

ENCINO-TARZANA REGIONAL MEDICAL CENTER

JUDICIAL REVIEW HEARING

In the Matter of)
)
GIL N. MILEIKOWSKY, M.D.)
)
_____)

VOLUME VII
(Pages 769 - 921)

Crowley

Encino-Tarzana Regional Medical Center
18321 Clark Street
Tarzana, California 91356

Monday, September 24, 2001

REPORTED BY:
Theresa A. Crowley
CSR No. 5513, RPR

File No. 9-3-010



Crowley Reporting

Certified Shorthand Reporters
2420 West Carson Street • Suite 210
Torrance, California 90501
(310) 787-4096

1 APPEARANCES:

2

3

THE HEARING OFFICER:

4

DANIEL H. WILLICK, ESQ.

5

1925 Century Park East

6

Seventeenth Floor

7

Los Angeles, California 90067

8

(310) 286-0485

9

10

FOR GIL N. MILEIKOWSKY, M.D.:

11

GIL N. MILEIKOWSKY, M.D.

12

2934 1/2 Beverly Glen Circle

13

PMB 373

14

Los Angeles, California 90077

15

(310) 858-1300

16

17

FOR THE MEDICAL EXECUTIVE COMMITTEE:

18

RICHARD WULFSBERG, M.D.

19

ENCINO-TARZANA REGIONAL MEDICAL CENTER

20

18321 Clark Street

21

Tarzana, California 91356

22

(818) 990-1067

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APPEARANCES:

(Continued)

MEMBERS OF THE HEARING PANEL:

Lawrence Pleet, M.D.

Darryl Ballin, M.D.

Jean Miyashita, M.D.

Michael Persky, M.D.

Zahi Nassoura, M.D.

Arthur Fleisher, M.D.

Marlon Brooks, M.D.

Also Present:

Debra Miller, Director of Medical

Staff Services

Layne Hastings

Jose Spiwak, M.D.

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I N D E X

WITNESSES	DIRECT	CROSS	REDIRECT	RECROSS
FOR THE MEC				
Gerald Clute		775	899, 916	904
				912, 918

Examination by Dr. Nassoura - page 893

Examination by Dr. Miyashita - page 894

Examination by Dr. Fleet - page 895, 898

Examination by Dr. Brooks - page 897

Examination by Dr. Ballin - page 910

MEC EXHIBITS REFERENCED

118	12-24-99 Clute letter to Mileikowsky
106	7-16-99 credentials committee meeting minutes
121	7/4-6/00 ETRMC security record

DOCUMENTS ATTACHED BY DR. MILEIKOWSKY

Mileikowsky v. Tenet Preliminary Injunction
8-28-00 Hafer memo to Office Managers

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TARZANA, CALIFORNIA

Monday, September 24, 2001, 6:50 p.m.

P R O C E E D I N G S

THE HEARING OFFICER: Why don't we go on the record.

This is a continuation of the medical staff hearing concerning Dr. Mileikowsky and allegations brought by the Medical Executive Committee.

Before we begin with continuation of the testimony by Mr. Clute, I'd like to remind everybody that we have some dates for the hearings in October. And you'll receive notice of this; but if you want to write it down now, it would be a good idea.

We have hearing dates confirmed for Tuesday, October 16; Monday, October 22; Tuesday, October 23; and Monday, October 29. This is because of limitations in the availability of various participants in the hearing.

Now, a question that I would raise is whether, because we want to try and move this along -- whether I can impose on anybody to be available on any weekend days in October. I will not ask you to respond to that here and now, but I would -- you'll be receiving a call

1 from Ms. Miller in the medical staff office asking for
2 dates.

3 And I would say you'd better ask for dates in
4 November and December because four days in October, I
5 don't think, are going to get us there.

6 And at the time she makes the call, I would ask
7 her to ask you if -- pretty, pretty please -- there are
8 any weekend days in October when you would be available
9 because I think if we could get one or more weekend days
10 where we spend a substantial amount of time, we can move
11 through this much more quickly. So in effect what I'm
12 doing is pleading with you, for whatever that's worth,
13 to try and make some weekend time available, if you can.

14 Having said that and having given you the dates
15 already confirmed in October, we will continue with the
16 cross-examination of Mr. Clute, which is where we left
17 off last time.

18 Mr. Clute, thank you for coming again. You're
19 still under oath from your prior testimony.

20 THE WITNESS: I see.

21 THE HEARING OFFICER: And we will continue from
22 there.

23 Dr. Mileikowsky, you have some more questions?

24 DR. MILEIKOWSKY: Thank you very much. Yes.

25 / / /

1 CROSS-EXAMINATION (Resumed)

2 BY DR. MILEIKOWSKY:

3 Q Good evening, Jerry. I still can call you
4 Jerry; right?

5 A Please.

6 Q All right.

7 Last time we were trying to explore what might
8 be your perception, because we know each other for a
9 long time, and I know that you are capable of lateral
10 thinking and beyond a small, narrow angle, and I was
11 trying to explore how you would perceive an escort on a
12 physician, any physician, as threatening from the point
13 of view of the physician.

14 Have you ever thought about it?

15 A To any physician, whether it would be
16 threatening?

17 Q Has there been in your career of -- what? -- 15
18 or 20 years in the hospitals?

19 A Closer to 27.

20 Q 27 since you've been in X ray.

21 A Right.

22 Q In 27 years in several hospitals, not just one,
23 do you recall ever seeing any physician being escorted
24 by uniformed guards?

25 A Never.

1 Q Never.

2 Yet if I recall -- correct me if I'm wrong --
3 was that your suggestion or was that the suggestion of
4 someone else to have me escorted?

5 A That's a good question. I don't believe that I
6 initiated it. I supported it because I believed that it
7 was the right thing to do, but don't know if I initiated
8 it.

9 Q Who initiated it, to the best of your
10 recollection?

11 A I believe Mr. Surowitz initiated it.

12 Q And where did Mr. Surowitz get the idea? Do
13 you know who suggested it to Mr. Surowitz?

14 A I don't know.

15 Q Now, why at the time did you think it was a
16 good idea?

17 A Well, the previous experience where you were in
18 the operating room and my perception of that particular
19 event back in December of '99 was that it was a hostile,
20 aggressive, very uncomfortable act, and there were
21 several employees that were affected deeply by it. And
22 I had heard by them when I was there that they felt
23 threatened. So I considered it an appropriate act.

24 Q But you did say last time that you never felt
25 threatened by me, and we know each other for 15 years.

1 A That's true.

2 Q You also said that you were aware of the fact
3 that on December 17, '99, I asked for you; correct?

4 A Right.

5 Q But I'm still not clear about, number one,
6 knowing that I asked for you, and in view of the fact
7 that we have had a very friendly rapport for over 15
8 years, why haven't you come over to me after the surgery
9 or left a message where I could have called you after
10 the surgery?

11 A Actually, I went up to the operating room, and
12 at the time there were enough employees -- I don't know
13 how many, but there were enough employees that were very
14 disturbed, a couple of doctors that were very
15 disturbed -- that it occurred to me that in my role,
16 that I needed to be supportive of a protective
17 environment where people don't have to be abused. And I
18 really thought it was an abusive and terrible event,
19 and it was frightening to a lot of people.

20 So from my perspective it seemed appropriate.

21 Q But, Jerry, you know that a coin has more than
22 one side. Have I ever been abusive to you in 15 years?

23 A No.

24 Q All right.

25 Have I ever threatened you in any way or form

1 or shape?

2 A No.

3 Q Have you felt threatened by me in any form or
4 shape?

5 A No.

6 Q So still try to answer my question because the
7 question was --

8 A Sure.

9 Q -- why didn't you try to find out if I had
10 called you from the operating room, I must have -- did
11 you perceive that I was disturbed by the situation?
12 Troubled is appropriate.

13 A Well, at the time my chief concern, to be
14 honest, was the staff. It wasn't a personal thing. I
15 wasn't personally angry or felt threatened by you, but I
16 do know that the staff did. Whether I feel or not
17 didn't seem relevant.

18 So did I then extend myself to call you up?
19 No. I think that the event was a poor event and spoke
20 for itself.

21 Q Let me ask you a broad question. In 15 years
22 have you ever seen a surgeon call a COO of the hospital,
23 stat?

24 A Well, yeah. A number of reasons.

25 Q And how did the COO respond? Did he ever talk

1 to that surgeon who asked for him?

2 A Oftentimes -- it's even happened to me, and I
3 have responded by going to the operating room. And when
4 I have arrived at the operating room, sometimes I've
5 spoken with the surgeon; sometimes whatever happened is
6 now diffused and seemingly moving forward, so it took --
7 events seemed to have taken care of themselves.

8 Q And testimony shows, yours as well as others,
9 that you felt and others felt that the surgery was
10 proceeding, and so there was no reason to interfere; is
11 that correct?

12 A That the surgery was proceeding?

13 Q The surgery that I was performing, I was
14 actually performing. And so there was a surgery going
15 on.

16 A Well, when I responded, you mean?

17 Q You were not there.

18 A I don't know what you're asking.

19 Q Very simple.

20 By the time you came to the operating room
21 area, you were in street clothes; correct?

22 A Correct.

23 Q You didn't change into scrubs; correct?

24 A No, I did not.

25 Q Were you informed of the fact that I actually

1 asked and wished, if possible, if you had the
2 opportunity to be in scrubs and come into the operating
3 room? Was that message anytime relayed to you?

4 A Yes, it was.

5 Q So since you were physically in the area in
6 street clothes, what prevented you from -- since you
7 know me for 15 years, you didn't feel threatened by me,
8 so what prevented you from putting on scrubs, like
9 Dr. Spiwak here, and walking into the operating room?

10 A At that time I made a decision that it was best
11 to let things proceed. I had already spoken with
12 Dr. Fenmore and Dr. Morrow, and it was determined that
13 it would be best to, in order to diffuse the whole
14 situation, let you proceed with the surgery and let
15 Dr. Yamini go ahead and participate.

16 Q Now, let's try to focus on the original
17 question. Once the surgery was over, why didn't you
18 call me? Why didn't you leave me a number where to call
19 you?

20 A I was very troubled about the whole event. I
21 truly was. Instead, what I chose to do was sit down,
22 ruminate on it, and at some point -- I don't remember
23 how many days thereafter -- I sent you a letter.

24 Why didn't I call you? Well, it was such a
25 weird experience and an unusual one that I just elected

1 to proceed on the path that I did. But I didn't elect
2 to go in or call you. And I thought you might call me.

3 Q I already asked for you, stat. Then I get a
4 letter which, from my perspective, is one-sided.

5 Why at that time, before writing a letter --
6 let me back up for a second.

7 Forget about the December 17, 1999 event. A
8 nurse reports to you a problem with a patient. You hear
9 from the nurses, other nurses, the doctor. Who else do
10 you ask about what happened so that you have a
11 fact-finding for yourself before you have the knowledge
12 and, for yourself, the level of confidence that you know
13 what really happened? Would you call the patient?

14 A I might.

15 Q You never -- you don't always call the patient
16 to find out?

17 A No, not always.

18 To best answer the question, my feeling was it
19 was outrageous and it was shameful.

20 Q But wait a second.

21 DR. WULFSBERG: Let him finish his answer.

22 DR. MILEIKOWSKY: You're right. I apologize.
23 Go ahead. Sorry.

24 THE WITNESS: And from my own personal
25 perspective, as shocked as I was that this had occurred,

1 I kept in context the fact that I was up in the
2 operating room. These nurses around me and physicians
3 around me were all extremely upset and disturbed, not to
4 mention that the person with whom you had the
5 interactions is a pretty small person. And I personally
6 looked at that as a horrible event. And I thought your
7 behavior was so outrageous, I went to the next step; and
8 that is to say, "You should never do this under any
9 condition."

10 And you're right. I didn't explore or call
11 you. But in my judgment, I've never seen anybody do
12 that before ever.

13 BY DR. MILEIKOWSKY:

14 Q Sorry. I don't mean to interrupt. Are you
15 done?

16 A Well, I will just say one other thing.

17 Nor have I had anybody complain to me in all my
18 28 years that they have had this happen to them.

19 Q Now, Jerry, you just said something very
20 interesting. You said you have never seen anyone do
21 something like this. What did you see?

22 A I only saw the staff and their anxiety.

23 Q So you saw nothing. You saw nothing. You saw
24 nothing.

25 A I saw --

1 Q What did you see?

2 DR. WULFSBERG: Let him answer the question.

3 DR. MILEIKOWSKY: Okay.

4 Q Sorry.

5 A I saw the distress of these people. That's the
6 best I could do to analyze what happened to those folks.

7 Q But -- I'm sorry.

8 A I'm done.

9 Q All right.

10 Did you see my stress?

11 A No.

12 Q Did you see my perspective and how outraged I
13 was at that time? And did you in any way, form, or
14 shape, try, even mentally in your mind without even
15 calling me, to imagine someone you know -- anyone; not
16 me, someone you know for 15 years that you know has
17 never raised his voice or never has caused any nurses
18 that you know of or doctors to lead to such a
19 situation -- were you not interested to know why a
20 person who is usually considered a gentleman, educated
21 in Europe, highly trained, an officer of committees for
22 a whole hospital -- why would he be upset? That never
23 came to your mind?

24 A No. Of course, I was sure that you found it
25 very upsetting.

1 Q But what did I find upsetting?

2 A That you were ready to start a procedure; and
3 that we had asked that you follow the rules and
4 regulations of the hospital; and that it occurred just
5 before or just about when you were ready to start the
6 procedure. I could imagine your being upset. But I
7 couldn't imagine taking it out on the staff in the way
8 that you did. I just couldn't imagine that.

9 Q But you wouldn't know unless you asked me.

10 A Well, I think I knew based on what the people
11 did around me.

12 Q Do you perceive anything that might be
13 defective or not, maybe, ideal in just hearing one side
14 of a story without seeking the other side -- or if there
15 are three or four sides? You know, if there's a car
16 accident, you have five witnesses, you may end up with
17 five different stories.

18 A Sure.

19 Q So why were you not interested, is my
20 question --

21 A Sure.

22 Q -- to find out what might be Dr. Yamini's point
23 of view? What was Kathy Herbert's point of view? What
24 was my point of view?

25 I was not the only one. Did you ever call

1 Dr. Yamini to find out what happened?

2 A No, I didn't.

3 Q Why?

4 A Again, the event, in and of itself, I don't
5 think was the point. The reaction to the staff and how
6 they felt threatened by you was the issue at hand.

7 I can't imagine what possible set of
8 circumstances would drive you that direction. But my
9 own perspective was, no matter what it was, it's wrong
10 to behave that way with our staff.

11 Q Done?

12 A Yeah.

13 Q You know me for 15 years. As a physician, what
14 comes first for me? Are my patients coming first?

15 A I imagine, yes.

16 Q Aren't you the one -- and I believe you stated
17 last time -- that you told me when I was in your office
18 once on a casual opportunity -- you said, "Gil, patients
19 love you. You're a great doctor. What's the problem?"

20 Wasn't that something like that you said?

21 A That's close.

22 Q So obviously for me, that's the whole reason
23 for me to be a physician is patients.

24 A Right.

25 Q Did you, in your mind, conceive that maybe I

1 felt my patient was threatened by a situation which I,
2 at that time, perceived as dangerous? Has that crossed
3 your mind?

4 A Well, what crossed my mind at the time was that
5 reasonable people discuss alternatives to the
6 situation. It seemed to me that -- it still seems to me
7 that if you just simply had said, "Look. How can we
8 help to resolve this problem? Clearly I have to do this
9 patient, and the patient's care is really preeminent in
10 my mind" I could understand that. But then going to the
11 extreme of the screaming and threatening somebody, I
12 think -- I mean, you asked my opinion. I think you put
13 your own patient in jeopardy.

14 Q How?

15 A By not being reasonable and saying, "There's
16 got to be a better way to deal with this situation,"
17 instead of profoundly affecting the staff and getting in
18 their face.

19 I can understand your wanting to proceed, but I
20 think reasonable people do it in a different way.

21 Q Let me ask you a question: Has anybody told
22 you how many times I told Marlene Hafer to leave the
23 room before I raised my voice?

24 A No.

25 Q Had it ever crossed your mind that Gil, who's

1 usually a calm fellow, may have asked Marlene more than
2 once in a calm voice to please leave the room? That
3 never crossed your mind?

4 A Well, but that's her job.

5 Q But that's the question. My question should be
6 different maybe. Okay.

7 If a surgeon tells anyone to get out of the
8 room, is it your understanding that -- once the whole
9 surgical team is in the operating room, the patient is
10 under anesthesia now, the patient is prepped and draped,
11 the surgeon and assistant surgeon are ready to perform
12 the incision, who is the so-called captain of the ship?

13 A The surgeon is.

14 Q The surgeon.

15 So if the surgeon, for whatever reason, has
16 determined that it is the best interests of the patient
17 that an individual who's not scrubbed, who's in street
18 clothes, and who comes back to deal with an issue that
19 has been already discussed four times before, and is
20 asking that individual to leave the room -- how many
21 times should that surgeon ask the person to leave the
22 room before that person gets the message?

23 What's the protocol in the hospital? You have
24 bylaws; you have rules and regulations. You have rules
25 in regulations regarding that?

1 A Not that I know of, no.

2 Q So what would the common sense be if you agree
3 that the captain of the ship is the primary surgeon and
4 he tells that individual, "Please leave the room" --
5 what do you expect that person to do?

6 A To reasonably approach you and say, "But it's
7 my job to" --

8 Q She's not a scrub tech. She's not --

9 DR. WULFSBERG: Wait.

10 THE HEARING OFFICER: Wait a minute. Let him
11 answer.

12 BY DR. MILEIKOWSKY:

13 Q Go ahead.

14 A If it were me, I would say, "But,
15 Dr. Mileikowsky, this is my job. I've been told this by
16 hospital administration, the medical staff that we have
17 to be assured that people have credentials and
18 privileges to do the task that they are about to do."

19 To me, that seems a reasonable approach. And
20 asking somebody to leave, in effect, obstructs that
21 person's ability to do that job. I mean, that's how I
22 perceive it.

23 And I would have acted the same way. Maybe I
24 would have been calm and approached it in a calm way and
25 asked that you do the same thing. But to ask somebody

1 to not do their job I think is wrong.

2 Q Is it the job of the director of nursing staff
3 to walk into the operating room in street clothes?

4 "Yes" or "no" answer.

5 A I don't think so.

6 Q If you were the primary surgeon and you saw
7 anyone, let alone the director of nursing of the
8 operating room, walk in in street clothes -- in a lab
9 coat, in the same clothes that she's walking with all
10 around the hospital, with shoes she's walking outside
11 the hospital, and clothes under the lab coat she's
12 walking outside the hospital with -- if you were the
13 primary surgeon and you asked that person to leave the
14 room, would you reasonably expect that person to leave
15 the room?

16 DR. WULFSBERG: I'm going to object because
17 there's no factual evidence that she was in a lab coat.
18 She testified she was in a cover coat, the kind of cover
19 coat that's used frequently in the hospital.

20 I object to the question.

21 THE HEARING OFFICER: All right. The objection
22 is sustained. There's a lack of foundation.

23 DR. MILEIKOWSKY: No. There is foundation. We
24 have the testimony of Dr. Hudosh, and Dr. Hudosh
25 confirmed she was in a lab coat.

1 hostility between myself and Ms. McDaniel going all the
2 way back to June, '92, nine years ago?

3 A I have no idea.

4 Q Have you ever discussed with Ms. McDaniel her
5 feelings and thoughts about me, as a union
6 representative?

7 A Could you ask me that one more time.

8 Q Sure. Have you ever discussed with Ms. Karen
9 McDaniel her feelings about me, as a representative of
10 the union?

11 A Well, not her feelings, but she came to me
12 stating that the nurses in L and D, labor and delivery,
13 after November 10 -- that they were fearful. And she
14 asked, as a representative of the union, for
15 administration -- meaning me representing
16 administration -- to take action to prevent that from
17 occurring in the future.

18 THE HEARING OFFICER: This is November 10,
19 2000?

20 THE WITNESS: Pardon?

21 THE HEARING OFFICER: This is November 10,
22 2000?

23 THE WITNESS: It was after that November 10,
24 2000 event, yes.

25 / / /

1 BY DR. MILEIKOWSKY:

2 Q Has Ms. McDaniel or any other member of the
3 union approached the administration, or anyone else that
4 you know of, in that frame of mind?

5 A Approached in terms of just any communication?

6 Q Any communication.

7 A After that I got a letter from the union
8 stating pretty much what I just said a minute ago; and
9 that is, that the union represents the staff here and
10 views administration as having the role of protecting
11 its staff. And they also feel that they had the role to
12 protect their staff. And it was directly related also
13 to that November 10, 2000 incident.

14 Q So if I understand you clearly, no one in this
15 hospital administration, physician, or whoever it is --
16 medical staff, whatever -- has not had any
17 communications regarding me in any way, form, or shape
18 from the union or a representative of the union prior to
19 November 10, 2000; is that correct?

20 A Not to me.

21 Q Or anyone that you know of?

22 A I wouldn't know.

23 Q Okay. And nobody approached you from the union
24 after the alleged incident of December 17, '99?

25 A No.

1 Q Now, the November 10, 2000 incident is
2 interesting because you really did not need any input
3 from anyone else because you were there yourself;
4 correct?

5 A Yes, I was there.

6 Q And you were even there literally for 90
7 percent of the time, if not 100 percent of the time.
8 Just before you came -- so let's say 98, 99, 95 percent
9 of the time you were there.

10 A I was there for a while.

11 Q Did you observe from your own eyes and ears any
12 conduct originating from me threatening any nurse?

13 A Any physical conduct.

14 Q Any verbal, gesture, physical -- anything?

15 A What I observed was --

16 Q Those nurses.

17 A Well, they were there, and --

18 Q But the question is clear. Focus, please, on
19 my question. I'm not talking about my conduct towards
20 Mr. Carlos, not towards any other security guards, not
21 towards you.

22 Towards the nurses in labor and delivery, have
23 you, while standing, walking, and sitting at the labor
24 and delivery desk, noticed anything from your own
25 observation -- anything that I might have done that

1 could in any way, form, or shape be interpreted as a
2 threat towards any nurses in labor and delivery on
3 November 10, year 2000? Your observations.

4 A My observation at that moment in time -- and I
5 was looking at the entire series of events -- I was
6 watching patients or family members of patients coming
7 out into the corridor, I saw the security guards, I saw
8 our nurses all frozen, afraid; and the loudness of your
9 approach and gesticulation, I think, made them afraid.
10 And my observation is it was frightening to them?

11 I don't know how else to describe it.

12 Q Can you tell us what you perceived from your
13 own observation that I might have done that might have
14 in any way, form, or shape been interpreted by any nurse
15 in labor and delivery as me threatening any one of them.

16 DR. WULFSBERG: This is asked and answered. He
17 just answered that he observed the whole circumstances.

18 THE HEARING OFFICER: I'll let him answer the
19 one further question.

20 THE WITNESS: I think every single person up
21 there -- our patients, our family members -- I think
22 they were scared. I think you were so loud, so
23 outrageously, I think, out of control that I think
24 everyone that was there was afraid of what was going to
25 happen or what was happening.

1 It's an unusual event. You know, to be in a
2 hospital and see people -- seeing you scream -- and you
3 were screaming -- it's frightening.

4 Was I frightened? I watched everyone there.
5 And my job, I believe, is to, hopefully, prevent that
6 from happening from anybody.

7 BY DR. MILEIKOWSKY:

8 Q Did you at any point that day on November 10,
9 2000, conceive in any way, form, or shape that I felt
10 threatened by the presence of uniformed guards?

11 A No.

12 Q Why?

13 A My perception was there were three guards
14 there, all of whom felt more intimidated by you than you
15 have them.

16 Q How did I intimidate any one of them? By
17 stating that I was going to call the Los Angeles Police
18 Department and have them escorted; right?

19 A Well, I think the way you threatened them was
20 you were yelling at them.

21 Q Saying what?

22 A You know, I don't remember the exact words, but
23 yelling at them; telling them you want them out of
24 there; that they were violating law. And you were
25 exceedingly angry that they were there at all.

1 Q Correct.

2 And you also testified last time that you had
3 no clue whether or not I was right or not; correct?

4 A Whether you were right about --

5 Q The fact that there was a violation of whatever
6 law or whatever. You testified to that.

7 A If there was some law they were --

8 Q Right. You were not aware of it.

9 Now, during the time you were there, you recall
10 that I introduced you to the father of the patient?

11 A Yes.

12 Q Did you ever imagine what might have been the
13 reason that I introduced you to him?

14 A Dr. Mileikowsky, it was just strange. It was
15 strange. One moment you were yelling and screaming at
16 everybody, and I was stationed there to make sure
17 everyone knew I was there to keep things calm.

18 The next -- within a couple of minutes, you
19 come out and introduce him. It was such a change in
20 behavior, it was a little shocking. But I don't know
21 why you did that. I can't imagine.

22 Q Let me try to refresh your memory.

23 Do you remember telling me when I met you
24 sometime in August of '99 after I left 30 of those
25 documents in the mailboxes of the labor and delivery

1 charge nurses -- you told me that you instructed the
2 nurses to treat me the same way they treat every other
3 physician on the department of OB/GYN. Do you remember
4 that?

5 A No. But I'm not surprised.

6 Q You're not surprised.

7 A No.

8 Q Why would you tell them to treat me the same
9 way as every other physician in the OB/GYN department?

10 A I'm not surprised because it is my common
11 practice to remind everybody that everyone needs to be
12 treated the same way, as much as is humanly possible.

13 Q Did you ever notice the impact that you have on
14 individuals around you and how they conduct themselves?

15 A Well, that November 10th day I know that my
16 presence there was welcome; that people felt better that
17 I was there.

18 Q You also realized that I welcomed your
19 presence?

20 A Yes.

21 Q So then you realized that I, from my
22 perspective, whether I'm right or wrong, believed that
23 your presence is capable of pacifying and turning a
24 situation which may be volatile into a more professional
25 and routine kind of environment; is that right?

1 A I suppose that's true.

2 Q Well, you know that two years earlier you
3 received a call from the head of operations in Dallas,
4 from no less than the medical director for the whole
5 chain of Tenet, seeking your intervention to try to
6 prevent a problem at that time; correct?

7 A Well --

8 Q A Different problem.

9 A -- I don't think that anyone was seeking me. I
10 think they called me, and I just happened to be the
11 person answering that call.

12 Q Right.

13 (Simultaneous colloquy.)

14 THE REPORTER: I didn't get that.

15 DR. MILEIKOWSKY: Sorry.

16 Q But at that time when you followed up with a
17 phone call to my office, and neither me or you knew -- I
18 didn't know you were the COO at Encino campus; right?

19 A That's true.

20 Q Last I knew you were still in Northridge?

21 A That's true.

22 Q What was my reaction when you called me? Was
23 it friendly?

24 A Yes.

25 Q Was it extremely friendly?

1 A Yeah, I'd say so.

2 Q And so at that time, from my perspective in our
3 conversation, did I see you as a problem-solver, like
4 they call in Sweden an ombudsman? Are you familiar with
5 the term "ombudsman"?

6 A Sure.

7 Q Okay. Was that at that time your understanding
8 that I was seeking you as an individual that may prevent
9 a degeneration of a certain situation?

10 A Well, I think I called you.

11 Q Right.

12 A Whether you sought me to be that -- I don't
13 know. But I think at the time, if I remember right, you
14 welcomed my participation because you thought I could be
15 helpful.

16 Q Were you aware of the fact that you received a
17 phone call from Dallas following a phone call from me to
18 Dallas?

19 A No, I didn't know that.

20 Q Now, we have established that one of the
21 elements which caused the December 17, '99 incident for
22 whoever is responsible -- this is not the issue now --

23 Do you need to take that?

24 DR. MIYASHITA: Yes.

25 THE WITNESS: May I say something I forgot?

1 BY DR. MILEIKOWSKY:

2 Q Yes, go ahead.

3 A I'm on call as well; I could get interrupted.
4 I forgot to mention it when I first came in.

5 THE HEARING OFFICER: Well, maybe this is a
6 good time to take a break, and then try to finish up.

7 DR. MILEIKOWSKY: Absolutely.

8 THE HEARING OFFICER: Let's take a 10-minute
9 break.

10 (Recess from 7:50 p.m. to 8:01 p.m.)

11 THE HEARING OFFICER: Back on the record.

12 Continue, please. Hopefully you can wrap it up
13 soon.

14 DR. MILEIKOWSKY: Yes, of course.

15 Q Coming back, Jerry, to the meeting with Karen
16 McDaniel, who was present with you at that time?

17 THE HEARING OFFICER: When you say "the
18 meeting," which meeting?

19 DR. MILEIKOWSKY: The first meeting after
20 November 10.

21 Q Is that right?

22 THE HEARING OFFICER: Okay.

23 THE WITNESS: Yes.

24 BY DR. MILEIKOWSKY:

25 Q November 10, 2000.

1 A It was just she and I.

2 Q And was it about how long after that? A week,
3 a day, a month?

4 A I want to say it was in a couple of days, maybe
5 even the next day. I don't recall the exact time, but
6 pretty close to the 10th. Very close to that.

7 Q Was it before or after you and I had set up a
8 long lunch meeting?

9 A Oh, you know, I don't know. It may have been
10 after we set up the lunch meeting.

11 Q Can you tell us, to the best of your
12 recollection, every single thing you can remember from
13 that meeting with Ms. McDaniel. So there was no other
14 representative of the union; is that correct?

15 A None at all. She asked to see me, and I said
16 sure. She came into my office. She told me that she
17 was there representing the union; and that she was
18 representing, of course, therefore, the nurses on the
19 labor and delivery unit who had expressed concern about
20 working on the unit when you come into the unit; and
21 that they felt it was an unsafe place for them; and that
22 she wanted me, as a representative of administration, to
23 assure a safe work environment.

24 Q And?

25 A And I am paraphrasing, but it's close to that.

1 Q So how were you to assure the safety of the
2 environment?

3 A The implication, I suppose, from her was that
4 if we could, I guess, have somebody there or assure that
5 you didn't come back there, then there would be a safe
6 environment. Somebody there to protect them or for you
7 simply not to come back.

8 Q And how were you to achieve that?

9 A Which?

10 Q Either one.

11 A Well, my thought at the time was we have
12 security there always present, and I think that that's
13 helpful -- or I thought that was helpful. To the latter
14 one about your being present, I had already at that
15 point determined that I didn't think it was right for
16 you to be practicing at this hospital.

17 Q And how were you to achieve that?

18 A Achieve -- your continued practice at the
19 hospital?

20 Q Correct.

21 A You know, I just figured there's proper
22 channels that we had to go through -- meaning myself,
23 the medical staff, whomever else -- to make sure that
24 either your behavior changed or you shouldn't be
25 practicing here.

1 Q I'm sorry. What did you say about changed?

2 A Your behavior with the staff.

3 Q Well, did you ever consider maybe asking me to
4 go to a behavior modification course?

5 A No, I hadn't.

6 Q Now, at that particular time, to the best of
7 your recollection, Ms. McDaniel came after I called you
8 to set up a lunch meeting between you and me.

9 A Yeah. It could have been before; it could have
10 been after. I think it may have been after.

11 Q Did you feel threatened by the lunch meeting
12 with me?

13 A No, not at all.

14 Q Didn't you think that maybe having a lunch
15 meeting with me might sort of explore some resolution to
16 a problem? Wasn't that the purpose of our meeting?

17 A My thought on it -- I canceled the lunch
18 meeting, and I canceled it because I decided for myself
19 that too many occurrences of this sort -- really,
20 something was not right. Something was wrong, and I
21 didn't see your behavior changing. I had determined in
22 my mind that at that point, to protect the employees
23 there, that truly that would not be effective at all.

