

## IN THE COURT OF COMMON PLEAS

SUMMIT COUNTY, OHIO

MICHELE VAN VOORHIS, ) CASE NO. CV 89-06-1812

Plaintiff,

-v-

) JUDGE JAMES R. WILLIAMS

)

JOHN MARTTER,

) TRANSCRIPT OF PROCEEDINGS

)

Defendant.

) VOLUME 1 (Of 1 Volumes)

- - -

BE IT REMEMBERED that upon the hearing of the above-entitled matter in the Court of Common Pleas of Summit County, Ohio, before the Honorable James R. Williams, Judge Presiding, and commencing May 17, 1991, the following proceedings were had, being an Excerpt of Proceedings:

- - -

PATRICIA A. KLEIN, RPR/CP, CM, CSR  
 Official Court Reporter  
 Summit County Courthouse  
 Second Floor - Room 210  
 Akron, Ohio 44308

APPEARANCES :

ROBERT HOUSEL, Attorney at Law,  
On behalf of the Plaintiff.

ORLANDO WILLIAMS, Attorney at Law,  
On behalf of the Defendant.

- - -

I N D E X

<u>DEFENSE WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>ReD</u>	<u>ReC</u>
DR. CHRISTOPHER LAYNE	4	56	140	155

**FRIDAY, MAY 17, 1991**

## MORNING SESSION

THE COURT:                   The Plaintiff has completed  
its case and we will now receive evidence from the  
Defense.

MR. WILLIAMS: Thank you, Your Honor.

(Defendant's Exhibit F, being curriculum vitae of Dr. Christopher Layne, was marked for identification by the Court Reporter.)

DR. CHRISTOPHER LAYNE

a witness herein called on behalf of the  
Defense, being first duly sworn as provided by law,  
was examined and testified as follows:

## DIRECT EXAMINATION

BY MR. WILLIAMS:

Q. Good morning, Doctor.

A. Hi.

Q. Would you introduce yourself to our jury, please.

A. I'm Chris Layne from Toledo and I'm a Clinical  
**Psychologist .**

THE COURT: How do you spelling your  
last name, Doctor?

THE WITNESS: L-A-Y-N-E.

BY MR. WILLIAMS:

Q. Dr. Layne, would you share for the jury some of

1 your credentials?

2 A. Well, I graduated from the College of William and  
3 Mary with honors and then went on to graduate  
4 school at the University of Alabama. And then I  
5 did an internship in Clinical Psychology and then I  
6 became a professor and also a private practitioner  
7 once I got out of graduate school. I did that for  
8 the rest of my career, I've done that now for about  
9 16 years.

10 I got Board Certified about 11 years ago and  
11 I've also published a lot of things in journals  
12 that are circulated around the world and gotten on  
13 a lot of hospital staffs and --

14 Q. Could you indicate, Doctor, some of your hospital  
15 affiliations?

16 A. I'm on virtually every hospital in Toledo, Mercy,  
17 Riverside, St. Charles, Flower. There is one  
18 hospital they just do not have staff privileges for  
19 psychologists and so, of course, I'm not on that,

20 Q. What is the procedure for being admitted to the  
21 staff of a hospital as a psychologist?

22 A. Well, physicians primarily review your records,  
23 usually it's a committee of about eight different  
24 physicians and they review your resume and your  
25 accomplishments and then decide whether or not to

1           let you in.

2           Q.   Now, Doctor, where are you currently employed and  
3           what do you do?

4           A.   I'm in private practice in Toledo on Central Avenue  
5           in the Westgate Building and then I shuttled over  
6           to the University of Toledo where I'm a tenured  
7           associate professor and there I teach classes at  
8           the graduate and undergraduate level in psychology.

9           Q.   Now, have you been -- have you published **or** have  
10          been an editorial consultant of any form?

11          A.   Yeah. I've published a few dozen articles for  
12          journals. You have to send the article to the  
13          journal and then they send the article out to a  
14          number of other psychologists who say whether or  
15          not it's good information to get in and sometimes  
15          they are and sometimes they aren't **but** most of the  
17          time they are and I'm **also** one of those reviewers  
18          myself.

19                There have been four or five journals that  
20          have asked me to be an editorial consultant for  
21          them and so I am.

22          Q.   Doctor, I don't want to belabor your resume too  
23          much. Just name for us a few workshops you  
24          conducted and things of that nature?

25          A.   The most recent one was a day-long workshop that I

did last fall in November at the University of Findley and it was for health care professionals in that segment of Ohio and I did that workshop on depression. That was a full day's workshop and before that, I've done workshops in Atlanta, New Orleans, Virginia, my home state, and for the Toledo Hospital back in 1981 or so. Those are some of the workshops that I've done.

Q. You've reviewed a number of publications I know and could you name one or two of those publications that you reviewed recently?

A. In terms of ones, articles that have been published, there are a number in depression. I've also reviewed a few books, a recent book that I reviewed was Finkelhor's book, that's the author, and that was a book on child sexual abuse. There were several other books, one being, the authors are Montgomery and Fewer, I'm not sure, I'll have to check the authors, at any rate, another book on child sexual abuse as well.

Q. Doctor, how long have you been in the private practice of psychology?

A. For the last 16 years.

Q. Handing you what's been marked for purposes of identification as Defendant's Exhibit F, do you

1 recognize what that is, Doctor?

2 A. Yes, that is my resume.

3 Q. Doctor, what areas of psychology do you concentrate  
4 on?

5 A. My specialties are depression and anxiety and then  
6 psychological evaluations. Those three areas.

7 Q. Now, what were some of the symptoms of the  
8 depression, Doctor?

9 A. Well, the one that was probably is familiar with, of  
10 course, is sadness, the emotion of sadness but  
11 there are others, too. Low motivation and  
12 disturbances of cognitive functioning, meaning that  
13 it's difficult to think straight when you're really  
14 down. It's tough to think clearly, it's easy to  
15 get confused it's easy to forget There is also a  
16 sluggishness that goes along with depression, sleep  
17 disturbances and eating disturbances, too.

18 Q. Now, is there any special name given to the various  
19 forms of eating disturbances?

20 A. Yeah, there are several eating disorders. One  
21 that we're all concerned with obesity, of course,  
22 but the really serious ones are anorexia and  
23 bulimia.

24 Q. What is anorexia, Doctor?

25 A. Anorexia and bulimia are very similar. In both



cases the person will **purge**, that **is** to say they will make themselves throw up. Usually it's because they want to lose weight. There are a couple **of** other ways they can do it, by taking laxatives and by exercising excessively but most people throw up. The difference in anorexia there is a profound weight loss. With bulimia there **is** **no** significant weight **loss**, there is what they call this binge and purge circle, you eat a lot and then you want to keep it off and do it, so you throw it up.

Q. Are there any other problems associated with those two eating disorders besides the fact of consuming food and then getting rid of it, so to speak?

A. The people who have this problem often have what's called a body image distortion. That means they can sit there and look at themselves in the mirror and say, "I'm still fat," when, in fact, they aren't fat. So they keep it exaggerating their weight.

Q. Now, you've indicated that you've had experience in performing psychological evaluations, in fact, that's one of your areas of specialty?

A. Right.

Q. What do you -- let me first **of** all ask you this,

1           Doctor. Have you ever testified before in a court  
2           of law?

3           A. Yes.

4           Q. What about by way of deposition?

5           A. Yes, I've had depositions before.

6           Q. And can you count the number of times you've done  
7           that recently?

8           A. Several times a year I am in a testimony situation.

9           Q. Have you ever had an opportunity to treat an  
10          individual who has brain damage?

11          A. Yes. I treated several people who have had closed  
12          head injuries and open head injuries.

13          Q. What are some of the symptoms -- well, first of all  
14          let me ask this question, Doctor, is there another  
15          name for that particular malady in your profession?

16          A. The results of a closed head injury, again, my  
17          profession is called dementia and that is a cluster  
18          of symptoms that is caused by a blow to the head.

19          Q. What is dementia?

20          A. There are really two major groups of symptoms, one  
21          is memory **loss**, the other is a radical change in  
22          other thought processes. These are people, in  
23          fact, some of the examples you get right from the  
24          textbook is that these are people who can never  
25          find their way to work, they forget things

1           constantly, they can't think very clearly. **So,**  
2           they perform very poorly on intelligence tests,  
3           they are described **as** having radically changed  
4           personalities, their emotions go up and down and  
5           all over the place. They get mad at a flash and  
6           then they get sad at another flash and they report  
7           a lot of ups and downs emotionally.

8       Q.   Now, what do you generally **do**, Doctor, in  
9           performing a psychological evaluation?

10     A.   It's really important that the psychological  
11           evaluation stand on three legs. There is like a  
12           three-legged stool, sure the testing is important,  
13           also what the person does while you're sitting in  
14           front of her, that's also important. How the  
15           person acts but the third thing that's really  
16           important, of course, is the history, What is the  
17           person like throughout the life, what has she done,  
18           how did she act in times past. So, the history is  
19           very important.

20     Q.   What is the best way, in your opinion, to determine  
21           history, Doctor?

22     A.   Documents. There have been all types research  
23           studies that basically say if I ask average people,  
24           for example, when they potty trained their children  
25           or what style they used to either raise their own

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1 children, research says we can't really remember  
2 very well how we did that or when our children  
3 first started to walk or talk. In other words,  
4 people are not really quite as good as historians  
5 as we think we are, And so, documents are really  
6 good as documents rarely, I mean I suppose  
7 occasionally one is forged but the people that make  
8 documents aren't -- they have no **ax** to grind, When  
9 somebody spends an expense on the high school  
10 transcripts or a letter, they don't know how it's  
11 going to be used 10 years later and so they're  
12 certainly trying to basically tell the truth at the  
13 time. So, the documents are unbiased and they also  
14 have an excellent memory, they don't change.

15 Q. Now, I've asked you to **perform** or I had asked you  
16 to perform a psychological evaluation on the  
17 Plaintiff, Michele VanVoorhis?

18 A. Right.

19 Q. Now, do you do those for free, Doctor?

20 A. Yes, I do.

21 Q. Do you do those for free?

22 A. Oh, I'm sorry, I thought you said did I do those  
23 three. I'm sorry, I did not do it for free,  
24 heaven's no.

25 Q. I would also assume that like most other doctors,

1           that when *you* come into Court, you charge a fee for  
2           that?

3       A.    That's right, I do.

4       Q.    Okay.  Now, prior to performing your evaluation **of**  
5           the Plaintiff, Michele VanVoorhis, did you review  
6           any documents?

7       A.    Yes, I sure did,, in fact, I brought along some of  
8           them here, these are some **of** the documents that I  
9           went through.

10      Q.    Can you share with the ladies and gentlemen some of  
11           the documents that you reviewed prior to conducting  
12           your evaluation of the Plaintiff?

13      A.    The most crucial ones were --

14                   MR, HOUSEL:           I'll object, that's not  
15           responsive.

16                   THE COURT:            I assume most crucial is  
17           going to lead to certain documents?

18                   THE WITNESS:        Exactly, yes.  *The* question  
19           as I understood it was what documents did I review  
20           and he was going to start with the most important  
21           ones,

22                   THE COURT:            You may answer.

23      A.    The most crucial ones were the high school and  
24           college transcripts of Miss VanVoorhis.  Other  
25           documents that were important were the reports of

1 Dr. Lefkovitz and Dr. Toth. Ms. VanVoorhis'  
2 deposition, I believe was important and there were  
3 several others that I reviewed as well.

4 BY MR. WILLIAMS:

5 Q. Now, what did you learn from your review of these  
6 documents, Doctor?

7 A. Well, the -- in a nutshell, there are two clusters  
8 of problems that Miss VanVoorhis had prior to the  
9 accident and both were not trivial, both were  
10 extremely important problems.

11 One was a cluster of psychological problems,  
12 what I'm trying to say it wasn't just one  
13 psychological problem, it was several. One was  
14 depression for which she was treated way before the  
15 accident, the second one ~~one~~ was bulimia, the  
16 eating disorder I talked about and she was treated  
17 for that way before the accident and then the third  
13 was the most intriguing and that was what I came to  
19 call a mystery trauma and this is very complicated  
20 and unusual situation in that I was prevented from  
21 finding out what this mystery trauma was.

22 MR. HOUSEL: I'll object, Your Honor,  
23 move to strike, have the jury disregard his  
24 comments.

25 THE COURT: Doctor, let's stick to sort

1 of the bare facts. At some point, if you're going  
2 to have a conclusion, you'll have that opportunity,  
3 but you're very expressive in how you speak and so  
4 on, we appreciate that, but there may be some  
5 meanings in those expressions that may not be fully  
6 understood. So, just sort of stick to the bare  
7 facts as you answer the question, please.

8 THE WITNESS: Could, perhaps call it a  
9 third problem?

10 THE COURT: I don't know,

11 MR. HOUSEL: I'll object.

12 THE COURT: Let's just take it one at a  
13 time. We'll see how it comes out.

14 MR. HOUSEL: Could the jury be  
15 instructed to disregard his last-comments about the  
16 material he was supposedly prevented from getting.

17 THE COURT: Mr. Housel, you will  
18 cress-examine him in a few minutes. I'm sure that  
19 we will have ample balance once this whole process  
20 is over.

21 MR. HOUSEL: Thanks, Judge.

22 BY MR. WILLIAMS:

23 Q. Doctor, you previously indicated that you had an  
24 opportunity to review the transcripts; isn't that  
25 correct?

1 A. That's right.

2 Q. I'd like you to share the information that you  
3 obtained with those, with the Jury and the Court.,

4 A. Here is --

5 MR. HOUSEL: Judge, there is no  
6 question, there is no --

7 THE COURT: Do you have an objection?

8 MR. HOUSEL: Yes.

9 THE COURT: Let's take it up over here,

10 MR. HOUSEL: Thank you.

11 (A discussion was held at the side bar.)

12 BY MR. WILLIAMS:

13 Q. Perhaps, **Doctor**, we could start with the, this  
14 document .

15 A. As I recall, your question was --

16 MR. HOUSEL: Objection.

17 BY MR. WILLIAMS:

18 Q. Doctor, ~~LE~~ you could share with the Jury some of  
19 the information you obtained through your review of  
20 these documents.

21 A. Okay.

22 MR. HOUSEL: I'll object to the form of  
23 the **question**, again.

24 THE COURT: What is the item we have  
25 there? I can't see it.



1                   MR. WILLIAMS:       That would be the high  
2                   school transcript, Judge.

3                   THE COURT:           I assume this is something  
4                   you provided the Doctor?

5                   MR. WILLIAMS:       Yes.

6                   THE COURT:           That's Miss VanVoorhis'  
7                   transcript that we previously had reviewed in this  
8                   Court?

9                   MR. WILLIAMS:       Exactly, Your Honor.

10                  BY MR. WILLIAMS:

11                  Q.   Dr. Layne, I'm going to hand you what's been  
12                       previously marked for purposes of identification as  
13                       Defendant's Exhibit C and ask you if you can draw  
14                       some correlation between that and what you have  
15                       blown up there?

16                  A.   First of all, this is the high school transcript  
17                       that I reviewed prior to my examination of Miss  
18                       VanVoorhis. This is an amplified or magnified  
19                       version of this piece of paper right here.

20                  Q.   Now, Doctor, what did you learn through your review  
21                       of this document with specific reference, that  
22                       transcript shows four years worth of high school  
23                       education of the Plaintiff, correct?

24                  A.   Right.

25                  Q.   Did you draw any meaningful conclusions through

1           your review of that? Perhaps you could share that  
2           information,

3                       MR. HOUSEL:           I'll object.

4       A.    Yes, I do.

5                       THE COURT:           Overruled.

6       A.    Yes, I did draw many important conclusions from  
7           this document. This is really a crucial document  
8           because it contains her high school grade point  
9           average for four years, the ninth grade, the tenth  
10          grade and the eleventh and the twelfth grade. So  
11          this is a long-term measure of her intellectual  
12          functioning before the accident and the crucial  
13          thing is this yearly average here and I guess you  
14          remember that averages are on a four point scale, 4  
15          is an A, 3 is a B, 2 is a C, here's a 2.61 in the  
16          ninth grade, Here is a yearly average of 1.68, I  
17          believe, in the tenth. Here's a yearly average of  
18          1.0, I guess that's a D average, in the eleventh  
19          grade and you'll notice up here that correlates  
20          with lots of Fs and Ds and so forth. And then in  
21          the twelfth grade, we're back up to a yearly  
22          average of 2.2. So, those are pretty low grades  
23          consistently.

24       Q.    Now, Doctor, was there other information regarding  
25           any standardized testing that you were able to

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obtain for that document?

A. Yeah. It's very difficult to see but if you squint a little bit, you can see two tests here. Standardized tests. One was taken about five years before the accident and the other was taken about three years before the accident and Michale scored an overall composite percentile ranking of 19 in 1982 and then in 1984 she scored a composite score of 39 percentile.

And what that means is that if you took the average high school students, you took this test and you took one hundred of them and you put them in a line with the smartest person up front and the least intelligent in the rear, then Miss VanVoorhis would have been somewhere between the 19th place and the 39th place from the rear. So that most of the people are in front of her. Most people are smarter than she is. In fact, a vast majority are.

Q. Doctor, were you able to extrapolate that data on that data that was, that you received from the standardized tests and make any conversions for purposes of IQ or intelligence quotient?

A. Yes. It's really quite simple. You know, an IQ test say that the average IQ is a hundred, well, that's the fiftieth percentile. After the accident

1 she scored, as I recall, she scored --

2 MR. HOUSEL: Judge, I'll object. That's  
3 not any longer responsive to the question.

4 THE COURT: Mr, Housel, let him  
5 testify, please. Let us get this over with.

6 MR. HOUSEL: Okay.

7 A. As I was seeing, she scored, as I recall, in the 77  
8 percentile on her testing after the accident, the  
9 IQ was a 111, as I recall. If you convert it is a  
10 77 percentile. Now after the accident that line of  
11 people I was taking about, she's up front, there  
12 are only 23 people smarter than her and you got  
13 about 77 people that are not as smart as she is  
14 after the accident.

15 Q. Was there anything, any other fact that you or  
16 information you learned through use of this  
17 particular exhibit?

18 A. Yeah. She had 305 people in her class, number in  
19 class, 305, her class rank was 250. If you take  
20 everybody in a class and put them in a line from  
21 the best grades to the worst grades, she would be  
22 250 in line. That means there are 250 people who  
23 made better grades than she did and there are 55  
24 people that made grades worse than she did.

25 Q. You mean 249?

5  
1 A. Right, Right. Roughly and see the point is that  
2 position in line, in high school is exactly what  
3 she **got** over here in her test scores. Basically  
4 she's in the same place in line no matter how we  
5 measure her intelligence and her cognitive  
6 functioning and all of this is before the accident.

7 Q. Now, do you know, Doctor, through your review of  
8 **Dr.** Toth's records whether she took this  
9 information into account when you reviewed her  
10 report?

11 A. There is no mention of any real cognitive  
12 functioning. Her cognitive functioning before the  
13 accident, which is a great surprise.

14 Q. Does this help you illustrate that point any  
15 better, Doctor?

16 A. Yeah. This is just a summary of what we just  
17 looked at, a summary of the grade point average, it  
18 is not a summary of the testing and it's not a  
19 summary of the class rank. It's just the grades  
20 and what's interesting here is the years before the  
21 accident, as they go, as you get closer and closer  
22 to the accident, before the accident, her average  
23 sort of declines and then goes up right at the end  
24 a little bit. It never quite reaches this level  
25 but the average of her averages in the last four

years of high school is below C level, you might say,

There is also another compelling thing, which I didn't point out over there, but it's on that document you just saw and that is days absent and days tardy and I won't bore you with all the individual numbers, just suffice it to say when she was in high school, she didn't show up more than once a month on the average and then almost once a month she was tardy.

