

THE STATE OF OHIO }
ASHTABULA COUNTY } SS:

Doc. 339

IN THE COURT OF COMMON PLEAS

CIVIL DIVISION

DALE R. PINNEY, ET AL,
Plaintiffs,

-VS-

THE CITY OF CONNEAUT, OHIO,
ET AL,

Defendants.

CASE NO, 68128

PARTIAL TESTIMONY
OF

DR JAMES RICHARD NOLAN

Trial to Jury

Held Before

Honorable Ronald W. Vettel

October 20, 1981

APPEARANCES:

On Behalf of the Plaintiffs:

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Ashtabula County Court House, Jefferson, Ohio 44047.

On Behalf of the Defendants:

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Street, Conneaut, Ohio 44030.

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Ashtabula County Court House
Jefferson , Ohio 44047

I N D E X

WITNESSES :

<u>Plaintiff;</u>	<u>Partial Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
Dr. James Richard Nolan	4	25	40	42

EXHIBITS :

<u>Plaintiff:</u>	<u>Marked</u>	<u>Admitted</u>	<u>Attached</u>
Exhibit H (spine model)	LO	--	--
Exhibit C sub 1 through C sub 7 (myelogram films)	16	--	--

Dr. James Richard Nolan - D.

Thereupon, on October 22nd, 1981, at approximately 10:00 o'clock A.M., witness Dr, James Richard Nolan was duly sworn, and direct examination was begun by Mr. Gaines,

PARTIAL DIRECT EXAMINATION OF DR. JAMES RICHARD NOLAN

CONTINUED BY MR. GAINES:

Q No. I would rather have now what physical examination you made of him,

A Right, The physical examination was limited by the patient, He allowed his wife to undress him -- his wife was present during the entire physical examination and taking of the history and the taking of the x-rays, and this is standard procedure in my office, we like to have husbands and wives accompany their spouses.

Q Was she helpful?

A Oh, yes, very. He allowed his wife to undress him for the physical examination, He stood with his buttocks against the examining table, and he would not sit down. I did what I could on the examination. He was oriented in time and space, Alert and rational;, cooperative within his own limits,

Now, the patient's stance, I wrote and I still say it, was wildly abnormal, That's a rather strong expression for a doctor to put down. He stands with an opisthotonos. The medical term describes the back as arched backward as far as it would be possible to move it back, backwards, as far as possible, That's

what that word means. It's a very strong word used for a very special situation. That *is*, and I am saying the same thing in different words, extreme hyperextension. Hyper, more than you'd expect normally, Extension, bending backward of the entire torso, and the apex of the curve at approximately L1. When he *was* *arched* backward, the deepest part would be about the level where you wear the belt, lumbar 1 vertebra. The muscles are rigidly in spasm, and I did not see them relax at any time during the examination, nor when he left the office and sat down in the passenger seat of the automobile. Even then, his back muscles did not relax, and he maintained the opisthotonos.

Q You used the words "in spasm". Would you please explain that for us?

A Yes. At all times when a human is alive, the muscles have a certain tension which is called tonus, all right, Only when he is dead is there no tension, no tonus at *all*. Even when he is unconscious or asleep, there is a certain tonus, When you are awake, there is a little more tonus, Example is an involuntary contraction of the muscle, that's *all*. It may be very brief, It may be quite prolonged.

Q You *said* it was involuntary. That means he has no control over it?

A Yes, sir,

Q What is it betoken to you, what does it mean to you as a physician?

A No single thing, sir.

Q What about underlying injury?

A His underlying injury could be anything from within his mind to his muscles, his nerves, joints adjacent, bones adjacent, all, these things can give muscle spasm,

Q You use the word "rigidly". What's the significance of the word "rigidly"?

A Only that I never saw him at any time when he was being examined by me, coming or going to be examined by me, never saw him able to bend forward or at least bend forward or relax,

Q Go ahead,

A In the gait, means how he walks, the patient walked with a cane, sometimes holding it in the right, sometimes in the left, Sometimes he can walk without the cane and gait was naturally very stiff.

Then, I described his skull and face and found nothing wrong, If I am moving a little fast, stop me,

In the eyes I found nothing wrong.. Normal eyes, normal motion, This is not to say he has normal vision. I do not check the actual vision, only how the muscles and nerves to the eyes work ,

In the ears, there was no apparent inflammation, and the hearing was apparently normal.

In the mouth, I found nothing terribly abnormal, except teeth weren't in the very best of condition, Tongue a little

coated from smoking, The voice was normal..

In the neck, the front of the neck was normal, The thyroid gland. was palpable, No particular lymph nodes, however, in back the patient -- bending forward or flexion was accomplished only a few degrees, I estimated about 15, causing pain in the whole back, this would, and then, there was a positive meningeal tug there. All right, now, what's a meningeal tug? When you and I bend our heads forward, nothing hurts in back, anywhere in back, If you bent your neck forward that is described as a meningeal tug, The meninges are the covering of the spinal cord so you are a little bit familiar with it. Information of inflammation of a meninges is a meningitis, It shouldn't hurt to put your head down, but in his case it did, Left and right rotation were apparently normal and pain free, He could turn to the left and right and it didn't hurt. Left and right normal bending, bending to the left and bending to the right. Well, the patient wouldn't do it, and that was that, I didn't argue about it. The man was uncomfortable, and I was doing everything I could to get an examination without adding to his problems or pain.

