

1 J. Froman - Plaintiff - Direct

2 Jake if he survived?

3 A Those are the two that I remember.

4 Q Now you have the floor to proceed to tell us only
5 what Dr. Duncan told you.

6 MR. KOPFF: Note my objection.

7 THE COURT: Overruled.

8 A Dr. Duncan discussed the severity of the brain
9 injury and it encompassed every level of functioning.

10 Q You got to tell us.

11 A From physical handicaps to being profoundly
12 retarded and everything in between. You know, there was
13 really nothing that was left out, I think, in terms of
14 what this damage had affected, and what I specifically
15 remember from Dr. Duncan is she talked about putting Jake
16 in an institution.

17 Q Now, was that in relation to what she thought the
18 future might hold for him?

19 A Yes.

20 Q Did she say when that should happen?

21 A She said she -- she said that it should happen
22 right after discharge, right from the hospital, because it
23 was easier to get it accomplished right from the hospital
24 as compared to bringing him home and trying to do it at a
25 later point.

26 Q Now, I'll come back, but you had this impression

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2 he might be profoundly retarded; is that right?

3 A Oh, yes, absolutely.

4 Q When did you first become aware that that
5 certainly wasn't the case?

6 A Well, that's an interesting question. I think
7 when I started wondering if maybe it wasn't as bad as the
8 picture originally presented was, he was maybe about ten
9 or so days old, and I think the day before someone had
10 told me in the ICU that the following morning a physical
11 therapist would meet me in the morning and would work with
12 Jake on trying to teach him how to suck, swallow and
13 breathe and coordinate these mechanisms to be able to have
14 a bottle, because up until then he was being fed in
15 different ways.

16 Q Intravenously?

17 A Intravenously originally, then through a nasal
18 tube.

19 Q Nasogastric tube?

20 A Yes.

21 Q Go ahead.

22 A And there was a very lengthy discussion about how
23 he would probably never be able to take a bottle, never be
24 able to suck and swallow and do all of these types of
25 things, and so I heard this long conversation, realizing
26 it was probably not going to go very well the following

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2 day, and I went back the next morning and met with the
3 physical therapist and they tried to give him the bottle,
4 and it took a lot of work, and it took a long time to get
5 him to do it, but that very first day he was able to do it
6 somewhat, and I have always marked that as a turning point
7 for me in that, well, you know, maybe it's not what was
8 originally predicted, it's not going to be that level.

9 Q Now, if we go forward from that, what would you
10 consider the next, just a few of the milestones, maybe not
11 the concept of milestone literally, to you, a milestone in
12 terms of Jack's intelligence?

13 A When he was a few months old, he loved when we
14 would read him books and he would be very attentive
15 whenever we were reading books, and, you know, we would
16 turn the pages and he just seemed to be very engaged
17 during this, and I mark that as one of the first signs of,
18 well, you know, this is pretty good.

19 When he was maybe six or so months old,
20 we've always done these flashcards with him, kind of just
21 I am putting information that this is a dog, this is a
22 cat, you know, whatever is on the flashcard, and we would
23 do them in groups of maybe 20 or 25 at a time, and every
24 day we would take out one and we replace it with a new
25 one, and we would do them very fast in front of him,
26 saying the name of the object or whatever was on the

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2 flashcard.

3 And we would start to see every so often
4 when we got to the new one, you'd sort of see his eyes
5 take note more of that one than of the others, and that
6 was significant to me at that point because I almost
7 thought maybe I was imagining something that wasn't
8 happening, and I would test it and he seemed to really be
9 able to distinguish, oh, wait a minute, I didn't see that
10 one before. So things like that.

11 Q Now, maybe just continue, a few more examples as
12 time progressed, this awareness that you had with the
13 child, as Dr. Cargan said, probably normal intelligence.

14 A As he got a little older and he could indicate
15 better, if we were looking at something, you would say
16 where is the tree, you know, if you're looking at a book
17 or something, and he can't point with his finger out, but
18 he can -- he'll indicate with his fist essentially.

19 Q He still can't point with his finger?

20 A No. And so we would start to do those types of
21 things with him, and so that was very exciting, because he
22 would be able to indicate a number of different things and
23 we felt very encouraged that he was understanding a lot
24 more than he was able to ever show us.

25 Q Now, why don't you bring us down to the present
26 time. You told us a lot about Jake today. Tell us a

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1
2 little more about Jake and your understanding of him as
3 you observed.

4 A He understands. We're very careful about what we
5 say in front of him because we really feel that he
6 understands almost everything that we say. He'll surprise
7 us at times.

8 Q You asked me not to have Dr. Cargan talk about
9 him yesterday when he was here. You asked me that.

10 A Yes, I'm very protective in that way, because
11 even if I go to a doctor's appointment, particularly if
12 it's a new doctor that doesn't really know me or Jake, I
13 will start off the conversation by saying please don't say
14 anything negative about him in front of him because I'm
15 very almost afraid of how much he understands and I just
16 never want him to hear, you know, what some people say or
17 some professional people say about him.

