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WITNESSES:

DR. RAYMOND SUSKIND

Continued Cross Examination by
Mr. Carr 7

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IN CHAMBERS CONFERENCES HELD ON PAGES 2 AND 66

1 BE IT REMEMBERED AND CERTIFIED, that heretofore,
2 on to-wit: March 4, 1986, the matter as hereinbefore set
3 forth came on for hearing before the Honorable Richard P.
4 Goldenhersh, Circuit Judge, Twentieth Judicial Circuit, State
5 of Illinois, and the following was had of record, to-wit:

6 * * * * *

7 (The following conference was held
8 in chambers.)

9 THE COURT: I have just one thing I want to take
10 up and basically let you know about, and I tried to call your
11 office yesterday after Court, and either your line was busy
12 or no one answered or something. I got a hold of Mr. Carr's
13 office. Apparently your office has filed a suit against a
14 brother-in-law of one of the jurors. I don't know what the
15 nature of the suit is or anything, it is Barbara McCann's
16 brother-in-law, it is a guy named Steve Arnold who lives in
17 Maryville, and he runs a Derby gas station in Washington
18 Park, which is in this county. And I don't know what kind of
19 suit it is or anything, but apparently they have filed a suit
20 against him. and I wanted to let you gentlemen know so you
21 could decide what you want to do about it.

22 MR. CARR: After you left the message, I called
23 Korein last night and we have not filed a suit against him,
24 there's been a suit been on file for sometime against the
25 Derby Oil Company. He is the dealer that operates the

1 station that's involved. Apparently some kind of a defective
2 tank, and the gasoline leaked out or something. I don't know
3 the details of it. The Derby Oil Company is being sued,
4 Arnold is not. But last week, I think they said last week,
5 the deposition of Steve Arnold was taken by the office, by
6 Mr. Bogard, and that may be where the juror, so far as I
7 know, so far as I have been told at least, he is not a third
8 party defendant. He is a dealer for Derby and he may be
9 identifying with Derby and he may have told Mrs. McCann that
10 he is being sued, when in fact it is Derby being sued. But
11 he is not a party to the suit, at least at this point in
12 time. And my thought is that if the juror thought it was
13 serious enough to report to the Court, then I think it is
14 serious enough that the Court ought to inquire of her,
15 determine whether or not that has prejudiced her against the
16 clients that I represent, before we can make a decision
17 about anything else to do. If she states that it has
18 prejudiced her, why, we would have to decide what to do at
19 that time. But if she states that it hasn't prejudiced her,
20 then it would be of no consequence and nothing should be done
21 about it. But I think the Court will have to voir dire her
22 to find out how it has affected her, if it has affected her
23 at all.

24 THE COURT: What do you gentlemen think about
25 that, or do you have any thoughts on it?

1 MR. HEINEMAN: Well, I'd like to, before I
2 respond to that, I'd like to talk to Mr. Nassif privately for
3 a minute, if I could. Could we step into a room over here?

4 THE COURT: Sure.

5 MR. NASSIF: Judge, I guess she raised this with
6 you?

7 THE COURT: She let Marlene know, pursuant to my
8 instructions that anything is to be reported to the bailiff
9 and reported to me, and I didn't get all the information
10 until after Court last night, which is why I tried to get a
11 hold of all of you.

12 MR. HEINEMAN: Insofar as our response is
13 concerned, I'm sure the Court is aware that we have a Motion
14 before the Court right now with respect to conducting of voir
15 dire of the Jury in connection with certain publications. We
16 have made previous requests of the Court to voir dire the
17 Jury for various reasons which are set forth in the record at
18 the time those requests were made.

19 THE COURT: I believe those others have also been
20 matters that are media related. I think that there was a
21 request, for example, for a New York Times magazine article
22 that was done about Mr. Carr. I think your requests for voir
23 dire have all been media related.

24 MR. HEINEMAN: I think there was one, if I am not
25 mistaken, with respect to the approach made on Rosemary

1 Stacker by a person who was alleged to have been a Monsanto
2 employee.

3 THE COURT: I did talk to Miss Stacker at that
4 time. I think I refused to talk to the rest of the Jury,
5 refused the Motion as far as the rest of the Jury.

6 MR. CARR: I don't think you asked a Motion for
7 the rest of the Jury. What happened was that you had
8 inquired of the juror before, out of our presence, and before
9 we had--we knew about it, you had, it had been reported to
10 you and you conducted your own investigation at that time,
11 and then reported to us about what was done and counsel for
12 Monsanto said at that time if there is any circumstances like
13 that occurs again, they didn't object to it at that time
14 because it was already done. But if it occurs again,
15 however, we want the voir dire to be in counsel's presence.
16 And that's the circumstances there. There was no request by
17 anybody that the Jury be voir dired, it was just you had
18 already asked a question of Miss Stacker and counsel said in
19 the future they wanted to be in on any such--

20 MR. HEINEMAN: That's not my recollection of it,
21 Judge. I know that we requested that other jurors be
22 examined because we were concerned about the fact that she
23 may have told other jurors about it. I think there was one
24 juror who is no longer on the jury right now, Barbara
25 Stanley, who evidenced that she knew something about it or

1 had been told about it. And we had asked that the Jury be
2 voir dired on it and that was--

3 THE COURT: I think I talked to Miss Stacker, and
4 I think I talked to Stanley, and that was it. I don't
5 remember if there was a Motion made to talk to others or not.
6 I know I didn't talk to any other members on the Jury.

7 MR. HEINEMAN: In addition to that, we did ask to
8 be present at the time the voir dire was conducted, and that
9 was refused.

10 MR. CARR: No.

11 MR. HEINEMAN: I frankly believe that. I
12 frankly believe that a voir dire should be conducted of this
13 juror, Mrs. McCann. And it is consiststent with our position
14 with respect to occasions when we thought it should be
15 conducted on our behalf.

16 In addition to that, I think that counsel should
17 be allowed to be present at that voir dire with an option to
18 question the juror after the Court concludes questioning the
19 juror and would request that we be allowed to do that.

20 THE COURT: Do you have any objection?

21 MR. CARR: Yes, your Honor. Our position would
22 be that it is appropriate for counsel to be present, under
23 these circumstances. But I don't think it would be
24 appropriate for counsel to ask questions. I think we should
25 be allowed to suggest questions to you, and we followed this

1 tack, if the Court recalled when we selected the jury to
2 start with and we brought them back here into the Court's
3 chambers to inquire into these matters, and I think we should
4 be allowed to suggest questions to you, but I think at this
5 point in time for us to have, that is, for counsel to have
6 any contact with the jurors directly could have devastating
7 consequences, either Mr. Heineman or myself could ask a
8 question that the juror might think is inappropriate, and
9 could result in a mistrial, could result in a problem that
10 the Jury could say, could have an outburst against Mr.
11 Heineman or against me that could cause that juror to be
12 excused or that juror to be excused without a question, not
13 necessarily mistrial, but to excuse that juror.

14 THE COURT: Let me think about the procedure,
15 what I'd like in the meantime is more information on the
16 suit, and if it is filed here, the cause number, and if not, a
17 copy of the complaint at least so that I can tell this juror
18 that I have reviewed and I can speak from some basis of
19 authority as to what the suit entails.

20 MR. CARR: It is filed here.

21 THE COURT: Oh, good.

22 MR. CARR: The filling station is in Washington
23 Park.

24 THE COURT: Fine. If you could get me the cause
25 number and I will pull the file and review it, and then

1 decide how I will approach the juror, since both of you agree
2 with the concept of a voir dire. It is a question of how it
3 is to be conducted. We will have voir dired the juror after
4 I decide how it is to be conducted, and after I have had a
5 chance to review, to pull the file and review it.

6 MR. CARR: Okay, I can call and get that number
7 right away.

8 THE COURT: Since we are going to have our drill
9 in four minutes, we might as well make the call and go from
10 there.

11 (The following proceedings were held
12 in open Court.)

13 THE COURT: Good morning. We have had our mid-
14 morning walk. We will proceed. Mr. Carr?

15 CONTINUED CROSS EXAMINATION

16 BY MR. CARR

17 (Plaintiff's Exhibit No. 1748 was
18 marked for identification.)

19 Q Handing you Plaintiff's Exhibit 1747, which has
20 been previously admitted into evidence, and Plaintiff's
21 Exhibit 1748. Doctor, I'd like for you to verify, if you
22 will, the correctness of the life expectancy for each of
23 these. First of all, you recognize these as the same
24 eleven--no, I'm sorry, fourteen, thirteen persons who were
25 part of the original thirty-six examined in '53, but who were

1 dead by the time the 1979 examination came around from natural
2 causes, do you not, sir?

3 A Yes, sir, that's what you stated.

4 Q I'm sorry?

5 A I said that's what you stated.

6 Q Now, Doctor, I know it is what I stated, but what
7 I want from you is agreement that these thirteen people are
8 in fact the thirteen deaths from natural causes which you
9 have seen the death certificates for yesterday that were
10 part of the original thirty-six examined in 1953.

11 A I have.

12 Q And they are, are they not, sir?

13 A They are.

14 Q Yes. Now, Doctor, I would also like for you to
15 check the--using the life table, Exhibit 1747, and that's in
16 front of you, and verify that the life expectancies put in
17 Exhibit 1748 are correct according to that table for the
18 persons named.

19 A No, sir, I cannot do that.

20 Q Doctor, do you have the table in front of you?

21 A I do, indeed. But I would have to know the
22 source of it.

23 Q Doctor, the Judge is the judge of the validity of
24 the table. The Court has ruled the table valid. I would
25 like for you to do as I asked you to do, please, sir.

1 MR. HEINEMAN: Objection, your Honor. May
2 counsel approach the bench?

3 THE COURT: Yes, you may.

4 (The following conference was held
5 at the bench.)

6 MR. HEINEMAN: Your Honor, that statement is just
7 the kind of stuff that I have been complaining about before,
8 what Mr. Carr is doing here. He has no right to say to that
9 jury that you have found this exhibit valid, because that
10 isn't at all what you have found. You have taken judicial
11 notice of it, period. And that's all you've done. And I
12 might say over my objection, because we do not have the
13 source of this document in the courtroom. Neither you nor I,
14 or I assume Mr. Carr does, but neither you nor I has any idea
15 of where this information comes from. And therefore, I renew
16 my objection to it, and it is improper for Mr. Carr to inform
17 this witness that you have ruled that this is valid
18 information, because you haven't ruled that.

19 MR. CARR: First of all, your Honor, you have
20 ruled that it is valid. He says he can't use it, because he
21 doesn't know the source. I've asked him to use it as an item
22 that's in evidence, whether it is the worst item or whether
23 it is the best item, it is not for him to decide. The Court
24 has made that decision. If the Court is wrong, the Court is
25 wrong. He is not an appellate judge over you. The source of

1 the table is identified in the table. It is the Public
2 Health Service of the United States government. It is
3 identified, counsel, and the Court has taken judicial notice
4 that this is a valid life expectancy table that can be used
5 in this case and admitted into evidence, and counsel knows
6 that has been done, and his objection is not proper.

7 THE COURT: I think that by taking judicial
8 notice of it, I have given ratification to its validity based
9 on its nature, so it can be used. It is not this witness'
10 province to decide the question that he has posed. Perhaps
11 the way around this would be that he is to assume its
12 validity and answer the questions on the basis of that, since
13 I have allowed it into evidence on the basis of judicial
14 notice. I think that your remark was correct. I think that
15 maybe the practical way around it as far as using it is
16 concerned. Your renewed objection and your objection at the
17 remark are both continuing.

18 (The following proceedings were
19 held in open Court.)

20 BY MR. CARR:

21 Q Now, Dr. Suskind, if you will now assume, please,
22 that this is an appropriate table to use, appropriate life
23 expectancy table to use, and with that assumption, please,
24 verify, sir, the life expectancies set out in 1748 is that
25 which are reflected by the life expectancy table that is

1 Plaintiff's Exhibit 1747.

2 A I cannot do that until I calculate it myself,
3 sir.

4 Q That's what I am asking you to do, Dr. Suskind.

5 A I have difficulty as a scientist to be using this
6 kind of a table.

7 MR. CARR: Your Honor, the witness--

8 THE COURT: Doctor, it is appropriate to use it.
9 Please use it. The matter that you posed is something that I
10 have ruled upon as far as its appropriate use in this
11 courtroom and this trial. I've ruled its use is appropriate,
12 so please proceed on that basis and use it.

13 Q And, Doctor, if you will, that's an original
14 Exhibit 1748, and please don't mark on it. If you want to
15 make markings, I can give you another copy if you want to
16 make markings on another copy.

17 A May I ask a question about the first column, sir?
18 The age is what? What does that represent?

19 Q That's the age given in the report that you made
20 in 1953 at the time you examined these men.

21 A May I ask another question about the table, sir?

22 THE COURT: Doctor, just use the table, please.

23 A I need an explanation for the--we start in 1953
24 and this table is as of 1950, sir. So there is a three year
25 difference.

1 THE COURT: Right, I understand that. That's been
2 part of my consideration. Use it, please.

3 Q Doctor, and on that point, life expectancies
4 increase as modern civilization advances, does it not?

5 A Well, I haven't seen the figures for '53, sir. I
6 can't tell you.

7 Q Excuse me, Doctor. Do you know as a scientist
8 that the life expectancy today is greater or longer than the
9 life expectancy for the people in 1950, you know that, don't
10 you, sir?

11 A Well, it would be different between '50 and '53.
12 I can't tell you, sir.

13 Q Doctor, could you please answer this question?
14 You do know that life expectancies are expanding, or
15 lengthening with the passage of time because of better
16 medical care, better health, better nutrition all the way
17 around. You are aware of that, aren't you, sir?

18 A It has been over the last twenty years, sir.

19 Q And I have here a life expectancy table for 1959,
20 sir, if you want to see it. You will see that it has a
21 greater life expectancy than the 1950 table. I have one for
22 1976, it shows a greater life expectancy than the 1959 table.
23 You are aware of that, aren't you, sir?

24 MR. HEINEMAN: Objection, your Honor. May we
25 approach the bench?

1 THE COURT: Yes, you may.

2 (The following conference was
3 held at the bench.)

4 MR. HEINEMAN: Here we have another speech by Mr.
5 Carr with respect to purported evidence that he claims he has
6 in his possession. He's asking this witness about--there is
7 no evidentiary basis for the statement. It is something
8 that he is just making a speech to the Jury about in order to
9 support his point about increased longevity in more recent
10 years, and I object to it. I ask that the speech be stricken
11 and I ask that the Jury be instructed to disregard it.

12 MR. CARR: Your Honor, the witness had absolutely
13 no right to make the statement that he made. It was uncalled
14 for. It had nothing to do--he was asked to do a function, a
15 simple function of looking at a table and comparing. He
16 wasn't asked to comment on the validity, whether or not there
17 is a longer or lesser life expectancy in '53 than there was
18 in '53. The Court can certainly take judicial notice of the
19 fact that life expectancies have increased and lengthened
20 over the passage of time. It is common knowledge, and my
21 remark was called for in view of Dr. Suskind's unsolicited
22 improper statement.

23 THE COURT: I'm afraid it was, but I think you
24 should probably produce those tables so they can be put into
25 evidence and upon my review, if I feel it appropriate to take

1 judicial notice, so that they appear on the record and there
2 is an evidentiary basis. And I think that will take care of
3 any problem that existed in the remarks, if you could bring
4 those up to the bench, we will take care of it now.

5 (Plaintiff's Exhibits 1749 and
6 1750 were marked for identification.)

7 MR. CARR: Your Honor, there is already in
8 evidence a life expectancy table that we used for Dr.
9 Grossman. I think it is a 19--I don't recall what year it
10 is. I think it is a 1979 table, I am not absolutely sure of
11 that. Anyway, whatever the number is, I don't have it
12 immediately available. But I am now offering and with leave
13 to withdraw, as soon as the Court is satisfied, Plaintiff's
14 Exhibit 1749, which is a U.S. life table for 1976, and
15 Plaintiff's Exhibit 1750, which is a U.S. life table for 1959
16 to support my statement that life expectancy as compared to
17 the 1950 table is increasing rather than decreasing.

18 (Plaintiff's Exhibits 1749 and
19 1750 were offered into evidence.)

20 MR. HEINEMAN: Your Honor, of course we would
21 object to these as being hearsay. They are not authoritative
22 documents, and we would object to the Court taking judicial
23 notice of them. Primarily I would certainly object to the
24 Court permitting Mr. Carr to withdraw them once they have
25 been admitted into evidence.

1 MR. CARR: We will leave a copy of the cover page
2 and the appropriate page.

3 THE COURT: That will be fine.

4 MR. HEINEMAN: But who knows how much of that
5 document is relevant to the portion which is being referred
6 to with the witness, and we would like, if the Court is going
7 to put any of it in, the Court ought to put all of it in and
8 leave it in so that it can be used on redirect examination
9 with the witness.

10 MR. CARR: I'll certainly leave it here long
11 enough for counsel to use it. I will be glad to make copies
12 of the entire document and put it in, but those are original
13 exhibits that I have used in many, many cases where the
14 Courts have taken judicial notice of these tables, and I
15 certainly don't want to leave them here for years.

16 THE COURT: Why don't you make copies of both in
17 their entirety and that will be fine, and I will take
18 judicial notice of both of them and they are both admitted
19 into evidence.

20 (Plaintiff's Exhibits 1749 and
21 1750 were admitted into evidence.)

22 (The following proceedings were
23 held in open Court.)

24 BY MR. CARR:

25 Q Are you finished, Doctor?

1 A I believe I am, sir.

2 Q And, Doctor, are the figures for the expectancy
3 correct?

4 A The figures as figured from this table are, yes.

5 MR. CARR: Your Honor, now I'd like to offer
6 Plaintiff's Exhibit 1748 into evidence, if it please the
7 Court.

8 (Plaintiff's Exhibit 1748 was
9 offered into evidence.)

10 THE COURT: Any objections, gentlemen?

11 MR. HEINEMAN: Your Honor, we would object to it
12 on, well, may we approach the bench?

13 THE COURT: Sure.

14 (The following conference was
15 held at the bench.)

16 MR. HEINEMAN: First of all, we object to it
17 because it contains the same stuff that's in Exhibit 1746,
18 which we previously objected to and which is inadmissible.

19 THE COURT: Right.

20 MR. HEINEMAN: To the extent that it includes
21 information from Exhibit 1747--

22 THE COURT: The life table.

23 MR. HEINEMAN: The life table, to the extent it
24 includes information from 1747, we've objected to the
25 admissibility of that information. We'd like to preserve

1 that objection at this time.

2 THE COURT: Of course.

3 MR. HEINEMAN: And I think the type of
4 calculation which the Doctor's been asked to make, we believe
5 is not possible from the information that's been provided to
6 him, and we would object to it on that basis as well, and I
7 would ask that my objection be a continuing objection with
8 respect to any examination of the witness, as to the content
9 of any of these three documents, 1746, 47, and 48, as well as
10 49 and 50.

11 MR. CARR: The purpose is for illustration,
12 illustrative purposes primarily to show the various life
13 expectancies of these workers as a part of the plan that I
14 have, and shown in the beginning to demonstrate to the Jury
15 and to Dr. Suskind the fate of the thirty-six people that he
16 said should be re-examined and re-studied in his letter that
17 we referred to earlier.

18 THE COURT: I will admit 1748 over objection. I
19 will--I think that you have properly preserved your prior
20 objections as to the materials that were used to compile--as
21 part of the compilation of 1748, and for purposes of economy,
22 I will note that it is a continuing objection to 1748.

23 While you're up here, I know that this happened
24 again this morning. It seems to be a recurring pattern with
25 this witness that he volunteers or says something which he

1 isn't supposed to do which I've told him not to do, which
2 I've asked you to tell him not to do, and he seems to put Mr.
3 Carr in a position that he feels in his professional judgment
4 he has to say something or do something which after he says
5 something or does something, and then he goes on with the
6 questioning, gets an objection from you. I think that's a
7 very disturbing pattern. It indicates that your admonitions
8 of him seem to be of no effect, and my admonitions seem to be
9 of no effect. And on top of that, it is bootstrapping an
10 objection that shouldn't have happened that happened in
11 response of something that shouldn't have happened, and this
12 should not happen. I don't want to see it occur.

13 MR. HEINEMAN: Your Honor, with respect to the
14 questions which Dr. Suskind asked about the exhibit, he was,
15 in my view, perfectly entitled to ask questions about what
16 those figures represented since he didn't put them on there.
17 These are figures that Mr. Carr put on there.

18 THE COURT: That's not the one I'm referring to.
19 After I made it perfectly clear to him that they had been
20 accepted by this Court with sufficient validity to be used
21 and continuing with this question, it was the source of the
22 comments which inspired your objection and Mr. Carr's
23 comments, not the questions, as far as the ages in that first
24 column, that was a very simple housekeeping question which
25 was answered in about four words from Mr. Carr as to which

1 there was no problem. I think it is perfectly clear as to
2 what I am talking about, and I don't want to see it recur.

3 (The following proceedings were
4 held in open Court.)

5 MR. CARR: Your Honor, may we pass the exhibit to
6 the Jury?

7 THE COURT: Yes. It's been admitted. You may
8 pass it to the Jury.

9 (Plaintiff's Exhibit 1748 was
10 admitted into evidence.)

11 Q Dr. Suskind, the exhibit refers to the workers
12 who were part of the workers who were not examined in 1979,
13 but who were part of the 36, group of 36 that you had
14 examined in '53, and the first of those workers on this list
15 is James Asbury, is he not, sir?

16 A It is.

17 Q And this exhibit and the death certificates in
18 evidence showed that he died at the age of 54, does it not,
19 sir?

20 A Yes, sir.

21 Q And he died of cancer, isn't that correct, sir?

22 A Yes, sir.

23 Q And according to the life expectancy table in
24 evidence, he had a--in 1953 he had a life expectancy of
25 nearly 36 years, correct, sir?

1 A No, sir.

2 Q Doctor, didn't you tell me that the population
3 with regard to life expectancy was correct according to the
4 life expectancy table in evidence?

5 A If you are considering--

6 Q Doctor, could you answer that question, please,
7 sir.

8 A Yes, if you are considering cancer--

9 Q Doctor, could you answer that question, please?

10 A Yes, I have.

11 Q All right. And according to the calculation,
12 using that table, that table shows that he had a life
13 expectancy in 1953 of nearly 36 years, isn't that correct,
14 sir?

15 A No, sir.

16 Q Sir?

17 A No, sir.

18 Q Isn't the calculation on this exhibit correct,
19 sir?

20 A No, sir.

21 Q Didn't you just tell me the calculation was
22 correct?

23 A The calculation according to that table.

24 Q That's what I am asking you, Doctor. Did you
25 think I was asking about some other table? I'm asking you

1 about the table in evidence, that the Court put into
2 evidence, Doctor, and would you confine your attention to
3 that, please? According to that table, this calculation is
4 correct, is it not, sir?

5 A The table can't be used for this purpose, sir.

6 THE COURT: Doctor--

7 A Yes, sir.

8 THE COURT: That answer was not responsive to the
9 question. Answer the question.

10 THE WITNESS: Your Honor, in this instance--

11 THE COURT: Doctor, I don't want an explanation,
12 I want you to answer the question as I've ordered you to.

13 A Using this table, the life expectancy is
14 accurate, according to this figure, yes, sir.

15 Q And, Doctor, according to that table then, his
16 death in 1972, according to that table, his life expectancy
17 would have been an additional 17 years, would it not?

18 A No, sir.

19 Q Now, Doctor, according to that table, did he have
20 a life expectancy of 36 years in 1953?

21 A According to that table, sir.

22 Q And according to the table in evidence showed
23 that in 1953, if he lived his life expectancy, according to
24 that table, he would live to the age of 71, isn't that
25 correct, sir?

1 A I don't know, sir.

2 Q I'm sorry?

3 A I don't know.

4 Q Doctor, are you listening to the question?

5 A Yes, I am, sir.

6 Q And that table, his life expectancy, according to

7 that table, that 1950 table was 36 years in 1953, was it not,

8 sir?

9 A According to that table.

10 Q All right. Now, that's what I am asking you,

11 Doctor. Keep that in mind. Thirty-six added to his age at

12 that time would mean 71, wouldn't it, sir?

13 A I would, if you did it that way, yes, sir.

14 Q Well, that's the way we are doing it, Dr.

15 Suskind. Now, you understand the Judge is the judge of the

16 proper way to do it and not you, do you understand that, Dr.

17 Suskind?

18 A Yes.

19 Q And please go along with what the Judge says is

20 proper in this case, would you do that, sir?

21 A I will try my best to do that, sir.

22 Q All right. So I don't have to go back to this

23 again. All right, Doctor, according to that table, he lived,

24 according to the death certificate in evidence, he died at

25 the age of 54, correct, sir?

1 A Yes, sir.

2 Q And 54 subtracted from '71 is 17, isn't it, sir?

3 A Yes, it is, sir.

4 Q And that's reflected in the column to the right-

5 hand side of the page, isn't it, sir?

6 A As I read it, sir, yes.

7 Q And Mr. Bailey, in 1953, according to that table

8 he had a life expectancy of 42 years, did he not, sir?

9 A According to that table, sir.

10 Q He died just 17 years later after his

11 examination, didn't he, sir, at the age of 48, according to

12 the death certificate in evidence.

13 A Yes, sir.

14 Q And his life expectancy then was a minus 21

15 years, according to the table in evidence, wasn't it, sir?

16 A A person who was of that age, a person who was

17 that age might be expected to live for 42 years more, is that

18 what you are saying, sir?

19 Q That's what I am saying, Doctor.

20 A A person of that age, right.

21 Q That's correct, Doctor.

22 A No matter what kind of disease he had.

23 Q That's correct, Doctor.

24 A Okay.

25 Q And, of course, you understand, don't you,

1 Doctor, that life expectancy tables are just averages based
2 upon the total population that some people live longer than
3 that and some people live less long than that, you understand
4 that?

5 A The life expectancy table--

6 Q Excuse me, Doctor. Would you answer that
7 question?

8 A It also takes into consideration--

9 Q Doctor, could you please answer the question that
10 I asked? I didn't ask you what it also takes into
11 consideration. Mr. Heineman can ask you that question if you
12 want him to. But I'm asking you the questions that I am
13 asking you, do you understand that, sir?

14 A Yes, sir.

15 Q And, Doctor, Mr. Dent who died of cancer at the
16 age of 53, according to the life expectancy table in
17 evidence, he had, a person like him had another 19 years to
18 live, isn't that correct, sir, according to the table in
19 evidence?

20 A According to the table in evidence, a person aged
21 49 would have that life expectancy.

22 Q Yes. And, Doctor, as far as Harris is concerned,
23 that's another 29-year-old person that died, he died at the
24 age of 49, did he not, sir?

25 A Yes. he did.

1 Q Of cancer?

2 A He did.

3 Q And the life expectancy table applied to a person

4 like Mr. Harris would have given him an additional twenty

5 years to live, would it not, sir?

6 A A person who was--

7 Q Doctor, could you answer the question that I gave

8 to you?

