

DOC. 392

The State of Ohio)
Cuyahoga County)
IN THE COURT OF COMMON PLEAS

LEWIS LILLY, SR., et al.)
Plaintiff) Case No. 239436
vs.)
ROB RYAN, INC., et al.) Judge: Brian Corrigan
Defendant.)

Deposition of MELVIN SHAFRON, M.D., a
witness taken before JOY MIHALKO, Notary Public within
and for the State of Ohio in this cause on WEDNESDAY the
26th day of JANUARY, 1994 at 26900 CEDAR ROAD, Cuyahoga
County, Ohio at 5:03 p.m. Pursuant to notice sent to
counsel, this deposition was tape recorded by Legal
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For the Defendant

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

Melvin Shafron, of lawful age, a witness herein having first been duly sworn as hereinafter certified, deposes and says as follows:

DEPOSITION OF MELVIN SHAFRON, M.D.

BY MR. CALHOUN:

Q Would you give us your name and your address, please?

A My name is Melvin Shafron, and my office address is 26900 Cedar Road, Beachwood.

Q And you are licensed to practice medicine in Ohio?

A Yes sir.

Q You are a longtime certified neurological specialist?

A Neurosurgeon, yes.

Q Neurosurgeon?

A Yes.

Q What is the difference between a neurosurgeon and a neurologist?

A Well, obviously, the most basic difference is the fact that neurosurgeons do surgery and neurologists do not. They see many patients who have the commonality of having the same diseases or certain diseases or disorders with the difference being that certain disorders can be

1 treated and are treated surgically, some aren't. There
2 are certain diseases which a neurosurgeon will treat
3 nonsurgically, there are many diseases which a
4 neurologist will treat nonsurgically. Of course, a
5 neurologist will not treat any disease surgically.

6 Q A neurosurgeon would tend to have more patients with
7 problems indicating there might be a surgical solution
8 and a neurologist would tend to treat more patients in
9 which it didn't seem like surgery was what would be
10 called for?

11 A That's a reasonable thing to say, sure.

12 Q Doctor' do you have a file on this case?

13 A Yes.

14 BY MR. CALHOUN: Let the record show that
15 this deposition is taken by agreement,
16 it's the discovery deposition. Do you
17 have the caption and the other
18 information? May I see your --

19 BY DR. SHAFRON: You have no objection to
20 that, do you Tom?

21 BY MR. DOVER: No. No, that's fine.
22 That's my understanding.

23 BY MR. CALHOUN: May I see your file?

24 BY DR. SHAFRON: Sure.

25 BY MR. CALHOUN: Thank you.

1 BY DR. SHAFRON: If you have trouble
2 reading my notes, let me know and I'll --

3 (OFF THE RECORD)

4 BY MR. CALHOUN:

5 Q Dr. Shafron, did you have occasion to examine a
6 Louis T. Lilly on September 3rd, 1993?

7 A Yes, sir, I did.

8 Q And what were the circumstances of your examining
9 him? How did that come about?

10 A I have no idea who made the arrangements, but it was
11 done through, obviously, my secretary and either Mr.
12 Covey or Mr. Covey's secretary.

13 Q In other words, arrangements were made by a law firm
14 for this examination?

15 A Yes.

16 Q And at the time, you knew that that law firm was one
17 that, for the most part, represented people who were
18 being sued as a result of injuries, product liabilities,
19 motor vehicle accidents and things like that?

20 BY MR. DOVER: Note my objection, I think
21 we do -- it's a general practice, I mean,
22 we sue people, we represent people that
23 are being sued in litigation, but with
24 that in mind.

25 A Yeah, obviously, when I saw the patient and when I

1 began talking with him, the reason was obvious to me.
2 You know, I didn't --

3 Q This isn't the first time you've examined for that
4 office?

5 A No, sir, it is not.

6 Q And have you ever examined for that office in which
7 they were representing a party that was injured?

8 A I haven't the vaguest idea. I can't answer that
9 question, I don't know.

10 Q You don't think you'd remember that if you had?

11 A If I did, I don't remember it and if I didn't I
12 don't remember it. I really can't answer your question.

13 Q Well, okay. Do you have a recollection of any kind
14 in which you can say that as far as your recollection is
15 concerned, the vast majority of people that you examined
16 for that office are people who are suing clients of that
17 office?

18 A There was -- are you asking me if I saw them for the
19 same purpose that I saw Mr. Lilly? The answer to your
20 question is yes. I don't quite understand your question,
21 but in very simple terms, the answer to your question, I
22 think, is yes.

23 Q Yes. And that you -- the vast majority of your
24 examinations are under the same circumstances?

25 A As far as I can tell, yes.

1 Q When you perform an examination like that and
2 prepare a report, obviously it's not for the benefit of
3 the party you are examining or for treatment, is it?

4 A Certainly not for treatment, no.

5 Q What is the purpose of the examination? What is
6 your objective when you so examine them?

7 A To provide, as best I can, a picture of this patient
8 medically, from a medical viewpoint.

9 BY MR. ZIPKIN: Could you speak louder,
10 doctor?

11 BY DR. SHAFRON: Oh, surely. I will.

12 A To provide, as best I can, a picture of this
13 patient, medically.

14 Q And when you say a picture of this patient, what
15 kinds of specifics are you attempting to provide?

16 A Just exactly what I said. A narrative, objective
17 evaluation of a patient's physical condition with respect
18 to his or her problems, at the time I saw them.

19 Q And in developing that objective evaluation, what
20 subjects are you interested in? What factors? What
21 circumstances?

22 A I'm interested in the patient, what the patient has
23 to --

24 Q What about the patient are you interested in?

25 A I want to hear what the patient has to say.

1 Q And that's not out of idle curiosity, it's for a
2 purpose. For what purpose do you want to hear?

3 A For the purpose of providing an objective picture of
4 the patient's clinical condition.

5 Q And in making that evaluation, do you make a
6 judgment? You pass judgment on his credibility?

7 A I may pass judgment on his credibility, depending on
8 the circumstances.

9 Q Do you pass judgment on his good faith?

10 A That's a difficult question to answer, because,
11 again, it depends on the patient and the particular
12 circumstances of that given patient.

13 Q But, if the occasion arises that you have questions
14 to doubt --

15 A I render an opinion.

16 Q And you're --

17 A If that's calling passing judgment, then indeed, I
18 do pass judgment.

19 Q You were given certain records to make this
20 examination with --

21 A No, that's not true. I was not provided with any
22 records to make an examination. I was provided with
23 records to give me information about the patient, with
24 respect to the treatments that he had in the past and
25 things that were on-going.

1 Q All right. Did these records show that Mr. Lilly
2 had an industrial claim, an injury, in 1968?

3 A Indeed they did. That was something I did not know
4 at the time I saw the patient. That's something I
5 utilized or I saw after I examined the patient. After I
6 took a history from him, I had a pile of records, as you
7 well know, since they are outlined in my letter. I
8 looked at these prior to preparing my report.

9 Q Would you detail everything you learned, not from
10 the records but from Mr. Lilly, which was material or at
11 least you believed it to be material, to the extent of
12 his present disability? And secondly, the cause of such
13 present disability?

14 A Well, I'll have to read from my notes, which I took
15 at the time I examined him.

16 Q That's all right.

17 A After he related -- you know, he recalled the
18 details of the incident in question which occurred on the
19 15th of October and there was someone here with him from
20 your office who obviously took notes and stuff like that.
21 But be that as it may, he stated that he was involved in
22 an accident with relatively poor recall or the details,
23 but he said that his head struck the glass on the back of
24 a panel, which I suspect was just behind the seat of the
25 truck he was in. He said that he was taken to Marymount

1 Hospital after the accident, had chest pain which he
2 thought was perhaps related to the seat belt he was
3 wearing and complained of headache and neck pain,
4 basically discomfort all over. And following his
5 evaluation at Marymount Hospital, he was allowed to go
6 home.

