

DOC. 346

1 The State of Ohio,)
2 County of Cuyahoga.) ss:
3 IN THE COURT OF COMMON PLEAS
4 Judith Ehlen,)
5 Plaintiff,) Case No.
6 -vs-) 218,459
7 Bruno Machinery Corp.,)
8 et al.,)
9 Defendants.)
10 - - - 000 - - -
11 Deposition of RICHARD C. OTTERBEIN,
12 P.E., an expert witness herein, called by
13 the Plaintiff as if upon cross-examination
14 under the statute, and taken before Luanne
15 Protz, a Notary Public within and for the
16 State of Ohio, pursuant to the agreement
17 of counsel, and pursuant to the further
18 stipulations of counsel herein contained,
19 on Friday, the 2nd day of September, 1994
20 at 9:00 A.M., at the offices of Schulman,
21 Schulman & Meros, the Standard Building,
22 the City of Cleveland, the County of
23 Cuyahoga and the State of Ohio.
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APPEARANCES:

On behalf of the Plaintiff:
Schulman, Schulman & Meros, by:
John Meros, Esq.

On behalf of the Defendants:
Weston, Hurd, Fallon, Paisley &
Howley, by:
Mark O'Neill, Esq.
Harry Sigmier, Esq.

Wilentz, Goldman & Spitzer, by:
Alan Darnell, Esq.

G. Mitchell Evander,
In-house Counsel for Harris Corp.

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1 P R O C E E D I N G S

2 RICHARD C. OTTERBEIN, P.E., being
3 of lawful age, having been first duly
4 sworn according to law, deposes and says
5 as follows:

6 CROSS-EXAMINATION OF
7 RICHARD C. OTTERBEIN, P.E.

8 BY MR. MEROS:

9 Q May I have your full name, sir?

10 A Richard C. Otterbein.

11 Q And your street address?

12 A 1101 Amboy Avenue, Edison, New
13 Jersey.

14 Q And your business street address?

15 A That was the business street address.

16 Q That's the business address, okay.

17 May I have a summary of your educational
18 background, please?

19 A Yes. I have a Bachelor of Science
20 degree in mechanical engineering. I have
21 a Master of Science degree and various
22 seminars thereafter.

23 Q May I have the names of the insti-
24 tutions where you obtained those degrees?

25 A The Bachelor of Science degree was

1 obtained from Newark College of
2 Engineering located in Newark, New Jersey.
3 The Master of Science degree was obtained
4 from New Jersey Institute of Technology,
5 also located in Newark, New Jersey, and
6 the "New Jersey Institute of Technology"
7 was a name change from "Newark College of
8 Engineering."

9 Q I don't think that I've been provided
10 with a current copy of your CV. Do you
11 have one with you?

12 A No, I don't.

13 Q Can you simply summarize your work
14 experience from the point at which you
15 were a graduate engineer?

16 A Yes. Upon obtaining my degree, I
17 became employed by Public Service Electric
18 & Gas Company located in Newark, New
19 Jersey, in the Instrumentation and Safety
20 Control Division. I worked with Public
21 Service for approximately five and a half
22 years or six years.

23 I left Public Service somewhere
24 around 1977 and became employed by a
25 company called NPS Engineers &

1 Constructors, Incorporated, originally
2 located in New York City and, then, moved
3 to Secaucus, New Jersey. I was employed
4 by NPS as an engineer, doing instrumenta-
5 tion and control system engineering work,
6 and some project management work and
7 project engineering work.

8 I left NPS in approximately 1980
9 and became employed by a company called
10 Schwalje & Eaton Associates. Schwalje is
11 S-C-H-W-A-L-J-E, and Eaton, E-A-T-O-N, as
12 an engineering consultant. doing consulting
13 work of all types.

14 In about 1983 or '84, I became
15 employed by Affiliated Engineering
16 Laboratories, Inc. as an engineer and
17 consultant, continuing to do consulting
18 work on an as-retained basis for my
19 clients who needed engineering work done,
20 and I've been with Affiliated Engineering
21 ever since.

22 Q And you are a registered engineer?

23 A Yes, I am.

24 Q What states are you registered in?

25 A I'm currently registered in New York,

1 New Jersey and Pennsylvania.

2 Q How many times have you taken a
3 qualifying exam?

4 A I took a qualifying exam in 1975 in
5 New Jersey once.

6 Q And the other states have granted you
7 some form of reciprocity as an engineer?

8 A That's correct.

9 Q Mr. Otterbein, what qualifies you, in
10 your mind, to be an expert in this case?

11 A Well, my educational background and
12 training, my evaluation of equipment of
13 this type over the years, my experience in
14 instrumentation and safety and control
15 systems, and my design experience.

16 Q Have you had experience in the area
17 of machine guarding?

18 A Yes.

19 Q To what extent? Let me see if I can
20 qualify that. Have you worked for an
21 employer designing guards for machinery?

22 A Yes.

23 a Could you tell me about that, please?

24 A Sure. At Public Service Electric &
25 Gas Company, part of my responsibility was

1 to provide guarding for equipment that I
2 designed and that was installed on the
3 property at that company.

4 Q What kind of equipment was it?

5 A All sorts of equipment: pumps, pump
6 shafts, motors, rotating equipment of all
7 types, compressors, valving.

8 Q Okay.

9 A Large equipment also.

10 Q Did those items of equipment have
11 points of operation or a point of opera-
12 tion?

13 A Some of the equipment did. The
14 ancillary equipment did, yes.

15 Q And what was your method of guarding
16 the point of operation in those instances,
17 or did you not guard the point of opera-
18 tion on those items of equipment?

19 A The method would be to evaluate the
20 necessity and the need for guarding and
21 provide appropriate guarding as deemed
22 necessary based on the design.

23 Q Did you do that?

24 A Of course.

25 Q Have you had any other employment

1 where you had the occasion to equip a
2 machine with a guard to guard the point of
3 operation, not as a consultant but in an
4 employer/employee situation?

5 A Yes. When I was employed with NPS
6 Engineers & Constructors, I was given the
7 opportunity to perform some projects for
8 various manufacturing companies, such as
9 Johnson & Johnson, Merck and others, who
10 had packaging equipment and other forms of
11 mechanical devices that required guarding,
12 and I was hired to perform consulting
13 services as an employee, though, of NPS
14 Engineers & Constructors under a contract
15 with these firms to provide engineering
16 analysis work for that type of equipment.

17 Q Did those items of equipment have a
18 point of operation?

19 A Yes.

20 Q And did you guard those points of
21 operation?

22 A Again, I would investigate the need
23 for guarding and provide guarding where I
24 felt that it was required and necessary.

25 Q As an engineer, were you able to

1 recognize the need for guarding on those
2 items of equipment?

3 A Sure.

4 Q Is that one of the fields of your
5 expertise, that you could analyze a
6 machine and determine a need for guarding?

7 A I believe that I can do that, yes.

8 Q And does that extend to the point of
9 operation on certain machinery?

10 A Yes.

11 Q By today's standards, in 1994, do you
12 recognize that there is a need to guard
13 the point of operation on machinery?

14 A Where deemed necessary, yes.

15 Q Have you experienced a situation
16 where there is a point of operation on
17 machinery that does not have to be guarded
18 by today's standards?

19 A There are occasions where that
20 occurs, yes.

21 Q You are well aware of the dictates of
22 OSHA Section 1910.217; is that correct?

23 A Yes.

24 Q And you are well aware of the ANSI
25 standard, B-11.1, on point of operation

1 guarding; is that correct?

2 A I am.

3 Q Good. Can you envision for me any
4 piece of machinery in the workplace that
5 would have a point of operation that would
6 not have to be guarded by today's stan-
7 dards?

8 MR. O'NEILL: In 1994?

9 MR. MEROS: Right.

10 THE WITNESS: Sure. I believe
11 there are occasions where that might be
12 true.

13 BY MR. MEROS:

14 Q Can you think of any for me now, that
15 you've seen in your experience?

16 A Yes. I am familiar with circum-
17 stances where automatic feeding devices
18 are provided, and the actual point of
19 operation is embedded within the machine.

20 Q I see, okay.

21 A And it's remote.

22 Q So, the automatic feed acts as a
23 safety device for the point of operation;
24 is that a fair characterization of what
25 you're telling me?

1 A Well, the machine frame and, you
2 know, the machine design.

3 Q Are there any other instances of a
4 machine where you would not have to guard
5 the point of operation by today's stan-
6 dards?

7 A Sure, there are occasions where you
8 can't do it. To use the machine and to
9 maintain the utility of the machine, you
10 can't use a guard on some pieces of equip-
11 ment.

12 Q On the point of operation?

13 A Yes.

14 a Okay. Could you give me an example
15 of that?

16 A Well, I can think of, for example, a
17 table saw. When you have to, for example,
18 do a finger joint, there are different
19 styles of guards that are provided for and
20 are available for a table saw, but none of
21 those guards are appropriate and can be
22 employed in doing a finger joint on a
23 table saw. There's just no way to do it.

24 Q And what would OSHA require for that
25 particular table saw, then, to adequately

1 guard the dangerous part of that saw
2 blade?

3 A Well, **OSHA** doesn't necessarily
4 require anything to guard it. They leave
5 it up to the employer or user to determine
6 the best way to appropriately machine that
7 part.

8 Q But you would recognize the need in
9 that instance to make the operator safe;
10 is that correct?

11 A When you say "you would recognize" --

12 Q You, as an expert analyzing a table
13 saw, would recognize the exposure to an
14 unguarded hazard; would you not?

15 A I don't quite understand your ques-
16 tion, sir.

17 Q You would recognize that a table saw,
18 in the instance that you have described,
19 would not have a guard for this finger
20 joint.

21 A That's correct.

22 Q What does **OSHA** say about that? In
23 your experience, what would **OSHA** want the
24 owner/user to employ on that type of
25 device?

1 A I don't think that OSHA specifically
2 says. OSHA in 1910.212, which is the
3 general section on machine guarding,
4 requires that guards be provided for the
5 point of operation. However, there are
6 circumstances where you cannot physically
7 do that and still use the machine.

8 Q All right.

9 A And it's either try to perform the
10 joint on some other machine where you
11 might be able to provide some guarding, or
12 not use the machine, and I think that
13 would have a significant effect on the
14 utility of the machine.

15 a The least desirable scenario is to
16 expose the operator to the unguarded
17 hazard; would you agree with me there?

18 A Well, again, I think that the utility
19 versus the risk would have to be analyzed,
20 and I think that the utility would be
21 affected significantly if you were to
22 decide that you had to provide some type
23 of a guard, and you couldn't do the work.

24 Q Have you ever participated in the
25 formulation of any standards?

1 A I have only commented on standards as
2 a part of my being a member of the
3 American National Standards Institute.
4 Q How long have you been a member of
5 ANSI?
6 A I don't know; five, ten years.
7 Q Has your engineering license ever
8 been suspended or revoked?
9 A No.
10 Q Or have you been subject to any
11 reprimand in any way?
12 A No, sir.
13 Q Have you ever been in charge of
14 safety for any design manufacturer?
15 A Well, I think that you need to be a
16 little more specific about being "in
17 charge." Designing machinery, placing it
18 in the field and evaluating its operation
19 or designing for its operation requires me
20 to have safety as a part of that process,
21 and when you say "in charge," that's part
22 of my duties as an engineer.
23 Q I'll be more specific. Have you ever
24 headed up the product design department
25 when employed by any manufacturers?

1 A No.

2 Q Have you ever worked for the Harris
3 Corporation as an employee?

4 A No.

5 Q Or for any of their affiliated com-
6 panies?

7 A No, sir.

8 Q Are you familiar with the Harris
9 Graphics Corporation or the Harris
10 Intertype Company or any of those com-
11 panies?

12 A Yes.

13 Q Have you ever consulted with them on
14 any particular matter outside of this one?

15 A I've never been employed directly by
16 Harris Corporation on a consultant basis,
17 although I have done work for people such
18 as attorneys who have done work for
19 Harris.

20 Q Have you ever been retained as an
21 expert on a case where the Harris
22 Corporation was a defendant?

23 A Yes.

24 Q Were you retained by the Harris
25 Corporation in any of those cases or in

1 that case?

2 A No, not directly, no.

3 Q Have you ever designed an embossing

4 press?

5 A No, sir, only evaluated the design.

6 Q Evaluated, okay. Have you ever

7 designed a power press?

8 A No, sir, only evaluated them. These

9 are machines that are many years old.

10 Q I understand. Have you ever designed

11 a guard for an embossing press?

12 MR. O'NEILL: Excuse me. What

13 was the verb?

14 BY MR. MEROS:

15 Q Have you ever designed a guard for an

16 embossing press?

17 A No.

18 Q Have you ever been called upon to

19 design a guard for an embossing press?

20 A Only to evaluate guards.

21 Q Have you evaluated any other

22 instances of an embossing press and how to

23 guard the point of operation outside of

24 this particular case?

25 A Could you repeat the question, sir?

1 Q I'll get it read back to you.

2 (At this time the question was
3 read back.)

4 THE WITNESS: Yes.

5 BY MR. MEROS:

6 Q Could you tell me about that?

7 A Yes. I've been retained to evaluate
8 guards that were placed on leather emboss-
9 ing presses. I guess as far back as ten
10 years ago, I was retained as a consultant
11 by a leather equipment manufacturer that
12 is an Italian manufacturer of leather
13 tanning equipment, and I had an occasion
14 at that time to evaluate some of their
15 equipment which included the evaluation of
16 guard arrangements for that type of
17 equipment.

18 Since that time, I've had an
19 occasion to evaluate some other guarding
20 arrangements on embossing equipment made
21 by Sheridan, actually.

22 Q Going back to the case ten years ago,
23 was that the Italian manufacturer of a
24 tanning press?

25 A It was, yes, a leather tanning and

1 finishing machine. This manufacturer also
2 made leather processing equipment includ-
3 ing presses.

4 Q What were you called upon to do in
5 that case?

6 A I was hired as a consultant to evalu-
7 ate their current design of equipment,
8 their current product line, to evaluate
9 the guard arrangements on their current
10 product line, to evaluate manuals and the
11 contents of those manuals and the warn-
12 ings.

13 Q There was no accident involved in
14 that particular matter?

15 A No, sir.

16 Q It was just analyzing the manufac-
17 turer's system of guarding and method of
18 guarding?

19 A The equipment in general, yes.

20 Q The equipment in general.

21 A And the ancillary units that went
22 with it.

23 Q What type of guards did you find the
24 manufacturer was employing on its tanning
25 presses?

1 MR. O'NEILL: At that time, ten
2 years ago?

3 MR. MEROS: Or before.

4 MR. O'NEILL: Well, he was
5 evaluating their current product line.

6 BY MR. MEROS:

7 Q The current product line, all right.
8 What did you find that they had used in
9 the past in terms of guarding methods?

10 MR. O'NEILL: You mean prior?

11 BY MR. MEROS:

12 Q What did you find from the company
13 literature, the company photographs, the
14 company records that they had employed in
15 years earlier as guarding mechanisms for
16 these presses?

17 MR. O'NEILL: I would have to
18 ask you to define more clearly the time
19 frame.

20 BY MR. MEROS:

21 a At any time, anything that you might
22 have seen. Well, actually, let me see if
23 I can start over again.

24 I'm looking for what you found
25 out ten years ago in terms of what this

1 Italian manufacturer had done in terms of
2 its history of guarding its machinery.
3 What did you learn at that time that they
4 had earlier done?

5 A Well, I had found that, depending on
6 the circumstances, and that is what the
7 equipment was designed to do by way of its
8 purpose and nature, various guards or no
9 guards were provided.

10 Q Can you give me a few examples?

11 A Well, there was a machine that had a
12 roll feed type of arrangement, and on that
13 machine, there was a contact type of guard
14 arrangement that had been put on the
15 machine, but earlier the machine was not
16 provided with a contact guard arrangement.
17 In the process of looking at the history
18 of development of the machine, originally
19 there was no guard and, then, ultimately
20 later there was a guard placed on this
21 machine, but the machine was a specific
22 purpose machine. It was specifically
23 designed to do a certain, specific job.

24 Q Which was what, in your recollection?
25 Do you recall?

1 A Yes. It was to finish, sand finish a
2 hide and, then, to emboss it.
3 Q And this would be for hides of all
4 shapes and sizes?
5 A Yes.
6 MR. O'NEILL: This would be for
7 what?
8 MR. MEROS: For hides of all
9 shapes and sizes.
10 MR. O'NEILL: Thank you.
11 BY MR. MEROS:
12 Q I think you said yes.
13 A Yes.
14 Q Do you consider the roll feed to be a
15 point of operation guarding mechanism for
16 these kinds of presses?
17 A I think that the roll feed can,
18 depending on the arrangement again, become
19 a part of a system which could provide a
20 remoteness or a configuration of guarding.
21 Q Okay. Were there any other presses
22 or machines of this Italian manufacturer
23 where you found out what types of guards
24 they had employed?
25 A Well, I know that, in some of their

1 lines, there were some fixed barrier
2 guards provided, but, again, the process
3 was a specific purpose process. It was to
4 do or to produce or convert a specific
5 size and arrangement of work piece.

6 Q Take me to the other instances of
7 where you consulted on or analyzed emboss-
8 ing presses.

9 A Okay. I have been retained to inves-
10 tigate accidents involving embossing
11 presses in that ten-year period, even up
12 to today.

13 a Let's go through each and every one,
14 okay, during the past decade. Can you
15 start with the earliest of the instances
16 where you investigated or analyzed an
17 embossing press situation, for whatever
18 the purpose.

19 A I don't recall the exact date or time
20 or even the name of the job.

21 Q Okay, but what did you do, essen-
22 tially?

23 A I was retained to evaluate whether or
24 not the press itself was appropriately
25 designed and do an independent investi-

1 gation of the design of the machine to
2 evaluate whether or not it met the stan-
3 dards, the current standards and whether
4 it was defective or not.

5 Q What do you recall about that
6 embossing press in terms of the size or
7 the manufacturer? Do you recall anything
8 at all?

9 A I just recall that it was a Sheridan
10 press. It was being used in a bookbinding
11 application. Actually, it was a gold leaf
12 stamping and embossing operation for the
13 processing of looseleaf binders.

14 Q I realize that you don't recall the
15 year of your work on that particular case.
16 What was the jurisdiction?

17 A New Jersey.

18 Q Where was the press at? Do you
19 recall?

20 A Not specifically, no.

21 Q Do you recall the plaintiff's name
22 who was injured in that case? And I am
23 assuming that this was a case of an acci-
24 dent on this press.

25 A Yes.

1 Q Can you recall for me the plaintiff's
2 name?
3 A No.
4 Q Can you recall the model of the
5 press?
6 A No, sir, not at this time.
7 Q Was it a four-poster? It was a
8 Sheridan four-poster?
9 A A four-rod press, yes.
10 Q Can you recall the vintage of the
11 press? How old was it?
12 A I don't recall, sir.
13 Q Did you write a report in that case?
14 A I'm pretty sure that I did.
15 Q I would ask you to produce that, all
16 right?
17 Did you testify --
18 A I'm not sure that I have it, just so
19 that you know. We don't keep records of
20 that nature.
21 Q Do you destroy them?
22 A Yes. When a case is disposed of, the
23 record is tossed.
24 Q So, the report that you authored,
25 assuming that you wrote one in that case,

1 you no longer keep on file?
2 A That is correct.
3 Q Do you recall testifying in that
4 case?
5 A No.
6 Q Did you testify in that case, either
7 in deposition or trial?
8 A I don't think so, no.
9 Q What corporation or manufacturer or
10 entity retained you in that case?
11 A I was retained by an attorney in that
12 case.
13 Q Did the attorney pay you, or did
14 somebody else pay you for your services?
15 In other words, who paid your bill in that
16 case for your work?
17 A I don't know that specifically. If I
18 send a bill, and the bill gets paid, the
19 bill doesn't come, or the check doesn't
20 come directly to me. I mean, I don't know
21 who ultimately paid it. It just comes and
22 gets paid, and it goes off the books.
23 Q This will go a lot easier and take a
24 lot less time if you try to understand
25 what I'm asking. I may not be specific-

1 ally using the right words.

