

ORIGINAL

STATE OF OHIO)
COUNTY OF CUYAHOGA)

COURT OF COMMON PLEAS

JOHN GERARD WAUNSCH,
Plaintiff,

vs.

No. 230252

SHERATON CLEVELAND
CITY CENTRE,

Defendant.

- - -

DEPOSITION OF CHRISTOPHER C. LAYNE, Ph.D.

DATE : May 4, 1994 at 2:10 p.m.

PLACE : Layne Psychological Services
3450 West Central Avenue
Toledo, Ohio

REPORTER: Wendy L. Anglin, RPR
Notary Public

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1 APPEARANCES:

2 On behalf of the Plaintiff:

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(216) 861-4211

6 On behalf of the Defendant:

7 GALLAGHER, SHARP, FULTON & NORMAN:
8 Patrick M. Foy
1501 Euclid Avenue
Cleveland, Ohio 44115
9 (216) 241-5310

10 - - -

1 CHRISTOPHER C. LAYNE, Ph.D.,
2 a Witness herein, called by the Plaintiff as if upon
3 Examination, was by me first duly sworn, as hereinafter
4 certified, deposed and said as follows:

5 - - -

6 EXAMINATION

7 BY MR. BEREZIN:

8 Q. Dr. Layne, knowing that this is not your
9 first occasion to be involved in a legal matter, I'd like
10 to go through some of those background areas first. How
11 long have you been doing medical/legal evaluations?

12 A. My first one was around 1980.

13 Q. And that was where?

14 A. In Toledo.

15 Q. And you've been doing, at some level,
16 medical/legal evaluations since that time?

17 A. During the first six years or so I did very
18 few. Around 1987, the work began to pick up. I must have
19 done -- from 1980 to 1987, I bet I did, say, three,
20 something like that, total, but after that the legal work
21 began to pick up.

22 Q. Did it pick up because of a specific interest
23 of yours or specific event?

24 A. An interest of mine. My father is a lawyer,

1 and I've always been interested in the law, though I went
2 into psychology, so I sort of welcome the opportunity to
3 function in the legal arena.

4 Q. Could you describe your current involvement
5 in medical/legal matters in terms of time and that kind
6 of --

7 A. I would say about a third of my income is
8 generated by what I call legal work, meaning interactions
9 with the -- with lawyers and the law in one fashion or
10 another. About two-thirds is direct patient contact.
11 That's about the way things stand now.

12 Q. Now, when you talk about legal work, are you
13 including cases such as this, lawsuits and worker's
14 comp --

15 A. Yes.

16 Q. -- evaluations?

17 A. That's correct.

18 Q. In terms of worker's comp evaluations,
19 what -- how would you break that down within that
20 one-third?

21 A. Within the one-third of what you would call
22 legal work, now worker's comp amounts to no more than 10
23 percent of my overall legal work. To put it differently,
24 in terms of my overall functioning, 27 percent civil and

1 criminal law, 3 percent worker's compensation.

2 Q. Is it fair to say that in the worker's comp
3 area you would be retained, for the most part, by
4 employers?

5 A. Correct.

6 Q. Now, in terms of non-worker's comp, how would
7 you divide that percentage between civil and criminal?

8 A. Criminal is another -- out of the 27 percent,
9 criminal might be 5 to 10 percent of the overall legal
10 load, the other 90, 95 percent of the cases are civil.

11 Q. When you indicate that one-third of your
12 income is from legal work, what dollar amount is that?

13 MR. FOY: Objection.

14 Q. Approximately, on an annual basis?

15 MR. FOY: Objection. You may answer.

16 A. We -- it's very difficult for me to figure
17 that out.' I mean, one-third -- our annual gross here is
18 about -- a little over \$200,000. If one-third of my
19 income is legal -- legally oriented, that would be
20 one-third of \$200,000 or so. That's a rough estimate.

21 Q. Now, you do business under Layne
22 Psychological Services?

23 A. Correct.

24 Q. Besides yourself, who is Layne Psychological

1 Services?

2 A. Well, my wife does the business work.

3 Q. That's --

4 A. Takes care of the money, pretty typical.

5 Then I have several master's level therapists who work for
6 me and see patients. There are four master's level people
7 who work generally part time.

8 Q. In terms of the legal work and the legal work
9 on evaluations such as in this case, in a civil lawsuit,
10 is there any other person other than you that touches that
11 process?

12 A. Yes, there are obviously several. There's
13 secretaries, and then there's -- I also have a master's
14 level person who helps to do research when it's needed,
15 that sort of thing.

16 Q. Secretaries, obviously, for typing and for
17 maybe scoring some of the testing?

18 A. That's right.

19 Q. In this particular case, other than you and
20 other than the scoring aspects, whatever tests you ran,
21 did anybody else do any specific research on this case?

22 A. That is hard to -- for me to recall. Let me
23 look at my report for just a second and see if I can
24 figure out any other work that was done. I don't think

1 that anyone did any work on this report other than the
2 secretaries and me, I don't think so.

3 Q. Now, does your one-third income also
4 translate into one-third time that you devote to
5 medical/legal?

6 A. That's fair, yes.

7 Q. Have you ever worked with Mr. Foy before?

8 A. Yes.

9 Q. And could you tell me how many times and what
10 kinds of situations?

11 A. I would say twice in civil matters over the
12 last four years or so.

13 Q. And do you recall the issues in those cases?

14 A. I do not. Beyond them being civil matters, I
15 don't remember the specific cases.

16 Q. Have you worked for anybody other than Mr.
17 Foy in his law firm?

18 A. Yes.

19 Q. And who have you worked for in his law firm?

20 MR. FOY: Objection. You can answer.

21 A, Sheila McKeon.

22 MR. FOY: McKeon.

23 A. McKeon, sorry. Tom Coffey often contacts me,
24 ne's a paralegal there, often runs the details of the

1 case, and so often I don't have great contact with the
2 attorneys themselves. Sometimes I'm not terribly aware of
3 who the attorney is.

4 Q. Well, let me ask you this: How many other
5 occasions have you worked for other members of Mr. Foy's
6 law firm?

7 A. I would guess over the last four years, ten,
8 twelve. Again, it's difficult to remember specific
9 numbers, but it's --

10 Q. Is it fair to say that all those matters
11 involve your evaluation for the defendant of the
12 plaintiff?

13 A. Yes. I believe that at Gallagher, Sharp,
14 certainly the majority, the vast majority of the cases
15 there have been defendant cases.

16 Q. Well, for Gallagher, Sharp, have you ever
17 evaluated a defendant represented by Gallagher, Sharp?

18 A. I don't remember, and that would be quite
19 unusual.

20 Q. How about other lawyers? Let's view it as
21 Northeastern Ohio. This is Northwest. We're in the
22 Cuyahoga County, Summit, Lake, Lorain County areas. Could
23 you tell me who else you worked for, what other lawyers?

24 A. There's a firm named Rhoa, Rawlin and

1 something or other. Again, I'm going to have a little
2 trouble remembering the names of the firms. It's not
3 something that I've --

4 Q. How many times have you worked for them?

5 A. Maybe twice.

6 Q. Also same situation, where they represented a
7 defendant and you evaluated a plaintiff?

8 A. I think so.

9 Q. Okay.

10 A. Though again, it's a little hard to piece
11 these memories together.

12 Q. What other law firms in the Cleveland area?

13 A. You know, there are several others, I just
14 can't remember the names.

15 Q. Do you maintain a list of lawyers you worked
16 for or law firms you've worked for?

17 A. They've got to be in our system somewhere,
18 under billing or something.

19 Q. But you don't retain a separate list
20 somewhere of law firms you worked for?

21 A. No.

22 Q. How about Akron? Have you worked for any law
23 firms in Akron?

24 A. Yes, okay, Akron being a part of Northeast

1 Ohio.

2 Q. We include Akron in that.

3 MR. FOY: They don't, but we do.

4 A. Yes. The name of the firm -- the fellow's
5 name was Orlando Williams.

6 Q. Roetzel & Andress?

7 A. Right. Roetzel & Andress, right, I've worked
8 for them, They also have an office in Canton, as I
9 recall.

10 Q. Fair to say that in -- in terms of your work
11 in Northeastern Ohio, it's been primarily for defense
12 firms?

13 A. Yeah, that's true.

14 Q. Have you ever done any plaintiff's
15 evaluations in Northeastern Ohio?

16 A. I suspect that I have, but in Northeast Ohio,
17 again, it's a little difficult for me to recall -- to
18 mentally break down defense/plaintiff cases in a certain
19 region of the country. About a third of my work is
20 plaintiff work.

21 Q. In the Lucas County area?

22 A. All Toledo, wherever, yeah.

23 Q. When you sent me your letter you -- th
24 Letter was obviously computer generated, and it had in it,

1 I think, typical travel cost to Cleveland, Akron, and
2 Columbus. Is it fair to say that you work a lot in those
3 areas?

4 A. Some, enough to obviously need a letter like
5 that, yes. They are intended as sort of examples of
6 mileage computations, but yes, I've done some **work** in
7 Columbus, a fair amount in Cleveland, some in Akron,
8 uh-huh.

9 Q. In terms of let's just say the last year, how
10 many times have you had occasion to work on a -- let's
11 call it a Cleveland case? It's artful, but I think you
12 know what I mean.

13 A. Yes, **six** cases **during** the last **12** months **in**
14 Cleveland.

15 Q. How about Akron?

16 A. Maybe once.

17 Q. How about Columbus?

18 A. Maybe once, yeah.

19 Q. Just to get back, I think you've answered
20 this, but do you have a specific recollection of doing any
21 work on behalf of a plaintiff in Cleveland, Akron, or
22 Columbus?

23 A. Let me think. I can't recall -- I can't
24 recall that.

1 Q. When is the last time -- I'm trying to get a
2 sense of frequency. When is the last time you gave a
3 deposition or appeared in court for testimony from today's
4 date, today is -- what is -- May 4th, 1994. When is the
5 last time that you --

6 A. I know I did some immediately before
7 Christmas of last year.

8 Q. I'm not talking about Cleveland.

9 A. Right, anywhere, anywhere,

10 Q. Okay.

11 A. I may have done one deposition since
12 Christmas.

13 Q. How about interviewing plaintiffs other than
14 Mr. Waunsch, who is --

15 A. Uh-huh.

16 Q. -- obviously in this case. How many people
17 have **you** interviewed for civil cases?

18 A. Seven.

19 Q. Okay.

20 A. Since -- you're saying since January 1st?

21 Q. Right, correct.

22 A. Right.

23 Q. And how many of those have been Northeastern
24 Ohio cases?

1 MR. FOY: Are we including
2 Waunsch?

3 MR. BEREZIN: Excluding Waunsch.

4 MR. FOY: Okay.

5 A. Say three out of the seven, 40 percent.

6 Q. Okay. Do you recall who the defense lawyers
7 were on those -- on those three Cleveland cases or
8 Northeastern Ohio cases, or firms?

9 A. No.

10 Q. Okay.

11 A. I just don't.

12 Q. Now, what's your fee schedule? How much have
13 you charged so far, Mr. Foy or his firm or his client, for
14 your services today?

15 A. I'm at \$100 an hour, and the trip to
16 Cleveland by itself is a five-hour trip, round trip, 'so
17 that's \$500 there. The evaluation, running through the
18 report, usually runs about \$1,000 with the tests and the
19 writing and the records review, so I'm guessing that I
20 have billed \$1500 for this case.

21 Q. Now, for deposition time you charge \$200 an
22 hour?

23 A. Right.

24 Q. And that's -- is that the similar fee for

1 your trial time also, trial testimony?

2 A. That's right.

3 Q. Do you have a sense of what's typical in a
4 case like this that would -- from beginning to end, your
5 total fees, both paid by defense lawyer or his client and
6 plaintiff?

7 A. This would be a fair example, you know,
8 today, if you are here for three hours, that would be
9 another \$600, so we would be at \$2100 or so. If it went
10 to trial, I assume I would be traveling to Cleveland for
11 the trial, and so there's **\$500** plus the -- I would
12 probably wait three hours, I would probably testify for
13 three.

14 MR. FOY: He's been to trial before.

15 A. So -- the waiting is at \$100 an hour, so
16 that's \$800, and then the testimony is another \$600, 'so
17 that's \$1400 for trial testimony, and so we add that to
18 the \$2100.

