

## - Summation - Defendant -

1 THE COURT: Defendant, you may sum up.

2 MS. SCIRETTA: Good morning everyone. Reading  
3 that transcript to you, I have to apologize to you, it  
4 is like watching paint dry, but I had to do it.

5 Listen, you remember back when we were in jury  
6 selection, that I told you that the big picture is  
7 always made up of many small details, and sometimes you  
8 see something presented to you, but you have to look at  
9 the other little pieces that may come in through other  
10 information, other witnesses, and you're going to say  
11 like wow, where does this fit in the whole scheme of  
12 things, where does this lead me to say can I sift  
13 through this and see what can I believe?

14 Now, you have to to look at things, like say  
15 for example, you're reading one of those mystery novels,  
16 and if you like to read them, any one, David Baldacci,  
17 Patricia Cornwell, you see that something is mentioned  
18 and it doesn't seem to make any sense to the scheme of  
19 things, and you say what were they saying afterwards  
20 seems so irrelevant. But then you think that maybe it  
21 means something, it drives the story down the line, and  
22 it has something to do later on that you say oh, now I  
23 get it, now I know what happened.

24 Now, basically this case was divided in two  
25 parts. You got the part that deals with damages, you

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1 got the medical part. So for all intents and purposes,  
2 you could be, even though you are lay people, and no one  
3 here, as far as we know, has a medical school education  
4 or nursing background, other than what you do for a  
5 living, you're not, you know, physicians.

6 Let's put this in the context of out of this  
7 courtroom, and you're at a hospital committee meeting  
8 called MMR, which is mortality morbidity review, and  
9 that committee is responsible to not fool themselves,  
10 not to make it easy on the hospital. That committee is  
11 supposed to look at the presentation of the case and  
12 say, well, what could you guys have done differently?  
13 Would you do it right? Did you render the right care?  
14 Did you come to the right decision? Did you look at all  
15 of the evidence that you had available? And if you  
16 didn't have it available, maybe you should have asked  
17 for it or done something different.

18 So in this case you're the committee members,  
19 and you run the meeting. And basically we're going to  
20 have one patient today, that patient is Karen  
21 Lariviere. Karen Lariviere, what do we know about her?  
22 And I can say, committee members, what did you know  
23 about her? What's her history? You're going to answer  
24 me, well, you don't know. Isn't that not acceptable.

25 Now, the doctors got on the stand. Nobody

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1 sent for those records of Dr. Alrei. No one examined  
2 what were her complaints over the time that she was  
3 seeing that doctor.

4 You take what they call self-reported. I'll  
5 tell you about me, you'll accept it, I'll tell you  
6 everything I want you to know. I got to tell you  
7 something. And something was said yesterday. I could  
8 care less about anybody who gets arrested for marijuana,  
9 that doesn't bother me, but there was a reason that that  
10 came up.

11 So I just want you to understand that that  
12 reason then goes over to April 19th to the hospital  
13 record, so that is the only connection we're going to  
14 make, and you'll see what I mean when we get to that  
15 record. So we have records in evidence. I'm going to  
16 have to pull them out, okay.

17 (Brief pause.)

18 MS. SCIRETTA: Committee, before we get  
19 started on how she arrived in our hospital, and what  
20 medical treatment we have to give, I want to know what  
21 did you know beforehand. Did she ever have any anxiety  
22 for any reason? Very understandable if you find a  
23 reason that seemed acceptable to you. Close member of  
24 your family died, everyone is going to feel horrible, if  
25 you don't, there might be something wrong with you for

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1 real.

2 But now what happened? This doctor, who did  
3 not come here by the way, and you heard during jury  
4 selection, and you also know from the Judge, the burden  
5 of proof is on the plaintiff. I could have sat there at  
6 that seat and done nothing. That was not what we  
7 intended to do, but I could have done that. I think you  
8 have to think who is here to drive this information to  
9 you so that you understand it.

10 February 16th, 2005, she appears at that  
11 doctor's office. Now committee members, I want to know  
12 did you know this before you let her in the hospital,  
13 and you're trying to treat her, that she had insomnia  
14 for six weeks, she had depression, she had lost weight,  
15 20 pounds in two months, she was sleep disturbed, she  
16 even had irregular menstrual periods over this?

17 This is really disturbing, for someone to lose  
18 a family member. So you can almost understand and say,  
19 yeah, I don't know how far you would go. But then you  
20 got to look at the personality.

21 Okay. So that the sister died in January, so  
22 here you got six weeks later she comes in, she's placed  
23 on medication, Paxil and Ativan. You heard about those  
24 drugs, they have side effects.

25 Okay, the next month, the end of the next

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1 month she comes back, she says I feel less jittery, but  
2 he now gives her Xanax and Paxil. So she carries over  
3 the grief, maybe even understandable.

4 But when we get to the fall, when we get to  
5 the end of September, going into November, she has even  
6 more symptoms, palpitations, anxiety, sweating. The  
7 doctor thinks, well, you know what, maybe this is,  
8 according to the record, maybe this is a thyroid  
9 condition. It makes logical sense. And, committee,  
10 almost you got to be like Dr. House here and figure out  
11 what is wrong with your patient.

12 Well, we're not going to forget that history,  
13 because it was somewhat removed from the initial  
14 stressor of the January death of her sister.

15 Well, you got to say, well, there might be  
16 something with this person that makes her react that  
17 way. So she's placed on the same medication, and  
18 actually there's not much more left of his record.

19 But then again, committee members, did she go  
20 any place else? We don't know. The only person that  
21 knows would be her.

22 Let me tell you something, and you got to take  
23 it from wherever it comes from, and nobody means this in  
24 a bad way, but she's not here every day and there's a  
25 reason for that. The reason is she may look too good to

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1           you, and then you'll say I don't know what the heck  
2           she's talking about, she looks good to me.

3                     You can't have someone here that many days for  
4           you to scrutinize her. It's better you see her here,  
5           you see her here, you see her here, that's it.

6                     You can imagine the rest, because all these  
7           records compound, repeat themselves, repeat themselves.  
8           She has this, she has that, she has depression, she has  
9           panic attacks, she has this, so you think she is home  
10          with all of these symptoms.

11                    You're smart. Don't let anybody kid you. You  
12          have to think of these things. Because even one of her  
13          doctors, Dr. Schuster, said so. What is the motivation?  
14          It is always the motivation he has to keep in the back  
15          of his mind that someone has something to gain.

