Doc 65

STATE OF OHIO)
) SS: IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY)

CASE NO. CV 94 03 0755

KEVIN M. AKERS, ET AL	)	
PLAINTIFFS,	)	VIDEOTAPE DEPOSITION
VS.	)	OF
MARGARET THORNSBERRY,	)	DR. RONALD BELL
DEFENDANT.	)	JUDGE MORGAN

VIDEOTAPE DEPOSITION taken before John Simon, a Notary Public within and for the State of Ohio, pursuant to Notice, and taken on October 18, 1994 at the office of Dr. Bell, 21100 Southgate Park Blvd., Maple Heights, OH. Said deposition taken of Dr. Bell is to be used as evidence on behalf of the Defendants in the aforesaid cause of action, pending in the Court of Common Pleas, within and for the County of Summit, for the State of Ohio.

APPEARANCES:

MR. FRANK MAZGAJ,

On Behalf of the Defendants,

MR. DEAN YOUNG,

On Behalf of the Plaintiffs.

OPERATOR: We're on the record. Doctor, would you please raise your right hand? Do you solemnly swear or affirm that the testimony you're about to give to be the truth, the whole truth, and nothing but the truth?

DOCTOR BELL: Yes, I do.

DURING DIRECT EXAMINATION BY MR. FRANK MAZGAJ:

Q Doctor Bell, could you introduce yourself to the members of the jury, please?

A Yes, I am Doctor Ronald Bell.

Q And your address, employment address?

A We are right now in the Southgate Medical Building in Maple Heights, Ohio. 21100 Southgate Park Boulevard.

Q And when you say we, who are you talking about?

A I'm talking about you, with Mr. Young, the camera man and myself.

Q And Doctor you are a dentist?

A I am an oral and maxillofacial surgeon.

Q And Doctor, can you tell us a little bit about your educational background, please?

A Yes. After I graduated high school I spent two years at Miami University, I then went on to the program at: Case Western Reserve University, where I graduated with a

Bachelor of Science degree and a D.D.S. degree in 1955.

Q And D.D.S. is dental?

A Doctor, doctor of dental surgery.

Q And any other educational background?

A Yes. After that I then went on to do a year of internship with the city of New York Hospitals in Brooklyn, New York, Greenpoint Hospital. I then went on for a year of academic study, my first year of residency actually, at the University of Pennsylvania, the graduate school of medicine in Philadelphia.

Q And Doctor, did you have any specific area of study there in Pennsylvania?

A That was oral and maxillofacial surgery, yes.

Q And, can you tell us what oral and maxillofacial surgery is?

A Yeah, the diagnosis of injuries, diseases of the jaws, teeth, and associated structures.

Q Go ahead, Doctor, with your educational background, I'm sorry?

A Right. After that I did have the privilege of spending two years with the 82nd Airborne at Fort Bragg, North Carolina, the Green Berets, at which point I then came back to the Mount Sinai Medical Center where I spent my last year as chief resident in oral and maxillofacial surgery and anesthesia.

Q And Doctor, before we get into your work back here in northern Ohio, when you were with the Green Berets, or a Green Beret in the military, can you tell us a little bit about what your medical practice consisted of in the military?

A The practice there consisted of treating the troops, really. I was the oral surgeon to the 82nd Airborne at Fort Bragg, one of the oral surgeons, we had several of us, we had a very large post. During the 21 months that I had at Fort Bragg, North Carolina I actually treated well over 200 jaw, jaw joint injuries.

Q And Doctor, coming back to northern Ohio now again, why don't you tell us a little bit more about your educational and work experience here in northern Ohio?

A I have been in practice actually in this office ever since I came out of my training. I opened up here on August the 1st of 1960 and have been here ever since.

Q And Doctor, have you held any positions with, first of all, any professional societies, and if so, can you tell us about those?

A Yes, I've had most of, all the professional societies. The Cleveland Dental Society, where I went all the way through the chairs, starting as the editor for about 4 or 5 years, working up as Vice-president, President elect, and finally President of the Cleveland Dental

Society. There is an organization called Alpha Omega Dental Fraternity, which I held the same arrangement. I started out as the editor for the first 4 or 5 years, worked my way up through the chairs, eventually becoming President of the Alpha Omega Dental Fraternity and even achieving their honor award and the achievement award. The Northeast Ohio Society of Oral and Maxillofacial Surgeons I have served it ever since, and served my year as president also.

Q And Doctor, do you hold any medical privileges at any area hospitals?

A Yes.

Q And, can you tell us what medical privileges are and at what hospitals you hold those privileges?

A Yes. The hospital where I trained at actually, the Mount Sinai Medical Center I am on the active staff where I still am involved in the training program of the hospital. This hospital has now merged with University Hospital and actually our privileges are now both Mount Sinai Medical Center and I now am also an assistant visiting professor of oral and maxillofacial at University Hospital at Case Western Reserve University School of Dentistry.

Q And, as a professor, what types of courses are you teaching and to whom are you teaching?

A We are teaching to all of the residents and we have many, many residents. We have over twelve residents there now. Where on a weekly basis we are involved in actual hands on training plus a number of lecture conferences that are held during the week.

Q And Doctor, have you held any office positions with respect to any medical institution staffs?

A Yes, two other hospitals, Marymount Hospital, which is a hospital in Garfield Heights, Ohio. I served as chief of oral surgery there for about 20 years. I am still on the staff. Suburban Community Hospital, which is now a Meridia, part of the Meridia Hospital chain. I have served there ever since I graduated and was chief of oral surgery there for about 20 years. I am also on the staff at Bedford Hospital, which is now associated with University Hospital.

Q And Doctor, in addition to lecturing some of the residents here locally, have you also lectured internationally, and by that I mean around the world at all, on some of the areas concerning jaw related problems and maxillo-facial surgery?

A As a matter of fact yes, just three weeks ago yesterday we were in England and at the request of University Hospitals we lectured at Royal Surrey County Hospital, to their oral surgery staff on temporal

mandibular joint injuries and diseases.

Q Any other countries where you've lectured?

A I've lectured in the Netherlands, I've lectured in Italy.

Q Now Doctor, on behalf of my client, Margaret Thornsberry, I in fact requested that you review the medical records concerning Mr. Akers and conduct a physical examination of him, correct?

A That is correct, Sir.

Q And Doctor, you like the other physicians who are testifying in this case are of course being paid for your professional services?

A Yes, I am Sir.

Q In both reviewing the records and in testifying?

A That is correct.

Q And Doctor, this case is not the first time that we've met, correct?

A I think this is the second time that we have met.

Q In fact, Doctor, in my 8 years of practice we met about 16 months ago or a year and a half ago where I asked you to review a case for me, correct?

A That is correct.

Q Doctor, in your, I guess I try to add up the years, I think it comes out to 38, 39 years or so of practice?

A 39 and a half.

Q Okay. I'm not going to ask you the specific number of days, that I won't do. Doctor, any idea as to how many patients you have examined who complained of some type of TMJ problem?

A I don't have specific numbers, but I would estimate that we see at least one a week or 50 a year, and that has been fairly constant over the last ten years.

Q And Doctor, a majority of your cases, how do the patients wind up at your office?

A Most of them are referred either by their physician, by their dentist, or occasionally by other patients who've been here before.

Q Being a maxillofacial surgeon, do you have a specialty in the area of TMJ and jaw related problems?

A Well, that's all part of our specialty of oral and maxillofacial surgery, certainly.

Q Doctor, in addition to the referrals that you receive from members of the medical community, do you also receive referrals concerning matters which are involved in the legal system?

A I have received matters of this nature, yes.

Q And Doctor, over the past few years approximately how many have you been involved in if you know?

A I would have to guess that I see about a dozen a

year, 12 to 15 a year that I am asked to review.

Q Do you keep track of those in any way?

A I don't keep a lot of statistics on these. I am basically a clinical oral surgeon, and this is where my chief interest is.

Q Doctor, why do you only review approximately 12 cases a year?

A I still like doing surgery, that's still my primary means of making a living, and my primary interest. However, I think that in the time that I served in the Cleveland Dental Society as the president of the Cleveland Dental Society one of my jobs was to police dentistry in this area, and I think that a lot of the cases that I initially took were of just that nature.

Q And Doctor, when you agree to review a case, over the past years that you've done that, have you always expressed an opinion which was favorable to the person who in fact sent the case to you?