Q. I believe a minute ago, Doctor, you were talking about an IQ information. Does that illustrate any better on that particular chart?

A. Yeah. That's her IQ after the accident, obviously, and this is what's really important, this 'is the testing that Dr. Toth gave, these are Dr. Toth's results, The IQs are reported by Dr. Toth here and here are the percentile rankings and they are accurate.

Remember, 100 is average, 100 would be the fiftieth percentile, So 111, remember this is the physical scale, this is the important number right here, and that 111 translates to percentile of 77 percent. Now she's ahead of everybody else, most other people.

1 Q. Doctor, did You have an opportunity to review any  
2 of the transcripts from Kent State University?

3 A. Yes, I did.

4 Q. Would this particular sheet be of any assistance in  
5 helping you explain what you found there?

6 A. If it's the Kent State transcript, it certainly  
7 would. This is the -- her Kent State transcript  
8 that I reviewed before I made my report. It shows  
9 her functioning two years intellectually, two years  
10 before the accident in 1985 and in 1986.

11 Q. Now, what grades did she receive, and if you could,  
12 sort of relate those to some courses from Kent  
13 State in 1985.

14 A. Her grades are as follows, it can be read quite  
15 easily, F; F, F and then N/A, I guess **that** means  
16 not applicable, College English 1, I don't know why  
17 that would not be applicable but it isn't.

18 Q. What did she receive those grades in, what courses.

19 A. Biological Principals, College Algebra and  
20 Introduction to Philosophy, that's where she made  
21 her three Fs.

22 Q. Now, then you had another continuation, what  
23 were -- what grades, if any, did she receive there  
24 in the next quarter?

25 A. In the Fall of 1985, and remember these grades, if

1           you start class in the Fall then you get them  
2           around December so, this would be two years before  
3           the accident, exactly when these grades came out,  
4           nothing **but** withdrawals. She dropped out or  
5           withdraw, W, W, W, that means withdrawal, she quit.

6       Q.   Is there anything else that you were able to  
7           determine by reviewing that particular document,  
8           Doctor?

9       A.   That is really about it, I mean the note on the  
10          college transcript, which is, of course, obvious is  
11          academic probation, academic probation, academic  
12          probation. Then the grade point average is 0.0.

13      Q.   Now, you had an opportunity, Doctor, to review the  
14          transcript from Cuyahoga Community College.

15      A.   Yes, I did..

16      Q.   Was that the next institution of higher learning  
17          that Miss VanVoorhis attended?

18      A.   That's my understanding.

19      Q.   Would this particular exhibit be helpful to you in  
20          explaining to the jury what you learned there?

21      A.   Very much so.

22      Q.   Go ahead, Doctor.

23      A.   This is the transcript that I reviewed prior to my  
24          making my report. It is crucial, it is a crucial  
25          document for this reason: Look at these, look at



6  
1 this date here, the **Fall**, this **is** the Fall Semester  
2 of **1987**, these grades came out in December, she got  
3 this report card almost right at the time of the  
4 accident. This shows her intellectual functioning  
5 immediately prior to the accident. What it shows  
6 the grades right before the accident are F, F, F  
7 and W, which means withdrawal. The grade point  
8 average is zero and then the accident occurred and  
9 the accident occurred right here.

10 After the accident she went right back to  
11 school, Got grades during the Spring of 1988, once  
12 again let me remind you when you get grades in the  
13 Spring, that means you got them for classes you  
14 went to for a couple of months. She went right  
15 back to school and in the Spring of **1988** her grades  
16 went **up**. Right after the accident.

17 Now, they didn't go up much, she got three  
18 Fs but she got a C. Now, here's what's most  
19 important, what did she get the C in? She got the  
20 **C** in Art Appreciation, that's Art 101, that is  
21 exactly the course she took --

22 THE COURT: Doctor, **I** still want to  
23 caution you in terms **of** your method of expression.  
24 You have been called as an expert. You're not  
25 called as an advocate.

1                                   THE WITNESS:           Right, Yeah, I know that,

2   BY MR. WILLIAMS:

3       Q.    Doctor, let me ask you this, you indicated that she  
4            had a C right after the accident in Art  
5            Appreciation, Art 101, did she -- are you aware of  
6            her ever taking that course before?

7       A.    Yes, she took the course immediately before the  
8            accident.

9       Q.    And what grade did she receive at that time?

10      A.    She received an F before the accident and then  
11            after the accident, she received a C in the same  
12            course.

13      Q.    Is there anything else, Doctor, that you felt  
14            important prior to completing or preparing for your  
15            evaluation of Michele VanVoorhis, based upon review,  
16            of this particular document?

17      A.    There is also, although the grades generally  
18            continue as Fs, Fs, a D is over here, this would be  
19            after the accident and it's the second college  
20            course that she ever passed after,

21      Q.    Finally, Doctor, she re-enrolled at Kent State,  
22            were you aware of that?

23      A.    That's right.

24      Q.    And did you have an opportunity to review those  
25            grades?

1       A.    Yes.

2       Q.    Would this document be helpful to you in explaining  
3           to the jury what you were able to learn from a  
4           review **of** that?

5       A.    Yes, it would be helpful. That is the document  
6           that I reviewed before I made my report and what's  
7           significant about it is that now in the end of the  
8           Summer **of 1990**, several years after the accident,  
9           Miss VanVoorhis made her first B in college.

10      Q.    And that is in what course?

11      A.    Art History 11.

12      Q.    And that's at Kent State University, Doctor?

13      A.    That's right.

14      Q.    And **do** you recall what grade she was receiving in  
15           Kent State prior **to** receiving this B?

16      A.    Straight Fs, as I recall, or withdrawal.

17      Q.    Does this exhibit in any way assist you, Doctor, in  
18           summarizing the information you obtained through a  
19           review of **the** exhibits you've just been explaining  
20           to the jury?

21      A.    Yes, it's very helpful in summarizing.

22      Q.    Could you please explain to the jury how?

23      A.    Well, this is a line **of** Miss VanVoorhis' test  
24           scores before the accident. **So**, we're back to test  
25           scores before and the important ones really to **look**

at are the italicized ones, the composite here, which this just summarizes these numbers up here, And then down here, we've got this composite, which is summarized here. So, again, you've already seen those figures, this just puts them in another way.

There is one other thing that's important here, notice that you got like a 67 here and a 23 here, the 22 there you've got significant what they call scatter. That means --

Q. Doctor, what is scatter?

A. That means that not everybody scores exactly the same on every intellectual scale, you know, some people are good at one skill and not another, some people are good at math, some people are good at english, scatter means that you may do very well on one and very poorly on another but we can still take a shot at what it all means in terms of your intelligence.

Q. Now, based upon your review of Dr. Toth's report, did she have any ideas or did she use the term "scatter" in any way?

MR. HOUSEL: Objection.

A. Yes, she did.

MR. HOUSEL: I'll withdraw the objection.

1 A. Yes, she use<sup>w</sup> the term scatter.

2 BY MR. WILLIAMS:

3 Q. And what did she utilize scatter in describing or  
4 including?

5 A. She said that the scatter, that is to say the  
6 different gnitu<sup>w</sup> of score<sup>s</sup> after the accident  
7 was evidence of brain damage, words to those  
8 affect.

9 Q. Now, Doctor, do most normal people have scatter?

10 A. Yes. There<sup>w</sup> has been some research done on  
11 that topic --

12 MR. HOUSEL: I'll object. It's no  
13 longer responsive.

14 BY MR. WILLIAMS:

15 Q. Now, you've indicated, Doctor, that most people do  
16 have scatter; is that correct?

17 A. That's correct.

18 Q. And why do you say that?

19 A. Because research has shown it. There is a big  
20 stack of research that gives people tests and it  
21 just looks at how highly they score on different  
22 components in the tests and normal people have high  
23 scatter.

24 Q. So, a person who would have scatter wouldn't  
25 automatically be a victim of a brain wave?

1       A,     Heaven forbid, we would have a society of brain  
2             damaged people.

3       Q.     Doctor, does this exhibit that I placed on the  
4             easel assist you in explaining some more  
5             information that you have obtained?

6       A.     Yes.

7       Q.     By virtue of the prior transcripts that you just  
8             explained?

9       A.     Yes, yes.   Again, it summarizes what we've already  
10            looked at, these are grades before the accident and  
11            either through Fs or withdrawals, the average is  
12            0.0, zero at two different colleges before the  
13            accident.

14      Q.     No, I don't want to belabor the point, Doctor, I'm  
15            going to hand you something that maybe it's a  
16            little easier on the easel, and ask you if this  
17            graph assists you in explaining that point any more  
18            and does that?

19      A.     Yes, it does,

20      Q.     If it does, Doctor, could you elaborate as far as  
21            the point that that graph helps you explain?

22      A.     Yes, this puts the grade point averages all  
23            together, both before the accident and after the  
24            accident.   This line here is the important line,  
25            that's where the accident occurs and this is 1982,

1           '83, '84. Here she goes to Kent, here she goes to  
2 Cuyahoga, the accident occurs. She continues to go  
3 to Cuyahoga, and then she transfers to Kent. So,  
4 this is a flow of her leave, her high school grade  
5 point average, just to give you something to look  
6 at, here is C level, and then college grades, point  
7 average was basically zero. Zero at Cuyahoga,  
8 zero, zero. The accident occurs and then her grade  
9 point average goes up. Times a little bit, goes  
10 up, goes back down.

11 Q. Now, in this instance, Doctor, would this instance  
12 represent the B she received at Kent?

13 A. That's right.

14 Q. And she was only taking one course?

15 A. Right.

16 Q. Is there anything significant **about** that?

17 A. Well, the, you know, I do think that that is an  
18 artificially inflated thing on the right-hana side.  
19 If you're only taking one course, it may be perhaps  
20 a little easier to get a good grade. The other  
21 thing is that having taken only one course, it  
22 perhaps shows some low motivation.

23                   MR. HOUSEL:           I'll object, Your Honor.  
24                   Move to strike the last comments.

25                   **THE COURT:**           Sustained.

1 BY MR. WILLIAMS:

2 Q. Doctor, if you could return to your seat, please.

3 Now, after reviewing those documents,  
4 Doctor, what did *you do* next in terms *of* your  
5 evaluation of Plaintiff, Michele VanVoorhis?

6 A. Well, I saw her and examined her face to face.

7 Q. Did you give her any tests?

8 A, Yes, I gave her two psychological,

9 Q. And what are those tests?

10 A, One is called the MMPI, or the Minnesota  
11 Multiphasic Personality Inventory and the other is  
12 called the Milan Personality Inventory.

13 Q. What's the MMPI designed to *do*, Doctor?

14 A. It is a personality test and so it's designed to  
15 measure the person's emotions, personality, the  
16 psychological adjustment of a person.

17 Q. Is it, is it easy to fake that test, Doctor?

18 MR. HOUSEL: Objection.

19 A. It is almost --

20 THE COURT: You may answer,

21 A, It *is* almost impossible *to* fake because it has  
22 three different validity scales that kind of are  
23 designed to catch people if they're exaggerating or  
24 if they are trying to look good.

25



BY MR. WILLIAMS:

Q. Do **you** know whether or not Dr. Toth also administered that particular test?

A. She did administer the MMPI, yes.

Q. Were you able to determine or review the results that she obtained on that test?

A. Yes, I saw the code point, so to speak, yes.

Q. What **do** you do when you receive code points on these tests? How does a person trained with your expertise and experience, how do they use that information?

A. Well, the data are presented in terms of how, which day was highest, which scale is the next highest and which scale is not next highest. You look at usually the top two and those are called. the peaks or the elevations,

Q. What were the top two scales on your MMPI test that Michele VanVoorhis filled out?

A. On my test, it was scale **34**, hysteria and scale **1** hypochondriasis.

Q. Now, explain that term hysteria for us, Doctor.

A. Hysteria is a slightly old term, the new term that is used, which is probably an improvement is called Somatoform Disorder.

MR. HOUSEL: Objection, not responsive

1 to the question asked,

2 Q. Doctor, what is --

3 THE COURT: We've had some testimony on  
4 this previously from other doctors. So, the Court  
5 will permit him to answer, let him explain it so we  
6 can get it over with.

7 BY MR. WILLIAMS:

8 Q. What's a Somatoform Disorder, Doctor?

9 A. It is a kind of hypochondriacal disorder, it's a  
10 psychological disorder where the focus is on the  
11 body or on medical explanations or problems. If I  
12 am a particularly anxious or depressed person but I  
13 don't want to admit that, I want to escape that, I  
14 want to get away from it, one way to do it is to  
15 explain to my physical doctor that I have rapid  
16 heart rate or that I'm fatigued or that I have  
17 headaches. So, it's a way of converting emotional  
18 problems into physical complaints.

19 Q. Now, you mentioned another high scale on that zest,  
20 what was that one, one scale?

21 A. The second highest scale on my test was  
22 hypochondriasis,

23 Q. Could you explain that term to our jury.

24 A. Well, that is almost like the stereotypical  
25 hypochondriac, meaning that it is again a person

who is not lying but who overemphasizes the body as opposed to the mind. Again, an example, if I'm anxious but I don't want to admit that I'm anxious, then I will go to my doctor and I'll say "Why are my hands shaking all the time." If I'm depressed and distressed and that causes me a headache, I'll go to my doctor and say "I have a headache, what's wrong? Do I have a brain tumor or something?" What's missing is some insight into the fact that I'm worried all the time.

Q. Now, Doctor, what scales were the highest on the MMPI that Dr. Toth administered to Michele?

A. They were the same two scales and in that order, scale 3 hysteria and scale 1, hypochondriasis were the two elevations that Dr. Toth got.

Q. When I asked Dr. Toth about that, she indicated she also had a high scale 8, what is a high scale 8, Doctor?

MR. HOUSEL: Objection, form of the question.

THE COURT: He may answer, if he understands the question.

A. Yeah, I understand the question and a scale 8 is schizophrenia.

BY MR. WILLIAMS:

Q. What does that term mean?

A. Well, that is a pretty serious long standing psychological disorder that involves a kind of breaking apart of the person's functioning so that what, the way they feel doesn't jive with what they're doing and what they're doing just doesn't jive with what they were or what they're thinking about. So, that's a fair summary of it.

Q. Now, you also administered the Milan Test?

A. That's right.

Q. What is that test?

A. I'm sorry?

Q. What is the purpose of that test?

A. That is another personality inventory scientifically developed in a very different way but getting at the same personality problems.

Q. What aid you determine through your interpretation of the results that or the information that Michele put on the Milan Test?

A. Her highest evaluation was on a scale called Somatoform Disorder and that really says it all. The Somatoform Disorder is nothing in the world but hysteria and hypochondriasis,

Q. Doctor, you also had an opportunity, didn't you, to

1 give an interview or have had an interview with  
2 Michele VanVoorhis, and examination?

3 A. Yes, I did.

4 Q. How long did that last, approximately?

5 A. About an hour and 45 minutes.

6 Q. Now, during --

7 MR. HOUSEL: I'm sorry, an hour and 45  
8 minutes, you said?

9 THE COURT: That's correct.

10 MR. WILLIAMS: Your Honor, I'm going to  
11 object.

12 BY MR. WILLIAMS:

13 Q. Anyway, during that time, did you notice anything  
14 about Michele and if so, share that with us.

15 A. Yes. I noticed many things. The most important  
16 story *that* I can tell is --

17 MR. HOUSEL: I'll object, Your Honor,  
18 that's clearly not responsive what he notices.

19 THE COURT: Sustained.

20 BY MR. WILLIAMS:

21 Q. Doctor, tell us what you noticed about Michele.

22 A. She was perfectly oriented, well groomed,  
23 understood everything I said, was responsive to  
24 everything I said. She did use the phrase "I don't  
25 remember" several times but then she went on and

1           remembered and in really quite vivid detail. She  
2           described the accident in very minute detail, how  
3           many objects were hit by the automobile, what she  
4           did immediately when the car stopped, namely she  
5           told the drive to cut **off** the engine so there  
6           wouldn't be a fire, That she walked over to the  
7           Rapid Response and so forth. It was a highly  
8           detailed description of the accident.

9       Q.   **Now**, Doctor, when was this examination conducted?

10   A.   On March the 15th, I believe.

11   Q.   Of this year?

12   A.   Of 1991.

13   Q.   **Now**, what -- did you learn anything significant,  
14           and I'm not talking about what you already have  
15           given us about what you observed, did you learn  
16           anything significant on the basis of that interview  
17           about Michele?

18   A.   Yes. As I was saying --

19                   MR. HOUSEL:       I object, Can we approach,  
20           please? I don't mean to belabor it, but I'm sorry.

21                   (A discussion was held at the side bar.)

22   BY MR. WILLIAMS:

23   Q.   Pardon me, Doctor, What else did you learn through  
24           your interview of Michele?

25   A.   That her thinking was clear, she was also, she had

1 a fairly good sense of humor. I recall that, for  
2 example, at the end of the interview, there was a  
3 sort of interesting exchange where I said that  
4 headaches could be caused by a number of things and  
5 I listed Somatoform Disorder and so on, I listed a  
6 number of different causes for headaches, I was  
7 just telling her that and she then, sort of with a  
8 wry smile said, "May I?" And I said, "Sure." She  
9 said, "How about brain damage?" And then she  
10 turned to Mr. Housel and kind of chuckled and he  
11 sort of chuckled back.

12 Q. Now, who all was -- who all were present at the  
13 time of this evaluation?

14 A. The people present were Miss VanVoorhis, myself, of  
15 course, and then Mr. Housel and you.

16 Q. Now --

17 A. I'm sorry, also a Court Reporter.

18 Q. Okay. Now, what -- was there any other information  
19 that you gained through this interview process,  
20 that you can share with us at this time?

21 A. Yes, there was also an exhibition, a very good  
22 executive planning.

23 Q. What do you mean by that, Doctor?

24 A, Well, people with brain damage, obvi usly, have a  
25 great deal of difficulty --

1                   MR. HOUSEL:           Objection, Judge, that's  
2                   not responsive,

3                   THE COURT:           You may answer.,

4       A.    People with brain damage have a great deal of  
5           difficulty remembering, planning, carrying on the  
6           tasks and during a break --

7       Q.    You learned -- go ahead, Doctor, I'm sorry, for  
8           interrupting you.

9       A.    During a break, Miss VanVoorhis informed me that  
10          she had called a friend to remind the friend to  
11          pick up some tickets to a rock concert because she  
12          was afraid she was going to be too late,

13      Q.    Who was this rock concert of, Doctor?

14      A.    Sting.

15      Q.    And when was that concert going to take place?

16      A.    That night, immediately after our examination.

17      Q.    Now, based upon the information you reviewed,  
18          Doctor, based upon the testing, the grades, the  
19          history, all of that information, were you able to  
20          arrive at a diagnosis of this young lady?

21      A.    Yes, I was.

22                   MR. HOUSEL:           Objection.

23                   THE COURT:           Side bar.

24                   (A discussion was held at the side bar.)

25



BY MR. WILLIAMS:

Q. You were saying you did arrive at a diagnosis, Doctor?

A. Yes, I did.

Q. What was that diagnosis?

A. Undifferentiated Somatoform Disorder.

Q. Now, you've already explained to all of us what a Somatoform Disorder is.

A. Right.

Q. What is an Undifferentiated Somatoform Disorder?

A. Well, that simply means that the person has several complaints, physical complaints for which there is insufficient or no substantiation medically.

Q. Now, you're saying it's either insufficient or none at all, medical complaints?

A. That's right. It is okay for a hypochondriac does get sick occasionally.

MR. HOUSEL: Objection, Judge, that is no longer responsive to the question,

THE COURT: Ask the next question.

BY MR. WILLIAMS:

Q. Could you explain what you meant by those distinguishing those two terms?

A, Right. A person with a Somatoform Disorder can also have a physical disorder. It's just that the

1 physical disorder is not sufficient to explain the  
2 complaints.

