

#569

1 THE STATE OF OHIO, )  
2 COUNTY OF CUYAHOGA: ) SS: JAMES J. CARROLL, J.

3  
4 IN THE COURT OF COMMON PLEAS  
5 (CIVIL DIVISION)

6 WENDY WILLIAMS PERIN, )  
7 Plaintiff, )  
8 vs. ) Case No. 153064  
9 BELLA LEYBOVICH, )  
10 Defendant. )

11  
12 --- o0o ---

13 EXCERPT OF PROCEEDINGS  
14 (Cross-examination of Dr. Kenneth Callahan)

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16 APPEARANCES:

17 On Behalf of the Plaintiff:  
18 THOMAS O. CALLAGHAN, ESQ.  
19 On Behalf of Defendant:  
20 DAVID G. BORLAND, ESQ.  
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23  
24 Thomas C. Walters  
25 Official Court Reporter  
Cuyahoga County, Ohio

SCANNED

1 WEDNESDAY AFTERNOON SESSION, OCTOBER 18, 1989

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3 \* \* \* \* \*

4  
5 THE COURT: Mr. Callaghan?

6 MR. CALLAGHAN: Thank you, your  
7 Honor.

8 CROSS-EXAMINATION OF KENNETH CALLAHAN

9 BY MR. CALLAGHAN:

10 Q Good afternoon, Doctor. My name is Tom  
11 Callaghan?

12 A Hi, Mr. Callaghan. How are you?

13 Q I spell my name with a G and you don't?

14 A Right. Your parents could spell better than  
15 mine.

16 Q You had at one time?

17 A That's right.

18 Q Doctor, you and I first met in your office  
19 January 7th of 1987 on the time of your exam of Wendy  
20 Perin, right?

21 A Right. That's correct, Mr. Callaghan.

22 Q Do you recall my being present at that time?

23 A I do.

24 Q And I was present during the time type of your  
25 recording of notes of the history that Wendy gave,

1 was I not?

2 A That is correct, Mr. Callaghan.

3 Q And, Doctor, you didn't tape-record that  
4 session, did you?

5 A No.

6 Q Do you remember, we were both taking notes? As  
7 I remember, my yellow pad and your yellow pad?

8 A Yes.

9 Q I see you're looking at your notes?

10 A Yes.

11 MR. CALLAGHNA: Your Honor, may I  
12 have a moment to look at Dr. Callahan's notes?

13 And, Doctor, have you brought your  
14 complete chart with you today?

15 THE WITNESS: I have, indeed,  
16 Mr. Callaghan.

17 THE COURT: Mr. Borland?

18 MR. BORLAND: That's fine.

19 MR. CALLAGHAN: May I approach the  
20 witness?

21 THE COURT: Surely.

22 MR. CALLAGHAN: If the Court  
23 please, this may take a minute for me to  
24 review.

25 THE COURT: All right.

- 1 Q Thank you, Doctor?
- 2 A Thank you, Mr. Callaghan.
- 3 Q And those are the only notes of that meeting  
4 that you have, is that correct, Doctor?
- 5 A That is correct, Mr. Callaghan.
- 6 Q And I take it it's your practice, Doctor, not  
7 to ever tape-record those sessions, is that true?
- 8 A That is true.
- 9 Q All right. And you don't tape-record those  
10 sessions to this day, do you?
- 11 A No.
- 12 Q Defense medicals, what we call defense  
13 medicals?
- 14 A I call them independent medical examinations.
- 15 Q All right. Were you satisfied, Doctor, and are  
16 you now satisfied that the notes that you took that  
17 day included all that you thought was relevant about  
18 what Wendy told you?
- 19 A Yes.
- 20 Q All right. And you were aware then, were you  
21 not, that an arthrogram procedure had been performed  
22 a month and a half earlier?
- 23 A Yes.
- 24 Q Had that been performed to one or both sides of  
25 her jaw?

1 A I never saw the copy of the arthrogram, but I  
2 believe it was done on both sides.

3 Q And Wendy told you at that visit, January 6,  
4 1987, in fact, that she had just had the arthrograms  
5 performed, didn't she?

6 A Yes, I have it here.

7 Q And did she tell you that they were positive  
8 findings on the arthrogram at the time?

9 A I don't recall that she had, but I would look  
10 at the arthrogram ordinarily anyway.

11 Q That is not included in your notes as to what  
12 she might have said about the results of the  
13 arthrogram, is it?

14 A It's implied. Dr. Lewis sent me to University  
15 Hospitals for arthrograms. The next sentence, Lewis  
16 said I need surgery.

17 If it was a negative arthrogram she  
18 wouldn't need surgery.

19 Q When she told you that Dr. Lewis had talked  
20 about surgery, if you, in fact, believed her, given  
21 your regard for Dr. Lewis, you would have believed  
22 that she probably would have surgery at that time, is  
23 that not true?

24 A Yes.

25 Q Okay. Doctor, tell me if you will, why at

1       that time you ordered a panorex X-ray?

2       A       Well, a panorex X-ray, Mr. Callaghan, will show  
3       the ball and socket. It will show whether there's  
4       any erosion or nibbling away, osteonecrosis of the  
5       bone.

6                   It will show a considerable amount of  
7       the bone.

8       Q       But it won't show anything about the inside of  
9       the temporomandibular, would it?

10      A       No.

11      Q       And you knew at that time, based upon your exam  
12      and based upon Wendy's report, again if you believed  
13      her, that the arthrogram had been performed and  
14      Dr. Donald Lewis was considering surgery, isn't that  
15      true?

16      A       Yes.

17      Q       Were you looking for something else from a  
18      treatment standpoint, having done those panorex  
19      X-rays?

20      A       From a diagnostic standpoint, Mr. Callaghan, if  
21      there is arthritic changes or if there are bone  
22      changes a flattening of the condyle, you can learn a  
23      lot from a panorex.

24      Q       You knew at that time that the panorex X-rays  
25      were not going to show you anything with respect to

1 her internal derangement of the temporomandibular  
2 joint itself, correct?

3 A That it does not show soft tissue.

4 Q Right. Now, October 12, 1987 you wrote that  
5 letter to Mr. Borland's law firm as you testified?

6 A Yes.

7 Q And the purpose of that report is to evaluate  
8 Mrs. Perin in terms of one, her injury, and whether  
9 or not her injury was caused by the accident, fair to  
10 say?

11 A That is correct.

12 Q And that report, including the signature page,  
13 consisted of ten typewritten pages?

14 A That is correct, Mr. Callaghan.

15 Q That report as you testified was written ten  
16 months after that one visit Wendy and I made to your  
17 office in January of 1987?

18 A Partly on that and also all of the other  
19 reports I have before me.

20 Q As far as the history is concerned, you had to  
21 look back into your notes there and reconstruct what  
22 Wendy had told you based upon your notes?

23 A That's correct.

24 Q Because you didn't have any tape-recording  
25 device at the time?

1 A No.

2 Q Doctor, isn't it fact when Wendy and I visited  
3 you, and we were both there taking notes, that Wendy  
4 told you that she could -- she could eat, but that  
5 she had -- she couldn't bite, couldn't open her mouth  
6 for something big, but that she was eating soft foods  
7 at that time?

