

1 IN THE COMMON PLEAS COURT OF ERIE COUNTY, OHIO

2 ALVIN F. CLARK,
3 et al.

4 Plaintiffs

5 -vs-

:

NO. 46819

6 THE DOW CHEMICAL COMPANY
7 and
8 LAKESHORE EQUIPMENT &
9 SUPPLY COMPANY
and
SHORT FREIGHT **LINES**

10 Defendants

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12
13 Deposition of WILLIAM R. BAUER, M.D., a witness herein,
14 taken by the Defendant as upon cross-examination before
15 Brenda Huntley, Registered Professional Reporter and
16 Notary Public in and for the State of Ohio, at the Erie
17 County Courthouse L.P.A., Small Courtroom, Sandusky,
18 Ohio on Friday, November 13, 1987 at 10:45 a.m.,
19 pursuant to Notice.

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APPEARANCES :

Murray & Murray Co., L.P.A., by
W. Patrick Murray, Esquire

For the Plaintiff

Rivkin, Radler, Dunn & Bayh, by
James R. Ruger, Esquire
and

Buckingham, Holzapfel, Zeiher,
Waldock & Schell Co., L.P.A., by
M. L. McDermond, Jr., Esquire

For the Defendant
Dow Chemical

Flynn, Py & Kruse Co., L.P.A., by
James W. Hart, Esquire

For the Defendant
Short Freight Lines

Arter & Hadden, by
Dale F. Kainski, Esquire

For the Defendant
LESCO

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STIPULATIONS

It was stipulated by and between counsel for the
Plaintiff and Defendant that this deposition may be
taken in stenotype by Brenda S. Huntley; that said
stenotype notes may be transcribed out of the presence
of the witness and the signing of the deposition by the
witness was waived by counsel; that the reading and
signing of the deposition was specifically waived by
the witness; and that all formalities with regard to
Notice of time and place of taking this deposition ar

1 waived.

2 WILLIAM R. BAUER, MD. of lawful age, a
3 witness herein, called by the Defendant
4 as upon cross-examination, pursuant to the
5 Rules of Civil Procedure, being first duly
6 sworn according to law, was examined and
7 testified as follows:

8 CROSS-EXAMINATION OF WILLIAM R. BAUER, M.D.

9 BY MR. RUGER:

10 Q Good morning, Dr. Bauer. My name is James Ruger,
11 R-u-g-e-r, and I am from the law firm of Rivkin,
12 Radler, Dunne & Bayh in Uniondale, New York. Myself,
13 along with Mr. McDermond and his firm, represents the
14 Dow Chemical Company in this case. And this is a
15 continuation of the deposition which took place on
16 August 20, 1987. I have marked as Bauer Exhibit 3 the
17 subpoena and notice of deposition for today's
18 deposition, which is dated October 26, 1987, and
19 indicating that this deposition **was** to begin at 9:30
20 a.m. I would like the record to reflect it's now a
21 quarter to 11:00 a.m. If, at any time in this
22 deposition, I ask you any questions that you don't
23 understand, please tell me and I'll be glad to rephrase
24 it. At times my question may be a bit inarticulate

since I am not a physician and some of these areas are highly technical, so please bear with me if I have that type of a problem. And of course, because I am from New York, I realize I may have an accent out here, and some people may have difficulty understanding my accent, so I ask your indulgence in that regard. Dr. Bauer, have you seen, since August 20, 1987, Mr. Clark in relation to this case?

A I believe he's, I believe that he underwent, on September 9 of 1987, testing in my office, evoked responses, and I may have seen him on that particular day. I don't have a note nor do my records reflect that he was seen for a neurological evaluation at that particular time.

Q Was he seen for neurological evaluation at any other time?

A (Nod indicating no.) My records do not reflect that.

Q Have you had him tested by any psychologist or neuropsychologist since August 20, 1987?

A I am not sure that he had. I do not recall sending him, but he, I think, has had some testing in that respect.

Q Do your records reflect that?

A I don't see any report in here at this particular time.



1 Q Do you know who may have performed any psychological or
2 neuropsychological testing on Mr. Clark?

3 A No, I do not know for sure.

4 Q Have you brought your records with you which would
5 reflect the new evoked potential testing?

6 A Yes, I have.

7 Q Where are those records?

8 A Here.

9 Q What the doctor is handing me is a file, part of which
10 has been marked as Bauer Exhibit 2-1. There is a
11 letter which evidently has been added to this file
12 which is dated September 30, 1987 on the letterhead of
13 William R. Bauer M.D., Inc. What is the Angela
14 Schroeder case?

15 A I don't know. I don't know what you're looking at.

16 Q I am looking at this letter which I just identified,
17 And in this second paragraph or the third paragraph of
18 that letter, it says the second matter is regarding the
19 Angela Schroeder case.

20 A This is basically, it's not relevant to this particular
21 problem, This communication is not a communication
22 that belongs in this file, The second paragraph to
23 which you refer refers to a case totally unrelated to
24 this particular problem. That's a misfiling of the

1 chart to which you're welcome to look at.

2 Q This is a letter to Mr. Patrick Murray?

A Right.

Q who is Mr. Clark's attorney in this case, correct?

A Correct.

Q Okay .

A But it's not relevant to this particular matter.

Q The second paragraph, as I corrected myself, I was
referring to the third paragraph regarding Angela
Schroeder, the second paragraph deals with Alvin
Clark.

12 A Right.

13 Q The third paragraph says, the second matter is
14 regarding the Angela' Schroeder case, and I have
15 reviewed this case several times. I just asked you,
16 what is the Angela Schroeder case; is that a case
17 you're working on with Mr. Murray?

18 A I believe so.

19 Q Does that involve neurological injury?

20 A That's correct.

21 Q Does it involve a chemical exposure?

22 A It does not to my knowledge.

23 Q Do you know if that case involves, as far as cause of
24 an injury or alleged cause of an injury?

1 A I believe that's a trauma case.

2 Q And the fourth paragraph of this letter you talk about
3 a subpoena that you believe is completely
4 unreasonable. Is that the subpoena in relation to this
5 case here?

6 A I don't know, there's so many of those subpoenas, it's
7 hard to know which one you're referring to. I don't
8 have a copy of the one you so handily marked there.

9 Q It's been marked as Exhibit 3.

10 A All right, the one I have is for a different time, it's
11 hard to know which one.

12 Q Also included in this file is a handwritten notation
13 signed by Leanne dated 9/30/87, requesting copy of
14 evokes on Alvin Clark as possibly being sent to Mr.
15 Clark, and that he is seeing a physician in Toledo on
16 Tuesday to determine percent of disability. Do you
17 know who that physician would be?

18 A No. I am sure Mr. Clark would.

19 Q And this handwritten notation also notes that the
20 evokes were done two or three weeks ago, which would
21 indicate early September. Who is Leanne?

22 A She's the girl, one of girls that works in the office.

23 Q And there's a CC down here below the attached
24 handwritten notation, CC, sent to patient. That means

that, I imagine that Mr. Clark was sent his evoke potential recordings of September?

A That would seem reasonable.

Q Now, and here I also show you a record which has got Alvin Clark's name on top with his age, Dr. Bauer, date in the bottom left-hand corner, 9/9/87. Are these, the pages attached also seem to have some sort of graphic read-outs, are those the evoked potentials of September?

A What's your question, counselor?

Q Are these, the evoked potentials which are indicated on the back of this page -- let the record reflect that both sides of the page have things on them. The first side has got an interpretation and clinical observation, and the back of the page has some sort of graphic printouts. And what I am asking the doctor is, are these graphic printouts, which appear on the back of this page which is identified, evoked potentials of Mr. Clark?

A The answer to your question is that what you have in your hand is a report. And that is a model of the potential, and those are the actual potentials back here.

Q So as we skip through, there is another page that is



1 also dated 9/9/87 which has test norms indicated on it
2 and impression. And then there is another page that's
3 also dated 9/9/87 and that has test norms and
4 impression. And under impression it has parentheses,
5 please see page two for the reading, close paren, and
6 this is followed by eight pages of graphic printout
7 which indicate Alvin Clark's name on top with dates of
8 9/9/87. The first has SER (R) median, the second is
9 SER (L) median, the third is SER (R) tibial -- that's
10 the letter R. The next is SER (L) tibial, the next is
11 BAER- (R)75DB. Okay, the next is -- going back to the
12 other one for a second, the bottom left-hand corner has
13 Roman numerals I-III equals 1.80, and I am doing this
14 to identify each page. The following page is also
15 BAER, paren, this has an (L)75DB as opposed to the
16 first page which had an (R)75DB, and this has an I-III
17 Roman numeral, 2.2. The following page has VER (R)
18 with no other indication on it. What does that mean?
19 A What does what mean?
20 Q This VER (R)?
21 A That means visually evoked response, right.
22 Q Right eye or right side or what?
23 A Right side. Visual evoked response, you do the right
24 eyeball, that would be reasonable.

1 Q And then the next page would be VER, left, okay?

2 A Very good.

3 Q Now those pages have been incorporated by Dr. Bauer
4 into what has already been marked as Bauer Exhibit 2-1,
5 and I think what we should do is probably tag these
6 pages as Bauer Exhibit 2-2 today's date on it. And
7 that's starting with the letter of September 30, 1987
8 to Mr. Murray and ending with the last page of evoked
9 potentials.

10 MR. MURRAY: Can I look at that?

11 THEREUPON, there was a discussion off the
12 record at 11:00.

13 Q Also attached to this file there is, on the front
14 cover, a page with a prescription form attached which
15 has CT-Scan, brain plane, R/O atrophy, DX, toxic
16 encephalopathy, Bellevue Hospital, Thursday, September
17 10th at 9:00 a.m. And then handwritten over this in
18 pencil it says canceled. What does that mean, Doctor?

19 A Right what it says.

20 Q That you had scheduled Mr. Clark for a CAT scan of the
21 brain and subsequently canceled it?

22 A Well, I think he may have canceled it, I'm not sure,
23 but it didn't get done.

24 Q And it hasn't been done since, has it?

1 A I don't think so, it's possible.

2 MR. RUGER: I think just for
3 completeness sake to make sure that everything is in
4 here, would you copy this whole file again? It looks
5 like everything has been copied already accept for
6 those pages that have been identified, but -- and also
7 indicate that there are a number of pages where there
8 is writing on the back of the page, so we have to be
9 careful that the pages are copied on both sides.

10 Q Have you referred Mr. Clark to any other physicians
11 since August 20, 1987 for any type of examination or
12 consult?

13 A I don't believe so.

14 Q Have **you** referred him to any psychiatrist since August
15 20, 1987?

16 A I don't believe so.

17 Q **And** you already testified, if I am correct, that you
18 didn't refer him to any psychologist; is that my
19 understanding?

20 A **Not** at this time.

21 Q Do you have an intention of doing so?

22 A Possibly.

23 Q That would be for what type of testing?

24 A Psychological testing.

- 1 Q Have you examined any other person in relation to this
2 case, such as co-workers of Mr. Clark?
- 3 A Not to my knowledge.
- 4 Q Do you know if any of his co-workers have been examined
5 by any physicians in relation to Mr. Clark's alleged
6 exposure?
- 7 A I don't have that knowledge.
- 8 Q Other than the evoked potentials which we have marked
9 as Exhibit 2-2, has any other testing been performed
10 under your orders or at your direction on Mr. Clark in
11 relation to this case; that being laboratory analyses
12 or any other type of nerve testing, anything like that?
- 13 A Not at this time.
- 14 Q On the day on which you did this further evoked
15 potential testing of Mr. Clark, did you take any type
16 of a history on him on that date?
- 17 A No, I did not.
- 18 Q Did you, yourself, do that testing?
- 19 A I did not do that testing, that's customarily done by
20 the technician.
- 21 Q who is the technician that did that?
- 22 A That would have been Mrs. McClure.
- 23 Q Does Mrs. McClure work in your office?
- 24 A Yes.

Q Is she a registered nurse?

A No, she's a technician that has been trained to do electro diagnostics of the evoked type and ultrasound.

Q Who trained her?

A I trained her and she was also sent to other institutions for training.

Q Did you send her to those institutions?

A Yes.

Q what institutions did you send her to?

A She's -- for in which respect?

Q For some audiosensory evoked potential, auditory evoked potential, or visual evoked potential testing?

A For those she's gone to the Medical College of Ohio in Toledo and she's also attended the Techa and Nickaway symposiums that are put on several times a year by people that do evoked potentials all over the country.

Q Does she have a college degree?

A I think she's got close to one.

Q But she doesn't have one?

A I don't know. It's not really material.

Q Okay, when you sent her to the Medical College of Ohio, Toledo, for this type of training, do you remember what date that was or approximately when that was, what year?

- 1 A No, no, I really don't, I don't have a tally sheet on
2 that,
- 3 Q Well, how long'has Ms, McClure been working with you?
- 4 A Well, basically since about 1983, over four years,
5 first at the hospital and then she's been with me in my
6 office that period of time, three, four years.
- 7 Q Now, do you recall the name of the program that she
8 took at the Medical College of Ohio?
- 9 A No, that probably was not a program. I probably sent
10 her up to Dr. Steven Cory's lab. He's an
11 electrocorticographer who is now going to the Medical
12 College of Virginia from Ohio.
- 13 Q Do you know how long she trained with Dr. Cory?
- 14 A No, it's all immaterial. She's a trained technician.
- 15 Q Does she have a certification by the American
16 Encephalographic Society as a technologist?
- 17 A She's not certified, she's equivalently trained, but
18 not certified.
- 19 Q Are you familiar with the equivalent training or the
20 standards that that organization has set for
21 technologist's training?
- 22 A I've helped to set them. I have been a member of the
23 society since the 70's, American Electro
24 Encephalographic Society.

1 Q Did you also help set the standards and guidelines that
2 they put forth on the parameters that should be
3 followed for doing evoked potential testing?

4 A I did not contribute to the formation of those
5 standards.

6 Q But you would abide by them, would you not?

7 A Sure, as they relate to what I am doing, sure.

8 Q And you are familiar with them?

9 A (Nod indicating yes.) Generically.

10 Q And when you do this type of testing, you make sure
11 that your technician or yourself would adhere to those
12 standards to the best as possible, those guidelines, at
13 least to the minimum guidelines set; isn't that
14 correct?