3 Q. Now, how did **you** arrive at this diagnosis of  
4 Undifferentiated Somatoform Disorder?

5 A. It is a long standing disorder and she has long  
6 standing problems, her long standing problems  
7 involve her body. Depression has many bodily  
8 manifestations, bulimia, which she had years before  
9 the accident, have lots **of** somatic manifestations.

10 Her testing was, I mean, classic, you  
11 couldn't have a clearer set of psychological tests  
12 indicating Somatoform Disorder. Elevations on  
13 hysteria, hypochondriasis, Somatoform Disorder  
14 scales, it just couldn't be any clearer on the  
15 tests. She behaved like a Somatoform Disorder  
16 during my examination. She **fit** all the criteria  
17 that are in the literature.

18 Q. Now, Doctor, what are some *of* the potential causes  
19 of a Somatoform Disorder?

20 MR. HOUSEL: Objection.

21 THE COURT: He may answer.

22 A. There really are two major clusters **of** causes, one  
23 is that you're taught to be hypochondriacal by  
24 doting parents, by mothers and fathers who both  
25 themselves are hypochondriacal. The second cause

1 is some trauma in childhood that is so severe and,  
2 this is the crucial point, unspeakable, something  
3 that's supposed to be kept a secret that what  
4 happens is that the person in a sense loses her  
5 soul. I mean she's told not to tell and so she  
6 doesn't and so she ends up becoming detached from  
7 her real emotions, she's left going through life  
8 emphasizing her physical body and ignoring any real  
9 emotion.

10 Q. Doctor, what does the term "disassociation" mean?

11 A. Well, that is the term that I was talking about.  
12 It has been called repression or denial or  
13 disassociation and it is the process of taking  
14 yourself away from your feelings so that you don't  
15 feel the pain anymore. It results in complaints  
16 of --

17 MR. HOUSEL: I'll object, Judge. No  
18 longer responsive to the question of what it was.

19 **BY MR. WILLIAMS:**

20 Q. What are some of the types of symptoms that you get  
21 from a person who has that particular malady?

22 MR. HOUSEL: I'll object. May we  
23 approach the Bench?

24 THE COURT: You may answer.

25 A. The symptoms of disassociation are poor memory,

1           that's **really** the main one.   Person says I can't  
2           remember, the person doesn't want to remember.

3                       MR. HOUSEL:           Judge, can we come up for a  
4           second? I'd like to based upon that answer,

5                       (A discussion was held at the side bar,)

6 BY MR. WILLIAMS:

7           Q.    Doctor, you'd indicated previously that you made a  
8           prior diagnosis of two conditions in this young  
9           lady or three, two that were known to you. It's  
10          been brought up in this courtroom that Michele  
11          VanVoorhis had been a victim of sexual abuse. ~~How~~  
12          would that, how would that revelation reconcile  
13          with your diagnosis of Undifferentiated Somatoform  
14          Disorder?

15                   MR. HOUSEL:           Objection.

16                   THE COURT:           He nay answer.

17          A,    It's really the missing piece of the puzzle and  
18          something **that** I didn't know when I wrote the  
19          report, But it's the missing link. It would  
20          describe quite clearly what the cause of this  
21          problem is.

22 BY MR. WILLIAMS:

23          Q.    Now, Doctor, when you -- have you had training and  
24          have you had occasion to treat individuals who have  
25          been the victim of this of the tragedy?

1 A. Yes, I certainly very, there are many.

2 Q. And what are some of the symptoms that you see and  
3 how does that manifest itself as a person goes on  
4 in life?

5 MR. HOUSEL: Objection.

6 THE COURT: He may answer.

7 A. The manifestations are exactly what the text books  
8 say and that is the victims of child sexual abuse  
9 grow up separated from themselves, from their  
10 feelings and so they are constantly trying to undo,  
11 to get away from, to withdraw from, they have a  
12 high incidence of bulimia, they have a high  
13 incidence of depression, they have a high incidence  
14 of memory complaints, They say "I can't remember,"  
15 what they really mean is "I don't want to  
16 remember."

17 BY MR. WILLIAMS:

18 Q. Now, have you had occasion to either write on this  
19 subject or review any authors on **this** particular  
20 subject?

21 A. Yes, I've done -- I've published one book review in  
22 International Social Science Review. Another one  
23 is in press and a third one is accepted for  
24 publication.

25 Q. I notice through a review of your resume you made

1 mention of a publication about child sexual abuse?

2 A. That's right.

3 Q. So *you* have written and read extensively on that  
4 subject?

5 A. Right. In fact --

6 MR. HOUSEL: I'll object, Judge. No  
7 question in front of him, no --

8 BY MR. WILLIAMS::

9 Q. If you've got anything at this point that you feel  
10 authoritative on that subject, please share that  
11 with us.

12 A. This is the book I reviewed.

13 Q. And what is that book?

14 A. This is the expert on child sexual abuse, his name  
15 is David Finkelhor and it's called a "Sourcebook on  
16 Child Sexual Abuse" and ■ reviewed that book and ■  
17 thought I gave it a pretty good review. It's a  
18 *good* book,

19 Q. How is this book set up as far as information or  
20 research on these issues?

21 A. It's -- it reports on advanced research on the  
22 victims of child sexual abuse. What they're like  
23 two years after the abuse and also what they're  
24 like 10, 15 years after the abuse. So, it's really  
25 a very good review of imperical research on the

11

1 results of child sexual abuse.

2 Q. Is the term "disassociation" linked with that  
3 particular condition?

4 A. Yes. The book is riddled with that term and terms  
5 like it.

6 Q. Dr. Layne, briefly, you had an opportunity to  
7 review the report prepared by Dr. Toth?

8 A. I did.

9 Q. And Dr. Toth arrived at some different conclusions  
10 than you did?

11 A. Correct.

12 Q. Now, why do you think that was?

13 MR. HOUSEL: Objection, Judge.

14 THE COURT: Sustained.

15 BY MR. WILLIAMS:

16 Q. *Were* you able to determine how Dr. Toth arrived at  
17 her conclusions?

18 MR. HOUSEL: Objection.

19 THE COURT: You may answer that,

20 A. Yes, I was.

21 BY MR. WILLIAMS:

22 Q. How did she do that?

23 A. According to a report, she based her conclusions on  
24 her tests and perhaps on a few observations. There  
25 was no history.

1 Q. Doctor, you're aware that Dr. Toth is a  
2 neuropsychologist?

3 A. Correct.

4 Q. And she administered a battery of  
5 neuropsychological tests?

6 A. That's right.

7 Q. Can you fake neuropsychological tests?

8 A. Yes, it's relatively easy and there are no validity  
9 scales to neuropsychological testing.

10 Q. How do you do it? Give us an example of that?

11 A. My favorite example is that some research was done  
12 on this. Children were brought in by a researcher  
13 and the researcher said really very little to the  
14 children. All he said is, "Look, we're going to  
15 give you some tests. We want you to pretend that  
16 there is something wrong with *your* brain," and so  
17 obviously what the kids did, they just kept saying,  
18 "I don't remember, I don't remember, I don't know."

19 In the end they took those test results to  
20 expert neuropsychologists and said "What's wrong  
21 with these kids?" And every single  
22 neuropsychologist reported that the kids were brain  
23 damaged.

24 Q. Now, can you fake a personality test?

25 A. No. And the reason is, let me put that



1           differently, being fake it is, but if you do,  
2           you'll be caught.

3       Q.   How is that?

4       A.   The validity scales will go through the ceiling and  
5           any psychologist will know that you've been faking  
6           and that's why in psychological reports they talk  
7           about the profile being valid, that's really the  
8           first think they'll say about profile,

9       Q.   Was your profile valid on the MMPI and Milan?

10      A.   Yes.

11      Q.   And you indicated, I believe, that Dr. Toth had a  
12           similar, if not the same, MMPI reading that you  
13           did?

14      A.   That's correct.

15      Q.   Now, did you look at Miss VanVoorhis' employment  
16           history at all?

17      A.   Yes, I did.

18      Q.   What did you find there?

19      A.   That before the accident she worked at jobs. She  
20           was around to a few different pubs. After the  
21           accident, her occupational functioning certainly  
22           did not go down. She worked at, I think, a few  
23           more pubs but she also worked on a construction  
24           site and she also managed 200 apartments along with  
25           some other fellow, so, her occupational

1 functioning certainly didn't decline after the  
2 accident.

3 Q. What is anomia, Doctor?

4 A. Say it again.

5 Q. Anomia.

6 A. Anomia is a neurological condition, I believe it is  
7 the difficulty in finding words.

8 Q. Did you observe that **as a** result **of** your interview  
9 with Michele in any part of your evaluation?

10 A. Not at all.

11 Q. Why was that?

12 A. Well, she was verbally, I think quite responsive.  
13 She seemed to 'nave a ready wit, she was brief in  
14 her responses **but** she seemed to have a ready wit  
15 and I observed no word-finding difficulty. A  
16 transcript was made of my interview.

17 MR. HOUSEL: I'll object, Your Honor.

18 That's no longer responsive to the question.

19 THE COURT: Next question, please.

20 Q. Dr. Layne, what --

21 MR. WILLIAMS: One moment, Your Honor, I'm  
22 almost completed here.

23 BY MR. WILLIAMS:

24 Q. Dr. Layne, you indicated that Michele had responded  
25 several times that she didn't remember. Are you --

1 do you believe that she was being dishonest?

2 A. Not really. No, I don't.

3 Q. Explain that.

4 MR. HOUSEL: I'll object, I don't  
5 object,

6 THE COURT: He may explain.

7 A. It's all part of Somatoform Disorder. Once you  
8 believe you've got some problem, tends to feed on  
9 it and to believe that you've got it and so you say  
10 it over and over, you make the complaint over and  
11 over. The reason it's not really believable,  
12 though, is because of all of the detailed memories  
13 that she, in fact, did have.

14 BY MR. WILLIAMS:

15 Q. Now, you're aware of the neurological data that was  
16 compiled on Michele, tests, et cetera, that were  
17 done?

18 A. Not only neurologic but also the physical test  
19 results of her brain, yes.

20 Q. And in your review of that test, did you find any  
21 sign of an organic problem of any serious nature?

22 A. Not one.

23 Q. You also aware that Dr. Toth treated her, you  
24 reviewed Dr. Toth's information?

25 A. Yes, I did.

1 Q. Files, et cetera?

2 A. Yes.

3 Q. Now, you didn't have all that information, all the  
4 test data?

5 A. That's right. I was unable to get it.

6 MR. HOUSEL: I'll object. Move to  
7 strike the last response, Your Honor.

8 THE COURT: I will do it but it wasn't  
9 important. It wasn't important until you made it  
10 important that we strike it.

11 MR. HOUSEL: I just have to protect the  
12 record,

13 BY MR. WILLIAMS:

14 Q. Dr. Layne, based upon your review of the treatment  
15 notes of Dr. Toth, you have seen those?

16 a. Yes, I have.

17 Q. Would it be your opinion that Dr. Toth, indeed,  
18 treated Michele for other situations?

19 MR. HOUSEL: I'll object to the form of  
20 the question.

21 BY MR. WILLIAMS:

22 Q. Let me ask this question, I'll withdraw that one.

23 Dr. Layne, is it your opinion or do you know  
24 what Dr. Toth treated her for?

25 MR. HOUSEL: Objection.

1 THE COURT: He may answer **that**.

2 A. The notes are quite clear as to what Dr. Toth  
3 treated Miss VanVoorhis for, yes.

4 BY MR. WILLIAMS:

5 Q. What do they say?

6 MR. HOUSEL: Objection, Judge.

7 THE COURT: He may answer.

8 A. She was treated for two things. One treatment  
9 technique, according to Dr. Toth, was called  
10 cognitive rehabilitation or CR. The other  
11 treatment was for problems with her parents and her  
12 boyfriend. There were, as I counted it --

13 MR. HOUSEL: I **object**, Your Honor.

14 BY MR. WILLIAMS:

15 Q. Dr. Layne, at the point, were you able to make any  
16 correlation between the number of treatments for  
17 the denoted CR condition, the cognitive  
18 rehabilitation and the treatments for the problems  
19 with parents and/or boyfriend?

20 A. Yeah, the number --

21 MR. HOUSEL: Objection, Judge,

22 A. -- were equal.

23 THE COURT: Overruled.

24 A. The number of sessions were equal. She was treated  
25 no more frequently for cognitive problems than for

1 problems with her parents and her boyfriends.

2 BY MR. WILLIAMS:

3 Q. Now, you're aware that Dr. Toth saw her -- well,  
4 I'd ask you to assume that Dr. Toth saw Michele  
5 approximately 27 times?

6 A. Uh-huh,

7 Q. You've accounted for 12 of those visits?

8 A. Right.

9 Q. What were the balance of those visits for?

10 MR. HOUSEL: Objection, Judge.

11 THE COURT: He may answer, if he knows.

12 A. Basically they were for neurological testing.

13 BY MR. WILLIAMS:

14 Q. Those were the tests that Dr. Toth -- those are how  
15 Dr. Toth was able to come up with her evaluation of  
16 Michele?

17 A. Correct.

18 MR. WILLIAMS: I don't have anything  
19 further, Doctor. Thank you.

20 THE COURT: Doctor, I assume you're  
21 available at one o'clock?

22 THE WITNESS: Yes, sir.

23 THE COURT: We're going to take our  
24 luncheon break.

25 Remember the admonition that I've given you.

I'd **like** for you to be back in the jury room at 10  
minutes after 1, 1:10. Remember the admonitions,  
please,,

(The Jury, having been duly admonished, and  
the Court recessed.)

- - -

AFTERNOON SESSION

(The Jury was returned to the courtroom and the following proceedings were had:)

THE COURT: I believe we had cross, we're at cross-examination: is that correct?

MR. HOUSEL: Yes, Your Honor.

THE COURT: Mr. Housel.

MR. HOUSEL: Thank you.

CROSS-EXAMINATION

BY MR. HOUSEL:

Q. Could I see what you brought along with you, Doctor?

A. Yes.

Q. Is this your entire file on Michele VanVoorhis?

A. Yes.

Q. Has anything been added to your file since I took your deposition on May 3rd?

A. Yes.

Q. What?

A. It's difficult to remember but I think another deposition, perhaps some one or two page medical records.

Q. Things that I mentioned when I took your deposition?

A. Could be, it's difficult to keep all this straight.



1 Q. If you look through it, could you keep it straight  
2 for me?

3 A. It would take some time, sure.

4 Q. Well, maybe to save the time, you didn't have the  
5 police report when I took your deposition on May  
6 3rd, right?

7 A. Correct.

8 Q. And the police report, especially the date on the  
9 police report is crucial to you, right, sir?

10 A. That being the date of the accident, yes.

11 Q. That's crucial and you've made a statement before  
12 that a police report and the date of it is crucial  
13 to your diagnosis, right?

14 A. Oh, I don't think so.

15 Q. Okay, You never said that before?

16 A. I don't think I said that the accident report was  
17 crucial to my diagnosis but probably important.

18 Q. Okay. And you had written a report expressing some  
19 opinions and diagnoses before I took your  
20 deposition in May, right?

21 A. That's right.

22 Q. And you didn't have the police report when *you*  
23 wrote that report, right?

24 A. That's right.

25 Q. And you also have the Rapid Response information

1           here in your file, *you* didn't have that on May 3rd  
2           in your **file** when I took your deposition: is that  
3           right?

4           A.    That's correct.

5           Q.    In fact, I asked you about that when it would have  
6           been important if you had it you said it would have  
7           been important, right?

8           A.    In a sense that all documents are relevant, I  
9           believe I made that point, as well.

10          Q.    Would you just answer my question.  if *you* don't  
11          understand it, just tell me, okay?

12                   MR. WILLIAMS:       Objection, Your Honor.

13                   THE COURT:           Just move on, please.  Just  
14          move on.

15   BY MR. HOUSEL:

16          Q.    What happened right after the accident as far as a  
17          physical injury would be important, too, Doctor,  
18          wouldn't it?

19          A.    It would.

20          Q.    Okay.  This Med Center one document, did you have  
21          that when I took your deposition?

22          A.    No.

23          Q.    And in that you have apparently on all these  
24          documents with green magic marker outlined certain  
25          things like you did here on those charts this

1 morning, right?

2 A, I have highlighted certain things on these  
3 documents, you're right.

4 Q. You highlighted them for what reason., sir?

5 A. So that I could check to make sure that these  
6 documents were consisten with my report.

7 Q. Did you have Dr. Lefkovitz's report when I took  
8 your deposition?

9 A. I believe I did.

10 Q. Okay. Your diagnosis isn't any different now that  
11 you got these new documents that you didn't have  
12 when I took your deposition?

13 A. That's right, it's the same diagnosis,

14 Q. Okay. It's the same diagnosis that you testified  
15 to here today that you testified to at your  
16 deposition, right, sir?

17 A. That's correct,

18 Q. No new diagnosis between May 3rd, when I took your  
19 deposition and I had your report and today; is that  
20 right?

21 A, That's right, sir, no new diagnoses.

22 Q. Hypochondriasis and disassociation, they were  
23 certainly in your report, weren't they, sir?

24 A. The concepts were certainly there, yes.

25 Q. The words there?

1 A. I believe so, yes, but the concept is what's  
2 important.

3 Q. Well, if you believe so, look at your report and  
4 tell me if they were or were not there?

5 A. Okay.

6 Q. The words.

7 A. Okay. The words synonymous with hypochondriasis --

8 Q. The words were not synonymous, were they there or  
9 not?

10 A. Why don't we do them one at a time.

11 Q. There is two words hypochondriasis, was that there  
12 in your report?

13 A. Yes.

14 Q. Where?

15 A. In the footnote, footnote number 90, page 11.

16 Maybe I'll direct your attention to it. It says,  
17 "One. Hypochondriasis."

18 Q. That's just a listing of the MMPI scales?

19 A. You asked me if the word was in my report and the  
20 word is, yes,

21 Q. Is it anywhere in the report as a diagnosis?

22 A. The word hypochondriasis was not used -- I did not  
23 use that word as a diagnosis.

24 Q. Okay. Did *you* use disassociation as a diagnosis  
25 anywhere in that report?

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

2 Q. Ever since the deposition I took, have you received  
3 copies **of** the depositions **of** Dr. Toth and **Dr.**  
4 Lefkovitz?

5 A. Let me check. Once again, obviously, I have them.  
6 A question is when did I get it and that becomes  
7 very difficult. I had Dr. Toth's deposition before  
8 I looked **at** the report,

9 Q. How about Dr. Lefkovitz?

10 A. I don't believe I had his deposition, only his  
11 office records.

12 Q. And the interview you took, you didn't have that  
13 when I took your deposition, the one that was taken  
14 down by the Court Reporter, right?

15 A. I believe that I **did** not.

16 Q. When was **that** supplied to you?

17 A. Some time, I think, after the deposition.

18 Q. Between **May** 3rd and certainly today?

19 A. Certainly.

20 Q. May 15th?

21 A. That's right,

22 Q. Okay. And you feel that this interview went till  
23 4:52?

24 A. That's what the Court Reporter who did the job  
25 copying-down that document, that was her opinion,

1 Q. That was her opinion?

2 A. That's what she said in the deposition. Look on  
3 the last page.

4 Q. Thank you, sir.

5 You indicated to me, when I took your  
6 deposition that your interview of Michele took 45  
7 minutes, right? Did you say that or not?