24 Q Let me try to refresh your memory. You did not
25 cancel the lunch. I called you after November 16, 2000,

1 when it's no secret that my privileges were summarily
2 suspended for alleged imminent danger. So I called you
3 to set up the lunch meeting, and I called you to ask you
4 if it still made sense for us to have lunch, since the
5 lunch meeting was for, I believe, the Monday lunch
6 following the 16th; is that correct?

7 A That's correct.

8 Q So now you agree to correct your previous
9 statement that you did not call me; I called you.

10 A No. I didn't say I called you, did I?

11 Q No.

12 A I just simply said I canceled. And at that
13 moment when you called me, I said, "No. It's best we
14 canceled this lunch."

15 Q Because I asked you, "Does it make, still,
16 sense for us to meet?"

17 A Right. And I agreed that it did not.

18 Q Right.

19 Who else, other than you, up to November 16
20 knew that you and I had a lunch meeting?

21 A You know, I don't think anyone did. I mean, my
22 secretary obviously did.

23 Q Did you ever share that information with anyone
24 else saying, "You know, I know Mileikowsky for 15
25 years. It so happens he called me to set up a lunch

1 meeting on his initiative to try to see if there's any
2 way to resolve this problem. Let's wait until I meet
3 with him and make a decision after I meet with him"?
4 Have you ever said such a thing to anyone?

5 A No, I didn't.

6 Q Why?

7 A Because my having lunch with you or not having
8 lunch with you, I believe, was my decision. Even though
9 it's true that you called me, that had nothing to do
10 with anybody, nor did I think -- and I still don't think
11 it has anything to do with anybody else.

12 Q Now, you told us actually last time something
13 very interesting; that you actually thought about
14 suspending my privileges as early as December, '99.

15 A That's true.

16 Q Who did you, other than Mr. Surowitz, suggest
17 that to?

18 THE HEARING OFFICER: Well, wait. We don't
19 know that he suggested it to --

20 DR. MILEIKOWSKY: He just said it's true.

21 THE HEARING OFFICER: But did you suggest it to
22 Mr. Surowitz at that time?

23 DR. MILEIKOWSKY: He said so last time.

24 THE WITNESS: I did suggest it to --

25 THE HEARING OFFICER: All right. Go ahead.

1 BY DR. MILEIKOWSKY:

2 Q Who else, other than Mr. Surowitz, had you
3 suggested that on or about December, '99, or when he
4 came back, January, 2000, since he was out of town?

5 A Right. It was to Dale -- to Mr. Surowitz.

6 Q Only to Mr. Surowitz?

7 A Only one I can remember saying it to. See, I
8 was representing him as acting CEO.

9 Q You were the CEO. Right.

10 So what prompted you -- without even ever
11 calling me after the December 17, '99, even though we
12 know each other for 15 years -- how did you reach such
13 an extreme solution?

14 Let's back up for a second.

15 Did it ever appear to you as a drastic and
16 extreme gesture or action to terminate the privileges of
17 any physician?

18 A Oh, yes.

19 Q So if you terminate the privileges of a
20 physician on alleged imminent danger, you know very well
21 that -- or should I ask.

22 Are you aware of the fact that that's reported
23 to the Board of Medical Quality Assurance here in
24 California through an 805 Report?

25 A That's my understanding.

1 Q Do you also know that within 30 days it's the
2 law the hospital has to report it to the National Data
3 Bank? Do you know that?

4 A That's my understanding.

5 Q Are you also aware that that type of report,
6 805 Report and National Data Bank report, appear on the
7 Internet?

8 A Oh, no, I didn't.

9 Q Now, let's take a hypothetical. Let's say that
10 you are now the COO or CEO in Miami, Florida; Brussels,
11 Belgium; or Tel Aviv, Israel, and a fellow by the name
12 of Mileikowsky is coming over to you from California and
13 wants to establish his practice after he's been
14 practicing for 15 years in California. What are the
15 routine procedures that you're going to proceed with
16 when he shows up in Florida, Texas, Israel, or Belgium?

17 A To check.

18 Q Check his credentials; correct?

19 A Correct.

20 Q Correct.

21 How will you react as a COO or CEO of that
22 hospital in Florida, Belgium, or Israel, and you see a
23 physician X whose privileges were summarily suspended
24 for imminent danger? Would you like that physician in
25 your hospital?

1 A No.

2 Q No.

3 So do you realize now that to take such a
4 measure is, to say the least, Draconian?

5 A Well, I didn't suspend you.

6 Q Wait a second.

7 A I didn't even make the recommendation to
8 suspend you.

9 Q Isn't that what you said?

10 A No. At the time before Dale Surowitz was back,
11 I made the decision not to suspend you --

12 Q That was not the question.

13 A -- and to send a letter to you.

14 Q Yes. This is not the issue.

15 A Oh.

16 Q You stated clearly today --

17 A That's why -- I think it would have been
18 Draconian at the time.

19 Q You think it would have been Draconian?

20 A At the time.

21 Q Okay. What are the chances of such a
22 physician X of practicing medicine anytime in his or her
23 future anywhere in the world -- the civilized world?
24 We're not talking about Afghanistan, Africa, or India.
25 What are the chances of such a physician with such a

1 background to practice in any civilized country?

2 A Dr. Mileikowsky, I don't know. It can't be
3 favorable no matter what.

4 Q Favorable?

5 A It can't be favorable.

6 Q Oh, it cannot be favorable. Thank you.
7 What did you consider as other potential
8 options short of recommending to Mr. Surowitz on or
9 about December, '99, or early January, 2000, to suspend
10 my privileges?

11 A Well, I exercised the option to send you that
12 letter, a letter that stated that we take this seriously
13 and that it can't happen. It violates our code of
14 ethics here. I don't know if I used those exact terms,
15 but that was what I did. I didn't proceed on that,
16 although I did afterwards state to Mr. Surowitz that I
17 did wish I had because when I learned about subsequent
18 events, that this wasn't the first time.

19 Q Why don't we take your letter, which is in
20 Exhibit 118.

21 MS. MILLER: It goes 1 through 99 then starts 1
22 again. So you want to go to the second No. 18.

23 THE WITNESS: The second one?

24 THE HEARING OFFICER: It's toward the back.

25 THE WITNESS: I got, it. I think.

1 Yes, I have it here.

2 BY DR. MILEIKOWSKY:

3 Q Now, before reading to us this letter, can you
4 tell us who assisted you in drafting this letter?

5 A I had our legal review it.

6 Q Who?

7 A I'm trying to remember who.

8 Q Anna Suda?

9 A No, uh-huh.

10 Q Jay Christensen?

11 A You know, it could have been. You know, I
12 don't remember who helped.

13 Q A man or a woman?

14 A It was a man.

15 Q Stephen Auer? Have you seen him, or was it on
16 the phone?

17 A On the phone.

18 Q So it was from Jay Christensen's office?

19 A I don't know if it was Jay Christensen.

20 Q Would it have been from Jessup Cohen's law
21 office?

22 DR. WULFSBERG: He's asked this question
23 several times.

24 DR. MILEIKOWSKY: I'm continuing to ask him the
25 questions.

1 DR. WULFSBERG: But he's asking different
2 questions --

3 THE WITNESS: I call legal all the time for
4 contracts, for advice, for all sorts of things. You
5 know, it could have been anybody.

6 THE HEARING OFFICER: All right. He doesn't
7 know. He doesn't recall.

8 DR. MILEIKOWSKY: Yeah. I tried to refresh his
9 memory.

10 THE HEARING OFFICER: All right. Well, he
11 doesn't recall. Go ahead.

12 DR. MILEIKOWSKY: All right.

13 Q So who else, other than someone from a law
14 office, did you consult before writing this letter?

15 A Like who?

16 Q Who did you speak to before writing this
17 letter, other than Karen -- sorry -- other than
18 Ms. Hafer and Dr. Morrow and Dr. Fenmore? Who else did
19 you discuss?

20 A So who did I consult before I wrote the letter
21 to find out --

22 Q Exactly.

23 A -- to find out why I would write this letter?

24 Q No.

25 First of all, yes, to make the determination,

1 number one, to write; and, number two, what to put in
2 that letter.

3 THE HEARING OFFICER: Those are two different
4 questions?

5 DR. MILEIKOWSKY: Correct. Two different
6 questions.

7 THE WITNESS: Which -- maybe you could tell me
8 which --

9 BY DR. MILEIKOWSKY:

10 Q First question is: Who did you consult before
11 even coming up with the situation or the idea of writing
12 me a letter, other than Dr. Morrow, Dr. Fenmore,
13 Ms. Hafer, and some attorney from some office? Was
14 Ms. Miller one of the people?

15 A Might have been.

16 Q Was the chief of staff, Gary Dosik, one of the
17 people you spoke to?

18 A Might have been, yes.

19 Q Did you have a meeting, or was it on the phone?

20 A No. I didn't have any meetings about this
21 letter. Whatever consultation I got, I spoke to people;
22 Dr. Dosik or Debbie Miller or the attorney or whomever.
23 But this still represents what I thought.

24 Q The question is: Who else did you consult
25 before that you can recall, and other than the names you

1 gave us?

2 A I think that's pretty much it, Dr. Mileikowsky.

3 Q All right.

4 Who suggested to you to write a letter?

5 A No. I wanted to write this letter.

6 Q Okay.

7 A That was self-motivated because of the events.

8 Q All right. What was the purpose of your
9 letter?

10 A To explain to you that the behavior that you
11 exhibited during this period of time frightened the
12 staff; that it's a violation of our medical staff, and
13 the behavior is not acceptable; and to ask you not --
14 well, more than ask -- to require that you not do that
15 again.

16 Q But you do realize that at that point in time,
17 you still have not spoken -- nor have you until today
18 spoken either to me or Dr. Yamini or anyone else that
19 might have a different perspective of that incident.

20 A Uh-huh.

21 Q What gave you the confidence to write such a
22 letter without having the full knowledge of the facts?

23 A Well, whatever the facts were that led to your
24 behavior that frightened all the staff that were in
25 there and that they felt threatened was not what I was

1 writing about. I didn't talk about the facts of what
2 led to this and what Dr. Yamini did.

3 It was strictly the result of your interactions
4 with those people and their fear that I was writing
5 about.

6 Q The problem is -- we're going to read it, and
7 then let's see how your thought process operated.

8 Please read us the first paragraph, "I'm
9 writing you because" --

10 A . . . because of the reports which were brought
11 to my attention by physicians and medical center
12 personnel regarding an incident which occurred in
13 the operating room on Friday, December 17, 1999.

14 Q Stop.

15 Did you get any written report from any
16 physician, other than Dr. Hudosh?

17 A No, I don't think so.

18 Q Next?

19 A One of my responsibilities as chief operating
20 officer of Encino-Tarzana Regional Medical Center is
21 to ensure that the medical center operations and the
22 delivery of quality patient care are not adversely
23 affected or jeopardized by the conduct of any
24 person --

25 Q Stop right here.

1 hostility between myself and Ms. McDaniel going all the
2 way back to June, '92, nine years ago?

3 A I have no idea.

4 Q Have you ever discussed with Ms. McDaniel her
5 feelings and thoughts about me, as a union
6 representative?

7 A Could you ask me that one more time.

8 Q Sure. Have you ever discussed with Ms. Karen
9 McDaniel her feelings about me, as a representative of
10 the union?

11 A Well, not her feelings, but she came to me
12 stating that the nurses in L and D, labor and delivery,
13 after November 10 -- that they were fearful. And she
14 asked, as a representative of the union, for
15 administration -- meaning me representing
16 administration -- to take action to prevent that from
17 occurring in the future.

18 THE HEARING OFFICER: This is November 10,
19 2000?

20 THE WITNESS: Pardon?

21 THE HEARING OFFICER: This is November 10,
22 2000?

23 THE WITNESS: It was after that November 10,
24 2000 event, yes.

25 / / /

1 BY DR. MILEIKOWSKY:

2 Q Has Ms. McDaniel or any other member of the
3 union approached the administration, or anyone else that
4 you know of, in that frame of mind?

5 A Approached in terms of just any communication?

6 Q Any communication.

7 A After that I got a letter from the union
8 stating pretty much what I just said a minute ago; and
9 that is, that the union represents the staff here and
10 views administration as having the role of protecting
11 its staff. And they also feel that they had the role to
12 protect their staff. And it was directly related also
13 to that November 10, 2000 incident.

14 Q So if I understand you clearly, no one in this
15 hospital administration, physician, or whoever it is --
16 medical staff, whatever -- has not had any
17 communications regarding me in any way, form, or shape
18 from the union or a representative of the union prior to
19 November 10, 2000; is that correct?

20 A Not to me.

21 Q Or anyone that you know of?

22 A I wouldn't know.

23 Q Okay. And nobody approached you from the union
24 after the alleged incident of December 17, '99?

25 A No.

1 Q Now, the November 10, 2000 incident is
2 interesting because you really did not need any input
3 from anyone else because you were there yourself;
4 correct?

5 A Yes, I was there.

6 Q And you were even there literally for 90
7 percent of the time, if not 100 percent of the time.
8 Just before you came -- so let's say 98, 99, 95 percent
9 of the time you were there.

10 A I was there for a while.

11 Q Did you observe from your own eyes and ears any
12 conduct originating from me threatening any nurse?

13 A Any physical conduct.

14 Q Any verbal, gesture, physical -- anything?

15 A What I observed was --

16 Q Those nurses.

17 A Well, they were there, and --

18 Q But the question is clear. Focus, please, on
19 my question. I'm not talking about my conduct towards
20 Mr. Carlos, not towards any other security guards, not
21 towards you.

22 Towards the nurses in labor and delivery, have
23 you, while standing, walking, and sitting at the labor
24 and delivery desk, noticed anything from your own
25 observation -- anything that I might have done that

1 could in any way, form, or shape be interpreted as a
2 threat towards any nurses in labor and delivery on
3 November 10, year 2000? Your observations.

4 A My observation at that moment in time -- and I
5 was looking at the entire series of events -- I was
6 watching patients or family members of patients coming
7 out into the corridor, I saw the security guards, I saw
8 our nurses all frozen, afraid; and the loudness of your
9 approach and gesticulation, I think, made them afraid.
10 And my observation is it was frightening to them?

11 I don't know how else to describe it.

12 Q Can you tell us what you perceived from your
13 own observation that I might have done that might have
14 in any way, form, or shape been interpreted by any nurse
15 in labor and delivery as me threatening any one of them.

16 DR. WULFSBERG: This is asked and answered. He
17 just answered that he observed the whole circumstances.

18 THE HEARING OFFICER: I'll let him answer the
19 one further question.

20 THE WITNESS: I think every single person up
21 there -- our patients, our family members -- I think
22 they were scared. I think you were so loud, so
23 outrageously, I think, out of control that I think
24 everyone that was there was afraid of what was going to
25 happen or what was happening.

1 It's an unusual event. You know, to be in a
2 hospital and see people -- seeing you scream -- and you
3 were screaming -- it's frightening.

4 Was I frightened? I watched everyone there.
5 And my job, I believe, is to, hopefully, prevent that
6 from happening from anybody.

7 BY DR. MILEIKOWSKY:

8 Q Did you at any point that day on November 10,
9 2000, conceive in any way, form, or shape that I felt
10 threatened by the presence of uniformed guards?

11 A No.

12 Q Why?

13 A My perception was there were three guards
14 there, all of whom felt more intimidated by you than you
15 have them.

16 Q How did I intimidate any one of them? By
17 stating that I was going to call the Los Angeles Police
18 Department and have them escorted; right?

19 A Well, I think the way you threatened them was
20 you were yelling at them.

21 Q Saying what?

22 A You know, I don't remember the exact words, but
23 yelling at them; telling them you want them out of
24 there; that they were violating law. And you were
25 exceedingly angry that they were there at all.

1 Q Correct.

2 And you also testified last time that you had
3 no clue whether or not I was right or not; correct?

4 A Whether you were right about --

5 Q The fact that there was a violation of whatever
6 law or whatever. You testified to that.

7 A If there was some law they were --

8 Q Right. You were not aware of it.

9 Now, during the time you were there, you recall
10 that I introduced you to the father of the patient?

11 A Yes.

12 Q Did you ever imagine what might have been the
13 reason that I introduced you to him?

14 A Dr. Mileikowsky, it was just strange. It was
15 strange. One moment you were yelling and screaming at
16 everybody, and I was stationed there to make sure
17 everyone knew I was there to keep things calm.

18 The next -- within a couple of minutes, you
19 come out and introduce him. It was such a change in
20 behavior, it was a little shocking. But I don't know
21 why you did that. I can't imagine.

22 Q Let me try to refresh your memory.

23 Do you remember telling me when I met you
24 sometime in August of '99 after I left 30 of those
25 documents in the mailboxes of the labor and delivery

1 charge nurses -- you told me that you instructed the
2 nurses to treat me the same way they treat every other
3 physician on the department of OB/GYN. Do you remember
4 that?

5 A No. But I'm not surprised.

6 Q You're not surprised.

7 A No.

8 Q Why would you tell them to treat me the same
9 way as every other physician in the OB/GYN department?

10 A I'm not surprised because it is my common
11 practice to remind everybody that everyone needs to be
12 treated the same way, as much as is humanly possible.

13 Q Did you ever notice the impact that you have on
14 individuals around you and how they conduct themselves?

15 A Well, that November 10th day I know that my
16 presence there was welcome; that people felt better that
17 I was there.

18 Q You also realized that I welcomed your
19 presence?

20 A Yes.

21 Q So then you realized that I, from my
22 perspective, whether I'm right or wrong, believed that
23 your presence is capable of pacifying and turning a
24 situation which may be volatile into a more professional
25 and routine kind of environment; is that right?

1 A I suppose that's true.

2 Q Well, you know that two years earlier you
3 received a call from the head of operations in Dallas,
4 from no less than the medical director for the whole
5 chain of Tenet, seeking your intervention to try to
6 prevent a problem at that time; correct?

7 A Well --

8 Q A Different problem.

9 A -- I don't think that anyone was seeking me. I
10 think they called me, and I just happened to be the
11 person answering that call.

12 Q Right.

13 (Simultaneous colloquy.)

14 THE REPORTER: I didn't get that.

15 DR. MILEIKOWSKY: Sorry.

16 Q But at that time when you followed up with a
17 phone call to my office, and neither me or you knew -- I
18 didn't know you were the COO at Encino campus; right?

19 A That's true.

20 Q Last I knew you were still in Northridge?

21 A That's true.

22 Q What was my reaction when you called me? Was
23 it friendly?

24 A Yes.

25 Q Was it extremely friendly?

1 A Yeah, I'd say so.

2 Q And so at that time, from my perspective in our
3 conversation, did I see you as a problem-solver, like
4 they call in Sweden an ombudsman? Are you familiar with
5 the term "ombudsman"?

6 A Sure.

7 Q Okay. Was that at that time your understanding
8 that I was seeking you as an individual that may prevent
9 a degeneration of a certain situation?

10 A Well, I think I called you.

11 Q Right.

12 A Whether you sought me to be that -- I don't
13 know. But I think at the time, if I remember right, you
14 welcomed my participation because you thought I could be
15 helpful.

16 Q Were you aware of the fact that you received a
17 phone call from Dallas following a phone call from me to
18 Dallas?

19 A No, I didn't know that.

20 Q Now, we have established that one of the
21 elements which caused the December 17, '99 incident for
22 whoever is responsible -- this is not the issue now --

23 Do you need to take that?

24 DR. MIYASHITA: Yes.

25 THE WITNESS: May I say something I forgot?

1 BY DR. MILEIKOWSKY:

2 Q Yes, go ahead.

3 A I'm on call as well; I could get interrupted.
4 I forgot to mention it when I first came in.

5 THE HEARING OFFICER: Well, maybe this is a
6 good time to take a break, and then try to finish up.

7 DR. MILEIKOWSKY: Absolutely.

8 THE HEARING OFFICER: Let's take a 10-minute
9 break.

10 (Recess from 7:50 p.m. to 8:01 p.m.)

11 THE HEARING OFFICER: Back on the record.

12 Continue, please. Hopefully you can wrap it up
13 soon.

14 DR. MILEIKOWSKY: Yes, of course.

15 Q Coming back, Jerry, to the meeting with Karen
16 McDaniel, who was present with you at that time?

17 THE HEARING OFFICER: When you say "the
18 meeting," which meeting?

19 DR. MILEIKOWSKY: The first meeting after
20 November 10.

21 Q Is that right?

22 THE HEARING OFFICER: Okay.

23 THE WITNESS: Yes.

24 BY DR. MILEIKOWSKY:

25 Q November 10, 2000.

1 A It was just she and I.

2 Q And was it about how long after that? A week,
3 a day, a month?

4 A I want to say it was in a couple of days, maybe
5 even the next day. I don't recall the exact time, but
6 pretty close to the 10th. Very close to that.

7 Q Was it before or after you and I had set up a
8 long lunch meeting?

9 A Oh, you know, I don't know. It may have been
10 after we set up the lunch meeting.

11 Q Can you tell us, to the best of your
12 recollection, every single thing you can remember from
13 that meeting with Ms. McDaniel. So there was no other
14 representative of the union; is that correct?

15 A None at all. She asked to see me, and I said
16 sure. She came into my office. She told me that she
17 was there representing the union; and that she was
18 representing, of course, therefore, the nurses on the
19 labor and delivery unit who had expressed concern about
20 working on the unit when you come into the unit; and
21 that they felt it was an unsafe place for them; and that
22 she wanted me, as a representative of administration, to
23 assure a safe work environment.

24 Q And?

25 A And I am paraphrasing, but it's close to that.

1 Q So how were you to assure the safety of the
2 environment?

3 A The implication, I suppose, from her was that
4 if we could, I guess, have somebody there or assure that
5 you didn't come back there, then there would be a safe
6 environment. Somebody there to protect them or for you
7 simply not to come back.

8 Q And how were you to achieve that?

9 A Which?

10 Q Either one.

11 A Well, my thought at the time was we have
12 security there always present, and I think that that's
13 helpful -- or I thought that was helpful. To the latter
14 one about your being present, I had already at that
15 point determined that I didn't think it was right for
16 you to be practicing at this hospital.

17 Q And how were you to achieve that?

18 A Achieve -- your continued practice at the
19 hospital?

20 Q Correct.

21 A You know, I just figured there's proper
22 channels that we had to go through -- meaning myself,
23 the medical staff, whomever else -- to make sure that
24 either your behavior changed or you shouldn't be
25 practicing here.

1 Q I'm sorry. What did you say about changed?

2 A Your behavior with the staff.

3 Q Well, did you ever consider maybe asking me to
4 go to a behavior modification course?

5 A No, I hadn't.

6 Q Now, at that particular time, to the best of
7 your recollection, Ms. McDaniel came after I called you
8 to set up a lunch meeting between you and me.

9 A Yeah. It could have been before; it could have
10 been after. I think it may have been after.

11 Q Did you feel threatened by the lunch meeting
12 with me?

13 A No, not at all.

14 Q Didn't you think that maybe having a lunch
15 meeting with me might sort of explore some resolution to
16 a problem? Wasn't that the purpose of our meeting?

17 A My thought on it -- I canceled the lunch
18 meeting, and I canceled it because I decided for myself
19 that too many occurrences of this sort -- really,
20 something was not right. Something was wrong, and I
21 didn't see your behavior changing. I had determined in
22 my mind that at that point, to protect the employees
23 there, that truly that would not be effective at all.

24 Q Let me try to refresh your memory. You did not
25 cancel the lunch. I called you after November 16, 2000,

1 when it's no secret that my privileges were summarily
2 suspended for alleged imminent danger. So I called you
3 to set up the lunch meeting, and I called you to ask you
4 if it still made sense for us to have lunch, since the
5 lunch meeting was for, I believe, the Monday lunch
6 following the 16th; is that correct?

7 A That's correct.

8 Q So now you agree to correct your previous
9 statement that you did not call me; I called you.

10 A No. I didn't say I called you, did I?

11 Q No.

12 A I just simply said I canceled. And at that
13 moment when you called me, I said, "No. It's best we
14 canceled this lunch."

15 Q Because I asked you, "Does it make, still,
16 sense for us to meet?"

17 A Right. And I agreed that it did not.

18 Q Right.

19 Who else, other than you, up to November 16
20 knew that you and I had a lunch meeting?

21 A You know, I don't think anyone did. I mean, my
22 secretary obviously did.

23 Q Did you ever share that information with anyone
24 else saying, "You know, I know Mileikowsky for 15
25 years. It so happens he called me to set up a lunch

1 meeting on his initiative to try to see if there's any
2 way to resolve this problem. Let's wait until I meet
3 with him and make a decision after I meet with him"?
4 Have you ever said such a thing to anyone?

5 A No, I didn't.

6 Q Why?

7 A Because my having lunch with you or not having
8 lunch with you, I believe, was my decision. Even though
9 it's true that you called me, that had nothing to do
10 with anybody, nor did I think -- and I still don't think
11 it has anything to do with anybody else.

12 Q Now, you told us actually last time something
13 very interesting; that you actually thought about
14 suspending my privileges as early as December, '99.

15 A That's true.

16 Q Who did you, other than Mr. Surowitz, suggest
17 that to?

18 THE HEARING OFFICER: Well, wait. We don't
19 know that he suggested it to --

20 DR. MILEIKOWSKY: He just said it's true.

21 THE HEARING OFFICER: But did you suggest it to
22 Mr. Surowitz at that time?

23 DR. MILEIKOWSKY: He said so last time.

24 THE WITNESS: I did suggest it to --

25 THE HEARING OFFICER: All right. Go ahead.

1 BY DR. MILEIKOWSKY:

2 Q Who else, other than Mr. Surowitz, had you
3 suggested that on or about December, '99, or when he
4 came back, January, 2000, since he was out of town?

5 A Right. It was to Dale -- to Mr. Surowitz.

6 Q Only to Mr. Surowitz?

7 A Only one I can remember saying it to. See, I
8 was representing him as acting CEO.

9 Q You were the CEO. Right.

10 So what prompted you -- without even ever
11 calling me after the December 17, '99, even though we
12 know each other for 15 years -- how did you reach such
13 an extreme solution?

14 Let's back up for a second.

15 Did it ever appear to you as a drastic and
16 extreme gesture or action to terminate the privileges of
17 any physician?

18 A Oh, yes.

19 Q So if you terminate the privileges of a
20 physician on alleged imminent danger, you know very well
21 that -- or should I ask.

22 Are you aware of the fact that that's reported
23 to the Board of Medical Quality Assurance here in
24 California through an 805 Report?

25 A That's my understanding.

1 Q Do you also know that within 30 days it's the
2 law the hospital has to report it to the National Data
3 Bank? Do you know that?

4 A That's my understanding.

5 Q Are you also aware that that type of report,
6 805 Report and National Data Bank report, appear on the
7 Internet?

8 A Oh, no, I didn't.

9 Q Now, let's take a hypothetical. Let's say that
10 you are now the COO or CEO in Miami, Florida; Brussels,
11 Belgium; or Tel Aviv, Israel, and a fellow by the name
12 of Mileikowsky is coming over to you from California and
13 wants to establish his practice after he's been
14 practicing for 15 years in California. What are the
15 routine procedures that you're going to proceed with
16 when he shows up in Florida, Texas, Israel, or Belgium?

17 A To check.

18 Q Check his credentials; correct?

19 A Correct.

20 Q Correct.

21 How will you react as a COO or CEO of that
22 hospital in Florida, Belgium, or Israel, and you see a
23 physician X whose privileges were summarily suspended
24 for imminent danger? Would you like that physician in
25 your hospital?

1 A No.

2 Q No.

3 So do you realize now that to take such a
4 measure is, to say the least, Draconian?

5 A Well, I didn't suspend you.

6 Q Wait a second.

7 A I didn't even make the recommendation to
8 suspend you.

9 Q Isn't that what you said?

10 A No. At the time before Dale Surowitz was back,
11 I made the decision not to suspend you --

12 Q That was not the question.

13 A -- and to send a letter to you.

14 Q Yes. This is not the issue.

15 A Oh.

16 Q You stated clearly today --

17 A That's why -- I think it would have been
18 Draconian at the time.

19 Q You think it would have been Draconian?

20 A At the time.

21 Q Okay. What are the chances of such a
22 physician X of practicing medicine anytime in his or her
23 future anywhere in the world -- the civilized world?
24 We're not talking about Afghanistan, Africa, or India.
25 What are the chances of such a physician with such a

1 background to practice in any civilized country?

2 A Dr. Mileikowsky, I don't know. It can't be
3 favorable no matter what.

4 Q Favorable?

5 A It can't be favorable.

6 Q Oh, it cannot be favorable. Thank you.
7 What did you consider as other potential
8 options short of recommending to Mr. Surowitz on or
9 about December, '99, or early January, 2000, to suspend
10 my privileges?

11 A Well, I exercised the option to send you that
12 letter, a letter that stated that we take this seriously
13 and that it can't happen. It violates our code of
14 ethics here. I don't know if I used those exact terms,
15 but that was what I did. I didn't proceed on that,
16 although I did afterwards state to Mr. Surowitz that I
17 did wish I had because when I learned about subsequent
18 events, that this wasn't the first time.

19 Q Why don't we take your letter, which is in
20 Exhibit 118.

21 MS. MILLER: It goes 1 through 99 then starts 1
22 again. So you want to go to the second No. 18.

23 THE WITNESS: The second one?

24 THE HEARING OFFICER: It's toward the back.

25 THE WITNESS: I got, it. I think.

1 Yes, I have it here.

2 BY DR. MILEIKOWSKY:

3 Q Now, before reading to us this letter, can you
4 tell us who assisted you in drafting this letter?

5 A I had our legal review it.

6 Q Who?

7 A I'm trying to remember who.

8 Q Anna Suda?

9 A No, uh-huh.

10 Q Jay Christensen?

11 A You know, it could have been. You know, I
12 don't remember who helped.

13 Q A man or a woman?

14 A It was a man.

15 Q Stephen Auer? Have you seen him, or was it on
16 the phone?

17 A On the phone.

18 Q So it was from Jay Christensen's office?

19 A I don't know if it was Jay Christensen.

20 Q Would it have been from Jessup Cohen's law
21 office?

22 DR. WULFSBERG: He's asked this question
23 several times.

24 DR. MILEIKOWSKY: I'm continuing to ask him the
25 questions.

1 DR. WULFSBERG: But he's asking different
2 questions --

3 THE WITNESS: I call legal all the time for
4 contracts, for advice, for all sorts of things. You
5 know, it could have been anybody.

6 THE HEARING OFFICER: All right. He doesn't
7 know. He doesn't recall.

8 DR. MILEIKOWSKY: Yeah. I tried to refresh his
9 memory.

10 THE HEARING OFFICER: All right. Well, he
11 doesn't recall. Go ahead.

12 DR. MILEIKOWSKY: All right.

13 Q So who else, other than someone from a law
14 office, did you consult before writing this letter?

15 A Like who?

16 Q Who did you speak to before writing this
17 letter, other than Karen -- sorry -- other than
18 Ms. Hafer and Dr. Morrow and Dr. Fenmore? Who else did
19 you discuss?

20 A So who did I consult before I wrote the letter
21 to find out --

22 Q Exactly.

23 A -- to find out why I would write this letter?

24 Q No.

25 First of all, yes, to make the determination,

1 number one, to write; and, number two, what to put in
2 that letter.

3 THE HEARING OFFICER: Those are two different
4 questions?

5 DR. MILEIKOWSKY: Correct. Two different
6 questions.

7 THE WITNESS: Which -- maybe you could tell me
8 which --

9 BY DR. MILEIKOWSKY:

10 Q First question is: Who did you consult before
11 even coming up with the situation or the idea of writing
12 me a letter, other than Dr. Morrow, Dr. Fenmore,
13 Ms. Hafer, and some attorney from some office? Was
14 Ms. Miller one of the people?

15 A Might have been.

16 Q Was the chief of staff, Gary Dosik, one of the
17 people you spoke to?

18 A Might have been, yes.

19 Q Did you have a meeting, or was it on the phone?

20 A No. I didn't have any meetings about this
21 letter. Whatever consultation I got, I spoke to people;
22 Dr. Dosik or Debbie Miller or the attorney or whomever.
23 But this still represents what I thought.