Now, in the upper extremities, the patient could abduct his arms, raise them from his sides only to 90 degrees, That's about level with the shoulder, and then said he couldn't go any higher, As a matter of fact, he could. I'll finish that in a minute, that thought, Flexion, bringing the shoulders and the

arms up in front of him was only to 30 degrees. That's only about halfway up as high as the shoulders, and he said he couldn't do it, because his back hurt. As a matter of fact, he can. While he was being dressed and undressed, he abducted his arms higher and flexed his arms higher, and I was there in the room, so that's that. The motions of the elbows and hands were normal, not limited in any way. The hands showed no tremor; There was no trembling. Good coordination. Sensation was normal. The deep tendon reflexes were tested. That's just tapping a tendon. For example, watching the muscle jerk. That's a normal thing. The point is tendons were normal.

I went on to his chest. It was symmetrical, no deformity there. When he took a -- when he breathed deep, the chest expansion was four centimeters, and that's about one-and-a-half inches and is quite normal, all right. However, deep breathing he says gave him back pain, and the entire back from the neck, the thoracic area -- you are going to hear that in the future, Thorax is the bony chest, and the thoracic area of the spine is that area between the shoulder blades and a little lower that has ribs on it. There are twelve such vertebrae, thoracic vertebrae and also on the lumbar spine. You heard that one, you are familiar with it. It's below the thoracic, okay.

In the abdomen, well, he was very thin and I had to examine him standing up and about all I could say is I found no evidence of hernia. It's not a very good examination of an

abdomen,

External genitalia, only determine that externally seemed to be normal, adult male. A rectal examination is part of a good thorough examination of adult **male**, and I do it routinely, It was not done in this case because I don't think the patient would allow it, I didn't; even ask him. He couldn't bend over. All right.

In the back, when the patient stands, he has this hyper-extension, bending backward, He was not able or would not, either one, bend his back in any direction, That was it. I was unable to get him to lie prone, that's English, but it's not a familiar word, That means on the belly; nor on supine, that's English, but it's not a common word, That means on the back,

He went into the x-ray room, his wife and my x-ray technician, and we tried to get him to lie on the table, and I think he cooperated to the best of his own ability at the time, He would lie on his side, but would not try to lie on his back nor his abdomen, We didn't ask him to. Two x-rays were taken of the thoracic vertebrae. Those are the ones with ribs on them, and the lumbar vertebrae, and they are not of a quality I insist in my office, but there is some information capable of being received from them. You can tell that he has twelve thoracic vertebrae, that's the normal number, usual number, and six lumbar vertebrae, which is an anomaly, and that he has six lumbar disks, This I could tell, Let me see if there is anything else I could

get out of it. I was able to see that he had a few drops of an oil substance called Pantopaque. That's what was used and sometimes is now used in doing myelograms. I felt there was no evidence of fractures. I did see that the spinous processes, those are the pieces of bone that stick out from the vertebrae in back so that you can feel them under the skin, stick straight out. Both L5 and L6 were absent. More than that, I could not see that on the x-rays that I saw in my office, and this was the extent of the history and the physical examination in my office,

Q Doctor, would this be helpful to the Jury if we identified this skeleton?

A Yes, it would, I think it would.

(Thereupon, Plaintiff's Exhibit H was marked for identification.)

Q I hand you what for purposes of identification, Doctor, has been marked Plaintiff's Exhibit H, and can you tell us what that simulates or purports to be? You doctors would know better than I, and explain to the Jury, if you will please, what are some of the terms to which you were referring in your examination?

A This is a plastic model. It's a commercial model, and it's of what's considered a normal human vertebrae. There are seven in the neck, twelve that have ribs on them, and that's called the thoracic spine. It would be between the shoulder blades, And there are here five lumbar vertebrae that do not have ribs, The ribs have been removed. Below that is a sacrum

which is five vertebrae fused together and a little vertebra made of three vertebrae fused together which is a very good model. In between -- well, first of all, what's a vertebra? Let's talk about the usual vertebra, and in this case, the lumbar vertebrae down here (indicating), and I am only going to be able to show you five. Actually, the man you are talking about today has six, all right. This would be five, four, three, two, one, one lumbar vertebra, so I am going to put my hand here and everything below my hand is lumbar vertebrae. Is this where you can see it? All right. Now, in between -- well, first of all -- the vertebra is a disk of bone. A woman would say it's a biscuit of bone. A man might call it a hockey puck of bone. All right, here it is in between the vertebral bodies, which are the bone, and the weight bearing structures. They are pads of tough gristle. This is called the intervertebral disk. All right. It is not bone. It does not show up on x-rays. It is part of the spine. The first lumbar sits on top of the first lumbar disk, okay. The fifth lumbar vertebra is above the fifth lumbar disk, and the sacrum would be below that. All right.

In the case of Mr. Pinney, there are six vertebrae, and the place where he had his herniated disk, according to the hospital records, are not the bottom-most disk, but the one second from the bottom and it is numbered L5 in his case. All right.

Now, I am going to take this model that has five lumbar

vertebrae. I am going to convert it into Mr. Pinney's back by holding my hand up one vertebra. Now, we've got six, and we are going to pretend they are his six lumbar vertebrae, so his disk was herniated here.

