

1 IN THE COURT OF COMMON PLEAS

2 CUYAHOGA COUNTY, OHIO

3 JAMES YARBROUGH, et al.,

4 Plaintiffs,

5 - vs -

JUDGE BURNSIDE
 CASE NO. 356193

6 MAX QUINTON, et al.,

7 Defendants.

8 - - - - -

9 Videotaped deposition of FREDERIC J. LEVINE,
10 M.D., taken as if upon direct examination before
11 Dawn M. Fade, a Registered Merit Reporter and
12 Notary Public within and for the State of Ohio,
13 at the offices of Frederic J. Levine, M.D., 6803
14 Mayfield Road, Mayfield Heights, Ohio, at 2:40
15 p.m. on Tuesday, June 18, 2002, pursuant to
16 notice and/or stipulations of counsel, on behalf
17 of the Defendant Max Quinton in this cause.

18 - - - - -

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On behalf of the Defendant
Joseph Ambrose.

ALSO PRESENT:

Raymond Andrews, Jr., Video Technician

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1 MR. JEPPE: This is the videotape
2 deposition of Dr. Frederic Levine taken in
3 his offices in Mayfield Heights. It is the
4 18th day of June and it's approximately
5 2:35 p.m. The deposition of Dr. Levine is
6 being taken pursuant to the Rules of
7 Superintendents and the Ohio Rules of Civil
8 Procedure and it's my intention as attorney
9 for the Defendant Max Quinton to use this
10 deposition at time of trial.

11 Before we start with the videotape
12 deposition, the swearing in of the doctor,
13 I'd like to ask if there's any objections
14 to taking the deposition at this time, the
15 manner in which it is being taken, the
16 notice which was provided or its use at
17 time of trial.

18 MR. SIGMIER: No objection.

19 MR. MESTER: No objection.

20 MR. JEPPE: If that's the case,
21 let's go on the record and swear the doctor
22 in.

23 VIDEO TECHNICIAN: On the record.
24 Please swear in the witness.
25

1 FREDERIC J. LEVINE, M.D., of lawful age,
2 called by the Defendant Max Quinton for the
3 purpose of direct examination, as provided by the
4 Rules of Civil Procedure, being by me first duly
5 sworn, as hereinafter certified, deposed and said
6 as follows:

7 DIRECT EXAMINATION OF FREDERIC J. LEVINE, M.D.
8 BY MR. JEPPE:

9 Q. All right. Doctor, would you please state your
10 full name for the record.

11 A. It's Frederic J. Levine.

12 Q. Now, Dr. Levine, you are a doctor, are you not?

13 A. Yes, I am.

14 Q. What is your business address, sir?

15 A. It's 6803 Mayfield Road, Suite 418, Mayfield
16 Heights, Ohio 44124.

17 Q. Now, you are a physician, is that correct?

18 A. Yes, I am.

19 Q. And do you have a specialty?

20 A. I do.

21 Q. And what's your specialty, sir?

22 A. Urology.

23 Q. Can you briefly just define the scope of urology
24 for the jury, let them know what you do for a
25 living?

1 A. Urology is a study and treatment of the urinary
2 tract which primarily involves the kidneys, the
3 bladder, the prostate gland in men, and the male
4 sexual organs including the penis, testes.

5 Q. Is there a subspecialty in urology?

6 A. There are subspecialties and special areas of
7 interest.

8 Q. All right. Do you have a special area of
9 interest?

10 A. I do.

11 Q. And what is that, sir?

12 A. It's sexual dysfunction.

13 Q. And another name for sexual dysfunction is?

14 A. Erectile dysfunction.

15 Q. Erectile dysfunction. All right. Now, can you
16 briefly outline your education for the jury
17 starting with your college?

18 A. I went to undergrad at Yale University,
19 graduated in 1979. I went to medical school at
20 Case Western Reserve University, graduating in
21 1983. I subsequently did a general surgery
22 internship and residency at Boston University for
23 two years, a year of fellowship research in
24 erectile dysfunction in 1986.

25 Q. What's the year of fellowship research, what is

1 that?

2 A. That was a year, I had a year off between my
3 general surgery and my urology residency and I
4 decided to do research for that year and I got
5 together with a gentleman who was doing research
6 in erectile dysfunction and spent the year doing
7 research with him so that was considered a
8 fellowship year.

9 Q. All right. And following that what did you do,
10 sir?

11 A. Following that I did a three-year urology
12 residency at Yale University and then following
13 that I did one more year of fellowship research
14 in erectile dysfunction again back at Boston
15 University.

16 Q. Now, are you licensed to practice medicine in the
17 State of Ohio?

18 A. Yes, I am.

19 Q. And when did you become so licensed?

20 A. In 1990.

21 Q. When did you take up the active practice of
22 medicine, urology here in the State of Ohio?

23 A. In 1990.

24 Q. All right. Now, doctor, you are still obviously
25 in the practice of medicine, urology, is that

1 correct?

2 A. Yes, I am.

3 Q. Would you tell the jury, if would you, the
4 hospitals that you're affiliated with or have
5 admitting privileges to?

6 A. Currently I have privileges at Hillcrest
7 Hospital, the Lake Hospital System which includes
8 Lake West and Lake East Hospital, South Pointe
9 Hospital, University Richmond Hospital.

10 Q. Besides your practice of medicine in urology,
11 have you had time or do you take time to do any
12 teaching of your specialty?

13 A. I do do some teaching to the residents at Case
14 Western Reserve University.

15 Q. Also during the course of your career have you
16 had a chance to publish any articles, books,
17 chapters in books, et cetera, with regards to
18 your profession?

19 A. Yes, I have.

20 Q. And can you tell the jury briefly how many
21 articles that you have published or chapters in
22 books and where they've appeared?

23 A. I've published approximately 20 articles or
24 chapters in books and journals. The primary
25 journal has been the Journal of Urology. I have

1 also published chapters in several urologic
2 textbooks including Master's of Surgery,
3 Operative Procedures in Urology and several other
4 textbooks.

5 Q. Now, have you had, received any awards, honors,
6 or appointments in your profession?

7 A. Yes, I have.

8 Q. Briefly outline some of those for the jury, if
9 you would?

10 A. Well, I received an award for the resident essay
11 contest for my research on traumatic erectile
12 dysfunction. I also received another similar
13 award at the North East, North Central Section of
14 Urology, excuse me, Northeast Central, Northeast
15 Section of Urology for a similar paper, both of
16 those were in 1987.