7 He saw a physician, namely Dr. Charms, after the
8 accident in question, was given a variety of medications
9 and subsequently came under treatment at a pain center at
10 Suburban Hospital, where he was treated with blocks.
11 Now, I could not tell from his description of these,
12 quote, blocks whether they were just -- whether or not
13 they were truly blocks or whether or not they were
14 injections of medication in the various sore areas of the
15 body that one calls trigger points. But he received
16 injections in his neck, his left shoulder, his left side,
17 the left upper arm and the forearm.

18 He also complained of pain in his neck, the left
19 side of his neck, pain over the left shoulder, pain over
20 the outside of the upper arm on the left side, pain in
21 the forearm. And also stated that all of the fingers of
22 his left hand tingled, with the exception of the thumb,
23 and he stated that these complaints were constant. He
24 said he thought that his arm pain began at the time of
25 the accident and that the finger tingling also began at

1 the time of the accident. He said that he thought that
2 the many injections that he received gave him some relief
3 of his complaints. He also mumbled something that
4 somebody wanted to put a stimulator in his spine.

5 He also told me that he saw a neurosurgeon on six or
6 seven occasions because he was thought to have had a
7 broken neck. He was treated with a variety of
8 medications, including Dilantin, which was apparently --
9 was given -- which he takes twice a day or was taking
10 twice a day, which he was given to help the ringing in
11 his ears. He thought he saw a Doctor Brown, and there is
12 a Doctor Brown who is a otolaryngologist, whether this is
13 the same Doctor Brown or not, I don't know. He said he
14 lost his hearing after the accident in question -- or had
15 hearing problems as a consequence of the accident. He
16 also had EEG's.

17 In taking his past history, he told me that he is
18 being treated by a cardiologist for both -- for
19 hypertension and when I asked him what medications he was
20 on, he told me that he was taking a medication called
21 Skelaxin, which is used as a muscle relaxant, a
22 medication called Daypro, which is one of the drugs
23 that's called a non-steroidal anti-inflammatory
24 medication, he was also taking Fiorinal for headaches
25 that he described as migraine headaches, which he had

1 since the accident in question. And when I asked him,
2 well, tell me about these headaches and where they're at,
3 he said, they are headaches which are present on a daily
4 basis and which were located at the front of his head.
5 He also stated that the headaches were continuous. He
6 also stated that he had eye problems, as well, as a
7 consequence of the accident in question. He also had a
8 numb feeling of the lateral aspect of his right thigh.
9 And in the context of a number of his complaints, as well
10 as tingling on the outside of the left leg which involved
11 the thigh and calf he's had a number of scans and other
12 tests. The numbness and tingling of the right lateral
13 thigh, the left leg, the left calf and the outside of his
14 left foot are present at all times. I asked him
15 specifically if he had any pain in either leg and he
16 said, no, just the numbness and tingling. He also told
17 me that he had a constant low back pain.

18 In ticking over his past history, he stated that he
19 had some type of cardiac problem which required him to be
20 hospitalized at St. Luke's Hospital in 1989, where he was
21 on the cardiac intensive care unit. Apparently, this is
22 related to perhaps an exposure to methane gas at work.
23 He also told me that he had an injury to his right elbow
24 as a consequence of an industrial accident which occurred
25 about ten (10) years also -- ten (10) years ago, which

1 required surgery. He denied other auto accidents or
2 injuries, he also told me that he had surgeries for elbow
3 spurs in his left heel. He said the operation helped his
4 -- the operations helped his pain. That was the history
5 that I got from the patient. Then I examined him.

6 Q In your examination, you found he had neck and low
7 back were very tender, you state that?

8 A Absolutely. His neck and low back were very --
9 every time I touched him he would moan and groan. And I
10 touched him -- when I touched his back or touched his
11 neck he moaned and groaned. *And* I, therefore, did not
12 test any movement. I noticed --

13 Q So that when you say in your letter, his neck and
14 low back were very tender, that wasn't your conclusion,
15 that was really what he was telling you?

16 A Of course. He said it hurt when I touched him, so
17 that's what I wrote down. He had multiple puncture sites
18 where presumably he had these injections, and these were
19 present in the low back. I also noted that if one were
20 to actively and passively move his left arm at the
21 shoulder, this produced a great deal of pain in the left
22 arm -- or the left shoulder.

23 Q At least he told you that?

24 A That is correct.

25 Q Did you have any way of knowing whether or not that,

1 in fact, was bona fide?

2 A Absolutely not. I recorded what the patient told
3 me. I noticed that there was no weakness of the muscles
4 of his face when I tested sensation. I noticed that
5 there was decreased appreciation of a pin over the entire
6 left side of his head, the left trunk and the left leg.
7 The vibratory sensation was intact. I then tested
8 straight leg raising by moving the legs to ninety degrees
9 (90) with reference to the body, this was performed
10 normally. I then checked what we call the deep tendon
11 reflexes by striking various body parts with a rubber
12 hammer. And my notes reflect that the reflexes were all
13 present, they were symmetrical when one compared right
14 side to left side and when one compared arms to legs, and
15 that there were no pathological reflexes. And that was
16 the sum and substance of my examination. My comment was,
17 no findings, many complaints, review records.

18 Q When Mr. Lilly made the complaints that you have
19 testified to, did you form an opinion as to whether he,
20 in fact, was experiencing this pain?

21 A All I did was dutifully record the complaints he
22 told me. I mean, pain is in the eyes of the beholder,
23 it's not in the eyes of the observer. It's in the eyes
24 of the patient --

25 Q In other words, it wasn't part of your function, as

1 a doctor, to ascertain whether this pain was on the level
2 or not?

3 A There's no doctor who can tell -- when you evaluate
4 a patient for pain, you have to get a picture of the
5 patient, and when you record a patient's complaints,
6 regardless of who that patient is, all you can do is
7 record them and try to relate the patient's complaints to
8 anything that you can see objectively. The complaint of
9 pain is a totally subjective thing. In other words, you
10 record what the patient tells you. Tenderness is a
11 totally subjective thing. I could just touch his neck
12 and he moaned and groaned and said it hurt him. So I
13 recorded that.

14 Q Doctor, aren't there many ways of ascertaining
15 whether someone is putting on pain? Whether someone
16 isn't telling you the truth when they say they hurt?

17 A There certainly can be, sure.

18 Q And you don't utilize any of those, do you?

19 A What do you mean, I don't utilize them?

20 Q Well, you say there's no way of telling, and I don't
21 see anything -- was there anything that you did to test
22 his good faith, his veracity?

23 A When a patient -- when a person says they have pain,
24 I can't test for pain. There --

25 Q You don't know of any -- you don't -- go ahead.

1 A Listen, don't say I don't know of any. Don't try to
2 belittle my knowledge. You're not listening to what I'm
3 saying --

4 Q All right, go ahead.

5 A -- and I'm not going to tolerate that.

6 Q Go ahead, doctor --

7 A I know lots of ways --

8 Q No, go ahead, Doctor.

9 A I know lots **of** ways --

10 Q Go ahead. I apologize, Dr. Shafron.

11 A Well, I'm just -- just watch what you're saying to
12 me, that's all. Don't get that way with me, I won't
13 tolerate it.

14 There are many ways to evaluate pain. You can do a
15 million tests to evaluate pain. There are some patients
16 who have complaints of pain in which there is absolutely
17 no objective test known to man that can tell you, yes, he
18 has pain or no, he doesn't have pain. You can take all
19 the x-rays you want, you can do all the scans you want
20 and you can do all the special nerve studies that can be
21 done, and these studies may show absolutely nothing. Are
22 you therefore going to conclude that a patient has pain
23 or doesn't have pain? All you are going to be able to
24 conclude is that I have no rational explanation for his
25 pain, and that's all I can say. There are lots of things

1 you can do.

