

#630
ORIGINAL

IN THE COURT OF COMMON PLEAS OF SUMMIT COUNTY, OHIO
MICHELE CHERI VAN VOORHIS, :

Plaintiff,

-vs-

: No. 89-06-1812

JOHN MARTTER,

: JUDGE WILLIAMS

Defendant,

:

- - -

Deposition of CHRISTOPHER LAYNE, a
witness called by the Plaintiff for
cross-examination under the Ohio Rules of Civil
Procedure, taken before me, the undersigned,
Douglas R. Ackerman, Notary Public and
Registered Professional Reporter, within and for
the State of Ohio, pursuant to agreement and
 stipulations of counsel hereinafter set forth at
the offices of Dr. Christopher Layne, 3450 West
Central Avenue, Suite 118, Toledo, Ohio, on,
Friday, May 3, 1991, deposition commencing at
1:45 o'clock p.m.

TOBIAS & ACKERMAN REPORTERS, INC.,
100 Toledo Legal Building
416 North Erie Street
Toledo, Ohio 43624
419-244-4448
- - -

APPEARANCES:

On behalf of the Plaintiff:

ROBERT V. HOUSEL

The Illuminating Building, Suite 1350
Public Square
Cleveland, Ohio 44113-1993

On behalf of the Defendant:

ROETZEL & ANDRESS

75 East Market Street
Akron, Ohio **44308**

By: **ORLANDO J. WILLIAMS**

- - -

S T I P U L A T I O N S

It is stipulated by and between counsel for the
respective parties hereto that the deposition of
CHRISTOPHER LAYNE, may be taken at this time in
stenotype by the Notary, whose notes may thereafter be
transcribed by or for him out of the presence of said
witness, and that the signature of said witness is not
waived.

It is further stipulated that the official
capacity, character and qualifications of the Notary
are admitted.

I N D E X

PLAINTIFF'S EXHIBITS

MARKED

No. 1 Confidential Psychological Evaluation.... 5
No. 2 Composite of 4 letters from Dr. Lord....103
No. 3 Transcript of Grades.....103

1 (Deposition commenced at 1:45 o'clock p.m.)

R LAYNE

3 being first duly sworn testified and was examined as
4 follows:

5 CROSS-EXAMINATION

6 MR. HOUSEL: Let the
7 record reflect this is the deposition of
8 Dr. Christopher Layne taking place at a
9 quarter to two on Hay 3rd in his office
10 at Toledo, Ohio, Yay I see your file,
11 Doctor?

12 DR. LAYNE: Yes.

13 BY MR. HOUSEL:

14 Q Thank you. That's the entire file that you
15 have on this young lady?

16 A That's right.

17 Q Everything that was sent to you by Mr.
18 Williams?

19 A That's right.

20 Q You have in the front there your report
21 entitled Confidential Psychological Evaluation?

22 A Yes.

23 Q And that is how many pages, Doctor, in total"

MR. WILLIAMS: Are you

1 including footnotes, Mr. Housel?

2 MR. HOUSEL: Go ahead.

3 A It is 13 pages including the footnotes or end
4 notes.

5 Q Footnotes are a part of the report, are they
6 not?

7 A Yes.

8 Q In fact the footnotes refer back to certain
9 things that are noted in the body of the report in the
10 first nine pages?

11 A That's correct.

12 Q And you use, in saying some of the things you
13 say in the first 9 pages, you use some of the material
14 that is mentioned in the footnotes; would that be
15 correct:

16 A Yes, the footnotes back up certain points
17 that I made in the report.

18 Q And if I understand you correctly how you do
19 it when you prepare a report like that, you put it in
20 a binder and send it out to an attorney like Mr.
21 Williams who requests you to to prepare a report?

22 A Sometimes I FAX the reports, sometimes I put
23 it in a binder. I don't believe I put this in a
24 binder, I don't recall.

1 Q Was it FAXed to him?

2 A That I don't -- I just don't know.

3 Q Okay, do you know the date you sent it to
4 him?

5 A I guess I do not, no.

6 Q Do you want to look at the top of your page,
7 maybe this will help you. Does that --

8 A Okay, that looks like a FAX.

9 Q Kinko's Copies?

10 A Yes.

11 Q April 5th?

12 A Right.

13 Q You certainly would have sent Mr. Williams
14 the entire report'.'

15 A Yes.

16 Q All right, sir. Thirteen pages?

17 A I assume that we sent the entire 13 pages,

18 MR. HOUSEL: Could you
19 mark this, please?

20 - - -

21 Plaintiff's Exhibit No. 1 was marked
22 for purposes of identification.

23 - - -

24 BY MR. HOUSEL:

1 Q Doctor, the material that you just took out
2 of your file when I was over there a few seconds ago
3 was some material from a Dawn Lord, a psychologist?

4 A Right.

5 Q And some tests or some transcripts from
6 various universities, correct?

7 A Yes.

8 Q That material was sent to you by Mr William
9 before how many of your report before you examined
10 Miss Van Voorhis?

11 A Yes.

12 Q Tell me, do you have a CV?

13 A Yes.

14 Q I can get one?

15 A Okay.

16 Q Tell me, what do you specialize in as a
17 psychologist?

18 A I have a specialty in anxiety, depression and
19 psychological evaluations.

20 Q Do you do things other than that, Doctor?

21 A Yes.

22 Q Such as?

23 A Eating disorders -- treating eating

24 disorders, personality disorders; really the full

1 range. When you specialize in my field you don't get
2 just your specialty.

3 Q When you say the full range, what do you mean
4 by the full range?

5 A I'm treating a -- well, I mean the full range
6 of diagnostic categories. For example, in DSM III-R
7 I've treated most all of the major categories of
8 mental illness say within the last five years.

9 Q Are you a neuropsychiatrist?

10 A No.

11 Q Are you trained in neuropsychiatry?

12 A I have had neurological training but it's not
13 my specialty.

14 Q Do you administer neuropsychological tests?

15 A Screening devices, ones that are designed to
16 detect global neurological impairment.

17 Q What is a global neurological impairment?

18 A Brain damage.

19 Q What are some of those tests?

20 A The Wechsler Adult Intelligence Scale, Halstead
21 Reitan, R-e-i-t-a-n. The Bender Gestalt; and a wide
22 variety of other psychological tests that allow me to
23 make differential diagnoses, for example the MMPI and
24 the Millon Personality Inventory.

1 Q Any others?

2 A There are many other tests, I'm not sure that
3 I can remember them all now, but another one would be
4 the California Psychological Inventory I can't
5 recall others, it's difficult to list every test that
6 I know how to give

7 Q Primarily, though you treat people with
8 anxiety and depression and other related problems?

9 A That is what I do in terms of treatment My
10 third area of specialty is, as I've said,
11 psychological evaluations and I do a good bit of
12 those.

13 Q Such as the ones you have done here?

14 A Correct.

15 Q And where do you do most of those?

16 A Here in my office in Tolp o

17 Q And do you do them for plaintiff's lawyers or
18 defense lawyers?

19 A Both

20 Q Both?

21 A Right.

22 Q What's the breakdown?

23 A Probably about 65 percent defense, 35 percent
24 plaintiffs, that is the way.

- 1 Q Can you give me the name of plaintiffs'
2 lawyers here in Toledo that you have done evaluations
3 for?
- 4 A Yes The fellow by the name of George Fell
5 F-e-l-l?
- 6 A Correct That's an example of one
7 Q When was the last time you did one for a
8 plaintiff's lawyer?
- 9 A Probably about five months ago perhaps
10 Q How many do you do a year, Doctor;
11 evaluations?
- 12 A Maybe 15
13 Q Total of 15?
- 14 A About a little over one per month. That's
15 about right.
- 16 Q And of the 15 you do, 65 percent are for
17 defenses and 35 percent are for plaintiff?
- 18 A That's right.
- 19 Q What do you charge to do an evaluation such
20 as you did for Williams, here?
- 21 A The price ranges from about \$900 to about
22 \$2,500 depending on the complexity of the case and
23 also depending on the necessity for travel
24 Q Now did you come to do this evaluation for

1 Mr. Williams?

2 X He called me and asked me to look into the
3 case.

4 Q Had you known him before that?

5 A No.

6 G Had you done other work for Roetzel & Andress
7 lawyers?

8 A No.

9 Q You have no idea how he got your name'?

10 A I believe that he -- I believe that he said
11 that he had read an article of mine in the OACTA
12 Quarterly. O-A-C-T-A, it is. the Ohio Association of
13 Civil Trial Attorneys, I think; right, Published in
14 their quarterly magazine or quarterly journal.

15 Q You have done work for other defense lawyers
16 in the Cleveland-Akron area, haven't you?

17 A That's right.

18 Q Can you name some of them for me?

19 A I'm not very good with names. Give me a
20 minute.

21 Q Sure.

22 MR. WILLIAMS: Doctor --

23 A Tom Dover.

24 Q Gallagher Sharp?

1 A Right.

2 Q Any others?

3 A There are many others. My problem is I'm
4 having trouble recalling their names.

5 Q Ron Rolland?

6 A Right.

7 Q Rosemary DeSanto?

8 A That does not sound familiar.

9 Q Brent Buckley?

10 A Yo. I don't think so.

11 Q There are many others, you just can't recall
i2 them now?

13 A That's right. There are probably -- hang on
14 a second. Joe Pappalardo.

15 Q Gallagher Sharp?

16 A P-a-p-p-a-l-a-r-d-o. Pappalardo. Pat Foy,
17 Gallagher Sharp.

18 Q Right. What do -- is there an hourly charge
19 involved in that evaluation, Doctor?

20 A Yes.

21 Q And what is that hourly charge?

22 A A hundred dollars.

23 Q And testimony is \$300 an hour?

24 A No, it is done on a half-day basis. \$600 a

1 half dag.

2 Q How much a half day?

3 A \$600.

4 Q For a half day?

5 A Right.

6 Q And that's for your preparation as well as
7 the testimony?

8 A Correct.

9 Q Okay. What do you charge an hourly rate for
10 a patient? If I wanted to come in off the street and
11 see you for depression, what would that be?

12 A \$80.00 and hour.

13 Q What did Mr. Williams ask you to do in this
14 case?

15 A To evaluate Michele Van Voorhis to determine
16 what if anything was psychologically wrong with her.

17 Q Do you evaluate people that have been
18 diagnosed by a neuropsychologist?

19 A Yes.

20 Q That's not unusual for you to do that?

21 A No, it isn't.

22 Q That is a different specialty of psychology,
23 is it not?

24 A There is a specialty of neuropsychology.

1 Q And **you** are not a neuropsychologist?

2 A That's correct.

3 Q What material did **Mr.** Williams provide you
4 Doctor, for evaluation **of** Miss Van Voorhis in this
5 case?

6 A Those sources are listed in my report but I
7 can --

8 Q That's listed in the history, Doctor?

9 A Right.

10 Q Nothing other than that, right?

11 A I believe that that is a complete list. It
12 may be I inadvertently left off the list something,
13 but at the time I did the report I believe that was
14 all that I had received.

15 Q Do you have any additional information now
16 that is not listed there?

17 A I don't believe so, but I could sure check.

18 Q Would you do that?

19 A Okay. There is a curriculum vitae **of** Delphi
20 Toth which I note listed in the report, but I didn't
21 really use it, the vitae, to write the report.

22 Q Sure. Okay.

23 A That's it. That is a complete list **of**
24 everything I received from Mr. Williams.

1 Q Did you ever request anything else from Mr.
2 Williams concerning this case to review?

3 a I don't believe so. I could check my
4 correspondence and --

5 Q In the file you mean?

6 A Yes.

7 Q Is there something relative to this case that
8 you have here in the office that is not in that file?

9 A No, there is not.

10 Q Okay.

11 A I think this is it, and I don't believe that
12 I requested any of this information. I believe it was
13 simply, other than the fact I said I would like to see
14 It everything.

15 Q Yes. Mr. Williams sent you everything
16 pertaining to the case?

17 A Exactly.

18 Q And I assume that you knew there was an
19 automobile accident?

20 A Yes.

21 Q Okay. I'm sure you had some discussion with
22 Mr. Williams on the phone about the case?

23 A Right, he described the case.

24 Q And it would be important to you, Doctor,

1 would it not, to know as much about how the accident
2 occurred as you could?