2 I'm asking what entity, what

3 manufacturer or corporation asked you to

4 be a consultant in that case. I realize

5 that you had contact with counsel, but

6 ultimately what entity asked you to par-

7 ticipate in that case?

8 A Harris Corporation.

9 Q Okay, and what were your findings in

10 that case ultimately?

11 A After my analysis, I think that I

12 determined that the machine was not

13 defective.

14 Q I understand, but you can't recall

15 for me the plaintiff's name?

16 A That's correct.

17 Q Could you recall for me the defense

18 counsel that consulted with you in that

19 case?

20 A Yes.

21 Q What is his name?

22 A Alan Darnell.

23 Q Is he in the room here now?

24 A He certainly is.

25 Q All right. How was the plaintiff

1 injured in that case, if you recall?
2 A I don't recall the specifics; I
3 really don't recall.
4 Q Okay. Do you know what part of the
5 embosser the plaintiff was injured on?
6 Was it a flywheel? Did they fall and
7 trip, and were they injured on a part of
8 this press, or were they entrapped in the
9 point of operation? Do you recall any-
10 thing about that?
11 A Not specifically. I think that I'd
12 be speculating to give you that answer --
13 Q All right.
14 A -- because I don't recall.
15 Q Do you recall anything about the
16 case?
17 A Only that it was a leather embossing
18 press that was used in a bookbinding
19 operation.
20 Q And that it was not defective?
21 A Yes.
22 Q But you don't recall anything else?
23 A Not at the moment, no.
24 Q And you have no file or record back
25 in your office that would reflect any of

1 the facts of the case or what your find-
2 ings were?

3 A I'm sure that I don't.

4 Q And this would have been within the
5 last decade? This was between 1984 and
6 1994?

7 A I think so.

8 Q Okay. May I have a summary of the
9 next instance in which you consulted on an
10 embossing press case?

11 A As I recall, there was a matter
12 located in Newark, New Jersey.

13 Q What was the jurisdiction of Mr.
14 Darnell's case? I think you said New
15 Jersey, but I didn't catch the city.

16 A I don't know the city. It was in New
17 Jersey, though.

18 Q Did you inspect this particular
19 press? Did you go --

20 MR. O'NEILL: Which one; the
21 first or the second one?

22 BY MR. MEROS:

23 Q The first one that we spoke about.

24 A I did inspect it, yes.

25 Q Where did you go to inspect it? What

1 city was the press in?
2 A I don't recall.
3 Q Do you recall the name of the shop
4 where the press was?
5 A No.
6 Q Okay. Let's go ahead to the second
7 instance or the next one in your chron-
8 ology. What was the next embossing press
9 case all about that you consulted on?
10 A There is a case in Newark, New Jersey
11 --
12 Q All right.
13 A -- involving a leather embosser.
14 Q Let's go back to the first one again.
15 I may do this often. Excuse me, but I'm
16 just not that organized.
17 The first case that was Mr.
18 Darnell's case, what injury was suffered
19 by the plaintiff? Do you recall that?
20 A I think I said that I wasn't sure.
21 Q What was the allegation of the
22 plaintiff that brought you to the finding
23 that it was not a defective press?
24 A I don't know; I don't recall.
25 Q Was there a point of operation guard

1 on the press?

2 A I'm not sure. I don't recall.

3 Q Well, why did you say in that case

4 that it was not defective?

5 A Because I believe that that was the

6 ultimate analysis conclusion.

7 Q But was the machine guarded in some

8 way?

9 A I believe that there were guards on

10 the machine, yes.

11 Q What kind of guards were there?

12 A I know that there were power trans-

13 mission guards.

14 Q Excuse me. I'll have to ask you:

15 what is a paratransmission guard?

16 A A power transmission guard.

17 Q I'm sorry. I thought you said

18 "para." Power transmission guard?

19 A Yes.

20 Q Is that a lockout device, a shutoff

21 device?

22 A No.

23 Q What is a power transmission guard?

24 A That's a guard that would be applied

25 to exposed gearing in the powertrain.

1 Q That isn't a point of operation
2 guard; is it, as defined by OSHA?
3 A No, sir.
4 Q It had that kind of a guard?
5 A Yes.
6 Q Did it have an automatic throw-off
7 lever?
8 A I don't recall.
9 Q Did it have a push-away guard of some
10 kind at the point of operation?
11 A I don't recall.
12 Q Did it have a movable barrier guard
13 of any kind on it?
14 A I don't recall.
15 Q But you recall that you found that it
16 was not defective.
17 A Yes, sir. After the analysis, I
18 believe I found that it was not defective.
19 Q In the Newark case with the leather
20 embosser, what was that case all about?
21 A That case is a hand injury case.
22 Q How did it happen?
23 A The employee's hands were in the area
24 of the point of operation, and he acti-
25 vated the machine.

1 Q This was a leather embosser?
2 A Yes.
3 Q Can you recall for me the name of the
4 case?
5 A Yes.
6 Q What was that case called?
7 A Flessner.
8 Q Can you spell it?
9 A F-L-E-S-S-N-E-R.
10 Q Versus whom?
11 A Harris Corporation.
12 Q Harris Corporation. Were there any
13 other defendants?
14 A Yes, I think Bruno Sherman.
15 Q Bruno Sherman, and this was in 19
16 what? Did you give me a year yet?
17 A No.
18 Q Can you recall?
19 A The year that the press was made?
20 Q No, no, the year of your involvement
21 in this case, the Flessner case.
22 A It's ongoing.
23 Q It's still going on?
24 A Yes.
25 Q When did you first start to work on

1 the Flessner case?

2 A Maybe three years ago, two years ago;

3 I'm not sure.

4 Q So, it's actively going on now?

5 A Yes, sir.

6 Q Have you been deposed in that case?

7 A No, sir.

8 Q Have you written any reports in that

9 case?

10 A Yes, sir.

11 Q I'd like you to produce any reports

12 in that case so that I may take a look at

13 them.

14 A All right.

15 Q Would you simply send a copy to

16 counsel?

17 A Yes, if there is an agreement for me

18 to do that.

19 MR. O'NEILL: I'll take that

20 under advisement.

21 BY MR. MEROS:

22 Q Okay. What's the model? Is this a

23 Sheridan press?

24 A Yes.

25 Q What's the model of the Sheridan

1 press in Mr. Flessner's case?
2 A Number 17.
3 Q Do you recall by chance a serial
4 number?
5 MR. O'NEILL: Sir?
6 BY MR. MEROS:
7 Q A serial number, do you recall that?
8 A Not off the top of my head, no.
9 Q The vintage, how old of a machine is
10 it?
11 A Late '40's.
12 a What are the allegations as to the
13 injury in that case?
14 A Inappropriate guarding.
15 Q And it was an entrapment in the point
16 of operation?
17 A Yes.
18 Q Have you inspected the leather embos-
19 ser in that case?
20 A Yes, I have.
21 Q Was it guarded at the point of
22 operation?
23 A Yes, it was.
24 Q What was the guard at the point of
25 operation?

1 A A Boyle type guard.

2 Q Are you involved in the Fred Ruping
3 Leather Company case in any way?

4 A The Fred Ruping Leather Company is
5 the company that initially purchased this
6 press.

7 a Is that this particular case?

8 A Yes, sir.

9 Q Okay. Is that corporate entity a
10 party in this case?

11 A I don't know which corporate entity
12 you're talking about.

13 Q The Fred Ruping Leather Company.

14 A What about them?

15 Q Are they a party in this Flessner
16 case? Are they a defendant in the case?

17 A I don't think so, no.

18 Q Had you inspected the press in that
19 case while it was at the Fred Ruping
20 Leather Company?

21 A Yes.

22 Q The Boyle guard was on the press?

23 A It was.

24 Q Was it an after-market guard, or was
25 it put on as part of the press?

1 A It was put on -- actually, I guess
2 that it's a Steinhart guard and not a
3 Boyle guard, but they're similar in
4 nature.

5 Q Okay.

6 A That guard was put on as it was sold.

7 Q On the machine?

8 A Yes.

9 Q So, is it a fair assessment that the
10 machine as manufactured by Sheridan was
11 manufactured with a Boyle or Steinhart-
12 type of guard?

13 A That's correct.

14 Q And that was in the '40's, 1940's?

15 A Late '40's.

16 Q Late '40's. Are you familiar with
17 the operation of a Boyle guard or a
18 Steinhart guard?

19 A Yes.

20 Q You've examined them, and you have
21 evidently run them or tested them in some
22 way?

23 A I have.

24 Q When did the technology first exist
25 for the Boyle guard to be used on a press?

1 A In the 1930's.

2 Q How do you know that?

3 A I've seen the patent.

4 Q For the Boyle guard?

5 A For the Boyle guard, yes.

6 Q Who patented the Boyle guard; do you

7 know?

8 A You mean the names of the people who

9 did?

10 Q Or the chief inventor of the Boyle

11 guard.

12 A I don't recall specifically.

13 Q Do you recall who it was assigned to,

14 the assignee?

15 A No, not at the moment.

16 Q Although it was patented in the

17 '30's, as far as you know, do you believe

18 that the technology existed for a Boyle-

19 type guard prior to the patent?

20 MR. O'NEILL: In a commercially

21 available sense?

22 BY MR. MEROS:

23 Q In a technologically feasible sense,

24 in a way that it could be used, developed

25 and implemented on some machinery.

1 MR. O'NEILL: You're not
2 inquiring about what might have been in
3 somebody's mind prior to 1930; are you?
4 MR. MEROS: No, no. I'm asking
5 him if the engineering know-how existed
6 prior to the '30's to put together a
7 Boyle-type guard for a press.
8 MR. O'NEILL: Have you ever
9 considered that question or researched it?
10 THE WITNESS: No, I really
11 haven't.
12 BY MR. MEROS:
13 Q I'll ask you to consider it now. With
14 all of your experience in mechanical
15 engineering, was the technology available
16 for a Boyle-type guard prior to the
17 1930's?
18 A That's a very, very difficult ques-
19 tion to answer.
20 Q Okay. If you can't answer it, that's
21 all right.
22 A Yes.
23 Q How would you classify a Boyle guard
24 in terms of OSHA; a Type A and a Type B
25 movable gate guard? Is it an A or a B, as

1 far as you know?

2 A I'd have to analyze that further.

3 I'm not sure.

4 Q You would agree that a Boyle guard is

5 a type of a movable gate guard or a

6 movable barrier guard? It slides into

7 place with the actuation of the press bed?

8 A Yes.

9 a And it advances ahead of the closure

10 of the die; is that a fair statement?

11 A It advances ahead of the closure of

12 the bed.

13 a Okay, and if an arm or any other

14 obstruction is in there, the Boyle guard

15 will make contact with the obstruction and

16 not allow the closure of the press beds,

17 correct?

18 A If it's functioning properly, that's

19 its intent, yes.

20 Q Without regard to a Boyle guard, how

21 long have movable gate guards been in

22 existence?

23 A I would say for a long time. I can't

24 give you a specific date, but they've been

25 around for a while.

1 **a** Before 1900?

2 A I would say that in or about that
3 time, I would imagine that they would have
4 been available.

5 Q The Flessner case is ongoing; is that
6 correct?

7 A Yes.

8 **a** And you haven't been deposed yet in
9 that case?

10 A I have not.

11 Q What are the allegations of Mr.
12 Flessner? How was he injured on the press
13 with a Boyle guard? Do you know?

14 A Yes.

15 Q Okay. I'm asking you for his
16 allegations. What does the plaintiff say
17 occurred in that case? Then, I'll ask you
18 for your own findings. What does the
19 plaintiff say in that case?

20 A I don't quite understand your
21 question. He got caught in the area of
22 the die. I mean, that's what he says
23 happened.

24 **a** Is he saying that the Boyle guard
25 failed or that the press had malfunctioned

1 or what?

2 A Well, he's saying that there was
3 inadequate design. The Boyle guard had
4 been removed.

5 Q So, the Boyle guard was not on the
6 press at the time of his injury?

7 A The gate had been removed, yes.

8 Q I see, okay, and what are your
9 findings in that case?

10 A Well, the fact of the matter is, the
11 gate had been removed, and it should not
12 have been removed. It appears as though
13 the guard was improperly adjusted, and
14 there was a major modification of the
15 controls of the press.

16 Q Did you make a finding in that case
17 that the Sheridan press was adequately
18 designed with the Boyle guard?

19 A Yes.

20 Q All right.

21 A It wasn't a Boyle guard. It was a
22 Steinhart guard, I believe.

23 Q All right. Your finding was that
24 there was no defective design of the press
25 because it was manufactured by the

1 Sheridan Company in the '40's with a
2 Steinhart guard; is that correct?
3 A Yes.
4 MR. O'NEILL: Excuse me. May I
5 hear the question again?
6 (At this time the question was
7 read back.)
8 THE WITNESS: And other con-
9 trols and arrangements.
10 BY MR. MEROS:
11 Q What other controls?
12 A The machine was provided with a two-
13 hand control also.
14 Q Were they mechanical levers?
15 A No.
16 Q What kind of controls were they?
17 A Electromechanical.
18 Q Dual palm buttons?
19 A No. They were actually push buttons.
20 Q Actually push buttons?
21 A Yes.
22 Q But they were electric and not pneu-
23 matic?
24 A Electric.
25 Q In the '40's?

1 A Yes.

2 Q Would you say --

3 A Well, when you say "pneumatic," they

4 were not pneumatic palm buttons or push

5 buttons.

6 Q They were electric-controlled push

7 buttons?

8 A They were push buttons that were

9 electric in nature, yes.

10 Q With the solenoids and everything to

11 signal the press bed to come down?

12 A Yes. The press bed didn't come down.

13 It came up.

14 Q I'm sorry; the bed came up, and this

15 was done by the Sheridan Company in the

16 '40's? They had electric push buttons to

17 activate the press bed then?

18 A Yes.

19 Q How do you feel about that as a

20 design advancement in the 1940's? Was

21 that somewhat ahead of its time?

22 A I would say that it was one of the

23 earliest of that nature, yes.

24 Q Two-hand controls and two-hand trips

25 have been around for a long time, but

1 those were mechanical in nature. Is that
2 what you have found?

3 A They were mechanical in nature, yes.

4 Q And you said that there were some
5 arrangements as well as controls. What
6 was that; the throw-off lever?

7 A There was not a throw-out lever as we
8 saw it. There was an anti-repeat device,
9 as the machine had been modified through
10 its control arrangement.

11 Q What did you find was on it in terms
12 of an arrangement when it was manufac-
13 tured? Did it have an automatic throw-off
14 lever?

15 MR. O'NEILL: Wait a second.
16 Let's just make sure that we understand
17 what you're asking about now. Are you
18 asking about the machine as it was origin-
19 ally manufactured?

20 MR. MEROS: Yes.

21 MR. O'NEILL: Or at the time of
22 his inspection?

23 BY MR. MEROS:

24 Q As a result of your inspection and
25 review of documents in that case, did you

1 learn how it was originally manufactured
2 by the Sheridan Company?

3 A Yes, as far as I could tell.

4 Q So that I understand and so that the
5 record is clear, you said that it had a
6 Steinhart guard as part of its original
7 manufacture; is that right?

8 A Yes. It was supplied with that.

9 Q And that it also had electric palm
10 buttons as the activating devices as it
11 was originally manufactured?

12 A I don't think that that's exactly
13 what I said, but --

14 Q Well, could you restate it for me so
15 that I understand? I may have misunder-
16 stood you.

17 MR. O'NEILL: Are you now
18 inquiring about the original equipment?

19 MR. MEROS: Right.

20 BY MR. MEROS:

21 Q All of my questions so far have been
22 about the original equipment. Were the
23 electric palm buttons original equipment
24 on this particular press?

25 A Electric buttons. They were push

1 button switches, and they were part of the
2 original press, yes.

3 Q As part of its original manufacture,
4 did it have an automatic throw-off lever?

5 MR. O'NEILL: Which would make
6 it run single cycle; is that the lever
7 that you're talking about?

8 MR. MEROS: Yes.

9 THE WITNESS: No, sir, I don't
10 believe that it did. It had other con-
11 trols to do that.

12 BY MR. MEROS:

13 Q And I think that you had said that it
14 had an anti-repeat device.

15 A It was a two-hand start, two-hand
16 hold.

17 Q So, there would have to be hold time
18 on the push buttons?

19 A Yes.

20 Q And that was, in effect, an anti-
21 repeat device?

22 A Yes.

23 Q Is that like a stop-on-top device?
24 You have to hold the push buttons in so
25 that the press makes a cycle and then

1 stops on top, and you've got to release
2 the push buttons, and then press them
3 again to get a second cycle?
4 A Yes.
5 Q And that's an anti-repeat device; is
6 that right?
7 A Yes.
8 a And that was on the press?
9 A Yes.
10 Q Were there any other controls or
11 arrangements on this particular press?
12 MR. O'NEILL: That's the ori-
13 ginal equipment?
14 MR. MEROS: The original equip-
15 ment, yes.
16 THE WITNESS: Well, that was
17 the extent of the operating controls.
18 BY MR. MEROS:
19 Q Can you summarize for me the
20 modifications that you found when you
21 inspected this number 17 Sheridan press
22 that injured Mr. Flessner?
23 A Yes. The two-hand control had been
24 removed.
25 MR. O'NEILL: What control?

1 THE WITNESS: The two-hand
2 control. It actually was four-hand, but
3 the two-hand control was removed, and
4 there was a foot pedal switch arrangement.
5 The guard was on the machine when I
6 inspected it but was not properly set.
7 BY MR. MEROS:
8 Q And this was a foot switch?
9 A Yes.
10 Q When you say that it was actually a
11 four-hand control, what do you mean? Was
12 the 17 meant to be operated by two men,
13 each having two controls?
14 A It could be, yes.
15 Q Was that the original manufacture?
16 Was that original equipment?
17 A It appears to be, yes.
18 Q Is that case set for trial?
19 A I believe there is a trial date, yes.
20 Q And you'll be testifying in that
21 case?
22 A If requested, I will.
23 Q Let's move forward, then, in our
24 chronology. What is the next embossing
25 press case that you have worked on?

1 A There is another one in New Jersey.
2 The name is, I believe, Ojea, O-J-E-A, I
3 believe.
4 Q Versus?
5 A Harris Corporation.
6 Q What kind of an embossing press is
7 involved in that case?
8 A I don't recall the model specific-
9 ally.
10 Q Is it an embossing press, though?
11 A Yes.
12 Q Have you inspected it?
13 A Yes.
14 Q Is it larger than the 17 that we
15 spoke of or smaller?
16 A I'm not sure. It's been some time
17 since I did the inspection, and I'm not
18 sure.
19 Q What is that case about?
20 A That is a hand injury.
21 Q Amputation?
22 A I'm not sure.
23 Q Did the injury occur in the point of
24 operation?
25 A Yes.

1 Q Was the point of operation guarded at
2 the time of the injury?
3 A Yes.
4 Q With what type of guard?
5 A A Boyle-type guard.
6 Q How did the injury happen?
7 MR. O'NEILL: What?
8 BY MR. MEROS:
9 Q How did the injury happen?
10 A I'm not positive about that. I
11 haven't received, or I think I have
12 received the deposition, but I'm not sure
13 that I've reviewed it. I don't believe
14 that I've reviewed it.
15 Q Have you just gotten involved in this
16 case, the Ojea case?
17 A It's been ongoing for some time.
18 However, it's been moving along -- well, I
19 guess it's been at a normal pace, but
20 we're not at a point now where I need to
21 generate a report or complete the analy-
22 sis.
23 Q So, you are not finished with your
24 work in that case?
25 A That's correct.

