

1 IN THE CIRCUIT COURT
2 TWENTIETH JUDICIAL CIRCUIT OF ILLINOIS
 ST. CLAIR COUNTY

3 FRANCES E. KEMNER, et. al.)
)
4 Plaintiffs,)
)
5 VS.) NO: 80-L-970
)
6 MONSANTO COMPANY,)
)
7 Defendant.)

8
9
10 REPORT OF PROCEEDINGS

11 Before the HON. RICHARD P. GOLDENHERSH

12 JURY TRIAL

13 March 12, 1986

14
15 APPEARANCES:

16 Mr. Rex Carr
17 Mr. Jerome Seigfreid
 On Behalf of the Plaintiffs;

18 Mr. Kenneth Heineman
19 Mr. Joseph Nassif
20 Mr. James Craven
 On Behalf of the Defendant.

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23 Debra M. Musielak, CSR, CM
24 Official Court Reporter

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EXHIBITS SUBMITTED ON BEHALF OF THE PLAINTIFF

Plaintiff's Exhibit No.:

1734A	(blow-up 1734)	2	3
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1 BE IT REMEMBERED, that on the 12th day of March,
2 1986, the same being one of the regular judicial days of said
3 court, the above-styled cause came on regularly for hearing
4 before the HONORABLE RICHARD P. GOLDENHERSH, one of the
5 Judges at the St. Clair County Building, 10 Public Square, in
6 the City of Belleville, County of St. Clair, State of
7 Illinois. Whereupon the following proceedings were had:

8 COURT CONVENED:

9 THE COURT: Good morning.

10
11 RAYMOND SUSKIND

12 (being called as a witness on behalf of the Defendant, having
13 been previously sworn, having resumed the stand, continued to
14 testify as follows)

15 CROSS EXAMINATION

16 BY MR. REX CARR

17 Q. Dr. Suskind, you recognize what's been marked
18 Plaintiff's Exhibit 1734 A as a blow-up of Plaintiff's
19 Exhibit 1734, do you not, sir?

20 A. Yes, I do, sir.

21 MR. CARR: Offer 1734 A into evidence, if it please
22 the Court.

23 THE COURT: Objections?

24 MR. HEINEMAN: If we can incorporate, Your Honor,

1 the same objections we made with respect to Plaintiff's
2 Exhibit 1734.

3 THE COURT: Sure, they are incorporated. It's
4 admitted.

5 Q. (by Mr. Carr) Doctor, with regard to the next
6 Nitro worker on the exhibit, Emmet Null, his symptoms had not
7 cleared up and gone away by 1979, had they, sir? They had
8 not cleared up with time, did they, sir?

9 A. I believe they have, sir.

10 Q. Doctor, did he not report and did not you record
11 that he reported that he had joint pain in the 1979
12 examination on Page 17 of Exhibit 17 -- do you have Exhibit
13 1740 with you, Doctor?

14 A. I'm looking for it, sir.

15 MR. CARR: Miss, could you see --, I don't think we
16 handed it to him before.

17 A. I don't think I have it, sir.

18 Q. Would you turn to Page 17, please, Doctor. Are you
19 there, Doctor?

20 A. I have it, yes, sir.

21 Q. Does he not report the joint pain currently that
22 started in '51-'53?

23 A. This is what he indicated, sir.

24 Q. And did you believe he was telling the truth, sir?

1 A. No, sir.

2 THE COURT: I'm sorry, I didn't hear that.

3 A. No, sir.

4 Q. You thought he was lying to you, sir?

5 A. I believe that his memory may have been faulty.

6 Q. Dr. Suskind, did you hear my question? Did you
7 believe he was lying to you, sir?

8 A. No.

9 Q. Then you thought he was telling the truth, correct,
10 sir?

11 A. No.

12 Q. Doctor, things are either the truth or they are
13 lies?

14 A. No, sir.

15 Q. The truth is what one perceives, is it not, what he
16 thinks is really there, whether it's really there or not? If
17 he thinks he has muscle pain or joint pain, he's telling you
18 the truth, is he not, sir?

19 A. No, sir.

20 Q. Doctor, what's he telling you if he's telling you
21 he's got joint pain and he believes he has joint pain? He is
22 telling you the truth, isn't he, sir? He's not lying to you,
23 is he, sir?

24 A. No, sir.

1 Q. All right. You don't believe this gentleman was
2 lying, do you, sir?

3 A. About the current joint pain, no, sir, but I do
4 believe about '51-'53 he was.

5 Q. You think he is lying to you about having it in '51
6 and '53?

7 A. Yes, sir.

8 Q. Doctor, this is the first time -- you've always
9 said before and when I asked you the questions about this man
10 before and this exhibit before, I asked you the same
11 question, whether or not you thought he was telling you the
12 truth and you said at that time that you thought he was
13 telling the truth, did you not?

14 A. About the current pain, yes, sir.

15 Q. No, Doctor, it was about his report and we put it
16 on this board that you thought at that time he was telling
17 you the truth, did you -- do you not recall that, sir?

18 A. Yes, sir, about the current pain.

19 Q. You didn't limit it to current pain?

20 A. Well, I am, because there are other factors.

21 Q. My question is you did not limit it to current
22 pain, did you, sir?

23 A. I did, sir.

24 Q. At the time we put this on the board you limit it

1 to current pain, sir?

2 A. Yes, sir.

3 Q. Doctor, I submit to you that you are not
4 representing to us what in fact occurred?

5 A. I am, sir, if you look at the record, sir.

6 Q. Doctor, unfortunately I don't have the record of
7 your testimony for that particular day so I can't pull out
8 the chapter and verse?

9 A. I'm talking about this record.

10 Q. I'm talking about your testimony, what you said
11 about this man when we prepared 1734. Did you not say at
12 that time, without reservation, without qualification, that
13 in your judgment this man along with all the others was
14 telling you the truth in 1979?

15 A. I did, sir.

16 Q. Yes. Now, you now say in 1979 he was not telling
17 you the truth, are you not, sir?

18 A. About one part of it, sir.

19 Q. Doctor, are you not now saying he was lying to you
20 in 1979?

21 A. Yes.

22 Q. Doctor, what -- the reason you say he was lying in
23 1979 is because he didn't report it in 1953, isn't that
24 correct, sir?

1 A. That's one of the reasons, sir.

2 Q. Do you have another reason, sir?

3 A. Yes, sir.

4 Q. What is the other reason?

5 A. The other reason, sir, is that this man has had a
6 history of multiple problems with his spine and he has had a
7 disk which he -- and he relates the numbness of his left hand
8 to that, and he indicates to us that the pain that he has had
9 is the result of the disk, sir.

10 Q. That's the pain that he had where, sir?

11 A. He simply says the pain that he has had is related
12 to his disk.

13 Q. Doctor, when did he have his disk, and where does
14 he make the statement that the pain --

15 A. He had --

16 Q. Excuse me. Let me break that down one at the
17 time. Where does he indicate to you, sir, that the pain he's
18 having in 1979 that started in '51-'53 was associated with
19 the disk?

20 A. The pain didn't start in '51-'53, but he does say
21 --

22 Q. Doctor, that's --

23 A. But he had --

24 Q. Doctor --

1 MR. CARR: Your Honor, would you ask the witness to
2 answer the question. Restrain himself from--

3 MR. HEINEMAN: Objection, Your Honor, may counsel
4 approach the bench?

5 THE COURT: Yes, you may.

6 (The following Side Bar conversation was had outside the
7 hearing of the jury.)

8 THE COURT: Before you start, why isn't he wearing
9 his hearing aid this morning?

10 MR. HEINEMAN: I don't know. I didn't even notice
11 that he wasn't.

12 THE COURT: Unless he's got an inside the ear one,
13 he's got one that he puts in his jacket pocket and a wire
14 that leads up to the ear. I don't see the wire and I could
15 Monday, and I believe that in one of the explanations that
16 you offered in Chambers was his hearing problem. I assume
17 that he's not wearing the aid.

18 MR. HEINEMAN: I didn't even notice. I don't
19 know. You want me to suggest it to him?

20 THE COURT: I would like you to if you would. And
21 what's your objection?

22 MR. HEINEMAN: The --

23 THE COURT: I did -- I remember that this -- giving
24 the gentleman the benefit of the doubt as much as I could, I

1 ordered that he wear the hearing aid. I don't think he is
2 this morning, unless he's got an inside the ear one.

3 MR. HEINEMAN: I'll have to ask him. I don't
4 know. My objection to the question, Your Honor, was that the
5 witness be allowed to answer, and my objection was to the
6 question and to the request for this Court to instruct the
7 witness. I believe that the witness' answer was responsive
8 as a premise to Mr. Carr's question. He suggested that what
9 he was reporting in '79 was the pain he had in '51 and '53.
10 This witness has just previously denied that the man had the
11 pain in '51 and '53 because he didn't report it in 1953,
12 therefore, he was addressing that premise in Mr. Carr's
13 question as he was answering the rest of it and Mr. Carr
14 interrupted and asked the Court for an instruction. I object
15 to it. I think what he was saying was responsive.

16 MR. CARR: Your Honor, clearly was not. I was
17 trying to identify the disk pain that the man says that he
18 had. Said he had a disk,. It was in the record that he said
19 he had a disk. I was attacking that point, addressing that
20 point. The witness clearly was not going with me. He wanted
21 to talk about something else. I don't want to talk about
22 something else.

23 THE COURT: I think he was talking about something
24 else, and he was also in the middle of that, also, I think

1 Mr. Carr was trying to revise the question to break it down
2 into a couple of questions and he kept talking, and so I
3 don't think -- I would like you to go over to him and ask him
4 to put the hearing aid back on as I've ordered. I don't want
5 any aggravation of problems or an excuse for problems, so I
6 would like you to do that now before we proceed.

7 MR. HEINEMAN: Your Honor -- well, I don't want --
8 I hate to take the time for a break to do it, but -- well,
9 I'll just --

10 THE COURT: You need a five minute break to do it?

11 MR. HEINEMAN: Yes.

12 THE COURT: We will take a five minute break, but I
13 want him wearing that.

14 MR. HEINEMAN: Okay.

15
16 (The following proceedings were had in open court.)

17 THE COURT: Ladies and gentlemen, we will take a
18 five minute recess at this time. I would remind you as I do
19 during any break in the proceedings you are not to discuss
20 this matter among yourself or with anyone outside the jury
21 panel or as of yet form any opinions or conclusions about the
22 matters on trial. Court is in a very short recess.

23 (Following a recess, these proceedings were had in open
24 court.)

1 Q. (by Mr. Carr) Doctor, my question is to point out
2 in the Exhibit 1740 that is the 1979 record where the man
3 told you of his disk disease, disk problem?

4 A. Are you asking me where he says this, sir?

5 Q. That's correct, Doctor.

6 A. He said he had on Page --

7 Q. First appears on Page 15, does it not, Doctor?

8 A. I believe there is a statement on Page 15 where he
9 says that in --

10 Q. Doctor, my question is --

11 A. Had bone problems.

12 MR. CARR: Your Honor, would you direct the witness
13 to refrain from answering until I finish the question?

14 A. I'm sorry.

15 THE COURT: He asked where it was located not what
16 was said. Please answer just the question that's asked of
17 you--?

18 A. The boney --

19 Q. You've answered that question already. You said it
20 appears on Page 15?

21 A. Right.

22 Q. Now, Doctor, on Page 15, it is pointed out that he
23 had a disk removed in 1973, is it not -- does it not, sir?

24 A. He said that he had --

1 Q. Doctor, could you answer my question, please, so we
2 can move on?

3 A. Yes.

4 Q. Doctor, it also says on Page 16 that he had a disk
5 problem removed in 1973, does it not, sir?

6 A. Yes, sir.

7 Q. And it says that he had back problems with traction
8 from 1968 to 1973, doesn't it, sir, on that same page?

9 A. Yes, sir.

10 Q. And it says then in '73 he had the disk removed,
11 does it not, sir?

12 A. Yes, sir.

13 Q. And, Doctor, it also is pointed out on Page 23, is
14 it not, sir, that he had the degenerative disk disease in
15 1973. Page 23, Dr. Suskind.

16 A. Yes.

17 Q. Doctor, where is -- where was the disk removed,
18 what area, sir?

19 A. In the lumbar area, which would affect the hip and
20 and the back, sir.

21 Q. Yes, But it would not affect the arm, would it,
22 sir?

23 A. No.

24 Q. And he had numbness in the right hand, does he not,

1 sir?

2 A. That's what he reported, sir, yes.

3 Q. That's what your doctor wrote down, isn't that
4 right?

5 A. Yes, sir.

6 Q. A disk disease in the lumbar area of the back would
7 not cause numbness in the hand, would it, sir?

8 A. No.

9 Q. Doctor, also he describes his problem as not muscle
10 pains, not nerve pains in the legs, does he, sir, he says
11 joint pain, doesn't he?

12 A. Yes, he does.

13 Q. And joint pain is something different than the pain
14 caused by disk disease, is it not?

15 A. No, sir.

16 Q. Doctor, have you ever heard of a person describing
17 their complaints as pain radiating down the legs when they
18 had the lumbar disk?

19 A. Yes, that's pain.

20 Q. That's not pain in the joint, however, is it, sir?

21 A. It is a joint.

22 Q. Doctor, the disk itself is a joint, is it not, sir?

23 A. Yes, the disk is a joint.

24 Q. But it's not the kind of joint that one ordinarily

1 thinks of as a joint, is it, sir?

2 A. Yes, it does.

3 Q. Excuse me, Doctor, the man on the street does not
4 think of the vertebrae and the disk in the back as joints,
5 does he, sir?

6 A. Yes, he does.

7 Q. Doesn't he think his elbow and his knee and his
8 ankle as being the joints?

9 A. Yes.

10 Q. And you believe that ordinary person would think of
11 his back as a joint problem?

12 A. Yes, if it involves the hip and the back.

13 Q. Well, the hip certainly is a joint, but one
14 certainly ordinarily does not think of the segments in the
15 back called disks as joints, do they, sir?

16 A. No.

17 Q. If you want say that go ahead and say that, but I
18 submit to you that's not what the man on the street thinks?

19 A. But Mr. Null did.

20 Q. Excuse me. Would you answer the question?

21 A. Yes, sir.

22 Q. The man on the street ordinarily thinks that?

23 A. Thinks of the back as a joint?

24 Q. Yes.

1 A. Yes, he might. Sure.

2 Q. You think he does that, is that your --

3 A. Yes.

4 Q. All right. Doctor, this gentlemen however, said

5 his joint pain began in 1953, did he not, sir?

6 A. He said his --

7 Q. Excuse me, could you answer my question, please?

8 A. His joint pain began in '65, too, sir.

9 Q. Doctor, where does he say that, sir? On Page 15,

10 sir.

11 A. On page 15.

12 Q. What line on Page 15?

13 A. Arthritis --

14 Q. Doctor --

15 A. And says hip and back. That's joint pain.

16 Q. Doctor, could you answer my question, please?

17 A. Yes, sir.

18 Q. Does he describe joint pain there, sir?

19 A. Yes, sir.

20 Q. And beginning in '65?

21 A. Beginning in '65, hip and back, sir.

22 Q. He says arthritis?

23 A. Yes, that's joint.

24 Q. Doctor, I know that's joint but does he describe it

1 as a joint, sir? The arthritis pain he says started in the
2 hip and back in '65, correct, sir?

3 A. Correct, but there is no --

4 Q. Now, when does he say his joint pain starts, sir?
5 He says his joint pain started in '53, didn't he, sir, on
6 Page 17?

7 A. '51, '53, '51, sir.

8 Q. He says '51-'53, doesn't he?

9 A. Yes, sir, he does that.

10 Q. He doesn't say 1965 for his joint pain, doesn't say
11 1973 for his joint pain, does he, sir?

12 A. No.

13 Q. What he says is '51- '53 for his joint pain,
14 correct, sir?

15 A. That's correct.

16 Q. Now, it is clearly delineated in this record that
17 you took, that your men took, that he answered questions on,
18 clearly delineated separate and distinct conditions, are
19 there not, condition in '65 is described arthritis, condition
20 in '73, that's described as disk disease, condition in
21 1951-'53 described as joint pain, correct, sir?

22 A. No, sir.

23 Q. Have we not identified three separate classes of
24 problems, sir, associated with what you might call joint?

1 Have we not first identified the joint pain that started in
2 '51-'53 on Page 17?

3 A. We have identified that, sir.

4 Q. Could you answer that yes?

5 A. Yes, we have identified that.

6 Q. And have we not identified arthritis pain in the
7 hip and back that started in '65?

8 A. Yes, sir.

9 Q. Now, that's different from the pain that started in
10 '53, isn't it, sir?

11 A. I think it was, sir.

12 Q. Yes. Now, he also then describes a disk problem
13 in '65, '68-'73, doesn't he, sir?

14 A. Yes, sir.

15 Q. Now, that's another distinct different problem,
16 isn't it, sir?

17 A. I can't say that, sir.

18 Q. Doctor, he identifies problems that started in
19 '51-'53, problems that started in '65, and problems that
20 started in '68-'73, doesn't he, sir?

21 A. He didn't say anything started in '55.

22 Q. Could you answer that question?

23 MR. CARR: Your Honor, would you direct the witness
24 to answer the question?

1 THE COURT: Doctor, please answer the question.

2 A. No, sir.

3 Q. He doesn't identify a problem that started in
4 '51-'53?

5 A. He does.

6 Q. Does he identify a problem that started in '55?

7 A. '55?

8 Q. '65.

9 A. '65. Yes, he does.

10 Q. And that's a separate problem from the problem that
11 started in '51-'53, isn't it, sir?

12 A. I don't know.

13 Q. Doesn't he describe it as two different times, sir?

14 A. Yes.

15 Q. And, then he describes a third episode, doesn't he,
16 sir, a third problem that started in '68-'73, doesn't he, sir,
17 the disk problem, isn't that correct, sir?

18 A. No.

19 Q. No?

20 A. That could be the same.

21 Q. Excuse me, Doctor, doesn't he describe that as
22 having started in '68-'73 and ending up with a disk being
23 removed in '73?

24 A. Yes.

1 Q. Does he say that that problem started in '53, his
2 back problems with traction? When does he say his back
3 problems and traction started, sir. I direct your attention
4 to Page 16.

5 A. He doesn't say, sir.

6 Q. Doctor, on Page 16?

7 A. 16?

8 Q. Yes, Doctor. Does he not say back problems and
9 traction '68-'73?

10 A. He had four times --

11 Q. Does he not say that, sir, on that page?

12 A. Yes, that doesn't mean it started in '68.

13 Q. When does it mean it started?

14 A. Could have started in '65, sir.

15 Q. When does it mean it started?

16 A. This is hospitalization.

17 Q. My question is --

18 MR. HEINEMAN: Objection, Your Honor, may the
19 witness answer a single question before he's interrupted?

20 MR. CARR: I wish he would answer a single
21 question.

22 A. I'm doing the best I can.

23 MR. CARR: I'm begging the man to answer.

24 THE COURT: The answer that was interrupted is not

1 responsive to the question. Counsel has a right to redirect
2 the question.

3 MR. HEINEMAN: May we approach the bench, Your
4 Honor?

5 THE COURT: Yes, you may.

6 (The following Side Bar conversation was had outside the
7 hearing of the jury.)

8 MR. HEINEMAN: He's asking the witness --

9 MR. CARR: When it started.

10 MR. HEINEMAN: When the back --

11 MR. CARR: I said--

12 MR. HEINEMAN: You said back problem.

13 MR. CARR: Right, back. All he has to do --

14 MR. HEINEMAN: Do you mind? You interrupt me, too.

15 THE COURT: Gentlemen, calm down. I'm not -- this
16 is deteriorating to a bad enough zoo without the two of you
17 coming close to blows. I want you to --

18 MR. HEINEMAN: We are not close to blows, Judge.

19 THE COURT: You sound like it. I'm getting tired
20 of it.

21 MR. HEINEMAN: Page 15, Judge, it says 1965, area
22 of body, hip and back. What the witness is saying is the man
23 had a back problem in '65, so it doesn't necessarily say
24 when, over here it says back problems starting in '68, it

1 could have started in '65. That's what the witness is
2 saying.

3 MR. CARR: All he has to do is say 1965. My
4 question is when did it start. All he has to say is 1965, if
5 that's his answer.

6 THE COURT: I see the record that has all that.
7 The problem is his answer was not responsive to the
8 question. In fact that does not cure the problem he was
9 answering a different question than the question he's been
10 asked. As he has been doing continually throughout his
11 testimony of this matter. That is the problem. The
12 objection that the interruption to redirect him back to the
13 question was proper because he was not answering the question
14 that was being asked of him. And your objection is not in
15 the least bit relevant to the problem of his not answering
16 the question. Your objection is overruled.

17 (The following proceedings were had in open court.)

18 Q. (by Mr. Carr) Now, Doctor, according to the
19 record, when did his back-hip problem start?

20 A. According to this record, sir --

21 Q. Doctor, could you answer my question?

22 A. 1965, sir.

23 Q. Thank you, Doctor. That shows that on Page 15,
24 doesn't it?

1 A. It does, yes.

2 Q. Now, Doctor, does it say there that the hip and
3 back problem started in 1965?

4 A. Yes, that's what it does.

5 Q. Doctor, does it say the joint problem started in,
6 what year, according to -- on Page 17?

7 A. '65.

8 Q. On Page 17, Doctor?

9 A. It says '51-'53.

10 Q. Thank you, Doctor. Doesn't say '65, does it?

11 A. Does not.

12 Q. Says '51-'53?

13 A. Yes, it does.

14 Q. Now that is a distinct different timeframe,
15 different year altogether from 1965, isn't it, sir?

16 A. It is indeed.

17 Q. It is a different time problem altogether from
18 1973, isn't it, sir?

19 A. I believe so.

20 Q. Yes. All right. Now, Doctor, you suggested that
21 the man is lying to you because he didn't report this in '53,
22 that problem which he's now reporting in 1979 that he says
23 started in '51-'53, correct, sir?

