that pelvic examination, you did
11 not have it arise in your mind that you might be dealing
12 with the bicornuate uterus with a rudimentary horn.

13 A Right.

14 Q Can I assume from that that it was not a breach
15 from the standard of care not to have that come to mind
16 upon a pelvic examination?

17 A Right.

18 Q In fact, the bicornuate uterus itself is a rare
19 condition, is it not?

20 A That's true.

21 Q And bicornuate uterus with a rudimentary horn
22 is a very, very rare condition; is that true?

1 A Yes, that's true.

2 Q In fact, you've never seen one exactly like
3 this before in your 22 years of practice?

4 A That's true.

5 Q It is a condition so rare that it would take
6 several lifetimes of statistical gathering in order to
7 do a study on the incidence in the population. Is that
8 true?

9 A Yes.

10 Q I believe you told me in answer to Mr.
11 Delaney's questions, you indicated that Mrs. Sami told
12 you that she didn't pass the fetus back in January. She
13 thought she still had it.

14 A She said she had never seen one come out.

15 Q And yet, when you did your differential
16 diagnosis in June, retention of the fetus was not among
17 the diagnoses that you had before you?

18 A That's correct.

19 Q It was not something that you expected.

20 A Yes, that's true. I didn't expect it.

21 Q Can we take it from that that it's possible for
22 an individual to pass a fetus completely upon a

1 miscarriage and not actually see it?

2 A It depends on the size of the fetus, yes.

3 Q She said that she didn't see it, and yet you
4 told her, Vida, your pregnancy is over. Weren't you
5 thinking at the time that she passed her fetus in
6 January and simply didn't see it pass?

7 A I was thinking that she had completed her
8 miscarriage, yes.

9 Q And yet did not report to you in the history
10 that she had passed the fetus.

11 A Right.

12 Q When a miscarriage occurs, the cervix opens to
13 allow the products of conception to pass?

14 A Yes.

15 Q And then closes again.

16 A Yes.

17 Q That can happen within a 24-hour period.

18 A Yes, it could.

19 Q In this situation in January of 1994 at the
20 emergency room at Fairfax Hospital, was the main uterus
21 in fact empty of fetus?

22 A In retrospect it probably was, yes.

1 Q Aren't you going to say, Doctor, it absolutely
2 was? This fetus was not in the main uterus, was it?

3 A No. This fetus was not.

4 Q And there was not a fetus in the main uterus?

5 A Not to my knowledge.

6 Q The connection that this rudimentary horn had
7 with the main uterus you described as diaphanous?

8 A Very filmy.

9 Q You can almost see through it, it's so thin;
10 right?

11 A Right.

12 Q I think you described it as mobile?

13 A Yes.

14 Q Would move upon position --

15 A Yes, upon position changes of the patient.

16 Q Do you know the exact position of that
17 rudimentary horn on the evening of January 26, 1994?

18 A In the right adnexa.

19 Q Do you know where in the right adnexa?

20 A On the right side of the uterus, on the left
21 side of the right ovary and fallopian tube connected to
22 the round ligament on the right side.

1 Q But it's mobile, is it not, Doctor?

2 A Somewhat, but it's attached by those structures
3 mentioned.

4 Q But it's mobile but can move either posterior
5 or anterior?

6 A Yes.

7 Q Do you know whether it was posterior or
8 anterior on that night?

9 A No, I don't.

10 Q Where was it when you found it?

11 A It was somewhat higher in the pelvis, and I
12 raked it down with my hand on the abdomen to meet the
13 hand that was inside the vagina.

14 Q But in January of 1994 you don't know where it
15 was.

16 A Couldn't have been very far away because it was
17 attached.

18 Q I understand that. But it was still mobile,
19 and you can't place it for us, can you?

20 A There are degrees of mobility. It had to be
21 within a few centimeters of where it was.

22 Q Wherever it was, Dr. Casper did not feel it

1 upon pelvic examination, did he?

2 A He certainly didn't.

3 Q And Dr. Dill did not see it on pelvic
4 examination, did she?

5 A No, she didn't.

6 Q And Dr. Orenstein did not feel it upon pelvic
7 examination, did he?

8 A No, he didn't.

9 Q And you don't know where it was at any of those
10 times when the pelvic examination was done except
11 grossly. You don't know specifically whether it was
12 anterior, posterior, to the front or behind; is that
13 true?

14 A That's true.

15 Q What year of residency was Dr. Dill, do you
16 know?

17 A She was a junior resident. She was either
18 second or third year resident.

19 Q Do you know whether she was in her second or
20 third year of residency?

21 A No, I don't.

22 Q Do you know how many pelvic examinations she

1 had performed at that point in her career?

2 A No.

3 Q You mentioned weight as a possible difficulty
4 in performing a pelvic examination?

5 A Yes.

6 Q Can there be other difficulties?

7 A Lack of cooperation of the patient who is in
8 pain who tightens the muscles of the abdomen, making
9 palpation of the organs more difficult.

10 Q Do you know whether any of those conditions
11 were present in January of 1994?

12 A They said she was nontender on the exam that
13 they did, which would indicate to me that she wasn't
14 guarding very much.

15 Q Do you know whether she was cooperative or not?

16 A No. I see no signs on the chart that she was
17 uncooperative.

18 Q You have described the fetus as a 15-week fetus
19 and the size of an orange?

20 A That was the size of the mass itself. The
21 fetus was somewhat smaller than the mass. The mass was
22 the walls of the uterus with the fetus inside.

1 Q Do you remember describing that earlier as a
2 small tangerine?

3 A Yes, small orange, tangerine.

4 Q Small orange or small tangerine. Where did you
5 gather the measurements of the mass from in order to
6 arrive at that estimate?

7 A From feeling of it on the outside from the
8 sonogram, and then it was sent to pathology afterwards.

9 Q Now, the beta HCG is indicative of whether a
10 pregnancy is continuing or not; is that true?

11 A No. Beta HCG indicates a pregnancy existed and
12 made a chemical that's in the blood, period. It doesn't
13 say whether it's continuing, whether it's growing,
14 whether it's dying, whether it's dead or anything. It
15 existed at one time, made enough chemical and the
16 chemical was still there at the time the test is done.

17 Q Well, you watch the betas, don't you, as an
18 OB-GYN?

19 A Do I watch betas?

20 Q Yes.

21 A Yes, I use them all the time.

22 Q What's the purpose diagnostically?

1 A Well, there are many different purposes for
2 them. If one sees them rising, one assumes that a
3 pregnancy is doing well.

4 Q How about if they're falling?

5 A If they fall, it indicates the pregnancy is
6 usually in some kind of trouble.

7 Q You mentioned earlier an ectopic pregnancy.
8 What is an ectopic pregnancy?

9 A A pregnancy not in the uterus.

10 Q In the tube?

11 A It could be in the tube, in the abdomen, on the
12 ovary, on the cervix.

13 Q One of the ways to handle an ectopic pregnancy
14 is to monitor and continue to monitor the beta HCGs;
15 isn't that true?

16 A That is correct.

17 Q You wouldn't automatically perform a D&C or a
18 laparotomy under those circumstances.

19 A That's correct.

20 Q On this presentation in January, the falling
21 betas were supportive of a diagnosis of completed
22 abortion, were they not?

1 A Among other diagnoses.

2 Q Was it supportive of the diagnosis of a
3 completed abortion?

4 A And a missed abortion.

5 Q With the uterus empty and the betas falling,
6 isn't that more supportive of a completed abortion,
7 Doctor?

8 A It was a missed abortion. It was in the
9 uterus. It was in one horn of the uterus.

10 Q I understand that. What I'm asking you is that
11 if the physician who is performing the pelvic has the
12 uterus -- the uterus is about the size of your hand, is
13 it not?

14 A Or smaller if it's not pregnant.

15 Q All right. But this one would be about the
16 size of a hand? It was pregnant, was it not, the
17 uterus?

18 A You are talking about the left horn, yes.

19 Q If they had that in their hand, they would
20 think that they had an empty uterus; is that true?

21 A I would think so, yes.

22 Q And they've got falling betas?

1 A Yes.

2 Q Are both of those supportive of the fact that
3 you've got a completed spontaneous miscarriage?

4 A They are consistent with a completed
5 miscarriage, but they are also consistent with a missed
6 abortion too.

7 Q Are they consistent with an ectopic?

8 A Yes, they are.

9 Q But you testified earlier it would be within
10 the standard of care to monitor an ectopic, to continue
11 to monitor the betas. Is that true?

12 A It is done by some people, yes.

13 Q Is it also a situation, particularly in an
14 emergency room, where it would be appropriate for the
15 emergency room physicians to refer the patient to their
16 primary care physician for follow-up?

17 A Would you repeat that?

18 Q Yes. Is it appropriate to refer the patient to
19 the patient's primary care physician for follow-up on
20 the OB-GYN situation that was present? Is that an
21 appropriate thing for the emergency room physician to
22 do?

1 A Yes. If there's not a danger of loss of life
2 or limb at the time, it could be referred.

3 Q Well, there was not a danger of loss of life or
4 limb at this time, was there?

5 A No.

6 Q Did they refer this patient to primary care?

7 A I think she was told to go to the GYN clinic.

8 Q That's the Women's and Children's Clinic.

9 A I'm not sure what the names are over there.

10 Q Do you know whether it's an OB-GYN clinic?

11 A Well, I said I thought she was told to go to
12 the GYN clinic.

13 Q That would be primary care, not emergency room
14 care. That would be primary care for OB-GYN situations.

15 A Right.

16 Q It's within the standard of care for the
17 physicians in the emergency room to make that discharge
18 instruction to the patient.

19 A Yes.

20 Q It's the obligation of the patient to follow
21 through with that, is it not?

22 A Yes.

1 Q This is a two-way street we have here in
2 medical care. If the physician makes a reasonable
3 recommendation to the patient to follow up, it's the
4 obligation of the patient to do so, is it not?

5 A It is.

6 Q Do you know whether she did follow it up?

7 A She followed up to the extent of getting the
8 betas done, but I don't know that she ever saw anyone.

9 Q That wasn't the referral to the OB-GYN clinic,
10 was it?

11 A Actually, I'm not sure where the betas were
12 done. I thought they were in the OB-GYN clinic.

13 Q Did she follow-up with any other primary health
14 care?

15 A Not to my knowledge, no.

16 Q Now, if there's an incomplete abortion, doesn't
17 the cervix usually not close and bleeding continue?

18 A Yes.

19 Q This cervix was closed at the time Dr. Dill saw
20 her?

21 A It appears so from the exam.

22 Q And that we needed it stopped.

1 A Yes.

2 Q Does that lead a physician away from a
3 diagnosis of incomplete abortion?

4 A Yes.

5 Q Now, your partner, Dr. Falo, diagnosed the
6 bicornuate uterus back in July of 1991. Would you have
7 expected Dr. Falo to inform his patient of that fact
8 that she had this uterine anomaly?

9 A Yes.

10 Q When did this fetus die, do we know?

11 A No.

12 Q Sometime prior to the time that the plaintiff
13 appeared at the emergency room at Fairfax Hospital on
14 January 26, 1994, the fetus had already died; is that
15 true?

16 A I can't say for sure, but there is
17 circumstantial evidence. The betas were falling from
18 that point on. She had had some bleeding. I didn't see
19 where anyone heard any fetal heart tones. But I didn't
20 actually see where anyone tried to listen for them
21 either.

22 Q There were no fetal heart tones earlier that

1 morning when she was seen by Dr. Rajae.

2 A Well, I don't know that for sure. There's some
3 doubt in my mind as to whether he listened or not.

4 Q Be that as it may, it's supportive, is it not,
5 if it's true?

6 A If he listened for fetal heart tones and there
7 were none, then it is supportive of the diagnosis that
8 the baby had died before she got to the emergency room.

9 Q Was this pregnancy in the rudimentary horn?

10 A Could it have gone to term there?

11 Q Yes.

12 A No.

13 Q In fact, it could have been a danger to the
14 patient.

15 A Yes. She could have ruptured that horn and
16 bled internally at any time.

17 Q You mentioned that -- let me ask you this
18 first. Is a sonogram required by a standard of care
19 every time a physician makes a diagnosis of a completed
20 spontaneous miscarriage?

21 A It depends on the certainty of his diagnosis.

22 Q Well, I'm asking you. Is it required in every

1 single case in which a diagnosis of completed
2 spontaneous miscarriage is made?

3 A Not in every single case.

4 Q In fact, even if a D&C had been performed in
5 this case, it would have been to no effect; is that
6 true?

7 A I think it would have been to some effect
8 because the products -- if the attempt to remove
9 products of conception showed no chorionic villi, then
10 they would have had to make a decision was this a
11 completed abortion or an ectopic.

12 Q But in terms of terminating this pregnancy, a
13 dilatation and curettage would have had no effect?

14 A It would not have terminated the pregnancy.

15 Q In fact, even on a dilation and curettage,
16 sonogram is not required under all circumstances, is it?
17 Is that true?

18 A Not under all circumstances.

19 Q The opening to the cervix -- at the time she
20 first presented to the emergency room and was seen by
21 the emergency room physicians earlier in the evening,
22 the cervix was open, was it not, to some extent?

1 A Well, there are two statements on there. One
2 says 5 millimeters, which is quite small, and the other
3 says closed.

4 Q But those are at different times, though,
5 aren't they, Doctor?

6 A Yes.

7 Q 5 millimeters was when she was seen by
8 Dr. Casper earlier in the evening; is that true?

9 A That's right.

10 Q Later at page 8, that's at midnight, is it not?

11 A That's right.

12 Q And at that point it's closed.

13 A That's right.

14 Q So we've got a closing cervix here, do we not?

15 A Yes.

16 Q And an opening of 5 millimeters followed by a
17 closing, that's consistent with passage of products of
18 conception in the recent past; is that true?

19 A Not with a 15-week size fetus. It's consistent
20 with the passage of something quite small.

21 Q Well, Doctor, don't you remember I took your
22 deposition and I asked you that exact question? And at

1 that time you stated that the 5 millimeter opening of
2 the cervix would be consistent with the passage of
3 products of conception in the recent past?

4 A There's a difference between products of
5 conception. A ten-pound baby is a product of
6 conception. And something smaller than a grain of rice
7 is a product of conception. And there's a difference
8 the way the cervix looks when you pass those two
9 products of conception.

10 Q Ultimately the cervix closes back up, does it
11 not?

12 A It does.

13 Q In order to go from opened to closed, it's got
14 to pass through the stage where it's 5 millimeters; is
15 that correct?

16 A It does.

17 Q So the fact that we've got it at 5 millimeters
18 early in the evening and closed is consistent with the
19 fact that the products of conception have passed in the
20 recent past; isn't that true?

21 A It's consistent with the fact that something
22 came out.

1 Q Let me ask you about the surgery. You
2 testified that you could have done a laparoscopic
3 procedure in January of 1994; is that true?

4 A Well, I suggested that when someone saw her in
5 the emergency room, that they should have considered
6 laparoscopy at that time.

7 Q Well, if the procedure had been -- I'm sorry.
8 I misunderstood that. I thought you said the procedure
9 that you performed --

10 A Was a laparotomy.

11 Q -- which you performed was a laparotomy in
12 June. I thought your testimony was that had this been
13 diagnosed, the fetus and the rudimentary horn in
14 January, that it could have been removed by a
15 laparoscopic procedure?

16 A Yes. It probably could have at the time that I
17 removed it too, but I thought I was dealing with
18 something that was a malignancy or suspected of possible
19 malignancy.

20 Q Do you know when the first reported case of
21 removing a rudimentary horn pregnancy was --

22 A No.

1 Q -- through a laparoscopic procedure?

2 A No, I don't.

3 Q You don't. Well, Doctor, don't you remember
4 providing me with an article on laparoscopic management
5 and rudimentary horn pregnancy when the authors of this
6 report indicated that theirs was the first time that
7 they were able to manage this disorder with a
8 laparoscopic procedure?

9 A I didn't remember that theirs was the first,
10 no.

11 Q The reason theirs was the first is because they
12 say the standard treatment is laparotomy; is that true?
13 That's the standard way you are going to remove a
14 rudimentary horn.

15 A Yes.

16 Q The reason for that is the patient usually
17 experiences massive abdominal hemorrhage. Is that true?

18 A That's true.

19 Q They were able to do it in a very peculiar
20 case. Do you remember the date that they did it,
21 Doctor?

22 A No, I don't.

1 Q 1996. So if you had performed this procedure
2 in 1994 and removed a rudimentary horn with a fetus in
3 it by laparoscopic procedure, it would have been the
4 first time that was ever done. Is it your testimony
5 that's what you would have done?

6 A I would have at least made the diagnosis with
7 the laparoscope. I don't know whether I would have
8 attempted to remove it or not.

9 Q All right. And that's fair enough, Doctor.
10 That's fair enough because there is a risk of
11 hemorrhage, is there not, when you do this with the
12 scope?

13 A Yes, there is.

14 Q If you have a hemorrhage beginning, then you
15 are going to open her up anyway, aren't you?

16 A That's right.

17 Q So you are going to end up with two procedures,
18 two incisions.

19 A Right.

20 Q And complications.

21 A Perhaps.

22 Q So you are not telling the jury with a

1 reasonable degree of medical probability that you would
2 have performed this procedure in January of 1994 or that
3 had it been diagnosed in January of 1994, that it would
4 have been done by laparoscopy.

5 A Well, "it" --

6 Q I'm talking about the removal of the
7 rudimentary horn.

8 A Diagnosis of what the problem was could have
9 been made by laparoscopy, and that was a reasonable
10 thing to do. At the time the diagnosis was made, the
11 surgeon should have then evaluated whether or not he
12 wanted to remove it through the laparoscope. Having
13 seen it from inside, I think that would have been an
14 easy one to remove. I doubt there would have been any
15 problem with the bleeding.

16 Q More likely than not, it would have been
17 removed not by laparoscope because that was not the
18 standard procedure, was it?

19 A Right. I think most people would have gone
20 ahead and opened her up at that time.

21 Q In fact, if they had removed it by laparoscope
22 and you had a hemorrhage, you would have most likely had

1 a situation that might well fall below the standard of
2 care under those circumstances; is that true? Because
3 it wasn't the standard.

4 A Not necessarily. If you started and had the
5 hemorrhage, you still could have opened her up and
6 finished the case abdominally.

7 Q Do you know the availability of the ultrasonic
8 procedure at Fairfax Hospital emergency room in off
9 hours in 1994?

10 A No.

11 Q When Mrs. Sami presented to you in June of
12 1994, you already testified that retained fetus was not
13 among the differential?

14 A No, it wasn't.

15 Q What was your differential?

16 A It was a pelvic mass. I thought it was either
17 an ovarian neoplasm of some kind or a pedunculated
18 fibroid.

19 Q Did you reach your differential prior to the
20 time you did the physical examination?

21 A No.

22 Q Did you know the cause of her abdominal pain by

1 history?

2 A No.

3 Q Was there any indication in the past medical
4 history or record that could give you an indication of
5 why she was having this intermittent pain that had been
6 continuing for some time according to the report that
7 she gave?

8 A One should always as a gynecologist when one
9 gets a history of severe pain, followed by periods of
10 being fairly normal, followed by periods of severe pain
11 consider the possibility of a torsive adnexa. That is a
12 twisted mass of some kind. So yes, there was something
13 in the history. The history itself could have led you
14 to the idea it was a torsive adnexa but not specifically
15 what the structure was.

16 Q Did the history and the conditions that she
17 described to you, did they lead you towards this
18 differential diagnosis of pelvic mass that might have
19 been causing the pain?

20 A No. The pelvic mass was found -- well, yes.
21 If you are thinking of torsion, you usually think of an
22 unbalanced mass of some kind.

1 Q So you had that in your mind at the time that
2 you did the examination.

3 A Yes.

4 MR. CAREY: One moment, Your Honor, if I could.
5 That's all the questions I have. Thank you,
6 Doctor.

7 THE COURT: Redirect?

8 MR. DELANEY: Briefly, Your Honor.

9 REDIRECT EXAMINATION

10 BY MR. DELANEY:

11 Q Dr. Roberts, could you tell the jury why a
12 sonogram was required in this case?

13 A Mrs. Sami had 15 weeks of amenorrhea. The
14 description that she gave of what had come out was blood
15 and blood clots. There was no fetus that had been
16 passed. Without having something come out, one has to
17 wonder exactly what happened to this pregnancy. This
18 was very much like an ectopic pregnancy in that she had
19 the bleeding but it was not from -- directly from the
20 pregnancy itself. It was from the endometrial reaction
21 in the horn that didn't have the pregnancy. Hormones
22 from the pregnancy had worked on the lining of that

1 uterus and made it grow thick. And then when the betas
2 started declining, it started to slough off.

3 Without accounting for the products of
4 conception, there should have been -- well, the second
5 thing is they should have felt the mass. If they had
6 felt the mass, they would have suspected an ectopic
7 pregnancy and would have looked for it. The way to look
8 for it would have been with a sonogram.

9 Not feeling the mass led them down the path to
10 considering this to be the most common kind of thing
11 that walks into the emergency room. You know, this
12 early pregnancy loss from a spontaneous miscarriage
13 occurs in about a third of all pregnancies. So it is a
14 very common thing to lose the fetus. And it's common to
15 lose it before it's big enough that the womb can
16 recognize that a fetus existed. However, in this case
17 she had 15 weeks of amenorrhea. You would have thought
18 she had something big enough that someone would have
19 been able to see or the patient would have been able to
20 see it.

21 Q Mr. Carey asked you a lot of questions about
22 the position of the fetus and whether or not you knew

1 where it was at any given moment in time. You said that
2 you found that fetus as you were raking down the body.
3 Can you tell us what you meant by that and how that
4 affects your analysis?

5 A When you do a pelvic exam, the lady is usually
6 lying on her back. And you put two fingers in the
7 vagina. And then you put one hand on top of the abdomen
8 and you try to feel the organs. If you put your hand in
9 immediately above the bones, you have a tendency to
10 catch a mass on top of your hand. And as you push your
11 hand in, it pushes the mass away from you.

12 So the proper way to do an exam is to start up
13 near the ribcage and mash downwards towards your hand so
14 that if anything is in there, it comes toward the inside
15 hand. That way when you get it between the outside and
16 the inside hand, you can feel the size of it.

17 I don't know for sure, but I have missed masses
18 myself when I was early in my career by going in
19 directly above the symphysis to feel it. Now, you'll
20 feel something that's attached because you will feel the
21 uterus in this case that was attached to the cervix
22 which you have between your fingers inside the vagina.

1 I suspect the other one went up.

2 Q If the proper pelvic exam had been performed by
3 raking from the ribcage on down, that would have found
4 this dead baby no matter what its position was at any
5 given point in time.

6 A It would have found the mass. The mass would
7 have tipped them to do a sonogram. The sonogram would
8 have showed something abnormal, and they eventually
9 would have ended up with the correct diagnosis.

10 MR. DELANEY: Thank you, Doctor.

11 THE COURT: May Dr. Roberts be excused?

12 MR. DELANEY: Yes, Your Honor.

13 THE COURT: Thank you, Dr. Roberts.

14 MR. CAREY: Yes, Your Honor.

15 (Witness excused.)

16 THE COURT: Call your next witness.

17 MR. MURRAY: I would like to call Vida Sami,
18 please, Your Honor.

19 Whereupon,

20 VIDA SAMI,
21 plaintiff, was called for examination by and in her own
22 behalf, and after having been first duly sworn, was

1 examined and testified as follows:

2 DIRECT EXAMINATION

3 BY MR. MURRAY:

4 Q Mrs. Sami, would you please state your full
5 name for the record?

6 A Yes. My name is Vida Sami.

7 Q Where do you reside, Mrs. Sami?

8 A I am living at 6214 Frontier Drive,
9 Springfield, Virginia.

10 Q Mrs. Sami, are you married?

11 A Yes, I am.

12 Q When were you married?

13 A I got married on January 1990.

14 Q In the United States?

15 A Yes, I did.

16 Q Are you an immigrant to the United States?

17 Have you come from another country to the United States?

18 A Yes, I did. I came from the country of Iran.

19 Q When did you come?

20 A I came in December '87.

21 Q Why did you come to the United States?

22 A I came because of the government in my country,

1 and we had a war with Iraq, and we couldn't live there.

2 Q Now, let me ask you this question. Did there
3 come a time when you and your husband had a child? Did
4 there come a time when you gave birth to a child in the
5 United States?

6 A Yes, I did.

7 Q When did that occur?

8 A That was on July 23, 1991.

9 Q Was that a boy or girl?

10 A Yes.

11 Q Which was it?

12 A That was one year after I got married.

13 Q And was it a boy or a girl?

14 A That was a girl.

15 Q Let me ask you this. Could you tell the jury
16 something about your educational background?

17 A Yes. I got my high school diploma from my
18 country plus one year in college.

19 Q Did you have any education or take any courses
20 in this country?

21 A Yes. I had three years college in Northern
22 Virginia Community College.

1 Q What was that? What course of study did you
2 pursue?

3 A I got English classes plus one year for
4 nursing.

5 Q Now, are you a citizen of the United States?

6 A Yes, I am.

7 Q When did you become a citizen?

8 A I got citizen in November 1998.

9 Q Could you tell the jury a little bit about your
10 employment history, if you have any, in the United
11 States? What was your first position or job in the
12 United States?

13 A When I got in the United States, I got a job at
14 McDonald's. And I stayed there for almost three years.
15 After that, I worked for county. And again, I didn't
16 continue the job with the county for some reasons. And
17 after that, I go back to McDonald's again. I'm now
18 first assistant at McDonald's.

19 Q What did you do for the county?

20 A I was a nurse aid.

21 Q Can you tell the jury when that was?

22 A I started with the county in 1992.

1 Q When did that job terminate?

2 A That job terminated after January the 26th of
3 1993 -- 1994.

4 Q Let me direct your attention to the events of
5 October, November '93, late fall '93. Did there come a
6 time when you became pregnant in late '93?

7 A 19?

8 Q Yes. Did there come a time when you had a
9 problem with a pregnancy, and wasn't that pregnancy --
10 didn't that occur in late '93, in October of '93?

11 A That's right.

12 Q Is that correct?

13 A That's right.

14 Q Now, first of all, did you have any problems
15 with your first pregnancy that you knew about?

16 A No, I didn't have.

17 Q This is with your daughter; is that correct?

18 A That's right.

19 Q And you didn't have any problems with that.

20 A I had no problems.

21 Q All right. Now, in this pregnancy that
22 developed toward the end of 1993, tell me first how did

1 you learn you were pregnant in the first place?

2 A Okay. The first one I missed my period. And I
3 wait for three more weeks to make sure. And then my
4 second period didn't come. And I go to the Fairfax
5 County clinic for urine test to see if I got pregnant or
6 not. I was pregnant.

7 Q Up until let's say January 26 of 1994, did you
8 have any problems with that pregnancy?

9 A Until that date I had no problem.

10 Q All right. Now, tell the jury as completely as
11 you can just what happened on January 26, 1994. And
12 speak slowly if you could.

13 A Yes. On January 26 when I woke up, I had a
14 little bit of back pain and a little bit down my stomach
15 pain. And I go to the restroom. I saw very, very
16 little light-pink blood. And after that, I stop. And I
17 tell my husband. I said I have pain and I saw little
18 pink things. And then I wait.

19 And it was 4, 5 o'clock. My pain got worse.
20 But I didn't see no blood. Very dark blood. Then on
21 January -- that was around 15 minutes to 7, I told my
22 husband to take me to the doctor. And my husband said

1 the closest doctor is Dr. Rajae, who is one block away.

2 Q Did you ever see Dr. Rajae before?

3 A No, I did not.

4 Q Why was Dr. Rajae there? Because of the
5 closeness?

6 A That was 10 minutes to 7. That was the closest
7 doctor I could go for ten minutes.

8 Q Do you remember the day of the week?

9 A That was on Friday.

10 Q All right. What happened next?

11 A Then my husband came home and took me to the
12 doctor. That was 10 minutes to 7. And I go there. I
13 knock on the door. The doctor open the door, and he
14 said I'm about to leave. He has no nurse, no nothing
15 there. I said I have pain. I have started bleeding.
16 Can you check on me? And he told me come inside. Then
17 he put me in the room. He check with the scope. He
18 told me this is hard to hear the heartbeat by scope.
19 But you have to go to emergency room because I don't
20 have a sonogram machine in this office. I have a
21 sonogram machine at Alexandria which is closed now.
22 Then he returned to go to the hospital to check on me.

1 Q All right. Did you go to the hospital?

2 A Yes, I did.

3 Q Did you go directly to the hospital?

4 A No. I came home for 30 minutes to pick up my
5 IDs and my husband and go with my husband to the
6 emergency room.

7 Q Tell the jury what happened in the emergency
8 room to the best of your recollection.

9 A I go to the emergency room. I have a pain. I
10 go to the register. I said I have a pain, and I saw the
11 blood, and I'm pregnant. And they put me -- they told
12 me do I have insurance. I said no, I don't have
13 insurance. They put me in the financial office. I fill
14 out the forms. And I wait there for three -- almost
15 three hours with the pain. I was crying, and I was
16 walking in the hallway. And I go to the restroom. I
17 saw my blood got darker and heavier.

18 Q All right. What happened next?

19 A After three hours, they call me. They call my
20 name, and they put me in a room. And after 45 minutes,
21 the doctor came. And the doctor test --

22 Q Do you know who the doctor was who came to see

1 you?

2 A The doctor was the doctor who was sitting in
3 the middle there.

4 Q Okay. Is that Dr. Varn?

5 A Dr. Varn, yes.

6 Q Okay.

7 A And he told me this look like I had a
8 miscarriage. And he check on me and told me okay. I'm
9 going to call the other specialist to come to check on
10 you. And after he left, after 20 minutes, the lady
11 came, the lady doctor. And she was busy with me; she
12 was looking inside when the telephone ring on the wall.
13 And she picked up the phone. And she told me, I'm
14 sorry, I have to leave this room.

15 Q Let me interrupt you just at this point. The
16 lady doctor, as you say, did she examine you?

17 A She was in the middle of the examination.

18 Q When the telephone rang?

19 A Exactly.

20 Q What she doing prior to the time that the
21 telephone rang? What stage of the examination did she
22 get to?

1 A At the time the telephone was ringing, she had
2 the longest stick by the cuff on top of it and she was
3 picking it up.

4 Q Did she examine your body in any way by
5 palpation or touching at that time?

6 A No. The only thing she did, she just check
7 inside.

8 Q With the --

9 A Yes. And by that she picked up some blood,
10 some dark blood. It is a clot. And then the phone was
11 ringing. She left me. She said I am having the
12 emergency C section. I could come back again after my
13 job is done. Then she leave me in the room, and she
14 left for a couple of hours.

15 And I was in the pain. I was crying. I told
16 my husband, please, go out, check outside if you can't
17 see the doctor. You can't leave me like this.

18 And my husband go outside. In the hallway he
19 saw the nurses station down the hall. And she was like
20 this and laughing with other nurses. They were talking
21 about something, and they laughing.

