

1 REPORTER'S RECORD  
2 VOLUME 4 of 5 VOLUMES  
3 TRIAL COURT CAUSE NO. 5612

4  
5 THE STATE OF TEXAS ) IN THE DISTRICT COURT  
6  
7 VS. ) ANDREWS COUNTY, TEXAS  
8  
9  
10 ANNE MARIE MITCHELL ) 109TH JUDICIAL DISTRICT

11  
12 \*\*\*\*\*  
13  
14 TRANSCRIPT OF PROCEEDINGS  
15  
16 \*\*\*\*\*

17  
18 On the 11th day of February, 2010, the  
19 following proceedings came on to be heard in the  
20 above-entitled and numbered cause before the Honorable  
21 James L. Rex, Judge Presiding, held in Andrews, Andrews  
22 County, Texas:  
23 Proceedings reported by computerized  
24 stenotype machine.  
25

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16 Voir

17	<u>WITNESSES</u>		<u>Direct</u>	<u>Cross</u>	<u>Dire</u>	<u>Volume</u>
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1 APPEARANCES:

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4  
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22 CHRONOLOGICAL INDEX  
23 VOLUME 4 - PROCEEDINGS OF FEBRUARY 10, 2010

24 Voir

24	<u>DEFENDANT'S WITNESSES</u>	<u>Direct</u>	<u>Cross</u>	<u>Dire</u>	<u>Volume</u>
25	Sean Kevin Roden, M.D.	4	7		4

1 February 10, 2010

2 9:03 a.m.

3 (JURY PRESENT)

4 THE COURT: Welcome back, ladies and

09:03AM 5 gentlemen.

6 Call your next witness, Mr. Cook.

7 MR. CARNEY: Your Honor, we'd call

8 Dr. Roden.

9 THE COURT: You haven't been sworn?

09:03AM 10 THE WITNESS: No, I have not.

11 (WITNESS SWORN)

12 THE COURT: Have a seat right here.

13

14 SEAN KEVIN RODEN, M.D.,

09:03AM 15 having been first duly sworn, testified as follows:

16 DIRECT EXAMINATION

17 BY MR. CARNEY:

18 Q. Good morning.

19 A. Morning.

09:03AM 20 Q. Would you tell the jury what your name is

21 please.

22 A. Yes. My name is Sean Kevin Roden.

23 Q. And where are you from, Dr. Roden?

24 A. I'm from Midland, Texas.

09:04AM 25 Q. Can you tell us a little bit about your

1 background please.  
 2 **A. Yes. I graduated from University of Texas in**  
 3 **Austin with a degree in exercise physiology. I then**  
 4 **graduated from University of Texas Permian Basin with a**  
 5 **master's in genetics.**

09:04AM

6 **I went to medical school at University of**  
 7 **Texas Medical Branch in Galveston where I got my**  
 8 **doctorate. I got a Scott and White residency and**  
 9 **internship in emergency medicine in Temple, Texas.**

09:04AM

10 **I then was in private practice in Midland**  
 11 **at Midland Memorial Hospital for approximately three to**  
 12 **four years, at which time I left, was accepted to the**  
 13 **space program as a flight surgeon.**

09:04AM

14 **I did a master's of public health at**  
 15 **University of Texas Medical Branch and an aerospace**  
 16 **fellowship with NASA and University of Texas Medical**  
 17 **Branch. I then was a NASA flight surgeon for**  
 18 **eight years.**

09:05AM

19 **I have recently left the government, in**  
 20 **private practice with a group out of Austin practicing**  
 21 **in College Station in Bryan, Texas, with St. Joseph's**  
 22 **Hospital in emergency services partnership.**

09:05AM

23 **I'm a board certified emergency physician**  
 24 **and a fellow of the American College of Emergency**  
 25 **Physicians.**

1 **Q. So I guess when someone says you're no rocket**  
 2 **scientist, you actually are?**

09:05AM

3 **A. Absolutely.**

4 **Q. Can you tell me please did you have the**  
 5 **opportunity to review five separate charts on five**  
 6 **different individuals that were treated at the Winkler**  
 7 **County Memorial Hospital by Dr. Arafiles?**

09:05AM

8 **A. Yes, I was asked to review five charts on five**  
 9 **different patients.**

09:05AM

10 **Q. And did you do that?**

11 **A. Yes, I did.**

12 **Q. And did you examine them with an eye towards**  
 13 **their care?**

09:05AM

14 **A. Yes, I did.**

15 **Q. And can you tell us whether or not you formed**  
 16 **an opinion as to whether or not the care given to each**  
 17 **one of those individuals met the minimum standards of**  
 18 **care?**

09:06AM

19 **A. Yes. In reviewing the five cases, I had some**  
 20 **concerns that the standard of care was not met.**

21 **Q. So is it your opinion that the standard of care**  
 22 **in all five of those cases was substandard?**

23 **A. Yes, that is correct.**

24 **Q. And not only was the medical care substandard,**  
 25 **did they rise to the level that there was patient**

09:06AM

1 safety -- excuse me, patient care concerns of all five  
 2 of those patients?