24 A. I'm saying it's incorrect, sir, yes.

1 Q. No. What you said, Doctor, that he was lying, you
2 said it's incorrect, yes, but answer my question, please
3 first, sir. You are saying he's lying, right, sir, because
4 he did not tell you in 1953, isn't that correct, sir?

5 A. Yes.

6 Q. All right. Now, Doctor, you know good and well
7 that problems like joint pain and muscle pains and other
8 pains start from exposure to dioxin, sometimes weeks, months,
9 perhaps even years after the exposure, don't you, sir?

10 A. No, sir.

11 Q. Doctor, isn't that what was reported to you in the
12 case of Mr. Shank on Page 6, sir, his problem started a year
13 after he got the exposure, did it not, sir?

14 A. According to him, sir, yes.

15 Q. And Mr. Frank Milam, his problem started six months
16 after the chloracne, didn't it, sir? Six months and three
17 weeks after the exposure, correct, sir, on Page 7? Are you
18 looking at Exhibit 1701, '53, report?

19 A. I'm looking at the '53 report, yes, sir.

20 Q. Look on Page 7 and verify, please, that Mr. Milan's
21 problems started six months and three weeks after the
22 accident, after he was exposed.

23 A. Six months, yes.

24 Q. And Mr. Westfall, his started almost three years

1 after the chloracne, didn't it, sir?

2 A. This is what he claimed, sir, yes.

3 Q. So, Doctor, you know from those first three that

4 are listed there that the complaints of the aches and pains

5 start weeks, if not months, after the occurrence, after the

6 exposure, don't you, sir?

7 A. According to those records, yes.

8 Q. According to John Selby, his started three months

9 later, didn't they, sir, Page 10, sir?

10 A. According to the record, sir, yes.

11 Q. Mr. Willard, his pain started six weeks after the

12 exposure, didn't it, sir?

13 A. According to Mr. Willard.

14 Q. Mr. Hurley's, his started a year after the

15 exposure, didn't it, sir?

16 A. Which Mr. Hurley?

17 Q. Lonnie Hurley, starts on Page 11, continues on Page

18 12, the top of Page 12, one year following the appearance of

19 the skin lesions he developed pains in the calf muscles,

20 painful twitching of the muscles, especially at night?

21 A. According to this record, yes.

22 Q. Barry Hudnall, his started months after the

23 exposure, did it not, sir, same Page 12?

24 A. Said a few months.

1 Q. Harold Young, his started several months later,
2 didn't it, sir, after the exposure, Page 13?

3 A. According to this record, yes.

4 Q. Jonathan Hurley, his started six weeks after the
5 exposure, didn't it, sir, Page 14?

6 A. Would you repeat the question, please?

7 Q. Jonathan Hurley's started six weeks after the
8 exposure, didn't it, sir, Page 14, middle of the page, six
9 weeks following the assignment he developed pains in the
10 right hip and both feet?

11 A. According to this record, yes.

12 Q. Sir?

13 A. According to this record, yes.

14 Q. Mr. Meadows started a year and a half after the
15 exposure, did it not?

16 A. According to this record, sir.

17 Q. And on and on, Doctor. So you know from the
18 records that it takes weeks, if not months for these aches
19 and pains to show up if Mr. Null's condition is like the
20 other conditions, isn't that right?

21 A. Weeks and months, yes, but not years, not many
22 years.

23 Q. Doctor, if you would look at your 1953 record, Mr.
24 Null was exposed just one week before your 1953 examination

1 and you knew that when you testified this morning because you
2 looked at it, didn't you, sir?

3 A. He was exposed once but not in '51.

4 Q. Doctor, he was exposed just one week before his
5 1953 examination, was he not, sir?

6 A. Yes, but he said that the pain --

7 Q. Doctor, if -- Doctor --

8 A. The pain started in '51. How could it start in
9 '51?

10 Q. Doctor, if you don't mind listening to my
11 question. He told you, sir, and you knew it when you
12 testified this morning, he told you and you knew that he'd
13 been exposed just one week before the exposure, isn't that
14 right, sir?

15 A. He had a splash one week --

16 Q. Excuse me, didn't he tell you he was exposed and
17 didn't you write down that he was exposed just one week
18 before the exposure?

19 A. Yes, sir.

20 Q. He was -- it occurred on April the 7th, 1953, isn't
21 that right, sir, Page 22 at the bottom of the page?

22 A. That's 1953, sir, yes.

23 Q. That was just one week before you examined him,
24 wasn't it, sir?

1 A. Yes.

2 Q. Doctor, if his aches and pains were consistent with
3 the other persons that show up weeks or months or perhaps
4 years later, you would not expect him to have aches and pains
5 one week following the exposure, would you, sir?

6 A. No, sir.

7 Q. All right. And Doctor, he said in his report, in
8 the report that you put down, that his joint aches started in
9 '51-'53, correct, sir?

10 A. He said '51, which is an error, sir.

11 Q. Did he not say '51-'53?

12 A. It reads that way, sir.

13 Q. That's what he said, wasn't it, sir?

14 A. Yes, sir.

15 Q. And he gave this history then, sir, how many years
16 after his actual exposure did he tell you that his joint
17 aches started about '51-'53? Let me help you. It's 26 years
18 later he tells you when his joint aches started, doesn't he,
19 sir?

20 A. I'll have to look at the record, sir.

21 Q. Doctor, his exposure was in 1953, wasn't it, sir?

22 A. It was.

23 Q. And you took this history from him that his current
24 joint aches started in '51-'53, you took that in '79, did you

1 not, sir?

2 A. Yes, we did.

3 Q. That's 26 years later, isn't it, sir?

4 A. We examined him 26 --

5 Q. Excuse me. That's 26 years later, isn't it?

6 A. We examined him then, yes.

7 Q. That's when you took this history from him?

8 A. Yes, sir.

9 Q. I would challenge you or anybody else to come
10 within two or three years of when a particular problem
11 started when you are asked 26 years later when did your
12 problem start. Isn't that a fair statement, Doctor? How on
13 earth can you call this man a liar because he tells us joint
14 aches started in '51-'53?

15 A. What are you asking me, sir?

16 Q. How can you call this man a liar when he told you
17 in 1979 that his joint aches started in '51-'53?

18 A. Because he wasn't exposed in '51 -- let me finish,
19 sir. He was not exposed in '51. And between '51 or '53,
20 when he was first exposed, there were a lot of other causes
21 for joint pain and that is in the record, sir, including
22 hospitalization, with four hospitalizations for -- with
23 traction for a disk, and he claimed that he had arthritis.
24 Now that's many years later, and he could have, without any

1 doubt, all of his joint pains which he claimed he had at the
2 time that we examined him and he said they were the arthritis
3 of the hip, and the back, and it was the result of his disk.
4 He intimated that.

5 Q. Doctor, you are calling this man -- you said that
6 he was lying to you in '79 because his joint pain started in
7 '51-'53 and you said you had no record of his joint pain in
8 1953 when you examined him, isn't that correct, sir?

9 A. That's true, sir.

10 Q. Doctor, he's also clearly delineated the hip and
11 back pain in '65, the disk operation in '73, the joint pain
12 in '51-'53, isn't that correct, sir?

13 A. No, sir, that's not clearly delineated in my mind.

14 Q. Doctor, I'm not asking about your mind, I'm asking
15 about the record. The record clearly establishes three
16 separate areas of time and problems, does it not, sir?

17 A. Not clearly, sir, no.

18 Q. Is it clear that he says on Page 17 the joint pain
19 started in '51-'53, is that clear?

20 A. He claimed that --

21 Q. Is that clear in the record?

22 A. He claimed that --

23 Q. Is that clear in the record? So we don't have a
24 problem, is it clearly delineated in the record that he says

1 joint pains, current, started '51-'53?

2 A. That is in the record.

3 Q. Is that clearly in the record?

4 A. If I have to make a judgment about it, it's not
5 clear.

6 Q. All right, so you are saying that that isn't clear,
7 is that what you are saying?

8 A. It is in the record.

9 Q. You are saying that is not clear that his joint
10 paint started in '51-'53, is that what you are saying?

11 A. According to our judgment.

12 Q. Excuse me, is that correct?

13 A. Yes, that's correct.

14 Q. Whose responsibility was it to make it clear the
15 interviewer or the interviewee?

16 A. Neither.

17 Q. Oh, really, Doctor. Don't you train these people
18 to bring out clearly. Here is a person sitting down and has
19 asked questions of the man and he has gotten responses on
20 three different time periods and three different episodes of
21 pain, has he not, sir?

22 A. According to this record, sir.

23 Q. Isn't it your responsibility, sir, if there is any
24 ambiguity or any fuzziness, isn't it your responsibility to

1 make sure that they are carefully delineated and clear so
2 that you can, when you look at these records, you can say,
3 hey, here's joint pain. He had it in '51-'53. Here's hip
4 and back pain that started in '65. Here's a disk disease
5 that he had in '73. Isn't that your responsibility, Dr.
6 Suskind?

7 A. It is indeed, sir, the interpretation of the
8 physician.

9 Q. Doctor, if it is your responsibility then it is
10 your problem if you now believe it's not clear, isn't that
11 correct, sir?

12 A. No, sir.

13 Q. Oh, it isn't your responsibility?

14 A. It is my judgment that it is not clear.

15 Q. Doctor, I'm not talking about judgment.

16 A. Well, I am.

17 Q. I'm talking now about whose responsibility was it
18 to make the record clear if you now say the record isn't
19 clear? Whose responsibility was it, Dr. Suskind?

20 A. Ours.

21 Q. And Doctor --

22 A. The physicians.

23 Q. And because you have fallen down in your
24 responsibility of making the record clear, you now say that

1 Mr. Null is a liar, is that correct, Dr. Suskind?
2 A. No, sir. No, not at all.
3 Q. You know Mr. Null is not a liar, don't you, sir?
4 A. I --
5 Q. Could you answer that question?
6 A. Would you repeat the question? I'm not sure what
7 the question is.
8 Q. You know Mr. Null is not a liar, don't you, sir?
9 A. No, I do not know, sir.
10 Q. Do you have any evidence that he is a liar other
11 than what you call an unclear record, sir?
12 A. Yes, sir.
13 Q. What other evidence do you have, sir?
14 A. All of the evidence I just presented about his
15 arthritis and about his disk, that is the evidence.
16 Q. This the record --
17 A. May I finish?
18 Q. I asked you, Doctor -- would you ask the witness to
19 wait until I ask another question?
20 MR. HEINEMAN: Objection, Your Honor, he asked him.
21 MR. CARR: That was not responsive to my question.
22 My question was what evidence other than this record, Dr.
23 Suskind, that's my question.
24 THE COURT: Doctor, wait until the question is

1 asked in full and then respond to it, please.

2 MR. HEINEMAN: May counsel approach the bench, Your
3 Honor?

4 THE COURT: Yes, you may.

5 (The following Side Bar conversation was had outside the
6 hearing of the jury.)

7 MR. HEINEMAN: The question was a general question
8 of what evidence is there, whether in the record, what
9 evidence is there that he had -- whatever the rest of the
10 question was. He asked him what evidence was. He starts
11 reciting the evidence that there is and he interrupts him
12 again. Now that -- what he said, what the witness said was
13 clearly responsive to the question, to the general question
14 of what evidence is in in the record that such and such
15 occurred.

16 MR. CARR: My question --

17 MR. HEINEMAN: As he's going on he's interrupted by
18 Mr. Carr again.

19 MR. CARR: Counsel, you --

20 MR. HEINEMAN: To try and steer him off of that.

21 MR. CARR: You need a hearing aid, because my
22 question wasn't what evidence was in the record.

23 MR. HEINEMAN: You just said it was.

24 MR. CARR: My question was what evidence other than

1 this unclear evidence, that record that --

2 THE COURT: That was the question. His answer was
3 not responsive because it was recitation of the record.
4 Objection is overruled.

5 (The following proceedings were had in open court.)

6 Q. (by Mr. Carr) Doctor, my question is clearly what
7 evidence is there other than this unclear record that Mr.
8 Null is a liar?

9 A. We are going by this record, sir.

10 Q. My question is, what evidence is there other than
11 this unclear record that Mr. Null is a liar?

12 A. I don't have any other evidence.

13 Q. Thank you, Doctor. And if Mr. Null is not a liar,
14 then his problems did not clear up with time, did they, sir?

15 A. No, sir.

16 Q. Are you assuming now, Dr. Suskind, that he is not a
17 liar?

18 A. I can't assume that, sir.

19 Q. Sir?

20 A. I can't assume that.

21 MR. CARR: Your Honor, would you direct the witness
22 to assume that?

23 MR. HEINEMAN: Objection, there is no evidence --
24 how can he ask him to assume something not in evidence?

1 MR. CARR: There is plenty of evidence. I think
2 it's for the jury to decide.

3 THE COURT: Objection is overruled. For purposes
4 of the question please assume that he is not a liar.

5 MR. HEINEMAN: Excuse me, may counsel approach the
6 bench?

7 THE COURT: Yes, you may.

8 (The following Side Bar conversation was had outside the
9 hearing of the jury.)

10 MR. HEINEMAN: Mr. Carr just said that that's a
11 question for the jury to decide.

12 THE COURT: That's right. There is evidence here
13 that's been put forth that a reasonable inference can be
14 taken from that he is not on that basis asking them to assume
15 for purposes of this question, that he is in fact not is a
16 reasonable request of the assumption to make and the question
17 as to whether he is or not is for the jury to decide. The
18 question Mr. Carr has asked that he assume is completely
19 proper. There is evidence in the record upon which it can be
20 based.

21 MR. HEINEMAN: Your Honor, I would object on the
22 basis that I think that in order to ask the witness to assume
23 something he has to assume that which is in evidence and this
24 is not a matter that is in evidence.

1 THE COURT: Completely disagree. There is evidence
2 upon which to base that inference on the record and there is
3 therefore evidence upon which to make that assumption. It is
4 properly directed to make the assumption. Objection is
5 overruled.

6 (The following proceedings were had in open court.)

7 Q. (by Mr. Carr) Now, will you answer my question,
8 Dr. Suskind?

9 A. If I am to assume that Mr. Null is not a liar --

10 Q. That's correct.

11 A. About his 1951-'53 pains, I would still say that
12 his problem cleared up.

13 Q. And upon what evidence do you base that statement,
14 sir?

15 A. The fact that the joint pains that he complains
16 about in 1979 are clearly, absolutely clearly attributable to
17 his disk and his arthritis which he complains about, might
18 very well be related also to his disk, because they're hip
19 and joint arthritis.

20 Q. Doctor, my question is, and you have avoided the
21 question, the man has told you that he had joint pains that
22 started in 1951-'53, has he not, sir?

23 MR. HEINEMAN: Object to the statement of counsel,
24 ask it be stricken and the jury be instructed to disregard

1 it.

2 THE COURT: Objection is overruled.

3 A. Would you repeat that, please?

4 Q. The man has told you, has he not, that his joint
5 pain started in '51-'53?

6 A. Yes.

7 Q. And, Doctor, if his joint pain started then and not
8 in 1965 or not in 1973, but assume that his joint pain
9 started in 1953, will you assume that, sir, that he's telling
10 the truth?

11 A. I will assume that, yes, sir.

12 Q. Now, assuming, sir, that the pain that he's talking
13 about started in 1951-'53 and he still has it, not that it
14 started in '65, not that it started in '73, but that it
15 started in '51-'53, are you assuming that, sir?

16 A. I am indeed.

17 Q. Then that problem that he had in '51-'53 did not
18 clear up with time, did it, sir?

19 A. It did indeed, sir.

20 Q. Does he still have the problem in '79?

21 A. Not the same problem.

22 Q. Doctor, what problem does he describe? Does he
23 still have the joint pain in 1979?

24 A. He has hip and joint pain.

1 Q. Does he have joint pain in 1979 that he says
2 started in '53?

3 A. No, sir.

4 Q. Doctor, doesn't he -- didn't you just get through
5 agreeing that he had joint pain that he says started in
6 1951-'53?

7 A. Yes, I didn't specify joint.

8 Q. Doctor, if you look at Page 17 it says joint pain,
9 does it not, sir? Your form, not his form. Your form says
10 joint pain?

11 A. May I look at this and read it, sir? Yes, and he
12 doesn't specify which joint.

13 Q. Doctor, if you don't mind.

14 A. Doesn't specify which joint.

15 MR. CARR: Will you direct the witness to withhold
16 his advocacy until I have had a chance to ask the question?

17 A. You have asked it, sir.

18 THE COURT: Doctor, that what you said went beyond
19 the question. Please answer the question that is asked of
20 you by either counsel, no more, no less.

21 Q. Doctor, he says to you in '79 that he's got joint
22 pain that started in 1951-'53, doesn't he, sir?

23 A. No, sir.

24 Q. Doctor, hasn't he got the current box marked on

1 Page 17?

2 A. Yes.

3 Q. With joint pain. He's telling you there that he
4 currently has joint pain, isn't he, sir?

5 A. Yes, sir.

6 Q. There is no question, we got that established, he's
7 telling you in '79 he's got joint pain?

8 A. He has indeed.

9 Q. He's telling you also in '79 that you asked the
10 question when did it start, don't you?

11 A. Yes, sir.

12 Q. And he says it started in '51-'53, doesn't it, sir?

13 A. Yes, sir.

14 Q. Now, that joint pain problem that he has in '79,
15 that he tells you started in 1951-'53 did not clear up with
16 the passage of time, did it?

17 A. Yes, it did, sir.

18 Q. Does he have it in '79?

19 A. Yes, he has joint pain.

20 Q. All right. That problem that he had, joint pain,
21 that started in '51-'53 according to him?

22 A. No, sir.

23 Q. Doctor, doesn't he say on Page 17 it started in
24 '51-'53, didn't you just get through saying that, sir?

1 A. Yes.

2 Q. So he says this joint pain that he's currently
3 having started in '51-'53, doesn't he, sir?

4 A. No, sir.

5 Q. Doctor, didn't you just get through saying that the
6 man told you that he currently has joint pain?

7 A. Yes.

8 Q. And didn't he also tell you that that joint pain
9 that he has currently started in '51-'53 on Page 17, Dr.
10 Suskind?

11 A. No, sir.

12 Q. He doesn't tell you that?

13 A. No.

14 Q. Didn't you just get through saying that, sir?

15 A. Yes.

16 Q. Doctor, when did he tell you the joint pain that he
17 currently has -- directing your attention to Page 17, on Page
18 17, when does he tell you that the joint pain he currently
19 has, when did he tell you that it started?

20 A. '51.

21 Q. Dash?

22 A. Says '51, and he wasn't exposed in '51.

23 Q. Doctor --

24 MR. CARR: Your Honor, would you direct the witness

1 to ask the jury to be instructed to disregard his impetuous
2 outbursts.

3 THE COURT: That was not responsive to the
4 question. The jury is ordered to disregard the remark the
5 doctor just may. You may continue.

6 Q. (by Mr. Carr) Doctor, now, you haven't read the
7 bottom of Page 17 completely, have you, sir? He said -- when
8 did he say the joint pain started at the bottom of Page 17?

9 A. '51-'53.

10 Q. All right. Doctor, and does he say that he still
11 has that joint pain that started in '51-'53? On page 17,
12 Doctor?

13 A. No.

14 Q. Has he got current checked there, sir?

15 A. Yes.

16 Q. Now, current means that he still has it, right,
17 sir?

18 A. He has a joint pain, right.

19 Q. Current means he still has it, doesn't it, sir?

20 A. He has joint pain, yes, sir.

21 Q. Where does it say a joint pain?

22 A. Says joint pain.

23 Q. That's not a joint pain?

24 A. Doesn't have to be the same pain, doesn't have to

1 be the same joint.

2 Q. Doctor, does he say he currently is having joint
3 pain?

4 A. Yes.

5 Q. And when does he tell you that that joint pain that
6 he currently has, when does he tell you it started on Page
7 17?

8 A. '51 to '53, sir.

9 Q. All right. And that problem that he tells you that
10 he has at the bottom of Page 17 that started in 1951-'53, he
11 still has it, hasn't he, sir?

12 A. He has a problem, sir.

13 Q. That problem, he's still got it, doesn't he?

14 A. No, sir.

15 Q. Doesn't he tell you he's still got it, Dr. Suskind?

16 A. He has a current joint problem.

17 Q. Doesn't he tell you that he still has that current
18 joint problem?

19 A. He has a current joint problem.

20 MR. CARR: Would you direct the witness to answer
21 the -- wait until I finish?

22 A. I'm answering the question.

23 THE COURT: The question was not completed, you
24 started answering. Wait until the question is finished,

1 please?

2 A. Thank you.

3 Q. (by Mr. Carr) Doctor, doesn't he tell you that he
4 has current joint pain in 1979 that started in '51-'53?

5 A. Yes.

6 Q. Doctor, now, if he has in fact current joint pain
7 that started in '51-'53, he still has that problem, hasn't
8 he, sir?

9 A. He has the joint pain problem, sir.

10 Q. Doctor, does he still have the problem that he
11 described that started in '51-'53?

12 A. No, sir.

13 Q. Doctor, does he tell you that he still has joint
14 pain that started in '51?

15 A. Yes, sir.

16 Q. Tells you it started in '51-'53, doesn't it?

17 A. Yes, sir.

18 Q. He describes that pain as having started in
19 '51-'53, doesn't he, sir. Doesn't he, sir?

20 A. He describes joint pain.

21 Q. Excuse me, could you answer my question, please?

22 A. Yes.

23 Q. And he says he still has it, doesn't he, sir?

24 A. Still has joint pain, sir, yes.

1 Q. That started in '51-'53 correct, sir?

2 A. No, sir.

3 Q. Dr. Suskind, when does he tell you the joint pain

4 started that he has at the bottom of Page 17? When did he

5 tell you it started, sir? Doctor, are you looking at the

6 bottom of Page 17?