8 A Well, I don't -- I don't take notes,  
9 Mr. Callaghan. If you notice these are all long hand  
10 sentences. It's a narrative form. It's not just  
11 notes, so I don't have that in my notes.

12 I knew she could not open very wide, so  
13 I think it's implies. It only opened 35 millimeters  
14 at that time.

15 Q In your report of October 12, 1987, who is this  
16 Dr. Gelb? Is he well known as an authority?

17 A I have his textbook here. Yes, I believe he's  
18 well known as an authority.

19 Q And this is the third addition or second  
20 addition?

21 A Second addition.

22 Q Has he been he recognized for sometime as an  
23 authority on the subject of temporomandibular joint  
24 dysfunction?

25 A Yes, he is one authority, yes.



1 Q And there are other authorities upon whom you  
2 rely? Of course, you testified?

3 A That is correct.

4 Q And how long has he been recognized as an  
5 authority in your view, Doctor?

6 A I don't know specifically, Mr. Callaghan. I  
7 would think in the '80's. He published the book in  
8 '85, so we certainly recognized it since then.

9 Q Had he published before that time?

10 A I don't know.

11 Q As a matter of fact, up until three and a half  
12 years ago you had never heard of Dr. Gelb, isn't that  
13 right, Doctor?

14 A I have to think about that. I don't know  
15 whether I had or not. When his book came out I  
16 bought it, and that was in '85. I certainly heard of  
17 it then.

18 Q Dr. Gelb has been recognized as an author, at  
19 least and writing textbooks for a long time before  
20 1985, isn't that true?

21 A I said I don't know, Mr. Callaghan.

22 Q So you didn't know him until recently, is that  
23 correct, Doctor?

24 A I still don't know him.

25 Q You just knew him as of three years?

1 A I don't know him now. I just know what he  
2 writes.

3 Q Now, Doctor, on page seven of your report, and  
4 could you pull that out, dated October 12th? Are you  
5 on page seven?

6 A Yes.

7 Q Under discussion, I wonder if you would read  
8 along with me? "Trauma is rarely listed as one of  
9 the prime <sup>ities</sup> ideological factors involved in language  
10 standing and chronic temporomandibular joint  
11 dysfunction.

12 This applies particularly to trauma in  
13 which the patient did not strike any object at the  
14 time of the traumatic incident with her jaws, face or  
15 teeth."

16 And you made that statement then?

17 A Yes.

18 Q October of --

19 A Trauma is meant to understand in this context,  
20 external trauma.

21 Q As opposed to internal trauma which you  
22 discussed --

23 A Yes.

24 Q -- on direct?

25 A Yes.

1 Q Right. Is that still your view today?

2 A That it is rare?

3 Q It's rarely a factor <sup>etc</sup> ideologically in the cause  
4 of TMJ dysfunction?

5 A I believe that it is a factor, but it's well  
6 down on the list.

7 Q Well down on the list?

8 A Yes.

9 Q And that is in terms of being <sup>an etc</sup> and ideological  
10 factor with temporomandibular joint dysfunction?

11 A Yes.

12 Q That is opposed to myofascial pain dysfunction?

13 A No, not as opposed to -- as opposed to the  
14 other causes of temporomandibular joint.

15 Q Let's get our definitions straight, shall we?

16 A Please do.

17 Q I'm going to try. Myofascial pain dysfunction  
18 is something separate and apart, is it not, from  
19 internal derangement?

20 A Absolutely.

21 Q Okay. And both of those disorders, if you  
22 will, can be subheadings of the general category of  
23 TTMJ dysfunction, fair enough?

24 A That's correct.

25 Q Now, you would agree, of course, that trauma is

576  
1 rarely an ideological factor in the cause of  
2 myofascial pain dysfunction, correct?

3 A Well, I'll have to think about that. I didn't  
4 say that in the report.

5 Q I'm asking to you breakdown the statement,  
6 because it's a general statement, is it not, Doctor?

7 A Yes.

8 Q And it includes both myofascial pain  
9 dysfunction and internal derangement and I want to  
10 break it up.

11 Are you referring in that statement  
12 more to myofascial pain dysfunction which Wendy did  
13 not have, or are you are referring just as much and  
14 with just as much force to internal derangement?

15 A In this statement I'm saying that the overall  
16 causes of temporomandibular disorder, whether it's  
17 MPD or internal derangement, that of the overall  
18 causes, I believe that trauma is well down on the  
19 list of common causes.

20 Q All right. And you would further agree that  
21 that statement insofar as it relates to MPD is  
22 irrelevant to Wendy's case because at the time, at  
23 the time of the writing of the report you already  
24 knew she had internal derangement and that was the  
25 subject of the report and the subject of this case,

1 isn't that true?

2 A I don't break down between MPD and internal  
3 derangement. In this particular case she has  
4 internal derangement.

5 Q Do you agree it might not have been a bad idea  
6 when you wrote this, because it was specifically  
7 about this young woman that we might have couched the  
8 phrase in terms of what she actually had, not another  
9 dysfunction, MPD?

10 A I don't really know what you are getting to,  
11 but --

12 Q All right. Well, admittedly, Doctor, I'm a  
13 little clumsy. This is my first TMJ case and please  
14 bear with me.

15 What if the statement read like this,  
16 trauma is rarely listed as one of the prime  
17 ~~ideological~~<sup>etc</sup> factors involved in internal derangement  
18 of the temporomandibular joint?

19 Would you agree with that statement?

20 A I probably would agree to that, Mr. Callaghan,  
21 yes.

22 Q You would agree also that trauma is rarely  
23 related to causing internal derangement, intrinsic  
24 trauma?

25 A Yes, that's correct.

1 Q And understand that Dr. Lewis and Dr. Goldberg  
2 completely disagree with you on that topic?

3 A Yes.

4 Q And there are many, many others that, in fact,  
5 disagree with you, isn't that so, on that subject?

6 A No.

7 Q They are two of the only people that you know  
8 of in this community, in your field of oral and  
9 maxillofacial surgery that disagree with you on that  
10 topic?

11 A Well, I haven't asked everybody, Mr. Callaghan,  
12 but the ones I asked pretty much agree with me.

13 I added an appendage to that statement.

14 Q Please feel free --

15 A If internal trauma did cause it, then why don't  
16 all the Brown's football players have it? Why don't  
17 boxers have it, and why is it it's restricted so much  
18 to young female sales representatives?

19 Q I'll answer the question for you, but we'll get  
20 to that in a minute. Ligaments. The ligaments  
21 contained inside the intracapsule inside the joint of  
22 the jaw, they are considerably smaller than the  
23 ligaments in the knee and the elbow.

24 You would agree with that, would you  
25 not?

1 A They are smaller, that's true.

2 Q And you said that you have done some surgery,  
3 some TMJ surgery in the past?

4 A Yes.

5 Q That wasn't by any means a major component of  
6 your practice, was it, Doctor?

7 A No, not in recent years.

8 Q Now, you answered Mr. Borland's question that,  
9 yes, indeed, you have written reports for his law  
10 firm, Meyers, Hentemann, Stevens, and Rea, and you  
11 have written a number of reports for them over the  
12 years?

13 And could you estimate approximately  
14 how many reports you have written for Mr. Borland's  
15 law firm, say in the year 1988, and I'm saying with  
16 respect to personal injury cases of this type, TMJ,  
17 alleged TMJ injuries, if you will?