16                    So now you can look at these records, and you  
17          can see what he found, and what he ordered, and what the  
18          thyroid scan showed.

19                    What do they show, committee? You saw it,  
20          right? Nothing wrong with the thyroid, so it must be  
21          something else.

22                    You don't have to be Columbo to figure that  
23          out. If it is not this, and you eliminated this, then  
24          it is something else. What that something else is, he  
25          didn't go any further with that.

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1                   We also know from this record, actually the  
2                   record was the pharmacy record, so here we have to piece  
3                   this all together. You have the doctor's record, and  
4                   apparently he ordered a drug in 2001 called Fiorinal,  
5                   and I had asked questions about that. That should be  
6                   given for headache. It is more than Tylenol. It is  
7                   more than a Motrin. It's a stronger medication. So for  
8                   someone to say I've never had that kind of headache.

9                   So committee members, I want you to tell me,  
10                  now you know a little bit about someone, you still don't  
11                  know a lot, you only know a little bit, but it's more  
12                  than you knew before, so then you come back to it, you  
13                  say where does she want her life to start for me, not  
14                  for me, but for you, she wants her life to start at the  
15                  date of the accident, well, I don't blame somebody.  
16                  Let's all forget about this and then go to the accident.

17                  What is interesting about the accident,  
18                  members of the committee, is this: In the ambulance  
19                  call report they have lots of boxes, because these  
20                  folks, they're trained to render emergency care.  
21                  Perhaps even the ambulance that came might have been  
22                  what they call advanced life support, because there is  
23                  basic life support ambulances, there's advanced life  
24                  support which will take care of any cardiac condition.

25                  If you get a call, pedestrian, bus on

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1 pedestrian accident, you're going to think the worst, so  
2 you might roll out everything, including, like she said,  
3 the fire trucks.

4 So what did these people do? They saw her and  
5 they said let's evaluate her. They're not going to just  
6 scoop her up, throw her in the ambulance, take her to  
7 the hospital. They have to see if they have to  
8 stabilize someone.

9 She walked on to that ambulance, so this  
10 gurney business was not correct. So you got to ask  
11 yourself, committee members, what else do you know?

12 You also know that they evaluated her head,  
13 and they saw a small lump. It wasn't the huge lump with  
14 my hands over the head, the way some of the people that  
15 were here before you, this is a big one, that's not  
16 correct.

17 What also isn't correct, is that you got to  
18 come into the hospital, somebody there with some medical  
19 training wants to see you immediately. He may be there  
20 for hours, but at least they come immediately. What are  
21 you hear for? Oh, I got hit in the head with a mirror.  
22 No, at the time there was no vomiting going on. As a  
23 matter of fact, that ambulance got her to that  
24 hospital.

25 First of all, the accident happened close to



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1           6 P.M. When you hear 3 o'clock, 4:30, that is not  
2           correct.

3                        People sometimes don't wear a watch. Maybe  
4           they think it is that time, don't really care. You just  
5           have to say, let me put it in context, that maybe if  
6           they couldn't get that right, maybe there are other  
7           things they are forgetting or putting a different spin  
8           on for you.

9                        No nausea, no vomiting. But then she said she  
10          did have a headache. Then she said she had nausea, but  
11          no vomiting. We heard a lot about vomiting. That  
12          didn't happen in that emergency room.

13                      . So that when the daughter said, well, maybe  
14          they weren't paying attention, or she was there for a  
15          while and then, you know, I had to go to the nurse's  
16          desk there.

17                      You know what, don't you think trained  
18          professionals, even at Lutheran Medical Center, want to  
19          say I'm going to be complete for this chart, I'm the  
20          nurse, I am responsible for you, I got to evaluate you,  
21          I don't want you to leave this hospital, and something  
22          happened to you? Because the next person, they're going  
23          to ask the questions of me, what did I do? Why didn't I  
24          document that in that chart?

25                      I documented no neural deficits. I documented

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1           that your Glasgow coma scale, even in the ambulance, is  
2           15. That is the highest you can get. The ambulance  
3           people said you weren't affected that way.

4                         She even told you she ran after the bus and  
5           put her foot in the door. So, committee members, you  
6           think about this, like putting that big picture  
7           together, what do you know? Your responsibility, you  
8           tell me about the first instance, and you list these  
9           symptoms, and you list everything that she would have  
10          looked for.

11                        But one thing else you would have looked for,  
12          you would have looked for other indicia of injury. You  
13          come into a hospital and you say you got hit in the head  
14          and I'm going to let you walk out that door?

15                        If I think you're seriously injured, I'm going  
16          to keep you overnight, I'm going to watch you. So they  
17          gave her an ice bag. So she had, like Dr. April said,  
18          she had a scalp wound. You can have a scalp wound  
19          without injuring your brain.

20                        Well, they did a CT scan. Now when you heard  
21          from Dr. Hibbard, and she showed you that picture, coup  
22          contra-coup, and the brain going like Jello, if there  
23          was that injury, that would have caused something more  
24          than her concussion that she said she had or head  
25          contusion. Then there would have been some evidence of

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1 swelling in the brain. There was the scalp wound but  
2 nothing on the inside.

3 If this brain was flopping around, back and  
4 forth, there would have been something that would have  
5 shown up on the CT, that is according to Dr. April,  
6 there would have been something. That means it's not  
7 going to stay there. It's going to get better. And it  
8 doesn't mean that you won't have a headache. I bet you  
9 would have a big one, a huge one.

10 But another thing I learned about you from the  
11 emergency room record, that you told us you don't take  
12 Codeine, it makes you sick, you don't take Penicillin,  
13 you have allergies, so why, two days after this  
14 accident, she goes to Dr. Alrei and say I'm vomiting, I  
15 took codeine, and he says don't take it, and he gives  
16 her a prescription. He writes in his chart Motrin.  
17 Like what would that be about? You wonder, committee.

18 Now you hear two different stories now. He  
19 refers her to a neurologist, a Brooklyn neurologist  
20 named Anthony Maniscalco. Anthony Maniscalco says I can  
21 see that you have a headache, but also this may be a  
22 concussion, because I think because you didn't lose  
23 consciousness, and you don't have the other indicia, but  
24 you tell me out of your mouth you have cognitive  
25 difficulties.

