IN THE COURT OF COMMON PLEAS

OF SUMMIT COUNTY, OHIO

TODD LAWVER, et al.,

Plaintiffs,

DOC. 430

vs.

Case No.

BOARD OF EDUCATION OF MOGADORE LOCAL SCHOOLS, et al.,

CV 89-05 0361

Defendants.

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Deposition of DR. WARD K. SWALLOW, Ph.D., a Witness herein, called by the Plaintiffs for examination under the statute, taken before me, Julieanne Ross, a Notary Public in and for the State of Ohio, by agreement of counsel, at the offices of Stark County Neurologists, 4575 Stephen Circle, Canton, Ohio, on Monday, September 24th, 1990, at 3:30 o'clock p.m.

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APPEARANCES:

On behalf of Plaintiff Todd Lawver:

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On behalf of Defendants:

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PG LN AFTERNOON-**SESSION**

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MR. DEL MEDICO: Would you swear him in, please?

DR. WARD K. SWALLOW, of lawful age, called for examination, as provided by the Ohio Rules of Civil Procedure, being by me first duly sworn, as hereinafter certified, deposed and said as follows:

EXAMINATION OF DR. WARD K. SWALLOW

BY-MR. DEL MEDICO:

Q. Would you state your full name for the record, please?

A. Ward Kent Swallow.

Q. And let the record reflect that this deposition is being taken pursuant to agreement of counsel with a waiver of all defects, correct?

MR. HIMMEL: Yes.

Q. Will you state your residence address, doctor?

A. 384 Stoner Road, Clinton, Ohio, 44216.

Q. And are you a married man?

A. No, I am not.

Q. Doctor, let me mention to you, as you already know, I represent Todd Lawver in

and generally what your role is going to be in this case.

At any time, please real free to refer to your chart. You don't have to do this by memory if there is something in the file

Have you had your deposition taken before?

A. For this case?

Q. For any reason.

A. Yes, I have.

Q. Then you understand how this works. And the only thing I would request is that you make sure you understand my question before responding.

Tell me a little bit about your educational background, if you would.

A. I received my Ph.D. From the University of Akron in counselling psychology.

Q. When was that?

A. 1986. Postgraduately, I've attended The Family Therapy Institute in

Washington, D.C. I also had postgraduate work at Harding Hospital in Worthington, Ohio.

I have been employed here at Stark County Neurological for the past 12 years. And during that time I served as the coordinator *of* the cognitive rehabilitation at Timken Mercy Medical Center as part of the rehabilitation unit.

I also worked at the Crisis Center as the supervisor of the therapeutic rehabilitation for the in-home emergency service program and also as a consulting pshychologist.

Q. How old a man are you?

A. 35 years old.

Q. What is your date of birth?

A. 5-10-55.

Q. Have you been employed anywhere else other than here?

You mentioned some other positions, but were those paying positions?

A. Yes, they were.

Q. Okay. Have we covered your employment history then up to the present?

A. Unless there would be some specific

questions.

Q. Have you basically mentioned all the jobs you've held in a professional capacity?

A. I've also been employed at Aultman Hospital as the director of the stress management unit and consulting psychologist for the psychiatric unit. I was also employed by Timken Mercy Medical Center as a consulting psychologist through the hospital.

Q. What is your present occupation?

A. I'm a psychologist.

Q. Are you licensed to practice psychology in the state?

A. Yes.

Q. For how long?

A. Since 1987.

Q. Presently you're with Stark County Neurologists, Inc

What is your title?

A. As a psychologist.

Q. And you're the only psychologist on staff?

A. Yes, I am.

Q. And can you describe your

responsibilities here, doctor?

A. My duties and responsibilities include directing the department, providing assessment services for the corporation. Also providing therapeutic services to refer clientele.

Q. Do you specialize within the field of psychology?

A. I am specialized in two areas. One is neuropsychology, in relationship to assessment. And in family and marriage therapy in terms of therapeutic offers.

Q. And what is neuropsychology and how does it differ from just the general category or field of psychology?

A. Neuropsychology is the assessment of relationships between brain and behavior which differs from the ordinary practice of psychology that might be more related to interest in personality assessment or how the personality of an individual is constructed or developed.

Q. Do you have any background in pediatric neuropsychology?

A. Yes. I received -- I had course

work in pediatric neuropsychology at Cleveland State University and received supervision.

Also, I spent a year getting supervisory experience in the administration and supervision of pediatric-style neuropsychology and personality assessment with Dr. Donald Kinsley, a pediatric psychologist.

Q. Can you tell me what percent of your professional neurological evaluations involve pediatric evaluations?

A. I would say about 40 percent.

Q. And who is Dr. J.P. Berke?

A. Jay Berke is a practicing neurologist that practices here at Stark County Neurologists.

Q. By the way, that's B E R K E. And how did you become involved in this particular case, Dr. Swallow?

A. To my knowledge Attorney Himmel contacted Dr. Berke and Dr. Berke referred Attorney Himmel to me.

Q. Do you know why you were referred? I'm sorry, why the case was referred to you --

A. My understanding --

Q. -- from Dr. Berke?

A. My understanding was that I was to will speak for themselves, but do you know off and the time you saw Todd you were asked to get

involved in this case; is that accurate?

A. That's correct.

Q. Do you know what the cost of the testing has been that you performed on this patient?

A. I'm uncertain as to the exact amount but I can get that information for you quickly.

Q. What is the charge for the deposition today?

A. I'm not certain of that. I can find that out also quickly.

Q. This is a rate schedule that you follow or something?

A. Yes.

Q. Okay.

A. Set by Stark County Neurologists.

Q. That's fine.

You've been asked to testify in this case?

A. Yes, I have.

Q. All right. And is it your understanding also that you will be attending the trial of this action?

A. I'm uncertain as to that.

Q. Do you know, have any plans been made to attend the trial?

A. To my knowledge, no dates have been set.

Q. Are you aware of when this case is going to trial?

A. No, I'm not.

Q. Have you testified in a trial before?

A. Yes, I have.

Q. Are you familiar with the Rehabilitation Institute of Pittsburgh?

A. Yes, I am.

Q. What type of a reputation do they hold in your profession?

A. A very good reputation.

Q. Okay. Are you aware of their having specialized in any particular area?

A. No, I am not.

Q. Let's go ahead and concentrate then on the examination for a while.

First of all, do you remember who accompanied Todd to the examination?

A. He was typically accompanied by his mother.

Q. And when you say typically with his mother, was he here on more than one occasion?

A. Yes, he was.

Q. On how many occasions?

A. I could provide that information for you quickly. Off the top of my head I would say five times.

Q. Can you get that information? If there is another file I would like to see it.

A. We print it out on the computer. I could ask someone to do that.

Q. Then you'll come back and we'll cover that information.

MR. HIMMEL: Off the record.

(Pause.)

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(Thereupon, Plaintiffs' Deposition Exhibits 1 and 2 were mark'd for purposes of identification.)

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MR. DEL MEDICO: Back on.

Q. Doctor, while you were out of the room you obtained a document that we have marked as Plaintiff's Exhibit 2 to your deposition and I'm looking for something to

identify this particular document, but in any event, it is a sheet that apparently is a cost sheet relating to Todd Lawver and it refers to him as patient 26107.

Is that correct?

A. That's correct.

Q. For purposes of identification we've also marked as Exhibit 1 to your deposition your narrative report dated September 18th, 1990. We'll be referring to that also.

Doctor, let's go back to Exhibit 2. Maybe you can tell me, this seems to indicate that Todd Lawver was here on March the 16th, 1990 for a 60-minute psychological exam.