2 Q Doctor, not meaning to belittle your experience, but
3 trying to find out what it is, how often have you been
4 doing these examinations --

5 A I have been taking care of --

6 Q -- for medical legal purposes?

7 A I've been taking -- let me -- I'm going to answer
8 you -- I'm not going to answer that question, but I've
9 been taking --

10 Q I'm sorry, that's the question I've asked --

11 A Well, I'm going to answer your question --

12 Q -- and the rule is, that you're going to answer that
13 question, and I direct you to.

14 BY MR. DOVER: Wait a minute, wait a
15 minute, wait a minute, wait a minute.

16 BY MR. CALHOUN: Wait a minute, he wants
17 to answer his question.

18 Q How long have you been doing that?

19 A Let me give you two answers. I've been taking care
20 of patients with pain for thirty (30) years.

21 Q I didn't ask you about taking care of patients.

22 A I said I'm going to give you two answers. I've been
23 taking care of patients with pain for two years -- for
24 thirty (30) years, rather. And I've been seeing patients
25 of this gentleman for probably ten (10) to fifteen (15)

1 years.

2 Q How many patients do you think you've seen over the
3 years?

4 A Thousands.

5 Q Roughly. Thousands?

6 A You mean, like this gentleman? For medical legal
7 purposes?

8 Q Yes.

9 A Three, four hundred, probably, over the years.

10 Q And seeing these numerous patients, you as a doctor
11 and you as an expert giving a medical legal report have
12 never thought that there were any tests, things you could
13 do to ascertain whether -- let's take the complaint of
14 tenderness --

15 A Mm-hmm.

16 Q -- was bona fide or not.

17 A Mm-hmm.

18 Q You never thought of a way to test that?

19 A Nope.

20 Q You've never thought, maybe, of pressing the spot
21 when the patient wasn't thinking about it, when you were
22 examining another part, and seeing whether he reacted.

23 A I'm not trying to fool a patient. You're asking me
24 if I'm trying to fool the patient, the answer is no.

25 Q In other words you --

1 A I touch the part --

2 Q In other words, you come into this examination
3 determined that you're not going to give any test to that
4 patient which might ascertain whether he's telling the
5 truth or not telling the truth? Because they would fool
6 him if he didn't tell the truth.

7 A No, I'm not --

8 BY MR. DOVER: Objection, that's not what
9 he said.

10 A I'm not trying -- you don't understand some - I'm
11 not trying to fool the patient.

12 Q Why not?

13 A Because that's not my -- I'm trying to find out
14 what's wrong with the patient.

15 Q But why --

16 A The patient was trying to fool me.

17 Q If the patient's trying to fool you?

18 A Oh, he was trying to fool me.

19 Q If the patient is trying to fool you?

20 A It's pretty obvious. And he was.

21 Q And how is it obvious?

22 A Because, for example, the type of sensory loss that
23 he had over the left side of his body is hysterical or
24 functional. There is no lesion or abnormality of the
25 spine of any kind that I'm aware of that can do this.

1 Q Tell us about an hysterical sign like that. Does
2 the patient believe it or is he lying about it?

3 A He may believe it. You can call it anything you
4 want. All I'm telling you is, that the sensory
5 disturbance that he had over the left side of his body,
6 including his face and his trunk and his arm and his leg
7 cannot be produced by any abnormality of the nervous
8 system. Now, is the patient doing this? Yes, the
9 patient is doing this. That's all. If you want -- is
10 the patient trying to fool me? He may be trying to fool
11 me, I don't know.

12 Q But you concluded that he was, from that.

13 A Well, I certainly did.

14 Q Even though it could have been hysterical?

15 A Well' hysterical means the same thing. The patient
16 is not --

17 Q In other words, if it's hysterical, it means that
18 the patient is trying to fool you and that the patient
19 doesn't really believe that he has that loss of
20 sensation?

21 A Well, the patient may indeed believe he has that
22 loss of sensation, I don't know.

23 Q Well, then he's not trying to fool you, is he,
24 Doctor?

25 A I'm not going to get into words with you. All I am

1 telling you is --

2 Q It's not a question of words, Doctor, please.

3 A Yes it is, yes it is. All I'm telling you about the
4 sensory loss, as an example, is that there is no
5 abnormality of the nervous system that I'm aware of that
6 can produce this. I'm not going to discuss with you the
7 mechanics of this gentleman's thinking. I didn't spend
8 hours with him trying to treat him -- trying to analyze
9 him psychologically, that's not my purpose.

10 Q I'm not interested in that, Doctor. I'm interested
11 in --

12 A Well, yes, you are. Yes, you are.

13 Q -- your attempt to objectively --

14 A Yes you were.

15 Q -- ascertain whether he's telling the truth, other
16 than to say if you can't see it on a scan, you can't see
17 it on an x-ray, then --

18 A I did not --

19 Q -- I can't make the judgment.

20 BY MR. DOVER: Who told you about the
21 sensations.

22 A I talked to you about the sensation. I don't try to
23 fool any patient that I can. In other words, I didn't
24 put my hand on his back to escort him in the --

25 Q Why not?

1 A Because that is a totally artificial circumstance.
2 I didn't --

3 Q It's totally what?

4 A I didn't put my hand under his clothes to feel his
5 back as he was coming into my room. When I touched his
6 back, he said, Doctor, that hurts. That's what I wrote
7 down.

8 Q But you didn't touch his back when he wasn't paying
9 attention to the fact that you were?

10 A No, I did not. No, I did not.

11 Q And I want to know why not, other than that you
12 didn't want --

13 A Because I don't do that with any patient, period.
14 It's very unusual, in my experience, to have somebody
15 complain of tenderness like this, especially when there's
16 no muscle spasm. So, I'm just telling you what I think.
17 And I did not try to fool this gentleman, I did not try
18 to touch his back when he wasn't looking and I didn't try
19 to touch his neck when he wasn't looking.

20 Q And you didn't perform any of the tests known to
23 neurologists, known to orthopedists, in making --

22 A To do what?

2' Q -- a medical legal examination to ascertain whether
2' in fact what the patient demonstrates is on the level or
2 not.

1 A I didn't do --

2 BY MR. DOVER: You're talking about
3 trying to fool the patient?

4 BY MR. CALHOUN: Yes, I am.

5 BY MR. DOVER: I mean, he's answered
6 this, we've been going around -- now,
7 let's move on.

8 A I made no attempt to sneak a hand on this patient at
9 all, because of the moaning and groaning that he -- and
10 Miss Geller was in the room, because of the moaning and
11 groaning and the complaints of discomfort that he had, I
12 didn't ask him to move his back, I didn't ask him to bend
13 over and touch his toes, I didn't ask him to move his
14 neck around. My purpose was not to hurt this gentleman,
15 or not to cause him discomfort. And everything I did
16 which was just a touch, for example, caused him
17 discomfort. And I wouldn't do that with this gentleman
18 nor would I do that with any patient.

19 Q You mean, you didn't ask him to bend over?

20 A No, sir, I did not.

21 Q Why not?

22 A I just told you. I wouldn't do it.

23 Q Why?

24 A Because he said everything he did caused him
25 discomfort and I would not do it.

1 Q And you didn't -- and you didn't --

2 A Absolutely not.

3 Q And so you didn't ask him to bend over?

4 A No, sir.

5 Q To see if that were true or not?

6 A That is absolutely correct. Absolutely correct.

7 Q And you didn't ask him to turn his neck to the
8 right or left?

9 A Absolutely not.

10 Q So you don't know whether he would have or could
11 have bent over?

12 A I have absolutely no idea whether he could or would.

13 Q And you weren't interested?

14 A I didn't want to cause this gentleman anymore
15 moaning and groaning than he exhibited when I examined
16 him.

17 Q But you realize that the moaning and groaning -- and
18 you came to the conclusion that it was being put on, so
19 why not ask him?

20 A I didn't say that at all. Don't put words in my
21 mouth, my friend. I didn't say that at all. I did not
22 say it was put on, and I resent that.