22 My husband told her, my wife is in pain. Can

1 you please come --

2 MR. CAREY: Your Honor, I'm going to object to
3 the hearsay.

4 THE COURT: Sustain the objection.

5 BY MR. MURRAY:

6 Q Let me ask you another question. What happened
7 after that? Did the lady doctor come back?

8 A Yes. The lady come back when my husband ask
9 her to come.

10 Q Did she continue with her examination?

11 A She check again inside, and she told me my job
12 is done, and you got clean. And she left. And the
13 nurse came with the prescription, with a prescription.
14 She told me okay. The job is done. And I said where is
15 my baby? What happened to my baby? And she said I drop
16 my baby in the restroom; I didn't recognize it. I told
17 her, Nurse, how can I drop my baby? The baby was 15
18 weeks old. How come I couldn't recognize it? And she
19 says, you just didn't --

20 MR. CAREY: Your Honor, I am going to object to
21 the hearsay.

22 MR. MURRAY: I'm not sure it's hearsay, Your

1 Honor, because it's relating a conversation that she had
2 with somebody at the hospital. The hospital was
3 involved here.

4 MR. CAREY: Well, Your Honor, the hospital --

5 MR. MURRAY: It's not hearsay.

6 MR. CAREY: The nurses are not controlled
7 employees of the hospital.

8 THE COURT: It's not being offered for the
9 truth anyway.

10 MR. MURRAY: Right.

11 THE COURT: It's just something that was said.
12 Overrule the objection.

13 A After that, they gave me the medicine, and they
14 sent me home, but I still believe that my baby is still
15 there.

16 BY MR. MURRAY:

17 Q You went home. Then did you fill the
18 prescription the way you were requested to do so?

19 A Yes, I did.

20 Q On the discharge instructions was there any
21 notation about coming back for future investigation or
22 care or anything like that?

1 A Yes. They told me come back after four weeks.

2 Q Now, did anything else happen? Was there any
3 contact from the hospital to you either that day or the
4 following day?

5 A Exactly. They offered that the doctor call
6 me --

7 Q When? When was it?

8 A The day after that. That was morning around
9 10:30.

10 Q That would be the 27th, January 27th?

11 A Yes.

12 Q You got a call from the hospital?

13 A Yes.

14 Q Now, would you tell the jury what happened?
15 What was the call about?

16 A Okay. The doctor call me and told me my
17 hormone in my blood is too high. It's like almost
18 having baby. She told me I have to go to the lab and
19 draw the blood one more time.

20 Q You said the doctor. Do you know who that
21 doctor was?

22 A No. She told me I was the doctor who was last

1 night see you. That was doctor -- that was the lady.

2 Q She identified herself as the lady, the female
3 physician who saw you the night before.

4 A Yes.

5 Q Is that correct?

6 A That's right.

7 Q All right. What did you do when you got that
8 call? Did you go back to the hospital?

9 A Yes. They told me I'd have to be there by 11
10 o'clock for the blood test. I be there.

11 Q And you went there.

12 A Yes, I did.

13 Q Was blood drawn?

14 A Yes, they did.

15 Q Who drew the blood?

16 A Nurse.

17 Q Do you know was the lady doctor there?

18 A That wasn't the doctor.

19 Q Okay. Was there any doctor there?

20 A No, there was no doctor there.

21 Q Then what happened?

22 A Then after that, I came home. And again I got

1 the call.

2 Q Do you remember when you got that second call?

3 A That was the day --

4 Q Was that about a week --

5 A -- after that or that was the same day. I'm
6 not sure. I can't remember that.

7 Q All right. What happened? What was that call
8 about?

9 A The doctor called me and told me they are going
10 to give me a medication, and I have to come back again
11 in one week.

12 Q All right. Was that the same doctor or do you
13 know the voice?

14 A I got called from the emergency room. From the
15 emergency room.

16 Q Then you say you got a call about a week later.

17 A Yes.

18 Q This would be about February 7th?

19 A That's right.

20 Q What was that call about?

21 A They called me -- after February 7?

22 Q You said you got a call to come back a week

1 later or?

2 A Yes.

3 Q Oh, I see. Okay.

4 A And during that week, they put me on
5 medication. They told me my hormone level will come
6 down.

7 Q So you went back to the hospital on February 7?

8 A That's right.

9 Q What exactly happened on February 7?

10 A They draw my blood again.

11 Q Did anybody talk to you at the hospital
12 about --

13 A After that, they call me again.

14 Q What did they say?

15 A They told me everything is fine with me, and
16 everything done for me, I'm okay, and I'm not supposed
17 to come back to the hospital again.

18 Q All right. Now, from that period of time --
19 let me rephrase that question. Did you experience any
20 pain from that period of time proceeding into the
21 future? And if you did, what kind of pain?

22 A Yeah. I had the pain, same pain I had in the

1 beginning on January 26. And the doctor told me that is
2 normal because I did a miscarriage. And I'm going to
3 take a couple of weeks or a month, and I be okay.

4 Q Did you do anything to alleviate the pain, to
5 take care of it in any way?

6 A I just took Advil or Tylenol.

7 Q Okay. When you had this pain, what did you do
8 about it other than take --

9 A I just keep taking the medicine.

10 Q Is there any reason why you didn't go to a
11 doctor or anybody else?

12 A Because the last time they called me from the
13 hospital, they make sure nothing is wrong with me. And
14 they told me if I had pain, just take Advil or Tylenol.
15 And that pain wasn't going away after a couple of weeks.

16 Q All right. Now, did there come another time
17 now when you went to the hospital again? Do you recall
18 that you went to the emergency room at Fairfax Hospital
19 again?

20 A Yes. That was in April.

21 Q Tell the jury the circumstances of your return
22 to the emergency room at Fairfax Hospital.

1 MR. CAREY: Your Honor, I am going to object to
2 relevancy at this point. We are far past the relevant
3 time period.

4 MR. MURRAY: Your Honor, this is all about what
5 she was experiencing as a result of the situation.

6 THE COURT: Overruled.

7 A Yes. The week after that I had very bad pain
8 that was not comparable. I couldn't control it by
9 medicine. Then I go to the hospital again. And same
10 thing. They put me in the room, and they did a pelvic
11 exam on me.

12 BY MR. MURRAY:

13 Q You say they. Who?

14 A The doctor.

15 Q Do you recall who? The doctor.

16 A The doctor.

17 Q Was it one of the doctors who is sitting here
18 today?

19 A That was the one on the side.

20 Q Dr. Orenstein.

21 A Yes.

22 Q Okay. You said they did a pelvic exam.

1 A They did.

2 Q Now, would you describe what kind of exam that
3 he did? Could you describe that? You say a pelvic
4 exam.

5 A Yes. By hand, and something long with metal.
6 Those metal things, the long one. They did it with that
7 one.

8 Q Was there an examination of your abdomen by
9 that doctor that you recall?

10 A No.

11 Q All right. What was the result of that visit
12 to the emergency room? Did you get any instructions
13 about what to do or what you should do at that point?

14 A Yes. They told me let me check your kidney;
15 maybe you have got a stone kidney. Then they take me to
16 X-ray. When they come back and --

17 Q Just take your time.

18 All right. What did the doctor say at that
19 time?

20 A The doctor came to me and said there is nothing
21 wrong with you. And you got infected. And you have to
22 go to the clinic because you don't know how to make sex

1 with your husband. And you have got a VD problem and
2 all of this --

3 MR. CAREY: Your Honor, I'm going to object to
4 this. This is so far afield of where we are with
5 Dr. Dill in January of 1994.

6 MR. MURRAY: Your Honor, this is something that
7 happened to her during that period of time.

8 THE COURT: Overruled.

9 MR. MURRAY: Thank you.

10 A And they told me I have to go to the public
11 clinic, and they are going to give me their special
12 program, how to take care of myself. And they told me I
13 have a bad infection.

14 BY MR. MURRAY:

15 Q Did you go to the clinic?

16 A I didn't.

17 Q Why didn't you go to the clinic?

18 A Because I believe that that was not true.

19 Q What did you believe was not true?

20 A I had any kind of disease.

21 Q Now, did the pain persist after your April
22 visit?

1 A Yes. I still have the pain.

2 Q Did there come a time after that that you took
3 an overseas trip?

4 A Yes.

5 Q Would you tell the jury the circumstances of
6 how you took that overseas trip?

7 A Yes. Because every day I was crying, you know.
8 I remembered the day, what happened to me. And my
9 husband told me, maybe because you lost a baby, maybe
10 you have emotional damages. Let me take you overseas
11 for vacation, and maybe you forget what happened to you.

12 Q Let me interrupt you. How was the trip
13 financed?

14 A My mom paid for my ticket and my brother-in-law
15 too. They both help me on that expenses.

16 Q Go ahead. Continue.

17 A And then he took me first to see his sister. I
18 was sick with pain. They told me let's take you to the
19 hospital. I said no, I can't go out to that place.
20 There was big technology there. How can --

21 Q Slow down. Slow down a little bit. I'm not
22 sure anybody -- you are just talking too quickly. Say

1 that again.

2 A Okay. My sister-in-law told me let's take you
3 to the hospital or see the other doctor here. And I
4 told her no. I came from the United States with all the
5 technology there. Then this country is a very poor
6 country. It's too much disease here. I don't want to
7 go to any doctor. And they touch me there.

8 Q Did you see somebody who was trained in
9 medicine at any time during that trip?

10 A I just took three big bottles of Advil and
11 Tylenol with me during that trip.

12 Q Did you eventually go to see your husband's
13 family at some point in that trip?

14 A I go -- after that, I go to Pakistan to see my
15 father-in-law and my mother-in-law.

16 Q Did you talk to somebody about your problem
17 while you were there?

18 A Yes. I was full of pain. My brother-in-law is
19 a doctor. And he told me where is the pain.

20 MR. CAREY: Your Honor, I'm going to object to
21 the hearsay.

22 THE COURT: Sustained.

1 A My brother-in-law told me --

2 THE COURT: Sustain the objection. Let's ask
3 the next question.

4 BY MR. MURRAY:

5 Q Then did there come a time when you came back
6 from Pakistan? Do you recall when that was or
7 approximately what the date was when you left Pakistan
8 and came back to the United States?

9 A After Pakistan, I go to England.

10 Q What did you do there?

11 A I have been there for three days.

12 Q Do you remember what time this was,
13 approximately what month this was?

14 A That was in June. Early June.

15 Q Early June, okay. You flew back from England
16 back to the United States; is that correct?

17 A That's correct.

18 Q Were you experiencing any pain at that time?

19 A Yes. I have back pain. I took medicine. But
20 by the time I came to New York, I fall down in the
21 airport. They pick me up, and they put me on the chair.
22 They told me are you going to Washington or stay here to

1 the hospital. I say I have to go to Washington because
2 my husband is waiting for me there. And they told me
3 that I'm going to call the ambulance to get ready for
4 you at the international airport. And by the time I be
5 in the airport, they gave me medicine, too strong
6 medicine, and I go to sleep. And my pain was reduced.
7 And again they ask me do you still want that ambulance.
8 I said no, I feel a little bit better. I'm going to go
9 home.

10 Q Did you go home?

11 A Yes.

12 Q Who picked you up at the airport?

13 A My husband.

14 Q What's the next thing that happened to you
15 after this with regard to this whole situation that you
16 can recall?

17 A I was still in pain. The pain get worse,
18 worse, worse. And that was on -- that was around 9:30.
19 And I couldn't read. The pain come so worse. And my
20 lips got dark. And my sister-in-law who was living with
21 me said Vida, your face change. I can't breathe. Then
22 she call the ambulance for me.

1 Q Where did you go in the ambulance?

2 A The ambulance took me to the Fairfax Hospital
3 in the emergency room.

4 Q Then what happened?

5 A When I was in the room, after five minutes, my
6 mom came to see me there.

7 Q Okay. Then what happened?

8 A I was screaming. I was crying. And the nurse
9 came to me and said can you shut down? I said I am full
10 of pain. I can't breathe. She said why do you keep
11 coming here over and over. You are acting like that. I
12 don't believe you are in that pain.

13 Q Did you leave -- you were not admitted. Were
14 you admitted to the hospital?

15 A Yes.

16 Q As a patient? No, I mean --

17 A The treatment they did to me, that wasn't
18 right.

19 Q You did leave the hospital after that. You
20 left the emergency room; is that correct?

21 A That's right.

22 Q And then you went home.

1 A That's right.

2 Q Now, did there come a time when you eventually
3 called Dr. Roberts or called his office with regard to
4 this case?

5 A Yes. I called his office. That was around
6 11:30. I called the office and said I am Dr. Falo
7 patient.

8 Q How come you decided to go to that office after
9 you had been going to Fairfax Hospital all this period
10 of time?

11 A Because they told me don't come back here
12 again.

13 Q Okay.

14 A And we discuss at home. My mom said you are
15 going to the doctor who deliver your baby. He have your
16 file there and maybe he know better than them. Then I
17 called by 11:30. I had appointment that time. And they
18 said as an emergency, come over. Then I go to the
19 doctor. Dr. Falo was busy with other patients, and
20 Dr. Roberts came to the room and saw me.

21 Q Okay. Now, let me ask you. You said that in
22 order to relieve the pain, you put an iron on your

1 stomach with a towel; is that correct?

2 A That's right.

3 Q Did you get a scar? Are there any scars from
4 that?

5 A Yes, I have on both sides.

6 Q Just describe for the jury what they look like,
7 what the dimensions are.

8 A The scar is like the lines here, the lines
9 there and the lines on the other side.

10 Q All right.

11 Let's continue with this. You heard
12 Dr. Roberts testify in this case about the surgery and
13 everything that he did. I'd like to pick up that at the
14 end of your surgery. Were you able to work after you
15 got out of the hospital? First of all, how long were
16 you in the hospital after the surgery?

17 A I was for three nights.

18 Q Three nights. Were you able to work after you
19 left?

20 A No. I had such pain for three months.

21 Q Was there any type of employment that you could
22 have gone to if you would have been okay?

1 A Yes. I could have the same job.

2 Q What job is that?

3 A That was McDonald's. I was McDonald's manager
4 when I left the job and worked for county.

5 Q How much money were you being paid as the
6 McDonald's manager at that time, do you recall?

7 A Maybe around 22,000.

8 Q Could you break that down to what you were paid
9 as a weekly salary?

10 A I had two paychecks a month.

11 Q How much was that approximately, if you know?

12 A That was around 800 something. It just depend
13 on the overtime I made.

14 Q How long could you not go back to work as a
15 result of the surgery that you were involved with?

16 A The last surgery I had?

17 Q Yes.

18 A I couldn't go for three -- for three months.

19 Q Okay.

20 Let me go back to one situation. This is back
21 on January 27th. This is the day after --

22 A They called me for a blood test.

1 Q You did testify that you got a call from the
2 same doctor who examined you earlier?

3 A That's right.

4 Q You know that to be Dr. Dill.

5 A That was a lady who called me.

6 Q Did you say anything to her when she said to
7 come back for tests?

8 A Yes.

9 Q What did you say?

10 A I told her, "Doctor, I still have my baby."
11 And she said, "No, no, Vida. You don't have your baby."
12 I said, "What's that mean?" She said, "You have no
13 baby." And I said, "But I still feel my baby." And she
14 told me, "I'm a doctor. I am making sure you have no
15 baby." Everything done on that date.

16 MR. MURRAY: I have no further questions, Your
17 Honor.

18 THE COURT: All right. Cross?

19 CROSS-EXAMINATION

20 BY MR. CAREY:

21 Q Hello, Mrs. Sami.

22 Do you have a clear memory of when the visits

1 to the emergency room occurred?

2 A The first time I went there? Yes, I did.

3 Q A clear memory of when that happened?

4 A Exactly.

5 Q Didn't you originally think that it happened a
6 month earlier in December?

7 A What's that?

8 Q Didn't you testify under oath that your first
9 visit to the emergency room at Fairfax Hospital happened
10 in December 1993?

11 A In December? That was in January.

12 Q Do you remember your deposition being taken?

13 A That was January 26.

14 Q Do you remember that your testimony was taken
15 earlier at Mr. Murray's office?

16 A Yes, I remember that, yes.

17 Q Do you remember you took an oath to tell the
18 truth at that time?

19 A That's right.

20 Q Do you remember being asked when the first
21 visit to the emergency room occurred, and you said three
22 times December 28, 1993? Do you remember saying that?

1 A That's right, I said that. But I didn't
2 understand at that time.

3 Q That was incorrect, wasn't it? It was off by a
4 month; is that right? You did not go in December of
5 1993.

6 A I did not go in December.

7 Q You testified just a few minutes ago that the
8 day that you arrived at the emergency room, January 26,
9 1994, was a Friday?

10 A That was on Friday, yes.

11 Q Is that true? That's what you testified to.
12 Is that right? It was a Friday?

13 MR. CAREY: May I approach, Your Honor?

14 THE COURT: Yes.

15 BY MR. CAREY:

16 Q Let me show you a calendar for 1994. What day
17 of the week was January 26th?

18 A That was a Wednesday.

19 Q It was a Wednesday. So you were wrong about
20 the day that it occurred. It wasn't a Friday after all,
21 was it? It was a Wednesday.

22 A That was Wednesday.

1 Q You testified a few minutes ago that you went
2 and saw Dr. Rajae before you went to the emergency
3 room?

4 A Exactly.

5 Q Do you remember being asked in your deposition
6 when you first saw Dr. Rajae, and you testified at that
7 time the first time you saw him was in 1995?

8 A That was for -- I pick him as a doctor. I
9 choose him as a physician doctor because the first time
10 for that reason I go to see the doctor, that was on
11 1994.

12 Q Do you remember being asked at your deposition
13 why his name --

14 MR. MURRAY: Your Honor, let me object. If he
15 is going to ask about deposition testimony, he should
16 frame the question to --

17 THE COURT: Correct. Sustain the objection.

18 BY MR. CAREY:

19 Q Would you turn to page 99 in your deposition.
20 First of all, do you see the date that your testimony
21 was taken on the front?

22 A March 19.

1 Q March 19 of what year?

2 A 1997.

3 Q 1997. Do you see at the bottom of page 98 the
4 question: "And when was the first time that you saw
5 Dr. Rajae?" And do you remember saying in answer to
6 that question, "The first time was about two years
7 ago -- one year ago. One year ago." Do you remember
8 saying that?

9 A That's right.

10 MR. MURRAY: What line are you talking about?

11 MR. CAREY: Line 22 on page 98, lines 1 through
12 3 on page 99.

13 BY MR. CAREY:

14 Q So at the time that your testimony was taken in
15 1997, weren't you telling us the first time you saw
16 Dr. Rajae was either in 1995 or 1996? Is that true?

17 A That's true.

18 Q Now you're telling us that you saw him in 1994,
19 immediately before you went to the emergency room?

20 A Yes. When I go to Dr. Rajae in 1994, he had
21 no record of me. And I couldn't come that visit because
22 he hadn't done anything for me. Just he listened to the

1 heart. That's it. I had no file. He make no file for
2 me.

3 Q But in answer to the question when was the
4 first time you saw Dr. Rajae, you indicated under oath
5 earlier that it was in 1995 or 1996. Is that true? Is
6 that what you testified to?

7 A 1995, 1996, I choose him as my physician.

8 Q You say that Dr. Rajae in 1994 saw you at
9 almost 7 o'clock?

10 A Exactly.

11 Q And that he said, I can't do a sonogram. I
12 don't have a sonogram at my office.

13 A That's right.

14 Q And he said the sonogram at Arlington Hospital
15 was closed? Is that what he said?

16 A He told me that I have no sonogram in the
17 Springfield office. I have a sonogram in Falls Church
18 office, which is closed now, yes.

19 Q Now, when you arrived at the emergency room, do
20 you remember what time of day you arrived at the
21 emergency room?

22 A That was around 9 o'clock, 8:30, 9 o'clock.

1 Q Do you remember testifying earlier that it was
2 7 o'clock that you got to the emergency room?

3 A That was 7 o'clock after I go to Dr. Rajae.

4 Q No. Do you remember earlier in your testimony
5 when your testimony was taken -- you have it before
6 you -- do you remember saying at that time that you
7 arrived at the emergency room at 7 o'clock?

8 A No. I leave the house by 7 o'clock to go to
9 the emergency room.

10 Q What time did you leave the emergency room?

11 A That was almost all morning.

12 Q What time in the morning?

13 A Around 3:30, 4:30.

14 Q 3:30 or 4:30 in the morning.

15 You say that I think it was Dr. Varn you
16 identified as the emergency room physician who --

17 A The first time I see him, the first doctor I
18 saw, that was Dr. Varn.

19 Q Did he perform a pelvic examination on you?

20 A He did.

21 Q He did. Then was it he or the lady doctor that
22 said that they were going to call in a specialist?

1 A No. That was the man who told me he was going
2 to call a specialist.

3 Q Do you remember testifying at your earlier
4 deposition that it was the lady doctor who told you that
5 she was going to call in a specialist?

6 A No. Dr. Varn told me he going to call the
7 specialist to check on his job.

8 Q Do you remember telling me earlier under oath
9 that it was the lady doctor who was going to call in the
10 specialist? You don't remember that?

11 A No.

12 Q Do you remember they gave you a -- let me ask
13 you this first. Do you remember when you got to the
14 emergency room, that you were first seen by a nurse who
15 examined you?

16 A The nurse didn't examine me.

17 Q The nurse did not examine you.

18 A No.

19 Q All right. Do you remember being examined by
20 any physician other than Dr. Varn? I'm sorry. Dr. Varn
21 and Dr. Dill? Did any other physician examine you?

22 A No.

1 Q Did you talk with any nurse during that time
2 period?

3 A I talked to the nurse, yes.

4 Q Is that what you've already told us about?

5 A Yes.

6 Q But other than that, did a nurse ever come and
7 take your temperature or take your blood pressure or
8 anything of that nature?

9 A Yes. At the beginning I be in the hospital,
10 yes, they did.

11 Q They did that at the beginning. All right.
12 But the only doctors that came and actually physically
13 examined you were Dr. Varn and Dr. Dill.

14 Do you remember a physical examination of your
15 ear, nose and throat, for example, that was performed by
16 Dr. Dill?

17 A What did you say?

18 Q I'm sorry. Do you remember that Dr. Dill
19 performed an examination of your ear, nose and throat?

20 A The throat?

21 Q The throat, here.

22 A No.

1 Q She did not do that. Did she perform an
2 examination of your abdomen?

3 A No.

4 Q Did she ask you questions about what brought
5 you to the emergency room?

6 A Yes.

7 Q Or what was your condition was?

8 A Yes, she did.

9 Q She did ask those questions.

10 A That's right.

11 Q Had somebody asked that earlier? Did Dr. Varn
12 also ask those kinds of questions earlier?

13 A Yes, he did, yes.

14 Q Had a nurse asked those kinds of questions
15 earlier than that?

16 A He told me if I pass any clot, yes.

17 Q Do you remember they drew blood in the
18 emergency room for a blood test?

19 A That's right.

20 Q Is that right?

21 A That's right.

22 Q Do you know when those blood test results came

1 back to the emergency room?

2 A They called me the day after that.

3 Q You don't know when they actually came back to
4 the emergency room, though.

5 A No.

6 Q This sheet here, you have seen this sheet
7 before, the discharge instructions? Do you recall that?
8 It's number --

9 THE COURT: Is this a good place to stop?

10 MR. CAREY: Yes, Your Honor. This would be a
11 good place to stop.

12 THE COURT: Let's take our afternoon break. Be
13 back in 15 minutes.

14 (The jury left the courtroom, after which a
15 short recess was taken.)

16 THE COURT: All right. Are we ready for the
17 jury?

18 MR. CAREY: Yes, Your Honor.

19 (The jury returned to the courtroom.)

20 BY MR. CAREY:

21 Q Mrs. Sami, you testified that you saw Dr.
22 Rajae before you went to Fairfax Hospital emergency

1 room; is that right?

2 A That's right.

3 Q Do you remember the discharge instruction
4 sheet, number 11?

5 A This one?

6 Q Yes. It's in tab 3?

7 MR. MURRAY: Number 5.

8 Q It's under tab 1, page 5. Do you see that,
9 Mrs. Sami?

10 A Yes.

11 Q Do you remember receiving a copy of this sheet
12 when you left the emergency room?

13 A Yes.

14 Q They gave the sheet to you so you could take it
15 home with you.

16 A That was a pink sheet.

17 Q Pink sheet, that's right. Does it say that you
18 are to return if you had severe abdominal pain? Does it
19 say that here?

20 A That's right.

21 Q Do you remember them telling you that as well
22 when you left the emergency room?

1 A They didn't tell me that. They told me the
2 pain is going to be normal for a couple of weeks. But
3 if it gets too worse, yes, come back.

4 Q You didn't come back to the emergency room for
5 three months.

6 A That's right.

7 Q Didn't they also say to call for an appointment
8 at the clinic, the OB-GYN clinic, in a month, in four
9 weeks? Do you remember them telling you that?

10 A At the time they call me after the second --

11 Q I'm sorry. I just want to ask you at the time
12 you left the emergency room -- you say you left between
13 3:30 and 4 a.m. Thursday morning, December 27 -- do you
14 remember them telling you at that time to call to the
15 clinic for an appointment in four weeks?

16 A No.

17 Q This is your signature, is it not, on the
18 bottom of the page?

19 A That's right.

20 Q When you saw Dr. Falo in 1991, that's when your
21 daughter was born?

22 A That's right.

1 Q That was by cesarean section; is that true?

2 A That's true.

3 Q Did he tell you that you had an unusual uterus?

4 A The only thing he told me, he told me my uterus
5 is too small.

6 Q Did he tell you anything else about it?

7 A Nothing else.

8 Q He said you had a small uterus.

9 A That's right.

10 Q When you had your abortion in 1992, did they
11 tell you at that time at the clinic --

12 A Nothing.

13 Q You went to the OB-GYN clinic for that, did you
14 not?

15 A That's right.

16 Q Somewhere in Alexandria?

17 A That's right.

18 Q Did they tell you at that time that you had
19 anything unusual about your uterus?

20 A Nothing.

21 Q If you were continuing to experience problems,
22 why didn't you go back to see Dr. Rajae?

1 A After the first visit?

2 Q After the first visit.

3 A Because they make sure nothing is wrong with
4 me, everything is done, and I'm clear.

5 Q But you are still having pain.

6 A They told me that pain was normal for a couple
7 of weeks going away.

8 Q But the pain continued beyond a couple of
9 weeks.

10 A It was not that worse.

11 Q It wasn't that bad?

12 A That bad, no.

13 Q But eventually it got bad.

14 A I was taking Advil and Tylenol. That reduce my
15 pain.

16 Q They said to you the pain should go away in a
17 couple of weeks; is that right?

18 A That's right.

19 Q But it didn't go away in a couple of weeks. It
20 continued for three months and four months and five
21 months. Why didn't you go see Dr. Rajae?

22 A Dr. Rajae was't my physician at that time.

1 Q But you had picked him as your physician,
2 didn't you?

3 A I just said -- picked him for that time before
4 I go to emergency room to see if I have any problem.

5 Q Well, on the emergency room face sheet there's
6 a place where they can put -- when they do the
7 registration, there's a place where they can put who
8 your private physician is.

9 A Yeah. They make a choice by themself. I told
10 them I was seeing Dr. Rajae for just for a couple of
11 minutes to make sure what's wrong with me. He had no
12 record of me in his office.

13 Q You had told them that you had seen Dr. Rajae
14 earlier that day; is that right?

15 A I told them I saw Dr. Rajae for just a couple
16 of minutes to make sure my baby is alive or dead.

17 Q You eventually did go back to Dr. Rajae,
18 didn't you, in 19 --

19 A I didn't go to see him back.

20 Q Ever?

21 A In 1995 I chose him as a physician, yes.

22 Q You had seen him in 1994 before you went to the

1 emergency room; right? You had seen him?

2 A Yes.

3 Q He did an examination, didn't he?

4 A He just listened to the heartbeat. That's it.

5 Q All right. He just listened to the heartbeat.

6 Did he feel at all or did he just listen to the
7 heartbeat?

8 A He just listen to the heartbeat.

9 Q And there wasn't one. Is that what he said?

10 A He said this is too hard to hear the heartbeat.

11 Q Did he tell you whether there was a heartbeat
12 or not?

13 A He told me, "I can't hear anything. I'm not
14 sure if the baby is alive or not."

15 Q You saw him then in 1994. You saw him again in
16 1995. What I'm asking you is why when the pain
17 continued, you didn't go back to Dr. Rajae in 1994.

18 A Because I had no insurance.

19 Q Why didn't you go to the Women's and Children
20 Clinic where they asked you to go in 1994?

21 A In 1994 they just told me to go to the clinic
22 to have a special program. That's why they refer me

1 from the hospital.

2 Q Let's be clear on this. Did they tell you that
3 in January or in April or June?

4 A They told me in April.

5 Q In April. But in January they told you to go
6 to the clinic. And there's a phone number on the sheet,
7 is there not, on the pink sheet that you got? There's a
8 phone number there; correct?

9 A That's 698-3106?

10 Q Did you ever call that phone number?

11 A No, because they call me, and they told me
12 Dr. Rajae said I'm okay, and don't come back for an
13 appointment.

14 Q Don't come back to the emergency room; right?

15 A Don't call for the appointment.

16 Q They told you not to call for the appointment.
17 Is that what you are testifying to?

18 A Yes.

19 Q They told you not to call and follow up on that
20 discharge instruction?

21 A They told me everything that's wrong with me
22 and I'm clear and don't come for any appointment.

1 Q To the emergency room.

2 A They didn't make sense for me.

3 Q Is it your testimony that they told you not to
4 go to the clinic to follow up?

5 A They told me don't make any appointment.
6 You're done.

7 MR. CAREY: That's all the questions I have.
8 Thank you, Your Honor.

9 THE COURT: Redirect?

10 MR. MURRAY: I have no redirect, Your Honor.

11 THE COURT: All right. Thank you, Mrs. Sami..
12 You may step down.

13 Call your next witness.

14 Whereupon,

15 AHMAD FAZLI,
16 was called as a witness on behalf of the plaintiff, and
17 after having been first duly sworn, was examined and
18 testified as follows:

19 DIRECT EXAMINATION

20 BY MR. MURRAY:

21 Q Mr. Fazli, would you please state your full
22 name and address for the record?

1 A Yes, please. My name is Ahmad Fazli. My
2 address is 6214 Frontier Drive, Springfield, Virginia
3 22150.

4 Q Are you married to Vida Sami, the plaintiff in
5 this case?

6 A Yes.

7 Q Any reason why you go by different names?

8 A Because at the time we were married, her last
9 name was Sami. And after four years, she's still Sami.
10 After she get the sheet, she change her name.

11 Q Can you tell the jury something about your
12 educational background?

13 A I finished college back home in Afghanistan.
14 And here I took a course for automotive repair down in
15 Washington, D.C., called National Business School.

16 Q When did you complete that course?

17 A The course takes one year. So 1986.

18 Q When did you become a citizen of the United
19 States?

20 A I became an American citizen in 1991.

21 Q Can you tell the jury something about your
22 employment background, where you are employed?

1 A I work, since I came to America, I work -- at
2 that time it was a Mobil gas station -- as a mechanic.

3 Q How long did you have that position?

4 A Since '86.

5 Q Did there come a time when you and Mrs. Sami
6 got married? Do you recall when that was when you got
7 married?

8 A When I got married was 1990, January 21, 1990.

9 Q Have the two of you had a child by that
10 marriage?

11 A At the time of the marriage we had no child.

12 Q No. I mean after the marriage.

13 A After the marriage we had a child, yes. She
14 was born in 1991.

15 Q Let me direct you -- by the way, were there any
16 problems with Vida's pregnancy with the first child?

17 A No. She had only -- cesarean.

18 Q Cesarean section.

19 A Yes.

20 Q Let me direct you to the period of time on or
21 about January 1994. Do you recall that period?

22 A Yes.

1 Q Vida got pregnant again; is that correct?

2 A Yes, in 1994, yes.

3 Q Do you recall the events of January 26, 1994?

4 A 1994, January 26, I was at work. She called me
5 around 10:30, 11 o'clock in the morning. She said she
6 has a light -- light-colored blood that she saw in the
7 toilet. I said that's all right. And she told me she
8 has pain on the back and the front. And I said wait
9 until I come. I take you to a hospital somewhere.

