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IN THE SUPERIOR COURT  
STATE OF CALIFORNIA, COUNTY OF ALAMEDA  
BEFORE THE HONORABLE TARA M. DESAUTELS, JUDGE  
DEPARTMENT NUMBER 3

---oOo---

THE PEOPLE OF THE STATE OF CALIFORNIA, )  
 )  
 ) Plaintiff, ) No. H57644  
 )  
 ) vs. )  
 )  
 ) MELISSA HO, )  
 )  
 ) Defendant. )  
 )

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REPORTER'S TRANSCRIPT OF CLOSING ARGUMENTS

WEDNESDAY, FEBRUARY 8, 2017

RENE C. DAVIDSON COURTHOUSE  
OAKLAND, CALIFORNIA

A P P E A R A N C E S

FOR THE PEOPLE: ANGELA BACKERS  
Deputy District Attorney

FOR THE DEFENDANT: DANIEL HOROWITZ  
Attorney at Law

REPORTED BY: Danielle A. DeWarns, CSR #9743

1 WEDNESDAY, FEBRUARY 8, 2017

MORNING SESSION

2

3

P R O C E E D I N G S

4

5 THE COURT: Ms. Backers, would you care to begin  
6 your opening argument?

7 MS. BACKERS: I would. Thank you very much.

8 Your Honor, Mr. Horowitz, Ms. Ho, ladies and  
9 gentlemen of the jury, may it please the Court, I'm going to  
10 keep my comments very brief this morning for two reasons. I  
11 know how everybody feels about lawyers and lawyers talking. I  
12 get that.

13 This case is very simple. There's two counts.  
14 Melissa Ho killed William and Melissa Ho permanently injured  
15 the tow truck driver, Mr. Andrade. And when you see the  
16 instructions that I'll put up for you, with the help of my  
17 intern who has returned from school -- he's going to help me  
18 out. There's only two counts, gross negligence, vehicular  
19 manslaughter. Melissa Ho is the driver who killed William and  
20 slammed him between two cars and she permanently injured Mr.  
21 Andrade, the tow truck driver.

22 There is no dispute about many things in this case  
23 which to me, and which is why I'm keeping my remarks brief to  
24 you this morning, makes this case very simple for you.  
25 There's no question she was the driver. There's no question  
26 she killed William. There's no question she injured the tow  
27 truck driver, Michael Andrade. There's no question that Mr.  
28 Andrade suffered great bodily injury.

1           You have stipulations in this case. That means that  
2 those are facts that are not in dispute. For instance, one of  
3 the facts not in dispute is that she worked Friday night at  
4 Dave & Busters from 3:30 in the afternoon until 9 p.m. That's  
5 not in dispute. That's a stipulation based on the employment  
6 records. That is proven to you beyond a reasonable doubt.  
7 Not in dispute.

8           Another fact that is not in dispute is an element of  
9 Count 2, and that is that Mr. Andrade, the tow truck driver,  
10 suffered great bodily injury. That's not in dispute. He  
11 showed you his leg. He was permanently injured. He had a  
12 broken nose. He has a metal rod in his leg. He had to have  
13 his leg reconstructed, his ankle with plates to reconstruct  
14 his ankle. That's not in dispute that he suffered great  
15 bodily injury.

16           So to me, presenting this case to you this morning,  
17 that makes the case very simple. She's the driver. She  
18 killed William. She permanently injured Mr. Andrade. That's  
19 not in dispute. So the only two decisions you have is whether  
20 or not she acted with gross negligence when she killed William  
21 and whether or not she drove recklessly when she permanently  
22 injured the tow truck driver, Mr. Andrade. That's it. Those  
23 two questions. That's it.

24           Did she act with gross negligence when she killed  
25 William Sampson? And did she drive recklessly when she  
26 permanently injured Mr. Andrade? That's it. Count 2 is, was  
27 she reckless? And you'll hear the definition in a second, I'm  
28 going to tell you. And Count 1, the killing of William, is

1 whether or not she acted with gross negligence. Those are the  
2 only two issues we have before us. And that is why my remarks  
3 will be brief today.

4 So, I want to -- I'm anxious, happy, delighted and  
5 honored to put this case in your hands, and I hope it will be  
6 in your hands at some point today.

7 So the first count is killing William Sampson while  
8 he's on the side of the road. She told her friend, "I drove  
9 on the shoulder and killed somebody." That's the issue. Did  
10 she operate with gross negligence that day? Did she act with  
11 gross negligence? And you will hear a very clear, very simple  
12 definition of what gross negligence is. The judge will give  
13 it to you when we're finished with argument, and I'm going to  
14 share it with you this morning.

15 So did she kill this young man on the side of the  
16 freeway near Warren? Did she pin him between her car after  
17 having a second accident? She had already been in an accident  
18 at 11 a.m., and now she doesn't take herself off the road?  
19 She's been up all night partying. She's on all kinds of  
20 medications. She's partying. She hasn't slept. She's  
21 speeding because she's late for work. She tells her mom, "I'm  
22 already late for work." And you have her going 65 to 75 miles  
23 an hour when she takes this young man and pins him against the  
24 flatbed.

25 I mean, each of you will hear the definition from  
26 me, and then from the Court, about what gross negligence is.  
27 And each of you will find at some moment in this time-line  
28 that a reasonable person, which is the standard for gross

1 negligence, a reasonable person would have known they were  
2 acting in a way which would have caused death or great bodily  
3 injury. That they were doing what we call a life endangering  
4 act.

5           There is no question that Melissa Ho was operating  
6 with gross negligence, that she was acting with gross  
7 negligence, and you can take whatever point in the time-line.  
8 My suggestion is, based on the evidence, not what I say, but  
9 based on the evidence, when you are on Trazodone you're on  
10 Trazodone. This came out from their \$20,000 expert. It says,  
11 "Do not drink alcohol. Trazodone can increase the effects of  
12 alcohol which could be dangerous. Trazodone may impair your  
13 thinking or reactions. Be careful if you drive or do anything  
14 that requires you to be alert."

15           That's the first thing she does. She buys cocaine  
16 from her rehab friend. She snorted cocaine at her shift on  
17 Friday. She goes to Bill Guo's house, and she starts drinking  
18 beers, Longboards. You can stop right there. She's on  
19 prescription meds that say do not drink alcohol. That's gross  
20 negligence right there. Right there. You could stop right  
21 there and find her guilty of Count 1 because she's on a  
22 prescription med that says do not drink and be careful if you  
23 drive.

24           Now, they did put on an expert, Dr. John Fullerton  
25 who said, oh, yeah, but all drugs have warnings. We don't  
26 really need to pay attention to those warnings. And, you  
27 know, "sure," that was his favorite word that he testified, I  
28 medically searched the transcript. He said "sure" a hundred

1 times. And I'm like, isn't this a warning for Trazodone?  
2 She's on prescription meds for Trazodone. It says do not  
3 drink alcohol. It's dangerous. It may impair your thinking  
4 or your reactions. Be careful if you drive. You're done.  
5 You're done as soon as you hear that warning. And you know  
6 this girl was snorting cocaine on her Friday shift that she  
7 purchased from her friend. She leaves to go to Bill Guo's  
8 house, and she's drinking alcohol on a prescription med that  
9 she's not allowed to drink with.

10 Now, Dr. Fullerton wants you to say, hey, hey, hey  
11 all prescriptions have warnings. Just ignore it. Well, we  
12 kind of know, you know, how Dr. Fullerton's testimony was.  
13 Not just was he paid for that opinion, but he was sent a  
14 PowerPoint saying how this testimony was supposed to end up.  
15 And the PowerPoint was, let's see, there's going to be a  
16 sentence at the very end on the last PowerPoint slide that I'm  
17 sending you, Dr. Fullerton, that says legally only evidence is  
18 awake drugs. This \$20,000 expert can't even tell you if that  
19 was his phrase or Mr. Horowitz's phrase. I mean, seriously?  
20 Awake drugs?

21 What -- oh, I guess she knew that she was so messed  
22 up doing drugs all night long, that she knew she had to get to  
23 work, so she did a stimulant, Adderall, at 10:00 in the  
24 morning just before she got in that first accident at 11. And  
25 the argument that he can't remember if this is his phrase or  
26 Mr. Horowitz's phrase is, hey, she's only on awake drugs.  
27 It's not really a crime. She's doing uppers. She killed  
28 William. And this is the defense, hey, she was doing uppers.

1 She's on stimulants. She took Adderall, cocaine,  
2 methamphetamine, amphetamine, and you're supposed to walk her  
3 out of this courtroom and say not guilty because the last  
4 thing she did at 10 a.m. before she killed William at noon was  
5 that she was on uppers? That's the defense? She's on awake  
6 drugs. And he told you, I can't even tell you if that's my  
7 phrase or Mr. Horowitz's phrase. But this is the PowerPoint I  
8 got before I talked to Melissa Ho in a Starbucks, and I can't  
9 tell you who the third party was who was present, and I didn't  
10 take any notes, by the way.

11 So let's remember why we're here, and it's to decide  
12 Count 1 and Count 2. And Count 1 is, was William killed with  
13 gross negligence? At 12:13-ish is about when it happened on  
14 Saturday, August 16th of 2014. Was he killed with gross  
15 negligence? And I'm submitting to you that the minute you  
16 know that she's on prescription meds that say do not drink  
17 alcohol, you might be unalert. You shouldn't drive, that  
18 that's gross negligence right there. You can stop right  
19 there.

20 Now, there will be evidence -- well, excuse me,  
21 there will be instructions about what we call lesser included  
22 offenses. So the judge correctly will give you the option of  
23 finding the killing of William to be a misdemeanor crime. And  
24 she is doing the right thing by telling you on Count 1 and  
25 Count 2, you will have the option of considering a lesser  
26 included offense of a misdemeanor.

27 The only way you can get to those lessers is if you  
28 find that she did not act with gross negligence. If you find

1 she did act with gross negligence by snorting cocaine, staying  
2 up all night, taking alcohol with her prescriptions, taking  
3 Adderall an hour before the first accident, two hours before  
4 she kills William, if you find that that's gross negligence,  
5 you don't ever get to the lesser. You don't get to the  
6 misdemeanor because the misdemeanor for Count 1 is, I just  
7 acted with simple negligence, not gross negligence. And I'm  
8 going to show you the difference in the definitions.

9           So if you find that anything, anything she did from  
10 the minute she bought the cocaine from her rehab friend to  
11 staying up all night and not sleeping, to doing marijuana,  
12 cocaine, alcohol, prescription meds, Xanax, the minute you  
13 find that's gross negligence, your job is done on Count 1.  
14 It's a felony. It's gross negligence, and it's vehicular  
15 manslaughter, and I believe that you will find, based on the  
16 evidence, not what any lawyers tell you, but based on the  
17 evidence in this case, that she's guilty of operating that car  
18 with gross negligence when she killed William and pinned him  
19 up against that flatbed truck.

20           So the definition of the crime that is charged in  
21 Count 1 is what we've just put up on the screen and that is  
22 the defendant drove a vehicle. That's beyond dispute. She's  
23 the driver. There's no contest about that. She drove her  
24 mom's Volvo. The defendant committed an otherwise lawful act  
25 that might cause death, and that act you will hear from the  
26 judge this afternoon. It's simply driving a vehicle. You  
27 know driving a vehicle can kill somebody, right? So she's  
28 charged with driving a vehicle, committing what would normally



1 be a lawful act, how most of you got to court today, driving a  
2 car, except now she's charged with driving that car with gross  
3 negligence.

4           So no contest she's driving a vehicle. She's  
5 driving her mom's Volvo after already getting in a collision,  
6 and she doesn't check herself and take herself off the road  
7 and say, gosh, you know, I've been partying all night. I'm an  
8 ex-addict. I'm on medication that says don't drink and drive.  
9 I'm doing all that. And she gets in a car accident that she  
10 lies about and says, hey, the dude hit his brakes, which  
11 Mr. Chang says never happened. And now she doesn't check  
12 herself and take herself off the road, say, whoa, whoa, I've  
13 been up all night partying, doing everything the warnings on  
14 my drugs say don't do. I just got into a car accident with a  
15 guy. I lied about how it went down because I said that he  
16 slammed his brakes, which actually never happened. I lied  
17 about that, and she doesn't take herself off the road.

18           Now, if you don't think taking Trazodone and  
19 drinking and staying up all night is gross negligence, I'm  
20 pretty sure all 12 of you and my three alternates -- our three  
21 alternates, I beg your pardon, I'm pretty sure that everyone  
22 in this room would say that the moment that she's taking these  
23 prescription meds and she disregards the warning on the  
24 prescription meds, you could stop there and that's gross  
25 negligence.

26           But if anybody had a second thought about it, how  
27 about going to a party and staying up all night? You could  
28 pretty much be done there, and if there was one person who is

1 like, well, I want to make sure -- I want to make sure that  
2 she really killed William with gross negligence, how about the  
3 fact that she's smoking weed, drinking beer, staying up all  
4 night, speeding, doing more cocaine, taking Xanax and then  
5 says, oh, my gosh, I'm so messed up. It's 10:00 in the  
6 morning. I have to go to work. I haven't been to sleep. I'm  
7 going to have to speed to get to work. I think I'll get  
8 myself an Adderall and a cup of coffee. If that's not gross  
9 negligence, that doesn't exist.

10           And then when you get in the first accident because  
11 you were inattentive and speeding and late for work, a  
12 reasonable person, which is the standard, would know that they  
13 are dangerous. This is the definition. The defendant  
14 committed an act of gross negligence that caused the death of  
15 another person, and here is what the test is for gross  
16 negligence. It involves more than ordinary carelessness. So  
17 let's say you're just speeding. It's more than ordinary  
18 carelessness or mistake in judgment or inattention. It is  
19 when she -- I use the word "she" because the defendant is a  
20 female not because I have a gender preference, but I'm just  
21 saying, she acted in a reckless way that created a high risk  
22 of death or GBI, great bodily injury.

23           Well, we know she caused the death. We know she  
24 killed William. We know she pinned him and cut him in two  
25 pieces, so she caused the death. The question is, did she act  
26 in a way that created a high risk of death? Well, yes, she  
27 did. If this isn't gross negligence, then, it just doesn't  
28 exist because when you're on meds that say don't drink and

1 drive, when you're speeding, when you are high, you stay up  
2 all night long, when you take all these uppers and all these  
3 downers, and you get in the first car accident and you don't  
4 take yourself off the road, then that is acting in a way that  
5 creates a high risk of death. When she knows that Mr. Chang  
6 was just moving along on his way, going about his business,  
7 northbound on 880, and she just out of the blue slams into the  
8 back of him, creates a little dent in his rental car and then  
9 is smart enough to lie about it. She lied about how that  
10 accident happened. She said he slammed his brakes. He said  
11 that never happened. Somebody just bumped into the back of  
12 me. I didn't hit my brakes. That's gross negligence.