15 A Guidelines are guidelines.

16 Q The purpose of those guidelines, as far as you would be
17 aware, would be to insure that this type of evoked
18 potential testing could at least follow some sort of a
19 format that replication could occur in other
20 laboratories, isn't that true?

21 A In general, that would be the expectation, but it would
22 certainly not be a constriction as there are certain
23 modifications you may have to make technically that you
24 would have to do because of the nature of the

environment or the particular biological variation of the patient.

Q When Mr. Clark came to see you in September, did you do any further testing of his mental status?

A No.

Q Did you do any further testing of his memory status?

A No.

Q Did you do any other testing regarding his central nervous system other than the evoked potentials that we have already identified here?

A I believe I have already answered that question. I indicated to you, Counsel, if you took the time to listen to me, that I didn't see him and I didn't perform any tests, so your question is redundant.

Q I'm sorry. It was unclear to me, I thought that you had seen him that day.

A No, I indicated that I may have seen him in passing to the laboratory, but I did not, repeat, did not engage him in conversation, did not examine him, did not do any testing; is that clear to you?

Q Yes, I'm sorry.

A Sure.

Q Do you know if Mr. Clark ever underwent thermographic testing regarding his claims of heat disturbances or

1 temperature disturbances on his body?

2 A Let's see. I don't have any record of that, it's
3 possible.

4 Q I note, I think, in the letter or report that you had
5 sent regarding Mr. Clark.

6 A Which information are you referring to, Counsel, which
7 letter, please?

8 Q Okay, please bear with me while I get this out.

9 A Yes.

10 Q It's a letter of June 27, 1986 to Mr. Murray?

11 A June 27

12 Q Yes.

13 A Okay.

14 MR. MURRAY: What part of the letter are
15 you referring to?

16 Q Excuse me, I'm sorry, it's not that letter. I'm sorry,
17 it's a record, a consultation record of yours from
18 Bellevue Hospital, title page on it dated 2/12/86.

19 A Let me see if I can find it or I can just read from
20 it. Okay.

21 Q In that it states, he complains of temperature
22 difference from left to right which can be documente
23 thermographically. I was wondering if you had ever
24 done that or had that ordered?

1 Q Yes,

2 A I don't recall.

3 Q Do you recall what service you searched?

4 A Yes, I used the Allen Memorial Library out of
5 Cleveland. I have used that for years; I am a Fellow
6 of that institution.

7 Q Did you receive a computer printout on that search?

8 A I believe I did.

9 Q Do you have that in your library as well?

10 A Possibly.

11 Q Is there any other place that it could be other than
12 your library?

13 A Possibly.

14 MR. RUGER: Okay, all right, we are
15 going to call for the production of these new papers as
16 well as the computer printout at this time.

17 Q Any other materials that you have looked at or read or
18 reviewed regarding this case since August 20, 1987?

19 A Any other what?

20 Q Materials.

21 A Literature like I have indicated to you,

22 Q Any textbooks in particular that you have looked at?

23 A I have looked at some neurotoxicology texts, but I have
24 read them in general.

1 Q Do you recall which neurotoxicology texts?

2 A They would certainly be available to you if you read or
3 search the literature.

4 Q Any of those texts by Herbert Shaurnburg?

5 A I may have looked at that, I think I see it here.

6 Q Which one, I've got two here?

7 A It's the bottom one, I think, isn't it?

8 Q Experimental and Clinical Toxicology, by Peter Spencer
9 and Herbert Shaumburg?

10 A (Nod indicating yes.)

11 Q Do you know what you looked at that text in relation
12 to?

13 A It certainly would have been in relationship to
14 chemical damage to the brain, wouldn't it?

15 Q Are you familiar with Dr. Shaumburg?

16 A Personally, no.

17 Q Reputation wise?

18 A What do you want to discuss?

19 Q I just want to know if you are familiar with him as far
20 as him being a neurotoxicologist?

21 A He's a neurotoxicologist, right.

22 Q Do you have any understanding as to how widely he's
23 worked in this area?

24 A No, why don't you ask him.

1 Q I was asking you if you know.

2 A It's not material, is it?

3 Q Well, I was just wondering if you knew. Did you find
4 anything in Dr. Shaumburg's book which would indicate
5 that MCPP would cause toxic encephalopathy?

6 A I don't specifically recall, but I would be happy to go
7 through the book with you page by page if you wish.

8 Q I am just asking for your recollection, sir. I am now
9 going to refer to Defendants' Bauer Exhibit 3, which is
10 the subpoena. Have you brought with you, sir, the
11 section, toxicology section, which you referred to in
12 your prior deposition of August 20, 1987 from The
13 Clinical Handbook of Neurology edited by Binken and
14 Bruhn?

15 MR. MURRAY: I filed a motion for a
16 protective order on that. I don't think that he is,
17 under any circumstances, required to do research for
18 the other side.

19 MR. RUGER: Well, I think it's clear,
20 sir, in our answering papers and also in his last
21 testimony, that he had already looked at that material,
22 and he's the one that referred to it. I am asking the
23 doctor if he brought it pursuant to the subpoena.

24 A No, I have a different dated subpoena than you do,

1 Counselor, which is not unusual dealing with people
2 like yourself. There would be probably more than one
3 document. Under no circumstances, unless you get a
4 court order and have a judge, am I going to bring that
5 in, period. You go get if yourself. There is a
6 textbook available in every library, even in New York,
7 with the Clinical Handbook of Neurology, and you go get
8 that section and then we will discuss it. I am not
9 bringing in those things.

10 Q Why don't you do this for us, Doctor; indicate to us
11 the pages that you looked at?

12 A I don't recall that and I'm not going to do that.

13 Q So in other words, you have used the whole textbook?

14 A Yes, it's in my library, I read it.

15 Q And you can't indicate the pages?

16 A It would be relevant to this case, Counselor, to pick
17 out, get the book, pick it up, go to the volume that
18 has the toxicological data in it, and I'll be happy to
19 discuss it with you. It's not my job to do your bloody
20 research.

21 Q In other words, you'll take my understanding as to what
22 is relevant to you regarding what you have read, and
23 you'll rely upon that at trial?

24 A Of course not.

Q Well, what I want to know is what was relevant to you, not what's relevant to me?

A Relevant to me is that there are chemicals similar and including this that damaged the brain; and I believe it damaged this man's brain.

Q What chemicals are similar that damaged this man's brain?

A Chemicals that are similar to this compound.

Q Which ones are those?

10 A There could be a lot of them.

11 Q Which ones?

12 A Which ones would you like to discuss?

13 Q You name them for me.

14 A You name them.

15 Q I am not here as the --

16 A It's not my Job.

17 MR. MURRAY: All right, I am going to
18 object. I think you're arguing here and let's get on
19 with the deposition.

20 MR. RUGER: No, the doctor has indicated
21 that he has looked at chemicals which are similar to
22 MCPP in his opinion, And my question is, what are
23 those chemicals; if the doctor can't name them as he
24 sits here --

1 A At this time --

2 Q -- that's my understanding, he can't name them?

3 A At this time I would indicate that it's my opinion that
4 the methylchloroxy phenoxy proprionic acid damaged this
5 man's brain, that's my opinion.

6 Q Well, I think we have a right to what you believe are
7 chemicals that are similar that you have looked at in
8 scientific books.

9 A I have seen a lot of them.

10 MR. MURRAY: If you recall any specifics?

11 A No. Similar compounds, there are a lot of similar
12 compounds.

13 Q All right, obviously, we are going to have to continue
14 this deposition at a later date after these things are
15 produced so we know what chemicals the doctor feels are
16 similar .

17 A That's up to you.

18 Q Right now the doctor seems to be shooting in the dark.

19 A That's your opinion, to which you're richly entitled,
20 after wasting all of this time.

21 (11:20) .

22 Q Have you brought the publications from Science
23 Magazine, sir?

24 A No, and I don't intend to.

1 Q So again, we have to search the entire volumes of The
2 Science Magazine since it's been published to try and
3 determine what's relevant to you; is that your
4 position?

5 A No, that's your position, If you were to use an index
6 or scanner, you would find related compounds.

7 MR. RUGER: Well once again, we are
8 going to reiterate that the doctor has indicated in his
9 prior deposition that he's reviewed publications from
10 Science Magazine, and we are calling for the production
11 of those materials. And again, we will have to make a
12 record here so that the doctor can be redeposed when
13 these things are produced.

14 A And I would answer to you that unless there is a proper
15 order, and unless there is a proper direction, I won't
16 comply to a generic request that's inane such as that.

17 Q Doctor, **we** are just referring to the publications that
18 you have cited in your previous deposition.

19 A No, we are not.

20 MR. RUGER: On page four of the
21 deposition dated August 20, 1987, the doctor indicates
22 that he's reviewed in The Clinical Handbook of
23 Neurology, the toxicology section, and that he's
24 reviewed some toxicological material from science and

1 other literature. And all we have asked for is this
2 material to be produced so that we can understand the
3 basis of the doctor's opinions as far as what's in the
4 scientific literature.

5 MR. MURRAY: And we have repeated,
6 without getting into an argument, Dr. Bauer has
7 properly stated that he's not obligated to do your
8 research for you, and he doesn't have a specific
9 article in front of him that he is referring to, that
10 he generically read science and medical books and texts
11 on this subject, and I think that's --

12 MR. RUGER: I think that's why we asked
13 for the production of it at this deposition, so he
14 would have this material in front of him.

15 MR. MURRAY: But we are not going to send
16 Dr. Bauer out and do specific research for you.

17 MR. RUGER: Well, this is before the
18 court and I am sure the court will rule on it.

19 Q Now you **also** indicated at your previous deposition that
20 you had a computer printout regarding Alvin Clark, and
21 we requested that. Did you bring that with you?

22 A No, I indicated that he **was** on a computer, they asked
23 about a computer in my office, and I certainly do not
24 intend to give you my office computer printouts. It's

1 private material, it has nothing about his address and
2 that on it, and I am not getting into that, period.

3 Q Well, I think it becomes a matter of record when a
4 person enters into a lawsuit claiming personal injury
5 that anything that his physicians have can become part
6 of the case, especially when it's a physician who has
7 been hired to act as an expert witness.

8 A I understand what you said to me. I am telling you
9 simply that it's computer data on his address and his
10 billing, it has nothing to do with this matter. And it
11 contains the disc records of other patients and there
12 is no need for you to have that. You don't need it.

13 Q We are not asking for information on other patients, we
14 are asking for the information on Alvin Clark.

15 A So obvious you know nothing about computers, in
16 addition to, perhaps, the subject matter in hand.

17 Q I'm sorry if you feel like that, sir. I have no
18 knowledge of computers, I am only an attorney.

19 A Right, and I'm only a doctor.

20 Q Obviously with much more experience and knowledge --

21 A Oh, not as much as you, Doctor, certainly from New York
22 you must be brighter.

23 MR. MURRAY: Let's get on with it.

24 Q Have you brought with you the appointment books for

111

1 past five years with patients' names stricken to
2 preserve any privilege?

3 A No, I'm not going to do that.

4 Q Have you brought any of the materials with you that
5 were asked to be produced in the notice to deposition,
6 which weren't at the last deposition?

7 A I have no idea what **you're** talking about.

8 Q Well, in what has been marked as Exhibit 2-1?

9 A What's 2-1? I don't have 2-1.

10 Q 2-1 is this file that's in front of you.

11 A Right.

12 Q On the back of this exhibit you do have some pages
13 which have notice of deposition attached to them as
14 well as on the front page,

15 A That's a different deposition subpoena, you seem to be
16 able to issue them at will.

17 Q Well, on the front page here, and we will mark this as
18 **Bauer Exhibit 4.**

19 A Different subpoena. Do you have for everyday of the
20 week?

21 Q What has **been** marked as Bauer Exhibit 4 is the same as
22 Bauer Exhibit 3, And attached to this --

23 A It is not the same. You obviously don't read, in
24 addition to marking exhibits.

1 Q Well, obviously the doctor is aware of any differences
2 here --

3 A It's a different day,

4 MR. RUGER: And attached to this is the
5 Notice of Deposition requesting all of the materials
6 which we have been asked, we have asked the doctor to
7 produce. And I'm asking him, since he knows what's in
8 this exhibit so well, if he's produced those materials,

9 MR. MURRAY: Let me go over the list
10 please, if I could. Doctor, I think you previously
11 produced a curriculum vitae; is that correct?

12 A Yes,

13 MR. MURRAY: Okay, two, all
14 correspondence to and from Plaintiff or to the
15 attorneys for the Plaintiff. I believe that's in your
16 file, is it not, Doctor?

17 A Right.

18 MR. MURRAY: That's an exhibit before the
19 court?

20 A Whatever, whatever your jargonese is, it's there.

21 MR. MURRAY: No. 3, all correspondence to
22 and from other experts in respect to MCPH herbicides.
23 We would object to that although --

24 MR. RUGER: Well, in the matter of time,

1 the record speaks for itself, this has been marked,
2 it's been produced,

3 Q Are the materials which have been marked here as
4 exhibits and at your last deposition, the only
5 materials that you have, other than what you have
6 already identified as possibly being in your library,
7 regarding this case?

8 A I can't answer that.

9 Q Do you know if there are other materials out there?

10 A There could be, there could be literature in Lithuania
11 that came out yesterday that I don't know about.

12 Q I am asking about what you personally have.

13 A What I have is what you have there,

14 Q Fine.

15 MR. RUGER: Why don't we mark this as
16 Exhibit 4, Okay that being the --

17 Q I am sorry,, Doctor, you were right. This is the
18 September 15th subpoena.

19 A I don't have that subpoena that you have there.

20 Q You were right, Doctor, you knew it better than me.

21 THEREUPON, Defendants' Bauer Exhibit 4 was
22 marked for identification,

23 (11:30).

24 Q What are the symptoms of toxic encephalopathy?

A What kind of toxic encephalopathy?

Q Any type of toxic encephalopathy?

A There can be a lot of symptoms related to toxic encephalopathy.

Q I'm sorry.

A Which symptoms are you interested in?

Q A person with dysplasia?

A Might have confusion, difficulty with their memory, they could difficulty with balance, vision, virtually any system that's centrally represented by neuronal cells and connections can be affected.

Q Are there more than one types of toxic encephalopathy?

