

1 dust on the floor --

2 A No, sir.

3 Q You don't recall that?

4 A No, sir.

5 Q Building 78 and 79?

6 A That wasn't where they shipped from.

7 Q Doctor, when they do -- when they do fill up a bag,
8 is it possible for them to not -- to keep the outside of the
9 bag from getting some of the dust and material on it? Is that
10 possible, physically possible to do that, Doctor Rousch?

11 A Well, I'm sure there were traces.

12 Q Doctor, that's what we're talking about in this whole
13 case is dealing with what you call traces.

14 A No, sir.

15 Q Doesn't the drums that they fill it with, doesn't that
16 drum sit there under spout and it comes down and fills up that
17 drum?

18 A Yes, sir, but not in shipping.

19 Q They fill it up where they make it, don't they, sir?

20 A Yes, sir.

21 Q And is it possible to keep some dust from that 2,4,5 T
22 that's going into that drum, is it possible to keep that from
23 -- from going onto the side of the drum?

24 A I'm sure there was some.

1 Q You're sure there's some, and it's taken from that
2 department where it's made and where is it taken then, Dr. Rousch?

3 A To the warehouse.

4 Q And when it gets to the warehouse, do those men in the
5 warehouse handle that drum or that box or that bag that's filled
6 with 2,4,5 T?

7 A Yes, sir.

8 Q And do they not handle it when it has some 2,4,5 T on
9 the outside of the surface, sir?

10 A I'm sure they do.

11 Q And when they drop it on the floor, doesn't some of
12 that dust that's on the outside of that package get into the
13 air or on the floor?

14 A It's possible.

15 Q And when they breathe that dust in and when they touch
16 that dust and wouldn't that dust touch their skin from these
17 packages?

18 A At trace levels I'm sure that's true.

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

20 A No, sir.

21 Q Yes, we are, sir. You may not be talking about it,
22 but that's what this case is about, that's what this case is
23 exactly about. My question is wasn't that worker exposed to
24 2,4,5 T, wasn't that shipping worker exposed to that? Given

1 your statement that it's trace amount, wasn't he exposed to it,
2 sir?

3 A Yes.

4 Q Now, after that three years of handling those bags he
5 then became foreman, didn't he, sir?

6 A Yes, sir.

7 Q And he was a foreman then until 1955 in that depart-
8 ment, in the Shipping Department, wasn't he, sir?

9 A Yes, sir.

10 Q And if there was dust on the floor or dust in the air
11 from handling those bags, he was exposed to it while he was a
12 foreman in that mode, wasn't he, sir?

13 A If there was dust and if it was from 2,4,5 T.

14 Q And there would be dust, would there not, sir?

15 A Not measurable.

16 Q Doctor, there would be dust, would there not, sir?
17 I have given you every single question, Doctor, I've given you
18 that there's some 2,3,7,8 TCDD or some 2,4,5 T, and you said
19 you can't measure it. Matter of fact, they did measure in the
20 dust, but I'm not even going to argue that with you at this
21 point, Doctor. It's there, isn't it, sir?

22 MR. HEINEMAN: Objection, your Honor, there's no
23 evidence they measured 2,3,7,8 in the dust in the warehouse.

24 THE COURT: Objection is overruled.

1 A I don't know.

2 Q You don't know that it's there? I thought you just
3 got through agreeing that it would be there in trace amounts?

4 A In trace amounts, that's right.

5 Q But, Doctor, please keep in your mind so that I don't
6 have to say it each time. If it's a trace amount, it's there,
7 isn't it, sir?

8 A Yes.

9 Q And these exhibits that we just went through where
10 they checked Buildings 46 and 79, they titled it Trace Amounts,
11 didn't they, sir?

12 A I don't recall.

13 Q Well, the exhibits are right in front of you. The
14 exhibit where they are going to pave the lot, they talk about
15 trace amounts in the material, don't they, sir?

16 A Yes, sir.

17 Q And they talk about, they say during the period from
18 1948 to 1969 Monsanto's Nitro Plant manufactured 2,4,5 T, which
19 contained trace amounts of 2,3,7,8 tetrachlorodibenzo-p-dioxin.
20 That's what they say, don't they, sir?

21 A Yes, sir.

22 Q Now, those trace amounts were as high as 55 parts per
23 million, weren't they, sir, or 60 parts per million?

24 A Yes, sir.

1 Q And trace amounts then can go all the way from 60
2 parts per million down to parts per trillion that they were
3 detecting the lowest amounts in these samples, isn't that
4 correct, sir, .16 parts per billion is 160 parts per trillion,
5 isn't it, sir?

6 A Right.

7 Q And over here on the area that they're paving, .12 --
8 no, I'm sorry, .11, that's 110 parts per trillion, isn't it,
9 sir?

10 A Yes, sir.

11 Q Now, these are the areas that they're talking about
12 that they're paving and putting asphalt over, these are the
13 areas that they measured .11, 110 parts per trillion, this is
14 where they're putting the crushed limestone, this is where
15 they're preventing the landfill from moving, this is where
16 they're putting the asphalt --

17 A No, sir.

18 Q Those are those samples, are they not, sir?

19 A No, sir.

20 Q Well, where are these samples when they say Nitro
21 Site 1A and all the way down through 8, where is this land that
22 has the 110 parts per trillion?

23 A I don't know.

24 Q Now, Doctor, it's this plant, they're talking about

1 this plant, wipe samples from the Nitro Plant, aren't they, sir?
2 Isn't that this plant is the Nitro Plant and they're giving the
3 results from that Nitro Plant, aren't they, sir?

4 A These are landfill samples here.

5 Q In the Nitro Plant?

6 A Yes, sir.

7 Q And turning the next page it's Nitro soil?

8 A Well, it says site. I don't know what that means.

9 Q Nitro site, you don't know what that means, sir?

10 A No. I know it's a site, but I don't know which site.

11 Q You know it's a site in the Nitro Plant?

12 A Yes, sir.

13 Q You know that, don't you, sir?

14 A Yes, sir.

15 Q And you know that the land, the soil samples they took
16 was from this area where they put the crushed limestone and from
17 this area where they put the blacktop and from this area where
18 they excavated?

19 A Yes, sir.

20 Q Now, those are trace amounts, aren't they, sir; those
21 described there as 110 parts per trillion?

22 A No, sir.

23 Q They're not trace amounts?

24 A Yes, they're trace amounts.

1 Q That's what I've asked you.

2 A But that's not what they're covering it up for.

3 Q Doctor, they are covering up the area that contains
4 110 parts per trillion, aren't they?

5 A Yes, sir.

6 Q And they did that in 1985, I take it?

7 A I don't know.

8 Q And why are they covering up the area that has 110
9 parts per trillion of 2,3,7,8 TCDD, Doctor?

10 A They're covering --

11 Q What are they trying to prevent by doing that?

12 A They're not trying to prevent anything.

13 Q They're not?

14 A No, sir.

15 Q They just want to cover up this area just for fun?

16 A No, sir.

17 Q What are they trying to prevent then?

18 A They're trying to cover up higher concentrations, not
19 that 110 parts per trillion.

20 Q Well, what's the highest that they're trying to cover
21 up?

22 A About 11 parts per billion.

23 Q Now, Doctor, are you sure that's not a spiked sample,
24 Doctor?

1 A No, sir, I don't think so.

2 Q Don't you see that "H" right there, Doctor? It means
3 it's a spiked sample.

4 A The one down on the previous page it's 10.34 parts
5 per billion.

6 Q All right, Doctor, for the sake of argument they went
7 from 110 parts per trillion to 10 parts per billion, and they
8 cover up that entire area, didn't they, sir?

9 A I'm not sure the relationship of what we just read to
10 that.

11 Q Doctor, do you know what the level of the contamination
12 is in this large area here?

13 A No, sir.

14 Q Do you know that that is not this area? This is the
15 only document that we have, Dr. Rousch. You gave us these
16 documents dealing with the Nitro Plant, Doctor.

17 A Yes, sir.

18 Q Doctor, there are no children in this plant that's
19 going to sit down and eat that dirt that contains 110 parts per
20 trillion or one part per billion or ten parts per billion, is
21 there, sir?

22 A No, sir.

23 Q And the men aren't going to sit down and eat that
24 dirt over their lifetime, are they, sir?

1 A No, sir.

2 Q They are simply, if they don't cover that up, they
3 are going to be exposed to the water that runs off onto the
4 parking lot, and that's the reason they've graded this, and
5 that's the reason they put that wall there. They're simply
6 going to be exposed to whatever might be in that soil and run
7 off into that plant, aren't they, sir?

8 A No, sir.

9 Q They're not going to be exposed to it?

10 A There's no evidence that they're going to be exposed
11 to it.

12 Q Doctor, why are you doing this, why is this called
13 remedial work 2,3,7,8 TCDD remedial work, why are you going to
14 this expense of excavating that, blacktopping that and putting
15 limestone there and a big earthen dam there? Why are you at
16 Monsanto doing that? You just want to spend some money?

17 A To cover up that site where they found dioxin.

18 Q Why do you want to cover up that site, Dr. Rousch?

19 A It's good practice.

20 Q Why is it good practice, Dr. Rousch?

21 A Because the EPA would like to have it done.

22 Q Why would EPA like to have it done?

23 A Not for health reasons.

24 Q Well, why would they like to have it done? Do they

1 just like to go around and make people do things not for health
2 reasons? Why do they want that covered up, Doctor? Why did you
3 agree to cover it up? They didn't go to Court and force you to
4 cover it up. You agreed to cover that up. You could have said,
5 hey, no, that's not a health hazard, that's not going to bother
6 our workers, that's not going to bother anybody, we're not going
7 to cover it up. We believe what Dr. Rousch says about health
8 hazards, and we're not going to go to that expense. Now, why
9 did Monsanto cover that up?

10 A I'm not sure of the reasons why they did it.

11 Q Well, just speculate for me, Doctor.

12 A So they wouldn't have to be talking about the fact
13 that they had found trace levels of dioxin in that area.

14 Q Well, why wouldn't they want to be talking about it,
15 trace levels, you said yourself trace amounts can't hurt any-
16 body. What do they care whether they talk about it or not?

17 A I think it's just good practice.

18 Q Well, I know that, Doctor, but the question is why is
19 it good practice, what kind of practice is it? It's a health
20 practice, isn't it?

21 A No, sir.

22 Q Sir?

23 A No, sir.

24 Q Well, what is it, just practice covering up? You mean

1 to get practice in spreading limestone or spreading asphalt?
2 What is it a practice that relates to what, industrial hygiene,
3 health, to protect children? What is that practice, Doctor,
4 why is it a good practice?

5 A To cover up an area where there's dioxin.

6 Q And why do you want to cover up an area where there's
7 dioxin? So it won't get out and expose people to it, isn't
8 that right, Dr. Rousch?

9 A No, sir.

10 Q Well, why do you want to cover it up? If that's not
11 the reason, why go to the trouble of covering up where there's
12 dioxin?

13 A It's because of a political issue.

14 Q It's a political issue?

15 A Yes, sir.

16 Q And there are some politicians now that are making
17 you do that?

18 A No, sir.

19 Q Well then, how is it a political issue?

20 A Because of the issue of what level is going to be
21 consistent with concensus standard of what is a no exposure
22 area.

23 Q Doctor, what it is is that neither you nor no one
24 else on earth knows whether or not exposure to trace amounts

1 down to 100 parts per trillion or 65 parts per trillion or one
2 part per quadrillion, nobody knows but what that might have long
3 term, long range latency period health effects, isn't that
4 correct, sir?

5 A No, sir.

6 Q Does anybody know that it doesn't, Doctor?

7 A The CDC says it doesn't.

8 Q Where did the CDC say that it doesn't have long range
9 -- we read the Missouri Division Health Report just last week,
10 Doctor. The CDC was part of that, where they said exactly the
11 opposite. Do you recall that, Doctor?

12 A Yes, sir.

13 Q All right. Now, Doctor, is there any study anywhere
14 that says it doesn't have, low dose exposure will not result in
15 long term latency health effects?

16 A Yes, sir.

17 Q What study is it, Doctor?

18 A The CDC said that.

19 Q Doctor, did the CDC ever publish a document that said
20 that?

21 A Yes, sir.

22 Q And what document was it, sir? Are you talking about
23 where they said levels at one part per billion cannot be con-
24 sidered safe, is that what you're talking about?

1 A Levels above one part per billion and above was not
2 safe.

3 Q Levels at one part per billion --

4 A Or above.

5 Q -- and above are not safe?

6 A For residential areas.

7 Q Yes. Now, Doctor, is there anywhere that anybody said
8 that levels below one part per billion are safe?

9 A That's what that article is about.

10 Q Doctor, my question is does anybody say that --

11 A Yes, sir.

12 Q Where did they say it, Doctor?

13 A It's a report by Kimbrough and her associates.

14 Q They said below one part per billion is safe?

15 A Yes, sir.

16 Q Doctor, the only thing they said was levels at one
17 part per billion and above cannot be considered safe is exactly
18 what they said, isn't that correct, sir?

19 A Yes, sir.

20 Q They didn't say the opposite of that, did they, sir?

21 A Yes, sir.

22 Q If the only thing they said was levels at and above
23 cannot be considered safe, Doctor, then they could not have said
24 the opposite if that's the only thing they said.

1 A They said that for residential areas.

2 Q Yes, Doctor, but we're now talking about an industrial
3 area.

4 A Yes, sir.

5 Q Where they're not going to be eating the dirt.

6 A That's right.

7 Q Now, I want to know, Doctor, have you seen any report
8 from anybody that would excuse you from considering that this
9 is a health hazard and support your instant position that you're
10 doing that for political reasons?

11 A Yes, sir, I think that same article talks about in
12 a commercial area you do not have to have the same one part
13 per billion standard.

14 Q But you apparently used that and below it in Nitro,
15 didn't you, sir? Now, does the CDC have any regulatory powers?
16 It's a voluntary organization, isn't it, sir?

17 A No, sir, it's not voluntary.

18 Q Oh, does it have any regulatory powers?

19 A Not regulatory, no, sir.

20 Q The EPA, however, does have regulatory powers, doesn't
21 it, sir?

22 A Yes, sir.

23 Q And the EPA is concerned here, isn't it, sir, in
24 Nitro?

1 A I don't think so.

2 Q Doctor, would you look at 1527 again please, sir.

3 A Yes, sir.

4 Q And isn't it talking about the EPA and remedial
5 studies done for the EPA? Isn't this attached document called
6 Nitro's Proposal Response to Walter Lee, United States Environ-
7 mental Protection Agency, Region III, Request for a Written
8 Description of Nitro's TCDD Remedial Work Plan. The plant wants
9 to send Monsanto's response as soon as possible. Isn't that
10 what that is said, sir?

11 A Yes, sir.

12 Q And aren't they talking about their response to the
13 EPA?

14 A Yes, but I don't know what the request was.

15 Q Doctor, aren't they talking about their response to
16 the EPA?

17 A Yes, sir.

18 Q And doesn't their response include those things that
19 we're talking about, paving the area where it was manufactured,
20 removing the soil from contaminated area, covering the area
21 where there was a trash incinerator with crushed limestone,
22 providing a clay cap over the disposal site of the equipment
23 from the 2,4,5 T facilities; isn't that what they're talking
24 about?