24 Q The question is: Who else did you consult
25 before that you can recall, and other than the names you

1 gave us?

2 A I think that's pretty much it, Dr. Mileikowsky.

3 Q All right.

4 Who suggested to you to write a letter?

5 A No. I wanted to write this letter.

6 Q Okay.

7 A That was self-motivated because of the events.

8 Q All right. What was the purpose of your
9 letter?

10 A To explain to you that the behavior that you
11 exhibited during this period of time frightened the
12 staff; that it's a violation of our medical staff, and
13 the behavior is not acceptable; and to ask you not --
14 well, more than ask -- to require that you not do that
15 again.

16 Q But you do realize that at that point in time,
17 you still have not spoken -- nor have you until today
18 spoken either to me or Dr. Yamini or anyone else that
19 might have a different perspective of that incident.

20 A Uh-huh.

21 Q What gave you the confidence to write such a
22 letter without having the full knowledge of the facts?

23 A Well, whatever the facts were that led to your
24 behavior that frightened all the staff that were in
25 there and that they felt threatened was not what I was

1 writing about. I didn't talk about the facts of what
2 led to this and what Dr. Yamini did.

3 It was strictly the result of your interactions
4 with those people and their fear that I was writing
5 about.

6 Q The problem is -- we're going to read it, and
7 then let's see how your thought process operated.

8 Please read us the first paragraph, "I'm
9 writing you because" --

10 A . . . because of the reports which were brought
11 to my attention by physicians and medical center
12 personnel regarding an incident which occurred in
13 the operating room on Friday, December 17, 1999.

14 Q Stop.

15 Did you get any written report from any
16 physician, other than Dr. Hudosh?

17 A No, I don't think so.

18 Q Next?

19 A One of my responsibilities as chief operating
20 officer of Encino-Tarzana Regional Medical Center is
21 to ensure that the medical center operations and the
22 delivery of quality patient care are not adversely
23 affected or jeopardized by the conduct of any
24 person --

25 Q Stop right here.

1 DR. MILEIKOWSKY: Same as the previous one,
2 what his understanding is that Ms. Hafer has or not done
3 to prevent such an occurrence to happen again.

4 THE HEARING OFFICER: The date of this is after
5 December. Are you going to ask him about any changes in
6 procedures after December of 1999?

7 DR. MILEIKOWSKY: Correct. Because he just
8 testified that he instructed Ms. Hafer to make sure that
9 this type of thing does not happen again.

10 THE HEARING OFFICER: All right. He can look
11 at this for the purposes of those questions.

12 DR. MILEIKOWSKY: May I introduce it as
13 Exhibit M-4?

14 THE HEARING OFFICER: You can question him
15 about it. We will decide whether it will be admitted
16 into evidence. You will recall there are previous
17 rulings --

18 DR. MILEIKOWSKY: But it's part of my
19 categories of exhibits, anything that was sent to me or
20 that I sent to them --

21 THE HEARING OFFICER: No. No. You don't want
22 to go into this now with the hearing committee here,
23 but I have rulings about what exhibits are going to be
24 admitted, and this exhibit does not comply with those
25 rulings.

1 So I will let you use this to question him to
2 refresh his recollection. But at this point, until you
3 abide by my ruling, we're not going to put it into
4 evidence as an exhibit.

5 So go ahead.

6 DR. MILEIKOWSKY: So in other words, what you
7 are saying is I may be able to insert it as M-4 after
8 you --

9 THE HEARING OFFICER: We'll talk about that at
10 the end of the hearing tonight.

11 DR. MILEIKOWSKY: Okay. Either way, at the
12 minimum, I would like a copy to be with the court
13 reporter so that --

14 THE HEARING OFFICER: The witness will hand
15 his copy to the court reporter afterwards.

16 DR. MILEIKOWSKY: All right.

17 Q Have you had time to review this document? If
18 you haven't, please take the time to review it.

19 A I read this in detail and --

20 Q Have you looked at page 2?

21 A Yes, uh-huh.

22 Q Are you happy with this?

23 A I'd have to think about my feelings about it.

24 Q Why don't you read for us on page 2 --

25 THE HEARING OFFICER: Wait. Excuse me. Let's

1 cut through this.

2 Is the question here to ask him about any
3 remedial steps that were taken after the December, '99
4 incident to track whether assistant surgeons had
5 privileges for assisting?

6 DR. MILEIKOWSKY: Correct.

7 THE HEARING OFFICER: Okay. Do you understand
8 this document that you have in front of you which
9 concerns the ORSOS III computer scheduling system to be
10 a document concerning procedures which were initiated at
11 some point in time that would give the nursing staff and
12 the medical staff the capacity of knowing whether
13 assistant surgeons were appropriately privileged?

14 THE WITNESS: Yeah. I don't see that as being
15 addressed in this document at all.

16 THE HEARING OFFICER: Okay.

17 BY DR. MILEIKOWSKY:

18 Q That's my point.

19 A All right.

20 THE HEARING OFFICER: All right. Next
21 question.

22 BY DR. MILEIKOWSKY:

23 Q So basically --

24 THE HEARING OFFICER: Well, let's finish the
25 thought.

1 DR. MILEIKOWSKY: Okay.

2 THE HEARING OFFICER: To your knowledge, after
3 the December '99 incident, were steps taken to tighten
4 the procedures to see to it that assistant surgeons were
5 appropriately privileged?

6 THE WITNESS: As far as I know, yes.

7 THE HEARING OFFICER: Okay. Were they steps
8 other than the use of the ORSOS III computer scheduling
9 system?

10 THE WITNESS: Oh, yeah. Educational bits of
11 information that they share -- that the director shares
12 during their staff meetings. And it's not unusual.

13 THE HEARING OFFICER: All right. Anything
14 else?

15 THE WITNESS: No. The procedure already
16 existed, as far as I was concerned.

17 THE HEARING OFFICER: Now, do you have more
18 questions about that?

19 DR. MILEIKOWSKY: Yes.

20 Q When a physician writes an order, I personally
21 never assume that because I wrote an order that it's
22 necessarily followed. So I call later on to check if it
23 has been followed.

24 I'm sure you must be doing the same, when you
25 want certain things to be done and they are important to

1 you --

2 A Uh-huh.

3 Q -- that in one way or another, you are going to
4 assert that it's happening.

5 Have you, for instance, sent a friend of yours
6 or anyone to assist a surgeon and see as a balloon trial
7 what happens if that person can walk in and assist?

8 A No. That's not my style at all.

9 Q So how do you verify that things and
10 procedures -- whether they are written, oral, or
11 others -- have been implemented or improved, or that
12 your desires and wishes have been implemented is the key
13 issue?

14 A Sure. There's all manner of types of ways to
15 do that. But the most important thing is this was an
16 important event; this was an important matter. And I
17 know that once I asked Marlene Hafer to do it, I am
18 confident that she did do it.

19 Q But you never verified?

20 A No.

21 Q All right. Let's go back to your letter,
22 please.

23 A Where was I?

24 Q Talking about efficiency, a recognized
25 professional level of quality and efficiency.

1 A Oh, here we go.

2 You are also required to treat employees,
3 patients, visitors and other physicians --

4 Q No. No. Before that is the word "efficiency."

5 A I'm sorry.

6 Q . . . providing patients with care of generally
7 recognized professional level of quality and
8 efficiency.

9 What was an issue of efficiency from your
10 perspective? Is it a duty of the primary surgeon to be
11 concerned -- is that his or her job description, to see
12 that the operating room schedule or other things run
13 efficiently? Or is that the responsibility of the
14 nursing staff, the COO, and other administrators?

15 A I think it is our responsibility, but I would
16 hope that nobody wants to impede that from happening.

17 Q All right. Okay.

18 THE HEARING OFFICER: Let me alert you,
19 Dr. Mileikowsky, this witness is not going to come back
20 after this evening.

21 DR. MILEIKOWSKY: I'm sorry. But let me also
22 alert you that if you don't let the witness come back, I
23 will use it as a reason for showing how you are biased
24 against me; which would not be the first time, by the
25 way.

1 THE HEARING OFFICER: But Dr. Mileikowsky --

2 DR. MILEIKOWSKY: Excuse me. I am not
3 finished.

4 THE HEARING OFFICER: Fine.

5 DR. MILEIKOWSKY: My purpose is not
6 interrupting you.

7 Also please note for the record, despite the
8 kindness of the witness, the witness has been very
9 consistently following the attorney's wishes and
10 instructions of, number one, saying they don't remember;
11 and, number two, "Even though it is totally unresponsive
12 to the question, repeat the same thing again and again,"
13 which Mr. Clute has done perfectly well.

14 So please do not accuse me of wasting time when
15 actually Mr. Clute is doing what he believes is his job
16 description, following Ms. Suda's responses. "You say
17 you don't remember, and you make sure you repeat the
18 same statement, even though it's not responsive to the
19 question."

20 So if as a consequence of the misconduct,
21 following instructions of Ms. Suda, you're cutting me
22 off from the possibility to bring to the hearing
23 committee evidence which is important to the committee,
24 then you are responsible for that.

25 THE HEARING OFFICER: All right.

1 Dr. Mileikowsky, your statement is out of order. The
2 Direct Examination of this witness took precisely 21
3 minutes. Your Cross-Examination of this witness this
4 evening has gone on for more than an hour; it's
5 approaching two hours. Your Cross-Examination of the
6 witness on the 5th of September began at 8:45 p.m. and
7 went to the end of the hearing.

8 That is more than adequate time for
9 Cross-Examination. I have been indulging you in your
10 Cross-Examination of this witness contrary to the spirit
11 of the rulings that I made to you and to the parties to
12 this proceeding previously.

13 And I alert you to the fact that this witness
14 will not come back after this evening, so I encourage
15 you to finish your Cross-Examination of the witness
16 now.

17 DR. MILEIKOWSKY: I think my opinion on the
18 record is already on the record, so I won't repeat
19 myself.

20 Q Jerry, would you been kind enough to go to
21 Exhibit 116. Tell me when you have 106-2. That's the
22 page.

23 A Is this the December 20 --

24 Q No. It's July 16, '99 credentials committee
25 minutes.

1 THE HEARING OFFICER: That isn't 116.

2 DR. MILEIKOWSKY: Sorry. 106. My apologies.

3 106-2. My fault.

4 THE WITNESS: This is the credentials
5 committee document?

6 BY DR. MILEIKOWSKY:

7 Q Correct.

8 Do you remember being present that day?

9 A At this credentials committee? I attend almost
10 all of them, I believe.

11 Q Do you remember when we met in August of '99,
12 when you quoted, among other things -- some of which you
13 remembered, some of which you didn't -- that you thought
14 that Ms. Miller's conduct was inappropriate during that
15 meeting?

16 A This meeting is the meeting --

17 Q Of July 16 of '99.

18 A -- that you wanted some of the paperwork? Is
19 that the one you mean?

20 Q Yes.

21 A The names of the people and all that?

22 Q Correct.

23 A No. I didn't say that her behavior was
24 inappropriate. But I did say that I think it could have
25 been handled in a different way.

1 Q Could you then tell us what you remember and
2 when you told Ms. Miller that she could have handled the
3 situation differently?

4 A I don't think I told Ms. Miller anything.

5 Q Oh. You told me at that time that you have
6 spoken to her. I don't know if you did or not. I only
7 know what you told me.

8 A No, I don't think I did.

9 Q So let me ask you the next question:
10 Ms. Miller falls under the authority of the COO or CEO?

11 A The CEO.

12 Q CEO.

13 And is Ms. Miller's salary out of the budget of
14 the hospital or a separate budget of the medical staff?

15 A It's out of the hospital.

16 Q So unless you are sometimes, like in December,
17 '99, the CEO and COO, you did not have anything to do
18 with whatever Ms. Miller's conduct is. So if you
19 believe her conduct could have been different or handled
20 differently, to use your words, why wouldn't you tell it
21 to her?

22 A I sometimes approach people if I think it's so
23 egregious. And sometimes I choose not to. And in this
24 case I didn't think her behavior was so egregious that
25 it required that kind of intervention, whether she

1 reports to me or not.

2 Q So what was it that you thought she did that
3 she did in a way that you thought she could have done
4 differently?

5 A Well, you guys got into a struggle, you and
6 Debbie, over paper.

7 Q How did it happen, to the best of your
8 recollection?

9 A You wanted to have some documentation from the
10 credentials committee, as I recall.

11 Q What was it that I wanted?

12 Let me help you --

13 A I think it was the names of the --

14 Q No it wasn't. Look at 106-2, last paragraph.

15 Shortly after arriving in the meeting, M.D.

16 No. 2181 asked for the sign-in sheets.

17 Does that refresh your memory?

18 A Yes.

19 Q Then what happened? You don't have to
20 read. Tell me from memory what you remember.

21 A Then you attempted to take that yourself -- to
22 take physical possession of it, and Ms. Miller attempted
23 to prevent you from taking it. And then there ensued
24 this push and pull over the document.

25 Q It says on here -- correct me if I'm wrong, and

1 if it fits with your recollection:

2 He --

3 Meaning me.

4 -- was told that he could not copy the names of
5 the committee members, and he told the director "You
6 could sit down. I will give it to you when I'm
7 done."

8 Is that a fair and accurate description of what
9 you recall?

10 A Pretty much.

11 Q And do you see any reason why any member of the
12 staff, an active member -- let alone 14 years -- had no
13 permission or needs permission to take a sheet of paper
14 and copy the names of the people who attend the meeting?
15 Is there any rule or regulation in the bylaws, sitting
16 next to you, that prevents such a thing for the
17 physician to do?

18 A You know, I don't know if it's in there.

19 Q Okay. Let's go to Exhibit -- let's see if I
20 get it right this time -- 121-1. You told us last time
21 that the security in the hospital personnel falls under
22 your authority; is that correct?

23 A That's correct.

24 Q How do you check what they are doing falls
25 below or above your wishes of what you expect them to

1 do?

2 A There are multiple ways. I can get complaints;
3 direct observation; I review security's assessment of
4 their various staff -- I do that at least once a year --
5 and just commentary from the various people that work
6 with security.

7 Q All right.

8 Can you tell us what is your understanding of
9 the purpose of the sign-in sheet in the emergency room
10 that is existing there next to the emergency room
11 entrance at night.

12 Do you see the first document is ER check-in
13 form; correct?

14 A Right.

15 Q What is your understanding of what is the
16 purpose of that document?

17 A This is the log-in for people who present, I
18 believe, after hours -- no. This looks like it's all
19 hours -- to the ER.

20 Q Let me ask you to just review the first two
21 pages, 121-1 and 121-2. I want you to just focus at the
22 two first columns, "Date" and "Time," on those two
23 pages, please.

24 A Uh-huh.

25 THE HEARING OFFICER: Do you have a question?

1 BY DR. MILEIKOWSKY:

2 Q Have you finished looking at those two pages?

3 A Just looking at the date and time?

4 Q Right, the first two pages.

5 Now, please go look on page 7 of the table of
6 contents under No. 121. What's the title?

7 Go all the way to the beginning; all the way to
8 the beginning of the book. It has a table of contents;
9 page 7 is where the description of Document 121 is
10 stated.

11 Can you please read to us what 121 is.

12 A ETRMC Security Record dated July 4, 2000;
13 July 5, 2000; and July 6, 2000.

14 Q All right.

15 Now, do you have the feeling that you really
16 have all of that here in those two pages? I'd like you
17 to look at it very carefully.

18 A You know what? I don't know.

19 Q So you don't see any holes? You don't see a
20 page missing? July 6 started at 9:00.

21 A Oh, I see. July 5 looks a little lean.

22 Q July 5 ends up at 0026. What happened between
23 July 5, 0026, and July 6 at 7:00 in the morning?

24 A I just have no idea.

25 Q No idea.

1 Who's responsible for those records?

2 A The security department, I would assume. But
3 you know what? I don't know.

4 Q It's under your authority. What is your
5 knowledge of it?

6 A You know, I don't review this document.

7 Q Okay. If a page is missing, what do you do?

8 A Well, I don't review this document.

9 Q You never review it at all?

10 A No.

11 Q Where are those kept and for how long?

12 A You know, I don't know. I just never reviewed
13 this, Dr. Mileikowsky.

14 Q Okay. Would it shock you to know that I have
15 reviewed it in August at night, and I have reported to
16 security that the page that I signed that night is
17 missing?

18 Did you ever get that information --

19 A I didn't get that.

20 Q -- in August?

21 A I did not get that report.

22 Q So who does security personnel report to when
23 there is a complaint regarding precisely this issue?

24 DR. WULFSBERG: I'm going to object to the
25 question because this is, again, facts not in evidence.

1 DR. MILEIKOWSKY: It's in evidence.

2 DR. WULFSBERG: We have no documentation that
3 he signed anything that he alleges that he signed. We
4 have no testimony, except his statement right now. And
5 I believe bringing this issue up in this manner is
6 stating issues not in fact.

7 DR. MILEIKOWSKY: That's not the issue.

8 (Simultaneous colloquy.)

9 THE REPORTER: One at a time.

10 DR. WULFSBERG: There's no fact in evidence to
11 support the statement that he signed anything or did not
12 sign anything.

13 THE HEARING OFFICER: We take for granted that
14 it's Dr. Mileikowsky's contention that there's a page
15 missing and that Dr. Mileikowsky signed the page that is
16 missing. And he's asking Mr. Clute if Mr. Clute was
17 ever made aware that that was Dr. Mileikowsky's
18 contention. And Mr. Clute's says "no."

19 THE WITNESS: I was not.

20 THE HEARING OFFICER: All right. Next
21 question?

22 DR. MILEIKOWSKY: Thank you very much.

23 Q If anyone -- not me, but anyone -- brings to
24 the security guards at night an issue like that, who
25 should they report it to? What's the chain of command?

1 A They should have reported it to me.

2 Q To you.

3 So would it disturb you to know that this was
4 not reported to you?

5 A I'm assuming that you reported it to somebody.

6 (Simultaneous colloquy.)

7 BY DR. MILEIKOWSKY:

8 Q Yes. That's something we don't need to waste
9 our time on right now.

10 A If that's true, yeah.

11 Q It's a hypothetical, since you're not aware of
12 it.

13 Who might interfere with the chain of command of
14 what is supposed to happen? Who has the authority to
15 interfere? The CEO?

16 A Anybody could interfere, I suppose.

17 Q Who has the authority to interfere? The CEO?
18 He's above you; correct?

19 A That's true.

20 Q Okay. Would the personnel of the risk
21 management have the authority to remove a document and
22 keep it in the risk management office, without your
23 knowledge, upon instruction of the CEO, hypothetically?

24 A I suppose.

25 Q Would Ms. Debbie Miller have the authority to

1 remove the document from this record and keep it in
2 medical staff without the CEO's authority?

3 A Not that I know of.

4 Q Okay. So if I understand you clearly, you have
5 never been in the medical staff office, nor Sharon Rose
6 in risk management, nor any other person, like Roberta
7 White in quality assurance, who have the authority to
8 remove a document from this log without the CEO's
9 authority; correct? Is there only one person who has
10 the full authority to go above your head; is that
11 correct?

12 A To remove it permanently from a record?

13 Q Correct.

14 A Yeah. I can't imagine anyone giving that kind
15 of authority to anyone.

16 Q But the only one who could have such an
17 authority would be the CEO; correct?

18 A He's the only recognized authority that I can
19 think of.

20 Q Above you.

21 So my question is: Would risk management,
22 quality assurance, or medical staff personnel on their
23 own volition have the authority to remove a document
24 from this logbook?

25 A You mean give themselves authority to do it?

1 Q Right. Do they have such an authority without
2 consulting the CEO?

3 A I can't imagine why.

4 Q That's not the issue, why. The issue is
5 whether they have the authority or whether they need or
6 require the authority. That's my question.

7 A The reason why it's a difficult question to
8 answer is because we have all kinds of rules, and I'm
9 aware that rules get broken. And I know that when I
10 know that they are being broken, I do something about
11 it.

12 So anybody, I guess, could have come in and
13 taken this.

14 Q Now help me out and help us out. Where does it
15 say in the bylaws and rules and regulations that you
16 have in front of you, or the ones that were in effect --
17 I can provide it to you -- on July of the year 2000 --
18 where are those rules and regulations that describe what
19 is the procedure regarding the recordkeeping of the ER
20 check-in form? You have it in front of you?

21 A We don't --

22 THE HEARING OFFICER: Do you have a rule in
23 mind?

24 DR. MILEIKOWSKY: I'm asking him if he has a
25 rule. He just said that rules and regulations are

1 broken. I want to know --

2 THE HEARING OFFICER: As you sit here, can you
3 recall a specific rule and regulation --

4 THE WITNESS: No.

5 THE HEARING OFFICER: Do you have a specific
6 one in mind that you wish to refer him to?

7 DR. MILEIKOWSKY: No.

8 THE HEARING OFFICER: I'm just trying to help
9 you finish.

10 DR. MILEIKOWSKY: Thank you. I would be
11 delighted to finish with him. I did not want to start
12 this whole thing, by the way.

13 THE HEARING OFFICER: All right. Go ahead.
14 Next question.

15 BY DR. MILEIKOWSKY:

16 Q Coming back to two very important issues, the
17 issue of the union, other than the meeting with Karen
18 McDaniel, have you had any other meetings or discussion
19 on the phone or otherwise with anybody else from the
20 union?

21 A Yeah, I had a discussion --

22 Q With whom?

23 A -- from the union. I have a letter that
24 references the name of the person, and I don't recall
25 their name. And it's in the letter.

1 Q Right. But before you saw that letter, you had
2 a conversation?

3 A I'm sorry? Before the letter, did I have a
4 conversation?

5 Q Before you received the letter, yes.

6 A Yeah. Actually, I got a call from that same
7 person that asked if I had received the letter.

8 Q Now, how soon after the meeting with Karen
9 McDaniel was that phone call?

10 A I'm sorry.

11 THE HEARING OFFICER: Do you need a break?

12 THE WITNESS: I need to just make this return
13 phone call for a moment.

14 THE HEARING OFFICER: Why don't we take a
15 five-minute break. Is that enough?

16 THE WITNESS: That's more than -- I think so.

17 THE HEARING OFFICER: Okay. Five-minute break,
18 and then we'll come back and then try to finish up,
19 Dr. Mileikowsky.

20 DR. MILEIKOWSKY: Yes. It's my deepest wish,
21 too.

22 (Recess from 9:06 p.m. to 9:13 p.m.)

23 THE HEARING OFFICER: Let's continue.

24 BY DR. MILEIKOWSKY:

25 Q Interestingly, you said that plenty of rules

1 are being broken on a daily basis.

2 DR. WULFSBERG: Excuse me. I don't believe the
3 witness ever said that.

4 DR. MILEIKOWSKY: It's because you don't
5 listen.

6 THE HEARING OFFICER: Well, wait. Wait. I
7 don't recall whether the witness said it or didn't say
8 it.

9 Do you recall saying it?

10 THE WITNESS: I said rules gets broken here.
11 Do they get done every single day

12 THE HEARING OFFICER: Go ahead.

13 DR. MILEIKOWSKY: Thank you very much.

14 Q What mechanisms do you have in place to prevent
15 the hospital -- let me put it this way first.

16 What rules do you have in place or what other
17 mechanisms do you have in place at this institution to
18 assist you and your personnel to make sure that, number
19 one, you comply with the bylaws of the hospital; and,
20 number two, that you comply with whatever orders come
21 from anywhere else that you're bound by? What mechanism
22 of communications or other exist, if at all? Maybe
23 there are not; I don't know. I'm asking the question.

24 A There's a variety. We have rules and
25 regulations. We have policies and procedures. We have

1 educational meetings. We have verbal communications.

2 Q With whom? Between who and whom?

3 A Just staff, physicians, nurses,
4 administrators -- there are all sorts of mechanisms.

5 Q Let me try to focus our attention on one little
6 detail. Okay? I'm going to read from the bylaws as
7 they were in effect on February 2, '99. And these are
8 the bylaws that were approved by the governing board on
9 March 25, '99. On page 14 it's Article VI, Section A,
10 like "Apple":

11 Members of the medical staff shall be appointed
12 every two years, the date of which shall be
13 determined based upon the date of the last
14 reappointment. Six months prior to the expiration
15 of the member's reappointment, a member shall be
16 sent a reappointment application by certified or
17 registered mail, return receipt requested.

18 You were the COO here since when?

19 A Since -- it's been two and a half years, so it
20 would be 19 -- I think it was May of 1998.

21 Q So on February 2, '99, you were the COO. To
22 the best of your knowledge, since the medical staff
23 operations do not fall directly under you but under the
24 CEO, who, if at all, assists the medical staff office
25 in making sure they comply with the bylaws of the

1 hospital? Anyone? Who would have that responsibility?

2 A Well, the medical staff has a great deal of say
3 in how we abide by the rules and regulations. We have
4 multiple committees that are a part of the structure.

5 I don't know if that answers your question.

6 Q So you mean it's the committees?

7 A No. Like I said, that's just one of -- the CEO
8 clearly has the responsibility to make sure we abide by
9 it. The medical staff office does. The medical staff
10 does.

11 Q What if the medical staff is not aware of the
12 fact that they are not actually abiding by certain
13 articles of the bylaws of the hospital. Who is there to
14 tell him, "Hey, guys. You're goofing"? No one?

15 A Well, I would imagine other medical staff
16 members or -- if we know there's a problem, we can
17 address it. If we don't know that it's not there, it's
18 difficult to address.

19 Q Very good.

20 So if a physician brings up to the attention of
21 the medical staff on February 2, '99, when you are the
22 COO -- and the CEO is made aware of that problem as
23 well -- what would you do if you come to the knowledge
24 that there is a portion of the bylaws that the medical
25 staff personnel, knowingly or unknowingly, is just not

1 abiding by? What would you expect to happen? Would
2 they fix it, question mark?

3 A I would assume that one would address it.

4 Q Address it how? Would they make sure they
5 comply with the bylaws?

6 A I would assume so.

7 Q Now, if that physician brings that further to
8 the attention of the Medical Executive Committee, would
9 you expect the Medical Executive Committee of that
10 hospital to advise the medical staff that they are
11 violating the bylaws or not complying with it, and they
12 should comply with it? Would you assume so?

13 A I would assume so.

14 Q And if the Medical Executive Committee does not
15 take that step and that physician then brings it up to
16 the attention of the governing Board of the hospital
17 that this particular section and item of that section of
18 the bylaws is not complied with by the personnel of the
19 medical staff, what would you expect the governing board
20 of the hospital to do?

21 A I would assume they would make a decision
22 whether to do something about it or choose not to. I
23 would assume that.

24 Q But would you expect them to request the
25 medical staff personnel to comply with the bylaws?

1 That's the only question I have.

2 A I suppose so.

3 Q All right.

4 And if all resources existing -- is there any
5 other resources? Is there anyone else that a physician
6 could go to in the hospital to say, "Guys, there's a
7 problem here" other than medical staff personnel, the
8 CEO, the MEC, and the governing board? Is there any
9 other authority in the hospital that could fix the
10 problem in the hospital if those entities have not fixed
11 it?

12 A I think that would do it.

13 Q That would do it.

14 So then what's the alternative of that
15 physician, he or she, if all of those safety measures,
16 shall we call it, fail? What's the only thing left for
17 that physician, he or she, to do?

18 A I guess you could call Tenet corporate. I
19 suppose you could take legal action.

20 DR. WULFSBERG: I'm going to interject myself
21 here because I believe this is going in a direction to
22 try and --

23 DR. MILEIKOWSKY: He answered the question.

24 DR. WULFSBERG: -- to try and get the witness
25 to elicit certain information that, in fact, we have

1 already discussed is not going to be part of this.

2 DR. MILEIKOWSKY: He just answered the
3 question.

4 THE HEARING OFFICER: All right. Do you have
5 another question?

6 DR. MILEIKOWSKY: Yes. Yes, absolutely.

7 Q Now, my question is: What mechanism exists to
8 inform the personnel of this hospital that some kind of
9 remedy to the problem has been advised -- not to use a
10 stronger word -- by an outside authority? Who advises
11 you guys of what you guys are supposed to comply with?
12 Outside? Your legal department?

13 A I really don't know what you're asking me.

14 Q It's very simple. You just stated that the
15 only measure left, short of shooting himself or shooting
16 anybody else -- right? -- is a legal venue, whatever it
17 is.

18 Whenever that venue is used, how are you
19 informed of the conclusion or whatever the ongoing of it
20 is?

21 THE HEARING OFFICER: All right.

22 DR. MILEIKOWSKY: That's all.

23 THE HEARING OFFICER: Wait.

24 DR. MILEIKOWSKY: I just want to know how he's
25 getting information, whatever information it is --

1 THE HEARING OFFICER: Look --

2 DR. MILEIKOWSKY: -- so that he complies so he
3 doesn't break the rules and laws. That's all.

4 THE HEARING OFFICER: Well, if you are --

5 DR. MILEIKOWSKY: I don't take any specifics.

6 THE HEARING OFFICER: -- bent on bringing legal
7 proceedings into this --

8 DR. MILEIKOWSKY: No. No. Just -- that's it.

9 THE HEARING OFFICER: -- we will discuss at the
10 conclusion of the testimony tonight how we will do
11 that.

12 DR. MILEIKOWSKY: This is a hypothetical.

13 THE HEARING OFFICER: No. We're not going down
14 the path any further. All right?

15 DR. MILEIKOWSKY: Okay. All right. Fine.

16 THE HEARING OFFICER: If you insist on doing
17 that, we will discuss that. I had a ruling which I
18 think, on balance, is a ruling that would be helpful to
19 you. But you don't believe that, so we will address it
20 further.

21 DR. MILEIKOWSKY: Let's continue to the next
22 question.

23 Q Did you notice on November 10, 2000, or
24 anytime before or anytime after, a notice by
25 Mr. Surowitz instructing to escort me and to call

1 security as soon as I call or as soon as I come? Have
2 you ever seen such notice on any billboard or board of
3 the nurses' station in labor and delivery and the
4 nurses' station in the office of the nursing supervisor
5 or anywhere else? Or have you received such a copy of
6 such a notice?

7 A I know that that notice existed, that that rule
8 existed.

9 Q Okay. That's good enough.

10 Does that, to your understanding, enhances,
11 changes in any way, or degrades the perception of that
12 physician to the eyes of the nurses and physicians and
13 other administrators like yourself or others? How do
14 you think the community in the hospital -- and out of
15 the hospital, but in the hospital -- is then perceiving
16 that physician?

17 What is your understanding? Is that a
18 compliment? Is that derogatory? Or it doesn't affect
19 in any way?

20 A No. If it were happening to me, I would
21 consider it offensive.

22 Q Offensive. When you say "offensive," what do
23 you mean? If it was a billboard saying "Whenever Jerry
24 Clute shows up, or before he shows up if he calls, make
25 sure a security guard is there to meet him at the

1 entrance, escort him all over until he leaves" --

2 A I would be embarrassed.

3 Q Embarrassed. Anything other than embarrassed?

4 A I think that's enough.

5 Q Now, if you were a physician, do you think
6 that would encourage other physicians or even nurses or
7 other patients to refer patients to him or her?

8 A I can't imagine that anyone would look
9 favorably upon that at all.

10 Q Would other physicians be encouraged or
11 discouraged to refer or work with that physician, let
12 alone cover for him when he is on call?

13 A I don't see how they could be encouraged. So
14 discouraged.

15 Q They would be discouraged?

16 A You know, it seems logical if security is with
17 you, yes.

18 Q So how would you expect such a physician to
19 react? If it was you, what would you do? You're
20 embarrassed --

21 A I would be embarrassed. I would go to the
22 CEO, and I would say, "Look. I need this not to
23 happen. I will do everything I can to alter this
24 perspective of me so that I can have security removed
25 from me."