1 Q But you've inspected the machine?
2 A Yes, I have.
3 Q Have you learned what the press was
4 equipped with when it was originally
5 manufactured?
6 A I'm not that far along yet.
7 Q Do you know the vintage of that
8 press?
9 A I don't have that information yet, I
10 don't believe. I may have it, but I'm not
11 that far along yet.
12 Q Are you confident that the embossing
13 press was made by Sheridan with a Boyle-
14 type guard in the original manufacture?
15 A I don't know.
16 Q Are there any other embossing cases,
17 embossing press cases, besides the one
18 that you're here on today, that you've
19 been involved in?
20 A I don't recall any others specific-
21 ally.
22 Q Any other cases involving any other
23 equipment wherein you have been an expert
24 consulting with the Harris Corporation?
25 A Yes, there are some others.

1 Q Are they ongoing, or are they closed
2 at this time?

3 A I'm sure that there are some that are
4 closed, and there may be some ongoing.

5 Q Can you give me just an estimate of
6 how many Harris Corporation cases you have
7 worked on in your professional career as
8 an engineering consultant?

9 A Oh, maybe eight.

10 Q And there appears to be three that
11 are current as far as I could tell from
12 what you testified to; is that right?

13 A Right.

14 Q This case, Ojea and Flessner.

15 A Uh-huh.

16 Q Are there any other Harris
17 Corporation cases that you're involved in
18 currently besides these three?

19 A I believe so, yes.

20 Q Can you tell me about those, please?

21 A I am evaluating a paper cutter, a
22 guillotine paper cutter case, and a print-
23 ing press case.

24 Q A printing press case?

25 A Yes.

1 Q Those are two. Are there any more
2 than those two that you're currently
3 involved in?

4 A Well, there may be more than one
5 printing press case and more than one
6 guillotine cutter case, but --

7 Q Do you know how many?

8 A There may be two or three.

9 Q Of each kind?

10 A Possibly.

11 Q Who would know that if you don't?

12 A I don't understand what you mean.
13 Who would know what?

14 Q Is there someone back at your company
15 who has a record of what you're working on
16 who would know the extent of your work
17 currently with this particular corpora-
18 tion?

19 A Well, I have any record of work with
20 the corporation.

21 Q Are there other employees in the com-
22 pany besides yourself?

23 A Yes.

24 Q Who are they?

25 A I don't know what you mean. Do you

1 want a list of all of the employees?
2 Q Are there other engineers?
3 A There are other engineers, sure.
4 Q And is there a support staff?
5 A Sure.
6 Q Is there a secretary?
7 A Sure.
8 Q Would they have information as to
9 what your pending cases are?
10 A No.
11 Q Do you keep time records?
12 A Sure.
13 Q All right. I'd ask to see your time
14 records that you currently have for your
15 work on behalf of the Harris Corporation
16 on all current cases, and, of course, I
17 have to ask this of your counsel, so it
18 would be beyond you.
19 MR. O'NEILL: I think that I
20 would probably be disinclined to respond
21 to that request.
22 BY MR. MEROS:
23 Q The request is being made, though,
24 for you to produce your time records
25 showing the extent of time and the nature

1 of the cases that you are currently
2 working on for the Harris Corporation.

3 Have you ever rendered an
4 opinion in any of the Harris Corporation
5 cases that the product in question was
6 defectively designed?

7 A Not that I can recall at this point,
8 but that doesn't mean that I haven't done
9 that; not necessarily that it's defec-
10 tively designed, but to indicate that I
11 could not help in or I could not give a
12 positive evaluation of a piece of equip-
13 ment.

14 Q I'm not sure if I follow you. Are
15 you saying that there have been instances
16 when they've called you in to consult, and
17 you've had a negative opinion before
18 getting involved in the case? If I don't
19 understand that, would you explain it,
20 please?

21 A Yes. I can't tell you any specific
22 or give you any specific information in
23 that regard. However, there may very well
24 have been an occasion where I performed an
25 evaluation, and I informed whoever I was

1 working for that I could not support any
2 opinions in that case.

3 Q Do you have a specific recollection
4 of that happening --

5 A No.

6 Q -- on a particular machine?

7 A No.

8 Q So, you can't testify and explain
9 exactly what kind of a machine you looked
10 at where you may have given them the
11 opinion: I can't help you with this case?

12 A Right.

13 Q But you think that it may have hap-
14 pened?

15 A It may have happened, yes.

16 Q But you can't think of any now?

17 A No.

18 Q Would you have any records which
19 might bear this out?

20 MR. O'NEILL: Sir?

21 BY MR. MEROS:

22 Q Do you have any records which might
23 bear this out and show what you are tes-
24 tifying to?

25 A I doubt it, but there might be some-

1 thing, but I don't know.

2 Q Am I correct in saying, then, that in
3 all of the cases on which you have been a
4 consultant on behalf of the Harris
5 Corporation, you have rendered opinions
6 favorable to the company in those cases?

7 A I have performed independent evalua-
8 tions, and I have provided opinions based
9 on those evaluations, and if they're
10 favorable, so be it.

11 Q Were they all favorable?

12 A As far as I can recall.

13 Q Are there any other cases that you're
14 currently working on for the Harris
15 Corporation outside of the ones that you
16 already told me about?

17 A No.

18 Q Have you had any teaching experience
19 of any kind in the field of engineering?

20 A No, not specifically, no.

21 Q What are your professional member-
22 ships?

23 A I am a member --

24 Q Currently. First of all currently,
25 the ones which you are now a member of.

1 A I am a member of the American Society
2 of Mechanical Engineers, the Instrument
3 Society of America, the American Society
4 of Safety Engineers, the National Safety
5 Council, the American National Standards
6 Institute, the National Fire Protection
7 Association.

8 Q Have you testified as an expert in
9 any fire cases?

10 MR. O'NEILL: In any what?

11 MR. MEXOS: Fire cases,

12 MR. O'NEILL: Fire cases?

13 MR. MEROS: Yes.

14 THE WITNESS: Yes.

15 BY MR. MEROS:

16 Q So, a part of your expertise is in
17 fire prevention or fire protection?

18 A Yes, cause and origin, fire analysis
19 and fire protection.

20 Q All right.

21 A That is something that I have pro-
22 vided services in. I happen to be a
23 volunteer firefighter. I've been a volun-
24 teer firefighter for over 20 years, close
25 to 25 years now. I do it as a service for

1 my local fire company; that is, cause and
2 origin, fire investigation and analysis
3 for my local community, and I also do it
4 on occasion and have done it on occasion
5 as a professional.

6 Q Are there any other memberships that
7 you may have in any organizations outside
8 of the ones that you've explained here?

9 A I think that those are generally it.
10 There may be some others.

11 Q What other ones have you had a
12 membership in that you do not now have a
13 membership in?

14 A There aren't any.

15 Q Outside of the fields of engineering
16 and fire analysis, do you claim to have
17 any other expertise in terms of consulting
18 work?

19 A That's basically what my professional
20 career is.

21 Q What percentage of your time is spent
22 consulting in the area of fire analysis?

23 A I'd say less than five percent.

24 Q Less than five percent. The rest of
25 your professional time, in terms of con-

1 sulting work, is spent in the engineering
2 field?

3 A Yes.

4 Q What percentage of your time --

5 A Well, engineering and administrative
6 fields, yes.

7 Q All right. What percentage of your
8 professional time is devoted to practicing
9 engineering work or design engineering
10 work?

11 A Well, it appears on the time frame

12 Q Let's say within the past three
13 years. What percentage of your time has
14 been spent actually in the engineering
15 field or in the engineering design field?

16 A Well, maybe 30 percent.

17 Q What percentage of your time in the
18 past three years has been spent in the
19 field of expert witness consulting?

20 A Approximately, 50 percent.

21 Q The rest of your professional time
22 has been spent in what?

23 A Administrative work.

24 Q Administrative work

25 A Yes.

1 Q Have you kept time records for this
2 particular case, for the work that you've
3 done?

4 A I don't keep specific written time
5 records. It goes on a billing sheet and
6 is billed. So, there's no specific time
7 records that I keep.

8 Q All right.

9 A I mean, there are no records that I
10 have in front of me that I can look at.

11 Q What is your hourly fee in this case?

12 A \$180 an hour.

13 Q Will that change for trial testimony
14 as opposed to deposition testimony?

15 A No, sir.

16 Q Is it the same for inspection ser-
17 vices and analyzing and research matters?

18 A Yes.

19 Q So, it's \$180 an hour across the
20 board for all services rendered?

21 A That's correct.

22 Q Is your travel time billed at the
23 same rate?

24 A It is.

25 Q Who first contacted you concerning

.....

1 the Ehlen case? Do you recall?

2 A I believe that I was first contacted

3 by Harry Sigmier.

4 Q And what was asked of you in this

5 case? Do you recall? What was initially

6 asked of you in this case?

7 A I was asked to perform an independent

8 analysis of what appeared to be an

9 industrial accident on a Sheridan leather

10 embossing press.

11 a Are you maintaining a file for this

12 particular case?

13 A Yes, sir.

14 Q Have you brought that with you?

15 A I have.

16 Q All right.

17 A With the exception of some things

18 like deposition transcripts. It was just

19 too much to carry.

20 Q I understand. Can you tell me what

21 you have reviewed in this case? And feel

22 free to look at any notes or take a look

23 at your file. I'd like to know everything

24 that you have reviewed in reaching your

25 findings in this case. You don't neces-

1 sarily have to hand them to me. I'm just
2 asking you to itemize them, if you will.

3 A Well, I've reviewed depositions. I
4 visited the site and did an inspection,
5 took photographs and measurements. I
6 reviewed Interrogatory answers, some
7 report of -- or some reports of technical
8 advisors, the investigation report of an
9 employee of Harris, responses to requests
10 for production of documents, those
11 documents themselves, deposition exhibits,
12 patents, the ANSI standard.

13 Q Which ANSI standard?

14 A B-11.1.

15 Q For what year?

16 A I looked at a number of years.

17 a Which ones did you look at?

18 A I don't recall the specific dates,
19 but --

20 Q How many codes are there? How many
21 ANSI codes are you aware of, or ANSI
22 standards, in terms of the years that they
23 were promulgated?

24 A How many are there?

25 Q Yes.

1 A I don't recall.

2 Q Do you know?

3 A Do I know? I have them all, but I

4 don't recall the number.

5 Q Do you recall any of the years of the

6 promulgation of ANSI standards?

7 A It's in the standards themselves.

8 Q For example, B-11.1, when was that

9 promulgated?

10 A I believe that it was first issued

11 late in 1922. I think that's when it was

12 first issued.

13 Q When was it revised?

14 A It was revised on a number of occa-

15 sions.

16 Q Can you give me any particular years?

17 A Well, it was revised in '71, I know.

18 There's a bunch of other years.

19 Q If the machine in this case was

20 bought by the current owner, the Mueller

21 Company, in 1954, what code would you use

22 to analyze the machine in terms of ANSI?

23 MR. O'NEILL: What code was

24 what?

25 BY MR. MEROS:

1 Q Which ANSI standard would you use to
2 analyze the machine? Which year and which
3 ANSI code?

4 A Well, the ANSI code for mechanical
5 power presses is promulgated for a spe-
6 cific type of press. It's a defined
7 press, by definition, and actually I don't
8 believe that this specific machine or a
9 leather embosser is covered by ANSI
10 B-11.1. However, the standard itself
11 provides guidelines for power press
12 equipment.

13 Q Is it your opinion that the ANSI
14 standard B-11.1 does not apply to this
15 embosser press?

16 A I don't think that it specifically
17 applies to this particular machine,
18 correct.

19 Q But you used it in analyzing the
20 machine in this case. You specifically
21 referred to the ANSI standard.

22 A That's true.

23 Q But you are telling me that it does
24 not really apply to this particular power
25 press.

1 A Well, the concepts that are developed
2 in the standard do apply from the
3 standpoint of a piece of press equipment
4 or a press. I have, when you analyze
5 equipment such as this, evaluated them
6 utilizing concepts that are developed by
7 standards such as this.

8 Q I understand.

9 A But I think, specifically, this
10 specific press is not a mechanical. power
11 press as defined by the standard.

12 Q All right. So, if I understand you,
13 you are saying that the ANSI standard
14 helps you as a guideline in analyzing a
15 machine, a machine such as this, but this
16 embossing press is not specifically
17 encompassed in this ANSI standard; is that
18 fair?

19 A It's not specifically defined as a
20 press that would be covered by the stan-
21 dard, yes.

22 Q Okay, thank you. Is there anything
23 else that you took a look at in analyzing
24 and researching this particular matter?

25 A Well, I believe that I've looked at

1 all of the exhibits, all of the exhibits
2 and documents that were identified by
3 other technical people in this case.

4 Q Can you recall for me what deposi-
5 tions you read or reviewed in some way?

6 A Sure. Jack Kelly, Judith Ehlen,
7 Richard Harkness, Ronald Javorsky, Vince
8 Bartos, Gerald Rennell, Doug Taylor, E.
9 Patrick McQuire, Robert Mueller.

10 Q Did you have an occasion to inspect
11 this particular press?

12 A Yes.

13 Q And did you find it to be a Sheridan
14 press, Model 5-A, leather embosser with
15 bookbinders' bed?

16 A It was a Sheridan 5-A leather
17 embosser which was employed in the book-
18 binders' application.

19 Q Was that appropriate for the design
20 of this machine, to be employed in a
21 bookbinders' application?

22 A This machine could be employed in
23 that application, yes, a general purpose
24 machine.

25 Q Did you see the machine history card

1 For this press?

2 A You mean the machine record card? I

3 don't know what you mean by "machine

4 history card."

5 Q Well, the machine itself was made by

6 the Sheridan Company, and they issue a

7 card that shows what parts are in the

8 machine and who it's sold to, and it has a

9 serial number on it. Have you seen any

10 document like that in this case?

11 A Yes.

12 Q You call that what?

13 A A machine record card.

14 Q Okay. Have you seen the machine

15 record card for this case?

16 A I have seen a copy of it, yes.

17 Q Did it say that this was a leather

18 embosser with bookbinders' bed?

19 A That is what it said.

20 Q What other applications could this

21 press be used for outside of being a

22 leather embosser with bookbinders' bed?

23 A Many.

24 Q Could it be used as a metal embosser?

25 A Yes, it could be used in metal appli-

1 cations, possibly.

2 Q Could it be accommodated by a sliding
3 plate?

4 MR. O'NEILL: Could it be what?

5 BY MR. MEROS:

6 Q Accommodated by or with a sliding
7 plate?

8 A Could it be provided with a sliding
9 plate?

10 Q Yes.

11 A Sure.

12 Q Could it be used for any other appli-
13 cations outside of embossing or stamping?

14 A Sure.

15 Q What could it be used for outside of
16 those applications?

17 A It could be used to grain, for grain-
18 ing applications. It could be used in the
19 inking application, the smoothing applica-
20 tion. It could be used specifically in
21 bookbinding. It could be used for leather
22 goods. There is a potential for metal
23 application. There's a multitude of
24 applications for this.

25 Q Okay.

1 A Steel rule die application, scoring
2 application, lots of different applica-
3 tions.

4 Q Die cutting?

5 A Sure, it could be.

6 Q Would the machine need any substan-
7 tial modifications to accommodate any of
8 those uses?

9 A I don't know what you mean by "sub-
10 stantial modifications."

11 Q All right.

12 A As this machine was sold in 1922,
13 this particular machine, would it require
14 modification for use? Is that the ques-
15 tion? I think that you need to follow up
16 on that question.

17 Q I'm asking you if there would need to
18 be, in your estimation, based upon your
19 experience, any substantial modifications
20 for this press to be used in these other
21 applications, and by "substantial," I mean
22 a changing of the press bed, a changing of
23 the actuation method, removal of any han-
24 dles and putting push buttons on. Would it
25 need any substantial modifications to the

1 press?

2 MR. O'NEILL: In order to do

3 all of these things?

4 MR. MEROS: Any of those

5 things, right.

6 THE WITNESS: There may very

7 well be modifications involved, sure.

8 BY MR. MEROS:

9 Q Could you give me more than just a

10 "may"? Would there have to be substantial

11 modifications if the machine were going to

12 be used for graining or stamping or

13 smoothing or plating? Would there have to

14 be substantial modifications?

15 A There would have to be modifications.

16 Now, when you say "substantial," there

17 would have to be -- there very well might

18 be modifications that are required for

19 each of those applications.

20 a Let me ask it this way: would you

21 need to change the motor to do any of

22 those different things?

23 A Well, depending on the size of the

24 press, again, you know, there's a lot of

25 different models of this press. You,

1 first of all, would have to determine the
2 type of press that you'd want to use and
3 the type of application.

4 MR. O'NEILL: Excuse me. I
5 think that he is inquiring about the Model
6 5-A that you saw at the Mueller shop.

7 BY MR. MEROS:

8 Q I'm simply asking you, if this 5-A
9 was going to be used for inking, graining
10 or smooth plating or embossing, would you
11 have to change the motor on this 5-A to do
12 those different things? Would it need a
13 bigger motor or a different kind of motor?

14 A I would say no.

15 Q Would it need different lever activa-
16 tion? Would you have to go to a foot
17 pedal instead of a hand lever?

18 A Depending on what the application is,
19 you might.

20 Q But you saw that this machine had
21 both foot pedals and hand levers, that
22 either could be used to activate this
23 press; is that right?

24 A It had a foot treadle or a hand lever
25 application.

1 Q Would you have to change the tonnage
2 of pressure on this machine to accommodate
3 either embossing, inking, leather grain-
4 ing, smooth plating, any of those things?
5 A The tonnage is fixed by the machine.
6 Q The tonnage is fixed?
7 A That's correct.
8 Q So, it would have enough tonnage for
9 these different items?
10 A To do what is intended to be done
11 within the confines of the machine, yes.
12 Q Would you have to change the size of
13 the press bed to go from an embossing
14 operation to an inking operation or to a
15 smooth plating operation?
16 A Would you have to do what?
17 Q Change the size of the press bed to
18 accommodate these different uses of it.
19 A You may have to change the configura-
20 tion of the bed from the standpoint of the
21 platens and dies that you use.
22 Q Sure, and those are not substantial
23 modifications. Those are only modifi-
24 cations to accommodate the operation being
25 done; isn't that correct?

1 A Well, I don't; know what you mean by
2 "substantial modification." It could be a
3 substantial modification. It's a change
4 in the arrangement of the design of the
5 press, sure.

6 Q If you change a die on this press,
7 you would determine that that is a
8 substantial modification?

9 A Well, again, it can be substantial,
10 depending on what it is that you're doing,
11 what the change is.

12 Q Isn't that a foreseeable change or
13 maintenance item or modification for the
14 manufacturer? Doesn't the manufacturer of
15 this 5-A embossing press realize that
16 there has to be some change in the confi-
17 guration of dies or make-readies if the
18 machine is going to be used for embossing
19 or inking or any of those other items?

20 A I would say that they know that that
21 has to be done, sure.

22 Q And can't this 5-A embossing press
23 accommodate any of these uses within the
24 press bed that's on that particular press
25 that you saw?

1 A It's designed to accommodate that,
2 sure.

3 Q Okay. I'll simply ask you again: are
4 there any substantial modifications that
5 would have to be done to the 5-A to accom-
6 modate any of these uses?

7 A Again, I think that I said that
8 there are substantial or potentially some
9 substantial modifications depending on
10 what the ultimate use is, the type of
11 product that you're going to process, the
12 type of loading that you're going to use
13 for the product that's being processed.
14 These could end up as substantial modifi-
15 cations of the machine.

16 Q Could you give me an example? If you
17 went from leather to, say, chipboard, what
18 substantial modification would you have to
19 do on the 5-A to do that?

20 A In what process?

21 Q Graining.

22 A In graining?

23 Q Yes.

24 A Well, depending on the size, you
25 might want to place a slide loader on

1 this. If you were graining, you're
2 probably going to take multiple hits on
3 the product. You'll probably want to make
4 it a continuous arrangement, cycle
5 arrangement. Depending on whether you
6 have continuous feed of material, you
7 might want to put some type of continuous
8 feed mechanism on to continuously process
9 the material through the machine. There
10 are lots of things that you might plan to
11 do in that application.

