

Doc. 450

DAVID R. NEELD, et al.,)
)
)
 Plaintiffs,)
)
 vs.) Case No. 131118
)
 DURABLE PLATING COMPANY,)
)
)
 Defendant.)

Transcript of deposition of MARCY S. WEINZIMER,
Witness herein, called by the Defendant as upon
cross-examination, pursuant to Agreement of Counsel,
pursuant to the Ohio Rules of Civil Procedure, before
Marcia Abbadini, a Notary Public within and for the
State of Ohio on Monday, October 16, 1989 at the
offices of Gaines & Stern, 1700 Ohio Savings Plaza,
Cleveland, Ohio.

MERIT REPORTING SERVICES 216-781-7120 C.A.T. by XSCRIBE

APPEARANCES:

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Cleveland, Ohio

OR behalf of the **Plaintiffs;**

Davis & Young
Jan Roller
1700 Midland Building
Cleveland, Ohio

on behalf of **the** Defendant.

- - -

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PROCEEDINGS

(Defendant's Deposition Exhibits A and B
marked for identification.)

MARCY S. WEIMZINER,

Witness herein, called by the Defendant as upon
cross-examination, having been first duly sworn, as
hereinafter certified, was examined and testified as
follows;

~~CROSS-EXAMINATION OF MARCY S. WEINZIMER~~

By Ms. Roller:

Q. Ms. Weinzimer, my name is Jan Roller, and I
represent Durable Plating in a lawsuit being brought by
David Neeld. Hi.

Have you ever had your deposition taken before?

A, Yes, I have,

Q. Then you know what the procedure is, and I'm just
going to state then that if you don't understand any
question I ask, tell me you don't understand it and
I'll rephrase it for you. All right?

A. Okay. Yes.

Q. And if you do answer a question, I will assume
you have understood it.

A. Okay.

Q. All right. So if you don't understand, please
tell me so and I'll rephrase it for you. All right?

1 A. Pine.

2 Q. And you're doing exactly what you should, you are
3 giving verbal responses to each question, and be sure
4 to do that: throughout the deposition.

5 A. Okay,

6 Q. Okay, Tell me your full name;..

7 A. Marcy Stoshak Weinzimer.

8 a. And what's your date of birth?

9 a. 12-21-42.

10 Q. Where do you live?

11 a. I live in Solon. Did you want the specific
12 address?

13 Q. Yeah, go ahead.

14 A. 5731 SOM Center Road, Solon, Ohio.

15 Q. I see you've given me your curriculum vitae.

16 MS. ROLLER: Why don't we mark
17 that as exhibit C?

18 Q. We've previously marked your two reports as
19 Exhibits A and B. Why don't we, while we're still on
20 the record, if you can, just verify that what we have
21 marked as Exhibit A and B are reports issued by the
22 Vocational Services Team for David Neeld.

23 A. Yes. Yes, they are.

24 Q. And those have been marked Exhibits A and B, is
25 that correct?

1 A. Yes, that's correct.

2 Q. All right, So let's have exhibit C be your
3 curriculum vitae.

4 (Defendant's Deposition Exhibit C marked for
5 identification,)

6 Q. Let me just review your vitae with you briefly.
7 It gives your education on the bottom of the vitae and
8 it indicates you graduated with a Bachelor of Arts in
9 Psychology in June of 1965, is that correct?

10 A. That's correct.

11 Q. And immediately after completing your
12 undergraduate work, what did you do?

13 A. I went to work for Procter & Gamble in
14 Cincinnati,

15 Q. And what did you do there?

16 A. I was a personnel assistant writing employment
17 tests.

18 Q. For what purpose? I mean, what was the goal of
19 the tests you were writing, what --

20 A. Procter & Gamble uses all of their own selection
21 tests; they do not use standardized selection tests.
22 They do the validation studies and on-the-job analyses,
23 and they write their own questions, computerize them,
24 validate them, do the statistical studies, produce
25 their own tests.

1 Q. Okay. I take it you were designing a test to get
2 the **ideal** employee for Proctor & Gamble, is that the
3 idea?

4 A. Right, for a variety of different job roles.

5 Q. And then does your vitae -- well, let me see.
6 There's a **gap** after 1967. What did you do **after** you
7 left Proctor & Gamble?

8 A. Well, that was -- I was living in Cincinnati at
9 the time, I married and moved here to Cleveland and at
10 that time worked -- my husband was a licensed
11 psychologist, and I worked part-time for him, helping
12 him in his practice, when we first made that move here.

13 Q. I see. That's the entry, "Larry S. Weinzierl,
14 Licensed Clinical Psychologist"?

15 a, Yes.

16 Q. January of '67?

17 A. Yes.

18 Q. What did you do between '67 and '70?

19 A. I was raising my child. Had a child and was --

20 Q. You were out of the work force?

21 A. Right.

22 Q. After that you then worked for Richard Halas, a
23 Licensed Clinical Psychologist, is that correct?

24 A. That's correct.

25 Q. What did you do for him?

1 A. I was the vocational interviewer and administered
2 testing to his clients,

3 Q. Well,, what type of practice did -- is it
4 Dr. Malas?

5 A. Yes.

6 Q. What kind of practice did he have?

7 A. He is a -- he was a clinician. He had -- most of
8 the work that I was doing was involved in BVR referrals
9 for vocational --

10 Q. BVR is what?

11 A. Bureau of Vocational Rehabilitation.

12 Q. He would refer cases by the BVR and you assisted
13 in interviewing them?

14 a. Yes. I would take their psychosocial histories,
15 medical histories and administer the paper and pencil
16 tests.

17 Q. Was that a full-time job?

18 A. That was a part-time job.

19 Q. How much time did you spend on that job a week?

20 A. Probably about 25 hours a week.

21 Q. After you left there you went to the Goodwill
22 Industries and ysu were there from January of '78 to
23 August of '81, is that correct?

24 A. Yes.

25 a. And what did you do for Goodwill Industries?

1 A. Well, at Goodwill I **started** out in the vocational
2 assessment department **as** a vocational evaluator.

3 Q. And what does that mean?

4 A. Well, I -- people who were referred to that
5 department were referred for vocational testing and
6 vocational opinions from the counselors. I
7 administered the tests, did the interpretations, wrote
8 reports, Later I became the director of that
9 department and **was** then **also** in charge of program
10 development and fiscal management of the department and
11. of public relations for that department.

12 Q. The clientele, the **patients** that go to Goodwill.
13 Industries are of **what** sort?

14 A. Primarily, at that time, when I **was** there, they
15 were **a** disabled population. Some were individuals who
16 had previous work histories and were disabled by
17 medical conditions, injuries or **illnesses; others were,**
18 had never been employed and **were** possibly **seeking** ways
19 and means to enter **the** job market,

20 Q. And is that what Goodwill Industries does?

21 A. **That's a segment** of Goodwill's purpose, yes.

22 Q. And you would assess the person's work abilities?

23 A. **Yes,** abilities, skills that they **had,** aptitudes.
24 **We would make** recommendations for kinds of career
25 options that might be viable and the services that

1 would be necessary to get the person from the place
2 they were at at the point of referral to getting them
3 back into **the** job market.

4 Q. I see. Now, while you were at Goodwill.
5 Industries you had some education at DePaul University,
6 correct?

7 A, That's **correct**,

8 Q. Did you receive a degree from DePaul?

9 A. No, That was a certification in management of
10 rehabilitation facilities.

11 Q. What **does** that mean? What were you being taught?

12 A. Well, they were taught -- being, at that time, I
13 was not only functioning as a rehabilitation counselor
14 and vocational evaluator, I was **also** doing program
15 management, the course work was a background in program
16 management **and** management theory as **it** applies to
17 rehabilitation facilities.

18 Q. What does program management encompass?

19 A. What is program management?

20 Q. **Yes.**

21 A. Program management is, includes the fiscal
22 management, the development of, for **example**,
23 particularly **in** this instance, what kind of tests were
24 going to be **used**, putting together selecting the test
25 batteries, hiring and firing people, **developing** the

1 public relations, developing referral associations.

2 Q. Is it fair for me to understand that it was
3 training for you to learn the skills involved in
4 perhaps running a facility --

5 A. Yes.

6 Q. -- that administers vocational rehabilitation?

7 A' Right, Yes.

8 Q. So literally management of a facility?

9 A. Yes.

10 Q. I see. And was that a one-month course?

11 A. No, that was a year.

12 Q. Oh, it was? And so September '79 is your
13 graduation?

14 A. That was -- yes, that was the completion date,

15 Q. But you say you did not receive a Master's
16 degree?

17 A. No. That was, it was a certification program.
18 It was a weekend course, We went on all day Friday,
19 all day Saturday and all day Sunday.

20 Q. Okay. So this entry under education, it
21 represents a weekend of training?

22 A. No. It was a week -- one weekend every month for
23 one year.

24 Q. I see. And did you receive your certification?

25 A. Yes, I did.

1 Q. What was your reason for leaving Goodwill
2 Industries?

3 A. I left Goodwill Industries to join the staff
4 where I presently am, at Vocational Services Team.

5 Q. And what was it that caused you to leave Goodwill
6 to go to Vocational Services Team?

7 A. Well, the rehabilitation director at Goodwill
8 Industries is the owner of Vocational Services Team --

9 Q. I see. Say that again?

10 A. -- and asked --

11 Q. I'm sorry.

12 A. Asked me to join the staff.

13 Q. I'm sorry, I didn't mean to interrupt you, but I
14 did. You said someone at Goodwill Industries owns
15 Vocational Services Team, is that correct?

16 A. That's correct.

17 Q. And who that person?

18 A. That's Michael Bryan.

19 Q. And what position did he have at Goodwill?

20 a. He was the Director of Rehabilitation there.

21 Q. Is he still?

22 a. No. He's now the owner and President of
23 Vocational Services,

24 Q. So that is, as far as you know, his sole
25 occupation?

1 A. Yes.

2 Q. At this time?

3 A. Yes.

4 Q. Do you know when he left Goodwill?

5 A. He left at the same time I did, in August of '81.

6 Q. Did anyone else leave Goodwill to begin
7 Vocational Services Team?

8 A. Yes, they did.

9 Q. How many people, approximately?

10 A. Well, there were three of us in the beginning.
11 There was one other individual at Goodwill who left
12 there, too.

13 Q. And who was that?

14 A. Her name was Nancy O'Connor.

15 Q. Is she with VST now?

16 A. No, she isn't.

17 Q. Now, was VST, when it began in -- well, first of
18 all, did it begin in August of '81?

19 A. Yes, That's when it was incorporated,

20 Q. And at that time were there three people who were
21 VST?

22 A. Yes, exactly.

23 Q. And that was you, Ms. O'Connor and Mr. Bryan?

24 A. Correct,

25 Q. You said it was incorporated in August of '81, is

1 that correct?

2 A, Yes, I believe so. I -- Mr. Bryan would best
3 know that.

4 Q. Now, is that a not-for-profit or for-profit
5 corporation?

4 A, It's a for-profit corporation.

7 Q. And are you a shareholder?

8 A. No, I'm not.

9 Q. Do you know how many shareholders there are?

10 A. I believe that Mr. Bryan is the sole shareholder.

11 Q. Was that Mr. Bryan?

32 A. Yes, it was.

13 Q. Okay. And by that, so the record knows what I'm
14 referrring to, is the gentleman who was here just
15 previous to us starting this deposition, is that
16 correct?

17 A. Yes, that's correct.

18 Q. When VST first began in August of '81, what was
19 the scope of its services?

20 A. The scope of its services were rehabilitation
21 counseling for injured workers.

22 Q. Just counseling?

23 A. Well, rehabilitation counseling encompasses a
24 number of modalities.

25 Q. Could you tell me what those are?

1 A. Yes, The rehabilitation counselor, in essence,
2 is a bridge between, for an injured worker or the
3 referral source between the time of a person's injury
4 or disability to the point of a work return, okay. The
5 primary goals of a rehabilitation counselor are to move
6 that person along through the adjustment to his
7 disability to re-entry into the job market, and that
8 will consist of any number of things that we do
9 depending upon the particular needs of the particular
10 case.

11 Q. Well, could you tell me the services?

12 A. Yes.

13 Q. And recognizing that maybe not every individual
14 client would need every service, but what are the range
15 of services?

16 A. The usual --

17 Q. As of August of '81.

18 A. Okay. The usual would be that we would do what's
19 called the medical management, okay. Initially --

20 Q. Can I interrupt? I'm not sure you're
21 understanding my question. I don't mean the usual that
22 a patient can have, I'm asking you for the full range
23 of service that you provided.

24 A. Right. Okay. Well, we will provide medical
25 coordination, which means we will assess the medical

status of the individual and the needs that that person had, then it would be our role to facilitate getting the person that treatment, making sure they have the right doctor, the right physical therapist, et cetera,

From that point, we **would** counsel with the individual regarding the -- in the aftermath of an injury, there are often emotional concomitants, fears, apprehensions, concerns with fears we **would** counsel.

Q. What kind of counseling would you call that?

A. **That's** rehabilitation counseling. Adjustment to disability counseling, that might **be** another **way** that it's often described.

Q. Okay.

A. If **it was** determined that the person was not going to be **able** to **go** back to their original **job**, then we do vocational assessment, which includes an analysis of the work history, vocational testing to ascertain aptitudes and **skills**. Following that, we might actually **assist** the person in job placement, or we might assist the original employer in making modifications to the **person's** job to accommodate the disability.

Along **the** way, we are doing **job** analysis of the labor market, interacting with the labor market, coordinating with the doctors on the case, physical

1 therapists on the case.

2 Now, **people** might also have **been** and **were**
3 referred just for one portion of **those** services. **Some**
4 referrals might come in to do the whole case management
5 role, others were referred to us just for a vocational
6 assessment or just for placement assistance, or just
7 for counseling.

8 Q. **Has** the scope of the services provided by VST
9 changed in any way from August of '81 to the present?

10 A. **Well**, they have expanded considerably. Of
11 course, the business has expanded considerably from the
12 days of inception.

13 Q. **Hopefully**.

14 A. And with **it**, of course, the scope of the services
15 have expanded to, you **know**, to **a** good degree.

16 Q. **Well**, do you provide anything in addition, now in
17 1988, '89, to what you've just told me?

18 A. One of the things that we do at **VST** now that we
19 **didn't have** back then is a, what we call **a** clerical
20 internship program where we provide computer training,
21 in-house, hands-on experience for individuals who have
22 been screened for having such aptitude and **need** to go
23 into more sedintary work, so we have an actual training
24 program at our facility. We write rehabilitation plans
25 to secure funding for the services that have been

1 recommended.