3 A Yes.

4 Q Did he send you a police report?

5 A No.

6 Q Did he send you anything from the emergency
7 room where she first was treated?

8 A I got records from St Thomas that was the
9 hospital to which she was taken I don't believe that
10 I received anything from the first medical center that
11 she went to; don't believe that I did

12 Q Okay. It would be important for you to know
13 everything about the way she was injured, what parts
14 of her body were injured, right, Doctor?

15 A That is relevant, yes.

16 Q Certainly. There is a psychological
17 component, lots of times, to the physical injuries
18 that one receives in an accident, right, Doctor?

19 A Certain psychological reactions

20 Q For example, one can become depressed over
21 injuries that they have received in an accident?

22 A Right.

23 Q You certainly need to know, to really
24 effectively do a psychological evaluation on someone

1 like Michele Van Voorhis, all the injuries she
2 sustained right after the accident?

3 A I wouldn't go that far. That is relevant
4 information. There is also other relevant
5 information. She could have any one of a number of
6 physical difficulties that I didn't know about and I
7 could still have a valid exam, but everything is
8 helpful. My general philosophy is the more
9 information the better.

10 Q You didn't get everything though in this
11 instance?

12 A I really don't know that.

13 Q If there was a police report, you didn't get
14 it?

15 A I didn't get a police report.

16 Q If there was a medical report from the Rapid
17 Response place she went to after the accident
18 happened, you didn't get that?

19 A Didn't get it.

20 Q What is it that you know about the accident?

21 A That she was riding on a snowy day in a car
22 as a passenger, the car hit several things and came to
23 a stop. She didn't lose consciousness. She told the
24 driver of the automobile to cut off the car so it

1 wouldn't catch on fire. She then-walked over to Rapid
2 Response and there was a sequence of events dealing
3 with treating her injuries and her suspected injuries
4 at that time.

3 Q Did you receive any information that she did
6 lose consciousness ever?

7 A There are conflicting reports about that.
8 She indicates **she** did not lose consciousness.

9 Q Where does she indicate that?

10 A During my interview of her, she indicates
11 that when the car stopped she asked the driver to cut
12 off the car because she was afraid it would catch on
13 fire. There is also the fact that she walked over to
14 Rapid Response after the accident. She Just
15 consistently maintained that.

16 Q What does that have to do with whether or not
17 she lost consciousness?

18 A It's less likely that a person is able to
19 walk over to -- really to walk anywhere if she lost
20 consciousness.

21 Q If she had lost consciousness would that be
22 significant to you in your evaluation?

23 A Yes.

24 Q Dr. Toth's report indicates that she lost

consciousness, doesn't it?

2 A It does.

3 Q And since you've indicated that was
4 significant, did you call Dr. Toth to discuss that
5 with her?

6 A No.

7 Q Why is that?

8 A Well, because I decided I would ask the
9 patient herself and the patient's description of what
10 happened; her detailed response that she indeed
11 recalls the entire accident.

12 Q

13 A I'm sorry?

14 Q Is that what she said, she recalls it all?

15 A What she told me is the blow by blow
16 description of the accident, yes. From beginning,
17 middle and end, it was a highly detailed description.
18 And then after the accident, the ability to walk over
19 to Rapid Response doesn't suggest any kind of severe
20 loss of consciousness.

21 Furthermore the fact that she remembers now
22 suggests that she didn't lose consciousness because
23 loss of consciousness correlates with what is called
24 retrograde amnesia. The person can't remember what

1 happened.

2 Q Would it be fair to know that in the Rapid
3 Response report she doesn't remember how the accident
4 happened?

5 A That would be interesting.

6 Q What do you mean by interesting? Would it be
7 important in your evaluation?

8 A It would be relevant.

9 Q But you didn't have that?

10 A Right.

11 Q And again, do you know how many times this
12 young lady saw Dr. Toth?

13 A No, and I'm not really sure that Dr. Toth
14 does. The report says there were numerous
15 cancellations of appointments and --

16 Q The question was: Do you know how many
17 times?

18 A No.

19 Q Thank you. If I told you that she saw her at
20 least 27 times, would you say that she would be in a
21 better position to know whether Michele lost
22 consciousness than you might?

23 A No, not necessarily. It really depends on
24 what questions she asked at the time.

1 Q But you never called Dr. Toth to find that
2 out?

3 A No, she never called me either.

4 Q Was it incumbent upon her to call -- call you
5 and help you with her examination?

6 MR. WILLIAMS: I will object
7 and I believe that is an argumentative
8 question and facetious one probably.

9 Q Would you answer it now?

10 A Yes, it is no more incumbent on me than it is
11 on Dr. Toth.

12 Q When you conduct an evaluation such as this,
13 it's really a search for the truth as far as you are
14 concerned, as to what happened, what the patient's
15 condition is, right?

16 A Yes.

17 Q And would it have assisted you to know what
18 the evaluation is and examinations of Drs. Toth and
19 Lefkovitz consisted of?

20 A Yes. And as a matter of fact, I got their
21 reports.

22 Q And that's all you did, you didn't contact
23 them, right?

24 A No, nor did they contact me. But yes, you

1 are right, that would be highly unusual.

2 Q Why would that be highly unusual?

3 A Because statistically, doctors don't call
4 other doctors when they are doing independent medical
5 exams.

6 Q They say something totally opposite from what
7 you say, don't they?

8 A They -- our reports are not consistent,
9 that's correct. Our opinions are not consistent.

10 Q Since it's a search for the truth, what would
11 be wrong with you calling them and saying I find
12 things totally differ with Michele than you have in
13 your record. Let's discuss that so I can be more
14 accurate and have the benefit of your information; why
15 couldn't you do that?

16 A First of all, let me reiterate, they didn't
17 do that with me either.

18 Q I didn't ask you that

19 A I know, but that's what I'm telling you.

20 Q Answer my question.

21 A Number 2, the minute I call on the phone and
22 tell them I'm interested in a certain case they know I
23 saw that case. I don't have a release of information
24 to do that.

1 Q Y could ask for one, couldn't you?

2 A You're asking me if I could call iss Van
3 Voorhis.

4 Q Or her lawyer.

5 A To release information?

6 Q Right.

7 A Yes, that could have been done. It would be
8 highly unusual.

9 Q And if it was done, you would have had the
10 benefit of knowing everything that Doctors Lefkowitz a
11 neurologist and Dr. Toth, a neuropsychologist had
12 known about her?

13 A I read their reports

14 Q Just answer my question.

15 A I'm in the middle of answering your question.
16 I assume that they put in their report everything
17 that they thought was important and I read the reports
18 thoroughly. It would be unfortunate if they withheld
19 information from their reports that was relevant

20 Q Would you read him the question now again
21 please, maybe you can answer it this time

22 - - -

23 Last question proposed by counsel

24 was read back to the court reporter

1

2 A And **my** answer **is**: Having read their reports
3 I **know** a sufficient amount about their opinions.

4 Q Would it have been any help to **talk** to them?

5 A Not particularly unless they withheld
6 significant information from their reports.

7 Q One of the reports was totally different then
8 as far as loss of consciousness, right? Doctor
9 Toth's?

10 A It was totally different from what?

11 Q From what you say in your report?

12 A Yes.

13 Q That wasn't significant enough for you to
14 call her and discuss that?

15 MR. WILLIAMS: I'm going to
16 object. I think we are beating a dead
17 horse here. You have asked him this
18 question I don't know how many times.

19 MR. HOUSEL: Are you
20 done?

21 MR. WILLIAMS: Are you done
22 asking the same question?

23 YR. HOUSEL: Go ahead.

23 YR. WILLIAMS: I think this

1 question has been asked and answered and
2 asked **and** answered again. Doctor, if
3 you feel you are any more capable after
4 hearing it all these times, be my guest.

5 MR. HOUSEL: Does he
6 represent you?

7 MR. WILLIAMS: No. I can
8 still object.

9 MR. HOUSEL: You have mace
10 your objection. I don't know that you
11 have to take any comments or, you know,
12 disortations from Mr. Williams. If you
13 just answer my question. Would you
14 please answer *the* question?

15 MR. WILLIAMS: I didn't tell
16 him not to answer the question, Bob.

17 MR. HOUSEL: What was the
18 question? Read it for me.

19 - - -

20 Last question propounded by counsel
21 was read back by the court reporter.

22 - - -

23 A Yes, that is correct. If I understand your
24 question it was not significant enough for me to call,

1 that's right.

2 Q Nor was it significant to have any discussion
3 with these doctors that have treated her much longer.
4 You never really treated her, you just evaluated her
5 once?

6 A That's correct.

7 Q They've treated her for years, right?

8 A That, I'm not sure about. I don't know how
9 many times they've seen her.

10 Q But you didn't call to ask them?

11 A That would not be the way to find out how
12 many times they treated her.

13 Q Okay, would they be in a much better position
14 to evaluate her medically and psychologically than
15 you?

16 A No.

17 Q Why is that?

18 A Because they don't give any evidence in their
19 record of having gone through a thorough evaluation of
20 her pre-accident history; I did.

21 Q You don't know whether they did or not
22 because you never contacted them and you had nothing
23 but their reports?

24 A I will have to report I did have their

1 reports. They either withheld significant information
2 from their report or they did not. I have to assume
3 they included in their reports everything that was
4 important. So assuming that they put in the report
5 what they thought was important, I thought it kind of
6 redundant to call them.

7 Q That is an assumption you make without having
8 any discussion with them though, right?

9 A It is a safe assumption.

10 Q It is, why is it safe?

11 A Because good doctors, and I have no reason to
12 doubt that they are good doctors, include in their
13 reports everything that is important.

14 a But you Just said, "I think that they
15 included everything that was important."

16 A I didn't say that. What I said, I hoped that
17 they did. I assumed that they included everything in
18 their reports, that is more --

19 Q Did you know what tests were administered to
20 Miss Van Voorhis by Dr. Delphi Toth?

21 A Some of the tests that she listed were the
22 Wechsler Memory Scale Revised and the Wechsler Adult
23 Intelligence Scale Revised. There were other tests
24 that she apparently administered which she did not

1 nclude in the report.

2 Did you ask Mr. Williams to get them for you?

3 No.

4 Why is that?

5 Let me rephrase that.

6 You want to rephrase the no?

7 Yes, exactly.

8 Go ahead.

9 A When I say no, I'm saying that I didn't ask
10 him to get the list of tests. I did say to him that
11 getting the raw test data would be important,
12 relevant.

13 Q But you didn't get it?

15 Q You didn't have it when you prepared your
16 report?

17 A That's right.

18 Q You don't have it as of today?

19 A That's right.

20 Q If you knew that Dr. Toth administered 16
21 neurological tests to Michele, would they be
22 significant to you?

23 A Well, the tests are described in her report.

24 Q All of them?

1 A I hope so.

2 Q Are there 16?

3 MR. WILLIAMS: If you'd let
4 him answer, Bob, you can understand.

5 Q Are there 16 described in her report?

6 A No, sir. I don't need to --

7 Q There aren't, are there?

8 A There are not 16 separate tests described in
9 the report.

10 Q Would you answer my question? would it be
11 significant or important for your evaluation to know
12 that she administered 16 and to know what the scores
13 were?

14 MR. WILLIAMS: I think that
15 he interrupted you when you were about
16 to say that the tests were described and
17 explain to him what that meant. I think
18 in the interest of getting all the facts
19 you should have an opportunity to
20 continue that answer,

21 MR. HOUSEL: It's my
22 deposition, I will ask the questions
23 okay? He can ask you when you come to
24 court, fair enough?

1 A Sure.

2 Q Do you need Mr. Williams to help you in this
3 deposition, Doctor?

4 A No

5 MR WILLIAMS: I'm not

6 helping

7 Q Do you know what types of tests, if any were
8 Lefkowitz performed on Michell Van Voorhis?

9 A No, I don't I'd have to check I can't
10 recall

11 Q Do you want to check?

12 A Sure. Dr. Lefkowitz described a number of
13 medical tests which are generally normal.

14 Q What does the generally mean?

15 A It means that if you look at the different
16 medical tests that he mentions that you'll find words

17 like "normal" are associated with each of them. Like
18 a quote Head & Tail was normal and was normal
19 Were they all normal?