19 Q. So about \$35001

20 A. Yeah, that sounds about right.

21 Q. And is that about typical?

22 A. Yes, that sounds about right.

23 Q. Have you ever testified as a treating
24 psychologist for a plaintiff?

1 A. Yes.

2 Q. And when is the last time you did that?

3 A. You're not -- you're asking the last time I
4 actually testified as opposed to being generally involved
5 in a lawsuit, specifically testified?

6 Q. Testified.

7 A. Okay. Oh, boy, the -- I cannot recall. The
8 case that I am running through my mind now just didn't go
9 to trial.

10 Q. How about a deposition? Was it in the past
11 year?

12 A. Yeah. I'm racking my brain, again, coming up
13 with many cases where I'm the treating psychologist, but
14 they just didn't go to trial. I can't -- I cannot
15 remember when the last time I testified for the plaintiff
16 was.

17 Q. Mr. Foy provided me a C.V. that you provided
18 to him, and I misplaced it. Do you happen --

19 MR. FOY: You're S.O.L.

20 Q. Do you happen to have your C.V.? And while
21 you're looking, I did note that there was a reference to
22 an article you published in -- in a journal that's
23 basically for defense lawyers. Do you have a reprint of
24 that article?

1 A. As I recall, there's only one article that's
2 been published in a law journal at all, the Ohio Quarterly
3 ; does that sound familiar? Whether it's defense or not,
4 I'm not sure, but --

5 Q. It's defense.

6 MR. FOY: Objection.

7 A. It was actually a transcript of a speech;
8 does that sound right?

9 Q. Do you have a reprint of that?

10 A. Yes, I believe I do.

11 Q. While you're --

12 MR. FOY: You better get a copy for me
13 too, please.

14 Q. If you could get a copy of that and your C.V.

15 A. Sure.

16 (A brief recess was had.)

17 Q. Now, in your -- in your report you indicate
18 the documents that you reviewed, and I'm on -- in your
19 "Endnotes" on page 13.

20 A. Okay.

21 Q. Besides those items, did you review any other
22 documents?

23 A. Yes. Subsequent to -- first of all,
24 subsequent to writing the report, I got a few other

1 documents, and secondly the -- you know, I meant this list
2 not to be exhaustive. The documents that I reviewed
3 included -- and I think I have some other stuff in my
4 file, other documents that I reviewed but didn't list
5 maybe perhaps because they didn't stick out at the time.

6 Q. Well, could you tell me what you reviewed?
7 That's what I -- I know you saw Schwartz's deposition,
8 because you refer to **it** several times.

9 MR. FOY: **It's** in there, yeah.

10 A. Right, right.

11 Q. Other than the documents you list and Dr.
12 Schwartz's deposition, have you reviewed anything else?

13 A. I believe so. It would, you know -- you're
14 welcome, of course, to look at what I have. It -- these
15 are chronological starting with, what, 1991, 1992, 1993,
16 **and** it goes all the way up to our report.

17 Q. My business card is in here -- well, that's
18 the most important document in here..

19 A. That's right, that's right.

20 MR. FOY: Objection, self-serving and
21 not true.

22 Q. The highlighted portions in blue, is that
23 your highlighting? What are the different -- you have
24 different colors. Is that a color code to your

1 highlighting?

2 A. Yes. The blue is references to mental
3 problems. Orange is, I think, drugs, I'm talking from
4 medically here now. Pink, I believe, is physical ills.
5 Yellow is just an -- interesting stuff and, of course,
6 dates and authors.

7 Q. Now, I'm at a tab in your book that's labeled
8 as LPS. Can I assume that that's Layne Psychological
9 Services?

10 A. Right, that it is.

11 Q. And this reflects items that you generated?

12 A. Correct, or that were generated, of course,
13 by Mr. Foy when he wrote me, uh-huh.

14 Q. Now, do you remember how you --

15 MR. FOY: You're back in another
16 section now.

17 THE WITNESS: No, I understand, I
18 understand.

19 MR. FOY: Okay.

20 Q. Do you recall how you got this case? Did you
21 get a letter? Did you get a phone call?

22 A. One or the other, either a phone call or a
23 letter.

24 Q. I don't see a letter in here -- well, maybe I

1 do, I'm sorry. Is your file chronological with the most
2 recent stuff up first, is that how your files *go*?

3 A. No, no, the opposite. The old stuff is in
4 the front of the file, and then it gets more and more
5 recent.

6 Q. In the back?

7 A. Yes.

8 MR. FOY: It should be, except for this
9 one right here.

10 MR. BEREZIN: That's why I'm confused.

11 A. There's a little mix-up in the LPS. The
12 other exception is in the reports, those sometimes are
13 much earlier.

14 Q. Now, there's a letter to you from Mr. Foy
15 dated July 9th, 1992. Whose handwriting does that appear
16 to be?

17 A. That must be one of our secretaries.

18 Q. What does that say?

19 A. Let's see, 9-4-92, phoned, and the cases are
20 in limbo for -- that looks like Waunsch, and then I think
21 there is one or the other signatures of our secretaries.

22 Q. Okay. Limbo, Waunsch, those are the main
23 words. Now, besides the letters that -- there are a
24 series of letters here from July, September, December, all

1 of '93, and then January of '94. Do you recall any phone
2 conversations with Mr. Foy or anybody from Mr. Foy's
3 office regarding this case?

4 A. No, I don't. The -- it is probable that I
5 received such a phone call, but I don't now remember
6 talking on the phone about this case.

7 Q. Now, could you make copies of these two
8 pages --

9 A. Sure.

10 Q. -- so we could mark them.

11 (A discussion was had off the
12 record.)

13 Q. Now, the -- this one sheet, which in **your**
14 report is reproduced, is the -- are the results of the
15 Millon Inventory?

16 A. That's right.

17 Q. Did you do a Millon Inventory, or are these
18 Dr. Kaplan's reports?

19 A. Kaplan's.

20 Q. Okay. Now, you interviewed Mr. Waunsch at
21 some point?

22 A. Correct.

23 Q. Do you know the date of your interview?

24 A. Yes, that is March 16th, 1994.

1 Q. Do you have notes of your interview with Mr.
2 Waunsch?

3 A. No. The way I work it is I interview
4 directly onto a computer. The computer software takes in
5 the words, and then later I edit those words to make a
6 narrative that flows, so there are no notes separate from
7 the report.

8 Q. So what's the process of -- let's back up.
9 When you interview -- when you interview a patient or a
10 person who you're evaluating, do you take notes?

11 A. In both cases, yes.

12 Q. Do you treat in terms of either retaining
13 notes or transcribing notes, do you make a distinction
14 between patients and people you evaluate?

15 A. Yes, there's a different procedure for the
16 two.

17 Q. So you keep your handwritten notes on
18 patients who consult you for therapy or who are your
19 patients?

20 A. That's right, that's right.

21 Q. Okay.

22 A. Those are just handwritten notes.

23 Q. Now, walk me through the process of what you
24 do with your handwritten notes for people you evaluate.

1 A. There are no handwritten notes for the people
2 I evaluate for legal purposes.

3 Q. Well, you make notes as you interview them?

4 A. But not with a handwriting -- not with a
5 pencil or a pen, but rather on a computer. I sit at a
6 keyboard.

7 Q. So you bring your little portable computer
8 and keyboard?

9 A. Correct.

10 Q. So you make notes as they're talking and type
11 it onto a computer disk?

12 A. Correct.

13 Q. And what happens to those notes?

14 A. The notes are entered not just on a -- the
15 notes are not entered into a clean screen, so to speak;
16 but are rather entered into the report that ultimately you
17 have in front of you. That report is formatted. In the
18 case of Mr. Waunsch, that report was' sort of formatted and
19 put in proper form before I ever saw him, with, you know,
20 headings like History -- sort of universal headings, like
21 History or Behavior.

22 Then when I'm talking with him, I fill in the
23 history as best I can, typing rapidly- Then I go home and
24 edit those notes that are in the computer and begin to

1 shape a report using the words that I entered into the
2 computer when I was talking with, in this case, Mr.
3 Waunsch.

4 Q. So you do not retain, either on disk or
5 printout, a complete copy of your notes as you interviewed
6 him?

7 A. Correct, right.

8 Q. They are -- they get integrated into your
9 report?

10 A. Right, right. It's part of the computer age,
11 I guess you would say, that the multiple copies of a
12 document as it's edited and refined all take place in the
13 computer file itself as with each modification. The -- as
14 it were, the old version sort of disappears and the new
15 version is there, and that's the only version, yeah,
16 but --

17 Q. Well, how do you know when **you** -- when I read
18 this report, how do I know, without referring back, and
19 how do you know, without referring back to your original
20 notes -- I'm trying to get rid of handwritten notes -- to
21 your original notes, how do you know that they were
22 self-reported from the person you interviewed?

23 A. The short answer to that is that the same
24 questions could be asked about somebody that took

1 handwritten notes. How do you know that when you take
2 handwritten notes that the handwritten notes reflect what
3 the person actually says or doesn't say.

4 Q. No, no, you're missing -- I'm sorry, my
5 question wasn't artful. I read this report, and you've
6 got -- you've got a lot of endnotes and footnotes and all
7 the rest, and you refer to the source of many of your
8 statements?

9 A. Uh-huh.

10 Q. Right?

11 A. Correct.

12 Q. Without you having a copy of notes you
13 generated at the time of the interview, how do you then
14 recall back what part of this report reflects what Mr.
15 Waunsch told you?

16 A. If -- yeah, if I were to do that now, I would
17 go through the report, first looking for statements that I
18 make that blatantly say, "Mr. Waunsch said," or, "Mr.
19 Waunsch told me that." Secondly, I would look to see
20 whether or not the statement is endnoted at all. If the
21 statement is not endnoted, that at least raises the
22 probability considerably that he, himself, told me that.

23 In other words, there probably are times in
24 the report when there's something he told me which I wrote

1 down but did not attribute to him, but the point is it
2 wouldn't be attributed to anything else, and so that would
3 be a tip-off, but most of the time I will say in the
4 report, "He told me this,"

5 Q. When you -- when a patient is with you, do
6 you -- do you make handwritten notes or do you utilize
7 that computer?

8 A. For patients I use just handwriting.

9 Q. Has anybody ever asked you about this process
10 before?

11 A. Yes, yes, they sure have.

12 Q. I would imagine they have.

13 A. Uh-huh.

14 Q. Now, the other document that you have in
15 your -- in your three-ring notebook are some records from
16 MCC, I believe?

17 A. Right.

18 Q. And those you received after you wrote your
19 report?

20 A. Correct.

21 Q. Do those documents in any way change your
22 conclusions reached in your report?

23 A. No.

24 Q. In your -- part of your practice in terms of

1 treating patients, do you have a subspecialty in terms of
2 the work that you do or in terms of your interest?

3 A. Yes. I treat depression and anxiety probably
4 best, so I'm partial to those problems, but those -- my
5 practice is not restricted to those two problems.

6 Q. Do you do any adolescent or child work?

7 A. Yes.

8 Q. Do you restrict your work in any way? Are
9 there any kinds of situations that you will not handle?

10 A. Yes. For example, I don't do biofeedback.
11 I'm sure there are other areas.

12 Q. I'm not really talking about in terms of
13 treatment modalities, I'm talking about in terms of
14 problems presented. I mean, I understand if someone is
15 grossly psychotic and needs medication, you would refer
16 them to a psychiatrist, but in the genre of what
17 psychologists do today, are there any areas that you
18 self-exclude?

19 A. There are a few. Just to give you a couple
20 of examples, if somebody specifically wanted a therapist
21 to handle women's issues, I just don't know the first
22 thing about that. I just say that -- I've generally
23 turned down things, what I would call sort of trendy
24 problems, you know, like women's issues or something, gay

1 issues, I don't know anything about that, so that's an
2 example.

3 Q. Now, do you -- reading your report, I
4 obviously -- I have read your report carefully, I think.
5 Are you going to offer an opinion at trial as to whether
6 Mr. Waunsch suffered any psychological injury as a result
7 of the assault on August 31st of 1991?

8 A. Yeah, I'm going to offer an opinion.

9 Q. And what is that opinion going to be?

10 A. That the assault was not relevant to his
11 mental health.

12 Q. So he suffered no psychological injury as a
13 result of the assault?

14 A. Right.

15 Q. And can I take that to also encompass the
16 fact that your opinion is -- is that he did not suffer
17 posttraumatic stress disorder or syndrome as a result of
18 the assault?

19 A. That's right.

20 Q. Are you going to offer an opinion as to
21 whether he suffered other psychological injuries or
22 conditions before the incident of August 31st, 1991?