1 A Yes, sir.

2 Q Now, Doctor, why would the EPA -- and it's not a
3 political organization, is it, sir?

4 A No, sir.

5 Q It's an organization of scientists, isn't it, sir?

6 A And regulators.

7 Q And regulators. And they and Monsanto worked out the
8 plan to remedy the TCDD contamination exposure in Nitro with
9 what's called 1527B, have they not, sir?

10 A No, sir.

11 Q Well, isn't that considered your remedial work,
12 Doctor?

13 A Yes, sir.

14 Q What are you remedying, Doctor?

15 A We're changing the measurable dioxin levels in the
16 surface.

17 Q You're remedying the fact that you have TCDD there at
18 levels of 110 parts per trillion up to 10 parts per billion,
19 aren't you, sir?

20 A I don't know, at least that's part of it.

21 Q That's what this document tells you, isn't it, sir?

22 A I can't relate that to all those sites.

23 Q Doctor, that's what this document tells you, doesn't
24 it, sir? You can't relate that? It describes exactly what

1 they're doing.

2 A Yes, sir.

3 Q If it's attached to this project, it is related to all
4 of those sites, isn't it?

5 A Yes, sir, but I can't relate it to the concentrations
6 that you're talking about.

7 Q That's the point. The concentrations, it makes no
8 difference, wherever they're finding 2,3,7,8 TCDD they require
9 something to be done about it, don't they, sir?

10 A No, sir.

11 Q Oh? Where did they find it that they didn't require
12 you to do something about it?

13 A I don't know.

14 Q My question is wherever they find it they require
15 something to be done.

16 A No, sir.

17 Q Well again, that no, sir means to me that my state-
18 ment is, my question to you is not correct?

19 A Yes.

20 Q It's stated affirmatively that there was some areas
21 where 2,3,7,8 TCDD was found and no remedy was required. Now
22 where is the area where it was found and they did not require
23 you or you did not remedy that?

24 A I don't know, but the standard would be --

1 Q Doctor, don't you understand that if you don't know
2 of any place where they ever found it and didn't require you to
3 do something about it that you cannot answer a question the way
4 you just did?

5 MR. HEINEMAN: Objection.

6 Q My question is of your knowledge isn't it a fact,
7 Doctor, that every place that 2,3,7,8 TCDD was found, you are
8 doing something about it?

9 A No --

10 MR. HEINEMAN: Objection, there is no evidence to
11 establish --

12 A I don't know.

13 MR. HEINEMAN: -- the findings with the location.
14 That's what the witness is trying to say.

15 THE COURT: Objection is overruled. Number one,
16 there is evidence, and number two, that's not what he's saying,
17 you're wrong on both.

18 Q Doctor, the remedial work is taken in order to prevent
19 exposure to these trace amounts, isn't it, sir?

20 A No, sir.

21 Q Doctor, why would you take remedial action except to
22 prevent exposure? What other possible reason could you have?

23 A In response to EPA's request.

24 Q Doctor, why are they requesting it?

1 A I don't know.

2 Q Well, just speculate. Why would the EPA want this
3 work done?

4 A I don't know.

5 MR. HEINEMAN: Objection to requiring speculation.

6 A I don't know.

7 THE COURT: Objection is overruled.

8 Q Sir?

9 A I don't know.

10 Q Well, think, use your medical mind. You're head of
11 this department, Dr. Rousch? --

12 A Yes, sir.

13 Q You confer with these people, you have conferred with
14 these people, it's your responsibility for the health of the
15 workers in that plant and for the environment outside of that
16 plant, you're the top man in that area.

17 A Yes, sir.

18 Q Now, I want you to use the skills, the medical training
19 that you've had and answer my question. Why would the EPA want
20 this remedial work done and why would Monsanto agree to do that
21 remedial work? And don't tell me you don't know, Doctor, be-
22 cause you're the head of this whole department, you've been the
23 head of it for many, many years.

24 A Yes, sir. Monitoring had disclosed the presence of

1 dioxin.

2 Q Yes, we know that, Doctor. Now, we're talking about
3 the response, the remedial work being done after finding that
4 dioxin there.

5 A Yes, sir.

6 Q Why are you doing this remedial work?

7 A So that it would no longer be found present in that
8 soil.

9 Q And why don't you want it to be found, why don't you
10 want it to be in that soil?

11 A I don't know.

12 Q Doctor, you don't know why you don't want 2,3,7,8 TCDD
13 in soil at your plant?

14 A At this concentration --

15 Q You don't have the vaguest idea, Dr. Rousch?

16 A Not at this concentration.

17 Q You don't have any idea why Monsanto agreed to do this?

18 A Not at that concentration.

19 Q Well then, Doctor, did they confer with you on that
20 point?

21 A No, sir.

22 Q Did they just ignore you then altogether?

23 A Yes, sir.

24 Q Well, you knew of it going on, didn't you, sir?

1 A Not this, no, sir.

2 Q You didn't know of it going on?

3 A No, sir.

4 Q Isn't this part of your responsibility about the
5 health of the workers at Nitro? Aren't they under your juris-
6 diction and part of your responsibility as well?

7 A Aren't who under my responsibility?

8 Q I'm sorry?

9 A Who is?

10 Q The Nitro workers.

11 A Yes, sir.

12 Q They are, aren't they, sir?

13 A Yes, sir.

14 Q Then, Doctor, it was under your jurisdiction this
15 work was done, this is in your department, isn't it, sir?

16 A No, sir, no, sir.

17 Q 2,3,7,8 TCDD exposure to your workers is not in your
18 department?

19 A Yes, sir, that is.

20 Q That's what this is, isn't it, sir?

21 A What is?

22 Q This document deals with 2,3,7,8 TCDD in your plant,
23 and it suggests remedial action in order to protect your workers,
24 doesn't it, sir?

1 A No, sir.

2 Q Well, Doctor, you say no, sir. That means that you
3 know why it was done. Otherwise you can say, well, I don't
4 know, I don't have any idea. Now, why was the remedial work
5 done if it was not done to protect the health of the workers
6 being exposed to these trace amounts?

7 A I don't know why they did it.

8 Q Well, Doctor, if not for that, what other reason
9 could there be? Is there any other reason that you can think
10 of other than health of the workers why they might have done
11 it?

12 A Because EPA told them, asked them to do it.

13 Q Doctor, now we're going in circles again. That isn't
14 a response. Why would the EPA want it done then, sir, for any
15 reason other than health of the workers?

16 A I don't know why they requested it.

17 Q My question is do you know of any reason other than
18 the fact that the health of the workers would be affected by
19 exposure to these trace amounts of 2,3,7,8 TCDD?

20 A Because they had established a standard.

21 Q Doctor, why do they establish the standard?

22 A Because they can get to that level.

23 Q Why do they want to establish that level? Who are
24 they protecting, Doctor, why are they doing that?

1 A It's not related to health.

2 Q Well, why are they doing it if it's not related to
3 health?

4 A Because EPA asked them to do it.

5 Q Doctor, no, we're talking about why would the EPA
6 establish the standard now. You said it's a standard, they're
7 doing it in response to a standard that's established?

8 A That's a speculation.

9 Q Why would they establish it, sir, other than the
10 health of the people that might be exposed to the 2,3,7,8 TCDD?

11 A No, sir.

12 Q What other reason other than that would they have?

13 A Because it's feasible.

14 Q Doctor, why would they want to do it if it's feasible?

15 A I don't know.

16 Q Doctor, what reason would they have other than pro-
17 tecting the health of people?

18 A Cause it's feasible.

19 Q Doctor, there's all kinds of things that are feasible
20 that have got nothing to do with health. You don't go around
21 doing things because it's feasible. The EPA has the obligation
22 to protect the environment, doesn't it, sir?

23 A Yes, sir.

24 Q And why do we want the EPA to protect the environment,

1 why do we want that, why do the citizens of the United States
2 want the EPA to go out and protect our environment?

3 A So that there is no needless contamination.

4 Q And why do we want to prevent needless contamination?

5 A Because there's no reason why we should have contami-
6 nation if it can be avoided.

7 Q Why would we want to avoid it if we can? What reason,
8 Doctor, other than health?

9 A So that it doesn't get up to a level where it would
10 be a health problem.

11 Q Well then, Doctor, that is connected with health,
12 isn't it, sir?

13 A No, sir.

14 Q Doctor, if they want to keep it from getting up to
15 a level where it would be a health problem, isn't that a health
16 reason?

17 A No, sir.

18 Q It's the only reason you've given.

19 A No, sir.

20 Q What other reason is there, what is it connected with
21 if it's not connected with health?

22 A Because it's not at the level found. If there's no
23 health problem, there's no health problem.

24 Q Doctor, but it accumulates, the EPA knows it, you know

1 it, I know it, the jury knows it, everybody knows that it can
2 accumulate.

3 A No, sir.

4 Q You don't know that?

5 A Not in this case. We haven't been making it since
6 1969.

7 Q Doctor, this is 15 years after you made it they've
8 come out with this. It's there, they found it, they want to
9 prevent exposure to it. Now, why do they want to prevent
10 exposure to it, Doctor? Because it may affect the health,
11 isn't that correct, sir?

12 A No, sir.

13 Q What other reason, Doctor?

14 A Because they don't want it to be present.

15 Q Why don't they want it to be present?

16 A Because that's needless contamination.

17 Q Why is it needless contamination, Doctor?

18 A Because the material was being made.

19 Q And why do they want people not to be exposed to that
20 material?

21 A They didn't say that. That isn't what was said.

22 Q Why are they covering this up if they don't want people
23 not to be exposed? What other reason do they have to pave it?

24 A Because it's contaminated.

1 Q Sir?

2 A Because it's contaminated.

3 Q And why are they covering it up?

4 A Because it's contaminated.

5 Q Aren't they covering it up so that nobody will be
6 exposed to it, sir?

7 A No, sir.

8 Q Why do you want to cover up things that are contaminated?
9 If there's not going to be an exposure, Doctor --

10 A It's the EPA approach to taking care of dioxin when
11 they can find it in the soil.

12 Q But why do they want it covered, Doctor? Doctor,
13 you've been playing a game with me for thirty minutes here.

14 A No, sir.

15 Q You've been avoiding the obvious and only answer to
16 this question, and I take it that you're not being in good faith
17 to this Court or to this jury. You know the only reason the
18 EPA is in existence is for the purpose of protecting our environ-
19 ment so that we may not get unhealthy and so that our children
20 and our children's children will not get sick because of the
21 environmental contaminants, and you know the work they're doing
22 at this plant is in order to protect not just the people at
23 that plant but the people in Nitro, West Virginia and the people
24 at elsewhere where this water runs off. You know that, too,

1 don't you, Doctor?

2 A No, sir.

3 MR. HEINEMAN: Objection, your Honor, to the speech
4 that Mr. Carr just gave. That might be fine jury summation,
5 but it's an improper question for the witness, and it's not
6 proper for him to give his opinions about whether he believes
7 or doesn't believe what the witness is saying, and I object to
8 it, and I ask that it be stricken and ask that the jury be
9 instructed to disregard it.

10 THE COURT: Objection is overruled, it's proper.
11 Excuse me, proper question.

12 Q Doctor, you know they also paved the parking lot at
13 Krummrich; you knew that, too, don't you, sir?

14 A I know they were going to. I don't know whether it's
15 been done.

16 Q And they found one part per billion of 2,3,7,8 TCDD
17 in that parking lot, didn't they, sir?

18 A I don't know what they found.

19 Q Well, nobody told you they found it there?

20 A They found it, but I don't know what level they found
21 it.

22 Q Doctor, why are they covering that parking lot?

23 A Because it's contaminated.

24 Q Doctor, you are an educated man --

1 A Yes, sir.

2 Q And you know exactly what you're doing here, don't
3 you, sir?

4 A Yes, sir.

5 Q You're trying to avoid giving an answer associated
6 with health, aren't you, sir?

7 A No, sir.

8 Q Doctor, why are we all concerned about contamination?
9 Has it to do with health?

10 A We're concerned, because it could be health.

11 Q Doctor, that's the reason we're working with contami-
12 nation, because of our health concern, isn't that right, sir?

13 A Yes, sir.

14 Q And that's the reason they're paving the lot, because
15 it's contaminated, isn't that right, sir?

16 A Yes, sir.

17 Q And that's connected with health then, isn't it, sir?

18 A No, sir.

19 Q Dr. Rousch, you just got through saying that you're
20 concerned about the contamination because of its health effects,
21 and you're paving the lot because it's contaminated.

22 A Yes, sir..

23 Q You said those things, didn't you, sir?

24 A Yes, sir.

1 Q And you're paving the lot then because of the possible
2 health effects?

3 A No, sir.

4 Q Then why are you paving it, Doctor?

5 A Because it's contaminated.

6 Q Why do you want to pave something that's contaminated,
7 Doctor?

8 A Because of standards that are being written and the
9 consensus of positions and feasibility and all sorts of things.

10 Q What do all these things relate to, these standards,
11 Doctor, dealing with contamination?

12 A At some level of concentration in the soil it may
13 become a hazard, but not all presence --

14 Q A hazard to what, Doctor?

15 A Only if it gets above a level.

16 Q A hazard to what? To our health, isn't that right,
17 Doctor?

18 A If it's high enough.

19 Q So they're paving these contaminated areas because
20 they're concerned about health effects?

21 A No, sir.

22 Q Sir?

23 A No, sir.

24 Q What other possible reason, Dr. Rousch?

1 A Because it's there.

2 Q Doctor, we went through that. Doctor, it's there,
3 and how does it affect anybody just because it's there? They're
4 paving it so it won't get away from there, aren't they, sir?

5 A No, sir.

6 Q Why are they paving it?

7 A So that it will be covered up.

8 Q Why do they want to cover it up?

9 A Because somebody asked them to.

10 Q Why did somebody ask them to?

11 A Because a standard has been written.

12 Q Why did they write a standard?

13 A Because at some level there's a hazard.

14 Q And, Doctor, and a hazard to what?

15 A To man if it's high enough.

16 Q What in man will be at hazard?

17 A Pardon?

18 Q What in man will be hazard or harmed if it gets high
19 enough?

20 A The man will get chloracne.

21 Q What else will they get, Doctor?

22 A Depends on what concentration.

23 Q Depends on what concentration and accumulation,
24 doesn't it, sir?

1 A Yes, sir.

2 Q Chloracne deals with what, Doctor?

3 A I don't --

4 Q It deals with a man's health, doesn't it, sir?

5 A Yes, sir.

6 Q Now, Doctor, can one part per billion in the soil
7 cause chloracne?

8 A No, sir.

9 Q Can that one part per billion or that 110 parts per
10 trillion in that soil, can it grow with the passage of time?

11 A No, sir.

12 Q It can't increase then, can it, sir?

13 A No, sir.

14 Q They're concerned about covering that not because
15 they're afraid that it will increase, are they, sir?

16 A No, sir.

17 Q They're concerned about the level that is there,
18 aren't they, sir?

19 A Yes, sir.

20 Q They want to keep that level that's there in place,
21 don't they, sir, and they don't want to let anybody get associated
22 or connected with it or touched by it, do they, sir?

