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SUPREME COURT OF VIRGINIA
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RICHMOND, VIRGINIA

IN THE

Supreme Court of Virginia

AT RICHMOND

Record No.
771244

JANET FARLEY,
Appellant

v.

ROLAND E. GOODE,
Appellee

APPENDIX

A. ALBERT BALAVAGE, ESQ.
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The Mosby, Suite 112
Fairfax, Virginia 22030
Counsel for Appellant

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TABLE OF CONTENTS

		APPENDIX PAGES
1.	Motion for Judgment Filed November 19, 1976	1 - 3
2.	Plea of Statute of Limitations Filed December 13, 1976	3
3.	Answer and Ground of Defense Filed December 13, 1976	3 - 4
4.	Transcript of trial in Fairfax Circuit Court held on June 7, 1977	5 - 149
5.	Final Judgment Order Entered June 10, 1977	150 - 151
6.	Assignment of Error (Exerpt from Petition for Appeal filed in Supreme Court in Richmond).	151

V I R G I N I A :

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

JANET FARLEY 4017 Majestic Lane Fairfax, Virginia	)	
Plaintiff	)	
vs.	)	AT LAW NO. 38137
ROLAND E. GOODE, D.D.S. 7257 Maple Place Annandale, Virginia	)	
Defendant	)	

MOTION FOR JUDGMENT

COMES NOW the Plaintiff, Janet Farley, and moves this Honorable Court for judgment against the Defendant, Roland E. Goode, in the amount and on the grounds hereinafter set forth.

1. At all times pertinent hereto, Defendant was a dentist practicing in the State of Virginia, and holding himself out to the public as a competent, qualified and skilled dentist, specializing in the diagnosis and treatment of cases involving teeth, gums, and extractions of teeth; that Defendant was engaged in such practice at 7257 Maple Place Annandale, Fairfax County, Virginia.

2. That approximately fifteen years ago, Plaintiff engaged the services of Defendant for the care and treatment of her teeth and gums and for treatment as long as might be necessary and continued to see Defendant for proper care and treatment of her teeth and gums up to August, 1976; said Defendant accepted

said professional employment and impliedly agreed to exercise and use a high degree of specialized professional skill and care in the examination, care and treatment of her teeth and in the necessary treatment thereafter.

3. Through the course of said relationship, Defendant performed certain examinations and treated Plaintiff; but due to his negligence, failed to properly examine, diagnose, and treat her for a periodontal disease of her teeth and gums which occurred over a period of time; he extracted a tooth on August 23, 1976 which could and should have been saved; he failed to take proper notice of Plaintiff's complaints, and he failed to prevent or curtail the periodontal disease which she now has; he failed to exercise reasonable skill, diligence and care, ordinarily exercised by members of the dental profession in this and similar localities in the same and general line of practice.

4. Defendant was negligent and careless and departed from the standards of care aforesaid with the plain disregard of the rights of Plaintiff, and with an almost wanton indifference to the obligations owed to Plaintiff.

5. As the sole and proximate result of such negligence, carelessness and departure from standards of care aforesaid, Plaintiff was caused to suffer great and excruciating pain and mental anguish; was unable to go about her business, thereby losing income from her employment; was unable to properly and comfortably attend, conduct and engage in her personal affairs; has incurred, and will in the future, incur doctors', hospital and related bills in an effort to contract and be treated and

cured of her periodontal disease.

WHEREFORE, Plaintiff moves for judgment against the Defendant in the sum of One Hundred Fifty Thousant Dollars ($150,000.00), along with her costs.

/s/ Janet Farley, by counsel
JANET FARLEY

A. Albert Balavage
Counsel for Plaintiff

PLEA OF THE STATUTE OF LIMITATIONS

COMES NOW defendant, by counsel, and files this his Plea of the Statute of Limitations based on the following:

1. The plaintiff's claims are barred by the two-year statute of limitations.

WHEREFORE, these premises considered, defendant prays that this case be dismissed with prejudice.

/s/ Roland E. Goode
Roland E. Goode
by counsel

ANSWER AND GROUNDS OF DEFENSE

COMES NOW defendant, by counsel, and for his Answer and Grounds to the Motion for Judgment previously exhibited against him does state and allege as follows:

1. The defendant denies as phrased the allegations of the first numbered paragraph of the plaintiff's Motion for Judgment.

2. The defendant denies as phrased the allegations of the second numbered paragraph of plaintiff's Motion for Judgment.

3. The defendant denies the allegations of the third numbered paragraph of plaintiff's Motion for Judgment

4. The defendant denies the allegations of the fourth numbered paragraph of plaintiff's Motion for Judgment.

5. The defendant denies the allegations of the fifth numbered paragraph of plaintiff's Motion for Judgment.

AND NOW having fully answered plainiff's Motion for Judgment, and by way of further answer thereto, defendant alleges the defenses of the expiration of the bodily injury statute of limitations, contributory negligence, and assumption of the risk. Furthermore, he expressly reserves the right to amend his responsive pleadings as further information comes to his attention through the discovery process.

AND NOW having fully answered plaintiff's Motion for Judgment, the defendant prays that the same be dismissed and that he may have his costs on his behalf expended.

/s/ Roland E. Goode
ROLAND E. GOODE
by counsel

SLENKER, BRANDT, JENNINGS & O'NEAL
By: /s/ John J. Brandt
Counsel for Defendant

1 VIRGINIA:

2 IN THE CIRCUIT COURT FOR THE COUNTY OF FAIRFAX

3 - - - - - - - - - - - - - - - - - - x

4 JANET FARLEY, :

5 Plaintiff, :

6 vs. : AT LAW NO. 38137

7 ROLAND E. GOODE, :

8 Defendant. :

9 - - - - - - - - - - - - - - - - - - x

10 Fairfax, Virginia

11 Tuesday, June 7, 1977

12 The trial commenced at 10:00 o'clock a.m.

13 BEFORE:

14 THE HONORABLE LEWIS D. MORRIS, and a jury.

15 APPEARANCES:

16 ALBERT A. BALAVAGE, Esq., 10560 Main Street,
Fairfax, Virginia 22030, Counsel for the
17 Plaintiff.

18 JOHN J. BRANDT, Esq., Slenker, Brandt, Jennings
and O'Neal, 2936 Chain Bridge Road, Oakton,
19 Virginia 22124, Counsel for the Defendant.

20

21

22

23

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

2 *

3 THE COURT: Call your first witness.

4 MR. BALAVAGE: Call Mrs. Farley.

5 Whereupon,

6 JANET FARLEY,

7 was called as a witness by and in her own behalf, and,

8 having been previously duly sworn, was examined and

9 testified as follows:

10 DIRECT EXAMINATION

11 BY MR. BALAVAGE:

12 Q Will you state your name please?

13 A Janet Farley.

14 Q And I think we are going to need you to speak up

15 just a little bit so we can hear you back here.

16 A My name is Janet Farley.

17 THE COURT: Every member of the jury has to hear.

18 I have to hear and the defendant has to hear you. Talk to

19 Mr. Balavage.

20 THE WITNESS: Janet Farley.

21 BY MR. BALAVAGE:

22 Q Where do you live?

23 A 401 Southern Majestic Lane, Fairfax.

1 Q And what kind of work do you do?

2 A I'm a clerk typist for the County Environmental

3 Management.

4 Q Mrs. Farley, did there come a time -- did there

5 come a time when you became a patient of Dr. Roland Goode,

6 the defendant in this case?

7 A Yes.

8 Q When was that approximately?

9 A Approximately 65, 66, somewhere.

10 Q Now do you have any recollection as to why you

11 went to see Dr. Goode back in that period of time?

12 A We chose Dr. Goode as a family dentist.

13 Q All right, during the period of time up till 1969,

14 did you have any work done by Dr. Goode on your teeth?

15 A To 1969?

16 Q Yes.

17 A Yes, he capped.

18 Q And will you tell the jury briefly what kind of

19 work he did on your teeth; what it was he capped?

20 A Capped 12 teeth, my upper teeth, 12 teeth, four

21 on the bottom.

22 Q Now were these individual caps or were they what

23 I might call a bridge cap?

1 A They're all together. They are capped together.

2 Q After Dr. Goode -- by the way, approximately what

3 did Dr. Goode charge for that capping job?

4 A It was somewhere in the area of $2000.

5 Q After Dr. Goode had performed that dental work for

6 you, when was it you next saw him, that you next called to

7 his office?

8 A It was 1972, I believe it was.

9 Q Can you remember what that was for?

10 A Well, Dr. Goode would check my teeth and the

11 hygienist would clean my teeth.

12 Q Now in 1972 -- going back to when Dr. Goode

13 concluded his capping work that you have told us about, did

14 Dr. Goode give you any instructions whatsoever in so far as

15 dental hygiene is concerned?

16 A He did not.

17 Q Did you at that time know anything about

18 periodontal disease or anything connected with it?

19 A I did not.

20 Q When you saw Dr. Goode in 1972, are you able to

21 tell us how many times you saw him in that year? I believe

22 he has a chart here that furnishes --

23 A (Interposing) I don't know if it was once or twice

1 in 72 that I saw Dr. Goode.

2 Q All right. In 1972 when you saw Dr. Goode for
3 whatever purpose it was, were you given any instructions on
4 dental hygiene?

5 A I was not. I was told to brush my teeth very
6 lightly with a really soft brush because my teeth are capped
7 in plastic, so that the plastic would not wear off, were the
8 instructions I was ever given by Dr. Goode or his hygienist.

9 Q Did you have occasion for whatever reason it may
10 have been to call on Dr. Goode in 1973?

11 A I did go to Dr. Goode in 73. I went to Dr. Goode
12 several times because I was concerned because the caps were
13 wearing off and the gold underneath was showing and I would
14 go to him and ask him if he could grind it down so the gold
15 would not show.

16 Q Did he do that sort of work?

17 A He did that several times.

18 Q Did he also during the course of these treatments
19 on these caps do any what they call painting to your know-
20 ledge?

21 A That was about three or four years later he did
22 suggest after he had ground the gold off several times that
23 he would try to paint over the caps and he did paint three

1 teeth over but that didn't stay on.

2 Q In 1973 when you saw Dr. Goode for -- as many

3 times as you did and for whatever reason which we will

4 later show the jury how many times you saw him by chart,

5 did he in 1973 ever give you instructions on the care, dental

6 hygiene care?

7 A He did not.

8 Q I believe you indicated to the jury -- stated to

9 the jury that up to the year of 1973 you may have seen him

10 for a cleaning and checking either once or possibly more,

11 is that correct?

12 A Yes.

13 Q During that time would you tell the jury briefly

14 what that routine was; who did the cleaning; who talked to

15 you; who did what?

16 A Well I would go to Dr. Goode's office and his

17 hygienist would take me into her office and clean my teeth

18 and scrape some and polish my teeth but dental floss was

19 never used on the teeth that are crowned and then Dr. Goode

20 would come in and look at my mouth and say everything looks

21 fine.

22 Q Up to that time did Dr. Goode ever conduct a

23 probing examination of your teeth?

1 A Dr. Goode did not probe my mouth at all.
2 Q Did you see Dr. Goode in 1974?
3 A Yes, I did.
4 Q Are you able to tell us what the -- the last
5 month in 1974 was that you saw Dr. Goode?
6 A I believe it was November.
7 Q And did you see him once or twice?
8 A Twice I think.
9 Q All right, now in November of 1974 again did
10 Dr. Goode give you any instructions on dental hygiene?
11 A No, the only thing he told me was not to brush my
12 teeth hard, to brush them very lightly so the caps would not
13 wear off, the plastic would not wear off.
14 Q In November of 1974 did Dr. Goode conduct a probe
15 examination of your mouth?
16 A No, he did not.
17 Q In 1974 -- when in November of 1974 when you saw
18 Dr. Goode did you relate to him any problems that you were
19 having with your teeth?
20 A Well I did ask Dr. Goode -- I was having some
21 bleeding, you know, when I would brush my teeth they would
22 bleed and I asked him but he just said that is nothing to
23 worry about; your teeth are in good shape; your teeth will

1 last a lifetime because they have been capped.

2 Q Did you have any conversation with Dr. Goode inso-
3 far as the stability of your teeth were concerned during that
4 November visit?

5 A I did mention to Dr. Goode that there were teeth
6 in the lower right section that were loose and he just didn't
7 give me a direct answer and I assumed because my teeth were
8 capped that this was causing the looseness. I had no idea.

9 Q The teeth that you mentioned to Dr. Goode that were
10 loose in 1974, in November of 1974, were any of those teeth
11 subsequently later pulled?

12 A One tooth was pulled.

13 Q And when was that pulled?

14 A In 1976.

15 Q By whom?

16 A By Dr. Goode.

17 Q In November of 1974, in that period of time, do you
18 have a recollection as to whether or not you were having any
19 spacing problems in your teeth?

20 A I noticed that the two teeth in the front were
21 spreading apart but I had no idea what was causing it. I
22 did ask Dr. Goode but he didn't explain it to me at all. He
23 just --

1 Q (Interposing) Did you see Dr. Goode at all in
2 1975?
3 A I don't believe I saw Dr. Goode in 75. I did in
4 76.
5 Q Now did you see Dr. Goode in 1976?
6 A Yes, I did.
7 Q And can you tell us the month, the first month you
8 might have seen him in 1976?
9 A I believe I went to him in March.
10 Q March of 76?
11 A Yes.
12 MR. BALAVAGE: If you will indulge me for just one
13 minute, Your Honor.
14 BY MR. BALAVAGE:
15 Q Dr. Goode's records show that -- indicate at least
16 to the best of our interpretation of what he had written that
17 there was a check in March 31 of 1976. Do you have a
18 recollection of being in his office?
19 A Yes, I remember being in his office.
20 Q In March of 197 -- in that March of 1976 visit, did
21 you have any loose teeth?
22 A Yes, I did.
23 Q Did anybody in that office make any reference to

1 the tooth that was pulled in August of 1976?

2 A No.

3 Q Do you know if Dr. Goode examined you in March 31

4 of 1976? Do you have a recollection of that?

5 A I don't know if he examined my mouth, no.

6 Q His records indicate, check. Do you know if he

7 checked anything or not?

8 A Unless he was checking the fillings, the gold that

9 was showing then.

10 Q Was anything said to you by Dr. Goode in March of

11 1976 insofar as you potentially having the periodontal

12 disease that you now have?

13 A No, he did not.

14 Q Up to that period of time, Mrs. Farley, did Dr.

15 Goode ever for all the time he treated you for the various

16 visits you have told us about, did he ever say to you any-

17 thing about periodontal disease?

18 A No.

19 Q Did he ever refer you to a periodontist for

20 treatment?

21 A He did not refer me to a periodontist.

22 Q Dr. Goode's records indicate that he saw you again

23 on May 18 of 1976 for certain work. Do you have a recollection

1 of that? I believe it was filling work.

2 A I went several times in 76.

3 Q His records also indicate that you were at his

4 office in June of 1976.

5 A That was for a small filling on a lower right tooth,

6 which was next to the tooth that was pulled.

7 Q Now his records also indicate that you -- that you

8 were in his office August 23rd of 1976, does that sound

9 right?

10 A Yes.

11 Q What happened August 23rd of 1976? What was done

12 to your mouth or to your teeth?

13 A My tooth was pulled.

14 Q Before we talk about that date, had Dr. Goode taken

15 any x-rays from 1969 after you had received your capping

16 work up to August of 1976; had he taken x-rays during any

17 of those visits you have told us about?

18 A I don't think he took a full mouth x-ray. I did

19 have a root canal done on a tooth that had been capped in the

20 upper right. He did x-ray that and say it was abscessed and I

21 needed a root canal.

22 Q Why did you go see him in August of 1976?

23 A Well I was at work and I noticed that my tooth was

very loose and a knot had come up on the inside of my gum and I called his office and asked to talk to his nurse and I said I think I needed to have a root canal done. I think my tooth is abscessing and they said come in and we will check it for you so I went to Dr. Goode's office and the nurse x-rayed my tooth and came back and said that Dr. Goode said that I had bone loss that I had to -- the tooth had to be extracted and I said, Dr. Goode, what, you know, what causes this? Is it something that was spread from, you know, tooth to tooth, smoking affect it, what causes it and he says oh, your bite was probably off.

Q At that time during that visit did Dr. Goode discuss with you in any way periodontal disease?

A He did not mention periodontal disease.

Q Or make some reference to it at all?

A No.

Q Now up to that point had Dr. Goode ever referred you to a periodontist?

A He did not refer me to a periodontist even when he extracted the tooth. He did not mention a periodontist.

Q Up to August of 1976 for the visit that you have told us about that you made to Dr. Goode's office did you pay him; was he paid?

A Well, I did pay him. There were a couple times that I'm sure I neglected to pay him on time, yes, but I did pay Dr. Goode.

Q Presently do you owe him some money?

A I owe Dr. Goode $60.00 but when he pulled the tooth and I went to another dentist and found out I had periodontal disease, I didn't figure I owed Dr. Goode the $60.00.

Q Now after you saw Dr. Goode in August of 1976, what did you do?

A Well I came back to the office and the next day I was very upset because I did lose a tooth which was very close to the front of my mouth and I was talking to a friend of mine in the office, Andrea, and she said why don't you go to see a dentist that I know in Centreville, a Dr. Buckis, so I called and made an appointment several days later with Dr. Buckis because Dr. Goode --

Q (Interposing) When Dr. Goode pulled the tooth in August of 1976 as you have told us, was there any reference by him as to what work might be done to your mouth to fill that hole?