23 A. Yes, I will argue that he had psychological
24 problems before this assault.

1 Q. And what are those psychological problems?

2 A. It's a chronic depression, a chronic
3 low-level depression called dysthymia.

4 Q. Now, is there a protocol of testing that
5 you -- that is typical when you undertake to review a
6 posttraumatic stress case?

7 A. Yes.

8 Q. And what -- tell me what that protocol or
9 routine is.

10 A. The MMPI and the Personality Assessment
11 Inventory, those are my two preferred tests.

12 Q. How about the Millon?

13 A. That's not bad. I've used it, and that would
14 be -- that's a viable alternative. I prefer the
15 Personality Assessment Inventory over it, but not by a
16 lot, And I have used the Millon in the past.

17 Q. Millon, okay, I'm sorry.

18 MR. FOY: I thought it was Millon.

19 A. I thought it was voir dire.

20 Q. I don't know what it is,

21 MR. FOY: Question.

22 Q. You've used the -- what is it, Millon?

23 A. Yeah, or Millon, as in Italy.

24 Q. I want to be correct here.

1 A. Millon.

2 MR. FOY: We're not on video, it
3 doesn't matter.

4 Q. You have administered the Millon test before?

5 A. Correct.

6 Q. In situations where you are evaluatin
7 someone in a posttraumatic stress situation?

8 A. That is probably true.

9 Q. Is there a reason you did not use it in Mr.
10 Waunsch's case or did not administer it?

11 A. Yes. The -- I really stopped using it about
12 a year-and-a-half ago, two years ago, maybe, because I
13 thought the Personality Assessment Inventory was more
14 valid, slightly more accurate.

15 Q. And you did both of those tests on Mr.
16 Waunsch?

17 A. Well, actually I did not, because in this
18 case, being amenable to the Millon, which had already been
19 done, and then looking at the fact that he **had** had, I
20 think, at least two **MMPI's** done already, I gave him
21 another MMPI and thought that's enough personality testing
22 for one guy. We got enough personality tests to last him
23 a lifetime, so I went off and did a -- an intelligence
24 test, because I thought it might be interesting to -- to

1 go into a new area to scope out his complaints of poor
2 attention and concentration, to see if there's any
3 validity to that.

4 So I administer -- I usually administer two
5 personality tests. This time I administered just one for
6 the reason he had already had so many personality tests.
7 There was also the problem that the poor guy had come in
8 from Miami, and he had to get back home. And I didn't
9 want to delay him and have him miss his flight and
10 everything.

11 Q. Do you dispute any of Dr. Haplan's reporting
12 of the results of the Millon test?

13 A. I'll have to look and see. I don't really
14 recall his interpretation of the Millon. Could you give
15 me the date of his report and I'll look at it real quick.

16 MR. FOY: Which one?

17 THE WITNESS: Kaplan.

18 MR. FOY: Well, there's two. I think
19 it's in the front, I think 9-16-91.

20 THE WITNESS: '91?

21 MR. FOY: Yeah, I think it's one of the
22 very first things- There it is.

23 A. All right. Let me look. I am on page five
24 of the Kaplan report, the one dated September 16th, 1991.

1 Again, I'm on page five, and --

2 MR. FOY: Could you read the question
3 back for me, please.

4 (Court Reporter read back said
5 question.)

6 A. Okay. I agree with what Kaplan has said in
7 his report starting on page five, down to the --
8 essentially the last sentence on that page, and here's
9 what that sentence says, it says, "Most likely prompted by
10 recent, unexpected trauma." I don't think that I would
11 agree with that. That -- in other words, he is -- he is
12 saying that Waunsch's elevation -- secondary elevation on
13 an anxiety scale is most likely caused by a recent, most
14 unexpected trauma, and I don't think I would agree with
15 that.

16 And I also don't think that the -- hang on
17 just a second -- okay. Yeah, I don't think that the
18 Millon author would agree with Dr. Kaplan on this point.
19 Kaplan ran a computer program that both scores and
20 interprets this test, and the program, as I recall, was --
21 was configured by Theodore Millon, who constructed the
22 test.

23 So in other words, we have the test maker's
24 interpretation of this test, and the test author himself

1 says, on page three of the computer report -- now this is
2 not the Kaplan report but rather the computer generated
3 report -- even it seems to disagree with this notion that
4 the anxiety elevation is due to a recent trauma. For
5 example, it says, "The features and dynamics of the
6 following --" dot, dot, dot, "-- are worthy of description
7 and analysis. They may arise in response to external
8 precipitants, but likely reflect and accentuate the more
9 enduring and pervasive aspects of this man's basic
10 personality makeup."

11 And then it goes on to say, "This man is
12 unaccustomed to experiences that characterize a
13 generalized anxiety disorder," and so on. Now, let me
14 look -- oh, okay. The -- the test author himself goes on
15 to say that "Most likely prompted by recent, unexpected
16 --" that's interesting, that's very interesting.

17 Let me reiterate, I don't think I agree with
18 Kaplan. Here's what Kaplan has done'. He has lifted this
19 paragraph, the one that I was **just** reading, he has lifted
20 it from the computer report and put it into his report,
21 but he's changed some words.

22 Let me read to you what his report -- this
23 computer generated report says. Again, I'm reading page
24 four from Theodore Millon's computer generated report run

1 by Kaplan, and here's what it says, "Behavioral indices
2 such as a sense of foreboding, feeling jumpy and on edge,
3 and short periods of unexplained fatigue, if not
4 exhaustion, also are possible, period. Most likely
5 prompted by recent, comma, unexpected failures and a sense
6 of being a fraud underneath it all, his current state
7 stems from an inability to have things go his way."

8 All right. Now, I emphasize the word
9 "failures" and the word "fraud," because Kaplan --
10 somebody has drawn a line through the word "failures" and
11 has written --

12 Q. Put in "trauma"?

13 A. -- and has written over it "trauma," So in
14 other words, Kaplan seems to be disagreeing with his own
15 computer generated report. And then where it says "a
16 sense of being a fraud," he has -- someone has put a line
17 through the phrase "a fraud" and has put "vulnerable" in
18 place of it.

19 So his computer report says he's a fraud,
20 Kaplan is modifying that and saying he feels vulnerable.
21 The computer report says that the anxiety is caused by
22 failures, Kaplan has changed that to trauma, So, yeah,
23 I'll have to stick by my notion.

24 I see -- Kaplan is essentially editing his

1 own computer report, I believe, subediting this thing, and
2 then putting it in the other report, so that you'll find
3 most of the words are in lockstep, but crucial ones have
4 been changed. That's what we got here.

5 Q. Now, to what do you attribute the elevated
6 anxiety result on the Millon test?

7 A. It is a little odd, but sometimes people who
8 are depressed complain of anxiety as a primary symptom,
9 and I think that's probably what is going on here.. **You**
10 have to wonder why in the world were his depression scales
11 not up on the Millon, but I guess that's one of the
12 reasons I quit using it, because sometimes it wasn't
13 consistent with the other steps.

14 Q. Posttraumatic stress syndrome is an anxiety
15 disorder; is it not?

16 A. Correct.

17 Q. And you have treated people who you have
18 diagnosed with posttraumatic stress syndrome; have you
19 not?

20 A. Yes.

21 Q. Disorder?

22 A. Yes.

23 Q. Is it okay if I use "disorder"?

24 A. Yes, same thing.

1 Q. You would agree that one who exhibits
2 symptoms of posttraumatic stress disorder would have
3 elevated anxiety levels?

4 A. Well, hang on and let me answer that
5 question, but it's going to take just a quick review of
6 something. In answer to your question, on the Millon, as
7 I say in my report on page 10, on the Millon a
8 posttraumatic stress victim should score highly on
9 anxiety, but in addition, he should score highly on three
10 other scales, which Waunsch did not score highly on, and
11 so his Millon does not fit the prototypical posttraumatic
12 stress victim.

13 Q. But in answer to my question, someone who is
14 having posttraumatic stress would score high on an anxiety
15 level, right?

16 A. Yes.

17 Q. Do you agree that the validity checks on the
18 Millon test were within limits?

19 A. Yes, they were normal.

20 Q. That would show that the test is valid?

21 A. Correct.

22 Q. Now, did *you* compare the results on the three
23 MMPI's that have been administered to Mr. Waunsch?

24 A. I did the best I could, but as I recall, I

1 didn't have the profiles in every case -- I'm not sur-.

2 MR. FOY: Why don't you look at your
3 records.

4 A. Right, let me -- let me -- okay, yeah, I did
5 review and discuss each of his **MMPI's**. The first one I
6 mentioned that he produced elevations on hypochondriasis
7 and hysteria. Then -- that was for Kaplan's test, he
8 scored high on hypochondriasis and hysteria. Then for
9 Farrell he produced elevations on hypochondriasis and
10 hysteria, but also elevations on three other scales. And
11 then on my test, he scored peaks on depression and what I
12 call worry.

13 Q. Well, as I was looking at this, and I confess
14 to you this is not very exact or scientific, but I **tried**
15 to chart out the various results.

16 A. Uh-huh.

17 MR. FOY: Is one of those in orange?

18 MR. BEREZIN: Yeah.

19 MR. FOY: Okay.

20 Q. And just so you know what I've done, Kaplan
21 **is** in orange, your result is in pencil --

22 A. Uh-huh.

23 Q. -- and Dr. Farrell is the -- is the --

24 MR. FOY: Pen.

1 Q. -- pen.

2 A. Okay.

3 Q. Okay?

4 A. All right.

5 Q. Now --

6 MR. FOY F r the purposes of your
7 question, we'll accept that as being true.

8 MR. BEREZIN: Yeah, I understand.

9 MR. FOY: And you did not --

10 MR. BEREZIN: I developed it sitting in
11 front of the TV, watching the Cavs lose last
12 night.

13 MR. FOY: That's why it's in orange.

14 Q- There is a -- to me, there is a remarkable
15 similarity, at least in terms of trends -- and I don't
16 know how to read these things, but in terms of trends
17 between **your** results and Dr. Farrell's results, is that --
18 and I think your report suggested that, that they were,
19 with some variations, they were pretty similar?

20 A. Uh-huh, correct.

21 Q. Right?

22 A. Yes.

23 Q. So -- and Dr. Kaplan's, although his -- the
24 numerical findings are different, for the most part the --

1 the trend is the same with some exceptions?

2 A. Yes.

3 Q. And the exceptions seem to be in scale two?

4 A. Yes.

5 Q. Is that correct?

6 A. Yes.

7 Q. And in scale -- well, actually in scale two
8 in terms of a line?

9 A. It -- it -- the way I would describe it is
10 that the -- Farrell and I produced quite similar MMPI's
11 that showed a fair amount of mental problems.

12 Q. Okay.

13 A. Kaplan's is different than us two. He
14 generated a very different profile.

15 Q. His profile was taken much earlier?

16 A. Yeah, and it tends to be healthier.

17 Q. The one big dip in terms of a trend --

18 A. Uh-huh.

19 Q. -- between you and Farrell and Kaplan is in
20 scale two, which is what scale?

21 A. Depression.

22 Q. Does that suggest anything to you?

23 A. Yeah, that at the time that Waunsch was
24 seeing Kaplan, he was much less depressed than when he saw

1 both Farrell and I.

2 Q. I think I asked this earlier, and I
3 apologize, but for purposes of writing this report, did
4 you specifically review any text articles or journals?

5 MR. FOY: You did not, but --

6 Q. Or anybody on your behalf? I know we talked
7 about it.

8 A. We cited a number of research studies in the
9 report, and so, yes, the -- I mean, I would have to say
10 that that constitutes a -- at least an attending to the
11 literature, yeah, So, **yes**, we --

12 Q. These citations weren't generated from a
13 computer program?

14 A. Well, we do have in our computer some
15 references that we pull into reports, but in pulling them
16 in, I would argue that we are thereby made aware of them,
17 We have to see them and -- we didn't go to a library,
18 yeah.

19 Q. Did you assemble all this information and
20 say, "Gee, I've got to look at Dr. Keene and his -- the
21 statistical methodology of his **MMPI** validity scales." I
22 mean, did you do that specifically?

23 A. Well, not going to the library, you know,
24 we -- in a sense we have our own internal computer library

1 of things that we have generated over the years. I mean,
2 so -- so in that sense, yeah, we -- we looked at our bank
3 of stuff.