13           And she doesn't even take herself off the road?  
14 What does she do? She puts her mother in the mix and says,  
15 hey, Mom, I'm already late for work. I'm already late for  
16 work. Hey, can you bring me a second car? I need you to give  
17 me another car because she crashed her fast Audi TT in the  
18 first accident with Mr. Chang. She said, hey, Mom, can you  
19 come? This is how selfish she is. She stayed up all night  
20 partying, violating all the warnings on her prescription meds.  
21 She says, hey, Mom, I just got in a car accident. I'm already  
22 late for work. Can you give me another car? And that sweet  
23 woman brings her the Volvo. And that sweet woman is left on  
24 the side of the road to wait for the tow truck to take away  
25 her daughter's car that she already hit somebody with.

26           How is that not gross negligence? I just stayed up  
27 all night partying and crashed into somebody. Violated  
28 warnings on my prescriptions and, hey, Mom, do you mind

1 standing on the side of the freeway for me and wait for the  
2 tow truck. And, by the way, bring me your nice Volvo, and her  
3 sweet mother did. Her sweet mother did.

4           And so the beautiful second element about gross  
5 negligence is not what an addict would think. Not what an  
6 addict would think, but what a reasonable person would think.  
7 So it is -- the question for you on Count 1 is, did she act  
8 with gross negligence causing a danger? Clearly she did. And  
9 would a reasonable person have known that her actions would  
10 create a risk of death or great bodily injury? Why is that  
11 important? Because it's not what a college student would  
12 worry about. It's not what an ex-heroin addict would worry  
13 about it. It's not what an ex-Xanax addict would worry about.  
14 It's not what the people at the party would worry about it.  
15 It's what a reasonable human being would say, you know what, I  
16 need to take myself off the road because I'm about to hurt  
17 somebody. That's the test. A reasonable person.

18           Now, yes, it is powerful evidence, powerful evidence  
19 that you have, that three people who partied with her all  
20 night said, you're too messed up to drive. You need to not  
21 drive. This is a bad idea. Three separate people told her do  
22 not get on the road. That is powerful evidence. And those  
23 are people who stayed up all night partying with her. That's  
24 heavy evidence for you.

25           Now, they put on the investigator for the Defense,  
26 Mr. Gregg Oglesby to say, hey, he never told me three people  
27 tried to talk her out of it. Three people tried to talk her  
28 out of driving. Do you actually think Bill Guo, her friend,

1 made that up? What did he say in front of you? He was under  
2 oath. Apparently, he doesn't like me very much. That's fine.  
3 I don't care. But he said, the only four people left in the  
4 house when she left at 10 a.m. and popped an Adderall, the  
5 three of us told her not to drive, right? So you have himself  
6 telling her not to drive which is exactly what he told Gus and  
7 I, and Gus wrote down notes unlike Mr. Oglesby. And the other  
8 two people left in the house, a male and a female, said, hey,  
9 you cannot drive. You are too messed up to drive. You should  
10 not be driving.

11           And they put on Gregg Oglesby to say, well, he never  
12 told us that. Gregg Oglesby is working for the Defense. He's  
13 not looking for evidence that is going to incriminate Melissa  
14 Ho. So I said, did you ever -- I asked him yesterday morning,  
15 did you ever ask, you know, the witness Bill Guo -- when you  
16 talked to him in 2015, did you ever ask him how many people  
17 told her she shouldn't be driving? He never asked that. No,  
18 it never came up. Well, yeah, it didn't come up, but isn't  
19 that the most poignant question. Did anybody warn her that  
20 she could hurt somebody if she got on the road? He never  
21 asked that question. He never took notes. How does that not  
22 come up? She's been at your house all night, at a party where  
23 apparently pills are everywhere, water bong, pills, lines of  
24 cocaine, you can just walk up and snort them. How does that  
25 question not come up at the end of that interview if you're  
26 seeking the truth?

27           How does that question not come up when you say to  
28 the guy who threw the drug party, hey, did anybody say it's a

1 bad idea for you to get on the road, girlfriend? You've been  
2 partying for eight to ten hours. You've been doing --  
3 snorting coke, smoking weed, drinking alcohol, God knows what  
4 prescriptions you're on. That question never occurred to the  
5 Defense investigator to say, hey, did anybody say you  
6 shouldn't be driving? Because that's what Gus and I asked him  
7 when we met Bill Guo. Did anybody warn her she shouldn't be  
8 driving? Oh, yeah. Oh, yeah.

9           And when he testified under oath, even though he  
10 didn't like me or Gus, or both of us, he said three people  
11 said not a good idea. Not a good idea.

12           What exactly does he tell Gus and I when we first  
13 meet him -- Inspector Galindo? What exactly does he say? We  
14 didn't get a chance to chat with this gentleman until February  
15 or March of 2016, so a year later, a year after  
16 Mr. Oglesby got to chat with him, but, you know, that's fine.  
17 We're chatting with him, and we're like, what drugs were at  
18 your party, sir?

19           Well, cocaine, weed, Adderall, Xanax, alcohol, all  
20 right? Can't really say how much she had, but that was all  
21 available.

22           What happened when she said she was going to work?  
23 What happened, sir, at 10:00 in the morning, broad daylight,  
24 she's been up all night partying, what happened when she said  
25 she's going to work? And Mr. Guo says, oh, no, this is a bad  
26 idea, and I told her. I told her it was a bad idea, that she  
27 shouldn't be driving. I told her -- I said, if you're going  
28 to drive, text me because this is not how this should go down.

1 You should not be driving. You've stayed up all night  
2 partying. I know you're an ex-addict, and I need you to text  
3 me when you get to work. And, of course, she never did  
4 because she killed William.

5 I was concerned -- he tells us, I was concerned that  
6 she was going to drive because she had been up all night  
7 partying. I tried to talk her into not driving. It's not  
8 just a reasonable person would have known, everybody knew who  
9 saw her at 10:00 in the morning when she left Bill's house.  
10 Girlfriend, you should not be driving. You cannot drive this  
11 car. You should not be driving. It's not just a reasonable  
12 person, everyone told her, you can't drive. You can't drive.

13 Now, something odd happened when Mr. Guo was on the  
14 stand. I have no problem with people saying that they don't  
15 like me. And so on Cross it was like, well, yeah, Ms. Backers  
16 is intimidating. Sometimes she throws the F bomb. You know,  
17 sometimes she's scary. I think she's scarier than Gus, but  
18 whatever. And then he says -- Mr. Horowitz says to him, well,  
19 isn't it true that you were worried about being sued? You  
20 were worried about getting sued because you threw this drug  
21 party.

22 So let me just tell you exactly what the e-mail was  
23 that I sent to Mr. Guo, and you have it in evidence. It's  
24 been received into evidence, and I'm going to read it to you  
25 so you know the exact words that I used even though I'm  
26 apparently not that likeable. It's People's 12. It's been  
27 received into evidence, and it was sent to him on Tuesday  
28 night, January 31st, of this year at 5:26 p.m. And you have

1 this in evidence. You'll be able to look at it. But just so  
2 you know my exact words to Mr. Guo after he called Gus and I  
3 on Monday and said, hey, I talked to a lawyer and she said I  
4 better get some kind of promise from you because he knows --  
5 he knows that Melissa acted with gross negligence and he  
6 warned her not to drive and so did the other two people left  
7 at the house. He knows that. He's like, oh, shoot, I better  
8 talk to a lawyer. He goes and talks to a female lawyer and --  
9 I don't know her name. He says, do you mind giving me  
10 something in writing saying, hey, you're not going to  
11 prosecute me for throwing this party?

12           This is what I said to him. It's in evidence. This  
13 is what it says, it's at 5:26 Tuesday night, the 31st of  
14 January. "Bill," that's Mr. Guo, the witness, "this is Angela  
15 C. Backers, senior Deputy District Attorney, the prosecutor in  
16 the Melissa Ho vehicular manslaughter case, number H" -- it's  
17 a docket number. It's the case number. "H57644. You have my  
18 word. You have my word and my agreement that we are not  
19 attempting to and will not prosecute you for any of the drugs  
20 that you provided or made available to your friend, Melissa  
21 Ho. Ms. Ho is responsible for her own actions on August 15th  
22 and August 16th, 2014. See you soon. Best, Angela C.  
23 Backers." So, yes, he was concerned. He chatted with some  
24 lawyer. She said, hey, you better get something in writing.  
25 And I sent him something in writing that we're not going to  
26 prosecute you. I promised him, we're not going to prosecute  
27 you for throwing this party because this is what we are  
28 worried about, Melissa Ho killing William and hurting the tow



1 truck driver. That's what our issue is.

2           So, yes, you have that and you can consider that and  
3 the judge is going to give you an instruction that says, if  
4 somebody is promised immunity, you can consider that in  
5 deciding whether they're telling you the truth. But, I mean,  
6 think about what he said. She was partying all night, up all  
7 night, never went to sleep, and I told her not to drive and so  
8 did my two friends.

9           So not only -- not only would a reasonable person  
10 know that when you take Trazodone you're not supposed to  
11 drink, even though their expert says, hey, you know, every  
12 label has warnings on it. Nobody pays attention to the  
13 warning. Not only would a reasonable person know that, Ms. Ho  
14 knew that.

15           Now, there was something Danny Horowitz said to you  
16 in his opening statement when he stood before you last  
17 Wednesday on the 1st, and he said to you I'm the evil one  
18 because -- he didn't say that. But the inference was I'm the  
19 evil one because I'm trying to get you to be prejudiced  
20 against Ms. Ho because she's an ex-addict. That could not be  
21 further from the evidence in this case. And he went on and on  
22 about how I'm trying to get you to be prejudiced against her  
23 because she's an addict or a recovering addict.

24           What is the evidence, the evidence that is  
25 uncontroverted in this case? Officer Brian Watkins, the Iraqi  
26 war veteran who testified all day yesterday, walks into the  
27 hospital and the first thing out of her mouth after she's been  
28 on the side of the road next to William's severed leg, the

1 first thing out of her mouth is, "Hey, I'm an ex-heroin  
2 addict. I'm on these two prescription meds, Trazodone and  
3 Gabapentin." I didn't make up that evidence. I'm not trying  
4 to get you to be prejudiced against her because she's a  
5 recovering or current addict. That's the evidence. He walks  
6 in the hospital room. She knows she's killed somebody. She's  
7 already sat on the side of the road next to his severed leg,  
8 and the first words out of her mouth to Officer Watkins is,  
9 "Hey, I'm an ex-heroin addict. I'm on Gabapentin and  
10 Trazodone." I'm not trying to have you slam her because she's  
11 an ex-heroin addict. That's what she said. That's what the  
12 evidence is.

13           And, by the way, let's back up a little bit to  
14 Officer Brian Barcklay who is talking to her on the side of  
15 the ambulance on scene and all she cares about is herself. Am  
16 I going to be in trouble? Am I going to jail? She knew that  
17 her behavior for the last 24 hours on Friday and Saturday  
18 before she slammed William into that flatbed, she knew that  
19 her behavior caused a great risk of death. She knew she was  
20 acting with gross negligence. And that's why she said, am I  
21 in trouble, am I going to jail, when she's in the ambulance on  
22 the side of the road. And they haven't even removed William  
23 from the scene.

24           The second charge in this case is the charge with  
25 Mr. Andrade, the tow truck driver, and that's Count 2, and  
26 that is -- let me just say one more thing about Count 1. It's  
27 not just a reasonable person's standard, but it's a reasonable  
28 person in the same situation. So when you're deciding whether

1 Ms. Ho acted with gross negligence, it's whether a reasonable  
2 person knew that she was creating a risk of danger, of death  
3 or great bodily injury, and it's a person facing the same  
4 situation in the same circumstances. And so what that means  
5 is clearly, I'm sure you're going to recall the testimony is,  
6 hey, not only does accident number one say, wow, I just ran  
7 into somebody for no reason. Maybe I should take myself off  
8 the road. And Bill Guo's testimony that three people said you  
9 shouldn't be driving. Three people told her you shouldn't be  
10 driving. So it's -- a reasonable person would know they were  
11 creating a risk of death or great bodily injury facing the  
12 same circumstances. So that's on Count 1.

13 Now, on Count 2 for Mr. Andrade, the tow truck  
14 driver. Again, there is a stipulation. And on Count 2, Mr.  
15 Andrade, different case, different standard, but there's only  
16 one question, was she driving recklessly? Because you have a  
17 stipulation that he suffered great bodily injury. You know he  
18 suffered great bodily injury. You know he has bars and plates  
19 and screws in his leg. He has a septum issue with his nose  
20 that was broken.

21 So the only issue for Count 2 is, did she drive?  
22 Yes, she did. And the question is, did she drive with wanton  
23 disregard for safety? That's -- it's not tough. That's not a  
24 tough call. When she ran him over and shoved the BMW up the  
25 embankment and crushed William and broke his leg, broke Mr.  
26 Andrade's leg and his nose, was she driving with wanton  
27 disregard.

28 How do we know that? What is wanton disregard? How

1 about the fact that she's late and she's speeding. She tells  
2 her mom, I'm already late for work. I need you to bring me a  
3 second car. She's high. She's been up all night, right?  
4 Granted, this case is not charged -- no matter what  
5 Mr. Horowitz says to you today, this case is not charged under  
6 the influence because we don't have a valid test. It's a red  
7 herring, as they call in the law, which is -- I never liked  
8 that phrase anyway, but it's to get you off track. So whether  
9 or not she was quote "under the influence" is irrelevant  
10 because it's not any of the elements of the charges that I  
11 have to prove. And that's why that e-mail to Scott Swisher  
12 came in, right? So Dr. Herrmann says, hey, this urine test,  
13 it's a little funky because she was given Morphine and  
14 Dilaudid and Zofran by the hospital, and so I don't think you  
15 should charge driving under the influence causing a death. We  
16 didn't. It's a red herring. It's to get you off track.