18 I'll use the word allege, and  
19 accidents?

20 A I have a chart. I could go home and tell you,  
21 but I don't have that accurate of a number here.

22 Q Would it be more than 20 in the last year?

23 A Probably might be a close estimate -- around  
24 there.

25 Q And those reports were principally concerned

1 with he people who allegedly suffered injuries to the  
2 TMJ joint as a result of accidents, correct?

3 A Yes.

4 Q And, likewise, do you also write reports for  
5 the law firm of Gallagher, Sharp, Fulton and Norman?

6 A Infrequently, but some.

7 Q And, in addition to writing reports for that  
8 law firm and Mr. Borland's law firm, you write  
9 reports to the clients directly, do you not, before  
10 the matter gets to court -- so to speak, before a  
11 lawsuit is filed?

12 A I don't write letters to clients, no.

13 Q Clients of Mr. Borland's law firm, you do not  
14 write letters to them?

15 A No, I write -- no. I write them to the law  
16 firms when they ask me, but a number of these, I  
17 have. Yes, there is a causal relationship and I so  
18 report that.

19 And others I report no, there is not a  
20 causal relationship. I'm sorry. Go ahead.

21 Q You have already told us that you are no  
22 stranger to the courtroom?

23 A That is true.

24 Q And you are comfortable in this surrounding,  
25 would that be fair to say?



1 A Yes.

2 Q You are quite obviously appearing here live  
3 today, right?

4 A Yes, it's me.

5 Q Quite obviously I said?

6 A Yes.

7 Q And you're not on videotape?

8 A No. Nope, you and me.

9 Q *Un* Like Dr. Lewis and King, in fact, you make it  
10 your practice to appear live for courtroom testimony,  
11 don't you?

12 A Yes.

13 Q Fair to say you enjoy this experience?

14 A Yes, I think so.

15 Q You get a kick out of it?

16 A Better than being home watching television,  
17 yes.

18 Q When you have to come and testify live, Doctor,  
19 does that pose a problem with your schedule with  
20 patients?

21 A Well, it does and it doesn't, I'll answer that.  
22 I have a partner and he's really a neat guy, but he's  
23 gone. He takes long vacations, like being in  
24 practice with Marco Polo. He's dressed and he's  
25 gone.

1 But when he's there we have an  
2 arrangement whereby he takes over the practice and I  
3 come to court.

4 Q He's there now?

5 A Yes.

6 Q He's there today?

7 A Yes.

8 Q You are pretty much on call if Mr. Borland's  
9 law firm or other defense law firms for whom you  
10 work, if they call you, you can pretty much make  
11 arrangements to be at the courthouse at a certain  
12 time, is that fair?

13 A Yes, or plaintiffs' attorneys just as well.

14 Q Doctor, come on. What percentage of your  
15 testimony is for plaintiffs' lawyers?

16 A I write many letters which I don't testify for.

17 Q You don't testify for, though?

18 A No.

19 Q You write plenty of letters for plaintiffs'  
20 lawyers, is that what you are telling us?

21 A Yes.

22 Q How many is plenty, Doctor, in the last year?

23 A I would say in the last month, I have written  
24 three and one will go to court with Paul Kaufman.

25 Q Doctor, you admitted on direct, did you not,

1 that cervical whiplash injury can cause internal  
2 derangement?

3 A Yes.

4 Q You did say that?

5 A Yes.

6 Q And that's been known for sometime, has it not?

7 A Yes.

8 Q I mean, you won't find a treatise either by an  
9 author that Dr. Goldberg recognizes or that you  
10 recognize as an authoritative source that is going to  
11 say the opposite, that cervical whiplash trauma does  
12 not cause internal derangement of the  
13 temporomandibular joint. That is fair to say, too,  
14 isn't it?

15 A I don't know of such an article -- possible  
16 that it's published.

17 Q Something that you have read widely?

18 A Yes.

19 Q And fact is, cervical whiplash trauma can and  
20 will cause temporomandibular joint dysfunction  
21 specifically internal derangement?

22 A Yes.

23 Q And that's been recognized by Dr. Gelb going  
24 back to 1985, isn't that true?

25 A Yes.

1 Q And frankly, it's been recognize by the  
2 authorities for sometime predating 1985, isn't that  
3 right?

4 A That may well be.

5 Q Yeah. So when did you change your mind,  
6 Doctor? When did you finally come to the conclusion  
7 and start to agree with the rest of the experts that  
8 cervical whiplash trauma can, in fact, cause internal  
9 derangement, because that didn't used to be your  
10 opinion, Doctor?

11 A I suppose around 1985 or so.

12 Q Oh, I'll help you on that. And, again forgive  
13 me. With all do respect, I'm here to do justice for  
14 a young lady, and please --

15 THE COURT: Please,  
16 Mr. Callaghan, just questions.

17 MR. CALLAGHAN: I'm sorry, your  
18 Honor.

19 THE COURT: And the jury will  
20 disregard counsel's purpose for being here.

21 Strike it from your mind. It's  
22 stricken from the record.

23 MR. CALLAGHAN: Thank you, your  
24 Honor. Your Honor. I apologize.

25 Q I beg the Court's indulgence.

1                    Didn't you at one time in the last few  
2 years, Doctor, testify to the affect that a patient  
3 can no sooner suffer a whiplash trauma in the TMJ  
4 than you can have a whiplash of a tooth.

5                    That was a clever play on words. Do  
6 you remember saying that?

7            A        I may have.

8            Q        So you did change your mind?

9            A        Yes, back in -- there's an article that came  
10 out in the Journal of Oral Surgery in August of '87.

11           Q        I'm aware of that article, Doctor, and we'll  
12 get to that in a minute. That is also not quoted in  
13 Wendy's report.

14                    You wrote that report, Wendy's report  
15 October 12, 1987, and as I heard you say on direct,  
16 you read these journals every night and that journal  
17 came out in early August and that is the Journal of  
18 Oral and Maxillofacial Surgery, correct?

19           A        Yes, there's lot of things I didn't quote in  
20 Wendy's report.

21           Q        That's pretty much the bible to your  
22 profession, just as the New England Journal of  
23 Medicine is to the field of medicine, isn't that  
24 right?

25           A        No, that is not right, Mr. Callaghan. A bible

1 has words which are guaranteed to be true. A journal  
2 has words that are sometimes controversial.

3 Q It is as the name implies, it's the Journal of  
4 Oral and Maxillofacial Surgery. It's quite respected  
5 by members of your profession?

6 A Yes, absolutely.

7 Q Okay. And that was the first time when this  
8 article came out, I take it, this case study of 25  
9 patients who had suffered cervical whiplash trauma  
10 and then developed internal derangement.

11 That was the first time that you swung  
12 over to the other side that yes, in fact, cervical  
13 whiplash trauma extension/flexion injuries can cause  
14 TMJ internal derangement, is that fair to say?

15 A I don't think it -- Mr. Callaghan, I don't  
16 know. This remark about whiplash of the tooth -- you  
17 are quoting me out of context, and if I could see the  
18 rest of the letter maybe I would say fine.