17 Q. What is traumatic erectile dysfunction?

18 A. It's erectile dysfunction that's caused by a
19 traumatic injury which varies from falls, car
20 accidents, other vehicle accidents, but some type
21 of trauma.

22 Q. Now, are you a member of any professional
23 organizations or societies?

24 A. Yes, I am.

25 Q. Would you then, briefly, outline some of those

1 for the jury? And probably the most important
2 ones would be the ones you'd want to outline.

3 A. The most important ones are the American Urologic
4 Association, the North Central Section of the
5 American Urologic Association, the International
6 Society for Impotence Research, and the American
7 Society for Sexual Research.

8 Q. And do you have any medical certifications, sir?

9 A. Yes, I'm board certified in urology.

10 Q. And what does it mean to be board certified?

11 A. To be board certified essentially means to take a
12 test administered by the American Urologic
13 Association by which they examine your ability to
14 practice your specialty.

15 Q. Now, doctor, at my request did you examine
16 medical records of Mr. James Yarbrough?

17 A. Yes, I did.

18 Q. Now, right off the bat let's bring this out, you
19 did not examine Mr. Yarbrough, did you?

20 A. I did not.

21 Q. You are here today to render some opinions that
22 I've requested from you after the review of those
23 records?

24 A. Correct.

25 Q. After reviewing the records, do you believe it

1 was necessary for you to have seen Mr. Yarbrough
2 or to have examined him?

3 A. No, I do not.

4 Q. All right. Now, doctor, I'm going to ask you
5 just briefly, I did send you records that were
6 supplied to me through the courtesy of
7 Mr. Yarbrough's attorney and I'm going to ask you
8 if you have in fact reviewed the following
9 records, Hillcrest Hospital, the records of
10 Dr. Vento, Dr. Mars, Dr. Nickels, Dr. Moss,
11 Dr. Kriegler, Dr. Rosenberg, Dr. Julian Gordon,
12 Dr. Carlson, Dr. Robert Corn, Beachwood
13 Orthopedics and Cleveland Clinic, is that
14 correct?

15 A. Correct.

16 Q. Now, there is also another doctor that works with
17 Dr. Gordon, you reviewed some records for him as
18 well?

19 A. Correct.

20 Q. And who was that, sir?

21 A. That was Dr. Allen Seftel.

22 Q. Now, doctor, for what reason did you review these
23 records at my request?

24 A. I was requested to review these to render an
25 opinion as to the cause of Mr. Yarbrough's

1 erectile dysfunction.

2 Q. All right. Now, doctor, with respect to those
3 records, many of those do not relate --

4 A. Correct.

5 Q. -- to an erectile dysfunction problem, is that
6 correct?

7 A. Correct.

8 Q. Would you tell the jury of all those records that
9 you reviewed the ones that you found important
10 with respect to your opinions here today?

11 A. The ones are the records of Dr. Gordon and
12 Dr. Seftel.

13 Q. Now, who is Dr. Julian Gordon?

14 A. Dr. Julian Gordon is a board certified urologist
15 who practices in this area.

16 Q. And do you know Dr. Gordon?

17 A. I do know him.

18 Q. Do you know Dr. Seftel?

19 A. I do know him as well.

20 Q. All right. And he also is a qualified urologist,
21 is that correct?

22 A. Yes, he is.

23 Q. All right. I take it then from what you're
24 saying, you never had an opportunity to treat
25 Mr. Yarbrough, is that correct?

1 A. I did not.

2 Q. Now, with respect to the records that you did
3 review, could you tell the jury the complaints
4 that were given to Dr. Gordon or Dr. Seftel by
5 Mr. Yarbrough, the history that he outlined?

6 A. He was complaining of erectile dysfunction,
7 primarily an inability to achieve and/or maintain
8 an erection suitable for satisfactory completion
9 of sexual intercourse and he also was complaining
10 of some urinary problems, specifically some
11 urgency of urination and some urinary
12 incontinence.

13 Q. Was there a history at all of any traumatic type
14 of things that may have happened to him during
15 his life with respect to these complaints of
16 sexual dysfunction?

17 A. Well, he did have a history of a motor vehicle
18 accident.

19 Q. And when did that accident occur, sir, if you
20 know?

21 A. It was in March of 1997.

22 Q. All right. Now, from the records that you
23 reviewed, did it appear that the sexual
24 dysfunction began sometime after that accident?

25 A. It did

1 Q. And he was treated, I believe, by both Dr. Gordon
2 and by Dr. Seftel, is that correct?

3 A. Yes. He was evaluated by them and I believe --
4 he was evaluated by both of them.

5 Q. Now, were any tests performed on Mr. Yarbrough by
6 Dr. Seftel or Dr. Gordon?

7 A. Yes.

8 Q. And you had a chance to review those tests?

9 A. I have.

10 Q. With respect to the sexual dysfunction, do you
11 recall what tests in fact were performed or run?

12 A. He had a penile doppler study performed and he
13 also had a nocturnal penile tumescence study
14 performed in addition to a general physical
15 examination.

16 Q. The two studies that you referred to, I won't
17 attempt to try to repeat those, would you explain
18 to the jury what those are?

19 A. Okay. The penile doppler study is a study to
20 assess the vascular control of a man's penis and
21 his ability to achieve and maintain an erection.

22 To summarize, an erection occurs from an
23 increase of blood flow into the penis and an
24 ability of the blood to be trapped inside the
25 penis, as more blood comes in and gets trapped an

1 erection develops.

2 The penile doppler study is a study whereby a
3 man gets a nonpainful injection of medication
4 into the penis to stimulate both the blood flow
5 and to stimulate the ability of the muscle to
6 expand to trap blood. It allows us to assess any
7 dysfunction that a man may have in his inflow and
8 in his ability to trap blood.

9 Q. Now, did you review the results of those tests?

10 A. Yes, I did.

11 Q. And what were the results of those tests?

12 A. It showed that Mr. Yarbrough had a decrease in
13 his arterial inflow or the blood flow into his
14 penis from the right side of his penis. There
15 are two arteries that come in, the left and the
16 right, and it showed a decrease on the right
17 side. It also showed a decrease in his ability
18 to trap blood inside the penis which means that
19 it's difficult for a man then, therefore, to
20 achieve a rigid erection and maintain it.