17           So when we talk about whether or not the urine test  
18 is valid, what do we know? Remember the bathtub analogy with  
19 the plug in the bottom of the bathtub? When you have a urine  
20 test, all you know is that these things have accumulated. We  
21 know there's no alcohol that shows up, right? We know cocaine  
22 shows up. Amphetamine shows up. Methamphetamine shows up.  
23 THC, marijuana, shows up.

24           The question for Count 2, is did she drive with  
25 wanton disregard for the safety of somebody? She stayed up  
26 all night partying. She's on prescription meds that says  
27 don't drink. She gets in the first car accident. How do you  
28 not take yourself off the road? Well, because it's about her.

1 I'm going to leave my mom on the side of the freeway waiting  
2 for the tow truck. And, by the way, I'm going to speed to  
3 work because I'm already late. And, by the way, when I'm at  
4 work, I just go outside and have a little smoke, a little  
5 cigarette, and snort my cocaine that I bought from my friend  
6 from rehab. That's what she did. It's gross negligence.  
7 It's wanton disregard for the safety of others.

8           The only issue as to Mr. Andrade, the tow truck  
9 driver, is whether -- you know she was driving. You know he  
10 suffered great bodily injury, and it's whether she acted with  
11 wanton disregard.

12           Now, let's talk about her statements for a second.  
13 I know I told you I wasn't going to talk very long. I already  
14 talked too long, I know. Let me tell you one thing, and that  
15 is all the lies she told, right? So at one point she says,  
16 hey, I was looking left and merging, and as soon as I realized  
17 it, I looked to the right and I didn't have time to stop and  
18 so I killed this kid and I hurt the tow truck driver. I got  
19 hurt, too. That's the first version of accident number two  
20 when she killed William is, hey, yeah, I was merging left.  
21 That's version number one.

22           Now, remember she's already lied about accident  
23 number one with Mr. Chang. She already lied and said he  
24 slammed his brakes. That never happened. That's a lie, too.

25           Now, you have the fatal collision with William and  
26 she says, hey, I was merging left. I was looking left and all  
27 of a sudden it was too late to stop. Now, what does Officer  
28 Watkins tell you? There was no evidence of braking. She says

1 she saw the people on the shoulder and she brakes. She  
2 broke -- however you say that, she broke because she saw after  
3 she's merging left. She -- she didn't have time to stop  
4 before killing William. And Officer Watkins is like there's  
5 no evidence of braking. There's no skid marks. Officer  
6 Cheever says, I checked all the tires. There was no braking.  
7 She did not see these folks on the side of the road before she  
8 killed William and pinned him against the flatbed and hurt Mr.  
9 Andrade. That's her first version of accident number two, the  
10 fatal collision, right?

11 Now she's at the hospital and she's got a different  
12 story, hey, I'm an ex-heroin addict. I'm on these meds and,  
13 yeah, I'm not exactly sure what I'm going to tell you except  
14 that. And then some friend of hers, who is unidentified,  
15 Asian gentleman, walks in and kind of shuts the conversation  
16 down that she's having with Officer Watkins. That's within  
17 two to three hours of the fatal collision of William.

18 Then on August 22nd, which is our recorded interview  
19 that you have, totally different story, completely different  
20 story, I either fell asleep or nodded off. So how does that  
21 happen? How do you go from, I'm late for work. I'm speeding.  
22 I just got in an accident. I'm in a hurry. I was looking  
23 left to merge, and I didn't see what I was about to commit,  
24 the fatal collision, with gross negligence. I didn't see  
25 that. How does it go from that, to, you know, Officer  
26 Watkins, I don't know, I think I might have nodded off? I  
27 might have blacked out. Those are three -- three lies about  
28 what happened. She killed William with gross negligence.

1           And what does she tell Bill Guo? That's a second  
2 set of lies. She tells Bill Guo, I was driving on the  
3 shoulder and I killed somebody. Completely different story.  
4 Completely different story.

5           Now you have, I was looking left to merge and it was  
6 too late when I came back upon the scene. Then you have, I  
7 fell asleep. Then you have, I blacked out. And then you have  
8 her telling her buddy, hey, you know what, I was driving on  
9 the shoulder and I killed somebody. All lies because she  
10 doesn't want to take responsibility for killing William and  
11 maiming Mr. Andrade. I mean, if you really think about the  
12 evidence and you see all those photos that Officer Watkins  
13 testified to and the MVARs that we had yesterday, what she  
14 told Bill Guo is probably the truth. I was driving on the  
15 shoulder and I killed somebody because he's -- those folks are  
16 on the shoulder, on the embankment, on the dirt, on the  
17 asphalt, not in the lane of traffic.

18           This isn't a tough case, ladies and gentlemen of the  
19 jury. She killed him, and she permanently injured Mr.  
20 Andrade.

21           So when you hear the judge's instructions, which I'm  
22 assuming will be this afternoon, you are going to hear the  
23 lesser included offenses of misdemeanors. And I just want to  
24 assist you in how you approach your task, which I'm hoping  
25 will be today. And when you approach your task, I want to  
26 assist you in the following way. The judge will read an  
27 instruction to you that says, "Depending on what you find the  
28 facts to be, then some instructions may not apply," and let me

1 help you with that road map.

2           So two things, one is, the judge will instruct you  
3 this afternoon that you have a duty. You are sworn to be  
4 reasonable. So if you have an argument today that is -- what  
5 you believe to be an unreasonable interpretation of the  
6 evidence, you're sworn by your oath to reject the  
7 unreasonable. So the way that the law works, and you'll hear  
8 this afternoon when the judge instructs you is, if there are  
9 two reasonable interpretations of the evidence, one which  
10 points to innocence and one which points to guilt, and they're  
11 both reasonable, then you are duty bound by your oath to  
12 accept the reasonable interpretation.

13           However, and this is a big however, if one of the  
14 interpretations of the evidence is unreasonable, you're also  
15 duty bound to reject that. So, by your oath that you gave to  
16 this court, you may only accept reasonable interpretations of  
17 the evidence and reject the unreasonable interpretations of  
18 the evidence.

19           So even though the judge is absolutely correct in  
20 offering you a lesser included misdemeanor on both Count 1 and  
21 Count 2, based on the evidence in this case, you can't get  
22 there. And the reason is, if you find gross negligence, you  
23 can never even get to the misdemeanor simple negligence  
24 manslaughter, which is a lesser of Count 1. So what I mean by  
25 that is, not legally, because the Court is correct in giving  
26 you that option, but based on this evidence, you can never say  
27 based on the evidence that Melissa Ho simply acted with simple  
28 negligence. You just can't get there on this evidence. She



1 acted with gross negligence. A reasonable person would have  
2 known she was about to commit harm. Three people told her.  
3 So factually you cannot get to the lesser misdemeanor on  
4 Count 1 because it wasn't simple negligence. She was driving  
5 and killed William with gross negligence.

6 The same is true for Count 2 based on her wanton  
7 disregard for her behavior and how she acted that night and  
8 the next morning. And when she took out William Andrade and  
9 permanently injured his leg and nose, you factually can't get  
10 there and say it was just a misdemeanor. What she did to that  
11 tow truck driver, you can't get there factually because she  
12 was driving with wanton disregard and caused him permanent  
13 great bodily injury.

14 So at the conclusion of this case, and when this is  
15 in your trusted hands, I'm asking you to find Ms. Ho guilty of  
16 both Count 1 and Count 2 as charged.

17 Thank you very much.

18 THE COURT: Thank you, Ms. Backers.

19 Now, at this time, ladies and gentlemen, we're going  
20 to take our mid-morning recess a little bit earlier just  
21 because the way things are going. So I'm going to ask you to  
22 come back at 10:45. Please remember the admonition. Do not  
23 discuss this case. Do not form any opinions. We will see you  
24 back at 10:45.

25 (Recess taken.)

26 THE COURT: We're back on the record in the Ho  
27 matter. Both counsel are present along with Ms. Ho. All of  
28 our jurors and alternates are present.

1           Mr. Horowitz, would you like to make your argument  
2 at this time?

3           MR. HOROWITZ: Yes, thank you.

4           Thank you all for being here, braving the traffic to  
5 get here and so on. You know, I think about how it must feel,  
6 you know, to be you sitting here. Some of you have seen  
7 people die and have been through tragedies. But this is a  
8 very painful, up close, experience that I think is probably  
9 unprecedented in your lives. And as a lawyer who does this,  
10 you don't completely escape feeling it, but it's not quite the  
11 same as when it's viewed the first time. If you think about  
12 the people involved, and I'm going to limit my remarks to just  
13 what is proper in this courtroom, but I'll say that the  
14 unimaginable happens a lot in this world, but until it  
15 happens, I don't think you can really understand it.

16           And we saw a picture of Mr. Sampson. I have no  
17 right to invoke him or talk about him. I never knew him. And  
18 I cannot imagine, you know, anything about what happened to  
19 him, and so I'm not going to pretend to except to say that on  
20 a human level it's a great loss.

21           And everybody involved in that accident will never  
22 be okay. You can't fix it, and I can't fix it. So I'm sorry  
23 for that. One second.

24           (Brief pause.)

25           MR. HOROWITZ: I'm fine. I'm just blowing my nose.

26           With that, you actually have to do something that is  
27 very military like because it's very easy to just wake up and  
28 say, well, there's a Constitution. I want my rights. I

1 believe in the Constitution. I believe in a world safe from  
2 terrorism. I believe in a world where people can live in  
3 peace, but there are times that you have to fight for it, and  
4 everybody's family has fought for that in a very different --  
5 coming here from a different country and establishing  
6 yourself. Serving in the military and maybe losing family  
7 members. Sitting on a jury is -- seems like something that  
8 people joke about avoiding, but right now you know it's not a  
9 joke because you are going to be asked by me to put aside  
10 everything that your gut feels in order to sort of make things  
11 right for the people who were hurt here, and I'm going to ask  
12 you to be soldiers and to follow the law and stand up for the  
13 law, and soon I'm not going to be so philosophical. I'm going  
14 to start going into my soldier mode as long as you understand  
15 that I'm doing it with full respect for the people who are  
16 hurt here, and I have no power to them. I can't hurt them. I  
17 can't help them.

18           But just remember this when you really sit there and  
19 listen to the judge's instructions, it is not about making  
20 things right or fixing things. It's about applying the law to  
21 these facts, and what I told you at the beginning and what I'm  
22 telling you now is that there's no evidence that Melissa Ho  
23 was intoxicated or affected by drugs at the time of this  
24 accident. And you heard from three medical doctors. You  
25 heard from Dr. Herrmann, and with all due respect to the man  
26 he may have been, he didn't have it on the stand, and that's  
27 sad. But there's nothing that he has that establishes any  
28 fact in this case.

1           Dr. Rogers, been a coroner for ten years less and  
2 unequivocally said to you, without a blood test, a urine test  
3 tells you nothing.

4           Dr. Fullerton told you lots of things, and it's not  
5 fair to denigrate him as a \$20,000 doctor because he also does  
6 a ton of charity work. And our \$20,000 frees him and his  
7 clinic to treat people in his mission, wherever he does his  
8 work, who can't afford medical care. I wish I could give him  
9 40. At the end of the year, maybe he'll get a donation.  
10 That's a good thing. That's a good thing.

11           I'm going to start with that. There's that whole  
12 attack on him about the clinic. The question was, you  
13 advertise your clinic by the beach. You advertise a private  
14 beach center. And this picture was taken from the computer.  
15 But what you can see is that it's his -- it's -- you put his  
16 name in, you Google his name, and you can see his name comes  
17 up, but above it is an ad. That's not him. That's the kind  
18 of ads that come up with Google's context. And, you know, as  
19 you may know, Google has saved every search that's ever been  
20 done on Google, and they have your IP address tied to it along  
21 with the demographics that come with it. They probably know  
22 who you are.

23           And when you search for John Hampton, his  
24 competitor, and it says right on it, Baysidemarin.com, which  
25 is not him, pops up to compete with him. And the nice thing  
26 is, for him, I didn't want to joke with him on the stand, but  
27 it shows four reviews and five stars for his clinic. And so  
28 to attack and denigrate him first by calling him the \$20,000

1 man and then by trying to claim he was running a beach front  
2 addiction center, when he's not, is the kind of attack that I  
3 can only say is meant to degrade him instead of looking at his  
4 facts, and I'd like to talk about his facts, and I want to  
5 talk about his facts in the context of me.

6           Let me -- let me jump ahead here because I don't  
7 usually like PowerPoints, so I'm going to jump through them.  
8 I always jump through them. Okay, here we go. Let's look at  
9 what is being portrayed as the basis for me trying to tell  
10 this doctor what to do.

11           First of all, it's something that's in evidence in  
12 this case. The hospital drug screen. Now, Dr. Herrmann  
13 thought that the drugs were taken at 1335 -- I mean, the urine  
14 was collected at 1335 and that the drugs were administered  
15 afterward.

16           Well, one thing I showed our doctor, Dr. Fullerton,  
17 was that this says 1738 when the urine was taken. So if  
18 that's the case, the only one that was taken at 1335 was the  
19 one up top there. That's the alcohol. So from that, as soon  
20 as she was admitted, she took alcohol, and you know that there  
21 was no alcohol in her blood which is a good thing. So that's  
22 why any of the opinions by Dr. Herrmann relating to alcohol  
23 and its effects and working with other drugs didn't make any  
24 sense to me because it's right there, you know, plain as day.  
25 1335.

26           And the same thing with the benzos and the opiates,  
27 which are drugs that the hospital gave, 1400 or 1500 hours  
28 before those tests. So, again, I didn't understand

1 Dr. Herrmann saying, well, the urine test was given before she  
2 was given the Lorazepam. It didn't make sense what he said.

3 One of the important things is if you're going to  
4 sit here and spend your time, you don't want to have me  
5 telling you something in opening or in any case that is  
6 stupid. It's hard enough to argue in light of everything that  
7 is going on. There's nothing wrong with sending him that and  
8 then sending him the alcohol results and then saying, is this  
9 proper to put in front of the jury? No alcohol it shows.  
10 Barbiturates, it shows negative. Methamphetamine, it shows  
11 positive. Cocaine, it shows positive. And we know the  
12 hospital didn't give those. So we know that that's her  
13 cocaine. That's her Adderall.

14 And so basically, you know, the hospital influenced  
15 drugs are the ones, you know, that the hospital administered,  
16 and there's no indication that anything that the hospital gave  
17 was in her blood beforehand. What's wrong with running that  
18 by an expert? I mean, if I'm going to pay him \$20,000, why  
19 shouldn't I ask him basic questions? I'm not a doctor, and  
20 I'm not testifying here, and if I put something stupid up in  
21 opening and base my case on it and then it fell apart, I'd be  
22 an idiot.

