

1 of the evidence is in. Counsel, earlier, submitted a  
2 Proposed Court's Charge.

3 Any new objections from the State?

4 *MR. JOHNSON:* None from the State.

5 *MISS McCLUNG:* Other than previous.

6 *THE COURT:* Other than what's in the record?

7 *MISS McCLUNG:* Yes, Judge.

8 *THE COURT:* Thank you.

9 Once again, the previous ruling will remain  
10 the same.

11 Now, Members of the Jury, I'm about to read  
12 the Court's Charge to you. The reason for the delay,  
13 ordinarily, what would happen at this time, you folks would  
14 go back to the jury room, now that all the evidence is in,  
15 then the Court prepares a Court's Charge, submits it to  
16 these good lawyers and they get to suggest how it could be  
17 improved. And then, once it's in its final shape, usually,  
18 after a couple of rewrites, then you're back in the jury box  
19 and the Court's Charge is read.

20 I'm sure the Judge has explained to you that  
21 the Court's Charge is the law of the case. Following that,  
22 the next thing that happens, the State, having the burden of  
23 proof, they get to argue why they suggest to you their  
24 evidence is sufficient to earn a verdict of guilty beyond a  
25 reasonable doubt.

1           And then, following that, the next thing  
2 happens, the Defense gets to argue their side of the case,  
3 suggesting to you why that's just absolutely incorrect, the  
4 State's position is wrong. No doubt, they're going to be  
5 arguing that you should find a verdict of not guilty.

6           Then the State gets to have the last word,  
7 because they have the burden of proofing the merits of their  
8 position beyond a reasonable doubt.

9           Once all the evidence is in, by that time,  
10 the Court's Charge has been read, so you know what the law  
11 is. You've already seen and heard all the evidence in this  
12 case. You will have heard at that point the position of  
13 both sides suggesting to you how you should -- what should  
14 be your ultimate verdict.

15           Then, for the first time, you will go to the  
16 jury room and deliberate on your verdict, keeping in mind  
17 whatever your verdict is, it needs to stay consistent with  
18 the law and whatever evidence that you have heard and  
19 whatever that might mean to you individually and then  
20 collectively.

21           I invite you to listen to the reading of the  
22 Court's Charge, so that you will know the law. Thereafter,  
23 I invite you to listen to the arguments of each side, as  
24 they suggest what you should do, as you will soon be  
25 deliberating upon your verdict.

1 Members of the Jury....

2 (Charge(s) of the Court read aloud to the  
3 Members of the Jury.)

4 THE COURT: Now, if you have unanimously  
5 found the Defendant guilty of any offense in this Charge,  
6 then you will next answer the Special Issue question on the  
7 following page. Special Issue question reads....

8 (Charge(s) of the Court read aloud to the  
9 Members of the Jury.)

10 THE COURT: Now, should there be a dispute  
11 among your members as to what the testimony of some witness  
12 in the course of the trial has been, there's always a form  
13 that's provided for you, that you can use to get a response  
14 from the Court.

15 Should that be, in the course of your  
16 deliberations, appropriate to use then, of course, read it  
17 and fill it out, as it needs to be filled out.

18 Now, you've heard the law. Now, I ask you to  
19 listen to the argument of counsel.

20 Madam District Attorney.

21 MRS. MARTIN: Thank you, Your Honor. May it  
22 please the Court. Counsel.

23 Ladies and Gentlemen of the Jury, when we  
24 started three weeks ago, we talked about a lot of things. I  
25 just want to remind you about a few of those things, as we

1 go through this.

2 We talked about what it is to have this kind  
3 of a crime. We talked about all of the elements that the  
4 State has to go through, bring to you, to find someone  
5 guilty of this crime. And, make no mistake, on July 25<sup>th</sup>  
6 of 2012, the Defendant went into a surgery with Mary Efurd,  
7 an elderly individual and, in that surgery, he malpositioned  
8 a pedicle screw, he malpositioned an interbody device and he  
9 amputated that L5 nerve root.

10 There is no question that all of those things  
11 happened. And there is also no question in anyone's mind  
12 that, when he did those things, where he malpositioned the  
13 device and the screws and he amputated that nerve root, that  
14 he caused her protracted loss or impairment of her bodily  
15 member or organ.

16 And I say that, because you heard what she  
17 said. She can't move her leg anymore. The muscles are  
18 weaker. That's from that interbody device inside the  
19 muscle. Dr. Henderson told you that those nerves that go  
20 through that muscle were damaged, causing weakness.

21 You heard about how that pedicle screw, going  
22 into the nerve canal, causes damage and pain constantly.  
23 And you heard about how bone are going in and severing  
24 nerves. And, in that L5 nerve root, causes that drop foot.  
25 There is no question that those things happened.

1           There is also no question that he used a  
2           weapon. He used his hands, he used those surgical tools and  
3           he used that pedicle screw to do it. All of those things  
4           caused serious bodily injury, in the way that they were  
5           used, and that's a deadly weapon. So, when you get to that  
6           part on that last page: "We do". It's very simple. You  
7           don't even have to think about the deadly weapon. That's a  
8           "we do" all day long. Okay?

9           What you have to do now is understand that  
10          this is a crime. And it's a crime, because of the way in  
11          which the Defendant did these things. We talked about how  
12          it happens. We talked about intentionally or knowingly. We  
13          talked about recklessly, and we talked about criminal  
14          negligence. They're all like tupperware stacked inside one  
15          another.

16          Criminal negligence is the lowest one. You  
17          act. You should be aware of the risk, of the result, but  
18          you aren't. And that's stacked inside of reckless.

19          Reckless is, you are aware of the risk or the  
20          result but you do it anyway. And that's inside knowingly.

21          Knowingly is, you know, walking in, that what  
22          you do is gonna cause the result.

23          And then intentionally: you intend to do it.

24          And you all promised me in voir dire that you  
25          will remember that intentionally and knowingly are in the

1 same level. You don't have to agree that it's intentionally  
2 or knowingly. As long as you all agree that it's one of  
3 those two, it's guilty on intentionally. And, I'm telling  
4 you right now, that big tupperware of intentionally and  
5 knowingly is what we're talking about today. It can all  
6 exist together, inside that tupperware. But we're going to  
7 stack him with the big one. That's what he gets today. He  
8 gets that intentionally-and-knowingly verdict.

9           So, when you go in your Jury Charge, page  
10 three, the application, it says if you believe he did it  
11 intentionally or knowingly, you stop right here and go on to  
12 the Special Issue. So, that's what I'm telling you to do.  
13 Go to page eight, and you sign that verdict form right there  
14 that says "we find him guilty of intentionally or knowingly  
15 causing serious bodily injury to Mary Efurd".

16           How do you know that he intended or knew what  
17 he was doing? We talked about that in voir dire. You look  
18 at what somebody does before, during and after, and the  
19 things that they say. What did the Defendant do? What did  
20 we bring you that shows you just how much he knew and just  
21 what he intended?

22           Well, he gave you a lot of lies. He lied  
23 about blood loss. He lied about operation reports. And,  
24 they're all in evidence. You can look at those. He lied  
25 about "this is just normal pain". He lied about "this is

1 something new. This is not a damage that I did to you,"  
2 even though it's clear in all of these scans that it is  
3 something that he did.