09:06AM

3 **A. In all five cases, after reviewing what was**  
 4 **found in the documents, I would find that there would be**  
 5 **some concerns that at least it would need to be reviewed**  
 6 **or would bring some questions into the standard of care.**

7 **Q. Thank you, Dr. Roden.**

8 **MR. CARNEY: I'll pass the witness.**

09:06AM

9  
 10 **CROSS-EXAMINATION**

11 **BY MR. TIDWELL:**

12 **Q. Good morning, Sean.**

13 **A. Good morning.**

14 **Q. It's been a long time.**

09:06AM

15 **A. Yes, it has. Good to see you.**

16 **Q. You and I have known each other for a long,**  
 17 **long time, haven't we?**

18 **A. Absolutely, yes, sir.**

09:06AM

19 **Q. Okay. You've been a governmental employee?**

20 **A. Yes, sir.**

21 **Q. And you understand that governmental employees**  
 22 **are public servants?**

23 **A. Absolutely, yes, sir.**

09:06AM

24 **Q. And as a public servant, should you allow a**  
 25 **decision as a public servant to be based on any personal**

1 animosity or personal vendetta?

2 **A. No.**

09:07AM

3 **Q. And if a governmental employee were to make a**  
 4 **decision based on personal vendetta, are they acting as**  
 5 **a governmental employee anymore?**

6 **A. No, they are not.**

7 **Q. Okay. Thank you very much, Dr. Roden. It's**  
 8 **good to see you.**

9 **A. Good to see you.**

09:07AM

10 **THE COURT: Mr. Carney?**

11 **MR. CARNEY: Nothing further, Your Honor.**

12 **THE COURT: You can step down. Thank you.**

13 **THE WITNESS: Sure.**

14 **THE COURT: May this witness be excused?**

09:07AM

15 **MR. TIDWELL: Yes, Your Honor.**

16 **THE COURT: Okay. You're free to go.**

17 **Call your next witness please.**

18 **MR. COOK: Your Honor, ladies and**

19 **gentlemen of the jury, the defense rests.**

09:07AM

20 **(DEFENDANT RESTS)**

21 **THE COURT: Rebuttal, Mr. Tidwell?**

22 **MR. TIDWELL: The State has no rebuttal,**

23 **Your Honor.**

24 **THE COURT: Close?**

09:07AM

25 **MR. TIDWELL: Close.**

1 THE COURT: Close?  
2 MR. COOK: Your Honor, the defense would  
3 close.

4 (EVIDENCE CLOSED)

09:07AM 5 THE COURT: Both sides have closed. That  
6 means you've heard all the evidence that you will hear  
7 in deciding the case.

8 Would the attorneys approach please.

9 (AT BENCH, OFF THE RECORD)

09:09AM 10 THE COURT: We have a few legal matters  
11 that we need to take care of. We worked on that some  
12 last night. But frankly the court was a little bit  
13 surprised by everybody closing right now. So I'm --  
14 we're going to be in recess for one hour so we can get  
09:09AM 15 those things taken care of.

16 You're free to go and do whatever you want  
17 to do. If you want to stay there, I'll have somebody go  
18 get you some doughnuts and if you just want to stay in  
19 the jury room and enjoy the warmth. But you're free to

09:09AM 20 go, move outside the jury room. Keep in mind the  
21 instructions I gave you earlier.

22 And if you'll just -- well, let's just --  
23 I'll just say 10:00, instead of an hour, if you'll just  
24 be back in the jury room at 10:00, we'll bring you in.

09:09AM 25 What will happen then, I'll read to you

1 the charge of the court, which are instructions and the  
2 law that you'll follow in deciding the case, and the  
3 lawyers will make brief arguments, and then you'll  
4 retire to consider your verdict.

09:10AM 5 So we'll be in recess until 10:00.

6 (JURY NOT PRESENT)

7 (A recess was taken from 9:10 to 10:18.)

8 THE COURT: After the close of the  
9 evidence both sides have received a copy of the proposed  
10:18AM 10 charge of the court. Is there any objection from the  
11 State?

12 MR. TIDWELL: None from the State, Your  
13 Honor.

10:18AM 14 THE COURT: Objections or suggested  
15 charges from the defense?

16 MR. CARNEY: Yes, Your Honor.

17 THE COURT: Go ahead.

18 MR. CARNEY: With regard to the charge  
19 that we've just been delivered, I'd like -- in the back  
10:18AM 20 on the -- one of the verdict forms, we would object that  
21 the -- it says we, the jury, find the Defendant, Anne  
22 Marie Mitchell, guilty. I think that it would be better  
23 to put we find beyond a reasonable doubt the Defendant,  
24 Anne Marie Mitchell, guilty. That's the only change we  
10:18AM 25 really haven't discussed, but I'll put my objections in

1 now --

2 THE COURT: Okay.

3 MR. CARNEY: -- for that --

4 THE COURT: All right.

10:19AM 5 MR. CARNEY: -- if that's okay.

6 THE COURT: Yeah, go ahead.

7 MR. CARNEY: With regard to the charge,  
8 Your Honor, I think that there are several things.

9 We've filed this morning a special requested charge on  
10:19AM 10 guilt and innocence, number one, regarding a 3823 charge  
11 that we're asking to be added to the charge, Your Honor,  
12 regarding an illegal search and seizure conducted with  
13 regard to confidential information and the use of that  
14 as being illegal by a peace officer in the State of  
10:19AM 15 Texas.

16 THE COURT: And that's been filed,  
17 correct?

18 MR. CARNEY: Yes, sir, it has been.

19 THE COURT: All right. Go ahead.

10:19AM 20 MR. CARNEY: In addition to that, Your  
21 Honor, I know that we've presented to the court our --  
22 we presented the court a draft of the charge regarding  
23 multiple issues that we asked to be included in the  
24 charge. Among those included in that is a requested  
10:19AM 25 charge on the suppression issue on the 3823.