23 And, you know, this is the other chart. And it was  
24 a little more complicated, but it showed him this is the  
25 time -- times that these drugs were administered, the start  
26 and the stop times. So you can see from those times that all  
27 of the drugs were given to her before the urine was drawn at  
28 the 1700 hour. And I'm drawing arrows to it, and I'm

1 explaining it. Again, I'm not telling him what to think.  
2 Anybody with medical background who has access to the records  
3 will put that together. And now you, as jurors, because  
4 you've had the benefit of having Dr. Fullerton explain it,  
5 know that Dr. Herrmann was wrong. And that the only drugs  
6 that we can rely upon in the urine test are the presence of  
7 the metabolite of cocaine and evidence of Adderall taking.

8           You know from Dr. Fullerton that the cocaine was  
9 long gone from her system and would not have an effect. And  
10 we know that the small amount -- from Dr. Fullerton, the small  
11 amounts of Adderall would be in the coffee range of effects  
12 because the effects of abuse would have been noted by the  
13 trained police officer who -- and the hospital staff and the  
14 ER staff and the paramedics and those signs were not there.

15           So what's wrong with showing him these things and  
16 focusing his attention on these things? And the marijuana,  
17 again, it showed THC positive. What's wrong with pointing  
18 that out except you know that THC positive is for the  
19 metabolite, and it could have been -- it has nothing to do  
20 with active marijuana in your brain. So, you know, I sent him  
21 this chart. Can I use this chart? Is this a reasonable chart  
22 to show the jurors? It's colorful, but it shows how marijuana  
23 changes into that carboxyl group right there.

24           I asked him, is it a carboxyl group? It is. So  
25 it's a byproduct. So there we go. So I'm sort of dumb at  
26 this. I want to close this. You didn't come here to watch  
27 T.V. So there we go. That's my great offense in trying to  
28 make sure that what's presented to you doesn't waste your time

1 and it isn't stupid.

2           The medical records themselves say all of these  
3 things. For example, Exhibit 13 shows urine, drugs of abuse.  
4 Screen positive for amphetamine, methamphetamine, cocaine, and  
5 THC. Just what we told you. It's on the hospital discharge  
6 summary. It doesn't say Lorazepam or opiates. So I'm not  
7 making this up. And my doctor is not just saying it because  
8 he's the \$20,000 man. It's there. And it's written by  
9 Dr. Christopher Trevor, M.D., who I don't know.

10           Let me switch this over so I can -- instead of  
11 holding it in front of your faces. So on Exhibit 16 -- you  
12 know you have all the exhibits. Here is the ER notes. Who  
13 are the ER people? The ER people are going to be nurses and  
14 doctors. And there are three names on this exhibit that has  
15 multiple pages. It's got the name of Dr. Nguyen. It's got  
16 the primary RN as -- it looks like A -- I don't know. It  
17 looks Ying or Young. I can't tell. It's got a nurse, and I  
18 believe there's another physician mentioned, and, you know,  
19 it's got all the facts there. It talks about Trazodone and  
20 Gabapentin. And it talks about IV drug abuse and her  
21 depression.

22           But, you know, if you actually read the transcript  
23 of the interview with Officer Watkins and Melissa Ho at the  
24 Hayward PD, and I don't know where I put it. I'll put it up  
25 in one second. It's probably right here. If you read that  
26 interview, just read a few parts of it. This is starting at  
27 line 361, because the way the transcript is, it has line  
28 numbers on it like that. See that? So you'll be able to read



1 it in the jury room and know exactly where you are.

2 She says, "um, so, like, since I've been working so  
3 much, I honestly sometimes forget." And that's in reference  
4 to her meds. She said just before that at 3:56. "I don't  
5 know. I had, um, a lot of trouble sleeping if I don't take  
6 like medication on the cert -- like a regular basis."

7 And then going back to where I read, the officer  
8 says, "What medication is that?"

9 "Um, I'm on Trazodone, okay. It's for sleep, but  
10 it's also an antidepressant."

11 "Okay."

12 And then, "I'm on Gabapentin. It's like a mood  
13 stabilizer," and it goes into the milligrams.

14 What's going on is there's no indication that she's  
15 taking those that night, and there's no test to show that she  
16 took those that night. And you heard, in any case from the  
17 doctor, that people get used to taking those drugs. They  
18 don't make you nod off. She's working all day. She's --  
19 she's living her life. If it was really illegal to have a  
20 drink when you're on an SRI, a serotonin uptake (sic)  
21 inhibitor, if you go by statistics, what's the number? How  
22 many people are on this jury panel either themselves, or  
23 family members, or people close to you who are on or have been  
24 on antidepressants? I know we're not supposed to admit those  
25 things.

26 If you look at when Senator Dole ran for president,  
27 this is the first person who was publicly, not like a media  
28 figure, saying, oh, I'm taking Viagra. And it was like this

1 humiliating embarrassing thing people thought, but it was very  
2 courageous, and he helped a lot of people be courageous.

3 I'm not asking people to talk about themselves in  
4 the jury room, but let's be honest, in this courtroom now,  
5 there's a lot of people who are on those serotonin reuptake  
6 inhibitors and they drink a beer, or two, or whatever. And  
7 they make sure they're okay and then they drive.

8 And, you know, Gabapentin, unless you take it to  
9 sleep, you know, if she had taken her Gabapentin to sleep or  
10 her Trazodone to sleep, she would have been asleep.

11 Think about this, the real negligence in this case  
12 is, if you're going to do what she did and to stay and party  
13 and do a very small amount of Xanax, you know, be -- doing  
14 coke at work, having a few beers, then it would be nice, go  
15 home. Take your Gabapentin, take your Trazodone, go to sleep  
16 and go to work. She didn't. She didn't leave until she was  
17 okay, and then she drove home. And the most likely version of  
18 what happened in this accident is that she did have a focal  
19 point seizure, a cluster of them. And we'll get into that in  
20 more detail in a minute. But you heard the doctor explain  
21 why.

22 And, truthfully, you can sit there, you know, and  
23 say, well, she shouldn't use cocaine, but there's probably one  
24 person on this jury who has once in their life. And she  
25 shouldn't be taking Xanax. But, you know, she took a very  
26 small amount of Xanax which I thought was interesting in that  
27 the doctor said Xanax -- Dr. Fullerton said Xanax can stop you  
28 from having seizures. The amount she took was either the one

1 milligram, the smallest amount, or even half of it. It's too  
2 bad she didn't take more. It might have had an anti-seizure  
3 effect. Somebody asked that question. It was a great  
4 question. The small amount she had and the fast acting. It's  
5 going into your blood like this, then you hit the area on the  
6 curve where it's effective, but the trouble is, as you're  
7 going up, your body is also eating it up. So the area on the  
8 curve starts to degrade pretty quickly, and there's some in  
9 your system but it's not effective.

10           You know, that could come up in real life, too.  
11 It's interesting, we had a situation where somebody in my  
12 family thought -- thought that she had ringworm so there's  
13 this drug you take for ringworm, and you can't drink and it  
14 has liver effects and it turned out it wasn't ringworm. It  
15 was just a rash. So besides wanting to go to the doctor and  
16 banging him on the head, how many days after you've taken that  
17 drug can you start drinking again if you discontinue it after  
18 two days? You have to calculate half life and area on the  
19 curve and some drugs are real quick. It's a matter of hours.  
20 Some are a matter of days. This one nobody knows even if you  
21 called the manufacturers. So you got to risk your liver.

22           But certain drugs, particularly the benzodiazepines,  
23 you know, and Dr. Fullerton knows. And what he's telling you  
24 is on that dosage it is not going to have an effect hours  
25 later. So -- and, in fact, the seizure hypothesis is actually  
26 consistent with the Xanax not working. So that's further  
27 proof.

28           The Adderall, you know, again, Dr. Herrmann had that

1 unscientific opinion that Adderall gives you focused attention  
2 and you can't go side to side. And I actually read from the  
3 journal Nature which talked about -- I'll pull it up in a  
4 minute. In that journal it talks about how it does give you  
5 the ability to shift your attention and he said he didn't  
6 understand what that meant. And what Dr. Fullerton said is we  
7 give it to fighter pilots. If you're going to be able to fly  
8 a fighter plane and shift attention, obviously, if you do too  
9 much, that's not good, but he described the symptoms of too  
10 much, and Melissa did not have them.

11 And if you look at the ER records, you will see  
12 that. I'm not just saying she didn't have them. It's what  
13 the nurses and what the doctors in the ER found, as well.

14 And let's not ask Bill Guo, or any of the officers,  
15 or anybody at the scene right now whether she was under the  
16 influence. Let's ask the medical professionals whose job it  
17 is to make an assessment. And I point out this first part,  
18 right here, so you would know that they knew what --  
19 everything you know. They weren't being fooled. IV drug  
20 abuse. It's right there, all right?

21 Okay. Let's start on the coma scale. She doesn't  
22 have a coma. She's -- the highest level of spontaneous  
23 oriented or base commands. Ok, she's oriented. They -- let's  
24 see -- they do her blood pressure as Dr. Fullerton told us and  
25 her BP is 140 over 72, a little elevated on the high end. He  
26 would prefer 120, but 140 post accident and in an ER is  
27 nothing and the bottom number, the diastolic, is excellent.

28 Same thing with her respiration which is 12. Her

1 heart is 77. Nothing at all that's elevated in the way that  
2 you would expect if somebody was under the influence of  
3 amphetamines to any meaningful degree. So it's all right  
4 there in the records.

5           And going back to these records, and I highlighted  
6 it in yellow, and I did this for Dr. Herrmann. It shows right  
7 here the times that these -- morphine, Zofran, Dilaudid and  
8 Xanax was administered all before the urine test.

9           In the handwritten notes you can see right here  
10 where it says at 1730 patient using bed pan. Urine collected  
11 and sent to lab, and then it lists the name of the nurse. So  
12 that's 1730 that everything was collected. That's yet another  
13 proof that Dr. Herrmann was wrong. Dr. Fullerton was right.  
14 It's not a question. It's in the records. I mean, the nurse  
15 is not wrong.

16           Here's a good summary of her admitting vitals an  
17 hour after she's been admitted. Her blood pressure, pulse,  
18 blood pressure, respiration, it's all right there. Right  
19 here, alert oriented times 3. Mild distress. Mild abrasion  
20 to face. Heart sounds normal. Pulse is normal. Breath  
21 normal. No respiratory distress. You know, it goes on and  
22 on. No motor deficit. No motor deficit. No sensory deficit.

23           All right. Nothing ends in a discussion in a case  
24 this serious, but -- unless the ER nurse and the ER doctors  
25 are complete idiots, she was not under the influence of any  
26 drugs at the time she was admitted.

27           The Adderall, if it was, was either at a subclinical  
28 level, meaning, it had already dropped off or it was affecting

1 her like coffee or some mild stimulant, but nothing that would  
2 be clinically significant because when she's in there and her  
3 spleen is bleeding -- first of all, they want to know if she's  
4 going to bleed out. Two, they're administering morphine to  
5 her and Lorazepam to her, and they've got to know if they're  
6 going to kill her. And if she's already high on opiates, or  
7 if she is on any sort of drugs, they've got to know this and  
8 they're checking and there's nothing.

9           To convict Melissa Ho, you would have to look at  
10 those results and throw them in the garbage. So that's at the  
11 ad lib part. Now I'm going to go to my closing statement that  
12 I wrote out, and I'll try not to repeat anything.

13           Let's look at the witnesses in this case and let's  
14 start with Bill Guo. Nobody interviewed Bill Guo until July  
15 20th, 2015, when Gregg Oglesby interviewed him, and it was 11  
16 months and one week after this accident. He -- I'll submit to  
17 you Gregg Oglesby did not bully Mr. Guo. He called him a few  
18 times. And he met with him in a neutral place, and he sat  
19 there and either took handwritten notes and transcribed them  
20 to his laptop or he took the notes right there on his laptop.  
21 Why he's being attacked for that I have no clue. He's a  
22 trained Daly City lead detective. He's worked in the United  
23 States government in prosecutions.

24           Nobody complained that Officer Watkins didn't have  
25 handwritten notes. We talked -- they talk about the  
26 handwritten notes of Inspector Galindo. Well, where were his  
27 typed notes that are easy to read? Dr. Herrmann didn't even  
28 remember what notes he looked at the day before and didn't

1 have any notes with him or records with him that he reviewed  
2 to give his opinion. You didn't see me degrading him for not  
3 remembering why. I suspected why, but I'm not going to attack  
4 him.

5           Gregg Oglesby is a top investigator. He did a great  
6 job talking to this witness and I'll tell you why. Because  
7 it's really easy to go to a witness who is scared and show up  
8 at his house, oh, your cousin let me in and be in his house,  
9 which is what the Prosecution did. Oh, your cousin let us in.  
10 If I went downstairs from my house, even though I don't have  
11 an upstairs, if I had an upstairs and I went downstairs and  
12 there's two police officers, or a D.A. and a police officer  
13 and an inspector in my house, I'd feel pretty invaded and  
14 uncomfortable. And if somebody in law enforcement or in the  
15 D.A.'s Office used a curse word and unless it's in the context  
16 of quoting, I would be thinking the person is trying to make a  
17 point of some sort. I don't think that just slips out. I  
18 don't know what that point is, but to say Bill Guo can be  
19 shown medical records of Melissa Ho or witnesses can be shown  
20 the context of your case, it's ridiculous.

21           Do you want a witness who has been manipulated or  
22 intimidated, or feels threatened, or has been told things that  
23 have nothing to do with what he or she actually observed? I  
24 would have liked if Gregg had asked to look at the text. You  
25 know, I mean, next time I see him, I'll probably say, next  
26 time you should ask for a text and he'll probably go, yeah, I  
27 should have asked.

28           But putting that aside, in a non-confrontational

1 direct interview, Bill Guo never said a word about ever  
2 telling Melissa not to leave or not to drive. That comes up  
3 years later and with two mystery people, the two people. Ms.  
4 Backers says, Bill Guo and two people told her not to drive.  
5 Are any of those people here in the audience? Is it you? Is  
6 it you? Is it you? Is it nobody? Is it somebody that Bill  
7 Guo made up because if they investigated it, and they're  
8 meeting with Bill Guo and he says, yeah, two people and I told  
9 her not to go, I think that the investigator might say, wow,  
10 what are their names? I mean, what's worse? Not asking for  
11 the text messages or having these two critical witnesses who  
12 are like prominent in the Prosecutor's closing? We don't know  
13 if they're men, women, if they're tall, short, age. We don't  
14 know anything about them. They just pop out of the blue. And  
15 where are the notes? Let's talk about the notes. Where are  
16 the notes where they say who are the names? Nothing. That's  
17 what they want you to convict on? That's what they want you  
18 to convict on?