A Can be.

Q Do you know how many types there are?

A I don't think there's a set number.

Q Do various types of chemicals cause different types of toxic encephalopathy?

A Possibly.

Q Do you know?

A Do I know what?

Q If different types of chemicals cause different types of toxic encephalopathy?

A It's a possibility.

Q Do you know what type of toxic encephalopathy, if any,

that lead causes?

A Lead causes the same symptoms and the same potential for symptoms that we have already discussed with the exception that **it** does affect peripheral nerves and **it** does also affect the blood and the kidney, which would distinguish **it**. Also produce a change called Gambalt's neuropathological changes and peripheral nerve, which would be different, but **it** also could be seen in other chemicals.

Q Is **it** your understanding that the type of toxic response that Mr. Clark may have suffered as a result of his alleged exposure to MCPP is of the organophosphate poisoning type?

A It's a possibility.

Q Do you know if **it** is?

A There are similarities.

Q Do you know if MCPP is an organophosphate insecticide?

A Well, **it's** a herbicide and basically **it's** what **it** says **it** is, **it's** a phenyl substituted methylchloro proprionic acid. **So** **it's** got a benzene molecule, **it's** got an aliphatic chain, and **it's** got a methylchloro substitution on the benzene ring.

Q And that information is reflected in the first page of Exhibit 2-1 which you were **just** reading from?

1 A Of course not, it just indicates the compound; I have
2 interpreted had the --

3 MR. MURRAY: What was that about?

4 MR. RUGER: The doctor was reading from
5 the document and he said that he wasn't, so --

6 A No, that isn't what I said.

7 MR. MURRAY: He didn't say --

8 A You're only not hard of hearing, you're very rude and
9 ignorant.

10 Q That information, as you were reading about the type of
11 compound that MCPD is --

12 A No, it just indicated the compound and interpreted what
13 its structure was in reading from it. I have had
14 chemistry, I am allowed to at least do that, counselor.

15 Q Excuse me, I thought you were reading the information
16 from that exhibit; you were just reading the compound
17 from the exhibit.

18 A Right.

19 Q In organophosphate poisoning, do you know what the
20 effects of the organophosphate is on the cholinesterase
21 level?

22 A It can either elevate or deplete them.

23 Q Is that pseudo cholinesterase, or red blood cells,
24 cholinesterases that's elevated with the --

- 1 A It wouldn't be interested if it's the pseudo because
2 that's not what gets an individual into difficulty.
3 what you're interested in is the cholinestrase at the
4 myoneural junction because that's what gets an
5 individuals into difficulty. The other areas, the red
6 blood cell are not nearly as important as what exists
7 at the myoneural junction in the central nervous
8 system.
- 9 Q Where is the pseudocholinestrase found?
- 10 A All over.
- 11 Q Any specific place where you would test for it?
- 12 A You could look for it in blood or you could look for it
13 in a muscle nerve perforation.
- 14 Q Where is the cholinestrase found which is located at
15 the neuromuscular junction?
- 16 A Well, you answered your own question. It's at the
17 junction, it's in the presynaptic vesicle.
- 18 Q How can you test for it?
- 19 A What do you mean, how can you test for it?
- 20 Q How can you test for it?
- 21 A You can test for it in the blood or you can take a
22 sample of the actual endings.
- 23 Q Where in the blood; what point in the blood?
- 24 A In the serum.

Q It's in the serum, that's your understanding?

A Sure.

Q Is it your understanding that this is the type of toxic reaction which Mr. Clark experienced, that he had either a decrease or increase in his cholinestrase level as a result of his exposure to MCP?

A I'm not really convinced that he had a significant myoneural effect.

Q Myoneural effect isn't found in the central nervous system, it's peripheral, right?

A Right.

Q Did you ever see anybody do any testing on Mr. Clark to determine whether or not he had an increase or a decrease in his cholinestrase levels in blood?

A I don't recall that being done.

Q Did you ever order that test?

A It wouldn't be of value now.

Q How many papers have you found in your research for this case that indicate that MCP causes toxic encephalopathy?

A I am not sure. There is certainly indication that it has an affect on the central nervous system.

Q which portion of the central nervous system does it affect, according to what you found in the literature?

- 1 A I would feel that its affect would be on the neurons
2 and possibly the myelon.
- 3 Q The myelon in the central nervous system?
- 4 A Yes, it could also affect the myoneural junction on the
5 peripheral nerve, too.
- 6 Q Are those myelinated fibers found in the spinal cord or
7 in the brain?
- 8 A Well, they are in both places, they are all part of the
9 central nervous system.
- 10 Q Are they afferent or efferent fibers?
- 11 A It could be either.
- 12 Q It's your understanding that there are myelinated
13 fibers in the brain and efferent myelinated fibers in
14 the brain; is that correct?
- 15 A Sure.
- 16 Q Which structure of the brain are they found in, these
17 myelinated fibers?
- 18 A What do you mean by that question?
- 19 Q Are there various structures found in the brain?
- 20 A Of course there is various structures in the brain.
- 21 Q Which structures of the brain are the myelinated
22 fibers?
- 23 A What the hell kind of question is that? It's a dumb
24 question; I can't answer it.

1 Q Which structure of the brain are myelinated **fibers**
2 found where you think MCPP has caused a toxic reaction?

3 A It could be anywhere in the white matter of the brain.

4 Q So it's the white matter of the brain?

5 A Well, that would **be** the myelinated fibers, if you
6 understand your own question.

7 Q Yes.

8 A That's what makes **it** white.

9 Q Okay, what literature have you found that shows that
10 MCPP affects the myelon in the brain?

11 A I don't recall that specifically.

12 Q Do you feel that MCPP causes gray matter -- affects
13 gray matter in the brain?

14 A I believe **it** can.

15 Q What literature have you found that shows that?

16 A I don't recall specifically.

17 MR. RUGER: Once again, we are going to
18 ask that the doctor look through the papers that he has
19 found, which he has testified to that he has found; we
20 are not asking him to do an independent literature
21 search, but what he has already found which would
22 indicate MCPP causing a toxic reaction on either the
23 white matter in the brain or the gray matter in the
24 brain.

1 MR. MURRAY : I don't understand your
2 question.

3 MR. RUGER: I am asking for the
4 production of those publications.

5 MR. MURRAY: Well, you know, he doesn't
6 have those here today.

7 MR. RUGER: That's why I am asking for
8 the production.

9 MR. MURRAY: Okay.

10 Q Are you familiar with the DSM-III?

11 A Yes.

12 Q And do you know what the DSM-III is?

13 A Yes.

14 Q what is it?

15 A It's used by psychiatrists for mental disorders.

16 Q Are you familiar with the DSM-III revised or R.

17 A I am aware of its existence.

18 Q Do you know if the DSM-III concerns or has a section
19 that deals with toxic insults to the brain?

20 A May or may not, it depends on how interested the
21 psychiatrists are in toxic affects on the central
22 nervous system. That's psychiatric literature, you
23 ought to ask a psychiatrist about that.

24 Q Have you made any attempt to use any diagnostic

MR. MURRAY : I don't understand your question.

MR. RUGER: I am asking for the production of those publications.

MR. MURRAY: Well, you know, he doesn't have those here today.

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MR. MURRAY: Okay.

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19 that deals with toxic insults to the brain?

20 A May or may not, it depends on how interested the
21 psychiatrists are in toxic affects on the central
22 nervous system. That's psychiatric literature, you
23 ought to ask a psychiatrist about that.

24 Q Have you made any attempt to use any diagnostic

criteria that's set forth in DSM-III to evaluate Mr. Clark?

A No, that would be up to a psychiatrist. They use that to classify mental disorders, it would really not have any material relevance to this particular problem, other than there might be a section under organic brain syndrome on toxic encephalopathy. They generally refer those to a neurologist.

Q so you have made no attempt then to --

A Of course, not. I already told you that it's not relevant. Don't you understand English? That's a psychiatric classifying unit. Do you understand that?

Q Did you make any type of an opinion that Mr. Clark suffers from any type of flattened effect?

A Yes.

Q Is that a psychiatric problem?

A Inasmuch as that part of the mental state is reflected in psychiatric interpretative investigation, yes.

Q Did you refer to DSM-III in determining how to do a differential diagnosis when there are matters of effect involved?

A No, no, I didn't use that.

Q Did you make an opinion that Mr. Clark suffers from memory problems?

1 A Yes.

2 Q Do you know if that type of condition is addressed in
3 DSM-III?

4 A Memory problems probably are addressed in there like
5 anything else that would relate to the mental status
6 exams psychiatrically.

7 Q Did you make any attempt to determine whether or not
8 Mr. Clark's alleged memory problems are addressed in
9 DSM-III and how to do a differential diagnosis to
10 determine what the cause would be?

11 A No, that would not be relevant.

12 Q Do you have any opinion as to whether or not toxic
13 chemicals entering the brain would affect one area of
14 the brain more than another?

15 A That's possible.

16 Q In Mr. Clark's case, do you have any opinion regarding
17 whether or not certain areas of his brain may be
18 affected more than others?

19 A Yes, I do. I believe his temporal lobe, I believe that
20 probably the hippocampal region and the white matter
21 that I have already indicated would have been
22 preferentially in this instance damaged, in particular
23 the white matter relating to the motor system or
24 corticospinal system, and also the visual system.

1 Q How did you go about evaluating whether or not any
2 areas of Mr. Clark's telencephalon were or were not
3 infected?

4 A Telencephalon is a zoological term that does not have
5 any relevant useage in clinical neurology. Perhaps you
6 would refer to your zoological text and convert it into
7 meaningful clinical neurological terms, Counselor.
8 Telencephalon is graded in the bird kingdom, but has
9 very, very little use in clinical neurological terms.
10 Could you rephrase your inept question.

11 Q Do you know what the telencephalon is comprised of
12 basically?

13 A Which species?

14 Q In human beings?

15 A It's an archaic embryological term, and it's not of
16 really any relevance in clinical neurology.

17 Q How did you go about making a determination as to
18 whether or not Mr. Clark's primary motor cortex may
19 have been affected or not affected by MCPP?

20 A Repeat the question.

21 THEREUPON, the Reporter read the requested
22 portion of the record.

23 A The question as asked cannot be answered until counsel
24 delineates what he means by, quote, primary motor

1 cortex.

2 Q Do you know what the primary motor cortex is?

3 A I want you to define to me what you mean by primary
4 motor cortex.

5 Q Sir, I am not the expert, you are. Are you familiar
6 with the term primary motor cortex as a neurologist?

7 A I am familiar with the term motor cortex. The
8 qualification of primary would reflect an amateurish
9 inept approach to the classification of that motor
10 cortex and I will not answer the question until you
11 indicate to me what you mean by primary.

12 Q You're not familiar with the term primary motor cortex.
13 What about secondary motor cortex, are you familiar
14 with that term, sir?

15 A Yes, I am.

16 Q What's the difference between a primary and secondary
17 motor cortex?

18 A It depends on whether you're talking about the
19 assignation primary or secondary or the anatomical
20 locations, the neurophysiological classification of
21 Brodell's modification in which there are motor cells
22 present in, in fact, all of the different areas of the
23 brain. So counselor, what I would suggest is stop
24 playing games, just tell me what you want to know; I'm

1 not going to answer any of those stupid questions. I
2 can't answer it. The question as asked is
3 semantically and syntactically incorrect and cannot be
4 answered.

5 Q Well, you have said that you have already understood
6 what the secondary motor cortex is or the function of
7 it is, why don't you tell us what that is, sir?

8 A No, I didn't say that and I'm not answering the
9 question.

10 Q You don't have any understanding as to what a secondary
11 motor cortex --

12 A I am not answering your answer on secondary motor
13 cortex until you define to me exactly what you mean by
14 secondary or primary motor cortex, period.

15 Q Do you know what the term motor cortex means, sir?

16 A Sure.

17 Q Why don't you tell us what your understanding of the
18 motor cortex is?

19 A That relates to that part of the parietal lobe and
20 those cells, those neuronal cells that relate to the
21 corticospinal tract and they sit in the precentral
22 region.

23 Q How do you test for that to see whether or not there
24 was a toxic encephalopathy effect in that area of the

1 brain?

2 A You could test by doing the reflexes.

3 Q And what reflexes in particular would you test for
4 that?

5 A Deep tendon reflex.

6 Q And you did that on Mr. Clark's, correct?

7 A They're already of record as being abnormal, Counselor,
8 and **you** know that. Before you asked all of your stupid
9 questions, you knew that,

10 MR. MURRAY: Try and answer the
11 question.

12 A Look **Mr.** Pat, in due deference to **you** here, I **am** sick
13 and tired of nonsense that goes on here, They are not
14 here to gather anything scholarly, they are just here
15 to jack around. I'm sick of **it**, you know, I'm **just** sick
16 of **it**.

17 MR. MURRAY: All right, just try --

18 A I'm **sick** of **it**. No, I'm not. I'm going to end this
19 thing.

20 MR. MURRAY: Now, **Bill**, wait **a** second.

21 A No, the heck with **you** guys.

22 MR. MURRAY: Bill, hold on a second.

23 A That's the end of **it**. No, Go waste someone else's
24 time,

MR. MURRAY: Bill, wait a second.. I want to talk to you.

THEREUPON, there was a discussion off the record at 11:50.

MR. HART: Let the record reflect he walked out of the room.

Back on the record 11:55 a.m.

Q What sort of testing, if any, have you done to determine whether or not Mr. Clark's visual memory is intact?

1: A I don't know of such a test that exists to interpret
12 visual memory or areas 17 and 18 of the occipital
13 cortex. I would be happy to look at such information
14 if you have it.

15 Q Have you ever heard of Albert's Famous Faces?

16 A Yes.

17 Q what is that test?

18 A Tests the vision and tests the area, primary area.
19 There is no existing proof of what neuronal cells are
20 being tested, none whatsoever.

21 Q Do you know if it tests visual memory?

22 A Possibly.

23 Q Do you know how Albert's Famous Faces test is done?

24 A (Nod indicating yes.) I have an idea. I do not use the

test because of its lack of correlation to any known anatomical studies that prove exactly which area of the brain it's testing other than the generic occipital cortex.

Q How is the test done?