4 Q. You travelled to Cleveland to interview Mr.
5 Waunsch?

6 A. Correct.

7 Q. Tell me about that, your -- the protocol
8 of -- of that interview and the testing and all that
9 stuff.

10 A. I believe that he -- and I'm just going to
11 tell you, because it's difficult for me to remember
12 exactly what we did, but I believe that he arrived a bit
13 early and began taking tests in a room and filling out
14 forms in a room by himself.

15 Q. Earlier meaning before you got there?

16 A. Before I arrived, yeah, I think -- you know,
17 in this case it -- that is typical, but I think in this
18 case, I think he arrived a little late, and therefore I
19 think he did not begin to take tests before I arrived, I
20 think he took them after I arrived.

21 Q. And this process took place where?

22 A. In the offices of Gallagher, Sharp in
23 Cleveland.

24 Q. Okay.

1 A. So -- and that gets to the idea that we were
2 therefore pressed for time. It became one more reason why
3 one test was sufficient. We didn't want to over-test this
4 guy.

5 So anyway, he arrived, we talked for a while,
6 and then I allowed him to take a test while I put together
7 an -- I had some of the notes I took on the computer.
8 Then I talked to him some more, then checked the notes I
9 had edited. Then we talked some more, and then I let him
10 go take some more tests. And then I would reedit and
11 rewrite and ask for some other pieces of information, and
12 that was pretty much the process until I gave him the
13 intelligence test, which I sort of had to do face-to-face,
14 and followed up with a few more questions, and then he
15 left.

16 a. How much time did you spend with him?

17 A I would guess about four-and-a-half hours,
18 maybe five hours in the same room.

19 Q. How did you find him? I mean, what general
20 observations did you --

21 A. He looked -- he looked quite unanxious with
22 smooth social skills. He was well dressed. Friendly, in
23 a superficial sort of way. And by superficial, I don't
24 mean that as a criticism, he just has got superficially

1 good social skills. His enunciation is very good, you
2 know, has classic media pronunciation of words and so on.
3 What struck me the most is that it will be difficult -- it
4 seemed unlikely, just looking at him, that I'm looking at
5 a person that has a serious mental illness. He certainly
6 doesn't look like a, you know, homeless street person or a
7 schizophrenic or --

8 Q- He projects very well?

9 A. Yes, so his problems are going to be mild at
10 least, maybe very mild.

11 Q. Did you find him to be cooperative in terms
12 of your process?

13 A. Yeah. Superficially he didn't complain and,
14 yeah, never showed anger or irritation.

15 Q. During your time with Mr. Waunsch, other than
16 the times that you interrupted your face-to-face contact
17 with him in order for him to take tests, were there any
18 other interruptions during that process?

19 A. I don't recall any. Were there any other
20 interruptions as I talked to him?

21 Q. Yeah. I mean, was it a smooth conversation?
22 I mean, you were doing this in a law office. Were you in
23 a library, or in a private office, or --

24 A. Yeah, I was in some conference room, a small

1 conference room, and I don't remember -- no, I don't
2 remember any dramatic interruptions.

3 Q. Were you and he alone the entire time of --
4 at least the time you spent together?

5 A. I believe so, yeah.

6 Q. In terms of recording the history of the
7 event which brings us here and that -- by the event, I
8 mean the assault itself.

9 A. Uh-huh.

10 Q. Did you -- do you have any dispute with any
11 of the people who have recorded the history of that event?

12 A. Maybe you could clarify that.

13 Q. Well, we have basically four people before
14 you who have taken a history of this event, Dr. Kaplan,
15 Dr. Farrell, Dr. Isaac, and Dr. Steiner. Was there
16 anything in terms of any of their reporting of this event
17 which -- 'which you disagree with?

18 A. Well, as I recall, there were some trivial
19 disagreements in terms of what happened,, There is some
20 inconsistencies. I don't make much out of that.

21 Q. Okay.

22 A. And I also believe that whichever story you
23 read, mine or someone else's, it was a pretty harrowing 60
24 seconds.

1 Q. Under the classification of posttraumatic
2 stress, under DSM-IIIR, in your opinion would the incident
3 itself qualify as a traumatic event?

4 MR. FOY: Objection.

5 A. It could, yes.

6 Q. Do you recall any psychological treatment
7 that Mr. Waunsch had before the assault?

8 A. I don't believe so.

9 Q. Will you be offering any opinions as to
10 whether this incident affected Mr. Waunsch in any way from
11 a psychological or emotional basis?

12 MR. FOY: Objection, asked and
13 answered. You can answer.

14 A. Yeah, I will be offering the opinion that
15 the -- this stressful event caused no lasting damage
16 where -- emotional damage whereby lasting, I mean, over a
17 period of weeks. And I will further say that the -- that
18 damage was relatively slight and not diagnosable.

19 Q. You once described mental health litigation
20 as, in quotation marks, Society's Wheel of Fortune, end of
21 quotation marks. Is that an accurate quote?

22 A. Well, I think that it's fair to say that I
23 said that's the way it could be.

24 Q. What did you mean by that?

1 A. Well, there are inconsistent investigations
2 in mental health litigation. Some people receive millions
3 of dollars for a problem that's relatively trivial, other
4 people receive not nearly enough money for a problem
5 that's really quite paralyzing psychologically. Wheel of
6 Fortune means that it -- at times, in litigation, awards
7 for mental damages seem almost random.

8 Q. And do you think that that's different in
9 mental health litigation than in any other type of
10 litigation?

11 A. Well, most recently, and at the time I wrote
12 those words, the -- I think mental health litigation was a
13 little more vulnerable to the problem of randomness, yeah.

14 Q. What do you base that on?

15 A. Articles that I had read on the subject. In
16 fact, I may have even -- it strikes me that I either saw
17 this quote or something close to it in one of those
18 publications. At any rate, the stuff that I was reading
19 at the time suggested that, with the advent of claims in
20 the area of mental health litigation, because they were
21 relatively new, because mental health litigation is a
22 relatively new area in the law, things hadn't yet been
23 organized very well, and so there was much more likelihood
24 for lots of random fluctuation. What do I base it on?

1 Readings and the fact that mental health litigation was
2 relatively new.

3 Q. And you wrote that comment when, or spoke it
4 when?

5 A. While the quote sounds familiar, it may be
6 that that is the -- that is something that I put in a
7 publication in the Ohio Quarterly. In other words, that
8 may be my transcribed speech, but I'm -- I'm uncertain
9 about that.

10 Q. I'd like to go through your report.. All
11 right. You -- I guess it's your first -- the first page
12 of the report. I don't think it's numbered, but it's --

13 A. Page one?

14 MR. FOY: It is not numbered, but it is
15 page one.

16 Q. You described that one of the psychologists
17 said that "Mr. Waunsch's family was 'dysfunctional'?"

18 A. Uh-huh.

19 Q. Is that one of the psychologists, or was that
20 something that Mr. Waunsch told you about one of the
21 psychologists?

22 A. Hang on and let's check. It will either be
23 Psychologist Kaplan's report on page three, or Farrell's
24 report on pages two and three. The Kaplan report would be

1 the September 16th, '91 report.

2 Q. Do you see it in Dr. Kaplan's report?

3 A. Not so far.

4 Q. The only --

5 A. Where is Farrell?

6 Q. The only place I see it in Farrell's report
7 is page three.

8 A. Okay.

9 Q. The first full sentence where Dr. Farrell
10 states that Mr. Waunsch stated "his family is best
11 described as having been 'dysfunctional.'"

12 A. Okay.

13 Q. I'm not sure whether any of the psychologists
14 reached that interpretation.

15 A. That would -- that would be a matter of
16 interpretation, whether we should attribute that to Mr.
17 Waunsch himself or the psychologist.

18 Q. Do you think that was an accurate description
19 of his family?

20 A. Oh, yeah, that's the important thing.

21 Q. Now, on page two you described -- your
22 headline is "Mr. Waunsch's Erratic Work History"?

23 A. Uh-huh.

24 Q. Is erratic meant to be in a clinical

1 description?

2 A. No, it's just sort of standard dictionary
3 meaning.

4 Q. Do you know when he obtained his first job,
5 what age?

6 A. Well, he had said that during adolescence he
7 held 20 odd jobs, so it would be during his adolescence.

8 a. Is there something -- does it suggest to you
9 that during his adolescence that he had 20 odd **jobs** -- I
10 mean, is that -- does that mean anything?

11 A. It means that he began working relatively
12 early. You know, beyond that I didn't put any great
13 interpretation on that.

14 Q. Okay.

15 A. It is a lot of jobs and -- well, let me
16 rephrase that. I believe -- it's certainly not
17 incompatible with the word erratic, 20 jobs in
18 adolescence.

19 Q. That's erratic?

20 A. Yes. Now, by itself I wouldn't want to **use**
21 the word erratic, **but** it certainly doesn't contradict the
22 term erratic for a person to have 20 jobs in adolescence.
23 One could argue that adolescence lasts, what, eight years,
24 something, seven years.

1 Q. So those 20 jobs could be leaf -- raking
2 leaves for his neighbors, and then shoveling snow for
3 another neighbor, and delivering papers and that kind of
4 thing?

5 A. Grilling hamburgers and that type of thing.

6 Q. You find all that erratic?

7 A. He also mentioned working for a pharmacy. I
8 mean, it sounds like these were more formal situations
9 simply than working for neighbors.

10 Q. Did he give you any other examples of his odd
11 jobs other than delivering papers or grilling hamburgers?

12 A. I don't think so. I believe he gave me those
13 three.

14 Q. Or working for a pharmacy?

15 A. Right. He gave me examples of three **jobs**,
16 and -- out of the 20, so -- then there's also the notion
17 that during one of those jobs he was fired. Again, which
18 itself, it certainly does not contradict the idea of
19 erratic -- of an erratic career.

20 Q. Now then you -- in your report, on page two,
21 you go on to describe his employment after he got
22 certified by the American Meteorological Society in that
23 he foretold the weather?

24 A. Uh-huh.

1 Q. Is that what weather people do, foretell or
2 forecast?

3 A. Well, **the -- I suppose** the terms **in** my mind
4 are just about synonymous.

5 Q. Okay. Now then, you have a table listing his
6 various **jobs**?

7 A. Uh-huh.

8 Q. Do you know why he -- he went, **for** instance,
9 from his job as a technician to the job in Chicago?

10 A. No, I don't really recall why he shifted from
11 job to job like that.

12 Q. Do you know if he was fired **from** any of these
13 jobs?

14 A. I don't believe that he was.

15 Q. Do you know if these job changes reflected
16 a -- an increase in salary and responsibility?

17 A I believe that generally they did.

18 Q. Have you ever been involved with any patients
19 or situations involving people in the media?

20 MR. FOY: Objection.

21 A. Once or twice, yes.

22 Q. Do you know if it is unusual in that industry
23 for jobs to be short-term positions?

24 A. I'm really not terribly familiar with the --

1 the demographics of, you know -- or the -- not the
2 demographics -- with the job changing of that particular
3 industry, no.

4 Q. Now, your next -- your next paragraph you
5 talk about "Stressors Surrounding the Assault," and your
6 next headline is "A 'Fatal Attraction.'" I love your
7 headlines. Do you know the timeframe of this event
8 involving his affair and the whole stalking? Do you know
9 in what timeframe this all occurred?

10 A. I believe that I do, yeah. The report says
11 that it started around 1987, and the stalking and
12 blackmailing occurred within, oh, months or a year or so.
13 For the next three-and-a-half years he paid her off,
14 essentially, then finally moved from Knoxville to
15 Cincinnati in 1990, where she increasingly stalked him.

16 And it was only months before the assault
17 that things got so bad that he had to go ahead and confess
18 the whole thing, and then his wife went over and basically
19 confronted the gal. And then the gal went away, so I
20 think the timeframe from 1987 until several months before
21 the assault, that's a pretty specific timeframe.

22 Q. I just want to make sure of this. It's your
23 understanding that the first time that his wife knew about
24 this was about a month before the assault? When I say

1 "the assault," just **so** we know, we're talking about the
2 assault at the Sheraton.

3 A. Right. I said months, plural, and **so** that is
4 a slightly more flexible term, not one month, but rather
5 months before. **so** that could be anything from two to
6 roughly eleven months before the assault.

