

1 IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT

2 ST. CLAIR COUNTY, ILLINOIS

3
4 FRANCES E, KEMNER, ET AL.,)

5 Plaintiffs,)

NO. 80-L-970

6 vs.)

7 MONSANTO COMPANY,)

8 Defendants.)

9
10 REPORT OF PROCEEDINGS

11 JULY 9, 1985

12
13 Before the HONORABLE RICHARD P. GOLDENHERSH, Circuit Judge

14
15 APPEARANCES:

16 MR. REX CARR and MR. JEROME SEIGFREID, Attorneys at Law,
17 on Behalf of the Plaintiffs; and

18 MR. KENNETH HEINEMAN and MR. JOSEPH NASSIF
19 on Behalf of the Defendant, Monsanto Company.

INDEX OF WITNESSES

Called on behalf of the Plaintiffs:

DR. GEORGE ROUSH

Cross Examination

(By Mr. Carr).....2

INDEX OF EXHIBITS

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1 BE IT REMEMBERED AND CERTIFIED, that heretofore,
2 on to-wit: July 9, 1985, the matter as hereinbefore set
3 forth came on for hearing before the Honorable Richard P.
4 Goldenhersh, Circuit Judge in and for the Twentieth Judicial
5 Circuit, and the following was had of record, to-wit:

6
7 (The cross examination under section 2-1102 of
8 Dr. George Roush by Mr. Carr continued as follows:)

9
10 (At this time Plaintiff's exhibit 1467 was
11 marked for identification by the court reporter.)

12
13 Q (By Mr. Carr) Doctor, I'll hand you now what's
14 been marked Plaintiff's exhibit 1467, ask you to look at
15 that, if you would. Do you recognize that as a news release
16 issued by Monsanto relating to the study that we've looked
17 at yesterday?

18 A Yes, sir.

19 Q Now, Doctor, the purpose of news releases is to let
20 the public be informed as to things and events that Monsanto
21 considers important, and of course, for the benefit of the
22 public relations aspect of the Monsanto operation; would
23 that be correct, sir?

24 A Yes, sir.

1 MR. CARR: I'd like to offer 1467 into evidence at
2 this time.

3 THE COURT: Any objections?

4 MR. HEINEMAN: Your Honor, I think the last number
5 we had was 1465.

6 MR. CARR: We'll make this 1466 then.

7 THE COURT: Okay.

8 MR. CARR: We'll just mark it--just put a 6 over
9 the 7.

10
11 (At this point previously marked Plaintiff's
12 exhibit 1467 was correctly marked to Plaintiff's
13 exhibit 1466 for purposes of identification.)
14

15 MR. CARR: Now, I offer 1466, your Honor.

16 THE COURT: Okay. Any objections?

17 MR. HEINEMAN: No objections, your Honor.

18 THE COURT: It's admitted without objection.

19 Q (By Mr. Carr) Dr. Roush--I'll withdraw the question
20 for a moment. Dr. Roush, to put this Press Release in per-
21 spective, at the time it was released in 1980, Monsanto was
22 a defendant in the Sturgeon spill case, of course this one,
23 the Nitro, West Virginia case being sued by its workers, by
24 the Viet Nam Veterans in the "Agent Orange" case, and in a

1 number of other cases related to dioxin and dioxin exposures:
2 isn't that correct, sir?

3 A Yes.

4 Q And the study, as a matter of fact, it uses the word--
5 words "Agent Orange" at the heading of it rather than dioxin,
6 doesn't it, sir, because it is that--dioxin is that part of
7 "Agent Orange" that has created the problem; isn't that
8 correct, sir?

9 A What problem?

10 Q The problem associated with dioxin exposure, sir.

11 A Yes.

12 Q And the study itself, if it were true, as stated by
13 Miss Zack--Mrs. Zack, as we have established yesterday,
14 would go a long ways towards negating those people that
15 claim that dioxin either promotes or initiates cancer in
16 human beings; would it not, sir?

17 A Yes.

18 Q But, if the figures that we've established yester-
19 day that were in fact the cancer deaths from those people
20 exposed to TCDD at the plant, it would have the contrary
21 effect, wouldn't it, sir, that is, it would show a strong
22 relationship between exposure to TCDD and death from cancer,
23 would it not, sir?

24 A If you can add those two together.

1 Q Yes, indeed. If these figures that we put in
2 exhibit 1464 and 1464A are indeed correct from the medical
3 records that we have here, this shows a very strong relation-
4 ship between TCDD exposure and death by cancer, doesn't it,
5 sir?

6 A If you can add those.

7 Q Yes. Isn't that correct, sir?

8 A What? Is what correct?

9 Q If these are added together and if these figures
10 are true, it shows a strong relationship between TCDD ex-
11 posure and death by cancer.

12 A If you can add those two.

13 Q Is the answer to my question yes, if these are
14 added?

15 A They can't be added together.

16 Q Dr. Roush, that is a point of contention. If these
17 exhibits accurately reflect the facts, and assume they do,
18 if you would, sir--

19 A Yes, sir.

20 Q --if they accurately reflect the facts, they show
21 a strong relationship between TCDD exposure and death by
22 cancer--

23 A Yes.

24 Q --don't they, sir?

1 And if these figures had been exhibited, had been
2 made public in 1980, they could have been used against
3 Monsanto in the Veterans case against Monsanto, could they
4 not, sir, to show the risk that the Viet Nam Veterans have
5 been exposed to by reason of their exposure to "Agent Orange",
6 that is dioxin.

7 MR. HEINEMAN: Your Honor, I'm going to object to
8 that. It's calling for sheer speculation on the part of
9 this witness. Of course, it doesn't take into consideration
10 the enormous difference in levels of exposure between those
11 people involved in that litigation, and those people involved
12 in the Nitro study.

13 MR. CARR: Your Honor, I'll accept those.

14 Q (By Mr. Carr) The difference in exposure, not only
15 the exposure of the Sturgeon people, but the exposure of
16 the Viet Nam Veterans, and the exposure to the--of the in-
17 dustrial workers to TCDD has to be taken into consideration,
18 mustn't it, sir?

19 A Yes.

20 Q Yes. But this study, if the figures that we have
21 shown from these records are indeed the fact, it could be
22 used in any court, sofaras you know, to support the position
23 that may be taken by those persons claiming injury from
24 dioxin to show that the risk of cancer is great or greater

1 than it should be; isn't that correct, sir?

2 MR. HEINEMAN: Let me object--may I renew my objection,
3 your Honor, on the bounds it calls for speculation, conclu-
4 sion on the part of this witness.

5 THE COURT: Excuse me. Overruled. Proper question.

6 THE WITNESS: If we say that the cancer was forty-
7 three percent higher than expected--

8 Q (By Mr. Carr) Yes.

9 A --that doesn't mean that it's statistically signifi-
10 cant and has no meaning if it's not statistically significant.
11 We can test that.

12 Q Excuse me, Doctor, could you answer the question
13 that I posed to you.

14 A I'm not sure.

15 Q Let me put it a different way. You issued this
16 Press Release, and you headlined it "Study Fails To Link
17 "Agent Orange" To Deaths Of Industrial Workers," did you not,
18 sir?

19 A Yes, sir.

20 Q And the study that you submitted, in fact, left out
21 half of the cancer deaths, did it not, sir, according to
22 exhibit 1464 and 1464A?

23 A Yes.

24 Q Yes. Now, Doctor, the study here, if you'll just

1 look at the very first paragraph, it indeed describes it as
2 a study to show whether or not a relationship exists between
3 TCDD, that is the dioxin, and the cause of death.

4 A Yes, sir.

5 Q Doesn't it, sir?

6 A Yes, sir.

7 Q And it's really not concerned about whether or not
8 it's 2,4,5-T, it's concerned about the relationship between
9 TCDD and the cause of death; isn't it, sir?

10 A Yes.

11 Q And, Doctor, there is another, at least, change in
12 this Press Release. It describes this study as being co-
13 authored by Judith Zack and Dr. Suskind, doesn't it, sir?

14 A Yes.

15 Q In fact, Dr. Suskind refused to be listed as a co-
16 author of this study, did he not, sir?

17 A I don't know.

18 Q It ultimately came out, did it not, called the Zack-
19 Gaffey Report?

20 A Yes, sir.

21 Q And Gaffey had nothing to do with it, did he, sir?

22 A Oh, yes.

23 Q Well, why did Dr. Suskind--why did you issue this
24 Press Release describing Dr. Susking as a co-author when in

1 fact he was not a co-author, and when in fact he never allow-
2 ed his name to be attached to this study?

3 A I don't know.

4 MR. HEINEMAN: Let me object to the question first,
5 Doctor, please. Let me object to the question as calling for
6 speculation on the part of this witness, unless you establish
7 that he had anything at all to do with the drafting of the
8 Press Release.

9 THE COURT: Objection is overruled.

10 Q (By Mr. Carr) Well, D. R. Bishop is the person in
11 charge of press relations, is he not, or was at that time?

12 A He was for this area.

13 Q And he prepared this Press Release, did he not, sir?

14 A Yes, sir.

15 Q And you, of course, were familiar with and are aware
16 of the fact that these Press Releases were coming out, weren't
17 you, sir?

18 A I usually am.

19 Q And you, of course, were vitally concerned about this
20 study, weren't you, sir?

21 A Yes.

22 Q An important work?

23 A Yes.

24 Q And you, of course, read this Press Release, did you

1 not, sir?

2 A I'm sure I did.

3 Q Yes.

4 A But I can't be positive.

5 Q And, Doctor, do you know any of the circumstances
6 under which Dr. Suskind failed or refused or was not listed
7 in the ultimate study as finally published as a co-author
8 of this study?

9 A No.

10 Q Can it be, Doctor, or do you know whether or not
11 the fact that these nine deaths were omitted--now, of these
12 nine deaths, Dr. Suskind had to be aware of eight of them
13 because they were in the report that he did co-author--

14 A Yes.

15 Q --while in a minor way--

16 A Yes.

17 Q --he was fully aware and he had to be aware of the
18 fact that these four deaths, Farley, Hudnall, Wesley and
19 Ortho, were, in fact, deaths in persons exposed to TCDD
20 even though the study showed them as being unexposed to
21 TCDD. Now, he had to be aware of those facts, mustn't he,
22 sir, just as Mrs. Zack was aware of those facts?

23 MR. HEINEMAN: Let me object to the form of the
24 question, as calling for speculation and conclusion on the

1 part of this witness as to what Dr. Suskind knew about the
2 Zack-Gaffey study.

3 THE COURT: Objection is overruled. It's a proper
4 question.

5 THE WITNESS: I don't think that he knew that those
6 four people were included in that one--in the non-exposed.

7 Q (By Mr. Carr) Well, Doctor, he knew that these
8 four people were, in fact, exposed, didn't he, sir?

9 A Yes.

10 Q Because he listed them in the Zack-Suskind study--

11 A Yes.

12 Q --as exposed, didn't he, sir?

13 A Yes, sir.

14 Q Now, when this 1980 study by Zack was submitted to
15 him, and it had these same people listed as being unexposed,
16 he could, if he read the document, as presumably he must
17 have read it if it was submitted to him, if he was to be
18 one of the co-authors, it must have been submitted to him--

19 A Yes, sir.

20 Q --wasn't it, sir?

21 A I'm sure it was.

22 Q He could have read, like we read it, he could have
23 compared it like we compared it, and found that these four
24 people were, in fact, listed in the unexposed table, when,

1 in fact, he knew that they were exposed. He could have
2 deduced that, a competent scientist could have deduced that,
3 couldn't he, sir?

4 A But he wouldn't have read it to that detail.

5 Q Did you read it to that detail?

6 A No, sir.

7 Q Dr. Roush, when was it that you first learned that
8 these four people that were exposed to TCDD were included
9 in Table 11?

10 A As we were getting ready for the Nitro lawsuit.

11 Q Didn't you learn it, in fact, after--after this
12 case was in trial?

13 A This one?

14 Q And after we put it in evidence in April or May
15 of this past year?

16 A No, sir. It was when that Nitro lawsuit where this
17 was involved.

18 Q Dr. Roush, you don't know that--that we had it
19 testified to here in the spring of 1984? Your attorneys
20 didn't advise you that we showed this to the jury in the
21 spring of 1984?

22 A No. No, sir.

23 Q And you learned of this--the fact that these four
24 cancer deaths were put in an unexposed group by Mrs. Zack

1 in the Nitro case?

2 A Yes.

3 Q Did you learn it yourself, or was it pointed out
4 to you?

5 A It was pointed out to me.

6 Q In the Nitro case?

7 A Yes, sir.

8 Q And was it brought out by the plaintiffs in that
9 case, or was it brought out by the defendants in that case?

10 A I don't know.

11 Q You don't know whether you voluntarily admitted
12 that--

13 A I don't know how--why they went back and reviewed
14 it.

15 Q Well, in any event, if you discovered it and if we
16 discovered it, Dr. Suskind surely could have discovered it?

17 A If he had had the names to associate with that, he
18 could have.

19 Q Well, he had the names. He had the report. He
20 co-authored the study. And you don't even need the names.
21 You can do it by looking at the year of birth, the year of
22 hire, the year of termination, because these are the reasons
23 we discovered it. We didn't have the names. All we had was
24 these tables.

1 A Right.

2 Q We compared these tables, and we saw that we had
3 exactly the same dates of everything, exactly the same cause
4 of death, everything. That's the way it was discovered by
5 us. We didn't have these reports at that time, Dr. Roush.

6 A Yes, sir, I understand.

7 Q They weren't produced to us.

8 MR. HEINEMAN: Let me object to that as a speech
9 by Counsel, no question involved. I ask that it be stricken,
10 ask the jury to be instructed to disregard it.

11 THE COURT: Objection is overruled.

12 Q (By Mr. Carr) Now, he could have done the same
13 thing that we did, couldn't he, sir?

14 A Yes.

15 Q He could have compared the deaths in Table 2 that
16 was in his report, the Zack-Suskind Report, and seen that
17 they had exactly the same years and days and causes of death,
18 these four people, couldn't he, sir?

19 A Yes.

20 Q Now, maybe it's unfair to ask you, but did you or
21 have you discussed the fact that these four deaths that were
22 in the Zack-Suskind Report, cancer deaths, have you discussed
23 that with Dr. Suskind?

24 A No, sir.

1 Q So you actually then, as you sit here now, you
2 actually don't know the extent of his knowledge, you don't
3 know whether he even knows today that these deaths were
4 included in the unexposed group, do you, sir?

5 A No.

6 Q Well, didn't you--haven't you had--didn't it con-
7 cern you, Dr. Roush, that Mrs. Zack did this?

8 A No, sir.

9 Q Oh, it was done with your approval?

10 A This study is done and followed just the way it's
11 described.

12 Q Then you intended, you at Monsanto, intended that
13 this be done; is that correct, sir? It was not an accident,
14 or it was not just on the part of Mrs. Zack, her own massag-
15 ing of the figures? This was a policy that Monsanto made
16 and approved and wanted to happen; is that correct, Dr.
17 Roush?

18 MR. HEINEMAN: I object, your Honor, to the use of
19 the term "massaging of the figures." If he'd just let the
20 witness explain how the two epidemiological studies arise,
21 we could certainly get an explanation of this. But he doesn't
22 want the jury to hear that. I object to the use of the term.

23 THE COURT: Objection is overruled. Your objection
24 is improper. Go ahead, Mr. Carr.

1 THE WITNESS: I don't know what you mean by policy.

2 Q (By Mr. Carr) Dr. Roush, did you at Monsanto, as
3 part of the policy making group dealing with these studies
4 and what's to be revealed to the public, and the health
5 studies to be performed, the mortality studies to be perform-
6 ed, did you know of and did you approve of the putting of the
7 four exposed deaths, these four people who were exposed in
8 the TCP accident in 1949? Did you approve of putting those
9 four people in the unexposed Table 11 in the Zack-Gaffey
10 Report of 1980?

11 MR. HEINEMAN: Let me object, your Honor. I believe
12 the witness--I believe that's been asked and answered. The
13 witness testified he didn't even know about it until the
14 Nitro study, the Nitro lawsuit. Am I incorrect?

15 MR. CARR: The witness is now saying that it was
16 done, and they approved of it, at least the inference is
17 that they knew of it, and that it's proper, and that what
18 was done was appropriate.

19 THE WITNESS: No, sir.

20 Q (By Mr. Carr) No, sir, what, sir?

21 A I did not--

22 THE COURT: Wait a second. Before it's answered,
23 I will overrule the objection. You may answer now, Dr.
24 Roush.

1 THE WITNESS: I didn't know that those four were
2 not--were in that study there.

3 Q (By Mr. Carr) You did not know it?

4 A Right.

5 Q And since you did not know it, you obviously did
6 not approve it, not knowing it; is that correct, sir?

7 A Approve what?

8 Q What we're talking about, Dr. Roush.

9 A I don't know--

10 Q These four deaths from cancer who were exposed to
11 TCDD, being put in Table 11.

12 A It was a part of the design of that study.

13 Q Excuse me. Is it, therefore--are you saying that
14 you approve of it and it's proper?

15 A Yes.

16 Q All right. And you're speaking for Monsanto, you
17 approve of what was done, and in your judgment it's proper?

18 A In that study it was proper.

19 Q Yes. All right. That's what I want to establish.
20 Then you'd have no reason to talk to Dr. Suskind about it
21 because in your--in Monsanto's judgment it's proper to tell
22 the world at large that these four people who died of cancer
23 had no exposure to TCDD?

24 A The report states--

1 Q Could you answer that question please, sir?

2 A Would you repeat that question for me. I'm sorry.

3
4 (The previous question was read back by the
5 court reporter.)

6
7 THE WITNESS: The answer to that is no.