I haven't done it in awhile. It's the test of showing people faces and their recall, which would be, unfortunately, not only a test of occipital, but also of parietal and temporal lobe; and therefore as such, is speculative, but used by the neuropsychologists and neuropsychiatrists, and in your own devious way, you're using it.

Q Are you familiar with picture reproduction testing?

Yes.

Q What is that test?

A It tests the abilities of the hand to go to the paper; therefore, it would test tactile sensation in the hand, it would test the ability of the person to hold the pen, which would be also the corticospinal tract, since properception would be also tested in the hand, this is before you even do the test, that would also test the posterior columns and it would also test the parietal lobe. And then when you got to the actual reproduction itself, it would test, indeed, the occipital lobe,

1 temporal lobe, parietal lobe and frontal lobe,

2 Q Would it test visual memory?

3 A In part.

4 Q How is auditory memory tested?

5 A With words,

6 Q Did you do that type of testing with Mr. Clark?

7 A No. I would relegate that to a neuropsychologist and
8 then interpret those tests based upon the information
9 I've already given you in response to the other
10 testing.

11 Q Did you test visual memory in Mr. Clark?

12 A Not at this time.

13 Q How did you test general memory?

14 A I asked him to indicate to me the troubles that he had
15 with his memory. I probably gave him numbers to recall
16 for immediate memory and he's to have a formal
17 psychological testing that would properly test his
18 memory.

19 Q So you based your opinion that he has memory problems
20 upon what you have just described?

21 A In part.

22 Q What else did you base it upon?

23 A The abnormal findings that I had on neurological exam
24 as well as the evoked responses.

1 Q What aspects of the neurological exam tests memory?

2 A That would be to do the neuropsychological testing in
3 particular, but basically asking him about his memory
4 would be the clinical way, then to test it, you have to
5 go to psychological testing or neuropsychological
6 testing.

7 Q Which hasn't been done in his case?

8 A I don't know that it has been done or not. But it
9 certainly will be done if it hasn't been done.

10 Q What part of the evoked potential testing tests memory?

11 A That would not test memory.

12 Q Did you do any vocabulary verbal concept formation
13 testing on Mr. Clark?

14 A No, not at this time.

15 Q Do you know what that type of a test, which is part of
16 the W.A.I.S. test, looks at?

17 A Repeat the question.

18 Q Could I have it read back.

19 THEREUPON, the Reporter read the requested
20 portion of the record.

21 A What are you referring to, what specific questions.

22 Q Verbal concept formation testing?

23 A That could test hearing, primary cochlear reception as
24 to whether a person could hear you or not, it would

- 1 test the brain stem pathways, it would test temporal
2 cortex and also occipital and frontal cortex.
- 3 Q Did you do any testing like that on Mr. Clark?
- 4 A No .
- 5 Q Did you give Mr. Clark a Benton Visual Retention Test?
- 6 A No .
- 7 Q Did you do any problem solving testing on Mr. Clark?
- 8 A No.
- 9 Q Did you do any digit spanning on Mr. Clark?
- 10 A I already answered that.
- 11 Q The answer was yes or no?
- 12 A I already answered your question.
- 13 Q You said you did some number testing on him. I'm
14 asking did you do a digit span test?
- 15 A Yes.
- 16 Q Which one did you do?
- 17 A Repeat the numbers, serial seven, six.
- 18 Q Was it forward or backwards?
- 19 A Both.
- 20 Q Where are the results of that test indicated?
- 21 A Didn't record them.
- 22 Q Did you do any simple arithmetic tests on Mr. Clark?
- 23 A No .
- 24 Q Did you do any interpretive data testing on Mr. Clark?

A NO.

Q Did you do any attention testing on Mr. Clark, such as story repeating?

A NO.

Q Did you do any spacial testing on Mr. Clark, such as block design testing?

A Not at this time.

Q Did you do any continuous performance testing on Mr. Clark?

A Not at this time.

Q Did you do a POMS on Mr. Clark?

A what do you mean by that?

Q Profile of mood stay test?

A No, I did not, not at this time.

Q Did you do the Hamilton Test on Mr. Clark?

A No, I did not at this time.

Q Do you know what it is?

A Vaguely familiar with it.

Q what is the test?

A It's a psychological test is my understanding, neuropsychological test.

Q How did you go about evaluating his effect if you didn't do any test which tests moods?

A I determined that myself.

Q Okay, do you know what a standardized test is?

A Depends on what you mean by a standardized.

Q standardized psychological test?

A In general, it refers to a test that's been standardized against a population.

Q What is the purpose of having standardized testing, as far as you understand it?

A Well, it would be helpful for laboratory to laboratory or in scientific data.

Q Is that the only reason?

A That's my answer. If you want to discuss anything else, ask it.

Q I did.

A I answered it.

Q That's your understanding of what a standardized test is for, so that laboratory to laboratory --

A In constrictio to the question as syntactically worded, yes.

Q Do you have any other understanding as to why a standardized test should be used to evaluate a person as far as the mental status, mood status?

A The question has been answered.

Q So I assume the answer is what you gave, that is your total understanding?

Q Okay, do you know what a standardized test is?

A Depends on what you mean by a standardized.

Q Standardized psychological test?

A In general, it refers to a test that's been standardized against a population,

Q what is the purpose of having standardized testing, as far as you understand it?

A Well, it would be helpful for laboratory to laboratory or in scientific data.

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1: else, ask it.

1: Q I did.

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16 is for, so that laboratory to laboratory --

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18 worded, yes.

19 Q Do you have any other understanding as to why a
20 standardized test should be used to evaluate a person
21 as far as the mental status, mood status?

22 A The question has been answered.

23 Q So I assume the answer is what you gave, that is your
24 total understanding?

A It depends on **how** you interpret the question that you've asked syntactically,

Q Do you know if standardized tests are judged for their validity?

A They can be.

Q What's the purpose of determining whether or not a test is valid, as far as you understand, regarding psychological testing?

A well, that may or may not have clinical or statistical significance,

Q Do you know **if**, in these standardized tests, there are safeguards put in so that potential malingering can be determined?

A That's usually included in psychological testing.

Q Mr. Clark, as far as you're aware, hasn't had any standardized testing performed on him regarding a neuropsychological complaint; is that correct?

A I have already answered that. The question is redundant.

Q Your answer is, as far as you know, you don't know?

A I don't know of any at this time. It's my understanding they are to be done.

Q Now in your opinion that Mr. Clark's memory has been affected by MCPP, is that short term memory or long

term memory?

A I would feel probably both at this time, barring further testing.

Q Do you know the mechanism of action by which MCPP allegedly, in your opinion, has affected his memory?

A By damage either to neuron or to myelon.

Q It's not a biochemical cause, is it?

A I'm not sure I know what you mean by that question.

Q You are familiar with the biochemical mechanisms in which memory is thought to be produced and stored, are you not?

A That's a vague question.

Q Are you familiar with any of the theories as to how memory is allegedly formed and stored?

A Yes.

Q What is the most prevalent theory in that regard?

A The question as asked is speculative.

MR. MURRAY: I'm going to object to that. You have no right to -- you know, this is not a proper line of questioning.

MR. RUGER: I'm trying to determine from the doctor if he has any concept as to how Mr. Clark's memory may have been damaged. I'm trying to find out if it's strictly a cellular effect or if there are

1 biochemical alterations **that** are allegedly involved,
2 I'm trying **to** get some sort of a thing here for the
3 mechanisms by which he feels MCPP has affected Mr.
4 Clark's memory.

5 A I answered that.

6 MR. MURRAY: I think he answered that.

7 Q Do you feel that's affecting the cyclic nucleotides in
8 Mr. Clark?

9 A Which cyclic nucleotides do you refer to?

10 Q Which cyclic nucleotides are involved in memory?

11 A It's your question; you asked me which nucleotide, to
12 which you refer, I'll answer; otherwise, I'm not
13 answering your generic questions anymore.

14 Q Fine, I'll ask you specifically. Does MCPP affect
15 cyclic AMP?

16 A I don't know that there is any literature at this time
17 to indicate that.

18 Q Do you know what the function of cyclic AMP is in
19 memory?

20 A It's a speculative function that would be presumed upon
21 what cyclic **AMP** does in the rest of the nervous system
22 and peripheral.

23 Q What does cyclic **AMP** do?

24 A It's a myophosphate, it may or may not contribute to

1 the metabolic function of every cell.

2 How does cyclic AMP work when it's stimulated in the
3 nerve cell?

4 A In which respect do you mean?

5 Q Central nervous system cell?

6 A In what respect?

7 Q When it's stimulated by a neurotransmitter?

8 A Which neurotransmitter?

9 Q Epinephrine?

10 A Epinephrine. Stimulating it where?

11 Q Stimulating it in the nerve?

12 A Which nerve?

13 Q How about a Golgi nerve in the cerebellum?

14 A There is no such thing as a Golgi nerve in the
15 cerebellum.

16 Q How about a Purkinje fiber in the cerebellum?

17 A That's a fiber, not a cell. You were talking about
18 cells, now you're into fibers.

19 Q I'm sorry, sir. In a Purkinje fiber in the cerebellum
20 with cyclic AMP stored, how does epinephrine affect it?

21 A It may or may not affect it, depends on what's being
22 demanded of that fiber at that particular time.

23 Q Let's assume that epinephrine interacts with its
24 receptor, on the Purkinje fiber in the cerebellum and

cyclic AMP is found there on the inside of the cell as a second messenger, will epinephrine increase or decrease cyclic AMP productions in that fiber?

A The question as asked cannot be answered because it's been conjured in your own mind and has no absolute resemblance to anything that exists in the central nervous system. You are flashing and waling in the dark, counselor.

Q I'm sure I am, sir. What about cyclic GMP, what role does that have in Purkinje cell --

A It has nothing whatsoever in my opinion to do with the damage of this man's brain with this poison, in my opinion.

Q I'm just trying to find out. Do you have an understanding --

MR. MURRAY: I'm going to object. We are now on a total fishing expedition. I don't think he has to come and sit here and ask --

I'm not answering that.

MR. MURRAY: Answer these kinds of questions. I think you can ask him --

MR. RUGER: Once again, I think there is scientific literature out there which indicates that these chemicals are involved in memory processes. And

1 I'm sure the doctor is well aware of them since he's an
2 expert in this area. I'm trying to find out whether or
3 not he has an opinion on whether or not MCPP affects
4 cyclic nucleotides in cells which are involved in
5 memory. Now if the doctor can't opinion on that or has
6 no understanding, I'll accept that as his answer.

7 A I can elaborate on that. I have indicated to you
8 already that I don't feel that the interaction of the
9 toxic chemical at hand has any material relevance to
10 the ongoing permanent effects. I don't think that
11 anybody knows the answer to that particular question
12 other than the damage to the cell or the damage to the
13 myelon. I have answered that repeatedly.

14 Q Is it your opinion that the cell membrane is damaged?

15 A Possibly.

16 Q How is it damaged?

17 A It's probably made porous at the time of the initial
18 increased level, particularly the membranes from the
19 blood brain barrier, and then that's repaired.

20 Q Have you seen any literature which would indicate that
21 MCPP causes that type of an affect?

22 A I don't specifically recall, it's possible.

23 Q What cells of the blood brain barrier do you feel were
24 adversely affected?

A The question as asked is too generic and cannot be answered.

MR. RUGER: Could I have the answer read back two questions ago where the doctor indicated that cells of the blood brain barrier were affected by MCPP.

THEREUPON, the Reporter read the requested portion of the record.

Q Which membrane of the blood brain barrier is affected by MCPP, in your opinion, as we have just read from your answer two questions ago?

A I would indicate the foot plate of the astrocyte which is the believed mechanism of the barrier.

Q And what literature do you have that would indicate that MCPP can have an adverse effect on the foot plate of the astrocyte?

A Not specifically, I can't think of it at this time.

Q Have you ever seen any pathological data which would indicate that MCPP has that type of an effect?

A Possible.

Q Where have you seen that?

A I don't recall.

Q Well, we will ask that you do a search of what you have reviewed in this regard and that any pathological data which you have seen which would indicate that the foot

1 plate of the astrocyte is adversely affected by MCPP be
2 produced?

3 A Do it yourself.

4 Q What is the effect that you believe MCPP had on the
5 hippocampus?

6 A I believe it had an affect on the cells that relate to
7 memory.

8 Q Which cells are those?

9 A A lot of cells, **all** of the cells of the hippocampus
10 relate to memory.

11 Q **H**ow many types of cells are in the hippocampus that
12 relate to memory?

13 A **Lots** of **cells**, neurons, astrocytes, glial cells.

14 Q Any neurons in particular, any category of neuron?

15 A Neurons.

16 Q Any specific area of the hippocampus?

17 A I've answered that question.

18 Q **I**t's your opinion that's diffuse neuronal damage
19 throughout the hippocampus?

20 A That's **my** opinion.

21 Q **I**s it also your opinion that it's diffuse damage to
22 astrocytes throughout the hippocampus in Mr. Clark?

23 A The question **as** asked is so stupid I can't answer it.

24 Q Well, you just testified a few seconds ago --

A It has nothing to do -- what I testified previously that you will have to reread back again, has nothing to do with the hippocampus. What you have done, like the idiot savant, is you have grabbed on a theme and a topic, and you're going to apply it probably to everything including the hair follicle. It has nothing to do with it. I'm not answering the questions because it's so stupid it can't be answered.

Q I'm trying to find out, sir --

10 A I have given you the answer.

11 Q All right, let me ask you this, sir: What literature
12 have you found that would indicate that MCPP can damage
13 neurons in hippocampus?

14 A What literature have you found?

15 Q It's not my opinion, it's yours, sir. I'm asking what
16 literature you found, if any.

17 A I don't recall.

18 Q what literature have you found, if any, which would
19 indicate that glial cells in the hippocampus would be
20 damaged by MCPP?

21 A The question as asked is ludicrous and the only answer
22 would be that it's ludicrous.

23 O My question is based upon an answer of yours that
24 occurred a few seconds ago, sir.

1 A No, it isn't. That means that you don't listen to the
2 question and you don't know where the blood brain
3 barrier is. There's no evidence that the glial cells
4 contribute via the foot plates to the blood brain
5 barrier of the hippocampus. Are you familiar with any
6 literature like that, counselor? Why don't you just
7 ask questions that are relevant to the data at hand and
8 stop that nonsense of yours? Why don't you just do
9 that?

