

DOCTORS AND CITIZENS FOR ETHICS, SAFETY, AND QUALITY
IN MEDICINE

+ + + + +

THE HEALTH INTEGRITY PROJECT

+ + + + +

WEDNESDAY,
MAY 18, 2005

+ + + + +

Came to order at 3:00 p.m. James John Murtagh,
Jr., MD, moderator.

Present:

Ziad Akl, M.D., Semmelweis Society International,
presiding.

James John Murtagh, Jr., M.D., Doctors for Open
Government

C. William Hinnant, M.D., J.D., Semmelweis Society
International

Don Soeken, M.D., Integrity International

Tom Devine, Government Accountability Project

Ron Marshall, The Grady Coalition

James Tate Jr., M.D., National Medical Association
Council of Clinical Practice

George Holmes, M.D., American Association of
University Professors

Kevin Mirch, JD

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

I N D E X

Welcome and Opening Remarks, Ziad Akl, M.D.	3
Remarks, James J. Murtagh, Jr., M.D.	3
Keynote Speaker, Kevin Mirch, Esq.	5
Speakers:	
Tom Devine, Government Accountability Project	20
C. William Hinnant, M.D., J.D., Semmelweis Society International	25
Ron Marshall, The Grady Coalition	36
George Holmes, M.D., American Association of University Professors	48
James Tate Jr., M.D., National Medical Association Council of Clinical Practice	57

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

P-R-O-C-E-E-D-I-N-G-S

3:02 P.M.

DR. AKL: Okay, my name is Ziad Akl. I am a physician, member of Semmelweis Society. I would like to welcome you today for coming here. We have people coming from all over the country, from as far as California and Nevada. I would like to thank everyone who participated in making this forum take place. It was a lot of work on everybody's part, especially that we started this just six weeks ago. We came up with the idea and we did all this in six weeks, so this was a lot of work. I would like to acknowledge Dr. Jim Murtagh for his tremendous amount of work.

(Applause.)

He's going to be our moderator today and for the sake of brevity, I'm going to turn the mic to him. Thank you.

DR. MURTAGH: Thank you, Ziad. What I like most about this group is teamwork, that's what I love. And I have a chance to work with a lot of good teams like the Grady Coalition, my good friend, Ron Marshall; the AAUP, George Holmes. We could not do this without teamwork. And I'm excited about our program for today.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 I'm particularly excited because I became
2 aware of just how bad bad faith in medicine can affect
3 the public this weekend, when I was put in touch with
4 a lawyer who actually has uncovered evidence far
5 beyond anything we ever dreamt of and we are the
6 Semmelweis Society that wants clean hands in medicine
7 and we did not know how bad it was.

8 Now Kevin Mirch came -- I'm getting your
9 name wrong, sorry, Kevin.

10 MR. MIRCH: It's all right.

11 DR. MURTAGH: This fellow has just
12 recovered from neck surgery and his wife did not want
13 him to travel and he snuck on to an airplane anyway,
14 so that he could be our keynote speaker. And just
15 before I have him come up, I'm going to tell you that
16 this happens to be the 158th anniversary today of the
17 discovery by Semmelweis of the disinfectant theory
18 which held that doctors should wash their hands in
19 between patients.

20 Well, back 185 years ago, they didn't like
21 to do it. They still don't like to do it, but they
22 threw the guy out of medicine in an example of a bad
23 faith peer review. So here is today National
24 Semmelweis Day and I'm going to push for recognition
25 of this as an annual day. We're going to work with

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 our representatives, but for this reason we want clean
2 hands in medicine. That's why I'm going to give Kevin
3 our Clean Hands in Medicine Award. Come on up.

4 (Applause.)

5 MR. MIRCH: Well, thank you.

6 DR. MURTAGH: Here it is, a bar of soap.
7 Our Clean Hands in Medicine Award, together with our
8 very sincere certificate of appreciation.

9 (Applause.)

10 MR. MIRCH: What a group, huh? I'm a
11 trial attorney and 15, I don't know, Vern, what do you
12 think? Ten to 15 years ago, I was approached by a
13 doctor in Reno named Dr. Clark.

14 DR. CLARK: It's been at least 15 years.

15 MR. MIRCH: Yes, probably at least, and he
16 came into my office and when I say I'm a trial
17 attorney, I really do go to trial. And I have tried a
18 lot of cases. I've won a lot and I've lost a lot.
19 And I'm not one of those guys that's never lost a
20 case. Just like probably you guys -- but he came in
21 and he told me a story about how he had gone to the
22 Medical Committee in a psychiatric care hospital owned
23 by Hospital Corporation of America and that he had
24 disclosed some just unbelievable things that were
25 going on in this hospital. Basically, it started off

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 with some upcoding and billing problems and then it
2 started to get into real care issues, even though I
3 think those are care issues, but it got into other
4 real care issues where, in fact, there were children
5 being impaired. And they knew about it.

6 And so anyway, he came to me and his case
7 had already been lost at every single stage and was --
8 I think I either filed a writ up to the Nevada Supreme
9 Court to rehear certain things to try to start it over
10 again or else I just filed a new case, I can't
11 remember at this time. But in any event, it went to
12 the Nevada Supreme Court and they found that because
13 he was a whistleblower, they couldn't take away his
14 privileges. And they had essentially said he had been
15 a whistleblower, we found some documents that actually
16 said right in the charging documents, it said we're
17 going to take away your privileges because you went to
18 JCAHO, HCFA. He went to everybody, Amnesty
19 International. He was a letter writer.

20 And as part of that, he told me his wife
21 had after one of the meetings they had gone home, one
22 of the meetings when they were trying to take away his
23 privileges and he was highly trained, he had a Harvard
24 background and Harvard pre-med and then University of
25 Geneva for psychiatric, his doctor and was board

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 certified and board certified in children care and he
2 was the only one. And they had a board meeting. He
3 had a fight with his wife, probably nobody has had
4 that in here, after one of these things. But he had a
5 fight with his wife on the way home. She blew a blood
6 vessel and she died that night. And she was a
7 physician. And a good, good -- nice person. She
8 didn't like the attack. She wanted to move. And he
9 wanted to move too, but it got to a point where he
10 couldn't move because they decided they were going to
11 attack him.

12 The group that he had, we actually did get
13 "60 Minutes" and "Day One" to come in and do
14 something. I can't remember if it's both or one, it's
15 at least "Day One" and it's so long ago. And they did
16 a little show on this, on his case.

17 What happened is is that when the Nevada
18 Supreme Court came in and they reversed it and said
19 you can't hurt a whistleblower and it specifically
20 says in your documents that you took away his
21 privileges because he was a whistleblower, at that
22 point in time they said Mr. Mirch gets to try this and
23 there's no absolute immunity. As you all have
24 probably heard, there's something called absolute
25 immunity under HCQIA and they say you can't ever get

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 to these people. It's not true. It's not true. The
2 Nevada Supreme Court, which is pretty conservative,
3 really took a step forward and said hello to him, gave
4 him a big kiss.

5 It's funny, because at first the public
6 opinion was not published and that's really
7 significant to lawyers. It probably doesn't mean much
8 to doctors, but what that means is they filed an
9 unpublished opinion and they said you can't use this
10 for anything. They were just going to let my guy go
11 and let him sue them, but they weren't going to tell
12 the public about it. So the lawyers on the other
13 side, they couldn't be beat by a guy like me, a little
14 law firm with my wife and she's a lawyer too. And so
15 they asked for reconsideration and the Nevada Supreme
16 Court came back with an opinion that was probably four
17 or five pages longer and it's a mean opinion. I don't
18 know if any of you had seen it, but you can find it on
19 the internet under the Nevada thing. And they made it
20 a published opinion.

21 At that point in time we got so many calls
22 that it was unmanageable and another thing happened at
23 that point in time. At that point in time I started
24 to do what's called discovery, because we were allowed
25 to go forward with this case. And in the discovery, I

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 remember I had a guy -- I had deposed a number of
2 people. Some of them I can't tell you who I have even
3 deposed because they got a protective order stopping
4 me.

5 But what happened is I had a doctor. His
6 name is Jerry Howle. He's now dead. I had him up in
7 the deposition and I asked him a question. I said Dr.
8 Howle, I said is there something strange going on in
9 that hospital that you want to tell me about? And he
10 got this big smile on his face. It was just this
11 horrible smile and I knew there was something going
12 on, I didn't think he'd tell me and he said no, there
13 isn't.

14 So I said well, you know when you smiled
15 you gave me that little smile, what were you thinking
16 about when you gave me that smile? And he said I was
17 thinking about a case with a doctor that we had that
18 Dr. Clark had a problem with where the doctor would do
19 what's called blowhole therapy.

20 And when I was there, there was a big law
21 firm here from Washington that was sitting in on this
22 deposition because all of a sudden it became serious
23 to them. And so this doctor looks at me and he said -
24 - and this is terrible, so I mean it's so terrible you
25 might even want to take it out of the tape after I

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 tell you. What it was was there was a doctor who
2 would with adults, at least, and I've even verified it
3 with adults and we believe with children, would if
4 somebody had a stomach ache, they would have them pull
5 their pants down, I can't look at anybody in the eyes
6 when I say this and they would somehow blow air three
7 times up their rectum of the patient. And so I
8 couldn't believe it. It's one of those times in law
9 where you just cannot believe a human being said that
10 and I think I sent part of the transcript just on
11 Sunday night, I found you were all meeting. And I
12 sent part of the transcript for you guys to look at.
13 And he says it.