19 Q It's not a letter, it's live testimony.

20 A Okay. Well, then to answer your question, I  
21 think -- I don't know when I was more amenable to  
22 cervical whiplash. I'm saying now --

23 Q Now, you are more amenable to --

24 MR. BORLAND: Let him finish his  
25 answer.

1 A Yeah. I don't that I was ever directly opposed  
2 to it. I don't know.

3 Q You certainly don't mention anything about  
4 recognizing the fact that a cervical whiplash injury  
5 can cause internal derangement in Wendy's report and  
6 that was written October 12th of 1987, isn't that  
7 true?

8 A Mr. Callaghan --

9 Q Isn't that true, you did not mention anything  
10 about whiplash trauma?

11 A That's true, because she didn't report it for  
12 four and a half months.

13 Q I'm asking when she reported it, Doctor. I'm  
14 talking about the mechanism that caused the injury,  
15 the type of accident that she was involved with.

16 What you do say in your report, though?

17 A The mechanism that you say caused the injury, I  
18 say doesn't.

19 Q I'm not talking about causing the injury  
20 necessarily, talking about the accident itself. And  
21 certainly by implication in that report you are  
22 suggesting to the evaluator of your opinion and the  
23 reader of your report that you must suffer a direct  
24 blow to the mandible, to the jaw, to the head, to the  
25 face, because you did say that in your report, did

1 you not --

2 A No.

3 Q Let's take out your report. Doctor, we'll come  
4 back to that.

5 Doctor, can you tell the jury, if you  
6 would, how long it's been that you have been giving  
7 expert testimony of this type?

8 A I don't know really. Eight years, maybe ten  
9 years.

10 Q And I believe you testified that you and  
11 Dr. Goldberg are good friends?

12 A Yes.

13 Q All right. And that you and Dr. Lewis are good  
14 friends?

15 A Yes.

16 Q And that both you and Dr. Goldberg are on the  
17 faculty at Case Western Reserve?

18 A Yes.

19 Q As a matter of fact, Doctor, you don't really  
20 teach at Case Western Reserve University Dental  
21 School, isn't that true?

22 A That is true.

23 Q <sup>don't</sup> You teach in the classroom?

24 A I teach in the clinic, Clinical Assistant  
25 Professor. I teach in the clinic, but we give the



1 lecture at --

2 Q You are a Clinical Assistant Professsor?

3 A Yes.

4 Q And Dr. Goldberg is an Assistant Professor on  
5 the faculty, the teaching faculty?

6 A He gives lectures. Yes, he's head of the  
7 department.

8 Q When did you become an Assistant Professor?

9 A Associate Professor.

10 Q You are an Associate professor?

11 A I think 1978.

12 Q And Associate Professor is one step blow an  
13 Assistant Professor, isn't that right?

14 A I don't know.

15 Q You know that, Doctor, do you not. You have a  
16 title?

17 A I got one title. It's an Associate Clinical  
18 Professor and I have that since '78.

19 Q How often do you teach at Case Western Reserve  
20 University in the clinic, Doctor?

21 A Tuesday mornings, once a week.

22 Q Every Tuesday?

23 A Yes.

24 Q And what types of surgery do you teach?

25 A Primarily dental --

1 Q What?

2 A Dental, extractions and bone trims and  
3 biopsies, that sort of thing.

4 Q Extractions of wisdom teeth and how about the  
5 bones? I don't quite --

6 A Bone trim.

7 Q Bone trim?

8 A Yes.

9 Q You do some jaw surgery, too?

10 A Yes.

11 Q And that would involve wiring the jaws?

12 A Talking about the clinic or my practice?

13 Q In your practice?

14 A I do jaw surgery, of course, and jaw fractures  
15 and jaw fractures involves wiring the jaws, yes.

16 Q And you did say that you hold Dr. Lewis and Dr.  
17 Goldberg in very high esteem?

18 A Yes.

19 Q You would agree that both Dr. Goldberg and  
20 Dr. Lewis do an extensive amount of TMJ surgery?

21 A I don't know that Dr. Lewis does  
22 temporomandibular joint surgery. I know Dr. Goldberg  
23 does.

24 Q Dr. Goldberg does extensive arthroscopic  
25 surgery as well?

1 A Yes.

2 Q And you said Dr. Donald Lewis is a good friend  
3 of yours. Don't you, in fact, know that he does a  
4 very tremendous amount of open jaw internal  
5 derangement -- repair of the meniscus, repair of --

6 A I don't know that -- where the primary areas  
7 are done. They are done at Metro and University.

8 Q Would you also agree that Dr. Goldberg's  
9 talents as an oral and maxillofacial surgeon, and his  
10 expertise in the area of the TMJ and  
11 temporomandibular joint disorders, is recognized not  
12 only in Ohio, but outside of Ohio, as well?

13 A Yes.

14 Q Because Dr. Goldberg treats or teaches the main  
15 course, courses in temporomandibular joint  
16 dysfunction at Case Western Reserve Dental School,  
17 doesn't he?

18 A Yes.

19 Q When was the last time you taught in a  
20 classroom at Case Western Reserve?

21 A When I give -- I give a talk every Tuesday  
22 morning at the end of the session, and it's  
23 essentially a small classroom.

24 We talk on office emergencies and what  
25 to do in the case of a patient with a fast pulse,

1       slow pulse, various things that happen in the office.  
2       So I give little seminars each Tuesday.

3       Q       Doctor, have you published on the subject of  
4       TMJ?

5       A       No, I haven't, Mr. Callaghan, although I have  
6       one in the process of.

7       Q       The answer is that you have not?

8       A       No.

9       Q       Have you published in any other areas of  
10      surgery, Doctor?

11      A       Yes.

12      Q       Where would that have been?

13      A       I published on Pagett's Disease. I published  
14      on Pentrane anesthesia, on a disease of the kidney  
15      which causes jaw lesions. I have had four  
16      publications mentioned.

17      Q       Those have been published in the last ten  
18      years?

19      A       No.

20      Q       You haven't published anything in the last ten  
21      years?

22      A       No.

23      Q       And as a matter of fact, Doctor, you don't  
24      treat and manage temporomandibular joint patients, do  
25      you?

1 A I diagnose them and I see them --

2 Q Apart from diagnosing them, though, you don't  
3 actually treat them from the standpoint of their  
4 coming back on regular basis to see you?

5 A No. No, I would refer them if they need  
6 surgery.

7 Q To a dentist -- if they didn't -- I didn't mean  
8 to interrupt your testimony, but to a periodontist or  
9 dentist, isn't that true?

10 A Yes.

11 Q Now, Doctor, you testified I believe that  
12 you're chief of the department of oral and  
13 maxillofacial surgery at Mary Mount?

14 A That is correct, division of.

15 Q I'm sorry?

16 A I think it's a division.

17 Q I think you said that. Does anyone, in fact,  
18 perform TMJ surgery at Marymount?

19 A I don't believe so, nor do I believe it ought  
20 to be done --

21 Q I didn't ask that. It's a simple yes or no.

22 THE COURT: Please let the  
23 witness finish his answer.

24 A I don't know that. To my knowledge, I don't  
25 think anyone does temporomandibular joint surgery at

1 Marymount, no.

2 Q When you have a patient who requires TMJ  
3 surgery, to whom do you refer that patient, because  
4 as you testified, you don't do that surgery yourself?