A No, no. In fact, the last couple of cases that I have reviewed over the last few months, two of them I have gone right back and told the attorney settle, we're, we're not in the right.

Q And Doctor, when you agree to accept a case, do you base that decision upon whether you're being asked to review it by someone who is being sued, or someone who is

actually doing the suing?

A I would review it for either case if I felt the case had merit.

Q Doctor, you have with you today the file which you have reviewed, including I think all of the letters which I have sent to you and those?

A That is correct.

Q Those have all been provided to Mr. Young, correct?

A That is correct, Sir.

Q And Doctor, can you just go through briefly, and kind of outline some of the records that you have there?

A The records that I, that were submitted to me were the records from the hospital emergency room at the time of the accident, the records of the doctor, the chiropractor who took care of Mr. Akers soon after the accident, and the records of his dentist who did continue the treatment afterwards. Those are the important records that I have.

Q And Doctor, in addition to reviewing the records that you have before you, did you also conduct a physical examination of Mr. Akers?

A Yes, I did. Mr. Akers came to my office and we conducted a physical here.

Q And, can you tell us approximately when that

examination was?

A August the 5th, 1994.

Q And Doctor, we'll talk about the specifics of that examination in a little bit, but can you tell us approximately how long it lasted?

A My usual examination of this sort lasts anywhere from 45 minutes to one hour.

Q And Doctor, as a result of that examination and review of the records, were you kind enough to prepare a report for Mr. Young and for me outlining your opinions and observations in this case?

MR. YOUNG: I object to that.

A Yes, yes I was.

Q And, in fact Doctor, is that report that you've prepared outlining your opinions approximately 6 pages, single typed?

A I haven't counted it, but I would assume that that is the correct number.

a And Doctor, in addition to that, you also had your deposition taken yesterday in this case by Mr. Young, correct?

A That is correct, Sir.

Q And Doctor, a copy of that transcript from yesterday has not yet been made available to you, is that correct?

A I have, no, I have not seen it.

Q And, Mr. Young was given the opportunity yesterday to ask you a series of questions, correct?

A That is correct.

Q Doctor, can you tell us, what is temperomandibular joint?

A May I bring my friend up here?

Q Sure.

A Does this show okay on the camera? This is a plastic skull. It is not a real skull, so we don't want anyone to be upset by this. Temporomandibular joint really is very, very simple. Up here, if we can see all right we have the temporal bone. The temporal bone is that bone that is associated and attached to the skull. This is the mandible. Where the mandible meets the temporal bone we have the TM, temporal mandibular joint, it's the joint that opens and close. You see it right here. In the particular case of the head, it's a double joint because you've got one on the left side and one on the right side, which must of course function, function simultaneously. And, that is simply what the **TMJ** is.

Q And Doctor, during your 30 plus years of experience, have you found people to experience problems with their temporomandibular joints?

A Yes, we certainly do.

Q And, other than trauma, what are some of the causes of TMJ problems?

A In the elderly folks we see a tremendous amount of arthritis. The same as you see in any joint, fingers, wrists, arthritis is a major cause of temporomandibular joint problems. But, that is only the beginning. You then get into what we call the parafunctional habits. Now these may have to do with missing molars, with missing teeth, which put a tremendous amount of strain on. But then you get into the other areas and the other areas are gum chewing, big, big cause, chewing gum. Grinding --

Q Why is that, Doctor?

A It puts a lot of stress on, but I can show you even more so. We talked about thumb sucking, nail biting, the other is grinding of the teeth. Grinding of the teeth. This is probably one of the greatest sources, and just let me show you why it is. Want to try a test? Put your hand on your jaws, try it, go ahead. And, crunch your teeth together real tight for 15 seconds, for 15 seconds, I'll time it, just hold your jaws crunched real, real tight. Don't let go. 5 seconds, 4, 3, 2, 1. Okay. Let go. Feel your own joint. Mine all the muscles are sore back there. Now, and that's only 15 seconds. You take a person who clinches their jaw, they do it all the time or they do it usually at night. They don't recognize the fact that

they're doing it during the day, but now try grinding your teeth. Do that for 15 seconds like that. I'm not going to do it because it will hurt too much. But if you will grind away for 15 seconds you will then begin to really understand what temporomandibular joint problems are.

Q And Doctor, the grinding of the teeth, is that also what is known as bruxism?

A That is bruxism, that is correct, Sir.

Q Doctor, in addition to those factors which you've just indicated for us, are there other, or can trauma be a cause of TMJ problems?

A Trauma is a maximum cause, and we see trauma from many different areas. And, if you want to see trauma, turn on your football screen on Sundays when the NFL is in action. And, you see trauma to all parts of the body. And, the areas that seem to catch most of it are the knees and the head, and you see somebody who has been traumatized in a National Football League game and right there on the television screen for the whole world to see, they will tell you that they have a problem.

Q And Doctor, do you believe that whiplash injuries can cause TMJ problems?

MR. YOUNG: Objection. Form of the question.

Q Doctor, do you have an opinion based upon a

reasonable degree of medical certainty as to whether or not whiplash type injuries can cause TMJ problems?

A I do have an opinion. There are many schools of thought. My school of thought that I subscribe to is that whiplash does not cause temporomandibular joint injuries. I think you can associate it very similar to a sprain of the ankle joint. If you hurt the leg, you're not going to cause a sprain of the ankle any more than if you have injuries to the neck, the shoulders, the back, this does not cause temporomandibular joint. My theory is, is that you really have to have a direct blow to the jaw, direct contact of some sort to have a true temporomandibular joint problem as far as an accident is concerned.

Q And Doctor, talking about the onset of pain in the TMJ, or TMJ's, as a result of trauma, when does that usually occur?

A Immediately. Immediately. As I said the football player who gets up, he doesn't tell you weeks later that his, that it hurts. We treat these players. They get up and for the whole world to see. They tell you right away. Now the only compromising factor here can be if the patient sustains enough of a head injury where they're unconscious, and they can't recognize anything. But pain in the joint is instantaneous. It is felt immediately.

Q Doctor, in your experience you've reviewed emer-

gency room records, EMS records, ambulance run reports, correct?

A Uh-huh. Yes, I have.

Q And Doctor, did you have a chance to review those documents in this case?

A I did have a chance to review the documents from the Akron hospital, yes.

Q And Doctor, in talking about the emergency room record, based upon your review of that record, did you see any indication of a direct blow to the jaw of Mr. Akers?

A No, Sir.

MR. YOUNG: Objection.

A The only blow to the head that was noted was a laceration of the forehead, an abrasion of the forehead. There was nothing to any of the jaw or the jaw joints.

Q And Doctor, was in fact that lack of a notation concerning the direct blow to the jaw important in your assessment of this case?

A Well, there are a number of notations in the chart made by a number of people. The patient who goes in to an emergency room is seen by more than just, I think a doctor's probably the last one that sees him. They're seen by the emergency crews that bring them in, they're seen by the triage officers who separate them, and in all of these records, including the doctor's discharge summary, no,

there was no mention of any jaw or jaw joint injuries.

Q And Doctor, if in fact there was a TMJ problem caused to Mr. Akers as a result of this accident, based upon a reasonable degree of medical probability, would you expect there to be a complaint of jaw pain or jaw symptomatology by the time he got to the emergency room?

A In my experience, the complaints are rather instantaneous. Jaw, jaw joint pain hurts and it hurts right away. I don't like to use the word hurt, but it does hurt right away.

Q Doctor, I want to talk a little bit about your physical examination of Mr. Akers, and again feel free to refer to your office record if you feel that's important. Doctor, when did you examine Mr. Akers?

A August the 5th of this year.

Q And, can you take us through your examination of him concerning what you tested him for and what your observations were?