23 Q All right.

24 A I won't tolerate that.

25 Q Is it your opinion that it was put on?

1 A I will not make any comment about that.

2 Q In other words, you can't say with reasonable
3 medical certainty that he wasn't feeling the pain that he
4 demonstrated to you?

5 A I have absolutely no idea. All I'm telling you is
6 what he did and what he said.

7 Q And you can't medically give it your opinion?

8 A Absolutely not.

9 Q That it wasn't there?

10 A Absolutely not.

11 BY MR. DOVER: Now, he said that about
12 fifteen (15) minutes ago, I don't know
13 really --

14 BY MR. ZIPKIN: No, he didn't.

15 BY DR. SHAFRON: He's try -- I know, it's
16 okay.

17 E IR. CALHOUN:

18 Q Doctor, you didn't read the records, or did you read
19 all the records before you? Before you wrote your
20 report?

21 A I looked at all of them before I wrote my report,
22 sure.

23 Q Yes. You make a statement here that Dr. Charms
24 makes a number of rash claims --

25 A Yes.

1 Q -- insofar as this patient is concerned, including
2 the statement that this patient has spinal cord
3 compression.

4 A Yes.

5 Q There could be nothing further from the truth.

6 A That is correct.

7 Q And that was after reviewing all the records?

8 A Yes.

9 Q Do you know what Dr. Charms' medical background is?

10 A Sure.

11 Q What is it?

12 A He's an internist and a cardiologist.

13 Q He's not a neurologist.

14 A Nope.

15 Q Do you have any idea where he got the idea that
16 there might be a spinal cord compression?

17 A You'll have to ask Dr. Charms, I haven't the vaguest
18 idea.

19 Q Doctor, did you have letters from a Dr. Rue, Terry
20 Rue, a neurologist?

21 A No it's, Tucker Ruch.

22 Q Ruch?

23 A She's not a neurologist, she's a neurosurgeon.

24 Q A neurosurgeon.

25 A Mm-hmm.

1 Q Ruch, a fellow neurosurgeon --

2 A Mm-hmm.

3 Q -- in which those words were used?

4 A If she did, I doubt that she used those words, she
5 may have thought that he did, but obviously the patient
6 did not have it.

7 Q Well, may I see her letters that you have there?

8 A They were all sent back to Mr. Dover's office and I
9 don't have any of those records here at this time.

10 Q Would you assume that they sent you all her records?

11 A Well, I assume that they did.

12 Q And let me ask you --

13 A If they left something out, I have no way of knowing
14 that.

15 Q And let me ask you a hypothetical question. If the
16 records did show that she used the words spinal
17 compression --

18 A Mm-hmm.

19 Q -- would you have any explanation for why you would
20 put the tag on Dr. Charms and not on Dr. Ruch, and accuse
21 her of saying something that couldn't be further from
22 the truth?

23 A I don't know whether Dr. Ruch -- I don't recall
24 whether Dr. Ruch said that in any of her letters. I know
25 Dr. Charms did, I remember that specifically. And I

1 don't know whether there's any medical information,
2 whether they'd be in records or reports -- scan reports
3 or myelograms, that indicated spinal cord compression.
4 To the best of my knowledge, there was no such thing. I
5 have no idea where Dr. Charms got that, and if you want
6 to find out, ask him, don't ask me.

7 Q Don't you think, Doctor, that if you had had Dr.
8 Ruch's letters to Dr. Charms before you, that you would
9 certainly have remembered it when you wrote your letter,
10 something that Dr. Ruch said that could be nothing
11 further from the truth?

12 A Well, why don't you show me the letter? I don't
13 recall that letter specifically.

14 BY MR. CALHOUN: Would you show him the
15 letters, please?

16 A Sure. Yeah, that's in the office. Okay, yeah.

17 Q Mm-hmm. Okay. Dr. Ruch said, in a letter dated
18 November 1st, 1990, that he had a pin level -- sensation
19 shows that he has decrease in his arms. I'm not sure
20 what she quite meant by that, but presumably decreased
21 appreciation of sensation in his arms to his neck and
22 also to a T-4 pin level. He also has -- and I don't know
23 quite what she means, because there's a little reverse of
24 where the sensation is normally described, he also has
25 some decrease in his legs anteriorly, posteriorly, they

1 seem normal, which makes no sense. My impression is that
2 he probably has spinal cord compression or contusion from
3 his injury. I'm going to give him -- send him for
4 tunnelgrams of 6 and 7, and an MRI of his neck. She
5 thought he could have, okay? Then the next letter, she
6 said that he has a compression fracture at C-6, which is
7 not true. And then she sees him again, and she's going
8 to get more films to make sure there's no subluxation.
9 And then she sees him again, and he thought maybe this
10 time he had weakness of the muscles of his hands. And
11 then she sees him again, and the MRI scan of the neck
12 shows nothing but a very tiny injury or osteophyte at C-6
13 dash 7, which obviously means that he has no compression.

14 Q So that she did use that term?

15 A She used the term when she originally saw him.

16 Q And when you wrote that -- when you read that
17 letter, even though it was something that could not be
18 further from the truth, you didn't remember it when you
19 decided to send your letter --

20 BY MR. DOVER: She ruled it out.

21 Q -- to the firm -- what?

22 BY MR. DOVER: She ruled it out.

23 A Can I just -- she ruled it out, and he didn't rule
24 it out. She did thirty-five (35) other tests, including
25 a myelogram and a post-myelogram CTQ scan which showed

1 nothing, and obviously ruled it out. So therefore, his
2 contention or conclusion that he had compression of the
3 spine is totally incorrect.

4 Q But you --

5 A Now, if he got it from her report, that's not my
6 problem, that's your problem.

7 Q Well, why did you put in there that she had said
8 that?

9 A I don't remember what -- I don't -- I did nothing --

10 Q Of course you don't remember. You say none of the
11 scans or studies revealed any evidence of fracture,
12 except for changes described in the cervical spine at C-
13 5, C-6, which are secondary to disk herniations in the
14 intervertebral bodies.

15 A Of C-5, yes.

16 Q At C-5?

17 A Mm-hmm.

18 Q They were described as fractures?

19 A Mm-hmm.

20 Q In the x-ray reports? Were they not? Or in the
21 scans?

22 A That's not -- Dr. Weinstein, who is an absolutely
23 outstanding neuroradiologist, felt that there was a
24 fracture. The question is, nobody was even sure this is
25 a fracture. There is wedging of the vertebrae described,

1 and I don't have the -- do you have the initial Marymount
2 records? The fractures of the vertebral bodies are due
3 to herniation of the disk in these vertebral bodies -- he
4 had cervical spine x-rays at the time of his injury which
5 showed no evidence of fracture or dislocation. So, I'm
6 not going to argue anything with you. I'm telling you
7 what the x-rays showed.

8 Q Well, are you telling me, then, that --

9 A There was no --

10 Q -- several months after the injury, when Dr.
11 Weinstein --

12 A Mm-hmm.

13 Q -- found them, in an MRI, that what he was
14 describing wasn't really there? Or --

15 A No, that's --

16 Q -- that they came on since the injury?

17 A That's right, they came on since the accident.
18 Correct.

19 Q Would you expect a fracture to show definitively the
20 day of the accident?

21 A If it -- yes, indeed.

22 Q Tell me, if they came on in these several months
23 after the accident, what possibly caused them?

24 A I haven't the vaguest idea. Dr. Weinstein thought
25 it was because of the fact that disks herniated into the

1 vertebral body. There was no fracture of the vertebral
2 body per se, as evidenced by the x-ray report of -- the
3 date of the accident, 10/15/90.

4 Q But there is an anterior wedge compression fracture.

5 A Where?

6 Q That's Dr. Weinstein.

7 A Well, that was something --

8 Q Number one.

9 A That was something that was done three months later.

10 You have to ask Dr. Weinstein about that.

11 Q And you can't attribute the cause of this new
12 finding --

13 A Nope.

14 Q What causes something like that? You don't know?

15 A It could happen to anybody, with or without trauma.
16 I do know --

17 Q And in two or three minutes, with or without trauma,
18 someone can develop mild anterior wedge compression
19 fracture, secondary to herniation of the adjacent nucleus
20 pulposus into this vertebral body?