1 In addition to that there are multiple  
2 issues with regard to definitions within the Occupation  
3 Code, from the Medical Practice Act, the Nurse Practice  
4 Act, and the Occupation Code with regard to someone not  
10:20AM 5 being able to be suspended, terminated, or otherwise  
6 disciplined for reporting -- a report made to the  
7 medical board; in addition that -- a charge regarding  
8 that each complaint is privileged and confidential.

9 We've also requested a charge, an  
10:20AM 10 instruction, regarding that what a medical licensee is  
11 with regard to that so that it's clear that a licensee  
12 is a doctor and not a nurse, under the statute, Your  
13 Honor, just so that that would clear up the issue with  
14 regard to the search and seizure conducted by Sheriff  
10:20AM 15 Roberts and that which led him to Ms. Mitchell and  
16 Ms. Galle.

17 Also, Your Honor, I believe that with  
18 regard to our requested charge on guilt and innocence, I  
19 would refer the court to Madden versus State, 242 S.W.3d  
10:21AM 20 504, the Texas Court of Criminal Appeals, a 2007 case,  
21 that talks about a disputed issue of fact, and that if  
22 there is a disputed issue of fact with regard to a  
23 search and seizure that that issue goes to the jury as  
24 opposed to a question of law that is solely for the  
10:21AM 25 court.

1 For example, I think that the issues that  
 2 exist in the record that raise that issue are that the  
 3 sheriff stated that he was investigating a licensee and  
 4 he made that representation to the Texas Medical Board,  
 5 which allowed him to receive a copy of the complaint  
 6 that he was not allowed to have and that was  
 7 confidential and privileged.

10:21AM

8 I think it also goes to whether or not  
 9 there was a reasonable suspicion whether or not an  
 10 offense was reported. And I believe there is no  
 11 articulable facts to show that an offense was reported  
 12 at the time that Dr. Arafles came to Sheriff Roberts.  
 13 And no facts that stated an offense are in the record  
 14 regarding that, Your Honor.

10:21AM

15 I think those issues are disputed, I think  
 16 they're fact issues, and I think they warrant the  
 17 inclusion of that.

10:21AM

18 I would offer as an Exhibit 8 to the  
 19 record a full copy of the charge that we propose to the  
 20 court, Your Honor, along with the verdict forms, so that  
 21 it's made and incorporated as a part of our objections.

10:22AM

(Defendant's Exhibit No. 8 offered)

22 THE COURT: Okay. They're admitted for  
 23 purposes of the record.

10:22AM

(Defendant's Exhibit No. 8 received)

1 MR. CARNEY: Thank you.  
 2 THE COURT: The -- anything else?  
 3 MR. CARNEY: No, Your Honor.  
 4 THE COURT: The objections to the charge  
 5 are overruled. And the charges -- the proposed charges,  
 6 other than those that we've already included in the  
 7 court's charge, are denied.

10:22AM

8 MR. CARNEY: And the verdict form, Your  
 9 Honor, is that --

10:22AM

10 THE COURT: That's overruled, also.

11 MR. CARNEY: Okay.

12 THE COURT: Anything else?

13 MR. TIDWELL: Nothing from the State, Your  
 14 Honor.

10:22AM

15 THE COURT: You want to argue how long,  
 16 did we talk about?

17 MR. COOK: Judge, I thought we agreed we'd  
 18 take 30 minutes or so.

19 THE COURT: Okay. Any objection to that?

10:22AM

20 MR. TIDWELL: No, sir.

21 MR. COOK: And, judge, for the court's --  
 22 just to let the court, that Mr. Carney and I plan to  
 23 split our time.

24 THE COURT: Okay.

10:23AM

25 MR. COOK: And we can handle the time and

1 how much each of us are using.

2 THE COURT: Okay. I generally give you a  
 3 two-minute warning when all of your time is used up.  
 4 Other than that you're on your own.

10:23AM

5 MR. COOK: Thank you, Your Honor.

6 THE COURT: Bring in the jury.

7 (JURY PRESENT)

8 THE COURT: Ladies and gentlemen, I will  
 9 now read to you the charge of the court, which are the

10:24AM

10 instructions and the law that you will use in deciding  
 11 the case. The lawyers will then give arguments, and  
 12 then you'll retire to consider your verdict.

13 (COURT'S CHARGE READ TO THE JURY)

14 THE COURT: Ready to proceed with

10:32AM

15 argument?

16 MR. TIDWELL: Ready, Your Honor.

17 THE COURT: Go ahead.

18 MR. TIDWELL: Thank you, Your Honor. May  
 19 it please the court, counsel.

10:32AM

20 Good morning again, ladies and gentlemen.

21 I told you thank you when we started this,

22 and I want to start by saying thank you again.

23 Obviously there was a dispute in issue in this case that

24 we needed your help resolving. I very much appreciate

10:32AM

25 your time and the energy you are about to expend in

1 helping us do this. The other lawyers do, too. We  
 2 can't do our system of justice without you.

10:32AM

3 I want to remind you that the State of  
 4 Texas has the burden of proof in the case, and the  
 5 burden of proof is beyond a reasonable doubt. In a few  
 6 moments I'm going to ask you to go into the jury room  
 7 and return a verdict of guilty.

