

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

FRANCES E. KEMNER, et al.)
)
 Plaintiff,)
)
 vs.) No. 80-L-970
)
 MONSANTO COMPANY,)
)
 Defendant.)

Before the HON. RICHARD P. GOLDENHERSH, Judge

REPORT OF PROCEEDINGS

JURY TRIAL

March 31, 1986

APPEARANCES:

MR. REX CARR & MR. JERRY SEIGFREID, Attorneys at Law
Appeared on Behalf of the Plaintiff.

MR. KENNETH R. HEINEMAN & MR. JOSEPH NASSIF,
Attorneys at Law
Appeared on Behalf of the Defendant.

MARSHA SCHNIPPER
Official Court Reporter

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6
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10
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12
13
14
15
16
17
18
19
20
21
22
23
24

INDEX

PAGE

DR. RAYMOND SUSKIND
CROSS EXAMINATION BY MR. CARR 2

EXHIBITSPage
IdentifiedPage
Admitted

EXHIBITS SUBMITTED ON BEHALF OF THE PLAINTIFFS:

Plaintiffs' Exhibit No.:

1666

191

1 BE IT REMEMBERED AND CERTIFIED that heretofore, on
2 to-wit: March 31, 1986, being one of the regular judicial
3 days of this Court, the matter as hereinbefore set forth came
4 on for hearing before the Honorable Richard P. Goldenhersh, a
5 Judge in and for the Twentieth Judicial Circuit of the State
6 of Illinois, Belleville, St. Clair County, Illinois, and the
7 following was had of record, to-wit:

8
9 * * * * *

10 THE COURT: Morning

11 RAYMOND R. SUSKIND,
12 being called on behalf of the defendant, having been first
13 duly sworn, testified as follows:

14 CROSS EXAMINATION

15 BY MR. CARR:

16 Q. Morning, Dr. Suskind. Do you have Plaintiffs'
17 Exhibit 1805 with you?

18 A. What is that, sir?

19 Q. It would be chapter 19, Doctor -- there, you have
20 it now?

21 A. Thank you.

22 Q. We were looking at that at the close of the court
23 day last week. If you could turn to the -- well, it's on the
24 first page of Exhibit 1805, the paragraph under the heading

1 enzyme induction. Do you see that, sir, on the first page
2 Doctor?

3 A. Yes, I do, sir.

4 Q. Have you read that paragraph recently, Doctor?

5 A. I haven't read it recently, but it isn't too long
6 to re-read, sir.

7 Q. Would you read it to yourself now so that I could
8 ask you a few questions about it.

9 A. Yes, sir.

10 Q. Now, Doctor, the statement about six lines down
11 where it says it appears that TCDD binds with the receptor in
12 the cytosolic portion of the cell and this complex migrates
13 into the nucleus, that statement in effect says there's a new
14 complex made, that is, the receptor plus the TCDD, isn't that
15 correct, Doctor?

16 A. No, not really, sir.

17 Q. What does it mean, Doctor?

18 A. Well, for all substances like TCDD which may
19 combine with cell components, there is a specific receptor
20 whether it's either on the membrane or in this instance the
21 cytosolic portion of the cell, and this simply is a
22 combination between the TCDD and whatever the receptor is,
23 sir.

24 Q. All right. And this then is -- moves into the

1 nucleus of the cell according to this statement?

2 A. According to Dr. Matsumura.

3 Q. It causes a pleiotropic response, does it, sir? Do
4 you see that, sir?

5 A. Yes, I do.

6 Q. What does it-- what does pleiotropic mean there,
7 Doctor?

8 A. I'm not altogether sure. It could mean a variety
9 of responses.

10 Q. Well, that's --

11 A. In this instance as he points out, this one change
12 may lead to a pleiotropic response, pleiotropic response
13 would mean many different changes. Now, I don't know that
14 Dr. Matsumura has demonstrated that, but he refers to Allen
15 Poland and Nebert to support that there may be induction of
16 other proteins.

17 Q. Doctor, the pleiotropic response simply means
18 according to the dictionary definition that I have here, it's
19 a quality of a gene to manifest itself in a multiplicity of
20 ways?

21 A. Right, right.

22 Q. So what this complex of TCDD plus the receptor it's
23 -- causes reaction in that gene apparently, many different
24 reactions, correct, sir?

1 A. Well, it might be responsible for -- are you saying
2 it causes different reactions in genes?

3 Q. No, it is a reaction in the gene that causes many
4 other reactions. The word pleiotropic refers to the quality
5 of a gene to do something, that is, to cause a number of
6 other actions, correct, sir?

7 A. That is -- that's correct, it's numerous kinds of
8 reactions that may occur.

9 Q. So this particular change, that is, the TCDD
10 receptor complex in that cell causes a multiplicity of other
11 responses according to this statement, isn't that correct,
12 sir?

13 A. It has the potential for doing that, sir.

14 Q. Well, Doctor, it doesn't say that it has the
15 potential. It says it leads to many, many different changes,
16 doesn't it, sir?

17 A. Well, according to Poland--

18 Q. Doctor, I'm referring, if you would, Doctor, to
19 this statement, what this statement says, Doctor. According
20 to this statement, sir, the pleiotropic response, that is,
21 the one change the intermediate, the TCDD -- it's a reactive
22 intermediate, is it not, sir, the TCDD and the receptor
23 combined?

24 A. Well, it -- it could be an end process and it could

1 be a process which induces other changes as doctor -- as Dr.
2 Matsumura points out. However --

3 Q. Dr. Matsumura didn't prove this, sir?

4 MR. CARR: Your Honor, would you ask the witness to
5 start out today responding to my questions.

6 Q. I'm not asking whether he proved it, Doctor. I'm
7 simply talking --

8 THE COURT: Wait a second. That part after however
9 was not responsive to the question. Now please just respond
10 to the question that is asked of you.

11 THE WITNESS: Yes, sir.

12 THE COURT: Thank you, Doctor. You may proceed Mr.
13 Carr.

14 Q. Doctor, I'm talking about in this situation the
15 TCDD receptor complex is something that is in between one
16 response and several other, it's an intermediate, is it not,
17 Doctor?

18 A. It could be, sir, yes.

19 Q. Yes. And it's an intermediate that causes other
20 actions according to this statement, isn't that correct, sir?

21 A. It might be, sir, yes.

22 Q. According to this statement that's what Dr.
23 Matsumura is saying, is he not?

24 A. I believe that's what he's attempting to say.

1 Q. All right. So he's saying that the TCDD receptor
2 complex is a reactive intermediate and has -- and leads to
3 many, many different changes, is that correct, sir?

4 A. That is what this statement reads, sir.

5 Q. So, Doctor, this is a reaction then that's taking
6 place where -- yes, it's taking place in the nucleus, is it
7 not, sir? This complex goes into the nucleus and there --
8 from there it causes many, many, according to this statement
9 many, many different changes, does it not, sir?

10 A. No. It could have its action in the -- in the
11 cytosolic portion of the cell as well.

12 Q. Well then, Doctor, to do that wouldn't it have to
13 move out of the nucleus?

14 A. No, it --

15 Q. According to this statement --

16 A. It starts in the cytosolic portion of the cell,
17 which is not the nucleus, sir.

18 Q. Right. And then according to this statement it
19 migrates into the nucleus, does it not, sir?

20 A. According to this statement, yes.

21 Q. Now, this is what I'm discussing, Doctor, this
22 statement. It migrates after it binds and moves into the
23 nucleus, isn't that correct, sir, according to this
24 statement?

1 A. That's what this statement says, sir.

2 Q. And there it causes a -- many, many different
3 changes, correct, sir, according to this statement?

4 A. According to this statement.

5 Q. If it is true, Doctor, if this statement is true,
6 then the TCDD is directly or indirectly causing these many
7 different changes, is it not, sir?

8 A. It may play a role in these changes, sir.

9 Q. According to this statement it does play a role,
10 does it not, sir?

11 A. According to the quotations that are used, yes,
12 sir.

13 Q. And, Doctor, if this statement is true then, a
14 statement that the TCDD is not really doing anything in
15 particular is untrue, isn't that correct, sir?

16 A. No, sir.

17 Q. Doctor, is the TCDD causing the -- is it binding to
18 the receptor and is this reactive intermediate, this form
19 there, is it causing the-- according to this statement these
20 many, many different changes, sir?

21 A. Yes, but there is a model system that is involved,
22 sir.

23 Q. Doctor, I'm sure there is, but I'm talking about
24 the TCDD in this situation, Dr. Suskind. According to this

1 statement the TCDD is causing these many, many different
2 changes, is it not, sir?

3 A. It's the TCDD receptor complex, which according to
4 this statement leads to many different changes using the
5 model systems quoted from Poland and Nebert.

6 Q. Yes, Doctor.

7 A. I think those are very important.

8 Q. So, Doctor, a statement that Dr. Dost might have
9 said that there are no -- the TCDD is not really doing
10 anything in particular wouldn't be true, would it, sir?

11 A. Who said that, sir?

12 Q. Dr. Dost in behalf of the defendant.

13 MR. HEINEMAN: Your Honor, may counsel approach the
14 bench?

15 THE COURT: Yes, you may.

16 (At this time a conference was had at the bench out
17 of the hearing of the jury.)

18 MR. HEINEMAN: Is this one of those situations when
19 the Court has demanded that I not be permitted to ask him for
20 a citation for a statement like that?

21 MR. CARR: It's Page 110 on November 5th, 1985.

22 THE COURT: Okay.

23 MR. HEINEMAN: 110 where?

24 MR. CARR: Page 110 on November 5, 1985.

1 MR. HEINEMAN: Thank you.

2 (The following proceedings were had in open Court.)

3 Q. Would that be correct, sir?

4 A. I can't answer that question, sir, cause I don't
5 know what the question that was raised with Dr. Dost was --

6 Q. Doctor --

7 A. -- Nor do I know what the--

8 Q. Please assume, if you would, sir, that I'm stating
9 correctly what Dr. Dost said, would you, sir?

10 A. I cannot answer that question.

11 MR. CARR: Your Honor, would you direct the witness
12 to assume as I'm asking him to assume.

13 THE COURT: Doctor, please assume it. Please take
14 it as an assumption what counsel stated. You may continue,
15 Mr. Carr.

16 Q. Doctor, the TCDD isn't just stored there, is it,
17 sir? It's not just stuck there. It has, in fact, done
18 something, has it not, sir, that is, it has bound with the
19 receptor and the combination, this complex has caused many,
20 many other responses, isn't that correct, sir?

21 A. In these model systems, yes, sir.

22 Q. Yes.

23 A. This is what --

24 Q. Yes. That's what I'm talking about, Doctor. Did

1 you understand I started talking about this system this
2 morning, and I'm still talking about it? Do you understand
3 that, sir?

4 A. No, I don't.

5 Q. Doctor, I been telling you that for the last
6 fifteen minutes. I'm talking about this paper, this system,
7 this statement, Doctor.

8 A. Okay.

9 Q. Now, we got that laid to rest. I'm talking about
10 that, about what we're talking about this morning, that's
11 what I'm talking about, Doctor.

12 A. Yes.

13 Q. Doctor, the TCDD then if it has formed this, formed
14 with this receptor and has led to this pleiotropic response,
15 it is in fact doing something or that is responsible for a
16 number of things, isn't it, sir?

17 A. It might, sir, yes.

18 Q. Yes. And if Dr. Dost said to this jury that it's
19 just stuck there and not really doing anything in particular,
20 that would be incorrect, wouldn't it, sir?

21 A. I can't say, sir.

22 Q. Doctor, the TCDD is doing something, isn't it, sir?

23 A. According to this paper, sir.

24 Q. Yes, Doctor. That's what I've asked you about.

1 A. Yes, sir.

2 Q. This paper would indicate that Dr. Dost is
3 incorrect.

4 A. No, sir.

5 Q. Doctor, is the TCDD doing something?

6 A. According to this paper, yes.

7 Q. Yes. And according to this paper then, if Dr. Dost
8 says it's not really doing in particular, according to this
9 paper he would be incorrect, wouldn't he, sir?

10 MR. HEINEMAN: Objection, Your Honor. May counsel
11 approach the bench.

12 THE COURT: Yes, you may.

13 (At this time a conference was had at the bench out
14 of the hearing of the jury.)

15 MR. HEINEMAN: Your Honor, it is patently unfair
16 for Mr. Carr to take a one statement out of context by Dr.
17 Dost without saying, without reciting what the question was,
18 what the context in which it was stated and ask this witness
19 to comment upon its accuracy. Dr. Dost testified for many
20 days, and he testified at great length about this subject,
21 and it's absolutely ridiculous to take one tiny statement out
22 of context without giving this witness the opportunity to see
23 the question, see the answer and make a comment as to whether
24 it's accurate or not.

1 THE COURT: Not necessarily. That would only be if
2 the particular question and answer which was taken has been
3 misleadingly interpreted.

4 MR. HEINEMAN: How do we know that?

5 MR. CARR: I point out, your Honor, that this is
6 exactly what Mr. Heineman did with statements of Dr. Carnow
7 and Dr. Silbergeld, that he gave to Dr. Dost and Dr.
8 Zahalsky. He took a statement of Dr. Zahalsky's and gave it
9 to Dr. Dost and call for this explanation. I'm simply taking
10 the statement of Dr. Dost and asking this witness whether
11 it's true or not just as you did a number of times.

12 MR. HEINEMAN: You will recall, Mr. Carr, that the
13 statements were taken in context, which I gave him.

14 MR. CARR: Well, mine are most certainly in context.

15 MR. HEINEMAN: No.

16 THE COURT: No, you both used some brief forms like
17 this, and I think any time that I felt that there was
18 anything improper about it is if I felt that the context of
19 the question and answer were in some way misleading. Are you
20 saying that in fact it is?

21 MR. HEINEMAN: Your Honor, we don't have the
22 question, we don't have the answer. He hasn't given it to
23 us.

24 THE COURT: No, no, no, no, you misunderstand what

1 I'm saying. If I reviewed it and decided it was in fact
2 misleading, not that it had to be given to the witness, the
3 times both of you have done this it has not been given to the
4 witness. What I'm saying was the only time I felt that it
5 might be improper is if I felt that it was misleadingly
6 characterized in either your presentation or your
7 presentation. I didn't make myself clear on that so unless
8 you're saying that, I don't think there's anything improper.
9 If there is, I'll look at it myself and decide whether it is.

10 MR. HEINEMAN: Well, Your Honor, I don't have the
11 transcript. As I'm sure you're aware, Mr. Carr doesn't give
12 me an outline of what he's going to ask the witness about.

13 MR. CARR: And I didn't get an outline when you
14 asked these questions about Dr. Carnow and Dr. Silbergeld.

15 MR. HEINEMAN: You interrupted me, Mr. Carr. I was
16 responding.

17 THE COURT: Gentlemen, let's calm down.

18 MR. HEINEMAN: My statement to the Court, your
19 Honor, is that I can't tell you right now the extent to which
20 this statement is taken out of context, because I don't have
21 the transcript with me right now.

22 THE COURT: Fine.

23 MR. HEINEMAN: I'm objecting to his demanding that
24 this witness give an opinion as to whether it's right or

1 wrong when the witness has said that he doesn't know the
2 question that was asked, he doesn't know the rest of the
3 quote, he doesn't know anything about the way it was stated
4 so he can't say whether it was right or wrong.

5 THE COURT: He doesn't have to have that. Your
6 objection is overruled. Let's proceed.

7 (The following proceedings were had in open Court.)

8 Q. Dr. Suskind --

9 A. Yes, sir.

10 Q. According to Dr. Matsumura's article, the TCDD has
11 been responsible for many, many different changes, has it
12 not, sir?

13 A. It may be responsible, sir.

14 Q. Doctor, according to this article, according to
15 what Dr. Matsumura has said it leads to many, many different
16 changes?

17 A. That's what this article reads, sir, yes.

18 Q. He's not saying may, is he, sir?

19 A. He is indeed, sir, cause he's quoting two people.

20 Q. Excuse me, Doctor. Isn't he saying there is a
21 pleiotropic response, that is, one change, TCDD receptor
22 complex leads to many, many different changes? Doesn't it
23 say that, sir?

24 A. In this context, yes, sir.

1 Q. Doctor, that's what I'm asking you about.

2 A. Yes, sir.

3 Q. Did you understand I'm talking about Dr.
4 Matsumura's article?

5 A. Yes, I am.

6 Q. He interprets Poland and Nebert's article, does he
7 not, sir, to mean that this TCDD receptor, this reactive
8 intermediate leads to many, many different changes, doesn't
9 he, sir?

10 A. According to Dr. Matsumura, yes.

11 MR. HEINEMAN: Excuse me, Your Honor. May counsel
12 approach the bench.

13 THE COURT: Yes, you may.

14 (At this time a conference was had at the bench out
15 of the hearing of the jury.)

16 MR. HEINEMAN: Your Honor --

17 THE COURT: Just a second.

18 MR. HEINEMAN: Your Honor I would object to this
19 entire line of questioning as going beyond the scope of the
20 direct examination. This witness was never asked about this
21 subject nor was he ever asked about this particular article
22 and Dr. Matsumura's remarks and, therefore, I would object to
23 this entire line of questioning as being beyond the scope of
24 the direct.

1 MR. CARR: This witness said he's a toxicologist,
2 your Honor. He was asked by counsel many, many statements as
3 to toxicity of TCDD and how it reacts, and I don't think it's
4 at all beyond the scope of the direct examination.

5 THE COURT: I don't think it is either. Overruled.

6 MR. HEINEMAN: May my objection go to the entire
7 line of the--

8 THE COURT: Sure. It will be a continuing
9 objection. Sure.

10 (The following proceedings were had in open Court.)

11 Q. And, Doctor, as to the significance of these
12 changes, that is, the induction of many proteins and so
13 forth, Dr. Matsumura goes on to say that on the next page 26
14 -- 262 they reflect some profound biochemical changes that
15 are taking place. However, what I would like to emphasize
16 here is that we still do not have the whole picture, isn't
17 that correct, sir?

18 A. That's what Dr. Matsumura states, sir.

19 Q. And, Doctor, with regard to the plasma membrane
20 alterations, he also says the last sentence on the membrane
21 section, it was clear that some profound changes were taking
22 place in the plasma membranes, isn't that correct, sir?

23 A. According to one author, sir, yes.

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

1 disregard that statement of Dr. Suskind?

2 A. Why?

3 MR. CARR: He is editorializing. He has no right to
4 do so.

5 THE COURT: Objection --

6 MR. HEINEMAN: Objection, Your Honor. May counsel
7 approach the bench?

8 THE COURT: Yes, you may.

9 (At this time a conference was had at the bench out
10 of the hearing of the jury.)

11 MR. HEINEMAN: Your Honor, the witness is making a
12 directly responsive answer. Mr. Carr is suggesting that this
13 is Dr. Matsumura's statement, and, in fact, he is quoting
14 Brewster, 1982.

15 THE COURT: No way that was responsive. When he
16 responded before according to this paper, he was correct, and
17 that did not draw an objection that he was not responsive.
18 The clear implication of his editorializing and non
19 responsive answer was to convey to the jury that this author
20 stands alone. He was not asked any question that would
21 justify any kind of comment on the question of whether this
22 person stands alone or not, whether any article, scientist,
23 or group of scientists agrees with him or disagrees with them
24 or partially agrees with him. It was total editorializing,

1 which was not responsive to the question that was asked of
2 him.

3 MR. HEINEMAN: Well, your Honor--

4 THE COURT: I'll sustain the objection, and I will
5 order the jury to disregard that remark.

6 MR. HEINEMAN: I would object to the Court's
7 instruction to the jury. I think it's clearly responsive.
8 The article itself states that it is referring to one
9 particular article, and that's what is being cited for and
10 that's what the witness was responding.

11 THE COURT: The article may show that. The question
12 didn't ask that. He has to respond to the question, and his
13 answer was not responsive. Let's proceed.

14 (The following proceedings were had in open Court.)

15 THE COURT: Ladies and gentlemen, the answer was not
16 responsive to the question. I'm ording you to disregard the
17 answer that was given. You may proceed.

18 Q. Doctor, in the section on receptor systems on Page
19 263, sir, it makes, Dr. Matsumura makes a reference to the
20 hypercholesterolemia in humans exposed to TCDD that was
21 mentioned by you in your presentation, does he not, sir? The
22 third paragraph under the heading receptor systems.

23 A. Now, what is the question please? Would you repeat
24 the question.

1 (Court reporter read back the question.)

2 A. No, sir.

3 Q. He doesn't say, sir, quote " moreover, they also
4 tie in with the possible hypercholesterolemia in humans
5 exposed to TCDD that was mentioned earlier in Dr. Suskind's
6 presentation?" Doesn't he say that, sir? Dr. Suskind, are
7 you listening to me?

8 A. Yes, I am, sir.

9 Q. Did I read that correctly and did he not say that,
10 sir?

11 A. I'm sorry, I thought you were referring to the
12 sentence just at the end of the second paragraph, which reads
13 familial--

14 Q. I identified the third paragraph, Doctor. Sir?

15 A. I see it now, sir, yes.

16 Q. He does tie it in with or says they -- these
17 reactions in the receptor systems tie in with what you
18 discovered was possible hypercholesterolemia according to
19 this statement, does it not, sir?

20 A. No, sir.

21 Q. Doctor, the results that he saw in the receptor
22 systems dealing with low density lipoprotein and interactions
23 with it's receptors and the metabolization of it, he says
24 it's of interest, he says these results are of interest in

1 providing clues as to the mechanism of action of TCDD, and,
2 moreover, they also tie in with possible hypercholesterolemia
3 in humans exposed to TCDD that was mentioned earlier in Dr.
4 Suskind's presentation. Sir, isn't he, when he says that,
5 isn't he saying that the possible hypercholesterolemia is
6 tied in with these laboratory results that's mentioned in the
7 first two paragraphs of that section? Isn't there a clear
8 link, a clear connection between those statements, Doctor?

9 A. No, sir.

10 Q. There is no -- You just think he threw that in
11 there just to be--

12 A. No, not according to my interpretation. That was
13 --

14 Q. According to Dr.--

15 A. That was Matsumura's interpretation.

16 Q. Doctor, do you understand I was asking you about
17 Dr. Matsumura's interpretation --

18 A. Right.

19 Q. -- Not yours. You disagree with Dr. Matsumura's
20 interpretation, do you not?

21 A. In this respect -- you haven't asked me that.

22 Q. Excuse me, Doctor. You disagree, do you not, sir?

23 A. Are you asking me that question, sir?

24 Q. Doctor, did you hear me ask it?

1 A. I disagree with that interpretation, yes, sir.

2 Q. Doctor, I'm asking about Dr. Matsumura's
3 interpretation, not your interpretation. Do you understand
4 that, sir?

5 A. No, I do not, sir.

6 Q. Doctor, do you understand I been talking about
7 Matsumura's article this morning?

8 A. You asked me a question in which I'm involved, sir.

9 Q. Certainly you're involved, Dr. Suskind.

10 A. So I have a responsibility to respond --

11 Q. No, Dr. Suskind, you have the responsibility to
12 respond the way the Court has ordered you to do so dozens of
13 times in this case to my question. You haven't the right to
14 go beyond and answer something that perhaps Mr. Heineman
15 might want you to say or you might want to say. You're
16 obligated to answer my question, sir. You do understand that,
17 don't you, Doctor?

18 A. I do.

19 MR. HEINEMAN: Objection, Your Honor. May counsel
20 approach the bench.

21 THE COURT: Yes, you may.

22 (At this time a conference was had at the bench out
23 of the hearing of the jury.)

24 MR. HEINEMAN: I object to the statement by Mr.

1 Carr his arrogating to himself the responsibility to instruct
2 and chastise this witness. He has no right to do it, and I
3 object to it, and I object to his statement, I ask that it be
4 stricken, I ask that the jury be instructed to disregard it.
5 It's clearly improper.

6 THE COURT: No, it's not. It happens to be a
7 correct statement it happens to be a correct recitation of
8 what has gone on before. Both of you gentlemen are officers
9 of the Court. I have asked both you at times to talk to
10 witnesses and to convey certain information. If I feel in
11 the exercise of my discretion that it promotes the rules of
12 this Court and the fulfillment of the orders of this Court
13 for counsel to do something either outside the presence of
14 the jury or in the presence of the jury and have it done or
15 allow it to be done and in the exercise of my discretion, it
16 happens to be proper. Nothing improper was done in this
17 circumstance. Your motion is denied. Let's proceed.

18 (The following proceedings were had in open Court.)

19 Q. Doctor, again, if you would, confine your answers
20 to what Dr. Matsumura is saying here. Will you do that, sir?

21 A. I will, sir.

22 Q. He is saying there is a tie with the possible
23 hypercholesterolemia that he says was mentioned by you and
24 these other changes described above, is he not, sir?

1 A. Dr. Matsumura says that, sir.

2 Q. Yes. He's also saying because there is a similarity
3 of effects found in experimental answers, he's saying--
4 experimental animals, he's suggesting that this might show
5 the need for further studies in the area, does he not, sir?

6 A. That's what Dr. Matsumura states, sir.

7 Q. Doctor, he goes on to say that his group is looking
8 at receptor systems other than low density lipoprotein
9 receptors, doesn't he, sir?

10 A. That's what Dr. Matsumura states, sir.

11 Q. And he states also that they find effects which
12 seem to be related to TCDD, the insulin receptor seems to be
13 stimulated at lower doses, but depressed at higher ones,
14 correct, sir?

15 A. Dr. Matsumura says that, sir.

16 Q. He goes on to say, does he not, Doctor, that the
17 epidermal growth factor receptor also seemed to show a marked
18 depression after TCDD administration?

19 A. That's what Dr. Matsumura states in this paper,
20 sir.

21 Q. He states that this growth factor receptor was the
22 one which was the most sensitive. It showed an effect at the
23 lowest TCDD dose sofar as we have studied, isn't that
24 correct, sir?

1 A. According to Dr. Matsumura, yes, sir.

2 Q. Doctor, what he's saying here is that the epidermal
3 growth factor was depressed at the lowest dose that they gave
4 of TCDD, they couldn't find a dose or didn't find a dose in
5 their studies that did not cause this depression of this
6 growth factor, isn't that correct, sir?

7 A. No, sir.

8 Q. Isn't that what they're saying?

9 A. No, that is not what they said, sir.

10 Q. Doctor, they say that this showed an effect at the
11 lowest TCDD dose?

12 A. The lowest dose that he used, sir.

13 Q. That's what we're talking about, Doctor.

14 A. There could have been a lower dose though.

15 Q. Doctor, aren't we talking about-- do you understand
16 I'm talking about Dr. Matsumura's study?

17 A. Yes, sir.

18 Q. You understand I been talking about it all morning,
19 sir?

20 A. Umhm.

21 Q. And doesn't he say, Doctor, this study we been
22 talking about thus far this morning that at the lowest TCDD
23 dose, TCDD dose that they used?