7 A. (no response)

8 Q. Doctor, are you looking at the bottom of Page 17?

9 A. (no response).

10 Q. Doctor, are you looking at the bottom of Page 17?

11 A. Yes, I am, sir.

12 Q. At the bottom of Page 17 when does he tell you that

13 the problem started?

14 A. 1951-'53, sir.

15 Q. Does he tell you there that he still has it, sir?

16 A. He has a joint problem, right.

17 Q. Does it tell you that he still has it, sir?

18 A. He has a joint problem.

19 Q. Does he tell you that he still has it, sir?

20 A. Has what, sir?

21 MR. HEINEMAN: Objection, Your Honor, asked and

22 answered three times.

23 THE COURT: Objection is overruled. Answer the

24 question, Doctor.

1 A. He still has joint pain, sir, yes.

2 Q. Does he tell you that he still has it, Dr. Suskind,

3 the join pain that started in '51-'53?

4 A. No, sir.

5 Q. Doctor, does he tell you that he has joint pain at

6 the bottom of Page 17?

7 A. Yes, sir.

8 Q. Does he tell you that he has -- that that joint

9 pain started in '51-'53?

10 A. Joint pain started '51-'53, yes, sir.

11 Q. Is that a yes? Then he has currently the problem

12 that started in '51-'53?

13 A. No, sir.

14 Q. Doctor, do you understand that I'm asking you

15 equivalent questions and you are saying yes that he says it

16 started, that he has joint pain, that he currently has joint

17 pain that started in '51-'53, then you are saying that he

18 doesn't, do you understand that? Do you recognize --

19 A. Can you separate -- you are asking four questions

20 at the same time, sir.

21 Q. Do you recognize what you are doing, Dr. Suskind?

22 A. Start with the first question, I'll answer it.

23 Q. Do you recognize what you are doing, sir?

24 A. Would you repeat the question?

1 THE COURT: Doctor, you interrupted the last
2 question. Please wait.

3 A. He's asked four questions, sir.

4 THE COURT: Doctor. Doctor, don't interrupt me
5 also?

6 A. I'm sorry, sir.

7 THE COURT: Listen until the question is completed,
8 so you know in full what you are expected to answer of either
9 counsel.

10 Q. Doctor, do you recognize that you are giving
11 inconsistent answers to the same questions?

12 A. No, sir.

13 Q. Do you think you are testifying consistently?

14 A. Absolutely, sir.

15 Q. Doctor, let's start over again. Does the man tell
16 you that he is having joint pain in 1979?

17 MR. HEINEMAN: Objection, asked and answered.

18 A. Yes.

19 THE COURT: Objection is overruled.

20 Q. When does he tell you that that joint pain that
21 he's having currently in 1979, when does he tell you that
22 that current joint pain that he's presently having in 1979 --
23 when does he tell you at the bottom of Page 17 that that
24 current joint pain started?

1 A. He doesn't say, sir.

2 Q. Doctor, doesn't he say under the column there --
3 when does he say '51-'53?

4 A. Doesn't say which joint pain, sir.

5 Q. Doctor, the one line is talking about joint pain
6 all the way across. Are you looking at the bottom of Page
7 17?

8 A. Yes.

9 Q. The joint pain there is described as current and
10 the question is when did that joint pain that's current
11 start, aren't you asking that, sir?

12 A. Not necessarily, sir.

13 Q. Not necessarily. What are you asking about when
14 you put in -- you put in first of all sleeplessness, current,
15 yes, no; past, yes, no; when, don't you, sir?

16 A. Yes.

17 Q. You are talking about -- you want to know when, if
18 he has sleeplessness, you want to know when it started, don't
19 you, sir?

20 A. Yes.

21 Q. If he has nightmares you want to know when it
22 started, don't you, sir?

23 A. Yes, sir.

24 Q. If he has muscle pain, you want to know when it

1 started, don't you?

2 A. Yes.

3 Q. If he has joint pain you want to know when it
4 started, don't you, sir?

5 A. Yes, sir.

6 Q. And now he answered it started in '51-'53, didn't
7 he, sir?

8 A. Yes.

9 Q. So he tells you that the current muscle pain that
10 he's having according to your questionnaire started in
11 1951-'53, doesn't he?

12 A. Not necessarily.

13 Q. When does he tell you it started?

14 A. In the rest of the history.

15 Q. When does he tell you on the rest Page 17?

16 A. Not on this page.

17 Q. You don't see the word 1951-'53 put in there or am
18 I reading something --

19 A. There are other dates that are significant.

20 Q. Doctor, are you listening to my question?

21 A. Yes, I am.

22 Q. When does he tell you on Page 17 that his current
23 problems started?

24 A. He says 1951-'53.

1 Q. The problem that he is currently having that
2 started in '51-'53, according to this record on Page 17, did
3 not clear up with time, did it, sir?

4 A. It does, sir.

5 Q. Doctor, does he tell you that he has it?

6 A. Yes.

7 Q. And assuming he's telling you the truth then, sir,
8 that he's having joint pain in 1979, are you assuming that,
9 sir?

10 A. He's having pain.

11 Q. Are you assuming that he's having joint pain in
12 '79?

13 A. Yes, sir.

14 Q. And are you assuming that that joint pain that he's
15 having now started in '51-'53?

16 A. I can assume that.

17 Q. Are you assuming it?

18 A. Yes, I'm assuming it.

19 Q. All right. So you are assuming --

20 A. If you make me assume it, I'll assume it.

21 Q. You are assuming now that he has joint pain in '79
22 which started in '51-'53, aren't you, sir?

23 A. I am assuming that, sir.

24 Q. You are assuming that, right?

1 A. Yes, sir.

2 Q. So he's got that problem, hasn't he, sir?

3 A. What problem, sir?

4 MR. CARR: Your Honor, this is absurd.

5 MR. HEINEMAN: Your Honor, may I approach the
6 bench?

7 THE COURT: Gentlemen, can you approach the bench?

8 (The following Side Bar conversation was had outside the
9 hearing of the jury.)

10 THE COURT: The last response was absolutely
11 outrageous. The only reason he's not going to jail for it is
12 because of his age. That was a contemptuous, ridiculous
13 remark. It's eleven o'clock. It's about time for a break.
14 I know that you disagree --

15 MR. HEINEMAN: I do indeed.

16 THE COURT: With a number of things that I have
17 said about responding to the questions, however, I have no
18 doubt in my mind, so you understand exactly that he
19 understands exactly what I'm talking about, subsequent to
20 your understanding to disagree with it, I want you to talk to
21 him again so that we don't have any more of this game
22 playing. I would like eventually to get him off the stand.

23 MR. HEINEMAN: Your Honor, I would say that the
24 game playing is being done by Mr. Carr. And that's clear

1 from the record. The doctor has made it very clear in the
2 record that there are two different types of joint pain, at
3 least two different types of joint pain that are being
4 referred to, and that when one says he has joint pain
5 currently that that's not necessarily the same joint pain
6 that started in '51-'53.

7 THE COURT: Are you telling me that that last
8 response was a reasonable response in the context of what was
9 just asked of him?

10 MR. HEINEMAN: I think it was.

11 THE COURT: Well, then you are part of the problem
12 not part of the solution if you think that it was. Talk to
13 him again and explain to him that he has to be responsive to
14 the questions that's asked of him and I don't want him going
15 on that stand without wearing that hearing aid, from now
16 until cross examination, your redirect examination, and
17 anything else is over. I want him wearing it. We are going
18 to take a recess now.

19 (The following proceedings were had in open court.)

20 THE COURT: Ladies and gentlemen, we will take a
21 short recess at this time. Excuse me. I want to remind you
22 that the admonishments that I gave you earlier will apply
23 during this break also. Court is in recess.

24 (Following a recess, these proceedings were had in open

1 court.)

2 Q. (by Mr. Carr) Doctor, this man -- and I would like
3 you to limit your attention now, you understand that I'm
4 aware of and the jury is aware of the fact that there are
5 other problems that the man discusses about 1965, 1968,
6 1973. I want you to put these out of your mind for the
7 moment, will you do that, sir?

8 A. Yes, sir.

9 Q. And I would like for you to assume that the man was
10 telling you the truth in this 1979 report, will you do that
11 also, sir?

12 A. Yes, sir.

13 Q. Now, he reported that he was having joint pain in
14 1979 that started in 1951, '53, on Page 17, did he not, sir?

15 A. Yes, sir.

16 Q. So he is in '79, he was having problems joint pain
17 that started in '51-'53, wasn't he, sir?

18 A. No, sir.

19 Q. Now, Doctor, have you put these other things out of
20 your mind, the '65 episode, the '68-'73, the '73 disk, are
21 those out of your mind? Are you not considering those as
22 I've asked you not to consider them?

23 A. Correct, sir.

24 Q. And you are considering that he's telling you the

1 truth on Page 17?

2 A. Yes, sir.

3 Q. And he's telling you on Page 17 that he has
4 currently got joint pain, isn't he, sir?

5 A. Yes, sir.

6 Q. And he's telling you that that current joint pain
7 that he has in '79 started in '51-'53, isn't he, sir?

8 A. Yes, sir.

9 Q. Then he is in '79 having joint pain according to
10 Page 17, if the man is telling you the truth, he's having
11 problems with joint pain that started in 1951-'53, isn't he,
12 sir?

13 A. Yes.

14 Q. And if he's having those problems in '79 that
15 started in '51-'53, if he is in fact having these problems,
16 sir, these are not symptoms that cleared with time, are they,
17 sir?

18 A. Yes, sir, they did clear with time, sir.

19 Q. Doctor, are you assuming that he has them in '79?

20 A. Yes.

21 Q. And are you assuming that those pains that he's
22 having in '79 started in '51-'53?

23 A. Yes.

24 Q. You are assuming that he's got joint pains in '79?

1 A. Yes, sir.

2 Q. And he's got them currently and they are hurting
3 him, you are assuming that?

4 A. Yes, sir.

5 Q. And you are assuming the problem started in
6 '51-'53?

7 A. Yes, sir.

8 Q. Now, that problem then is not cleared up, is it,
9 sir?

10 A. Yes, sir, it has cleared up.

11 Q. Doctor, are you assuming that he's got the problem
12 in '79?

13 A. Yes.

14 Q. Then it's not cleared up if he's got the problem,
15 is it?

16 A. Yes, sir, it has cleared up in my mind.

17 Q. Doctor, I'm not asking you about your mind, I don't
18 want to get into that. I want you to go on the record, sir,
19 on the record that you have it, sir, here on Page 17, he is
20 having joint pain in 1979, isn't he, sir?

21 A. Yes, sir.

22 Q. And that is a problem that has not cleared up with
23 time, isn't it, sir?

24 A. No, it might clear up.

1 Q. Sir?

2 A. Might have cleared up, sir.

3 Q. Doctor, it might have, but I'm asking you to assume
4 that he's telling you the truth, you've agreed that you
5 would, sir?

6 A. Yes, sir.

7 Q. And he's told you that he's got joint pain in '79,
8 hasn't he sir?

9 A. Yes, sir.

10 Q. And now for the purpose of this question, you are
11 assuming that he's got joint pain in '79, he's got a problem
12 with joint pain, correct?

13 A. Yes, sir.

14 Q. And now he's got that problem in '79, you agree,
15 right, based on what I've told you to assume?

16 A. He's got a joint problem in '79, yes, sir.

17 Q. Doctor, now, I didn't ask you to say a joint pain,
18 did I, sir, because you don't have here a joint pain, Doctor,
19 what I'm asking you to assume is as you have it on this
20 record that he is complaining of joint pain that he's telling
21 the truth, that he's got that problem in 1979, are you
22 assuming that, sir?

23 A. I am, sir.

24 Q. You are not going to say a joint pain again, are

1 you, sir? You are going to agree that he's talking about
2 joint pain, aren't you, when I ask you this question?

3 A. Yes, sir.

4 Q. Now, he's got that problem in '79, hasn't he, sir?

5 A. Yes, sir.

6 Q. Are you assuming he's got it when he's writing down
7 this, when he's answering the questions that you are asking
8 him in '79?

9 A. Yes, sir.

10 Q. So the problem that he's got in '79, still got it,
11 hasn't he, sir?

12 A. He has a joint problem in '79, yes, sir.

13 Q. He has joint pain in '79, right, sir?

14 A. Joint pain in '79, yes, sir.

15 Q. Didn't clear up with time, did it, if he's still
16 got it?

17 A. It did, sir.

18 Q. Sir, if he still has it, are you assuming that he
19 still has it?

20 A. Yes, sir.

21 Q. Still got it

22 A. (indicates affirmatively)

23 Q. Got it in 1979?

24 A. Yes, sir.

1 Q. And it's there, right, sir? Not cleared up, is it,
2 sir, it's there, isn't it, sir?

3 A. It is there.

4 Q. Okay, and if it's there, it didn't clear up, did
5 it, sir?

6 A. Yes, it did clear up, sir.

7 Q. If it's there, it's cleared up, doesn't cleared up
8 mean that it's gone away, sir? Isn't that what it means,
9 sir, that it cleared up, went away?

10 A. One can interpret it that way.

11 Q. Isn't that the way you would interpret it, sir?

12 A. No, sir.

13 Q. Doctor, you don't believe that when the AMA told
14 all the physicians that these problems always cleared up with
15 time, don't you believe they were telling the physicians that
16 the problems went away with time, isn't that what they were
17 telling him?

18 A. Yes, sir, specific problems, yes, sir.

19 Q. That's what the AMA is telling the world, all these
20 physicians, these problems always clear up with time, they
21 went away, correct, sir?

22 A. Yes, sir.

23 Q. Now, if he's having a problem in '79, it didn't go
24 away, did it, sir?

1 A. Yes, sir.

2 Q. Are you assuming that he's got it?

3 A. I am assuming he has a joint problem, yes, sir.

4 Q. Doctor, I didn't ask you to assume that he has a

5 joint problem, did I, sir? Did I ask you to assume that?

6 A. I believe you did.

7 Q. I asked you to assume that he's having joint pain.

8 A. I am assuming that.

9 Q. I didn't say problem.

10 A. I am assuming --

11 Q. Did I say problem?

12 A. No, sir.

13 Q. I didn't say joint problem, did I, sir?

14 A. Well, you did on other occasions, sir.

15 Q. Doctor, I've talked about a lot of things on other

16 occasions. I didn't say a joint problem, did I, sir? I said

17 joint pain, didn't I, sir?

18 A. Yes, sir.

19 Q. Now, are you assuming that in 1979 he's got joint

20 pain?

21 A. Yes, sir.

22 Q. He has a current problem of joint pain, you agree,

23 Doctor?

24 A. Yes, sir.

1 Q. Didn't clear up, didn't go away if it's still
2 there, did it, isn't that correct, sir?

3 A. No, sir, it's not correct, sir.

4 Q. If it's still there it went away, is that what you
5 are saying, Doctor?

6 A. I am saying that in a sense, yes.

7 Q. Doctor, if it's still there -- I have my glasses in
8 my hand, don't I, sir?

9 A. Yes, sir.

10 Q. Now, if I have put the glasses over there I don't
11 have the glasses in my hand any more, do I, sir?

12 A. No.

13 Q. No problem about that. The glasses have gone away,
14 haven't they, sir?

15 A. Yes, sir.

16 Q. From my hand, no longer there, but when I put these
17 glasses in my hand, the glasses are still in my hand, aren't
18 they, sir?

19 A. Yes, sir.

20 Q. They didn't go away, they are here?

21 A. You still have them.

22 Q. The joint pain, he still has the joint pain?

23 A. He has joint pain, yes, sir.

24 Q. It didn't go away, did it, sir, didn't clear up,

1 did it, sir, if he has it?

2 A. It did clear up, sir.

3 Q. Does he still have it, sir?

4 A. Still has joint pain, sir.

5 Q. Didn't go away then, did it, sir?

6 A. Yes, sir.

7 Q. Doctor, does he still have it?

8 A. Yes, sir.

9 Q. He's got the joint pain?

10 A. Yes, sir.

11 Q. He's got joint pain that started in '53, '51-'53,

12 correct, sir?

13 A. He has joint pain, yes.

14 Q. Is that correct?

15 A. That started in '51-'53.

16 Q. And he's still got that joint pain, doesn't he,

17 sir?

18 A. No, sir.

19 Q. Doctor, do you see down there where it says

20 current, didn't you agree that he still has it currently, are

21 you assuming he's still got it?

22 A. Not that joint pain, sir. You asked me if he had

23 that joint pain.

24 Q. Doctor, I want you to assume that he has the joint

1 pain described in the bottom of Page 17 that he says he has
2 that, are you assuming that, sir?

3 A. Yes, sir.

4 Q. Now, I've asked you to put out of your mind the
5 problem with the arthritis in '65, the problem with the disk
6 in '68-'73, have you done that, sir?

7 A. I have, sir.

8 Q. Now, the only joint pain that you have in your mind
9 now is the joint pain that he describes that he's currently
10 having in '79, correct, sir?

11 A. Yes, sir.

12 Q. He has the joint pain in '79, right, it's not gone
13 away?

14 A. He has a joint pain in '79, yes, sir.

15 Q. Doctor, I didn't use the word a joint pain, did I?

16 THE COURT: Your Honor, would you direct the
17 witness --

18 A. He has joint pain in '79.

19 MR. CARR: Your Honor, would you direct the witness
20 to answer the question the way I've given it?

21 THE COURT: Doctor, you have to conform to the
22 assumption that's given, so please do that.

23 A. Thank you. I will.

24 MR. HEINEMAN: Your Honor, may counsel approach the

1 bench?

2 THE COURT: Yes, you may.

3 (The following Side Bar conversation was had outside the
4 hearing of the jury.)

5 MR. HEINEMAN: I'd like to object to Mr. Carr's
6 statement that the witness had not answered his question and
7 his request for the Court's instruction of the witness, and
8 I'd also like to object to the Court's instruction of the
9 witness on the grounds that I think the witness answered
10 exactly what Mr. Carr asked him, and I'd like it to be read
11 back.

12 THE COURT: There is no way --, that is not what
13 happened. He did not. He has kept substituting a joint pain
14 for the particular joint pain, that was the basis of the
15 assumption. It was clearly the basis of the assumption the
16 first time then it was clarified even more by the second
17 delivery of assumptions that were just made, and then his
18 response reverted back to a joint pain after that other,
19 after the second request to assume was made. I think Mr.
20 Carr's request that the Court direct the witness to follow
21 the parameters of the assumption was correct and proper, and
22 based upon -- that was obvious in the record because I don't
23 think the witness was following the parameters of the
24 assumption he was asked to follow before and that he agreed

1 to follow before. Your objection is overruled.

2 MR. HEINEMAN: Your Honor, may I say that I thought
3 from where I was sitting that I heard both the witness and
4 Mr. Carr use exactly the same article, whether it was a or
5 the, I'm not sure, but I thought --

6 MR. CARR: I didn't use an article.

7 MR. HEINEMAN: I'd ask the Court permission to have
8 the Court Reporter read it back to us.

9 THE COURT: I've been listening to the articles
10 because they are important and if -- perhaps you should stand
11 closer, because I heard him use a different article than was
12 used by Mr. Carr in the context of this question and there
13 was a substantial qualitative difference between a and the.
14 Your objection is overruled. Let's proceed.

15 (The following proceedings were had in open court.)

16 Q. (by Mr. Carr) Doctor, are you assuming that he's
17 got joint pain currently as he described on the bottom of
18 Page 17? Are you assuming that, Dr. Suskind?

19 A. Yes.

20 Q. Will you keep that in your assumption, sir?

21 A. I will, sir.

22 Q. No question now, in '79 when he was there he's
23 having joint pain currently, is he not, sir?

24 A. Yes, sir.

1 Q. And he tells you that that joint pain started in
2 '51-'53, doesn't he, sir?

3 A. No, sir.

4 Q. Doctor, didn't you just tell us just a moment ago
5 that he told you that joint pain started in '51-'53?

6 A. Said that joint pain started, didn't say that joint
7 pain, sir. You said joint pain.

8 Q. That's what I'm asking you, Doctor, joint pain.
9 I'm not talking about a particular joint, and he's not
10 talking about a particular joint. Your form that you
11 prepared is not talking about a particular joint. It's
12 talking about generically, generally, joint pain, isn't it,
13 sir?

14 A. Yes, sir.

15 Q. Not talking about a joint in the back or a joint in
16 the head or a joint in the toe, it's talking about general
17 terms, joint pain, isn't it, sir?

18 A. Yes.

19 Q. And he says generally his joint pain, the general
20 point pain that he has now started when?

21 A. '51-'53, sir.

22 Q. All right. Now, Doctor, he has a problem then that
23 started in '51-'53, according to this form on Page 17, isn't
24 that correct, sir?

1 A. Right.

2 Q. He has it in '79, hasn't he, sir?

3 A. If you are talking about general joint pain, yes,
4 sir.

5 Q. We are talking about the joint pain that's
6 described on the bottom of Page 17, aren't we?

7 A. The generic way.

8 Q. Aren't we, sir? The way you prepared the form, not
9 me, not the patient, not anybody, the way you prepared the
10 form?

11 A. Correct, sir.

12 Q. Now, he's saying he has that joint pain in 1979,
13 isn't he, sir?

14 A. No, he's not saying that -- he said he had joint
15 pain, not that joint pain, sir.

16 Q. Doctor, he's saying he's having that joint pain
17 that you've asked him about at the bottom of Page 17, isn't
18 he, sir?

19 A. He's having joint pain, yes.

20 Q. Generic joint pain?

21 A. Yes.

22 Q. He's having that kind of joint pain?

23 A. Yes.

24 Q. In 1979?

1 A. Correct. Correct, sir?

2 A. Yes, sir.

3 Q. And that joint pain started when, sir?

4 A. That joint pain, the general joint pain started in
5 '51-'53, sir.

6 Q. And the problem he's had in '79 didn't go away, did
7 it, sir, the problem that started in '51-'53, didn't go away,
8 did it, sir?