8 Thank you very much.

9 Reserve my time, Your Honor.

10:32AM

10 MR. CARNEY: Good morning. As you can  
 11 tell the cold air is really doing wonders for me.

12 I know y'all haven't heard from me, at  
 13 least on the record. You probably heard me over there  
 14 telling Mr. Cook things that because of the acoustics in  
 15 this room I'm always constantly I think in the course of  
 16 this thing ask this, what about that, which I think not  
 17 only probably annoyed you but it wasn't doing much for  
 18 Mr. Cook either. At least this way I'm up in front of  
 19 you talking.

10:33AM

20 And this won't take very long, but I want  
 21 to go through a few things with you while we have some  
 22 time.

23 For starters, the court's charge is -- I  
 24 have little children that Mr. Cook kind of alluded to in

10:33AM

25 voir dire, and so these things remind me of the

1 instructions Christmas night you get them and they tell  
2 you no assembly, you know, required, and about 4:00 a.m.  
3 on Christmas morning you're putting the last piece  
4 together of some toy and you have pieces left over and  
5 you wonder what you've missed.

10:33AM

6 These are like those instructions.  
7 They're not exactly straightforward. They're not  
8 necessarily complicated either, but I want to go through  
9 them a little bit just to kind of explain some points  
10 that I think are important, okay?

10:34AM

11 With regard to the allegations in this  
12 case, the government has to prove every allegation they  
13 allege. They have to prove that someone was a public  
14 servant. We know that's true. But they also have to  
15 prove that the information that was transmitted was sent  
16 for a nongovernmental purpose.

10:34AM

17 And in the charge, it states that the  
18 Texas Medical Board is an agency of the executive branch  
19 of the State government with the power to regulate the  
20 practice of medicine; a governmental agency, as we all  
21 heard from a lot of different witnesses, okay?

10:34AM

22 Also, a couple of other things, with  
23 regard to proving each and every element, I think that  
24 the element about how it was used for nongovernmental  
25 purpose is a real issue that I think has to be resolved,

10:34AM

1 and I think that's -- that has been shown to you that it  
2 hasn't been proved.

3 Every person who testified talked about,  
4 from Mr. Swanson, who was the first witness, all the way  
5 through the very end of the State's case, everyone said  
6 that Anne Mitchell was concerned about patient safety,  
7 everyone.

10:35AM

8 Even the people who didn't have nice  
9 things to say about her, about her personality or about  
10 commentary she had about the poor practice that  
11 Dr. Arafles provided some of these patients, they all  
12 agreed, well, Anne is concerned about patient safety.  
13 This is not something that she just fabricated up.

10:35AM

14 And not only did you hear from nurses who  
15 treated people with Dr. Arafles, you heard from a board  
16 certified physician saying I looked at it and that ain't  
17 going to work.

10:35AM

18 All those justify a need to report to the  
19 governmental agency and for that purpose.

10:35AM

20 Now I wanted to explain to you kind of the  
21 logistics here. We get to get up and discuss with you  
22 the close. And because the State has the burden they  
23 get to go first and they get to go last. So there's a  
24 little jockeying for position.

10:35AM

25 I mean, you think Mr. Tidwell would get up

1 and say more to you with regard to his argument on the  
2 first part. And that's a strategic move. I mean, he  
3 gets to close first, he gets to have the last word. He  
4 gets to tell you about what his case is about. So  
5 that's --

10:36AM

6 But it's not uncommon with the rest of  
7 this case. There has been a lot of jockeying for  
8 position. You heard from the sheriff. He said I got  
9 these letters, I got one from Naomi Warren, I have the  
10 one from Anne Mitchell, I don't know if Naomi Warren  
11 really wrote that letter, I'm not really --

10:36AM

12 And since I have little kids, and I have a  
13 three-year-old as well as a seven-year-old, we have a  
14 lot of jockeying for position in our house, you know,  
15 there is a lot of questions that did you eat the  
16 chocolate chip cookie, I didn't eat the chocolate chip  
17 cookie, well, did you eat the strawberry cookie, yeah,  
18 yeah, I did.

10:36AM

19 I mean, there's -- you know, it's all  
20 shaded, it's all shaded to kind of -- well, maybe. You  
21 know, did y'all go out and drink beer last night? No,  
22 we didn't drink beer. Well, you know, it's all these --

10:36AM

23 And that's what this case has come down  
24 to. It's, well, we looked at her and that's -- we think  
25 that's the problem, but now that other deal, we weren't

10:37AM

1 sure that was really Naomi Warren, that's not -- that's  
2 somebody we really kind of like, that's someone we  
3 have -- doesn't give us any problems at the hospital, so  
4 let's just don't -- let's kind of put some blinders on  
5 that and go on.

10:37AM

6 The thing that's interesting is within the  
7 Texas Medical Board, their mission as they state it is  
8 our mission is to protect and enhance the public's  
9 health, safety, and welfare by establishing and  
10 maintaining standards of excellence used in regulating  
11 the practice of medicine and insuring quality healthcare  
12 for citizens of Texas through licensure, excuse me,  
13 discipline, and education.

10:37AM

14 And these complaints that are brought to  
15 the medical board are confidential and privileged. No  
16 one could have known about those things.

10:37AM

17 No one would have ever known this took  
18 place except Dr. Arafles had to go down because he was  
19 afraid something bad was going to happen to him because  
20 of his previous experience, he had to go down and tell  
21 the sheriff you've got to stop this deal, this is  
22 harassment, this is causing me some angst, I -- you've  
23 got to put the quietus on this thing, go over there and  
24 shut that deal down.