10 Q Did you come home?

11 A I came around 6 o'clock home. I saw she was in
12 pain. And about 6:45, 6:30 -- exactly I don't know the
13 time -- I took her to Dr. Rajae.

14 Q Were you present during the examination when
15 Dr. Rajae saw her?

16 A When we went there, Dr. Rajae said we are
17 closed. I can't check you with the scope. And he took
18 her to inside. And he said he cannot listen, no heart
19 from the baby.

20 Q Did you hear him say that?

21 A Yes.

22 Q Okay.

1 A And after he examine her, he says he has no
2 sonogram here. He has a sonogram in Alexandria and
3 they're closed, to go to Fairfax Hospital.

4 Q Did you take Mrs. Sami -- did you take your
5 wife to Fairfax Hospital?

6 A We came home. I took her ID and driver
7 license, and I drove her to emergency, Fairfax Hospital.

8 Q Were you present during the entire time that
9 she was at Fairfax Hospital that day?

10 A Yes. We went there, and we fill out a form,
11 and I had no insurance. And I got help from Fairfax
12 County. And we waited like three, four hours, three and
13 a half hours. Finally they call our name. Before that,
14 she has very bad pain. And she go to the toilet. And
15 she had --

16 Q I'm sorry?

17 A She went to toilet and she had very bad pain.
18 When she came back, her face was white. I asked her
19 what happened. She said she bleed very bad in the
20 toilet.

21 Q Do you recall her being examined by a male or
22 female doctor during that period of time?

1 A When they call her name, we go inside. There
2 is a gentleman there with glasses. And he came and he
3 check her out. And I think I was standing there, and he
4 took a long stick, and he said he is going to clean her.
5 I left them 15, 20 minutes. And he says he's going to
6 call for a specialist.

7 Q Did he call? Did somebody come down to the
8 emergency room after that?

9 A A lady came.

10 Q A lady came down?

11 A Yes.

12 Q Were you there when she attended to your wife?

13 A Yes.

14 Q Can you tell the jury what happened there?

15 A She came inside. They asked her a question,
16 what happened. I said the other doctor was here. And
17 he said he did a miscarriage for us.

18 Q Who said that?

19 A The other gentleman had left. He said he did a
20 miscarriage.

21 Q Who said that?

22 A The first doctor, the gentleman who left. My

1 job is finished. I did the miscarriage on your wife.
2 The first doctor. After he said he would call for a
3 specialist, the lady came. And after we told her the
4 story, and she said this is not his job. I am the one
5 who take care of this job. I am the YNG, a special
6 doctor.

7 Q OB-GYN?

8 A Yes. And after a few minutes, she start
9 working on her and she start cleaning. And she pull
10 like two pieces of blood, like my finger size, and she
11 pull it out. We ask her what is this. She said I clean
12 her.

13 Q Did you observe her? Based on what you
14 remember, what you recall, did you see her perform any
15 kind of other examination of your wife during that
16 period of time?

17 A I saw she pull out a long stick and put it
18 inside, and she clean her.

19 Q Did there come a time when she had to leave?

20 A She was like ten minutes or seven minutes. And
21 after she got a pager, and she dialed the number, and
22 she had said she's got to leave. Somebody is, you know,

1 in the hospital, and she's got to go to hospital
2 emergency. Somebody is having a new baby.

3 Q Did she ever come back to the room?

4 A And after three hours waiting and my wife was
5 tired and she was in pain, she asked me to go call, what
6 I have to do here. I walk out. I saw her. She was
7 laughing at another nurses station. She was standing.
8 I told her, what have to my wife do here.

9 Q What did she do?

10 A She came inside. And she said it's done.

11 Q Just explain that again. What did she say when
12 she went back?

13 A When she came to the room, she said everything
14 is done. You guys can leave.

15 Q So did you leave after that?

16 A After five, six minutes, I help her with the
17 clothes, and we left.

18 Q Did she perform any other examinations when she
19 came back?

20 A She only asked me to take for the pain. I told
21 her she has pain. She asked her to take Tylenol or
22 Advil.

1 Q Were you present the next day or the following
2 days with regard to any -- did you observe any
3 conversations that your wife might have had with Fairfax
4 Hospital either that day or the following day?

5 A Exactly I don't know the date. After two days,
6 she called me at work. She says she has strong
7 medicine. I've got to get it from, at that time the
8 name was People's. They change it now to CVS.

9 Q Now we are at, let's say, February now. I want
10 you to describe, if you can, to the jury what your wife
11 was going through between February, shortly after that
12 visit to Fairfax Hospital, and April of that same year.
13 Could you describe what the circumstances were with
14 regard to your wife and what she was going through?

15 A She had the pain every day. And they was
16 telling me to -- she has infection. They give her
17 antibiotics.

18 Q Excuse me. I'm sorry?

19 A Antibiotic for infection inside. And other
20 time she is using the 500 Advil. Any time she told me
21 she has pain, I gave her two Advil. Midnight she wake
22 up. She was screaming. I put hot water in the tub, and

1 I put her in the water for one hour. And after hours
2 she was okay for two, three hours.

3 Q Did doing the hot water help her?

4 A Yes. For two, three hours she was okay.

5 Q Do you recall the events of April when she went
6 back to the emergency room again?

7 A Yeah, we went again to the emergency room.

8 Q Can you tell the jury what happened, why you
9 went back to the emergency room?

10 MR. CAREY: Your Honor, I would object. It's
11 irrelevant. As far as Mr. Murray's representation that
12 this is something that happened to her, it's cumulative
13 at this point. We've already heard it.

14 MR. MURRAY: I think, Your Honor, his
15 observations of what she testified to is also relevant.

16 THE COURT: Overruled.

17 MR. MURRAY: Thank you.

18 BY MR. MURRAY:

19 Q Could you tell me again what the events were in
20 April, if you recall.

21 A In April she had the same pain. I took her to
22 emergency room. And I cannot remember the exact date,

1 what date was it, but she was in the emergency room.

2 Q Were you present when she had spoken with some
3 of the personnel at the hospital at that time -- were
4 you present during the time when there were any
5 conversations between hospital personnel and her?

6 A The second time, yeah.

7 Q What did they tell her to do after that second
8 visit?

9 A They said it was shame on me, you know, if I
10 tell that word. They told her you don't know how to
11 make sex with your husband.

12 Q What do you mean? What did they say?

13 A They said all overseas people come here. And
14 you guys, meaning like dirty. And you guys -- she got
15 an infection inside.

16 Q Did there come a time that you took a trip
17 overseas shortly after that?

18 A After this, and I thought maybe she lost the
19 baby, and she has emotion. She thinking about the
20 child --

21 Q Did you think she lost the baby?

22 A Because the doctor told me.

1 Q Did Vida ever tell you that she lost the baby?

2 A The doctor said maybe dropped it in the toilet.

3 Q Okay. So you --

4 A And I believe it because the doctor told me
5 that.

6 Q Okay. So then you took a trip, is that
7 correct, overseas?

8 A Yeah. I took a trip. I asked my brother for
9 help and my mother-in-law. And they bought a ticket for
10 us. We went to India. And my sister was living there
11 and my brother-in-law.

12 And the first day she start pain. And my
13 brother-in-law said we take you to doctor here. And I
14 told him no, we came from the country that has
15 technology. Why I go to India that has nothing.

16 Q All right. Did there come a time when you did
17 return to the United States? Is that correct?

18 A No. We went to Pakistan after India. And we
19 went to Pakistan. My brother was there. And he asked
20 me what happened. I said my wife has pain, and I think
21 has a miscarriage --

22 MR. CAREY: Objection, Your Honor. This is

1 hearsay as to what his brother-in-law told him.

2 THE COURT: Sustain the objection.

3 BY MR. MURRAY:

4 Q What was the next time that you recall that
5 your wife went to a hospital or suffered major distress
6 with regard to this incident, do you recall?

7 A We went to London. We came back to Virginia,
8 and she had the same pain. I was at work. And my
9 sister-in-law called me. I asked her to call the
10 ambulance for her because she told me she has black
11 lips. She is sleeping in the center of the house and
12 she is hardly breathing. I was at work. And I think
13 the ambulance took her to the hospital.

14 Q Now, did there come a time when she went to
15 Arlington Hospital or when she went to see Dr. Roberts?
16 Do you recall that?

17 A Yes. When we went to -- she went to Fairfax.
18 When I get out from my work, I go to Fairfax to see her.
19 At the time when I get there, she was waiting with the
20 clothes to try to go out. The nurse told her don't come
21 back here. Go to clinic.

22 And after two, three days, and she called me

1 around 12 o'clock, she says she has very bad pain. And
2 she called Dr. Roberts. And she tried to call Dr. Falo,
3 and he is not at work. And Dr. Roberts is going to
4 check her out. I went home. I put her in the car. I
5 took her to Arlington Hospital.

6 MR. MURRAY: That's all the questions I have,
7 Your Honor.

8 THE COURT: All right. Cross.

9 CROSS-EXAMINATION

10 BY MR. CAREY:

11 Q Good afternoon, Mr. Fazli.

12 A Good afternoon, sir.

13 Q Mr. Fazli, these events occurred in 1994;
14 correct?

15 A 1993.

16 Q Did you make any notes at that time --

17 A No.

18 Q -- of things that you observed?

19 A No.

20 Q Did you have anything to write on when you were
21 in the emergency room on these occasions that you just
22 discussed?

1 A I don't know exactly the date, but I remember
2 the dates.

3 Q Did you write anything down?

4 A No.

5 Q Did you make any notes on a calendar?

6 A No.

7 Q Did you keep a diary?

8 A No. This is four years ago, five years ago. I
9 can't remember. But the thing I remember, I just tell
10 the truth.

11 MR. CAREY: That's all I have. Thank you.

12 THE COURT: All right. Any redirect?

13 MR. MURRAY: No redirect, Your Honor.

14 THE COURT: May this witness be excused?

15 MR. CAREY: Yes, Your Honor.

16 MR. MURRAY: Yes, sir.

17 THE COURT: Thank you, sir. You can step down.

18 (The witness is excused.)

19 MR. MURRAY: Your Honor, that concludes
20 plaintiff's case.

21 THE COURT: All right. Do you have any motion?

22 MR. CAREY: Your Honor, I have one brief

1 motion. Then we do have Dr. Varn, who is still with us
2 and will testify, who has an engagement tomorrow with an
3 airplane. He's got to leave town, so if we could get
4 him on this afternoon.

5 THE COURT: All right. Ladies and gentlemen, I
6 have to hear a motion briefly. I'm going to ask you to
7 step out to the jury room while I hear that. Then we'll
8 come back and we'll hear one more witness.

9 (The jury left the courtroom.)

10 MR. CAREY: Your Honor, there's a claim for
11 punitive damages that still resides in this case. I
12 would move to strike it at this time. The evidence is
13 insufficient in that regard.

14 Also, I would move to strike the evidence with
15 respect to the lost wages being claimed, three months
16 subsequent to the surgery which occurred in June. I
17 will tell you the basis. It's pretty simple.

18 Dr. Roberts testified that more likely than not
19 had the condition been diagnosed in January, she would
20 have had not the laparoscopic procedure but the
21 laparotomy procedure. It took a while, but we got there
22 eventually. And so there's just no causal connection.

1 She was going to have the surgery one way or the other.
2 Nothing Dr. Dill did or didn't do had any effect on
3 that. So there's properly no claim for either punitive
4 or for lost wages in the case.

5 THE COURT: All right. Mr. Murray?

6 MR. MURRAY: Your Honor, I would concede the
7 punitive damages. I don't think we've made a case for
8 that. However, I would strongly object to the
9 characterization that we can't make a wage claim because
10 of all the pain and suffering she went through during
11 this whole period of time. I mean he would have to show
12 that her pain and suffering --

13 THE COURT: Isn't there a claim that she missed
14 work during the period before she had this operation?

15 MR. CAREY: I did not hear any testimony to
16 that effect, Your Honor. I heard three months
17 subsequent to the surgery.

18 MR. DELANEY: You also asked if she worked
19 before.

20 MR. MURRAY: Yes.

21 THE COURT: Well, I think the testimony is a
22 little vague, but I think it's going to be up to the

1 jury to make that determination, not me. So I'm going
2 to leave the wage claim in there.

3 MR. MURRAY: Thank you, Your Honor.

4 THE COURT: All right. How long will Dr. Varn
5 be on the stand?

6 MR. CAREY: I think we can finish him up by
7 five certainly, maybe even before, Your Honor. But he
8 would be the only witness left.

9 THE COURT: All right.

10 (The jury returned to the courtroom.)

11 THE COURT: All right, ladies and gentlemen.
12 The plaintiff has rested. We are going to have one
13 defendant's witness. We expect we'll be able to finish
14 him by 5 o'clock, which is when we normally stop in
15 these trials. Tomorrow morning I've got an 8:30
16 settlement conference, so we won't be able to start
17 earlier than 10. We'll finish tomorrow, won't we,
18 instead of Thursday?

19 MR. CAREY: Yes, Your Honor. No question about
20 it.

21 THE COURT: We will finish tomorrow.
22

1 Whereupon,

2 MILES VARN, M.D.,

3 was called for examination by counsel for the defendant,
4 and after having been first duly sworn, was examined and
5 testified as follows:

6 DIRECT EXAMINATION

7 BY MR. CAREY:

8 Q Would you please identify yourself for the
9 jury?

10 A Yes. I'm Dr. Miles Varn. I'm an attending
11 physician at Fairfax Hospital in the emergency
12 department.

13 Q By whom are you employed?

14 A I'm employed by Emergency Physicians of
15 Northern Virginia.

16 Q Is that a separate organization from Fairfax
17 Hospital?

18 A It is.

19 Q Were you the emergency room physician who saw
20 Vida Sami on January 26, 1994?

21 A As much as I can tell by the record, yes, I
22 was.

1 Q When you say as much as you can tell by the
2 record, do you have a memory of seeing her?

3 A I have no memory of that. It's been five and a
4 half years.

5 Q How many patients in a year would you see? Can
6 you give us a reasonable estimate?

7 A I see between 4,000 and 5,000 patients a year.

8 Q Have you reviewed the medical chart from the
9 January 26th ER visit?

10 A Yes, I have.

11 Q Do you see that your signature appears on that
12 chart?

13 A Yes, it does.

14 MR. CAREY: Your Honor, if I may, I think it
15 would be easier for the jury if we could set the easel
16 up and have the doctor explain some of the medical
17 records.

18 THE COURT: All right.

19 MR. CAREY: Doctor, if you would, we are going
20 to move over.

21 (The witness leaves stand and goes to the
22 easel.)

1 BY MR. CAREY:

2 Q Doctor, if you could, explain to the jury what
3 portion of the medical chart this --

4 THE COURT: Mr. Murray, if you want to move
5 down to that end so you can see and Mr. Delaney as well.

6 A This page is the registration information. The
7 registration clerk in the emergency department takes the
8 name, demographic information, and records it on the
9 chart. It includes the patient's record number and the
10 way to identify the records.

11 MR. CAREY: Your Honor, for the record, I'm
12 going to continue to refer to these as the plaintiff's
13 exhibits so that we have one set.

14 THE COURT: All right.

15 MR. CAREY: This is Plaintiff's Exhibit Bates
16 stamped 1.

17 BY MR. CAREY:

18 Q I'm sorry, Doctor. Who did you say gathered
19 this information?

20 A The registration clerk.

21 Q Who are the registration clerks at the
22 emergency room? What kind of training do they have?

1 What kind of function do they fulfill?

2 A I'm not sure as to their background. I know
3 that they interview the patient and collect this
4 demographic information, including the name, date of
5 birth, address, insurance information. They do have
6 some medical background training because I have seen
7 them use at least the CPT coding books.

8 Q Those are medical terminologies for the
9 diagnoses?

10 A Yes. They record those diagnoses.

11 Q All right. So they have enough familiarity
12 with those kinds of diagnoses to put something in the
13 history column?

14 A Yes, I would say so.

15 Q But the history itself is taken by who at the
16 ER?

17 A Well, initially the patient sees a triage nurse
18 who takes the basic information, what we call the chief
19 complaint. And the triage nurse assigns a priority
20 based on taking vital signs and recording that
21 information and determines sort of in a priority scheme
22 of things where the patient fits.

1 Q Let me show you this sheet. That's marked as
2 Plaintiff's Exhibit 2. What does this portion of the
3 chart show?

4 A This would all be blank when the patient gets
5 to the triage area. The triage --

6 THE COURT: Excuse me just a minute. You are
7 talking about Bates 2. Bates 2 is still in Exhibit 1.

8 MR. CAREY: Exhibit 1, Bates 2. Thank you,
9 Your Honor.

10 THE COURT: I just wanted to make clear for the
11 record.

12 MR. CAREY: Thank you, Your Honor.

13 A The triage nurse would interview the patient
14 and fill out the initial time and this section here,
15 which is the top portion of the chart.

16 BY MR. CAREY:

17 Q Now, this would indicate that the triage nurse
18 saw the patient at 8:04 in the evening?

19 A Yes.

20 Q And the chief complaint would be vaginal
21 bleeding since 10 a.m. this a.m.?

22 A Yes.

1 Q And then what does this portion say?

2 A This says no clots, no cramping, positive
3 backache.

4 Q So she's presenting at the emergency room at
5 that time without clotting, without cramping, but she
6 does have a backache.

7 A Yes.

8 Q What else can you tell about the process of
9 Ms. Sami's visit to the emergency room by this chart?

10 A Well, this code here means nonmonitored, a
11 patient who doesn't require a heart monitor. This
12 category is 2, 1 being the most serious, 4 being the
13 least priority in terms of where they get put in the
14 scheme.

15 Q That would be for triage purposes.

16 A For triage purposes.

17 Q Is the emergency room at Fairfax Hospital one
18 of the busier emergency rooms in Northern Virginia?

19 MR. DELANEY: Objection, Your Honor. What is
20 the foundation for that?

21 MR. CAREY: He works there.

22 THE COURT: Overruled.

1 A As far as I understand, it's the busiest in the
2 Washington area.

3 BY MR. CAREY:

4 Q What's recorded next in the process here?

5 A This section also would generally be filled out
6 by the triage nurse. It's the time that the vital signs
7 were taken, temperature, pulse, respirations and blood
8 pressure. This is a list of medications that the
9 patient is taking. This is a sort of a one or two-line
10 medical history of current problems. This is a section
11 devoted to drug allergies. This would be the last
12 normal menstrual period.

13 Q The NKD means no known drug allergies?

14 A No known drug allergies, yes.

15 Q This portion here, who fills that out, the
16 middle portion?

17 A This portion is filled out by either the
18 attending physician in the emergency department, the
19 medical students whom we supervise in the emergency
20 department, or the residents whom we supervise.

21 Q Now, these residents and medical students, they
22 rotate through Fairfax Hospital because Fairfax Hospital

1 is a teaching hospital?

2 A That's correct.

3 Q From what places do they come?

4 A We have medical students in the emergency
5 department from Uniformed Services, U-Va, Georgetown,
6 and other places by special request.

7 Q How about the residents?

8 A Residents are family practice residents,
9 pediatric residents, surgical residents, emergency
10 medicine residents, transitional residents. They come
11 from G.W., Georgetown, U-Va, M.C.V., and George
12 Washington Hospital.

13 Q Are they medical school graduates, a resident?

14 A A resident has graduated.

15 Q They are a physician.

16 A They are a physician.

17 Q Do you know whether or not they are licensed?

18 A My understanding is it's still in the State of
19 Virginia that it requires a certain amount of practice
20 as a resident to get an unrestricted license. Any
21 physician practicing, at least my understanding, at
22 Fairfax Hospital at least has a temporary medical

1 license to practice.

2 Q How many years does the residency last?

3 A It varies specialty to specialty. Emergency
4 medicine is generally three years.

5 Q Can you read for us -- is this your
6 handwriting?

7 A This is not my handwriting.

8 As best I can tell from the record -- and again
9 I can only go by what I see here; I don't have an
10 independent memory -- this signature appears to me to be
11 Jeff Casper, who I remember as a resident.

12 Q Can you read this for us?

13 A 31 year old I believe that says Indian female,
14 15 weeks gestational age, gravida 3, para 1, abortion 1.
15 Complains of lower back pain with lower abdominal
16 cramping since last PM. Appointment with OB this AM
17 revealed no fetal heart tones and began spotting this AM
18 at 10 AM with progressive increase in volume and then
19 began passing clots at 2145.

20 Q Is that what we call a history?

21 A That would be the history portion.

22 Q Where would that be obtained from?

1 A Generally the resident would interview the
2 patient and all that information would come from the
3 patient.

4 Q I think it's also explanatory, but the gravida
5 3, 3 times pregnant, 1 birth, 1 abortion?

6 A Yes.

7 Q The PE, what does that refer to?

8 A That is a physical examination.

9 Q Okay. What is that, if you will read that?

10 A Well-developed woman, intermittent distress
11 secondary to abdominal cramping. Ears, eyes, nose,
12 throat. I'm not sure what that refers to. Pupils 4
13 millimeters to 2 millimeters bilaterally. Oral pharynx
14 clear.

15 Q Is that a physical examination?

16 A Yes.

17 Q That's hands on.

18 A Yes.

19 Q All right.

20 A Cardiovascular: Regular rhythm. No murmurs,
21 gallops or rubs. Respiratory: Clear. Abdomen: Obese.
22 I don't know what this says. Nontender, no palpable

1 masses. Extremities: No clubbing, cyanosis or edema.

2 Neurologic: Alert and oriented, nonfocal.

3 Speculum exam: Large amount of blood with clot and
4 tissue. Os approximately 5 millimeters.

5 Q Okay. Let's stop there for a second. What is
6 the speculum?

7 A A speculum is actually taking an instrument and
8 placing it in the vagina to visualize the vagina as well
9 as the cervix.

10 Q What type of an instrument is it? Can you
11 describe it for us?

12 A It has -- it opens like this on a lever device
13 that's controlled by sort of a finger and thumb trigger
14 and will slide this way as well as this way.

15 Q Is it a long metal device or is it rather
16 compact?

17 A In our department it's approximately I would
18 say five inches long. We use a plastic disposable
19 speculum. It has a source in the bottom to place a
20 light so you can visualize clearly.

21 Q What did the resident visualize?

22 A A large amount of blood with clot and tissue.

1 The os was approximately 5 millimeters.

2 Q What is the os?

3 A The os is the opening of the cervix where it
4 protrudes down out of the uterus.

5 Q Okay. What else is recorded there?

6 A Bimanual exam. No tenderness, uterus midline,
7 cervix retroverted.

8 Over here would be the review of systems which
9 would apply to fevers or cough or other things. Past
10 medical history. Family history. This refers to no
11 cardiovascular disease, gestational diabetes, no
12 hypertension. And social history, no tobacco, no
13 alcohol.

14 Q Did Dr. Casper arrive at a preliminary clinical
15 analysis for this patient?

16 A From the record it appears that his impression
17 was -- or his impression along with my input was
18 spontaneous abortion.

19 Q Okay. Would he discuss that with you?

20 A Yes. He would have after examining a patient
21 or at least taking a history, come to me and discuss the
22 history and possibly the exam findings, and we would

1 come up with a plan based on that.

2 Q Now, this indicates case discussed with GYN
3 resident. How does that occur in the hospital?

4 A Well, in a case like this where there's a
5 pregnant woman who is having bleeding and cramping and
6 passing tissue and whose lab findings suggest the
7 possibility of a pregnancy that's not consistent with
8 some of the lab findings --

9 Q You say that because of the level of beta HCGs?

10 A The beta HCG for a woman who is 15 weeks
11 pregnant might be in the 150,000 range. But clearly
12 that is not what it should be. Based on that, it would
13 be clear to us that the patient needed to be examined in
14 the emergency department by an OB-GYN physician.

15 Q Okay. There are portions of the chart that
16 deal with Dr. Dill's examination. I won't take your
17 time with that, Doctor, because she is going to testify
18 by videotape concerning it.

19 What occurs in the process when the OB-GYN
20 resident has completed her examination?

21 A It varies, depending on how busy we are as
22 attendings. Sometimes they are tied up for several

1 hours and our shift may change. I may not be the one
2 there anymore. But generally they would come down,
3 examine the patient, and at the end of the exam they'll
4 either find one of us to discuss their findings and plan
5 or they simply write the discharge instructions based on
6 consulting their superiors.

7 Q Okay. Now, let me show you the discharge
8 instructions for this. Could you read this for us?

9 A This says completed miscarriage. Doxycycline
10 100 milligrams 2 times a day. No sex --

11 Q Is that an antibiotic?

12 A That's an antibiotic. No sex, tampons,
13 douching for four weeks.

14 Return to the emergency department if fever
15 greater than 101, chills, severe abdominal pain, vaginal
16 bleeding worse than a period.

17 Call for an appointment 4 weeks. That's
18 essentially the number for the OB-GYN clinic.

19 Q 698-3106 is the OB-GYN clinic.

20 A Yes.

21 Q Did she obtain primary OB-GYN care at that
22 facility?

1 A She could, yes.

2 Q Under the practice of Fairfax Hospital is a
3 copy given to the patient?

4 A Yes. The patient signs their understanding of
5 these instructions and signs it here.

6 Q It's countersigned by a nurse?

7 A Yes.

8 Q And also I see Dr. Casper signed it as well?

9 A That's correct.

10 Q Is this your signature next to Dr. Casper?

11 A That's my signature.

12 Q Does it indicate the time that the discharge
13 was given?

14 A It appears to be 1:36 in the morning.

15 Q Thank you, Doctor.

16 (The witness resumes the stand.)

17 MR. CAREY: May I have a moment, Your Honor?

18 THE COURT: Yes.

19 BY MR. CAREY:

20 Q Doctor, as part of the triage, stage 1 through
21 4, 1 being the least emergent, 4 being life threatening?

22 A Actually, it's the opposite. 1 is essentially

1 life threatening, needs to come back immediately. 2
2 would be needs to come back urgently.

3 Q Okay. In an emergency room setting, do you
4 often refer a patient who is not having an emergency to
5 the primary care physician for further follow-up and
6 treatment?

7 A We frequently do many more times than not.

8 Q Is it the obligation of the patient then to
9 follow up on that care, on that discharge instruction?

10 A I would say it's their obligation, yes.

11 MR. CAREY: Thank you. That's all the
12 questions I have.

13 THE COURT: Cross?

14 CROSS-EXAMINATION

15 BY MR. DELANEY:

16 Q Mr. Carey showed you the discharge instructions
17 which you showed to the jury. It had your initials at
18 the bottom of the page. Do you recall that?

19 A Yes.

20 Q What was your practice at the time? When did
21 you write your initials on those discharge instructions?

22 A Well, it varied. There were times when I would

1 sign all three pages, you know, in the initial time, or
2 there were times when I signed them later.

3 Q If you turn in your book to page 34 of your
4 deposition, I asked you that question. And you told me:
5 "It was my practice at that time to sign all three pages
6 of the chart straight away. I don't do that anymore."
7 Is that right?

8 MR. CAREY: Objection as to relevancy on this,
9 Your Honor.

10 THE COURT: Overruled.

11 BY MR. DELANEY:

12 Q Isn't that right?

13 A If I could just -- if you would tell me what
14 page of this book I'm looking at.

15 Q Page 34, line 9?

16 THE COURT: What tab?

17 MR. DELANEY: Tab 16, judge.

18 BY MR. DELANEY:

19 Q The question was: "Why are your initials on
20 the discharge instructions?" And the answer was:
21 "Well, it was my practice at that time to sign all three
22 pages of the chart straight away. I don't do that

1 anymore." Isn't that correct, Dr. Varn?

2 A That's what it says, yes.

3 Q Now, in your testimony and the evidence from
4 the chart, I think you basically said you referred
5 Mrs. Sami to the OB-GYN resident. My question to you is
6 what did you expect the OB-GYN resident was going to do
7 with her?

8 A Well, I expected, as is the case, this sort of
9 thing is what we see all the time in the emergency
10 department. I expected that they would come down,
11 examine the patient, and based on consultation with
12 their superiors, determine a plan of care for the
13 patient.

14 Q Did you expect them to do a sonogram?

15 A I felt that that was in their range of options
16 but not necessarily a requirement.

17 Q I asked you that question in your deposition.
18 On page 41, line 21, I asked you that question. You
19 said: "I felt that was up to them. The choices were
20 sonogram then, sonogram later; surgical D&C at that
21 time, a D&C later, or a follow-up examination, but I
22 felt that was their area of expertise." Isn't that

1 correct?

2 A That's correct. And I think what I just said
3 was the same thing.

4 MR. DELANEY: Thank you, Dr. Varn.

5 MR. CAREY: I have nothing further, Your Honor.

6 THE COURT: All right. May Dr. Varn be
7 excused?

8 MR. CAREY: He may.

9 THE COURT: Thank you, Doctor.

10 THE WITNESS: Thank you.

11 (The witness was excused.)

12 THE COURT: That's your witnesses for today?

13 MR. CAREY: Yes, it is, Your Honor.

14 THE COURT: Ladies and gentlemen, as you've
15 heard, we will definitely finish tomorrow. Sometimes we
16 start earlier than 10, but as I said, I've got an 8:30
17 settlement conference that I scheduled last week, so
18 we'll start at 10 o'clock in this courtroom.

19 When you go home tonight, there may be someone
20 there who wants to know what you have been doing all
21 day. You can certainly tell them you've been picked for
22 a medical malpractice case to hear, but please don't

1 discuss the case with anyone at home.

2 You can see by expressing your ideas and having
3 a sounding board, that you are going to start forming
4 opinions about this case. As I said at the beginning,
5 you really can't do that until the whole case is over
6 and you've gotten your instructions. If you did discuss
7 it at home, it would be like adding an eighth juror to
8 the mix. So I know it may be hard. You can blame mean
9 old Judge Keith, if you want to, won't let me talk about
10 the case. You can certainly talk about the case when
11 it's all over. But while it's in progress, please keep
12 everything to yourself, as we said at the beginning.

13 Hope you have a good evening, and I'll see you
14 tomorrow morning at 10 o'clock.

15 (The jury left the courtroom.)

16 We will be in this courtroom tomorrow, so if
17 you want to leave your materials there, it will be
18 locked up.

19 Yes.

20 MR. CAREY: We took the deposition of Dr. Dill
21 by videotape. I don't like to do that because you don't
22 know what's going to happen, and so we've got objections

1 going back and forth. I think it's going to help a lot
2 if we could get some of the Court's time to go over
3 those objections very quickly. My practice has been
4 that it's not practical to try to edit the videotape.
5 Just to be on hand with a copy of the transcript to see
6 what's been allowed, what hasn't been allowed, and just
7 to work through it that way, fast-forwarding past the
8 portions.

9 THE COURT: Can't we do it from a transcript?
10 I don't know that we need to look at the video.

11 MR. CAREY: We have a transcript, Your Honor.
12 We would present the transcript to you. We can do it
13 right now, Your Honor.