8 Q (By Mr. Carr) Then it's not proper to tell the
9 world at large; is that right, sir?

10 A Not to tell them that there wasn't exposure, that's
11 right.

12 Q And in fact, what you did tell them, however, in
13 this study is that we were not exposed to TCDD, did you, sir?

14 A Yes.

15 Q Then, Doctor, how can you say it's proper to tell
16 them that they're not exposed to TCDD, and yet say it's
17 improper to include them in a table indicating that they were
18 not exposed, or vice versa?

19 A Because a part of that study design.

20 Q Doctor, we established yesterday the purpose of
21 that study was to determine cancer deaths caused by TCDD.

22 A Yes, sir.

23 Q Yes. And they were put in a group of people who
24 presumably had no exposure to TCDD; isn't that correct, sir?

1 A By job assignment.

2 Q Yes. And, Doctor, in fact, they had exposure to
3 TCDD, though, didn't they, sir?

4 A Yes.

5 Q And, therefore, the person that reads that is
6 going to believe that they were not exposed to TCDD, but
7 yet that they died of cancer when, in fact, you knew
8 absolutely that they were exposed to TCDD? Don't you see
9 something rotten there, Dr. Roush?

10 A No, sir.

11 Q That is proper in your judgment?

12 A The report states that that unexposed group could
13 include some workers who had exposure that we couldn't
14 determine.

15 Q Where does it state that, Doctor?

16 A It's in the text of that paper.

17 Q It states what you couldn't determine?

18 A We couldn't--

19 Q But, Doctor, you could determine it. You did
20 determine it. You knew that they were exposed to it because
21 they were so listed in 1979 by Zack-Suskind. So that was
22 a lie, wasn't it, sir?

23 A No, sir.

24 Q It wasn't a lie?

1 A No, sir.

2 Q You knew they were exposed, didn't you, sir?

3 A Yes.

4 Q And yet you said you couldn't determine whether or
5 not they're exposed, didn't you, sir? Didn't you just get
6 through saying that, sir?

7 A Yes.

8 Q So that's a lie, isn't it, sir? You knew that they
9 were exposed, but yet you said you couldn't determine whether
10 or not they were exposed. That's a lie, Dr. Roush, any way
11 you look at it it's a lie.

12 A No, it isn't.

13 Q It isn't?

14 A No, sir.

15 Q Is it the truth to say that you couldn't determine
16 whether or not these people were exposed to TCDD? Is that
17 the truth, sir?

18 A Yes.

19 Q When you knew they were exposed to TCDD because
20 they were in that accident?

21 A Yes.

22 Q That is the truth, sir?

23 A It's the truth that we knew that they were exposed
24 to dioxin.

1 Q Then if you knew they were exposed to dioxin, it's
2 not the truth to say that you could not determine that; isn't
3 that correct, sir?

4 A On those four, that's correct.

5 Q So it is a lie as to those four, isn't it, Doctor?

6 A It's incorrect.

7 Q If you know something is the truth, sir, if you
8 know something is a fact, that is a lie any way you look at
9 it, isn't it, Dr. Roush?

10 A It's incorrect.

11 Q Would you answer my question, Dr. Roush.

12 A No, it's not a lie.

13 Q It's not a lie?

14 A No, sir.

15 Q Is it a lie when I know that I have four pieces
16 of paper in my hand, Dr. Roush, if I tell you that I have
17 three pieces of paper in my hand, knowing that I have four?
18 Am I telling you a lie or am I telling you the truth, or am
19 I simply being incorrect? I know I have four. It is in my
20 mind that I have four. I tell you I have three. Am I tell-
21 ing you a lie, or am I telling you the truth?

22 A If you knowingly, that's a lie.

23 Q All right. And you indeed knew that these four
24 were exposed to TCDD, did you not, sir?

1 A Yes.

2 Q And Zack knew that, didn't she, sir?

3 A I don't know.

4 Q You don't know that she knew that?

5 A I'm not sure.

6 Q Did she not prepare both of these tables?

7 A Yes.

8 Q Then she knew the contents of both of those tables,
9 did she not, sir?

10 A If she went back with the other one, she would have.

11 Q Well, she did them both. She did them both at
12 practically the same time.

13 A They were quite separated.

14 Q She referred to both, Doctor.

15 A Yes, sir.

16 Q She referred to both. She worked with both. Both
17 the medical records were the same. Those four medical
18 records are the same as these four medical records, were
19 they not, sir? She prepared both tables, didn't she, sir?

20 A Yes, sir.

21 Q Is there any way that she could not know that these
22 four people were in the list of a hundred and twenty-two
23 that had chloracne, that were exposed to the TCP accident?
24 Any way she could not know that?

1 A If she had gone--if she had looked at it and tried
2 to compare them, she would have seen them.

3 Q She had to go and pick them out. She had to know
4 that they were in the original hundred and twenty-two, didn't
5 she, sir?

6 A Yes.

7 Q And she had to know the dates of their births, she
8 had to look at those records to pull that out, didn't she,
9 sir?

10 A Yes, sir. But I'm not sure she compared them.

11 Q Well, have you discussed it with her? Have you
12 ever asked her how she happened to tell something that was
13 untrue?

14 A She didn't tell something was untrue.

15 Q Dr. Roush, didn't we just get through establishing
16 that these people were exposed to TCDD?

17 A Yes, sir.

18 Q And they're listed in a table as not being exposed,
19 aren't they, sir?

20 A Yes.

21 Q And that's not the truth then, is it, sir?

22 A That's right.

23 Q Now, did you ever discuss that with Mrs. Zack?

24 A No, sir. I didn't know it.

Q Well, you knew it as far back as the spring of 1984.

1 You learned it then.

2 A But Judy Zack wasn't working with us.

3 Q But she came in for a deposition taken by the people
4 at Nitro.

5 A I didn't know that.

6 Q You didn't know that?

7 A No, sir.

8 Q Did you bother to inquire, Dr. Roush?

9 A No, sir.

10 Q Dr. Roush, this report, now you know that the Viet
11 Nam case has been settled. You know it was disposed of, and
12 you know what occurred there.

13 MR. HEINEMAN: Your Honor, I object to this as being
14 irrelevant, and an attempt to influence the jury, and I
15 object to it.

16 THE COURT: Objection is overruled. You may pro-
17 ceed, Mr. Carr.

18 Q (By Mr. Carr) Dr. Roush, doesn't it concern you
19 that you at Monsanto have put out a document that is--this
20 Press Release and the document that was published, put out
21 a document that is based upon untruth?

22 A Yes.

23 Q Now, Dr. Roush, what have you done about that
24 concern?

1 A Nothing.

2 Q Dr. Roush, don't you believe that it is Monsanto's
3 duty to right this wrong, to let the people know that this
4 is an untruth, to let the scientific community know that
5 this is an untruth?

6 A I'd have to look at it to see what effect it has
7 on the report.

8 Q Doctor, you know, if you take these four deaths,
9 which were taken and put in the exposed group, it makes it
10 thirteen deaths in the exposed group in that table itself,
11 not just nine, but thirteen, and it reduces this group by
12 four.

13 A But you can't put that in the other group.

14 Q Doctor, you can, because they were exposed. But
15 just reducing that group by four, sir, would be important
16 to the scientific community. Now, if it's of concern to you,
17 Dr. Roush, and you've known it since 1984, since the spring
18 of 1984, why haven't you done something about it?

19 A I just haven't gotten around to it.

20 Q One of these days you'll get around to it, Dr. Roush?

21 A Yes, sir.

22 Q Dr. Roush, if you will turn to the second page of
23 this document, you've announced in that second paragraph in
24 the middle of the page there that this study found no

1 statistically significant excess in total deaths or deaths
2 due to cancer or disease of the nervous system, circulatory
3 system, respiratory system or digestive system. Do you see
4 that, sir?

5 A Yes, sir.

6 Q Now, have you determined whether or not adding these
7 eighteen deaths, these additional nine deaths to the cancer
8 group would make a difference statistically, sir? Have you
9 made the determination?

10 A I did last night.

11 Q Oh, you did make a determination?

12 A I went to see what it would do if we put them to-
13 gether. I don't think you can. You can't put those to-
14 gether.

15 Q Doctor, they are together here.

16 A Yes, sir.

17 Q They are deaths from cancer. They were deaths from
18 cancer to people who were exposed to TCDD, are they not?

19 A Yes, sir.

20 Q There were eighteen deaths of your workers, people
21 that have worked for you, faithfully, loyally for years and
22 years, eighteen people that died of cancer from being ex-
23 posed to TCDD.

24 A No. Associated in that group. That doesn't mean
that they died from exposure to TCDD.

Q Doctor, they were exposed to TCDD, were they not?

A That doesn't mean--the question is every population is going to have--

Q Doctor, were they exposed to TCDD?

A Yes, sir.

Q Did they die of cancer?

A Yes.

Q And was this study an effort to associate or find out whether or not there was a relationship to exposure to TCDD and deaths by cancer and death by other causes?

A It doesn't show an association.

Q Excuse me. Was the purpose of the study to determine whether or not there was an association or a relationship between exposure to TCDD and death by cancer?

A It doesn't mean there's an association--

Q Excuse me. Was that the purpose of the study, Doctor?

A No, sir.

Q Sir?

A No, sir.

Q It wasn't?

A No, sir.

Q Didn't we just get through establishing that, sir, in the --where is that group of exhibits--in the statement

1 that she said, sir, in several different places where it says
2 the study presented here examines the mortality of Nitro
3 plant workers who were assigned to an area of TCP or 2,4,5-T
4 production with potential for exposure to TCDD? Isn't that
5 exactly what it says?

6 A Yes, sir. Yes, sir.

7 Q And isn't that the purpose of this study, sir?

8 A There is--the purpose of the study is to see whether
9 there's an excess of deaths in that population. That doesn't
10 mean there's an association if you find it.

11 Q And doesn't she go on to say, "as a result, the only
12 specific hypothesis that can be tested is whether a relation-
13 ship exists between potential TCDD exposure and proportional
14 mortality, especially for malignant neoplasms?"

15 A Yes.

16 Q Doesn't she say that, sir?

17 A Where did you read that?

18 Q We read it yesterday several times, Doctor. Right
19 there.

20 A All right.

21 Q Do you see it, Doctor?

22 A Yes, sir.

23 Q Doctor, the purpose of the study was to see whether
24 or not there's a relationship between exposure to TCDD and

1 death by cancer?

2 A Possible relationship.

3 Q To see if there's a possible relationship--

4 A Yes.

5 Q --between exposure to TCDD and death by cancer?

6 A Yes.

7 Q And these are eighteen deaths of people that were
8 exposed to TCDD?

9 A Yes, sir.

10 Q And doesn't that have just a bearing on whether or
11 not there is a causal relationship, Doctor?

12 A It can have.

13 Q That's the purpose of the whole study, isn't it,
14 sir?

15 A That's right.

16 Q And she eliminated fifty percent, didn't she, sir,
17 by eliminating these nine? Didn't she, sir?

18 A Yes.

19 Q Doctor, on the next page, she states, or the Press
20 Release states to the world at large this was done--this is
21 in the second paragraph in the middle of the page, talking
22 about comparing the work history of the hundred and sixty-
23 three decedents. She took all of the people that died, fifty-
24 eight had been exposed to 2,4,5-T, and a hundred and four

1 were considered non-exposed. So presumably, Doctor, these
2 nine deaths here are all in the non-exposed, aren't they,
3 sir?

4 A Yes.

5 Q They're not in the fifty-eight, are they, sir?

6 A No.

7 Q So she's considering--she's telling the world,
8 Monsanto is telling the world that these nine deaths came
9 from people who were not exposed to TCDD, doesn't she, sir?

10 A By virtue of job assignment.

11 Q And it goes on to say this was done to test whether
12 any relationship existed between potential TCDD exposure
13 and proportional mortality, doesn't it say that, sir?

14 A Yes.

15 Q When, in fact, these folks were exposed to TCDD
16 and put in the non-exposed group, isn't it, sir?

17 A Yes, sir. On purpose.

18 Q By purpose?

19 A Because--

20 Q Exactly right, sir.

21 A That's because of the design of that study said
22 they couldn't be included.

23 Q Then this statement, Doctor, this was done to test,
24 how on earth, if you know that a hundred people have been

1 exposed to TCDD by having been in an accident and having
2 worked up and cleaned up that accident, but simply because
3 they are not at the time of the study assigned to a place
4 where they're producing the TCDD, how on earth can you
5 compare those hundred people who were exposed in the acci-
6 dent and say they are not exposed to TCDD? How can you
7 say that, Doctor, with a straight face?

8 A By virtue of their job assignment. They never
9 had worked in TCP or 2,4,5-T. None of those.

10 Q But they were all exposed to TCDD, weren't they,
11 sir?

12 A Yes, sir.

13 Q And they were all--these four all had chloracne,
14 didn't they, sir?

15 A Yes.

16 Q A hallmark of TCDD exposure?

17 A Yes, sir.

18 Q You knew--you knew, you were absolutely certain
19 because these four having chloracne, you knew for absolute
20 certainty that they were exposed to TCDD, without a question
21 of a doubt.

22 A Yes, sir.

23 Q And they had filed workmen's compensation claims
24 for it. Yet, you put these people in a group that you told

1 the world at large, one hundred and four were considered
2 non-exposed.

3 A By virtue of job assignment.

4 Q You don't say by virtue of job assignment. You
5 don't tell them that they were in fact exposed in this
6 accident, that they developed chloracne. You don't tell the
7 world that, do you, sir?

8 A We tell them in the report.

9 Q You don't tell them that in the report, sir, because
10 in the report you say TCP production as well. And these
11 people were in the TCP production.

12 A No, they were not.

13 Q Oh, Doctor, where do you get the information that
14 they were not?

15 A Because they had never--

16 Q Where do you get the information they were not?

17 A From their work record.

18 Q Where's the work records that says that, sir?

19 A The plant work records.

20 Q Do you have--have you ever seen that work record,
21 sir?

22 A No.

23 Q How do you sit there under oath and say they were
24 not producing TCP?

1 A Because that's what Zack was to do.

2 Q That's what Zack was to do. Zack tells you that
3 they were not exposed, that they were not in the work pro-
4 duction area.

5 A That's right.

6 Q And you believed what Zack tells you?

7 A Yes, sir.

8 Q You believe what Zack tells you when she says that
9 these people were not exposed to TCDD?

10 A By virtue of job assignment.

11 Q They talk about potentially exposed to TCDD. This
12 is a study of people who were exposed to TCDD as we estab-
13 lished yesterday, did we not, sir?

14 A No, sir, that's not what that was to do.

15 Q Excuse me. Didn't we establish that yesterday,
16 sir?

17 A Ask the question--

18 Q Do we need to establish it again, Dr. Roush, that
19 this study was for the purpose of determining whether ex-
20 posure to TCDD causes these problems? Do we need to estab-
21 lish that again, Dr. Roush?

22 A No, sir.

23 Q All right. Now, Doctor, the statement here that
24 this was then to test whether or not any relationship existed

1 between potential TCDD exposure and proportional mortality,
2 you can't do that, if the people, if that hundred and four
3 people were, in fact, exposed to TCDD. You simply can't
4 do that, can you, sir? It confounds the whole study, doesn't
5 it, sir?

6 A What hundred and four?

7 Q The hundred and four that were considered non-exposed,
8 according to this Press Release.

9 A I see. Right.

10 Q If a part of that group was, in fact, exposed to
11 TCDD, you can't tell then whether or not TCDD did or did not
12 cause their problems, can you, sir?

13 A Not for those four.

14 Q Not for these nine, sir. All of these nine, sir,
15 were in the non-exposed one hundred and four, and there may
16 have been more than that because our studies only went to
17 the cancer group. There may have been deaths from heart
18 attack, or deaths from other reasons in people that were
19 exposed to TCDD. But we felt it sufficient simply to point
20 out that you missed half of the cancer deaths at this time,
21 sir. So we don't know how many of that hundred and four
22 were, in fact, exposed to TCDD, and neither do you, do you,
23 Dr. Roush?

24 MR. HEINEMAN: Let me object to the speech of

1 Counsel as not being related to the question, ask that it be
2 stricken, ask that the jury be instructed to disregard it.

3 THE COURT: Objection is overruled.

4 Q (By Mr. Carr) Neither do you, do you, Dr. Roush,
5 know how many of these hundred and four had been exposed to
6 TCDD?

7 A No, sir.

8 Q And, Doctor, if you don't know how many had been
9 exposed to TCDD, then you cannot test whether or not a
10 relationship exists between TCDD exposure and mortality,
11 can you, sir?

12 A You can do the study we did.

13 Q Doctor, would you answer the question that I asked
14 you?

15 MR. HEINEMAN: Objection, your Honor. He just did.

16 THE COURT: Overruled. He did not.

17 THE WITNESS: Would you repeat that for me.

18
19 (At this time the previous question was read back
20 by the court reporter.)
21

22 THE WITNESS: Yes, you can, by doing the study we
23 did.

24 Q (By Mr. Carr) Doctor, if you don't know how many

1 of these hundred and four were exposed to TCDD, how on earth
2 can you determine whether or not a relationship exists between
3 TCDD exposure and their deaths? If you don't know whether
4 they were or were not exposed to dioxin, tell me how you can
5 do that.

6 A That's--

7 Q Excuse me. Tell me how you can do that which I'm
8 asking you, sir.

9 A You can't do it well.

10 Q You can't do it at all. All of those one hundred
11 and four dacedents may have been exposed to TCDD. If you
12 don't know whether they were or not, how can you tell whether
13 or not their death had any relationship to TCDD exposure if
14 you don't know, Dr. Roush?