20 A Well, there was a -- there were tests that
21 related to his bodily problems, cervical spine for
22 example which were suggestive but were not confirmed
23 with the CT study.

24 Q You could have called him and asked him what

1 he meant by that, couldn't you?

2 A Only after I had gotten a release from her to
3 release these to let him know that I evaluated her,
4 Also, he would need a release to release information
5 to me. It would have been extremely inconvenient and
6 that is why they don't do it and that is why I didn't
7 do it.

8 Q You don't know how inconvenient it would have
9 been because you never attempted in this matter --

10 A And neither did they. It is highly unusual.

11 Q Well, your report could have a direct bearing
12 on the amount of damages in your testimony that a jury
13 might award this young lady, is that correct'?

14 A That's right.

16 you write your report, being fair to everybody here?

17 A No, I don't agree with that statement in the
18 sense that I've reviewed so much more information than
19 either of these two doctors suggest that they have
20 reviewed. I have already read a lot more than they
21 have.

22 Q How do you know that just from their reports?

23 A Yes. They don't mention in the reports --
24 they could have mentioned them in their reports but

1 they sure don't.

2 Q You list in your report her benign accident,
3 what does benign mean?

4 A It means that it wasn't a very harmful
5 sounding accident. She experienced several blows, her
6 car did. She didn't lose consciousness.

7 Q You are not sure of that?

8 A I'm fairly sure of that, yes.

9 Q Go ahead.

10 A She walked over to the emergency room after
11 the accident. As I told you, she made comments right
12 after the accident that made a lot of sense. This was
13 not somebody who was undergo::; a severe brain
14 contusion leading to a comma. She obviously didn't go
15 into a coma, she didn't go into long-term
16 unconsciousness.

17 Q Did she strike her head on any portion of the
18 interior of the vehicle?

19 A She was vague about that. She may have but
20 there is no evidence that I saw of any important blow
21 to her head.

22 Q She was vague about that?

23 A Hu-huh.

23 Q You mean when you interviewed her?

1 A Right. Intensity of the blow; she said she
2 was jostled around.

3 Q Is that what she said or was that your word?

4 A You know, I don't know, but I think she used
5 a word that was synonymous with that.

6 Q What does jostle mean to you?

7 A Shaken around to and fro.

8 Q Not striking anything?

9 A She may have struck something. She might
10 have bumped her head. My only argument is every head
11 bump doesn't lead to a concussion.

12 Q Why do you need to make an argument in that
13 matter -- making an argument for the defense here?

14 A No, making a statement about my exam.

15 Q You know your exam was taken down by a court
16 reporter?

17 A Right.

18 Q And have you read that transcript?

19 A No.

20 Q At page 2 of the transcript you asked her
21 what was the next thing that you remember and she
22 said, "I remember going forward, hitting the
23 windshield and going backward, and going forward and
24 hitting the windshield with my head, and I remember

1 hitting my shoulder."

2 And **you** said, "Uh-huh, you went forward, you
3 went **back**, you went forward again." And she said --
4 do your reports reflect that?

5 MR. WILLIAMS: Are you
6 talking about page 8 of this transcript?

7 Q Do your notes reflect that?

8 MR. WILLIAMS: Why don't you
9 give the doctor an opportunity --

10 MR. HOUSEL: Would you not
11 interrupt my deposition?

12 BY MR. HOUSEL:

13 Q The question is very simple: Do your notes
14 reflect that, Doctor? Do you have the notes of the
15 history, by the way?

16 A No, sir, I don't have any handwritten notes.
17 My contemporaneous history is this report.

18 Q You did take notes when you interviewed Miss
19 Van Voorhis?

20 A That's right, and immediately dictated a
21 report from the notes.

22 Q Immediately?

23 A Hu-huh, that day.

24 Q And threw the notes away?

1 A That's right.

2 Q Do you usually do it that way?

3 A Every time.

4 Q What does it say on page 8?

5 A Now, do you want me to reread what you just
6 read?

7 Q You trust I read that accurately?

8 A Sure.

9 Q is that different than what you reflect in
10 your report?

11 A I don't think so.

12 Q Why don't you think so?

13 A I think you're asking me if I described that
14 particular set of events?

15 Q Right.

16 A Hang on and let me look at my report. I
17 believe what my report is going to say is that she was
18 okay, she was jostled to and fro, That is my summary
19 of what she said in the deposition.

20 Q Is that different than what it says on page 8
21 from what you remembered there or what I just read to
22 you?

23 A Not in substance, no.

24 Q "I remember going forward, hitting the

1 windshield and going backward and going forward and
2 hitting the windshield with my head, and I remember
3 hitting my shoulder." And you said, "You went
4 forward, you went back, you went forward again. She
5 said, yes. Is that the same as being jostled to and
6 fro to you?"

7 A Yes.

8 Q If somebody's head is thrown forward and
9 strikes the windshield from where they are seated in
10 the passenger seat, what happens to their brain?

11 A Well, the braio is t~~g~~ consistency of thick
12 egg yoke, it sloshes in a situation like that.
13 Q Can it also strike the bony structure in the
14 front portion of the skull?

15 A That is possible in a severe --

16 Q That is possible even if you get whiplashed
17 head thrown forward, head thrown back, isn't it,
18 Doctor?

19 A In a severe accident.

20 Q How severe does it have to be?

21 A Head on collision going 80 miles an hour --

22 Q Are you an expert in analysis of head
23 injuries of people in automobile accidents?

24 A No.

1 Q Then how can you make the statement that that
2 is the **only** thing that is a severe accident, 80 miles
3 an hour head-on?

4 A I never said a head-on collision at 80 miles
5 an hour was the only severe accident, it's an example.

6 Q Could it be as severe an accident if one is
7 going **35** miles an hour and hits a car head-on at 35?

8 A Sure.

9 Q Just the right front of the car hits another
10 automobile at 35 miles an hour?

11 A You are beginning to pull back on the
12 severity obviously.

13 Q And then it strikes another couple of objects
14 after that?

15 A That weakens *the* accident because now we have
16 several **blows** slowing the car down instead of one
17 powerful blow.

18 Q You have one at 35 miles an hour and then you
19 have a series of others slowing the car down, each one
20 of those blows doing more to cause someone to be
21 thrown forward and backward in the manner in which
22 Michele was telling you, am I right?

23 A I'm not -- you will have to repeat the --

24 Q Could you repeat it to him first, Doug.

1

2

3

Last question propounded by counsel
was read back by the court reporter.

4

5

A I can't find the question in there.

6

BY MR. HOUSEL:

7

Q Do you agree with me that a 35 mile per hour
head-on accident is a severe accident?

8

9

A Yes.

10

Q And it's somebody in the passenger seat who
does not have a seat belt on at the time is likely to
be thrown forward and strike their head on something?

11

12

A On a full-fledged head-on collision, that is
what we are talking about, yes.

13

14

Q And if you knew that was the situation in
this case, that would be significant to you in your
evaluation of Miss Van Voornis, is that right?

15

16

17

A Obviously the more severe the accident the

18

19

Q If you knew what the report indicated right
after the accident relative to that that might be
important to you right?

20

21

A It would be important not crucial but
important.

22

1 Q Why would it **be** important then?

2 A **Because** it's another description **of** the
3 accident and **all** descriptions **of** the accident **are**
4 important.

5 Q Does Michele have a brain injury from this
6 accident?

7 A It --

8 Q I'm asking you **if** that is your opinion.

9 A I understand.

10 Q Yes, sir.

11 A If she has a brain injury it's not
12 interfering with her functioning.

13 Q What about her memory?

14 A
15 with her memory.

16 Q No evidence. Do you think she sustained a
17 brain injury from the accident?

18 A I doubt it but if she did it's not
19 interfering with her functioning.

20 Q And now she says it **is**?

21 A That's correct.

22 Q You disbelieve her?

23 A I don't agree with her, I don't think she is
24 making it up.

1 Q Do you think she is lying?

2 A No.

3 Q Do you disbelieve her?

4 A Yes.

5 Q Why?

6 A Her personality tests say she is not the kind
7 of person to be believed when it comes to somatic and
8 mental health problems.

9 Q She lies about those things?

10 A Didn't say she lies. She is misinformed
11 about her own health; she is hypochondriacal.

12 Q Misinformed by who?

13 A Her own mental distortions.

14 Q Could she have sustained a brain injury if
15 she struck her head on the windshield and the
16 dashboard in that accident, Doctor, is it likely?

17 A In this particular case, no, it is not.

18 Q A 35 mile per hour head-on collision where
19 she says, as she indicated to you when you took the
20 interview, she went forward and back striking her head
21 both times. You don't think that caused a brain
22 injury?

23 MR. WILLIAMS: Are you

24 indicating that is what happened in this

1 case or what she --

2 MR. HOUSEL: Read him the
3 question again.

4 - - -

5 Last question propounded by counsel
6 was read back by the court reporter,

7 - - -

8 A It's unlikely, but if it did it's not a brain
9 injury that resulted in any impairment to her life.

10 Q Did she -- did you see anywhere where she
11 said she had no memory problems before the accident?

12 A Memory of the --

13 Q Did you see that anywhere in the material
14 provided to you?

15 A Yes.

16 Q That was the question.

17 A Okay,

18 Q Did you want to respond to it, go ahead?

19 A If I understand your question correctly,
20 you're asking me if there were signs of memory
21 problems before the accident, is that what you are
22 asking?

23 Q The question was: Did you see anywhere in
24 the material provided to you that she had no problems

1 with poor memory before the accident?

2 MR WILLIAM S: You already
3 answered it, Doctor

4 A There is evidence in the record that she had
5 difficulty with her memory before the accident

6 Q Where?

7 A Her school grades her standardized test
8 scores

9 Q Those could have been from other reasons
10 other than memory, couldn't they?

11 A Well, no I mean, when somebody has trouble
12 in school and somebody has trouble on standardized
13 testing it's quite likely that that is a problem with
14 memory

15 Q Is it also possible that it is a problem with
16 something else?

17 A Well, yes. Let me give you a third

18 difficulty; she was depressed before the accident

19 Q That could affect her school, couldn't it?

20 A Specifically one of the symptoms of
21 depression is poor concentration and memory. that's
22 one of the symptoms of depression

23 Q If the Rapid Response report indicates she
24 lost consciousness would that have any affect on her

1 judgment relative to a brain injury?

2 A That would be relevant.

3 Q That she was sleeping and she had an
4 immediate headache and didn't remember things right
5 after the accident, would that be relevant?

6 A That would be relevant.

7 Q Would that change your opinion at all?

8 A No.

9 Q I didn't think so. Would it have any affect
10 on your opinion?

11 A It would have none because my opinion is
12 based, more than anything else, on assessments of her
13 functioning before and after the accident and really
14 are not targeted firmly in the moments before and
15 after the accident.

16 Q Your assessment of functioning **was** about a
17 45-minute interview, right?

18 A And a lot of tests and the review of a whole
19 lot of records.

20 Q Two tests, MMPI and Millon?

21 A Right, and the tests that are contained in
22 other records.

23 Q Or not contained?

24 A Or not contained.

1 Q Okay. And why is it that you didn't give her
2 some other test knowing she was claiming a loss of
3 ability to concentrate and a memory problem?

4 A Well, that had already been done. I had the
5 benefits of the testing of Dr. Toth.

6 Q And what did Dr. Toth say about that testing?

7 A That her intelligence after the accident was
8 either average or above average; that there were many
9 tests, intelligence tests, not just the Wechsler that
10 suggested that. That was a very important piece of
11 data for me because --

12 Q Was Dr. Toth's diagnosis a very important
13 piece of data for you?

14 A Sure.

15 Q Why?

16 A Well, I take any other physician's or
17 psychologist's diagnosis seriously.

18 Q What was her diagnosis?

19 A I don't think that she made a formal
20 diagnosis, I believe that instead --

21 Q Why don't you get her report and see what it
22 says?

23 A I believe instead what she said was that
24 there was damage to the entire left hemisphere and

1 specifically the left frontal lobes.