24 A. Yes.

1 Q. They still found this depression of the epidermal
2 growth factor?

3 A. That's what he says, sir, yes.

4 Q. He also goes on to say that we, that is, the
5 scientists that he is working with, are far from an
6 understanding of the unique action of TCDD, correct, sir?

7 A. I don't see the quotation, sir.

8 Q. You don't see that quotation there?

9 A. No, sir.

10 Q. It's the last sentence on that page of text quote
11 " we are far from understanding -- from an understanding of
12 the unique action of TCDD, but we are hoping that the
13 combined efforts of many biochemical toxicologists will
14 eventually provide the answers we seek" end of quote?

15 A. I see that, yes, sir.

16 Q. All right. Now, Doctor, you have stated for this
17 jury on a number of occasions that if the -- if there is no
18 chloracne in the human, that there are no clinical or
19 laboratory or systemic effects that follow TCDD exposure
20 and/or absorption, isn't that correct, sir?

21 A. Yes, in my experience, sir.

22 Q. I'm sorry, sir?

23 A. In my experience.

24 Q. And that's what you've stated as your scientific

1 facts, judgment here for this courtroom to believe is true,
2 isn't that correct, sir?

3 A. I believe it's true, sir, yes.

4 Q. If there is no chloracne, there's not going to be
5 any clinical effect, laboratory effect or systemic effect,
6 isn't that correct, sir, according to you?

7 A. Yes, according to my observations, sir, yes.

8 Q. Doctor, you're making that observation as a -- now
9 as a toxicologist, aren't you, sir?

10 A. I am making that observation as a scientist who
11 with experience in toxicology and clinical research, sir.

12 Q. Yes. And, Doctor, what you're telling the world
13 and what you've told the jury here and sworn to here, look,
14 if you don't have chloracne, don't worry about dioxin, it's
15 not doing anything to you that you need to worry about.
16 That's what you're saying to the world, are you not, sir?

17 A. Yes, I am, sir.

18 Q. What you're saying is just relax, go in all the
19 dioxin you want to, be exposed to as much as you want, and if
20 you don't get chloracne, there is going to be nothing bad
21 happen to you, isn't that what you're saying?

22 A. No, sir, that is not what I am saying.

23 Q. All right. Are you saying that something bad can
24 happen to you without chloracne?

1 A. No, sir.

2 Q. Then you are saying if you don't get chloracne,
3 nothing bad has happened to you or is going to happen to you,
4 isn't that correct, sir?

5 A. That's what I have said, sir.

6 Q. That's what you're saying here and have said in
7 this courtroom, isn't that correct, sir?

8 A. That's what I published, sir, too, yes.

9 Q. So, this is a kind of reassurance then to the
10 people at Sturgeon, the people at Times Beach, the people at
11 Nitro who work there, the people at Seveso, the people around
12 the world, look at your skin, if you don't have chloracne,
13 nothing bad has happened to you, you have no clinical
14 effects, there are no clinical effects from it, there's no
15 laboratory effects from it, there's no systemic effects from
16 it if you don't have chloracne; that's what you said, haven't
17 you?

18 A. According to my experience, sir, yes.

19 Q. Isn't that what you said, sir?

20 A. I said, sir, yes.

21 Q. Yes. And, Doctor, now you just didn't limit it to
22 your experience. You testified here as a toxicologist based
23 upon your examination of the literature, based upon your
24 study of the animal studies, on the human studies, you've

1 given it as your opinion, sir, based not just on your
2 experience. You based it on your scientific expertise, have
3 you not, sir?

4 A. I based it on-- if you will let me -- without a yes
5 or no answer, I can explain that I have --

6 Q. Doctor, what I'd like for you to tell us is it not
7 true that you're giving your opinion, your judgment as a
8 toxicologist based upon your knowledge of what has gone on in
9 this world relating to TCDD, not just relating to your
10 experience?

11 A. In humans, sir, in humans.

12 Q. In humans, isn't that correct, sir?

13 A. Okay, yes.

14 Q. And you are disregarding then, I take it, by saying
15 in humans, you're disregarding what it says will happen in
16 animals, is that correct?

17 A. I'm not disregarding that, sir, no, I'm not.

18 Q. You're saying in humans if you don't get chloracne,
19 there's nothing, you're going to have no clinical effects
20 from exposure to dioxin if you're human. Now, if you're an
21 animal, you may die, but if you're a human, if you don't get
22 chloracne, you're not going to have any clinical effect,
23 you're not going to have any laboratory effects, that's what
24 you're saying based upon not your experience alone, Doctor,

1 but your experience, your study and your knowledge as a
2 scientist, isn't that correct, sir?

3 A. Yes, sir.

4 Q. Yes. Now, Doctor, insofar as your experience is
5 concerned, let's establish what experience you have had with
6 humans -- you haven't worked with animals at all, correct,
7 sir?

8 A. I have worked with animals, sir.

9 Q. Well, none of your judgments are based upon what's
10 happened to animals so we can disregard that, can't we, sir?

11 A. They are, too.

12 Q. Can we disregard, sir, what's happened to animals?
13 You don't extrapolate what's happened to animals to what's
14 going to happen to humans, do you, sir?

15 A. No, but one considers when doing a study like we
16 did like the morbidity study that if one wants to determine
17 the long-term effects, the long-term effects, one should be
18 looking at those organ systems which are known to have been
19 affected in an acute exposure, a subchronic exposure in
20 humans as well as the effect in animals.

21 Q. Doctor, what you are --

22 A. And my paper so states, sir.

23 Q. What you have said based upon your studies and upon
24 your knowledge is that whatever it does to animals, if it

1 doesn't cause chloracne in humans, you're not going to have a
2 clinical effect, a laboratory effect or a systemic effect,
3 isn't that what you've said, sir?

4 A. No.

5 Q. I thought you just got through saying that?

6 A. No, but what I said is that based upon human
7 experience, based upon human experience it would appear and
8 there's a substantial amount of scientific proof for it, that
9 chloracne is the hallmark of TCDD intoxication and it's the
10 first evidence of intoxication and without chloracne in
11 humans one doesn't get the liver effects, one doesn't get the
12 neurotoxic effects, one doesn't get the other effects that
13 are found usually in the acute and subacute stage.

14 Q. Doctor, are you saying or are you not saying if it
15 doesn't cause chloracne regardless of what it does in
16 animals, regardless of what experimentations shows, if it
17 doesn't cause chloracne in you, Mr. Human Being, you're not
18 going to have any clinical effect, any laboratory effect or
19 any systemic effect; isn't that what you're saying as a
20 scientist, sir?

21 A. Well, chloracne is a clinical effect, sir.

22 Q. Any other clinical effects other than chloracne,
23 Doctor.

24 A. Okay, right.

1 Q. Isn't that what you're saying, sir?

2 A. Yes.

3 Q. Yes. Now, Doctor, your experience as far as humans
4 is concerned has been limited to the people, as far as
5 treatment of any people is concerned has been limited to the
6 Nitro people, isn't that correct, sir?

7 A. No.

8 Q. Have you treated some other people, sir, exposed to
9 dioxin other than the Nitro workers?

10 A. No.

11 Q. Then your treatment of people exposed to dioxin has
12 been the Nitro workers, isn't that correct, sir?

13 A. For TCDD?

14 Q. Yes, for TCDD.

15 A. No.

16 Q. What other persons have you treated for absorption
17 or clinical effects of TCDD absorption other than the workers
18 at Nitro, sir?

19 A. I haven't treated, but I have had an opportunity to
20 be consulted.

21 Q. Doctor my question is-- doctor, I'm not asking you
22 about consultants, I'm asking you about treatment, sir. What
23 persons have you treated other than the workers at Nitro for
24 exposure or absorption to TCDD?

1 A. I have had my -- the bulk of my experience for
2 studying people exposed to TCDD has been the Nitro
3 population.

4 Q. Now, would you answer my question, Doctor.

5 A. What's the question?

6 Q. Because when you say the bulk of your experience is
7 Nitro, that might lead us to believe that you have treated
8 some people other than Nitro workers. In point of fact,
9 Doctor, you have treated only Nitro workers for exposure to
10 TCDD, have you not, sir?

11 A. I would have to answer no.

12 Q. What other workers, what other people, whatever
13 humans have you treated for TCDD effects, sir, other than
14 workers at Nitro?

15 A. Treated, no.

16 Q. That's what I said, Doctor.

17 A. Treated. That means giving them treatment.

18 Q. Did you hear the word I used--

19 A. Not evaluation.

20 Q. Doctor, I said treated, sir.

21 A. Okay.

22 Q. What other people have you treated, sir, other than
23 the workers at Nitro for the effect of TCDD exposure or
24 absorption?

1 A. Personally they have been limited to the Nitro
2 group.

3 Q. The answer is you've treated no persons other than
4 the Nitro people, isn't that correct, sir?

5 A. Treated, yes, that's right.

6 Q. Doctor, insofar as consultant is concerned, you
7 looked at some children at Seveso that had chloracne, did you
8 not, sir?

9 A. I did indeed.

10 Q. But you did not treat those children, did you, sir?

11 A. I couldn't treat them, sir.

12 Q. Would you answer my question please, Doctor.

13 A. I didn't treat them.

14 Q. Doctor, have you had any other experience with
15 people as a consultant on TCDD exposure other than the Seveso
16 incident, sir?

17 A. Yes.

18 Q. Who is that, Doctor?

19 A. That's the Yusho group.

20 Q. Doctor, the Yusho group was exposure to
21 dibenzofurans.

22 A. Right.

23 Q. I think you made that clear earlier, sir.

24 A. I did, sir.

1 Q. It was not dioxin, was it, sir?

2 A. It is a close relative of it, yes, sir.

3 Q. Excuse me, Doctor, it was not dioxin, was it, sir?

4 A. Not chlorinated dioxin, no.

5 Q. It was dibenzofurans, wasn't it, sir?

6 A. It was indeed.

7 Q. Earlier in your examination I suggested to you that
8 the Yusho people had effects from dioxin exposure, and you
9 said no, no, they were never exposed to dioxin, so,
10 therefore, it is not a dioxin exposure, is it, sir?

11 A. Not in the sense that you are talking, sir.

12 Q. Now, my question, sir, what people have you seen as
13 a consultant other than the Seveso children that you saw for
14 dioxin exposure, sir?

15 A. I haven't seen other, I haven't treated other
16 groups, sir.

17 Q. Doctor, that isn't what I'm asking you now, sir.
18 My question, sir, what other people have you seen as a
19 consultant for TCDD exposure other than the people at Seveso,
20 other than the children at Seveso?

21 A. I have not, sir.

22 Q. Then you haven't seen any, is that correct, sir?

23 A. I haven't seen any from other groups, sir, no.

24 Q. Then the total experience that you've had with

1 dioxin is the workers that you've treated at Nitro and the
2 few children you saw at Seveso, isn't that correct, sir?

3 A. With respect to dioxin?

4 Q. That's what I'm asking you about, Doctor.

5 A. No, there have been other consultations, sir, yes.

6 Q. Doctor, my question was examination. Did you hear
7 me say examination, Doctor? My question --

8 A. I thought you said consultation, sir.

9 Q. No, Doctor, I said examination, sir. You have not
10 examined anybody for dioxin exposure absorption other than a
11 few children at Seveso and the Nitro workers, isn't that
12 correct, sir?

13 A. That's true, sir.

14 Q. Sir?

15 A. Yes.

16 MR. HEINEMAN: Excuse me, Your Honor. May counsel
17 approach the bench?

18 THE COURT: Yes, you may.

19 (At this time a conference was had at the bench out
20 of the hearing of the jury.)

21 MR. HEINEMAN: Your Honor, I object to the question
22 of Mr. Carr as being confusing, because he keeps switching
23 from TCDD on the one hand to dioxin in general on the other.
24 Does he mean TCDD in all occasions?

1 THE COURT: I disagree. I don't think it's
2 confusing. I don't think the witness has been confused by
3 it. Your objection is overruled.

4 MR. HEINEMAN: My objection is overruled. Excuse me,
5 is the Court ruling that TCDD and dioxin are synonymous?

6 THE COURT: No, I'm ruling that the witness does not
7 appear to be confused by that. Your objection is overruled.

8 (The following proceedings were had in open Court.)

9 Q. Now, Doctor, with regard to the children at Seveso,
10 you saw those children at Seveso, the ones that had-- saw
11 some of the ones that had chloracne, did you not, sir?

12 A. I saw some of the control children as well.

13 Q. Well, control children would be children that were
14 not exposed to dioxin, isn't that correct, sir?

15 A. They were children who did not have chloracne right
16 after the accident, sir.

17 Q. Doctor, weren't they children who were not exposed
18 to dioxin if they are controls?

19 A. Well, I wasn't altogether sure what their controls
20 consisted of, sir, and I still don't.

21 Q. Then, Doctor, you don't know whether their controls
22 were children from other areas who had never been exposed?

23 A. I don't think they were, sir.

24 Q. Isn't that correct, sir?

1 A. I don't think they were.

2 Q. Sir?

3 A. I don't think they were.

4 Q. You don't know, do you, sir?

5 A. In my best recollection they were not from other
6 areas.

7 Q. Doctor, you do know that the Italian government did
8 have a control group of the children, to compare with the
9 children at Seveso, you know that, don't you, sir? It's been
10 described in Reggianni and many other works. You know that,
11 don't you, sir?

12 A. Yes.

13 Q. You saw some of that control group, did you not,
14 sir?

15 A. I'm not sure that that was the control group, sir.

16 Q. Well, are you sure that it wasn't the control
17 group?

18 A. Well, these were children --

19 Q. Excuse me, Doctor. Are you sure that it was not the
20 control group?

21 A. No, I can't tell you, sir.

22 Q. All right. Doctor, what you did examine then, the
23 children that were reputedly exposed to dioxin, the ones that
24 you saw so far as you know were the ones that had chloracne,

1 isn't that correct, sir?

2 A. I saw some of them that had chloracne.

3 Q. Would you answer my question the way I gave it to
4 you, Dr. Suskind.

5 A. It's -- yes.

6 Q. All right. Now, Doctor, did you see -- strike
7 that. Now as far as the people that you saw at Nitro, sir,
8 the people that you examined and treated, because the ones
9 you saw at Seveso you simply examined, isn't that correct,
10 sir?

11 A. That's correct.

12 Q. You didn't -- and by examine you simply looked at
13 their skin, did you not, sir?

14 A. No. I asked them questions and went over their
15 clinical records with the examining physician.

16 Q. Yes, Doctor. My question is the ones that you
17 examined at Nitro, the only examination you-- at Seveso, the
18 only examination you gave was you examined their skin, isn't
19 that correct, sir?

20 A. My clinical examination was limited to the skin,
21 yes, sir.

22 Q. You did not give them a neurological examination,
23 did you, sir?

24 A. No.

1 Q. You did not give them a laboratory porphyrin test,
2 did you, sir?

3 A. I don't undersand that question. How would I give
4 them a porphyrin test, Mr. Carr?

5 Q. Doctor, whatever you might or might not do, you
6 didn't do it, did you, sir?

7 A. I didn't do what, sir?

8 Q. You did not--

9 A. I looked at their skin like the dermatologist did.
10 It was a dermatologic examination.

11 Q. Exactly correct, Doctor.

12 A. Okay. And in Seveso, and you should know this,
13 since you're questioning me about it --

14 MR. CARR: Your Honor, would you direct the witness
15 that that is completely improper, and he should know it.

16 THE COURT: Let's proceed, Mr. Carr. It is
17 improper, Doctor. Just answer the questions that are asked
18 of you. You're starting to stray beyond please?

19 A. At Seveso--

20 THE COURT: Doctor -- Doctor, you haven't been asked
21 another question yet.

22 A. I'm trying to answer the--

23 THE COURT: Mr. Carr.

24 Q. You asked the children at Seveso as a

1 dermatologist, did you not, sir?

2 A. I did, sir, yes.

3 Q. And as a dermatologist you looked at their skin and
4 did nothing further than that by way of examination, isn't
5 that correct, sir?

6 A. That's true, sir.

7 Q. Now, Doctor, with regard to --

8 A. I'm sorry -- we did examine for other things that
9 dermatologists usually do.

10 Q. What did you examine?

11 A. That is, we looked in their mouths, and we examined
12 for lymph -- possible lymph node enlargement.

13 Q. All right. And that's it, isn't that correct, sir?

14 A. That is -- that was what the dermatologist there
15 was doing as well.

16 Q. When you say we, you really mean yourself, do you
17 not, sir?

18 A. I'm talking about --

19 Q. I'm asking what you did by way of examination, sir.

20 A. I did those things that I just described, sir.

21 Q. All right. Now, Doctor, as far as the people at
22 Nitro were concerned, the people at Nitro you first saw four
23 workers in 1949, did you not, sir?

24 A. Yes, sir.

1 Q. And then there was two added to that group of four,
2 so you saw six in 1950, did you not, sir?

3 A. Yes, sir.

4 Q. And then you examined an additional 30 in 1953, did
5 you not, sir?

6 A. No, I believe there were more than that. One of
7 the individuals that we examined in -- two of the individuals
8 we examined in 1949 and '50 were not in the '53 group.

9 Q. All right. So then there were 32 that you examined?

10 A. 32 additional, yes.

11 Q. Additional ones that you examined in 1953?

12 A. '53.

13 Q. Is that correct, sir?

14 A. That's correct, sir.

15 Q. So you examined then a sum total then of 38 people
16 altogether from Nitro, isn't that correct, sir?

17 A. No, sir, that's not correct.

18 Q. What's the total you examined then, sir?

19 A. Personally?

20 Q. Yes, that's what I'm talking about, Doctor.

21 A. Well, during the 1979 morbidity study I was one of
22 the examining physicians.

23 Q. All right, Doctor, we'll get to the --

24 A. I must have examined at least 20 or 25 additional

1 people, at least that if not more. I can't tell you.

2 Q. We'll get to the '79 study in a moment, Doctor. Up
3 until 1979, from 1949 until 1979 when you undertook the
4 morbidity study, you had examined people that had been
5 exposed to dioxin from Nitro a total of some 38 people, isn't
6 that correct, sir?

7 A. Yes, I believe so.

8 Q. And no others any time, any place, anywhere except
9 the children at Seveso, isn't that correct, sir?

10 A. No, sir, that's not correct.

11 Q. What other people had you examined, sir? I thought
12 we had established that you had examined just the workers at
13 Nitro and the children at Seveso?

14 A. I just got through telling you in 1979, sir, I--

15 Q. Doctor, my question was up until 1979. From 1949
16 until 1979, a total of 30 years, you had examined a total of
17 38 people that had been exposed to dioxin other than the
18 children at Seveso, isn't that correct, sir?

19 A. If you're saying personally, yes, sir.

20 Q. That's what I'm saying, Doctor.

21 A. I'm not altogether sure what you mean.

22 Q. Isn't that correct, sir?

23 A. Because we work as a team, sir.

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

1 to answer my question.

2 THE COURT: Doctor, please just answer the question
3 that's asked of you.

4 Q. Isn't that correct, sir?

5 A. What is correct, sir?

6 MR. CARR: Would you read the question.

7 (The Court Reporter read back the question.)

8 A. Personally, yes.

9 Q. Now, Doctor, and you treated those or offered some
10 kind of dermatological advice or treatment for all of those
11 38, did you not, sir?

12 A. Medical advice in addition to dermatological, yes,
13 sir.

14 Q. Doctor, you're not an internist, you had a doctor,
15 Dr. Ash and others who were specialists in internal medicine
16 and things of that sort, a neurologist that gave them that
17 kind of advice, isn't that correct, sir?

18 A. No, sir. Dr. Ash was only involved in '49 and '50
19 and the rest-- let me finish-- the rest of those examinations
20 I supervised, and I have with the consultation with others
21 sufficient qualifications to make recommendations other than
22 dermatologic.

23 Q. Doctor, the advice you gave in areas other than
24 your field, other than your specialty, was based upon what

1 you were told by experts in the other fields, isn't that
2 correct, sir?

3 A. No, sir.

4 Q. Doctor, do you purport to be an expert in any field
5 of medicine other than dermatology?

6 A. Yes.

7 Q. What other field of medicine are you an expert,
8 Doctor?

9 A. Clinical toxicology.

10 Q. Doctor, clinical toxicology is not a specialty in
11 medicine, is it, sir?

12 A. It is indeed, sir.

13 Q. Are you -- Doctor, what -- what persons practice
14 clinical toxicology?

15 A. Physicians usually trained in general medicine or
16 dermatology or neurology or whatever, who through
17 experience--

18 Q. Doctor, were you a clinical toxicologist in 1953?

19 MR. HEINEMAN: Object, interrupted the answer, Your
20 Honor.

21 THE COURT: Overruled.

22 A. In 1953 I had sufficient experience at the
23 Kettering Laboratory for five years of training, and I had a
24 fellowship there to consider myself a clinical toxicologist,

1 yes, sir.

2 Q. By 1953 you considered that you were a clinical
3 toxicologist?

4 A. I was an -- I was -- I had expertise in clinical
5 toxicology.

6 Q. My question is did you consider yourself an expert
7 clinical toxicologist in 1953?

8 A. Yes, I did.

9 Q. Were you certified by anybody at that time?

10 A. There were no certifications at that time. I
11 started the American Board of Toxicology, sir.

12 Q. All right. Then, Doctor, what you're saying is is
13 that there was no specialty or subspecialty known as clinical
14 toxicology, but based upon your experience and training in
15 the past, you considered yourself to be that kind of expert,
16 isn't that correct, sir?

17 A. There was a specialty, but no certification at the
18 time. Certification came later.

19 Q. You considered yourself, however, to be expert in
20 the field, did you not, sir?

21 A. Yes, I did.

22 Q. Now, Doctor, with regard to the advice that you
23 give as a clinical toxicologist in areas that are outside
24 your field like neurology, you do rely upon neurologists,

1 don't you, sir?

2 A. When necessary, yes, sir.

3 Q. You do rely upon urologists, don't you, sir?

4 A. You say urologist?

5 Q. Yes.

6 A. When needed, sir, yes.

7 Q. You do rely upon internists, don't you, sir?

8 A. When their special expertise is needed, yes, sir.

9 Q. All right. Now, in 1953, sir, your total
10 experience was with these 38 workers exposed to dioxin, isn't
11 that correct, sir?

12 A. Up until that time, yes, sir.

13 Q. Yes. Doctor, you didn't get any additional
14 experience from that time until 1979 insofar as exposure to
15 dioxin is concerned, did you, sir?

16 A. Yes, sir.

17 Q. What other experience did you get, Doctor?

18 A. In the direct testimony, Mr. Carr, we recounted the
19 number of conferences and meetings that those of us who were
20 interested in this probable, and we called these conferences
21 so that we could learn from each other.

22 Q. Doctor, let me interrupt you. I'm interested in
23 experience with people who have been exposed to dioxin, sir.
24 That's what I'm asking you about, sir. I'm sure you must

1 have had numerous conferences. I'm talking about between
2 1953 and 1979 you had no other experience with people exposed
3 to dioxin other than these workers in 19 -- workers at Nitro,
4 isn't that correct, sir?

5 A. Are you talking about examining them?

6 Q. Experience with these kind of people, Doctor.

7 A. Yes, sir, I just got through telling you.

8 Q. Doctor, what you're talking about was conferences
9 with other doctors or other scientists, isn't that correct,
10 sir?

11 A. In which they presented clinical problems to us for
12 discussion.

13 Q. Doctor, but I'm talking about your personal
14 experience with people who were exposed to dioxin, sir.

15 A. Are you asking about examination or treatment?

16 Q. No, I'm talking about your experience with those
17 persons, whether you were even in the room with them, sir,
18 just looking at them, not examining them, from 1953 until
19 1979 you did not see a single other person allegedly exposed
20 to dioxin, did you, sir?

21 A. If you're talking about examination, the answer is
22 I did not, sir.

23 Q. No, Doctor, I'm talking about even being in the
24 same room with such a person.

1 A. No, we haven't.

2 Q. So from 1953 until 1979 you had not even seen in
3 that period -- in 1953 to '79, that's 26 -- no, that's --

4 A. 95 years, sir.

5 Q. Sir? 95 years?

6 A. It's a long time.

7 Q. Not hardly, sir.

8 A. My mathematics may be off a little bit.

9 Q. It's 36--

10 A. I don't know what you're driving at.

11 Q. Doctor, it's 46 -- 26--'53 to '79-- Right, okay,
12 it's 26 years, is it not, Doctor? Isn't that correct, sir?
13 From 1953 to 1979 is 26 years, isn't that correct, Doctor?

14 A. If you're talking about people specifically exposed
15 to TCDD.

16 Q. Or dioxin period, general?

17 A. That's correct, sir.

18 Q. Now, Doctor, your experience at the time you saw
19 these people at Nitro, you saw just people that had
20 chloracne, did you not, sir, except for one person, James
21 Kyle?

22 A. I believe that's true.

23 Q. So, Doctor, all you saw in your experience with
24 dioxin happens to be people that have chloracne, isn't that

1 correct, sir?

2 A. No, sir.

3 Q. Doctor, what other persons did you see from 1949
4 until 1979, sir, that had problems other than chloracne who
5 had been exposed to dioxin?

6 A. In '79 we saw a lot of them.

7 Q. Doctor, we'll get to '79 later on.

8 A. But that's critical, sir.

9 Q. I know it's critical, Doctor.

10 A. It sure is critical.

11 Q. For your position. My question, sir--

12 A. I didn't write my hallmark paper, sir--

13 Q. My question, sir, is from 1949 until 1979, sir,
14 what people did you see other than people who had chloracne,
15 sir, who claimed to have been exposed to dioxin?

16 A. We were asked to see those people, sir.

17 MR. CARR: Would you direct the witness to answer my
18 question.

19 THE COURT: Doctor, that was not responsive to the
20 question. Please answer the question that was asked of you.

21 A. People with chloracne.

22 Q. My question is, sir, what people did you see other
23 than people who had chloracne in that period of time?

24 A. In that period of time we didn't see any other,

1 sir.

2 Q. All right. Then, Doctor, and as a dermatologist you
3 wouldn't be called in to treat somebody that doesn't have a
4 skin, that does not have a skin problem, would you, sir?

5 A. That is totally incorrect, sir.

6 Q. Doctor, are you -- do you treat people that don't
7 have skin problems?

8 A. I said that's totally incorrect, sir.

9 Q. My question is do you treat people other than
10 people that have skin problems?

11 A. Yes, I do, sir.

12 Q. What people do you treat, sir, other than people
13 that have skin problems?

14 A. People with other toxicologic -- people who are
15 suspected of having clinical problems as a result of
16 something in their chemical environment or physical
17 environment, and I have done that, sir, let me finish, since
18 1948, sir.