21 Q. Now, doctor, I think you already stated that
22 trauma can cause erectile dysfunction?

23 A. Yes, it can.

24 Q. The type of dysfunction that Mr. Yarbrough is
25 experiencing, is that traumatic in nature?

1 A. The type he is experiencing is not traumatic in
2 his case.

3 Q. All right.

4 A. And I think that's important.

5 Q. Can you explain that for the jury?

6 A. Yeah. One may have traumatic vascular causes of
7 sexual dysfunction which are manifested by a low
8 arterial inflow and a decrease in his ability to
9 trap, those may occur from trauma, but that type
10 of trauma is trauma that causes pelvic fractures,
11 in other words, fractures of the pelvic bones, it
12 causes from severe, it can be caused from severe
13 perineal injuries.

14 Q. What's a severe perineal injury?

15 A. The perineum is the area between the scrotum and
16 the rectum and if a man has an injury where he
17 falls say from a couple story building, if he is
18 kicked, if he gets a football injury say to the
19 perineum, the shock of that injury can cause
20 vascular and muscular damage to that area. So
21 those types of trauma can cause vascular erectile
22 dysfunction.

23 The type of trauma that Mr. Yarbrough had,
24 trauma to his back, does not cause vascular
25 erectile dysfunction because there is no blood

1 flow to the penis or muscular, muscles that go to
2 the penis that come from the back.

3 The type of trauma to the back that can cause
4 sexual dysfunction is severe almost catastrophic
5 back injuries where the spine is severed. Okay.
6 That is not what happened to Mr. Yarbrough.

7 Q. That was my next question. From your review of
8 the medical records, and that would be all of the
9 medical records now from the emergency room, the
10 physicians that treated him, did you see any type
11 of a significant injury like you have just
12 described in Mr. Yarbrough's case?

13 A. No, I did not.

14 Q. All right. Now, doctor, then I guess based upon
15 your education, your training, your examination
16 of the records, do you have an opinion, the
17 medical records that you've reviewed, do you have
18 an opinion based upon a reasonable degree of
19 medical certainty whether or not Mr. Yarbrough's
20 erectile dysfunction is related to the motor
21 vehicle accident of March the 29th of 1997?

22 A. I do have an opinion.

23 Q. And what is that opinion, sir?

24 A. My opinion is that his erectile dysfunction was
25 not related to the injury that he incurred on

1 that date.

2 Q. Now, briefly, I think you've already said or
3 stated most of this already, but can you give me
4 the basis of that opinion?

5 A. Number one, the penile doppler studies which show
6 vascular arterial inflow disease and an inability
7 of the penis to trap blood, neither of those
8 would be caused by his type of injury.

9 He also had nocturnal penile tumescence
10 studies which showed abnormal erections which
11 would not be caused by that type of jury.

12 In addition, Mr. Yarbrough describes his
13 erectile dysfunction as occurring just after the
14 injury, but it was a progressive type of erectile
15 dysfunction that he noted to be progressive over
16 several months. That is a classic history for
17 vascular erectile dysfunction.

18 The type of erectile dysfunction that would
19 occur from a severe spinal cord injury is
20 immediate, it's not, doesn't develop over time
21 because you have an immediate injury.

22 So based on his history and based on the
23 studies that we have, I do not believe that his
24 motor vehicle accident caused his erectile
25 dysfunction.

1 Q. All right. Then, doctor, based upon your
2 training and your education, your review of the
3 medical records, do you have an opinion based
4 upon a reasonable degree of medical certainty
5 what is the source or the cause of
6 Mr. Yarbrough's erectile dysfunction?

7 A. It is a vascular cause, arterial, decreased
8 arterial inflow and what we call veno-occlusive
9 dysfunction, an inability for the muscle to trap
10 blood, which develops in men over a period of
11 time and very often is what we call idiopathic
12 and not related to any specific cause.

13 Q. All right. Now, doctor, from the records did you
14 discover or review, that you did review, did you
15 discover any other urological problems that
16 Mr. Yarbrough may have?

17 A. Well, he was complaining of some urinary urgency
18 and some incontinence, in other words, leakage of
19 urine.

20 Q. All right. Can you describe further for the jury
21 what that included?

22 A. Well, urgency is a sense that one has to urinate
23 and a sense that one has to urinate fairly
24 frequently and incontinence means a leakage of
25 urine, which he was complaining of some urinary

1 leakage, which is abnormal, one should not leak
2 urine in a normal state.

3 Q. All right. Now, can that be traumatically
4 induced?

5 MR. MESTER: Objection.

6 Q. Go ahead, sir.

7 A. It can be traumatically induced from, generally
8 from, again, a severe spinal injury or it can be
9 traumatically induced from a severe pelvic
10 fracture whereby the bladder or the external
11 sphincter is ruptured. But the only time you can
12 get a rupture of the bladder or the sphincter is
13 from a pelvic fracture, which he didn't have.
14 And, again, neurologic injury can occur from a
15 severe injury to the spine whereby the spine is
16 compressed or the spine is severed.

17 MR. MESTER: Move to strike.

18 Q. Did you review the records and discover or tell
19 the jury what studies were performed?

20 A. Yes, Mr. Yarbrough had a urodynamic study
21 performed. A urodynamic study is a study which
22 essentially evaluates the dynamics of the
23 bladder, the ability of the bladder to hold
24 urine, the ability of the bladder to relax as
25 urine comes in, the ability of the bladder to

1 contract and empty, and the ability of the
2 sphincter to open up to allow the urine to come
3 out.

4 Q. Go ahead.

5 MR. MESTER: Could we go off the
6 record for a second?

7 MR. JEPPE: Sure.

8 VIDEO TECHNICIAN: Off the record.

9 MR. MESTER: I object to any
10 opinions expressed in this case by Dr.
11 Levine. The one report I have from
12 November 24, 2000 expresses absolutely no
13 opinions with respect to urgency or
14 incontinence with respect to Mr. Yarbrough
15 in this case and I understand no
16 supplemental report has been provided so
17 pursuant to Rule 21.1 such testimony is
18 inadmissible in this case and if I could
19 have a continuing objection, Jerry, if I
20 may, to any further testimony on that.