21 A That's right. Believe it or not.

22 Q Just out of heaven?

23 A Just believe it or not. Absolutely.

24 Q And you see that all the time.

25 A It's not very common, but it surely happens. It's

1 been well-described, and you can ask Dr. Weinstein about
2 it if you don't believe me, which you obviously don't.

3 Q Now, can you with reasonable medical certainty, give
4 your opinion that these changes came on from unknown
5 causes and not this injury, in this period of time?

6 A That was the opinion I gave.

7 Q Are you giving that now?

8 A Yep

9 Q That they came on without relation to the injury --

10 A Yep.

11 Q -- from unknown causes?

12 A Mm-hmm.

13 Q You say none of the scans or studies revealed any
14 further evidence of fracture, except the changes
15 described in the cervical spine at C-6 which is secondary
16 to disk herniations intervertebral bodies.

17 A Yes.

18 Q These cannot be construed as specifically related to
19 the traumatic episode in question?

20 A That's --

21 Q When you say, use the word, these, what are you
22 referring to?

23 A The traumatic -- let me just find out where I said
24 that, please.

25 BY MR. COVER: First paragraph -- or

1 second paragraph.

2 Q It's in the second paragraph --

3 A What page is that, sir?

4 Q It's the first page, second paragraph, the third
5 sentence.

6 A That's what I said. To the traumatic episode, of
7 course which would be the accident of 10/ -- the date of
8 the accident, whatever it was, 10/15/90. Was that it?

9 BY MR. DOVER: Mm-hmm.

10 Q Now, when you say these, what are you referring to?
11 The scans?

12 A Wait a minute. The changes -- these, the changes
13 described in the cervical spine at C-5 dash 6. And the
14 rest of the paragraph, at the time of his original
15 injury, the patient had no evidence of compression
16 fracture, according to the x-ray reports that I saw.

17 Q Doctor, I want you to tell me, though you have gone
18 through it and I only saw one sentence, as to your --
19 well, let me strike that question.

20 You said that you didn't look at the other records
21 before you took the -- made the examination?

22 A I never do.

23 Q You never do. You look at them later?

24 A I have to, because I don't have time to look at a
25 pile of records when a patient comes into my office.

1 Before they come in. It takes a long time to go through
2 these things.

3 Q So that when he told you that he'd had a prior
4 accident in 1968 --

5 A He didn't mention that date, he said an industrial
6 injury or elbow problem that was ten (10) years old.

7 Q And did you ask him whether he'd ever had any
8 problems with his low back, with his neck, with his arms
9 --

10 A He said he had no other problems --

11 Q -- with his shoulders?

12 A -- the only problems he had were problems with his
13 elbows and his left heel and his right elbow. That's
14 what he told me and that's what I wrote down. He had no
15 other accidents or injuries, period. That's what he
16 said. And your associate was there taking notes down,
17 and she knows this as well.

18 Q Are you saying after you went through the chart and
19 you found out that he had a sixty-five percent (65%)
20 permanent partial evaluation by Dr. Freeman, on 2/16/90 -
21 -

22 A Mm-hmm.

23 Q -- you assumed from those recoras that the
24 complaints recorded by Dr. Freeman were the complaints
25 that he had been experiencing?

1 A I'm not sure which complaints you are specifically
2 referring to. I mean, he had a lot of complaints when he
3 was seen by this physician on behalf of the Industrial
4 Commission, and this Dr. Fryman or Freeman --

5 Q You ever heard his name before?

6 A I think I -- I think he was a family practitioner
7 years and years ago. And I think I know who he is, but
8 I'm not sure.

9 Q Would you find his reports credible?

10 A I have no idea. I didn't look at them for that
11 purpose.

12 Q But you did -- you did give them credence.

13 A I looked at them -- there's no way I can judge the
14 credibility of another doctor's report at the time you
15 saw the doctor -- saw the patient. He was seeing him for
16 a number of industrially related injuries, and he tied --
17 apparently tied all of these complaints together and
18 injuries together and said that he had a permanent
19 partial disability of whatever that number was that you
20 mentioned, sixty-five (65) or seventy percent (70%).

21 Q But then you went on to say in your record, in other
22 words, this patient has had chronic long-standing
23 problems?

24 A I think that's a reasonable conclusion that anyone
25 could come to.

1 Q Yes. And it would have to be by giving credence to
2 Dr. Freeman's report?

3 A By Dr. -- by his conclusions. There's no way I can
4 say anything else about that, other than that.

5 Q You saw evidence of degenerative disks, hypertrophic
6 spurring, things like that in the x-rays, did you not?

7 A I never saw the x-rays' to the best of my knowledge.
8 I only looked at the reports.

9 Q All right, from the reports then, I'm sorry, you saw
10 evidence of degenerative problems in his neck and in his
11 back, did **you** not?

12 A I'd have to look at those reports again.

13 BY MR. DOVER: Here's a wide variety of
14 them.

15 A Okay, sure. Well, in the MRI scan, one can
16 presumably tell whether or not there is disk degeneration
17 on an MRI scan, but Dr. Weinstein made no record of that.
18 So, I can't comment about that. When he was originally
19 seen at Marymount, they described degenerative changes of
20 the midcervical spine. Now, what they mean by that
21 specifically, I can't answer, because I haven't seen the
22 x-rays myself. Whether they mean disk space narrowing or
23 some little bit of spurs or something, I just can't say
24 that.

25 Q Dr. Weinstein did talk about herniation, didn't he?

1 A Well, yeah.

2 Q Is it possible to have a herniated disk without
3 degeneration?

4 A Absolutely. How about that? Surprised? He had a
5 CT scan in October of 1990 shortly after the accident,
6 and the CT scan showed no evidence of fracture, although
7 the reconstructions suggest a fracture. Since the doctor
8 who did this could not be sure, they suggested that he
9 have other studies; another CT scan was done, this showed
10 no abnormalities whatsoever, and he had a number of other
11 x-rays in October of 1991, which showed nothing except
12 disk space narrowing. He's got degenerative disease of
13 his cervical spine, which there's no question of. So,
14 they have lots of x-rays --

15 Q And it's your opinion, with reasonable medical
16 certainty, that these findings came on between 10/15/90
17 and 1/14/91?

18 A No, they were there before, they just kept on
19 getting worse as most -- as happens with many patients.
20 But I -- you can't really -- I can't really draw a
21 specific conclusion as to how bad they are or how much
22 they change without -- in all candid honesty, without my
23 personally seeing all these x-rays myself and sort of
24 laying them out. I don't think anybody can. So, I can't
25 tell you anything about progression at all, and if you

1 ask me, I can't give you a more honest answer than that.

2 Q Would these kinds of changes, would these
3 herniations ever be expected to cause symptoms?
4 Symptomatology in the neck?

5 A They might cause some pain acutely in the neck, but,
6 you know --

5 Q And they might not?

8 A Then again, they might not. But why they should
9 persist over the years is beyond me. I have absolutely
10 no ability to explain that to you or to anyone else.

11 Q You have a statement here, he describes constant low
12 back pain, which may or not -- may not be new.

13 A Mm-hmm. There is some suggestion that he had an
14 industrial problem with his low back as I recall, which
15 was perhaps one of the factors involved in determining
16 his permanent partial disability by the doctor who
17 examined him on February of 1990. So that, you know, his
18 low back problem -- there may have been some problems
19 with his low back that preexisted the accident.

20 Q And you had to say may or may not because you hadn't
21 taken a history from him as to that?

22 A Well, he said he never had any problems. This is
23 what he told me, and I believe the patient -- what he
24 says. I have absolutely no reason to doubt any patient
25 when they give me a history.