10:37AM

25 That's exactly what happened. And it kept

10:38AM

1 rolling and rolling, and here we are.  
 2 You know, I think y'all have heard plenty  
 3 about this case. I don't think you need to hear me talk  
 4 a whole lot about it to interpret it.  
 10:38AM 5 Mr. Tidwell said in his voir dire about  
 6 reasonable doubt and proof beyond a reasonable doubt and  
 7 we've all talked about the standards.  
 8 He said an interesting thing. He said,  
 9 well, you need to just vote your conscience. That's not  
 10 proof beyond a reasonable doubt, but I think it surely  
 11 figures into your common sense in coming in here and  
 12 listening to this evidence and figuring out what your  
 13 conscience tells you about what really was going on here  
 14 and whether or not this is really a felony.  
 10:38AM 15 Now Mr. Cook is finishing up on our part  
 16 of the argument, but I would implore you that before you  
 17 let Mr. Tidwell sit down make him, make him show you on  
 18 that chart he had over here that he used on opening  
 19 statement, how this was for a nongovernmental purpose,  
 10:39AM 20 how the Texas Medical Board is not a governmental  
 21 purpose, how this was sent for a -- to a nongovernmental  
 22 agency.  
 23 You know, this wasn't sent to -- this  
 24 wasn't sent out to the Boy Scouts, you know, in a  
 10:39AM 25 meeting. This wasn't discussed at the Lions Club with a

1 bunch of people at lunch said hey, you know who came by  
 2 the hospital, blah, blah, blah, I saw their chart, you  
 3 know what they have.  
 4 This was sent to the Texas Medical Board,  
 10:39AM 5 an exempt agency within the government, no  
 6 nongovernmental purpose to it.  
 7 They've got to prove all the elements.  
 8 And before he sits down make him tell you that, make him  
 9 show you how he figures out the Texas Medical Board is a  
 10 nongovernmental agency. We haven't heard about it. It  
 10:39AM 11 would be interesting to hear the take on it.  
 12 That element is completely lacking, along  
 13 with the other ones that you heard, but that one is  
 14 lacking. So please consider that when you're  
 10:39AM 15 considering what is beyond a reasonable doubt and what  
 16 your conscience tells you about what is really going on  
 17 here.  
 18 Thank you for your time. I appreciate it.  
 19 THE COURT: Mr. Cook.  
 10:40AM 20 MR. COOK: Thank you, Your Honor.  
 21 Ladies and gentlemen, on voir dire I told  
 22 you there are certain things that we do not trust to the  
 23 government. Chief among that is our liberty. I think  
 24 this case shows you why.  
 10:40AM 25 And I'm not worried about what you're

1 going to do back there. I know you're going to do the  
 2 right thing because Texans have always stood for  
 3 liberty.  
 4 The State said that they were going to  
 10:40AM 5 show a pattern of harassment that would prove a public  
 6 official abused the public trust, that was being driven  
 7 by a personal vendetta, and that there was breaches of  
 8 confidentiality by this public servant. And I will tell  
 9 you right now I believe they have proved that beyond any  
 10:41AM 10 doubt. But the victim in this case is not Dr. Arafiles.  
 11 The victim in this case is Ms. Anne Mitchell.  
 12 We talked about duties. What is duty?  
 13 Doing your duty is doing your job. Doing your duty is  
 14 doing what is right.  
 10:41AM 15 What's the duty of a nurse? To care for  
 16 us, to assist doctors and others in that care. But the  
 17 most sacred duty, their highest calling, is to protect  
 18 us.  
 19 Anne Mitchell does her duty.  
 10:42AM 20 What's the duty of a public servant? To  
 21 use the power that they're entrusted with for the public  
 22 good, not to use that power maliciously for their own  
 23 personal agendas, not to deny citizens their liberty, to  
 24 deny them their rights, to deny them their ability to  
 10:42AM 25 earn a living.

1 And remember, those are things that were  
 2 not given to us by government. They were not given to  
 3 us by kings or presidents or sheriffs. They were given  
 4 to us by the Almighty. They are sacred.  
 10:43AM 5 Let's talk about honor. I told you I grew  
 6 up in a military family. I told you that I myself  
 7 joined the military right out of high school. I grew up  
 8 with a sense of honor, and I hope that I do.  
 9 What is honor? Honor is being honest.  
 10:43AM 10 Honor is serving selflessly. Honor is admitting your  
 11 mistakes.  
 12 A doctor who will not admit his mistakes  
 13 has no honor. A doctor who blames everybody for the  
 14 harm and the pain that he causes and will not learn from  
 10:43AM 15 his mistakes is dangerous.  
 16 Let's talk about courage. Courage is  
 17 sacrificing yourself to protect others. Anne Mitchell  
 18 is a woman of courage. Anne Mitchell has made  
 19 sacrifices.  
 10:44AM 20 What is her motive in this? She got tired  
 21 of seeing people getting hurt. She tried to work within  
 22 the system, but it got to a point where the system  
 23 failed the patients. She did what she had to do,  
 24 knowing that she would be retaliated against because  
 10:44AM 25 this man was a friend of powers that be in that town.

1 Anne Mitchell is a professional. She did  
2 her duty. She did it with courage. She did it with  
3 honor.

4 And I'll tell you something else about  
10:45AM 5 Anne Mitchell. She has courage to stand up against  
6 injustice. She has courage to stand up not only for  
7 herself and her family, but for the rights of every  
8 nurse to do their duty to protect us.