21 MR. JEPPE: You can.

22 Q. Doctor, what tests, what were the results of the
23 tests that were performed?

24 A. The results of the urodynamic testing essentially
25 showed, and I have a copy in here, well,

1 essentially showed that as the bladder filled up
2 he had normal sensation. Okay. So there was no
3 abnormal sensation to his bladder and no abnormal
4 increase in the bladder pressure as the bladder
5 filled with urine, which is a normal response.

6 He had a normal capacity, I believe he held
7 close to 322 cc's of fluid in his bladder which
8 is normal and at that point the bladder relaxed
9 well, again a normal response.

10 Mr. Yarbrough then was asked to urinate as
11 part of the study and it showed that he was able
12 to increase the pressure of his bladder
13 voluntarily, again a normal response, allowing
14 the urine to flow out. The one abnormal finding
15 was that he had a slow flow, in other words, a
16 lot of pressure pushing but a low flow beyond the
17 sphincter indicating that the sphincter was not
18 relaxing as well as it should.

19 Now, that can happen generally in one of two
20 cases, one, when you have what's known as
21 detrusor sphincter dyssynergia or the bladder and
22 the sphincter do not coordinate. The sphincter
23 is supposed to relax as the bladder contracts and
24 that wasn't happening. That will happen
25 pathologically only if you have a complete or

1 near complete injury to the spinal cord.

2 The other time that it will happen is if a
3 man is anxious or if he is having pain. And very
4 often when a man has pain he will not be able to
5 relax his sphincter or when he's anxious, such as
6 in a study situation as he was in you may see
7 this and I believe that's what could be happening
8 in this case.

9 Q. All right. And, doctor, based upon your
10 education and your training and the records that
11 you have reviewed, do you have an opinion based
12 upon a reasonable degree of medical certainty
13 whether this voiding dysfunction that you've
14 related is in fact related to the motor vehicle
15 accident of March the 29th, 1997?

16 A. Yes, I do.

17 Q. First of all, do you have an opinion?

18 A. Yes, I do.

19 Q. And what is that opinion?

20 A. That opinion is that the voiding dysfunction was
21 not related to the motor vehicle accident.

22 Q. All right. Then, doctor, again based upon your
23 training and your education and the medical
24 records that you have reviewed, do you have an
25 opinion based upon a reasonable degree of medical

1 certainty as to what the source or cause of this
2 voiding dysfunction is?

3 A. I believe that it is related to his pain and the
4 discomfort that he has in his back which often
5 will relate to some sphincter spasm.

6 MR. JEPPE: Okay. Thank you. I
7 have nothing further.

8 MR. MESTER: Why don't we go off
9 the record.

10 VIDEO TECHNICIAN: Off the record.

11 - - - -

12 (Off the record.)

13 - - - -

14 VIDEO TECHNICIAN: On the record.

15 - - - -

16 CROSS-EXAMINATION OF FREDERIC J. LEVINE, M.D.

17 BY MR. MESTER:

18 Q Doctor, good afternoon, my name is Jonathan
19 Mester. I represent Jim and Linda Yarbrough in
20 this matter.

21 Just a few questions for you. And let me be
22 clear, first of all, in your role in this case.
23 You were retained by Mr. Jeppe on behalf of his
24 client to render an opinion in this case?

25 A Correct.

1 Q. All right. And you're being compensated for that
2 here today?

3 A. Yes, I am.

4 Q. Okay. And for your review and so forth?

5 A. Correct.

6 Q. Okay. You've never treated Jim Yarbrough?

7 A. I did not.

8 Q. Okay. So you didn't send him for any tests,
9 prescribe him medications or do anything else to
10 help this patient, correct?

11 A. No, I did not.

12 Q. Okay. In fact I think you had mentioned in your
13 direct examination, you never actually saw James
14 Yarbrough?

15 A. No.

16 Q. All right. So the opinions that you're providing
17 here today are based on never actually having
18 seen the individual that you're rendering these
19 opinions on?

20 A. Yes.

21 Q. All right. If Jim Yarbrough were to walk down
22 the street you would have no idea who he would
23 be?

24 A. Correct.

25 Q. Okay. Doctor, have you testified in cases

1 similar to these in the past?

2 A. I have.

3 Q. Okay. And how long have you been doing these
4 type of testimony, doctor?

5 A. Roughly eight years.

6 Q. Okay. So you've been hired in the past by
7 defendants to testify on these types of personal
8 injury complaints?

9 A. I have.

10 Q. You've been hired by insurance companies as well,
11 I take it?

12 A. Not by insurance companies.

13 Q. Okay. What about workers' compensation claims,
14 have you been hired on any of those?

15 A. No.

16 Q. Okay. All right. Doctor, with regard to James
17 Yarbrough, first of all, let's start with the
18 voiding dysfunction that you talked about.

19 Doctor, you prepared one opinion in this case,
20 correct, one medical report?

21 A. Correct.

22 Q. And I have that dated November 24, 2000. Do you
23 have that in front of you?

24 A. Yes.

25 Q. Okay. Doctor, am I reading this correct, you've

1 expressed no opinion in your report with respect
2 to the voiding dysfunction, have *you*?

3 A. Correct.

4 Q. Okay. You did not express any opinion?

5 A. I did not express an opinion.

6 Q. And this is the only opinion that you provided,
7 the only written opinion that you provided in
8 this case prior to your testimony here today?

9 A. Yes.

10 Q. All right. So when Mr. Jeppe contacted you about
11 providing opinions in this case, you did not
12 provide him with an opinion with respect to the
13 voiding dysfunction, is that correct?

14 A. Correct.

15 Q. Okay.

16 MR. MESTER: Off the record for a
17 second.

18 VIDEO TECHNICIAN: Off the record.

19 MR. MESTER: I am going to ask the
20 doctor, cross-examine him on the few
21 questions with respect to his new opinions
22 here today on the voiding dysfunction
23 issue. Again, I do not believe this is
24 something that would be played at trial and
25 I'll withdraw it if his direct examination

1 is stricken as this is the first notice I
2 had of any opinions that the doctor would
3 be providing today.

4 VIDEO TECHNICIAN: On the record.

5 Q. Now, doctor, you mentioned in your direct
6 examination with respect to his urgency and
7 incontinence that your belief is that the cause
8 of it was related to the pain he had in his back?