A Sure. The first part of the exam is we did take an x-ray. We took one of our own x-rays which I have here. We then discussed, and he told me what had happened. The actual physical examination, we first of all start out by having the patient open their jaw just open and close. And we measure to see what is the distance that they're opening. That measurement is taken from the edge of the

front teeth to the edge of the lower front teeth. His particular case he measured somewhere in the area of 42 or 43 millimeters. The average person opens anywhere from 40 to 50 millimeters. So his opening was where one would expect it to be. Then you look to see as they open whether they deviate to one side or not. This can indicate some type of derangement. But there was no problem, he was able to open and close without difficulty. We then ask them to move their jaw into a lateral position. This fellow doesn't move quite so well, but that is, can you see my own mouth? To the right and to the left. If they cannot do that, then you must look further. In his particular case he was able to move his jaws to the left and to the right or as we call lateral, without any difficulty. The next thing is to listen to the jaw joints, the temporomandibular joints, and the way we do that is we do it with a stethoscope, the same as the doctor listens to your lung or listens to your heart. Put the same stethoscope right on the joint, have the patient open and close, listen for any popping or cracking or unusual sounds, there were none. Everything sounded perfectly normal, and everything in fact functioned perfectly normally. Attention then of course is directed to the teeth. What do you see by looking at the teeth? And, as I've mentioned in my report, the first thing that caught my attention was the severe amount of grinding

abrasion of the teeth surfaces. Now, abrasion indicates one thing. When you grind your teeth, as the test we tried a little bit ago, when you grind your teeth like that even though you may not grind them during the day, because most people do this as a subconscious habit, when you grind at night the way you tell this is to see the surfaces that have been abraded. And, in his case there was a severe amount of abrasion of the teeth.

Q And Doctor, based upon your review of the severe abrasion that you found with respect to Mr. Akers' teeth, do you have an opinion based upon a reasonable degree of medical certainty as to whether or not he in fact was grinding his teeth before this accident in April of 1992?

A It is strictly something that I have found from years of observation, but that amount of grinding of the teeth, that amount of wearing away of the teeth does not occur in a short time. That indicates years, and years, and years of grinding.

Q Doctor, there's been some testimony by Mr. Akers and I believe it may come from Doctor Hendricks, that in fact since this accident there has been some grinding from a dental standpoint of Mr. Akers' teeth. Are you familiar with that type of procedure?

A What do you mean by grinding? Are you talking about the patient grinding?

Q It's my understanding the dentist does some grinding of the patient's teeth?

A Oh, oh, oh. All right. No, this is, this is different. A dentist that is doing grinding to improve the occlusion, to relieve the occlusion, to enhance the occlusion, this is a very scientific, selective spot grinding. The dentist takes a little strip of blue paper, and you probably all have experienced, and he puts it between your teeth and he says, tap. And, he looks in, and if any spots are hitting high or low he will take a diamond instrument or a burr, and he will grind away those little spots. That's very selective. That's not wide spread. You can't wide spread grind the teeth with a burr, because you're going to lose everything. No, there's a very great difference between the two.

Q And Doctor, from a professional standpoint, you have no difficulty telling the difference, is that true?

A No, you can tell the difference.

Q Doctor, you used the term occlusion. Can you tell us what you mean by that?

A Sure. Occlusion is merely how the upper teeth meet the lower teeth. The teeth come together, they occlude. That is occlusion.

Q Now Doctor, in your field, is a common term malocclusion?

A Malocclusion basically means bad occlusion, mal, the kid's mal, the kid's bad. Malocclusion is bad occlusion. The teeth do not occlude together like they should. It could be for many reasons. It can just be developmental, it can be the fact that the patient is missing teeth, the patient hasn't cared for his teeth, missing molars would indicate that there is a malocclusion, or it may be a developmental type of malocclusion.

Q And, what do you mean by that?

A Well, when you look at the teeth like this, you notice that the top teeth, are we showing it okay? Come out over the lower teeth a millimeter or two, that is known as a class one occlusion, and that's what we sort of refer to as a normal occlusion. The class two occlusion is a retruded lower jaw, and I can't get this guy back, but if you look at me I'll try to make it. And for those of us who used to read the comic pages, there was an Andy Gump chin. Andy Gump was an old guy in the comic strips that had very little chin, that was really basically a class two occlusion, but because of him, that has been known as the Andy Gump jaw.

Q And Doctor, would that be the situation where you have something that some of us may term an overbite?

A That is really an overjet, where the upper teeth jet out way over the lower teeth. Then you've got a class

three bite which is just the opposite, and I can't show it on this fellow, so I'll do it myself, and that's where the lower teeth stick right out, that's the protruding jaw of the athletic type of person which the lower jaw protrudes way out in front of the upper teeth.

Q And Doctor, in addition to the classes of mal-occlusion, malocclusion I'm sorry, are there also within those classes various degrees?

A The orthodontists have break downs of everything. There's variations of all degrees.

Q And, can you tell us what those degrees are within the various classes that you have seen?

A Well, they don't really mean an awful lot here. It's just that even in a class one occlusion, which is a normal occlusion, the teeth may be twisted or turned, and that could be then a class one normal occlusion with some malocclusion because of the twisting or turning of the teeth.

Q Doctor, have you ever heard the term, class two malocclusion, severe?

A Yes.

Q Can you tell us what that means?

A That is the Andy Gump chin we just talked about. That's where either the upper teeth protrude way out over the lower teeth or the lower teeth protrude, retrude way in

under the upper teeth.

Q And Doctor, I'm going, going to mark for identification purposes Defendant's Exhibit 6, which has been previously provided by Doctor Hendricks' office and it is specifically Doctor Hendricks' office note or charge note for July of 1992 and August of 1992, approximately one to two months after the motor vehicle collision in this case. And Doctor, there's a reference there to a class two severe, do you see that?

A It is noted twice, severe class two.

Q And Doctor, class two severe, is that the mal-occlusion that you just indicated for us?

A That's the Andy Gump chin, yes.

Q And Doctor, what type of treatment can one receive to correct that problem?

A There's two ways, either you do it the conservative way, which most of us have done, most patients who have it, which is orthodontia, braces. It can also be corrected surgically or a combination of the two, but the usual way that 99 percent of these are corrected is with an orthodontic treatment.

Q And Doctor, that is precisely the type of treatment received by Mr. Akers in this case, correct?

A That is correct.

Q And Doctor, referencing that class two severe

malocclusion, your review of the case, and your examination of Mr. Akers, do you have an opinion based upon a reasonable degree of medical certainty as to whether or not the orthodontia or the braces which Mr. Akers received and wore was necessary treatment for any injuries sustained in the motor vehicle accident that brings us here today?

A I have an opinion. Yes, certainly. Orthodontia is meant to do just that which the name implies and that is to straighten teeth. Orthodontia does not correct temporomandibular joint problems, nor does it cause temporomandibular joint problems. Orthodontia is meant to straighten teeth and it would certainly be meant to straighten a class two occlusion.

Q Doctor, I am going to hand you what I've marked for identification purposes as Defendant's Exhibits 7 and 8, and I think we'll start with Defendant's Exhibit 7, which is a patient medical history completed by Mr. Akers on July 23rd, 1992, approximately three months after the accident in this case. Doctor, in reviewing that history completed by Mr. Akers, anything in that record that you find to be significant?

A Yes.

Q And, can you tell us what that is?

A Well, there's a whole list of questions here. There are 44 questions which are basically yes or no, but

at the very bottom, I think we're number 42 down here, it says do you habitually clench your teeth during the day or night and the answer to that is, yes.

Q And Doctor, by clenching teeth, that's what we were talking about earlier, correct?

A That is correct, Sir. That is clenching or bruxism.

Q And Doctor, handing you what I'll mark for identification purposes as Defendant's Exhibit 8, which is I believe Doctor Hendricks' office note of 7-24-92. Anything on that note that you find to be significant with respect to your opinions in this case?

A Yes. In the notes, and it's signed by Kevin Akers, I can't tell who wrote it. It says clenching, severe head pain, morning pain, which is usually when you have pain with clenching because you do it during the night and you wake up with it in the morning. It says work very stressful, which is a very great cause of grinding of the teeth.

Q Doctor, do you have -- I'm sorry.

A It says also that he wakes up with teeth together which is really another part of the clenching process.

Q Doctor, do you have an opinion based upon a reasonable degree of medical certainty as to whether any of the TMJ complaints made by Mr. Akers following or

subsequent to the accident that brings us here today were caused by that accident?

A I do have an opinion.

Q And, what is that opinion?

A My opinion is that the temporomandibular joint problems were not caused by the automobile accident.

Q Doctor, that's all I have. Thank you very much for your time today.

A Thank you.

DURING CROSS EXAMINATION BY MR. DEAN YOUNG:

Q Doctor, my name is Dean Young. I represent Kevin Akers in this particular case. Doctor, you and I met for the first time yesterday, isn't that correct?

A That is correct, Sir.

Q And, we did that here in your office where I asked you some questions about Kevin's case?