19 Q. Doctor, from 1949 until 1979 the only people that
20 you saw that had problems claimed to be associated with
21 dioxin exposure were people that had chloracne, and these
22 were the workers at Nitro, isn't that correct, sir?

23 A. As you have stated it, that is correct, sir.

24 Q. Yes, Doctor.

1 THE COURT: Mr. Carr, is this a good point for a
2 short break?

3 MR. CARR: Yes, Your Honor.

4 THE COURT: We'll take a short recess at this time
5 and then we'll resume testimony. I would remind you, and this
6 will go for any other breaks we take during the day you're
7 not to discuss this matter among yourselves or with anyone
8 outside the jury panel or as of yet form any opinions or
9 conclusions about the matter on trial. Court's in recess.

10 (At this time a short recess was taken.)

11

12 (The following proceedings were had in open Court.)

13 Q. Dr. Suskind, insofar as the significance of the
14 fact that the only people that you saw being a dermatologist
15 at Nitro were people that had chloracne, it really would be
16 something like a spaceship landing at the South Pole or near
17 the South Pole and seeing nothing but penguins and not going
18 anywhere, not seeing anybody except penguins, and you saw
19 nobody except the people that had chloracne, he'd go back and
20 report to his superiors or on the planet where he came from
21 that the planet Earth is populated with little people that
22 run around wearing tuxedos, wouldn't he, sir? He wouldn't be
23 aware of the fact that there were other like beings or life
24 forms or human beings on the planet Earth if all he happened

1 to see were penguins, isn't that correct, sir?

2 A. Absolutely no, sir.

3 Q. Doctor, what you saw were at Nitro with one
4 exception, and you discounted that, what you saw at Nitro
5 were only the penguins, that is, only the people with the
6 chloracne, isn't that correct, sir?

7 A. No, sir.

8 Q. Did you see any person at Nitro that did not have
9 chloracne, sir?

10 A. No, but we knew that there were, sir.

11 Q. Doctor, my question is, sir, is you saw at Nitro,
12 you saw at Nitro and from 1949 until 1979 insofar as people
13 being exposed to dioxin is concerned, what you saw were just
14 the people with chloracne, isn't that correct, sir, and
15 haven't we established that, sir?

16 A. No, sir.

17 Q. Didn't you -- didn't we establish that, sir, that
18 what you saw from '49 to '79 were just the workers with the
19 chloracne, sir?

20 A. If you're --

21 Q. Didn't we establish that, sir?

22 A. No, sir.

23 MR. CARR: Your Honor, would you direct the --
24 because I don't feel like going -- would you direct the

1 witness to assume that we have established that from 1949 to
2 1979 he saw only the people at Nitro that had chloracne.

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

5 THE COURT: Yes, you may.

6 (At this time a conference was had at the bench out
7 of the hearing of the jury.)

8 MR. HEINEMAN: I would object to the Court making
9 such a-- first of all, I object to the Court exercising a
10 province to instruct the witness as to what his testimony has
11 been. That is not in the province of the Court, and I object
12 to it.

13 Secondly, what Mr. Carr has done now is he's
14 changing the words again as he does all the way through the
15 cross-examination of every witness. Before he talked to this
16 witness about who he treated, who he treated. Now he's
17 talking about who he saw. The witness is saying, no, that we
18 haven't established that I only saw people with chloracne.
19 So Mr. Carr has changed the words. He used saw now instead
20 of treat, and I object to it. It's misleading, it's an
21 obvious attempt to mislead the witness, and I object to the
22 Court, first of all, exercising a province to instruct the
23 witness to -- with respect to what he said, but particularly
24 in light of distinction I have just drawn and this Court

1 instructing this witness that the only people he saw were
2 people that didn't have chloracne.

3 MR. CARR: That's exactly what I established, Your
4 Honor, before the break, that he wasn't even in a room with
5 anybody other than people at Nitro who were exposed to dioxin
6 that had chloracne. He stated that specifically from '49 to
7 '79.

8 THE COURT: It is within my province to so
9 instruct. Your objection is overruled. I will order the
10 witness to accept that assumption, and you may proceed

11 (The following proceedings were had in open Court.)

12 THE COURT: Dr. Suskind. I am ordering you to
13 accept the assumption that counsel stated. Mr. Carr, you may
14 proceed with your questioning.

15 Q. Dr. Suskind, if that is correct, then you saw just
16 the penguins, didn't you, sir?

17 A. No, sir.

18 Q. Doctor, are you assuming that you did not from '49
19 until '79 see any people other than the workers at Nitro who
20 had been exposed to dioxin? Are you assuming that, sir?

21 A. I am assuming that, sir.

22 Q. Are you assuming also, sir, that all of those
23 workers that you saw in that period of time had chloracne?

24 A. All but one, sir.

1 Q. All but one, sir. Then you saw just the penguins,
2 you saw just, that is, the people with chloracne?

3 A. No, sir.

4 Q. Are you assuming that you saw just people with
5 chloracne?

6 A. I am doing just as you state, sir.

7 Q. Are you assuming that you saw just people with
8 chloracne and that you saw nobody except people that had
9 chloracne?

10 A. Yes, sir.

11 Q. Then you saw just the people with chloracne, didn't
12 you, sir?

13 A. No, sir.

14 Q. Are you assuming those things as true as the Court
15 has instructed you to assume?

16 A. Yes, I am, sir.

17 Q. Did you see anybody other than the people that had
18 chloracne, Dr. Suskind?

19 A. Yes.

20 Q. Then you're not doing as the Court has instructed
21 you to assume, Doctor.

22 A. I think I am, sir.

23 Q. Are you operating on the assumption as the Court
24 has directed you that it was established before the break

1 that from 1949 until 1979 the only workers at Nitro that you
2 saw were people that had chloracne and that the only people
3 you saw in the world who allegedly were exposed to TCDD were
4 people who had -- from Nitro and those were the people who
5 had chloracne, are you assuming that, sir?

6 A. I am.

7 Q. Then, Doctor, if you are assuming that, it follows
8 you did not see anybody who claimed to have been exposed to
9 TCDD who did not have chloracne, isn't that correct, sir?

10 A. No, sir.

11 Q. Are you assuming that you saw --

12 A. I am indeed, sir, I am indeed.

13 Q. You're assuming that you saw nobody, sir, from '49
14 to '79 other than Kyle?

15 A. Would you repeat the question, sir?

16 Q. Are you assuming, Dr. Suskind, as you have
17 testified to this morning and as the Court has direct you to
18 assume that from 1949 to '79 the only people in the world you
19 saw who were allegedly exposed to dioxin were the 38 workers
20 at Nitro? Are you assuming that, sir?

21 A. Yes, I am. The word dioxin there bothers me, sir,
22 and I think I know why.

23 Q. Doctor, that's what you said this morning, that's
24 what the Court is instructing you to assume now.

1 A. Okay.

2 Q. That's what you said this morning, is it not, sir?

3 A. That is what I said, sir.

4 Q. All right. Now, Doctor, are you assuming that, sir?

5 A. I am, sir.

6 Q. Then you saw only people who had chloracne except
7 for Mr. Kyle, isn't that correct, sir?

8 A. No, sir.

9 Q. Doctor, are you assuming that you saw --

10 A. I am indeed.

11 Q. -- Just the 38 workers?

12 A. I am indeed.

13 Q. All of those 38 workers had chloracne, did they
14 not, except for the one, Kyle?

15 A. Well, there were actually more than 38, sir, there
16 are more than 38.

17 Q. Doctor, you testified this morning there were 38.
18 You testified --

19 A. You said there were 38. There happens to be
20 more, sir.

21 MR. CARR: Your Honor, would you direct the witness
22 to not argue with me please.

23 THE COURT: Doctor, I don't think the question was
24 finished. Please let the question be finished and then answer

1 the question.

2 Q. Doctor, are you, in fact, assuming as the Court
3 told you to assume, or are you assuming something other than
4 that? Are you following the Court's instructions?

5 A. I am following that assumption, sir.

6 Q. Are you following the Court's instructions?

7 A. I am following the Court's instructions with that
8 assumption, yes.

9 Q. Yes. That assumption is that you saw only the 38
10 workers at Nitro? Are you assuming that, sir, in the period
11 of '49 to '79?

12 MR. HEINEMAN: Objection, Your Honor. That isn't
13 the assumption.

14 THE COURT: Overruled. You may proceed.

15 Q. Are you assuming that, sir?

16 A. Would you repeat the assumption, sir, because I
17 think this is confusing.

18 Q. Are you assuming that you saw only the 38 workers
19 at Nitro between 1949 and 1979, sir, who claimed to have been
20 exposed to dioxin?

21 A. I think the assumption was that I examined, that I
22 examined 38 workers.

23 Q. No, Doctor, it was saw, even being in the same room
24 with, seen, not just examined, but saw, even saw, sir?

1 A. Okay.

2 Q. What you testified to this morning, sir, and that's
3 what the Court is asking you to assume, sir.

4 A. Well, I was assuming, too, that the saw --

5 MR. CARR: Your Honor, would you direct the
6 witness--

7 THE COURT: Doctor, please just respond to the
8 question. You weren't asked about that.

9 Q. Are you assuming, sir, that you saw for the people
10 that claimed to have been exposed to dioxin, you saw only
11 those 38 people from Nitro? Are you assuming that?

12 A. I am assuming that, sir.

13 Q. Now, Doctor, if those are the only people you saw,
14 they all had chloracne, didn't they, sir?

15 A. Those had chloracne, sir, yes.

16 Q. All except the one, correct, sir?

17 A. That's correct.

18 Q. All right. And that would be the equivalent to just
19 seeing penguins, wouldn't it, sir?

20 A. Absolutely not, sir.

21 Q. Doctor, did you see anybody except somebody that
22 had chloracne?

23 MR. HEINEMAN: Objection. Asked and answered.

24 A. Did I see--

1 THE COURT: Objection is overruled.

2 A. Yes, sir, I did.

3 MR. CARR: Well then, Your Honor, the witness is not
4 following your instructions.

5 A. Well, no, that's a different--

6 THE COURT: Doctor --

7 A. That's a different question.

8 THE COURT: Answer the question as asked of you
9 please.

10 MR. HEINEMAN: Objection, Your Honor. May counsel
11 approach the bench.

12 THE COURT: Yes, you may.

13 MR. HEINEMAN: Mr. Carr keeps intentionally
14 confusing this thing, your Honor. The man testified he saw
15 children at Seveso.

16 THE COURT: Keep your voice down.

17 MR. HEINEMAN: He saw children at Seveso, he's seen
18 people at Yusho, the people at Yusho he disputed with respect
19 to dioxin and furans, okay. The people at Seveso clearly had
20 dioxin exposure. He testified this morning he saw people at
21 Seveso. Now, you're asking-- Is he being directed to assume
22 that he didn't?

23 THE COURT: No, you've gotten-- This entire line of
24 questioning as far as this has been limited to the Nitro

1 people, number one. There is no dispute that he saw people
2 at Yusho. There is also no dispute that he said it was not a
3 dioxin exposure as you're talking about, the dibenzofuran
4 exposure and also there is no dispute he saw kids from Seveso
5 exposed and controlled. The questions that have been going
6 on since the break have all dealt and all been narrowed down
7 to explicitly Nitro, and your objection has no basis in the
8 record. It's overruled.

9 MR. HEINEMAN: Your Honor, the question that Mr.
10 Carr asked the witness was are you assuming as the Judge
11 ordered you to assume that the only people you saw exposed to
12 dioxin from '49 to '79 that had -- were the Nitro people and
13 they had chloracne. Well, that just isn't true.

14 THE COURT: That's not what was said. It was all
15 within the context of the Nitro, and the question was as to
16 the 38 from Nitro. The record clearly reflects that that's
17 the only thing that's been talked about since the break.
18 Your objection is overruled.

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

20 Q. Doctor, when you were answering the questions with
21 the assumptions, were you -- did you -- and you were
22 answering negatively, were you having in mind that you did
23 see additionally the children at Seveso?

24 A. That was after '79, sir.

1 Q. Yes, I thought it was. Now, Doctor, between 1979
2 -- and the only people you saw were the people at Yusho,
3 correct, sir, and they were exposed to dibenzofurans and not
4 dioxins as we've established, correct, sir?

5 A. I think that is correct, sir.

6 Q. All right. Now, Doctor, then the only people you've
7 testified to this morning that you saw between 1949 and 1979
8 who were allegedly exposed to dioxin, if what you said was
9 correct this morning, were the 38 people at Nitro, isn't that
10 correct, sir?

11 A. No, sir.

12 Q. That isn't what you testified to this morning?

13 A. That isn't correct, sir.

14 Q. Sir, is that what you testified to this morning?

15 A. I testified that --

16 Q. Doctor, is that what you testified to this morning?

17 A. What did I testify to this morning, sir?

18 Q. Is that what you-- that you saw only the 38 people
19 at Nitro, sir, between 1949 and 1979 who claimed to have been
20 exposed to dioxin? Isn't that what you testified to this
21 morning, sir?

22 A. Those that had chloracne, yes.

23 Q. Yes.

24 A. Yes.

1 Q. And who claimed to have been exposed to dioxin,
2 correct, sir?

3 A. I knew they were exposed to --

4 Q. Isn't that correct, sir?

5 A. -- The process, sir.

6 Q. Didn't I--

7 A. I knew that they were exposed, they didn't claim,
8 sir.

9 Q. Doctor, you didn't have any personal knowledge, you
10 had only what you were told by others. You didn't know
11 anything except what you were told, but that's another aside,
12 Doctor. My question is, sir, did you not testify this
13 morning that the people who had the exposure to dioxin were
14 the 38 workers at Nitro and that they all with the exception
15 of one had chloracne? Isn't that what you testified to
16 before our break, sir?

17 A. That's what I testified to.

18 Q. Now, Doctor, that's what the-- and those are the
19 only people that you saw in that period of time who claimed
20 or were exposed to dioxin according to your testimony this
21 morning, isn't that correct, sir?

22 A. That is not correct, sir.

23 Q. Isn't that what you testified to before the break?

24 A. That is-- no, no-- that is--

1 Q. Isn't that what you testified--

2 A. There are two different questions, sir.

3 Q. Doctor, isn't that what you testified to this
4 morning?

5 A. No, sir, no.

6 MR. CARR: Your Honor, would you direct the witness
7 that that is what he testified to this morning, that the
8 only--

9 MR. HEINEMAN: Objection.

10 MR. CARR: -- That the only people that you saw
11 between '49 and '79 who claimed to or were exposed to dioxin
12 were the 38 workers at Nitro.

13 MR. HEINEMAN: Same objection, Your Honor.

14 THE COURT: Overruled. Doctor, you are to take that
15 as an assumption.

16 Q. Now, are you assuming that, sir?

17 A. I am assuming that, sir, if the Court asks me to,
18 yes.

19 Q. Now, pretend that they were penguins. Would you do
20 that, Doctor?

21 A. I will not assume that. They are not penguins.

22 MR. CARR: Your Honor, would you instruct the
23 jury--

24 A. Why?

1 MR. CARR: Instruct the witness here to assume that
2 these are equivalent to penguins.

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

5 THE COURT: Yes, you may.

6 A. God, that's ridiculous.

7 (At this time a conference was had at the bench out
8 of the hearing of the jury.)

9 MR. HEINEMAN: Is there any conceivable -- do you
10 mind facing the Judge-- is there any conceivable factual
11 basis for asking this witness to assume or pretend that these
12 people are penguins? I mean that's ridiculous. We're just
13 playing games, Judge, we're wasting time. It gets nowhere.
14 There's no basis for him to ask him to assume that, there's
15 no basis in the law to ask him to pretend anything.

16 MR. CARR: Well, if the witness doesn't want to do
17 it, I'll back off from that, your Honor, and I'll do it
18 another way.

19 THE COURT: Okay.

20 (The following proceedings were had in open Court.)

21 Q. Doctor, are you assuming that all you saw were
22 these people with chloracne who claimed to have been exposed
23 to dioxin?

24 A. If I'm to assume that, I am assuming it, yes.

1 Q. That's all you saw, correct, sir?

2 A. No, it isn't.

3 Q. People that had chloracne.

4 A. It really isn't.

5 Q. Under the assumption, Doctor.

6 A. Well, I am being forced to assume that, and I'm
7 assuming it, sir.

8 Q. Doctor, you're being forced to assume what you
9 testified to--

10 A. No, sir.

11 Q. -- Under oath this morning --

12 A. No, sir.

13 Q. -- Before the break.

14 A. That is not so, sir.

15 Q. Oh, Doctor, did you not testify that that was in
16 fact your experience, the workers at Nitro?

17 A. I examined 38, sir, I examined 38, but I saw more,
18 and the more I saw were people --

19 MR. CARR: Your Honor, would you direct the witness
20 to--

21 A. Well, I'm answering the question, sir.

22 Q. Didn't you--

23 THE COURT: Doctor, it was not responsive. Stop
24 when you've answered the question and don't go beyond it.

1 You've done that many times, and I'm asking you again respond
2 only to the question, no more and no less.

3 Q. Doctor, before the break, during the break you had
4 a conference with the Monsanto attorneys, did you not, sir?

5 A. No, sir.

6 Q. You did not, you didn't go in a room with Mr.
7 Nassif and talk to him, sir?

8 A. Not about this.

9 Q. Did you go into a room with Mr. Nassif out there in
10 the hallway, sir?

11 A. Yeah.

12 Q. Did you talk to him, sir, about this case, sir?

13 A. Yeah, in a very general way.

14 Q. Did you talk to him about your testimony this
15 morning?

16 A. A little bit.

17 Q. Yes, Doctor. Now, before that conference, Doctor,
18 did you not testify that the only people you had even seen in
19 the entire world before 1979 that had claimed to be exposed
20 to dioxin were the workers at Nitro? Wasn't that your
21 testimony before the break, sir?

22 A. That's my testimony now, sir, my testimony now.

23 Q. Wasn't it your testimony this morning that the only
24 people you saw at Nitro were these 38 workers, sir, that had

1 the chloracne?

2 A. The only-- no, it was not. It was the only people
3 I examined, and that's different than seeing, and I saw
4 people without chloracne who were exposed in 1953.

5 Q. Did you examine these people, sir?

6 A. No, I didn't, but I knew they were there, and I was
7 in the same room with them, and that's what you're asking and
8 I'm telling you.

9 Q. Doctor, did you see these people as--

10 A. Let's keep the record straight, sir.

11 Q. Did you see these people as a physician, as a
12 dermatologist?

13 A. I saw them as a-- we were asked to examine --

14 Q. Did you see them as a physician, as a
15 dermatologist?

16 A. Yes, indeed I did.

17 Q. Did you make a record of your examination?

18 A. No, I did not, because we didn't have the time to
19 examine everybody. We only had the time to examine 36 people.

20 Q. Did you write down their names, sir?

21 A. No, I did not.

22 Q. Now, Doctor, the only records that you have of
23 examining or seeing as a physician are these 38, isn't that
24 correct, sir?

1 A. According to the 1953 record, yes, sir.

2 Q. Doctor, you have no record of seeing or examining a
3 single other person, isn't that correct, sir?

4 A. But I have a clear recollection, sir.

5 Q. Excuse me, Doctor. You have no record of seeing or
6 examining a single other person, do you, sir?

7 A. Not in any report, sir.

8 Q. Now, Doctor, you made a recommendation based for
9 treatment of that chloracne, did you not, sir, for these 38
10 people or recommendations, didn't you, sir?

11 A. We made a set of recommendations, sir, yes.

12 Q. Now, Doctor, these people that had chloracne had as
13 we've established many other problems as late as 1953, did
14 they not, sir?

15 A. They had some other problems, sir, yes, sir.

16 Q. Did you examine or see as a physician any person
17 that had claims of headaches, fatigue, nervousness, pain in
18 the lower extremities other than these 38 people, sir, who
19 claimed to have been exposed to dioxin?

20 A. Yes.

21 Q. And who were these people, sir?

22 A. There were four others that I examined in 1956 for
23 the -- in conjunction with the -- with the workmen's
24 compensation hearing, which we've already discussed.

1 Q. Doctor, you've already discussed that, and these
2 were people in 1956, and these were people that all had
3 chloracne. You saw them for their chloracne, did you not,
4 sir?

5 A. They were compensation cases, yes, sir.

6 Q. My question is, sir, did you see any person other
7 than people that had chloracne who had these complaints of
8 aches and pains of the lower extremities, headaches, fatigue
9 and so forth, sir, in 1949, 1950, 1953 or 1956, sir, other
10 than Kyle?

11 A. I'm not sure I understand the question so I'll have
12 to ask that it be repeated, sir, cause it's a long one and a
13 complicated one.

14 (Court reporter read back the question.)

15 A. I'm not sure I can answer that question the way
16 it's worded, sir, because --

17 Q. Try.

18 A. -- Some of these people didn't have systemic
19 manifestations.

20 Q. Try, Dr. Suskind.

21 A. I say I can't answer the question the way it's
22 worded.

23 Q. Doctor, my question is did you see anybody who had
24 complaints of aches and pains in muscle extremities, joint

1 aches, excessive fatigue, nervousness other than people who
2 had chloracne?

3 A. I did not, sir.

4 Q. All right. And, Doctor, you weren't called upon to
5 treat or examine anybody that had such other complaints, did
6 you -- were you, sir?

7 A. I wasn't called upon, yes, sir, that's right.

8 Q. Doctor, as a matter of fact, as far as you're
9 concerned as far even as Kyle is concerned, there may have
10 been others like him in the entire group, isn't that correct,
11 sir, who had these complaints but did not have chloracne so
12 far as you know?

13 A. I don't know.

14 Q. So far as you know that is correct, is it not, sir?

15 A. I don't know.

16 MR. CARR: Your Honor, would you --

17 A. I can't answer the question.

18 MR. CARR: Would you direct the witness to answer
19 the question as far as he knows there may have been others
20 like Kyle in the entire group.

21 THE COURT: Doctor, listen to the question.

22 MR. HEINEMAN: Objection, Your Honor. May counsel
23 bench.

24 THE COURT: Sure.

1 (At this time a conference was had at the bench out
2 of the hearing of the jury.)

3 MR. HEINEMAN: This type of question is a device
4 that Mr. Carr has been using now for three years, and it's
5 totally objectionable. When the witness doesn't know, he's
6 entitled to answer he doesn't know. He isn't required to say
7 as far as you know it is or it isn't. When he says he
8 doesn't know, he doesn't know. He's not required to give a
9 yes or no answer as to whether it might be or whether it
10 might not be, and I object to it. I object to the Court
11 instructing the witness to do such a thing.

12 MR. CARR: I have nothing to say, your Honor.

13 THE COURT: I think that it is proper. It's'
14 obvious that if one establishes the lack of knowledge, one
15 can establish what one knows up to that point of lack of
16 knowledge, and that can be with the caveat of so far as one
17 knows. It is a proper question, and it's clear as to the
18 extent of his knowledge, and it's a perfectly proper question
19 and it follows logically from what you're saying, and there's
20 nothing inherently contrary in those two positions. Your
21 objection is overruled.

22 MR. HEINEMAN: Your Honor, if he says he doesn't
23 know, then anything else has to be speculation and
24 conjecture, and I object to it on that basis.

1 THE COURT: No. If he were asked something that
2 would be beyond the realm of his knowledge, that would be
3 true. In this case it's specifically caveat and has to be
4 within the realm of his knowledge by the words so far as you
5 know. Your objection is overruled. You may proceed.

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

7 Q. Now, Dr. Suskind, would you please answer that
8 question, sir?

9 A. Would you repeat the question please.

10 (Court reporter read back the question.)

11 A. I don't believe so.

12 Q. Doctor, you recall you testified in front of the
13 Workmen's Compensation Commission, Page 101 and 102, counsel,
14 of his testimony in 1956. This question was asked you, this
15 chloracne or comedones have been common in practically all
16 the men who were examined, that is correct, is it not? Your
17 answer was with one exception in my experience with these men
18 of the 36 which we examined in 1953 there was one man who had
19 symptoms which the other men had, that is, some of the aches
20 and pains and the fatigue, but he did not have any acne.
21 There was just the one man. Now, whether or not there were
22 others like him in the entire group, I don't know. Wasn't
23 that your answer at that time, sir, under oath, sir?

24 MR. HEINEMAN: Objection, Your Honor. May counsel

1 approach the bench?

2 THE COURT: Yes, you may.

3 (At this time a conference was had at the bench out
4 of the hearing of the jury.)

5 MR. HEINEMAN: That is the same testimony the
6 witness just testified to here, and then the Court ordered
7 him to answer yes or no to the question. He just testified
8 here that he didn't know, and it's exact -- that's not
9 impeaching, and I object to the use of it. He just testified
10 he didn't know.

11 MR. CARR: It's clearly impeaching. He testified
12 -- I asked him whether or not as far as he knows there were
13 others like that in the group, and he testified that way in
14 front of the commission. Now, whether or not there were
15 others like him in the entire group, I don't know. He was
16 clearly suggesting that there may have been others like him
17 in the entire group, but he didn't know.

18 MR. HEINEMAN: He was ordered by the Court to give
19 a yes or no answer to a question to which he previously had
20 said -- to which he previously said he didn't know, and then
21 after that cheap charade you bring out this and try to
22 impeach him with it, and I object to it, Mr. Carr. I think
23 it's outrageous.

24 THE COURT: The question was proper, he was properly

1 ordered to answer it, and he did answer it. He was properly
2 impeached by this. I heard what was asked of him before, and
3 I heard the part that was read from the Comp Commission, and
4 it is impeaching. Your objection is overruled.

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

6 Q. Dr. Suskind, wasn't that your answer at that time,
7 sir, under oath?

8 A. That was, sir.

9 Q. Yes. And at that time you clearly stated that as
10 far as -- that there may have-- that whether there were
11 others like him or not in the entire group you didn't know,
12 isn't that correct?

13 A. That's correct, sir.

14 Q. You're suggesting there that there may have been
15 others like him in the entire group?

16 A. No, I'm not.

17 Q. Oh, you're not, sir?

18 A. No.

19 Q. What do you mean when you say, Doctor, explain
20 this, if you would, sir. Now, whether or not there were
21 others like him in the entire group, I don't know. Would you
22 explain that please, sir?

23 A. Well, I don't know. It could be no.

24 Q. No, Doctor, I'm asking you to explain this

1 statement that you made to the commission. Now whether or
2 not there were others like him in the entire group, I don't
3 know. Explain that please, sir.

4 A. It has a very simple explanation.

5 Q. Yes.

6 A. The answer to that is I did not know, and that's
7 the explanation.

8 Q. Doctor, are you not suggesting to --

9 A. Take it at face value. I didn't know.

10 Q. Are you not suggesting, Doctor, to the commission
11 that there may have been others like him?

12 A. I didn't suggest that at all.

13 Q. Doctor, when you said, now, whether or not there
14 were others like him in the entire group, I don't know,
15 doesn't that mean, Doctor, that there may indeed have been
16 others like him, sir, but you didn't know whether there were
17 or not?