2 Q That is not a diagnosis?

3 A Well, not really. Diagnosis would be
4 dementia.

5 Q Damage to the lobe and the brain is not a
6 diagnosis, you're telling me?

7 A It's not a normal diagnosis that is listed
8 in, you know, for example DSM III-R.

9 Q Does it have to come from DSM III-R for it to
10 be a psychological diagnosis? Does it or doesn't it?

11 A No.

12 Q What are the findings that are contained in
13 Dr. Toth's reports that you disagree with, if any?

14 A Okay, I disagree with the statement that she
15 sustained a loss of consciousness.

16 Q What page?

17 A Page one.

18 Q Go ahead.

19 A The description suggests that she gave --
20 suggested that she did not lose consciousness at the
21 scene.

22 Q Rapid Response -- if I told you the Rapid
23 Response, first place she went when she walked across
24 the street, said she had lost consciousness; would you

1 still disagree?

2 A That would be relevant. I would want to know
3 why the discrepancy. Why is she telling me one thing
4 and somebody else something else.

5 Q Mr. Williams didn't bother sending you that3

6 A Rapid Response report, no.

7 Q Go ahead, what else do you disagree with?

8 A I don't agree with the statement that there
9 was a pronounced difference between her verbal and
10 performance IQ's.

11 Q What page are you on?

12 A Number 2.

13 Q Where on number 2?

14 A About one-third the way down. "average range
15 of intellectual function, period. There was a
16 pronounced difference."

17 Q It says -- where it says paragraph starts,
18 "These WAIS-R, W-A-I-S Slash R scores placed here in
19 the average to above average range of intellectual
20 function." Do you disagree with that?

21 A I disagree.

22 Q The next?

23 A There was a pronounced difference between her
24 verbal and performance IQs.

1 Q Why do you disagree with that?

2 A Because there have been -- there has been
3 some research done on the difference between the
4 verbal and the performance IQs of normal people.
5 Those differences are reported, in fact, in the
6 so-called WAIS-R manual. The average person in their
7 study achieves a verbal performance IQ difference of
8 up to 40 points either way.

9 Q So you disagree with Dr. Toth's finding about
10 the WAIS-R scores?

11 A Specifically about that sentence that I just
12 read you, the pronounced difference. I wouldn't call
13 it a pronounced difference.

14 Q Would that be significant to you?

15 A Yes.

16 Q You didn't call and discuss that disagreement
17 with her, did you?

18 A That's correct.

19 Q Go ahead. What I want you to do is continue
20 on reading in the report and find out what else it is
21 that you disagree with?

22 A Okay. The middle paragraph in the middle or'
23 page 2 quote, "Based on her highest scores on these
24 tests, her premorbid IQ is estimated to have been at

1 least in the above-average range more likely in the
2 superior range.

3 Q You disagree with that, first of all?

4 A I disagree specifically with the quote "more
5 likely in the superior range", that is what I disagree
6 with.

7 Q You don't disagree with the above average
8 range?

9 A That's right. It's kind of interesting
10 that -- now this is a little technical but Toth is
11 saying that an average IQ, if I could direct you to
12 roughly line 6 or so, she is saying that starts,
13 "WAIS-R intelligence tests parentheses (average equal
14 90 to 110), all right. Toth is saying that it's
15 average to be between 90 and 110. She is further
16 saying that Miss Van Voorhis was at 111 which puts her
17 above average. I completely agree, Miss Van Voorhis's
18 IQ after the -- after the accident is above average.

19 Then Toth goes on to say these WAIS-R scores
20 placed her in the average range to above-average
21 range. I don't understand if average is 90 to 110 and
22 she scores a 111, how come that doesn't make her above
23 average? So I agree with that.

24 Now dropping down, her premorbid IQ estimated

1 to have been at least in the above average range
2 that's what her IQ is now, it's in the above-average
3 range, so I can somewhat agree with that. I don't
4 agree it's more likely to have been in the superior
5 range.

6 Q What else don't you agree with?

7 A Okay.

8 Q You pointed out these disagreements in your
9 record with Dr. Toth's report, didn't you?

10 A Well, no I didn't. You are asking me to go
11 through --

12 Q Go ahead, you didn't, fine, read on. What
13 else do you disagree with?

14 A All right. She goes on once again in the --

15 Q Please tell me where you are?

16 A Fifth line from the bottom --

17 Q All right.

18 A -- of the page. Quote, "Far below her
19 estimated premorbid IQ of 110 to 120 plus."

20 Q You disagree with that?

21 A Somewhat disagree with the notion of 120
22 plus.

23 Q There is nothing else on the above portion,
24 the lines above line 5 down that you disagree with

1 though you read on down, you don't disagree with
2 anything else she says?

3 A Well, if you want to get extremely precise on
4 this, I assume she did get that, Miss Van Voorhis did
5 get a weaker memory scale of only 80.

6 Q Did you understand my question?

7 A Yes.

8 Q Would you answer it?

9 A I just did. I was in the process.

10 Q Did you disagree with anything else above?
11 You told me you disagreed with the sentence dealing
12 with above-average to superior range for non-verbal
13 function. I'm sorry, I apologize.

14 You told me that you disagreed with part of
15 the statement that says, "Based on her highest scores
16 on these tests, her premorbid IQ is estimated to have
17 been at least in the above-average range more likely
18 in the superior range." You disagreed with part of
19 that?

20 A Correct.

21 Q Then I asked you to continue on and go to the
22 next thing you disagreed with and you went down to the
23 5th line from the bottom which is the sentence that
24 says, "Is far below her estimated premorbid IQ of 110

I to 120 plus."

2 A That's correct.

3 Q You don't disagree with anything in between
4 those --

5 A Let me go back and check.

6 Q Did you check before now? Did you read it
7 before now?

8 A In a cursory way. You apparently want a kind
9 of phrase by phrase evaluation which I'm happy to
10 provide.

11 Q I want to know everything that you disagree
12 with in Dr. Toth's report?

13 A I have a suspicion about the statements.

14 Q A suspicion?

15 A Yes.

16 MR. WILLIAMS: as you let
17 him answer.

18 Q Is that a disagreement or something you are
19 not certain?

20 A It's a suspicion.

21 Q Go ahead?

22 A About the first sentence under Mnestic
23 function. It's m-n-e-s-t-i-c function.

24 Q You've now gone back and read that more

1 carefully and you have a suspicion about it, am I
2 right?

3 A That's right

4 Q And what is it that you have a suspicion
5 about and not a disagreement?

6 A That she has shown significant memory
7 problems

8 Q Okay You are not -- you don't disagree with
9 that you are just suspicious about that?

10 A That's right.

11 Q What else, doctor? Maybe go from there on
12 down, I want you to read it carefully.

13 A Okay

14 MR. HOUSEL: Don't you
15 have your own copy?

16 MR. WILLIAMS: I didn't
17 bring it with me. Do you want to take
18 time to give me one? Then I'm going to
19 read his. Do you have a problem with
20 it?

21 MR. HOUSEL: No, sir not
22 at all.

23 A I have problems with the sentence immediately
24 above the heading 'Language function

1 Q Okay. Read it for me?

2 A That sentence says it should be noted that
3 even her higher score, the non-verbal memory score of
4 98 is far below her estimated premorbid IQ of 110 to
5 to 120. My problem with that is the estimate of
6 premorbid IQ.

7 Q What, why is that a problem?

8 A Because there are -- there is significant
9 evidence that Miss Van Voorhis did not have a
10 premorbid IQ of 110 to 120 plus.

11 Q Where is that significant evidence?

12 A The evidence is her functioning in high
13 school and in college and her standardized tests in
14 high school.

15 Q Didn't you just say a few minutes ago her
16 premorbid IQ was 111?

17 A No.

18 Q You don't know what it is, do you?

19 A I have a fair estimate, yes.

20 Q Fair?

21 A Yes.

22 Q What is your fair estimate?

23 A It is that she was functioning intellectually
24 in high school roughly somewhere between the 19th and

1 the 39th percentile, relatively below average

2 Q What is the IQ number that would apply to
3 that?

4 A The IQ number would be roughly 80 to 95
5 somewhere around there

6 Q What else on page 2 do you not agree with or
7 do you have a suspicion about?

8 A Okay.

9 Q Or do you have a problem with?

10 A All right The next section on your language
11 function quote, "Miss Van Voorhis's receptive and
12 expressive language skills were in the mildly to
13 moderately impaired range."

14 Q What is -- what is it -- you disagree with
15 that?

16 A Yes.

17 Q Why?

18 A Because I talked with her for a good portion
19 of time and I saw no problem with receptive and
20 expressive language

21 Q You talked to her about 45 minutes didn't
22 you?

23 A Well, I believe that my exam was about an
24 hour.

1 Q Okay about an hour?

2 A Right I **also** observed her before my formal
3 exam **as** we went through our courtroom battles to get
4 my examination done right.

5 Q Was she there when that happened?

6 A Yes.

7 Q She wasn't over at the courthouse?

8 A Not at the courthouse.

9 Q You just said **our** courtroom battles?

10 A There were courtrooin battles.

11 Q Where did you first see her?

12 A When I walked in the door about 12:30 she was
13 standing in the lobby.

14 Q And you observed her, right?

15 A That's correct.

16 Q And what did you observe?

17 A Well, at that point in time what I observed
18 was a relatively well-groomed person who seemed alert
19 and attentive to what was going on around her who was
20 able to pick up on social nuances.

21 Q Like what?

22 A When during that period of time, for example,
23 the two of you wanted to go to lunch. You were
23 particularly interested in going to lunch and I

-1
1 watched her facial expression, and her facial
2 expression appeared to me to be quite normal. She
3 didn't seem to be oblivious to the nuances of the
4 interaction.

5 Q And that tells you a lot about her?

6 A That **does** tell you something about her.

7 Q When was the next time you saw her?

8 A Well, when she came back from lunch. When
9 the two of you came back from lunch I continued to
10 watch. In a general sense she continued to react like
11 a normal person.

12 Q Like what, tell me, describe that for me?

13 A When I was introduced to her she seemed to
14 speak in a normal tone of voice. She seemed to have
15 reasonably good verbal skills. Again, her facial
16 expressions were normal. This was not somebody who is
your stereotypical brain-damaged victim.

What is a stereotypical brain-damaged victim?

19 A They have several deficits, one is emotional
20 lability. The other is difficulty with memory,
21 difficulty with abstract reasoning, the higher
22 cortical functions, and the ability to pick up on
23 social nuances are impaired in a brain-damaged person.

24 Q Always?

1 A What's that?

2 Q Always?

3 A That is a part of the syndrome.

4 Q Always?

5 A I think so.

6 Q You think so?

7 A Yes.

8 Q Anybody that has brain damage has that

9 problem?

10 A Well, it's a family of symptoms -- it is part

11 of the symptom complex of brain damage, it's possible

12 not to have one but to have all the others. So maybe

13 I should revise my answer and say while it's a symptom

14 of brain damage, every single person doesn't have

15 every single symptom.

16 Q When did you next see Michele?

17 A During the interview that I had with her. I

18 think it's difficult, of course, in all of the ins and

19 outs of this interaction, it's difficult for me to

20 remember every single time I saw her.

21 Q Did you write these things down to make up

22 the report, things like observing going out to lunch

23 and observing her in other areas, and what have you

24 about what you just told me, because I didn't see it

1 in your report anywhere.

2 A On my report on page 3, I said quote, 'I
3 didn't just evaluate what Miss Van Voorhis told me, I
4 also observed how she acted, observed, voice tone,
5 facial expression, gestures, posture, tempo, muscle
6 tension and more."

7 Q Can people react the way you described
8 Michale acting in your observation and still have
9 frontal lobe brain damage?

10 A It becomes obviously less and less likely.

11 Q Can the -- was the question yes or no?

12 A Could not -- again, my position is --

13 Q I don't want your position just answer the
14 question.

15 A No.

16 Q I know what your position is.

17 A No That can't act the way she answered and
18 have significant frontal lobe damage

19 Q Did anybody say it was significant?

20 A Yes the other experts certainly do imply
21 that it's not just damage but significant damage

22 Q Significant memory problem?

23 A Yes.

24 Q Significant loss of concentration problems,

1 right?

2 A And psychologist Toth specifically said that
3 the left side of the entire hemisphere and the frontal
4 lobes were damaged.