9 A Yes, sir. I am attempting to answer that, sir.

10 Q And, Doctor, Mr. Hoffman, a 28-year-old person

11 that died at the age of 48 of a heart attack, he had a 40 and

12 a half year life expectancy, according to the table in 1953,

13 did he not, sir?

14 A A person of that age would.

15 Q Doctor, could you answer the question the way I

16 framed it without giving me your add-on speech to it, sir?

17 A Yes, sir.

18 Q Thank you. And, Doctor, that's a minus twenty

19 years for him, isn't it, sir?

20 A That's what it reads in the table, sir.

21 Q And Barry Hudnall, now, he died at age 75, he had

22 a life expectancy of thirteen years at the time he was

23 examined in 1953 and he indeed lived his life expectancy,

24 minus one year, did he not, sir?

25 A That's what the table reads, sir, yes, sir.

1 Q And, Mr. Kyle, 35-year-old man died just seven
2 years after his examination in 1953, did he not, sir, at the
3 age of 42?

4 A Yes.

5 Q Of a heart attack, and his life expectancy
6 deficit, according to that table, would be 19, would it not,
7 sir?

8 A According to the table, sir.

9 Q Isn't that what I said in my question, Dr.
10 Suskind?

11 A Yes, sir.

12 Q There is no question in your mind but what I said
13 according to that table?

14 A That's right, sir.

15 Q And, Dr. Suskind, Mr. Newcomer, a 34-year-old
16 man, he lived twenty years after the examination, didn't he,
17 sir?

18 A He did.

19 Q And his deficit was a minus 16, wasn't it, sir,
20 according to the table?

21 A According to the table, yes, sir.

22 Q And Mr. Shank, a 48-year-old man died at the age
23 of '67, he came close to living his life expectancy, didn't
24 he, sir? It was a minus five, according to the table.

25 A Yes, sir.

1 Q And, Doctor, Mr. Simmons, a 27-year-old man, died
2 of a heart attack at age 43, did he not, sir?

3 A According to the table, yes, sir.

4 Q And he had a deficit in his case of a minus 26
5 years, didn't he, sir, according to the table, is that
6 correct, sir?

7 A According to the table, yes, sir.

8 Q Mr. Westphall died of cancer at age 54, he had a
9 deficit of a minus 16, didn't he, sir, according to the
10 table?

11 A He did indeed, sir.

12 Q And Mr. Harold Young, a 38-year-old man, died at
13 the age of 45 of a heart attack, didn't he, sir?

14 A Yes, according to the table.

15 Q And he had a deficit of a minus 26 years, didn't
16 he, sir?

17 A Yes, according to the table.

18 Q Mr. H.O. Young died at age 69, did he not, sir?

19 A He did.

20 Q And he lived close to his life expectancy, just a
21 minus five, in his instance, isn't that correct, sir?

22 A Yes, according to the table.

23 Q Now, Doctor, these deaths of these 13, and we've
24 already discussed the accidental or suicidal deaths of two
25 others, that's fourteen all together, or thirteen, rather,

1 Q No, we agreed that in Mr. Shank's case it was
2 described as mild pains, but in fact, there were a number of
3 others where their symptoms were not mild, isn't that
4 correct, sir, in '53?

5 A No--

6 Q I'm sorry?

7 A I'm not sure I understand what you mean.

8 Q You said here in your Exhibit 1727, your report
9 in 1978 that in very few cases workers continued to complain
10 of mild pains, nervousness, and fatigue. In point of fact,
11 there were a number of cases where they complained--where the
12 problems they complained of were not mild, isn't that
13 correct, sir?

14 A That might be so, yes.

15 Q But you stated--

16 A The complaints--

17 Q Sir?

18 A They complained, yes, sir.

19 Q But you stated in this exhibit that the only
20 complaints you got were mild pains and complaint of mild
21 pains, nervousness, and fatigue, isn't that right, sir?

22 MR. HEINEMAN: Objection, your Honor. May
23 counsel approach the bench?

24 THE COURT: Sure.

25 (The following conference was

1 held at the bench.)

2 MR. HEINEMAN: That is a false and misleading
3 question. It says in this statement you say the only
4 complaint we got were mild pains, nervousness, and fatigue,
5 that isn't what the statement says, and I object to it as
6 misleading, false.

7 MR. CARR: It is this one right here, Judge.

8 THE COURT: Overruled.

9 (The following proceedings were
10 held in open Court.)

11 BY MR. CARR:

12 Q Doctor, you did not announce to the world in
13 1978, you didn't give any description of the problem these
14 men were having in '53 other than to say they continued to
15 complain of mild pains, nervousness, and fatigue, isn't that
16 right, sir?

17 A No, sir, it is not.

18 Q I'm sorry?

19 A It isn't correct.

20 Q Are you looking at the report you made in 1978,
21 sir?

22 A I am indeed, sir.

23 Q And you are looking on Page 4?

24 A I am.

25 Q And did you not say on Page 4, "Thirty-six

1 persons were followed over a period of four years. In very
2 few cases workers continued to complain of mild pains,
3 nervousness, and fatigue." Did you say that, sir?

4 A Yes, I did. But I also said other things.

5 Q Oh, you said mild residue of acne were common,
6 did you not?

7 A Yes. And I said in the previous paragraphs, I
8 describe the manifestations of the problem.

9 Q You described the manifestations of the problems
10 as you first saw them in '49, did you not, sir?

11 A And 1950, yes.

12 Q And then you say, you describe the problems as
13 they existed in 1950, which were severe, were they not, sir?

14 A Some of them were.

15 Q Severe and disabling, as a matter of fact, in
16 many instances, isn't that correct, sir?

17 A Some of them were, yes.

18 Q And then you describe, you say that you followed
19 these thirty-six persons over a period of four years, do you
20 not, sir?

21 A We didn't follow them, but they were followed.

22 Q Doctor, you say they were followed over a period
23 of four years, didn't you, sir?

24 A Right. That's what this statement--

25 Q And then you say with reference to following

1 these persons over four years, in very few cases workers
2 continued to complain of mild pains, nervousness, and
3 fatigue, didn't you, sir?

4 A That's how it reads, sir.

5 Q Isn't that what you said, sir?

6 A Yes, sir.

7 Q But you did not tell the world that in a number
8 of cases, the complaints that they had were not mild, did
9 you, sir?

10 A We did not, sir.

11 Q And you left the impression with this document
12 that the only thing that they were complaining of were mild
13 pains, nervousness, and fatigue and some mild residue of
14 acne, did you not, sir?

15 A No, sir.

16 Q Well, what impression did you leave with the
17 world other than what I have just stated?

18 A That it was our interpretation that overall--it
19 was our interpretation that overall the cutaneous and the
20 noncutaneous symptoms had regressed. And that overall the
21 noncutaneous symptoms such as pains, nervousness, and fatigue
22 were mild and occurred in a few cases, that's what we said.

23 Q That's what you told the world that the
24 problems--

25 A That was our interpretation.

1 Q Excuse me, Dr. Suskind. Would you let me finish
2 my question, will you, sir, let me finish my question before
3 you answer?

4 A Yes, sir.

5 Q Thank you. And, Doctor, you also told the world
6 that they regressed and they regressed so much that in--so
7 that the situation by 1953 was that in very few cases the
8 workers continued to complain of mild pains, nervousness, and
9 fatigue, did you not, sir?

10 A That was our interpretation, sir.

11 Q But your interpretation in 1953 was in point of
12 fact that there were a number of cases that were not
13 categorized as mild, didn't you, sir?

14 A No.

15 Q Now, Doctor, would you turn to the--your Exhibit
16 1701, your report that you--where you analyzed these people
17 in 1953 and where you said in seven cases they were not mild,
18 in seven of the twenty-seven, they were not mild, in '53,
19 Page 41, are you at Page 41, sir?

20 A Yes.

21 Q You say in the paragraph there, do you not, sir,
22 "Twenty-three persons at the time of the examination
23 complained of symptoms other than cutaneous, which they
24 attributed to the occupational exposure. These included the
25 aches and pains, nervousness, fatigue, loss of vigor,

1 dyspnea, decrease in libido, as described above. In most of
2 the twenty-three cases, the other symptoms were mild except
3 in instances cited by Messrs. Westphall, Steele, Willard,
4 Hudnall, Selby, Beckman, and Stover." Now, this is your
5 interpretation of your examination in 1953, is it not, sir?

6 A That is a record of it. As we indicated, we had
7 a judgment to make.

8 Q Dr. Suskind, please let me finish my question.
9 Isn't this Page 41 your interpretation of the complaints that
10 these people made?

11 A It is a record of the examination.

12 Q And, Doctor, isn't that record an interpretation,
13 isn't this page an interpretation of that record?

14 A No, sir.

15 Q Doctor, how can you possibly say that you have
16 done anything except interpret the record when you say in the
17 paragraph, "Twenty-three persons at the time complained of
18 symptoms other than cutaneous--", that is an interpretation
19 of what these twenty-three people were complaining of, is it
20 not, sir?

21 A No, sir, it simply lists, it lists the twenty-
22 three who complained. That's what it says, twenty-three
23 people complained.

24 Q Yes, that's your interpretation of their
25 complaints, isn't it, sir?

1 A No, that is the record of the complaint.
2 Q No, Doctor, the record of the complaint is in
3 other places in the document. This Page 41 is an
4 interpretation, is it not, sir?
5 A Well, since I wrote the document, I think I have
6 a--
7 Q Doctor, could you answer my question, please,
8 sir?
9 A Yes, sir.
10 Q Are you not interpreting the complaints that
11 these people have? Are you not saying that the complaints
12 these people had included aches, pains, nervousness, fatigue,
13 loss of vigor, aren't you there interpreting their complaints
14 to show what they include, sir?
15 A We are recording those complaints.
16 Q No, Doctor, the recording of the complaint is in
17 the earlier pages where you--starting at Page--
18 A This is a reflection of a record--
19 Q Doctor, if I could direct your attention,
20 recording the complaint starting at Page 5 of this document
21 where you call it, "Case Histories", do you not, sir?
22 A Yes, sir.
23 Q And there you say, "Case Histories. The
24 following are summaries of the pertinent facts from the
25 medical histories of the persons who were examined," isn't

1 that right, sir?

2 A That's true, sir.

3 Q Now, you are there listing not even the history

4 itself, but a summary of the history, aren't you?

5 A Yes.

6 Q There is nowhere in this document except in the

7 very few instances actually the record that was made at the

8 time, is there, sir?

9 A It is an excerpt of the record, sir.

10 Q Well, did you understand my question, sir? In no

11 place is the record here, Doctor.

12 A The complete records are not here, no, sir.

13 Q Well, Doctor, not just the complete record. This

14 is a summary, this is your report, is it not, sir?

15 A I agree.

16 Q And the thing is entitled your report.

17 A It is indeed.

18 Q And in that report you evaluate things, don't

19 you, sir? You made a clinical survey, did you not, sir?

20 A Yes.

21 Q And you made an environmental survey, did you

22 not, sir?

23 A Yes, we did.

24 Q And in both those surveys, you analyzed and you

25 interpreted, did you not, sir?

1 Ross, the psychiatrist?

2 A. I don't believe so.

3 Q. Did Dr. Ross, the psychiatrist, testify at the
4 compensation commission hearing?

5 A. I don't believe so.

6 Q. Do you have a copy of the report of Dr. Nestmann in
7 which I found most of these employees to be psychoneurotic?

8 A. No, I don't think I have, sir.

9 MR. CARR: Your Honor, could I approach the bench?

10 THE COURT: Yes, you may.

11 (The following Side Bar conversation was had outside the
12 hearing of the jury.)

13 MR. CARR: I would like to move that we receive
14 from Monsanto a copy of Dr. Nestmann's reports.

15 MR. HEINEMAN: Do you know whether or not you have
16 it?

17 MR. CARR: I know I do not.

18 MR. HEINEMAN: You've said that before.

19 THE COURT: As I've said many times I don't think
20 that's an unreasonable request. You look for it and you
21 check to see if you do have it. But, I think that's not an
22 unreasonable production request. I think it should be
23 produced. It's obviously relevant to what we are doing
24 here. So both of you look. But I want -- I mean it's out of

1 your campe, I would expect that you come up with a copy.

2 MR. HEINEMAN: I would point out to the Court for
3 the record that the document that Mr. Carr is referring to on
4 Page 3 states that the evaluation -- well, now wait a minute,
5 which document are you talking about?

6 MR. CARR: I'm talking about the report concerning
7 most of the employees that he has examined for Monsanto.

8 MR. HEINEMAN: Okay, well, we will look for it. I
9 don't know.

10 THE COURT: Okay. I think it should be produced.
11 I think it has to be produced. I'm ordering you to produce
12 it.

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

14 Q. (by Mr. Carr) Doctor, if you don't have a copy of
15 Dr. Nestmann's report, did you use that when you prepared
16 your features of exposure to TCDD.

17 Q. Would you repeat the question?

18 MR. CARR: Would you read the question?

19 (Court Reporter read the previous question.)

20 A. No, I don't believe I did, sir.

21 Q. Doctor, did you ignore that report of Dr. Nestmann
22 then when you prepared the possible human effects resulting
23 from TCDD exposure?

24 A. No, sir.

1 Q. Well, did you pay -- give it any weight, sir?

2 A. No, we didn't.

3 Q. You did not give it any weight?

4 A. Absolutely no weight.

5 Q. You ignored what Dr. Nestmann said, did you not,
6 sir?

7 A. Correct.

8 Q. And Dr. Nestmann found that most of these employees
9 had been exposed to TCDD who before were without neuroses for
10 some reason had become neurotic, isn't that correct, sir?

11 A. That's what he claimed, sir.

12 Q. Now, Doctor, that Dr. Nestmann is a person employed
13 and paid for my Monsanto, isn't he, sir?

14 A. I have no idea.

15 Q. Doesn't it say that, sir, he has examined these
16 people for us?

17 A. It says so.

18 Q. Yes. And he therefore is a person that -- a
19 psychiatrist examined these employees for Monsanto, correct,
20 sir?

21 A. At their request, I assume.

22 Q. Has anybody reported to the world, so far as you
23 know, that Monsanto's psychiatrist had found in 1955, some
24 six years after the exposure, that these men that he examined

1 then were neurotic as a result of the exposure?

2 A. Would you repeat the question.

3 MR. CARR: Would you read the question?

4 (Court Reporter read the previous question.)

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

7 THE COURT: Yes, you may.

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

10 MR. HEINEMAN: I recall during my cross examination
11 of Plaintiffs' witnesses that at Mr. Carr's insistence this
12 Court has ruled that when we were asking questions on cross
13 examination that they had to be based upon some evidence in
14 the case, they had to be based on evidence.

15 THE COURT: Right.

16 MR. HEINEMAN: Now, there is no evidence whatever
17 that Nestmann found that these psychoneuroses were caused by
18 the exposure. Doesn't say that here. And that is included
19 in the question and I object to it. I object to it. I think
20 the Court should instruct the jury, or Mr. Carr should be
21 required to rephrase the question.

22 MR. CARR: Your Honor, I think that clear
23 conclusion can be drawn from Mr. Stone's apprehension as to
24 the implications that could be done if that report is

1 submitted as evidence, because it could only be evidence used
2 in the compensation hearing and he would be apprehensive only
3 if it showed a causal connection.

4 MR. HEINEMAN: Well --

5 THE COURT: Without Nestmanns report the only thing
6 that I can base a decision on on your objection, or that any
7 questions can be based on for that matter, is this paragraph
8 about Nestmann's work. That's not an unreasonable inference
9 and I think as such that it's a proper basis for a question.
10 Once we find the report if it shows something different,
11 that's something else, but at this point in time the only
12 thing that you've got and the only thing you've got in hand
13 is this particular report on Nestmann's work, and that's a
14 reasonable inference from that paragraph, I think.

15 MR. HEINEMAN: So, therefore, he's entitled to ask
16 questions based on reasonable inferences?

17 THE COURT: He's entitled to ask questions based on
18 that inference from this. He's got the documentary basis
19 upon which to base that question. I remember I called during
20 your cross examination a number of times when you inferred
21 the existence of the document to see whether or not in fact
22 that document did exist. I don't know if that's analogous,
23 but, the point of this thing, the only thing we have as far
24 as the document unfortunately is this one paragraph comment

1 on it. Your objection is overruled.

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

3 MR. CARR: Would you read the question again?

4 COURT REPORTER: Has anybody reported to the world,
5 so far as you know, that Monsanto's psychiatrist had found in
6 1955, some six years after the exposure, that these men that
7 he examined then were neurotic as a result of the exposure?

8 A. I don't know of any report, sir. I said I don't
9 know of any report which includes Nestmann's findings.

10 Q. Would you read my question to him again, please.

11 (Court Reporter read the previous question)

12 A. No, not to my --

13 MR. HEINEMAN: Just a minute. Objection. That's
14 been asked and. It's just been answered.

15 THE COURT: I think it has been answered.

16 Q. (by Mr. Carr) Now, Doctor, you had the benefit of
17 that report when you testified before the commission, didn't
18 you, sir?

19 A. I really don't remember. I believe that in '55 we
20 discussed that report.

21 Q. Yes, and you testified in 1956?

22 A. And I don't know, honestly don't know whether or
23 not it was ever raised in the hearing, sir.

24 Q. Doctor, saying this honestly, now my question to

1 you is, and I assume you've been -- strike that. My question
2 to you is you had the benefit of that Dr. Nestmann's report
3 before you testified at the compensation commission as to
4 whether or not these men should get compensation for the
5 disabilities, if any, they suffered resulting from their
6 exposure in this accident, isn't that correct, sir?

7 A. I did review that paper, if there is one. I can't
8 remember now, in '55, so that it was before we appeared at
9 the hearing, sir. A year before.

10 Q. Doctor, at the hearing you told the commission, did
11 you not, insofar as emotional factor is concerned, that as
12 far as -- when you were being asked about these men's
13 emotions and how they are affected by this exposure, did you
14 not tell them that you were not a psychiatrist and all I can
15 go by is my observations and own limited experience with
16 emotional problems?

17 A. What page is that on, sir?

18 Q. Page 68, Dr. Suskind.

19 A. Thank you. Yes, I read that, sir. I have it.

20 Q. Doctor, you in fact did have something to go on
21 other than your own observations, did you not, sir, you had
22 the report of Dr. Nestmann that you had previously read,
23 isn't that correct, sir?

24 A. That's correct.

1 Q. But you didn't tell the commission that, did you,
2 sir?

3 A. The commission knew it, sir.

4 Q. And, Doctor, where does it say here that the
5 commission knew what Dr. Nestmann's report revealed?

6 A. Their -- the meeting that we had with the Board in
7 1955.

8 Q. And where does it say that you told them of this
9 report at that meeting, sir?

10 A. But the commission had that.

11 Q. Excuse me, Dr. Suskind, where does it say in the
12 1955 memo that you told the commission about Dr. Nestmann's
13 report of psychoneuroses of both of these persons?

14 A. Dr. Suskind, let me finish my question because I
15 can't hear what you are saying when I'm talking.

16 A. Sorry.

17 Q. Where in this report does it say Dr. Nestmann's
18 report was given to the commission, or that they knew of it
19 or were told of it or it was even hinted at?

20 A. In the report of 1955, sir.

21 Q. That's what I'm asking you, where in that report,
22 sir.

23 A. Sorry, there is nothing in that report that
24 indicates that the commission had it at the time.

1 Q. Doctor, in point of fact, what that report says is
2 that at the end of the conference of the commission officers,
3 you all went to the lawyer's office where you discussed this,
4 isn't that correct, sir?

5 A. That's correct, sir.

6 Q. Now, Doctor, you knew of Dr. Nestmann's report when
7 you testified in front of the commission, but you did not
8 tell them of it, did you, sir?

9 A. I didn't discuss it, sir, no.

10 Q. And, Doctor, you said that you had only your own
11 observations to go on and that wasn't true, was it, sir?

12 A. In this instance, yes, my own observations I depend
13 upon --

14 Q. Doctor, my question to you is you told the
15 commission that all you could go on was your own
16 observations, and that wasn't true, you had Dr. Nestmann's
17 report to go on, did you not, sir?

18 A. It was true, sir.

19 Q. Did you not have Dr. Nestmann's report to go on?

20 A. Yes, but I didn't have to take it seriously, sir.

21 Q. Yes, but Doctor, that's not what you told the
22 commission. You didn't say, well, I've got a report from
23 Monsanto's psychiatrist that says all these people are
24 neurotic following this exposure, but I don't take it

1 seriously, you didn't tell them that, did you, sir?

2 A. No, I didn't. But I didn't have to, sir.

3 Q. What you told them, sir, was that all you can go on
4 is by your own observations?

5 A. Yes, sir, that's what I said.

6 Q. Isn't that correct?

7 A. I did indeed.

8 Q. You also told them that these were anxious people
9 but you are not prepared to say that it came from the
10 original disease, isn't that right, sir?

11 A. Correct, sir.

12 Q. You acknowledged that they were anxious, you
13 acknowledged that they had emotional problems, but what you
14 said in effect was that they did not stem from the exposure,
15 isn't that correct, sir?

16 A. I haven't read through this, and if you'll point
17 out where I said that.

18 Q. Page 75 and Page 63 and throughout that line of
19 questioning, sir. Doctor, to help you on Page 63 you said it
20 would be impossible for you to say that all their
21 apprehension or anxiety or even some of it was actually due
22 to the original exposure, did you not, sir?

23 A. I did indeed, sir.

24 Q. And what you said on Page 75 was, "I would say yes

1 that they have their emotional problems and they're anxious
2 people but that their anxieties stem from the original
3 disease, I would not be prepared to say," isn't that right,
4 sir?

5 A. Yes, sir, that's what I said, sir.

6 Q. Doctor, at that point in time, you acknowledged
7 that they were anxious people, you acknowledged that they had
8 the fears, they had apprehension, they had concerns as the
9 examiner at that time asked you about. You knew that Dr.
10 Nestmann had given a report supporting the Plaintiffs in
11 their statement that they're anxious, fearful, and neurotic
12 and yet you told the commission at that time that there was
13 no basis for that connected with the original exposure, did
14 you not, sir?

15 A. No, I didn't say that, sir. I didn't say that,
16 sir.

17 Q. Doctor, on Page 63, didn't you say, "It would be
18 impossible for me to say that all of the apprehension or
19 anxiety or even some of it is actually due to the original
20 exposure?"

21 A. That's very different from what you just said, sir.

22 Q. Excuse me, did you say that?

23 A. Oh, I said it, yes, I did.

24 Q. And you said it would be impossible for you to say

1 it, isn't that right, sir?

2 A. Yes, sir.

3 Q. And on Page 75, did you not say that you weren't
4 prepared to say that it stemmed from the original disease?

5 A. Yes, I did say that.

6 Q. Yes. Doctor, if the report of Dr. Nestmann would
7 not support the workers who had these problems at that time,
8 why would he not want it to be submitted as evidence?

9 A. Why would who --

10 Q. The attorney would -- whom you discussed all of
11 these legal cases with, sir, at the time you met with him the
12 lawyers who are going to present this case that you sat down
13 and conferred with, you discussed with, you said I'm going to
14 talk to the psychiatrist, they gave you all the summaries of
15 all these legal causes, those lawyers, why would they not
16 want this Nestmann report submitted as evidence if it were
17 going to show that these fears or neuroses did not stem from
18 the exposure?

19 A. I don't know that it wasn't submitted, sir, because
20 I was only present at one of the hearings. Other doctors
21 that testified as well before or after me, and I have no idea
22 whether Nestmann testified. I really don't know. Do you?

23 Q. What I know is I haven't got the report, Doctor.

24 A. Well, very frankly, I don't either.

1 Q. I got the commission hearing and I don't have the
2 report. Isn't their --

3 A. That's the commission hearing of my hearing.

4 MR. HEINEMAN: Objection. May counsel approach the
5 bench?

6 THE COURT: Yes, you may.

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

9 MR. HEINEMAN: When Mr. Carr says that all he says,
10 he has the commission hearing and all there is in it is
11 Suskind's testimony. That is a blatant falsehood.

12 THE COURT: That's not what he said, number one.
13 Number two, I would like to know why when I've been trying to
14 -- asking you to try to keep this witness in line with the
15 decorum of this courtroom, your main reaction has been to
16 come up here and object, when Mr. Carr has a response totally
17 uncalled for, questions to him, tries to put the witness back
18 in some sort of even keel. I don't think that anything that
19 he said is false. I don't think anything he said was
20 misleading. Your objection is overruled. We have got very
21 little time left today. Let's go back to trial.

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

23 Q. (by Mr. Carr) Doctor, what you do know is you
24 didn't utilize the results in your decision as to what is or

1 is not a problem that can come from exposure to dioxin, isn't
2 that correct, sir?

3 A. I did not utilize the results of the Nestmann
4 report if that's what you are saying, but we didn't know
5 anything about dioxin at the time, sir.

6 Q. Doctor, when you wrote your articles in '73 and
7 '78, you went back and researched the medical information
8 that was available to you connected with these men, did you
9 not, sir?

10 A. That were reported in peer reviewed journals, sir?
11 Yes.

12 Q. When you did your 1979 morbidity study, the
13 sickness study, you went back and reviewed the medical
14 record, didn't you, sir, on these people that were exposed?

15 A. We reviewed those --

16 Q. In the 19 what, sir? '79? The study you started
17 in June, July 1979 and reported in May of 1984?

18 A. When we needed them we did go back to them, sir,
19 yes.

20 Q. Doctor, you made no mention of these psychoneuroses
21 on these workers that were exposed, did you, sir, in any of
22 your reports, any of your publications?

23 A. None in the publications, but I think in the actual
24 records we do have, wherever the individual indicated that

1 they had emotional problems, we reported them.

2 Q. Doctor, my question referred to Dr. Nestmann's
3 report, sir. Did you understand that's what I'm asking you
4 about?

5 A. I don't believe it was ever published.

6 MR. CARR: Your Honor, would you direct the witness
7 to let me finish my question.

8 THE COURT: Doctor, let him finish.

9 A. Thank you.

10 Q. (by Mr. Carr) Doctor, what I'm asking you is
11 whether or not you utilized Dr. Westman's (sic) report, his
12 findings -- this psychiatrist hired by Monsanto in any of the
13 publications that you made about the health effects of
14 2,4,5-T or its contaminants upon the workers?

15 A. We did not, sir.

16 Q. Yes. But it is a piece of evidence that has not
17 yet so far as you know seen the light of day, isn't that
18 correct, sir?

19 A. I don't know whether Nestmann ever published it.

20 Q. Excuse me, did you answer my question? Please,
21 sir, is the answer to my question that as far as you know
22 this evidence of the health effects on workers exposed to
23 dioxin has not yet seen the light of day?

24 A. There are two parts of that question, one is dioxin

1 and the other is the psychoneurotic effects and --

2 Q. Could you answer that question, please, Dr.
3 Suskind?

4 A. I don't know whether it's seen the light of day. I
5 haven't seen it, sir.

6 Q. Doctor, my question is -- and listen to me
7 carefully, as far as you know it has not seen the light of
8 day? So far as you have knowledge of, it has not been
9 disseminated? As far as you are aware, it has not been
10 published? As far as you have any idea of, nobody has read
11 it other than you and the lawyers in their offices on that
12 day in November of 1955, isn't that correct, sir?