19           And Bill Guo is testifying, and I'm basically  
20 having -- hearing him say he told the truth to Gregg Oglesby.  
21 What's the truth? He did not feel that Melissa's behavior  
22 was -- was strange. In fact, he said Melissa's behavior was  
23 normal throughout the night. She did not appear very high or  
24 intoxicated. She had a couple of beers during the course of  
25 the evening but she definitely was not getting drunk. She was  
26 mostly watching movies that night in his family room. Gave  
27 her either one milligram or even less, half a gram --  
28 milligram of Xanax.



1           Did you tell the truth to my investigator? Yes.  
2 Can you explain the difference? What comes out is he says,  
3 I'm feeling threatened.

4           Well, did you get immunity from the Prosecutor?  
5 Yeah, I went to a lawyer and she gave me an e-mail immunity.  
6 That was okay with me. All right. Any problems with it?  
7 Yeah, I didn't feel it covered everything. I thought I might  
8 get in trouble. What kind of trouble? And he intimated, I  
9 didn't bring it up. And Ms. Backers just now said,  
10 Mr. Horowitz asked, were you afraid of being sued? You can  
11 have it read back. That's not what happened. He expressed  
12 vague feelings like -- maybe we can interpret it being sued,  
13 being blamed. What greater excuse can he give than to say,  
14 oh, yeah, we were at the party but I told her not to leave? I  
15 mean, the dram shop rule that Dr. Fullerton talked about.  
16 You're supposed to cut somebody off at the bar or you're  
17 responsible if they leave and drive and hit somebody. So he  
18 knows that, I guess. He's talked to a lawyer. So his  
19 response is to say, I told her not to leave. She did anyway.  
20 Me and the two invisible people told her not to leave. The  
21 people -- what could be more obvious?

22           And the cursing on the phone when he's talking to  
23 her. I don't know what that cursing is about, you know, when  
24 he's talking to Ms. Backers. I don't think it's proper to  
25 curse on the phone with witnesses. I think probably -- I  
26 don't think you have heard a single witness other than my  
27 expert who I talked to personally. So I'm not in this case.  
28 My conduct is not -- I didn't inject myself into this case.

1           But Ms. Backers and her investigator had that excuse  
2 and didn't explore it and then put it on the stand like it was  
3 the truth. And it's so obvious what he's doing. And he's  
4 what's known as an outlier. When you have statistics and you  
5 get all the data sort of here and there's an outlier all the  
6 way out here, you've got to explain the outlier. I mean, you  
7 got to say the outlier could be random variation just like if  
8 I went to Vegas and put a quarter in the machine and won a  
9 million bucks. That would be the outlier. Everything is  
10 generally dead center.

11           In this case, is the outlier accurate? We just have  
12 differences of opinions. Here's what you got with Bill Guo.  
13 She wants you to convict beyond a reasonable doubt to find  
14 that Bill Guo was telling the truth when closest to the time  
15 he said just the opposite that she was fine. That -- what he  
16 said when he talked to Gregg Oglesby is totally consistent  
17 with what the ER medical records show. And he changes it up  
18 in the courtroom after telling you that he talked to a lawyer,  
19 that he was afraid. He's afraid of the equivalent of the dram  
20 shop rule, or whatever, and he gives you a statement that,  
21 even in the stand here, was back and forth, and he explains  
22 why. He basically says, I wanted immunity and so I told her.  
23 It's so unbelievable. To base a case, to ask you to find  
24 guilt beyond a reasonable doubt because she was intoxicated  
25 when she drove, based upon Bill Guo's statement is insane.

26           And the only thing to corroborate that is  
27 Dr. Herrmann's testimony that there's warning labels on the  
28 drugs and Trazodone is a depressant and the urine test was

1 done at 1335, not 1738.

2 I'm sorry, but Dr. Herrmann to this day, I'm sure,  
3 can do a great autopsy. But his qualifications as a  
4 toxicologist are nil. I mean, he technically qualifies as an  
5 expert, but you don't know the class of drugs that you're  
6 talking about and each class has a different type of action.  
7 Why is he there? You know, you're not allowed to go on the  
8 internet as jurors, but I think you would get more information  
9 from the internet than what you got from Dr. Herrmann. He  
10 couldn't even remember what he reviewed the day before.

11 And I don't -- I like Dr. Herrmann. You know that.  
12 And I was happy when he was able to make that joke when I  
13 said, would I be nicer if I took the Xanax. I was happy to  
14 see he had that sharpness to him. Why would they call him?  
15 Why would a Prosecutor call him? I will tell you. If they  
16 didn't have his opinion, the drug stuff would fly out the  
17 window and be a total obvious waste. He's the attempt to  
18 dignify prejudice and bias and passion with a medical opinion  
19 which fortunately is so obviously not true, that it leaves you  
20 just with, were there any objective signs that she was  
21 impaired? And the answer is, other than Bill Guo, no.

22 Let's see what kind of order I did here. I sort of  
23 wanted to do the order of people as they saw Melissa Ho.

24 After Bill Guo, you had Mr. Chang and bear with me  
25 on this. I can read it, but if I can do a little technology  
26 I'll actually play you just a portion of what he said. If I  
27 can't do it easily, I'll just summarize it.

28 I'm guessing at about 46. It will be loud enough to

1 hear, but not too loud to drive you nuts. This is the very  
2 end of my questioning after Ms. Backers started to say things  
3 like, you don't know the effects of heroin. You don't know  
4 the effects of cocaine. Here's what I asked.

5 (Video playing.)

6 MR. HOROWITZ: Is he a liar? Is he stupid? Does he  
7 not know what he's talking about? Because everything he says  
8 is entirely what the ER records show, as well. So you now  
9 have, from the time of that accident right up to the ER,  
10 consistent findings that she's not at all impaired.

11 Who is the first person to talk to her at the scene?  
12 Well, you remember in opening I got upset that Ms. Backers was  
13 implying that all Melissa Ho could think about was herself.  
14 That she was selfish. That she was unmoved. And I told you  
15 that it was outrageous, and I told you why it was being done.  
16 I told you that this case was not a valid case on the facts  
17 and that you would be in a sense attacked -- I used those  
18 words and I'm using them now. You would be attacked to try to  
19 feel emotion based upon the very well known psychological  
20 theory that logic follows emotion. And I purposely used the  
21 term alt-facts in opening. And why did I do that? And that's  
22 because depending what side you favor, that's -- that tends to  
23 be the facts that you believe and that favoring is emotional  
24 first.

25 I'm not telling anybody how I really feel about  
26 politics because you don't really care, but I am telling you  
27 that the human brain will follow its heart and in this case  
28 your heart can only lead to the people hurt in this case. And

1 that's why you have to be soldiers and fight for democracy  
2 because Heaven forbid that you or someone you love should ever  
3 be in that defendant's chair. You would want the jurors to  
4 follow the law and not their emotion. In fact, there's an  
5 instruction that the Court will give you which is often  
6 ignored, but it's not meant to be ignored. It tells you that  
7 you can't decide on emotion.

8           If you look at what Mr. Damien Johnson said, now,  
9 here is a man who I feel he's a strong man, but he broke down  
10 at the scene emotionally. And soldiers do, too. Don't you  
11 think for a minute. There's a country song about letters from  
12 home, about a soldier getting letters from home and in the  
13 video as the soldier is reading it, all his buddies turn away.  
14 It hurts. Things hurt. And he hurt. And he showed some of  
15 it here, and what you heard about what happened at the scene  
16 is even stronger. So his bias, okay, his emotion, his anger,  
17 toward Melissa Ho must be unbounded even compared to the way  
18 we feel.

19           And yet when he testified, there was not a word from  
20 him, not a clue, not a hint of anything being wrong with her.  
21 And contrary to what Ms. Backers told you in opening, he  
22 described how she got out of the car and ran to Mr. Andrade  
23 and tried to help him. And then he says, "You killed my  
24 friend. You killed my friend." And she walks over and sees  
25 something that -- unless you've been in -- it even affected  
26 Officer Watkins who did two tours in Iraqi. What do you think  
27 it did to her? She got in her car and got on the phone, and  
28 at some point, as we know, got out and minutes later when

1 people are coming over, she is still -- she's not even on the  
2 ground sitting. She's just curled up sobbing. She's curled  
3 up sobbing. It's like a fetal position, sobbing. That is  
4 somebody who does care what she did. That is somebody who is  
5 not separated from her feelings by drugs. That is somebody  
6 who is connected to the horror of what she did, and she is  
7 sorry. And if there was anything that we could do as living  
8 people to bring that young man back, we would do it, but we  
9 can't, and revenge does not bring him back at all.

10           She was so upset she could not speak. You didn't  
11 just hear that from one witness. Who came to the scene? Who  
12 did not have to come to the scene? Mr. Arulkannan, Deepak  
13 Arulkannan. He was driving by as so many other people were,  
14 but he stopped and he got out and he saw this horrific scene,  
15 but he did not blink. He saw Melissa hysterically crying. He  
16 saw no signs of impairment whatsoever. He saw her hunched  
17 over just as Officer Watkins later found her. Did  
18 Mr. Arulkannan lie to you? Is he stupid? Does he not know  
19 what he saw? He offered her water. She couldn't even talk to  
20 him or take it. He saw no signs of impairment just as  
21 Mr. Chang saw no signs of impairment. Just as the doctors and  
22 nurses saw no signs of impairment.

23           Becky Sun, in between. In between Becky Sun saw no  
24 signs of impairment. A mother is not going to let her  
25 daughter drive impaired. You saw her up there. Did she lie?  
26 She was so scared. She answered "Yes" and "No."

27           Officer Watkins, tours in Iraqi, E.M.T., still  
28 certified, a medic. Not only did he see her at the scene but

1 before he filled out his CHP 555 form, he saw her in the  
2 hospital, had his radar put up because she said, I've been a  
3 drug addict. And even then on his form he put nothing about  
4 her being impaired. Nothing. He didn't ask the hospital to  
5 do a blood test. He didn't ask questions about her being  
6 impaired at the time she was driving. When he saw her at the  
7 scene, he had time to talk to her and ask what happened.

8           And as you know from Dr. Fullerton, memory comes  
9 back after a concussion. Hopefully back. At the scene she  
10 first said, I don't know what happened. Later she remembered  
11 looking left and then seeing the car coming on. Later on in  
12 Hayward she said, I said that but I think I either blacked out  
13 or fell asleep. That's called her memory coming back and  
14 trying to be helpful. And Officer Watkins saw nothing.  
15 Nothing whatsoever.

16           The other officer, Officer Barcklay, who saw her in  
17 the ambulance. Yeah, she asked, not -- you know, in opening,  
18 she asked over and over and over and over am I going to be  
19 arrested? Barcklay said she asked two times which is not an  
20 abnormal thing to do, and she also did not seem impaired  
21 whatsoever.

22           So -- and the ambulance driver, there's no ambulance  
23 drivers coming in here saying she was impaired. Look at all  
24 of the people who touched her without a single person saying  
25 she seemed impaired. And not -- from every walk of life. Her  
26 mother. Somebody who was screaming at her, "You killed my  
27 friend." A man who does microbiology work who is a very smart  
28 man, Mr. Chang, who spoke to her in two languages. An E.M.T.,

1 war veteran, who -- medic. Hospital staff including nurses  
2 and not just nurses who barely see this, trauma nurses at a  
3 trauma center. Doctors at a trauma center. The actual tests  
4 themselves, the medical tests. The medical tests are not  
5 biased. All of them say the same thing. All of them.

6 And yet the Prosecution wants you to somehow believe  
7 whatever I just heard. I could spin her drug use any way you  
8 want. I could spin it this way, that way, depending on what  
9 side I want to argue, if I don't want to be honest with you.

10 But if I want to be honest, you have to go to a  
11 medical expert combined with the people at the scene.

12 Now, let's say there was no medical expert in this  
13 case. Let's say I didn't call Dr. Fullerton. You would be  
14 asked -- remember, she's not being charged with swerving to  
15 the side. She's being charged with the crime of committing  
16 gross negligence because nobody in her condition would  
17 reasonably get behind a wheel and drive.

18 I've already told you that logically had she left  
19 earlier when the drugs might have been affecting her, you  
20 might have wanted to think about that.

21 But, what is the evidence? We know there's evidence  
22 that she took drugs. But just because of A, doesn't mean B.  
23 Because if A equaled B, if using drugs means that every time  
24 you have an accident after you've used them, the drugs caused  
25 it, then these courts are going to be full of people because  
26 alcohol is a drug. Xanax is a drug. It's prescribed.  
27 Marijuana is legal now, at least for another few months until  
28 Sessions gets approved, and so on. So the point is, people



1 consume substances. We as human beings have consumed  
2 substances throughout our genetic history.

3 I claim that we were made perfectly on this earth  
4 except we're deficient in caffeine, and that's why coffee was  
5 invented. But the point is, human beings always take  
6 chemicals and always will. The law says you can't be impaired  
7 by those chemicals and drive in a way that hurts somebody.  
8 But in this case, the two are not connected. The only thing  
9 that connects her drug use and us being here is that this  
10 accident is so bloodily horrific and the injuries are so  
11 awful, that somebody decided to put it in front of you even  
12 though the original e-mail from Dr. Herrmann, years ago, made  
13 it clear, that there's no way you can draw a conclusion from  
14 those urine tests. But, now, sadly things have changed for  
15 Dr. Herrmann, and his opinion is often very confused and  
16 totally unscientific and not useful. But the fact that they  
17 can bring somebody and basically take advantage of him and put  
18 him on the stand where he does not belong, that doesn't make a  
19 case.

20 I want to talk a little bit about the epilepsy.  
21 There is no way that we can say for a fact that Melissa Ho had  
22 focal point epileptic seizures. If Dr. Fullerton said that, I  
23 would take back my \$20,000 because that would be the kind of  
24 thing you pay a jerk who works for money and is not a  
25 scientist. What he said to you was that doctors, when they  
26 are faced with scientific evidence, have to make assessments  
27 as to probabilities. And when I told the story about the  
28 ringworm and the medicine that stops you from drinking alcohol

1 and then it turned out to be the wrong diagnosis, you really  
2 can't blame the doctor for that, right? Because if it looked  
3 like ringworm, the sooner you take the drug, the sooner you  
4 stop it, and the sooner it's not contagious to the people  
5 around you. Thank goodness the lab test came back and said  
6 it's something else. A differential diagnosis in that case  
7 was, ringworm and then the other diagnosis is, you know --  
8 there are two or three other ones. They finally figured it  
9 out. Great.

