



*Does the radiologist's failure to identify it constitute malpractice? The crux of this case was the single missed "bright dot."*

## Where's Waldo? What's malpractice?

Stuart E. Mirvis, MD, FACR

With respect to radiologists, malpractice suits are of two kinds: something we have already suffered through, or something we fear happening in the future. Not to tempt the gods—I still have a long tail to cover before I am out of range—but I have not had the “pleasure” of being on the receiving end of this particular bit of nastiness.

However, I have been a consultant or expert witness on many such cases, for both the plaintiff and the defense, during my long and multifaceted career, and I could share many interesting stories and potentially valuable lessons from my experiences. But a blog post I recently came across brought to mind a case I once worked on that both speaks to a particularly big question relating to malpractice, and the rather simple strategy I used to address it.

“Buried in the hundreds if not thousands of superfluous images,” Eric Postal writes in his post, “perhaps some would-be med-mal attorney (or his hired-gun “expert” witness) will find a pic with just the right artifact or other technical wrinkle. Blow that single image up to poster-size, circle the pixels supporting their claim that the rad “missed” this single image with key findings.”<sup>1</sup>

The case Postal reminded me of concerned a cerebral MRI that was interpreted as normal in a middle-aged woman with a recent history of transient right eye blindness and right arm numbness, a strange neurological presentation for a single cerebral lesion. Cerebral ischemia was the rule-out diagnosis. Of course, there were multiple MR imaging sequences performed in multiple imaging planes, producing a multitude of pictures. No MR angiography was performed. There was just one tiny bright dot in the right parietal cerebral cortex on a single axial T1-weighted image.

In my opinion, this was a real finding and compatible with a focal hemorrhage or fatty embolus. Ultimately, the patient went on to have a major right CVA.

Assuming the MR finding was in fact a real pathology and missed by the radiologist, the question raised was this: Does the radiologist's failure to identify it constitute malpractice? The crux of this case was the single missed “bright dot.”

The evening before my testimony I was ruminating over the case while trying to find a way to put this alleged abnormal finding into perspective, and into the real-world context with which the radiologist was dealing,

*continued on page 16*

**Dr. Mirvis** is the Editor-in-Chief of Applied Radiology, and Professor Emeritus, University of Maryland School of Medicine, Baltimore, MD.

*continued from page 14*

for the jury. While the numerous images, the limited time available for review, and the poor-quality history provided were of prime importance, I wanted the jury to fully understand the challenge facing the radiologist.

Suddenly the children's cartoon, "Where's Waldo?" struck me as the way to get this concept across. I went online and quickly found a zillion images. Many showed Waldo hidden deeply amongst hundreds of other characters in his typical unique clothing. Others showed Waldo in virtual plain sight with just two or three other characters. I downloaded one of each.

In court the next day, I gave the jury members about a minute to find Waldo in the first picture, which was far more time than the radiologist would have had to look at the specific MR image at the center of the case. I also reminded them that I told them Waldo was definitely in the picture, as opposed to the radiologist, who had no idea whether a small dot of questionable pathology was present when he initially reviewed the images.

Next, I showed the jury the picture in which Waldo was grossly obvious. Since I was the last witness to be called for

the defendant's side, I noted that they had likely been seeing the "abnormality" all week in pictures blown up to poster size—and with nothing else to distract them. I received many knowing smiles and nods in response.

The plaintiff's attorneys didn't cross-examine me, and I don't know for certain how the case was resolved, as this information is almost never discussed with expert witnesses. But I think I have a pretty good idea which way the jury went.

I don't know if this strategy was particularly clever, but I knew the jury would find my analogy relatable to their own experience. It seems to me that if you ever find yourself testifying in a malpractice case for either side, the best way to get a jury to understand your opinion is not to throw around a lot of medical jargon and terminology—that's just a remedy for insomnia—but to liken it to their own experience.

Now if you'll excuse me, I need to go find Waldo.

## REFERENCES

1. Postal E. Too Much to Look At. Modern Medicine Network. [http://www.diagnosticsimaging.com/blogs/too-much-look?rememberme=1&elq\\_mid=463&elq\\_cid=938268&GUID=A571907E-2A16-49E8-9597-F1FA79862FA9](http://www.diagnosticsimaging.com/blogs/too-much-look?rememberme=1&elq_mid=463&elq_cid=938268&GUID=A571907E-2A16-49E8-9597-F1FA79862FA9). Accessed August 16, 2018.

# APPLIED RADIOLOGY® UPDATE YOUR SUBSCRIPTION

THE JOURNAL OF PRACTICAL MEDICAL IMAGING AND MANAGEMENT



Since 1972, Applied Radiology has brought physician-authored clinical review articles, radiological cases, clinical quizzes, and specialty columns to the radiology community.

Now you can have it all your way (FREE) without missing a single issue.

*Please take a moment to update your subscription preferences.*

[appliedradiology.com/subscribe](http://appliedradiology.com/subscribe)