13 A. Mr. Carr, there are ten parts to that question.

14 MR. CARR: Your Honor, would you direct --

15 THE COURT: Answer the question.

16 A. Can I answer this one at a time?

17 THE COURT: Doctor, the question was very clear.

18 Please answer it.

19 A. I don't know.

20 Q. (by Mr. Carr) No, Doctor, I'm asking you for your
21 knowledge as far as you know has it ever seen the light of
22 day?

23 A. No.

24 Q. Thank you, Doctor. Doctor, it is another piece of

1 evidence that the world doesn't have to use or to utilize
2 with respect to what does dioxin do to people, just as the
3 piece of evidence we have here in a few cases, they don't
4 have the evidence about the 27 out of 29, do they, sir?

5 A. But if that's a question, sir, can I answer the
6 question?

7 Q. Excuse me, they don't have the evidence of the
8 Nestmann report just as they don't have the evidence of the
9 27 out of 29, isn't that correct, sir?

10 A. No.

11 Q. What is incorrect about it, sir?

12 A. As I said, I don't know whether the Nestmann report
13 has never been published.

14 Q. So far as you know, Doctor, have you ever read it
15 anywhere that Dr. Nestmann or Monsanto or these workers had
16 psychoneurotic effects from dioxin exposure? Have you ever
17 read?

18 A. I haven't. I haven't read it.

19 Q. Have you ever read anywhere that 27 out of 29 of
20 these workers that you reexamined in 1953 you found to have
21 continued complaints?

22 A. I hope not.

23 Q. Sir?

24 A. I hope not.

1 Q. Would you answer my question, Doctor?

2 A. No.

3 Q. Has anybody read in the world that you've

4 interpreted these 27 out of 29 as having these --

5 A. They have not, sir.

6 Q. But it has been your interpretation, hasn't it?

7 A. No, it hasn't. It's your interpretation.

8 Q. Oh, Doctor. Do we have to go through this again

9 and again and again. Didn't you acknowledge, sir, that this

10 was indeed your interpretation? Didn't we get that clearly,

11 sir, established once, didn't we, sir?

12 A. For the record we did, yes, sir.

13 Q. And didn't we get it clearly established that you

14 interpreted these records this way?

15 A. Clearly, no, sir.

16 Q. Doctor, didn't we go through each of them and

17 didn't I ask you on Monday and Tuesday this is -- these are

18 your interpretations, aren't they, sir?

19 A. Yes, you asked me that.

20 Q. And didn't you say, yes, they were your

21 interpretations?

22 A. That what you have on the board?

23 Q. Yes.

24 A. Using your method of coding.

1 Q. No, using your interpretations, sir?

2 A. No, sir.

3 Q. Oh, Doctor, fortunately that -- we don't need to go
4 over it again because I do have the transcript of Monday,
5 while I don't have the more clearer transcript yesterday,
6 yeah it was yesterday, or Tuesday. Page 24 of the testimony
7 of March 3rd, Counsel. Didn't I ask you these questions at
8 that time or this question, Doctor? "Didn't we just
9 establish that 90 percent of them did continue to complain
10 according to your records, according to your interpretation
11 of your records?" And wasn't your answer at that time, "Yes,
12 sir?"

13 A. I did.

14 Q. Now, so that we are clear, we did establish that 90
15 percent of these workers continued to complain according to
16 your interpretation of your records, have we not, sir?

17 A. Not clearly established. We have --

18 Q. Doctor, you want to read your testimony, sir?
19 Isn't that exactly what you said at that time, sir?

20 A. I don't see the word clearly in here, sir.

21 Q. Well, Doctor, didn't we establish then, sir, that
22 this 90 percent of these people have these problems according
23 to your interpretation of your own records?

24 A. Yes, sir.

1 Q. So according to your interpretation of these
2 records, has the world ever been told that 90 percent of
3 these people, 93 percent, actually, 27 out of 29 continued to
4 have these complaints?

5 A. No, sir.

6 Q. And they haven't been told about Dr. Nestmann's
7 report, either, have they, sir?

8 A. No, sir.

9 Q. Now, Doctor, you had another meeting with Monsanto
10 in 1956 just -- strike that. You had a meeting in which it
11 was reported to you about the BASF occurrence, was it not,
12 sir?

13 A. I don't have this, the memorandum, so I can't
14 verify it.

15 Q. Could you give him Plaintiff's Exhibit 1459 to the
16 witness.

17 MR. CARR: Your Honor, for the jury, we have -- I
18 think the jury has had keeps once, but it's been some time
19 back and I'll pass copies of 1459 to the jury again.

20 THE COURT: Fine.

21 (Exhibit passed)

22 Q. Doctor, 1459 is actually two reports in one, first
23 three pages is a Monsanto Chemical Company report made by Mr.
24 Wheeler to Dr. Kelly and the last five pages is a report

1 referable to a conference had at Kettering Laboratory, where
2 you were present, isn't that correct?

3 A. Is there a date on the second part, sir?

4 Q. No, there is no date.

5 A. There should be, sir.

6 Q. I'm sorry?

7 A. There should be.

8 Q. Maybe there should be, but there wasn't when it was
9 given to me by Monsanto?

10 A. This was held in 1960, sir.

11 Q. That's perfectly all right, Doctor, I'll certainly
12 accept that. I have no reason to dispute it. So we have
13 these two reports, one in 1956 and one in 1960, is that
14 correct, sir?

15 A. Yes.

16 Q. Now, Doctor, there was -- there occurred in 1953 an
17 accident in Germany at the BASF plant, isn't that correct,
18 sir?

19 A. According to this memorandum, yes, sir.

20 Q. Well, Doctor, according to the conference at which
21 you attended, isn't that right, sir?

22 A. Yes.

23 Q. So there is no question about that, they did have
24 that accident?

1 A. In 1953, yes, sir.

2 Q. And, it's reported in the second paragraph of the
3 first page that the men at BASF had in addition to the
4 chloracne, fatigue, vertigo, loss of libido, painful joints
5 and so forth, correct, sir?

6 A. That's correct.

7 Q. Those are symptoms remarkably similar to the
8 problems exhibited by the workers that you examined, isn't
9 that correct, sir?

10 A. They are.

11 Q. Now, Doctor, the next paragraph goes on to point
12 out that animals that were placed in cages where the cages
13 had been in the department, these animals that simply are
14 placed in the cages after they came out of the department
15 died of liver necrosis?

16 A. They died, but the autopsy showed liver necrosis.
17 Whether they died of liver necrosis, I don't know.

18 Q. Doctor, I know you don't know, because you weren't
19 there and you didn't perform the autopsy, but if you would
20 listen to my question, my question is simply this reports by
21 Dr. Oettel, does it not, he says that not only did animals
22 die that were put in the department in open wire cages, but
23 animals that were put in these open wire cages after they
24 were taken out of the department also died of liver necrosis,

1 isn't that correct, sir? Doctor, it's the last sentence on
2 the third paragraph.

3 A. Yes, I see it, but it --

4 A. The interpretation is not as you stated, sir?

5 A. They died after they were taken out of that
6 department, sure, took awhile for them to become ill and
7 die.

8 Q. Doctor, the -- it describes two groups of animals,
9 doesn't it, sir, animals that were put in the department in
10 cages, they all died within -- there is three groups of
11 animals, actually. The first group exposed. There were no
12 -- in open wire cages. There are no obvious symptoms and
13 they died one week after exposure, correct, sir?

14 A. Yes.

15 Q. Sir? Is that correct, sir?

16 A. In the open wire cages, that's the first group.

17 Q. Is that correct?

18 A. Yes, sir.

19 Q. They died. Autopsy showed liver necrosis, correct,
20 sir?

21 A. That's correct, sir.

22 Q. And then it says he thought there might be a virus
23 infection so he exposed additional animals in the department,
24 others in cages suspended inside the "decontaminated"

1 What page does it point out that they had the data?

2 A. I don't believe that it's in there.

3 Q. Doctor, is there any document that you have to show
4 that you gave this 1953 report to the commissioner, this was
5 a report to Monsanto?

6 A. If you let me look through this, I'll --

7 Q. It is a report to Monsanto, not a report to the
8 commission. Show me, please, sir, where you gave a copy of
9 that to the commission.

10 A. I didn't give it to them, Monsanto did.

11 Q. How do you know that Monsanto did? Did some
12 attorney tell you that?

13 A. No, it's in here.

14 Q. Please find it for me.

15 A. I believe it is on Page 13, the results of these
16 observations were made available to the company in a form of
17 report which was made in December of '49. I understand this
18 report was made available to the commission.

19 Q. You are referring to the December 1949 report,
20 aren't you?

21 A. '49 and '50.

22 Q. Doesn't say '50, says '49, talks about your report
23 on four men in 1949, does it not, sir?

24 A. Yes, it does.

1 Q. That's not the 1953 report, is it, sir?

2 A. In this opinion as contained in the report which
3 was to the company in April 1950.

4 Q. What page are you referring to now, sir?

5 A. 13 -- I mean 18. My recollection that all of those
6 reports were made --

7 Q. Excuse me, Doctor, if you don't mind, sir, you are
8 talking there about a report that you gave the company,
9 correct, sir?

10 A. Right.

11 Q. Correct, sir?

12 A. Yes.

13 Q. Could you find for me any place in the record where
14 the 1953 report was given to the commission?

15 A. It may not be stated, but in my understanding --

16 Q. Please don't tell me what --

17 A. It is my recollection, sir.

18 MR. CARR: Your Honor, would you ask.

19 THE COURT: Doctor, that was not responsive to the
20 question -- listen to the question and just respond to that
21 alone, please.

22 Q. Doctor, I would like for you to point out where in
23 the record any document any mention of the 1953 report having
24 been given to the commission?

1 A. In my casual perusal --

2 Q. I'd like for you to point out for me --

3 A. I cannot at this time find it, but I know from my
4 recollection that the commission got the report.

5 MR. CARR: I ask the jury be instructed to
6 disregard what the witness has said.

7 THE COURT: Doctor, I just told you 30 seconds ago
8 that that same comment was not responsive to the question and
9 you did it again. I'm ordering you not to do it any more.
10 Ladies and gentlemen, that was not responsive to the
11 question. It was an improper remark. You are ordered to
12 disregard it.

13 Q. (by Mr. Carr) Doctor, the report that you made
14 suggests you told the commission at that same time that there
15 had been no new cases of chloracne, isn't that correct, sir?

16 A. Yes. You have a quotation, I'd like to see it.

17 Q. Don't you recall, sir, that you did tell them that?

18 A. I'd like to verify it, sir.

19 Q. Sir?

20 A. I said I'd like to verify it.

21 Q. Doctor, is your best memory that you did or did not
22 tell them that?

23 A. I can't recall whether I did or did not, sir.

24 Q. Look at Page 76 and 77, sir, which you talk about

1 your 1953 survey, see that on Page 77, sir, now at the time
2 that we did this survey there had been no new cases for some
3 time, and I believe with the exception of one, there were no
4 new cases since that time, do you see that, sir?

5 A. Yes, I do.

6 Q. This was your sworn statement to the commission
7 that at the time you did that survey, there were no new cases
8 for some time and that at that time there had been only, with
9 the exception of one, there had been no new cases since that
10 time, isn't that correct, sir?

11 A. Yes, that's what I was told.

12 Q. You meant again for the commission to believe that
13 the chloracne that had been caused was caused as a result of
14 this accidental explosion and not as a result of the process,
15 isn't that correct?

16 A. No, sir, not at all.

17 Q. Did you mean for them to believe that there had
18 been no new cases of chloracne that had occurred since the
19 accident, sir?

20 A. No, sir, not by any means.

21 Q. Didn't you tell them that, sir?

22 A. No, sir, I did not.

23 Q. What did you tell them?

24 A. I said there had been no new cases since the '53

1 examination.

2 Q. Well --

3 A. That's what I said, and that's what I was told by
4 the medical department of the company, sir.

5 Q. You knew that was a lie, sir, did you not?

6 A. Nothing to do with the accident.

7 Q. Sir?

8 A. Nothing to do with the accident.

9 Q. You knew there were new cases since '53, did you
10 not, sir?

11 A. No, I did not, I had no opportunity to know that.
12 I was told by the company that there were very few or no new
13 cases since '53 except one, that's what I was told.

14 Q. What you told the commission was that there were no
15 new cases of chloracne since your survey in '53 except for
16 one, correct, sir, with -- and none after that up to the
17 present time, that is 1956, except for one, isn't that
18 correct, sir?

19 A. Yes, that's what I was told.

20 Q. That's what you told the commission?

21 A. Yes, I did.

22 Q. You knew at the time you told the commission that
23 that there had been new cases since your 1953 survey, didn't
24 you, sir?

1 A. No, I'm not sure I did, sir.

2 Q. Well, Doctor, you swore on your oath to them in
3 1956 that from 1953 forward there had been no new cases and
4 up to 1956 there might have been one, is that what you told
5 them under oath, didn't you, sir?

6 A. That is what I was told, sir. I was told it and I
7 simply recounted it.

8 Q. Doctor, why don't you look at the report that you
9 made in July of 1954 in which you describe new cases
10 occurring since your 1953 report. You were told that there
11 were new cases, but -- and you told Monsanto that there were
12 new cases, but you lied to the commission and you told them
13 that there were no new cases, isn't that correct, Dr.
14 Suskind?

15 A. No sir, I would have no knowledge of new cases
16 because I'm not an employee of the company. I wasn't in
17 Nitro. How would I have access to new cases?

18 Q. Doctor, why don't you turn to Page 13 of your
19 report, your July 1954 report where you say, and the jury has
20 this, that new cases arise currently in the 2,4,5-T synthesis
21 despite carefull reorganization of the process, and
22 institution of rigid hygienic precautions indicates that
23 acnegens are still being evolved and that the potential
24 hazard is still present. You said that at that time, did you

1 not, sir?

2 A. Yes, that's what we wrote, sir.

3 Q. But you didn't tell the commission that, did you,
4 sir, you told the commission that no new cases had come up,
5 didn't you, sir?

6 A. That was my understanding, sir.

7 Q. Doctor, wasn't your understanding because this is I
8 your report of July of '54, isn't it, sir?

9 A. Yes, sir.

10 Q. So it couldn't possibly be your understanding,
11 could it, sir?

12 A. Yes, it could be, sir.

13 Q. When you say new cases arose --

14 A. Again, we were depending upon the company to tell
15 us that.

16 Q. They told you new cases arose, didn't they, sir,
17 despite these rigid things that took place after your 1953
18 recommendation, didn't they, sir? They told you that new
19 cases were arising currently in your 2,4,5-T synthesis,
20 didn't they, sir?

21 A. Yes, we must have been told that, sir.

22 Q. Yes, indeed. But you told the commission that no
23 new cases arose, didn't you, sir?

24 A. That's what the record reads, sir.

1 Q. That's what you told them, isn't that correct?

2 A. That is, sir.

3 Q. And so the commission, when it made its decision,
4 you told them that a new process that had been cleaned up and
5 hygienic that the only cases of chloracne that you had were
6 the ones that were caused by the trichlorophenate accident,
7 that the 2,4,5-T that was currently being made couldn't cause
8 chloracne because no new cases had arisen, even though you
9 knew at the time, sir, new cases had arisen, isn't that
10 correct?

11 A. That is not so and --

12 Q. Tell me which part is incorrect?

13 A. It's a gross interpretation of what you said and
14 what you have gotten me to tell you, sir.

15 Q. Tell me which part is incorrect?

16 A. The fact that only the accident was the source of
17 the chloracne. I never said that at any time in any of those
18 reports, sir.

19 Q. Doctor, point out --

20 A. So that is inaccurate.

21 Q. Point out to me where in the record, this
22 transcript, you told them that something other than the
23 accident was the cause of the chloracne?

24 A. Well, I didn't say that the accident was the sole

1 cause of the chloracne in here.

2 Q. But, Doctor, you told them first of all that these
3 men that you examined were all involved in the accident,
4 correct, sir?

5 A. Those men that I examined --

6 Q. Excuse me, could you --

7 A. For the commission, yes.

8 Q. Could you just go one at a time.

9 A. For the commission, yes.

10 Q. You told them these men were all in the accident?

11 A. The four I examined were.

12 Q. Is that correct, sir?

13 A. Yes, sir.

14 Q. You told them that you tested the 2,4,5-T, the end
15 product, and that it didn't cause chloracne, didn't you, sir?

16 A. The recrystalized, yes.

17 Q. You didn't say recrystalized?

18 A. Yes, I did, sir.

19 Q. Point out to me in the record where you told them
20 in 1956 that it was recrystalized, sir.

21 Q. You are not looking at the transcript?

22 A. It's in the letter --

23 Q. Dr. Suskind, could you look at what you told the
24 commission that's making these decisions at that time, sir?

1 A. It was told in 1955 to the commission, sir.

2 Q. Dr. Suskind, this case took place in 1956 in
3 November of '56, your testimony took place November the 29th,
4 1956?

5 A. It's important to combine both of my items --

6 Q. Dr. Suskind, will you please tell me where in that
7 transcript you told the commission that the 2,4,5-T caused
8 chloracne?

9 A. From our experiments we didn't find that it caused
10 chloracne because it was recrystalized, however, the process
11 of --

12 Q. Doctor, my question --

13 A. The process of making 2,4,5-T causes chloracne.

14 Q. Doctor, my question is where did you tell the
15 commission that the end product that these men worked with
16 caused chloracne?

17 A. The end product, we didn't, but the process of
18 making it.

19 Q. Doctor, did you understand my question?

20 A. I did indeed, and I'm answering it correctly. The
21 process of making 2,4,5-T causes chloracne.

22 Q. Doctor --

23 A. And I've said that a thousand times in this court,
24 sir.

1 Q. If you said it a thousand times, just point out to
2 me one time where you said just working in the process causes
3 the chloracne.

4 A. Okay, 1953 report, sir.

5 Q. Doctor, I'm talking about what you told the
6 commission?

7 A. The commission had this report, sir.

8 Q. Doctor, we have been through that as well. There
9 is no place in this record and you have no knowledge
10 whatsoever that that report was ever given to the
11 commission.

12 A. Yes, I do.

13 Q. Where is the source of the knowledge?

14 A. The source is what I knew to happen. It doesn't
15 have to be in the transcript in order for it to happen, sir.

16 Q. Indeed it does have to be.

17 A. No, it does not. I disagree with you.

18 Q. You may disagree, but do you have any knowledge
19 that it happened?

20 A. My best recollection of that hearing, sir.

21 Q. They mark this as an exhibit and put it in the
22 record?

23 A. No, they did not, sir. They didn't have to.

24 Q. Oh, yes, you have to. That's one of the beautiful

1 things about courts, we have stenographers who take them down
2 and we have clerks that file papers, and --

3 A. Workman's compensation hearing --

4 Q. Workman's compensation hearing is exactly the same
5 as it is in court, you do it with exhibits, you do it with
6 witnesses, you do it with sworn testimony. It is nothing
7 more than a trial just like in court, Doctor, except you've
8 got a commission instead of a jury, and you know that to be
9 the fact, don't you, sir? Don't you, sir?

10 A. Yes, sir.

11 Q. And, Doctor, there is no place in this record and
12 you have no documentation of any other place where your 1953
13 report was given to the commission?

14 A. It is my best recollection that all the reports
15 were given to the commission.

16 Q. Doctor, I didn't ask you about your recollection,
17 what I asked you was whether or not you have any record,
18 whether or not you can point to any record that shows that it
19 was so done. Do you have any such record, sir?

20 A. If I did I wouldn't know where to locate it, sir.

21 Q. Doctor, with regard to the TCDD being produced at
22 Monsanto, I'll hand you what's been marked Plaintiff's
23 Exhibit 1488 earlier. It's coming apart now, and it will
24 show you the production for the years '58 through '65. I ask

1 you whether or not in any of those years there was 2,4,5-T
2 described as not having TCDD, sir?

3 A. This goes up to 1965, sir.

4 Q. Yes, it does.

5 A. And they made it up until 1969.

6 Q. Yes. Is there any reference there, sir, where the
7 --

8 A. Not in this report, sir.

9 Q. And, Doctor, insofar as the cases of chloracne is
10 concerned --, would you mark this as an exhibit? Hand you
11 what's been marked Plaintiff's Exhibit 1757, and ask you if
12 you recognize this as a memo which causes a meeting with you,
13 sir, in December of '55?

14 A. I believe the date may be inaccurate. It isn't
15 '55, is it?

16 Q. Yes, it is '55, Doctor. To help you refresh your
17 memory on it, you were discussing and doing other tests,
18 discussing a possibility of other tests and 2,4,5-T, weren't
19 you, sir, in '55? You just looked at a memo dated November
20 '55, sir, in which you discussed these tests?

21 A. Yes.

22 MR. CARR: Offer these exhibits into evidence if it
23 please the Court.

24 MR. HEINEMAN: Counsel approach the bench?

1 THE COURT: Sure.

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

4 MR. HEINEMAN: Object to the exhibit, Your Honor.
5 There is absolutely no foundation been laid for the admission
6 of this document. The doctor is mentioned in the document.
7 He does not appear to have been present. He does not appear
8 to be a recipient. Doesn't appear to be an author of it.
9 And the only thing he does is mention his name and,
10 therefore, there has been absolutely no foundation laid for
11 its admission into evidence.

12 MR. CARR: This is a document given to us by
13 Monsanto, Your Honor, as part of their business records.

14 THE COURT: Objection is overruled. It's
15 admitted.

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

17 MR. CARR: Pass it to the jury, please the Court?

18 THE COURT: I'm sorry, did you say something?

19 MR. CARR: Pass it to the jury?

20 THE COURT: Sure.

21 (Exhibit passed to the jury)

22 Q. (by Mr. Carr) Doctor, this exhibit, this Monsanto
23 exhibit discusses the meeting that Mr. Soden had with you,
24 does it not, sir?

1 A. I believe that may be referring to that November
2 3rd meeting, sir.

3 Q. It might have? Might be? It might be?

4 A. The one you just gave me.

5 Q. Who is Mr. Soden?

6 A. I believe he was the plant manager, if I'm not
7 mistaken.

8 Q. The plant manager at that time then states that
9 this chloracne problem, the 2,4,5-T problem, has not been
10 solved, doesn't he, sir?

11 A. Yes, he indicates that.

12 Q. He also tells in this memo that while the plant is
13 considerably safer, we know of three new chloracne cases
14 during the past year, correct, sir?

15 A. That's what it states, sir.

16 Q. He also says he's convinced that the only solution
17 to the problem is to isolate that which causes the chloracne
18 and remove it from the process, correct, sir?

19 A. I believe that's what he says, sir.

20 Q. That's what he does say, doesn't he, sir?

21 A. Yes, sir.

22 Q. He also goes on to say that our experience and that
23 of Dow and Diamond Alkali indicates that distillation of the
24 trichlorophenol can provide this solution to the problem, do

1 you see that?

2 A. Yes, sir.

3 Q. And you knew from your work that the Diamond Alkali
4 material, that distillation of the trichlorophenol would
5 solve the problem, did you not, sir?

6 A. Forgive me, but I'm a little confused about the
7 dates here. I don't know whether this preceded the -- that
8 study or whether it came after the study. I really don't
9 know. I'm talking about the study in which we use the
10 trichlorophenate from the plant process, the trichlorophenate
11 made according to Diamond Alkali and then a distillation. So
12 I really can't tell you whether or not this preceded our
13 doing it or came after our doing it. I think it preceded our
14 doing it, sir.

15 Q. Well then, even if that's true, Doctor, then even
16 without your work with the Diamond Alkali material, they knew
17 that Dow and Diamond Alkali could distill trichlorophenol and
18 eliminate the chloracne causing material, is that correct,
19 sir?

20 A. Well, it would cause less chloracne -- Diamond
21 Alkali, sir, had chloracne.

22 Q. My question is, sir, doesn't this indicate, sir,
23 that Monsanto in 1955 knew that the material causing the
24 chloracne could be -- could be removed by distilling the

1 trichlorophenol?

2 A. No, sir, I don't believe.

3 Q. Doctor --

4 A. Reduced by it.

5 Q. Doctor, what does this sentence say, our
6 experience, or mean, "Our experience and that of Dow and
7 Diamond Alkali indicates that distillation of the
8 trichlorophenol can provide this solution to that problem?"

9 A. Right, that's what it says, sir, which means --

10 Q. That's what it means?

11 A. Doesn't mean eliminate, it means that the material,
12 the acnegenic material may be decreased.

13 Q. No, Doctor, the sentence before that says it can be
14 removed. "I'm convinced that the only solution to the
15 problem is to isolate the chloracne causing material, and
16 remove it from the process." Doesn't it say that, sir?

17 A. Yes, that's what it says.

18 Q. He said --

19 A. But --

20 Q. Now, Doctor, please do not interrupt me. Let me
21 finish my line of questioning then you can disagree with the
22 conclusion when we get to it. I can never get to it if you
23 keep interrupting me. He says the solution to the problem is
24 to find out what's causing it and remove it, correct, sir, in

1 that sentence?

2 A. Yes.

3 Q. No doubt about it that's what he says is the
4 solution to the problem, correct, sir?

5 A. Correct, sir.

6 Q. Then he says, "Our experience and that of Dow and
7 of Diamond Alkali indicates that distillation of the
8 trichlorophenol can provide this solution to the problem,"
9 does it not, sir?

10 A. That's what he said, sir.

11 Q. And the solution that he's talking about is
12 removing the chloracne causing material, correct, sir?

13 A. Correct.

14 Q. And he says that the experience indicates that
15 distillation of trichlorophenol can do that, correct, sir?

16 A. No.

17 Q. Doesn't he say our experience of Dow and Diamond
18 Alkali indicates the distillation of trichlorophenol can
19 provide this solution to the problem?

20 A. Yes, he does say that?

21 A. What is the solution to the problem that he says,
22 what is the solution?

23 A. May I answer?

24 Q. What is the solution that he describes can solve

1 the problem?

2 A. The distillation of trichlorophenol.

3 Q. And what is the problem?

4 A. The problem is the acnegenic agent which can be,
5 which can be reduced, not removed, sir.

6 Q. Doctor --

7 MR. CARR: You Honor, would you ask the jury to
8 disregard that statement?

9 THE COURT: Jury is so instructed, it was not
10 responsive to the question. Jury is ordered to disregard
11 it. So ordered.

12 Q. The problem, Doctor, is what the chloracne causing
13 agent, correct, sir?

14 A. That is what --

15 Q. How does the plant superintendent say this problem
16 can be solved, sir?

17 A. By distillation.

18 Q. And he says that is a solution to the problem,
19 doesn't he, sir?

20 A. He does indeed.

21 Q. Now, he may be wrong, may he not, sir, as you are
22 attempting to say what it might do is not remove it all, but
23 reduce it, correct, sir?

24 A. Correct, sir. I think you are absolutely right.

1 Q. But what he has said at that time in 1955 is that
2 the solution to a trichlorophenol containing TCDD didn't even
3 know it was TCDD at the time, but trichlorophenol that
4 Monsanto produces contains this chloracne agent which you
5 knew in 1957, did you not, sir, was TCDD, isn't that correct,
6 sir?