5 A I have a feeling that not very many people need  
6 temporomandibular joint open surgery.

7 Q Let me rephrase that. For those patients whom  
8 you deem to need surgery of the temporomandibular  
9 joint, to whom do you send those patients?

10 A I'll answer that again, Mr. Callaghan. I don't  
11 believe that anyone needs temporomandibular joint  
12 surgery unless we are talking about arthroscopic  
13 surgery.

14 Arthroscopic, I would refer them to  
15 Dr. Thomas Henderson at Cleveland Metro.

16 Q Cleveland Metro?

17 A Yes.

18 Q So, apart from diagnosis, you do not treat  
19 medically any of your, any TMJ patients at the  
20 present time?

21 A At the present time, no.

22 Q As a matter of fact, you haven't in the last  
23 ten years, isn't that fair to say?

24 A Last seven years.

25 Q And you don't treat these patients surgically

1       either?

2       A       No.

3       Q       Have you at any time, Doctor, treated patients  
4       with TMJ dysfunction from a medical standpoint as  
5       opposed to surgery?

6       A       Yes, I used to.

7       Q       And that was prior to seven or eight years ago,  
8       is that right?

9       A       Yeah.

10      Q       Do you have in your practice currently,  
11      patients referred to you by others, other physicians  
12      or treating specialists for treating TMJ dysfunction?

13      A       Yes.

14      Q       What is that for, diagnosis?

15      A       Diagnosis, yes.

16      Q       Doctor, have you at any time ever done any  
17      surgery on a patient with internal derangement of the  
18      temporomandibular joint?

19      A       Yes.

20      Q       You have actually performed surgery?

21      A       Yes.

22      Q       Where would that have been?

23      A       Lutheran Hospital.

24      Q       That was many, many years ago, wasn't it?

25      A       Yes.

1 Q How many years, approximately?

2 A It would be before '73, but we did a lot of  
3 surgery in the '60's.

4 Q So it's fair to say, is it not, that the state  
5 of the art with respect to the understanding of the  
6 temporomandibular joint, its workings, the way it  
7 functions, the <sup>etio</sup>ideology or causes of damage to it,  
8 that that's changed quite a bit since the late '60's?

9 Is that true?

10 A That's correct.

11 Q Did you ever act as a lead surgeon in those  
12 cases?

13 A Yes.

14 Q And that was open jaw surgery?

15 A Yes.

16 Q Am I correct in understanding, Doctor, that  
17 your qualifications as an expert in this case, have  
18 primarily to do with your wide reading, your  
19 attendance at seminars and your attendance at  
20 lectures, is that right?

21 A No, I see a lot of TMJ patients in the office  
22 as I just explained to you, Mr. Callaghan, and we  
23 talk at great length, yes, talk about treatment,  
24 planning diagnosis, X-rays.

25 Q You diagnose TMJ patients clinically and --



1 A And radiographically.

2 Q Radiographically?

3 A Yes.

4 Q You don't perform arthrograms?

5 A No.

6 Q By the way, that is a painful procedure, isn't  
7 it?

8 A Yes.

9 Q So, let me rephrase it. Given the fact as we  
10 know now, you don't surgically treat and manage TMJ  
11 patients with internal derangement?

12 You don't medically treat them. You  
13 don't see them on a regular and continuing basis.  
14 All right. Notwithstanding, and <sup>do</sup> I understand your  
15 qualifications to testify in this case have to do  
16 with your wide reading, your attendance at lectures,  
17 attendance at seminars and seeing patients that have  
18 TMJ?

19 A Diagnosing them, yes.

20 Q Okay. But you don't diagnose them through  
21 arthrograms?

22 A No.

23 Q Have you ever lectured on the TMJ, other than  
24 to lawyers?

25 A Not recently.

1 Q You have, in fact, lectured to defense lawyers,  
2 lawyers who represent defendants in these type of  
3 cases, on the subject of TMJ, haven't you?

4 A I may have. I have been at seminars. Whether  
5 they are all lawyers or not --

6 Q Okay. Your Honor, I beg the Court's  
7 indulgence. (Pause.) I'm trying to find the correct  
8 report and I just found it.

9 Now, when you did an examination of  
10 Wendy on January 6th of '87, you found Wendy to be a  
11 person with normal dentition, isn't that correct?

12 A Yes.

13 Q You didn't find any wear facets that might be  
14 indicative of grinding?

15 A I didn't find any wear facets A, but, B, I  
16 don't think they are terribly significant.

17 Q I'm just asking if you found them?

18 A No.

19 Q Did you at the time of your examination note  
20 any parafunctional jaw habits of any kind upon your  
21 physical examination of Wendy?

22 A I don't see how you could note parafunctional  
23 jaw habits during an examination, no.

24 Q One way would be to see the wear facet. I  
25 suppose another way would be to see or perceive a

1 malocclusion, a biteproblem, isn't that true?

2 A That's not a parafunctional habit,  
3 Mr. Callaghan.

4 Q I'm sorry. It's caused by a parafunctional  
5 habit sometimes, is it not?

6 In any case, Doctor, you didn't find  
7 any malocclusions in Wendy's teeth either, did you?

8 A No.

9 Q Was there anything in her history that she gave  
10 you that suggests that she was a stressful or  
11 stressed-out person?

12 A No.

13 Q Now, Doctor, you talked about microtrauma  
14 before, I think, and that is internal --

15 A Yes.

16 Q That is internally induced trauma?

17 A That's correct.

18 Q As opposed to extrinsic trauma?

19 A Yes.

20 Q And as a matter of fact, those microtraumas,  
21 that would be as a result of parafunctional jaw  
22 habits, I suppose, that involves the stretching of  
23 the ligaments inside of the interior capsule of the  
24 joint, doesn't it?

25 A Yes.

1 Q And I think I understood you to say with that  
2 situation as opposed to direct extrinsic trauma that  
3 they will stretch to a point where eventually pain  
4 will occur?

5 A Yes.

6 Q And there is no telling, is there, when the  
7 pain will occur with those microtraumas internally?

8 A That's correct. I think Dr. Goldberg says it  
9 or Lewis says it very well. It goes from a click to  
10 a louder click to a click and pop that doesn't hurt,  
11 to a pop that does hurt.

12 Q And as a matter of fact, you said, I believe on  
13 direct, that when the jaw is opened too wide you can  
14 stretch the ligaments inside the capsule.

15 Isn't that true, whether you said it or  
16 not, is it ~~sure~~ true?

17 A Probably true, sure it is.

18 Q And, likewise, with a cervical whiplash injury,  
19 can you not stretch the ligaments inside the capsule  
20 without causing immediate pain?

21 A No.

22 Q Couldn't they be -- could they, in fact, be  
23 stretched minutely by a whiplash trauma?

24 A Yes, the same way that it could with an  
25 uncontrolled yawn, same way with a sneeze and the

1 same way it could with eating a Big Mac Burger.

2 Q And let's say that it takes, for example, and  
3 this might sound silly to you, Doctor, but bear with  
4 me.

5 A Okay.

6 Q We talked about these little microtraumas  
7 gradually building up where the ligaments are  
8 stretched far enough, I take it to the point where  
9 they lose their elasticity, their grip, and the disk  
10 would move anteriorly forward, right?