Q I was going to ask you to describe the components of a disk, if there are component parts to it, so that the Jury would understand what a disk is.

A A disk is made up of two parts, and remember it's tough stuff, You stand on it, and it carries your weight, The outer part is called the circular ring, fibrous ring, and annulus fibrosus, and the fibers of that outer covering around the outside are continuous with the fibers in the bone, Bone is a fibrous tissue which has calcium deposited in it, All right. There has been, for your information, no clinical history of any man ever having had a slipped disk. The bone will break first. There is nothing wrong for using it for a slang expression,

Now, inside of the fibrous ring there is something which is called the pulpy nucleus, and that makes you think it's soft, It isn't. It's extremely tough stuff, It is in a random pattern,

Q Sometimes I have the nucleus pulposus, Is that the same thing you are talking about?

A I was putting it in English.

Q That's the same thing then?

A I think nucleus pulposus is the name, as nucleus pulposus I intend it to be.

All right, Now, if a disk pushes out and herniates, it means you have to have a break, a gap, a hole in the fibrous ring, annulus fibrosus, and the inside squirts out like toothpaste out of a tube, something pushes through. A hernia is something coming through a hole in a wall. A hernia in your belly is a hole in the abdomen with intestinal contents coming through, All right. Now, if it pushes out forward, there is not much in front of this except muscles and veins, and I am oversimplifying it, of course. We are not that simply built, but it doesn't seem to bother us much, It can even push up to the bone above. In that case you can show it. It doesn't seem to bother much. If it pushes out in back, now -- from the brain the spinal cord comes down and runs behind the bodies of the vertebrae and through a tunnel, and this tunnel is covered by the laminae or the roof, The tunnel is called the spinal canal, All right.

Now, in the case of the man with six lumbar vertebrae, so I don't miscount, six, five, four, three, two, one, here, If he had a disk, inside of this disk pushes out in back, it would press on the spinal cord which runs back of the body of the vertebra, That would be in here, and it would lie where the tip of my finger is and would press on the spinal cord and the nerve root at that level, and that level in this case would be L5, and I've got my finger on the right side, would be a midline, would be on the left, that's the back, I think that's a basic thing. Is there anything more you want?

Q No, resume. You've explained pretty well, the arrangement of **disk** and vertebra, That's what I wanted the Jury to know. You can proceed with your recital.

A I had finished telling you of my physical examination, Mr. Gaines,

Q Doctor, did you have occasion to view a number of x-rays which had been taken in ~~the~~ various **hospitals** to which he had been admitted?

A Yes, sir,

Q And among them, his first hospitalization you referred to as Ashtabula General Hospital and this occurred on -- and I think in March of 1977, and among the x-rays which were taken at that time and which I take it you had occasion to review, did you?

A I did.

Q There were some which were made pursuant to a myelographi study. I think you said you had written a tract on myelograms or myelographic studies. What's a myelogram?

A A myelogram is an x-ray, and it is a diagnostic study, doesn't make the patient any better, It makes the patient and the doctor smarter. An opaque substance, in this case an oil, is floated -- you have to inject it with a needle -- in the fluid which lies between the coverings of the spinal cord, not in the spinal cord, between the coverings of the spinal cord where the normal spinal fluid is, The fluid is heavier than the -- the oil

is heavier **than** the spinal fluid, If you place the man on an **x-ray** table so that you can both look through a fluoroscope, and when you want to take x-ray pictures and tip the table so that he is almost standing up, the oil will slide downward -- it's heavier than the water -- towards the **tail** bone. If you tip the table so that **his** head **is** downward, the oil will slide downhill again, but towards the thoracic vertebrae, higher up towards **his** neck, so you can actually watch with the fluoroscope this oil moving up and down his back as you tip the table. Now, you can see the oil and you can see the bones, but you can't see the spinal cord and you can't see the disks. They are soft tissues that don't show up, but if you see the oil come down and go around something **like** this (indicating), there is a vertebra, come down and go around something, you can't see what it's going around, but you know that there is a lump of something there that's taking up space, and the radiologist, if he is a purist, says, "I see a space occupying lesion."

Q Doctor, I hand you --

THE COURT: What did we say
we were going to mark these, C.sub 1? Are these Ashtabul
General Hospital?

THE WITNESS: That's a myelogram,

Q Those are the myelogram films?

A Yeah. There are other x-rays here taken in that hospital but those are the myelogram films.

Q Apparently, there is a number and date on this. This is made at the time that the film is performed?

A Yes, sir.

Q I see.

THE COURT: All right, Let's mark these,

(Thereupon, Plaintiff's Exhibits C sub 1 through C sub 7 were marked for identification,)

Q Doctor, I hand you for purposes of identification what have been marked as C sub 1 through 7. I think you heretofore indicated that these were films, x-rays in association or taken at the time of a myelogram that was taken at Ashtabula General Hospital as of 3-21-77. Would a view box help you to explain to the Jury what if anything you see in those?

A A view box is necessary. I am going to put this up and see what I can see there. May I bring that up a little closer? I think the limit is going to be the electric cord,

THE COURT: Well, there is another plug right under the jury box.

Mr. Scharon, there is another plug right down there underneath the jury box.

Can the attorneys see? If not, you can step back to a position where you can.