7 A. Correct.

8 Q. And the trichlorophenol that Monsanto produces,
9 that is this contaminant in it, and by distilling the
10 trichlorophenol, Monsanto's plant superintendent at Nitro
11 believed could solve the problem, correct, sir?

12 A. That's what the memo states.

13 Q. And he urged, did he not, or he recommended that
14 this solution be proceeded with as rapidly as possible?

15 A. No, he didn't say that, sir.

16 Q. Didn't he ask --

17 A. He said that we should use the new method we
18 developed for testing the various processes and the product
19 of the processes to determine whether or not the acnegenic
20 agent is removed.

21 Q. And what you determined, then, Doctor, you did work
22 with this distilled product, didn't you, sir, the distilled
23 2,4,5-T, didn't you, sir?

24 A. One of them was a distilled product, yes, sir.

1 Q. That's what you worked with, you worked with
2 Diamond Alkali's as well, didn't you?

3 A. We worked with a material prepared by Monsanto by
4 the Diamond Alkali method, but it was prepared in the lab,
5 sir.

6 Q. But what you discovered, sir, in using the
7 distilled 2,4,5-T that it does -- did not cause chloracne?

8 A. Caused less chloracne.

9 Q. Could you refer to the report, sir. Did you not
10 say that it did not cause chloracne? Didn't you tell the
11 commission that? Doctor, haven't we gone through it a number
12 of times?

13 A. No, sir.

14 Q. You pointed out a number of times that the
15 recrystallized --

16 A. If you'll allow me to find it, sir --

17 Q. May I finish, please? The recrystallized -- the
18 distilled 2,4,5-T did not cause chloracne? Doctor, if you
19 look at Page 32 again where we have been so many times, and
20 33, where you say we have not been able to induce acne in
21 humans with 2,4,5-T, Page 33, didn't you say that, sir?

22 A. That isn't what we are talking about, sir. We are
23 talking about the Diamond Alkali distilled product.

24 Q. No, we are talking about the 2,4,5-T distilled from

1 Monsanto, that's what we are talking about.

2 A. I am utterly confused. We were talking about the

3 --

4 Q. No, we were not. We were talking about the
5 process. The man says distillation of 2,4,5-T will solve the
6 acne causing problem. Do you recall that, sir?

7 A. But we are talking about the two other processes.

8 Q. Doctor, do you recall that, sir.

9 MR. HEINEMAN: Object, Your Honor. May counsel
10 approach the bench?

11 THE COURT: Sure.

12 (The following Side Bar conversation was had outside the
13 hearing of the jury.)

14 MR. HEINEMAN: This statement by Mr. Carr, he said
15 that the man said the distillation of 2,4,5-T, is what Mr.
16 Carr just said, that isn't what the man said here at all. He
17 said distillation of trichlorophenols, and I object to the
18 statement as being misleading and incorrect and
19 misrepresentation of what this exhibit says.

20 MR. CARR: 2,4,5-T is a trichlorophenol just like
21 all of these are.

22 MR. HEINEMAN: Wrong. Orthochlorophenol is not a
23 trichlorophenol.

24 MR. CARR: It's a chlorinated phenol.

1 THE COURT: I've listened to the whole thing,
2 listened to the context, nothing misleading said. Your
3 objection is overruled. Let's get an answer.

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

5 Q. (by Mr. Carr) Doctor, didn't you tell the
6 commission that 2,4,5-T that had been distilled in Monsanto
7 process did not cause chloracne?

8 A. Yes, I did say that, sir.

9 Q. Doctor, we have been over the business of the
10 Diamond Alkali process before, have we not, sir? And we have
11 examined on that and I could read your prior testimony to
12 you, but you are aware of what you said earlier about the
13 Diamond Alkali product, did you not, sir?

14 A. Yes.

15 Q. And all that you found with the Diamond Alkali
16 product was some capillary debilitation and lympholytic
17 paravascular reaction which become more prominent during the
18 last two weeks of the application in two subjects. The
19 follicular plugging was negative, isn't that correct, sir?

20 A. I would have to look at my report about that
21 material in order to verify that, sir.

22 Q. Doctor, you made --

23 A. Do you have a copy of that? I'd be happy to --

24 Q. Do you have your report of December 10th, 1957 that

1 you gave to the society in Chicago?

2 A. That's not the report I'm talking about, sir. I'm
3 talking about the report of the study.

4 Q. Doctor, this is the report of the study.

5 A. The report of the study which is the only report I
6 will depend on.

7 Q. You wouldn't depend on what you reported to the
8 American Academy of Dermatologists at the symposium?

9 A. That's a summary report and I would like to look at
10 and have you look at -- verify it --

11 Q. My question is would you not depend upon that and
12 what you reported to these people?

13 A. I wouldn't depend upon that for details, sir.

14 Q. Well, Doctor, the point of the examination is that
15 whatever it might do, Monsanto did not put the process into
16 effect, did they, sir?

17 A. I don't know, sir.

18 Q. Doctor, you've seen the exhibit that I gave you
19 that showed the levels of TCDD in the 2,4,5-T being produced
20 by Monsanto during the Fifties and the Sixties, have you not,
21 sir? It's right in front of you.

22 A. I have it.

23 Q. Sir?

24 A. Yes, sir, it's right here.

1 Q. Contains TCDD up to 55 parts per million, doesn't
2 it?

3 A. One report of 55 parts, the rest are below.

4 Q. Is that a yes to my question, Doctor?

5 A. That is a yes to your question, sir.

6 Q. Thank you, Doctor. It contained TCDD from levels
7 of ranging from the low of 5 parts per million, to a high of
8 55 part per million, does it not, sir?

9 A. That's what the report reads, sir.

10 Q. You also know that all during those years the
11 Monsanto employees were still getting chloracne, you know
12 that, too, don't you, sir?

13 A. I believe some of them were, sir.

14 Q. No, all the employees in the department were
15 getting chloracne, weren't they, sir?

16 A. No, sir.

17 Q. Hand you what's been marked Plaintiff's Exhibit
18 1758, sir, Dr. R. Emmet Kelly was the physician for Monsanto,
19 was he not?

20 A. I believe he was.

21 Q. And he's the person there taking care of the
22 chloracne cases and other problems that might occur at Nitro?

23 A. No, sir.

24 Q. Well, he was in charge of it, wasn't he, sir?

1 A. No, sir, he was not.

2 Q. What was his position?

3 A. He was the corporate medical director of the
4 company. They had a plant physician who took care of the
5 problems.

6 Q. He was the corporate medical director for the
7 company, for the entire company, wasn't he, sir?

8 A. I believe so.

9 MR. CARR: And I'll offer this exhibit into
10 evidence, if it please the Court.

11 MR. HEINEMAN: Counsel approach the bench?

12 A. May I ask the date?

13 MR. HEINEMAN: Whoops, hold it.

14 MR. CARR: The answer is 1965.

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

17 THE COURT: You did offer this?

18 MR. HEINEMAN: We would object to this exhibit.

19 The witness is not an author, the witness is not a
20 recipient. Isn't even mentioned it in. There as been no
21 foundation, no testimony, nothing to establish the
22 admissibility of this document in court, and I object to it.

23 MR. CARR: It's been identified as the document
24 prepared by the corporate medical officer for Monsanto. It's

1 part of the materials produced to us by Monsanto. It's part
2 of their records pursuant to the order of this Court.

3 MR. HEINEMAN: Not been identified as a document
4 prepared by the medical director. This witness can't know
5 that. He's identified who Emmet Kelly is.

6 MR. CARR: The document is self-speaking.

7 THE COURT: Objection is overruled.

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

9 MR. CARR: Pass the exhibit to the jury as well?

10 THE COURT: Yes, you may.

11 (Exhibit passed to the jury)

12 Q. (by Mr. Carr) Doctor, this exhibit states, does it
13 not, the question whether or not there are any employees in
14 the department who don't have chloracne already?

15 A. That's what it states. I don't know what
16 department that means, though.

17 Q. Doctor, was there more than one department at Nitro
18 where chloracne was the result of the workers working there,
19 other than -- other than the department dealing with 2,4,5-T?

20 A. There were several buildings, sir.

21 Q. I know that, but they are all in the same
22 department. Is there any -- were there any workers other
23 than the 2,4,5-T department that got chloracne?

24 A. I don't believe so.

1 Q. Doctor, in point of fact, the main building that
2 was looked at was Building 34, wasn't it, sir, where they
3 packaged and worked with the 2,4,5-T?

4 A. By 1965 I don't know what building was used, sir.

5 Q. Well, you do know that following your survey in
6 1953 in which you made certain recommendations about hygiene
7 and things of that sort that take place in order to cut down
8 chloracne, you do know that another survey took place, don't
9 you, sir, in 1956?

10 A. Yes, I do, sir.

11 Q. And you do know that as a result of that survey,
12 your laboratory examination group or inspecting group found
13 that the conditions were exactly the same as they had been
14 except for a screen or something being removed or placed, did
15 you not, sir?

16 A. No, sir.

17 Q. You don't know that, sir?

18 A. No, that's not an accurate description of it, sir.

19 Q. I hand you what's been marked Plaintiff's Exhibit
20 1759, ask you if you recognize that as the survey by your
21 environmental group in January of 1956?

22 A. Is a reproduction. 1759 is a reproduction of a
23 report carried out by the industrial hygiene group from the
24 Kettering Laboratory on Building 34 at the Monsanto Chemical

1 Company.

2 Q. That was the only building surveyed, wasn't it,
3 sir?

4 A. Sorry?

5 Q. It was the only building surveyed, wasn't it, sir?

6 A. That was the only building surveyed, however, they
7 --

8 MR. CARR: Offer Plaintiff's Exhibit 1759 into
9 evidence, please the Court.

10 THE COURT: Any objections?

11 MR. HEINEMAN: Your Honor, may counsel approach the
12 bench for a minute?

13 THE COURT: Sure.

14 (The following Side Bar conversation was had outside the
15 hearing of the jury.)

16 MR. HEINEMAN: I just want to be sure, Your Honor,
17 that the record is clear. First of all, we have no objection
18 to this document being admitted into evidence.

19 THE COURT: Fine.

20 MR. HEINEMAN: Other than we want to be sure -- you
21 remember the continuing objection to Nitro and all of that?

22 THE COURT: Oh, sure. Oh, sure.

23 MR. HEINEMAN: When we say no objection, we are not
24 eliminating that running objection.

1 THE COURT: That's what I have done for the whole
2 duration of this. I understand.

3 MR. HEINEMAN: Then we have no objection

4 THE COURT: Okay. Before we go into this, we will
5 take a short break.

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

7 THE COURT: Fine, it's admitted without objection.
8 We will take a short recess at this time and then we will
9 resume testimony. The admonishments that I've given you
10 earlier will apply during this break also. Court is in
11 recess.

12 (Following a recess, these proceedings were had in open
13 court.)

14 Q. (by Mr. Carr) Doctor, at the break we were
15 discussing Plaintiff's 1759 that is entitled Report On
16 Environmental Survey carried out in Building 34 of Monsanto
17 Chemical Company in Nitro, correct, sir?

18 A. It does, sir, yes.

19 Q. And the last paragraph on the first page, it says,
20 does it not, "Except for minor changes and the elimination of
21 the Alsop filter, the operations in Building 34 were found to
22 be exactly as they were in April of 1953," is that correct,
23 sir?

24 A. That's what it says, sir.

1 Q. And on Page numbered three in their discussions
2 they, it is said, is it not, "A comparison of the findings
3 and the present survey were those obtained in 1953 indicate
4 that the concentrations of dust and vapors in Building 34
5 have not changed appreciably," does it not, sir?

6 A. That's what it reads, sir.

7 Q. Now, Doctor, with regards to the Diamond Alkali
8 method and whether or not it produced chloracne, you do
9 recall, don't you, sir, that we asked you questions earlier
10 here about your testimony in the Federal Court in Charleston,
11 West Virginia, with regard to your interpretation of your
12 tests concerning the Diamond Alkali substance?

13 A. Yes, I believe you have, sir.

14 Q. And you did testify in the Federal Court, did you
15 not, sir, that Diamond Alkali substance which was the Diamond
16 Alkali procedure prepared trichlorophenate did not produce
17 any chloracne, you did so testify, didn't you, in that
18 Federal Court case, sir? Doctor, to help you, let me show
19 you your testimony.

20 A. I have it here, sir.

21 Q. So you can move from the point which has once been
22 established. On Page 27201, Counsel, beginning at Line 9 on
23 that page, did you not say the Diamond Alkali would not
24 produce any chloracne?

1 A. Yes, we did.

2 Q. And did you not also say on Page 27202 at Line 11
3 that the material, the diluted material which was the method
4 of Diamond Alkali did not produce any chloracne with the
5 method that we used, did you not say it at that point, sir,
6 under oath in the Federal Court?

7 A. Yes, we did, sir.

8 Q. Now, Doctor, I'd like to move to a -- your study on
9 the 2,4,5-T by inhalation. I think it's Plaintiff's Exhibit
10 1756, and I'd like to pass to the jury, Your Honor, copies of
11 that exhibit which has been admitted into evidence. 1756.

12 MR. HEINEMAN: This is the study?

13 MR. CARR: A copy of a report, Exhibit 1756,
14 Counsel.

15 MR. HEINEMAN: It's not a copy of a report. Have
16 we got the wrong exhibit?

17 MR. CARR: It is a report of Monsanto's, not Dr.
18 Suskind's, dated November the 3rd, 1955.

19 MR. HEINEMAN: Memorandum of the meeting?

20 MR. CARR: Yes, that's correct.

21 Q. (by Mr. Carr) Now, Doctor, the jury has a number
22 of poor copies, just as we have. I would like to explain
23 that these are all taken from microfilms and not from
24 original documents. That's the reason they are poor copies.

1 (Exhibit passed to the jury)

2 Q. (by Mr. Carr) Doctor, with respect to the second
3 series of experiments that you mentioned earlier today where
4 you did the inhalation of 2,4,5-T material, you understand
5 that, sir?

6 A. I see it here, sir.

7 Q. That was of the 2,4,5-T dust, was it not, sir?

8 A. Yes.

9 Q. You volatilized 2,4,5-T, did you not, sir? You
10 turned it into a volatile vapor?

11 A. That was a dust, sir, a dust is different than a
12 vapor.

13 Q. Didn't you volatilize some 2,4,5-T, sir, for
14 purposes of inhalation?

15 A. I don't have the report here, sir, so I can't tell
16 you, but what this does is to --

17 Q. Excuse me, Doctor, my question is, did you not in
18 your second experiment which you did not make a written
19 report on, did you not work with volitilized 2,4,5-T and
20 Halowax?

21 A. Sir, the only indication I have is that we used the
22 dust here, that's what it reports, it reports a dust, not a
23 vapor.

24 Q. Did you work with volitilized 2,4,5-T?

1 A. I really can't remember, sir, because I don't have
2 the report before me.

3 Q. Well, Doctor, you didn't make a report if you
4 recall on the volitilized 2,4,5-T, did you, sir?

5 A. No, we did not.

6 Q. But what you did do, you reported that that work
7 and that experiment orally to people at Monsanto, didn't you,
8 sir?

9 A. Yes, this was a progress report.

10 Q. And you never reduced that second group of
11 experiments to writing, did you, sir?

12 A. Pardon, what was the question?

13 Q. You never reduced that experiment, the results of
14 that experiment to writing, did you, sir?

15 A. I can't say that we did, we probably had many notes
16 on it, but whether or not it was put into a formal report I
17 can't tell you, sir.

18 Q. Well, you testified this morning that you did not
19 put it in the form of a report, didn't you, sir?

20 A. We didn't submit any report on it, yes, sir.

21 Q. But you did tell orally the people at Monsanto,
22 didn't you, sir, Dr. Kelly among others?

23 A. Those who were present at that meeting, sir.

24 Q. Well, didn't you have a discussion with Mr. Weger

1 and Mr. Soden and Dr. Kelly about your volatilization work?

2 A. Yes, well, the volatilization work, I can't tell
3 you about, I know --

4 Q. Turn to the last page of Exhibit 1756, sir.

5 A. 1756, okay.

6 Q. One that has the -- you can barely make out the
7 letterhead says Monsanto Chemical Company, you see that, sir?

8 A. The last page, sir?

9 Q. The last page where it says, "In discussion.."

10 A. I have it, sir.

11 Q. "In discussion with Dr. Suskind," do you see that,
12 sir?

13 A. Yes, I do.

14 Q. It is signed by Dr. Kelly or at least his name
15 appears below there, does it not, sir?

16 A. Yes.

17 Q. And his initials R.E.K., that's Dr. R. Emmet Kelly,
18 is it not, sir?

19 A. Yes.

20 Q. Doctor, you described there the experimental
21 production of your last years work on experimental production
22 of chloracne, don't you, sir?

23 A. Yes, we do.

24 Q. You couldn't cause it with either the Halowax or

1 2,4,5-T. Now, that's your first study, correct, sir, because
2 it was the diluted, rather the 5 percent 2,4,5-T and 5
3 percent Halowax, isn't it?

4 A. That's true.

5 Q. Goes on to say when you applied the 20 percent
6 Halowax to the forearm they developed the chloracne, correct,
7 sir?

8 A. Correct.

9 Q. And then you used a 20 percent recrystallized
10 2,4,5-T on humans, two of them up to 36 days and nothing
11 happened, correct, sir?

12 A. That's true, sir.

13 Q. And then it says they did some generalized repeat
14 work with the volatilization of 2,4,5-T and Halowax, you see
15 that, sir?

16 A. Yeah.

17 Q. Sir?

18 A. Yes, I see it, sir.

19 Q. Says, "In neither case did they get any skin
20 trouble but they did get systemic damage with both
21 compounds. Almost all with the 2,4,5-T developed a
22 pneumonitis. There was some liver trouble." Correct, sir?

23 A. Correct, sir.

24 Q. Now, sir, what happened there was that they didn't

1 get chloracne, did they, sir, when they breathed in the
2 volitilized 2,4,5-T?

3 A. Well, animals usually don't get chloracne.

4 Q. Excuse me?

5 A. No, they didn't get chloracne.

6 Q. Well, there was a worker -- there were workers
7 involved in this experiment as well, were there not, sir?

8 A. Humans in the inhalation experiment, no, sir.

9 Q. Yes?

10 A. No, sir.

11 Q. Doctor, says right there on that very page, "An
12 interesting sideline was that the worker who was exposed to
13 volitilized Halowax developed a chloracne of his arm, isn't
14 that what it says?

15 A. He was working with it, sir.

16 Q. Excuse me, isn't that what it says?

17 A. But not by inhalation. He contacted it, sir. This
18 is what we said. This laboratory worker who was working with
19 Halowax got chloracne on his arm. It has nothing to do with
20 the volatilization or the dust, sir.

21 Q. Well, Doctor, you are talking about the humans that
22 were exposed. You are talking about the study in this entire
23 paragraph. You are talking about your human study, aren't
24 you, sir?

1 A. No, we are not, sir. We are talking --

2 Q. Doctor --

3 A. Let me finish, sir, may I? You are asking me to
4 finish.

5 Q. Yes, please.

6 A. And I will. We are -- in this memorandum there is
7 a description of the initial work which was done with 20
8 percent Halowax and distilled or recrystallized 2,4,5-T in
9 humans.

10 Q. Yes.

11 A. And we each were able to produce chloracne in those
12 subjects --

13 Q. No, you didn't produce chloracne in those subjects
14 with recrystallized 2,4,5-T on humans.

15 A. Not 2,4,5-T but with Halowax. Let me finish. We
16 were not able to do it with the recrystallized 2,4,5-T, but
17 what this also says, what this also says is that the repeat
18 work with the volatilization of 2,4,5-T and Halowax in
19 animals --

20 Q. Where does it say that, sir? Did I miss a word
21 there?

22 A. We didn't do any --

23 Q. Where does it say in this report that you are
24 talking about animals?

1 A. In the rest of this report, sir, in the rest of
2 this report.

3 Q. Doctor, those are two separate reports?

4 A. They are not. They are the same thing.

5 Q. Doctor, if you look --

6 A. May I finish?

7 Q. No, you may not, sir.

8 A. Well, I'd like to.

9 Q. If you look at the first page, you are talking
10 about, Present: Suskind, Fan, Kelly, Lesslie, Soden, and
11 Weger.

12 A. Correct.

13 Q. In the first page of Exhibit 1756. In the last
14 page, you are talking about a discussion with Suskind, Weger,
15 Soden and Kelly, aren't you, sir? They are two different
16 meetings that you have had, sir, they are not the same
17 meetings. The first memo is completed and signed by Mr.
18 Weger, the -- the second --

19 A. I'm only talking about 1756.

20 Q. Yes, you have 1756, which is a memo concerning two
21 or three experiments, is it not, sir? The first page is a
22 meeting --

23 A. It clearly says two experiments here, sir.

24 Q. That's right.

1 A. That's all we described.

2 Q. But the last page clearly describes three
3 experiments, doesn't it, sir? Unable to cause chloracne on
4 any animal with Halowax or 2,4,5-T?

5 A. That's the 5 percent.

6 Q. Yes, that's one. Applied 20 percent to the forearm
7 of humans, five out of five got it. You used 20 percent
8 recrystalized 2,4,5-T on humans, didn't get anything. That's
9 two, correct, sir?

10 A. Correct.

11 Q. Then -- Period. They did some generalized repeat
12 work with the volatilization of 2,4,5-T and Halowax, correct,
13 sir, number three?

14 A. That's right.

15 Q. So we got thre experiments that's discussed on this
16 last page, don't we, sir?

17 A. That is number two, sir.

18 Q. Excuse me, sir, we had three experiments discussed
19 on page number -- on this last page?

20 A. The first two are described up here in one.

21 Q. Could you answer my question?

22 A. There are only two experiments.

23 Q. Doctor, could you answer my question, please, sir?

24 A. I said there were two, not three.

1 Q. Could you answer my question?

2 A. What is the question?

3 Q. There are three discussed on this last page, aren't
4 there?

5 A. No, there are two discussed on the last page.

6 Q. Doctor, you told us earlier, if you recall, that
7 you had experiments with animals and the diluted 2,4,5-T and
8 the diluted Halowax, recall that? Number one. And then you
9 had a last report that you reduced to writing, you got two
10 studies that you reduced to writing, number one and number
11 three, correct, sir? Do you recall that, sir? There were
12 three experiments. This one with the inhalation of the
13 volatilized 2,4,5-T and Halowax you did not reduce to
14 writing, isn't that correct, sir?

15 A. We did not describe in a final report the
16 inhalation experiments.

17 Q. You had three experiments, didn't you, sir?

18 A. Well, the -- if you want to split hairs, sir, we
19 had three experiments.

20 Q. No, Doctor, it's not splitting hairs, there are
21 three experiments. You describe your inhalation by your
22 acnegens to the dust of 2,4,5-T, and the first two pages of
23 Plaintiff's Exhibit 1756, don't you, sir?

24 A. The volatilization and the dust experiment is the

1 same experiment.

2 Q. Could you answer my question?

3 A. I am answering it, sir.

4 Q. You describe the dust inhalation on Pages 1 and 2
5 of this exhibit?

6 A. I didn't describe it, Mr. Weger did, sir.

7 Q. That experiment is described on Pages 1 and 2,
8 isn't it, sir, of 1756?

9 A. That's the same experiment that is described in the
10 last page.

11 MR. CARR: Your Honor, would you direct the witness
12 to answer my question?

13 THE COURT: Doctor, you have not answered the
14 question. It's been asked about four times. None of your
15 answers have been responsive. Listen to the question and
16 answer the question that's been asked of you.

17 Q. Doctor, you describe an inhalation of dust
18 experience with the animals, don't you, sir, on page numbered
19 2 of this exhibit?

20 A. It is described. I didn't describe it, yes.

21 Q. It says animals exposed to 2,4,5-T dusted coughing
22 and nausea, correct, sir?

23 A. Right.

24 Q. And, Doctor, there are three experiments described

1 on the last page, isn't there, sir? Two human and one
2 animal?

3 A. Yes, two human and one animal.

4 Q. Doctor, would you answer my question, please,
5 directly? I don't want to get on another bypass. There are
6 three experiments described on this page, third page, has no
7 number, isn't that correct, sir?

8 A. There are three results described there, yes, sir.

9 Q. Three experiments described, sir?

10 A. Three studies, yes.

11 Q. And your first experiment is cause -- trying to
12 cause the chloracne in the animals, correct, sir?

13 A. On Page 3, sir?

14 Q. Yes, sir. You say in brief they were unable -- you
15 don't say it, Dr. Kelly says, "In brief, they were unable to
16 cause chloracne in any animal either with Halowax 1014 or
17 2,4,5-T," correct, sir?

18 A. Correct.

19 Q. However, they applied 20 percent Halowax 1014 to
20 the forearm of humans, you are talking about humans now
21 right, sir? And the total of 2 to 5 or 8 grams, can't make
22 mine out, five out of five of these developed chloracne
23 starting with the second day, right, sir?

24 A. Correct.

1 Q. They then used 20 percent recrystallized 2,4,5-T on
2 humans, correct, sir?

3 A. Yes.

4 Q. That's another experiment, right, sir?

5 A. Well, it's the same experiment, sir.

6 Q. Isn't that right, sir?

7 A. It's Halowax.

8 Q. Aren't they discussing the fact that you used the
9 20 percent, sir?

10 A. Yes, but they -- but the Halowax and recrystallized
11 were the --

12 Q. Were the same experiment, that's correct, and
13 that's different than the first one described about the
14 chloracne in animals, so you've got the 5 percent and the 20
15 percent, don't you, and they are both described in this first
16 ten lines of this memo, aren't they, sir?

17 A. Where is the 5 percent, sir, in animals?

18 Q. Yes.

19 A. Yes.

20 Q. Then, Doctor, you go on to say they did some
21 generalized repeat work, don't you, sir?

22 A. Yes.

23 Q. Describing another experiment, correct, sir?

24 A. Correct.

1 Q. With the volatilization of 2,4,5-T and Halowax,
2 correct, sir?

3 A. Correct.

4 Q. Doctor, wherein does it say there that this repeat
5 work with the volatilized 2,4,5-T and Halowax was done with
6 animals?

7 A. Well, we wouldn't have dared --

8 Q. Excuse me, Doctor, maybe you wouldn't have dared
9 but you put it on the skin of human beings, you -- I don't
10 want to get on this. Doctor, whether you would dare or not,
11 where do you say in this memo that these are animals that you
12 are talking about and not human beings?

13 A. I don't say that in a memo, sir, Dr. Kelly says
14 that and it happens to be animals. We didn't do inhalation
15 experiment in human beings.

16 Q. Where does it say, sir?

17 A. It's in my 1956 report to the commission.

18 Q. It's in your 1956 report to the commission?

19 A. I believe so.

20 Q. You worked with volatilized -- please find it for
21 me, please, sir.

22 A. It's on Page 28 and 29, sir, and 30 and up to 31,
23 sir, that is described. You want me to read it?

24 Q. No, Doctor, what I read there is the experiment

1 that you were discussing about the inhalation and ingestion
2 of Halowax, the very first experiment that you did, sir, that
3 you described a number of times, and that is described on the
4 first page of Plaintiff's Exhibit 1756, you in no place there
5 described this as volatilized 2,4,5-T, do you, sir, in his
6 testimony before the commissioner?