9 A. That was related to that. It was also a
10 diagnosis of prostatitis that he had that was
11 treated with antibiotics as well.

12 Q. Okay. So, but explain that to me, doctor, you
13 mentioned that the cause of his urgency problems
14 is related to the pain in the back, how does that
15 work?

16 A. Well, many times when people have pain they have
17 difficulty emptying their bladder.

18 Q. Okay.

19 A. You got a sphincter spasm and you, it's a
20 response of the sphincter to close off so when
21 one urinates, even though you're increasing the
22 bladder pressure, you're unable to completely
23 empty the bladder so with a bladder that's still
24 partially full it may fill up much more quickly
25 and then you're going to have more urge to go

1 rather than when you empty out a bladder.

2 Q. Okay. Doctor, you have reviewed the records in
3 this case with respect to the neurologists and
4 orthopedic surgeons and so forth who have treated
5 Mr. Yarbrough?

6 A. Yes.

7 Q. You're aware that he sustained an injury to his
8 back in this accident?

9 A. Yes.

10 Q. So, doctor, I mean, aren't we essentially coming
11 at this but saying the exact same thing? I mean,
12 doctor, isn't it true that his urgency and
13 incontinence was caused by this motor vehicle
14 accident even under your own opinions?

15 A. Well, my opinion is it could be from the pain,
16 but as far as an organic objective evidence of
17 any type of bladder dysfunction caused by the
18 injury, I see no objective evidence of that.

19 Q. All right. Fine, doctor. But you would at least
20 agree with me that the pain in his back that he
21 sustained as a result of his motor vehicle
22 accidents -- and you saw that in the records,
23 correct, doctor?

24 A. I saw that.

25 Q. The pain that he received in his back from these

1 motor vehicle accidents is essentially, because
2 of that pain in his back, what caused his
3 problems with urgency and incontinence?

4 A. Pain can cause that.

5 Q. And in this case with Mr. Yarbrough that's what
6 happened?

7 A. I think it's very possible.

8 Q. Is that your opinion, you've told us on direct
9 that's your opinion of what happened, right?

10 A. That because of the pain he can have this urgency
11 and this incontinence.

12 Q. Okay. Because of the pain in his back?

13 A. Right.

14 Q. And you see nothing to suggest in the records
15 that Mr. Yarbrough was having any back pain prior
16 to that accident of March '97, have you?

17 A. No.

18 Q. Okay. And you've read Dr. Gordon's report where
19 he indicates that the urgency and incontinence
20 was due to the motor vehicle accident, correct?

21 A. Right.

22 Q. So essentially you don't really disagree with
23 Dr. Gordon on that point, do you?

24 A. I'm not sure what he means by that, but if he
25 feels that there is a, an injury and an organic

1 cause for it then I would disagree with that.

2 Q. Okay. But if he --

3 A. But if it was from the pain, I would agree that
4 it was from the pain.

5 Q. From the pain in his back?

6 A. Right.

7 Q. Okay. Now, moving on to your testimony with
8 respect to his erectile dysfunction. Doctor, you
9 will agree with me that tests were done in this
10 case to verify the organic nature of his erectile
11 dysfunction?

12 A. Correct.

13 Q. And what does it mean, doctor, to say that the
14 erectile dysfunction was of an organic nature?

15 A. We generally differentiate between organic or
16 physical and psychological causes of erectile
17 dysfunction. They're not mutually exclusive, but
18 we talk about both. So when we say organic we
19 mean there is a definite physical abnormality
20 that causes the erectile dysfunction.

21 Q. And in Mr. Yarbrough's case there was a definite
22 physical abnormality which caused his erectile
23 dysfunction?

24 A. Correct.

25 Q. Okay. And that was verified, I believe, in tests

1 that were administered by Dr. Seftel, correct?

2 A. Correct.

3 Q. And Dr. Seftel is somebody who you have worked
4 with in the past, correct?

5 A. Yes.

6 Q. In fact, glancing at your CV before we started,
7 you've actually published some articles with
8 Dr. Seftel?

9 A. I may have published one with him, I don't even
10 remember if we -- I know we've worked together
11 because we're both here in town.

12 Q. I see two of them here, two entries, doctor, one,
13 both in '99.

14 A. Oh, correct. That was the --

15 Q. Do you recall those?

16 A. Yes, those were the studies where I submitted
17 tissue to his lab, correct.

18 Q. Okay. All right. So, again, doctor, we agree
19 that Mr. Yarbrough has a physical problem here
20 with respect to his erectile dysfunction?

21 A. Correct.

22 Q. Okay. And, doctor, tell me about the testing
23 that Mr., that Dr. Seftel did on Mr. Yarbrough.

24 A. Okay. He did two tests, one was the penile
25 doppler study and the other was a nocturnal

1 penile tumescence study.

2 Q. Let's talk about the nocturnal, I think it was
3 called an NPT study, correct?

4 A. NPT study, correct.

5 Q. How exactly does that work? How is that
6 conducted?

7 A. Well, a man normally has erections at night while
8 he's asleep. It's a function when a man goes
9 into REM sleep there are certain nerves
10 essentially that are stimulated from the brain
11 that go down and cause an erection and it's a
12 normal physiologic function.

13 The NPT study is a study whereby a man has
14 rings or monitors placed on his penis and they
15 monitor what the penis does throughout the night
16 It tells whether the man is getting an erection,
17 how hard they are, how long they last.

18 Q. Okay. And this is what Mr. Yarbrough did?

19 A. Correct.

20 Q. He had to wear this monitor on three nights?

21 A. Correct.

22 Q. Okay. And the result of this test was abnormal,
23 that he had a physical finding?

24 A. Correct.

25 Q. Okay. In fact as I'm looking at the reading of

1 the tests, it appears to read, "The patient's NP
2 testing is abnormal on a number of parameters and
3 suggestive of an organic etiology.''

4 A. Correct.

5 Q. Okay. Now, doctor, in the records that you've
6 been shown in this case, did you see any evidence
7 that Mr. Yarbrough had had a problem with
8 erectile dysfunction prior to the motor vehicle
9 accident?

10 A. No.

11 Q. Okay. Doctor, you'll agree with me that erectile
12 dysfunction can be caused by a neurologic injury?

13 A. Correct.

14 Q. Okay. And you will also agree with me, I assume,
15 that Mr. Yarbrough did suffer a neurologic injury
16 in this motor vehicle accident?