THE WITNESS: I have seven films. These were all taken the same day on the date 3-21-77,

and they are a lumbar: myelogram, which we've already discussed, I think, Now, what you are seeing here is somewhat dark, and it's oftentimes, the way, and there is no reason why I should pick the first film, The right is on the right and is marked with an R, There are two pictures here.

THE COURT: Which one are you now referring to, Doctor?

THE WITNESS: Yes, sir, This happens to be sub title 6, Plaintiff's C, sub title 6, All right.

There is two pictures on the film, The right is marked with an R. You are looking at a man's back. This is the solid bone, is the sacrum. Above it, that was up, The head would be at the top of the film, His lumbar vertebra six. The dark area is lumbar intervertebral disk five, and this would be above it, lumbar L5, and this would be intervertebral disk four, above it, You see a mass of oil which looks like a white streak to you, and you see the ghosts of little pieces of the oil coming out left and right at the level of four, and left and right at the level of five. Those are -- that's oil going in the nerve region, It's a normal shadow, Over here -- you are going to get familiar with it as I move, so I'll move a little more briefly -- you have nerve roots at

four and at five, The oil from a myelogram and the lumbar area going down past the sixth disk and just appearing to touch the sacrum,

Now, this is a Plaintiff's Exhibit C sub title 7. It's a myelogram from the same date, and I am going to stand it up so you don't get confused, It's actually taken with the patient: lying on his belly like that, Here is the sacrum, the buttocks, the lumbar spine, The head would be up here, All right, I am standing it up because you are used to seeing this. The last myelogram I showed you was with the patient standing up. Now, this is very clear, Some of these are not, Here is the oil, This happens to be a piece of needle in, and I should say the needle that the oil is put in, and they will take some oil out later. This is the sacrum. It looks like there is no bone there, that is the sixth intervertebral disk, Here is the sixth lumbar vertebra. Above it is the fifth intervertebral disk, and something is taking up space right in there at the level of five, and there's a much less bulge of the disk, a much smaller space occupying lesion at the level of six. What about the level of four disk? Well, it's hard to say. The oil doesn't go that far, but this is what the radiologist, x-ray specialist interpreted as showing a filling defect in herniated disk at the level of L5. Please, notice this

is intervertebral disk L5. No reason to put two numbers on it. That's confusing. There is in this case an L6.

Now, I am going to move through this and see if there is anything else of significance, That's the best picture, as I remember. I think there is nothing more to be shown here. That's the most vivid thing, what I showed you there.

(Thereupon, the witness returned to the stand.)

BY MR GAINES :

Q Doctor, did you have occasion also to review films that were taken at Hamot Medical Center on 4-20-78, that's April 20th, 1978?

A Yes, I did.

Q And those films were what? How do you describe them?

A I am speaking from the notes I made in my office, not on Mr, Pinney --

Q You may refresh your recollection.

A The films taken at Hamot Medical Center on 4-20-78 showed left and right lateral stress films, Then, films, same date, show flexion and extension x-rays, All right, That means there are four pictures, One of them is taken with the patient bending to the left as far as he can and a picture is taken, and the other is with the patient bending to the right as far as he can, The third with him bending forward as far as he can, and the fourth with him bending backward as far as he can, They are

labeled the stress films and indicated as such on the x-rays. The purpose of the films is to show motion and how much motion, and you want the patient to move as much as possible. In the films where the patient bent to the left and right, I could see a little motion above the level of L1, but none below L1. He didn't move below L1. In the films where the patient was bending backward and forward, or was supposed to bend backward and forward there was no motion at all on the two films.

Q What then did that tell you?

A I felt that as of the date, 4-20-78, he was already rigid as far as the lumbar spine, no motion as far as bending forward and backward,

Q You used the words "rigid lumbar spine".

A Yes.

Q Is that consistent with what you have just said?

A It is what I just said.

Q Precisely. Doctor, from your examination conducted on that date -- what was it, December 30th?

A Yes,

Q -- of '80, do you have an opinion as to the permanency or otherwise of the condition that you found in this man?

A Yes.

Q Will you please state the facts upon which you predicate the grounds upon which you predicate that opinion as to whatever it may be as to permanency or otherwise?

A Yes+ No man sees the future, **but** the doctor is asked to **make** a prognosis based on **his** experience and what he knows about the patient, In this specific case, I'm examining the patient four years later, several years later,--

Q Approximately.

A -- after **his** injury. Approximately four years later. He has been through a lot. I also have medical records from the different hospitals. I have seen **x-rays**. I have seen x-rays showing that he couldn't move in 1978. I have seen him in my office in 1980, when he couldn't move. I do believe on a basis of the history, physical examination, **my x-rays** to a lesser extent than the x-rays of other institutions, hospitals, that the condition is permanent.

Q Have you reached that conclusion with reasonable medical certainty?

A Yes, sir.

Q Doctor, do you have an opinion with reasonable medical certainty as to whether or not this man is experiencing pain?

MR. DYSON:

Objection,

THE COURT:

Overruled, You may

answer the question.

THE WITNESS:

I have,

Q And state the grounds upon which you have reached an opinion on that?

A **It is my** professional opinion that on December --

Q You have to **state** the grounds first upon which you reach the **opinion**, and then, **tell** us what that opinion **is**. That's a new rule that's been enacted, and we have to follow it.