4 "You just need steroids," Jerry Summers.  
5 "Jerry, we're going to fix your quadraplegia. The surgery  
6 went just fine. It's just a reaction to the Fentanyl," why  
7 he quit Baylor Hospital and how Mary Efurd's surgery went  
8 just fine. Those are all of the lies that he told  
9 throughout all of this, and the things that he did.

10 Well, that email, number one, tells you  
11 everything you need to know about what's in his head.  
12 Number two, he tried to sedate Jerry Summers when Jerry was  
13 talking too much, saying too much. He had to shut him up.

14 His personality changed. He wouldn't return  
15 patient phone calls. He's not going into the office. He's  
16 doing all of these things and, in addition, he's doctoring  
17 charts. He asks someone else to hide what he's doing. And  
18 you know, with all of these things, that he's trying to keep  
19 the world from knowing that he's doing. It's telling you  
20 that he knew he's hiding it, or at least trying to. But it  
21 came to light in this courtroom.

22 But, he's just a doctor. Right? These are  
23 consensual surgeries. Well, if you have one bad outcome,  
24 okay. Two, okay. Three, where you make your best friend a  
25 quadraplegic; four, you kill one; five, you kill someone

1 else; and, while that woman is dying, while Floella Brown's  
2 brain is pushing down into her spinal cord because there's  
3 no pressure left, there's nowhere else for it to go, and  
4 he's the only one in the building who can take care of her,  
5 he chooses to go into the sixth surgery. Not a  
6 life-threatening case, an elective surgery, while Floella  
7 Brown is dying.

8           Those are not consensual things, Ladies and  
9 Gentlemen. Those are things that he intended, and he knew  
10 what was gonna happen. He walked into that surgery knowing  
11 he was gonna cause serious bodily injury to Mary Efurd.  
12 They were telling him, as it's happening.

13           Now, if a police officer were to go get out  
14 of the academy and go on a killing spree, he's held  
15 accountable for that killing spree; just like a medical  
16 license does not keep you from prosecution, if you maim and  
17 kill people.

18           It's not a literal  
19 get-out-of-prosecution-free card. But, he didn't have  
20 training. He didn't know. That's what the Defense would  
21 have you believe. Well, Dr. Bagley doesn't know what the  
22 Defendant's training is. Dr. Bagley didn't ask anybody.  
23 And he said, it's a good program. And, let me just tell you  
24 this: Dr. Foley signed off on this, this guy (indicating).  
25 Signed off on him.

1                   And, if you expect a doctor who basically  
2                   invented minimally-invasive spinal surgery to say, "I'm  
3                   gonna let you out, because my ego won't admit that I picked  
4                   a bad guy in my draft -- because that's what they're saying,  
5                   right? That's what they're implying is, my ego is bruised  
6                   because I picked a bad guy and let him into the program.  
7                   And, because my ego was so high, I'm going to let him  
8                   through.

9                   Well, let me ask you this: Do you think it's  
10                  a bigger blow to your ego to pick a bad draft person or to  
11                  be associated with this guy, for the rest of your life?  
12                  Because, let's face it, Dr. Foley's name is all over the  
13                  place in this courtroom. Which do you think he'd rather  
14                  have? Do you think he's going to put his name on the line,  
15                  coming out of a practice, coming out of a fellowship, for a  
16                  bad draft choice or somebody that comes out and then turns  
17                  into this (indicating). Because the email told you that's  
18                  what he's turning into. He's turning into a cold-blooded  
19                  killer. Don't blame the training. We're blaming him.

20                  Ego is not the situation here. The Defense  
21                  brought up, in their questioning of Dr. Bagley, well, you  
22                  know, surgeons have big egos, don't they? And they're  
23                  trained to keep going forward. Well, sure. The qualifier  
24                  with Dr. Bagley is, when you're doing the best you can and  
25                  you're trying to save lives.

1           That's not what we have here. He's not  
2 saving lives. He's not doing the best he can. We've got a  
3 device in the muscle. That's not the ego talking of a good  
4 surgeon just trying to get through a bad outcome one time.  
5 These are catastrophic -- catastrophic -- worst possible  
6 things that could happen, happening over and over and over  
7 again.

8           But, he's god. He's Einstein. He's the  
9 antichrist. Those are his words, right? People say that's  
10 what he is. That's his ego. He can do no wrong. He's the  
11 best-trained surgeon there is. But, it's not his fault.  
12 It's not. That's what they would have you to believe; that  
13 it's everybody else's fault. We needed a peer review, a  
14 written piece of paper to say, "Do you know what? You did  
15 wrong."

16           Do you really need a peer review for Jerry  
17 Summers? Do you really need something in writing that says,  
18 "Hey, man, you made your best friend a quadraplegic"? Do  
19 you really need that in writing?

20           And, okay, maybe, you need some more  
21 information about what happened to Kellie Martin. He did  
22 that. He got that in writing. He requested from the  
23 medical examiner the autopsy report, and he got it  
24 (indicating). When your peer review comes from the ME's  
25 office in Collin County, that tells you all you need to

1 know. All you need to know right here (indicating). And,  
2 he got that. Dr. Rohr told you he told him on the phone,  
3 and he told him in writing, "There's your peer review."

4 But, he kept going. He kept doing this. And  
5 the State's witnesses, doctor after doctor, told you the  
6 conscientious doctor, the doctor with a conscience, stops.  
7 But, it's not his fault. It's everybody else's.

8 And, let's talk about that national database.  
9 Is it a reasonable deduction from the evidence that it's the  
10 hospital trying to circumvent or go around the national  
11 database, or is it the Defendant? Because, who really has  
12 the most to lose with everything getting on the national  
13 database? That goes on the national database, you don't get  
14 anymore privileges, right? But, he hires a lawyer. He  
15 quits, before they put it in writing. And he negotiates  
16 that letter. And then he lies, and he gets his privileges.

17 Who has the most to lose, by that peer review  
18 getting put in writing? Who has the most to lose, by  
19 waiting and letting Baylor Plano kick him out? That's the  
20 reasonable deduction from the evidence, Ladies and  
21 Gentlemen.

22 I mentioned that there might be some talk  
23 about, is this reasonable medical care? But everybody says  
24 it's not, even the Defense's expert. So, you don't have to  
25 worry about that. Okay.

1           So now, we've got all of these people. All  
2 of these people that he hurt, over and over and over again.  
3 How many does it take? How many does it take? One, two,  
4 three, four, five, six times, before you know what you're  
5 doing is hurting people, causing that serious bodily injury?  
6 How many lives does it take?

7           Well, when he went into that surgery, he  
8 intended to go in there and perform that surgery, just like  
9 Ms. Shughart said. He knew what he was doing, when he cut  
10 her open and he put that pedicle screw in too far. He knew  
11 what he was doing, when he pushed that bone in, severing  
12 that nerve. He knew what he was doing, when he was drilling  
13 into that muscle and putting that device in.

14           We all know the difference between cutting  
15 muscle and cutting bone. If you've ever had a piece of meat  
16 that has a bone in it, we all know what that feels like. We  
17 all know the difference. And he knew that he was gonna hurt  
18 her. He knew he was gonna cause her serious bodily injury.

19           *THE COURT:* Fifteen.