14 I remember literally being without words.

15 So what I said to get the thing, break the ice, I
16 said well, what's the Medicare billing number on that?

17 (Laughter.)

18 I had the privilege then after that case -
19 - they eventually settled. I can't tell you about the
20 settlement. They settled with Dr. Clark and it was
21 about his 20th or 21st year.

22 The only reason I even took that case was
23 because a man walked in and I know it's how everybody
24 in this room has felt, a man walked in and thought he
25 had no hope ever, absolutely didn't believe in the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 legal system, didn't believe in anything that we do.
2 And I do believe in the legal system and that doesn't
3 mean I'm not subject to attacks. When I found out all
4 this stuff, I had to hire lawyers every time there was
5 an attack on me and let the lawyers take care of it,
6 but that was okay because we have done well.

7 I know every one of you, every one in this
8 room and there are a lot of other people that don't
9 come to this room, you suffer tremendously. It's the
10 walking dead. What happens is is somebody gets hit
11 and then automatically you pull back and you think,
12 you know, it's just so embarrassing. I'm a good
13 doctor. Or you could be a lawyer and get hit. I'm a
14 good lawyer. I've had all these cases. I work hard.

15 I don't cheat. I'm not on drugs. Why are they going
16 after me? And you kind of -- the first thing is to
17 isolate yourself because it hurts so bad. Like you're
18 in the grocery store and you see an ex-patient or
19 something and you've lost your privileges and they're
20 going to come up and talk to you and you have this
21 horrible feeling and it never goes away, that feeling.

22

23 I have told people I wish I could wave my
24 wand and have you wake up on a Saturday morning and
25 have that just be gone, so you'd feel good. But it

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 never goes away. When you're operating, you're
2 thinking about. When you're seeing patients, you're
3 wondering if somebody is going to come in and talk.

4 DR. MURTAGH: You're doing a great job.

5 MR. MIRCH: Does that mean I have to sit
6 down.

7 DR. MURTAGH: No.

8 MR. MIRCH: But these cases, there is
9 hope. I do a lot of different cases. I've attacked
10 the casino industry. I kind of have a public interest
11 firm that I never thought I'd have. I started off as
12 a certified public accountant. That was too boring
13 for me. A lawyer was just too boring, so I've kind of
14 gotten into these big fights. And I have to tell you
15 they're very painful, but you can win. You have to
16 know how to do them and how to say the right things at
17 the right time and to do the right things so that you
18 protect yourselves. But there is hope and through
19 these types of organizations, there is hope.

20 For instance, I have a case is in Las
21 Vegas with a Dr. Roddie Wong who is a chiropractor and
22 it doesn't matter if he's a chiropractor or not and
23 how you feel about that. He had signed -- these
24 people brought him a contract from his board which was
25 the board was set up through the -- at this time it's

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 set up through the State of Nevada and it was the
2 Board of Chiropractic Examiners. And they had him
3 sign this document where he would take some sort of
4 public reprimand, maybe a private reprimand. And then
5 he went out and thought his life would just be the
6 same.

7 And what happened is that he lost the
8 contract with the Culinary Union which you can
9 imagine. So he called me and he asked if I would take
10 on a case because that was his big client and they
11 wanted the Culinary Union. They wanted him to share.

12 And Dr. Wong, he owned that market. I mean literally
13 owned the market. And that's the biggest union in
14 Nevada for sure.

15 And so anyway, he came to me and tried a
16 case in front of Judge Gates and Judge Gates, he's an
17 African-American Judge in Las Vegas. And Judge Gates
18 back in chambers, he told them before the case was
19 done to take away the discipline. And we had only
20 sued at that time the State of Nevada and the Board.
21 And he told them, I don't care, take it away. This is
22 not a good deal. This is an unfair deal. It's dirty.

23 I don't care if he signed the thing saying he was
24 guilty of it, because people sign things just not to
25 have the problem the next day, but the problem doesn't

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 go away because you have to go to HMOs, PPOs and
2 disclose that to other boards in other states and
3 disclose that and you're just nailed on this deal.

4 So there is hope. Do I like these cases?
5 They're horrible cases. I hate them. I can't stand
6 these types of cases. Why? Because it's not a money
7 issue. I mean if you get to the point where you have
8 a Supreme Court Opinion, you know, you get to that
9 point you're going to probably win. They're going to
10 probably show up at your door and they're going to
11 probably pay you some money. And I'm not saying
12 that's ever happened to me because I can't say that.

13 But I'll say the amounts of money never,
14 never pay you for what you've gone through. I don't
15 care if you've got \$1 billion. It doesn't pay you
16 because of the pain you go through. I think even with
17 your whole family here, I know that pain.

18 I mean I wasn't going to come today and I
19 want to thank you guys. I'm a big consumer of your
20 stuff. I've had two of them in two years and I really
21 do believe in what you're doing. I can't believe that
22 somebody would cut open my neck, go to the base of my
23 skull, take out a disk, put another human being's disk
24 in, put in some sort of plate and have me here in
25 three weeks. It's just extraordinary to me. I have

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 my little neck thing in my bag, but I'm too
2 embarrassed to wear it.

3 But there is hope for you guys and you're
4 standing, so I don't know if that means I should sit
5 down. There is hope and there's things that you can
6 do. I mean it's just a matter of realizing that
7 everybody has to get together.

8 (Applause.)

9 DR. MURTAGH: Don't forget, we could
10 listen all afternoon, and in fact, every single person
11 here we could listen for a long time, but we have so
12 many exciting speakers.

13 The one thing I really have grown to
14 appreciate by putting together all the stories into
15 Ziad's document is no matter what bad thing happens in
16 a hospital and we just heard about something pretty
17 terrible, the response of the hospital usually is to
18 cover it up and the weapon of choice is bad faith peer
19 review, because doctors, in general, want to do the
20 professional thing. And they might be able to make
21 other people go along with it, but right now, doctors
22 have the Sword of Damocles hanging over their heads
23 and they know if they speak out on anything, the
24 hospital can end their career without any due process.

25 We all know that there's a malpractice

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 crisis or it's said to be one, but this has the
2 potential to be a much worse crisis. We know what
3 malpractice is because you go to trial and there's a
4 lawyer and even if you lose, you go on with your
5 career.

6 With bad faith peer review, it might be
7 just a whisper and you may never get to face your
8 opponent and your career is over without recourse.

9 Now we're going to be talking about three
10 big cases around the country throughout some of our
11 speeches today. We've all heard about Dr. Poliner and
12 I had a nice talk with his wife, Ruth, the other day
13 and the Poliners are with us here. And in fact, we
14 have a certificate for the Poliners I'm going to
15 present to them. They have really taken this fight as
16 far as it can go.

17 And with the jury verdict of \$366 million,
18 that's going to have an enormous impact. A jury
19 recognized how much harm was being done to the public
20 and that's what's important here. As much as the
21 doctors' careers are valuable, we're here for the
22 public and if a bad faith peer review is done to stop
23 a doctor from using the best practice possible, to
24 force a doctor, for instance, we have an obstetrician
25 here who says that her C-section rate was less than

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 half of her competitors. The hospital wanted C-
2 sections because they're very profitable. No one
3 should want medicine to be done purely for profit.

4 We all heard of the Terri Schiavo case and
5 not all of us agree with what was done, but one thing,
6 Congress got out of bed because they said the life of
7 one patient was sacred. And what I'd like to ask them
8 is to get out of bed for millions of patients, all of
9 whose lives are sacred.

10 What we've heard is in all of our
11 examples, is that when you do a bad faith peer review,
12 competition is reduced, price goes up, quality goes
13 down, diversity goes down, care for minority patients
14 goes down, and in the Poliner case, the transcript
15 shows billions can be lost and lives can be lost.

16 I mentioned we have the Poliner case. The
17 second big case is HCA and Humana. Again, there are a
18 lot of people in this situation, as Kevin said he
19 couldn't say everything because he's under judicial
20 restraint. It's hard for the public to know the
21 impact of bad faith peer review, because once you've
22 proven it, it usually is put under a gag order or a
23 seal or hard ball litigation.

24 Linda Peeno broke through all of that at
25 Humana. She was an executive who came out and said

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 that Humana and HCA were purposely withholding care
2 from thousands of patients leading to deaths. She
3 testified before Congress that she was actually
4 killing patients as a Humana executive. And we have
5 that testimony in our packet.

6 What more would you need to know that bad
7 faith peer review harms the public?

8 Now Kevin, I know you mentioned that there
9 were some high Government officials involved in some
10 of your cases. Is that safe to say?

11 MR. MIRCH: Yes.

12 DR. MURTAGH: You cannot name them, but
13 they may be in the high offices of the U.S. Senate.

14 MR. MIRCH: Possibly. Yes.

15 DR. MURTAGH: I have to tell you I am so
16 happy because I was worried if maybe I had done
17 something wrong with this conference because one of my
18 very good friends who introduced me to all of this,
19 Don Devine has just arrived.