2 Q. Let me **ask** you a more specific question then. In
3 a report which is marked Exhibit A, that's the one with
4 the, **it** says, "VST," at the top, the last two pages
5 talk about various types of rehabilitation
6 interventions,

7 A. Yes.

8 Q. Are any of those provided by VST, or do **you** have
9 services, do you have interventions in any one of those
10 **six** areas mentioned?

11 A, Yes. It -- not: in **all** of them, but **it** -- we have
12 interventions, We do do the vocational counseling,
13 we --

14 Q. That's number 3?

15 A. That's number 3, yes, We do do vocational
16 counseling, we do job search training --

17 Q. That's number 5?

18 A. That's number 5. And with job search training is
19 the placement assistance. **There's** one program where we
20 teach **people** how to interview, **how** to answer questions
21 **about** their disabilities so -- to reduce those barriers
22 with an employer. And we actually do placement
23 assistance, helping to get job leads, helping to set up
24 on-the-job training funds.

25 Q. All right. Anything **else**?

1 A. And we provide, **also**, the number 6, the case
2 management services.

3 Q. These six that are listed on this report which is
4 marked Exhibit A, are those the only three of the six
5 that **VST** provides?

6 A. Yes, that's right.

7 Q. Where would you send a person, if **it** was your
8 client, your patient -- by the way, what do you call
9 them, patients **or** clients?

10 A. Clients.

11 Q. Where would you send a client who needed
12 comprehensive pain and stress management?

13 A. Well, there are several options for that. There
14 are any number of programs in **existence which have** met
15 certain guidelines that **are**, that are established **for**
16 these kinds of programs; they can be purchased on an
17 inpatient basis or an outpatient basis. **We have found**
18 for most people **inpatient** has proved to be more
19 effective, and I would likely **send someone** to an
20 **inpatient** program **as opposed** -- I can give you **names of**
21 typical ones but there are a lot of them. Did you want
22 specific names?

23 Q. We'll **get** back to that. I take **it** then that for
24 numbers 1, 2 and 4, the comprehensive pain and stress
25 management, the work-hardening program and vocational

1 re-training and enhancement, you would refer the
2 client --

3 A. The person, right.

4 Q. -- to an outside service?

5 A. Yes. Exactly. Probably ones that are in close
6 proximity to where they lived, if that was possible.

7 Q. Now, what is your position at VST?

8 A. Well, my position is entitled Rehabilitation
9 Counselor or Consultant. They're used interchangeably,
10 the terms.

11 Q. And it indicates that you're a Licensed
12 Professional Counselor in the State of Ohio. When did
13 you receive that license?

14 A. That was two years ago when the licensure law
15 took effect.

16 Q. So that would be 1987?

17 A. Yeah.

18 Q. That's the first time such license was required
19 in Ohio?

20 A. That was the first, right. Yes.

21 Q. What did you have to do to obtain that license?

22 A. To obtain the license you have to have been in
23 the field for a certain number of years. I don't
24 recall offhand what that was. I think it was like 10
25 years at the time of the licensure. And you had to

1 have been, you had to be able to document that you were
2 working in the field; you had to have, at basic, a
3 Bachelor's degree in a related field, rehabilitation
4 counseling, psychology or social work.

5 Q. And you also indicate you're a Certified
6 Rehabilitation Counselor?

7 A. That's correct,

8 Q. When did you receive that certification?

9 A. Let's see. I was first certified -- it was
10 around seven years ago.

11 Q. That would be 1982 --

12 A. Yeah.

13 Q. -- is that correct?

14 A. These dates get -- you know, they fade away from
15 you.

16 Q. Yes,

17 A. I -- let's see. I had to re-certify last year,
18 so -- yeah, that sounds right.

19 Q. Approximately 1982?

20 A. Yeah.

21 Q. Early '80s should we say?

22 A. Yeah.

23 Q. Does that sound right?

24 A. Yes.

25 Q. Okay. Is that a State certification?

1 A. No, that's a National certification.

2 Q. And what association or grouping issues such
3 certifications?

4 A. It's the -- CRCC. CICC. What does it stand for?
5 It's a Board Certification of -- I don't know the exact
6 name. I have all my licensures on the -- you know,
7 back home and, I mean in the office, and they go -- but
8 it is a National board. It's called CRCC or something.

9 Q. To the best of your memory.

10 A. I can bring it to you if you want.

11 Q. That's all right, I was just wondering who it
12 was.

13 A. Yeah, It's a nationally established board that
14 certifies rehabilitation counselors, vocational
15 evaluators and work adjustment counselors.

16 Q. And Certified Vocational Evaluator, when did you
17 receive that certification?

18 A. That, I have also had that around the same time
19 as the CRS.

20 Q. What did you have to do, going back to the
21 certified rehabilitation counselor, what, if anything,
22 did you have to do to be certified?

23 A. Well, to qualify, again, you have to have the
24 educational degree, a minimum of a Bachelor's degree,
25 you had to have been working in the field for a

1 specified amount of time with an internship in, a
2 sponsored internship, and then you had to **pass** a
3 certification test, which is an all-day test.

4 Q. And how **about** for the Rehabilitation Counselor,
5 **did** you have to --

6 A. Same.

7 Q. You have to take an all-day test?

8 A. **Right.**

9 Q. **Have** you done any teaching?

10 A. I have done some teaching. **It's** not on my
11 resume, but --

12 Q. Is **it** for the field of rehabilitation?

13 A. No, it was **not** in the field of rehabilitation.

14 Q. What was **it** in?

15 A. It **was** in the field of education.

16 Q. **How** about any writings, have **you** written anything
17 in the field of rehabilitation that's been published?

18 A. No.

19 Q. Now, let's go back to the VST. You said that the
20 **clients** are clients that you serve for rehabilitation
21 counseling for injured workers. Who refers cases to
22 VST?

23 A. Wait. Can I --

24 Q. If that wasn't correct --

25 A. Can I clarify something? I think the question

1 was what did they do initially.

2 Q. Okay. Thank you.

3 A, Initially it was, we started out where referrals
4 were strictly injured workers. Today we have an
5 expanded business; we don't see just injured workers.

6 Q. Now what have you added to that?

7 A. Well, now we might see individuals who are just
8 going through career dilemmas and need and want
9 vocational counseling, we may see individuals who have
10 never worked and need that bridge and assistance in
11 removing the barriers that a physical disability is
12 posing.

13 Q. Who would refer such a person?

14 A, A physician, Department of Labor, As examples, a
15 self-insured employer. Sometimes people refer
16 themselves off the street, but that's probably a minor,
17 a minor part of the business.

18 Q. What percentage of your clients today are injured
19 workers?

20 A. Probably the majority are injured workers. I
21 would say probably 85 percent.

22 Q. And of that 85 percent, who refers those injured
23 workers to VST?

24 A. Well, our referral sources are primarily three
25 categories, self-insured employers, we're working on

1 behalf of the employer themselves, these would be --
2 **some** of our clients include places like **Eaton**
3 **Corporation**, **Parker Hannifin**, **Ohio Machinery**, many of
4 the area hospitals, **St. Vincent**, **Mt. Sinai**, those types
5 of **corporate** -- **Kroger Food stores** would have many
6 self-insured companies that directly **will** secure us.

7 Q. What's another type?

8 A. Another category is the Department of Labor. **We**
9 do work for the **U.S. Post Office**, for the **Veterans**
10 **Administration** and for the **Army Corps of Engineers**,
11 among other government agencies.

12 Q. Those are Federal **employees** who **have been** injured
13 at work?

14 A. Right. **Yes**, the employer hires us to **go** out and
15 see the injured, the injured person.

16 Q. And the employer is the Federal agency?

17 A. Yes.

18 Q. Like the **post** office?

19 A. Right, The other referral source that we, that
20 is a primary referral source is the **Industrial**
21 **Commission of Ohio itself**.

22 Q. What percentage of the 85 percent. injured workers
23 are referred by the **Industrial Commission**?

24 A. None of our total case management -- the total --
25 **when** we are hired for case management **service**, which

1 would be that bridge from the beginning of an injury or
2 at **some** point when they have decided to refer back into
3 the employment world, those referrals generally come
4 directly from the employer, okay, or an attorney may
5 refer, refer to us. If the referral is strictly for
6 vocational assessment or placement services without the
7 case management, the connecting services, probably 90
8 percent of those are from the Industrial Commission and
9 associated agencies, like the Permanent Total
10 Disability Board,

11 Q. Okay. What type **are** those, just for job
12 placement?

13 A. Those are just **for** vocational assessment,
14 vocational counseling and placement services,

15 Q. So you said for the **full** case management cases,
16 though -- let me **ask** you with respect to those type of
17 cases. And by the way, would you Consider -- well,
18 where **would** the case of David Neeld fall within the
19 type **of** case that was referred to your office?

20 A. Well, I **didn't** include that as a primary source
21 because our attorney referrals are a very, are
22 incidental to our primary business. So that would be
23 another **category** that is **not** a primary category for us.

24 Q. Let me **ask** you, do you advertise at all?

25 A. No, we do not.

1 Q. You say **that** -- well, with respect to the cases
2 that are referred **to** you by attorneys, what percentage
3 of the business of VST includes those type of cases?

4 A. Well, out of maybe about 2 percent, maybe 1
5 percent.

6 Q. **And** how **many** cases does that accumulate, say, for
7 a year period?

8 A. I believe this year maybe we've had **six** attorney
9 referrals, as compared to 200 or 300 vocational.

10 **a.** Total cases?

11 A. Total referrals to the agency,

12 Q. **And** of those six cases this year -- first of **all**,
13 have you worked on **any** of them?

14 A. **Yes**,

15 Q. **And** --

16 A. I've worked on all of them,

17 Q. I'm sorry?

18 A. I've worked on **all** of **them**. I'm sorry, with the
19 exception of one.

20 Q. I'm going to ask you again, are you familiar with
21 the one you didn't work on?

22 A. Only -- not **real** familiar, no.

23 **Sa.** Okay, then let --

24 A. **Just** the gist of it.

25 Q. Then let **me** limit the question to **the** five you've

1 worked on this year, **Was** David Neeld one of them?

2 **A.** *Yes.*

3 **Q.** Of the other four this **year**, who referred the
4 case to you, was **it** the attorney for the injured worker
5 or was **it** the opposing side of the case?

6 **A.** Of the five that I worked on, one was from the
7 employer and the others were *the* individual's attorney.

8 **Q.** *Okay.* So of the **five**, four **were** from the injured
9 worker, or the injured worker's lawyer?

10 **A.** *Yes.*

11 **Q.** I don't **want** to limit the question **just** to the
12 year 1989, that year isn't over with. Let me ask you
13 to take the five **years** prior to that, '83 to '88. **On**
14 average, how many cases would you say that VST has had
15 referred in from cases involving litigation?

16 **A.** Well, from '83 through '87, **none**, we did not do
17 any litigation. The six cases that I have referred to,
18 **most** of those have been an overlap; you know, **we** may
19 have initially **seen** them in '88 and the cases, as you

23 work we do -- our reports are **used** in hearings, if you
24 consider hearings as part of litigation, but **we**
25 ourselves do not appear. The Permanent Total

1 Disability Board frequently sends individuals for
2 evaluation.

3 Q. So you provide reports in cases involving
4 Workers' Compensation, correct?

5 a. Yes.

6 Q. Any other type of case where you will present a
7 report for compensation for an injured party other
8 than, of course, cases like we have here, which is not
9 a Workers' Comp case but a direct tort action case in
10 court? Are there any other types of hearing that I'm
11 just not aware of?

12 A. No. We've had two that have involved divorces.

13 Q. Okay. But there's no other agency, like within
14 the Labor Department or anything else?

15 A. Outside of the Permanent Total Disability Board
16 no.

17 Q. And you're referring to the Workers' Comp?

18 A. Workers' Comp.

19 Q. Now, with the Workers' Comp cases, who refers the
20 case to you?

21 A. Again, these can come either through a
22 self-insured employer or through the, through the
23 Permanent Disability Board, the counselors or the
24 rehabilitation staff that is involved with the board,
25 or through the Cleveland area field team or the, any of

1 the other Ohio field teams. So **we** have done some work
2 **for --**

3 Q. What's a field team?

4 A. The rehabilitation center itself has
5 rehabilitation counselors that do the same kind of case
6 management **work** that we **do**; however, the rehab center
7 **itself** does **not** do vocational assessment, nor do **they**
8 do all of their own placement, nor do they do
9 counseling, and so they refer to our agency ~~for~~ those
10 **services.**

11 Q. Do you **give** an opinion in those Industrial
12 Commission cases, such as the **one** you've given in David
13 Neeld's case, that **this** person can do **this** type of **work**
14 and he'll need this amount of rehabilitation **and it**
15 will **cost** this much? Did you give similar type of
16 reports?

17 A. Yes.

18 Q. Are you ever retained **by** an attorney for the
19 injured **worker** in Industrial Commission cases? **Because**
20 you told me you **were** often retained by self-insured
21 employers. It sounds like the Industrial Commission
22 themselves through **that** mechanism.

23 A. Right.

24 Q. Are you ever requested to give an assessment in a
25 Workers' Compensation **case** on behalf of, or **you've** been

1 asked to give a report on behalf of the injured worker?
2 Do you understand the question?

3 A. I'm not sure that -- yeah, I'm not sure.

4 Q. I'm not a Workers' Comp lawyer, but I do know
5 that in Workers' Comp cases you'll often have a report,
6 a medical report from the employer, a medical report
7 from the injured person themselves and then the board
8 will sometimes have a third report. What I'm asking
9 you is, in the Workers' Compensation cases that you
10 have, which there's quite a number of them, are you
11 ever retained by the individual, injured person
12 themselves to give a report to the board?

13 A. To my awareness, I don't believe so. Those
14 referrals will generally come through a Rehabilitation
15 Commission counselor or the self-insured employer.

16 a. Did the policy change of VST in 1987 to accept
17 attorney referral cases?

18 A. No, it wasn't a policy, it was just we never
19 considered that business. We had never actively
20 marketed, as it were, that kind of a business.

21 9. Are you actively marketing that business now?

22 A. No, we don't.

23 Q. How is it that those cases come to you?

24 A. The same way that all of our business does,
25 really through word of mouth, and the fact that,

1 really, people have come to know us.

2 Q. You indicated that there were six cases this
3 year. Are there any other cases that you're aware of
4 that have been referred by attorneys for injured
5 workers, cases involving litigation, other than those
6 six cases?