1 Q If that failed?

2 A If that failed, I would do everything I could
3 to show and demonstrate to everybody that I know that I
4 don't warrant this kind of security activity.

5 Q How would you show it?

6 A By having good behavior, by being professional,
7 by being courteous to the staff at all times.

8 Q Have you ever seen me until -- or heard of me
9 until December 17, '99, of not being courteous to
10 anybody on the staff?

11 A I had not.

12 Q Actually, in reality, in August of '99, you
13 were still telling me that patients love me and I'm a
14 great physician.

15 So obviously having any physician, not
16 necessarily me, being escorted interferes with the
17 ability of that physician to practice medicine at that
18 facility; is that right?

19 A No. I didn't say that.

20 Q Okay.

21 A I said it would be embarrassing. I would want
22 to change my behavior. And I don't think it would be
23 favorable, but, you know, you still had patients.

24 Q Okay. Now let's go one step further. If your
25 perception is that it's embarrassing for you if such a

1 thing happened, how would you perceive if your capacity
2 to function as a COO anywhere in the civilized world was
3 compromised? If there was an equivalent of a 805 Report
4 and National Data Bank Report, with 37 charges going all
5 the way 14 or 12 years backwards, how would you feel?
6 What are your chances of continuing to work in any
7 capacity as an administrator in any hospital in the
8 civilized world?

9 A Well, I'm responsible for my behavior. And if
10 I earned that, which I hope I never do, I would expect
11 that I would go find a job, if I had to, and start
12 fresh, start anew, and say, "Look. I cannot behave that
13 way here."

14 But I would certainly not behave in the same
15 fashion. I just wouldn't.

16 Q Earlier I asked you the question if you were a
17 COO or CEO in Florida, Belgium, or Israel and a
18 physician came over to you from California with
19 credentials of summarily suspended privileges for
20 imminent danger, you said yourself you wouldn't want
21 such a guy.

22 A That's true.

23 Q And if he said, "You know, I'm going to
24 change," would you believe him?

25 Would you still take the risk is the question?

1 Why should --

2 A Dr. Mileikowsky, you were given that option.
3 You were given that opportunity.

4 Q What opportunity?

5 A In December I sent you a letter and said,
6 "Please, don't do this. You can't do it. We won't
7 support it," and yet it happened again.

8 I feel badly, but I'm not responsible for your
9 having behaved that way. I tried to stop it.

10 Q Are you finished?

11 A Yes. Sorry.

12 Q I just wanted to make sure you're finished.

13 Another problem, Jerry, you haven't looked at
14 is that you're being provided with blinders. Because on
15 November 10, 2000, you had no idea if I was right or
16 wrong when I stated that you personally violated
17 certain --

18 DR. WULFSBERG: There's no question here.

19 This is a statement.

20 DR. MILEIKOWSKY: No. No. No. No. The
21 question is --

22 DR. WULFSBERG: Yes. Yes. Yes. Yes.

23 THE HEARING OFFICER: It's argumentative, out
24 of order.

25 Ask a question, please.

1 DR. WULFSBERG: It is argument.

2 BY DR. MILEIKOWSKY:

3 Q What have you done since November 10, 2000, to
4 attempt to find out if I was right or wrong about that
5 when I told it to you in confidence? And when I offered
6 you a lunch precisely in order to open your eyes, what
7 did you do from November 10, 2000, to find out whether
8 or not you were -- you personally were right or wrong in
9 your decision to keep Mr. Carlos where you kept him?

10 The question is very simple.

11 DR. WULFSBERG: This has been asked and
12 answered innumerable times. He said --

13 DR. MILEIKOWSKY: Why are you afraid of his
14 answer?

15 (Simultaneous colloquy.)

16 THE HEARING OFFICER: Let him finish his
17 objection.

18 Go ahead.

19 DR. WULFSBERG: I think you should be afraid of
20 his answer, not me.

21 But the answer is that he has asked and
22 answered this question laboriously now for two and a
23 half hours on virtually the same issue. He has stated
24 the answer. I think to recapitulate this is --

25 DR. MILEIKOWSKY: What is the answer?

1 DR. WULFSBERG: It's enough already. Let's
2 move on.

3 THE HEARING OFFICER: You may answer it one
4 last time.

5 BY DR. MILEIKOWSKY:

6 Q Do you want me to make it short for you?

7 What has happened since November 10, 2000, up
8 to today, September 24, 2001, that you have personally
9 done to verify whether or not I was in the wrong or you
10 were in the wrong on November 10, '99 -- 2000? Sorry.

11 Have you done anything? "Yes" or "no"?

12 A No.

13 Q Why?

14 A Because I was there --

15 Q That is not the question.

16 A You asked me why.

17 THE HEARING OFFICER: Let him finish.

18 DR. MILEIKOWSKY: But it is nonresponsive
19 again.

20 THE HEARING OFFICER: He's giving you his
21 answer why.

22 DR. MILEIKOWSKY: No. Because the fact he was
23 there is nonresponsive.

24 DR. WULFSBERG: I said you might not like to
25 hear the answer. You're going to hear it now.

1 (Simultaneous colloquy.)

2 THE HEARING OFFICER: Excuse me. Let him
3 answer the why.

4 DR. MILEIKOWSKY: Absolutely. We'll find
5 exactly the same way he rehearsed with Ms. Suda.

6 THE HEARING OFFICER: Go ahead.

7 THE WITNESS: First of all, there was somebody
8 there, a patient, who deserved for us to assure that the
9 confidentiality was protected.

10 BY DR. MILEIKOWSKY:

11 Q Jerry, please. What was my question?

12 A Number two -- let me finish.

13 THE HEARING OFFICER: Excuse me. Let him
14 answer the question.

15 DR. MILEIKOWSKY: He's not answering the
16 question. It's nonresponsive, and I move to strike.
17 This is at least the 50th time he's saying the same
18 nonsense.

19 What was the question? Maybe you can rephrase
20 it to him.

21 THE HEARING OFFICER: You may not like the
22 answer --

23 DR. MILEIKOWSKY: No. No. No. I like it very
24 much. On the contrary, it shows how much he has been
25 educated and --

1 (Simultaneous colloquy.)

2 THE HEARING OFFICER: I will sustain the
3 objection to the question.

4 Next question.

5 DR. MILEIKOWSKY: This is ridiculous.

6 THE HEARING OFFICER: Excuse me. Next
7 question.

8 DR. MILEIKOWSKY: For the record, once again,
9 Mr. Willick is not acting as a hearing officer but as an
10 advocate; as an advocate for this hospital. He is
11 preventing this witness, number one, to answer the
12 question. He is perfectly satisfied with this witness
13 repeating the same thing as a broken record.

14 And I hold Mr. Willick responsible -- and
15 you're a party to this. You're not at all an impartial
16 hearing officer.

17 THE HEARING OFFICER: Dr. Mileikowsky --

18 DR. MILEIKOWSKY: That's for the record. You
19 don't need to answer. This is for the record.

20 THE HEARING OFFICER: Dr. Mileikowsky --

21 DR. MILEIKOWSKY: This is the record.

22 THE HEARING OFFICER: Dr. Mileikowsky, you
23 wouldn't allow him to answer the question.

24 DR. MILEIKOWSKY: I would love him to answer
25 the question.

1 THE HEARING OFFICER: Excuse me.

2 DR. MILEIKOWSKY: I would love him to answer --

3 THE HEARING OFFICER: Dr. Mileikowsky --

4 DR. MILEIKOWSKY: -- why was he not
5 interested --

6 THE HEARING OFFICER: Excuse me.

7 DR. MILEIKOWSKY: -- to know. That's the
8 question.

9 THE HEARING OFFICER: Dr. Mileikowsky, you're
10 out of order. You're out of order.

11 The question was objected to as redundant. I
12 allowed him to answer. He was giving his answer. You
13 interrupted him; you wouldn't allow him to answer, so I
14 sustain the objection.

15 Next question.

16 BY DR. MILEIKOWSKY:

17 Q Do you have any rule, regulation, that
18 prevents or forbids any member of your staff from giving
19 their name if they are asked what's their name?

20 A Name of a patient?

21 Q Anybody. If I met you in the corridor and I
22 didn't know you, and I asked you "What's your name?" do
23 you have any rule or regulation or bylaw that prevents
24 you from telling me what your name is?

25 A No, we do not.

1 THE HEARING OFFICER: Okay. Dr. Mileikowsky,
2 at this point I'm going to let Mr. Clute go after this
3 evening. The members of the hearing committee have
4 indicated to me that they have questions. All right?

5 Now, I'm going to give you a choice. The
6 choice is this: You either stop right now and let them
7 ask their questions; or you continue on, and they won't
8 get to ask their questions.

9 DR. MILEIKOWSKY: I would love the hearing
10 committee to ask questions, and I expect you to give me
11 a follow-up after that.

12 THE HEARING OFFICER: Well, Dr. Wulfsberg will
13 have a chance, too. But I'd like to let the hearing
14 committee ask the questions. You've had more than ample
15 opportunity for Cross-Examination based on -- what was
16 it? -- a 21- or 25-minute Direct.

17 All right. Members of the committee, do you
18 have any questions of Mr. Clute.

19 DR. NASSOURA: Yes.

20

21

EXAMINATION

22 BY DR. NASSOURA:

23 Q Mr. Clute, we've heard about so many instances
24 so far. And, you know, we've heard the last questions
25 that you have not done anything to find out what's his

1 side of the story.

2 Has at any time he given you his side of the
3 story, either in writing or verbally or by telephone
4 call?

5 A No.

6 Q Has he attempted to give you his side of the
7 story?

8 A No.

9 DR. NASSOURA: Go ahead.

10 DR. MIYASHITA: I have a question. May I ask?

11 THE HEARING OFFICER: Yes.

12

13

EXAMINATION

14 BY DR. MIYASHITA:

15 Q Mr. Clute, do you consider Dr. Mileikowsky to
16 have a problem with controlling his behavior?

17 A I absolutely do.

18 Q Prior to the events of December, 1999, was he
19 considered to be a physician in good standing;
20 professional conduct, ethical, and so forth?

21 A My understanding as of that date was, yes, that
22 he was fully credentialed and in good standing at this
23 hospital.

24 Q So my question is: Is there a reason that he
25 was not offered some kind of counseling options in the

1 same way that, perhaps, an anesthesiologist or somebody
2 using drugs might be offered counseling for that kind of
3 behaviorial --

4 A I, frankly, don't even know if he was offered
5 that or was not. That isn't my particular role. You
6 know, medical staff has a well-being committee, and I
7 don't know if they pursued that. That's just something
8 I'm not aware of.

9 DR. MIYASHITA: Okay.

10 DR. FLEISHER: We keep hearing about Dr. Yamini
11 having scrubbed before. In fact, had he scrubbed many
12 times before as an assistant?

13 THE WITNESS: My belief is he did.

14

15 EXAMINATION

16 BY DR. PLEET:

17 Q Prior to November the 10th, are you aware of
18 how many occasions Dr. Mileikowsky was escorted by
19 security subsequent to the letter of June the 23rd?

20 A No. I never made an account.

21 Q Was there ever a tracking done based upon his
22 appearances at the hospital and whether there was
23 security provided during those times?

24 A My understanding is that he had to call the
25 nursing supervisor or Mr. Surowitz or myself when he was

1 going to come to the hospital; so that would have been
2 documented, I would imagine. And then security would
3 have been -- would have documented that they escorted
4 him.

5 Q Were the nurses or anyone in the hospital
6 informed that if Dr. Mileikowsky was in the hospital and
7 there was no security present, that someone should be
8 notified?

9 A I believe that they were notified -- security
10 was notified. I believe --

11 No. The direct answer to your question is I
12 don't think so.

13 Q Does it surprise you, then, that -- if the
14 enforcement of that letter was inconsistent, would it
15 surprise you, then, that all of a sudden on November 10,
16 that suddenly it was enforced?

17 A My understanding was that it was enforced
18 consistently. Whether it was documented consistently, I
19 don't know. But I believe my recollection of the last
20 two years or how long this has been going on is that he
21 always did call before he came in, and we documented
22 that, as far as I know.

23 So we may have a problem with documentation
24 versus, I think, the actual performance.

25 Q Would there be documentation in the records of

1 the security personnel?

2 A I think there should be. But, again, I've been
3 around long enough to know that we don't even -- we
4 don't document what happens to our patients as regularly
5 as we should. Documentation is a tough thing.

6 Not that I can condone it, but I wouldn't be
7 surprised if it isn't there.

8 THE HEARING OFFICER: Any other hearing
9 committee members' questions?

10

11

EXAMINATION

12 BY DR. BROOKS:

13 Q Just to get back, the purpose of the security
14 was to protect the staff against -- to protect the
15 staff. Did you ever feel that there would be vindictive
16 behavior against Dr. Mileikowsky?

17 A Good question. My chief concern was to protect
18 the staff, and I may have been remiss in thinking about
19 whether or not there would be vindictive behavior. I
20 suppose there could have been.

21 DR. PLEET: I have another question.

22 THE HEARING OFFICER: Yes, Doctor.

23 / / /

24 / / /

25 / / /

1 FURTHER EXAMINATION

2 BY DR. PLEET:

3 Q There were allegations that Dr. Mileikowsky
4 took photographs of several of the nurses. Yet in the
5 record -- or it's alleged that he mistakenly took a
6 picture of an obstetrician/gynecologist who happened to
7 be down the hall.

8 Now, is there more than that single incident of
9 a picture of an individual, other than that one?

10 A Not to my knowledge at all. Just during that
11 one day.

12 Q So the allegation that he took pictures of
13 several nurses on the floor may, in your opinion, have
14 been an exaggeration; or from one person to the next, a
15 story gets changed?

16 A You know, I don't know. The nurses felt
17 uncomfortable that he was taking pictures. Whether he
18 actually took pictures of them specifically, the feeling
19 was that they were. And then this one physician, of
20 course, felt that he took pictures of that physician.

21 So whether I think they exaggerated or not, I
22 think they were concerned that he was taking pictures in
23 the first place. So whatever people behave like, I
24 don't know.

25 DR. PLEET: Thank you.

1 THE HEARING OFFICER: Any other hearing
2 committee questions?

3 Dr. Wulfsberg, a couple of questions on
4 Redirect?

5 DR. WULFSBERG: A few.

6 THE HEARING OFFICER: We're going to be out of
7 here by 10:00 because some of these doctors have
8 something to do tomorrow morning.

9 DR. WULFSBERG: We all do.

10 DR. FLEISHER: Like work for a living.

11 THE HEARING OFFICER: Like work, yes.

12 DR. WULFSBERG: We have been here for a long
13 time, and I'll try to limit this.

14

15 REDIRECT EXAMINATION

16 BY DR. WULFSBERG:

17 Q Were you aware that Dr. Mileikowsky received a
18 letter from Dale Surowitz indicating that he was to be
19 accompanied by a security guard?

20 A Yes.

21 Q At any time were you aware that any notice
22 lifted that responsibility from the hospital and removed
23 that responsibility from the hospital of providing
24 security?

25 A No.

1 Q Okay. And based on the fact that
2 Dr. Mileikowsky received a letter and had acknowledged
3 the letter by calling nursing, calling administration,
4 would you have been surprised that he became angry that
5 there was a security guard in labor and delivery that
6 day?

7 A No.

8 Q So it was a surprise that he became angry?

9 A Because we had been doing this for a while.

10 Q So he knew about it. He knew about the letter
11 in advance, and he had ample preparation ahead of time.
12 So when the security guard arrived, that was no surprise
13 to anybody, including Dr. Mileikowsky and especially
14 Dr. Mileikowsky?

15 A That had become what we had been doing for
16 enough time that I think he shouldn't have been
17 surprised.

18 DR. MILEIKOWSKY: I would like to object to one
19 thing.

20 DR. WULFSBERG: Well, I --

21 DR. MILEIKOWSKY: Excuse me.

22 Dr. Wulfsberg takes the liberty to state facts
23 not in evidence. As a matter of fact, worse than that,
24 he states facts which are contrary to the evidence. So
25 I would like you to keep that in your mind.

1 THE HEARING OFFICER: You may have a chance to
2 ask some more questions.

3 DR. MILEIKOWSKY: Provided you don't object
4 again. You see, your ruling is, again, unfair because
5 you allowed them to present the opposite of the truth,
6 and you don't allow me to present the truth.

7 And I want you to keep that in mind when you
8 are going to revisit your rulings regarding legal
9 issues.

10 THE HEARING OFFICER: Go ahead, Dr. Wulfsberg.

11 DR. WULFSBERG: Thank you.

12 Q There's an issue regarding Dr. Yamini and
13 whether he operated in the past or not. When you
14 discover that a rule has been broken by an employee or a
15 physician at the hospital, what's your usual procedure?

16 A To make sure that we start to comply with that
17 particular rule and regulation, once I know it.

18 Q So once the rules has been broken, that doesn't
19 give that individual the carte blanche to continue
20 breaking the rules?

21 A No. You know, the fact that people break rules
22 happens, but we don't authorize the breaking of rules.
23 So when we find out -- when I find out, I try to do
24 something about it to make sure they abide by the
25 rules.

1 Q You have testified that you knew
2 Dr. Mileikowsky for many years and that you had a
3 professional relationship with Dr. Mileikowsky,
4 certainly not an adversarial relationship in the past.

5 A No.

6 Q Do you believe his behavior has changed?

7 A Since?

8 Q Since 1998.

9 A Since the time I have known him -- yeah, very
10 much. In my eyes, he has changed dramatically.

11 Q And do you believe that his disruptive behavior
12 is a threat to the hospital personnel?

13 A I do believe that. I absolutely believe that.

14 Q Dr. Mileikowsky has used the analogy that he is
15 captain of the ship. Would it be fair to say that
16 because of your role as COO, you're the admiral of the
17 fleet? By that I mean to say that you have a greater
18 responsibility than just simply whether or not he's
19 going to operate on a patient.

20 DR. MILEIKOWSKY: I object because this is
21 totally different territory. The operating room --

22 THE HEARING OFFICER: Objection sustained.

23 Next question. Go ahead.

24 DR. MILEIKOWSKY: Nonsense.

25 / / /

1 BY DR. WULFSBERG:

2 Q Do you have a responsibility to protect the
3 staff at this hospital from disruptive behavior?

4 A Yes, I do.

5 Q Were you exercising that responsibility --

6 A Yes.

7 Q -- when you wrote the letter to
8 Dr. Mileikowsky?

9 A I think I was.

10 Q Okay. When you supported his being suspended
11 from the hospital, that, also, was your responsibility
12 to protect the staff from his disruptive and dangerous
13 behavior?

14 A That was always and only my desire.

15 Q He mentioned to you the embarrassment this
16 caused to himself. Do you believe that the hospital was
17 responsible for causing that embarrassment? Or do you
18 believe that he was responsible for causing his own
19 embarrassment?

20 A No. He's responsible for that behavior. The
21 hospital is not.

22 Q Thank you.

23 THE HEARING OFFICER: Dr. Mileikowsky?

24 DR. MILEIKOWSKY: Thank you.

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CROSS-EXAMINATION

BY DR. MILEIKOWSKY:

Q Jerry, to follow up Dr. Nassoura's question, the letter you wrote to me December 24, '99, I responded to. I also received a letter from Dr. Dosik. You never received a copy of it?

A Of your response to my letter?

Q Yes.

A I did.

Q You did.

And when did you receive it?

A I don't remember the date.

Q Sometime in '99 or early 2000? Either January, 2000, or December, '99?

A I would guess so.

Q Is it actually my habit to put the letters under your door or to have it hand-delivered or faxed?

A Probably faxed.

Q So it's safe to say you received it in December -- sometime in December, '99, or early January, 2000.

When we met on November 10, 2000, in labor and delivery, didn't I ask you to come with me to a private area so that you and I could talk?

A Yes, you did.

1 Q And after that, didn't I call you and offered
2 to invite you to lunch to discuss these issues?
3 Correct?

4 What was the purpose of me inviting you for
5 lunch?

6 A You did ask me out to lunch.

7 Q To discuss these --

8 A You didn't say that, but you did ask me to
9 lunch. I could assume that, I suppose.

10 Q Okay. And that's the reason you canceled the
11 lunch, because there was no sense talking about it after
12 the decision of November 16, 2000; correct?

13 A That's fair.

14 Q So why did you tell Dr. Nassoura that you're
15 not aware of any time that I have attempted to explain
16 to you the situation when you just said that I have
17 responded to your letter of December 24, '99, and I
18 asked you to come privately to discuss the issues of
19 November 10, 2000, and I also had the initiative to
20 invite you for lunch to discuss this matter?

21 Why do you tell Dr. Nassoura that you're not
22 aware of any time I have attempted to explain to you the
23 other side of the story?

24 A When you asked me to go into the private
25 meeting, it was not to explain the situation. You asked

1 me at the time -- or told me at the time that this
2 patient already had consent. That's what you told me.

3 I said, "Fine. Then this is a moot point.
4 Let's go out and get the patient done and let's move
5 on."

6 We went out, and that particular document was
7 being formed at that moment for your signature.

8 As to the letter -- I'm sorry -- as to your
9 invitation to lunch, I guess I could assume that you
10 were going to have lunch with me to talk about these
11 issues. You know, unfortunately, I didn't think about
12 that having been the purpose of that lunch, but rather
13 just to be cordial, I guess.

14 Maybe I should have done that, I don't know.

15 Q Now that you recollect that I responded to your
16 letter of December 24, '99, regarding the alleged
17 incidents of December, '99, would you then answer
18 differently Dr. Nassoura's question, which was,
19 basically: Did I ever respond to you --

20 A You mean the letter that you sent to Dr. Dosik?

21 Q Yeah.

22 A Well --

23 Q You saw it. You just said yourself you did.

24 A But you didn't send that to me.

25 Q How did you get it?

1 A You didn't send it to me, though. I mean, were
2 you asking for me to respond to a letter you sent to
3 Dr. Dosik?

4 Q That was not the question of Dr. Nassoura.
5 Dr. Nassoura's question was: Did Dr. Mileikowsky ever
6 provide you his side of the story? And you said "No."

7 A You had not.

8 Q So because I sent you a copy of a letter that
9 I'm sending to Dr. Dosik responding to both of your
10 letters at the same time, that's not a response to your
11 question?

12 A Did you describe in the letter the text of the
13 events?

14 Q Yes. It was a pretty thick letter.

15 A Well --

16 Q Okay. Let me ask you a completely different
17 question.

18 Do you have any bylaws, rules, and regulations
19 in front of you -- or any time since you have been, in
20 May, 1998, the COO at Tarzana Hospital -- anything
21 regarding regulations of anyone taking pictures anywhere
22 in the hospital? Is there anything in that document?

23 A I don't think there is. Not that I know of.

24 Q So for instance, patients that want to have
25 their family take pictures of the delivery, there's

1 nothing to prevent them from doing it?

2 A No. There's a policy in labor and delivery
3 about photography. But nothing in these bylaws or -- I
4 don't even think it addresses the physicians.

5 Q So there's nothing that addresses the
6 physicians' authority or lack of authority to take
7 pictures during operations -- which is routine; right?
8 I'm known as a Japanese tourist -- or in labor and
9 delivery or for whatever purpose that physician believes
10 is the purpose of his or her pictures; correct?

11 A (No audible response.)

12 Q Coming back to the very important meeting you
13 had with Karen McDaniel, was it at that time your
14 response to Ms. McDaniel that in order for you as an
15 administrator to act upon her complaints that you needed
16 an official letter?

17 A No. Actually, she was official enough because
18 that's her role. And I documented that meeting with
19 her, and that was sufficient for me.

20 Q Did she at that time provide you any document?

21 A No.

22 Q Did she at that time have any note or incident
23 report or memos or anything else from any of the nurses
24 that allegedly felt threatened on November 10, 2000?

25 A I did not see anything.

1 Q Did you ever see, since then, any --

2 A Well --

3 Q -- originating from the unions?

4 A Originating from the union?

5 Q From the union.

6 A No. Other than the letter that they sent me.

7 Q To the best of your recollection, was Ms. Karen
8 McDaniel present when you were there on November 10,
9 2000?

10 A I don't think she was.

11 Q She was not.

12 So since you were there and she was not, didn't
13 you, during your conversation with her, say, "You know,
14 Karen, I happen to have been there, and I think this is
15 a little inflated. Dr. Mileikowsky was upset at me,
16 Jerry Clute. He was upset at the presence of security
17 guards, but I don't recall Dr. Mileikowsky ever
18 complaining or addressing any of the nurses, threatening
19 them in any way, form, or shape. Yes, they were shook
20 because he was upset, but at no point did he have
21 anything to say or address verbally or gesturally or
22 physically to any of the nurses. I, Jerry Clute, was
23 there"?

24 Have you ever discussed the fact that you were
25 there and Karen McDaniel was not there; and since you

1 have nothing, you say, in writing, so it was all
2 verbal -- you wrote notes of your conversation with
3 her. What did you do with those notes?

4 A I don't remember what I did with the notes.

5 But to answer your question specifically, I
6 wouldn't say that to Karen McDaniel or anyone else
7 because I think they were very afraid, and that's why
8 the nurses at the station asked me to stay.

9 THE HEARING OFFICER: Okay. I think we're at
10 the end of this. One of the hearing committee members
11 does have another question.

12 Dr. Ballin?

13

14

EXAMINATION

15 BY DR. BALLIN:

16 Q Mr. Clute, you had mentioned a response to one
17 of the other hearing panel members that you were not
18 aware of Dr. Mileikowsky's actions being reported to the
19 medical staff committee.

20 In the past have you ever reported any
21 physicians' actions, such as a change in behavior, to
22 the medical staff committee?

23 A You mean myself, just report to medical staff?

24 Q Yourself.

25 A I don't think I ever have.

1 Q Are you aware of any regulation in the bylaws
2 or rules and regulations that it's incumbent upon the
3 COO to report any change in behavior, suspicious
4 behavior to the medical staff committee?

5 A Specifically relating to my job --

6 Q Correct.

7 A -- to report?

8 No, not that I know of. That's just something
9 that when it comes to the protection of staff or concern
10 over the environment and the safe environment that they
11 work in, I assume that is part of my role.

12 Q But if the actions that you witness or you're
13 apprised of do not relate to the safety of the staff --
14 if the COO, such as yourself, would notice a change in
15 behavior or suspicious behavior of a physician, is it
16 your understanding that you don't have the duty to
17 report that to the medical staff committee?

18 A No. I think it is my duty, whether it's stated
19 in here or not.

20 During the course of my professional career,
21 I've had to report -- not this kind of incident, but
22 other incidents where a physician appeared impaired and
23 I had to report that to medical staff. So I have done
24 that as part of what I think is my duty.

25 But this kind of behavior I hadn't, truthfully,

1 reported to medical staff in the past. I just didn't
2 have that opportunity or need.

3 THE HEARING OFFICER: One more question,
4 Doctor.

5 DR. MILEIKOWSKY: I was interrupted, but I'm
6 happy to have an interruption coming from the hearing
7 committee.

8

9 FURTHER RE-CROSS-EXAMINATION

10 BY DR. MILEIKOWSKY:

11 Q We were talking about the notes you were taking
12 while you had a meeting with Ms. McDaniel. What did you
13 do with those notes?

14 DR. WULFSBERG: Asked and answered.

15 BY DR. MILEIKOWSKY:

16 Q Where did you keep them?

17 A I have files all over the place in my office.

18 Q Okay. So in your office.

19 Who did you discuss it with after you met with
20 Ms. McDaniel?

21 A I discussed it with Mr. Surowitz.

22 Q Anybody else?

23 A I don't think so. I discussed it directly with
24 Mr. Surowitz.

25 Q What was the substance of your conversation?

1 A I reported that I had been approached by the
2 union in a legitimate capacity as their representative;
3 and that I felt that I needed to report to him that they
4 were asking us to protect the staff, specifically; and
5 that I told him that I was sure that the union would be
6 contacting us.

7 THE HEARING OFFICER: Okay. That's it. One
8 more question and we're through with Mr. Clute.

9 BY DR. MILEIKOWSKY:

10 Q On the weekend of July 4th --

11 Actually, you interrupted me before the hearing
12 committee. I had a question that he didn't answer, so
13 it's two questions; the one from before and the one now.

14 THE HEARING OFFICER: All right, two. Finish.

15 BY DR. MILEIKOWSKY:

16 Q The question I asked you before the hearing
17 committee asked you questions was regarding the issue of
18 any policy that exists if a physician asks any member of
19 the staff for their name. There's no reason for them
20 not to say the name; correct?

21 A I can think of no reason.

22 Q So why did you instruct Mr. Carlos not to tell
23 me his name on November 10, 2000?

24 A I did not instruct him -- oh, you're right. I
25 did tell him not to because prior to that, he refused to

1 give you his name. And your behavior, I thought, was so
2 aggressive that he didn't have to tell you. But I would
3 have told you.

4 Q Afterwards you told me --

5 A Uh-huh.

6 Q -- his name?

7 A That's right. It was so threatening at that
8 moment that --

9 Q Asking the name is threatening?

10 A It's the way you did it, Dr. Mileikowsky.

11 Q My last question: On the weekend of July 4,
12 2000, last year when we went to the Hollywood Bowl, you
13 were the administrator on call. Do you remember?

14 A That's correct.

15 Q And at that time on July 3, which I believe was
16 a Saturday -- either way, it was a Saturday and probably
17 July 3 -- I received a certified letter, return receipt
18 from the medical staff office telling me that unless I
19 paid my dues within 24 hours or 48 hours, my privileges
20 would be suspended.

21 Do you remember that?

22 A You mean at the Hollywood Bowl?

23 Q Well, it was the same weekend. I was trying to
24 refresh your memory.

25 But do you remember that I actually verified

1 with you that you got my check because I did not know
2 the amount, and you did not know the amount. Remember?

3 A I think you're right.

4 Q Because the letter did not indicate the amount.

5 A I think you're right.

6 Q It happened.

7 THE HEARING OFFICER: Okay.

8 DR. MILEIKOWSKY: No. Wait. This is a
9 question related to it.

10 Q What was the financial situation of the medical
11 staff at that time that they needed my money within 24
12 hours on the weekend of July 4 and sending me a
13 certified return letter on a Saturday when most probably
14 I would have been out of town?

15 A I have no idea.

16 Q But after that you called Debbie to verify that
17 she received it so there would be no problem over the
18 weekend if a patient was admitted and I would be told
19 that I had no privileges; correct?

20 A I'm sorry. Say that again.

21 Q You verified with whoever you needed to --

22 A To make sure.

23 Q -- to make sure that nobody in their right or
24 wrong mind would claim, like happened before, and tell
25 me that I couldn't admit a patient or couldn't deliver a

1 patient due to something that was wrong?

2 A That's right.

3 Q Because you were the administrator on call that
4 weekend; correct?

5 A That's right.

6 Q Have you ever had any other physician in your
7 15 years receive a certified return letter on a weekend
8 when most people are out of town or out of the country
9 asking for dues for medical staff or within 24 hours,
10 your privileges would be suspended?

11 A You know, they --

12 Q You don't remember such a thing?

13 A I have no idea if it was done -- if other
14 physicians ever had the same thing. I know they get
15 letters.

16 Does it happen on the weekend? I don't know.

17 THE HEARING OFFICER: Okay.

18 DR. MILEIKOWSKY: Thank you very much.

19 THE HEARING OFFICER: That's it.

20 DR. WULFSBERG: In all fairness, one question.

21 THE HEARING OFFICER: One question.

22

23 FURTHER REDIRECT EXAMINATION

24 BY DR. WULFSBERG:

25 Q You spoke to many people after these incidents;

1 the operating room incident, the labor and delivery
2 incident. You witnessed the labor and delivery
3 incident. You made some judgments.

4 Would there have been any statement that
5 Dr. Mileikowsky would have told you that would have been
6 satisfactory to explain the kind of behavior that you
7 heard and witnessed? Could he have given you a credible
8 explanation for that behavior?