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1 I'm not a Detective. I'm a doctor. Am I  
2 going to say, you know, what is this all about? Should  
3 I believe it or shouldn't I believe it? I'll take you  
4 on your words, okay, I'm going to say you have a  
5 concussion now because you told me you have these other  
6 problems.

7 I didn't verify that. But you also told me  
8 you were dizzy. But I also did something to you. I did  
9 what they call that Efnv maneuver, and I twisted your  
10 head and turned it so that there was some reorganization  
11 supposedly in this middle ear part and your vertigo went  
12 away.

13 Now that doesn't sounds too bad when you think  
14 about it. I mean, nobody wants to have it, but it went  
15 away. So what do we do?

16 Well, you get a lawyer. It's her right.  
17 Maybe everyone in this room would have done the same  
18 thing. Who knows? It's your right. It's her right.  
19 Nobody is denying that, just that, you know, keep it  
20 straight. Don't add to this, make it real.

21 The lawyer sends her to Dr. Friedman. He was  
22 a real cute little guy. He had a nice way about him.  
23 People like him. It's hard not to like him. This  
24 doctor is going to be a great testifier.

25 He does like he says, he goes to court a lot.

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1           Maybe that's another reason why you get to go to him.  
2           Okay, he is your treating doctor. Now he also is  
3           taking, he started to tell you taking a lien on  
4           anything. He'll get paid eventually. You give her  
5           money, he gets money.

6                       MR. RONEMUS: Objection.

7                       THE COURT: Sustained. Move on.

8                       MS. SCIRETTA: So what happened? He comes  
9           here and he testifies under oath, and every day we buy  
10          the transcript, and he tells you that basically he's  
11          been taking care of her. He did an EEG. He claimed it  
12          was abnormal, but yet it was artifact movement, and it  
13          was minimally reactive, or whatever term he used. You  
14          can always have that read back to you.

15                      Dr. April, who specializes in EEG, first of  
16          all he never saw the EEG. I would think that this would  
17          be an important piece of evidence to bring to this  
18          court, to call up that doctor, Doctor, you're going to  
19          come here and testify, you're going to come before this  
20          committee meeting, the doctors that are going to want to  
21          know, show me the proof. Where is the rest of it? And  
22          it's big. I can't bring it.

23                      Well, he didn't bring even the sample that  
24          even Dr. Houseknecht showed you. Dr. Houseknecht shows  
25          you, he had five seconds, he didn't even know, he had

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1 ten seconds that showed nothing, then he does other  
2 tests and they're normal.

3 He testified that she could hardly walk in his  
4 office, but yet only three days earlier she had no  
5 problems walking for Dr. Maniscalco. And she was doing  
6 the tandem walking, heel to toe. What happened in three  
7 days? What happened?

8 He acknowledged what he said. Nobody but her  
9 husband ever really saw that seizure, using the term  
10 like Dr. April, very generically, because other  
11 conditions, maybe to people who look like that, maybe  
12 panic attacks, maybe anxiety attacks, and we heard  
13 plenty about that, that that was going on.

14 Matter of fact, when you get to the hospital  
15 record, you're going to see that she told them she  
16 hadn't slept in a few days.

17 You're also going to see other things in that  
18 hospital record that he doesn't make mention of, okay?  
19 That her gate was fine, she could go to the bathroom,  
20 walk around walk with her family, had no need for  
21 assistance.

22 You read that hospital record that's in  
23 evidence. So all of a sudden, you know, this lady goes  
24 from before her seizure, when she sees him on December  
25 22nd, so then she has this April event, and now she's

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1 walking fine over there and not walking fine for you?  
2 Does that make sense?

3 I mean, you're going to decide this. He says,  
4 and he told you from that stand, after swearing to tell  
5 the truth, a panic attack and seizure can be hard to  
6 tell apart.

7 He believes that most of her episodes are  
8 panic disorders, severe anxiety. She gets episodes when  
9 she falls down; spasms, palpitations, choking, shortness  
10 of breath, feels the room spinning. All of this can be  
11 severe panic disorders. It may manifest as an  
12 electrical short-circuit of the brain. It's impossible  
13 he says for an experienced neurologist to differentiate  
14 between that and a seizure.

15 Now if he can't do it, and you, committee  
16 members, are not all neurologists, you are orthopedists,  
17 you're a urologist, you're a surgeon, and you're an  
18 oncologist, we're all together, we're all looking at  
19 this with different eyes. And he wanted this test. He  
20 wanted that video EEG.

21 Now, let me tell you when she went there she  
22 had coverage. The MTA, the bad MTA didn't throw off  
23 no-fault. She had her GHI. Why didn't she go? Ask  
24 yourself why didn't she go to the psychiatrist that he  
25 asked her to go to twice?

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1           If I'm a neurologist, and I think you got an  
2           organic problem that I can help you with, upping your  
3           medication till you're at the upper limits, risk benefit  
4           he called it, and I see a psychiatrist, there is a  
5           reason for that. If I think I can take care of you, and  
6           this medical treatment can help you, I don't need to  
7           take you there, because I think it's not in your head  
8           but it is in her head. That's her personality.

9           So now I asked him if he ever confirmed that  
10          the patient had symptoms before that would be anxiety  
11          related. He said he never confirmed that. And he  
12          agreed it is important to know a medical history, that's  
13          why they ask these questions.

14          Now, he wanted her to go see this  
15          psychiatrist, because he wanted her to talk out her  
16          problems. What were her problems? If they were  
17          medical, do you need to see the psychiatrist? I don't  
18          think so.

19          Now, I asked him about the medication she was  
20          on. He said, oh, Xanax can cause poor concentration and  
21          poor cognitive problems. It can cause confusion,  
22          thinking abnormally.

23          She was on a very high dosage of Xanax. When  
24          she was on Xanax, an antianxiety drug, he saw an  
25          increase in anxiety, palpitations and fear. So that



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1 medication that is meant to change what is going on in  
2 your head did help her. If this was just solely related  
3 to brain damage, that wouldn't have happened.

4 So even though you are in all different  
5 specialties, when you come to the arena here, bring your  
6 common sense, which people say is not so common  
7 anymore.

8 He admits she never had a grand mal seizure  
9 after that. He admits he didn't even bother to take  
10 blood samples to make sure there was a therapeutic value  
11 of the medication, because she didn't have any  
12 break-through seizures.

13 Now, his tracing he admits showed minimal  
14 background activity, and it could have been anything,  
15 including his telephone wires.