20 (Applause.)

21 Tom Devine is simply the best public
22 interest lawyer in the country.

23 MR. DEVINE: I wouldn't have come if I
24 knew you were going to talk that way.

25 DR. MURTAGH: It's true. When I first

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 came into this trouble, you know, I've written about -
2 - my first meeting with Tom, that is the heart of a
3 book that I've written. When everybody else told me
4 there was no hope, I came and knocked on his door and
5 he tested me out and he said well, Jim, you've got
6 these problems. They're offering you some money, why
7 don't you take it and run?

8 I go well, I'd feel bad. He goes, in
9 other words you'd feel like you'd be leaving a
10 chilling effect on your work? I go well, yeah, I
11 guess that's what I mean. And he goes well,
12 congratulations, we wouldn't support you if you
13 weren't one of us.

14 (Laughter.)

15 So -- and he gave me the Whistleblower's
16 Survival Guide, which I recommend every single person
17 read because what we're facing in peer review is the
18 same thing as what he's writing about under a
19 different name. That's why we're here to network with
20 all these different groups. We sat down with
21 Congressman Markey's group and they said well, this is
22 just simple whistleblowing. Our group just doesn't
23 know that.

24 I'm going to get out his book as a prop in
25 just a minute and you can go down it. Every single

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 thing that happens is in his book and the
2 countermeasures. So in my own case, just meeting Tom
3 was the key to reversing it. And since then, in our
4 conversations, he's shown me the way.

5 So Tom, you know we're here as part of the
6 Semmelweis organization and I just explained that Dr.
7 Semmelweis decided that you should wash your hands in
8 between patients. He came up with the disinfectant
9 theory 158 years ago. This is the anniversary today.

10 So we're calling this National Semmelweis Day. So we
11 want clean hands in medicine and we also want to
12 disinfect the body politic. So that is why I'm going
13 to award to you right now the Semmelweis Clean Hands
14 in Medicine Award.

15 So come on up.

16 (Applause.)

17 And if you would just give us a few
18 remarks about whistleblowing, in general, and courage
19 without martyrdom.

20 MR. DEVINE: Well, this is totally a
21 surprise. Thank you very much for the appreciation.
22 It's nice to feel appreciated.

23 I'm just very pleased and excited by the
24 product of Jim Murtagh's persistence over the years.
25 I view him as someone who has just been unsinkable and

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 it makes a big difference.

2 GAP's work in terms of the integrity of
3 medical care. I became very active about 10 years
4 when I was on the Commission on Research Integrity, a
5 congressionally-chartered commission to try and do
6 just what the Semmelweis Society is up to, clean up
7 the record of medical research which was being
8 doctored in the worse sense, doctored by conflicts of
9 interest, doctored by personal ambitions, doctored by
10 plagiarism and was tarnishing one of the most
11 important areas of science in terms of its direct
12 impact on life-saving consequences.

13 We worked real hard for two years. Held
14 about a dozen public hearings all over the country.
15 Had over 30 whistleblowers who testified on fraud in
16 medical research. Developed a consensus between
17 hospitals, universities, medical schools, public
18 interest groups, whistleblowers at a reform program
19 which would expand the scope of scientific misconduct
20 to have a much more realistic umbrella beyond fraud
21 fabrication and plagiarism as examples of misconduct
22 in medical research.

23 We also had about a dozen recommendations
24 to strengthen whistleblower protections in all
25 different stops along the research trail. And the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 lesson that I learned from this is this would be a
2 struggle for lives, if not generations, in order to
3 accomplish meaningful change.

4 The outcome of our recommendations, the
5 implementation of them was not to have any
6 whistleblower protection that would strengthen and to
7 shrink the definition of scientists' misconduct,
8 instead of expanding it. This was during the Clinton
9 Administration which was supposed to be more
10 responsive to public interest concerns.

11 This kind of taught me the facts of life
12 about the entrenched tradition that medical
13 whistleblowers are challenging. I had another
14 experience with medical whistleblowers last fall,
15 however, actually last year over the course of last
16 year climaxing last fall, involving the Food and Drug
17 Administration and Dr. David Graham. He is the FDA
18 researcher who challenged the safety of Vioxx, a super
19 aspirin that cost conservatively about 50,000
20 unnecessary deaths from heart attacks among the people
21 who wanted to get rid of headaches and arthritis pain.

22 The FDA was totally supportive of this
23 drug. A month before Merck took it off the market,
24 the FDA told Dr. Graham that in our business wasting
25 the taxpayers' money continuing to study possible side

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 effects from this drug and then he was engaged in junk
2 science and he was becoming an embarrassment to the
3 Food and Drug Administration.

4 Well, Dr. Graham committed the truth and
5 survived. He not only survived, he made a life saving
6 difference that will prevent tragedies from striking
7 tens of thousands of our families over the next few
8 years. And that's the two ends of the spectrum that
9 we're talking about here.

10 Whistleblowers are people who don't accept
11 realistic expectations. They follow their hearts and
12 their values, whether it's realistic or not. And
13 because of that, whistleblowers are the pioneers of
14 change and whistleblowers are the people who change
15 the course of history.

16 It's not something that happens in one
17 juicy scandal or one great congressional hearing or
18 one dedicated Senator or public leader who adopts your
19 values. It's a commitment. And with you folks, it's
20 a commitment to your profession, not just to the
21 consequences and I can't think of any better
22 intersection to wage this fight than peer review, a
23 process which is essential for checks and balances,
24 but in our experience and at the Commission on
25 Research Integrity, was regularly distorted into being

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 as much of a false advertising shield as the FDA's
2 approval of Vioxx to assist in public health goals.

3 There are institutions and there are
4 processes that we have to have, but you're going right
5 to the heart of the matter by focusing your reform
6 efforts on this institution and so I'm sorry to be
7 tardy and I'm just very honored to have a chance to
8 participate in your forum.

9 (Applause.)

10 DR. MURTAGH: Thanks, Tom. You're on the
11 run because he's got a lot of fights. he stood up for
12 the people in Iraq and whistleblowers everywhere.

13 By the way, I've mentioned his book. I
14 really do say anybody who gets into this situation,
15 you can get it on the website, The Whistleblower's
16 Survival Guide, really does -- I mean Nixon had a book
17 commissioned about how to screw your enemies and
18 pretty much all the defense firms use it. Honestly.
19 It all comes from that one book.

20 And then Tom wrote the antidote. So
21 really, whenever you're in hardball litigation,
22 whether you call it whistleblowing or things like
23 that, that would be fine.

24 Now Tom, I don't know if you have time,
25 but we do have a dinner tonight too that we want to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 invite you too. We know that you have a lot going on.

2 Are next speaker is the President of
3 Semmelweis and we also have -- we have an award for
4 him too because taking on this group as being the
5 president, that's a pretty big deal and he's a busy
6 practitioner, running all over the country trying to
7 help, so Bill, I just want to say we all appreciate
8 you.

9 (Applause.)

10 He also gets the Clean Hands in Medicine
11 Award.

12 DR. HINNANT: Sometimes I feel I need to
13 wash my hands after dealing with this group, but truly
14 it's a great group of people. It's a great group of
15 people that are here for a great cause and I'm sorry,
16 it's the lawyer in me, I can't speak behind the podium
17 very well.

18 What I want to do in just a few brief
19 minutes that we have is number one, welcome all of you
20 as the President of the Semmelweis Society to the
21 Health Integrity Project's First Forum on Integrity in
22 Medicine.

23 Why do we need integrity in health care?
24 Why do we need integrity in medical practice? Well,
25 first off, health care now is about 17 percent of our

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 gross national product. It's the biggest industry in
2 this country. It involves the biggest chunk of money
3 that changes hands in this country. Integrity in
4 medicine benefits patients, number one, and that's why
5 most of the doctors here, we're here to try to benefit
6 patients.

7 Some of you that blew the whistle were
8 mainly trying to benefit patients. We also want to
9 benefit doctors. Doctors are at a crossroads. Time
10 was years ago when the Healthcare Quality Improvement
11 Act passed in the mid-1980s, you had doctors in one
12 corner and hospitals in another. Now that corners
13 have blurred and that's why we have sham peer reviews.

14 There is no due process because there is no forum
15 wherein an individual can get due process. Doctors
16 are not black and hospitals white. They're merged.
17 They're all in a state of gray and in that area is
18 where sham peer review occurs.

19 Finally, why do we need integrity in
20 medicine? Because it benefits our healthcare system.

21 Remember, the only place where our system is truly
22 number one is in cost. I think Ralph Bard is quoted
23 that in terms of quality, we're somewhere between Sri
24 Lanka and what's the other country, Ralph? Costa
25 Rica. But the one place where no one would question

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 that we excel is in cost.

2 And I would submit to you that one reason
3 bad faith peer review occurs and one reason our system
4 is harmed is money and my wife always said when you
5 can't figure anything out, follow the money trail and
6 through the years I've learned that she was right
7 about that. And I think that this is a prime example
8 of where we should focus our attention in looking for
9 answers to this problem. We need open dialogue. We
10 need good faith peer review. We need to pursue
11 quality, but as Semmelweis said and as we've talked
12 about a lot today, it has to involve due process,
13 clean hands and a fair forum.