15 You can't, can you, sir?

16 A Not absolutely.

17 Q Not in any fashion. If you don't know whether I've
18 been exposed to dioxin, and I died from a sarcoma, you don't
19 know whether that dioxin had anything to do with it if you
20 don't know that I've been exposed, do you, sir? It could
21 have caused it and it could not have caused it. You simply
22 don't know. If you don't know my medical history, my exposure
23 history, isn't that correct, sir?

24 A One measure of exposure history--

1 Q Excuse me, sir. If you don't know whether or not
2 I have been exposed to dioxin, how can you say whether a
3 relationship exists or does not exist between my cancer and
4 the dioxin?

5 A I can't on you.

6 Q And you can't on any of these one hundred and four,
7 can you, sir?

8 A I don't know how many--

9 Q My question is if you don't know the exposure history
10 of these one hundred and four, if you don't know whether
11 they have or have not been exposed to dioxin you cannot then
12 tell whether or not a relationship exists between their
13 death by cancer and the dioxin, can you, sir?

14 A Not accurately.

15 Q Well, can you in any fashion, if you don't know,
16 sir? You used the word "accurately." If there's a hundred
17 and four names up there, and you see that they all died from
18 cancer, and there's nothing to tell you whether those hundred
19 and four were or were not exposed to dioxin, can you make
20 any statement, any statement at all, as to whether or not
21 their deaths were related to dioxin?

22 A Most of those--

23 Q Can you make any statement at all in the hypotheti-
24 cal that I gave you, Dr. Roush?

1 A Not absolutely.

2 Q Not in any way. Not absolutely, not in any fashion
3 at all. If you don't have the facts, you can't make the
4 connection, can you, sir?

5 A We don't have the facts.

6 Q Excuse me. If you don't. I'm giving you a hypo-
7 thetical. If you don't have the facts, you can't make the
8 connection, can you, sir?

9 A You cannot.

10 Q But you do have the facts as to these nine, sir?

11 A Yes, sir.

12 Q And the facts are that these nine were exposed to
13 dioxin, weren't they, sir?

14 A Yes, sir.

15 Q And they died from cancer, didn't they, sir?

16 A Yes, sir.

17 Q But they were not included in the death listed by
18 Zack-Gaffey-Suskind, or Zack-Gaffey as having died from
19 exposure to TCDD, were they, sir?

20 A That's right.

21 Q Doctor, the statement, in the next paragraph then,
22 sir, "specifically, cancer deaths among 2,4,5-T workers
23 (nine observed versus 10.94 expected) were found to be lower
24 than in the non-exposed group (twenty-five observed versus

1 20.43 expected)." Isn't that correct, sir?

2 A Yes, sir.

3 Q Now, Doctor, if you take the nine unexposed and
4 subtract them from the twenty-five observed--

5 A Yes, sir.

6 Q --you would then get sixteen deaths, wouldn't you,
7 sir?

8 A Yes.

9 Q As opposed to twenty expected?

10 A Yes. If you can do that.

11 Q Well, you know these nine were exposed to dioxin,
12 don't you, sir?

13 A Yes. But that would change--

14 Q They're called here--

15 MR. HEINEMAN: Objection, your Honor. Let the man
16 finish. Can we let the man finish an answer before he's
17 interrupted?

18 THE WITNESS: These--

19 THE COURT: I think the question was answered.
20 Whether they were exposed was the question. You may con-
21 tinue, Mr. Carr.

22 Q (By Mr. Carr) And they were put, however, in the
23 non-exposed group, weren't they, sir?

24 A Yes.

1 Q All right. Now, Doctor, this Press Release also
2 refers to the fact that there is a third study--on the last
3 page, sir,--that there is a third study taking place under
4 the auspices of Monsanto; isn't that correct, sir?

5 A Yes.

6 Q And that's the so called morbidity study?

7 A Yes, sir.

8 Q And, Doctor, that morbidity study was undertaken
9 by Dr. Suskind, and I think we've established prior to our
10 recess and the vacation that that was paid for by Monsanto;
11 isn't that correct, sir?

12 A NIOSH insists that they paid for it as well.

13 Q Yes, I understand. I think we've gone all through
14 that. This was a Monsanto financed study, was it not, sir?

15 A No.

16 Q Sir?

17 A It was a joint--

18 Q Well, joint. It was paid for, at least Dr. Suskind
19 and all of his expenses, I think we've been all through that,
20 I don't need to report it--repeat it, was paid for in greater
21 part by Monsanto, wasn't it?

22 A We didn't pay for their time.

23 Q Sir?

24 A We didn't pay for their time.

1 Q Doctor, you paid for their examinations, for the
2 use of the laboratory, for the regular fees that they
3 charged for those kind of examinations?

4 A Yes, sir.

5 Q Now, those fees include a component for doctors
6 time, don't they, sir?

7 A Part of it, yes.

8 Q All right. Now, Doctor, this third study, we've
9 got two studies thus far that we've discussed, the Zack-
10 Suskind study and the Zack-Gaffey study.

11 A Right.

12 Q And we've examined in detail some of the discrep-
13 ancies in that study. Now, this last study that just came
14 out, that was published again--not again, but it was publish-
15 ed in the spring of 1984, wasn't it, sir?

16 A Yes, sir.

17 Q And it again is a study, along with these other
18 two, that Monsanto has used and will use to suggest to the
19 world at large that dioxin is not bad stuff, that it doesn't
20 cause cancer, it doesn't cause a lot of other problems;
21 isn't that right, sir?

22 MR. HEINEMAN: Let me object to the form of the
23 question, of the suggestion that dioxin is not "bad stuff."
24 I don't think there's ever been--

1 MR. CARR: Let me reform the question.

2 THE COURT: The objection is sustained. You may
3 rephrase it.

4 Q (By Mr. Carr) You used that study as you have
5 already used the other two studies to support Monsanto's
6 position that dioxin does nothing more than cause chloracne,
7 which is something like teenage, adolescent acne; isn't
8 that correct, sir?

9 A Those were the findings.

10 Q Sir?

11 A Those were the findings of Suskind.

12 Q My question, sir, could you respond to my question
13 first, sir.

14 A Would you read that for me.

15
16 (The previous question was read back by the
17 court reporter.)

18
19 THE WITNESS: Yes.

20 Q (By Mr. Carr) Now, Doctor, the--would you mark
21 this exhibit.

22
23 (Plaintiff's exhibit 1467 was marked for
24 identification by the court reporter.)

1 Q (By Mr. Carr) I'll hand you what's been marked
2 Plaintiff's exhibit 1467, and ask you if that is not a copy
3 of the Suskind so called health or morbidity study published
4 in 1984 in The Journal of the American Medical Association?

5 A Yes, sir.

6 Q Now, for background of this study the population
7 that was studied here was actually three hundred and sixty-
8 seven people; correct, sir?

9 A Yes.

10 Q There were two hundred and four in an exposed group
11 and a hundred and sixty-three in a not exposed group.

12 A I don't have that, but that's supposed to be right.

13 Q Well, if you look--did I offer this exhibit, your
14 Honor?

15 THE COURT: No, you haven't.

16 MR. CARR: I offer this exhibit into evidence.

17 THE COURT: Any objection?

18 MR. HEINEMAN: One moment, your Honor.

19 THE COURT: Sure.

20 MR. HEINEMAN: We have no objection, your Honor.

21 THE COURT: All right. It's admitted without
22 objection. Thank you.

23 Q (By Mr. Carr) If you look in the first part of it,
24 this abstract, it sets out the two cohorts, the two hundred

1 and four exposed and the hundred and sixty-three unexposed.

2 A Yes.

3 Q Actually there were four hundred and thirty-six
4 people that were examined, but for one reason or another
5 the study was ultimately reduced to three hundred and sixty-
6 seven.

7 A Right.

8 Q Now, as further background of this study, the body,
9 the group of workers that were involved included retired
10 workers, as well as currently employed workers who were
11 invited to participate from lists furnished and from data
12 furnished by Monsanto.

13 A Yes, sir.

14 Q And Monsanto has--has an element of control that it
15 can exercise in any study of this kind, if it wished to do so
16 it could give the examiners and investigators a list of
17 people telling them that these people were unexposed when,
18 in fact, the people could be exposed, could have been exposed.
19 We know that they can do that, can't they, sir?

20 A They could, yes.

21 Q Yes. And of course, we've seen what--now, how much
22 did Judith Zack have to do with creating the lists of exposed
23 and unexposed people?

24 A I think it was Jan Young who did this.

1 and four exposed and the hundred and sixty-three unexposed.

2 A Yes.

3 Q Actually there were four hundred and thirty-six
4 people that were examined, but for one reason or another
5 the study was ultimately reduced to three hundred and sixty-
6 seven.

7 A Right.

8 Q Now, as further background of this study, the body,
9 the group of workers that were involved included retired
10 workers, as well as currently employed workers who were
11 invited to participate from lists furnished and from data
12 furnished by Monsanto.

13 A Yes, sir.

14 Q And Monsanto has--has an element of control that it
15 can exercise in any study of this kind, if it wished to do so
16 it could give the examiners and investigators a list of
17 people telling them that these people were unexposed when,
18 in fact, the people could be exposed, could have been exposed.
19 We know that they can do that, can't they, sir?

20 A They could, yes.

21 Q Yes. And of course, we've seen what--now, how much
22 did Judith Zack have to do with creating the lists of exposed
23 and unexposed people?

24 A I think it was Jan Young who did this.

1 Q My question is how much did Judith Zack have to do
2 with it.

3 A I don't think anything.

4 Q All right. Jan Young was her replacement?

5 A Not her replacement. But she took over part of her
6 job.

7 Q All right. She worked in the same department and
8 did some of the same functions?

9 A Yes, sir.

10 Q And having access to those records, and all of these
11 people were invited to participate, weren't they, sir?

12 A Yes, sir.

13 Q Having access to medical records, it is certainly
14 possible that you could not invite people that had serious
15 problems, couldn't you, sir?

16 A Yes.

17 Q If I knew--for instance, if I knew that John Jones
18 had reported to the company physician that he had a skin
19 cancer and had retired, and had moved to Florida, or some
20 place like that, with his skin cancer, if I wanted to affect
21 the outcome of this study, I could fail to tell by accident
22 or by deliberate intent, I could fail to tell the investiga-
23 tor, I could fail to give them the name of John Jones,
24 couldn't I, sir?

1 A Yes.

2 Q And I could thereby affect the results of the study,
3 couldn't I, sir?

4 A Yes.

5 Q And I could do that not just one time, but a dozen
6 times, couldn't I, sir, or a hundred times, couldn't I, sir?

7 A Yes. But Jan Young wouldn't do that.

8 Q Excuse me, Dr. Roush. And thereby I could--

9 MR. HEINEMAN: I beg your pardon. Excuse me. You
10 don't want to hear the rest of his answer?

11 MR. CARR: No, I don't.

12 MR. HEINEMAN: I object, your Honor.

13 MR. CARR: No, because he responded to my question.

14 THE COURT: Objection is overruled.

15 Q (By Mr. Carr) And I could thereby influence the
16 outcome of the study, couldn't I, sir?

17 A Yes.

18 Q Now, and it means, therefore, that the integrity
19 or the honesty of the person supplying the raw data, supply-
20 ing the cohort, if you will, supplying the names of the
21 workers who have these various problems, that that becomes
22 an important factor in any study like this, doesn't it, sir?

23 A I'm not sure how much it would influence it.

24 Q Well, Dr. Roush, if I knew, if I'm Monsanto, and I

1 know that I've got one hundred employees who have got cancer
2 in one form or another, and I'm interested in seeing a favor-
3 able outcome of this investigation, and I just supply them
4 to Dr. Suskind, the names of fifty, I don't supply the names
5 of the hundred. I just supply the names of the fifty. Dr.
6 Suskind would never be the wiser, would he, sir?

7 MR. HEINEMAN: Object to the form of the question.
8 It's asking a hypothetical based not on any facts in evidence.

9 THE COURT: Objection is overruled.

10 THE WITNESS: It could.

11 Q (By Mr. Carr) Yes. And that could radically
12 influence or affect the results of the investigation, couldn't
13 it, sir?

14 A If there was a significant number that you took out,
15 yes.

16 Q Well, if I took out--if I had a hundred cancers and
17 I took out fifty, that's significant. Just as if I had
18 eighteen cancers and I take out nine, that's significant,
19 isn't it, sir?

20 A I'm not sure that's significant.

21 Q You're not sure that half of the cancers are not
22 significant, fifty percent of the total cancers are not
23 significant? What becomes significant if fifty percent
24 isn't significant, Doctor? Seventy-five percent? Ninety

1 percent? What is the cut off figure of significant if half
2 isn't significant?

3 A But when you change--

4 Q What becomes significant, Doctor, if half isn't
5 significant?

6 A It's not half.

7 Q Nine is half of eighteen, isn't it, sir?

8 A Yes.

9 Q There were eighteen cancers, weren't there? Cancer
10 deaths, weren't there, sir?

11 A Out of ninety.

12 Q There were eighteen deaths, weren't there, sir?

13 A Yes.

14 Q And only nine were reported upon, weren't they, sir?

15 A Yes.

16 Q Doctor, back to my hypothesis, is fifty percent
17 significant?

18 A Yes.

19 Q Yes.

20 THE COURT: Is this a good point for a short break?

21 MR. CARR: Yes, your Honor.

22 THE COURT: Okay. We'll take a short break at this
23 time. Ladies and gentlemen, I would remind you that you are
24 not to discuss this matter among yourselves, with anyone

1 outside the jury panel, or as of yet form any opinions or
2 conclusions about the matters on trial. The Court is in
3 recess.

4
5 (At this time a short recess was taken.)

6
7 (The following proceedings were held in the
8 presence and hearing of the jury:)

9
10 THE COURT: Gentlemen, can I see you up at the
11 bench for a minute?

12
13 (A discussion was held at the bench off the
14 record and out of the hearing of the jury:)

15
16 (The following proceedings were held in the
17 presence and hearing of the jury:)

18
19 THE COURT: Ladies and gentlemen, two things I want
20 to announce before we go back into the testimony. First of
21 all, today we will end at three o'clock instead of four
22 o'clock, and secondly, on July 19 we will not have court.
23 So put that down, if you would, on your records. Okay, Mr.
24 Carr, you may proceed.

1 Q (By Mr. Carr) Dr. Roush, that last report, exhibit
2 1467, last study, rather, is also important, has been used
3 already by Monsanto to support the position that you have
4 taken relative to the health effects of TCDD on those people
5 who had exposure; isn't that correct, sir?

6 A Yes, sir.

7 Q And, Doctor, the very first table in that report,
8 Table number 1, deals with, among other things, cancer, that
9 is those of the workers who have had a history of cancer,
10 skin cancer and all other types of cancers, isn't that
11 correct, among other things?

12 A Yes.

13 Q And Dr. Suskind, of course, got that from medical
14 records and from those things that had been reported to
15 he and his investigators by the workers, the names of whom
16 had been given to Dr. Suskind by Monsanto; isn't that correct,
17 sir?

18 A Yes, sir.

19 MR. CARR: Could you mark this, the group exhibit,
20 Plaintiff's group exhibit 1468.

21
22 (Plaintiff's group exhibit 1468 was marked for
23 identification by the court reporter.)
24

1 Q (By Mr. Carr) Doctor, I'll hand you what's been
2 marked Plaintiff's group exhibit 1468, which has been re-
3 presented to us to be the results of the Suskind interviews
4 and laboratory reports on these group of workers who have
5 cancers. I'd like to establish with you some pertinent
6 data relative to those cancers, and to do that I'd like to
7 further establish some basis for that.

8 MR. CARR: Would you mark this exhibit number--

9
10 (Plaintiff's exhibits 1469 and 1470 were marked
11 for identification by the court reporter.)
12

13 Q (By Mr. Carr) Doctor, I'll now hand you Plaintiff's
14 exhibit 1469, which is a letter to some other of your
15 attorneys to Dr.--from Dr. Suskind, and 1470 which is one of
16 the attachments to that letter which we'll use to further
17 identify these people.

18 MR. CARR: I offer these exhibits at this time,
19 your Honor.

20 THE COURT: All three?

21 MR. CARR: Yes, your Honor.

22 MR. HEINEMAN: Could I have an explanation again
23 of what 1468 purports to be?

24 MR. CARR: 1468 are the Suskind records dealing

1 with those people who reported to have cancer.

2 THE COURT: Do you have any objections to any of
3 the three?

4 MR. HEINEMAN: Your Honor, for the record, we'd
5 like to object to these exhibits on the basis of hearsay,
6 on the basis of lack of foundation, and we obviously have
7 no idea--I certainly as I'm sitting here have no idea who
8 says these are the people that reported cancer. Obviously
9 that is something that Mr. Carr has made a determination of.
10 That's not a fact in the case. I don't think it's an
11 adequate foundation for the admission of these exhibits for
12 that purpose.

13 THE COURT: You are objecting to all three; is
14 that correct?

15 MR. HEINEMAN: I'm objecting to all three, yes, sir.

16 MR. CARR: Your Honor, the offer is not for the
17 purpose of my assertion that these are what have been re-
18 ported to have cancer. That will be established by the
19 records themselves. These are the records of the morbidity
20 study furnished to us by Monsanto relating to the workers
21 study investigated by Dr. Suskind. We will establish
22 whether these people do or do not have cancer, as I examine
23 the Doctor.

24 MR. HEINEMAN: I think, your Honor, that these are

1 exhibits that were made available to us by Dr. Suskind, and
2 hints turned over to Mr. Carr pursuant to an order of this
3 Court requiring Dr. Suskind to turn them over. I think,
4 therefore, I still maintain the same objection.

5 THE COURT: All right. I'm going to admit all three
6 over objection. I think they are admissible. So 1468 group
7 exhibit, 1469 and 1470 are all admitted over objection.