9 Shame on them for abusing their public  
10:45AM 10 trust. Shame on them for using the powers entrusted to  
11 them by us for their own personal gains and wishes.  
12 Shame on them for seeking to destroy professionals who  
13 for more than 20 years gave them their labors, their  
14 hearts, and their soul.

10:45AM 15 Shame on them for not having the honor to  
16 admit their mistakes. Shame on them for not saying I'm  
17 sorry. Shame on them for putting fear in every nurse in  
18 doing their duty. Shame on them for subjecting all  
19 Texans to ridicule by their Boss Hogg mentality.

10:46AM 20 Texans have always stood for liberty.  
21 It's in our souls. You can't undo all the pain, all the  
22 suffering, and all the hardship that Anne and her family  
23 has been made to suffer. But today you can restore her  
24 liberty. I know you will do that.

10:46AM 25 Stand now for liberty by returning the

1 only verdict that is proper in this case under the law  
2 and the evidence. Go back there, sign the verdict form  
3 that says we, the jury, find Anne Mitchell not guilty.

4 Thank you.

10:47AM 5 THE COURT: Mr. Tidwell.

6 MR. TIDWELL: Thank you, judge.

7 I'm holding one piece of paper, I don't  
8 have anything else on the desk, holding one piece of  
9 paper. This is the charge of the court. This is all we  
10:47AM 10 need. This is the law of this case. This is what you  
11 need to do. This is the only thing that's important.

12 We lawyers use a term smoke and mirrors.  
13 The only things that are important in this case are in  
14 this document. Look at this document when you get back  
10:48AM 15 there.

16 You will not find that the Texas Medical  
17 Board is on trial. You will not find a single question  
18 in here to answer what did the Texas Medical Board do or  
19 should not do. We are not here to do their job. The  
10:48AM 20 Texas Medical Board will do their job in due course.  
21 That is their function.

22 The other person that's not on trial in  
23 this is Dr. Arafles. You will not see a question did  
24 he do the right care, did he not do the right care. It  
10:48AM 25 doesn't matter in this charge. That is an issue for the

1 Texas Medical Board. They will deal with that. You  
2 heard Ms. Lockhart, Dr. Lockhart, the expert, say the  
3 Texas Medical Board will do their job.

4 I hope they do. I want them to do their  
10:49AM 5 job. We need them to do their job. But we're not here  
6 to do their job for them.

7 This document is important because it's  
8 the charge of the court. It's all that's important.

9 Thinking about should Dr. Arafles done  
10:49AM 10 this or should not have done it or what was the standard  
11 of care, that's all smoke and mirrors. Defense counsel  
12 wants you to get honed in on that because they don't  
13 want you to consider what's actually the issue in this  
14 case.

10:49AM 15 This case is a very simple case. We're  
16 four days into it, but this is a very simple case, I'll  
17 show you in a minute why.

18 On page 4 of this charge, the judge will  
19 instruct you the law is do not let bias, sympathy,  
10:50AM 20 prejudice, or any other emotion play any part in your  
21 deliberation. Don't do that. The judge tells you not  
22 to do that.

23 There is a book that was on Oprah's book  
24 club called A Lesson Before Dying. I keep -- it's a  
10:50AM 25 little paperback book; it's pretty thin. It's a good

1 little read. I buy 10 of them at a time. And anybody  
2 that I know that goes to law school I give them a copy  
3 of that book. And I write in the front of that book,  
4 because it's what the book is about, lawyers, all we  
10:50AM 5 have is words. That's all we have.

6 We have to be careful that our words don't  
7 hurt people. We have to be careful with the things we  
8 say. We have to be careful that we don't accuse every  
9 employee in the Winkler County hospital of being  
10:51AM 10 incompetent. We're not supposed to do that. Those  
11 words are harmful to those good, kind people that work  
12 in my hospital in my county. Those words hurt them.

13 I live in a small town; so do you. You  
14 depend on your hospital for your healthcare. You depend  
10:51AM 15 on the very fine professionals in that facility to take  
16 care of you. We all do. We don't live in Dallas or  
17 Houston where there's huge medical centers. We have to  
18 be able to depend on the people that are in our  
19 hospital.

10:52AM 20 What was the last evidence you heard in  
21 this trial? Mr. Cook asked Dr. Roden, Sean, are you a  
22 rocket scientist. And you giggled, and so did I, and so  
23 did Sean. I mean, he sort of is. What's the last thing  
24 you heard him say? A governmental employee should not  
10:52AM 25 let their personal feelings or vendettas drive a

1 decision. That's the last evidence you heard out of the  
2 witness chair. Dr. Roden is exactly right. A public  
3 servant cannot do that, cannot do that.

10:52AM 4 Mr. Carney wants you to focus on the only  
5 thing for -- in the governmental purpose is the Texas  
6 Medical Board governmental. Certainly they are. But  
7 this charge doesn't ask you that.

8 This charge asks you did she, the  
9 Defendant, disclose or use information for a  
10:52AM 10 nongovernmental purpose. It's not about the Texas  
11 Medical Board. It's about the Defendant. What was her  
12 purpose?

13 Well, we know what her purpose was. We've  
14 heard from the other nurses at the facility. It was a  
10:53AM 15 personal vendetta. It started from day one. She didn't  
16 get her way and block Dr. Arafles from being hired.  
17 And Mr. Wiley told you from day one she didn't like him  
18 and it got worse day by day by day.