5 Q And if psychologist Toth had an occasion on
6 27 different times to see Michele and conduct
7 psychological evaluations and discussions and
8 treatment of Michele, you don't think she would be in
9 better position to determine the damage than you,
10 right?

11 A That's right because I have the benefit of
12 her records before the accident.

13 Q But you don't have her whole file, you never
14 had anything but her report, did you?

15 A You are talking about Toth's file now?

16 Q Right.

17 A That's right, I don't have Toth's file.

18 Q You don't have the test scores from Toth do
19 you?

20 A Correct.

21 Q Did you ask Mr. Williams for them?

22 A In a general sense I asked him for
23 everything.

24 Q He didn't give you those, did he?

1 MR. WILLIAMS: Didn't have
2 them.

3 A No.

4 MR. WILLIAMS: I don't have
5 them.

6 Q As you said here today you don't have them?

7 A Correct,

8 Q Would they be important to you in your
9 evaluation?

10 A Relevant, yes.

11 Q Important?

12 A Some of the information that I reviewed is
13 more important than those test scores.

14 Q Go ahead on with Dr. Toth's report and tell
15 me what else you disagree with?

16 A Okay.

17 Q I think you are at the bottom of page 2,
18 Doctor?

19 A Right, okay.

20 MR. WILLIAMS: Could we go
21 off the record for a second?

22 MR. HOUSEL: I would like
23 to get a copy of the reports.

24 - - -

1 DISCUSSION **HELD OFF THE** RECORD

2 - - -

3 MR. HOUSEL: Read him the
4 last question please, Doug.

5 - - -

6 Last question propounded by counsel
was read back by **the** court reporter.

8 - - -

9 A Okay. Okay. The statement she showed a
10 significant degree of anomia. Significant degree of
11 anomia, word finding difficulty. I did not observe
12 this during my interview with her.

13

15 Q Okay.

16 A And then the off and on observation for
17 several hours.

18 Q They have nothing to do with word finding
19 difficulty, the observations, do they?

20 A I saw her and heard her converse
21 occasionally.

22 Q What did you hear her say?

23 A I don't remember specifically but I was
24 certainly looking for signs of brain damage and saw

1 none. Furthermore, with an I.Q. that is well above
2 average, that is to say 111, it's very difficult to
3 imagine that she has difficulty finding **words**. Most
4 of those tests -- some of these tests require the
5 production of words. She very specifically scored, in
6 terms of the quality of her word production subtests,
7 along those lines, would be vocabulary similarities,
8 information, comprehension.

9 Q Let me stop you because I don't think I asked
10 you a question, you just volunteered all this
11 additional information not responsive to a question.

12 A I'm answering your question.

13 Q I think the question was, you made some
14 judgment on anomia, word finding difficulty, by your
15 visual observations of her?

16 A I finished telling you that I disagree with
17 the following statement.

18 Q Just answer the question I just asked you.

19 A I'm answering your question.

20 Q Ask him the question. See, ask the question.

21 A I don't need that but I'm happy to listen.

22 Q Okay, I'd like you to listen.

23 - - -

24 Last question propounded by counsel

1 was read back by the court reporter

2 - - -

3 A My answer, first of all, that appears to be
4 a statement rather than a question.

5 Q Did you then let me -- did you -- do you want
6 me to read it to you or rephrase it? Did you make
7 some judgment on her degree of difficulty with word
8 finding based upon your physical observations with her
9 without her saying anything?

10 A No.

11 Q Didn't you just say that a few minutes ago?

12 MR. WILLIAMS: That's a
13 different question Bob, you could be
14 fair.

15 Q Didn't you just say that you did?

16 A Since you are now asking a question and
17 before you didn't, it's really very difficult for me
18 to say. It sounds like a different question on your
19 part.

20 Q So you don't know whether you said that a few
21 minutes ago or not?

22 A I know that you asked me two separate
23 questions and I have given you two separate answers.

24 Q Can't you answer the question asked you? Is

1 that difficult?

2 A I did.

3 Q What question did I ask you?

4 A You asked me a convoluted question which was
5 whether or not my observations of her behavior were
6 relevant to my notion that she does not have anomia.

7 Q And the answer to that is?

8 A That my observations of her non-verbal
9 behavior are not relevant to my impression about her
10 anomia.

11 Q Anything else you disagree with on page 2, or
12 is that it? Why do you disagree she showed a
13 significant degree of anomia?

14 A I will reiterate there are ~~several~~ pieces of
15 evidence that she does not suffer from anomia. One is
16 that she didn't exhibit it during my interview.

17 Second is she performed well on an intelligence test,
18 and by well I mean in Dr. Toth's words, above average.

19 That intelligence test is heavily verbal, you have to
20 produce words, you have to find words to get a good
21 score on that intelligence test, apparently she did.

22 Q Anything else?

23 A The other intelligence test that Dr. Toth
24 gave also showed a normal I.Q. I suspect that those

1 other tests of intelligence also require verbal
2 intelligence, for example quoting from the middle of
3 page 2 on the test of intelligence administered to
4 Miss Van Voorhis also placed her in the average range
5 for verbal intellectual function. Now for her to
6 score average she had to talk average. I believe she
7 said.

8 Q You don't disagree with the statement that
9 Miss Van Voorhis's receptive and expressive language
10 skills were in the mildly to moderately impaired
11 range, right?

12 A That's right although if -- it's hard to say.
13 I mean, if this means she got that score on some test,
14 obviously I'd have to go along with it,

15 Q Are you speculating now or are you just
16 answering my question?

17 A I'm telling you I don't know.

18 Q If you don't know, say you don't know.

19 A That *is* exactly what I said --

20 MR. WILLIAMS: You can
21 answer the question how best you feel.

22 Q If you don't understand the question, why
23 don't you just tell me instead of not answering it
24 responsively?

1 a I've been telling you.

2 Q Okay. And you don't know whether in the 27
3 different times that she had office visits and had
4 testing with Dr. Toth whether during those times she
5 had a significant degree of anomia, do you?

6 A It's likely she would show you --

7 Q Do you know?

8 A On some occasions and not others.

9 Q Do you know?

10 A Yes, I'm fairly satisfied she did not show it
11 during the 27 visits because she didn't show it on the
12 test and *she* didn't show it with me.

13 Q And you don't know what she showed with Dr.
14 Toth other than what is in this report, right?

15 A Correct.

16 Q Go to page 3, what do you disagree with on
17 page 3?

18 A All right.

19 A My problem in agreeing or disagreeing with
20 much of what is on page 3 is that I don't know whether
21 or not Toth intends to describe the outcome of
22 psychological testing or whether Toth means to
23 describe her behavior in general. For example --

24 Q Well, if that's the case, let me stop you

1 then. You can't agree or disagree with anything on
2 page 3 right? Would that be right or not?

3 A No, that's not correct.

4 Q Why is that not correct?

5 A I'm not characterizing every single sentence
6 on page 3.

7 Q That's what I want **you** to do, take it
8 sentence by sentence.

9 A Okay, will do.

10 Q Thank you.

11 A Let me make an offhand comment, and that is
12 we *were* supposed to get started at 1:30, I will --

13 MR. HOUSEL: You will be
14 paid for your time.

15 A I agree we started at a quarter to two. I
16 got to get out of here at a quarter of four.

17 Q Go ahead.

18 A Perceptual function. This is at the top of
19 page 3. Hiss Van Voorhis showed no problems in the
20 accurate perception of visual or tactile stimuli. If
21 that sentence -- I agree with that sentence.

22 Q Go on from there then.

23 A Okay. She had mild difficulty reproducing
24 simple geometric figures and manipulating elements of

simple drawings and designs. If that was the doctor's

4 Q Go ahead.

5 A Visual motor function. She showed mild
6 deficits in visual motor coordination. I observed
7 none. I observed no deficits in visual motor
8 coordination. It may be that on some test she did
9 show mild deficits in that area but I observed none.

10 Q You don't disagree with that statement,
11 right?

12 A I didn't observe that and so it's very
13 difficult for me to agree or disagree with it.

14 Q Go ahead, are you penalizing me because the
15

16 I have to take your --

17 A This court reporter is not my court reporter.
18 Yes, what I just finished telling you that I am
19 willing to go until a quarter to four.

20 Where do you have to be at a quarter to four?
21 Got other things to do.

22 Q Other work to do? Like what?

23 A I have got some writing that I got to do that

L 1 Q Here?

2 A Yes.

3 Q That's \$300 bucks an hour?

4 A No.

5 Q Go ahead. Writing that is pressing that
6 can't wait another half an hour or so?

7 A That's right.

8 "Hiss Van Voorhis had a mild degree of
9 difficulty with rapid switching of cognitive set,
10 (thinking on her feet)." Close parenthesis. I did not
11 observe that and in fact observed the opposite.

12 Q You don't disagree that Dr. Toth obviously
13 observed it?

14 A I don't know, I don't agree with that
15 sentence. I don't know what Toth did, but --

16 Q You disagree with that?

17 A Correct.

18 Q Go ahead, what else?

19 A While she had little difficulty with
20 non-verbal reasoning she had significant difficulty
21 with analysis **and** synthesis of verbal information. I
22 disagree with that statement.

23 Q Why's that?

24 A I didn't observe it and her intelligence

was consistent, according to Toth,

ently normal, that intelligence testing

is analysis and synthesis of verbal information.

Just on the other subject. Am I to

and because you have some pressing writing to

Friday afternoon that you're going to make me

this if I'm not through and drive back to

?

That's right.

Okay. Go ahead.

"There appeared to be a mild frontal lobe

ction in the dominant cerebral hemisphere."

Do you disagree with that?

Yes. I saw no evidence of that kind of brain

What test did you conduct to find difference

t kind of brain damage?

Well, I used really Toth's test. I didn't

o conduct many of the --

You used Toth tests? You didn't have Toth's

I have her report in which I assume she put

er was important. I have a verbal IQ of 104

s slightly above average.

ted, according to

think you said;

s in this report

atement?

I didn't take

er report. Dr.

rage.

er?

er

that.

1 Q I doubt that you think anybody is solidier
2 than yourself?

3 A Your wrong about that.

4 Q Go ahead.

5 MR. WILLIAMS: Nice try,
6 Bob.

7 MR. HOUSEL: What a
8 comment from the peanut gallery.

9 A Her quote, "Personality test" results were
10 strongly suggestive of CNS dysfunction rather than of
11 an underlying psychopathology, I disagree with that
12 statement.

13 Q Why?

14 A Because she is using the personalty test to

16 dysfunction, very peculiar. I would love to see, you
17 know, a reference or two suggesting that personality
18 testing can be strongly suggestive, strongly
19 suggestive, of CNS dysfunction.

20 Q You didn't contact her to ask her about that?

21 A You're right, I didn't contact her.

22 Q Go ahead, what else do you disagree with?

23 A As a result of the cognitive deficits she now
24 has a poor self-concept and shows mild depression.

1 Q Disagree with that?

2 A I disagree with that.

3 Q Why?

4 A Because I don't think she has cognitive
5 deficits. And therefore those deficits couldn't cause
6 a poor self-concept and a mild depression, that is
7 point one. Point two is she was depressed before the
8 accident. I think that is fairly well established.

9 Q She could be depressed more so because of
10 what happened in the accident, after the accident,
11 couldn't she?

12 A Given her functioning generally improved
13 after the accident.

14 Q What functioning?

15 A For example her college grades. Her college
16 grades, non-significantly, went up after the accident.
17 Her test scores basically went up after the accident.
18 Standardized testing shows that she wasn't as smart
19 before the accident as she was after the accident.

20 Q That's your answer to my question of whether
21 depression can affect you from an accident?

22 A We can reread your question if you like.

23 Q Did you understand it?

23 A Yes.

1 Q That was your answer too is?

2 A That's correct.

3 Q Go ahead, what else?

4 A Okay. A poor self-concept is a part of
5 depression and once again what we have is a statement
6 cognitive deficits are causing her self-concept and
7 depression. I'm saying she showed both of those
8 symptoms before the accident. Okay. Quote, "She
9 experienced feeling of low self-esteem and prolonged
10 because of her ongoing difficulties with speech and
11 her poor academic performance." Now, her academic
12 performance improved after the accident. So I can't
13 agree with the statement from that perspective.