10 In this case, because he's not at the ER, because  
11 this is all alt-fact, he -- he can suggest that the evidence,  
12 as you have it medically, makes a focal point seizure a very  
13 likely scenario, the most likely. Based upon the evidence in  
14 front of you, there is zero evidence that she was impaired.  
15 The fact that you have two accidents does not mean necessarily  
16 that you're impaired. It could mean that you're in a rush.  
17 It could mean you're a bad driver. It could be bad luck. It  
18 could be a statistical anomaly. A certain number of people  
19 have two accidents a day. It could be that the first accident  
20 upset her and made her tense and so she was not thinking about  
21 it. There's many possibilities but your job is not to  
22 speculate.

23 The point is that scientifically -- essentially,  
24 when you are jurors, you are scientists because scientists --  
25 as this doctor is, Dr. Fullerton said, are evidence based.  
26 You have to decide on evidence, facts. So he gave you the  
27 medical facts and a likely diagnosis. You can consider that  
28 as part of your decision. And I will tell you in terms of

1 reasonable doubt, there's going to be -- every thought should  
2 go through your head. You should consider every thought that  
3 Ms. Backers puts in your head as her argument to see if it has  
4 a factual basis.

5           But, just the epilepsy theory alone is viable. They  
6 didn't attack it. They didn't bring Dr. Herrmann or any other  
7 doctor back to attack it. And you know, unlike me, who did  
8 not have any notes from Dr. Herrmann, they had the entire file  
9 from our doctor, and they looked through it. They didn't find  
10 anything in it that contradicted his medical opinion. They  
11 found nothing in the records, the medical records here, that  
12 in any way contradicts that medical opinion. Nothing.

13           That -- the law is -- the law of reasonable doubt is  
14 so clear. You can't like -- you know, if somebody on the jury  
15 said, well, maybe Martians came down and caused the accident  
16 and you planted a memory in Melissa Ho's head and, obviously,  
17 that's ridiculous and that person should be given Trazodone  
18 and Gabapentin so that they can calm down. But if you have  
19 people on this jury who say, you know, the epilepsy is  
20 probably what happened. I feel strongly that's -- I agree  
21 with Dr. Fullerton.

22           Somebody else says, I don't know, I don't know.  
23 Even that little amount of Xanax, maybe that would have  
24 stopped the seizures. I don't know. I've got -- it doesn't  
25 seem to me the most likely.

26           Then another juror says, but is it stupid? Is  
27 Dr. Fullerton totally wrong? Can you discount him? And that  
28 same juror says, no, I mean it's reasonable. It's not my

1 choice. It's reasonable. That's a not guilty. Both jurors  
2 are on the same page. So the juror who thinks it was  
3 epilepsy, it was epilepsy. And the other one who says, I  
4 don't think it was. I think Ms. Backers is right. She was  
5 just stoned and she hid it really well. She even controlled  
6 her heart rate in the ER and her breathing rate just to fool  
7 people, okay, but is Dr. Fullerton wrong? No, I see his  
8 point, but I like my point better. Not guilty. They're both  
9 not guilty jurors. Both not guilty.

10           If the Prosecution just can't prove what happened,  
11 you know, some jurors might say, I don't like any of them.  
12 Okay. But did Ms. Backers prove she was under the influence  
13 at the time? Well, they've got Bill Guo. They said different  
14 things. Yeah, that's true. I don't know. I can't decide but  
15 I don't want to do not guilty because I'm not going to let her  
16 get away with it. It's not guilty because she didn't prove  
17 anything beyond a reasonable doubt. It all adds up to the  
18 same thing.

19           So let me talk to you a little bit about the  
20 instructions in this case. It will be -- do you want me to go  
21 about half hour?

22           THE COURT: Let's go 15 minutes and take our  
23 break.

24           MR. HOROWITZ: All right. The instructions are  
25 pretty simple in the sense that you know the elements of  
26 killing somebody or greatly injuring somebody is obviously  
27 proven. But when you actually look at the judge's  
28 instructions and think about them, they're so outside anything

1 that's been proven in this case, it's beyond belief. I mean,  
2 you actually have to find that Melissa Ho deliberately got  
3 behind the wheel knowing that she was likely to kill somebody  
4 or injure somebody or at least have an accident.

5           And what you really have is just the opposite. You  
6 have Melissa Ho in a situation where she's used some drugs and  
7 she doesn't leave the house. Remember, there's no evidence of  
8 her taking any of the Xanax. Once the party was going on, she  
9 took it early on. The beers are like three beers and you know  
10 that she took those early on because they're not in her blood  
11 at the hospital. They took her blood at the hospital right  
12 when she came, so that's just off the table.

13           So is it really a crime to be up all night and  
14 drive? There is nobody I know who hasn't been up for many,  
15 many hours if not up all night and driven. If you go to a  
16 concert at Napa Winery in Saratoga and you live here and when  
17 you leave at 12:00, you're going to be lucky if you get home  
18 by 2, 2:30. And people drink beers at concerts. So being  
19 tired -- I mean, being tired can probably increase your chance  
20 of having an accident, but that's not gross negligence.  
21 That's -- and if she had fallen asleep at the wheel, if that's  
22 what you found, you might find she was negligent if she knew  
23 she was going to fall asleep.

24           You might start thinking about it, but she had a cup  
25 of coffee. She took an Adderall which even though it sounds  
26 so awful, Adderall, is, you know -- it's an amphetamine.  
27 Well, if it's so awful, why are we giving it to our children  
28 in massive numbers? And then they ride bicycles and they have

1 split attention. Dr. Herrmann was just wrong on that. We  
2 don't say don't give -- don't give your ADHD children Adderall  
3 and then they only have to walk to school. They have to  
4 drive. They ride their bikes. They ride their scooters.  
5 They play like -- they play on the play equipment at school.  
6 So it's just, again, a myth. It's a lie. It's a prejudice to  
7 make you think that just because somebody took a drug like  
8 that, that somehow they become dysfunctional. Guess what?  
9 There's a lot of adults taking Adderall for ADHD and they  
10 drive. They drive. Probably hundreds and thousands. Who  
11 knows? A lot of kids take Adderall or some newer drugs and  
12 they take them the rest of their life. And it helps them  
13 apparently. You know, they do well in school and pay  
14 attention and they still play with the other kids. So what  
15 the heck is -- is he saying you take Adderall you can't drive?  
16 It's just not true. It's not even a little true.

17           So -- and if you look at her blood pressure. If you  
18 look at her heart rate, what is Ms. Backers going to say?  
19 Every time she got tested and every person she met was fooled  
20 because she had adrenaline going. You know -- because I don't  
21 get to talk after I sit down and she does, so I'm going to  
22 have to sit there and probably grind my teeth and maybe I will  
23 take a Xanax or an Ativan so I don't get too upset sitting  
24 there. But the point is, well, of course, you know she's a  
25 trained drug addict. She knows how to act normally. And the  
26 adrenaline from those accidents, of course she seemed normal,  
27 but she was really sleepy and she knew she wasn't paying  
28 attention. That's what the argument is going to be. Is there

1 a single fact that that is true? No.

2           What is adrenaline? Adrenaline is an awful lot like  
3 Adderall. They're stimulants. She's okay because of  
4 adrenaline. But why couldn't she take an Adderall and  
5 function like a cup of coffee, or a couple cups of coffee.  
6 That's what the expert said. That's what the real expert  
7 said, Dr. Fullerton. No matter how you spin it, there's  
8 nothing that establishes gross negligence whatsoever. That's  
9 why the attacks have been so personal on Dr. Fullerton.

10           For example, if you look at Exhibit 27, that's from  
11 the DVD that Ms. Backers was given by Dr. Fullerton. And she  
12 was trying to imply that he's some sort of like cheat, that  
13 I'm telling him what to say. And that he got that, you know,  
14 two weeks before the interview with Ms. Ho. But what was not  
15 understood, is that, that's not the date that he got the file.  
16 It says right on it, you know, date finalized, and you can see  
17 right there it says "opening 12/1/16," and I guess it was  
18 worked on and modified last on 12/5/16. But the date  
19 modified, anybody who works on the computers, is the date that  
20 was last opened and changed or maybe just opened and closed  
21 and saved. I forget which.

22           But, in any case, it's not the day that it was  
23 transmitted to him. You would find that by the creation date  
24 on the disk. You could look at the date the disk was burned  
25 or if it was e-mailed or in this case it was a disk. If you  
26 look at the burn date on the disk. And, in fact, to show that  
27 that is correct, here's another disk, and you can see right  
28 there, it's all on one disk. But the date modified, it's all

1 sorts of different dates. And what's interesting is that that  
2 date modified is 11/21/16, the very top. So if he got those  
3 disks at the same time, then he would have had to have gotten  
4 them after the latest date which would be 11/21/16. I mean,  
5 that's -- you know, it's just a bunch of nonsense. A bunch of  
6 nonsense. 12/5/16, 11/21/16, you know they're all different  
7 creations. Some of the stuff was created 2015, and if you  
8 opened up that folder, right there, who knows what date they  
9 would found inside. I mean, I know it, but I can't tell you  
10 because I'm not a witness. It has to do with what is evidence  
11 in evidence.

12           The point is, the creation date of a file has  
13 nothing to do with when the person actually got it. Look at  
14 the disk. See when they were burned. You will have a better  
15 idea.

16           You know what, let's say I gave him that  
17 presentation prior to him talking to Melissa Ho. Why attack  
18 him or me for that? You've seen that. It's got the hospital  
19 drug screen. He's got to look at that, right? It's got my  
20 interpretation of the alcohol. Is that incorrect? Could any  
21 reasonable doctor disagree with no alcohol at the time of  
22 admission? No. Can anybody disagree that barbiturates are a  
23 no? Can anybody disagree with the methamphetamine or the  
24 cocaine findings or the fact that a hospital administered  
25 drugs are not relevant? I mean, all of this is just right out  
26 of the records.

27           So, why does it say that an expert witness is  
28 somehow going to lie and cheat and steal because he's being



1 shown medical records and an attorney's belief as to what the  
2 records show. And hasn't it turned out that everything that I  
3 showed him in those files turned out to be what he testified  
4 to, what the medical records show, which are undisputed in  
5 this case? So I was correct. So if in the end, the fault is  
6 that I didn't want to go in front of you and medically give  
7 you something wrong, then blame me for it. But he is just  
8 totally following what the evidence suggests.

9           You know, even the misdemeanor charge. I know that  
10 you'll get -- you'll be allowed to choose with Mr. Andrade  
11 whether it's a misdemeanor or a felony. They're the same  
12 elements. You just decide which is which, but -- based upon  
13 your view whether it should be a misdemeanor or a felony. It  
14 gives you a lot of discretion. Look at the elements of it,  
15 all right?

16           Felony reckless driving. This is from Mr. Andrade.  
17 Did she drive a vehicle on the highway? Well, that part is  
18 really easy.

19           The third one, did she cause great bodily injury to  
20 Mr. Andrade? Yeah. He suffered great bodily injury. She  
21 caused it because her car hit him. That's pretty obvious.  
22 But number two is where they lose. You would have to find  
23 beyond a reasonable doubt that Melissa Ho intentionally drove  
24 with wanton disregard for the safety of persons or property.

25           Now, obviously, she would have to have known that  
26 Mr. Andrade would be there in general. Did she drive her car  
27 in wanton disregard? If she drove her car 90 miles an hour,  
28 that would be one thing. In the town where I live, somebody

1 was running from the police at 60 miles an hour in city  
2 streets. And even after their tire blew off, they were on  
3 their rims. That might be wanton. And nobody got hurt. That  
4 person is locked up now.

5 But look at the evidence of her driving. There's no  
6 evidence that she did any bad driving other than the two  
7 accidents. Not that that is great, but it's not like she was  
8 weaving. You know, when you're a DUI person, you're weaving  
9 or you're doing something to draw the attention of the police.  
10 No witness -- nobody ever said she drove funny any time. She  
11 had these two accidents. I get it. That's very provocative.  
12 I understand it, but look at their expert witness. Look at  
13 their CHP expert who knows more about the insides of cars than  
14 anybody I have ever seen. I mean, I think if you found a  
15 screw on the ground, Officer Cheever would know where that  
16 screw went on an engine.

17 But when I tried to push him further to an area  
18 where he talked about Melissa Ho's speed, all of a sudden he  
19 would say it's a tremendous impact. It's an enormous impact.  
20 You know why they're doing it? Because she doesn't know how  
21 fast she was going at the time of the impact because most  
22 likely she had an epileptic fit, or blacked out, or something.  
23 She doesn't really know. She's estimating, guessing trying to  
24 help. He's trying to make you without evidence think that  
25 this impact must be 60, 65 miles an hour. It may have been.  
26 It may not, but he doesn't know. He didn't understand the  
27 formula for acceleration, force, he didn't understand it. And  
28 he threw that out like he was an expert and -- but he was

1 wrong about understanding. He didn't understand that  
2 basically if you're going 65 and you hit something and then it  
3 slows you down, your acceleration is one number, and if you  
4 hit it and you stop right away, the acceleration, the change  
5 of speed is another.

6           Melissa Ho hit basically a stopped object, a stopped  
7 car, which means that all of her force at one moment was  
8 transferred between the two vehicles as opposed to a gradual  
9 transfer of force, which means, that the amount of damage to  
10 her car is the most that there could be.

11           But if she was really going 65, at least you have to  
12 wonder whether she would have stayed in the car and not gone  
13 through the windshield. You know, it's -- you know, if they  
14 had come here, for example, and said here is -- here's the  
15 crash dummy test that the government does on cars and we're  
16 crashing into cars at a certain speed and here's how it  
17 deforms the cab, that would have been interesting. If they  
18 could have shown what it looks like when a car hits a wall at  
19 40, 50, or 60. If they bought in a mechanical engineer or  
20 somebody who has a physics. Somebody asked the question.  
21 Have you taken any courses in physics? The answer is no. So  
22 he doesn't know anything more than what we know, which is, we  
23 don't know.