18 A. I couldn't say, sir, and that's why I said I didn't
19 know.

20 Q. Doctor, insofar as people exposed to the -- these
21 halogenated hydrocarbons, you know that in some cases they
22 have systemic problems without the skin problems, in some
23 cases they have the skin problems without the systemic
24 problems and in some places they have, sometimes they have

1 both, isn't that correct, sir?

2 A. I can't answer that question the way it's worded.
3 There are some chlorinated hydrocarbons like chlorinated
4 naphthalene in which you may get systemic problems without
5 much evidence of chloracne, and the halowaxes are an example
6 of that which you get chloracne and no systemic problems or
7 you can get systemic problems.

8 Q. Now, Doctor, isn't it a fact in the case of
9 chloracne that the -- you don't believe that the type or
10 severity of extensiveness-- and talking about dioxin, sir,
11 exposure, the severity or extensiveness of the skin lesions
12 are reflective of or accompanied by disturbance of internal
13 organs. I have seen many cases of occupational acne in which
14 by physical examination or else by laboratory examination
15 there was no evidence of any systemic problems, and there's
16 also by the same token reports of people who have been
17 exposed to halogenated -- halogenated hydrocarbons which are
18 known to cause acne and who have developed a systemic disease
19 without skin lesions, so that I believe one has nothing to do
20 with the other. Isn't that a fact, sir?

21 A. In the case of that chlorinated hydrocarbon, sir,
22 yes, not TCDD.

23 Q. Doctor, you have seen in the case of these
24 halogenated hydrocarbons which cause chloracne, you have seen

1 instances where they developed a systemic disease without the
2 skin lesions, have you not, sir?

3 A. I haven't seen it, sir. I have only the literature
4 to go by.

5 Q. Doctor, insofar as your experience is concerned as
6 a physician you haven't seen others with systemic diseases at
7 all in the Nitro group, have you, sir, who did not have
8 chloracne other than Mr. Kyle? Seen as a physician, sir,
9 examined, sir?

10 A. Systemic disease without chloracne?

11 Q. That's correct.

12 A. Systemic problems? I haven't seen that, sir.

13 Q. Because the only people you have seen, sir, happen
14 to be people who have chloracne?

15 A. No, sir.

16 Q. Oh, Doctor --

17 A. Absolutely not.

18 Q. What other persons other than these 38 did you see
19 at Nitro, sir, as a physician?

20 A. We're leaving out 1979, and that's a critical --

21 Q. Doctor, my question was --

22 A. That's a critical examination for your--

23 Q. My question was, Doctor, up to 1979.

24 A. You didn't say that just now, sir.

1 Q. This time I did not, so let me amend it, sir, to be
2 crystal clear. Up until 1979 you had not seen anybody other
3 than these 38 workers who had chloracne with the exception of
4 one person, isn't that correct?

5 A. No, sir, I saw people without chloracne in 1953,
6 sir.

7 Q. Doctor, my question is--

8 A. I just got finished telling you that.

9 Q. My question is, sir, as a physician whom you
10 examined, isn't that right?

11 A. Until 1956, sir.

12 Q. All right. Doctor, were these other people that
13 you saw at Nitro that you're discussing, did they have
14 complaints of nervousness, headaches, and problems of that
15 sort, sir, did they have fatigue, did they have nerve reflex
16 changes, did they have these things, Doctor, these other--

17 A. Which group are you now talking about, sir?

18 Q. You said you saw others in 1953 who did not have
19 chloracne.

20 A. Other exposed people, yes.

21 Q. Now what problems--

22 A. They had nothing else, sir.

23 Q. What problems did they--

24 A. They didn't complain of anything else.

1 Q. Doctor, did you examine them, sir, did you take a
2 history from them, sir?

3 A. Not in the same way that we did with these others,
4 sir.

5 Q. Doctor, you know in point of fact that as late as
6 1984 it was reported by Moses and Selikoff that no
7 significant differences were found between people that had
8 chloracne and people who did not have chloracne in the Nitro
9 group for joint pain, abdominal pain, nausea, vomiting,
10 diarrhea, constipation, weakness, fatigue, irritability,
11 nervousness, depression, numbness, vertigo, lightheadedness
12 and personality change, isn't that correct, sir?

13 A. No, sir.

14 Q. Doctor --

15 MR. CARR: Would you give the witness Defendant's
16 Exhibit 908.

17 A. Thank you.

18 Q. Turn to page -- first of all, you do recognize Drs.
19 Moses and Selikoff as experts in this fields, don't you, sir?

20 A. No, sir.

21 Q. They're not experts, sir?

22 A. They are not indeed experts. They did one study,
23 sir.

24 Q. What about doctor -- the others named there? Let's

1 see, Moses, Marion Moses, M.D., Ruth Lilis, M.D., R.D. Crow,
2 M.D., John Thornton, PhD, Ali Fischbein, M.D., Henry
3 Anderson, M.D., and Irving J. Selikoff, M.D., they're not
4 experts, sir?

5 A. Not in the field of chloracne or TCDD, sir.

6 Q. Doctor, thus far so far as I'm aware of the -- Dr.
7 Matsumura, you disagreed with what he said, you disagreed
8 with what Dr. Holmestead, that Bo Holmestead is an expert,
9 you disagreed with practically every person and you said
10 they're not experts. Is the only expert in this field you,
11 Dr. Suskind?

12 A. No, sir, by no means, but I would contend that this
13 was the first study they had ever done of a population
14 allegedly exposed to TCDD.

15 Q. Doctor --

16 A. They had no prior experience, sir.

17 Q. Up until 1979 your total experience on people that
18 had been exposed to dioxin were the Nitro workers, isn't that
19 correct, sir?

20 A. That is a lot of experience, sir.

21 Q. Doctor, excuse me. Weren't your total experience
22 those 38 workers, sir?

23 A. A lot of experience, sir, more than anybody else.

24 Q. Doctor, wasn't that your total experience, sir?

1 A. Until 1956 it was 42, sir.

2 Q. Doctor, 42 in 1956, from 1949 until 1979 when you
3 did this morbidity study, your total experience was with
4 these Nitro workers, wasn't it, sir?

5 A. Correct, sir, and that was more than a lot of other
6 people have ever had.

7 Q. Doctor, I take it that that made you, seeing these
8 42 people in 30 years made you an expert on dioxin, did it,
9 sir?

10 A. No, it made me --

11 Q. Doctor, those are the only people --

12 A. Will you allow me to finish, Mr. Carr? You asked
13 me a question and please allow me to finish. You asked me if
14 I was an expert and without being humble, all I can tell you
15 is that as a scientist and a physician I had a good deal of
16 experience in the environmental issues as well as the
17 clinical issues involving TCDD. So that when we came to
18 1979, I was fully qualified, I felt, to do a morbidity study,
19 which we did, and the results of those studies, I think, are
20 something that we might discuss here.

21 Q. Doctor, these doctors that I read off they're not
22 -- one or more are not dermatologists, sir?

23 A. There is one person who has had experience in
24 chloracne, and that's --

1 Q. Is that person ---

2 A. Dr. Ken Crow, right.

3 Q. Dr. Crow? Is Dr. Crow an expert in chloracne?

4 A. I would regard the late Dr. Crow as an expert in
5 chloracne, sir.

6 Q. Well, Doctor, he was one of these authors of this
7 Moses- Selikoff study, was he not?

8 A. That's correct, sir.

9 Q. And, Doctor, your 42 cases at that time there were
10 plenty of people in Europe that had more experience than
11 that, weren't there, sir?

12 A. Personal experience?

13 Q. Yes.

14 A. You haven't asked about personal experience for any
15 of those people.

16 Q. Excuse me, Doctor. My question is there were
17 plenty of other doctors in Europe that had experience,
18 personal experience with dioxin exposure, weren't there, sir?

19 A. I think there were, certainly.

20 Q. Yes, Doctor. The doctors at Spolana,
21 Czechoslovakia, the doctors at Boehringer, these other
22 doctors saw more people than you did, didn't they, sir?

23 A. I don't know whether they saw them individually.
24 You're asking me did Dr. Suskind see those cases --

1 Q. Doctor--

2 A. And then you have to go to and ask--

3 Q. Doctor, will you listen to my question please,
4 sir? These doctors saw these people, did they not, sir?

5 A. I don't know if they saw them individually.

6 Q. Haven't you read their works, Doctor?

7 A. I have read their works certainly, but that doesn't
8 mean that they saw everyone individually. That's what you're
9 asking me, sir.

10 Q. Doctor, don't they report that they examined and
11 treated these people, Drs. Jirasek, Dr. Pazderova, don't they
12 discuss the number of people that they examined, saw, and
13 treated in their clinics?

14 A. Whether they saw them individually I have no idea.

15 Q. My question is, Doctor-- would you answer my
16 question, Doctor?

17 A. I have answered it, sir.

18 MR. CARR: Your Honor, would you direct the witness
19 to answer the question that I asked.

20 THE COURT: Doctor, please respond to the question.
21 Listen to it again and respond to it, no more, no less.

22 A. Would you please repeat the question.

23 (Court reporter read back the question.)

24 A. They report, and there are many authors to those

1 papers, that collectively they did this study. Now, whether
2 or not they saw them individually I do not know, sir.

3 MR. CARR: Your Honor, the witness is not answering
4 my question.

5 THE COURT: Doctor, listen to it again and respond
6 to it. I don't think your answer was responsive.

7 (Court reporter read back the question.)

8 A. They so reported, sir.

9 Q. Thank you, Doctor. Now, Doctor, back to Moses and
10 Selikoff's study, if you'll turn to Page 173, sir, where it
11 discusses review of symptoms, do you see that, sir? Do you
12 see that, sir?

13 A. I do, sir.

14 Q. Does it not say, sir, so far as the paragraph
15 dealing with no difference, doesn't it say, sir, no
16 significant differences were found between those with and
17 without chloracne for the following symptoms. Now, Doctor,
18 they are comparing those with and without chloracne, are they
19 not, sir, in that sentence? Doctor, are you listening to
20 me? Doctor, you're not listening.

21 A. Yes, I am, sir.

22 Q. Would you answer my question then please, sir.

23 A. I don't know what the question is, sir.

24 Q. Because you weren't listening, Doctor. You were

1 reading ahead, Doctor. Please listen to my question.

2 A. In order to answer it I have to read it, sir.

3 Q. Not ahead, Doctor. Now, Doctor --

4 A. May I have the question please.

5 (Court reporter read back the question.)

6 A. That's what they have stated, yes.

7 Q. And, Doctor, in comparing those with and without
8 chloracne for -- they compared them for the following
9 symptoms. They found no difference, did they, sir, no
10 significant difference between the complaints or symptoms
11 rather of those with and without chloracne for joint pain,
12 abdominal pain, nausea, vomiting, diarrhea, constipation,
13 weakness, fatigue, irritability, nervousness, depression,
14 numbness, vertigo, lightheadedness or personality change,
15 isn't that correct, sir?

16 A. That's what this reads, sir.

17 Q. Yes.

18 THE COURT: Doctor, in the future please when you're
19 being asked a question, don't read ahead or be looking for
20 something or whatever. Please concentrate on the question.
21 You've done that a number of times and invariably the result
22 has been that you don't fully get the question that's being
23 asked of you, and I would appreciate it if you would
24 concentrate on the question that's asked of you. You may

1 proceed, Mr. Carr.

2 THE WITNESS: I am trying to do that, sir.

3 Q. Now, Doctor, insofar as the recommendations that
4 you have made on these people that have been exposed to
5 dioxin in 1949, in 1950, in 1953, isn't it a fact, sir, that
6 you recommended that these people should be removed from
7 further exposure?

8 A. No. Those that we saw in '49 and '50, yes, sir. In
9 '53 we did not, sir, and they have to be separated.

10 Q. Doctor, did you recommend as the -- as Drs.
11 Birmingham and Denton did that these workers should be, if
12 there's a possibility that they should be exposed, that they
13 not be exposed?

14 A. In '49 and '50 for those people who were ill we
15 recommended that, sir, yes.

16 Q. Doctor, weren't you recommending that because of
17 their chloracne? Didn't you recommend that as treatment for,
18 preventive measure of treatment for chloracne, not the other
19 problems, but for chloracne?

20 A. No, sir. We were recommending it for the whole
21 problem. We were -- these people were acutely ill, they were
22 hospitalized.

23 Q. Doctor, do you recall your testimony in the Federal
24 Court in Charleston, West Virginia on January 22nd, 1985 at

1 Page 2309, 23089. Did you not, sir, say ---

2 MR. HEINEMAN: Excuse me. Can we get it? (Pause)

3 I have it, thank you.

4 Q. Did you not testify at the bottom of that page with
5 relating -- in relating to treatment for dioxin poisoning
6 sir, quote " and the other aspect of the skin reaction to
7 TCDD, and this is relating to '49 and '50 is that in order to
8 improve it if the reaction is a relatively severe one or a
9 moderate one, one usually recommends if they are, if they are
10 -- there is a possibility that they will be exposed again,
11 that they not be exposed. That's the preventive treatment of
12 chloracne?

13 A. That is a preventive treatment of chloracne, but
14 not limited to chloracne.

15 Q. Sir?

16 A. But not limited to it.

17 Q. Doctor, you recommended that these men that had
18 chloracne be removed from exposure, didn't you, sir?

19 A. We did, those who were acutely exposed and had
20 acute symptoms.

21 Q. Didn't you also recommend it because of the other
22 symptoms as well, sir?

23 A. We did indeed.

24 Q. And you -- and Drs. Birmingham and Denton also

1 recommended that these men --

2 A. They did indeed.

3 Q. And you have testified to us however though that
4 they should not be removed. Isn't that what you said on the
5 24th of March, sir?

6 A. 24th of March here?

7 Q. This year in your testimony in this case did you
8 not say, Doctor, that they should not be removed from this
9 further exposure in this case?

10 A. What kinds of cases? I didn't --

11 Q. Where the workers are exposed to these chemicals,
12 Doctor. Page 137, counsel, of March 24th, 1986. Didn't I ask
13 you this question, sir? Doctor, my question is do you not
14 believe, sir, that these workers that developed this evidence
15 of these problems they should be removed from further
16 exposure, and wasn't your answer if you're saying they should
17 be removed from that particular job, no, sir. Wasn't that
18 your answer at that time?

19 A. That was my answer, yes, sir.

20 THE COURT: Mr. Carr, is this a good point to break
21 for lunch.

22 MR. CARR: Yes, your Honor.

23 THE COURT: We'll take a break for lunch at this
24 time. We'll resume again at 1:15. The admonishments that I've

1 given you earlier will apply during this lunch break also.

2 Court's in recess.

3 (At this time a short recess was taken.)

4

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

6 Q. Dr. Suskind, this morning we examined your
7 experience of the workers that you had examined between '49
8 and '79 as to the presence of chloracne in all of those men,
9 and they all -- well, not all of the 36 had other symptoms,
10 but at least by 1953, 27 out of 29 continued to manifest
11 these problems that we have gone into and established
12 earlier, and I'd now like to go with you to the experience of
13 others as to whether or not you can have clinical effects or
14 laboratory effects without chloracne being present, and I
15 would like first to draw your attention to the testimony of
16 Dr. Dost, who testified in this case about the Holmberg's
17 prisoners that were experimented with with TCDD. Are you
18 familiar with that study, sir?

19 A. I'm familiar with some of it? Are you referring to
20 the one by Dr. Kligman.

21 Q. And Dr. Roe testified with reference to it before
22 the Environmental Protection Agency, and Dr. Dost testified
23 to his conclusions based upon what was found in those
24 studies. Now, Doctor, this is on the first of November, 1985,

1 counsel. Dr. Dost testified that one particular group, group
2 number 6, had TCDD painted on the skin and did not get
3 chloracne, but the liver was affected by the dose of TCDD --
4 on Page 28, counsel. These questions were asked, and he gave
5 these answers. Question: Would that indicate then that the
6 liver was being affected by the dose of TCDD? Answer was
7 yes. And would that be a toxic effect, Dr. Dost? Yes.
8 Question: Even though it didn't cause chloracne, it caused
9 liver damage, didn't it, sir? Answer: It would appear so.
10 Question: Would that suggest to you that low dose of TCDD
11 can cause liver damage, sir? Answer: That is not a low
12 dose. Question: Excuse me, Doctor. Would it suggest to you
13 that the dose that was not sufficient to cause chloracne
14 could nevertheless cause liver damage, and his answer was in
15 those patients, yes. And then on the next page, counsel, at
16 Line 25 of Page 29. Question: Of those prisoners, those
17 voluntary prisoners painted TCDD wouldn't cause chloracne but
18 the amount of TCDD they put on their skin was sufficient to
19 cause all of those prisoners liver damage, wasn't it, sir?

20 MR. HEINEMAN: Objection, Your Honor. May counsel
21 approach the bench?

22 THE COURT: Yes, you may.

23 (At this time a conference was had at the bench out
24 of the hearing of the jury.)

1 MR. HEINEMAN: My recollection is, Your Honor, that
2 what Mr. Carr is talking about here is voir dire. It was not
3 heard before the jury on November 1st of 1985.

4 MR. CARR: That's correct. It was his testimony in
5 this Court. It wasn't before this jury.

6 MR. HEINEMAN: You can't ask him to assume, you
7 can't read him testimony of this witness as -- under the
8 guise that this was something heard by the jury when it's a
9 voir dire hearing before the Court.

10 MR. CARR: Nobody said it was his testimony before
11 this jury. I said it was his testimony in this case.

12 MR. HEINEMAN: So what? It isn't his testimony in
13 this case. It is not his testimony in this case, Judge.
14 It's a voir dire examination. If that were the case, why
15 don't I just get up and read to the witness what Dr.
16 Kimbrough has testified to in the offer of proof if you can
17 -- if you can have the jury hear what has gone on in a voir
18 dire examination.

19 MR. CARR: Your Honor, he also acknowledged before
20 this jury that he did testify that way in that voir dire.
21 That's been read to this jury exactly word for word.

22 THE COURT: You're saying that you read him this out
23 of the voir dire and he acknowledged it?

24 MR. CARR: He acknowledged that he said that.

1 MR. HEINEMAN: Where? May we see it? May we see
2 that where that occurred?

3 MR. CARR: It did occur.

4 MR. HEINEMAN: I don't believe it unless I see it.

5 MR. CARR: I know it occurred, and he acknowledged
6 that he did say it. He, however, in front of the jury tried
7 to qualify what he said, in fact, but I read it to him and he
8 acknowledged that he did in fact say it.

9 MR. HEINEMAN: Your Honor, what Mr. Carr is reading
10 to the witness now is testimony that occurred in a hearing,
11 in a voir dire hearing out of the hearing of the jury, and I
12 object to it. It's improper, Mr. Carr knows it's improper.
13 He cannot do that. Otherwise, I'm free to read to the
14 witness what Dr. Kimbrough has testified to before this Court
15 in an offer of proof. It would be no different whatsoever.

16 MR. CARR: But, counsel, he acknowledged that he
17 said it in front of this jury, he acknowledged that he thus
18 testified, no question about it.

19 THE COURT: Okay. Normally I would agree with you.
20 His having acknowledged that he so testified, I think, would
21 put it in a different light, and under those circumstances it
22 can be used as it was used with him in front of the jury.
23 Normally I think that these offer of proof matters cannot be,
24 but he was properly impeached as far as his prior

1 inconsistent statement in front of the jury, and under those
2 circumstances it has been in front of the jury. Excuse me.
3 And so it may properly be brought in front of this witness as
4 something that the jury has heard, because he has in fact he
5 has heard it.. So I think that would take it out of the
6 general rule, which I think you have accurately stated.

7 MR. HEINEMAN: Your Honor, now you have said that
8 this has occurred solely on the basis of Mr. Carr's telling
9 you that it is occurred.

10 THE COURT: No, just a second. Just a second, just
11 a second. His mentioning it refreshed my memory that I
12 believe it has occurred, too. I don't have those notes with
13 me. There are a number of notebooks back, but in my memory I
14 believe that it had occurred also, and I think it occurred
15 more than once. I think there were a number of times when
16 this in fact was done with Dr. Dost. So before he mentioned
17 it I didn't remember it. I do remember it now. I think it
18 did occur, and it having occurred, it is properly being used
19 in this manner.

20 MR. HEINEMAN: Your Honor, I don't have this
21 transcript in Court with me, so I cannot make a determination
22 independently as to whether or not it occurred or it didn't
23 occur.

24 THE COURT: Fine.

1 MR. HEINEMAN: I note Mr. Carr has not offered any
2 transcript to demonstrate to the Court or to me or for the
3 record that, in fact, Dr. Dost did acknowledge that he said
4 this in front of the jury, that that testimony was read to
5 him, and he acknowledged that he said it. That has not been
6 offered by Mr. Carr.

7 THE COURT: That's right.

8 MR. HEINEMAN: If it turns out to be inaccurate, if
9 it turns out that your memory is inaccurate and Mr. Carr's
10 representation is inaccurate, then you will have permitted
11 something to be read in front of this jury that in fact was
12 not read before and, in fact, is voir dire and should not be
13 heard by the jury, and I would ask that we have some sort of
14 a demonstration from the record that it in fact was heard by
15 the jury.

16 THE COURT: I don't have any feeling from my own
17 memory that it did not, and if it were in question, if it
18 were in question in my mind, since I've got the
19 responsibility for making a decision, I would ask for that.
20 I don't have that kind of question in my mind so I haven't.
21 I'm not going to wait until it is dug up by either of you
22 gentlemen before we proceed. When I do have that kind of
23 question in my mind, then I would ask to be shown that, and
24 we do have to wait until that's done. I don't have any

1 problem with my remembering that it did in fact happen, so
2 proceed on that basis. I'm the one who's responsible for
3 making the decision, and in my memory it did in fact occur.

4 MR. HEINEMAN: Your Honor, obviously for the record
5 I'm going to object to proceeding without there being some
6 substantiation for the Court that that did occur, because the
7 damage would be irreparable.

8 THE COURT: Well, I disagree with that, but your
9 objection is noted for the record and I'll accept it as a
10 continuing objection.

11 MR. HEINEMAN: Thank you.

12 (The following proceedings were had in open Court.)

13 Q. Doctor, his answer to the question that I was
14 reading was, yes, that it was sufficient to cause all these
15 prisoners liver damage, and then in addition I discussed with
16 him the fact that a lower white blood count occurred with
17 these same persons, and he testified in follows: Question:
18 Well, what does it mean in cases of other persons who have a
19 lower white blood count? His answer was it could mean an
20 effect on bone marrow. Question: What is the significance
21 of that, Doctor? Answer: It would possibly mean a decreased
22 resistance to infection.

23 Now, Doctor, I want you also to assume that Dr.
24 Dost acknowledged in front of this jury that he had earlier

1 testified on the date that I gave you to the effect that I
2 have just read, but that he also said at that time in front
3 of the jury that the counts in question, that is, the
4 difference in the SGOT and the blood marrow count was not
5 outside an abnormal range, and that it was, therefore, a
6 laboratory effect, but not necessarily at that time
7 indicative of liver or white blood cell damage. Now, will
8 you assume those things, sir, that he so testified as I've
9 indicated to you?

10 A. Did you say blood marrow or bone marrow or blood,
11 what is it?

12 Q. Bone marrow, sir.

13 A. Okay.

14 Q. Will you assume that, sir, and that these prisoners
15 did not have chloracne. Will you assume that, sir?

16 A. I'm assuming what -- what was read is accurate?

17 Q. What I've read to you and what I've said to you.
18 Are you, sir?

19 A. I'm assuming that.

20 Q. The effect would then be a laboratory effect
21 without any chloracne, would it not, sir?

22 A. No, sir.

23 Q. Doctor, are you assuming as I've just read to you
24 that Dr. Dost testified?

1 A. I'm assuming that Dost said that.

2 Q. Yes, that's what --

3 A. Okay.

4 Q. If that is true, that is a laboratory effect, is it
5 not, sir?

6 A. He said it was not outside the range, sir, didn't
7 he?

8 Q. Doctor, if what he said is true, sir, if it
9 indicates liver damage or indicates a problem with the --
10 indicates an effect upon bone marrow, those two things, sir,
11 if true, are laboratory effects, are they not, sir?

12 A. I'm confused.

13 Q. Doctor, if --

14 A. No, I'm -- I'm confused as to what --

15 Q. Let me give it to you again if you're--

16 A. As to what he testified, sir.

17 THE COURT: Doctor, let counsel try to restate it
18 for you please.

19 Q. He's testified as I've read it to you and as I have
20 said, Doctor, that it was indicative of liver damage and that
21 it was indicative of an effect upon bone marrow, which could
22 possibly mean a decreased resistance to infection. Now, will
23 you assume that, sir?

24 A. I have to assume that he said that.

1 Q. Please do.

2 A. That's all I'll assume, that he said that.

3 Q. If what he said is true, Doctor, these would be
4 laboratory effects without chloracne, would they not, sir?

5 A. No, sir.

6 MR. HEINEMAN: Wait a minute. Objection, Your
7 Honor, that's not the entire assumption.

8 THE COURT: Objection is overruled.

9 MR. HEINEMAN: May counsel approach the bench?

10 THE COURT: Yes, you may.

11 (At this time a conference was had at the bench out
12 of the hearing of the jury.)

13 MR. HEINEMAN: Mr. Carr in addition to what he said
14 before also asked the man to assume that Dr. Dost testified
15 that he acknowledged that he earlier testified to what Mr.
16 Carr said--

17 THE COURT: Right.

18 MR. HEINEMAN: -- That the counts in question were
19 not outside the abnormal range--

20 THE COURT: Right.

21 MR. HEINEMAN: Thus the lab effects were not
22 necessarily a liver or white blood cell or bone marrow
23 damage.

24 THE COURT: Right.

1 MR. HEINEMAN: Now he's excluding that portion from
2 what he's asking him to assume, and I object to it.

3 THE COURT: No, objection is overruled. The part of
4 it that he asked him to focus on did not say there was
5 damage, but that there was an effect, and the question of
6 whether it's damage or not does not negate the testimony that
7 there was an effect, whether it took it out of the normal
8 range or not. What he told him to focus in on of the part of
9 that assumption was the part about the effect and that is not
10 negated by the question of whether it's inside or outside the
11 normal range. It was a change. I don't think that his
12 selection out of the assumption is improper because there's
13 something else in the totality of what he was ordered to
14 assume, asked to assume and did assume that would negate it.

15 MR. HEINEMAN: Your Honor, if he makes clear to the
16 witness that he's only asking him to assume at this point
17 part of it and makes clear to him that he wants to
18 concentrate on this portion of it, that's one thing, but to
19 ask him that this is the assumption and leave out part of the
20 assumption is clearly misleading.