14 Q What in the interpretation slash summary of
15 findings; do you agree with anything --

16 MR. WILLIAMS: You don't
17 want him to finish the other part?

18 MR. HOUSEL: Go ahead.

19 A I was in the middle of an answer

20 My time is limited.

21 MR. WILLIAMS: I just wanted
22 to ask your son don't later --

23 MR. HOUSEL: I don't need
24 any suggestions from you. My time is

1 limited, please let me finish in the
2 time I have left, the doctor has more
3 pressing writing to do.

4 MR. WILLIAMS: We were
5 supposed to start at one o'clock, Bob.

6 MR. HOUSEL: 1:30.

7 A 1:30 on our books.

8 MR. WILLIAMS: I'm sorry,

9 A Okay, so once again to reread the statement
10 she expresses feeling of low self-esteem and
11 hopelessness because --

12 Q You went to the interpretation -- go into the
13 interpretation?

14 A You don't want me to finish?

15

16

17

18 neuropsychological and personality test results point
19 consistently to generalized damage consistent with a
20 closed head injury?

21

22 Q Sure.

23 A I take issue with, once again, with the note
24 that a personality test results --

- 1 Q She lumped them together there now.
- 2 A If I could finish my answer.
- 3 Q Sure.
- 4 A Let me repeat it. "Neuropsychological and
5 personalp test results," and I want to emphasize that
6 word and then reiterate personality test results don't
7 measure brain damage.
- 8 Q Do neuropsychological tests measure brain
9 damage?
- 10 A Yes.
- 11 Q Isn't that senience putting the two of those
12 tests together?
- 13 A Yes, the word is and; it's not or, it's and.
- 14 Q That's what I thought I said.
- 15 A Yes.
- 16 Q Did you disagree with that sentence?
- 17 A I do disagree with that sentence from the
18 standpoint the personality test results do not point
19 consistently to closed head injuries.
- 20 Q How about, "The neurological and personalty
21 test results point consistently to generalized damage
22 consistent with a closed head injury?"
- 23 A Neurological or neuropsychological.
- 24 Q Would you agree with that?

1 A No, the data that I **have** seen thus far
2 suggests that her intelligence is now just as good **as**
3 **it was** before the accident; so no, I don't **agree** with
4 that.

5 Q Her specific deficits include, do you agree
6 with what's listed under attention span/concentration
7 you can read it. Do you agree with that? Read it to
8 yourself, tell me if you agree with it?

9 A We are now shifting over a number of
10 sentences.

11 Q You can do that can't you?

12 A What.

13 Q You can do that?

14 A Yes, I'm in the process of doing that.

15 Q Fine.

16 A Her specific deficits --

17 Q You don't have to read it out loud, just read
18 it to yourself. Tell me if you agree with it?

19 A I don't agree with that list.

20 Q Any part of the list?

21 A Yes.

22 Q Which part?

23 A Attention span and concentration, I don't
24 believe she has a deficit in that area relative to her

1 performance before the accident. Really, I don't
2 believe she has problems with her memory especially
3 for verbal and auditory information, there is no
4 information --

3 Q Do you know how many times in your interview
6 of Hiss Van Voorhis she said I don't remember?

7 A She did say that several times and then
8 proceeded to remember with exquisite detail.

3 Q What did she remember with exquisite detail:

10 A I was most impressed with her remembering to
11 go out and warn her friend Sharon that since she was
12 going to be late; the examination was going to make
her late, that her friend should go and pick up the
14 tickets to the Sting Concert. I thought that was
15 pretty good clerical remembering. Me, i have trouble
16 remembering things like that.

17 Q Go to the next page then --

18 MR. WILLIAMS: You don't
19 want him to finish the list then, Bob?

20 Q Go to page three of your report.

21 A My report?

22 Q Yes.

23 A Okay.

24 Q Paragraph that says Toth based her

- 1
└─┘ 1 conclusions partially on Van Voorhis subtest scatter?

2 A Where are you reading.

3 Q Page 3 whereon physician Lefkovitz --

4 MR. WILLIAMS: Third
5 paragraph.

6 A Go ahead.

7 Q Says "Lefkovitz then based his conclusion
8 partially on Toth's testing. He wrote." Do you
9 disagree with that whole paragraph there?

10 A The paragraph that I'm quoting?

11 Q Yes.

12 A I disagree with the phrase "severe
13 post-concussive syndrome."

14 Q Are you a medical doctor?

15 A No.

16 Q Do you have a place to disagree with a
17 diagnosis of a medical doctor such as Dr. Lefkovitz?

18 A Yes, I think so.

19 Q Why do you think so?

20 A Because I've been trained in neurological
21 testing. Toth is a psychologist who also diagnosed a
22 psychological syndrome. It's in our Diagnostic and
23 Statistical Manual.

24 Q Have you ever diagnosed post-concussive

1 syndrome?

2 A Yes.

3 Q You have?

3 A Yes.

3 Q I thought physicians diagosed like that?

6 A They do.

7 Q You can also do so?

8 A Sure.

9 Q Go head, what else do you disagree with there
10 from this neurologist's report?

11 A Are you asking me to look on my report on
12 page 3.

13 Q Yes, right?

14 A Okay, the rest of the quote, myofascial pain
15 syndrome, cervical and diffuse back pain and so on,
16 I'm not qualified to make those diagnoses.

17 Q So you don't disagree with that?

18 A No.

19 Q But you are good and qualified to make
20 diagnosis of post-concussive syndrome?

21 A That is a psychological syndrome.

22 Q Do you disagree with patients with whom
23 continue to remain symptomatic on a permanent basis?

24 A Since I saw no symptoms, yes, I strongly

1 disagree with the notion that those particular
2 syptoms, post-coconcussive syndrome are permanent

3 Q You wouldn't think she has that, do you?

4 A That's correct, I don't

5 Q So this accident didn't cause Miss Van

6 Voorhis any mental problems, psychological problems,
7 right?

8 A Where is that?

9 Q That's just a question, it's not anywhere.

10 A Okay. Restate the question.

11 Q Read him the question.

12 - - -

13 Last question propounded by counsel
14 was read back by the court reporter.

15 - - -

16 A That's right.

17 Q One of the reasons I think you said she
18 wouldn't deteriorate, she has some highly responsible
19 job managing 200 apartments, right?

20 A What was one piece of evidence

21 Q That was significant, wasn't it?

22 A It was significant.

23 Q If somebody has some kind of a problem like
24 she is saying memory or what have you, she wouldn't

1 handle a highly responsible job managing 200
2 apartments, right?

3 A It would be difficult to do if you had brain
4 damage, that's right.

5 Q And they did it according to what you wrote
6 in here? Then she got a highly responsible job
7 managing 200 apartments?

8 A Yes, I believe that to be true.

9 Q Did you read her deposition thoroughly?

10 A Yes.

11 Q Did you read in the deposition that she
12 co-managed it with Robert Schlepper?

13 A Yes.

14 Q Did you read in the deposition she quit the
15 job because she couldn't perform because she couldn't
16 remember?

17 A Yes.

18 Q Did that have any significance to you?

19 A Yes. What I have to do is go back and ask,
20 what was her work history like before the accident

21 Q You asked her that, didn't you?

22 A What?

23 Q You asked her that, didn't you?

24 A Yes.

1 Q Answer **my** question.

2 A I was in the middle **of** doing **so**.

3 Q Didn't sound like it but **go** ahead.

4 A **Okay**. You have to -- she quit **a** job, that's
3 true, she performed very poorly on work tasks before
6 the accident too. There is nothing different here,
7 nothing new.

8 Q Well then why did you list this here that she
9 got a highly responsible job managing 200 apartments'?

10 A Well, it's better than her -- I had the sense
11 that it was a better job than some of the jobs that
12 she had before the accident, you know, a cocktail
13 waitress, that sort of thing.

14 E Did you disbelieve Michele *when* she said in
15 her deposition she couldn't handle that job because
16 she couldn't handle things?

17 A No. Meaning that I don't think she was
18 trying to be deceptive. I believe her pattern of job
19 history and high school performance is really no
20 different than her quitting this job after the
21 accident.

22 Q If I understand you correctly, her pattern,
23 the way you seem to describe it in this report is,
24 what she does is, she plays like she is sick because

1 that is part of her psychological problem?

2 A It's hypochondriacal When your grandmother
3 says she has achilles pains that is not lying out at
4 the same time she is over sensitive

5 Q Michelle is not lying with her?

6 A That's correct.

7 Q So she is overly sensitive to them?

8 A That's right

9 Q You didn't use hypochondriacal anywhere in
10 this report?

11 A I don't think so but I certainly was synonymous
12 like that in the file.

13 Q Like what?

14 A Undifferentiated somatoform

15 Q Is that undifferentiated somatoform pain
16 disorders?

17 A No, I don't think there is any such diagnosis
18 in DSM III-R.

19 Q Is there something called undifferentiated
20 somatoform disorders?

21 A Yes.

22 Q Is there something called undifferentiated
23 somatoform pain disorder?

24 A I don't think so.

1 Q Is there somatoform pain disorder?

2 A Yes.

3 Q What is the difference between somatoform
4 disorder and somatoform pain disorder?

5 A Well, somatoform disorder is the overall
6 category within which there fit a number of
7 psychological problems. One of those problems is
8 called somatization disorder. Somatoform pain
9 disorder is a hypochondriacal difficulty in which the
10 person's major complaint is pain.

11 Undifferentiated somatoform disorder is a
12 disorder where the person's complaint is physical, not
13 necessarily pain, but it is a physically related
14 problem of some kind that seems to be over-emphasized
15 based on testing and so on.

16 Q Do you express any opinions to a reasonable
17 psychological probability in this report?

18 A Yes.

19 Q Where are they?

20 A The diagnosis. My diagnosis.

21 Q Which is?

22 A Undifferentiated somatoform disorder and
23 tendencies toward personality disorder.

24 Q That is your diagnosis?

1 A Correct.

2 Q And that is not caused by the accident?

3 A That's right.

4 Q What's it caused by?

5 A It's caused by her genetics and her -- well
6 her early childhood experiences more than her
7 genetics. There is sufficient evidence that
8 personality disorders have a genetic root. There is a
9 lot of evidence that somatoform disorders in general
10 have early childhood roots.

11 Q As far as you're concerned she sustained no
12 damage to her brain from this automobile accident?

13 A It doesn't appear that she does but as I say
14 I'm even more firm on the notion that if she were to
15 have sustained some minor damage, it's not interfering
16 with her functioning.

17 Q So she may have sustained, according to you,
18 some minor damage?

19 A It's unlikely, but we all experience brain
20 damage when we take a couple of drinks, alcoholic
21 drinks. So it's no significant brain damage, that
22 would be another way to put it.

23 Q Would it be better for you if you saw her on
24 a regular basis to make a diagnosis like that as

1 opposed to the one time?

2 A The more information the better. I
3 emphasized her record as opposed to seeing how over
4 and over again.

5 Q Any other opinions?

6 A Well, those are contained in my report.

7 Q It doesn't say opinions, it says diagnosis.

8 A Well, those are the standard that one testifies to
9 in court relative to opinions, Doctor?

10 MR. WILLIAMS: I'm going to

11 object he is not a legal --

12 A I don't know.

13 Q Do you know --

14 MR. WILLIAMS: He is not a

15 lawyer and I don't know that he is
16 qualified to answer that question.

17 Q Answer the question.

18 A Would you repeat the question?

19 Q What is the standard by which you are to
20 testify to an opinion in a courtroom?

21 A Reasonable degree of psychological certainty.

22 Q Are any opinions -- are you planning to
23 express in court in this case opinions to a reasonable
24 degree of psychological certainty?

1 A Yes.

2 Q And they are what?

3 A Again they are contained in my report, but I
4 can summarize to you what that report says.

5 Q Summarize what the opinion would be?

6 A I'll have to repeat myself. My opinion is a
7 written opinion that is roughly 13 pages long. It's a
8 long opinion, you know. Some of the highlights of
9 that opinion are her diagnosis which we have gone over
10 and the diagnosis has really five dimensions.

11 Q Let me stop you. If you are asked this
12 question what are -- Doctor based upon your evaluation
13 of Michele Van Voorhis, your review of the material
provided to you by Mr. Williams and your entire review
15 of Miss ~~Van~~ Voorhis, do you have an opinion to a
16 reasonable degree of psychological certainty as to
17 whether she sustained any injury in the automobile
18 accident on December 16 of 1987?