20           *MRS. MARTIN:* It is that simple.

21           The entire medical community came in here in  
22 this -- associated with this case. You had doctors, you had  
23 nurses, you had technicians, you had medical device reps,  
24 come in here and tell you everything that went wrong.  
25 Everything that continued to go wrong. They tried to stop

1 him, but it wasn't going fast enough for him. Right? We  
2 were all -- we're just all little humans in his world.  
3 Wasn't going fast enough. The doctors couldn't get him  
4 stopped fast enough.

5           So, it's your turn right here. You have to  
6 stop him, in this moment. Because it took a long time to  
7 get into the courtroom. It took a long time to get to the  
8 prosecution. The Defense asked for the return date of the  
9 Indictment: 2015. It took a long time. Because, what did  
10 Dr. Henderson tell you? This is unique, in the truest sense  
11 of the word. As in, never before seen.

12           You have to go in now and tell him "no more".  
13 Justice demands you say "no more". He built his empire. He  
14 built it on the maiming, paralysis and death of people.  
15 And, to get there, it was a path of pain, all the way to  
16 Mary Efurd. You have to tell him "no more" and you must  
17 find him guilty. You crash down his empire, and you say  
18 "no".

19           His own words, he was being what he was: a  
20 one-of-a-kind, mother-fucker, stone-cold killer. You say  
21 "no." You are merely guilty of this crime, and you will  
22 stop.

23           *THE COURT:* Thank you.

24           *MISS McCLUNG:* May it please the Court.

25           *THE COURT:* Yes, ma'am.

1                    *MISS McCLUNG:* Ladies and Gentlemen of the  
2 Jury, passion, sympathy, prejudice, public opinion, opinion  
3 outcry, are not to play a part in this case. They can pack  
4 the courtroom as much as they want. You can put the media  
5 at the door, you can do whatever you want, but that is not  
6 why we're here.

7                    You are not responsible for fixing whatever  
8 all these people out here want. You are not responsible for  
9 the cameras that are here. This case may be unique to  
10 Texas, but it ain't the first one out there. There are  
11 doctors misdiagnosing people to get money from Medicare.  
12 There are doctors intentionally ending peoples' lives, when  
13 they're not supposed to. There are other cases involving  
14 doctors. This is not the first time.

15                    What this is, is this is the first time that  
16 they have decided to call it intentionally by flooding you  
17 with every possible person they can. They want to make a  
18 big deal out of the fact that I stood up and said, "Please  
19 read the date of the Indictment." I think you're entitled  
20 to know the timeline. You're entitled to have all the  
21 information. You're entitled to get the whole picture about  
22 Mary Efurd's case.

23                    See, they want this to be about Mary Efurd;  
24 but they don't want it to be about Mary Efurd. They want  
25 the cake, but they don't want to eat the cake that they've

1 got. They want to gunk it up with frosting. They want to  
2 pull it up and pummel you all with as many bad surgeries as  
3 they can.

4 And, yes, Dr. Bagley sat up here -- after you  
5 heard from all the State's experts, he sat up here and told  
6 you, "Yes, not one of these surgeries was reasonable medical  
7 care." So there's no defense to reasonable medical care.  
8 "Yes, they were suboptimal surgeries. They were not good  
9 surgeries. They were bad outcomes." Okay. Everybody  
10 agrees that they were bad outcomes.

11 How do you dispute it? You've seen the list.  
12 You've seen all the symptoms. They've been placard around  
13 the courtroom the entire time we've been in here. You  
14 haven't been able to forget 'em. You don't forget the  
15 people.

16 But, do you know what? It's interesting --  
17 come on, put your email back up there. Go ahead. Put it  
18 back up. They want to distract you with the other drama.  
19 They want to talk to you about what some people have said,  
20 but they don't want to talk to you about the others. They  
21 want to give you your email and say, "See, this is what he  
22 is." Because why? They started out this whole thing  
23 telling you they want you to find him intentionally and  
24 knowingly, because they want their dad-gummed first-degree  
25 felony. They want it, and they want it now. And they're

1 going to make sure that they prejudice you and sympathize  
2 you into total submission to what they want.

3           They don't want you to focus on Mary Efurd's  
4 case. They want you to focus on the bigger picture. They  
5 want that sympathy. They want that emotionality. Because  
6 they don't want you to focus on the facts. They want you to  
7 think he's a stone-cold killer. I'm sorry. I don't say the  
8 other word, not in a courtroom and not any place else.

9           What did the person who brought you that  
10 email say? He rambles like this all the time. We asked  
11 her: "Did you think you needed to call somebody? Does this  
12 scare you? No. That's just the way he talked." Ladies and  
13 gentlemen, they're taking an email, just like they pulled it  
14 off your server and tried to prosecute you because of  
15 something you said to a friend.

16           How many times have you ranted and raved and  
17 said, "Gosh, I hope nobody knows I said that. I don't want  
18 to own those words"? That's what they want to do. They  
19 want to take those words and attach them across his forehead  
20 and say that's who he is. So, watch out. Don't put  
21 something in an email. They may get your email and start  
22 telling you that's who you are.

23           Ladies and Gentlemen of the Jury, this is  
24 about Mary Efurd's case. What's really interesting is, the  
25 first day and a quarter of testimony was about Mary Efurd's

1 case. We stopped being about Mary Efurd and we start being  
2 about everybody else, until we get down to the end. At the  
3 very end, before you hear from Dr. Lazar, you start hearing  
4 from people who are in the actual operating room when Mary  
5 Efurd is going to go into surgery and you start hearing  
6 about the distractions.

7 Now, Ladies and Gentlemen, most of you drove  
8 here today in the pouring-down rain, which anybody who  
9 drives in Texas in the rain knows Texans don't know how to  
10 drive in the rain. And people who drive in the rain still  
11 have an occasion to want to operate their cell phones.

12 If you're a parent, you're thinking about  
13 whether or not your kids are safe and where they are and  
14 what's going on or if they've gotten to school on time and  
15 if everything's done like it's supposed to. You may even be  
16 thinking about your jobs. You're distracted. You've got  
17 multiple things going on, and you're in the rain. That's a  
18 dangerous situation.

19 You hear about what's going on with Dr.  
20 Duntsch, when he's in that operating room. You hear about  
21 him standing there at Mary Efurd's side -- and, granted,  
22 every doctor could disagree. And the State's position is  
23 that he shouldn't have been in Mary Efurd's surgery, because  
24 Floella Brown wasn't doing well. And, I get that.

25 **(NO OMISSIONS)**

1           But, Ladies and Gentlemen, if we're focusing  
2 on that surgery, which is the Indictment they chose to go to  
3 trial on -- if we're focusing on that surgery, then let's  
4 focus on that surgery. He made the choice -- bad or  
5 otherwise, he made the choice to go into surgery with Mary  
6 Efurd.

7           Now, according to Ms. Martin today, he didn't  
8 just go into that surgery with Ms. Efurd because he wanted  
9 to fix Ms. Efurd, he wanted to hurt Ms. Efurd. That's what  
10 she's saying. She's saying he went in there knowing he was  
11 going to malposition those pedicle screws. He knew he was  
12 going to malposition that device. He knew, when he went in  
13 there, that those hands were deadly weapons and he intended  
14 to cause her serious bodily injury. That's what she's  
15 saying.