12 Q Those sound like arrangements that
13 can be added to the machine, a roll feed
14 or a slide application, but those are
15 merely attachments or devices that can be
16 added to accommodate feeding; is that
17 correct?

18 A Well, to accommodate the product, the
19 registering of the product, the feeding of
20 the product; yes, these applications may
21 require that, and the ultimate user is
22 really the only one in the position to
23 determine that.

24 Q To determine what?

25 A To determine what the size of the

.....

1 material is, what the feeding arrangement
2 is, how they're going to feed it, whether
3 they're going to grain or whether they're
4 going to ink or whether they're going to
5 smooth; the ultimate user is the only one
6 who really knows that.

7 Q I'd like to take a look at your file
8 without having everybody or all of us
9 being on the record. So, if we could take
10 just a short break, in your presence or
11 both of your presences, I'll look at his
12 file and try to save a little bit of time.
13 (At this time a short recess was
14 had.)

15 MR. MEROS: Back on the record,
16 if everyone agrees.

17 BY MR. MEROS:

18 Q Mr. Otterbein, I've had a chance to
19 take a look at the two folders which you
20 brought with you as your file in this
21 case, and I've focused in on one. First
22 of all, I have pulled the patent from the
23 one large folder, and for the record, I
24 simply want to identify this as patent
25 number 1,843,077, the patent that was

1 granted January 26, 1932. First of all, I
2 guess I have to have it marked. I'll mark
3 it as Plaintiff's Exhibit 1 for the
4 Otterbein deposition. After doing so,
5 I'll ask you a question.

6 (At this time Plaintiff's
7 Exhibit 1 was marked for identification
8 purposes.)

9 BY MR. MEROS:

10 Q May I ask you where you obtained
11 that, in terms of, was it given to you by
12 counsel or anyone else in particular, or
13 did you obtain it yourself?

14 A This patent, this specific document
15 that I have in my hand was given to me by
16 counsel, but I also have this document
17 myself.

18 a Could you tell me what that is a
19 patent for or what is patented in that
20 document?

21 A Yes, this is a patent for a safeguard
22 for a plunger machine. It is the patent
23 for the Boyle guard.

24 Q I see. What significance does that
25 hold for you in this case?

1 A Well, this indicates that the Boyle
2 guard was not designed until it was filed
3 -- this application was filed in 1928, and
4 it was not patented until 1932 which was
5 after the time that this machine involved
6 in Mrs. Ehlen's accident was manufactured.
7 Q What superiority, if any, does the
8 Boyle guard have over the older movable
9 gate guards?
10 A Well, this particular guard arrange-
11 ment prevents a complete cycle from
12 occurring of what's classified in the
13 patent as a plunger, if there is an
14 interference created in what is classified
15 as the point of operation.
16 Q The second item is the folder which
17 I won't put a sticker on, but I'll refer
18 to it as Plaintiff's Exhibit 2, which is
19 the smaller of your two folders, and it
20 contains a number of items, all right?
21 A Yes.
22 Q First of all, it has a videotape that
23 is labeled "Mueller Art Cover Raw
24 Footage." Could you tell me what that is,
25 please?

1 A Yes. It's a videotape of the opera-
2 tion of the press on the day that I
3 inspected it.

4 Q Okay. Who took that? Do you know?

5 A I don't know specifically the name of
6 the company that actually produced it.

7 Q You were there, though, during the
8 footage?

9 A I was there when the footage was
10 taken, yes.

11 Q Next we have a series of -- if I
12 could take this from you, I can probably
13 do this faster, if you don't mind.

14 A Do you want this out?

15 Q You can put that back.

16 A All right.

17 Q There's a series of correspondence
18 between you and Weston, Hurd, Fallon,
19 Paisley & Howley, and, in addition, these
20 appear to be deposition summaries; is that
21 correct?

22 A Yes.

23 Q Who prepared those?

24 A I did.

25 a Did you prepare these?

1 A Yes, I did.

2 Q How did you do that? As you read

3 these depos, did you dictate notes?

4 A Yes.

5 Q And that was done personally by you?

6 A It was.

7 Q And, then, we have notes of an

8 inspection that appears to have occurred

9 on July 20th of '93.

10 A Correct.

11 Q Are those your notes?

12 A Correct, yes.

13 Q Did you inspect the 5-A once, one

14 time only?

15 A Yes.

16 Q And these are the notes and sketches

17 that you made concerning this particular

18 press; is that correct?

19 A Correct.

20 Q Okay, and you made these notes and

21 sketches?

22 A I did.

23 Q Okay. Outside of the correspondence

24 and deposition summaries, we also have a

25 copy of the Interrogatory answers of the

1 plaintiff; is that right?

2 A Yes.

3 Q We have the inspection report of Mr.
4 Vandeman; is that correct?

5 A Correct, yes.

6 Q With his photographs attached, and we
7 have a copy of Dick Harkness's affidavit.
8 We also have a copy of Gerald Rennell's
9 affidavit, a copy of an affidavit from E.
10 Patrick McQuire, and there appear to be
11 some still photographs of your inspection;
12 is that correct?

13 A Yes.

14 Q In the photographs, there's one
15 photograph of Mueller product. It appears
16 to be a cover, and it's expanded. It's
17 opened up, and it's got gold leaf stamped
18 on it. Could you tell me the significance
19 of that photograph?

20 A Yes. At the time of the inspection,
21 there was a request made to the company
22 that they provide a typical type of
23 hardback cover binder case that they would
24 be embossing at the facility.

25 Q And what was explained to you about

1 that; anything at all by the company?

2 A No, that this was a typical case that

3 was being produced by the company.

4 Q Would the size of that stock make it

5 stick out over the press bed on the 5-A?

6 A Yes.

7 Q Could you tell?

8 A Yes.

9 Q Did they inform you that they did

10 stock that was within the size of this

11 press bed?

12 A They did not inform me of that at

13 all. I did get the information from

14 depositions, though, that, in fact, the

15 typical use of this press was the handling

16 of hardbacked covers or cases that

17 extended outside the area of the point of

18 operation.

19 Q What was your understanding of the

20 extent of the extension over the press

21 bed? Was it ever explained to you?

22 A No.

23 Q Was it explained to you whether it

24 extended out over the front of the press

25 bed or the rear or both?

1 A Well, the depositions indicate that
2 it at least stuck out the front because
3 it's apparent from the testimony that it
4 appeared to them that the design or the
5 application of the press component was
6 appropriate because a person had to hold
7 the work piece outside the area of the
8 point of operation.

9 Q Were there any standards in existence
10 when this press was manufactured in 1922?

11 MR. O'NEILL: Were there any
12 what?

13 MR. MEROS: Standards that were
14 in existence, public or private, when this
15 was manufactured in 1922.

16 MR. O'NEILL: Go ahead.

17 THE WITNESS: Any standards at
18 all?

19 MR. O'NEILL: Applicable to
20 bookbinders' presses.

21 BY MR. MEROS:

22 A Of course, they would have to be
23 standards that are relevant to the pro-
24 duct. Assuming that, were there any
25 standards that were in existence in 1922

1 that would have applied to this particular
2 machine?

3 A That would have specifically applied
4 to this particular machine?

5 Q That would have covered it in any
6 way.

7 A Not that I am aware of.

8 Q The ASA is the forerunner of ANSI?

9 A Yes.

10 Q Is that correct?

11 A Yes.

12 Q And their first standard or code was
13 in 1922, I believe you said?

14 A Well, the B-11.1 standard or the B-11
15 standard, I guess as it was called at that
16 time, was issued in 1922, yes.

17 Q Do you know if it was before the
18 manufacturing date of this press or after?

19 A I believe that it was after.

20 Q Okay, but you have testified that
21 ANSI, and I would assume the earlier B-11
22 code of ASA, does not specifically cover
23 this particular press: is that correct?

24 A That's correct.

25 MR. MEROS: I'd like to ask

1 the witness and counsel for a copy of the
2 things that were in Exhibit 2. They don't
3 amount to much, and I think if we follow
4 the arrangement that we have had in other
5 expert depositions, it shouldn't be a
6 problem. I won't need a copy of the
7 photographs, all right.

8 BY MR. MEROS:

9 Q Now, Mr. Otterbein - -

10 A Before you put that away, I may need
11 this. I can give it to them later. I may
12 need this to use during the deposition.

13 Q Oh, sure, sure.

14 A To refer to.

15 Q That's fine. What you were explain-
16 ing before about the different applica-
17 tions of the 5-A in terms of, I think you
18 were mentioning things such as embossing,
19 inking, leather graining and smooth
20 plating; is that true of other Sheridan
21 embossing presses, or is that only true of
22 the 5-A?

23 A There are other embossing presses
24 that have general purpose applications,
25 sure.

.....

1 Q I think in your report, you describe
2 the 5-A as a multi-purpose press.

3 A Yes.

4 Q Is that also true of the 8E or the 9A
5 Sheridan presses?

6 A No.

7 Q Why not?

8 A The 8E press is a press designed
9 basically for graining or smoothing of
10 leather hides. That is a specific purpose
11 type of press. It does not require --
12 it's used in the leather tanning industry
13 for that application, and it is the type
14 of press that doesn't require real fine
15 and specific registering of the product.
16 There are multiple hits generally, but it
17 doesn't require, in general, fine regis-
18 tration of the product. It's a more
19 specific purpose press in that application
20 of graining and tanning which is depicted
21 in the brochures.

22 Q But the Sheridan literature that you
23 have reviewed, obviously, shows that the
24 8A is capable of a wide range of appli-
25 cations.

1 MR. O'NEILL: It's the 8E.

2 BY MR. MEROS:

3 Q I meant to say "8E." The 8E in the
4 Sheridan literature is depicted as having
5 a wide range of applications such as
6 embossing, inking, smashing, leather
7 graining and smooth plating.

8 A In general, that's true. It can be,
9 in general, a more general purpose unit,
10 but in its application specifically in the
11 leather industry for the smoothing or
12 graining of hides, it comes to have a much
13 more specific purpose.

14 Q Can we agree that the 8E does some
15 things better than others, but it has a
16 multi-purpose nature to it?

17 A I wouldn't say that. I would say
18 more that, if a person or if a user
19 intends to use this machine, for example,
20 in a graining or smoothing application,
21 that becomes more specific in nature.

22 Q You would certainly not try to change
23 the Sheridan literature that has been in
24 existence for a number of years in terms
25 of what the 8E can do; is that correct?

1 MR. O'NEILL: You're asking him
2 if he would change it?
3 BY MR. MEROS:
4 Q You aren't attempting to limit what
5 the 8E can do in contravention of what the
6 literature says that it can do; are you?
7 A No. I think that the 8E had an
8 application for processing hides or
9 leather and was more specifically directed
10 to graining and smoothing applications.
11 Q But if it has more than one purpose,
12 is it not a multi-purpose press?
13 A Well, it depends on the purpose that
14 you purchase it for.
15 Q Does the 8E have more than one pur-
16 pose?
17 A Could it be applied to others?
18 Q Yes.
19 A Sure.
20 Q Would you then call it a multi-
21 purpose press?
22 A I think that it could be classified
23 as that, but I think that the brochures
24 that you're directing your comments to
25 define the 8E as a press for leather

1 processing to be used in tanneries, more
2 in the graining and smoothing applica-
3 tions.

4 Q All right.

5 A I think that that's the intent of
6 that as purchased and as produced.

7 Q And you have read the literature that
8 was given to you in this case --

9 A I have.

10 Q -- concerning the 8E's and their
11 application?

12 A Yes.

13 Q Have you relied on any other opinions
14 in forming your own opinions in this case?
15 In other words, are your opinions based on
16 anyone else's opinions in this case? And,
17 if they are, please explain to what
18 extent.

19 A No. They're my opinions.

20 Q Okay. So, the opinions that you have
21 stated in your written report in this case
22 are not based on any other opinions in
23 this case. They are your own opinions.

24 A These are my opinions, yes.

25 Q When you were at the New Jersey

1 Institute of Technology in the Master's
2 program, did you take any courses in
3 design projects or in design?
4 A Sure.
5 Q And did they relate to the manufac-
6 turing process?
7 A They certainly did.
8 Q Did they relate to safeguarding?
9 A Sure.
10 Q Were you taught at the New Jersey
11 Institute of Technology that the designer
12 of a machine must have an eye toward
13 safeguards to be designed into the machine
14 where possible?
15 A Sure.
16 Q What are some of the good sources of
17 information that you go to when you are
18 analyzing and researching a machine
19 guarding issue? What do you look at?
20 A I basically look at the standards
21 that apply and the codes that apply.
22 Q Anything else?
23 A Well, sure, my general knowledge and
24 background of what I've learned over the
25 years, various readings that I have done.

1 I mean, there's a multitude of things,
2 machine design manuals, multiple things.

3 Q Can you tell me of any machine design
4 manuals that you may refer to?

5 MR. O'NEILL: I can't hear you,
6 John.

7 MR. MEROS: I'm sorry. I have
8 to keep my voice up.

9 BY MR. MEROS:

10 a Can you tell me of any machine
11 reference manuals or machine design
12 manuals that you look at in analyzing a
13 machine guarding case?

14 A Sure. There's the Kent Mechanical
15 Engineers Handbook for different areas of
16 design.

17 Q All right.

18 A There's many, many textbooks, you
19 know.

20 Q How about National Safety Council
21 publications, the Accident Prevention
22 Manual?

23 A I'm a member -- the Accident
24 Prevention Manual is something I'd look at
25 although it's not a code or standard.

1 Q Is it something that you would find
2 helpful if you had it to look at in a
3 machine guarding situation?
4 A It may or may not be.
5 Q How about the National Safety
6 Council's safe practices pamphlets on
7 machine guarding; are they helpful to you?
8 A Sure. I mean, it all goes into the
9 general knowledge of design and analysis.
10 Q I'm sorry. How long have you been a
11 member of the National Safety Council?
12 A Oh, probably since the early '80's.
13 a Have you ever been a member of their
14 machine guarding section?
15 MR. O'NEILL: Of their what?
16 BY MR. MEROS:
17 Q Machine guarding section.
18 A Not specifically, no.
19 Q Have you been a member of their power
20 press section ever?
21 A No.
22 Q Do you rely upon the National Safety
23 Council's library to provide you with
24 information and documents?
25 A Sure, I have.

1 **a** Okay. Have you ever heard of a
2 publication called "The Machinery
3 Magazine," put out by the industrial press
4 company?
5 A Not that I recall, not that I recall.
6 Q Have you ever learned of a book by
7 David Beyer on industrial accident preven-
8 tion?
9 A Yes.
10 Q Have you looked at it?
11 A Yes.
12 **a** Do you find that to be a good source
13 of information?
14 A Again, it's a textbook. It's by a
15 single author. It's something that you
16 would look at and take into consideration,
17 certainly.
18 **a** And have you done that in the past?
19 A I'm familiar with the book.
20 Q Okay. Do you find it helpful when
21 you have to analyze a machine guarding
22 situation?
23 A It may or may not be helpful,
24 depending on the analysis that's done.
25 **a** Do you have the book?

1 A Sure.

2 Q Do you own the book?

3 A Sure. Yes, sir.

4 Q I don't want to be argumentative
5 about it, but if it wasn't any good, you
6 wouldn't own it; is that fair?

7 A I also own probably 500 books.

8 Q All right.

9 A So, I mean, there's lots of books
10 that I own.

11 Q Do you think that safeguards or
12 safety devices should ever be optional
13 from a machine manufacturer's standpoint?

14 MR. O'NEILL: Excuse me. Try
15 to keep your voice up.

16 MR. MEROS: Yes, sir.

17 MR. O'NEILL: Bear in mind that
18 we're talking about 1922, okay?

19 MR. MEROS: Well, we are and we
20 aren't.

21 MR. O'NEILL: Well, I am, and
22 I'm going to object to any question that
23 relates to standards --

24 MR. MEROS: I understand.

25 MR. O'NEILL: -- that were

1 nonexistent in 1922.

2 MR. MEROS: I would agree with
3 you that there are no standards that can
4 be used in this case unless they were in
5 existence at the time that this product
6 was manufactured. I do agree, but this
7 case also involves an allegation of a
8 negligent recall which is an inadequate
9 post-marketing warning, so to the extent
10 that there is a way to make a machine safe
11 in later years, it may be relevant. That's
12 the only reason why I'm asking these
13 questions.

14 MR. O'NEILL: Okay. When you
15 talk about the post-marketing warning
16 issue, we can address all relevant
17 considerations, but I think that your last
18 question is exceedingly broad in its reach
19 and its scope, and I want to direct our
20 attention to the applicable standards in
21 1922.

22 MR. MEROS: Okay. I will try
23 to do that, Mark.

24 BY MR. MEROS:

25 Q You've had a chance to inspect the

1 5-A press in this case; is that correct?
2 A Yes.
3 Q And can we agree that it was manu-
4 factured without a point of operation
5 safety device?
6 A There was no point of operation
7 safety device provided with the press
8 component; that's correct.
9 Q But it was manufactured with an auto-
10 matic throw-off lever; is that correct?
11 A Yes, it was.
12 Q If that press in that configuration
13 was designed today, would you find that
14 acceptable?
15 MR. O'NEILL: Objection.
16 BY MR. MEROS:
17 Q You may answer.
18 A If that press was manufactured today?
19 I need the question repeated, please,
20 Q If that press was manufactured today
21 in that configuration, would you find that
22 acceptable?
23 A It could be acceptable, yes.
24 Q Without a point of operation safe-
25 guard?

1 A Yes.

2 Q Would it comply with the **OSHA** code if

3 it was manufactured in that way today?

4 A The **OSHA** code doesn't apply to the

5 manufacturer. The **OSHA** code applies to

6 the employer.

7 Q I did not ask you that. I simply

8 asked you: would the **OSHA** code apply to

9 the machine if it was manufactured today?

10 A The **OSHA** code would apply, yes.

11 Q Okay. Would the product without a

12 point of operation guard comply with **OSHA**

13 if it were made in that fashion today?

14 MR. O'NEILL: Objection.

15 THE WITNESS: It would depend

16 on the ultimate application of the

17 machine. Probably not, but you can't be

18 positive until you evaluate each piece on

19 an individual basis.

20 BY MR. MEROS:

21 Q I'm simply asking, if the machine was

22 used as it was designed without a point of

23 operation guard today, would it comply

24 with **OSHA**?

25 MR. O'NEILL: If it was used by

1 an employer?

2 MR. MEROS: Yes.

3 THE WITNESS: In 1922, by 1922

4 standards?

5 MR. MEROS: No, no. I'm

6 asking you --

7 MR. O'NEILL: He's asking about

8 in 1994.

9 BY MR. MEROS:

10 Q The question is fairly simple, but

11 I'll try to make it even easier to under-

12 stand. If the product was manufactured

13 today in that same configuration and was

14 used as an embossing press, would it

15 comply with OSHA?

16 A No.

17 Q What do we know now about machine

18 guarding that we did not know in 1922?

19 MR. O'NEILL: Objection. You

20 don't have to answer that. It's just

21 altogether too broad and incapable of an

22 answer in the next seven hours.

23 MR. MEROS: If it takes him an

24 hour to answer that, I'm prepared to give

25 him an hour to answer.