A I asked Dr. Goode how much he would charge to bridge those teeth since I was missing one behind that and he said $1200 and I thought that was a lot of money to bridge

1 two teeth in and this is when I talked to Andrea, my friend
2 in the office and she suggested I go to Dr. Buckis to --
3 Q (Interposing) When did you see Dr. Buckis to your
4 recollection?
5 A It was several days later. I believe it was the
6 first of September I saw Dr. Buckis and talked to him about
7 the tooth that was pulled which I -- no one had really
8 explained to me why the tooth was pulled except that my
9 bite was off and I had bone loss.
10 Q Did anybody including Dr. Goode ever tell you that
11 the tooth that was pulled, the tooth itself that was pulled
12 have anything wrong with it?
13 A No.
14 Q Do you still have that tooth?
15 A I still have the tooth.
16 Q When you went to see Dr. Buckis, did he examine
17 you?
18 A Yes, he examined my mouth.
19 Q What did he -- what did Dr. Buckis -- without
20 trying to remember his exact words, what did he say to you
21 and what did he do after that?
22 MR. BRANDT: Your Honor, I am going to object.
23 THE COURT: Objection sustained. Don't testify to

1 what the doctor may have said to you but you can testify
2 what he did to you but not what he said to you.
3 BY MR. BALAVAGE:
4 Q Yes, Mrs. Farley.
5 A Yes.
6 Q What did Dr. Buckis do during the course of his
7 examination that you can remember?
8 A He probed my mouth.
9 Q What was that like; what happened there?
10 A Well they use a probe. It's a -- I don't know
11 how to describe it. It's just a plain aluminum thing they
12 stick down between the gum line to see --
13 Q (Interposing) Were you aware that he was doing
14 that?
15 A Well --
16 Q (Interposing) Were you aware that he was probing?
17 A Yes, I was aware that he was probing.
18 Q Now, keeping that in mind, that experience in mind,
19 when I am going to ask you if Dr. Goode ever probed your
20 mouth or teeth or gums or the bone line as Dr. Buckis did?
21 A No, he did not.
22 Q Did anybody in his office under his direction ever
23 do that?

1 A Nobody probed my mouth.

2 Q After Dr. Buckis examined you, did he refer you to

3 someone?

4 A Yes, he referred me to a Dr. Armstrong who is a

5 periodontist in Falls Church.

6 Q When did you see Dr. Armstrong to the best of your

7 recollection?

8 A The next day I had an appointment with Dr. Armstrong,

9 the next day.

10 Q Did Dr. Buckis -- by the way Dr. Buckis is a general

11 dentist, is that correct?

12 A Yes, he is.

13 Q And Dr. Armstrong is a periodontist?

14 A That is right.

15 Q Is that correct?

16 A That is right.

17 Q Did Dr. Buckis do anything else during the course

18 of his examination that you are aware of in addition to probing

19 as you have told us?

20 A He also taught me the proper cleaning procedures

21 for my teeth, for teeth that are capped.

22 Q Would you explain that to the jury very briefly?

23 A Yes. He gave -- it's a plastic needle you use to

1 stick through because you can't get floss between your
2 teeth when they're capped and you have to use a special
3 needle to thread the floss through and go over, under the
4 gum line and also a special toothbrush that you brush under
5 the gum line, not the teeth but under the gum line.
6 Q Now, remembering that, did Dr. Goode or anybody in
7 his office ever give you that sort of dental hygiene instruc-
8 tion?
9 A No.
10 Q Have you been caring for your teeth in accord with
11 the recommendation of Dr. Buckis?
12 A Oh, yes, I have.
13 Q May I ask you, does that take -- does that take
14 much longer to care for your teeth than just plain brushing
15 and letting them go?
16 A Yes, it does. It takes longer to thread each piece
17 of floss through and I spend at least an hour a night on my
18 teeth.
19 Q Now, when you went to see Dr. Armstrong, did he
20 examine you?
21 A Yes, he did.
22 Q Will you tell us whether or not he examined you
23 with a probe?

A He did use a probe and --

Q (Interposing) Was that examination similar or dissimilar from Dr. Buckis'?

A It was similar. It was the same type.

Q What else did Dr. Armstrong do when you came to his office?

A Well Dr. Armstrong set up a number of appointments for -- first to go through several appointments of what they call scaling your teeth before the surgery.

Q And what is that?

A That is where they go in and chip off all the calcium or calculus or whatever and that was about five or six appointments. You go through that and then he set up the dates for the surgery and I have had three sessions of surgery done to my mouth.

Q Are you able to tell us the period of time when the first surgery was performed?

A The first surgery was on five teeth that was done um, December 6, I believe, December 6.

Q And then after that you had further surgery?

A Yes.

Q When?

A When, I had surgery on March 4th on the lower left

1 and surgery on the lower right, the 6th of March.

2 Q Now, Dr. Armstrong will describe the surgery in

3 more detail but generally what happens during the surgery

4 that you have told the jury and Judge Morris about?

5 A Because I have advanced periodontal disease it's

6 really bad --

7 MR. BRANDT: (Interposing) Your Honor, I think

8 that is probably an opinion that she is not capable of

9 rendering. I'd object to that sir.

10 THE COURT: I think she can testify to how it

11 felt, Mr. Brandt.

12 MR. BRANDT: Well my objection is that she talks

13 about the nature of the problem that she feels that she has

14 which is a dental condition.

15 THE COURT: That's right. I would sustain the

16 objection.

17 MR. BRANDT: I would ask that be striken, sir.

18 THE COURT: I ask the jury to disregard her

19 conclusion.

20 BY MR. BALAVAGE:

21 Q My question to you is, Mrs. Farley, as briefly and

22 generally, what does the operation consist of that you have

23 mentioned? What happens?

1 A Well, they cut my gums open and they drill the
2 calculus around the bone, the bottom, the roots of my teeth
3 and then sew it back up.
4 Q Now is that a pleasant or an unpleasant sensation?
5 A It's very unpleasant. It's very painful and very
6 unpleasant.
7 Q What effect did all three of those surgeries have
8 on you and your life?
9 A It's affected my job.
10 Q How?
11 A Well, I have had to take a lot of time off from
12 work. It's also affected my social life. In fact the only
13 way I've been able to cope with this at all is to go home and
14 go to bed at 9:00 every night in order to go to work.
15 Q You have to speak up a little because I am just
16 quite not hearing you. Now, Mrs. Farley, was there any
17 swelling connected with these surgeries?
18 A Yes, after surgery your face is swollen.
19 Q How long approximately did it take you to get over
20 the various operations that you have described?
21 A Well, I haven't gotten over them entirely. My
22 teeth are still very sensitive; they're very sensitive.
23 Q That was my next question to you. Are you able to

eat properly now?

A No.

Q Normally as you did?

A No. You have a problem eating. You have to drink liquids, hot and cold affects it. It takes weeks for it to heal, for the surgery to heal to the point that you can eat anything except liquids.

Q You have mentioned that you have -- that you missed time from work as a result of the treatment, the dental treatment. Can you tell the jury what work loss you have suffered?

A Well, I have lost at least three weeks.

Q What does that mean in dollars and cents?

A I make $35.00 a day.

Q What does it mean in dollars and cents; what's your total work loss?

A I don't know how much that would be.

Q Pardon?

A I don't know how much that would be. I'd have to add it up.

Q You haven't computed that out?

A No, I haven't.

Q We'll do that before we are through. Have you been

1 given a price by both Dr. Buckis and Dr. Armstrong for the
2 care of your teeth?
3 A Yes. For the surgery on my gums, approximately
4 $2500. In order to reconstruct my mouth, about $7500 to
5 $8000.
6 Q Now have you paid Dr. Armstrong any monies to date
7 for the work that he's had to do for you?
8 A I paid Dr. Armstrong $1000. I owe him $500 to date.
9 Q Have you paid Dr. Buckis?
10 A I paid Dr. Buckis approximately -- it's about
11 $400 or $500 I have paid him to date.
12 Q Have you had -- will you tell us if you have had --
13 whether or not you have had a difficult time financially
14 insofar as handling those payments is concerned?
15 A Yes. I borrowed the money.
16 Q You borrowed the money?
17 A Yes.
18 Q The teeth that you have told the jury about that
19 have been operated on, what affect did the operation by Dr.
20 Armstrong have on the gumline or the gum, what I would say
21 the gum margin between the gum and cap?
22 A It would be easy to show it but I can't show you
23 when you have capped teeth and they do surgery the gum is

1 cut away partially so there is a gap between the gum line
2 and the caps of the teeth where the roots of my teeth are
3 showing.
4 Q Can you feel that with your tongue?
5 A Yes.
6 Q Can you feel that additional gap in there?
7 A Yes.
8 Q Can you see it?
9 A Yes, you can see it.
10 Q How do you feel about that?
11 A Well, I care about my teeth. I don't like it at
12 all. I really care about my teeth.
13 Q Dr. Buckis has proposed a certain course of treat-
14 ment and work for you. Do you want that work done or not?
15 A Yes, I do. I want to save my teeth.
16 Q Now you have told us that your teeth are sensitive.
17 Are you referring now to teeth that Dr. Armstrong operated
18 on?
19 A Yes. The teeth Dr. Armstrong has operated on.
20 Q Mrs. Farley, today if you went out in the hall and
21 took a cold drink of water and sloushed it around all your
22 teeth, what would the affect on you be?
23 A It would be horrible. It's very hard to do that.

1 For weeks I had to drink through a straw.

2 Q Do you do that?

3 A No, I don't do that. It's very hard to use cold

4 or hot. I try to use warm water.

5 Q Before Dr. Armstrong undertook your care back in

6 1976, what was the general condition of your mouth and

7 teeth?

8 A Well, I had several teeth missing in my mouth and

9 I wanted my teeth capped because the fillings -- each time

10 they would refill them the holes would be larger and also

11 I was missing a tooth in the front and I wanted that bridged

12 in and --

13 Q (Interposing) My question to you is, what was the

14 general condition of your teeth and gums?

15 A Good.

16 Q Now you have been -- you have been told by your

17 treating dentist about potentially losing some more teeth,

18 is that correct?

19 A Yes.

20 Q How many more -- how many more teeth are you

21 scheduled to loose?

22 A Three.

23 MR. BRANDT: Your Honor, I'm going to object to

1 that. It seems like we are getting into hearsay.

2 THE COURT: I will sustain the objection. It seems

3 the doctor ought to testify about that.

4 MR. BALAVAGE: I think it's proper for me to ask

5 her without going into the medical part of it, Your Honor.

6 BY MR. BALAVAGE:

7 Q What is your feeling on that prospect?

8 A I'm very upset about it. I was upset to losing the

9 first tooth because it was very close to the bone and I'm

10 very upset about it like any normal person would be.

11 MR. BALAVAGE: Your Honor, I believe that is all I

12 have of Mrs. Farley.

13 THE COURT: All right, sir. Cross examination?

14 MR. BRANDT: Yes, sir.

15 CROSS EXAMINATION

16 BY MR. BRANDT:

17 Q Mrs. Farley, where are you from, what part of the

18 country are you from?

19 A Originally, Nelson County.

20 Q In this state?

21 A Yes, in Virginia.

22 Q Okay and when you first went to see Dr. Goode, it

23 was October 25, 1966, was it not?

1 A If that is the exact date, yes. I didn't
2 remember the exact date that I went to see Dr. Goode.
3 Q And at that time were you married?
4 A Yes.
5 Q And how many children did you have?
6 A Three.
7 Q Were you experiencing marital difficulties at that
8 time?
9 A Yes.
10 Q And did you have any physical, medical or mental
11 problems at that time?
12 A I had emotional problems, yes.
13 Q Were you under the care of a physician at that time?
14 A Yes. I had been to a psychiatrist.
15 Q You had been to a psychiatrist at that time?
16 A Yes, I have been.
17 Q There came a time when you were divorced I believe?
18 A That is correct.
19 Q Am I correctiin that?
20 A In 1969.
21 Q In 69?
22 A Yes, I was separated in 1968.
23 MR. BALAVAGE: Your Honor, I'm going to voice a

1 general objection. I don't see where that has any
2 relevancy to the case.
3 MR. BRANDT: Your Honor, we feel it does have a
4 good bit of relevancy and we will tie it up.
5 THE COURT: I will let it on the basis it has some
6 effect on her treatment procedures and so forth returning to
7 the office. I will overrule your objection.
8 BY MR. BRANDT:
9 Q Now in 1966 when you first went to see Dr. Goode,
10 is it fair to say that things between you and your husband
11 were such that you were financially strapped for dental care?
12 A In 1966?
13 Q Yes.
14 A No.
15 Q Things were fine then?
16 A Yes.
17 Q Do you recall what Dr. Goode did for you on your
18 first visit?
19 A No, I don't.
20 Q Do you recall that a full mouth set of x-rays was
21 taken?
22 A Yes, he did take -- I saw the full mouth x-rays in
23 the depositions.

1 Q Do you recall that Dr. Goode told you that you
2 needed a root canal on one of your teeth and referred you
3 to Dr. Burton Zwibel, Z-w-i-b-e-l?
4 A I didn't remember his name but I do remember the
5 name now.
6 Q Does that refresh your recollection, my mentioning
7 of his name?
8 A Yes, it does.
9 Q And did you in fact go to see Dr. Zwibel as Dr.
10 Goode recommended to you?
11 A Yes.
12 Q When?
13 A I don't remember the date that I went to -- but I
14 could not remember that dentist's name but I do remember now
15 and I don't remember the date I went to see him.
16 Q Would it be fair to say you did not go to see
17 Dr. Zwibel immediately as requested but instead delayed a
18 considerable period of time?
19 A That is possible.
20 Q Was that because of financial difficulty?
21 A No, sir, I had no financial difficulty in 1966.
22 Q All right, why did you not go and seek the care
23 that Dr. Goode recommended to you immediately?

A I don't recall.

Q Do you recall seeing Dr. Goode again next on November 30, 1966, when prophy and check was performed. Do you know what the word prophy means?

A No, I'm sorry I don't.

Q The cleaning of your teeth by the dental hygienist?

A I have had my teeth cleaned several times in Dr. Goode's office.

Q Do you remember Mrs. Durahm?

A Yes, I do.

Q His dental hygienist?

A Yes.

Q Do you recall her cleaning your teeth on November 30, 1966?

A I don't recall that but I have had my teeth cleaned several times by Mrs. Durahm.

Q Do you recall Dr. Goode checking your teeth that very day?

A Dr. Goode always comes in and checks your teeth. after they are cleaned.

Q Do you recall Mrs. Durahm telling you to make a six month appointment after your teeth were cleaned that day for your next cleaning?

A I'm sure she did.

Q And did you do that?

A Probably not.

Q Why not?

A I don't remember.

Q Do you recall that on December 2, 1966, Dr. Goode presented his diagnosis to you, discussed with you what needed to be done including two root canals on your teeth?

A They were the two I had to have pulled I'm sure.

Q Do you recall a discussion with him as to what it is that he could do for you in reference to the root canals being performed and then a bridge being made for you with crowns?

A Yes, he did mention a bridge.

Q Do you recall being in Dr. Goode's office on January 16, 1967 and having an x-ray performed and having a temporary maxillary left central incisor made for you?

A As I say I was in Dr. Goode's office several times in 66 but I don't remember exactly.

Q Do you recall that after the 16th of January, 1967, regarding the visit I have just mentioned to you that you did not again come back to see Dr. Goode despite the fact that he had offered you the treatment plan we have talked about until

February 22, 1968?

MR. BALAVAGE: Your Honor, I am going to object to the form of that question. He is assuming something in that question that is not in evidence.

THE COURT: I don't believe -- in other words she said she had been to Dr. Goode but I don't think she quite gave the answer that you said she had given, Mr. Brandt.

MR. BRANDT: I had asked her if he had presented a treatment plan for crown and bridge work. She said yes he did. That was done on the 2nd of December, 1966.

THE COURT: Do you recall that?

THE WITNESS: Yes, I do.

THE COURT: All right, fine. I'm sorry.

BY MR. BRANDT:

Q Now, my question is to you, why is it that after being there on the 17th of January, 1967, you waited over a year to come back to his office?

A Over a year?

Q Is it not so?

A Well, maybe.

Q That you never returned until February 22, 1968?

A Well, this was before he crowned my teeth.

Q Didn't he tell you that on the 2nd of December, 1966,

1 when he presented the plan to you that it was important to
2 have two root canals performed and then move on the crown and
3 bridge work requirements?
4 A I don't remember that.
5 Q I'm sorry?
6 A I do not remember that.
7 Q Well, can you give this jury any explanation for
8 your not returning to his office for at least a cleaning
9 job six months after you had your first cleaning job from
10 his office?
11 A Well, I had planned to have my teeth capped. I
12 don't remember.
13 Q Do you remember being in his office on February 22,
14 1968, for the preparation of a left central incisor?
15 A I remember being in Dr. Goode's office. I don't
16 remember the specific date.
17 Q All right, do you recall being there on March 12,
18 1968 when a crown was placed?
19 A I remember when the crowns were placed.
20 Q That was just a crown, a single crown?
21 A I don't remember which tooth that was.
22 Q All right. Do you recall being there on May 3rd,
23 1968, when five fillings were performed?

1 A Several of my teeth were filled by Dr. Goode.

2 Q Do you recall being there on May 17, 1968?

3 A No.

4 Q Do you recall being there on June 23, 1968, when

5 an impression was taken for a temporary upper denture?

6 A I do remember that.

7 Q Do you recall being there the next day, June 24,

8 1968, when the temporary upper partial was placed in your

9 mouth?

10 A Yes.

11 Q Do you recall that you did not return then until

12 January 14, 1969?

13 A I don't remember.

14 Q All right, can you give any reason for not having

15 your teeth cleaned during that period of time, for not having

16 made an appointment to do that?

17 A No.

18 Q Do you say that Mrs. Durahm, the dental hygienist,

19 did not show you how to brush your teeth and how to floss your

20 teeth?

21 A She did not.

22 Q Are you certain of that?

23 A I'm positive. I had not seen one of those threaders

1 before.

2 Q When did your divorce situation heighten; what

3 time, what period of time was this?

4 A I'm sorry, I didn't hear.

5 Q When did the divorce situation reach a high

6 pitch; when was the separation; when did that take place?

7 A 1968.

8 Q What month?

9 A I don't remember the month.

10 Q Would it have been December of 1968?

11 A Yes, he left, yes December.

12 Q And was it --

13 MR. BALAVAGE: (Interposing) Your Honor, I am

14 going -- I don't want to keep interrupting Mr. Brandt, if

15 I may voice a continuing objection to this line of questioning.

16 THE COURT: To her domestic problems?

17 MR. BALAVAGE: On the grounds of relevancy, Judge.

18 THE COURT: I think it could have some bearing,

19 Mr. Balavage, if it had some question about her returning

20 to the doctor's office and so forth. Mr. Brandt said he

21 will tie that in.