16 I asked him if he heard of this condition  
17 called a psychological non-epileptic seizure. He said  
18 he didn't. He was treating her for that too. He was  
19 killing two birds with one stone with this mood  
20 stabilizer, which was the the Keppler.

21 He said it's impossible to clinically  
22 determine whether she has non-epileptic seizures. Now,  
23 if in between she not only saw him, he then says I want  
24 you to see the orthopedist, because now she is having  
25 problems with her neck. She complained about her back,

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1 her shoulder, that Dr. Lucciardi --

2 (Brief pause.)

3 MS. SCIRETTA: Dr. Lucciardi, I asked about  
4 why did he have in his records, maybe this is it,  
5 why did he have in his records on February 9th, 2000,  
6 pardon me, puts me in charge of the committee, right?  
7 Why did he put in his records that she was sent to work,  
8 even though she was disabled for financial reasons,  
9 bring him in here and say, Doctor, did you make a  
10 mistake? Did you need Dr. Greenwald to sit here, who  
11 didn't write this, it got to be a mistake.

12 You take that with a grain of salt that  
13 somebody else is saying this about this record. You  
14 bring this doctor in, just like you bring those  
15 ambulance people in, to say what happened to you that  
16 you were vomiting and you were confused.

17 And you will see in the record an hour of  
18 heads banging. It didn't take a hour between having the  
19 accident and going into the emergency room. When did  
20 that happen? Ask yourself that, committee.

21 So now, committee, you see this, the cervical  
22 radiculopathy was in a billing record that is attached  
23 to here, that is what he billed under, but he didn't  
24 write it in here. He billed for it, but he also did an  
25 MRI of her shoulder which came back normal.

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1                   She showed up for physical therapy. She knew  
2                   when to go, where to go. She went. She had it. I  
3                   guess she wasn't in bed those days with her headaches.

4                   Now those headaches, you're going to find out  
5                   that those are also related to what's going on in her  
6                   head. It's not so much that these are caused by the  
7                   brain. It's caused by her reaction, her mood, like she  
8                   told you in her transcript that I read to you, it  
9                   depends on her mood.

10                   What's going to happen if she's going to have  
11                   any anxiety. If you think the bus mirror did that,  
12                   that's a bit farfetched.

13                   So what happens next? Now the committee is  
14                   still wanting to know. We can't make a decision here  
15                   until we know what's going on.

16                   Let's piece this together as best we can and  
17                   make sure that we know what we can do.

18                   Well, you know what, let's jump ahead and say  
19                   there's a nice lady who you know is now your neighbor,  
20                   but nobody knew about her until not long ago when they  
21                   were walking in the street, they said they saw her.

22                   I know sometimes I jump around. Follow me.  
23                   I'm trying not to, but I thought it was interesting that  
24                   that lady, Miss Brown, was the first person to mention  
25                   this, now put this big picture together and what drives

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1 this, that they were walking there doing --

2 First of all, you heard from the daughter they  
3 live in a two-bedroom apartment, that is no longer as  
4 immaculate as when her mother didn't have the accident,  
5 but it is tidy. She is an adult sleeping in the living  
6 room.

7 I asked her at a deposition who do you live  
8 with? I know it is not a person, it is a dog, but why  
9 would a dog be in the family when you got so may  
10 problems? You know, everybody loves dogs, most people  
11 do, some people like cats better than dogs. But,  
12 nevertheless, you have to understand that it makes no  
13 sense to keep that.

14 First of all, why would you keep one like that  
15 if your life was so disrupted? If your mother and your  
16 wife were so sick, can't tolerate these headaches, can't  
17 tolerate noise, can't tolerate anything, you have to put  
18 an animal in this? I'm just thinking it sounds a little  
19 petit, think about it, when you think about what was  
20 really going on in that house.

21 So you have this lady who was a receptionist,  
22 office manager, 25 years. She can't legally treat  
23 patients in that doctor's office. She can't prescribe  
24 anything.

25 One thing that you can take from her

## - Summation-Defendant -

1 testimony, I got to tell you this seemed like a really  
2 nice lady, and that she is a concerned person, and that  
3 is the kind of citizen you want in this borough. You  
4 got enough grief in life, you don't need to add bad  
5 neighbors.

6 But one thing she didn't say, even though she  
7 was asked twice, and you can have that read back to you,  
8 she said she, you know, she saw her eyes roll back, she  
9 saw that she wasn't responsive, she kept saying looked  
10 like she was in great distress, which she probably was.

11 But then again you don't know what that really  
12 was that she was having. She never said foaming at the  
13 mouth, which she was asked. What else did you see?  
14 What else did you see? She never said that.

15 And we know that when she got to the hospital  
16 she was alert. She was alert talking to them in the  
17 ambulance. She was found crying. This is not seizure-  
18 like activity, post seizure-like activity, no biting the  
19 tongue, no loss of urine or feces. She didn't see any  
20 foaming.

21 You wonder like what the heck is going on  
22 here. The one thing that was interesting, and when you  
23 read the hospital records, you piece it together, they  
24 found marijuana in her urine. That is the only reason  
25 why I brought it up.

- Summation-Defendant -

1                   And she admits to one doctor every two weeks,  
2                   one time she didn't, two weeks ago to another doctor,  
3                   three weeks ago.

4                   Well, I mean your husband says you're still  
5                   drinking two glasses of wine a week. And he said that  
6                   on May 26, 2001, we know now you're still smoking pot.  
7                   How sick are you?

8                   You're now taking Xanax, you're doing all of  
9                   that, getting this medication, and feeling so miserable,  
10                  why do you add to it? Is that a good idea, or is that  
11                  not maybe you're getting the whole picture, maybe she is  
12                  not as sick as you think she is.

13                  Because a lot of this information, committee  
14                  members, comes from their mouth, and what they tell  
15                  their doctor. And the doctor got on here and said a lot  
16                  of -- it was all history basically what I'm telling you.

17                  So they brought some pretty interesting people  
18                  here, the manager of Hunters. The reason why I read you  
19                  the hearing transcript, and the reason why I read you  
20                  the deposition transcript concerning work, February 2nd,  
21                  2009, she was asked by a hearing officer, under oath,  
22                  how many jobs do you have? She only had the Hunters  
23                  job, and this nanny job for her sister-in-law.