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

9 THE COURT: Sure.

10 A. Yes, we do. Sorry

11 (The following Side Bar conversation was had outside the
12 hearing of the jury.)

13 MR. HEINEMAN: Your Honor, this is about the third
14 time that Mr. Carr, who has these documents in front of him,
15 is representing to this witness and to the jury by
16 questioning that this witness has not done something that a
17 document that he has in his hand demonstrates occurred. And
18 here --

19 THE COURT: Show it to me.

20 MR. CARR: I'm looking at 28 and 29. Counsel, are
21 you --

22 MR. HEINEMAN: Page 108.

23 MR. CARR: The witness didn't say 108, did he.

24 MR. HEINEMAN: But you told him it isn't in the

1 record at all.

2 THE COURT: Wait a second. Wait a second. Let me
3 read what you just gave me.

4 MR. CARR: Doesn't say anything about it, counsel.

5 MR. HEINEMAN: We didn't get the human subjects.
6 We didn't dare get them to ingest or inhale.

7 MR. CARR: That's right. There is no question
8 about that, counsel, we are talking about volatilized
9 2,4,5-T.

10 MR. HEINEMAN: He says he didn't have the humans
11 inhale the 2,4,5-T.

12 THE COURT: Wait a second. Wait a second.

13 MR. CARR: Talking about volatilized, Counsel, not
14 ingested and not inhaled.

15 MR. HEINEMAN: What do you think they are inhaling,
16 iron pipes?

17 MR. CARR: Not volatilized, it's dust. They are
18 eating the dust. They are inhaling the dust.

19 MR. HEINEMAN: For God's sakes, Rex. As I recall
20 --

21 THE COURT: Wait a second, I want to check
22 something back here. Okay. Either of you have anything more
23 to say?

24 MR. HEINEMAN: Your Honor, I'd like to read into

1 the record a portion of the testimony that I'm referring to,
2 the question on cross examination. "Now getting down to the
3 tests that you made first on a variety of animals, later on
4 human beings, did I understand you to say that no chloracne
5 was developed by those tests? Answer: In the animals, yes.
6 Very unfortunately for us they didn't react. Question: The
7 human beings, did they react? Answer: Yes, they did. That
8 is by skin application. We didn't get the human subjects --,
9 we didn't dare get them to ingest or inhale." Thank you.

10 THE COURT: Anything you want to say.

11 MR. CARR: No, that's obviously referring to the
12 first experiment in July 1954, we are now discussing one they
13 did not report on either the commission or anybody else which
14 he volatilized. Talking ingestion and inhaling and I'm
15 talking about volatilized 2,4,5-T and volatilized Halowax,
16 which is totally different than ingestion and inhalation of
17 2,4,5-T or Halowax.

18 THE COURT: I think there is material on Page 109
19 that supports that. Your objection is overruled.

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

21 Q. (by Mr. Carr) Doctor, so that we can get
22 everything straight, it is the July 1954 study which you did
23 with the animals, your report with the animals, is it not,
24 sir?

1 A. Only the skin study, sir.

2 Q. Doctor, isn't that the report that you made with
3 the animals?

4 A. I said --

5 Q. Isn't that --

6 A. Yes, but only of the skin study.

7 Q. Now, Doctor, the description of your animal tests
8 both in the front page of this exhibit, the second page of
9 this exhibit, is ingested or inhaled 2,4,5-T or Halowax,
10 isn't it, sir?

11 A. Halowax or recrystallized 2,4,5-T, sir.

12 Q. Isn't that right, sir?

13 A. Yes.

14 Q. And your -- it's not the tests with the end product
15 2,4,5-T, is it, sir?

16 A. No, sir.

17 Q. And, Doctor, ingesting and inhaling the dust, that
18 2,4,5-T, is not volatilization, is it, sir?

19 A. Inhaling is from volatilization.

20 Q. Doctor, you can inhale dust or you can inhale
21 vapors?

22 A. Right.

23 Q. When you are talking about ingestion and inhaling
24 here, you are talking about the inhaling of the dust, are you

1 not, sir?

2 A. Yes, we are talking about the inhaling of the dust.

3 Q. All right. Now, Doctor, back to Page 3 of this
4 Exhibit 1756, you are talking about volatilization of
5 2,4,5-T, aren't you, sir, and volatilization of Halowax?

6 A. Yes.

7 Q. And the volatilized and volatilization it's turned
8 into a gas, isn't it, sir?

9 A. That would be the usual meaning of it, sir, yes.

10 Q. Doctor, both you and Dr. Kelly are scientists, you
11 would use the word volatile and volatilization in the way
12 that the usually meant, would you not, sir?

13 A. Yes, but I don't know whether or not he's talking
14 about dust.

15 Q. Please just answer my question if you would, sir?

16 A. Sure, I'd be happy to.

17 Q. When scientists talk about something being
18 volatilized, they mean it's turned into a gas, don't they,
19 sir?

20 A. Usually, sir, a vapor.

21 Q. Or a vapor?

22 A. Right, a vapor.

23 Q. And it said here that when they were exposed to
24 this volatilized 2,4,5-T, they got systemic damage, did they

1 not sir, pneumonitis and liver trouble?

2 A. Yes.

3 Q. Doctor, the worker -- there was one worker that got
4 chloracne as well, correct?

5 A. From handling the material, sir.

6 Q. I'm sorry, sir?

7 A. From handling the material.

8 Q. Where -- Doctor, where does it say that?

9 A. From the volatilization Halowax.

10 Q. Where, Doctor, where does it say that?

11 A. "An interesting sideline was that the worker who
12 was exposed to the volatilized Halowax developed chloracne on
13 his arm." That's by contact, sir.

14 Q. Doctor, how would you get an experiment with people
15 other than exposing them to the volatilized Halowax?

16 A. He was working in that area, sir.

17 Q. Excuse me, could you answer my question, please,
18 sir? Could you answer my question, please, sir?

19 A. He was working with the volatilized Halowax, right,
20 and by contact.

21 Q. Doctor, did you understand my question?

22 A. I did indeed.

23 Q. How would that person who you were going to work
24 with or experiment with volatilized 2,4,5-T, Halowax, you

1 would have to inhale it, would you not?

2 A. No, sir, not in this instance.

3 Q. Doctor --

4 A. I remember this man, sir.

5 THE COURT: Doctor, just answer the question,
6 please. What you are saying is not responsive to it. Mr.
7 Carr, you may proceed.

8 Q. (by Mr. Carr) Doctor, if you performed an
9 experiment and had humans inhale volatilized 2,4,5-T or
10 simply let their arm be volatilized 2,4,5-T, they would
11 indeed be exposed to the vapor now, wouldn't they, sir?

12 A. By contact, sir, yes.

13 Q. They would be in contact with the vapor, wouldn't
14 they?

15 A. They'd been in contact with the vapor, yes, sir,
16 and that's what I'm saying.

17 Q. Doctor, you don't know whether or not these people
18 inhaled this volatilized 2,4,5-T or not, do you, sir?

19 A. They weren't people. There was one man, sir.

20 Q. Well, --

21 A. He was an assistant, a lab assistant.

22 Q. Where does it say this was not an experiment with
23 human beings, Doctor? The way I read it --

24 A. I can tell you.

1 Q. Excuse me, could you --

2 A. It was not an experiment with human beings.

3 Q. Could you let me finish my question, Dr. Suskind
4 once if you would, please, sir?

5 A. Please.

6 Q. You say, do you not, they then used 20 percent
7 recrystalized on humans, two of them, up to 36 days and
8 nothing happened. They did some generalized repeat work with
9 volatilization of 2,4,5-T and Halowax in neither case, and
10 that would be referring to the 2,4,5-T in Halowax, wouldn't
11 it, sir? In neither case did they get any skin trouble, but
12 they did get systemic trouble with damages with both
13 compounds?

14 A. Those are the animals, sir, yes.

15 Q. Dr. Suskind, haven't you really learned by now
16 you've been in the Federal Court, you've been before the
17 commission, you've been here, that my question didn't ask you
18 for that particular response, did it, sir? I asked you
19 whether or not it said that, didn't I, sir? Didn't I, sir?

20 A. Would you repeat your question?

21 Q. Didn't I ask you whether or not it said that?

22 A. Said what, sir?

23 Q. In neither case did they get skin trouble but they
24 did get systemic damage with both compounds, isn't that

1 right, sir?

2 A. Correct.

3 Q. The word they, sir, talks about animals or humans?

4 A. Talks about animals, sir.

5 Q. Oh, does it, sir?

6 A. Clearly.

7 Q. The last word you used with reference to they?

8 A. I didn't use this, this is Dr. Kelly's memorandum,
9 sir.

10 Q. I understand that, Doctor.

11 A. I'm not responsible for this memorandum, Dr. Kelly
12 was.

13 Q. Doctor, but you are responsible for the systemic
14 damage that was done through the volatilized 2,4,5-T, aren't
15 you, sir?

16 A. In the animals, sir.

17 Q. But we have no report, do we, sir, to test the
18 correctness of whether or not there were animals involved in
19 this experiment, do we, sir?

20 A. I believe that my reference to the hearing after
21 the Workman's Compensation Commission and I've quoted that
22 repeatedly verifies that, sir, before a court of law.

23 Q. Doctor, didn't you say in the Federal Court that
24 you didn't submit a report to Monsanto on Page 27194, were

1 the results of that work recorded to anyone at Monsanto, and
2 your answer was, we didn't submit an official report?

3 A. Correct.

4 Q. Doctor, was there any record of this third
5 experiment whatsoever?

6 A. By the third experiment you mean the inhalation
7 experiment?

8 A. That's right, the volatilization experiment?

9 A. Yes, there was. There was a ledger record of it.

10 Q. Where is that ledger record, sir?

11 A. It's thirty years ago or more and I have no idea.

12 Q. And we cannot test whether or not humans were
13 involved or not, can we, sir?

14 A. Yes, sir, we can indeed.

15 Q. And where is the record that allows us to test your
16 statement, sir?

17 A. My recollection of it as a scientist I can tell
18 you.

19 Q. Doctor --

20 A. Let me finish.

21 Q. Do you understand I'm asking whether or not there
22 is any documentary evidence by which we can test that which
23 you say is fact? Is there any documentary evidence in
24 existence regarding this experiment, sir, whether it included

1 animals or whether it included humans as well?

2 A. There is this record and the workman's compensation
3 hearing record, sir.

4 Q. Doctor, the workman's compensation hearing record
5 refer to the animals in a number of places, it did not refer
6 to volatilization, it referred to ingestion and inhalation of
7 2,4,5-T, isn't that correct, sir?

8 A. Inhalation is volatilization.

9 Q. Isn't that correct, sir?

10 A. But volatilization has to be done for inhalation.

11 Q. Doctor, isn't that correct, sir?

12 A. What is correct, sir?

13 Q. Could you read my question, please.

14 (Court Reporter read the previous question.)

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

16 Q. Doctor, if you'll turn to the second page of this
17 exhibit, didn't you agree with me earlier, sir, that you are
18 talking about inhalation of the dust in that experiment?

19 A. Talking about inhalation of dust and
20 volatilization.

21 Q. Where does it say that, sir, on that page?

22 A. It doesn't say that it on that page.

23 Q. Where does it say it on any page, sir?

24 A. Says animals exposed to 2,4,5-T dust had coughing,

1 nausea, tearflow, all during the exposure. The 2,4,5-T was
2 volatilized.

3 Q. Doctor, what I asked you was to point out to me on
4 any page where it describes this as volatilization and not
5 dust, not just dust?

6 A. Well, volatilization process --

7 Q. Excuse me, did you understand my question?

8 A. Yes, sir.

9 Q. Would you point out for me on this page or any page
10 where you are discussing this work with the animals as being
11 with volatilization and not with dust?

12 A. Volatilization is the dust, sir.

13 Q. Doctor, I thought you said volatilization was a
14 vapor?

15 A. Right, but in that chamber --

16 Q. Vapor is not dust?

17 A. But in the chamber --

18 Q. Excuse me, Dr. Suskind, is vapor dust?

19 A. No.

20 Q. All right, Doctor.

21 A. The only way we were able --

22 Q. I didn't ask for this continued question, I asked
23 whether or not vapor was dust.

24 THE COURT: The question has been answered,

1 Doctor.

2 A. Sir?

3 THE COURT: Doctor, the question has been
4 answered. You may continue.

5 A. The vapor became the dust.

6 THE COURT: Doctor, didn't you just understand that
7 I considered the question answered and that Mr. Carr was
8 supposed to go on to the next question?

9 A. Yes.

10 MR. CARR: Could you instruct the jury to
11 disregarded?

12 THE COURT: The jury is so instructed.

13 Q. (by Mr. Carr) Doctor, dust is not vapor, is it,
14 sir?

15 A. No.

16 Q. Dust is solid particulates in small size, is it
17 not, sir?

18 A. Correct.

19 Q. Vapor is a liquid form or gas form, isn't it, sir?

20 A. No, it's a gas form.

21 Q. Vapor is liquid suspended in the air, isn't it,
22 sir?

23 A. It might be, yes.

24 Q. What else might it be?

1 A. It might be a gas.

2 Q. Might be a gas, but it is not solid particulate, is
3 it, sir?

4 A. It might become so, sir.

5 Q. Sir, did I ask you whether or not it might become
6 so? When it condenses it might become solid, might it not,
7 sir?

8 A. Sure.

9 Q. Any vapor if it condenses might become solid, might
10 it?

11 A. Yes, sir. That's what happened in this chamber.

12 MR. CARR: Your Honor, could you ask the witness --
13 just ask the jury to disregard this statement.

14 THE COURT: Sure. Jury is so instructed. Dr.
15 Suskind, at least a half dozen times today you've insisted on
16 answering things that have not been asked of you and
17 volunteering statements. Now I am requesting you as a
18 professional and as a gentleman not to continue doing so.
19 You've been disobeying this Court's orders and doing it
20 blatantly. I'm asking you to refrain from doing it any
21 more. You understand, sir?

22 A. Yes, sir.

23 Q. Dr. Suskind, you do understand that I may, by the
24 questions that I asked you, give an absolute wrong impression

1 or false impression to the jury or to the Court and that if I
2 do that we have something called redirect. Your lawyer,
3 Monsanto's lawyer, has the opportunity to ask you questions
4 and if at that time you want to say vapor turns into dust,
5 you may do so. Do you understand that, sir?

6 A. Yes, sir.

7 Q. Do you understand that I can never finish my cross
8 examination of you if you go beyond the question that I asked
9 you? You understand that?

10 A. Yes, sir.

11 Q. You understand that Monsanto -- they always ask
12 redirect questions. You'll have every opportunity to explain
13 for three weeks, if you want to, sir, every little iota that
14 you want to explain. Do you understand that, sir?

15 A. Yes, sir.

16 Q. Now, Doctor, there is another report or
17 circumstance that took place regarding the human health
18 effects of these workers that we have not yet discussed,
19 isn't that correct, sir?

20 A. I'm not sure I know what you are referring to.

21 Q. The psychoneurotic effects that were discovered by
22 Monsanto with respect to these workers. Do you have the
23 letter dated, or rather the report of November 18th, 1955, in
24 front of you, the exhibit number I'll give you in a minute.

1 A. 1754, I have that.

2 Q. Dated November 18th, 1955?

3 A. '55, yes, sir.

4 Q. Starts out, "November 17, Mr. McClain and I.."

5 A. Yes.

6 Q. Referring to that particular report which we went
7 through earlier, let me find my other copy of it, if you
8 would wait a moment. On the Page numbered 3, if you'll refer
9 to it, sir, and the first, second, third, fourth paragraph on
10 page numbered 3, Doctor, it says, does it not -- first of
11 all, the paragraph right before that stated that Dr. Suskind
12 -- "McClain and I discussed our," and that would be Mr.
13 Weger, would it not?

14 A. Yes.

15 Q. "Discussed our problem with Mr. Bowles," that's
16 your attorney, and Mr. A. G. Stone at their offices, that
17 would be the lawyers offices, would it not, sir?

18 A. Yes, sir.

19 Q. So you went from the commission over to the
20 attorney's offices, didn't you, sir?

21 A. That's what the memorandum reads, sir.

22 Q. And you -- there again you discussed the findings
23 of a Dr. Nestmann, did you not, sir?

24 A. Yes.

1 Q. Now, and you -- Dr. Nestmann reported or found that
2 most of the employees that he had examined had
3 psychoneurosis, did he not, sir?

4 A. No, sir, that's not how it's stated.

5 Q. Doesn't it say, "We discussed the findings of Dr.
6 R. H. Nestmann concerning psychoneurosis in most of the
7 employees he has examined for us?"

8 A. That's correct, sir.

9 Q. You are saying that of the employees he has
10 examined most of them have psychoneuroses, has he not, sir?

11 A. That could be inferred from that, but I'm not
12 altogether sure that is a logical conclusion.

13 Q. Doctor, I'm not asking you to use your logic, what
14 I'm asking you to do is, didn't you -- doesn't this memo
15 state that the psychoneuroses that Dr. Nestmann found in most
16 of the employees that he examined was discussed?

17 A. Yes, I believe that is what the memorandum says.

18 Q. And Mr. Stone, that's one of the attorneys, is it
19 not, is apprehensive as to the implications that may be drawn
20 if this is submitted as evidence, says that, too, doesn't it,
21 sir?

22 A. That's what it reads, sir.

23 Q. Now, if it's submitted as evidence in the
24 compensation commission hearing, correct, sir that was the

1 subject of this discussion, was it not, sir?

2 A. I assume that that's what he meant, sir.

3 Q. And the implications would be that the commission
4 could decide that these employees have been made
5 psychoneurotic by the substance to which they had been
6 exposed, is that correct, sir?

7 A. Not necessarily, sir.

8 Q. Isn't that the logical conclusion if you want to
9 use your logic, sir, of the fear of Mr. Stone, the attorney
10 for Monsanto?

11 A. No, sir.

12 Q. What other thing could he be fearful of, sir?

13 A. The possibility that the people who had been
14 affected by the exposure but now improving significantly
15 physically, that is, they could still be concerned about
16 their problem that would also lead perhaps to a
17 psychoneurotic, which is not neurological, it's a behavioral
18 problem, a psychoneurotic consequence.

19 Q. Now, Doctor, I submit to you, you haven't answered
20 my question. What would he be fearful -- what are the
21 implications which he would be, he would fear would be drawn
22 if Dr. Nestmann's report is submitted as evidence?

23 A. I don't know, sir.

24 Q. To the compensation commission?

1 A. I'm not sure, because I don't know what the
2 commission or others would -- how they would regard Dr.
3 Nestmann's findings.

4 Q. Doctor, what you do know is that the Plaintiff's
5 attorney at the commission hearing spent a considerable
6 amount of time examining you on the subject of the fears, the
7 apprehension, the psychological outlook of these men that had
8 been exposed, did they not, sir?

9 A. He did, sir.

10 Q. And Dr. Nestmann's report was not submitted as
11 evidence, was it, sir?

12 A. I don't know.

13 Q. Do you have any knowledge that it was, sir?

14 A. No, I have no knowledge about that.

15 Q. Now, Doctor, you and the attorneys all read that
16 paper obtained from Dr. Nestmann, didn't you, sir?

17 A. Yes, we did.

18 Q. And you followed a suggestion that you could get an
19 opinion from a Dr. Ross, a psychiatrist at Kettering
20 Laboratory, isn't is that correct, sir?

21 A. Correct, sir.

22 Q. Did you get an opinion in writing, sir?

23 A. I don't believe so.

24 Q. Did you get paid for getting the opinion from Dr.

1 A. Not recently, sir.

2 Q. Doctor, did you have any memos written down about
3 this meeting that you perhaps have been able to refer to?

4 A. I don't have any memos about this, sir.

5 Q. All you've had since the day before yesterday and
6 today is a period of time, correct, sir?

7 A. Correct.

8 Q. Have you conferred with counsel in that period of
9 time?

10 A. No, sir.

11 Q. You haven't talked to them at all in that period of
12 time?

13 A. I have, but not about this.

14 Q. You haven't talked to them about this at all, about
15 your experimental results, sir?

16 A. About my experimental results, but not about this,
17 not about the memorandum.

18 Q. Doctor, tell me what in your experimental results
19 -- assume this is hypothetically correct, sir. Assume that
20 you did do as this memo says that you did, could you tell us,
21 please, what there is or could possibly be in these
22 experimental results that could be used to effectively defend
23 Monsanto's position?

24 A. I have no idea, sir, because it's not an accurate

1 statement.

2 Q. Doctor, I don't want -- Your Honor, would you ask
3 the witness to respond to my question?

4 A. I think I have, sir.

5 THE COURT: No, that was not responsive. Listen to
6 it again. I'll have the Court Reporter read it and listen to
7 it again, especially the first part. It was not responsive
8 to the question.

9 COURT REPORTER: "Doctor, tell me what in your
10 experimental results -- assume this is hypothetically
11 correct, sir. Assume that you did do as this memo says that
12 you did, could you tell us, please, what there is or could
13 possibly be in these experimental results that could be used
14 to effectively defend Monsanto's position?"

15 A. Again, I don't know.

16 Q. Doctor, let me suggest to you that you did use some
17 of the experimental results to defend Monsanto's position
18 before the compensation hearing. Do you recall that you did
19 do that, sir?

20 A. I recall that I explained the experiments, sir.

21 Q. Doctor, you --

22 A. It's written up quite clearly.

23 Q. Doctor, you used the experimental results, you
24 discussed the experimental results before the Compensation

1 Commission at the time you appeared in behalf of Monsanto,
2 did you not, sir?

3 A. I did indeed discuss those results.

4 Q. All right. And, it was used -- it was used to
5 defend Monsanto's position, wasn't it, sir?

6 A. I don't know.

7 Q. Doctor, you do know that you discussed with counsel
8 and Mr. Paul Bolles was the attorney for Monsanto, was he
9 not?

10 A. I believe so, sir.

11 Q. You discussed the aspect of these chloracne claims
12 and litigation with that lawyer, did you not, sir?

13 A. I imagine I did, sure.

14 Q. You testified at the hearing and answered questions
15 put to you by Monsanto's counsel, did you not, sir?

16 A. Yes, sir.

17 Q. And in response to those questions you described
18 these experimental results, did you not, sir?

19 A. I did indeed.

20 Q. And, Doctor, then in front of the commission you
21 testified to a number of things, didn't you, sir?

22 A. I believe so.

23 Q. Now, you told them that in your experiments with
24 2,4,5-T, the end product 2,4,5-T, you could not produce

1 chloracne, didn't you, sir?

2 A. I told him that we could not --

3 Q. Could you answer my question, please, sir?

4 A. Yes, I did indeed.

5 Q. Yes, you did. You told them that you applied the
6 2,4,5-T itself to humans. You told them that we have not
7 been able to induce acne in humans with 2,4,5-T, did you not,
8 sir?

9 A. With distilled 2,4,5-T, yes, sir.

10 Q. Oh, Doctor, you didn't tell them -- we went through
11 this once and I don't want to go through it again. You did
12 not tell them that it was distilled 2,4,5-T did you, sir?

13 A. It was pure 2,4,5-T.

14 Q. Doctor, my question -- I know it was pure 2,4,5-T
15 with the contaminant, with the TCDD removed, but the
16 commission did not know it because you didn't tell them,
17 isn't that correct, sir?

18 A. Didn't tell them what, sir?

19 Q. That it was pure 2,4,5-T with the TCDD or the
20 contaminants, whatever you conceived them to be, removed?

21 A. That was taken for granted, sir, it was pure
22 2,4,5-T.

23 Q. Doctor, my question is you did not tell them that
24 was pure 2,4,5-T, did you, sir?

1 A. Not I didn't explain it that way, that's correct.

2 Q. Doctor, my question is you didn't tell them that,
3 you told them that it was the final product in the operation,
4 didn't you, sir?

5 A. 2,4,5-T, yes.

6 Q. That's what you told them, you applied to these
7 men, didn't you, sir?

8 A. No, I said 2,4,5-T.

9 Q. Turn to page -- you didn't tell them it was the end
10 product?

11 A. Well, 2,4,5-T is the end product.

12 Q. But it's not the recrystallized, sir?

13 A. We weren't interested in the end product, we were
14 interested in the recrystallized because we wanted to find out
15 whether or not 2,4,5-T itself applied in a five percent
16 mixture would cause chloracne, and we found it did not.

17 Q. Doctor, but what you told them on Page 51 -- well,
18 2,4,5-T and I think we had to again say that 2,4,5-T is the
19 final product of this operation in which we were involved, it
20 is a specific chemical, trichlorophenate, sodium
21 trichlorophenoxy acetic acid, this is the weed killer that is
22 used all over the world, isn't that what you told them, sir?

23 A. That's right. That's what I told them.

24 Q. And so you led them to believe that the 2,4,5-T you

1 were working with was the 2,4,5-T that the -- was packaged by
2 these workers and shipped out around the world, isn't that
3 correct?

4 A. No, sir. No, sir.

5 Q. Doctor, where did you tell them that it was
6 recrystalized or purified 2,4,5-T?

7 A. It's not so stated, but that's what it was, sir.

8 Q. Doctor, I know that's what it was and that's the
9 whole point of the thrust of these questions that I'm asking
10 you, sir, is that you knew that it wasn't the end product
11 2,4,5-T that goes out around the world that you used, but
12 nowhere did you tell the commission that it was the -- that
13 it was not that which you studied, isn't that right, sir?

14 A. Yes, sir, but we did tell them about --

15 Q. Excuse me, sir. The question is did you tell them
16 about the end product? You told them that you tested the end
17 product and that it did not cause chloracne, isn't that
18 right, sir?

19 A. We tested --

20 Q. Excuse me, would you answer the question the way I
21 put it to you, Dr. Suskind?

22 A. That's what we told them, sir.

23 Q. Yes. Doctor, they made their decisions based upon
24 what you told them, didn't they, sir?

1 A. No, sir.

2 Q. Did they have some other expert from Monsanto or
3 some other scientist to tell them that 2,4,5-T, the end
4 product, does in fact cause chloracnes you knew that it
5 caused? Did they have somebody tell them that, sir?

6 A. I don't know whether there were other hearings
7 about this, sir, so I can't tell you whether or not. It was
8 my testimony.

9 Q. You have no such knowledge, do you, sir?

10 A. No, but I assume that there were --

11 Q. You would assume that somebody would come in and
12 tell them the truth about what was tested, is that what you
13 are saying?

14 A. No, that isn't what I'm talking about.

15 Q. Doctor, you know you didn't tell them the truth,
16 did you?

17 A. I did, too. I told them trichlorophenate does
18 cause chloracne and it's in that. Why don't you read this to
19 the jury?