8 A. No.

9 Q. You want me to show you the deposition where you  
10 said it? We --

11 MR. WILLIAMS: Objection, Your Honor. If  
12 he wants to impeach this witness, he knows the  
13 proper --

14 THE COURT: Let's not argue.

15 A. I can explain the discrepancy.

16 BY MR. HOUSEL:

17 Q. I didn't ask you to explain it. I asked if it was  
18 45 minutes when I took your deposition?

19 A. The 45 minutes referred to the amount of time I had  
20 to interview the person directly. The one hour and  
21 45 minutes is the total amount of time allotted to,  
22 with me in her presence. The problem was I was  
23 continuously interrupted.

24 Q. You weren't in her presence for an hour and 45  
25 minutes, were you, Doctor?

- 14           1       A.     According to the Court, to your Court Reporter, I  
             2       was with her for one hour and 42 minutes,  
             3       Q.     Doctor, you do these psychological evaluations for  
             4       who?  
             5       A.     A number of people.  
             6       Q.     G.E. Corporation in Toledo?  
             7       A.     Yes.  
             8       Q.     Chrysler Insurance?  
             9       A.     That's the same thing.  
            10       Q.     Oh, is it?  
            11       A.     Yes, it is.  
            12       Q.     Debbie Owens Ford?  
            13       A.     I have done work for them, that's right.  
            14       Q.     And these psychological evaluations that you do for  
            15       these folks deal with people that are injured at  
            16       work and have workmen's compensation claims; is  
            17       that right?  
            18       A.     That's correct.  
            19       Q.     And you do a fair amount of this type of work,  
            20       also, for defense firms such as Roetzel and  
            21       Andress, right, sir?  
            22       A.     This is the first case I've had with Roetzel and  
            23       Andress, I have done defense work for other firms,  
            24       as well.  
            25       Q.     In Cleveland, Gallagher Sharp, which is a defense

1 firm?

2 A. Correct, Well, I don't know if they're a defense  
3 firm but I have done work for Gallagher Sharp.

4 Q. Well, they're all defense cases, weren't they?

5 A. I believe so.

6 Q. Rhoa, Follen and Rawlin, you've done reports for  
7 them?

8 A. Yes.

9 Q. That's a defense firm, right?

10 A. Correct.

11 Q. What do you charge in situations such as this for  
12 your interview and writing a report and your  
13 deposition, your evaluation, things such as that?

14 A. The full evaluation including the review of the  
15 records and so on, runs between about \$900 and  
16 \$2,000, if I have to do a lot of travelling.

17 Q. I thought it was \$2500 when I --

18 A. That could be true, I sure can't remember all the  
19 figures with absolute precision.

20 Q. Did you read the deposition I took of you on May  
21 3rd?

22 A. I skimmed that, yeah. In fact, I'm sorry, I read  
23 that deposition and looked for errors, that's  
24 right.

25 Q. Looked for errors?



1 A, That's right,

2 Q. Did I ask if **you** looked for errors? I just asked  
3 **you** if **you** read it, didn't I?

4 A. Yes, **you** certainly did.

5 MR. WILLIAMS: Objection.

6 BY MR. HOUSEL:

7 Q. Would you please just answer my question,

8 A. I'm trying to.

9 Q. Fine. And how much did the law firm of Roetzel and  
10 Andress, Mr. Williams' firm, pay you to do your  
11 evaluation in this matter?

12 A. They paid me a hundred dollars an hour and I really  
13 don't know what the bill has come to.

14 Q. How come the bill isn't in your file there?

15 A. Well, I don't routinely keep the billings in my  
16 file. They're in a computer.

17 Q. It wasn't in your file when I took your deposition  
18 on ~~Ma~~ 3rd, however, was it?

19 A. I'm sorry?

20 Q. The billing information that you billed Roetzel and  
21 Andress for these evaluations, that wasn't in your  
22 file when I took your deposition on May 3rd, was  
23 it?

24 A. I don't believe that it was.

25 Q. Do you ever keep it in your file?

1 A. Very rarely, no. It may make its way in by mistake  
2 or something.

3 Q. Do you have any idea how many hours you spent doing  
4 your evaluation of Michele **for** Roetzel and Andress  
5 in this case?

6 A. Well, the review of these records, most of which I  
7 had before my evaluation, probably took five, maybe  
8 eight **hours** of reading.

9 Q. **At** \$100 an hour?

10 A. That's right.

11 Q. Okay. Go ahead.

12 A. Then I had to travel to and from Toledo and I also  
13 had to, of course, do the evaluation.

14 Q. **How** much did that cost?

15 A. The evaluation at an hour and 45 minutes would be  
16 \$145.

17 Q. I'm sorry, I didn't understand you. Say that  
18 again, please.

19 A. The evaluation, which took an hour and 45 minutes,  
20 cost \$145.

21 Q. And the travel time from Toledo?

22 A. About two and a half hours one way.

23 Q. So, that's another two and a half, two and a half  
24 is five, six, six hours and 45 minutes, right?

25 A. That's right.

1 Q. All right. And then you had to write the report?

2 A. That's right.

3 Q. How long did that take you?

4 A. Probably at least five hours.

5 Q. Okay. So, we've got five to eight hours to review  
6 the documents, about six hours to travel up to do  
7 the interview and how long for the report?

8 A. I would guess five hours, ~~six~~ hours.

9 Q. You don't know, you have to guess?

10 A. That's right.

11 Q. What else?

12 A. The two tests, the two psychological tests are --  
13 we charge for those, too, of course.

14 Q. What do you charge for those?

15 A. The MMFI is about \$75 and the Milan Test is about  
16 100.

17 Q. Okay. And did you do anything else that you billed  
18 Roetzel and Andress for in this case?

19 MR. WILLIAMS: Your Honor --

20 THE COURT: I assume we're getting to  
21 the end on this, Mr. Williams, so let's proceed,  
22 please.

23 MR. WILLIAMS: Roetzel and Andress isn't  
24 in the case, Your Honor.

25

**BY MR. HOUSEL:**

1 Q. Go ahead, Doctor, who pays your bill?

2 A. Roetzel and Andress or the insurance company, I'm  
3 really not sure which one,  
4

5 Q. Go ahead. What else did you do?

6 A. My testimony today is being billed by the hour.

7 Q. What's the hourly rate for that?

8 A. I think that it's \$100, I really am not in touch  
9 with our charges all that well.

10 Q. You think it's a hundred dollars?

11 A. Yes, that's right.

12 Q. Is charge for your testimony any different than  
13 charge for your other work that you do?

14 A. It's about the same.

15 Q. About the same?

16 A. Because we charge differently for different  
17 services, of course.

18 Q. What do you charge to see a patient for  
19 psychological counseling for an hour?

20 A. \$90.

21 Q. Ten bucks less than you charge to do an evaluation,  
22 right?

23 A. Pretty good bargain.

24 Q. Pretty good bargain?

25 A. Yes.

1 Q. Okay. So, you'd agree with me that you probably  
2 spent close to 20 hours in this csae, something  
3 like that?

4 A. With the travel time thrown in, that's a realistic  
5 estimate.

6 Q. And how many of these do you do yearly?

7 A. I guess I do about 15, 20 maybe,

8 Q. You told me at your deposition you did 15, is it  
9 20?

10 A. My answer now is 15 to 20. I think that's  
11 reasonably consistent with what I said then.

12 Q. At between \$900 to \$2500 each, right?

13 A. Right.

14 Q. Okay. I did a little math on that and I computed  
15 that if you did 15 for the range of what you would  
16 make for doing them, would be between \$13,500 and  
17 \$37,500. You agree with me that would be the low  
18 to the end?

19 A. I assume that math is correct.

20 Q. Okay. If it was 20, of course, it would be  
21 considerably more than that, correct?

22 A. And if it were 900, it would be less.

23 Q. I didn't ask you that, did I?

24 MR. WILLIAMS: Objection.

25 THE COURT: Mr. Housel, let's go on,

1 please.

2 BY MR. HOUSEL:

3 Q. The documents are real important?

4 A. Crucial?

5 Q. In a case such as this?

6 A, Yes, they are.

7 Q. In fact, you have written something, have you not,  
8 that indicates that the most important things to  
9 have in a case such as this are documents,  
10 documents, documents and some of the patient's  
11 history; is that right?

12 A. That quote sounds about right.

13 Q. What is that quote from, Doctor?

14 A. I can't -- it's probably from an article that I was  
15 asked to write for the OACTA Quarterly.

16 Q. Ohio Academy of Civil Trial Attorneys widely  
17 circulated journal, right?

18 A. I think it's the Ohio Association but regardless,  
19 yeah, that sounds about right.

20 Q. They're defense lawyers, right?

21 A. I really have no idea.

22 Q. You have no idea?

23 A. Correct. I really don't keep track of lawyers'  
24 organizations.

25 Q. This organization didn't ask you to write this

1 article?

2 A, I just said that the organization asked me to write  
3 that article,

4 Q. Who in the organization asked you to write the  
5 article?

6 A. The Journal itself. I had been giving a speech for  
7 the organization and they liked the speech and so  
8 they asked me to write it up in article form.

9 Q. Okay,

10 (Plaintiff's Exhibit 53, being OACTA  
11 Quarterly, was marked for identification by the  
12 Court Reporter,)

13 Q. Handing you what's just been marked for  
14 identification as Plaintiff's Exhibit 53, can you  
15 identify that, sir?

16 A. This is the article that I wrote for the OACTA  
17 Quarterly along with the cover sheet.

18 Q. Okay. It's the Ohio Association of Civil Trial  
19 Attorneys, correct?

20 A. Correct.

21 Q. That report I'd like to ask you some questions if  
22 you hang on to it for a minute, will you?

23 A. All right,

24 Q. The first page of that report, Doctor, now, this is  
25 your writing, right, sir?

1 A. That's right.

2 Q. "Psychological injuries are real and juries  
3 compensate their victims." Is that what it says  
4 there?

5 A. No, It says, "Psychological injuries are real and  
6 juries compensate their victims."

7 Q. That's what I just said. Did I misread that?

8 A. Perhaps I misheard you,

9 Q. I'll get over here so maybe you can hear me. "A  
10 jury awarded a husband for his stress after  
11 physicians misdiagnosed syphilis in his wife,"  
12 That's what it says?

13 A. Correct.

14 Q. It goes on to say, this is in quotes in the segment  
15 right here.

16 A. Okay.

17 Q. "The good news is that there are no more frivolous  
18 lawsuits. The bad news is that this is because  
19 now, broad liability rules means no lawsuit is  
20 clearly frivolous," Right?

21 MR. WILLIAMS: Your Honor, I'm going to  
22 impose an objection.

23 THE COURT: May I see you at side bar,  
24 (A discussion was held at the side bar.)

25



1 BY MR. HOUSEL:

2 Q. Doctor, did I read that last section accurately  
3 there?

4 A, I believe so.

5 Q. Then you put a question, "Is this a dangerous  
6 trend? Are psychological damages subjective and  
7 unscientific?" Correct?

8 A, That's right.

9 Q. "No. There are tools available to measure  
10 psychological damage scientifically, but some  
11 professionals don't bother to use them," Did I  
12 read that accurately?

13 A. Yes, you did.

14 Q. Did Dr, Toth bother to use them?

15 A. Well, some and not others.

16 Q. She used about 14 more than you did, didn't she,  
17 Doctor? Did she or didn't she?

18 A. No.

19 Q. She didn't use 16 neuropsychological and  
20 psychological tests?

21 A. Well, I thought that the question you asked me was  
22 to comment on the question concerning the tools in  
23 relation --

24 Q. The question is very simple, did she use 16, yes or  
25 no?

1 A. Did **she** use 16 what?

2 Q. Psychological and/or neuropsychological tests?

3 A. Yes, she used 16 --

4 Q. Thank you, you answered the question,

5 Turn to the second, third page, sorry, in  
6 objective history.

7 A. Yes.

8 Q. Does that read, "There are four objective sources  
9 of history: documents, documents, documents, and  
10 some of the patient's memories,"

11 A. Exactly,

12 Q. "The professional should focus on the first three  
13 because they are most objective." Right?

14 A. That's exactly what I wrote.

15 Q. You didn't have all of the important documents in  
15 your possession when you wrote this report on  
17 Michele VanVoorhis prior to my deposition of you on  
18 May 3rd; isn't that right?

19 A. I had lots of documents, not all of them.

20 Q. Okay. And some of them were important but you  
21 didn't have them, right?

22 A. That's correct.

23 Q. Mr. Williams didn't give you the police reports  
24 before **you** wrote your report, right?

25 A. Correct.

1 Q. He didn't give **you** the Rapid Response reports  
2 before you wrote your report, right?

3 a. Correct.

4 Q. Didn't have the St. Thomas medical chart before you  
5 wrote your report, right?

6 A. Correct.

7 Q. Now, the Rapid Response report and the St. Thomas  
8 Hospital medical report would clearly be important  
9 to you because they suggest that there is some  
10 brain injury, right, Doctor?

11 MR. WILLIAMS: Object.

12 A. Well --

13 Q. Do they or don't they?

14 A. They question whether or not there is brain injury,  
15 that's right.

16 Q. Can you get your **Rapid** Response out of there for  
17 me, please. I want you **to** follow along with me  
18 now. You told me at your deposition that it was  
19 certainly important, Dr. Layne, for you to know  
20 what happened at the accident and what injuries the  
21 patient complained of after right, sir?

22 A. Correct.

23 MR. WILLIAMS: Your Honor, objection. Can  
24 we approach?

25 (A discussion was held at the side bar.)

1 THE COURT: Patti, would you please  
2 read the last question back for me.

3 (The last question was read back by the  
4 Court Reporter.)

5 BY MR. HOUSEL:

6 Q. The Rapid Response report, we know you didn't have  
7 that before you wrote your report in this matter,  
8 right, sir?

9 A. That's right.

10 Q. And does it have any neurological symptomology  
11 contained in the report of what happened right  
12 after this accident happened in this Rapid Response  
13 report? You have it outlined here.

14 A. Right.

15 Q. What's it say?

16 A. Diagnosis, motor vehicle accident, rule out  
17 cervical fracture. There is no mention of any  
18 brain damage in the diagnosis.

19 Q. I asked for neurological symptomology, I think,  
20 Doctor, Did you understand my question?

21 A. Yes, I did and I believe that I answered it.

22 Q. Okay, Does it say, these are in the areas some of  
23 which you don't have in yellow magic marker,  
24 "Patient complains of headache." That's right  
25 here, you don't have that.

'1 A. Uh-huh,

2 Q. "At present and complains of being sleepy."

3 A. Correct .

4 Q. Is that a neurological symptom, Doctor?

5 A, It's a symptom of many things, including a head  
6 blow and it could be a neurological symptom, as  
7 well.

8 Q. 35 mile per hour, hit second car head on, hit head  
9 on dash, appears to have hit windshield per  
10 firemen, is that important to you?

11 A. Yes, In fact, I've even highlighted that, you left  
12 out the question mark,

13 Q. You've answered my question.

14 A. You misquoted this document,

15 Q. Where did I misquote the document?

16 A, I'm quoting, "it hit second car head on, question  
17 mark, hit head on dash, question mark. Appears to  
18 have hit windshield, appears to 'nave hit windshield  
19 per firemen." That's a more correct rendition of  
20 what I have in front of me.

21 Q. What about "LOC," what does that stand for?

22 A, That probably stands for loss of consciousness,

23 Q. And sleepy in connection with sleepy and complains  
24 of headache, right?

25 A. Well, the quote is --

1 Q. Does it say that?

2

3

4

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16

17 A. Yes.

18

19

20

21

22 Q. But you didn't have the accident report when you  
23 wrote your report, did you?

24 A. Well --

25 Q. Did you have it? Yes or no.

1 A. I had the date of the accident,

2 Q. Did you have the accident --

3 THE COURT: Mr. Housel, if you're  
4 trying to make a point, give him a chance to  
5 explain his answers. You just can't ask him a  
6 question and have it hang out there without a  
7 reasonable answer.

8 MR. HOUSEL: I would ask the Court to  
9 instruct the Doctor to please respond to my  
10 questions, not volunteer additional information not  
11 requested.

12 BY MR. HOUSEL:

13 Q. Did you have the accident report at the time you  
14 wrote the report?

15 A. No.

16 Q. Page 6, turn to that page, sir. "Objective  
17 Psychological Tests." It says, "True," I don't  
18 want to leave anything out.

19 A. Good.

20 Q. "Some psychological tests are supported by a  
21 network of old wives' tales. But I wonder how they  
22 compare with medicine's thermography?" Did I read  
23 that quote accurately, Doctor?

24 A. That's correct.

25 Q. You told me, I think at your deposition, that to

1           your knowledge, Mr. Williams from Roetzel and  
2           Andress phoned you and asked you to do the  
3           psychological evaluation because he had read this  
4           article, remember that?

5           A.    Yes.

6           Q.    Okay.   Page 10, "Putting It All Together.   Don't  
7           accept Chat Scans."   Chat scans you describe  
8           earlier in your report as a psychiatrist's  
9           interview of a patient and then a diagnosis, right?

10          A.    No.

11          Q.    Let's look back to where we deal with Chat Scans,  
12          Doctor.   On page 2, actually the first page of your  
13          report, the last full paragraph, "instead the  
14          psychiatrist ran his usual 30-minute 'Chat Scan.'  
15          He asked 'Why are you depressed?'   And she replied  
16          'I got hit,' so he diagnosed depression.   This made  
17          everyone happy:   She was pleased, he could move to  
18          the next patient and his secretary could use his  
19          diagnosis to bill her insurance," parentheses,  
20          "(remember--her insurance wouldn't pay if there was  
21          nothing wrong with her).   The only thing measured  
22          objectively was his fee."

23                   Is that the description you give of Chat  
24          Scan?

25          A.    Yes, that was written in the report.



1 THE COURT: Let me see Counsel at side  
2 bar.

3 (A discussion was held at the side bar.

4 BY MR. HOUSEL:

5 Q. Lastly, on this article you wrote for the Ohio  
6 Academy of Civil Trial Defense Associates.

7 A. Association.

8 MR. WILLIAMS: Objection.

9 BY MR. HOUSEL:

10 Q. Well, turn to page 13.

11 A. Okay.

12 Q. At the top, "What's the Consequence? Lots of  
13 mental illls are no big deal, Many phobias hardly  
14 interfere with the victim's life. Some personality  
15 disorders help used car salesmen find more suckers,  
16 You can have a sprained shoulder, allergies,  
17 dandruff and flat feet and still work," and lastly,  
18 your last paragraph at the bottom, "So use experts  
19 who focus on the patient's history, behavior and  
20 tests. Use experts who pull it all together with  
21 DSM III-R. Familiarize yourself with DSM III-R and  
22 an MMPI atlas and then maybe mental health  
23 litigation will stop being society's wheel of  
24 fortune ,"

25 Did I read that accurately?

1       A.     **Yes.**

2       Q.     When you interviewed Michele, you made a statement  
3             to her at the beginning **of** the interview, which I'd  
4             like **to** read to you. This is the Court Reporter's  
5             taking down of your interview. You have it there,  
6             you want to just follow along with me.

7       A.     Okay.

8       Q.     "By Dr. Layne: I am Dr. Christopher Layne and I'm  
9             here to conduct **a** psychological examination **of** you,  
10            I want to make sure that you understand why I'm  
11            here and what I'm going to do. And it's sort of a  
12            formality but I want you to understand that I am a  
13            psychologist. I'm not here to help you or to treat  
14            you. I'm not here to offer psychotherapy. I'm  
15            here to assess your psychological status; do you  
16            understand that?" She said, "Yes, right."

17      A.     Correct .

18      Q.     On page 4. "Now, you're involved in a lawsuit and  
19             that is the primary purpose for my examination,  
20             psychological examination of you. You understand  
21             that my opinion could help you, it could have **no**  
22             impact on your lawsuit, it could hurt you, it could  
23             hurt your lawsuit; do you understand that?" She  
24             said, "Yes."

25                   Did I read that accurately, sir?

1 A, Yes.

2 Q. And I assume that in any psychological evaluation  
3 that you conduct, Dr. Layne, you tell the patient  
4 on whom you're conducting the psychological  
5 examination that same information?