14 Why does bad faith peer review occur?
15 Well, first and foremost, it's nothing more than good
16 old fashioned economic competition. It's the money
17 trail. Medicine, doctors, hospitals are all faced
18 with this crunch from third party payers. They're
19 faced with a crunch from the federal payers, CHAMPUS,
20 Medicare, Medicaid. The pot of money is just not big
21 enough.

22 And more and more people want to take a
23 little bit of the pie. What happens to a number of
24 Semmelweis members and what's happened to a number of
25 physicians around the country that we never hear from

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 is they speak up, they do a good job. They provide
2 services at a lower cost with a higher level of
3 quality. Their peers don't like this. Their peers
4 may be some of the people that are responsible for the
5 98,000 deaths that were reported by the Institute of
6 Medicine study a couple of years ago.

7 The fellow that I see, that I represent
8 and I probably have counseled between 75 and 100
9 physicians around the country in numerous
10 jurisdictions at this point are generally good
11 doctors, who have good statistics, who compare
12 favorably to their peers, but they're shoved out,
13 either labeled disruptive or labeled as being
14 problematic in some area of care.

15 What else do we see as a cause for bad
16 faith peer review? Well, there's plain old racism and
17 personal animus. I've had the distinct pleasure to
18 deal with Dr. Jim Tate who chairs the National Medical
19 Association's Committee on Clinical Quality and they
20 are a great group. It's the largest organization of
21 African-American physicians in our country and I
22 personally have been involved in cases and am involved
23 in cases wherein I believe racism was at the core of
24 actions taken against physicians.

25 I think since 9/11, not only have African-

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 American physicians been targeted, but more and more
2 physicians of Middle Eastern descent have been a
3 target. And again, it boils down to just plain old
4 fashioned meanness. I don't mean to sound like my
5 wife is a genius, but she also says all you get out of
6 a pig is a grunt. And that's what we see when we see
7 racism applied in this context and like it or not, it
8 does occur.

9 We see disagreements with hospital ad
10 (3:38:07) administration as a route cause of bad faith
11 peer review. Maybe it's how the money is spent.
12 Maybe it's how care is allocated. Maybe it's whether
13 funds are channeled into capital improvements or into
14 a clinic to serve the poor or unwed mothers or
15 prisoners. When these disagreements come up, how do
16 we get rid of the dissent bad faith peer view -- bad
17 faith peer view.

18 Finally, and what we've talked about a lot
19 today is whistle blowing. We see whistle blowing
20 concerned with direct patient care. We've talked
21 about cases where kids have been harmed through some
22 sham technique that Kevin looked for a code on.
23 However, there was no code. I guarantee the
24 practitioner who was doing it found a code, found a
25 way to get paid. Because guess what? If he couldn't

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 get paid, he wouldn't have been doing it.

2 Patient care concerns are at the heart of
3 most whistleblowers that we see in a peer view
4 setting. How do they get rid of the dissent? Bad
5 faith peer view. A second area that we see commonly
6 is fraud and abuse concerns. Kickbacks to the
7 hospitals. Kickbacks to practitioners. Kickbacks to
8 durable medical equipment makers. My father always
9 used to say if you just have the resources he could
10 put every hospital in the country into the jail. He
11 was right. He was probably 25 years ahead of his
12 time, but he was right. And it's all going on. It's
13 a dirty little secret. Everybody knows it, but nobody
14 wants to talk about it.

15 How does all this happen? Well, it
16 happens for two reasons. It happens because our own
17 regulatory agencies, JCAHO -- center for Medicare and
18 Medicaid Services, Department of Health and Human
19 Services, don't enforce their own regs adequately.
20 The fox is guarding the hen house, as Verner White
21 would say. We have got to have somebody help guard
22 the hen house for patients and for the public and for
23 healthcare quality and for the betterment of every
24 American in this country. That's one reason we're
25 here today on Capitol Hill. We need help.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 We need our Agencies to act. We need
2 Congress to look at this legislation because like it
3 or not, the qualified immunity under the Health Care
4 Quality Improvement Act is not helping. It's hurting
5 healthcare in this country. We need the dissent,
6 ladies and gentleman.

7 Tom Devine talked about whistleblowers
8 have changed our country. I would propose to you that
9 the dissent and open dialogue has been what made our
10 country what it is. We need open dialogue. HCQIA and
11 the ability to retaliate against doctors, against
12 healthcare whistleblowers is what's wrong with our
13 system today.

14 What about some of the people we've got
15 here? I've been asked to introduce some folks and
16 then I'm going to sit down.

17 First off, Ziad Akl who did a great job at
18 organizing this forum peer review, infectious disease
19 specialist from right here in the D.C. area.

20 Eric Grosch, Internist from Florida, Sham
21 Peer Review, has done a wonderful job as well helping
22 getting this forum set up, eloquent writer, wonderful
23 to read insightful as to the cause of this problem and
24 its history.

25 Kevin Kuritsky, a medical student who

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 voiced concerns as to unethical and unreasonable
2 treatment of minority patients in Atlanta, Georgia was
3 retaliated against four to five weeks before
4 graduation from medical school, was expelled.

5 Dave Shallot, VA Physician, triple Board
6 certified, rheumatology, internal medicine and
7 geriatrics if I'm not mistaken. Pointed out
8 deficiencies in our VA health system, was retaliated
9 against and has been unfortunately relegated today
10 trading on the stock market. I hope he's been more
11 successful at it than I've been.

12 Carl Shaller, neurosurgeon. Same story,
13 sham peer review. I'm sorry if I mispronounced the
14 name. Retaliated against as a neurosurgeon in
15 Colorado. Also has been helpful in organizing this
16 conference.

17 Verner Waite, what can I say about Verner
18 Waite. What's going on today is the product of an
19 idea that Verner Waite had 25 years ago. Verner has
20 done a spectacular job founding this organization. I
21 feel honored to be a part of it. I feel honored that
22 Verner is here and I think he had an idea that was
23 years above his time.

24 And Verner, as I say, deserves a pat on
25 the back from all of us as well.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Mike Wagner, trauma surgeon, double Board
2 certified. Sham peer reviewed. Fortunately, has been
3 able to obtain legal counsel and is hopefully on the
4 road to recovery and is working again. I'm glad to
5 know he's out there. If I'm ever hurt in West Texas,
6 I know where I want to go.

7 Lyle Griffith, urologist. Many, many
8 years of untarnished clinical practice in a rural
9 community in central California, brought up issues as
10 to any kickback violations, STARK issues. And
11 business issues related to his hospital system. All
12 of a sudden, despite 30-plus years of untarnished
13 practice, he's a bad doctor and is whisked off. He's
14 part of the dissent, ladies and gentlemen. He's what
15 we need.

16 He shouldn't be pushed under the rug. But
17 that's what happens, because he voices a concern and
18 that's how our society is always hurt.

19 And D.C. Amarasinghe. D.C. working out of
20 I believe Norfolk at the time another sham physician,
21 he's had a big part in setting up this conference and
22 also I admire D.C. for what he's done in terms of
23 trying to provide aid for the Sunami victims. He's a
24 native, I believe, of Sri Lanka and got a great
25 website. I think it's referenced from the Semmelweis

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 site. He's put a lot of sweat equity and money into
2 supporting the Sunami victims and he needs our support
3 too.

4 Ralph Bard, Vice President of this
5 society, excuse me -- Ralph Bard, the Vice President
6 of this organization who I can't say enough about. I
7 think Ralph is a tremendously talented individual
8 intellectually, I think he obviously was a talented
9 general surgeon and that may be why he was shammed.

10 He may have been just a little bit better
11 than his peers. Maybe he provided services a little
12 cheaper.

13 Like it or not, sometimes costs, you think
14 hospitals are interested in care being provided at a
15 low cost? Not as long as reimbursement is the way it
16 is in our country. When you do more and you get paid
17 more, there's no incentive to be efficient.

18 Ralph is a great help to me as president
19 and I think is a great help to the organization.

20 Helen Salisbury, I think, a very talented
21 obstetrician and gynecologist from South Florida, as
22 many of us know, and particularly some of the ladies
23 in the audience, as a female in gynecology, she was a
24 hot commodity. Evidently, she engendered some dislike
25 from some of her male colleagues and, despite having

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 the lowest C-section rate in South Florida, which when
2 she told me what it was, I really couldn't believe it,
3 doing a substantial job with vaginal delivery after C-
4 section. Based on one case, one case, after 19 years
5 of clinical practice, she's labeled a bad doctor, and
6 is skirted off having her privileges revoked, with no
7 way to easily gain them back.

8 Ladies and gentlemen, it's not fair. It's
9 not fair. We're here on Capitol Hill for a reason.
10 And we appreciate the year that we've been given by
11 our legislators. We hope that we can lead to
12 substantive change. But until we have the qualified
13 immunity that allows hospitals to follow a procedural
14 cookbook and pretty much get rid of anybody they want,
15 we'll no longer have that. And our health care will
16 continue to excel with cost. Quality, I don't know,
17 but cost unequivocally will be affected.

18 Thank you for your time. Enjoy the forum.

19 DR. MURTAGH: Bill, don't forget your
20 certificate. Bill, you really outdid yourself.
21 Speaking without notes. That was really amazing.