A That is correct, Sir.

a And, I wanted to make sure we were correct on something. Mr. Mazgaj said I had the opportunity to ask questions. Do you recall yesterday our session was cut short by an hour because a court reporter didn't show up?

A Yes.

Q So I, we ran out of time before I ran out of the questions that I wanted to ask you?

A I was here, I was here waiting.

Q Okay and so was I.
A Yes, Sir.
Q Doctor, you examined Kevin Akers for purposes of giving a report to the Defense lawyer in this case, didn't you?
A I examined him, and after I examined him I did give a report, yes, Sir.
Q And when Mr. Mazgaj says you gave a report to me and to him, you never issued a report to me, did you?
A I issued the report to Mr. Mazgaj.
Q Mr. Mazgaj?
A Correct, Sir.
Q And, you didn't see Kevin Akers because Kevin's a patient of yours, did you?
A No, Sir. I did not.
Q You didn't see him for purposes of evaluating his condition to treat him, did you?
A No, Sir. I did not.
Q Basically you saw him because the Defense lawyer in this case paid you for your time to examine him and render an opinion?
A That is correct, Sir.
Q Okay. Doctor Bell, you indicated I think to Mr. Mazgaj here that you've been involved in 12 to 15 of such litigation cases in the last year, is that correct?

A No, I have been presented 12 or 15, I have not accepted all of them.

Q Okay. And Doctor, I think that, that you told me when I asked you whether that was done regularly for insurance companies and defense lawyers, you said what, Sir?

MR. MAZGAJ: I'm going to object to the form of the question. Are you referring to the deposition? This is improper cross examination. What page are you referring to?

Q Doctor, if, if I have some questions that I ask you that came up in our session yesterday when we took your deposition, I've had a transcript of that prepared so that if there's anything we need to refer to we can, and I provide you today with a copy of that, Doctor, if you wish to refer to it.

A I think it's going to be awfully thick to sit here and go through now. That's a big volume.

Q No, I'll indicate to you where I'm referring. I asked you whether those examinations were done only at the instance of insurance companies and defense lawyers. Do you recall that?

A That, yes.

MR. MAZGAJ: Objection to the form,

form of the question.

A No, my answer --

Q Did I not ask you that, Doctor?

MR. MAZGAJ: I'm going to object, if you can let me finish, Mr. Young. I object to the question and the use of the term, insurance company. You know that's improper. You have no evidence whatsoever in this case that any insurance company in fact referred or suggested that Mr. Akers be referred to Doctor Bell. The referral came from my office, payment was from my office, and you know that, and you're trying to get insurance into the case, which is a direct violation of the rules and which mandates a mistrial.

Q Doctor, I'm going to ask the question this way. I asked you whether those referrals of litigation cases were at the request of defense lawyers?

A Not all of them, Sir, no.

Q Okay. And, you recall that I, when you indicated to me that, yeah you saw some at the request of some injured parties?

A That is correct.

Q I asked you for the name of a lawyer for whom you'd done that?

A And, I refused to give you those names, Sir.

Q You refused to provide me with that, is that correct?

A Absolutely, absolutely, that's privileged information.

Q Okay. Doctor Bell, you only saw Kevin Akers once, isn't that correct?

A That is correct, Sir.

Q And, during the time that you saw him he was cooperative with you and answered every question that you had, didn't he?

A Yes, he did.

Q Doctor, when you normally see a patient and examine him, don't you make notes as to the examination?

A I make my hieroglyphics, yes.

Q That is you, it's normal and customary in your profession, isn't it Doctor, to prepare written records of the results of the examination, isn't that correct?

A I have the written record of that examination.

Q Well Doctor, yesterday I asked you for the copy of the written record?

A It's all right here.

Q Well, Doctor, you're referring now to the letter

you wrote to Mr. Mazgaj, isn't that correct?

A That is correct.

Q Okay. I, I'm asking now about the practice in your profession of creating a record of examination when you examine a person for a dental problem. Isn't there such a practice?

A Yes, there is, if you're seeing a patient to treat the patient. I was not seeing this gentleman to treat him.

Q Okay, Doctor, Doctor, isn't it important when you're examining a patient for a dental problem to record the details of the history that patient gives you?

A Everything that he gave me is recorded right here.

Q And Doctor, you do that so that everything that's important to evaluating the case is actually found in your records. Isn't that why that's done in your profession?

A If it's an on going record, yes.

Q Now wait, Doctor --

A Everything I put down is right here in the records.

Q Did you, did you have the opportunity in this case, in reviewing Kevin's case to take a look at the written records of history and examination done by Kevin's treating dentist, Doctor Hendricks?

A Yes, I did.

Q And, you had the benefit of those records because the Defense lawyer in the case subpoenaed all of the records and materials from Doctor Hendricks, isn't that true?

A That was an on going, continual treatment. Mine is not.

Q And, you knew, you knew what Kevin had told Doctor Hendricks because you could read it from the history, the written history and the written examination records that Doctor Hendricks made, isn't that correct?

A If you're questioning, I think you'll have to assume I'm an honest man.

Q Well Doctor, I don't presume one way or the other. I'm trying to understand your evaluation and I come back to what's standard in your profession. Isn't it standard in your profession that when a patient is examined that the dentist involved will create a record of examination? Is that so or not, Doctor Bell?

A If you are the treating doctor, yes. I was not the treating doctor in this case, Sir.

Q Well Doctor, you in fact created a record --

A I certainly did.

Q -- based, Doctor, at the time that you examined him, you did in fact take notes, didn't you?

A I took notes and transposed them all to the records right here, Sir.

Q Doctor, just, please, Doctor. Just listen to my question. At the time that you examined him, you did in fact create notes of your observations and the results of your examination, didn't you?

A I put my hieroglyphics down on paper, yes, Sir.

Q Hieroglyphics like those that you're referring to in the records that you've examined of Doctor Hendricks?

A And, everything I put down is right here.

Q Doctor, please listen to my question?

A Okay.

Q When you're referring to hieroglyphics, you're talking about your personal handwriting, isn't that correct?

A That is correct.

Q Just as we had the benefit to examine Doctor Hendricks' personal handwriting?

A Yes.

Q Okay. But Doctor, your personal handwriting of exactly what you found isn't, doesn't exist, does it?

A It is all written right down here.

Q No, no, Doctor, please listen to my question.

MR. MAZGAJ: I'm going to object.

A Oh, come on.

MR. MAZGAJ: Just because he takes notes like other physicians like other physicians do.

A No, I, I have it all down here and, you know, you've already asked this question, and I can't give you a different answer. No, I didn't keep the notes that I used, I threw 'em away. I couldn't read them.

Q That's, that's my question. That after you got done taking notes of your examination of, of Kevin Akers, you simply threw those notes away?

A I used 'em to transcribe it into my report, which is my important report. This is what my name is signed to.

Q But you, in other words, the records, your records of examination of Kevin Akers that you took at the time that you examined him, you threw 'em away?

A That is correct, Sir.

Q Okay. Now, we, you had the benefit, Doctor, in evaluating this case of reviewing the records also of Doctor Battaglia, isn't that correct?

A That is correct, Sir.

Q And, we have those records to review because Doctor Battaglia took handwritten notes and preserved 'em?

A Because he is a treating doctor.

Q Okay. Doctor, you also had the opportunity to review the notes from a Doctor Kimberly, who's a dentist

with Valley Dental in Akron, didn't you, Sir?

A That is correct.

Q And, you were able to learn what he knew from the examination because he took notes and those notes were kept and preserved for review, isn't that correct?

A That is correct.

Q Now Doctor, if, if we wanted to see exactly what the millimeters of the opening, what the questions that were asked of Kevin Akers and the, his responses and information given you, that you wrote down simultaneously in those handwritten notes, we can't see those any longer, can we?

A Yes, you can because they're all right here.

Q Sir, your handwritten notes, we can't?

A No, no, you can't see my handwritten notes. They don't exist.

Q Now Doctor, you agree that a TMJ disorder or injury should be diagnosed by a dentist who specializes in that area, don't you?

MR. MAZGAJ: Objection to the broad nature of the question. You can answer.

A No, it can be diagnosed by any dentist.

Q You agree then, that the diagnosis ought to be by a dentist?

A I have seen some very sharp physicians who are able to diagnose it, but they send them to dentists for verification.

Q That's, that's pretty rare, isn't it?