23 A No, sir.

24 Q They do want to let people get touched by it?

1 A No, sir.

2 Q They don't want to let people get touched by it?

3 A No, sir.

4 Q No, sir, to both those questions?

5 A I don't think that's related. I think this is a
6 standard that's been set that's feasible.

7 Q Doctor, the standard that's set that's feasible is
8 related to contamination, isn't it, sir?

9 A Yes, sir.

10 Q And they want to cover it up because they don't want
11 people exposed to it, do they, sir?

12 A I don't know why they want to cover it up.

13 Q You don't have any vague idea, sir?

14 A I don't know what the levels were, I don't know --

15 Q Don't worry about the levels. Trace amounts is what
16 we're talking about. That's what the document says, trace
17 amounts, goes down to 110 parts per trillion, and they call
18 trace amounts anything from 55 million apparently, so don't
19 worry about that amount. They don't want people exposed, they
20 don't want to take the risk of that 2,3,7,8 TCDD escaping,
21 whatever the level might be, from that soil at Nitro, do they,
22 sir?

23 A No, sir.

24 Q And, Doctor, Rogers working there in that plant was a

1 foreman in '55, up to '55 and then he was a transportation
2 foreman. As a transportation foreman from '55 to '59 he is
3 responsible for all transportation of raw material and finished
4 product, wasn't he, sir?

5 A Yes, sir.

6 Q And from '60 to '73 he was responsible for receiving
7 raw materials and containers, wasn't he, sir?

8 A Yes, sir.

9 Q So at least from 1949 to 1959 he had a possibility
10 of being exposed to one of the products being manufactured at
11 the Nitro Plant, that is, 2,4,5, T, isn't that correct, sir?

12 A Trace exposure, yes.

13 Q That's all I'm talking about, Doctor. He, therefore,
14 can be included in the exposed group, can he not, sir, to a
15 trace exposure?

16 A If he would put trace people in with people with
17 heavy exposure.

18 Q I'm sorry?

19 A If you'd put people who have trace exposure at most
20 with those who have heavy exposure.

21 Q Doctor, they took people and put people in the exposed
22 group if they had worked in the 2,4,5 T Production Department
23 for one day, did they not, sir?

24 A No, sir.

1 Q Oh, Doctor, did they not include in the exposed group
2 everybody that worked in the 2,4,5 T that wasn't terminated
3 before 1955? By definition anyone that had been assigned to
4 that Production Department was considered as part of the exposed
5 group by Suskind by definition, wasn't he, sir?

6 A No, sir. He would look at the exposure before he
7 would put them into the exposed group.

8 Q Doctor, if you look at his study, he said by definition
9 anyone that's been assigned to that department was put in the
10 exposed group, didn't he, sir?

11 A I don't recall those words.

12 Q I think it's Exhibit 62. Plaintiff's Exhibit 1467
13 is what it would be.

14 A Thank you.

15 Q Doctor, you'll see on the second page it says they
16 were remaining 367 who were designated by exposure, exposure
17 without qualification was 204 subjects who were involved in
18 any aspect of the production of 2,4,5 T including maintenance
19 from 1948 to 1969.

20 A Where are you reading, sir?

21 Q Second page, Dr. Rousch, first column, middle of
22 that column.

23 A Yes, sir.

24 Q And that is the subject group, isn't it, Doctor?

1 A Yes, sir.

2 Q Anybody who had ever been assigned during that period
3 of time to the production of 2,4,5 T.

4 A Yes, sir.

5 Q Now, Doctor, you can have a lot more exposure working
6 for ten years in a department that handles finished product in
7 these bags and these boxes and these drums than if you were
8 working in that department for one day or one month, can you
9 not, sir?

10 A No, sir, I don't think so.

11 Q You don't think so?

12 A No, sir.

13 Q Doctor, doesn't your reasoning tell you that, as you
14 described this before, that you could have one person standing
15 right next to another worker and not have any exposure or very
16 little exposure?

17 A Yes.

18 Q That's the reason you said they didn't get chloracne.

19 A Yes, sir.

20 Q Doctor, you know there's people got chloracne that
21 were never in that Production Department?

22 A Yes, sir.

23 Q So, Doctor, doesn't it follow by your own definition
24 of exposure that a person can be working in that department for

1 a month and have little exposure whereas a person could be
2 working as a foreman or shipping product worker for ten years
3 and have a lot of exposure?

4 A No, sir.

5 Q That doesn't follow?

6 A No, sir.

7 Q Why doesn't it follow, Doctor?

8 A A man who is working with low level exposure for ten
9 years is not the same as somebody who works for a short time at
10 high levels.

11 Q But, Doctor, if he doesn't get chloracne, by your
12 definition he hasn't been exposed. Don't you recall that, sir?
13 By your definition --

14 A No, sir.

15 Q No, sir?

16 A No, sir.

17 Q What is your definition? Can he be exposed and not
18 have chloracne?

19 A Yes, sir.

20 Q Then you do agree then, sir, that you can have exposure
21 that will cause these problems without getting chloracne?

22 A No, sir.

23 Q Doctor, do you agree that this man could be exposed,
24 this Rogers could have been exposed to 2,4,5 T and its contami-

1 nants?

2 A At very low levels.

3 Q Doctor, I don't care what levels. He could have been
4 exposed, could he not, sir?

5 A Yes, sir.

6 Q And he did have skin cancer, didn't he, sir?

7 A Is this 422?

8 Q 422.

9 A It says no cancer.

10 Q Doctor, he had skin cancer, he had surgery performed
11 on it two times.

12 A But he lists there as having no cancer.

13 Q Doctor, look at the -- I know how Suskind listed
14 him. That's what the whole thing is about. We know exactly
15 how he's listed him, but he has a record in there of skin cancer,
16 doesn't he, sir, talks about the number of times he had surgery
17 performed twice on the nose, nine times on the back, once on
18 the right hand, three times on the left ear, once in the fossa?

19 A Yes, sir.

20 Q And it's called recurrent skin cancer, is it not, sir?

21 A Yes, sir.

22 Q And this is the handwritten part of the record that
23 Suskind gave you which you gave us, isn't it, sir?

24 A Yes, sir.

1 Q He had skin cancer, didn't he, sir?

2 A Yes, sir.

3 Q He, therefore, should be in the group that has skin
4 cancer, shouldn't he, sir?

5 A If he has exposure.

6 Q If he has exposure.

7 A Yes, sir.

8 Q And we have agreed that he could have had exposure;
9 have we not, sir?

10 A I wouldn't call him exposed.

11 Q Doctor, I'm not caring what you would call it --

12 A Yes, sir.

13 Q I'm caring about what did the man report, what are the
14 facts, not what you would say. This man working with these
15 finished products may have had exposure, may he not have, sir?
16 And he did have skin cancer, did he not?

17 A Yes, sir.

18 Q Doctor, the next one is Postlethwaite.

19 THE COURT: Mr. Carr, before you get into that, is
20 this a good point to break for lunch?

21 MR. CARR: Sure, your Honor.

22 THE COURT: All right. Ladies and gentlemen, we'll
23 break at this time. We will resume at one o'clock. The
24 admonishments that I've given you earlier will apply during this

1 lunch break also. Court's in recess.

2 (At this time Court recessed for lunch.)

3 DR. GEORGE ROUSCH,

4 resuming the witness stand, having been previously sworn, testi-
5 fied further as follows:

6 RECROSS EXAMINATION (Continued)

7 BY MR. CARR:

8 Q Doctor, the next person I'd like to talk to you about
9 is Mr. Postlethwaite, No. 436.

10 A What was the number, sir?

11 Q 436.

12 A 436. Yes, sir.

13 Q Doctor, he was both exposed and gave a history of
14 skin cancer, did he not, that he was told by the doctor that he
15 had a malignant skin cancer?

16 A Yes, sir.

17 Q He's also listed in the Suskind computer study at
18 Plaintiff's 1472 as having skin cancer, is he not? The last
19 entry on the second page.

20 A Yes, sir.

21 Q And, Doctor, you removed him from the list although
22 he has a history given in the -- in his medical records of
23 skin cancer, the doctor told him it was malignant, the Suskind
24 computer record shows that he had a skin cancer, but yet you

1 say he didn't have a skin cancer. Where do you get the infor-
2 mation, Doctor, that he did not have a skin cancer?

3 A I took it from the reading of the physician in his
4 summary.

5 Q What does the physician say in the summary, that he
6 did not have skin cancer?

7 A He did not list him as having one.

8 Q Doctor, that's the additional history taken by the
9 doctor, is it not, sir?

10 A I don't know what you mean by additional.

11 Q It says additional history. We went through that
12 this morning.

13 A Yes, sir.

14 Q Now, that's additional history. There's already a
15 history in the record of skin cancer, is there not, sir?

16 A Yes, sir.

17 Q And there's a history in the computer -- it's
18 listed in the computer study as skin cancer, is it not, sir?

19 A Yes, sir.

20 Q And you, however, say that he doesn't have skin cancer
21 simply based upon the point that in the additional history it
22 isn't mentioned again, isn't that correct, sir?

23 A No, sir, I'm talking about diagnoses. It doesn't
24 list them.

1 Q Doctor, the diagnosis is for current conditions.

2 A No, sir.

3 Q Doctor, what page are you reading from?

4 A On Page 25.

5 Q Doctor, that's the diagnosis from the physical exami-
6 nation. It's in that section under physical examination, is it
7 not?

8 A No, sir, it's under diagnosis and impressions. Based
9 on the history and --

10 Q Doctor, if you're looking at the same page that I'm
11 looking at --

12 A 25.

13 Q You see the category 42, do you not, sir, the side of
14 the page, 42?

15 A Yes, sir. I don't have --

16 Q Yes, you do. And 42 is from physical examination.
17 That is the diagnosis of current conditions, Doctor.

18 A But the history is --

19 Q Doctor, that is a separate category, that's abnormal
20 findings that they make from a history talking about angina,
21 pneumonia, hypertension, bronchial wheezing --

22 A Yes, sir.

23 Q They're not talking about -- is that what you've
24 done throughout where they didn't diagnose a present case of

1 skin cancer you have eliminated it?

2 A No, sir, if -- that is based on his interpretation
3 of this man's condition.

4 Q Doctor, the man's condition is his current condition.
5 We're talking about his past condition.

6 A And he -- on the history for the skin they list
7 weed bumps in 1949 and resolved since then. So there's nothing
8 here to -- when in doubt, you got to go along with what the
9 physician says.

10 Q Doctor, the physician, the computer study, the final
11 document, this computer document was made after that doctor's
12 entry, was it not, sir?

13 A Yes, sir.

14 Q That doctor's entry was made at the time of the
15 examination, wasn't it, sir?

16 A Yes, sir.

17 Q And this computer -- they have it listed in their
18 computer study as having a skin cancer, don't they, sir?

19 A I go back cause I don't know what that --

20 Q Doctor, didn't they, sir?

21 A Didn't they what?

22 Q Isn't it listed in this computer study that was based
23 upon the medical records, based upon the history, based upon
24 everything else, isn't he listed as having a skin cancer?

1 A I don't know what that means when it says V701 skin.

2 Q Doctor, we went through that once already.

3 A Yes, sir.

4 MR. CARR: Your Honor, would you direct the witness
5 to testify that he did testify that Hertzberger told him what
6 it meant and that he used that in telling us Scarberry had a
7 lung and bladder cancer.

8 THE COURT: So directed. That's what was testified
9 to this morning. Doctor, you are to assume that that is what
10 you testified to.

11 THE WITNESS: Yes, sir.

12 Q Doctor, in that event V701 does mean skin cancer,
13 and that's the latest record, isn't that right, sir?

14 A Yes, sir.

15 Q And, Doctor, the next person is Gorrell, and you have
16 him -- you testified on -- when I asked you about him that
17 he was exposed. Do you recall that, sir? It would be No. 128,
18 Doctor. Doctor, do you recall in regard to Gorrell that you
19 testified that on July 9th from these records you can deduce
20 that the man possibly had exposure to TCDD?

21 A No, sir.

22 Q Sir?

23 A No, sir.

24 Q You don't recall you testifying to that?

1 A Yes, sir.

2 Q You do recall testifying to that?

3 A Yes, sir.

4 Q Did you get any -- when I asked you then from these
5 records that you could deduce that he had exposure to TCDD, we
6 were talking about the records that I hold in my hand, part of
7 this exhibit, were we not, sir?

8 A Yes, sir.

9 Q And from those records at that time you deduced that
10 he did possibly have exposure to TCDD, didn't you, sir?

11 A Because I didn't know what utilities meant completely.

12 Q Well, Doctor, it's on these records that the testimony
13 has been coming. Have you talked to somebody, has somebody
14 convinced you that utilities means something else, have you
15 talked to somebody else?

16 A I called the plant and asked them what utilities
17 meant.

18 Q Doctor, what you've done then is you've conducted an
19 investigation of your own, haven't you, sir?

20 MR. CARR: Your Honor, I'll ask that the jury be
21 instructed to disregard that information that he's obtained
22 as to something that he called the plant subsequent to the time
23 I've been examining him on the point.

24 MR. HEINEMAN: Your Honor, I would like -- I would

1 like to know what in the world the basis for that is. Obviously
2 -- and I'd object to that request -- obviously Dr. Suskind
3 had access to Max Galloway at the plant, as this witness has
4 said previously to have information about what these job titles
5 were and what the job descriptions meant, and I don't see any
6 reason in the world why his testimony in that regard should be
7 stricken.

8 MR. CARR: Did this man call Max Galloway?

9 MR. HEINEMAN: I don't have any idea.

10 MR. CARR: You said he had access to Max Galloway.

11 Did Dr. Rousch call Max Galloway?

12 MR. HEINEMAN: I don't know who he called.

13 A I called Max Galloway.

14 Q And he's at the Nitro Plant?

15 A Yes, sir.

16 Q And is that the information that you got?

17 A What information?

18 Q About Correll that he wasn't exposed.

19 A Yes, sir. Not -- only indirectly. I know what
20 utilities for sure means now.

21 Q Well, and do these utilities workers -- is the
22 utility plant in this Nitro Plant?

23 A Yes, sir.

24 Q And where is it, sir?

1 A I don't know.

2 Q Doctor, do you know whether or not it's here in
3 Building 49 across from the Nitro 2,4,5 T Department?

4 A No, sir.

5 Q Do you know whether it's here where this contaminated
6 soil is?

7 A No.

8 Q Do you know whether it was up here, sir?

9 A Not there.

10 Q Then how can you say, Doctor, that he was not exposed
11 if you don't know where the plant was?

12 A I know what the job, what that job entails.

13 Q It entails working in the utility plant which supplies
14 the power to the entire plant, doesn't it, sir?

15 A Yes, sir.

16 Q And it's his job to see to it that the power gets
17 there, isn't it, sir?

18 A No, sir.

19 Q Oh, no? What is his job?

20 A To maintain the utilities plant.

21 Q Doctor, you don't know where that plant is with
22 relation to the 2,4,5 T, do you, sir?

23 A No, sir, I don't.

24 Q Then how can you deduce from the fact that he's a

1 Q Doctor, again you're saying not measurable.

2 A Yes, sir.

3 Q No one -- these people -- your only way of
4 measuring TCDD if they've got chloracne. These people were not
5 studied because they had chloracne. They were studied because
6 there was a possibility that they were exposed to 2,3,7,8 TCDD,
7 and your plant wanted to find out what, if any, health effects
8 there might be following this possible exposure, isn't that
9 correct, sir?