A. That was the interview --

Q. Okay.

A. -- with Todd and with his mother.

Q. Okay. And then on April the 6th, 1990 there were three tests administered.

A. That's correct.

Q. And then on May 5th of 1990 there was an additional test administered; is that correct?

A. That's correct.

Q. And is that the extent of the visits that Todd would have here to the office?

A. Those were the visits he had here, yes.

Q. Thank you, sir.

A. And the cost is also there, by the way.

Q. Right. When the examination took place and you indicated and I'm quoting you, "He was typically accompanied by his mother," do you know if his mother accompanied him to each of those examinations or did his father ever attend, if you know?

A. I'm not sure. I remember there was a time when mom dropped him off and then left. I don't know if that's what you call accompanied, but typically she was involved and she was present if I needed her.

Q. And this first examination or interview on March the 16th of 1990, did you actually interview Mrs. Lawver?

A. Pes, I did.

Q. Do you have any notes that reflect the interview that you had on March the 16th of 1990?

A. Let's see. (Pause.)

No, I don't have them present in the chart.

Q. Okay. First of all, the file that you have here today, is this a complete file?

That is, does it contain every piece of paperwork generated as a result of your examination in the testing of Todd Lawver?

A. To my knowledge.

Q. Have you remove anything from that chart?

A. No, I have not.

Q. Were there notes generated in connection with this interview of 3/16?

A. I do remember jotting some things down but I'm not certain as to where they might be at this time.

Q. Was Mrs. Lawver, that is Deborah Lawver, tested in any way?

A. No, she was not.

Q. And who else at Stark County Neurologists, Inc., saw this patient other than yourself?

A. Just myself to my knowledge. I'm not certain whether he was seen by any other

professionals in the practice.

Q. Did Dr. Berke ever see him?

A. I'm uncertain as to that fact. I could only read his notes and conclusions. That might be a better question for Dr. Berke.

Q. How did you determine which tests to perform on this young man?

A. Typically, how I look at a child is based upon -- I administer the earliest part of /the battery or the most sensitive parts of the battery to indicate certain dysfunctions. And based on how the child performs on the sensitive testing, it indicates, it gives me afterwards ideas of how to proceed.

Q. First you said the battery.

What *is* meant by the battery? The battery of the psychological tests available to you?

A. The battery available, but also I depend greatly on the right psychological test battery as mentioned in the report.

Q. Okay. Did you ever discuss your conclusions with Dr. Berke?

A. Yes.

Q. And did he discuss his conclusions

with you?

A. No. I only reviewed Dr. Berke's conclusions through his notes in the chart.

Q. Okay. Now, the first visit here of 3-16-90 indicates that it was a 60-minute psychological interview.

A. That's correct.

Q. Then on 4-6-90 there were three tests performed, the Reitan Neuropsychological Test, which is generically written down as a neuropsychology test.

A. Battery.

Q. Battery, okay. And then Bender Gestalt Test.

A. That's correct.

Q. And how do you pronounce this -- the Raven's Standard --

A. Matrices.

Q. -- Raven's Standard Progressive Matrices?

A. That's correct.

Q. Okay. So those, that group of testing, how long did those take, if you know?

A. He completed them in approximately five hours.

Q. And then there was another battery performed on May 5th, 1990.

A. He was completing the tests that he started on the first battery. And that's why it is written in, in terms of a charge. But we wanted to record when he was here and the time that he spent.

Q. Were there any tests that you requested to be performed on this patient that for one reason or another you could not perform either because the mother refused, he refused, Mr. Himmel refused?

A. No. No one refused anything I wished to do.

Q. Okay, fine. With respect to the written material that you have reviewed -- first of all, was the written material provided to you by Mr. Himmel of significance to you?

A. You mean reports from other professionals who have evaluated Todd?

Q. I don't even know what you have reviewed. So maybe you could begin by telling me what written material you've reviewed.

A. First, the written materials reviewed were very helpful and I utilized them.

Q. Why were they helpful?

A. Because he's been evaluated essentially by Akron Childrens Hospital and that's very helpful in terms of being able to view his progress.

And the primary records that I viewed were the records of his treatment at Akron Childrens Hospital.

Q. Did you review the records from the Pittsburgh Rehabilitation Center?

A. I looked over the records from Pittsburgh but I didn't go into as much detail that's required for review.

Q. Why did you not review those records in the same detail as you did the Childrens Hospital records?

A. Simply because I was asked to do an evaluation of Todd in the present. And I'm not sure that that information about the time spent, that he spent in the Rehab Institute in Pittsburgh had that much to do with how he is doing right now.

Q. Okay. I asked you or I mentioned to you that we had marked your report as Exhibit 1 to your deposition.

When were you asked to prepare that report dated September 18th, 1990?

A. In terms of the actual report itself or --

Q. Yes.

A. I was asked to perform it approximately two or three weeks before then.

Q. And in preparation for this report, what materials did you review?

A. I reviewed the records of his treatment at Akron Childrens Hospital. I reviewed records provided to me from Canton Country Day School. I reviewed records that were apparently progress notes from speech therapy sessions at Akron Childrens Hospital and the other records from his previous hospitalizations.

Q. I'm going to ask you a sort of an all-inclusive general question and then I want you to go back and tell me specifically.

A. Okay.

Q. One of the things that you were asked to do in this case is to render an opinion as to Todd's prognosis; is that correct?

A. Yes, that's correct.

Q. And when we say prognosis, what are we talking about? Prognosis for what, for adult development or exactly where are you coming from when you use that word?

A. When I use the word prognosis I'm meaning anything about his ability to live a normal, productive life in the future as an adult.

Q. And tell me, first of all, do you have an opinion as to Todd's ability to live a normal, productive life in the future?

A. No, I don't. I can't say that. I think it's a very difficult opinion to make based upon his remarkable progress in the past.

He has just done remarkable work in terms of his general recovery from a rather severe injury.

Q. Okay. So where are you in terms of your opinion as to his prognosis; you simply don't have an opinion?

A. My opinion about it is that based upon his previous behavior in terms of a rehabilitative capacity and what he's been able

to perform, I see that he certainly has unlimited progress. It's hard to really say where he'll end up.

Q. I didn't understand that --

MR. PIERSON: Limited or unlimited?

A. Unlimited. I really -- you know, it's very difficult for me to see where this boy with his ability and his drive will end up.

Q. Okay. Have you reviewed any depositions in this case?

A. No, I haven't.

Q. So you haven't seen the depositions of the teachers or tutors that have been working with him?

A. No, I have not seen those.

Q. Are their opinions important to you?

A. Certainly.

Q. Okay. Were you aware of the fact that he has been treating -- I'm sorry, been working with a particular tutor now for most of his rehabilitative period?

A. I found out about the tutor following the assessment.

Q. Okay. Have you asked to review any

testimony from that tutor as to his progress and development?

A. I asked for records from the school and that's what Attorney Himmel sent over to me.

Q. My question is have you asked for any records from the tutor?

A. I haven't.

Q. You were unaware before this deposition that there was an independent tutor that the Lawvers have hired to work with this young man?

A. Following the assessment, yes.

Q. Okay.

MR. HIMMEL: Let the record show I have an objection.

I don't have that deposition and yet I've requested all the depositions. But I don't have the tutor's deposition.

Q. In any event, have you reviewed -- have you had the opportunity to speak to anybody from Canton Country Day School about his development?

A. No. The only thing I had was his school records from Canton Country Day School

and that is usually what I review.

Q. But I want to know how did you quantify this young man's progress?

Am I being fair to say that you are relying principally on the test results and psychological test results?

A. No.

Q. What you are relying on, doctor?

A. I'm relying on the rather extensive serial tests that appear to be very complete and well performed by Akron Childrens Hospital.

Q. For example, do you know where the folks at Childrens Hospital are in terms of their prognosis for that young man's recovery?