1 MR. O'NEILL: No, I'm sorry.
2 What do we know about machines that we
3 didn't know in 1922? That's ridiculous.
4 MR. MEROS: I said: what do
5 we know about machine guarding today that
6 we didn't know in 1922?
7 MR. O'NEILL: There would be
8 multiple volumes that could be written on
9 that subject, and probably have been.
10 MR. MEROS: That may be true,
11 but let's see if he's capable of
12 answering.
13 MR. O'NEILL: He's capable, but
14 we're not going to sit here and listen to
15 an extended answer to a question that
16 doesn't have any relevance to this case.
17 MR. MEROS: He still has to
18 answer, Mark.
19 MR. O'NEILL: You can certify
20 that to the court if you want to, but
21 we're not going to answer it.
22 MR. MEROS: Are you instructing
23 him not to answer?
24 MR. O'NEILL: Yes.
25 MR. MEROS: This deposition is

1 concluded then, and I caution you that
2 this could be quite expensive if you're
3 instructing him not to answer that.
4 That's a relevant question. It may take
5 him time in answering, but you do not have
6 the authority, Mark, to order him not to
7 answer that particular question. You may
8 not like the question.
9 MR. O'NEILL: I don't like it.
10
11 MR. MEROS: But you do not have
12 the authority to tell him not to answer.
13 MR. O'NEILL: I agree.
14 MR. MEROS: I hate to send him
15 back while I go over and try to get a
16 ruling.
17 MR. O'NEILL: All right, okay.
18
19 MR. MEROS: I would ask you to
20 reconsider.
21 MR. O'NEILL: Sit down.
22 MR. MEROS: I have a habit of
23 trying to ask relevant, probing questions.
24 I've done this long enough that I don't
25 ask things that may be stricken by the

1 court. It may take you time in answering,
2 but I think that it's a question that has
3 some relevance in this case.

4 MR. O'NEILL: That's fine. If
5 you want to spend the time --

6 MR. MEROS: I do.

7 MR. O'NEILL: .. talking about
8 stuff that is not relevant, we'll spend
9 the time, but we're out of here in time to
10 catch his plane at 2:30.

11 MR. MEROS: I have assured Mr.
12 Otterbein and you that I will do every-
13 thing that I can to get him out on time
14 for the 2:30 plane, and if I'm wasting my
15 time on this, it's my loss because I'm
16 paying you for your time. So, would you
17 please tell me what we know now about
18 machine guarding that we didn't know in
19 1922?

20 MR. O'NEILL: Take all the time
21 you want.

22 THE WITNESS: Well, I guess,
23 first of all, there's been tremendous
24 changes in technology which have affected
25 not only the machine but the application

1 of safeguards, their design. We have, I
2 believe, learned more about human beha-
3 vior, about how people exist in environ-
4 ments with machinery and in the workplace.
5 New devices have been produced.

6 BY MR. MEROS:

7 Q Is that similar to the first thing
8 that you said, that the technology has
9 improved?

10 A Well, technology has improved.
11 Devices have come from technology that aid
12 in issues of safeguarding. The techniques
13 of making analyses of equipment and even
14 the equipment design itself have changed,
15 which has had a significant effect on the
16 methods and the applications of safe-
17 guards. I think, basically, the knowledge
18 of the issue of guarding has certainly
19 advanced.

20 Q Anything else? I'm not trying to
21 limit you in any way. I'm just asking if
22 there's anything else.

23 A I'm sure that I could think of some
24 things.

25 Q Okay. Let me address a point or two,

1 and if at any time you want to add any-
2 thing, stop me and add a thought on how
3 you feel that we've advanced and know more
4 things about machine guarding now that we
5 didn't know in 1922.

6 First of all, in terms of
7 publications, were there publications
8 before 1922 that called attention to the
9 fact that embossing presses needed to be
10 guarded at the point of operation?

11 A I think that there are documents
12 which talk about embossing presses as well
13 as other types of machinery that might
14 involve guarding issues. I think that
15 you've produced some of those in the
16 patents.

17 Q And that would have been before 1922?

18 A I'm not sure whether it was before
19 1922 or not.

20 Q Have you seen any of the patents that
21 were used in the depositions of Gerald
22 Rennell and Richard Harkness?

23 A Yes.

24 Q Were you able to determine that there
25 was some technology for guarding embossing

1 presses or platen presses at that time,
2 that there was some technology that exist-
3 ed for guarding the point of operation on
4 these embossing or platen type of presses?

5 MR. O'NEILL: Commercially
6 available?

7 MR. MEROS: Sure.

8 MR. O'NEILL: Or just ideas?

9 BY MR. MEROS:

10 Q Let's take first of all ideas. The
11 ideas were there, evidently, from these
12 patents; is that correct?

13 A Correct.

14 Q Were there any commercially available
15 devices before 1922 to guard the point of
16 operation on an embossing press?

17 A There may have been, yes.

18 Q As a matter of fact, I think that
19 Sheridan had developed some type of a
20 guard or guards to safeguard the point of
21 operation on some of their embossing
22 presses; is that right?

23 A Yes.

24 Q And you've seen in the literature
25 that Sheridan had developed a push-away

1 type of a guard for an 8E embossing press
2 and a 9A embossing press; is that correct?
3 A Yes.
4 Q And a 16 embossing press and an 18
5 embossing press; is that correct?
6 MR. O'NEILL: Excuse me.
7 THE WITNESS: Yes.
8 MR. O'NEILL: Are you implying
9 by that that these machines were extant in
10 1922?
11 MR. MEROS: Yes, and earlier.
12 As early as the 1914's and 1915's,
13 Sheridan had the push-away guard available
14 for some of these presses that I just
15 mentioned.
16 BY MR. MEROS:
17 Q Did you find that in your search of
18 these records?
19 A For some of the presses.
20 Q So, evidently, the recognition of the
21 need to guard the point of operation on an
22 embossing press was certainly in existence
23 before 1922; would you grant me that?
24 A In that time frame, sure.
25 Q The human behavior aspect was such

1 that even before 1922, the industry knew
2 that operators were being entrapped and
3 injured on embossing presses that were not
4 guarded at the point of operation; would
5 you agree with me on that?

6 A I would suspect that that's true,
7 yes.

8 Q Devices for safeguarding have improv-
9 ed; is that correct?

10 A Sure, yes.

11 Q Do you know if there was a mechanical
12 two-hand trip available before 1922 for
13 activating a press that would require
14 activation of both hand levers or both
15 hand actuation devices?

16 A I don't know.

17 Q If you had that kind of a question
18 facing you, where would you go to find the
19 answer in your own research?

20 A I would go back and try to look at
21 some historical documents, some older
22 types of books, possibly, or even make
23 some contacts with people who might have
24 that information.

25 Q Would you ever use the U.S. Patent

1 Office to find if there were any ideas or
2 technology available for those items?

3 A I have used the patent office before,
4 but I'm careful in using patents in that,
5 just to say that there's a patent doesn't
6 mean that it was ever produced.

7 Q That's true. I understand. Would
8 you say that the technology that Sheridan
9 had itself improved over the years after
10 the manufacture of this 1922 5A embosser?

11 A The technology improved --

12 Q To safeguard the point of operation.

13 A I think that the technology improved
14 in general over the years.

15 Q But you have evidence that Sheridan
16 was staying abreast of these advances,
17 such as with the two push button electric-
18 al controls; is that correct?

19 A That's true.

20 MR. MEROS: That wasn't so
21 bad; was it? I don't think it was, in
22 asking him to explore this.

23 BY MR. MEROS:

24 Q Let me move on because time is short.
25 Have you ever been qualified as an expert

1 in machine guarding in Ohio State courts?
2 A Yes.
3 Q What courts in the State of Ohio? Do
4 you recall?
5 A No, I don't know specifically the
6 names.
7 Q What are the cities in which you have
8 been qualified as an expert in Ohio
9 courts? Was it in Cincinnati or Columbus
10 or Cleveland? Do you recall?
11 A Cleveland and Columbus and
12 Youngstown.
13 Q Have you ever been retained by Mr.
14 Sigmier's firm prior to this case?
15 A No.
16 Q Have you ever been qualified as a
17 machine guarding expert in federal courts
18 in the State of Ohio?
19 A I'm not sure if the answer that I
20 gave you before was for the federal court
21 in the State of Ohio or state court.
22 Q I see.
23 A I have been qualified. It's possible
24 that it was in both. I have been quali-
25 fied in Ohio.

1 Q You can recall three occasions?
2 A Yes.
3 Q Were those mechanical engineering
4 cases, or were they fire prevention or
5 fire analysis cases or what?
6 A Mechanical design cases.
7 Q And you recall three cases specific-
8 ally?
9 A Yes.
10 Q Could you tell me about those,
11 please?
12 A Yes. One case involved a guarding
13 issue on a milling machine. One case
14 involved a guarding issue on a large
15 industrial panel saw, and one case
16 involved an issue of guarding and design
17 on a miter saw.
18 MR. O'NEILL: A miter saw?
19 THE WITNESS: A miter saw.
20 BY MR. MEROS:
21 Q On the milling machine, were you
22 retained by plaintiff's counsel or defense
23 counsel?
24 A Defense counsel.
25 Q And the panel saw -- did you say that

1 it was a panel saw?
2 A Yes.
3 Q In the panel saw case, were you
4 retained by the plaintiff or by the defen-
5 dant?
6 A The defendant.
7 Q And in the miter saw case, were you
8 retained by the plaintiff or the defen-
9 dant?
10 A The defendant.
11 Q Have you ever been retained by Sears
12 in any saw cases?
13 MR. O'NEILL: Sears?
14 MR. MEROS: Sears.
15 MR. O'NEILL: Sears Roebuck?
16 BY MR. MEROS:
17 Q Sears or Emerson Electric in any saw
18 cases?
19 A No, sir.
20 Q Have you ever testified in a radial
21 saw case?
22 MR. O'NEILL: Radial saw?
23 BY MR. MEROS:
24 Q I'm sorry; radial arm saw case.
25 A Maybe years ago, yes.

1 Q And were you retained by the plain-
2 tiff or the defendant in that case?
3 A I think the defendant.
4 Q Have you ever done a breakout of the
5 percentage of time as to how it's spent on
6 plaintiff or defendant consultations?
7 A No.
8 Q So, you wouldn't be able to tell me
9 now the percentage of your time spent
10 consulting with the plaintiff or with the
11 defendant?
12 A No.
13 a Have you ever testified in any power
14 press cases, mechanical power press cases
15 which are better known as punch presses?
16 A No.
17 Q Have you ever testified in any press
18 brake cases?
19 A No.
20 Q Have you ever performed any con-
21 sulting services for any of the following
22 manufacturers: Verson Press Company?
23 MR. O'NEILL: What was the
24 name?
25 BY MR. MEROS:

1 Q V-E-R-S-O-N, Verson.
2 A No.
3 Q Cincinnati?
4 A No.
5 Q Danly?
6 A No.
7 Q Niagara?
8 A No.
9 Q Dreis & Krump?
10 A No.
11 Q E.W. Bliss?
12 A No.
13 MR. O'NEILL: There are whole
14 new worlds to conquer, Richard.
15 BY MR. MEROS:
16 Q Tell me about your inspection of this
17 press. Who all was with you when you
18 inspected this press?
19 A Mr. O'Neill and Mr. Sigmier were
20 there. Mr. Vandeman, Mr. Averill, and I
21 don't recall if Mr. Evander was there.
22 Q Are you saying that Jim Averill was
23 at the inspection in July of '93?
24 A Yes.
25 Q All right.

1 A There was also an operator of this
2 machine, but I am not sure who that was.
3 I don't remember the name.

4 Q Did he operate it for you?

5 A He operated it, and I operated it.

6 Q How did you operate it?

7 A With a hand lever control.

8 Q Did you emboss anything?

9 A And the foot control.

10 Q Or did you just activate it? Was
11 there any product in the press?

12 A No. There was no die. The press had
13 been moved to the back of the building.

14 Q It was powered, but there was no
15 production being done?

16 A There was no production.

17 Q And you activated the foot pedal and
18 the hand lever at different times?

19 A Yes.

20 Q Do you have an opinion as to whether
21 the press is safe to run in a continuous
22 mode, being hand fed?

23 A Yes, I have an opinion.

24 Q What is that opinion?

25 A Depending on the ultimate arrangement

1 of the machine, it could be run in a hand-
2 fed mode in a continuous cycle.

3 Q Was it foreseeable by the manufac-
4 turer that this 5-A press would be run on
5 a continuous cycle?

6 A That it could be run on a continuous
7 cycle? Yes.

8 Q And that it would be run on a
9 continuous cycle, not at all times, but
10 that it would be run in that mode?

11 A Did the manufacturer know that it
12 could be run in that mode?

13 Q I didn't say "know." Was it
14 foreseeable, something that the manufac-
15 turer anticipated, that it would probably
16 also be run on a continuous cycle?

17 A I can't say they would probably --
18 sure, it's foreseeable that it would be
19 run in a continuous mode for certain
20 applications, and I believe that the
21 manufacturer knew that.

22 Q The automatic throw-off lever is a
23 device that can be bypassed to enable the
24 machine to be run in a continuous mode; is
25 that correct?

1 A With the throw-off lever removed,
2 yes. It can be removed, and it can run in
3 a continuous mode, correct.

4 Q And the machine was designed with
5 that component; is that correct?

6 A Yes. It also can run in a single
7 cycle mode without the throw-off lever.
8 That's not necessarily the determining
9 factor. You could run it in a single
10 cycle mode.

11 Q By manually pressing the lever back
12 and forth?

13 A Certainly, certainly.

14 Q But the throw-off lever is an auto-
15 matic device; is it not?

16 A It functions with each cycle, cor-
17 rect.

18 Q And it's designed on this press to be
19 run either with the throw-off engaged or
20 disengaged; is that a fair statement?

21 A Installed or not installed.

22 Q But that's anticipated by the manu-
23 facturer of this product?

24 A That the throw-off lever can be
25 removed?

1 Q Right.

2 A And it can run on continuous? Sure.

3 Q Does it have to be taken off of the

4 back of the press to engage it in a

5 continuous mode, or did you not look at

6 that?

7 MR. O'NEILL: Excuse me. I

8 didn't understand.

9 BY MR. MEROS:

10 Q That was a bad question. Strike that

11 and let me start over.

12 I am assuming that you inspected

13 the automatic throw-off lever; is that

14 correct?

15 A I did.

16 Q There are photographs in your file of

17 the automatic throw-off lever. Did you

18 remove it from the press when you inspect-

19 ed it?

20 A I installed it and removed it.

21 Q And how did you do that?

22 A By hand.

23 Q Did you have to physically take both

24 connecting ends of this bar off of the

25 press to disengage it?

1 A I did not try to cycle the press with
2 part of it still engaged. I removed it,
3 and I installed it.

4 Q Did you remove it without hand tools?

5 A Yes.

6 Q And did you have to remove -- again,
7 I think I'm asking this a second time, and
8 I don't mean to be redundant. Let me see
9 if I can rephrase it.

10 Could you not have disengaged it
11 by merely taking one end off?

12 A I never tried it that way, so I can't
13 answer that question. I removed it, and I
14 put it in.

15 Q All right.

16 A And I tried it with it in fully and
17 removed.

18 Q What were you told at that time about
19 how the accident occurred, if anything?
20 Were you told anything at all as to how
21 the accident occurred?

22 MR. O'NEILL: At that time?

23 MR. MEROS: At that time.

24 THE WITNESS: I was told that a
25 person had become injured in the platen or

1 die area of the press during a stamping
2 operation.

3 BY MR. MEROS:

4 Q From your report in this case, I
5 believe you have read Ehlen's account of
6 what occurred, and you have read Mr.
7 Bartos' account of what occurred; is that
8 right?

9 A Yes.

10 Q And they're inconsistent in a number
11 of ways; is that right?

12 A There are inconsistencies, yes.

13 Q Is it your opinion that, if the
14 automatic throw-off device was engaged,
15 Ehlen would not have been injured?

16 A Based on her testimony, yes.

17 Q Based on Mr. Bartos' testimony, if
18 the throw-off device was engaged, would
19 she have been injured?

20 A Yes.

21 Q Why do you say that?

22 A Because Mr. Bartos' testimony indi-
23 cates that Ms. Ehlen accessed the area of
24 the die space on the initial stroke of the
25 bed, not after the complete first cycle.

1 Q She would not have been injured, then
2 -- I'm sorry. I misunderstood.
3 A I must have misunderstood.
4 Q I'm misunderstanding you. Ms. Ehlen
5 would still have been injured in the way
6 that Mr. Bartos saw the accident occur,
7 even if the throw-off device was engaged;
8 is that correct?
9 A I thought that was what I answered to
10 the last question.
11 Q I apologize. I think that the record
12 is clear that I goofed. I understand what
13 you're saying.
14 A All right.
15 MR. O'NEILL: That's only the
16 first time, John.
17 BY MR. NEROS:
18 Q The automatic throw-off device, then,
19 has its limitations in terms of being a
20 safety device; is that correct?
21 A The automatic throw-off device can
22 provide safety aspects for the machine,
23 sure. It can provide a safe -- it's a
24 safety device that can provide a measure
25 of safety, but certainly when it's removed

1 to go into continuous operation, it's been
2 removed, so it's no longer in position.

3 Q But even if it's engaged, it does not
4 always prevent an accident, as we know now
5 from what Mr. Bartos says. In other
6 words, I'm asking you: it has a limita-
7 tion. It does not always prevent injury
8 to the operator who may be reaching into
9 the press bed, correct?

10 A If you believe Mr. Bartos' scenario,
11 then, that would be true.

12 Q And in any other instance, if an
13 operator or anybody else is reaching into
14 the press bed to align a misaligned piece
15 of stock before the press has made its
16 first cycle, the automatic throw-off
17 device will not prevent injury; is that
18 correct?

19 A That is true.

20 Q Did anything else occur at the
21 inspection besides your measuring the
22 machine, running it, photographing it and
23 discussing its operation with anyone
24 there?

25 A I don't know what you mean by

1 "anything else."
2 Q Was there any discussion of a model
3 being constructed?
4 A No.
5 Q Are you involved in the construction
6 or the development of a model in this
7 case?
8 A Not at this point.
9 Q Will you be? Do you intend on being
10 involved in the development of a model for
11 the press?
12 A If asked, I will assist.
13 Q Did you talk with Jim Averill at the
14 inspection?
15 A Yes.
16 Q Have you ever talked with Jim Averill
17 after the inspection?
18 A Yes.
19 Q Has he sent you any documents or
20 records?
21 A No.
22 Q Did he speak to you after the writing
23 of your written report in this case?
24 A No.
25 Q He spoke to you before --

1 A We --
2 Q -- before you wrote the report?
3 A Yes.
4 Q You do not mention that you inter-
5 viewed Mr. Averill in your report. Why is
6 that?
7 A I didn't feel that it was necessary.
8 I met Jim Averill at the inspection and
9 did the inspection and had a discussion
10 with him and others at the inspection.
11 Q But --
12 A There was no reason to put that in
13 the report.
14 Q But then you spoke to him afterwards;
15 is that correct?
16 A No.
17 Q I'm sorry; I thought you said that
18 you spoke to him after the inspection as
19 well.
20 A No. You asked me if I had spoken to
21 him prior to issuing the report, and I
22 said -- I already explained to you that I
23 met Jim Averill at the inspection, and I
24 said: yes, I did speak with him prior to
25 the issuing of the report, and that was on

1 the day of the inspection.

2 Q I see, another mistake on my part.

3 What did he tell you about this
4 Sheridan press?

5 MR. O'NEILL: At that time?

6 BY MR. MEROS:

7 a At that time.

8 A I think that we basically just talked
9 about the machine, the design aspects of
10 the machine, more the functional aspects
11 and its arrangement as it was originally
12 provided in 1922. I mean, that was
13 basically the extent of it. We ran the
14 machine, and we just talked about the
15 machine, its function and operational
16 characteristics.

17 Q Did he ever tell you why it was
18 manufactured in 1922 without a point of
19 operation safeguard?

20 A That question was asked, and I
21 believe that the answer I received was
22 that it's a general purpose machine, and
23 he doesn't specifically know. He doesn't
24 specifically know because he wasn't there
25 in 1922, but it's a general purpose

1 machine, and that was what I got from the
2 conversation, and he didn't have to tell
3 me that because I knew that.