19 You heard the fine Dr. Lockhart tell you a  
10:53AM 20 nurse should not say, it is not appropriate, to say the  
21 doctor is an S.O.B., and that indicates personal  
22 animosity. Dr. Lockhart told you that. And  
23 Dr. Lockhart told you that is not appropriate for a  
24 nurse. Nurses should be held to a higher standard than  
10:53AM 25 that. They're supposed to remove themselves from that

1 sort of thing. I agree, they should. She didn't. This  
2 was a personal vendetta starting on day one.

3 I told you when we started that there was  
4 a number that was going to be important, and there is.

10:54AM 5 Let me tell you the first number,  
6 99.99999. That's the percentage of nurses in our  
7 country who are fine, decent, hard-, hardworking people  
8 that do a wonderful job when we need them and when we're  
9 sick. There are hundreds of thousands of healthcare  
10:54AM 10 professionals out there doing their job every day. But  
11 that's not the important number.

12 The important number is the .0000001. The  
13 important number in this case is one, because that's all  
14 we're here about, what did this one person do to drive  
10:54AM 15 her personal vendetta. It's not about the big number.  
16 It's about the one. Those hundreds of thousands of  
17 nurses do a great job every day. But in every  
18 profession sometimes there's problems with one, in mine,  
19 in yours, in all of ours. This is about one.

10:55AM 20 What about the patients? Do you think  
21 they ever imagined their personal information that they  
22 think they got good medical care based on would be  
23 disseminated out on the Internet? And it is because of  
24 one, it is because of one.

10:55AM 25 MR. CARNEY: Objection, Your Honor.

1 That's not in the evidence, and that's not what the  
2 charge against Ms. Mitchell is.

3 THE COURT: Ladies and gentlemen, the  
4 lawyers are allowed to argue what they believe the  
10:55AM 5 evidence shows and reasonable deductions therefrom.

6 You are instructed in the charge that you  
7 are the sole judges of the evidence, of the credibility  
8 of the witnesses, and the weight to be given their  
9 testimony.

10:56AM 10 Again, the lawyers are allowed to make  
11 their arguments, but you judge the case based on your  
12 judgment and the evidence that you heard from the  
13 witness stand.

14 Go ahead.

10:56AM 15 MR. TIDWELL: Thank you, judge.

16 What did you hear Judge Leck, our county  
17 judge from Kermit, tell you? Known Ms. Mitchell a long  
18 time, she's a good nurse, she does a good job.  
19 Certainly she has done a fine, fine job for many, many,  
10:56AM 20 many years.

21 What did Judge Leck tell you? Should a  
22 public servant allow personal animosity or vendetta in  
23 any decision they make? What did Judge Leck say? No,  
24 that is not what we're supposed to do. Every witness  
10:56AM 25 told you that.

1 What did Mr. Wiley, the administrator,  
2 tell you? We are public employees. We hold ourselves  
3 to a higher standard.

4 What else did he tell you? He'd had  
10:56AM 5 trouble with Ms. Mitchell from the beginning. She was,  
6 when he took over as the administrator, untouchable  
7 because of her relationship with Judge Leck. He'd gone  
8 to Judge Leck many times to try to get something  
9 changed. And he couldn't stop Ms. Mitchell's vendetta.

10:57AM 10 The elements of the case are what we're  
11 here about. The judge tells you that intent is one of  
12 the important things. It's right at the bottom. I  
13 underlined it several times.

14 The judge also tells you on page 2 you're  
10:57AM 15 instructed as a part of the law in this case that intent  
16 may be inferred from acts done, if any, or words spoken.  
17 That's the problem, this personal vendetta was about  
18 words.

19 Mr. Carney wants me to prove the elements  
10:57AM 20 of the case. I want to prove the elements of the case.  
21 That's all this case is about. This is a simple case.

22 I told you in the beginning I had to prove  
23 Anne Mitchell was a public servant. Mr. Carney agrees  
24 she is.

10:58AM 25 I told you I had to, let's skip down,

1 prove that she had access to the confidential  
2 information because of her office. They agree she did.  
3 That the information had not been made  
4 public. They agree that it had not.

10:58AM 5 The rub was going to come, I told you in  
6 the beginning, with the intent to harm another,  
7 Dr. Arafles. And the judge tells you in here harm  
8 means anything reasonably regarded as loss,  
9 disadvantage, or injury. That's in your charge; you'll  
10 see that. Okay?

11 And that it was the disclosure of  
12 information for a nongovernmental purpose; not what is  
13 the purpose of the Texas Medical Board, not what is all  
14 those other purposes. It's the purpose --

10:58AM 15 nongovernmental purpose of this Defendant, one. One,  
16 that's the important number.

17 What should nurses do? Nurses have  
18 duties, thank goodness. Nurses from day to day report  
19 things that they ought to report. I appreciate that.  
20 Most nurses do it excellently.

21 This nurse was a public servant. She had  
22 a higher duty. She had all --

23 MR. CARNEY: Objection, Your Honor.  
24 That's not the evidence nor is it the law, Your Honor.

10:59AM 25 THE COURT: Ladies and gentlemen, you will

1 be guided by the evidence that you heard, not what the  
2 lawyers say. The law is contained in the charge of the  
3 court, and you are to be guided thereby, not by what the  
4 lawyers say.

10:59AM 5 Go ahead.

6 MR. TIDWELL: Thank you.

7 What should a public servant do?  
8 Mr. Wiley told you. Ms. Lockhart told -- Dr. Lockhart  
9 told you. Dr. Roden told you. Hold yourself to a  
10 different standard. Do not let personal animosity,  
11 feelings, or vendettas guide your decisions. You heard  
12 that from every witness. No one told you anything  
13 differently.