10 A Yes, sir. Yes, sir.

11 THE COURT: Gentlemen, could I see you at the bench
12 for a minute please.

13 (The following proceedings were had at the bench out
14 of the hearing of the jury.)

15 THE COURT: This subsection that you made, I assume,
16 has somewhat cleared itself up about his making the investigation
17 and calling --

18 MR. CARR: Oh, yeah.

19 THE COURT: This has happened a number of times where
20 things have come out of this particular witness and then we find
21 out later there was something the basis of which was not in-
22 dicated at the time or something extraneous to what he had been
23 examined on, and it wasn't clarified that it was so. I am
24 insisting at this point that the basis for anything like that

1 is clarified so that if and when it does come up, an objection
2 -- there is a possibility of an objection being made and it
3 can be considered, but whether it goes in or not depends on
4 what it is. But I'm really getting tired of these surprise
5 sources for contradictory points of testifying from this parti-
6 cular witness, and I think at a minimum you should be -- as
7 part of the examination giving what the basis of that is. Both
8 of you gentlemen understand the record, both of you know what's
9 there, both of you can deduce what's been taken from outside
10 that record, and you in the basis of preparation of your witness
11 and hopefully, knowing what he has been doing would be even in
12 a better position to do that, so I expect that to be done in
13 the future.

14 MR. HEINEMAN: You mean that if there's anything he
15 knows outside the records --

16 THE COURT: In other words, the perfect example is
17 that. He comes up with this conclusion contrary to what he
18 testified to under the basic Section 60 on the basis of clarifying
19 information. When he called Nitro -- that being the basis of
20 it not having been made on the record before. That is an
21 example of what I'm talking about. The initial one that I can
22 remember offhand is the call to, I think, Hartzberger, who sat
23 down and explained to him some of the bases for these classi-
24 fications. This has been repeated, it comes out in the middle

1 of what's going on coming from it. It is the type of thing the
2 nature of which should be made evident before so that it's appro-
3 priateness under the rules of evidence can be known to everyone.
4 If there is an objection, there is an opportunity for an
5 effective objection and we know what the basis of it is. Am I
6 making myself clear? In other words, if it's coming up, you
7 should be in a position to know that it's coming up. That's the
8 bottom line of it.

9 MR. HEINEMAN: So I am instructed to bring out the
10 source of any information that he has?

11 MR. CARR: So that I can object to it if it's hearsay.
12 He testified on direct examination that this man was exposed
13 because he was a utility worker and then he eliminated apparently
14 on some information that he got after my examination because he
15 talked to Max Galloway, and Max Galloway says he works in the
16 power plant or something.

17 THE COURT: Both of these --

18 MR. HEINEMAN: He testified -- when you examined
19 him, he testified --

20 MR. CARR: And he said he was exposed.

21 MR. HEINEMAN: He said --

22 MR. CARR: You want to see the record? And he was
23 possibly exposed.

24 MR. HEINEMAN: Possibly, he just admitted that.

1 MR. CARR: He says now only on -- I'm not going to
2 get into this argument.

3 THE COURT: Okay. There was a change, it was on the
4 basis of that call. That is an example. His change on how you
5 do these classifications, the computer printout was on the basis
6 of the call to Hertzberger. Those are the two examples of what
7 I'm talking about. I don't want it done that way again. Now
8 whether -- what information comes out of the call or conference
9 or whatever is admissible or not depends on what it is obviously.
10 What I'm saying is the way it's been done these last two times
11 it's basically been out and in evidence before anyone even knows
12 that there is a basis that could possibly prove its admissibility
13 into question. Whether effectively it is or not is another
14 question, but the point that I'm trying to make and I think the
15 basic point of the rules of evidence is that you proceed in such
16 a manner so that if there is a basis for an objection that is
17 known in an effective point in time, that's when I'm instructing
18 you to do, so proceed on that basis from now on.

19 (The following proceedings were had in the hearing
20 and presence of the jury.)

21 Q Doctor, the next person is McDade. That would be
22 numbered 32.

23 A Yes, sir.

24 Q McDade you removed from the list on what basis?

1 A I don't think he was exposed.

2 Q Doctor, if you look at the computer study, he's
3 categorized as exposed by Dr. Suskind, is he not?

4 A Yes, sir.

5 Q And if you look to the records themselves, sir, you
6 note that he's listed as the safety inspector. Do you recall
7 testifying that a safety inspector would be exposed?

8 A To some degree, yes.

9 Q And Suskind has him listed as exposed?

10 A Yes, sir.

11 Q In the computer study?

12 A Yes, sir.

13 Q Is there anything in this record that tells you that
14 he was not exposed?

15 A There is nothing to say that he was.

16 Q Doctor, you -- the nature of this examination of
17 these records is that you look to the record to see if they
18 reveal a possibility that the man was exposed, isn't that correct,
19 sir?

20 A Yes, sir.

21 Q Haven't we gone through that?

22 A Yes, sir.

23 Q And we went through the fact that a safety inspector
24 has to go throughout the plant to inspect all aspects of the

1 plant for safety; do you recall that, sir?

2 A Yes, sir.

3 Q And he would be obligated, would he not, sir, to go
4 into the part of the plant where they make 2,4,5 T?

5 A I would think so.

6 Q So, therefore, you would think that he is exposed,
7 would you not?

8 A While he was there, but that was such a short time.

9 Q Doctor, we're not talking about terms of time, we're
10 talking about his exposure.

11 A Yes, sir.

12 Q And he has exposure, has he not, sir? If he goes into
13 that plant into that department to look at their safety equip-
14 ment once a week, once a month, once a day, once a year, he is
15 exposed, is he not, sir?

16 A During that time, yes, sir.

17 Q Therefore, he is exposed by history, is he not, sir?

18 A The question is how significant it is.

19 Q And he's listed as exposed by Suskind, isn't he, sir?

20 A Yes, sir.

21 Q So his work records show that he was exposed, Suskind's
22 computer shows that he was exposed, and you have no information
23 that he was not exposed, do you, sir?

24 A Other than what I just --

1 Q What you're making is your judgment value that well,
2 in your judgment it's not a significant exposure?

3 A Yes, sir.

4 Q And, Doctor, that isn't one of the criteria for this
5 study, is it, sir?

6 A Yes, sir.

7 Q Didn't we go through that, sir?

8 A Yes, sir.

9 Q Anybody that has been -- has worked in that depart-
10 ment, whether they got chloracne or not, if they were exposed,
11 they were exposed, and they don't try to measure the amount of
12 the exposure. There's no place in this study where Suskind
13 tried to measure the amount of exposure, is there, sir?

14 A No, sir.

15 Q Doctor, for your information on clarification by Mr.
16 Heineman you said then that he was exposed. Your reason then
17 for not putting him on the list was because you weren't sure
18 that it was a skin cancer, but now you're changing the tune.
19 You told me that he was exposed, you told Heineman that he was
20 exposed, but now you're saying that he was not exposed.

21 A Yes, sir.

22 Q Dr. Rousch, don't you think that is just being a
23 little bit dishonest?

24 A No, sir.

1 Q To tell Heineman that in your judgment he was exposed
2 when Heineman asked you the question, to tell me when I asked
3 you the question that he was exposed, but now today because
4 you find there is a history of skin cancer today you change and
5 say, well, you now say he's not exposed. Don't you think that's
6 just a little bit dishonest, Dr. Rousch?

7 A No, sir, I'm not trying to hide anything.

8 Q Dr. Rousch, you testified -- why did you testify
9 with Mr. Heineman that he was exposed?

10 A Because I don't have fixed numbers --

11 Q Sir?

12 A I don't have the fixed definition of exposure before
13 me. I have to do these individually and based on judgment.

14 Q Well, so then your judgment just varies from day to
15 day as to whether somebody is exposed or not exposed, is that
16 what you're telling us?

17 A No, sir, but it can well be as I -- I look over this,
18 I have to -- if I'm not sure about something, I would call and
19 ask someone about it.

20 Q Doctor, you're not testifying here today as to what
21 others have told you. You're testifying based upon these records.
22 The purpose of this examination that you know that I went through
23 was not to prove whether these people do or do not have exposure
24 nor to prove whether they do or do not have skin cancer or lung

1 cancer. The purpose of this is to show that the studies done
2 by Monsanto cannot be relied upon, that there were 28 cancers
3 by exposure history on the record and that a reading of the
4 record and you have to come to the conclusion there was exposure,
5 you have to come to the conclusion that there was a cancer by
6 the record, and that Suskind put down only half, having the
7 records he cut it in half. That's the whole purpose of this.
8 We're not proving any case for or against these people. We're
9 showing the invalidity of the Monsanto morbidity study, which
10 you note to be the case. Now, Doctor --

11 MR. HEINEMAN: Objection, your Honor, that speech is
12 nothing but a speech, it's nothing but a jury summation. It
13 had nothing to do with any question, which was clear by when
14 he said "Now, Doctor" afterwards. I ask that it be stricken --

15 MR. CARR: I was not allowed --

16 MR. HEINEMAN: That the jury be instructed to dis-
17 regard it.

18 MR. CARR: -- to finish my question.

19 THE COURT: You may finish your question.

20 Q Now, Doctor, based upon what you know from your being
21 on the stand the purpose of this examination is, and you know
22 what the purpose of the clarification examination is --

23 A Yes, sir.

24 Q How can you come in here and change your opinion from

1 moment to moment? Isn't it a fact, Doctor, that you're changing
2 your opinion with this man because you now see that he has for
3 sure skin cancer and had a history of skin cancer and now you
4 feel you have to take him off the table on a basis of exposure

5 --

6 A No, sir.

7 Q Isn't that a fact, Doctor?

8 A No, sir.

9 THE COURT: Objection is overruled.

10 Q Doctor, did you -- have you agreed until today
11 that this man had exposure?

12 A I apparently have.

13 Q And you agree that there is -- if he's a safety
14 inspector and going throughout the plant that he had exposure
15 by going into that plant as well today, don't you, sir?

16 A Yes, he goes into the plant, yes, sir.

17 Q And we now agree that he did have exposure, don't we,
18 sir?

19 A Some.

20 Q Did he have exposure?

21 A Probably yes.

22 Q And, Doctor, he should be on the list then, should
23 he not, sir?

24 A I put a question beside him. I have difficulty --

1 Q Doctor, did he have exposure?

2 A To some, yes, sir.

3 Q Did he have skin cancer?

4 A I haven't gotten to that part.

5 Q Does he have a history of skin cancer, sir?

6 A I don't know yet. I haven't been there. (Pause)

7 Yes, sir, he had a skin cancer.

8 Q Then he should be on the list, shouldn't he, sir?

9 A I haven't gotten to the last part.

10 Q Sir?

11 A I didn't get to the physician's interpretation.

12 (Pause) Yes, sir.

13 Q Doctor, the next one that -- is Selby.

14 A Do you have his number, sir?

15 Q His number is --

16 A 82.

17 Q 82. And he has a history of exposure, doesn't he,

18 Doctor?

19 A Yes, sir.

20 Q And he has a history of cancer, doesn't he, sir, skin
21 cancer and bladder cancer?

22 A The history on Page 15 just says skin cancer.

23 Q Yes, and the very next page it says he had a bladder
24 tumor removed?

1 A Tumor removed, right.

2 Q So he has a history of both, doesn't he, sir?

3 A I have difficulty reading this one. I can't tell.

4 Q What is it that you can't tell?

5 A On the physician's write up on this man.

6 Q It says bladder tumor removed 1975, doesn't it, sir,
7 has a frequent cystectomy, had one one month ago?

8 A I see that, yes, sir.

9 Q And you see the history that he gave was skin cancer,
10 don't you, sir, on Page 15?

11 A Yes, sir, but I didn't see what the physician said
12 about this.

13 Q The physician said bladder -- as I pointed out on
14 the additional history, bladder tumor removed.

15 A I was looking for skin. It has a question, says skin
16 cancer, question mark.

17 Q Umhm.

18 A So he wasn't sure that he had a skin cancer.

19 Q But he was told that the man's doctor told him he had
20 a skin cancer, didn't he, sir?

21 A Yes, sir, but that could be without a diagnosis being
22 made.

23 Q Doctor, how can a doctor tell you that you've got skin
24 cancer without a diagnosis being made? He's giving you his

1 diagnosis, isn't he, sir?

2 A Yes, sir, but you can't say --

3 Q Excuse me, Doctor, isn't he giving you his diagnosis
4 when he tells you you have skin cancer?

5 A Yes, sir.

6 Q Doctor, the next one is Waldorf. You removed Waldorf
7 from the list, did you not, sir?

8 A I don't remember.

9 Q Well, look at Waldorf's records now and see if he
10 hasn't been exposed.

11 A Yes, sir.

12 Q And look at his history on Page 15 and see whether or
13 not he told the interviewer that a doctor had advised him that
14 he had skin cancer on his nose in the past?

15 A Yes, sir.

16 Q And he would be on the list, would he not, sir?

17 A It depends on what the physician said.

18 Q Doctor, the physician told him that he had skin cancer,
19 he's got a history of skin cancer, doesn't he, sir?

20 A By the man's statement, yes.

21 Q And the physician, the physician you're talking about
22 is the physician taking the additional history?

23 A And physical exam, and I can't read that.

24 Q Well then, Doctor, what you can read says that he has

1 history of skin cancer, doesn't it, sir?

2 A Yes, sir.

3 Q And you have nothing to say that he doesn't, do you,
4 sir?

5 A No, but I would like to know what the physician said.

6 Q Well, would you look at the computer listing by
7 Suskind that had legible records, if yours and mine is not
8 legible. He says skin cancer, doesn't he, V701-skin cancer?

9 A It says skin.

10 Q So you have the computer that says skin cancer, you
11 have his history that a doctor told him that he had skin cancer,
12 and you've got nothing that says that he did not have skin
13 cancer, isn't that correct, Doctor?

14 A That's right.

15 Q And based upon those facts that you have he should be
16 on the list then, should he not, sir?

17 A Unless the physician's got something that --

18 Q Doctor, we've already gone through that. We don't
19 have anything to the contrary.

20 MR. HEINEMAN: Objection, your Honor, he wasn't given
21 a chance to finish the question.

22 THE COURT: It was not responsive. The question was
23 limited to what he has and the information available.

24 Q Based on the information you have he should be on the

1 list, shouldn't he, Dr. Rousch?

2 A I don't know.

3 Q Doctor, I'm asking you to deduce. You don't know any-
4 thing, I'm not asking you what you know whether he in fact had a
5 skin cancer. I'm asking you based upon the computer printout by
6 Suskind and based upon what this man said his doctor told him
7 that he had and based upon that you have no information to the con-
8 trary, can you not say that the man has a history of skin cancer?

9 A Yes.

10 Q Doctor, there's another -- if you put back on the
11 list those people that we have discussed this afternoon, we
12 come back with the fact that there were 28 cancers shown by
13 these records to the Suskind interviewers and medical team, and
14 there were 30 cancers shown to the Moses-Selikoff team, wasn't
15 there, sir?