10 Q Sir, you answered earlier that the hippocampus, in your
11 opinion, in Mr. Clark --

12 A That has nothing to do with the blood brain barrier,
13 Counselor .

14 MR. MURRAY: Let's' get on to the next
15 question.

16 A Don't you understand that?

17 Q I'm not talking about the blood brain barrier, I'm
18 talking about the hippocampus.

19 A Hippocampus. I have already told you what the damages
20 of cells are. Go on to another question.

21 O What cells are damaged?

22 A I already told you the answer to that, vis above, read
23 above.

24 Q You said glial cells?

1 A I did not say that, you said that,

2 Q Sir, did you not say --

3 A No, I said neurons, when did a glial cell become a
4 neuron, you idiot? What's the matter with you?

5 Q Sir, I didn't say --

6 A What did you say; you don't know what you're talking
7 about, that's your problem.

8 Q Sir, which glial cells of the hippocampus, if any --

9 A The question as asked is not meaningful and can't be
10 answered. Stupid question, go to the next one.

11 O What literature have you found which would indicate
12 that glial cells in the hippocampus --

13 A No literature because the question as asked is stupid
14 and nobody but yourself would do the research. Look in
15 your own literature, stupid literature 101.

16 Q It's your opinion, sir.

17 A It's your opinion. I never said that.

18 MR. MURRAY: Go to the next question.

19 O Which portions of the white matter?

20 A The portions of the white matter that have myelon, and
21 any portion that was damaged by the chemical would have
22 produced it, and in particular, the corticospinal. I
23 have already answered that, the motor system. Already
24 answered.

1 Q Fine.

2 Do you have any other redundant questions on your pad?

3 MR. MURRAY: Go on. Get on to the next
4 question. Let's go.

5 Q Sir, which **cells** --

6 Yes, sir.

7 Q Which **cells** of the temporal lobe, in your opinion, were
8 affected by --

9 I'm not answering a question that's redundant and it's
10 been answered. The hippocampus is in the temporal lobe,
11 anybody knows that, you ought to, you have been looking
12 from your book all day there.

13 Q Now, sir, which book am I looking from?

14 Your yellow book.

15 Q My yellow pad.

16 Right, your yellow pad book.

17 Q Who did you study under, if anyone, to learn how to do
18 some autosenory evoked potential testing?

19 A Who did I study under? I studied under the
20 neurological training program that I had, Dr. Van der
21 Muellen, who **was** a neurophysiologist, and I had --

22 Q How do you spell that name?

23 Van der Muellen.

24 Q Yes.

A At that time, from 1966 through 1969 neurophysiology from the standpoint of evoked responses was at its infancy. And basically, I got my study and training subsequent to that at the Cleveland Clinic foundation, seminars there, and also with Nickoway and Teca.

O In doing the visual evoked potentials on Mr. Clark, did you use a variety of different type of stimuli?

A I used a patterned response, the checker pattern response standard.

1 O Did you do a nsnpatterned response?

1: A NO.

1: Q Was it monocular or biocular?

1: A Bi and then block both.

14 Q What did you do to determine whether or not his pupil size remained constant throughout the period of testing?

17 A Well, the test itself would indicate if the pupil were to remain permanently constricted, then there would be an artifact or there would be an abnormality that you would pick up at the time of the test. There was no such evidence that he had any pupillary, either clinically or at the time of the evoked response.

23 Q Did you do anything --

✓ 24 A He has no pupillary abnormality.

1 Q Did you do anything to monitor whether or not his pupil
2 size remained the same throughout the test period as is
3 recommended in the minimum standards for the guidelines
4 of this type of testing by the AES?

5 A The pupils were normal and are normal in this patient
6 as witnessed by the evoked response. The question as
7 asked is stupid.

8 O Well, my question wasn't whether or not his pupils were
9 normal, my question is whether or not you did any
10 monitoring to determine whether or not the pupil
11 size --

12 A Yes, they are monitored at the time of the visual
13 evoked response.

14 O How did you monitor it?

15 A You don't have to. You don't have to continue to
16 monitor because if you have a response that you can see
17 on the paper, it would indicate to you that the pupil
18 is allowing the light and the stimulus to come through
19 or you wouldn't have a response on the page. Any
20 idiot, including yourself, and I'm sure you're a
21 qualified idiot, could look at this piece of paper and
22 see that there is a N-1, P-100, N-2 latency, which
23 means that the pupil has to have been normal whether
24 monitored or not, which is not relevant, or there

1 wouldn't be a response on the paper. How many more of
2 those questions are you going to go through?

3 O Quite a few.

4 A I'm sure.

5 Q Are you familiar with -- well, I'm sure you are
6 familiar, that the AES guidelines for the clinically
7 evoked potentials recommend that the pupil size be
8 monitored by audio visual techniques throughout the
9 testing to determine whether or not the pupil size
10 stays the same?

11 A That is the stupidest thing I ever ever heard of. If
12 you can show me something; sir, that audio-wise
13 monitors the pupil, then not only is your question
14 unique, uniquely stupid, but you now have made some --
15 you said audio visual and that's been typical of your
16 questions all day. There's nothing in sound that
17 monitors the pupil.

18 Q I apologize.

19 A No, don't apologize because it's deliberate.

20 Q I apologize.

21 A Yes, I apologize.

22 Q Visually, did you do anything to determine whether or
23 not visual --

24 A The question is asked and answered.

1 Q What visual monitoring did you do as is stated by the
2 AES?

3 A Dumb.

4 Q Which is the American Encephalographic Society
5 Guidelines for clinical evoked potential studies, to
6 determine whether or not Mr. Clark's pupils remained
7 the same size throughout the testing periods?

8 A The question has been answered. I won't answer it
9 again.

10 Q The question hasn't been answered, sir.

11 MR. MURRAY : It has been answered. He
12 said that he told you what he did.

13 Q How did you monitor?

14 A We looked at it before.

15 O Throughout?

16 A Yes, sure.

17 Q How?

18 A You don't look at it throughout. Your question that
19 you are asking, you don't even know what you're asking,
20 that's your problem, sir. What you're doing is you
21 have some cookbook that you go through of stupidity to
22 come here and ask questions that have nothing to do
23 with the issue. The pupil, if you understand anything
24 about the eye, has to be open in order for the test to

1 be done. Now, there's no way that anybody or any test
2 can look at a pupil continuously throughout the test
3 because all it's doing is changing its size **about** a
4 millimeter or two throughout the test in response to
5 the changing of the pattern which goes in a sequence
6 black/white, reverse, back and forth, throughout the
7 test thousands of times, and you generate these waves
8 on this paper. Now anybody with any common sense would
9 know that **if** a person had a pupil that was slammed
10 shut, no light would get through, there would be no
11 response. So the guideline has to do with simply
12 monitoring whether or not there's a pupillary
13 abnormality in advance to the test. We have already
14 determined that. And if you look at the result itself,
15 **it** tells you that the pupil was, in fact, normal and
16 able to allow the test to function. Now if you're
17 going to continue to take each standard **and** ask asinine
18 questions like this, I consider this an abuse of the
19 system, which is what you read in that first letter,
20 and which is what I maintain today; that you're not
21 here to gain any knowledge of what I know about this
22 problem, you're just here to be a jackass. Now ask
23 proper questions.

24 Q I'm asking questions --

1 A Your questions are stupid.

2 Q -- based upon the AES guidelines for clinical evoked
3 responses.

4 MR. MURRAY: We have gone over that.

5 A I'm not going to answer that anymore. The pupil was
6 normal, it doesn't need to be monitored, except by
7 you. Why don't you monitor your chemicals your
8 company, the company that you represent, that would be
9 a better thing for you to do.

10 Q Did you do an eye test on Mr. Clark prior to doing a
11 visual evoked potential?

12 A I checked his vision and I checked his eyes before he
13 had it.

14 Q Where is it indicated that you checked his vision
15 before he had it?

16 A That's already of record in the prior deposition, that
17 I checked his eyes, and that he had a problem with his
18 left eye. That's all of record, it's all been gone
19 through in the deposition that you presumably read
20 before you came here today.

21 Q Now, when you did the visual evoked potentials, was he
22 wearing corrective lenses?

23 A No, he was not, it's not necessary.

24 Q What was the rate of the flash stimulus that you gave

1 him?

2 A Standard rate.

3 Q What is that?

4 A I don't have it on this sheet, I can produce it for
5 you .

6 MR. RUGER: Well, I call for the
7 production of that information, both for the original
8 visual evoked potentials and for the followup.

9 A They are all the same, standardized.

10 Q What was of the duration of time that the evoked
11 potentials testing was done?

12 A It was monitored over two hundred milliseconds,
13 actually two hundred fifty milliseconds.

14 Q Were the visual evoked potentials used in conjunction
15 with electroretinograms?

16 A NO.

17 O What would be the purpose of doing th t?

18 A I can't think of any. I'm sure, another cookbook
19 question. There is no value in doing that unless
20 you're interested in retinal disease.

21 Q Do you know if Mr. Clark had any type of a --

22 A It's already of record, it's already there, you know
23 that, it's already been answered in the prior
24 deposition, Counselor. Stop your games. Next

question. It's already been answered.

Q Well, I'm just trying to find out about the time when you tested him.

A No, you're not, you're just being a jerk.

Q I'm trying to find out, sir, if at the time that you tested him, if --

A Nothing has changed.

Q -- you did any type of a test to determine whether or not his retina was working properly.

A Question answered. Next .

Q On the testing of September, did your technician do that test with or without corrective lenses on Mr. Clark?

A Question as asked is immaterial; whether the lenses are used or not is immaterial.

Q That's your understanding?

A That's my opinion.

THEREUPON, there was a discussion off the record.

MR. HART: I asked Dr. Bauer if there were any time constraints involved in completing this deposition today and I think we are going to discuss that now. Doctor, what was your response?

A My response is yes. How long are you -- how many more

1 of these questions do you have?

2 Q I have a full day's worth of questioning.

3 A (Nod indicating no.) I won't be here a full day.

4 Q What time do you intend to leave?

5 A It depends.

6 MR. MURRAY: We will finish the process
7 today.

8 Q what were the number of trials that were given to Mr.
9 Clark in the September testing by your technician?

10 A Standard.

11 Q What is standard?

12 A Usually several hundred to a thousand and then the test
13 itself is performed. Here it is right here, you have
14 it.

15 Q It's indicated on what has been marked as Exhibit
16 2-2.

17 A YOU have already had all of these things, you have had
18 an opportunity to review them; it's more inane
19 questions.

20 Q How many persons has your laboratory tested to
21 determine the norms of your laboratory, regarding
22 visual evoked potentials?

23 A several hundred.

24 Q Where is that data stored?

1 A That would be, the original data for this equipment,
2 would be at the Memorial Hospital in Sandusky County,
3 Fremont. And this tech equipment that I have was then
4 monitored -- this is a new piece of equipment -- and
5 similiarly we would have some of those stored here. The
6 other ones would be in the laboratory that is in
7 Memorial Hospital, Sandusky County. I don't go to that
8 hospital, so you have to independently try to get that
9 data. But suffice it to say that the equipment is
10 standardized, the procedure is standardized and the
11 test is abnormal under anyone's standards, so that the
12 questions beyond that are just your usual games.

13 Q Do you have a list of your normals regarding visual
14 evoked potentials?

15 A Probably .

16 MR. RUGER: I want to call for a
17 production of those.

18 Q How many standard deviations beyond the mean of your
19 normals do you consider abnormal?

20 A I would consider two.

21 Q Have you done that type of a calculation regarding Mr.
22 Clark?

23 A Yes.

24 Q Where is that indicated, that he is beyond two standard

deviations beyond the mean?

A It's right on the test itself, the interpretation, and if you look at the P-100, where I have indicated that it's abnormal --

Q But I don't have your normals to see what is the two standard deviations beyond, so --

A My normals are the same and comply, these are the normals; you do have the normals.

Q That's in the new things that have just been produced; is that correct?

A No, it's been in the same things that have been produced --

Q Sir, could you read the date on the bottom of the page --

A No, I'm not reading the dates for you.

MR. RUGER: Let the record reflect --

A Let the record reflect that the counselor is pointing to a date that has no meaning to the question that he's asked and, as usual, is devious in its purpose.

MR. RUGER: Let the record reflect that I'm pointing to a date of 9/9/87 and it comprises part of Exhibit 2-2 --

A Right.

MR. RUGER: -- which are the notes

- 1 which have been newly produced by the doctor in today's
2 deposition. Up until this point in time, we had no
3 norms.
- 4 Q What is the increase in latency in milliseconds that
5 you would consider pathologic?
- 6 A The question as asked can't be answered.
- 7 Q Do you have any increase in latency that you consider
8 pathologic?
- 9 A That question has been asked and answered.
- 10 O When you compare a person's evoked potentials to your
11 norms, what increase, based upon milliseconds in
12 latency, do you consider to be a pathologic finding?
- 13 A I have already asked, the question has been asked and
14 answered. Are you talking about the specific test here
15 with Mr. Clark, that's a different matter.
- 16 Q Yes, I am talking about the specific test with Mr.
17 Clark.
- 18 A Which do you want, the visual, do you want the test of
19 9/9/87; what do you want me to address myself to.
- 20 Q I want the visual evoked potentials?
- 21 A The normal is here, right here, you have the picture of
22 the normal. His record for the visual evoked response
23 is right here, and he has on the right a W
24 configuration, on the left, he has a normal appearing

1 P-100. The value of the W, if you look at the distal
2 part, is 141; if you look at the proximal portion of
3 115, that's fifteen milliseconds beyond P-100; in my
4 opinion that's abnormal. The N-1 latency of N-75 is
5 normal in this patient, the 160 is delayed, which is
6 the P-2, or the N-2 component, on the left, we have
7 indicated that the N-57 is normal. The P-100 is 112; I
8 consider that to be abnormal, The 140 or the N-2
9 latency, the negative is slightly, I would not consider
10 that absolutely two standard deviations. And that's all
11 there, it's all been gone over, asked and answered.

12 Q These are new records which have just been produced
13 today so they couldn't have been gone over.

14 A The answers to the questions as to whether they are
15 abnormal or not is the same as it was previously, it's
16 the same data, you already know that.

✓ 17 O What percent of amplitude decrease do you consider
18 pathologic?