17 A. Correct.

18 Q. You've seen the records?

19 A. Yes.

20 Q. I know we're getting a little bit out of your
21 field at this point, but you had a chance to
22 review the MRI scans that were done, particularly
23 the one on March 29th of '97 at the emergency
24 room?

25 A. Right.

1 Q. And did you see in that record the impressions
2 that Mr. Yarbrough had two herniated disks in his
3 lower spine?

4 A. Yeah, he had two bulges on the left side.

5 Q. Okay. And did you also see where there was a
6 finding of probable blood within the lower lumbar
7 canal?

8 A. Yes.

9 Q. Okay. So you'd agree with me, doctor, that's a
10 relatively significant neurological injury?

11 A. It's an injury. The significance of the
12 neurologic damage I can't say because I'm not a
13 neurologist.

14 Q. Getting out of your area.

15 A. Right.

15 Q. I understand. You mentioned that you also
17 reviewed the records from the Cleveland Clinic
18 Foundation?

19 A. Right.

20 Q. Okay. And, again, I think that was, the jury by
21 this time would have heard from Dr. Oas, who is a
22 neurologist in the vestibular department at the
23 Clinic, did you read those documents?

24 A. Yes, I went through them. Again, it's beyond my
25 field, so --

1 Q. I understand. But you did see in those documents
2 where Dr. Oas and the other physicians at the
3 Clinic diagnosed him with a neurologic injury
4 affecting the cervical area as well?

5 A. Correct.

6 Q. So, and I understand we're out of your area, and
7 I'm not going to ask you specific questions here
8 in the field of neurology, but I guess I just
9 want to make sure we're clear, from your review
10 of these records, Mr. Yarbrough sustained
11 neurologic injuries to both his lumbar spine and
12 to his cervical spine in these motor vehicle
13 accidents, is that correct?

14 A. He sustained injuries to both areas and, again,
15 from, I can't comment on the extent of the
16 neurologic injury, but he did sustain injuries to
17 both areas.

18 Q. I understand. Okay. And I'm not going to ask
19 you to get into that.

20 A. Yeah.

21 Q. Okay. Now, in your direct examination I believe
22 you indicated that erectile dysfunction is
23 certainly something that is, that can be
24 traumatically caused?

25 A. Correct.

1 Q. All right. In fact, you were given an award, I
2 think you said, what, about 15 years ago for the
3 research you did in this area?

4 A. Correct.

5 Q. And as part of your research you have certainly
6 seen where traumatic car accidents such as Mr.
7 Yarbrough suffered in March of '97, can cause
8 erectile dysfunction?

9 A. Car accidents can but not with the same mechanism
10 of injury that Mr. Yarbrough had.

11 Q. Explain what you mean by that, doctor?

12 A. Well, the mechanism of injury, he had a back
13 injury. The car accidents that can cause
14 erectile dysfunction are accidents that cause a
15 pelvic fracture or perineal damage, those can
16 cause the vascular, the types of vascular changes
17 that are seen on his vascular study.

18 Q. Okay. Well, doctor, did Mr. Yarbrough only
19 suffer a back injury in that accident?

20 A. Well, he did not suffer a pelvic fracture or
21 perineal injury which are the two things that can
22 cause --

23 Q. All right. I think we can agree -- I didn't mean
24 to interrupt you.

25 A. A knee injury, I believe he bumped his knee, but,

1 again, that would not relate to his sexual
2 functioning.

3 Q. All right. Now, we can agree, I think, that
4 Mr. Yarbrough did not suffer a pelvic fracture.

5 A. Right.

6 Q. But when you're talking about a perineal injury,
7 what type of injury are you talking about?

8 A. Perineal injuries are crush injuries. We're
9 talking about injuries where, the classic case is
10 somebody who's say in falling out of a second or
11 third story building and comes right down on the
12 perineum, people who are jumping over park
13 benches or fences and land right on that area and
14 they develop severe bruises, swelling, ecchymosis
15 as we say, of the perineum, of the perineal area
16 and the scrotum as well.

17 Q. Do you have any idea in this case exactly what
18 happened to Mr. Yarbrough inside of that vehicle
19 upon impact?

20 A. I don't know what happened exactly. I wasn't
21 there.

22 Q. Okay. But you have reviewed the records, right?

23 A. Right.

24 Q. Can you tell me from your review of the records
25 exactly the mechanism of injury, in other words,

1 exactly what portions of Mr. Yarbrough's body
2 were, you know --

3 A. Again, I'd have to review them, but I know he
4 sustained a back injury and a knee.

5 Q. Well, I understand that, doctor, but I guess my
6 question is this: You don't know whether
7 Mr. Yarbrough did in fact sustain a direct injury
8 to his perineal area, do you?

9 A. There is no evidence that he did, there is no
10 complaint of pain in the area, there is no
11 swelling or ecchymosis in the area. Motor
12 vehicle accidents, and I've done a lot of
13 research on these, we've never seen a direct
14 perineal injury because there's nothing whereby
15 the perineum is going to be pushed up against a
16 solid object. So can I categorically say that
17 nothing hit the perineum, no, but by reviewing
18 the records I can with a lot of certainty say he
19 did not have a significant perineal injury.

20 Q. All right. But again, you don't know the exact
21 mechanism of injury here, correct?

22 A. I wasn't in the car.

23 Q. Okay. And, in fact, you never saw Mr. Yarbrough
24 here in your office to get that?

25 A. I didn't.

1 Q. Would that have been helpful for you in terms of
2 your opinions in this case?

3 A. No.

4 Q. Well, but, doctor, I'm a little confused on that,
5 I mean, you're telling us here today that the way
6 you suffer this type of injury is through a, you
7 know, a shock, a trauma to your perineal area.

8 A. Right.

9 Q. Wouldn't it have been helpful for you to have
10 interviewed James Yarbrough and find out whether
11 that occurred?

12 A. Well, we have extensive medical records whereby
13 there's no evidence of any perineal injury and
14 it's rare to ever get a perineal injury in a car
15 accident, so I don't think that that would have
16 been helpful.

17 Q. Doctor, when you've done these types of defense
18 medical examinations in the past, do you normally
19 meet with the person?