A In this case, I don't rely on **the** records from other hospitals or the **x-rays**. It depends upon two people: Him and me, what he does **and** what he **says and** what I see. Not everything he **says** is a hundred percent accurate, **and** I can see that **that's** true. On the other hand, I am allowed to form an opinion, and I am required to form an opinion, how much a man hurts, I do not feel his pain, but nevertheless, the question is does he have pain is one that is commonly asked, and I'm expected to be able to answer it.

Q With reasonable medical certainty, what is that opinion?

A On December 30th of 1980, when I examined him, he was in pain ,

Q Doctor, do you have an opinion on the basis of the examination you made and the inquiry you made as to whether or not this man, when you saw him on December 30th, 1980, was disabled from engaging in gainful employment?

A I do,

Q And upon what grounds do you base that opinion?

A Again, I base it on all of the evidence, not only the history and physical examination and x-rays in my office, but also on the communications, x-rays, and hospital records that I have received and reviewed.

Q And what is that opinion?

A On December 30th, 1980, I believe he was disabled,

Q With reasonable medical certainty, do you have an opinion as to whether that disability will continue in the future?

A I do.

Q And on what grounds do you base that opinion?

A Again, I rely considerably on the history from the patient, even more so on the records of his myelogram, diagnostic studies, surgery, and then, my own examination,

Q I overlooked asking you the question as to whether or not with reasonable medical certainty you have an opinion, with reasonable medical certainty as to whether or not the pain that you described existent on December 30th, 1980, will continue in the future?

MR. DYSON:

Objection.

THE COURT:

Overruled, Overruled.

You may answer.

Q Do you have an opinion on that?

A Yes.

Q And upon what grounds do you base that opinion?

A Only again primarily on the length of time between the injury and my examination, on the course as described by the patient in the four years between the time he was injured and the time I saw him, on the treatments he had received, Those are the primary things as far as projecting into the future,

Q What is that opinion? E

A I believe the pain **will** continue, I do not **know** whether it will continue at the same level as it was when I saw him on December 30th of 1980,

Q Doctor, with reasonable **medical** certainty, do you have an opinion **as** to the direct causal relationship, if **any**, between the incident described on November 30th, 1976, and the conditions with respect to which you have testified?

A I do,

Q And what are the grounds for that opinion?

A History, particularly mechanism of injury, which is to say what happened to him at the time of the injury, Secondly, and very important, what did he **say** he felt like then, and the day after, and I have that down what he said. I assume what he said is the way he felt the *day* after the injury, and then, also the physical examination and the other studies I have done, and the other studies done by other institutions,

Q And what is that opinion?

A I wrote on the last page of my report, "I am of the opinion with reasonable medical certainty that the herniated intervertebral disk L5 was the direct result of the accident of November 30th, 1976."

Q Thank you. You may inquire.

THE COURT:

Mr. Dyson.

Dr. James Richard Nolan - C.

CROSS-EXAMINATION OF DR. JAMES RICHARD NOLAN

BY MR. DYSON:

Q Doctor, your experience as an orthopedic surgeon over the years, you have seen many herniated disks, have you not?

A Yes, sir.

Q Is it fair to say there are many causes of a herniated disk? That's a fair statement, is it not?

A Yes, sir.

Q Would you explain to the Jury, sir, what is meant by the degenerative disk disease?

A Yes, sir, It depends on who uses the term. If a radiologist, an x-ray technician uses the term, he is seeing that the space -- he calls it a space -- on the x-ray between two vertebrae may be narrowed, or he may see arthritic changes in the bones, not in the disk, but he still calls it a degenerated disk.

An orthopedic surgeon is more apt to think in terms of what the disk tissue actually is doing: Staying where it belongs herniating out again, so that the term "degenerated disk", we all are in agreement as to what it shows on x-ray, but the radiologists don't carry their thinking as far as the orthopedists.

Q What causes a disk to degenerate?

A Primary cause:, most common cause is age.

Q Would it also cause a disk to degenerate due to someone's work? For example, heavy labor, carrying things on their shoulders, pressure and compression on the spine, would that cause

irritation and problems with the --

A Mr. Dyson, that question has been kicked around for many decades, There is no conclusive evidence that hard work causes degeneration of the disk, The problem is that while you are amassing the information time is going on. In other words, the patient is aging, and that's the finical factor,

Q Is this unusual, Doctor, for a man of age 40 to have degenerative disk disease?

A Not at all, You would expect it in a man age 40. You would expect to be able to see some,

Q In other words, degenerative disk disease just comes from aging?

A No, degenerative disk can come from aging.

Q Can it also come from the -- with reasonable medical certainty, come from the type of employment, in your opinion?

A No.

Q Can it aggravate it? Can it aggravate the disk disease?

A Too many pronouns, I don't know what you are referring to.

Q I will withdraw the question, then.

Now, it's important, is it not, Doctor, to obtain a diagnosis from a patient to get a correct and truthful history from him? That's correct, is it not?

A I may not have understood. Would you ask that again?

Q Surely, It's important to get a truthful history from a

patient, is it not, to diagnose their problem?

A It's helpful.

Q It's helpful?

A Yes, it's important,

Q If someone would lie to you, you might not come to the same conclusion as to how an accident happened or --

A Depending on whether I identify it as a lie or I accept it as the truth.

Q Have you ever had people come into your office that have exaggerated their problem?

A Oh, yes.

Q Did Mr. Pinney exaggerate his problem with you on the day you examined him?