A No.

Q That the physician, not the referral, that's common place. That's the state of what ought to be done, isn't it, that the case be referred to a dentist?

A It should be, yes, Sir.

Q And, for proper diagnosis, it ought to be referred to a dentist?

A That is correct, Sir.

Q The, the dentist in injury cases commonly doesn't. get involved until weeks or months down the road, isn't that correct?

A He may not become involved, but it's usually recognized way prior to that.

Q Doctor, that's, I'm just asking. Normally the dentist wouldn't get involved till weeks or months down the road, isn't that correct?

MR. MAZGAJ: Objection as to normally.

A The ones that have severe injuries usually are involved immediately.

Q Doctor, in this case, that's exactly the situation we had, a referral by a treating doctor to a dentist

after the treating doctor suspected problems with injury to the jaw, isn't that correct?

A That is what happened in this case, yes.

Q Okay. Now, you wouldn't say that emergency room people are qualified to diagnose temporomandibular joint disorder or injury, would you?

A My experience has been is that they are very clever these days and they are. That people in the emergency room are today specifically trained emergency room doctors. This is what they look for today.

Q Doctor, I thought I asked you that question directly yesterday as to --

A I said that they --

Q -- just a minute, Doctor. Please listen to my question.

MR. MAZGAJ: First, I'm objecting in the way you're doing it, it's improper cross examination. You're not testifying. You have to refer to the direct passage in the deposition.

Q Okay. Doctor, let me look and I, I've supplied you with a copy at your Counsel's request here. Take a look at that deposition that's in front of you, Page 42?

MR. MAZGAJ: Can you let him read the whole page befcre we --?

Q At the, Doctor, on page 42, line 23, didn't I ask you this question? Well, I'm asking about the qualifications of emergency room personnel to determine if injury has occurred to the joint, and you said to me, answer, I am not qualified to answer about the qualifications of emergency room personnel.

A If you look further down we talk about the emergency room nurses and we talk about the emergency room litter bearers, who are the people who bring the patients in. We are not talking about the physicians. If you look further down on that page you'll see that when we talk about the physicians, we say that's a sophisticated hospital, and sophisticated doctors in the emergency rooms today, yes, can diagnose it. That is directly there. I hadn't read it over, but it's there.

Q Well Doctor, the proper diagnosis is to be done by a dentist and generally that is after referral from persons who are medical people suspecting injury, isn't that correct?

A No.

MR. MAZGAJ: Objection.

A No. Emergency room personnel, doctors, emergency room trained doctors do look for these things today and they do note them. They have to.

Q Doctor, pain is one sign or symptom that there's

something wrong in the temporomandibular joint, isn't it?

A It is the most important sign, yes.

Q And, other symptoms would include popping or clicking?

A Popping and clicking occur in probably two-thirds of every patient who walks into my office.

Q Well, but in conjunction with the symptom of pain, popping and clicking would be very significant, wouldn't it?

A No, because popping and clicking occur without pain, so pain is something unto its own.

Q No, Doctor. Doctor, I understand popping and --

A People don't have --

Q -- clicking noises can occur, but I'm talking about a signi -- a situation where popping and clicking together with pain occurs. Then it's significant, isn't it?

A Then it may be significant.

Q Okay. And, in conjunction with that if there's also difficulty in opening the mouth, that would be a significant sign, wouldn't it?

A That's more significant than popping and clicking.

Q And, if an individual had their jaw open and then it locked open, that would be a very significant sign too,

wouldn't it, Doctor?

A Yes, it would be, Sir.

Q Okay. And, pain, when you talk about pain, you're talking about pain in the head or pain in the neck, isn't that correct, Doctor?

A I'm talking about pain in the jaw joints and associated structures. We, we --

Q And, and when I asked you about that yesterday, you indicated --

MR. MAZGAJ: What page are you on?

Q -- you indicated the neck as well, did you not, Doctor?

MR. MAZGAJ: I'm going to object to the form of the question. We ask that you go to the specific reference.

Q Okay, Doctor. Take a look at page 17, Doctor? And, on line 17, I asked you what I want to know in specific terms, I started by asking you signs or symptoms of a problem with a TM joint?

A Uh-huh.

Q You said, okay. And, I said, you gave me, I think popping and clicking is that correct, and you said, yes, that's correct?

A Yes.

Q And, I asked, pain?

A That is correct.

Q And your answer, yes, and I said that would include jaw pain. Your answer, it can be pain anywhere radiating pain, jaws, the entire side of the face, into the, then I asked you, into the neck?

A That's correct. And, my answer was, could be.

Q Could be.

A Depending on where in the neck it is.

Q No, Doctor.

A No, it's very important where in the neck it is. If it's in the --

Q Well, wait a minute.

A It depends on where in the neck it is, which only the doctor who is treating it can diagnose. You can't take the whole neck any more than you can take the whole side of the body, no.

Q Okay. Doctor, just to be fair here, your answer at that juncture to me was, could be?

A That is correct.

Q You're adding this qualification at this juncture, isn't that correct, here Doctor?

A Well, no, we just go that far yesterday, that's all.

Q Okay, Doctor. Now, the, you did not determine when Kevin's problem with clicking and popping began, did

you?

A No, Sir.

Q You didn't determine when his difficulty with opening his mouth began, did you?

A No, Sir.

Q You didn't determine when a problem with locking of the mouth began?

A No, Sir.

Q Now, whether or not those questions were ever asked of Kevin, we would need records of the examination to tell that, wouldn't we?

A Either records or his telling us.

Q But, I'm saying to you, Doctor, if that question, if you just, if you asked that question, that would be contained in your records of examination, wouldn't it?

A If there were continual updates on the records, yes.

Q Okay. But, we don't have those records?

A No, we don't.

Q Okay. Now Doctor, Kevin Akers, in fact sustained a blow to his head, didn't he?

A He had a blow to the head which caused a abrasion type of laceration or something, and it did not require sutures. It was closed with antibiotic creme, there was not a laceration that required closure,

Q Okay, Doctor. He, in fact, sustained an impact where his head smashed into the windshield, isn't that correct?

A I wouldn't use, we don't know that his head smashed into it, we know his head hit the windshield.

Q Well Doctor, his head was travelling at 35 miles an hour at the time of the impact, wasn't it, Sir?

MR. **MAZGAJ:** Objection.

A We don't know, we don't know what the forces or blow. It would take a rocket scientist to figure the forces. We don't know that his head smashed into anything. I think that if his head smashed into it, you'd see a lot more than he had. I think that his head hit it. There's no question about that. But we can't use the term smash.

Q Doctor, photographs were taken of the windshield that his head struck. Isn't that correct?

A I haven't seen the photographs.

Q I think I asked you that yesterday and you told me that you didn't need to see them because it wouldn't make any difference to your opinion?

A No Sir, it wouldn't make any difference, no.

Q So, whether his head smashed a star burst into the windshield or not is of no consequence in your opinion, Doctor?

A Cars have safety glass today that shatters very

easily, it doesn't take much, it's safety glass, that's why we don't have so many injuries.

Q Doctor, my question was the fact that his head, in striking the windshield, shattered it into a star burst is of no consequence to you in forming an opinion in this case, isn't that correct?

A No, because I had a pebble that hit my car recently going at a low rate of speed and it shattered too.

Q Okay Doctor. You, were you aware of the fact that Kevin Akers reported headache to the Akron paramedic team that arrived on the scene?

A I don't recall that, but if you say it's there I'll believe you.

Q Okay. Assume Doctor, that he reported a headache, that is head pain, to the paramedics that arrived on the scene. Does that change your opinion, Doctor?

A No, I think if I hit my head I'd have a headache too, yes.

Q And Doctor, when Doctor Battaglia saw him on May the 9th, 1992 he reported to Battaglia, neck pain, headache and jaw symptoms, were you aware of that, Sir?

A It is so written in there, yes.

Q And, does that make any difference in your opinion, Doctor?

A No Sir, it doesn't change my opinion at all.

Q Okay. And, the notation by Doctor Battaglia in May that Kevin reported jaw pain and clicking, is that of, does that make any difference to you and your opinion, Doctor?

A No Sir, it does not.

Q Now Doctor, you did some x-rays of Kevin Akers, didn't you?

A Yes, I did.

Q Now, you did what, what in your profession are called panograms or panographic?

A A single panographic x-ray, yes.