7 A. No.

8 Q. Okay. So that's the entire cases that you've had
9 at VST, cases involving litigation?

10 A. Approximately,

11 Q. And again --

12 A. Yeah -- I don't have a list, you know, so --

13 Q. And that was with your caveat, your understanding
14 that we're not talking about Industrial Commission
15 cases?

16 A. Right.

17 Q. And you've just begun doing this work in 1988?

18 A. Yes, I believe so.

19 Q. Now, I have been given two reports by Attorney
20 Shapero regarding VST's work on David Neeld, and we've
21 marked this Exhibits A and B, and I notice that they're
22 signed by different individuals. They're both signed
23 by you, but the one that's marked Exhibit A, which has
24 "VST" at the top, is signed by Michael Bryant, and the
25 one on Exhibit B is signed by Glenna Dutand.

X First of all, can you tell me what role you played in
2 the evaluation of David Neeld?

3 A. My role in the evaluation of David Neeld was to
4 choose the test battery that was going to be given to
5 him, to interpret the test scores, to see Mr. Neeld, do
6 an interview with Mr. Neeld and to oversee the process,
7 the scoring, that the tests were given, et cetera.

8 Q. Did you actually do the scoring?

9 A. No, I did not.

10 Q. Who did that?

11 A. That is our technician, and that is Glenna
12 Durand, the individual that signed the one report.

13 Q. What role, if any, did Michael Bryan play?

14 A. Michael Bryan was not directly involved in the
15 case, but it is office policy that he reads all the
16 reports that go out of the office and then countersigns
17 them.

18 Q. What is Mr. Bryan's educational and licensed
19 background in rehabilitation?

20 A. Well, I can't tell you, you know --

21 Q. Specifically?

22 A. I mean, I may not be totally accurate. I know
23 that, like myself, he is licensed by the State of Ohio,
24 he is a Certified Rehabilitation Counselor and a
25 Certified Vocational Evaluator,

1 Q. I guess basically that's what I wanted to know,
2 He's not a psychiatrist or --

3 A. No, he is a rehabilitation professional,

4 Q. His experience and educational work as Ear as you
5 know is very similar to yours?

6 A. That's correct.

7 Q. How many employees are there of VST now?

8 A, Can I take a moment: from the --

9 Q. Sure, Please do.

10 A. We've just had some new hirings; I have to figure
11 this out,

12 MS. ROLLER: Off the record.

E3 (Thereupon a recess was taken,)

14 MS. ROLLER: Back on the record.

15 Q. How many employees does VST have now?

16 A. Okay. We have seven rehabilitation counselors,
17 we have one business trainer, we have our testing
18 technician --

19 Q. That's Glenna Durand?

20 A. That's Glenna. Okay. We have an office
21 administrator who oversees the office and is involved
22 in the management aspects of the business with
23 Mr. Bryan. Of course then there's Mr. Bryan, the
24 Director.

25 Q. He's not one of the seven rehab counselors?

1 A, No. He **does** do rehab counseling, but his, I
2 included **him** separately **as** being the director. He is a
3 primary counselor, though, **also** at **the** office, And we
4 have three office **staff**, clerical staff.

5 Q. What is the training and education of Ms. Durand,
6 **as** far as you know **it**?

7 A. Tell you the truth, I do not know her educational
8 background. I personally trained her on the **job** in the
9 use and the scoring of our tests, appropriate
10 observations to make, et cetera.

11 Q. You indicated that you decided what tests to **use**
12 in this case of Mr. Neeld. I take **it**, Ms. Weinzimer,
13 that you did not receive the expertise to **know** what
14 type of tests to **give** Mr. Neeld in this case **from** the
15 education you received in your Bachelor of Arts degree
16 on Psychology from **the** University of Cincinnati, is
17 that a fair statement?

18 A. I had some testing courses, but, no, **that's**
19 developed through experience.

20 Q. Okay. That is my question. Where did you get
21 the expertise to know what tests to give Mr. Neeld?

22 A. Well, my **expertise** really is through experience.
23 It began at Goodwill in the evaluation department, I
24 went **to** many **workshops**, we had many presenters of
25 people who come to sell their wares, **as** it were.

1 I also had a background, of course, in paper and
2 pencil testing through my work with area psychologists
3 who were doing vocational testing, so I was familiar,
4 when I came into that line of work, with the providers
5 who had standardized and acceptable tests in the field
6 and in the industry. And the tests that are chosen
7 here are those that are generally utilized in our
8 agency as appropriate to our clients.

9 Q. Have you gone to educational seminars within the
10 last five years?

11 A. Yes, many. Part of licensure requirements are
12 continuing education requirements.

13 Q. And what's the subject matter of these seminars?

14 A. Well, they --

15 Q. Generally.

16 A. They range from seminars on the primary effects
17 of disability, on chronic pain management, on back
18 injuries and the effects of back injuries, the medical
19 terminology of back injuries, seminars on testing.

20 It's -- on counseling -- a wide scope, really, of
21 things.

22 Q. Do you have a continuing education requirement by
23 the State in your profession?

24 A. Yes. All of the licenses have continuing
25 education.

1 Q. How many hours of requirement are you required to
2 take a year?

3 A. They vary. The licensures are, say, for two
4 years, and I believe you have to have 30 continuing
5 education credits, but I -- that's a guess. I don't
6 know off the top of my head.

7 Q. And you're referring to the license for a
8 Professional Counselor, correct, that requires the COE
9 credits?

10 A. Yeah.

11 Q. Any other?

12 A. No, All of them have requirements for continuing
13 education,

14 Q. The Certified Rehabilitation Counselor and
15 Certified Vocational Evaluator?

16 A. Yes.

17 MR. SHAPERO: For the record, I'm
18 not sure she has COE but she has CEU credits.

19 Q. Oh, you're right. I'm sorry, you're right,
20 continuing rehabilitation credits,

21 A. CEU credits.

22 Q. Now, what information did you have about
23 Mr. Neeld prior -- strike that.

24 When is the first time you were approached
25 regarding Mr. Neeld?

1 A. We received a phone call at our office on June
2 15th.

3 Q. Of which year?

4 A. Of this year,

5 Q. That's 1989?

6 A. 1989.

7 a. And who was that from?

8 A. That was from Neal Shapero.

9 Q. And what was your assignment in this case?

10 A. Well, I was -- Mr. Shapero requested that I see
11 Mr. Neeld for the purpose of assessing what his
12 vocational status was presently, what his vocational
13 status would have been expected to have been had he not
14 had a functional disability and what the future
15 vocationalizing might hold for him.

16 a. Had you ever done any work for the law firm of
17 Gaines & Stern prior to this case?

18 A, Yes, we did.

19 a. And what did that consist of?

20 A. It was a similar kind of assessment.

21 Q. And does that mean that you were referred a case
22 where the plaintiff was injured?

23 A, Yes, that's right.

24 Q. And that case was involved in litigation?

25 A. That's correct.

1 Q. And that's not a Workers' Comp case? Well --

2 A. I don't know if that **was** involved or not, **but it**
3 **wasn't** part of my -- you know, **I was** not -- in other
4 words, **I wasn't** to coordinate any services with the
5 Industrial Commission.

6 Q. All right. Did you only have one other case
7 referred to **you by Gaines & Stern** prior to **David**
8 **Neeld's** case?

9 A. I believe. I believe there are two cases.

10 Q. Are those two, two of the six cases that we were
11 referring to earlier?

12 A. Yes.

13 Q. And so David Neeld would be the third case?

14 A. Yes.

15 Q. So **half** of the cases that you've been involved in
16 that involve litigation where the cases have been
17 referred to by an attorney involved from the law firm
18 of Gaines & Stern?

19 A. My counting is probably wrong. I know of two of
20 three off **the top of** my head. I know of three that I
21 have done **khat** have not been **Gaines & Stern**, so that
22 would **make it** seven, I guess.

23 Q. So **just** so we're clear now, you recalled another
24 case and **there's** been about seven attorney referral
25 cases, correct?

1 A. Yes.

2 Q. And three out of the seven were from Gaines &
3 Stern?

4 a. Again, as I'm saying, if I had a complete list, I
5 might find we had ten and there was a balance there.

6 Not all of our cases have been from Gaines & Stern,

7 Q. But you're giving the testimony from the best of
8 your memory, I take it?

9 A, Yes.

10 Q. Knowing there may be a slight inaccuracy in your
11 memory on those points. Just so we're clear, you're
12 referring **seven** cases, and seven of the three **were from**
13 Gaines & Stern?

14 A, Yes.

15 Q. And one of the three was David Neeld's case?

16 A, That's correct,

17 Q. Had you ever worked with Attorney Shapero before?

18 A. Not directiy.

19 Q. **Was** he involved in either of the **two** prior cases?

20 A. I believe he was present at a deposition I had
21 given before,

22 Q. What information did you have **about** David Neeld
23 prior to interviewing him?

24 A. ~~We~~ **were** provided the referral packet from
25 Mr. Shapero, which were photocopies of all of the

medical, the medical records.

2 Q. Do you have that with you today?

3 A. No, I don't.

4 Q. What medical records did you receive?

5 A. Well -- I have a list. I don't have a list of
6 what we saw, but there was an extensive file, about
7 this -- (Indicating.)

8 Q. Several inches high?

9 A. About five inches thick. I know there were
10 records from Dr. Marsolais, there were hospital records
11 from previous hospitalizations,

12 Q. Dr. Schnall?

13 Yes.

14 Q. Do you know if you received a report from
15 Dr. Dennis Brooks for your evaluation?

16 A. No, I have not seen a report from Dr. Dennis
17 Brooks,

18 Q. Have you seen it up till today?

19 A. No, I haven't.

20 Q. Did you speak with anyone other than Mr. Shapero
21 about this case prior to seeing Mr. Neeld?

22 a. Not that I recall.

23 Q. Have you spoken to anyone other than Mr. Neeld
24 and Mr. Shapero regarding the substance of your
25 conclusions in this case?

1 A. I have discussed with other members at Vocational
2 Services Team.

3 Q. But no one outside your team?

4 A. No .

5 a. Now, what's the first thing you did? You've told
6 me the various responsibilities you've had in this
7 case, but what is the first thing that you did?

8 A. Well, the first thing that I did was I reviewed
9 all of the medical records so that I could get a
10 general concept of what the medical status was in the
11 case. And after that, we contacted, by phone,
12 Mr. Neeld and set up an appointment for him to come
13 into our office.

14 Q. And did he come in?

15 A. Yes. And he came in on 6-28.

16 Q. And what happened?

17 A. And we saw him twice. He came in again on 7-7
18 because we did not complete everything that we wanted
19 to do on that one day.

20 Q. What occurred on the first day? First of all,
21 let me ask you, where was this meeting?

22 A. The meeting was at the Vocational Services Team
23 offices.

24 Q. Which is located on --

25 a. On Euclid Avenue.

1 Q. 3940 Euclid Avenue^p correct?

2 A. Correct .

3 Q. What time did Mr. Neeld arrive?

4 A. ~~We~~ came in at eight o'clock in the morning.

5 a. And **was** he accompanied by anyone?

6 A. No, he **was** not.

7 Q. Do you know how he got there?

8 a. I do **not** recall.

9 Q. What occurred? **Well**, how long was he there that
10 day?

11 A. **He** was there until four o'clock that day.

12 Q. Do you have a breakdown of **what** occurred that
13 day, by that I **mean** an outline?

14 A. Well, on that day we did the test battery, we did
15 the **test** administration that day.

16 Q. My question is little bit more specific. Do you
17 have anything written down as to what occurred that
18 day, you know, from 8:00 a.m. to 9:00 a.m. interview,
19 9:00 a.m. to 11:00 a.m. this **test**?

20 A. No .

21 Q. You are referring to some notes in front of you,
22 am I correct?

23 A. **Yes**.

24 Q. Could I see what you're referring to?

25 A. Uh-huh. **It's** just -- this is just a general

1 running record, it's not -- it's just kind of
2 incomplete notes to jog my memory as when we go through
3 a case. Not every detail is explicit in the running
4 records.

5 8. The papers I'm holding in my hand right now, is
6 all the information that's contained in these papers
7 generated from you?

8 A. Yes.

9 8. Did you dictate these, the typewritten notes
10 are --

11 A. I go to my computer and I just jot them down so
12 that I will have something to recall from.

13 Q. And what do you call these, these notes, these
14 three pages of computerized typing?

15 A. A running record.

16 Q. I'd like to mark this as Exhibit D if we could.
17 We can put it on the back maybe.

18 A. I would like to note, pertaining to your question
19 of whether we have a written report of what occurred
20 that day, while we don't, you know! sign in and out
21 those kind of things, there is a sequence in which the
22 test battery is given.

23 Q. All right. And is that written down anywhere?

24 A. No. We just know that, it's common practice.

25 (Defendant's Exhibit D marked for

1 identification.)

2 Q. So the record can reflect what we're doing here,
3 Ms. Weinzimer, we've just marked your three
4 computer-typed pages which you call your running sheet?

5 A. Yes, running record,

6 Q. Running record, We've marked those three pages
7 as Exhibit D, okay?

8 A. Okay.

9 Q. There is one other piece of paper in the folder
10 that you've handed me, and it says at the top
11 "Vocational Services Team Referral Information," and
12 you indicated that you had written out this information
13 on this sheet, correct?

14 A. Correct.

15 Q. And it refers to, "Company is Reliance Electric."
16 What does that mean?

17 A. That is his employer. His last employer is the
18 name of the company.

19 Q. It says, "Other information: Court, October
20 30th. Dr. Rosen, economist." What does that mean to
21 you?

22 A. I think that was when the -- this is a sheet that
23 we use when, you know, somebody calls in and we're
24 taking a referral off the telephone. It's a sheet we
25 use to record our case numbers. You'll see, as in the

1 upper right number, we assign a number to the case, and
2 I, from time to time, might: write from the telephone
3 conversation.

4 In this case, Mr. Shapero had mentioned that this
5 was going to **go** to court on October 30th, so I jotted
6 it down, and that his economist he was using **was** Dr.
7 **Rose** -- or that the intent was to use --

8 Q. I see.

9 A. -- Mr. Rosen.

10 Q. What **other** documents do you have in front of you?

11 A. These are -- **well**, this is another copy of my
12 vitae and a copy of my report. These are actually part
13 and parcel of **the same report** that -- Exhibit A and B
14 **are** the same -- are one report, actually.

15 Q. **Okay**,

16 A. I have Dr. Marsolais' **letter** of June 12 of '89
17 which depicts his breakdown of Mr. Neeld's physical
18 capacities and --

19 Q. I'm familiar with the **letter**.

20 A. Yeah. And a note --

21 Q. What --

22 A. -- attached to it. I had asked Mr. **Shapero** to
23 phone Dr. Marsolais and to ask him to define for me his
24 term "appreciable."

25 Q. Okay. And did you get a response to that

1 request?