A Certainly,

Q Would you tell the Jury in what respect, sir?

A I'm not going to be able to remember every respect, but the most obvious ones were that he said he couldn't sit down. As a matter of fact, he could have sat down, and he did sit down later when he got in his car. The second one is he couldn't raise his arms any higher than 90 degrees, only he wasn't being examined, he was being dressed and undressed, two occasions. That's enough. There were others.

Q All right. So, in other words, you did notice exaggeration on the day you examined Mr. Pinney?

A Yes.

Q There's evidence in this case, Doctor, that after this accident occurred, that Mr. Pinney drove the vehicle from the accident scene to the hospital. Would you check your history and advise the Jury what Mr. Pinney told you with reference to who drove?

A Indeed I can. I can check the notes I wrote in my own hand while he was telling them to me. Mr. Niemi drove to Brown Memorial Hospital.

Q Mr. Pinney told you that?

A Sure -- I mean, yes, sir.

Q When you were examining, or prior to the examination of Mr. Pinney when you were -- prior to examining Mr. Finney, were you shown this photograph of the vehicle that he was operating?

a I saw no photograph.

THE COURT: Just a minute. Now what photograph did you show him?

MR. DYSON: Defendant's Exhibit

THE WITNESS: No photographs,

Q Did Mr. Pinney explain to you the damage to the rear end of the vehicle that he was operating at the time this accident occurred?

A No, Mr. Dyson.

Q If I was to tell you, Doctor, that there was little or minimal damage to the rear end of the vehicle that Mr. Pinney was operating, would you still be of the same opinion? I withdraw

that question.

Now, you were supplied certain **records**, Doctor, from the hospitals for your review **prior** to the examination of Mr. Pinney, were you not?

A Well, not prior. It was afterwards.

Q After you examined him?

A Yes, sir.

Q So, you didn't have the benefit of any records at all before you examined him?

A He came in a stranger, no records,

Q No records at all?

A (Witness shakes head negatively.)

Q Do you know a neurosurgeon by the name of Dr. **Erasmus**?

A Surely,

Q Do you have an opinion with reference to Dr. Erasmus's reputation as a neurosurgeon?

A He was considered a very good neurosurgeon, and he moved out to California recently,

Q And he was with Dr. Hassan, was he not?

A Noor Hassan, Yes, they were associates.

Q Did you ever consult with Dr. **Hassan**, either by letter or personally, with reference to Mr. Pinney?

A No.

Q Were you ever informed of a report sent by Dr. Erasmus to Dr. Ramachandran dated July 27th, 1977, indicating that the

myelogram indicated no defect and that Mr. Pinney has a degenerative disk disease?

A No.

MR. GAINES:

Objection.

THE COURT:

Come up to the

Bench.

(Thereupon, a conference was held at the Bench out of the hearing of the Jury and off the record,)

THE COURT:

Sustain the objection.

We are going to ask counsel to rephrase that last question.

Q Dr. Nolan, if you had received information prior to your report and prior to your examination of Mr. Pinney that a discogram was performed on Mr. Pinney, and that that discogram showed no defect, and that Mr. Pinney had a degenerative disk disease, and that report was prepared by a prominent neurologist, would you still be of the same opinion today that Mr. Pinney's problem is directly related to the accident?

A I am aware of the discograms, I am aware of the report you refer to, I quoted it in the history that I gave earlier today, and my opinion is the same as it was before.

Q When did you receive that report?

A Question?

Q When did you receive the report that I just referred to?

A I haven't any idea at all, but it's part of this pack.
As to when it came in, my secretary could tell you, I know I had to read it after I did the physical examination,

Q First of all, Doctor, you are not a radiologist, are you?

A No, sir.

Q And that's a specialized field in itself, is it not?

A Yes, sir.

Q And the radiologist is the one that performs the discogram and/or myelogram, is it not?

A No, sir,

Q Generally speaking, does the radiologist do that?

A No, sir,

Q Does the neurologist do it, orthopedic surgeon?

A This orthopedic surgeon does his own myelogram, and I don't do discograms,

Q Now, as I understand, Mr, Pinney told you that his back problems started the day after the accident. I believe that's what your history reflects, is that correct, Doctor?

A Either the same day or the day after, one of those two, yes.

Q You had a chance to review the hospital records with reference to his history and his back problem?

A I have reviewed the hospital records which were sent to me.

Q Did you see in the hospital records where Mr. Pinney told

or it's indicated that Mr. Pinney's back problems started immediately at the time of the accident?

A I'd have to review the hospital record, but I can refer,

Q If you would, please,

A But I can refer to see what we say about it in my own report. Now, what was the question again? What do you want to know about the hospital record?

Q I would like to know, sir, on the history as given by Mr. Pinney as to the time he first noticed pain of his low back, if there's indicated,

A And which hospital record are you talking about?

Q Any one, sir,

A Oh, heavens.

THE COURT:

Can you direct his

attention now to some specific record?

Q I thought you had all the records, and let me -- I am handing you, sir, what has been marked Plaintiff's Exhibit C, which is the records from Ashtabula General Hospital, and ask if you would tell the Jury what the history indicates with reference to Mr. Pinney's complaints of low back pain?