6 A. Yeah, I'm trying to be honest with them.

7 Q. I understand. And the bottom line is you do an  
8 interview, you look at the documents, those that  
9 you get, you review everything and then you write a  
10 report, just like you did in this case, right?

11 A, I also give psychological tests. Then my answer is  
12 no because I also give psychological tests,

13 Q. I'm sorry, you give psychological tests. You look  
14 at documents, you conduct an interview, then you  
15 write a report, right, sir?

16 A, Now, that's correct.

17 Q. Thank you.

18 And that report is disseminated to the  
19 lawyer that asked *you* to do it, right, sir?

20 A. That is one person who receives the report.

21 Q. Well, he's the **only** person you give it to, right?

22 A. That is frequently the case.

23 Q. Is it sometimes not the case?

24 A. It is always distributed to everyone, including in  
25 this case, you.

1 Q. But **you** didn't send **it** to me, right?

2 A. Correct.

3 Q. In fact, I didn't get all of **it**, did I?

4 A. That I really don't know.

5 Q. But once that report is then your psychological  
6 evaluation, be **it** good or bad, because as I just  
7 noted from what I read there, be **it** good or bad,  
8 that is your psychological evaluation containing  
9 your diagnosis and opinions regarding that patient,  
10 right, sir?

11 A. That's right.

12 Q. Okay. And you stick by that, right, sir,  
13 regardless of who **it** helps or hurts, right?

14 A. That's right.

15 Q. And you certainly wouldn't change that. Some  
16 lawyer said "I don't like this report, Doctor,  
17 change **it** **for** me," right?

18 A. Right.

19 Q. You would never do that, would you?

20 A. No.

21 Q. That would be unethical, would **it** not?

22 A. Well, I mean there are circumstances under which --

23 Q. Would **it** be unethical?

24 A. No, **it** would not be unethical.

25 Q. **So** if a lawyer said, "Doctor, I'm not happy with

1           **what** your report says about this or that," he wants  
2           you to change it, you would, say, change it?

3           A.    There are circumstances under which you would, you  
4           know, format problems.

5           Q.    Not diagnosis, though?

6           A.    No.

7           Q.    Not an opinion relative to one's abilities to work,  
8           **for** example?

9           A.,   Absolutely not.

10          Q.    Absolutely not,   You've never done that, have you?

11          A.    No.

12                       (PPlaintiff's Exhibits 54, 55 and 56, were  
13                       marked for identification by the Court Reporter.)

14                       (There was a pause in the proceedings.)

15          Q.    Handing you what has been marked for identification  
16               purposes as Plaintiff's Exhibit 54, what is that?

17          A.    This is a report that I did on a person.

18          Q.    By the name of what?

19          A.    I'm not comfortable releasing that information.

20          Q.    Well, the lawyer that sent it to me from Toledo was  
21               comfortable.

22                       MR. WILLIAMS:       Objection.

23                       THE COURT:           Why don't we leave the name  
24               out as long as that's a report he did on someone.

25

**BY MR. HOUSEL:**

1 Q. It's one of your reports like you did in this case?

2 A, Right.

3 Q. You did it for an Attorney George Fell?

4 A. Right.

5 Q. That's the guy you told me was a Plaintiff's lawyer  
6 when I took your deposition, right?

7 A, That's right.

8 Q. That report at page 11 has information concerning  
9 whether or not Mr. -- we won't use his name, is  
10 capable of working, doesn't it, sir?

11 A. Yes.

12 Q. Did you ever change that paragraph in there?

13 A. Yeah, Mr. Fell --

14 Q. Did you change it? *Yes* or no.

15 A. Yes.

16 Q. And you changed it to Plaintiff's Exhibit 55,  
17 didn't you, sir?

18 A. Yes.

19 Q. That's the change that you made in the report,  
20 right, sir?

21 A. Yes.

22 Q. And in making the change in the report, you sent  
23 the letter of August 4, 1989 to Mr. Fell, that's  
24 Plaintiff's Exhibit 56, right, sir?  
25

1       A.     Yes.

2       Q.     Now, that letter says, Doctor, "Mr. Fell" --

3                   MR. WILLIAMS:       Your Honor --

4       BY MR. HOUSEL:

5       Q.     "As you requested, I elaborated on Mr.," and I won't  
6               mention the name, "ability to work, pages 11 and 12  
7               and on his depression, first paragraph, page 8.  
8               The old report is obsolete, so you can throw it  
9               away if you like."

10                   Did I read that accurately?

11       A.     I'd have to read it.

12       Q.     Let me come over so we don't make any mistakes.

13                   THE COURT:        Mr. Housel, you give him  
14               the letter and let him read it, please.

15                   MR. HOUSEL:        Sure.

16                   THE COURT:        You don't have to stand  
17               over him like that.

18       BY MR. HOUSEL:

19       Q.     Does it then go on to say, "My apologies for  
20               failing to focus on the right areas. If the  
21               enclosed still misses the mark, let me know and  
22               I'll try again."

23                   Did I read that accurately?

24       A.     Yes.

25       Q.     Did I read the first paragraph accurately?

1 A. I believe.

2 Q. Do you want me to read it again?

3 A. No.

4 MR. WILLIAMS: Objection.

5 BY MR. HOUSEL:

6 Q. "Thanks for sending Mr. Awada to me, Let me know  
7 if there is anything else we can do."

8 A. Right.

9 Q. "Cordially, Christopher Layne."

10 A. Uh-huh.

11 Q. "Ph.D."

12 A. Right.

13 Q. "Diplomat, Clinical Psychology, American Board of  
14 Professional Psychology,"

15 A. Yes.

15 Q. Did I read all that accurately?

17 A, Yes.

18 Q. May I have these for a second?

19 The original report dealing with whether  
20 he's capable of working or not is dated would you  
21 turn that over, please. First draft typed June 29,  
22 1989, this copy presented July 3rd, 1989, correct?

23 A. Right.

24 MR. WILLIAMS: Your Honor, could Mr.  
25 House1 come over here and ask his questions,



1 please.

2 BY MR. HOUSEL:

3 Q. I only have one copy of the report. Am I bothering  
4 you next to this, sir?

5 A. No.

6 Q. Thank you.

7 The Plaintiff's Exhibit 54, Doctor, says,  
8 first draft typed June 29, 1989, same as it says on  
9 55 there, this copy revised and presented August  
10 2nd, 1989.

11 A. That's right.

12 Q. Right?

13 A. Perfectly honest statement.

14 Q. I just asked you if that's what it said, didn't I?  
15 Did I ask you if it was honest or not?

16 A, You're asking and I responded.

17 Q. Did I? Okay,

18 Now, is he capable of working on Plaintiff's  
19 Exhibit 55, the first report you prepared for Mr.  
20 Fell, says that "Vocational experts so and so  
21 testified that people like Mr." won't use the name,  
22 "could work as either a shipping or receiving clerk  
23 or as a telephone solicitor," you said undoubted?

24 A. Right.

25 Q. Then it goes on to say, "A physician is best able

1 to predict with Mr. Awada physically capable of  
2 working and several physicians stated that he is  
3 totally disabled. As a Psychologist, I am trained  
4 to assess Mr. Awada's mental health, including his  
5 tendencies toward exaggeration of his pain, My  
6 conclusion is that he is not exaggerating much, if  
7 at all, when he states that he cannot sit or stand  
8 for more than 30 minutes, we should believe him.  
9 It is unlikely that clerking, soliciting or any  
10 other job will allow him to alternate among  
11 sitting, standing and then lying down."

12 Did I read that accurately?

13 A. Yes, you did.

14 Q. In the new report, at page 11 under the same  
15 heading, "Is he capable of working?" It says,  
16 "Three barriers stand between Mr.,," won't use his  
17 name "and employment" and they're highlighted to a  
18 certain extent and italicized, right?

19 A. They're italicized, yes.

20 Q. Well, there is a dot next to it there. "He is in  
21 constant," and then italicized, "physical pain.  
22 Several physicians stated that he is totally  
23 disabled and I found that he is not." That's  
24 italicized. "Exaggerating his pain consciously or  
25 unconsciously, when he states that he cannot sit or

1 stand for more than 30 minutes, we should believe  
2 him. He has difficulty" -- do you want to read  
3 along or you just trust I'll read it accurately?

4 A. Go ahead.

5 Q. "He has difficulty with English, technically,  
6 writing. It is not his native tongue and he is not  
7 highly intelligent again. He is depressed," with  
8 the words difficulty with English and depressed are  
9 italicized, emphasized.

10 A. Right.

11 Q. "He is depressed. This leads him to feel fatigue,  
12 hopeless and sometimes suicidal."

13 Did I read it accurately?

14 A. Yes.

15 Q. Let's back up, it no longer says "I doubt it" in  
16 the second report, does it? Does it say it or not?

17 A. No.

18 Q. So in the first report you put "I doubt it," You  
19 removed. that from the second one, right, sir?

20 A. I have conceded it, that there are many word  
21 changes.

22 THE COURT: Doctor, you will have an  
23 opportunity upon cross-examination -- redirect, to  
24 answer that.

25 A, One report says "I doubt it." The other report

1 does not say "I doubt it."

2 BY MR. HOUSEL:

3 Q. The first report doesn't say a darn thing about  
4 being depressed, does it?

5 A. I suspect that it does.

6 Q. Does it? Is he capable of working section.

7 A. You're asking me if depression in one section is  
8 mentioned, let me check.

9 Q. That was pretty clear, wasn't it?

10 A. It's rather unbelievable question but give me a  
11 moment.

12 Q. Let me ask it another way so you can understand it.  
13 Is there a section that he is capable of working,  
14 does it say in Plaintiff's Exhibit 55, the first  
15 report you sent Mr. Fell, that he is depressed?

16 A. Uh-huh. Hang on.

17 Q. Okay.

18 A. In my 12 page report --

19 Q. Does it say it in that section is the question?

20 A. I am trying to answer the question in my 12 page  
21 report --

22 THE COURT: Doctor, just answer as far  
23 as that section is concerned.

24 A. In that particular section the word depression is  
25 not mentioned.

BY MR. HOUSEL:

Q. Is it mentioned in that particular section that he is in constant physical pain? Yes or no.

A. In that particular section of my long report, that that particular phrase is not in this version, that's right.

Q. And does it say that "Three barriers stand between Mr.," we won't mention his name "and employment" in the first report?

A. In that particular section it does not say that, that's right.

Q. Okay. Does it say anywhere in the first version of the report that he has difficulty with English?

A. Would you repeat that question, please?

Q. Sure. Does it say anywhere in Plaintiff's Exhibit 55, the first version of the report you sent to Mr. Fell, in the section dealing with is he capable of working, that he has difficulty with English?

A. In that particular section, it does not.

Q. Okay. Does it say anything about "technically writing it. It is not his native tongue and he is not highly intelligent"?

A. In that section it does not.

Q. That's what I'm talking about. Then in the second report that you sent after, Plaintiff's Exhibit 54,

1 well, the first one, under is he capable of working  
2 is three paragraphs long, right?

3 A. If you're asking me about the section is he capable  
4 of working.

5 Q. All I'm asking about --

6 A. Okay. Assuming that's what you're asking me, it is  
7 three paragraphs long, that's right.

8 Q. In the second report, it's count them up with me  
9 here, a sentence, 1, 2, 3, 4, 5, 6, 7, 8, 9  
10 paragraphs long?

11 A. Correct, that particular section has expanded which  
12 is what he asked me to do.

13 Q. Now, Doctor --

14 MR. HOUSEL: Judge, would *you* instruct  
15 the Doctor not to volunteer information

16  
17 said "that's what he instructed me to do."

18 THE COURT: Seemed like an innocent  
19 enough reply to me.

20 MR. HOUSEL: Was kind of interesting, I  
21 agree.

22 BY MR. HOUSEL:

23 Q. Do you diagnosis Somatoform Disorder regularly?

24 A. When they exist, yes.

25 Q. I have about 11 of your reports, would it interest

1           you to know that in 11 of your reports, to save the  
2           time of going through them, you've diagnosed  
3           Somatoform Disorder, one form or another, seven  
4           times?

5       A.   Are you asking me whether that would interest me or  
6           not, mildly interesting.

7       Q.   I don't know, do you understand my questions?

8       A.   I think you asked me if -- I believe *you* asked me  
9           if it would interest me and my answer is yes,  
10          somewhat.

11      Q.   All right. And in all 11 of these reports, Doctor,  
12          you disagreed with medical doctors, psychiatrists  
13          and other psychologists, right?

14      A.   I doubt that that is true.

15      Q.   You doubt that that is true?

16      A.   Uh-huh.

17      Q.   Well, if you don't disagree with somebody's  
18          1% diagnosis, you're not going to write a report, are  
19          you?

20      A.   Absolutely false, write reports all the time and  
21          agree with many doctors.

22      Q.   Doctor, you have made it a point, as you did at my  
23          opportunity, to take your deposition, that you do  
24          not send to lawyers the test questions given in the  
25          MMPI, right, sir?

1       A.     That's often true.

2       Q.     That's what, sir?

3       A.     Often true.

4       Q.     Is it always true?

5       A.     No.

6       Q.     You do sometimes?

7       A.     Yeah.  There are times when it appears as though  
8             the way the legal workings are going, that the data  
9             are going to come out anyway and in that case, I  
10            just go ahead and willingly send them along as I  
11            did with you.

12      Q.     Well, you sent them along to me, you sent them to  
13             Dr. Toth?

14      A.     Correct.

15      Q.     Don't send them to the lawyer, you send them to the  
16             doctor?

17      A.     That's right.

18      Q.     I think what you said at your deposition, we can go  
19             through it if you want, is that the psychologist  
20             boards or some regulatory agency doesn't permit you  
21             to send the questions to anyone without the, except  
22             for the other psychologist, right?

23      A.     That's what they ask you to refrain from doing,  
24             sometimes it's impossible.

25      Q.     And you told me that you've never done that in your



1 deposition, right?

A. I don't think I said that.

3 Q. You want to take a look?

4 A. Sure.

5 Q. Here's a copy of your deposition, Doctor. Would  
6 you be kind enough, sir, to turn to page 93. Now,  
7 test scores on the MMPI are different than the test  
8 questions themselves, right?

9 A. That's right.

10 Q. And the test scores are something that without any  
11 question, you would give to a Plaintiff's attorney,  
12 such as myself, right?

13 A. I'm sorry, repeat that again.

14 THE COURT: Patti, would you repeat  
15 that again, please,

16 (The last question was read back,)

17 A. Right,

18 BY MR. HOUSEL:

19 Q. On page 93, line 15, I asked you this question:

20 "Do you have the test scores somewhere? Answer:

21 Yes. Question: Could I have them? Answer: No."

22 Is what you said at your deposition, right,  
23 sir.

24 A. Correct.

25 Q. Then Mr. Williams chimed in and said no.

1                   MR. WILLIAMS:       Your Honor, I'm going to  
2                   object .

3                   THE COURT:           Sustained.

4                   BY MR. HOUSEL:

5           Q.     Then I asked you "Why?" And you said, "That's a  
6                   document I can send to Toth or whoever requests it  
7                   but can't give them to you."

8                   Did I read that accurately?

9           A.     Right.                         --

10          Q.     Then I said, "Why?" And you said, "Test publisher  
11                   says we are supposed to keep all that stuff very  
12                   confidential." Then I said, "The scores?" And I  
13                   said, "I thought the question is what you kept  
14                   confidential?" And you said, "Yes, I believe that  
15                   is correct." I said, "You won't give me the  
16                   scores?" You said, "What do you mean by scores?"  
17                   I said, "Scores on the MMPI. As I say, I'll send  
18                   them to another." Then I asked you again, "Will  
19                   you give me the scores or not?" And you said,  
20                   "No ."

21          A.     You omitted Mr. Williams' comments.

22                   MR. HOUSEL:       Well, he objects when I  
23                   read them.

24                   THE COURT:        I don't need his comments.

25

1 BY MR. HOUSEL:

2 Q. That's why I omitted it, Doctor.

3 I asked you again would you -- I asked the  
4 Court Reporter direct you to take the scores out of  
5 the file and to give them to me, didn't I? At the  
6 bottom of the page there.

7 A. Yes.

8 Q. Okay. The clear position is the scores you can  
9 give to me, you didn't but they're, at least, but  
10 you can give to me but not the test questions,  
11 right?

12 A. Now, it's a little convoluted, I, in fact, did  
13 give the profile to you that day: is that not  
14 correct?

15 Q. No, it's not correct. You mailed it to Dr. Toth.  
16 Would you like to see the envelope and the mailing  
17 you gave to Dr. Toth?

18 A. What I just said is that I gave you something that  
19 day.

20 THE COURT: Mr. Housel, I'm missing the  
21 point. Can we move on?

22 MR. HOUSEL: Sure, Judge.

23 BY MR. HOUSEL:

24 Q. Just to finish up on that point, did -- is it your  
25 policy that under no circumstances will a lawyer,

1 not a psychologist that's treating now, a lawyer  
2 get the test questions?

3 A. It depends on the case. There are times when the  
4 case, it's obvious from the case that the lawyers  
5 are going to end up with the questions anyway and  
6 in that situation, I typically just send them  
7 along. It's just a formality and I really don't  
8 have anything to hide.

9 Q. The test questions you just send along?

10 A. And the scores and the profile,

11 Q. Even though it's indicated everywhere in your  
12 deposition that the test publisher says you're not  
13 supposed to do it?

14 A. The test publisher's discuss not to do that and we  
15 try not to but sometimes the legal system just goes  
16 ahead and kind of pre-empts that. There is really  
17 very little we can do about that,

18 Q. You described Michele's accident as a benign  
19 accident, right?

20 A. Correct,

21 Q. You said that she was jostled to and fro in the  
22 car, correct?

23 A. That's right.

24 Q. And you base that upon your interview of her,  
25 right?

1 A. The interview and some of the documents.

2 Q. Well, one of the documents certainly wasn't the  
3 Rapid Response document, because you didn't have  
4 that, right?

5 A. That's right.

6 Q. And one of the documents certainly wasn't the St.  
7 Thomas Medical Center charts because you didn't  
8 have that when you wrote your report, right?

9 A. I think I did.

10 Q. I thought you said about a half hour ago you  
11 didn't?

12 A. Well, it is tough to keep these. I had a stack of  
13 documents that high, it's very difficult to keep  
14 them all straight. Let me look real quick.

15 Q. It's in your report there, right?

16 A. Yeah. My report says records of St. Thomas Medical  
17 Center. So in answer to your question, when I  
18 wrote the report I had the documents of St. Thomas  
19 Medical Center.

20 Q. What does benign mean?

21 A. It means relatively harmless and in a permanent  
22 way.

23 Q. In a what sir?

24 A. In any permanent way, a benign tumor is bad news, I  
25 don't want something -- it's not something that's

1 going to kill you.

2 Q. When I saw your report I got the dictionary,  
3 Webster's Dictionary and looked up benign, I  
4 happen to have that here. Would you read along  
5 with me here, "Benign. Of a gentle disposition,  
6 showing kindness and gentleness. Of a mild  
7 character."

8 Did I read that accurately?

9 A. Hang on.

10 Q. You want to check that out?

11 A. I sure do. You did not read this in its entirety.

12 Q. Did I read the segment I read accurately, then?

13 A. You read some segments from an entire definition  
14 and you omitted several important words.

15 Q. I did?

16 A. You sure **did**. Would you like for me to read it?

17 Q. Sure?

18 A. Great. "Benign." It goes on to talk about how to  
19 pronounce it.

20 Q. Just read it.

21 A. Okay, "Benign, Benign. Adjective, ME, benign,  
22 French **OF**, benignus, French. Bene, well, plus,  
23 beginning to be born, past, et cetera."