8 Q (By Mr. Carr) Doctor, I intend to go through these
9 records that you have with you. Have you ever seen these
10 records before, sir?

11 A No, sir.

12 Q Then I could help you to identify these records.
13 There are numbers on them that give the identities of the
14 different people, and you can refer to the records that I
15 have given you. For instance, the first record you'll see
16 has a number 407 in the right-hand corner of it.

17 A Yes, sir.

18 Q If you look to exhibit 1470, at number 407, what's
19 called new i.d. number, you'll see the new i.d. number is
20 407, is Paul T. Bricker. Do you see that, sir?

21 A Yes.

22 Q All right. And by using these documents in that
23 fashion we can determine the name of the people involved.
24 All right?

1 A But there's no name on the Suskind form here.

2 Q That is correct. There is no name on it. There
3 is only the identification number.

4 A That 407 is the only identification?

5 Q That is correct. And the first one listed there,
6 the first on the stack is Bricker; right? Do you see that,
7 Doctor?

8 A Yes, sir.

9 Q I.D. number 407. I'd like now for you to go to the
10 history of Bricker, and first of all tell me whether or not--
11 I'll give you the assistance, of course, as to whether or
12 not he has a history of being exposed or unexposed.

13 A I'm sorry? I didn't get the question.

14 Q I'd like for you to go to his history records--

15 A Right.

16 Q --and determine if you would whether or not he has
17 a history of being exposed or a history of being unexposed
18 to TCDD.

19 A From the medical history?

20 Q Yes. From the history you have in your hands, sir.

21 A You get that from the occupational history.

22 Q Doctor, the occupational history is the second page--

23 A Yes, sir.

24 Q --of this document.

1 A Yes, sir.

2 Q Would you look at that, sir?

3 A The second page?

4 Q Yes, sir.

5 A All right.

6 Q And tell me whether or not you get from that a
7 history that he is exposed or unexposed to one of the
8 departments where TCDD could be a contaminant.

9 MR. HEINEMAN: Your Honor, I'll object to this
10 as calling for sheer speculation and conclusion on the
11 part of this witness. This witness didn't prepare these
12 documents. He's never seen them before. They were done
13 by Dr. Suskind. Dr. Suskind is the one that took the
14 occupational histories. How in the world can this man say
15 whether or not this fellow was exposed according to this
16 document, which he's never seen before? Sheerly speculation
17 on his part.

18 MR. CARR: Your Honor, these records are all the
19 records that Dr. Suskind had, occupational records at least,
20 to determine whether the person was or was not exposed.
21 The study shows that, and I intend to demonstrate. I intend
22 to classify, show what Dr. Suskind has said about these
23 persons in his report, whether they're exposed, whether
24 they have a history of skin cancer, and so on, and demonstrate

1 by these records either the truth or the falsity of Dr.
2 Suskind's conclusions from these records, which are the
3 sole records that Dr. Suskind has given.

4 THE COURT: Objection is overruled. You may
5 proceed, Mr. Carr. I will take your objections as a
6 continuing objection to this line of testimony, to this
7 course of questioning.

8 MR. CARR: And could I have another exhibit number,
9 please, for the next exhibit number?

10
11 (Plaintiff's exhibit 1471 was marked for
12 identification by the court reporter.)
13

14 Q (By Mr. Carr) Doctor, do you recognize exhibit
15 1471 as a blow-up of Table 1 that is in the Suskind Morbidity
16 Study?

17 A Yes, sir.

18 Q Yes. And it states, its caption is History of
19 Medical Problems versus Exposure Status and by Age, does it
20 not, sir?

21 A Yes.

22 Q And it, of course, refers to the fact, as you can
23 see it, that it refers to the interview and the physical
24 examination program, and that's made clear from the report

1 itself, from the study itself that Dr. Suskind interviewed,
2 took occupational histories and medical histories from each
3 of these persons that participated in this program; isn't
4 that correct, sir?

5 A Yes.

6 Q Yes. And as far as cancer is concerned, he had two
7 catagories for cancer, skin cancer and cancers of all other
8 sites except skin, doesn't he, sir?

9 A Yes.

10 Q Yes. Now, Bricker has no history from these records
11 of ever having been exposed to the manufacturing process of
12 that--that is the manufacturing process that would have TCDD;
13 isn't that correct, sir?

14 A I would assume that's right.

15 Q At least so far as you can tell--

16 A Yes.

17 Q --from the records that you have in front of you.
18 He has no history there of ever having been exposed to any-
19 thing that could be called TCDD?

20 A Right.

21 Q And he then, we could put a check under the U on
22 this which stands for unexposed; correct, sir?

23 MR. HEINEMAN: Objection, your Honor. He's asking
24 this witness to comment on whether or not Mr. Bricker was

1 actually exposed--

2 MR. CARR: No. I'm asking whether or not this
3 record reveals exposure or a possibility of exposure or
4 unexposure. This record, sir.

5 MR. HEINEMAN: How can one--your Honor, my objection
6 goes to the fact how can one tell either way whether or not
7 this man was exposed based upon this second page?

8 THE COURT: That objection has already been made as
9 to the use of this. I told you that it would be a continuing
10 objection, and the objection is overruled again. You may
11 proceed, Mr. Carr.

12 MR. CARR: And for the record, your Honor, the
13 statement that Mr. Heineman made, if true as he's made, is
14 extremely injurious to the Suskind Morbidity Study. I'm
15 sure he said it without thinking because these records con-
16 stitute the totality of what Dr. Suskind used to determine--
17 unless there was a medical history in the medical records
18 that he used--the totality to determine whether or not the
19 man was or was not exposed, and if these records cannot
20 reveal to Dr. Suskind or to this witness, a competent medical
21 physician, whether or not this person was or was not exposed,
22 then the entire Suskind study is in jeopardy. Because he
23 classified based upon these records all of the three hundred
24 and sixty-seven people that participated in this study, he

1 classified each of those persons as either being exposed or
2 unexposed based upon these records.

3 MR. HEINEMAN: Your Honor, I think that's not
4 accurate. I think if Mr. Carr were to examine either Dr.
5 Suskind's deposition or this witness, he would perhaps learn
6 that Dr. Suskind conducted interviews, extensive interviews
7 with these people, and my understanding is that he had--he
8 had work histories available to him from the plant, which I
9 believe Mr. Carr has.

10 MR. CARR: Well, we had--these are the records, your
11 Honor, of the interview. This is the actual interview con-
12 ducted by Dr. Suskind that Counsel refers to.

13 THE COURT: Okay. As I said before, the line of
14 questioning is proper. I'm taking it as a continuing ob-
15 jection to the line of question. So the objection has been
16 made, has been ruled upon, and would apply to any and all
17 individuals that Mr. Carr in the course of his questioning
18 singles out for consideration in this line of questioning.
19 Mr. Carr, you may proceed.

20 Q (By Mr. Carr) Yes. But further for the record,
21 the very first page, Dr. Roush, gives the interviewer number,
22 does it not?

23 A Yes.

24 Q Number 16?

1 A Yes.

2 Q Bricker?

3 A Right.

4 Q And it gives the date of the interview, doesn't it,
5 sir?

6 A Yes.

7 Q And if you look through, it gives medical history,
8 it tells where they were hospitalized, it gives the physical
9 exam, it gives the lab reports, it gives the brother and
10 sister, it gives smoking background. It is a complete
11 history, is it not, Doctor?

12 A Quite complete.

13 Q Yes. And, Doctor, would you now turn for Bricker
14 to the page that has the yellow tab on it, I think I've
15 marked it for you for your benefit, to the personal medical
16 history to determine whether or not this person had a history
17 of cancer. And Bricker does have a history of cancer,
18 doesn't he, sir?

19 A Yes.

20 Q As reported by Dr. Suskind or the interviewer for
21 Dr. Suskind, correct, sir?

22 A Yes, sir.

23 Q And we'll put a check then in the column for cancer
24 for Bricker. He has--and it's a skin cancer, is it not, sir?

1 A Yes.

2 Q And if you'll now turn to the next one, this group
3 exhibit number 325 is Estep, number 325. And again if you'll
4 look to his history of working at Monsanto on the second
5 page, he worked in the laboratory, in the drafting depart-
6 ment, design engineering, and there is nothing there to
7 suggest that he had any exposure; isn't that correct, sir?

8 A I would assume so, but I would check if I were going
9 through this with the plan to make sure what they mean by
10 laboratory.

11 Q You might. But there's no evidence that Dr. Suskind--
12 there's nothing in his reports to suggest that he did?

13 A Nothing in the report.

14 Q So he went on this record, and again that is an
15 unexposed worker. If you'll turn to the one with the yellow
16 tab, you'll find again that he had a history of a malignant
17 mole removed from his shoulder. So he again has a history
18 of cancer, doesn't he, sir, an unexposed worker with a
19 cancer?

20 A Yes, sir.

21 Q And that would be classified as a skin cancer,
22 wouldn't it, sir?

23 A Yes.

24 Q The next person we have is Runyon. It's number 87.

1 And again, on the second page of his history of working with
2 Monsanto, while he worked in the yard at one time at Monsanto,
3 and he worked as a helper in the Santamer's Liquid Detergent
4 department. Again, there's no history there that he had any
5 exposure to any TCDD formation process; would that be a fair
6 statement, Dr Roush?

7 A I would think so.

8 Q Yes. And looking again to his history, he has a
9 history on the part with the tab on it of again, skin cancer,
10 doesn't he, sir?

11 A Yes.

12 Q Next one is number 22, which would be Finch. And as
13 far as his history is concerned, he has a history of working
14 in the departments where 2,4,5-T might be made, does he not?

15 A I think, yes.

16 Q But if you'll turn to the history part and you'll
17 find that he had--you'll find that he had cancer as well,
18 won't you, sir?

19 A I'm not there yet.

20 Q The part with the yellow tab.

21 A Yes.

22 Q And it is again a skin cancer?

23 A Yes.

24 Q But now to be fair and not to take advantage, this

1 skin cancer was removed in 1967. If you'll turn back to his
2 history you'll find that he worked in the departments where
3 he might be involved in dioxin subsequent to 1967.

4 A Where did you get that?

5 Q On the second page, sir.

6 A Yes.

7 Q You'll see there that 2,4,5,-T, he worked there in
8 1972. The fourth entry on the history.

9 A Yes.

10 Q And where he worked prior to 1972 was as a helper in
11 the bagging and as an operator in the Drumming of Avadex,
12 and that's where he worked in '67 at the time he had his
13 malignant mole removed, therefore the mole that he had, or
14 the skin cancer that he had removed in 1967 could not have
15 been caused by exposure to dioxin in 1972, could it, sir?

16 A No.

17 Q And, therefore, he would be properly put in the
18 unexposed group, wouldn't he, sir, as far as this cancer is
19 concerned?

20 A Yes.

21 Q And he was so put by Dr. Suskind as will be revealed
22 later. But I want to demonstrate that while he had this
23 cancer, and he was exposed, his exposure was not related to
24 the cancer. The next one we'll take will be number 36, which

1 will be Reynolds. And his number is 36. And if you'll look
2 at his history on the second page, he was foreman of janitors
3 starting in 1960, and in '39 auto clave operator, but in
4 1960 he was a foreman of janitors, and he circulated through-
5 out the plant, in 1974 he handled all chemicals. Therefore,
6 he would have exposure, would he not, sir?

7 A Yes.

8 Q And as we turn to the history of cancer--

9 A '60--yes.

10 Q Return to the history of cancer, he had a bladder
11 cancer. The next one would be Rogers, number 422. And if
12 you'll look at his history on the second page, he was a
13 shipping foreman. He was responsible for the transportation
14 of all raw materials and finished products, responsible for
15 receiving raw materials and containers, and therefore, he
16 had--he would have had a history of exposure, would he not,
17 sir?

18 A Possible. I'm not sure.

19 Q Yes. Possible exposure?

20 A But I can't be sure that that's correct.

21 Q Well, from the history given to you, you can con-
22 clude that he was possibly exposed, if he handled all of his
23 responsible foreman--responsible for transportation of all
24 raw materials and finished products, and he was a warehouse

1 man, a shipping foreman after three years in the warehouse,
2 he certainly would have had an opportunity to be exposed
3 to 2,4,5,-T, would he not, sir?

4 A It depends if it was in some kind of closed package.
5 It may not be.

6 Q Well, it may not be.

7 A It's possible.

8 Q No one knows for certain that anyone even working
9 in the department has absolutely touched the stuff. But
10 he has the opportunity for exposure, doesn't he, sir?

11 A I would have to talk to the plant to find out.

12 Q I know you would, to be absolutely certain. But
13 based on this record, sir, that you have in front of you,
14 he has a possibility of exposure, doesn't he, sir?

15 A Yes.

16 Q As you turn to the history that he gave on the first
17 yellow tab, you'll find that he has a recurrent skin cancer,
18 surgery performed a couple of times on his nose, nine times
19 on his back, one time on his right hand, three times on his
20 left ear, once in the fossa; isn't that correct, sir?

21 A Yes.

22 Q And further history in the next tab, he has cancers
23 removed there as described. So he has skin cancer, does he
24 not, sir?

1 Sir?

2 A I'm trying to read it on--this is a different form
3 than the other.

4 Q Yes. But it clearly says skin cancer, doesn't it,
5 sir?

6 A That's on the review of systems and physical exam?

7 Q No. The page with the first tab, sir.

8 A I see it. All right.

9 MR. HEINEMAN: Will you give us the page number,
10 sir?

11 MR. CARR: Well, they're not numbered, Counsel, so
12 I can't very well give it to.

13 THE WITNESS: Yes.

14 MR. HEINEMAN: They are here.

15 MR. CARR: They're not on mine.

16 MR. HEINEMAN: The one you gave me have got numbers
17 on them.

18 MR. CARR: Well, this page doesn't have a number.

19 Q (By Mr. Carr) The next one would be 128, that is
20 Gorrell. And he has a history that he was a utilities
21 supervisor, starting in 1970, and that he operated the
22 utilities, in 1967 he was the utilities worker and a staff
23 engineer. And if he's a utility worker, he was a worker
24 that would have gone throughout the plant, all departments,

1 would he not, sir?

2 A I don't know. Not necessarily.

3 Q Well--

4 A It's--

5 Q Well, the history that you have here is that this
6 man, if he was the supervisor for utilities and operated
7 the utilities, he was a man that had a potential for exposure
8 to TCDD.

9 A I don't know that.

10 Q Well, you can deduce that from this record, can you
11 not, sir?

12 A No, sir.

13 Q You cannot.

14 A No, sir.

15 Q What does a utility worker do, sir?

16 A One who runs a power plant.

17 Q And they have power plants in every department, don't
18 they, sir?

19 A No, sir. One power plant.

20 Q Do they not furnish power to each department?

21 A Sure.

22 Q Doctor?

23 A Yes, sir.

24 Q And isn't that the only way the department can operate

1 is by power that's given by the utility workers?

2 A I don't know whether you could say with any assurity
3 that he had exposure. In my opinion that would be minimal
4 or none.

5 Q Well, look to the next page where he talks about--
6 I don't know the next page, it doesn't have a number on it.
7 It's four pages farther on, where he gives work hygiene at
8 Monsanto. He talks about--are you with me?

9 A No, sir.

10 Q There's no number on this page. It says work hygiene
11 at Monsanto.

12 A All right.

13 Q Yes. You see where he states that he works with--he
14 wears raincoats for ammonia protection, he wears coveralls
15 when he sometimes works on boilers and tanks, and then look
16 on the next page where he talks about working--he has colds
17 from exposure to NH3 and other gases, chlorine. He has
18 sporadic exposure from 1945 to 1976. You see that, sir?

19 A Yes.

20 Q Wouldn't that suggest to you, sir, that he has had
21 exposure?

22 A It's possible.

23 Q That's what I'm asking you, Doctor, from these records
24 you can deduce that the man possibly had exposure to TCDD,

1 can you not, sir?

2 A Yes.

3 Q Yes. And as far as his history of cancer is con-
4 cerned, he too had a history of skin cancer, did he not, sir?

5 A Yes.

6 Q And a prostate tumor in 1970--prostate trouble, I'm
7 sorry. That's not a tumor. The history of a skin cancer,
8 is it not, sir?

9 A Yes.

10 Q Now, Doctor, we have here a total of one, two, three,
11 four, five, six, seven people who have histories of cancer,
12 four of whom were clearly, from their history, unexposed,
13 and three of who were exposed; is that correct, sir? Or
14 potential for exposure.

15 A Based on our assumption of what those classifications
16 mean.

17 Q Yes. Well, and that's--you have all the history
18 here and all the records here, Doctor, that we have?

19 A Yes.

20 Q Because we asked for everything that was supplied
21 to Dr. Suskind and we have everything that was supplied to
22 Dr. Suskind. This is it. There is no more. Now, Doctor--

23 MR. HEINEMAN: Now, your Honor, I'm not sure that is
24 correct. I want to check on that. That's what I'm asking

1 is to whether this is a complete record. I object to that
2 statement.

3 MR. CARR: I'll represent to the Court that this
4 is the complete record that was furnished to us.

5 MR. HEINEMAN: What about all the--

6 THE COURT: You may proceed.

7 Q (By Mr. Carr) Doctor, these cancers, if you'll
8 look at the Table 1 for the number of cancers in the not
9 exposed group, sir. This is by percentage, is it not, sir?
10 The percentage, the number of non-exposed is one hundred
11 and sixty-three.

12 A Yes.

13 Q That's the number of workers actually studied, a
14 part of the study.

15 A Yes.

16 Q 2.5 percent of those people had skin cancer, and
17 1.5 percent had other kinds of cancer; isn't that correct,
18 sir?