Q Panographic x-rays are not specific for TMJ disorders or injury to the jaw, are they?

A That is correct, Sir.

Q So, the x-rays that you did, we can't see the, what you folks would call, the articulating disk of this joint?

A No, Sir.

Q By articulating I mean that's the place where injury, when injury occurs to the temporomandibular joint that the injury itself exists?

A That is correct, Sir.

Q In other words, the x-rays you took you can't visualize whether that, whether that exists or not?

A This was not, this was not meant to be specific

for the temporomandibular joints, no.

Q Doctor, if you'd wanted to examine specifically for damage to ligaments, or muscle, or the disk there in that joint, you'd have had to do at least a transcranial x-ray, wouldn't you?

A No, Sir. I would do an MRI.

Q You would do an MRI?

A Yes, Sir.

Q And --

A I would want to do an MRI. Unfortunately, not every one will allow them to be taken.

Q Because of the expense, is that correct?

A It is the most wonderful, noninvasive way we have of viewing the joint.

Q And Doctor, another way of viewing this joint would be a transcranial x-ray, isn't that correct?

A No, another way, no another way is a CAT scan.

Q Well Doctor, are you --

A Transcranial is not going to really show that much.

Q The transcranial is an x-ray of the joint itself, is it not?

A I know what, I know what, I know what it is. It's adequate.

Q But, so it is an x-ray, that's all I'm asking you

Sir. It's an x-ray of the joint itself?

A Yes, it is.

OPERATOR: Excuse me. We're off the record to change audio tape.

OPERATOR: We're on the record.

Q Doctor, the joint that we're concerned with is the connection between the jaw bone and the mandible of the head, isn't that correct?

A No, Sir.

Q The joint we're concerned with is not --

A Not the mandible and the head, the joint is the connection between the mandible and the skull, not the mandible and the head, no Sir.

Q Well, there, the --

A No, the mandible is the lower jaw.

Q The skull is composed of several bones that are all interconnected, isn't that correct?

A Everything is right except you called them the wrong thing. Let's go back, let's go --

Q Correct me, Doctor?

A Let's go back, temporal bone of the skull, mandible, joint is temporal mandibular joint.

Q Okay. Thank you for that correction. The skull is made up of several bones that are all interconnected?

A Yes, Sir.

Q And, those bones don't have any joints, they have sutures, so to speak, between them, isn't that correct?
A That is correct, that is correct.
Q And, in that regard they're all interconnected?
A That is correct.
Q What bone would be over the upper eye, that is over the, the eyebrow?
A Part of the, it's all the orbital bone.
Q And, that's the bone that, that Kevin Akers struck when he hit the windshield, isn't that right?
A No, he hit the frontal bone.
Q He hit the frontal bone?
A Uh-huh.
Q Okay. Doctor, you said, and I want to understand this, if it's your position that striking the head against an immovable object would not cause injury to the TM joint, is that your opinion, Doctor? Could not cause injury to the TM joint?
A My opinion is, is that to have injury to the temporomandibular joint, that you must strike the mandible part of it. That is the moveable part, not the fixed part.
Q And, your, it makes no difference to you what amount of force Kevin Akers head hit the windshield, you would be of the opinion that it could not and would not injure the joint of the jaw?

A It would make a lot of difference to me, I'd be very concerned. But, that is still not what causes injuries to the temporomandibular joint. Striking a bone up here does not cause injury to the temporomandibular joint.

Q Doctor, would striking a bone of the leg, could that cause injury to the knee joint?

A No.

Q Striking a bone that connects to the joint cannot cause injury to the joint, is that your testimony, Doctor?

A You're talking, well first of all, let's not compare the two. First of all, you're talking about a long bone. A long bone has a totally different physiology than the mandible. Striking a bone up here is not going to cause injury to the temporomandibular joint. So, you can't even compare a long bone injury. We treat them differently, they heal differently, they have a totally different physiology.

Q Doctor Bell, the mandible, the jaw bone is the heaviest bone in the body, isn't it?

A Is the heaviest bone in the body?

Q Isn't that correct?

A I've never weighed it, I don't know.

Q You would have no idea?

A You obviously looked it up. I don't know the

answer.

Q Doctor, I asked you when I took your deposition.

MR. MAZGAJ: What page are you referring to?

Q I'm referring now to page 37. Well, let me say, Doctor, can you site me to any text book, treatise or journal article that supports the opinion that you gave that the joint cannot be injured unless there's a direct blow to the jaw bone?

A Are we, do you want me to go to page 37 first or do you want me answer?

Q No, I first asked you the question?

A Yeah, I can give you the most important book. Now there are literally volumes out written by both sides, but I'm going to give you the most important book that there really is, and that is called Doctor Ronald Bell's book of 40 years of experience. Now this goes back to one year treating a cross section of New York, this goes back to one year treating a cross section of Philadelphia, it goes back to two years treating a cross section of the U.S. military, including the paratroopers, the tough ones, it goes back to a year of treating a cross section of Cleveland, right here through Mount Sinai Hospital, and then it goes back to 35 years, 34 and a half years of continual treatment at Mount Sinai and treatment right here in

the office. Doctor Ron Bell's book of information, which is right here, is where I got that information.

Q In other words, Doctor, it's your personal opinion?

A Absolutely.

Q And, when I asked you if you could site to me a treatise, text book, or journal article, you refused to do that?

A That's right, because for everything that one can site, you can find someone to site the opposite side, and it doesn't mean anything. My personal experience is what is put into play here, Sir.

Q Okay Doctor. Can you give me a citation to some authoritative work on the subject of injury to the TM joint?

A No, no. I have not referred to anything here. I've referred to my own personal experience.

Q Okay. Doctor, you claim that an injury to the TM joint would cause a patient to know that through symptoms within 24 to 48 hours?

A If you've ever had an injury yourself, you would know that this is when it happens. I've had it.

Q Doctor, can you site me to text or treatise or journal articles to support that?

A Doctor Ron Bell's 40 years of personal

experience.

Q So that again is your personal opinion?

A Absolutely.

Q Doctor, there is no evidence anywhere in all of the records supplied to you after subpoena by the Defense lawyer here of symptoms, signs, or condition of a TMJ problem in Kevin Akers before this auto accident happened on April the 24th, 1992, is there?

A That is correct, Sir.

Q Now Doctor, you have indicated your claim that orthodontia, braces is not a treatment for TM joint problems?

A Absolutely. Orthodontia is meant to correct crooked teeth, it is meant to straighten teeth.

Q Could you site me, Doctor, to any text, or treatise, or professional article that agrees with your opinion?

A I will site you, site you right back to where I told you before. This is 40 years of personal, tried and proven experience.

Q Do you try to keep up on current trends, including authoritative materials on treatment of TMJ?

A I have to. We're teaching at the hospital on a daily basis, on a weekly basis.

Q Doctor, did you read the article in the Journal

of Cranial Mandibular Practice issued October, 1994 as to the use --?

A No, I didn't read it.

Q You didn't read the journal?

A No, Sir.

Q But, let me ask the question, Sir?

A Go ahead.

Q I'm talking about the journal article that was published specifically to treatment of the temperomandibular disorders through the use of orthodontics?

A That's precisely one of the reasons why I don't read that journal. I've given you 40 years of my own experience, and I said to you that for every article one can find, one can find an article to disagree with it.

Q So, you're not interested in the articles that they would publish in that journal?

A I'm interested in all articles. I read all that I feel are important.

Q Doctor, this subject of bruxism, my understanding is although there can be many causes for a problem with the TM joint, it's your opinion that the cause of the problem that Kevin Akers had with his TM joint was bruxism? Is that correct?

A That is correct, Sir.

Q And, whereas there can be other causes, you've

discounted, you've excluded all the other causes for, for Kevin Akers?

A I, no, I have not, I have not discounted or excluded anything. I took everything into consideration.

Q No, I didn't mean it that way, Doctor. I'm sorry if you understood it, so that after considering all the possibilities, the only cause in Kevin Akers' case, in your opinion, is bruxism?

A I think that is the cause of it, yes Sir.

Q So, there's nothing else here, in your opinion, that would have been the cause? I mean you in response to Mr. Mazgaj you gave us a litany of causes?

A I gave you a whole litany. I'm not aware of his gum chewing, I'm not aware of other problems, I'm aware of his bruxism, which in my 40 years of practice, that is one of the major causes.