24                  But yet at her deposition, when she had a new  
25                  set of lawyers, Canedo's, said you can't verify because

## - Summation-Defendant -

1           it closed. Of course, she made more money there, but  
2           this guy Steve Gannon, the manager -- First of all, no  
3           W-2, no 1099's. He directed her work. She sat there  
4           and seated people, made sure, and he liked the way she  
5           worked, probably she did do good work, but he said she  
6           worked two or three nights.

7                         And when you are asked to give her money, and  
8           say what kind of an income did you lose, 10 years she  
9           worked here and she didn't file income taxes until she  
10          had to, after she started her lawsuit, don't you get  
11          it? That he got up here and says, well, if the  
12          information he gets is wrong, because he never spoke to  
13          her, then he's wrong.

14                        You go to work. You file your taxes. They  
15          take it right out of your check, if you're an employee,  
16          sounded like she was an employee, he directed her work,  
17          told her what to do, you have to ask yourselves, you  
18          want this jury, you want the committee here to say, you  
19          know what, I'll give you over whatever you're asking  
20          for, a million three, something, and I'm also going to  
21          throw in that Social Security that you didn't pay for?

22                        Well, you also heard that Dr. Leiken say,  
23          well, she would still get it from her house because he  
24          paid it. But he didn't see anything accept a piece of  
25          paper that they made up to file.

## - Summation-Defendant -

1                   And let me tell you something: You pay the  
2                   government \$40,000, the husband said in back taxes,  
3                   penalties fees, well, the first thing I would have  
4                   brought, to show it to your face, is that check for  
5                   \$40,000.

6                   Did you see that check? There's a lot of  
7                   things you're not seeing. And you're asked to take it  
8                   on face and do what they want you to do. Because, let's  
9                   face it, nobody has any sympathy for the bus.

10                  She seemed like a nice lady. She sat there.  
11                  Whenever you saw her, you would want to give her  
12                  something. You would want to say I would like to find  
13                  for you, but you know what, make it legitimate, make me  
14                  do the right thing, let me do what I think I should do,  
15                  because I don't see a W-2, I don't see a 1099.

16                  He had a very great faith. He tells you he  
17                  testifies a lot, he reviews. He says I saw the tax  
18                  return, the tax return they prepared. That is your  
19                  proof? And he only saw 2008. And for 2008 he projected  
20                  a \$37,500 dollar salary on working two or three days at  
21                  \$50 a night? Where do you get this number from? What  
22                  kinds of math do you know? And he was a math major. Go  
23                  back to school. This doesn't make sense.

24                  But not only that, she filed this afterwards,  
25                  so is it for me or is it for you that this is done? The



## - Summation-Defendant -

1 average salary he said was 50 to \$55 dollars a night,  
2 average.

3 Okay. So you got to look at what's presented  
4 to you, committee. So this committee has a lot to think  
5 about. You have to think about the veracity of the  
6 information, how truthful is it, why is it there, what  
7 is driving it.

8 Well we're driving it because we now are going  
9 to file this, and jack up this money so that I get lost  
10 wages too. It is not good enough I get pain and  
11 suffering. I want to get the wages that I never  
12 declared.

13 If you give any credence to that, you have to  
14 ask yourself on what basis am I doing that, why am I  
15 doing that? Just to feel sorry for someone?

16 You took an oath. You took an oath to truly  
17 try this case, no matter who it helps and who it hurts.  
18 Let me tell you something: She manages to get to her  
19 friend's house once a week. I don't care that she goes  
20 to visit him. He seems like to be a nice enough man. I  
21 can see she wants to spend some time. She made it there  
22 every week.

23 Whatever happened to those paralyzing  
24 headaches and watching HDTV. When you think about it,  
25 you have to also say went to that eye place up there,

## - Summation-Defendant -

1 and she told them she reports the computer and the HDTV  
2 give her headaches. The first thing I want to do is go  
3 watch HDTV every week to get bigger headaches?

4 Then when you look at those records, you'll  
5 see a lot of stuff that was told. It is like self-  
6 reporting: I have headaches. I have this. Read  
7 through it. Read between the lines.

8 She reports she had an anxiety attack after  
9 leaving the eye place at the last appointment, and when  
10 she went outside and was relieved when she took a  
11 Xanax. She also reported she had another episode  
12 another day and was relieved by Xanax. Do you think if  
13 you got your white matter all screwed up, that Xanax is  
14 going to help you?

15 Oh, Dr. Houseknecht saw her twice, 2009. He  
16 he is not a seizure expert, he is a neurologist, and  
17 they all learn about seizure, we'll give him that.

18 You, the oncologist, the surgeon, the  
19 orthopedist, you also learned about this in medical  
20 school and in your first year of residency as a general  
21 intern.

22 Now, he is saying you might not see if the  
23 TBI, meaning the traumatic brain injury, is  
24 microscopic, but if large enough would show up on a CT  
25 or MRI, you might see some bleeding or atrophy. You

## - Summation-Defendant -

1 didn't see any of that, because the MRI's that she had,  
2 the MRI's were all normal.

3 We'll get to the DTI in a second. He's saying  
4 the top, max he gave her, can possibly cause the  
5 dizziness and the headaches.

6 The Xanax can cause her to lose sleep, and  
7 poor concentration, memory, fatigue, decreased libido  
8 because she said she wasn't interested, she is not in  
9 the mood.

10 He didn't know that in 2005 she had -- 2001  
11 she had had gotten the Fiorinal for the headaches. He  
12 didn't know that.

13 He wasn't aware of her prior history in 2005  
14 of insomnia, depression, crying, and 20 pounds weight  
15 loss, even though it is related to a situation you still  
16 had the symptoms.

17 She remembered the details of her accident, so  
18 her short term memory was intact, that is why I read  
19 that to you.

20 She knew where the bus was, it was 20 feet.  
21 She didn't have any of the amnesia. She didn't have any  
22 post-traumatic stress syndrome, that she blocked this  
23 out. She didn't block out anything, she didn't. She  
24 wants you to get the full impact of what she is going to  
25 say.

## - Summation-Defendant -

1                   Now, he also said there is nothing wrong with  
2                   the rest of her body, because I asked him, he did range  
3                   of motion, straight leg raising, all normal.

4                   The only impairment he felt was in her head.  
5                   Okay. So when you hear cervical radiculopathy, and back  
6                   and shoulder, her own doctor, her own witness said  
7                   nothing wrong with that. As a matter of fact, I think  
8                   she got on and told you the same thing, nothing wrong  
9                   with that.