9 DR. MILEIKOWSKY: How would he know if he
10 didn't --

11 DR. WULFSBERG: I am asking the question --

12 DR. MILEIKOWSKY: I object. I object.

13 (Simultaneous colloquy.)

14 THE REPORTER: One at a time.

15 (Simultaneous colloquy.)

16 THE REPORTER: We're not on the record.

17 DR. MILEIKOWSKY: All right. Slowly.

18 He did not accept my invitation for lunch, so
19 how would he be able to answer such a hypothetical
20 question, since he wouldn't know what I would be telling
21 him?

22 THE HEARING OFFICER: We hear your objection.

23 Do you have an answer to that?

24 THE WITNESS: Yeah. I can't imagine anyone
25 behaving this way toward anyone. I just can't imagine

1 it. I feel he terrorized these people.

2 And it was not a good experience for me. I
3 admitted that I have never been fearful, but I sure have
4 been uncomfortable. And I'm the COO; these people are
5 not in my position. And to have this happen to them, I
6 just can't imagine.

7 DR. MILEIKOWSKY: I have a follow-up question.

8 THE HEARING OFFICER: One more. That's it.

9

10 FURTHER RECROSS-EXAMINATION

11 BY DR. MILEIKOWSKY:

12 Q You talk all the time about your concerns about
13 the nursing staff and so forth. Do you feel you're
14 responsible for how the physicians feel?

15 Where is your business coming from, if not from
16 physicians? Are you at all concerned about how your
17 physicians on staff feel -- and not only about their own
18 feelings, but about the conduct of your personnel,
19 whether it's professional or unprofessional or
20 threatening to the physician --

21 A Yes.

22 Q -- or to other physicians?

23 Is that one of your concerns?

24 A Yes, it is.

25 Q So why didn't I hear you talk about it, neither

1 this evening or the last time? You always talk about
2 the nurses; you never talk about the physicians.

3 Is that because you have never been a
4 physician?

5 A No. It's because your behavior was about you
6 and not globally about anybody else.

7 Q That wasn't the question.

8 THE HEARING OFFICER: All right. We're done at
9 this point.

10 Thank you, Mr. Clute. You're excused.

11 I remind the hearing committee that the next
12 meeting is going to be Tuesday evening, October 16. The
13 hearing committee can leave.

14 I have talked to the hearing committee -- this
15 is still on the record.

16 I have talked to the hearing committee at a
17 prior break about weekends, and there were strong
18 feelings that they're not available on weekends. So the
19 only dates that we have in October are the dates that I
20 indicated. We're not going to be able to get people
21 here on weekends.

22 DR. MILEIKOWSKY: Can you please repeat the
23 dates. One second.

24 THE HEARING OFFICER: Sure.

25 The committee can leave. Thank you all.

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October 16, 22 --

DR. MILEIKOWSKY: I'm sorry?

THE HEARING OFFICER: October 16, 22, 23, and
29.

DR. MILEIKOWSKY: Thank you.

THE HEARING OFFICER: And we're adjourned for
the evening.

(At 10:05 p.m. the proceedings were adjourned.)

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STATE OF CALIFORNIA)
)
COUNTY OF LOS ANGELES)

I, Theresa A. Crowley, CSR No. 5513, a
Certified Shorthand Reporter in and for the State of
California, do hereby certify:

That the foregoing proceedings were taken
before me at the place therein set forth;

That the foregoing pages comprise a true
and correct transcript of the proceedings had;

That said transcript contains all the
evidence, acts, and statements of the parties made
during the progress of said proceedings.

In witness whereof, I have subscribed my
name this 8th day of October, 2006.

Theresa A. Crowley
Certified Shorthand Reporter
No. 5513

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I N D E X

WITNESSES	DIRECT	CROSS	REDIRECT	RECROSS
FOR THE MEC				
Gerald Clute		775	899, 916	904
				912, 918

Examination by Dr. Nassoura - page 893

Examination by Dr. Miyashita - page 894

Examination by Dr. Pleet - page 895, 898


Examination by Dr. Brooks - page 897

Examination by Dr. Ballin - page 910

MEC EXHIBITS REFERENCED

118	12-24-99 Clute letter to Mileikowsky
106	7-16-99 credentials committee meeting minutes
121	7/4-6/00 ETRMC security record

DOCUMENTS ATTACHED BY DR. MILEIKOWSKY

	Mileikowsky v. Tenet Preliminary Injunction
	8-28-00 Hafer memo to Office Managers

1 PAUL M. HITTELMAN SBN: 33449
 2 PAUL M. HITTELMAN
 3 A PROFESSIONAL CORPORATION
 4 9100 Wilshire Boulevard
 5 East Tower - Suite 601
 6 Beverly Hills, California 90212-3415
 Telephone: 310-888-7790
 Facsimile: 310-888-7793
 Attorneys for Petitioner

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 LOS ANGELES
 SUPERIOR COURT

SUPERIOR COURT OF THE STATE OF CALIFORNIA
 FOR THE COUNTY OF LOS ANGELES

11 GIL N. MILEIKOWSKY, M.D.,
 12 Petitioner,

13 v.

14 TENET HEALTHSYSTEM, ENCINO-
 15 TARZANA REGIONAL MEDICAL
 16 CENTER, a California corporation; and
 17 DOES 1 through 100, inclusive,
 Respondents.

CASE NO: BS 056525
 PRELIMINARY INJUNCTION

DATE: APRIL 19, 1999
 TIME: 9:30 A.M.
 DEPT: 85

19 TO: RESPONDENTS TENET HEALTHSYSTEMS, INC., ENCINO-TARZANA
 20 REGIONAL MEDICAL CENTER, A CALIFORNIA CORPORATION, AND DOES
 21 1 THROUGH 100, INCLUSIVE, AND EACH OF THEM, AND THEIR
 22 RESPECTIVE AGENTS, SERVANTS AND EMPLOYEES, AND EACH OF
 23 THEM:

24
 25 The application of Petitioner for a preliminary injunction came on regularly for
 26 hearing by the Court on April 19, 1999 in accordance with an Order to Show Cause
 27 issued by this Court on April 6, 1999 on Petitioner's application for a preliminary
 28 injunction. Petitioner appeared through Paul M. Hittelman, A Professional Corporation,

1 by Paul M. Hittelman, his attorney of record; respondents Tenet HealthSystem, Inc. and
2 Encino-Tarzana Regional Medical Center, a California corporation, appeared through
3 Irvin, Cohen & Jessup, LLP, by Mark T. Kawa, Esq., their attorney of record.
4

5 On proof made to the Court's satisfaction, the matter having been argued and
6 evidence, oral and documentary, having been introduced by both parties, good cause
7 appearing therefor, and it appearing to this Court that great or irreparable injury will be
8 suffered unless such Order be issued:
9

10 IT IS ORDERED that, during the pendency of this action, the above-named
11 respondents, Tenet HealthSystem, Inc., Encino-Tarzana Regional Medical Center, a
12 California corporation, and DOES 1 through 100, inclusive, and each of them, and their
13 respective agents, servants, employees, and each of them, and all persons acting in
14 concert or participating with them, are enjoined and restrained from engaging in,
15 committing or performing, directly or indirectly, by any means whatsoever, any of the
16 following acts:
17

- 18 A. Excluding or preventing Petitioner Gil N. Mileikowsky, M.D. from exercising
19 the privileges to which he was reappointed on April 17, 1997 as an
20 attending physician and surgeon, an active status member of the Medical
21 Staff of Encino-Tarzana Regional Medical Center;
22
- 23 B. Excluding or preventing Petitioner Gil N. Mileikowsky, M.D. from admitting,
24 treating or performing obstetrical services or surgery upon patients at
25 Encino-Tarzana Regional Medical Center;
26
- 27 C. Publishing, disseminating, distributing, communicating or otherwise
28 transmitting to any person or entity, directly or indirectly, orally or in writing,

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a report of, or any information concerning, the "purported voluntary resignation" of Medical Staff privileges of Petitioner Gil N. Mileikowsky, M.D. at Encino-Tarzana Regional Medical Center deemed effective by Tarzana's Governing Board on February 25, 1999;

D. Publishing, disseminating, communicating, concerning or otherwise transmitting to any person or entity, directly or indirectly, orally or in writing, any report of or information concerning any action taken concerning Petitioner Gil N. Mileikowsky, M.D. by Encino-Tarzana Regional Medical Center on or about February 25, 1999, including rejection of the challenge by Petitioner Gil N. Mileikowsky, M.D. of the alleged "voluntary resignation" of his Medical Staff membership at Encino-Tarzana Regional Medical Center.

IT IS FURTHER ORDERED that before this Preliminary Injunction shall take effect. Petitioner must file a written undertaking in the sum of Five Thousand Dollars (\$5,000.00) as required by *Code of Civil Procedure* section 529, for the purpose of indemnifying Respondents for the damages as they may sustain by reason of this preliminary injunction if the Court finally decides that Petitioner is not entitled to it.

IT IS FURTHER ORDERED that the preliminary injunction as set forth above shall issue on Petitioner's filing a written undertaking in the sum specified above.

The Court reserves jurisdiction to modify this Preliminary Injunction as the ends of justice may require.

ROBERT H. O'BRIEN

DATED: April 20, 1999

ROBERT H. O'BRIEN
Judge of the Superior Court

PROOF OF SERVICE

STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and not a party to the within action. My business address is 9100 Wilshire Boulevard, East Tower - Suite 601, Beverly Hills, California 90212-3415.

On April 20, 1999, I served the foregoing document(s) described as: PRELIMINARY INJUNCTION on the interested parties in this action by placing a true copy thereof enclosed in a sealed envelope, addressed as follows:

[See Attached Service List]

(BY MAIL) In accordance with the regular mail collection and processing practices of this business office with which I am familiar, by means of which mail is deposited with the United States Postal Service at Beverly Hills, California that same day in the ordinary course of business, I deposited such sealed envelope for collection and mailing on this same date following ordinary business practices, and/or

(BY PERSONAL SERVICE)

By personally delivering copies to the person served.

I delivered the referenced document(s) by hand to the office of the addressee pursuant to C.C.P. § 1011.

I caused the referenced document(s) to be delivered by hand to the office of the addressee either by overnight courier or by local courier service.

I caused the referenced document(s) to be delivered to the office of the addressee by telecopier or facsimile machine to the telephone number listed. Proof of such delivery is attached to this Proof of Service.

STATE

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on April 20, 1999 at Beverly Hills, California.

FEDERAL

I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made. Executed on April 20, 1999 at Beverly Hills, California.

Handwritten signature of Wendy Larsen-Cleaves and printed name WENDY LARSEN-CLEAVES

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Mark T. Kawa, Esq.
 Ervin, Cohen & Jessup LLP
 9401 Wilshire Boulevard
 Ninth Floor
 Beverly Hills, California 90213
 (Fax No. 310-859-2325)

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I N D E X

WITNESSES	DIRECT	CROSS	REDIRECT	RECROSS
FOR THE MEC				
Gerald Clute		775	899, 916	904 912, 918

Examination by Dr. Nassoura - page 893

Examination by Dr. Miyashita - page 894

Examination by Dr. Pleet - page 895, 898

Examination by Dr. Brooks - page 897

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121	7/4-6/00 ETRMC security record

DOCUMENTS ATTACHED BY DR. MILEIKOWSKY

Mileikowsky v. Tenet Preliminary Injunction

➔ 8-28-00 Hafer memo to Office Managers

MEMO

To: Office Managers
From: Marleen Hafer, RN, Director of Surgical Services
Subject: Scheduling Process
Date: August 28, 2000

While many of you have been scheduling with us at Encino-Tarzana Regional Medical Center for years, we are very pleased to welcome some new offices to our facilities. We have enclosed a scheduling form to be used by your surgery scheduling personnel to assist those of you who may be unfamiliar with our process and aid all of you in making the process as smooth and efficient as possible. We have devised the form to follow the steps in our ORSOS III computer scheduling system which will decrease the length of time it takes to schedule a case. This form also lists all of the questions you will be asked and will enable you to have all of the information required for scheduling ready when you call for your patients' appointments. Please retain this form as a master copy for future use. Through our collaborative efforts, we are confident that scheduling at our campuses will be an expedient and efficient process. We look forward to providing you with quality service.

If you have any questions or concerns, please contact surgery scheduling at either campus.

Thank you very much for your continued cooperation.

**Encino • Tarzana
Regional Medical Center
Tenet California Health System**

**Surgery Scheduling
Encino (818) 995 - 5283 (Linda)
Tarzana (818) 708 - 5299 (Pat, Judy, Michele)**

Please provide the following information to schedule at either one of our campuses:

1. Desired Date of Surgery:
2. Desired Time of Surgery:
3. Surgeon's Name:
4. Procedure:

- A. Assistant (if applicable):
- B. Approximate length of procedure:

5. Anesthesia Type: General Epidural Spinal MAC Local Bier Block Conscious Sedation Other

6. **Diagnosis:**

7. Anesthesiologist Request (if applicable):

8. Special Equipment/Supply Needs (i.e. laser, c-arm, scopes, implants, etc.):

**If you have any additional questions re: equipment or supplies, please call Karen Webb at (818) 708 - 5285.*

9. Patient Name:

Has the patient been to either hospital before?

10. Birthdate:

11. Sex: Male Female

12. Social Security Number:

13. Home Phone Number:

14. Work Phone Number:

15. Patient Type: Inpatient AM Admit Outpatient Surgicenter SSO Special Procedure

16. Admit Date:

17. Who will be doing the labs?

Phone number:

18. Insurance:

A. Certification Number:

B. Group Number:

C. Authorization Number:

D. Workmen's Comp:

1. Name of Company:

2. Adjustor (Name and Phone #):

3. Claim #:

4. Date of Injury:

19. Secondary Insurance (if applicable):

JRC Hearing (Volume VII) 9-24-01

Condenselt™

'92 - allegations

'92 [1]	811:2	847:20	916:7	37 [1]	886:4	98 [1]	813:8	920:9
'99 [38]	776:19 777:3	16 [9]	773:17 823:25	373 [1]	770:13	99 [2]	813:8 829:21	administration [8]
	797:20 799:17 799:22		824:19 862:24 863:17	4 [6]	843:3 843:11	990-1067 [1]	770:22	788:16 811:15 811:1
	800:5 807:3 812:24		905:12 919:12 920:1		843:15 868:12 914:11	abide [5]	838:20 856:3	812:3 812:10 812:15
	816:24 819:21 825:14		920:3		915:12	878:3 878:8	901:24	821:22 900:3
	826:3 826:11 829:9	16th [1]	824:6	45 [2]	839:9 862:6	abiding [3]	841:23	administrator [5]
	839:19 844:1 844:21			46 [3]	839:2 839:3	878:12 879:1		841:18 886:7 908:1
	851:3 857:3 858:3	17 [11]	777:3 781:7		839:7	ability [2]	788:21	914:13 916:3
	862:24 863:11 863:17		812:24 819:21 826:11	48 [1]	914:19	885:17		administrators [4]
	864:17 877:7 877:9		834:13 837:9 839:19	4th [1]	913:10	able [3]	856:7 917:19	841:19 860:14 877:4
	877:21 878:21 885:9	18 [1]	829:22	5 [7]	843:9 843:14	above [5]	810:23	883:13
	885:12 889:10 904:4				843:15 868:13 868:21	866:25 871:18 872:10		admiral [1] 902:16
	904:13 904:14 904:20	18321 [2]	769:0	50 [2]	773:2 820:10	872:20		admit [1] 915:25
	905:17 906:16 906:17			50th [1]	890:17	absolute [1]	802:3	admitted [6] 805:1
'assault' [1]	836:16	19 [1]	877:20	5513 [3]	769:0 921:6	absolutely [6]	820:7	854:16 855:15 855:2
'stalking' [1]	792:24	1925 [1]	770:5		921:23	854:8 881:6 890:4		915:18 918:3
/ [21]	774:25 774:25	1998 [3]	877:20 902:8	5th [1]	862:6	894:17 902:13		admonition [1] 835:1
	774:25 811:25 811:25			6 [11]	773:2 841:4	abused [1]	777:17	advance [1] 900:1
	811:25 897:23 897:23	1999 [8]	781:7 806:15		842:7 842:19 843:1	abusive [2]	777:18	adversarial [1] 902:4
	897:23 897:24 897:24		808:3 834:13 837:10		843:2 843:15 843:17	777:22		adversely [1] 834:22
	897:24 897:25 897:25		852:21 855:6 894:18		868:13 868:20 868:23	accent [1]	792:18	advice [1] 831:4
	897:25 902:25 902:25	2 [5]	856:20 856:24			accept [1]	917:18	advise [1] 879:1
	902:25 903:25 903:25		877:7 877:21 878:21			acceptable [1]	833:13	advised [1] 881:9
00 [3]	868:20 868:23	20 [5]	775:18 847:20	6-B [1]	843:22	accident [1]	784:16	advises [1] 881:1
	899:7		852:11 852:15 862:23	646.9 [1]	794:2	accompanied [1]		advocate [2] 891:1
0026 [2]	868:22 868:23	2000 [40]	792:4 792:12 795:21 796:8		793:5	899:19		891:10
01 [1]	820:10		796:11 796:24 797:20	7 [4]	820:10	accordance [1]	841:3	affect [1] 883:18
05 [1]	920:9		804:24 811:19 811:22		868:9 868:23	account [1]	895:20	affected [2] 776:2
056525 [1]	802:14		811:24 812:13 812:19	7-16-99 [1]	772:17	accuse [2]	846:17	834:23
06 [1]	875:22		813:1 814:3 815:9	7/4-6/00 [1]	772:19	861:14		affecting [1] 786:17
1 [2]	829:21 829:21		820:25 823:25 826:4	769 [1]	769:0	accused [2]	802:10	Afghanistan [1] 828:2
1/2 [1]	770:12		829:9 868:12 868:13	775 [1]	772:5	846:25		afraid [6] 814:8
10 [28]	796:7 796:11		868:13 873:17 882:23	8 [3]	793:6 820:10	822:17 822:18		814:9 814:24 888:15
	796:24 811:13 811:18		887:15 888:3 888:7		862:6	achieve [3]	822:8	888:19 910:7
	811:21 811:23 812:13		889:7 889:10 904:13	8-28-00 [1]	772:24	822:17 822:18		Africa [1] 828:2
	812:19 813:1 814:3		904:14 904:21 904:22	805 [3]	826:24 827:6	acknowledged [1]	900:2	afterwards [3] 829:1
	815:8 820:20 820:25		905:12 905:19 908:24		886:3	act [6]	776:20 776:23	856:15 914:4
	882:23 887:15 888:3	2001 [3]	769:0 773:2	818 [1]	770:22	836:22 836:24 842:9		again [22] 774:18
	888:7 889:7 889:10		889:8		83.2 [1]	908:15		785:4 790:1 791:1
	896:15 899:7 904:22	21 [2]	862:2 893:16	830.32 [1]	793:17	908:15		801:24 801:24 802:5
	905:19 908:24 909:8	2181 [1]	865:16	8301 [1]	793:16	acted [2]	788:23 843:25	829:22 833:15 837:18
10-minute [1]	820:8	22 [3]	773:17 920:1	858-1300 [1]	770:15	acting [2]	826:8	855:3 855:9 861:12
100 [1]	813:7			893 [1]	772:8	891:9		861:12 869:25 887:7
106 [2]	772:17 863:2	23 [5]	773:17 792:2	894 [1]	772:9	901:4 901:4 915:20		889:19 891:8 897:2
106-2 [3]	863:3 865:14		792:11 795:21 920:3	895 [1]	772:10	901:4 901:4 915:20		901:4 901:4 915:20
	863:3 865:14	23rd [1]	895:19	897 [1]	772:11	against [4]	793:3	860:24 897:14 897:1
10th [3]	817:15 821:6			898 [1]	772:10	860:24 897:14 897:1		897:14 897:14 897:1
	895:17	24 [10]	769:0 773:2	899 [1]	772:5	aggressive [2]	776:2	914:2
116 [2]	862:21 863:1		852:20 889:8 904:4	9 [3]	868:20 875:22	ago [3]	805:2 811:2	
118 [2]	772:16 829:20		905:17 906:16 914:19		875:22	812:8		
12 [1]	886:5	25 [1]	877:9	9-3-010 [1]	769:0	agree [3]	788:2 824:8	
12-24-99 [1]	772:16			90 [1]	813:6	838:16		
121 [4]	772:19 868:6	25-minute [1]	893:16	90067 [1]	770:7	agreed [1]	824:16	
	868:9 868:11			90077 [1]	770:14	ahead [19]	780:1	
121-1 [2]	866:20	28 [1]	782:18	904 [1]	772:5	781:23 788:13 793:14		
121-2 [1]	867:21	29 [2]	773:18 920:4	910 [1]	772:12	794:24 800:8 802:12		
13 [1]	875:22	2934 [1]	770:12	912 [1]	772:6	820:2 825:25 831:1		
14 [3]	866:12 877:9	3 [2]	914:15 914:17	91356 [2]	769:0	856:5 874:13 876:1		
	886:5				770:21	888:18 890:6 894:9		
15 [16]	775:17 776:25	30 [8]	804:9 806:15	916 [1]	772:5	900:11 901:10 902:23		
	777:7 777:22 778:21		807:3 808:3 808:10		772:5	alert [3]	860:18 860:23	
	780:7 783:16 785:13		808:22 816:24 827:1	918 [1]	772:6	862:13		
	791:10 791:21 824:24	31 [3]	808:9 808:10	921 [1]	769:0	allegation [2]	793:20	
	826:12 827:14 845:7	310 [2]	770:8 770:15	95 [1]	813:8	898:12		
						allegations [2]	773:9	

JRC Hearing (Volume VII) 9-24-01

CondensetTM

alleged - calls

898:3	apologies (1)	863:2	assisting (3)	840:10	911:1	877:2
alleged (5)	812:24	apologize (1)	852:5 857:5		awareness (1)	796:25
824:2 826:20 898:5	appear (2)	826:15	assists (1)	877:24	away (2)	795:2 795:4
906:16	827:6		assume (12)	790:21	awhile (1)	842:16
allegedly (2)	appearances (3)	770:1	858:21 869:2 879:3	879:3	B (2)	802:15 843:17
908:24	771:1 895:22		879:6 879:12 879:13	905:9	background (1)	829:1
alleges (1)	appeared (1)	911:22	879:21 879:23 906:9 911:11		backwards (1)	886:5
allow (4)	Apple (1)	877:10	assumed (1)	853:5	badly (1)	887:8
891:23 892:13 901:6	application (1)	877:16	assuming (1)	871:5	balance (1)	882:18
allowed (3)	appointed (1)	877:11	assurance (3)	826:23	Ballin (4)	771:6
892:12 901:5	apprised (1)	911:13	872:7 872:22		772:12 910:12 910:15	
almost (2)	approach (5)	788:6	assure (5)	821:23	balloon (1)	859:6
863:9	788:19 800:17 814:9 864:22		822:1 822:4 838:19 890:8		Bank (3)	827:3 827:6
alone (3)	789:7 866:12	approached (3)	assured (1)	788:17	886:4	
884:12	approached (3)	788:24	assured (1)	788:17	based (6)	784:10
along (1)	812:3 812:5 812:23 847:25 848:1 848:5 913:1	812:3 812:5 812:23 847:25 848:1 848:5 913:1	attach (1)	805:13	793:20 877:13 893:15	893:15
alter (1)			ATTACHED (1)		895:21 900:1	900:1
alternative (1)			772:22		basis (3)	841:11 850:23
alternatives (1)			attempt (2)	836:1	876:1	
always (6)			888:4		became (4)	847:5 847:6 900:4 900:8
781:17 822:12 896:21 903:14 919:1	appropriate (5)	776:23	attempted (5)	865:21 865:22 894:6 905:15	become (2)	791:16
among (2)	777:20 778:12 790:18 839:14		865:22 894:6 905:15		900:15	
863:12	appropriately (2)		attend (2)	863:9	began (1)	862:6
amount (4)	857:13 858:5		866:14		begin (1)	773:11
915:2 915:2 915:4	approved (1)	877:8	attention (10)	799:8	beginning (3)	808:23
ample (2)	area (4)	779:21 780:5	834:11 845:5 847:5 877:5 879:16	847:5 851:18 879:16	868:7 868:8	
900:11	854:24 904:24		attire (1)	790:18	behave (5)	785:10 886:14
analogy (1)	arena (2)	847:22 851:20	attorney (5)	807:16	844:12 886:12 898:23	
analogy (1)	argument (1)	888:1	807:19 808:1 832:13	832:13	behaved (1)	887:9
analyze (1)	argumentative (1)	887:23	attorney's (1)	861:9	behaving (1)	917:25
anesthesia (1)	arrived (4)	779:4	audible (1)	908:11	behavior (35)	782:7
anesthesiologist (1)	807:6 807:7 900:12		Auer (1)	830:15	816:20 822:24 823:2 833:10 833:13 833:24 836:20 837:5 846:2 863:23 864:24 885:6 885:22 886:9 894:16 897:16 902:6 902:11 903:3 903:13 903:20 910:21 911:3 911:4 911:15 911:15 911:25 914:1 917:6 917:8 919:5	823:2 833:10 836:20 863:23 885:22 897:16 902:11 903:20 911:4 911:25 917:8
895:1	arriving (1)	865:15	August (8)	799:17 799:22 800:5 816:24 863:11 869:15 869:20 885:12	authority (23)	864:10 866:22 869:4 871:14 871:17 871:21 871:25 872:9 872:9 872:17 872:17 872:18 872:23 872:25 873:1 873:5 873:6 880:9 881:10 908:6
anew (1)	Arthur (1)	771:10	authorize (1)	901:22	author's (1)	773:19
Angeles (4)	article (11)	793:5	availability (1)	773:19	available (4)	773:23 774:8 774:13 919:18
770:14 815:17 921:3	793:6 794:10 841:4 842:19 842:25 843:2 843:4 843:5 877:9		Aviv (1)	827:11	774:8 774:13 919:18	
angle (1)	793:6 794:10 841:4 842:19 842:25 843:2 843:4 843:5 877:9		avoid (1)	845:12	below (1)	866:25
angry (5)	842:19 842:25 843:2 843:4 843:5 877:9		aware (32)	777:2 796:10 799:9 799:10 800:10 805:7 810:25 816:8 819:16 826:22 827:5 847:19 847:24 848:4 850:16 850:20 852:21 852:25 854:1 870:17 871:11 873:9 878:11 878:22 895:8 895:17 899:17 899:21 905:15 905:22 910:18	behaviorial (1)	895:3
815:25 847:11 900:8	articles (3)	841:7	audible (1)	908:11	Belgium (5)	792:23 827:11 827:16 827:22 886:17
animosity (1)	842:2 878:13		audible (1)	908:11	827:11 827:16 827:22 886:17	
Anna (1)	asks (1)	913:18	author's (1)	861:9	belief (1)	895:13
answer (35)	aspect (1)	793:2	audit (1)	808:11	believes (2)	861:15
781:18 781:21 783:2 788:11 789:4 796:5 801:3 814:18 873:8 888:14 888:20 888:21 888:24 888:25 889:3 889:21 889:25 890:3 890:14 890:22 891:11 891:19 891:23 891:24 892:2 892:12 892:12 892:13 896:11 906:17 910:5 913:12 917:19 917:23	aspects (1)	846:21	author's (1)	861:9	908:9	
answered (10)	assault (6)	835:15 835:22	Aviv (1)	827:11	below (1)	866:25
814:16 814:17 845:22 849:4 880:23 881:2 888:12 888:22 912:14	835:17 835:20 835:22 836:6 836:13		avoid (1)	845:12	bent (1)	882:6
answering (2)	assaulting (1)	837:3	aware (32)	777:2 796:10 799:9 799:10 800:10 805:7 810:25 816:8 819:16 826:22 827:5 847:19 847:24 848:4 850:16 850:20 852:21 852:25 854:1 870:17 871:11 873:9 878:11 878:22 895:8 895:17 899:17 899:21 905:15 905:22 910:18	best (17)	776:9 780:10 783:6 783:6 787:16 792:15 798:5 809:23 821:11 823:6 824:13 837:7 845:7 865:7 877:22 909:7
890:15	assaultive (2)	836:20	authorize (1)	901:22	780:13 781:18 783:6 787:16 792:15 798:5 809:23 821:11 823:6 824:13 837:7 845:7 865:7 877:22 909:7	
answers (1)	844:13		availability (1)	773:19	beliefs (2)	861:15
878:5	assert (1)	859:4	available (4)	773:23	908:9	
anxiety (1)	Asserts (1)	793:18	774:8 774:13 919:18		below (1)	866:25
782:22	assessment (1)	867:3	Aviv (1)	827:11	bent (1)	882:6
anyhow (1)	assist (5)	839:23 840:3 859:6 859:7 876:18	avoid (1)	845:12	best (17)	776:9 780:10 783:6 783:6 787:16 792:15 798:5 809:23 821:11 823:6 824:13 837:7 845:7 865:7 877:22 909:7
854:5	840:3 859:6 859:7 876:18		aware (32)	777:2 796:10 799:9 799:10 800:10 805:7 810:25 816:8 819:16 826:22 827:5 847:19 847:24 848:4 850:16 850:20 852:21 852:25 854:1 870:17 871:11 873:9 878:11 878:22 895:8 895:17 899:17 899:21 905:15 905:22 910:18	bet (1)	808:15
anytime (4)	assistant (14)	787:11 838:25 839:9 839:15 839:22 840:3 851:19 852:2 852:9 852:16 857:4 857:13 858:4 895:12	author's (1)	861:9	better (3)	774:3
828:22 882:24 882:24	838:25 839:9 839:15 839:22 840:3 851:19 852:2 852:9 852:16 857:4 857:13 858:4 895:12		audible (1)	808:11	786:16 817:16	
	assisted (3)	830:4	between (8)	837:8 853:19		
	841:6 842:1		811:1 823:8 835:25 837:8 853:19 868:22		between (8)	797:10 811:1 823:8 835:25 837:8 853:19 868:22