7 Q. When you describe his sexual **affair** as
8 harrowing, what do you mean by that?

9 A. Well, again, dictionary meaning of the word
10 harrowing. It's very frightful, it's scary, it's spooky
11 to show up at a -- to do a newscast somewhere and to **see**
12 your stalker over there, peering over the cameraman,

13 Q. **so** the harrowing was the whole -- in terms of
14 the whole context of the affair and then the stalking?

15 A. Right. It's a pretty hair-raising situation.

16 Q. And you described many liaisons. Do you' know
17 how many 'or who reported that to you?

18 A. No, I did -- I didn't ask **for** a specific
19 count, but **it** was more than one.

20 Q. And how do you know that?

21 A. He told me.

22 Q. But you don't have any of your notes to
23 indicate that?

24 MR. FOY: Objection.

1 A. The plural use of the word liaisons is, you
2 know, a fair notation of that.

3 Q. Now, onto page three, your next paragraph is
4 "Irrational Fear After Knee Surgery." What do you mean by
5 irrational?

6 A. Well, just that the last sentence, "he 'cried
7 every day' because he feared he would not walk again." I
8 think that in hindsight, particularly, that fear has ended
9 up being, by definition, irrational. I mean, he walks.

10 Q. Well, it didn't happen, so does that make
11 that fear irrational?

12 A. It sure raises the probability, yeah, yeah.

13 Q. How does this -- this situation involving
14 this knee surgery and what you report, how does this
15 relate to this -- to this assault? I mean, what's the
16 connection?

17 A. These are stressors surrounding the assault,
18 that's the major category, so --

19 Q. When you say, just so I understand,
20 "stressors surrounding the assault," are you talking about
21 in terms of time, in terms of a timeframe?

22 A. Correct, yeah, correct, surrounding by time,
23 stressors that occurred before and after the assault.

24 Q. And he had the knee surgery, you report, in

1 1989?

2 A. Right.

3 Q. And this was arthroscopic surgery, was the
4 stressor that you're talking about?

5 A. It was both the knee surgery and, as I
6 understood it, then arthroscopic surgery. In other words,
7 it seems like there were two surgical events.

8 Q. And he was upset at both of them, is that it?

9 A. That I don't recall.

10 Q. So if he wasn't upset during the 1989 event,
11 it would be less of a stressor?

12 A. The -- I don't -- I think that may be cutting
13 it a little too fine grain. We have Psychologist Raplan
14 reporting that he was upset over knee problems somewhere
15 around 1989, and that there were surgeries involved, and
16 I'm saying that that's a stressor.

17 Q. In terms of a stressor, would you consider
18 the -- his problems involving his knee surgery or the
19 assault more of a stressor? Which one would be more of a
20 stressor?

21 MR. FOY: Objection.

22 A. Just looking at those two individual events,
23 I would -- I would say that they were roughly equal. My
24 reasoning being that the knee surgery was less dramatic

1 but more long term. He was afraid he would never walk
2 again. The assault produced, you know, obviously a
3 temporary injury, blood and so on. To my knowledge, he
4 cried every day because he was afraid that he was
5 permanently disabled in some way after the assault, so --

6 Q. Now, under "The Assault" itself, you have a
7 paragraph at the bottom of page three, you have a comment
8 that "Mr. Waunsch felt more angry than afraid." How --
9 how do we know that -- how do you know that?

10 A. He mentioned that to me, that -- that by the
11 time he hit the floor and was being attacked by the guy
12 again, that he started getting irritated with the guy, and
13 I think that that is close to a direct quote by him to me.

14 Q- Do you recall any reports that he made to
15 anybody else, at the time he was -- he was scared?

16 A. Any reports that -- what's the question
17 again?

18 Q. That he was scared?

19 A. Yes, I believe that he told me and others
20 that he was also afraid, of course, yeah.

21 Q. Do you know why Mr. Waunsch feared leaving
22 the bathroom?

23 A. Yeah, he was wondering if the guy would
24 somehow come back.

1 Q. And did he relate to you that at the time he
2 believed he was going to die?

3 A. I don't recall him telling me that, but I
4 believe that that's in some record somewhere.

5 Q. Now, on page four you -- you indicate, the
6 last sentence in the first full paragraph, you talk about
7 his physical injuries?

8 A. Uh-huh.

9 Q. You said that "Within days a physician found
10 a normal central nervous system"?

11 A. Uh-huh.

12 Q. And you're referring to what there?

13 A. That is Physician Isaac's report, one is on
14 September 5th, the other is on September 10th, 1991.

15 Q. Dr. Steiner saw Mr. Waunsch after Dr. Isaac,
16 didn't he?

17 A. Yes, two months later.

18 Q. Do you think postconcussion migraine is a
19 central nervous system disorder?

20 A. Yes, that could very well be a central
21 nervous system disorder, yes.

22 Q. So if Dr. Steiner diagnosed him later with a
23 postconcussion migraine?

24 A. Yes.

1 Q. Which he did?

2 A. Uh-huh.

3 Q. Right?

4 A. Well, I would have to look.

5 Q. That's not a normal central nervous system,
6 is it?

7 A. Well, while it is not, I mean, you have to
8 keep in mind that my statement is "Within days a physician
9 found a normal central nervous system and diagnosed a
10 cervical strain." I mean, my statement is "Within days a
11 physician found a normal central nervous system," and what
12 you're asking me now is, okay, two months later, what
13 about Steiner?

14 Q. Well, your headline says "His Physical
15 Injuries Healed."

16 A. Uh-huh, right, and that also could be
17 consistent with Dr. Steiner's report.

18 Q. Now, you then, in the next paragraph,
19 indicate that two weeks after the assault, Mr. Waunsch
20 came back to Cleveland and he did the evening weather
21 report flawlessly. How do you know that?

22 A. Would you direct my attention again?

23 Q. That's the second paragraph.

24 A. Second paragraph.

1 Q. Page four.

2 MR. FOY: Under physical injuries.

3 Q. Under physical injuries.

4 A. Okay. He told me that, yeah. I simply asked
5 him, "Did he make any mistakes? Did he do anything
6 poorly?" He said, "No."

7 Q. Now we go to the next paragraph,
8 "posttraumatic Stress." You report in your first sentence
9 that "Neurologist Steiner reported these odd symptoms."

10 A. Uh-huh.

11 Q. Why were they odd?

12 A. Well, on a number of dimensions. One is, you
13 **know**, he's "'going to see a psychologist, but didn't want
14 to tell me his name,'" didn't want to tell his neurologist
15 the name of the psychologist he's going to. See, I just
16 consider that to be peculiar. And the -- the symptoms
17 reported didn't seem to hang together into a diagnosis of
18 posttraumatic stress syndrome. The neurologist was
19 reporting that he generally couldn't cope, couldn't sleep,
20 but had a normal memory. Impaired memory for the trauma
21 can be one symptom of posttraumatic stress disorder, but
22 he had a normal memory. I didn't quite know what Steiner
23 meant by "hyperacid."

24 Q. It's hyperacute.

1 A. Okay.

2 Q. I think that that was a typographical.

3 A. That was peculiar to me too. And the trouble
4 concentrating is not -- although it can be a symptom, **it's**
5 not regarded as a central symptom. So I would have
6 suspected in a note like this, if he was speculating
7 posttraumatic stress syndrome, I would have expected him
8 to say that he has nightmares about the assault, and sort
9 of the standard, and, of course, avoidance of situations
10 that would remind him of the assault, that's what I would
11 have expected him to see.

12 Q. Dr. Steiner concluded that -- at least in Dr.
13 Steiner's view -- he was developing a posttraumatic stress
14 syndrome, didn't he?

15 A. Well, it's ambiguous. On the one hand, he
16 says that, and on the other hand, as I said in my report,
17 he seems awfully skeptical, Steiner does, in his September
18 26th, 1991 report.

19 Q. The first paragraph you report about the
20 September 10th, 1991 symptoms?

21 A. Okay.

22 Q- That's -- that's what you're talking about,
23 in Steiner's report, at that point he feels that he's
24 developing a posttraumatic stress syndrome?

1 A. Right. If you wanted to restrict it to one
2 of Steiner's reports, then he obviously wondered about --

3 Q. He had questions about it later?

4 A. -- that, but -- well, let's look. Are you
5 now talking about Steiner's October 24th report?

6 Q. No, I'm talking about your first paragraph --

7 A. Okay.

8 Q. -- in your report on page -- under
9 "Posttraumatic Stress" on page four.

10 A. All right. "Ten days after the assault,"
11 that would be September 10th, all right. Then on
12 September 16th, he saw Kaplan, okay, all right. Yes,
13 at -- at that point, on September 10th, at that point
14 Steiner was suspecting posttraumatic stress syndrome.

15 Q. That's all I asked.

16 A. Yes, you're right, at that point he was.

17 Q. Now then, you talk about his maintaining **his**
18 lifestyle. I'm on the last full paragraph on page four.

19 A. Uh-huh.

20 Q. Do you know if he still has his boat or his
21 BMW?

22 A. I just don't know.

23 Q. **And** then you report about Dr. Steiner's
24 skepticism; is that fair?

1 A. Correct.

2 Q. Fair to call it, you report that?

3 A. Yes.

4 Q. And then report on -- on Psychologist
5 Schwartz and his treatment, right?

6 A. Right.

7 Q. Now, Psychologist Farrell, who he saw, you
8 report that he suffered -- that Psychologist Farrell
9 agreed that "Mr. Waunsch suffered preexisting problems"?

10 A. Uh-huh.

11 Q. And I think you then -- you then list -- are
12 these the problems that you -- that you list as what
13 Mr. -- what Dr. Farrell agreed that Mr. Waunsch suffered?

14 A. I'm quoting Psychologist Farrell there.

15 Q. Psychologist Farrell in his opinion indicated
16 that "Mr. Waunsch was not experiencing any psychopathology
17 prior to the 8-31-91 job injury"; did he not?

18 MR. FOY: Objection.

19 Q. I'm reading from his opinion, Dr. Farrell's
20 report.

21 A. Okay.

22 Q. His opinion on page five.

23 A. What is the date of his report? I forgot,

24 MR. FOY: 6-26-92.

1 A. 6-26-92. All right. And on Farrell's
2 report, page --

3 Q. Page five.

4 A. Page five.

5 Q. First sentence under "Opinion."

6 A. Okay. Hang on just a second. Yes, he does
7 say that he "was not experiencing any psychopathology
8 prior to the 8-31-91 job injury," he does say that.

9 Q. And he also diagnoses posttraumatic stress
10 for Mr, Waunsch; does he not?

11 A. Let's see -- yes.

12 Q. How would you describe the differences
13 between Dr. Kaplan's MMPI results -- and there again
14 referring you to that -- to my homemade chart --

15 A. Uh-huh.

16 Q. -- and Dr. Farrell's MMPI results, which **were**
17 the next results of MMPI testing?

18 A. **As** I said earlier, Farrell's are more
19 pathological and Farrell's emphasize -- Farrell's and mine
20 both emphasize depression a lot more. Kaplan, of all of
21 the scales, the one that differs the most, it seems, is
22 depression.

23 Q. Do you question that test result from Kaplan?

24 A. It does seem odd. I mean, Kaplan has a set

1 of test results that are quite different than two other
2 people, myself and Farrell. It's my guess that the -- the
3 test results are accurate in all cases, but that Waunsch's
4 depression was just good that day, or good that week, that
5 he had a very short-term quick decline in his depressed
6 symptoms at that point. That's the only explanation I can
7 give.

8 Q. Both Dr. Kaplan and Dr. Farrell report good
9 validity scales?

10 A. Right.

11 Q. And that means what to you?

12 A. The test is accurate.

13 Q. In both Dr. Kaplan's and Dr. Farrell's?

14 A. Right.

15 Q. Now we go to Mr. Waunsch returning to work.
16 You must not like Miami?

17 A. What's that?

18 Q. You must not like Miami?'

19 A, Oh, no.

20 Q. What's wrong with Miami?

21 A, I can't be accused of that. The -- I don't
22 think that anything is wrong with Miami. It is known for
23 a high crime rate, and I say that in the report, but
24 that's all.

1 Q. Is -- I don't know, your report in sections
2 seems to be somewhat, I guess, judgmental, I would
3 describe it, and I'm trying to understand what -- is there
4 something wrong in Mr. Waunsch accepting a job in Miami?

5 A. No, no. What I was trying to point out is
6 that he's a guy that is -- where there's some question
7 about whether he's phobic of being mugged again, about
8 being the victim of crime again, and Miami is known, I
9 guess, throughout the country, due to bad press and/or
10 maybe their high murder rate, they're known as slightly
11 more violent than the average city.

12 And he then told me that he's in -- that his
13 new job is in a particularly violent section of Miami, and
14 went on to tell me that he arrives there in the dark every
15 day, and that just struck me as a contradiction. If takes
16 a fairly brave person, I think, to show up in a dangerous
17 section of Miami any day, any person, but this guy is
18 supposed to be phobic about crime. .