22 MR. BALAVAGE: All right, sir.

23

BY MR. BRANDT:

Q Now during the first nine months of 1969, you made approximately eight visits to see Dr. Goode concerning the crown and bridge work he was working on for you, does that sound about correct?

A What? Through 69, is that what you said?

Q I'm talking about February through September, 1969.

A Yes.

Q During that period of time you did not make however any appointments to have your teeth cleaned and checked, did you?

A During that period of time?

Q During that period of time.

A I would imagine if they needed it, it would have been done.

Q Well, there is a dental hygienist that tells you you have to make an appointment with the receptionist, isn't that correct; you have to get on the list in order to be seen, don't you?

A I suppose so.

Q Well I think you testified before that you recall her telling you that. Now is it not correct that between the 3rd of September, 1969 and the 14th of June, 1972, you never

1 saw Dr. Goode or anybody in his office?

2 A That is correct.

3 Q What is the reason for that?

4 A The reason being when my teeth were crowned on the —

5 were capped, I was told that my teeth would last a lifetime,

6 to brush very lightly in order not to wear the plastic off.

7 I thought my mouth was in good shape so I saw no reason to

8 go have my teeth cleaned.

9 Q For almost three years, Mrs. Farley, you felt that

10 way?

11 A That is correct.

12 Q You didn't have every tooth in your mouth crowned,

13 did you?

14 A Most of my teeth were crowned.

15 Q Well you had 12 teeth crowned, did you not?

16 A I have 12 upper and I have four lower teeth crowned.

17 Q You had other teeth in your mouth that were in need

18 of attention, did you not?

19 A Yes, the lower front, yes and there is -- there are

20 two in the back that are not crowned.

21 Q Was it during this period of time that you had

22 financial difficulties and that you had also emotional

23 difficulties because of the divorce?

1 A Sir, I had emotional difficulties but I did not
2 have financial difficulties in 69.
3 Q How about in 1970?
4 A In 1970 did I have?
5 Q Yes.
6 A Well, when you're talking about finances,
7 difficulty in finances, when -- if Dr. Goode would say, you
8 know, something about my teeth being crowned that is a large
9 amount of money but just to go have my teeth cleaned or a
10 filling, I did not have that kind of a problem, money problem.
11 Q Weren't you having difficulty getting the proper
12 support from your husband in this period of time?
13 A My husband did not support me.
14 Q It wasn't one of the grounds of your divorce action
15 that he didn't --
16 MR. BALAVAGE: (Interposing) Your Honor, this is
17 too much.
18 MR. BRANDT: May it please the Court, I think this
19 lady has testified that --
20 THE WITNESS: (Interposing) I had admitted to
21 having emotional problems. I went to a psychiatrist.
22 THE COURT: Just a minute, Mrs. Farley.
23 MR. BRANDT: She has said to us she did not have

1 any support problems and I think I have a right to show that
2 she on other occasions has testified differently.
3 THE COURT: I will sustain the objection.
4 MR. BRANDT: I have an objection to the grounds
5 stated, Judge.
6 THE COURT: Sure.
7 BY MR. BRANDT:
8 Q Do you recall coming to Dr. Goode's office on
9 June 14, 1972?
10 A Yes, I was in Dr. Goode's office in 72.
11 Q That was the only day in 72 as a matter of fact?
12 A Yes.
13 Q What was the reason for your being there?
14 A I don't know if it was for cleaning and check or
15 for a cavity. I don't remember.
16 Q Did you ever call in advance and make appointments
17 in advance with Dr. Goode's office or were your appointments
18 made on the spur of the moment because of a problem right
19 then and there?
20 A A couple of times they were made on the spur of
21 the moment like when I had the tooth that abscessed and I
22 had to have a root canal, I did make that on the spur of the
23 moment. Also in 76 when the tooth was pulled, that was on the

1 spur of the moment. I thought I had another tooth that was
2 abscessed. I did keep appointments with Dr. Goode.
3 Q You say you did keep them?
4 A Yes.
5 Q Did you ever break an appointment with him?
6 A I'm sure I broke one or two but I don't believe
7 I broke that many appointments with Dr. Goode.
8 Q His office would accommodate you when you called
9 on the very day itself and said you had a problem; they would
10 try to squeeze you in, wouldn't they?
11 A They were very nice about it, that is correct.
12 Q Do you recall how many times you saw him in 1973?
13 A I don't know if it was once or twice.
14 Q Do you recall seeing him in January of 1974 when
15 three x-rays were taken?
16 A Yes.
17 Q What was the reason that you were there that day?
18 A In 74, I believe that was when he x-rayed -- I
19 don't know if that is when he ground the bite down, the
20 gold down, I really don't know.
21 Q Do I understand that sometime in 1973 you had
22 trouble with your gums bleeding, you say?
23 A Yes.

Q And you talked to Dr. Goode about that and you felt you got no satisfaction from him or you got no answer from him?

A Well he just said it was nothing to worry about.

Q In reference to the tooth that Dr. Goode pulled for you in 1976, that was the date of your last visit to him, was it not?

A That is correct.

Q August 23rd, 1976?

A Right, 1976.

Q Do I understand, Mrs. Farley, that you say Dr. Goode gave you no opportunity to save that tooth?

A He gave me no alternative. He said I had bone loss and he would suggest it be pulled and I did rely on Dr. Goode. I had been going to him for a number of years.

Q Mrs. Farley, is it possible that you just don't recall what transpired that day?

A I do recall.

Q You deny that Dr. Goode told you that the tooth could be saved with root canal?

A I do deny that. I went there, Mr. Brandt, I called and I said I think I need a root canal. That is why I called his office. I thought I had an abscessed tooth. That is why

1 I called. Now why if Dr. Goode had mentioned a root canal,
2 I certainly would have had it done.
3 Q You don't recall telling him you just plain
4 can't afford a root canal?
5 A A tooth close to the front of my mouth, I would have
6 gotten the money some place.
7 Q Who was present and overheard the discussion?
8 A Mrs. Goode, his wife.
9 Q Mrs. Goode was there?
10 A Was there, that is correct.
11 Q Do you remember anybody else being there also at
12 that time?
13 A Not in the room.
14 Q Did you say that you felt your mouth was in pretty
15 good condition when you first went to see Dr. Goode?
16 A Yes. I was missing some teeth.
17 Q How many teeth were you missing?
18 A Four I suppose.
19 Q Where were they located or where had they been
20 located?
21 A I had a partial plate on the upper -- my upper
22 teeth. I was in a school bus accident in high school. This
23 one was missing and there were two missing on the side that

1 are bridged in. I have two missing on the lower left and
2 now I have two on the lower right.
3 Q Did you say that you had a number of fillings in
4 the front teeth and that was one of the reasons you wanted
5 them capped and crowned?
6 A Yes and also the teeth that were missing, I wanted
7 those bridged in and they suggested I have them capped.
8 Q And that in fact was performed by Dr. Goode?
9 A Was performed.
10 Q Yes, was done?
11 A Yes, that was.
12 MR. BRANDT: May I have the Court's indulgence
13 for a moment?
14 THE COURT: Yes, sir.
15 BY MR. BRANDT:
16 Q Mrs. Farley, was a lower partial plate prepared
17 for you at the same time the bridge work was prepared?
18 A Yes.
19 Q And did you wear that lower partial plate?
20 A I could not wear it because it hurt. It was very
21 painful to wear and Dr. Goode did adjust it several times but
22 it still hurt and I could not wear the partial plate.
23 Q So that you did not use that partial plate that had

1 been prepared for you?

2 A No. I did try.

3 Q I'm sorry.

4 A I did try to use it but it was just not successful

5 at all. It did not fit properly.

6 Q Did you, Mrs. Farley, in fact lose that lower

7 partial plate?

8 A I don't have it. No, I don't.

9 Q I'm sorry.

10 A I did lose the plate.

11 Q Is it not true that everytime that Dr. Goode would

12 bring up the question of work that should be done on your

13 teeth, either be it periodontal or other types of treatment

14 you would remind him constantly you could not afford such

15 treatment?

16 A That is not true, Mr. Brandt.

17 MR. BRANDT: That is all, sir.

18 MR. BALAVAGE: Just a few questions, Your Honor.

19 REDIRECT EXAMINATION

20 BY MR. BALAVAGE:

21 Q Mrs. Farley, when Dr. Goode's office would

22 accommodate you as Mr. Brandt has pointed out, was that

23 free or did you pay for that?

1 A I paid for that.

2 Q During the period of time that you had your

3 emotional problems as you have candidly told the jury, did

4 that -- did you in anyway neglect the care of your teeth as

5 you had been instructed to care for them by Dr. Goode's

6 office?

7 A I did not. No, I did not neglect my teeth. I have

8 always cared about my teeth.

9 Q Has anybody ever told you that getting a divorce

10 causes periodontal disease?

11 A No.

12 MR. BALAVAGE: That is all, Judge.

13 THE COURT: Any further recross?

14 MR. BRANDT: No, I don't think I have any other

15 questions.

16 THE COURT: You may step down.

17 (Witness excused.)

18 THE COURT: Gentlemen, let's take about a five

19 minute recess. Members of the jury, we will take a five

20 minute recess.

21 (Whereupon, a brief recess was taken.)

22 THE COURT: Bring the jury out please.

23 (Whereupon, the jury returned to the jury box.)

1 MR. BALAVAGE: Your Honor, I would like to call
2 as our next witness, Dr. Buckis.
3 THE COURT: All right, Dr. Buckis, come forward.
4 I don't believe he's been sworn.
5 Whereupon,
6 DAVID CHARLES BUCKIS,
7 was called as a witness by and on behalf of the plaintiff,
8 and, after having been first duly sworn, was examined and
9 testified as follows;
10 DIRECT EXAMINATION
11 BY MR. BALAVAGE:
12 Q Dr. Buckis, state your name please?
13 A David Charles Buckis.
14 Q Where do you live?
15 A 1709 Galloway Drive.
16 Q What is your occupation?
17 A A dentist.
18 Q What school did you attend preparatory to
19 becoming a dentist?
20 A John Carroll University. It's in Cleveland, Ohio.
21 That is the only undergraduate school.
22 Q All right, sir, then what graduate schools?
23 A Case Western Reserve University and that's also in

1 Cleveland, Ohio.

2 Q All right, so when did you graduate from dental

3 school?

4 A In 1960.

5 Q After you graduated from your dental school, what

6 did you do?

7 A I went into the Navy for two years as a reservist.

8 Q Did you do dental work in the Navy?

9 A Yes, it was general practice at dentistry.

10 Q What did you do after that?

11 A I left the Navy in 62 and practiced as a general

12 practitioner for three years in Cleveland, Ohio.

13 Q And how long have you been practicing here in

14 Virginia?

15 A Since July of 1972.

16 Q Where is your office located now, Dr. Buckis?

17 A It's at 5830 Old Centreville Road in Centreville.

18 Q And I assume that you're licensed to practice

19 dentistry in the State of Virginia?

20 A That is right.

21 Q Have you taught anywhere, taught school?

22 A I have had no training as an educator so I haven't

23 taught in any school environment, no.

1 Q All right, sir. Now, what is your field of
2 dentistry?
3 A My practice is a general practice or a family
4 practice.
5 Q And you have been practicing in Northern Virginia
6 for how long?
7 A Almost five years.
8 Q Do you have a family of your own?
9 A Yes.
10 Q Tell us about them.
11 A Five children. The oldest is 18, the youngest is
12 two months.
13 Q All right, sir. Now, Dr. Buckis, did you take on
14 as a patient, Mrs. Janet Farley during 1976?
15 A Yes, I did.
16 Q And can you tell us the approximate time when she
17 came to see you?
18 A September of 76.
19 Q When Mrs. Farley presented herself to you, what
20 did you do?
21 A Well she came primarily with the question of do
22 I have a problem? And particularly she seemed -- she wanted
23 to know why she had lost a tooth and I examined her mouth and

1 the area where the tooth was lost was on the lower right
2 side so I looked primarily to that area and examined her
3 and found that she had some loose teeth and on probing the
4 right side of the mouth I found that she had lost the attach-
5 ment apparatus of the -- some of the attachment apparatus on
6 the right side of her mouth and this would account for the
7 looseness of those teeth and because it seemed to be extensive,
8 I made a referral to a Dr. John Armstrong.
9 Q All right, sir, did you conduct a probing -- what I
10 am going to call a probing examination of Mrs. Farley?
11 A Yes. To a limited degree I did and on that right
12 side, I know that we found that she did have some extensive
13 pocket depth.
14 Q And what is pocket depth, Dr. Buckis?
15 A Basically it's a gap or an extended cuff of tissue
16 between the tooth and where the gum tissue meets the tooth.
17 Normally this tissue is attached very tightly within a couple
18 of millimeters of where the edge of the gum line is and when
19 you develop periodontal disease this attachment migrates or
20 comes away from the tooth if you will and you develop a space
21 there or a pocket.
22 Q All right, sir. Now you have indicated that
23 normally the pocket depth would be two millimeters, about

1 two millimeters?

2 A Yes, that is correct.

3 Q Now in the limited probing that you performed,

4 Dr. Buckis, can you tell us what those millimeter ratings

5 were?

6 A Well, I note the first tooth I probed was six

7 and eight millimeters.

8 Q Sixes and eights?

9 A That is right.

10 Q What is the maximum millimeter to scale that we

11 are referring to that is considered, what does the scale

12 run from, from one to what?

13 A Well these probes are calibrated up to ten milli-

14 meters and if you go beyond that you -- at least I haven't

15 seen any probes that go beyond that.

16 Q All right and what does that mean in terms of,

17 what is the significance for instance of having a ten?

18 A Well the root of the tooth normally would be

19 say an average of 18 millimeters so if you have had a 10

20 millimeter pocket there it would mean that you lost over

21 half the bone around that tooth.

22 Q Now before I leave your measurements, your pocket

23 depth measurements, I think you said they were eight and six.

1 Dr. Buckis, do you have an opinion within reasonable
2 dental certainty as to what the pocket depth of those
3 teeth that you have -- that you measured at sixes and eights
4 would have been in November of 1974? For instance, let's
5 take them one at a time. What in your dental opinion within
6 reasonable certainty would that, an eight pocket depth
7 reading have read in November of 1974 or around that period
8 of time?
9 A Backing up two years, I would say five millimeters
10 would be a reasonable expectation.
11 Q And how about a six; if you observed or read a six
12 millimeter pocket depth reading in September or latter part
13 of 1976, what would that have been in November of 1974?
14 A You would expect that that would be three to four,
15 I would think.
16 Q Does periodontal disease develop overnight or
17 can you help us in understanding how long it takes for that
18 to develop within some medical probability?
19 A Well basically the body has a balance to it and
20 when we are younger our tissues -- some tissue cells are
21 lost and new ones are formed and what happens in the mouth
22 is that if bacteria is permitted to stay in one place for
23 any extended period of time then they begin to break down

1 the tissue cells or the gum cells around the tooth and
2 extend into the deeper tissues once that is broken down
3 so I think that it's a question of learning to live with
4 these bacteria that accumulate as to whether or not you are
5 going to have any gum disease or periodontal disease.
6 Q Now, Dr. Buckis, in light of that, can you give
7 us some idea in years or whatever framework of time you can
8 that it takes periodontal disease to develop to the point
9 that you saw -- you observed it in Mrs. Farley's mouth?
10 A Well, generally it would take several years. I
11 would say at least five years for it to develop to that
12 extent.
13 Q All right, sir, now when you examined Mrs. Farley,
14 was it difficult at all, difficult for you to determine that
15 she had periodontal disease?
16 A Not at all. In fact I really abbreviated my examina-
17 tion simply because it was very apparent to me and consequently
18 I felt she would need the help of a specialist to treat it.
19 Q And when we are relating to Mrs. Farley, as a
20 result of periodontal disease Mrs. Farley had and has, what
21 has happened to her gum, the gum-bone structure in her
22 mouth?
23 A Over the period of -- what period of time are you-

1 speaking?

2 Q Any period of time. What happens to it? Has it

3 improved; has she lost it? Is it getting better or --

4 A (Interposing) Until I saw her I assume it would

5 continue to go down hill.

6 Q What does that mean?

7 A She was losing more and more of the ligaments over

8 the tooth structure.

9 Q When will that ligament or attachment structure

10 rejuvenate itself; will it grow back and become like it was

11 before or not?

12 A Unfortunately the body is not capable of

13 repairing that mechanism. Consequently, the treatment

14 primarily is directed at arresting the disease at whatever

15 point it is.

16 Q So that whatever, is it fair then to say, Dr.

17 Buckis, that whatever bone loss, ligament loss, structure

18 loss Mrs. Farley suffered, sustained up to the time that you

19 saw her, that will never come back? Is that fair; is that

20 right?

21 A As far as I know, you cannot regenerate periodontal

22 tissues.

23 Q All right sir, do you in your office treat people

1 yourself who have three and four pocket depth readings?

2 A Yes, I do.

3 Q And what would that treatment consist of?

4 A Generally, a removal of the diseased attachment

5 tissue and showing the patient primarily how they can remove

6 the bacteria that if started or initiated that process and

7 then observing the healing of this and keeping on top of

8 their own home care procedures. That is basics of treatment

9 of that.

10 Q Why did you send Mrs. Farley to a periodontist

11 if you are able to do this kind of work yourself?

12 A You just asked me three and four millimeters.

13 Q Yes.

14 A And her -- we were dealing with more extensive

15 problem and I felt that he deals with this extensive type

16 of problem every day and when you get involved with it you

17 lose so much tissue; you're involved with molars that have

18 multiple roots and that gets a little more complicated when

19 you get in there and treat those areas.

20 Q All right, sir. After Mrs. Farley saw Dr. Armstrong,

21 did she return to you for treatment?