16           Ladies and Gentlemen, that's not what the  
17 evidence says. The reason she's saying that is, she's  
18 saying, well, you know, because he injured Mr. Passmore and  
19 he injured Mr. Morguloff and he injured his best friend and  
20 he killed Kellie Martin and he killed Floella Brown, that's  
21 how we know he intended to hurt Mary Efurd. He intended to  
22 cause her serious bodily injury.

23           Ladies and Gentlemen, it's up to you to  
24 decide if the injuries that's sustained by these people lead  
25 you to that point. The Judge read you the Charge. If you

1 believe beyond a reasonable doubt that he caused these  
2 injuries to these people intentionally, knowingly or  
3 recklessly caused them serious bodily injury, if you believe  
4 that -- don't leave out the mental state -- beyond a  
5 reasonable doubt, you can use that to decide what his intent  
6 was or basically whether or not what happened to Mary Efurd  
7 was an accident. Okay?

8           But you have to take it from the perspective  
9 of the person charged. You have to take it from his  
10 perspective. So you have to stand there, and you have to be  
11 him. You have to be -- and he's had to hear it enough, and  
12 he's heard it from me more than we've been in this trial --  
13 a suboptimal surgeon.

14           Now, they want you to think that he thinks  
15 he's God's gift to everyone and he's the best surgeon that's  
16 ever hit the state of Texas. We all know, from being here  
17 in this courtroom, that is not true. But, even more, we  
18 know it from the staff that got up here.

19           We had a doctor who said he never wanted to  
20 work with him again. I think we've even got a doctor --  
21 yeah, Dr. Hoyle: "I think that's dangerous. You're going  
22 to hurt somebody. I never want to work with you again."  
23 But, right after he testified, we had a nurse come up that  
24 was in the room. What did she tell you that Dr. Hoyle said?  
25 "He said he never wanted to work with him again." Why?

1 State's own prosecutor asked, "Why did he say he didn't want  
2 to work with him again? Because he was always late and was  
3 way too slow." She didn't say, because he thought he was  
4 gonna kill somebody. And nobody upstairs ever hears about  
5 that. Because, he keeps operating.

6 Are we trying to blame the hospitals? Are we  
7 trying to blame Dr. Foley? No. But, do you know what,  
8 Ladies and Gentlemen of the Jury? They asked every single  
9 expert, the entire time they were putting on their case:  
10 What would a skilled, well-trained surgeon know? What would  
11 a skilled, well-trained surgeon do?"We want you to figure it  
12 out. They may be talking about a skilled, well-trained  
13 surgeon, but that's not him.

14 What did Dr. Henderson tell you, when he  
15 testified about Mary Efurd? He said he thought he was a  
16 fraud. He thought he was somebody pretending to be a  
17 doctor, who wasn't. So he got on the phone and called Foley  
18 and said, "Hey, we've got a guy here that says he graduated  
19 from your medical school, went to your fellowship, and I  
20 think he's a fake. I need to send you a picture and ask  
21 you, do you know this guy?"

22 And when Foley replied back, "Yes. He  
23 graduated from my medical school. He was trained at my  
24 fellowship," Henderson was flabbergasted. You're kidding  
25 me? But what does Henderson also tell you? Foley continues

1 to be in contact with him later, when someone sends an  
2 authorization asking to certify that he went to the  
3 University of Tennessee; that he attended Foley's  
4 fellowship. And Foley says, "I don't know what to do.  
5 You've told me what he's doing. I don't know what to do."

6 They say Foley's certifying him, because  
7 Foley thinks he's trained. No. Foley has figured out "I  
8 screwed up. I let him out". Jerry Summers told you, he let  
9 him out of surgeries in order to do research. "I let him  
10 out. This is what he's done, but I'm scared to not send it  
11 out." What did Dr. Henderson tell you Foley told him? "You  
12 won't have a single doctor in Tennessee not sign off,  
13 because they're afraid of being sued."

14 You don't get to blame Dr. Foley. You don't  
15 get to punish Dr. Foley. You don't get to punish Baylor  
16 hospital. You don't get to punish Dallas Medical Center.  
17 You don't get to punish them for what they didn't do, but  
18 you still have the right to know what they didn't do. You  
19 have a right to know they put the almighty dollar before  
20 your protection.

21 Why does he need a peer review? Why  
22 shouldn't he need a peer review? If you're a teacher and  
23 you're not teaching your children in the classroom what  
24 you're supposed to be teaching, and the children don't do  
25 well and they don't do well on the STARS test, they don't do

1 well on the TAKS test, it comes back to bite you in your  
2 peer review. You get told by your principal, "You're a  
3 suboptimal teacher." If you're a mechanic and you're  
4 working on cars and the cars are continuing to breakdown and  
5 people end up getting injured, you get told that you're a  
6 suboptimal mechanic. If you're a pilot and you can't land,  
7 you get told, "You can't do this anymore."

8 Any job you do, people tell you when you  
9 fail. They come to you and they look you in your eyes, no  
10 matter how much you want to know you're doing the right  
11 thing, they will tell you when you're not. Now, they  
12 brought the doctor from the Peer Review and the Executive  
13 Committees at Baylor, and he said he had a face-to-face  
14 conversation -- he alone had a face-to-face conversation --  
15 where he told Duntsch "you will never operate at Baylor  
16 again". And that was supposed to mean "you're a bad  
17 surgeon".

18 But Baylor does something that's totally the  
19 opposite: they send a clearing letter to Dallas Medical  
20 Center. So, how does that make sense? And they want to  
21 make a big deal over the fact, well, the reason Duntsch sent  
22 this letter to Baylor Medical Center and wanted an  
23 explanation of the peer review was because he had hired a  
24 lawyer.

25 (NO OMISSIONS)



1                   Everyone in that operating room called it  
2 exactly what it was: chaos, distraction. We even asked Dr.  
3 Lazar: "I'm standing here, Dr. Lazar. I'm standing here  
4 with a patient. I am a suboptimal, poorly-trained, surgeon.  
5 I am what a staff member, who watched me operate, say is the  
6 level of a first-year resident".

7                   "People are calling me. People are talking  
8 to me. People are pulling me out, and I'm breaking scrub  
9 three times. Am I going to make mistakes? Yes. Is that  
10 distraction? Yes."

11                   I'm coming here to argue to you guys, and my  
12 child's running a 101 temperature. Is that a distraction?  
13 Yes. But I'm still doing my job, because it needs to be  
14 done. Because his side needs to be presented, and because I  
15 believe that what happened in that operating room was  
16 distractions and all sorts of things that doesn't say that  
17 what he did to Mary Efurd was intentional. It doesn't say  
18 knowingly. They want all this to bring it to that level.

19                   Ladies and Gentlemen, to make it a crime, you  
20 have to start by saying, is it criminally negligent? Was he  
21 criminally negligent at the time he enters the hospital  
22 operating room and starts to work on Mary Efurd, with all  
23 those distractions going on? Is he being criminally  
24 negligent?