19 Q- You don't know anything about his -- the
20 parking lot at his work or anything like that?

21 A. I believe he described it as an outdoor lot.
22 I believe that he -- he said he basically shuts his car
23 door in the dark and walks into the building, but I may
24 have misunderstood that, yeah. There's some walk,

1 obviously.

2 Q. So you don't -- you're not quite sure of his
3 description of the parking lot?

4 A. Right, I am -- I am not.

5 Q. I mean, is it -- regardless of whether --
6 whether he is sick or not sick, however you describe that,
7 it is certainly good that he found a job and is working?

8 A. Oh, yeah.

9 Q. Okay.

10 A. Oh, yeah, that's perfectly appropriate.

11 Q. Now, you have this -- this chart about his --
12 "What Mr. Waunsch Did Yesterday"?

13 A. Yes.

14 Q. What -- what relationship does his scheduled
15 activities have to -- to psychopathology?

16 A. Well, **it just looks** like such a normal day.
17 This is in the context of somebody, who some
18 professionals, I think Kaplan -- Kaplan **says** this guy **is**
19 **40** percent disabled psychologically, and we got a guy that
20 gets up at 4:00 a.m., does weather on TV, phones home,
21 does graphics for noon weather, does weather on TV, gives
22 a speech to school children -- again, he opts to do that
23 on his own -- goes home, walks the **dog**, dinner, helps his
24 wife do laundry, gives the baby a bath, and that just does

1 not look 40 percent disabled to me.

2 Q. 40 percent disabled would be 40 percent of
3 his day being spent on his disability?

4 A. While I'm not sure how we can pin down, you
5 know, what Kaplan means by 40 percent disabled, I guess
6 just on the face of it, you know, prima facie, this is --
7 just doesn't look like a 40 percent disabled guy.

8 Q. Now, on page seven --

9 MR. FOY: You're moving right along.

10 MR. BEREZIN: I've only got another
11 hour.

12 MR. FOY: Whatever.

13 THE WITNESS: That's right, distract
14 him.

15 Q. Now, you indicate that in your report of the
16 MMPI-2, your headline is "Exaggeration & No Posttraumatic
17 Stress"; is that right?

18 MR. FOY: Page seven?

19 MR. BEREZIN: Page seven.

20 A. Yes.

21 Q. Is it your opinion that Mr. Waunsch
22 exaggerated his problems?

23 A. Yes. In -- as I explained, it's -- the
24 exaggeration I'm talking about is the exaggeration of

1 physical problems, His peaks are on two scales called
2 hypochondriasis and hysteria. Being a hypochondriac
3 essentially means to exaggerate physical ills.

4 Q. So when you say exaggerate, you're saying he
5 is exaggerating his physical ills?

6 A. Correct, was at that time, uh-huh.

7 Q. So you would disagree with Dr. Farrell who
8 observed no tendency to minimize or maximize physical or
9 psychological symptoms?

10 A. Right, I would disagree with the notion
11 about physical symptoms on -- at least on this -- well,
12 hang on, At the time he took the test for Kaplan, he
13 showed exaggeration, hence I present Kaplan's **MMPI-2**, and
14 I categorize it as no posttraumatic stress. I don't
15 characterize Farrell's **MMPI** that way, because Farrell's
16 **MMPI** did not show, at least as its primary sign,
17 exaggeration, it did not show that.

18 Q. What did it show?

19 MR. FOY: **Who** are we at, Farrell?

20 MR. BEREZIN: Yes.

21 A. Yes, the primary things that Farrell's **MMPI**
22 showed was distress, that is depression and worry.
23 Secondly, it also showed exaggeration of physical **ills**, so
24 I guess I'm going to have to backtrack and say I would

1 disagree with Farrell, that Farrell's profile shows
2 exaggeration of physical. illls. My only point to you is
3 Farrell's report shows something more than that.

4 Q. Which is?

5 A. Distress.

6 Q. Anxiety?

7 A. Depression and worry, yeah.

8 Q. It's called the anxiety scale, isn't it?

9 A. The two scales that -- the answer to that is
10 no. The two scales that Farrell's produced and that I
11 produced are technically called scale two depression,
12 scale seven psychasthenia, which is a long cumbersome term
13 that means worry.

14 Q. Okay. Would you expect, if you show that --
15 you indicate that Kaplan's supplementary scale shows an
16 elevated poor health peak?

17 A. Yes.

18 Q. Which **shows** Mr. Waunsch was at the present
19 time with physical illls?

20 MR. FOY: Illls?

21 Q. What? Ill, I'm sorry. Would you find that
22 unusual in someone who had just been the victim of an
23 assault?

24 A. Yes. It was -- in studies of this scale,

1 when people who have had real physical injuries take this
2 test, they score a little higher on hypochondriasis and
3 hysteria. They score a little higher than the average
4 population, but not this high.

5 Q. Well, you don't dispute the fact that Mr.
6 Waunsch suffered real injuries as a result of this
7 assault?

8 A. No, I don't dispute that, no. The tests
9 suggests that he exaggerated their intensity, and not
10 intentionally, but nevertheless he has a tendency to
11 exaggerate them.

12 Q. The elevation -- in Kaplan's **MMPI**, where were
13 the elevations?

14 A. For Kaplan, as I recall, the two elevations
15 were on hypochondriasis and hysteria.

16 Q. Which are what scales?

17 A. One and three.

18 Q. And is it fair to **say** that scale one, in both
19 your **MMPI** and Dr. Farrell's **MMPI**, was lower?

20 A. No, the -- it gets complicated here, but, **you**
21 know, your diagram would help to explain it. It tells
22 me -- is my report -- is my profile the pencil; do you
23 know?

24 Q. I think your profile --

1 MR. FOY: Is pencil, and Farrell is
2 pen, and the other one is orange.

3 Q. Yeah, yours is pencil.

4 A. It appears that Kaplan and I agree 100
5 percent on the positioning of hypochondriasis., That we
6 both got exactly the same level, and that Farrell's
7 hypochondriasis is slightly lower.

8 Q. Well, how many -- how many -- how many scales
9 are clinical findings, in you and Farrell's report?

10 A. Ten, that's how many that you have plotted
11 there.

12 Q. But in your and Farrell's results of the
13 **MMPI**, how many were elevated?

14 A. The number that are elevated for Farrell are
15 one, two, three -- five. Both of us got five significant
16 elevations.

17 Q. And those elevations are in what areas?

18 A. Hypochondriasis, hysteria, worry,
19 schizophrenia, and depression. '

20 Q. Now, Dr. Farrell describes his findings as
21 classic symptoms of posttraumatic stress syndrome. Are
22 you saying that he describes his profile that way or --

23 A. Right. Let me check that out. Again, the
24 date is 9-2 --

1 MR. FOY: No, his would be -- Farrell,
2 you're talking about?

3 Q. Farrell is 9-26-92.

4 A. Test results, okay. I don't see the -- I'm
5 reading Farrell's test results starting on page four, and
6 I don't see him saying that this is, you know, a typical
7 posttraumatic stress profile.

8 Q. Oh, I'm sorry, he does -- it's on page six
9 under his summary, "In summary, it is my opinion that he
10 is experiencing classic symptoms suggestive of a
11 posttraumatic stress disorder"?

12 A. Okay. Yeah, and my guess is that he's
13 relying on Waunsch's report of these various symptoms
14 rather than the test, because the test is really not that
15 indicative of posttraumatic stress disorder.

16 Q. Now, you described the major difference
17 between Kaplan's **MMPI** result and you and Farrell's **MMPI**
18 result as in the area of depression?,

19 A. Correct.

20 Q. How would you describe -- and this is on page
21 eight of your report, the graph -- how would you describe
22 Dr. Kaplan's finding on the Millon Inventory as to
23 depression?

24 A. Kaplan's Millon profile shows no real

1 evidence of depression.

2 Q. His elevated scales were in what two areas?

3 A. Narcissistic personality disorder was by far
4 his highest scale, and then secondarily anxiety and
5 somatoform disorder, those are the significant peaks --
6 oh, one other significant peak is the histrionic
7 personality disorder.

8 Q. You interpret this as showing -- again,
9 showing exaggeration by Mr. Waunsch?

10 A. Right. The -- again, exaggeration of
11 physical ills. That term somatoform disorder, that is --
12 that's just the new word for hypochondriacal problems.

13 Q. So that's the basis upon which you -- you
14 come to your conclusion that this test result also shows
15 exaggeration of physical problems?

16 A. That's right. There's another basis too, I
17 might as well point out, and that is the narcissistic
18 personality disorder. That is a major problem. It's not
19 an entirely pretty picture of his personality. It shows a
20 gross tendency for him to believe that, in a sense,
21 there's nobody else in the universe. I mean, that he's
22 the most important thing in the universe.

23 Now, I'm exaggerating that a little bit
24 myself, but a narcissist is somebody that is stuck on

1 themselves, so my point is it's not unusual for a person who
2 is stuck on himself, is assaulted, puts him on the floor
3 and makes him bleed, we all hate that, but my point is, a
4 narcissist is enraged by somebody who is causing him harm.
5 He is much more used to exploiting other people, so he is
6 going to go out afterwards and exaggerate his trials and
7 tribulations. He's going to try to convince us that the
8 world is somehow a much worse place to live in because
9 he's been hurt, because he's such an important part of the
10 world.

11 Q. Well, for him it's a little worse place to
12 live, isn't it?

13 A. Yes.

14 Q. You don't discount the horror which someone
15 confronts when they are being assaulted with a weapon?

16 MR. FOY: Objection.

17 Q. And there's no way for someone to get in had
18 he called for help, and he's down on the floor being
19 beaten?

20 MR. FOY: Objection to **all** those
21 characterizations.

22 Q. Do you dispute the horror of that?

23 MR. FOY: Objection.

24 A. My report, I think, speaks for itself in that

1 regard. I don't minimize the, you know, harrowing
2 experience of the -- of the assault, no.

3 Q. And you don't think that that experience has
4 any long -- had a lasting effect on Mr. Waunsch?

5 A. That's right.

6 Q. In your -- on the last paragraph on page
7 eight, your -- your headline is "He Elevated Every Scale
8 on a Check List"?

9 A. Yes.

10 Q. The things that you have quoted there,
11 wouldn't those things be typical of a person who suffers
12 from posttraumatic stress?

13 A. Well, I think it's too broad, that's the only
14 problem I have with it, is that the -- suddenly on the
15 symptom checklist, he seems to be endorsing everything,
16 he's got all these problems. And I mean that almost
17 literally, so no, it's not circumscribed enough. I mean,
18 distress, okay, that's right. Posttraumatic stress, a
19 large number of clinical symptams, that's not really true.

20 This is a fairly narrow mental illness where
21 a specific set of stimuli make him freak out, as it were
22 consistent with major depressive episode, it says here,
23 not posttraumatic stress. A panic disorder, okay, that
24 could be close to posttraumatic stress.

1 Then he says a variety of medical conditions,
2 side effects of a therapeutic drug, withdrawals from an
3 addictive substance, and agoraphobia with panic, thought
4 disorder. We got a guy that's delivering the weather,
5 articulating the weather before huge audiences, and this
6 test is saying he's got a thought disorder. You know, I
7 mean, sleep disturbance, obsessive, compulsive, they're
8 not leaving any stone left unturned on this test. 1
9 believe they're exaggerating on this test. It just
10 doesn't fit him at all.

11 Q. Now, is the scale -- eight scale -- you
12 describe the eight scale as being schizophrenia?

13 A. Right.

14 Q. It's also known as an alienation scale?

15 A. Well, it's name is schizophrenia. It may be
16 fair to say that it could measure alienation.

17 Q. One **who** scores high on a schizophrenia scale
18 doesn't mean that they have schizophrenia?

19 A. That's right.

20 Q. It -- it's a little broader than that?

21 A. Yes.

22 Q. **And** in terms of clinical practice, an
23 elevated level on that can show someone who feels
24 alienated?

1 A. It could, yes.

2 Q. What else can **it** show, an elevation on a
3 scale eight?

4 A. It could show, you know, obviously
5 schizophrenia and the symptoms of schizophrenia, which
6 are, as you pointed out, can mean alienation or confusion
7 or odd emotions.