18 Q Now, we've heard quite a bit about therapies
19 today but not from you.

20 Tell us, first of all, the various therapies
21 that Jake gets.

22 A Okay. He receives Feldenkrais therapy, speech
23 therapy, occupational therapy, cranial osteopathy,
24 hyperbaric oxygen therapy, vision therapy. I think I'm
25 forgetting one. Occupational therapy I said.

26 Q Speech?

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A Speech, I got that.

Q Okay.

A I think I'm leaving one off. Oh biofeedback.

Q Right.

A There you go.

Q Now, would you tell us, you're not an expert in any of these?

A No.

Q Did you do a lot of research?

A I try to, yes.

Q What kind of research did you do?

A I'm on the Internet all the time trying to talk to different parents who are in similar situations with their children and different things that they do. I read as many books as I can put my hands on regarding different therapies.

Q Now, how about the various therapies, first of all, that he gets now? Would you tell us, not as an expert, but what -- you're always with him or almost always with him at the therapies; is that correct?

A Yes.

Q Tell us what you observe these therapies to be based on your observations of your child involved in them.

A Okay.

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2 Q Would you go through each of them individually?

3 A Sure, sure. Feldenkrais therapy is a type of
4 movement therapy. We do Feldenkrais in place of
5 traditional physical therapy because Jake seems to respond
6 better to it, and Feldenkrais is different from regular
7 physical therapy in that Jake is a more active participant
8 in the lesson, and what they believe that they do is they
9 really tap in more to the child's brain to teach them a
10 more effective way of moving. It's a little hard to
11 explain what a session looks like.

12 Q Well, can you give us --

13 A An example.

14 Q Yes.

15 A Early on when we made the change to Feldenkrais
16 therapy --

17 Q That was -- he had been getting physical?

18 A Yes, for his first ten months, yes, physical
19 therapy. And one example that made an impact on me was up
20 until that point he, 95 percent of the time, held both of
21 his hands in fists, and for months I had seen the physical
22 therapist and the occupational therapist working with him
23 and trying to force his hand open and force it, you know,
24 and it still didn't work. 95 percent of the time they
25 were still fisted.

26 And then we changed to the Feldenkrais

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2 therapy, and it was within the first couple of lessons
3 that we were driving home and I looked in the rearview
4 mirror and he was sitting in the car seat with his hands,
5 both hands wide open, and I don't know that I had ever
6 really seen both hands wide open, and what they had done
7 was instead of forcing them open, they had worked, you
8 know, it's so much about their ability to touch and feel
9 different things, but to watch it, it appeared that the
10 therapist was pressing and doing all kinds of things with
11 his hand, and I didn't notice any change while we were
12 actually there, I didn't notice it until the way home.
13 All of a sudden there was just this relaxation in his
14 hands that he was able to keep them open.

15 Q Now, how often does he get Feldenkrais therapy?

16 A Four times a week.

17 Q And is it from one specific therapist?

18 A We have one Feldenkrais therapist in San Diego
19 and we have another one in San Francisco.

20 Q Why do you have two?

21 A The woman in San Francisco is -- has had the best
22 results with children specifically and has worked with
23 children for the past 27 or eight years and she works
24 exclusively with children.

25 Q By the way, it's not just children that get
26 Feldenkrais?

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2 A No, no, it's not, but there are only a few
3 Feldenkrais therapists who really are trained to work with
4 children. There are quite a number of Feldenkrais
5 therapists around, but mostly they just work with adults
6 so you really do have to find a specialized Feldenkrais
7 therapist.

8 Q And biofeedback.

9 A The type -- there are a number of different types
10 of biofeedback that people, children and adults can do.
11 The only type that I've been able to find for Jake, a lot
12 of biofeedback is interactive; the adult or the child is
13 expected to do something.

14 I was able to find one type of biofeedback
15 where -- it's a passive type of biofeedback so that what
16 they do is at any given session they'll put maybe three or
17 four electrodes on his head in certain key sections, and
18 they feed basically a stimulus through the electrodes, and
19 the theory is that it tries to even out brain waves, tries
20 to make those brain waves operate more functionally.

21 Q And how often does he get this?

22 A Once a week.

23 Q How about hyperbaric oxygen therapy?

24 A We started hyperbaric oxygen therapy last summer
25 was his first round of sessions; last August we did 35
26 sessions. And you're supposed to do them as close

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2 together as possible. So most of the days in August we
3 actually did two sessions a day, about four or five hours
4 apart, and the theory behind breathing, the child is
5 breathing in pressurized oxygen, which is basically what
6 hyperbaric oxygen is, is that in any inactive brain cells
7 that the person may have, by being fed pure, pressurized
8 oxygen, could be stimulated to become active brain
9 cells.

10 If the brain cells are dead they're dead,
11 there's nothing you can do about it, but there are these
12 inactive cells that could potentially become activated by
13 feeding them this oxygen.