20 Q. That's not the end product, is it?

21 A. No, but that's what causes the chloracne.

22 Q. But that's not the end product?

23 A. That's what causes the chloracne, and I told them
24 the truth.

1 Q. Could you answer my question?

2 A. I am answering the best way I know how.

3 Q. Trichlorophenate is not the end product, is it,
4 sir?

5 A. But it's found --

6 Q. Doctor --

7 MR. CARR: Would you direct the witness to answer
8 the question?

9 THE COURT: Doctor, the question is clear. It's
10 been put to you a couple times. Answer the question.

11 Q. Trichlorophenate is not the end product, is it,
12 sir?

13 A. No, it's not the end product, but it's one of the
14 materials.

15 MR. CARR: Your Honor, would you ask the jury to
16 disregard the last statement?

17 THE COURT: Jury is so instructed to disregard. It
18 is not responsive to the question, Doctor. I'm asking you
19 again just respond to the question that's asked of you.

20 Q. (by Mr. Carr) Doctor, the trichlorophenate goes
21 through further processing before it becomes 2,4,5-T, doesn't
22 it, sir?

23 A. It does indeed.

24 Q. It is possible that the further processing could

1 remove the contaminants, isn't it, sir?

2 A. It could.

3 Q. As a matter of fact, you know that if you reprocess
4 -- if you process trichlorophenate, if you further distill
5 it, that it can be purified and that the chloracne agent in
6 it can be removed, you know that, too, don't you, sir?

7 A. I believe to some degree it can be.

8 Q. Doctor, you know that because in fact you did it,
9 you -- Monsanto distilled the 2,4,5-T, the product that they
10 had, and it didn't cause chloracne when it was distilled as
11 you testified to, isn't that correct, sir?

12 A. No, sir.

13 Q. That isn't correct, sir?

14 A. It was less acnegenic.

15 Q. Doctor, you told us that it was not acnegenic,
16 distilled 2,4,5-T?

17 A. I said it was less. You said it was not.

18 Q. Doctor, could you point out where you said the
19 distilled 2,4,5-T was acnegenic?

20 A. Distilled 2,4,5-T?

21 Q. Yes.

22 A. We are not talking about distilled 2,4,5-T, we are
23 talking about trichlorophenate.

24 Q. No, Doctor, we are talking about the distilled

1 2,4,5-T, which is not --

2 A. I'm sorry.

3 Q. Which is not --

4 A. I'm sorry, we have not been able to communicate.

5 You are asking about the trichlorophenates?

6 Q. No, Doctor, I'm asking you -- I clearly asked you
7 -- I led up to it, I said you can indeed distill 2,4,5-T so
8 as to remove the contaminants and it will not cause
9 chloracne, isn't that correct, sir?

10 A. That's true.

11 Q. And that's -- in point of fact you could sell
12 2,4,5-T without the contaminants in it, could you not, sir?

13 A. I don't know, sir, I'm not a --

14 Q. You know Monsanto gave you 2,4,5- T distilled that
15 didn't cause chloracne, isn't that right?

16 A. That was out of a laboratory.

17 Q. Excuse me, sir, you know that, don't you, sir?

18 A. Yes.

19 Q. You told -- the only thing you described to the
20 commission was that kind of 2,4,5-T, didn't you, sir? You
21 told them the end product 2,4,5-T is what you put on the skin
22 of these human volunteers, didn't you, sir?

23 A. Yes, sir.

24 Q. And you told them that that end product did not

1 cause chloracne, didn't you, sir?

2 A. The pure 2,4,5-T did not cause chloracne.

3 Q. Did you, sir --

4 MR. CARR: Would you direct the witness to answer
5 the question?

6 THE COURT: Doctor, that was not responsive.

7 Q. You told them that the end product, the 2,4,5-T
8 that you put on these people's skin did not cause chloracne,
9 did you not?

10 A. That's true.

11 Q. Yes. You didn't tell them that the 2,4,5-T that
12 you put on the skin was the pure 2,4,5-T, did you, sir?

13 A. I don't recall.

14 Q. Look and see and refresh your recollection, sir.
15 Doctor, to help you, you have already testified in this case,
16 sir, before this jury on the 18th of February, 1986, on Page
17 65, that you did not tell the commission that the 2,4,5-T you
18 were working with was pure 2,4,5-T with the contaminants
19 taken out. Don't you remember you testified that way once in
20 front of this jury already, sir?

21 A. Page 56 of what, sir?

22 Q. Of your testimony here. Page 65, sir, of your
23 testimony here. Right there, sir. (Indicating)

24 A. I said I didn't have to tell them.

1 Q. Excuse me, would you read it, please. You said we
2 did not tell them.

3 A. May I read the answer. I said, "We did not, but
4 that's beside the point." That's what I said. Read the
5 complete answer.

6 Q. Doctor, my question is you did not tell them that
7 it was pure 2,4,5-T that you put on the skin of these
8 workers, did you, sir?

9 A. I will answer as I did before, no we did not, but
10 that's beside the point, sir.

11 MR. CARR: Your Honor, would you direct the witness
12 to answer my question directly.

13 THE COURT: Doctor, that was not a direct answer.
14 Answer the question directly. Listen to it closely.

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

16 THE COURT: Doctor, that was not a direct answer.
17 I'm ordering you listen to it carefully and answer it
18 directly, sir.

19 Q. (by Mr. Carr) Doctor, you did not tell the
20 commission that you were working with pure 2,4,5-T with the
21 contaminants taken out, did you, sir?

22 A. I did not, sir.

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

1 MR. CARR: Yes, Your Honor.

2 THE COURT: We will take a short recess at this
3 time and then resume testimony. I would remind you you are
4 not to discuss this matter among yourselves, with anybody
5 outside the jury panel, or as of yet form any opinions or
6 conclusions about the matters on trial. Court is in recess.
7 (Following a recess, these proceedings were had in open
8 court.)

9 Q. (by Mr. Carr) Doctor, some time before you
10 testified in front of the commission, some representative of
11 the occupational disease part of the commission visited the
12 -- rather you and others from Monsanto had a meeting at the
13 workman's compensation in Charleston, did you not, sir?

14 A. Yes, I believe we did. Yes.

15 Q. And, there was a report made on that meeting dated
16 November the 18th, 1955, was there not, Dr. Suskind?

17 A. Yes, I believe there was.

18 Q. And on this meeting, you don't need any memory
19 refreshed do you, sir, because this is a copy of the report
20 that we had from your file that you brought here, is it not,
21 sir? You recognize it? Is that not a copy of a record of
22 that meeting, sir?

23 A. That is a copy of the record of that meeting made
24 again by a Mr. Weger.

1 MR. CARR: I'd like to offer that into evidence,
2 please the Court.

3 THE COURT: Any objections?

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

6 THE COURT: Sure.

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

9 MR. HEINEMAN: I don't think he's laid an adequate
10 foundation for the admission of this document, Your Honor,
11 and I will object to it on that basis.

12 MR. CARR: Well, an additional foundation is that
13 this is -- I also received a copy of this from Monsanto in
14 earlier discovery that they gave us.

15 THE COURT: It's got your C numbers on there.
16 Okay.

17 MR. CARR: This is part of the business records of
18 Monsanto, is it not, counsel?

19 MR. HEINEMAN: Well, that calls for my legal
20 conclusion.

21 MR. CARR: That calls for what you know as an
22 attorney in this court whether or not this is one of the
23 records of Monsanto which you've kept with regard to your
24 workings at Nitro, West Virginia, and which you supplied to

1 us pursuant to order of Court?

2 MR. HEINEMAN: This is a document that's been
3 produced to Mr. Carr by me, or by our office, and I think
4 it's incumbent upon Mr. Carr to establish a foundation from
5 the witness stand. And my position is he has not done that
6 and I object, Your Honor.

7 THE COURT: Objection is overruled. It's
8 admitted.

9 MR. CARR: Your Honor, we would like to pass it to
10 the jury at this time.

11 THE COURT: Yes, you may.

12 (Exhibit 1754 passed to the jury)

13 Q. Doctor, the memo describes the meeting that you --
14 a person name of McClain and Mr. Weger, who's been mentioned
15 earlier of Monsanto had with the Occupational Disease Board,
16 isn't that correct, sir?

17 A. Yes, I believe that's so, sir.

18 Q. And, Doctor, on the second page, the large
19 paragraph in the middle of that page, it reports that Dr.
20 Brick inquired whether or not what the Board saw being
21 packaged was 2,4,5-T, and they were told that it was. Do you
22 see that, sir? Do you see that, sir?

23 A. Yes, sir.

24 Q. And what they saw being packaged would have been

1 the final end product 2,4,5-T that's going to be sold to the
2 public, is that correct, sir?

3 A. No, sir.

4 Q. Oh, no?

5 A. No.

6 Q. Why would they be packaging 2,4,5-T?

7 A. They would be packaging it for further
8 esterification before it was-- I think so, before it was
9 marketed, because you can't use the crude 2,4,5-T which is
10 called ringer cake, can't use that as a weed killer. You got
11 to esterify it, sir.

12 Q. And, Doctor, Monsanto would package ringer cake?

13 A. I believe they might.

14 Q. Why? What conceivable reason would they have?

15 A. So it could be esterified.

16 Q. Why would you need to package something to esterify
17 it?

18 A. It might go to a -- another company for
19 esterification.

20 Q. Doctor, you know it doesn't go to another company
21 for esterification, Monsanto sells its 2,4,5-T?

22 A. Sir, I really don't know what the -- the industrial
23 process is all about. I have no idea. But I do know that --

24 Q. Doctor --

1 A. That --

2 Q. Doctor, you have no idea then, why would you
3 suggest that it's being packaged for some purpose other than
4 selling it?

5 A. I have no idea.

6 Q. Then you have no reason to make that statement
7 then, do you, sir?

8 A. No, I do. It could be that --

9 Q. Doctor that --

10 A. They are packaging it for further esterification.

11 Q. That is pure speculation on your part, absolute
12 pure speculation?

13 A. No, it isn't.

14 Q. Do you know they were packaging it for further
15 esterification?

16 A. Yes.

17 Q. What knowledge do you have?

18 A. I believe that that's what they did.

19 Q. My question is what knowledge do you have?

20 A. It is my recollection, sir, that that's what they
21 did. Now whether or not they packaged 2,4,5-T ester for
22 sale, I have no idea either, but I assume that they might
23 have done that.

24 Q. You say you have no idea either. You have no idea

1 on either then?

2 A. That is a phrase, it's a way of expressing myself,
3 sir.

4 Q. Doctor, in point of fact, you were asked there
5 whether or not that -- or someone was asked whether or not
6 what was being packaged was 2,4,5-T, weren't you, sir?

7 A. Where is that in here?

8 Q. That first sentence, sir, on that paragraph they
9 inquired whether the material which the Board saw being
10 packaged on the plant tour was 2,4,5-T, and you were told it
11 was, you see that, sir?

12 A. Yes, sir.

13 Q. Right in the middle of the page?

14 A. Right.

15 Q. The Board was told that that was 2,4,5-T, correct,
16 sir?

17 A. Yes, sir.

18 Q. And then the Board was told that it was and then
19 the Board asked whether or not that was the material that was
20 given to you for testing, correct, sir, is that correct, sir?

21 A. Yes it was, sir, that's how it reads.

22 Q. And sir --

23 A. And I said that that was one of the materials, yes.

24 Q. You replied that that which was being packaged

1 which was 2,4,5-T was one of the materials that was submitted
2 to you for testing, correct, sir?

3 A. No, sir. No, sir.

4 Q. Doctor, isn't that what it says? He then asked
5 whether that was the material which was given to Dr. Suskind
6 for testing and Dr. Suskind replied that that was one of the
7 materials submitted?

8 A. If you take it literally.

9 Q. Doctor, if you would let me finish, please isn't
10 that an exact quote from this memo?

11 A. That is an exact quote.

12 Q. And wasn't that what was asked of you and wasn't
13 that what you replied, sir, to the best of your present
14 recollection?

15 A. No, sir.

16 Q. What was asked you to the best of your recollection
17 31 years later, sir, and what was your reply?

18 A. My reply was, yes, it was --

19 Q. First of all, what was asked you, sir?

20 A. Was that the material 2,4,5-T, was that the
21 material given to me for testing.

22 Q. And what did you --

23 A. Dr. Suskind replies that it was one of the
24 materials submitted, but that's the literal part of it.

1 Q. Was that your reply, sir?

2 A. Yes, it was, and we got 2,4,5-T.

3 Q. And that's what I asked you, if this is your best
4 recollection as to whether or not that was your reply to the
5 question asked?

6 A. Yeah, we got two kind of 2,4,5-T.

7 Q. Dr. Suskind, it was your reply to the question
8 asked whether or not the material that they saw being
9 packaged was 2,4,5-T, whether or not that material was
10 submitted to you for testing, and you replied that it was?

11 A. Yes.

12 Q. Yes. Now, Doctor, when you testified one year
13 later, eight months later in -- I'm sorry, it was a year
14 later, November of 1956, the commission had you testify that
15 you tested the end product, isn't that correct, sir, and you
16 said you did?

17 A. Yes.

18 Q. And they would have believed, based upon what you
19 said, sir, that the material they saw being packaged was
20 2,4,5-T and that you had tested the 2,4,5-T, isn't that
21 correct, sir?

22 A. That's correct, sir.

23 Q. Yes. In point of fact, however, you did test the
24 2,4,5-T, the end product, didn't you, sir?

1 A. We did.

2 Q. In your July of 1954, you report on that, don't
3 you, sir?

4 A. Yes, sir.

5 Q. And now your testing of the end product in July of
6 -- so you told them the truth, you did test the end product
7 2,4,5-T, correct, sir?

8 A. We did.

9 Q. The product at the end of the Monsanto process,
10 when they were -- they are going to send it out, you tested
11 that product, didn't you, sir?

12 A. We did, sir.

13 Q. And you told the commission in your testimony that
14 that didn't cause chloracne, didn't you, sir?

15 A. Yes, we did.

16 Q. And, in point of fact, I knew from your earlier
17 examination of the workers and from their history, that the
18 end product does cause chloracne, you knew that, didn't you,
19 sir?

20 A. No, sir.

21 Q. Doctor, you knew the workers simply hauling this
22 2,4,5-T got chloracne, you knew that, didn't you, sir?

23 A. I'm not sure that's the end product, though, sir,
24 we had no idea --

1 Q. Doctor, you --

2 A. And we did test the end product.

3 Q. Excuse me, Doctor.

4 A. It's in the report, sir.

5 Q. Excuse me, Doctor, the product that the workers
6 hauled in the plant was the 2,4,5-T, wasn't it, sir?

7 A. Yes, sir.

8 Q. And the workers who simply hauled the 2,4,5-T got
9 chloracne, didn't they, sir?

10 A. What are you reading from, sir?

11 Q. Doctor, could you answer my question? Does it make
12 a difference to the truth whether or not I'm reading
13 something or not, sir?

14 A. I have to verify what I'm answering, sir.

15 Q. I'm not asking you to verify that what I'm reading
16 is true or false?

17 A. But in order to give you an answer --

18 Q. Would you read my question to the witness again
19 please?

20 COURT REPORTER: "And the workers who simply hauled
21 the 2,4,5-T got chloracne, didn't they, sir?"

22 A. No.

23 Q. Doctor, you testified in front of this jury on
24 February the 18th that they did -- that some of the them did

1 get chloracne. Now were you lying then, or are you lying
2 now?

3 A. No, it is not a lie, sir.

4 Q. Doctor, did some of these workers get chloracne or
5 not that hauled the 2,4,5-T?

6 A. In our '53 report --

7 Q. Excuse me, Doctor, did some of them get chloracne
8 or not, the ones that simply hauled the 2,4,5-T?

9 A. No.

10 Q. Doctor, I ask you the question, this is Page 67 of
11 the February 18th transcript, and some of the workers who
12 simply hauled the 2,4,5-T got chloracne, didn't they, sir,
13 and your answer was some of them did, wasn't that your answer
14 at that time, sir, under oath then just like you are under
15 oath now?

16 A. I didn't say only two -- only hauling, and that's
17 what I'm asking you, that's what you are asking me.

18 Q. Could you read my question back to the witness,
19 please. And his answer.

20 COURT REPORTER: "Doctor, did some of these workers
21 get chloracne or not that hauled the 2,4,5-T? No.

22 Q. Doctor, which is the truth, did some of the workers
23 get chloracne who simply hauled the 2,4,5-T, or not?

24 A. The answer is no.

1 Q. And what you told this jury then on the 18th of
2 February was a lie?

3 A. No, sir, it's not a lie. I'm just clarifying it.

4 Q. Doctor, I asked you at that time, did I not, sir,
5 "And the workers who simply hauled the 2,4,5-T got chloracne,
6 didn't they, sir?" Do you recall I asked you that question?

7 A. No, I don't recall it, but if that's in the
8 transcript then it must be accurate.

9 Q. Your answer at that time was some of them did,
10 wasn't that your answer at that time?

11 A. Yes, sir.

12 Q. That was the truth then, wasn't it?

13 A. Yes, it was.

14 Q. So some of the workers who simply hauled the
15 2,4,5-T got chloracne, didn't they, sir?

16 A. No, sir.

17 Q. Doctor, would you read that question, and didn't I
18 just ask you that very same question? Read it out loud for
19 the jury what I asked you then and what your answer was then?

20 A. "Question: And the workers who simply hauled the
21 2,4,5-T got chloracne, did they, sir?"

22 Q. "Didn't they, sir?"

23 A. The answer is, "Some of them did."

24 Q. Wasn't that your answer?

1 A. Yes.

2 Q. Was that the truth?

3 A. That was the truth.

4 Q. So some of them did get chloracne who simply hauled
5 the 2,4,5-T, correct, sir?

6 A. No, sir.

7 Q. Doctor, would you want to read your question again?

8 A. "And the workers who simply hauled the 2,4,5-T got
9 chloracne, did they, sir?"

10 Q. "Didn't they, sir?"

11 A. "Didn't they, sir?"

12 Q. Yes.

13 A. And the answer is, "Some of them did."

14 Q. So some of them did get chloracne who simply hauled
15 the 2,4,5-T, correct, sir?

16 A. No.

17 Q. Were you lying when you told us that they did?

18 A. No.

19 Q. Were you telling us the truth when you told us that
20 some of the workers who simply hauled the 2,4,5-T got
21 chloracne?

22 A. Yes.

23 Q. So it is the truth then that some of the workers
24 who simply hauled the 2,4,5-T got chloracne, correct, sir?

1 A. No, sir.

2 Q. Didn't you answer on the 18th that some of them
3 did?

4 A. Yes, sir.

5 Q. That was the truth then?

6 A. It needs modification, sir.

7 Q. Was it the truth then, sir, simple, unvarnished,
8 plain, unmodified truth? Did you answer to the truth at that
9 time?

10 A. Absolutely, sir.

11 Q. Yes. And some of them did then, is that correct,
12 sir?

13 A. No, sir.

14 Q. Sir?

15 A. I said no, sir.

16 Q. Dr. Suskind, do you understand that if you are
17 telling the truth then that you can't be telling the truth
18 now?

19 A. Yes, I can.

20 Q. You can be telling the truth when you say on the
21 18th some of them did get it and when on the 6th of March you
22 can say that they didn't get it, is that right, sir?

23 A. No, that's not what I'm saying.

24 Q. No, but Doctor, didn't you say on the 18th that the

1 workers who simply hauled the 2,4,5-T got chloracne, didn't
2 you say that, sir?

3 A. That's what I said.

4 Q. That was the truth, wasn't it?

5 A. When I said it, yes.

6 Q. Well, it was the truth then, the truth doesn't
7 change with passage of time, does it, sir?

8 A. If it needs an explanation, it does, sir.

9 Q. Excuse me. The truth doesn't change with passage
10 of time, does it, sir?

11 A. No, sir.

12 Q. The truth on February the 18th, is the truth on
13 March the 6th, isn't it, sir?

14 A. It is indeed.

15 Q. Yes. Doctor, you knew when you testified in front
16 of the commission that some of these workers who simply
17 hauled the 2,4,5-T got chloracne, didn't you, sir?

18 A. We did.

19 Q. Yes. You didn't tell the commission that however,
20 did you, sir?

21 A. I don't believe I was asked.

22 Q. Doctor, my question is you didn't tell the
23 commission that, did you, sir?

24 A. I don't believe I was asked, sir.

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

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

5 A. I did not.

6 Q. And, Doctor, you -- what you did tell them,
7 however, was that 2,4,5-T, the end product, doesn't cause
8 chloracne, didn't you, sir?

9 A. I did.

10 Q. Now, Doctor, you did perform this experiment that
11 you reported in July of 1984, didn't you, sir?

12 A. Right, 1954, sir.

13 Q. I'm sorry.

14 A. '54.

15 Q. Yes, '54. And, you couldn't get chloracne with the
16 end product 2,4,5-T you tested then, could you, sir, didn't
17 get it, did you?

18 A. We did test the end product, sir.

19 Q. Did you hear my question, Doctor? Did you hear my
20 question, sir?

21 A. Yes, sir, I heard your question.

22 Q. My question was, you did test the end product
23 2,4,5-T, did you not, sir?

24 A. Yes, we did.

1 Q. And you did not get chloracne with that testing,
2 did you, sir?

3 A. That's true.

4 Q. Sir?

5 A. That's true.

6 Q. All right. Now, Doctor, and you put that in a
7 report, didn't you, sir, dated July 1st, 1954, isn't that
8 correct, sir?

9 A. I believe so.

10 Q. And, Doctor, at that time that you tested -- well,
11 let me put this in -- I hand you what's been marked
12 Plaintiff's Exhibit 1755 and ask you whether or not that is a
13 copy of your report of July 1st, 1954?

14 A. It is, sir.

15 MR. CARR: I'll offer that into evidence, please
16 the Court.

17 MR. HEINEMAN: No objection, Judge.

18 THE COURT: It's admitted without objection.

19 Q. (by Mr. Carr) Now, Doctor, when you performed this
20 test, you performed what strength of 2,4,5-T, you've
21 testified earlier it was 5 percent?

22 A. Five percent, sir, in acetone.

23 Q. You also had a control there, didn't you, sir, a
24 known chloracnegen, did you not, sir, Halowax?

1 A. Yes, sir.

2 Q. And you knew at that time that you tested this
3 product that Halowax does cause chloracne, doesn't it?

4 A. But not at that time, not with the concentration we
5 used, sir.

6 Q. That isn't what I asked you. You knew that Halowax
7 is a known acnegen, isn't it, sir, and was known then?

8 A. All depends on concentration.

9 Q. Doctor, at what you knew then and described Halowax
10 then as a known acnegen, did you not, sir?

11 A. We did, sir. That's why it was the control.

12 Q. Because you used it to see whether or not since you
13 know that it causes chloracne --

14 A. It can.

15 Q. Well, it can, indeed it does, if you use it in the
16 appropriate fashion and appropriate concentration, correct,
17 sir?

18 A. You are absolutely right, the appropriate
19 concentration and this was not the appropriate concentration,
20 because it doesn't cause chloracne.

21 Q. If you just don't mind letting me ask the question,
22 you give the answer.

23 A. Please. I'll be happy to answer.

24 Q. My question was, you used it because it was a known

1 MR. CARR: I'm not sure now, the jury has the
2 copies. I had a note on it once.

3 Q. (by Mr. Carr) Now, Doctor, you used a five percent
4 solution of the end product 2,4,5-T, did you not, sir?

5 A. What experiment are you talking about, sir?

6 Q. Sir?

7 A. What experiment are you talking about? We did both
8 animal and human studies in this one. Which are you talking
9 about?

10 Q. The humans.

11 A. Yes, sir.

12 Q. As a matter of fact, it was 5 percent solution all
13 the way around, wasn't it, sir?

14 A. Yes, sir.

15 Q. You used 5 percent solution with the animals and 5
16 percent solution with the humans, didn't you, sir, Pages 8
17 and 9 summarize your findings and state the applications that
18 you made, Doctor, it would be more convenient for you to look
19 there.

20 A. Yes, sir.

21 Q. You used five percent solutions, did you not, sir?

22 A. We did indeed.

23 Q. You did not get chloracne with the 5 percent
24 solution, did you, sir?

1 A. On human skin, right.

2 Q. You didn't get chloracne on the animal skins
3 either, did you, sir?

4 A. We used the end product there, too.

5 Q. Did you understand my question, Dr. Suskind?

6 A. Yes, sir.

7 Q. Could you answer my question, please, sir? You
8 didn't get it on the animal either, did you, sir?

9 A. That's quite true.

10 Q. You also used five percent solution of Halowax, the
11 known chloracnegen, did you not, sir?

12 A. Right.

13 Q. But it didn't get chloracne either, did it, sir?

14 A. Yes, it did not. It didn't induce chloracne,
15 right.

16 Q. Sir?

17 A. It didn't induce at that concentration.

18 Q. That tells you that the concentration, five percent
19 of this known acnegen was not strong enough, was not
20 concentrated enough to cause that which you know Halowax can
21 cause, correct, sir?

22 A. Other factors too, sir.

23 Q. Excuse me. Could you answer that?

24 A. That's right, but there are other factors involved.

1 Q. Doctor --

2 MR. CARR: Your Honor, would you ask the witness to
3 please again to respond to my question.

4 THE COURT: Doctor, what you said at the end was
5 not responsive to the question. I am asking you again to
6 respond just to the question that's asked.

7 A. Yes, sir.

8 Q. (by Mr. Carr) Doctor, in the fashion and manner
9 that you used this five percent solution to Halowax, it did
10 not produce acne, did it, sir?

11 A. Correct.

12 Q. But this was known throughout the scientific
13 community and yourself that Halowax does produce chloracne?

14 A. In higher concentrations, sir.

15 Q. Under appropriate circumstances, correct, sir?

16 A. Correct.

17 Q. But it didn't produce it here and neither did the
18 end product 2,4,5-T, correct, sir?

19 A. Right.

20 Q. Therefore, you can conclude nothing from your test
21 other than the concentration of a known chloracnegen wasn't
22 sufficient or the method that you used for this known
23 chloracnegen was not sufficient to produce chloracne,
24 correct, sir?

1 A. I think we said that in this report, sir.

2 Q. Isn't that a fact, sir?

3 A. That's true.

4 Q. So actually -- and your 2,4,5-T at the same
5 concentrations and apply in the same manner did not cause
6 chloracne, correct, sir?

7 A. Correct, sir.

8 Q. Now, Doctor, that really means then that you have
9 not reproduced that which is necessary with the known
10 chloracnegen to cause for acne, correct, sir?

11 A. Correct, sir.

12 Q. You haven't reproduced what might be necessary with
13 the end product 2,4,5-T to produce chloracne, isn't that
14 correct, sir?

15 A. That could be so, yes.

16 Q. There is no other conclusion that you can draw, is
17 there, sir?

18 A. Correct.

19 Q. So actually this tells you nothing about whether or
20 not 2,4,5-T can produce chloracne, does it, sir, you can't
21 conclude that it does or does not produce chloracne except
22 that you know at a level of 5 percent it doesn't cause
23 chloracne, but you also know at a level of 5 percent Halowax
24 doesn't cause chloracne?