9 A. Yes, it did, sir.

10 Q. Are you keeping in mind now Page 17?

11 A. Yes, sir.

12 Q. You are disregarding everything else?

13 A. Uh-huh.

14 Q. Does he say he has that joint pain in '79?

15 A. He's had joint pain in '79, yes, sir.

16 Q. No, my question is, is he saying he had that joint
17 pain in '79?

18 A. He didn't say that, no, sir.

19 Q. Didn't we just agree that he's talking about joint
20 pain generically?

21 A. Yes, sir.

22 Q. General joint pain he's having in '79?

23 A. Yes.

24 Q. When did that general joint pain start?

1 A. '51-'53, sir.

2 Q. So he's having in '79 a problem that started in
3 '51-'53, according to Page 17, is he not, sir?

4 A. No, sir.

5 Q. Is he having a problem in '79, sir?

6 A. He's having a problem in '79, yes, sir.

7 Q. Is he having general joint pain in '79?

8 A. He's having a generic joint pain in '79, yes, sir.

9 Q. And when did that generic joint pain that he's
10 having in '79, that he's currently having in '79, when did it
11 start, sir?

12 A. According to this reocrd, 1963, '65.

13 Q. Doctor, I'm directing your attention to Page 17,
14 Doctor, you have deliberately gone back to '65, haven't you,
15 sir?

16 A. Not deliberately. You asked me a question.

17 Q. Doctor, I asked you from the beginning to put those
18 things out of your mind. Don't you remember that, sir?

19 A. Yes, sir.

20 Q. And you didn't put them out of your mind, did you,
21 sir? You are right back there, Doctor, it may be that this
22 man's pain started in '65, it may be that he's lying, may be
23 that he's mistaken, may be that I'm twisting the facts
24 horribly, I'm just having you misinterpret everything

1 horribly. That may be.

2 A. Yes, sir.

3 Q. Now, Doctor, put all that out of your mind and

4 direct your attention just to Page 17, sir.

5 A. Yes, sir.

6 Q. Now, are you going to do that, Dr. Suskind?

7 A. Yes, sir.

8 Q. You are not going to refer back to '65 again on me?

9 A. If you don't want me to.

10 Q. I don't want you to. I'm begging you not to.

11 Let's not talk about it any more.

12 A. Good. Yes, sir.

13 Q. Will you please don't refer back to '65? Will you

14 please refer only to Page 17? Will you do that, sir?

15 A. Yes, sir.

16 Q. You are sure now?

17 A. Yes.

18 Q. All right. Now, Doctor, he's having general joint

19 pain in '79, is he not, sir?

20 A. He's having joint pain in '79, yes, sir.

21 Q. He's having general joint pain in '79, isn't he,

22 sir?

23 A. Yes, sir.

24 Q. And that general joint pain that he's having in '79

1 is a problem that started when, sir?

2 A. 1951-'53.

3 Q. That problem did not -- that problem that started
4 in '51-'53, he's still having in '79, isn't he, sir?

5 A. No, sir.

6 Q. Doctor, doesn't he say he's currently having a
7 general joint pain in '79?

8 A. Yes, sir.

9 Q. Doesn't he say that problem started in '51-'53?

10 A. Yes, sir.

11 Q. Then he indeed is having that problem, according to
12 this record?

13 A. No, sir.

14 Q. Doctor, didn't you just say, yes, sir, that he is
15 having the problem he's having now in '79 started in '51-'53?

16 A. Joint pains, yes, sir.

17 Q. General joint pain?

18 A. The generic way, yes, sir.

19 Q. Right, he's having joint pain in general in '79?
20 No question about it?

21 A. Right.

22 Q. It started in '51-'53, no question about that?

23 A. Right.

24 Q. The pain that he's having in '79 started in

1 '51-'53?

2 A. Yes, generically, yes.

3 Q. And therefore it didn't clear up, did it, sir,
4 according to this Page 17?

5 A. Yes, sir, it did clear up.

6 Q. Where does it tell you that on Page 17, Doctor?

7 A. You don't find it on Page 17, sir.

8 Q. Doctor, I'm asking you, I'm begging you so we can
9 move on in this case, to assume those things that I've asked
10 you to assume, Doctor.

11 A. Yes, sir.

12 Q. Are you doing that, Doctor?

13 A. Yes, sir.

14 Q. Does it appear on Page 17 that the problem that he
15 started in '51-'53 cleared up?

16 A. Not on Page 17, no, sir.

17 Q. Does it appear that he's still having the problems
18 in '79 that started in '51-'53?

19 A. If you are just referring to Page 17.

20 Q. That's what I'm doing. I begged you just to refer
21 to it. I pleaded you. The Court has directed you to.

22 A. Yes, sir.

23 Q. Are you doing it, sir?

24 A. Yes, sir.

1 Q. The problem that he's having in '79 started in
2 '51-'53 according to Page 17, didn't it, sir?

3 A. Correct, sir.

4 Q. Didn't clear up with time, did it, sir? If he's
5 still having that problem that started in '51-'53, if he's
6 still having that problem in '79, it did not clear up with
7 time, did it, sir?

8 A. If you are referring to 17.

9 Q. That's what I'm referring to.

10 A. It did not clear up.

11 Q. With time?

12 A. With time.

13 Q. Thank you. Now, Doctor, the next person I'd like
14 to talk to you about is Mr. Selby. Mr. Selby also had a
15 number of problems in 1953 and a number of problems according
16 to 1741. Would you give the witness 1741. A number of
17 problems yet in '79, isn't that correct, sir, as represented
18 by the checkmarks on Plaintiff's Exhibit 1734, 1734 A, isn't
19 that correct, sir?

20 A. Would you repeat the question, please?

21 (Court Reporter read back the previous question.)

22 A. Yes, sir.

23 Q. And his problems did not clear up with time, did
24 they, sir?

1 A. Yes, sir, they did clear up with time. Some of
2 them did not.

3 Q. Doctor --

4 A. Some of them did not.

5 Q. Okay, then some of his problems did not clear up
6 with time, is that correct, sir?

7 A. That's correct, sir.

8 Q. So the next -- and these problems that he's having
9 in '79 that did not clear up with time were headaches,
10 nightmares, muscle and joint pain, muscle weakness,
11 paresthesia, depression, poor memory, fatigue and loss of
12 libido, is that correct, sir?

13 A. No, sir.

14 Q. Doctor, doesn't he tell you on Page 17 that he's
15 currently having nightmares?

16 A. Yes, sir.

17 Q. Doesn't he tell you that he's currently having
18 muscle pain?

19 A. Yes, sir.

20 Q. Doesn't he tell you that he's currently having
21 muscle weakness.

22 A. Yes, sir.

23 Q. Doesn't he tell you that he's currently having
24 paresthesia?

1 A. Yes, sir.

2 Q. Doesn't he tell you that he's currently having
3 depression?

4 A. Yes.

5 Q. Doesn't he tell you that he's currently having poor
6 memory?

7 A. Yes, sir.

8 Q. But somebody's written in there that it's
9 associated with age, correct, sir?

10 A. I believe it was, sir, yes.

11 Q. And he wasn't having any complaint of poor memory
12 in '53, was he, sir?

13 A. No.

14 Q. He was having complaints of persistent fatigue,
15 pains in the legs, depression and vertigo in 1953, wasn't he,
16 sir?

17 A. Would you repeat the question?

18 Q. Repeat the question.

19 (Court Reporter read back the previous question.)

20 A. Yes, he was.

21 Q. And, Doctor, he is still having those pains in
22 1979, wasn't he, sir?

23 A. He claimed that he was, sir.

24 Q. Do you believe he's telling the truth?

1 A. I believe Mr. Selby was telling the truth.
2 Q. That problem didn't clear up, go away, did it, sir?
3 A. Yes, sir.
4 Q. It cleared up and went away?
5 A. Yes, sir.
6 Q. Doctor, do you agree that he's complaining of
7 muscle pain in 1979?
8 A. According to Page 17, sir.
9 Q. Do you agree that he's -- that he says it started
10 in 1949?
11 A. Yes.
12 Q. That problem then that started in '49 did not clear
13 up with time, did it, sir? He's still got it thirty years
14 later in 1979, hasn't he, sir?
15 A. Yes.
16 Q. Didn't clear up with time, did it, sir?
17 A. That didn't, no.
18 Q. Thank you, Doctor. Doctor, he was complaining
19 about depression in 19 -- let's see, he -- yes, he was
20 complaining about depression in 1949 and in 1953, wasn't he,
21 sir?
22 A. No, sir.
23 Q. Page 10 of your 1953 reports, sir?
24 A. I have it, sir.

1 Q. He complained of depression started in '49, a year
2 after the spill, did he not, sir? Middle of the page. Three
3 months after the first appearances of the chloracne he
4 developed aches and pains in the lower extremities, extreme
5 fatigue?

6 A. Yes, sir.

7 Q. Frequent nightmares, hands became numb?

8 A. Yes, sir.

9 Q. One year later he's got severe fatigue, pains in
10 the chest, low back pain, loss of libido, occasional
11 depression and vertigo?

12 A. Correct, sir?

13 A. Yes, sir.

14 Q. 1953 he's still got the occasional depression, has
15 he not, sir?

16 A. That is recorded here, sir, yes.

17 Q. In 1979 still got the depression, has he not, sir?

18 A. He has depression, yes, sir.

19 Q. That depression?

20 A. He claims, sir.

21 Q. Sir? Did you say something I didn't hear, Dr.
22 Suskind?

23 A. Yes, sir.

24 Q. He has depression in '49, '53 and '79, hasn't he,

1 sir?

2 A. Yes, sir.

3 Q. The depression, according to your records, started
4 after the exposure, did it not, sir?

5 A. Yes.

6 Q. Did not go away, did it, sir? He still has it in
7 '79, hasn't he, sir?

8 A. He complains about depression.

9 Q. My question is he still has it in '79, it did not
10 go away, did it, sir?

11 A. No, sir.

12 Q. It did not clear up with time, did it, sir?

13 A. Yes, sir.

14 Q. It did clear up with time? Was he -- are you
15 assuming now he's telling you the truth?

16 A. Yes, sir.

17 Q. Are you assuming that he's depressed, got
18 depression according to questions that you've asked in the
19 form that you've asked? Are you assuming that he has the
20 depression currently? Are you assuming that, Doctor?

21 A. I am, sir.

22 Q. Are you assuming that he had depression in 1953?

23 A. He complained of depression.

24 Q. Are you assuming that he had it in 1953?

1 A. Yes, sir.

2 Q. Are you assuming that he had it in 1950?

3 A. 1950?

4 Q. Yes.

5 A. Well, I don't know, we didn't examine him in 1950.

6 Q. Doctor, you have a record on Page 10 in which he

7 tells you that he had it, it developed a year after his

8 exposure to the dioxin, 2,4,5-T, isn't that correct, sir?

9 A. Yes, sir.

10 Q. He was telling the truth in 1953, wasn't he, sir?

11 A. I believe so, sir.

12 Q. So he was depressed and there is no mention of

13 being depressed before exposure, is there, sir? Tells you it

14 started after the exposure?

15 A. He says so, yes.

16 Q. You believe he's telling the truth?

17 A. I do indeed.

18 Q. He's telling the truth in '79?

19 A. I believe so.

20 Q. He has the same condition in '79 that he had in '50

21 and '53, has he not, sir?

22 A. Are you referring to depression?

23 Q. I am.

24 A. Well, he has -- he complains about depression to

1 the interviewer but not to the doctor.

2 Q. Doctor, would you answer my question, please?

3 A. Yes, sir.

4 Q. According to him, not according to your Doctor,
5 sir, but according to him, does he have the depression in
6 '49, '50, '53, and '79?

7 A. No, sir.

8 Q. When did he not have it, sir?

9 A. In '79 there is no clear evidence that he has
10 depression.

11 Q. Doctor, I didn't ask you about clear evidence, did
12 I, sir? I asked you about according to him on the form that
13 you used in '79, did not the person that you designated to
14 ask these questions about paresthesia, dizziness and
15 depression, did not that person record from Mr. Selby that he
16 was currently -- that he currently had the condition that you
17 call "depression?"

18 A. That person did, sir.

19 Q. And didn't he have that depression -- according to
20 your report, wasn't he having depression in '53, sir?

21 A. '53, sir?

22 Q. Yes.

23 A. Yes.

24 Q. Now, if Mr. Selby was telling the truth, he is

1 having in 1979 a condition that he also had started after
2 this exposure and still had in '53, isn't that correct, sir?

3 A. According to 17, sir?

4 Q. Yes.

5 A. Yes.

6 Q. Then if that is true, this is a condition that did
7 not clear with time, isn't that correct, sir?

8 A. It did, sir.

9 Q. Doctor, are you assuming that that is true, what
10 I've given you to assume, sir?

11 MR. HEINEMAN: Which is true?

12 Q. That he's having depression in 1979 according to
13 Page 17?

14 A. Yes, sir.

15 Q. If that is true, he is having depression in 1979,
16 isn't he, sir?

17 A. No, sir.

18 Q. If he is truly having depression in 1979, he is
19 having depression in 1979, isn't he, sir?

20 A. If he is truly having depression.

21 Q. Yes. Now, I asked you to assume that what he said
22 on Page 17 was true. Didn't I ask you to assume that?

23 A. I am assuming that.

24 Q. Now, if that is true, that which he told you on

1 Page 17 is true, then he is having the condition known as
2 depression in '79, isn't he, sir?

3 A. No, sir.

4 Q. Are you assuming that he's telling you the truth?

5 A. Yes, sir.

6 Q. And you are assuming that it's a fact that he's
7 having depression in 1979?

8 A. I'm assuming that, sir, from 17, sir.

9 Q. From 17 you are assuming it's a fact that he's
10 having the condition known as depression in '79?

11 A. Yes, sir.

12 Q. Then he has that condition in '79?

13 A. No, sir.

14 Q. Doctor, if that is true, he is having the condition
15 known as depression in '79, isn't it?

16 A. According to Page 17, sir, yes.

17 Q. That's what I'm asking, sir.

18 A. Yes.

19 Q. So if that is true on Page 17, he's having that
20 condition?

21 A. No, sir.

22 Q. Doctor, are you assuming that it's true?

23 A. I'm assuming it's true. I'm assuming the record is
24 true.

1 Q. If it's true, it's true, it's true, is it not,
2 sir? Are you assuming what's stated on Page 17 is true?

3 A. Yes, sir.

4 Q. If it is true, and he says on Page 17 that he's
5 having the depression in '79, isn't he, sir?

6 A. He claims he's depressed, yes, sir.

7 Q. And are you assuming that's the truth?

8 A. I'm assuming that's the truth, sir.

9 Q. You are saying he's got the condition known as
10 depression? He's not saying he's depressed, it's on Page 18,
11 not 17, he's telling you that he currently has the condition
12 known as depression, isn't he, sir, on Page 18?

13 A. Yes.

14 Q. And are you assuming that that is true?

15 A. I'm assuming that, sir.

16 Q. If it's true, then he's got it in '79, hasn't he,
17 sir?

18 A. No, sir.

19 Q. Doctor, are you assuming it's true?

20 A. Yes, I am.

21 Q. If it's true, it's true, isn't it?

22 A. No, sir.

23 Q. If it's true, it's not true?

24 A. Yes, sir.

1 Q. Doctor, if it is true, are you assuming it's true?

2 A. I'm assuming that the record is true, sir, yes.

3 Q. I didn't ask you whether or not the record was
4 true, I'm asking you whether or not you are assuming that he
5 has the condition known as depression in 1979?

6 A. I'm assuming that, sir.

7 Q. So he's got it in '79 then, hasn't he?

8 A. No, sir.

9 THE COURT: Mr. Carr, let's follow this up after
10 lunch. We will break for lunch at this time. We will resume
11 again at 1:30 today. I would remind you that the
12 admonishments I gave you earlier will apply during the noon
13 break also. Court is in recess for lunch.

14 MR. HEINEMAN: Your Honor, could counsel --

15 THE COURT: Yes.

16 (The following Side Bar conversation was had outside the
17 hearing of the jury.)

18 MR. HEINEMAN: You had mentioned about doing the
19 voir dire.

20 THE COURT: I will do it after lunch. It was more
21 important that you talk to the witness during that break.
22 We'll have the voir dire -- we will do it in the afternoon
23 break.

24 MR. HEINEMAN: Afternoon break. Okay.

1 (Following a recess for the lunch period, these proceedings
2 were had in open court.)

3 Q. (by Mr. Carr) Doctor, with regard to Mr. Selby, I
4 think you mentioned that at the time I started asking you
5 about him this morning, that there were in your judgment some
6 of his symptoms that did not clear with time. Perhaps to
7 save us some time, you could tell us which of those you
8 believe that according to your records did not clear with
9 time, which of those symptoms?

10 A. I believe that one of the things that did not clear
11 with time was his cutaneous symptoms and findings. They
12 didn't clear completely. They got better.

13 Q. What else, Doctor?

14 A. I believe that the muscle pains had decreased
15 significantly. He still said that he did occasionally have
16 muscle pains and --

17 Q. What else, Doctor?

18 A. He indicated that in '53 he had nightmares and I
19 believe that he indicated to us that he still had some
20 nightmares.

21 Q. What else, Doctor?

22 A. In our judgment, the other complaints that he had
23 in 1953 had essentially subsided. He did have joint -- he
24 complained of joint pains, but he did have arthritis, and --

1 Q. Doctor, do you understand what I'm asking you, so
2 we can save some time, is for you to tell us, please, if you
3 will, what are these other symptoms, other problems that did
4 not clear with time that he had in '49, or '50 or '53. Is
5 joint pains one of the problems that did not clear with time
6 in your judgment?

7 A. No, they did clear, but there were other reasons
8 for joint pain, sir. There were other reasons and I think --

9 Q. Well, Doctor, please, are joint pains one of the
10 problems that did not clear with time?

11 A. We felt they cleared with time.

12 Q. All right. That's not one of the --

13 A. As of '53.

14 Q. Doctor, we are talking about 1979, you understand
15 that?

16 A. Right. Sure.

17 Q. My question is, as of your examination in 1979,
18 sir, you said that some of these symptoms did not clear with
19 time, some of these problems did not clear with time?

20 A. Right.

21 Q. Please identify those for us.

22 A. I have already done several, sir.

23 Q. I know. Would you complete your identification?

24 Is joint pains one of the problems that did not clear with

1 time?

2 A. No.

3 Q. Then please go on, Doctor, tell us what other
4 problems he had in '79 were problems that had not cleared
5 with time. What other problems did he have in '49 or '53
6 that did not clear with time?

7 A. I believe that's all I would judge as did not clear
8 with time.

9 Q. All right. Doctor, then you say occasional muscle
10 pain and the nightmares is what it comes down to, other than
11 the chloracne which has never been a question, is that
12 correct, sir?

13 A. Yes, sir.

14 Q. Doctor, you said occasional muscle pains. Where
15 does he describe it, or on what basis do you say that the
16 muscle pains that he had in '79 were occasional?

17 A. I don't find it in the '79 report, sir.

18 Q. What he described --

19 A. What he's saying is occasional.

20 Q. Sir?

21 A. I don't find it in the '79, report, sir.

22 Q. Then was the muscle pains he's having in 1979,
23 according to your report, just muscle pain currently since
24 '49? It wasn't occasional, was it, sir?

1 A. Well, he didn't specify it being occasional, but --

2 Q. No, Doctor, he didn't specify it being occasional,
3 did he?

4 A. He didn't specify it being continuous either, sir.

5 Q. Doctor, is there some place where you asked whether
6 or not it was continuous or occasional in this form that you
7 prepared so you know what the man's condition is?

8 A. The interviewer and the doctor.

9 Q. Doctor, my question, is there some place in this
10 form where you state whether or not it's occasional or
11 continually or what it is?

12 A. No, sir.

13 Q. Doctor, when you added the word occasional, did you
14 have any record in front of you other than 1741 relating to
15 his condition as it was on the 14th of June, 1979, when he
16 was seen by you and your fellow interviewers and doctors,
17 Doctor, do you understand my question?

18 A. Yes, I'm just looking at the record.

19 Q. My question is, do you have some record other than
20 that, Doctor?

21 A. Dealing with his condition as it was found in 1979,
22 sir? I don't here, sir, no.

23 Q. Doctor, do you have some record anywhere dealing
24 with his condition as you found it in 1979 other than what

1 you have here, sir?

2 A. Well, we did consult the plant medical records and
3 in my recollection, I believe that he had occasional pain in
4 '79, but there is no record of it in my -- or in the 1979
5 record of Mr. Selby's examination.

6 Q. Now, Doctor, what he says in his 1979 record that
7 you have there, sir, and by the way this man was long retired
8 in '79, wasn't he, sir?

9 A. Sorry, he was what, sir?

10 Q. He was retired, was he not, in 1979? He wasn't
11 currently employed, was he, sir?

12 A. Yes.

13 Q. Isn't that correct, he was not currently employed?

14 A. That's right, sir.

15 Q. And therefore you could not refer to any current
16 plant records as to his condition in '79, could you, sir?

17 A. No, but we could refer --

18 Q. Doctor, could you answer my question, please, sir?
19 There were no plant medical records of his condition in 1979,
20 was there, sir?

21 A. Yes, sir.

22 Q. What current -- what plant records were there to
23 describe his 1979 condition, sir?

24 A. There were no plant records about that but there

1 were plant records --

2 Q. That's what I asked you. Do you understand my
3 question was what records do you have of his condition in
4 1979, sir, that would lead you to say that his pains that he
5 was having in 1979 were occasional. Now, I've referred you
6 to what other records, sir, relating to his 1979 problem, do
7 you have, sir, other than this report, Plaintiff's Exhibit
8 1741?

9 A. I said that we did refer to --

10 Q. Doctor, do you understand my question? My question
11 is what other records do you have that refer to his 1979
12 condition other than this record which is an examination of
13 him in 1979 and an interview of him in 1979?