22 I'm sorry we're going to hold our
23 questions till the end. And, we are holding our
24 questions until the end. And, sorry, we are holding
25 our questions until the end. All right.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Now, we are saying that we as doctors are
2 here for patients. How would you all feel if citizens
3 formed a group to support the doctors? I'm privileged
4 to say in Atlanta, Georgia, we have a coalition, a
5 citizens group, that realized some of the problems
6 being visited on us are affecting patients.

7 And, so I want to bring my friend Ron
8 Marshall up, who has been doing such a great job at
9 the Grady Coalition in Atlanta, Georgia.

10 And Ron, of course, you deserve one of our
11 very biggest Clean Hands in Medicine awards.

12 (Applause.)

13 MR. MARSHALL: Thank you. Well, I'm here.

14 I'm here because of a lot of things, actually. I
15 don't like corruption. I'm just a good citizen. I
16 just try to do things right. I got involved in this
17 thing because last year, in my campaign, I talked
18 about corruption a lot. It got me non-elected.
19 Through the process, though, I met a lot of good
20 people. Started a lot of coalitions. Got with Jim,
21 started Grady Coalition. We followed up with a
22 coalition that was in process, but it wasn't doing
23 anything. Started getting a lot of letters from the
24 doctors. I started getting a lot of letters from the
25 nurses. I started getting a lot of letters from the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 patients. Had nobody to go to. So, I decided to
2 interview them. As I interviewed them, and
3 interviewed the doctors and the nurses, I found out
4 some discrepancies.

5 I went to the trustees, the board of
6 trustees, at Grady. They didn't allow me to speak.
7 So I had to force my way in. I literally stood up and
8 said, I'm going to say something. They would adjourn
9 the meeting. And they started walking out. I said,
10 well, you can hear me as you leave, and I would start
11 talking.

12 Well, that excelled into bigger things.
13 Because they said, well, I'm not going away. And I
14 didn't go away. And I made it my point to understand
15 that we need to do something about what's going on
16 here. As the doctors and peer review were being, as
17 you guys see it, your jobs are being jeopardized.

18 I met with JCAHO. This was the funny
19 thing. JCAHO, of course, they tried to skirt around
20 me. They'd run down this hall. I can see them turn
21 the corner looking that way and I'd come around the
22 backside. And they'd turn the corner looking that
23 way. And I finally boxed them in. We got a room.
24 Sat down with them, it took me about three days. It
25 was a long process.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 I sat down with them and they sat and told
2 me about how they do peer reviews illegally. And I
3 told them, I said, did you guys read your own
4 material? And they said, well, we don't have it with
5 us. And I asked them, I said, you've been there 14
6 years, and you don't know your own material. I said,
7 well look, I got it for you. Read through it. Told
8 them what they were telling me that everything was
9 just the opposite about how they didn't need the
10 doctors to be there. We didn't need the doctors to be
11 there when we did peer reviews. I said, I'm thinking
12 common sense. You know, common sense is not common.

13 I said, to me, due process is being
14 misused here. How can you talk about somebody, their
15 not being present? Well, we do this all the time. I
16 said, you do it all the time, uh? Now, I'm taping
17 this. And I asked them, I said now you know, I want
18 some more information from you. Of course, I never,
19 ever got any call backs.

20 Well, as a citizen group, fighting hard
21 for due process, righteousness, we've got an elected
22 official, Senator, in the State of Georgia, under a
23 142-count federal indictment, for the wrongs he was
24 doing through the hospital. He was taking hospital
25 kickbacks, up to \$10 to \$15 million, and using them

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 for his personal gain.

2 We're not going to stop. We're going to
3 continue to do this. And I think, as a group, with
4 the experience that we have doing this, we do open
5 records, we went against the ethic boards. We went,
6 the trustee, the head trustee, what's his name, Brown,
7 Robert Brown, we went up against Robert Brown, who, I
8 was told not to mess with. You know, I got
9 threatened. And, as a matter of fact, I got lawyers
10 calling my house now, sending me letters. They have
11 couriers. I have, they come to me. They threaten me.

12 And I told them, I said, well, you know, two can play
13 this game. So I threatened them. You know, I just
14 don't fall over like that. And now, of course, they
15 stopped threatening me. Now they want to cooperate.

16 So, I'm saying that because we have a
17 tolerance level that we have to exceed. If we don't
18 go pass our tolerance levels, we will always be
19 crushed. So we need, we have to keep going. We can't
20 let ourselves be threatened. We can't take
21 intimidation. We have to look at the bottom line,
22 the morality of all of this.

23 Now, in ethics board, I just had a meeting
24 with the ethics board last week. We went over to,
25 because we charged Robert Brown with violations of

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 ethics. Of course, the ethics board, they looked at
2 us and said well, there's nothing -- with all the
3 indictments that we have, we had a 250-page
4 indictment. I mean it was one of the biggest things
5 they've ever seen. Well, of course, they dismissed
6 it. So we went back and filed ethics violations
7 against the ethics board. And it was so funny because
8 they didn't know what to do. What do we do? I said
9 well, first you've got to recuse yourself and get
10 somebody else in here to look at you.

11 And so they didn't have anything to do
12 from that point, but to say doggone, we never had this
13 happen before. Well, it's a new day. There's a lot
14 of things that are going to be happening that hasn't
15 happened before and it takes all of us to do this.

16 Now we'll be glad to come to your cities
17 and set up boards of citizen coalitions. It's
18 something that needs to be done because you guys need
19 help too.

20 You always talk about doctors, a everybody
21 things well, doctors earn a lot of money. They don't
22 have any problems, leave it alone. But when you have
23 citizens backing you, you have a lot of traction. You
24 have force because you don't have to say the same
25 thing. Let us say it for you too because we can speak

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 louder, because remember, like I tell the politicians,
2 we vote. We put you in there. We can get you out.

3 We are right now started recalls on those
4 who don't do what they say and that's what we're going
5 to do. We're going to start recalling them. Pull
6 them out of there, because we put them in there. We
7 can take them out just as fast. And that's what we
8 have to start doing, exercising our power as a group
9 of citizens and taxpayers.

10 This is something that has to be done and
11 it will be done.

12 I appreciate your award, Jim, and I hope
13 that -- like I said, if we can help you guys, just
14 call us. I've been doing a lot of writing on the
15 website. I know Jim -- all night long, Jim calls me
16 at 12 o'clock, "Ron, we're going to do this tomorrow
17 at 6." I said well, Jim, can't we get some sleep
18 first?

19 (Laughter.)

20 But I thank you guys for everything.
21 Thank you.

22 (Applause.)

23 DR. MURTAGH: Do you see how lucky I am?

24 Ron, if we had somebody like you in every
25 city, now he's offering to go like ghostbusters to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 clean up your city too.

2 It's hard to imagine the breadth of what
3 he was just talking about. I don't know if you all
4 know about Sunshine Week that happened two months ago,
5 Ron started a group called Georgians for Open
6 Government or GOG. And all that week everybody could
7 say is all they wanted was open records, open
8 government, yes, this is the sinew of our democracy.
9 If you don't like it, get in the spider hole with
10 Saddam Hussein.

11 During the month after that, Ron
12 demonstrated 100 percent noncompliance with open
13 records with all the Georgia officials, more than 25
14 officials stonewalled on a matter that I'm not going
15 to get into. But it was astonishing.

16 Then every ethics committee stonewalled.
17 So now he's put in complaints against every ethics
18 committee from both counties, the state. Now he's
19 gone up the food chain and now when he said they can't
20 rule on their own ethics complaint, well, he wrote to
21 the District Attorney and said well, you also have
22 violated our open records request, so you're
23 conflicted out. Every official is conflicted out.
24 You know where we got this idea?

25 Tom, do you remember talking about using

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 the Freedom of Information Act at our last -- and I
2 hadn't used it very much before then. Well, we
3 decided to do that and the internet is a very good way
4 of doing these things because we can keep up with
5 things very fast.

6 I was starting to say at one point there
7 are there national cases right now. We talked about
8 the Poliner case where the citizens of Dallas are
9 going to be paying \$366 million or whatever it is, you
10 know. How can you not say the public is not going to
11 -- the public is damaged. You can't have too many
12 \$366 million verdicts. I mean they talk about the
13 malpractice crisis. That's like 300 malpractice
14 awards right there. It's hard to get the cases to
15 trial, but what you do it would break the bank.

16 Now we're not here advocating jumbo
17 lawsuits. We're advocating people follow the rules
18 and let's fix the system so we don't go broke with
19 these lawsuits. So that's an important distinction
20 because sometimes you go to your legislation and say
21 gee, we can't support this. We don't want to pay this
22 much money. Neither do we.

23 We want to fix the system. Okay, Poliner.
24 There's absolutely no and he took a lot of courage
25 talking to his wife. There are some wives in the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 audience like Judy, I hope we have a chance to
2 recognize. Some of the whistleblowers have really had
3 strong spouses standing with them and they need to be
4 recognized. So to make sure that yes, and the male
5 spouses too.

6 (Applause.)