19 A Yes.

20 Q What is that opinion?

21 A That she sustained **no** significant brain
22 damage during that accident.

23 Q **But** some brain damage?

24 A No significant brain damage.

1 Q Does that mean some brain damage?

2 A No. No.

3 Q Significant doesn't mean some brain damage?

4 A There **is** a --

5 Q Does it or doesn't it? That's a yes or no.

6 A Ask it again.

7 Q Ask it again. Why don't you -- **do** you like
8 being evasive?

9 A No.

10 Q Okay.

11 A I don't believe she sustained any significant
12 or important brain damage.

13 Q Did she sustain some?

14 A No, I don't think so, to a reasonable degree
15 of psychological certainty, no.

16 Q Do you believe her when she says in her
17 deposition I know she says in her interview she cannot
18 remember things?

19 A I don't believe that. She has demonstrated
20 the opposite,

21 Q So she is lying about that?

22 A **No.**

23 Q Her test paints a bleak prognosis, what does
24 that mean?

1 A I go on to explain that in the next couple of
2 sentences. People with --

3 Q Explain it without looking at your report.

4 MR. WILLIAMS: Why can't you
5 look -- you can look at your report if
6 you want, Doctor.

7 MR. HOUSEL: You don't
8 have the right at my deposition, since
9 you don't represent him, to direct what
10 he can or cannot do.

11 Q Without looking at the report, answer the
12 question.

13 A I --

14 MR. WILLIAMS: If you want
15 to look at it, look at it.

16 A I understand. The report will tell you that
17 there are experts in the field who are indeed sort of
18 pessimistic about the treatability of a person like
19 this and I go on to quote that authority.

20 Q That was the answer to the question that I
21 just asked you?

22 A That's right.

23 Q You kind of -- are these reports prepared on
24 a computer?

1 A Yes.

2 Q And are reports ever similar?

3 A Sure **they** are.

4 Q **Use** the same quotes in a lot **of** different
5 reports, do you?

6 A Oh, yes every psychologist does that,

7 Q Every psychologist does that.

8 Q So the quotes about the **MMPI** and the people
9 you rely on there and the Merck Manual, they are
10 pretty much in all of your reports?

11 A Not in all of them, but in some, right.

12 Q When Yiss Van Voorhis says she ~ ~ i suffers
13 from pain, numbness, anxiety and memory loss, you
14 don't believe her when she says that do you?

15 A My report is nor, about pain or numbness,

16 Q Just answer my question. The question is
17 very simple. When Yiss Van Voorhis says she suffers
18 from pain, numbness and anxiety and memory loss you
19 don't believe her, do you; yes or no?

20 A Your statement is intriguing.

21 Q Do **you** believe her **or** not?

22 A Yes and no.

23 Q Yes you do and no you don't?

24 A Exactly. **You** just listed a lot of symptoms.

1 You could have asked me, do you believe the following;
2 that she is a female and she lives on the moon yes or
3 no Now it's very difficult to answer that question
4 yes or no because I disagree with part of it

5 Q What part do you disagree with?

6 A Why don't you read your list again or maybe
7 we can have him do it.

8 Q Miss Van Voorhis says she still suffers pain
9 combiness, anxiety and memory loss; do you believe her?

10 A I don't know about the pain and combiness, I'm
11 not an expert on that sort of thing Anxiety, I don't
12 buy that. There is no evidence for it in the testing
13 or in my examination of her. The memory loss, there
14 is no evidence that her memory is any worse now than
15 it was before the accident. There is lots of evidence
16 that she had a poor memory before the accident
17 We can go until 4:00; am I a nice guy or
18 what?

19 Q You swear

20 MR WILLIAMS: Prince of a
21 man.

22 A At no additional charge.

23 Q Do you -- did you know that Michele was being
24 treated by another neurologist, a Dr Wickel?

1 I think she may have mentioned him at the
2 time af the examination.

3 Q Do you have any records from him?

4 A No.

5 Q Did you know he diagnosed she had permanent
6 brain damage as well?

7 A I don't know that -- didn't know that.

8 Q You wouldn't agree with that even if that was
9 the case, would you?

10 A Well, that's right I would not agree with
11 that.

12 Q So you disagree with thit diagnosis of Dr.
13 Toth who had seen her on 27 occasions, right?

14 A Correct.

15 Q And Dr. Lefkovitz a number of times and years
16 he has treated her?

17 A Yes.

18 Q And Brickel, right?

19 A Well, I don't know about Brickel but that may
20 be true, It may be that I've disagreed with a Dr.
21 Brickel.

22 Q What does it mean to express an opinion to a
23 reasonable degree of psychological certainty?

24 A It means you are about 51 percent sure of

1 yourself.

2 Q Are your diagnoses in this report that you
3 have testified to all out of DSM?

4 A Yes.

5 Q Are there different forms of the MMPI test
6 other than the one you administered?

7 A Yes, there are several different forms.

8 Q Which one did you administer?

9 A It's called, I think, the Group Form.

10 Q Did you score it?

11 A My secretaries did.

12 Q You didn't send it off somewhere to have it
13 scored?

14 A No.

15 Q Do you have the test scores somewhere?

16 A Yes.

17 Q Could I have them?

18 A No.

19 MR. WILLIAMS: No.

20 Q Why?

21 A That's a document I can send to Toth or
22 whoever requests it but can't give them to you.

23 Q Why?

24 A Test publishers say we are supposed to keep

1 all that stuff very confidential.

2 Q The scores are? I thought the questions is
3 what you kept confidential?

3 A Yes, I believe that is correct.

3 Q You won't give me the scores?

6 A What do you mean by scores?

7 Q Scores on the MMPI.

8 A As I say, I'll send them to another --

9 MR. WILLIAMS: You mean the
10 numbers, Bob?

11 BY MR. HOUSEL:

12 Q Will you give me the scores or not'?

13 a No.

14 Q Why?

15 A Because of the test publishing problem, I
16 just told you.

17 BY MR. HOUSEL:

18 Q Would you direct the doctor to take the
19 scores out of his file and give them to me.

20 MR. WILLIAMS: Are you
21 talking about the documents themselves?

22 (Witness ordered to remove certain files.)

23 A What scores are they?

24 BY MR. HOUSEL:

1 Q The scores on the MMPI and the Millon.

2 A Does that mean it's okay? I want to make
3 copies of these.

4 MR. WILLIAMS: You don't
5 have to give him the originals.

6 MR. HOUSEL: I only want
7 copies.

8 MR. WILLIAMS: Don't give
9 him the copies. Don't give him
10 copies --

11 MR. HOUSEL: He does not
12 having anything to do --

13 MR. WILLIAMS: Don't give
14 him the copies.

15 MR. HOUSEL: Would you
16 make copies? He doesn't represent you,
17 he has no right to tell you what to do
18 or not to do.

19 DR. LAYNE: They are not
20 the test questions, no big deal.

21 MR. HOUSEL: Thank you.

22 - - -

23 DISCUSSION HELD OFF THE RECORD

24 - - -

1 MR. HOUSEL: Put on the
2 record that Mr. Williams says Delphi
3 Toth is full of shit and I am full of
4 shit. That is what you said Mr.
5 Williams, isn't it, sir? Isn't that
6 what you just said?

7 MR. WILLIAMS: I said Delphi
8 Toth would not give me those records
9 when I requested them from her
10 Further, I said, and the doctor is
11 not in the room, the deposition was not
12 convened and that Mr. Housel is a
13 scoundrel, he has withheld records from
14 throughout this litigation, has done it
15 again yesterday -- Wednesday at Dr.
16 Toth's deposition when she refused,
17 after I asked her on several occasions
18 to give me copies of the scoring sheets
19 from these tests.

20 Now, Mr. Housel has come in
21 here and as has been his practice
22 throughout this case has demanded every
23 record that we put our hands on what has
24 failed to give us even the most minimum

1 documents and then questions experts
2 which I have retained as to why he
3 doesn't have these documents. It's
4 really funny. So we can send that to
5 the Court too.

6 MR. HOUSEL: Did you get
7 that on the record that this
8 professional sitting over here said that
9 Dr. Delphi Toth was full of shit and I
10 was full of shit?

11 MR. WILLIAMS: I did not
12 make that statement on the record in any
13 proceeding.

14 MR. HOUSEL: Did you just
15 say that here in this room a few minutes
16 ago?

17 MR. WILLIAMS: You got a
18 question to ask me, Bob, we can do it
19 any time, any way, any day, okay?

20 MR. HOUSEL: I just asked
21 you --

22 MR. WILLIAMS: We can do it
23 any time. I can do it any time, any way
24 any day, baby.

1 MR. HOUSEL: Are you going
2 to -- you are pointing your finger --

3 MR. WILLIAMS: I believe I'm
4 sitting about three feet away from
5 you --

6 MR. HOUSEL: Pointing your
7 finger in my face.

8 MR. WILLIAMS: Your face is
9 three feet away -- right here, I'm going
10 to point, I'm going to talk, I'm going
11 to do whatever I feel necessary to
12 protect my client, Bob. Now, if you
13 feel threatened, baby, I'm very sorry
14 for you. You know, maybe you have a
15 psychological condition, you know, maybe
16 you have lost your memory as result of
17 this, I don't know.

18 MR. HOUSEL: i don't nave
19 a lot of time left --

20 MR. WILLIAMS: I don't care.

21 MR. HOUSEL: The doctor
22 has given me ten more minutes, i want to
23 continue with my deposition.

24 BY MR. HOUSEL:

1 Q Will you give me those, please? I don't want
2 you to give me the tests themselves.

3 A The agreement with the test publishers is we
4 are not supposed to disclose questions from the tests.
5 I believe your expert did something similar or at
6 least I overheard.

7 Q Is that part of the question I asked you?
8 Are you doing it because my expert did it?

9 A Well, number one, it was in a part of your
10 question.

11 Q You are doing it because my expert did it?

12 A No.

13 Q Why did you mention that?

14 A To show you that it is a standard that some
15 psychologists follow.

16 Q Will you send Dr. Toth a copy of those test
17 questions like you just indicated?

18 A If I have the proper release, yes, I will.

19 Q What release, what does it need to say?

20 A Michele Van Voorhis needs to release me to
21 enable me to send this information off to Toth.

22 Q Didn't she do that when she signed a release
23 before you interviewed her?

24 A No, she didn't release me to send anything to

1 Dr Toth

2 Q So if you get a written release from APW
3 authorizing to send to Toth, you will do that?

4 A That's right.

5 Q Why wouldn't you talk to me on the phone when
6 I told you about a portion of the report that had not
7 been provided to me by Mr Williams?

8 MR WILLIAMS: I will object

9 right here I think Mr Xousel here is
10 out of line, first of all, in even
11 calling an expert witness who has been
12 retained by the other side and then to
13 ask this man why he will not engage in
14 behavior that this counsel knows is
15 improper is certainly an improper
16 question in asking this man to engage in
17 what I believe to be an unethical act.

18 BY MR. HOUSEL:

19 Q Go ahead and answer the question

20 A You called, I got the message that you had
21 called and you were looking for footnotes

22 Q Right. Did you call me back?

23 A No.

24 Q Why?

1 A Well, because I wasn't really sure what was
2 proper in this situation.

3 Q You've done these before, haven't you?

4 A Yes, but I have never been called by the
5 opposing attorney,

6 Q If it's a search for the truth, what's the
7 problem, why wouldn't you call me back and ask me --

8 MR. WILLIAMS: A search for
9 the truth by calling the other party's
10 expert witness, I don't think that is
11 proper, Mr. Housel, and I think the
12 doctor acted properly.