8 Q. Okay.

9 A. Emotions that are not congruent with what's
10 going on.

11 Q. On page nine of your report, **you** talk about
12 "Anxious on the Impact of Events Scale," first paragraph?

13 A. Right.

14 Q. You are reporting the impact of events **scale**
15 is from what, is from what test?

16 A. I think **it's** a freestanding test that you
17 give the person. I don't think **it** has validity scales
18 associated with **it**. It's not used very frequently. I'm
19 not terribly familiar with **it** for that reason.

20 Q. In other words, you're just reporting things
21 that Dr. Kaplan found; **is** that it?

22 A. Yeah. I mean, I feel compelled to report
23 whatever tests other people have given, uh-huh.

24 Q. Now, you then talk about your test

1 two-and-a-half years ago. You talk about the Slosson
2 Intelligence Test?

3 A. Uh-huh.

4 Q. And then you just call it "Exaggeration on
5 the MMPI"?

6 A. Uh-huh, yes.

7 Q. And again, when you talk about "Exaggeration
8 on the MMPI," you're talking about exaggeration of
9 physical ills?

10 A. Yes.

11 Q. You're -- do you think your test was valid?

12 A. Yes.

13 Q. In other words, it records accurately what he
14 was -- what his mental state was at the time?

15 A. That's correct.

16 Q. Now, you talk about normal attention and
17 concentration, and that's why you use the Slosson
18 Intelligence Test?

19 A. Right.

20 Q. What does Slosson measure?

21 A. Overall verbal skills, intelligence,
22 attention, concentration, memory.

23 Q. Well, concentration and intelligence are not
24 the same thing; is that fair to say?

1 A. I believe they are. I think concentration is
2 a component of intelligence, and without concentration,
3 you could not score highly on an intelligence test.

4 Q. Isn't there a -- isn't there, in psychology,
5 a distinction between fluid concentration and crystallized
6 concentration?

7 A. Well, fluid intelligence and crystallized
8 intelligence, yes, there sure is.

9 Q. And Slosson measures crystallized
10 intelligence; does it not?

11 A. I believe so, yes.

12 Q. You don't believe that concentration tests
13 and scales belong to the fluid category?

14 A. I believe they more belong to the fluid
15 category, that is a good point, but the test still, for
16 example, includes items like digit span, where you read
17 off a series of digits and he has to report them right
18 back, or you read a sentence and he has to repeat the
19 sentence right back to you, so it has some attention and
20 concentration items in it. So what I'm saying is,
21 attention and concentration are more important for fluid
22 than for crystallized intelligence, but they are important
23 for crystallized intelligence as well.

24 Q. And Slosson measures crystallized

1 intelligence, right?

2 A. Right.

3 Q. Now, in your -- you also had a -- had a
4 computer service read your MMPI results; did you not?

5 A. My computer scored the MMPI, that's right.

6 Q. And there's references to the 2772 profile
7 type?

8 A. All right.

9 Q. Do you know what that is?

10 A. Yes, 27 --

11 Q. What is that?

12 A. Well, they call it the distress syndrome, if
13 I understand your question correctly.

14 Q. And in your -- in the Marks Adult MMPI
15 report, which is a report of your MMPI, the
16 interpretation, at least, from -- from your computer is
17 that this client's clinical scales results correspond to
18 the 2772 profile type?

19 A. All right, yes.

20 Q. **Could** you describe what that **s**?

21 A. It is called the distress syndrome. It shows
22 a combination of depression and anxiety both. The
23 suggested diagnoses put forth by the computer program are
24 generalized anxiety disorder, which is chronic anxiety,

1 dysthymia -- and again, I'm looking at page three of my
2 computer report -- dysthymia, which is a chronic
3 depression, and then adjustment disorders or alcohol
4 abuse.

5 Q. Would you agree that a 2772 profile is
6 consistent with a posttraumatic stress disorder?

7 A. No. The typical profile for a posttraumatic
8 stress disorder victim is a 28, depression and
9 schizophrenia, that's more typical. The MMPI-2, which
10 Farrell gave -- you have there in the report, but I'll
11 just remind you of it, that has specifically two
12 posttraumatic stress disorder scales in the report, in the
13 profile, the MMPI-2 has two different posttraumatic stress
14 scales. Farrell scored them both, neither one were
15 significant.

16 Q. And what are they, what are those scales?

17 A. This is outlined in -- on page 10 of my
18 report under "No Posttraumatic Stress." It says right
19 about the -- at line 15 on page 10, "His tests reveal no
20 Posttraumatic Stress. For example, Haplan's MMPI-2
21 included two Posttraumatic Stress Scales and Mr. Waunsch
22 scored normally on both, though one --"

23 Q. Do you know the history of those scales?

24 A. What's that?

1 Q. Do you know the history of those scales?

2 A. Could I have the history --

3 Q. Do you know the history of those
4 posttraumatic stress scales? They were developed by Dr.
5 Keene; were they not?

6 A, One was, yeah.

7 Q. And they were scales that were formed for
8 Vietnam combat vets?

9 MR. FOY: Objection.

10 Q. Isn't that right?

11 A. Let me look. In my report, on page 21, foot
12 note number 45, I go into that in some detail, that the --
13 the first of the two scales, the Keene scale, was formed
14 on Vietnam veterans, yes. It goes on.

15 Q. What footnote are you at?

16 A. Footnote number 45 on page 21.

17 Q. Okay.

18 A. The -- what it says is that Vietnam veterans
19 are the focus group. The trouble is that it goes on to
20 say that it is "susceptible to faking" and it generally
21 overestimates the disorder. So when you get a positive on
22 that scale, you can't be sure that the person has it. On
23 the other hand, if you get a negative on that scale, then
24 you would be pretty sure he doesn't have it. The scale

1 tends to overestimate pathology.

2 Q. Well, on your note, posttraumatic stress, in
3 your reference to the posttraumatic stress scales, there's
4 been a great deal of discussion about that scale applying
5 to civilians; is that fair to say?

6 A. Well, yeah, there has been some. I felt like
7 this situation, you know, bears some resemblance to what
8 happens in Vietnam, a physical attack, a mugging is a
9 physically violent attack, It's not rape trauma. It's
10 not really an automobile accident. It's one person trying
11 to hurt another, and so in other words, I think this scale
12 can be applied in this case, Secondly, there is a second
13 posttraumatic stress scale that is -- is in Kaplan's
14 report called the Ps scale, and he didn't produce a
15 significant peak on that either. It was almost smack dab
16 normal, smack dab normal.

17 Q. So why do you think two psychologists would
18 conclude, based upon **all** those findings, that Mr. Waunsch
19 suffered from posttraumatic stress disorder?

20 A. It's a good question. There are many --

21 Q. Thanks.

22 A. There are many --

23 MR. FOY: I can answer it. You want me
24 to answer it?

1 A. There are many times that a patient comes in,
2 a patient with preexisting mental health problems comes
3 into a psychologist and says, "I just went through a
4 violent event, and now I have these signs of distress."
5 And the mental health professionals assume, for some
6 reason, that the person had no mental health trouble
7 before the event. And so they -- they attribute then all
8 the person's -- misattribute all the person's problems to
9 the event.

10 Once they do that, the reflexive diagnosis is
11 posttraumatic stress disorder. I don't know why they
12 diagnosed it, but I also know there are two other
13 psychologists who did not diagnose posttraumatic stress
14 and really blamed the preexisting problems. Those would
15 be Schwartz and McCarthy.

16 Q. Well, Schwartz didn't comment on the
17 posttraumatic stress disorder, did he?

18 A. Well, he -- in the negative. What I'm saying
19 is, he didn't diagnose it. He diagnosed dysthymia and
20 narcissistic personality disorder, which is --

21 Q. And you're finding the chronic element of Mr.
22 Waunsch's problems is dysthymia?

23 A. That is one and the most important. Others
24 are raised, the possibility of the personality -- the

1 personality disorder, although I didn't diagnose a
2 personality disorder.

3 Q. If you had an MMPI result akin to Dr.
4 Kaplan's, would you have diagnosed dysthymia?

5 A. No. Not based on that profile, no.

6 Q. Now, on your -- back to page nine..

7 MR. FOY: You're going the wrong way.

8 Q. You indicate that -- that his highest
9 frequently scored scale in the supplementary scales was
10 low back pain?

11 A. Right.

12 Q. Were there any other scales on the
13 supplementary scales that were on the clinical range?

14 A. I believe that there were. Let's check.
15 Yeah, his second highest was manifest anxiety on one set
16 of scales.

17 Q. How about the -- on the Tryon scales?

18 A. Right. On that there are three significant
19 ones, **and** they are body symptoms, that's the highest one,
20 again, showing an exaggeration of physical ills. Second
21 highest is tension, worry, and fears. Third highest is
22 oppression and apathy.

23 Q. Tension, worrying, fears is also an anxiety
24 level?

1 A. Right, that's fair, or an overall distress
2 scale.

3 Q. Now, you report that in the second sentence
4 under MMPI, you **say**, "He produced Depression, 'Worry,' and
5 Schizophrenia peaks." Didn't he produce -- wasn't
6 schizophrenia the fourth peak, isn't it, or third peak?
7 Isn't there a third peak that you left out?

8 MR. FOY: Where are you at? Under
9 exaggerations?

10 Q. Exaggerations of **MMPI's**.

11 A. Okay. What is your question again? I'm
12 sorry, I kind of missed it.

13 Q. In your narrative, you indicated that "He
14 produced Depression, 'Worry,' and Schizophrenia peaks"?

15 A. Okay.

16 Q. You've identified three peaks?

17 A. Right.

18 Q. Isn't there a peak that's higher than
19 schizophrenia?

20 A. On my report -- let me **just** double-check, but
21 I don't think there's one that's -- again, remember, I
22 named three, depression, worry, which is scale seven, and
23 schizophrenia. So both depression and worry are above
24 schizophrenia.

1 Q. What's the schizophrenia peak? What's the
2 scale?

3 A. Eight.

4 Q. Which one?

5 A. That's hypochondriasis.

6 Q. Isn't that higher than schizophrenia?

7 A. You may be right about that. I think I
8 know -- well, I know I know what I was doing. Yes, one is
9 higher than -- in other words, he really has a 271, or
10 depression, worry, hypochondriasis. Unfortunately we
11 couldn't find a -- a profile in the literature to fit
12 those three elevations, and so we concentrated on the
13 three elevations where there is some literature on it.

14 Q. The only reason I **ask** is because you noted
15 those as the peaks, and there was one that was higher.

16 A. Right, right.

17 Q. And I'm just trying to get the distinction.

18 A. I should have clarified, and let me see if I
19 did or didn't -- no, I should have clarified that there
20 was this other peak, and that -- that other peak raises
21 the hypochondriacal qualities of the profile. Instead
22 I -- but I really failed to mention that.

23 Q. Now, under "Diagnosis" you indicate that "Mr.
24 Waunsch shows no personality disorder"?

1 A. Right.

2 Q. Why do you reach that conclusion?

3 A. I mean, I was tempted to diagnose it. Others
4 had -- on balance, I felt that the diagnosis of dysthymia
5 of a chronic long-term depression summarized his problems
6 pretty well. I wouldn't quibble, though, if someone else
7 disagreed with me and said that he also had a personality
8 disorder.

9 Q. Did any of the test results reveal a
10 personality disorder?

11 A. Yes. In -- for example, on Kaplan's MMPI --
12 Kaplan's Millon, there were four elevated scales, two of
13 the four were personality disorders specifically, and they
14 were narcissistic and histrionic. And then remember we
15 have the diagnosis of both Schwartz and McCarthy, both of
16 them speculate, I believe, narcissistic -- maybe only one
17 of those .two speculated that narcissistic personality
18 disorder.

19 Q- You opine that his functioning is very mildly
20 impaired? And I'm at the top of page 10.

21 A. Yes.

22 Q. His clinical elevations on five of ten scales
23 on the MMPI --

24 A. It's unusual.

1 Q. -- do you think that's very mildly?

2 A. No. The tests suggest a worse diagnosis than
3 that, no doubt. It's just that his functioning is *so*
4 good. You look at the tests, the worst one being the
5 symptom checklist reported by Kaplan, where he just blew
6 the top off all of the scales on these **MMPI's**.

7 In his daily activities, he looks very good.
8 He's got a new job. **He's** working in what he considers to
9 be a bad area. He gives speeches in front of school
10 children. He's helping out his wife. He doesn't act
11 mentally impaired in terms of the way he acts. If his
12 behavior is mentally impaired, then a huge percentage of
13 the population is *too*.