2 A. Yes, we did, and I wrote that down, Over the
3 phone.

4 Q. And what was the response?

5 A. He defined "appreciable" -- do you want me to --

6 Q. What was the response he made to your inquiry?

7 A. It was that he could lift two to three pounds
8 Frequently, he could stand at 20-minute intervals, he
9 could sit at 20- to 45-minute intervals, he could
10 walk -- I didn't write it down, but I recall it was
11 standing and walking for 20-minute intervals.

12 Q. Standing or walking for 20 minutes?

13 A. Yeah, at 20-minute intervals.

14 Q. While we're on that subject, let me just ask you,
15 you said he could sit for 20- to 45-minute intervals,
16 correct? That's what you were told when you made an
17 inquiry of Mr. Shapero to ask Dr. Marsolais?

18 A. Right.

19 Q. How often can he do that a day, is your
20 understanding?

21 A. Well, my understanding was throughout an eight-
22 hour day that that would be -- well, I'm sorry. Strike
23 that.

24 Referring back to his June 12 letter --

25 Q. I'm going to go over your shoulder for a minute

1 because I think that's the report I had the question
2 on.

3 A. Referring back to his June 12 letter, he said,
4 "Three hours of standing in a workday, three hours of
5 walking," and in this report he says, "Two hours of
6 bending, one hour of squatting." So he was breaking
7 down -- my understanding was he was attempting to break
8 down an eight-hour day into a total time.

9 Q. Dr. Marsolais was?

10 A. Yeah.

11 Q. In his letter of June 123

12 A. Right.

13 Q. My question is this: It says he can sit for
14 about 45 minutes for a total of about only one hour a
15 day.

16 A, Right. This is why I asked for some
17 clarification.

18 Q. And that is why I'm asking you this question.
19 You told me that when you had asked Mr. Shapero to ask
20 Dr. Marsolais, his response was 20- to 45-minute
21 intervals, correct?

22 A. Right.

23 8. Bow many intervals can he do a day?

24 A, Throughout an eight-hour day.

25 Q. So that means he could sit for 45 minutes, walk

1 around and stretch, and for the next hour he could sit
2 another 45 minutes, is that a fair interpretation?

3 A. That **is** probably what Dr. **Marsolais** meant, but I
4 couldn't swear to that.

5 Q. Okay.

6 A. I couldn't swear to that. I took that as an
7 assumption of throughout an eight-hour day, broken up
8 throughout an eight-hour day,

9 a. **And** you received that information after June 12?

10 A. Yes.

11 Q. What other documents do you **have** in front of you?

12 A. This was a computer run-through that **we** had -- we
13 had done a computer match analysis of **some** of the, of
14 his aptitude profile with jobs transferable through his
15 work history.

16 Q. Tell me how you do this. Do you pick certain
17 types of jobs or --

18 A. Well, what you do is, you **feed** into the computer
19 the titles of **the** individual's previous employment
20 history; the computer then finds the aptitude breakdown
21 for those jobs, okay. Then what you do is, the
22 computer will ask you to adjust any physical demands
23 for what the person can do now, okay. **For example**, if
24 a person is **limited** to sedentary work and before could
25 do heavy work, which is basically the case here in

1 Mr. Neeld's case, you would tell the computer to modify
2 its search to reduce his physical capacities to the
3 sedentary range. Then the computer will search all of
4 the job titles, and the computer has all the aptitude
5 breakdowns to match the aptitudes that the individual
6 is showing now to the jobs in the job search,

7 Q. And did you prepare this breakdown after you had
8 tested him?

9 A. Yes.

10 Q. And you fed into the computer the responses the
11 information you gained from that testing, is that
12 correct?

13 A. That's correct.

14 a. And the job titles, do they come from any
15 particular source, like the Dictionary of Occupational
16 Titles?

17 A. That's correct.

18 Q. Is that where it comes from?

19 A. That's correct.

20 Q. I have two documents here, are they one in the
21 same or --

22 A. No, One -- in this document, the thicker
23 document of the two, we ran through the aptitude
24 profile and asked the computer to match it to the job
25 categories that he had worked in in the past. We asked

1 it to run through **all** jobs with in the drafting
2 industry, all jobs within the truck driving industry.

3 Q. I see.

4 A. ~~We~~ asked ~~it~~, I think, to also, to expand that to
5 include, yeah, the mechanical engineering and
6 transportation services **in** general to which his
7 abilities **might** transfer, okay.

8 MS. ROLLER: Let's mark that
9 document Exhibit E, and the other one we'll mark F.

10 But let's -- why **don't** we mark them first and
11 then we'll get to the explanation after this.

12 (Defendant's Deposition Exhibits E and F
13 **marked** for identification.)

14 Q. Okay. **You've** explained what E is. **How** about F,
15 **what** is that?

16 A. Well, on the basis **of** E, what happened was, when
17 the computer ran through those -- there were **1,241** job
18 titles in those categories and it came out with **zero**
19 matches, so we ran through another program, asking the
20 computer to compare with **all** occupational groups, **and**
21 **that's** what we have here.

22 Q. And were there any **matches**?

23 A. **Yes**, there are **some** matches in this one, in the
24 second one.

25 Q. Now, do you know **if** there are existing jobs in

1 the Cleveland market for those matches?

2 A. Okay. Now, I have to -- I have to explain what a
3 match is --

4 Q. Please do.

5 A. -- in terms of the computer. The match **does** not
6 mean that **the** person can walk into these **jobs**. The
7 match, in a computer, does not take into consideration
8 a person's actual training or skill; they are looking
9 strictly at aptitudes, okay. **For** example, we might
10 test a man who **has** -- and find that he has one of the
11 dexterity. Barbers have one of the dexterity; that
12 doesn't mean we **can** go out and get this **man** -- or that
13 **this** man can go out tomorrow and get a job as a **barber**,
14 he has to **be** trained to be a barber. That's what we
15 have here.

16 Q. I see.

17 A. We have potential **jobs**, and that is different
18 from saying that **this** man can walk into these **jobs**.

19 Q. And how **many matches** did you find in F, what we
20 have **marked** as Exhibit F?

21 A. Let's see. This **doesn't** give us a total **here**.
22 **There** are 72 -- wait a minute. I'm sorry. There are
23 **84** jobs listed here.

24 Now, again, it also has to be known that these
25 jobs are **also** in the computer based upon the Dictionary

1 of Occupational Titles; that doesn't necessarily mean
2 that those **jobs** exist in the Cleveland area.

3 Q. That's why I wanted to **ask** you that. **And based**
4 upon your experience and training, do you believe that
5 there are jobs in those **84 areas** in the Cleveland area?

6 A. Yes, there are some.

7 Q. Have you, at this point, made an examination of
8 whether **or** not -- **or** of how many jobs exist in the
9 Cleveland area that match those **84** titles?

10 A. No, I haven't. But in just looking through
11 **the** -- many of the jobs are of an entry level clerk
12 nature, and **those** jobs pretty much are **available**,
13 Again, **these** take **SOME** specific skills, which
14 **Mr. Neeld**, this particular individual, does not have at
15 this particular time.

16 Q. Let me get to your conclusion because I want to
17 **make** sure I understand it. Are you saying that with
18 his current background, history, medical condition,
19 aptitudes and **skills** that he is currently unemployable?

20 A. **That's** correct.

21 Q. Based upon the medical condition as described to
22 you by **Dr. Marsolais**, specifically the updated report
23 to you of June 12, 1989 and the subsequent telephone
24 call --

25 A. Right.

1 Q. -- clarification given to you by Mr. Shapero from
2 what Dr. Marsolais said, are **you** of the opinion that
3 Mr. Neeld is untrainable for any jobs in the future?

4 A. No. No. I do not conclude that he has no
5 employment potential.

6 Q. Even in his current physical condition?

7 A. I'm sorry. No, If **we** are to take Dr. Marsolais'
8 medical reports indicating that there is an unstable
9 fusion as fact, then I would have to say that **this** man
10 **has** to get medically stable before he's going **to** be
11 able to sustain employment.

12 Q. Well, I'd **ask** that you not -- let's see if we can
13 define **it** in a different way than using the term
14 medically **stable** or medically unstable because that's
15 sort of not **a** very precise statement. I want to **ask**
16 you to refer to what Dr. **Marsolais** says he can and
17 cannot do presently.

18 A. **Okay.**

19 Q. And do you understand presently that his spine
20 hasn't fused? **We know** that, correct?

21 A. **Correct.**

22 Q. And **that** is an assumption that you're going on,
23 correct?

24 A. **Correct. Yes.**

25 Q. And based **upon** that assumption and knowing that

1 he can perform to the levels described in
2 Dr. Marsolais' letter, with the, again, the
3 clarification --

4 A. Yes, I understand.

5 Q. The clarifications from Mr. Shapero, and not
6 using terms medically stable, based upon that
7 information do you have an opinion of whether or not
8 Mr. Neeld is employable today with that medical
9 condition?

10 A. Okay. Mr. Neeld is still not employable today
11 because of other variables.

12 Q. And what are those?

13 A. Those variables are primarily what we know as
14 chronic pain syndrome. That's a primary variable.
15 Another variable is the fact that many of the jobs
16 that, at first glance, it might seem that he could do
17 because of a capacity to sit actually require more
18 prolonged sitting and tolerances. And, thirdly,
19 because, particularly in the field of drafting, the
20 technology has changed since he first, since he left
21 it. Those variables are all going to get into the way
22 of his present employability.

23 Q. Are you saying that if those three factors, the
24 chronic pain syndrome, the fact that some jobs are
25 requiring prolonged, more prolonged sitting than what

it appears Dr. Marsolais says he can tolerate,
2 Mr. Neeld can tolerate, and that the drafting field has
3 changed, if those three variables could be met, and by
4 that I mean satisfied, that those would not be problems
5 for Mr. Neeld with his present medical condition as
6 described by Dr. Marsolais, do you think he could be
7 employed today?

8 MR. SHAPERO: Objection. You can
3 answer.

10 A. Okay, There's some unclarity, as you indicated,
11 in the physical tolerances right now; however, I think
12 that if those factors were addressed, the chronic pain,
13 if the sitting tolerance could be improved somewhat and
14 if he with get a little bit of skill upgrading, then I
15 believe that he would have a fair prognosis to get back
16 into the labor market,

17 Q. And taking it one step further, because of your
18 previous statement regarding instability, that's even
19 if he, his spine did not fuse, in your opinion, is that
20 correct?

21 A. Well, if it does not further deteriorate and
22 cause more unmanagable pain, you know, he would have to
23 assume that it would be -- it's not stable now but that
24 it would be totally stable at the point it is right now
25 and --

1 Q. So your answer was given with the assumption that
2 he doesn't get worse?

3 A. Exactly. I wish I could have said it so simply.

4 Q. Now, let me turn to **the**, a little bit more
5 specifics which I have. Those are just my general
6 questions. Now, did you first conduct a
7 person-to-person interview with Mr. Neeld?

8 A. **Yes**, I did,

9 Q. And **how** long did that take?

10 A. That was approximately two hours.

11 Q. ~~Was~~ anyone else present?

12 A. Yes. **Someone else** in our staff is generally
13 always present in an interview.

14 Q. And who was that in this **case**?

15 A. ~~We~~ rotate among our staff in our tag-teaming. I
16 believe -- you know, I can't, I can't say for sure.

17 Q. You don't recall?

18 A. I can't say for sure, it was back in June.

19 a. All right. But you *do* believe another person
20 from VST was present?

21 A. Yeah.

22 Q. After that interview, what happened, that
23 two-hour interview?

24 A. Well, after that interview we, I believe we
25 completed a few more of the tests that he had not done

1 that day.

2 Q. Well, let me ask you, during that two-hour
3 interview, did he do any tests during those two hours?

4 A. No. The interview ~~is~~, is a counseling, what we
5 call a counseling interview, and it includes the
6 relevant history taking, background, work history, et
7 cetera, we often give time for people to express their
8 feelings, et cetera, and just talk a little bit about
9 who they are and where they're at, and then we will
10 talk about their skills, their education, we will give
11 them some feedback on their testing sometimes if it
12 appears that that's **going** to be useful in terms of
13 planning. In this case I did not give Mr. Meeld
14 feedback on his tests,

15 Q. Well, the tests hadn't been performed **yet**, had
16 they?

17 A. **Yes**, they were performed. The interview took
18 place on the second day.

19 Q. Oh, okay.

20 a. The testing took place on the Eirst day.

21 Q. Okay. **Was** there **any** communication, conversation
22 with Mr. Neeld before any testing began?

23 A. **Yes**. Initial introduction, you **know**, who I was,
24 make him comfortable, offer him a cup of coffee --

25 Q. Oh, okay.

1 A. -- that kind of thing. Introduce him to the
2 people that he was going to be working with that day,
3 to Ms. Durand and who she was, introducing him to
4 others who were also there on that testing day that he
5 would be involved with and a general overview of what
6 was going to happen that day.

7 Q. All right. Now, the testing that was done the
8 first day, first of all, were you present while he was
9 tested?

10 A. I go in and out during the testing day.

11 Q. And when you're in, what are you doing?

12 A. Generally observing behaviors, posturing,

13 Q. You told me before that Mr. Meeld was at VST the
14 first day from eight a.m. to four p.m.

15 A. Correct,

16 Q. Were there any breaks during that period?

17 A. Yes. We give -- many -- as I said, we generally
18 will test several people on one day and we -- probably
19 the majority of those people have back problems,
20 sometimes knee problems and other orthopedic problems,
21 so we're in the habit of giving breaks generally
22 between each of the tests or at approximate half-hour
23 segues,

24 Q. So from what you've said, am I to understand that
25 breaks were given every half-hour?

1 A. Approximately every half-hour, and then we have a
2 half-hour to 40-minute lunch break.

3 Q. And what does a break consist of, these
4 half-hour --

5 A. Every half-hour, during that time they can go to
6 the restroom, they can walk down the hall to unstiffen,
7 whatever. They can go get a cup of coffee, water
8 fountain, They don't leave the building.

9 Q. And how long are these breaks, these half-hour
10 breaks?

11 A. They ~~may~~ be for five minutes.

12 Q. Now, how much of the day between **eight** and four
13 p.m. **were** you with Mr. Neeld once the testing began?

14 A. Once the testing began -- as I said, we have a
15 structure in our office where my office is **across** from
16 the testing room, **so** that I can look up from my desk
17 and observe, you know, what is going on.

18 I ate lunch with Mr. Neeld that day and, as I
19 said, I, you know, go in and out of the testing room,
20 not conversing with him but **observing**, during the day.
21 Usually on that half-hour basis, or **maybe** at least once
22 an hour.

23 Q. But I guess I **would** like to get some sort of idea
24 of how much time you observed him during the testing
25 process.