11 A Yes.

12 Q And it takes so many of those microtraumas to  
13 add up to a big trauma?

14 A Yes.

15 Q To enough stretching to accomplish that?

16 A Yes.

17 Q Now, is it not possible, Doctor -- am I boring  
18 you? I'm sorry?

19 A No, keep talking --

20 Q Is it not possible to have stretching as a  
21 result of cervical whiplash that doesn't tear off the  
22 meniscus, it doesn't rip it apart, but it stretches  
23 it just enough, it stretches those avascular  
24 ligaments on both sides such that you wouldn't  
25 experience pain at the time of the accident or

1 immediately thereafter?

2 A If you're talking specifically in this  
3 individual's case or generally --

4 Q We are talking about -- let's talk about  
5 generally first, then we'll talk about Wendy.

6 A Generally, it is possible for one act to give  
7 internal derangement.

8 Q Is it possible for one act not to create  
9 internal derangement, but to create a stretching of  
10 the ligaments such that maybe we skipped over about  
11 eight microtraumas, but we will needed another eight  
12 to get to the final trauma, the final slip?

13 A In the case of Wendy she already had internal  
14 derangement, as I explained to you, in 1984. And to  
15 answer your other question, can it skip over, if it  
16 skips over that far it's a pretty painful injury.

17 That is like opening too wide or that  
18 is like doing something, oh, my gosh, what did I do  
19 to my jaw? It hurts.

20 Q Let's go ahead. You said that Wendy had  
21 internal derangement because she had clicking back in  
22 '84?

23 A Crepitus, yes.

24 Q Let's go back to that prior clicking before the  
25 accident, and, Doctor, take a look at your notes

1 because I couldn't understand it myself in reading  
2 the report why you also report a click in '82 if  
3 Wendy told you not only did she have a click in '84,  
4 but she had a click in '82?

5 A Because it says in my notes in '82, but then I  
6 read Dr. King's report and it was in '84.

7 Q Then you, in fact, you include in the report  
8 she had a slight click in '82 and '84?

9 A Yes.

10 Q So you made mistakes?

11 A He may be incorrect. Probably '84. It's still  
12 the one episode. She reported it and --

13 Q And you have read through Dr. King's  
14 deposition, haven't you?

15 A I have.

16 Q The transcript?

17 A Yes.

18 Q And you know, as a matter of fact, that his  
19 testimony was that crepitus to him is that the  
20 general dentist meant any form of clicking, and  
21 further, that there were varying degrees of quote,  
22 "crepitus" to Dr. King.

23 You read that. You reviewed that with  
24 Mr. Borland?

25 A Yes.

1 Q But I take it that you are still standing by  
2 your reliance on what you saw in Dr. King's chart,  
3 crepitus in quotation, 2-84?

4 A Yes.

5 Q Would that clicking without pain, does that  
6 indicate internal derangement?

7 A Yes.

8 Q And that internal derangement is a TMJ  
9 dysfunction?

10 A If you got clicking you have internal  
11 derangement. That is the reason it clicks. It's  
12 sliding up and running over that little band on that  
13 displaced meniscus.

14 Q So a lot of people, I take it, in the general  
15 populous, generally without any other problems with  
16 their jaws, they have, in fact, have internal  
17 derangement if they have any clicking?

18 A That is correct. As a matter of fact, I just  
19 attended a seminar where they took 42 normal joints  
20 with people with no history of trauma, no history of  
21 clicking, no history of symptoms, and did an MRI and  
22 said they had 30 years of internal derangement --  
23 it's a very complicated subject.

24 Q That is a TMJ dysfunction. But if you have an  
25 internal derangement, that, doesn't necessarily cause



1 pain?

2 A That's correct.

3 Q It's when the derangement becomes more  
4 anteriorly displaced that it starts to cause pain,  
5 right?

6 A I'm sorry. I'm not sure about. I don't know  
7 what causes the pain. Other people have it for years  
8 and don't have pain.

9 Q ~~A~~ some people that have internal derangement  
10 versus others who have their discs farther forward,  
11 isn't that true?

12 A Right, but I don't know that there's a  
13 correlation between the further forward it gets and  
14 the more it hurts. I'm not sure of that.

15 Q Doctor, I don't remember if you would remember  
16 writing this letter, December 5th of 1988. It  
17 doesn't involve this case, but it's another case,  
18 opinion letter that you wrote to the firm of  
19 Gallagher, Sharp, Fulton and Norman.

20 And it's written under your heading  
21 there, Doctors Bell and Callahan, December 5th, 1988,  
22 and written to Mr. Singletary. Do you know him?

23 A Like a pen pal. I have written to him.

24 Q He's one of the lawyers at Gallagher's office?

25 A Okay.

1 Q You make a statement on page 11 of that report,  
2 Doctor, and I quote, opposite paragraph number three,  
3 "and the conclusion --

4 MR. BORLAND: Excuse me. Has he  
5 been provided a copy of this?

6 MR. CALLAGHAN: I'm not sure.

7 MR. BORLAND: Would you provide  
8 him a copy?

9 Q And there it says, and I quote, "I'm not  
10 convinced that the TMJ disorder includes popping and  
11 clicking alone." You said that, right?

12 A That's right.

13 Q Can you explain how that statement is  
14 consistent with your previous statement?

15 A An awful lot of people, as I explained, have  
16 popping and clicking and I think Dr. Goldberg and  
17 Lewis explained that to you, too.

18 If you have popping and clicking it's  
19 not necessarily TMJ disorder even though it's an  
20 internal derangement. Even though it's a, it's an  
21 anatomic finding, that has no significance.

22 If you don't have any pain you don't --  
23 it's a pathologic existence which does not need  
24 treatment.

25 Q What you are saying, I gather, is internal

1 derangement is not always a TMJ disorder?

2 A That's right.

3 Q I asked you before whether it was a TMJ  
4 dysfunction -- same thing?

5 A Okay.

6 Q So what you are saying, is that people can have  
7 a slight click as Dr. Goldberg and Dr. Lewis both  
8 testified -- in many, many people there is <sup>not</sup> a perfect  
9 synchronization of the TMJ, right?

10 A That's right.

11 Q And many of us, literally speaking, we have  
12 internal derangement. In fact, I suppose internal  
13 derangement so slight that you wouldn't even have a  
14 click. Is that fair to say?

15 A I don't know. I don't know.

16 Q Wendy had -- would you now acknowledge, based  
17 upon the charts that you reviewed, the arthrogram,  
18 and the University Hospitals surgery, she had a very  
19 serious internal derangement, did she not?

20 A Yes.

21 Q Yeah. I believe your testimony was earlier  
22 that you don't know what causes pain after a patient  
23 gets -- gets the discs sufficiently anteriorly  
24 displaced -- you <sup>don't</sup> know what it's caused by?

25 A I know what causes the pains. I didn't say I

1 don't know what causes the pain. I don't believe  
2 that any more anteriorly or any more lateral  
3 extension of a disc dislocation necessarily puts one  
4 patient in great pain and another patient goes along  
5 and pays no attention to it.

6 What causes the pain is the retrodisc.

7 Q The nerves and the blood vessels are exposed?

8 A Yes.

9 Q That is not the only pain that you can feel in  
10 the inside of the joint as result of internal  
11 derangement, is it? That is part of the pain?