14 THE COURT: How long would it take?

15 MR. CAREY: I don't think it would take that
16 long.

17 THE COURT: Let's try to get through it today.

18 MR. CAREY: Okay.

19 THE COURT: Let me ask you also, have you all
20 been through the instructions with each other?

21 MR. CAREY: No, we haven't been through them
22 yet, Judge. I glanced at them. They are repetitious.

1 So --

2 THE COURT: The problem is in some of these
3 cases, the jury cools their heels longest on
4 instructions because nobody is really focused on them,
5 and I understand why not, until the very end of the
6 case. I'd like to try to avoid any serious delays over
7 instructions.

8 MR. CAREY: I think I only have one or two
9 outside of VMJ. So what I was planning on doing is
10 going through creating a master set we all agree upon
11 and having the two, three, four to argue.

12 THE COURT: If you all could meet a little
13 early tomorrow morning, say at 9:30, and go through
14 instructions, I think it would speed things up. Then
15 you could give me a stack of instructions you agree
16 could be given and then give me a stack of instructions
17 that I need to rule on.

18 All right. Have you got a copy of that
19 transcript?

20 MR. MURRAY: We don't have a copy.

21 THE COURT: All right. What page is the first?

22 MR. CAREY: Page 18, Your Honor, is the -- I'm

1 sorry, page 17.

2 THE COURT: All right.

3 You are talking about line 10?

4 MR. CAREY: Yes, Your Honor. I think I cured
5 it by rephrasing the question.

6 THE COURT: Would you agree, Mr. Murray?

7 MR. MURRAY: I'm reading it, Your Honor. Well,
8 my point was that it should be something in this case
9 that's relevant, not what her normal procedure was. I
10 didn't find it appropriate just generally, and I didn't
11 find it appropriate necessarily for the normal
12 procedures. If she has no recollection of this case, I
13 was trying to make the point that that's what her
14 testimony would be.

15 THE COURT: I think her normal operating
16 procedures are relevant. And so I'm going to overrule
17 that objection on 17.

18 MR. CAREY: I think that applies equally -- it
19 starts on the next page, Your Honor, at the bottom of
20 18. It continues on to 19. I again rephrased to ask
21 normal practice.

22 MR. MURRAY: Same objection.

1 THE COURT: Well, I think again it's relevant.
2 It goes more to the weight than anything else. So I
3 think that's more for argument. So I overrule that
4 objection.

5 MR. CAREY: The next one is page 26, Your
6 Honor.

7 THE COURT: All right. Hope springs eternal.

8 MR. CAREY: I was going to say that was
9 optimistic.

10 THE COURT: You asked her "does the note
11 reflect that the patient provided any other information
12 concerning the C-section that occurred in 1991?" "No,
13 she did not." Then she goes on to add she didn't
14 provide any information. I guess the objection is
15 what's the foundation for her saying that when she
16 doesn't have any recollection. Is that correct?

17 MR. MURRAY: Right.

18 THE COURT: Well, Mr. Carey, she can testify to
19 tell us what this record shows, but she doesn't have any
20 independent recollection; correct? So there's no
21 foundation for that testimony at all, is there?

22 MR. CAREY: Well, no. She has no independent

1 recollection. I think she's just saying the patient
2 didn't provide any information.

3 THE COURT: I sustain the objection to
4 everything after "No, she did not."

5 MR. CAREY: All right. Down to line -- through
6 line 3 on the following page?

7 THE COURT: Correct. What's the next one?

8 MR. CAREY: 33, Your Honor.

9 THE COURT: All right.

10 MR. CAREY: I think that was cured by my
11 follow-up.

12 THE COURT: Well, I think she can testify what
13 her normal practice on exams is. Again, I think it goes
14 to the weight, so I overrule the objection on page 33.

15 What's the next one?

16 MR. DELANEY: Page 35, line 1.

17 MR. CAREY: Well, that is part of the same
18 thing. That's the end.

19 THE COURT: I overrule that objection.

20 MR. MURRAY: Your Honor, that one is: "Did you
21 perform a pelvic exam invariably in the same fashion as
22 you always do it?" That's asking for her to say what

1 she did on that occasion.

2 THE COURT: I don't read it that way. I read
3 it to say, do you perform pelvic exams in the same
4 fashion every time. That's what she said, yes, she
5 does.

6 MR. CAREY: I withdraw that. We'll just go
7 right through it. There is an objection on page 53
8 about reading questions and the use of the deposition,
9 but it wasn't followed up by Mr. Murray. So there's
10 no --

11 THE COURT: 53? We are into Mr. Murray's
12 cross-examination?

13 MR. CAREY: Yes, sir.

14 THE COURT: 53?

15 MR. CAREY: Yes. But I'll withdraw the
16 objection because he didn't do what he was threatening
17 to do.

18 THE COURT: All right. What's the next one?

19 MR. CAREY: 53, Your Honor. It has to do -- do
20 you recall Your Honor on February 7, the second time
21 back, for the beta testing? There is an entry by the
22 clerk that says follow-up. Missed AB. He's asking

1 about that.

2 THE COURT: That's not 53, though. What page
3 is that?

4 MR. CAREY: I'm sorry. That was 57. We are
5 past 53. 57.

6 MR. MURRAY: I'm --

7 THE COURT: 57, did the fax get there?

8 MR. MURRAY: Yes, it did.

9 THE COURT: So can't we delete all that 57
10 business? Is there another objection after the fax gets
11 there?

12 MR. CAREY: Probably, Your Honor.

13 MR. MURRAY: I think I asked her that same
14 question later on.

15 MR. CAREY: Yes. We can probably pick it up
16 there. I think we can take it out. From 56-21 --

17 THE COURT: Can't we take out 56-21, 22, all
18 the way down to page 59, line 3?

19 MR. CAREY: Yes, Your Honor.

20 THE COURT: All right. What's the next one?

21 MR. CAREY: There's colloquy, but I don't think
22 it's much, actually.

1 MR. DELANEY: 61, line 8.

2 MR. CAREY: That's just colloquy.

3 Bottom of 62. Well, I think that's just
4 colloquy as well. I don't have a problem with that.

5 THE COURT: The colloquy is to go out then?
6 You don't need that, do we?

7 MR. CAREY: No, we don't.

8 THE COURT: So the question is, "Again, perhaps
9 I just misheard" it. "Somebody called her the following
10 day to come in for further tests." The next question
11 picks up on page 63, line 9. All right?

12 MR. MURRAY: What I was getting at here, Your
13 Honor --

14 THE COURT: She answered. "I don't even know
15 that the patient was called." What's the next one?

16 MR. CAREY: The next one is page 67. The
17 question was: "Obviously, something went wrong here;
18 isn't that correct?" That's an argumentative question,
19 Your Honor. Bottom of 66 and then going over to the top
20 of 67.

21 Actually, she did not answer that. It picks up
22 on 68, Your Honor, line 5. "Do you have any explanation

1 as to why"?

2 THE COURT: I overruled the objection on 66.
3 So all that colloquy on 67, line 1 through 20 can go out
4 and the next can pick up on 21 that there was a
5 misdiagnosis.

6 MR. MURRAY: She said yes.

7 MR. CAREY: Where?

8 THE COURT: We are on to 68.

9 MR. CAREY: All of 67, Your Honor?

10 THE COURT: Right.

11 MR. CAREY: Down to what line of 68?

12 THE COURT: "Do you understand, doctor, that
13 there was a misdiagnosis in this case? Answer: Yes, I
14 do."

15 MR. CAREY: All right. So all of 67 down
16 through line 4 on 68.

17 MR. DELANEY: No, all of page --

18 THE COURT: Down to line 20 on 67.

19 MR. CAREY: And the question, "Do you
20 understand, doctor, that there was a misdiagnosis in
21 this case?" "Yes, I do." I think that's not
22 objectionable.

1 Continuing on 68, "Have you come to any
2 conclusions about why you missed the diagnosis?" And
3 it's two things: Beyond the scope of direct, and she
4 was not designated as an expert in the case, Your Honor.

5 MR. DELANEY: The answer is on page 7, line 6.

6 THE COURT: Isn't that an expert opinion,
7 Mr. Murray?

8 MR. MURRAY: Not, Your Honor, when she did it.
9 I mean she can know what she did and why she did things
10 or why she missed things. It's just asking her for her
11 own opinion about what she did herself. This is not
12 asking her to give an expert opinion about why things
13 are done in a vacuum. This is why did you miss it,
14 Doctor, if you know.

15 MR. CAREY: Your Honor, that's at the heart of
16 the case. She can testify historically as to why she
17 did, and there's a lot of history in here about the care
18 that was rendered. But then to go prospective with it
19 and ask her to express an opinion now as to --

20 THE COURT: I think it is asking her to express
21 an opinion, and I'm going to sustain the objection on 68
22 starting at line 10 and all of 69. I think the

1 question, "It's your testimony that it's the uterine
2 anomaly in this particular case which caused you to miss
3 the fetus," there's no objection to that; correct? So
4 we can go through 70, line 11, delete it, and the next
5 question picks up at 70-12?

6 MR. CAREY: Well, Your Honor, --

7 THE COURT: I guess that's continuing the
8 opinion. But I think he can ask what a sonogram would
9 reveal of the fetus.

10 MR. CAREY: Yes. Yes.

11 THE COURT: So down through 70 on line 19, and
12 then we pick up 70, line 20 with the question, "Would a
13 sonogram have revealed the fetus?" I don't think
14 there's anything objectionable about that.

15 All right. What's the next one?

16 MR. CAREY: The next one was asked, answered
17 and goes on. It would take too long to stop the tape
18 for that one.

19 THE COURT: All right.

20 MR. CAREY: Your Honor, we pick it up again
21 when the fax comes in on page 79.

22 THE COURT: All right. 79.

1 MR. CAREY: The objection is speculative, Your
2 Honor. We've heard already testimony that those
3 portions of the history that the registration did are
4 put in by the clerical staff at the hospital without
5 significant medical training.

6 MR. MURRAY: I didn't hear that, Your Honor.

7 MR. DELANEY: What page?

8 MR. CAREY: We are on 79 where the fax comes
9 in.

10 THE COURT: Why isn't this just speculation on
11 her part? This isn't her record. She didn't do it.
12 Somebody else did it; right? I mean the record is going
13 in. The record is in.

14 MR. CAREY: The record is in. They can argue
15 from it if they want it.

16 THE COURT: I sustain the objection on that
17 one. That starts at 79.

18 MR. CAREY: Well, the fax comes in at line 78,
19 21. "Did you get a copy of that fax?"

20 THE COURT: Yes. I think all that can go out,
21 all the way down to 81, line 11. "Would you turn to
22 page 6 of the chart?" Okay?

1 MR. CAREY: Then I do the redirect.

2 THE COURT: All right. There's an objection by
3 Mr. Murray on 85.

4 MR. CAREY: Well, that was because he made an
5 opinion. So I guess I am just going to have to withdraw
6 that, Your Honor. Because if it is sauce for him, it is
7 sauce for me too.

8 THE COURT: "Do you routinely perform an
9 ultrasound? "No, I would not." You are talking about
10 84, question starting on line 21?

11 MR. CAREY: Yes, Your Honor.

12 THE COURT: All right. I sustain the
13 objection. That goes down to you pick up again on 85 at
14 15. "Doctor, this patient was referred for follow-up
15 care to primary physicians?" If seems to me that's the
16 same thing. She is just speculating at this point,
17 isn't she?

18 MR. CAREY: I would say that's true. But it's
19 also continuing with the opinion portion down through
20 line 9 on page 86. But I think that question, beginning
21 on line 10 on 86, is a good question.

22 THE COURT: All right.

1 MR. DELANEY: So, Bill, you are basically
2 saying we are taking everything out on page 85 all the
3 way down to page 86, line 10?

4 MR. CAREY: Through line 9.

5 THE COURT: Mr. Murray has a continuing leading
6 question objection; correct?

7 MR. CAREY: I try to --

8 THE COURT: This was done by telephone, wasn't
9 it?

10 MR. CAREY: Yes, Your Honor. I tried to
11 restrain myself after that.

12 THE COURT: I will overrule the objection on
13 that one. If it keeps leading -- let's see.

14 Okay. I think the next question is all right.

15 MR. CAREY: Your Honor, beginning on 88 was my
16 redirect with respect to the fax. Now, the fax has been
17 removed, so I would suggest we remove this as well.
18 That would be beginning at line 9, 88, down through line
19 1 on 90.

20 THE COURT: That's all on the fax?

21 MR. CAREY: Yes, that's all on the fax, Your
22 Honor.

1 THE COURT: All right. That's it.

2 MR. CAREY: That's it. But then there was
3 recross. Number one, I don't think this Court allows,
4 except under the most extraordinary circumstances,
5 recross.

6 THE COURT: Well, I don't allow recross here in
7 the courtroom, but I think in deposition I've never
8 struck it on that ground.

9 MR. CAREY: This is trial testimony, Your
10 Honor. It was taken for purposes of trial.

11 THE COURT: I understand.

12 MR. CAREY: Also, it went beyond the redirect.
13 It raises entirely new issues that weren't touched on in
14 redirect.

15 THE COURT: Let's see. Here we go.
16 Mr. Murray, question in follow-up. There's no recross
17 so you --

18 MR. MURRAY: Where are you?

19 THE COURT: That you might have discussed this
20 case with the attending OB-GYN the next morning,
21 something to that effect. Well, she did testify to that
22 on her direct, didn't she? Didn't we earlier -- didn't

1 I overrule an objection that Mr. Murray made that I
2 allowed her to testify what her normal practice was,
3 right?

4 MR. CAREY: But she didn't testify to it on
5 redirect. We are in recross now.

6 THE COURT: Recross.

7 I sustain the objection on the recross. I
8 don't think it went into redirect. I think there has to
9 be some limit. I don't think it adds much anyway.

10 MR. CAREY: Since Mr. Rhatigan is no longer
11 with us, I propose stopping on page 91 after line 18.

12 THE COURT: All right.

13 MR. CAREY: That's it, Your Honor.

14 THE COURT: See you tomorrow morning at 10
15 o'clock.

16 MR. CAREY: Thank you, Judge.

17 THE COURT: How many additional witnesses?

18 MR. CAREY: Scheduling problems are a nightmare
19 in these cases. I will tell you our problem. We have
20 Dr. Partridge coming from 2 o'clock. Frankly, I didn't
21 think --

22 THE COURT: Can you try to see if he can come

1 earlier? I mean he may have things scheduled and have
2 blocked this out and that's it. But at least give him a
3 call. When would he come if he wasn't scheduled at 2
4 o'clock?

5 MR. CAREY: Well, I envision starting with
6 Dr. Dill and then going with Dr. Garreau. We probably
7 at least would start him before lunch.

8 THE COURT: See if he can get here before
9 lunch. Please make a phone call and see what he can do.

10 MR. CAREY: Thank you, Your Honor.

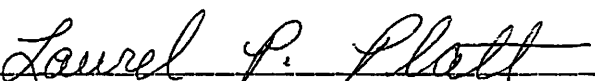
11 MR. MURRAY: Thank you, Judge.

12 (At 5:08 p.m. the trial was recessed to
13 reconvene at 10 a.m., Wednesday, July 14,
14 1999.)
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CERTIFICATE OF REPORTER

I, Laurel P. Platt, do hereby certify that the foregoing proceedings were taken by me in stenotype and thereafter reduced to typewriting under my supervision; that said proceedings are a true record of the testimony given by said witnesses; that I am neither counsel for, related to, nor employed by any of the parties to the action in which these proceedings were taken; and further, that I am not a relative or employee of any attorney employed by the parties hereto, nor financially or otherwise interested in the outcome of the action.

Given under my hand this 30th day of August, 1999.


Laurel P. Platt,
Registered Diplomate Reporter

VIRGINIA

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

Vida Sami

Plaintiff

VERSUS

CASE NO. LAW 171034

FAIRFAX HOSPITAL, et al)

Defendant

FINAL
ORDER

This case came before the Court on the 13th day of July,
1999, for TRIAL

It is ORDERED as follows: PLAINTIFF THIS CASE IS
DISMISSED WITH PREJUDICE AS TO THE DEFENDANTS
MILES VARN, MD AND JULIAN OPENSTEIN, MD FOR
REASONS STATED IN THE TRIAL TRANSCRIPT HEREOF. THIS
CASE SHALL CONTINUE AS TO THE DEFENDANT FAIRFAX
HOSPITAL.

ENTERED on July 13, 1997.

SEEN AND OBJECTED TO FOR
REASONS STATED IN THE TRIAL TRANSCRIPT

JUDGE

Counsel for the Plaintiff

~~I ASK FOR THIS~~

Counsel for the Defendants VARN & ORENSTEIN

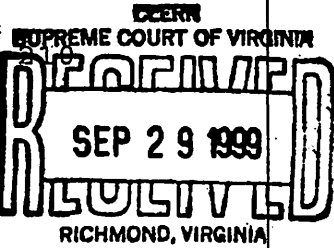
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COUNSEL FOR DEFENDANT FAIRFAX HOSPITAL

ORIGINAL FILED

PARTIAL TRANSCRIPT



VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

VIDA SAMI,

Plaintiff,

vs.

FAIRFAX HOSPITAL, et al.,

Defendants.

At Law No. 171033

Consolidated with

At Law No. 171034

Fairfax, Virginia

Wednesday, July 14, 1999

The trial commenced at 9:52 a.m.

BEFORE:

THE HONORABLE M. LANGHORNE KEITH and jury.

1 APPEARANCES:

2 RICHARD MURRAY, ESQ., and RAIGHNE C. DELANEY,
3 ESQ., Pompan, Murray & Ruffner, P.L.C., 601
4 King Street, Suite 400, Alexandria, Virginia
22314, counsel for the plaintiff.

5 WILLIAM L. CAREY, ESQ., and BRIAN R. SANDERSON,
6 ESQ., McCandlish & Lillard, P.C., 11350 Random
7 Hills Road, Suite 500, Fairfax, Virginia
8 22030-7429, counsel for the Defendant Fairfax
9 Hospital.
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I N D E X

WITNESS	DIRECT	CROSS	REDIRECT
Barbara A. Dill, M.D.,	217	256	277
Elizabeth Garreau, M.D.	283	308	313
John Partridge, M.D.	316	333	338
Pauleen Abate	340	343	

EXHIBITS

DEFENDANT'S	FOR EVIDENCE
Nos. 8, 11, 12 and 13 (Documents)	345

P R O C E E D I N G S

(Out of the presence of the jury.)

1
2
3 THE COURT: I've been notified that Juror
4 Rosenkranz's, juror number 8, son was taken to the
5 intensive care unit in Fairfax last night. He was with
6 him all night, he and his wife. He's still there with
7 his son. They're doing MRIs and EKGs on his son now,
8 and he's not going to be here. I've asked Ms. Stanley
9 to see if he will be here tomorrow or could be here
10 tomorrow. However, I think that may be unlikely, and he
11 may be in such emotional state, whether he would do us
12 much good or not, I don't know. So the question is are
13 the parties willing to go with six jurors instead of
14 seven today?

15 MR. MURRAY: May we have a couple minutes to
16 think it over?

17 THE COURT: Certainly. I don't think we've got
18 any real assurance that even if we delay it for a day,
19 that Mr. Rosenkranz will really be available tomorrow.

20 MR. CAREY: Your Honor, I'm not sure that's an
21 option with our expert witness schedules. It's tough
22 enough as it is.

1 THE COURT: You all think about it and let me
2 know.

3 (A short recess was taken.)

4 MR. CAREY: Good morning, Your Honor. The
5 parties have agreed to go forward.

6 MR. MURRAY: We hope when you mention it to the
7 jury, we hope you say something like a personal
8 emergency.

9 THE COURT: A family emergency and the parties
10 have agreed to go with six.

11 MR. CAREY: Your Honor, when we get started
12 with the videotape, may I explain to the jury what we
13 are going to do with respect to stopping and starting
14 the videotape?

15 THE COURT: All right.

16 (The jury returned to the courtroom.)

17 THE COURT: Good morning, ladies and gentlemen.
18 Mr. Rosenkranz, juror number 8, has had a family
19 emergency which has prevented him from returning today
20 and will probably prevent him from participating in this
21 case in any event. The parties have agreed, have
22 stipulated that the case can be heard by a six-person

1 jury rather than a seven-person jury, so we'll just go
2 forward and finish the case. I appreciate counsel
3 agreeing to that stipulation.

4 You're now going to hear testimony through a
5 deposition that was videotaped. As you may know, a
6 deposition is a procedure where a witness is sworn, a
7 court reporter is present, and the lawyers ask questions
8 and cross-examine just as though the witness was in a
9 courtroom, and you can consider this testimony just as
10 you consider the testimony of any other witness. It's
11 just being produced by videotape instead of from the
12 stand.

13 You had some information for the jury about how
14 the videotape is going to be done.

15 MR. CAREY: Thank you, Your Honor.

16 This is a videotape deposition of Dr. Dill, who
17 is in New Jersey and is unable to be with us today. We
18 arranged last Friday to have her testimony taken. The
19 videotape -- I hope the quality of it is good. None of
20 the attorneys have reviewed it yet. But we did have an
21 opportunity yesterday with the judge to review the
22 transcript so that we could get a ruling on certain

1 objections that were made at the time of the deposition.

2 So what we are going to do is we are going to
3 play the deposition. And points will come, and not too
4 many of them as we go through the testimony, points will
5 come where we need to fast forward through some of the
6 colloquy that occurs between the attorneys on the tape.
7 And so we'll try to minimize the discussion of the
8 testimony.

9 So from time to time I'll be here. I may stay
10 in the chair because there will be another point coming
11 up quickly that we'll need to fast forward it through.
12 But I'll be back and forth. Also Dr. Dill will be
13 referring to the charts that you have seen before. As
14 she does refer to them, I'll be putting the charts up on
15 the easel so that you also may see them and refer to
16 what she's testifying to.

17 Are you ready, Your Honor?

18 THE COURT: Yes, sir.

19 MR. CAREY: Thank you.

20 (The videotape deposition of Barbara A. Dill,
21 M.D., was played as follows:)

22 THE VIDEOGRAPHER: Today's date is July 9,

1 1999. The time is 2:54 p.m.

2 And at this time, we'll ask counsel to identify
3 themselves.

4 MR. CAREY: This is Bill Carey. I represent
5 Inova Fairfax Hospital.

6 MR. MURRAY: My name is Richard Murray, and I
7 represent Vida Sami, the plaintiff.

8 And with me is Mr. Raighne Delaney, who is
9 co-counsel in this case.

10 MR. RHATIGAN: This is Brian Rhatigan. I
11 represent the defendants Miles Varn, M.D., and Julian
12 Orenstein, M.D.

13 MR. CAREY: Dick, I understand we have a waiver
14 of the standard introduction by the videographer.

15 MR. MURRAY: Yes.

16 MR. CAREY: All right. We'll get started,
17 then.

18 Can we swear the witness?

19 Thereupon,

20 BARBARA A. DILL, M.D.,
21 a witness, having been first duly sworn by the Notary
22 Public, was examined as follows:

1 EXAMINATION BY COUNSEL FOR THE DEFENDANT

2 BY MR. CAREY:

3 Q Dr. Dill, are you there?

4 A Yes, I am.

5 Q All right. Would you please identify yourself
6 for the jury?

7 A Okay. My name is Barbara Angelika Dill.

8 Q What is your profession?

9 A I am an obstetrician-gynecologist.

10 Q Where do you practice that profession?

11 A I practice in Tenafly, New Jersey, and I have
12 been here since 1995.

13 Q Dr. Dill, we appreciate your taking the time.
14 We've been able to arrange among the attorneys to have
15 your testimony taken by videotape for presentation to
16 the jury. I'm down here in Virginia, as is Mr. Murray
17 and Mr. Rhatigan. And, so, if you could keep your voice
18 up so that every one on-line and the jury is able to
19 understand your answers.

20 A Okay.

21 Q Would you -- would you tell the jury a little
22 bit about your educational background?

1 A My undergraduate training is I went to Colgate
2 University, which is in Hamilton, New York. I graduated
3 from Colgate in 1986 and then attended the University of
4 Vermont Medical School, and I received my M.D. degree
5 from that university in 1991.

6 From there, I did my obstetrical and gynecology
7 training. The first year was an internship at George
8 Washington University, and then I completed the
9 remainder of my residency program at G.W. in D.C., and I
10 finished that program up in 1995. And then I came into
11 private practice here in Bergen County in New Jersey.

12 Q When did you obtain your medical license?

13 A Following the completion of my intern year, I
14 obtained a license to practice medicine in the State of
15 New York. That was in 1992, I believe. Then in 1994, I
16 obtained a license to practice in the State of Virginia,
17 and then in '95 in New Jersey.

18 Q Are you board certified?

19 A Yes, I am board certified.

20 Q Explain to the jury what board certification
21 means in your profession.

22 A In our profession?

1 Following the completion of an accredited
2 residency program, there is a two-step process to
3 receiving board certification. The first is a written
4 exam that is taken upon immediate completion of the
5 residency, so I took that exam in 1995 and passed the
6 first time I took the exam. The next two years are then
7 spent in practice in which a case list is accumulated,
8 where the American Board of Obstetrics and Gynecology
9 reviews your practice, the care that you have provided
10 for the patients you've taken care of. You provide this
11 case list, and following acceptance of this case list,
12 an oral examination, a three hour oral examination is
13 undertaken. And I took -- the first time I was eligible
14 to take that exam was in 1997, November of 1997, and I
15 passed the exam the first time I took it.

16 Q You made reference earlier to a residency.
17 Explain to the jury what a residency program is.

18 A A residency program is postgraduate training
19 for a physician in which they receive additional
20 training in the specialty of their choice.

21 Q What was the specialty for your residency?

22 A Obstetrics and gynecology.

1 Q Where did you receive that training?

2 A At a hospital, a residency program, those are
3 usually affiliated with teaching hospitals. And I
4 obtained mine from George Washington University.

5 Q I'm sorry, I didn't catch that, Doctor. What
6 was the university that you did the residency program
7 in?

8 A George Washington University.

9 Q And as part of that program, do the residents
10 rotate through the various teaching hospitals in the
11 greater Washington area?

12 A Our residency program, or G.W.'s residency
13 program, has three hospitals with which it is
14 affiliated, the first being actually George Washington
15 Hospital in D.C., the second, which was the larger
16 program where we spent the bulk of our time, was Fairfax
17 Hospital in Virginia, and then also at Holy Cross
18 Hospital up in Silver Spring, Maryland.

19 Q All three of those hospitals are what are
20 called teaching hospitals?

21 A The -- yes, they are.

22 Q Tell me how a -- tell me how the residency

1 program would operate, how do you spend your day, where
2 are you physically located.

3 A Physically located?

4 Depending on the year of your training, you
5 have different responsibilities. Our first year of
6 residency is the internship year, and that is basically
7 an overview year. We spend time in the emergency room,
8 we spend time in the pediatrics, in the intensive care
9 nursery, we spend time in the medical wards taking care
10 of medical patients. And then we also do an obstetrical
11 rotation, where we are actually on labor and delivery,
12 assisting with delivery of patients. And also in the
13 offices working with our professors, seeing their OB and
14 GYN patients.

15 Following the completion of internship, then
16 you spend your time in residency which is solely devoted
17 to the specialty of your choice. At G.W., the
18 residency, the first two years, so intern year and the
19 second year, is more heavily weighted towards
20 obstetrics, but there is a great deal of gynecology
21 training as well. We do our infertility rotations, we
22 also do an oncology rotation. So we spend time working

1 with the various specialists within our -- within
2 obstetrics and gynecology.

3 And then by the time you are a fourth year
4 resident, which is your chief year, you're mostly as a
5 supervisory, in a teaching position involved with
6 instructing the more junior residents beneath you.

7 Q By the time you're in the third year of the
8 residency program -- well, let me ask you this: By the
9 time you were in your third year of the residency
10 program, can you give the jury a general estimate of how
11 many obstetrical patients you would have seen?

12 A I would imagine hundreds to thousands.

13 Q And what type of obstetrical or gynecological
14 conditions would you have treated by that third year?

15 A Everything. At that point, we had seen pretty
16 much everything.

17 Q During these residency programs, is the care
18 that you're rendering primarily rendered in a hospital
19 setting?

20 A Yes. But there are clinics which are
21 outpatient settings, where we see patients who are not
22 admitted to the hospital. They come to the clinic and

1 are cared for by the residents.

2 Q Okay.

3 And during your third year of residency, did
4 you have any other medical experience?

5 Did you work in any other aspect of medicine at
6 that time?

7 A As part of the residency or me in particular?

8 Q You in particular, Doctor.

9 A I was -- I'm not trying to flaunt myself, but I
10 was one of the stronger residents in my program. During
11 the first two years of my residency, I received the
12 Outstanding Resident of the Year Award, and was my chief
13 year named Administrative Chief Resident, all of which
14 are honors to my abilities, and was sought after by the
15 attendings in the hospital that I worked at; they were
16 trying to get me to join their group. So I actually had
17 the ability to work with one of the local OB-GYN groups
18 in their office, and this was apart from the residency
19 program.

20 Q So you were working both as a resident and you
21 were actually practicing as a physician in an OB-GYN
22 office?

1 A Yes, I was.

2 Q Okay.

3 A I was a licensed physician in the State of New
4 York, and in 1994 I received my license in the State of
5 Virginia, so I could work with a private practitioner.

6 And additionally, the emergency room department
7 at George Washington University had a program where they
8 would escort patients to various places. So I actually
9 was the obstetrician that would escort patients when
10 they had various trips across country because I was
11 licensed.

12 Q All right. Doctor, by the time you reached
13 your third year of residency, had you seen a patient who
14 presented with a spontaneous or completed miscarriage?

15 A Yes, I had taken care of many patients with
16 that diagnosis.

17 Q Any idea of an estimate of the number?

18 A I would imagine probably a couple hundred.

19 Q what's the presentation, what's the typical
20 presentation for that diagnosis?

21 A Well, there is really no typical presentation
22 for spontaneous miscarriage. However, miscarriage would

1 be a woman who was pregnant who would then have some
2 bleeding with a passage of tissue.

3 And then there are different types of
4 miscarriages. So depending on where the patient was in
5 the process of miscarriaging, there are different
6 findings that you would have on your physical exam.

7 Q Doctor, let me go ahead and direct your
8 attention to January 26, 1994. Now, you've been
9 provided copies of the emergency room records --

10 A Yes, I have.

11 Q -- for that day, and they're numbered in the
12 bottom right-hand corner.

13 Do you see that?

14 A Yes, I do.

15 Q We're going to try to refer to them both as the
16 number, and, if the document has a title, we'll refer to
17 it as the title as well so we all can keep on the same
18 page.

19 A Okay.

20 Q Now, you have had opportunity to review this.
21 Did you see you treated Vida Sami from this
22 chart?

1 A Yes, I did.

2 Q Okay. Do you have a memory of this patient?

3 A Unfortunately, I do not.

4 Q And after having reviewed the chart, is there
5 anything unusual in the chart that would have made this
6 patient more memorable than the other hundreds that you
7 saw during that time period?

8 A No. This was a pretty standard course for a
9 patient presenting with a miscarriage.

10 Q Now, at that time you were an OB-GYN resident
11 at Fairfax Hospital?

12 A Yes, I was.

13 Q And who was your supervisor?

14 A Above me would have been a chief resident who
15 was on call, and then the attending physician who was
16 covering during that 24-hour period.