1 A. Would you give me one question at the time so I
2 understand what you are talking about? One question at a
3 time.
4 Q. I think you can answer that one.
5 A. No, I can't. What is the question?
6 Q. Doctor, you know that the five percent Halowax
7 doesn't cause chloracne? You know the 5 percent 2,4,5-T
8 doesn't cause chloracne, isn't that right?
9 A. Correct.
10 Q. Correct, sir?
11 A. Correct.
12 Q. And also know that Halowax at greater
13 concentrations and applied in a different fashion will cause
14 chloracne, correct, sir?
15 A. Yes, we have shown that.
16 Q. So that -- you did show that in later experiments,
17 didn't you?
18 A. Yes, we did.
19 Q. But you didn't use the 2,4,5-T end product in your
20 later experiments, did you, sir?
21 A. No, we did not.
22 Q. So what you did you told the commission in 1956
23 that the test you performed with the 2,4,5-T end product did
24 not cause chloracne but you failed to tell them at that time

1 that the way you use the test with the known acnegen,
2 chloracnegen, Halowax, it also did not cause chloracne, you
3 didn't tell them that, did you, sir?

4 A. I believe we did, sir.

5 Q. Look and see, sir.

6 A. On Page 32, sir, we said we have applied the known
7 acnegen like Halowax 1014, which is composed of hexachloro
8 and pentachloro naphthalene in concentrations of 20 percent
9 for periods of six weeks. We have applied 2,4,5-T in the
10 same concentration to whom subjects for the same period of
11 time. We have also applied other fractions evolved in the
12 2,4,5-T fraction such as sodium trichlorophenate, which is
13 produced in the initial phase of the synthesis and we found
14 that we can produce acne locally in humans with Halowax and
15 the trichlorophenate.

16 Q. At what concentration of the Halowax, Doctor, 5
17 percent?

18 A. No, 20 percent.

19 Q. Yes, Doctor. At 5, you didn't tell them this, did
20 you, sir, that when you compared the 2,4,5-T at 5 percent and
21 Halowax at 5 percent that you did not get chloracne, did you,
22 sir? That was my question, Dr. Suskind, what you told them
23 was your later experiments at 20 percent it got chloracne,
24 but you never did test the end product at 20 percent, you

1 test the sodium trichlorophenate at 20 percent not the
2 2,4,5-T, isn't that correct, sir?

3 A. That's the nature of the experiment.

4 Q. Excuse me, is that a yes to my question that you
5 did not tell them that, sir?

6 A. They didn't ask that sir, no.

7 Q. Doctor, you didn't tell them that the Halowax at 5
8 percent just like the 2,4,5-T at 5 percent does not produce
9 chloracne, did you, sir?

10 A. I can't find it in here.

11 Q. Doctor, if you told them, it would be in there,
12 wouldn't it, sir?

13 A. It could be, yes, sir.

14 Q. No, it would be, not could be, Doctor?

15 A. But that would be of no importance.

16 Q. Doctor --

17 MR. CARR: Your Honor, would you ask the jury to
18 disregard the statement because it is of the greater
19 importance, Doctor.

20 THE COURT: The jury is ordered to disregard it.
21 It is not responsive to the question.

22 THE COURT: Mr. Carr, is this a good point to break
23 for lunch?

24 MR. CARR: Sure.

1 THE COURT: All right, we will break for lunch.
2 Gentlemen, could I see you at the bench for a minute,
3 please?

4 THE COURT: Mr. Heineman?

5 MR. HEINEMAN: Yeah, I'll be right there, Your
6 Honor, I'm making a note.

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

9 THE COURT: This witness again is going through
10 numerous times of volunteering things that are not responsive
11 to the question and not responding to the questions asked,
12 such as this last example which was a totally uncalled for
13 remark. I am ordering you as an officer of the court again
14 to talk to him. I would like not to have a repeat of Tuesday
15 when in the morning I also asked you to talk to him in the
16 afternoon when he was bad or worse than he has ever been
17 before. I think you have to exercise some control over the
18 witness. His performance Tuesday was outrageous, not as bad
19 this morning, but he's still not responding to the questions,
20 and I have had to ask him to do so a number of times. I
21 would prefer not to have to do it again this afternoon. We
22 will break until -- and I haven't told the jury about the
23 11th. I'll tell them. We will break until 1:15.

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

1 THE COURT: Ladies and gentlemen, we will break for
2 lunch now until 1:15. I don't think that I have told you
3 earlier, if I have, I'll just repeat it, that we will not be
4 able to hold Court on March 11th, and so mark that down,
5 please, if I haven't told you that already.

6 We will break until 1:15. The admonishments I gave
7 you earlier will apply during this break also.

8 (Following a recess for the lunch hour, these proceedings
9 were had in open court.)

10 Q. (by Mr. Carr) Doctor, referring back to the
11 conference commission hearing, you advised them, did you not,
12 that you got your chloracne from using the 20 percent
13 solution of Halowax, did you not, sir?

14 A. Yes, I did.

15 Q. And you told them that you applied the 2,4,5-T in
16 the same concentration as Halowax, didn't you, sir, but could
17 not get chloracne, didn't you, sir?

18 A. I don't believe I said that, sir.

19 Q. Look on Page 32 of your sworn testimony, Doctor.

20 A. 33, sir?

21 Q. 32. You said it, didn't you, Doctor?

22 A. Yes.

23 Q. It wasn't the truth, was it, Doctor?

24 A. I'm not really sure. I'll have to look at my

1 notes, sir.

2 Q. Doctor, you applied five percent 2,4,5-T to the
3 human skin and did not get chloracne. You never applied 20
4 percent 2,4,5-T to the human skin, isn't that correct, sir,
5 except for the recrystallized 2,4,5-T that had the contaminant
6 removed, isn't that correct, sir?

7 A. That's what we were referring to, sir.

8 Q. Isn't that correct, sir?

9 A. That's what we were referring to.

10 Q. Excuse me. Could you answer my question? It is
11 the truth you did not apply 20 percent concentration 2,4,5-T
12 to the end product, the material the men worked with, to
13 human skin, did you, sir?

14 A. That's true, sir.

15 Q. But you told the commission that you did, didn't
16 you, sir?

17 A. We said we applied 2,4,5-T itself and I believe
18 that in a previous hearing with the commission, we -- we
19 indicated --

20 Q. Doctor, please don't refer me to any previous
21 hearing of the commission where I don't have any record of
22 it?

23 A. Oh, yes, you do, 1754.

24 Q. Are you referring to the meeting that you had a

1 year before with some members of the Board?

2 A. Yes, that was the commission, sir.

3 Q. Doctor, that was some members of the Occupational
4 Disease Board in which you had a meeting with them. It was
5 not a hearing in any sense of the word, was it, sir?

6 A. It was a meeting with them which we --

7 Q. Excuse me, sir, it was not a hearing in any sense
8 of the word, was it, sir?

9 A. No, but we had an opportunity to discuss our
10 studies.

11 Q. Indeed discussed a number of things?

12 A. I said we discussed our studies, sir, that's in Mr.
13 Weger's record.

14 Q. Indeed it is, Doctor, but the point that I'm making
15 with you, you did not in this hearing under oath at the time
16 the litigants had their -- claimants had their claims to be
17 litigated and decided, you did not tell the commission that
18 the 2,4,5-T that you applied was a 5 percent solution, did
19 you, sir?

20 A. I believe we referred to this on Page 33 and 34,
21 sir.

22 Q. Doctor, on 33 and 34 you discussed the sodium
23 trichlorophenate that you use, that you applied, not the
24 2,4,5-T. You say there that you've not been able to induce

1 acne in humans with 2,4,5-T and you do not advise them on
2 that page or any other page that it's a five percent solution
3 that you are working with that could not produce chloracne
4 just like the known acnegen Halowax in that same solution
5 could not produce chloracne, isn't that correct, sir?

6 A. We are talking about a different experiment, sir.

7 Q. Excuse me, would you answer that question, please,
8 sir?

9 A. Yes, we did.

10 Q. Where did you tell them it was a 5 percent
11 solution?

12 A. When I talk about 2,4,5-T I'm not referring to the
13 operation, I'm referring to the specific compound 2,4,5-T
14 trichlorophenoxy acetic acid.

15 Q. You are referring there to the recrystallized or
16 purified 2,4,5-T, aren't you?

17 A. Yes.

18 Q. My question refers to end product 2,4,5-T in the
19 five percent solution, you did not tell the commission that
20 that end product 2,4,5-T that you applied was a five percent
21 solution, did you, sir?

22 A. We had no occasion to, no, we did not.

23 Q. You did not, did you, sir?

24 A. We did not.

1 Q. There is no question but what it was the 20 percent
2 solution of recrystallized 2,4,5-T, there is no question about
3 that, is there, sir?

4 A. I'll have to look.

5 Q. Mark this exhibit, please. Handing you now
6 Plaintiff's Exhibit 1756, ask you if that's not a memo dated
7 December 3, 1955, which refers to the recrystallized study
8 that you performed with a 20 percent solution of the
9 recrystallized 2,4,5-T?

10 A. Yes, it is.

11 Q. Doctor --

12 MR. CARR: I'll offer that exhibit, Your Honor.

13 THE COURT: Any objections?

14 MR. HEINEMAN: What's the number?

15 THE COURT: 1756.

16 A. Excuse me, do you have a better copy of this? I
17 can't read this.

18 MR. HEINEMAN: May counsel approach the bench,
19 Judge?

20 THE COURT: Sure.

21 (The following Side Bar conversation was had outside the
22 hearing of the jury.)

23 MR. HEINEMAN: I'm going to object to this, Your
24 Honor, on the basis that he hasn't laid a foundation with

1 this witness for its admission. I thought he asked the
2 witness if this was a report by him of --

3 MR. CARR: No.

4 THE COURT: No, I think he just asked whether it
5 was a report about the meeting on the study. That's what you
6 asked?

7 MR. CARR: That's correct, Your Honor.

8 MR. HEINEMAN: Okay. Well, that being the case I
9 do object to it on the basis of the lack of foundation laid
10 with this witness for the admission of the exhibits.

11 MR. CARR: You do agree this is a Monsanto
12 document, do you not, sir, prepared by Monsanto in part of
13 their study? It's taken from your microfilms that you gave
14 us.

15 MR. HEINEMAN: I agree that this is a document
16 produced to Mr. Carr by Monsanto Chemical Company.

17 MR. CARR: And it was a part of the record of your
18 company, isn't it?

19 MR. HEINEMAN: I'm not here to make the record for
20 Mr. Carr, Your Honor. If Mr. Carr wants to establish a
21 foundation through the witness then he may do so, and I
22 object on the basis that he has not.

23 MR. CARR: I think I've established an adequate
24 foundation with counsel, Your Honor.

1 THE COURT: Objection is overruled.

2 MR. CARR: It's a bad copy, but on the last page
3 it's got Monsanto Chemical Company. You can make it out.

4 THE COURT: Just barely, not the best copy in the
5 world, but it's -- I guess that's what we have got. Okay.
6 That's over your objection.

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

8 Q. (by Mr. Carr). Doctor, I think you stated you do
9 recognize this as a memo pertaining to a meeting you attended
10 in which you discussed your testing of this recrystallized
11 2,4,5-T and other materials, isn't that correct, sir?

12 A. Yes.

13 Q. And such a meeting did take place, and the rest of
14 your knowledge -- this is a memo of that meeting, is it not,
15 sir?

16 A. To the best of my knowledge, it appears to be a
17 memo of that meeting, sir.

18 Q. All right. Now, Doctor, the essence of the
19 substance of your appearance before the compensation
20 commission in November of 1956 was to tell them that you
21 could not get chloracne with the end product 2,4,5-T, but
22 that you could get chloracne with the intermediate product,
23 that is sodium trichlorophenate, isn't that correct, sir?

24 A. Yes.

1 Q. And you at no time told them that you could get
2 chloracne with the end product 2,4,5-T in the 20 percent
3 concentration, isn't that correct, sir?

4 A. Well, I believe on Page 33 we do that, sir.

5 Q. Well, Doctor, on Page 33 you are either referring
6 to the 5 percent solution that you used in -- reported on
7 July of 1954 that the jury has in front of them, or you are
8 referring to the 20 percent recrystallized solution and not
9 the end product as the workers worked with it and as it's
10 sent out to the public, isn't that correct?

11 A. You are referring -- we are referring to specific
12 2,4,5-T.

13 Q. Would you answer my question? Would you read the
14 question?

15 (Court Reporter read back the previous question.)

16 A. You mean referring to both -- we are referring to
17 both, both 5 percent and 20 percent, the recrystallized
18 doesn't produce chloracne, that's what we said.

19 Q. No, Doctor, you didn't tell them anywhere that it's
20 recrystallized 2,4,5-T.

21 A. We say it's the specific compound which I infer
22 that's the pure compound, not the independent product.

23 Q. Are you inferring it's -- refer it's the pure
24 compound?

1 A. Specific -- may I read it? When I talk about the
2 2,4,5-T I'm not referring to the operation, I am referring to
3 the specific compound 2,4,5-T trichlorophenoxy acetic acid,
4 and we have not been able to induce acne in humans with that
5 specific compound.

6 Q. Doctor, don't you --

7 A. It's quite clear in that statement, sir.

8 Q. Doctor, don't you recall that on Page 51 you are
9 talking about that it's the final product, on Page 52?

10 A. 2,4,5-T is the final product, but it's the pure
11 final product we are talking about.

12 Q. Oh, no, Doctor, the way Monsanto did it there is no
13 pure final product 2,4,5-T, is there, sir?

14 A. But we were interested in it.

15 Q. Excuse me. Was there, sir?

16 A. There is a final product, pure 2,4,5-T, if you make
17 it that way.

18 Q. Made by Monsanto in 1949, '53, '56, 1960, '65, '68,
19 was there any 2,4,5-T made by Monsanto which did not contain
20 TCDD?

21 A. I don't know, sir.

22 Q. Do you have any knowledge of any 2,4,5-T made by
23 Monsanto that did not contain TCDD?

24 A. I believe that there were -- there were, and this

1 was told to me, sir, that there were analyses of reserve
2 compound, reserve 2,4,5-T and some of them came up with less
3 than the detectable amount, which is equivalent to zero of
4 TCDD.

5 Q. Who told you and where is the document that tells
6 you that Monsanto ever made any 2,4,5-T that did not contain
7 TCDD in detectable levels?

8 A. I said I was told that, sir.

9 Q. You have no document to that effect?

10 A. No, I don't --

11 Q. Documents we have -- you've seen the document that
12 we have on the production of 2,4,5-T by Monsanto, have you
13 not, sir?

14 A. I haven't seen your documents, sir.

15 Q. You have seen the documents made by Udell and
16 others and they have been in evidence and they will be in
17 evidence again showing that the 2,4,5-T produced by Monsanto
18 had TCDD in the levels of up to 55 parts per million, you do
19 recall that, don't you, sir?

20 A. I don't recall that bit of information, because I
21 haven't seen that information, sir.

22 Q. Doctor, we showed it to you during the course of
23 this trial.

24 A. You told it to me, sir.

1 Q. Well, I'll show it to you as we move along.

2 A. Well, may I see it, sir?

3 Q. Yes, you may.

4 A. Good.

5 Q. Have you ever seen any document that shows that the
6 2,4,5-T made by Monsanto had levels other than -- of TCDD
7 other than what I've told you, sir?

8 A. Oh, yes, sir.

9 Q. Where are those documents?

10 A. I don't have the documents, sir, but I was told
11 that there were --

12 Q. Doctor, I asked you not what you were told, because
13 a lawyer or corporate officer or somebody in order to
14 influence you to a particular opinion could tell you
15 anything. I want to know have you seen the document? Have
16 you seen a record of what they in fact found in their
17 2,4,5-T?

18 A. I have not.

19 MR. HEINEMAN: Excuse me, Doctor, please. Your
20 Honor, may counsel approach the bench?

21 THE COURT: Sure.

22 (The following Side Bar conversation was had outside the
23 hearing of the jury.)

24 MR. HEINEMAN: I object again to one of the

1 interminable number of Mr. Carr's jury speeches that preceded
2 the question. I ask it be stricken. I ask the jury be
3 instructed to disregard it.

4 MR. CARR: Your Honor, the witness clearly was not
5 responding to my question. I asked him had he seen any
6 document. He persisted in telling us what someone told him.
7 I think my comments were called for and precipitated by what
8 the witness said.

9 MR. HEINEMAN: Do I understand Mr. Carr's position
10 for the record to be that he's entitled to say anything he
11 wants in response to a response.

12 MR. CARR: I'm entitled to correct what the witness
13 says when he is misleading the jury.

14 MR. HEINEMAN: You are the one misleading the jury,
15 Mr. Carr and I object to it.

16 THE COURT: Objection is overruled.

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

18 Q. (by Mr. Carr) Now, Doctor, who was it that told
19 you the 2,4,5-T produced by Monsanto contains, contained no
20 TCDD?

21 A. What I said, sir --

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

23 A. Dr. Roush.

24 Q. And when did Dr. Roush tell you that, sir?

1 A. I'm not sure of the date but I think when we asked
2 him it must have been at the time following our morbidity
3 study.

4 Q. Doctor, didn't he -- didn't you ask him in 1982 for
5 a report as to whether or not there was the levels of the
6 TCDD in the Monsanto product?

7 A. Yeah, I believe so.

8 Q. And didn't he send you a letter dated December of
9 1982, and it will come shortly, didn't he tell you, sir, that
10 there were always levels of TCDD in the product?

11 A. No, I believe in that letter, if my recollection is
12 correct, that there was some batches, reserve batches, in
13 which the level was below the sensitivity of the method.

14 Q. Now, Doctor, are you saying that he told you that
15 in a letter, sir?

16 A. Yeah, there could have been a letter to that. We
17 also discussed it on the phone.

18 Q. That's in another file at the office. But we will
19 get to that, Doctor. And, you believe he told you orally
20 then, and it's also in a document, that there were levels of
21 2,4,5-T where there was no TCDD?

22 A. If I recollect, not that there wasn't, but it was
23 below the level of detection.

24 Q. Doctor, can't be detected then it's not there?

1 A. No, that's not so.

2 Q. As far as you know, if you can't detect it, you
3 don't know that it's there?

4 A. It could be in a part, fraction of a part per
5 trillion and you couldn't detect it.

6 Q. That's speculating, isn't it?

7 A. No.

8 Q. Are you saying that they told you they produced
9 2,4,5-T from '48 to '69 that didn't have detectable levels of
10 TCDD?

11 A. No, they didn't do any analyses in '48 and '49,
12 sir, only in the fifties.

13 Q. You didn't understand my question. I asked you are
14 you saying that they produced, that you were told they
15 produced 2,4,5-T at Nitro during the period from '48 to '69
16 which did not contain detectable levels of TCDD?

17 A. Some batches.

18 Q. That's what you were told by Dr. Roush?

19 A. Yes.

20 Q. Or at least that's what you think now you were
21 told?

22 A. No, I can recall that, sir.

23 Q. And you believe it was also put in a document, sir?

24 A. That I can't recall whether it's in the document,

1 but I believe it is.

2 Q. Well, Doctor, and even that is an aside we can
3 straighten that out and we can demonstrate to you when I get
4 that file. I didn't bring all the files with me, but we will
5 get to that and there is in evidence, it's by Udell, Jerry,
6 it would be about 1400 something.

7 MR. CARR: Your Honor, we will get to that later.
8 I don't have it right at the tip of my finger just right now,
9 but we do have it and we will demonstrate at that point.
10 Doctor, the substance you knew for practical purposes and
11 for, except if you insist upon a few isolated instances where
12 it was not detected, you knew that TCDD or this acne causing
13 contaminant was in the 2,4,5-T being produced by Monsanto,
14 did you not, sir?

15 A. If you are talking about the substance that caused
16 --

17 Q. That's what I'm talking about.

18 A. Yes, we knew that it could be there.

19 Q. But you did not report that to the commission, did
20 you, sir?

21 A. We didn't report what, sir?

22 Q. Just what I said to you, sir, you did not report to
23 the commission that the end product 2,4,5-T contains this
24 acne causing contaminant, did you, sir?

1 A. No, I think they knew it.

2 Q. Well, Doctor, did you tell them -- where did you
3 tell them that it did, because at the commission what you
4 told them was that it did not contain it. Everything you
5 told them about 2,4,5-T the end product, the recrystallized,
6 if you want to call it recrystallized was that it did not
7 induce chloracne, isn't that correct?

8 A. Yes, but they had the reports --

9 Q. Isn't that correct?

10 A. What is correct, sir?

11 Q. Could you read the question?

12 (Court Reporter read back the previous question.)

13 A. No, that's not correct.

14 Q. Doctor, would you show me where you told them in
15 your testimony at this hearing, where you told them that the
16 2,4,5-T end product would cause chloracne?

17 A. That was one of the parts of your question, sir.

18 Q. Doctor, my question is, will you show me in this
19 report, sir, where you told them that in the commission's
20 testimony, in the transcript that you have, will you show me
21 where you told them that the end product 2,4,5-T will cause
22 chloracne, the way the men worked with it.

23 A. I believe on Page 52.

24 Q. 52?

1 A. 52, this is a weed killer used all over the world,
2 large quantities without the report of any toxic reactions or
3 skin reactions from it. So that we have to say that evidence
4 is negative evidence in its useage and that 2,4,5-T is
5 certainly not acnegenic or toxic in the way it is used as a
6 weed killer.

7 Q. So that's telling them that it's not chloracne,
8 doesn't cause chloracne, doesn't it, sir?

9 A. The final product.

10 Q. My question is --

11 A. The final product. When --

12 Q. My question, Dr. Suskind, is where did you tell the
13 commission that the 2,4,5-T produced by Monsanto causes
14 chloracne? You told them on that page that it does not cause
15 chloracne. Isn't that correct, sir?

16 A. Yes, from our experiments and from use.

17 Q. And so the -- what you gave them at that hearing
18 under oath was that 2,4,5-T being produced by Monsanto does
19 not cause chloracne, isn't that correct, sir?

20 A. I did say that in the circumstances in which it is
21 used.

22 Q. And you at no time told them that it could cause
23 chloracne, did you, sir?

24 A. I'm unable to find it in this record, but we did

1 provide them with the 1953 report and in the '53 report there
2 are people exposed to 2,4,5-T who did appear to get
3 chloracne, and they had this '53 report.

4 Q. Doctor, they may have had that report although it
5 doesn't show in this record that they had it, my question to
6 you, sir, is what you wanted them to believe was that the way
7 the men were working with this 2,4,5-T that they got
8 chloracne because of a particular accident, one in a thousand
9 accidents that would occur, this autoclave blew up, this
10 explosion, and that's the reason these men got the chloracne,
11 because they were working with the sodium trichlorophenate
12 and it was the sodium trichlorophenate that you proved in a
13 laboratory causes chloracne and that the 2,4,5-T that you
14 worked with did not cause chloracne. The 2,4,5-T the men
15 worked with did not cause chloracne, isn't that correct, sir?

16 A. That is completely incorrect, sir.

17 Q. Would you point out for me in the transcript of
18 your testimony where you told them anything except what I've
19 suggested to you that you said?

20 A. All we said in here --

21 Q. Excuse me. My question is to point out where you
22 told them anything other than what I've said that you did say
23 indeed?

24 A. You -- we said that the --

1 Q. Point it out to me, please, in the record, where
2 you told them, sir? It's only in two places where you even
3 discuss it, that's Page 32, 33 and Page 51, 52.

4 A. Let me see that for myself, sir, please. In those
5 instances we were not talking about the --

6 Q. Doctor, my question is for you to find, if you
7 will, please, where you told the commission anything other
8 than what I suggested what you told them?

9 A. Well, it's in the record here.

10 Q. Please point out out to me, sir, where it is, what
11 page is it that you tell them?

12 A. You indicate we have not been able to induce acne
13 in humans with 2,4,5-T.

14 Q. Yes.

15 A. And when I talk about 2,4,5-T I'm not referring to
16 the operation.

17 Q. Right. Doctor, so far you've told them that it
18 doesn't produce, your 2,4,5-T doesn't produce chloracne?

19 A. Itself, right.

20 Q. Now, tell me where you told them anything other
21 than the 2,4,5-T the men worked with doesn't cause chloracne,
22 that the thing that causes chloracne is what escaped in this
23 accident?

24 A. We didn't test the final product in humans, sir.

1 Q. Doctor, you said you did.

2 A. No, we tested the 2,4,5-T.

3 Q. You told -- you did test the final product, a 5
4 percent solution?

5 A. Recrystallized.

6 Q. Sir?

7 A. Recrystallized.

8 Q. No, in July of '54 it was not recrystallized, sir.
9 July of '54 was a 5 percent solution of the 2,4,5-T product
10 used by the men, recall that, sir?

11 A. On Page 2 of the letter, sir --

12 Q. Doctor, are you looking at the transcript?

13 A. 1754.

14 MR. CARR: Excuse me, would you direct the witness
15 to point out to me in the transcript, as I've asked him to
16 do, where he told the commission anything other than what
17 I've said that he said.

18 THE COURT: Doctor, I think the question was
19 directed to the transcript alone. Please restrict your
20 answers to the transcript?

21 A. I don't find anything specific in that transcript
22 to answer your question, however, they had this data, this
23 '53 report and they knew exactly what --

24 Q. Where does it show, sir, that they had the report?

1 workers?

2 A. Yes, but it needs an explanation, sir. We did
3 follow the workers.

4 Q. Doctor, please just answer my question, sir. You
5 said in the Nitro court what you wanted the Nitro Court to
6 believe, and you have said in this court what you want us to
7 believe?

8 A. No, sir.

9 Q. Oh, you haven't, sir?

10 A. No, sir.

11 Q. Are you saying things in court that you don't want
12 us to believe?

13 A. I do want you to believe what I said.

14 Q. You want us to believe what you are swearing to
15 under oath?

16 A. Yes, in 1953 we followed these people.

17 Q. If you don't mind, just answer the question.

18 A. I can only answer the question, sir, by being
19 correct.

20 Q. Doctor, I haven't asked you a question yet. You
21 want us to believe what you swear to here, don't you, sir?

22 A. I do indeed.

23 Q. And you wanted the Federal Court in Nitro in
24 Charleston, West Virginia, to believe what you said there?

1 A. Yes, sir.

2 Q. Now, it may be, Doctor, that you were mistaken at
3 one place or the other, isn't that correct, sir?

4 A. Mistaken perhaps in language.

5 Q. It may be that you were mistaken at one place or
6 the other, isn't that right, sir?

7 A. No, sir.

8 Q. It isn't possible that you were mistaken, sir?

9 A. No, sir.

10 Q. Doctor, do you really believe that you are
11 incapable of making a mistake?

12 A. No, sir, I am capable of making a mistake.

13 Q. May I finish my question?

14 MR. CARR: Your Honor, would you ask the witness
15 again to let me finish my question?

16 THE COURT: He wasn't finished, Doctor. Please
17 listen. You can tell whether he's finished or not.

18 Q. (by Mr. Carr) Doctor, do you really believe that
19 you are incapable of making an inaccurate statement in the
20 Federal Court in Charleston, West Virginia? Do you really
21 believe that, Dr. Suskind?

22 A. This is --

23 Q. Dr. Suskind, please answer my question. Doctor --

24 A. What is the question? You are asking three

1 questions.