7 That really is the determinant of victory,
8 whether your spouse is going to stay with you and
9 that's a very unusual thing. Okay, the second case we
10 were saying is Humana and HCA. I had the privilege of
11 talking to Linda Peeno. She couldn't be here because
12 of illness. I also talked to James Alderson who won
13 the \$2 billion from HCA. Now that's a guy who walked
14 around for 8 years looking for a lawyer and everybody
15 told him he didn't have a case. Until he got one and
16 won \$2 billion.

17 So if somebody tells you that you don't
18 have a case, I wouldn't necessarily believe him. I
19 would just keep going. He's the nicest guy in the
20 world, but he's an example of judicial restraint. He
21 really, even after winning all this money, he's still
22 afraid -- well, he has to be afraid. So he wasn't
23 sure if he could talk or not, but he certainly does
24 support us.

25 So we got Dallas, we got Humana and HCA

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 and you know who owns those companies, by the way.
2 We're completely bipartisan, but I do have to make one
3 example, exception. If your family has ripped off the
4 public for more than \$2 billion, we're not going to
5 give you our support.

6 Unfortunately, they punish the family that
7 ripped off that money by making one of the members of
8 the family the leader of the U.S. Senate, Senator Bill
9 Frist. So unfortunately, we'd like to work with
10 everyone except the Frist family is the worst violator
11 and I just have to call it like it is. When we talk
12 about bad faith peer review, they own 45 percent of
13 all for-profit hospitals, so why did Willy Sutton rob
14 banks? That's where all the money was.

15 Okay, and then the third case were these
16 huge public problems. Senator Charles Walker, we have
17 a group of whistleblower citizens and when we say
18 whistleblower, Tom Devine had a hearing where Serpico
19 came and said that he didn't really like being called
20 a whistleblower because it has a bad connotation. He
21 would rather be called a lamplighter because when you
22 think about it, you know, Paul Revere asked for the
23 lamps to be lit so he could go and warn everybody.
24 And how could anybody say that being a whistleblower
25 isn't patriotic? He was the ultimate whistleblower,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 riding here and there that the Redcoats are coming.
2 That's the kind of thing we're trying to do.

3 So I also like to use another name for
4 whistleblower which is called a witness. All right?
5 If you're involved in a trial and you're a witness and
6 they retaliate against you, most people aren't going
7 to have any -- wouldn't like that at all. And in the
8 Senator Charles Walker case, there's been maybe 30
9 witnesses retaliated against, some very severely, some
10 with bodily injury. And Kevin told me about other
11 doctors that he fears may have been harmed. So we're
12 up against people who might not do anything. So those
13 are the three cases when you're talking to your
14 officials, how can anybody deny that the public is at
15 risk?

16 Now I'm going to ask our president, Bill
17 Hinnant to say another word here. I won't give you
18 another Clean Hands in Medicine Award though.

19 DR. HINNANT: I had to make one
20 correction. I didn't recognize John Payne. He's a
21 neurosurgeon practicing in the Dallas-Fort Worth area,
22 sham peer reviewed there. He is here. We're glad to
23 have him. I left him out inadvertently.

24 (Applause.)

25 I think too, the cases that Jim mentions

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 are three big cases. The important cases that far
2 outshine the three big cases are all the cases that
3 never get any place. Remember, cases that are won
4 usually involve judicial restraint and you never hear
5 about them.

6 DR. MURTAGH: I hope no one is going to
7 give him, Bill, a hard time after he did that
8 wonderful review of everyone's case by memory, so
9 anyway. And again, the unknown case, who knows when
10 it's going to become the big case. James Alderson was
11 told he had a nothing case for eight years. Don't
12 believe it.

13 I loved Winston Churchill when he said
14 "never give in. Never, never, never, never give in,
15 except to convictions of honor." He wrote that in
16 grade school, by the way.

17 Okay, here's somebody who would never give
18 in.

19 George, come on up. George Holmes is my
20 new running buddy from the AAUP. George, just tell us
21 a little bit about Doctors Against Tenure Abuse.

22 DR. HOLMES: Thank you very much.

23 DR. MURTAGH: I've just known George for a
24 short period of time. I met him through Carol
25 Bernstein, through Tom Devine. So when you start

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 these networks, you've got a big group to run with.

2 DR. HOLMES: Thank you. Well, the
3 startling thing about tenure abuse, it's a very
4 serious issue and it fits in with everything else.
5 Like I said, I'm the President of the District of
6 Columbia AAUP Chapter, American Association of
7 University Professors. This is tied in with four to
8 five thousand around the nation. These are professors
9 at medical schools and things.

10 We're a very powerful organization and if
11 I may, one of the things I say is that no university
12 wants to be put on the censorship list and we are very
13 powerful and I say they're heroes because we're
14 academicians, you see. And Tom Devine, I respect him
15 for what he's talking about.

16 One of the things we say about the DATA,
17 Doctors Against Tenure Abuse, it's the same thing
18 here. The whistleblowers, we in academia talk about a
19 person's violation of his academic freedom or due
20 process, some rules or procedures have been violated
21 or some arbitrary and capricious action has been taken
22 against a faculty member, well, that's the same thing,
23 you see.

24 What they have is a sham peer review.
25 See? If we're talking about due process, due process

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 gives me a chance to do that. I always say we're not
2 saying the doctor is right or wrong, or indifferent,
3 but give me a chance to come before a peer review, not
4 someone that you selected, okay? That's all we're
5 talking about.

6 It's the same process and that's why I say
7 becoming a member of the Semmelweis, all we do is
8 strengthen you and strengthen all the things that we
9 were talking about together. That's what I say is
10 that all the societies, they want to be a part of the
11 Semmelweis, if I may, because we give hope to you and
12 you give hope to us. And I say Dr. Levine, I keep on
13 giving him high respect for talking about the
14 whistleblower acts. And that's why we were saying
15 this in Senator Mackie's office about the
16 whistleblower in Massachusetts, right? He is saying
17 the same thing we're saying here. And that's why I
18 say it's so important for us to be a part. And like
19 Kevin here, they told him to write a report. And now
20 that they don't like his report, see, because Coca
21 Cola owns Emory University. That's what it's all
22 about. They don't want to put the bad publicity out
23 there, you see. So therefore they won't give this man
24 his degree, his medical degree and that's what we're
25 talking about.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 We're not afraid of the corporation.
2 We're not afraid. We're academicians, you see. And
3 that's why I say we're going to meet in June, the 9th,
4 10th, 11th and 12th. And Dr. Carol Bernstein -- you
5 know Dr. Carol Bernstein, she's a strong warrior from
6 Yuma, Arizona. She runs that whole state down there.
7 You can understand.

8 Dr. Carol Bernstein and Dr. Murtagh, we
9 are on this committee on Doctors Against Tenure Abuse.

10 And we're going to meet now with the AAUP. And we're
11 going to take the issues there and bring them back to
12 report to see how it all fits in and tell them the
13 problems. See, because we're bringing them into the
14 fold, see.

15 I also sent, wrote a letter to Colin
16 Powell. Some of you saw the letter I wrote to Colin
17 Powell and I also wrote a letter to all the people in
18 the District of Columbia to join. But I also sent
19 that same letter to the president of AAUP and also to
20 the general secretary and the president of state
21 conference. I sent it to them showing them how they
22 have to see what we're talking about.

23 One thing I must say about Colin Powell is
24 that I wrote him that letter, certainly not knowing --
25 he didn't show up. But I sent the letter on the 18th,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 last Friday. I got the card back that he received
2 it. I know Colin Powell works in the background.
3 Colin Powell was on the board of trustees of Howard
4 University, chair of the Academicians Committee. I
5 know the man very well. I know what he does as a
6 person. And I know his footprints. He sent that card
7 back to me indicating to me that he's behind us. I
8 mean he's not here, but just believe what I'm talking
9 about, okay? He's a very strong person for
10 righteousness. I just want to thank him for being a
11 part. I just am proud to be a part of this group
12 because this would help me out at Howard University
13 and universities across the nation. It shows that
14 we're all talking about the same thing and I'm proud
15 to be a part of the Semmelweis Society.

16 (Applause.)

17 DR. MURTAGH: Don't forget this now.
18 Okay.

19 DR. HINNANT: I need to recognize one more
20 member, John Raviola, obstetrician/gynecologist who
21 voiced concerns about obstetrical care, particularly
22 the work up of women in active labor who presented to
23 emergency rooms in a rural area; when the emergency
24 doctors refused to screen these ladies, and at least
25 one case, one young baby died. When he voiced his

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 concerns about this he was summarily dismissed and is
2 fighting to be reinstated as we speak. I hope I
3 didn't miss anyone else.

4 DR. MURTAGH: I'm sure glad that I
5 assigned that task to Bill, so that I wouldn't get
6 caught missing anyone.

7 You know, with the Terri Schiavo case, at
8 least Congress said that every patient has a sacred
9 life. Can you imagine what it would be like if you
10 were in the room 20 years ago trying to decide to put
11 a feeding tube into a patient knowing that that would
12 commit your company to multi-million dollars. And
13 suppose further, someone from big medicine was in the
14 room saying you know, you've already put in 13 of
15 these this year. I think that's unprofessional. All
16 right?

17 Now the hospitals are reviewing their
18 economic competitors. Of course, that's not going to
19 influence their decisions at all. Of course not.
20 They can be just, even if they lose millions of
21 dollars from their decisions.