Q Doctor, bruxism is a significant condition?

A Very much so.

Q That is, it's one that should be treated by a dentist?

A It should be.

Q And, it's one that dentists are trained to examine for and to identify?

A Well, not all can examine for it and identify it, which is why I get so many referrals to see 'em.

Q Doctor, didn't you tell me yesterday that when we talked about this, that a family dentist ought to look for --

MR. **MAZGAJ:** What page? What page?

Q **I'm** referring now to page 26?

A **A** family, a family dentist ought to look for it, yes Sir.

Q Okay. Look at page 26, Sir?

A Okay.

Q I asked you specifically, so a family dentist ought to look for evidence of bruxism on somebody who's presenting to him for care on that person's teeth, and you said he should?

A Correct.

Q Meaning it would be proper in the profession for the family dentist to examine for it, be concerned about it and treat it if it, if that condition exists?

A It would be nice to know that all dentists are looking for it, yes Sir.

Q Doctor, you, you had the opportunity to examine the records of the Valley Dental Group, did you not?

A Yes, Sir.

Q I'm handing you, Doctor, I hate to stick my hand in front of the camera?

A It's okay, it's fine.

Q Plaintiff's Exhibit 21. That was the, the records of a Doctor Kimberly who was a family dentist for Kevin Akers prior to Doctor Hendricks, isn't that correct?

A That's correct, Sir.

Q That was supplied to you by Mr. Mazgaj, who subpoenaed that?

A That's correct, Sir.

Q There's no evidence in that record of any bruxism grinding of the teeth?

A Do you know when this record was taken? This is 1985, nine years prior to the accident.

Q And Doctor, the last entry is in 1989, isn't that correct?

A That's still five --

Q That's three years, slightly less than three years prior to the accident, isn't that correct?

A All he did, all, if we notice that the last three entries include only one thing, profi and bite wings.

Q Well Doctor --

A There's, there, these are two word, two word total entries covering four years, profi and bite wings. There's no indication of anything positive or negative, for or against.

Q Doctor, that's because Kevin Akers had generally healthy dental condition, isn't that correct?

A I would hope he did.

Q Well Doctor, you yourself concluded that based upon review of the records of Valley Dental and the x-rays, isn't that correct?

A The x-rays of Valley Dental I sent back because they were just bite wings, which don't really mean anything.

Q But, you did, you did have the opportunity to examine the x-rays that were done by Doctor Kimberly of the Valley Dental Group?

A No one would make a diagnosis of anything based on bite wing x-rays. Bite wing x-rays are meant to show one thing, decay between teeth, that's all.

Q Doctor, I'm not asking you that. This shows general health of the teeth, doesn't it?

A No, it shows decay. It doesn't show any of the supporting structures, bone, it doesn't show anything to do with health. It shows one thing, it shows decay of teeth and nothing else.

Q If it's lack, if there's lack of decay, that would show general health, would it not?

A Not every one. The Mayan Indians have all kinds of sugar habits and they don't have any decay, but their teeth fall out.

Q Okay Doctor, you concluded in the letter you

wrote to Mr. Mazgaj that there were no missing teeth in Kevin Akers, in fact everything appeared to be in a very healthy condition?

A That is correct, Sir.

Q Okay. Now Doctor, if, if Kevin Akers presented to a family dentist for cleaning or routine checkup and that dentist discovered bruxism, that is grinding of his teeth, that would be something significant to note and deal with, isn't that correct?

MR. MAZGAJ: I'm going to object to that. I'm going to object to the broad nature of that question. You're asking him to testify the credibility of some dentist who's not even going to testify.

A Yeah, I, I can't, I can't even answer, I won't even answer that.

Q You won't answer that question?

A No, Sir, no.

Q Let me try to break it down to help you answer it.

A Okay.

Q Bruxism is a serious condition?

A Yes, Sir.

Q And, if an individual presented to a family den-

tist for examination, and that dentist noted evidence of bruxism, that would be something for that dentist to deal with, wouldn't it?

A When a dentist is noting only a one word phrase that says profi and bite wing in 1985, 1988, and 1989, I really don't know what he's looking for or what he's noting. He's not noting anything to do, he doesn't say the health of the mouth is good, either.

Q Doctor, if he found a serious condition like bruxism, he'd note that under the standard in your profession, isn't that right?

A If that is all that he is noting, I'm not sure that he would.

Q You wouldn't say the standard would require some notation about that?

A Standard depends. I don't know how old this gentleman is, when he was trained, what year he was. No, I don't think that that's a fair assumption.

Q Now, the condition of bruxism as I understand it from questioning that Mr. Mazgaj gave of you, is this is something that develops over time, is that right?

A That is correct.

Q It's a long term problem?

A It is a chronic problem. We can't use the term long term, it really is a chronic problem, more so than if

I used the term long term I will retract it, I will put in chronic.

Q Well that is a problem that develops over time?

A That is correct, Sir.

Q Doctor, the only evidence that you have of bruxism in Kevin's case is your observation in your office on August the 4th, 1994, isn't that correct?

A That is my observation, plus the observation of Doctor Hendricks that says clenched, yes.

Q Well Doctor, clenched just --

A My, my, my observation, to me is the most important observation that there is.

Q Well, my question for you Sir, clenching is different than bruxism, isn't it?

A The two go simultaneously.

Q Well, but they're different ideas, aren't they, Sir?

A Yes.

Q In the dental profession?

A There is a modicum of difference, yes.

Q Well Sir, clenching is when the teeth are held tightly together, isn't that what clenching is, Sir?

A Usually when you hold the teeth tightly together, you do tend to grind.

Q Doctor, I'm, I'm just trying to understand it.

Clenching is when the teeth are held tightly together, that's the definition in the dental profession of clenching isn't it?

A That is correct.

Q Okay. And, bruxism, the definition is the grinding, which requires the movement of the teeth, is that not correct, Sir?

A Clenching you're not going to see unless you stay over the patient at night and watch him, because you don't do it during the day. I saw evidence of grinding.

Q Okay. But let's go back to my question. I just asked you to answer it?

A Okay. I've answered it.

Q I said to you, Sir, bruxism, that's the grinding, that's the movement of the teeth?

A That's correct.

Q Okay. And, that would be a night time habit, isn't that correct?

A It can be an any time habit. If it happens during the day he would probably recognize it.

Q Isn't it generally a nocturnal, that is a night time habit?

A I would say the greatest number of these are nocturnal habits, yes.

Q Doctor, when you told Kevin that you believed he

was, that he had evidence of bruxism, he said he'd never been told that?

A No, he didn't say that. He said he was unaware of it.

Q He said he was unaware. He'd never heard of the term, bruxism, isn't that correct?

A He said, he said he was unaware of it. He didn't say he never heard it. He said he was unaware of it.

Q He said he never heard of that?

A No, no.

MR. MAZGAJ: Object, Dean. Look, you asked a question, he gave you your answer.

A We're picking on terms now. He said he was unaware of it. I can't tell you any more than that, geeze.

Q Doctor, in terms of the things that you reviewed to arrive at an opinion, you didn't talk to Kevin's wife Judy, did you?

A No, I did not, Sir.

Q You didn't interview other people that he associates with during the day like co-workers?

A No, I did not.

Q If we wanted to know what someone does in the night time, we'd either have to talk with the person that sleeps with him or put him in a sleep tank, wouldn't we?

Isn't that correct?

A Yes.

Q Doctor, you didn't review the testimony that, that Kevin gave under oath to Mr. Mazgaj?

A No, I didn't see that testimony.

Q You didn't review the answers he gave Mr. Mazgaj to written questions they call interrogatories?

A I didn't see that report, Sir.

Q You, you didn't call Doctor Hendricks on the telephone, did you?

A No, I did not.

Q You, you had a copy of Doctor Hendricks x-rays, did you not?

A *Yes,* I did.

Q Okay. And, you didn't contact anybody at Valley Dental to get more detail on Kevin?

A No, I did not.

Q And, you didn't review the photographs that, that were done of the damage to the vehicle?

A I did not see those photographs. You already asked me that.

Q Doctor, if, well, Doctor, you gave in response to some questions some testimony with regard to grinding done by a dentist. Dentists do grind teeth, don't they?

A They do.

Q And, in terms of the amount of grinding done by Doctor Hendricks, you haven't done anything to determine what grinding or how much he did on Kevin's teeth, have you?