JRC Hearing (Volume VII) 9-24-01

Condenselt™

calm - corrido

calm [5] 787:1 787:2 788:24 788:24 816:17	chances [3] 828:21 828:25 886:6	change [8] 779:23 790:20 816:19 885:22 886:24 910:21 911:3 911:14	changed [5] 822:24 823:1 898:15 902:6 902:10	changes [2] 855:5 883:11	changing [1] 823:21	channels [1] 822:22	charge [2] 808:11 817:1	charges [1] 886:4	check [7] 827:17 827:18 850:23 851:22 858:22 866:24 915:1	check-in [2] 867:12 873:20	chief [5] 778:13 832:16 834:19 851:13 897:17	choice [3] 854:2 893:5 893:6	choose [2] 864:23 879:22	chose [2] 780:21 836:10	Christensen [3] 830:10 830:19 836:6	Christensen's [2] 830:18 835:19	Circle [1] 770:12	circumstance [1] 802:1	circumstances [2] 785:8 814:17	civilized [4] 828:23 829:1 886:2 886:8	claim [1] 915:24	clarify [2] 848:20 850:8	Clark [2] 769:0 770:20	cleaned [1] 795:10	clear [3] 777:5 813:18 847:25	clearly [7] 786:8 812:14 828:16 836:4 853:4 872:4 878:8	close [4] 785:21 821:6 821:6 821:25	Closer [1] 775:19	cloth [1] 790:10	clothes [9] 779:21 780:6 787:18 789:3 789:8 789:9 789:11 790:8 790:17	clue [1] 816:3	Clute [24] 772:5 772:16 773:12 774:16 774:18 794:19 796:19 803:19 806:2 849:19 861:13 861:15 870:16	870:16 883:24 893:2 893:18 893:23 894:15 909:16 909:22 910:16 913:8 919:10	Clute's [2] 799:15 870:18	CNO [2] 851:10 851:12	coat [8] 789:9 789:11 789:17 789:18 789:19 789:25 790:8 790:9	code [2] 793:5 829:13	Cohen's [1] 830:20	coin [1] 777:21	collateral [1] 802:25	colloquy [10] 801:1 818:13 849:12 870:8 871:6 888:15 890:1 891:1 917:13 917:15	columns [1] 867:22	coming [14] 774:18 785:14 805:15 814:6 820:15 827:12 832:11 847:3 847:6 850:9 874:16 908:12 912:6 918:15	command [2] 870:25 871:13	commentary [1] 867:5	committee [39] 770:17 772:17 773:10 801:21 804:19 805:8 805:16 805:20 855:22 861:23 861:23 862:24 863:5 863:9 865:10 866:5 879:8 879:9 879:14 893:3 893:10 893:14 893:17 895:6 897:9 899:2 910:10 910:19 910:22 911:4 911:17 912:7 913:12 913:17 919:11 919:13 919:14 919:16 919:25	committees [3] 783:21 878:4 878:6	common [2] 788:2 817:10	communication [3] 812:5 812:6	communications [3] 812:17 876:22 877:1	community [1] 883:14	compelled [1] 835:10	complain [1] 782:17	complaining [1] 909:18	complaint [1] 869:23	complaints [2] 867:2 908:15	completely [2] 852:12 907:16	complied [1] 879:18	complies [1] 882:2	compliment [1] 883:18	comply [9] 855:24 876:19 876:20 877:25 879:5 879:12 879:25 881:11 901:16	complying [1] 879:11	compounded [1] 873:2 836:3	comprise [1] 921:11	compromised [1] 886:3	computer [3] 853:23 857:9 858:8	computers [2] 853:20 853:21	conceive [2] 785:25 815:9	conceived [5] 794:3 795:7 835:1 837:18 837:24	concept [2] 795:20 836:21	concern [4] 778:13 821:19 897:17 911:9	concerned [4] 858:16 860:11 898:22 918:16	concerning [2] 773:9 857:10	concerns [3] 857:9 918:12 918:23	conclusion [2] 881:19 882:10	condition [1] 782:9	condone [1] 897:6	conduct [16] 810:21 813:12 813:13 813:19 817:14 834:23 837:12 837:24 846:17 846:25 851:5 863:14 864:18 864:19 894:20 918:18	confidence [3] 781:12 833:21 888:5	confident [1] 859:18	confidentiality [1] 890:9	confirmed [3] 773:16 774:15 789:25	confront [2] 838:2 838:9	confrontation [1] 838:12	confrontational [9] 837:14 837:17 837:23 837:25 838:1 838:5 838:6 838:13 838:18	Confronting [1] 838:5	confusing [1] 802:14	consent [1] 906:2	consequence [1] 861:20	consider [5] 823:3 829:7 847:14 883:21 894:15	considered [3] 776:23 783:20 894:19	considering [1] 805:19	consistently [3] 861:9 896:18 896:18	consult [6] 831:14 831:20 832:10 832:24 841:10 841:20	consultation [1] 832:21	consulting [2] 841:16	873:2 contact [3] 836:19 837:7 837:8	contacting [1] 913:6	contains [1] 921:13	contention [2] 870:14 870:18	contents [2] 868:6 868:8	context [1] 782:1	continuation [2] 773:8 773:11	continue [15] 774:15 774:21 805:25 809:4 820:12 835:13 837:12 841:6 842:7 843:17 845:24 875:23 882:21 893:7 901:19	continued [3] 771:2 804:18 822:18	continuing [2] 830:24 886:6	continuous [1] 848:21	contracts [1] 831:4	contrary [4] 847:1 862:10 890:24 900:24	control [1] 814:23	controlling [1] 894:16	conversation [7] 800:3 819:3 875:2 875:4 909:13 910:2 912:25	COO [24] 778:22 778:25 818:18 827:10 827:21 846:21 850:22 851:4 851:15 853:20 853:21 860:14 864:10 864:17 877:18 877:21 878:22 886:2 886:17 902:16 907:20 911:3 911:14 918:4	copies [1] 808:10	copy [10] 801:16 843:9 843:14 856:12 856:15 866:4 866:14 883:5 904:6 907:8	cordial [1] 906:13	corporate [1] 880:18	correct [52] 776:2 777:3 779:11 779:21 779:22 779:23 790:20 792:2 792:3 792:4 804:8 808:14 812:11 813:4 816:1 816:3 818:6 821:14 822:20 824:6 824:7 824:8 827:18 827:19 827:22 832:5 838:7 839:13 840:11 840:19 855:7 857:6 863:7 863:2 865:25 866:22 866:2 867:13 871:18 872:9 872:11 872:13 872:17 905:3 905:12 908:1 911:6 913:20 914:1 915:19 916:4 921:12	corridor [2] 814:7 892:21
---	---	---	---	------------------------------------	----------------------------	----------------------------	-----------------------------------	--------------------------	--	--------------------------------------	--	--	------------------------------------	-----------------------------------	---	--	--------------------------	-------------------------------	---------------------------------------	--	-------------------------	------------------------------------	----------------------------------	---------------------------	---	--	---	--------------------------	-------------------------	---	-----------------------	--	--	-------------------------------------	------------------------------	--	------------------------------	---------------------------	------------------------	------------------------------	--	---------------------------	--	-------------------------------------	-----------------------------	---	---	-----------------------------------	--------------------------------------	---	-----------------------------	-----------------------------	----------------------------	-------------------------------	-----------------------------	---------------------------------------	--	----------------------------	---------------------------	------------------------------	--	-----------------------------	--------------------------------------	----------------------------	------------------------------	---	---------------------------------------	-------------------------------------	--	-------------------------------------	--	---	---------------------------------------	--	--	----------------------------	--------------------------	---	--	-----------------------------	----------------------------------	--	------------------------------------	---------------------------------	--	------------------------------	-----------------------------	--------------------------	-------------------------------	--	---	-------------------------------	--	--	--------------------------------	------------------------------	--	-----------------------------	----------------------------	--	------------------------------------	--------------------------	--------------------------------------	--	---	---------------------------------------	------------------------------	----------------------------	---	---------------------------	-------------------------------	---	---	--------------------------	--	---------------------------	-----------------------------	--	-------------------------------------

JRC Hearing (Volume VII) 9-24-01

Condenselt™

counsel - Dr

counsel [2] 842:3	904:12	department [14] 815:18	discourteous [1] 846:19	door [3] 796:3 796:13
842:5	dated [1] 868:12	817:3 817:9 839:10	846:19	904:17
counseling [2] 894:25	dates [8] 773:13 773:16	839:23 839:24 839:25	discover [1] 901:14	Dosik [7] 798:14
895:2	774:2 774:3 774:14	840:1 840:4 840:6	discretion [1] 839:16	832:16 832:22 904:5
country [2] 829:1	919:19 919:19 919:23	840:19 848:25 869:2	discuss [9] 786:5	906:20 907:3 907:9
916:8	David [1] 798:11	derogatory [1] 883:18	831:19 882:9 882:17	down [9] 773:15 780:21
COUNTY [1] 921:3	days [8] 773:24 774:4	describe [4] 814:11	905:2 905:7 905:18	798:15 804:18 843:17
couple [4] 777:14	774:8 774:9 780:23	844:10 873:18 907:12	905:20 912:19	853:11 866:6 882:13
816:18 821:4 899:3	deal [3] 786:16 787:18	describing [1] 805:20	discussed [12] 787:19	898:7
course [7] 783:24	878:2	description [6] 795:16	798:1 811:4 811:8	Dr [348] 772:8 772:9
800:24 820:14 821:18	Debbie [5] 832:22	838:23 860:11 861:16	847:21 848:5 850:2	772:10 772:11 772:12
823:4 898:20 911:20	842:4 865:6 871:25	866:8 868:9	850:10 881:1 909:24	772:22 773:9 774:23
court [12] 801:15	915:16	deserved [1] 890:8	912:21 912:23	774:24 775:2 780:9
803:2 804:11 804:15	Debra [1] 771:15	desire [1] 903:14	discussing [3] 797:13	780:12 780:12 780:15
804:21 805:11 805:18	December [35] 774:4	desires [1] 859:12	797:24 798:24	781:21 781:22 782:13
805:18 806:20 806:24	776:19 777:3 781:7	desk [1] 813:24	discussion [2] 874:18	783:2 783:3 784:22
856:12 856:15	797:20 804:24 812:24	despite [1] 861:7	874:21	785:1 788:9 788:12
courteous [4] 842:10	819:21 825:14 826:3	detail [4] 796:24	disheartening [1] 835:10	788:15 789:16 789:23
844:22 885:7 885:9	826:11 829:9 834:13	802:24 856:19 877:6	disruption [1] 848:25	789:24 789:24 790:1
cover [4] 789:18 789:18	837:9 839:19 844:1	detailed [1] 795:16	disruptive [3] 902:11	790:1 790:4 793:8
807:11 884:12	844:21 851:3 852:20	details [1] 845:12	903:3 903:12	793:13 793:15 794:9
credentialed [1] 894:22	855:5 855:6 857:3	determination [2] 831:25 845:13	distance [1] 797:10	794:13 794:14 794:17
credentialing [1] 840:15	858:3 862:23 864:16	determine [2] 840:2	distress [1] 783:5	794:23 794:25 795:13
credentials [18] 772:17	885:9 887:5 894:18	841:23	disturb [6] 851:23	795:17 796:15 796:20
788:17 827:18 838:24	904:4 904:14 904:20	determined [11] 780:12	852:1 852:5 852:17	797:1 797:8 798:10
848:3 850:2 850:23	904:20 905:17 906:16	787:16 804:19 822:15	853:7 871:3	798:11 798:14 798:17
851:21 852:5 852:17	decide [2] 849:6	823:21 840:4 840:5	777:15 778:11 782:3	799:21 799:23 800:9
853:3 853:5 853:6	855:15	840:7 840:18 845:4	848:22 852:8	800:17 800:21 800:23
862:24 863:4 863:9	decided [1] 823:18	877:13	doctor [4] 781:9	800:24 801:5 801:9
865:10 886:19	decision [7] 780:10	determining [2] 841:6	785:19 897:22 912:4	801:11 801:15 801:17
credible [2] 793:23	825:3 825:8 828:11	842:1	783:18 899:7	801:18 801:20 802:6
917:7	879:21 888:9 905:12	Dictionary [1] 836:11	doctors [3] 777:14	802:9 802:13 802:14
CROSS [1] 772:3	deepest [1] 875:20	difference [1] 843:12	783:18 899:7	802:16 802:20 802:21
cross-examination [9] 774:16 775:1 862:3	deeply [1] 776:21	different [20] 784:17	803:5 803:8 803:10	802:22 803:1 803:4
862:5 862:9 862:10	defective [1] 784:13	786:20 787:6 793:5	803:14 803:16 803:23	803:14 803:16 803:23
862:15 893:15 904:1	defects [1] 852:22	808:20 818:8 831:1	804:1 804:3 804:4	804:1 804:3 804:4
crossed [4] 786:2	defense [1] 805:9	832:3 832:5 833:19	804:8 804:12 805:3	805:23 806:1 806:6
786:4 786:25 787:3	defined [2] 793:16	836:15 837:21 838:5	805:23 806:1 806:6	806:12 807:1 809:5
Crowley [2] 769:0	797:15	846:3 852:11 852:12	809:14 810:2 812:1	809:14 810:2 812:1
921:6	definitely [1] 841:15	863:25 864:19 902:21	814:16 815:7 816:14	814:16 815:7 816:14
CSR [2] 769:0 921:6	definiton [5] 791:15	907:16	818:15 819:24 820:1	818:15 819:24 820:1
cultures [1] 837:22	792:21 793:6 794:21	differently [5] 806:14	820:7 820:14 820:19	820:7 820:14 820:19
customary [1] 841:19	835:17	864:3 864:20 865:4	820:24 825:20 825:23	820:24 825:20 825:23
cut [2] 843:7 857:1	degeneration [1] 819:9	906:18	826:1 829:2 830:2	826:1 829:2 830:2
cutting [1] 861:21	degrades [1] 883:11	difficult [2] 873:7	830:22 830:24 831:1	830:22 830:24 831:1
D [3] 772:1 773:4	delighted [2] 849:16	diffuse [1] 780:13	831:8 831:12 831:18	831:8 831:12 831:18
811:12	874:11	diffused [1] 779:6	831:18 832:5 832:9	831:18 832:5 832:9
daily [1] 876:1	deliver [3] 807:10	direct [5] 772:3	832:12 832:12 832:22	832:12 832:12 832:22
Dale [3] 826:5 828:10	807:18 915:25	862:2 867:3 893:16	833:2 833:18 834:2	833:2 833:18 834:2
899:18	delivered [2] 808:8	896:11	834:16 837:3 843:8	834:16 837:3 843:8
Dallas [3] 818:3	808:9	direction [2] 785:8	843:11 843:15 843:18	843:11 843:15 843:18
819:17 819:18	delivering [1] 808:6	880:21	843:20 844:2 845:12	843:20 844:2 845:12
danger [5] 793:19	delivery [27] 796:4	directly [4] 812:12	845:24 846:1 846:3	845:24 846:1 846:3
824:2 826:20 827:24	796:14 800:11 800:13	851:13 877:23 912:23	846:5 846:11 846:14	846:5 846:11 846:14
886:20	803:20 807:3 807:5	director [12] 771:15	847:7 848:1 848:3	847:7 848:1 848:3
dangerous [3] 786:2	807:7 807:8 808:12	789:2 789:7 790:7	848:5 848:23 848:23	848:5 848:23 848:23
845:19 903:12	811:12 813:22 813:24	818:4 835:15 835:25	849:4 849:5 849:6	849:4 849:5 849:6
DANIEL [1] 770:4	814:2 814:15 816:25	845:1 845:2 847:13	849:8 849:10 849:14	849:8 849:10 849:14
Darryl [1] 771:6	821:19 834:22 835:4	858:11 866:5	849:15 849:16 849:18	849:15 849:16 849:18
Data [3] 827:2 827:6	883:3 900:5 904:23	disciplinatory [1] 809:21	849:22 850:3 850:16	849:22 850:3 850:16
886:4	907:25 908:2 908:9	disciplines [1] 852:12	850:21 850:23 853:1	850:21 850:23 853:1
date [9] 799:14 799:20	917:1 917:2	discouraged [3] 884:11	854:4 854:7 854:8	854:4 854:7 854:8
855:4 867:22 868:3	demonstrate [1] 885:3	884:14 884:15	854:9 854:12 854:16	854:9 854:12 854:16
877:12 877:13 894:21	denied [1] 802:3		854:18 854:21 854:23	854:18 854:21 854:23

JRC Hearing (Volume VII) 9-24-01

Condenselt™

Draconian - file

862:17	863:2	863:6	921:15	ensure (1)	834:21	772:11	772:12	862:2	847:19	847:24	848:4																													
868:1	869:13	869:24	duties (1)	847:1	entire (4)	794:10	893:21	894:13	895:15	850:16	862:13	870:6																												
870:1	870:2	870:7	duty (4)	860:10	814:5	848:19	849:11	897:11	898:1	899:15	870:10	878:12	880:2																											
870:10	870:14	870:15	911:18	911:24	entirely (1)	837:15	910:14	916:23			889:22	895:11	900:1																											
870:17	870:22	871:7	E (3)	772:1	773:4	entities (1)	880:10	exceedingly (1)	815:25	except (3)	795:25	900:23	901:21	909:24																										
873:24	874:7	874:10	773:4	early (5)	799:17	entrance (2)	867:11	796:17	870:4	Excuse (14)	798:21	fact-finding (1)			781:1																									
874:15	875:19	875:20	829:9	904:13	904:20	environment (7)	777:17	802:20	803:25	849:18	833:23	796:16	833:22	869:25																										
875:24	876:2	876:4	earned (1)	886:10	ears (1)	813:11	817:25	821:23	822:2	854:11	856:25	861:2	890:13	911:10																										
876:13	880:20	880:23	East (1)	770:5	East (1)	770:5	equivalent (1)	886:3	ER (3)	867:12	867:19	891:6	892:1	892:6																										
880:24	881:2	881:6	educate (3)	809:11	810:6	853:16	ER (3)	867:12	867:19	873:19	excused (1)	919:10	executive (5)	770:17																										
881:22	881:24	882:2	educated (2)	783:20	890:25	escort (8)	775:11	791:1	791:18	795:18	773:10	879:8	879:9																											
882:5	882:8	882:12	890:25	educational (2)	858:10	797:9	797:10	882:25	884:1	exercised (1)	829:11	exercising (1)	903:5																											
882:15	882:21	887:2	effect (7)	774:11	788:20	803:5	803:6	794:4	795:12	795:14	829:20	exhibit (7)	854:19	855:13	855:24																									
887:18	887:20	887:22	effective (1)	823:23	804:20	873:16	877:7	797:19	815:18	885:16	856:4	862:21	866:19	866:19	866:19																									
888:1	888:2	888:11	efficiency (5)	859:24	859:25	860:4	860:8	895:18	896:3	escorting (1)	797:4	exhibited (1)	833:11	833:11	833:11																									
888:13	888:19	888:25	efficiently (1)	860:13	860:9	especially (1)	900:13	ESQ (1)	770:4	establish (1)	827:13	established (5)	792:7	795:11	795:13	819:20																								
889:1	889:5	889:18	egregious (2)	864:23	864:24	either (3)	822:10	822:24	833:18	843:15	856:11	893:6	894:3	894:3	894:3	894:3																								
889:22	889:24	890:4	elect (1)	781:1	818:1	elected (1)	780:25	elements (1)	819:21	elicit (1)	880:25	embarrassed (5)	884:2	884:3	884:3	884:20																								
890:10	890:15	890:23	embarrassing (2)	885:21	885:25	embarrassment (3)	903:15	903:17	903:19	emergency (3)	799:19	867:9	867:10	867:11	867:12	867:13	823:22																							
891:5	891:8	891:17	embarrassment (3)	903:15	903:17	903:19	867:9	867:10	867:11	employee (3)	810:13	850:22	901:14	employees (5)	776:21	777:12	777:13	823:22																						
891:18	891:20	891:21	employee (3)	810:13	850:22	901:14	employees (5)	776:21	777:12	777:13	823:22	860:2	Encino (1)	818:18	Encino-Tarzana (4)	769:0	769:0	770:19																						
891:22	891:24	892:2	encourage (2)	862:14	884:6	encouraged (2)	884:10	884:13	884:13	end (5)	784:16	839:7	856:10	862:7	910:10	ends (1)	868:22	enforced (2)	896:16																					
892:3	892:4	892:7	884:6	encouraged (2)	884:10	884:13	end (5)	784:16	839:7	856:10	862:7	910:10	ends (1)	868:22	enforced (2)	896:16	enforcement (1)	896:14																						
892:9	892:16	893:1	892:10	892:12	893:3	899:5	899:10	899:12	899:16	900:13	900:14	900:21	900:22	901:3	901:10	901:11	901:12	902:2	902:3																					
893:9	893:12	893:19	900:18	900:20	900:21	900:22	901:3	901:10	901:11	901:12	902:2	902:3	902:14	902:20	903:8	903:23	903:24	904:2	904:3	904:5																				
893:22	894:9	894:10	901:11	901:12	902:2	902:3	902:14	902:20	902:24	903:1	903:8	903:23	903:24	904:2	904:3	904:5	905:14	905:21	906:18	906:20																				
894:14	894:15	895:9	903:23	903:24	904:2	904:3	904:5	905:14	905:21	906:18	906:20	907:3	907:4	907:5	907:5	907:9	907:15	909:17	910:12	910:15																				
895:10	895:10	895:16	909:17	910:12	910:15	910:18	912:5	912:10	912:14	912:15	913:9	913:15	914:10	915:8	916:18	916:20	916:24	917:5	917:9	917:11																				
895:18	896:6	897:12	917:12	917:17	918:7	918:11	919:22	920:2	920:5	Draconian (3)	828:4	828:18	828:19	drafting (1)	830:4	dramatically (1)	902:10	draped (1)	787:10	drastic (1)	826:15																			
897:16	897:21	898:2	898:3	898:25	899:3	899:5	899:9	899:10	899:12	899:16	900:13	900:14	900:21	900:22	901:3	901:10	901:11	901:12	902:2	902:3	902:14																			
898:3	898:25	899:3	902:3	902:4	903:8	903:23	903:24	904:2	904:3	904:5	905:14	905:21	906:18	906:20	907:3	907:4	907:5	907:9	909:17	910:12	910:15																			
898:3	898:25	899:3	907:5	907:9	909:15	909:17	910:12	910:15	910:18	912:5	912:10	912:14	912:15	913:9	913:15	914:10	915:8	916:18	916:20	916:24	917:5																			
899:5	899:9	899:10	917:5	917:9	917:11	917:12	917:17	918:7	918:11	919:22	920:2	920:5	Draconian (3)	828:4	828:18	828:19	drafting (1)	830:4	dramatically (1)	902:10	draped (1)	787:10																		
899:12	899:16	899:17	917:5	917:9	917:11	917:12	917:17	918:7	918:11	919:22	920:2	920:5	Draconian (3)	828:4	828:18	828:19	drafting (1)	830:4	dramatically (1)	902:10	draped (1)	787:10																		
900:2	900:13	900:14	917:5	917:9	917:11	917:12	917:17	918:7	918:11	919:22	920:2	920:5	Draconian (3)	828:4	828:18	828:19	drafting (1)	830:4	dramatically (1)	902:10	draped (1)	787:10																		
900:18	900:20	900:21	917:5	917:9	917:11	917:12	917:17	918:7	918:11	919:22	920:2	920:5	Draconian (3)	828:4	828:18	828:19	drafting (1)	830:4	dramatically (1)	902:10	draped (1)	787:10																		
900:22	901:3	901:10	917:5	917:9	917:11	917:12	917:17	918:7	918:11	919:22	920:2	920:5	Draconian (3)	828:4	828:18	828:19	drafting (1)	830:4	dramatically (1)	902:10	draped (1)	787:10																		
901:11	901:12	902:2	917:5	917:9	917:11	917:12	917:17	918:7	918:11	919:22	920:2	920:5	Draconian (3)	828:4	828:18	828:19	drafting (1)	830:4	dramatically (1)	902:10	draped (1)	787:10																		
901:24	903:1	903:8	917:5	917:9	917:11	917:12	917:17	918:7	918:11	919:22	920:2	920:5	Draconian (3)	828:4	828:18	828:19	drafting (1)	830:4	dramatically (1)	902:10	draped (1)	787:10																		
902:3	902:14	902:20	917:5	917:9	917:11	917:12	917:17	918:7	918:11	919:22	920:2	920:5	Draconian (3)	828:4	828:18	828:19	drafting (1)	830:4	dramatically (1)	902:10	draped (1)	787:10																		
902:24	903:1	903:8	917:5	917:9	917:11	917:12	917:17	918:7	918:11	919:22	920:2	920:5	Draconian (3)	828:4	828:18	828:19	drafting (1)	830:4	dramatically (1)	902:10	draped (1)	787:10																		
903:23	903:24	904:2	917:5	917:9	917:11	917:12	917:17	918:7	918:11	919:22	920:2	920:5	Draconian (3)	828:4	828:18	828:19	drafting (1)	830:4	dramatically (1)	902:10	draped (1)	787:10																		
904:3	904:5	905:14	917:5	917:9	917:11	917:12	917:17	918:7	918:11	919:22	920:2	920:5	Draconian (3)	828:4	828:18	828:19	drafting (1)	830:4	dramatically (1)	902:10	draped (1)	787:10																		
905:21	906:18	906:20	917:5	917:9	917:11	917:12	917:17	918:7	918:11	919:22	920:2	920:5	Draconian (3)	828:4	828:18	828:19	drafting (1)	830:4	dramatically (1)	902:10	draped (1)	787:10																		
907:3	907:4	907:5	917:5	917:9	917:11	917:12	917:17	918:7	918:11	919:22	920:2	920:5	Draconian (3)	828:4	828:18	828:19	drafting (1)	830:4	dramatically (1)	902:10	draped (1)	787:10																		
907:5	907:9	909:15	917:5	917:9	917:11	917:12	917:17	918:7	918:11	919:22	920:2	920:5	Draconian (3)	828:4	828:18	828:19	drafting (1)	830:4	dramatically (1)	902:10	draped (1)	787:10																		
909:17	910:12	910:15	917:5	917:9	917:11	917:12	917:17	918:7	918:11	919:22	920:2	920:5	Draconian (3)	828:4	828:18	828:19	drafting (1)	830:4	dramatically (1)	902:10	draped (1)	787:10																		
910:18	912:5	912:10	917:5	917:9	917:11	917:12	917:17	918:7	918:11	919:22	920:2	920:5	Draconian (3)	828:4	828:18	828:19	drafting (1)	830:4	dramatically (1)	902:10	draped (1)	787:10																		
912:14	912:15	913:9	917:5	917:9	917:11	917:12	917:17	918:7	918:11	919:22	920:2	920:5	Draconian (3)	828:4	828:18	828:19	drafting (1)	830:4	dramatically (1)	902:10	draped (1)	787:10																		
913:15	914:10	915:8	917:5	917:9	917:11	917:12	917:17	918:7	918:11	919:22	920:2	920:5	Draconian (3)	828:4	828:18	828:19	drafting (1)	830:4	dramatically (1)	902:10	draped (1)	787:10																		
916:18	916:20	916:24	917:5	917:9	917:11	917:12	917:17	918:7	918:11	919:22	920:2	920:5	Draconian (3)	828:4	828:18	828:19	drafting (1)	830:4	dramatically (1)	902:10	draped (1)	787:10																		
917:12	917:17	918:7	917:5	917:9	917:11	917:12	917:17	918:7	918:11	919:22	920:2	920:5	Draconian (3)	828:4	828:18	828:19	drafting (1)	830:4	dramatically (1)	902:10	draped (1)	787:10																		
918:11	919:22	920:2	917:5	917:9	917:11	917:12	917:17	918:7	918:11	919:22	920:2	920:5	Draconian (3)	828:4	828:18	828:19	drafting (1)	830:4	dramatically (1)	902:10	draped (1)	787:10																		
920:5			917:5	917:9	917:11	917:12	917:17	918:7	918:11	919:22	920:2	920:5	Draconian (3)	828:4	828:18	828:19	drafting (1)	830:4	dramatically (1)	902:10	draped (1)	787:10																		
Draconian (3)	828:4	828:18	828:19	drafting (1)	830:4	dramatically (1)	902:10	draped (1)	787:10	drastic (1)	826:15	drive (1)	785:8	drugs (1)	895:2	dual-sided (1)	838:14	due (2)	802:13	916:1	dues (2)	914:19	916:9	during (17)	795:25	809:21	816:9	833:11	843:6	848:14	848:17	850:9	852:15	858:12	863:14	895:23	898:10	908:7	909:13	911:20

JRC Hearing (Volume VII) 9-24-01

CondenseIt™

financial - hypothetical

financial [1] 915:10	forward [1] 779:6	820:6 878:19 883:9	918:25	Hebrew [1] 792:23
Fine [4] 850:14 861:4	found [1] 783:24	885:6 894:19 894:22	heard [5] 776:22 885:8	help [15] 786:8 793:4
882:15 906:3	foundation [4] 789:22	897:17 918:2	893:23 893:24 917:7	800:16 806:3 806:12
finish [12] 781:21	789:23 795:11 854:21	goofing [1] 878:14	hearing [202] 769:0	806:23 807:12 807:15
801:18 820:6 857:24	four [5] 774:4 784:15	governing [4] 877:8	770:3 771:4 773:6	809:22 839:1 847:10
862:15 874:9 874:11	787:19 804:6 852:11	879:16 879:19 880:8	773:9 773:16 773:20	865:12 873:14 873:14
875:18 888:16 889:17	fourth [1] 795:3	grand [1] 846:4	774:21 784:13 788:10	874:8
890:12 913:14	frame [2] 812:4	granted [2] 839:22	789:21 790:3 793:11	helped [1] 830:12
finished [4] 861:3	845:9	870:13	793:14 794:18 794:24	helpful [4] 819:15
868:2 887:10 887:12	frankly [1] 895:4	great [4] 785:19 794:4	795:9 795:15 796:18	822:13 822:13 882:18
first [25] 785:14 785:14	freak [1] 803:20	878:2 885:14	796:22 797:7 798:19	Herbert's [1] 784:23
790:23 797:18 797:22	freaked [4] 799:11	greater [1] 902:17	798:21 799:14 799:18	hereby [1] 921:8
799:22 804:5 806:17	800:11 803:23 808:16	grounds [1] 793:18	800:1 800:19 800:22	Hey [1] 878:14
820:4 820:19 829:18	frequent [1] 841:12	grown [1] 836:15	801:3 801:7 801:13	highly [1] 783:21
831:25 832:10 834:8	frequently [2] 789:19	guard [14] 790:25	801:21 802:4 802:7	himself [3] 835:25
836:3 839:11 853:10	841:12	791:11 791:18 791:24	802:12 802:18 802:21	881:15 903:16
860:24 867:12 867:20	fresh [1] 886:12	795:2 795:4 795:6	802:23 802:24 802:24	hold [1] 891:14
867:22 868:4 876:15	Friday [1] 834:13	796:3 796:12 796:25	803:3 803:7 803:12	holding [1] 790:10
890:7 898:23	friend [1] 859:5	883:25 899:19 900:5	803:15 803:22 803:25	holes [1] 868:19
fits [2] 794:21 866:1	friendly [3] 777:7	guards [9] 775:24	804:3 804:5 804:10	Hollywood [2] 914:12
five [4] 784:16 784:17	818:23 818:25	794:5 795:3 813:20	804:14 804:19 804:21	914:22
852:3 852:11	frightened [3] 815:4	814:7 815:10 815:13	805:11 805:16 805:20	honest [1] 778:14
five-minute [2] 875:15	833:11 833:24	870:24 909:17	806:4 806:10 806:18	hope [2] 860:16 886:10
875:17	frightening [3] 777:19	guess [7] 822:4 848:22	806:22 809:2 809:13	hopefully [2] 815:5
fix [3] 847:15 879:2	814:10 815:3	873:12 880:18 904:15	809:25 811:18 811:21	820:12
880:9	front [5] 802:4 857:8	906:9 906:13	814:18 820:5 820:8	horrible [1] 782:6
fixed [2] 853:13 880:10	873:16 873:20 907:19	guy [1] 886:21	820:11 820:17 820:22	hospital [70] 778:22
fleet [1] 902:17	frozen [1] 814:8	guys [6] 808:4 865:5	825:18 825:21 825:25	783:22 784:4 787:23
Fleisher [3] 771:10	fully [1] 894:22	878:14 880:6 881:11	829:24 831:6 831:10	788:16 789:10 789:11
895:10 899:10	function [1] 886:2	gynecologist [1] 852:14	832:3 843:7 843:9	789:12 789:19 791:1
floor [2] 770:6 898:13	future [3] 805:7	H [1] 770:4	843:13 843:16 845:22	791:11 791:17 792:10
Florida [4] 827:10	811:17 828:23	habit [1] 904:16	845:25 846:4 846:8	792:12 795:24 796:12
827:16 827:22 886:17	G [1] 773:4	Hafer [17] 772:24	846:12 849:13 849:17	807:10 807:16 807:16
focus [12] 780:16	Gary [2] 798:14 832:16	786:22 831:18 832:13	854:6 854:11 854:14	808:2 808:2 808:3
791:20 813:18 836:9	general [4] 839:5	837:2 837:9 839:18	854:20 854:22 854:24	808:5 809:8 809:10
845:5 847:4 847:6	840:23 841:22 852:13	839:24 840:10 847:5	855:4 855:10 855:14	810:8 810:12 810:14
847:17 848:7 849:2	generally [2] 842:11	848:2 850:3 853:10	855:21 855:22 856:9	812:15 815:2 822:16
867:21 877:5	860:6	853:14 855:2 855:8	856:10 856:14 856:25	822:19 827:2 827:22
focused [2] 844:22	gentleman [2] 783:20	859:17	857:7 857:16 857:20	827:25 838:25 864:14
847:8	804:23	Hafer's [2] 837:24	857:24 858:2 858:7	864:15 866:21 876:15
folks [1] 783:6	Gerald [1] 772:5	845:18	858:13 858:17 860:18	876:19 878:1 878:13
follow [2] 784:3	gesticulation [1] 814:9	half [3] 799:22 877:19	861:1 861:4 861:22	879:10 879:16 879:20
904:3	gesturally [1] 909:21	888:23	861:25 862:7 863:1	880:6 880:9 880:10
follow-up [2] 893:11	gesture [2] 813:14	half-hour [1] 847:20	867:25 870:13 870:20	881:8 883:14 883:15
918:7	826:16	ball [1] 898:7	873:22 874:2 874:5	883:15 886:7 891:10
followed [4] 793:22	Gil [8] 769:0 770:10	hand [2] 785:6 856:14	874:8 874:13 875:11	894:23 895:22 896:1
818:16 858:22 858:23	770:11 785:18 786:25	hand-delivered [1] 904:17	875:14 875:17 875:23	896:5 896:6 899:22
following [8] 793:2	799:10 800:10 808:15	handed [1] 854:9	876:6 876:12 881:4	899:23 901:15 902:12
793:2 794:16 819:17	given [6] 774:14 795:15	handled [3] 863:25	881:21 881:23 882:1	903:3 903:11 903:16
824:6 861:9 861:16	887:2 887:3 894:2	864:2 864:19	882:4 882:6 882:9	903:21 907:20 907:22
forbidden [1] 801:25	917:7	happening [5] 814:25	882:13 882:16 887:23	hospitals [4] 775:18
forbids [1] 892:18	giving [6] 805:19	815:6 859:4 860:16	888:16 889:3 889:17	775:22 791:21 808:23
foregoing [2] 921:9	846:9 872:14 889:20	happy [2] 856:22	889:20 890:2 890:6	hostile [1] 776:19
921:11	892:12 892:18	912:6	890:13 890:21 891:2	hostility [1] 811:1
Forget [2] 781:7	Glen [1] 770:12	harassed [1] 793:22	891:6 891:9 891:16	hour [6] 847:21 850:17
840:24	globally [1] 919:6	harm [2] 836:2 845:3	891:17 891:20 891:22	850:21 850:24 851:20
forgot [2] 819:25	God [1] 791:21	Hastings [1] 771:17	892:1 892:3 892:6	862:4
820:4	goes [2] 801:20 829:21	head [3] 790:10 818:3	892:9 893:1 893:3	hourly [1] 850:23
form [12] 777:25	gone [2] 796:24 862:4	872:10	893:9 893:12 893:13	hours [9] 852:4 862:5
778:3 783:13 812:17	good [12] 773:15	hear [6] 781:8 799:20	894:11 895:10 897:8	867:18 867:19 888:23
814:1 814:14 815:9	775:3 776:5 776:16	889:25 889:25 917:22	897:8 897:22 899:1	914:19 914:19 915:12
838:10 867:13 873:20			899:1 899:6 899:11	916:9
875:22 909:19			901:1 901:10 902:22	Hudosh [5] 789:24
formed [1] 906:7			903:23 910:9 910:10	789:24 790:1 834:16
forth [3] 894:20 918:13			910:17 912:3 912:6	837:3
921:10			913:7 913:11 913:14	humanly [1] 817:12
			913:16 915:7 916:17	hypothetical [7] 790:5
			916:19 916:21 917:22	
			918:8 919:8 919:11	
			919:13 919:14 919:16	
			919:24 920:3 920:6	
			hearings [1] 773:13	
			heart [1] 841:8	