A The history that Dr. Ramachandran recorded on 3-31-77, was "this 40 year old white male was well until about November 30th, 1976, at which time he was a passenger in a car or truck, a car or truck. A snowplow hit him from behind, and apparently, he developed immediate neck pain and lumbosacral pain for which he

"has been treated by Dr. Eippert, and so on." More?

Q No, that's fine. Thank you very much.

Now, that particular history is inconsistent with what Mr. Pinney told you, is that not correct?

A Not a bit.

MR. GAINES: Objection.

THE COURT: Overruled,

MR. GAINES: May I approach the Bench?

(Thereupon, a conference was held at the Bench out of the hearing of the Jury and off the record,)

THE COURT: Ladies and gentlemen I know we have been in session now for about an hour and forty-five minutes, Perhaps we'll take a short recess. Obviously, I know Dr. Nolan is busy this morning. Let's take a short recess. We'll try to keep it limited to approximately ten minutes. Keep in mind all the instructions the Court previously gave you. You may now return to the juryroom.

(Thereupon, a recess was taken,)

THE BAILIFF: Rise,

THE COURT: You may be seated.

Let the record reflect we are ready to resume the trial of civil case number 68128, All parties are presen

before the Court with counsel.

Mr. Gaines, the Court is aware that you had the reporter read that last question, Am I to understand you want to withdraw that objection?

MR. GAINES: I do, I misunderstood the question, Your Honor, and at this juncture:, I would like to withdraw it. I don't know whether the Jury heard the question, and I think I confused the situation a little bit by making the interruption.

THE COURT: I will have the question repeated.

(Thereupon, the Jury was returned to the courtroom.)

THE COURT: Let the record show the Jury is now returned to the courtroom and are present in the jury box.

Mr. Gaines has withdrawn the objection that he made just prior to the recess. Please, reread the question that was objected to.

MR. DYSON: Withdraw the question.

THE COURT: The question has been withdrawn.

BY MR. DYSON:

Q Dr. Nolan, do you know, sir, what the diagnosis of Dr. Erasmus was with reference to Mr. Pinney's condition?

A May I look at *my* records, sir?

Q Surely.

A Could you help me on date, approximately when was that?

Q Well, with reference to that question, I am showing you what has been marked as Plaintiff's Exhibit E, which is the Richmond Heights Hospital, and I've opened to the page where the diagnosis is there. Would you read that to the Jury, please.

MR. SCHARON:

Which date?

THE WITNESS:

The physical

examination done by a Michael Tome lists the diagnosis, is that what you want, sir?

Q Yes, sir,

A As a degenerative lumbar disk, and that is not Erasmus's diagnosis,

Q I apologize, but that is the Richmond Heights record, is it not?

A It's in the Richmond Heights record; Dr. Tome is the man who wrote it,

Q And, Doctor, I am handing you what has been marked as Plaintiff's Exhibit D, which is the Hamot Medical Center, and I want to ask you if you would read the diagnosis with reference to Mr. Pinney's condition on that date, please,

A Well, this diagnosis is signed by a pathologist, no,

Q Would you read that, please, to the Jury.

A All right. To begin with, this is not a diagnosis --

Q Excuse me --

A I am going to identify what I read, or I am not going to read it,

It's not a diagnosis of the physical examination,

THE COURT: Just a minute, now,

I think the Doctor can certainly identify what report this is and who made it.

MR. DYSON: Fine ,

MR. GAINES: Which one,

THE COURT: There is no page number.

MR. GAINES: Would counsel please identify what it is. It's hard to identify because it's a big record volume, but it's the --

MR. SCHARON: What's the date,

MR. DYSON: It's the date of April 28, '78.

Q Doctor, again I am handing you the exhibit and ask if you could identify for the Jury that particular page, please,

A Yes, indeed, This is the pathological report. This is the report of the pathologist, The pathologist signs himself H., and then, Lart, M.D.

Q What is his diagnosis, please,

A His diagnosis at the bottom is degenerating cartilaginous tissue, and then, in parentheses, "disk material L5S1, right side"

end of parentheses.

Q A pathologist is also a specialist, is he not, Doctor?

A Yes, sir,

Q He is the individual that takes the material and through his expertise and exam--

A He examines it.

Q -- and his examination shows that it was degenerative disk disease, does it not?

A Well, it's a little hard to say, sir, because he's even got the wrong disk down here,

Q Well, does it not say degenerating tissue?

A Of what?

Q Of L5 and S1, does it say that?

A That's what it says, of L5S1.

Q Thank you, and you told us before that degenerating condition of a disk is caused by age to some degree, that's correct, isn't it, Doctor?

A To some degree, yes, sir, 'It's the most common cause' are the words I used.

Q And your diagnosis with reference to examination of Mr. Pinney was contrary to what we read from these reports, is that correct?

MR. GAINES:

Objection, it's

argumentative, Your Honor,

THE COURT:

Overruled, You may

answer the question.

THE WITNESS:

We've read a great

deal from the records.

Q Can you answer the question, please,

A Yes, I'll answer your question. It is not.

Q You didn't say degenerative disk disease, though, was his problem,

A Degenerative disk disease is not his problem.

Q That's contrary to the records, though, is it not?

A He has more problems than degenerative disk disease, and the degeneration he has is not causing his present problems.

Q Did Mr. Pinney tell you, Doctor, when he was being treated by Dr. Eippert, that ~~there came~~ a time when he had improvement in his lower back? I'm talking about in December and January of 1977.