24           But what we do know is when you hit a stationary  
25 object, all of the crushing is going into your car. You're  
26 not being slowed down. I mean, if a kid is running at me and  
27 he's about to run into the wall, if I grab the kid and go  
28 backwards, the kid is not going to get hurt. The kid runs

1 into the wall. The kid gets hurt. When you hit an immovable  
2 object, that does the most damage. That's all you know. So  
3 you really can't speculate as to how much speed was in that  
4 crash and there are factors that you don't know.

5           You don't know whether the frame was really bent,  
6 the bottom frame. You don't know how much force it takes to  
7 bend the parts that were bent. These are simple mathematical  
8 things that real experts know. And for them to ask you to  
9 speculate -- I mean, the guy is probably the greatest mechanic  
10 on earth. You know the Click and Clack -- the Tappet  
11 Brothers. You called them on NPR, and they're from Boston,  
12 and they know everything wrong with your car just on the  
13 phone. He's one of those guys.

14           But why would they to try to get you to believe that  
15 this was such a high speed impact by using somebody with no  
16 physics background who doesn't even know the basic formula for  
17 force? And why would they ask him to testify to that? Why?  
18 Why?

19           Your Honor, should we break?

20           THE COURT: We will do that. So ladies and  
21 gentlemen, it is time for our mid-day recess. We will see you  
22 all back here at 1:45. Please remember the admonition. Do  
23 not discuss this case with anyone. Do not conduct any  
24 experiments. Do not form any opinions even, not yet. We will  
25 see you back here at 1:45. Have a good lunch.

26                           ---oOo---

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1 WEDNESDAY, FEBRUARY 8, 2017

AFTERNOON SESSION

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P R O C E E D I N G S

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THE COURT: We're back on the record in the Ho matter. Both counsel are present along with Ms. Ho. All of our jurors and alternates are present.

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Mr. Horowitz, would you like to continue your argument?

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MR. HOROWITZ: Thank you.

Welcome back. So what I tried to do, I tried to put some slides together over lunch that are useful. They will be a little out of order and a little rough, but I wanted to hit a bit on the jury instructions, hit on the epilepsy a little bit more and do a brief summary of some of the points and show you how they tie in. So it's a little more T.V. at this point.

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All right. The instruction for felony vehicular manslaughter. You'll get it from the Court, and I'm not showing you the whole instruction, but I wanted to focus on the concept that the defendant had to commit an otherwise lawful act which in this case the Prosecution is saying driving. So it's the act of driving, and she did it in a way that might cause either death or serious injury and she had to do the driving with gross negligence. But we're not talking about a driving error. It's very important to understand, you're not deciding whether she should have veered off the road, or not veered off the road.

1           You're assessing whether when she got behind the  
2 wheel, even though there's no DUI charge, whether she was  
3 intoxicated or should have known she was so impaired by the  
4 drugs and everything else that she couldn't drive safely.  
5 That's why I hit so heavily before the break on the fact that  
6 there's no evidence of that from any witness. It's all --  
7 it's all prejudice.

8           And she had to actually -- when they talk about  
9 gross negligence, they're actually saying that you have to do  
10 something in a reckless way that creates a high risk of death  
11 or great bodily injury. And the truth is, except for Bill  
12 Guo's lies, you know, what every person said was that she just  
13 seemed normal except that she was hysterically upset. So  
14 getting behind the wheel with a history of having done  
15 anything, if you're not impaired, even if you've been up all  
16 night and even if you have broken the law by snorting cocaine,  
17 doesn't mean that when you're behind that wheel, if you're not  
18 impaired and there's no evidence of it, that you've acted with  
19 gross negligence.

20           So the instruction support exactly what I'm saying.  
21 The instructions are not telling you that this is a really bad  
22 accident, you find her guilty because it's a really bad  
23 accident, or that you're supposed to assess whether she should  
24 have driven straight and not looked left. So it doesn't say  
25 that. It's a very different theory of the case. It actually  
26 says she would have known. A reasonable person would have  
27 known that she was going to create the risk. And since  
28 everyone says she wasn't impaired and she didn't drive earlier

1 in the evening, she waited, how would she know? Because she  
2 had one little minor accident when Mr. Chang told you she just  
3 seemed fine? And where her mother saw her and she seemed just  
4 fine? This is not about a bad accident. So their witness who  
5 kept talking about how the bad accident was, it's deceiving.  
6 Because you know it's a bad accident and in a civil court, you  
7 know, you can sue for money damages and it doesn't help really  
8 when somebody is dead, but, here, it's not the issue.

9 Misdemeanor vehicular manslaughter. It's an  
10 otherwise lawful act. Again, driving with ordinary  
11 negligence, but the otherwise lawful act has to be dangerous  
12 to human life under the circumstances. So, again, it's not  
13 that she just drove the car and was negligent because  
14 obviously, you know, unless she had an epileptic fit, and I'm  
15 putting that aside, whenever you have an accident, you're  
16 driving lawfully and then you have an accident that's  
17 negligent. But it also has to be an act that's dangerous to  
18 human life under the circumstances which gets back to the same  
19 concept, if she's not impaired, the fact that she had an  
20 accident is not an issue in this case.

21 Reckless driving, to prove that -- this is the  
22 second count, right. This is Mr. Andrade. She had to drive  
23 with a wanton disregard for the safety of persons or property,  
24 and she has to be aware that her actions present such a risk.  
25 Back to the same point. If she's okay, if she's not under the  
26 influence, driving and having an accident is not the issue.  
27 And, again, I've said this so many times, there's no evidence  
28 that she was impaired by the drugs or alcohol.

1           So, now you get to the focal point epilepsy which is  
2 the other point. If she had an epileptic fit -- or that's a  
3 bad word. That's not the word you use anymore. An epileptic  
4 episode, that's it. There's no choice. That's a medical  
5 issue. And you really got to think about, how did the  
6 accident happen? They asked Melissa. Officer Watkins said,  
7 how did it happen? And at first she said, I don't know what  
8 happened. And then she said, maybe I looked left and veered  
9 right. And then later when she's at the station, at the  
10 Hayward station, she's trying to help. She's trying to figure  
11 it out because remember what Dr. Fullerton said, he said she  
12 really doesn't know what happened because she blacked out.

13           So, she's trying to piece it together, and as her  
14 memory comes back, she's saying, you know, I know I said I  
15 veered left and then I was going right, but I actually think  
16 in between those two times, I blacked out or fell asleep.

17           Now, falling asleep is one term. Blacked out is  
18 another. She said blacked out first. But they're both a loss  
19 of consciousness. So there is no conscious choice. If it was  
20 epilepsy, then that's just it. It's a medical condition.

21           Now, she's trying to figure it out. Remember,  
22 Dr. Fullerton said she doesn't know. She has a real memory  
23 lapse. He keeps talking about amnesia because when you're  
24 blacked out from epilepsy, your brain is exploding  
25 electrically, and you don't know what's going on, and she  
26 talks about muscle memory, and she's doing everything she can  
27 to try to help.

28           This is not up on the board, I don't think, but



1 here's what I thought about. At the scene she talked to the  
2 officer. At the hospital she talks to the officer  
3 voluntarily. At her home she talks to the officer  
4 voluntarily. She's the one who tells the officer about Bill  
5 Guo voluntarily. She tells the officer about the previous  
6 accident voluntarily. She goes down to Hayward and talks to  
7 him voluntarily. She's concerned about the medical records  
8 but she signs the release for the medical record. She's  
9 trying to figure out what happened, and she's aware of the  
10 enormity of what happened.

11           The prior history of epilepsy shows she was taken by  
12 ambulance, all right. This is not an invented condition for  
13 this case because you know the key fact here. The records are  
14 from 2012, okay? Years before this accident happened. So  
15 it's not that Dan Horowitz tried -- said to the doctor, hey,  
16 come up with an excuse that fits the words "blacked out" and  
17 try to sell it for 20 grand. That's a record from 2012. And,  
18 by the way, that record -- those records, Dr. Herrmann had.  
19 He had them.

20           The mental state. She had to know she created the  
21 danger. And the instruction on mental state, the judge will  
22 give it to you, but the important part and this is where  
23 epilepsy comes in because Dr. Fullerton didn't say definitely  
24 the only possibility is epilepsy. What he said was having to  
25 choose the reasonable choices given all of the evidence, and  
26 he explained why already. And we'll go over it again why he  
27 thinks epilepsy is the most likely -- focal point epilepsy.

28           The instruction will say if you can draw two or more

1 conclusions from the circumstantial evidence, dot, dot, dot.  
2 Jump ahead. You "must." Okay? It doesn't say you "may." It  
3 says you "must" conclude that the required mental state was  
4 not proved. And I went back earlier and I showed you the  
5 mental states. You know, she had to know. She had to be  
6 aware that her actions would present a substantial risk of  
7 harm. She had to -- you know, she would have known that what  
8 she was doing would create a risk. Unless they're going to  
9 prove that she knew she was going to have an epileptic  
10 episode, then that's -- she couldn't have known.

11           And since that is one of the differential diagnoses,  
12 it's the one that the doctor thinks is most likely. He's  
13 telling you he can't be sure. That right there, according to  
14 the instruction that you will get from the Court, it's when  
15 you have more than one possibility and they're reasonable, you  
16 have to find that that mental state was intentional and it's  
17 not proved.

18           So, the Prosecution on epilepsy provided no  
19 response. I stated it in opening statement. Dr. Herrmann had  
20 the record. They offered no counter testimony. They barely  
21 crossed her on it with Dr. Fullerton, and I'm going to say  
22 this -- I don't have to say it. It's right up there.

23           Medical evidence is a response. Claiming that I  
24 manipulated the doctor is not a factual response. Claiming  
25 the doctor has a beachside resort-type office is not a factual  
26 response. And calling him the \$20,000 man is not a factual  
27 response.

28           I'm going to conclude. I got more slides, but it

1 doesn't matter anymore. You understand what you have to do.  
2 This is a terrible case, and your hearts are going to hurt,  
3 but they will hurt whether you vote guilty or not guilty. The  
4 only, only, fair verdict, the only correct verdict, is not  
5 guilty. And if gore and blood and power can turn you from  
6 your duty, then we are through as a nation. But if you stand  
7 up and you say that it's painful and you feel for these people  
8 who suffered so much and you mean it and you feel their pain  
9 and then you do what you have to do, then you've protected the  
10 Constitution, and you've done your duty and you've served.  
11 The word "served" is the real word. You've done what you had  
12 to do. And we will all cry together at what we feel, but  
13 you'll be proud at what you did.

14 Thank you.

15 THE COURT: Thank you, Mr. Horowitz.

16 Ms. Backers, rebuttal?

17 MS. BACKERS: Thank you.

18 So I'm going to be very brief with you because I  
19 want you to start working, and I appreciate that you are going  
20 to do the right thing. And the right thing has nothing to do  
21 with alt-facts, the Constitution, the politics. I don't know.  
22 That entire argument about what's going on in the nation has  
23 nothing to do with your job. Your job is to follow the  
24 instructions the judge gives you based on the evidence you  
25 heard. That's your job. It has nothing to do with politics.  
26 It has nothing to do with alt-facts. It has nothing to do  
27 with alternative facts which was used during jury selection.

28 We have one question for each count, two counts.

1 Did she act with gross negligence, and did she drive wantonly  
2 in Count 2 with reckless disregard of Mr. Sampson? That's it.  
3 This is not a referendum.

4 The comments that you've heard for the last two  
5 hours in the morning and in the afternoon do not relate to the  
6 evidence. Here's the evidence, the evidence is that there was  
7 a piece of paper in Dr. Fullerton's file that I got over the  
8 noon hour when he was on the stand, and I said, hey, where's  
9 your notes?

10 I don't take notes.

11 Okay. Who else was present?

12 I don't know, some guy.

13 You don't even know? You're interviewing someone  
14 accused of killing somebody and you don't take a note about  
15 who the third party is present?

16 Nope.

17 All right. So what do you have in your file?

18 Well, I have Danny's PowerPoint. I have his  
19 PowerPoint which he just showed to you. Part of what he  
20 showed to you about how he's going to do his final argument  
21 and how she was on uppers. She was on upper drugs. I have  
22 that.

23 What else do you have?

24 Well, I have this piece of paper that he sent to me.  
25 I don't know whose writing -- this is a medical doctor. And  
26 he says, I don't even know whose writing is on the top of the  
27 page.

28 And I said, well, let's talk about it. It says

1 Daniel Horowitz, colon. Does this reflect head trauma and  
2 likely LOC, which stands for loss of consciousness. That's in  
3 one person's writing. He doesn't even know if it's his or his  
4 support staff, but it's in his file that he's on the stand  
5 with.

6 Daniel Horowitz, does this reflect a head trauma and  
7 likely loss of consciousness? Question mark. And then in  
8 someone else's writing, and he won't even own his own writing,  
9 it says, "it may but probably not acute change."

10 That's what the good doctor -- and I never called  
11 him the \$20,000 man. I called his opinion a \$20,000 opinion  
12 because that's what he got paid to come into this court  
13 without notes, with his lawyer's PowerPoint and he says, no,  
14 it may but probably not have acute changes. In other words,  
15 the question was, does this reflect head trauma and likely  
16 loss of consciousness? Why is that important? Because before  
17 your very own eyes, Dr. Fullerton, Mr. Comfortable,  
18 Mr. \$20,000 opinion, sat here and told you, oh, you know what,  
19 at first I thought she had a concussion. Then I thought she  
20 had loss of consciousness and neither one of those things  
21 makes you lie -- or the word for \$20,000 is confabulate.

22 So if you hit your head or you have a loss of  
23 consciousness, it doesn't make you into a liar. So I'm going  
24 to come in here for 20 grand and say it doesn't make you give  
25 three different versions of how she killed this poor young  
26 man.

27 But, then, we have Paramedics Plus records which  
28 Dr. Herrmann never had. It was a misstatement that was, I'm

1 sure, accidental by Mr. Horowitz. That we have from 2012 that  
2 we obtained late and they say -- I'll make sure I have my hand  
3 on the right exhibit. We have a lot of exhibits in this case.  
4 The Paramedics Plus records that we obtained January 31st,  
5 which is the day before opening statements, indicate that in  
6 2012 --

7 if you could find those for me. They're Paramedics  
8 Plus records, and I can wait until you have a minute. I know  
9 you're jammed right now.