1 A. During the course of the day. Probably about
2 five minutes each hour over and above then the direct
3 time, Ms. Durand, the testing specialist, is in the
4 room all the time, and she's there the whole time
5 making behavioral observations **that** might be --

6 Q. Was anything done other than testing and that
7 general introduction that you gave him that first
8 morning?

9 A. Nothing else that, other than what I've already
10 **said**, you know, the general introduction, the lunch.

11 Q. And then the next day how many hours, or the
12 second session, which you said was in July, July 7th?

13 A. Right.

14 Q. How many hours was Mr. Neeld at VST that day?

15 A. He was there approximately three hours that day.

16 Q. And what time was **that**, do you know?

17 A. That -- I believe he **came** in around ten and **left**
18 around one.

19 A. Generally our second day interviews are done **also**
20 in the **morning**.

21 Q. So you said from ten to one?

22 A. Yes,

23 Q. And two of the hours on **that** visit were spent on
24 a one-to-one interview?

25 A. That's correct,

1 Q. With someone else in the room --

2 A. **Yes.**

3 Q. -- that you don't recall who it was. Okay. And
4 then what would have been done the other hour that day?

5 A. **Picking** up on the testing that wasn't completed
6 on that first day.

7 Q. The report, as you've indicated it's really one
8 report, but we have it marked A and B. Did you write
9 that entire report?

10 A. **Yes**, I did.

11 Q. Did **you have** anyone else help you write it?

12 A. **No.**

13 Q. And when was the **report** written?

14 A. On August 11th.

15 a. Did **you** choose the norm groups for the tests?

16 A. **Yes.** Some tests have only a single manner of
17 scoring, a single comparison of the intelligence test.
18 The Revised **Beta Exam**, for example, is compared with
19 **the** age group; reading and **math tests** are compared
20 against grade **levels, okay.** Other tests then, yes, you
21 do select a, a norm group and, yes, I did the selection
22 of, in those cases where norm groups need to be
23 selected,

24 Q. I'm going to ask you to look at the tests and
25 tell me which ones **you** selected the norm groups for,

1 and I'm looking at what we have marked as Exhibit 5,
2 the **last** two pages, Give us the various tests you had
3 conducted.

4 A. Okay. None on the first page. Those are all
5 standard norm groups and there's standard ways **of**
6 comparing those, On the second page, the spatial and
7 form perception, **which** is the Minnesota Paper Form
8 Board, the clerical perception, which is the Minnesota
9 Clerical Test, and mechanical knowledge, which is the
10 Bennett Mechanical Test.

11 Q. And you're saying **all** -- I'm sorry, Are **there**
12 any others?

13 A. No, that's **all**.

14 Q. And so you're saying for **all** the others the norm
15 groups are standardized?

16 A. Correct, There are, there's a particular group
17 that that test was normed on or being compared against.

18 Q. And **just** so that I make sure that I'm
19 understanding what you're saying is that the test
20 **itself** instructs the examiner what the norm group is?

21 A. That's correct.

22 Q. There is no process of **selection** to be **made** by
23 the test taker?

24 A. That's correct. By the test scorer.

25 Q. Oh, scorer. All right, The scoring, you told me

1 earlier, was done by Glenna Durand, correct?

2 A. Yes.

3 Q. Now, did she choose these norm groups on those
4 three tests?

5 A. On what three tests?

6 Q. The three that you told me that the norm groups
7 were selected and not standardized, spatial and --

8 a. No, I Choose --

9 Q. She scored?

10 A. She scored and I indicated what norm groups to
21 compare then to,

12 Q. And just so that I'm clear on one other thing or
13 testing, you've indicated on each of those tests the
14 source of the test, Gates-MacGinitie Reading Test, the
15 comprehensive ability battery, these -- just so that I
16 understand, there is a manufacturer of each of these
17 tests, correct?

18 A. That's correct, a publisher.

19 Q. Publisher. And that's the source that you
20 indicated?

21 A. That's correct.

22 Q. And it would be the publishers in all the tests,
23 other: than the three that you mentioned, who give the
24 norm group?

25 A. That's correct.

1 Q. During the testing of David Neeld that was
2 performed primarily on the first day and, you said, a
3 little bit on the second time you met with him, was an
4 attempt made by the personnel of VST to determine
5 whether there was any exaggeration of his pain or back
6 condition?

7 MR. SHAPERO: Objection,

8 A. I'm not quite sure how to answer that. Our --
9 the best that I can respond, you know, to you is that
10 one of the reasons that we have people at our office
11 for such a length of time and that we have several
12 observers of that person, myself and Glenna Durand in
13 this case, so that obvious inconsistencies and things
14 are generally picked up. Someone can usually fake
15 something for an hour or two, but over, you know, an
16 eight-hour day, patterns usually are going to show up,
17 so it's a, it's an observational procedure.

18 Q. All right, Did you observe any pain exhibited by
19 David Neeld while he was in your presence?

20 A. He had many pain behaviors.

21 Q. And what were they?

22 A. He was constantly squirming around on this day in
23 his chair to the point where we gave him several
24 different types of lumbar supports and seating to
25 attempt to see if any of those would make him more

comfortable. For the most part **it**, none of them substantially changed his comfort, his comfort level. Some **tests** he took standing up and he, when he couldn't sit anymore.

Q. When you say "squirming," what do you mean, **what** did he do?

A. Fidgeting and moving around, lifting, **you** know, maybe lifting himself, turning his trunk in the chair.

Q. **So** movement, basically?

A. Movement.

Q. Anything other than that?

A. He **did** not verbalize -- he wasn't a -- I would not describe him as a complainer. He did not verbalize pain; however, he looked worn out,

Q. Tired?

A. Tired, fatigued. Particularly by the end of the day. Facial grimacing sometimes during the day.

Q. Describe the grimacing for me?

A. Well, you know, a, a tightening of the brow, the non-verbal sighing.

Q. And you attributed that to pain?

A. Generally **those**, the facial expresses were accompanied **with** the, **with** the fidgeting movements, which together are real typical of pain behaviors.

Q. How **about** the sighing?

1 A. Sighing can be anything. It can just be
2 boredom, it can be tiredness, it can be pain,

3 Q. Did you attribute that to pain in David Neeld's
4 case?

5 A. No, I don't think the -- the sighing wasn't a big
6 part and parcel of the overall impression that he was
7 having a difficult time with comfort, you know, with
8 getting comfortable.

9 Q. What was it that led you to believe that his
10 movement in the chair was associated with his back
11 condition?

12 A. That is generally why a person moves around,
13 because they're uncomfortable, unless they have some
14 kind of a motor/neuro, neuro disease, disorder.

15 Q. Anything else regarding your observations of
16 Mr. Neeld's pain or back condition as you saw him on
17 the two testing dates?

18 A. If I remember correctly, the only other thing
19 that I recall is that his gait was, was somewhat
20 awkward. I believe he walked with, I think, I believe
21 it was his left foot was rotated out for balance.

22 Q. Do you know how long he's walked that way?

23 A. Well, I questioned him about that, and he said
24 that in his opinion that was part of the -- he had left
25 hip pain from, at the site of, the donor site where the

1 fusion **was** taken out of and he **was** accomodating, the
2 body was accomodating for that, that pain.

3 **a.** Throughout your report you indicated that you, **am**
4 I correct, that you felt that pain was playing a part
5 in Mr. Neeld's performance and that **also** the drugs he
6 may **have** been taking that day had an effect on **his**
7 performances, is that a fair --

8 A. My -- well, yeah,

9 Q. -- conclusion?

10 A. **The** conclusion was -- or the notation is **that** a
11 decreased performance can result **from** distractions to
12 **pain**, and, also, if an individual is taking medication,
13 oftentimes then cognitive **powers** and then motor skills
14 are going to be decreased by that, by the side effects
15 of that nedication.

16 Q. And did you find that **to** be playing a part in
17 Mr. Neeld's performance?

18 A. **We** felt that that **was** a part in **his** performance,
19 yes.

20 Q. Now, on the days that you tested him, **what** drugs
21 were *he* taking?

22 A. I'm sorry, I don't have it written down.

23 Q. Are you aware then of what drugs David Neeld was
24 taking at **the** time he **was** being tested?

25 A. No, I'm not.

1 Q. Let me make sure I'm clear. At the time he was
2 being tested and the basis upon which you wrote your
3 report were you aware of the type of drugs he was
4 taking?

5 A. I believe he told me. I don't have it written
6 down. See, that's not the focus of my, you know, of
7 what I'm doing, to delve too much into that kind of
8 stuff, but I note -- okay. I know somewhere I had
9 written it down. I know that he had told me that he
10 tried to stay away from a lot of things because of his
11 bleeding, because of a bleeding ulcer which he had,
12 that he was taking Extra Strength Tylenol as his
13 anti-pain medication. He was also taking an
14 anti-inflammatory called Tenormin.

15 Q. Anything else?

16 A. He indicated Vistaril and Sinequan.

17 Q. Did you know how much of each of these
18 medications he was taking?

19 A. He said he was taking, that he had taken two
20 Extra Strength Tylenol.

21 Q. Anything else?

22 A. I have written down Vistaril, three, and
23 Sinequan, two, I assume I meant by that that he took
24 that three times a day and Sinequan two times a day,
25 but I --

1 Q. Well, let me ask you, what was your understanding
2 as to the amount of medication that Mr. Neeld had taken
3 that day that he was tested, which was June 28th, 1989?

4 A. My understanding was that he had taken two Extra
5 Strength Tylenol that morning.

6 Q. Anything else?

7 A. And that was all that I, that I know of.

8 Q. All right, And how about the second date, July
9 7th, were you aware of any medication that he had taken
10 that day?

11 A. No, I don't believe I questioned him as to
12 whether he had taken anything that day.

13 Q. What tests did he complete that day?

14 A. On --

15 Q. The second date, July 7th.

16 A. The second day he did the motor testing, Purdue
17 Pegboard.

18 Q. Anything else?

19 A. And I believe the mechanical test.

20 Q. Anything else that he took that day?

21 A. I don't believe so. I think the others were all
22 taken on the first day.

23 Q. Did you know how long he had been taking the
24 medications that he mentioned to you, this Tenormin,
25 Vistaril, Sinequan and Tylenol, how long as in months,

1 years that he had been taking that type of medication?

2 A. No, I can only, I would only be making an
3 assumption right now.

4 Q. And when he told you that he takes Tylenol,
5 Tenormin, Vistaril and Sinequan, he just told you that
6 those were medications he, what, that he was taking
7 generally or --

8 A. Well -- yeah. This -- see, one thing I'd like to
9 clarify, all of that is in the medical records, and
10 that's **not** the focus of what I do in an interview,
11 okay. My focus is really on **the** vocational aspects,
12 and I only briefly kind of, you know, in an overview
13 get what he is, you know, what **he's** taking, because
14 that's, is all documented in other medical records
15 someplace. So I really don't take a lot of time to
16 focus on that.

17 Q. I'm going to refer you then to what **we've** marked
18 as Exhibit A of your report, **it** would be **the** third
19 page, the **second** to **last** paragraph, the last full
20 paragraph on **the** page, you see the paragraph **starts**,
21 "**Further** vocational testing*'? In that you say, a
22 little bit further down in that paragraph, "Attention
23 and concentration difficulties which contribute to poor
24 test and work performance are also often found where
25 there is the **problem** of living with chronic pain and of

1 frequent medication."

2 A. Right.

3 Q. You have stated in this report, have you not, not
4 only at that location but you've concluded otherwise,
5 that David Meeld performed poorly on **some** of these
6 **tests**, such as the cognitive abilities test, because of
7 drug medication, correct?

8 A. No, I said that drug medication is one of the
9 factors that contribute, can contribute to decreased
10 performance. I did not attribute the whole thing to
11 it, I'm just saying that medications can and that the
12 **regular** use of Extra Strength Tylenol is, you know, is
13 a regular use, is a frequent use of medication. Most
14 people don't get up in the morning and take two
15 Tylenols.

16 Q. Then let me ask you, based upon your knowledge of
17 this case, is it your opinion that the amount of drugs
18 that Mr. Neeld **has** taken for his back condition, docs
19 that affect his aptitude today?

20 MR. SHAPEAO: Objection.

21 A. It --

22 Q. Period.

23 A. That would have to specifically be questioned to
24 a medical practioner. My experience, however, in
25 working with people day by day is that when somebody is

1 taking a lot of medication, we see decreased
2 concentration and focus powers.

3 Q. I'm asking you, is it your opinion that, in David
4 Neeld's case, that his aptitudes to rejoin the work
5 force have been decreased because of drug medication?

6 A. I think that would be a minor, a minor influence.

7 Q. Okay. But it does exist; in this case?

8 A. Again, I think you would have to ask the medical
9 practitioner, but I would think that there is -- yeah,
10 in my opinion, there is some influence by that.

11 Q. But it's minor, in your opinion?

12 A. Yes.

13 Q. Are you aware of any possible learning
14 disabilities that David Meeld might have?

15 A. No, I'm not.

16 Q. Did you test for that?

17 A. No, we don't test, we don't have a specific test
18 for learning disabilities,

19 Q. Would that be a factor in any re-training that he
20 might need for rejoining the work force?

23. A. It could be. A learning disability is an
22 oft-used and ill-defined term. Generally it's thrown
23 out when you see a very big difference between an
24 individual's IQ level and performances in perceptual
25 measures or reading deficiencies,

1 Q. Let me go back to the drug question again. The
2 effect **it may** or may not be having on him, are you
3 saying that **if** he didn't take any medication, that you
4 would expect to find a change in his testing?

5 MR. SHAPERO: Objection.

6 A. I don't believe that the major cause of the
7 decreases in **his** performance that we're seeing **here** are
8 because of medication, **I** believe **they're** because of
9 other factors.

10 Q. Do you know how **much** time during the day **was**,
11 that first **day**, that he **actually** sat, as opposed to
12 standing?

13 A. Well, he sat, and, as you say, at -- sat with the
14 moving, the fidgeting and the moving about for 20- to
15 30-minute **intervals**.

16 Q. And that was --

17 A. Sometimes less, That **was** around the **maximum**.
18 Maybe the 30 minutes was the maximum that he sat at any
19 one time without a **break**.

20 Q. Then there would *be* a break for about 5 minutes
21 and then he would sit another 20 to 30 minutes without
22 a **break**?

23 A. Uh-huh. Right.

24 a. And that pattern **was** throughout the day except
25 during the half-hour to 40-minute lunch **break**?

I A. Correct. But there were times, as I said, that
2 were not on a pattern, where he **would** stand and take
3 the test.