2 Q. Read the question.

3 COURT REPORTER: "Doctor, do you really believe that
4 you are incapable of making an inaccurate statement in the
5 Federal Court in Charleston, West Virginia?"

6 A. I did not make an inaccurate statement.

7 MR. CARR: Your Honor, would you direct the witness
8 to answer my question?

9 A. I am answering it, sir.

10 THE COURT: That was not responsive. That was not
11 the question that was asked. Please read the question
12 again.

13 COURT REPORTER: "Doctor, do you really believe that
14 you are incapable of making an inaccurate statement in the
15 Federal Court in Charleston, West Virginia?"

16 A. Yes, sir.

17 Q. And do you believe that you are incapable of making
18 an inaccurate statement in this court, sir?

19 A. Yes, sir.

20 Q. Doctor, are there any other persons that you know
21 of?

22 A. May I ask -- would you read that back to me?

23 THE COURT: Just listen to the question.

24 Q. Listen to my question. Doctor, are there any other

1 persons that you know of that you believe are similarly
2 incapable of making an inaccurate statement?

3 A. I don't know, sir.

4 Q. Are you the only person that you know of that you
5 believe that is incapable of making an inaccurate statement?

6 A. No, sir.

7 Q. There are others -- who are the others that you
8 believe are incapable of making inaccurate statements?

9 A. I can't tell you here, sir, can't name them. Do
10 you want me to name them?

11 Q. But you do know such persons, do you, sir?

12 A. In a general way, I suppose I do. Sure. Anybody
13 can make a mistake, but in this instance I didn't make a
14 mistake.

15 Q. I'm not asking you for that, I'm asking you to name
16 the persons.

17 A. You said who.

18 MR. CARR: Your Honor, would you direct the witness
19 to wait until I finish the question.

20 THE COURT: Doctor, you keep jumping in in the
21 middle of the question. You can't answer unless you've heard
22 the whole thing. Please wait until the end of the question
23 so you can respond.

24 Q. (by Mr. Carr) Doctor, do you understand that I

1 asked you previously if you knew of such persons to name them
2 who are incapable of making an inaccurate statement?

3 A. That's what I thought you said, sir.

4 Q. You thought I did say that?

5 A. Yes.

6 Q. And, who are these persons that you know?

7 A. I can't give you any names.

8 Q. Name me a single person, that you know, sir, other
9 than yourself who is incapable of making inaccurate
10 statements?

11 A. I cannot give you that answer, sir, I don't --

12 Q. You don't know of any, do you, Dr. Suskind?

13 A. Not offhand.

14 Q. Think about it. Just don't be offhand. I want you
15 to think about it and name the person that you believe is
16 incapable of making an inaccurate statement other than
17 yourself?

18 A. In this instance I didn't make an inaccurate
19 statement.

20 Q. Doctor, would you please listen to my question and
21 answer it, sir? Doctor, could you name the person that you
22 believe is incapable of making an inaccurate statement?

23 A. I cannot, sir.

24 Q. Other than yourself?

1 A. I cannot, sir.

2 Q. All right. Doctor, do you recognize that either
3 you made an inaccurate statement in this court or the Federal
4 Court, or you deliberately lied in this court or in the
5 Federal Court, do you understand that, sir?

6 A. No, sir.

7 Q. Doctor, you were either mistaken here or there in
8 the statements you made here or there because they are
9 directly contradictory, or you deliberately lied. Now, I'm
10 giving you the option, sir, to make your decision. Which is
11 it that you did, was it a mistake here or there or was it a
12 deliberate lie one place or the other?

13 A. It was neither, sir.

14 Q. It was neither a mistake nor a lie?

15 A. That's right.

16 Q. It was the truth and accurate in both places?

17 A. Absolutely, sir.

18 Q. All right. You believe the truth to be that you
19 did follow the workers and you believe the truth to be that
20 you did not follow the workers, is that correct?

21 A. Yes, with explanation.

22 Q. Excuse me. Is that your statement, sir?

23 A. Yes, sir, with explanation.

24 Q. And, Doctor, now you want to explain how now that

1 you can be telling the truth in both places? Is that what
2 you want to do?

3 A. Yes.

4 Q. Would you please do that?

5 A. In the case of the 1953 group, what we meant when
6 we followed them was that we had histories of that group
7 which we felt were fairly accurate histories of that group,
8 so that that in a sense was a follow-up to the point where we
9 examined the '53. And in that sense, we followed them, sir.
10 In that sense we followed them. A medical history, a good
11 medical history is a way, and a good occupational history,
12 which I believe we had, is a way of following these patients
13 from the time that their problems started until we examined
14 them. So that what we have said is that we followed these
15 1953 people for that period of time. Some of them for four
16 years.

17 Q. Doctor, that's fine. That explains the statement
18 that you made under oath in the Federal Court that you did
19 indeed follow these workers. Now, if you will, explain the
20 statement in this court where you said you did not follow the
21 workers?

22 A. Well, following in the sense that we started four
23 years before with the 36, we did not. We did not follow
24 those workers from 1949 until 1953, not until we examined

1 them in 1953, and that explains my statement to the Court
2 that we followed them. But, if you are asking --

3 Q. No, what I'm asking you now is -- Excuse me --

4 A. You are asking me --

5 Q. Excuse me. May I interrupt you, Doctor. You
6 explain how you had indeed followed these workers and how you
7 swore to tell truth that you followed the workers. Now, I'd
8 like you to explain to us how you did not follow the
9 workers. Why it is the truth in the Federal Court that you
10 followed the workers, but it is the truth in this court that
11 you did not follow the workers? Could you explain that now
12 please, sir?

13 A. We did not examine these people, that's what I mean
14 by following. We did not examine these people during a
15 period of four years.

16 Q. Doctor, you use exactly the same language, you said
17 in the Federal Court affidavit that you followed them and in
18 this case you said you did not follow them. You didn't use
19 the word examine. You said in both cases you used the word
20 follow.

21 A. That was my intent, sir.

22 Q. Your intent was what, to say I examined them, I did
23 not examine them for four years?

24 A. During the period of four years, yes, sir.

1 Q. Then, Doctor, what you did then when you stated
2 here that you did not follow them was that you made a
3 mistake, you were inaccurate, weren't you, sir?

4 A. If the language sounds inaccurate, yes, but it has
5 an explanation.

6 Q. Well, Doctor, what I'm asking you is you've used
7 exactly the same words to describe the same occurrence in two
8 places. In front of the one word you use the word not and
9 didn't use the word not in the other court. The same word
10 was being used, Doctor. Now either you misused the word here
11 or you misused the word there, isn't that correct, sir?

12 A. Correct.

13 Q. So you did make the mistake here then, is that what
14 you are saying, sir?

15 A. In not explaining completely, yes, sir.

16 Q. You did make a mistake?

17 A. In not explaining it completely.

18 Q. So you are not a perfect human being?

19 A. You are absolutely right, I'm not perfect.

20 Q. Thank you, Doctor. Now may we pass to -- you did
21 indeed follow these 36 persons and you were concerned about
22 these 36 persons and you looked at their medical records over
23 the period of four years, didn't you, sir?

24 A. During our '53 examination we did that, yes.

1 Q. Doctor, no, you said over a period of four years.
2 You are not saying during the '53 examination. I'm asking
3 you, you did indeed follow these 36 workers over this period
4 of four years in the sense you have just described in the way
5 you told the Federal Court, didn't you, sir?

6 A. No, sir.

7 Q. You didn't follow them?

8 A. We followed them by getting the medical history and
9 the work history, that's what I meant by followed, sir.

10 Q. Doctor, did you follow the workers just the way you
11 explained it, the way you explained your Federal Court
12 statement? Did you indeed follow these workers over this
13 period of four years?

14 A. In the sense that we examined them in 1953.

15 Q. Can you answer my question, please? Did you or did
16 you not follow these workers as you have explained following
17 to be?

18 A. Yes, in the sense --

19 Q. Doctor, you were concerned about their health, you
20 did conceive that it was important to know what happened to
21 these men in that four-year period of time, didn't you, sir?

22 A. Yes.

23 Q. And, Doctor, that indeed was the subject of your
24 1978 letter to Monsanto because you were concerned about

1 these so-called common ailments, weren't you, sir, over this
2 period of four years?

3 A. As a scientist we were interested in knowing what
4 happened to those people.

5 Q. Yes, thank you, Doctor. Now, Doctor, with regard
6 to your June 22nd, 1956 memo, do you have Plaintiff's Exhibit
7 1752 there?

8 A. Yes, sir.

9 Q. Now, Doctor, you recall you told us that you had no
10 recollection of this meeting?

11 A. Not until you presented this to me, sir.

12 Q. Well, didn't you tell us even then that you had no
13 recollection of what took place?

14 A. I may have indicated that I had no recollection,
15 but, in reviewing -- in reviewing this letter, much of what
16 this letter says came back to me so that I can tell whether
17 or not this is an accurate description of what actually
18 happened.

19 Q. And, Doctor, when did it come back to you?

20 A. In just reading over this, which I haven't seen in
21 a long time.

22 Q. Had not come back to you any time before that,
23 then?

24 A. Well, I hadn't seen it before that, sir.

1 Q. You had never seen it before I handed it to you?
2 A. No, I saw it in 1983.
3 Q. Well, didn't it --
4 A. That's three years ago.
5 Q. When you saw it in 1983, didn't it refresh your
6 memory then?
7 A. Yes, it did, and it's now refreshing my memory now.
8 Q. Doctor, in 1983 when you saw it, you said the
9 document didn't refresh your memory, did you not, sir, and
10 now you are telling us you thought it did refer your memory?
11 A. No, in 1983 it also refreshed my memory. I said
12 that just a moment ago, sir.
13 Q. I know you said that just a moment ago, Doctor. Do
14 you recall when you were given that document in 1983, what
15 time in 1983 was it you got that document?
16 A. I really can't recall, sir.
17 Q. Let me refresh your memory, sir, it was the time
18 you had a deposition taken on the 22nd day of December, 1983,
19 in the case of the wives of the railroad workers, wives and
20 children of the railroad workers who were suing Monsanto for
21 problems they had resulting from the dioxin exposure, do you
22 recall that, sir?
23 A. I do now that you've said it, sir.
24 Q. And, sir, do you recall at that meeting that you

1 said you could not recall any meeting and then there was an
2 exhibit handed to you, the exhibit dated of the conference
3 June 22nd, 1956, do you recall that, sir?

4 A. Yes, sir.

5 Q. Do you recall this question being asked you.

6 MR. HEINEMAN: Where are you?

7 MR. CARR: Page 15 of the deposition taken on
8 December 22nd, 1983, in Cincinnati, Ohio.

9 A. Who took that deposition, sir?

10 Q. (by Mr. Carr) The plaintiffs of the --
11 representing the dependents, the wives and children of the
12 railroad workers who were involved in the Sturgeon spill.

13 A. Who took the deposition, sir?

14 Q. On Page 15 this question. The Plaintiffs'
15 attorneys took it.

16 A. Who was he, sir?

17 Q. Don't you know who he is?

18 A. No, I can't remember, sir.

19 Q. Makes no difference, does it?

20 A. I think it does.

21 Q. How so?

22 A. Well --

23 Q. Does it make any difference whether or not you told
24 the truth, whether you know the Plaintiffs' attorney or not,

1 aren't you going to tell the truth, Dr. Suskind, no matter
2 who is asking the questions?

3 A. That's not the question, sir.

4 Q. I know, the question is this --

5 A. I was curious to know about it. I don't have the
6 document before me.

7 Q. Doctor, I'm not concerned about your curiosity. I
8 would like you not to change the subject. The subject is,
9 sir, when you were handed Plaintiff's Exhibit 1752 at that
10 time, which is the conference of June 22nd, 1956, wasn't this
11 question asked you? Question: "Does the document refresh
12 your memory about the conference of June 22nd, 1956?" And
13 wasn't your answer, "It does not."

14 MR. HEINEMAN: What page are you on?

15 MR. CARR: Page 15, Counsel.

16 MR. HEINEMAN: May I see it? I don't see that
17 question on Page 15.

18 MR. CARR: Well, my pages aren't numbered. I
19 numbered them.

20 MR. HEINEMAN: Oh. I've got the one numbered by
21 the Court Reporter.

22 MR. CARR: As you can see my corners are cut off,
23 so you keep on going, you'll find it. Let's start from the
24 beginning, Counsel. You've got a different deposition,

1 Counsel. Let's start from the beginning. You have just the
2 cross examination. This is -- I have the evidence deposition
3 that was taken. You've got the discovery deposition,
4 Counsel. There were two depositions taken that day. I think
5 you just skipped it.

6 MR. HEINEMAN: Okay. Are you on Page 15 now?
7 There we are, thank you.

8 MR. CARR: You're welcome.

9 Q. (by Mr. Carr) Wasn't that your answer to that
10 question at that time, sir?

11 A. Yes, it was. I was handed that thing and I said I
12 didn't.

13 MR. CARR: Your Honor, would you direct the witness
14 to respond to the question, not go beyond it?

15 A. Yes, sir.

16 THE COURT: That is an appropriate response,
17 Doctor. Thank you.

18 Q. Doctor, hear you told us that seeing the document
19 then refreshed your memory then, did you not, sir?

20 A. Yes.

21 Q. But at that time you told the Plaintiffs' attorney
22 that it doesn't refresh your memory, didn't you, sir?

23 A. Because I'd never seen that before, sir.

24 Q. Excuse me, did you not tell him at that time, sir?

1 A. Yes, sir, that's what I told him, and it was the
2 truth.

3 Q. And he examined you about -- didn't examine you
4 about the contents of it because it didn't refresh your
5 memory. Do you recall that, sir?

6 A. No, I don't.

7 Q. Doctor, since it was not a memo that was in
8 evidence at that time, unless it refreshes your memory, you
9 know that the counsel may not inquire of its contents, you
10 know that, don't you, sir?

11 A. No I don't. I'm not a lawyer, so I can't --

12 Q. Well, in any event you do know that at that point
13 in time because it didn't refresh your memory you were not
14 subjected to cross examination on the contents of that
15 record, were you, sir?

16 A. I don't know, sir.

17 Q. Well, why don't you look at it and find out if you
18 were asked any questions about that, because at that time you
19 said it didn't refresh your memory.

20 A. Where is that, sir?

21 Q. The question is right here, "Does the document
22 refresh your memory about the conference of June 22nd, 1956?
23 Answer: It does not."

24 A. That's right, sir.

1 MR. HEINEMAN: Your Honor, may counsel approach the
2 bench?

3 THE COURT: Sure.

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

6 MR. HEINEMAN: I object to this line of questioning
7 as being misleading to the witness and to the jury. There is
8 no objection made here. All this says is that Pratt didn't
9 go on with it.

10 THE COURT: Right.

11 MR. HEINEMAN: He didn't go on. Doesn't say I
12 can't go on with it.

13 MR. CARR: You know good and well he can't go on
14 with it.

15 MR. HEINEMAN: Listen, you've taken depositions
16 with Paul Pratt.

17 MR. CARR: It's a Monsanto document, it's not in
18 evidence, cannot be interrogated about it unless it --

19 MR. HEINEMAN: There is no explanation.

20 THE COURT: Whoa, whoa, whoa, whoa. One at a time,
21 gentlemen. There is nothing misleading about what just went
22 on. Nothing at all.

23 MR. HEINEMAN: It implies that that's the reason
24 Pratt didn't go on with it. There is nothing said in the

1 record that's that's the reason Pratt didn't go on with it
2 and Mr. Carr and I know Paul Pratt well enough that there is
3 no way to predict why he does things in depositions.

4 MR. CARR: That isn't true. I assume he follows
5 the rules of evidence.

6 THE COURT: Wait a second. Now wait a second.
7 Regardless of whatever your personal opinion of him is, don't
8 you operate under the presumption that he's going to follow
9 the evidentiary and procedural rules. Objection is
10 overruled.

11 MR. HEINEMAN: That Mr. Pratt's going to follow
12 them? He has shown me otherwise on a number of occasions.

13 THE COURT: Did he show you otherwise in this
14 deposition?

15 MR. HEINEMAN: I don't know, it's been so long ago,
16 but I get you a dollar that he did at some point.

17 THE COURT: Your bet notwithstanding, I will engage
18 in that presumption and on the basis of that presumption
19 there is nothing misleading about what Mr. Carr said.

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

21 Q. (by Mr. Carr) Doctor, following that refreshment
22 of your recollection, you then in this court when I suggested
23 to you that there was a meeting in June of '56 about this
24 subject, you said again that you had no recollection of it,

1 did you not, sir?

2 A. I did, sir.

3 Q. Yes. Doctor, had you forgotten it then in the
4 meantime?

5 A. I really believe so, sir.

6 Q. You really believe you had forgotten it in the
7 meantime?

8 A. Yes.

9 Q. Hadn't entered your mind again?

10 A. Precisely.

11 Q. Doctor, then why is it in the medical court case
12 under direct examination at Page 27202 you said in response
13 to questions, "I recall a meeting in 1956. This report was
14 discussed thoroughly at a meeting June 22nd, 1956." Why did
15 you say that in response to Monsanto attorneys' questions in
16 the Federal Court on that page?

17 A. Because in the discussion with the Monsanto
18 attorneys, this thing turned up again.

19 Q. Doctor, would you want to look at your direct
20 examination and see if it wasn't that you said in response to
21 questions on page 27202, "Question: All right." Referring
22 to your studies with the Diamond Alkali material and the
23 Monsanto material. "All right, sir, were there any systemic
24 effects?" And wasn't your answer, "No, there were no

1 systemic effects. Question: Was this study delivered to
2 Monsanto? Wer the results of it given to Monsanto? Answer:
3 Yes, it was. Question: And when, if you know? I should say
4 when and to whom, if you know? Answer: Yes, I'm trying to
5 recall when there was a conference on it. And I believe it
6 was some time in 1956, I believe. Question: All right, sir,
7 did you make any recommendations based on the results of this
8 study? Answer: I have, and if I may go back and answer the
9 last question, I believe that this report was discussed
10 thoroughly at a meeting in 1956, June 22nd, 1956." And the
11 Court asked you, "That was a meeting with whom, Doctor?" And
12 you said, "This was a meeting with the people who
13 participated in the study, Dr. Fan, Dr. Wallace of Monsanto,
14 Nitro, Mr. Lukey, Mr. Godfrey, Mr. Wheeler, I think Paul
15 Bolles was there, and Mr. Weger." The Court said, "What was
16 the date?" And you said, "June 22nd, 1956." You recall all
17 those things, sir?

18 A. Yes, well, it's in the record.

19 Q. Do you recall all those things, sir?

20 A. Do I --

21 Q. Do you recall that this is what was asked you and
22 these are the answers that you gave?

23 A. Yes, I do now.

24 Q. And at that time you volunteered the statement that

1 there was a meeting in June 22nd, 1956, did you not, sir?

2 A. Yes, sir.

3 Q. And, Doctor, you didn't remember it when the
4 Plaintiffs' attorney asked you about it in late 1983, and you
5 said it didn't even refresh your recollection, and then in
6 1985, you answered in the Federal Court that you did recall
7 it and you recalled the details, you recalled who was there.
8 The memo hadn't been handed to you at that time, you hadn't
9 been given that exhibit, you recalled who was there and the
10 details of it, and then in this court again you say I have no
11 recollection of it, I have no memory of it, because again the
12 Plaintiffs' attorney in a case wants to ask you some
13 questions about it. Don't you find that strangely
14 coincidental, Dr. Suskind?

15 A. No, sir, not at all.

16 Q. All right.

17 A. Not at all.

18 Q. Dr. Suskind, with regard to this meeting, sir, the
19 June 22nd memo as we have gone into earlier, you do say at
20 that time that you strongly urge that consideration be given
21 to publication of all of the experimental results obtained to
22 date so that it could be used most effectively in defending
23 Monsanto's position. Now, Doctor, that is a direct quote
24 from the memo, is it not?

1 A. Yes, but not a direct quote from me.

2 MR. CARR: Excuse me, Your Honor, would you direct
3 the witness to answer the question?

4 THE COURT: Doctor, that was not responsive to the
5 question. That's not what you were asked. Listen to the
6 question and answer it, please.

7 A. Yes, sir.

8 Q. Doctor, what I read to you was a direct quote from
9 this June 22nd, 1956 meeting, was it not, sir?

10 A. I'm just trying to locate it, sir.

11 Q. It's at the bottom of Page 2 and the top of Page
12 3.

13 A. That is a quote from this memorandum, sir.

14 Q. Doctor, what were these experimental results that
15 could be used most effectively in defending Monsanto's
16 position?

17 A. It's an inaccurate statement, sir.

18 Q. Doctor, did you discuss some experimental work that
19 you at Kettering had done?

20 A. Yes, we did, but not to defend Monsanto's position.

21 MR. CARR: Your Honor, could you direct again the
22 witness to wait until I finish the question and then respond
23 just to the question?

24 THE COURT: Doctor, I don't think he was finished.

1 I think it was pretty obvious he wasn't. Please listen and
2 listen for the end of a question before you respond.

3 Q. Doctor, were there experiments that had been
4 performed?

5 A. Yes, there were, sir.

6 Q. Were there results of those experiments that had
7 been performed up to June 22nd, 1956?

8 A. Yes, there were.

9 Q. And how many different sets of experiments had been
10 performed up to that point in time, sir?

11 A. I think there must have been at least three
12 different kinds of studies.

13 Q. And when were they performed?

14 A. They were performed between 1953 and 1955, I would
15 say.

16 Q. Wasn't the first one performed in 1954?

17 A. We started it in -- I believe we started it in '53,
18 we wrote it up in '54, sir.

19 Q. In July of '54 you wrote it up, didn't you, sir?
20 Didn't you, sir?

21 A. Yes, sir.

22 Q. And was there another experiment after that, sir?

23 A. Yes, there was.

24 Q. And what was the -- what was that experiment, what

1 did you do in that experiment?

2 A. We attempted to expose a large variety of animals
3 to inhalation of certain of the -- of the materials that we
4 were concerned with.

5 Q. And was that report written?

6 A. Yes, I believe it was.

7 Q. And what would be the date of that report?

8 A. I have no idea, I don't have it with me.

9 Q. Doctor, I have no such report, was there a report
10 given, written up, sir?

11 A. I don't recall whether it was a report written or
12 this was a discussion with the Monsanto people after it was
13 completed.

14 Q. You had an experiment completed, you knew the
15 results of the experiment, you communicated it to the
16 Monsanto scientists, people involved, but you did not write
17 up the results of that report, is that correct, sir?

18 A. Because we felt it was incomplete.

19 Q. Excuse me. Could you answer my question, sir?

20 A. No, we did not.

21 Q. Monsanto knew about that?

22 A. We knew some of it, yes.

23 Q. Excuse me, Monsanto knew about the experiment, knew
24 about the results of the experiment, right, sir?

1 A. Right.

2 Q. But you didn't publish it either then or later,
3 isn't that correct, sir?

4 A. No, sir, we did not.

5 Q. And you didn't mention it publicly either then or
6 later?

7 A. Yes, we did.

8 Q. When was that?

9 A. In the hearing, the workman's compensation hearing
10 in 1956, sir.

11 Q. You did mention it in that hearing?

12 A. I believe so.

13 Q. All right. Now, the third result that you -- third
14 test, when was that, sir?

15 A. That was completed in, I believe, 1955.

16 Q. Were there any after that, sir?

17 A. No, I don't believe so.

18 Q. So there is three experimental results, one in '54,
19 then one where the inhalation experiment, the date we don't
20 have, when was it in '55 or '54?

21 A. I would assume it would have been '55.

22 Q. All right. And, then there was the last report,
23 last experiment dealing with the sodium trichlorophenate from
24 the Monsanto process and from Diamond Alkali and Halowax,

1 correct, sir?

2 A. Correct.

3 Q. And that report was written up and you referred to
4 it a number of times?

5 A. I have, sir, yes.

6 Q. So at the time of this meeting, you had these three
7 experiments that you had concluded, is that right, sir?

8 A. Correct.

9 Q. And, in addition, at the time of this meeting, you
10 had examined as is the subject of that paragraph numbered
11 three, Roman numeral III on Page 2, you had examined these 35
12 people, had you not, sir?

13 A. Yes.

14 Q. So now at that point in time what you had was
15 knowledge as to the condition of the workers, knowledge as to
16 the condition of the animals, knowledge as to the condition
17 of the human volunteers relating to exposure to this 2,4,5-T
18 and to the constituents of the 2,4,5-T process?

19 A. Yes, sir.

20 Q. And, there would be no other experimental results
21 then that this statement could be possibly referring to, is
22 that correct, sir? Have we covered all the possibilities,
23 sir?

24 A. I can't recall any others, sir.

1 Q. All right. Now, Doctor, which of those results or
2 what in those results could be used to effectively defend
3 Monsanto's position?

4 A. I don't know.

5 Q. Doctor, think about the results that you had and
6 tell us please which of these results could be used to
7 effectively defend Monsanto's position.

8 MR. HEINEMAN: Objection, asked and answered.

9 A. I have answered it, sir, I don't know.

10 Q. Doctor, what was Monsanto's position, first of all,
11 that needed defending at that point?

12 A. I have no idea, that's not my statement. That's
13 Mr. Weger's.

14 Q. Doctor, you do know what needs defending, it's the
15 claims and litigation, that is the subject of Paragraph
16 numbered III, it starts out that way, discusses the claims
17 and litigation, isn't that correct, sir?

18 A. If you are referring to item III, yes.

19 Q. That's what I'm referring to, that's the subject of
20 that paragraph, isn't it, sir?

21 A. Yes.

22 Q. And, Monsanto's position there that you discussed
23 and they considered the possibility there of using you as an
24 expert witness, did they not, sir?

1 A. Yes, sir.

2 Q. And, somebody says, and I take it you have no
3 memory to counter what was said here, that you strongly urged
4 consideration be given to the publication?

5 A. I would have never said that, sir.

6 Q. Doctor, you cannot have it both ways, you've told
7 us that, day before yesterday, you told us that you had no
8 memory of that at all, that you knew nothing beyond what was
9 stated in this memo. Isn't that correct, sir?

10 A. At that time, yes, sir.

11 Q. Has -- have you got some new data now since day
12 before yesterday?

13 A. I've had an opportunity to review this, sir, in the
14 last two days.

15 Q. Have you got some new data? Sir, may I finish my
16 question?

17 A. Sure, please.

18 Q. Have you got some new data or a new report since
19 the day before yesterday that you used to come up with the
20 details of the meeting?

21 A. No, sir.

22 Q. Now, Doctor, have you undergone hypnosis or
23 something to explore the remote corners of your memory with
24 regard to this meeting?

1 STATE OF ILLINOIS)
2 TWENTIETH JUDICIAL CIRCUIT)
3 COUNTY OF ST. CLAIR)

4

5 I, RICHARD P. GOLDENHERSH, CIRCUIT JUDGE, do
6 hereby certify that the foregoing transcript is a true and
7 correct copy of said transcript.

8

9 DATED: February 24, 1986

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RICHARD P. GOLDENHERSH, CIRCUIT JUDGE

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