25                   **(NO OMISSIONS)**

1           If you think it's higher than that, then you  
2 can go up. Or if you prefer to start at intentionally and  
3 go down, you can do it that way. But the point is, Ladies  
4 and Gentlemen, you all have to come to an agreement. And  
5 you have to -- you can't just, all of a sudden, say, "I'm  
6 going to make a decision on what the mental state is for  
7 Mary Efurd, based on all of this." Not because all of this  
8 is just something that I want to ignore, no. But because  
9 that's not the way the law says it. You need to focus on  
10 the case. And then if you believe those other instances,  
11 and you believe he committed those offenses beyond a  
12 reasonable doubt, either intentionally, knowingly or  
13 recklessly, you can use that for what you need to determine  
14 intent or absence of a mistake or accident.

15           Ladies and Gentlemen, just listening to the  
16 facts of Mary Efurd's case alone, with all the distractions,  
17 with everything going on -- yes, you or I think we would  
18 know the difference between muscle and bone. He had people  
19 yelling at him: "That's a muscle. That's not right. That  
20 pedicle screw is not right." He had people yelling at him  
21 and telling him that. But if you're standing in his feet  
22 and you're wanting to do the best for this person, but  
23 you've got the distractions going on around you, you've got  
24 the people yelling, you and I both know that sometimes those  
25 distractions don't make any sense and you don't perceive it.

1                   And, what do we know from these other  
2 situations? His lack of skill. His lack of understanding.  
3 We talked about it with Dr. Lazar. His inability to  
4 understand how much vigor he could use those instruments  
5 with, where he would not touch those veins and arteries and  
6 not end up nicking them. His ability to remove the disc,  
7 without leaving bone fragments in a way that it would crush.  
8 His ability to remember what time it was time to stop  
9 putting in the Gelfoam and start pulling it back out, so  
10 that you didn't impact it -- you didn't compact it to where  
11 you put pressure on the spinal canal, to cause an edema.

12                   His desire to want to do an operation to  
13 relieve the pressure off of Floella Brown's head, and what  
14 they're saying is, "Well, he waited six hours to do it."  
15 Well, we know what was going on. He had everyone in the  
16 hospital telling him, "No, you cannot do it. We are not  
17 going to give you the privileges to do it." And he kept  
18 saying, "I want to do it." What did Dr. Lazar say? "I  
19 don't care about privileges. If it's my patient, I'm going  
20 to do it, no matter what."

21                   But, we're not talking about Dr. Lazar.  
22 We're talking about Dr. Duntsch. Dr. Duntsch, who's had  
23 these bad outcomes, who told Dallas Medical Center "I had a  
24 bad outcome". Yes, he put on his application that he was  
25 moving to another part of the metroplex. But he still told

1 Raji -- you heard her -- "I had a bad outcome. I  
2 voluntarily resigned from Baylor Hospital".

3           What did Dr. Ippilito say? "I never heard  
4 that. She never told me he voluntarily resigned. She never  
5 told me he had a bad outcome." We asked him, "Would those  
6 have been red flags to you?" He said, "Yes." To Raji, they  
7 weren't. The CEO -- about the money -- they weren't. To a  
8 doctor, the chief medical person on staff, the big wig, they  
9 were red flags. "I would have never given him temporary  
10 privileges."

11           Why is that important? Because, Ladies and  
12 Gentlemen, they want it to be about him running and hiding  
13 at Dallas Medical Center. He told them he voluntarily  
14 resigned. He told them he had a bad outcome. The CEO  
15 didn't care. The doctors would, but they never got to hear.

16           And what did his own secretary tell you?  
17 That was the fastest credentialing she'd ever seen: less  
18 than a week, when it normally takes 90 days. He's  
19 credentialed, and then he's doing surgery. They tell you he  
20 has a surgery right before: Floella Brown. And everything  
21 comes out, he believes, okay. But we're, more than likely,  
22 to expect not quite so okay.

23           Ladies and Gentlemen, here we've got somebody  
24 that knows he's had a bad outcome; has to voluntarily resign  
25 from Baylor, standing in an operating room. He wants to

1 help one patient. They're telling him he can't do what he's  
2 supposed to. She needs to be transferred.

3 Do you know what, Ladies and Gentlemen of the  
4 Jury? We don't know how long it took them to get that  
5 transfer effectuated. All we know is, some six hours later,  
6 after he's in surgery, he signs off on the transfer. We  
7 know about the argument. We know about all the  
8 interactions. Dr. Ippolito doesn't say it's an argument.  
9 Of course not. But we know from the other people in the  
10 operating room, they saw what they saw. And they told you  
11 honestly. They told you about Dr. Ippolito's personality.  
12 They told you about all the times he broke scrub. Even  
13 though some of them couldn't remember the exact amount of  
14 times, they knew it was a lot.

15 They told you about the times they tried to  
16 make him change what he was doing and fix what he was doing.  
17 "I'm a suboptimal surgeon. I've had a bad outcome. I've  
18 left a hospital by resigning, and I'm standing here still  
19 trying to help somebody."

20 They want to make him a stone-cold killer and  
21 monster, because that's what he said in an email, to a  
22 girlfriend, who thought he was rambling, just like he always  
23 does. But you've got to stand there and think, is that,  
24 does that, in and of itself, rise to the level of criminal  
25 negligence? Does it rise to the level of reckless? Or does

1 it rise to the level of intentional and knowingly?

2 Or, do you need all this (indicating)?

3 Because, see, the fear the State has is that if you look at  
4 the situation by itself, you might accidentally -- think  
5 it's an accident. Think it's all the distractions that  
6 caused it. So they want to make sure you had all this  
7 (indicating) to help you with intent.

8 Do you know what? You can have all this,  
9 because he's got that in his head. And maybe it helps you  
10 put yourself where he is. But maybe where he is at that  
11 point in time is not what they want to say. Because,  
12 remember, they started this whole thing out wanting that  
13 guilty cake. That's what they said in voir dire. And they  
14 started this whole thing out in opening statements they were  
15 going to prove to you intentionally and knowingly, and  
16 that's what they were asking for. Ladies and Gentlemen,  
17 just because that's what you think he deserves doesn't mean  
18 necessarily that's what the evidence fits.

19 Now, I don't get to have the last word.  
20 Ms. Shughart gets the last word. She'll get up here and  
21 she'll charm you and she'll tell you all the different  
22 reasons why I've forgotten to say you need to find it  
23 intentionally and knowingly. And then, once you find it  
24 intentionally and knowingly, she'll ask you to find a deadly  
25 weapon. I'll get to that deadly weapon right now.

1 Ladies and Gentlemen, you have to look at the  
2 intended use of that object. That's another reason you look  
3 at the mental state of the Defendant. You get to crawl  
4 inside where he is. You have to decide whether you need --  
5 whether or not you unanimously believe: (Reading) "Do you  
6 find beyond a reasonable doubt that during the commission of  
7 the offense for which you have found the defendant guilty,  
8 the defendant used or exhibited a deadly weapon?" In other  
9 words, anything in the manner of its use or intended use is  
10 capable of causing death or serious bodily injury.

11 You've got to decide, was he using that  
12 interbody device, was he using those pedicle screws, was he  
13 intending to amputate that nerve root, in order to cause  
14 serious bodily injury? Only you can decide. And each  
15 verdict that you render, whether you render a verdict of  
16 criminal negligence, reckless or intentionally and knowingly  
17 as to the offense, and whether you decide it's a deadly  
18 weapon or not, that is each your independent verdict.