14 A. We would have had the plant medical records, sir.

15 Q. Doctor, he wasn't working at the plant in 1979 was
16 he, sir?

17 A. No, but there were plant medical records.

18 Q. Of his condition in '79?

19 A. No, sir.

20 Q. Did you understand my question referring to his
21 condition in '79?

22 A. Yes, I did.

23 Q. There were no plant records referring to his
24 condition in 1979, were there, sir?

1 A. Correct.

2 Q. All right. Doctor, what records did you refer to,
3 sir, other than this record to lead you to the conclusion,
4 1979 record, Doctor, of this man's condition in 1979? What
5 other records did you refer to other than Plaintiff's Exhibit
6 1741 to lead you to come to the conclusion that the pains he
7 was suffering in '79 were occasional?

8 A. These were the records, sir.

9 Q. Then you referred to no other records, is that
10 right, sir?

11 A. Except my recollection.

12 Q. Doctor, your recollection could not be of medical
13 records that were existing of his condition in 1979 because
14 none exist, you would have imagined those records in your
15 recollection, wouldn't you?

16 A. No, I'm not saying that, sir. My recollection of
17 what he told us in '79, sir.

18 Q. Oh, Doctor, but that isn't what you said. A moment
19 ago you said it was the plant records that you looked at that
20 you recollected, and when I point to --

21 A. No. No, sir.

22 Q. When I pointed out that the man had retired, he was
23 69 years of age when he was examined in 1979, you now say
24 it's your recollection, is that right, sir?

1 A. Yes, sir.

2 Q. Did you talk to him, sir? Where in this record
3 does it indicate that you talked to him, sir?

4 A. I examined him, sir.

5 Q. Where does it indicate that in the record, Doctor?

6 A. On Page 21, sir.

7 Q. Doctor, whose name appears on Page 21?

8 A. The general physician was Dr. Marsh, but the
9 examination with the drawings on Page 21 is my handwriting,
10 sir.

11 Q. Doctor, are you saying then that the examining
12 physician was not Mr. Martin but was you?

13 A. We did it together, sir. Dr. Marsh did the other
14 examination and I did the dermatologic, but we did talk with
15 Mr. --

16 Q. Doctor --

17 A. Mr. Selby together, and since he was a 1953
18 examinee, I was particularly interested in knowing his
19 condition.

20 Q. Doctor, whose handwriting is it that appears on
21 Page 23, sir?

22 A. The handwriting on Page 23 is Dr. Marsh's. The
23 handwriting on Page 21 and 25 is half mine and half Dr.
24 Marsh's, sir.

1 Q. And, Doctor, on Page 23, what does Dr. Marsh say
2 the man told him about his pains?

3 A. He claimed that he had pains in the joints and
4 muscles since 1950.

5 Q. Does it say -- did Dr. Marsh report that he has
6 occasional pains in joints and muscles since 1950?

7 A. No, it does not, sir.

8 Q. Doctor, on Page 17, is his joint pain there
9 described or muscle pain there, joint pain and muscle pain
10 described as occasional, sir?

11 A. No, it's not, sir.

12 Q. All right. Doctor, relating now then, sir, to the
13 other problems he had at that time, he had muscle weakness,
14 did he not, sir?

15 A. There is a check after muscle weakness.

16 Q. As a current problem, correct, sir?

17 A. Correct.

18 Q. Now, Doctor, there is a check for paresthesia, is
19 there not, sir?

20 A. There is indeed.

21 Q. And, Doctor, did he have paresthesia in 1949
22 following exposure? Directing your attention to Plaintiff's
23 Exhibit 1701, Page 10 in the middle of the page, sir, doesn't
24 it not say he also had frequent nightmares and his hands

1 become numb?

2 A. Yes, it does, sir.

3 Q. Doctor, did he have a problem of paresthesia that
4 did not go away, that did not clear with time, sir?

5 A. No.

6 Q. Doctor, did he have paresthesia in '49?

7 A. It's only recorded as numbness, sir.

8 Q. Doctor, isn't that what paresthesia is?

9 A. I'm not sure that's the interpretation in this
10 report, sir.

11 Q. Doctor, how would you interpret it then? You wrote
12 the report. What is a finding that his hands were numb?

13 A. I would interpret this as numbness, but the
14 character --

15 Q. Doctor, you use the word numb in 1953?

16 A. Right.

17 Q. What is numbness if it isn't paresthesia?

18 A. It could be a failure to appreciate pain or
19 position. It does not necessarily mean numbness, although on
20 occasion --

21 Q. Doctor, now hold it. I asked you what does the
22 word numb mean and you are now saying it doesn't necessarily
23 mean numbness. Doctor, numb does mean numbness. My question
24 to you, sir, is what does the word numb mean, sir?

1 A. The inability to sense.

2 Q. Yes, and what is paresthesia, sir?

3 A. It can mean tingling.

4 Q. Can mean inability to sense, can it not, sir?

5 A. It might, but not necessarily, sir.

6 Q. Doctor, didn't say necessarily, did I, sir? Numb

7 means inability to sense, among other things, doesn't it,

8 sir?

9 A. Yes.

10 Q. And paresthesia means inability to sense, among

11 other things, doesn't it, sir?

12 A. It might, yes.

13 Q. And, Doctor, you are the one that used the word

14 numb in 1953, correct, sir?

15 A. I didn't. Whoever examined him did, sir, yes.

16 Q. Doctor, your group did. You signed off on this

17 report, did you not, sir?

18 A. Yes, sir.

19 Q. You and your group used the word numb, didn't you,

20 sir?

21 A. Yes, sir.

22 Q. And, Doctor, you and your group used the word

23 paresthesia in 1979, did you not, sir?

24 A. Correct.

1 Q. Did you use the word numb? Is there a place where
2 you could say he had numbness in 1979? Did you put numb in
3 there as one of the things to check, sir, or did you just put
4 in paresthesia?

5 A. We just put in paresthesia.

6 Q. Now, Doctor, he had numbness, which can be an
7 inability to sense in 1949, did he not, sir?

8 A. Yes, sir.

9 Q. He had paresthesia, which can be an inability to
10 sense in 1979, didn't he, sir?

11 A. Can be.

12 Q. Was this a problem that cleared up with time?

13 A. Yes.

14 Q. Did he have an inability to sense, to feel things
15 in '53?

16 A. Yes.

17 Q. Did he have the inability to feel things in '79?

18 A. No, sir.

19 Q. Doctor, didn't you tell us that that's what
20 paresthesia --

21 A. Well, but I -- it's one of the things, one of them.

22 Q. Paresthesia includes more than just inability to
23 feel things, doesn't it, sir?

24 A. Right.

1 Q. But it is included in there in that definition?
2 A. It might be, yes.
3 Q. Doctor, it is included in the definition, inability
4 to sense things, to feel things, in the definition?
5 A. It might be.
6 Q. Doctor, no question about might be, that is part of
7 the definition of paresthesia, isn't it, sir?
8 A. No, sir.
9 Q. It is not? Didn't you just give us that, sir?
10 Didn't you just tell us that the word paresthesia means,
11 among other things, inability to sense or to feel things?
12 Didn't you tell us that?
13 A. Yes, sir.
14 Q. Then it does mean that, doesn't it, sir, among
15 other things?
16 A. Among other things.
17 Q. It is part of the definition, isn't it, sir?
18 A. I don't know, sir. I'm not a neurologist.
19 Q. Doctor, you are the one that prepared the word.
20 You are the one that prepared the form. Are you telling us
21 you don't know what you meant when you put that word down
22 there?
23 A. No, I'm not saying that, sir.
24 Q. May I finish please, sir? Wanted your interviewers

1 to ask questions to determine whether or not these people had
2 paresthesia. Are you telling us you don't know what you
3 intended by that word?

4 A. I am not saying that, sir.

5 Q. Doctor, you know exactly what you meant. You meant
6 to elicit from them whether or not they had loss in their
7 judgment the ability, among other things, to sense or to feel
8 things, did you not, sir?

9 A. That's correct, sir.

10 Q. And, Doctor, he said that he had that problem in
11 '53, didn't he, sir?

12 A. I don't have the date here, sir.

13 Q. Doctor, in '53 -- I'm sorry, in '49, he said he had
14 that problem, didn't he, sir? Three months following the
15 appearance of the skin lesions?

16 A. Yes, sir.

17 Q. Doctor, he had that problem in '79, didn't he, sir?

18 A. No, sir.

19 Q. Doctor, didn't you just tell us that that's what
20 the paresthesia means?

21 A. It could mean it, but it doesn't necessarily mean
22 that, sir.

23 Q. What does it mean?

24 A. It could mean tingling, could mean other kinds of

1 aberrant sensations.

2 Q. What other kind of things could it mean, sir?

3 A. I'm saying it could mean other things.

4 Q. I know. I want you to tell us what other other
5 things are.

6 A. It could mean tingling. Could mean other forms of
7 aberrant sensations.

8 Q. What are those other forms?

9 A. Like a feeling of hot or cold, these are aberrant.

10 Q. Yes, I want the rest of the things that the word
11 paresthesia encompasses.

12 A. Those are some of the things that are encompassed
13 by paresthesia.

14 Q. I understand that. What are the rest of the things
15 you meant to cover when you used the word paresthesia, Dr.
16 Suskind?

17 A. I believe those are the most important ones, sir.

18 Q. My question is, what are the rest of the things
19 that it covers, sir?

20 A. At the moment that's all I can think of, sir.

21 Q. Doctor, what are the things that are covered by the
22 word numb?

23 A. Just the inability to sense.

24 Q. And that's all?

1 A. That's all.

2 Q. Doctor, you never heard somebody that described a
3 numbness as a sensation of tingling?

4 A. May be accompanied by tingling, yes.

5 Q. You have heard --

6 A. May be accompanies by tingling.

7 Q. You have heard the word numb to include the word
8 tingling?

9 A. No, sir.

10 Q. You have not?

11 A. No.

12 Q. Numb just means the inability to sense?

13 A. That's the actual definition.

14 Q. And paresthesia also means that in part, doesn't
15 it, sir?

16 A. Among other things.

17 Q. So when a person tells you he has paresthesia, he
18 may be telling you that he's got one or all of these
19 problems, isn't he, sir?

20 A. He might, yes.

21 Q. So the man that had paresthesia could well be
22 having the lack of feeling that he had in '49, could he not,
23 sir?

24 A. He might.

1 Q. So, Doctor, then his problem that he had, if he had
2 it in '49, he had it yet in '79, did he not, sir?

3 A. Not clearly sir, no.

4 Q. Doctor, did I say clearly, because the forms that
5 you used are ambiguous, they are not broken down, are they,
6 sir? Paresthesia, sir -- if you don't want to answer that
7 question, paresthesia includes the same symptoms that
8 numbness includes, doesn't it, sir?

9 MR. HEINEMAN: Objection, Your Honor. May counsel
10 approach the bench?

11 THE COURT: Yes, you may.

12 (The following Side Bar conversation was had outside the
13 hearing of the jury.)

14 MR. HEINEMAN: I object to the statement of counsel
15 about if you don't want to answer that question. The witness
16 was opening his mouth, starting to talk and Mr. Carr
17 interrupted him, and said if you don't want to answer that
18 question. He never gave the witness a chance to answer the
19 question. I object to that statement. I ask that it be
20 stricken. I ask that the jury be instructed to disregard
21 it.

22 THE COURT: Anything you want to say?

23 MR. CARR: No, Your Honor.

24 THE COURT: Objection is overruled. He had not

1 answered the question. Didn't appear to me that he was
2 starting to answer the question. Overruled.

3 MR. CARR: Read the last question.

4 (The following proceedings were had in open court.)

5 (Court Reporter read back the previous question.)

6 Q. They are not broken down.

7 Q. The use of the word paresthesia, so far as you
8 know, can indeed include and does include the inability to
9 feel things, doesn't it, sir?

10 A. Might include that, yes, sir.

11 Q. Didn't you tell us does include that?

12 A. Yes, sir.

13 Q. There are -- paresthesia does include the ability
14 to -- inability to feel things?

15 A. Correct, sir.

16 Q. Was the inability to feel things one of the
17 problems that he had in 1953, 1949 or '50?

18 A. If that's what he meant by numbness, yes.

19 Q. Then he had -- that problem then of inability to
20 feel things did not clear up with the passage of time, did
21 it, sir?

22 A. I'm not sure.

23 Q. Doctor, could you please look at the record that
24 you have. Did he have the inability to feel things in 1949?

1 A. Yes, sir.

2 Q. Did he have the inability to feel things in 1979?

3 A. I don't know, sir.

4 Q. Doctor, from the record that you have, paresthesia,
5 you just said, included that problem, does it not, sir?

6 A. Yes.

7 Q. And he had that problem of paresthesia in '79,
8 didn't he, sir?

9 A. Yes, sir.

10 Q. If he had the problem of paresthesia, which
11 includes the inability to feel things, he had the same
12 problem then that he had in 1949 or '50, did he not, sir?

13 A. No, sir. No, sir.

14 Q. Doctor, are you assuming that he has -- that he had
15 in 1949 an inability to feel things?

16 A. In 1949 I assumed so, yes, sir.

17 Q. Now, are you assuming that in 1979 he had an
18 inability to feel things?

19 A. Are you asking me to assume it?

20 Q. No, I'm asking you are you assuming that?

21 A. No, I'm not.

22 Q. Doctor, do you not report in 1979 that he had
23 paresthesia, which includes an inability to feel things?

24 A. Which may include an inability to feel things.

1 Q. Does include, didn't you say that, sir?

2 A. By definition, but whether or not Mr. Selby had it,
3 I can't tell you, sir.

4 Q. Doctor, the only record that you have is
5 paresthesia which you know includes inability to feel things
6 by definition, don't you, sir?

7 A. It can, yes.

8 Q. So he had -- not can, it does. Didn't you say
9 that, sir?

10 A. The definition does, but not Mr. Selby.

11 Q. Doctor, I'm not talking at this point in time about
12 Mr. Selby. I'm talking about your use of the word
13 paresthesia and your definition of the word paresthesia, Mr.
14 Selby. The word paresthesia includes, does it not, by
15 definition the inability to feel things?

16 A. Yes, it does.

17 Q. And, he is checked with having paresthesia in 1979,
18 has he not, sir?

19 A. That's correct.

20 Q. Which includes the inability to feel things,
21 correct, sir?

22 MR. HEINEMAN: Objection, this has been asked and
23 answered eighteen times.

24 THE COURT: Objection is overruled. Answer the

1 question, please, Doctor.

2 A. Would you repeat the question, please?

3 (Court Reporter read back the previous question.)

4 A. He had paresthesia in 1979 and the definition
5 includes inability to feel, sir, yes.

6 Q. And that's a problem of inability to feel things
7 that he has in '79 by definition?

8 A. Only by definition, yes.

9 Q. Is there any other way that he can have it?

10 A. Oh, yes, sir.

11 Q. Doctor, if you say he has paresthesia in 1979, you
12 are saying that he has, among other things, inability to
13 feel?

14 A. He might, sir, not he does.

15 Q. Doctor, isn't that what you are asking him?
16 Doctor, are you assuming that he had paresthesia?

17 A. Yes, I am.

18 Q. Are you assuming that the word paresthesia includes
19 inability to feel things? Are you assuming that, sir?

20 A. It includes inability to feel.

21 Q. According to this record, he had a problem which
22 includes among other things the inability to feel things,
23 correct?

24 A. I don't know, sir, because I don't know what he

1 had.

2 Q. Doctor, my question is not whether you know, it's
3 what your record reflects, sir.

4 A. The record reflects that Mr. Selby had paresthesia
5 and he could have had tingling, could have had a great number
6 of other things besides -- besides numbness.

7 Q. Doctor, I'm not quarreling with that. At one
8 moment he may have had all those other problems besides
9 numbness. I'm not suggesting to you these other problems.
10 I'm focusing your attention, sir, on the problem that he did
11 have.

12 A. Sir, yes.

13 Q. Now, Doctor, according to your definition, Mr.
14 Selby had, among other things, an inability to feel things in
15 '79, did he not, sir?

16 A. No, sir, he did not, sir.

17 Q. What did he have in 1979 then, what's included in
18 the paresthesia?

19 A. I don't know what's included in the paresthesia but
20 I cannot say definitely that.

21 Q. Doctor, excuse me?

22 A. May I finish my answer?

23 Q. Will you tell us what the word paresthesia meant.

24 MR. HEINEMAN: Objection, he interrupted the

1 answer.

2 THE COURT: Objection is overruled.

3 A. Would you read the question?

4 (Court Reporter read back the previous question.)

5 A. The word paresthesia in this instance could mean
6 all the things I've already said. It could mean tingling.
7 It could mean feeling of sharp pain occasionally. It could
8 mean no feeling, like in numbness. It could mean feelings of
9 cold or hot. This is a sensory problem, sir.

10 Q. Doctor, then as far as --

11 A. Numbness is only one of the --, if I may finish,
12 numbness happens to be only one of the manifestations of
13 paresthesia. So I can't logically, sir, I can't logically
14 say that in 1979 Mr. Selby had numbness. I can't logically
15 say that.

16 Q. Doctor, isn't one of the manifestations of
17 paresthesia numbness?

18 A. Yes, it is, sir.

19 Q. Did he have paresthesia in 1979?

20 A. He did, sir.

21 Q. Did he, therefore -- did he have then the
22 manifestations of paresthesia in '79?

23 A. He had some of the manifestations of paresthesia.

24 Q. You checked he had paresthesia?

1 A. Correct.

2 Q. You don't say he had part paresthesia?

3 A. No.

4 Q. You don't say he had some paresthesia. You say he
5 had paresthesia?

6 A. Yeah, but any one of those things --

7 Q. Could you answer my question?

8 A. Yes, sir, I'll do my best.

9 Q. You reported that he had paresthesia in 1979,
10 didn't you?

11 A. Correct.

12 Q. One of the manifestations of paresthesia is an
13 inability to feel things, isn't it, sir?

14 A. Numbness, yes.

15 Q. So he had then paresthesia, which includes one of
16 the manifestations it includes, among other things, is
17 numbness, correct, sir?

18 A. He had paresthesia, yes.

19 Q. Is that a yes to my question?

20 A. I don't know whether he had numbness.

21 Q. Is that a yes to my question, sir?

22 A. The answer is yes.

23 Q. Then, Doctor, he had -- one of these manifestations
24 that he had is a manifestation that he had in '49, isn't it,

1 sir?

2 A. No, sir.

3 Q. No?

4 A. Not necessarily, no.

5 Q. Doctor, don't you report that he's got the
6 paresthesia in '79.

7 MR. HEINEMAN: Objection, Your Honor, it's been
8 asked and answered several times.

9 THE COURT: Objection is overruled.

10 A. Would you read that?

11 (Court Reporter read the previous question.)

12 A. Yes, we do, sir.

13 Q. And one of the manifestations, among many, is
14 inability to feel things?

15 A. That's one of the manifestations.

16 Q. So he's got then in '79 an inability to feel
17 things?

18 A. No, sir.

19 Q. According to this order?

20 A. No, sir, the logic --

21 Q. Has he got paresthesia?

22 A. No, but he doesn't cover the whole range of the
23 definition.

24 Q. No, but Doctor --

1 A. May I finish, sir?

2 Q. No, Doctor, because it's not he that's covering
3 it. You that's got the word in there, not him.

4 A. That's true, sir.

5 Q. You used the word.

6 A. But I don't know whether he had numbness, and I'm
7 saying that he could have had tingling, could have had sharp
8 pains, could have had a feeling of cold, but to say logically
9 that he had the same neurological manifestations that he had
10 in '53 would be for me foolish. I couldn't say that.

11 Q. Doctor, then what you are saying is that he
12 reported paresthesia and it could include one or all of those
13 manifestations, couldn't it, sir?

14 A. Could include.

15 Q. The way you are now using it, sir?

16 A. It could include one or some, but usually doesn't
17 include all.

18 Q. Doctor, what's the definition of paresthesia?

19 A. It's aberrant sensation, sir.

20 Q. Isn't paresthesia a scientific word that you
21 doctors use to describe conditions that people have with
22 regard to their ability to feel things?

23 A. Or feeling things aberrantly. That is, they think,
24 they believe they have a sensation which is recorded in the

1 central nervous system, but there is no apparent external
2 stimulus like cold or like a sticking pain. They don't have
3 an external stimulus but they feel that. That's why it's
4 called paresthesia. It's like something, but not actually
5 that.

6 Q. And one of these things, Doctor, is inability to
7 feel things?

8 A. That's one of them, yes.

9 Q. He tells you that -- when he tells you that he has
10 an inability to feel things, you check the paresthesia mark,
11 don't you, sir?

12 A. If he said he had an inability to feel.

13 Q. If he told you in 1979 that he had an inability to
14 feel things you would check the paresthesia mark?

15 A. I don't know if he told me that. If he told me
16 that, yes.

17 Q. And, Doctor, you don't know what he told you?

18 A. I didn't interview him, so I can't tell you.

19 Q. You don't know what he told you or told the
20 interviewer?

21 A. He didn't tell me.

22 Q. You don't know what he told the interviewer?

23 A. No, I can't say what he told the interviewer.

24 Q. All you know the interviewer checked paresthesia

1 which could be an inability to feel things, couldn't it, sir?

2 A. Yes.

3 Q. And, Doctor, if it was an inability to feel things,
4 it was a problem that did not go away, isn't that correct,
5 sir?

6 MR. HEINEMAN: Objection, Your Honor. May counsel
7 approach the bench?

8 (The following Side Bar conversation was had outside the
9 hearing of the jury.)

10 MR. HEINEMAN: Mr. Carr is now asking the witness a
11 hypothetical question which is based upon facts which are not
12 in evidence. He's asking him if it was the inability to feel
13 things. There is no evidence that in 1979 the man had an
14 inability to feel things, and I object to it as being a
15 hypothetical question not based upon facts in the evidence in
16 the case.

17 MR. CARR: The witness has clearly said that it
18 could be that.

19 MR. HEINEMAN: Could be doesn't cut it.

20 MR. CARR: I'm asking him to assume that it could
21 be that. Could be a number of things he says. I'm just
22 asking him to assume, among the number of things that it
23 could be, that it was that inability to feel things.