17 Q Would that be the attending OB-GYN physician?

18 A Yes, that would have been.

19 Q And so that we're clear, this is the period of
20 your residency when you are focusing on OB-GYN medicine.

21 A Exactly.

22 Q This is the third year of your residency.

1 A That's all that I would be doing at this point,
2 was obstetrics and gynecology.

3 Q How would you communicate with your supervising
4 chief resident and supervising OB-GYN attending
5 physician? How did that work?

6 A Are you referring to --

7 MR. MURRAY: I'd like to interpose an
8 objection. I think what's relevant is how it worked in
9 this particular case, not how she normally did it.

10 Q Well, did you have a normal and typical
11 practice in communicating with the chief resident and
12 the attending OB-GYN?

13 A Yes, there was a usual pattern of behavior.

14 Q What was that, Doctor?

15 A Basically when we got called to the emergency
16 room to provide a consultation, the GYN resident of the
17 day would go down and see the patient, would get a
18 history with the patient, perform a physical exam, and
19 then, depending on how complicated the patient was or
20 uncomplicated, would then decide if the patient needed
21 to go to the operating room, not the operating room,
22 discuss the case with the chief resident, the attending

1 would be involved, and then the appropriate care would
2 be provided.

3 Q Okay. Let's go ahead and turn to January 26,
4 1994.

5 What would be the first thing that you would do
6 when you arrived in the emergency room?

7 You were the OB-GYN resident on call?

8 A I was the GYN resident on call.

9 MR. MURRAY: Let me interpose another
10 objection, if I might.

11 She testified she has no memory of any of the
12 events other than, I guess, from the records. So the
13 question of what she might have done is really not
14 relevant.

15 MR. CAREY: Mr. Murray, I didn't ask what she
16 might have done, but let me see if I can clarify the
17 question.

18 Q Dr. Dill?

19 A Yes.

20 Q You see that your name appears on this chart?

21 A Yes, I do.

22 Q Tell the jury what your normal practice would

1 be when you arrived in the emergency room, having been
2 called there by the emergency room physicians to deal
3 with an OB-GYN patient.

4 A Well, typically we would be called to the
5 emergency room to see a gynecology patient. If a
6 patient was actually an obstetrical patient and was
7 having obstetrical emergency, they would be brought to
8 labor and delivery because that's considered part of the
9 emergency room.

10 So a gynecology patient or somebody who was
11 less than -- I don't know what their rules are, 15, 16
12 weeks, something like that, would be in the emergency
13 room, would be evaluated initially by the emergency room
14 physician. If they felt that they needed a gynecology
15 consultation, the GYN resident on call would be paged,
16 we would answer the page back, and then over the phone
17 the information would be transmitted to us what the
18 initial assessment of the patient had been.

19 At that point, I would go down to the emergency
20 room, again look at whatever information the emergency
21 room had previously obtained, look at the history that
22 the emergency room had obtained, any lab work, any

1 studies that had been performed by the emergency room
2 physician. And then I would go in and reassess the
3 patient, obtain my own history, and perform my own
4 physical exam, and then make my own assessment and plan.

5 Following that, I would then contact the
6 information to the emergency room physician, and then
7 the patient would be discharged home or admitted to our
8 service, whatever the case might be.

9 Q Let me go through that in a little bit more
10 detail.

11 A Okay.

12 Q If you would turn to Exhibit 30006, and the
13 title of that document is: Physician's progress notes.

14 A Yes.

15 MR. MURRAY: Could you just hold on one minute
16 while we try to track that down?

17 MR. CAREY: Absolutely.

18 Do you have it, Dick?

19 MR. MURRAY: Yes.

20 Q All right. Dr. Dill, is that your signature on
21 the bottom of that page?

22 A Yes, it is.

1 Q Who else's signature is there?

2 A It is a medical student's name. I don't know
3 who that person is, but it says MS-3 afterwards.

4 Q That would be third year medical student?

5 A Yes.

6 Q Tell us how a medical student would come to be
7 in Fairfax Hospital with you at that time.

8 A In addition to having a GYN resident on call,
9 there was also a GYN medical student who was on call.
10 And, basically, as part of their education process, they
11 followed us along and basically helped us out. They
12 would be there while we interviewed the patients and
13 basically would then have the ability to write up a
14 history and physical, which was done in this case. This
15 history and physical is written by the medical student.

16 Q Why is it written by the medical student?

17 A Because it's part of the learning process.
18 They need to learn how to write an appropriate note. So
19 once a student -- once we felt comfortable with the
20 student, we would allow them to write a note and make
21 corrections on it. And in this case, I felt that the
22 student had written an appropriate note, because it is

1 basically written the same way that I would write a
2 note, so the student was probably somebody who worked
3 with me, and I just needed to cosign it. I did not need
4 to make a great deal of corrections on his or her
5 findings.

6 Q Did you take the history that's recorded here?

7 A Yes, I did.

8 Q Did you perform the examination that's recorded
9 here?

10 A Yes, I did.

11 Q All right.

12 Read for us -- what is the date of the history?

13 A 1/27/94.

14 Q At what time of day?

15 A I believe that's 2400? 2200? I can't read it.

16 Q She came into the emergency room at around 10
17 o'clock on the 26th.

18 Can we assume this is about midnight?

19 A Yes.

20 Q Can you read what the history reflects?

21 A The history?

22 31 year old, gravida 3, para 1, AB 1, Iranian

1 female with a last menstrual period of October 5, 1993.

2 Q What does the G-3, P-1, A-1 refer to?

3 A Gravida and para refers to how many pregnancies
4 this patient has had. She's a gravida 3. Para refers
5 to --

6 Q Third pregnancy?

7 A Third pregnancy, correct.

8 Para refers to the number of children born.

9 And abortions refers -- A refers to the number of
10 miscarriages or actual terminations of pregnancy.

11 So in this case, this was a woman who had three
12 pregnancies, one full-term delivery, and one abortion.

13 Q If you can continue with the history.

14 A Iranian female with a last menstrual period of
15 October 5, 1993. An estimated due date of July 18,
16 1994. Approximately 16 weeks gestation. She presents
17 with lower back pain and diffuse lower abdominal pains
18 for the past 48 hours. She also started having vaginal
19 bleeding for 12 hours. No nausea and vomiting. Patient
20 stated -- started passing clots at about 2145 p.m. No
21 hematuria, no hematochezia, no dizziness. Patient was
22 seen by her obstetrician in private office earlier this

1 a.m. and she denied that there were fetal heart tones at
2 the time. Her past medical history is nonsignificant.
3 Her past surgical history reveals a cesarean section in
4 1991. No trauma or other surgeries. Her past GYN
5 history reveals no sexually abnormal diseases, no
6 abnormal Pap smears. Patient couldn't recall the date
7 of her last Pap smear. Her previous obstetrical history
8 was significant only for a previous cesarean section in
9 1991, and --

10 Q Let me stop you there, Doctor.

11 Did the patient -- does the note reflect that
12 the patient provided any other information concerning
13 the C section that occurred in 1991?

14 A No, she did not.

15 (The video tape was fast forwarded.)

16 Q Doctor, I want to stop you at this point and I
17 want you to turn back to the document zero two.

18 A That would be the emergency department record?

19 Q Yes.

20 A Okay.

21 Q And if you would, the document that you would
22 review, were it be your invariable practice as a

1 resident in Fairfax Hospital in 1994 to review this
2 document as well in the course of seeing a patient?

3 A Yes, it would be.

4 Q Read, if you would, for the jury what their
5 history was.

6 A Just the history?

7 Q Yes.

8 A Okay.

9 They have medications, none. Patient was not
10 taking any prenatal vitamins. Current medical history,
11 she was 15 weeks pregnant. Gravida 3, para 1, abortions
12 1, with no known allergies. The time of the initial
13 history was 2210, and her primary physician is Rajae,
14 something like that.

15 Q Dr. Rajae.

16 A Rajae, okay.

17 Then the actual written history and physical,
18 again, is a 31 year old Indian female. 15 weeks
19 gestational age. Gravida 3, para 1, AB 1. Complaining
20 of lower back pain and lower abdominal cramping since
21 last p.m. Appointment with OB this a.m. revealed no
22 heart tones. Began spotting this a.m. at 10 o'clock

1 with progressive increasing in -- I believe that's
2 cramping, and then began passing clots at 2145.

3 Q Is that history generally consistent with the
4 history that you took when you saw her at midnight?

5 A Yes, it is.

6 Q Why is it important to take a history from a
7 patient, Doctor?

8 A That's the basis of why the patient presents to
9 a physician for care. They usually come to you having
10 some sort of complaints; in her case, either pain or
11 bleeding. And that's why they're coming to you. It's a
12 part of a communication. Many times the patient can
13 provide you with the answer of what's going on, they
14 just don't have the medical knowledge as to what that
15 means.

16 Q As part of the examination, part of your
17 examination of this patient, after you obtain the
18 history and review the chart of the emergency room, do
19 you -- did you arrive at a differential diagnosis?

20 A In this specific case, I can't -- I cannot tell
21 you what the -- in this specific case what it was, but
22 based on what I've obtained, this is a woman who's

1 pregnant and bleeding. You have to think that she has
2 some sort of pregnancy that's not doing very well, a
3 miscarriage -- it could also be a normal pregnancy.

4 There are multiples of things, and I can't tell
5 you exactly what my differential diagnosis was as I was
6 going through the process. I can tell you what after I
7 had finished doing my physical exam and obtaining all
8 the information from the patient and the lab work what
9 my final decision was.

10 Q Okay. Let's go ahead and move to the exam.
11 Describe to the jury what the physical exam consisted
12 of.

13 A The physical exam that I provided?

14 Q Yes.

15 A Okay. Let me go back to page --

16 Q Is that page 6?

17 A Page 6. Okay.

18 The patient's vital signs, she was afebrile.

19 MR. MURRAY: Give us one minute, because we're
20 trying to get our records together with yours.

21 Okay, I have it. Thank you.

22 THE WITNESS: I'm sorry, can I continue?

1 Q Yes.

2 A Her vital signs are stable. Her temperature
3 was afebrile, blood pressure was 140 over 66. Her pulse
4 was fine. Respiratory rate was also fine. In general,
5 she was a well-dressed, well-nourished female in no
6 acute distress. Her HENT, which is her head and neck
7 exam, was unremarkable. Her lungs were clear on both
8 sides. Her heart was normal rate and rhythm; revealed
9 no murmurs, rubs, or gallops. Her abdominal exam
10 revealed her abdomen to be mildly obese. She had normal
11 active bowel sounds. Her abdomen was soft, it was
12 nontender, it was nondistended, and there were no
13 palpable masses abdominally.

14 From that point, after the abdominal exam, a
15 pelvic exam was then performed, which revealed normal
16 female genitalia externally; there were no lesions on
17 the outside. Her vagina was pink and moist. There was
18 some blood in the vault. Her cervix was long and closed
19 and was nontender, and there was no bleeding noted.
20 Uterus was about eight weeks in size, was nontender and
21 anteverted. Her adnexa were also nontender, not
22 enlarged, and there were no masses appreciated. Her

1 extremities, there was no erythema, cyanosis, or
2 clubbing. And neurologically, she was alert and
3 oriented times three.

4 Q Okay. What does it mean when there's moist,
5 blood in the vault?

6 A Well, the vagina is normally moist, so that's a
7 normal finding. And blood in the vault just means
8 there's old blood in the vagina. The vagina is a space,
9 and blood can accumulate in there.

10 Q How is this pelvic exam performed, Doctor?

11 Explain to the jury physically how that's done.

12 A Okay. A very important part of the pelvic exam
13 is the abdominal exam, because that will give you an
14 idea -- if there's a large uterine mass or ovarian mass,
15 you can many times feel it abdominally, so the abdominal
16 exam is a very integral part of the pelvic exam. So
17 that's done just by pressing on the abdomen and checking
18 all four areas of the abdomen.

19 The next part of the pelvic exam is the patient
20 is placed at the end of the examination table, placed in
21 stirrups, and an examination, just an inspection of the
22 external --

1 MR. MURRAY: Let me interject an objection at
2 this point, if I may, and here's my objection: She has
3 no actual -- she's testified she has no actual memory of
4 the occurrence here. What she's really testifying to is
5 how she ordinarily in practice would perform the pelvic
6 exam.

7 I think there's a difference.

8 Q Doctor, let me ask you this: Where did you
9 learn how to perform a pelvic exam?

10 A In medical school.

11 Q Are there variations in the technique of
12 performing a pelvic exam?

13 A Not for me there isn't.

14 Q Do you know of any variation among the medical
15 profession on performance of a pelvic exam?

16 A I don't believe so.

17 Q Have you performed a pelvic exam in exactly the
18 same fashion since you learned it in medical school?

19 A Yes, I have.

20 Q By 1994, January 1994, approximately how many
21 pelvic exams had you performed?

22 A Too numerous to count. I would imagine well

1 into the thousands.

2 Q Did you perform a pelvic exam invariably in the
3 same fashion as you always do it?

4 A Yes, I do.

5 MR. MURRAY: Same objection.

6 Q Go ahead and continue, Doctor.

7 A I believe I was leaving off with the inspection
8 of the external genitalia; is that correct?

9 Following looking at the external genitalia, at
10 the vulva, at the labia, checking for any sort of
11 lesions, anything out of the ordinary, next would be
12 done an inspection of the internal vagina, at which
13 point a speculum, a metal speculum is placed inside the
14 vagina, and that allows direct visualization of the
15 cervix, as well as the remaining vagina.

16 The cervix is the mouth of the uterus, and that
17 is essentially what opens and closes -- during labor or
18 during a miscarriage, that opens and closes and allows
19 the tissue to come out. So you can see actually if the
20 cervix has tissue or is actively bleeding when you're
21 looking at it.

22 Once you're done with the visual inspection,

1 the speculum is removed, and then two fingers are placed
2 within the vagina to allow actually feeling of the
3 uterus and the ovaries. And that is done a combination
4 of both placing your hands in the vagina and the second
5 hand is then placed abdominally. So once your fingers
6 are placed in the vagina, it allows you to then elevate
7 the uterus so your abdominal hand can feel the uterus.
8 So between those two hands, in a thin woman you should
9 be able to feel the uterus very well.

10 And then I usually go over to the patient's
11 right-hand side, so my left-hand side, to feel the
12 adnexa, which would be the left ovary, the left tube,
13 and then I would go over to the right-hand side to feel
14 the right side to see if there's any masses or
15 suspicious lesions or if there's anything tender on that
16 side.

17 Q Okay.

18 A Now, let me just tell you --

19 Q Was this patient a thin woman?

20 A No, she was not.

21 Q Does that have an effect on the ability of a
22 pelvic examination?

1 A Many things contribute to pelvic examination.
2 The chunkier a patient is, the harder it is to feel
3 masses, especially if they're soft.

4 I guess the analogy that I would make is sort
5 of the princess and the pea; the more mattresses that
6 you place on top of the pea, the harder it becomes to
7 feel that pea underneath it.

8 But there are many other things besides. Body
9 shape is another thing. Patient's cooperability with
10 the examination, many women do not like to have pelvic
11 exams and are very uncomfortable, and that would make a
12 pelvic exam much more difficult to perform and make it
13 less reliable.

14 However, it is very easy to feel a woman's
15 cervix and to tell if it's open or closed. It's very
16 easy to look at a cervix to see if it's bleeding or not
17 bleeding.

18 Q Is the pelvic exam a precise examination?

19 A It is subject to many variables; as I said,
20 patient's body shape, patient's weight, patient
21 cooperability. There are many things that contribute on
22 as to how a pelvic exam goes.

1 So whereas one physician may call a uterus
2 eight weeks in size, meaning eight weeks pregnant,
3 another person may call it ten weeks, that is
4 essentially the same physical exam.

5 Q Not to state the obvious, but it is because --
6 there is no visualization on this exam, is there?

7 A No, it's more of a subjective, your experience.

8 Q And you're feeling with your hand rather than
9 seeing with your eyes?

10 A I mean, one of the things -- I guess what I
11 would say is like when we describe an eight-week uterus,
12 we're thinking of something the size of a grapefruit.
13 Now, a grapefruit can be very small to very large; it
14 depends on your -- what you think of as a grapefruit.

15 Does that help explain?

16 Q Yes, thank you.

17 As a result of the pelvic examination, did you
18 arrive at a diagnosis of what was going on with this
19 patient?

20 A As a patient's history evolved, yes, I did.
21 The patient had been examined by the emergency room
22 physician prior to my examination. When he examined

1 her, he felt there was blood and tissue coming from the
2 os, and then an hour or two later when I actually
3 examined the patient the cervix, or the os, was closed
4 and the patient was no longer actively bleeding and was
5 much more comfortable than she had been at the time when
6 she had been seen previously.

7 So my assessment was that this miscarriage had
8 completed itself, that while the emergency room
9 physician had seen her, she may have already passed the
10 tissue, was bleeding quite heavily.

11 Once all the tissue from the uterus is
12 expelled, the uterus typically shrinks up smaller and
13 the cervix closes up and bleeding slows down.

14 Q So the shrinking of the uterus and the closing
15 of the cervix is indicative of a completed miscarriage?

16 A Yes. If there were residual tissue in there,
17 the cervix would not close and the bleeding would not
18 stop.

19 Q What's the difference between a missed abortion
20 and a completed miscarriage?

21 A A missed abortion is a nonviable pregnancy that
22 has not gone on to miscarry yet. So it would be

1 basically a woman who thinks she's pregnant and then you
2 go to listen to the baby's heartbeat and there's no
3 heartbeat, and you go then to look, and the baby is
4 essentially dead. But there is no symptoms with that,
5 no bleeding, no cramping.

6 Once that miscarriage then begins to evolve,
7 you have what's called a threatened AB, where perhaps
8 bleeding starts and cramping starts. What you would
9 notice at that point is the cervix again is closed, but
10 that there's bleeding and cramping. And then as the
11 pregnancy -- as the miscarriage evolves even more, the
12 cervix begins to open and the actual tissue is passed as
13 well as the blood clots. Once all the pregnancy tissue
14 is -- has removed itself from the uterus, then the
15 bleeding slows down and the cervix sort of closes up
16 again and the uterus shrinks in size.

17 Q When you're talking about the pregnancy tissue,
18 you're talking about the embryo?

19 A Well, there's a -- may be an embryo. Many
20 times these are not viable, there isn't actually an
21 embryo, it's a nonviable pregnancy where an egg and
22 sperm get together and don't actually develop into a

1 fetus. So many times it's just macerated tissue that
2 doesn't really look like anything. You don't have to --
3 it's very rare for a patient to actually see a baby.

4 Q Doctor, in reviewing this medical chart, is
5 there any indication in there that you made a diagnosis
6 or a finding of a bicornuate uterus with a rudimentary
7 horn?

8 A No, there is not.

9 Q Would a bicornuate uterus have been a
10 significant factor in the treatment of this patient?

11 A If I had known the patient had a bicornuate
12 uterus --

13 Q Yes.

14 A -- would that have impacted on this?

15 Q Yes.

16 A It would have put an interesting twist on
17 everything because patients who have abnormal uteruses
18 many times will have difficulties with miscarriages. In
19 fact, when you do a D&C for somebody that has a bi --
20 that's usually done under ultrasound guidance, because
21 the anatomy is not normal, and what normally you would
22 do does not apply.

1 MR. MURRAY: Hello?

2 MR. CAREY: Hello?

3 THE WITNESS: Yeah?

4 MR. CAREY: Are you there, Doctor?

5 THE WITNESS: Yeah, I am.

6 MR. CAREY: I'm sorry, it sounded like you were
7 cut off for a moment.

8 THE WITNESS: Oh, okay, no, I'm sorry.

9 Q You were saying what you normally would do.

10 A With an abnormal uterus where the anatomy is
11 not normal, sort of all bets are off. What you normally
12 do may or may not apply. When you know that there's
13 something like that going on, usually you would perform
14 a D&C under ultrasound guidance.

15 Q Okay.

16 Have you treated patients with bicornuate
17 uteruses?

18 A Yes, I have.

19 Q Is that a condition that you can pick up on
20 pelvic examination?

21 A Not usually.

22 Q Is there anything in the history -- in

1 reviewing this chart of January 26, 1994, anything in
2 the history that indicates that the patient communicated
3 either to the emergency room staff or to yourself that
4 she had in any fashion a uterine anomaly?

5 A No, there is absolutely no notification of that
6 kind.

7 Q Doctor, did you prescribe any medications to
8 the patient?

9 A Are you referring to the prescriptions that she
10 was sent home with?

11 Q Yes.

12 A Yes, I did.

13 Q And what were those?

14 A That is on page 11. I sent her home with
15 Doxycycline.

16 Q And what's the purpose of Doxycycline?

17 A Doxycycline is an antibiotic, and that would be
18 to prevent any sort of infection. Sometimes
19 miscarriages can be the result of an infection. And not
20 really knowing what this patient had initially, rather
21 than have her become infected, it's easier to just treat
22 them prophylactically.

1 Q Any other medications?

2 A Actually, not that I know of. Well, actually
3 that's not true. Prior to her being discharged home, I
4 ordered that she get a dose of Rocephin, which is also
5 antibiotic.

6 That's on page 7, I believe, on the Fairfax
7 Hospital physician orders. And, again, the Doxycycline
8 orally.

9 Q On the discharge instructions on page 11, does
10 your handwriting appear on that document?

11 A Yes. All those instructions, that's all my
12 handwriting.

13 Q Let's read through that, starting at the top.

14 A Where my handwriting is?

15 Q Yes, please.

16 A The diagnosis was completed miscarriage.
17 Doxycycline, a hundred milligrams two times a day. No
18 sex, tampons, douching for four weeks. Return to the
19 emergency department if your fever goes above 101,
20 develop chills, severe abdominal pain, or vaginal
21 bleeding worse than a period. And then I instructed her
22 to contact our clinic to get a follow-up appointment

1 within four weeks, and the phone number to the clinic at
2 Fairfax Hospital is provided there.

3 Q Is it a -- was it the practice in Fairfax
4 Hospital for these discharge instructions to be signed
5 by the patient?

6 A I believe that is true. I personally would
7 review the instructions with the patient prior to giving
8 them to the patient, and then the written instructions
9 were given to the nurse, and I believe the nurse is the
10 one who would then obtain the actual patient physician.
11 So these instructions would be reviewed several times
12 with the patient.

13 Q What's the purpose for referring the patient to
14 the OB-GYN clinic?

15 A To allow for follow-up to assure that
16 everything had returned back to normal, that her uterus
17 had returned to normal, that her bleeding stopped, that
18 she was not experiencing any more discomfort, and that
19 things had returned to normal.

20 This woman was pregnant, and perhaps she was
21 going to contemplate pregnancy again; we should get her
22 on some prenatal vitamins.

1 Q This OB-GYN clinic, that's primary care, then?

2 A It's an outpatient facility, yes. The patients
3 are not inpatients. They come there and they receive
4 their obstetrical care. It's also a GYN clinic, so they
5 could get routine Pap smears, annual exams, surgeries,
6 whatever they would need through that clinic.

7 Q It would be like an OB --

8 A It would be like a private practice's office.

9 Q Do you know whether she followed up on that?

10 A Based on all the records that I reviewed, I did
11 not see any follow-up appointments at the clinic.

12 Q Explain to the jury what a beta HCG is.

13 A Beta HCG is the hormone of pregnancy. When you
14 do a pregnancy test, the little test that you give your
15 urine in, they test for beta HCG. So if there's beta
16 HCG, your test would be pregnant, your test would be
17 positive. And pregnancies -- early in pregnancy, they
18 secrete this level, this hormone, beta HCG, and the
19 levels typically rise as the pregnancy grows up until a
20 certain point.

21 Then if a pregnancy dies or once the tissue is
22 no longer viable, the hormone level drops when you pass

1 the tissue following a miscarriage.

2 Q Was there a beta HCG test done on this patient
3 at the ER visit of January 26/27, 1994?

4 A Yes, there was.

5 Q And what did those beta tests reveal?

6 A The beta HCG level is -- let me just look what
7 it was.

8 MR. MURRAY: Can you tell us what you are
9 referring to?

10 MR. CAREY: It's No. 9.

11 A No. 9, beta HCG was 3,776.

12 Q And is that consistent with a viable pregnancy
13 at 15 weeks?

14 A No, it is not.

15 That -- let's call it 4,000 level -- would fall
16 in the range between a three- to four-week pregnancy.
17 The normal range for a three- to four-week pregnancy is
18 between 500 and 6,000.

19 Q What would be the purpose for follow-up beta
20 HCG testing?

21 A Since there was not actually any pregnancy
22 tissue that was attained to confirm the fact that there

1 was a miscarriage, we'll typically follow the beta HCG
2 levels. That should drop rapidly following a
3 miscarriage.

4 Q And did they do so in this case?

5 A I don't think I have those results with me.
6 But I do know that a beta HCG was attained -- I believe
7 it was a week later, a few weeks later, that was a
8 thousand -- I can't remember what it was, but it
9 dropped. And then there was a second one that was
10 essentially -- less than a hundred, I believe it was.

11 Q And so that --

12 A Those were all done within ten days of her
13 emergency room visit.

14 Q That's also consistent with the termination of
15 the pregnancy?

16 A Exactly.

17 Hello?

18 Q I'm here. I'm just -- if you would give me a
19 moment.

20 MR. CAREY: That's all the questions I have.

21 If you would answer Mr. Murray's questions now,
22 please.

1 THE WITNESS: Okay.

2 EXAMINATION BY COUNSEL FOR THE PLAINTIFF

3 BY MR. MURRAY:

4 Q Thank you, Dr. Dill.

5 Dr. Dill, do you have a copy of the deposition
6 that you gave on April 20?

7 A No, I do not have that with me.

8 Q Hello?

9 A No, I do not have that with me.

10 Q You don't?

11 A No.

12 Q All right. I will refer to it.

13 MR. MURRAY: Do you have a copy, Bill?

14 MR. CAREY: Yes, I have a copy.

15 Q Okay. So the only document you have is the
16 medical records that were provided to you by Mr. Carey;
17 is that correct, Dr. Dill?

18 A Yeah, the ones from Fairfax Hospital, from her
19 emergency room admission.

20 Q By the way, did you ever review your
21 deposition?

22 A I believe I did because I had to sign an errata

1 sheet.

2 Q All right.

3 And let me ask you this question now: What did
4 you do to prepare for your examination today?

5 A I looked at the chart.

6 Q Did you refer at all to your deposition?

7 A No, I did not.

8 Q I'm sorry?

9 A No, I did not.

10 Q Okay.

11 Did you talk to Mr. Carey?

12 A He called me to tell me what was going to
13 happen with the next questions, I mean with regard to
14 the video deposition.

15 Q Did Mr. Carey discuss with you in any way your
16 testimony?

17 A No.

18 Q Well, I'm going to refer now to your
19 deposition, if I might. And what I'm going to do since
20 you don't have a copy, I'm going to try to read some of
21 the items, and I'll try to read them as completely as I
22 can so you will know what at least the question was and

1 what your answer was.

2 MR. CAREY: Dick -- Mr. Murray, let me suggest
3 to you that's not proper use of deposition testimony to
4 impeach a witness, if that's what you're trying to do.
5 That's not the technique. I will object to you
6 proceeding in that fashion.

7 MR. MURRAY: Well, I'm going to ask her
8 questions from her deposition.

9 MR. CAREY: You can asking her any questions
10 you want, Dick. Ask her a question.

11 MR. MURRAY: Thank you.

12 Q Doctor, you did make an actual diagnosis in
13 this case, didn't you?

14 A Yes, I did.

15 Q That diagnosis was that it was completed
16 abortion.

17 Is that correct?

18 A Yes, it was.

19 Q And that diagnosis is reflected on page 11; is
20 that correct?

21 A Yes.

22 Q Of your notes?

1 A Yes.

2 Q If you have the medical records, I'd like you
3 to turn to -- at least by our records it's 0017.

4 Do you have that?

5 A No. My records only go up to 11.

6 MR. CAREY: Dick, what's the title of the
7 document?

8 MR. MURRAY: Fairfax Hospital System, February
9 7, 1994.

10 MR. CAREY: That's the beta HCG testing. She
11 just testified she did not have those documents. That's
12 after the time she treated this patient.

13 MR. MURRAY: I understand that, I understand
14 that. But at one time she did review these documents.

15 Q In reviewing the documents from Fairfax
16 Hospital that you reviewed previously, do you recall
17 that -- do you recall any of the statements on the
18 document?

19 A No, I don't.

20 Q Do you recall that on February 7, that the
21 specific document that we have and that you reviewed at
22 one time talks about a missed AB?

1 A I don't know what you are talking about.

2 Q Do you recall ever seeing a document that
3 listed a missed AB as part of the hospital records in
4 this case after you saw -- after you saw the patient?

5 A I saw the patient in the emergency room, and
6 then I did not see the patient after that.

7 Q Did if you ever call the patient after that?

8 A I don't recall.

9 Q Isn't it a fact that you did call Vida Sami the
10 day after and asked her to come in for some additional
11 tests?

12 A I don't know that to be a fact at all.

13 Q Let me put something -- let me state it this
14 way: Isn't it a fact that a missed AB means that the
15 fetus is still present; is that correct?

16 A Yes.

17 But this patient did not present with a missed
18 AB. She had bleeding and cramping.

19 (The video tape was fast forwarded.)

20 Q Is it your recollection, Doctor, that you did
21 discuss this case with the chief resident?

22 A I don't recall the specifics. I can attest to

1 what my usual behavior would have been. And, yes, that
2 would have been discussed with the chief resident.

3 Q And if you did discuss the matter with the
4 chief resident, would there be any notation on the
5 medical records?

6 A No, there would not.

7 Q And why wouldn't that -- why is that?

8 A Because it's what we did, and this is a pretty
9 straightforward case.

10 Q Would you have discussed the case with the
11 attending physician?

12 A We probably would have, yes.

13 Q And when would you have discussed the case with
14 the attending OB-GYN physician?

15 A Depending on what was going on; if he or she
16 were awake, it would have been discussed right away, or
17 would have been discussed at sign-out at seven in the
18 morning.

19 Q And do you have any recollection of discussing
20 this with the attending physician?

21 A No, I do not.

22 Q Do you know what the name of the attending

1 physician was?

2 A No, I do not.

3 Q Do you know the name of the chief resident who
4 you might have discussed this case with?

5 A No, I do not.

6 Q Doctor?

7 A No, I do not.

8 Q Do you know -- obviously, somebody called
9 Ms. Sami to have her come in for further testing.

10 Is that correct?

11 A She was probably told that in the emergency
12 room, to come back.

13 Q Do you have any knowledge -- do you recall
14 calling her?

15 A No, I do not.

16 Q And so, therefore, somebody apparently called
17 her.

18 Do you know who called her?

19 MR. CAREY: Excuse me, Mr. Murray, that's not
20 what she testified to. She testified that most likely
21 she was told in the emergency room to come back for the
22 beta HCG testing.

1 MR. MURRAY: She said most likely. I said do
2 you know if anybody told her directly.

3 MR. CAREY: No, that's not the question you
4 asked, but that question is fine.

5 Do you know whether anybody told her?

6 THE WITNESS: Do I know if anyone specifically
7 told her in the emergency room or she was telephone
8 called? I cannot tell you which happened, but she would
9 have been instructed to follow up.