12 A No.

13 Q Isn't it a fact that there is, in addition to  
14 that inflammation, that sensitivity that I think you  
15 are talking about, the retrodiscal pad, that their  
16 can be often, with internal derangement, bleeding  
17 into the joint spaces, and that in turn, along with  
18 the inflammation, can produce scar tissue?

19 A Yes, that's correct.

20 Q And the scar tissue itself isn't painful and  
21 neither is the process of the formation of the scar  
22 painful, isn't that right?

23 A Yes.

24 Q The scar tissue becomes painful, sufficiently  
25 painful, when enough scar tissue develops such that

1 movement of the jaw, microtears, if you will, tear up  
2 the adhesions and cause pain in the case of an  
3 internal derangement?

4 A But the disc is still coming from the disc  
5 area.

6 Q But that takes some time to develop after the  
7 disc has gone forward in some cases, doesn't it?

8 A Correct, but it starts with the click as I  
9 stated.

10 Q Let's go back to --

11 THE COURT: Let's take a  
12 recess. Ladies and gentlemen, you are not to  
13 discuss this case among yourselves. Do not  
14 permit anyone to discuss it with you or in your  
15 presence, nor form any opinion concerning this  
16 case.

17  
18 (Thereupon, a short recess was had.)  
19

20 Q Doctor, do you have your report in hand,  
21 October 12, 1987?

22 A I do.

23 Q I direct your attention to the top of the page,  
24 actually about a quarter of the way down, at the end  
25 of the first paragraph?

1 A What page?

2 Q Page four. I'm sorry if I didn't mention that.  
3 The last sentence -- well, let's go to the previous,  
4 so we can put it in context.

5 You're commenting here, are you not,  
6 about Dr. Brooks' orthopedic evaluation of Wendy,  
7 Dr. Brooks' being the defendant's expert in this  
8 case, isn't that true?

9 A Yes.

10 Q And at that time you were reviewing his chart  
11 or his report as part of your ability to evaluate  
12 Wendy's TMJ problem, isn't that right?

13 A Yes.

14 Q All right. And read along with me, Doctor, if  
15 you would, and we are referring now, are we not, to  
16 Dr. Brooks' opinion letter such as the opinion you  
17 wrote.

18 Now, in his letter to Mr. Borland,  
19 Dr. Brooks has a one paragraph summary in his letter  
20 in which he states in the early part of 1986 -- we  
21 know it was 1985, December, that in the early part of  
22 1986 Mrs. Perin consulted Dr. King the dentist  
23 because of continuing jaw pain.

24 He concludes that paragraph by stating  
25 that she was referred to Dr. Lewis and he discussed

1 surgery with her.

2 These are Dr. Brooks' words that you  
3 are paraphrasing, I take it, right?

4 A That's correct.

5 Q " He makes no other comment about her alleged TMJ  
6 complaints, nor apparently did Mrs. Perin bring any  
7 complaint to Dr. Brooks' at the time of her  
8 examination on April 13, 1987 of TMJ dysfunction or  
9 complaint."

10 Now, Doctor, this, as we know, this  
11 report was written October 12 of '87, at a time when  
12 you knew the surgery had already been performed on  
13 Wendy, right?

14 A Yes.

15 Q And she had a serious enough internal  
16 derangement problem to necessitate surgery and that  
17 surgery gave her relief certainly by the time you had  
18 written this report?

19 A Yes.

20 Q You knew that because the surgery was  
21 accomplished in June of 1987?

22 A Yes.

23 Q There are two things that concern me, Doctor.  
24 He makes no other comment about her alleged TMJ  
25 complaints."

1                   Why did you say "alleged", Doctor? At  
2 that point, Doctor, you knew as well as we know today  
3 they weren't "alleged." She had complaints and it was *her*  
4 real injuries that necessitated surgery.

5                   Why did you say allege?

6           A        I don't know why I said alleged in that  
7 particular instance. She had symptoms when I saw  
8 her.

9           Q        Do you think that statement might help the  
10 defendant?

11          A        No.

12          Q        You didn't think it was going to help the  
13 plaintiff. You didn't put it in there for that  
14 reason.

15                   Why did you think it was significant,  
16 Doctor, that Dr. Brooks or that Wendy didn't bring  
17 any complaint of TMJ disorder to Dr. Brooks in April  
18 of 1987 when, in fact, she was going there for the  
19 sole purpose of being examined orthopedically by a  
20 doctor she never expected to see again and by a  
21 doctor who was hired by the other side in this case?

22          A        Because, Mr. Callaghan, if you see an  
23 orthopedic surgeon you would talk about  
24 temporomandibular joints. The orthopedic surgeon  
25 deal with joints, and I don't know --



1 Q But she had --

2 THE COURT: Just a moment.  
3 complete your answer.

4 THE WITNESS: They will with  
5 joints, and very frequently if you have a joint  
6 disturbance I would tell a joint doctor about  
7 it.

8 Q Doctor, she had, as you paraphrase it here, she  
9 had, indeed discussed it with Dr. Brooks and told him  
10 about the history, but that she didn't complain to  
11 him at that time and apparently you thought that was  
12 significant, isn't that so?

13 A Can I answer that by finding Dr. Brooks'  
14 letter? I think the second -- she did not apparently  
15 bring any complaint to Dr. Brooks at the time of her  
16 examination in April 13, 1987.

17 Q Yeah?

18 A It's not particularly significant. It's just  
19 part of the report. This is one of the things I  
20 found from reading the report.

21 There is no other basic underlying  
22 significance.

23 Q Because it's reasonable to assume now,  
24 appreciating Wendy's history, that in April of '87,  
25 just a month and a half or month and three quarters

1 before the surgery that she was having problems with  
2 her internal derangement, with her TMJ at that time.  
3 That would be a fair statement?

4 A Yes, but what I find unusual about that, most  
5 TMJ patients I see will tell everybody; tell the  
6 cleaning lady running the vacuum sweeper. It's  
7 attached a great deal of --

8 Q Maybe she's not a complainer and she knew she  
9 was going to have surgery?

10 A That may well be.

11 Q And didn't necessarily trust an orthopedic  
12 surgeon whom she never met and only there for one  
13 occasion and going there for advice on her TMJ when  
14 she was treating with Dr. Lewis --

15 MR. BORLAND: Are you testifying  
16 or is that a question?

17 THE COURT: The objection is  
18 sustained.

19 A It's not a --

20 THE COURT: The objection is  
21 sustained, Doctor.

22 Q Do you believe Dr. King now when he says, as he  
23 did in his testimony, that Wendy had a slight click  
24 in February of 1984 and not that grating and grinding  
25 which you interpreted that crepitus notation to mean?

1 A I simply don't know the answer to that.  
2 Dr. King writes such sparse notes. I don't say that  
3 in a pejorative manner. He said crepitus.

4 If I take that in context really only I  
5 meant a slight click. Then you ought to have written  
6 that down but, in fact, he didn't.

7 Q But you had an opportunity to review his  
8 testimony, right?

9 A Yes.

10 Q As a matter of fact, that is one of the  
11 advantages of testifying live here today rather than  
12 on videotape, because these transcripts have been  
13 available since August and you have had a lot of  
14 opportunity to review them with Mr. Borland, isn't  
15 that a fact?