A. From reading their notes, yes.

Q. What's their position on this?

A. Well, from the last notes that I've been able to review here, which is the note --

Q. The one referred to in your report?

A. Yeah. Let me get a date here (pause). The last reviewed report we have from Akron Childrens is dated 1-15-90 and their prognosis for continued speech and language therapy is very good.

Q. Okay. Do you know what that means

though?

For example, do you know what their position is on whether this young man will ever be able to attend high school?

A. My assessment of the data that they provided for us is that the prognosis there is very good.

Q. What data are you referring to?

A. I'm referring to the data of 1-15-90.

Q. Is it your interpretation of that data from which you conclude he would be able to attend high school?

A. Yes. It is my interpretation.

Q. In other words, they don't say that in that data; is that correct?

A. No, they don't address that issue here except they do state that he is currently enrolled in a regular seventh grade program.

Q. Were you aware that he's currently enrolled in a regular eighth grade program?

A. Yes.

Q. Are you aware that the plan for him is to go through eighth grade twice?

A. No, I am not.

Q. Is that significant to you in any way?

A. I guess that depends on the rationale as to why he is going through the eighth grade twice.

Q. What types of things did you discuss with Todd and with his mother when you did this 60-minute interview?

A. I discussed some historical information in terms of the accident, what was going on at the time of the accident and some basic information about the family. How he was doing now from, you know, in general layperson's attitude about his medical condition, what kind of therapies they were still involved with, his academic plans. You know, basic historical kind of data.

Q. Did you have the opportunity to talk to Deborah Lawver outside of the presence of Todd Lawver?

A. Yes, I did.

Q. What was the reason for doing that?

A. To give her an opportunity to perhaps share any information that would be difficult for her to share in Todd's presence.

Q. The report dated September 18th, 1990, is this the only written report you've performed in connection with this case?

A. Yes, it is.

Q. I'm going to refer you to that. You might want to locate it in your chart so I can ask you some things.

Before we get to that report, do you know about -- do you know anything with respect to the organic injury that this young man sustained?

Do you know what aspects of that injury, if any, is permanent?

A. In terms of -- that seems to me to be kind of a medical question.

Q. I realize that and if it's out of your field, simply indicate that to me.

A. Yeah, I think that's out of my field.

Q. Okay. Let's talk about the history and background information.

How did you obtain that information, strictly from the interview?

A. Some of it from the interview and some of it from previous records.

Q. What records; can you tell me?

A. The records from Akron Childrens Hospital. And also I think we had some neurological reports also, an ER report, that kind of thing.

Q. Well, the second paragraph, in review of his hospital records, Dr. Berke of Stark County Neurologists, Inc., reported that following the May 7, 1985 accident Todd suffered significant brain damage.

What was it that you -- what is the basis or foundation of that paragraph? Is that something from the written material that Dr. Berke generated?

A. That's correct. That was generated from a letter that was written to Mr. Himmel regarding the review of the records.

Q. Okay.

A. As a matter of fact, it's a letter dated January 16th, 1990 from Dr. Berke to Mr. Himmel.

Q. Did Dr. Berke's opinions and

opinions?

A. No, they did not. Only that he had

reviewed the records extensively and using his knowledge as a review.

Q. Do you know what he means when he uses the term initial deficits were rather global?

A. I have an understanding of that of my own.

Q. Okay. What did that mean to you?

A. That means that there were many different deficits that occurred from different areas of potential injury to the brain.

Q. I'm going to get back to progress for a minute.

As I understand it in this case, you don't have an opinion as to the degree of rehabilitation that this young man will achieve; is that correct?

A. My opinion of that is that I really can't say how far he would go. I think it's based upon factors perhaps other than the neurological issue.

Q. So do I understand from that then that it's possible that he would not be able to function in society as an adult or it's possible that he may? I mean, I want to get

some kind of parameters as to what your opinion is.

A. Certainly I sense that he would function as an adult within society.

Q. And what do you mean by function as adult in society?

A. That he would hold down a job; that he would be able to perform normal functions and tasks to function in society.

Q. Do you have any opinions as to what types of jobs he would be able to perform?

A. Again, I think that is greatly dependent upon what he does between now and the future.

I think it's very difficult to crystal ball where he'll be.

Q. Do you have an opinion as to whether or not he would ultimately achieve a full -- I think this question is contained in what I've already asked you but I want to be certain.

Do you have an opinion that you can state within a reasonable degree of psychological certainty and probability as to whether or not he would achieve pre-accident

status as far as his psychological condition is concerned?

A. Well, based upon my review of the records I feel that in many areas he's exceeded pre-accident status.

Q. Well, through normal development, right?

A. Well, plus pretty intense remediation and instructions. So, you know, that's a very difficult question to answer also.

Q. Let's get back to the report.

You indicate that he has made substantial improvement in apparently all areas of cognitive functioning; meaning what, sir?

A. Cognitive functioning is basically higher cerebral processes that involve primarily language, symbolic materials, like mathematics. It certainly includes the expression of language through speech. It includes basic sensory information, higher cerebral processes.

Q. Now, later in the report you indicated that the performance on the neuropsychological tests revealed the presence,

and I think you characterized it as a mild presence, of damage to his higher cerebral processes.

A. That's correct.

Q. What evidence is there of damage to that processes?

A. He has some difficulty with reproducing line drawings. It's called constructional apraxia. It's a problem with integrating information through the visual processes and transferring it out through the motor skills.

Q. How does that affect one in everyday living or everyday education?

A. Certainly it affects his sense of perception on looking at items in space. So I think you could see that in everyday life, it could produce some difficulty having to do any drawing or a drafting skill, a design skill.

It might affect the quality, let's say, of handwriting because it's a difficulty in being able to transfer things through the eyes and out through muscles.

Q. On the section marked test taking, behavior and attitude, you say that he was --

the third line there -- he was mildly oppositional for test tasks with the self report that should the test tasks become too difficult that he could act out.

What do you mean by that?

A. Oh, for example, at times when the test task would become difficult he would say, you know, when things like this got tough in the past, I would just clear everything off of the table.

Q. You mean, push it off on the floor type thing?

A. Exactly. And one particular test task when I congratulated him on completing it, he said, well, you know, I certainly haven't destroyed any of your tests, kind of thing.

Q. Okay. I would question, why, if in fact you were able to verify if he charged out in the past?

A. I talked to Todd's mother and she said he had become frustrated in academic tests or remedial settings in the past and had performed some of those acts.

Q. What's the basis for that?

In other words, what is the cause

of that, I guess is a better way to put it?

A. It's not unusual in adolescence after a closed head injury that for a time period they are very agitated at any time you want them to perform tasks that bring up their deficits, they become easily frustrated and show more impulse control and they act out.

Q. And what is your opinion as to why he would feel compelled to tell you how he would react in the past?

A. In some respects that gives him a cushion where, you know, it says, don't push me too far, kind of thing.

Q. Almost an inherent warning for you there?

A. I think so.

Q. You also indicated in your report here that at times Todd attempted to outsmart the examiner. I assume you're the examiner?

A. I am, indeed.

Q. Would you give an antecdote about that?

A. Sure. It wasn't unusual for Todd to perform a task in a novel way and kind of look at me expecting some kind of approval or

disapproval with his novel approach to the task.

And typically speaking, they were creative ways of doing things. And he enjoyed that kind of positive reinforcement.

Q. He has an engaging personality, doesn't he?

I want to ask you about some general information that you may or may not have.

A. Okay.

Q. As you sit here today, doctor, a week before this trial is scheduled to begin, what is your understanding of how Todd functions in school at the present time?