21 THE COURT: Not at all. It was very clear. The
22 liver damage and effect on bone marrow. It was perfectly
23 clear. It was restated when the witness said he was confused
24 before, it's been restated, and I think it's been restated

1 clearly. Your objection is overruled.

2

3 (The following proceedings were had in open Court.)

4 MR. CARR: Would you read the question to the
5 witness please.

6 (Court reporter read back the question.)

7 A. No, sir. I really can't answer that question, sir.

8 Q. Doctor, are you assuming that what he said is true?

9 A. I will assume it if I can hear that whole complex

10 --

11 Q. Doctor, you are requesting --

12 A. Let me just ask a question, sir.

13 Q. Dr. Suskind, you are requested by me--

14 THE COURT: Doctor, just answer the questions that
15 counsel asked of you please.

16 Q. You are requested by me to assume something,
17 Doctor. You know from experience that when I request you to
18 assume something, you're obligated to do so.

19 A. I don't know what that assumption is, sir.

20 Q. I'm asking-- Would you read the question again.

21 A. No, I want that whole statement of Dr. Dost.

22 Otherwise I can't assume it, sir.

23 THE COURT: Doctor, Doctor, wait until counsel asks
24 you something or states something or restates it please. You

1 are not the person to be asking the questions.

2 MR. CARR: Your Honor, would you also please
3 instruct the witness to assume that Dr. Dost testified as
4 I've indicated he testified.

5 THE COURT: I think I asked you to assume that
6 before.

7 A. Sure.

8 THE COURT: I'm asking you again.

9 Q. If that is true, sir, these are laboratory effects,
10 are they not, sir?

11 A. I don't know, sir.

12 Q. Dr. Suskind, are you assuming--

13 A. I am indeed, and I'm answering correctly. I do not
14 know.

15 MR. CARR: Your Honor, would you ask the witness
16 please to --

17 THE COURT: Doctor, you can't interrupt the question
18 and adequately answer it. You interrupted the question
19 before what you were asked to assume was stated by the
20 questioner. Now, please I've asked you before, I'm asking
21 you again, wait until the question is finished before you
22 attempt to answer it. Mr. Carr, you may restate the question
23 or finish the question.

24 MR. CARR: Yes, Your Honor.

1 Q. Dr. Suskind, are you assuming that Dr. Dost
2 testified the SG going up as indicated?

3 A. I don't know what an SG is, Mr. Carr. What is an
4 SG?

5 Q. That's fine, Doctor. If you don't know what it is,
6 that's okay. He-- What Dr. Dost said it tends to go up when
7 the liver cells are beginning to suffer effects and that
8 means liver damage. Now, will you assume that since you
9 don't know what it means, Doctor?

10 A. I do know what it means, sir, but not SG, sir.

11 Q. Dr. Suskind, would you please --

12 A. If you mean SGOT, that's something else, sir.

13 THE COURT: Doctor, you're interrupting counsel
14 again. Now, please wait until the question--

15 MR. HEINEMAN: Your Honor, may counsel approach the
16 bench.

17 THE COURT: -- Is finished.

18 MR. HEINEMAN: Your Honor, may counsel approach the
19 bench.

20 THE COURT: Yes, you may.

21 (At this time a conference was had at the bench out
22 of the hearing of the jury.)

23 MR. HEINEMAN: Now, Your Honor, I object to this
24 procedure by Mr. Carr. Now, if Mr. Carr made a misstatement

1 by just calling it SG, wouldn't he have the decency to admit
2 that and say what the witness actually said was SGOT or SGPT
3 or whichever the liver enzymes he's referring to? Instead he
4 says, well, if you don't know what an SG means as though
5 that's what Dr. Dost said, and that's clearly not accurate.
6 So why doesn't he have the grace to acknowledge that he's
7 made a mistake in the way he's asked the question, and I
8 object to his trying to mislead this witness with respect to
9 that Dr. Dost said that some kind of SG was normal or
10 abnormal, because as everybody in this courtroom has heard
11 for the last three years I don't think anybody's ever
12 mentioned a liver enzyme going by the name of SG.

13 MR. CARR: Your Honor, the witness is playing games
14 with me and with the Court. He knew exactly what I was
15 talking about, what I been talking about all afternoon now.
16 He simply doesn't want to assume facts that I've given him as
17 being true, and that's all he's doing. He's just trying to
18 confuse it by making insertions of his own, by making
19 questions of his own in order to obfuscate the issue. The
20 witness knows exactly what he's doing.

21 MR. HEINEMAN: Now, I'd be interested to know, Mr.
22 Carr--

23 MR. CARR: Could we pass on? I don't have to
24 respond to Mr. Heineman in this situation. I think the

1 witness knows what he's doing, and I would like the witness
2 to be instructed to assume as I've given it to him now a half
3 a dozen times.

4 MR. HEINEMAN: I would object to your asking the
5 witness, your instructing the witness to assume that Dr. Dost
6 said something about SG, because he clearly didn't, and
7 that's a mischaracterization of what Dr. Dost's testimony
8 was.

9 THE COURT: Objection is overruled. Let's proceed.

10 MR. CARR: Yes, Your Honor.

11 (The following proceedings were had in open Court.)

12 Q. Dr. Suskind, are you assuming that Dr. Dost
13 testified that these things indicated liver damage, whatever
14 it is? Are you assuming that?

15 A. What is whatever it is. I don't know what that is.
16 I know what liver damage is, but whatever it is, I don't
17 know.

18 Q. Whatever it is will you assume that that means
19 liver damage according to Dr. Dost?

20 A. I will assume that.

21 Q. Thank you, Doctor. Now, if this is true, sir, that
22 the TCDD did not cause chloracne, but did cause liver damage,
23 that is a laboratory effect without chloracne, is it not,
24 sir?

1 A. No, sir.

2 Q. Are you assuming that it's painted on the skin,
3 sir?

4 A. I'm assuming that Dr. Dost said all those things.

5 Q. Excuse me, Doctor, would you please go along with
6 one at a time. Are you assuming that TCDD was painted on the
7 skin?

8 A. I am.

9 Q. Are you assuming that it did not cause chloracne?

10 A. If that's what was found, I'm assuming that.

11 Q. Are you also assuming that Dr. Dost testified that
12 that indicates liver damage, sir?

13 A. What indicates liver damage?

14 Q. The reaction, sir, the SGOT going up, sir. Would
15 you assume that that according to Dr. Dost indicates liver
16 damage?

17 A. According to Dr. Dost, sir.

18 Q. Thank you, Doctor. Now, if that is true, then that
19 is a laboratory effect without chloracne, is it not, sir?

20 A. No, sir.

21 Q. Doctor, are you assuming --

22 A. I am doing all the assumptions you've asked me to,
23 sir.

24 Q. Are you assuming that Dr. Dost testified that it

1 indicates liver damage?

2 A. I am assuming that, sir.

3 Q. Are you assuming that that is true?

4 A. I'm assuming that -- that Dr. Dost's testimony is
5 true, sir.

6 Q. All right. Then if Dr. Dost's testimony is true,
7 that is a laboratory effect, is it not, sir?

8 A. No, sir.

9 Q. Doctor, are you assuming that the liver is being
10 damaged by the TCDD?

11 A. I'm assuming that Dr. Dost said that the liver was
12 damaged.

13 Q. Doctor, are you assuming that the liver is being
14 damaged by the TCDD?

15 A. I'm not. I'm assuming Dr. Dost said that.

16 MR. CARR: Your Honor, would you direct the witness
17 to assume that what Dr. Dost said is true.

18 MR. HEINEMAN: Objection, your Honor.

19 MR. CARR: What I asked him to assume.

20 MR. HEINEMAN: May counsel approach the bench.

21 THE COURT: Yes, you may.

22 (At this time a conference was had at the bench out
23 of the hearing of the jury.)

24 MR. HEINEMAN: As we have been through before, Your

1 Honor, a witness is not required to assume that another
2 witness' opinion is fact, is true or false. He's not
3 required to assume that another witness' opinion is true or
4 false. He's required to assume facts that are in evidence.
5 Whether or not there is liver damage is an opinion, not a
6 fact, and, therefore, I object to it.

7 MR. CARR: My question posed simply if Dr. Dost's
8 opinion or statement is true, that indicates liver damage.
9 That's all it is.

10 MR. HEINEMAN: He's not entitled to have the
11 witness assume that that's true.

12 THE COURT: I disagree. I think that he is. He's
13 been asked to twice and apparently he has not. I will now
14 order him to. Your objection is overruled.

15 MR. HEINEMAN: I want to be sure I'm
16 understanding this.

17 THE COURT: No, no, no, no, wait a second. Every time
18 you go through this on clarification, this takes twice as
19 long. I did not speak in riddles. I spoke in plain English.
20 This conference at the bench is over. I'm going to order him
21 to assume it. Your objection is overruled.

22 (The following proceedings were had in open Court.)

23 THE COURT: Doctor, you've been asked to assume
24 that what Dr. Dost testified to is true. I am now ordering

1 you to take that assumption that what Dr. Dost testified to
2 is true. Mr. Carr, you may proceed.

3 Q. If that is true, that is a laboratory effect, is it
4 not, without chloracne?

5 A. No, sir.

6 Q. Are you assuming that what Dr. Dost--

7 A. I am indeed.

8 Q. -- Said is true?

9 A. Yes.

10 Q. Are you assuming that it indicates liver damage?

11 A. According to Dr. Dost, sir, yes.

12 Q. Are you assuming that it indicates liver damage,
13 sir?

14 A. According to Dr. Dost, sir.

15 Q. Would you answer my question please.

16 A. Yes.

17 Q. Is liver damage a laboratory effect, sir?

18 A. Might be.

19 Q. And, Doctor, if the --

20 A. Not necessarily, but it might be.

21 Q. If the prisoners have, and it is -- well, liver
22 damage as well is a clinical effect as well, is it not, sir?

23 A. Since I haven't seen that report, sir, I don't know
24 what the clinical findings were, but I do know how that study

1 was conducted.

2 MR. CARR: Your Honor, would you ask the witness
3 to--

4 THE COURT: Doctor, Doctor, please, you've got to
5 answer the questions and not make a response that's not
6 related to the question that's asked of you. Now, please
7 answer the question and no more and no less.

8 Q. Doctor, is liver damage and signs of liver damage
9 clinical and laboratory effects?

10 A. It may be either or both, sir.

11 Q. And, Doctor, if TCDD caused liver damage, that --
12 without causing chloracne, that may well be a clinical or
13 laboratory or both effect from TCDD, would it not, sir?

14 A. No, sir.

15 Q. Are you assuming that it caused it, Doctor?

16 A. I am assuming that Dr. Dost said that it caused it,
17 sir.

18 MR. CARR: Your Honor, would you direct the witness
19 to assume that it caused it.

20 THE COURT: Doctor, I asked you to assume that
21 earlier. I'm now asking you again to take that assumption as
22 true and answer the question on that basis. That's what I
23 asked you to do before. Mr. Carr, you may proceed.

24 Q. Doctor --

1 MR. HEINEMAN: Excuse me, Your Honor, do I-- you
2 did say I have a continuing objection.

3 THE COURT: Yes, I did say that.

4 MR. HEINEMAN: For the record.

5 THE COURT: Yes.

6 MR. HEINEMAN: To this--

7 Q. Doctor, this is then, if true, a clinical and/or
8 laboratory effect without chloracne, isn't it, sir?

9 A. Yes, if true.

10 Q. That's what I asked you, Doctor.

11 A. If true.

12 Q. All right. And, Doctor, you, of course, are
13 familiar also of the Bleiberg article dealing with
14 industrially acquired porphyria, are you not, sir?

15 A. I am, sir.

16 MR. CARR: Could you give him Plaintiffs' Exhibit
17 1445.

18 Q. Doctor, this exhibit and many, many others that I'm
19 going to ask you about have been testified to at some length
20 by others, and I'm not going to ask you except a few specific
21 questions relating to each, sir. Would you turn to the
22 table, sir, that's on Page 795 of that article, sir. Do you
23 have the article in front of you, Doctor?

24 A. I do, sir.

1 Q. Are you turning to that page?

2 A. I have Page 795 directly in front of me, sir.

3 Q. Doctor, if you will look at that that list of 26
4 workers whose urine was tested for porphyrins, is it not,
5 sir?

6 A. Yes.

7 Q. And, Doctor, patients No. 14, 25 and 26 are not
8 reported to have chloracne, they're reported none in the
9 column for chloracne, are they not, sir?

10 A. I see two that are reported as positive without
11 chloracne. Is that what you're saying?

12 Q. Are you looking at No. 14? Worker No. 14, are you
13 seeing that, sir?

14 A. I see that, sir, yes.

15 Q. It says none for chloracne?

16 A. Right.

17 Q. It says positive for porphyrins, does it not, sir?

18 A. Yes, sir.

19 Q. Are you looking at No. 25?

20 A. I am, sir.

21 Q. That says none for chloracne, does it not?

22 A. Right.

23 Q. It says positive for porphyrins, does it not, sir?
24 You see that, sir?

1 A. Yes, sir.

2 Q. Is that correct, sir?

3 A. That is correct.

4 Q. Number 26 it says none for chloracne, do you see
5 that, sir?

6 A. Umhm.

7 Q. It says positive for uro -- for porphyrins, does it
8 not, sir?

9 A. Correct.

10 Q. These are three cases -- those are urine porphyrins
11 are laboratory effects, are they not, sir?

12 A. They are laboratory-- well, no, they're more than
13 that, sir.

14 Q. Clinical and laboratory effects, Doctor? Doctor
15 they're referring to a laboratory test, aren't they, sir?

16 A. No, these are just laboratory effects. There are
17 no clinical effects.

18 Q. They are referring to laboratory tests, aren't
19 they, sir?

20 A. Yes, they are.

21 Q. These three men had laboratory effects without
22 chloracne, did they not, sir?

23 A. I would expect that, yes, sir.

24 MR. CARR: Would you give the witness then

1 Plaintiffs' Exhibit 1642.

2 THE CLERK: I don't have that exhibit, Mr. Carr.

3 MR. CARR: We'll have a spare copy then.

4 Q. Doctor, you recognize Plaintiffs' Exhibit 1642 as a
5 nerve conduction study by Dr. Raymond Singer, Marion Moses,
6 Jose Valciukas, Ruth Lilis, and Dr. Irving J. Selikoff, do
7 you, sir?

8 A. I do.

9 Q. And, Doctor, you, of course, are familiar with this
10 study, are you not?

11 A. I am.

12 Q. Doctor, these workers were workers with 2,4,5-T,
13 were they not, sir, in the manufacture of it? Fifty-six
14 workers that were employed there, sir?

15 A. Yes, I believe so, and 2,4,-D, sir, both materials,
16 not just one.

17 Q. Doctor --

18 A. There were two materials, sir.

19 Q. Doctor, as far as these, all these workers would be
20 at risk for exposure to phenoxy herbicides to some degree
21 according to this article, would they not, sir? Page 301, the
22 second paragraph under the heading methods. Do you see that,
23 sir?

24 A. Yes, sir, I see it.

1 Q. All right. Doctor, on Page 303 the authors state,
2 do they not, sir, under the heading analysis that in this
3 group chloracne was infrequent and could not serve as a
4 variable in the analysis?

5 A. I see that, sir.

6 Q. They conclude, do they not, sir, in this study of
7 these workers in this chemical factory that they have slowed
8 nerve conduction velocities found among these workers, do
9 they not, sir, on Page 307?

10 A. If you're referring to the first sentence under the
11 discussion.

12 Q. I am.

13 A. These authors contend that this is so, sir.

14 Q. Doctor, the way you emphasized the various words
15 about these authors, are these authors competent scientists
16 in your judgment?

17 A. No, sir, not for nerve conduction velocity, sir.

18 Q. Dr. Raymond Singer, Dr. Marion Moses and Valciukas,
19 Lilis, and Irving Selikoff are not competent, sir?

20 A. Not for nerve conduction velocity and its
21 significance, sir.

22 Q. Doctor, isn't one of these workers, a Dr. Singer,
23 isn't he a neurologist?

24 A. I don't know, sir.

1 Q. Well, Doctor, if you don't know that, how can you
2 say that he's not competent, sir?

3 A. Because of the way he conducted the study, sir.

4 Q. Doctor, do you know -- this is a peer-reviewed
5 article, is it not, sir?

6 A. I don't know, sir.

7 Q. Well, Doctor, it's been testified that it was so
8 assume that it is, would you?

9 A. I can't tell you that it was, sir.

10 Q. Doctor, I would like for you to assume that it's
11 been testified that it is an authoritative article. Would you
12 do that please, sir?

13 MR. HEINEMAN: Objection, Your Honor. May counsel
14 approach the bench.

15 THE COURT: Sure.

16 (At this time a conference was had at the bench out
17 of the hearing of the jury.)

18 MR. HEINEMAN: Your Honor, we now have another wild
19 assertion by Mr. Carr based upon no reference to record or no
20 reference to anything else, assume that it's been testified
21 that this is peer-reviewed. Now, who testified--

22 MR. CARR: I said authoritative, counsel.

23 MR. HEINEMAN: No, you said peer-reviewed.

24 MR. CARR: You weren't listening.

1 MR. HEINEMAN: Shall I have it read back?

2 THE COURT: He said it was authoritative.

3 MR. HEINEMAN: May I have it read back, Your
4 Honor?

5 THE COURT: No, you may not. I heard it, too. It
6 was authoritative. Now, are you saying that it has not been
7 testified that --

8 MR. HEINEMAN: I object to that. I have no
9 recollection of that. I'd like to know who said it.

10 MR. CARR: I don't know who said it. I know it
11 would not be in evidence if it were not authoritative.

12 THE COURT: Has it been admitted into evidence?

13 MR. CARR: Yes.

14 THE COURT: You may proceed. That would be one of
15 the conditions of it being in evidence. Your objection is
16 overruled.

17 MR. HEINEMAN: May my objection run to any similar
18 discussion with respect to this article on the basis that
19 it's supposedly authoritative and peer-reviewed.

20 THE COURT: Sure. It's a continuing objection.

21 MR. HEINEMAN: Thank you.

22 (The following proceedings were had in open Court.)

23 Q. Doctor, counsel reminds me that Dr. Singer is a
24 neuropsychologist and --

1 MR. HEINEMAN: Who?

2 MR. CARR: Dr. Singer.

3 MR. HEINEMAN: What counsel reminds you?

4 MR. CARR: My co-counsel, Mr. Siegfried.

5 Q. Doctor, now would you assume please that this
6 article has been described as authoritative?

7 A. Only if I'm asked to, sir.

8 Q. And, Doctor, this is a work that Dr. Moses and
9 Selikoff worked in 19-- well, at least they published the
10 article in 1981, did they not, sir?

11 A. 1982, sir.

12 Q. Published in '82, received in June of '81. You see
13 that, sir?

14 A. Yes.

15 Q. And this indicates that Dr. Moses and Selikoff had
16 some work in this area of phenoxy herbicides in addition to
17 the Nitro work, doesn't it, sir?

18 A. Yes.

19 Q. How many workers were involved in this study,
20 Doctor?

21 A. I don't know, sir.

22 Q. Doctor, it says in the very first paragraph, it
23 says 56, in the abstract 56 workers, doesn't it, sir?

24 A. That's what it reads, sir.

1 Q. Doctor, now do you believe that this group of
2 doctors are not competent to conduct a nerve conduction
3 velocity examination, sir?

4 A. No, sir, I don't believe they are.

5 Q. Doctor, do you have any knowledge about the
6 qualifications of Dr. Raymond Singer as to conducting tests
7 of this sort?

8 A. No, except -- except this study, sir.

9 Q. Doctor, do you have some knowledge about Dr.
10 Singer's qualifications?

11 A. Only this study.

12 Q. Excuse me. Do you have some knowledge about his
13 qualifications, sir?

14 A. Only this study, sir, no.

15 Q. Then you don't have any knowledge as to his
16 qualifications, do you, sir?

17 A. Not as a neurophysiologist, which is what this is
18 about.

19 Q. Doctor, as far as you know he might be the most
20 qualified person on earth to give nerve conduction velocity
21 examinations so far as you know, might he not, sir?

22 A. No, sir, I do know others who are qualified, sir.

23 Q. Doctor, you don't know that he's not qualified, do
24 you, sir?

1 A. I believe he is not.

2 Q. Doctor, my question is you don't know anything
3 about the man's background or qualifications, do you, sir?

4 A. I know he's a neuropsychologist, sir.

5 Q. Doctor, do you know -- it's possible that he may
6 have conducted these examinations on thousands of people,
7 isn't it, sir?

8 A. He might have, sir, yes.

9 Q. You don't know that he hasn't, do you, sir?

10 A. No, I don't know --

11 Q. Doctor, if he has done it on thousands, don't you
12 think it might make him competent, sir?

13 A. No, sir, absolutely not.

14 Q. All right. And you think Dr. Moses and Dr. Selikoff
15 would go out here and do studies of this sort with people
16 that are incompetent, sir?

17 A. No.

18 Q. All right, Doctor, you do know that they would find
19 competent people to work with them, don't you, sir?

20 A. I do not know, sir.

21 Q. You don't know that either?

22 A. No, I don't.

23 Q. Well, Doctor, whether you accept the competence or
24 not, they have made a finding, have they not, sir?

1 A. They have made certain conclusions, sir.

2 Q. And, Doctor, they describe quite carefully what
3 they did with their control group and other workers, do they
4 not, sir?

5 A. They do indeed.

6 Q. Sir?

7 A. They do.

8 Q. They describe what they did in the laboratory and
9 what they -- how they placed their electrodes, did they not,
10 sir?

11 A. That's pretty standard for this study, sir.

12 Q. That is the standard way to do it then, isn't it,
13 Doctor?

14 A. It is one way to do it, sir.

15 Q. Doctor, is it a standard way to do it?

16 A. It is their way of doing it.

17 Q. My question is is it a standard way of doing it?

18 A. It is one of the standard ways of doing it, sir.

19 Q. Thank you, Doctor. And one of the standard ways of
20 doing it that they used revealed the results of a slowed
21 nerve conduction velocities prevailing among these chemical
22 workers, do they not say that, sir?

23 A. That's what they attempt to say, sir.

24 Q. Doctor, they don't attempt to say it. They say it,

1 do they not, sir?

2 A. Well, this is what they have decided was the result
3 of their study, sir.

4 Q. Doctor, my question is this is what they said, is
5 it not, sir?

6 A. That is what they said, sir.

7 Q. Yes. And, Doctor, if--

8 A. But they said it.

9 Q. Yes. And if this is true, Doctor, this is a
10 laboratory or clinical effect caused in people exposed to
11 these herbicides without chloracne being present, isn't it,
12 sir?

13 A. No, sir.

14 Q. It is not?

15 A. No, sir.

16 Q. What is untrue about that, sir?

17 A. Nothing true about it, because it's a fallacious
18 study, sir.

19 Q. Doctor, are you assuming that it is true, that it
20 is truthful and correct, sir?

21 MR. HEINEMAN: Objection, Your Honor. May counsel
22 approach the bench?

23 A. I can't believe it.

24 (At this time a conference was had at the bench out

1 of the hearing of the jury.)

2 MR. HEINEMAN: Mr. Carr has no right and there's no
3 basis in fact in law to ask this witness to assume that it's
4 a true and correct study. The witness can express his
5 opinion on it, and he has -- is not required to assume that
6 it's true. There's nothing that requires him to do that, and
7 I object to the request of him to assume that it's true.

8 MR. CARR: Darling versus Charleston, your Honor,
9 said long ago, your Honor, that we have the right to
10 cross-examine these witnesses using authoritative articles
11 and studies to test the witness that's testifying. Obviously
12 he has to assume that it's true, and my question was if this
13 study is true, and then he said, no, but I knew exactly why
14 he's saying that, because he's not assuming that it's true.
15 I'm asking him to assume it's true. Your Honor, I don't know
16 what to do. I don't know how to continue the
17 cross-examination of this witness, because he obviously never
18 accepts the assumption that it's true, he never accepts the
19 preparatory remarks, if it's true. He has done it time and
20 time again, and he's making a mockery of this
21 cross-examination. He's laughing at me, he's laughing in
22 front of the jury about it, saying this is a fallacious
23 study. Now, I didn't ask whether it's a fallacious study. It
24 may be erroneous, it may be the worst study on earth, but I

1 asked him if true, it shows it, and he has not assumed that
2 it's true.

3 MR. HEINEMAN: He's not--

4 MR. CARR: The witness should be, I think, ordered
5 to assume that it is true.

6 MR. HEINEMAN: Your Honor, again we have the
7 opinions of the authors set forth in their paper. The witness
8 is not required to assume that the opinions of somebody else
9 are true. He's required to assume facts, but not opinions.

10 THE COURT: The question as phrased was proper. He
11 was asked to assume it. His answer showed that he did not
12 assume it. He was obviously not following the request of the
13 assumption. I'm going to order him to assume that it is
14 true. Your objection is overruled.

15 MR. HEINEMAN: Obviously, your Honor, I object to
16 your ordering him to assume that it's true.

17 THE COURT: Fine. You may object. It happens to be
18 proper, and I will do it.

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

20 THE COURT: Doctor, I am ordering you to assume that
21 what's stated in that study is true. You were asked to
22 assume it being true in the question before. Your answer
23 indicated that you were not assuming that it was true. I am
24 now ordering you to assume that it is true. Mr. Carr, you

1 may proceed.

2 Q. Doctor, if true, it is a laboratory effect of --
3 without the presence of chloracne, is it not, sir?

4 A. No, sir.

5 Q. Are you assuming that it's true, Doctor?

6 A. I am indeed, sir.

7 Q. Are you assuming that these workers had slowed
8 nerve conduction velocities?

9 A. I am assuming that this is what they felt they
10 found, yes, sir.

11 Q. Are you assuming that it's true that they had
12 slowed nerve conduction velocities?

13 A. As it's discussed in this paper, yes, sir.

14 Q. My question is specifically, sir, are you assuming
15 that it's true that these workers had slowed nerve conduction
16 velocities?

17 MR. HEINEMAN: Your Honor, do I have a continuing
18 objection to this?

19 THE COURT: Yes, you do. Yes, you do.

20 A. I am assuming what they've said is true, sir.

21 MR. CARR: Your Honor, would you direct the witness
22 to answer my question directly please.

23 THE COURT: Doctor, you were asked not a general
24 question, but a very specific one as far as nerve conduction

1 velocities. Your answer was not responsive to that question.
2 Please respond to the question that was asked of you, sir.

3 THE WITNESS: Yes, sir?

4 A. I am assuming that it is true, sir.

5 Q. All right. Now, Doctor, and these were found in
6 workers that did not have chloracne, isn't that correct, sir?

7 A. Some of them didn't have chloracne, sir.

8 Q. Doctor, the authors said that chloracne was an
9 infrequent occurrence among these 56 workers, did they not,
10 sir?