19 Maybe, you can come to a unanimous decision.  
20 Maybe, you can't. That's why the Charge says, "If you  
21 believe from the evidence or you have a reasonable doubt  
22 thereof," you go to the next mental state. Just like they  
23 were talking about with Mary Efurd: Does it rise to the  
24 level of criminal negligence? Does it rise higher? Does it  
25 rise higher? Each of you get to decide, based on your

1 understanding of the evidence. All we can do is get up here  
2 and tell you what our belief is and what our position is.  
3 You're the ultimate judges of the facts proved and the  
4 weight to be given the evidence.

5 Ladies and Gentlemen, it's just like with Dr.  
6 Bagley yesterday. The State wanted to bring out issues that  
7 he had with the Texas State Board. So, let's just deal with  
8 him for a minute. The Texas State Board was slow to act in  
9 Christopher Duntsch's case. You know, because you have a  
10 copy of the Agreement where he surrendered his Texas medical  
11 license to the Texas State Board.

12 What did Dr. Bagley tell you, before he was  
13 on cross with the State? He told you that getting into the  
14 state and getting licensed by the state of Texas had changed  
15 dramatically, when he came to the state a year and-a-half  
16 ago from out of state -- out-of-state surgeons and  
17 out-of-state neurosurgeons, especially. And what did they  
18 do? They retroactively -- things that had happened out of  
19 state, they added those to his bar record -- his medical  
20 board records here.

21 Why? Because they're trying to be  
22 pro-active, to show that they are holding everyone  
23 accountable, even for things that happened in the past.  
24 Does that change the fact that he told you that these were  
25 suboptimal surgeries? No. It actually just goes to show

1 how much the State Board is actually trying to be more  
2 pro-active with doctors and holding them accountable for  
3 everything, even things they did in past states, which you  
4 should be happy about.

5           You should hope the hospitals decide to be  
6 more pro-active. As the Baylor hospital doctor said, he  
7 didn't think that the database was that big a deal. It was  
8 so unreliable, he didn't think they needed to report it.  
9 But what we found out from Dallas Medical Center, they rely  
10 on it a great deal. So does other institutions. So, we  
11 hope that changes.

12           There's a lot of things that you heard about  
13 this case that are extraneous to just Mary Efurd's case.  
14 And that's what is the most important aspect, is that you  
15 leave all the sympathy that is going to be generated, as the  
16 State wraps their argument up, and all the public opinion  
17 and all the drama about what is the right thing to do with  
18 Christopher Duntsch and what's the right message to send to  
19 him.

20           Right now, it's not about sending a message  
21 to anybody. It's not about giving closure to anybody. What  
22 it's about is, what have the facts proved? What is the  
23 offense that has been committed, if one has? That's what  
24 it's about. And basically, as Ms. Martin said, all the  
25 elements have been proven, with the exception of one. And

1 that's the mental state. Was it intentionally? Was it  
2 knowing? Was it reckless? Was it criminally negligent?

3           Go back and look at the definitions for  
4 yourself. And remember that you're looking at it from the  
5 perspective of the Defendant. And you can take all these  
6 situations in, in determining what his perspective was when  
7 he stood there.

8           Ladies and Gentlemen, based on just our own  
9 personal experiences, we can see how someone can enter into  
10 a situation with good intentions and still be distracted,  
11 just like the people driving down the road today, as we were  
12 coming here. Some of them may have been distracted, with  
13 all the good intentions, not meaning to hurt anybody. It  
14 doesn't mean that people didn't end up getting hurt.

15           Dr. Duntsch entered the operating room --  
16 regardless of whatever the State wants to say, he entered  
17 the operating rooms on those days, when he operated on those  
18 people -- especially when he operated on his friend Jerry  
19 Summers -- he operated on them with the intention of trying  
20 to help them. Whether he misdiagnosed or misadventured, his  
21 intention was to help people.

22           The problem was, he was not a trained  
23 surgeon. He was not a skilled surgeon. He was, according  
24 to his peers, at the level of a first-year resident. But he  
25 was on his own, and doing the best he could. He may talk

1 about being god or the antichrist or a stone-cold killer  
2 but, Ladies and Gentlemen, what he is, is a very  
3 misunderstood man.

4 I think the one thing that I thought was the  
5 most interesting is one of the individuals -- and I believe  
6 it was a nurse -- said, "He seemed really smart." That's  
7 that summa cum laude that they kept pointing to yesterday in  
8 the Vitae. "He seems real smart. But what's up here  
9 doesn't get down here (indicating)." I think everybody has  
10 known somebody like that. They've got the intellect, but  
11 they can't seem to put that intellect to use. And that's  
12 what we have here. He knew a lot of things. He learned a  
13 lot of things. He saw a lot of things. But he never could  
14 get his hands to do what he knew he was supposed to do, and  
15 it caused injury.

16 I think he knows that that caused the injury.  
17 And I can feel that he probably saw that every time he went  
18 back in. But, was he going in hoping that he would do it  
19 again; that he would cause injury again? No. That he had  
20 the intent to cause injury? No. I think his hope was, this  
21 time, he would learn from what he did before and it would be  
22 better. And it never did. If anything, you're looking at  
23 criminal negligence. We've got that.

24 Ladies and Gentlemen, I don't envy the job  
25 you have. Both sides have their own perception of what went

1 on, and I'm sure everybody out in the courtroom and  
2 everybody on the other side of those cameras have their own  
3 perception. But, Ladies and Gentlemen of the Jury, you're  
4 the only ones that have heard all the evidence that you have  
5 heard the last two and-a-half weeks. You are the exclusive  
6 judges of the facts proved and the weight to be given the  
7 evidence.

8           Render your verdict according to the law and  
9 the evidence, and not according to emotion or sympathy or  
10 prejudice or public opinion or sending a message. It's  
11 about whether or not the State has proven to you that a  
12 crime was committed, and what level that crime is.

13           Thank you.

14           *THE COURT:* Thank you.

15           Madam Prosecutor. Twenty-nine.

16           *MISS SHUGHART:* Thank you, Your Honor. May  
17 it please the Court.

18           I just wanted to clear something up: these  
19 patients are not frosting. We didn't bring them to you to  
20 garner sympathy and have you convict him based on sympathy.  
21 Should a doctor be taking into account sympathy and the fact  
22 that he's causing human suffering? Absolutely. But that's  
23 not why you're getting it. You're getting it, because the  
24 Judge ruled that you could get it.

25           **(NO OMISSIONS)**

1           So, you remember the Judge had to read to you  
2 that instruction everyday about how you can't consider  
3 extraneous offenses for, you know, other reasons unless you  
4 find them beyond a reasonable doubt? There's a reason for  
5 that. The Judge allowed you to hear about these other  
6 patients, because it goes to knowledge. That is why you  
7 even got those. Normally, you don't get to hear about those  
8 other sort of things. It's not to garner sympathy. It is  
9 that you can know everything that the Defendant knew.

10           You've got this Agreed Order of Revocation of  
11 his medical license. Read it closely. It was signed  
12 December of 2013, a year and-a-half later. And you got  
13 evidence today that he went to other hospitals.