A. My understanding of Todd functioning in school is that it is fairly limited. My understanding is that he does attend school regularly, that he has some trouble attending to lengthy tasks within the academic environment and that there have been periods within the academic environment where it's been tough for teachers to prod him along or push him.

Q. Do you know how he has tested at

the present time?

A. I have those records here in the chart, yes.

Q. But, and I don't mean specifically, but do you know how he has tested?

A. Typically speaking, as I reviewed those records it seems that he tested about around in the 50 percentile range.

Q. That question wasn't very clear and

But I mean the actual -- physically do you know how he was tested along with the others, if he's given the same type of tests?

What is your understanding?

A. My understanding from his mother is Canton Country Day School had made a lot of different, I guess, variations from the norm for Todd.

Q. You understand that at the present time he has a tutor that he works with on a daily basis?

A. Uh-huh.

Q. Earliene Sziraky, maybe you're not familiar with her.

A. I heard it for the first time

today.

Q. And are you also aware of the fact that Kathleen Considine at Childrens Hospital was his speech therapist?

A. Yes.

Q. Do you have an opinion that you can make with a reasonable degree of psychological certainty and probability as to how long Todd will require this -- well, let's take them one at a time -- the assistance by way of a tutor if he's going to continue development?

A. You know, in terms of performing and academic assessment, I was not in that capacity so it's very difficult for me to say how long he would need the tutor for.

Q. That's something you haven't been asked to do?

A. No.

Q. What about for Kathleen Considine, the speech therapist?

A. Well, that's really her area. She would give you the best answer.

Q. You don't have an opinion?

A. I think that might be inappropriate.

Q. All right. So basically, your opinion is an overview looking at where he was on March the 16th, 1990, based upon your review now of the records and reports and opinions generated by the experts in these various fields?

A. Not necessarily. I think that I reviewed those reports in a sense to gain

earlier, he definitely needs to work with a tutor or a cognitive rehabilitation program or something along those lines to help him become

better able to reproduce designs and objects and place them appropriately in space.

Q. Let's forget the designs and objects. Let's talk about simply comprehending a story, reading comprehension.

Do you know where he is right now with respect to reading comprehension and do you have an opinion as to whether he would develop in that field?

A. Well,. I think that the reading comprehension has been assessed by the speech therapist. I would expect since she did the assessment, the best person to answer that question would be the speech therapist.

Q. Do you have an opinion about that?

A. No.

Q. Okay. Are you deferring to Kathleen Considine, with the folks at Pittsburgh Rehabilitation Center and Akron Childrens Hospital, on all those opinions with respect to progress in terms of educational development?

A. I think probably the best thing to do is that if we're going to utilize their assessment to make statements about progress in

specific areas of academic achievement, then I would certainly defer to what their assessment has revealed.

Q. Are you going -- I'm not trying to limit your opinion, I just want to know are yo going to render any opinion in that area?

A. In terms of educational achievement in the future?

Q. Yes.

A. My feeling, my opinion regarding his educational achievement is that he's done extremely well in terms of the overall rehabilitation and I think **he** will continue to do well. But there are a lot other factors that affect that.

Certainly his personality, motivational issues, what happens with his peer relations -- I think all of those things impact where he's going to be in the future.

In terms of what I see from my assessment, the only limiting factors that I could identify was his constructional apraxia.

Q. Okay. Getting back to the report --

MR. HIMMEL: Excuse me, if I may.

What Attorney Del Medico was talking about I'm interested in also, about not deferring specifically.

You may not have been asked for your opinion or I might not be asking for an opinion in that area of expertise. But you do have those records and I don't know if you're asking him to comment on the records.

I want to ask him to comment on the records of the speech therapist as he referred to the speech therapist. But I would like to hear his opinion also if he has one, knowing that he's not a speech therapist. 1 would like to hear it and have it stated also.

MR. DEL MEDICO: Well, you can ask him at the end of the deposition.

MR. HIMMEL: All right.

I was just trying to get out the information I think you want also.

Q. Let's get back to the report then.

You indicated that Todd did not wish to participate in speed test tasks.

What did you mean by that?

A. Timings, ones that are timed.

Q. How did he express his displeasure

or lack of desire to get involved with those?

A. Any time he saw the stopwatch he would immediately ask me, is this test timed and I would say to him, yes. He would say I do terrible on timed tests. And he would become a little more agitated and wiggling around more in the chair. He is not fond of constraints placed upon time.

Q. Do you know whether or not that lack of fondness of those timed tests is related to this accident?

A. No, I don't. I see a lot of kids who really don't like to be timed.

Q. Okay. You made your answer so that it had two different meanings.

You said you don't know whether that is related to the accident or it isn't?

A. I don't know whether his specific concerns about timings are related to that injury.

Q. But you see that in others?

A. Yes.

Q. The tests that were administered are listed on the reports and we talked about them at the beginning. I'm going to go through

these records that you talked about in your report,

First of all, the test battery as you've referred to it, it's the R E I T A N.

Is that Reitan?

A. Neurological test battery for children.

Q. And then you have, selected subtest. Let's talk about that particular test first.

A. Okay.

Q. You talk about abstraction and concept formation abilities and you say that that is within a normal range.

First of all, what are abstraction and concept formation abilities?

A. The ability to generalize basically from things to ideas.

Q. Do you know whether or not, given the brain injury that Todd Lawver sustained, that the part of his brain that was injured, the part that wasn't injured, whether you would expect that his abstraction and concept formation ability are within normal range?

A. Abstraction and concept formation

abilities seem to be the most sensitive of the areas that we display brain injury through, in terms of our behavior and delivery.

Most of the tests that measure /brain injury in a global sense on a sensitive basis start by measuring abstract and concept formation ability.

Based upon his brain injury, based upon the reports that I read, I would have suspected there would have been more evidence of deficits.

Q. Was there any evidence of deficits?

A. No.

Q. You say that it's within normal range. I assume that means that there is, there were some deficits there but it was -- is it an overall test that it's categorized as being within a normal range?

A. Well, there is a normal range and there is a range defined as normal dash learning disability and then brain injured. His score fell within the normal range.

Q. Forgive me if I already asked you this but in layman's terms, what type or what abilities are being tested with abstraction and

concept formation?

A. We generally as a culture define abstraction as the basis for interpretation. It's a basis of being able to connect things and ideas together, you know. It's a creative process. It's an ability to take what we know and make more than what we know from it.

Q. Okay. You tested his motor functions under that test battery and you indicated that there were variable results. That, and I'm quoting you, "That the test results seem to reflect attitudinal factors regarding test task completion rather than true deterioration of motor functioning."

I think I know what you mean by that, but why don't you explain it for the record?

A. Sure. On testing motor dexterity he does extremely well, well within normal limits.

And I gave him a difficult task, having to place blocks on an elevated board. The blocks had cutouts in the board. He had to place the proper design in the proper cutout blindfolded.

And the first time he did it, he did it very well. But when he found out he had to do it with each hand separately and both hands, he thought it was the most ridiculous thing in the world. And attitudinally his performance deteriorated markedly.

Q. Your sensory perception examination, you indicated appeared to be mild /constructionalapraxia. I think we've talked about that already.

A. Uh-huh.

Q. The second test was the Raven's Standard Progressive Matrices.

A. That's correct.

Q. And that tests what, nonverbal intellectual ability?

A. Yes.

Q. He was in the 50 percentile. And then you say lower than what might be expected, I believe, given the other results.

Can you explain that to me?

A. Sure. Raven's Matrices is a test that I like to utilize for a neuropsychological battery because it doesn't depend on the language at all, you know.

Most of these kids come in and unfortunately they've been measured in our culture, strictly measured by language. And they look terrible on the intellectual test results.