19 A Yes.

20 Q And that's a total of 3.7 percent, is it not, sir?

21 A Yes.

22 Q And if you take 3.7 percent of one hundred and
23 sixty-three, you'll get the number six, will you not, sir?

24 A Yes.

1 Q Now, Doctor, Dr. Suskind has reported to the world
2 at large that he has found six cases of cancer among these
3 one hundred and sixty-three unexposed people, has he not, sir?

4 A Yes.

5 Q When in point of fact, he has found four cancers in
6 unexposed people, has he not, sir?

7 A That's what we've gone through so far.

8 Q Yes. And that, Doctor, is all that exists, as I
9 will represent to you and as you will see as we go farther
10 on. Now, if these figures are correct, if there are only
11 four workers who have had cancer and not exposed to TCDD,
12 then Dr. Suskind himself is not telling the truth to the
13 world at large, is he, sir, when he says there were six that
14 had cancers without being exposed in that group of a hundred
15 and sixty-three?

16 A He was not correct. That's right.

17 Q That, too, would affect, again you're comparing the
18 exposed group to the unexposed group, aren't you, sir, the
19 skin cancers?

20 A Yes.

21 Q And it comes out here, you've got 3.7 percent having
22 cancer in the unexposed as opposed to 6.9 percent in the
23 exposed group, while there is a difference, it's not near the
24 difference that it would be if it were 3 percent as opposed

1 to 6 percent, is it, sir? Again, a 50 percent difference.
2 If there's only four people in the unexposed group that have
3 cancer, which will represent 3 percent of the total, as
4 opposed to 6.9 percent, nearly 7 percent of the exposed
5 group, and if you add these three to the exposed group, you
6 increase your percentage by another two or three points,
7 don't you, sir? It makes a big difference, doesn't it, Dr.
8 Roush?

9 A If our definition of exposed and unexposed is correct.

10 Q Yes, indeed. And again, the world at large has to
11 depend upon the honesty of the persons interpreting these
12 records and upon the honesty of the persons supplying the
13 persons who are going to give the records. So there's two
14 ways you can confound the world at large. You can confound
15 it by not supplying those people who were in fact exposed,
16 or by calling them unexposed. And you can confound it by
17 interpreting records where there have been and is potential
18 for exposure, the janitor, the utility foreman, the shipping
19 foreman, by calling those people unexposed, you can confound
20 the results, can't you, sir?

21 A If that's correct.

22 Q Yes. Now, Doctor, I'd like to continue with the
23 records that we have of these various cancers to establish
24 the status of the remaining workers that were described.

1 The next one is Crites. It's number 8. And if you'll turn
2 to his history, he has a history of working in the 2,4,5,-T
3 department, does he not, sir?

4 A Yes.

5 Q And so he is exposed, is he not, sir?

6 A Yes.

7 Q And as far as his history of cancer is concerned,
8 on the page dealing with that, with the next yellow tab, he
9 has a skin cancer, hasn't he, sir?

10 A I don't have that on my next tab. I must be on the
11 wrong page.

12 Q Well, the third tab then. Yes, that's the one.

13 MR. HEINEMAN: Can you give us a page, Mr. Carr?

14 MR. CARR: Fifteen, Counsel. I think it's the
15 history, the personal medical history is on page fifteen.

16 Q (Mr. Carr) He has the history of skin cancer, does
17 he not?

18 A Yes.

19 Q The next one is number nine. That would be Miller.
20 As far as his history is concerned--

21 A This is nine? Is that nine?

22 Q Number nine.

23 A Right.

24 Q And he has a history of working as a maintenance man,

1 a pump mechanic, all through the plant repairing open lines,
2 opening lines, and he worked as a utility worker in all
3 buildings, in production. He worked in the shipping depart-
4 ment, the warehouse, he weighed product for shipping. He
5 was an operator in building 41. He had ample opportunity
6 for exposure, did he not, sir?

7 A The question is the magnitude of his exposure. It's
8 a questionable one.

9 Q The Dr. Suskind study did not deal with the magnitude
10 of exposure. He simply classified them exposed or not ex-
11 posed. He dealt not with the magnitude. His study, as
12 you can see, if will look at it again, dealt only with did
13 he have a history of exposure or non-exposure.

14 A I think that there's another group in here that he
15 dropped out.

16 Q Yes, indeed. And this study that we have here deals
17 with those who have exposure by history or not exposure.

18 A No, sir. There's another one in here. On page 27--
19 what is it, 2373, it says there are fifty-one subjects whose
20 possible exposure as limited and poorly documented and did
21 not include working in the 2,4,5-T process, and they were
22 not included in the analysis.

23 Q Well, but these are ones that were included in the
24 analysis, Doctor.

1 A How can you tell?

2 Q Well, because of the tape that was given us, and
3 perhaps I should give that to you also. It will help you
4 in interpreting these records. Make this exhibit--I should
5 have given this to you earlier. It would help you interpret
6 these documents, because this again is Dr. Suskind's computer
7 record of these exhibits.

8
9 (Plaintiff's exhibit 1472 was marked for
10 identification by the court reporter.)
11

12 Q (By Mr. Carr) Handing you now what's been marked
13 Plaintiff's exhibit 1472, that can help you interpret these
14 records. For the record, 1472 is the computer printout,
15 the tape of which, as shown by exhibit 1469, was furnished
16 by Dr. Suskind to the lawyers in the case, and it was
17 subsequently furnished to us.

18 A What's 1469?

19 Q 1469 is the letter to those lawyers.

20 A I see.

21 Q This is from Charleston, West Virginia.

22 A I see.

23 Q Referring to the computer tape.

24 A All right.

1 Q And if you'll--to assist you in the way Dr. Suskind
2 interpreted these records, if you look at the second entry
3 which says "new i.d. number nine," and the word "Miller is
4 written above that.

5 A Yes.

6 Q If you'll read across you'll see that he has a history,
7 he has it marked as exposed, does he not?

8 MR. HEINEMAN: Excuse me, your Honor. Mr. Carr are
9 you offering 1472?

10 MR. CARR: Yes. I thought I did. I offer 1472,
11 your Honor.

12 MR. HEINEMAN: Your Honor, the same objection will
13 apply. There's no foundation whatsoever for the same reasons
14 I previously stated. In addition to that, this document
15 appears to be written on. I don't know who wrote on it. I
16 don't know whether this was a document produced or whether
17 Mr. Carr had some tape run through a computer and this is
18 generated, or what it is.

19 MR. CARR: The tape that was supplied to us, the
20 computer tape was run through the computer. The printed
21 part is the part that the computer spit out. The written
22 part is there for the assistance of the witness. If he
23 wants to use it, he may. He doesn't have to use it if he
24 doesn't want to.

1 MR. HEINEMAN: Do I understand that the written
2 part was put on for the assistance of this witness?

3 MR. CARR: Yes.

4 MR. HEINEMAN: And yet it was just now given to
5 him an hour after the examination?

6 MR. CARR: I'm sorry. For my assistance in inter-
7 preting these tapes. And I'm now giving it to this witness
8 to help him interpret this data.

9 MR. HEINEMAN: My objection stands, your Honor.
10 This is a document apparently generated by Mr. Carr. And
11 there's no foundation for its admission.

12 THE COURT: The objection is overruled.

13 MR. CARR: Your Honor, if Counsel is concerned
14 about the written part going to the jury, because I'm not
15 passing this exhibit to the jury at this time, why ultimately
16 they will see it, I'll be more than happy to produce a
17 document without the writing on it.

18 THE COURT: Fine.

19 MR. CARR: If Counsel objects to the jury having
20 these writings.

21 THE COURT: Fine. If you would, please.

22 MR. CARR: It's simply a repetition of what is on
23 the tape itself.

24 THE COURT: Fine.

1 Q (By Mr. Carr) Now, Dr. Roush, to assist you, you'll
2 see the number nine there that we previously identified as
3 Miller.

4 A Yes, sir.

5 Q He's classified as exposed by this computer printout,
6 is he not, sir, that Dr. Suskind furnished us?

7 A If that's what that means. There's not much informa-
8 tion to help us understand that.

9 Q Well, this information you have, this information
10 was generated by Dr. Suskind from the other information that
11 you have. This is the totality of the information hopefully
12 that Monsanto supplied to us. If it has more information,
13 we would certainly love to have it. But we asked for and
14 the Court ordered that Monsanto produce all the information,
15 all the data that it gave to Dr. Suskind upon which Dr.
16 Suskind made his conclusion.

17 A I understand.

18 Q If we don't have all the data, then we, of course,
19 cannot analyze Dr. Suskind's results. If we have all the
20 data, as we are supposed to have, then we can analyze the
21 results as we are doing.

22 A That's not my question.

23 Q Now, would you assume please, Doctor, that--

24 A Yes, sir.

1 Q --that this is all the data we've got and all the data
2 that Dr. Suskind had?

3 A I understand.

4 Q All right.

5 A My question is when you talk about the statement
6 that it's exposed, that's one word.

7 Q Yes.

8 A I'm not sure what that means.

9 Q Well, look at the very--"exposed equals exposed."
10 Then look at the very next entry, "exposed equals not ex-
11 posed." The next entry in on Finch. We have earlier de-
12 scribed Finch as unexposed because his exposure took place
13 after he had the skin cancer. If you look at all of those,
14 you will find that Dr. Suskind has catagorized these by
15 exposed and not exposed.

16 A All right.

17 Q Even to assist you further, you can see, go down to
18 the one called Gorrell. That's on this page. The next
19 one is Runyon. Do you see Runyon? His i.d. number is 87.
20 His says "exposed equals not exposed" and he was listed by
21 Dr. Suskind as not exposed. You see that, Dr. Roush?

22 A Yes.

23 MR. HEINEMAN: Your Honor, I object to the character-
24 ization that it's merely been listed by Dr. Suskind as not

1 exposed. I think Mr. Carr has pointed to his own list and
2 his own characterization. Is that correct?

3 MR. CARR: Does not this tape classify Runyon as not
4 exposed? Do you see the words "not exposed" there, Counsel,
5 and Dr. Roush?

6 MR. HEINEMAN: I also see "exposed" there.

7 MR. CARR: No. You see "exposed equals not exposed."
8 There's an equals sign there, Counsel.

9 MR. HEINEMAN: Yes.

10 MR. CARR: Exposed equals not exposed.

11 MR. HEINEMAN: That's certainly not very helpful
12 to me, Mr. Carr.

13 THE COURT: Well, the objection is overruled.

14 Q (By Mr. Carr) Well, Dr. Roush, back to the criteria
15 that we have. I'm giving you this computer tape because
16 the computer tape is the analysis that Dr. Suskind put on
17 the other records which I've been asking you about. I've
18 lost my exhibit now that I was talking about. Mr. Miller.

19
20 A Is there another category that says questionable
21 exposure, besides exposed and not exposed?

22 Q Apparently not that's been furnished to us, Doctor.
23 Please, if I am misrepresenting something, you will have an
24 opportunity when Mr. Heineman asks you questions to fully

1 show the misrepresentation and destroy my credibility with
2 the jury. So if I'm doing that, if I'm misrepresenting
3 something, or misleading you in something, you'll have the
4 full opportunity to expose me.

5 A I'm just asking a question about that data.

6 Q I have not that category.

7 A I understand.

8 Q This data, if you'll go back to Miller now. He has
9 a history of exposure, does he not? He's listed in Dr.
10 Suskind's tape as exposed, is he not?

11 A Yes.

12 Q And if you'll turn to his history, he has a history
13 of bladder cancer, doesn't he, sir?

14 A Yes.

15 Q The next one is Hein, whose i.d. number is 26. He
16 has a history of exposure, says that he works throughout
17 the plant preparing instruments. And if you'll look at
18 Suskind's tape, he calls him exposed, also, in this tape;
19 isn't that correct, Doctor?

20 A Exposed, yes.

21 Q And if you look to his history of cancer, he has
22 bowel cancer, does he not, sir?

23 A Yes.

24 Q The next one is McDade, number 32. He has a history

1 of being exposed, does he not, sir?

2 A Yes.

3 Q And he has a history of skin cancer, doesn't he, sir?

4 A Yes.

5 Q The next one is--we already had Reynolds, have we
6 not, sir?

7 A I'm going by number. Are you talking about 52?

8 Q We have previously shown that Reynolds--you had
9 that exhibit earlier--

10 A Those are the ones I haven't looked at yet.

11 Q All right. We've already established that Reynolds--
12 I'm going to put him out of order at this time--strike that,
13 let that be. Go to the next one, which would be Volz, the
14 one I'm going to give you at this time. The next one is
15 number 52 who would be Volz. He has a history of exposure,
16 does he not?

17 A Are you ready--

18 Q From the records.

19 A From the tape?

20 Q From the records. If you look at the place where
21 the tab is.

22 A All right.

23 Q He worked in a health safety program and plant
24 inspections. He's the safety director of the Nitro plant.

1 The safety director of the Nitro plant goes throughout the
2 plant, does he not, sir?

3 A Yes.

4 Q And as far as his history is concerned, he has a
5 history of bladder cancer, does he not, sir? Do you see
6 that on the page numbered 15?

7 A Yes. That--yes.

8 Q He also has a history, sir, of skin cancer, doesn't
9 he? If you look on page 21 you see that basal cell carcinoma
10 of the right thorax ten to twelve years ago.

11 A Yes.

12 Q So he has two cancers.

13 A Did Dr. Suskind list him as exposed on his tape?

14 Q No, I don't think. Let me look. Yes. Fifty-two?
15 Yes, he's listed as exposed.

16 A I don't see it. What's his number?

17 Q Fifty-two.

18 A Fifty-two. On the first page?

19 Q Yes. Number 52. Look on the new i.d. numbers.
20 You're looking at the old.

21 A I see. All right.

22 Q Now, he's listed as exposed, but on Dr. Suskind's
23 printout he's listed as no history of cancer; isn't he, sir?

24 A Where is this?

1 Q Volz, i.d. number 52, skin cancer history, no.

2 Cancer history, no. Do you see that, sir?

3 A No, sir.

4 Q You don't see that?

5 A Where are you reading that?

6 Q On the Suskind tape, sir.

7 A Right.

8 Q Volz, skin cancer, no, i.d. number 52, exposed.

9 He's exposed. Skin cancer, no. Cancer history, no. Do
10 you see that, sir?

11 A Yes.

12 Q And if you would look at McDade on that same printout.
13 McDade is also listed by Suskind's printout--

14 A What number is that?

15 Q Number 32, sir.

16 A Is that the next one?

17 Q No. That's the one just above it, sir.

18 A All right. He hasn't been exposed.

19 Q But he has no history of skin cancer. Doesn't it
20 show that, sir? No history of skin cancer.

21 A Right.

22 Q But yet he clearly has cancer, doesn't he, sir?
23 Clearly has a history of cancer, doesn't he, sir?

24 A Yes.

1 Q In the Suskind records, if you will look at Hein,
2 sir.

3 A His number is? It's 26?

4 Q Number 26. He's exposed. He has a history of
5 cancer in his records that he gave to Dr. Suskind. But
6 Dr. Suskind has him listed as no cancer, doesn't he, sir?

7 A If those representations are correct, it makes
8 sense what you are saying. But this is the first time I've
9 seen these abbreviations.

10 Q I understand that, Doctor, but the point I want to
11 make to you, and I'm making to the jury, is that these
12 three men--and there will be more, many more, Doctor, many
13 more--these three men reported to Dr. Suskind, to their
14 interviewer, that they had history of cancer, and Dr. Suskind
15 on his computer tape, exhibit 1472, listed them as not
16 having a history of cancer. And there will be more, Dr.
17 Roush.

18 MR. HEINEMAN: Your Honor, I'll object to this
19 characterization, and that speech by Mr. Carr, because if
20 you look at number V701 on the printout there, under McDade,
21 it says V701 skin. Under Hein it says V701 bowel. Could
22 that possibly be a reporting of the cancers that Mr. Carr
23 says are not there?

24 MR. CARR: We'll find out, sir. If we have as many

1 cancers, just as many cancers as he reported in his table,
2 relatively few, seven percent of two hundred and four, that's
3 fourteen cancers, if we have only fourteen cancers when we
4 end up to this, we'll find that he did report all these
5 cancers. However, if we have twenty-five cancers when we
6 end up with this study, we'll discover that he didn't list
7 all those that had cancers, won't we, Mr. Heineman?

8 MR. HEINEMAN: Well, that's your characterization,
9 Mr. Carr.

10 MR. CARR: And we will see.

11 THE COURT: Mr. Carr, you may proceed.

12 MR. CARR: Yes, your Honor.

13 Q (By Mr. Carr) Doctor, going to the next person is
14 Honaker. His i.d. number is 53. And he has a history of
15 exposure, does he not, sir?

16 A I would think so.

17 Q Well, he clearly says it.

18 A Yes.

19 Q 2,4,5-T cleans them out.

20 A I would think so, yes.

21 Q And Honaker also has a history of two kinds of
22 cancer, doesn't he, sir, leukemia and prostate cancer. You
23 see that on page 15? You see that, sir?

24 A Yes. Yes.

1 Q And if you look at the printout for Honaker, that is
2 exhibit 1472, for the new i.d. number 53, you'll find he
3 has a history of no skin cancer, but he has a cancer history
4 listed there. It just mentions one cancer, doesn't it, sir?

5 A Well, it lists leukemia and prostate.

6 Q Well, we'll pass--we'll get back to that one, Dr.
7 Roush, and we'll demonstrate what he in fact demonstrated in
8 his report. The next one would be Salby, would it not?
9 That would be number 82. He has a history of exposure, does
10 he not, sir?

11 A I can't read it.

12 Q He's a pipefitter. He works all over the plant.
13 He's a maintenance and construction foreman. He works in
14 installation of equipment all over the plant.

15 A Yes.

16 Q His history of cancer, he has--

17 A Skin cancer.

18 Q Well, there's a bladder tumor removed, that he also--
19 there's a bladder tumor removed. His history is just of
20 skin cancer.