14           So, the Defense wants to imply to you that he  
15 didn't know, he didn't know, he didn't know, he was bad.  
16 When do you know? He didn't stop here. He keeps going and  
17 operating on people. This is only good for a year. Read it  
18 closely. It says you can reapply in a year and go to other  
19 states.

20           But, we're back to where we started. Why  
21 didn't he stop? Did you find the answer? That's the  
22 question that I told you, you would have. Because I know  
23 that you don't have a doubt that when he went into Mary  
24 Efurd's surgery that he was reasonably certain he was going  
25 to hurt her. That's the standard of knowing: you're

1 reasonably certain that you're going cause the outcome; not  
2 that you know 100 percent that you're gonna cause the  
3 outcome, but that you're reasonably certain of it.

4           They want you to believe that he wasn't  
5 trained. They even brought you an expert to say, "Well,  
6 based on my review of the 20 or 30 cases that he did, those  
7 outcomes were so awful that he couldn't have been trained  
8 right." But he also told you that there are other things  
9 that can cause a surgeon, when they get out of school, to  
10 not be doing right. There are other things.

11           It's absurd to think that a surgeon -- a  
12 neurosurgeon, weeded out to be the best of the best of the  
13 surgeons, who had 17 years of training before he got to Mary  
14 Efurd, has an MD, a Ph.D, pattens in research, did stem cell  
15 research, created implants that go into the spine, the human  
16 body, that he trained under Dr. Kevin Foley, do you think  
17 somebody like that didn't have the right training? That's  
18 absurd. And you know he had the right training, because you  
19 heard he did a couple of surgeries right. And if it's just  
20 a training issue, why didn't he stop? Because, even a  
21 poorly-trained surgeon knows when things are going wrong.

22           They want you to think that the Defendant was  
23 distracted in Mary Efurd's surgery. Do you know what? He  
24 probably was a little bit distracted, because he created  
25 that other horrible situation where Ms. Brown is dying. He

1 leaves her. And the records show, he doesn't order any  
2 transfers for seven hours on her. He goes into Mary's  
3 surgery, knowing that this is going on. He chooses to do  
4 that. And then he's the one who leaves the surgery to go  
5 argue with hospital personnel for half an hour, while Mary  
6 Efurd is laying on the table with her back open.

7 Dr. Ippolito just comes back in the surgery,  
8 because the Defendant is still insisting on doing something  
9 he is absolutely not qualified to do. Absolutely not. No  
10 record anywhere in evidence that the Dallas Medical Center  
11 had, that Baylor also had, no evidence anywhere, that he  
12 knows what he's doing. In fact we know he can't even work  
13 on the spine, much less the brain.

14 And Dr. Ippolito wasn't there in Lee  
15 Passmore's surgery. He wasn't there in Jerry Summers' or  
16 Kellie Martin's or Barry Morguloff's or Floella Brown's. He  
17 wasn't causing distraction in all of those surgeries.  
18 Distraction isn't what caused this. Stress is not what  
19 caused this. Doctors, they train under stress. They are  
20 trained for this. They spend hours and hours in the  
21 operating room, with life and death in their hand. They  
22 know how to deal with stress.

23 Stress and distraction were not Mary Efurd's  
24 problem. You know because, at the end of Mary Efurd's  
25 surgery, the Defendant was jubilant: "Tricortical. I can

1 leave her like that, and she'll be fine." Those were his  
2 words. "Tricortical" doesn't even exist in the spine world.  
3 It doesn't exist. Nobody's heard of it. He was very  
4 pleased with how that surgery went, and how he left her.

5 They want you to say to yourself, well, gee,  
6 nobody told him he was bad. Nobody told him he was messing  
7 up. So he couldn't possibly have known. "It's okay to keep  
8 operating, because nobody's telling me I'm doing bad."

9 Except, that's not true. Right? Dr. Hoyle told him. First  
10 surgery y'all have in front of you, Dr. Hoyle tells him,  
11 "You're bad. You're dangerous. You're gonna hurt somebody.  
12 I'm not going to operate with you again."

13 The anesthesiologists, in all of the  
14 surgeries, are saying, "What's going on? Why is there so  
15 much bleeding?" Dr. Sample tells him to his face, not just  
16 that he's not going to operate at Baylor hospital again but  
17 that he is way below the standard of care in Jerry Summers.  
18 Way below. Not to mention, patient after patient coming out  
19 complaining of new, bad to horrendous, problems.

20 Nobody had to tell him. Because even a  
21 poorly-trained surgeon knows what massive bleeding means.  
22 Even a poorly-trained surgeon knows what quadraplegia and  
23 death means. And even a poorly-trained surgeon knows, by  
24 the time they get to Mary Efurd, they should not be in the  
25 operating room.

1 Don't get me wrong, there's plenty of guilt  
2 to go around. The system is hugely flawed. We know that.  
3 We've all learned that. I think we're all a little afraid  
4 the next time we go into our doctor's office, on what's  
5 happened in the past. The hospitals should have acted. The  
6 hospitals, they failed our community. The Texas Medical  
7 Board, they should you have moved faster. The doctors out  
8 in Tennessee, if they had any idea what he was capable of,  
9 they never should have let him out.

10 But, don't think for one second that that  
11 exonerates him. Because he's the one who went into all  
12 those operations. He is the one who put the knife to those  
13 patients' back. And he is the one who kept going.

14 So, we are all mad at those other entities.  
15 But, he's the one before you today. He's the one that was  
16 slithering between the hospitals, with the help of a lawyer,  
17 because he knew he wasn't going to get anywhere else if it  
18 got out how bad he was.

19 The medical license is kind of like a  
20 driver's license: it let's you out, gives you some freedom.  
21 You get to go out into the world, but you are still  
22 responsible for what you do when you're out there on the  
23 road. Sure, there are police out there to help deter you  
24 and try to get you to follow the laws. But they can't be  
25 there every time you speed or every time you run a stop

1 sign. Eventually, you may have a wreck. And if you're bad  
2 enough, you keep having wrecks. And, some day, you have  
3 enough wrecks, somebody may take your license away. But the  
4 only person who can choose not to get behind that wheel is  
5 the driver. He is the driver.

6 So, let's talk about knowing. Absolutely. I  
7 want you to find that he intentionally, knowingly, did this.  
8 We have filled you a room full of knowledge. Knowledge of  
9 all the pain that the patients were suffering, as they came  
10 out of the surgeries, that he was causing. It was new.  
11 Knowledge -- every witness who came in here told you and  
12 gave you a different piece of everything that the Defendant  
13 knew, before he went into Mary's surgery and even while he's  
14 in there.

15 Because, you see, Mary's case does stand  
16 alone. If you don't want to consider all these others, I'm  
17 okay with that. The things that he did in Mary's surgery  
18 are unfathomable. They don't happen. Doctors don't do that  
19 kind of stuff.

20 Two surgeons, two experts, came in here and  
21 told you that any neurosurgeon would know that by  
22 malpositioning the pedicle screw, the interbody device and  
23 amputating the nerve root that they are causing serious  
24 bodily injury to that person, as they are doing it. In Mary  
25 Efurd's surgery, he knows he is hurting her. We brought you

1 everybody in that operating room. Or, you heard about  
2 everybody in that operating room. And they all told him he  
3 was doing it wrong. And they showed him. He could clearly  
4 see, just like we can today, that that cage is not in the  
5 spine. We can see that. We're not trained in reading  
6 x-rays.