And the Raven's Matrices measures the results without depending upon language. So it was a very nice measurement given on the test battery, based upon his ability to perform the abstraction and concept formation skills.

I would have expected his performance on the Raven's Matrices to have been higher.

And Raven's Matrices is a test where you have a design and a piece is missing out of the design. And there are six distractors below the design that he has to choose the piece that best completes the matrices correctly.

And it requires some ability to reproduce that design through your visual processes and mark the correct answer on the page. And I suspect that factor may have gotten in the way some.

Q. Okay. The next one you talked

about is actually the fourth test that's listed in your report, that's the Bender Gestalt Test.

How was that administered, by the way?

A. That's a group of designs that he has to reproduce.

Q. And you indicate that he had difficulty with visual perception. Does that relate back to the constructional apraxia?

A. Most likely, yes.

Q. And then you indicated there, and this is one of the few places that I really noticed it though -- in any event, you indicated there that this reflected an insult to the anteriolateral aspect of the right parietal lobe.

How did you determine that he had this visual perceptual problem?

A. From his difficulty with reproducing the designs and --

Q. Excuse me. Then is what you are saying, is that consistent with the organic injury that he sustained to the aspects of the brain that you speak of there?

A. It's interesting, constructional apraxia has traditionally attributed to left side injury. And one of the things that's come out in the last ten years is we see it in right parietal injuries. And, yeah, I suspect so, the correlation is quite high.

Q. Now, for example, the deficits that were evidenced after the Bender Gestalt test that reflect an injury or insult to the entire lateral aspect of the parietal lobe, is that something that you expect to improve?

A. It's difficult to predict. In most cases you get most of the improvement that you are going to see within two years post-injury.

Todd, on the other hand, has made improvement in areas, again, in any interpretation of Akron Childrens Hospital work that is fairly rare and unusual in his favor.

And so it's difficult for me to say whether he'll gain further progress of the constructional apraxia or not.

Q. Well, we're talking about a timetable. Let me ask you a general question. We're now five years post-accident.

A. Yes.

Q. Can you tell us about your experience with a recovery in a general way, a recovery from a brain injury as times goes on?

A. Well, unfortunately, after five years in most cases you've seen most of the improvement you are going to see.

Q. Why is it then that you expect that Todd will continue to improve?

A. Because the other serial testing that has been performed on him indicates continued improvement.

Q. All right. Do you normally see -- I mean, how can you render that opinion?

How do you know that the improvement has ended, that the serial testing reflects improvement up to 1990 and that from now on there won't be any improvement or you just don't know that?

A. Only a future serial testing will demonstrate the plateau, if there is one.

Q. Is there anything about the serial testing that is usual?

A. His improvement has been remarkable.

Q. When do you normally see a plateau

in the serial testing?

A. Research data suggests that you see a plateau at about the two-year point.

Q. Let's move on then to the last category which is actually the third one listed in your report. How do you say this, M I L L I O N?

A. Millon.

Q. Millon assessment personality inventory. This is an area that I wanted to ask you about.

How do you determine as a neuropsychologist with some specialty in dealing with pediatrics and in adolescence, how do you determine whether you're dealing with problems related to this accident or just normal problems of adolescence?

A. Basically, what you try to do is sort out if there are any specific kinds of problems that you have seen with either kids in the past from your clinical experience that seem to be related to head injuries or from what the literature talks about in terms of what we see with head injury kids.

Q. Okay. You indicate here -- excuse

me one minute. I want to be sure I'm in the right place here.

I want to back up for a minute and ask you something else that I skipped on the Raven's.

A. Okay.

Q. Your third paragraph there you talk about Todd's personality development is characterized by an anxious dependency and so on.

A. Uh-huh.

Q. Is this something that you related to this accident?

A. It's very possible that some of this is due to the accident, yes.

Q. Because you talked about there a relationship -- I'm sorry, moving back up, you talk about the expectation that he would lose the support of those who have provided in the past.

Are you talking here of the support that has occurred since the accident through his rehabilitation period or are you separating that out?

A. Hard to pinpoint. And, again,

later in the report here, I have seen this kind of pattern in kids who have had extensive hospitalization.

Q. I'm going to ask you about that in a minute because that did interest me.

Again, where Todd describes periods of depression and moodiness and outbursts, is this anything that you're prepared to say with a reasonable psychological certainty or probability is related to his personality quirks as they existed prior to this accident or somehow relate this to the accident and his rehabilitation?

A. Again, hard to say because we have no personality assessment prior to the accident.

Q. Let's go ahead and talk about that point that you brought up.

Quoting you from your reports, "As with many children who have experienced extended periods of hospitalization, this youngster may feel a sense of helplessness about his future."

Maybe you can expound upon that a little.

A. It's not unusual when you have been in a hospital for an extended period to wonder what's going to become of you. You have a very intense focus on rehabilitation and the nurturing people around you.

And just like most of us, we wonder when we are going to get out if we'll ever be normal. And all these factors come out when you've had a serious injury like this, with life threatening conditions and hospitalization for extended periods.

Q. Does Todd perceive himself as normal?

A. Yes.

Q. In what way?

A. He perceives himself as different. It's very hard for him to put a finger on how he's different but he knows that he receives a lot more assistance and support than other kids his age.

He also realizes that he has qualities about him that allow him to relate to adults in a way that he doesn't see his peers doing.

Q. Is that something that you think

existed prior to the accident?

A. It's hard to say because his mom says he's related to adults well for sometime. And what sometime means, I'm not sure.

But clearly, you know, his focus has been with adults since he's been hospitalized. They are extensive interrelationships, interpersonal relationships with adults.

Q. When you go on and talk about comparing him with other adolescents -- this gets to the second to the last page and the first full paragraph -- Todd's compared quite favorably to the typical adolescents in terms of satisfaction of self.

How do you reconcile that statement; he doesn't perceive him different globally?

A. One of the things that ranks in his favor is he's satisfied with his personal development, his bodily development, his physical attraction.

He seems to be very content with that, where many adolescents who look at themselves feel that they're the ugliest thing

on the face of the planet. Todd doesn't face that issue.

Q. Are you aware of testimony in this case from individuals who have indicated that Todd doesn't interact with his classmates?

For example, that he is playing out on the playground and does participate. He may participate in a soccer game but it involves running up and down the sidelines while everybody else is actually out on the field playing soccer.

Have you heard any testimony or any antecdotes like that?

A. I've heard no testimony, although there is something in one of the records to the effect that he has trouble interrelating with peers.

Q. Do you know, can you tell from your testing whether he relates that to this feeling of being different than others?

A. It's certainly possible. I'm not sure in the testing that that would be the only possible reason for why he might do that.

Q. Can you tell me anything based upon the tests that you've performed and the records

that you reviewed about, forgetting where his development will end, his general development, but how he would interact with individuals in the future?

Do you have any opinion on this?

A. It's interesting in terms of my opinion in that there were times with me that Todd related to me on an adult level that is remarkably consistent with an unusual amount of maturity.

On the other hand, there are times that he reacted with me in a very immature fashion and I think that really clouds where he's going to be later on.

My guess is that if he receives some further support and social nurturing and what have you that he has the capacity to move forward in that area.

Q. But again, in terms of quantifying you really can't say?

A. Tough thing to quantify.

Q. Do you have an opinion as to whether or not Todd is in need of psychological ounselling at the present time?

A. In my thinking about psychological

counsel, I tend to differentiate between remedial issues, meaning things that are moving to the abnormal plane that need to be brought into the normal plane versus growth kind of counselling, moving from areas that have some social normality and enhancing them.

If I was Todd's parents and I wanted to enhance his social skills then I perhaps would seek counsel for him in that area. But I think that would be kind of a growth experience for him.