A I don't see any correlation between the amount of grinding he did and the amount of bruxism that I saw.

Q But, bruxism is evidenced by grinding, abrasion to the teeth, isn't that correct?

A Totally, totally different type. We said before that selective grinding that a dentist does is spot grinding. No dentist is going take any kind of instrument and lay the surfaces flat that bruxism can. You just don't do it.

Q Doctor, you didn't call Doctor Hendricks to find out what kind of grinding he did?

A No, I didn't, Sir. No, no, no, I told you I didn't call him.

Q And, you didn't examine the models that were done of Kevin's teeth, did you?

A No, Sir.

Q If you wanted to know the condition of Kevin's teeth prior to any grinding done by Doctor Hendricks, it would be appropriate to examine the model he did of his teeth, wouldn't it?

A I told you I did not see the models.

Q Okay. Doctor, if there, if there is no evidence of grinding prior to the sign, the signs and symptoms of temporomandibular problems that Kevin had, then your opinion on bruxism would be incorrect, isn't that true?

A No, Sir. My opinion on bruxism is not incorrect. Don't try to put words in my mouth.

Q No, Doctor, I, your opinion assumes and depends on the fact that bruxism existed prior to this accident, doesn't it?

A That is correct, Sir.

Q And, if there is no evidence of bruxism -- Let me put it this way, Doctor. If bruxism didn't exist prior to the accident, if grinding and evidence of abrasion didn't exist prior to the accident, then your opinion is not correct?

A No, Sir. It is not totally. You're putting words in my mouth and you're twisting them, and that is not correct, Sir.

Q Maybe I'm, I'm doing a poor job of asking the question?

A No, you're doing a very good job. You're just twisting my words.

Q Your opinion assumes that there was grinding and abrasion to Kevin's teeth before this accident ever occurred?

A That is correct, Sir.
Q And, if, if that's not so, then your opinion would not be valid?
MR. MAZGAJ: Objection.
A But, it is so.
Q Okay. I have no further questions on cross.
DURING REDIRECT EXAMINATION BY MR. FRANK MAZGAJ:
Q Doctor Bell, I have just a very few questions for you. First I guess in fairness to you, Doctor, I'm going to hand you Defendant's Exhibit 9. Is that in fact the report which you prepared in this case?
A Yes, it is.
MR. YOUNG: I'm going to, just a minute, Mr. Mazgaj. Let me enter an objection to the receipt of this as an Exhibit in any manner.
Q And Doctor, is it in fact unusual for a treating physician or any physician for that matter to dictate notes instead of writing them down?
A No, it's not unusual at all.
Q In fact, Doctor, that's common practice, isn't it?
A It is the practice.
Q Now Doctor, your six pages of single spaced notes concerning your examination and review of this case are set

forth in Defendant's Exhibit 9, correct?

A That is correct, Sir.

Q And, those were provided to Mr. Young well before today, correct?

A That is correct, Sir.

Q And Doctor, your notes from this one visit, they're in fact two to three times longer than all of the medical records that have been kept concerning Mr. Akers for the last nine years, isn't that true?

MR. YOUNG: Object to that.

A I -- Probably.

Q Doctor, in reviewing Doctor Hendricks' notes, with all of the treatment that he rendered for Mr. Akers, are they even half as long as your six pages of single spaced notes?

A No, Sir. Those are all one line entries.

Q Now Doctor, let's talk a little bit about what Mr. Young asked you and what emergency room physicians know. Doctor, you've reviewed emergency room records, haven't you?

A For many years.

Q If somebody gets hit in the jaw, have you ever seen jaw pain in a medical record?

A We see it all the time.

Q Does it, do you need somebody who's an expert in

TMJ to put down jaw pain in a medical record?

A No, you don't need an expert.

Q Do you often times see EMS personnel, fire department personnel, nurses, emergency room physicians include that?

A They almost all include it.

Q Now Doctor, you were asked about your deposition a little bit today, and Doctor, before you sat down here, you had never seen this, had you?

A No, I had not, Sir.

Q And, in fact you were asked some question by Mr. Young where he did, for the members of the jury, point out one answer that you gave concerning neck pain and TMJ, is that correct?

A That is correct, Sir.

Q Well Doctor, he didn't ask you about the question and answer that you gave on page 19 in all fairness to the jury, did he?

MR. YOUNG: Just a minute. I object. This is improper. Ask him a question and, just a minute, Mr. Mazgaj. The, the proper form of the question is not being asked and I object to this.

Q Doctor, you can please turn to page 19 of your deposition, please?

A Yes, Sir.

Q And Doctor, in fact, were you asked yesterday by Mr. Young --?

A I knew that there was something else there, yes. It says pain radiating depending -- My answer was, with pain radiating into the neck, depending on how far into the neck it would go. It limits itself to the area of the face.

Q And, what do you mean by that, Doctor?

A That if you have an injury, and you have tempero-mandibular joint pain, that that pain isn't going to go down. This is the neck down here, too. No, you're not going to feel it down here in the neck. You may feel it up here in the neck, but there's a long ways from here to here, and you can't take the neck as a stock answer.

Q And Doctor, the type of face and neck pain that you're talking about, does that differ from whiplash type cervical strains?

A Oh, totally and completely.

Q Now Doctor, again in all fairness to you, Mr. Young asked you about, something about dentists being able to diagnose bruxism and do they do that all the time. Well Doctor, I'd ask you to go to page 26 of your deposition?

A Yes, Sir.

Q And Doctor, can you read for the members of the

jury what answer you gave yesterday in response to Mr. Young's questions, starting at line 18?

MR. YOUNG: Now, I'm going to object to it. This is your witness Mr. Mazgaj. If you have a question you want to put to him, go ahead and ask him.

Q You can answer, Doctor?

A Okay. Well the, it has been asked, so the family dentist ought to look for evidence of bruxism, and my answer was, he should do that. If there is bruxism it should be dealt with. That's the question.

Q Okay. What's your next question?

A My answer is, it should be, but it isn't always.

Q And Doctor, when you say it isn't always, what do you mean?

A I mean that sometimes the members of my profession, as dearly as I love them, don't take the time to look for all these things. I'd like to think we're perfect, but we're not.

Q Doctor, is it unusual for somebody to have good oral hygiene but still experience bruxism?

A Oh, absolutely. There's no correlation between good oral hygiene and bruxism.

Q And, in fact Doctor, is that what you saw with respect to Mr. Akers in August of this year?

A Yes, it is, Sir.

Q Doctor, that's all I have. Doctor, when you express opinions to members in your community or people in general, do you always have a citation to some literature to support your opinion?

A Doctor Ron Bell's book of 40 years of experience.

Q Thank you, Doctor. That's all I have.

DURING RECROSS EXAMINATION BY MR. DEAN YOUNG:

Q Doctor Bell, Mr. Mazgaj has shown you the letter that you wrote, and I forget the Exhibit Number that he put on it. At any rate I'll just, I want to ask you about it. This letter is the letter that you wrote to Mr. Mazgaj, the Defense lawyer, at his request, to, to give him an opinion on Kevin Akers, isn't that correct?

A That is correct, Sir. Absolutely.

Q And, that letter, you never shared with Kevin Akers your opinions, did you?

A Kevin never asked for it.

Q Well, because the reason was that he was here to be examined at the request of the Defense lawyer, isn't that correct?

A If he had, well, it was shared with you, and if Kevin Akers would have like to have had it, I would have been very happy to give it to Kevin Akers.

Q Okay. Doctor --

A There's nothing private about it.

Q This, this isn't the form that your records take in the usual course of practice as a dentist and maxillo-facial surgeon, is it?

A I, I don't understand what you're trying to get at, Sir?

Q In the, Doctor, in the usual course of your business as an oral and maxillofacial surgeon, you create records of examination, isn't that correct?

A That is when I am a treating doctor.

Q Okay. I don't have anything further, Doctor Bell.

MR. MAZGAJ: Nothing, Doctor. Thanks for your time today.

OPERATOR: Doctor, it is your right to review the videotape in its entirety. Do you wish to waive that right?

DOCTOR BELL: I waive that right.

OPERATOR: Can we have an agreement by Counsel to waive the filing requirement of the videotape?

MR. MAZGAJ: Yes.

MR. YOUNG: Yes.

OPERATOR: We're off the record.

END OF TESTIMONY AS WAS GIVEN BY DOCTOR RONALD BELL.