19 A Generally at least a half, fifty percent.

20 Q Does Mr. Clark have a fifty percent decrease in
21 amplitude?

✓ 22 A I don't believe that, nor did I indicate that in my
23 test.

24 Q Is his findings or are his findings symmetrical or

asymmetrical?

A Asymmetrical. You know the answer to that,

O They are asymmetrical?

A You know that.

Q what are other causes of asymmetrical decreases in amplitude or increases in latency?

A There are a lot of other causes.

Q what are they?

A Could be demyelinating diseases of other than toxic type. It could be multiple sclerosis, lucodystrophy, it could be multiple sclerosis, it could be a lot of things. A lot of possibilities.

Q Tumor?

A You could go through a whole list, Counselor, come on.

O Epileptic foci?

A Yes, come on.

Q What about subclinical CVA?

A If you want to get a book, you can go through, there's about a hundred or two hundred of them.

O what have you done --

A I have eliminated them all because they are stupid like your questions and the differential diagnosis.

Q What are the symptoms of a CVA?

A Symptoms of a CVA?

1 O Yes.

2 A That's a stupid question; I'm not answering that,

3 Q What are the symptoms of a CVA?

4 A I'll tell you, I'm gone.

5 MR. MURRAY: I'm objecting to the
6 question. Bill, sit down.

7 A I'm gone, that's it.

8 MR. MURRAY: Wait a second.

9 A Come back another day.

10 MR. MURRAY: Bill --

11 A That's the end. I have got to go to the hospital.
12 Goodbye.

13 MR. MURRAY: Wait a second.

14 MR. HART: Would you note the time and
15 also note that his beeper didn't go off, which he was
16 wearing.

17 THEREUPON, there was a discussion off the
18 record at 12:35

19 Back on the record at 12:40.

20 MR. MURRAY: Do you want to break for an
21 hour for lunch, it all depends on how long you're going
22 to be,

23 A As far as I'm concerned, you can take the record and
24 copy it since you want other things that you're going

1 to demand, and as far as I'm concerned, I want a court
2 order for that.

3 MR. MURRAY: Don't worry about the other
4 things.

5 A I want an order as to whether I have to answer
6 questions that are totally unrelated to the matter at
7 hand. And as far as I'm concerned, I can't break for
8 your usual legal two-hour lunch and come back, I'm
9 done. I have got patients to see. We will come
10 another day. That's it, I can't do it.

11 MR. MURRAY: Copy the file, let's back
12 for a half hour for lunch.

13 MR. McDERMOND: For the record, I would like
14 to put some information in here; and that is, today's
15 session was arranged through conversation with Mr.
16 Murray that we should try to get this done in a day's
17 time, that it would take all day, and that we should
18 start at 9:30 in the morning so that as much time as
19 possible would be available. It was on that basis that
20 a subpoena was prepared and served on Dr. Bauer by
21 certified mail with a return receipt signed by R. A
22 Minick of his office on October 29, 1987.

23 MR. MURRAY: The subpoena speaks for
24 itself.

1 MR. McDERMOND: Of course it does.

2 A I have never received it.

3 MR. McDERMOND: I'm stating on the record
4 that this was arranged with your consultation and it
5 was known that this would take all day long, that it
6 would start at 9:30 so that we would have as much
7 possibility of finishing as possible.. You're right, of
8 course, the subpoena speaks for itself and it will be
9 appended to whatever motions we file.

10 A Let the record reflect that under no circumstances was
11 it my idea that there's an eight hour, ten hour or any
12 kind of a day arranged, and even if there were, I can't
13 predict my schedule; and as far as I'm concerned, you
14 can follow me right around to the hospitals I have to
15 go to, but I have got six, seven, eight hours more work
16 within I can't stay here that period of time. We will
17 to come back here another day.

18 MR. McDERMOND: We will go to one
19 o'clock and decide whether we break or go another day.
20 I don't care.

21 MR. MURRAY: Let's keep going to one
22 o'clock .

23 MR. McDERMOND: The Court is going to know
24 how this was arranged and I'm sure Pat is going to

1 agree with that because he knows that's how we did it.
2 O On the visual evoked potentials testing that your
3 office did on Mr. Clark, what was the luminescence of
4 the testing that was done?
5 A I'll obtain that information for you, I don't have that
6 figure at hand. I'll obtain that; make a demand for
7 it.
8 O How far away from the screen --
9 A Make a demand for that, don't have that data standard,
10 make a demand for all of those questions and they will
11 be answered.
12 Q How far away from the screen was Mr. Clark --
13 A The proper standard distance.
14 Q Let me finish the question, please. How far away from
15 the screen was Mr. Clark sitting in the September --
16 A The standard distance.
17 Q In the September --
18 A Same as the prior, standard distance.
19 O What is the standard distance?
20 A I'll prepare that for you separately.
21 Q As you sit here now, you have no recollection of what
22 your standard distance is?
23 A This is all standard. These questions as asked are not
24 relevant. If you want them, the record will reflect

1 it's been asked and I'll send you a list of all of that
2 stuff .

3 Q How many times in your practice on a monthly period do
4 you do evoked potential testing, visual evoked
5 potential testing on patients?

6 A The question has asked cannot be answered accurately;
7 I'll be happy to supply for you a list of the dates of
8 tests done, but not names, to protect confidentiality.
9 Make a demand and it will be answered.

10 O What I am trying to find here, and I think it's a
11 reasonable question, you're measuring the person's
12 response to light stimuli, you're saying standard
13 distance away from the screen he was sitting, now I'm
14 trying to determine, what is the standard distance, as
15 you sit here today if you recall; if you don't recall,
16 I'll accept that as an answer.

17 A The standard distance is the distance in which the
18 focal centralis will fall upon the screen to give you
19 the visual angle, and that's generally anywhere from
20 two to six feet.

21 Q With Mr. Clark do you know if he was two feet away, six
22 feet away?

23 A I'll produce that. The question as asked cannot be
24 answered .

1 Q Do you have that data on Mr. Clark?

2 A I don't have it here. Any question that relates to a
3 thousand questions that could be asked about how the
4 test was done, specifically, other than the data that's
5 here at hand, will be asked and answered separately.

6 Q I'm just asking, do you have that data?

7 A No, no.

8 Q Specifically for Mr. Clark?

9 A Here's the data I have, I'll be happy to discuss this
10 data. Anything else you ask that's not relevant to
11 this data, will be answered the same way.

12 Q Well, is it --

13 A To speed up going through the rest of the book.

14 Q Is it your understanding, with the visual evoked
15 potential testing that distance away from the screen
16 that a person is sitting can have an affect on the test
17 results?

18 A That's possible.

19 Q What I am trying to find out is, in Mr. Clark's case,
20 how far away from the screen he was sitting?

21 A I'll find that out.

22 Q Where do you have that specific data?

23 A I would have to go back to the laboratory and check,
24 that it was a standard test done; I'll find that out, I

1 will find that out for you.

2 O Would Mrs. McClure or Ms. McClure know that
3 information?

4 A Possibly.

5 O Is she the one who gave --

6 A It was under my direction that she did the test.

7 Q Both times?

8 A That's correct.

9 Q What were the size of the boxes on the checkered
10 pattern that you used on Mr. Clark?

11 A Standard checkerboard pattern. I'll find out and give
12 them to you, it's not essential data.

13 Q Do you have an understanding as to whether or not the
14 size of the boxes can have an influence on the test
15 results?

16 A Possibly.

17 Q What could the influence be?

18 A If the pattern were to be too small, it could possibly
19 change the results of the test. We use the standard
20 checkerboard pattern, standard pattern.

21 O Do you know if there are variations in the standards
22 that are allowed?

23 A I'll be' happy to, the question as asked, please
24 indicate the data you want and we will get it to you.

1 Q Well --

2 A I don't have --

3 Q My problem is this: Is that you were supposed to have
4 supposed your records on Mr. Clark. I'm trying to find
5 out, not what you do as standard practice, but what you
6 did on Mr. Clark. And you indicate now that you may
7 have this information back in your office. What I am
8 trying to do is find out, as you sit here, if you know
9 what was done with Mr. Clark?

10 MR. MURRAY : Wait a second. That's not
11 fair. It's what he has here is his data concerning the
12 exact testing done on Mr. Clark. Now if what he says
13 is this test was done according to a certain set of
14 standards that are used in his lab, that he doesn't
15 have at his fingertips all of the standards, but he
16 will provide you with all of the standards which were
17 used in Mr. Clark's case, which he doesn't have in his
18 hands here today. I think that's, I think, pretty
19 clear.

20 Q All right, is it your testimony, for the record, that
21 the test done on Mr. Clark was exactly the standard
22 that's done according to the guidelines in your office?

23 A These were, these are the results that were done
24 according to the standards that, the testing that are

1 done for this patient and every other patient that are
2 in the office. I don't have the answer to all of those
3 questions here, nor would anybody unless you were to
4 ask in advance that that information were to be made
5 available, because it's not relevant to the test
6 results directly that's here that you're asking about.

7 MR. RUGER: I'm going to ask for the
8 production on the record of the information regarding
9 Mr. Clark's, both sets of visual evoked responses, as
10 to what his orientation was in relation to the screen,
11 what the size of the boxes were, what their
12 luminescence were, and what all of the specific
13 calculations were that were done, such as standard
14 deviation calculations, in relation to normals
15 regarding visual evoked potentials that the doctor may
16 have on Mr. Clark. I'm going to ask for that be
17 produced now.

18 Q Did you do a transient visual evoked potential or a
19 study state evoked potential on Mr. Clark?

20 A They are changing pattern, so they would be considered
21 transient.

22 Q When you do a transient evoked potential, how is that
23 done?

24 A That's a generic question.

1 Q How is it done, how is the screen controlled?

2 A Can't answer that question. The question as asked is
3 so generic that it can't be answered. If the pattern
4 changes, it's a function of the pattern that's set
5 under the machine, and you turn the machine on, and you
6 put it as either affixed or an ambient state; are you
7 asking how all of the mechanisms change the pattern on
8 the screen; I have no idea what you are asking, I don't
9 think you do either.

10 O What is your understanding, if any, of the study state
11 of evoked potentials?

12 A Study state is a constant visual stimulus no matter
13 what it is.

14 O You didn't do that on Mr. Clark?

15 A The question is asked and answered, Counselor.

16 Q What would be the purpose of doing a study state evoked
17 potential?

18 A It's just another way to do a visual stimulus. You can
19 do it study state or you can do a transient; it's
20 recommended that you do transient, do it either way.

21 Q Is Ms. McClure capable of evaluating the state of the
22 retina?

23 A No, I don't think so, she might have some idea about
24 it, but she's not a retinologist.

- 1 O Do you know if the minimal guidelines recommended by
2 the AES for clinical evoked potential studies regarding
3 visual evoked potential states that the state of the
4 retina has to be evaluated in the patient before these
5 tests are done?
- 6 A There is nothing in the standard that says that the
7 retina has to, that you have to have retinograms done
8 prior to the evoked, visual evoked response.
- 9 O Can visual problems in a patient cause asymmetry?
- 10 A Yes, they can,
- 11 Q What does the percent that you know of for false
12 positives using visual evoked potentials?
- 13 A False positives can be as high as ten, fifteen percent,
14 can be as low as two percent,
- 15 Q Does Mr. Clark have A-wave and D-wave problems?
- 16 A A-wave and B-wave problems, He has a W configured
17 B-100, **but** the retinogram waves that you are referring
18 to, were not evaluated because, as far as I'm
19 concerned, I was not looking at that portion of the
20 visual system. And that can be tested separately, and
21 in my opinion, doesn't relate to the toxicology of this
22 case.
- 23 Q Why is that?
- 24 A It's fact, res ipsa loquitur, as you say, the fact

1 **speaks** for itself. For a person that has pre-existing
2 retinal disease, obviously that wouldn't be related to
3 an event that occurred prior or subsequent; isn't that
4 so?

5 Q Do you know if A-wave and B-wave interpretation has any
6 clinical significance whatsoever?

7 A Sure **it** can have significance.

8 Q What is the significance?

9 A A and B-wave measurements can be significant. **It**
10 depends on what you want to do with them.

11 O Significant of what?

12 A Significant of whatever. **It's** not relevant, the A have
13 nothing to do with this particular case at hand. **It's**
14 not into **it**. I haven't testified to **it**. This is
15 generally the nonsense that **you** have engaged in from
16 the very beginning.

17 MR. MURRAY: Next question, please.

18 Q I'm trying to find out whether or not, in your opinion,
19 Mr. Clark has any A-wave or B-wave --

20 A I have already answered that.

21 Q **Does** he or doesn't he?

22 A **It's** not relevant to this problem.

23 Q **It's** not relevant because they are normal?

24 A **It's** not relevant to this problem.

1 Q Is it because the A-wave and B waves are normal?

2 A Question answered, it's not relevant not relevant.

3 O Is that because they are --

4 MR. MURRAY: Are they normal, Bill?

5 A Not relevant,

6 Q I'm trying to find out why they are not relevant?

7 A They are not relevant to the case.

8 Q Why?

9 A Because I said so.

10 Q That's because they are normal?

11 A It's not a relevant issue.

12 Q What's the **basis** for your determin ng whether or not it
13 is relevant?

14 A Because it has nothing to do with the case. The issue
15 here are the tests that I have given you, and anybody,
16 including the judge, who I **wish** was here, and who I
17 would ask -- as far as I'm concerned, I would like to
18 end this. I have got other: things to do. And I have
19 already testified to the tests, there's the test, The
20 counselor knows, as he looks at the tests very clearly,
21 that there's nothing there about an A, B, C, D, E, F,
22 G, nothing, it has the N-75, P-100, N-125 to 135, and
23 therefore, it's not an important issue. This is
24 exactly what he does to do what he does. I suppose to

1 bill the Dow Chemical Company and then ultimately us
2 through their product for a total waste of time.

3 O What type of amplifier do you use to test visual evoked
4 potentials?

5 A Standard amplifier, the amplifier that comes with the
6 piece of equipment.

7 Q What **is** the name?

8 A Please make a demand of all questions relevant to the
9 equipment and they will be answered. I don't carry
10 that information around because it's stupid.