14 Q Now, did you do that on the east coast and the
15 west coast?

16 A Yes.

17 Q Any place else in the United States that you know
18 of?

19 A Oh, yeah, there are a number of hyperbaric
20 chambers around the country.

21 Q Now, how about the osteopathic manipulation?

22 A The cranial osteopathy is -- it's a hands-on
23 manipulation and it's done by a doctor of osteopathy,
24 who's training actually almost mimics an M.D.'s training.
25 D.O.'s can prescribe medications, they can even do surgery
26 if they've become specialized in it.

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2 A small percentage of osteopaths become
3 cranial osteopaths and they do hands-on manipulation of
4 not just the head but really any part of the body,
5 particularly the spine, and what they try to do is they
6 feel for anything that isn't perfect and they try to
7 almost realign it so that everything can flow better,
8 whether it's blood or cerebrospinal fluid, anything. It
9 just helps the person operate in a more optimal way.

10 Q Have you been told that your child is at risk for
11 what's called scoliosis or curvature of the spine?

12 A Yes.

13 Q And have you been told that that will remain a
14 risk as long as he lives?

15 A Yes.

16 Q How about we've heard about the speech therapy,
17 that was described in detail to the jury. The
18 occupational therapy, how often does Jake get that?

19 A Once a week.

20 Q And he gets that in San Diego?

21 A Yes.

22 Q What else?

23 A Do you want to hear about the occupational
24 therapy?

25 Q I think --

26 A You already covered that.

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2 Q That was explained in detail to the jury. That's
3 the fine motor, right?

4 A Yes. Vision therapy.

5 Q What happens there?

6 A Vision --

7 Q Tell us about that.

8 A Jake's eyes are crossed, either the left crosses
9 or the right crosses at a time, and in vision therapy what
10 they try to do is they, by doing different exercises, most
11 of which are pretty fun, you know, they do things with
12 balls and, you know, different things to try to get his
13 eyes to work better together and try to really retrain
14 those muscles to function together, and they do that.

15 Q When did you first notice this -- I forget the
16 technical word, forgive me -- this kind of cross-eye that
17 Jake has?

18 A He was about four or five months old.

19 Q And when did you first see an ophthalmologist
20 about that?

21 A We actually saw an ophthalmologist almost
22 immediately when he came home from the hospital. The
23 reason was because we understood that there was occipital
24 lobe damage and that that area affects vision, and so
25 everybody was very concerned right away about his vision.

26 Q Speaking about physicians, what physicians does

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2 he see? We know an ophthalmologist, a pediatric
3 neurologist. What other physicians does he see?

4 A A regular pediatrician.

5 Q Who's his regular pediatrician?

6 A Well, we actually are still looking for one in
7 San Diego. He's gone to a couple that -- in San Diego,
8 but I haven't really found one yet.

9 Q Dr. Cowan?

10 A Was our pediatrician.

11 Q How long was Dr. Cowan?

12 A Since the time he was one.

13 Q And Dr. Cowan's office is where?

14 A Croton, Westchester County.

15 Q Now, what about any other medical or related
16 treatments or observations that he has on a periodic or on
17 a regular basis?

18 A He sees an orthopedist about once a year or so.
19 We see a nutritionist. We've seen others in the past. We
20 saw an ear, nose and throat specialist in the past. We
21 saw a physiatrist in the past. There have been a number
22 of specialists, you know, in the past, some of which
23 aren't really necessary right at this time.

24 Q In terms of orthopedics, the future does hold
25 some things. Have you discussed them yet with
26 orthopedists, surgeries that will be needed in the future,

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2 things like that?

3 MR. KOPFF: Objection.

4 Q I don't need detail.

5 THE COURT: Have you done it, I'll allow.

6 A Yes.

7 Q How about Jake's health?

8 A His overall health is very good. That's why he's
9 able to do all of these therapies every day, he's very
10 healthy and very energetic.

11 Q A couple of things I'll come back to, but I'd
12 like to go now to there came a time that you became
13 pregnant; is that right?

14 A Yes.

15 Q You and your husband had been married for how
16 long?

17 A Oh, four years or so, yeah, about four years at
18 the time.

19 Q This was the first pregnancy that ended with the
20 delivery of Jake; is that right?

21 A Yes.

22 Q Was the picking of an obstetrician a pretty major
23 decision?

24 A Yes.

25 Q Would you tell us what went into that decision?

26 A I think my first priority was I wanted to be in a

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1 large city teaching hospital, mostly because I had worked
2 for years in large big city teaching hospitals, so I think
3 I had a little bit of a bias toward that type of
4 institution.
5

6 Q Let me interrupt you. The jury doesn't know why
7 you were in a big city hospital, I think three of them; is
8 that right?

9 A Yes.

10 Q What was your work background?

11 A I used to be a manager in medical records
12 departments.

13 Q Did you have -- I found this only recently myself
14 -- there's actually a degree in that?

15 A Yes, there is.

16 Q What is it called?

17 A I received a bachelor of science degree in
18 medical record administration.

19 Q And did you pursue that career after college?

20 A Yes.

21 Q Where were you first?

22 A First, I was at Jacobi Hospital in the Bronx.

23 Q And after that?

24 A Mass. General up in Boston.

25 Q And after that?

26 A Mount Sinai.