10 THE COURT: It should be 8.

11 MS. BACKERS: People's 8. Thank you, Judge. Here's  
12 8-A.

13 8-A. This is in evidence. It's been received. You  
14 will have this in front of you. It was not delivered until --  
15 the fax is January 30th of 2017, which was the Monday that we  
16 picked you lovely folks, and then Dr. Herrmann never had it.  
17 He was never asked about it, right? And then the good doctor,  
18 Fullerton, was asked about it, and now he has this moment  
19 of -- I can't say clarity because I don't believe it's true.  
20 So it's not clarity. It was, hey, I now have a third  
21 explanation for why Melissa Ho killed William. Now I'm going  
22 to say she had an epileptic seizure because in 2012 when she  
23 says, I'm recovering from Xanax and she's transported in 2012,  
24 it's 2/8, February 8th -- it's a little ironic, today is  
25 February 8th, I believe.

26 But February 8th of 2012, Melissa Ho is transported  
27 by ambulance and says, I'm an ex-Xanax addict and I had a 20  
28 to 30-second seizure. So now the good doctor who is being

1 paid 20 grand has gone from she hit her head on the  
2 windshield. She had loss of consciousness. No, no, no, even  
3 though she never said it in 2014 on any of the three occasions  
4 she was interviewed, now, I'm going to tell this jury, because  
5 I'm the man and I'm a medical doctor, I'm going to say, you  
6 know what, she had an epileptic seizure. And that's why she  
7 doesn't remember anything.

8           So now he's got a third explanation for why this  
9 woman has lied about killing William. That's what you have.  
10 That is exactly what you have. You have Dr. Fullerton saying,  
11 hey, loss of consciousness. Hey, concussion. And now you  
12 know what, these records they just got for us, now we have a  
13 third explanation. And I'm going to say to this jury, even  
14 though she never said it on the three times she was  
15 interviewed, hey, I'm going to say she had an epileptic  
16 seizure, and that's why she can't possibly tell the truth  
17 about killing William. That's the reason he had to go to  
18 politics and the nation instead of talking about the evidence.

19           So what do we know? What do we know for real? The  
20 entire morning, the entire morning, you heard from  
21 Mr. Horowitz. The entire argument, every word he told you  
22 said she was not under the influence of drugs and alcohol.  
23 She's not charged with that. She's not charged with being  
24 under the influence. There's a reason Scott Swisher from the  
25 D.A.'s Office consulted Dr. Herrmann and Dr. Herrmann said,  
26 you know, this is a little funky. There's a urine test. I  
27 don't like urine tests, and she was given Morphine, Dilaudid  
28 and Zofran by the hospital. So I don't think you should

1 charge driving under the influence.

2           If you -- don't do this because it will destroy my  
3 court reporter -- our court reporter. She's not mine. She's  
4 a lovely human being. But if you had to look up the word  
5 "impaired" from Mr. Horowitz's argument this morning and this  
6 afternoon, it would be 200 times. He told you she was not  
7 impaired and that's because Dr. Herrmann said we can't charge  
8 that because we have a funky urine test and the hospital gave  
9 her Dilaudid and Morphine and Zofran. So don't charge driving  
10 under the influence.

11           That's -- and Scott Swisher being a good soldier, as  
12 you were told to be good soldiers, Scott Swisher said, I can't  
13 charge her with driving under the influence because we have a  
14 funky urine test. And that's why when you're deciding this  
15 case, I don't want you to consider the Morphine. I don't want  
16 you to consider the Zofran. I don't want you to consider the  
17 Dilaudid because we have a funky urine test, and she was given  
18 those by the hospital. But you know what, the hospital didn't  
19 make her stay up all night. The hospital didn't make her  
20 speed. The hospital didn't make her get in the first crash.  
21 And the hospital didn't give her cocaine, amphetamine,  
22 methamphetamine and THC. And the hospital didn't give two  
23 prescriptions that say do not drink and drive. They didn't.

24           So even though we have a funky urine test, it  
25 doesn't matter because we didn't charge her with being  
26 impaired. That's not one of the elements. The elements are  
27 you acted with gross negligence. So no matter how long  
28 Mr. Horowitz speaks to you, I don't have to prove she was



1 impaired. That's not the rule. That's not the law. It's not  
2 by burden of proof. All I have to prove to you is that she  
3 acted with gross negligence. That's it. Not that she was  
4 impaired.

5           So what -- what was that argument for? It has  
6 nothing to do with the elements that I have to prove. He  
7 would have just won if we had charged her with a DUI, if we  
8 charged her killing somebody while under the influence and  
9 impaired, but we didn't. So the argument was completely  
10 irrelevant to the elements that I have to prove.

11           And I don't know why, but he chose to tell you that  
12 the Adderall is not clinically relevant. He said it's not  
13 clinically significant. Then why does amphetamine show up in  
14 her urine test? Why does it show up? Because she just did an  
15 Adderall. Because she knew she was so messed up when she was  
16 leaving Bill's house and she had been up all night and she's  
17 taking prescription drugs and she's doing all those street  
18 drugs, she knew she was so messed up and late for work that  
19 she had to go to McDonald's and get a cup of coffee and pop an  
20 Adderall. How could you possibly say that's not clinically  
21 significant when amphetamines show up in her test and the  
22 hospital didn't give her amphetamines? How could he say that  
23 to you? It's not true.

24           And he said to you in his argument this morning that  
25 cocaine -- I'm quoting, "the cocaine was long gone." That's  
26 what he said. He told you this morning the cocaine was long  
27 gone. Then why is it in the test? The hospital didn't give  
28 her cocaine. She's been doing cocaine for two days. She's

1 snorting it on her breaks at Dave & Busters on Friday, and  
2 she's snorting it on Saturday.

3           And Bill Guo says, you know, this is the kind of  
4 parties we have. You have it out. There's lines. You walk  
5 up and snort lines. Whatever you want to do. And so why does  
6 he tell you that cocaine is long gone when it shows up in her  
7 test?

8           And then he tries to embarrass Dr. Herrmann. It was  
9 kind of a weird flip that we had. In his opening statement to  
10 you on February 1st he says, you know, I think he's a fine  
11 gentleman. I respect him. And then today he says he felt  
12 sorry for him because obviously he's lost his mind and he  
13 didn't remember exactly what class of drugs Xanax was. And so  
14 he says to you, you need to totally disregard Dr. Herrmann.  
15 And all Dr. Herrmann told you was, you know what, I'm a  
16 medical doctor and she was on five depressants. She is on  
17 five depressants, alcohol, her prescriptions, THC, Xanax, the  
18 uppers she takes. She takes Adderall at 10:00 in the morning  
19 before she gets in her first accident, before she kills  
20 William two hours later, but he tells you the cocaine is long  
21 gone. That's just not true.

22           And what you do know from Dr. Herrmann is not only  
23 is he a fine gentleman but she was on five depressants. And  
24 you know from his special doctor, Dr. Fullerton, she's not  
25 allowed to drink when she's taking her prescription meds. I  
26 know you were paying attention, so I'm shortening my notes, so  
27 hold on just a second.

28           So what I heard Mr. Horowitz say this afternoon and

1 he put a few slides up on the television, and what I heard him  
2 tell you this afternoon is straight up not guilty. Just walk  
3 her out of the courtroom not guilty. She's not guilty of  
4 anything. She hasn't done anything. He didn't even ask you  
5 for the misdemeanor lessers. He didn't ask you for  
6 misdemeanor manslaughter on Count 1, a misdemeanor killing  
7 William with simple negligence. He didn't even ask you for  
8 that. He didn't even ask you for the misdemeanor on the  
9 reckless driving. He said, hey, there's nothing wrong with  
10 her. She just had an epileptic fit. You need to walk her out  
11 and say not guilty on everything. That's what he just said to  
12 you just now. Not guilty on everything because she had an  
13 epileptic fit on August 16th of 2014.

14           Except, you know what, when she's on the side of the  
15 road asking about whether she's going to jail, concerned only  
16 for herself, does she say on the embankment, hey, you know, I  
17 just had an epileptic seizure? Nope. It doesn't happen. How  
18 about when she's in the paramedic ambulance and she's talking  
19 to Officer Brian Barcklay, and Brian Barcklay says, can I get  
20 your name, date of birth, California driver's license, please,  
21 and your insurance information. She's sitting in the back of  
22 an ambulance on scene where she just smashed a young man.  
23 Does she say then, oh, my God, Officer Barcklay, I just had an  
24 epileptic seizure. You know I'm prone to these. I'm so  
25 sorry. No, no, no. What does she say? Am I going to jail?  
26 Am I in trouble? It's all about her.

27           How about August -- no, let's back up to the  
28 hospital. So that's the second person who speaks to her.

1 Damien talks to her on scene. Officer Barcklay talks to her  
2 on scene and now between two and three hours after killing  
3 William, she's in the hospital and presumably she's been given  
4 Morphine, Dilaudid and Zofran.

5 And what happens in the hospital? When Brian  
6 Watkins, the E.M.T., Iraqi war veteran, CHP walks in and says,  
7 how you doing? Does she say, I just had an epileptic seizure?  
8 No. What does she say? You know what, I'm an ex-heroin  
9 addict, and I'm on these meds, and I'm on Gabapentin and I'm  
10 on this other drug Trazodone. And then some guy walks in and  
11 shuts the whole conversation down, a friend of hers.

12 Okay. So now eight days later -- six days later,  
13 August 22nd, he does an interview with her. It's recorded.  
14 You have the entire interview. Does she say to Officer Brian  
15 Watkins on tape, you know what, I had an epileptic seizure?  
16 No. What does she say? You know what, well, here's the deal,  
17 I was looking left. I left the party with some -- now  
18 Mr. Horowitz told you that these were invisible people. He  
19 called them invisible people this morning when he said the  
20 three people told her not to drive when she left Bill's house.  
21 He called them invisible people. Like made up. Like Bill Guo  
22 and maybe me made them up except that's not what happened.  
23 In the statement that you have in evidence that we played for  
24 you, Melissa Ho's statement, she tells you their names.  
25 They're not invisible people. They really are three people  
26 who told her not to drive.

27 So it's her friend, Bill Guo, who says, oh, no, no,  
28 you can't drive. You're too messed. You partied all night.

1 You can't drive. In her statement on page 8 -- you have the  
2 transcript as an aid. The actual recording is in evidence,  
3 and this is in evidence also as a transcript to help you. She  
4 says who the two people are, Andy and Howell. They're not  
5 invisible people. They're not made up people. There are  
6 literally three people who say, girlfriend, you cannot drive.

7           And she's like, well just pop me an Adderall. I'm  
8 good. Give me an Adderall. I'll get a cup of coffee at  
9 McDonald's. I'll speed off to work. They're not made up  
10 people. We're not making this up.

11           So on August 22nd when she's being recorded talking  
12 to Officer Watkins, she never once says, I had an epileptic  
13 seizure. I had a loss of consciousness. I hit my head on the  
14 windshield. I got knocked out. No. What does she say? You  
15 know what, I turned left, I was veering. I looked left, and  
16 when I looked right, it was too late. That's what she says.  
17 When I looked right, it was too late. That's the evidence in  
18 this case. She says, I blacked out. I was speeding. I might  
19 have fallen asleep. She gives all those different stories,  
20 but never once does she say, I had an epileptic seizure.

21           So right before our eyes, I mean literally before  
22 our eyes, Dr. Fullerton, who went to Miami University and got  
23 paid 20 grand says originally, I was going to say she had a  
24 loss of consciousness. Originally I was going to say she had  
25 a concussion. But now I have these new paramedic records from  
26 2012 that says, hey, you know what, she must have had a  
27 seizure and then everything goes away. The jury will be  
28 confused. Everything goes away. She must have had a seizure,

1 except Melissa Ho never said she had a seizure in 2014 when  
2 she killed William.

3 All right. So she has a third opportunity with  
4 Officer Watkins because he talks to her three times. She has  
5 a third opportunity to say, you know what, I have a disorder,  
6 and I had an epileptic seizure when I killed William. No, no,  
7 no. That's not what happens.

8 October 28th. Now Officer Watkins has her drug  
9 screen and he knows she's been lying from day one about what  
10 she was on. Now he has her drug screen. So he's talking to  
11 her. Takes awhile for her to get back to him, and she's  
12 talking to him. And she finally says, you know what, I was  
13 partying. I was partying all night at Bill Guo's house. And  
14 now that you have my screen, I'm going to tell you all the  
15 drugs I took. I already told you about my two prescriptions,  
16 Gabapentin and Trazodone. I told you about those, and I told  
17 you I was in a hurry. I told you I was speeding. I told you  
18 I was late for work. I told you I was merging, looking left  
19 and not looking right. I told my friend, Bill Guo, I was  
20 driving on the shoulder. And now that you have my drug screen  
21 from the hospital, I'm going to tell you another story. I was  
22 on amphetamine. I was on methamphetamine. I was on cocaine  
23 and I was on THC.

24 There is not a single piece of evidence, except for  
25 that hired doctor who said she had an epileptic fit, not a  
26 single piece of evidence. That guy is the only person who  
27 said, hey, you know what, on August 16th, Saturday, at 12:13  
28 when she slammed into that young man, she must have had an

1 epileptic fit. We call it a cluster of focal point seizures.  
2 That was made up out of whole cloth. Talk about alt-facts.  
3 That's an alt-fact. That is made up out of whole cloth.  
4 Never once has Melissa Ho told her friends, the good  
5 samaritans on scene, or CHP Officer Watkins, that she had an  
6 epileptic seizure when she killed William.

7                   That girl was up all night, partying, exhausted,  
8 speeding, late for work and on all kinds of medications.  
9 That's it. That's gross negligence. And she's good for this,  
10 and I need you to do the right thing.

11                   Thank you.

12   ---oOo---

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1 STATE OF CALIFORNIA)  
 ) ss.  
2 COUNTY OF ALAMEDA )

3 I, DANIELLE A. DEWARNS, do hereby certify under  
4 penalty of perjury under the laws of the State of California  
5 that the foregoing is true and correct:

6 That on WEDNESDAY, FEBRUARY 8, 2017, I reported in  
7 shorthand writing the proceedings in the matter of People of  
8 the State of California versus MELISSA HO, heard before the  
9 Honorable TARA M. DESAUTELES, Department No. 3 of the Alameda  
10 County Superior Court, Rene C. Davidson Courthouse.

11 That thereafter I caused the same to be transcribed  
12 into typewriting and that the foregoing Pages 1 through 78 is  
13 a full, true, and correct transcription of my notes taken at  
14 the time and place therein stated.

15 Dated: March 15, 2017.

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Danielle A. DeWarns, CSR No. 9743

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