11 O We will make a demand.

12 A You make a list of everything you want and we will get
13 it for you.

14 MR. MURRAY: Move it along.

15 - MR. RUGER: I'll demand on the record
16 the make and model number of the amplifier used for the
17 visual evoked potential testing that the doctor has
18 volunteered to give **us**, its capability of signal
19 magnification, its differential input impedance, common
20 mode rejection at the highest sensitivity of amplifier
21 and common mode stimulus between each input and
22 neutral, **how** the doctor has determined these criteria,
23 the band width capabilities of the amplifier, what the
24 roll-off slopes of the filters are, what the noise

1 level of the amplifier is with the inputs connected to
2 neutral, and at what brand width.

3 Q What type of --

4 A I would ask that the judge specifically rule on this
5 issue and to cite for me the literature legally that
6 would justify that those questions be answered --

7 MR. MURRAY: Don't worry about that,
8 Bill.

9 A -- reasonably.

10 MR. MURRAY: Go on to the next question.

11 MR. RUGER: I'll state on the record
12 here that this information has been obtained from the
13 Guidelines for Clinical Evoked Potential Studies by the
14 American Electroencephalographic Society, 1983, as
15 stating what type of information should be indicated on
16 doing these tests and what type of precautions are to
17 be taken by the examiner to insure that the tests are
18 done properly so that false results cannot be
19 obtained.

20 A My answer is that let the record show that there is no
21 test done in the continental United States or Europe
22 that indicates any of the questions that have been
23 asked by counsel as it would be impossible to generate
24 a test report that would be able to bear all of the

1 data that's asked for and called for in those
2 guidelines; and that this is another issue the devious
3 matter contrived by counsel as representative for the
4 Dow Chemical Company.

5 Q What type of averager did **you** use?

6 A The usual.

7 Q What is the make?

8 A Please list all of the demands that you wish.

9 MR. MURRAY: We have already, I think we
10 have settled that you can give us a list of **all** of the
11 questions that you have concerning the machine --

12 MR. RUGER: Let me state this,
13 Counselor. This is a deposition, it's **not a** document
14 request. If the doctor doesn't know the answer as he
15 sits here, **let** the record so reflect that he doesn't
16 know the answer and then I will make the request.

17 A Right.

18 Q That's what he's done.

19 A It's already asked and answered.

20 Q So if you don't know the make, **I'll** make the request.

21 A Don't have that data, nobody keeps that data at hand.

22 Q So you don't know the make or model number of the
23 averager that you used?

24 A Nobody, I would have to go look at the back of the

1 machine because the components are made in different
2 parts.

3 MR. MURRAY: Let's go on with the
4 questions.

5 O Do you know what the time of resolution of your
6 averager is?

7 A That's data that I would have to get from the machine
8 equipment.

9 Q Did you do so any reproductive studies reproducible
10 studies on Mr. Clark?

11 A I don't understand that question as how it relates to
12 this test or evoked responses.

13 Q How many trials did you do to get averaging on Mr.
14 Clark if you, in fact, did averaging on him?

15 A The question as asked has already been answered as to
16 the number of trials that we usually do and the fact
17 that it is averaged indicates again a generic can
18 question. There is no way that that could be there if
19 it wasn't averaged. That's an evoked response is, it's
20 an averaged signal, that's what it is, so you already
21 know the answer to that.

22 Q Fine.

23 A Sure.

24 Q I'm trying to find out --

1 A Canned list, boiler plate canned list.

2 O What were the sweep analysis times that were done on
3 your averager?

4 A Data that is kept in the laboratory, please ask any
5 other serial questions and I'll answer it for you.

6 Q We are going to ask --

7 A I don't have that data at hand. Please do.

8 MR. RUGER: We are going to ask
9 production on sweep analysis times of the averager as
10 well as the make and model of the averager regarding
11 its time resolution?

12 A Redundant.

13 MR. RUGER: The amplitude resolution.

14 A Redundant.

15 MR. RUGER: The number of memory
16 addresses per channel and the number of trials?

17 A That's redundant.

18 MR. RUGER: That are done to average.

19 A One new one in there.

20 MR. MURRAY: You're just putting that on
21 the record, Bill. You don't have to answer that.

22 MR. RUGER: This is a production request
23 now, since the doctor doesn't know this information.

24 Q Did you do any artifact contaminated trials before you

- 1 tested Mr. Clark on either of those occasions, or Ms.
2 McClure tested Mr. Clark and either of those occasions?
- 3 A The patient had trial runs, tell me what you
4 specifically mean by an artifact contaminated run.
- 5 Q Where are those trial runs.
- 6 A They would be in the laboratory or they would have been
7 disposed of prior to the recording that we do have here
8 on the paper. That is a proper recording of the
9 averaged run that was done that you have here in front
10 of you.
- 11 Q We are going to call for the production of the trial
12 runs that were done on Mr. Clark; did you do any?
- 13 A If that data is available, you have got it.
- 14 Q Did you do any steps to subtract artifact contaminated
15 runs from Mr. Clark's readings?
- 16 A Artifact runs are subtracted by the machine itself
17 prior to the production of the final product. The
18 final product does not have artifact in it, it's
19 artifact proof.
- 20 Q Does your machine have any filters on it?
- 21 A Yes.
- 22 Q What hertz do they function?
- 23 A All hertz, depends on how you set it. Ask a specific
24 question and we'll answer it.

1 Q On the original set of evoked potentials on Mr. Clark,
2 at what hertz setting were those set at?

3 A I don't recall.

4 Q On the September evoked potentials?

5 A I don't recall.

6 Q Do you have that information?

7 A I'll try to supply it for you.

8 MR. RUGER: Again, we are going to call
9 for the production of that information since this all
10 goes to the validity of the testing.

11 Q How was your apparatus calibrated?

12 A Standard way.

13 Q What is the standard way?

14 A Calibrate the apparatus by turning it on, and there's a
15 calibration switch, and the calibration switch tells
16 you whether the equipment is prepared and whether there
17 is any intrinsic artifact. That the Teca has its own
18 analytic circuitry that indicates if the equipment is
19 faulty.

20 Q Was the apparatus calibrated before the first set of
21 evoked potentials on Mr. Clark?

22 A Yes.

23 Q Did you do that calibration?

24 A That would have been done as a standard part of that

1 test.

2 Q Did you do it?

3 A Did I do the calibration? No, not --

4 Q Ms. McClure would have done that?

5 A Yes.

6 Q Do you know if Ms. McClure did that calibration on the
7 second set of runs in September when you didn't see Mr.
8 Clark?

A Right.

10 Q Do you know if she did?

11 A Those calibrations would have been done in the
12 laboratory,

13 Q Did you see her do them?

14 A No, I did not.

15 Q Why is it important to do replicative studies of visual
16 evoked potentials in a patient?

17 A I don't know of such a word, Would you show me the
18 dictionary word --

19 Q Is it important to get replication in studies regarding
20 visual evoked potentials?

21 A Yes, that's already been done; it's been answered
22 previously. Those are on the basis of the trial runs
23 and runs before the final product.

24 Q Did you establish a baseline on Mr. Clark before doing

any of his testing?

A I'm not sure I understand that question. Baseline of testing for what, the neurological exam?

O On the visual evoked potentials?

A What do you mean by a baseline.

Q Do you have baseline data on Mr. Clark prior to his alleged exposure?

A No, I don't have any neurophysiologic data on Mr. Clark prior to the data that you have here of record. That's already been asked and answered.

Q Prior to doing the first set of visual evoked potentials on Mr. Clark, did you establish a baseline for the machine?

A That question as asked can't be answered, it doesn't make sense; the question can't be answered.

Q Do you know what is meant when you establish a baseline for the machine prior to doing the testing?

A Are you talking about calibration? I already indicated that the machine is calibrated before it's used. What are you talking about? Do you know what you are talking about?

Q I know what I am talking about.

A No, you don't.

Q What data, what literature have you found in your

1 searching that would indicate that MGPP can affect
2 visual evoked potentials?
3 A I believe there is literature that indicates that
4 chemicals can affect visual evoked responses. I'm not
5 sure of that when it's specifically, but that's a
6 possibility.
7 Q A lot of chemicals can do a lot of things, I'm asking
8 specifically MCPP, did you find any literature on that?
9 A Possibly, possibly.
10 Q What is the literature that you found?
11 A I don't recall.
12 MR. RUGER: We are going to ask for the
13 production of that literature.
14 Q Did you do any tolerance limit calculations on Mr.
15 Clark prior to doing his visual evoked potentials or --
16 withdrawn, I'm sorry. I misspoke. Did you do any
17 tolerance limit calculations on the results of Mr.
18 Clark's visual evoked potentials?
19 A I'm not sure I understand what you mean by tolerance
20 limitations.
21 Q Did you do any nonperimetric analysis on Mr. Clark's
22 results?
23 A No, no, I don't recall doing that.
24 Q Did anybody help you develop norms for your laboratory

1 other than Ms. McClure?

2 A That was it. She ran the patients through the
3 baseline, the equipment was calibrated, the engineer
4 was there from Teca. We ran through the baseline
5 patients and that was well over three years ago.

6 O What do you use to ground or as a neutral on Mr. Clark?

7 A What kind of a question is that. I don't understand
8 that question. Ground is a standard done on any
9 electrical procedure. Ground is ground.

10 Q Did you use any --

11 A Move on down. That's not relevant. Of course, he's
12 grounded.

13 Q Did you use any EEG electrode placements on Mr. Clark
14 while doing his visual evoked potential?

15 A What the hell kind of question is that? How do you
16 think you can get the potentials, you've got to have
17 something to pick them up with. I want the judge to
18 rule on these questions.

19 MR. MURRAY: Go on.

20 A This is not related, this is a dumb -- what is this?
21 Come on.

22 Q Obviously you used one; where did you place it?

23 A You bloody idiot. Where do you think this came from?

24 Q Where did you place the electrodes?

- 1 A Come on now. What do you mean where they were placed,
2 they have to be over the occipital cortex or you're not
3 going to get a wave. Come on.
- 4 Q Where over the occipital cortex did you place --
- 5 A Over the occipital cortex on the skull, standard.
6 Asked, answered. Next question.
- 7 Q Do you have any placement definition --
- 8 A Standard, international 1020 system.
- 9 Q What, according to that system, is the standard
10 placement of the electrode?
- 11 A ' The question is standard, answered. Next question.
- 12 Q What's the standard?
- 13 A Standard is you use the 1020 division and then you
14 place the occipital electrodes according to the
15 requirements of the EEG society; and basically, you're
16 in a location approximately about eight centimeters on
17 either side from the edge of the occiput and over the
18 area 17 of occipital cortex, roughly, on either side of
19 the mid-line and normally you will have four electrodes
20 with neutral electrode placement, either on the ear or
21 somewhere else. This is all, it has nothing to do with
22 the --
- 23 Q Was any local anesthetic used in Mr. Clark's eyes prior
24 to doing the visual evoked potential testing on either

1 occasion?

2 A That is a stupid question.

3 MR. MURRAY: Answer the question.

4 A You have already answered that this man did not have a
5 retinogram, there would be no reason to anesthetize his
6 eyes, counselor. Now get out of the cookbook.

7 Q Is it your understanding that the relevance of
8 brainstem auditory evoked potentials have a relation or
9 an established -- withdraw. Is it your understanding
10 that brainstem auditory evoked potentials have an
11 established neurological diagnostic capability?

12 A Yes, they do.

13 O What is the basis of that information?

14 A The literature. There's approximately ten foot of
15 literature on the use of brainstem auditory evoked
16 responses in this country and in Europe as a clinical
17 tool, at least that, probably more, probably a room
18 full.

19 Q Did you do short latency auditory evoked potentials on
20 Mr. Clark?

21 A Do you have the record at hand? Let's look at it, tell
22 me what you would like to discuss?

23 O I would like an answer to my question.

24 A The answer is apparent if you look at the record. If

- 1 look at the record, you can see which latencies were
2 done.
- 3 Q Where does it indicates whether it's a short latency or
4 long latency?
- 5 A If you look at the time scale, can you read a time
6 scale; do you know how to read this time scale?
- 7 Q No, I don't, I'm sorry.
- 8 A Why would you ask a question on something you don't
9 know anything about.
- 10 O Can you describe that process for us, how to read that?
- 11 A What would you like me to describe?
- 12 Q How do you read the time scale?
- 13 A No, no. Short latency is the answer, you ought to know
14 that before you ask the questions. I would like the
15 judge to rule on that.
- 16 MR. MURRAY: Let's go on to the next
17 question.
- 18 A It's not relevant to the issue. There are the results
19 right here,
- 20 O I'm sorry I'm not an expert in this area.
- 21 A That's not an issue.
- 22 Q I'm just asking you to show us how to read those
23 charts.
- 24 A It's not an issue.

- 1 Q Are clicks used in your brainstem auditory evoked
2 potential testing?
- 3 A Yes.
- 4 Q Did you do an audiogram on Mr. Clark prior to doing a
5 brainstem auditory evoked potentials?
- 6 A No, it wasn't necessary.
- 7 Q What type of ear speakers were used on him?
- 8 A What kinds of which?
- 9 Q Ear speakers?
- 10 A Make a specific demand. That's not data that would be
11 relevant, and since it's another one of the those
12 unreasonable questions, state it and it will be
13 gathered in answer as nonrelevant data.
- 14 MR. RUGER: Regarding Mr. Clark, I will
15 request that the band width of the clicks used on him
16 be provided and audio frequencies be provided?
- 17 A Sure.
- 18 Q And type of ear speaker that was used.
- 19 A A type, please be specific as to how you define the
20 words type. Are you talking about make or --
- 21 O Make and model number.
- 22 A Are you talking about serial numbers,
- 23 O I'm making about make and model number.
- 24 A Are you talking about the chemical constitution of it?

1 Please be specific or it won't be able to be supplied.

2 Q Make and model number is fine. What type of frequency
3 was used on Mr. Clark's brainstem auditory evoked
4 potentials?

5 A He was tested at, on the September, I presume you're
6 talking about, 75 decibels on the right, 75 decibels on
7 the left. It was the click system and the standard
8 according to the brainstem auditory evoked responses
9 for the monaural, binaural click system and masking
10 that is done. Anymore questions that are nonrelevant
11 to the test results, please indicate them in and they
12 will be answered.