22 A Dr. Armstrong asked her to return to me on a

23 couple different occasions to treat specified areas that he

1 felt needed attention at the same time that he was treating.
2 Q Will you tell us what her condition was when she
3 returned from Dr. Armstrong; what the condition was insofar
4 as you were concerned in your treatment and then what you did?
5 A Initially there was an area which had rather
6 extensive decay and he felt that if we didn't treat that
7 area and remove the decay and put a filling or restoration
8 in that right away that the possibility of her losing that
9 tooth was eminent so that was initially done, was to get rid
10 of the decay factors.
11 Q What did you do to do that?
12 A We removed the decay and rebuilt the tooth in
13 silver mounting.
14 Q Do you have an opinion as to how long that decay
15 that you have told us about had been in that tooth?
16 A Well, as decay sits in one place for an extended
17 period of time it develops a dark leathery appearance and
18 feel to it and it certainly appeared that it was the type
19 of decay lesion or caries lesion that had been there for a
20 couple of years or more.
21 Q What else did you do in addition to cleaning that
22 tooth up?
23 A There were a couple of other teeth involved that

1 had some decay and also he had done some periodontal surgery
2 and the teeth that he had treated were very loose and felt
3 they needed to be stabalized so the one tooth would help
4 support the others so that was done.
5 Q All right, sir. Mrs. Farley is still a patient
6 of yours?
7 A Yes.
8 Q And do you anticipate further treatment for her?
9 A Yes, we have worked up an extensive treatment plan
10 for her.
11 Q All right, now before I go into that, Dr. Buckis,
12 let me ask you a series of questions. I want you to take
13 into account certain facts that I am going to mention and
14 then I want to ask you a question based on those facts. I
15 want you first to take the period of time of November of
16 1974 and on that date a lady of about 37 or 38 years old
17 presents herself to a general practicing dentist. At that
18 time she has evidence of bleeding, of loose teeth, of some
19 spacing, unusual spacing in the front teeth and at that time
20 would have pocket depth readings in some of her teeth at
21 three millimeter. Do you have an opinion within reasonable
22 dental certainty what the condition of that person's mouth,
23 guns, teeth were at that time?

1 MR. BRANDT: Excuse me, Your Honor. I'm going to
2 object to that. I don't believe there is any fact in
3 evidence as to pocket depth on that date. There's been an
4 opinion expressed by this witness but no facts.
5 MR. BALAVAGE: It is an opinion, Your Honor, and I
6 think it is a fact opinion. The man has indicated pocket
7 depth reading in his --
8 THE COURT: (Interposing) I believe he did testify,
9 Mr. Brandt.
10 MR. BRANDT: Not facts. My problem is that is his
11 opinion because he didn't see her at that time. He's offered
12 to you an opinion as to what the pocket depth may have been
13 since he wasn't there but I don't think you can base a
14 hypothetical on an opinion; it has to be based on a fact
15 in evidence. That is my objection.
16 MR. BALAVAGE: If I could disagree with that. We
17 can only do with a matter of this kind what is possible.
18 THE COURT: I will overrule your objection.
19 MR. BRANDT: I have an objection.
20 THE COURT: All right, sir.
21 BY MR. BALAVAGE:
22 Q Dr. Buckis, what in your dental opinion was the
23 condition of that person's mouth?

1 A At what time is this now?

2 Q November of 1974 taking into account the factors

3 that I have told of to you.

4 A The -- certainly what you mention was evidence of

5 periodontal disease or periodontitis.

6 Q My next question to you was would or should a

7 generally practicing dentist in this area have discovered,

8 diagnosed periodontal disease at that time?

9 A Yes.

10 Q On an examination performed on that person?

11 A Yes.

12 Q Can you give us an opinion within reasonable

13 dental certainty what affect there would have been on that

14 person had that person been diagnosed properly in November

15 of 1974 and treated properly; what affect would all of that

16 have had on the hypothetical lady we are talking about, on

17 her gum, mouth, bone structure?

18 A With the patient's cooperation, the lesions would

19 heal up and she would retain her teeth.

20 Q Taking -- comparing that hypothetical lady in the

21 questions and answers that I have asked and you have given,

22 had Dr. Goode diagnosed Mrs. Farley's condition in November

23 of 1974 and then either treated her himself or referred her

1 out for proper treatment, do you have an opinion within
2 reasonable dental certainty as to whether or not the treat-
3 ment to Mrs. Farley would have been as extensive as it is
4 now?
5 A I'm sure it would not have been as extensive.
6 Q Do you feel that some of these operations may have
7 been unnecessary?
8 MR. BRANDT: I will object as to what may have
9 been. I think he's got to testify as to the basic standards.
10 THE COURT: Sustain the objection.
11 MR. BALAVAGE: I will reword it.
12 BY MR. BALAVAGE:
13 Q Doctor, taking into account all the factors we have
14 previously cranked into our computer, do you have an opinion
15 within reasonable dental certainty as to whether or not some
16 of the operations that have been performed by Dr. Armstrong
17 and will be performed would have become unnecesary had prompt
18 proper treatment been rendered then?
19 A My opinion that some of those procedures would not
20 have been necessary.
21 THE COURT: Were what?
22 THE WITNESS: Would not have been necessary.
23

1 BY MR. BALAVAGE:

2 Q Dr. Buckis, in our Northern Virginia area is it
3 standard practice when a patient would come, let's say to
4 you for other work, for let's say grinding or painting of
5 teeth that have been capped or x-rays, is it standard
6 dental practice to routinely check that person for potential
7 possible periodontal disease?

8 A Yes.

9 Q Do you?

10 A Yes.

11 Q Dr. Buckis, assuming that you're aware of the fact
12 that Dr. Goode, back in 1969 area, did extensive capping,
13 bridging work for Mrs. Farley, you know that don't you?

14 A Yes.

15 Q Were those caps individual caps or are they
16 bridged or can you give us a brief description of that?

17 A They're bridges replacing some teeth and most of
18 those are what we call multiple units or they're tied together.

19 Q All right, sir, now assuming that Mrs. Farley were
20 your patient,you had performed that sort of capping, bridging
21 work what dental oral hygiene instructions would you have
22 given her?

23 A Well after I --

1 MR. BRANDT: (Interposing) Excuse me, I don't
2 think that is the standard sir, what a particular physician
3 or dentist might have done.
4 THE COURT: I sustain the objection. I think it's
5 what the general practice would have been in the area.
6 BY MR. BALAVAGE:
7 Q All right, Dr. Buckis, would you tell us what the
8 general standard practice is in the area insofar as instruc-
9 tions under those conditions?
10 MR. BRANDT: Excuse me, sir, what year are we
11 talking about?
12 THE COURT: What year are we talking about?
13 MR. BALAVAGE: Your Honor, I would be talking about
14 1969 and thereafter.
15 THE COURT: All right.
16 MR. BALAVAGE: Because this lady did see this
17 doctor as we know many times after.
18 THE COURT: All right.
19 THE WITNESS: I would say that when an appliance is
20 placed, if a patient in the area generally is shown how to
21 clean and maintain that.
22 BY MR. BALAVAGE:
23 Q Now will you explain to us what that instruction

1 would be.

2 Q In Mrs. Farley's case, it would be showing her how
3 to use a little lead or threader to feed some dental floss
4 between the teeth where she can't get it inbetween any other
5 way because they are soldered together, tied together, so
6 they can get in there and remove the bacteria that would
7 create a periodontal problem.

8 Q Would you give her instructions in brushing in
9 that regard?

10 A Yes because dental floss as you know is not
11 possible to wrap it all the way around a tooth so that some
12 of the areas would have to be cleaned using a soft bristle
13 brush.

14 Q And is there any particular way that you would
15 instruct her to use that brush? I don't -- did you bring
16 a brush with you by any chance?

17 A No, I didn't.

18 Q Maybe you can show us -- can you tell us or show
19 us if there is any unusual way your instruction would be in-
20 sofar as the use of a toothbrush is concerned?

21 A Well, it's not unusual. I think the accepted method
22 of brushing today is what we call secular brushing where you
23 point the bristles --

1 MR. BRANDT: (Interposing) I am going to object
2 again. We are talking about today. It is one thing if we
3 are talking about 1969.
4 MR. BALAVAGE: I don't mind doing it if --
5 BY MR. BALAVAGE:
6 Q Dr. Buckis, for the five years that you have been
7 in practice in this area what has been the accepted or
8 general standard of practice among general dentists in
9 dentistry in general insofar as oral hygiene, dental
10 hygiene instruction is concerned?
11 A Basically it's been what I have been describing
12 to you.
13 Q Go ahead and describe it again.
14 A And when I first came here I joined a group
15 practice in Reston, Virginia and the first thing I did there
16 was help them institute a program to instruct their patients
17 in oral hygiene or home care procedures and there was besides
18 myself, there was an individual dental auxillary whose sole
19 duty it was to work with patients in proper methods of brushing
20 and the use of dental floss.
21 Q Will you tell us what the proper method of brushing
22 is as you have described it?
23 A It is known as a secular method of brushing and

1 that means you point the bristles toward the gumline and
2 vibrate it very gently and this cleans the little crevice
3 between the gum and the tooth where the bacteria harbor
4 themselves.
5 Q Is this done with a hard or soft brush?
6 A The soft bristle brush.
7 Q What is the purpose for instructing Mrs. Farley or
8 anybody like her in that sort of dental hygiene; what is the
9 purpose of that?
10 A To prevent periodontal disease and caries, decay
11 problems.
12 Q Have you given Mrs. Farley any instructions in
13 that regard since you have had her as a patient?
14 A Yes. As a matter of fact the first appointment
15 we spent most of our time doing exactly that because she
16 wanted to know what she could do right away to get rid of
17 this problem she had and I said yeh there is something you
18 can do. So we spent at least thirty minutes going through
19 a ritual of cleaning up everything.
20 Q Now, Dr. Buckis, assuming Mrs. Farley continues
21 with the dental hygiene as you have recommended to her, and
22 further assuming that she will continue to see you and
23 possibly Dr. Armstrong over the years, do you have an opinion

1 within reasonable dental certainty what the progress if any
2 of that periodontal disease will be; what I am getting at,
3 will it be arrested; will it be accelerated; will it stay
4 the same or what?
5 A My opinion I think that proper treatment is going
6 to arrest the problem. There -- in my conferring with Dr.
7 Armstrong, there are a few teeth that are as yet questionable
8 in his mind and these teeth he feels the --
9 MR. BRANDT: (Interposing) Excuse me, I'm going
10 to object what somebody else feels.
11 THE COURT: I will sustain the objection.
12 MR. BALAVAGE: All right.
13 BY MR. BALAVAGE:
14 Q We don't want you to say what Dr. Armstrong may
15 have said. What is your opinion insofar as these teeth that
16 you have just referred to? What is your opinion?
17 A Well with the exception of perhaps three teeth,
18 I think she can retain the remainder of her dentition and
19 without any problem provided she stays on a good maintenance
20 program.
21 Q Is Mrs. Farley a cooperative patient?
22 A As cooperative as any patient I have ever worked
23 with. Does an excellent job of taking care of --

1 Q (Interposing) All right, sir. You have mentioned
2 with the exception of three teeth. What -- do you have an
3 opinion within reasonable dental certainty as to what the
4 future is going to hold for Mrs. Farley insofar as those
5 three teeth are concerned?
6 A We are endeavoring, of course, to salvage everything
7 we can but I think short of a miracle for those three teeth
8 to last say more than four to five years would be expecting
9 too much, so it would be unfair to plant in anybody's mind
10 the fact that we can perform miracles so I would say those
11 three teeth are probably going to be lost.
12 Q Why?
13 A Because by the time treatment was initiated the
14 disease had caused too much bone loss.
15 Q Dr. Buckis, you have I understand a plan of treat-
16 ment and work laid out for Mrs. Farley, is that correct?
17 A Yes.
18 Q And what is your end purpose; what is your end
19 result insofar as she is concerned?
20 A Well we have a number of things we want to accomplish.
21 We want to stabalize the overall periodontal condition or the
22 support around her teeth and to do that because there's been
23 so much bone loss those teeth need to be stabalized. Right

1 now they're in a state of fluction. They're moving and it's
2 a known fact that at the end of periodontal treatment that
3 teeth need to be stabalized or mutually supporting to one
4 another so you tie them together and another thing you want
5 to do, of course, is to have her look presentable, her best
6 and sometimes when you expose root surfaces after periodontal
7 treatment these root surfaces are very sensitive and that
8 sensitivity can be overcome by covering those sensitive areas
9 with a crown or cap which is a part of the splint that is to
10 be made up and then the teeth should be put into a
11 harmonious relationship so that they're not tripping over
12 one another and aggravating a weakened condition. So if
13 you -- these are some of the treatment goals that we have
14 in mind and want to spread those forces out over as many
15 teeth as possible. It's kind of a snowshoe effect so there
16 is not too much stress put on any one tooth and basically that
17 is what we are.--
18 Q (Interposing) All right, sir. Has Mrs. Farley
19 told you that the teeth that Dr. Goode has operated on are
20 sensitive? Has she indicated that to you?
21 A Did you mean Dr. Armstrong?
22 Q Dr. Armstrong, excuse me.
23 A Yes, she did say she had some sensitivity.

1 Q Has there been as a result of Dr. Armstrong's
2 operations to your observation any widening of the gap between
3 the crowns, the lower edge or maybe the upper edge of the
4 crowns on the top and the gumline; has there been any effect
5 on that?
6 A Yes, it is evident that the teeth appear
7 elongated in the areas that he's done surgery.
8 Q Can you see -- can you if you look in Mrs. Farley's
9 mouth, can you see this gap; is it pretty evident or not?
10 A Yes, you can see it.
11 Q And one of your goals is correct that cosmetically
12 so it cannot be seen, is that correct?
13 A That is part of the goals, yeh.
14 Q All right, sir. Now what would you do, how do you
15 intend to go about meeting your goals that you have outlined
16 to try to help Mrs. Farley out? What do you intend to do?
17 What will you do?
18 A Well basically we want to develop a satisfactory
19 bite for her and to do this we will be doing it out of -- out
20 of crowns, developing it in the prosthesis, prosthetic
21 fixed replacement that would be made there and in addition
22 to that some of these teeth have to be put in more favorable
23 alignment because the forces when they are directed on teeth,

1 if they are directed in a vertical plane they're much kinder;
2 the tooth can take these forces better than if the tooth is
3 leaning to one side then you get a leverage effect and it
4 will tend to break down the ligaments that hold that tooth
5 in there so some of the treatment involves moving teeth or
6 upriding them by orthodontic means and after they're there
7 stabalizing them by tying them all together and developing
8 a bite that will allow the teeth to glide over one another
9 smoothly.
10 Q All right, sir and do you intend -- you may have
11 said this but I will ask you, do you intend to remove the
12 crowns that she now has in her mouth and replace them; is
13 that part of the treatment that you have?
14 A Yes.
15 Q And you feel by doing that you will accomplish these
16 various goals you have indicated, is that correct?
17 A As I outlined it, that would be removing those
18 would be included in.
19 Q And what, Dr. Buckis, what would be your charge?
20 Before I ask that question. Over approximately how long a
21 period of time do you feel you are going to have to be working
22 on Mrs. Farley to get her straightened out?
23 A I'd say two years.

1 Q And what would be your charge; can you give me a
2 cost as to Mrs. Farley for the work that you have told us
3 about?
4 A I believe we estimated approximately $7500.
5 Q And Doctor, is that price for the work that you
6 have indicated; is that what is generally charged throughout
7 the Northern Virginia area for the work that you have told us
8 about?
9 A As far as I know. My fees are in line with the
10 other practitioners in the area. I think it is probably the
11 best cost accounting system you can use.
12 Q Let me just ask you a few other things, Dr. Buckis,
13 and I will be through. Based on reasonable medical certainty
14 should a practicing dentist have diagnosed Mrs. Farley as
15 having periodontal disease in 1974, November of 1974?
16 A Yes.
17 Q Based on reasonable medical certainty and also
18 taking into account the standards of practice for dentists
19 in the area at that time, November of 1974, what treatment
20 should have been recommended by Dr. Goode to Mrs. Farley;
21 what should he have done?
22 A You mean if he were doing periodontal treatment
23 himself?

1 Q No, sir. In November of 1974 when Dr. Goode saw
2 Mrs. Farley, what should he have done?
3 A I would think he should have informed the patient
4 she had a periodontal disease.
5 Q And then what after that?
6 A And if he felt capable, go ahead and treat it him-
7 self or if not make a referral to someone he felt would do
8 an adequate job.
9 Q Doctor, do you have an opinion within reasonable
10 medical certainty as to whether or not Dr. Goode failed to
11 meet the then applicable dental standards in that period of
12 time?
13 MR. BRANDT: Your Honor, I am going to object to
14 that. I think that probably calls for the ultimate fact in
15 issue which only the jury can decide under your proper
16 instruction. I think he can tell what the standard of care
17 is.
18 MR. BALAVAGE: I will withdraw the question.
19 THE COURT: He is going to withdraw the question.
20 MR. BALAVAGE: Yes, sir.
21 BY MR. BALAVAGE:
22 Q Dr. Buckis, in November of 1974 and even before that
23 and since then within reasonable dental probability what

1 instructions of care should have been given to Mrs. Farley
2 from the standpoint of dental hygiene, oral hygiene?
3 A Well I feel she should have been shown how to
4 remove the bacteria which grow in everyone's -- in everyone's
5 mouth and certainly that to do that the brushing technique
6 that I showed you would be called for as well as the use of
7 some dental floss to get areas that that brush is not going
8 to reach.
9 Q Dr. Buckis, in response to a letter I wrote you,
10 you responded November 16 of 1976 and you then gave a diagnosis --
11 MR. BRANDT: (Interposing) Your Honor, I am going
12 to object. I think that is a improper question.
13 THE COURT: Sustain the objection.
14 MR. BALAVAGE: I will strike it. I will ask him
15 directly.
16 BY MR. BALAVAGE:
17 Q Dr. Buckis, you have told us about your examination,
18 your treatment, your proposed treatment. Now I want to ask
19 you what your diagnosis is and was of Mrs. Farley from the
20 time that you saw her to the present of her condition?
21 A The diagnosis would be periodontitis.
22 MR. BALAVAGE: I believe that is all I have, Your
23 Honor.

THE COURT: Cross examine, Mr. Brandt?

CROSS EXAMINATION

BY MR. BRANDT:

Q Dr. Buckis, have you had patients over your career that did not return for continued care from you?

A Yes.

Q That is a problem that plagues a dentist is it not?

A I don't find that it plagues the dentist. I think some of them are happy some of them didn't return.

Q Maybe it plagues the patient; maybe I should state it that way. Would you agree it is not very good common sense by a patient to stay away for two and three years at a time from her dentist?

A That would be reasonable to assume.

Q All right. How frequently do you tell your patients to come back to see you?