16 A Yes, sir.

17 Q And we have down the fact that at the most -- oh,
18 if we include in the exposed group, if you include the four
19 remaining exposed group persons that are not on this list now,
20 there would be one, two, three out of the seven or six that
21 would be in Suskind's six or seven that were exposed, so you
22 can't count those twice, so if you take those three that are
23 not on this table, there's a total of 31 cancers, one question-
24 able that shows up in the exposed and unexposed group, isn't

1 that correct, sir?

2 A Would you repeat that question?

3 Q If you add the three cancers known in the unexposed
4 group of Suskind's --

5 A Yes, sir.

6 Q If you add those three to these 27 for sure cancers
7 and leaving out the one question mark, that's a total of 30
8 cancers in the exposed and unexposed group, isn't it, sir?

9 A No, sir.

10 Q No?

11 A No, sir, the ones -- I don't think Scarberry belongs
12 on there.

13 Q Doctor, I'm asking you -- Scarberry belongs on
14 there because you talked to Hertzberger, and Hertzberger told
15 you that there was lung and bowel cancer in Scarberry. Do you
16 recall that, we went through that, Doctor.

17 A Yes.

18 Q So I'm not asking you now as to what your opinion is.
19 This exhibit, if we put back these persons on this list, this
20 exhibit shows 27 for sure cancers, doesn't it, sir?

21 A It doesn't show for sure to me.

22 Q Doctor, I recognize that, but this exhibit shows 27
23 cancers, doesn't it, sir?

24 A Yes, sir.

1 Q That is supported by the record and by the evidence
2 that we went through while you may differ with the import of
3 those records, isn't that correct, sir?

4 A We went through all those, that's right.

5 Q Yes, and there's 27 here, aren't there, sir?

6 A Yes, sir.

7 Q And, Doctor, there are three then that remain in the
8 -- were found in the unexposed group, correct, sir?

9 A Yes, sir.

10 Q Those three added to these 27 give you how many, Dr.
11 Rousch?

12 A Thirty.

13 Q And how many -- that's 30 cancers that we found in
14 this group. How many did Moses-Selikoff find in that group of
15 Nitro workers?

16 A More than 30.

17 Q No. Thirty, Doctor.

18 A I thought there was some listed on the bottom.

19 Q No, those were asterisks that would explain --
20 haven't you read that, Doctor Rousch?

21 A Yes, sir.

22 Q Those are asterisks that explain why there are some
23 people listed twice.

24 A Yes, sir.

1 Q Isn't that right?

2 A Yes, sir.

3 Q So there's a total of 30 there, aren't there, sir?

4 A Yes, sir.

5 Q And that's the same total that we find here, isn't
6 it, sir?

7 A Yes, sir.

8 Q But not reported by Suskind, is it, sir?

9 A No, sir.

10 Q Now, Doctor, I'd like to talk to you about one other
11 -- before I do that I want to get a exhibit that doesn't have
12 the writing on it into evidence.

13 MR. CARR: Would you mark this as another plaintiff's
14 exhibit.

15 (At this time Plaintiff's Exhibit 1532 was marked for
16 identification.)

17 Q Doctor, I'll hand you what's been marked Plaintiff's
18 Exhibit 1532 and ask you if you recognize that as a memo pre-
19 pared by Marcy Strauss on the Zack-Suskind study and the Zack-
20 Gaffey study?

21 A Yes, sir.

22 Q Now, a few days ago I gave you an exhibit that had
23 handwritten on it on the -- it would be the fourth page of
24 this exhibit referring to John Workman. Turn to the last page

1 of this exhibit.

2 A Yes, sir.

3 Q And that shows John Workman there without any hand-
4 written notations near it, isn't that correct?

5 A That's right.

6 Q And it says here John Workman should be counted as
7 exposed, but he had been counted as unexposed, isn't that correct,
8 sir?

9 A That's what it says.

10 MR. CARR: Offer 1532, your Honor, into evidence.

11 THE COURT: Any objections?

12 MR. HEINEMAN: Object on lack of foundation, your
13 Honor. Other than that no other objections.

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

16 Q Now, Dr. Rousch, do you recall when you were testifying
17 on behalf -- Mr. Heineman was asking you questions and you
18 brought up or it was brought up to you the Binghamton office
19 accident. Do you recall discussing that?

20 A Yes, sir.

21 Q And do you recall that you testified on July the 17th
22 1985 about a Dr. Kim -- this would be on Page 69 of that
23 transcript -- do you recall that?

24 A Yes, sir.

1 Q And, Doctor, at that time you were being asked about
2 the effects of exposure with relation to chloracne, and it was
3 your position then as it has been both before and since that
4 chloracne is -- that's not the right transcript. I've got
5 a wrong note on it. I'll find it in just a second. I've
6 given you the wrong date. (Pause)

7 Well, Doctor, I'll get the reference in a few minutes,
8 but I'd like to continue this examination with you based upon
9 the -- oh, here it is. I'm sorry, it's on July the 13th. I
10 wrote the wrong thing on my notes -- where you testified on
11 Page 69 that a Dr. Kim from the Health Department had an exami-
12 nation of those people in Binghamton Office Building and found
13 no evidence of an adverse effect on them?

14 A Yes, sir.

15 Q And, Doctor, I asked your attorneys to give me the
16 reference that supports that statement of yours, and you know,
17 of course, that they've given me that, don't you, sir?

18 A No, sir.

19 Q You didn't know that?

20 A No, sir.

21 Q First of all, you knew and you had -- you said at
22 that time that they had had an examination of those people and
23 found no evidence of an adverse effect on them. You have known
24 and you knew at the time you testified to that that an industrial

1 clinic at Binghamton, in Binghamton area examined a number of
2 people there and found a large number of adverse effects on those
3 people in Binghamton. You knew that at the time you made this
4 testimony, didn't you, sir?

5 A No, I didn't, sir.

6 Q Sir?

7 A No, sir.

8 Q Dr. Rousch, are you sitting here now and telling us
9 that you did not know that a broad range of adverse health
10 effects had been found in those people that were in that Binghamton
11 office fire?

12 A No, sir.

13 Q You're not sitting here and telling us that?

14 A I didn't know that.

15 Q Doctor, you do know that it's not Dr. Kim and you do
16 know that it wasn't any health study done, you do know that the
17 source of your statement that there was no health effects is a
18 one line statement in a discussion somebody by the name of Nancy
19 Kim had at a meeting and nothing else, nothing more than that?

20 A Yes, sir.

21 Q Doctor, this meeting and this article, it was held in
22 October of 1981, wasn't it, sir?

23 A I don't recall that.

24 (At this time Plaintiff's Exhibit 1533 was marked for

1 identification.)

2 Q I'll hand you now what's been marked Plaintiff's Exhibit
3 1533 and ask you if you recognize that as that article that was
4 given to us by your attorneys in response to my request for
5 the citation of your statement that a Dr. Kim had said there
6 were no adverse health effects. Do you recognize that, sir?

7 A This isn't -- mine was almost a one liner.

8 Q Well, it was a one liner. I'm giving you more than
9 just one line.

10 A Yes, sir.

11 Q The one line is included there. It's on Page C25628,
12 but I'm asking you now do you recognize this?

13 A No, I haven't seen this.

14 Q Doctor, did you not read, did you not get the infor-
15 mation from some source as to what Kim said?

16 A All I had was that one statement.

17 Q Doctor, you have it there in front of you, the second
18 to last page, Dr. Kim, there were no -- quote "There were no
19 toxic effects observed in the approximately 160 people who were
20 exposed to some degree in the Binghamton accident" close quote
21 marks.

22 A Yes, sir.

23 Q One line, isn't that right, sir?

24 A Yes, sir.

1 Q That's the one line you're referring to, isn't it,
2 sir?

3 A Yes, sir.

4 Q And that is the sum total of the information that you
5 have to support the statement that there were no adverse health
6 effects following that Binghamton fire, isn't that right, sir?

7 A Yes, sir.

8 MR. HEINEMAN: Objection, your Honor, the statement
9 taken from the context of the testimony says "I recall reading
10 that a Dr. Kim from the Health Department had an examination of
11 those people and found no evidence of adverse effects on them".
12 That's what the statement is, not as broad as what Mr. Carr
13 just said.

14 MR. CARR: He just answered the question --

15 THE COURT: Objection is overruled. I don't think
16 those two points are contradictory. Go ahead, Mr. Carr.

17 MR. CARR: You did give the doctor's answer that yes,
18 it was the sum total of his knowledge.

19 Q Doctor, this to put it in context is a -- was a
20 forum held on October the 4th to October the 7th of 1981, wasn't
21 it, sir?

22 A Yes, sir.

23 Q And Doctor, that -- the fire at Binghamton was in
24 February of 1981, wasn't it, sir?

1 A I don't recall.

2 Q Well, if you look at the document itself in the fourth
3 page of the exhibit, Doctor, it was on February the 5th, 1981
4 according to Kim.

5 A Yes, sir.

6 Q And the subject was building reclamation after dioxin
7 contamination, wasn't it, sir?

8 A Yes, sir.

9 Q And Nancy Kim is described as part of the Bureau of
10 Toxic Substances Management, isn't she, sir?

11 A Yes, sir.

12 Q And she took the position at this meeting that this
13 Binghamton Office Building should be used and it should not be
14 torn down, didn't she, sir?

15 A I don't know.

16 Q Doctor, didn't you read what --

17 A No, sir, I didn't read this.

18 Q Doctor, you read it before you testified unless some-
19 body just told you as to what Kim -- this is the only source
20 of your information you said.

21 A There was a two sentence in an item that I read dis-
22 cussing the Binghamton fire in which they quoted Dr. Kim. That's
23 all.

24 Q Doctor, this is the quote. You have testified that

1 this is the sum total of your information.

2 A Yes, sir.

3 Q Now, in that same paragraph she takes the position
4 that you shouldn't tear down the building, but that's only an
5 aside. This is a statement by her that a health -- and it
6 doesn't say when or who said whether or not there was an exami-
7 nation. Where does it say that these people were examined by
8 anybody at the time she made the statement?

9 A It doesn't say.

10 Q Doctor, when you -- and this October, 1981 study
11 would be a half a dozen months after the fire, wouldn't it,
12 sir?

13 A Yes, sir.

14 Q And you had in your possession an article since
15 January of '84, and at the time you made this sworn statement
16 that there were no adverse effects from that fire you had in
17 your possession ample information exactly to the contrary, did
18 you not, sir?

19 MR. HEINEMAN: Objection to the premise, your Honor.
20 That completely misquotes what he just said. The statement was
21 I recall reading what a Dr. Kim said.

22 THE COURT: Objection is overruled.

23 Q Doctor, to put it in context you were asked by Mr.
24 Heineman, "Now, there was conversation between you -- this is

1 on Page 69 -- "Now, there was conversation between you and Mr.
2 Carr with respect to the Binghamton, New York fire. Do you
3 remember that?"

4 Your answer was "Yes, sir".

5 Question: Mr. Heineman asked you "And that was a fire
6 in which -- he showed you an article which said it had been
7 estimated that there was 2.8 parts per million of 2,3,7,8 TCDD
8 found in the soot that resulted from that fire. Do you recall
9 that?"

10 And your answer was "Yes".

11 And then the question was "Now, do you know, sir,
12 whether there has been a follow-up with respect to the people
13 that were exposed to the cleanup of that fire?"

14 And your answer was "I recall reading that a Dr. Kim
15 from the Health Department had an examination of those people
16 and found no evidence of an adverse effect on them".

17 Question: "Dr. Kim of who?"

18 Answer: "She's with the Health Department, I think."

19 Question: "Of the State of New York?"

20 Answer: "Yes, sir."

21 Now that's what you said at that time, isn't it, sir?

22 A Yes, sir.

23 Q And you said then in response to the question whether
24 or not there had been a follow-up --

1 A Yes.

2 Q You said yes there had been, a Dr. Kim had an exami-
3 nation of these people and found no evidence of an adverse
4 effect on them. That's what you said then --

5 A Yes, sir.

6 Q Now, there isn't anything in that document to suggest
7 that Dr. Kim had an examination of those people, is there, sir?

8 A I don't know how you could say there was no toxic
9 effects if you didn't do an examination.

10 Q Well, Doctor, that may be a fact.

11 A Yes, sir.

12 Q But there is no statement there that she had an
13 examination of those people. First of all, there's no state-
14 ment -- no, there's no statement that she had an examination
15 of those people at all, is there, sir?

16 A No, sir.

17 Q And there is no statement that on that examination
18 there was found to be no evidence of an adverse effect.

19 A It said there was no toxic effects. That is an
20 observed effect.

21 Q They observed, somebody -- she said that no observed
22 toxic effect was found in hundred -- was seen in 160 people.

23 A Yes, sir.

24 Q She doesn't even say there was an examination, does

1 she, sir?

2 A No, sir.

3 Q But you said there was an examination, didn't you, sir?

4 A Yes, sir.

5 Q Doctor, this question that Mr. Heineman asked you,
6 he specifically asked you whether or not there has been a follow-
7 up with respect to the people that were exposed to that fire
8 and all you said was relating to Dr. Kim, didn't you not, sir?

9 A Yes, sir.

10 Q But yet you had in your possession a follow-up that
11 shows a multitude of adverse effects, and you didn't mention
12 that, did you, sir?

13 A I didn't recall there being adverse effects.

14 (At this time Plaintiff's Exhibit 1534 was marked for
15 identification.)

16 Q Doctor, I'll hand you what's been marked Plaintiff's
17 Exhibit 1534 and ask you if you recognize that as a document
18 in your possession, first of all?

19 A Yes, I recall it.

20 Q Doctor --

21 MR. CARR: I'll offer this exhibit into evidence if
22 it please the Court.

23 THE COURT: Okay. Any objections?

24 MR. HEINEMAN: I'm just looking it over, your Honor.

1 THE COURT: Sure, go ahead.

2 MR. HEINEMAN: Your Honor, it's hearsay, and there's
3 no foundation established for it.

4 THE COURT: Objection is overruled.

5 MR. HEINEMAN: Other than that I don't have any
6 objection.

7 THE COURT: Objection is overruled. It's admitted
8 over objection.

9 Q Doctor, do you recognize your handwriting on the
10 bottom of that first page?

11 A Yes, sir.

12 Q What did you write on that, sir?

13 A I said it was title page.

14 Q And this was a paper that was delivered to the
15 American Chemical Society, wasn't it, sir?

16 A Yes, sir.

17 Q Did you attend that meeting?

18 A No, sir.

19 Q From whom did you receive this copy, Doctor?

20 A From Dr. Schecter.

21 Q I'm sorry?

22 A From Dr. Schecter.

23 Q You received it from him personally?

24 A Yes, sir.

1 Q Did you discuss the contents of it with him?

2 A No, sir.

3 Q When did you receive it from him?

4 A In the last year or two.

5 Q Well, this is dated -- you -- oh, incidentally,
6 those numbers that are on the bottom of each page are numbers
7 put there by you also, aren't they, sir?

8 A No, sir.

9 Q Sir?

10 A No, sir.

11 Q Were they numbered that way when you got it?

12 A I would suspect so.

13 Q The dates that appear on these pages, 1/18/84, is
14 that the date that you read the article?

15 A Where do you see 1/18/84?

16 Q Well, it appears on the first page, it's not too
17 clear on that, so if you would turn to page numbered 7 and page
18 numbered 8, and you can read it clearly on Page 10, 1/18/84.
19 Is that your writing, sir?