22 So what we're asking for is something very
23 simple and by the way, we have a one-page handout
24 about what we think the fix could be and we went
25 around handing it out. I understand there's some LAs

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 here. It's always important to tell Congress not what
2 the problem is, but what is the solution.

3 To me, the biggest part of the solution is
4 to enforce what already is the law. At JCAHO, and
5 we're going to talk about that in a few minutes. It's
6 not enforcing its own regulations. And if it won't
7 enforce it's own regulations, HHS should simply
8 decouple JCAHO from anything.

9 There's a couple of very minor solutions.
10 Doctors are not asking for special rights. They
11 asking for the same rights as anyone else. There are
12 professional reviews for lawyers, for soldiers, for
13 policemen, for airplane pilots, even for congressional
14 aides, I'm sure.

15 Now if you were told your head was going
16 to be chopped off if you told your Congressman
17 something he didn't want to hear, well, maybe you can
18 still say it, but it might influence your decision and
19 once your head is chopped off, you're not there for
20 the next time.

21 So right now, we'd like to think our
22 doctors would be heroic enough to make a decision to
23 put down a feeding tube based only on ethics and what
24 the patient wants, but how many times can you put your
25 career on the line and if you move all Marcus Welby-

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 type doctors out of medicine, you're going to end up
2 with Darth Vader medicine or assembly-line medicine.

3 My own university president said the
4 Hippocratic Oath is dead. And he meant it. What he
5 meant was that now doctors are technicians who report
6 to their managers and do what they're told. I don't
7 know about you. I don't want a doctor like that. I
8 want a doctor who works for me, not someone else.

9 Now I'm glad you spoke out just then
10 because Verner, we're probably not going to have a
11 chance to have you talk. Other people have said it.
12 I want to say it too. How much we appreciate you
13 forming this society from your own money. So many
14 years ago he won an award and he used that to form the
15 Semmelweis Society. I can remember reading your
16 article in UO and calling you that day in the middle
17 of my case. My lawyers wouldn't even look at peer
18 review aspects and immediately he was faxing things
19 off. I went and visited him in his home in California
20 recently and his wife said that's the way it's been
21 for years and years and years. So you're lucky to
22 have her strong support too, after all that time. But
23 you personally put yourself on the line many, many
24 times. So you don't need our clean hands in medicine
25 aware, I'm sure, but thank you so much. Come on up.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 (Applause.)

2 DR. WAITE: I don't want to come up, but
3 Lyle Griffith and his lawyer, Kevin Mirch, can tell us
4 something about why do hospitals keep doing this? Is
5 the government subsidizing them and gets paid as
6 outlier reimbursements? How does this continue to
7 happen? The hospital is not guilty, four or five
8 doctors are, but the hospital pays the whole damn
9 mill. Is there some aspect --

10 DR. MURTAGH: Verner, I'm going to take
11 care of his. I'm going to take care of this. I think
12 it's pretty easy and we've identified it. There's a
13 couple of elements: money and arrogance. Actually,
14 good faith would lead to better profits, but the
15 arrogance factor gets in the way. And somebody who
16 tries to cut a corner to cover up a little problem
17 makes a bigger problem. In my own case, it started
18 with a very small thing and now we're dealing with
19 indictments of this the state's top people because
20 they just continued to leverage it up, not wanting to
21 admit a mistake.

22 It's a bit like Vietnam. We got into
23 Vietnam and then we made a bigger problem because no
24 one wanted to admit that a smaller problem had
25 existed.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 So there's some human nature in there, but
2 knowing that human nature tends towards corruption
3 means that we should go along with our founding
4 fathers.

5 It's funny, we need committees nowadays to
6 support our Constitution. I'm not sure our
7 Constitution would pass today because many of the
8 guarantees are really controversial now. But I think
9 in an age of terror we need due process more, not less
10 because if you're looking a terrorist and not you're
11 not sure of the result of a tribunal, the wrong guys
12 are going to be put away which, unfortunately, happens
13 in Guantanamo and so that means the terrorists get
14 away. So due process helps you get tough on crime,
15 get tough on bad practices in medicine. If you know
16 that result, you have to test it through real process
17 and you know, the why question is the big question
18 you're asking and that's what we've all been answering
19 here today and we'll debate it some more when time is
20 over, but right now we're nearing the end and I would
21 like to recognize James Tate, who has come all the way
22 from New Mexico -- from Las Vegas -- with a very
23 important issue regarding diversity in peer review.

24 So thanks for coming.

25 (Applause.)

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 And again, we'd like to award you again,
2 one of our Semmelweis Clean Hands in Medicine Awards.

3 DR. TATE: Thank you. I am going to try
4 to be as brief as possible because I know the hour is
5 getting late.

6 I'm Jim Tate. What I have to share with
7 you is a little bit complicated. I am the chair of
8 the Council on Clinical Practices of the National
9 Medical Association and we have been working for
10 probably the last five years trying to deal with the
11 issue of the attack on black physicians. And the
12 reason for this is that do blacks come under attack
13 more often than others? Probably so. We don't have
14 any hard statistics, but it's probably true.

15 Anyway, as I said, we have been dealing
16 with this for about six years.

17 I'm also the president of the West Group
18 Medical Society which is the local branch of the NMA
19 or at least it was as of three hours ago. And we've
20 sort of been trying to get to the leadership of the
21 national organization to focus on this as a major
22 problem and it's something you need to move on. We've
23 not been successful, so the council has done things on
24 their own. This morning, I got a call from the
25 president of the organization and the chairman of the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 board which is unheard of. They were a little upset
2 and I'm not giving away any secrets. They were a
3 little upset about the press conference and a
4 statement that was released yesterday in Las Vegas,
5 which I'll give you a copy of for your records.

6 What it talks about is a number of
7 physicians, black physicians who come under attack in
8 the Las Vegas area. But this is not a local area
9 phenomenon. This is a national phenomenon, because
10 one of the people we're here to talk about -- that's
11 our local list -- one of the people we're here to talk
12 about is Dr. Harold Martin. Dr. Harold Martin is a --
13 I hope you all can hear me -- is a black physician in
14 Albany, Georgia. Dr. Martin is a very well-trained
15 surgeon. He's board certified. Has been practicing
16 for almost 30 years in the civilian and military life.
17 Never had a malpractice suit in his entire career.

18 Now for everybody -- those of you who are
19 surgically inclined and to make a statement like that,
20 that he hadn't had a malpractice suit, we say it's
21 akin to walking on water at high tide in a hurricane.

22 (Laughter.)

23 Because that is really almost unheard of.
24 I'm a trauma surgeon and a critical care specialist.
25 And we're sued so much you wouldn't believe. As you

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 know, Grandma comes in after getting run over by an
2 18-wheeler three times and you're supposed to save her
3 and it doesn't work that way.

4 Anyway, Dr. Martin had his privileges
5 revoked by a hospital called Phoebe Putney in Albany
6 which is a very strange name for a hospital, but I
7 won't get into that. And the person who did the
8 review is the guy who works for an outfit called
9 Greely Company. The Greely Company is basically a
10 company that does reviews for hospitals only, not
11 doctors and always says the doctor was at fault.
12 Okay? So when you go to the Greely Company, they say
13 you're guilty, don't even worry about it.

14 We subsequently had Dr. Claude Organ and I
15 always tease Claude. I tell Claude, if you are not
16 God, then you sit at the right hand of God, at least
17 in terms of surgeons. Many of the surgeons here know
18 who Claude Organ is. He was the past president of the
19 American College of Surgeons and he's also the past
20 chairman of the American Board of Surgeons which any
21 of you who are board certified know that's the new --
22 all of you who are board certified know that's the
23 group who says you are board certified. And he was
24 the chair.

25 Dr. Clive Callander is the Chief of

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Surgery at Howard University here in Washington, D.C.

2 Dr. Orlando Curtin is Chief of Trauma at Hartford
3 Hospital and was also subsequently reviewed by Lynn
4 Weaver who is Chief of Morehouse and Eddy Hoover, who
5 used to be Chief at SUNY. All of them came to the
6 same conclusion, that the peer review process did not
7 work. They had taken away privileges with no due
8 process and the case reviews were so bad that indeed
9 the guy who did the review ought to be subject to
10 disciplinary action.

11 Still, Putney hasn't moved on this. So
12 one of the things that we are doing is trying to bring
13 this to national attention so that the hospital now
14 begins to feel the heat. Because I will tell you from
15 my own experience and let's make it very clear that
16 the beast can come after me, he would. The only
17 reason he doesn't is because I'm too, you know, tough.

18 And I don't mean that in the sense of you know,
19 duking it out.

20 I always tell our doctors, never hide in a
21 tall grass. The beast knows you're there. You do
22 better and turn around and face the beast. Raise all
23 the hell you can because now the beast is wondering do
24 I really want this whipping before I eat. Okay?

25 (Laughter.)

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 And so at least you give yourself time to
2 back them up off of you for a minute, okay? I know
3 again that the hour is late and I don't want to take
4 any more time, but that's the major case I'm talking
5 about and I think that is the way you stop sham peer
6 review. As soon as they say something to you, you
7 raise all kinds of hell. And then they've got to
8 think about it.

9 Do I really want to do that? Most time
10 they're going to say, no, I'll go get the fool who is
11 hiding in the tall grass.