1 Q So that when you put in here, as one reviews his old
2 industrial charts, this patient has a litany of
3 complaints relating to an injury which occurred back in
4 1968. And apparently, all of his complaints have
5 persisted up to and including the time of the current
6 accident in question.

7 A Mm-hmm. Yep.

8 Q So you are of the view --

9 A Not when I took the patient's history.

10 Q No, no, I'm not talking about the patient's history.

11 A Well, he --

12 Q I'm talking about when you're writing this letter.

13 A All I'm saying is that the patient had a lot *of*
14 complaints up to the time of the accident, which included
15 complaints with reference to the low back, and that I was
16 not privy to any of this when I took his history.

17 Q Okay. And then after taking his history and sitting
18 down to read his report and reading the Industrial
19 Commission report --

20 A Mm-hmm.

21 Q -- then you decided that when he told you that he
22 had had no problems, other than the ones he described,
23 before this injury, that that was not the fact?

24 A Well, apparently so. I mean --

25 Q The answer is yes, isn't it?

1 A The answer is -- the only conclusion I can come to
2 is that your statement, that is correct.

3 Q And since you didn't question him --

4 A I did question him.

5 Q -- on this, well, no.

6 A He said he had no problems other than those related
7 to his elbows and his heels from the industrial accident.
8 He mentioned no problems of his low back before the
9 accident. And again, Miss Geller was sitting here taking
10 notes.

11 Q And you think he did have problems?

12 A I suspect that he did.

13 Q But you are not in a position, are you not --

14 A Not a --

15 Q -- to give an opinion with reasonable medical
16 certainty on that question?

17 A Only on the basis of what his records say, not on
18 the basis of what the patient himself told me.

19 Q Now tell me, are medical records the only indication
20 of whether someone has problems or doesn't have problems?

21 A They certainly can be. If the patient -- if a
22 medical record says one thing and the patient says
23 something else, you yourself have to decide whom to
24 believe. I cannot make that kind of statement now, and
25 I will not make that conclusion about this gentleman.

1 All I'm doing is recording what was said to me and
2 recording what was stated in his records. I am not
3 making any other conclusion.

4 Q All right, let me give you an assumption to make.
5 I want you to assume that at the time of this accident,
6 he was doing heavy, laboring work --

7 A Mm-hmm.

8 Q -- and he had been doing it for ten (10) years.

9 A Mm-hmm.

10 Q And that he had not had any treatment for any of
11 these conditions which that great Dr. Freeman said he had
12 a sixty-five percent (65%) permanent partial disability.

13 A Well, then, Dr. Freeman was obviously wrong.

14 Q It wouldn't be the first time?

15 A I'm not there to pass any judgment on Dr. Freeman.

16 Q Well, I am. Would you find what the impairment that
17 Dr. Freeman described and related in his report as
18 incompatible with someone being able to do heavy,
19 laboring work --

20 BY MR. DOVER: And I'm going to object.

21 I think he said he's not here to pass
22 judgment on Dr. Freeman, here.

23 A Yeah. Well, somebody had the wool pulled over his
24 eyes and I'm not here to pass judgment on that, either.

25 BY MR. CALHOUN: Would you read the

1 question back, please?

2 THE COURT REPORTER PLAYED BACK THE
3 QUESTION.

4 Q I don't think that's passing judgment on --

5 A Well, you're asking me to pass judgement.

6 Q -- Dr. Freeman. What?

7 A You are asking me to pass -- well --

8 Q I'm asking you a medical question. I'm asking you,
9 here's a report --

10 A Well, obviously --

11 Q -- that you relied on --

12 A Somebody is -- something --

13 Q -- that you relied on, right?

14 A Something is wrong somewhere, then. Then this
15 gentleman --

16 Q Well, I'm trying to find out where it is.

17 A Well, I'm not playing detective. You'll have to
18 play detective, I'm not playing detective. I'm not here
19 to play detective.

20 Q In other words, when you give a report, unlike a
21 detective who's trying to find out the truth, you don't
22 do that?

23 BY MR. DOVER: I'd like to --

24 A I am trying to find out the truth, sir. I have --
25 there are lots of patients who don't tell me things about

1 themselves that I find out in medical records. This man
2 said he had no problems whatsoever, and that's what he
3 told me.

4 BY MR. DOVER: It was your client that
5 went to this doctor and got the sixty-
6 five percent (65%) --

7 A Then I see a medical record which says he's disabled
8 to sixty-five percent (65%) because of his problems. I
9 mean --

10 Q I'm asking you, Doctor.

11 A I did not ask the patient what he did at the time,
12 what kind of work he did, and I did not ask him if he did
13 heavy lifting. No, I did not do that.

14 Q No, you did not --

15 A I relied on the veracity of the patient and on the
16 veracity of his medical records. And if he was capable
17 of pulling the wool over the doctor's eyes, then that's -
18 - so be it, but I'm not here to pass judgment on that,
19 either.

20 Q Doctor, when you wrote your report, you gave
21 credence to Dr. Freeman's report.

22 A I assumed it was correct, I don't know.

23 Q All right. No, did you or didn't you?

24 A Obviously I assumed something about this patient
25 with respect of what Dr. Freeman said about him, that

1 this man had a permanent partial disability because of
2 his problems of sixty-five percent (65%), okay?

3 Q And you gave credence to his findings?

4 A Obviously, because he believed the patient, too.

5 Q Now, I'm asking you for your opinion, medically,
6 whether the findings related by Dr. Freeman would be
7 compatible with doing heavy, laboring work.

8 A Obviously they are not compatible with a patient's
9 ability to do heavy, laboring work, if this indeed is
10 true. And I'm not here to make a judgment about that,
11 either.

12 Q But certainly you would agree, Doctor, and you would
13 concede that what a patient in fact does and what his
14 work history in fact is, is more credible than what we
15 find in a report --

16 A Well, then the --

17 Q -- by a doctor evaluating whether he's going to get
18 money or not, having nothing to do with treatment?

19 A When a doctor --

20 Q No, answer the question. Answer the question,
21 please?

22 A Well, when a doctor like Dr. Freeman makes a report,
23 he obviously has to depend on what the patient tells him,
24 so obviously, the patient wasn't telling him the truth
25 either. So, you know, you believe what you want to

1 believe, that's all.

2 Q You don't know anything about Dr. Freeman, how can
3 you make --

4 A I don't know a thing about Dr. Freeman and I wasn't
5 there when Dr. Freeman saw this gentleman --

6 Q No, but YOU --

7 A -- and I don't know what Dr. Freeman told him nor do
8 I know what Dr. -- the patient told Dr. Freeman. All I
9 know is what Dr. Freeman said. And if you want to depose
10 Dr. Freeman, why don't you feel free to do so. But
11 obviously, Dr. Freeman had the wool pulled over him,
12 because he thought this guy was -- this patient was
13 sixty-five percent (65%) disabled and he obviously isn't,
14 'cause you are telling me now he did heavy work. So, you
15 believe whom you want to believe.

16 Q And you believe Dr. Freeman?

17 A I have to, because the patient says one thing to him
18 and something else to me. He had told me he had no
19 problems whatsoever and he told Dr. Freeman something
20 else. So, you know, I'm not here, again, to see whether
21 the patient is lying or not lying or not quite telling
22 the truth, I'm here to try to find out what's wrong with
23 this patient. And it's very difficult, obviously,
24 because he's hard to believe.

25 Q You go on to say in the same sentence, apparently

1 all of his complaints had persisted up to and including
2 the time of the current accident in question.

3 A Mm-hmm.

4 Q And you are relating them back to the injury which
5 occurred in 1968.

6 A Correct. I mean, Dr. Freeman evaluated him in 1990
7 for that injury.

8 Q What was he -- according to the record that you had
9 and you saw, what was the primary complaint that Mr.
10 Lilly had?