21 A Where is the bladder removed?

22 Q On the next page, number 16. Do you see that, where
23 he has a bladder tumor removed?

24 A Yes.

1 Q But he reports in his history section, or the inter-
2 viewer reports that he has a history of skin cancer; correct?

3 A Yes.

4 Q The next one will be number 89, Mr. West.

5 A Does he list him as exposed on his form?

6 Q I'm sorry. Who?

7 A The one you just finished, Selby?

8 Q Yes. You see there?

9 A Yes.

10 Q Number 82, expose equals exposed.

11 A Yes.

12 Q The next one is West. He has a history of exposure.

13 A Is that 89?

14 Q Number 89, the second page. He works in the 2,4,5-T
15 department.

16 A I can't read it on mine.

17 Q Well, you can see the 2,4,5-T there, can't you, sir?

18 A And he's also listed as exposed in the printout.
19 Is that the last little writing down there? It's very
20 blurred on mine. It's right on the bottom of it. The
21 2,4,5-T? Yours is as blurred as mine.

22 Q He's also listed in the Suskind printout as exposed.
23 Number 82 exposed.

24 A All right.

1 Q I'm sorry. I've directed you to the wrong one.
2 It's West, 89, exposed.

3 A All right.

4 Q And as far as his history of cancer is concerned,
5 he also has a history of skin cancer, does he not?

6 A Yes.

7 Q The next one would be number 133, which would be
8 Hill, Keith Hill. I think there's two Hill's. I better
9 put a K behind him. He has a history of exposure, does he
10 not, sir? He was a maintenance supervisor--on page 4
11 where the tab is--throughout the production supervisor,
12 and the maintenance supervisor in the entire plant.

13 A Yes.

14 Q And he has cancer of the bladder that's shown on
15 the medical records as attached and the very first page of
16 this, papilloma of the bladder neck. Do you see that, sir?

17 A Mine says history of cancer of bladder. Oh, I
18 see it. The first page. Right.

19 Q All right. And he also has a history of skin cancer
20 that's shown on page 21, does he not, sir? Malignant mole
21 on the back of something, his nose, or whatever that is.
22 I can't make out that word. Are you on page 21?

23 A Yes, sir.

24 Q Malignant.

1 A It says he was told malignant.

2 Q Yes.

3 A Yes.

4 Q The next one would be--

5 THE COURT: Okay. Mr. Carr, before you go on to
6 the next one, we'll break for lunch. Ladies and gentlemen,
7 we'll break for lunch at this time. The admonishments I
8 gave you earlier will apply during this break also. We'll
9 resume again at one o'clock. The Court is in recess.

10
11 (At this time the lunch recess was taken.)

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

15
16 (Plaintiff's 1471A was marked for identification
17 by the court reporter.)

18
19 Q (By Mr. Carr) Doctor, the exhibit that I've handed
20 you earlier and had marked 1471A is Table 1 from the Suskind
21 Morbidity Study, is it not, and a duplicate of 1471 that
22 had been previously admitted into evidence.

23 A Yes, sir.

24 MR. CARR: I'd like to offer 1471A, your Honor, and

1 pass it to the jury, also. I had it this morning, but I
2 neglected to pass it.

3 THE COURT: Do you have any objection to that?

4 MR. HEINEMAN: Your Honor, to keep my exhibit
5 numbers straight, your Honor--

6 MR. CARR: 1471 is the blow-up. 1471A is the
7 Table 1 from exhibit 1467.

8 MR. HEINEMAN: Okay.

9 THE COURT: It's from the Suskind study.

10 MR. HEINEMAN: And it's the same as 1470?

11 THE COURT: 71.

12 MR. CARR: 1471.

13 MR. HEINEMAN: Number A--1471A is the same as 1471?

14 MR. CARR: That is correct.

15 MR. HEINEMAN: No objection.

16 THE COURT: Fine. Admitted without objection.

17 Q (By Mr. Carr) Doctor, the next employee-worker
18 that was subject of the study that's on this group exhibit
19 that you have is Matheny, number 135, is it not, sir?

20 A Yes, sir.

21 Q And Matheny has a history of exposure, does he not?
22 On page 8 with a tab on it.

23 A Yes.

24 Q And assigned to the building permanently at the

1 2,4,5-T plant .

2 A Yes.

3 Q And he has a history on page 135, the next tab, of
4 bowel cancer, does he not, sir?

5 A Yes, sir.

6 Q The next one would be Woodall, number 167. Wouldn't
7 that be correct, Doctor?

8 A 167, I don't know if it's Woodall.

9 Q Well, you have the--

10 A I can go back over this list.

11 Q If you wish to check it. It has--

12 A Right.

13 Q --the list there, and you also have the computer
14 printout that shows the i.d. number 167 Woodall.

15 A Yes, sir.

16 Q And you see on page 3 his exposure history. He's
17 a maintenance man, electrician in the entire plant. Do
18 you see that, sir?

19 A He was working 2,4,5-T.

20 Q I'm sorry.

21 A He was working 2,4,5-T.

22 Q Yes. You see that now, do you, sir?

23 A Yes.

24 Q And his history is one of skin cancer?

1 A Yes.

2 Q And you will note on the computer printout of Dr.
3 Suskind that he's listed as no cancer history, is he not?
4 If you look at exhibit 1472.

5 A They list him as having skin cancer.

6 Q If you look there you'll see his computer printout
7 shows he has not got a history of cancer.

8 A But it shows earlier that he does have skin cancer.

9 Q Indeed, it does. No, it shows he has a skin problem.
10 It doesn't show skin cancer. No skin cancer history, no.
11 Cancer history, no.

12 A We called Vicki Hertzberg at lunchtime from Suskind.
13 Skin cancer history and cancer history, that's not from
14 Cincinnati. That's not from Kettering.

15 MR. GARR: Your Honor, I would ask the jury to be
16 instructed to disregard what Dr. Roush has just stated here,
17 unless Dr. Hertzberg--well, ultimately we may produce him
18 for cross examination. But that statement is a volunteered
19 statement. Purely hearsay. I have no way of knowing whether
20 Hertzberg has described it correctly or not, whether or
21 not Dr. Roush has correctly described what Dr. Hertzberg
22 has said, if anything, at lunch, to Dr. Roush.

23 THE WITNESS: Yes, sir.

24 MR. GARR: These are the documents that we have been

1 given, and they can explain those away at some other point,
2 at some other time.

3 THE COURT: That motion was granted--

4 MR. HEINEMAN: Your Honor--

5 THE COURT: Wait just a second. Dr. Roush, if you
6 would please confine your answers, or any statement you make
7 to answers to the questions that are directly asked of you.
8 You will have an opportunity in the clarification examina-
9 tion by the attorneys from Monsanto to refer back to any
10 of these matters. So if you would do that, please, I would
11 appreciate it. The system that we have is in response to
12 questions, and not volunteered statements such as that.
13 Is that okay, Dr. Roush?

14 THE WITNESS: Yes, sir.

15 THE COURT: Thank you.

16 MR. HEINEMAN: Your Honor, am I--may I not be per-
17 mitted to respond to Mr. Carr's argument? The Court has
18 already ruled.

19 THE COURT: I have ruled. This was not responsive
20 to any question. There was no question before the witness,
21 and the matter that was stated was unquestionably improper.
22 The questioner has the right to make that motion, and that
23 motion was made. You may proceed, Mr. Carr.

24 Q (By Mr. Carr) Now, Dr. Roush, in that regard, and

1 did you, in fact, talk to Dr. Suskind or Dr. Hertzberg
2 during a break of this trial today?

3 A Yes, sir.

4 Q You talked to him personally?

5 A I talked to Hertzberg.

6 Q Did you learn from Hertzberg, did you discuss with
7 him these omissions that we have discovered here?

8 A No, sir.

9 Q You did not discuss those?

10 A No, sir.

11 Q Did you discuss with him how this computer printout,
12 1472, is to be interpreted?

13 A Only very briefly. We couldn't go through all of
14 the items here.

15 Q Well, did he advise you--

16 A It's her.

17 Q Did she advise you that where there is--where it
18 says cancer history, no, that if there is something else
19 there that says skin, that would indicate that there was a
20 history of skin cancer?

21 A She said she didn't know what those two items were
22 on the skin cancer history or cancer history.

23 Q Well, did she advise you that the items before that--
24 we're talking about Woodall at this time, and I've lost him

1 on this printout. Number 167. There it is. --advise you
2 that the numbers before that, where it says V701 skin, that
3 that indicates a skin cancer?

4 A Yes, sir.

5 Q Then where it says skin cancer history no, cancer
6 history no, it was the advice you received that the figures
7 before--in front of that, that would be 701 equals skin,
8 indicates that there was a history of skin cancer; is that
9 correct?

10 A Yes.

11 Q Well, would that be true of, say, the one above,
12 Matheny, where it says V701 bowel, that would indicate a
13 bowel history?

14 A Yes, sir.

15 Q And near up where we have i.d. 118 Scarberry. We
16 haven't talked about Scarberry. It says there, that would
17 be a lung and bowel cancer.

18 A I think that's yes.

19 Q All right.

20 A I only got through that first one.

21 Q Well--

22 A But I think that's correct.

23 Q What you learned from your conversation was that
24 the controlling entry then would be the entry that would say

1 lung and bowel; is that correct?

2 A Yes.

3 Q And Suskind and Hertzberg did not use the part of
4 the computer printout dealing with the skin cancer history
5 where it says no, and cancer history where it says no; is
6 that correct?

7 A Yes, sir.

8 Q All right. So the record is clear on that, according
9 to that interpretation, Woodall would have been treated
10 by Dr. Suskind as having had a history of skin cancer; is
11 that correct?

12 A What's Woodall's number?

13 Q Number 167. The one we were just talking about.

14 A Yes, sir.

15 Q And Gorrell would have--well, there isn't anything
16 for Gorrell, any number there. But there is a skin cancer
17 history, and we do know that Gorrell had a skin cancer
18 history, don't we, sir?

19 A I don't remember.

20 Q Well, we jump up to Honaker, Honaker, that's i.d.
21 number 53. It says leukemia and prostate. Indeed, Honaker
22 has leukemia and prostate cancer from the records; is that
23 correct?

24 A Yes, sir.

1 Q All right. So we can use both of these entries then
2 to determine just how Suskind, what history Suskind had of
3 these various cancers; is that correct also?

4 MR. HEINEMAN: Objection, your Honor. That's con-
5 fusing to me. Both of what entries?

6 MR. CARR: The entries where it lists like V701
7 skin, and where it says skin cancer history yes, or skin
8 cancer history. There are entries as you see, Counsel, as
9 you have seen on that line for all of those items.

10 MR. HEINEMAN: Are you asking him a question?

11 MR. CARR: Yes.

12 Q (By Mr. Carr) We may use that additional data,
13 information you've received from Dr. Hertzberg to interpret
14 this computer printout then.

15 A But I don't--I'm not sure where that skin cancer
16 history and cancer history comes from.

17 Q Well, it comes from Dr. Suskind's documents. This
18 is a Dr. Suskind document.

19 MR. HEINEMAN: Your Honor--

20 Q (By Mr. Carr) It is a tape--

21 MR. HEINEMAN: I object. He just said earlier that
22 he ran that document off on a computer.

23 MR. CARR: No. You completely confused it. We had
24 the computer tape. This is a printout from Suskind's computer

1 tape, Counsel.

2 MR. HEINEMAN: That's what I'm saying.

3 THE COURT: Objection is overruled. You may proceed,
4 Mr. Carr.

5 Q (By Mr. Carr) Well, Doctor, the next person is Martin,
6 number 171, is that correct, sir? And Martin has a history
7 of being exposed, does he not? Do you see that on page 3,
8 Dr. Roush? He works as an operator out of herbicides, insect-
9 icides, worked all units as a maintenance man, entrance
10 mechanic in all control units. You see that, sir?

11 A Yes. But that herbicides, insecticides may not be
12 2,4,5,-T.

13 Q The next one where he worked in all units and pro-
14 ducts. That certainly is a history of exposure, is it not?

15 A Yes. Yes, sir.

16 Q If you look at the Suskind tape record, he treats
17 Martin as exposed, does he not, sir?

18 A Yes, sir.

19 Q And on the cancer history, he has a history of
20 bladder cancer, does he not, according to this record on page
21 15?

22 A Yes, sir.

23 Q The next one would be Frank West, number 242; is that
24 correct, sir?

1 A Yes, sir.

2 Q And he reports that he was a maintenance man, a
3 welder and near the 2,4,5-T accident in '41. The interviewer
4 undoubtedly meant '49. He also repairs in all parts of the
5 plant, does he not, sir?

6 A Yes.

7 Q That would be a history of exposure, would it not,
8 sir?

9 A Yes.

10 Q As far as his history, he reports a skin cancer on
11 page 15, does he not, sir?

12 A Yes.

13 Q The next one is number 247. It would be McGinn.
14 M-cG-i-n-n Miss reporter. And McGinn has a history of having
15 worked in these departments as a maintenance man, plantwide
16 maintenance worker, climbed into the auto clave. He worked
17 mostly building 4592, which has 2,4,5,-T in it. You see
18 that, sir?

19 A Yes.

20 Q So he would have a history of having been exposed,
21 would he not, sir?

22 A Yes.

23 Q And his history is one of skin cancer. Three times,
24 as a matter of fact.

1 A Yes.

2 Q Next one Waldorf, number 300; is that correct, sir?

3 A Yes, sir.

4 Q And he has a history of exposure, utility production
5 worker working all over the plant. Worked in the warehouse
6 as a loader, loaded out maintenance to trucks and railroad
7 cars, and maintenance pipefitter, worked all over the plant,
8 maintenance foreman, project scheduler and plant. That
9 would be a history of exposure, would it not, sir?

10 A Yes, sir.

11 Q And if you'll turn to his history, we have Waldorf
12 is with a history of cancer, do we not?

13 A Skin cancer.

14 Q Skin cancer. Look at the next one, which would be
15 Dunn, number 316. And he was exposed. He made, according
16 to him, he made 2,4,-D, and worked in the building in auto-
17 mated process; is that correct, sir?

18 A Yes.

19 Q So he had a history of exposure, and in his cancer
20 he has a skin cancer, does he not? Does he not?

21 A Yes.

22 Q The next one would be number 324, McClanahan; is
23 that correct, sir?

24 A As I recall, there's more than one McClanahan.

1 Q Well, there may be, but this one is--

2 A I'm talking about an initial, if you think it
3 appropriate.

4 Q Look at number 324 and we can get his initial. It's
5 William E. McClanahan, is it not? He has a history of
6 having worked in Building 46 and 44, making 2,4,5,-T, does
7 he not?

8 A Yes, sir.

9 Q He has a history of having skin cancer?

10 A I don't have the page marked on mine.

11 Q Page 324.

12 A No; no.

13 Q Look at Suskind's printout. It will show you that
14 he's exposed and that he has a skin cancer history.

15 A It doesn't have it on the history form.

16 Q Sir?

17 A It doesn't have it on the history form. It says
18 no cancer.

19 Q Well, if you look in that part--on page 21, it
20 describes something taken from his forehead, and Dr. Suskind
21 has included him in the group that has a history of skin
22 cancer.

23 A Where?

24 Q In the computer printout of Dr. Suskind related to

1 McClanahan. I.D. number 324.

2 A No, he doesn't.

3 Q If you will see, skin cancer history yes. Do you
4 see that, sir?

5 A Yes.

6 Q All right.

7 A But where did that come from?

8 Q This is from Suskind's computer printout. This is
9 computer tapes created by Dr. Suskind.

10 A Hertzberg said that's not in her record. Hers does
11 not include that statement "skin cancer history."

12 Q Well, when Hertzberg comes here, she can, if she
13 does come here, she can relate that and demonstrate that is
14 not the data from the tape. The information I have is that
15 this is the tape, data from the tape sent by Suskind.

16 Mr. Heineman; Your Honor, I object to this state-
17 ment. That isn't evidence that he is putting on. This
18 whole thing is hearsay. What's more different from Dr.
19 Roush telling what Hertzberg told him on the phone then
20 Mr. Carr standing up and saying what somebody told him?
21 I mean this is just crazy.

22 MR. CARR: The difference is that these are documents
23 created by defendants and they're considered admissions,
24 Counsel, that we can use. They're exceptions to the hearsay

1 rules because they are things that your agents and your
2 employees have said to us. This document has been given
3 to us.

4 MR. HEINEMAN: This document was created by you,
5 Mr. Carr.

6 MR. CARR: I'm sorry?

7 MR. HEINEMAN: This document was created by you,
8 Mr. Carr.

9 MR. CARR: This document was not created by me.
10 The only thing that was created by the people in my employ
11 was the handwritten portion. The typed portion is a print-
12 out from the computer tape given and described in that
13 letter, given to us to be used in analyzing these data.

14 MR. HEINEMAN: Given to you by whom?

15 MR. CARR: Dr. Suskind, your agent.

16 MR. HEINEMAN: First of all, you haven't proven that.

17 MR. CARR: You have admitted that, Counsel.

18 MR. HEINEMAN: You told the Court and the jury you
19 had this printout created from a tape.

20 MR. CARR: From the tape that you sent--all you do
21 is put the tape--the tape that you sent in the printer, and
22 it prints it out from the tape.

23 MR. HEINEMAN: All right.

24 MR. CARR: As you well know, Counselor.

1 MR. HEINEMAN: Your representation is that we in
2 this lawsuit gave you the tape.

3 MR. CARR: That is correct.

4 MR. HEINEMAN: From which this document was created?

5 MR. CARR: That is absolutely correct. Now you
6 understand it.

7 MR. HEINEMAN: Now I've forgotten. Is there a
8 question? Or where are we?

9 THE COURT: I think you made your objection or
10 asked your question between questions. So I don't think
11 there's a question posed.