20 A No, sir.

21 MR. CARR: Your Honor, I'd like to pass Page 8 to the
22 jury if I might.

23 THE COURT: Fine.

24 (At this time Plaintiff's Exhibit 1534A was marked

1 for identification.)

2 Q Doctor, would you turn to Page 8 of that exhibit please
3 for me.

4 A Yes, sir.

5 Q And advise me whether or not 1534A correctly excerpts
6 a portion of that page where it starts "Medical Pathology"?

7 A Yes, sir.

8 Q And ends with the words "and other findings"?

9 A Yes, sir.

10 MR. CARR: Offer 1534A into evidence if it please the
11 Court.

12 THE COURT: Same objections?

13 MR. HEINEMAN: Yes, your Honor. Did I understand it
14 excerpts only part of it?

15 MR. CARR: That's correct, this part of it beginning
16 with the words "Medical Pathology" and ending with the words
17 "other findings".

18 MR. HEINEMAN: Oh, A is that?

19 MR. CARR: 1534A is that. I better give that page
20 a number, too.

21 (At this time Plaintiff's Exhibit 1534B was marked
22 for identification.)

23 Q Doctor, 1534B is the Page 8 from Document 1534, is
24 it not, sir?

1 A Yes, sir.

2 MR. CARR: It is 1534B that has been passed to the
3 jury, and I'll offer 1534B into evidence as well, your Honor.

4 THE COURT: Same objections?

5 MR. HEINEMAN: Yes, may my prior objection be --

6 THE COURT: Incorporated?

7 MR. HEINEMAN: For A and B.

8 THE COURT: Sure, so noted. Same ruling.

9 Q Doctor, now this is a paper written after the 1981
10 article of Kim, is it not?

11 A When was the paper given, do you know? I can't tell,
12 but I think so.

13 Q Well, there are dates in it that refer to 1983, work
14 done in 1983. If you'll turn to Page 16, you'll see it talks
15 about samples that were taken in 1983, two years after the
16 initial exposure.

17 A Yes, sir.

18 Q So that would be -- obviously this article was
19 written in point of time after the 1981 session was had in
20 which you referred to Dr. Kim's statement, isn't that correct,
21 sir?

22 A Yes, sir.

23 Q And this shows that at an industrial clinic, an
24 occupational medicine clinic that they noted in a group of

1 patients from this building one case of chloracne, transient
2 erythema, three cases of skin cancer, three cases of liver
3 pathology, hypertension, one suicide, nervousness, irritability,
4 insomnia, impotence, fatigue, elevated serum cholesterol,
5 triglyceride levels elevated, psychoneurotic illness leading to
6 time off from work, psychiatric treatment, headaches, and
7 peripheral nerve impairment and other findings. Do you see
8 that, sir?

9 A Yes, sir.

10 Q Now, Doctor, there was only one case of chloracne in
11 that building, wasn't there, sir, according to this, in this
12 occupational medical group?

13 A Yes, sir.

14 Q And there was a broad range of problems going from
15 suicide to cancer in these people that were in that building,
16 wasn't there, sir?

17 A Yes, sir.

18 Q Dr. Rousch, when you testified here, when Mr. Heineman
19 asked you the question were there -- has there been a follow-
20 up with respect to the people that were exposed to that cleanup
21 of that fire --

22 A Yes, sir.

23 Q You knew and you mentioned only that Dr. Kim one line
24 throw-away statement at an oral -- at a meeting, an oral state-

1 ment, not even a written paper at that, but an oral statement,
2 you had in your possession at that time and was aware of the
3 fact that on this follow-up there had been all of these things
4 found in these people after that Binghamton fire; you had that
5 information in your knowledge and in your possession, this is
6 your handwriting on the document, Dr. Rousch.

7 A Yes, sir.

8 Q Dr. Rousch, why in response to the question that Mr.
9 Heineman gave you, why did you want this Court to believe that
10 these -- that their -- they had found no evidence of an
11 adverse effect on these people when you knew and you had in
12 your possession this document that you sent for that showed
13 the exact opposite, that there had been a number of serious
14 health effects on these people?

15 A This states that the etiology findings are not clear.

16 Q Doctor, would you answer my question please, sir.

17 A I didn't recall having read this article, because
18 this was related to levels of dioxin in PCB's and tissues, not
19 this statement here.

20 Q Yes, but, Doctor, the point that I'm making is that
21 Mr. Heineman asked you a specific question --

22 A Yes, sir.

23 Q -- about whether or not had there been a follow-up
24 with respect to the people that were exposed to the cleanup of

1 that fire --

2 A Yes, sir.

3 Q -- and your response was a Dr. Kim follow-up, had
4 an examination. First of all, Dr. Kim did not have an exami-
5 nation or at least there's not statement in your reference that
6 she did.

7 A That's right.

8 Q And secondly, there has been a follow-up, which this
9 document shows the follow-up and shows all kinds of adverse
10 health effects. My question, Doctor, is not whether these
11 things are true or false.

12 A Yes, sir.

13 Q My question is why did you answer Mr. Heineman's
14 question the way you did without giving this information which
15 you should have given at that time?

16 A I didn't recall this.

17 Q And that's your sole explanation, Doctor?

18 A Yes, sir.

19 Q You don't recall that there had been all these health
20 effects, Doctor?

21 A I don't recall having read this.

22 Q Doctor, that's not what I'm even asking you. My
23 question is you don't recall that there has been a lot of health
24 effects that have been reported subsequent to this Binghamton

1 fire, there have been a number of studies, and I'm not bringing
2 those up, Doctor, to show you that there have been other health
3 effects. I'm bringing this up to ask you specifically this is
4 information that you had in your possession --

5 A Yes, sir.

6 Q -- at the time you were answering -- I can't prove
7 that you know of the other articles dealing with the health
8 effects, but I can and have proven that you knew of these
9 health effects, you knew of this follow-up exam, and so I'm
10 asking you why did you give the answer that you did to Mr.
11 Heineman when you knew that it wasn't true? Oh, it might be
12 technically correct --

13 MR. HEINEMAN: It's been asked and answered, answered
14 twice.

15 THE COURT: Objection is overruled. That was not
16 answered.

17 A I didn't recall this. I remember this article only
18 by virtue of the fact they were measuring residues of dioxin
19 and furans and PCB's in adipose tissue. That's what I remember.
20 That's what the substance of this article is about.

21 Q Doctor, the substance of the article that you referred
22 to, the Kim article, deals with whether or not to tear the
23 building down. There is absolutely no other mention in that
24 document about health effects associated with Binghamton other

1 than that one line throw-away, that one line statement, nothing
2 else.

3 A Yes, sir.

4 Q You remembered that, you tell us, and you could not
5 remember a suicide, three cases of skin cancers, three cases of
6 liver pathology, psychiatric treatment, headaches, psychoneurotic
7 illnesses, peripheral nerve impairment; you couldn't remember
8 those things, but you could remember the one line throw-away of
9 Kim?

10 A I had read that in preparation for this trial.

11 MR. CARR: I have no further questions, your Honor.

12 THE COURT: Ladies and gentlemen, we'll take a short
13 break at this time, and then we will resume testimony. The
14 admonishments that I have given you earlier will apply during
15 this break also. Court's in a short recess.

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

17 DR. GEORGE ROUSCH,

18 resuming the witness stand, having been previously sworn, testi-
19 fied further as follows:

20 RECLARIFICATION

21 BY MR. HEINEMAN:

22 Q Dr. Rousch, I'd like you to pick up in front of you,
23 if you would there please, Plaintiff's Exhibit 1533. Do you
24 have it there, sir?

1 A Yes, sir.

2 Q Would you read to the jury -- turn to Page --
3 where it says Page 188.

4 MR. CARR: What page, Counsel?

5 MR. HEINEMAN: 188.

6 Q I'd like you to direct your attention to the remarks
7 attributed to Dr. Kim there, okay?

8 A Yes, sir.

9 Q Would you read that first sentence aloud.

10 A "There were no toxic effects observed in the approxi-
11 mately 160 people who were exposed to some degree in the Bing-
12 hamton accident."

13 Q All right. Now, sir, she uses the term observed, does
14 she not?

15 A Yes, sir.

16 MR. CARR: Objection to the leading form of the question.

17 THE COURT: Objection sustained. Rephrase it please.

18 Q Does she use the term observed, sir?

19 A Yes, sir.

20 Q Now, could one reach the conclusion based upon the use
21 of that term that someone had looked at these people?

22 A Yes, sir.

23 Q Why did you say in your testimony, sir, that there had
24 been an examination?

1 A I know of no other way that we can say that there are
2 no toxic effects unless a history, a physical examination and
3 laboratory studies were done.

4 Q Was that an assumption on your part, sir?

5 A Yes.

6 Q Based upon what, the language made in that statement?

7 MR. CARR: Object to the leading form of the question.

8 THE COURT: Objection sustained.

9 Q Was that assumption based upon --

10 A Yes, sir.

11 Q -- that statement? Now, if you look at Plaintiff's
12 Exhibit 1534, sir, you see that?

13 A Yes, sir.

14 Q This is -- how many pages are in that exhibit, sir?

15 A 38.

16 Q And what is the title of that paper?

17 A Biological Markers after Exposure to Polychlorinated
18 Dibenzo Dioxins, TCDD's, Polychlorinated Dibenzo Furans, PCDF's,
19 Polychlorinated Biphenols, PCB's, Part I, Residues of TCDD's,
20 PCDF's, and PCB's in Adipose of Humans Exposed to a Transformer
21 Fire.

22 Q Now, sir, other than Page 8, which Mr. Carr showed you,
23 and which I think is Exhibit 1534B, that was passed to the jury,
24 what does the majority of this paper deal with as best you can

1 tell?

2 A The presence of dioxin, furans, and PCB's, both in the
3 environment as well as in these people exposed to these three
4 families of chemicals.

5 Q Does it contain figures and levels?

6 A Yes, sir.

7 Q Does it contain pages with chromatographic graphs?

8 A Yes, sir.

9 Q Photographs taken at the time of the fire, cleanup?

10 A Yes, sir.

11 Q Three pages of references?

12 A Yes, sir.

13 Q Tables of measurements?

14 A Yes, sir.

15 Q So that how would you characterize the gist of what
16 this document is about, 1534?

17 A It's a study to determine what levels of these families
18 of chemicals are found in the fat of men and apparently related
19 to the fact that they were involved in this transformer fire.

20 Q Now, with respect to Plaintiff's Exhibit 1534A that
21 begins with this sentence; you see that, sir?

22 A Yes, sir.

23 Q If you look at Plaintiff's Exhibit 1534B; do you have
24 that before you, sir?

1 A Yes, sir.

2 Q Is that the document from which this extract is taken?

3 A Yes, sir.

4 Q What is the sentence immediately before the one where
5 this extract begins?

6 A It states the etiology of these medical findings is
7 not always clear.

8 Q What does etiology mean, sir?

9 A Etiology has to do with the cause of the abnormality
10 that are found when these people were examined. In other words,
11 if a man has a sore throat, and if we culture his throat and
12 find he's got streptococcus in it, the etiology of that sore
13 throat was the streptococcus.

14 Q What you'd call a strep throat?

15 A Strep throat. And so the etiology of these things are
16 listed here he says is not always clear.

17 Q Sir, I'd like to take you back, if I may, to the
18 Suskind morbidity study. Let's look at -- I'd like to find
19 some of the exhibits though that you had at the time when we
20 were going through this before. (Pause) Let me hand you, sir,
21 what's been previously marked as Defendant's Exhibit 922 and
22 923 and Plaintiffs' Exhibits 1513 and 1514. Do you recognize
23 those, sir?

24 A Yes, sir.

1 Q And what are those?

2 A Those were the notes I made when I went through these
3 records.

4 Q The records being Plaintiffs' Exhibit 1468?

5 A Is that -- I can't tell.

6 Q I think that's right. Let's look at Plaintiffs'
7 Exhibit 1473C in connection with what we went through once before.

8 MR. HEINEMAN: Your Honor, I neglected to mark these
9 pages.

10 THE COURT: Which pages are those?

11 MR. HEINEMAN: That Dr. Rousch and I went through the
12 other day with a defendant's number.

13 THE COURT: Why don't you put a number on it. We'll
14 make it a group exhibit then.

15 (At this time Defendant's Exhibit 924 was marked for
16 identification.)

17 Q Dr. Rousch --

18 THE COURT: What number is that?

19 MR. HEINEMAN: It's 924, your Honor.

20 Q Would you agree with me that Defendant's Exhibit 924,
21 a group exhibit, consists of six pages done in green marker
22 that were the results of clarification examination that you and
23 I did the other day on the Suskind morbidity study?

24 A Yes, sir.

1 Q Now, one of the ones that Mr. Carr just asked you
2 about was Mr. McDade. You remember that, sir, Edward McDade?

3 A Yes, sir.

4 Q And when we went through this the last time, how did
5 you characterize Mr. McDade as being exposed or unexposed?

6 A Exposed.

7 Q And how did you characterize whether or not he should
8 be included in Table 1 as an exposed person?

9 A I said you need more information.

10 Q And what was the basis for that conclusion, sir?

11 A The doctor had said that he had a tumor of the skin,
12 but he didn't say any more than that, and so I said that he
13 hasn't established that he's -- that he has a cancer, and I
14 wanted to get from the doctor what he thought about that.

15 Q Now, sir, if I am not mistaken, in reference to a
16 prior exhibit, I think a memorandum by Tim Long of your depart-
17 ment, you and Mr. Carr discussed the meaning of the term tumor.
18 Do you remember that?

19 A Yes, sir.

20 Q And whether or not a tumor could either be malignant
21 or whether it could be benign. Do you remember that, sir?

22 A Yes, sir.

23 Q What term did the doctor use who did the history and
24 physical examination on Mr. McDade on Mr. -- on Dr. Suskind's

1 behalf?

2 A I don't recall from this, but from that cause he said
3 it was a tumor without further definition.

4 Q All right. Now, why is it, sir, -- strike that --
5 when you summarize on Page 6 of Group Exhibit 924 what should
6 be done with Mr. McDade, what did you say?

7 A I said I wanted to get more information.

8 Q Did you say he should be stricken from the table?

9 A No, sir.

10 Q So you didn't take him off, did you?

11 A No, sir.

12 Q You said you wanted more information?

13 A Yes, sir.

14 Q And that's what you said back here, didn't you, sir?

15 A Yes, sir.

16 Q Now, the interview on Mr. McDade, what does it say
17 with respect to a skin cancer?

18 A On Page 15 he said yes, he had a cancer, and it was of
19 the skin.

20 Q All right. Now, do you have the McDade record in
21 front of you there, sir?

22 A No, sir.

23 MR. HEINEMAN: What number is it, Joe, can you tell me?

24 MR. CARR: 32.

1 MR. HEINEMAN: 32?

2 MR. CARR: I'm not Joe, but that's the number.

3 Q Now, would you look at what the physician said and
4 look at all the things the physician said.

5 A It says he had had removal of several skin tumors with-
6 out further definition on history, and on examination he did not
7 find a cancer or anything else other than some hyperkeratotic
8 lesions that would go with the fact, and the fact that he had
9 actinic changes would be consistent with the fact that he had
10 had skin tumors. Now, then they summarized this, and he left
11 it out and didn't talk anything about tumors here, so --

12 Q Now, when they -- when you say summarize, what are
13 you referring to, sir?

14 A The dermatologist who said he had removal of skin
15 tumors without further definition, when he then wrote down his
16 diagnosis he was talking about the changes in the skin and made
17 no further mention about the skin tumors.