10 Q You have no recollection that you called her.

11 A No.

12 Q Would it be -- would you have called her under
13 certain circumstances?

14 A I would have told her in the emergency room to
15 come back for follow-up.

16 Q I'm sorry?

17 A I would have told her in the emergency room to
18 come back.

19 Q So you wouldn't have called her the next day,
20 let's say?

21 A No, I would not. The next day I would have
22 been home.

1 Q And, again, perhaps I just misheard your
2 testimony, who would have called her?

3 Somebody called her the following day to come
4 in for further tests.

5 MR. CAREY: Excuse me, let me put another --

6 (The video tape was fast forwarded.)

7 Q ... emergency room or she was told in the
8 emergency room, you have no additional knowledge where
9 that call might have come from.

10 Is that correct?

11 A I don't even know that the patient was called.

12 Q But you know the patient came back for
13 additional tests?

14 A I have learned that by reading through the
15 chart, yes.

16 Q If you didn't order the follow-up tests, who
17 did?

18 A I don't know. If I ordered them, I would have
19 ordered from the emergency room and given the patient a
20 prescription, to tell her to come back in for follow-up
21 blood work.

22 Q Who would review the follow-up tests?

1 A Excuse me?

2 Q Who would review the follow-up tests?

3 A If I were still there and I ordered them, I
4 would have.

5 Q But you didn't?

6 A I did not, no. I saw the patient in the
7 emergency room. That was it.

8 Q Did you get a copy of that record yet?

9 A Not yet.

10 Q You talked about the beta HCG levels in your
11 testimony.

12 A Yes.

13 Q And I believe you testified that the beta HCG
14 levels, low levels, very low levels, are evidence the
15 pregnancy might have been terminated.

16 Is that correct?

17 A It might -- yes, that's one thing.

18 Q Isn't it also true that low levels would also
19 be evidence of a dying or dead fetus?

20 A Yes. That's another thing, yes.

21 Q So just because they're all low levels doesn't
22 mean the fetus has been expelled or all of the fetal

1 tissue has been expelled.

2 Is that correct?

3 A In this specific instance, or are you talking
4 about theoretically, because based on --

5 Q I'm talking about generally first.

6 A Generally, first?

7 Q Yes.

8 A A level means that the pregnancy is no longer
9 viable, that it is not growing, and that the level is
10 not increasing.

11 Q I understand.

12 My question was: That doesn't necessarily mean
13 that the fetus has been expelled. It could also mean
14 that the fetus is dying or is dead but still within the
15 uterus or her body.

16 Is that correct?

17 A Yes, that's true.

18 Q Isn't it true that the only way that one could
19 really determine whether there was no -- was expelled
20 would be to either perform an adequate pelvic exam or to
21 perform a sonogram?

22 A No, that's not true.

1 Q Why is that not true?

2 A Because based on your physical exam, you can
3 sometimes tell what's going on, and the patient's
4 history.

5 Q You can sometimes tell.

6 Can you conclusively tell?

7 A With the rest of the patient's history, yes.

8 (The video tape was fast forwarded.)

9 A Yes, I do.

10 (The video tape was fast forwarded.)

11 MR. CAREY: I apologize.

12 Dick, this is one short section between two
13 longer sections that we are trying to remove. May I
14 simply read it to the jury? It's one question, one
15 answer.

16 MR. MURRAY: We'd like to see it.

17 Q And let me put it another way so perhaps

18 Mr. Carey would not feel it objectionable.

19 Do you have any explanation as to why you
20 missed the diagnosis in this case?

21 A I don't know why that happened. Based on all
22 the clinical information that I obtained, it seems very

1 straightforward to me.

2 MR. MURRAY: I think the question was missed.

3 MR. CAREY: I thought the question was asked.

4 In fact, I had gone back one more.

5 THE COURT: Hold on, gentleman.

6 (Counsel approached the bench and an
7 off-the-record discussion was held.)

8 THE COURT: What page are we on?

9 MR. DELANEY: 67, line 20, Your Honor.

10 THE COURT: Line 21 is okay.

11 (Counsel approached the bench and an
12 off-the-record discussion was held.)

13 Q Do you understand, Doctor, that there was a
14 misdiagnosis in this case?

15 A Yes, I do.

16 Q Let me put it another way so perhaps Mr. Carey
17 would not feel it objectionable.

18 Do you have any explanation as to why you
19 missed the diagnosis in this case?

20 A I don't know why that happened. Based on all
21 the clinical information that I obtained, it seems very
22 straightforward to me.

1 (The video tape was fast forwarded.)

2 Q Would a sonogram have revealed the fetus?

3 A It might have.

4 Q Why do you say might?

5 A I don't -- I'm sorry, it probably would have,
6 yes.

7 Q Thank you.

8 Would a pelvic exam reveal the fetus?

9 A A full pelvic exam was done and did not reveal
10 it.

11 Q Thank you.

12 Who did the pelvic exam?

13 A I answered that question previously. I
14 performed the pelvic exam.

15 Q Are you sure about that?

16 Are you sure it wasn't done by the medical
17 student?

18 A I am one hundred percent sure of that.

19 Q Let's go into a little bit about your
20 supervision at Fairfax Hospital. I guess my first
21 question is who supervised you, and -- if you could give
22 me that answer.

1 A I'm not sure what you mean by supervised.

2 Q You were a third-year resident.

3 Is that correct?

4 A Yes, I was.

5 Q At the time of this incident?

6 A Yes, I was.

7 Q And you were supervised by a chief resident?

8 A Yes.

9 Q And do recall what the name of that chief
10 resident was?

11 MR. CAREY: Dick, that's asked and answered.

12 MR. MURRAY: I just thought maybe she might
13 know generally. Not that specific day perhaps, but...

14 A Every day there was a different resident who
15 was chief resident who was supervising.

16 Q But you don't know the name of the person?

17 A On that day, I have no idea who was
18 supervising.

19 Q Would it vary?

20 A Excuse me?

21 Q Would the chief resident -- would the resident
22 vary?

1 A Yes, every day it was a different OB resident,
2 it was a different GYN resident, it was a different
3 chief resident.

4 Q Thank you, Doctor, because that's why I guess
5 I'm confused. I thought that perhaps it might have been
6 the same person.

7 So it could have been a different attending
8 OB-GYN attending also every day?

9 Is that correct?

10 A Every day. We were on for 24 hours straight
11 and then we would go home the following day.

12 Q Who actually paid your salary?

13 A I received my paychecks from George Washington.
14 I don't know who actually paid the salary.

15 Q What was your -- see if you can describe the
16 scenario. I'm trying to get to it.

17 Your relationship with the emergency room
18 physician who you dealt with, did, let's say, Dr. Varn
19 supervise you in any way?

20 A I don't understand what you mean by supervise.

21 Q Did he kind of approve your conduct or your
22 treatment or what you did?

1 A I'm very -- I don't really understand what the
2 question is.

3 We were -- we would provide -- if the emergency
4 room had a GYN question, they would call the GYN on
5 call. We were a consult service. We would see the
6 patient and then inform the emergency physician of our
7 findings.

8 Q And did there ever come a time when the
9 emergency room physician would question your findings?

10 I don't mean in this incident particularly, but
11 at any time.

12 A Not that I can recall.

13 Q Okay.

14 Could you tell the jury what the purpose of a
15 sonogram is?

16 A I don't understand the question.

17 Q What is a sonogram?

18 A It's an imaging technique using ultrasound
19 waves.

20 Q And what is it designed to accomplish when
21 used?

22 A To look at anatomy.

1 Q And you said that a sonogram probably would
2 have revealed a fetus in this case.

3 Could you tell us why?

4 A Because subsequently a fetus was found inside
5 the uterus, so it probably would have seen it.

6 Q Is that because the sound waves would have
7 picked it up? Is that the way it works?

8 A I don't really understand how ultrasound works,
9 but I can use them.

10 Q Somehow the ultrasound picks up the fetus or
11 picks up the waves that would reflect there's some type
12 of mass there, something like that?

13 A Yeah, I guess so.

14 Q Was there a particular policy at the hospital
15 about ordering a sonogram, about when it would be
16 ordered?

17 A No, that was left to the discretion of the
18 ordering physician.

19 Q Did you order -- had you ordered sonograms --
20 let me strike that.

21 Did you order sonograms while you were a
22 resident at the hospital?

1 A Yes, I did.

2 Q Was it done frequently?

3 A It's a tool that we as obstetricians use
4 commonly.

5 Q Would there have been any trouble in getting a
6 sonogram reading in this particular situation if you
7 believed it was appropriate to do so?

8 A I don't know.

9 Q Why don't you know?

10 A Sometimes the sono. technicians were in-house,
11 sometimes they were not, and I can't really remember the
12 specifics of Fairfax Hospital, if they had 24-hour
13 ultrasound coverage. I know at the hospital that I work
14 at now we do not have sono. technicians in the hospital
15 off hours. And I honestly cannot remember what the
16 policy was at Fairfax Hospital.

17 Q Okay. Do you recall offering her the
18 opportunity to undergo a sonogram?

19 A I don't recall the specifics of this case.

20 MR. MURRAY: If you'll just bear with me one
21 moment, Doctor.

22 Q If Mrs. Sami had told you that she definitely

1 did not pass a fetus, would you have treated this case
2 any differently?

3 A No.

4 Q Why is that?

5 A Because to a lay person, the blood clots and
6 the pregnancy tissue all looks pretty much the same, and
7 it is very rare for a patient to go sifting through all
8 the blood and the clots that is in there, to actually go
9 looking for a fetus. So usually the patients never see
10 the tissue that's in there.

11 Q Okay.

12 But would there be any difference? Because
13 this was ostensibly a 15-week old fetus.

14 Is that correct?

15 A Many times -- I don't know that to be correct.
16 15 weeks is based on the last menstrual period. Many,
17 many times patients come in and don't -- their history
18 is not always the greatest. So we don't necessarily
19 need to see a fetus to be assured that a pregnancy has
20 miscarried -- not miscarried, that there was a fetus in
21 there. And many times with a missed AB, there is no
22 fetus, it's just tissue.

1 (The video tape was fast forwarded.)

2 Q Would you turn to Page 6 of the chart?

3 A That would be the history and physical exam?

4 Q Yes.

5 A Okay.

6 Q Going down there, I think -- I'm trying to read
7 this writing, but I think you testified to it.

8 You said the cervix was closed?

9 A Yes, I did.

10 Q And you used that as a basis for determining
11 that there was a spontaneous abortion or completed
12 miscarriage.

13 Is that correct?

14 A A completed miscarriage, yes.

15 Q Why did you discount the possibility that the
16 fetus still remained even though the cervix was closed?

17 A If you look on page 2 from the emergency room,
18 where the emergency room physician had done an exam, he
19 saw on his speculum exam a large amount of blood clot
20 and tissue in the cervix.

21 Q Is that the basis?

22 A So that would have been an hour or so before.

1 It looks like she may have miscarried.

2 MR. MURRAY: All right.

3 Just one or two more minutes. Just let me
4 review some notes, and we may be finished here.

5 Q Did you ever see Dr. Varn signing any of these
6 documents?

7 A I don't recall the incident specifically.

8 Q Oh, that's correct, you didn't.

9 MR. MURRAY: Okay. I have no further
10 questions.

11 FURTHER EXAMINATION BY COUNSEL FOR THE
12 DEFENDANT

13 BY MR. CAREY:

14 Q Dr. Dill, just a few follow-up. Let's go back
15 to what you just mentioned about what the emergency room
16 physicians found upon their speculum examination.

17 A Okay.

18 Q Just so that we're clear on this, the speculum
19 is actual visualization; is it not?

20 A Exactly.

21 Q And what is that visualizing?

22 A According to their physical exam, they saw a

1 large amount of blood and clot and tissue in the vagina.

2 Q All right. And an hour or two hours later,
3 that was not found by you on examination?

4 A Exactly. There was minimal bleeding and the
5 cervix was closed.

6 Q What does that indicate to you?

7 A To me? It says that the miscarriage has
8 completed itself. If there were still tissue in there,
9 she would continue to bleed.

10 Q Do you perform an ultrasound on a completed
11 miscarriage?

12 A No.

13 Q I'm sorry?

14 A No, I do not.

15 MR. MURRAY: I didn't hear the answer.

16 MR. CAREY: The answer was no.

17 Q Do you routinely perform an ultrasound testing
18 on every OB-GYN patient that arrives at the emergency
19 room?

20 A No, I would not.

21 (The video tape was fast forwarded.)

22 Q Let me ask you this: Is an ultrasound

1 something also that a primary care physician can order?

2 A Of course.

3 Q And, in fact, you do it -- you do it
4 practically --

5 A We do it all the time.

6 MR. MURRAY: Object to the whole leading of
7 this witness. And I'm just going to make that a
8 continuing objection because I don't want the jury
9 to keep on hearing me object.

10 MR. CAREY: Dick, I'll try to rephrase my
11 questions.

12 Q Doctor, tell the jury whether or not an
13 ultrasound is a procedure that a treating OB-GYN
14 physician in an office or a clinic does or does not have
15 at his or her disposal.

16 A Any physician, any OB-GYN, any primary care
17 doctor can order an ultrasound in the emergency room,
18 can order it in the office, can order it from anywhere.
19 It can be done at any time.

20 Q Let's be clear on this as well: You performed
21 a pelvic examination of this patient.

22 A Yes, I did.

1 Q And that pelvic examination, although not
2 visual and not precise, it does include your having the
3 patient's uterus in hand?

4 A In both my hands, between my right and my left
5 hand.

6 Q And did you or did you not palpate a mass in
7 the uterus of this patient on January 26/27, 1994?

8 A I did not palpate a mass.

9 Q In fact, what was later found was not in the
10 main uterus, was it, the mass that was later found?

11 A I believe it was found in a rudimentary horn
12 off on the side. It was thought to be an ovarian, an
13 adnexal mass.

14 (The video tape was fast forwarded.)

15 Q Also, Mr. Murray asked you about a 15-week
16 gestational age.

17 Do we know when this embryo or this fetus died,
18 became nonviable?

19 A No, we don't know.

20 Q It occurred prior to the time that she arrived
21 in the emergency room, January 26, 1994.

22 Is that true?

1 A I assume so, yes.

2 Q But we don't know how long before?

3 A No.

4 But based on her beta level, that's a pretty
5 low level. It happened a while ago.

6 Q Some time, would that -- is there an educated
7 estimate for how long prior, how many weeks prior to
8 January 26, 1994?

9 A No, I couldn't even begin to speculate or
10 guess.

11 Q But the beta levels reported on that date and
12 the follow-up date indicated that it was some time
13 before?

14 A Yes.

15 Q Is that true?

16 A Yes, it is.

17 And they dropped off very quickly afterwards.
18 I mean, based on -- I guess the last -- let's see, the
19 first one was done on February 1, and then the next one
20 was done on February 7. So that's a week later. It was
21 essentially zero or nothing.

22 Q And those are consistent with the diagnosis

1 that you made on January 26?

2 A Of a completed AB, that there was no longer any
3 viable tissue in that uterus.

4 Q And, in fact, there was not viable tissue in
5 that uterus, was there?

6 A No, there was not.

7 MR. CAREY: That's all the questions I have.

8 (Dr. Dill's video deposition was concluded.)

9 MR. CAREY: That concludes Dr. Dill's
10 testimony, Your Honor.

11 THE COURT: All right. Who is your next
12 witness?

13 MR. SANDERSON: Dr. Elizabeth Garreau.

14 THE COURT: Why don't we take our morning break
15 before we get into the doctor's testimony. Be back in
16 15 minutes.

17 (A short recess was taken.)

18 THE COURT: All right. Call your next witness.

19 MR. SANDERSON: Dr. Elizabeth Garreau.

20 Whereupon,

21 ELIZABETH GARREAU, M.D.,

22 was called as a witness on behalf of the defendant, and

1 after having been first duly sworn, was examined and
2 testified as follows:

3 DIRECT EXAMINATION

4 BY MR. SANDERSON:

5 Q Good morning.

6 A Good morning.

7 Q Could you please tell the jury your name and
8 professional address?

9 A Elizabeth Garreau, G-A-R-R-E-A-U.

10 Q And your occupation?

11 A Do you want my address?

12 Q I apologize.

13 A 5201 Leesburg Pike, Suite 301, in Falls Church
14 22041.

15 Q And your occupation?

16 A OB-GYN.

17 Q Could you please provide the jury with a
18 summary of your educational background?

19 A I went to college at Buchnell in Lewisburg,
20 Pennsylvania. I went to medical school at UMDMJ/Robert
21 Wood Johnson Medical School, which used to be called
22 Rutgers Medical School when I went there. I finished

1 there in '86, and I did my internship and residency at
2 Washington Hospital Center here in D.C. where I was
3 chief resident in my last year from '89 to '90. And
4 then since June of 1990, I've been in private practice
5 in Falls Church and in D.C.

6 Q Doctor, you mentioned you served your residency
7 at Washington Hospital. Was that in the obstetrics and
8 gynecology program?

9 A Yes, it was.

10 Q Could you please describe the program for the
11 jury in terms of what you did each year and how many
12 years it was, those types of things?

13 A Okay. It was a four-year program. We are
14 academically affiliated with Hopkins, although it is a
15 private hospital program. There are four residents per
16 year, so a total of 16.

17 During the first year, you rotate through some
18 general medicine, emergency room, intensive care unit
19 and also, of course, time on OB-GYN.

20 And then during the second and third years, you
21 rotate in more detail in OB-GYN, going through surgery,
22 going through OB, doing infertility, urology, different

1 parts of our specialty, and doing more surgeries and
2 more deliveries.

3 And then during the fourth year, we rotate as
4 being the chief resident of varying services. For a
5 while, we are in charge of OB. We are in charge of GYN.
6 We are in charge of oncology, which is cancer. And then
7 on top of that, I was the chief resident, so I was in
8 charge of organizing all 16 of us.

9 Q How is one chosen to be the chief resident?

10 A The department chairman selects that. It's
11 totally his discretion.

12 Q Did your residency include consulting with the
13 emergency room physician in the emergency room?

14 A Yes, many times.

15 Q Were you ever requested to consult on occasion,
16 and upon the completion of that consultation it was your
17 conclusion the patient had completed an abortion?

18 A Yes, many times.

19 Q Can you give us an estimate of how many times
20 that occurred during the residency program?

21 A During all four years?

22 Q Yes.

1 A It seems almost every night on call. I mean
2 people come in the emergency room. It is very, very
3 common.

4 Q Could it be hundreds?

5 A Yes. I'm just trying to think of -- I mean
6 probably at least a hundred. Maybe even a couple
7 hundred. I mean it's really just so common.

8 Q Since you completed your residency, have you
9 had occasion to see patients that have completed
10 abortions?

11 A Oh, yes.

12 Q With what frequency?

13 A Probably about once a week.

14 MR. SANDERSON: Your Honor, at this time I
15 would proffer the witness as an expert in the field of
16 obstetrics and gynecology.

17 THE COURT: Do you wish to voir dire?

18 MR. DELANEY: I'm sure Mr. Sanderson can clear
19 it up, but I haven't heard any testimony about the year
20 before 1994.

21 MR. SANDERSON: She stated she's been in
22 continuous practice since --

1 THE WITNESS: June of 1990.

2 MR. SANDERSON: June of 1990.

3 MR. DELANEY: No objection then.

4 THE COURT: All right. She will be qualified
5 as an expert in obstetrics and gynecology.

6 BY MR. SANDERSON:

7 Q Just one more question about your credentials.
8 Are you board certified?

9 A Yes.

10 Q In what field?

11 A Obstetrics and gynecology.

12 Q Since what year?

13 A 1992.

14 Q Thank you.

15 Doctor, what materials have you reviewed in
16 preparation for your testimony today?

17 A The binder that I was provided which had the
18 medical records from Fairfax Hospital and from Arlington
19 Hospital. There's two hospitals. Also, the office
20 records from Dr. Falo, Dr. Rajae, and Dr. Roberts. And
21 the transcript of the deposition from Dr. Roberts, from
22 Vida Sami, Barbara Dill, Miles Varn and Julian

1 Orenstein.

2 Q Could you please tell the jury what generally
3 are the indications of a completed miscarriage?

4 A Indications? What makes one make that
5 diagnosis?

6 Q What are the signs and symptoms that would lead
7 to that diagnosis?

8 A Okay. Well, first of all, there's a missed
9 menstrual period and then a positive pregnancy test.
10 And then there is episode of bleeding or cramping,
11 frequently with passage of tissue or passage of blood
12 clot, and then the impression that the bleeding and
13 cramping has decreased is the classic presentation.

14 Q What does an obstetrician and gynecologist do
15 to assess a patient that presents with those signs and
16 symptoms?

17 A You take the history. You ask the patient when
18 was her last menstrual period, if she has not had a
19 pregnancy test already, when was it, because sometimes a
20 missed period doesn't necessarily mean that they're
21 pregnant.

22 And then if the pregnancy has been determined,

1 then you do a physical examination, see if the uterus is
2 enlarged and softened, which would indicate there would
3 still be tissue in there, or if it's smaller and firm.

4 You look at the cervix to see if it's opened or
5 closed. You examine any tissue, if there is tissue
6 present in the vagina or cervix or if the patient
7 brought in the tissue that they might have passed
8 earlier.

9 You look at the lab result. If we do do a
10 hormone level, it can help to know whether the pregnancy
11 hormone level is high or low. The lower that it is, the
12 more likely it is that the miscarriage has already
13 occurred. That's pretty standard.

14 Q I think you have indicated you reviewed the
15 emergency department medical chart for January 26 of
16 1994?

17 A Yes, I did.

18 Q We've already heard from Dr. Varn that
19 Mrs. Sami was first seen by Dr. Casper who was an
20 emergency medicine resident.

21 A Okay.

22 Q According to the record, what history did

1 Mrs. Sami give to Dr. Casper that's recorded in the
2 chart?

3 A Okay. It says that she complained of back pain
4 and lower abdominal cramping since last evening and that
5 she had had an appointment that morning with no fetal
6 heart tones and began spotting that morning with
7 progressive increasing amount of bleeding and began
8 passing some clots at 9:45.

9 Q Okay. Is there a physical exam recorded?

10 A Yes, right underneath that.

11 Q What were the findings upon the physical exam
12 performed by Dr. Casper?

13 A On the speculum exam, when they insert the
14 speculum in the vagina, it says: Large amount of blood
15 with clot and tissue. Os about 5 millimeters.

16 Q Are those findings significant?

17 A Oh, very. A large amount of blood and a large
18 amount of clot and tissue would indicate passing the
19 miscarriage tissue.

20 The os about 5 millimeters, that's a normal to
21 very barely, slightly enlarged size cervix opening which
22 would indicate -- it is what I call a closed cervix, as

1 opposed to an open cervix which would be bulging open
2 usually because there is still tissue coming out.

3 Q Would the os at 5 millimeters be consistent
4 with recently passing a large amount of blood with clot
5 and tissue?

6 A Yes.

7 Q How so?

8 A When the tissue passes out -- the cervix is
9 quite elastic. So when something passes out, it springs
10 right back closed. You wouldn't expect it to stay open.

11 Q We have also just heard from Dr. Dill. Dr.
12 Dill has testified that she also examined this patient.
13 Have you reviewed the notation that was made as a result
14 of that encounter?

15 A Yes.

16 Q Now, Dr. Dill has testified that the note of
17 her exam was actually written by a medical student.

18 A I could see that.

19 Q It was done that way for the purpose of
20 teaching the student how to write an appropriate note.
21 Is that uncommon in a teaching institution?

22 A Oh, no.

1 Q Is that something that you would do or you did
2 when you going through your residency program?

3 A Yes, many times.

4 Q I would assume that when you were a medical
5 student, that you had the opportunity to do that as
6 well.

7 A Yes.

8 Q According to that note, what history did
9 Mrs. Sami give?

10 A It says lower back pain and diffuse lower
11 abdominal pain for 48 hours. Patient also started
12 having vaginal bleeding times 12 hours. Started to pass
13 clots at 9:45 p.m. That's about it for the history.

14 Q Is that history consistent with the diagnosis
15 of a complete abortion?

16 A Yes. It's classic.

17 Q It's been suggested here that no one performed
18 an abdominal examination on Mrs. Sami. Based upon your
19 review of the medical record, is that what you conclude
20 from reviewing the chart?

21 A No. There's a clearly written abdominal exam
22 both by Dr. Casper and by Dr. Dill.

1 Q Could you please describe for the jury in
2 detail how the obstetrician-gynecologist performs a
3 pelvic exam, starting from the beginning going all the
4 way through?

5 A Okay. Well, actually, an abdominal exam is
6 part of the pelvic exam. It's another way to assess the
7 pelvis. So we always do start as an abdominal exam.
8 And we just use the flat part of the fingers and palpate
9 around the abdominal area, usually beginning up high and
10 moving down low. If a patient has indicated that a
11 certain area is painful, that's the place you'd touch
12 last, because once they're uncomfortable, they tend to
13 tighten up.

14 So if they haven't indicated one area of pain,
15 I usually start from the top down, and I think that's
16 pretty standard. You're feeling for if the muscles are
17 tense, if the patient complains of pain, if there's any
18 kind of a mass or hardness. And if there is something,
19 then you'll continue to examine. Maybe if you feel a
20 mass, you'll feel around it, try to get an idea of the
21 size and location, the consistency of it. Whether you
22 do or do not feel any abnormality, once you are done

1 with the abdominal exam, then you --

2 Q Let me stop you right there. What were the
3 findings you recorded from the abdominal exam?

4 A With Dr. Casper or Dr. Dill?

5 Q With Dr. Dill.

6 A Dr. Dill, it says normal bowel sounds. The
7 abdomen was soft, nontender, nondistended, mildly obese
8 with no palpable masses.

9 Q How would you determine that the abdomen is
10 soft, nontender, nondistended, mildly obese with no
11 palpable masses?

12 A How would you determine that?

13 Q Would you have to place your hands on the
14 abdomen?

15 A Oh, absolutely. Palpable means feelable. If
16 you cannot -- to have no palpable masses would imply
17 that you felt and you were not able to feel a mass.

18 Q When I interrupted you, I think you were going
19 to the next phase of the pelvic exam, if you would just
20 proceed.

21 A Correct. Then you walk around. I get between
22 the patient's legs. The first part is to look at the

1 external genitalia, the outside skin, see if there's any
2 abnormality, see if there's any blood, see if there's
3 anything in the physical appearance of the labia and the
4 clitoris that in any way appear abnormal. Then you feel
5 with an index finger to get an idea of the vaginal
6 opening. I do that too, select the proper size
7 instrument.

8 Then we use a speculum, which is sort of a
9 long, tubular instrument with a handle, and slide that
10 into the vagina and open it up so that we can look in
11 and see the length of the vagina, and you position it
12 and move it around so that the cervix is then in view.
13 You can see the cervix, and you can see the os or the
14 opening of the cervix. And you can see any tissue
15 that's in the vagina, and you can see the vaginal walls.

16 After whatever observations or test, Pap smear,
17 culture, whatever are performed, the speculum is then
18 removed.

19 Then we do what's called a bimanual part.

20 Q Let me interrupt you again.

21 A Sure.

22 Q If you can tell the jury, in looking at this

1 note, what findings would have been recorded during the
2 speculum portion.

3 A Okay. It says normal external genitalia with
4 no lesions. Vagina: Pink, moist with blood in the
5 vault. Cervix: L/C, which is our standard abbreviation
6 for long and closed. And no CMT, which is cervical
7 motion tenderness.

8 Q You were removing the speculum when I
9 interrupted you.

10 A Okay. Then you put your hand in the vagina and
11 put it right kind of behind or underneath the cervix and
12 press up a little bit. That takes the uterus and
13 presses it up forward toward the abdominal wall. So
14 that internal hand is pushing the organs up. Then the
15 external hand, you start up -- it depends if you felt a
16 mass up high like by the naval, you would start your
17 hand up high. If you have not felt any mass, you
18 usually start at a place about halfway between the pubic
19 hair and the naval and put the hand down. And usually
20 between the two hands, one can compress the uterus. And
21 then you feel around. You get the idea of the top and
22 the sides. And this inside hand is feeling the back of

1 the uterus. So you can get kind of around it and feel
2 the size, the shape, the consistency, whether there's
3 any kind of lumps or bumps or whether it's smooth and of
4 course judge the patient's reaction, you know, if it's
5 tender or if there's any response on her part.

6 Then you slide your finger sort of off to the
7 side, and usually then you can get the ovary and kind of
8 pin that there. Sometimes you can't exactly touch the
9 ovary, but you can get kind of on either side, and as
10 you rock back and forth, you can feel around the ovary.
11 We do that on both sides. And that's the same thing to
12 get an idea of the size, the shape, the consistency and
13 the patient's reaction when you are feeling that.

14 Q Okay, Doctor. It's documented here the uterus
15 was noted to be eight weeks in size. What does that
16 mean?

17 A Well, a normal uterus and a uterus up to six
18 weeks pregnant are the same size. For the first six
19 weeks the uterus does not enlarge. And a normal uterus
20 is frequently described as being the size of a small,
21 tightly-clenched fist or the size of a pear is often
22 used as an example. The difference between six weeks

1 and eight weeks is sort of like taking the fist and
2 relaxing it a little or getting a smaller pear versus
3 kind of a big, juicy pear would be a similarity. So
4 eight weeks size is very slightly enlarged.

5 Q For a patient that presents and reports that
6 her last menstrual period was 15 to 16 weeks ago and you
7 have an uterus of 8 weeks in size, what does that tell
8 you?

9 A That either they were never 15 or 16 weeks
10 pregnant or that if the uterus was indeed 15 to 16 weeks
11 size, that certainly a great deal of tissue would have
12 passed through and the uterus was nice and small.

13 Q Doctor, we've heard the term adnexa a few times
14 here today. Could you explain to the jury what that
15 terms means?

16 A The adnexa means the area on the side of the
17 uterus. You cannot specifically feel along and identify
18 a tube and identify the ovary until those two things are
19 separate. The tube sort of drapes over the ovary, and
20 it's nice and soft, but sometimes the tube can become
21 enlarged. Sometimes the ovary can become enlarged, but
22 you cannot tell them apart.

1 So when we say there is adnexal fullness or
2 adnexal tenderness or an adnexal mass, that just means
3 when we slid our hands off to the side and are feeling
4 to that side, we felt something there. But you cannot
5 tell with your fingers whether it's a tube or an ovary,
6 so we call it adnexa.

7 Q Is there anything documented regarding the
8 adnexa in this chart?

9 A It says adnexa, no masses, not enlarged,
10 nontender.

11 Q Thank you.

12 Doctor, I'm going to be asking you about
13 certain opinions that you formulated in this case. When
14 I ask for your opinions, would you please only give me
15 those that you hold to a reasonable degree of medical
16 probability?

17 A Okay.

18 Q Now, you are aware that Dr. Dill, upon taking
19 the history of this patient, reviewing the prior chart
20 and performing her examination, diagnosed a completed
21 miscarriage. In your opinion did that diagnosis comply
22 with the standard of care?

1 A Yes.

2 Q Could you please explain to the jury why?

3 A I feel that the history, the physical exam, and
4 the laboratory exam were all completely consistent with
5 this diagnosis. She had had bleeding and pain, had
6 passed tissue. All of that history is exactly what one
7 would expect. The cervix was closed, and the uterus was
8 small and firm and nontender, which is exactly what one
9 would expect. And also, the hormone level was much
10 lower than one would expect with a pregnancy of this
11 gestational age or this duration. The hormone level was
12 very low, which would indicate passing of the pregnancy
13 tissue. So all of the different aspects all were
14 consistent.

15 Q It's been suggested here that one of the
16 possibilities that should have been considered in this
17 case was that there was an ectopic pregnancy. Based
18 upon what you have reviewed, all of the materials, was
19 an ectopic pregnancy considered and evaluated?