24 Q. That doesn't apply here, though, does it?

25 A, You asked me **to** read the whole thing and I'm

1 willing to do that.

2 Q. I just asked you another question. That part **you**  
3 read doesn't apply to this does it?

4 A. No.

5 A. Can I continue?

6 Q. Please.

7 A, "Passive, of I **go**, narrow, to beget more at bounty.  
8 Kind, one **of** a gentle disposition, colon, gracious,  
9 parenthesis, (a) for example, a benign teacher.  
10 Number 2a, colon: showing kindness and gentleness,  
11 for example, benign faces. B. Favorable, For  
12 example, a benign climate and 3," this is  
13 important, "of a mild character, for example, a  
14 benign tumor." And that's the sense in which I  
15 meant the word.

16 Q. And the report goes on to say, well, the heading in  
17 your report is "her benign accident."

18 A. Page?

19 Q. It's on page 1 of the report that I **got**.

20 A. Okay.

21 Q. And then it goes **on to** say, "On December **16**, 1987,  
22 Miss VanVoorhis was a passenger in a car. As **she**  
23 looked up, she saw a car approaching from the  
24 right, a truck, a telephone pole and a fence. She  
25 was jostled to and fro." Those are your words,

1 right?

2 A. That's correct.

3 Q. "Jostled to and fro," right?

4 A. Correct.

5 Q. Did Michele tell you -- I think you said and, in  
6 direct examination that she gave you a highly  
7 detailed description of the accident in the  
8 interview, right, sir?

9 A, That's right, she remembered it all.

10 Q. Do you have a copy **of** the interview?

11 A. Yes .

12 Q. Pull it out, would you, Doctor.

13 A. Sure. I have her deposition, is that what you're  
14 interested in?

15 Q. No. The transcription of your interview.

16 A. I have it.

17 Q. Now, what happens in the interview about the  
18 history of the accident is very important to you as  
19 it would **be** to any medical health professional,  
20 right, Doctor?

21 A. Absolutely.

22 Q. Okay. Turn to page 4. Okay. "Tell me about the  
23 accident, what happened. It's my understanding  
24 from reading some of the records that you were in  
25 **an** auto accident and that in **a** sense that is what



1 all of this is about. So, tell me about the  
2 accident." Michele said, "You're correct, it was  
3 an automobile accident." You said, "Uh-huh." She  
4 went on to say, "It was snowy and the car that I  
5 was in, I was a passenger, he hit several different  
6 objects and I received a head injury." You said,  
7 "Let's back up and give it to me in even more  
8 detail, You were -- who was driving, a boyfriend?"

9 Then she went on to say, "Yes, Mr. Martter."  
10 She went on to tell -- well, okay. Okay "And where  
11 were you in Akron or Cleveland or where?" She  
12 said, "On Graham Road." You said, "Uh-huh." She  
13 said, "In Cuyahoga Falls." To save time.

14 A. You're skipping portions.

15 Q. If he wants to read them back to you -- to save  
16 time.

17 A. Okay.

18 Q. Okay. Turn to page 6, I'm sorry, before that, the  
19 bottom of page 5, "My purse fell on the floor and I  
20 was picking up my purse and when I came up, is when  
21 the accident happened." And at page 6 you said,  
22 "Uh-huh. What did you see, I'm sorry and what did  
23 you see? I'm not just, I'm sorry, I'm not so much  
24 interested in what really happened, just what did  
25 you see?" That's what you said to her, right?

1 A. Correct.

2 Q. "I saw a car come up on the right. Uh-huh. And  
3 then everything just happened after that. Okay.  
4 You **saw** a car coming up from the right? Uh-huh and  
5 then **it** was snowing I mentioned. And then, you say  
6 uh-huh, okay. So then your purse falls on the  
7 floor, you reach down to pick it up, you come up,  
8 you see something out of the corner of your eye  
9 coming from the right?" She says, "Yes, a street."  
10 Question. "What happens next? i can't recall  
11 everything exactly as it happened. You said  
12 uh-huh. "

13 Did you want to follow along?

14 A. Sure. What page are you on?

15 Q. I said I was on page 6.

16 A. Thank you.

17 Q. You're welcome.

18 You said, "Uh-huh. Do the best you can."

19 And she said, "To the best of my knowledge the car  
20 came out of the right.' You said, "Uh-huh." It  
21 just goes on from there. So she described what  
22 happened just like she did in her deposition, which  
23 she read?

24 A. With exquisite accuracy both on the deposition and  
25 with me.

1 Q. That's exquisite accuracy?

2 A. Absolutely.

3 Q. Do you know how many times in your interview she  
4 said she couldn't remember?

5 A. It was a fair number.

6 Q. A few, I think you said on direct, right?

7 A. Perhaps.

8 Q. I had my secretary total it up and then I double  
9 checked it and I got a total of 43 times: is that  
10 about right?

11 A. Could be.

12 Q. You wouldn't dispute that, would you?

13 A. Don't think so.

14 Q. You had the -- you made your diagnosis of what  
15 happened in this situation from the DSM manual,  
16 right?

17 A. Correct.

18 Q. Diagnostic and Statistical Manual of Mental  
19 Disorders, right?

20 A. That's correct.

21 Q. It's the book I have in my hand right here?

22 A. That's correct.

23 Q. Let's turn to your diagnosis of Undifferentiated  
24 Somatoform Disorder. You got your book in your  
25 little bag there?

1       A,    Yes, I do.

2       Q.    Turn to page 266 with me.

3       A.    I have it.

4       Q.    300.70 Undifferentiated Somatoform Disorder.

5       A.    Right.

6       Q.    "This is a category for clinical pictures that do  
7           not meet the full symptom picture of Somatization  
8           Disorder, There **is** either **a** single circumsised --  
9           circumscribed" --

10      A.    Much better.

11      Q.    Thank you,

12                   -- "symptom, such as difficulty in  
13           swallowing, or, more commonly, multiple physical  
14           complaints, such as fatigue, loss of appetite and  
15           gastrointestinal problems. Like somatization  
16           Disorder, the symptoms are not explainable on the  
17           basis of demonstrable organic findings or a known  
18           pathophysiologic mechanism, and are apparently  
19           linked to psychological factors."

20                   Doctor, you had a lot of evidence in this  
21           case, didn't **you**, either before or after I took  
22           your deposition, that the complaints **of** Michele  
23           VanVoorhis were linked to some demonstrable organic  
24           findings, right?

25      A,    Absolutely not.

1 Q. What Dr. Lefkovitz found isn't a demonstrable  
2 organic finding?

3 A. What did Lefkovitz --

4 Q. Is it or isn't it?

5 A. No.

6 Q. What Dr. Toth found and put in her report is not a  
7 demonstrable organic finding?

8 A. No. Their tests were normal, normal, normal,  
9 normal, normal.

10 Q. So, consequently, Michele's lying, right?

11 A. Didn't say that. That's an awful thing to say.

12 Q. Deceiving, though, right?

13 A. Somatization involves denial, involves being apart  
14 from yourself, it's not a conscious lie.

15 Q. The diagnostic criteria, page 267 which enables you  
16 to diagnose Undifferentiated Somatoform Disorder  
17 300.70 is listed as: "A. One or more physical  
18 complaints, examples, fatigue, loss of appetite,  
19 gastrointestinal or urinary complaints. B. Either  
20 (1) or (2)" and one says, "appropriate evaluation  
21 uncovers no organic pathology or pathophysiologic  
22 mechanism, (example, physical disorder or the  
23 effects of injury, medication, drugs or alcohol) to  
24 account for the physical complaints."

25 Did I read that right?

1       A.    **Yes.**

2       Q.    **So**, if there is an appropriate evaluation  
3            uncovering an organic pathology, you can't make a  
4            diagnosis of Undifferentiated Somatoform Disorder,  
5            right?

6       A.    False.

7       Q.    Well, that's not what it says here, though?

8       A,    You didn't read all the criteria.  You're simply  
9            leaving out passage after passage.  Read number 2.  
10           If you like, I'll read it.

11      Q.    I'll read it.  "Two.  When there is related organic  
12            pathology, the physical complaints or resulting  
13            social or occupational impairment is grossly in  
14            excess of what would be expected from the physical  
15            findings."

16      A.    Bingo.

17      Q.    **So** she has two?

18      A.    Well, I didn't **see** much evidence of organic  
19            pathology.

20      Q.    Did you see any?

21      A.    No, **no**.  Given her premorbid history, I saw **no**  
22            evidence of organic pathology.

23      Q.    And you told me at your deposition when I asked you  
24            that you didn't think she had significant brain  
25            damage because **you** finally admitted that you

A 1 thought she had some brain damage before this  
2 accident, right?

3 A. I think that's an exaggeration.

4 Q. What do *you* think *you* said?

5 A. I believe that I said she had no significant brain  
6 damage and that I went on to say you can drink two  
7 beers and researchers will tell you that you  
8 damaged your brain a little bit. So people do have  
9 minor neurological insults all their lives. The  
10 question is whether or not it has any effect on a  
11 person. So I stand by my statement, no  
12 significance.

13 Q. Did I ask you anything about drinking a few beers  
14 here?

15 A. I am explaining my answer.

16 Q. The question I thought was pretty self -- did you  
17 say at your deposition on May 3rd, that she didn't  
18 have significant brain injury but that she had some  
19 from the accident? Yes or no.

20 A. That is a partial description of what I said.

21 Q. And if that's what you said, that would be organic  
22 pathology, wouldn't it, Doctor? Yes or no.

23 A. Not significant.

24 Q. Well, if it's not significant, that means it is  
25 some, though, right?

1 A. Sure.

2 Q. Sure.

3 THE COURT: Let me see Counsel at side  
4 bar.

5 (A discussion was held at the side bar.)

6 THE COURT: We're going to take our  
7 afternoon break. I see you swirling around a  
8 little bit there. So we'll take 10 minutes.

9 Remember the admonitions that I've given you  
10 and we'll try to get started promptly in 10  
11 minutes. Ten minute break.

12 (The Jury, having been duly admonished, and  
13 the Court recessed,)

14 - - -

15 (The Jury was returned to the courtroom and  
16 the following proceedings were had:)

17 THE COURT: You may continue,

18 MR. HGUSEL: Thanks, judge.

19 BY MR. HGUSEL:

20 Q. A few more questions from your deposition. I'll  
21 hand you a copy of it. Did you ever have the  
22 results, the actual tests themselves, the  
23 neuropsychological tests Dr. Toth administered?

24 A, I saw them but I didn't get complete results.

25 Q. You asked Mr. Williams for them?



1 A. That's right.

2 Q. He didn't get them to you, right?

3 A. I didn't receive them, that's correct.

4 Q. Neuropsychological tests are used to determine  
5 brain damage?

6 A. Yes.

7 Q. And yet you didn't even have those  
8 neuropsychological tests in this case that Dr. Toth  
9 performed, right?

10 A. Well, I had --

11 Q. Said right or not?

12 A. It is incorrect. In her report --

13 Q. Doctor, the question is very simple, did *you* have  
14 the neuropsychological tests performed by Dr. Toth:

15 A. I had their results.

16 Q. You didn't have the tests themselves, right?

17 A. Didn't have the blocks --

18 Q. Just answer, Doctor, maybe *it* would help us get  
19 through *this*.

20 THE WITNESS: Right.

21 THE COURT: Just answer --

22 A. I had the test results.

23 BY MR. HOUSEL:

24 Q. But you didn't have the tests?

25 A. If by "tests" you mean the physical things Dr. Toth

1           **had** in Akron, no.

2           **Q.**    What **Do** you think that means?

3                       THE COURT:           Mr. Housel, please.

4           **A.**    The answer is **no** I didn't have her testing  
5                   materials.

6           BY MR. HOUSEL:

7           **Q.**    And you said in your deposition that that would be  
8                   important, right?

9           **A.**    No.   For me to have her test materials, no.

10          **Q.**    Turn to **page** 26 in the deposition,   Now, Doctor,  
11                   you were under oath when this deposition was taken,  
12                   weren't you, sir?

13          **A.**    As I am now.

14          **Q.**    Right.   Page 26, line **19**, I said, "Did *you* know  
15                   what tests were administered to Miss VanVoorhis by  
16                   Dr. Delphi Toth?"   And your answer was, "Some of  
17                   the tests that she listed were the Wechsler Memory  
18                   Scale Revised and the Wechsler Adult Intelligence  
19                   Scale Revised.   There were other tests that she  
20                   apparently administered which she did not include  
21                   in the report."

22          **A.**    Correct.

23          **Q.**    We're on 27.   I said, "Did *you* ask Mr. Williams to  
24                   get them for you?"   And you said, "**No.**"   Right?

25          **A.**    Okay.

1 Q. Did you say "no"?

2 A. Yes.

3 Q. Thank you.

4 And I said, "Why is that?" And you said,  
5 "Let me rephrase that." And then you said -- and I  
6 said, "You want to rephrase the 'no'"? And you  
7 said, "Yes, exactly." Right?

8 A. Correct.

9 Q. And then I said, "Well, go ahead." And you said,  
10 "When I say 'no,'" I'm saying that I didn't ask him  
11 to get the list of tests. I did say to him that  
12 getting the raw test data would be important,  
13 relevant." Right?

14 A. Correct.

15 Q. Then I said, "But you didn't get it?" And you  
16 said, "No." Right?

17 A. Correct.

18 Q. And I said, "You didn't have it when you prepared  
19 your report?" And you said, "That's right."  
20 Right?

21 A. Correct.

22 Q. Then I said, "And you don't have it as of today?"  
23 And you said, "That's right."

24 A. Correct.

25 Q. As of May 3rd you didn't have it, right?

1 A. Correct.

2 Q. Do you have it as of today, May 15th?

3 A. I have a little bit of additional information.

4 Q. Do you have it as of today, May 15th? Yes or no.

5 A. Define "it," I'm not sure what you're talking  
6 about.

7 Q. What did I just read here to you?

8 A. "It," you're using the word "it" and I really don't  
9 know what you're referring to anymore.

10 Q. The raw test data.

11 A. I have some of it now.

12 Q. Some of it?

13 A. Uh-huh.

14 Q. Some of it you don't have, right?

15 A. Correct.

16 Q. And that raw test data would deal with  
17 neuropsychological test that is used to determine  
18 brain damage, right?

19 A. Correct.

20 Q. Okay. Doctor, when you do an evaluation like you  
21 did here and write a report, you understand that  
22 what you are doing, if a jury believes what you  
23 say, can have a direct impact on the amount of  
24 money they award people like Michele VanVoorhis for  
25 damages, right, sir?

1 A. Yes.

2 Q. And you understand that a trial and the procedure  
3 before a trial, depositions, things like that, is a  
4 search for the truth, right, sir?

5 A. Absolutely.

6 Q. And it would be important for you to find out as  
7 much information about this young lady as possible  
8 before you write a report, give a deposition and  
9 come and testify, right?

10 A. Absolutely, The more information the better.

11 Q. Okay, But -- and you knew, for example, that she  
12 had seen Dr. Delphi Toth on 27 different occasions,  
13 right, sir?

14 A. I knew that she had seen Dr. Toth. I'm not sure  
15 that I knew it was 27 times.

16 Q. Well, I asked you that at your deposition.

17 A. Then apparently I did.

18 Q. All right. Fine. You knew she had been treating  
19 with Dr. Lefkovitz, a neurologist, a period of  
20 time?

21 A. I knew she had seen him because I saw the report,  
22 yes.

23 Q. An you knew she had been treating with a  
24 neurologist named Dr. Brickel, right, sir?

25 A. I'm not sure when I became acquainted with that

1 fact. I don't recall the information does kind of  
2 keep pouring in,

3 Q. Does it?

4 A. Yes.

5 Q. Okay. Did you know it at the time I took your  
6 deposition?

7 A. I really don't recall.

8 Q. Okay. And these people have been treating Michele  
9 for a long period of time, these two doctors and a  
10 neuropsychologist, right?

11 A. Apparently so,

12 Q. And you saw her one time in Defense Counsel's  
13 office in March of this year, right?

14 A. Correct,

15 Q. And you interviewed her for a period of time and  
16 watched the way she walked and the way she dressed  
17 and what she said, right?

18 A. That's part of what I did.

19 Q. And you administered the psychological test?

20 A. That's another thing I did.

21 Q. You reviewed the material provided to you, even  
22 though it wasn't everything, and you wrote your  
23 report, right?

24 A. Hundreds of pages of documents, that's right.

25 Q. Okay. Did you ever contact Dr. Lefkovitz?

1 A. No.

Q. Did you ever contact Dr. Toth?

3 A. No.

4 Q. Did you ever contact Dr. Brickel?

5 A. NO.

6 Q. These two medical doctor and neuropsychologist  
7 had completely different things to say about what  
8 they thought was wrong with Michele VanVoorhis than  
9 what you say, right, sir?

10 A. Correct, I saw the reports.

11 Q. Turn to page 31, please, sir, line 17. "Did she  
12 strike her head on any portion of the interior of  
13 the vehicle?" Your answer, "She was vague about  
14 that. She may have but there was no evidence that  
15 I saw of any importance, blow to her head."

16 A. Right.

17 Q. And I said, "She was vague about that?" And you  
18 said, "Uh-huh." Right?

19 A. Right.

20 Q. And do you recall reading at page 8 of the  
21 transcript of your interview of Michele, and I'm  
22 now on page 32, Doctor.

23 A. Uh-huh.

24 Q. Line 20 at page 8 of the transcript you asked her  
25 "What was the next thing that you remember?" And

1 she said, "I remember going forward, hitting the  
2 windshield and going backward and going forward and  
3 hitting the windshield with my head and I remember  
4 hitting my shoulder." Did I read that accurately?

5 A. You did.

6 Q. Does that sound vague to you, sir?

7 A. The stress was on the words "importance" and  
8 "important blow to her head."

9 Q. We're talking vague was the question, vague?

10 A. In that context it sure does and that's what I  
11 meant.

12 Q. But she gave you a highly detailed description of  
13 the accident you said?

14 A. She sure did.

15 Q. Not a vague one, right, sir?

16 A. In terms of the description of the overall  
17 accident, it was the detail was exquisite. It  
18 was -- represented very good memory.

19 MR. HOUSEL: Would you direct the  
20 Doctor, please, just to answer my question.

21 THE COURT: Doctor, do you understand  
22 the question?

23 THE WITNESS: Yes.

24 BY MR. HOUSEL:

25 Q. Did I ask you if it demonstrated memory or not?



1 A, Exquisite. You asked me if it was detailed,

2 Q. Did I ask you if it demonstrated memory or not?

3 MR. HOUSEL: Did I?

4 THE COURT: Let's not answer -- Doctor,  
5 that answer appeared not to be responsive.

6 THE WITNESS: Okay. My apologies.

7 BY MR. HOUSEL:

8 Q. Page 35, sir, line 8. "If somebody's head is  
9 thrown forward and strikes the windshield from  
10 where they are seated in the passenger seat, what  
11 happens to their brain?" Your answer was, "Well,  
12 the brain is the consistency of thick egg yolk. It  
13 sloshes in a situation like that."

14 That was your answer, right, sir?

15 A. Correct.

16 Q. I said, "Can it also strike the bone structure in  
17 the front portion of the skull?" And you said,  
18 "That is possible in a severe" and I interrupted  
19 and said, "That is possible even if you get  
20 whiplashed, head thrown forward, head thrown back  
21 isn't it, Doctor?" And you said, "In a severe  
22 accident,

23 Have I read that accurately so far?

24 A. You sure have.

25 Q. I said, "How severe does it have to be?" And your

1           answer was, "Head on collision going 80 miles an  
2           hour," Right, is that what it says there?

3       A.   No.   There is a dash-dash after the word or  
4           indicating that witness, again you interrupted me.

5       Q.   And then I said -- but it does say there head on  
6           collision going 80 miles an hour, doesn't it?