13 A Seemed improper for me to talk with opposing
14 counsel.

15 Q "What's improper"? You're talking with me now

16 A Right.

17 Q Is it only by deposition --

18 MR. WILLIAMS: And the other
19 lawyer happens to be present.

20 A That is proper.

21 Q That is proper?

22 A Yes, that's routine, done that many times.

23 Q Many times?

24 A Right.

1 Q You wouldn't have certainly the majority of
2 the reports that Mr. Williams wouldn't provide me
3 anyhow would you?

4 A Probably would have under different
5 circumstances.

6 Q What different circumstances?

7 A Well, had it been sort of a -- had I known it
8 was okay to do so, I'm not a lawyer, I don't know what
9 the legal ramifications --

10 Q You called Mr. Williams after I called you,
11 didn't you?

12 A I believe so.

13 Q And *he* told you not to send them?

14 A No.

15 Q What, did he tell you?

16 A Said everything was **okay**. I didn't talk to
17 him.

18 Q What did you call him for?

19 A To find out what the information was.

20 Q About what?

21 A The footnotes,

22 Q Handing you what's been marked **as** Plaintiff's
23 Exhibit 1, what is that?

23 A That is a copy of my report but under the

1 first sheet there is something, FAX cover sheets from
2 Kinko's, and then it continues with my report.

3 Q It's your report in its entirety, right?

4 MR. WILLIAMS: Including the
5 footnotes.

7 MR. WILLIAMS: You never
8 asked me a **question** the whole day, Bob,
9 but you have put ever other comment I
10 made on the record so I'm sure this one
11 can be put on the record,

12 A This looks iike my report in its entirety,
13 yes.

14 Q And you provided that report in its entirety
15 as it is here in Plaintiff's Exhibit 1 to Mr. Williams
16 sometime ago?

17 A Right.

18 MR. HOUSEL: Mark these
19 two would you please.

20 - - -

21 Plaintiff's Exhibit **Nos. 2** and **3** were
22 marked for purposes of identification.

23 - - -

24 BY MR. HOUSEL:

1 Q Handing you what has been marked for
2 identification, Plaintiff's Exhibit No. 2, can you
3 identify that, please?

4 A Well, these are letters from a Dr. Lord,
5 there are four letters.

6 Q Okay, and they were provided to you by Mr.
7 Williams?

8 A Correct.

9 Q You used those four letters in some fashion
10 in preparation of your report?

11 A I believe so.

12 4 Handing you what has been marked for
13 identification purposes is Plaintiff's Exhibit 3,
14 would you identify that, please?

15 A These *are* the school records of Michele Van
16 Voorhis from Cuyahoga Community College, Kent State
17 University, and the Kent Public Schools.

18 Q And they were also used by you, Plaintiff's
19 Exhibit 3, in preparation of your report?

20 A Yes.

21 Q The footnotes that appear on Plaintiff's
22 Exhibit, Deposition Exhibit 1 starting with page 10
23 and ending with page 13, they are very important in
24 your report, aren't they Dr. Layne?

1 A They are relevant. Are they very important;
2 no. If they were very important I would have brought
3 them forward to the body of the report, yes but they
4 are --

3 Q Are you trying to say they are not part of
the body of the report?

Yes, I'm trying to say they are footnotes to
8 the notes.

9 Q How could one look to what references you are
10 making in the body of the report without having the
11 notes available?

12 A They couldn't.

They couldn't? The notes specifically refer
the MMPI, Michele's deposition, Lane Psychological
15 Services specializes in psychological assessments, in
16 fact you don't present any medical opinions in the
17 report. Statements from experts on MMPI and Millon
18 Clinical inventory, things like that?

19 A That's right.

20 Q DSM III-R?

21 A Right.

22 Q Causes of somatoform disorders?

23 A Hu-huh.

24 Q Books that you use in reference to these

reports?

A Right.

MR. HOUSEL: I'd like

the record at this point to reflect that as of today, although I had requested them on more than a half dozen occasions, I never received portions of the report from pages 10 through 13 from defense counsel, Orlando Williams, nor did I receive the copies of the Plaintiff's Exhibit 2 or Plaintiff's Exhibit 3 and could not possibly have had any opportunity, since I just saw them when I arrived here this afternoon when we started this deposition at a quarter to 2:00, to review any of that material. And in order to prepare questions to effectively take this doctor's deposition for which I sent him a check for \$600 for two hours of his time.

And that, please, I want you to type this specific section up in the beginning portion so I can file a motion

1 with the Court next week relative to
2 defense counsel's conduct in not
3 providing me with this material. Had I
4 had the material, I could adequately
5 prepare within the two hours
6 allotted on this doctor who is 135
7 miles away from this court where this
8 case is taking place an opportunity to
9 thoroughly review, to do some research,
10 consult other doctors that I may be
11 dealing with to determine whether it is
12 accurate or not

13 The doctor has upon him
14 enough to give me an extra 15 minutes
15 and at this time, I'm going to request
16 that this deposition be recessed until I
17 have an opportunity to review this and
18 then I'm going to ask the Court to order
19 that the defense counsel in this case,
20 Orlando Williams, pay for the cost of my
21 to come back to Toledo next week
22 and the time it takes me additionally to
23 prepare, and Dr Layne's time for
24 additional questions that I need to ask

him or materia hat should have been provided -- as ordered to have been provided by Judge Williams to me and not provided, and I would like to book another time with you, Dr. Layne, next week.

MR. WILLIAMS: At this point in time I would like the record to reflect that the Confidential Psychological Evaluation by Dr. Layne consists of ten pages with Dr. Layne's signature on the 10th page. This is his report, there are footnotes from page 10 through 13 which are in fact not part of his report, which merely reference information contained within this report.

I'd like the record to reflect that Dr. Delphi Toth has a four-page report which does not contain any reference to anything that she has in that report or Toth's report does not contain a listing of the 16 series of tests which she told me about at her

1 very deposition; that Dr. Lefkovitz's
2 report is only about two pages long, and
3 does not contain -- reference to the
4 things that I asked counsel for the
5 plaintiff back at his client's
6 deposition, which took place on July
7 27th of 1990, for the school records of
8 his client; that I wanted this
9 information in order to prepare for this
10 case. I asked him for transcripts from
11 his client at that point in time so I
12 could prepare for this case.

13 I have asked him repeatedly
14 throughout the course of this case, even
15 prior to that date in time, for records
16 from his physicians, all the physicians
17 who have treated Miss Van Voorhis. He
18 has repeatedly refused and it was not
19 until January of this year that he
20 indicated that he would sign releases
21 to allow me to obtain this information

22 Michael Van Voorhis himself
23 could have obtained this information with
24 a simple telephone call but counsel for

1 the plaintiff didn't want to do that, he
2 wanted me to do his discovery **work**, so
3 now he **claims** he is **not** prepared to take
4 this doctor's deposition. I'm not done,
5 **Bob**, and I didn't interrupt you.

6 So the record should reflect
7 that the information from Dr. Dawn Lord
8 contains no medical records that I have
9 although Michele Van Voorhis has been
10 treated by six or seven other
11 psychologists, including psychologists
12 since her adolescence. I have never
13 obtained one single solitary record from
14 any of those persons.

15 In addition, the information
16 which Mr. Housel has received today has
17 already been sent to him, he already has
18 possession of it at his office, through
19 the kindness of me. The judge had
20 indicated that Mr. Housel was not
21 entitled and **I did** not have to give him
22 this information until I could complete
23 it, the report of his experts.

24 Mr. Housel called me on last

1 Friday while I **was** preparing to attend
2 **my** father's funeral, which occurred the
3 very next day, to indicate allegedly
4 that he had decided to use another
5 expert witness, Dr. Art Brickel. I just
6 received the information from Dr.
7 Brickel and his report yesterday. I had
8 already taken the deposition of two of
9 his other experts and did not have an
10 opportunity to question them about
11 anything in Dr. Brickel's report. One
12 of those reports was dated October of
13 1990, yet Mr. Housel gives those to me
14 yesterday and comes all the way here to
15 Toledo, Ohio to complain about some
16 questions related to his client which
17 his client could have very easily
18 gotten.

19 I want an opportunity if Mr.
20 Housel is going to seek an opportunity
21 for costs for preparing to come back up
22 here, an opportunity to reconvene the
23 deposition of Dr. Layne, reconvene the
24 deposition **of** Dr. Toth, to have Mr.

1 Housel pay me for my costs in preparing
2 for those depositions as well as taking
3 those depositions and to pay those
4 doctors whom I have already paid.

5 MR. HOUSEL: Brilliant.
6 Are you done?

7 MR. WILLIAMS: Yes, I think
8 I'm quite done now and I want that typed
9 up so I can put it in my motion which I
10 will be filing with the Court right
11 behind Mr. Housel.

12 MR. HOUSEL: The footnotes
13 from 10 through 13 are part of your
14 report?

15 DR. LAYNE: Yes.

16 MR. HOUSEL: Thank you.
17 He has a copy, Mr. Williams, of Yay 2nd
18 1991 sentence addendum to Dr. Brickel's
19 report. I will hand it to you now. If
20 you don't want it, don't take it.

21 MR. WILLIAMS: Thanks.

22 MR. HOUSEL: Doctor, is
23 there a time next week'?

24 MR. WILLIAMS: Let the

record reflect that I have just received, at the conclusion of this deposition, a copy of a purported addendum to Dr. Brickel's report and I would like also the record to reflect that in the -- along with the correspondence which I received from Mr. Housel containing two purported reports of Dr. Brickel, those -- Mr. Housel made the indication that now Dr. Brickel is able to state with a reasonable degree of medical certainty that this lady has brain damage. None of those reports contain that information and this addendum, I would like it read now, it's dated May 2nd, 1991, it was marked apparently this morning, says send back to Brickel, Michele Van Voorhis, the patient, has sustained permanent brain injury as a result of an accident 12-16-87. Relationship between these two is within a reasonable degree of medical certainty. Dr. Brickel, Jr. MD, Director Department of Neurology. It's

1 not signed and there is a FAX number on
2 it. Apparently it was FAXed this
3 morning.

4 MR. HOUSEL: Is there a
5 time next week we can --

6 DR. LAYNE: I would like
7 to get advanced payment.

8 MR. HOUSEL: That wasn't
9 the question. The question was -- you
10 got advanced payment this time.

11 MR. WILLIAMS: Sure did, is
there any problem?

DR. LAYNE: I got a
feeling it's going to be a little
tougher this time. I'd prefer you to
work out the payment, send it along,
I'll tentatively hold the time, how's
that?

MR. HOUSEL: When are you
tentatively holding a time for?

DR. LAYNE: Let me check.

MR. HOUSEL: One other
thing. If I get sent to you the
appropriate release, you will send those

1 test copies to Dr. Toth?

2 DR. LAYNE: Will do.

3 MR. HOUSEL: Thank you,

4 sir. Do you want to waive signature or
5 not?

6 MR. WILLIAMS: No.

7 MR. HOUSEL: Come back

8 Doctor, come back.

9 MR. HOUSEL: Put this on

10 the record, you can explain the waiver

11 MR. WILLIAMS: He said he
12 didn't waive.

13 MR. HOUSEL: Let him
14 explain it on the record.

15 DR. LAYNE: No, I do not
16 wa ve

17 MR. HOUSEL: So then you'd
18 be willing to compare over to his office
19 and read it and make whatever
20 corrections

21 - - -

22 DISCUSSION HELD OFF THE RECORD

23 - - -

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(Deposition concluded at 4:10 o'clock p.m.)


CHRISTOPHER LAYNE

C E R T I F I C A T E

I, Douglas R. Ackerman, a Notary Public and Registered Professional Reporter within and for the State of Ohio, duly commissioned and qualified, do hereby certify that the within-captioned witness,

DR. CHRISTOPHER LAYNE, was first duly sworn to tell the truth, the whole truth and nothing but the truth in the cause aforesaid; that the testimony then given by him was by me reduced to stenographic in the presence of said witness, afterwards reduced to computer transcription words by supervision, and that the foregoing is a true and correct transcription of the testimony so given by him as aforesaid, and that the reading and signing of the witness was waived

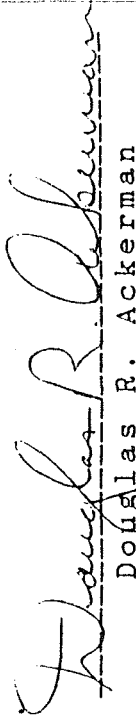
I do further certify that this deposition was taken at the time and place in the foregoing caption specified

I do further certify that I am not a relative, counsel or attorney of either party

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal of office at Toledo, Ohio, on this

6th day of May, 1991.

My commission Expires
November 26, 1995


Douglas R. Ackerman
Notary Public

In and for the State of Ohio