18 Q What is that page, is it Page 25, sir?

19 A The first page is on Page 21.

20 Q And that's where they start the history, is that
21 right?

22 A That's right.

23 Q Now, Mr. Carr was referring to the statement on this
24 form that says additional history, is that right?

1 A Yes, sir.

2 Q Now, sir, when we discussed this before, did these
3 examinations and interviews all begin at the same stage or did
4 some of them occur simultaneously?

5 A They were taking place simultaneously.

6 Q So that while -- how many interviewers were there?

7 A I just know there were at least two. I don't know
8 whether there was more or not.

9 Q All right. How many physicians were there?

10 A There were a number of them. There were general
11 internists, several dermatologists, and I think there was a
12 neurologist as well at least.

13 Q Now, did it occur that a physician could be taking a
14 history and physical exam from someone who had not previously
15 been interviewed by the interviewer?

16 A Yes, sir.

17 Q And could it occur that the interviewer was inter-
18 viewing someone --

19 MR. CARR: Object unless the witness has first stated
20 that he was there and he knows that to be the fact. Otherwise
21 it's pure speculation.

22 THE COURT: Objection sustained.

23 Q Do you know it to be a fact, sir?

24 A No, sir.

1 Q You do not? All right. Do you have a source of your
2 understanding?

3 MR. CARR: Your Honor, I object to any source of
4 understanding. It has to be his knowledge.

5 THE COURT: Objection sustained.

6 MR. HEINEMAN: Well, your Honor, he can certainly say
7 what his source is. I may not be able to get him to say what
8 the man told him, but --

9 MR. CARR: Your Honor, counsel knows that's doing by
10 indirection that which he may not do by direction.

11 THE COURT: Objection is sustained.

12 Q Dr. Rousch, if you were to assume, sir, that the
13 physician -- that a man went in for his physical exam and had
14 not yet been interviewed --

15 MR. CARR: Object, your Honor, unless there is evidence
16 that that's in fact what occurred and that this witness knows
17 that that occurred. I object to it.

18 THE COURT: Objection is sustained.

19 Q Well, sir, the physician in this case would take a
20 history, doesn't that appear from the record, sir?

21 A Yes, sir.

22 Q Does it appear from the records -- other than the
23 word additional history, does it appear from the records whether
24 or not the physician knew that that person had already been

1 interviewed?

2 A No, sir.

3 Q Now, the physician took a history, as is reflected in
4 the record --

5 A Yes, sir.

6 Q And is there -- there is --

7 MR. CARR: Your Honor, to keep the record straight
8 it's additional history the physician took, and it's clear from
9 these records.

10 THE COURT: Could you rephrase the question please?

11 MR. HEINEMAN: Am I to understand, your Honor, --
12 I'm not sure I understand.

13 THE COURT: The point of clarification for additional
14 history.

15 MR. HEINEMAN: I have to use the word additional?

16 THE COURT: I believe that it was so noted, and the
17 witness agreed a number of times that it was additional history.
18 I'm ordering that you clarify the question in that respect.

19 MR. HEINEMAN: All right, sir.

20 Q Now in this additional history as it's listed on the
21 form there, sir, the -- there was one of those histories taken
22 by a dermatologist?

23 A Yes, sir.

24 Q And according to the record was one of those histories

1 taken by another type of doctor?

2 A Yes, sir.

3 Q And who -- what kind of doctor was that?

4 A A general internist.

5 Q So there were two --

6 MR. CARR: Your Honor, I object unless this history,
7 this record that we have here shows that. I'd hate to go through
8 cross examining this witness again, but the exhibit that I have
9 on McDade does not have the name of the physician. It has a
10 nurse ID, and I'd hate to have to go through all this again.

11 MR. HEINEMAN: I don't understand what the objection
12 is.

13 MR. CARR: My objection is is that the witness is
14 speculating and that this record does not support what he is
15 saying as to your suggestion.

16 THE COURT: Gentlemen, I'd like you to approach the
17 bench with a copy of that record. I don't have a copy of it.

18 (The following proceedings were had at the bench out
19 of the hearing of the jury.)

20 MR. CARR: Here's the additional history. There's a
21 nurse's ID, but no doctor's name.

22 MR. HEINEMAN: Your Honor --

23 THE COURT: That's blood pressure, I assume? Yeah,
24 that is.

1 MR. HEINEMAN: There is an identification of the
2 physician by name and number on the document here.

3 MR. CARR: Where?

4 MR. HEINEMAN: I've seen it.

5 THE COURT: I don't see it.

6 MR. CARR: It's not there.

7 MR. HEINEMAN: I thought I'd seen one. I've seen it
8 on the others.

9 MR. CARR: It is on some, it's not on others, Counsel.
10 That's my point.

11 THE COURT: I don't see one. It's about four pages,
12 and I don't think there is one. There's a point, there's a
13 place for it, but there's nothing in it, an ID or name.

14 MR. HEINEMAN: Well, in any event, your Honor, my
15 point is this. If you look at Page 25 --

16 THE COURT: Umhm.

17 MR. HEINEMAN: Where the physician's diagnosis is
18 given you've got --

19 MR. CARR: Hold it. It doesn't say physician's
20 diagnosis --

21 THE COURT: That's not --

22 MR. CARR: It says diagnosis impression.

23 THE COURT: That's not the point. The point is you
24 were talking about this additional history and different doctors

1 taking it.

2 MR. HEINEMAN: That's right.

3 THE COURT: And that doesn't have anything to do with
4 the diagnosis, number one. Number two, the diagnosis doesn't
5 tell us who wrote it either.

6 MR. HEINEMAN: If you'd look at it, sir, here's the
7 way it appears to me. You've got --

8 MR. CARR: My objection is that there's no doctor
9 identified here. You said -- he said there was, and I say
10 there is not. I object to your --

11 MR. HEINEMAN: May I point something out here, Mr.
12 Carr?

13 MR. CARR: Sure.

14 MR. HEINEMAN: The first three diagnoses, your Honor,
15 heart disease, ulcer disease, and hiatal hernia would hardly
16 be that which would be diagnosed by a dermatologist, whereas
17 Item 4, 5, and 6 are clearly items that would be reported by
18 a dermatologist, solar elastosis, actinic keratosis and some-
19 thing which I think is an athlete's foot condition. Now, it
20 also appears that the handwriting is different, that a different
21 pen was used, that you've got somebody that did the first three
22 and somebody else that did the last three.

23 MR. CARR: Nobody's quarreling with that, Counsel.

24 THE COURT: First of all, that's not -- that is pure

1 -- that is more speculation than you're asking, number one.
2 Number two, you're telling me that an internist or a dermatologist
3 who is in either of those positions is not capable from any kind
4 of training of making those same diagnoses and impressions,
5 which I'm not so sure of. Number three, the whole point is
6 about the additional history part and not the diagnosis or
7 impressions and there is nothing that that relates to that.
8 There is a point and place for a physician's name and/or
9 physician's ID number, neither of them is in there. The objec-
10 tion is well placed as far as this document is concerned, and
11 the objection is sustained.

12 (The following proceedings were had in the hearing
13 and presence of the jury.)

14 Q Dr. Rousch, insofar as your conclusion about Edward
15 McDade is concerned, the basis upon -- would you tell us the
16 basis upon which you said you need more information?

17 A We have an opinion by the doctor of a skin tumor not
18 otherwise identified.

19 Q In reviewing these records, sir, did you attribute
20 any different importance between what was reported to the inter-
21 viewer and what was seen from the portion of the exam filled in
22 by the physician?

23 A I look at both of them, and when in doubt, is I took
24 the opinion of the doctor who was examining the man.

1 Q Did you consider the history taken by the doctor in
2 reaching the decisions you made which are reflected in Defendant's
3 Exhibit 924?

4 A Yes, sir, the physician who does an examination always
5 asks history related to what examination he does.

6 Q And does a history appear?

7 A Yes, sir.

8 Q Under the term additional history?

9 A Yes, sir.

10 Q Now, with respect to Harry Reynolds, Mr. Reynolds,
11 how did you characterize Mr. Reynolds with respect to exposure,
12 sir?

13 A Not exposed.

14 Q All right, sir. Now, if I recall correctly, when you
15 were examined by Mr. Carr a few moments ago, you gave the opinion
16 that he could possibly be exposed, is that right?

17 A Yes, sir, but I would call him minimally exposed at
18 best.

19 Q Now when you went through the records you characterized
20 him, how did you characterize him?

21 A I called him not exposed when I went through it.

22 Q All right. So that if as Mr. Carr represents in
23 Plaintiffs' Exhibit 1473C, Dr. Suskind characterized Harry
24 Reynolds as unexposed, would you find any fault with that?

1 A No, sir.

2 Q Now, sir, Mr. Carr asked you about Ed Volz. Now, let
3 me move on to Ed Volz here for a moment. As I recall, sir --
4 oh, I'm sorry, do you want to get it first? Do you have it there?

5 A Yes, sir.

6 Q Now, for Mr. Volz what did he tell the interviewer with
7 respect to his cancer history?

8 A He said he had a cancer and it was a bladder cancer.

9 Q All right. So he said yes to bladder?

10 A Yes, sir.

11 Q But he did not say he had a skin cancer, correct?

12 A That's right.

13 Q All right. Now let me direct your attention to
14 Exhibit 1472, which is the computer printout here. If you look
15 down for Mr. Volz, would he be No. 101 there, sir?

16 A Yes, sir, he would be listed really as 52.

17 Q All right. Now V701 is what, sir?

18 A It says other.

19 Q V702 says what?

20 A It says miss, and I think that means there's no other
21 lesion.

22 Q V703 says what, sir?

23 A It says also miss, which means nothing else.

24 Q All right. So V701 there's a positive for other, but

1 a miss for V702 and a miss for V703, correct?

2 A Yes, sir.

3 Q What does the doctor's record show with respect to Mr.
4 Volz?

5 MR. CARR: Counsel, for the record are you talking
6 about the additional history, are you talking about medical
7 records, are you talking about the interviewer, which are you
8 talking about?

9 MR. HEINEMAN: The physician portion of the record
10 that's before him.

11 MR. CARR: The additional history portion?

12 THE WITNESS: Yes, sir.

13 MR. HEINEMAN: And the entire record. Additional
14 history, physical exam, whatever, the physician portion of it.

15 Q What does it say, sir?

16 A The physician said he had a basal cell carcinoma of
17 his back ten or twelve years ago.

18 Q So the physician says basal cell cancer of the skin?

19 A Yes.

20 Q What does the physician say about the bladder?

21 A It says that in 1951 he had a bladder tumor removed
22 that was benign, and there had been no recurrence since 1951.

23 Q Now, what does the fact that the interview is yes for
24 bladder, no for skin, but the doctor's portion of it says no

1 for bladder and yes for skin tell you about what V701 and V702
2 and V703 mean on this printout?

3 A That comes under the classification of other and calls
4 it a bladder cancer, and nothing --

5 Q The only place in the record where there is a yes on
6 bladder is where, sir?

7 A There it says yes, that's what the history says.

8 Q Which history?

9 A The history as recorded on Page 15.

10 Q By whom?

11 A By the interviewer.

12 Q All right. So if the interview is yes for bladder
13 V701 is positive for other type of cancer, correct?

14 A Yes.

15 Q But the doctor is no for bladder, correct?

16 A Benign bladder.

17 Q And yes for skin?

18 A Yes.

19 Q But the interview is no for skin, correct?

20 A Yes.

21 Q And there's no skin listed for Mr. Volz in either
22 V701, 702 or 703, correct?

23 A That's right.

24 Q So what does that tell you what V701 and V702 are

1 reporting?

2 A What the history says, and that's all.

3 Q To whom?

4 A To the interviewer.

5 Q And nothing else?

6 A That's right.

7 Q Now, as a result of this record, sir, would you
8 include Ed Volz in Table 1 as an exposed person?

9 A Yes.

10 Q For skin cancer?

11 A Yes.

12 Q Even though he did not report it to the interviewer?

13 A That's right.

14 Q And you put him as a what for bladder?

15 A I would take the bladder off, because it's benign and
16 it's not a cancer.

17 Q Even though he said yes to the interviewer?

18 A Yes, sir.

19 Q Because of what the doctor said about him?

20 A Yes, sir.

21 Q Now, with respect to Harry Honaker, sir, do you
22 included him, did you not?

23 A Yes, sir.

24 Q On the basis, as I recall, that either one --

1 MR. CARR: Object to the leading form of the question
2 if it please the Court.

3 THE COURT: Objection sustained.

4 Q Okay. On what basis was he included?

5 A Because he had -- he was exposed and he had leukemia
6 and he had a prostate cancer.

7 Q And he's -- how many times is he on the list in the
8 Suskind morbidity study?

9 A You can only be on the list once.

10 Q So he's on it once?

11 A Yes.

12 Q All right. Now with respect to John Selby, sir, if
13 I recall, Mr. Carr asked you about Mr. Selby. Do you recall
14 Mr. Carr asking you about Mr. Selby, sir?

15 A Yes, sir.

16 Q All right.

17 MR. CARR: Your Honor, I've been waiting, and so far
18 all this reclarification is is a rehash of his first clarification
19 examination, and there's nothing new that he is bringing out at
20 this point in time. All he's doing is repeating exactly what
21 he did earlier, and I object to his repetition.

22 MR. HEINEMAN: Your Honor, we are indeed clarifying
23 those people that Mr. Carr went through with respect to Mr.
24 Carr's claiming or thinks -- suggesting to the witness that

1 they should be as he had originally classified them, and what
2 I'm doing is showing that this witness' original classification
3 as set forth here was correct.

4 MR. CARR: Your Honor, I went through only the ones
5 that Mr. Heineman had some questions and the doctor had a
6 question about in their clarification examination. I have that
7 right to do that. There wasn't anything new that I brought out
8 in my examination that would warrant this rehash of the same
9 subject. If we continue this way, then I would have the right
10 to ask the questions about the same thing that Mr. Heineman just
11 talked about and then he would have the right to talk about.
12 Reclarification examination I thought was for the sake of
13 explaining something new that I may have brought out in my
14 examination and not for the purpose of rehashing material that
15 he's already hashed once, and I object to it. It's repetition.

16 THE COURT: Objection is sustained.

17 MR. HEINEMAN: Your Honor, I'm only going over the
18 ones that he covered.

19 THE COURT: The objection is well placed. It's sus-
20 tained.

21 Q Sir, Mr. Carr asked you about Mr. Scarberry, did he
22 not, sir?

23 A Yes, sir.

24 Q Now, he reviewed with you, did he not, sir, the 1472

1 with respect to Mr. Scarberry?

2 A 1472? Oh, this?

3 Q That's the computer printout, sir.

4 A Yes, sir.

5 Q Now, on 1472, sir, he pointed out to you that Scar-
6 berry --

7 MR. CARR: Object to the leading form of the question,
8 and there isn't anything new that I'm aware of that counsel can
9 get into on this point.