A Depending on the previous experience as far as disease goes, encouraging everyone to see me once a year. Those that I see on a six month or less interval and they're still having problems, I want to see them more frequently.

Q So you would say at least once a year?

A That is right.

1 Q Now, Mr. Balavage has asked you about November of
2 1974 and the fact that periodontal disease in your opinion
3 was present but as a matter of fact your opinion is that was
4 present before that, isn't that correct?
5 A Yes.
6 Q How far back did you say, five years?
7 A That is correct.
8 Q Five years from when you saw her; you saw her in
9 September 1976, early September, the 2nd day was it, am I
10 correct in that?
11 A I believe so, yes.
12 Q So did I understand at least in your opinion she
13 had had an active periodontal disease condition that should
14 have been attended to by a general dentist back in 1971
15 period of time?
16 A I would have to concur, right.
17 Q Now I believe you did tell Mr. Balavage that if a
18 general dentist had observed this problem and had attended
19 to it you felt that the care would have been less extensive
20 than it is now?
21 A Right.
22 Q It is a fact, however, is it not that the care,
23 that would have been periodontal care, required that three,

1 four, five year period of time prior to that time which would
2 have required not only attention by a dentist, be he a
3 periodontist or not, but time by Mrs. Farley, expense by
4 Mrs. Farley, discomfort by Mrs. Farley?
5 A To some extent, yes.
6 Q Are you able to give the jury, Dr. Buckis, any kind
7 of a feel for comparing the procedures that should have been
8 performed and picked up earlier and those that Mrs. Farley
9 is now undergoing?
10 A Well in the earlier stages this disease can be
11 arrested and controlled with a minimal amount of treatment
12 where you don't have to go in and make surgical flaps and
13 reshape the bone and tissue around the teeth so treating
14 it earlier I think that it could have been done is what they
15 call a closed procedure. One where you don't reflect any
16 tissue out of the way but merely go in and do what is known
17 as root planting and shaping away the affected areas on the
18 root and scraping out. It's kind of a D&C around your tooth
19 type thing.
20 Q And Dr. Buckis, what is your estimate of the cost
21 of that, that that would have cost Mrs. Farley?
22 A I can't really feewise go back to five years but
23 right now it would run approximately $700.00.

1 Q Did you say $700?

2 A Right, um-hum.

3 Q And do you say that there would have been your

4 services necessary then following that periodontal care, the

5 splinting and the crown and bridge work?

6 A I don't believe I understand what --

7 Q (Interposing) As I understand it when the

8 periodontist is finished you propose to do some splinting

9 of the teeth together or tying it as you call as well as

10 brand new crown of bridges, am I correct sir?

11 A The two are congruent.

12 Q You are going to do them?

13 A Yes.

14 Q Or you tell us here you are going to do them?

15 A Right.

16 Q I'm asking you whether or not if the $700 periodontal

17 job had been done five years ago prior to your seeing her, do

18 you say she also would have been required to have then done

19 in your general opinion, these procedures?

20 A I don't believe so because you wouldn't have all

21 the mobility of these teeth and consequently they wouldn't

22 need to be stabalized.

23 Q How about crowns and bridges?

1 A And the crowns and bridges happened to be there
2 already, is that correct?
3 Q You tell me. You have looked at Mrs. Farley's
4 mouth, I haven't.
5 A Some of the -- some of the crown and bridge work,
6 of course, that is already there is already there, right?
7 Q You're proposing to take what's there off as I
8 understand it are you not sir and to redo it?
9 A That is correct.
10 Q Would you do that also had periodontal care been
11 rendered five years ago?
12 A I don't believe so because she probably wouldn't have
13 had the root sensitivity from the tissue having receded or
14 been broken down halfway up the root.
15 Q Now, let's talk about the crown and bridge work.
16 You don't find anything wrong with the crown and bridge work
17 that is in place, do you sir?
18 A What do you mean by find anything wrong with it?
19 Q Does it not meet the general standards here in
20 Northern Virginia that are exercised by a general dentist
21 in this community?
22 A Do you feel that is a debatable question or not?
23 Q I'm asking you if you find any problem with the

1 crown and bridge work in Mrs. Farley's mouth, do you find
2 that it varies from the general standard here in Northern
3 Virginia exercised by the general dentist?
4 A I would think so.
5 Q You think it does not meet or it does meet?
6 A Does not.
7 Q In what way, sir?
8 A I am thinking in terms of when I initially saw Mrs.
9 Farley.
10 Q I understand.
11 A And at that time they were over-contoured.
12 Q What does that mean?
13 A Were not shaped to conform to the original shape
14 of the tooth structure that they replaced.
15 Q Have you ever had that happen to you?
16 A Yes.
17 Q So it is an expectable thing that can happen on
18 occasion you say?
19 A No, I remade it.
20 Q All right. How many overcontours as you describe
21 them did you see?
22 A In Mrs. Farley's case?
23 Q That is right.

1 A I didn't count them to be truthful with you.

2 Q So you're not able to tell the jury how many you

3 found over-contoured?

4 A I'd have to give an approximation. I believe

5 the majority.

6 Q You felt that the majority of the crowns and

7 bridges in this lady's mouth were over-countoured, not

8 acceptable?

9 A That is right.

10 Q Well if this lady had not had any periodontal

11 care at all then you would have gone in and removed all of

12 these crowns and redone them?

13 A I might have suggested it to the patient.

14 Q Why? For what reason?

15 A Because they tend to trap bacteria; they tend to

16 develop decay in areas where bacteria are lodging, make it

17 more difficult for the patient to get in and clean and they

18 were subsequently recontoured or filed down and thinned out

19 or reshaped to the proper contour as a part of the periodontry.

20 Q I thought you said since she's been under your

21 care she doesn't have a cleaning or bacteria problem?

22 A How does that go together with what you just said?

23 THE COURT: Just respond to his question.

1 MR. BALAVAGE: Your Honor, there is no question.
2 He just made a statement.
3 THE WITNESS: He didn't ask me anything.
4 MR. BALAVAGE: Your Honor, it is cross examination
5 but I think he's got to ask a question. He didn't ask a
6 question.
7 MR. BRANDT: I don't think Your Honor had any
8 problem understanding the problem.
9 THE COURT: Mr. Brandt will repeat it.
10 BY MR. BRANDT:
11 Q Dr. Buckis, isn't it is so sir, ever since she's
12 been under your care you say that the bacteria condition that
13 you found when you first saw her has been cleaned up and taken
14 care of, cured? Your Honor, I'd appreciate it if Mr. Balavage
15 would not motion with his head.
16 MR. BALAVAGE: I'm getting ready to object. He
17 didn't say all that and I don't think it is a fair question.
18 That is what I am objecting about. I don't think he said
19 all -- if he wants to ask that question.
20 MR. BRANDT: Your Honor, I think it is proper cross
21 examination.
22 THE COURT: I will overrule the objection. I think
23 it is completely --

1 THE WITNESS: (Interposing) Her treatment is not
2 completed. She still has problem areas. There's areas she
3 cannot get to and clean.
4 BY MR. BRANDT:
5 Q How many?
6 A How many?
7 Q Yes, sir.
8 A From the maxillary right first central incisor
9 to the last molar.
10 Q How many teeth?
11 A On the right side that would encompass seven teeth.
12 Q You say that it is impossible for her to properly
13 clean seven teeth?
14 A Right now, yes.
15 Q Why is that?
16 A Because she hasn't had any periodontal treatment
17 completed in those areas.
18 Q I see. Well, it has nothing to do with the crown
19 and bridges, does it?
20 A Remember these crowns were already reshaped and
21 recontoured by Dr. Armstrong which enabled her then to get
22 in and do the cleaning.
23 Q So those crowns don't need to be replaced?

1 A I don't believe I said that.

2 Q I'm sorry. I thought you said you proposed that

3 you would redo all of this lady's crowns?

4 A That is right.

5 Q But didn't you just tell us now Dr. Armstrong had

6 reshaped or recontoured a number of them?

7 A That is right.

8 Q Then they don't need to be redone?

9 A That is not a logical conclusion.

10 Q Well explain to us why it isn't.

11 A Because esthetically they're unacceptable.

12 Q What do you mean esthetically they're unacceptable,

13 to you or to Mrs. Farley or what? How do you make that

14 determination?

15 A Okay, forget esthetics. From sensitivity stand-

16 point she's got a lot of discomfort if she drinks anything

17 cold.

18 Q All right.

19 A And by putting crowns on you are going to get away

20 from the sensitivity.

21 Q I thought you said she had crowns on those teeth?

22 A But what about the areas that have been exposed to

23 periodontal treatment that are not covered by the crowns?

1 Q So you are trying to make a bigger crown in layman's
2 terms?
3 A Not larger necessarily but it would cover more tooth
4 surface.
5 Q Isn't that frowned upon by the periodontist because
6 you are going up close to the gumline and you can then trap
7 bacteria by making that larger?
8 A I don't believe that that -- that that is necessarily
9 the factual statement.
10 Q Well is there a controversy about doing that, let
11 me ask it that way, that your profession between your profes-
12 sion and the periodontal specialists?
13 A I don't think that it is necessarily a controversy.
14 Q Is there a disagreement between dentists about
15 that, may I ask it that way?
16 A I don't think you can get two dentists to agree on
17 too much of anything.
18 Q All right. Aren't you really proposing, Dr. Buckis,
19 the absolute perfect situation for this lady without reference
20 to cost and so forth?
21 A I felt that in the light of the amount of supporting
22 tissues that's been supported that she needs the absolute
23 best we could do for her.

1 Q Well, crowns and bridges have nothing to do with
2 support, do they?
3 A Yes, they do provide a whole lot of support.
4 Q Isn't a crown merely a cap over an existing
5 tooth?
6 A But the shape of that cap and how it functions
7 with the cap that it meets is going to determine how much
8 stress is put on the tooth.
9 Q You talked about the fact that three teeth -- you
10 didn't think would last more than five years. Are two of
11 those upper molars?
12 A I believe so.
13 Q And is it not correct that there was no -- that
14 there were no teeth beneath those two teeth on the lower
15 arch?
16 A Right.
17 Q And isn't the reason that she's having trouble
18 with those two teeth is because of that fact, they have
19 dropped down because there was nothing beneath them?
20 A I think they had been in that position long before
21 she had trouble.
22 Q Well when is it that you say that those teeth
23 dropped down?

1 A I didn't say.

2 Q All right. Well did they?

3 A Did they what?

4 Q Drop down?

5 A We have already established that.

6 Q When?

7 A I don't know.

8 Q You are not able to say they weren't in that

9 condition when Mrs. Farley walked into Dr. Goode's office

10 are you?

11 A What condition?

12 Q The condition that they currently are in?

13 A Yes I think you have some films that he took when

14 he initially saw Mrs. Farley.

15 Q Did they show they were dropped down at that time?

16 A Dropped down, yes, but they didn't show a lot of

17 bone loss.

18 Q Wouldn't the use of her partial plate have helped

19 that situation?

20 A What situation?

21 Q The situation of those two teeth dropping down

22 because they had nothing to hit, no surfaces to come in

23 contact with?

1 A They were already dropped down.

2 Q I thought you said they have undergone a change

3 since?

4 A Periodontal change.

5 Q All right. Wouldn't the use of a lower partial

6 plate have helped that situation?

7 A I don't think so.

8 Q You do not?

9 A No.

10 Q A dental hygienist is the normal person who shows

11 the patient how to brush their teeth, isn't that correct?

12 A Not in my office.

13 Q Isn't it normal in most dental offices?

14 A I don't believe so.

15 Q You do not believe so. Didn't you testify on your

16 deposition that that was the normal approach?

17 A I testified I believe that if I had a dental

18 hygienist that she would have to be capable of doing that.

19 Q Well wouldn't that be the reason you did them?

20 A It would be one of the reasons, yes. However, the

21 doctor is still ultimately responsible for whatever goes on

22 in the office.

23 Q You said that you came to a Reston group and gave

1 them some assistance in preventive dentistry. Did they need
2 some help; is that why you joined the group? Were they
3 having trouble in showing people how to brush their teeth?
4 A That I don't believe was a factor in my joining
5 the group.
6 Q Doctor, hasn't there been a running controversy
7 over the years even in the dental school as to how to brush
8 one's teeth and as to what to emphasize, whether it be hard
9 brush, soft brush, teeth themselves and so forth?
10 A Believe it or not I believe everybody agrees one
11 particular method is superior.
12 Q What were you taught in dental school?
13 A I don't know, we are going back.
14 Q Just to 1960.
15 A Seventeen years, right. We were taught three
16 different methods.
17 Q Do you want to tell us what they were?
18 A One was called Charter's Method and --
19 Q (Interposing) What was that?
20 A It was a method where you as I recall the brush
21 was moved up and down.
22 Q On the tooth surface or the gum?
23 A On the tooth surface.

1 Q Okay.

2 A And then to be honest with you, I'm not sure that

3 I can remember the names of the other two methods that were

4 prescribed at that time.

5 Q How about just describing them to us?

6 A One was a circular method where you went in little

7 circles.

8 Q Tooth or gums?

9 A Well actually the circular method you hit both

10 really.

11 Q Intentionally or accidentally?

12 A It was -- you couldn't do it any other way than

13 go in a circle.

14 Q What was the third one?

15 A And the third one is the one I really don't

16 remember.

17 Q Didn't make a particular impression on you as a

18 dental student apparently.

19 A Right.

20 Q Which one were you taught was preferable in 1960?

21 A Here again the profession had no particular format

22 that was shown to be preferable, preferred and as a matter of

23 fact the bacteria, logic factors were not promulgated.

1 Q Well when is it between 60 and 77 that you got
2 squared away into a method that you feel is the superior
3 method which now as I understand is soft bristles up under
4 the gum, concentrate on the gum and not the tooth?
5 A After I developed a periodontal problem.
6 Q After you personally developed a periodontal problem?
7 A Right, right.
8 Q So dentists aren't above having these problems.
9 yourself?
10 A That is right.
11 Q Did you do some special study when this happened
12 for your own personal welfare?
13 A I sought the help of a specialist and the specialist
14 gave me a little rubber stimulator or one of these things
15 you see on the end of a toothbrush sometimes and he said
16 try that for a few months and come back and see me. So I
17 used that for a few months and my gums still bled and I went
18 back to see him. I said this thing is not doing any good at
19 all so the next thing I knew there was a course being given
20 in preventive dentistry at the Naval Dental School for one
21 week and this I believe was in 1966 or 67 and so I went to
22 this course and a gentleman by the name of Robert Barkley
23 was giving the course. And the whole theme of the course

1 was that anyone could be independently healthy by just
2 doing what I have already described here.
3 Q So that was 67 did you say?
4 A Yes.
5 Q So as 67 you feel that at least as far as you were
6 concerned you got the light and knew the right way to brush
7 your teeth?
8 A Right.
9 Q Do you concede that even today dentists disagree
10 on the usefulness of the method that you liked?
11 A I haven't found too many that would argue.
12 Q I take it you -- that you found some from the way
13 you phrased that?
14 A Put it this way, I don't know of any honestly if
15 we are talking about what you and I are talking about right
16 now, I don't know of anybody that isn't talking about the
17 same thing I am talking about.
18 Q When did your profession go in this area to soft
19 bristles from hard bristles?
20 A Well the American Dental Association in 1972 put
21 out a little pamphlet which describes the techniques that I
22 have described here.
23 Q Why were they six years late or five years late?

1 A Because they're a big bureaucracy and any change
2 usually comes from grass roots and I feel that that is
3 undoubtedly --
4 Q (Interposing) Now, of course, if Mrs. Farley
5 had been shown the correct way to care for her teeth and
6 gums and just didn't do it, what, of course, would be a
7 situation that I suspect you see from time to time, is it
8 not, where a patient just doesn't have the time or the
9 desire or the will to do what she's been shown?
10 A Yes.
11 MR. BRANDT: May I have the Court's indulgence?
12 THE COURT: Sure.
13 MR. BRANDT: Those are all the quesions I have, sir.
14 THE COURT: Any further redirect?
15 MR. BALAVAGE: Just a few.
16 THE COURT: Well try to finish with this doctor
17 before lunch recess.
18 MR. BALAVAGE: Yes.
19 REDIRECT EXAMINATION
20 BY MR. BALAVAGE:
21 Q Yes, Dr. Buckis, on the last series of questions
22 regardless of what you were taught in dental school 17 years
23 ago and regardless perhaps of your seeking out all the

information you could about periodontal disease in 1969 I think you said or 67, whatever it was, in your own case, what for the last five years, for the last five years that you have been in the Northern Virginia area, what has been the accepted standard of dental practice insofar as prescribing the care of teeth is concerned?

A Again, it's the technique I described. It's in the little booklet put out by the American Dental Association in 1972 and really by the time they get a booklet together like that everybody's got the word so --

Q (Interposing) All right, sir. Now the line with those questions that you were asked at the end of your examination, is it acceptable general practice for dentists in this area to keep up with things, to continually educate yourselves in the dentistry profession?

A Yes.

Q And isn't periodontics one of the aware things or one of the live things for the last seven, eight or nine years?

A Yes.

Q Let me ask you this. Have all the dentists in your community that you may know including yourself who have kept up with things, would they have diagnosed Mrs. Farley in

1 November of 1974 as being with periodontal disease?

2 A Yes, I'm sure.

3 Q Would it be fair to say that if a dentist, a

4 generally practicing dentist, did not diagnose and catch

5 Mrs. Farley's then condition in November of 1974, that

6 dentist just wasn't keeping up?

7 A That would be a fair -- that would be a reasonable

8 assumption.

9 Q With his continuing dental education?

10 A Yes.

11 Q Did you own a car back in 1961?

12 A Yes.

13 MR. BALAVAGE: I think that is all.

14 THE COURT: Any further recross?

15 MR. BRANDT: Yes.

16 RECROSS EXAMINATION

17 BY MR. BRANDT:

18 Q Again as I understand you say that a general

19 dentist just wasn't keeping up with this lady if he hadn't

20 seen and begun to solve the periodontal problem back in 1971,

21 five years before you saw her?

22 A You said that; that is approximately the time

23 periodontal disease would be beginning.