13 O Well, decibels is the measure of loudness; I'm
14 requesting a measure of frequency.

15 A Standard.

16 Q What is standard, what hertz does it go from, deep
17 hertz to high hertz?

18 A It's a standard, just ask for it and we will reproduce
19 it for you. The data is not here and we will reproduce
20 it for you. It's not part of the test plan.

21 Q Was it tested monaurally or binaurally?

22 A Both. By the way, the data that's being asked for, it
23 was not on any prior demand that was put forth here.
24 Let the record reflect that.

1 MR. RUGER: Let the record reflect that
2 we asked for everything on Mr. Clark?
3 A No, it did not ask for that.
4 MR. RUGER: In the doctor's file.
5 MR. MURRAY: Let's go on.
6 A It's not in the file; it's not typically in the file.
7 MR. RUGER: As well as other information
8 he had on Mr. Clark?
9 A Right,
10 (1:15).
11 Q Did you do any contralateral masking on Mr. Clark?
12 A Asked and answered.
13 O When?
14 A Previously. The record will reflect that.
15 Q I'm sorry, it must have eluded us. Did you do any
16 contralateral masking on Mr. Clark?
17 A Asked and answered.
18 Q How did you do it?
19 A You mask.
20 Q How?
21 A You mask.
22 Q How is it done?
23 A You occlude the sound, mask is mask.
24 Q Explain the process that was done specifically on Mr.

1 Clark.

2 A Sound is occluded.

3 Q Where it indicates in your records?

4 A It's not indicated in the records.

5 Q How is the sound occluded?

6 A Asked and answered.

7 Q How?

8 A Occluded.

9 Q How?

10 A Occluded.

11 Q How?

12 A Occluded.

13 Q By whom?

14 A By the person that did the test.

15 Q Who was that?

16 A That would be the technician.

17 Q So you know for a fact she occluded them?

18 A Yes, I believe that that occurred. The test, I
19 believe, is a valid test.

20 Q Where is that information indicated anywhere that you
21 have that she did that?

22 A Nobody, nobody puts that in. There's no report issued
23 by the Mayo Clinic, the Cleveland Clinic or anyone that
24 indicates on anybody that it's done, it's a standard

1 and nobody puts that on there.

2 Q What is the purpose of doing contralateral testing?

3 A You have got a test both of those, it's a necessary
4 part of the test because you're testing the auditory
5 pathways: the pathways cross, the brainstem, they cross
6 and have interdigitation of the brain through, the
7 corpus callosum.

8 Q Obstructions in the ear?

9 A Yes, yes, yes, there is a million things that can cause
10 artifact. Go through the cookbook list, please.

11 Q Did ~~Ms.~~ McClure look in Mr. Clark's ears when she did
12 these auditory ear potentials?

13 A I'm not sure that she did, but I know there was wasn't
14 any serum because of the results that I got, which
15 would indicate that there wasn't serum in there.

16 Q How do you tell that from these results?

17 A Because if you have the wave forms as they are
18 indicated here, if there **was** serum in the ear, there
19 wouldn't be any wave form on that side, and it would be
20 necessary, because the sound isn't getting there, even
21 **for** someone **of** your substance to recognize that that
22 would be a problem.

23 Q Well, does wax in the ear always totally eradicate the
24 graphic readout?

- 1 A No.
- 2 Q It could partially interfere with it, could it not?
- 3 A Possibly.
- 4 O How can you tell if there's not a partial interference?
- 5 A I don't think there is, that's my opinion; it could be,
6 but I don't think there is. Next question.
- 7 Q How have you ruled that out?
- 8 A I just ruled it out. Next question.
- 9 Q You didn't do any physical examination on Mr. Clark at
10 the time of that testing, did you?
- 11 A No, no. No serum in the ear.
- 12 Q As far as your opinion as you sit here today?
- 13 A That's my opinion.
- 14 Q Without an examination, right?
- 15 A Right. Right.
- 16 Q Did you ever order -- withdraw. What do you know about
17 Mr. Clark's hobbies?
- 18 A Not a lot.
- 19 Q Do you know what hobbies he's been involved with?
- 20 A Not specifically. Do you have some specific question
21 you want to ask?
- 22 Q What do you know about him?
- 23 A I don't know. The question is generic.
- 24 O Have you ever asked him about any hobbies he may be

1 involved with?

2 A Possibly, I don't recall, counselor. Please come to
3 the point.

4 Q Do you know if in any of his hobbies he's been exposed
5 to toxic substances that can cause --

6 A Possibly, I don't know. Do you have some point in
7 question?

8 Q Do you know what I am asking that they can cause?

9 A No, I don't. Your line of questioning is obvious.

10 Q Do you know if he can be exposed to his hobbies?

11 A All of us can. We can all be exposed to a million
12 things, everything is possible on this planet, the next
13 planet, the next world and the world beyond. Come on,
14 counselor.

15 Q Do you know specifically, in relation to Mr. Clark,
16 whether or not he has hobbies where he is exposed to
17 toxic substances?

18 A I don't know if he has a Gilbert chemical set at home
19 that he plays with or an erector set, I don't know the
20 answer to that.

21 Q It wouldn't be important for you to know that?

22 A It could be important.

23 Q But you don't know, right?

24 A That's very possible.

1 Q You never asked?

2 A I don't know, I may have. Do you have some specific
3 issue at hand?

4 Q It's not indicated in your records.

5 A Is it indicated in your records that there's something
6 specifically of value in that line of questioning?

7 Q Do you know if Mr. Clark was on any medications when he
8 underwent these visual evoked potentials?

9 A My records do not reflect any medicines that would
10 interfere with the test.

11 Q What medicines do you know he was taking, if any?

12 A I don't have any record of anything that would
13 interfere with this test.

14 Q Do you know if Ms. McClure, when she tested him in
15 September of 1987, asked him if he was taking any
16 medications, since you weren't there to see Mr. Clark,
17 if you know?

18 A I can't answer that. It's not relevant.

19 Q Are there medications that can interfere with visually
20 evoked potentials?

21 A Possibly.

22 Q Are there medications which can interfere with
23 brainstem auditory evoked potential?

24 A Possibly, it would be speculative.

1 Q Do you know if Ms. McClure asked Mr. Clark, in
2 September when she did the evoked potentials, if he was
3 taking any medication?

4 A No, it would be speculative and nonrelevant.

5 Q Do you know if there are medications which can
6 interfere with neurotransmitters?

7 A It's possible.

8 Q Do you know if Mr. Clark was taking any of those?

9 A I don't have any records of same.

10 Q What medications, if any, do you know if Mr. Clark has
11 been taking?

12 A I don't have a record of any medicines that he has that
13 would interfere, I don't have any such records,

14 Q Do you know what Zantac is?

15 A Yes.

16 Q What is Zantac?

17 A It's a gastrointestinal medicine for the blocking of
18 acid secretions by the parietal cells.

19 Q How does that work?

20 A Oh, come on, I answered that. Come to the -- it has
21 nothing to do with the issue,

22 Q Sir, how does it work?

23 A It works, it works as a chemical. I'm not answering
24 any further, it's not relevant. Get the judge.

1 Q Do you know if it works?

2 A I'm not answering your question.

3 Q Do you know if it works on histamine receptors.

4 A It could, histamine receptors, H-1 or H-2, right,

5 Q Do you know if it works or not?

6 A Possibly. Not relevant.

7 Q Do you know if there are central nervous system side
8 effects of Zantac?

9 A Possibly.

10 Q What are they?

11 A Could be a lot of them. Nonrelevant.

12 Q What are they?

13 A What do you want to talk about, which one?

14 Q Which one have been recorded in the literature?

15 A Dizziness, nausea, vomiting, irritability, confusion.

16 Q Do you know if Mr. Clark was taking Zantac when he saw
17 you?

18 A He may have been.

19 Q Do you know if Mr. Clark was taking Clofibrate?

20 A I believe, I'm not sure, If he was, I can't see that
21 it's relevant.

22 Q Atromid-S, is it not?

23 A Yes.

24 Q What's it used for?

A You know what it's used for. You know the answer, all of it, it's not relevant, in my opinion, to the evoked responses or to the issue at hand or the neurotoxicity of the chemical to the brain, in my opinion with reasonable medical certainty. Next line of questioning.

O Do you know what chemical Atromid-S is related to?

A A lot. There are a lot of chemicals it's potentially related to. It's an organic compound, and you can shift them around, and you can make them very similar.

Q Do you know if Atromid-S is quite similar to MCP?P?

A It's a possibility.

Q Do you know what the chemical formula of Atromid-S is?

A No, I don't have that offhand, but I would be happy to look at that with you if it had some earthly reasonable content.

Q It's a medication that's been approved by the Food and Drug Administration for human consumption, is it not?

A Purportedly,

Q Do you know if Mr. Clark has had exposure to PCB's?

A It's possible.

Q Can PCB's cause toxic encephalopathy?

A Yes.

Q Have you ever tried to find out if Mr. Clark had

1 exposure to PCB's?

2 A I don't have any information of that exposure.

3 Q Can Enderin cause toxic encephalopathy?

4 A Can?

5 Q Enderin?

6 A Enderin?

7 Q Enderin, yes.

8 A Possibly.

9 Q Do you know what Enderin is?

10 A No, not specifically. I have heard it before.

11 Q Do you know if Mr. Clark has exposure to Enderin?

12 A Not specifically.

13 Q Would it be important for you to know that?

14 A Possibly.

15 Q How would you go about making a differential diagnosis
16 as to whether or not Mr. Clark's alleged toxic
17 encephalopathy was due to either Enderin or to MCPP if
18 he had exposure at the same time?

19 A I don't know the answer to that question.

20 Q How would you go about making a differential diagnosis
21 as to whether or not Mr. Clark's toxic encephalopathy
22 could be due to PCB exposure or to MCPP if he had
23 exposure at the sametime?

24 A Those are possibilities.

1 Q How would you go about making a differential diagnosis?

2 A I don't know any way you could.

3 Q So you couldn't tell then if a toxic encephalopathy
4 that you were looking at were the result of a PCB
5 exposure, that's PCB or an MCPP exposure; isn't that
6 correct?

7 A You would have to have the history. The history is
8 what I have given to you, it's all of record.

9 Q Well, based upon a history, assuming that exposure took
10 place at the same time?

11 A Possible that both could have been.

12 Q Possible that one could have done it and not the other,
13 right?

14 A That's possible.

15 Q Did you go to the literature to find out whether or not
16 PCB's could cause toxic encephalopathy?

17 A Yes, they can cause toxic encephalopathy.

18 Q Have you seen literature on PCB's causing toxic
19 encephalopathy?

20 A Yes, I believe I have.

21 Q More literature than you saw on MCPP, correct?

22 A Possibly.

23 Q Do you know if PCB's are found in hydraulic fluids?

24 A I believe they are.

MR. RUGER: Do you want to break for lunch, break until two?

A I don't know if I can do that. What I would really like you to do is why don't you get all of your demands down and we will set aside another day.

MR. MURRAY: How much longer?

A Well in advance, get it well in advance and we will just have to block a whole day.

MR. MURRAY: How much longer do you have?

MR. RUGER: I have a full day.

MR. MURRAY: what do you mean, two hours, three hours?

MR. RUGER: I have about four or five hours.

A I don't have time for that. I have got to go. If you want to follow me around to the hospitals, you're welcome to.

MR. MURRAY: I mean, if you want to come back another day, fine; if not, we set the day aside.

MR. RUGER: We will come back another day. That's fine with us.

MR. HART: Maybe you did, but the doctor didn't.

1 MR. MURRAY: The doctor's schedule is not
2 as easily, he's got a lot of patients that are
3 depending upon him in life and death situations.

4 MR. RUGER: If it's acceptable to the
5 doctor --

6 A If I led you to the conclusion I was going to be here a
7 full eight to ten hour day, that's incorrect and that's
8 my fault.

9 Q That was our understanding.

10 A I have never had that in any other other issue, but
11 this one and one other instance.

12 MR. RUGER: If it's acceptable to the
13 doctor, we will set another day aside and come back.

14 A Well in advance, that's fine.

15 MR. RUGER: We will make the production
16 requests, specifically, so the doctor --

17 MR. McDERMOND: Doctor, before you go,
18 we would like to copy that.

19 A You have got it.

20 MR. MURRAY: Would you have your
21 secretary,

22 MR. McDERMOND: Do you want us to give
23 it back to you? On the record, Brenda, I want you, at
24 your convenience now since he's left, to make copies of

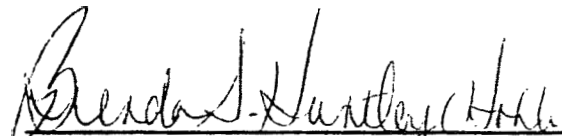
this entire file **as it** sits here assembled. And before
you do that -- **strike** that, **you** better not. Copy every
piece of paper in here, both sides if there's anything
on the back side, copy the folder, the inside of the
folder, anything that's attached to the folder, so that
we have a clear and complete record of everything
that's here. If **you** will get that done, get me the
original and I will make copies for the other fellows,
whatever is easier for you.

CERTIFICATE

STATE OF OHIO)
) ss.
 COUNTY OF ERIE)

I, Brenda S. Huntley, Registered Professional Reporter and Notary Public within and for the State aforesaid, duly commissioned and qualified, do hereby certify that the within named WILLIAM R. BAUER, M.D. Was by me, before the giving of his deposition, first duly sworn to testify the truth, the whole truth and nothing but the truth; that the deposition as above set forth was reduced to writing by me by means of Computer-Aided Transcription; that the signing of the deposition by the witness was waived by counsel; that the reading and signing of the deposition was specifically waived by the witness; that the said deposition was taken pursuant to Notice and was completed without adjournment; that I am not a relative or attorney of either party or otherwise interested in the event of this action.

IN WITNESS WHEREOF, I have hereunto ~~set~~ my hand and seal of office at Sandusky, Ohio this 17 day of Dec, 1987.



HUNTLEY REPORTING SERVICE

Brenda S. Huntley, RPR,

Notary Public

P. O. Box 1067

Sandusky, Ohio 44870

My commission expires 3/15/91

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EXHIBITS

Bauer Deposition Exhibit	3	Subpeona
Bauer Deposition Exhibit	2-2	New Records
Bauer Deposition Exhibit	4	9/15/87 Subpeona