24 MR. HEINEMAN: If -- now you are saying -- you

1 didn't say assume in your question, but now that you are
2 saying assume, I object to that as well because he's not
3 entitled to ask the witness to assume anything that isn't in
4 evidence either.

5 MR. CARR: I have the right to ask the witness to
6 assume a possibility that he concedes is a possibility.
7 Absolutely.

8 THE COURT: Objection is overruled. It's a proper
9 question.

10 (The following proceedings were had in open court.)

11 MR. CARR: Read the last question.

12 (Court Reporter read the previous question.)

13 A. If it was that indeed, then he still had that
14 problem.

15 Q. And it didn't clear up then, isn't that right, sir?

16 A. No.

17 Q. Still had that problem, didn't clear up, did it,
18 sir?

19 A. No, sir.

20 Q. Excuse me, Doctor, if he still had that problem, in
21 '79, it did not clear up, did it, sir? Are you assuming he
22 still had the problem of inability to feel things?

23 A. If I am assuming that, sir?

24 Q. That's what I'm asking you.

1 A. If you want me to assume that.

2 Q. That's what I'm asking you. Assuming that what he
3 meant when you checked paresthesia, an inability to feel
4 things, if that's what he meant, he still had the problem?

5 A. If that's indeed what he meant and you asked me to
6 assume that.

7 Q. And you had nothing in the record to support a
8 conclusion that it was not inability to feel things that he
9 meant by that checkmark?

10 A. Yes, sir, I do.

11 Q. What do you have?

12 A. On Page 24 there is a doctor's record and no
13 mention of paresthesia, no mention at all, and the doctor
14 would have done -- would have taken a history, a neurological
15 history, which would have included paresthesia. And also --

16 Q. Doctor --

17 A. May I finish?

18 Q. Sure.

19 A. And the neurological examination according to Dr.
20 Marsh is negative. The neurological is normal and if he had
21 paresthesia, we would have known it from this, from the
22 history and from the examination.

23 Q. Now, Doctor, what you are saying, your interviewer
24 was incompetent when he checked that the man had told him

1 that he had paresthesia, or the man lied when he told the
2 interviewer and telling the truth when he talked to the
3 doctor, which of those three alternatives?

4 A. No, sir.

5 Q. Excuse me, which of those three alternatives? Was
6 the interviewer incompetent when he checked that the man told
7 him he currently had paresthesia? Did the man lie? Which is
8 it? Which is it, sir? Was the interviewer incompetent?

9 A. No, sir.

10 Q. Did the interviewer make a mistake?

11 A. No, sir.

12 Q. The interviewer accurately recorded what the man
13 said, correct, sir?

14 A. I suppose so, yes.

15 Q. Now, if the man had that problem, as the man said
16 he had in 1979, it did not go away, did it, sir?

17 A. Yes, it did.

18 Q. Doctor, are you assuming he had the problem in '79?

19 A. Yes, but the doctor --

20 Q. You are sure -- you are assuming that -- you are
21 sure you are assuming that Mr. Selby had a problem of
22 paresthesia in '79?

23 A. If I have to assume that, I will, sir.

24 Q. All right. Now, please assume that, if he had that

1 problem in '79, it was a problem that he had in '49 and which
2 did not clear with time, isn't that correct, sir?

3 A. Are you referring to numbness?

4 Q. Doctor, you know exactly what I'm referring to.
5 Your Honor, would you direct the witness to answer the
6 question?

7 THE COURT: Doctor, answer the question, please.

8 A. Would you read the question?

9 (Court Reporter read the previous question.)

10 A. If the problem is numbness and he had claimed he
11 had numbness, and if he claimed he had numbness in '79, then
12 the problem did not clear.

13 Q. All right. Now, Doctor, when the doctor does the
14 examination, he of course has the interviewers notes and
15 records of what the interviewer took down, doesn't he, when
16 he does the examination?

17 A. Yes, he did.

18 Q. So he had in front of him all the things that the
19 interviewer reported, correct, sir?

20 A. He did.

21 Q. Did he write anywhere that the interviewer was
22 incorrect?

23 A. No, he did not.

24 Q. Did he say anywhere that the man was incorrect when

1 he said that he continued to have paresthesia?

2 A. No.

3 Q. All right. Now, Doctor, another problem that the
4 man had in 1949 and '50 was fatigue, was it not, sir
5 persistent severe fatigue?

6 A. He had persistent fatigue, whether it was severe at
7 that time I don't know, in '53, sir.

8 Q. Doctor, he described it in 1949 as severe fatigue,
9 did he not, sir?

10 A. Yes, he did.

11 Q. You describe in 1953 as persistent fatigue, didn't
12 you, sir?

13 A. Correct.

14 Q. What is fatigue that would be persistent?

15 A. Could be mild fatigue.

16 Q. What kind of fatigue is described in your report
17 that the man had that persists?

18 A. At the time this was done, there is no qualifying
19 statement.

20 Q. Doctor, there is -- if you look in the middle of
21 Page 10, doesn't he say he developed severe fatigue, sir?

22 A. That's history, sir, yes.

23 Q. Yes, and they say then right after that, they say
24 his present complaints include persistent fatigue, doesn't

1 it, sir?

2 A. Correct.

3 Q. Now, Doctor, does this man tell you in 1979 that he
4 is always tired, he has general fatigue? Page 18, Dr.
5 Suskind.

6 A. He indicated that he had fatigue, general fatigue.

7 Q. Always tired?

8 A. Well, that's the statement of the --

9 Q. Excuse me, Doctor, isn't your thing that you asked
10 them always tired, general fatigue, isn't that what you've
11 put in there? Isn't there a checkmark by that, sir?

12 A. Yes, but not necessarily everybody who was
13 questioned there had always tired. They could have been
14 occasionally fatigued and that would have also checked in
15 current, sir.

16 Q. Doesn't it say for current for that problem, always
17 tired, general fatigue?

18 A. That's the general title to stimulate the
19 interviewer to ask about fatigue.

20 Q. Excuse me, Doctor, my question is, doesn't it say
21 there always tired, general fatigue?

22 A. It does indeed. There is a comma between them.

23 Q. Isn't that what you are trying to find out, whether
24 or not the man is always tired, whether or not he has general

1 fatigue?

2 A. There should be an or between that, sir.

3 Q. But there isn't?

4 A. There is a comma.

5 Q. And that means and?

6 A. No, it doesn't, necessarily.

7 Q. Doctor, what does it mean if it doesn't mean and?

8 If I say I'm -- any time you use a comma, that's an and,

9 isn't it, sir? It's not an or.

10 A. Not necessarily, not in an outline like this.

11 Q. Where have you ever seen a comma where it doesn't
12 mean and? If you meant or, you would say comma or, wouldn't
13 you?

14 A. No, sir, not in this outline.

15 Q. Look at the one right directly above it.

16 A. Okay.

17 Q. You say memory poor, comma, or change in memory,
18 you delineate that?

19 A. Yes, we do.

20 Q. You are talking about either memory poor or change
21 in memory?

22 A. Those are two different things.

23 Q. Excuse me. Could you answer my question, sir?

24 A. Yes, sir.

1 Q. But right below it you don't use the word or, do
2 you, sir?

3 A. No, sir.

4 Q. You use the comma. You say always tired comma
5 general fatigue, don't you, sir?

6 A. Yes, sir, we did.

7 Q. Now, Doctor, and the interviewer checked for this
8 man current condition, did he not, sir?

9 A. He did indeed.

10 Q. Checked past condition, didn't he, sir?

11 A. Yes.

12 Q. Now, this condition of fatigue was not a problem
13 that always cleared with time, was it, sir?

14 A. I would say yes.

15 Q. Doctor, did he have the problem according to the
16 records in 1953?

17 A. He did.

18 Q. Did he have the problem according to the record in
19 1979?

20 A. Only on Page 15, sir.

21 Q. Is there any other place, sir, that you ask about
22 fatigue?

23 A. Yes, sir.

24 Q. Where is that, sir?

1 A. On Page 24.

2 Q. Doctor, what I see on Page 24 is section called
3 vascular, section called neuropsychiatric, section called
4 infections. Is there more on that page than what I've read?

5 A. There would be in the --

6 Q. Excuse me, Doctor, is there more on that page than
7 I read, sir?

8 A. No, sir.

9 Q. Doctor, the place the fatigue is mentioned and the
10 interviewer wrote it down, that he's always tired, general
11 fatigue, that's listed on Page 18, is it not, sir?

12 A. It is.

13 Q. Was this a problem that he reported to your
14 interviewer that he had in 1979?

15 A. He must have been asked and he reported it, sir.

16 Q. Was the man telling the truth in your judgment in
17 1979?

18 A. I believe so.

19 Q. Sir?

20 A. I believe so.

21 Q. If he was telling the truth, then he perceived that
22 he was always tired and had general fatigue, did he not, sir?

23 A. No, sir.

24 Q. Was he telling the truth when he said he's always

1 tired, had general fatigue?

2 A. Yes, sir.

3 Q. That's the truth now, no question about that?

4 A. Yes, sir.

5 Q. And this is what the man told the interviewer?

6 A. No, sir.

7 Q. Doctor, doesn't the interviewer check -- isn't the
8 interviewer the one that checks there, sir?

9 A. Yes, sir.

10 Q. Didn't the interviewer check on the column always
11 tired, general fatigue, current? Didn't he check that, sir?

12 A. Yes, sir.

13 Q. Isn't that what the interviewer wrote down as the
14 man told him?

15 A. Yes, sir.

16 Q. All right. That's what he told the interviewer
17 then, that's what the interviewer wrote down so far as we
18 know, correct, sir?

19 A. I'm not sure I understand the question. What did
20 he tell the interviewer?

21 A. The interviewer asked him are you always tired, do
22 you have general fatigue. The man said, yes, and the
23 interviewer checked the yes column for current, did he not,
24 sir?

1 A. I don't know if it's done that way, sir.

2 Q. Doctor, isn't that the way it's supposed to be
3 done?

4 A. I would assume that it was, sir.

5 Q. All right. You have no evidence in this case, no
6 knowledge that it wasn't done that way, correct, sir?

7 A. Correct, sir.

8 Q. Can't you presume then that he did it the way it's
9 supposed to be done?

10 A. Yes, sir.

11 Q. Doctor, the man told him that he was always tired
12 and had general fatigue and had had it in the past, isn't
13 that correct?

14 A. No, sir.

15 Q. Isn't that what it says, sir?

16 A. No, it says --

17 Q. Are we reading on the same page, 18, Dr. Suskind?

18 A. It says always tired, comma, general fatigue. He
19 could have had either or. Could have had either or.

20 Q. Or both?

21 A. I don't know. He could.

22 Q. Doctor, could he have both, sir?

23 A. Yes, but I can't assume he did.

24 Q. He could be always tired or have general fatigue or

1 be always tired and have general fatigue as well?

2 A. And the fatigue could be occasional and it would
3 have been checked.

4 Q. Always and general doesn't mean occasional, does
5 it?

6 A. Yes, the general fatigue might mean occasional.

7 Q. Doctor, everybody is a fatigued on occasion, aren't
8 they?

9 A. Yes, sir.

10 Q. Even you?

11 A. Yes, sir.

12 Q. Everybody has occasional fatigue, isn't that right?

13 A. Yes, sir.

14 Q. So there would be absolutely no reason to put a
15 question in: "Are you occasionally tired?" That would be
16 stupid to put that in, wouldn't it, sir?

17 A. No, sir.

18 Q. Because you know everybody is going to say yes?

19 A. Well --

20 Q. Isn't that right, sir, everybody telling the truth
21 is going to say yes, just like, do you breathe, that's asking
22 a question are you alive, everybody is going to say, yes, I'm
23 alive. Everybody has occasional fatigue, and therefore it
24 would be stupid to ask the question that you know invariably

1 everybody is going to say yes, I am tired occasionally.

2 Isn't that right, Dr. Suskind?

3 A. No, I don't think so.

4 Q. Dr. Suskind, why didn't you put it in then, because
5 you put the question in always tired, general fatigue. You
6 didn't say occasionally fatigued, did you, sir?

7 A. Not here, sir, no.

8 Q. What part of this form did you put in there check
9 if you are occasionally fatigued?

10 A. We did not.

11 Q. Not in there?

12 A. No, sir.

13 Q. What's here is always tired, general fatigue?

14 A. Or general fatigue.

15 Q. Man got it checked?

16 A. Yes.

17 Q. He had fatigue in 1949?

18 A. Yes.

19 Q. And had fatigue in 1953, didn't he, sir?

20 A. Yes.

21 Q. And he reports that is always tired or general
22 fatigue, and general fatigue in 1979, doesn't he, sir?

23 A. That's what is reported on that page.

24 Q. Is a fatigue problem a problem that always cleared

1 with the passage of time?

2 A. My answer to that question is yes, sir, in this
3 case.

4 Q. Doctor, does he have it in '79? Fatigue in '79
5 according to this record?

6 A. According to the whole record?

7 Q. According to the record on Page 18, Doctor, the
8 only place the word fatigue -- Doctor, the only place the
9 word fatigue appears on this document is on Page 18, isn't
10 that correct, sir?

11 A. Right.

12 Q. Now, Doctor, according to the record where the only
13 place where the word fatigue occurs in this record, did the
14 man have fatigue in '79?

15 A. That's where it occurs, sir.

16 Q. My question is did he say he always -- that he has
17 fatigue in '79?

18 A. He said that to the interviewer.

19 Q. Is that a condition that he had in '53 and in '49?

20 A. Yes, sir.

21 Q. Is that a condition that cleared with time if he
22 had it in '79, sir?

23 A. I believe it did.

24 Q. Doctor, if he has it in '79, are you assuming that

1 he's got fatigue in '79? Are you assuming that, sir?

2 A. Only according to the one --

3 Q. Doctor, are you assuming that he has the fatigue in
4 '79?

5 A. If I have to assume it, I'll assume it, sir.

6 Q. Yes, I'm asking you to assume it. Are you assuming
7 he's got the general fatigue in '79?

8 A. Yes.

9 MR. HEINEMAN: Objection, Your Honor. May counsel
10 approach the bench?

11 THE COURT: Yes, you may.

12 (The following Side Bar conversation was had outside the
13 hearing of the jury.)

14 MR. HEINEMAN: I object to his being asked to
15 assume it. The doctor has testified that the physician
16 portion does not state fatigue. It's his belief that
17 according to the whole record it doesn't support fatigue in
18 1979, but it's only this one page, and, of course, all Mr.
19 Carr wants is to try and force him to testify from this one
20 page, and that's patently unfair to the witness and I object
21 to his being asked to assume a fact which is not in evidence.

22 MR. CARR: Your Honor, I don't think I need to
23 argue the point.

24 THE COURT: We have gone through this before. The

1 line of examination on this point has consistently used a
2 portion of the record. There is a consistent portion of the
3 record to question in that matter. Your objection is
4 overruled. It does not deal with the question that has been
5 asked. I think the question is proper. It is not
6 objectionable.

7 (The following proceedings were had in open court.)

8 Q. (by Mr. Carr) Doctor, would you answer that
9 question, please, sir?

10 A. Would you repeat the question, please?

11 (Court Reporter read the previous question.)

12 A. I'm assuming that, sir.

13 Q. That is the same problem that he said he had in '53
14 and '49, isn't it, sir?

15 A. I don't know. Are you asking me to assume that,
16 sir?

17 Q. Doctor, I'm asking you if he didn't describe that
18 same problem in '49 and '53?

19 A. I don't know, sir.

20 Q. Look at your record, Doctor, on Page 10, because
21 you do know, because you wrote it down there, sir.

22 A. On Page 10?

23 Q. Of 1701, of your 1953 report. Doctor, we went
24 through it.

1 A. I thought you were talking about --

2 Q. We went through it three times already, didn't we?
3 Didn't you all write down there that the man had severe
4 fatigue, persistent fatigue in '49 and '53?

5 A. Yes, we did. I'm assuming that's fatigue.

6 Q. You are assuming that's fatigue?

7 A. Yeah, I'm assuming that is the fatigue you are
8 talking about.

9 Q. What other fatigue is there that I could be talking
10 about other than what you wrote down in, as described in '53,
11 Doctor?

12 A. He did have fatigue in '53, yes, sir.

13 Q. No question about that.

14 A. From the record, yes, sir.

15 Q. And, from the record here he reports to your
16 interviewer on Page 18 that he's got fatigue in 1979, doesn't
17 he, sir?

18 A. Yes, he does.

19 Q. If that's true, sir, that is the problem that
20 didn't clear with time, isn't that right, sir, if it's true,
21 sir?

22 A. If it's the same fatigue, sir.

23 Q. If it's the same fatigue, Doctor, it didn't clear
24 with time, did it, sir?

1 A. I'm assuming that the --
2 Q. This is an accurate -- 18 is accurate, sir?
3 A. Yes.
4 Q. That's what I'm asking you to do, sir.
5 A. If this is accurate, which I don't think it is.
6 That's the point.
7 Q. Doctor, are you saying that your interviewer made a
8 mistake?
9 A. No.
10 Q. Are you saying that Mr. Selby lied?
11 A. No, sir.
12 Q. Then it is an accurate record of what Mr. Selby
13 told the interviewer?
14 A. Probably is.
15 Q. Just like in 1953 is an accurate record of what Mr.
16 Selby told the interviewer at that time?
17 A. I believe so, the doctor --
18 Q. So he's told the interviewers on two different
19 occasions, the interviewers that you checked to ask the
20 questions, he told the interviewer in 1953 that he was
21 fatigued. Told your interviewer in 1979 he's fatigued,
22 correct, sir?
23 A. Correct.
24 Q. And he has then -- he told the interviewer in '79

1 that he had the same problem that he had in '53 and '49,
2 isn't that correct, sir?

3 A. I can't read that final date, sir. Is it clear in
4 your copy on Page 18?

5 Q. No. I have no idea at all what it says.

6 A. Is that '53 or what?

7 Q. I have no judgment as to what it says. Doctor, my
8 question is --

9 A. That's why I can't say.

10 Q. My question is, does he not describe the same
11 problem in '79, that is fatigue, that he described in '50 and
12 '53?

13 A. No, I can't say. I don't know.

14 Q. Does he describe fatigue in '53, sir?

15 A. He does indeed.

16 Q. Does he describe fatigue in '79, sir?

17 A. Says he has fatigue, but when it started --

18 Q. Excuse me. Does it say he had fatigue in 1953.

19 MR. HEINEMAN: Objection, asked and answered.

20 THE COURT: Overruled.

21 A. 1953?

22 Q. Yes.

23 A. Yes, he had fatigue in 1953.

24 Q. Does he have fatigue -- does it say he had fatigue

1 in 1979?

2 A. Only according to Page 18.

3 Q. Doctor anyplace where it says he did not have
4 fatigue, if so, show me where the words appear that he
5 doesn't have fatigue.

6 A. The doctor did not record --

7 Q. Excuse me, that's not what I've asked you, Doctor.
8 The interviewer's notes -- the interviewer has -- there is a
9 strong purpose for the interviewer to go into these detailed
10 matters, isn't that correct?

11 MR. HEINEMAN: Objection, Your Honor, he
12 interrupted the answer.

13 THE COURT: Overruled. Not responsive.

14 Q. Isn't there a real reason for the interviewer to go
15 into all these details as contained on Page 15, sir, on Page
16 16? Isn't there a reason for that, sir?

17 A. Yes.

18 Q. The reason is to save the doctor time, to give the
19 doctor a history, to give the doctor the records already so
20 that he doesn't have to reask the same questions, isn't that
21 correct, sir?

22 A. No, sir.

23 Q. That isn't correct?

24 A. Not in this case.

1 Q. Doctor, you mean to say that your doctors
2 duplicated the work of your interviewers?

3 A. We verified --

4 Q. Doctor, did your doctors duplicate the work of the
5 interviewers?

6 A. We verified them, sir.

7 Q. Doctor, why didn't he write down that the
8 interviewer was wrong, there was no fatigue in '79, if that's
9 the purpose of it? Did he write down that the interviewer
10 was wrong anywhere?

11 A. No, he did not.

12 Q. Did he say that it was false anywhere?

13 A. No, sir.

14 Q. Did he say that it was inaccurate anywhere?

15 A. No, sir.

16 Q. And, Doctor, there is a whole -- in all of these
17 that we have gone through, there is a whole list of problems
18 that the interviewers write down that these people have,
19 correct, sir?

20 A. There is a list of problems.

21 Q. And very few places does the doctor redo that
22 history, isn't that correct, sir?

23 A. In most instances, the doctor usually wants to
24 verify positive complaints. In most instances, sir.

1 Q. Doctor, what you are saying then is -- did the
2 doctor verify the nightmare complaint anywhere, sir?

3 A. No.

4 Q. But you said he has nightmares?

5 A. Well, that was according --

6 Q. Wouldn't that be in your neuropsychiatric column,
7 sir?

8 A. It could be, but it --

9 Q. Doctor, that's where it would be if the doctor
10 verified it, wouldn't it, sir?

11 A. That's quite true and apparently --

12 Q. He doesn't say on Page 24 in the neuropsychiatric
13 column that this man has nightmares, does he, sir?

14 A. No, sir.

15 Q. But you said that you accept that as a problem,
16 don't you, sir?

17 A. Yes, I believe I did.

18 Q. Yes, indeed you did, Doctor, and you accepted that
19 as a problem because the interviewer reported it, didn't you,
20 sir? I believe it's also recorded among the abnormal
21 findings, sir, on Page 25.

22 Q. Where, sir?

23 A. It should record it.

24 Q. Where, sir?

1 A. It's hard to read. I can't see it, sir.
2 Q. It isn't there, is it, Doctor?
3 A. I don't know. I can't read it.
4 Q. Doctor, look carefully, would you, sir?
5 A. It's impossible to read, sir.
6 Q. It is not impossible to read, Doctor, we can read
7 it together, can we not? The first line says edentis (sic)
8 lower something, correct, sir, on Page 25 if that's what you
9 are looking at?
10 A. Yes, sir.
11 Q. Then frequent sinus injections, correct, sir?
12 A. No, I can't see that, sir.
13 Q. You don't see the word frequent there?
14 A. Yeah, but I can't -- that's infections.
15 Q. Frequent infections. That's not nightmares, is it,
16 sir?
17 A. No.
18 Q. The next one is emphysema or something to that
19 effect?
20 A. Correct.
21 Q. The next one has dyspnea, shortness of breath, on
22 exertion?
23 A. Uh-huh.
24 Q. Next one is pleurisy, 1949?