1 Q That is right and should have been caught by a
2 general dentist exercising ordinary care in this community,
3 Northern Virginia?
4 A I would think that they would be aware of it, yes.
5 Q Should have been aware of it you say; should have
6 done something about it?
7 A Yes.
8 Q And I believe you also feel that way about the tooth
9 that was extracted too, don't you sir, that if that had -- she
10 lost I think you called it -- I will use the right word, the
11 lower right second premolar?
12 A All right.
13 Q That was extracted in August of 1976 by Dr. Goode
14 I believe and I think she came to you the next week?
15 A Shortly thereafter.
16 Q Shortly thereafter. As I understand it you feel
17 that that was lost because of a specific periodontal problem
18 around that tooth?
19 A Yes.
20 Q And that that should have been picked up five years
21 ahead of time too and the tooth would have been saved?
22 A Two years or three years, yes.
23 Q Five years is what you're starting with and working

1 from that point on, is that right?

2 A All we are saying, we gave an approximation.

3 Q I understand.

4 A Right.

5 Q But we are talking about 1971.

6 A All right.

7 Q If that tooth had periodontal disease about it

8 resulting in bone loss and later resulting in the loss of

9 that tooth in your opinion, am I correct?

10 A Yes.

11 Q And had that been picked up by a general dentist

12 in this community exercising the normal standards in this

13 community the tooth would not have been lost and he should

14 have picked it up in 1971?

15 A Well assume there would certainly be evidence, yes

16 in 1971.

17 Q I don't want you to assume, is that your opinion?

18 A If I had seen Mrs. Farley in 1971, I would have

19 observed it.

20 Q I'm talking about the normal general dentist here

21 in Northern Virginia. You say the average dentist here in

22 Northern Virginia should have picked up in 1971 and done

23 something about it and then the tooth would have been saved?

A I can agree with that, yes.

MR. BRANDT: Okay, sir.

FURTHER REDIRECT EXAMINATION

BY MR. BALAVAGE:

Q Would the same apply in November of 1974?

A Yes.

Q Now, in light of that -- let me just ask a few questions and I will be through. Dr. Buckis, this periodontal disease, when is it at its worst? In other words let me straighten that question out if I can. When is the greatest damage suffered by a person who has periodontal disease, at the beginning, in the middle, at the end or where?

A Well, like most disease entities that particulary one that -- that can't regenerate itself. In other words these structures once they're broken down don't regenerate so the longer they're there they worse they get and they're snowballed so it's at its worst in the later stages because it's drawing more tissue at a faster rate.

Q And would that be the period of time that a person would suffer the most damage if we can compare damages?

A Yes.

Q During the latter part of the disease?

A Yes.

MR. BALAVAGE: That is all, Judge.

THE COURT: Anything further?

MR. BRANDT: No other questions.

THE COURT: May Dr. Buckis be excused?

MR. BALAVAGE: Yes, sir.

THE COURT: Doctor, you may be excused and free to leave.

(Witness excused.)

THE COURT: Bring the witnesses in. We are going to recess at this time for lunch.

Members of the jury and witness, the Court is going to recess. We ran a little past our normal time. Normally we try to recess from 1:00 to 2:00 but when we have a witness of this type we try to get through his testimony so we are going to recess until 2:30. It will be about an hour and ten minutes. Please don't discuss the case in the presence of anyone and don't attempt to arrive at any conclusions and report back to the jury room about 25 after 2:00.

(Whereupon, at 1:15 p.m., the trial was recessed to reconvene at 2:25 p.m.)

1 AFTERNOON SESSION (2:40 p.m.

2 THE COURT: Both counsel ready at this time?

3 MR. BALAVAGE: Yes, sir.

4 MR. BRANDT: Yes, sir.

5 THE COURT: Let's bring the jury down.

6 (Whereupon, the jury returned to the jury box.)

7 THE COURT: Call your next witness.

8 MR. BALAVAGE: We call Dr. Armstrong, Your Honor.

9 Whereupon,

10 JOHN FRANKLIN ARMSTRONG,JR.,

11 was called as a witness by and on behalf of the plaintiff,

12 and, having been previously duly sworn, was examined and

13 testified as follows:

14 DIRECT EXAMINATION

15 BY MR. BALAVAGE:

16 Q State your name please?

17 A My name is John Franklin Armstrong, Jr.

18 Q Where do you live?

19 A Arlington, Virginia.

20 Q What is your occupation?

21 A I am a periodontist.

22 Q Doctor, where did you go to school?

23 A I went to school at the Randolph-Macon College in

1 Ashland, Virginia, at the Medical College of Virginia,
2 Richmond, Virginia, University of Kentucky, Lexington,
3 Kentucky.
4 Q When did you graduate from dental school?
5 A In 1963.
6 Q Now did you go to a specialty school?
7 A I did.
8 Q When was that?
9 A In 1969.
10 Q And what was your specialty?
11 A Periodontist.
12 Q Did you practice in this area as a general
13 practitioner?
14 A Yes, I did.
15 Q Where?
16 A In Arlington, Virginia from 1965 to 1969.
17 Q And when did you get out of your periodontal
18 school?
19 A In 1971.
20 Q And your office now is where, Doctor?
21 A Falls Church City, Virginia.
22 Q So you have been practicing then in Virginia for,
23 in this part of Virginia for approximately how long?

1 A Twelve years.

2 Q Both specialties?

3 A Twelve years.

4 Q Let me ask you some preliminary questions before

5 we talk about Mrs. Farley's case. When we say periodontal

6 disease or periodontics, what are we talking about?

7 A We are talking about a disease process that affects

8 the tooth, the gum around the tooth and the destruction of

9 bone.

10 Q And what is the cause of that disease?

11 A The cause is inflammation.

12 Q And what is the cause of inflammation?

13 A Bacteria.

14 Q Now, Doctor,has there been some period of time I

15 am going to ask for this in years if you can give it to us,

16 some approximation as to when the dental profession has

17 become rather acutely aware of periodontal disease and its

18 prevention and treatment and so on?

19 A In the past ten years.

20 Q Do you have patients referred to you by other

21 dentists?

22 A Yes.

23 Q Now when did you take on Mrs. Farley as a patient?

1 A In August of 1976.

2 Q Did you perform an examination?

3 A Yes, I did.

4 Q What did your examination show?

5 A My examination showed that Mrs. Farley had

6 advanced periodontal disease at that time.

7 Q All right, sir, before I go any further I neglected

8 to ask you, Dr. Armstrong, are you licensed to practice in

9 this state?

10 A Yes, I am.

11 Q And your specialty is periodontics?

12 A Yes.

13 Q Now did you take a history from Mrs. Farley?

14 A Yes.

15 Q And will you give us that very briefly?

16 A Mrs. Farley's oral examination revealed bone loss

17 from around most of her teeth, a dental decay, red margins,

18 red gum margins, looseness of theeth.

19 Q All right. What did you conduct, a probing examina-

20 tion?

21 A Yes, I did.

22 Q And how was that done; what is a probing examination?

23 A A probing examination is done with a hand instrument

1 which is calibrated in millimeters and placed between the
2 tooth and the gum to the level of the bone.
3 Q What does it look like; does it have a shape?
4 The instrument, does it have a shape?
5 A Yes. It's about this long (indicating) and each
6 end is curved up and down (indicating) and it slips under
7 the margin.
8 Q Do you have a chart that reflects the probe measure-
9 ments that you made?
10 A Yes, I do.
11 Q Now, Doctor, by the way did you bring with you a
12 model, a clay model I guess it is or a plastic model of
13 Mrs. Farley's teeth and --
14 A (Interposing) Yes.
15 Q Now would it be of help to the jury and all of us
16 if you used those models in your testimony?
17 A I think it would, yes sir.
18 Q Okay. Now will you give us the depth readings that
19 you took of Mrs. Farley, you might maybe point out which way
20 your -- I don't know if you have those readings in sequence
21 but you might maybe point out which is upper and lower and
22 what you are talking about?
23 A We began probing in Mrs. Farley's mouth on the teeth

in the upper right side of her mouth and the pocket depth in millimeters where the tissue has been diseased and detached from the tooth root starting with this back tooth goes seven, six, ten, eight, eight, three, four, six plus. Shall I continue?

Q Yes.

A Four, three, four plus, four plus, three, six, six. The sixes are in the midline of her upper front teeth. Three, five, four, two, three, four, two, four plus, five, two, three, five, two, three, five, three, five, five, four plus, three and four. That encompasses the outside surfaces of the teeth from the righthand side to her left-hand side. On the inside of her mouth beginning also with the righthand side the numbers read as follows in millimeters: seven, five, five, seven, eight, five, six plus, six plus, five, five, five, four, three, five, five, five, six, four plus, four plus, five, five, four plus, five, five, three, five, three, three, four, seven, four, two, five, six plus, three, three, four. That is the periodontal clinical examination for the upper arch.

Q Okay.

A In the lower arch beginning with the left side on the outside the numbers are: three, three, three, three,

1 three, three, three, two, three, three, two, three, three,
2 two, five, five which is in the midline again of the lower
3 two, three, three, two, five, five, two, three, five, two,
4 three, three, six, five, seven, seven, eight, seven --
5 excuse me, five, seven. The inside measurements again
6 beginning in the lower left are three, three, four plus,
7 four plus, three, three, three, two, three, two, two, two,
8 two, three, three, three, three, three, three, three, three,
9 three, three, two, three, three, three, three, seven, seven,
10 three, three, seven.
11 Q All right, now, Dr. Armstrong, after you examined
12 Mrs. Farley, did you form an opinion as to what her condition
13 of her mouth and teeth and gums was at that time?
14 A Yes, in my opinion Mrs. Farley's diagnosis would be
15 labeled as advanced periodontal disease.
16 Q Doctor, do you have an opinion within a reasonable
17 medical certainty as to what the various readings that you
18 have told us of would have been had they been taken in
19 November of 1974?
20 A In my opinion the pocket depth readings in
21 millimeters would be three millimeters less in 1973 than
22 were recorded in 1976.
23 Q Now, Dr. Armstrong, taking into account -- I'm going

1 to pose a hypothetical question to you and I would like you
2 to make some responses to it. Taking into account that a
3 37 or 38 year old woman would present herself in your office
4 in November of 1974 and would have the following complaints
5 or symptoms. One, bleeding of her gums; two, looseness of
6 some teeth; three, some spacing between front teeth; four,
7 pocket depth readings ranging from some instances six on
8 down into four and three. Do you have an opinion within
9 reasonable medical dental certainty as to what the condition
10 of that person's mouth was?
11 MR. BRANDT: Excuse me, Your Honor. I am going to
12 object to that hypothetical fact that I particularly have in
13 mind is I believe Mrs. Farley said it was 1973 if I recall
14 correctly when she had bleeding gums. Other than that I
15 have no objection. I think that is the facts in evidence.
16 MR. BALAVAGE: She said when she says she saw
17 Dr. Goode in 1974 she discussed with him bleeding and he
18 made some response back. I have notes on that.
19 THE COURT: I would have to go back and check. I
20 don't recall whether it was 73 or 74, yeh, 1974 I was having
21 bleeding, told him.
22 MR. BRANDT: On cross examination she said she also
23 told him 1973.

1 THE COURT: But --

2 MR. BRANDT: (Interposing) So maybe it's both.

3 THE COURT: 74 talked to him about it.

4 BY MR. BALAVAGE:

5 Q Doctor, do you have an opinion as to what the

6 condition of that person's teeth were?

7 A My opinion would be, sir, that Mrs. Farley had

8 periodontal disease in 1974.

9 Q Now within reasonable medical dental certainty

10 and taking into account the standard of practice as practice

11 by general practitioners in this area, what should in this

12 case Dr. Goode first of all have done insofar as diagnosing

13 that condition with those elements that I have given you?

14 A I don't understand the question, sir.

15 Q Well, let me ask it a different way. I don't think

16 I worded that too well. My question to you is should a

17 general practitioner in this area in November of 1974 been

18 able to diagnose that condition?

19 A Yes.

20 Q At that time?

21 A Yes.

22 Q If it is shown that Dr. Goode in this case did not

23 diagnose that condition of Mrs. Farley at that time, do you

1 have an opinion within reasonable dental certainty and again
2 taking into accounts the standards in this area, the dental
3 standards in this area, as to whether or not Dr. Goode was
4 negligent?
5 MR. BRANDT: Your Honor, I am going to object only
6 because of the grounds that you and I have previously dis-
7 cussed in my prior objection. I think it deals with the
8 ultimate fact in issue. I think it is for the jury to decide
9 under your proper instruction.
10 THE COURT: I think so.
11 MR. BALAVAGE: I'd reword it whether or not it would
12 be below the standard.
13 THE COURT: Not whether or not he was negligent?
14 MR. BALAVAGE: I'll just reword that in that regard.
15 THE WITNESS: Would you repeat the question.
16 MR. BRANDT: My objection -- the reason is bi-
17 laterally. First objection it seeks to determine the
18 ultimate fact and issue which I think is objectionable in
19 this Commonwealth. Secondly, I think the question has to
20 be phrased and answered in reference to a general dentist
21 in this area without reference to a specific individual,
22 so I have those two objections. Then I think under proper
23 instructions the jury determines whether this defendant

1 violated the standard or he didn't.

2 THE COURT: I think you might rephrase it. He is

3 right in that respect.

4 BY MR. BALAVAGE:

5 Q Dr. Armstrong, taking into account the various

6 factors that I have given you or hypothetical lady and

7 assuming -- assuming that the dentist practicing in this

8 area did not diagnose the disease that you felt she had

9 at that time, would that have met or not met the standards

10 prevailing in this area at that time?

11 A It would not have met the standards in this area

12 at that time.

13 Q Doctor, going one step further what should the

14 examining or treating dentist that we are now talking about

15 have done had he diagnosed that condition;what should have

16 been done in accord with the accepted standards in this

17 area?

18 A He should have attempted treatment himself or

19 referred her to a competent specialist.

20 Q What treatment did you undertake for Mrs. Farley?

21 A Our first phase of treatment for Mrs. Farley

22 consisted of conservative periodontal care which involves

23 going around all of her tooth roots under the gum tissue

1 margins into the pocket areas where there was calculus and
2 to remove this debris from the root surfaces of the teeth
3 over a two month period of time on a multiple visit basis.
4 Q Was anything else done by you?
5 A I referred Mrs. Farley back to Dr. Buckis for
6 a re-examination and restoration of those areas where there
7 was dental decay.
8 Q Was anything else done by you?
9 A In the initial -- in the first phase of treatment,
10 sir, or totally?
11 Q After these stages that you have told us about,
12 Doctor?
13 A Following the conservative phase of treatment we
14 have surgically operated in three of Mrs. Farley -- in three
15 areas of Mrs. Farley's mouth to eliminate the pocket depth.
16 Q And will you describe to the jury what was to be
17 accomplished and what was accomplished by those operations
18 and the operations themselves consisted of?
19 A Yes. In the treatment of advanced periodontal
20 disease it is necessary to make incisions into the gum tissue
21 which surround the teeth on both the outside surface and the
22 inside surface and which the scalpel you make a line along
23 the gum margin like so (indicating) down to the level of the

1 bone and then take a periosteal elevator or another tool and
2 we frequent the gum tissue which is diseased from around the
3 tooth roots. So an incision is made here and another
4 incision is made on the inside in a similar process and so
5 now exposed to me is the bone that is surrounding the teeth
6 and the tooth roots and various grinding procedures are done
7 on the -- is done on the bone of the teeth in an attempt to
8 level their horizontal crest so that the tissue when it is
9 surgically repositioned will be compatibile with Mrs. Farley
10 cleaning her mouth. Once this is done there are sutures
11 placed inbetween each of the teeth to bind down the two
12 flaps of tissue, one on the outside and one on the inside
13 and then a periodontal dressing is placed over the sutures
14 and over the margin of the flaps for comfort. The procedure
15 lasts about two hours.
16 Q All right, sir, is this a painful operation, Doctor,
17 for the patient?
18 A Yes, it is painful. It involves a considerable
19 amount of post operative pain and discomfort for approximately
20 seven days until the sutures and the dressings have been
21 removed. It causes facial swelling. It requires the use of
22 an analgesic, of a pain killer such as codeine which they
23 take every four hours for approximately five or seven days

1 or until the discomfort has been minimized. Is that sufficient
2 sir?
3 Q All right, sir. Do the operations that you performed
4 and there were three of them, is that right, Doctor?
5 A To date, there have been three, yes.
6 Q And how many do you propose in the future?
7 A Three more sir.
8 Q Will the operations in the future be about as you
9 have described them to the jury?
10 A They will, yes.
11 Q What were the conditions when you opened Mrs.
12 Farley's teeth up as you have told us; what did they look
13 like? Do you have any charts or any anatomical diagrams or
14 pictures of anything that would give us some idea of what it
15 looked like?
16 A When I opened -- when I surgically opened the
17 soft tissues and separated them as I have described
18 previously from the bone, I noticed that on these -- on
19 particularlyon the molar teeth that there were -- that there
20 was only a very little bit of bone remaining around the teeth
21 and it looks like something like this and you reflect the
22 tissue from it.
23 Q Would you bring that down here so the jury can see

1 it please? You might stand in the middle there if you are
2 going to demonstrate.
3 A These are the teeth and these are the teeth and
4 this is the calculus on them. These are the tooth roots
5 and this is the bone that surrounds the tooth roots to give
6 it stability and when you have advanced periodontal disease
7 this bone that surrounds the teeth has been destroyed and
8 when I say there is very little bone left, there was some-
9 thing like this amount of bone (indicating) remaining which
10 produces mobility of the teeth and gives a diagnosis of
11 periodontal disease. This is with the flap of tissue
12 uncovered. When you put the flap back you put it at the
13 level of bone. In other words you don't put it back up here
14 because it is not going to attach to anything so you put it
15 back down to where the level of bone was originally when it
16 was reflected from the gum margin was up here and now it has
17 been repositioned at a lower level on the teeth like so
18 (indicating). I made one error, Mr. Balavage. I think we
19 only have two areas left of surgical procedures for Mrs.
20 Farley.
21 Q All right, sir.
22 A Thank you.
23 Q Now, has Mrs. Farley been a cooperative patient for

1 you?

2 A Yes.

3 Q Have you given -- did you give her instructions

4 on dental oral hygiene?