20 A It looks that way. I mean even though the
21 physical exam and all was very consistent with a
22 miscarriage, it looks like they took the extra

1 precaution of asking her to come back for follow-up
2 hormonal tests, which is typically done in an emergency
3 room setting just to make sure that those sort of things
4 don't slip through. And she did come back for two prior
5 visits where the pregnancy hormone level dropped off
6 quite dramatically, as would have been expected in a
7 miscarriage.

8 Q How did the dropping hormone levels fit in to
9 the scenario involving Mrs. Sami? What does that tell
10 you?

11 A Well, in a healthy pregnancy the hormone levels
12 increase by 60 to 100 percent or basically almost double
13 every two days. So when we are looking at a pregnancy
14 and not sure where it's going, following the hormone
15 levels every couple of days is very helpful. In a
16 normal pregnancy, they will go up, up, up, pretty much
17 double every two days pretty regularly. In a
18 miscarriage, particularly when the tissue has been
19 passed or died, the hormone levels will drop off, again,
20 very dramatically.

21 In an ectopic, or a pregnancy growing in a
22 tube, where it's growing but not healthy and not normal,

1 one will see either a rise of the hormone, but a very
2 slow little rise, not a very dramatic one. Or sometimes
3 if the ectopic is really not doing very well, you will
4 sometimes see either a drop, but again a slow, little,
5 gentle drop because there still is live tissue.

6 So there are basically three good patterns:
7 dropping way off, increasing dramatically, or sort of
8 doing this wandering around, slightly up or slightly
9 down. So following them is very helpful. It tells you
10 what you need to know.

11 Q Now, does the standard of care require that a
12 physician correctly diagnose every patient that they
13 see?

14 A I'm sure people would think that, but I think
15 that would be more of a standard for God.

16 Q Let me ask you this. Was it a breach of the
17 standard of care for Dr. Dill not to discover that
18 Mrs. Sami had a uterine anomaly, namely, a bicornuate
19 uterus with this rudimentary horn?

20 A No, it was not.

21 Q It's been suggested that perhaps Dr. Dill
22 should have ordered a sonogram. Did the standard of

1 care require that she order a sonogram in this case?

2 A No, it did not require it. Her diagnosis was
3 quite clear.

4 Q Does the standard of care require that an
5 OB-GYN order a sonogram for every patient that is
6 suspected to have a miscarriage?

7 A No.

8 Q If a patient reports a last menstrual period
9 date that is 15 to 16 weeks earlier, does that
10 necessarily mean that the fetus has progressed to the 15
11 to 16-week stage?

12 A Not at all. It was not in this case either.

13 Q Can a fetus die at some time before it's
14 actually expelled from the body?

15 A It almost always does die well before it's been
16 expelled from the body because it's after the death of
17 the fetus that the hormone levels drop and the body
18 starts to get the signal saying that it should miscarry
19 the pregnancy.

20 Q When you evaluate a patient for a miscarriage,
21 at that time do know how far the fetus has progressed?

22 A No.

1 Q Would you know anything about the size of the
2 fetus?

3 A You would have an idea of what would be the
4 size if the pregnancy were still ongoing. But if the
5 pregnancy miscarried, you don't know exactly how long
6 ago that occurred.

7 Q So for a 15-week pregnancy by menstrual period
8 dates, you wouldn't necessarily expect that that patient
9 would have passed something resembling a 15-week fetus.

10 A Only if the fetus had just died moments ago.
11 If it had died weeks earlier, it would have been much
12 smaller.

13 Q Why do people miscarry?

14 A Nature is not perfect. Making babies is really
15 complicated. Women are born with half a million eggs
16 and not all of them are normal. A man in a single
17 ejaculation has at least 20 million sperm. Not all of
18 them are normal. So if you have an abnormal egg or an
19 abnormal sperm, it will cause an abnormal pregnancy.
20 Sometimes even if you have a perfect egg and sperm, when
21 they get together, the process of fertilization and the
22 two hormones combining, it's so immensely complicated, I

1 think it's pretty amazing it happens as well as it does.

2 But about one-third of conceptions miscarry.

3 It's a very high amount.

4 Q By the way, the mass that was removed from
5 Mrs. Sami in June has been described as being the size
6 of an orange. Have you reviewed anything that tells you
7 what was actually the size?

8 A Sure. There's the pathology report from the
9 actual specimen.

10 Q What does that say?

11 A It says it's roughly ovoid mass of rubbery,
12 pink-yellow tissue measuring 4.5 by 4.5 by 4
13 centimeters.

14 Q Could you put that into inches for us?

15 A It's about two inches. Two and a quarter. Two
16 and a quarter by two and a quarter by two.

17 Q As a physician, is the pathology report a
18 reliable indicator to you of what the actual
19 measurements were?

20 A It's going to be the most accurate because they
21 have the mass right there, and they can hold a ruler to
22 it and look at it. I mean it's more accurate than

1 anything.

2 Q More accurate than performing a bimanual exam?

3 A Sure. Because when you're feeling it, you are
4 sort of -- first of all, you are kind of guessing. You
5 don't have a ruler between your fingers, and also you
6 don't know what other body tissues. There's the
7 intestines that are down there. And you have the
8 abdominal wall and fat. So you are not sure exactly how
9 much of the mass. We can do a pretty good job at
10 estimating it, but that's not the level of accuracy of
11 taking the object and holding a ruler next to it.

12 Q Doctor, you have seen the discharge
13 instructions that were recorded in the chart, is that
14 true, and were given to Mrs. Sami?

15 A Yes.

16 Q Could you please tell the jury what those
17 instructions were?

18 A They told her to return to the emergency
19 department if she had a fever over 101, chills, severe
20 abdominal pain, vaginal bleeding worse than a period;
21 otherwise, to call for an appointment in four weeks, and
22 there's a telephone number.

1 Q Why tell a patient to make an appointment in
2 four weeks when you diagnose a completed miscarriage?

3 A I think it's just good medical practice. I do
4 this in my practice too whenever I've diagnosed a
5 miscarriage. I usually have them come back a few weeks
6 later.

7 Probably the most important reason is because
8 sometimes the tissue or the blood that's still in the
9 uterus can sometimes be a source for infection. You
10 want to make sure that there hasn't been any infection,
11 that the patient feels well, that her menstrual periods
12 have started again, to kind of just close the chapter
13 and make sure that it has all been completed and that
14 she's healthy.

15 Q In your opinion did those discharge
16 instructions comply with the standard of care under the
17 circumstances here?

18 A Yes, they did.

19 Q Let me ask you this. Is it within the standard
20 of care for an obstetrician and gynecologist to give
21 discharge instructions to the patient and then trust
22 that that patient will comply with those instructions?

1 A Yes, it is. I certainly hope so.

2 MR. SANDERSON: That's all the questions I
3 have, Doctor. Mr. Delaney I guess will have some
4 questions.

5 THE COURT: All right. Mr. Delaney, cross?

6 CROSS-EXAMINATION

7 BY MR. DELANEY:

8 Q Hi, Dr. Garreau. My name is Raighne Delaney.

9 A Hello.

10 Q Are you being paid in any way for your
11 testimony today?

12 A Yes, I am.

13 Q Would you tell the jury how much you're being
14 paid?

15 A I get paid \$300 an hour.

16 Q \$300 an hour. Is that from the time you leave
17 your office or your house to the time you get here until
18 the time you go back home?

19 A I haven't actually decided how to do that. I
20 usually just do it for the time that I'm actually in the
21 courtroom.

22 Q You are also paid \$300 an hour to review the

1 records in this case?

2 A Yes.

3 Q I see you brought the materials with you that
4 you actually reviewed; is that right?

5 A Yes, I did.

6 Q Would you show to the jury the two big books
7 that you reviewed?

8 A You want me to carry them over?

9 Q Just hold them up so they can see.

10 A (Indicating.)

11 Q And the other book that you reviewed?

12 A (Indicating.)

13 Q Thanks. You also said you reviewed the
14 depositions in this case. There was quite a number of
15 depositions.

16 A They're in here.

17 Q They're in there?

18 A Yes.

19 Q Could you tell us what depositions you
20 reviewed?

21 A Vida Sami, Barbara Dill, Miles Varn, Julian
22 Orenstein and Herbert Roberts.

1 Q Did you review both of Dr. Dill's depositions?

2 A It just says transcript of deposition in the
3 singular. Whatever this one was here, Tuesday, April
4 20th.

5 Q I imagine you also spent some time talking with
6 Mr. Carey, Mr. Sanderson?

7 A Yes, a little bit.

8 Q About how much time would you say that you've
9 spent reviewing this case, analyzing the case?

10 A Probably about four hours.

11 Q Only four hours?

12 A I'm a fast reader.

13 Q Have you read any medical journals or texts to
14 help further your understanding of this case?

15 A No.

16 Q So the four hours you put in so far to date and
17 I guess a couple of hours today for being in court,
18 that's about six hours?

19 A Correct.

20 Q So it's roughly \$2500 is what you're being paid
21 to testify?

22 A Correct.

1 Q It's not going to be any more than that, is it?

2 A Not unless you keep me a lot longer.

3 Q You didn't actually observe Dr. Dill examine
4 Mrs. Sami; is that right?

5 A Of course not.

6 Q You don't know whether Dr. Dill stopped to take
7 a page sometime in the middle of the examination to run
8 off somewhere else; is that right?

9 A I could not possibly know that.

10 Q You don't know whether Dr. Dill actually came
11 back to finish the examination; isn't that right?

12 A I do not know the circumstances. I know that
13 she cosigned the note. I certainly would not have
14 cosigned the note if I had not come back and completed
15 an exam.

16 Q You don't know whether anybody called Mrs. Sami
17 to give her the test results after the second beta HCG
18 test; isn't that right?

19 A Whether someone called her? I don't recall
20 whether there's a note that she was notified.

21 Q You haven't seen the mass that Dr. Roberts
22 pulled out of Mrs. Sami; is that right?

1 A Actually seen it? No. I just read the
2 pathology report describing it.

3 Q Have you ever testified as an expert before?

4 A Yes.

5 Q How many times?

6 A Once.

7 Q Was that also a medical malpractice case?

8 A Yes, it was.

9 Q Did you testify for the plaintiff or did you
10 testify for the doctor?

11 A For the doctor.

12 Q You were also paid in that case.

13 A Yes.

14 Q Were you also paid \$300 an hour?

15 A Yes.

16 Q Are you currently reviewing any other medical
17 malpractice case to testify for doctors?

18 A I am reviewing another case. I don't know
19 whether it will go to court because it doesn't seem to
20 have merit, but we'll see.

21 Q You are also being paid \$300 an hour for your
22 work on that case; isn't that right?

1 A Right.

2 Q Now, a sonogram in this case would have
3 revealed a dead baby inside Mrs. Sami. Do you agree
4 with that?

5 A I agree that a sonogram would have identified a
6 mass.

7 Q That's fair enough. Everybody else agrees with
8 that too.

9 MR. DELANEY: I have no further questions.

10 THE COURT: All right. Any redirect?

11 REDIRECT EXAMINATION

12 BY MR. SANDERSON:

13 Q Doctor, is the money that you are paid to
14 review cases as an expert witness, is that a large
15 percentage of your income?

16 A No, not at all.

17 MR. SANDERSON: That's all I have.

18 THE COURT: May Dr. Garreau be excused?

19 MR. CAREY: She may, Your Honor.

20 THE COURT: Thank you, Doctor.

21 THE WITNESS: Thank you.

22 (Witness excused.)

1 Your next witness is here at 2?

2 MR. CAREY: No, Your Honor. We were able to
3 get in touch with him, and he is able to come earlier.
4 If we could check, I guess we could do it one of two
5 ways. I was going to read a portion of the deposition
6 of the plaintiff for the jury pursuant to the rules, and
7 that would take some minutes. And then if I could check
8 after that and see.

9 THE COURT: Well, we are just about at
10 lunchtime. How long is this next doctor going to be on?

11 MR. CAREY: Well, probably a little bit longer
12 than this witness.

13 THE COURT: She was on for about half an hour.
14 We could go over lunchtime 45 minutes and get the doctor
15 on and get him or her out of here and stop the meter
16 running. But if it's going to be much more than 45
17 minutes in total, then I think we --

18 MR. CAREY: That will depend upon the
19 cross-examination.

20 MR. SANDERSON: May we approach?

21 THE COURT: All right. Sure.

22 (The following bench conference took place.)

1 THE COURT: This is the doctor from Richmond?

2 MR. SANDERSON: Yes, Dr. Partridge. I
3 understand he's here, but I haven't seen him and greeted
4 him this morning.

5 THE COURT: Let me just suggest one thing. I
6 don't know what Dr. Partridge is going to testify.
7 We've got the problem where they're going to object
8 because it's cumulative. I assume it's not cumulative.
9 I don't think we have to run him through and tell us
10 once again with the medical records.

11 MR. CAREY: I'm going to go lickety-split with
12 him, Judge.

13 THE COURT: If he has an opinion, what is it
14 based on. It seems to me we could probably do that in
15 45 minutes. You tell me.

16 MR. MURRAY: I wouldn't expect the cross would
17 be very lengthy at all.

18 MR. CAREY: I'll try to do him before lunch.

19 THE COURT: Get him on before lunch, and then
20 you can read your deposition afterwards, and then that's
21 it.

22 MR. CAREY: One five-minute witness after

1 lunch, a nurse, and that will be it at 2 o'clock.

2 MR. DELANEY: We may have a rebuttal case
3 depending on theirs.

4 THE COURT: That's all right.

5 (The bench conference was concluded.)

6 Whereupon,

7 JOHN PARTRIDGE, M.D.,
8 was called for examination by counsel for the defendant,
9 and after having been first duly sworn, was examined and
10 testified as follows:

11 DIRECT EXAMINATION

12 BY MR. CAREY:

13 Q Good morning, sir.

14 A Good morning.

15 Q Would you identify yourself and your profession
16 for the jury?

17 A I'm John Partridge. I'm an
18 obstetrician-gynecologist.

19 Q Where do you practice your profession?

20 A In central Virginia around the Richmond area.

21 Q Where did you get your training?

22 A I got my medical school training at the

1 University of Chapel Hill in North Carolina.

2 Q When did you graduate?

3 A I graduated in 1971. I did my residency in
4 obstetrics and gynecology at the Medical College of
5 Virginia. Finished in 1975.

6 Q Are you licensed to practice medicine in
7 Virginia?

8 A Yes.

9 Q When did you obtain that licensure?

10 A That was obtained in 1975.

11 Q Are you board certified?

12 A Yes.

13 Q Which board certification do you hold, sir?

14 A I'm board certified in obstetrics and
15 gynecology as of November 1977.

16 Q Would you explain to the jury a little bit of
17 what your obstetrical and gynecological practice is?
18 What do you do on a day-by-day basis?

19 A I'm a general OB-GYN doctor. I see everybody
20 from teen years or even before the teens up through the
21 eighties or nineties. I do gynecologic well visits, Pap
22 smears, breast exams. I evaluate breast lumps, evaluate

1 pelvic masses, take care of pregnant patients, deliver
2 pregnant patients, sometimes operate on cancers. So I
3 really do everything that a general OB-GYN would do.

4 Q Have you had occasion in your career to treat
5 patients who have spontaneously miscarried?

6 A Yes.

7 Q Do you have an approximation of how many times?

8 A It would be hard to estimate. I guess in the
9 thousands.

10 MR. CAREY: Your Honor, I would offer Dr.
11 Partridge as qualified to express opinions in the
12 general area of obstetrical and gynecological medicine
13 and also on the standard of care with respect to that
14 field of medicine.

15 THE COURT: Do you wish to voir dire?

16 MR. DELANEY: No, Your Honor.

17 THE COURT: All right. He will be qualified in
18 the field of obstetrics and gynecology.

19 BY MR. CAREY:

20 Q Dr. Partridge, did we ask you to review some
21 materials in this case?

22 A Yes.

1 Q Can you tell the jury what materials you have
2 reviewed?

3 A I have reviewed a variety of emergency room
4 notes from Fairfax Hospital from January 1994 through
5 June 1994; some records from Arlington Hospital,
6 including an admission under Dr. Roberts' care in June
7 1994, and at least the operative note from the previous
8 surgery, the cesarean section done I believe in 1991 at
9 Arlington Hospital; and also Dr. Roberts' office notes
10 and some notes from some of his colleagues in that
11 clinic or office.

12 Q Dr. Partridge, you have discussed your findings
13 with myself and also with Mr. Sanderson; is that true?

14 A Yes.

15 Q Now, at the time that we asked you to review
16 these materials, did you offer to do that free, gratis,
17 on a pro bono basis, or do you have a charge for such
18 services?

19 A I do have a charge.

20 Q What is that charge?

21 A The charge for reviewing documents is \$250 an
22 hour.

1 Q Doctor, can you tell the jury what is the
2 importance of history and presentation of the patient?

3 A Well, the history and presentation are one of
4 the two major legs upon which a doctor evaluates a
5 patient, the other being the physical exam. The history
6 and the presentation, meaning the complex symptoms and
7 physical things that the doctor can observe, tells the
8 doctor an awful lot about what is going on. And a
9 well-taken history and carefully observed patient will
10 often guide you as a physician as you start the
11 evaluation of the patient, narrowing down a whole lot of
12 options and focusing in on what the likely causes of the
13 patient's problems are.

14 Q Is that the normal practice of medicine in
15 order to arrive at what they call a differential
16 diagnosis?

17 MR. DELANEY: Your Honor, I would object. I
18 think that Dr. Garreau has covered this area. Is there
19 a specific area that this witness is different from
20 Dr. Garreau?

21 MR. CAREY: Your Honor, this is preliminary to
22 the presentation in June of 1994.

1 THE COURT: Overruled.

2 BY MR. CAREY:

3 Q Is that the normal process of arriving at a
4 differential diagnosis?

5 A Yes.

6 Q There's no crystal ball, is there, to tell as
7 the patient arrives what the diagnosis is going to be?

8 A I wish there were.

9 Q Now, with respect to the presentation that this
10 patient made to Dr. Roberts in June of 1994, have you
11 reviewed those records?

12 A Yes.

13 Q Was that presentation different from the
14 presentation in January of 1994?

15 A It was totally different.

16 Q How so? Explain that to the jury.

17 A The history was different, dramatically
18 different. In June of '94 the patient presented to
19 Dr. Roberts saying that she had had pain of six months
20 duration. There is some discrepancy as to exactly what
21 that pain entailed. At one point in his notes he lists
22 almost constant pain for six months. But then in his

1 history and physical he puts down that she would have
2 pain at times and then it would be better for a few
3 days.

4 But what he understood, at any rate, was that
5 there had been essentially six months of pain following
6 the apparent miscarriage in January. Whereas in
7 January, the presentation was of bleeding and pain, pain
8 in the back and pain in the lower abdomen. By June she
9 was saying it was in the right lower quadrant, right
10 lower portion of the abdomen. So by June the pain had
11 localized to one side. In January, to several
12 observers, or at least several observers' notes indicate
13 the pain was not generalized; it was in the back and
14 diffusely in the lower abdomen. So the character of the
15 pain had changed dramatically.

16 In addition, in January there was bleeding. By
17 June the bleeding was not part of the story. She had
18 had a period. It was listed as June 5th. At the time
19 we saw her on June 20th, the intermediary emergency room
20 note in April had listed a March 15th period. So we
21 know by that history she had had at least two periods.
22 There was no mention and no notation of anything odd

1 about bleeding from January until June. So bleeding was
2 not part of the differential. It was not part of the
3 picture when Dr. Roberts saw her in June.

4 Q In June of 1994 what would be the differential
5 of an OB-GYN that was examining that patient with that
6 history and that presentation?

7 A The differential would be headed by such issues
8 at ovarian cysts, pelvic masses, fibroids of the uterus
9 which are tumors of the uterus, and other structural
10 type things that might be causing pain, either on a
11 steady basis or on an off-and-on-again basis.

12 Q Now, Doctor, you've seen in the records that
13 this patient had what's called a bicornuate uterus with
14 a rudimentary horn?

15 A Yes.

16 Q Can you describe -- well, let me ask you this.
17 Do you know the incidence of that particular variation
18 of bicornuate uterus in the general population?

19 A It's extremely rare. I don't know that I've
20 ever run across mention in the literature or textbooks
21 of exactly how often this occurs. But I would estimate
22 as an educated guess roughly 1 out of a 100,000

1 patients. It's extremely rare.

2 Q With respect to this condition, the connection
3 between the horn, the uterine horn, the rudimentary horn
4 and the main uterus has been described as diaphanous.
5 Would that be thin and practically able to see through
6 it?

7 A Yes.

8 Q What does that do with respect to the mobility
9 of that uterine horn, the rudimentary horn?

10 A It means that it can flop in any direction,
11 totally basically 360 degrees. So you wouldn't know in
12 what position it might be at any given moment. It might
13 even vary as the patient changes position, standing,
14 lying, turning from side to side.

15 Q Is it required by the standard of care to
16 diagnose a rudimentary horn uterus upon pelvic
17 examination?

18 A No. The standard of care really addresses the
19 things that doctors do in the normal course of medical
20 practice. You could go a whole career. You could have
21 two or three medical careers and never run across this
22 type of rudimentary horn. The standard of care

1 certainly doesn't require it to be listed in your
2 differential or hold you accountable to be able to find
3 such a rare thing.

4 Q Now, this rare thing cannot even be visualized
5 on a sonogram; is that true?

6 A That's true. It might be, but it certainly
7 can't be counted upon as being seen on an ultrasound.

8 Q The standard of care doesn't require surgical
9 exploration in order to determine whether the physician
10 is dealing with a rudimentary bicornuate uterus.

11 A No.

12 Q Doctor, with respect -- let me ask you this.
13 What would happen to such a structure upon pelvic
14 examination? Do you have an opinion with respect to
15 that?

16 A Well, on pelvic examination such a structure
17 could go in any direction at all. It could be anterior.
18 It could be forward and felt by an examiner, or it could
19 be flipped backward and be out of reach of the examiner
20 off to one side. In addition, in a pregnant condition
21 such a horn would be so soft that it would stretch my
22 imagination how you would really be able to tell it was

1 there.

2 Q Let me ask you that, Doctor. What kind of --
3 this area of the pelvic examination, is there a
4 structure that you can describe for us to give us an
5 idea of the size of the pelvic area that we are dealing
6 with on examination?

7 MR. SANDERSON: This area was directly covered
8 by Dr. Garreau.

9 THE COURT: Overruled.

10 A The pelvic area is of a size that would not
11 exceed that of a cantaloupe and generally be a little
12 smaller than a cantaloupe. It's big enough for a baby's
13 head to come through, and a baby's head is usually
14 smaller than a cantaloupe.

15 Q What are the organs that are there? What's
16 present?

17 A Dozens of organs. You have the bladder, the
18 ureters, the sigmoid colon, the lowest part of the bowel
19 just above the rectum. You have the uterus. You have
20 the tubes, the ovaries. You have muscles coming from
21 the legs up through the pelvis. You have parts of the
22 small intestine draped down into the area. So you

1 really have, what is that, eight or nine different
2 structures at least, all within that confines.

3 Q Pretty closely packed?

4 A In very close proximity to each other. You
5 could say closely packed, yes.

6 Q Let me ask you with respect to the pelvic mass
7 that was taken out, did you review the pathology report
8 from Arlington Hospital?

9 A Yes.

10 Q Describe for the jury in layman's terms what
11 would you describe the size of that pelvic mass as.

12 A That mass was described, once it was out and
13 being measured in the pathology lab on a centimeter
14 scale, as being four and a half by four and a half by
15 four centimeters.

16 Now, to put it in terms that we all are
17 familiar with, that's the size of chicken egg. I pulled
18 an egg out this morning to eat it and looked at it, and
19 it's exactly that size.

20 Q Doctor, what's the process of calcification
21 that occurs in the pelvic mass?

22 A In this type of mass?

1 Q In this type of mass, yes.

2 A Well, in this type of mass where you've had a
3 pregnancy that dies off and yet stays in the body, there
4 is a process of laying down of calcium. Basically it's
5 the same process that causes calcium to occur in other
6 parts of the body when you get a bruise.

7 If the body resorbs tissue, say, blood or fetal
8 tissue, it resorbs a lot of what's there, but it can't
9 resorb everything as well. And so a lot of times you'll
10 have calcium left behind. Much like the rim of a lake
11 as you get into a dry season, you will see a white line
12 where the high watermark was that represents deposits
13 left behind. The calcium is like this left behind where
14 you have a resorption of other bodily fluids and
15 tissues.

16 Q What does that do to the consistency of the
17 mass?

18 A Well, when you have calcium there, it make it
19 rock like, at least much, much harder than it is in its
20 initial stage when it's spongy and soft. It turns
21 almost into a rock.

22 Q Now, the initial state that you are referring

1 to in this case was January 26, 1994?

2 A That's right.

3 Q It would be spongy and soft.

4 A Spongy at that point, so soft it would be very
5 hard to feel.

6 Q In June of 1994?

7 A June of 1994, rock-like, almost like a rock the
8 size of a chicken egg.

9 Q Doctor, for these reasons is it your opinion
10 that Dr. Dill in January 1994 did or did not breach the
11 standard of care in failing to palpate the fetus and the
12 rudimentary horn of the bicornuate uterus?

13 A It's my judgment that Dr. Dill did not violate
14 the standard of care in January when she failed to
15 detect this rudimentary pregnant horn.

16 Q Do we know where the horn was located
17 anatomically on that evening?

18 A No.

19 Q Was it a breach of the standard of care to fail
20 to order a sonogram to determine whether a fetus was
21 present in a rudimentary horn?

22 A No.

1 Q There's been talk, Doctor, about an ectopic
2 pregnancy. An ectopic pregnancy, as I understand it, is
3 a pregnancy that's continuing but is not in the uterus.
4 It's in the tube, in the fallopian tube or some other
5 structure.

6 A Well, an ectopic can be an ongoing, active
7 ectopic or it can be an involuting ectopic. But it's a
8 pregnancy that's in a site other than in the cavity of
9 the uterus.

10 Q Now, when you do a pelvic examination and you
11 have the uterus in your hand and you are feeling it, you
12 can tell whether it has a mass in it or not, whether
13 it's empty or not; is that true?

14 A You get a strong indication, yes. You get a
15 feeling of the texture, the firmness, and the size as
16 well as the position.

17 Q In the possibility that it's ectopic, is it an
18 appropriate standard of care to monitor the patient with
19 continued beta HCG testing?

20 A Yes.

21 Q What is the purpose of that?

22 A The purpose of doing those series of blood

1 tests is to measure the actual number of units of
2 pregnancy hormone. We all have pregnancy hormones in
3 our bodies. As I sit here, I know I have some. Men do.
4 Women do too whether they're pregnant or not. It's when
5 that pregnancy hormone gets above a level of ten, that
6 we say they're pregnant.

7 Now, if we have an intrauterine pregnancy
8 that's failing or if we suspect an ectopic pregnancy,
9 one way of handling this, one appropriate way of
10 handling it is to draw a series of blood measurements of
11 pregnancy hormones and see do they keep falling. A
12 normal pregnancy rises. Even an ectopic pregnancy
13 that's a threat to a person and might rupture doesn't
14 fall in a precipitous fashion. When you have a
15 significant fall from test to test -- in this case 3776,
16 to 1148, to 311, you are getting an indication that
17 wherever this pregnancy may have been, it's not a threat
18 to the patient anymore.

19 Q You say it's not a threat to the patient
20 because the pregnancy is terminated. Is that what the
21 betas reveal?

22 A Yes.

1 Q What about the fetus that may be retained in
2 the body in an ectopic situation? What's the follow-up
3 for that?

4 A We use those blood tests as the follow-up,
5 along with pelvic exam at a later time and an indication
6 for the patient to call us if she gets a flare-up of
7 pain, particularly lateralizing pain off to one side or
8 dizziness or fainting, symptoms that would point toward
9 an ectopic rupture. In the absence of that, we use the
10 falling beta values combined with the subsequent exam in
11 the office as an indication that everything has been
12 resorbed. Everything is okay. These ectopic pregnancy
13 tissues don't have to be taken down surgically in all
14 cases. In some cases they do.

15 Q With respect to the discharge instructions,
16 were the discharge instructions that were given to this
17 patient appropriate?

18 A Yes.

19 Q Was it her obligation to follow those discharge
20 instructions?

21 A Yes.

22 Q Is a physician entitled to rely in terms of the

1 standard of care upon her patient following the
2 discharge instructions that are given to her?

3 MR. DELANEY: Your Honor, I would object.
4 Dr. Garreau has covered this area.

5 THE COURT: Overruled.

6 A Would you repeat the question?

7 Q Would a physician giving discharge instructions
8 to the patient with respect to the standard of care,
9 doing the doctor's job, is she entitled to rely upon the
10 patient following the discharge instructions?

11 A Yes, we absolutely rely upon that. The doctor
12 is part of the team. The patient is part of the team.
13 We can only be as good of a team as both parties
14 involved.

15 MR. CAREY: Thank you, Doctor. That's all the
16 questions I have.

17 THE COURT: Mr. Delaney?

18 MR. DELANEY: I'll be brief, Your Honor.

19 CROSS-EXAMINATION

20 BY MR. DELANEY:

21 Q Good afternoon. Is it Dr. Partridge?

22 A Yes.

1 Q My name is Raighne Delaney. I represent Vida
2 Sami. I just have a few questions for you.

3 Are you being paid \$250 an hour?

4 A That's for review. For a day out of the office
5 for testimony like this, it's \$4,000.

6 Q \$4,000?

7 A \$4,000.

8 Q That covers your trip up here from Richmond and
9 then back to Richmond?

10 A Yes.

11 Q Did you drive up or fly?

12 A Drove up.

13 Q Now, apart from the \$4,000 you are being paid
14 to come here today, you said you are getting paid \$250
15 an hour for the review of this case?

16 A That's correct.

17 Q What did you do to review this case?

18 A Went over the documents, talked to Mr.
19 Sanderson on a couple of occasions. There were some
20 other people in the firm who initially contacted me who
21 I talked to as well. Read through the depositions that
22 were sent as well. I don't know if we mentioned those

1 earlier, but I saw depositions by Dr. Roberts, two
2 depositions by the plaintiff, and by Dr. Dill.

3 Q How much time have you spent in review for this
4 case?

5 A I haven't added it up. I would assume six or
6 seven hours.

7 Q So that's almost another 2 grand on top of the
8 4 that you are charging for today?

9 A That's probably true.

10 Q So in total you are going to be paid around
11 \$6,000 for your testimony in this case?

12 A Approximately, yes.

13 Q Have you ever testified as an expert before?

14 A Yes.

15 Q In medical malpractice cases?

16 A Yes.

17 Q About how many medical malpractice cases have
18 you testified as an expert before?

19 A In terms of testimony, it's hard to remember
20 for sure, but I would gather maybe 45, 50 through the
21 years.

22 Q So you've testified as an expert 45 or 50

1 times?

2 A Yes.

3 Q Have you ever testified on behalf of the
4 plaintiff?

5 A Sure.

6 Q About how many of those 45 times?

7 A Of the cases I have reviewed, they don't all
8 come to court, nor do they all come to depositions, but
9 I've reviewed approximately 10 or 15 percent of the
10 cases I reviewed for the plaintiffs' side.