1 A. Yes.

2 Q. Next one is irregular heart beat, '74?

3 A. Yes, sir.

4 Q. On Dilantin since appendectomy?

5 A. Correct.

6 Q. 1948 difficult erection, correct, sir, 1948, or
7 '68. Anyway, it's not nightmares, is it, sir?

8 A. I can't read.

9 Q. Difficult erection and no loss of libido?

10 A. I can't read what you are reading, my copy is not
11 that good.

12 Q. Doctor, it is that good. 1948, difficult erection,
13 no loss of libido arthritis, takes cortisone, correct, sir?

14 A. Your copy is clearer than mine, sir.

15 Q. Well, let's just look at my copy then, Doctor.
16 Difficult erection, loss of libido, sorry Doctor, arthritis,
17 takes injections, cortisone injections, ASA, two fingers or
18 something, some kind of irritation?

19 A. Amputation.

20 Q. Amputation, and what's the next word following
21 blood counts?

22 A. Blood clots.

23 Q. Gangrene?

24 A. Yes.

1 Q. Blood, something exertion, once?

2 A. Bladder.

3 Q. Infections once since 1975. Had biopsy of nerve
4 for evaluation 2,4,5-T, correct, sir?

5 A. Correct, sir.

6 Q. So we have read all that, haven't we?

7 A. Yes, sir.

8 Q. The next one says, breath sounds, arthritic changes
9 of fingers, third and fourth fingers, something petty, edema
10 of ankles and something petis. There isn't any word there
11 that you can't make out that's clearly not referring to
12 nightmares, is it, sir?

13 A. That's correct, sir.

14 Q. But you said the man had nightmares based upon the
15 finding the statement of the interviewer, didn't he, sir?

16 A. I believe so.

17 Q. And, you have a finding of fatigue said by the
18 interviewer and not contradicted anyplace else, isn't that
19 correct, sir? Would you answer my question, Doctor?

20 A. Did you ask about fatigue, current fatigue, yes, it
21 is checked off.

22 Q. And not contradicted anyplace in this record, is
23 it, sir?

24 A. But not included, either.

1 Q. Doctor, nightmare is not included either, is it?
2 A. Correct, sir.
3 Q. But yet you said it was a problem that he was still
4 having, correct, sir?
5 A. I believe that he was since I --
6 Q. And fatigue. Fatigue is checked off by the
7 interviewer and not contradicted exactly the same way as the
8 nightmares, isn't that correct, sir?
9 A. Correct.
10 Q. In the one instance you accepted what the
11 interviewer said, did you not, sir?
12 A. Yes.
13 Q. And logically you should also accept what the
14 interviewer said about fatigue?
15 A. No, sir.
16 Q. Do you have anything in the record to contradict
17 what the interviewer said?
18 A. Except my own recollection, I examined him.
19 Q. I'm not going back to your recollection, my
20 question was referring to the record, Dr. Suskind, not your
21 recollection.
22 MR. HEINEMAN: Objection, interrupted the answer.
23 THE COURT: Objection is overruled, not
24 responsive.

1 A. Would you read the question, please?

2 (Court Reporter read back the previous question.)

3 A. The record omits the medical -- the doctor's record
4 omits any reference --

5 MR. CARR: Your Honor, would you direct the witness
6 to answer my question?

7 THE COURT: Doctor, respond to the question that
8 was asked of you, please.

9 A. Would you read it, please?

10 (Court Reporter read the previous question.)

11 A. Yes, I believe we do.

12 Q. And where in the record does it contradict what the
13 interview said about fatigue, sir?

14 A. The fact that the physician did not record it.

15 Q. Doctor, what I would like for you to do is point
16 out for me where in the record, sir, what the interviewer
17 said is contradicted.

18 MR. HEINEMAN: Objection, it's been asked and
19 answered.

20 THE COURT: Overruled. It has not.

21 A. The fact that the doctor didn't --

22 MR. CARR: Your Honor, would you direct the witness
23 to point out to me in the record where the interviewer's
24 statement that his fatigue is contradicted.

1 THE COURT: Doctor, respond to the question,
2 please. You are not responding to the question. I'm asking
3 you again respond to the question that was asked of you,
4 sir.

5 A. There is no --

6 MR. HEINEMAN: Excuse me. May counsel approach the
7 bench, Your Honor?

8 (The following Side Bar conversation was had outside the
9 hearing of the jury.)

10 MR. HEINEMAN: I object to the request for counsel
11 to instruct this witness. I object to the instruction of the
12 Court to this witness. The witness has told the Court and
13 the jury that what -- what the record demonstrates to support
14 his position is the fact that the doctor did not mention it.

15 THE COURT: That was not the question. The
16 question is show me where in the record what was mentioned in
17 the interview was contradicted, that is not the question that
18 you just mentioned. It is a different question. His
19 response was not responsive to the question, just as your
20 objection is irrelevant. Objection is overruled, and let's
21 proceed.

22 MR. HEINEMAN: Thank you, sir. I object.

23 (The following proceedings were had in open court.)

24 Q. (By Mr. Carr) Now, Doctor, would you answer my

1 question?

2 A. There is no positive statement in the record.

3 Q. Is what you are saying is there is no place in the
4 record where this interviewer's findings are contradicted?

5 A. There is no statement in the record other than the
6 -- other than the interviewer, sir.

7 Q. And, Doctor, the physician, if he found that the
8 interviewer was wrong, it would be his obligation to clear up
9 the matter and put in a statement the interviewer is wrong,
10 he's there to verify, isn't that correct, sir?

11 A. Yes, he was there to verify.

12 Q. And there is no entry there in which he contradicts
13 what the interviewer says, is there, sir?

14 A. There is no verification, either.

15 Q. Doctor, the verification consists of the fact that
16 his job is to correct the record if the record is wrong,
17 isn't that correct, sir? That's the purpose of verification,
18 isn't that right, sir?

19 A. Also to support.

20 Q. Excuse me, the purpose of verification of the
21 interviewer's remarks is to indeed verify the record. If the
22 interviewer is wrong then it's the doctor's obligation to
23 correct the record, isn't that right, sir?

24 A. No.

1 Q. It's not his obligation to correct an incorrect
2 record?

3 A. Yes, it is. That's part of it.

4 Q. It is indeed.

5 A. That's part of it.

6 Q. It is indeed his obligation?

7 A. Yes, sir.

8 Q. So if when he interviewed this person he found out
9 that the interviewer was wrong and put down something
10 incorrect, it would be his obligation to put in that record
11 interviewer was wrong, man has not been fatigued, is not
12 fatigued currently, doesn't have nightmares currently,
13 doesn't have loss of libido currently. That's his
14 obligation, so the record will not be ambiguous or contrary,
15 isn't that correct?

16 A. No, sir.

17 Q. It's not his obligation? Doctor, what is his
18 obligation to do if it's not to verify the record? Didn't I
19 say his obligation is to verify the record?

20 A. His obligation was to verify the record in two
21 different ways, sir, either to determine whether or not the
22 history was accurate or inaccurate.

23 Q. Doctor, did he put anywhere that the history was
24 inaccurate? Did you write down the history taken was

1 inaccurate?

2 A. No, I don't believe he did.

3 MR. HEINEMAN: Objection. He interrupted the
4 question.

5 THE COURT: Objection is overruled.

6 A. But the fact he left it out didn't verify its
7 accuracy either.

8 Q. In every single one of these records, and I can
9 give them all to you, I'll ask you to point out a single
10 place where the doctor contradicted the interviewer, where
11 the doctor said what the interviewer wrote down is not true.
12 There isn't any such place, is there, sir?

13 A. There probably is not, sir, and we didn't ask them
14 to do it that way, sir, we asked them to take a medical
15 history and if they didn't find something, they didn't put it
16 down, and in this instance, he didn't find what the
17 interviewer found and he didn't put it down.

18 Q. But you said earlier that the nightmares weren't
19 put down, didn't you, sir?

20 A. Correct.

21 Q. Then somebody fouled up then. Did the man have
22 nightmares in your judgment or not, sir?

23 A. I believed since I examined him that he was really
24 telling the truth about nightmares.

1 Q. Doctor, you said another word about was really
2 telling the truth, I thought you told us that all of these
3 people with the exception to Mr. Null were telling the truth?

4 A. Yes, indeed.

5 Q. You said Mr. Null lied. So the statement that he
6 was really telling the truth you didn't really mean that, did
7 you, sir?

8 A. That he really had the nightmares is what I meant,
9 sir.

10 Q. Well, and did anybody write down that he didn't
11 really have the fatigue?

12 A. No, he did not.

13 Q. The interviewer's notes are for the single purpose
14 of assisting the doctor?

15 A. That's one of the things that the interviewer was
16 doing.

17 Q. The doctor is obligated to make any corrections in
18 the record that he finds are incorrect so that one won't be
19 misled, correct, sir?

20 A. And in this instance, he did, sir.

21 Q. Where did he write down, sir, that the man didn't
22 have nightmares? Where did he write down, sir, that the
23 interview was wrong when the man said he didn't have
24 fatigue? Where did he write down that the man didn't have

1 paresthesia?

2 MR. HEINEMAN: Object to the multiple question.
3 Could we have them one at a time?

4 THE COURT: I think they should be broken down one
5 at a time.

6 Q. Doctor, where did he write down that the man did
7 not have nightmares?

8 A. He didn't write it down, sir.

9 Q. Where did he write down that the man did have
10 nightmares?

11 A. Didn't write it down.

12 Q. Where did he write down that the man did not have
13 muscle pain?

14 A. Didn't write it down, but he didn't write down that
15 they did, and that's what is important.

16 Q. He didn't what?

17 A. He didn't write down that they did. That's --

18 Q. He didn't write down that they did have muscle
19 pain?

20 A. That they -- you are asking me about the -- asking
21 me about the fatigue.

22 Q. No, I just said pain. Where does he write down
23 that he didn't have pain? He wrote down as a matter of fact
24 that he did have pain in the joints and muscles, didn't he?

1 A. Well, you were confusing me with a multiple
2 question.

3 Q. No, I was asked to turn them -- I was asked to ask
4 them one at a time, and I'm doing that now.

5 THE COURT: Mr. Carr, is this a good point for a
6 short break?

7 MR. CARR: Yes, Your Honor.

8 THE COURT: Take a recess at this time. I would
9 remind you that the admonishments that I gave you will apply
10 during this break also. Gentlemen, could I see you in
11 Chambers for a moment, please?

12 (The following proceedings were had in Chambers, outside the
13 presence of the jury.)

14 THE COURT: Okay, I thought we would talk to --

15 MR. CARR: Your Honor, I note that Mr. Craven is
16 here and I would object to his presence when this juror is
17 interviewed. He's not been identified to her as counsel in
18 the case, and she would not know who he is, and she might
19 have some concern of that. We have never asked her whether
20 she knows him or knows anything about him and I would object
21 to him being here during this voir dire.

22 MR. HEINEMAN: Your Honor --

23 THE COURT: Anything you want to say about that?

24 MR. HEINEMAN: Sure, he is an attorney of record in

1 the case. He's entered his appearance in the case, and if
2 Mr. Carr has any concern about that, and she wonders who he
3 is, just tell her he is a lawyer for Monsanto. Can't
4 conceive of any prejudice to either party by virtue of the
5 fact of his being present.

6 MR. CARR: She may be concerned about it. It may
7 problem her. He has not participated in this trial in front
8 of the jury in any way. They have absolutely no knowledge of
9 his connection with this case and he has not been trial
10 counsel, has been Appellate counsel, argued very few motions
11 and have not been connected with anything connected with this
12 jury and enter this as an element that I think should not be
13 introduced.

14 MR. HEINEMAN: Well, Your Honor, he has been in
15 court a number of times in the past --

16 THE COURT: He's not been at trial counsel bench.

17 MR. CARR: He's never be identified to the jury.

18 THE COURT: Trial counsel table while the jury was
19 in the box, I believe.

20 MR. CARR: Never has he been at the table when the
21 jury's been in the box.

22 THE COURT: I think your motion is well taken. I
23 hadn't thought of that.

24 MR. HEINEMAN: Is Monsanto being deprived of its

1 choice of counsel?

2 THE COURT: No, Monsanto is being put in a position
3 so that this juror is not confused by a face to whom it --
4 this juror has not been introduced, and Mr. Craven has not
5 been introduced to the jury. Mr. Craven, during the course
6 of the trial when the jury has been in the box, has not been
7 present at the counsel table. Monsanto is in no way being
8 deprived of its choice of counsel. Monsanto is by this
9 Court's order being prevented from putting in a position that
10 might confuse a juror that is to be interviewed in Chambers
11 by the Court with counsel present. And under the
12 circumstances I think the motion is well taken.

13 MR. CRAVEN: May I make an observation?

14 THE COURT: Sure. I didn't realize you wanted to.

15 MR. CRAVEN: If the Court is being persuaded that
16 Mr. Carr's idea is that we are going to confuse the juror,
17 seems to me the less severe cure for that ill, real or
18 imagined is to identify me to the juror.

19 MR. CARR: I personally see no reason for that.
20 All that does is add an element that hasn't been in before.
21 She may wonder why is he here, hasn't been here before.
22 What's going on? Am I going to be punished or sued? What's
23 going to happen if I don't answer right? Why is he hear? I
24 submit there is absolutely no reason for him to be here. He

1 has not participated in the trial of this case. And he's not
2 been identified to anybody at all and I think it would throw
3 in an unnecessary element. Mr. Heineman and Mr. Nassif are
4 perfectly competent to protect the interests of Monsanto here
5 and we don't need a foreign or strange element thrown in.
6 It's foreign enough. She is going to be under enough strain
7 and enough problems being called into the Judge's Chambers
8 and being interrogated in this fashion without another
9 element being introduced.

10 MR. CRAVEN: It just simply is not realistic. If
11 he says she is not going to answer truthfully because I'm
12 here, that's --

13 MR. CARR: That isn't what I said.

14 MR. CRAVEN: If he says she is going to be
15 intimidated --

16 MR. CARR: That isn't what I said.

17 MR. CRAVEN: I must not have heard you.

18 MR. CARR: There is going to be an element that
19 will be strange to her, won't understand, she will think why
20 is he here.

21 MR. CRAVEN: Easily remedied.

22 MR. CARR: There is no need to do that, to explain
23 your presence because any explanation will only cause her to
24 ask for questions in her mind why is he here, wasn't here

1 before. What's different about me?

2 MR. CRAVEN: Why not then do this in open court?
3 I'll sit in the gallery.

4 MR. CARR: Why do it in open court? Then you put a
5 lady on the witness stand.

6 MR. CRAVEN: If there is --

7 MR. CARR: The other jurors have to pass back and
8 forth. None of the jurors --

9 MR. CRAVEN: It's easily clear by moving into the
10 open room, and I'll sit behind the rail --

11 MR. CARR: It's up to the Judge whether he thinks
12 it's easier on this juror to have it in Chambers or in the
13 courtroom. I don't think the Court is here to serve your
14 purposes. The Court is here to interrogate the juror under
15 conditions which will not be strange to her or bother her and
16 have Monsanto's trial counsel here to protect its interests,
17 and I think it will be protected without you being here, and
18 certainly you don't intend to participate.

19 MR. CRAVEN: I think --

20 MR. CARR: Let me finish, please. You will
21 certainly have the transcript available to you to read. You
22 are not going to participate in the questioning. I don't
23 know that the Court is going to allow anybody to participate
24 in the questioning. I most certainly would object if you

1 were allowed to question the juror. Therefore, no function,
2 useful function can be served by you being here because
3 you'll have the transcript, and there will be the possibility
4 of injuring the juror with you being here. Monsanto can't be
5 hurt with you excluded. The juror can be hurt with you
6 present.

7 MR. CRAVEN: Then I ask we go into the courtroom.
8 I will sit behind the rail and you can proceed. I have no
9 intention of asking any questions. As I understand the
10 ground rules the Court is going to ask the questions and I
11 understand the ground rules to be that we will have an
12 opportunity to suggest additional questions to the Court. We
13 can't do that if we don't hear the proceedings. So I suggest
14 we move into the open courtroom. That solves Mr. Carr's
15 problems.

16 THE COURT: I think that creates more of a
17 problem. I think all the jurors have been back here at some
18 point in time. Being in that courtroom interrogated after
19 the jurors have seen witnesses interrogated in the courtroom,
20 I think would present more of a problem. I think your point
21 is well taken. Judge Craven, I'd ask you to leave, please.
22 (Mr. Craven exits the room.)

23 THE COURT: Now, as to ground rules on this
24 matter. I am going to ask the following questions. I'm

1 going to ask the first part of question number three
2 submitted by Monsanto, what does --

3 MR. CARR: Your Honor, we had lost our copy. Do
4 you have a spare copy?

5 THE COURT: I've got the originals that were given
6 to me because I made copies and circled things. There you
7 go. I'm going to ask the first part of number three which is
8 what she does know about the suit generally.

9 MR. HEINEMAN: You are not going to ask the part
10 about her brother-in-laws involvement in it?

11 THE COURT: Let me finish.

12 MR. HEINEMAN: Okay.

13 THE COURT: I'm going to ask question number -- the
14 two questions that were proposed by Mr. Carr in the order
15 that they are offered. I want to know what she knows about
16 the suit generally, and how she has reacted to it or feeling
17 about it. And I think that the question is open-ended
18 enough. I want to know what she knows about the entire suit.

19 MR. HEINEMAN: Your Honor, we would object
20 strenuously to the omission of question number one submitted
21 by Monsanto. And question number two submitted by Monsanto,
22 because we need to know if there is a reason she may have --
23 she may have reported it immediately and that's fine, but if
24 she didn't, we need to know the reason why she waited,

1 because it may have something to do with her feelings with
2 respect to the lawsuit, with respect to the lawyers, with
3 respect to her position on the jury. And we need to have
4 that information with respect to the suit. We need to know
5 her brother-in-laws involvement in it. We need -- with
6 respect to question number four we need to know her
7 relationship with her brother-in-law. It may be so
8 insignificant as to create no problem at all, or it may be
9 such that her brother-in-laws situation would have a very
10 great influence upon her individually. And so we needed to
11 know what her relationship is. And question number five is
12 obviously --

13 THE COURT: Question five I think is stated better
14 in Mr. Carr's questions. In effect I'm asking that. Mr.
15 Carr, do you have anything you want to say on any of this?

16 MR. CARR: I don't have any objection to asking
17 number one, the first question. I do think the second
18 question would be unfair to ask because it implies that she
19 did something wrong in waiting, if there was -- if it was not
20 done immediately. The implication why did she wait to do
21 so. I think that would be an inference that she is doing
22 something wrong. I think the Court already when he's going
23 to ask what does she know about the suit is going to include,
24 it will include by necessity what she knows about her

1 brother-in-laws involvement. She will relate to the Court
2 what she knows about the suit, which of course encompasses
3 her brother-in-laws involvement. As far as the personal
4 relationship with her brother-in-law and his family, I really
5 don't know that that's our business, but I don't have any
6 particular objection to it. We know when she told the Court,
7 so there is no point in asking that question, the first part
8 of number two.

9 So I guess in summation, Your Honor, we don't know
10 of any objection to number one. Don't have any objection --
11 do have an objection to number two, all together. I think
12 the Court is correct in just asking the question what does
13 she know about this suit and not the latter part of it. I
14 don't really care one way or another about number four and as
15 the Court has indicated, he's already going to ask the
16 questions involving number five.

17 THE COURT: What's the relevance of asking number
18 one? What different does it make when she learned about it?

19 MR. HEINEMAN: Because it's a way to determine how
20 long she knew before she did something.

21 THE COURT: Right, and what relevance does that
22 have?

23 MR. HEINEMAN: The relevance, as I explained
24 earlier, is to find out what could possibly be the reason

1 why, if there is a delay, why that delay occurred. Is she
2 concerned? Was she intimidated in any way? Did she feel
3 that that would exclude her from the jury for some reason?
4 Is there some other reason which influenced her in coming to
5 the Court? And that's what we want to know. Is there some
6 additional reason other than my understanding of this Court's
7 admonition to the jury that they were to report to the Court
8 any concerns or anything that they had. I don't remember
9 exactly how that came about in the general instructions.

10 THE COURT: It's a thing I always say to the
11 jurors. There is some wording that is about as general as
12 what you said.

13 MR. HEINEMAN: I am concerned that there may be
14 some influence in her mind which would have prevented her
15 initially from coming to the Court. If there was some reason
16 why she wouldn't, some desire to be on the jury, some desire
17 to see a particular outcome in the case, reluctance to be
18 excluded for some reason, I think that we ought to have an
19 opportunity to know that.

20 THE COURT: Well, if no one has any objection to
21 one, I'll ask it. I'm not sure if it's going to do any --,
22 if it's going to lead to anything, but, if no one has any
23 objection, I will ask that. So I'll ask one, and first part
24 of three. I gather you have no objection to number four

1 either?

2 MR. CARR: No.

3 THE COURT: Okay. I'll ask that, too. And I'll
4 ask the two questions that Mr. Carr offered. Now, --

5 MR. CARR: I'd like to sit back there because I
6 don't want to be in her line of sight. I don't want her --

7 THE COURT: I should be the one she is looking at.
8 Now, you gentlemen are allowed to be here. You are not
9 allowed to participate. I don't want any of you to request
10 to ask any questions while this juror is in the room, while
11 she is entering the room, or while she is leaving the room.
12 I will take up that matter after she has left. I'm the only
13 one who is to say anything, other than a cough, when this
14 woman is in the room. Is that understood?