12 (Laughter and applause.)

13 Thank you.

14 DR. MURTAGH: Thank you so much. You
15 know, that is a great thought. I'm going to have --
16 I'm going to be thinking of that one, the fools in the
17 tall grass. That's wonderful.

18 You know, I wish we had time to hear from
19 every person in this room. Every person has so much
20 to say. Are there any legislative assistants still
21 here? Any legislative assistants? I know some came
22 in and out and just for the record, I'm going to say
23 thank you to them. We're going to send votes of
24 thanks to them.

25 Again, we're very happy. I talked at

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 length with "60 Minutes" this morning. They're going
2 to be reviewing this transcript. I know that Bill
3 talked to Time Magazine. When you say about getting
4 this on the record, this transcript we expect to be
5 the first step in really getting this issue on the
6 record. And I hope every person in this room feels
7 that they contributed to that success by coming here
8 today. The effort to get around a Congress -- some
9 Congress office felt like they got three-fourths of
10 visits. I mean we really have gotten the issue out.
11 I have to thank you all.

12 There's one little bit of business that I
13 have to do. You may know that we have committees on
14 different aspects of bad faith peer review. I'm the
15 chair with a couple of other folks on Doctors Against
16 Psychiatric Abuse, or DAPA. In executive committee,
17 we have found that psychiatry is often abused and have
18 adopted our report which is going to be made part of
19 this transcript. We are going to the American
20 Psychiatric Association next week with that report and
21 the backing, I hope, of the unanimous Semmelweis group
22 that we do not like this idea.

23 Now George Holmes is the head of Doctors
24 Against Tenure Abuse or DATA. And George and I and
25 Carol Bernstein are going to approach the AAUP. John

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 has written a wonderful report about JCAHO abuse,
2 together with a lot of the work that Ron has done, and
3 we have targeted Mr. Bressler. And we talked to
4 Congressman Stark and many of the other Congressman
5 about one of the big problems is that JCAHO refuses,
6 absolutely refuses to enforce its own regulations. In
7 fact, I took the letter you gave me, Dr. Waite, that
8 you wrote 10 years ago to Mr. Bressler and we asked
9 him when is he going to answer this letter? And so I
10 wish we had more time to talk about that today.

11 I think maybe we almost need a committee
12 about spouses, because Judy, you wrote such a
13 wonderful letter. I'm sorry we don't have time to go
14 into it today, but everyone can read it. And that's
15 the most important thing. There's no way we could put
16 everything in a verbal record today, but Ziad has put
17 together what I think is the definitive booklet now
18 that we're going to append. And I would like a show
19 of hands that all in favor of appending Ziad's
20 document say aye.

21 (Ayes.)

22 By unanimous acclaim, we've decided to
23 adopt the findings in Ziad's report and that will be
24 as if it were just part of this -- and actually, I
25 think most people in this room have reviewed it. Ziad

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 is the chairman of the Doctors Against State Board
2 Abuse.

3 So you see, we have many different -- it's
4 the elephant in the room. All right? One person
5 feels the trunk and says well, bad faith peer review
6 feels a lot like tenure abuse. Another part gets the
7 rump. Well, there are many parts to this elephant and
8 even though it's the same pattern, we break it down
9 into committees and go to the different agencies
10 involved. It's all part of the same pattern. It's
11 all of the same bird or the elephant. I better not
12 mix too many metaphors.

13 Now if there is another part of the peer
14 review that we haven't formed a committee on, let us
15 know, volunteer. Write up a report. we're behind
16 you. We got a big writing team.

17 Kevin is in charge of Doctors Against
18 Student Abuse. So you see, we have very nice
19 acronyms: DAPA, DATA, DASA, very easy to do, just
20 like George says, For Open Government, FOG; then we
21 have Americans or AOG. And Doctors for Open
22 Government, DFOG. Patterns, I like them.

23 Okay, so that was a little bit of the
24 business I wanted to do and we've done very wonderful.

25 Now D.C. has put together a wonderful

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 benefit, a Sunami Benefit Dinner tonight that I hope
2 everyone will go to and it's not too far away. D.C.,
3 will you tell us where it is?

4 DR. AMARASINGHE: Yes. It's at 3224 16th
5 Street.

6 DR. MURTAGH: 3224 16th Street which is
7 very close to the White House.

8 DR. AMARASINGHE: It's called Family
9 Preparation for World Peace and Unification, North
10 American Headquarters.

11 DR. MURTAGH: D.C., why don't you come on
12 up and tell us a little bit about this. A lot of our
13 doctors have been involved in Sunami relief and other
14 doctors have been involved in other types of mission
15 work which is a very good thing for our organization.

16 I myself am part of the Flying Doctors and we go on
17 relief missions to Vietnam and places like that.

18 D.C., tell us about this.

19 DR. AMARSINGHE: I have a CD. I'm going
20 to have a slide show there when you come there. Sri
21 Lanka is the island south of India. We lost 50,000.
22 The worst country affected, number of deaths per
23 capita population, you know. It has a population of
24 17 million. We lost 50,000 people.

25 So anyway, I set up at between 5 and 7, so

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 I need to rush and go there. Okay.

2 If anyone doesn't have a map, if you're
3 coming --

4 DR. MURTAGH: I hope everybody here is
5 going to come because it's actually much cheaper than
6 most of the dinners we would go to and it's a good
7 chance for us to sit around and relax. We came from a
8 long distance and I don't know about you, but I'm kind
9 of tired. I want to relax at this point.

10 Now I told you all we were holding
11 questions. I hope I wasn't impolite. At this point,
12 we're going to take some questions. And in fact,
13 Bill, why don't you come on up and you can be part of
14 --

15 DR. HINNANT: Can we go off the record?

16 DR. MURTAGH: Now does somebody have a
17 question they want to ask on the record and then we're
18 going to go off the record?

19 Yes, go ahead, I'm so sorry.

20 DR. PAYNE: It wasn't a question. Bill
21 was mentioning the Institute of Medicine study.

22 DR. MURTAGH: Would you come up to the
23 microphone because frankly, they can't hear you, John,
24 from there. We're just asking our stenographer how
25 did we do today as far as you're -- good. Okay.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 How did our videotape go so far? Good.
2 Okay, all systems are good.

3 DR. PAYNE: Well, the points made about
4 peer review as how it affects patient care, it affects
5 it in many different aspects and Bill was mentioning
6 the internal -- the Institute of Medicine study which
7 indicates even though HCQIA was passed in 1986,
8 there's a lot of good evidence that really hasn't
9 achieved what it was supposed to do and I was going to
10 mention that in USA Today, on the front page, it
11 basically stated that the complications of problems in
12 hospitals haven't really changed much, even though the
13 Institute of Medicine Study came out a couple of years
14 ago. There's been a big movement to improve things,
15 but each individual hospital is different.

16 So really at this point in time, we can
17 see that there haven't been a lot of improvements, at
18 a lot of hospitals for a lot of different reasons.
19 The thing with peer review, I think we've made a lot
20 of good points, but I also want to make a basic study,
21 basic point is how can you really have improvement in
22 hospitals without accountability? Hospitals, my view,
23 are not democratic institutions. I'm not certain what
24 they are. They're a place where you operate. There
25 are individual personalities, economic interests are

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 in a flux and I think economics have really changed
2 things.

3 The politicians and the public has to
4 understand that you can't really have quality
5 improvement without open conferences and
6 accountability. And that's so critical. But I just
7 wanted to mention, it was interesting that for all the
8 publicity, hospitals, a lot of hospitals are having a
9 lot of problems. It was in USA Today.

10 Let me see, what else do I want to say?
11 I'll give you one other example. We were talking
12 about some very vivid cases of peer review against
13 individuals like Poliner, but look at the -- let's
14 look at the other side of the coin. Let's look at the
15 tenant-hospital situation in Reading. Over two years
16 of over 100 inappropriate cabbages (4:30:44), no
17 doctor came forward and reported that to any
18 meaningful or any board to change that.

19 Now why didn't they report it? Were they
20 just scared? You know some doctors knew there was a
21 problem. Were they fearful of retribution? Finally,
22 after two years, a couple of patients reported it.
23 There was no peer review action to improve that
24 because the administrator and some of the surgeons
25 were in collusion. There is a vivid example of what

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 happens, what we're talking about when peer review
2 isn't working properly and I wanted to mention that.
3 We always talk about the individuals being hurt, but
4 let's talk about a very serious issue where the
5 doctors didn't have the courage to whistleblow and
6 many patients were hurt.

7 Thank you.

8 (Applause.)

9 DR. MURTAGH: Those were really excellent
10 points. Thanks for making them very much. Okay, now
11 we're going to go off the record n just a few minutes.

12 Does anybody else want to make an -- on
13 the record, I would like to say that all information,
14 now the world's best source about bad faith peer
15 review is www.semmelweis.org.

16 We're going to find out where Tom got this
17 thing published and we'll try to be the peer review
18 survival guide or something like that.

19 At this point I'm going to say the
20 official part of this meeting is closed. So we're off
21 the record.

22 Thank you very much.

23 (Applause.)

24 (Whereupon, at 4:32 p.m., the meeting was
25 adjourned.)

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701