4 Q. What test did he stand taking?

5 A. He took parts -- I believe he took -- I believe
6 they're **these** latter, The clerical perception test **was**
7 one that he **stood** up, **and** for part of the sub-test of
8 the verbal creativity test he was standing,

9 Q. This is your memory, you don't have that written
10 down?

11 A. **Yeah**, this is just from memory.

12 Q. I'm sorry, the second test that he stood up for
13 part of?

14 A. Was the verbal creativity battery, There are
15 four sub-tests to that,

16 Q. Did he complete each test?

17 A. **Some tests** are not designed for completion, Some
18 tests are timed tests and on the standards that we get
19 are a combination of the amount that has been finished
20 compared with the accuracy of that, so the expectation
21 is not **always** that the **person's** going to complete a
22 test.

23 Q. What tests, **for example**, were there where the
24 **score** would be based upon the amount completed, the
25 number completed?

1 A. The Minnesota Paper Form Board is one, the
2 clerical perception test, which is the Minnesota
3 Clerical Test; tests of motor skill, Purdue Pegboard,
4 that's based on the amount that is done.

5 Q. Any others?

6 A. The verbal creativity test is a free
7 idea-generation test that the person produces as many
8 ideas, adjectives, et cetera, that they can, okay. So
9 that is an open ended kind of a test.

10 Q. That is not timed?

11 A. Yes, it's timed, but the score is derived from a
12 combination of how many items are done or are produced
13 as compared with the accuracy.

14 Q. So those are not like the other tests that you've
15 just listed?

16 A. Right, Other tests have, are given sufficient
17 time where the person should complete within those
18 tests.

19 Q. But of the four tests that you just indicated,
20 the Minnesota Paper Form Board, the clerical perception
21 test, the motor skill, the Purdue Pegboard, what I was
22 asking for are tests that your scores depend upon how
23 many you finish during a specific period of time, and
24 those are four tests that they scored that does depend
25 on that?

A. Uh-huh.

Q. On those tests, did you have him complete the test beyond the time permitted, did you let him just finish the test?

A. No, we did not.

Q. Did you do that on any test?

A. No, we did not.

a. What evidence do you have -- strike that.

Who commonly uses CADS, computerized assessment design systems?

A. Well, the field of drafting across all industries where draftsmen are, from manufacturing to the printing industry to construction industry, all of them, machine tooling, all of them use CAD today, all of them are re-tooling to include CAD,

Q. Let me ask you, how did you define or categorize the type of work that Dave Meeld did before he was a van driver? How would you characterize that? What category of worker was he, in your opinion?

A. The way he described his position was defined as that of a tool drafter.

Q. Now, going back to the CAD question, is it your statement that CADS are used by all workers in the field of drafting and below to include even a tool drafter, that a tool drafter today uses CADS?

1 A. There are many companies, yes, that the tool
2 drafters are using --

3 Q. What percentage of the market of tool drafters do
4 you believe uses a CAD today?

5 A. Well, I can't give you the percentage today. I
6 can tell you that Ohio Bureau of Employment statistics
7 in the Occupational Outlook Handbook indicate that by
8 the year, I believe it is, 1990, I believe I have that
9 in my report, that almost all drafting places are
10 going, or all drafters are going to need to know how to
11 do CAD, that there will be, that they will be, about 90
12 percent would be converted by 1990.

13 Q. Do you have any firsthand knowledge of that or is
14 it simply from looking at that Ohio Bureau of
15 Employment statistics?

16 A. Both.

17 Q. What is your firsthand knowledge?

18 A. We work with many manufacturers, as I say, Ohio
19 Tool -- or, I mean, Ohio Machinery, Modern Tool & Die.
20 We work with many companies where they have these kinds
21 of departments and we're working with their injured
22 workers.

23 Q. Have you personally worked with companies where
24 CADs are used?

25 A. Yes. I have not personally put a person back to

1 work as a drafter, There has been one instance in our
2 office **where** that has happened, and on a rehabilitation
3 plan we did buy the individual a CAD, CAD equipment and
4 trained him in that so that he could be employed at
5 Caterpillar Tractor.

6 Q. You said that was one client in your office,
7 correct?

8 A. Right.

9 Q. But that you personally have not put a person
10 **back to work** as a drafter?

11 A. That's **correct**.

12 Q. But, **again**, just so **that** I make sure that I'm
13 understanding, are you saying today that in the
14 Cleveland **asea people** who are categorized as tool
15 drafters as of **today**, 1989, a requirement of that
16 position generally in the Cleveland area is the use and
17 knowledge of CADS?

18 A. Well, let me clarify as *best* I can, okay? A
19 person can get into the **field** today at an entry level
20 still **without** CAD, okay. He's going to, he's going to
21 make entry-level wage. The employer then, as they
22 re-tool, is going to train him in-house, okay. That's
23 what has happened generally. People **who** are working
24 now as drafters, as their companies are moving toward
25 CAD, they are sending those people over to Tri-C and

1 the various places, the technology center at Tri-C, or
2 they bring **people** in to train their drafters in **CAD**,
3 Now someone who already knows **CAD**, okay, is going to be
4 able to change employment to a new employer at a higher
5 salary level if he already knows **CAD**.

6 **It's** kind of the equivalent of word processing in
7 office practices. A person can still, a girl or a guy
8 looking for clerical-type work may be **able** to get a **job**
9 today without the knowledge of **word** processing if that
10 person is, if the company is willing to train them, but
11 the person with **word** processing is a lot more
12 marketable and at a higher **wage**.

13 Q. You are not saying that David Meeld is incapable
14 of being re-trained on a **CAD**, are you?

15 A. No. I would think that with his background **and**
16 once his cognitive powers are freed **up** of all **his** focus
17 on pain, that with his background in the drafting
18 there, you know, he would be a candidate to train in
19 **CAD**.

20 Q. **His** cognitive skills, in other words, his mental
21 ability, as such, you believe that he is capable of
22 learning to use a **CAD**, correct?

23 A. If **we** look at his work history, okay, and that is
24 a common practice in determining transferable skills,
25 is the assumption that if one has been doing **a** certain

1 job for the amount of years that it takes to do a good
2 job in that job, that that person has those abilities
3 to do that job, okay. So we have to assume that at
4 least at one time Mr. Neeld had the cognitive ability
5 to function as a drafter.

6 Q. All right. Let --

7 A. So the assumption then is that if appropriate
8 interventions occurred, that that knowledge is still,
9 is still buried there and could be built upon.

10 Q. You're talking about his native abilities, I
11 think that's a term that you used in your report,
12 correct?

13 A. correct,

14 Q. Is David Neeld currently functioning at his,
15 quote, native abilities?

16 A. No, I would say that he's not.

17 Q. And why is that, in your opinion?

18 a. Well, in my opinion it's highly probable that
19 that is because of the, primarily, the chronic pain
20 syndrome.

21 Q. Would you define that for me, chronic pain
22 syndrome?

23 A. Chronic pain syndrome is a condition which occurs
24 in many, many instances where there has been a
25 disabling medical impairment, an unemployment,

1 particularly long-term unemployment, and what happens
2 is a combination of factors that cause an emotional
3 inability to adjust to the disability and the life
4 changes that that disability imposes. And in people
5 with chronic pain, we see distraction to pain, where
6 the person cannot differentiate discomfort from gain,
7 we see inattention, we see cognitive decreases, motor
8 decreases. It's a combination of medical factors and
9 emotional factors that are secondary to those body and
10 life changes that happen and a person lives with over:
11 time.

12 Q. Okay. Did you see inattention on behalf of David
13 Need?

14 A. Yes.

15 Q. How did that demonstrate itself?

16 A. Subjectively it demonstrates itself in the
17 lowered test scores, okay. It's particularly where you
18 have timed measures. Attention is very, very
19 important, you've got to attend to that task, you've
20 got to do it quickly, okay, and we get lowered scores
21 on timed measures where we are, often see concentration
22 and attention factors.

23 Q. If I can ask you, those timed measures, were
24 those those Tour tests that we pointed out earlier
25 where the score depended upon how much you were able to

1 finish in a timed period?

2 A, Yes, Correct, Also there, we have a specific
3 sub-test, okay, that measures rote associative memory,
4 that was included in his battery, and he scored at the
5 6th percentile on that, which means that he did better
6 than six of a hundred -- he only would have done better
7 than six of a hundred individuals in the norm group,
8 which in this case was male high school seniors.

9 9. Okay. Which test was that you are referring to,
10 just so I can see it?

11 A. It's on the first page and it's the third test
12 down, rote associative memory. So a lot of distraction
13 was shown there,

14 Q. You've stated in your report that a lack of
15 practice and experience reduced his cognitive and
16 perceptual skills, correct?

17 a. Correct. As part of what happens in the, this
18 phenomena of chronic pain syndrome, you have a person
19 who's out of work, he's not being intellectually
20 stimulated, and as people are not being intellectually
21 stimulated, okay, their minds get real stagnant: that's
22 part of this whole syndrome of chronic pain that is
23 very common.

24 Q. You would certainly agree that depends on the
25 individual, though?

1 A. That depends on **the** individual, **but** not every
2 individual has chronic, **develops** chronic pain syndrome,
3 okay.

4 Q. Okay. Every person with David Neeld's condition
5 may not develop chronic pain syndrome, correct?

6 A, That's correct.

7 Q. And every person with chronic pain syndrome may
8 not sit back **and** let their, not use their **brain** to be
9 thinking through things, is --

10 A. **Well**, that would happen at various levels, but
11 part and parcel of chronic pain syndrome is that
12 **inability** to **apply** consistently **the cognitive powers**.
13 The focus becomes so much on pain that the person just
14 sometimes **loses** the **ability** to **problem** solve and think
15 well.

16 Q. What tests demonstrate that to you, a reduction
17 in cognitive and perceptual skills?

18 a. Well, when we compare expectations, okay, of a
19 man who was educated, trained and worked as a drafter,
20 as a cool designer, **tool** drafter, okay, his **scores**
21 **don't** match that, **we** see **lots** of deficiencies.

22 a. Examples is what: I'm looking for.

23 A. His Revised Beta Examination, the general
24 cognitive abilities **was** in the 25th percentile in,
25 compared with similar-aged adults; that's the first

1 test. And while **that's** within the average range, **the**
2 profile **of** a tool drafter is an individual **who** has
3 above-average intelligence,

4 Q. Can you hold on one for one minute? Who is **the**
5 Revised **Beta** Exam designed for?

6 A. **This** is designed **for** adults, all adults.

7 Q. Well, what kind of adults?

8 A. **Any** adult.

9 Q. And what is **its** purpose?

10 A. To measure general intellectual ability, general
11 intelligence.

12 Q. **Where** would that kind of ranking, 25th, put
13 Mr. Neeld in **the** range of intelligence?

14 A. It's within the average range, It's **below**
15 average.

16 Q. **The** average range is the 25th percentile?

17 A, Well, in **this** case, the **way** this, this test is
18 done, that's why we show **that the** result is within the
19 average range.

20 Q. But on the low end of **the** average range, I take
21 it?

22 A. On the **low** end of the average range, correct.

23 Q. The comparison for ntany of **these** tests,
24 especially on the first **page** of what we've marked as
25 Exhibit B, or the second to last page of **Exhibit B**, is

1 male high school seniors?

2 A. Uh-huh.

3 Q. Are those current **male** high school seniors?

4 A. Each -- well, this -- the batteries are
5 standardized age of **the** publishers of the test in the
6 development of that test, tests are tests, as **it** were,
7 and **it results** in standardization. These
8 standardizations are done over years and years, so that
9 **norms** are published every several years because **it**
10 takes several years to develop and statistically go
11 through and validate those. So generally they are
12 updated, and some tests update every ten years, some
13 tests update every **two** or three years.

14 This particular battery, the comprehensive
15 ability **battery**, has norms which **I believe** were
16 published within the last three years.

17 Q. All right. There's nothing to prevent **you** from
18 taking Mr. Neeld's scare on any one of these tests
19 where the norms are standardized and comparing him with
20 other normative groups, **is** there? I mean, you could
21 have done that, could you?

22 MR. SHAPERO: Objection.

23 A. If normative groups **exist**. There are times, **I**
24 mean, **when** you don't have a choice.

25 Q. Such as?

1 A. Normative groups.

2 a. Could you have done that with any of the tests on
3 the second to last page of Exhibit B?

4 A. Compared them with other groups?

5 Q. Yes, with 46 year-old males.

6 A. Well, no, The only -- like on the comprehensive
7 ability battery, the only other group I could have
8 compared him to would have been high school seniors who
9 were female, but on --

10 Q. Well, let me ask you this. How does the
11 comparison of Mr. Neeld with high school seniors, how
12 did that reflect his peer group?

13 A. Well, in this particular case, this battery was
14 normed, okay, on high school seniors and --

15 Q. I don't know if we know which one you're
16 referring to. I'm sorry,

17 A. The comprehensive ability battery, all of the
18 sub-tests on the comprehensive ability battery are
19 normed on high school seniors, okay. That is the only
20 norm group that there, that they use, okay. Those high
21 school seniors are going to be competing workers,
22 they're going to graduate, they're going to go out to
23 the job market and they're going to compete with
24 everybody else, okay. So everybody, so that they have,
25 they do have their place in comparison.

1 Q. Well, would you expect a high school senior who
2 graduated in the time Mr. Neeld graduated to have the
3 same scores as a current male high school senior on any
4 one of **these** tests, the comprehensive ability battery,
5 the Gates-MacGinitie Reading **Test**?

6 A. There's **always** going to be **some** fluctuations, you
7 know, but that's why we give an entire battery, okay.
8 That's why we don't just give a single test and make a
9 judgment about a person on the **basis** of a single test.
10 We give an overview, we look for consistencies and
11 inconsistencies, so that we can find patterns that can
12 overcome **any** incidentals like that where a norm group
13 might not match the exact profile of the **person you're**
14 giving them to. After **all**, it **would** be, it **would** be
15 utterly impossible **for** a **test** to be developed on every
16 single kind of socioeconomic and age person that there
17 is. It just doesn't **exist** in reality,

18 Q. Let **me** ask you, on the applied numeric skill test
19 and **the** reading **ability** test you have a --

20 MR. SHAPERO: What page **are** you
21 on?

22 MS. ROLLER: Right there.

23 MR. SHAPERO: Right here.

24 Q. The reading ability **test** and the applied numeric
25 skill test, you have grade levels **for** **numeric** ability

1 at 6.9 and the reading ability at 6.4. Let's take the
2 numeric. How does a 6.9 grade level compare with a 46
3 year old in 1989?

4 A. Well, all this is saying, okay, is that
5 Mr. Neeld's ability to figure, to add, subtract,
6 multiply and divide, understand percentiles, understand
7 decimals is comparable to what is learned and taught at
8 the 6th grade, during the 6th grade. That's
9 functionally where he is.