11 A. That's what they said they said.

12 Q. Are you assuming that that is also true, sir?

13 A. I cannot. There's no dermatologist in this group,
14 sir.

15 MR. CARR: Your Honor, would you --

16 A. How can I assume it if there's no--

17 MR. CARR: Would you direct the witness to assume
18 that the--

19 THE COURT: Doctor. Doctor, you were ordered, you
20 were asked before and you have since been ordered to assume
21 that what is stated in that study is true for the purposes of
22 these questions. That is part of the study you were ordered
23 to assume that particular matter also and any other
24 particular matters that are stated in the study. Mr. Carr,

1 you may proceed.

2 Q. Now, Doctor, are you assuming that chloracne was an
3 infrequent occurrence in these workers?

4 A. I am, sir.

5 Q. And are you assuming that slowed nerve conduction
6 velocities was prevalent in the workers, in these 56 workers?

7 A. I am assuming that that is the case, sir.

8 Q. Now, if those two things are true, Doctor, this is
9 a laboratory effect without chloracne association, is it not,
10 sir?

11 A. No, sir.

12 Q. Doctor, are you assuming that --

13 A. I am, yes, I am assuming all --

14 Q. Doctor, I haven't finished my question yet. Are
15 you assuming, sir, that these 56 workers had found to be an
16 increased prevalence of slowed nerve conduction velocities in
17 these workers, sir, are you assuming that is true?

18 A. I am assuming that, sir.

19 Q. Are you assuming it's also true that chloracne was
20 found among these workers infrequently?

21 A. I'm assuming that, sir.

22 Q. Now, Doctor, do you assume that the prevalence is
23 more often than the -- that it was found to be slowed more
24 often than the chloracne was found to be present?

1 A. I'm not sure I can answer that question.

2 Q. Are you assuming that the workers had these --

3 A. That isn't what's said here, so how can I assume
4 it?

5 THE COURT: Doctor, the question wasn't finished.
6 Wait until the question is finished before you respond to it.

7 Q. Doctor, you're assuming that it was found to be
8 prevalent among these 56 workers, sir, that they had slowed
9 nerve conduction velocities?

10 A. I've already answered that, yes, sir, I am assuming
11 it.

12 Q. Are you also assuming among these same workers that
13 they didn't have chloracne except on an infrequent basis?

14 A. I'm assuming that, sir.

15 Q. Now, you've got the group that has a slowed nerve
16 conduction velocity on a frequent basis, do you not, sir? If
17 it's prevalent, that's frequent, isn't it, sir?

18 A. There was an increased prevalence, sir, yes, sir.

19 Q. Is the answer to my question that the prevalence
20 would mean that it occurred frequently?

21 A. I don't know, sir.

22 Q. Doctor, if something is prevalent, if it's
23 prevalent, it's certainly more than infrequent, isn't it,
24 sir?

1 A. If it's increased, sir.

2 Q. Well, that's what it says, doesn't it, sir,
3 increased prevalence, Doctor?

4 A. Yes, sir.

5 Q. Isn't that exactly what it says?

6 A. Yes, sir.

7 Q. That's certainly more than infrequent, isn't it,
8 sir?

9 A. That is true, sir.

10 Q. Then, Doctor, this increased prevalence was found
11 in a group of workers that had infrequent chloracne, isn't
12 that correct, sir?

13 A. If you put the two together, yes, sir.

14 Q. Yes. And if putting the two together then, Doctor,
15 that is a laboratory effect without the manifestation of
16 frequent chloracne, isn't it, sir?

17 A. I'm not sure I can answer that question.
18 Manifestations of what?

19 MR. CARR: Your Honor, would you direct the witness
20 please to answer my question.

21 THE COURT: Doctor --

22 MR. HEINEMAN: The witness is confused by the
23 question.

24 MR. CARR: He knows exactly what I mean.

1 THE COURT: Doctor, the question is clear. I'm
2 ordering you to answer it.

3 THE WITNESS: I'm sorry, Your Honor, but I--

4 THE COURT: Would you please the repeat the
5 question.

6 A. Please. Thank you.

7 (Court reporter read back the question.)

8 A. No, sir.

9 Q. Doctor, are you putting together the slowed nerve
10 conduction velocity that was found to be prevalent, increased
11 prevalence, are you putting that together, sir?

12 A. Putting it together with what, sir?

13 Q. With the infrequent chloracne, Doctor.

14 A. They're two separate issues.

15 Q. Doctor, the issue, as you know, I announced to you
16 at the outset that we are going to go into studies to show
17 where there have been laboratory effects or clinical effects
18 without chloracne. Now, Doctor, you understand that that's
19 the course of the line of cross examination that I'm embarked
20 upon right now, you understood that from the outset this
21 afternoon, did you not, sir?

22 A. No, sir.

23 Q. Didn't you hear me say that, Doctor?

24 A. No, I did not, sir.

1 Q. Doctor, let me tell you again, sir, and intend to
2 demonstrate that chloracne, that other manifestations,
3 clinical effects and laboratory effects occur, sir, without
4 the occurrence of chloracne. Do you understand that, sir?

5 A. Clinical and laboratory effects from what, sir?

6 Q. From exposure to contaminated products with TCDD,
7 from exposure to 2,4,5-T that may have in it TCDD, from
8 exposure to any kind of product that may have dioxin in it,
9 sir. Now, Doctor, and we started out with Dr. Dost's
10 testimony relating to the TCDD painted on the workers, you
11 recall that, sir?

12 A. Yes, I do.

13 Q. When they had the liver damage according to Dr.
14 Dost's interpretation without the chloracne; do you recall
15 that, sir, and then we went to the Bleiberg study where we
16 had three workers without chloracne who had the positive
17 porphyrins, do you recall that, sir?

18 A. I have a difficult time understanding that aspect
19 of it, sir, because --

20 Q. Doctor, I didn't ask you -- do you understand that
21 we've demonstrated with Dr. Bleiberg that three of these
22 workers without chloracne had these positive urinary
23 porphyrins, you do recall we just went through that, don't
24 you recall that, sir?

1 A. I do, but not in relation to TCDD.

2 Q. Doctor, in the next article we went into with
3 Singer's article dealing with these nerve velocities slowed
4 conduction tests. Do you understand that, Doctor? We're on
5 the same framework, we're in the same line of examination,
6 and you do understand that, don't you, sir?

7 A. No I do not, sir, because if you want to relate it
8 to TCDD.

9 MR. CARR: Your Honor, would you direct the witness
10 to let me finish my question.

11 Q. Doctor, this study here deals with-- and by this
12 study, this Singer article refers to the manufacture of
13 2,4,5-T and 2,4,-D, does it not, sir?

14 A. That's what it reads, sir.

15 Q. Doctor, that 2,4,5-T was the subject that was
16 contaminated in Vietnam, was it not, sir, that was
17 contaminated at Nitro, was it not, sir, with TCDD?

18 A. Which question do you want me to answer first,
19 sir?

20 Q. Either one, Doctor, or both.

21 A. In Vietnam I'm not sure, at Nitro I am.

22 Q. Doctor, you do know that Vietnam used the-- the
23 Army used in Agent Orange 2,4,5-T made by Monsanto which
24 contained levels, parts per million levels of TCDD, you do

1 know that, don't you, sir?

2 A. Parts per million I'm not familiar with that, sir.

3 Q. Doctor, we went through the reports, the Udell
4 report, the exhibit we showed you, sir, Dr. Gott and others
5 wrote it in the 1960's, from 1958 to 1965 and later, sir, the
6 TCDD content of the 2,4,5-T, you do recall that now, don't
7 you, sir?

8 MR. HEINEMAN: Objection, Your Honor. Objection,
9 your Honor. May counsel approach the bench.

10 THE COURT: Yes, you may.

11 (At this time a conference was had at the bench out
12 of the hearing of the jury.)

13 MR. HEINEMAN: Mr. Carr is again trying to mislead
14 and confuse the witness and the jury. He's switching from
15 Agent Orange to 2,4,5-T and they're two different things, as
16 he knows and as this witness has explained. The Gott exhibit
17 related to findings of ppm of TCDD in 2,4,5-T as I recall,
18 not in Agent Orange. 2,4,5-T is not what's in Agent Orange.

19 MR. CARR: It sure as hell is.

20 MR. HEINEMAN: Oh, no, it is an esterified product,
21 and if you knew a little more about chemistry, you wouldn't
22 make a foolish remark like that. It's not 2,4,5-T that is in
23 Agent Orange. It's an esterified as this witness has
24 testified.

1 THE COURT: We have been through this many times.
2 What was stated was accurate, what was stated was not stated
3 in a confusing or misleading manner. Your objection is
4 overruled.

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

6 Q. Doctor, this Singer article deals with 2,4,5-T,
7 does it not, sir?

8 A. That's one of the substances, yes, sir.

9 Q. And, Doctor, the second paragraph -- second page of
10 this discusses 2,4,5-T and the possibility that TCDD is
11 involved in it, is it not, sir? Starts out the very first
12 paragraph, doesn't it, sir? There have been many reports of
13 adverse effects on human health from exposure to 2,4,5-T and
14 its contaminants in relation to industrial accidents, doesn't
15 it, sir?

16 A. Yes, sir.

17 Q. And, Doctor, it discusses on the first page, last
18 paragraph on that page a one to one combination of anbutyl
19 esters and 2,4,5-T and 2,4,-D comprise Agent Orange a
20 defoliant widely used by the U. S. Military in South Vietnam
21 from 1965 to 1970. In 1971 the U.S. Environmental Protection
22 Agency suspended most food crop uses of 2,4,5-T and most
23 other uses were suspend in 1978 based upon unresolved
24 questions regarding effects of low level exposure to

1 chlorinated dioxins on human health. 2,4,5-T is no longer
2 being manufactured in the United States. It says that, does
3 it not, sir?

4 A. That's what it reads, sir.

5 Q. Now, Doctor, if the 2,4,5-T has in it the
6 contaminant known as 2,3,7,8-TCDD in this circumstance, sir,
7 it caused chloracne infrequently and slowed nerve conduction
8 velocities on an increased prevalent scale, did it not, sir?

9 A. No, sir.

10 Q. Doctor, what is incorrect in the statement that I
11 gave you, sir?

12 A. The incorrect part of it, sir, is that you don't
13 know and I don't know nor do these people who have written
14 the article know that there was sufficient exposure to be
15 absorbed, to be absorbed and to have any toxic effect.
16 There's no other information in here outside of the nerve
17 conduction velocity test, which in the opinion of experts
18 like Schomberg and Spencer --

19 MR. CARR: Your Honor, the witness is way beyond the
20 question's scope.

21 MR. HEINEMAN: Objection, Your Honor. He asked him
22 why.

23 THE COURT: Objection is overruled. It is beyond the
24 question.

1 Q. Doctor, the authors here writing this article in
2 relation to the possibility that 2,3,7,8-TCDD is in the
3 2,4,5-T that these workers have been exposed to, isn't that
4 correct, sir?

5 A. They cite on 308 they cite dioxins as toxic agents,
6 but they felt that these findings might also be due to
7 2,4,-D, sir.

8 Q. Doctor, don't they discuss on the present study on
9 Page 300 in April of 1979 chlorinated dibenzo-p-dioxin
10 contamination was found in locations away from the chemical
11 plant producing 2,4,5-T and 2,4,-D in Jacksonville, Arkansas,
12 a small community near Little Rock. The source of the
13 contamination was found to be toxic wastes leaking from drums
14 stored above ground at the 93 acre plant site. Levels of 40
15 parts per million of 2,3,7,8-TCDD were found in the wastes
16 and 2 parts per million in a sewer system outlet at the plant
17 that discharged into the city system. The problem was
18 investigated by the Arkansas State Department of Health and
19 the Governor's Office ordered production of 2,4,5-T suspended
20 until the health and safety implications of the findings were
21 investigated and evaluated. 2,4-D, however, continued to be
22 produced. Doesn't it say that, sir?

23 A. Yes, it does.

24 Q. And aren't they discussing, sir, the particular

1 problem that Arkansas found to be associated with the 2,4,5-T
2 that had been manufactured, sir?

3 A. No, this group was concerned both with 2,4,5-T and
4 2,4,-D.

5 Q. Doctor, wasn't 2,4,5-T involved, sir?

6 A. It was, along with 2,4,-D.

7 Q. Doesn't it point out, Doctor, and doesn't it point
8 out clearly that the 2,4,5-T in that plant they found 40
9 parts per million of 2,3,7,8 was found in the wastes in the
10 sewer system outlet at the plant that discharged into the
11 city system. Is there any question of what they're talking
12 about--

13 A. No, sir, no, sir.

14 Q. -- 2,3,7,8 TCDD?

15 A. That is an incorrect quotation, sir. It's 40 --

16 Q. Doesn't it say, sir, the source -- page 301 -- the
17 source of the contamination was found to be toxic wastes
18 leaking from drums stored above the ground at the 93 acre
19 plant site, doesn't it say that, sir sir?

20 A. Correct, that's what it says, sir.

21 Q. Doesn't it say levels of 40 parts per million of
22 2,3,7,8-TCDD were found in the wastes, sir?

23 A. And 2 parts per billion in the sewer.

24 Q. And 2 parts per billion in the sewer system, sir?

1 A. That's what this reads correctly, yes.

2 Q. All right, Doctor. Now, are they not talking about
3 2,3,7,8-TCDD that's associated with manufacture of the
4 2,4,5-T and the 2,4,-D in that Jacksonville, Arkansas plant,
5 sir?

6 A. No, they're -- no, sir.

7 Q. Doctor, did they not find the dioxin in the plant
8 waste, sir?

9 A. They found it in drums stored, sir, not in the
10 plant.

11 Q. Yes.

12 A. They found it in drums stored.

13 Q. Where, Doctor?

14 A. Above ground level.

15 Q. And did they find it, sir --

16 A. These are wastes, sir.

17 Q. -- In the sewer system, sir, outlet at the plant?

18 A. In two parts per billion, sir. That's a very low
19 level.

20 Q. Where do you reckon that 2,3,7,8-TCDD came from,
21 sir? Do you reckon it just might have come from the
22 manufacture of 2,4,5-T at the plant?

23 A. It could have, yes.

24 Q. Yes, indeed, it could have, because that would be

1 consistent with what happened at Nitro, is it not, sir?

2 A. No, sir.

3 Q. Oh, you didn't find 2,3,7,8-TCDD in the 2,4,5-T at
4 Nitro? Is that what you're saying, sir?

5 A. We're talking about sewer systems.

6 Q. Excuse me, Doctor.

7 A. We're talking about stored materials.

8 Q. Would you address your attention to the question
9 that I asked you. Did you find 2,3,7,8-TCDD or was it found
10 rather 2,3,7,8-TCDD in the 2,4,5-T manufactured at Nitro?

11 A. TCDD was found.

12 Q. They found it in the ground as well, did they not,
13 sir, in the earth, in the soil?

14 A. Beneath the surface, sir.

15 Q. Doctor, they found it hear in this plant as well,
16 did they not, sir, found it in the sewer system outlet, two
17 parts per billion, sir?

18 A. Yes.

19 Q. All right, Doctor. Now, and in this study, sir, is
20 then associated, is it not, sir, with 2,4,5-T that has as a
21 contaminant 2,3,7,8-TCDD?

22 A. I don't know. I don't know what these people were
23 exposed to, sir.

24 Q. Doctor, I didn't ask you if you knew. I asked you

1 about this study, what it says, sir, and you understand that
2 I'm asking you, you weren't there, Dr. Singer, Moses, and
3 Selikoff were there, they conducted the tests. You weren't
4 there, isn't that correct, sir?

5 A. Correct.

6 Q. And, Doctor, you only know what's stated in this
7 article, you don't know that it's true, you don't know that
8 it's false, you don't know that it's part in part. Doctor,
9 I'm asking you questions about this study. This study on
10 it's surface relates to 2,4,5-T contaminated with
11 2,3,7,8-TCDD, does it not, sir?

12 A. Yes, the workers that were studied--

13 Q. All right, Doctor. That yes is fine, and they
14 found among those workers, did they not, sir, effects of
15 slowed velocity on their nerves, sir, in the conduction test
16 without finding chloracne?

17 A. I think we've answered that question before, sir.

18 Q. Would you answer it please, Doctor.

19 A. This study found --

20 MR. CARR: Your Honor, would you direct the witness
21 to answer my question?

22 A. I'm answering the question.

23 THE COURT: Please answer the question.

24 A. I am.

1 THE COURT: Answer it please.

2 A. I'm attempting to do so.

3 THE COURT: Go right ahead then.

4 A. This study found that among the 56 workers who were
5 in that plant that there was an increased prevalence of
6 slowed nerve conduction velocity.

7 Q. And, Doctor, they found at the same --

8 A. -- And in this group-- May I finish, sir?

9 Q. Doctor, may I finish that please? Doctor, at that
10 same time in that group they found that chloracne was
11 infrequent, did they not, sir?

12 MR. HEINEMAN: Objection, he interrupted the
13 answer.

14 THE COURT: Objection is overruled. The question was
15 responded to.

16 A. Would you allow me to finish, sir?

17 THE COURT: Doctor, please answer the question that
18 was asked of you.

19 A. They allegedly found infrequent chloracne if they
20 looked for it.

21 Q. Now, Doctor, if that is true, they found then
22 increased slowed nerve velocity and infrequent chloracne, did
23 they not, sir?

24 A. We have answered that before. The answer is yes.

1 Q. And, Doctor, if that is true, that is a laboratory
2 effect, is it not, sir?

3 A. A laboratory effect of what?

4 MR. CARR: Your Honor, would you direct the witness
5 to answer my question.

6 THE COURT: Would you ---

7 Q. A laboratory effect, Dr. Suskind, without chloracne
8 of exposure to the 2,4,5-T and 2,4,-D that may or may not be
9 contaminated with 2,3,7,8-TCDD, isn't that correct, sir?

10 A. No, sir, it is not, sir.

11 Q. Doctor, is it a laboratory effect?

12 A. A laboratory--

13 Q. Is it a laboratory effect, Doctor?

14 A. It's a laboratory measurement.

15 Q. All right. Is that an effect, Doctor?

16 A. When you say effect, you have to say effect of
17 what.

18 Q. Doctor, we've been through the effect --

19 A. No, we haven't.

20 Q. We've gone through, Doctor, your testimony as to
21 what are markers. You said that the marker of an exposure,
22 sir, is laboratory effects and clinical effects. We have
23 gone through that, Doctor. I do not intend to go through it
24 again. This test, sir, shows the result of something

1 happening in the body, it is a laboratory test, is it not,
2 sir?

3 A. Not strictly a laboratory test, sir.

4 Q. What is it, Doctor, is it a clinical test?

5 A. It would be essentially a physiologic test.

6 Q. Which category does it fall in, Doctor, a clinical,
7 showing a clinical effect or showing a laboratory effect?

8 A. Well, this would be a -- not a clinical effect, but
9 a physiologic effect, which is different than laboratory.

10 Q. Yes, Doctor, but what does it fall into, laboratory
11 or clinical?

12 A. It would fall into the same category as an ECG,
13 sir.

14 Q. What category does that fall into?

15 A. That would be a diagnostic, apparently a diagnostic
16 test.

17 Q. As far as clinical effects or laboratory effects,
18 which classification does it fall into?

19 A. Well, there could be other than those two, sir.

20 Q. Doctor, those are the two effects that you have
21 testified, sir, about the effects of TCDD or other toxic
22 products that caused either a clinical effect or a laboratory
23 effect, sir. Recall that, sir, we went through that on your
24 table. Do you recall that, Doctor?

1 A. It really doesn't matter, sir, it's a diagnostic
2 test.

3 Q. Doctor, is it a test that shows a result of
4 something occurring in the human body?

5 A. Allegedly, yes.

6 Q. And, Doctor, is this an effect that's occurring in
7 the human body where the chloracne does not occur allegedly?

8 A. No, sir.

9 Q. Is chloracne -- are you assuming that chloracne is
10 not occurring, Doctor?

11 A. I am.

12 Q. Are you assuming that this nerve velocity
13 conduction test is showing up abnormally slow?

14 A. I am.

15 Q. Then, Doctor, that is something that's occurring
16 without chloracne, isn't it, sir?

17 A. In this group.

18 Q. That's what I'm saying, Doctor.

19 A. But there's no control.

20 Q. Doctor, that's something that's occurring without
21 chloracne, isn't it, sir?

22 A. Yes.

23 MR. CARR: Now, would you give the witness exhibit

24 --

1 THE COURT: Well, before we get into another area
2 let's take a break at this point in time.

3 MR. CARR: Yes, your Honor.

4 THE COURT: Ladies and gentlemen, we'll take a short
5 recess. The admonishments that I gave you earlier will apply
6 during this break also. Court's in a short recess.

7 (At this time a short recess was taken.)
8

9 (The following proceedings were had in open Court.)

10 THE COURT: Ladies and gentlemen, in keeping with my
11 policy of trying to let you know ahead of time of what days
12 we'll be off, I don't have at this time any days that we'll
13 have to be off in April. We will be off Friday, May the
14 2nd. So if you'd mark that date down on your calendars. If
15 there are any changes in what I've said, then I will let you
16 know as soon as I know about them. Mr. Carr, you may
17 proceed.

18 MR. CARR: Thank you, your Honor. Would you give
19 the witness Plaintiffs' Exhibit 1436 and 1534B.

20 THE COURT: I'm sorry, what was that last number.

21 MR. CARR: 1534B.

22 THE COURT: Thank you.

23 Q. Doctor, 1436 is part of a book that was published
24 that has Dr. Schecter among others as authors and editors of

1 that book. You're familiar with it, are you not, sir?

2 A. Yes, I know it, sir.

3 Q. And, Doctor, 1436 deals with three patients who
4 developed abnormal liver enzymes after exposure to PCB's,
5 chlorinated dioxins, furans, naphthalenes, biphenylenes.
6 You're familiar with those three cases, are you not, Doctor?

7 A. I am, sir.

8 Q. And, Doctor, these three case histories, they had
9 these abnormal liver enzymes without chloracne, did they not,
10 sir?

11 A. These were three multiple exposed persons, sir,
12 yes, they were multiple exposed, as you said, to pcb's.

13 Q. Was that a yes to my question that they had these
14 liver effects without chloracne?

15 A. I don't believe that any of the people in that
16 group ever had chloracne, sir.

17 Q. Is that a yes to my question, Doctor, that they had
18 these liver effects without chloracne?

19 A. They did not find chloracne in these people, sir.

20 Q. They had liver effects, did they not, sir?

21 A. Liver effects of what, sir?

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

24 THE COURT: Doctor, please answer the question as it

1 was asked of you. Your answer was not responsive.

2 A. They had abnormal liver findings, sir, yes.

3 Q. Yes, Doctor. And these findings shown it's either
4 a clinical effect or a laboratory effect, is it not, sir?

5 A. These individuals did have some abnormal liver
6 findings, yes.

7 Q. Is that a yes to my question that it's a clinical
8 effect or a laboratory effect, Doctor?

9 A. I can only say that they had abnormal liver
10 findings, sir.

11 Q. Doctor, would you not describe that as a clinical
12 effect or a laboratory effect? Isn't it a laboratory --
13 doesn't it show up as a laboratory disturbance, sir?

14 A. In this instance I believe not having reviewed it
15 completely at this time that these were largely laboratory
16 effects, sir.

17 Q. And, Doctor, there was no chloracne, was there,
18 sir?

19 A. I think I've answered that question already, sir.
20 No, there was no chloracne.

21 Q. Doctor, on Page 249 these authors point out quote
22 "chloracne, a skin lesion, was used as a biological marker in
23 past incidents, but was noted infrequently in adults in
24 Seveso and was rarely seen in Binghamton". They say that,

1 don't they, sir?

2 A. On what page is that, sir?

3 Q. 249 at the bottom of the page, paragraph beginning
4 at the bottom of the page.

5 A. What is the question, sir?

6 MR. CARR: Would you read the question please.

7 (Court reporter read back the question.)

8 A. This is how they've described it, sir, yes.

9 Q. And, Doctor --?

10 MR. CARR: Could you give -- do you have Exhibit
11 1534B.

12 THE CLERK: He's got it.

13 MR. CARR: He has? All right.

14 Q. Oh, Doctor, before that if you would turn also to
15 Page 262. Are you there, sir?

16 A. 262 in 1436?

17 Q. That's correct. Are you there?

18 A. I am.

19 Q. The second paragraph, the paragraph beginning in
20 the middle of the page. Are you there, sir?

21 A. I am there, sir.

22 Q. It says, does it not, sir, quote " It is important
23 to note that liver rather than skin is the organ most
24 frequently responding in a pathological fashion to dioxins,

1 pcb's, and related chemicals in animal experiments. It is
2 also of significance as pointed out by Crow in 1970 that
3 liver lesions may be seen in some patients and skin lesions
4 in other patients after exposure to compounds that may lead
5 to chloracne" end of quote. It says that, does it not, sir?

6 A. Yes, it does.

7 Q. And do you have Plaintiffs' Exhibit 1534B in front
8 of you, sir? Do you, sir?

9 A. I do.

10 Q. Doctor, in the middle of the page do you see the
11 sentence that starts with medical pathology noted? Do you
12 see that sentence?

13 A. Yes, I see it.

14 Q. It says, does it not, sir, medical pathology noted
15 on a subset of patients followed in an occupational medicine
16 clinic, the group from whom the data presented here is
17 derived included one case of chloracne transient erythema
18 while working in the contaminated building and for several
19 days thereafter, three cases of skin cancer, three cases of
20 liver pathology with no other causal etiology determinable
21 with ultrastructural lesions described in the accompanying
22 paper, hypertension, one suicide, nervousness, irritability,
23 insomnia, impotence, fatigue, elevated serum cholesterol and
24 triglyceride levels, psychoneurotic illness leading to time

1 off from work and psychiatric treatment, headaches and
2 peripheral nerve impairment and other findings" end of quote.
3 It says that, doesn't it, sir?

4 A. That's what Dr. Schechter claims, sir.

5 Q. Would you answer my question, Dr. Suskind?

6 A. Yes, it does say that, and Dr. Schechter is the
7 author, sir.

8 MR. CARR: Your Honor, would you direct the witness
9 to respond to my question without adding other statements to
10 it.

11 THE COURT: Doctor, please again just answer the
12 question that's been asked of you, no more and no less.

13 A. Okay. Thank you.

14 THE COURT: Don't go beyond the question.

15 Q. Doctor, this document describes a number of
16 clinical and laboratory effects without chloracne being
17 present except in one case, does it not, sir?

18 A. No, sir.

19 Q. Does it describe a number of clinical effects?

20 A. It describes a number of clinical findings, sir,
21 not effects.

22 Q. Clinical findings or effects, Doctor, if you find
23 something that indicates that something has been affected,
24 does it not, sir?