16 A I don't think I saw the transcripts until last  
17 Wednesday or last Thursday.

18 Q Normally --

19 A They may have been available --

20 Q Normally, of course, had they been testifying  
21 live, there would have been a separation of witnesses  
22 and you would not have been able to view their  
23 testimony had they been?

24 MR. BORLAND: Objection. What is  
25 the point of all this?

1 THE COURT: The objection is  
2 sustained.

3 Q Now, on that same page, Doctor, in page four,  
4 last paragraph, I would appreciate it if you would  
5 read along with me.

6 " However, there is one other finding  
7 which is significant on Dr. King's chart. I have  
8 before me a chart that indicates Dr. King did a  
9 routine dental examination of Wendy's teeth and  
10 existing fillings on that chart.

11 In very easy to read writing, is the  
12 following notation, that you referred to, crepitus,  
13 2-84, in quotation marks. Where did -- the word  
14 crepitus is used frequently by dentists to indicate  
15 TMJ clicking or popping which you also testified to.

16 No problem yet. Dr. King indicates  
17 that Mrs. Williams-Perin, had crepitus, cracking  
18 grating, in February of 1984. This is one and a half  
19 years before her moving vehicle collision and almost  
20 two years before she sought help from Dr. King about  
21 her TMJ.

22 Then you go onto say on the same page,  
23 and in the same writing, and apparently with the same  
24 pen, Dr. King indicates bite plane. I must infer  
25 from this that the patient had crepitus, TMJ

1       symptomatology, and need for a bite plane  
2       approximately one and a half years prior to her  
3       moving vehicle collision?"

4       A       Yes.

5       Q       Right. Do you have a copy of Dr. King's chart  
6       in your file, Doctor, and if you do --

7       A       Yes.

8       Q       May I see it? May we approach the bench?

9  
10                       (Thereupon, Plaintiff's Exhibits 11 and  
11                       12 were marked for identification.)

12  
13       Q       Doctor, handing you what's been marked for  
14       identification as Plaintiff's Exhibit Number 11, can  
15       you identify that?

16       A       Yes, that is the same -- I have the photocopy.  
17       This is a photocopy. It is -- shall I explain to the  
18       jury what it is?

19       Q       Is that Dr. King's chart?

20       A       Yes.

21       Q       May I see your copy? These copies seem to be  
22       different, Doctor. In fact, on my copy crepitus is  
23       very light. Isn't it marked, 2-84 and bite plane is  
24       very dark, isn't it?

25       A       Yes.

1 Q But on yours, crepitus appears to be quite a  
2 bit more bold, ~~doesn't~~ it?

3 A Yes, correct, but since those are the only two  
4 notations on this one side of the page I presume they  
5 were done at the same time.

6 I have found since that they were done  
7 with a different pen. I can't tell.

8 Q Handing you now what's been marked as  
9 Plaintiff's Exhibit Number 12, can you identify that  
10 for us?

11 A Why sure. One is done in red, and this, of  
12 course, I can't tell that. I'm just given a copy and  
13 it looks like the same handwriting and same type of  
14 pen and since they are only two notations it's  
15 logical to assume bite plane and crepitus have  
16 something to do with one another.

17 Q I see. Yours came out darker than mine. Let  
18 me refer you to the front page of that report,  
19 Doctor. That is the clinical record?

20 A Yes.

21 Q And does yours look the same as mine other than  
22 there were a few extra visits? I'm handing you the  
23 original now.

24 A Yes.

25 Q Yours cuts off there?

1 A Yes.

2 Q And I refer you to about line number seven  
3 where it says one, 4-86,

4 A Yes.

5 Q Bite plane seated?

6 A Yes.

7 Q Look at my original, if you would, Plaintiff's  
8 Exhibit Number 12?

9 A Okay.

10 Q All right. Is there any other writing, and  
11 that is opposite January of '86. Is there any other  
12 writing on that, the front of the chart in black, I  
13 think, similar to this --

14 A Yes.

15 Q Isn't that a felt tip pen? Does it appear to  
16 be?

17 A It's really not my field of expertise. I don't  
18 know. I think it's a felt tip.

19 Q Let me stop the inquiry. I'm not trying to  
20 jump on you. We see bite plane on the chart on the  
21 diagrammatic, do we not?

22 A Yes.

23 Q And with the same pen, January of '86, bite  
24 plane seated, right?

25 A Yes.

1 Q So we can conclude, logically, I think, you  
2 would agree with me, that the bite plane was written  
3 here at the same time that the bite plane was seated  
4 in '86?

5 A Yes.

6 Q Not in February of '84?

7 A That is true.

8 Q So your <sup>ref</sup> inference to the fact that you said  
9 that you must infer from that that Dr. King detect a  
10 need for a bite plane, you would back off on that  
11 statement now, wouldn't you?

12 A Well, yes. I already explained that to you,  
13 Mr. Callaghan, that I see it in only two entries on  
14 one page. And I presume they would have made them  
15 the same day. It's reasonable.

16 Q And, Doctor, going back to your visit of  
17 January of '87, at that time were you concerned how  
18 minor or slight the click that Dr. King talks about,  
19 how that had progressed from the time of February of  
20 '84 to the time of her automobile accident in August  
21 of '85?

22 A Was I concerned?

23 Q Were you interested to know the progression or  
24 lack of progression of that click between the time it  
25 was noted by Dr. King in February of '84 to how it



1 was doing by the time of the accident in August of  
2 '85?

3 A Not specifically. I'm not, Mr. Callaghan, and  
4 I'll tell you, because Dr. King told Miss Williams --  
5 she told us she had a click. He said, quote, don't  
6 worry about it. So I presume it would been redundant  
7 for her to tell him again about it.

8 Q I'm asking whether you thought it was important  
9 for you to know, in assessing the causation,  
10 evaluating the causation or lack of causation of this  
11 accident to Wendy's internal derangement, and by  
12 that, wouldn't it have been important for you to  
13 inquire at the time of the examination, hey, Wendy,  
14 has that click been getting worse or is it the same  
15 or is it not present at all since the time it was  
16 noted by Dr. King in 1984?

17 A Yes, that might have been worthwhile.

18 Q As a matter of fact, you never did ask that  
19 question?

20 A Well, I asked as many questions as I could,  
21 Mr. Callaghan. I don't know whether I asked that one  
22 or not.

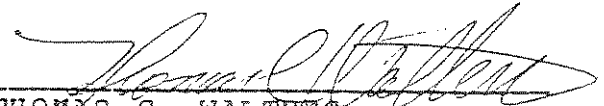
23 MR. CALLAGHAN: Thank you, Doctor.

24 I have nothing further.

25 --- o0o ---

C E R T I F I C A T E

I, Thomas C. Walters, Official Court Reporter for the Court of Common Pleas, Cuyahoga County, Ohio, do hereby certify that as such reporter, I took down in stenotypy all of the proceedings had in said Court of Common Pleas in the above-entitled cause; that I have transcribed my said stenotype notes into typewritten form as appears in the foregoing Excerpt of Proceedings, that said transcript is a partial record of the proceedings had in the hearing of said cause, and constitutes a true and correct Excerpt of Proceedings had therein.

  
THOMAS C. WALTERS,  
Official Court Reporter  
Cuyahoga County, Ohio