14 I told you in the beginning that I wanted  
15 you to come and vote your conscience. That's exactly  
16 what I want you to do, your conscience. You arrive at  
17 your verdict. Whether it's guilty or not guilty, you  
18 arrive at your verdict and you vote your conscience in  
19 this case.

11:00AM 20 This case is very simple. This case is  
21 about one thing. It's about a public servant that let  
22 personal animosity drive her decision. That's all it's  
23 about, very simple.

11:00AM 24 Thank you again for helping us with this  
25 dispute. We all have a part of this process. I'm going

1 to turn it over to you because I think you will do the  
2 right thing.  
3 And I think the evidence beyond a  
4 reasonable doubt shows that this lady let these personal  
5 things creep in and shouldn't have. And I'll ask you  
6 now to go back and return a verdict of guilty.

7 Thank you again very, very much for your  
8 time.

9 THE COURT: The jury will now retire to  
10 consider your verdict.

11 (The jury retired to the jury room  
12 to begin their deliberations at  
13 11:01 a.m.)

14 THE COURT: Ladies and gentlemen, the jury  
12:00PM 15 has indicated they have reached a verdict and will  
16 announce that verdict. And I remind you that no  
17 demonstration of approval, disapproval, or whatever is  
18 acceptable. This is a court of law, and we expect  
19 everyone to conduct themselves with dignity. So please  
20 help me with that and we'll be just fine.

21 Bring in the jury.

22 (JURY PRESENT)

23 THE COURT: Mr. Tyler, you're the  
24 presiding juror; is that correct?

12:01PM 25 THE FOREPERSON: Yes, Your Honor.

1 THE COURT: And you've reached a verdict?  
2 THE FOREPERSON: Yes, Your Honor.  
3 THE COURT: Would you hand it to the  
4 bailiff please.

12:01PM 5 The verdict reads as follows: We, the  
6 jury, find the Defendant, Anne Marie Mitchell, not  
7 guilty, signed by Mr. Tyler as presiding juror.

8 Either side wish to have the jury polled?  
9 MR. TIDWELL: The State does not, Your  
10 Honor.

11 MR. COOK: No, Your Honor.

12 THE COURT: Ladies and gentlemen, I have  
13 previously instructed you that you can't talk to anybody  
14 about this case. You can now talk to anybody you want  
15 to about the case or you can refuse to do so. And if  
16 you refuse and somebody pesters you, let me know and  
17 I'll take care of that for you. But you're free to talk  
18 to anybody you want to.

19 A couple other things. I can't express  
12:02PM 20 enough appreciation for your service this week. We  
21 really appreciate it.

22 Sometimes jurors worry about your -- their  
23 verdicts, did we do the right thing, and you shouldn't  
24 do that. And in saying that I don't mean to express any  
12:02PM 25 approval, disapproval, of your verdict, I don't care

1 what you decide. But you shouldn't worry about that.  
 2 The way the system works is we present the  
 3 law to you, the attorneys present the facts to you, and  
 4 you decide. And whatever decision you come to is the  
 5 correct decision.

12:03PM

6 And sometimes folks criticize juries and  
 7 they'll -- you'll hear people on TV or in the public at  
 8 the coffee shop or wherever saying I can't believe this  
 9 jury did that or that jury did something else. And  
 10 usually those statements are made by people that haven't  
 11 been back in a jury room doing what you guys have done  
 12 this week.

12:03PM

13 So maybe when you hear those things in the  
 14 future you'll let those folks know that things are a  
 15 little bit different when you're in the trenches.

12:03PM

16 I'm going to let you go at this time. I'm  
 17 going to ask the folks here and in the hallway to let  
 18 you go home and leave in peace if you want to leave in  
 19 peace. If you want to stay around and talk to the  
 20 lawyers, that's okay. Sometimes they like to know what  
 21 you think. But I'm going to make sure you can leave in  
 22 peace if that's what you want to do.

12:03PM

23 You're free to go. I thank you very much  
 24 for your service.

12:03PM

(JURY NOT PRESENT)

1 MR. COOK: I take it the court has  
 2 accepted the verdict --  
 3 THE COURT: The verdict is accepted and  
 4 you're free to go, Ms. Mitchell.

12:05PM

5 THE DEFENDANT: Thank you.  
 6 MR. COOK: Thank you, Your Honor.  
 7 (COURT ADJOURNED)

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REPORTER'S CERTIFICATE

1  
 2 THE STATE OF TEXAS )  
 3  
 4 COUNTY OF ANDREWS )  
 5

6 I, Kelly Allen, Official Court Reporter in  
 7 and for the 109th District Court of Andrews County,  
 8 State of Texas, do hereby certify that the above and  
 9 foregoing contains a true and correct transcription of  
 10 all portions of evidence and other proceedings requested  
 11 in writing by counsel for the parties to be included in  
 12 this volume of the Reporter's Record in the above-styled  
 13 and numbered cause, all of which occurred in open court  
 14 or in chambers and were reported by me.

11 I further certify that this Reporter's  
 12 Record of the proceedings truly and correctly reflects  
 13 the exhibits, if any, offered by the respective parties.

13 I further certify that the total cost for  
 14 the preparation of this Reporter's Record is \$ \_\_\_\_\_  
 15 and will be paid by Mr. Brian Carney, Attorney for  
 16 Defendant.

16 WITNESS MY OFFICIAL HAND this the \_\_\_ day  
 17 of \_\_\_\_\_, 2010.

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