1 A. No, sir.

2 Q. Oh, no, sir?

3 A. No, sir.

4 Q. Isn't a finding something that you find in the
5 clinic, sir?

6 A. Yes, sir.

7 Q. And isn't a clinical effect or a clinical finding
8 one of the markers of absorption of toxic substances?

9 A. It might be.

10 Q. And in this case, Doctor, in dealing with dioxin
11 haven't you testified on more than one occasion, sir, that
12 the marker of absorption is an adverse effect whether it's a
13 clinical effect or a laboratory effect?

14 A. I didn't say that for dioxins. I said that for
15 chlorinated hydrocarbons, sir.

16 Q. Isn't dioxin a chlorinated hydrocarbon?

17 A. It is one of them --.

18 Q. Thank you, Doctor.

19 A. But you can't--

20 Q. That's all I asked you, Doctor. It is a
21 chlorinated hydrocarbon, is it not, sir?

22 A. One out of very many, sir.

23 Q. No problem with that, Doctor, won't quarrel with
24 that.

1 A. There is a problem.

2 Q. Doctor, not as far as I'm concerned.

3 A. Yes, there is.

4 Q. Dioxin is a chlorinated hydrocarbon, is it not,
5 sir? Haven't we established that time and time again?

6 A. One is not synonymous with the whole.

7 Q. Excuse me, Doctor. Doctor, dioxin is a chlorinated
8 hydrocarbon, is it not?

9 A. That doesn't make it --

10 MR. CARR: Your Honor, would you direct the witness
11 to answer my question.

12 THE COURT: Doctor, answer the question that's asked
13 of you please, no more, no less.

14 A. It is one of many chlorinated hydrocarbons.

15 Q. Thank you, Doctor.

16 A. You're welcome.

17 Q. Now, Doctor, these findings here are findings of
18 either clinical effects or laboratory effects, are they not,
19 sir?

20 A. No.

21 Q. Are they -- is the nervousness a clinical effect,
22 Doctor?

23 A. It's a clinical finding, sir.

24 Q. Doctor, didn't you testify earlier, sir, that a

1 clinical finding and a clinical effect are the same, sir?
2 Haven't you testified as to your own chart, sir, that those
3 are synonymous, sir?

4 A. I have insofar as --

5 Q. Thank you, Doctor.

6 A. --- My own studies are concerned, sir.

7 Q. Yes, Doctor, you have described nervousness as a
8 clinical effect, have you not, sir?

9 A. I've described it as a clinical complaint and
10 finding, sir.

11 Q. Excuse me, Doctor. You have described it as a
12 clinical effect, have you not, sir?

13 A. I have described it as a clinical complaint and
14 finding.

15 Q. Would you answer the question as I stated it to
16 you?

17 A. I have answered it, sir.

18 Q. Doctor, my question is you have described it as a
19 clinical effect, have you not, sir?

20 A. I described it as a clinical finding.

21 MR. CARR: Your Honor, would you direct the witness
22 to answer the question.

23 THE COURT: Doctor, your answer is not responsive to
24 the question. Listen to the words used in the question.

1 I'll have the court reporter read it back to you, and answer
2 the question that's asked of you, not something else.

3 MR. HEINEMAN: Your Honor, may counsel--

4 THE COURT: Would you read it back please.

5 MR. HEINEMAN: May counsel approach the bench.

6 THE COURT: Yes, you may.

7 (At this time a conference was had at the bench out
8 of the hearing of the jury.)

9 MR. HEINEMAN: Your Honor, the witness-- Mr. Carr
10 is not required or is not permitted to require this witness
11 to answer the question in the words that Mr. Carr wants to
12 hear nor is the Court entitled to instruct the witness to
13 answer them in just one particular way. The witness is
14 entitled to answer the question as he sees fit.

15 THE COURT: Not when it is precisely asked, and he
16 answers something that's not asked of him. He was not asked
17 anything about findings. He was asked whether something was
18 a clinical effect. He insists upon answering a different
19 question. Mr. Carr has the right to insist and I have the
20 right to order that a question that is not objectionable be
21 answered and the answer and the response given was not an
22 answer to the question that was asked. Your objection is
23 overruled. It has been unfortunately something that this
24 witness has done innumerable times. He's not entitled to

1 choose a question that is to be asked of him and I will not
2 allow him to choose what question is to be asked of him. If
3 the question is not -- if the objection to a question is not
4 sustained or otherwise ordered not to be asked or to be
5 rephrased he's required to answer and his response was not an
6 answer to the question that was asked of him as unfortunately
7 many, many of his responses have not been.

8 MR. HEINEMAN: Your Honor, I think it's apparent
9 from the record that his answer was responsive, and I object
10 to the Court's instruction, and I want the record to so show.

11 THE COURT: You think that that was responsive to
12 the question?

13 MR. HEINEMAN: I sure do.

14 THE COURT: Well, perhaps you ought to stand closer
15 and listen to the terminology better yourself. There was no
16 way it was responsive. If you think it was responsive,
17 you're going to be of no help in getting this witness to
18 comply with the orders of the Court. Your objection is
19 overruled.

20 (The following proceedings were had in open Court.)

21 THE COURT: Could you read the question back to him
22 please.

23 (Court reporter read back the question.)

24 A. Could I have the previous question. Can I have the

1 previous one.

2 Q. I can't hear you, Doctor.

3 A. Can I have the previous one as well?

4 THE COURT: Doctor, that was the question that was
5 asked of you. Please answer that question.

6 Q. I'm not altogether sure I remember which clinical
7 effect, sir, he asked for.

8 THE COURT: Okay. Read him the previous question,
9 too.

10 (Court reporter read back the previous question.)

11 A. I have, sir.

12 Q. Doctor, this document then has nervousness, does it
13 not, sir, as an effect from the exposure here? You see that,
14 sir?

15 A. Yes, I do, but I'm trying to relate it to Dr.
16 Schecter's--

17 Q. Doctor--

18 A. -- Statement about exposure.

19 Q. Doctor, it also has irritability, which you have
20 also described as a clinical effect, have you not, sir?

21 A. I have, sir.

22 Q. And, Doctor, this document then, these other
23 findings here -- where is that -- we lost our little --
24 Doctor, these other matters that have been reported here are

1 also, may also be clinical effects, may they not, sir, or
2 laboratory effects?

3 A. No, sir.

4 Q. Doctor, is irritability -- is irritability
5 described here, sir?

6 A. Yes.

7 Q. Have you described that earlier as a clinical
8 effect, sir?

9 A. I have, sir.

10 Q. Insomnia is described here, sir?

11 A. Yes, sir.

12 Q. You described that earlier as a clinical effect,
13 have you not, sir?

14 A. An early clinical effect.

15 Q. Could you answer my question, Doctor?

16 A. Yes, yes.

17 Q. Impotence is described here, is it not, sir?

18 A. Yes, it is.

19 Q. You described that as a clinical effect, have you
20 not, sir?

21 A. I have on occasion.

22 Q. Fatigue is described here, is it not, sir?

23 A. Yes.

24 Q. You've described that as a clinical effect, have

1 you not, sir?

2 A. I have.

3 Q. Elevated serum cholesterol and triglyceride levels
4 are described here, are they not, sir?

5 A. They're described here, yes.

6 Q. They are clearly laboratory effects, are they not,
7 sir?

8 A. They are laboratory effects of acute exposure, yes.

9 Q. And, Doctor, psychoneurotic illness is described
10 here, is it not, sir?

11 A. That's what this is.

12 Q. Doctor, psychoneurotic illness is also a clinical
13 effect, is it not, sir?

14 A. No, sir.

15 Q. Psychoneurotic illness is not a clinical effect?
16 What is it if it is not a clinical effect, Doctor?

17 A. You're talking about in relation to TCDD.

18 Q. Doctor, my question to you is if psychoneurotic
19 illness is not clinical effect, what is it, sir?

20 A. It's a behavioral effect.

21 Q. And that is a clinical effect, is it not, sir,
22 something that you see and observe in the clinic, you watch
23 it, they come in there with that problem, and it is a
24 clinical effect, is it not, sir?

1 A. You might call it a clinical effect.

2 Q. Yes, Doctor. And headaches are clinical effects,
3 is a clinical effect, is it not, sir?

4 A. Not necessarily.

5 Q. It may be, may it not, sir?

6 A. Remotely, yes.

7 Q. Doctor, you have described it as a clinical effect,
8 have you not, sir?

9 A. I have described it in one set of circumstances,
10 sir.

11 Q. My question is, sir, you have described it as a
12 clinical effect, have you not, sir?

13 A. I have.

14 Q. Yes, Doctor.

15 A. -- In one set of circumstances.

16 Q. Doctor, I don't care if it's one or a thousand.

17 A. It's important.

18 Q. My question-- It may be important, Doctor, but my
19 question is limited. You have described headaches as
20 clinical effects in the past, have you not, sir?

21 A. But what I want to be sure--

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

24 THE COURT: Doctor, please just respond to the

1 question, no more, no less?

2 A. I have described it as an acute clinical effect.

3 Q. Thank you, Doctor. And, Doctor, peripheral nerve
4 impairment is a laboratory or clinical effect, is it not,
5 sir?

6 A. It's a clinical effect.

7 Q. And, Doctor, all of these things then are described
8 as clinical effects and just one case of chloracne as a
9 clinical effect, isn't that correct, sir?

10 A. No, sir. No, sir.

11 Q. Doctor, how many cases of chloracne were described
12 here?

13 A. According to this very limited document, one case
14 of chloracne.

15 Q. Thank you, Doctor. How many other problems or
16 effects were described here?

17 U A. Well, there are three cases of skin cancer
18 occurring --

19 Q. Yes. Go ahead, Doctor.

20 A. -- Just one or two years after--

21 Q. Doctor, I understand that.

22 A. Three cases of liver pathology. This is what--

23 Q. Just count them please, Doctor. How many other
24 clinical effects are described here, sir, in addition to the

1 one case of chloracne. Count them up please.

2 A. Well, I am citing them, sir. You said --

3 Q. I would like for you to count them, Dr. Suskind.

4 A. You didn't ask me for numbers, sir. You asked me
5 what other clinical effects.

6 Q. I'm asking you to count the other clinical effects
7 in addition to chloracne that are described here.

8 A. Okay. There are three cases of skin cancer, three
9 case of liver pathology with no causal etiology determinable
10 with ultrastructural lesions described in the accompanying
11 paper, hypertension, one suicide--

12 Q. Doctor, I'd like for you to count them, please,
13 sir. We read this document once. I'd like for you to count
14 the number of--

15 A. We didn't read that part, sir, and you know it. We
16 didn't read that.

17 Q. Doctor, we read the entire sentence, Doctor.

18 A. We didn't read the cancer part, and we didn't read
19 the hypertension.

20 Q. Doctor, we read the entire sentence, Doctor, the
21 entire sentence we read from beginning to end.

22 A. We did not, sir, I beg to differ with you, and
23 let's go back to the record to find out.

24 MR. CARR: Your Honor, may we proceed?

1 THE COURT: Yes, you may.

2 Q. Doctor, will you count the number of clinical
3 effects shown in this exhibit.

4 A. I may be wrong, but I count 12.

5 Q. And how many laboratory effects, sir?

6 A. Three.

7 Q. And how many cases of chloracne, Doctor?

8 A. I'm not sure, sir.

9 Q. Doctor, how many cases of chloracne does it
10 describe on the exhibit that you have front in you?

11 A. This exhibit says one case of chloracne.

12 Q. Thank you, Doctor.

13 MR. CARR: Could you give the witness Plaintiffs'
14 Exhibit 1645.

15 Q. Doctor, you recognize this exhibit as the Oliver
16 study that deals with three laboratory workers who were
17 exposed to dioxin, do you not?

18 A. I do.

19 Q. And, Doctor, in this exhibit they describe two
20 patients that had chloracne and other problems and one
21 patient that had chloracne, but --

22 A. Two had chloracne, sir.

23 Q. One patient that had no chloracne, but had symptoms
24 with remarkable similarity to the patient that had chloracne,

1 isn't that correct, sir?

2 A. No, sir.

3 Q. Doctor, would you look at Patient C.

4 A. Yes, sir.

5 Q. Doesn't it say there, sir,, Patient C, he had never
6 had any chloracne? Doesn't it say that, sir, third
7 paragraph, first sentence in the third paragraph under the
8 heading Patient C?

9 A. That's what this paper reads, sir.

10 MR. CARR: Would you give the witness -- strike that
11 for a moment.

12 Q. He had other findings from expose-- other clinical
13 or laboratory effects from the exposure to the TCDD, did he
14 not, sir, according to this paper?

15 A. Are you referring to Patient C, sir?

16 Q. That's right, Doctor.

17 A. Okay.

18 Q. He had other clinical effects, he did not have
19 chloracne, but he had other clinical or laboratory effects
20 described in this document, did he not, sir?

21 A. He did, including other skin effects, sir.

22 MR. CARR: Would you hand the witness Plaintiffs'
23 Exhibit 1651.

24 Q. Doctor, you are familiar with the study of the --

1 immune study by Dr. Ward, are you not, sir?

2 A. Unfortunately, yes.

3 Q. And Doctor, Dr. Ward's study describes a group of
4 workers exposed to TCDD, does it not, sir?

5 A. Ostensibly, sir.

6 Q. And, Doctor, it describes workers in England in
7 three separate groups, does it not, sir, for this immune
8 study?

9 A. Allegedly, yes.

10 Q. And Group C is a group that was exposed to toxic
11 levels of TCDD more than ten years previously and had
12 evidence of toxicity in the form of chloracne, isn't that
13 correct, sir? Page A-6, Doctor.

14 A. What is the question please?

15 (Court reporter read back the question.)

16 Q. Doctor, are you on Page A-6?

17 A. I am on A-6.

18 Q. And do you see the small i there, exposed to toxic
19 levels and parentheses behind it Group C?

20 A. Yeah there's a group with chloracne, without
21 chloracne and unexposed, yes.

22 Q. Doctor, Group C is the group that had been exposed
23 ten years before, and they showed clinical evidence of
24 toxicity in the form of chloracne. That's Group C, is it

1 not, sir?

2 A. That is allegedly Group C, yes.

3 Q. The next group is exposed to TCDD, but not showing
4 evidence of dermatological toxicity, that is Group B, isn't
5 that correct, sir?

6 A. That is what Mr. Ward says.

7 Q. And Group B would be persons without -- and by the
8 way it is Dr. Ward, is it not, sir?

9 A. I really don't know. It doesn't--

10 Q. Doctor, would you look at--

11 A. It's listed as Dr. A. Milford Ward, yes, sir.

12 Q. Thank you, Doctor. And the second group is a group
13 that does not have chloracne, correct, sir, Group B?

14 A. That's Group B.

15 Q. And Group A is unexposed controls, is it not, sir?

16 A. That's what it reads, sir.

17 Q. Doctor, Group B had an increase in IgD levels, did
18 it not, sir?

19 A. Group B?

20 Q. Page A-12, Doctor, Group B, the group that was
21 exposed to dioxin but that did not have chloracne, sir, Group
22 B?

23 A. Umhm, I see it.

24 Q. And, Doctor, that group had increased proportion of

1 cases with IgD levels, did it not, sir, according to Dr.
2 Ward?

3 A. I don't know what that means, sir.

4 Q. Doctor, I'm not asking you to interpret it, I'm
5 asking you to agree that this is what it says, does it not,
6 sir?

7 A. This is what the man who wrote this paper which was
8 not published, says, sir.

9 MR. CARR: Your Honor, the witness persists in going
10 beyond my question. Would you instruct him again to answer
11 my questions, Your Honor.

12 THE COURT: Doctor, please, no extraneous matters,
13 just answer the question that's asked of you.

14 Q. Doctor, for your information this is also
15 Monsanto's Exhibit 84. Does that help you, Doctor?

16 A. No, it doesn't help me one bit, sir.

17 Q. All right. Doctor, it is also described in the
18 conclusions, is it not, sir, that the IgD, that is, the
19 increased proportion in Group B, IgD is thought to be
20 associated with the transfer of immune capability from the
21 T-cell to the B-cell and with short-term immunological
22 memory? Do you see that, sir, the paragraph right under the
23 paragraph I just read to you about Group B?

24 A. Yes, I see it, sir.

1 Q. Doctor, this describes a laboratory effect, does it
2 not, sor?

3 A. It's supposed to, sir, yes.

4 Q. And, Doctor, it describes a laboratory effect that
5 occurred in a group of workers who were exposed according to
6 this document to 2,3,7,8-TCDD, does it not, sir?

7 A. No, sir.

8 Q. Doctor, doesn't this describe a group of people
9 that were exposed to TCDD? Didn't we go through that, sir?

10 A. One --

11 Q. This Group B --

12 A. Two of the groups.

13 Q. -- Was exposed to TCDD, doesn't it say that, sir?

14 A. Two of the groups were exposed, yes.

15 Q. Group B is one of those groups that was exposed,
16 did not have chloracne, but exposed to TCDD, correct, sir?

17 A. Yes, that's the way it says.

18 Q. Doctor, this then is a laboratory effect described
19 in this document, is it not, sir, from exposure to TCDD
20 without chloracne?

21 A. No, sir.

22 Q. Doctor, is it in a group that was exposed to TCDD,
23 are you assuming that, sir?

24 A. I have already assumed it, sir.

1 Q. Are you assuming the IgD was abnormal, sir?

2 A. That is what this -- this is what the author
3 claims, sir.

4 Q. Yes, Doctor. Are you assuming that to be the fact,
5 sir?

6 A. No, I cannot assume that, sir.

7 MR. CARR: Your Honor, would you direct the witness
8 to assume that it's a fact.

9 MR. HEINEMAN: Objection, Your Honor. May counsel
10 approach the bench?

11 THE COURT: Yes, you may.

12 (At this time a conference was had at the bench out
13 of the hearing of the jury.)

14 MR. HEINEMAN: Your Honor, I object, as I
15 previously have, with respect to Mr. Carr's request that this
16 witness assume as a fact an opinion or a conclusion reached
17 by the author of this paper. There is nothing in Illinois
18 law that suggests that he has the right, that the Court has
19 the right to force this witness to assume as a fact an
20 opinion of somebody else, particularly when this witness
21 disagrees so violently with this paper and with the alleged
22 conclusions reached by the authors.

23 THE COURT: Do you have any response?

24 MR. CARR: No, Your Honor.

1 THE COURT: It sounds like what he's asking him to
2 assume is something which is proper for him to assume. It's
3 -- whether he agrees with the paper or not, it is replete
4 with -- and the question as we have gone through before many,
5 many times, he asks him to assume, that it's proper for him
6 to be asked to assume for purposes of these questions. I
7 will order him to assume it. I will take your objection as a
8 continuing objection to this line of questioning on 1651.

9 (The following proceedings were had in open Court.)

10 THE COURT: Doctor, you are ordered to assume that
11 as a fact. You may proceed, Mr. Carr.

12 Q. Doctor, if that is true, this is a laboratory
13 effect, is it not, sir?

14 A. If it is true, it might be a laboratory effect,
15 sir, might be.

16 Q. Doctor, is the -- does the author describe an
17 increased important proportion of cases with IgD levels?

18 A. He does in this paper, sir.

19 Q. Is he describing --

20 A. Mr. Carr, may I finish, sir?

21 Q. No, Dr. Suskind, you may not. Is he describing a
22 laboratory effect, Doctor?

23 A. He's allegedly describing a laboratory effect.

24 Q. Is this something that he says he found in the

1 laboratory, Doctor?

2 A. He thought he found it, yes, sir.

3 Q. Doctor, is this something that he says that he
4 found in the laboratory?

5 A. The way he describes it, one would assume that he
6 thought he found it, yes, sir.

7 Q. Doctor, would you answer my question. Is this--

8 A. I have already answered it.

9 Q. Doctor, he doesn't say he thinks he finds it, does
10 he? He reports it as a fact, does he not, sir, as what he
11 found in the laboratory?

12 A. Yes, but the reader--

13 Q. Doctor, if you don't mind answering my question,
14 sir, and then I'll pass to the next one. This is what he
15 reported that he found in the laboratory, isn't that
16 correct,, sir? Now, Doctor, you may think that he's lying,
17 you may think it's not a fact, you may think that he's made
18 it up, you may disagree totally with the result. I'm not
19 asking you whether you agree that it's the truth, whether you
20 agree that he in fact -- he just may have made it up out of
21 whole cloth, Doctor, just to misrepresent something to the
22 world. He may have said this occurred when, in fact, it
23 didn't occur, he may have done that. Now, Doctor, he does
24 report it, does he not, sir?

1 A. He reports it in this paper.

2 Q. Yes, Doctor, in this paper. This is the paper 1651
3 that I'm talking about, Doctor. This is the exhibit in front
4 of you. In this paper he reports, does he not, sir, a
5 laboratory effect from exposure, a laboratory effect in these
6 workers that were allegedly exposed to TCDD?

7 A. He believed he found an effect, sir, yes.

8 Q. Is that a yes to the question the way I posed it?

9 A. No, I'm saying he believed he found an effect.

10 MR. CARR: Your Honor, would you direct the witness
11 to answer my question the way I posed it.

12 A. I have answered it, sir.

13 THE COURT: Doctor, Doctor, you have not responded
14 to the question. Now the question's been asked of you
15 twice. Please listen to the question, don't read through the
16 paper while it's being asked. Listen to the question and
17 answer it. Mr. Carr, would you ask it again please.

18 MR. CARR: Would you read it to him please.

19 (Court reporter read back the question.)

20 A. With the assumption that we made, he has reported
21 an effect, sir, yes.

22 Q. Thank you, Doctor.

23 MR. CARR: Could you give the witness Defendant's
24 Exhibit 53.

1 Q. Doctor, do you recognize Plaintiffs' Exhibit--
2 Defendant's Exhibit 53 as the report by Dr. Kimbrough on the
3 horse arena cases? Drs. Carter, Kimbrough, Cline, Zack and
4 Barthel?

5 A. I have it before me, sir.

6 Q. Doctor, this document describes people who were
7 exposed to TCDD in the horse arena case, and some of these
8 people had chloracne and others did not, isn't that correct,
9 sir?

10 A. I do not know, sir.

11 Q. Would you read what it--

12 A. I am reading what it says.

13 Q. Doctor, does it not report, sir, on the second page
14 of the document, sir, that human illnesses were less severe,
15 but included one case of hemorrhagic cystitis in a 6 year old
16 girl who frequently played in the arena soil? You see that,
17 sir, first column, Doctor, on the second page?

18 A. I know this paper by heart, sir.

19 Q. Did I read that correctly, Doctor?

20 A. Yes, you did. It has nothing to do with the TCDD.

21 MR. CARR: Your Honor, would you direct the witness
22 to answer my question.

23 THE COURT: Doctor, Doctor, I've asked you many
24 times today. I am ordering you, you continually interject

1 things that are not responsive to the question. Answer the
2 question only, whatever is asked of you, no more and no less.

3 THE WITNESS: Yes, sir.

4 THE COURT: You were not asked anything that called
5 for that response.

6 THE WITNESS: Yes, sir.

7 Q. Doctor, did I read that sentence correctly, sir?

8 A. Yes, you did.

9 Q. The next sentence states, does it not, cystoscopy
10 confirms this diagnosis and a retrograde pyelogram revealed
11 signs of focal pyelonephritis; does it say that, sir?

12 A. I see it.

13 Q. Then it says bacterial and viral cultures were
14 negative. You see that, sir?

15 A. That's what it says.

16 Q. Now, Doctor, in the sentence we've read thus far
17 discussing that 6-year-old girl is there chloracne
18 discussed? Is there chloracne mentioned in that 6 year old
19 girl?

20 A. I don't know whether or not that young lady had
21 chloracne.

22 Q. Excuse me, Doctor, did you understand my question?

23 A. I do, sir, and I'm answering it.

24 Q. My question is, sir, is there described in those

1 sentences that we just read a case of chloracne?

2 A. For that young lady?

3 Q. Yes.

4 A. I don't know.

5 Q. Doctor, is there described in the sentence we just
6 read, does this describe chloracne?

7 A. No.

8 Q. All right, Doctor. It does describe, however, a
9 laboratory or clinical effect, does it not, sir, for the 6
10 year old girl?

11 A. It describes hemorrhagic cystitis.

12 Q. That is a clinical or laboratory effect, is it
13 not, sir?

14 A. It's a clinical finding and the viral and culture
15 or viral and bacterial cultures are laboratory findings.
16 There's no effect there.

17 Q. Doctor, is hemorrhagic cystitis a clinical effect?

18 A. It's a clinical finding, sir, we've gone through
19 that before.

20 Q. Is it not an effect, Doctor?

21 A. Of what?

22 Q. Doctor, is it not an effect, an adverse clinical
23 effect, Doctor?

24 A. It's an adverse clinical finding, sir, yes.

1 Q. Is that a yes to my question that it's an adverse
2 clinical effect, Doctor?

3 A. If you want to use your terms, sir, yes, your
4 terms.

5 Q. Doctor, you were the one that testified to the
6 clinical effects; you recall that?

7 A. Not hemorrhagic cystitis.

8 Q. Doctor, you were the one that described clinical
9 effects or laboratory effects from exposure to halogenated
10 hydrocarbons, did you not, sir?

11 A. I sure did, sir.

12 Q. All right, Doctor.

13 A. What's all right about it?

14 Q. Now, is this a clinical effect, hemorrhagic
15 cystitis?

16 A. It's a clinical finding, yeah.

17 Q. Is that a yes to my question that it's a clinical
18 effect, Doctor?

19 A. In your language it -- to use your language, yes.

20 Q. Doctor, you understand the language I'm using is
21 your language?

22 A. No, sir.

23 Q. You don't recall testifying that way, Doctor?
24 Surely you do. Don't you recall that, Doctor? Sir?

1 A. When I was talking about clinical effects --

2 Q. Excuse me, Doctor. My question is don't you recall
3 using the words clinical effects and laboratory effects in
4 describing what occurs when one is exposed to halogenated
5 hydrocarbons, sir?

6 A. I do indeed, sir.

7 Q. They were words that you used, weren't they, sir?

8 A. They were words that I used, but not in this case,
9 sir. This is different.

10 Q. Doctor, they were words that you used, weren't
11 they, sir?

12 A. Again, yes, they were, but not in this case.

13 Q. Thank you.

14 A. This is different.

15 Q. Now, Doctor, relating to hemorrhagic cystitis, is
16 this a result of exposure to something or is this something
17 this girl just has naturally in her body?

18 A. Hemorrhagic cystitis as in the case of many young
19 women, especially children playing in filthy soils is not an
20 uncommon occurrence. Cystitis is an infection of the bladder,
21 and a young woman of -- a young girl of that age playing in
22 horse arena soil could very well develop a cystitis.

23 Q. Is it a clinical effect, Doctor?

24 A. It's a clinical finding, yes, sir.

1 Q. Doctor, did this girl play in highly contaminated
2 TCDD soil, soil so toxic that it killed 62 horses, 62 horses
3 died, became ill rather and 48 died?