10 Q. This is my question. Bow does that compare with
11 other 46 year olds in the United States?

12 A. That, I don't know. But for the, for the purpose
13 of functional ability it's more -- what is important
14 for decisions about work is how is he functioning, you
15 know, can he add, subtract, multiply and divide, can he
16 do percentiles; not can he do it, a person, somebody
17 his age, but can he do it.

18 Q. What was your reason for not giving a percentile
19 on those two tests, the reading ability and the applied
20 numeric skill?

21 A. They don't have percentiles.

22 Q. "They" meaning whom?

23 A. The test publisher.

24 Q. Is it --

25 Am We don't use the, you know, that -- what we are

1 looking for here is functional ability, okay. I cannot
2 place a man in -- if a person wants to be a bookkeeper,
3 okay, and I want to see if he's got the mathematic
4 basis to be a bookkeeper, okay, a percentile score
5 doesn't mean anything to me; what means something to me
6 is what grade level work he's doing. The percentile is
7 not relevant in that kind of a function,

8 Q. So you don't know how he does in relation to
9 other 46 year olds in his reading and math ability?

10 A. Right.

11 Q. In your report you indicated that Mr. Neeld is,
12 that he is not a candidate for sales and managerial
13 training. Why do you say that?

14 A. Well, first of all, he does not have the
15 combination of verbal skills nor inductive reasoning
16 ability on the testing to do that.

17 Q. Do you think he has the personality for that?

18 A. His word fluency was at the first percentile, he
19 doesn't have the verbal ability to do sales, and he
20 certainly doesn't have any interest in doing that.

21 Q. Okay.

22 A. And presents himself as a, as kind of a withdrawn
23 individual who really doesn't fit the profile.

24 Q. And he didn't express any interest in that type
25 of work?

1 A. No, he did not.

2 Q. All right. I'd like you to look at Exhibit B,
3 page 3, the third paragraph down. It says, "Mr. Neefd
4 at this time is not going to manage any occupation
5 where sustained concentration is needed, such as
6 drafting, money exchanges, recording transactions,
7 working to close-prescribed tolerance, such as drafting
8 or detail." First of all, did you test for those
9 occupations?

10 A. We did give Mr. Meeld a drafting, a drafting work
11 sample, okay, which was a blueprint reading work
12 sample, and he did not do well on that. A man who has
13 actual experience in that should not make any errors.

14 Q. Was there a certain time fox him to perform that
15 test?

16 A. No, that was untimed. It's an untirned test and
17 he made three errors, The maximum allowance that shows
18 aptitude for drafting is two errors.

19 Q. To what do you attribute his poor score on the
20 blueprint reading test?

21 a. I think attention rather than inability. I think
22 the concentration and the attention factors. But --
23 well, let me clarify that. The fact is, also, that
24 he's been away from that field for five years and there
25 may be some loss of, you know, memory for the field.

1 Q. Did you test for that factor, the fact that
2 you're away from doing something, that that results in
3 a decrease in ones ability to do it? Did you test for
4 that specific factor?

5 A. You can't test for that. There's no test for
6 that kind of a factor, That's just an, that's just a
7 subjective assumption, you know, of perhaps common
8 sense, that if **someone** is not performing a certain
9 occupation or task or hobby or whatever **it** is that they
10 do, if they leave that for a long period of time,
11 there's going to be some loss of, there's going to be
12 some re-learning that's necessary, you're not going to
13 remember every detail.

14 Q. Well, didn't you base any of these tests, the --
15 you **made** a conclusion, first of all, that because he's
16 been away from the job market and away from working,
17 that his scoring on these, on **some** of these various
18 tests has been reduced, correct?

19 A. Correct. **That's** part of it as well.

20 Q. What tests did you refer to?

21 A. The **overall battery**, that can affect an overall
22 battery. The fact that his, the fact that this man
23 has -- you see, we **can't** isolate **these** factors. This
24 is a human being, he functions as one unit, **okay**, and
25 all of the factors that impinge upon his life come

1 together in this one human being, and we don't have a
2 person who's got a certain little segment of him over
3 **here**, over here and over here. What we've got is an
4 individual who has a combination of factors, he has
5 this focus on pain, he doesn't manage his pain well,
6 which is part of a disability adjustment problem.

7 Q. How do you know that?

8 A. We know that by the behaviors.

9 Q. What behaviors?

10 a. That we're seeing **here**.

11 a. The fidgeting?

12 A. Yes. By the fidgeting, the depressed test
13 scores. You know, the **whole** picture is **of** this
14 individual who is having these problems, Talking to
15 him, okay, just in interviewing with him, you can see
16 his suffering, you know. **And** this is **all** part of this
17 chronic pain syndrome. Now, with that, okay, you've
18 got someone who's been removed from the job market so
19 that his mind isn't being challenged, he's not sitting
20 at home working crossword puzzles to keep his mind, you
21 know, sharp, he's not reading philosophy books to
22 challenge his mind; he's sitting at **home** absorbed in
23 **his** disability and in his pain.

24 Q. All right,

25 MR. SHAPERO: Were you finished?

1 THE WITNESS: Yes.

2 Q. Yeah, I think so, And let me ask some more
3 specific questions. Those are your conclusion for his
4 poor performance, correct, that it's the chronic pain
5 syndrome that is causing poor performance from what you
6 believe should be his native ability to complete these
7 tasks?

8 MR. SHAPERO: Okay. Objection.

9 A. No one has the power to say absolutely, okay,
10 that this is it, Who knows, you know? I mean, a man
11 can have a stroke that nobody knows about and he's got
12 some organic thing going on. What we do know, however,
13 is that we know, and through experience as
14 rehabilitation people, that this is a very common
15 syndrome that we see and that with pain management
16 interventions, okay, we often see raises in the
17 functioning, okay, But there's no way that one can
18 give an absolute test. Now, you could do -- you could
19 get psychoneurological testing for someone to see if
20 there's organic brain damage, you know.

21 Q. Number one, you don't suspect that here,
22 though --

23 A. No, I don't.

24 Q. -- that there's any neurological brain damage?

25 A, No.

1 Q. Number **two**, your conclusion that he suffers from
2 chronic pain syndrome is based upon the test results,
3 is that correct?

4 A. The test results and the whole medical picture,
5 and my whole experience in working with **people** and
6 knowing the patterns that happen with people through
7 unemployment and disability. It's the whole package,
8 not just the test **scores** alone.

9 Q. Bo the test scores, are they consistent with
10 someone who has a chronic pain syndrome?

11 A, Yes, they are,

12 Q. **Going** back to that paragraph on page 3 of what's
13 been marked Exhibit B, did you **test** for money
14 exchanges, that type **of** occupation, or recording
15 transactions? **Does** any **of** your testing **reflect** whether
16 or not he would be a good candidate for **those** type of
17 occupations?

18 A. If we're considering **someone** ~~for~~ those **type** of
19 occupations, we **will** utilize **the mathematic** score, the
20 **arithmetic** test, the grade **level** and the word
21 perception scores which relate to the **ability to do**
22 record keeping detail.

23 Q. And you believe **his** performance on those tests do
24 not indicate that he would be a good candidate for
25 those type of jobs?

1 A. Certainly not at this time.

2 Q. You don't feel that the **back** injury in any way
3 affected his **brain**, do you?

4 A. Directly?

5 Q. Yeah.

6 A. Well --

7 MR. SHAPERO: Before you answer,
8 I just want to voice an objection. Go ahead and
9 answer.

10 A. I wouldn't know how to answer that question,

11 Q. Well, do you have an **opinion** on that subject?

12 A. I mean, a medical affect, the way that back
13 problems **affect** brains is through chronic pain
14 syndrome.

15 Q. Do you have an **opinion**? You -- what, do you have
16 an **opinion** on that **subject**?

17 A. I would rather not give an **opinion**. I'm not sure
18 of: an answer, what: you're looking for there.

19 Q. Have you ever worked with the mentally
20 handicapped?

21 A. Yes, I have.

22 a. What did that consist of?

23 A. It's similar types of services, case management,

24 Q. Where were you working when you worked with the
25 mentally handicapped?

1 A. Well, we have -- I worked with many individuals
2 who were mentally handicapped when I was working at
3 Goodwill Industries, and from time to time at VST we
4 have workers who also have mental handicaps.

5 Q. And where would they fall on these **tests**? Where
6 would you expect" from your experience, to have a
7 mentally handicapped person fall in these tests?

8 MR. SHAPERO: Objection.

9 A, If that's an individual -- I mean, it's all going
10 to be individual.

11 a. Wait a minute. I'm asking whether or not --
12 first of all, have you ever administered any of **these**
13 **tests** that you **administered** to David Neefd to a
14 mentally handicapped person?

15 A, Can I **ask** a question? Can we define what your
16 concept is of **mentally** handicapped?

17 Q. **Someone** with a mental disability, **any** type of
18 problem affecting ones cognitive abilities because of a
19 brain -- or mentally handicapped, not specifically
20 emotional. But mentally retarded is an example,
21 someone who's been injured and has had **a** brain injury,
22 that type of individual, someone who has a mental
23 disability, **a** mental handicap.

24 A. Well, I've **worked** with several people who have
25 had strokes, for **example**.

1 Q. Okay.

2 A. *See*, a stroke will affect the verbal abilities if
3 it's in one area, it will affect the psychomotor in
4 another, so depending on what's going on, you've got
5 different circumstances,

6 Q. **Let's** maybe get a category, **The** mentally
7 retarded, have you ever worked with mentally retarded?

8 MR. SHAPERO: I'm going to
9 object.

10 MS. ROLLER: You can object.

11 MR. SHAFERO: I'm going to object
12 to how each of you now are going to define mental
13 retardation.

14 Q. All right, Down's syndrome patients, **have** you
15 ever worked with Down*--

16 A, No.

17 Q. Have you ever worked with anyone you would
18 classify as mentally retarded?

19 A. Generally mentally retarded people are going to
20 be referred to the Board of Mental Retardation, they
21 don't get referred to these type of **systems**.

22 Q. What type of mentally retarded people have you
23 worked with? You said you did what type --

24 A. I've worked with many people who have, many
25 people, what's called post-traumatic **stress** disorder,

1 it may be Vietnam Vets, it may be caused by a traumatic
2 injury, an amputation which **has** created **a** traumatic
3 emotional problem.

4 Q. Okay. So these are emotional reactions that you
5 would put in the category of mentally handicapped?

6 A. Correct. We've also had -- I've **also** worked with
7 **some stroke victims.**

8 Q. You don't have any experience then on knowing
9 **where** children who are mentally retarded would **fall** on
10 any of these tests?

11 a. No, I don't,

12 Q. What does the Purdue **Pegboard** Test measure?

13 A. Purdue Pegboard measures fine **motor** dexterity,

14 Q. Anything **else**?

15 A. No.

16 Q. Do **you** understand it to test motor coordination?

17 A. **Yes**, the **motor** dexterities, motor coordination,
18 elevate, pinch, grasp, ability to manipulate parts.

19 Q. Let me ask you this. Have you had a chance to
20 review **the report** of **Joseph Spoonster** in this case?

21 A. I saw a copy that was not very readable late
22 Friday, I'm not --

23 Q. Let me give you a copy right here. I'm going to
24 ask **you** to **look** on page 6 and 7. You see there's a
25 notation, "**K, motor coordination,**" do you see **that**?

1 A. Yes.

2 Q. And under **that**, "F, finger dexterity," and then
3 the next page, "M, manual dexterity," do you see those?

4 A. **Yes.**

5 Q. Are you familiar with those definitions?

6 A. Yes, uh-huh.

7 Q. Do you understand the Purdue Pegboard to include
8 testing on those categories, motor coordination, finger
9 dexterity and manual dexterity?

10 A. Yeah. The Purdue -- **well**, the Purdue Pegboard is
11 primarily motor coordination and fine finger dexterity.

12 Q. Well, I'm not sure I understood your answer. My
13 question **was**, does the Purdue Pegboard Test each of
14 those abilities, motor coordination, in your opinion --

15 A. **Yes**, it does.

16 8. -- and finger dexterity and manual dexterity?

17 A. **Yes**, it does,

18 Q. Okay. Do you feel chat **the** Purdue Pegboard is a
19 sufficient test for each of **those** type of **tasks** or
20 abilities?

21 A. **It's** a standardized test which is --

22 Q. I guess the answer is yes or no.

23 A. Which is **commonly** accepted.

24 MR. SHAPERO: Objection,

25 A" Yes. **Yes**, I do.

1 Q. If you can, I didn't want to -- I just wanted to
2 know, yes or no, do you agree?

3 A. Yes, I do.

4 Q. And is that the way VST will test for those,
5 those three abilities, motor coordination, finger
6 dexterity and manual dexterity? Does VST use the
7 Purdue Pegboard for those three areas?

8 A. Yes, we do.

9 Q. Did you do testing for those three areas, again
10 motor coordination, finger dexterity and manual
11 dexterity? Did you have any other tests that would
12 test those three abilities, other than the Purdue
13 Pegboard?

14 A. Not the direct -- we do have some others, but we
15 do not -- but they are usually reserved for people who
16 did not, who have hand disabilities.

17 Q. You didn't use them in this case?

18 A. No.

19 Q. Do you recognize as authoritative the Dictionary
20 of Occupational Titles?

21 A. I'm sorry?

22 Q. Did you recognize as authoritative in your field
23 the Dictionary of Occupational Titles?

24 A. It depends on what you're using it for. I mean,
25 it has its purpose, it has its place.

1 Q. What purpose is that, that you recognize?

2 A. I recognize it as a way to get a general overview
3 of a job description, kind of cursory job analysis.

4 Q. Anything else?

5 A. And also to get a general idea of the aptitude
6 levels that are required in that job.

7 Q. Is that it?

8 A. Yes.

9 Q. Do you recognize as authoritative in your field
10 the Guide to Classification of Jobs?

11 A. Yes. The Guide to Classification of Jobs is the
12 actual breakdown of those general aptitudes.

13 Q. Do you recognize, use that in your work?

14 A. Yes, we do.

15 Q. What kind of mistakes can David Neeld make in the
16 blueprint reading test?

17 A. I don't have the test with me to tell you
18 exactly, but the -- what is presented are some diagrams
19 and measurements are requested.

20 Q. Do you know what kind of mistake he made?

21 A. But I don't have the tests with me.

22 Q. Are there test sheets? Do you have in your
23 possession at VST Dave Neeld's test sheets?

24 A. Yes, they're at VST.

25 Q. And the scoring, is that on the test sheet --

1 A. Yes.

2 Q. -- for what he got right and wrong?

3 MS. ROLLER: Neal, I thought
4 that that **was** going to be here today. That's why we
5 had the conversation on the phone. I said I want to
6 make sure all the **records** are there, **all** the *tests*, all
7 the **scores**, so that I can go over them.