10                   Now, you piece this together. You're piecing  
11                   bit by bit. She told Dr. Luciano that she wasn't  
12                   depressed.

13                   She told even Dr. Hibbard, who according to  
14                   Dr. Schuster didn't ignore some of her own data, that  
15                   she didn't have the PTSD, had dissipated and there was  
16                   no flashbacks.

17                   So there are a lot of these other conditions  
18                   that they want you to accept as going along with a head  
19                   injury are not that problem.

20                   So what are you left with? You're left with,  
21                   you know, if I had so much evidence, if I were the  
22                   doctor that was treating her, and I had that much  
23                   evidence, I wouldn't have to send her all over the place  
24                   and then ship her up to the Bronx to Dr. Lipton, who  
25                   doesn't tell you that he did that DTI twice, because

## - Summation-Defendant -

1           there are two different types of slices, but also those  
2           images, according to Dr. Zimmerman, didn't show what he  
3           he said it showed.

4                         Now he wrote articles in 2006 and 2008. When  
5           you think about it, the 2006 might have been 2008, I'll  
6           go get them, dealt with boxers that get repeated head  
7           injuries.

8                         But you also have to think think about this:  
9           You know what, medicine progresses. They are not  
10          writing for lawyers, for the Court, they are writing for  
11          each other. They are writing for research. They want  
12          to understand, knowledge. They don't want to tell  
13          themselves any kind of story, because it has to be  
14          verified. And this DTI can't be used in clinical, it's  
15          not there yet, maybe some day it will be, but it is not  
16          there yet.

17                        There were hopes for that. And in those  
18          articles the word is may. In those articles, especially  
19          the one with the boxers, some of them already had or  
20          they all had loss of consciousness. She didn't have  
21          that, but some of them had bleeding in their brain.

22                        And then they used mouse models. So from what  
23          you extrapolate from that, you say what can I learn from  
24          this? It is almost like when you hear the news, they  
25          tell you, you know what, last week you can eat all the

## - Summation-Defendant -

1 tomatoes you want, you're not going to get cancer, you  
2 got a decreased chance of 10 percent. Then the  
3 following week they'll tell you you don't eat tomatoes,  
4 because it is going to jack up your cholesterol. So you  
5 don't know who to believe from week to week.

6 They learn things, and maybe their literature  
7 has to catch up with them, but it doesn't catch up  
8 overnight. That's why there's always something to  
9 learn. There's always something to go back and say you  
10 know what, I used to think that way but you can't use  
11 this, we don't even accept it anymore, let's do it for  
12 tumor resection, Alzheimer's, multiple sclerosis, and  
13 let's track these people from the beginning to the  
14 middle, to the end, not take somebody three years one  
15 month out, which she would not have been a suitable  
16 subject.

17 And there was artifacts in the second one  
18 which invalidates that study. So if Dr. Lipton wants to  
19 come here and tell you something, that's what he did,  
20 but that's not what it showed.

21 Dr. Lipton said most patients who have mild  
22 traumatic brain injury, or post-traumatic axonal injury  
23 recovered. He said DTI is used for other diseases,  
24 multiple sclerosis, brain tumor, and stroke.

25 The DTI shows non-specific findings, meaning

## - Summation-Defendant -

1           it could be due to many diseases. You would have to  
2           rely on other clinical information.

3                        So, folks on the committee, do you have enough  
4           clinical information to make that quantum leap and  
5           reasoning to say this is what you're going to believe?

6                        He does his trolling down in the emergency  
7           room looking for patients that come in with fresh  
8           injuries. This was not a fresh injury. She, more or  
9           less, is not even a candidate for this test. Why do  
10          they do the test if you would not need to?

11                      You would need to do the test, if you had  
12          everything behind you that says I don't need to do this  
13          because I got enough proof in my pocket that I don't  
14          need to do this but obviously you did.

15                      So, committee, let's put this in our pile. We  
16          have our pile of information going forward. So what do  
17          we have? We have, oh, Dr. Hibbard, wow, Mary Hibbard.  
18          First of all, she was a little peeved when I started  
19          with that e-mail. Now everybody has e-mails, obviously  
20          Dr. April had e-mails, his e-mails to me which I have  
21          every right to send him the transcript and say, Doctor,  
22          what do you think? And he tells me.

23                      But out of those three pages you only heard a  
24          couple of things, and they weren't so horrible. But  
25          what happened to her, when Dr. Schuster, who is one of

- Summation-Defendant -

1           their witnesses, who's a neurologist, said she ignores  
2           her own data? She said, well, you know, he didn't.  
3           Then she had to admit it. So put that in the pile.

4                       This is material, this deals with the data she  
5           brought to you. She says it's a typographical error.  
6           Instead of saying she has an I.Q. Of 74, I made it 84.

7                       Well, Dr. DeBenedetto said we had to get that  
8           data, because you can't rely on what she writes in the  
9           report, because the report didn't make any sense. And  
10          Schuster said he never saw the raw data, but he realized  
11          there there was a mistake. So we got the data. We  
12          asked for the data. Initially she wouldn't give it to  
13          us. She gave it to DeBenedetto.

14                      MR. RONEMUS: Objection.

15                      THE COURT: Sustained. Move on.

16                      MS. SCIRETTA: What happened is that he saw  
17          what she did and what variables she was using, what  
18          sub tests. It was skewed.

19                      Now, I'm not saying she did that  
20          intentionally. Who knows what she did? I don't go  
21          behind that. I'm just telling you that you can't rely  
22          on that data, because from the pre -- they called it  
23          pre-morbid, before the accident to after the accident,  
24          statistically there was no difference or very little  
25          difference, so you can't say that this was all related,



## - Summation-Defendant -

1           you can't say it is related to the accident.

2                        You know what was really interesting, is that  
3           you know what, you're only a stand-up kind of person, if  
4           you admit to the things that you're supposed to admit to  
5           instead of hiding behind it.

6                        When I asked her about that program, with the  
7           lectures to lawyers about how to cut through somebody's  
8           cross-examination, how to make it as, you know,  
9           basically as lethal as possible, she couldn't remember  
10          what hotel was that, I don't remember that, I don't  
11          remember that. Well, it wasn't that long ago. Then,  
12          finally, she had to say, yeah, she does do lectures like  
13          that. She didn't want to own it.