4 Q Did he talk to you about Sheridan's
5 push-away guards for embossing presses?

6 A I don't think that that discussion
7 happened at that time.

8 Q Okay. Did you learn anything else at
9 this inspection outside of what you
10 already told me?

11 A Well, I learned a lot of things about
12 the machine during the inspection. I
13 mean, I did an inspection, and I ran the
14 machine, so there were a lot of things
15 that I saw. I don't understand how to
16 answer your question so much at this
17 point.

18 Q That's all right. Is there anything
19 that's not in your report in this case
20 concerning your inspection that would be
21 important in this case?

22 A I think that it's pretty well covered
23 in the report.

24 Q Okay. Have you ever run any other
25 Sheridan 5-A embossers besides this one?

1 A I don't know.

2 Q Have you ever seen any other Sheridan

3 5-A embossers?

4 A It's possible.

5 Q Where would you have seen them?

6 A On other sites, either at times of

7 inspection or during consulting services

8 work.

9 Q Do you know of any other 5-A embos-

10 sers in Greater Cleveland?

11 A No.

12 Q Has the Harris Corporation shown you

13 any photographs of the 5-A embossers out-

14 side of this one?

15 A No.

16 Q Have you seen any accident summaries

17 for accidents on 5-A embossers that would

18 have occurred prior to Ehlen's accident?

19 MR. O'NEILL: Objection. You

20 may answer.

21 THE WITNESS: No.

22 BY MR. MEROS:

23 Q Do you know of any other injuries on

24 5-A embossers outside of Ms. Ehlen's?

25 MR. O'NEILL: Objection.

1 THE WITNESS: No.
2 MR. O'NEILL: You can answer.
3 THE WITNESS: I do not know of
4 any.
5 BY MR. MEROS:
6 Q And at this point, you have not been
7 involved in developing a model of this
8 press for the trial of this case; is that
9 correct?
10 A Yes.
11 a Let me get back to this one other
12 point that I think I was talking about a
13 moment ago. With an unguarded point of
14 operation on the 5-A, is it safe to run it
15 in a continuous mode?
16 A Again, I think I said that each
17 application has to be analyzed. It can be
18 made safe to run in a continuous mode,
19 yes.
20 Q Without a point of operation guard?
21 A It's possible.
22 Q How would you do that with your
23 expertise in mechanical engineering? How
24 would you safely have someone operate a
25 5-A embosser in the continuous mode

1 without a point of operation guard?

2 A Well, I can't give you that answer
3 because there are too many variables that.
4 have to be analyzed before you come to
5 that point.

6 Q And some of those variables are what?

7 A The type of product, the size of
8 product, the application of feed tables or
9 other types of devices. There are lots of
10 things that need to be considered.

11 Q Let me have you assume for the moment
12 that an operator of a 5-A embossing press
13 that's unguarded at the point of operation
14 is hand-feeding the material into the
15 press bed because the size of the material
16 is smaller than the press bed. Can that
17 safely be done on continuous cycle?

18 A Well, I certainly would hope that
19 somebody would not be trying to put that
20 in the press, in the bed of the press when
21 it was running in continuous cycle.

22 Q That would be unsafe?

23 A I would say so.

24 Q Would a point of operation guard make
25 it safe?

1 A You might find a point of operation
2 guard that might make it safer or safe.
3 Again, it would have to be analyzed to see
4 how that would all be done.

5 Q I'm interested in finding out what
6 you learned from Harris, if anything,
7 about the Flessner situation where there
8 was what appears to be a redundant safe-
9 guarding system. There were the two
10 electric push button controls and a Boyle
11 guard, both installed as original manu-
12 facture. Have you ever found out why
13 there was such a redundant or double
14 system?

15 A No, I don't know why.

16 Q Is that unusual, in your experience,
17 to find a manufacturer putting two point
18 of operation safeguards on a press?

19 A Not necessarily.

20 Q If this 5-A was run by an operator on
21 the continuous mode without a point of
22 operation guard, but stock was being
23 inserted that extended beyond the press
24 bed so that the operator didn't have to
25 reach in, would you find that to be a safe

1 application of this press?

2 A If I was an employer evaluating an
3 operation like that in 1991 at the time of
4 this accident, I would have done more to
5 safeguard that equipment.

6 Q If you were the manufacturer in 1922,
7 would you have done more to safeguard that
8 equipment?

9 A No, because the manufacturer provides
10 the press component, and certainly in this
11 particular case, being a general purpose
12 machine, it doesn't know what the ultimate
13 application of the machine is, and it
14 could not provide a guard that is a prac-
15 tical and usable guard for that machine in
16 1922 for an operation that it doesn't know
17 exists.

18 Q But you are saying that, as soon as
19 the owner gets that press in 1922, the
20 owner then had available to him the means
21 to guard it in 1922?

22 A The owner certainly in 1922 should
23 have analyzed what the ultimate applica-
24 tion of that machine was and made it safe,
25 yes.

1 Q Okay, and you're saying that the
2 technology existed in 1922 for the first
3 purchaser of the 849 press to safeguard it
4 as soon as he bought it?

5 A When he received the press and deter-
6 mined what he was going to do with the
7 press, he should have -- he should have
8 analyzed it at that point and determined
9 how he was best going to keep a person
10 from entering that point of operation.

11 Q I see.

12 A With whatever devices were available
13 at the time, he should have made that
14 analysis.

15 Q Okay. If I follow you, you're saying
16 that that's not something that Sheridan
17 had to be concerned with in 1922. They're
18 going to leave guarding up to the owner/
19 user; is that correct?

20 A I wouldn't put it that way. What I
21 am saying is that Sheridan, in 1922 when
22 it sold this press, sold a general purpose
23 press, much like a mechanical power press.
24 It sold a general purpose press for use by
25 someone to process a certain stock, a

1 certain material, and it didn't have
2 knowledge of what the ultimate application
3 of that machine would be, and the person
4 who did have the knowledge was the
5 ultimate user, and they had, in my mind, a
6 responsibility to do something to ensure
7 that a person could use it safely.

8 Q Are you offering testimony that
9 Sheridan wouldn't know what an embossing
10 press was going to be utilized for?

11 A I think that we went through this
12 once already, and I think that I told you
13 that an embossing press, this particular
14 embossing press has a multitude of
15 applications, and it has a multitude of
16 potential types of materials that can be
17 processed on it, and what I'm telling you
18 is that the manufacturer doesn't know what
19 the ultimate use is and what the ultimate
20 work piece is and what the ultimate die
21 is, and the responsibility for putting
22 that system together is that of the
23 ultimate user, and they should perform
24 that analysis and determine what it is
25 that's going to make them or allow them to

1 use that machine safely.

2 Q And once the purchaser obtains that
3 machine in 1922, he ought to analyze it
4 and then guard it; is that correct?

5 A Yes, do something to ensure that the
6 operation is going to be performed safely.

7 Q Certainly, this embosser, as you saw
8 it, needed to be guarded in 1922. You're
9 only saying that it was up to the owner/
10 user to fashion some guard after he
11 figured out how he was going to use it.

12 A What I am saying is that some form of
13 device or devices or an analysis should
14 have been made, and the owner should have
15 done something to ensure that it was being
16 used safely.

17 Q We seem to agree that this press was
18 in need of safeguarding; is that correct?

19 A It was in need of safeguarding, yes.

20 Q But you say that it wasn't up to
21 Sheridan to do that; it was up to the
22 owner/user.

23 A I'm saying that Sheridan couldn't do
24 it.

25 Q Pardon me?

1 A I'm saying that Sheridan couldn't do
2 it, given the general purpose nature of
3 the machine and the component that they
4 were providing.

5 Q But the owner/user could, based upon
6 the technology available in 1922?

7 A Well, I didn't interview the initial
8 owner, but what I do know is, in 1991 when
9 Ms. Ehlen was hurt, there is ample testi-
10 mony to suggest that Mueller had an under-
11 standing of guarding because they had
12 guarded machines on their property, and,
13 in fact, I think that there's even testi-
14 mony in the transcripts which suggests
15 that a person at Mueller believes that a
16 guard could have been provided for this
17 machine at a time prior to this accident.
18 I can't speak for Collier, who I think was
19 the owner to which this press was sold,
20 but I can speak, from what I can tell from
21 the depositions, as to Mueller, and they
22 had ample opportunity to provide a guard
23 on this machine. They had guarded other
24 machines, and depending on who you read,
25 either you believe that they felt that it

1 wasn't necessary or someone felt that it
2 could be done but didn't do it.

3 a So, you put the fault on Mueller for
4 the lack of guarding on this press in
5 1991?

6 A Absolutely.

7 Q But you recognize the need to have
8 the machine guarded in 1991; is that
9 correct?

10 A Yes, sir.

11 Q And you also seem to recognize the
12 need to have it guarded in 1922; is that
13 correct?

14 A There was a need to provide a safe
15 machine in 1922.

16 Q And this machine, in 1922 as manu-
17 factured, lacked an adequate safety guard
18 at the point of operation, and you're
19 saying that was because the manufacturer
20 could not do that; is that right?

21 A I'm saying, in 1992, the manufacturer
22 provided --

23 MR. O'NEILL: 1922.

24 THE WITNESS: I mean, in 1922,
25 the manufacturer provided a safe machine.

1 BY MR. MEROS:

2 Q That I don't follow because, a moment
3 ago, you agreed with me that, when the
4 purchaser gets that machine in 1922, it's
5 in need of safeguarding.

6 A What I told you was, depending on the
7 ultimate application of the machine, the
8 user has to determine what the safeguard
9 is. I am saying that the manufacturer did
10 not know what the ultimate use of that
11 machine would be and that it provided a
12 safe machine as a component of a process-
13 ing system that was going to be applied by
14 the user.

15 Q Do you have any opinions on the
16 recall effort of Sheridan, of the Harris
17 Corporation and Bruno Sherman in this
18 case?

19 A Yes.

20 Q Are they in your report?

21 A The reference in my report suggests
22 or indicates that there was a safety
23 mailing that was produced in September of
24 1980 which was directed to owners of
25 record, and the letter recommended safety

1 criteria as well as warning label
2 application.

3 Q And you read those warning letters;
4 is that correct?

5 A Yes.

6 Q And the warning letters were not just
7 saying that there's a defect in the
8 machine, but here is how to correct it;
9 isn't that correct?

10 A I don't think that it said that there
11 was a defect in the machine. What it said
12 was: if you are an owner of this machine,
13 you may need to make certain changes based
14 on current day requirements and that those
15 changes should be employed as soon as
16 possible.

17 Q And they were even mentioned, though.
18 They talked about Boyle guards, that a
19 Boyle guard should be installed?

20 A Sure.

21 Q Contact us, and we'll tell you how to
22 do it; is that correct?

23 A I'm not sure that it said: contact
24 us, but it did say that you should analyze
25 your machines, and a Boyle guard was one

1 of the items that might be used.

2 Q So, evidently, the Harris Corporation
3 and Bruno Sherman felt a need to inform
4 owners and users of older Sheridan
5 machinery that there were certain ways to
6 upgrade the machines?

7 A Yes.

8 Q Did you find that that was approp-
9 riate at that time?

10 A Yes.

11 Q Did you find that it was adequately
12 done?

13 A Yes, I do.

14 a Do you know whether or not Mueller
15 Art Cover & Binding Company was sent such
16 a warning letter?

17 A I understand from my review that they
18 were not.

19 a Did the Harris Corporation know that
20 Mueller had Sheridan presses?

21 A There appears to be some indication
22 that there may have been some parts at
23 Mueller at some time.

24 Q And that the Harris Corporation had a
25 record of its own that showed that Mueller

1 owned an embossing press; have you seen
2 that?

3 A I've seen some indication of that,
4 yes.

5 Q Do you still find that the warning
6 effort was adequate, even though it did
7 not reach Mueller?

8 A I think that the warning effort was
9 adequate. Mueller should have gotten the
10 letter.

11 Q But it wasn't sent to them; is that
12 what your understanding is, that it was
13 not, in fact, sent to them because they
14 were not on the mailing list, or have you
15 not found that out?

16 A I know that they did not get it.

17 Q Do you have an opinion that the
18 Harris Corporation was negligent for not
19 informing Mueller at that time?

20 A No, I wouldn't say that they were
21 negligent, no. They missed it. It was a
22 mistake. I don't see that as being
23 negligent.

24 Q It was a mistake, but it was not
25 negligent in some way to have an owner

1 identified in your records but not send
2 them the warning letter?

3 A It was a mistake.

4 Q Okay, but you don't find that that
5 was negligent in any way?

6 A No.

7 Q I believe that we'll be done by 1:00,
8 all right?

9 MR. O'NEILL: All right.

10 BY MR. MEROS:

11 a Do you feel that the risk of
12 entrapment in the 5-A press as you saw it
13 was open and obvious?

14 MR. O'NEILL: Entrapment?

15 MR. MEROS: Entrapment.

16 BY MR. MEROS:

17 Q Entrapment in the --

18 MR. O'NEILL: I would object to
19 that word. The machine did not trap
20 anyone. The machine would crush anyone
21 who put their hand in the point of opera-
22 tion, but entrapment is an objectionable
23 term.

24 MR. MEROS: I'll change it.

25 BY MR. MEROS:

1 Q Do you find that the risk of injury
2 or the risk of a crushing injury in the
3 5-A press that you inspected was open and
4 obvious?

5 A I would say that the hazard was open
6 and obvious, yes.

7 Q Open and obvious to whom?

8 A Open and obvious to the user, to the
9 owner.

10 Q Was it open and obvious to the manu-
11 facturer?

12 A If, in fact, that component was used
13 as it was sold as a component part, and
14 somebody placed their hand in the area of
15 the die, certainly, there would be an
16 injury. So, it would be obvious.

17 Q Even to the manufacturer?

18 A Sure.

19 Q There isn't anything that Ehlen did
20 in operating the press on that day of her
21 injury that was not foreseeable by the
22 manufacturer; is that correct?

23 A Oh, yes. I don't think it was fore-
24 seeable at all.

25 Q By the manufacturer?

1 A Yes.

2 Q Why do you say that?

3 A It's conceivable that somebody would
4 use this machine and stick their hands in
5 the press during its operation, I guess,
6 but that certainly is not foreseeable. I
7 don't see that as being foreseeable at
8 all.

9 Q All right.

10 A And that this press would be used in
11 the condition that it was in, in 1991 at
12 the time of her accident, I don't see that
13 as being foreseeable at all.

14 Q Is that because the manufacturer
15 would not have anticipated that somebody
16 would be graining or embossing a part
17 smaller than the size of the press bed?

18 A No, I don't think so. I don't think
19 the manufacturer in this particular case
20 in 1991 would believe that or would
21 foresee that a user would attempt to do
22 what she was doing at that time without
23 having some form of device on the machine
24 to prevent her from putting her hands in
25 there when it's running.

1 a I understand. So, it's the fact that
2 it was unguarded is what was not fore-
3 seeable by a manufacturer; is that what
4 you're saying?

5 MR. O'NEILL: I object to that.
6 It's unclear.

7 THE WITNESS: No.

8 BY MR. MEROS:

9 a First of all, let me see if I can
10 break this down because I want this to be
11 clearly on the record.

12 The manufacturer, Sheridan, does
13 anticipate that a user of an embossing
14 press may have to hand feed some stock; is
15 that correct? Can you agree with that?

16 MR. O'NEILL: That the user of
17 an embossing press what?

18 BY MR. MEROS:

19 Q Has to hand feed stock, that they may
20 put their fingers and hands between the
21 platens.

22 A No, I don't think that that is
23 correct.

24 Q All right. Why would Sheridan
25 install a push-away guard on any of their

1 embossing presses, then?

2 A Why did they install a push-away

3 guard?

4 Q On any of the presses.

5 A Because the particular press that

6 they installed it on was a specific

7 purpose press for graining or smoothing

8 stock, and the fact that that guard may

9 interfere with the operation, which would

10 be the feed and the registering of the

11 material, would have no effect on the

12 final product, on the outcome and what the

13 condition of the product was. There's no

14 need to have an absolute register or a

15 register of the material during a graining

16 or a smoothing operation that interference

17 with this guard would affect. In some

18 circumstances where you might have to

19 emboss a material with gold leaf, for

20 example, if you move that product, if that

21 guard were to come up and were to push you

22 out of the way or move your body or move

23 your hands, and you were to have control

24 of that product, you would not be able to

25 register it properly. That would not work

1 in that application.

2 Q And that's on which press?

3 A On any press.

4 Q On any of them; is that correct?

5 A On any press. They weren't provided,

6 necessarily, on every press, but on any

7 press, you can provide that guard for a

8 specific application, for a specific

9 design and a specific arrangement of the

10 machine, and it will provide a means of

11 potentially moving a person away from the

12 front area of the machine. It will not

13 stop the machine from cycling, but that's

14 an application -- you would employ that

15 application potentially, and I think it

16 did in that 8E press, in a smoothing or a

17 graining application where raw hides or

18 stock were being put into the machine, and

19 the function that the machine was perform-

20 ing did not require an absolute register

21 or a close register of the product, and,

22 therefore, if the guard hit the product,

23 if the guard hit the person to move them

24 out of the way, the machine would function

25 still and still perform its intended duty

1 or its intended operational routine.

2 Q You are pointing out limitations of
3 the push-away guard?

4 A I am pointing out the fact that a
5 push-away guard cannot be applied for
6 every application, and that a push-away
7 guard, as you point out in the 8E, might
8 be applicable in or usable in a smoothing
9 or a graining application.

10 Q The limitations of a push-away guard
11 that you just explained would also exist
12 on the 8E?

13 A I think I said the 8E.

14 Q So, even though the push-away guard
15 was utilized on 8E's by Sheridan, you
16 recognize the limitations that it would
17 have even on the 8E?

18 A Sure, there are limitations. Well,
19 if you were to try to apply that to the
20 5-A, a general purpose type of press, it
21 wouldn't work.

22 Q Have you ever seen a push-away guard
23 in use on an embossing press?

24 A No.

25 Q Have you ever studied the engineering

1 I design of one?

2 A I have studied the design of it, yes.

3 Q Do you know how it works?

4 A Sure.

5 Q At what level of the lower bed does

6 it start in the operating cycle?

7 MR. O'NEILL: Does it start?

8 MR. MEROS: Yes.

9 THE WITNESS: It would start

10 as soon as the bed moves. There's a

11 linkage arrangement with a ratio.

12 BY MR. MEROS:

13 Q At the feeding point where the

14 operator is feeding the stock in, is the

15 push-away guard higher than the lower

16 press bed?

17 A At what time?

18 Q I just said: at the start, when the

19 operator is feeding the material in --

20 A Yes.

21 Q -- is the push-away guard higher than

22 the lower press bed?

23 A What part of the guard? I thought

24 you said what part of the press.

25 Q Any part of the push-away guard; is

1 any part of the push-away guard higher
2 than the lower press bed at the point that
3 the operator is feeding the stock in?
4 A Are you talking about the push-away
5 guard that is depicted on some pictures of
6 an 8E machine in this case, or are you
7 talking about a push-away guard that one
8 of your technical advisors has come up
9 with?
10 Q Let's stick with the photographs that
11 you have seen. Have you seen any photo-
12 graphs --
13 A Sure.
14 Q -- of the push-away guard?
15 A It's in the brochure.
16 Q How about photographs of actual
17 presses, actual machines?
18 A I've seen some photographs, yes.
19 Q On what presses did you see the
20 push-away guard?
21 A I don't recall the specific presses.
22 I don't recall.
23 Q Let's see if we can make this clear
24 on the record. Does the push-away guard
25 ever rise above the height of the lower

1 bed at any point in the cycle?

2 A It doesn't appear so, no.

3 Q But it pushes away; it rises with the

4 lower bed and pushes the operator back

5 away from the press; is that your under-

6 standing?

7 A Yes. It will do that. Depending on

8 where the operator is standing, it will do

9 that.

10 Q And that's how it's described in the

11 literature; is that correct?