11 A When?

12 Q After the October 15th 1990 injury?

13 A What he told me? Neck p --

14 Q No, no. From the records, please.

15 A Oh, I can't recall --

16 Q He was being treated for.

17 A I don't recall that. I'd have to look at those
18 again. I don't -- I'd have to -- let me look at Dr.
19 Charms' reports and see what Dr. Charms said and see what
20 Dr. Ruch said. Dr. -- well, let's see. Let me see if I
21 can find those very specifically, sir.. Well, when he was
22 in the emergency room at Marymount Hospital, they really
23 don't list his complaints. He said chest and back pain,
24 and my upper back and my head, my upper back hurts, my
25 head was cut. Complains of pain in his neck and upper

1 back, chest and left shoulder. Those were his initial
2 complaints as recorded in the --

3 Q And, Doctor, I direct your attention to the fact
4 that those complaints were not referred to in Dr.
5 Freeman's report.

6 A I haven't the vag -- well, this happened after the
7 accident. I'm not referring -- the patient had no
8 complaints of neck pain, nor did he have complaints of
9 headache, as far as I know, in Dr. Freeman -- with Dr.
10 Freeman's records --

11 Q Or left shoulder?

12 A Or left shoulder, that is absolutely correct.
13 Absolutely correct.

14 Q So that the only common complaint, both by Dr. Free
15 -- and Dr. -- before Dr. Freeman and when you saw him,
16 was the low back?

17 A That is correct. When he saw Dr. Charms, he
18 complained of he had blurred -- well, when he first saw
19 him on the October 15th, the day of the accident, he
20 apparently went from Marymount to Dr. Charms' office.
21 And Dr. Charms didn't list the complaints he had that
22 day, but when he saw him two days later, the patient was
23 complaining of blurred vision and a headache. He also
24 had neck pain, low back pain, left shoulder pain and
25 chest pain. Those were his complaints a day or two --

1 and then on October 19th, that's about a week after the
2 accident, four days after the accident, the patient says
3 -- he says, the patient still had severe double vision.
4 There was no mention of that in any previous part of his
5 record, so I'm not sure what the word still means.
6 Headache pain, low back pain, neck pain and shoulder pain
7 and chest pain. Then he saw him again another week
8 later, neck pain and headaches, back pain. Now he has
9 migraine headaches, which he really doesn't have. Pain
10 in the low back and now some problems with memory loss.
11 Then Dr. Charms said there was a dislocation of the
12 second cervical vertebrae, which is totally incorrect.
13 Saw him again on the 19th of November, now he had an
14 earache, neck pain, ringing in his ears and a headache,
15 low back pain. One week later, he thought he saw a --
16 having noted a hematoma over the neck, I'm not sure
17 whether Dr. Charms noted this, but he says he returned
18 having noted a hematoma over the neck, which would be
19 almost impossible for something to occur a month later,
20 like this to occur a month later. Pain in the left upper
21 extremity to the elbow and pain in his low back down to
22 the coccyx. Now, his ankles were swollen.

23 Q Are you finished?

24 A Well --

25 BY MR. DOVER: Well, do you want to go

1 through the whole thing? I mean, what --
2 A You want me to do the whole thing?
3 BY MR. CALHOUN: I don't want it, he's --
4 BY MR. DOVER: Oh, I'm sorry.
5 BY DR. SHAFRON: Well, you asked me --
6 well, you asked me --
7 BY MR. CALHOUN: -- not -- that's not
8 responsive to my question. Read the
9 question back.
10 BY DR. SHAFRON: You asked what did the
11 other people say about his complaints,
12 and I'm reading everything.
13 BY MR. CALHOUN: No, no. Would you read
14 the question back so that the doctor
15 BY MR. DOVER: Let's not go back, just --
16 BY MR. CALHOUN: -- realizes that he's
17 not being fair?
18 BY DR. SHAFRON: Okay, if I'm not
19 responsive, forgive --
20 BY MR. DOVER: Let's just go on. I
21 thought he was -- he's not -- let's move
22 on.
23 BY MR. CALHOUN: No. Read the question
24 back, please.
25 BY DR. SHAFRON: Okay.

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BY MR. DOVER: Well, listen, we are not going to sit here all night and do this.

BY MR. CALHOUN: Well, I'm not going to -
- we're going to sit here all night if he insists upon answering what he wants to answer --

BY DR. SHAFRON: I'm not answering what you want, sir, I'm answering --

BY MR. CALHOUN: -- and doesn't listen to the questions in answering them.

BY MR. DOVER: What was the question, then?

BY MR. CALHOUN: That's why we're reading it back.

THE COURT REPORTER PLAYED BACK THE QUESTION.

BY MR. CALHOUN: Go back on the record. Go back on the record.

BY DR. SHAFRON: You asked me what the --

BY MR. CALHOUN: I'm satisfied, Doctor' that you're right.

BY MR. SHAFRON: Okay.

BY MR. CALHOUN: The question did ask for what the record showed his complaints were, and that's what you were reading.

1 BY MR. CALHOUN:

2 Q Doctor, you examine a lot of people that are in
3 accidents, particularly automobile accidents, motor
4 vehicle accidents.

5 A Sure.

6 Q As a doctor, and with your experience in examining
7 literally thousands of these patients and giving
8 opinions, how important is the severity of the trauma in
9 your evaluating one, whether the complaints the patient
10 has now are on the level and two, if they are, whether
11 they were caused by the accident?

12 A I have seen patients -- it obviously plays a factor
13 in the nature of the patient's injuries, but the most
14 important factor in any particular patient's problem is
15 what happened to them. I've seen patients, you know,
16 fall down a stair and render themselves quadriplegic,
17 I've seen patients fall out of three-story buildings and
18 they have nothing happen to them. So the important thing
19 is, what happened to the patient specifically, as a
20 consequence to the accident in question, in terms of the
21 production of any type of serious life- or limb-
22 threatening problem.

23 There are a lot of things that happen to patients in
24 accidents that I and other doctors have great difficulty
25 explaining, I'd be the very first to admit that. And one

1 of these things is the persisting pain that a lot of
2 people have after accidents of this kind. And I have no
3 way of explaining these things, and I'm very candid with
4 you, and I think any other doctor who sees patients like
5 this would give you the same honest and candid opinion.

6 Q And when you --

7 A And I can tell you from my own personal experience,
8 which you obviously don't want to hear, I was struck
9 from behind by somebody in front of this building. I had
10 no problem, the car into which I was pushed, two young
11 men got out of the car clutching their necks, and I broke
12 **up** laughing hysterically. What happens to people is
13 something that's beyond -- you know, it's sometimes
14 beyond rational explanation, if you want to know the
15 truth. And I can't tell you why this gentleman hurts so
16 much today, I honestly can't tell you that.

17 Q Doctor, when you took a history, you said he was
18 struck by another truck from behind.

19 A That's what he said.

20 Q Did you ask him what kind of a truck?

21 A He said a Mack truck, which I assume is a big truck,
22 I don't know. I don't know whether it was a -- just a
23 loaded tractor, I don't really know whether it was a
24 tractor trailer or just a cab, I really don't know.

25 Q You don't know that a Mack truck is a semi?

1 A Now wait a minute. I don't know --

2 BY MR. DOVER: That's not what he said.

3 A That's not what I said. I said, I know what a Mack
4 truck is, I don't know whether it was just the cab of the
5 truck or whether or not it was a semi with a tractor rig
6 behind it. I have no idea how fast this other vehicle
7 was going; I have none of that. I don't know anything
8 about that.

9 Q And you didn't ask him?

10 A No, sir, I did not.

11 Q You said he had full recall of details?

12 A That's what he said.

13 Q What were those details? The ones you gave?

14 A The ones that he described to me.

15 Q Yes. Did you put down those details?

16 BY MR. CALHOUN: He read them to you
17 earlier, verbatim. Do you want him to do
18 them again?

19 A I mean, what else would you like me to do?

20 Q Did you ask him how hard he hit the glass behind
21 him?

22 A Enough to break it, I know that.

23 Q You didn't put that in your report?

24 A I think I did. I certainly have it in my records.

25 Q Oh, but you didn't put it in your report? Why?

1 A Well, I don't know why I didn't put it in my report.
2 Let me just look, please.

3 Q And let's see it in your records, too.

4 A Yep. I just had, his head hit the glass back of the
5 truck, I wrote -- he said he broke it. Yes, it's there.
6 It's certainly there. I'm not trying to hide it, I read
7 that. Third line, fourth line. I read that in the
8 record and you know I did.