14                       You know what, ladies and gentlemen of the  
15          committee, if you say you own it, stand up about it.  
16          Saw her a couple of times, three times at the most. She  
17          didn't have time to see this lady, sent her to somebody  
18          else. She did this testing.

19                       Now you know what was interesting, I asked  
20          questions, the first two reports, they were identical.  
21          She claimed she revised the first report because she had  
22          to take Norway out of there. And she had a few other  
23          typos. Who knows what else was taken out?

24                       But the third report, which was really only  
25          the second report, wasn't done that long ago. It was

- Summation-Defendant -

1 done in September of 2011. But the data was collected a  
2 year earlier. What's her story?

3 I mean, you are not an ordinary consumer. You  
4 are supposed to be looking at this with no bias, no  
5 sympathy. You're supposed to look at it the way it is,  
6 call it like you see it. You promised that you would,  
7 because you are more than the jury, you're the committee  
8 now. You're not going to lie to yourself.

9 I asked her a lot of questions. Did she  
10 impress you? I'm not sending you to the store because  
11 her own allies in this case didn't trust the data.

12 She is a nice lady. She reminded me of, you  
13 know, a nice older lady. You want to believe her. You  
14 don't think somebody who could come with that little  
15 jacket, and I attended NYU, that they're going to tell  
16 you something that may be a little over the edge.

17 That's a good way to be, if you're not going  
18 to be a hundred percent truthful, because you don't know  
19 that, you're sitting here, even though you're on the  
20 committee and you're supposed to bring everything, live  
21 everything, your life, your years, all your years, maybe  
22 more years than others, but you're going to bring it  
23 here and you're going to say, you know, I'm not stupid.  
24 You think I am going to believe that?

25 You know, these people were very good

## - Summation-Defendant -

1           testifiers and if you didn't examine everything you  
2           might believe it.

3                       There's this Dr. Schuster, very personable  
4           guy. He made up all of these charts here. He didn't  
5           even know what medications she was on, but he put in the  
6           price tag for it.

7                       He says he put in money for psychiatric  
8           problems, anxiety, irritability. You have different  
9           factors.

10                      He never reviewed the the raw data. He admits  
11           on the stand he was told that morning about that  
12           e-mail. So people do talk to each other. Don't think  
13           people don't talk. And he got the heads-up that I was  
14           going to ask that question.

15                      He says she may have been prescribed  
16           anti-anxiety medication, true, but she didn't mention it  
17           to him. Including I asked, he brought it out, I didn't  
18           bring it out, I asked him a lot of questions about drug  
19           abuse, contact with the criminal justice system. She  
20           said no to that. I didn't pursue it any clearer. I  
21           just didn't care. I wanted to know. All of the  
22           information you're going to get is what the plaintiff  
23           wants to give to you.

24                      I can tell you I have a headache every day and  
25           I can't sleep at night, do you know that, do you know

- Summation-Defendant -

1           that? Can you say I'm not telling you the truth?

2                       He knows that she denied depression to Dr.  
3           Luciano. He also knows that he doesn't know what  
4           medication she's on, and he did this in 2010.

5                       He said he would have liked to see her again.  
6           He didn't see her. So he wants to think what she said  
7           she needed in 2010, if you believe she needed it then,  
8           and extrapolate it for 2012. You have to think about  
9           how much of this are you going to accept.

10                      He said, which was important, her anxiety and  
11           palpitations that she had later in 2005 cannot stay  
12           indefinitely, related to the beginning of the year when  
13           her sister died.

14                      Here you have a neurologist saying the  
15           symptoms that she had later on, they may not be  
16           bootstrapped to the event over there, so that stands  
17           alone.

18                      And he also said, he said much of the  
19           information he got was what they call self-reported. He  
20           agreed, that is what I tell you, take it on face what I  
21           tell you, believe me. There's always going to be  
22           issues, especially when there is a lawsuit pending.

23                      I was very concerned about, you want a lady or  
24           somebody to come in, a case manager for a hundred ten  
25           dollars a week, twice a week to manage money that you're

## - Summation-Defendant -

1 going to give her? What about her family? Do you want  
2 to open up your checkbook to the stranger? Do you think  
3 when her husband, if he gets a job, he comes home, he's  
4 not going to say where is the money, how are we going to  
5 live, how are you going to live in Texas? Because that  
6 is where she wants to go. And he told you she's on the  
7 internet looking for houses. So this is out of here,  
8 out of New York. I'll take it and go.

9 You're never going to see her again. You're  
10 not going to know if this is legitimate or not. I think  
11 that was mean spirited.

12 When I asked her, I saw her walk up, and that  
13 cane hardly touched the floor from where I was seeing,  
14 and I asked to see that tip, and that was brand new, she  
15 had a very quick response to me. I admired that, that  
16 she was quick-witted to say I brought the wrong cane.  
17 You have a dress cane and every-day cane.

18 You only got it in 2000, after Dr. Greenwald  
19 said go get a cane? I mean, come on. I didn't think  
20 there was that much damage going on in her head that she  
21 could make a statement like that.

22 I asked her when she got on the stand, a lot  
23 of people don't like me, I don't care, to tell you the  
24 truth, I'm not here to win a personality contest, which  
25 I never will, but she'll be much better she says when

## - Summation-Defendant -

1 this is all over, she'll be better in Texas; ma'am, I  
2 have TBI, I don't remember what I said. That is such a  
3 good way not to answer the questions.

4 I asked her about who referred you to Dr.  
5 Friedman. Why should that be a secret? She didn't  
6 think it was a secret or had to change it for a hearing,  
7 but she changed it for a deposition. You know, does the  
8 information change from day to day? What can we rely  
9 on?

10 She says her hearing is fine, her neck is  
11 fine, her back is fine, except for her head.

12 You know, that video EEG, she could have had  
13 that done, and we could have seen her doctors. Forget  
14 the Transit Authority. Who cares about what the Transit  
15 Authority sees? They are not her doctor. But her  
16 doctor, who is supposedly treating her, she didn't  
17 really see, except that they would know, hey, listen,  
18 maybe, lady, there is something up there, I can see it.  
19 That test wasn't done, because there's a fear that that  
20 test might show there is nothing there. I can't go for  
21 the test. I'm not going for that test, just not doing  
22 it.