7       A.   And I was about to continue.

8       Q.   Does it say that or not?

9       A.   No, there are two dashes that you keep leaving out,

10      Q.   I'm sorry, I don't want to leave those dashes out.

11                 Says "Head on collision going 80 miles an  
12           hour" dash-dash.

13      A.   I was going to continue.

14      Q.   That's what it says dash-dash, right?

15                 I said, "Are you an expert in analysis of  
16           head injuries of people in automobile accidents?"  
17           And you said, "No." Right?

18      A.   Correct.

19      Q.   You later agreed that a 35 mile per hour head on  
20           accident was a severe accident, didn't you?

21      A.   Would you point that out, please, I'm not sure that  
22           I did.

23      Q.   37, line 7, 8 and 9. Line 7, "Do you agree with me  
24           that a 35 mile per hour head on accident is a  
25           severe accident? Answer: Yes." Right?

1 A. You have read correctly.

2 Q. Thank you.

3 Page 38, Doctor, line 5, "Does Michele have  
4 a brain injury from this accident?" You said it --  
5 I said, "I'm asking you if that is your opinion."  
6 You said, "I understand." I said, "yes, sir,"  
7 Your answer was, "If she has a brain injury, it's  
8 not interfering with her functioning.' And I said,  
9 "What about her memory?" And you said, "No  
10 evidence that the accident is interfering with her  
11 memory." No evidence, right? That's what you  
12 said?

13 A. Correct.

14 Q. What the client, young lady says to you isn't  
15 evidence, right? When she says to you she's having  
16 memory- problems that's not evidence to you, right?

17 A. It's not evidence that she is having memory  
18 problems due to the accident, that's right.

19 Q. The doctors say that she tells him.

20 MR. WILLIAMS: Your Honor, he's  
21 interrupting the witness's answer.

22 A. I don't take the patient's diagnosis of her own  
23 problem as gospel.

24 BY MR. HOUSEL:

25 Q. You think she was deceiving you?

1 A. No.

2 Q. That she was lying to you?

3 A. No.

4 Q. You said in the deposition that you thought she was  
5 deceiving you; do you remember that?

6 A. Deceiving in a certain sense of the word which I've  
7 explained to this jury today.

8 Q. Explain it again,

9 A. A person can fool himself and other people at the  
10 same time. It's been called repression, it's been  
11 called disassociation, it's been called denial and  
12 it's highly associated with Somatoform Disorders.

13 Q. You don't dispute the fact that Michele VanVoorhis  
14 has a neck injury and a back injury, do you,  
15 Doctor?

16 A. It seems to me is some evidence of that but that is  
17 not my area of expertise.

18 Q. I just asked you if you disputed it or not.

19 A. I am not qualified to either dispute or endorse a  
20 diagnosis that's physical like that.

21 Q. So then you don't dispute it, right, because you're  
22 not qualified?

23 A. I think I've answered the question, you're out of  
24 my expertise.

25 Q. Brain injury is your expertise, right?

1 A. Never said that, either, although it is  
2 psychological.

3 Q. Is it possible that a young person that has a  
4 permanent neck and back injury could be depressed  
5 because of it?

6 A. That's certainly possible.

7 Q. In fact, it's more likely than not, isn't it,  
8 Doctor?

9 A. No, I don't think it's more likely than not but it  
10 certainly is possible.

11 Q. Page 38, you keep putting it down, I want to ask  
12 you some more questions from it, okay? Line 20,  
13 says, after I asked you a few things, she sustained  
14 a brain injury and you said you doubt it. Line 20,  
15 "And now she says it is?" And you said, "That's  
16 correct." And I said, "You disbelieve her?" You  
17 said, "I don't agree with her. I don't think she  
18 is making it up."

19 A. Correct.

20 Q. And I say, on page 39, "Do you think she is lying?"  
21 And you say, "No." Then I said, "Do you disbelieve  
22 her?" And you say, "Yes." Don't you?

23 A. Absolutely. That expresses my -- my apologies, I'm  
24 very sorry.

25 Q. Thank you. Line 30 on page 39, I said to you, "She

lies about those things," line 9 and you said "Didn't say she lies. She's misinformed about her own health, she is hypochondriacal," and then I said, "Misinformed by who?" And you said, "I'm sorry, by her own mental distortions." Then I said, "Could she have sustained a brain injury if she struck her head on the windshield and the dashboard in this accident, Doctor, is it likely?" And you said, "In this particular case, no, it is not." Correct?

A. Correct.

Q. In those other 11 reports I have about you, including one of a Mr. Leonard Vanello, a client of mine, you wrote a report about six months ago, there are lots of doctors that write reports that say that people are permanently injured that have back injuries, that have head injuries, all kinds of injuries that you disagree with, right, Doctor?

MR. WILLIAMS: Objection, Your Honor.

THE COURT: Sustained to the nature of the question.

MR. HOUSEL: All right.

BY MR. HOUSEL:

Q. You remember Mr. Vanello?

A. I have no comment, this is a confidential matter.

1 Q. I got a letter from him that says that I'm welcome  
to cross-examine you completely on it. Do you want  
3 to see that, would that help you remember him?

4 A. He would have to release me, any patient that I  
5 see. I'm not saying --

6 Q. He's not a patient. These people aren't patients,  
7 you don't treat these people, right, sir?

8 MR. WILLIAMS: Objection, Your Honor,  
9 badgering the witness.

10 THE COURT: Let's move on.

11 A. That's false.

12 BY MR. HOUSEL:

13 Q. Is Miss VanVoorhis a patient?

14 MR. WILLIAMS: Objection, Your Honor.

15 THE COURT: Let's move on, please.

16 MR. HOUSEL: Could he answer that  
17 question?

18 THE COURT: Sustained.

19 BY MR. HOUSEL:

20 Q. You won't answer any questions about my client  
21 Leonard Vanello?

22 MR. WILLIAMS: Objection, Go ahead, *you*  
23 can answer.

24 A. Not unless he releases me to do that and I'm not  
25 here saying that I either have or have not ever

1           seen him,

2   BY MR. HOUSEL:

3       Q.   Do you remember what his problems were?

4           MR. WILLIAMS:       Objection.

5           THE COURT:           Sustained.

6           Mr. Housel, I would like to move on with  
7   cross-examination of this witness,

8           MR. HOUSEL:       All right, Your Honor.

9           THE COURT:       Relative to this case,

10          MR. HOUSEL:       Okay.

11               (Plaintiff's Exhibit 57, being a release  
12   letter, was marked for identification by the Court  
13   Reporter.)

14          MR. WILLIAMS:       Can we approach, Your  
15   Honor?

16               (A discussion was held at the side bar.)

17          MR. HOUSEL:       Could I show it to him?

18          THE COURT:       NO.

19          MR. HOUSEL:       Okay, Judge.

20   BY MR. HOUSEL:

21       Q.   Would you turn to page 50, please, Doctor, I was  
22   asking you questions at your deposition about your  
23   agreement or disagreements with Dr. Toth's report,  
24   remember that?

25       A.   Yes, I do.



1 Q. Okay. And I asked you if you read her report  
2 before ROW, this is at line 6, "Did you check  
3 before now, did you read it before now? This is  
4 her report." Remember that?

5 A. [REDACTED] have to check to see if that is her report, do  
6 you have a reference prior to that as to what you  
7 are now talking about here?

8 Q. Let's back up a little bit.

9 A. Okay.

10 Q. I was asking you questions about --

11 MR. WILLIAMS: Your Honor, I'm going to  
12 object to his testifying. I would --

13 THE COURT: He's trying to help him  
14 right now. I think we're trying to decide what  
15 he's asking the question about, Mr. Williams. If  
16 we all can be a little more patient, we can get  
17 through this.

18 BY MR. HOUSEL:

19 Q. Do you remember me asking you questions about  
20 whether you agreed or disagreed with Dr. Toth's  
21 report?

22 A. I do.

23 Q. On line -- page 50, I said, "You don't disagree  
24 with anything in between those?" You said, "Let me  
25 go back and check." Did I read that accurately?

1       A.    Yes.

2       Q.    "Did you check before now? Did you read it before  
3           now?" Your answer was, "in a cursory way. You  
4           apparently want a kind of phrase by phrase  
5           evaluation, which I'm happy to proceed." Then I  
6           said, "I want to know everything that you disagree  
7           with in Dr. Toth's report."

8                    Agree with me that's what we were talking  
9           about?

10      A.    I do not agree that we were talking about Dr.  
11           Toth's report in toto, we were talking about  
12           several specific lines in the report.

13      Q.    I went through the report with you completely and  
14           asked you what you disagreed with, didn't I, from  
15           beginning to end?

16      A.    Eventually you made that clear, it was rather --  
17           yes, eventually you made that clear. You did not  
18           make that clear at first, that you wanted me to  
19           read every single sentence and comment on every  
20           single sentence.

21      Q.    Does it make it clear when I said I want to know  
22           everything that you disagree with in Dr. Toth's  
23           report or is there something confusing about that  
24           question?

25                   MR. WILLIAMS:       Objection.

8           1           A.    Well, there, that question was asked way after we  
2                            had started the exercise, this is trivial.

3   BY MR. HOUSEL:

4           Q.    I'm sorry, what did you just say?

5           A.    This is trivial.

6           Q.    Trivial?

7           A.    Right.

8                           MR. WILLIAMS:       Objection,

9   BY MR. HOUSEL:

10          Q.    You said, in answer to that question, "I have a  
11                   suspicion about the statements," And I said, "A  
12                   suspicion?" And you said, "Yes." Right?

13          A.    Correct.

14          Q.    Then Mr. Williams said --

15                           MR. WILLIAMS:       Objection, Your Honor.

16                           MR. HOUSEL:        He wanted me to read  
17                           everything, so -- all right,

18   BY MR. HOUSEL:

19          Q.    Line 18, "Is that a disagreement or something you  
20                   are not certain?" And you said, "It's a  
21                   suspicion." That's what you said, right?

22          A.    That's right.

23          Q.    And I said, "Go ahead," You said, "About the first  
24                   sentence under," and how do you say that?

25          A.    Mesteg.

1 Q. "Mesteg," M-E-S-T-E-G "function," and you spelled  
2 it, "you've now gone back and read that more  
3 carefully and you have a suspicion about it; am I  
4 right?" And you said, "That's right." Then I  
5 said, "And what is it that you have a suspicion  
6 about and not a disagreement?" And your answer  
7 was, "That she shows significant memory problems."  
8 I said, "Okay. You are not -- you don't disagree  
9 with that, you are just suspicious about that?"  
10 You said, "That's right."

11 That's what you said, Doctor, correct?

12 A. You have read that portion of the entire deposition  
13 correctly.

14 Q. Would you feel better if we marked! it and made it  
15 an item of evidence?

16 MR. WILLIAMS: Objection, Your Honor?

17 THE COURT: Let's move on, Mr. Housel,  
18 please.

19 Q. Line 5, page 55, remember the discussion we had  
20 about one of the things that you do is you observe  
21 the way the young lady acted, you use that in your  
22 determination whether she's got a memory problem or  
23 she's brain damaged?

24 A. Absolutely.

25 Q. So, you use that to determine whether she's brain

1           damaged, right, Doctor?

2           A,    **No**, that's one **of** the things I use.

3           Q.    I thought only medical doctors, like neurologists  
4                and neurosurgeons were qualified to make  
5                determinations whether people were brain damaged;  
6                am I wrong about that?

7           A.    No, you are wrong about that.  Delphi Toth, fox  
8                example, is a psychologist.  The -- we are  
9                qualified to make comments about neurological  
10               symptoms.

11          Q.    But you didn't run any neurological tests,  
12                psychologically on this patient, did you?

13          A.    They had already been done,

14          Q.    But you didn't have them,

15          A.    I had the report of two neurologists,

16          Q.    Okay.  At page 55, line 12, I asked you, "Like  
17                what?  Tell me.  Describe that for me," and this  
18                was from your previous answer, in a general sense  
19                you tend to react like a normal person and is this  
20                your answer was, "When I was introduced to her, she  
21                seemed to speak in a normal tone **of** voice.  She  
22                seemed to have reasonably good verbal skills.  
23                Again, her facial expressions were normal,  This  
24                was not somebody who is your stereotypical brain  
25                damaged victim."

1                   That's what **you** said, right?

2       A.     Correct.

3       Q.     And I asked you what was a stereotypical brain  
4             damaged victim and you said, "They have several  
5             deficits, One is emotionalability, the other is  
6             difficuly with memory, diffculty with abstract  
7             reasoning, the higher portable functions and the  
8             ability to pick up on social nuances are impaired  
9             in a brain damaged person." I said, "Always?" And  
10            you said, "What's that?" I said, "Always?" And  
11            you said, "That is part of the syndrome." I said,  
12            "Always?" And you said, "I think so."

13            Then I said, "Anybody that has brain damage  
14            has that problem?" You said, "'Well, it's a family  
15            of symptoms, It is part of the symptom complex of  
16            brain damage. It's possible not to have one but to  
17            have all the others. So, maybe I should revise my  
18            answer and say while it's a symptom of brain  
19            damage, every single person doesn't have every  
20            single symptom. "

21            Did I read that accurately?

22       A.     Absolutely true.

23       Q.     Thank you. I asked you if I read it accurately,  
24             didn't I?

25       A.     Yes.

1 Q. When I took your deposition it was for a half day,  
2 right, sir?

3 A. You were there the last half of the day, that's  
4 correct.

5 Q. You told me that the fee for me to take your  
6 deposition would be for a half day of your time,  
7 right?

8 A. That's right.

9 Q. I started the deposition at a quarter to two,  
10 right, sir?

11 A. You were late and that is true.

12 Q. Did I start it at a quarter to 2?

13 A. Yes.

14 Q. Was I late or was the Court Reporter late?

15 A. Your Court Reporter was late.

16 Q. Why did you just say I was late for?

17 MR. WILLIAMS: Objection, Your Honor, he's  
18 not being fair with the witness.

19 MR. HOUSEL: I'll withdraw it.

20 BY MR. HOUSEL:

21 Q. Doctor, at about four o'clock, you told me that you  
22 had some pressing writing to do and we were going  
23 to have to stop the deposition; is that right? Is  
24 it right or not?

25 A. That's a distortion, but, yes.

1 Q. Was it a distortion?

2 A. Uh-huh. It's a half truth.

3 Q. Half truth?

4 A. Correct.

5 Q. Turn to page 69.

6 THE COURT: What's the point, Mr.

7 Housel, I'm missing it?

8 MR. HOUSEL: I'll get to it after this  
9 question. I want to move on.

10 BY MR. HOUSEL:

11 Q. You charged me \$600, my client \$600 to drive down  
12 to Toledo and take your deposition for two hours,  
13 right, Doctor?

14 A. Let's check on how long,

15 Q. Is that right? If it's not right --

16 A. It's a distortion of the truth. Since you got  
17 started let's -- I always give you an extension of  
18 the time,

19 Q. Till four o'clock, right?

20 A. I'll have to check.

21 THE COURT: That's all we're going to  
22 discuss fees and time. Let's move on.

23 BY MR. HOUSEL:

24 Q. Do you remember me asking you about Delphi Toth's  
25 resume?



1 A. Yes.

2 Q. Page 70.

3 A. I do remember your asking me about her resume.

4 Q. I asked you if you knew anything about her  
5 qualifications, right?

6 A. Let's look. What line?

7 Q. 14 .

8 A. Yes.

9 Q. And you said, "I have seen her vitae resume."

10 A. Yes.

11 Q. "Impressed with that?" You said, "It's a fine,  
12 solid resume." Correct?

13 A. Right.

14 Q. I said, "Solider than yours?" And you said, "No."  
15 Right?

16 A. Right.

17 Q. Remember the discussion about the highly  
18 responsible job managing apartments?

19 A. Yes.

20 Q. In fact, you put that in your report then after the  
21 accident she got a highly responsible job managing  
22 apartments, right?

23 A. That's what I said, I think.

24 Q. Do you put anything in your report about why she  
25 lost that highly responsible job managing

1 apartments?

2 A. I'm not sure whether I put that in my report or  
3 not.

4 Q. Why wouldn't you, that would be important, wouldn't  
5 it?

6 A. Yes, I suppose so.

7 Q. In fact --

8 A. Anything is relevant.

9 Q. You said in your deposition that it was  
10 significant, didn't you?

11 A. Okay, significant.

12 Q. Is that the same as relevant?

13 A. Close enough.

14 Q. Close information?

15 A. Yes.

16 Q. Okay. You knew why she lost that job, didn't you?

17 A. Well, yes, I would say that I do.

18 Q. Okay, And you knew that she lost that job because  
19 of what she said in her deposition, right, sir?

20 A. No, I really don't agree with her description.

21 Q. Wait a minute. You read her deposition before you  
22 wrote your report?

23 A. Correct.

24 Q. And she described only in her deposition how she  
25 lost that job, right?

1       A.    She did describe it, that's right.  You're asking  
2            me whether I believe her description and my answer  
3            is that I do not.  I really don't think the patient  
4            should diagnosis themselves.  I have a different  
5            explanation.

6       Q.    She's telling you how she lost the job.  How is she  
7            diagnosing herself?

8       A.    Well, she's giving a causal explanation to her  
9            behavior and I have a different explanation.

10      Q.    And finally, at page 82, I said, "If I understand,"  
11            line 22, "If I understand *you* correctly, her  
12            pattern, the way you seem to describe it in this  
13            report is what she does is she plays like she is  
14            sick because that is part of her psychological  
15            problem?"  And your answer was, "It's  
16            hypochondriacal,  When your grandmother says she  
17            has aches and pains, that is not lying but at the  
18            same time she is oversensitive."

19                   Did I read that accurately?

20      A.    Yes.

21      Q.    And I said, "Michele is not lying either?"  And you  
22            said, "That's correct,  So, she is overly sensitive  
23            to them?"  You said, "That's right."  Right?

24      A.    Correct.

25      Q.    And Somatoform Pain Disorder is a hypochondriacal

1           difficulty in which **the** person's major complaint is  
2           pain, right?

3           A.     Where are we now?

4           Q.     Do *you* agree with that statement?

5           A.     Say it again, please.

6           Q.     Somatoform Pain Disorder is a hypochondriacal  
7           difficulty in which the person's major complaint is  
8           pain?

9           A.     That's correct.

10          Q.     Okay. And Undifferentiated Somatoform Disorder is  
11          a disorder in which the person's complaint is  
12          physical, not necessarily pain but it is a  
13          physically related problem of some kind that seems  
14          to be overemphasized based on testing and so on,  
15          right?

16          A.     Right.

17                   MR. HOUSEL:           I don't have any other  
18          questions,

19                   THE COURT:           Redirect?

20                   MR. WILLIAMS:        Thank *you*, Your Honor.

21                                   REDIRECT EXAMINATION

22                   BY MR. WILLIAMS:

23          Q.     Doctor, briefly, let's start with Plaintiff's  
24          Exhibit Number 53. I hand *you* that again.

25          A.     Okay.

1 Q. That's the OACTA Quarterly article that you wrote?

2 A. That's the one I wrote, that's right.

3 Q. what was the tenure of that article, Doctor?

4 A. This was an article that was my attempt to inform  
5 attorneys about what represents a good and a bad  
6 psychological evaluation, it wasn't oriented  
7 towards plaintiffs, it wasn't oriented towards  
8 defendants.

9 MR. HOUSEL: I'll object, Judge. It's  
10 no longer responsive to the question what the  
11 tenure of the article was.