20 A. Sometimes I have and sometimes I haven't.

21 Q. How do you make that determination?

22 A. Well --

23 Q. In other words, is there a reason in this case
24 you didn't meet with Jim Yarbrough?

25 A. I was asked to review his records and render an

1 opinion based on those and seeing what his
2 physical examination is and what his studies were
3 I feel that I could render a good decision based
4 on that.

5 Q. Would you have objected if Mr. Jeppe had asked
6 you to see Mr. Yarbrough?

7 A. No.

8 Q. Do you agree with me that could have been
9 helpful, potentially fill in some blanks?

10 A. I don't think it would have been that helpful. I
11 have good objective studies and a good history
12 taken by other people that tell me what I need to
13 know.

14 Q. Although you don't know the exact mechanism of
15 injury --

16 MR. JEPPE: Objection.

17 Q. -- in other words, what happened to him in the
18 car?

19 MR. JEPPE: We're beating this
20 thing, it is a dead horse.

21 Q. Am I correct, doctor?

22 MR. JEPPE: Objection.

23 A. I can't say exactly what happened to him in the
24 car. I wasn't in the car.

25 Q. Okay. Well, none of us were actually in the car,

1 doctor.

2 A. Right.

3 Q. Doctor, you've looked at the records from
4 Dr. Gordon, I think you told us?

5 A. Correct.

6 Q. And Dr. Gordon attempted to treat, you would
7 agree, Mr. Yarbrough's erectile dysfunction?

8 A. Right.

9 Q. I believe he was given Viagra?

10 A. Correct.

11 Q. Okay. And were these treatments effective?

12 A. Viagra was not effective.

13 Q. Okay. Have you seen in his records that any
14 treatments were particularly effective for
15 Mr. Yarbrough?

16 A. No.

17 Q. Doctor, with respect to the venous leakage,
18 that's something that, is that something that
19 somebody like Mr. Yarbrough can have and still be
20 able to maintain an erection?

21 A. Yes, because there are different degrees of
22 venous leakage

23 Q. Okay. In other words, I guess what I'm trying to
24 get at here is where, at what point did
25 Mr. Yarbrough suffer that venous leakage, do we

1 know that?

2 A. Venous leakage almost invariably short of a
3 traumatic injury is something that develops over
4 a period of time. It's not a specific incident
5 that will cause venous leakage.

6 Q. Okay. So are you able to tell us from your
7 review of the records in this case when
8 Mr. Yarbrough developed that venous leakage?

9 A. I can't say exactly. It could have, it's a
10 progressive thing. It could have started before,
11 it could have started after. All I do, all I
12 know is we have objective evidence at the time of
13 his test that he had venous leakage.

14 Q. Okay. And when was that test done again?

15 A. That test was done, I have to check Dr. Seftel's
16 note.

17 Q. Sure.

18 MR. JEPPE: I'll supply the
19 records for you, doctor.

20 A. Yeah. Dr. Seftel, I believe that it was in 1999,
21 but the note from Dr. Seftel right here --

22 Q. What's the date of that, doctor?

23 A. 7/23/99.

24 Q. Okay. And that's over a year after, I'm sorry,
25 over two years after the motor vehicle accident?

1 A. Correct.

2 Q. Okay. And, Doctor, you reviewed the notes from
3 Dr. Gordon. I believe he started seeing
4 Dr. Gordon before he had those tests with
5 Dr. Seftel, correct?

6 A. Correct.

7 Q. And that's when he was having the problems with
8 er ctile dysfunction?

9 A. Correct.

10 Q. Did you see any indications that he was having
11 these problems with erectile dysfunction before
12 the accident?

13 A. Before the accident, no.

14 Q. Okay. So I guess my question is, Doctor, did
15 Mr. Yarbrough have this venous leakage before the
16 accident?

17 A. It's possible that he could have had it before
18 the accident.

19 Q. Do you have an opinion in that regard?

20 A. I don't have an opinion either way. I don't
21 know.

22 Q. Okay. If he had the venous leakage before the
23 accident would you expect him to have been
24 experiencing problems with erectile dysfunction?

25 A. He could have or he may not have. Again, there's

1 is a continuum.

2 Q. All right. So you would agree with me then, as
3 we talked about before, that one can have a
4 venous leakage, as Mr. Yarbrough has been shown
5 to have, and still have proper erections?

6 A. You can have a certain degree of it, yes.

7 Q. All right. So if Mr. Yarbrough did come into
8 this with a certain degree of venous leakage, as
9 we talked about, and then sustained a
10 neurological injury to the extent that we've
11 discussed here today, the neurological injury
12 could be the precipitating force in causing that
13 erectile dysfunction?

14 A. I don't see any evidence that he had a neurologic
15 injury related to the erectile dysfunction.

16 Q. Well, we talked about that, we've discussed that,
17 I guess.

18 A. Right. But we don't have any evidence that he
19 had any injury to the neurologic input to his
20 penis.

21 Q. All right. I guess my only question is this,
22 doctor, one can have a venous leakage such as
23 Mr. Yarbrough had and still have good erections?

24 A. Correct.

25 Q. Okay. And in fact, as you said, Mr. Yarbrough

1 may have had this venous leakage before the
2 accident and had been having perfectly fine
3 erections?

4 A. To some degree, yes.

5 Q. Okay. Doctor, will you agree with me that you
6 cannot rule out in this case that Mr. Yarbrough,
7 based on -- strike that.

8 Doctor, you can't rule out based on
9 everything that you've seen in this case that
10 Mr. Yarbrough's erectile dysfunction was in part
11 caused by this motor vehicle accident?

12 MR. JEPPE: Objection.

13 A. Restate the question.

14 Q. Sure. Doctor, you cannot rule out, I understand
15 your opinion in this regard, but you can't rule
16 out, based on the fact that Mr. Yarbrough had no
17 problems prior to this motor vehicle accident,
18 based on the fact that he sustained neurologic
19 injury, and based on the fact that you don't know
20 the extent of the perineal injury or compromise
21 that occurred in this case as a result of the
22 accident, you can't tell us for sure whether or
23 not that his erectile dysfunction was caused by
24 this motor vehicle accident?

25 A. I can tell based on all the evidence that I have

1 that it was not. I don't see anything there that
2 tells me that the motor vehicle accident and the
3 mechanism of injury would lead to erectile
4 dysfunction.