8 Do you recall the conversation we had on the
9 telephone? You don't?

10 MR. SWAPERO: I recall the
11 conversation about Dr. Schnall, having **his file** there.

12 MS. ROLLER: It was **the** same
13 conversation that we had **regarding** both depositions. I
14 will **request** that,

15 A. We generally **don't** do **that** because our, our
16 ethics, **standards** that govern our fields, **okay**, require
17 us to keep that as a separate file, **And it's used as a**
18 **working file**; I mean, we make scribbles and notations
19 and things on those, on those tests, so we don't, you
20 know --

21 Q. I'm going to be requesting that, though.

22 A. We **don't** bring them.

23 Q. Will you give that to Mr. Shapero?

24 A. Uh-huh.

25 Q. And that **request** is to **include** absolutely any

1 paperwork that VST generated as a result of the tests
2 that you performed on David Neeld and any notes taken
3 during his interview, all right?

4 A. Uh-huh.

5 Q. And if you give that to Mr. Shapero, he'll give
6 it to me.

7 MS. ROLLER: And, likewise, that
8 information will be provided at Mr. Spoonster's
9 deposition.

10 MR. SHAPERO: That's fine.

11 Q. Okay. Am I to understand then with respect to
12 the blueprint reading test that you, you don't:
13 understand at this time what mistakes he made or why he
14 made them?

15 MR. SHAPERO: Objection. I think
16 before you asked her if she knew mistakes; now you said
17 do you understand what mistakes he made.

18 Q. I said what kind of mistake that he made, and you
19 said you didn't know, correct?

20 A. Not offhand.

21 Q. Okay.

22 A. If we can go off the record --

23 Q. No.

24 MR. SHAPERO: I don't think you
25 want to do that.

1 Q. No. Go ahead, you can just answer the question.

2 A. In this assessment, okay, my task was to
3 establish overall prognoses and not to sit down and go
4 over every single error on every single test and come
5 up with pages and pages and pages on every error; I did
6 not focus on that. What is relevant for our purposes
7 and my purposes in my experience in making decisions is
8 the standardization of the norming, the fact that he
9 made more errors than are allowed, okay, which
10 indicates to me that there is a decrease in performance
11 at this time, and that's what's important at this time,

12 Q. All right. So if I'm reading what you just
13 stated, the only question for your analysis is whether
14 or not he made more mistakes than is allowed on the
15 test, not an analysis of why he made them or what kind
16 of mistakes he made to have a deeper, make it a deeper
17 interpretation of his performance on that test?

18 A. That's correct.

19 Q. Who administered the 16 personality test, factor
20 test?

21 A. The 16 personality factor test?

22 Q. Yeah.

23 MR. SHAPERO : Maybe if you tell
24 us where you're looking we can get there faster?

25 MS. ROLLER: Yeah, I was looking

1 at my notes, but I'm trying to --

2 Q. You did take a personality test, didn't you?

3 A. We did the Vocational Preference Inventory. Oh,
4 yeah. Okay, we did do the screening,

5 Q. Who administered that?

6 A. That's a computer -- he administers his own.
7 It's a computer-generated test.

8 Q. And who scores it?

9 A. The computer scores it.

10 Q. And was it the Long or short form?

11 A. It's a short form, I think.

12 Q. And what occupational group did you correlate his
13 results with?

14 a. I didn't look for that, I was looking for the
15 overall patterns that were suggested, as indicated
16 here, that he was, he presented as a serious and
17 responsible person and he was presently worried,
18 anxious and emotionally vulnerable. I wasn't looking
19 to utilize that as a vocational match.

20 e. All right. Was that an interpretation that you
21 gave as a result of the results of the test or is that
22 a --

23 A. No, that was --

24 Q. It comes right out of the computer?

25 A. That was computer-generated, yes,

1 Q. Why are you ruling out sedintary work for
2 Mr. Neeld?

3 A. Because at this time, okay, with the combination
4 of, of factors, okay, within his experience, he's not
5 going to be able to sustain that kind of employment.
6 He doesn't have the pain tolerance to, to sit for the
7 prolonged time, day after day **after** day, that's
8 required in sedentary employment.

9 Q. Did you do any physical stamina testing on him?

10 A. No, We don't do that.

11 Q. Or any other testing or evaluation that you
12 performed to know whether or not he could perform work
13 such as he did during that eight-hour day, from eight
14 a.m. to four p.m., on June 28th, 1989? Did you do any
15 other type of testing to know whether he could repeat
16 that on another day?

17 A. No. But when you see, see that kind of
18 discomfort on, you know, on one day, okay, it's very
19 unlikely that that person -- now, that; person might
20 have good days and days when he can sit all day long.
21 That's the nature of back injuries, they're not always,
22 the symptoms are not always consistent, you may have a
23 good day, you may have a bad day. But with the level
24 of discomfort that he was showing, I would say it's
25 highly improbable that that gentleman right now, you

1 know, could go out and sustain, sustain employment.

2 Q. Did he wear a back brace to the testing, VST,
3 either day?

4 A. I don't believe he had a back brace on, no.

5 Q. Did he at any time verbalize pain on either day
6 he was there?

7 A. When he was questioned, he indicated pain, but he
8 didn't, he did not complain of pain throughout the day.
9 He didn't ask for, to be excused because of pain, for
10 example.

11 Q. Did he offer any complaint of pain at any time --
12 I understand you've just said that he will verbalize it
13 when asked, but my question is, did he offer it at any
14 time voluntarily?

15 A. Not to my knowledge.

16 Q. And what were the questions that were asked of
17 him when he did state that he had pain?

18 A. Well, when he was standing up and I questioned
19 why he was doing that, you know, then, then he
20 indicated, of course, that he was having a lot of pain
21 in his low back and in his hip.

22 Q. How often did that occur on the first day?

23 A. On the --

24 Q. June 28th.

25 A. On the first day, twice during the day he stood

1 up to take tests.

2 Q. And how about the second day, which **was** July 7th?

3 A, **Well**, the second day we were in our interview,
4 and during that time he often got up out of the chair
5 and stood, sometimes walked around, and would sit down
6 again.

7 Q. And that was during that two-hour interview?

8 A, Yeah, But I did not address **his** pain at **that**
9 point in time.

10 Q. So when he got up, there was no discussion
11 regarding what was causing him to **stand up, is** that
12 correct?

13 A. Well, we didn't focus on **it**. You know, **it's** just
14 an, "Are you uncomfortable?" "Yes." You **know**.

15 Q. That **was** that kind of verbalization?

16 A. That kind, yeah, but not delving into, you know,
17 "Where does **it** hurt?" and **level** of pain.

18 Q. How would you describe Mr. **Neeld's** demeanor when
19 **describing** his physical condition?

20 A. He was -- during the whole interview, he was
21 tearful off and on and he **actually** came to tears
22 several times.

23 Q. Mas that the second day, July 7th?

24 A. Yes.

25 Q. Did you **meet** his wife?

1 A. No, I did not.

2 Q. The second day that he came, July 7th, 1989, did
3 he come alone?

4 A. To my knowledge he was alone.

5 Q. Do you know whether or not he drove his car to
6 the testing place?

7 A* I believe -- no -- I don't know.

8 Q. Did you ask him whether he drives?

9 A. Yes, he did tell me that he drives short
10 distances.

11 Q. Did he describe what a short distance was?

12 A. Generally within his neighborhood.

13 Q. Did he say that?

14 A. I believe so. Well -- I can't say.

15 MR. SHAPERO: Only if you know.

16 A. Yeah, strike that. I don't recall.

17 Q. How many people from VST observed his behavior
18 throughout the day? You indicated that you and
19 Ms. Durand did; did anybody else?

20 A. No, no one was specifically assigned to do that,

21 Q. Do you recognize the Psychological 'Testing in
22 Vocational Evaluation?

23 MR. SHAPERO: Objection,

24 Q. It's from the Materials Development Center from
25 Stoudt Vocational Rehabilitation Institute. Are you

1 familiar with that psychological test? If **you're** not,
2 **you're** not,

3 A. No, I'm not, I'm **just** trying to recall, They
4 generally do not publish psychological tests.

5 Q. Okay. What are the charges that you have in this
6 case for the time and **expense** that **VST** has performed in
7 David Neeld's case? What is your rate of --

8 A. What is the **rate**?

9 Q. Yeah, your charge.

10 A. \$100 an hour.

11 Q. And **how** many hours have you spent?

12 A. That's not my personal **time**, of course, **that's**
13 the agency's charge.

14 Q. Understood. And how many -- have you **submitted** a
15 bill?

16 A. No.

17 Q. Have you been paid?

18 A. No.

19 Q. And how many hours have you **spent**, has VST spent
20 so far?

21 A. I **don't** know. It's all stored in the computer
22 until the end of, until the case is closed.

23 Q. Can you give me an idea?

24 MR. SHAPERO: Only if you know.

25 A. Probably around 20 hours, including the

1 assessment.

2 Q. And do you expect David Neeld to be a client at
3 VST with respect to the modalities, the interventions
4 that you do offer at VST, you said vocational
5 counseling was one, case management and job search
6 training?

7 A. Do I expect him to be a client?

8 Q. Yes.

9 A. No, I don't have that expectation.

10 Q. If I may, let me just look over my notes. I
11 think we're done.

12 You indicated several times today that you
13 believe that although drug, any drug medication that he
14 may be taking has played a minor factor in his test
15 performance, that the chronic pain syndrome, would you
16 say, is a major factor in his level of abilities today
17 to re-enter the job market?

18 A. Yes, I suspect that's a major factor.

19 Q. How do you know what his native abilities are
20 absent the chronic pain syndrome; in other words, did
21 you do any testing? Do you have any idea what his
22 native abilities would be without the chronic pain
23 syndrome?

24 A. In the field of assessment, okay, in the field of
25 assessing vocational potential, the native abilities

1 are assessed through the educational level and through
2 the use of the **tools** that you mentioned **before**, the
3 Dictionary of Occupational Titles and the
4 classification of **jobs**, which again breaks down -- we
5 will **take** the person's work history, look at what he
6 has done, okay, find the aptitudes for **those** jobs, and
7 then we need to **assume** that that person has at least
8 that level of aptitude.

9 Q. So you do **agree** there is an assumption that he,
10 David Neeld, was at least an average **tool** and die
11 **designer**, correct?

12 A. *Yes.*

13 Q. Or a van driver, a transportation driver?

14 A. Correct.

15 Q. And you agree that there was no, by **VST**, any
16 testing to know whether or not he was really a good,
17 bad or average van driver?

18 A. Of course not. We didn't know him, you know,
19 before **the** injury, and we didn't have access **to** that
20 kind **of** information,

21 Q. But there's no test that you could utilize to
22 find that information out?

23 A. No, there's not.

24 Q. In **other** words, you're saying there's no testing
25 to demonstrate the effects of the chronic pain

1 syndrome, is that what you're saying?

2 A. The testing that we did, I believe, demonstrates
3 the effect, but there is no one test in existence that
4 I know of, okay, that you can give a person that says
5 here's the difference, it's going to come out and tell
6 you here's the absolute, you know, difference between
7 what he did before and what he's doing now; that's done
8 on the basis of you test how his functional ability is
9 now, you look at what is his functional ability was as
10 is evidenced in his work and educational status and
11 then you compare those two.

12 Q. At the bottom of page 3 of Exhibit A you did
13 computer job search covering 1,241 job titles in the
14 related fields of drafting, engineering, architecture,
15 driving and transportation, First of all, is it your
16 testimony chat those are related fields?

17 A. I'm sorry, that, there's an omission there.

18 Related to his work history.

19 Q. Okay. Thank you. Would you also agree that
20 certainly the fields of engineering and architecture
21 require more education than what Mr. Neeld currently
22 has?

23 A. Yes, that's true.

24 Q. And you're not suggesting that he go back to
25 school for those --

1 A. No .

2 Q. Be trained for those fields?

3 A. No. ~~We~~ we were looking more to match whether there
4 might be **some** potential for elemental entry level kinds
5 of occupational titles, whether there were any, and
6 there were not.

7 Q. You have concluded, have you not, that David
8 Neeld should not go back to a driving or transportation
9 field, correct?

10 A. On the basis of his work restrictions, that that
11 would probably not be managed well.

12 Q. Then why did you test for that?

13 A. Well, to see if there were matches, you see, and
14 then **when** there weren't, to see **if** there were any
15 drive -- jobs within the driving occupation that might
16 be met by this physical demand and the computer search
17 said that there were not.

18 Q. Do you **believe** that current high school graduates
19 reflect David Neeld's peer group?

20 MR. SHAPERO: Objection.

21 A. I -- you know --

22 MR. SHAPERO: Do you understand
23 the question?

24 Q. Pretty simple question. Do you believe, do you
25 feel that current high school graduates reflect David

1 Neeld's peer group?

2 A. I'm not sure that I can, can know that. We're
3 looking at -- again you're talking in terms of
4 percentages, okay? I'm looking at functional ability,
5 okay? It doesn't matter whether a 24 year old person
6 can do this job or a 46 year-old person can do this
7 job; what matters is that they can do the tasks of the
8 job. So that I don't look at that, that's not a
9 consideration.

10 MS. ROLLER: That's it. Thank
11 you very much for your time, and sorry we went a little
12 bit over.

13 MR. SHAPERO: I don't want you to
14 waive signature,

15 We're not going to waive signature.

16 - - -

17 (Signature not waived.)

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State of Ohio) SS.
County of Cuyahoga)

CERTIFICATE

I, Marcia Abbadini, a Notary Public within and for the State aforesaid, duly commissioned and qualified, do hereby certify that the above-named witness **MARCY S. WEINZIMER**, 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 her was by me reduced to stenotypy in the presence of said witness, afterwards transcribed upon a computer; that the foregoing is a true and correct transcript of the testimony so given **by** her as aforesaid, and that this deposition was taken at the time and place in the foregoing caption specified.

I do further certify that I am not a relative, employee or attorney of any of the parties hereto, and further that I am not a relative or employee of any **attorney** or counsel **employed by** the parties hereto or **financially interested** in the action.

IN WITNESS WHEREOF, I have hereunto set my hand
this ____ day of _____, 1989.

Marcia Abbadini
Notary Public

My commission expires October 16, 1994.

SIGNATURE_PAGE

MARCY S. WEINZIMER

I certify that this deposition was signed in my
presence by MARCY S. WEINZIMER on this-----day of
-----, 1989.

IN WITNESS WHEREOF, I have hereunto set my hand
and affixed my seal of office at-----,
-----on this-----day of-----, 1989.

Notary Public

My commission expires:

[illegible]

**450 The Arcade
401 Euclid Avenue
Cleveland, Ohio 44114**

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