Q. Are there any areas of abnormality that you feel require that type of psychological counsel?

A, I can't find any specific abnormalities in his personality that would warrant that type of psychological counsel.

Q. You didn't perform an MMPI?

A. He's too young for that.

Q. When can that first be performed?

A. I think when he's 16 and 18; when there is reading comprehension and a variety of other factors.

Q. Were there anywhere tests that you would have performed except for his mental

deficiencies?

A. No. There were no tests that I would have performed based upon that.

Q. Are there any tests that you would have performed but for the mental deficits that he may have?

A. You mean if I've done more testing with him beyond what I was asked to do, no.

If I was asked for other opinions, an academic opinion, I would do different testing, I think.

If I was asked to testing of his personality I think I would do more. This personality assessment was done strictly as a screening, it's part of the battery.

We look very carefully for symptoms of depression because many times depression often times indicates areas of brain dysfunction.

Q. Again, in that first paragraph, first full paragraph on the second to the last page, you talked about Todd. Quoting you, "Todd also demonstrated noted satisfaction both with his rates of maturation and his personal attractiveness."

The next sentence, "He described a level of comfort with his sexual development."

How did you approach that with him and what exactly do you mean by that?

A. There are questions on the test that ask him things like -- let's give some actual questions.

For example, a true-false question might be sex is disgusting. Another question might be something like, I worry a great deal about sexual matters. Questions along those lines.

Q. Do you have any knowledge, Dr. Swallow, of Todd Lawver knowing anything of when he responds to a true-false question that even mentions the word sex or sexual, do you have any idea of the maturity of his thinking on that subject?

A. In terms of the fact that we discussed attractiveness, girls at different times and tests, I think he has a sense of what the term sex means. But I think it's probably age appropriate. I don't think he's a Master's and Johnson's therapist but he has age appropriate kinds of notions of sexuality.

Q. And that is based upon some of the comments that he made to you in the interaction as well as test results; is that correct?

A. That's correct.

Q. How did he indicate to you he is going to be, quote, actively engaging in the process of developing ties with peers?

A. He seeks friends. Friends are something that's important to him. /Particularly surrounding the fact that he stated that he used to do more with peers and he wishes *to* do more with peers in the future.

You know, he expressed an active desire to engage age-related folk.

Q. Did he indicate to you that he has any friends or were you able to find this out from his mother?

A. You know, I don't remember what his mother said about friends. Although I vaguely remember her saying something about the fact that she was concerned that at times he had been relating with kids younger than himself.

Q. So what do you feel attributes that?

A. It's a safer relationship with him

right now. It doesn't imply the risk that age-related peers might imply.

MR. DEL MEDICO: That's all the questions I have, doctor.

Thank you very much for your time.

EXAMINATION OF DR. WARD K. SWALLOW

BY-MR. PIERSON:

Q. I may have a few questions.

A. Okay.

Q. In your professional judgment or your experience with related disciplines, do you have an opinion as to whether IQ can change with time and training?

A. You know, IQ is interesting in that it's typically tallced of as a measure of ability.

However, there is strong evidence that through testing, through training, that IQ can change.

Q. There has been some testimony in this case from other professionals that his IQ tests have changed.

You would not be surprised at that?

A. No.

Q. Would you in this case?

A. No.

Q. Would you think it possible or even likely that his IQ may go higher still on later testing?

A. That wouldn't surprise me, no.

Q. Based upon your testimony that his continued improvement over a longer period than typical of closed head injury, would you say that it is likely that he would have continued improvement in the future?

A. Based upon the behavior in the past, certainly it is suggestive of that.

Q. We've also had some testimony from teachers or therapists that he last tested in the 99th percentile in certain aspects of his reading comprehension and so on.

Does that mean that in a group of 100 children that 99th percentile means that he would be ahead of the 99 other children in testing?

A. It depends upon how the data has been normed. If it was normed for the general population and they were comparing his scores with kids that are out there functioning without head injuries and just being a natural

stratified sample, then, yes, that means that he's doing better than 99 percent of the kids.

Q. I misstated when I talked about a particular sample of 100.

It really is a test measuring him with all others in the age group that says he comes out in the 99th percentile. That would mean then that he would be ahead of 99 percent of the persons?

A. It depends on the normative data that you are comparing it to.

If the norm is a social stratified sample of kids then, yes, that's what it means. And this tests a very specific, strict population.

Q. Now, the 50th percentile that you mentioned and expressed some surprise about, that is, as I understand it, is one that results in constructional apraxia?

A. That's one that I suspect may have been clearly attributed to the constructional apraxia problem.

Q. And I understand you to say that it's possible that that constructional apraxia can be improved in that boy?

A. It is possible.

Q. Based upon what you have seen, what you've read in his reports and your general appraisal of him, do you know if it's likely that he would be able to go to college?

A. I suspect that based upon his verbal level, based upon what I have read in the speech therapy reports, my opinion is I think he could go to college.

Q. And would it be fair to assume you suspect him also to get through a normal, average high school in that area?

A. Again, I think some of the other factors that play into this relate to social development that you have as a big factor in terms of how kids get through high school.

In terms of reviewing, in my opinion, his deficiencies, the ability to get through high school, I think so. These other factors though, I think they play an important role in the overall --

Q. In other words, intellectually you think he has the capacity to do the usual high school work, leaving out the other factors for a moment?

A. Well said.

Q. And based upon your meetings with the mother and understanding the family background, their educational level and so on and the recreational opportunities he has had and the level and the kind of school he's in, would you say those other factors would probably tend to support the likelihood that he would get through high school okay?

A. Definitely.

Q. Okay. Do you think, based upon your knowledge of him and the family and the records and your own training, that this boy is limited in his occupational choices?

A. He has some limitations, yes.

Q. What do you think they might be?

A. Especially areas we talked about before. Having to reproduce objects, I think that would be very difficult for him to do, you know, in an exacting way.

In other words if he is going to design the next space probe to Pluto, he's going to have trouble.

Q. He wouldn't even be good at mechanical drawing?

A. I don't know that. It would depend on his improvement.

Q. But as far as being a salesman or something of that sort, you know, a salesman of various kinds, do you think he would be fitted for that?

A. He certainly has the language ability to perform something like that. A lot of that would depend on his social development. I think a salesman has to have good, solid social skills.

Q. Would you say that he has any marked social deficits as far as his ability to get along with his peers?

A. Again, I think he gets along much better with adults right now because they are accepting. And I think it's a big risk right now to engage with age-related peers.

Q. In your experience isn't it typical or at least characteristic to have a mixture of adult-like expressions and then a childishness at other times? Isn't that rather characteristic of rather bright children?

A. Yes.

Q. So that the fact that he displays

these rather adult verbal exchanges and relates to and finds humor in situations that other kids don't, those things by themselves at least are somewhat indicative of an above-average child intellectually, isn't that true?

A. Yes. And I think some of that comes from the amount of adult interaction through the hospitalizations and educational levels of the family and other things that you had mentioned.

Q. And in discussing his personality and his personality traits, is it fair to say that it's not really possible to say clearly whether those traits are accident-related or whether they may be related to his chronological age of development?

A. I think that certainly it's difficult to separate them out. However, I think there is some separation available in terms of the amount of difficulty and risk with his own age-related peers. It is very typical with hospitalized groups of adolescents.

Q. We've had testimony here, that is those neurological testings indicate that he has no gross neurological deficits. That was

from his neurosurgeon.

He also testified and I'm speaking from memory, it maybe not be meticulously accurate, it's difficult to assess whether his personality and social characteristics are the result of the accident or whether they are chronological developmental things.

Would you agree with that kind of an assessment?

A. For the most part.

Q. Is it fair to say that many of the personality traits you speak of are ones that this boy manifests are ones that I think you said may be typical adolescence situations?