14 Q. Certainly lawyers are.

15 A. Speak for yourself, right?

16 Q. Now, you've listed some risk factors for PTS.
17 You haven't listed all the risk factors, have you?

18 A. All that I could, you know, recall at **this**
19 time, Are we now on page 10 still?

20 Q. Yeah.

21 A, Okay. Yeah, I don't know what I may have
22 omitted.

23 Q. Now, then you quote a statistic, "natural
24 disasters produce no symptoms in roughly 75 percent of

1 survivors"?

2 A. Uh-huh.

3 Q. Mr. Waunsch didn't go through a natural
4 disaster, did he?

5 A. Correct.

6 Q. What proportion of people who have been
7 victimized by crime, by assault, produce symptoms of PTS?

8 A. I don't know, but -- but I would raise one
9 word of caution. To show symptoms of any disorder,
10 physical or mental, is really very common, symptoms.
11 Showing the full-blown syndrome is another matter. So to
12 me the important thing is whether or not the person
13 actually gets the syndrome, not whether he has some
14 symptoms.

15 Q. Well, I mean, this is -- this is not my
16 words. You said "After all, natural disasters produce no
17 symptoms in roughly 75 percent of survivors." That's your
18 language, not mine.

19 A. You're exactly right. You make a good point
20 there, "no symptoms," right. Not even any symptoms, okay,
21 in 75 percent of survivors. What this would mean is
22 that --

23 Q. And you're using that to buttress your first
24 sentence, that "It is not unusual for Mr. Waunsch to

1 experience a trauma and yet not develop Posttraumatic .
2 Stress"?

3 A. Right. In other words, what I'm trying to
4 say is it is unusual. It's noteworthy when not even --
5 when 75 percent of a group shows no symptoms of something,
6 not even a symptom. That suggests that 25 percent of the
7 group shows some symptoms.

8 Q. After natural disasters?

9 A. Yeah, but only a small amount of that 25
10 percent will show a full-blown symptom of the full-blown
11 stress disorders.

12 Q. I'm not arguing. This is your words, not
13 mine.

14 A. It's **just** noteworthy when a group fails to
15 show symptoms.

16 Q. This is not a natural disaster?

17 A. Right.

18 Q. And this is not combat?

19 A. Right.

20 Q. Do you know what the percentage of veterans
21 in combat who develop PTS would be?

22 MR. FOY: Objection, irrelevant, you
23 can answer.

24 A. No, I don't think I do.

1 Q. Now then, on page 11 you indicated in "His
2 Stressors Show Preexisting Causes," does the fact that Mr.
3 Waunsch was able to kind of rise above, for lack of a
4 better term, his family of origin, does that denote a
5 certain psychological health?

6 MR. FOY: Objection.

7 A. I'm not sure that I --

8 Q. It's not artful. It's not artful, but, I
9 mean, here is a guy who came -- everybody described it as
10 dysfunctional and problems with family, and he seems to
11 have been the only one in the family to have gotten out of
12 the -- of that milieu, at-least in some respects?

13 A. Yeah.

14 Q. Does that suggest anything about his
15 psychological makeup?

16 A. Well, again, I think I would question the
17 premise. . We have -- about him rising above his family.
18 We have a history of -- certainly both parents are arguing
19 alcoholics. Mr. Waunsch is neither of those. On the
20 other hand, the family was -- has been described as
21 dysfunctional.

22 Mr. Waunsch went through years of being
23 stalked by somebody because of an affair that he had, had
24 to tell his wife about it, I'm sure that that caused some

1 emotional upset. Some have speculated he's a
2 self-centered kind of a guy. My guess is that his parents
3 were somewhat self-centered people.

4 He has talked about being down, at least, and
5 professionals have said that he's been chronically
6 depressed, you know, before this assault and afterwards.
7 So in other words, it's a -- it's a little generous to say
8 that he rose above it and that he was perfectly normal
9 before the assault, but I'll give him that, that it sure
10 sounds that his marriage is better than his parents'
11 marriage, for example. So in short, I'm afraid I'll still
12 have to say that I think he had a low level, a very mild
13 mental problem before this assault.

14 Q. Who diagnosed him with chronic depression
15 prior to the assault?

16 A. No one that I know of.

17 Q. Do you think promotions and moving from job
18 to job to increase income and stature in his profession is
19 a stressor?

20 MR. FOY: Objection.

21 A. Yes, I believe that job changes are all
22 stressful, and there are -- just the sheer event of
23 changing jobs is a stressor, yes.

24 Q. You indicate that "Psychologist Schwartz

1 believed that Mr. Waunsch's symptoms --" and you quoted
2 "-- 'had been going on since childhood.'" You quote that,
3 that --

4 A. Page --

5 MR. FOY: Page 11.

6 Q. Page 11, last sentence in the first full
7 paragraph.

8 A. Okay, yes.

9 Q. Psychologist Schwartz, in that, was referring
10 to his narcissistic personality disorder, was he not?

11 A, I don't remember.

12 MR. FOY: Page 20, Schwartz.

13 THE WITNESS: Page 203

14 Q. On Schwartz, that's what it says.

15 A. Footnote number --

16 MR. FOY: 51.

17 THE WITNESS: 51, okay. Okay. It's
18 his deposition, page 20, I see --

19 MR. FOY: Oh, I'm sorry, it's
20 Schwartz's deposition, page 20, so maybe --

21 A. I don't recall. We can look it up in his
22 deposition, but I'm having trouble finding his deposition.

23 Q. Well, let's go on.

24 A. Okay.

1 Q. You indicate that Psychologist Schwartz
2 diagnosed the dysthymia only half a year after the
3 assault?

4 A. Yes.

5 Q. Which then you have, "which shows that Mr.
6 Waunsch's Dysthymia predated the assault by at least 1 1/2
7 years."

8 A. Right.

9 Q. How do we make that leap?

10 A. The -- let me give you an analogy that may be
11 of little help. If he -- if a physician diagnoses a -- an
12 adult with Down's syndrome, you immediately know that the
13 person had it since birth, because of the nature of the
14 illness. In psychology, the same thing is true.

15 Dysthymia is, by definition, a chronic
16 depression. It's not a depression, it's a chronic
17 depression. And it is that and it is nothing else but
18 that, and the criteria are very explicit. In order to
19 diagnose dysthymia, the symptoms, all of them have to have
20 been present for two years -- up to two years -- up to
21 decades, but at least two years.

22 Q. And how long were the symptoms present in Mr.
23 Waunsch as of the time that Dr. Schwartz saw him?

24 A. Well, I know at least two years.

1 Q. How do you know that?

2 A. Because of the definition of the -- for the
3 same reason that if he had been correctly diagnosed with
4 Down's syndrome, I would know that he had it since birth.
5 By definition, it's a genetic disorder.

6 Q. Well, Dr. Kaplan took an **MMPI**, which you
7 testified as valid, and you couldn't reach the diagnosis
8 of dysthymia based on that **MMPI** prior to Dr. Schwartz
9 seeing him, so how can we go back in time?

10 A. I'm -- I don't think I understand your
11 question there. It is true that Kaplan's **MMPI** does not
12 show depression, that is true.

13 Q. And the Millon?

14 A. Correct, it does not -- Kaplan's two -- two
15 of his tests do not show depression.

16 Q. Would they support a finding of dysthymia?

17 A. Those two tests at that time would not have.
18 You've got to keep in mind most of the others would,
19 however. I mean, Kaplan's tests are strange. They seem
20 to be different from other peoples' test results and
21 diagnoses.

22 Q. Well, how do we know that Mr. Waunsch had
23 these symptoms for at least two years?

24 MR. FOY: Objection, asked and

1 answered. You can answer it again.

2 A. You can ask them why they diagnosed a chronic
3 depression. I don't know why they diagnosed it, but they
4 did. They're now stuck with that diagnosis as it were.

5 Q. I'm talking about Psychologist Schwartz
6 diagnosing the dysthymia?

7 A. Uh-huh.

8 Q. And I don't understand when you say in order
9 to reach that diagnosis, you have to have symptomatology
10 for two years?

11 A. Yeah.

12 Q. Well, I'm trying to understand how you -- how
13 you get to the point that Dr. Schwartz can diagnose it,
14 not having seen symptoms over a two-year period?

15 A. Right. It may be more productive for you to
16 ask him why did he come to the conclusion about dysthymia,
17 because I don't know why Schwartz did. I can't speak for
18 him and say that he knew that -- I can't say that Schwartz
19 knew that --

20 Q. Let me back up.

21 A. -- that the guy was depressed or something.

22 Q. There is your report, **it's** on page 11 under
23 "His Diagnosis Shows Preexisting Causes."

24 A. Okay.

1 Q. The last sentence in that paragraph.

2 A. Yes.

3 Q. "Psychologist Schwartz diagnosed it --" and
4 you're talking about dysthymia?

5 A. Uh-huh.

6 Q. "-- only half-a-year after the assault --"

7 A. Yes.

8 Q. "-- which shows that Mr. Waunsch's Dysthymia
9 predated the assault by at least 1 1/2 years."

10 A. Okay. Let me try again to explain that,
11 because the evidence is simple. It's not a complicated
12 inference.

13 Q. Okay.

14 A. He has diagnosed a disorder that must last at
15 least two years, all right? He diagnosed that disorder
16 six months after the assault, therefore that disorder must
17 have emerged at least a year-and-a-half before the
18 assault.

19 Q. Or he's wrong in his diagnosis?

20 A. Of course.

21 Q. Is there anything in the -- in the records
22 that you've seen which shows that he had dysthymia prior
23 to the assault?

24 A. All right. The -- the answer to that is yes.

1 He had lots of dysfunctional problems going on throughout
2 his life that are compatible with some form of mental
3 illness. The bad family, essentially, that he grew up
4 with, and then lots of stressors. Reports of, you know,
5 crying over his bad knee every day, that's a -- a symptom
6 of some form of depression, or certainly could be a
7 symptom of some form of depression.

8 Even his seeking a sexual affair outside of
9 marriage, while not a primary symptom of depression, could
10 be looked on as a symptomatology of his dissatisfaction of
11 his marriage, being very bummed out about his marriage.
12 The other stressors then continue, depressing stressors,
13 like having a stalker bother you and being able to do
14 nothing about it. So in other words, his life showed not
15 only lots of stressors before the assault, but also some
16 arrant behavior on his part.

17 Q. And those stressors and arrant behavior are
18 consistent with DSM-IIIR in meeting the criteria for a
19 diagnosis of dysthymia; is that what your testimony is?

20 A. Yes, the ones that I have mentioned. And
21 then I believe that if we look further, we will find that
22 he himself has said to one psychologist or another that he
23 has been sad off and on throughout his life. I believe
24 we're going to find that in notes. Just a minor thing,

1 the Metropolitan Clinic of Counseling, January 23rd, 1992,
2 reports -- John reported -- quote, John reported that he
3 grew up worried, nervous, and underweight.

4 Worry and nervousness can be, and underweight
5 certainly is, symptoms of depression, just to give you an
6 example. They go on to mention that his media persona
7 only worsened his tendency to cover **up** his internal
8 feelings of insecurity with makeup and a suit. Oh, by the
9 way, one random thing, the -- here comes that phrase
10 "fatal attraction" again, two-thirds down that page. Some
11 others seem to be using that same phrase before I did.

12 Q. Not original, huh?

13 A. No, maybe not, maybe not. Okay. There's my
14 point. My point is that there is so much evidence that
15 this guys's problems did not crop up as a function of the
16 assault. He had lots of problems beforehand.

17 **MR. BEREZIN:** I have **nothing** further.

18 **MR. FOY:** We won't waive.

19 (Deposition concluded and witness
20 excused at 5:00 p.m.)

21 - - -

SIGNATURE PAGE

Date of Deposition: May 4, 1994

Errata sheet(s) enclosed? Yes _____ No _____ How many? _____

CHRISTOPHER C. LAYNE, Ph.D. Date

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C E R T I F I C A T E

I, Wendy L. Anglin, Registered Professional Reporter and a Notary Public in and for the State of Ohio, duly commissioned and qualified, do hereby certify that the within-named witness was by me first duly sworn to tell the truth, the whole truth and nothing but the truth in the cause aforesaid; that the testimony then given was by me reduced to stenotype in the presence of said witness and afterwards transcribed; that the foregoing is a true and correct transcription of the testimony so given as aforesaid.

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 any party, or otherwise interested in the event of this action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal of office at Toledo, Ohio on this 18th day of May 1994.


WENDY L. ANGLIN, RPR

Notary Public
in and for the State of Ohio

My Commission expires November 24, 1994.