12 A Yes.

13 Q In the sense that the push-away guard

14 never rises higher than the lower bed, the

15 push-away guard is not going to strike any

16 material sticking out; will it?

17 A Not necessarily so.

18 Q But it may push the operator back

19 that might be holding the stock; is that

20 right?

21 A It might hit the stock, and it might

22 hit the person, sure.

23 Q Wait a minute. You said that it

24 might hit the stock. If the push-away

25 guard never rises higher than the lower

1 bed, how will it push the stock or ever
2 contact any of the stock?

3 MR. O'NEILL: It would push
4 limp stock. I think perhaps you're
5 thinking of rigid stock.

6 BY MR. MEROS:

7 Q My question implies, from what you
8 said, that that's what the 5-A is used
9 for. You haven't mentioned any stock or
10 flexible stock. You were talking about
11 stock that might be firm.

12 A That's not true. I didn't say that,
13 number one, and number two, there are
14 looseleaf binders that are creased that
15 may hang down. You don't know what the
16 arrangement of that work piece is, and if
17 it hangs down, it could contact it.

18 Q Well, can't the push-away guard, from
19 a mechanical standpoint, be adjusted to
20 move outward and not contact stock but
21 still push the operator away?

22 A I don't -- I think it was a -- I
23 guess mechanically you could adjust it,
24 but it may mean a modification. I'd have
25 to look at that.

1 Q But from a mechanical standpoint,
2 this is certainly something that could be
3 engineered so that the push-away guard
4 could be adjusted backward so that it does
5 not strike the stock that may stick out
6 over the end of the press bed. What's so
7 difficult about that?

8 A Well, every time you adjust it so
9 that it won't hit the stock, because it
10 articulates from the front of the machine
11 up, you make it closer to the machine,
12 and, then, you may affect its ability to
13 do the job that it's intended to do. I'm
14 not sure that that's appropriate, to make
15 an adjustment like that.

16 Q Why not move it further from the
17 machine instead of closer to the machine?

18 A Exactly, and, then, maybe the
19 operator can't control the stock at all.

20 Q Certainly, that can be engineered by
21 the owner/user?

22 A It can be analyzed by the owner/user,
23 yes.

24 Q If the push-away guard is there to
25 begin with, the owner/user can either

1 adjust it or modify it.

2 A It's not an adjustable or modifiable
3 guard. It is a guard with a linkage
4 arrangement that didn't seem to have any
5 adjustment to me from what I reviewed, but
6 the fact of the matter is, the manufac-
7 turer doesn't know what the application of
8 that machine is and whether or not it will
9 affect the user or not or the application
10 of the machine. I don't see that such a
11 guard should be provided and would be
12 provided by a manufacturer in that type of
13 circumstance.

14 Q Was the push-away guard at that time,
15 in your opinion, a bad device?

16 MR. O'NEILL: Are you referring
17 to the push-away guard illustrated on the
18 8E?

19 MR. MEROS: Whatever he saw.

20 THE WITNESS: I don't know what
21 you mean by a "bad device." It's a device
22 that can be applied for certain specific
23 applications, and that's why it was
24 provided.

25 BY MR. MEROS:

1 Q And it would afford safety in some
2 circumstances?
3 A In some circumstances, it would
4 provide some safety.
5 Q Would it have prevented this injury
6 if it was on the 5-A?
7 MR. O'NEILL: To Ms. Ehlen?
8 MR. MEROS: Sure, this injury.
9 BY MR. MEROS:
10 Q If it was on this press, would it
11 have prevented this injury?
12 A It's difficult to tell, but I would
13 say probably not.
14 Q Why not?
15 A Because Ms. Ehlen stuck her hand in
16 the area of the point of operation where
17 that guard or that articulating hinged
18 device does not cover.
19 Q But it would have pushed her body
20 away, thereby extracting her arm from the
21 danger zone as it's designed to do?
22 A Maybe not.
23 Q You mean if it failed?
24 A Maybe she would have reached beyond
25 it.

1 Q Well, you have to reach over it and
2 beyond it to get into this press bed; do
3 you not?

4 A Sure.

5 Q And that is true on the 8E, the 9A,
6 the 16 and 18. You have to reach beyond
7 the guard to get into the press bed; is
8 that correct?

9 A That's true, and she may have done
10 that in this case, reached over the guard
11 and gone right in. There's no evidence
12 that I found to indicate, from what I've
13 read here, that that guard would have
14 prevented this accident in any way.

15 Q If a push-away guard was on the 5-A,
16 and it wasn't broken and it was working,
17 would it not have pushed her away --

18 A Maybe not.

19 Q -- thereby extracting her arm?

20 A I'm not sure that that would happen.

21 Q So, you can't give me an opinion as
22 to whether or not a push-away guard on the
23 5-A in this case would have prevented the
24 injury?

25 MR. O'NEILL: He has given you

1 his opinion.

2 THE WITNESS: I've given you my
3 opinion, and I say it will not.

4 BY MR. MEROS:

5 Q You said that it will not?

6 A Exactly.

7 Q I thought that you weren't sure. You
8 are saying that it would not have pre-
9 vented this injury?

10 A In my opinion, I do not believe that
11 that guard would have prevented this
12 accident.

13 Q Thank you. At least it's on the
14 record clearly.

15 Now, in your report, there's a
16 number of things that you say that I'd
17 like to cover now.

18 You understand that the Mueller
19 Art Cover Company bought the Sheridan
20 press in question in 1954; is that right?
21 That's in the first part of your report.

22 A Yes.

23 Q Okay, and along through your report
24 on pages two and three, you seem to
25 indicate that there was a disagreement

1 between Ehlen and Bartos as to how the
2 accident happened; is that right?

3 A Yes.

4 Q The first opinion that you state is
5 on page three, the third full paragraph
6 down. Your first opinion that I see in
7 this report is in the third full paragraph
8 on page three, and in your opinion, you
9 say that the accident did not occur as the
10 result of any inadequacy in the design or
11 manufacture of the press component of the
12 embossing system. Have I read that
13 correctly?

14 A Yes.

15 Q And then you say, "Rather," in your
16 opinion, "Ms. Ehlen's accident occurred as
17 a result of an unsafe and inadequate
18 embossing system arrangement and improper
19 operating techniques and training provided
20 by others"; is that correct?

21 A Correct.

22 Q And by "others," you mean her employ-
23 er and co-workers?

24 A By Ms. Ehlen herself and the employ-
25 er.

1 Q And in the next paragraph, your
2 second opinion or your second group of
3 opinions are that the 5-A embossing press,
4 when sold by the Sheridan Company, was
5 properly designed and manufactured and was
6 reasonably safe and suitable for its
7 intended purpose. Now, I've kind of
8 paraphrased that, but is that essentially
9 what you're saying?

10 A Yes.

11 Q Further, you say that, "The subject
12 press, as originally designed, manufac-
13 tured and sold by Sheridan, was not
14 defective or deficient and violated no
15 known code, standard or other written
16 authority applicable to the safety aspects
17 of its design at the time of manufacture
18 in 1922." Have I read that correctly?

19 A Yes, you have.

20 Q In the last full sentence there,
21 there are the words "or other written
22 authority applicable." What other written
23 authority applicable do you recognize?

24 A The only other written authority
25 would be potentially the writings of, let

1 us say, the National Safety Council where
2 they adopt the writings of ANSI or OSHA.
3 Q Well, in 1922, we know that there was
4 no OSHA; is that correct?
5 A Correct.
6 Q And in 1922, there was no ASA code
7 that predated, I believe, the July of '22
8 manufacture of this press.
9 A That's exactly right.
10 Q Are there any other written authori-
11 ties that you find that would have been in
12 existence at that time?
13 A I did not find any others. It says,
14 "No known."
15 Q Well, David Beyer's book was written
16 in 1916; is that correct?
17 A Yes.
18 Q So, that would have been in existence
19 at that time.
20 A In 1922?
21 Q Yes. The Beyer book was in existence
22 in 1922?
23 A Yes.
24 Q Are you saying that the design of
25 this press did not contravene the

1 admonitions of Mr. Beyer in his book about
2 a manufacturer guarding a press?
3 A Mr. Beyer is not an authoritative
4 source. Mr. Beyer is a single person
5 giving an opinion, and it's his own
6 opinion. He's not an authoritative
7 source.
8 Q You own his book, and you have used
9 it?
10 A Sure. Like I told you, I have 500
11 books.
12 Q But you have his book, and you have
13 used it, and you've referred to it?
14 A I've referred to it in the past.
15 Q You wouldn't refer to a source that
16 was not authoritative; would you?
17 A Sure. I've referred to all sorts of
18 sources over the years.
19 Q That are not authoritative?
20 A Sure.
21 Q Are you basing any of your opinions
22 on any of those books in this case that
23 may not be authoritative?
24 A No, I'm not.
25 Q Did the National Safety Council have

1 any publications in 1922 that called for
2 the machine manufacturer to design safety
3 into the machine as part of his manufac-
4 turing process?

5 A I don't know.

6 Q Then, you say in the last paragraph
7 on that page that the Sheridan embossing
8 press is a multi-purpose machine, and I
9 don't think we have to go over that, and
10 you explain that it's equipped with a wide
11 variety of feeding devices; is that
12 correct?

13 A Yes.

14 Q Can you tell me what some of those
15 feeding devices are?

16 A Sure. There's a table slide feed, a
17 roll feed, a chain feed, a belt feed.

18 Q A sliding plate?

19 A Pardon me?

20 Q A sliding plate?

21 A A sliding plate.

22 Q If the owner/user wanted to, could
23 they have implemented any of these feeding
24 devices on the machine?

25 A In general on the machine at any

1 time?

2 Q Well, I'm talking about our machine
3 here, the 5-A.

4 A Yes, but at what time? At the time
5 that Ms. Ehlen was using the machine to do
6 the specific operation that she was doing
7 at that time?

8 Q Any time after 1954.

9 A Could they have employed them?

10 Q Yes.

11 A Sure.

12 a Could they have used a sliding plate
13 on the 5-A?

14 A I just want to be clear. They would
15 determine what type of application, like,
16 a sliding plate might have in the evalu-
17 ation of the specific use of the machine.

18 Q "They" is who?

19 A Mueller. Now, when you say: could
20 they have done it? Well, in 1954, what
21 were they doing with that machine? If *you*
22 tell me, if you want to give me the
23 specifics of exactly what they were
24 processing on the machine in 1954, could
25 they have applied something? Maybe and

1 maybe not.

2 Q All right.

3 A I don't know.

4 Q Was a sliding plate in existence in

5 1954?

6 A Sure.

7 Q How early do we see the start of the

8 use of sliding plates on embossing

9 presses?

10 A I don't know. I never really looked

11 it up or evaluated it.

12 Q Now, those are feeding devices that

13 could be utilized on an embossing press

14 that would keep the operator's hands out

15 of the danger zone, right?

16 A Well, it would keep the operator's

17 hands out of the point of operation, yes;

18 that's correct.

19 Q And, then, you explain, as you have

20 explained before, that the specific

21 application and arrangement of the machine

22 is known only to the ultimate user whom

23 you feel is responsible for appropriate

24 safeguarding.

25 A Yes.

1 Q Is that right?

2 A Yes.

3 Q And you make the statement in your
4 report at the bottom of page three that
5 "Specifically, the manufacturer had no
6 knowledge of the ultimate system confi-
7 guration of Mueller Art Cover Binding
8 Company," correct?

9 A Correct.

10 Q On page four, the third paragraph
11 down, in the middle of that paragraph is a
12 sentence that starts, "Further, the
13 hazards associated with. the press opera-
14 tion were open and obvious," and then it
15 goes on. Would you tell me what are the
16 hazards that you were speaking of here?
17 What hazards associated with the press are
18 you speaking of?

19 A Well, the hazard of getting a body
20 part in the area of the point of opera-
21 tion.

22 Q And you feel that that was open and
23 obvious?

24 A It was open and obvious.

25 Q From 1922 on?

1 A It was open and obvious that, in the
2 ultimate application of the machine, when
3 this machine would be taken and put in a
4 system, there may or may not have to be
5 things done to it in order to ensure that
6 it can be operated safely.

7 a Okay. You say that the Bruno Sherman
8 Corporation produced a safety mailing
9 dated September 5 of 1980. Wasn't it
10 actually Harris who produced it, but it
11 went out on Bruno Sherman stationery, or
12 did you not find that out?

13 A I know that Harris had some involve-
14 ment, yes.

15 Q More than "some" involvement. They
16 developed it; didn't they?

17 A It appears that that's the case.

18 a They had the mailing list. They
19 edited this, actually wrote out what it
20 should be, and sent it to Mr. Bruno;
21 didn't they?

22 A Yes. They had some involvement,
23 correct.

24 Q In the bottom paragraph, there's a
25 sentence that -- well, it's the first

1 sentence that continues on for about seven
2 lines. The last phrase or the ending
3 phrase there says, "the failure of Mueller
4 to employ appropriate safeguards on the
5 embossing press."

6 What appropriate safeguards are
7 you speaking of?

8 MR. O'NEILL: Excuse me. I'm
9 lost.

10 MR. MEROS: At the bottom of
11 page four, the bottom paragraph, a phrase
12 that starts about four lines from the
13 bottom, "the failure of Mueller to employ
14 appropriate safeguards on the embossing
15 press."

16 Q What would be appropriate safeguards
17 on this embossing press?

18 A At the time that Ms. Ehlen was doing
19 what she was doing when the accident
20 occurred, the machine should have been
21 provided with the single cycle throw-out
22 lever. It should have been installed in
23 that the operation that she was doing was
24 a single cycle operation and not -- and
25 that throw-out lever should have been

1 attached to the machine and functional.
2 They should have provided some type of
3 feeding device so that the work piece
4 could have been registered on it outside
5 the area, like a sliding plate, some type
6 of a fixture to allow Ms. Ehlen to
7 register that work piece outside the bed
8 of the press, and there should have been
9 some formal type of guarding provided; for
10 example, a Boyle guard.

11 MR. MEROS: Let me take a
12 short break, and we'll move to this, and
13 I'll have some documents and records to
14 show you. We'll take a five-minute break,
15 and we'll end by one or within five
16 minutes of 1:00.

17 (At this time a short recess was
18 had.)

19 (At this time Plaintiff's
20 Exhibits 3 to 13 were marked for identi-
21 fication purposes.)

22 MR. MEROS: We're back on the
23 record.

24 BY MR. MEROS:

25 a Mr. Otterbein, I have a series of

1 exhibits that I'd like to show you and
2 show to all of us on our screen as I ask
3 you about them.

4 The first one is Plaintiff's
5 Exhibit 3 which is a discovery document in
6 our case. I think that I saw a copy of
7 that in your file. Do you recognize that?

8 MR. O'NEILL: The identi-
9 fication of the document is "Response to
10 Plaintiff's Seventh Request for Production
11 of Documents."

12 BY MR. MEROS:

13 Q Have you not seen it?

14 A Yes.

15 Q You have seen it?

16 A Yes, I have.

17 Q Attached to the production request is
18 a publication of the Sheridan Company
19 which shows various presses, and I'll have
20 a few questions after you've taken a look
21 at that.

22 A Okay.

23 Q First of all, on our screen, let me
24 show you the 8E press. There is the whole
25 document. We'll first start there. Now,

1 this is the Sheridan 8E as you understand
2 it; is that correct?
3 A Yes.
4 Q And it has the push-away guard on the
5 bottom of the press bed; in other words,
6 it's attached to the lower press bed.
7 A Yes.
8 Q And as the press, as the lower bed
9 rises, the push-away guard comes up with
10 the lower bed and pushes out and is
11 supposed to push the operator out of
12 danger; is that correct?
13 A I need to see the document. I can't
14 see it.
15 Q There is the Sheridan identification,
16 and there is the press itself. Is there
17 any portion that you would like me to
18 focus on?
19 A I'd like you to focus up there.
20 Q Up there?
21 A Yes.
22 Q Sure. We can go a little closer if
23 you like. Can we agree that the config-
24 uration of the push-away guard is never
25 higher than the lower bed?

1 A That's correct.

2 Q Thank you. Next in this document,
3 let me show you a statement that is made
4 by -- first of all, let me come back and
5 show you the whole document first. There
6 is a page that is called the "Sheridan
7 Automatic Sliding Plate Presses." If it's
8 easier for you, let me show you that, and
9 then I'll focus on a certain part.

10 A All right.

11 Q At the bottom of this particular
12 document, it appears that Sheridan is
13 marketing this, the sliding plate, as a
14 feed or safety device. Would you agree
15 with me, because at the bottom of this it
16 says, "The possibility of accident to the
17 operator is entirely eliminated as the
18 action of the sliding plate makes it not
19 only unnecessary but practically impos-
20 sible for an operator to put his hands
21 under the head of the press when in
22 operation"? I'm simply asking you: is
23 the sliding plate a sort of a safety
24 device?

25 A It would provide a measure of safety,

1 yes.

2 a Now, further on in the publication or
3 in the document there is a separate
4 section called "Sheridan 8E 4-Rod Leather
5 Press," and it's got a list of parts, and
6 I just wanted you to be able to identify,
7 if you can, the push-away guard. This is
8 sideways. Let me go straight up so that
9 we can see it easily.

10 There's the portions of this
11 guard that make up the safety guard. We
12 have the guard itself, the support and it
13 looks like a stud and a connector to
14 attach this to the press, okay?

15 A The linkage, yes.

16 Q Have you ever seen them actually on a
17 press?

18 A No.

19 Q The next page of this shows a
20 Sheridan 8E, and it's called "Automatic
21 Roll Feed Press." Let me go a little bit
22 tighter on the description. It's called
23 the "Sheridan 8E Automatic Roll Feed
24 Press."

25 Could you explain something to

1 me about how the roll feed works as we see
2 it in the depiction? How does this con-
3 figuration work to feed this 8E embossing
4 press?

5 A It is a roll feed for roll-type
6 stock, and it would unroll the stock
7 through the bed area, and there would be a
8 take-up reel at the rear.

9 Q And that's usable on flexible stock?

10 A Yes, it would be roll-type stock,
11 yes.

12 Q Is this a form of a safety device to
13 keep the operator's hands out of the
14 danger zone, or is it merely to aid in
15 production?

16 A Well, I think it provides both.

17 Q Does it?

18 A Sure.

19 a Now, there's a page that talks about
20 the Sheridan 16 and 18 presses, all right?
21 It has the statement that, "The press can
22 either be arranged to throw off after each
23 impression or run continuously as
24 desired."

25 Now, I believe that this is the

1 statement of the manufacturer. Now, you
2 seem to agree with it, that the throw-off
3 device is made to be disconnected or taken
4 off; is that correct?

5 A Well, this is a 16 or 18 press. It's
6 a much later model press. I'm not sure of
7 the arrangement of the throw-off device or
8 lever in that particular press at this
9 moment. So, I really can't answer your
10 question.

11 Q But the throw-off device on the 5-A,
12 on our press, I think that you have said
13 can be taken off of the press?

14 A It can be removed to allow it to run
15 in a continuous mode.

16 Q And you took it off without hand
17 tools.

18 A I did.

19 Q Next we have the Sheridan 16 press
20 with the head size 48 by 26. It's the
21 width that's 48, and the depth that's 26;
22 is that correct?