JRC Hearing (Volume VII) 9-24-01

CondenseIt™

hypothetically - letter

790:15 790:16 827:9	893:4 919:20	interpretation [1]	789:2 815:5 838:19	796:14 800:11 800:13
871:11 882:12 917:19	indicating [1] 899:18	836:17	838:23 838:24 840:13	803:20 807:3 807:3
hypothetically [4]	individual [8] 787:17	interpreted [3] 814:1	840:14 840:15 847:13	807:4 807:7 807:7
790:6 850:20 851:18	787:20 788:4 790:6	814:14 837:25	860:11 861:15 886:11	808:11 811:12 813:22
871:23	790:12 819:8 898:9	interrupt [2] 782:14	911:5	813:23 814:2 814:15
idea [14] 773:15 776:12	901:19	842:14	Jose [1] 771:18	816:25 821:19 883:3
776:16 790:25 794:4	individuals [2] 805:7	interrupted [4] 820:3	judgment [1] 782:11	900:5 904:22 908:2
795:21 811:3 832:11	817:14	892:13 912:5 913:11	judgments [1] 917:3	908:8 917:1 917:2
836:5 868:24 868:25	indulging [1] 862:9	interrupting [1] 861:6	JUDICIAL [1] 769:0	laboriously [1] 888:22
887:15 915:15 916:13	inflated [1] 909:15	interruption [1] 912:6	July [23] 804:9	lack [2] 789:22 908:6
ideal [1] 784:13	inform [1] 881:8	intertwined [1] 836:25	807:3 808:3 808:9	language [1] 836:1
identifying [1] 805:13	information [6] 824:23	intervention [2] 818:5	808:10 808:10 862:24	last [20] 774:17 775:7
III [7] 841:4 842:19	858:11 869:18 880:25	864:25	863:17 868:12 868:13	776:24 785:17 802:24
842:25 843:2 853:23	881:25 881:25	intimidate [1] 815:16	868:13 868:20 868:21	804:17 806:19 816:2
857:9 858:8	informed [3] 779:25	intimidated [1] 815:14	868:22 868:23 868:23	818:20 825:12 825:2
ill-tempered [1] 837:14	881:19 896:6	introduce [2] 816:19	873:17 913:10 914:11	865:14 866:20 877:13
imagine [16]	initials [4] 806:16	855:12	914:15 914:17 915:12	889:4 893:24 896:19
784:6 784:7 784:8	806:20 806:21 806:25	introduced [2] 816:10	June [5] 792:2 792:11	914:11 914:12 919:1
785:7 785:15 816:12	initiated [5] 776:6	816:13	795:21 811:2 895:19	lateral [1] 775:9
816:21 872:14 873:3	776:7 776:9 776:11	intrusion [1] 845:18	K-A-W-A [1] 807:20	latter [1] 822:13
878:15 884:8 896:2	857:10	invitation [2] 906:9	Karen [16]	law [6] 815:24 816:6
917:24 917:25 918:6	initiative [2] 825:1	917:18	811:8 820:15 831:17	816:7 827:2 830:2
immediate [2] 793:19	905:19	invite [2] 905:2	847:25 848:12 848:14	831:13
794:1	Injunction [1] 772:23	905:20	849:20 850:1 874:17	Lawrence [1] 771:5
imminent [4] 824:2	innumerable [1] 888:12	inviting [1] 905:4	875:8 908:13 909:7	laws [1] 882:3
826:20 827:24 886:20	input [1] 813:2	involved [3] 799:5	909:14 909:25 910:6	lawyer [1] 804:2
impact [1] 817:13	insert [2] 835:24	808:7 854:2	Kathy [1] 784:23	Layne [1] 771:17
impaired [1] 911:22	856:7	involving [1] 809:4	Kawa [4] 807:20	lead [1] 783:18
impartial [1] 891:15	inserted [1] 847:12	irrelevant [1] 809:2	807:21 807:23 807:24	lean [1] 868:21
impede [1] 860:16	insist [1] 882:16	Israel [4] 827:11	Kayne [2] 798:10	learn [1] 852:1
implemented [2]	instance [2] 859:5	827:16 827:22 886:17	keep [10] 795:24 804:12	learned [2] 829:17
859:11 859:12	907:24	878:5	816:17 871:22 872:1	852:8
implication [2] 801:23	instances [1] 893:23	875:6	888:9 895:10 900:25	least [6] 801:9 828:4
822:3	instead [2] 780:21	787:18 790:3 801:8	901:7 912:16	848:6 852:11 867:4
implies [1] 802:1	786:17	802:8 803:10 819:22	kept [3] 782:1 869:11	890:17
important [11] 805:9	institution [1] 876:17	828:14 846:5 846:6	888:9	leave [14] 780:1
805:10 836:22 847:18	instruct [3] 804:18	850:2 851:3 853:13	888:9	786:22 787:2 787:2
858:25 859:15 859:16	913:22 913:24	859:13 860:9 869:23	key [1] 859:12	787:21 788:4 788:20
859:16 861:23 874:16	instructed [2] 817:1	870:5 870:7 870:24	kind [14] 789:18 791:12	789:13 789:14 790:12
908:12	855:8	873:4 873:4 874:17	817:25 837:21 862:20	799:19 845:20 919:1
impose [1] 773:23	instructing [1] 882:25	888:23 901:12 913:17	864:25 872:14 881:8	919:25
improved [1] 859:11	instruction [2] 805:20	issues [7] 809:4	885:4 894:25 895:2	leaves [1] 884:1
inappropriate [6]	871:23	870:6 874:16 901:9	911:21 911:25 917:6	led [2] 833:23 834:2
837:15 846:2 846:3	instructions [2] 861:10	905:2 905:18 906:11	kindness [1] 861:8	left [9] 774:16 777:9
846:6 863:14 863:24	861:21	item [1] 879:17	kinds [1] 873:8	799:11 799:23 808:1
inches [2] 795:2	instructions [2] 861:10	itself [2] 778:20 785:4	knew [12] 784:10	808:16 816:24 880:16
795:4	intefere [1] 871:13	January [5] 797:20	795:11 795:14 797:3	881:15
incident [25] 796:23	intent [1] 793:23	826:4 829:9 904:13	797:15 816:17 818:17	legal [17] 802:2
804:7 812:13 812:24	interaction [2] 849:20	904:20	818:20 824:20 900:10	803:9 804:20 805:2
813:1 819:21 833:19	interactions [2] 782:5	Japanese [1] 908:8	900:10 902:1	805:21 808:13 808:17
834:12 836:14 847:21	834:3	Jay [3] 830:10 830:18	knowing [3] 777:6	830:5 831:3 842:3
848:13 848:14 848:17	interested [4] 783:19	Jean [1] 771:7	807:6 857:12	842:5 854:5 880:1
848:18 848:19 849:9	784:19 793:1 892:5	jeopardized [2] 834:23	knowingly [1] 878:25	881:12 881:16 882:6
852:2 857:4 858:3	interesting [3] 782:20	835:3	knowledge [11] 781:11	901:8
898:8 908:22 911:21	813:2 825:13	jeopardy [2] 786:13	809:6 809:23 833:22	legitimate [1] 913:2
917:1 917:2 917:3	Interestingly [1] 875:25	845:3	837:8 858:2 869:5	length [2] 846:1
incidents [3] 906:17	875:25	Jerry [18] 775:3	871:23 877:22 878:23	846:9
911:22 916:25	interests [2] 787:16	775:4 777:21 782:19	898:10	less [1] 818:4
incision [1] 787:12	845:8	791:19 792:23 805:4	known [3] 845:7	letter [70] 772:1
including [3] 835:9	interfere [4] 779:10	820:15 836:16 844:14	902:9 908:8	780:23 781:4 781:5
837:9 900:13	871:15 871:16 871:17	849:25 862:20 883:23	knows [2] 791:21	812:7 828:13 829:12
inconsistent [1] 896:14	interferes [1] 885:16	887:13 890:11 904:3	796:19	829:12 829:19 830:3
incumbent [1] 911:2	interject [1] 880:20	909:16 909:22	L [1] 811:12	830:4 831:14 831:17
India [1] 828:24	Internet [1] 827:7	Jessup [1] 830:20	lab [6] 789:8 789:11	831:20 831:23 832:2
indicate [1] 915:4		789:17 789:25 790:8	789:9	832:12 832:21 833:4
indicated [3] 804:17		790:9	labor [25] 796:4	833:5 833:9 833:22

JRC Hearing (Volume VII) 9-24-01

CondenseIt™

letters - morning

844:20	846:17	846:17	856:7	mechanism [2]	876:21	message [3]	777:9	890:23	891:5	891:8
846:24	848:9	850:1	M.D. [12]	769:0	770:11	780:3	787:22	891:17	891:18	891:20
850:15	852:21	852:24	770:18	771:5	771:6	met [6]	808:15	816:23	891:21	891:22
853:18	859:21	874:23	771:7	771:8	771:9	863:11	892:21	904:22	892:2	892:3
874:25	875:1	875:3	771:10	771:11	771:18	912:19			892:7	892:9
875:5	875:7	887:5	865:15	M.D. [1]	770:10	Miami [1]	827:10	893:1	893:9	894:15
895:19	896:14	899:18	M.D. [1]	770:10		Michael [1]	771:8	895:18	896:6	897:16
900:2	900:3	900:10	mail [1]	877:17		might [25]	775:7	898:3	899:17	900:2
903:7	904:4	904:5	mailbox [2]	800:13		781:2	781:14	900:13	900:14	900:18
904:7	905:17	906:8	808:17			784:22	790:25	900:21	901:3	902:2
906:16	906:20	907:2	mailboxes [3]	799:12		794:5	798:7	902:3	902:14	902:20
907:8	907:12	907:14	808:12	816:25		800:16	813:25	903:24	903:8	903:23
908:16	909:6	914:17	makes [1]	774:6		814:13	816:12	903:24	904:2	907:5
915:4	915:13	916:7	maliciously [1]	793:21		832:15	832:18	909:15	909:17	912:5
letters [3]		904:16	man [2]	830:13	830:14	842:2	842:2	912:10	912:15	913:9
907:10	916:15		management [4]	871:21	871:21	871:13	889:24	913:15	914:10	915:8
level [4]	781:12	842:11	871:22	872:6	872:21	Mileikowsky [226]	769:0	916:18	917:5	917:9
859:25	860:7		Managers [1]	772:24		769:0	770:10	917:12	917:17	918:7
liberty [1]		900:22	manner [4]	842:10		772:16	772:22	918:11	919:22	920:2
life [2]	791:12	793:2	844:22	859:14	870:5	773:9	774:23	920:5		
lifted [1]	899:22		March [1]	877:9		775:2	781:22	Mileikowsky's [3]	870:14	870:17
limit [1]	899:13		mark [1]	879:2		783:3	788:12	Miller [11]	771:15	
limitations [1]	773:18		Marlene [5]	786:22		789:23	790:4	774:1	829:21	832:14
lines [1]	839:4		787:1	838:19	847:5	793:15	794:13	832:22	842:4	864:2
list [1]	798:15		859:17			794:23	794:25	864:4	864:10	865:22
listen [3]		849:23	Marlon [1]	771:11		795:17	797:1	871:25		
849:25	876:5		mask [1]	790:10		798:22	799:16	Miller's [3]	863:14	
listening [1]		803:17	material [1]	805:15		800:9	800:17	864:13	864:18	
litany [1]		794:12	matter [9]	769:0		801:5	801:9	mind [19]		783:14
literally [1]		813:6	785:9	802:18	803:7	801:18	802:6	783:23	785:25	786:3
litigation [1]		802:17	805:19	829:3	859:16	802:13	802:20	786:4	786:10	786:25
living [1]		899:10	900:23	905:20		802:22	803:1	787:3	812:4	823:22
log [1]	872:8		may [27]	784:16	787:1	803:8	803:10	836:12	836:23	845:9
log-in [1]		867:17	799:9	800:17	802:6	803:16	803:23	845:16	873:23	874:6
logbook [1]		872:24	806:4	807:15	817:24	804:3	804:4	900:25	901:7	915:24
logical [1]		884:16	819:8	819:25	821:9	804:12	805:3	mine [4]	796:14	806:16
look [19]	786:7	800:22	823:10	837:25	844:20	806:1	806:12	807:2	843:11	
806:2	806:4	841:25	850:8	854:4	855:12	807:17	808:5	minimum [1]		856:12
842:16	842:18	843:16	856:7	877:20	889:3	809:14	810:2	minute [2]		788:10
854:10	854:13	854:14	890:21	894:10	896:23	815:7	816:14	812:8		
855:10	865:14	868:5	897:18	898:13	901:1	820:1	820:7	minutes [6]		772:18
868:17	882:1	884:8	907:20			820:19	820:24	816:18	847:20	847:20
884:22	886:12		McDaniel [20]	807:4		825:20	825:23	862:3	862:25	
looked [3]		782:6	807:8	809:7	809:24	827:12	829:2	misconduct [1]		861:20
856:20	887:13		811:1	811:4	811:9	830:24	831:8	missing [5]		868:20
looking [6]		792:22	812:2	820:16	821:13	832:5	832:9	869:7	869:17	870:15
806:7	814:5	846:20	823:7	874:18	875:9	843:8	843:11	870:16		
868:2	868:3		908:13	908:14	909:8	843:18	843:20	mistake [1]		803:6
looks [3]	842:23	867:18	909:25	910:6	912:12	845:24	846:1	mistakenly [1]		898:5
868:21			912:20			846:5	846:11	Miyashita [6]		771:7
Los [4]	770:7	770:14	mean [20]	779:16		849:5	849:8	772:9	819:24	894:10
815:17	921:3		782:14	786:12	788:21	849:18	849:22	894:14	895:9	
loud [1]	814:22		791:20	792:24	798:11	854:8	854:18	modification [1]		823:4
loudness [1]		814:8	824:21	836:16	842:13	854:23	855:1	moment [9]		797:25
love [5]	785:19	885:13	847:23	863:19	872:25	855:2	855:18	814:4	816:15	824:13
891:24	892:2	893:9	878:6	883:23	902:17	856:11	856:16	847:2	850:10	875:13
lunch [27]		821:8	906:20	907:1	910:23	857:17	857:22	906:7	914:8	
821:10	823:8	823:11	914:22			858:19	860:19	Monday [5]		769:0
823:14	823:17	823:25	meaning [5]	794:2		861:1	861:2	773:2	773:17	773:18
824:3	824:4	824:5	811:15	822:22	836:12	862:1	862:17	824:5		
824:5	824:14	824:20	866:3			863:6	868:1	money [1]		915:11
824:25	825:7	825:8	means [1]	843:1		870:1	870:7	month [1]		821:3
888:6	905:2	905:5	measure [4]	799:1		870:22	871:7	months [2]		804:6
905:6	905:9	905:11	799:4	828:4	881:15	874:7	874:10	877:14		
905:20	906:9	906:10	measures [1]	880:15		875:19	875:20	moot [1]	906:3	
906:12	917:18		MEC [3]	772:4	772:15	876:4	876:13	morning [2]		868:23
M-4 [3]	854:19	855:13	880:8			881:2	881:6	899:8		
			memory [9]	805:4		881:24	882:2			
			806:13	807:12	816:22	882:8	882:12			
			823:24	831:9	865:17	882:21	887:2			
			865:20	914:24		888:2	888:13			
			memos [1]	908:23		889:5	889:18			
			mentally [1]	783:14		890:4	890:10			
			mention [2]	782:4						
			820:4							
			mentioned [3]	837:7						
			903:15	910:16						

JRC Hearing (Volume VII) 9-24-01

Condenset™

Morrow - operating

Morrow [3] 780:12	neurosurgeons [1] 852:13	799:7 800:5 804:23	obstetrician/gynecologist [1] 898:6	861:4 861:25 863:1
831:18 832:12	never [26] 775:25	805:25 810:6 810:25	obstructions [1] 845:13	867:25 870:13 870:20
most [4] 844:11 859:15	776:1 776:24 781:15	813:1 816:9 819:20	obstructs [1] 788:20	873:22 874:2 874:5
915:13 916:8	782:8 782:11 782:20	819:22 823:6 824:8	obviously [3] 785:22	874:8 874:13 875:11
mouth [1] 790:11	783:17 783:17 783:22	825:12 827:9 827:10	824:22 885:15	875:14 875:17 875:23
move [5] 773:22 774:10	787:3 791:10 792:11	828:3 830:3 843:25	occasions [1] 895:18	876:6 876:12 881:4
889:2 890:16 906:4	809:3 848:12 858:21	845:4 845:16 846:9	occurred [5] 777:15	881:21 881:23 882:1
moving [1] 779:6	859:19 869:9 869:12	850:7 851:25 853:18	781:25 784:4 797:21	882:4 882:6 882:9
Ms [45] 774:1 807:4	872:5 886:10 895:20	855:22 858:17 862:16	occurrence [2] 841:13	882:13 882:16 887:23
807:8 807:11 809:7	904:5 918:3 919:2	868:5 868:15 870:4	855:3	888:16 889:3 889:17
809:24 811:1 811:4	next [28] 782:7 790:23	871:9 873:14 875:8	occurrences [2] 823:19	889:20 890:2 890:6
811:8 812:2 821:13	796:3 797:7 806:11	879:7 881:7 884:5	852:22	890:13 890:21 891:2
823:7 829:21 831:18	808:9 816:18 821:5	885:24 888:22 889:25	occurring [3] 794:20	891:6 891:9 891:16
832:13 832:14 837:2	834:18 835:8 839:21	893:5 893:6 898:8	811:17 850:11	891:17 891:20 891:22
837:9 837:24 839:18	840:22 840:24 844:17	Nowhere [1] 840:11	October [13] 773:13	892:1 892:3 892:6
839:24 840:10 845:18	854:23 857:20 864:9	number [14] 777:5	773:17 773:17 773:17	892:9 893:1 893:12
848:2 848:4 850:3	866:16 867:10 870:20	778:24 780:18 832:1	773:18 773:24 774:4	894:11 897:8 897:22
853:10 853:14 855:2	874:14 882:21 891:4	832:1 846:18 846:18	774:8 774:15 919:12	899:1 899:6 899:11
855:8 861:16 861:21	891:6 892:15 898:14	846:19 861:10 861:11	919:19 920:1 920:3	901:1 901:10 902:22
863:14 864:2 864:4	night [5] 808:8 867:11	876:18 876:20 890:12	off [4] 774:17 790:10	903:23 910:9 912:3
864:10 864:13 864:18	869:15 869:16 870:24	891:11	839:8 861:22	913:7 913:14 915:7
865:22 871:25 890:5	nine [1] 811:2	number-one [1] 845:5	offensive [3] 883:21	916:17 916:19 916:21
908:14 909:7 912:12	nobody [4] 812:23	nurse [5] 781:8 813:12	883:22 883:22	917:22 918:8 919:8
multiple [2] 867:2	852:4 860:16 915:23	814:14 847:22 847:25	offered [5] 888:5	919:24 920:3 920:6
878:4	None [1] 821:15	nurses [39] 781:9	894:25 895:2 895:4	official [2] 908:16
must [3] 778:10 839:22	nonexistent [1] 851:4	781:9 782:2 783:17	905:1	908:17
858:24	nonresponsive [3] 889:18 889:23 890:16	799:11 800:11 803:19	office [21] 772:24	often [1] 841:10
N [5] 769:0 770:10	nonsense [2] 890:18	804:25 807:4 808:11	774:1 785:17 799:7	Oftentimes [1] 779:2
770:11 772:1 773:4	902:24	808:16 809:7 809:10	799:15 800:4 818:17	ombudsman [2] 819:4
name [21] 806:19	nor [6] 782:17 792:1	809:16 809:17 811:12	821:16 830:18 830:21	819:5
806:19 806:23 806:24	825:10 833:17 872:5	813:16 813:22 814:2	831:14 832:13 851:22	once [9] 780:17 785:18
807:2 807:24 827:11	872:6	814:8 817:1 817:2	871:22 872:5 877:24	787:2 787:8 859:17
874:24 874:25 892:19	Northridge [1] 818:20	821:18 839:25 840:5	878:9 883:4 912:17	867:4 891:8 901:17
892:19 892:20 892:22	notation [1] 805:12	840:19 851:6 877:3	912:18 914:18	901:18
892:24 913:19 913:20	note [2] 861:7 908:22	883:12 884:6 896:5	officer [172] 770:3	one [72] 774:9 775:22
913:23 914:1 914:6	910:4 912:11 912:13	898:4 898:13 898:16	773:6 774:21 783:21	777:5 777:22 780:25
914:9 921:18	nothing [10] 782:23	908:23 909:18 909:22	788:10 789:21 790:3	782:16 784:13 784:25
namely [1] 851:6	782:23 782:24 792:5	910:8 919:2	793:11 793:14 794:18	785:16 791:4 795:3
names [5] 832:25	794:15 825:9 908:1	nurses' [2] 883:3	794:24 795:9 795:15	795:16 795:23 798:24
863:21 865:13 866:4	908:3 908:5 910:1	883:4	796:18 796:22 797:7	801:2 807:4 811:7
narrow [1] 775:10	notice [9] 773:14	nursing [11] 789:2	798:19 798:21 799:14	812:14 814:15 814:19
Nassoura [8] 771:9	817:13 882:23 882:24	789:7 790:7 851:13	799:18 800:1 800:19	815:16 816:15 819:20
772:8 893:19 893:22	883:2 883:6 883:7	852:23 857:11 860:14	800:22 801:3 801:7	822:10 822:14 826:7
894:9 905:14 905:21	899:21 911:14	883:4 895:25 900:3	801:13 802:7 802:12	829:23 832:1 832:14
907:4	noticed [1] 813:24	918:13	802:18 802:21 802:23	832:16 834:19 835:2
Nassoura's [3] 904:3	notified [3] 896:9 896:10	O [1] 773:4	803:3 803:7 803:12	837:2 837:6 837:16
906:18 907:5	notification [1] 813:24	oath [1] 774:19	803:15 803:22 803:25	846:18 850:8 851:2
National [3] 827:2	notion [1] 791:6	OB/GYN [2] 817:3	804:3 804:5 804:10	852:15 855:1 859:3
827:6 886:4	November [32] 774:4	object [14] 789:16	804:14 805:11 806:4	861:10 863:19 870:9
naturally [1] 853:5	796:7 796:11 796:24	789:20 794:9 796:15	806:10 806:18 806:22	872:9 872:16 874:6
nauseam [1] 845:23	811:13 811:18 811:21	801:11 801:17 805:23	809:2 809:13 809:25	876:19 877:5 878:7
necessarily [2] 858:22	811:23 812:13 812:19	806:6 869:24 900:18	811:18 811:21 814:18	878:14 879:3 885:2
885:16	813:1 814:3 815:8	901:3 902:20 917:12	820:5 820:8 820:11	889:3 891:11 898:9
need [11] 813:2 819:23	817:15 820:20 820:25	objected [1] 892:11	820:17 820:22 825:18	898:11 898:14 898:19
839:12 839:14 871:8	823:25 824:19 882:23	objection [8] 789:21	825:21 825:25 829:24	900:18 910:10 910:16
873:5 875:11 875:12	887:15 888:3 888:7	849:17 849:18 888:17	831:6 831:10 832:3	912:3 913:7 913:14
884:22 891:19 912:2	889:7 889:10 895:17	891:3 892:14 902:22	834:20 843:7 843:9	913:13 916:20 916:2
needed [7] 777:16	896:15 904:22 905:12	917:22	843:13 843:16 845:22	917:14 918:8 918:23
792:8 853:13 908:15	905:19 908:24 909:8	observation [5] 813:25	845:25 846:4 846:8	one-sided [2] 781:4
913:3 915:11 915:21	now [55] 773:15 773:21	814:4 814:10 814:13	846:12 849:13 849:17	838:14
needs [2] 817:11	773:25 776:15 779:6	observations [1] 814:3	851:13 854:6 854:11	ones [1] 873:16
866:13	780:16 782:19 787:10	observe [1] 813:11	854:14 854:20 854:22	ongoing [1] 881:1
negotiations [1] 810:20	792:17 797:18 798:18	observed [2] 813:15	855:24 855:4 855:10	open [1] 888:6
neither [2] 818:17		814:17	855:14 855:21 856:9	operate [1] 902:19
			856:14 856:25 857:7	operated [3] 834:7
			857:16 857:20 857:24	852:3 901:13
			858:2 858:7 858:13	operating [32] 776:1
			858:17 860:18 861:1	777:11 778:10 779:3
				779:4 779:20 780:2
				780:9 782:2 787:9