A From my notes and from my report, Mr. Pinney painted a picture of very little improvement, if any, so I'm not aware that when he was under Eippert's care there was a time he felt better.,

Q If you can read this, Doctor, I am handing you what has been marked as Plaintiff's Exhibit B, from the Clinic, and ask if you can read, please, sir, the notes made by the doctor on January 17, '77.

A This is a -- dated January the 17th, unsigned and not titled. I don't know where it comes from.

Q Well, I'm talking about this January 17th. Can you read

that?

A I can read it, but I have no idea where it's coming from,

Q Well, these are admitted into records. These are the records from the Ashtabula Clinic, who treated Mr. Pinney, and they have been admitted into evidence.

A Oh, this is a record from the Ashtabula Clinic?

Q Yes, sir.

A Thank you. The Ashtabula Clinic, on January the 17th, somebody writes "Gradual improvement, Still some lumbar pain when he gets up and down. Reflexes --" and then a symbol theta. I don't know what that means. "Recommend more --"

Q That's fine at this point, thank you,

Did Mr. Pinney tell you, sir, that after he received some treatment from the Euclid Clinic, he went back to work --

THE COURT:

Now, wait a minute.

You said "Euclid Clinic".

MR. DYSON:

I am sorry, Your

Honor. I apologize.

Q After he received some treatment from the Ashtabula Clinic that he went back to work full time at the East Ohio Gas Company, did he tell you that?

A The patient told me, and I reported earlier today that he returned to work as an inspector at the East Ohio Gas Company for another three or four weeks.

Q Would bending and lifting and being able to do your chore

Dr. James Richard Nolan - ReD.

sir, be consistent, and I am talking about bending and lifting and carrying objects, be consistent with a herniated disk? Would you be able to perform your duties?

A Depends on your pain threshold, sir.

Q Assuming, for example, that you work for four or five weeks without any medical treatment, would you think that's consistent with a herniated disk?

A Yes.

Q You would?

A Yes,

Q In other words, someone could work full time, doing labor and carrying material and bending and lifting without difficulty, without any problems?

A A supervisor, sir?

Q No, no, The question was could a man do work, could he do labor, could he bend and lift and have a herniated disk? Could he do it without any difficulty?

A He could not do it without difficulty, but he might work,

MR. DYSON: I have no further questions,

THE COURT: Redirect, Mr. Gaines?

REDIRECT EXAMINATION OF DR. JAMES RICHARD NOLAN

BY MR. GAINES:

Q Doctor, you said you don't do discograms, Why?

A It's a personal choice. I have found, and a great many

orthopedists have found and neurosurgeons, that they are relatively inaccurate. They are painful to the patient, and I just don't do them, and I am in the same boat as a lot of other surgeons, and I speak for the neurosurgeons, Fewer and fewer discograms are being done across the nation,

Q What's the procedure? What do they do?

A Under sedation, that's pills, to quiet the patient down, but not anesthesia, a needle, long needle with little local anesthetic is placed through the front of the neck into the disk between the cervical vertebrae, or in the back, it would be obliquely from the side, from the flank a little bit angled in towards the disk there. After you think the disk is in the right place, you use a fluoroscope or x-ray control to determine that in two planes, both looking from the front and from the side that the needle is where you want it to be, and then, after that, you do several -- one of several things, You can inject salt water, sterile saline, and if it increases the pressure in there and causes pain, that may be of significance, Then, you can inject a dye, water solution, not oil, that shows up on x-ray, and you can get x-rays of it, and if the dye stays inside of the intervertebral disk, that's one thing, and if the dye leaks out somewhere else, that's another thing, so it can be helpful at some times.

Q You didn't find it helpful in your practice?

A No, sir,

Dr. James Richard Nolan - ReC.

Q Doctor, does the fact that Mr. Pinney began to experience pain in his low back on the following morning after the day of the trauma, is that common or uncommon? Is that of any great significance to you?

A To me?

Q Yes,

A It is of significance,

Q And what significance does it have?

A That he had pain in his back and possibly damage, but at least he had pain.

Q And is that consistent with a herniated disk, a pathology involving a herniated disk?

A That could be one of the several of many findings,

Q He began to experience this pain on the following morning?

A That is consistent,

Q Thank you, Doctor, I am very grateful to you.

THE COURT: Do you have something on discogram?

MR. DYSON: Yes, or the -- either/or.

RECROSS-EXAMINATION OF DR. JAMES RICHARD NOLAN

BY MR. DYSON:

Q Doctor, have you ever been provided a report from Dr. Erasmus dated August 8th, 1977? Do you know, sir, whether

you have or not?

A I do not remember Dr. Erasmus's report of August 7th, if I had it.

Q Let me show you that and ask if you have ever seen that before.

A I have never seen **this** report.

MR. DYSON: I have no further questions.

MR. GAINES: No further questions

THE COURT: Thank you, Doctor.
That'll be all.

MR. GAINES: Thank you, Doctor.

(Thereupon, the witness exited the courtroom.)

I hereby certify that the above and foregoing is a true and correct partial transcript of the testimony introduced in the trial of **the** within named cause as **shown** by my stenotype notes taken by **me** during the trial and at the time the testimony was being introduced,

Terri L. Tisch

Terri L. Tisch, RPR
Official Court Reporter