9 Q Did you give any credence to the history at
10 Marymount, in which he said he couldn't recall what had
11 happened?

12 A Sure, I said that he could have had a mild.
13 concussion, absolutely I said that.

14 Q And what is a mild concussion?

15 A A transient loss of awareness, a transient loss of
16 contact with the environment.

17 Q What's it caused by?

18 A Trauma.

19 Q How is it caused?

20 A Trauma.

21 Q No, physiologically?

22 A Oh, nobody can really explain what causes that.
23 There are lots of studies done on animals, but nobody
24 really knows what happens to people. If you watched the
25 two football games last weekend, both quarterbacks had

1 concussions. Mr. Montana and Mr. -- the quarterback for
2 the Dallas Cowboys.

3 BY MR. DOVER: Aikman.

4 A Mr. Aikman. In fact, Mr. Aikman couldn't remember
5 going to the stadium that day.

6 BY MR. DOVER: Can't remember too many
7 passes, he said, either.

8 BY THE WITNESS: Yes.

9 Q When you found multiple puncture sites in the low
10 back which were the site of obvious paraspinal injections
11 --

12 A Mm-hmm.

13 Q -- did you ascertain when --

14 A Nope.

15 Q -- those puncture sites --

16 A No, they were -- obviously they had been done
17 recently, one could easily identify them and note them.
18 I don't --

19 Q In other words, they had been done since the
20 accident?

21 A Oh, yeah. Oh, yeah.

22 Q Did you ask him if he had ever had them before the
23 accident?

24 A No, I did not, I assumed he didn't.

25 Q You assumed what?

1 A I assumed that he had never had this type of
2 treatment before the accident. He told me that he never
3 had a problem with his back before the accident. And
4 therefore, the assumption was that these were done as a
5 consequence of the treatment that he had.

6 Q Do you have patients that have the scan findings
7 such as he has, the degenerative conditions?

8 A Sure, lots of them.

9 Q Who have an accident?

10 A Sure, lots of them.

11 Q Who have had no problems before that?

12 A Sure.

13 Q Who then go on to have unremitting problems?

14 A That's pretty unusual in the kind of patients I see
15 in my office. That is, to go on to have unremitting
16 problems. That's not very common.

17 Q It's unusual, but it has happened?

18 A It's not common in my practice. That is correct.

19 Q It's not common in your practice?

20 A No, sir.

21 Q And when you run into that circumstance, do you stop
22 treating them?

23 A No, I treat patients symptomatically and
24 intelligently, I hope.

25 Q And you give credence to their symptomatology?

1 A I have to. I listen to what patients tell me.

2 Q I beg your pardon?

3 A I listen to what patients tell me, just as I
4 listened to what Mr. Lilly told me.

5 Q When you run into a patient like that, do you find
6 it very frustrating?

7 A I said so in my letter. Indeed I do.

8 (OFF THE RECORD)

9 Q Based upon your examination and the reports that you
10 gave credence to --

11 A I'm sorry?

12 Q And the reports that you gave credence to --

13 A Okay, okay, I didn't quite hear that, I'm sorry

14 Q -- what do you see were Mr. Lilly's injuries, and
15 disability at the time that you saw him that were related
16 to this motor vehicle accident?

17 A I think he had soft tissue injuries involving his
18 head, his neck, his low back, probably to his chest
19 because of the seat belt. And I wonder to this day
20 whether or not he's got a problem with his left shoulder
21 at the joint itself, because of the fact that he had pain
22 in the arm at the shoulder joint with either passive or
23 active manipulation. And if he were my patient, I know
24 what I would do. But that would be a concern of mine,
25 which I think certainly could be from the accident.

1 Q Was it your opinion that he was, at the time that
2 you examined him, suffering from these soft tissue
3 injuries?

4 A I think he did. He still had shoulder pain, he
5 still said that he had neck pain and he still said he had
6 low back pain.

7 Q If you were in Dr. Charms' position and you received
8 the reports that you've seen, from Dr. Terry Rue --

9 A Rusch.

10 Q Ruch, Rusch, excuse me, you would certainly give
11 them credence, wouldn't you?

12 A What, Dr. Rusch's reports?

13 Q Yeah.

14 Q If -- it's much the same as saying if Dr. Charms
15 sent me a letter and said Mrs. Jones had a myocardial
16 infarction by EKG, I would be in absolutely no position
17 to make any other judgment than to assume that Dr. Charms
18 is correct. Of course.

19 Q Because Dr. Charms would be in the field --

20 A Knows nothing of -- Dr. Charms --

21 Q -- would be in a field that he was familiar with?

22 A Yeah, Dr. Charms is not in a field that he's
23 familiar with when he comes to making comments about
24 problems like this.

25 Q And Dr. Rusch is?

1 A Well, I think she is certainly more qualified than
2 he.

3 Q I'm sorry, that answer was that she's more
4 qualified?

5 A She's more qualified than he is to make that kind of
6 a judgment.

7 Q Is she qualified to make that judgment?

8 A I think she's qualified.

9 Q How about Dr. Burt Brown? What's his reputation, as
10 far as you're concerned?

11 A Dr. Brown's an ENT doctor, I think.

12 Q Mm-hmm. So you don't know?

13 A He could certainly tell more about ears -- knows
14 more about ears and stuff than I do, no question of that.

15 Q Would you agree, Doctor, that your physical
16 examination of Mr. Lilly was slightly less than eight
17 minutes long?

18 A I wouldn't argue that one hoot.

is Q Doctor, I want to ask *you* a question which I'm sure
20 you're always asked, and that is, how expensive you are.

21 A I'm going to charge by the hour, you going to ask me
22 how much my -- the deposition is going to cost today?

22 BY MR. DOVER: How much did it cost you?

24 Q No. What do you charge by the hour?

25 A I charge at least two hundred and fifty dollars

1 (\$250) an hour

2 Q And that's for preparing reports and examinations
3 and everything you do?

4 A When I send a report to an attorney --

5 Q Mm-hmm.

6 A -- the time I spend with a patient, the time I spend
7 reviewing records, et cetera, that all counts into the
8 charge I send the attorney. Yes, I do --

9 Q And would you have any idea of what you charged the
10 law firm in this case?

11 A I think I --

12 Q So far, before the deposition?

13 A Oh, I'm sure I charged at least three hundred and
14 fifty dollars (\$350), or -- I can tell you exactly, I
15 think I charged four hundred dollars (\$400) for seeing
16 this gentleman and reviewing the records and sending the
17 report. I'm almost positive, but I can't be sure.

18 BY MR. ZIPKIN: Thank you, Doctor.

19 (OFF THE RECORD)

20 BY MR. DOVER: Do you waive --

21 BY DR. SHAFRON: Oh, my God, yes.

22 (END OF DEPOSITION)

23

24

25

CERTIFICATE

The State of Ohio)
County of Cuyahoga) ss

I, MARC EPPLER, a Notary Public within and for the State of Ohio, duly commissioned and qualified, do hereby certify that the abovenamed MELVIN SHAFRON, M.D., was first duly sworn to testify the truth; that the testimony then given by him was tape recorded and reduced to writing, that said deposition was taken and that it was completed without adjournment; that the foregoing is a true and correct transcript of the testimony given by the witness as aforesaid, that I am not a relative or counsel of either party or otherwise interested in the event of this action.

IN WITNESS WHEREOF, I have hereunto set my hand and seal of office in Cleveland, Ohio this 2nd day of FEBRUARY, A.D., 1994.



MARC EPPLER
Notary Public - State of Ohio
my commission expires 10-4-98