23 A Yes.

24 Q So, it's wider than a 5-A but not
25 that much deeper?

1 A Correct.

2 Q The 5-A is approximately 27 and a
3 half by 22 and a half or thereabouts?

4 A Yes.

5 Q Is the 16 a multi-purpose press?

6 A I'm not sure. I'd have to look at
7 that.

8 Q Do you have any reason to believe
9 that the 16 is not capable of a multipli-
10 city of functions and applications?

11 A Well, I could tell you that it
12 probably is a leather-type press, and it's
13 probably for hides.

14 Q Why couldn't you do chipboard on the
15 16 or any embossing of book covers on the
16 16?

17 A Because the guard might very well
18 interfere with the registering of the
19 work.

20 Q So, it's the guard that would limit
21 the use of this particular press; is that
22 correct?

23 A Well, that's one of the problems or
24 one of the potential problems of it.

25 Q But if there wasn't a guard on here,

1 if the push-away guard was not on this,
2 this would be a multi-purpose press. You
3 could probably emboss book covers and
4 grain them, do some inking procedures and
5 also do hides; is that correct?
6 A I would say that's possible. I'd
7 have to look a little bit further at the
8 specific design of the 16.
9 Q Okay, and then we have the portion of
10 this that says, "The Sheridan 9A 4-Rod
11 Leather Press, 54 by 26, List of Parts,
12 Sheridan Company," and approximately four,
13 five pages, six pages down, we see the
14 same safeguard that we saw for the 8E and
15 the same parts that would connect it; is
16 that correct?
17 A Yes.
18 Q Next, I'd like to show you Exhibit 4,
19 Plaintiff's Exhibit 4 which is a discovery
20 response again. I'm simply asking you if
21 you've ever seen that before.
22 MR. O'NEILL: What does the
23 cover page say? "Response to Request for
24 Production Number 1-C through E."
25 MR. MEROS: That's correct.

1 THE WITNESS: Yes.

2 BY MR. MEROS:

3 Q Okay. I can take the clip off of
4 here. The second page of this particular
5 document shows or explains things about
6 the 5, the Sheridan 5 press, and it has a
7 press head size of 27 by 22. Would that
8 not be substantially similar in size to a
9 5-A?

10 A Yes.

11 Q All right, and this points out that
12 the 5 is similar in design to the 16 and
13 fills the requirement for a smaller press
14 for all-around use, okay?

15 A Yes.

16 Q Now, on the next page, we have a
17 depiction of the 5. At the bottom, it
18 should say that this is a 5 press, 27 by
19 22.

20 A Yes.

21 Q Now, is this the kind of a press that
22 you are saying is a multi-purpose press
23 and that the push-away guard would not be
24 practical on this press?

25 A That is a multi-purpose press, and a

1 push-away guard, when you do not know what
2 the ultimate application of the machine
3 is, may not be applicable.

4 Q Next we have what is a Sheridan **5-AB**
5 bookbinders' press, is what it says at the
6 bottom. Let me give you the whole docu-
7 ment here. I'll come in a little bit
8 closer, all right?

9 As you look at that, is there
10 any substantial difference in configura-
11 tion between the **5-AB** and the **5-A**?

12 A It's a Model **5**. So, it would be the
13 same configuration.

14 Q Okay. Do you know any of the
15 chronological history of Sheridan as to
16 why they went from a **5** to a **5-A** or **5-AB** or
17 the differences therein?

18 A I don't know specifically the reason.
19 It's just a progression in the type and
20 application of the machine, I believe.

21 Q Now, the very opening line of this
22 explains that "This press is used for
23 graining, blanking, embossing and gold
24 stamping." Doesn't the manufacturer kind
25 of limit this **5-AB** to four uses: graining,

1 blanking, embossing and gold stamping? He
2 does not? You're nodding.

3 A That's a pretty general purpose.

4 Q Is there any reason why a push-away
5 guard could not be utilized on a 5-AB when
6 it is intended for graining, blanking,
7 embossing and gold stamping?

8 A Sure.

9 a And those are the reasons that you
10 explained before?

11 A Absolutely.

12 Q But right here, when the manufacturer
13 puts together the description of what the
14 press is for, doesn't the manufacturer
15 have knowledge as to what it's going to be
16 used for because he's specifying its use?

17 A The manufacturer has an idea that
18 this is a leather embossing press. It's a
19 multi-purpose press, and it can be used
20 for many things. Those four things could
21 encompass hundreds or more than hundreds
22 of operations and different types of
23 arrangements of operations.

24 a But we still have some information in
25 the manufacturer's own literature as to

1 what the manufacturer expects that it's
2 going to be used for.

3 A I understand, yes.

4 Q So, we do have some information as to
5 what the manufacturer anticipates that the
6 product will be used for.

7 A Certainly. It's going to be used for
8 leather processing and for processing of
9 other materials, potentially metals and
10 others, sure, absolutely.

11 Q This literature also on the next page
12 says that the Sheridan 5 press is similar
13 in design to the 8E and fills the require-
14 ment for a smaller press for all-around
15 use. Isn't that similar to what the
16 literature said, that the 5 is like a 16?
17 Now, it says that it's also like an 8E in
18 design.

19 A I think that we already went through
20 this one.

21 Q No. That one said that the 5 was
22 like the 16 press. This one says that the
23 5 is like the 8E.

24 A But it says that it's for all-around
25 use, general purpose operation. Abso-

1 lutely, that's what it says.

2 Q The only point I'm making is the
3 similarities in design between the 5 and
4 the 16 and the 8E by the manufacturer's
5 own literature; would you agree with that?

6 A That's what it says. It says what it
7 says.

8 Q Very good. Further on in this
9 document, we have page ten that shows a
10 5-B, press head 24 by 22, and it says,
11 "Equipped with automatic sliding plate."
12 Here we see the sliding plate. Is this
13 the sliding plate that I'm pointing to
14 there?

15 A Yes.

16 Q Okay. This was a sort of a safety
17 device and a production enhancer for a
18 5-B; is that correct?

19 A It was a device that could enhance
20 the safety as well as the production, yes.

21 Q Now, let me show you, one by one,
22 Exhibits 5 through 13. Let me represent
23 to you that these are copies of photo-
24 graphs that were in the Harris Company's
25 possession, and they all depict Sheridan

1 presses of one type or another.

2 A Not all of them represent pictures of
3 presses. I guess one of them is a record.

4 Q I'm sorry. Yes, there is one
5 document there that is a record, a machine
6 record card.

7 Let me show you Exhibit 5 which
8 is a 9-EF 4-rod leather press that was
9 built, evidently, in April of 1921, or at
10 least that's what the document shows,
11 serial number 774. Could you identify for
12 me what the device is that we are seeing
13 that feeds the machine or feeds the point
14 of operation?

15 A That's a belt feed.

16 Q What is that for?

17 A For feeding stock.

18 Q Is it a safety device, or is it a
19 production device or both?

20 A Again, it can provide a portion of
21 safety or it can provide some safety, and
22 it's a production device.

23 Q What can be fed into this 9-EF with
24 this chain feed in place?

25 MR. O'NEILL: It's a belt feed.

1 MR. MEROS: I'm sorry. I
2 called it a "chain feed."
3 BY MR. MEROS:
4 Q This belt feed, what can be fed into
5 this point of operation with this type of
6 a belt feed?
7 A Hides.
8 Q Stiff stock?
9 A No, no. It would probably be hides,
10 flexible stock.
11 Q It would be flexible, then?
12 A (At this time the witness nodded his
13 head.)
14 Q In Exhibit 6, we have a 3C 4-rod
15 embossing press with case feeder and
16 inker, 1273 for the serial number, and
17 this is dated May 20 of 1929. What is a
18 case feeder and inker that we see right
19 there?
20 A A case feeder is a registering device
21 for providing a way of accessing the
22 machine with the cases being able to be
23 loaded and, then, fed into the machine by
24 an automatic means, by an automatic pro-
25 cess, and the inking is a way of trans-

1 ferring an ink-type of -- it could be a
2 foil ink to whatever the case is.

3 Q Is this a device that affords some
4 protection to the feeder?

5 A It may, sure.

6 Q Was that available in 1922; do you
7 know?

8 A Well, it was available in 19 --
9 Q 1929.

10 A 1929. I don't know if it was avail-
11 able in 1922.

12 Q Exhibit No. 7 shows a number 17
13 press, serial No. 2122, and it apparently
14 was in the possession of Fred Ruping
15 Leather Company. It shows a Steinhart
16 guard. Do you see the Steinhart guard?

17 A I see a portion of it.

18 Q Is there a portion on the side or on
19 the back that would also be part of the
20 Steinhart guard?

21 A Yes.

22 Q Okay. Is this like a Boyle guard?

23 A Similar, yes.

24 Q And it works to advance ahead of the
25 press beds' closing to see if there's

1 anything in the point of operation which
2 would then prevent the beds from closing
3 together?
4 A Well, it would prevent the bed from
5 rising, correct.
6 Q It would prevent the bed from rising,
7 and this is a form of a movable gate
8 guard; is that right?
9 A That's correct.
10 MR. O'NEILL: What is the date
11 of that photograph?
12 MR. MEROS: I don't know.
13 Everything on there, I can show you by
14 panning around. I can tell you that it's
15 photo number 1257 in the books of Harris,
16 and I don't have a date on this photograph
17 of any kind. This is Exhibit 7.
18 MR. O'NEILL: For the record,
19 I would like to state my belief that the
20 Model 17 was first produced in 1947.
21 MR. MEROS: Okay.
22 BY MR. MEROS:
23 Q Showing you Exhibit 8, this is a 5-B
24 4-rod leather press, 1911, and it shows a
25 sliding plate.

1 MR. O'NEILL: Model 5-B?

2 MR. MEROS: 5-B.

3 BY MR. MEROS:

4 a That's the sliding plate that we've
5 already talked about in detail. This
6 would at least show us that, as early as
7 1911, Sheridan had the technology for
8 sliding plates on No. 5 presses; would you
9 agree with that?

10 A Sure.

11 Q And this affords some safety to an
12 operator in feeding material into the
13 point of operation?

14 A It would help the operator in feed-
15 ing, correct.

16 Q Next we have Exhibit 9, and this is a
17 number 16 press, serial number 2073, with
18 a Boyle guard, and it's known in the
19 Harris books as photo 1071, and let me
20 come in with this, and we'll show it to
21 you. The Boyle guard is similar, as you
22 say, to the Steinhart guard; is that
23 right?

24 A Yes.

25 Q And this is certainly adaptable to a

1 16 press as we see here; is that right?
2 A It could be adapted to a 16 press.
3 Q If I recall, one of the cases that
4 you're an expert on involves a 16 or a 17?
5 A Well, it involves a 17.
6 Q Okay.
7 MR. O'NEILL: I would like to
8 note for the record my belief that the 16
9 was first shipped in 1945.
10 MR. MEROS: 1945?
11 MR. O'NEILL: Yes.
12 BY MR. MEROS:
13 Q That was Exhibit 9. Exhibit 10 is a
14 number 18 press known by photo number 837
15 and 838 in the Harris books. This shows
16 the push-away guard; is that correct?
17 A It does.
18 Q Okay. Can you tell from the photo-
19 graph whether the lower bed is against the
20 upper, or are they open in here?
21 A I can't tell by that view that you
22 have on the screen.
23 Q Okay. In the same series of Exhibit
24 10, there's a close-up. It appears that
25 the beds are together in that photograph;

1 does it not, the bed being here?
2 A That's very difficult to tell.
3 Q Well, I don't see an opening there;
4 do you? Do you see an opening?
5 MR. O'NEILL: It's hard to
6 tell.
7 THE WITNESS: It's poor
8 quality. I can't really tell.
9 BY MR. MEROS:
10 Q On these embossing presses, the press
11 heads or the lower bed never does come
12 flush against the top. There's a minimum
13 space; isn't there?
14 A There usually is for the stock.
15 Q So, there would be some space even if
16 the lower was as high as it could go in
17 the cycle; there would be some space there
18 anyway.
19 A Sure, if there was no stock in it.
20 Q Next we have Exhibit 11.
21 MR. O'NEILL: Excuse me, John.
22 I would like to note for the record my
23 belief that the 18 was first shipped in
24 1947.
25 BY MR. MEROS:

1 Q Here's a photograph of an 8E. We
2 don't have a date on it. We just know
3 that it's photo number 323 in Harris'
4 books, and it shows the push-away guard on
5 this 8E press. Are you in agreement with
6 that?

7 A That's what it shows.

8 Q Exhibit 12 is a number 16 press,
9 serial number 1433. Photo number 749 ~~is~~
10 shows the back -- this is a split page.
11 It shows the back of the press and the
12 front or a side view showing portions of
13 the front which show a push-away guard.
14 Would you agree with that, that this shows
15 a push-away guard?

16 MR. O'NEILL: What is the

17 model? MR. MEROS: This is a

18 16, serial number 1433

19 THE WITNESS: Well, it's poor
20 quality. It shows something; that's for
21 sure.

22 BY MR. MEROS:

23 Q Would you not say that that is a
24 push-away guard?

25 A Well --

1 Q You can't tell from the photo?
2 A It's very difficult to tell.
3 Q Now, showing you Exhibit 13 which
4 appears to be the machine record card for
5 the press in question, this is the card
6 for serial number 849 which was the press
7 involved in our case, and it shows a run
8 date of 5/6/22, and then it shows a
9 shipment date of July 11, 1922 to New
10 York, it appears.
11 I would like you to look at the
12 last entry on that card. Does it not say
13 that there was some work done, in essence,
14 on this machine on February 25 of '55 of
15 the main cam, and there's a part number
16 there, F 027828?
17 A I looked at this, and I can't tell
18 whether that's "55" or what it is.
19 Q Have you seen the blowup of this yet?
20 Have you seen this up closer? Doesn't
21 that look to be a "55"?
22 A I still don't think it's a "55."
23 Q What do you think that it is?
24 A I don't know.
25 Q Do you think it's a "25," or do you

1 have any idea as to what those numbers
2 are?

3 A I can't tell.

4 Q Is that not a "55"? Is the 5 in "25"
5 similar to the last two digits?

6 A I'm having trouble telling for sure.
7 I don't know.

8 Q Okay, if you don't know, you don't
9 know.

10 A It's hard to tell.

11 Q I just have a few more, and we'll be
12 done. Would you mark that as 14.

13 (At this time Plaintiff's
14 Exhibit 14 was marked for identification
15 purposes.)

16 BY MR. MEROS:

17 Q Let me show you a patent for a safe-
18 guard on a power press, an embossing press
19 guard, patent number 1,405,057 patented
20 February 7 of 1922. Have you ever seen
21 anything like that before?

22 A This is a guard for a power press. I
23 may have seen it before, but I don't know.
24 I don't recall specifically at this point.

25 Q Is that not a movable gate type of a

1 guard that is depicted and explained in
2 that patent, or would you need more time
3 to review it?

4 A Well, I certainly would like to
5 review it, but it appears from the
6 pictorial on the photograph or on the
7 patent itself that it is some type of an
8 articulating guard.

9 Q I think that you had testified
10 earlier that, as far as you knew, movable
11 gate guards had been around before 1922.

12 A In that time area, they were around.

13 Q Let me turn to what the inventor was
14 pointing out in terms of the patent.

15 A Okay.

16 Q I'll direct you to the third
17 paragraph that starts right over here.
18 "In the use of heavy power embossing or
19 punch presses or the like, serious injury
20 to the hands of an operator often results
21 from delay in removing the hands from
22 between the jaws of the press." He goes on
23 to explain that sometimes the hands have
24 to be in the power press to load the
25 stock.

1 From here on down, from this
2 line here, he says, "Furthermore, the
3 operator will at times attempt to
4 straighten a piece of work or remove
5 foreign matter by reinserting his hand
6 after the press has started to close. It
7 has been found in practice that any safety
8 device which depends upon any voluntary
9 act of the operator for the safety
10 afforded is of doubtful utility, if not
11 useless."

12 You certainly can't dispute that
13 this inventor was noting that as a reason
14 why he patented this, but my question is:
15 would you agree or disagree with what the
16 inventor was indicating here?

17 **MR. O'NEILL:** As to what? As
18 to what part?

19 **BY MR. MEROS:**

20 Q As to the fact that operators are
21 known to reach back into the press as the
22 jaws are closing to straighten out a part,
23 and that safety devices which don't depend
24 on the voluntary act of the operator are
25 the better safety devices.

1 A I'd have to study that more. I'm not
2 sure that I understand what that means.
3 Q All right.
4 A I'd like to read the whole document.
5 Q You've seen the exhibits that were
6 used in Mr. Rennell's deposition and Mr.
7 Harkness' deposition concerning patents
8 for guards on certain presses; is that
9 correct?
10 A Yes.
11 Q All right. Without marking them
12 again since they're already marked, let me
13 show you Exhibit 13 which is identified
14 there as being marked on July 29 of '94
15 which I believe was Mr. Harkness' deposi-
16 tion. This is a barrier guard and an
17 emergency stop which guards the rollers on
18 a printing and embossing press. Have you
19 had a chance to take a look at this?
20 MR. O'NEILL: May we go off the
21 record?
22 (At this time a short recess was
23 had.)
24 BY MR. MEROS:
25 Q Have you had a chance to study that?

1 A I reviewed it, yes.

2 Q Would it not be something of value
3 that could have been utilized on the 5-A
4 in 1922?

5 A I believe, if it was ever produced,
6 that certainly in a particular applica-
7 tion, when an application was known, that
8 the employer probably could have employed
9 it, yes.

10 Q And the manufacturer could have
11 employed this; is that not true?

12 A Not without knowing what the ultimate
13 application of the machine is.

14 MR. O'NEILL: What exhibit was
15 that?

16 MR. MEROS: That was Exhibit 13
17 from Mr. Harkness' deposition.

18 BY MR. MEROS:

19 Q Showing you Exhibit 11 from Mr.
20 Harkness' deposition, have you had a
21 chance to look at this, which is an inter-
22 locking guard for use with a leather
23 press? I'm reading from the words on the
24 very bottom. "The press shown utilizes a
25 stationary upper head and a movable lower

1 head similar to an embossing press."

2 Would this have any value if it

3 were utilized on a 5-A in 1922?

4 A I don't think that that guard could

5 have been used in the application as it

6 was used prior to Ms. Ehlen's accident at

7 Mueller.

8 a Last of all, I have Exhibit 12 from

9 Mr. Harkness' deposition. This is a guard

10 for an embossing press used to emboss or

11 stamp paper, cardboard, book covers and

12 letters. This type of press also has a

13 stationary upper head and moving lower

14 platen. The guard functions by moving in

15 advance of the moving platen toward the

16 operator. Would this have had any value

17 on a 5-A in 1922?

18 A I don't believe that that could be

19 used also in the application as it was

20 immediately prior to Ms. Ehlen's accident.

21 Now, in 1922, again, if an employer felt

22 that this guard would provide appropriate

23 and necessary protection, as he felt it

24 was deemed necessary, he could provide it.

25 Q Okay.

1 MR. MEROS: That's all I have.
2 We're concluded.

3 MR. O'NEILL: We'll waive
4 signature.

5 (At this time a discussion was
6 held off the record.)

7 THE WITNESS: All right.

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1 CERTIFICATE

2 The State of Ohio,)

3 County of Cuyahoga.)

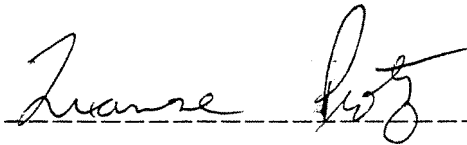
4 I, Luanne Protz, a Notary Public
5 within and for the State of Ohio, duly
6 commissioned and qualified, do hereby
7 certify that the above-named witness,
8 RICHARD OTTERBEIN, was by me first duly
9 sworn to testify to the truth, the whole
10 truth and nothing but the truth in the
11 case aforesaid; that the testimony then
12 given by the above-referenced witness was
13 by me reduced to stenotypy in the presence
14 of said witness; afterwards transcribed;
15 and that the foregoing is a true and
16 correct transcription of the testimony so
17 given by the above-referenced witness.

18 I do further certify that this
19 deposition was taken at the time and place
20 in the foregoing caption specified and was
21 completed without adjournment.

22 I do further certify that I am not a
23 relative, counsel or attorney for either
24 party, or otherwise interested in the
25 event of this action.

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IN WITNESS WHEREOF, I have hereunto
set my hand and seal of office at
Cleveland, Ohio this -- 6th ---- day of
---- August ---- A.D., 1994.



Luanne Protz-Notary Public
Within and for the State of Ohio
My commission expires 4/5/98.