23 Oh, don't forget her daughter tells you, I  
24 know you don't argue with someone you think is sick.  
25 You also don't get mad at them if you really don't

## - Summation-Defendant -

1 believe they can help themselves.

2 Living with your old grandma who is there,  
3 says the same thing over, and over, and over again,  
4 grandma, I just told you you don't get angry with her  
5 and say I just answered you a few minutes ago. You  
6 don't say things like that. You don't also have to take  
7 money to help around the house. You also don't do a lot  
8 of things.

9 But they're on the internet. The mother's on  
10 the internet. How can she have 24 out of 25 symptoms?  
11 Think about it, you got everything wrong with you, every  
12 part of her head there is something wrong with, every  
13 symptom, I got every symptom, you know, you can write a  
14 textbook in medicine and say do you believe it, can you  
15 believe it? What are you researching besides houses in  
16 Texas? Researching medication, researching the  
17 symptoms, researching what, DTI?

18 Typically the symptoms, when they say  
19 symptoms, there's a range of symptoms. You don't expect  
20 that every symptom committee would be in one patient.

21 So you're the committee. What are we going to  
22 do here about this patient? Well, the DTI is not  
23 reliable. We're not able to use it in clinical  
24 practice, so would she have a scalp problem?

25 And you know what, I think we should call down

## - Summation-Defendant -

1 to the ambulance bay and have those EMT's come up and  
2 tell us what they saw, so we can add to our basis and  
3 knowledge. It would have been nice if one of them would  
4 have taken the stand.

5 THE COURT: You have five minutes.

6 MS. SCIRETTA: Well, if you think she deserves  
7 a loss of income, then nobody should go to work, nobody  
8 should pay their taxes, nobody should be part of the  
9 system that makes this system work. Your fair share,  
10 ten years I paid in, she paid in. She didn't pay in.  
11 She wants you to give it back now. I don't know, it  
12 sounds a little far.

13 You're asking a lot. And when you think about  
14 pain and suffering, you got to think about what parts of  
15 this pain and suffering is really related to the  
16 accident or her personality.

17 Doctor Greenwald told us she had a seizure in  
18 his office. Well, if you call that a seizure, and he  
19 called it a near-panic attack, somebody is wrong over  
20 here. Does the word seizure sound better to this jury  
21 or panic attack?

22 You got a conversion disorder, according to  
23 Dr. DeBenedetto. You have Dr. April, and who knows, you  
24 don't have to like people, dislike them, but these are  
25 learned people, they come to you, they don't have really



## - Summation-Defendant -

1 a dog in the fight, they don't. And who would be a full  
2 professor of medicine, who knows that maybe transcripts  
3 can follow you around from case to case, people left  
4 there ivory tower to come here and tell you, you know,  
5 listen, back then we saw this, I don't think it is  
6 anymore, you can't use it.

7 So what are you supposed to do to this person,  
8 what are you supposed to say, Doctor? Her Doctors take  
9 it on face, why should I believe you?

10 But for you the buck stops here. You're the  
11 People that stand between the litigants. You are the  
12 reason why New York City Transit Authority is taking a  
13 verdict. We have to put our trust in the system. We  
14 have to put our trust in that you had more common sense  
15 like gang busters.

16 You're going to call it like you see it, but  
17 you're also not going to be snowed. It's almost like  
18 that Groucho Marx movie, Duck Soup. Groucho Marx always  
19 had this woman actress, and she liked Groucho. That is  
20 what the doctor is referring to, who are you going to  
21 believe, me or your lying eyes? He wanted to go out  
22 with her. Margaret Dumont was the actress, and he said,  
23 I'm Groucho, come out with me. She looked at him. He  
24 wasn't Groucho. She said, you're not Groucho. He said,  
25 who are you going to believe, me or your lying eyes?

## - Summation-Defendant -

1 You are the lying eyes, what is the evidence that you  
2 can really believe? No, not what is told to you, not  
3 what these doctors, they have a very good way of  
4 repeating themselves in bringing it forward.

5 And when you take a look at Dr. Greenwald's  
6 records, read them, each page is the same. Each problem  
7 is the same. He spent 30 minutes with her, 15 was  
8 cognitive? Baloney.

9 He sent her downstairs to the Ph.D. Student  
10 psychologist who is in training, and she said go take  
11 Yoga. You tell somebody who has brain damage to go take  
12 Yoga, done, you slap them over the head. What is with  
13 you? I got Yoga?

14 Put it together. Each piece means something.  
15 You could sit here and cry for someone. You can feel  
16 sorry for someone. They don't need that. They got each  
17 other for that.

18 You are here to do justice. When they come in  
19 here and ask you for six million dollars, and they want  
20 you to pay for drugs, they want to pay for someone to  
21 come in and balance the books, and they want you to come  
22 in and oh, you should see a physiatrist and  
23 psychiatrist, neurologist, vestibular training,  
24 psychocognitive rehabilitation, she is not going for it,  
25 now don't believe that.

## - Summation-Defendant -

1                   You know what, that is Schuster, he knows  
2                   about Acces, that program. She can go for nothing. I  
3                   need it, I'm going to get it. I want to get better.  
4                   You want to get better, than go. You want to blame the  
5                   New York City Transit Authority? Tell it to six  
6                   people. The verdict is up to you, what are you really  
7                   going to believe.

8                   You want to give them money, you give them  
9                   money, but don't give her six million dollars. Hit her  
10                  on the head, not nice. Nobody said that was nice.

11                  We didn't cause this. You think we caused  
12                  this? Again, I wouldn't send you to the store. You  
13                  have to look at the evidence, what is believable, not  
14                  what they want you to believe. You got to say if I give  
15                  you money, it's because you deserve it, not because I  
16                  feel sorry for you.

17                  And when you think about everything, she's not  
18                  here because she looks too good. She can't afford to  
19                  parade for you, or you, or you. You'll feel sorry, but  
20                  you're not going to feel sorry, she looks pretty good  
21                  for me.

22                  THE COURT: Time's up.

23                  Okay, ladies and gentlemen, I'll see you at  
24                  2:30.

25                  THE COURT: All rise.

- Summation-Defendant -

1 MS. SCIRETTA: May I just say one more thing?

2 THE COURT: No. I gave you an hour and 15  
3 minutes. That time is up.

4 Have a good lunch everyone.

5 (Whereupon, jury exited courtroom.)

6 (Whereupon, a luncheon recess was held.)

7 (Continued on page 1255)

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