12 Q (By Mr. Carr) We were in the process of identifying
13 a history or no history of skin cancer; correct, Doctor?

14 A Yes, sir.

15 Q And because you are not willing to accept this
16 printout data as skin history one hundred percent, I'll
17 put a question mark on that entry because of that fact, even
18 though it says skin cancer history yes. On this printout
19 we'll put a question mark there.

20 A I understand.

21 Q All right. Doctor, the next subject is Lewis, James
22 Lewis, number 375; is that correct, sir? Do you see that,
23 sir?

24 A Yes, sir.

1 Q And Lewis has a history of being exposed, does he
2 not, sir, making 2,4,-D on page 3?

3 A Yes.

4 Q And he's then exposed and his history of cancer is
5 on page 375. He has a history of bowel cancer, does he not,
6 sir?

7 MR. HEINEMAN: Objection to the form of the question,
8 your Honor. Mr. Carr assumes he was exposed. He did not
9 ask the witness that question.

10 MR. CARR: The witness answered yes.

11 MR. HEINEMAN: All you did was repeat what the
12 documents said. The witness said yes to what the document
13 said.

14 THE COURT: Objection is overruled. Go ahead, Mr.
15 Carr.

16 Q (By Mr. Carr) Doctor, working in 2,4,-D is the
17 equivalent of being exposed, isn't it, sir?

18 A Yes.

19 Q All right. Thank you, sir. And he has a history
20 of bowel cancer, does he not, sir?

21 A Yes.

22 Q On the entry for skin cancer, on the computer print-
23 out he also has listed there has a skin cancer history, yes;
24 correct, sir?

1 A Yes. But it's not recorded on page 375.

2 Q You mean on page 15?

3 A I mean on page 15.

4 Q He reports the acne that he had on the same page,
5 however, does he not? That he tried to burn it off in a
6 raw place on his face that would not heal. If you look on
7 page 21 he reports skin cancer of the left cheek.

8 A Yes.

9 Q And so he reported a history of skin cancer on the
10 left cheek, did he not, sir?

11 A Yes, he did.

12 Q We've already shown the bowel cancer. And Postleth-
13 waite, number 436, has a history of exposure, having been
14 in the 1949 accident. He was on the repair crew. He went
15 into Building 41 to repair it after the explosion.

16 A Right.

17 Q And Postlethwaite has a history of skin cancer, sir?

18 A Yes.

19 Q And the next one is Scarberry, Doctor; correct, sir?
20 Number 118. Do you see that, sir?

21 A Not in that form yet.

22 Q I'm sorry?

23 A Not on the printout.

24 Q Look at the computer printout, 118, and identify

1 if you will please, that Scarberry is number 118.

2 A Yes, sir.

3 Q And he has a history of exposure, does he not, sir?

4 A Yes.

5 Q And on tha--we have the history of having a number
6 of tumors removed, does he not? On page 16.

7 A Yes.

8 Q And on the computer printout of Scarberry, he's
9 listed according to the interpretation you got from Dr.
10 Hertzberg as having had lung cancer and bowel cancer; is
11 that correct, sir?

12 A Yes.

13 Q Now, Doctor, when we add to that list the persons
14 who have had a history of exposure that we have previously
15 gone over, from this list we have Reynolds, Rogers and
16 Gorrell, all of whom have had history of exposure, and all
17 of whom have cancer; is that correct? We've previously
18 established that.

19 MR. HEINEMAN: Objection, your Honor. I don't think
20 that's been previously established.

21 MR. CARR: It has been established, your Honor.

22 THE COURT: Overruled. Would you answer the question
23 please, Doctor?

24 THE WITNESS: You're talking about just the first

1 four?

2 Q (By Mr. Carr) No. These bottom three. You said
3 yes, they were exposed and yes, they had these cancers.

4 A Right. Right.

5 Q Doctor, we have here than listed in the group of
6 workers that were exposed, we have one, two, three, four,
7 five, six, seven, eight, nine, ten, eleven, twelve, thirteen,
8 fourteen, fifteen, sixteen, seventeen, eighteen on that
9 page, nineteen, twenty, twenty-one, twenty-two, twenty-
10 three, twenty-four, twenty-five, twenty-six, twenty-seven,
11 twenty-eight, and we have questionable. So we have twenty-
12 eight. That shows by the records that we have twenty-seven
13 cancers, do we not, sir?

14 A Yes.

15 Q And of those twenty-seven we had one, two, three,
16 four, five, six--five, not counting the questionable one--
17 six, seven, eight, ten, eleven, twelve, thirteen, fourteen,
18 fifteen skin cancers, with one questionable. We have one,
19 two, three, four bladder cancers, do we not, sir?

20 A Yes, sir.

21 Q We have one, two, three, four bowel cancers, do we
22 not, sir?

23 A If one man has two tumors, you don't count that
24 twice.

1 Q If one has lung cancer and bowel cancer, those are
2 two surgeries, aren't they, sir?

3 A Only one man has the cancer.

4 Q Oh, to be sure. But we are counting the number of
5 cancers, aren't we, Doctor? That's what I'm counting right
6 now is the number of cancers.

7 A All right.

8 Q Let's say we had about four cancers.

9 A You think that's right?

10 Q And we have leukemia one, and the prostate one;
11 is that correct?

12 A I don't see the leukemia. Where's that?

13 Q Leukemia and prostate.

14 A Yes. Yes. That was in the same person.

15 Q Now, Doctor, I'll hand you--please mark this exhibit.

16
17 (Plaintiff's exhibit 1473 was marked for
18 identification by the court reporter.)
19

20 Q (By Mr. Carr) In a moment I'll hand you the exhibit.
21 Referring to Table 1, Dr. Roush, for the exposed group of
22 skin cancers, Dr. Suskind reports 3.9 percent having skin
23 cancers, or 3.9 skin cancers, does he not, by history?

24 A Yes.

1 Q Which would be eight skin cancers?

2 A Yes. Yes.

3 Q He reports other cancers of 3.0, which would be
4 six other cancers; correct, sir?

5 A For a total of cancers altogether, correct, sir,
6 yes.

7 Q How much cancers did we add up, Dr. Roush? We
8 added up twenty-seven, did we not, sir?

9 A Yes.

10 Q And he reported that Table 1 only with regard to
11 fourteen, didn't he, sir?

12 MR. HEINEMAN: Objection, your Honor. The table
13 is clear. This is a misleading question. The table is
14 clear that it's a percentage of people. He's reporting
15 people, and he's reported number of malignancies. That's
16 not the same thing.

17 THE COURT: Objection--

18 Q (By Mr. Carr) How many people had skin cancer?

19 THE COURT: Objection is overruled.

20 THE WITNESS: Fifteen.

21 Q (By Mr. Carr) And how many did he report had skin
22 cancer?

23 A Eight.

24 Q Now, how can there be fifteen people with skin

1 cancer, and a truthful and honest investigator report to
2 the world at large that there's only eight that have skin
3 cancer?

4 A I can't answer that.

5 Q Well, the answer is obvious, Dr. Roush. If there
6 were fifteen people with skin cancer, he should report that
7 there are fifteen exposed people with skin cancer, should
8 he not, sir?

9 A Yes.

10 Q But he reported only eight, didn't he, sir?

11 A Yes.

12 Q Nearly fifty percent; isn't that correct, sir?

13 A Yes.

14 Q Doctor, how many other cancers did we have, other
15 than skin cancers? Cancer of all sites except skin.

16 A Well--

17 Q How many did he report?

18 A Six.

19 Q Fifty percent too light. How can a truthful and
20 honest investigator report only six cancers from all other
21 sites, when in fact there were twelve?

22 A I can't answer that.

23 Q You can't answer that, Dr. Roush? A truthful, honest
24 investigator would not and could not report six cancers of

1 other sites, when in fact there were twelve from his own
2 records. There were twelve. Isn't that correct, sir?

3 A Yes.

4 Q Doctor, how many ^{BLADDER} broader cancers does he report
5 as being in the exposed group? There's a footnote at the
6 bottom of the page there.

7 A Two.

8 Q How many bladder cancers were in fact, reported to
9 him?

10 A One. I don't know--I've forgotten what the
11 question mark was for.

12 Q The one is for skin cancer.

13 A I see.

14 Q This bladder cancer is five. We counted five,
15 Dr. Roush.

16 A Yes.

17 Q And he reported two, didn't he, sir?

18 A Yes.

19 Q How can a truthful, honest investigator report
20 only two bladder cancers when, in fact, there were five,
21 sir?

22 A I don't know.

23 Q He can't, can he, sir?

24 A I don't know. I don't know the explanation.

1 Q You've seen the record and the history that these
2 workers at Nitro reported to your paid investigator, Dr.
3 Suskind, have you not, sir? We've gone through those
4 records, have we not?

5 A Yes. Yes.

6 Q And they reported these various cancers to your
7 investigator, didn't they, sir?

8 A Yes.

9 Q But he did not include those in his Table 1, did
10 he, sir?

11 A Not all of that.

12 Q He had the knowledge because they gave him the
13 knowledge, didn't he, sir?

14 A Yes.

15 Q He then, having the knowledge, and he deliberately
16 created this table, did he not, sir?

17 A Yes.

18 Q Then he intentionally mislead those that were going
19 to rely on this tape, having the knowledge that these were,
20 in fact, the cancers that were reported to him, isn't that
21 correct, sir?

22 A I don't know his explanation to that.

23 Q Doctor, he knew the facts, did he not, sir?

24 A Yes, he did.

1 Q And he reported something that was not the truth,
2 didn't he, sir?

3 A I don't know.

4 Q Well, did he not report that there were only two
5 bladder cancers, when, in fact, there were five? Did he
6 not report that there were only two when, in fact, he knew
7 from these records that there were five?

8 A I don't know what his explanation is.

9 Q My question is not what his explanation is, but
10 my question is did he not know that there were five bladder
11 cancers reported to him and he reported only two, that there
12 were fifteen skin cancers reported to him and he reported
13 eight? All these things are of record, indisputable record.
14 They're in his records. He knew these things. How many
15 leukemias did he report, sir?

16 A I don't see that he recorded any.

17 Q He did not. How many leukemias were reported to
18 him?

19 A One or four.

20 Q One. The bowel is the four. And on the bowels,
21 on the colon cancer, sir, how many bowel cancers were re-
22 ported to him?

23 A No. I'm talking about here.

24 Q No. That's what he reported to us.

1 A Yes.

2 Q I wanted to know how many we reported to him.

3 A Five.

4 Q No. It's four.

5 A Four, five. Five, four.

6 Q How many did he report to us, sir?

7 A Three.

8 Q He found one prostate cancer, and he reported one
9 prostate cancer, didn't he, sir?

10 A Yes.

11 Q Now, turning for a second to the so called unexposed
12 group, sir, how many bladder cancers were there in the
13 unexposed group that he classified as unexposed that were
14 found by the records to be unexposed?

15 A None.

16 Q How many did he report in this table that there
17 were in the non-exposed group?

18 A None.

19 Q Again, he didn't report truthfully, did he, sir?

20 A No.

21 Q I hand you now Plaintiff's exhibit 1473 and ask
22 you if that is a correct representation--let me have 1473A
23 and 1473B. Give me two markers please--strike that. 1473A
24 and B for now.

1 (Plaintiff's exhibits 1473A and 1473B were
2 marked for identification by the court reporter.)
3

4 Q (By Mr. Carr) Doctor, I've handed you what's been
5 marked Plaintiff's exhibit 1473. I'll ask you if that is
6 an accurate reproduction of the data that appears on what
7 has now been marked Plaintiff's exhibit 1473A and B, with
8 the exception that I don't have a question mark by
9 McClanahan's skin cancer. And let me put a question mark
10 on McClanahan's skin cancer.

11 MR. HEINEMAN: Do you have a copy for us?

12 MR. CARR: Oh, I'm sorry.

13 MR. HEINEMAN: What is this document numbered?

14 MR. CARR: 1473. Yes.

15 Q (By Mr. Carr) Now, this is missing any degree of--
16 the twenty-eight is Gorrell. I don't think it's in this
17 exhibit. Yes, I need to put Gorrell in there. Let me put
18 Mr. Gorrell's full name in there, if you would. I've only
19 got part of it. Let me put the rest of it in there. Doctor,
20 have you had an opportunity to check those against the
21 exhibit 1473A and B?

22 A Yes.

23 Q And is it an accurate reflection of this exhibit
24 1473A and B?

1 A Yes.

2 MR. CARR: I offer 1473.

3 MR. HEINEMAN: Are you offering A and B as well?

4 MR. CARR: Yes, as well.

5 THE COURT: All three of them?

6 MR. CARR: Yes, your Honor.

7 MR. HEINEMAN: Your Honor, I object to all three
8 of the documents. First of all, they're based upon--pur-
9 portedly to be based upon documentary evidence which we've
10 previously objected to on the basis of lack of foundation,
11 and as to these documents as well, since they're based
12 entirely on that, there's no foundation for their admission.
13 They're based upon hearsay. There's no evidence about the
14 criteria that Dr. Suskind used in categorizing these people.
15 There's no evidence other than asking this witness to
16 speculate about what Dr. Suskind did or did not mean, or
17 what the document means or doesn't mean, and therefore, I
18 object to it on absolutely no foundation being laid for its
19 admission.

20 THE COURT: I'll incorporate your prior argument as
21 far as the foundation. I think that there is proper founda-
22 tion, and I'm offering your other objections.

23 1473, 1473A and 1473B are all admitted
24 over objection.

1 MR. CARR: Could I have 1473C, please?

2
3 (Plaintiff's 1473C was marked for identification
4 by the court reporter.)
5

6 Q (By Mr. Carr) Doctor, is 1473C an accurate re-
7 production blow-up of 1473 that you have in your hands
8 there?

9 A Yes, sir.

10 MR. CARR: I offer 1473C, if it please the Court.

11 MR. HEINEMAN: The same objections as before, your
12 Honor.

13 THE COURT: Same ruling. Thank you.

14 MR. CARR: I'll have to have the jury's back, because
15 the question mark is not on the McClanahan entry.
16

17 (Plaintiff's exhibit 1474 was marked for
18 identification by the court reporter.)
19

20 Q (By Mr. Carr) Doctor, I hand you now what's been
21 marked Plaintiff's exhibit 1474, and ask you if that also
22 accurately reflects the data shown on 14--

23 MR. HEINEMAN: What are we doing now?

24 MR. CARR: I'm putting this label over a misnumbered

1 label.

2 Q (By Mr. Carr) Now, Doctor, you haven't got your
3 copy yet, Counsel. This is exhibit 1474 that you now have,
4 showing the data in 1473A and B.

5 A I have looked at this.

6 Q My question is does it accurately reflect the data
7 shown in 1473A and B?

8 A Yes.

9 MR. CARR: I offer 1474 into evidence, your Honor.

10 MR. HEINEMAN: Object to it, your Honor, on the same
11 grounds that we objected to 1473A and B, and the documents
12 upon which they were based.

13 THE COURT: Fine. Those objections are incorporated.
14 It's admitted over objection.

15 MR. CARR: May I have another listed as 1474A, please?

16
17 (Plaintiff's exhibit 1474A was marked for
18 identification by the court reporter.)
19

20 Q (By Mr. Carr) Doctor, does exhibit 1474A, is it an
21 accurate blow-up of exhibit 1474?

22 A Yes.

23 MR. CARR: I offer 1474A.

24 MR. HEINEMAN: Same objection--

1 THE COURT: Same ruling.

2 MR. HEINEMAN: --as to 1474, your Honor.

3 THE COURT: I'll incorporate those. The same
4 ruling.

5 Q (By Mr. Carr) Doctor, 1474 reports only twenty-
6 seven cancers, instead of twenty-eight, as shown, and this
7 can be accounted for, or it will accurately reflect because
8 we have left out by inadvertants the questionable skin
9 cancer. All right. Now, Doctor, the affect--you are
10 shaking your head for the record. You meant to say yes,
11 did you not?

12 A Yes.

13 Q All right. Doctor, this work study done by Monsanto
14 relating to these various workers, this morbidity study,
15 you announced that to the world at large with a considerable
16 amount of fanfare, and you had it published, I believe, in
17 your Journal of the American Medical Association, the most
18 wide read medical publication, did you not, sir?

19 A No, sir.

20 MR. HEINEMAN: Let me object--object, please. Let
21 me object to the form of the question. He said the study
22 was done by Monsanto, and obviously it wasn't. It was done
23 by Dr. Suskind.

24 MR. CARR: Done by Suskind for Monsanto.

1 MR. HEINEMAN: Paid for jointly by NIOSH.

2 MR. CARR: He testified that it was a Monsanto study,
3 they gave the laboratory that was set up, they gave the data.

4 MR. HEINEMAN: He was NIOSH and Monsanto, and I
5 object to the statement in Mr. Carr's question obviously
6 intended to mislead the jury.

7 THE COURT: Objection is overruled. Proper. Answer
8 the question please, Dr. Roush.

9 THE WITNESS: I'm sorry, would you repeat the
10 question.

11
12 (At this time the previous question was read
13 back by the court reporter.)
14

15 THE WITNESS: The answer is no.

16 Q (By Mr. Carr) No. Which part of the question that
17 I asked you do you disagree with?

18 A It was not our study. It was Suskind's study.

19 Q What you're saying is that you disagree with my
20 characterization that it was Monsanto's study?

21 A Yes, sir.

22 Q We have established that it was done under contract
23 by Suskind, was it not, sir?

24 A Yes.

1 Q Entered into a contract with Suskind to do that
2 study, did you not, sir?

3 A Yes.

4 Q And you agreed under that contract to pay him a
5 certain amount of money for each worker examined, did you
6 not, sir?