JRC Hearing (Volume VII) 9-24-01

CondenseIt™

operations - problem

789:3	789:8	790:17	panel [2] 771:4	910:17	perceived [4]	786:2	775:23	785:13	785:23	785:7	817:12	
791:16	834:13	834:19	paper [2] 865:6	866:13	794:5	814:12	845:17	791:10	792:1	812:15	potential [1]	829:7
835:25	838:9	838:10	paperwork [1]	863:18	perceives [1]	836:23	817:3	817:9	826:17	826:17	potentially [1]	835:3
845:18	846:22	847:22	paragraph [5]	834:8	perceiving [1]	883:15	826:20	827:23	827:24	827:24	practice [5]	817:11
848:2	848:20	850:3	paraphrase [5]	839:10	percent [3]	813:7	828:22	828:25	834:16	845:2	822:18	827:13
851:5	851:19	852:10	865:14	840:22	813:7	813:8	835:24	839:15	845:2	845:5	848:22	829:1
853:25	860:12	902:21	paraphrasing [1]	821:25	perception [6]	775:8	866:17	878:20	879:7	866:17	878:20	879:7
operations [4]	818:3		821:25	Pardon [1]	776:18	815:13	879:15	880:5	880:15	879:15	880:5	880:15
834:21	877:23	908:7	Park [1]	811:20	883:11	885:25	880:17	883:12	883:16	880:17	883:12	883:16
opinion [6]	786:12		part [12]	805:6	perfectly [2]	861:13	884:5	884:11	884:18	884:5	884:11	884:18
845:11	847:7	849:11	806:8	810:9	perform [1]	787:11	885:14	885:15	885:17	885:14	885:15	885:17
862:17	898:13		844:11	844:12	performance [1]	896:24	886:18	894:19	898:19	886:18	894:19	898:19
opportunity [6]	780:2		878:4	881:1	performed [1]	853:1	898:20	901:15	908:9	898:20	901:15	908:9
785:18	887:3	887:4	911:24		performing [2]	779:13	911:15	911:22	913:18	911:15	911:22	913:18
893:15	912:2		participants [1]	773:19	perhaps [1]	895:1	916:6	918:20	919:4	916:6	918:20	919:4
opposite [1]	901:5		participate [1]	780:15	period [3]	795:25	physicians [19]	782:2	782:2	834:11	839:25	840:4
option [4]	829:11		participation [1]	819:14	permanently [1]	872:12	834:11	839:25	840:4	840:7	840:18	841:17
838:14	838:15	887:2	particular [8]	776:18	permission [2]	866:13	840:7	840:18	841:17	860:3	877:3	883:12
options [2]	829:8		823:6	841:24	866:13	866:13	860:3	877:3	883:12	884:6	884:10	908:4
894:25			879:17	895:5	permitted [1]	839:8	884:6	884:10	908:4	916:14	918:14	918:16
oral [1]	859:10		906:6		Persky [1]	771:8	918:17	918:22	919:2	918:17	918:22	919:2
order [11]			parties [2]	862:11	person [32]	782:4	physicians' [2]	910:21	908:6	910:21		
803:2	803:4	858:20	party [1]	891:15	782:5	783:20	834:11	839:25	840:4	840:7	840:18	841:17
858:21	862:1	887:24	pass [1]	846:14	787:22	788:5	898:17	898:18	898:20	898:17	898:18	898:20
888:6	892:10	892:10	past [4]	901:13	789:14	790:18	898:22	907:21	907:25	898:22	907:21	907:25
908:14			910:20	912:1	793:3	793:19	908:7	908:10		908:7	908:10	
orders [1]	876:20		path [4]	781:1	793:24	809:20	pinpoint [1]	807:13		pinpoint [1]	807:13	
original [1]	780:16		853:12	882:14	814:20	818:11	place [9]	795:23	821:21	898:17	898:18	898:20
originating [3]	813:12		patient [33]	781:8	836:2	836:17	876:14	876:16	876:17	898:23	912:17	921:10
909:3	909:4		781:13	781:15	836:22	836:23	898:23	912:17	921:10	808:11		800:13
ORSOS [3]	853:23		786:9	786:13	847:15	859:7	placed [2]	808:11		808:11		793:24
857:9	858:8		787:10	787:16	872:9	874:24	808:11			808:11		793:24
otherwise [2]	837:19		797:1	806:16	898:14		placing [1]	793:13		808:11		793:13
ourselves [1]	850:12		807:2	807:6	person's [2]	788:21	plan [1]	797:13		808:11		797:13
outcomes [1]	805:21		808:9	816:10	personal [3]	778:14	pleading [1]	774:12		808:11		774:12
outraged [1]	783:12		845:8	845:17	personally [6]	778:15	Plect [6]	771:5	772:10	808:11		772:10
outrageous [2]	781:19		847:5	847:9	781:24	844:7	895:16	897:21	898:2	895:16	897:21	898:2
782:7			890:8	892:20	personnel [16]	834:12	898:25		875:25	898:25		875:25
outrageously [1]			906:2	906:4	851:5	852:23	plenty [1]	875:25		plenty [1]	875:25	
814:23			915:25	916:1	869:22	871:20	PMB [1]	770:13		PMB [1]	770:13	
outside [7]	789:10		patient's [1]	786:9	876:18	878:25	point [27]	775:12		point [27]	775:12	
789:12	790:9	797:1	patients [17]	785:14	879:25	880:7	780:22	784:22	784:23	780:22	784:22	784:23
797:6	881:10	881:12	785:18	785:23	897:1	902:12	784:24	785:5	794:23	784:24	785:5	794:23
own [10]	781:24	785:9	796:4	814:6	perspective [13]	777:20	795:1	795:3	795:7	795:1	795:3	795:7
786:13	813:11	813:24	814:21	842:10	781:4	781:25	796:11	798:24	803:7	796:11	798:24	803:7
814:13	844:7	872:23	860:6	884:7	785:9	817:22	805:22	808:2	815:8	805:22	808:2	815:8
903:18	918:17		885:13	885:23	833:19	844:1	822:15	823:22	833:16	822:15	823:22	833:16
P [1]	773:4		907:24		847:4	860:10	845:2	856:2	857:11	845:2	856:2	857:11
p.m [7]	773:2	820:10	pay [1]	838:19	847:4	860:10	857:18	893:2	906:3	857:18	893:2	906:3
820:10	862:6	875:22	paying [1]	850:22	phone [10]	798:23	909:20	919:9		909:20	919:9	
875:22	920:9		Penal [1]	793:5	818:17	819:17	Police [1]	815:17		Police [1]	815:17	
pacifying [1]	817:23		people [31]	777:17	830:16	830:17	policies [1]	876:25		policies [1]	876:25	
page [26]	772:8	772:9	777:19	783:5	874:19	875:9	policy [2]	908:2		policy [2]	908:2	
772:10	772:11	772:12	786:5	786:20	photographs [1]	898:4	913:18			913:18		
839:1	839:2	839:3	796:4	814:6	photography [1]	908:3	poor [1]	778:19		poor [1]	778:19	
839:7	839:9	843:3	814:21	842:10	physical [7]	797:9	portion [1]	878:24		portion [1]	878:24	
843:9	843:11	843:14	860:6	884:7	813:13	813:14	position [3]	803:20		position [3]	803:20	
843:19	856:20	856:24	885:13	885:23	837:7	837:8	810:7	918:5		810:7	918:5	
862:22	868:5	868:9	907:24		physically [2]	780:5	possession [1]	865:22		possession [1]	865:22	
868:20	869:7	869:16	pay [1]	838:19	909:22		possibilities [1]	835:2		possibilities [1]	835:2	
870:14	870:15	877:9	Penal [1]	793:5	physician [52]	775:12	possibility [1]	861:22		possibility [1]	861:22	
pages [7]	769:0		people [31]	777:17	775:12	775:13	possible [3]	780:1		possible [3]	780:1	
867:21	867:23	868:2	777:19	783:5	775:12	775:13						
868:4	868:16	921:11	786:5	786:20	775:12	775:13						
paid [1]	914:19		798:25	810:24	775:12	775:13						
			817:16	832:14	775:12	775:13						
			832:21	834:4	775:12	775:13						
			838:20	844:13	775:12	775:13						
			863:21	864:22	775:12	775:13						
			867:5	867:17	775:12	775:13						
			901:21	916:8	775:12	775:13						
			918:1	918:4	775:12	775:13						
			perceive [5]	775:11	775:12	775:13						
			778:11	784:12	775:12	775:13						
			886:1		775:12	775:13						

JRC Hearing (Volume VII) 9-24-01

Condenset™

responses - speak

responses [1] 861:16	812:11 895:5 902:16	schedule [1] 860:12	907:8 909:6	sides [1] 784:15
responsibilities [2] 834:19 842:8	908:18 911:11	scheduling [4] 853:24 853:25 857:9 858:8	sentence [3] 801:19 839:21 842:23	sign [1] 870:12
responsibility [14] 845:17 851:7 851:7 851:10 860:13 860:15 878:1 878:8 899:22 899:23 902:18 903:2 903:5 903:11	room [47] 777:11 778:10 779:3 779:4 779:20 780:3 780:9 782:2 786:23 787:2 787:8 787:9 787:20 787:22 788:4 789:3 789:8 789:14 789:15 790:12 790:17 797:1 797:4 797:23 798:4 834:13 836:1 838:9 838:10 838:18 845:14 845:18 845:20 846:22 847:22 848:2 848:20 850:4 851:6 851:19 853:25 860:12 867:9 867:10 902:21 917:1	scream [1] 815:2	separate [2] 837:6 864:14	sign-in [2] 865:16 867:9
responsible [12] 819:22 840:10 853:19 861:24 869:1 886:9 887:8 891:14 903:17 903:18 903:20 918:14	Rose [1] 872:5	scrambling [4] 815:3 816:15 845:1	September [4] 769:0 773:2 862:6 889:8	signature [1] 906:7
responsive [1] 861:18	routine [3] 817:25 827:15 908:7	scrub [1] 788:8	sequence [1] 849:21	signed [5] 869:16 870:3 870:3 870:11 870:15
result [1] 834:3	RPR [1] 769:0	scrubbed [3] 787:17 895:11 895:11	series [2] 794:19 814:5	significant [1] 844:12
Resumed [1] 775:1	rule [9] 866:15 873:22 873:25 874:3 883:7 892:17 892:23 901:14 901:17	scrubs [3] 779:23 780:2 780:8	seriously [1] 829:12	simple [5] 779:19 847:24 850:6 881:14 888:10
return [5] 875:12 877:17 914:17 915:13 916:7	ruled [4] 802:19 803:15 804:16	second [9] 781:6 781:20 802:22 826:14 828:6 829:22 829:23 837:16 919:23	services [2] 771:16 835:15	simply [4] 786:7 822:7 824:12 902:18
review [9] 769:0 830:5 856:17 856:18 867:3 867:20 869:6 869:8 869:9	rules [28] 784:3 787:24 787:24 838:3 838:10 839:2 839:5 839:6 840:9 840:23 873:8 873:9 873:15 873:18 873:25 875:25 876:10 876:16 876:24 878:3 882:3 901:18 901:20 901:21 901:22 901:25 907:18 911:2	secret [1] 824:1	set [9] 785:7 791:5 791:13 821:7 821:10 823:8 824:3 824:25 921:10	Simultaneous [10] 801:1 818:13 849:12 870:8 871:6 888:15 890:1 891:1 917:13 917:15
reviewed [2] 869:12 869:15	ruminate [1] 780:22	secretary [1] 824:22	Seventeenth [1] 770:6	single [4] 814:20 821:12 876:11 898:8
revisit [1] 901:8	run [2] 809:18 860:12	section [13] 793:16 794:2 841:4 842:7 842:19 843:1 843:2 843:15 843:22 844:5 877:9 879:17 879:17	several [5] 775:22 776:21 830:23 898:4 898:13	sit [3] 780:21 866:6 874:2
RICHARD [1] 770:18	S [2] 773:4 807:11	security [37] 772:19 791:18 795:2 795:3 795:4 795:22 796:2 796:12 796:25 797:3 813:20 814:7 822:12 866:21 867:6 868:12 869:2 869:16 869:22 870:24 883:1 883:25 884:16 884:24 885:4 895:19 895:23 896:2 896:7 896:9 897:1 897:13 899:19 899:24 900:5 900:12 909:16	shall [7] 806:18 838:3 839:15 877:11 877:12 877:15 880:16	sitting [5] 796:3 796:12 813:23 852:20 866:15
ridiculous [1] 891:5	S-H-O-P [1] 809:13	security's [1] 867:3	shameful [1] 781:19	situation [15] 778:11 780:14 783:19 786:1 786:6 786:16 790:16 808:4 817:24 819:9 832:11 864:3 905:16 905:25 915:10
right [106] 775:4 775:6 775:21 776:7 777:4 777:24 781:22 782:10 783:9 785:24 789:21 790:22 792:14 794:24 795:17 796:9 797:17 799:6 804:10 804:21 805:11 806:14 807:25 808:20 809:5 815:18 816:3 816:4 816:8 817:22 817:25 818:12 818:18 819:11 819:13 820:21 822:15 823:20 824:17 824:18 825:25 826:5 826:9 831:6 831:10 831:12 833:3 833:8 834:25 835:16 835:20 836:24 838:22 839:11 839:17 841:14 842:6 843:13 843:18 846:8 848:8 851:1 854:14 855:10 856:16 857:19 857:20 858:13 859:21 860:17 861:25 866:20 867:7 867:14 868:4 868:14 870:4 870:20 871:9 873:1 874:13 875:1 880:3 881:4 881:16 881:21 882:14 882:15 885:18 887:15 888:4 888:8 893:4 893:6 893:17 908:7 913:14 913:24 914:7 915:3 915:5 915:23 916:2 916:5 917:17 919:8	S-T-A-L-K-I-N-G [1] 792:18	see [32] 774:20 782:21 783:1 783:10 783:12 798:25 800:19 815:2 819:3 821:15 823:21 825:1 826:7 827:22 834:7 837:5 854:6 854:19 857:14 858:4 859:6 860:11 866:11 866:19 867:12 868:19 868:19 868:21 884:13 901:4 908:25 909:1	shape [9] 778:1 778:4 783:14 812:17 814:1 814:14 815:9 838:10 909:19	six [1] 877:14
risk [5] 871:20 871:22 872:6 872:21 886:25	safe [4] 821:23 822:5 904:19 911:10	seeing [2] 775:23 815:2	share [2] 824:23 858:11	slightly [1] 810:23
road [1] 804:18	safety [5] 793:25 794:1 822:1 880:15 911:13	seek [1] 799:3	shares [1] 858:11	slowly [2] 839:13 917:17
Roberta [1] 872:6	salary [1] 864:13	seeking [4] 784:14 818:5 818:9 819:8	Sharon [1] 872:5	small [2] 775:10 782:5
role [7] 777:15 812:10	satisfactory [1] 917:6	seem [1] 778:17	sheet [2] 866:13 867:9	so-called [1] 787:12
	satisfied [1] 891:12	seemingly [1] 779:6	sheets [1] 865:16	software [1] 853:20
	Saturday [3] 914:16 915:13	selection [2] 839:12 839:14	ship [4] 787:12 788:3 790:13 902:15	solution [1] 826:13
	saw [11] 782:22 782:23 782:25 782:23 782:23 782:25 783:5 789:6 814:7 814:7 875:1 906:23	self-motivated [1] 833:7	shock [1] 869:14	someone [7] 776:4 783:15 783:16 810:16 831:13 838:1 896:7
	says [4] 839:9 840:1 865:25 870:18	send [4] 828:13 829:11 906:24 907:1	shocked [1] 781:25	sometime [4] 800:4 816:24 904:13 904:20
	scared [1] 814:22	sending [2] 907:9 915:12	shocking [1] 816:20	sometimes [5] 779:4 779:5 864:16 864:22 864:23
		sense [5] 788:2 792:9 824:4 824:16 905:11	shoes [2] 789:10 790:9	soon [4] 820:13 875:8 883:1 883:1
		sensed [1] 799:9	shook [1] 909:19	sorry [27] 781:23 782:14 783:4 783:7 799:18 799:20 799:24 805:1 807:19 807:22 808:19 818:15 823:1 831:17 840:24 842:13 843:21 860:5 860:21 863:2 875:3 875:10 887:11 889:10 906:8 915:20 920:2
		sent [10] 780:23 855:19 855:20 859:5 877:16 887:5 906:20 907:2	shooting [2] 881:15 881:15	sort [2] 823:15 823:19
			shop [8] 809:9 809:13 809:15 809:25 810:1 810:3 810:6 810:24 889:6	sorts [2] 831:4 877:4
			short [3] 829:8 881:15	sought [1] 819:12
			shortcomings [1] 852:23	space [1] 797:15
			Shorthand [2] 921:7 921:23	speak [2] 792:23 831:16
			Shortly [1] 865:15	
			shot [2] 809:11 809:24	
			show [7] 800:18 800:25 801:5 842:13 854:6 885:3 885:5	
			showing [1] 860:23	
			shows [6] 779:8 827:16 842:15 883:24 890:24	
			side [9] 777:22 784:13 784:14 796:13 894:1 894:2 894:6 905:23 907:6	

JRC Hearing (Volume VII) 9-24-01

Condenset™

specific - 6

specific [3] 851:2	stat [2] 778:23 781:3	895:19	Surowitz [20] 776:11	774:19 779:8 789:24
874:3 874:5	state [6] 806:18 829:16	substance [1] 912:25	776:12 776:13 797:14	794:15 796:17 803:1
specifically [4] 898:18	838:8 900:22 921:2	substantial [1] 774:10	797:23 798:24 799:3	870:4 882:10
910:5 911:5 913:4	statement [11] 793:9	such [28] 780:24 783:18	825:16 825:22 826:2	Texas [1] 827:16
specifics [1] 882:5	793:11 796:17 796:20	798:25 799:4 816:19	826:5 826:6 828:10	text [1] 907:12
spelling [1] 792:19	824:9 861:18 862:1	825:4 826:12 828:3	829:8 829:16 882:25	thank [22] 774:1
spend [1] 774:10	870:4 870:11 887:19	828:21 828:25 828:25	895:25 899:18 912:21	774:24 794:25 807:1
spirit [1] 862:10	917:4	833:21 835:11 852:22	912:24	829:6 839:21 840:9
Spiwak [4] 771:18	statements [1] 921:14	855:3 866:16 872:16	Surowitz's [1] 795:20	840:21 843:24 850:6
780:9 799:18 799:23	states [3] 793:7	873:1 883:2 883:5	surprise [4] 896:13	851:1 870:22 874:1
spoke [6] 778:19	795:5 900:24	883:6 884:18 885:25	896:15 900:8 900:12	876:13 898:25 901:1
832:17 832:21 848:12	stating [4] 811:12	886:21 910:21 911:14	surprised [6] 817:5	903:22 903:24 916:18
spoken [7] 779:5	812:8 815:17 870:6	Suda [3] 830:8 861:21	817:6 817:10 897:7	919:10 919:25 920:5
780:11 807:20 808:1	station [3] 883:3	890:5	900:4 900:17	themselves [3] 779:7
833:17 833:18 864:6	883:4 910:8	Suda's [1] 861:16	suspend [4] 828:5	817:14 872:25
staff [96] 771:16 773:8	stationed [1] 816:16	sudden [1] 896:15	828:8 828:11 829:9	thereafter [1] 780:23
774:1 778:14 778:16	stay [4] 795:25 847:8	suddenly [1] 896:16	827:23 886:19 903:10	therefore [1] 821:1
782:22 784:7 785:5	904:19 910:8	sufficient [1] 908:19	914:20 916:10	therein [1] 921:1
785:10 786:17 788:16	step [4] 782:7 790:23	suggest [3] 825:16	suspending [1] 825:14	Theresa [2] 769:0
789:2 791:22 799:4	879:15 885:24	825:21 825:24	suspicious [2] 911:3	921:6
803:21 810:12 812:9	Stephen [1] 830:15	suggested [4] 776:13	911:15	thick [1] 907:14
812:11 812:12 812:16	steps [3] 857:3 858:3	825:19 826:3 833:4	sustain [2] 891:2	thinking [3] 775:1
822:23 823:2 832:16	858:7	suggestion [4] 776:3	892:14	837:21 897:18
833:12 833:12 833:24	steward [8] 809:9	776:3 797:19 835:19	sustained [6] 789:22	thought [17] 775:14
835:2 835:9 837:1	809:9 809:12 809:15	827:23 886:19	798:19 798:21 806:10	777:18 781:2 782:6
837:4 837:14 838:3	810:1 810:3 810:6	895:25	849:18 902:22	794:3 819:14 822:1
839:6 839:8 841:1	still [22] 774:19 775:3	support [3] 799:3	Sweden [1] 819:4	822:13 823:17 825:13
841:2 841:3 841:4	777:5 778:6 786:6	870:11 887:7	system [5] 853:24	832:23 834:7 857:25
841:16 841:17 841:20	803:5 818:20 824:4	871:6 903:10	853:25 854:2 857:9	863:13 865:2 865:3
841:24 843:1 851:22	824:15 825:10 832:23	supported [3] 776:6	858:9	914:1
852:23 853:17 857:11	833:17 835:20 841:12	791:6 903:10	table [2] 868:5 868:8	thoughts [1] 811:5
857:12 858:12 860:14	844:10 848:21 848:22	supportive [1] 777:16	takes [1] 900:22	threat [4] 793:24
864:14 866:12 867:4	848:25 885:13 885:23	suppose [9] 818:1	taking [6] 784:7	814:2 902:1
872:2 872:5 872:22	886:25 919:15	822:3 837:2 871:16	865:23 898:17 898:22	threatened [14] 776:2
877:3 877:11 877:22	stop [7] 834:14 834:25	871:24 880:2 880:19	907:21 912:11	776:25 777:25 778:3
877:24 878:2 878:9	835:16 837:16 839:17	897:20 905:9	907:21 912:11	778:15 780:7 785:6
878:9 878:11 878:15	887:9 893:6	supposed [3] 795:19	target [1] 793:24	786:1 815:10 815:1
878:21 878:25 879:10	storics [1] 784:17	871:14 881:11	Tarzana [4] 769:0	823:11 833:25 836:1
879:19 879:25 880:7	story [7] 784:14 894:1	surgeon [32] 778:22	770:21 773:1 907:20	908:24
885:7 885:10 892:18	894:3 894:7 898:15	779:1 779:5 787:7	task [1] 788:18	threatening [11] 775:17
895:6 897:14 897:15	905:23 907:6	787:11 787:11 787:13	team [1] 787:9	775:16 786:11 794:6
897:18 903:3 903:12	strange [2] 816:14	787:14 787:15 787:21	tech [1] 788:8	795:7 813:12 814:1
910:19 910:22 910:23	816:15	788:3 789:6 789:13	Tel [1] 827:11	909:18 914:7 914:9
911:4 911:9 911:13	street [9] 769:0 770:20	790:14 791:10 838:25	telephone [1] 894:3	918:20
911:17 911:23 912:1	779:21 780:6 787:17	839:18 840:3 845:6	telling [6] 815:23	three [8] 784:15 795:3
913:4 913:19 914:18	789:3 789:8 790:8	845:6 845:10 847:1	816:23 885:13 892:24	795:16 798:18 815:1
915:11 916:9 918:13	790:17	847:2 847:3 851:19	914:18 917:20	841:11 846:19 852:2
918:17	stress [1] 783:10	852:2 852:3 852:9	tells [2] 787:7 788:4	through [13] 774:1
stalking [6] 792:18	stricken [1] 794:14	852:14 852:16 859:6	temporary [1] 848:23	802:7 802:23 803:1
792:20 792:22 793:6	strictly [2] 801:25	860:10	Tenet [3] 772:23	822:22 826:24 829:2
793:20 794:11	834:3	surgeon's [1] 839:16	818:5 880:18	836:18 842:16 843:7
stand [1] 836:7	strike [1] 890:16	surgeons [7] 839:8	term [2] 810:18 819:5	847:9 857:1 913:8
standard [15] 791:4	strong [1] 919:17	852:12 852:13 852:14	terminate [2] 826:16	tighten [1] 858:3
791:9 791:12 791:13	stronger [1] 881:10	857:4 857:13 858:4	826:19	times [15] 786:2
791:14 791:15 791:16	strongly [3] 801:11	surgeons' [1] 840:11	terminology [1] 810:11	787:19 787:21 790:11
791:20 791:22 792:5	805:19 806:6	surgeries [1] 852:16	terms [3] 792:25 812:5	796:13 796:13 798:1
792:6 792:9 792:10	structure [2] 810:9	857:4 857:13 858:4	829:14	799:8 830:23 841:1
792:11 792:14	878:4	840:6 850:17 851:20	terrible [1] 777:18	852:11 885:7 888:1
standing [6] 796:13	struggle [1] 865:5	847:2 847:3 851:19	territory [1] 902:21	895:12 895:23
796:25 797:5 813:23	style [1] 859:8	852:2 852:3 852:9	terrorized [1] 918:1	title [1] 868:6
894:19 894:22	subject [2] 838:11	860:10	testified [8] 789:18	today [3] 828:1
stands [1] 805:19	847:19	surge [16] 777:8	816:2 816:6 846:1	833:17 889:8
start [6] 784:2 784:5	subscribed [1] 921:17	779:10 779:9 779:12	846:9 849:19 855:8	tolerated [1] 837:15
874:11 886:11 886:12	subsequent [2] 829:17	779:13 779:14 780:14	902:1	tomorrow [1] 899:8
901:16	829:17	780:17 790:8 839:10	testimony [9] 773:12	790:2
started [3] 850:17	829:17	839:23 840:1 840:5		tonight [3] 790:2
851:20 868:20		840:6 850:17 851:20		856:10 882:10
starts [3] 829:21 839:8		846:9 849:19 855:8		too [4] 805:1 823:19
839:11		902:1		875:21 893:13

JRC Hearing (Volume VII) 9-24-01

Condenselt™

took - Wulfsberg

took (7) 779:6 862:2	type (2) 827:5 855:9	upheld (1) 802:2	859:7	825:24 829:23 829:25
898:4 898:5 898:12	types (1) 859:14	upset (7) 782:3 783:22	walked (1) 848:2	831:3 832:7 843:19
898:18 898:20	Typically (1) 851:9	784:6 804:25 909:15	walking (7) 780:9	849:15 854:12 856:14
top (3) 810:6 839:3	unacceptable (1) 853:11	909:16 909:20	789:9 789:10 789:12	857:14 858:6 858:10
845:6	uncomfortable (3) 776:20 898:17 918:4	upsetting (2) 783:25	795:4 813:23 850:3	858:15 860:19 860:22
totally (3) 861:11 902:21	under (16) 774:19	784:1	walks (2) 790:6	861:8 861:8 862:2
tough (1) 897:5	782:8 787:10 789:11	used (5) 789:19 829:14	790:8	862:3 862:6 862:10
tourist (1) 908:8	790:9 843:17 851:6	837:23 881:18 902:14	wanting (1) 786:19	862:13 862:15 863:4
toward (2) 829:24	851:7 851:9 864:10	using (4) 790:9 806:8	wants (2) 827:13	870:19 874:4 875:12
917:25	866:21 868:6 869:4	836:5 895:2	860:16	875:16 876:3 876:7
towards (9) 813:19	877:23 877:23 904:17	usual (2) 841:19 901:15	warning (1) 835:11	876:10 880:24 890:7
813:20 813:21 813:22	understand (9) 786:10	usually (2) 783:20	warrant (1) 885:4	891:11 891:12 895:13
814:2 837:12 837:13	786:19 792:17 796:5	787:1	waste (2) 837:20	911:12 917:24 921:17
839:7	812:14 844:16 851:3	v (1) 772:23	871:8	witnessed (2) 917:7
town (3) 826:4 915:14	857:7 872:4	variety (2) 841:25	wasting (2) 845:12	witnesses (2) 772:3
916:8	understood (1) 794:20	876:24	861:14	784:16
track (1) 857:4	unethical (6) 843:25	various (4) 773:19	watched (1) 815:4	woman (1) 830:13
tracking (1) 895:21	844:4 844:8 844:20	805:21 867:4 867:5	watching (1) 814:6	word (19) 791:20
trained (1) 783:21	844:20 846:18	vascular (1) 852:14	ways (2) 859:14	792:9 792:14 792:15
transcript (6) 805:6	unfair (1) 901:4	venue (2) 881:18	Webb (6) 848:1	792:17 792:24 835:18
805:12 805:14 806:25	unfortunately (1) 906:11	881:18	848:4 848:12 848:14	835:19 835:20 835:21
921:12 921:13	uniformed (7) 775:24	verbal (3) 813:14	849:20 850:1	836:5 836:10 836:13
treat (4) 817:2 817:2	790:25 791:11 791:23	877:1 910:2	Webster (1) 792:22	836:16 837:17 837:23
817:8 860:2	794:5 796:12 815:10	verbally (2) 894:3	Webster's (1) 836:11	838:13 860:4 881:10
treated (1) 817:12	union (28) 808:24	909:21	week (1) 821:2	words (6) 815:22
trial (1) 859:6	809:3 809:4 809:7	verbiage (1) 836:18	weekend (12) 773:23	836:7 836:8 845:25
tried (3) 831:8 847:13	809:10 809:10 809:18	verified (3) 859:19	774:8 774:9 774:13	856:6 864:20
887:9	810:3 810:7 810:21	914:25 915:21	913:10 914:11 914:23	worked (1) 842:4
troubled (2) 778:12	811:5 811:10 811:14	verify (5) 838:24	915:12 915:18 916:4	world (4) 828:23
780:20	812:3 812:7 812:9	852:17 859:9 889:9	916:7 916:16	828:23 886:2 886:8
true (13) 777:1 802:2	812:18 812:18 812:23	versus (1) 896:24	weekends (3) 919:17	worse (1) 900:23
818:1 818:19 818:21	821:14 821:17 874:17	VI (1) 877:9	919:18 919:21	worth (1) 774:12
825:9 825:15 825:20	874:20 874:23 909:4	view (8) 775:13 777:6	weird (1) 780:25	wrap (1) 820:12
840:20 871:10 871:19	909:5 913:2 913:5	784:23 784:23 784:24	welcome (1) 817:16	write (8) 773:15 831:23
886:22 921:11	unions (1) 909:3	795:1 795:7 795:24	welcomed (2) 817:18	832:1 833:4 833:5
truest (1) 792:9	unit (3) 821:19 821:20	views (1) 812:10	819:14	833:21 835:11 842:25
truly (2) 780:21 823:23	821:20	VII (1) 769:0	well-being (1) 895:6	writes (1) 858:20
truth (2) 901:5 901:6	United (1) 795:5	vindictive (2) 897:15	whereof (1) 921:17	writing (11) 781:5
truthfully (1) 911:25	unknowingly (1) 878:25	897:19	White (1) 872:7	831:14 831:16 832:11
try (23) 773:22 774:13	unless (3) 784:9	violated (2) 842:3	whole (13) 780:13	834:1 834:4 834:9
778:6 778:9 780:16	864:16 914:18	887:16	780:20 783:22 785:22	850:1 852:21 894:3
783:14 791:19 806:14	unprofessional (7) 844:24 845:15 845:20	violates (1) 829:13	787:8 792:10 794:11	written (3) 834:15
816:22 818:5 820:6	846:19 846:25 847:14	violating (3) 808:4	798:15 814:17 818:4	835:22 859:10
823:24 825:1 836:4	918:19	815:24 879:11	844:5 850:21 874:12	wrong (16) 776:2
836:9 845:9 849:2	unquote (1) 791:23	violation (2) 816:5	willfully (1) 793:21	785:9 789:1 802:11
875:18 877:5 880:22	unresponsive (1) 861:11	833:12	Willick (3) 770:4	817:22 823:20 838:7
880:24 899:13 901:23	unsafe (1) 821:21	violently (1) 847:11	891:9 891:14	845:19 865:25 887:16
trying (10) 775:7	unusual (3) 780:25	virtually (1) 888:23	wish (5) 807:13 829:17	888:4 888:8 889:9
775:11 792:8 803:11	815:1 858:12	visitors (1) 860:3	854:25 874:6 875:20	889:10 915:24 916:1
803:18 830:7 844:14	up (36) 777:11 778:18	voice (4) 783:17 786:23	wished (1) 780:1	wrote (18) 831:20
846:20 874:8 914:23	781:6 782:1 784:16	787:2 803:21	wishes (3) 859:12	835:1 835:18 835:22
Tuesday (3) 773:17 919:12	795:10 797:19 799:8	volatile (1) 817:24	861:9 866:25	836:10 837:17 843:4
773:17 919:12	803:18 809:4 814:20	volition (1) 872:23	within (10) 794:1	844:19 844:19 846:16
turning (1) 817:23	818:16 820:6 820:12	VOLUME (1) 769:0	795:24 795:24 809:18	846:24 848:9 850:15
twice (3) 841:11 848:1	821:7 821:10 823:8	W (1) 806:16	816:18 827:1 847:20	852:24 858:21 903:7
848:6	824:3 824:19 824:25	wait (20) 781:20 788:9	914:19 915:11 916:9	904:4 910:2
two (27) 791:5 795:16	826:14 827:11 832:11	788:10 790:4 800:19	without (13) 783:14	WS (3) 807:2 807:2
818:2 832:1 832:3	836:5 848:21 849:6	800:21 801:3 802:22	784:14 790:10 806:2	807:18
832:5 839:4 846:18	853:12 868:22 868:4	803:22 804:3 825:2	806:5 826:10 833:22	Wulfsberg (60) 770:18
852:10 852:15 861:11	875:18 878:20 879:15	825:18 828:6 849:13	845:11 853:3 871:22	781:21 783:2 788:9
862:5 867:20 867:22	883:24 883:24 889:7	849:13 856:25 876:6	872:2 872:8 873:1	789:16 790:1 793:8
867:22 868:2 868:4	walk (6) 789:3 789:8	876:6 881:23 915:8	witness (52) 774:20	794:9 794:14 796:15
868:16 874:16 876:20	790:19 795:23 838:8	883:24 889:7	781:24 797:3 798:20	796:20 798:17 800:21
877:12 877:19 888:22			799:24 800:17 805:1	801:11 801:17 801:20
890:12 896:20 913:13			810:1 811:20 811:23	802:14 802:16 803:5
913:14			814:20 819:25 820:23	806:6 814:16 830:22
				831:1 849:4 849:6

JRC Hearing (Volume VII) 9-24-01

CondenseIt™

Wulfsberg's - [sic]

849:10	849:15	849:16
854:7	854:9	854:12
854:16	869:24	870:2
870:10	876:2	880:20
880:24	887:18	887:22
888:1	888:11	888:19
889:1	889:24	893:12
899:3	899:5	899:9
899:12	899:16	900:20
900:22	901:10	901:11
903:1	912:14	916:20
916:24	917:11	
Wulfsberg's (1)		845:12
X (5)	772:1	775:20
808:23	827:23	828:22
Yamini (15)		780:15
785:1	833:18	834:2
847:7	848:1	848:3
848:5	848:23	850:3
850:16	850:21	853:1
895:10	901:12	
Yamini's (2)		784:22
850:23		
year (6)	792:4	814:3
841:11	867:4	873:17
914:12		
yearly (1)		841:10
years (28)		775:18
775:22	776:25	777:8
777:22	778:21	780:7
782:18	783:16	785:13
791:10	791:21	808:22
811:2	818:2	824:25
826:12	827:14	845:7
852:10	852:15	866:12
877:12	877:19	886:5
896:20	902:2	916:7
yelling (4)		815:20
815:23	816:15	845:1
yet (5)	776:2	854:5
854:15	887:7	898:4
yourself (15)		781:11
781:12	798:7	799:3
813:3	840:16	842:18
845:9	847:12	865:21
883:13	886:20	906:23
910:24	911:14	
Zahi (1)	771:9	
[sic] (1)	793:17	