A. There are clearly many of the problems of typical adolescence.

Q. Do you think there is any evidence that perhaps Todd has had too much support and nurturing and guidance and direction in the last five years?

A. I have concerns along those lines but, again, part of the rehabilitation process is a gradual weaning of that dependent relationship and the promotion of independence.

Q. Do you think that from home or the

tutors and teachers that -- do you sense any over-protectiveness there?

A. You know, when I interviewed mom, I didn't sense that.

Q. You did not?

A. I didn't. If anything I sensed that mom was pressing him for independence.

Q. I take it you did not perform any IQ test?

A. Only the Raven's. Again, IQ traditionally has not proved to be very useful in the neuropsychological battery.

Q. And did I understand you to say based on that test he is of normal limits?

A. 50th percentile which is average based upon Raven's Matrices.

EXAMINATION OF DR. WARD K. SWALLOW

BY-MR. YOUNG:

Q. I have a couple questions.

I sense from your reports a general support of the rehabilitative program that Todd has been enrolled in. Would that be correct?

A. That's correct.

Q. In other words, that the improvement that he's been able to make has

been tied to the therapies provided to him and the tutor provided to him?

A. Without a question. He's had outstanding care.

Q. Would you state that in your opinion as a neuropsychologist that that program as you understand it has been necessary to his improvement?

A. Yes.

Q. And would you agree that the improvement that he has in the future is tied to a continuation of that program?

A. That depends upon how the program is conducted, obviously. But, yes, I think his improvement in the future will depend upon the amount of support and instruction he receives, sure.

Q. Mr. Del Medico had asked you your opinion relative to the time periods. And now I'm simply asking you for your opinion as a neuropsychologist as to the necessity of continuation of this program.

Not necessarily the time period, but whether in your opinion it's necessary for Todd to continue in the present course of

therapy, speech therapy, the language therapy and the tutoring program?

A. If I understand your question, you're asking me to give my opinion in other areas for disciplines that are outside my area of expertise.

Q. Do you have an opinion on that?

A. I do have an opinion on that, you know. I start to become concerned when I see test scores that are in the 99th percentile, you know, as to how much better can we go in therapy.

Q. Well, you've indicated that future improvement is expected in the rehabilitative course; is that correct?

A. That's correct.

Q. And you wouldn't, it's not your feeling that there is no more improvement in Todd?

A. That's correct.

Q. Okay. So would you agree that it would be reasonable and necessary to continue in the current program of speech and language /therapy as you I understand it to exist with Akron Childrens Hospital?

A. Well, see, the problem I have is with the notion of the current course.

Again, my opinion is that I would be perhaps altering the course to deal specifically with the focus areas of the deficits. Especially, again, there are areas that he is outstanding in versus areas where he needs further specific assistance.

Q. So you might change the focus but you would continue that program?

A. I might change the course but I would certainly continue the program of assistance until he showed evidence in test scores that he plateaued.

Q. And you haven't seen that plateau yet?

A. Not in the other serial testing I've performed.

Q. And would you degree also as it relates to the tutor program that you would continue him in the tutor program in the future?

A. In terms of understanding his academic program when I have limited knowledge, certainly based upon what we've seen in terms

of his current enrollment in the regular classroom, I would suspect until he received sny grades that he was doing well, I would continue that, yes.

MR. YOUNG: Okay. I don't have snything further at this point.

MR. DEL MEDICO: Nothing further. Thanks a lot, doctor, for your time.

(Deposition concluded at 5:05 o'clock p.m.)

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CERTIFICATE

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

I, Julieanne Ross, a Notary Public within and for the State of Ohio, duly commissioned and qualified, do hereby certify that the within named witness, DR. WARD K. SWALLOW, was by me first duly sworn to testify the truth, the whole truth and nothing but the truth in the cause aforesaid; that the testimony then given by the above-referenced witness was by me reduced to stenotypy in the presence of said witness; afterwards transcribed, and that the foregoing is a true and correct transcription of the testimony so given by the above-referenced witness.

I do further certify that this deposition was taken at the time and place in the foregoing caption specified and was completed without adjournment.

I do further certify that I am not a relative, counsel or attorney for either party, or otherwise interested in the event of this action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal of office at Cleveland, Ohio, on this 27th day of September, 1990.

Julieanne Ross

Julieanne Ross, Notary Public
within and for the State of Ohio

My commission expires May 30, 1994.

STARK COUNTY
NEUROLOGISTS, INC.

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September 18, 1990

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RE: LAWVER, Todd A.

HISTORY AND BACKGROUND INFORMATION: Todd Lawver is a 12 year old male who was administered a battery of neuropsychological tests at the request of Attorney Gary L. Himmel. Todd was involved in a motor vehicle accident on May 7, 1985. He was admitted to the hospital unconscious and was found to have a left frontal depressed skull fracture with accompanying left frontal hematoma. Todd underwent immediate neurosurgery to remove the hematoma and elevate the fracture. He was then placed in the Intensive Care Unit. He subsequently required two surgical procedures, the first on May 21, 1985 and the second on June 11, 1985. Todd was apparently discharged on June 21, 1985 and was readmitted to the hospital on August 1, 1985. Todd underwent physical and speech therapy during his admissions to the hospital. He was transferred to the Rehabilitation Institute of Pittsburgh. Apparently Todd also suffered a femoral fracture that was treated primarily at Children's Hospital Medical Center of Akron.

In a review of his hospital records, Dr. Berke of Stark County Neurologists, Inc., reported that following the May 7, 1985 accident Todd suffered significant brain damage. Dr. Berke noted that the initial deficits were rather global consisting of intellectual dysfunction in multiple spheres, aphasia, a left homonymous hemianopsia and gait and upper extremity weakness and incoordination. Dr. Berke noted that Todd had responded well to "outstanding efforts of Children's Hospital and the Pittsburgh Rehabilitation Center." Dr. Berke reported that Todd had made substantial improvement in apparently all areas of cognitive functioning. Dr. Berke also noted that Todd had made remarkable progress in physical therapy which included improvement in coordination.

The most recent rehabilitative evaluation received by our office was performed by Kathleen A. Considine, a speech and language pathologist at Children's Hospital Medical Center of Akron. Evaluation was performed January 15, 1990. Ms.

STARK COUNTY
NEUROLOCISTS, INC.

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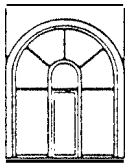
P.O. BOX 35006 • CANTON. OHIO 44735



NEUROLOGY
Jay P. Berke, M.D.
James D. Burkholder, M.D.
Leon H. Rosenberg, M.D.

PEDIATRIC NEUROLOGY
Morris Kinast, M.D.

PHYSICAL MEDICINE
AND REHABILITATION
Mark J. Pellegrino, M.D.

NEUROPSYCHOLOGY
Ward K. Swallow, Ph.D.

PHYSICAL THERAPY
Jayne F. Dalsky, P.T.

Appointments
(216)494-2097

Gary L. Himmel, L.P.A September 18, 1990
RE: LAWVER, Todd

Considine noted that Todd suffered bilateral intracerebral hematomas of both frontal lobes, a depressed skull fracture, along with damage to the posterior lateral aspect of the left frontal lobe and the anteriolateral aspect of the right parietal lobe. He has been working with the speech and language department at Akron Children's Hospital since the injury. She noted that Todd's attendance and home follow through of the speech therapy was excellent. She described his prognosis for improvement with continued speech and language therapy as very good. A review of his performance on test measures performed by Ms. Considine revealed remarkable improvement. It would appear that Todd has made a remarkable recovery from the May 7, 1985 accident.