4 A. Whether she played in that I don't know.

5 Q. Excuse me. Wasn't this soil so toxic that it killed
6 48 horses?

7 A. You asked me one question and let me answer it.

8 Q. Doctor, my question is, sir, wasn't the soil so
9 toxic that it killed 48 horses?

10 A. You've asked me three questions, sir. Which do you
11 want me to answer?

12 MR. CARR: Your Honor, would you direct the witness
13 to answer my question.

14 THE COURT: Doctor, the last question asked of you
15 was very clear. Please answer it.

16 A. Okay. Would you repeat the question please.

17 (Court reporter read back the question.)

18 A. Apparently it was a toxic soil, sir, yes.

19 Q. Is that a, yes, it killed 48 horses?

20 A. Well, according to this it did, yes, sir.

21 Q. Yes, Doctor, this is what we're talking about, it's
22 this document we're talking about. You understand that, sir?
23 You may not believe it's the truth, it may be a lie, it may
24 be made up by Dr. Carter and Dr. Kimbrough, but does it not

1 report, Doctor, that 48 horses were killed as a result of
2 this exposure to dioxin?

3 A. That's what this report claims, sir.

4 Q. All right. And, Doctor, you believe it is a claim,
5 and you think Dr. Kimbrough is lying?

6 A. No, sir.

7 Q. You think she's telling the truth, don't you, sir?

8 A. She always does, sir.

9 Q. All right, Doctor. Then if she's telling the truth,
10 it's not just a claim, is it, sir?

11 A. She didn't get.

12 Q. Doctor, if she's telling--

13 A. She wasn't there at the time.

14 Q. Doctor, if she is telling the truth, it's not just
15 a claim, is it, sir?

16 A. It is still a claim.

17 Q. Doctor, doesn't she say quote " 48 died", isn't she
18 reporting that as fact, sir?

19 A. Because somebody else told her that.

20 Q. Doctor, isn't she a reputable scientist?

21 A. She's a reputable scientist.

22 Q. Would she do that investigation necessary to
23 discover whether or not something is fact before she reports
24 it in a document that is going to go around the world, sir?

1 Wouldn't she as a reputable scientist do that kind of
2 investigation?

3 A. Absolutely.

4 Q. All right, Doctor. After doing that investigation
5 she reports that 48 died, isn't that correct, sir?

6 A. She was told that 48 died.

7 Q. Doctor, after doing the investigation necessary to
8 verify the facts in this statement, after this reputable
9 scientist did that investigation she reported it as fact that
10 48 died, did she not, sir?

11 A. I am assuming that this is accurate, sir, but I
12 don't know myself, sir.

13 Q. Doctor, that isn't what I asked you. I asked you
14 Dr. Kimbrough, after doing the investigation necessary to
15 confirm or to disprove the facts she reported 48 horses died,
16 did she not, sir?

17 A. She reported 48 horses died in this report.

18 Q. After she did the necessary investigation to verify
19 whether it's true or false, isn't that correct, sir?

20 A. I assume that she did that investigation, sir.

21 Q. Thank you, Doctor. Now in addition to that child,
22 the next sentence reads, does it not, three other children
23 and one adult frequently exposed in -- to the arena
24 complained of skin lesions. In at least two of the children

1 the lesions described were consistent with chloracne, isn't
2 that correct, sir?

3 A. That's what this report states.

4 Q. That's what this reports, and it also says
5 intermittent arthralgias have been associated by two adults
6 with previous exposure to the arena, it says that as well,
7 does it not, sir?

8 A. That's what this report states.

9 Q. Thank you, Doctor.

10 A. From other sources.

11 Q. Now, Doctor, the next exhibit I'd like to direct
12 your attention to is Plaintiffs' Exhibit 1644 and Plaintiffs'
13 Exhibit 1666. Do you have that for the witness' use?

14 Q. Doctor, this is the -- 1644 is the Dr. Jirasek
15 article dealing with the exposure to 2,4,5-T in
16 Czechoslovakia, is it not?

17 A. No, sir, it is not. 1644 is a urine analysis
18 report on a Gilbert Embree.

19 Q. Well, we've got the wrong exhibit. That's
20 Monsanto's Exhibit 1644. I meant Plaintiffs' Exhibit 1644.

21 A. Thank you.

22 Q. Doctor, now you have the exhibit, do you not, sir?

23 A. I have Plaintiffs' Exhibit 1644 dated 11/7/85.

24 Q. It deals, does it not, sir, with the-- dated

1 11/7/85? You've got the exhibit number-- that's the date on
2 the exhibit number?

3 A. Right.

4 Q. The article is dated 1976, is it not, sir?

5 A. The article itself was published in 1976.

6 Q. Doctor, this exhibit deals with the Czechoslovakia
7 exposure to 2,4,5-T among other things, does it not, sir?

8 A. I believe it deals in a very general way, sir.

9 Q. Doctor, directing your attention, if you would, to
10 the page that has in the lower right hand corner, I believe,
11 the number five on it, sir. Are you there, sir?

12 A. I believe I have it.

13 Q. In the middle of the page it describes that they --
14 there was a mass intoxication in 80 employees, does it not,
15 sir?

16 A. That's what this sentence reads, yes.

17 Q. Doctor, it says 76 had chloracne and four did not,
18 four had general intoxication without chloracne, does it not
19 describe that, sir?

20 A. That's what this reads, yes.

21 Q. And, Doctor, it goes on to describe the -- what is
22 meant by general intoxication, does it not, sir?

23 A. I don't see the separation of findings of general
24 intoxication alone, sir.

1 Q. Doctor, it describes a wide variety of problems
2 that these 80 workers had, does it not, sir?

3 A. No, sir, it doesn't differentiate between the
4 chloracne patients and the others.

5 Q. Doctor, I didn't ask you whether or not it --

6 A. That's what you said, sir, in the beginning.

7 Q. Doctor, my question was -- yes, there are four
8 people that did not have chloracne of the 80, Doctor. My
9 question is as far as the 80 is concerned, it describes a
10 variety of clinical effects and/or problems, laboratory
11 effects and/or problems, does it not, sir?

12 A. It does.

13 Q. And, Doctor, among the problems that it describes
14 on the page numbered 7, sir, it describes the subjective
15 complaints-- are you there with me, Doctor? Are you there,
16 sir, where it says our patients, however?

17 A. I have it.

18 Q. It says, does it not, Doctor, it states our
19 patients have given a series of subjective complaints
20 flabbiness, weakness of the lower limbs, muscle pains,
21 somnolence or sleeplessness, increased perspiration, loss of
22 appetite, headaches as well as a disturbance in the spiritual
23 and sexual areas. Does it describe that, Doctor?

24 A. That's what this reads underlined, sir, yes.

1 Q. And, Doctor, these are clinical effects if they
2 have in fact occurred in these people, are they not, sir?

3 A. They would be as this author put it subjective
4 complaints, sir.

5 Q. My question is, sir, if they have in fact occurred
6 in these people notwithstanding that they're complaints made
7 by the people, if they have in fact occurred, they are
8 clinical effects, are they not, sir?

9 A. Sir, I am reading from this article, and it says
10 subjective complaints.

11 MR. CARR: Your Honor, would you direct the
12 witness--

13 A. Why do we have to alter what the author says?

14 THE COURT: Doctor, Doctor, that was not responsive
15 to the question. Listen to the question again. I'll have
16 the court reporter read it back, and please answer the
17 question that has been asked of you. Could you read the
18 question again.

19 MR. HEINEMAN: Your Honor, may counsel approach the
20 bench?

21 THE COURT: Yes, you may.

22 (At this time a conference was had at the bench out
23 of the hearing of the jury.)

24 MR. HEINEMAN: I object again, Your Honor. Now Mr.

1 Carr is asking him to go beyond the document itself. He
2 gives the witness the document, and now he's asking him to
3 suppose something that isn't even in the document at all. I
4 object to it. He's asking the witness to speculate. It
5 certainly isn't apparently the opinion of the author of the
6 document that he's asking him for. He's asking him to accept
7 something as true for which there's absolutely no evidence in
8 the record. I object to it.

9 MR. CARR: Your Honor, we have established so many
10 times that subjective complaints is what the worker has to
11 say. The person could be lying, they could be making it up,
12 but if it's true, they do exist, and we've done that so many
13 times that I surely don't need to explain it to counsel
14 again.

15 THE COURT: Objection is overruled, and with the
16 comment that what he -- he is not asking him to speculate.
17 Your objection is overruled.

18 (Court reporter read back the question.)

19 A. I'm sorry, I don't undersand the notwithstanding
20 part of it, what does that refer to? That's part of your
21 question, sir.

22 Q. Doctor, can you answer the question the way I gave
23 it to you? If not, I'll restate it, Doctor.

24 A. Would you please restate it.

1 Q. Doctor, these men if they in fact had these
2 problems, these are clinical effects, are they not, sir?

3 A. If we have to use your language, sir, they are
4 clinical effects.

5 MR. CARR: Your Honor, would you ask the jury to
6 disregard what the witness has said and answer my question as
7 I gave it.

8 MR. HEINEMAN: Objection, Your Honor. May counsel
9 approach the bench.

10 THE COURT: Yes, you may.

11 (At this time a conference was had at the bench out
12 of the hearing of the jury.)

13 MR. HEINEMAN: Your Honor, I object to Mr. Carr's
14 request, and I would object to any instruction of the witness
15 by the Court on the grounds that the witness has answered the
16 question.

17 THE COURT: You think that answer was responsive?

18 MR. HEINEMAN: Of course, it is.

19 THE COURT: There is no way in the world it was
20 responsive. He was not asked to make any type of comment on
21 the terminology that was given to him, number one. Number
22 two, within this afternoon we went through this question
23 before, whose terminology it was, the equivalence of
24 terminology. He's trying to bring up a rehash of other

1 matters to go back through it again in the form of a
2 nonresponsive answer -- in a nonresponsive answer to the
3 question. Your objection is overruled. I will order the jury
4 to disregard this, and I will order him to answer the
5 question after I have the court reporter read it back to him.

6 MR. HEINEMAN: Your Honor --

7 THE COURT: It was not responsive.

8 MR. HEINEMAN: For the record, Your Honor, the
9 position the Court is taking with respect to the prior
10 testimony of the witness we would certainly disagree with.
11 The witness has used the terms clinical findings in
12 connection with his own report and in connection with his own
13 determination of what was caused or may have been caused by
14 TCDD. Mr. Carr is implicitly including that as a part of his
15 question, and that is part of what this witness is objecting
16 to, and the witness -- that is the part of the explanation why
17 the witness is using the term your language as opposed to
18 mine. I think that's been apparent from the witness'
19 testimony. I've made my record with respect to the
20 objection.

21 THE COURT: You have. Everything that you just
22 talked about was previously covered. Your objection is
23 overruled.

24 THE COURT: Ladies and gentlemen, I am ordering you

1 to disregard what the doctor just said. It was not
2 responsive to the question that was asked of him. You are,
3 therefore, ordered to disregard it. Doctor, I will have the
4 court reporter read back the last question that was asked of
5 you. I would appreciate it if you would answer that
6 question.

7 (Court reporter read back the question.)

8 A. They are clinical effects, sir.

9 Q. Doctor, these -- this article by Jirasek and these
10 others, Pazderova, these were published in -- what is that?

11 A. Der Hautarz. It means the skin specialist, haut
12 meaning skin.

13 Q. Is that --

14 A. It's a German dermatological journal, sir.

15 Q. Is it considered authoritative, Doctor?

16 A. In certain circles I suppose, yes.

17 Q. And this article or translation like it has been
18 accepted, it's been used by, not just by you, but by many
19 others, has it not, Doctor, in the period of time?

20 A. The translation?

21 Q. Yes.

22 A. Yes, sir.

23 Q. And, matter of fact, the -- well, there is another
24 article, this one, Plaintiffs' 1666. Can you tell us where

1 this one was -- oh, there it is.

2 A. It's a Czechoslovakian journal.

3 Q. What's the name of that one, Doctor?

4 A. It's a Ceskoslovenska Dermatologie, which means the
5 Czechoslovakian Journal of Dermatology.

6 Q. Is that also considered authoritative in the --

7 A. I very frankly have never heard it before I saw
8 this article. I don't know.

9 Q. Have you used that article and others like it in
10 your study of dioxin and effects on it?

11 A. In relation to the Spolana incident, yes, sir.

12 Q. All right. And it's the same authors or is it the
13 same authors?

14 A. Almost.

15 Q. Yes, it has --

16 A. Same authors.

17 Q. Jirasek-- It is exactly the same authors, is it
18 not, sir, or is it?

19 A. Yes.

20 Q. Yes, it is exactly the same authors. Now, that's
21 part two.

22 MR. CARR: Your Honor, our notes don't indicate that
23 that exhibit has been offered, and I'd like to offer it into
24 evidence at this time.

1 THE COURT: Which one?

2 MR. CARR: It's Plaintiffs' 1666, isn't that it,
3 Doctor?

4 A. 1666, right.

5 THE COURT: Any objections?

6 MR. CARR: Do you have a copy for us?

7 MR. CARR: No, I don't, and I don't have a copy for
8 myself.

9 MR. HEINEMAN: May counsel approach the bench, Your
10 Honor.

11 THE COURT: Sure.

12 (At this time a conference was had at the bench out
13 of the hearing of the jury.)

14 THE COURT: I can't find my copy either, so I'm not
15 going to be much help on that.

16 MR. HEINEMAN: Your Honor, we would object to the
17 admission of this document for the following reasons. First,
18 the witness has not admitted that it's authoritative.
19 Secondly, that it is hearsay. There's been no foundation
20 laid for its admission, it's not been authenticated, it's not
21 identified, it's clearly hearsay. Therefore, it's not
22 admissible.

23 MR. CARR: I think the doctor has authenticated it.
24 He has said it's a document he and others have relied upon in

1 the study of dioxin.

2 MR. HEINEMAN: No, he said he has looked at it in
3 connection with the Spolana issue, but he specifically did
4 not answer yes to your question as to whether you and others
5 have relied on it with respect to the study of dioxin.

6 THE COURT: I think he did. He said he had so used
7 the article. Objection is overruled. I'll admit it over
8 objection.

9 (The following proceedings were had in open Court.)

10 Q. Doctor, and you, of course, haven't read it in the
11 Czechoslovakian, have you, Doctor, you have read it in the
12 translation as we have it here?

13 A. Yes.

14 Q. And, Doctor, did you -- did you have occasion to
15 read it when it -- I don't see -- oh, yes, a date, 1974 when
16 it was first published or was it sometime thereafter that you
17 read it?

18 A. I really believe it was sometime thereafter, but it
19 was before 1978 when Dr. Jirasek came to Lyon to meet with a
20 group interested in problems.

21 Q. He was part of the international conference that
22 you attended that you earlier year described as occurring in
23 1978?

24 A. Yes, he was.

1 Q. I suppose he reported at that conference much of
2 the contents of this exhibit?

3 A. He reported more than this, sir.

4 Q. All right, but he reported that plus, did he not,
5 sir?

6 A. Well, very frankly I haven't looked at this
7 particular exhibit in some years, but if I recall correctly,
8 if one goes by the last exhibit there is a great deal of
9 duplication as you well know.

10 Q. Right.

11 A. They're -- essentially they're the same paper.

12 Q. All right.

13 A. They're essentially the same paper so you really
14 don't need both of them in order to understand what Dr.
15 Jirasek and his group found. However, at this meeting he did
16 report on other aspects of it, which he does not have in the
17 paper.

18 Q. Now, Doctor, referring to one aspect that he does
19 have in the paper on Page 14, and forgive me for leaning over
20 your shoulder this way, because it is--

21 A. That's all right.

22 Q. -- The only copy we have. He describes apparently
23 Schulz's experiment which you are familiar with and earlier
24 talked about intake of chlorinated hydrocarbons, and then he

1 goes on to say it is difficult to explain why some workers
2 had extensive acne chlorina, that's chloracne, is it not?

3 A. Right.

4 Q. Without any accompanying evidence of internal
5 change and others had an acute porphyria and other symptoms
6 of total intoxication or a distinct neurological diagnosis
7 while they showed insignificant or no skin symptoms. Does it
8 say that, sir?

9 A. It does.

10 Q. Now, they describe there then if I understand that
11 correctly, workers in the same factory, some of whom had
12 chloracne and no systemic problems and others had a lot of
13 problems and no chloracne, isn't that right, sir?

14 A. That's what he describes for that particular plant
15 that had multiple chemicals in it.

16 Q. That's what I am asking you. There were workers
17 exposed there that had other problems but did not get
18 chloracne, isn't that correct, sir?

19 A. Yeah, but the -- that's true.

20 Q. Excuse me, isn't that correct, Doctor?

21 A. But, you know, Jirasek describes --

22 Q. Excuse me, Doctor?

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

1 THE COURT: Doctor, doctor, please respond only to
2 the question that's asked of you. Please don't go beyond
3 that.

4 Q. Doctor, doesn't he say that there were workers that
5 had an acute porphyria and other symptoms of total
6 intoxication or a distinct neurological diagnosis while they
7 showed insignificant or no skin symptoms, doesn't he say --

8 A. Sure, he says that.

9 Q. Doesn't the author say that in this document?

10 A. Oh, absolutely, and he's --

11 Q. Doctor, they are --

12 A. He's accurate, he's very accurate.

13 Q. Doctor, they are describing problems that exist
14 from exposure or total intoxication without chloracne being
15 present, aren't they, sir?

16 A. Exposure to what, sir?

17 Q. Excuse me, Doctor, would you answer that question
18 please, sir.

19 A. I cannot answer it unless you say--

20 MR. CARR: Your Honor, would you direct the witness
21 to answer that question please.

22 A. Exposure to what?

23 THE COURT: Doctor, please answer the question.

24 A. I really can't answer the question the way it's

1 put, sir.

2 MR. CARR: Your Honor, would you direct again the
3 witness to answer the question.

4 MR. HEINEMAN: Your Honor, may counsel approach the
5 bench.

6 THE COURT: Yes, you may.

7 (At this time a conference was had at the bench out
8 of the hearing of the jury.)

9 MR. HEINEMAN: The witness has asked for an
10 explanation. The witness said he's not able to answer the
11 question as it's posed. He asked for an explanation.

12 THE COURT: Right.

13 MR. HEINEMAN: And this Court is refusing to let him
14 have it, and that is patently unfair.

15 THE COURT: No, what is patently ridiculous is
16 saying that he is not capable of answering the question after
17 he has talked about and given an analysis that these two
18 papers are duplicates, that you can use one without the other
19 and that he heard a report by Jirasek of what's in these
20 papers plus more at Lyon in 1978 and then he claims
21 incapability of answering that question in the context that
22 he himself has established for the Jirasek report. That is
23 what's patently ridiculous about this charade and the answer
24 that the witness has just given, and I don't have to allow

1 him to get away with it, and I don't intend to. Your
2 objection is overruled.

3 MR. HEINEMAN: Your Honor, the question by Mr. Carr
4 was is that the result of an exposure, of the exposure. Now,
5 the witness has already said, and we've been through this
6 with other witnesses, the witness has already said that there
7 was an exposure to a multitude of chemicals in the plant.

8 THE COURT: Right, he has said that.

9 MR. HEINEMAN: And Mr. Carr has asked the exposure.
10 The witness very naturally in response to your question,
11 exposure to what? It's a perfectly legitimate question for
12 the witness to ask, and it's patently unfair, Your Honor, to
13 permit Mr. Carr to grill him on a question on exposure
14 without the witness being entitled to know what particular
15 chemical Mr. Carr is suggesting the exposure was to.

16 THE COURT: You've already given the answer, to the
17 multitude of chemicals that he says Jirasek reported were in
18 the plant, and that's clear in the context. It's clear to
19 you, and you have less experience with Jirasek than he has
20 and you're not up here as an expert witness. The context is
21 clear to you, and it's crystal clear to him. I don't accept
22 the answer that he does not understand exposure to what. It's
23 patently absurd in the context of this man's abilities,
24 expertise and personal experience. Your objection is

1 overruled.

2 MR. HEINEMAN: Your Honor, then may I ask that in
3 the future if he gets an answer of yes, that this is an
4 indication of exposure to all the materials in the plant, if
5 that's understood in the question, Judge, then I want the
6 Court to admonish Mr. Carr that he may not use that answer in
7 the future with respect to an admission by this witness that
8 that is a sign of exposure to dioxin, because that is exactly
9 what Mr. Carr is trying to get at, and that's exactly what
10 this witness wants the clarification of.

11 MR. CARR: We have cross-examined a number of
12 witnesses on this particular episode. The authors describe
13 in the article that they consider these people had these
14 effects from exposure to 2,3,7,8 TCDD. Mr. Heineman has put
15 on witness to explain that there are other things in that
16 chemical plant that these workers were exposed to, and it may
17 well be. We don't contest the issue that there were other
18 chemicals. It has nothing to do with the question. There
19 were 76 out of 80 people that had chloracne. Whatever it was
20 they got chloracne, but the authors also point out that there
21 are a number of workers in same plant that didn't get
22 chloracne that had all these other neurological problems and
23 the witness clearly knows it and Mr. Heineman knows it, and
24 he knows that's what we're looking for and trying to prove

1 that you can have a number of other clinical effects without
2 getting chloracne, and this entire thing that we been going
3 through all day long, as the Court has described it, is
4 indeed a charade.

5 MR. HEINEMAN: No, Your Honor, what Mr. Carr wants
6 to do is to argue that that admission out of this witness
7 will be a demonstration that there was dioxin there, that the
8 dioxin caused the chloracne and the dioxin caused the other
9 symptoms as well, and that is what this witness is objecting
10 to, and that's what this witness is questioning him about.
11 If indeed the Court is correct that the context is clear from
12 the question, that all he's asking is with respect to all of
13 these chemicals in the plant, then that's fine, but I want
14 Mr. Carr restricted in what use he can make of the answer.

15 THE COURT: I will restrict both of you to the use
16 of the answer, any answer by the reasonable inferences from
17 the answer. I have said that before, I will say it again, I
18 will apply it to both of you in the future as I have in the
19 past. I am not going to give you an advisory opinion on the
20 use of any answer that has not yet been given to a question
21 that the witness so far has refused to answer. I've told you
22 before, and I will tell you again, I do not give advisory
23 opinions, I rule on what's before me and you are asking me to
24 rule on something that is not yet before me. This witness has

1 not yet answered this question, and I will not give you what
2 you ask for. Your objection is overruled. Your request for
3 an advisory opinion is overruled. I am going to get an answer
4 out of this witness and both of you are restricted in your
5 use of that answer to the reasonable inferences from that
6 answer.

7 (The following proceedings were had in open Court.)

8 THE COURT: Doctor, please answer the question that
9 was asked you. I'll have the court reporter read it back to
10 you.

11 (Court reporter read back the question.)

12 A. No, sir.

13 Q. Doctor, have they described -- did I not read to
14 you, sir, that they had -- workers had acute porphyria and
15 other symptoms of total intoxication or a distinct
16 neurological diagnosis with insignificant skin symptoms? Did
17 I not read that to you, sir? Doctor, did I not read that to
18 you?

19 A. I believe you have read that, sir, yes.

20 Q. Doctor, the authors are discussing men who were
21 exposed to something, but did not get chloracne, isn't that
22 correct, sir? Isn't that correct, Dr. Suskind?

23 A. That is correct.

24 Q. And, Doctor, these something, these problems that

1 they describe here, the total intoxication, the neurological
2 problems, the acute porphyria are problems they're describing
3 that do not include chloracne, aren't they, sir?

4 A. I don't know if they don't include chloracne, but
5 these are others problems, sir.

6 Q. Doctor, don't you recall that we read this and let
7 me read it to you again, sir?

8 A. On what page is that, sir?

9 Q. On Page 14. You don't have the exhibit Dr.
10 Suskind. I have it.

11 A. Oh, I'm sorry, I thought I had that, too? Don't
12 I?

13 Q. No, this is the one that we just have the one copy
14 of. You said it's the same as the one that you have in your
15 hand, Doctor. The sentence that we read is, it is difficult
16 to explain why some workers had extensive acne chlorina
17 without any accompanying evidence of internal change and
18 others had an acute porphyria and other symptoms of total
19 intoxication or a distinct neurological diagnosis while they
20 showed insignificant or no skin symptoms", end of quote. Now
21 do you recall that, sir?

22 A. Yes, I do.

23 Q. Now, Doctor, they are describing, are they not,
24 clinical and/or laboratory effects in the absence of

1 chloracne?

2 A. Yes, but they had other skin symptoms, sir.

3 Q. Doctor, my question relates to chloracne, they had
4 it without chloracne or for that matter they showed
5 insignificant or no skin symptoms; isn't that what they say,
6 Doctor, right there?

7 A. If you have porphyria, you've got skin symptoms,
8 sir.

9 Q. Isn't that what they say, Dr. Suskind?

10 A. I have this, too. That's what they say here, sir.

11 Q. And, Doctor, what they say there, they're
12 describing people who have other clinical or laboratory
13 effects without chloracne, aren't they, sir?

14 A. So what? So what?

15 MR. CARR: Your Honor, would you direct the witness
16 to answer my question.

17 THE COURT: Doctor, please answer the question that
18 was asked of you.

19 MR. HEINEMAN: Does my same objection apply, your
20 Honor.

21 A. That's what they describe, that's what they
22 describe. However--

23 MR. CARR: Your Honor--

24 THE COURT: Doctor, you've answered the question.

1 MR. HEINEMAN: Your Honor, I asked--

2 THE COURT: Yes, your objection applies.

3 MR. HEINEMAN: Thank you.

4 THE COURT: Are you at a point where we can break.

5 MR. CARR: Yes, Your Honor.

6 THE COURT: We'll recess at this time for the day.

7 We'll resume again Wednesday. Remember we're not having
8 Court tomorrow. I would remind you as I do on any overnight
9 break that you're not to read, listen to, or watch anything
10 about this case in particular or the subject matter in
11 general in any of the media. Thank you for your attention
12 and cooperation. See you Wednesday morning. Gentlemen,
13 could I see you at the bench for a minute please.

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1 STATE OF ILLINOIS)
2) SS.
3 COUNTY OF ST. CLAIR)

4 I, MARSHA SCHNIPPER, certify the foregoing to be a
5 true and accurate transcript of the testimony and proceedings
6 in the above-entitled cause.

7 Dated this ____ day of April, 1986.
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1 STATE OF ILLINOIS)
2) SS.
3 COUNTY OF ST. CLAIR)
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5 I, RICHARD P. GOLDENHERSH, one of the Judges in and
6 for the Twentieth Judicial Circuit, do hereby certify that
7 the foregoing transcript is a true and correct transcript of
8 the proceedings had in said cause.

9 Dated this ____ day of April, 1986.

10
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12 _____
13 RICHARD P. GOLDENHERSH, JUDGE
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