11 Q Of those 10 or 15 percent that you reviewed,
12 how many have you actually testified in?

13 A For the plaintiff?

14 Q Yes.

15 A One or two.

16 Q So out of the 45 to 50 times you testified as
17 an expert, only once has been on behalf of the
18 plaintiff?

19 A Well, I said one or two. But relatively small
20 number.

21 Q Are you reviewing any cases now to testify as
22 an expert on medical malpractice cases?

1 A Yes.

2 Q About how many are you reviewing?

3 A I guess there are roughly ten cases that are
4 active.

5 Q Are any of those on behalf of the plaintiff?

6 A None that I can recall.

7 Q How long have you been in the practice of
8 testifying as an expert in medical malpractice cases?

9 A I guess the first case I was asked to review
10 was around 1982. And so ever since 1982 on a relatively
11 small scale.

12 Q Now, you didn't actually observe Dr. Dill do
13 any of the care in this case. Am I right?

14 A No.

15 Q You don't know whether she stopped her exam to
16 take a page; is that right?

17 A Well, the plaintiff's deposition refers to
18 that. There's nothing in the documents that supports
19 that.

20 Q But you don't know that, do you?

21 A No.

22 Q And you don't know whether Dr. Dill ever came

1 back to finish the exam; isn't that right?

2 A That's correct.

3 Q Now, if the sonogram was performed in this
4 case, it would have revealed the dead baby inside
5 Mrs. Sami; isn't that right?

6 A More likely than not, yes.

7 Q You weren't there with Dr. Roberts when he
8 pulled that dead baby outside of Mrs. Sami and actually
9 could see what it looked like, were you?

10 A No.

11 MR. DELANEY: Thank you. No further questions.

12 THE COURT: Thank you. Redirect?

13 REDIRECT EXAMINATION

14 BY MR. CAREY:

15 Q Just briefly. Doctor, do you place any
16 restriction on the type of cases you review? I mean
17 other than the fact that they're OB-GYN cases, I assume?

18 A I'll review cases for plaintiff or defense. I
19 put no restrictions on it.

20 MR. CAREY: That's all the questions I have,
21 Your Honor.

22 THE COURT: Can Dr. Partridge be excused?

1 MR. CAREY: Yes, he may.

2 THE COURT: Thank you, Doctor. Good luck on
3 95.

4 (Witness excused.)

5 Let's break for lunch. Be back at 2 o'clock.

6 (The jury left the courtroom.)

7 THE COURT: Have you had a chance to go over
8 instructions with each other?

9 MR. CAREY: We have, Your Honor. We have a
10 stack that is agreed. A much smaller stack is
11 contested. Over the lunch hour we'll make copies of
12 both so that we can go right through them when the time
13 comes. I don't think it will take very long. Your
14 Honor, one thing I will say, there are a few
15 instructions that the title was left on at the top. Is
16 it possible in some to have that blocked out?

17 THE COURT: We can magic-marker them out. All
18 right. See you at 2 o'clock.

19 (At 1 p.m. the trial was recessed to reconvene
20 at 2 p.m.)
21
22

1 AFTERNOON SESSION (2 p.m.)

2 THE COURT: All right. Are we ready for the
3 jury?

4 MR. CAREY: Yes, Your Honor.

5 (The jury returned to the courtroom.)

6 THE COURT: All right. Call your next witness.

7 Whereupon,

8 PAULEEN ABATE,

9 was called as a witness on behalf of the defendant, and
10 after having been first duly sworn, was examined and
11 testified as follows:

12 DIRECT EXAMINATION

13 BY MR. CAREY:

14 Q Ma'am, would you identify yourself, your name
15 and your profession for the jury.

16 A My name is Pauleen Abate. And I am now a nurse
17 practitioner, but in 1994 when this -- the case that I
18 am here for, I was a registered nurse in the emergency
19 room.

20 Q What emergency room was that?

21 A Inova Fairfax Hospital.

22 Q How long had you been an emergency room nurse

1 at Fairfax Hospital in 1994?

2 A Well, I started in '78, in May of '78. So in
3 1994, 16 years approximately.

4 Q That's continuous in the emergency room at
5 Fairfax Hospital during that time period?

6 A From 1978 until then, yes.

7 Q At my request did you review a medical record
8 dated April 23, 1994?

9 A Yes, I did.

10 Q Did you see that you were recorded as a nurse
11 who treated the patient by the name of Vida Sami?

12 A Yes.

13 Q Do you recall ever telling Vida Sami that the
14 reason she was having pain was she didn't know how to
15 have sex with her husband?

16 A Absolutely not.

17 Q Do you recall ever using the word dirty with
18 respect to Vida Sami at that admission?

19 A No, absolutely not.

20 Q Do you ever recall addressing any patient in
21 those terms?

22 A No, never.

1 Q Do you remember this patient?

2 A No, I don't.

3 Q How many patients on an average would you see
4 in a month or a week at the emergency room?

5 A Usually maybe 20, 25 a day.

6 A JUROR: I can't hear.

7 Q Thank you. If you could speak up?

8 A 20 to 25 a day.

9 Q So you see hundreds and thousands of patients
10 then.

11 A Oh, yes.

12 Q Do you recall ever at any time in your career
13 using the words you are dirty, you don't know how to
14 have sex with your husband? Do you recall ever using
15 those terms with a patient?

16 A No, I don't. Never. I never would.

17 Q Do you recall ever overhearing another health
18 care provider who would use such language with a patient
19 at the emergency room at Fairfax Hospital Fairfax
20 Hospital?

21 A No, it's not appropriate. It's just not done.

22 MR. CAREY: That's all the questions I have.

1 THE COURT: All right. Cross?

2 CROSS-EXAMINATION

3 BY MR. MURRAY:

4 Q You did review the medical record of that day?

5 A I did.

6 Q Isn't it a fact that on the medical record
7 there is a notation that she is to go for some check for
8 gonorrhea?

9 A There is no notation. There was none on the
10 record that I reviewed.

11 Q There is no notation on the date in April about
12 checking for gonorrhea or anything to that effect, was
13 there?

14 A There was no notation. There was some lab work
15 done. That's routinely done for a female with lower
16 abdominal pain. But there is no notation made.

17 Q But you have no independent recollection of
18 anything that occurred on that date.

19 A Say that again.

20 Q You have no independent recollection of any
21 type of conversation or ever seeing Mrs. Sami on that
22 date; is that correct?

1 A That's correct.

2 Q Weren't there two other nurses present also at
3 the emergency room at that time?

4 A There was one other nurse listed on the record
5 who admitted her to the room. And she was there
6 probably 20 minutes or so. Then I took over, according
7 to the record.

8 MR. MURRAY: All right. I have no further
9 questions.

10 THE COURT: All right.

11 MR. CAREY: Nothing further, Your Honor.

12 THE COURT: May Nurse Abate be excused?

13 MR. CAREY: She may, Your Honor.

14 THE COURT: Thank you, Nurse Abate.

15 (Witness excused.)

16 MR. CAREY: Your Honor, we would move into
17 admission Defendant's Exhibit No. 8.

18 THE COURT: Any objection to Defendant's 8?

19 MR. CAREY: Defendants' Exhibit 11, Your Honor.

20 THE COURT: Any objection to 11?

21 MR. MURRAY: No, Your Honor.

22 THE COURT: All right.

1 MR. CAREY: 12.

2 THE COURT: Any objection to 12?

3 MR. MURRAY: No objection.

4 THE COURT: All right.

5 MR. CAREY: 13?

6 MR. MURRAY: No objection.

7 THE COURT: All right.

8 8, 11, 12 and 13 -- Defendant's 8, 11, 12 and
9 13 are admitted.

10 (The documents previously marked for
11 identification as Defendant's Exhibit Nos. 8,
12 11, 12 and 13 were received in evidence.)

13 MR. CAREY: Those are the exhibits, Your Honor.

14 THE COURT: All right.

15 MR. CAREY: That concludes the defendant's
16 case.

17 THE COURT: All right. Does the plaintiff have
18 any additional testimony?

19 MR. MURRAY: No, Your Honor.

20 THE COURT: All right. Ladies and gentlemen, I
21 am going to review certain matters with counsel. After
22 we do that, you'll come back. You'll hear instructions

1 of the Court, and you'll hear closing argument, and the
2 case will be yours. We'll try to be as fast as we can
3 to get these housekeeping matters done so you can get
4 into closing argument. If you'll just step in the jury
5 room for a few moments.

6 (The jury left the courtroom.)

7 MR. CAREY: Your Honor, the ones on the top are
8 agreed to. Beginning with the red tabs are the ones
9 that we'll argue.

10 THE COURT: All right.

11 MR. CAREY: Is the first one you have
12 instruction number 3, Your Honor?

13 THE COURT: Yes.

14 MR. CAREY: That's an extraordinary instruction
15 that's given under the most extraordinary circumstances.

16 THE COURT: Why do we need this instruction?

17 MR. MURRAY: Your Honor, I was proposing it on
18 the grounds that there are some witnesses here that are
19 under the control of the hospital that just never showed
20 up that were on the records. There's the supervising
21 resident. There's the attending doctor. Those are my
22 reasons. Also, a Dr. Anton is listed on one of the

1 records where this Ms. Abate is. So I thought that
2 would be somebody that the hospital would call.

3 THE COURT: Well, I agree with Mr. Carey that a
4 missing witness instruction is an extraordinary
5 instruction to give, and I'm going to deny it.

6 The next one is 5-A.

7 MR. CAREY: 5-A needs to be compared with K,
8 Your Honor. They're both finding instructions. I had a
9 concern at the beginning of the case, and this concern
10 is still with me. There are so many different health
11 care providers that have been discussed in this case.
12 But the only evidence, the only expert evidence in the
13 case is directed against specifically Dr. Dill. Now,
14 there's another instruction, Judge, that's uncontested
15 that Fairfax Hospital takes responsibility for Dr. Dill.
16 The focus of the case, the focus of the jury's
17 deliberation should be K, was Barbara Dill, M.D.,
18 negligent, not Fairfax Hospital negligent. Fairfax
19 Hospital can't be negligent. It operates through the
20 individuals that they claim --

21 THE COURT: Is there a respondeat superior
22 instruction in there that if you find Dr. Dill

1 negligent, then Fairfax Hospital is responsible for
2 that?

3 MR. CAREY: Yes. Yes. That's theirs, Your
4 Honor.

5 THE COURT: All right. Why isn't K a better
6 instruction?

7 MR. MURRAY: Well, because, Your Honor, the
8 finding instruction is the instruction that's given
9 really as a finding. And since that respondeat superior
10 instruction is there, the jury should not be looking
11 just at Dr. Dill. They know already that Dr. Dill under
12 the respondeat superior -- that the hospital is
13 responding for Dr. Dill. Therefore, the appropriate
14 finding instruction is against Fairfax Hospital.

15 MR. CAREY: No, Your Honor --

16 THE COURT: Instruction K is not a finding
17 instruction. That's an issues instruction which I think
18 should be given. I think 5-A can be given if we just
19 substitute in 1 and 2, Barbara Dill, M.D, or Dr. Dill,
20 however you want to do it. And Dr. Dill's negligence
21 was the proximate cause of the plaintiff's injuries and
22 damages.

1 MR. CAREY: I think that's appropriate, Your
2 Honor. Actually, that may obviate the need for the
3 other instruction.

4 THE COURT: Well, I think it's helpful at the
5 beginning of the instructions to tell the jury what the
6 issues in the case are and then tell them if they
7 find -- I like to give both an issues and a finding
8 instruction. But I'm not going to change Fairfax
9 Hospital to Barbara Dill, M.D, apostrophe S or Barbara
10 Dill, M.D., was negligent and Barbara Dill, M.D.'s
11 negligence was the proximate cause of injuries and
12 damages. All right?

13 MR. CAREY: That may obviate instruction number
14 8, which was earlier agreed upon. At that point it's
15 repetitious, Your Honor. That means Fairfax Hospital is
16 liable for any and all damage. But the finding
17 instruction already covers that. You will find your
18 verdict against Fairfax Hospital if Barbara Dill was
19 negligent --

20 THE COURT: I think 8 is not redundant. I
21 think it helps the jury. So I'm going to give 5-A as
22 modified. I will also -- is there any objection to

1 giving K?

2 MR. CAREY: No, Your Honor. I think that's
3 appropriate.

4 THE COURT: All right.

5 MR. CAREY: On 9, Your Honor?

6 THE COURT: 9. Okay.

7 MR. CAREY: Compare that to the following one
8 which is C. The only difference is in the model
9 instructions, if you look on C, the last clause starting
10 with "and whether" is in brackets to be given or not
11 according to the circumstances. I think it's very
12 appropriate in this case given the different facts, the
13 varying facts that were testified to by the experts. I
14 think that's an appropriate part of the instruction.

15 MR. MURRAY: I think it was left out because I
16 do believe in this type of a situation that the witness
17 can rely on different evidence to reach his conclusion,
18 that each fact need not necessarily be proved.

19 THE COURT: I think instruction 9 is the better
20 instruction given the facts of this case, and I'll give
21 9 and I'll deny C.

22 MR. CAREY: 16 is the damage instruction, Your

1 Honor, and there are two of them. Both of them are the
2 plaintiff's. They vary in some degree. I'm not sure
3 how. It looks like it's in paragraph 2. I think 16-B
4 is more appropriate. There's no testimony that there
5 will be any future consequences of this.

6 MR. MURRAY: The only thing is, Your Honor,
7 Dr. Roberts did testify that the scar was permanent and
8 that is a permanent damage, so the jury could infer
9 consequences from that type of injury.

10 MR. CAREY: Your Honor, that's covered by 3.
11 Paragraph 2 is physical pain and mental anguish, and
12 there's been no testimony of any futures on that.

13 THE COURT: I think we should work from 16-B.
14 I'm going to deny 16-A. Let's look at 16-B. Any bodily
15 injuries sustained and their effect on her health
16 according to the degree and probable duration. I think
17 there's been evidence to support that. Physical pain
18 and mental anguish she suffered in the past, evidence to
19 support that. Stigma or deformity, any associated
20 humiliation or embarrassment.

21 MR. CAREY: May I be heard on that paragraph?

22 THE COURT: Yes.

1 MR. CAREY: Because it was clear -- Dr. Roberts
2 was eventually clear on it -- the surgery that would
3 have occurred in January was the same that occurred in
4 June.

5 MR. MURRAY: He never did say that, Your Honor.
6 He said there was a question about what he would have
7 done.

8 THE COURT: I think that's argument to the
9 jury. I think the jury could accept the
10 cross-examination that, well, he said in direct, he said
11 he could have done it by laparoscopic procedure and then
12 on cross he said, well, that would have been the first
13 time it had ever been done. But I think that's for the
14 jury to decide. Any inconvenience caused in the past, I
15 think there was certainly evidence of that, and then
16 earnings she lost because she was unable to work at her
17 calling.

18 MR. CAREY: I'll renew the objection on that
19 one, Your Honor. They haven't provided sufficient
20 evidence of any lost wages.

21 THE COURT: Did we hear any evidence? I was
22 wondering what she made that the jury could calculate

1 that?

2 MR. MURRAY: Yes, she did, Your Honor. She did
3 testify as to her biweekly salary and the duration of
4 it.

5 THE COURT: All right. I'm going to leave that
6 in there and let the jury determine it.

7 All right. 16-B will be given.

8 Then we've got S. That's just another --

9 MR. CAREY: That's mine, Your Honor. So I
10 guess we have subsumed that.

11 G. I went over with her deposition. I put it
12 in front of her and asked her questions, and she
13 admitted she said one thing and something different at
14 trial.

15 MR. MURRAY: Your Honor, if I may be heard on
16 that point. The Court will recall what counsel did was
17 attempt to try to use deposition testimony to try to
18 discredit her, but he never really did it in a way. You
19 sustained my objection. Then you never did follow
20 through on that.

21 THE COURT: I think that's right. I don't
22 remember any successful impeachment by either side using

1 the proper procedure. So I'm not going to --

2 MR. CAREY: Your Honor, if I may, I remember
3 that distinctly. I approached her and gave her the
4 deposition. And asked her if that's what she said at
5 the time. I remember that distinctly.

6 THE COURT: But you never asked her the
7 question and the answer; right? You never asked her if
8 that's what she said -- the jury never heard what the
9 question was and what the answer was in the deposition.
10 You showed it to her, and I just didn't think it --

11 MR. CAREY: It had to do with Dr. Rajae, Your
12 Honor, and I read that portion of it. And she agreed
13 that that's what she said in her deposition. It was
14 contrary to what she said at trial.

15 THE COURT: All right. It will be given. Let
16 the jury remember whether she did or didn't.

17 Patient's duty to mitigate damages.

18 MR. CAREY: I think that's pretty clear. We've
19 got a lot of expert testimony and facts to support that
20 instruction, Your Honor.

21 THE COURT: Mr. Murray?

22 MR. MURRAY: Your Honor, I think what she

1 testified, I don't think that anybody ever kind of
2 touched her on it. She pointed out why -- I mean
3 everything that she did was according to what she
4 thought the instructions were. She received that call.
5 The other time she didn't go back because she testified
6 that she was humiliated because of the --

7 THE COURT: I think that's again for the jury
8 to determine, so I'm going to give that.

9 MR. CAREY: That's it, Your Honor. They were
10 not in any particular order.

11 THE COURT: I'll put them in order and tell you
12 what order I'm going to give them.

13 MR. DELANEY: May we move the podium out of
14 way, Your Honor?

15 THE COURT: For your closing arguments, you can
16 go in the well. You are not restricted by the podium.
17 Just don't get up in the jury's face, so to speak. But
18 you can certainly be in the well.

19 MR. CAREY: Do we want to put a time on it,
20 Your Honor?

21 THE COURT: I'd like to have an estimate of
22 your time.

1 MR. MURRAY: Your Honor, I don't think I'm
2 going to be more than about 20 -- let's say 20 minutes
3 and 10 for rebuttal.

4 THE COURT: All right. If you get to 30, I
5 will just say 30 minutes. How much time are you going
6 to take?

7 MR. CAREY: I guess I'll take the same amount
8 of time, but I don't think I'll use it.

9 THE COURT: All right. I will give you a mark
10 of 30 minutes.

11 On instruction number N, I know you all have
12 agreed on it, but we've got instruction number 6, a
13 doctor has the duty to use a degree of skill and
14 diligence and so forth, and if he fails to do that, he's
15 negligent. Then we've got N, negligence is the failure
16 to use the ordinary care a person would have used under
17 the circumstances of this case. I think that's going to
18 terribly confuse the jury, and I'm not sure it's the
19 law. A doctor has a right to use what a reasonably
20 prudent doctor would use, not ordinary care. Do we
21 really need N?

22 MR. CAREY: Well, Your Honor, I think N is

1 appropriate. It's a medical malpractice case. It
2 remains a negligence case.

3 THE COURT: I know, but we have said a doctor
4 has a duty to use the degree of skill and diligence in
5 the care and treatment of his patients that a reasonably
6 prudent doctor in the same field of practice and
7 specialty in this state would have used under the
8 circumstances of this case. If the doctor fails to
9 perform this duty, then he is negligent. We have told
10 them the issues in the case, was Barbara Dill negligent.
11 Then we give them the standards for negligence. But
12 then we say negligence is a failure to use ordinary
13 care.

14 MR. CAREY: Your Honor, I think instruction N
15 would appropriately come right after instruction 6.

16 MR. MURRAY: I don't think it's necessary. I
17 think it's just confusing to the jury.

18 THE COURT: I think it's terribly confusing.
19 I'm not going to give it.

20 I intend to read the instructions in the
21 following order:

22 K, which is the issues instruction.

1 1, you are the judges of the facts.

2 P, the fact that the plaintiff was injured does
3 not of itself entitle the plaintiff to recover.

4 J, don't base your verdict on sympathy, bias,
5 etc.

6 2, one party testifies unequivocally to facts
7 within his own knowledge, etc.

8 4, any fact that may be proved by direct may be
9 proved by circumstantial.

10 9, the weight to be given to the testimony of
11 an expert.

12 G, inconsistent statements by a party.

13 H, don't consider a matter rejected or
14 stricken.

15 6, the definition of negligence of a doctor.

16 Z, determine the degree of care required of a
17 defendant by considering only expert testimony.

18 Y, the fact that it was unsuccessful does not
19 by itself establish negligence.

20 O, the plaintiff has the burden on negligence
21 and proximate cause.

22 11, definition of further weight of the

1 evidence.

2 Q, the definition of proximate cause.

3 8, the respondeat superior instruction, Fairfax
4 Hospital.

5 The finding instruction, 5-A.

6 16-B, the damage instruction.

7 T, the burden is on the plaintiff to prove each
8 item of damage.

9 AA, mitigation of damages.

10 All right. All ready for the jury?

11 MR. CAREY: Yes, Your Honor.

12 (The jury returned to the courtroom.)

13 THE COURT: Ladies and gentlemen, you have now
14 heard all the evidence in the case. Before you hear
15 closing argument, I'm going to read the instructions of
16 law that you are going to apply in deciding this case.
17 You are going to have these instructions in the jury
18 room with you, but I'd appreciate if you would listen to
19 them now because counsel may be referring to these
20 instructions during their closing arguments.

21 When you get into the jury room, you are going
22 to notice that some of the instructions are lettered and

1 some are numbered and there are letters and numbers
2 missing and they don't flow in any particular order.
3 Don't concern yourself about those missing letters or
4 numbers. That's just the way we keep track of these
5 instructions while we are deciding which are the
6 appropriate ones to be given.

7 The Court instructs the jury as follows:

8 Your verdict must be based on the facts as you
9 find them and on the law contained in all of these
10 instructions.

11 The issues in this case are:

12 Was Barbara Dill, M.D., negligent?

13 2. If she was negligent, was the negligence a
14 proximate cause of the injury? On these issues, the
15 plaintiff has the burden of proof.

16 3. If the plaintiff is entitled to recover,
17 what is the amount of her damages? On this issue the
18 plaintiff has the burden of proof.

19 Your decisions on these issues must be governed
20 by the instructions that follow.

21 You are the judges of the facts, the
22 credibility of the witnesses, and the weight of the

1 evidence. You may consider the appearance and manner of
2 the witnesses on the stand, their intelligence, their
3 opportunity for knowing the truth and for having
4 observed the things about which they testified, their
5 interest in the outcome of the case, their bias, and, if
6 any have been shown, their prior inconsistent
7 statements, or whether they have knowingly testified
8 untruthfully as to any material fact in the case.

9 You may not arbitrarily disregard believable
10 testimony of a witness. However, after you have
11 considered all the evidence in the case, then you may
12 accept or discard all or part of the testimony of a
13 witness as you think proper.

14 You are entitled to use your common sense in
15 judging any testimony. From these things and all the
16 other circumstances of the case, you may determine which
17 witnesses are more believable and weigh their testimony.

18 The fact that the plaintiff was injured does
19 not of itself entitle the plaintiff to recover. You
20 must not base your verdict in any way upon sympathy,
21 bias, guesswork or speculation. Your verdict must be
22 based solely upon the evidence and the instructions of

1 the Court.

2 When one of the parties testifies unequivocally
3 to facts within his own knowledge, those statements of
4 fact and the necessary inferences from them are binding
5 upon you. He cannot rely on other evidence in conflict
6 with his own testimony to strengthen his case. However,
7 you must consider his testimony as a whole, and you must
8 consider a statement made in one part of his testimony
9 in the light of any explanation or clarification made
10 elsewhere in his testimony. Any fact that may be proved
11 by direct evidence may be proved by circumstantial
12 evidence. That is, you may draw all reasonable and
13 legitimate inferences and deductions from the evidence.

14 In considering the weight to be given to the
15 testimony of an expert witness, you should consider the
16 basis for his opinion and the manner by which he arrived
17 at it. If you believe from the evidence that a party
18 previously made a statement inconsistent with his
19 testimony at this trial, that previous statement may be
20 considered by you as evidence that what the party
21 previously said was true. You must not consider any
22 matter that was rejected or stricken by the Court. It

1 is not evidence and should be disregarded.

2 A doctor has a duty to use the degree of skill
3 and diligence in the care and treatment of his patient
4 that a reasonably prudent doctor in the same field of
5 practice or specialty in this state would have used
6 under the circumstances of this case. If a doctor fails
7 to perform this duty, then he is negligent.

8 You must determine the degree of care that was
9 required of the defendant by considering only expert
10 testimony on that subject. The fact that a health care
11 provider's efforts on behalf of his patient were
12 unsuccessful does not by itself establish negligence.
13 The plaintiff has the burden of proving by the greater
14 weight of the evidence that the defendant was negligent
15 and the defendant's negligence proximately caused injury
16 to the plaintiff.

17 The greater weight of all the evidence is
18 sometimes called the preponderance of the evidence. It
19 is that evidence that you find more persuasive. The
20 testimony of one witness whom you believe can be the
21 greater weight of the evidence.

22 A proximate cause of an accident, injury, or

1 damage is a cause which in natural and continuous
2 sequence produces the accident, injury, or damage. It
3 is a cause without which the accident, injury or damage
4 would not have occurred.

5 Fairfax Hospital is liable for all damages, if
6 any, proximately caused by Barbara Dill, M.D. You shall
7 find your verdict for the plaintiff and against Fairfax
8 Hospital if the plaintiff has proved by the greater
9 weight of the evidence that: 1, Barbara Dill, M.D. was
10 negligent; and 2, Barbara Dill, M.D.'s negligence was
11 the proximate cause of the plaintiff's injuries and
12 damage. You shall find your verdict for the defendant
13 if the plaintiff has failed to prove either negligence
14 or proximate cause.

15 If you find your verdict for the plaintiff,
16 then in determining the damages to which she is
17 entitled, you shall consider any of the following which
18 you believe by the greater weight of the evidence was
19 caused by the negligence of the defendant:

20 1. Any bodily injuries she sustained and their
21 effect on her health according to their degree and
22 probable duration.

1 2. Any physical pain and mental anguish she
2 suffered in the past.

3 3. Any disfigurement or deformity and any
4 associated humiliation or embarrassment.

5 4. Any inconvenience caused in the past.

6 5. Any earnings she lost because she was
7 unable to work at her calling.

8 Your verdict shall be for such sum as will
9 fully and fairly compensate the plaintiff for the
10 damages sustained as a result of the negligence of the
11 defendant.

12 The burden is on the plaintiff to prove by the
13 greater weight of the evidence each item of damage she
14 claims and to prove that each item was caused by the
15 defendant's negligence. She is not required to prove
16 the exact amount of her damages, but she must show
17 sufficient facts and circumstances to permit you to make
18 a reasonable estimate of each item. If the plaintiff
19 fails to do so, then she cannot recover for that item.

20 A patient who is injured as a result of a
21 physician's negligence has a duty to follow the advice
22 of her doctor. If a patient fails to perform this duty,

1 she may not recover for any portion of the harm which by
2 such care she could have avoided.

3 All right. Mr. Murray?

4 (Closing statements were given.)

5 THE COURT: All right, ladies and gentlemen.
6 This is an important case both for the plaintiff and
7 defendant. In order to reach a verdict, each of you
8 must agree upon that verdict. When you first get to the
9 jury room, select a leader. He or she should see to it
10 that each of you has an opportunity to discuss the
11 issues in this case fully and fairly. You may now
12 retire to consider your verdict.

13 (The jury retired from the courtroom to
14 deliberate upon its verdict.)

15 THE COURT: Would counsel review the verdict
16 forms, please?

17 MR. CAREY: Fine, Your Honor.

18 THE COURT: All right.

19 (A recess was taken while the jury
20 deliberated.)

21 (The jury returned to the courtroom.)

22 THE CLERK: Members of the jury, have you

1 reached your verdict?

2 THE FOREMAN: Yes.

3 THE CLERK: Is the jury verdict unanimous?

4 THE FOREMAN: Yes.

5 THE CLERK: Thank you.

6 We, the jury, on the issue joined in the case
7 of Vida Sami, plaintiff, vs. Fairfax Hospital,
8 defendant, find our verdict in favor of the defendant.

9 THE COURT: Do you wish the jury polled?

10 MR. MURRAY: Yes, Your Honor.

11 THE COURT: All right.

12 THE CLERK: If this is your verdict, please
13 answer in the affirmative when I call your name.

14 Howard Smith?

15 JUROR SMITH: It is.

16 THE CLERK: Joan Dickey?

17 JUROR DICKEY: It is.

18 THE CLERK: Betty Campbell?

19 JUROR CAMPBELL: It is.

20 THE CLERK: Jay Simbulan?

21 JUROR SIMBULAN: It is.

22 THE CLERK: Samuel Budak?

1 JUROR BUDAK: Yes.

2 THE CLERK: And Gloria Agnew.

3 JUROR AGNEW: Yes.

4 THE CLERK: Thank you.

5 THE COURT: All right, ladies and gentlemen.
6 This concludes your duty as jurors on this case. On
7 behalf of Chief Judge Bach and all of us here in the
8 court, I want to thank you for performing that duty. We
9 are all aware that each and every one of you doubtless
10 had things you preferred to be doing the last two days.
11 But jury duty certainly is one of the most important
12 duties that a citizen can perform, and I thank you for
13 performing it. The deputy will show you out.

14 (The jury left the courtroom.)

15 THE COURT: Do counsel want a suspending order
16 on the judgment?

17 MR. DELANEY: Yes, Your Honor.

18 THE COURT: All right.

19 All right. If counsel would endorse the order.

20 Thank you, Mr. Murray and Mr. Carey for a very
21 well-tried case.

22 MR. CAREY: Thank you, Your Honor. We

1 appreciate your time.

2 MR. MURRAY: Thank you, Your Honor.

3 (At 4:30 p.m. the proceedings in the
4 above-entitled matter were concluded.)

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CERTIFICATE OF REPORTER

I, Laurel P. Platt, do hereby certify that the foregoing proceedings were taken by me in stenotype and thereafter reduced to typewriting under my supervision; that said proceedings are a true record of the testimony given by said witnesses; that I am neither counsel for, related to, nor employed by any of the parties to the action in which these proceedings were taken; and further, that I am not a relative or employee of any attorney employed by the parties hereto, nor financially or otherwise interested in the outcome of the action.

Given under my hand this 1st day of September, 1999.



Laurel P. Platt,
Registered Diplomate Reporter

Copy for L171033
KL

VIRGINIA
IN THE CIRCUIT COURT OF FAIRFAX COUNTY

Vida Sami) L NO. 171033
Plaintiff(s),)
VERSUS)
Fairfax Hospital) FINAL ORDER
Defendant(s).) (JURY TRIAL)

THIS CAUSE came on for trial upon the pleadings filed by the parties herein and

UPON CONSIDERATION of the evidence presented, the argument of counsel, the rulings of the Court and the verdict of the jury, it is,

ADJUDGED, and ORDERED that judgment be and is hereby entered in favor of the Defendant(s).

AND THIS CAUSE IS ENDED

Entered this 14 day of July 1999.

M. LaShone Reid
JUDGE

I ask for this: [Signature]
Counsel for Defendant(s)

Seen and [Signature]:
Counsel for Plaintiff(s)

SUSPENDING ORDER

It is ORDERED that the Final Order be suspended for fourteen (14) days from this date so that the parties may submit an agreed Amended Final Order, if they should desire. This tolls the running of the twenty-one (21) day provision in Rule 1:1, thus allowing a total of thirty-five (35) days for entry of an Amended Final Order.

Entered this 14 day of July 1999.

M. Sanchez Kord
JUDGE

Richard W. [Signature]
Counsel for Plaintiff(s)

[Signature]
Counsel for Defendant(s)