5 A Yes, we did.

6 Q What was it?

7 A On the -- on the first conservative treatment visit

8 which I described previously as going under the gum tissue

9 margin in a nonsurgical approach before we began that we

10 went over with Mrs. Farley the proper methodology of

11 removing the bacteria which produces inflammation which

12 produces disease to how to remove these bacteria from the

13 tooth roots so that we would no longer have this problem

14 of periodontal disease.

15 Q And what were the instructions that you gave her?

16 A We told Mrs. Farley we would prefer she take our

17 soft toothbrush and in a horizontal fashion angling the

18 brush under the gum tissue margins, to brush in a horizontal

19 fashion like so and to use the dental floss placing it under

20 the gum tissue margin and moving it vertically to remove the

21 bacteria from the gum surface.

22 Q Did you give her any instructions insofar as the

23 fixed bridge that she has?

A We have a fixed prosthesis in the mouth and we cannot use the floss in between the teeth because there are solder joints at various places. We give them what we call a bridge cleaner which is a plastic -- which is a plastic device with an eyelet and they put the floss in the eyelet and pass it under the solder joint or the contact point and that gets the floss in between the teeth and then they can move it in a vertical fashion.

Q Did Mrs. Farley ever indicate to you while you gave her this instruction or at anytime when you talked with her that she was familiar with the techniques that you have just described to the jury?

A She did not indicate that she was familiar with disease control techniques.

Q Did you ask her that?

A Yes.

Q What was her response?

A That she was brushing her teeth up and down and back and forth but she was using the dental floss incorrectly.

Q That was my next question, Doctor, if you take dental floss and I guess we are all familiar with that and just go between the teeth is that enough?

A No you must place it on the root of the tooth and

1 move it up and down.

2 Q Then are you saying the dental floss and not only

3 go between the teeth but kind of up into the gumline?

4 A Yes.

5 Q Was she familiar with that? Did she know that

6 had some meaning when you talked with her?

7 A She did not, no.

8 Q In this area, Doctor, can you give us an opinion

9 within reasonable logical dental certainty as to whether or

10 not the instructions that you have just explained should have

11 been given to Mrs. Farley as long as five years ago?

12 A Yes.

13 Q And would the same apply in November of 1974?

14 A Yes.

15 Q What affect does that tooth care, that type hygiene

16 that you have outlined for us, what does that have; what

17 affect does that have?

18 A Prevents periodontal disease.

19 Q What program of treatment you have told us about,

20 two operations that you still propose, Dr. Armstrong, what

21 other treatment is going to be necessary for Mrs. Farley to

22 help her out?

23 A Mrs. Farley will need considerable periodontal

1 prothetic crowns to be placed under her teeth following my
2 treatment.
3 Q And will you just elaborate on that just briefly
4 for us? Dr. Buckis has described I think in part what you
5 are going to say but I want to hear it from you also.
6 A Yes, well in periodontal cases in which there is
7 an advanced degree of bone loss there around the teeth it is
8 a -- it is a customary procedure to do what we call oral
9 rehabilitation or periodontal rehabilitation in order to
10 tie or splint together mobile teeth, teeth that have been
11 sensitive from the surgical procedures, teeth that have --
12 teeth that have been esthetically destroyed due to repositioning
13 as I described over here of the gum tissue margin and to close
14 any gaps in between the teeth. This type of a procedure is
15 very well documented in textbooks dealing with advanced
16 periodontal disease.
17 Q Do you agree with the textbooks?
18 A Yes.
19 Q Did Mrs. Farley after your operations complain to
20 you of sensitivity?
21 A Yes.
22 Q Does the treatment that you have outlined, would
23 that help in that regard?

1 A Yes.

2 Q How?

3 A It will cover those tooth roots which have been

4 denuded of bone and tissue from the disease process.

5 Q All right, sir, has Mrs. Farley expressed to you

6 some concern about her appearance, the appearance of her

7 teeth after your operations?

8 A Yes, every visit Mrs. Farley poses to me a question

9 of what will I look like when you -- after you take the

10 dressing off? Will the gum tissue be really high up on the

11 root or low down in the root as in the case of the lower?

12 Q What has been happening as a result of these

13 operations insofar as that gum margin is concerned?

14 A It has been repositioned to the appropriate level

15 where the bone is creating an esthetic problem.

16 Q Dr. Armstrong, are you saying to us that it is

17 necessary in your opinion to recap the teeth that Mrs. Farley

18 still has?

19 A Yes.

20 Q Is it possible to just recap some of them and

21 leave the others alone?

22 A No.

23 Q Why?

1 A Because due to the missing teeth that Mrs. Farley
2 has in her mouth it will be necessary to put false teeth
3 in between like here (indicating) for example in between
4 other teeth, adjacent teeth.
5 Q When is periodontal disease at its worst; what I'm
6 asking for there, Doctor, is to give us a comparison if you
7 can in terms of years or times? What I'm asking is
8 periodontal disease at its worst insofar as damage is
9 concerned when it first starts or in the middle of its
10 progress or in the end or where?
11 A The disease process is much more severe at the end
12 of the process because the tooth roots being in shape as the
13 bone progresses down the tooth root there is less circumference
14 or square millimeters of area for bone to be attached and
15 therefore the teeth become loose and mobile so it is
16 considerably worse at the end of the disease process.
17 Q What is the ultimate pocket depth reading; what
18 is the end of it?
19 A Tens, ten millimeters of pocket depth means that
20 according to the periodontal probe the tissue has been
21 detached about ten millimeters down the root of the tooth
22 and the bone has been lost along with it.
23 Q Did you do any work on the crowns that Dr. Goode

1 had placed in Mrs. Farley's mouth?

2 A Yes, I took a dental instrument and removed some
3 of the bulky margins that were into the gum margin producing
4 some of the inflammation. I thinned out the bulkiness and
5 made them more compatible with periodontal health to the
6 tissue.

7 Q Do you have an opinion as to the contour aspect
8 of those teeth when you saw them?

9 A Yes.

10 Q Is that what you worked on by the way when you
11 indicated what you did?

12 A Yes, yes.

13 Q Dr. Armstrong, what fee are you charging for your
14 work?

15 A $2500.

16 Q Over what period of time will that -- your medical
17 fee be earned, Doctor?

18 A From September of 1976 until Dr. Buckis finally
19 places the crowns, approximately 18 months so September 76,
20 77, spring of 78.

21 Q All right, sir, do you have in mind a plan of
22 follow-up care for Mrs. Farley, what she is going to have
23 to do in the future?

1 A Yes, I told Mrs. Farley -- I advised Mrs. Farley
2 on the first visit back in September that when we went -- if
3 and when we went through this treatment of her periodontal
4 disease condition that she would -- I would like for her to
5 see me every three to four months for a considerable period
6 of time for maintenance activity.
7 Q Can you give us some idea of how many years you are
8 talking about?
9 A Twenty.
10 Q Twenty years and in your medical opinion is it
11 going to be necessary for her to see you that often to
12 preserve the work that you and Dr. Buckis will have done
13 by that time?
14 A Yes.
15 Q What will you do? Tell us what you will do every
16 three or four months.
17 A I will make full mouth radiographs of her mouth
18 at given intervals. I will check on the condition of the
19 teeth, the crowns, the roots, if any root decay has occurred
20 around any crown margin. What the case overall generally
21 looks like.
22 Q What is your expense for that? What is the cost
23 for that?

1 A $75.00.

2 Q A visit?

3 A Yes.

4 Q How much time would be involved in that sort of

5 follow-up care, Doctor?

6 A Approximately an hour and a half.

7 Q Dr. Armstrong, do you have an opinion within

8 reasonable dental certainty as to whether or not all of

9 the operations that you have told us about, all of the

10 follow-up care that you have told us about, all of the

11 damage, periodontal damage, that you have described to

12 us in Mrs. Farley's mouth whether or not that would have

13 occurred and/or been necessary had Dr. Goode properly

14 diagnosed Mrs. Farley's condition in November of 1974?

15 MR. BRANDT: Again, Your Honor, I will object to

16 the way that question is phrased. I think that is an

17 improper foundation, leads to the ultimate fact in issue

18 which is for the jury to determine under your proper instruc-

19 tion.

20 THE COURT: All right.

21 MR. BALAVAGE: Your Honor, I don't think it is

22 improper. I don't think it takes away from the jury the

23 final decision. I don't want to do that but I think he is

1 talking about a matter of necessity. I am assuming for the
2 purpose of that question that he's testified that the
3 standard was not met, the standard prevailing in this area
4 was not met and I am asking him and I can reword it if
5 necessary. If -- had the standard been met, the standard of
6 care been met would these various things have been necessary.
7 I think it is a proper question.
8 BY MR. BALAVAGE:
9 Q Dr. Armstrong, assuming that the standard of care,
10 dental care, prevailing in this area of November of 1974 had
11 been met by a doctor treating our hypothetical lady when
12 started out a long time ago would one or all of the operations
13 you have performed and are going to perform have been
14 necessary?
15 A No.
16 Q Would her treatment be as extensive as it is now?
17 A No.
18 Q Generally speaking?
19 A No.
20 Q Would it have been necessary under those conditions
21 for the follow-up care that you have indicated is going to
22 be necessary?
23 A No.

1 Q Do you have an opinion, Dr. Armstrong, as to whether
2 or not Mrs. Farley can expect to lose any more teeth as a
3 result of the periodontal disease which she now has?
4 A Yes.
5 Q How many more do you anticipate she is going to
6 have to lose?
7 A Four teeth.
8 Q Dr. Armstrong, can emotion or even like having a
9 divorce, does that cause periodontal disease?
10 A No.
11 Q Can a -- just having a bad bite, does that cause
12 periodontal disease?
13 A No.
14 MR. BALAVAGE: All right. I think, Your Honor, I
15 am through with my examining.
16 THE COURT: Cross examine, Mr. Brandt?
17 CROSS EXAMINATION
18 BY MR. BRANDT:
19 Q Is Mrs. Farley emotional, Dr. Armstrong, about
20 finances with you in your treatment?
21 A No.
22 Q She is not. Do you recall in your deposition saying
23 it was correct she was emotional about finances?

1 A She was at the very outset when I told her the
2 fee was $2500. She has paid me per visit and it's no longer
3 a problem. It was a problem the first day when I told her,
4 yes $2500 for my fee and that she would need to have her
5 mouth reconstructed and that was somewhere in the neighborhood
6 of I think I told her $10,000 and at that point she indicated
7 to me she did not know where she would get the money but --
8 Q (Interposing) You have run kind of pay as you go
9 shop, don't you, Doctor?
10 A Yes.
11 Q And as I understand you saw her on the 3rd of
12 September, was it?
13 A Yes.
14 Q 1976?
15 A Yes.
16 Q And found yourself confronted with a patient who
17 knew absolutely nothing about how to properly brush and care
18 for her teeth?
19 A She indicated to me that she was brushing and she
20 was using the floss but it was in an improper manner.
21 Q Well, okay she might as well not have bothered, is
22 that your feeling for all the good she was doing?
23 A She was doing some good, yes.

1 Q As I understand it on September 3, 1976, however,
2 the technique that she was using certainly did not meet the
3 standards of care in Northern Virginia?
4 A Yes.
5 Q From the general dentist or indeed from anybody?
6 A Yes.
7 Q They should have been showing, whomever was showing
8 her how to do this, the appropriate and proper method that
9 you described?
10 A Yes.
11 Q You say?
12 A Yes.
13 Q Now isn't it true, Dr. Armstrong, that you don't --
14 you don't limit the periodontal condition age when you saw
15 it to just November 74; it was in fact five years or more old
16 when you saw it, was it not?
17 A Yes.
18 Q You saw her September 3, 1976?
19 A Right.
20 MR. BRANDT: May I have the Court's indulgence
21 for a minute?
22 THE COURT: Yes, indeed.
23

1 BY MR. BRANDT:

2 Q Dr. Armstrong, in reference to the crowns that you
3 feel should be redone, the crown and bridge work that is in
4 place, would you concede that this lady could have a
5 perfectly acceptable albeit maybe not a Cadillac mouth, but
6 an acceptable mouth if those crowns and bridge work were
7 left in place where they are now?

8 A No.

9 Q You would not?

10 A No, sir.

11 Q Do you feel there could be room for difference of
12 opinion on that, Doctor?

13 A No.

14 Q You don't?

15 A I do not.

16 MR. BRANDT: That is all.

17 THE COURT: Any redirect?

18 REDIRECT EXAMINATION

19 BY MR. BALAVAGE:

20 Q When Mrs. Farley -- when you talked with her about
21 her flossing practices as she was then using them, she was
22 only flossing the teeth that were not crowned, is that correct?
23 Didn't have that permanent crowning?

1 A Mrs. Farley was unaware there were devices
2 manufactured that would go under the solder joints to
3 remove the bacteria, to the answer to your question she
4 was only cleaning the teeth that were not capped.
5 Q Mr. Brandt made a reference to a Cadillac, the
6 work that you and Dr. Buckis intend and will do for Mrs.
7 Farley, would it be more fair to say it is a good workmanlike
8 job that will serve her in the future at old age?
9 A Yes.
10 MR. BALAVAGE: That is all.
11 THE COURT: Anything further, Mr. Brandt?
12 MR. BRANDT: No, sir.
13 THE COURT: You may be excused, Dr. Armstrong.
14 You are free to go at this time.
15 THE WITNESS: Thank you.
16 (Witness excused.)
17 *
18 THE COURT: Would you have additional witnesses,
19 Mr. Balavage?
20 MR. BALAVAGE: No, sir.
21 THE COURT: Let me see counsel at the bench.
22 (Whereupon, the following bench conference was
23 held out of the hearing of the jury.)

1 THE COURT: Mr. Balavage, I understand for the
2 record the plaintiff rests at this time?
3 MR. BALAVAGE: Yes, sir, with the exception, Your
4 Honor, of later I assume that they will be putting in or
5 would have the charts of Dr. Goode in here but outside of
6 that, yes sir.
7 THE COURT: But at this time in other words you are
8 resting at this time?
9 MR. BRANDT: I don't know what that means.
10 THE COURT: I don't either.
11 MR. BRANDT: He is either resting or isn't resting.
12 THE COURT: You mean you plan to call Dr. Goode to
13 put those charts in?
14 MR. BALAVAGE: No, I am assuming he is going to
15 do it.
16 THE COURT: Are you? But you are resting at this
17 time?
18 MR. BALAVAGE: Yes.
19 (Whereupon, the bench conference was concluded
20 and the proceedings continued within the hearing of
21 the jury.)
22 THE COURT: Ladies and gentlemen of the jury, there
23 is a matter I have to take up out of the hearing of the jury.

1 If you retire at this time.

2 (Whereupon, the jury was temporarily excused.)

3 MR. BRANDT: Your Honor, I have a very brief

4 memorandum of law. Two cases I think control the case

5 before you. I might let you take a couple minutes to read

6 it. I think it is short enough it shouldn't take you too

7 long.

8 THE COURT: All right, sir.

9 MR. BRANDT: May it please the Court, I think

10 when counsel stands to argue a plea of the statute of limita-

11 tions it is a difficult motion for him to argue for a couple

12 of reasons. Usually first of all he is indirectly pointing

13 a finger at fellow counsel. That is not the case here.

14 Mrs. Farley never came to Mr. Balavage until after the

15 statute has run. Secondly, the Court frequently has a

16 challenge to itself when that plea is argued because in a

17 sense the plea arguendo assumes that a malpractice may have

18 taken place but that there is no remedy in our law but I

19 think we are all bound by the law and interesting enough

20 in the Morgan v. Schlanger case had some question about it

21 but felt constrained by Virginia law as, of course, Federal

22 Courts are. The first case is the classic case, statute

23 of limitations and malpractice in Virginia, Hawks v. DeHart.