12 THE COURT: Ask the next question.

13 BY MR WILLIAMS:

14 Q. Doctor, in the interest of completeness, I believe  
15 that you, I believe that a section of this was read  
16 concerning the Chat Scan. Let me ask you if this  
17 information appears in there, this is on the second  
18 page here. "No. There are tools available to  
19 measure the psychological damages scientifically,  
20 but some professionals don't bother to use them.  
21 After Sarah was rear-ended by a truck, a  
22 psychiatrist said that she became depressed. But  
23 he ignored her history of pre-existing mental  
24 illness, her hyperactive un-depressed behavior in  
25 the session, her psychological testing. Instead

1           the psychiatrist ran hesitate usual 30-minute Chat  
2           Scan. He asked, "Why are you depressed?" And she  
3           replied, "I got hit," so he diagnosed depression.  
4           This made everyone happy, she was pleased, he could  
5           move on to the next patient and his secretary could  
6           use a diagnosis to bill her" --

7           A.     Right.

8                     MR. HOUSEL:           Why don't you read the rest  
9           of it.   Objection, he --

10                    THE COURT:           He reads what he wants to  
11           read.   You read what you wanted to read.

12                    MR. HOUSEL:           Okay.   Judge.

13   BY MR. WILLIAMS:

14           Q.     Now, was this article meant to be somewhat  
15           informative and somewhat humorous, Doctor?

16           A.     Yes.   It was a transcription of my speech and  
17           speeches, of course, are lively, they're  
18           entertaining and they're informative.   So it was a  
19           light article.

20                    THE COURT:           I assume the next time you  
21           prepare to give one, you will keep that in mind,  
22           Doctor.

23                    THE WITNESS:        I think I'm going to keep  
24           my style the same, though.

1 BY MR. WILLIAMS:

2 Q. Now, referring you to another portion of this  
3 article that you had so many questions about --

4 MR. HOUSEL: Which portion?

5 MR. WILLIAMS: I'll go to page 6 now, if  
6 you like.

7 MR. HOUSEL: Not what I like, if that's  
8 what you want. Thank you.

9 BY MR. WILLIAMS:

10 Q. It's entitled objective ratings of behavior. And  
11 it says here, "Behavior is what the patient does in  
12 the session, what he wears and says" --

13 MR. HOUSEL: Page 6?

14 MR. WILLIAMS: Page 5, I thought I said.  
15 Thank you. Are you with me, Counsel?

16 MR. HOUSEL: Go ahead, I'm with you,

17 MR. WILLIAMS: Thank you.

18 BY MR. WILLIAMS:

19 Q. "Objective Ratings of Behavior. Behavior is what  
20 the patient does in the session, what he wears and  
21 says and how he says it. And when a patient pounds  
22 on my desk and screams, "I never get mad," his  
23 behavior is more important than the history he  
24 gives."

25 "There are structured ways to examine

1 behavior. I often "Ask-the-Opposite." A guy tells  
2 me that he's been depressed since the accident. I  
3 ask him about each symptom and he endorses them  
4 all. So, I'll ask the opposite:"

5 "Me: Are you wildly full of energy?"

6 "Faker: Yup. "

7 "Me: Are you strangely happy all the time,  
8 no matter what?"

9 "Faker: That's me."

10 "Me: Is your sleep schedule rigid, you go  
11 to bed at 11 and get up exactly at 7 every day?"

12 "Faker: Yeah. All the time."

13 "After Bill suffered a mysterious back  
14 injury, he stopped working, a psychiatrist  
15 diagnosed depression. But his behavior said  
16 otherwise. He looked like a tanned body builder.  
17 He glided into my reception area and joked with my  
18 secretary, "Hi, where is the shrink?" Later he  
19 said to me something like, "Yo, dude, I'm real  
20 depressed." When I tried to end the interview and  
21 leave, he gave me a menacing glare, motioned me  
22 back to my seat, and said, "Hey, come here. I'm a  
23 Chirstian, are you going to put that in your little  
24 report?" And I thought, "Let's see. Pessimistic?  
25 Guilt prone? Passive? Nah. His behavior is the



1 opposite of depression. "

2 Doctor, I don't want to take the time to go  
3 through this, I think the jury gets the idea,

4 MR. HOUSEL: I'll object. Would you  
5 please instruct --

6 THE COURT: No editorial comments, Mr.  
7 Williams, please. Can we move?

8 MR. WILLIAMS: I'm sorry, Your Honor.

9 THE COURT: We've had our share on both  
10 sides but please let's move on.

11 BY MR. WILLIAMS:

12 Q. Now, Doctor, I'm handing you what's been previously  
13 marked for purposes of identification Plaintiff's  
14 Exhibits 54, 55 and 56. Recognize what those are?

15 A. Yes. Those are -- this is my report, this is an  
16 addendum to my report or rather vice versa and  
17 that's a letter I wrote.

18 Q. Now, this was to some lawyer in Toledo, a  
19 plaintiff's lawyer?

20 A. Correct.

21 Q. And you only have two pages of the, I guess,  
22 revised report: is that correct, Doctor?

23 A. I believe that what I have in my hand here bonded  
24 is the final report, the two pages are the two  
25 pages that I took out and part of those two pages,

1 of the two pages I amplified on at the request of  
2 the attorney.

3 Q. Doctor, how long was that report in total?

4 A. 16 pages.

5 Q. Did that number of pages change any from the first  
6 edition to the amplification?

7 A, I really don't think so. It doesn't appear as  
8 though it did. The second report is perhaps half a  
9 page longer, again, amplification of the first.

10 Q. Now, was this report done on this lawyer's own  
11 client?

12 A. That's correct.

13 Q. Okay. Now, what did the lawyer ask you to do and  
14 what did you do? Explain this situation for us.

15 MR. HOUSEL: I'll have to object to the  
16 hearsay.

17 THE COURT: Overruled. We spent  
18 extensive time on this so we certainly have an  
19 explanation now.

20 MR. HOUSEL: Okay.

21 A. Mr. Fell called me and asked me to examine a  
22 plaintiff. I did that, sent him the report and he  
23 said, "Look, could you expand on the implications  
24 of his psychological disorder for work because this  
25 is a social security report and, therefore, it was

1 different than the one you're used to writing. All  
2 I want you do, Doctor, is to expand on his problems  
3 would affect his work." I said, "Tom, you know I  
4 can't change the substance of the report. I can't  
5 change the diagnosis,, Obviously, I can't change  
6 what I said caused it or anything." He said,  
7 "Absolutely. All I want to know is given his  
8 problem, how will that problem affect his work. Go  
9 into more detail on that." I said, "Certainly,  
10 I'll do that," and I did. Not one substantive  
11 thing in the report changed. It was an  
12 amplification.

13 BY MR WILLIAMS:

14 Q. Now, we went through some paragraphs. There is  
15 paragraph comparison made on that report and I  
16 think we were talking about some reference to  
17 whether or not this man's -- man spoke English?

18 A. Right.

19 Q. What did that have -- what was the relevance of  
20 that, Doctor?

21 A. Well, in this particular case, the poor man had  
22 hurt his back. There was medical evidence for  
23 that, he went to a psychologist who said that he  
24 was not really hurt, that he was faking. They  
25 thought he was faking because he had tripped up

1           some validity scales on a personality test, I then  
2           found out that the man couldn't hardly read English  
3           and see, the reason the test was invalidated is not  
4           because he was lying but because he couldn't read  
5           the test very well.

6                        So, I then gave him another kind of test  
7           that didn't require reading and, indeed, he did not  
8           come out to be a faker and I, therefore, supported  
9           his social security claim and I supported his  
10          lawsuits to recover damages for his injury.

11       Q.   Now, there was a portion in there where it asks  
12           about a return to work or something of that nature.  
13           You indicated, I doubt it was present in one, it  
14           was not in the other. Explain that for us.

15       A.   Well, the part that, the part that I expanded was  
16           indeed under one heading called is he capable of  
17           working. In the old report it was three  
18           paragraphs, in the new report it was about seven  
19           paragraphs. In the old report, it was about a half  
20           a page. In the new report it was a full page,

21                        So, it was a matter of amplifying one  
22           section. Everything else that he said,  
23           introduction, history, behavioral observations,  
24           testing, every one of those sections is identical  
25           in the two reports word for word. The diagnosis is

1 identical. The section called prognoses and  
2 treatment is identical word for word. There are  
3 very few changes in the report.

4 Q. And after Mr. Fell asked **you** for an amplification,  
5 is it correct that you then sent him what is now  
6 known as Plaintiff's Exhibit 56?

7 A. That's right.

8 Q. And that letter indicates that he can discard the  
9 former report?

10 A. As you requested, I elaborated on Mr. Blank's  
11 ability to work, dot, dot, dot, yes.

12 Q. In fact, going back to this OACTA article, there is  
13 something in there about a person who seems to have  
14 tripped up these validity scales on a personality  
15 test and it's, indeed a person who doesn't speak  
16 English?

17 A. That's correct.

18 Q. Now, you reviewed Dr. Toth's deposition?

19 A. Correct.

20 Q. And you're aware that she would not give me results  
21 of her tests?

22 MR. HOUSEL: Objection. Move to strike.

23 THE COURT: Sustained. We're not going  
24 to get into that.

25

1 BY MR. WILLIAMS:

2 Q. Now, page 5 of the deposition you had on Michele  
3 VanVoorhis, and I don't want to belabor this point,  
4 let me just read a short bit that was omitted.

5 MR. HOUSEL: I object, Your Honor.  
6 Comment that it was omitted is not proper.

7 THE COURT: Probably not but I think  
8 they understand, They've been here long enough,  
9 we've had a lot of things that are not proper.

10 MR. WILLIAMS: I'm at line 3, Counsel, on  
11 page 5,

12 BY MR. WILLIAMS:

13 Q. Where the question is this: "Doctor, let's back up  
14 and give it to me in even more detail. You were --  
15 who was driving? A boyfriend, Mr. John Martter.  
16 How do you spell that?" Michele goes on to spell  
17 it. Okay. "Where were you in Akron or Cleveland?  
18 On Graham Road, uh-huh, in Cuyahoga Falls. What  
19 kind of highway was it? i believe it to be four  
20 lanes but I could not be correct on that. Uh-huh,  
21 okay. You're going down this highway, roughly how  
22 fast were you going? I have no idea. Okay. Was  
23 this the first thing you saw as you were riding  
24 along? Okay, And what was the first thing you saw  
25 as you were riding along? Before the accident?

a Yes.

2 My purse fell on the floor and I was picking  
3 up my purse, When I came up is when the accident  
4 happened. Uh-huh and what did you see? I'm not so  
5 much interested in what really happened, just what  
6 did you see? I saw a car come up the right,  
7 uh-huh, and then everything just happened so,  
8 happened after that. Okay. You saw a car coming  
9 up from the right, uh-huh, And then it was snowing  
10 you mentioned, uh-huh. So, then your purse falls  
11 on the floor, you reach down to pick it up, you  
12 come up, you see something out of the corner of  
13 your eye coming from the right? Yes, a street.  
14 What happens next? I can't recall everything  
15 exactly as it happened. Uh-huh. Do the best you  
16 can.

17 To the best of my knowledge, the car came on  
18 the right, uh-huh. We were going forward and there  
19 was a truck, uh-huh. We hit a truck, I think, I'm  
20 saying, I just remember seeing the truck, uh-huh,  
21 and telephone pole. Did you see yourself hit the  
22 car that was coming from the right? I just -- I  
23 don't recall. I don't recall all the events. I  
24 just recall the car. I understand. I'm just  
25 asking what you do recall. This is what I do is

1 the car out of the right, a truck in the opposite  
2 lane coming towards me, a telephone pole on the  
3 opposite side of the street, uh-huh, along the  
4 fence. Uh-huh, okay. What, and I guess what  
5 you're saying is that all of these events and sites  
6 occurred in rapid succession over a period of a  
7 second or two. I'm not sure on the time limit but  
8 what about the outside, I'm sorry, excuse me, what  
9 would be the outside amount of time that we're  
10 talking about? A question again from you, could it  
11 be from the event that you just told me starting  
12 from the side of the car coming over here and  
13 ending up with the car stopped roughly? Answer: I  
14 have no idea, it could have been as much as a  
15 minute, more or less, It could be either. Could  
16 be more than a minute."

17 MR. HOUSEL: Objection, Your Honor.

18 THE COURT: Is this leading up to a  
19 question?

20 MR. HOUSEL: He misread a portion.

21 BY MR. WILLIAMS:

22 Q. Doctor, is that the exquisite detail that you were  
23 talking about?

24 A. Yes, that's an example.

25 Q. Now, we're talking about page 66 of the DSM-III,



1 DSM-III-R manual, where they make a diagnosis at  
2 300.70 of the Undifferentiated Somatoform Disorder?

3 A. This would be page --

4 Q. 266?

5 A. Thank you, Okay.

6 Q. Now, in that diagnosis, what is the second prong of  
7 that diagnosis, I believe it's an or?

8 A, Right. Right.

9 Q. Could you give me the second prong of that  
10 diagnosis?

11 A, The first prong is one or more physical -- one or  
12 more physical complaints and the second prong, it  
13 sort of branches, it says that "Appropriate  
14 evaluation uncovers no organic pathology." Then it  
15 goes on "Or when there is related organic  
16 pathology, the physical complaints or resulting  
17 social or occupational impairment is grossly in  
18 excess of what would be expected from the physical  
19 findings."

20 Q. Now, prior to preparing your report, Doctor, did  
21 you know the date of the accident?

22 A. Yes. It was December of 1987, December, it's  
23 slipping my mind. Middle of December.

24 Q. Now, I believe you were asked whether or not Dr.  
25 Toth had reviewed 14 more, 14 times more

13 1 information than you'd reviewed, would you agree  
2 with that statement?

3 MR. HOUSEL: I object, I don't think --

4 THE COURT: Does he agree with what,  
5 whether he was asked that or not?

6 BY MR. WILLIAMS:

7 Q. Do you agree that Dr, Toth reviewed 14 times more  
8 information than you?

9 MR. HOUSEL: Objection.

10 A, No, not at all.

11 BY MR, WILLIAMS:

12  
13  
14  
15 reviewed nearly as many documents as I did  
16 concerning Miss VanVoorhis. My stack of documents  
17 is pretty hefty and I gave two tests, each of those

18  
19  
20  
21  
22 Doctor.

23 BY MR. WILLIAMS:

24 Q. Now, you're aware that two neurologists testified  
25 in this case and they've given reports?

1 A. Right.

2 Q. Do you know what objective neurological findings  
3 they made?

4 A, I am familiar with their reports and some of the  
5 records of neurlogocial tests, yes.

6 Q, Do you know any objective evidence of the injury  
7 they found throughout their tests?

8 A, No.

9 MR. WILLIAMS: I don't have anything  
10 further, Thanks.

11 THE COURT: Any recross?

12 MR. HOUSEL: I'll be real brief, I  
13 promise.

14 THE COURT: Promise.

15 RECROSS-EXAMINATION

16 BY MR. HOUSEL:

17 Q. On page 266 in the Somatoform Disorder -- you don't<sup>t</sup>  
18 have to get your book out, I'll --

19 A. Thank you.

20 Q. You're welcome.

21 The course of an undifferentiated Somatoform<sup>II</sup>  
22 Disorder says, "Unlike in Somatization Disorder,  
23 the course variable and often is recurrent or  
24 limited to a single episode of at least six months'<sup>I</sup>  
25 duration. "

1                   Did I read that accurately?

2       A.     True.

3       Q.     It's a course of that problem, right?

4       A.     Yes.

5       Q.     "Single episodes of six months' duration," right?

6       A.     That's not all that you just read,

7       Q.     That's what it says there, though, right?

8       A.     That's not all it says. It's recurrent,

9       Q.     Okay. The testimony that you just gave was that in  
10           the final report you prepared for George Fell, you  
11           made no substantive changes: is that right?

12      A.     Yes.

13      Q.     You're saying to this Court and this Jury that it  
14           isn't a substantive change when you address whether  
15           he's capable of working for social security claim,  
16           when you change it to put he is in constant  
17           physical pain. That's not substantive, Dr. Layne?

18      A.     I believe that you will find other reference --

19      Q.     Is it substantive in your estimation? Just answer  
20           the question.

21      A.     Ask the question again,

22      Q.     Is changing a report on whether a man is capable of  
23           working for purposes of his social security claim  
24           to read he is in constant physical pain, a  
25           substantive change from the prior report that did

1 not have that information?

2 A. My prior report had that information and that's my  
3 problem. You seem to be saying that I'm pulling  
4 this new information out of the blue on the report  
5 number 2. It's just not true,

6 Q. Show me where it is in the other report.

7 A. Great, I really appreciate this. Starting with the  
8 summary "After Mr. Blank's real back injury, he has  
9 reported continuous pain and depression." Those  
10 are the first words of my report under the summary.

11 Now, if you'd like for me to go on, I'll bet  
12 you we'll be here for the next hour with me showing  
13 you how many references to this man's pain are in  
14 both references. I'll do it, if you want.

15 Q. I think they can probably read it.

16 A. I hope so.

17 Q. Is it a substantive change to put that he has  
18 difficulty with English, technically writing it?

19 A. Since I put that in the report one and report two,  
20 it is not a substantive change. It's the same  
21 information summarized in the back.

22 Q. But who reads these reports? People that evaluate  
23 them to make a determination whether to pay a  
24 claim, right?

25 MR. WILLIAMS: Objection.

1 THE COURT: Sustained.

2 BY MR. HOUSEL:

3 Q. Who reads these reports?

4 A. Unfortunately, not only the people for whom the  
5 report is relevant read them, but apparently they  
6 get out to all kinds of lawyers. That's  
7 unfortunate.

8 Q. You mean so that we can use them to cross-examine,  
9 right?

10 A. So that that means confidentiality is violated,

11 Q. So that we can use it --

12 THE COURT: Okay. Let's move on.

13 Q. So that we can use them --

14 MR. WILLIAMS: Objection, Your Honor.

15 THE COURT: Let's move on.

16 BY MR. HOUSEL:

17 Q. So that we can use to show what a fraud you are?

18 A. Excuse me? Did you just call me a fraud?

19 Q. Yeah.

20 THE COURT: Mr. Housel, that was  
21 uncalled for.

22 A. I resent you calling me a fraud.

23 THE COURT: Okay. Doctor, let's just  
24 calm down.

25 THE WITNESS: Okay.

1 BY MR. HOUSEL:

2 Q. Plaintiff's Exhibit 56. "My apologies for failing  
3 to focus on the right areas. If the enclosed still  
4 misses the mark. let me know and I'll try again."  
5 That's what it says, doesn't it?

6 A. Correct.

7 Q. There was some mark you were aiming for when you dc  
8 these evaluations, Doctor?

9 A. Would you repeat that question?

10 MR. HOUSEL: Would you repeat that  
11 question.

12 (The last question was read back.)

13 A. Yes. The mark was that the attorney wanted me to  
14 amplify on the implications of this man's pain **for**  
15 his job functioning specifically, that's what I  
16 did.

17 Q. That was the second thing he asked you to do,  
18 right?

19 A. That **is** the only thing that he asked me to do.

20 Q. He didn't ask you to do that in the first report?

21 A. Correct. He most certainly did not.

22 Q. I didn't know that lawyers could ask *you* to do  
23 anything or not do anything except do an evaluation  
24 and review the material, examine the tests and  
25 write a report. Isn't that the way it's supposed

1                   to be?

2                   MR. WILLIAMS:       Objection.

3                   THE COURT:           Sustained.   Let's move on.

4   BY MR. HOUSEL:

5       Q.   Finally, Doctor, I guess the last question I have  
6            is, you don't happen to have any idea why Roetzel  
7            and Andress went to Toledo to hire a psychologist  
8            to --

9                   MR. WILLIAMS:       Objection.

10                  THE COURT:           Sustained.   Come on, Mr.  
11                  Housel, that's not proper examination, you know  
12                  that.

13                  MR. WILLIAMS:       Your Honor, I don't have  
14                  anything further.

15                  THE COURT:           You can step down.

16                                       - - -

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