15 MR. HEINEMAN: Yes, Your Honor.

16 MR. CARR: Yes.

17 MR. NASSIF: Yes.

18 MR. HEINEMAN: I want to be sure that the record
19 shows our protest to the Court's exclusion of Mr. Craven.

20 THE COURT: I think that's clear on the record. I
21 think that's perfectly clear.

22 MR. HEINEMAN: All right.

23 THE COURT: Okay. I'll have her get --

24 (Juror Barbara McCann present in Chambers.)

1. THE COURT: How are you doing?

2 JUROR McCANN: All right.

3 THE COURT: Okay. I'd like to ask you a few
4 questions, if I could.

5 JUROR McCANN: Okay.

6 THE COURT: You had mentioned to Marlene about this
7 lawsuit.

8 JUROR McCANN: I just heard from my mother about
9 one, yeah.

10 THE COURT: Okay. You heard it from your mother?

11 JUROR McCANN: Uh-huh.

12 THE COURT: When did you hear that, and Mr. Carr's
13 office's involvement in it?

14 JUROR McCANN: Just that -- let's see, was it that
15 morning or the day before I told Marlene about it.

16 THE COURT: Okay. And what do you know about the
17 suit?

18 JUROR McCANN: I don't know anything about it. All
19 I know is supposed to be with his work, from the Derby
20 Station, some guy was supposed to have got hurt or something
21 or another.

22 THE COURT: What's your personal relationship with
23 your brother-in-law and your family and his family?

24 JUROR McCANN: Well, it's my sister's husband.

1 THE COURT: Right.

2 JUROR McCANN: Right. What's my relationship?

3 THE COURT: You know, close, see each other, not
4 see each other?

5 JUROR McCANN: They live in Maryville. We see them
6 when we get together normally or when there is a family
7 gathering of some sort like that.

8 THE COURT: Okay. Has the existence of this suit
9 that involves your brother-in-law influenced you or affected
10 your feeling in any way or attitude about any of the
11 attorneys in this case?

12 JUROR McCANN: No, because I really didn't know if
13 it was true or not, because I told Marlene I didn't want to
14 call and find out, and she said she'd ask you if I should
15 call and ask my sister who it was or anything. So she asked
16 me if I did, I said, no, I didn't call anybody about it.

17 THE COURT: So, you don't have any feelings one way
18 or the other about it?

19 JUROR McCANN: No, because I really don't know too
20 much about what's going on about it.

21 THE COURT: Okay. So do you think that any
22 feelings that you have may develop or anything, that you
23 could put them aside when you retire to the jury room to
24 deliberate on the verdict?

1 JUROR McCANN: If I get any -- yeah.

2 THE COURT: The way you feel now, basically?

3 JUROR McCANN: Right. Right.

4 THE COURT: You don't know, but the way you feel
5 now, do you think that would have any problem in your going
6 into the jury room?

7 JUROR McCANN: The way I feel now, no, huh-uh.

8 THE COURT: Okay. You understand that when you go
9 into the jury room you'd have to decide this case solely upon
10 the evidence that was in court that you saw and heard and the
11 instructions that I'd be giving you as the trial judge, you
12 understand that?

13 JUROR McCANN: Right. Right. Right.

14 THE COURT: You don't think that the existence of
15 this suit, I gather, would in any way interfere with that?

16 JUROR McCANN: Not that I -- not that I can think
17 of right now that it would, no, huh-uh.

18 THE COURT: Okay.

19 JUROR McCANN: Okay.

20 THE COURT: That's all I need to know.

21 JUROR McCANN: Okay.

22 THE COURT: Thank you very much. Thank you for
23 letting us know.

24 JUROR McCANN: Okay. I didn't know if I should let

1 you know. Every time I come in this place I find out
2 something else. I said, heck with this stuff.

3 (Juror McCann exits the room)

4 THE COURT: Well --

5 MR. CARR: The only problem I see, we were told by
6 Marlene that she believes that her brother-in-law is being
7 sued, is the defendant in the case, when in fact he isn't.
8 He's not being sued at all. But that's what she believes,
9 and she apparently is not calling anybody to find out. Near
10 as I can gather from what she said her mother told her that,
11 and she doesn't know that it's not true, and while she has
12 stated that it won't affect her feeling or attitude, I would
13 like her to be told that it isn't true, that her
14 brother-in-law is not a defendant in that suit, that he's not
15 a party to the suit. If the Court feels that is appropriate.

16 THE COURT: Now, he -- from my examination of the
17 file Derby Refinery is being sued, and on the summons he was
18 listed as the owner.

19 MR. CARR: The brother-in-law was?

20 THE COURT: The brother-in-law, Steven Arnold.

21 MR. CARR: But wasn't a party?

22 THE COURT: He personally was not a party to it,
23 and I believe, if I remember correctly, I'm not looking at
24 the file, he's got Phil Feder representing him on the

1 defense, and John McMullin on third party actions.

2 MR. CARR: Then he is in the case, because --

3 THE COURT: No, Derby Refinery is, but he isn't
4 personally.

5 MR. CARR: I was told by the office that he was not
6 a party to the case.

7 THE COURT: He personally is not.

8 MR. HEINEMAN: He was listed on the summons?

9 THE COURT: He was listed on the summons as owner.
10 It was written in apparently.

11 MR. CARR: Sheriff wrote it in there?

12 THE COURT: All right. Other than in some answers
13 to interrogatories, he's identified. And I think he was
14 identified in a notice of deposition but I'm not sure. Other
15 than that I don't think his name comes up in the file. Do
16 you have any comments on this matter?

17 MR. HEINEMAN: Judge, we have been kind of kicking
18 this thing around between us previously. One of the problems
19 Of Course is whether or not this lawsuit is going to affect
20 her brother in some way. I know that's a pretty general
21 proposition, but, thus far he hasn't been joined as a party.
22 He could be a third party defendant. Her position is that
23 she doesn't know anything.

24 THE COURT: He personally?

1 MR. HEINEMAN: Sure.

2 THE COURT: That's very unlikely from -- in that
3 file, that is extremely unlikely in that file. I've gone
4 through the whole file, it's nothing like ours, four file
5 folders, starting the fifth. From what I've seen of the
6 pleadings, what I've seen of the discovery, that is so
7 unlikely as not to be a practical concern.

8 MR. HEINEMAN: Okay. Her position is that she
9 doesn't know anything about the suit. She doesn't know --
10 all she knows is what she heard from her mother the morning
11 or day before she reported it to the Court. She doesn't know
12 anything about it, and so we don't know whether if she learns
13 something about it, whether it would affect her ability --
14 she says as she sits here right now not knowing anything
15 about it, it doesn't affect her feelings. If she were to
16 know something about it, we believe it very likely may affect
17 her feelings. The other side of the coin is I think that she
18 -- I think she needs to be notified about -- well, about the
19 potential effects, of course, obviously it's pretty hard to
20 say exactly what those are, but, you know, if her brother --
21 if her brother-in-law is found to be negligent, if he loses
22 his job --

23 THE COURT: I don't think --

24 MR. HEINEMAN: If he's sued as a third party

1 defendant.

2 THE COURT: I don't think any of that is
3 realistic. He's being defended obviously on an insurance
4 basis. Why don't you, Mr. Carr, prepare what you believe
5 would be a statement of the case that could be given to her
6 to explain what her brother's actual -- brother-in-laws
7 actual position is.

8 MR. CARR: Judge, I've never looked at the file.

9 THE COURT: Well, then I'll prepare one and we will
10 discuss it.

11 MR. CARR: All I've done -- I haven't even had
12 face-to-face conversation with the office about it. All I
13 did, I told Sandy what we were told by you that the juror
14 understands that her brother-in-law, Steve Arnold, is being
15 sued by our office. I said is that true, and they checked
16 the file said, no, it's not true. He was a witness and he
17 had his deposition taken last week and his only connection
18 with it was the lessee of the station, not the owner of it,
19 or the manager of the station. I forget which, and it's a
20 case involving a leaky tank which he in no way is responsible
21 for, can't be responsible for, and that's all I know about
22 the case.

23 THE COURT: Okay. Now my review of the file
24 indicates that this guy was noted as the owner. He is listed

1 in someone's answers to interrogatories as a post occurrence
2 witness. It seems as if the drift of the file is that the
3 major defendant is going to be Washington Park and not Derby
4 Refinery, which is the entity that her brother-in-law is
5 involved with.

6 MR. HEINEMAN: Who represents the plaintiff?

7 MR. CARR: My office.

8 MR. HEINEMAN: I'm sorry. I meant the
9 co-defendants. You've got Sandy Korein representing the
10 plaintiff.

11 THE COURT: Phil Feder has got Derby Refinery.
12 Dennis Rose is in there. Theodore Williams is in there.
13 John O'Connell is in there, and John McMullin has come in on
14 third party, and I don't remember if anyone else has come in
15 on these or not, very frankly.

16 MR. HEINEMAN: Okay. Ted Williams from Shepard's
17 office?

18 THE COURT: I think from Shepard's office.

19 MR. HEINEMAN: John McMullin?

20 THE COURT: Right.

21 MR. HEINEMAN: Everybody's favorite. Representing
22 a third party defendant?

23 THE COURT: He's representing Derby on the third
24 party actions.

1 THE COURT: Derby is a third party defendant?

2 THE COURT: Derby is a third party plaintiff, I
3 think. Everybody has filed against everybody else. Everyone
4 is pointing the finger by contribution.

5 MR. HEINEMAN: Represents Derby on the third party
6 plaintiff's actions.

7 MR. CARR: Derby is probably suing Washington Park.

8 THE COURT: Everyone seems to be pointing the
9 finger at Washington Park as the major --

10 MR. HEINEMAN: Feder represents Derby on on the
11 defense?

12 THE COURT: On the defense.

13 MR. HEINEMAN: Who does Rose represent?

14 THE COURT: I don't remember. I didn't really
15 concentrate on that.

16 MR. CARR: All I think you need to do is just to
17 tell her, Miss McCann, we were told that you believe that
18 your brother-in-law was a defendant and was being sued in
19 that case. I've checked the file and he is not being sued.
20 He's not a defendant in that case. Now, with that fact that
21 he's not a defendant, would that affect your feelings in any
22 way? Just pass it off that way. Just to correct the
23 misinformation. She has now some misinformation, right? She
24 says that that will not affect her feelings about any party

1 in the case, but why not correct the misinformation that
2 she has, so we can be sure that it won't affect her in any
3 way, no matter what happens with that case, then if something
4 should happen to that case while we are going on, she reads
5 about it, maybe it's going to be tried or a verdict, she need
6 to know that her brother-in-law is not being sued by my
7 office, is not a party defendant.

8 THE COURT: That is an accurate statement of the
9 file. And the points that you raised frankly are not likely
10 to happen in the course of this file. I've gone through all
11 of the folders. I think that's a good idea and I think the
12 time to do it probably is now and not let any other time
13 waste. I'll get her back in.

14 MR. HEINEMAN: Can we take --

15 THE COURT: Again, I want the same ground rules to
16 apply.

17 MR. HEINEMAN: Can I confer with Mr. Craven for
18 just one minute before we bring her back in?

19 THE COURT: Just a minute. We have been at this
20 too long.

21 MR. HEINEMAN: Your Honor, we would object to the
22 Court telling her only that her brother-in-law is not a
23 defendant. It is possible that she could --

24 THE COURT: I would say that her brother-in-law is

1 not named as a defendant, he's not a defendant, that Derby
2 Refinery is a defendant. That's what I'd say.

3 THE COURT: That is how the record actually states,
4 Derby Refineries.

5 MR. HEINEMAN: She may well think that if Derby
6 Refinery is a defendant, that her brother-in-law is part of
7 that and, therefore, he is subject to some liability.

8 MR. CARR: I think the Court should tell her that
9 he is not part of the lawsuit. I agree with counsel, she
10 should be told that.

11 MR. HEINEMAN: I'm saying you can't tell her that.
12 If you -- there are all other kinds of ramifications you are
13 starting, whether he's going to become a defendant,
14 indemnification action against him, any third party, whether
15 he's going to lose his job as a result of that. I mean, it
16 is unfair I think to center in on one particular aspect
17 because there are a lot of other things that could happen to
18 the job.

19 THE COURT: I think the problem with what you are
20 saying is -- you are talking about things that could happen.
21 I'm talking about something -- or Mr. Carr rather has
22 requested she be told about something that has happened. As
23 far as the status of the defendants, from my review of the
24 file, what you are obviously -- I don't know of any indemnity

1 agreement he's got with this employer, but the other things
2 are matters that one can deduce from looking at the file and
3 I think the likelihood of any of the others happening is
4 remote to none.

5 MR. CARR: Your Honor, the whole idea anyway is to
6 keep her not prejudiced. Counsel is suggesting that things
7 be proposed to her that could conceivably cause her to be
8 prejudiced. The whole idea of this is to make sure it's a
9 juror who is not prejudiced. Currently she has some
10 information that could conceivably prejudice her against
11 Plaintiff's counsel, that is that her brother-in-law is being
12 sued by my office. Well, that isn't true, she should be told
13 that that isn't true. Certainly she should not be told, but
14 there is a possibility that he could become a party. There
15 is a possibility he could be held liable, because as counsel
16 says that, if she is told that possibility then she may have
17 prejudice, which I'm sure counsel doesn't want this juror to
18 be prejudiced against plaintiffs' counsel. Therefore, she
19 should not be told something that could conceivably cause her
20 to be prejudiced. If those events come up, if he does become
21 a party defendant and if she learns of that, she may never
22 learn it. Her mother -- if he does become a third party or
23 anything else and if she learns it, then she will have to be
24 inquired again, has this prejudiced you. But at this point

1 in time, it has not occurred. He is not a defendant. I
2 think she should be -- her mind should be laid to rest that
3 there is no reason for her to be prejudiced against us. It's
4 nice you are not prejudiced, but in fact there is no reason
5 for you to be prejudiced anyway.

6 MR. HEINEMAN: We certainly don't want that said to
7 her -- that statement.

8 MR. CARR: That's the essence.

9 THE COURT: I wouldn't say that to her.

10 MR. HEINEMAN: I think if you are going to say
11 anything to her, you've got to make clear to her that she
12 never was -- that her brother-in-law never was a party to
13 this thing, so that she doesn't think that something has been
14 done to eliminate --

15 MR. CARR: There is no problem with that, we don't
16 object to that.

17 THE COURT: That's a very good point. That's
18 absolutely right. I don't want to tell her something that's
19 speculative. I would only want to tell her something that's
20 reflected in the file, what you've requested that I tell her
21 is reflected in the file. I will tell her that. And, then I
22 think that the matter is over. It's a practical matter.
23 Again, the same ground rules, I don't want anyone to mention
24 anything about asking questions while she is in the room,

1 coming in the room, or leaving the room.

2 MR. HEINEMAN: Your Honor, may the record show that
3 our position should be that she should be talked to by the
4 Judge in the manner that we suggested, and we disagree with
5 the method being used by the Court?

6 THE COURT: I think the record is clear on that.
7 I'll have her brought back in.

8 (Juror McCann present in Chambers.)

9 THE COURT: Welcome back.

10 JUROR McCANN: Oh, yeah.

11 THE COURT: One last thing, and I should have told
12 you this at first. I want --, I've reviewed the file, and
13 one thing that I want to explain to you so that you
14 understand, you understand that your brother-in-law, Steve
15 Arnold?

16 JUROR McCANN: Right.

17 THE COURT: You understand that Steve Arnold is not
18 named as a defendant in the case?

19 JUROR McCANN: Okay.

20 THE COURT: Derby Refinery is named as a
21 defendant. Your brother-in-law, Steve Arnold, is not named
22 as a defendant in the case. You understand that?

23 JUROR McCANN: Okay.

24 THE COURT: Does that change anything that you

1 told? --

2 JUROR McCANN: No, huh-uh.

3 THE COURT: Okay. Thank you. I appreciate your
4 following the directions that I gave you a long time ago
5 about reporting things, and I appreciate you doing that.

6 JUROR McCANN: I didn't think all that stuff would
7 come up. Every time I turn around somebody else is coming
8 up. Oh, my, don't tell me nothing.

9 THE COURT: That's a good way to take it. Thank
10 you very much for letting us know.

11 JUROR McCANN: Oh, okay. Thank you.

12 (Juror McCann exits the room)

13 MR. HEINEMAN: On the record, Your Honor, one thing
14 that I think, unless I misunderstood you, you didn't tell her
15 that he never had been a party to the case once it started.

16 THE COURT: You are right. See if she can get her
17 back here. That was my mistake. You are right, I didn't say
18 that.

19 MR. SIGFRIED: You did say you reviewed the record
20 and he was not a party to the case.

21 MR. HEINEMAN: But that could mean now. That's
22 right, but that could mean now. That doesn't mean that he
23 never was.

24 THE COURT: I should have said that.

1 (Juror McCann present in Chambers.)

2 THE COURT: Now this getting you back here again is
3 my fault. I forgot to tell you, and I should have, I have
4 reviewed the file. Your brother-in-law is not a defendant in
5 the case. He never has been a defendant. I wanted to make
6 that clear also. I have reviewed the entire file and that's
7 clear on the file.

8 JUROR McCANN: Okay.

9 THE COURT: You understand that?

10 JUROR McCANN: Yeah. Right. Right.

11 THE COURT: Thank you very much.

12 JUROR McCANN: Oh, okay.

13 (Juror McCann exits the room. Mr. Craven present at this
14 time.)

15 MR. HEINEMAN: Your Honor, we would at this time
16 move that this juror be excused, and the reason for that is
17 that the very fact that she had a question in her mind that
18 she thought might affect her behavior as a juror in some way
19 and reported it to the Court is sufficient to raise a problem
20 as to whether she can remain a totally unbiased, unprejudiced
21 juror. I'm reminded by my cohort over here that in the --
22 when judges are -- when a judge even gets the impression,
23 asks himself the question should he recuse himself, that the
24 guidelines on the bench are that he should do so, by virtue

1 of the fact that he's even raised that, raised that question
2 in his own mind. The very fact that this lady has raised a
3 question in her mind, we think is sufficient to raise a doubt
4 or a question as to whether or not she can be a totally fair
5 and impartial juror. We think she should be excused. In
6 addition to that, we are always going to wonder about this
7 lady. It's entirely possible that this case that her
8 brother-in-law is involved in may go to judgment during the
9 pendency of this litigation, and we are always going to
10 wonder about whether or not this thing is going to have any
11 impact on her, and therefore we are making that motion at
12 this time.

13 THE COURT: Mr. Carr, do you have any rebuttal?

14 MR. CARR: I'd like to confer with Mr. Seigfreid
15 before we respond. If we could be excused for just a
16 minute?

17 MR. HEINEMAN: We are going to file a memorandum,
18 written memo for the Court and motion on this subject.
19 Okay?

20 (Following a brief recess, the following proceedings were had
21 in Chambers, outside the presence of the jury.)

22 MR. CARR: Your Honor, we agree. Let the juror
23 go.

24 THE COURT: I'm not so sure I want to.

1 MR. HEINEMAN: Judge, for the record I mentioned to
2 the Court while you were out, we intend to file a written
3 motion and memorandum on the subject, and we -- obviously
4 because we have made this motion and the other side has
5 agreed, we object to going forward with any evidence in front
6 of this jury with this lady, with this lady on the jury.

7 MR. CARR: We don't object to recessing at this
8 time then if that's what counsel is asking, in order to give
9 the Court time to make its determination.

10 THE COURT: It's 4:18, we would break at 4:45
11 anyway. I think that might not be a bad idea.

12 MR. CRAVEN: We are not moving for a recess.

13 THE COURT: I know you are not. I know you're
14 not. But, I'm not sure that I want to let her go. And we
15 would have less than a half hour back in court anyway. So, I
16 think that might not be a bad idea. I'll just explain to
17 them that we had to break early because of some other matters
18 and to come back Monday.

19 MR. CARR: All right.

20 MR. CRAVEN: Just a point in inquiry. With
21 reference to filing a written motion and memorandum, is that
22 necessary since both sides urge that keeping her would be
23 error?

24 THE COURT: Well, that is really something that is

1 your decision. If you feel that you should file, it then go
2 ahead. If you feel that -- both counsel are in agreement
3 that you need not, I'm not asking you to file it. I'm not
4 saying that you shouldn't file it either.

5 MR. CRAVEN: I'm so used to being in an adversary
6 situation with Mr. Carr, when he agrees with me --

7 THE COURT: Really taken off guard, uh-huh.

8 MR. CRAVEN: Doesn't take me off guard, just seems
9 that we shouldn't file a memorandum unless the Court directs
10 that we do so.

11 THE COURT: I'm not directing that you do so. If
12 you wish to, you may. If you wish to, you may. But --

13 MR. CARR: We have no request to.

14 THE COURT: You are agreeing to the motion?

15 MR. CARR: We are agreeing to the motion. We are
16 not agreeing with the same reasons, we agreed with the
17 result.

18 MR. CRAVEN: Will he share the reasons with us?

19 MR. CARR: We just agree that she should be
20 excused.

21 THE COURT: I will consider it and I will let the
22 jury go until Monday morning at 9:30.

23 STATE OF ILLINOIS)

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TWENTIETH JUDICIAL CIRCUIT) SS
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COUNTY OF ST. CLAIR)

I, DEBRA M. MUSIELAK, certify the foregoing to be a
true and accurate transcript of the testimony and proceedings
in the above-entitled cause.

Dated this 17 day of March, 1986.

Debra M. Musielak

1 STATE OF ILLINOIS)
2 TWENTIETH JUDICIAL CIRCUIT) SS
3 COUNTY OF ST. CLAIR)
4

5 I, RICHARD P. GOLDENHERSH, one of the Judges in and
6 for the Twentieth Judicial Circuit, do hereby certify that I
7 have examined the aforesaid transcript of proceedings, and
8 certify the foregoing to be a true and accurate transcript of
9 the testimony and proceedings in the above-styled cause.

10 Dated this ____ day of March, 1986.
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16 HON. RICHARD P. GOLDENHERSH
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