7 Dr. Henderson, luckily, recorded this for us.  
8 Recorded his surgeries, so we can get in there and see  
9 ourselves what was done. You can see on here, just as Dr.  
10 Henderson told you, this white part is your bone  
11 (indicating). Where is the screws and the rod? Off into  
12 the muscle. Off into the soft tissue. You can see it  
13 yourself.

14 We all know the difference between muscle and  
15 bone. You feel it through your arm (indicating). It's like  
16 when you're putting a nail into dry wall. You're in dry  
17 wall, you're hitting it and you're hitting it, and then you  
18 hit a stud. It's harder. You just know, when you're  
19 hitting it. When you're cutting into a T-bone steak, as Dr.  
20 Henderson told you, and you're in that meaty, juicy part,  
21 you hit the bone. You just know, because it's hard.

22 He put it in there that way, he sewed her up  
23 and he left her. And you know he knew that he did it wrong,  
24 because he lies about it in his operative report. Nothing  
25 in this operative report says anything about "something went

1 wrong. I was distracted. I may have misplaced something.  
2 I need to go back in". It reads perfect, like it was a  
3 perfect surgery. That's a lie. He's covering his tracks,  
4 as if that was going to prevent anybody from -- everybody  
5 else from knowing what happened in the neurosurgery.

6 And then, when the CEO asked him, "How did it  
7 go? How is your patient doing," he lies again. He says,  
8 "Oh, she's doing fine. He's doing fine. But, do you know  
9 what? I'm going to go back in, in a couple of days, and fix  
10 something else. Not what I did there, but I'm going to go  
11 do some other work." Lies.

12 None of that is anything that Mary consented  
13 to. It is not a normal risk of surgery that your spine  
14 surgeon is going to put the hardware into your muscle  
15 instead of your bone. Nobody consents to that. He knew,  
16 while he was operating on Mary, that he was hurting her.  
17 And he knew, before he ever even went in there, that he was  
18 reasonably certain to hurt her. Because his most recent  
19 patients were complaining of pain -- excruciating pain --  
20 nerve damage, foot drop, paralysis, numbness, quadraplegia,  
21 death and another one was dying. He knew all of that  
22 information.

23 He also knew that he had been peer reviewed  
24 on two cases; that he had been sued on two cases; that he  
25 had been kicked out of a hospital; that he didn't have

1 anywhere to operate for months; that other hospitals were  
2 rejecting him. And he had to hire an attorney so that he  
3 could lie his way into the next hospital. That's  
4 intentionally. That is knowing.

5 He is the only one who had all of the  
6 information. He is the only person who knew all of the  
7 damage that he had caused. He chose to hide it. He chose  
8 to not get help. And he chose to continue maiming and  
9 killing patients. And he chose to go into Mary Efur'd's  
10 surgery with all of that information.

11 The way that you could know, beyond a  
12 reasonable doubt, that he did this intentionally and  
13 knowingly is because, just ask yourself: Would anyone in  
14 here allow him to operate on you? No. Absolutely not.  
15 Because we know what he is capable of. None of us has a  
16 medical degree. None of us has been through residency or a  
17 fellowship. Yet, we all know that he should not be  
18 operating. He never should have gone into Mary's surgery.  
19 And if we can know it, based just on what we've heard here  
20 in the courtroom today, he certainly did.

21 *THE COURT:* Thank you.

22 Members of the Jury, you may now retire to  
23 the jury room to deliberate on your verdict.

24 The two alternates may --

25 *MRS. MARTIN:* Judge, may we approach briefly?

1                   THE COURT: Sure.

2                   *(Off-the-record discussion held at the*  
3                   *bench.)*

4                   THE COURT: All right. Okay. Mr. Edwards  
5 and Ms. Vaughn, I understand both of you are the alternates.  
6 Okay. And, Ms. Vaughn --

7                   JURY MEMBER: You tell me.

8                   THE COURT: My understanding, from the list  
9 here, Charles Edwards and Melanie Vaughn are alternates.

10                  JURY MEMBER: (Indicating).

11                  THE COURT: I'm sorry. We'll find a place  
12 for you.

13                  The first twelve of you, you may now retire  
14 to the jury room to deliberate upon your verdict. I know  
15 that it's roughly eleven o'clock right now. Usually, jurors  
16 get hungry at some point. We'll deal with that when and if  
17 we need to.

18                  Okay. I'll now retire the jury to deliberate  
19 its verdict.

20                  THE BAILIFF: All rise.

21                  *(Members of the Jury retire to consider its*  
22                  *verdict(s) on guilt/innocence.)*

23                  THE COURT: The Court will now stand in  
24 recess, pending further communication from the jury.

25                                   **(NO OMISSIONS)**

1                   *(Proceedings in recess, pending the*  
2                   *verdict(s) of the Members of the Jury.)*

3                   *THE COURT:* Let's invite the Defendant to  
4 join us, please.

5                   *(Defendant enters the courtroom.)*

6                   *THE COURT:* Let's bring out the jury.

7                   *THE BAILIFF:* All rise.

8                   *(Members of the Jury enter the courtroom.)*

9                   *THE COURT:* Why don't you have a seat.  
10 Who is the Presiding Juror?

11                   *JURY MEMBER:* (Indicating).

12                   *THE COURT:* The way this is going to work,  
13 I'm going to read the verdict, and then I will inquire as to  
14 whether or not the twelve of you who deliberated are in  
15 agreement with the verdict.

16                   If you do agree with the verdict, if you  
17 would indicate it by raising your hand when I call for you.  
18 Okay?

19                   *JURY MEMBER:* Okay.

20                   *THE COURT:* (Reading) "We, the jury, find  
21 the Defendant, Christopher Daniel Duntsch, guilty of  
22 intentionally and knowingly causing serious bodily injury to  
23 an elderly individual, as charged in the Indictment." And  
24 that's signed by the Presiding Juror.

25                   **(NO OMISSIONS)**

1                   The Special Issue question, which is  
2 answered: (Reading) "Do you find beyond a reasonable doubt  
3 that during the commission of the offense for which you have  
4 found the Defendant guilty, the Defendant used or exhibited  
5 a deadly weapon?" The answer given is "we do".

6                   Members of the Jury, as read, do you confirm  
7 that is your verdict?

8                   *(Members of the Jury polled by the Court.)*

9                   **THE COURT:** Thank you. I see all twelve  
10 hands. The verdict is received.

11                   As you know, the way it works, there will be  
12 what's called a "punishment hearing" which we will start  
13 that in just a few minutes. What I need to do is recess  
14 you, because I think I'm going to be calling you back in  
15 here to hear a limited amount of testimony. It'll probably  
16 be very close to the four o'clock adjournment time. We may  
17 run over a little bit. I hope, if it is necessary that we  
18 run five or ten minutes over, you'll be understanding about  
19 that.

20                   Now, once again, you are under the  
21 instruction you've been under up until the time I authorized  
22 you to deliberate. You may not discuss anything about this  
23 case with anybody or receive any information, other than  
24 here in the courtroom, with all of you present. In other  
25 words, you cannot continue to deliberate.