5 Q. All right. But, doctor, you can't rule it out
6 here, can you?

7 MR. JEPPE: Objection. Asked and
8 answered.

9 A. No, I do not believe that -- I believe that I can
10 rule it out that it was not related to the motor
11 vehicle accident.

12 Q. And just so we're clear, that's based on the fact
13 that you don't have any evidence that he suffered
14 any type of trauma or injury to the perineal
15 area?

16 A. It's based on the testing, it's based on the
17 history that he gives, it's based on several
18 things, not based on the lack of trauma to the
19 perineum.

20 Q. Doctor, if you were offered the opportunity to
21 see Mr. Yarbrough in this case and to revisit
22 your opinions after seeing him, would you be
23 interested in that?

24 A. I would. I would do it, but I believe that at
25 this point, which is now five years out, there's

1 nothing that I would find on testing now that
2 would change things or be able to be related to
3 the injury back then.

4 Q. So, in other words, you would have liked to have
5 seen him a couple years ago?

6 MR. JEPPE: Objection.

7 A. No. No. I believe I have all the information I
8 need from that, I did not need to see him back
9 then.

10 MR. MESTER: All right. That's
11 all I have, doctor.

12 MR. SIGMIER: Let's go off the
13 record for a minute.

14 - - - -

15 (Off the record.)

16 - - - -

17 VIDEO TECHNICIAN: On the record.

18 - - - -

19 CROSS-EXAMINATION OF FREDERIC J. LEVINE, M.D.

20 BY MR. SIGMIER:

21 Q. Dr. Levine, my name is Harry Sigmier. I
22 represent Joseph Ambrose in this case, he's a
23 co-defendant.

24 VIDEO TECHNICIAN: Off the record.

25 - - - -

(Off the record.)

- - - -

VIDEO TECHNICIAN: On the record.

Q. Yeah, you indicated that Mr. Yarbrough's erectile dysfunction began after the March 1997 accident, are you able to tell me where in the records you started to see evidence that that problem was beginning?

A. I can't dig it up exactly, but I remember reviewing that he said that he developed erectile dysfunction after the accident. I would have to re-review that to tell you exactly where.

Q. All right. Then Dr. Seftel did this test where he put a ring on his penis for three nights, is that correct?

A. Correct.

Q. Was that the test that was done on July 23rd, 1999?

A. The one that he comments on July 23rd is the penile doppler study. I believe that's the nocturnal penile tumescence study and, which was done right around that time, and I have a report on that from, on, it was from 6/21 to 6/23, 1999.

Q. Then you were talking about the, I think you said in regard to the bladder problems he had

1 urodynamic studies performed?

2 A. Right.

3 Q. When were they performed?

4 A. Again, that was by Dr. Gordon and that was done
5 on 3/8/99.

6 MR. SIGMIER: That's all I have.
7 Thank you.

8 MR. JEPPE: Thank you, doctor.
9 Nothing further.

10 MR. MESTER: Thank you.

11 VIDEO TECHNICIAN: Doctor, you
12 have a right to review this videotape in
13 its entirety or you could waive that right.
14 Do you wish to waive that right?

15 THE WITNESS: I will waive that
16 right.

17 VIDEO TECHNICIAN: You have a
18 right to review the written transcript or
19 you could waive that right, would you waive
20 that right also?

21 THE WITNESS: I will waive that
22 right also.

23 VIDEO TECHNICIAN: Can we
24 stipulate possession of the videotape
25 remains in the custody of Mehler &

1 Hagestrom until trial in court?

2 MR. JEPPE: Yes.

3 MR. MESTER: Yes.

4 MR. SIGMIER: Yes.

5 VIDEO TECHNICIAN: Off the record.

6 - - - -

7 (The reading and signing of the
8 deposition was expressly waived by the witness
9 and by stipulation of counsel.)

10 - - - -

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C E R T I F I C A T E

The State of Ohio,) SS:
County of Cuyahoga.)

I, Dawn M. Fade, a Notary Public within and for the State of Ohio, authorized to administer oaths and to take and certify depositions, do hereby certify that the above-named witness was by me, before the giving of their deposition, first duly sworn to testify the truth, the whole truth, and nothing but the truth; that the deposition as above-set forth was reduced to writing by me by means of stenotypy, and was later transcribed into typewriting under my direction; that this is a true record of the testimony given by the witness; that said deposition was taken at the aforementioned time, date and place, pursuant to notice or stipulation of counsel; and that I am not a relative or employee or attorney of any of the parties, or a relative or employee of such attorney, or financially interested in this action; that I am not, nor is the court reporting firm with which I am affiliated, under a contract as defined in Civil Rule 28(D).

IN WITNESS WHEREOF, I have hereunto set my hand and seal of office, at Cleveland, Ohio, this _____ day of _____ A.D. 20 _____


Dawn M. Fade, Notary Public, State of Ohio
1750 Midland Building, Cleveland, Ohio 44115
My commission expires October 27, 2002

1
2
3 C E R T I F I C A T E
4

5 The State of Ohio,) SS:
6 County of Cuyahoga.)

7 I, Dawn M. Fade, a Notary Public within and
8 for the State of Ohio, authorized to administer
9 oaths and to take and certify depositions, do
10 hereby certify that the above-named witness was
11 by me, before the giving of their deposition,
12 first duly sworn to testify the truth, the whole
13 truth, and nothing but the truth; that the
14 deposition as above-set forth was reduced to
15 writing by me by means of stenotypy, and was
16 later transcribed into typewriting under my
17 direction; that this is a true record of the
18 testimony given by the witness; that said
19 deposition was taken at the aforementioned time,
20 date and place, pursuant to notice or stipulation
21 of counsel; and that I am not a relative or
22 employee or attorney of any of the parties, or a
23 relative or employee of such attorney, or
24 financially interested in this action; that I am
25 not, nor is the court reporting firm with which I
am affiliated, under a contract as defined in
Civil Rule 28(D).

17 IN WITNESS WHEREOF, I have hereunto set my
18 hand and seal of office, at Cleveland, Ohio, this
19 30th day of June A.D. 20 02.

20
21 
22 Dawn M. Fade, Notary Public, State of Ohio
23 1750 Midland Building, Cleveland, Ohio 44115
24 My commission expires October 27, 2002
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LAWYER'S NOTES

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