1 I think Your Honor probably has been through it before.
2 Our Supreme Court had the first opportunity in that case
3 to decide what route it would go for this Commonwealth. It
4 opted to go from the time of the wrong, not from discovery.
5 It did -- after considering the law in the country not just
6 in neighboring jurisdictions but in the country. They didn't
7 just say we suggest that we go from the time of the wrong.
8 They said we are committed to it and the quote is found on
9 page 13, simply say we are committed in Virginia to the
10 rule in personal injury actions the limitation on the right
11 to sue against the wrong when the wrong is done not when the
12 plaintiff discovers that he's damaged. Let's stop there for
13 a second. It's pretty clear. I know Your Honor has been
14 making notes and I have been too. It's pretty clear that
15 the evidence as it stands before you at this moment is that
16 inappropriate periodontal care was not rendered to the
17 plaintiff and that that began approximately five years prior
18 to 1976. Both dentists, no question about it. This lawsuit
19 as you can tell from the jacket was filed in 1976, November.
20 Obviously this cause of action began to start to run in 71,
21 72, 73. Pick any date, any year that we would care to. It
22 expired suffice it to say before this suit was filed and there
23 isn't any question about it at all as the evidence stands

1 before you. There is nothing this man could have done about
2 that, can't help it when the client comes through the door.
3 There is no question about it and I said it was a classic
4 case and I stand by that. It is a classic case of the
5 expiration of the statute of limitations in a malpractice
6 case. The Schlanger case treats any question that Your Honor
7 might have about the fact that the dentist in that case,
8 physicians continued to treat the person. Counsel for
9 plaintiff in Schlanger was in a tough spot as Mr. Balavage
10 is in and said we argue to you, to the trial court, that
11 because the defendant physician continued to treat that we
12 want to run, we admit that the act or the omission occurred
13 more than two years before we could file the suit but it so
14 happens that they continued to treat her within the two
15 years. I don't know if Your Honor follows what they were
16 arguing there but it was a good argument too because it is
17 all they had and they did a good job on it and it forced the
18 Fourth Circuit to say all right we are going to have to
19 decide what is Virginia going to do on the continuing treat-
20 ment rule. Basically we have I think in the country three
21 rules. The discovery rule that says statute doesn't run
22 until you, the plaintiff, discover that a cause of action
23 has been existing. Then it runs but we know what Virginia

1 does about that. Hawks is crystal clear about that. The
2 continuing treatment rule suggests that you may run the
3 statute not from the wrong but from when you stop treating
4 the person so if you continue to treat the person as Dr.
5 Goode did here, run it from when he stops treating her.
6 He stopped treating August 76 so it would be August 78.
7 The Morgan court looked at Hawks v. DeHart and said there
8 is no way Virginia accepts the continuing treatment rule.
9 They are clear what they would do and you might say how
10 are they so certain. They were certain because if Your
11 Honor will take a look at page 240, if it please the Court,
12 note that the Fourth Circuit there says and I might say that
13 I suspect none of us wish to pick and choose judges who write
14 opinions but I do think Judge Winter has a rather fine
15 reputation, not that they all don't, but I think he particularly
16 does on 240. The Court says, the Court stated, Virginia's
17 general rule -- now he is talking about Hawks v. DeHart up
18 at the top about six lines down from the top column may it
19 please the Court.
20 THE COURT: Right, right.
21 MR. BRANDT: The Court stated, he is talking about
22 Hawks v. DeHart, that is what they're looking at, this Fourth
23 Circuit is looking at, the only -- interpretation of statute

1 of limitations in malpractice cases, the only one in our
2 Commonwealth that treats it so, that is where they go,
3 right to Hawks. Now they say, the Court stated the general
4 rule, limitation is again at the time the wrong is committed.
5 Notice what they underlined or what is italicized. There
6 are cases to the contrary fixing the discovery of damage
7 and notice now what was italicized or other events as the
8 time when the limitation begins and they cite that West
9 Virginia case which is, of course, obviously also in the
10 Fourth Circuit. Now that is what Hawks v. DeHart said.
11 They said we admit there are other cases that say it runs
12 from discovery and from other times. We pick, however,
13 when the wrong is committed. Now switch to the right
14 column under headnotes four and five and now the Fourth
15 Circuit does what they feel they must do. If you read this
16 carefully they don't kind of don't want to do it but they
17 do what they're sworn to do while the Court on the facts of
18 the case was rejecting only the discovery rule they emphasized
19 and I apologize I think I underlined that. I don't apologize
20 because I'm trying to call your attention to what I'm talking
21 about. The emphasized language indicates to us a rejection
22 of any acceptance of any exception other than legal disability
23 of the plaintiff because of infancy or insanity or actual

1 fraud on the part of the defendant and concealment of a
2 cause of action to the general tort rule of that state.
3 Now, come down a bit more, we can only conclude that Virginia
4 would not in an appropriate case embrace the continuing treat-
5 ment rule. It follows that any acts of alleged malpractice
6 occuring more than two years prior to March 12th, that is when
7 the act was committed, not when they stopped treating this
8 lady, when the act was committed, are barred by the limita-
9 tions under the Virginia law; that is what I'm saying here.
10 It is a classic case, Judge. There's nothing anybody can
11 do about this and there's nothing that perhaps could have
12 been done about it. It is a classic case in this Common-
13 wealth. This case should stop now on this ground. Thank
14 you.
15 THE COURT: Mr. Balavage?
16 MR. BALAVAGE: Your Honor, I couldn't disagree more
17 with Mr. Brandt. This is a classic case to distinguish from
18 these two cases. He is talking about, what he is talking
19 about and I think he's missed a point in these other cases.
20 What he is talking about in these two cases he cited so
21 vehemently here, Your Honor, so strongly rather is an act
22 which occurred beyond the two year period. That was done by
23 a doctor, and then there was treatment for that act. That

1 went on over a period of time. We don't have that here. We
2 don't have that here at all. Dr. Goode saw Mrs. Farley over
3 a period of time and each time she went into his office he
4 had an obligation to her and if he was negligent on any of
5 those visits he wasn't in there treating her for something
6 that happened way back when that he did wrong. That is not
7 the case at all. She was in each and every time that she
8 went into his office, she was in there for a new treatment,
9 for a new visit. This wasn't a continuing treatment of some-
10 thing that happened way back when. That is why, Your Honor,
11 we spent so much time and I think you knew it on November
12 of 1974. At that time Mrs. Farley presents herself to Dr.
13 Goode, not for treatment of something that happened way back
14 when, not for periodontal disease that happened back three
15 or four years ago. She didn't go there for that reason.
16 She went there for whatever purpose it was. I think the
17 record maybe has that contained in it now. She went there
18 and the medical testimony at this point is that she went
19 there in November of 1974 in accordance with the accepted
20 medical dental standards in our area. Dr. Goode when he
21 examines her has got to say she's got something wrong with
22 her, that was the act, the negligent act. We don't say for
23 a minute that Dr. Goode caused the periodontal disease way

1 back five years ago. We don't say that for a minute. Can't
2 be said so we don't have a continuing treatment situation
3 here at all. What we have is that everytime that Mrs. Farley
4 went into his office, she was there for treatment, examination.
5 The doctors have said she should have been examined properly
6 and if she was the periodontal disease would have been
7 discovered. Now I think Mr. Brandt is the one that -- that
8 has the problem in this case, Judge. He's got to convince
9 this jury that all of the damage or most of the damage from
10 that periodontal disease occurred beyond that statute of
11 limitations. That is his job. He's got a tough job. He's
12 right in using those words but as far as the negligent act
13 is concerned, Your Honor, that happened each and every time
14 this lady went into his office. If it did happen each and
15 every time there was no treatment of some pre-existing
16 condition that he was negligent in catching or treating.
17 That is not the case here. I think what we have is a classic
18 case to distinguish from these two cases that these judges
19 are so reluctant to follow in and to pronounce law on. For
20 instance, Your Honor, this evidence is very, very clear. I
21 will put it, maybe argue it a different way, Judge. Let's
22 say that the periodontal disease happened five years ago,
23 five years, 1971 to pick out a date and it progresses for

1 three years and stops. I say we can do nothing about it.
2 What are we going to do about it? Now let's say that at that
3 point -- well, Your Honor, I am losing myself to be frank
4 about it. But the point that I make, Judge, is that each
5 and every time that Mrs. Farley presented herself to Dr. Goode
6 for whatever purpose that was a separate act that he committed.
7 In other words when he examined her for instance, Judge, in
8 November of 1974, that had nothing to do, that had nothing
9 to do with what had transpired four or five years ago, nothing
10 to do with it. At that point he was under an obligation
11 according to the two medical experts to discover the extent
12 of that disease, to discover it and do something about it.
13 It's not a matter of something happening back there that he
14 did wrong and continue up to that period of time. That is
15 not this case at all and I think the evidence here is very
16 clear also that the disease, the periodontal disease
17 progresses. In other words, let's say the statute ran
18 on certain portions of that disease that happened beyond
19 a two year period but there is more disease happening
20 every day. It's happening right now with her and if some
21 doctor examined her right now and didn't pick it up, then
22 he is responsible for whatever her condition is right now
23 on forward and it is up to them to eliminate what happened

1 in the past if they don't want a jury to consider it. We
2 say, Your Honor, this is a classic case to be distinguished
3 from these other cases. This is not a continuing treatment
4 case. For instance, Judge, when we go to a dentist that is
5 what she was doing, we go to a dentist for a checkup and to
6 clean our teeth. We go in there for whatever we have right
7 then, right then, not for what has happened in the future,
8 not at all. I guess maybe a more startling example of that,
9 Judge, would be if Mrs. Farley went instead of to Dr. Goode
10 in November of 1974, if she went to Dr. Buckis and then Dr.
11 Buckis did what Dr. Goode did. Is there a cause of action
12 there? Why of course there is. You see? And that
13 distinguishes her case from the continuing treatment rule
14 because it is not a question of an injury happening back
15 here and then treatment happening. It is a matter of that
16 disease happening each and every day of her life apparently
17 up through that period of time and we say, Judge, we have met
18 our burden here; that he can limit this case as to what happened
19 from November of 74 on to the present, that is his job. It
20 is a matter for them to determine. I don't think the case
21 should be struck out, Judge.
22 THE COURT: Mr. Brandt?
23 MR. BRANDT: Judge, even Mr. Balavage got hung up

1 trying to argue this because he knows what the law is as we
2 do. Continuing treatment in Morgan v. Schlanger is a coin
3 phrase. It means under your care for anything, for anything.
4 These medical witnesses said this periodontal condition
5 that she has today, that has advanced the way it has, began
6 five years ago from the time they saw her. It began, it
7 continued, it went on. It didn't get attended to. It wasn't
8 treated and that a general dentist in this Northern Virginia
9 community should have treated it. It was obvious it
10 existed. That is when the cause of action began and we
11 can say whatever we want to about that and that doesn't change
12 their testimony. Indeed November of 1974 is fine; that is
13 fine because this suit wasn't filed until November 19,
14 1976 so it is barred even under that testimony but their
15 testimony is absolutely clear; they could have said different
16 had they felt that way but they clearly testified it began
17 five years ago. The condition that now has advanced to the
18 degree that it is now. Classic. Not because I want it to be
19 but because the law says it is. I submit to Your Honor there
20 is no alternative but for Your Honor to grant this motion to
21 strike.
22 MR. BALAVAGE: Your Honor, could I be heard? I
23 don't want to interrupt your train of thought.

1 THE COURT: I made up my mind but I will be glad
2 to hear what you have to say.
3 MR. BALAVAGE: Well, Your Honor, if you are
4 inclined to rule against us, then I, of course, what to
5 be heard. Otherwise --
6 THE COURT: (Interposing) Let me -- I will be glad
7 to hear what you have to say, Mr. Balavage. I will give Mr.
8 Brandt a chance to respond.
9 MR. BALAVAGE: Your Honor, in each of these cases,
10 they're strictly distinguishable from what you have before
11 you. The first case, the one act was done way back when.
12 Then the people discover it and then they say the statute
13 has run because you discover it too late. That is one act.
14 The same applies in the Schlanger case. The act was giving
15 radiation treatment on a certain date. The gravamen of that
16 suit was that there was negligence in giving those radiation
17 treatments on that date. Now there was treatment that
18 continued for that radiation treatment thereafter, not for
19 the radiation treatment but for everything the lady was
20 complaining of. But the gravamen of that suit was for the
21 radiation treatment that day; one act. And the Court held
22 in this case the act had occurred that there was treatment
23 but that the one act of treatment given, radiation treatment

1 given, occurred beyond the two year statute. We don't have
2 that in this case. We have separate each and every time
3 Dr. Goode saw Mrs. Farley he saw her we say to you and we
4 ask you to exercise just common sense, she has a separate
5 different condition at that time. She has a condition it
6 is true the statute has run on the condition which she might
7 have had back five years ago or beyond two years ago but the
8 condition as it gets worse for instance, Mrs. Farley five
9 years ago didn't have this periodontal condition. She did
10 in November of 1974. She didn't have it. How could the
11 statute run on it? She had a condition in 1970, then she
12 has a different condition. We say these are all new condi-
13 tions as they come up, a new condition in 1974. Dr. Goode
14 sees her, doesn't diagnose for that condition. Judge, each
15 and every time he saw her he was looking at a lady with a
16 different condition and each and every time that he did what-
17 ever he did on those dates he did a separate act that was each
18 and everyone of those is a separate act. You don't have that
19 in these two cases. That is why, Your Honor, we stress
20 November 23rd, the dates of November of 1974 as we did
21 because at that time Mrs. Farley has a separate, new condition
22 if you will by the exercise of common sense that just makes
23 sense. She has a different condition than whatshe had back

1 there. This is different than these two cases, Judge.
2 These two cases don't say that. They don't stand for that
3 proposition at all, Your Honor. I know that you have been
4 judging too long to be overcome by Mr. Brandt's argument.
5 Maybe a little loud argument. This is a classic case. It's
6 not a classic case, but it is not a classic case where you
7 say, Judge, to repeat, Your Honor, the condition when she
8 first got the periodontal disease and, Judge, that periodontal
9 disease there is no evidence here it started in one tooth
10 and went to another and so on. There is no evidence of that.
11 We have the right to say as far as the plaintiff's prima
12 facie case is concerned, what we sued for in 1976 was what
13 happened within that two year year period going back to
14 November of 1974 and that is not a difficult proposition
15 at all. That is not, Your Honor, not a continuing treatment
16 act in the strict sense of that word, in the strict sense
17 of that word. This is each and every time he saw Mrs.
18 Farley. This was a new act. Whatever he did then was a
19 new act for a new condition. You see in this radiation
20 case that case always stayed the same. It worsened but it
21 stayed the same. They always sued for the same act, one
22 radiation treatment. I think it was back in 1973 or whatever
23 it was. The same with that sponge case. That was an act,

1 happened one time. It wasn't a question of for instance,
2 Judge, that sponge case say the same doctor keeps operating
3 on a lady every year and keeps leaving a sponge in her every
4 year. Does the statute run on all the sponges, all the acts
5 rather? Of course it doesn't. Each one of those acts of
6 that doctor was a separate negligent act and that is what
7 we have here. What we say the difficulty of this case again,
8 Your Honor, is going to lay with Mr. Brandt. He's got to
9 separate what her damage was, what her condition was for the
10 period of time going back from November of 1974, that is his
11 problem and I think this jury can resolve that easily enough
12 but we don't have, Your Honor, we don't have anywhere near
13 these kind of cases and I ask you let us go to the jury with
14 it.
15 THE COURT: Did you wish to respond, Mr. Brandt?
16 MR. BRANDT: Your Honor, all I would say again,
17 Mr. Balavage should be congratulated for his advocacy but
18 there is nothing he can say to change the law of Virginia
19 or what these mean. The periodontal condition this lady
20 suffers today began five years before 1976. This very
21 condition should have been picked up, arrested, should have
22 been stopped, wouldn't have cost the $700.00 which would be
23 expectable. She should have paid for herself. Wouldn't have

1 required any of this treatment. Wouldn't have required the
2 loss of that tooth. Specifically ask Dr. Buckis that. He
3 can't help that, that is what these men say which bind you
4 and bind me. The law is just as clear as it can be whether
5 we like it or don't like it. It requires the results we
6 seek in this case and I ask you to grant this motion.
7 THE COURT: I will tell you, in other words I have
8 always, of course, from the time I read DeHart for the first
9 time I thought that is as harsh law but of course, that is
10 what the Supreme Court has held and I think the Supreme Court
11 feels like it is going to be any change let the Legislature
12 make the change. Hawks is a very, very -- I think it is very
13 harsh law but at the same time I think it is -- and it is
14 true they went off and that dealt with the discovery aspect.
15 In other words at the same time when you read the language of
16 Hawks and of course when you read Winter's, the reasoning in
17 Schlanger you can't help but infer the Supreme Court of
18 Virginia is going to do the same thing insofar as any
19 continuing treatment or in the absence of these particular
20 you might say disability on the part of the plaintiff to
21 discovery these things and, of course, that is not present
22 in this particular case. I think it is harsh law. It is one
23 of these decisions that a judge hates to make and, of course,

1 as I say I don't like to just make a decision; been some-
2 time since I read Hawks and even Morgan v. Schlanger but
3 it's been over a year or so and I had completely forgotten
4 the particular facts but I don't care how you cut it. I
5 think the holding in both cases would be applicable. I
6 am going to grant the motion to strike, Mr. Balavage. I
7 hate to do it but summary judgment for the defendant,
8 that is my feeling. I have to do what I feel is the law
9 of the case. That is what I am sworn to do and I feel that
10 way and that is my feeling and I say the Court of Appeals
11 may tell me I am wrong but I don't see how you can get
12 around it and I think my feeling, the Court of Appeals would
13 be governed by the same thing. One of these decisions we hate
14 to make and I hate to do it but at the same time I still feel
15 that that is the law of this case and if as much sympathy I
16 may have or feeling toward the plaintiff in this case, I
17 can't let that enter into any decision I may make. I will
18 have to grant the motion to strike and enter summary judgment
19 for the defendant.
20 MR. BALAVAGE: May we accept, Your Honor, and I
21 will announce that, of course, the case will be appealed.
22 THE COURT: Yes, sir. In fact that would be one
23 way to be sure this point gets to the Court of Appeals. As

1 I say I have a great deal of respect for Judge Winter's
2 decision and when you read his reasoning there I think the
3 Court of Appeals and when you read DeHart and see the case
4 you can see between the lines exactly how he was thinking.
5 I think that he has a pretty good judicial mind, Want to
6 bring the jury down.
7 (Whereupon, the jury was returned to the jury box.)
8 THE COURT: Just stand inside the courtroom please.
9 Members of the jury, I have granted the defendant's motion
10 to strike the plaintiff's evidence in this case and I have
11 entered summary judgment for the defendant so the case is
12 all over. Your services are through so if you will return
13 back on your regular jury day you are excused at this time.
14 Court will adjourn at this time.
15 (Whereupon, at 4:20 p.m., the trial was concluded.)
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FINAL JUDGMENT ORDER

THIS MATTER came before the Court the 7th day of June 1977, for jury trial on the merits and there were in attendance the parties and their attorneys; whereupon

A PANEL of thirteen veniremen were sworn and examined on their voir dire from which a panel of seven were selected by counsel exercising their respective peremptory challenges; whereupon

THE PANEL OF SEVEN were sworn and opening statements were presented by both parties and the plaintiff presented her case in chief and rested; whereupon

DEFENDANT MOVED the Court to strike plaintiff's evidence and enter summary judgment for the defendant on the grounds of the expiration of the two-year statute of limitations and the Court considered the evidence, the legal authorities cited and the arguments of both counsel; whereupon

IT BEING THE OPINION of the Court that said motion should be granted; it is therefore

ADJUDGED AND ORDERED that defendant's motion to strike plaintiff's evidence be, and the same hereby is, granted, summary judgment is entered for the defendant and plaintiff's case is dismissed with prejudice, to which ruling of the Court plaintiff duly noted her objection and exception.

AND THIS ORDER IS FINAL.

Entered: June 10, 1977

/s/ Lewis D. Morris
JUDGE

SEEN AND AGREED

SLENKER, BRANDT, JENNINGS & O'NEAL

By /s/ John J. Brandt
John J. Brandt, Counsel for Defendant

SEEN AND OBJECTED TO WITH EXCEPTION NOTED:

/s/ A. Albert Balavage
A. Albert Balavage, Counsel for Plaintiff

ASSIGNMENT OF ERROR

QUESTION INVOLVED IN THIS APPEAL

1. Whether or not Plaintiff's claim for damages as a result of the Defendant's negligence was barred by the two year Statute of Limitations, and the trial court erred in accordingly striking Plaintiff's evidence.