TEST TAKING ATTITUDE AND BEHAVIOR: Todd Lawver arrived promptly at Stark County Neurologists, Inc. dressed in neat and clean attire. He was mildly oppositional for test tasks with the self report that should the test tasks become too difficult that he could act out. Todd enjoyed social conversation with the examiner and rapport was easily established. Many times throughout the evaluation, Todd would attempt to "outsmart" the examiner and appeared to enjoy the problem solving nature of most of the test tasks. Todd reported that he is currently enrolled in Canton Country Day School. He stated that he is allowed to work at his own pace within the academic confines of Canton Country Day School. He noted that it was best if I allowed him to work at his own pace on the neuropsychological test tasks. Todd demonstrated adequate comprehension of instructions and did not require repetition of instructions for task completion. Sustained attention to test tasks was good. Todd did not wish to participate in speeded test tasks and at times would flatly refuse to perform them. However, given some verbal prodding, he often completed the test tasks without further complaint.

TESTS ADMINISTERED:
1) The Reitan Neuropsychologic Test Battery for Children--selected subtests.
2) Raven's Standard Progressive Matrices.
3) Millon Adolescent Personality Inventor),.
4) Bender Gestalt Test.

IMPRESSION: Todd's performance on the Reitan Neuropsychological Test Battery was scored utilizing normative data collected by Knights and Norwood (1980) and normative data collected by Reed (1963). Todd's performance on the

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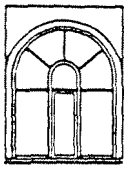

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neuropsychological test battery for children revealed abstraction and concept formation abilities within the normal range. Measures of motor function were variable and seemed to reflect attitudinal factors regarding test task completion rather than true deterioration of motor functioning. There were no consistent sensory or perceptual abnormalities consistently demonstrated on the sensory perceptual examination. Visual--spatial skills were intact, however, there appeared a mild constructional apraxia. Verbal abilities were excellent. Alertness and concentrated attention were within normal limits.

Todd's performance on Raven's Standard Progressive Matrices, a test of nonverbal intellectual ability, was scored at approximately the 50th percentile. This score was lower than what might be expected based upon his performance on the neuropsychological test battery. The Bender Gestalt test was also administered to better understand his visual motor skills. Review of his performance on the Bender Gestalt test was suggestive that Todd had some difficulty with visual perceptual skills that may have abnormally lowered his response pattern to Raven's Matrices. The visual--perceptual difficulties appeared mild and are most likely reflective of the insult to the anteriolateral aspect of the right parietal lobe.

Todd's personality development is characterized by an anxious dependency, a persistent seeking of reassurance from others, and the expectation that he will lose the support of those who have provided it in the past. At the time of the assessment, Todd apparently viewed a significant relationship in his life as having become increasingly insecure and unreliable. **As** a consequence of his perception of a change in an important relationship, he described periods of dejection and moodiness accompanied with periods of angry outbursts. Todd has developed a pattern of "testing behaviors'' whereby he tests the sincerity of significant relationships in his life. These testing behaviors have exasperated and alienated those upon whom he depends and a5 a consequence he has concerns that others will give **up** hope and that he will never regain their support.

As with many children who have experienced extended periods of hospitalization, this youngster may feel a sense of helplessness about his future. He recognized that he has suffered an injury with severe health consequences. He also recognized that others have begun to grow weary of his unpredictable behaviors. At times, he tended to withdraw into a shell of protective indifference. His struggle is the typical one of adolescence, between the dependent acquiescence to others and a desire to assert independence. His difficulty

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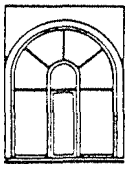

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with regulating his emotional controls and his feelings of being misunderstood by others seem only to produce further moodiness and impulsivity that adds to periods of tension and dysphoria.

Todd compared quite favorably to the typical adolescence in terms of satisfaction with self. He reported a reasonable degree of personal well being and appeared to be achieving a measure of self expression both of which should aid in dealing with present difficulties. Todd also demonstrated noted satisfaction both with his rate of maturation and his personal attractiveness. He described a level of comfort with his sexual development. Todd described himself as actively engaged in the process of developing ties with peers. He viewed his social relationships as reasonably secure and generally satisfying. Todd demonstrated a moderate level of sensitivity to the needs of others, being neither indifferent nor overly compassionate.

Todd is actively engaged in the early phases of adolescent self assertion and this is beginning to shift the family balance. Still viewing parents and siblings in a favorable light, a critical examination has begun towards greater independence from family values. This young man perceived scholastic endeavors as very rewarding both expecting and seeking to achieve high levels of success in this area.

SUMMARY: Todd Lawver is a 12 year old male currently enrolled in Canton Country Day School who suffered an accident and resultant head injury on May 7, 1985. Both Dr. Berke and rehabilitation specialists at Akron Children's Medical Center have viewed Todd's rehabilitative progress from the head injury as remarkable. A review of Todd's performance on neuropsychological test measures revealed the mild presence of damage to his higher cerebral processes. The residual insult to his higher cerebral processes is best described as constructional difficulties that most likely represent the injury to the anteriolateral aspect of the right parietal lobe, Otherwise, Todd's performance on the neuropsychological test battery is reflective of the rather remarkable recovery that he has made from this accident.

Todd's personality development is characteristic of both the difficulties commonly associated with adolescent development as well as the dependency conflicts often seen in children who have been hospitalized for estended periods of time. Todd has

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September 18, 1990

learned to depend upon the support and nurturance of those who have provided him with the intense focus of care necessary to recover from a serious injury. It is obvious that the rehabilitative disciplines working with Todd have devoted a tremendous effort to assist him in his course of improvement. I am impressed with the rehabilitative team's efforts as well as Todd's drive to reach higher levels of functioning and independence.

Sincerely,

Ward K. Swallow, Ph.D.
Psychologist

WKS/kln

dict. 9/18/90
trans. 9/18/90

STARK COUNTY NEUROLOGISTS, INC.

TAX ID NUMBER: 34-1257807
4575 STEPHEN CIRCLE

P.O. BOX 35006
CANTON, OHIO 44735
(216) 494-2097

DEPOSITION EXHIBIT
2
9-24-90 GK

GARY L. HIMMEL
RE: TODD LAWVER
ONE CASCADE PLAZA
AKRON,OHIO 44308-1195

AT CLOSING 9/24/90
PATIENT # 26107-
PHONE 628-2838

REGARDING: TODD A LAWVER
PLEASE RETURN THIS PORTION WITH YOUR PAYMENT.

$ _____
AMOUNT ENCLOSED

DATE	SERVICE	M.D.	DIAGNOSIS	INS.	CHARGE	PAYMENT
3/16/90	60 MINUTES PSYCHO 90844	WKS	HEAD INJ 854.00		85.00	
4/06/90	NEURO-PSY. TEST B 95880	WKS	HEAD INJ 854.00		500.00	
4/06/90	BEND GEST 95881	WKS	HEAD INJ 854.00		33.00	
4/06/90	RAVE MATRICE 95882	WKS	HEAD INJ 854.00		81.00	
5/05/90	NEURO-PSY. TEST B 95880	WKS	HEAD INJ 854.00		500.00	
5/31/90		WKS		NATIONW		699.(
5/06/90	WRITE OFF	WKS			-500.00	

SERVICES RENDERED BY: WARD KENT SWALLOW PH. D.

CURRENT CHARGES	AMOUNT PAST DUE				PAY THIS AMOUNT →	TOTAL DUE
	1-30 DAYS	31-60 DAYS	61-90 DAYS	OVER 90 DAYS		
0.00	0.00	0.00	0.00	0.00		0.00

STARK COUNTY NEUROLOGISTS, INC. TODD A LAWVER

STARK COUNTY NEUROLOGISTS, INC.

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