10 MR. HEINEMAN: Well, your Honor --

11 THE COURT: Objection as to form is sustained. He
12 may rephrase the question.

13 Q Doctor, if you look at Scarberry, sir --

14 A Yes, sir.

15 Q What does 1472 say with respect to Scarberry on V701
16 and V702?

17 A That he had history of a lung cancer and a bowel
18 cancer.

19 Q History of lung and bowel?

20 A Yes, sir.

21 Q And the record demonstrates, sir, what with respect
22 to the interview?

23 A That in fact this lung and bowel cancer --

24 Q Yes to both?

1 A Yes, sir.

2 Q V701 and V702?

3 A Yes.

4 Q Now, what does the doctor say about Homer Scarberry?

5 MR. CARR: Your Honor, that's repetition. We've gone
6 through that already.

7 MR. HEINEMAN: Well, your Honor --

8 THE COURT: Objection sustained. It is repetition.

9 MR. HEINEMAN: May I speak to it, speak to the objection?

10 The implication that Mr. Carr was making, your Honor, in the
11 reexamination of the witness was that Dr. Suskind had reached
12 the conclusion vis-a-vis what he heard from Vicki Hertzberger,
13 that Dr. Suskind had reached the conclusion that indeed Homer
14 Scarberry had cancer, and what I'm seeking to demonstrate is
15 that all these V701 and V702 reports are what's been told the
16 interviewer, and they don't reflect the conclusion of Dr. Suskind
17 with respect to whether or not that man had cancer and should,
18 therefore, be included in Table 1. That's what I'm seeking to
19 do, because that's the implication that Mr. Carr was trying to
20 raise.

21 THE COURT: Mr. Carr, do you have any statement to the
22 objection?

23 MR. CARR: Your Honor, the questions that he has asked
24 at this time are questions that he asked when he rehashed it.

1 There isn't anything new that he's bringing out. There is no
2 dispute about the fact that he gave a history of lung and
3 bladder cancer, there is not dispute about the fact that it's
4 listed in 1472 under those V numbers as that. All this matter
5 has been gone into by both sides, and this would make it the
6 second time Mr. Heineman has gone into it.

7 THE COURT: Objection is sustained. Move on please.
8 It has been covered.

9 Q Would you, based upon what you see in the records
10 there put Chester Correll as an exposed person or leave him as
11 unexposed?

12 MR. CARR: Your Honor, that's repetition. The question
13 was asked and answered. Mr. Heineman asked it originally in
14 clarification.

15 THE COURT: Objection is sustained. It is repetition.

16 Q Based upon your examination by Mr. Carr just a few
17 moments ago with respect to Curtis Postlethwaite, do you remember
18 that, sir?

19 A Yes, sir.

20 Q Would you reclassify him as belonging in Table 1?

21 A No.

22 Q And why not?

23 A Because the skin cancer mentioned by the doctor is
24 not -- I mean by the interviewer -- is not mentioned by the

1 doctor.

2 Q And what is the reason, sir, that you would give that
3 difference in weight?

4 MR. CARR: Your Honor, that's been gone into as well.
5 I object to this repetition.

6 THE COURT: Objection is sustained.

7 Q Keith Hill, do you have the Hill record there, sir,
8 please.

9 A Yes.

10 Q Mr. Carr asked you to refer to the first three pages
11 of that record. Do you recall that, sir?

12 A Yes, sir.

13 Q And he asked you to read to the jury from the second
14 page at the top. Do you recall that?

15 A Yes, sir.

16 Q The second page at the top cites what, sir?

17 A The preoperative diagnosis is what they're referring
18 to, and it says that there is a history of carcinoma of the
19 bladder, and the examination was to rule out recurrence.

20 Q So the history of carcinoma of the bladder is stated
21 on Page 2?

22 MR. CARR: Object to the leading form of the question.

23 THE COURT: Objection sustained. Please rephrase it.

24 Q Is there a history of bladder cancer stated on Page 2?

1 MR. CARR: Repetition, your Honor. The witness has
2 already stated what's stated on Page 2.

3 THE COURT: Objection sustained.

4 Q What's the date on Page 2?

5 A March 22nd, 1976.

6 Q What's the date on Page 1?

7 A May 21st, 1971.

8 Q What is the bladder statement made in 1971 on Page 1?

9 A Transitional cell papilloma of the bladder neck.

10 Q What is a transitional cell papilloma?

11 A Well, first of all, is a papilloma is an outgrowth
12 where a lesion or we call it -- it can be called a tumor of
13 the bladder neck, and the transitional cell just means that the
14 same kind of cells that are found in the bladder epithelium.

15 Q All right. Is a papilloma a malignant or benign tumor?

16 A It's a benign tumor.

17 Q So in 1971 it's benign?

18 A Yes, sir.

19 MR. CARR: Object to the leading form of the question.

20 THE COURT: Objection sustained.

21 Q Now, what does the physician say in the record in Dr.
22 Suskind's examination with respect to Keith Hill?

23 A The history says negative history and the normal
24 examination.

1 Q What does the physician say about the bladder?

2 A In his -- in his summary of the history the state-
3 ment is made benign bladder neck tumor, surgical treatment,
4 non-recurrence.

5 Q How does that relate, sir, to the 1971 record?

6 A They're talking about the same thing.

7 Q And how does that relate to the 1976 record?

8 A When Dr. Dean or Dr. Sellus were planning to do this
9 cystoscopy, they said that there was a history of cancer of the
10 bladder, and I'm not sure on what they made that -- that state-
11 ment of history.

12 Q But the '71 record demonstrates is it cancerous or is
13 it not?

14 A No, sir, it's not, it's a benign lesion.

15 Q And so would you list Mr. Hill for a bladder cancer?

16 A No, sir.

17 Q Would you list him for a skin cancer?

18 A Yes.

19 Q Why is that?

20 A The history by the dermatologist said that he had a
21 malignant mole on his back which was removed surgically.

22 Q Now with respect to Mr. Rogers, sir, do you believe as
23 you sit there now he should be included in the list as exposed
24 or not?

1 A No, sir, I thought he wasn't exposed.

2 Q Do you still feel that way?

3 A Yes.

4 Q With respect to Mr. Waldorf's records, sir --

5 A Yes, sir.

6 Q Was that the one -- could you read that one?

7 A No, I could not.

8 Q And did you take Mr. Waldorf off?

9 A No, sir.

10 Q What did you say about him?

11 A I said I'd like to know what that physician said when

12 he examined him and took his history.

13 Q So you put a question mark?

14 A Yes, sir.

15 Q And you said need more information?

16 A Yes, sir.

17 Q So you didn't take him off, did you?

18 A No, sir.

19 Q If I can direct your attention for just a moment again

20 to Keith Hill and Exhibit 1472 --

21 A Yes, sir.

22 Q What does 1472 say with respect to V701 for Keith Hill?

23 A Nothing.

24 Q V702?

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1 A Nothing.

2 Q V703?

3 A Nothing.

4 Q And indeed on the form what did Mr. Hill tell the
5 interviewer about cancer?

6 A I can't read it.

7 Q Well, do you have the form there in front of you?
8 Here we go.

9 A On 15 it says he had no cancer.

10 Q And V701, 2, and 3 are all negative?

11 A Yes, sir.

12 Q And the doctor diagnosed malignancy of the skin?

13 A Yes, sir.

14 Q Sir, does that reinforce your view as to what V701, 2,
15 and 3 on 1472 purport to do?

16 A Yes, sir.

17 Q Now, sir, there came a time in your examination by
18 Mr. Carr when you talked about the question of whether or not
19 the -- what Dr. Suskind sent you on September 29th of 1980
20 was the final report. Do you remember that, sir?

21 A What date was that?

22 Q September 29th, 1980.

23 A Yes, sir.

24 Q And do you remember his discussing that with you, sir,

1 in connection with your former testimony?

2 A Yes, sir.

3 Q Do you recall that? And he asked you, as I recall,
4 whether at Page 66 of your testimony you were telling the truth;
5 do you remember that?

6 A Yes, sir.

7 Q I think that was May 31st, if I'm not mistaken. Let
8 me show you that testimony, sir, May 31st of 1985, Page 66. Do
9 you remember Mr. Carr showing you that?

10 A Yes.

11 Q All right, sir. Now, he asked you, do you recall --
12 let me ask you, do you recall whether he asked you whether you
13 were telling the truth at that point, do you recall that?

14 A No, sir.

15 Q Well, do you recall, sir, your telling him that you
16 didn't know whether or not you were telling the truth at that
17 point?

18 A Yes, sir.

19 Q All right. What did you mean by that?

20 A When I read the report was I reading the final report.
21 The definition of the final report has only to do with when Dr.
22 Suskind says that the final report, so I had read the report,
23 but I'm not sure when I read it. We're talking about was I
24 reading it as the final draft or just a preliminary report, so

1 the question is only that in my opinion what I was being asked.

2 Q Now, the testimony you gave there was on the 31st of
3 May, sir, is that right?

4 A Yes, sir.

5 Q At that time or as you sit here now do you have a
6 specific fix on the first time you discussed with Dr. Suskind
7 the question of whether the September 29th, 1980 report should
8 be considered final?

9 A That was not the final report in 1980.

10 Q My question, sir, is do you have a fix on the first
11 time you discussed with Dr. Suskind when the September 29th,
12 1980 report should be considered the final report?

13 A It was about the end of May or early in June.

14 Q Now, the facts, sir, -- let me hand, sir, what's
15 been marked as Defendant's Exhibit 917. Can you identify that
16 for me please?

17 A This is a letter or a memo from the Superintendent
18 for Health and Safety at the Krummrich Plant, and he is writing
19 a letter to the union committee on June 14th, 1985, and the
20 subject was Dr. Suskind's Krummrich study.

21 Q And what does the memo say, sir?

22 MR. CARR: Your Honor, that's repetition. Counsel
23 got into that once already.

24 THE COURT: Objection sustained. It has been read

1 already.

2 Q Would you turn to the next page. Would you identify
3 that document for me?

4 MR. CARR: The next page has been read to the jury as
5 well, your Honor.

6 MR. HEINEMAN: I'm just asking him to identify what
7 it is.

8 MR. CARR: He's already identified it, Counsel.

9 THE COURT: Objection is sustained. Please get onto
10 something that's not repetitious.

11 Q Doctor, as you sit there now, sir, is there any question
12 in your mind as to whether or not the report that Dr. Suskind
13 sent to you on September 29th, 1980 was a preliminary report?

14 A The 1980 report sent to me was a preliminary report.

15 Q Thank you, sir. Now, sir, were the results of the
16 Suskind examination given to the Krummrich workers at any time
17 by Dr. Suskind?

18 A Each individual man had a report of his findings.

19 MR. CARR: Your Honor, that's all repetition, too.
20 Counsel has gone into that.

21 MR. HEINEMAN: Your Honor, there's a -- Mr. Carr
22 asked this witness as to whether or not the results of the report
23 were given to the workers on -- when he came back with him,
24 and I want to clarify that indeed they were.

1 MR. CARR: I asked whether or not this report was
2 given to them.

3 THE COURT: I didn't hear the last part of what you
4 said, I'm sorry.

5 MR. CARR: I asked whether or not this report had ever
6 been given to the workers.

7 MR. HEINEMAN: That's not my recollection. The results
8 of the examination were given to the workers.

9 MR. CARR: Counsel, it's been in the record for a long
10 time that Dr. Suskind sent letters to different workers from
11 time to time based upon his Krummrich plant study. That's an
12 exhibit in the record. There's no contest on that point. The
13 contest is whether or not they were ever told of this final
14 report, of this September 29th, 1980, that's the contest.

15 THE COURT: Objection is sustained.

16 Q Doctor, Exhibit 9 -- what does Exhibit 917 tell us
17 on that point?

18 MR. CARR: Your Honor, that's repetition. Counsel
19 has gone into that.

20 THE COURT: Objection is sustained. It has been gone
21 into already.

22 MR. HEINEMAN: Your Honor, I see it's four o'clock.

23 THE COURT: Do you have any further questions?

24 MR. HEINEMAN: I beg your pardon?

1 THE COURT: Do you have any further questions?

2 MR. HEINEMAN: Yes, sir, I do.

3 THE COURT: Okay. We'll adjourn for the day at this
4 point. Ladies and gentlemen, I would remind you on an over-
5 night break that you're not to discuss this, you're not to
6 read, listen to, or watch anything about this case in particular
7 or the subject matter in general as well as not discussing it
8 among yourselves or with anyone else outside the jury. I'd
9 also remind you that we're not in session tomorrow. We'll
10 start on Wednesday morning at nine o'clock. Court's adjourned
11 for the day.

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1 STATE OF ILLINOIS)
2 COUNTY OF ST. CLAIR) SS
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4 I, MARSHA SCHNIPPER, one of the Official Court Repor-
5 ters in and for the Twentieth Judicial Circuit of the State of
6 Illinois, and the Official Court Reporter who reported the pro-
7 ceedings had at the hearing of Frances E. Kemner, et al. vs.
8 Monsanto Company, No. 80-L-970, on the 29th of July, 1985, do
9 hereby certify that the above and foregoing is a true and
10 correct transcript of the proceedings had at said hearing,
11 which proceedings were reported by me in shorthand and by me
12 correctly transcribed.

13 Dated this 5th day of August, 1985.
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Marsha Schnipper
Official Court Reporter

1 utility worker in the plant that he did not have exposure?

2 A Cause I know what he does.

3 Q Doctor, we just went through that. Now either I'm
4 missing something or you're missing something. He is a utility
5 plant worker?

6 A Yes, sir.

7 Q And you don't know where the utility plant is, where
8 that --

9 A No, sir.

10 Q Do you, sir?

11 A No, sir.

12 Q It could be here, here, here, here, here, it could
13 be anywhere, couldn't it, sir?

14 A Not any place, but it's more along that main road,
15 but I'm not sure where it is.

16 Q And by the main road, you mean this road?

17 A Yes, sir.

18 Q That goes right in front of the 2,4,5 T Department?

19 A Yes, sir.

20 Q Do you know how many times a day he has to pass by
21 the 2 -- well, it's in between, Department 46 is on one side
22 of the road and the Building 41 is on the other side of the
23 main road?

24 A Yes, sir.

1 Q So a worker using the main road passes right in be-
2 tween, right in the midst of the area where they're making
3 2,4,5 T?

4 A It could be, yes, sir.

5 Q Doctor, he could well have exposure every day going
6 to and from the plant, could he not, sir, on that main road?
7 You've got it -- Building 46 here, Building 41 here. They
8 made 2,4,5 T in Building 46, they made 2,4,5 T here, and this
9 building even juts out into the main road, Building 41.

10 A Yes, sir.

11 Q So a man walking by there would have exposure every
12 day, would he not?

13 A Theoretically.

14 Q And on a practical basis as well, although it couldn't
15 be measured according to your calculation, isn't that right?

16 A Yes, sir.

17 Q Then, Doctor, he could well be classified as being
18 exposed, could he not, sir?

19 A Not by my classification.

20 Q I'm sorry?

21 A Not by my approach.

22 Q Doctor, didn't we just go through that he could have
23 exposure every day?

24 A Not measurable.