7 A Yes.

8 Q And you paid him for each worker examined, did you
9 not, sir?

10 A Yes, sir.

11 Q And you agreed under that contract to give him all
12 the data that he needed to conduct that study, to cooperate
13 in every way, did you not, sir?

14 A Yes, sir.

15 Q And you furnished him employees to perform that
16 study, work with him on that study, did you not, sir?

17 A Yes, sir.

18 Q A large number of employees, did you not, sir?

19 A Yes.

20 Q And those employees that worked on this study with
21 Dr. Suskind were paid by Monsanto, were they not, sir?

22 A Yes.

23 Q And he sent the draft to you for approval, did he
24 not, sir?

1 A No, he did not.

2 Q He didn't send--did he send the draft to you prior
3 to the time it was published?

4 A Not the final report, he did not send us.

5 Q He didn't send you--he sent you draft reports?

6 A Draft reports, but not of the final.

7 Q He sent you draft reports, and you made comments
8 and suggested changes to him, did you not, sir?

9 A Yes.

10 Q And he incorporated your suggested changes, did he
11 not, sir?

12 A I'm not sure he did in the final report.

13 Q Well, have you checked it?

14 A No.

15 Q Doctor, you made suggested changes to him. How many
16 drafts did you see before the final draft was published?

17 A I don't know. One or two.

18 Q Doctor, your employees were studied, he had access
19 to all of your confidential and other plant records, he had
20 a number of your employees working with him, he was paid
21 for his examination, you saw the and made suggested changes
22 in the draft reports, all before it was published, how much
23 more-- and it was done under contract with Monsanto--how
24 much more do you need before you consider that it is a

1 Monsanto study? What more do you need before you can call
2 it yours, sir?

3 A I need access to these records that we didn't get
4 to see. Have to have access to his computer program that
5 we didn't get to see.

6 Q Doctor, all these records were sent to your attorney,
7 paid by your attorney, were they not, sir?

8 MR. HEINEMAN: Objection, your Honor. Now, wait
9 a minute. First of all, he cut the witness off while he
10 was in the middle of answering the question.

11 Q (By Mr. Carr) Did you have more to say?

12 MR. HEINEMAN: Yes, I do.

13 THE COURT: No, no, no. Wait a second. I didn't
14 think you cut him off. Doctor, did you have more to say?

15 THE WITNESS: We were not permitted to look at
16 the records. He wouldn't let us see them. He wouldn't let
17 us look at the definition of exposure, and he had a contract
18 with the workers that he was not going to show us these
19 records.

20 Q (By Mr. Carr) Where is that contract, Doctor?

21 A That's what he told the people when he went to see
22 them.

23 Q He told the people that he had a contract, that he
24 wasn't going to show it to Monsanto?

1 A That's right.

2 Q Doctor, have you ever heard of such a thing in your
3 life? Have you ever seen such a contract? Who told you
4 that?

5 A He told me that.

6 Q He told you that he had a contract--

7 A Not a contract.

8 Q --with the workers?

9 A He told them that he would not let us see the records,
10 and he did not.

11 Q He told them that he would not let you see the
12 records?

13 A That's right.

14 Q Dr. Roush, I have a document dealing with that
15 subject that I'll bring tomorrow. I don't have it here.
16 But we'll examine that statement as well, how that came
17 about. But in point of fact, he gave you these records
18 when your attorney requested them, did he not, sir?

19 MR. HEINEMAN: Your Honor, let me object to that.
20 Mr. Carr knows that Dr. Suskind exercised or asserted
21 physician/patient privilege with respect to those records,
22 and this Court overruled that privilege and ordered those
23 records produced, and pursuant to that, they were sent over
24 to us and we gave them to Mr. Carr. Now, he knows that's

what happened.

MR. CARR: Now, we will correctly state what occurred, Counsel. The first records that were given were given in the Federal Court to the attorney's Love, et al, and you'll see the documents there in which the Federal Court told Monsanto they could not use the results of this study unless Monsanto came up with the data. Because of that condition, Monsanto then went to Dr. Suskind and Dr. Suskind agreed to give the data. This Court did exactly the same thing, told Monsanto--this Court has no jurisdiction over Dr. Suskind. He is in Ohio. He is not in Illinois. This Court told Monsanto that if you want to use the Suskind report, you had better get the data to plaintiff's counsel, and with that having occurred, Monsanto went to Dr. Suskind and said, "give us the data." Dr. Suskind gave you the data. That is an exact statement of what occurred.

MR. HEINEMAN: I think my statement is exact.

THE COURT: The objection is overruled. Mr. Carr, you may proceed.

Q (By Mr. Carr) Now, Doctor, did you ever request of Dr. Suskind the data, other than under the circumstances that I have suggested occurred?

A Yes.

Q And when did you do that, sir?

1 A When we got--all through the time he was working up
2 the data, from 1979 until last year. We asked him if we
3 could see the data. He said no, because--

4 Q Well--

5 MR. HEINEMAN: Objection, your Honor. Will the
6 witness be allowed to answer the question?

7 Q (By Mr. Carr) Do you have it in writing, sir?

8 THE COURT: Go ahead, Mr. Carr.

9 THE WITNESS: Why would I get it in writing?

10 Q (By Mr. Carr) So you'd have a record of it so when
11 I challenged the circumstance under which that statement
12 was made, you'd have some proof that what you're saying
13 is accurate.

14 A This was done long before there was a lawsuit.

15 Q Doctor, I suggest to you that it was not done long
16 before there was a lawsuit. If you'll check the records,
17 dr, your morbidity study was published in 1984. This law-
18 suit had been on file for a year prior to that time.

19 MR. HEINEMAN: Objection, your Honor. All Mr. Carr
20 has to do is look at the dates on the interview forms and
21 he'll know when the study began. That's an absolutely mis-
22 leading question, or a statement, or whatever it is, and I
23 object to it.

24 THE COURT: The objection is overruled.

1 Q (By Mr. Carr) Doctor, did you ever request the
2 record of Suskind in writing?

3 A Yes.

4 Q In writing?

5 A No. You don't do it with someone you know well.

6 Q How well do you know Dr. Suskind?

7 A I've known him for years.

8 Q And he's worked in cooperation with Monsanto since
9 the initial Nitro accident, hasn't he, sir? Close coopera-
10 tion with Monsanto. Since 1949.

11 A Yes, sir.

12 Q He has worked regularly and frequently in Monsanto
13 since '49, and all through these studies. He's been involved
14 in all these studies, hasn't he, sir?

15 A Yes.

16 MR. HEINEMAN: Let me object to the form of the
17 question, your Honor, insofar as it uses the term regularly
18 with no definition. It's misleading and it's indefinite.

19 THE COURT: Objection is overruled. Proper question.

20 Q (By Mr. Carr) Dr. Roush, you at Monsanto have used
21 this report to announce to the world through the Journal of
22 the American Medical Association that at least insofar as
23 cancer is concerned, that there were only half as many
24 cancers as in fact occurred; have you not, sir?

1 A Are you talking about cancers or people?

2 Q Talking about cancers, sir.

3 A He talks about people, not cancers.

4 Q I'm talking about cancers. His table talks about
5 cancers.

6 A No, he talks about people.

7 Q Does the table talk--does it list the number of
8 cancers or not, sir?

9 A It's people.

10 Q Excuse me. Could you look at the table and see
11 whether it describes cancers. Does it talk about in the
12 group, bladder cancer, two? Does it talk about skin cancer?
13 Does it number the cancers, sir?

14 A No.

15 Q Do you read at the bottom of the page there, employees
16 bladder cancer reported two.

17 A Yes.

18 Q And how many bladder cancers were there, sir? There
19 were five.

20 A Five.

21 Q Now, Doctor, he has said there were only five--only
22 two--was he saying there were only two people that had bladder
23 cancer? How many people had bladder cancer? Five people
24 had bladder cancer.

1 A Yes.

2 Q Some of them may have had more than one cancer.

3 But we've only counted the bladder cancer. They've had
4 the skin cancer, perhaps, five times. Some of these people
5 have five skin cancers. We've only counted that once. He's
6 counted them once. How many people had bladder cancers?

7 A Five.

8 Q And how many people did he report that had bladder
9 cancers?

10 A Two.

11 Q Well, now, Doctor, he didn't tell the truth, did he,
12 sir? He told to the world that there were only two bladder
13 cancers, only two people with bladder cancer when in fact
14 there were five. He told the world that there were only
15 eight skin cancers, eight people with skin cancer. How
16 many people, in fact, had skin cancer? Fifteen had skin
17 cancer. Fifteen people had skin cancer. How many people did
18 he report had skin cancer, sir?

19 A Eight.

20 Q Well now, Doctor, he told the world that only eight
21 people had skin cancer when he knew that only--that fifteen
22 had--and possibly sixteen had skin cancer. Now, Doctor,
23 this is being used, this study goes all around the world,
24 doesn't it, sir?

1 A Yes, sir.

2 Q This study, wherever dioxin is of concern to human
3 beings--

4 A Yes, sir.

5 Q --this study goes around and people, doctors go
6 to court because this was published in an authoritative
7 magazine, that the American Medical Association journal
8 published this table, and so it is accepted as evidence
9 in every single court in this country, and I don't know
10 where else around the world, but every single court where
11 some person comes up and says I was exposed to dioxin and I
12 got bladder cancer, or I got skin cancer, or I got bowel
13 cancer. This study can be used to show--well, here, look
14 at it. Out of Monsanto, the people working there, only
15 two people had bladder cancer, or eight people had skin
16 cancer. It can be used to persuade juries that dioxin
17 doesn't cause cancer. It can be used in every single--it
18 can be used in the Viet Nam cases to show that dioxin
19 doesn't cause cancer. Doctor, it is a total fraud. Now,
20 Doctor, you know the extent that this can be used for, do
21 you not, sir?

22 MR. HEINEMAN: I object, your Honor, to that speech.
23 I don't know whether he ought to have a brass band or some
24 violin accompaniment.

1 MR. CARR: I wish we would have some. How can you
2 sit there and see this thing--

3 MR. HEINEMAN: May I say my objection after you've
4 given your jury argument? I object to this as nothing but
5 a speech. It has nothing to do with the following question.
6 It's obviously a jury summation and I object to it. I ask
7 that it be stricken, and I ask that the jury be instructed
8 to disregard it, your Honor.

9 THE COURT: The jury--the question was a proper
10 question. Your objection is overruled. In the future, I
11 would appreciate your objection to be made on the basis of
12 the legal point that you are making. Mr. Carr, you may
13 proceed.

14 Q (By Mr. Carr) Doctor, do you not agree that this is
15 indeed a fraud, this study relating the cancer is indeed a
16 fraud?

17 A No. I'd like to hear what Dr. Suskind says.

18 Q Doctor, you have read what Dr. Suskind says. You
19 have read where he recorded eight skin cancers when there
20 were fifteen reported to him. You've seen that, sir. Isn't
21 that a fraud to say--

22 A No.

23 Q --that one thing is true when, in fact, something
24 else is true? Isn't that a fraud, sir?

1 A There are five--

2 Q Excuse me, sir. Answer that question.

3 A No; no.

4 Q Isn't it a fraud for me to tell you one thing when
5 I know that something else is the truth? Isn't that fraudu-
6 lent, sir?

7 A Yes.

8 Q Now, Doctor, this study, you know, you have been
9 involved in these cases involving dioxin since you started
10 working for Monsanto, have you, sir?

11 A No. I started in about '77.

12 Q Well, since '77 then. Is that eight years now to
13 date?

14 A Yes.

15 Q You know the power that these studies have. Dr.
16 Suskind, from the University of Cincinnati, the Kettering
17 Institute, dermatologists who has knowledge had an expert
18 on dioxin, in all kinds of circles, that Monsanto has had
19 working on probably--working the earliest scientists, work-
20 ing on dioxin cases in the United States, since 1949, and
21 he reports something to be the case when the facts are some-
22 thing else. You know, do you not know, Doctor, that what
23 he says in this table will be used to support arguments
24 that the dioxin does not cause these cancers?

1 A Yes.

2 Q Doctor, have you advised the workers at Nitro--strike
3 that. Did you have any discussion with--I think you've
4 already stated that you had no discussion with Zack when she
5 left out the cancers that we have previously shown in her
6 report. Did you have any discussion with Dr. Suskind or
7 Dr. Hertzberg, other than the discussion you had today about
8 their omissions of cancers?

9 A No.

10 Q Doctor, when you talked to Dr. Hertzberg today, you
11 knew already, and we have gone through a number of these
12 cases already, and you knew the point I was making in regard
13 to these large number of cancers that existed that were not
14 reported, did you not, sir?

15 A Yes, sir.

16 Q Did you ask Hertzberg for an explanation at that
17 time, sir?

18 A No.

19 Q Dr. Roush, didn't it concern you that you saw here
20 that these medical records show histories of cancers and
21 Hertzberg or Suskind, rather, was not reporting these, was
22 not reporting them in the articles that it published? Didn't
23 it concern you, sir?

24 A Yes.

1 Q Why didn't you ask them about it?

2 A We didn't have enough time.

3 Q Doctor, will you agree that leaving out fifty
4 percent--he reports fourteen and we've got twenty-eight.
5 Do you agree that you couldn't leave out fifty percent by
6 accident?

7 A They didn't leave out fifty percent by accident.

8 Q They reported fourteen. We've got twenty-eight.
9 That's fifty percent they left out. They were a hundred
10 percent in error. Twenty-eight is twice fourteen, is it not,
11 sir?

12 A Yes. But that isn't what they've done.

13 Q Doctor, they reported fourteen cancers in the ex-
14 posed group, didn't they, sir?

15 A Yes, sir.

16 Q And we have discovered twenty-eight cancers in the
17 exposed group, haven't we, sir?

18 A Yes.

19 Q Twenty-seven, if you omit McClanahan. Haven't we,
20 sir?

21 A That's what's listed there.

22 Q Now, can you leave out fifty percent by accident,
23 Doctor?

24 A They purposely left out five. If they have only

1 one who gets cancer, they only count it one cancer, not two
2 for each male that had the cancer.

3 Q Why wouldn't they report the bladder cancer? They're
4 reporting them separately. If they're just reporting all
5 cancers you might be correct. But they reported separately
6 the number of skin cancers.

7 A Yes.

8 Q They made that a separate category. Now, obviously
9 Vlz had skin cancer, and he should be in that skin cancer
10 category, shouldn't he, sir?

11 A But they told me--

12 Q Excuse me, sir. He had skin cancer and he should
13 have been included in the skin cancer category, shouldn't
14 he, sir?

15 MR. HEINEMAN: Let me object to this as calling for--

16 THE WITNESS: I don't know the purpose.

17 MR. HEINEMAN: Doctor, please let me make my
18 objection. I'd like to object on the grounds that it's
19 calling for this witness to speculate as to what is in Dr.
20 Suskind's mind. This witness has already testified in this
21 Court he had nothing to do with the preparation of this
22 material. He had never seen the documents or the reports
23 before, and, therefore, I object to it as calling for
24 speculation.

1 THE COURT: Objection is overruled. I don't think
2 the question--

3 Q (By Mr. Carr): Could you answer that question, Doctor,
4 so we can recess for the day?

5 A They decided--

6 Q Excuse me, Doctor. My question is Edward Volz had
7 skin cancer and it should have been reported, should it not,
8 sir? It should be included in the group that had skin cancer,
9 shouldn't he, sir?

10 A I'm not sure.

11 Q Is there anything in the documents to suggest to you
12 that they should have not reported skin cancer that the man
13 had? What--is there a footnote there that says "Volz had
14 skin cancer and bladder cancer and so we decided to just
15 count the bladder cancer?" But, of course, they didn't
16 count the bladder cancer because they only counted two of
17 those when in fact there were five; isn't that correct, sir?

18 Isn't that correct?

19 A Is which correct, about the bladder cancer?

20 Q Yes.

21 A Yes, sir.

22 Q And there's nothing to suggest in this table that
23 they reported that one person may have had two cancers, is
24 there, sir?

1 A They didn't state that. They should have.

2 MR. CARR: Your Honor, this is a convenient place
3 for me.

4 THE COURT: Fine. Ladies and gentlemen, as I told
5 you, we were going to break at three this afternoon. So
6 we'll do that at this time. We'll resume again tomorrow
7 morning at nine. Besides your regular admonishments,
8 remember that you are not to listen to, read or watch any-
9 thing about this case, in particular the subject matter
10 in general. We'll resume at nine o'clock. Thank you.
11 Court is adjourned.

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13 (Court adjourned)
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1 STATE OF ILLINOIS)
2 COUNTY OF ST. CLAIR)

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5 I, KATHLEEN W. BRUNSMANN, CSR, RPR, Official Court
6 Reporter in and for the Twentieth Judicial Circuit, do hereby
7 certify that the foregoing transcript of proceedings is a
8 true and accurate record of the proceedings had in the case of:
9 Frances E. Kamner, et al v. Monsanto Company, case number
10 80-L-970 had on the 9th day of July, 1985. These proceedings
11 had before the Honorable Richard P. Goldenhersh, Judge.

12 Dated this 16th day of July, 1985.

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16 *Kathleen W. Brunsmann*
17 KATHLEEN W. BRUNSMANN, CSR, RPR
18 OFFICIAL COURT REPORTER
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1 STATE OF ILLINOIS)
2 COUNTY OF ST. CLAIR)
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5 I, HONORABLE RICHARD P. GOLDENHERSH, Circuit Judge
6 in and for the Twentieth Judicial Circuit, do hereby certify
7 that the foregoing transcript of proceedings is a true and
8 accurate record of the proceedings had in the case of:
9 Frances E. Kammer, et al v. Monsanto Company, case number
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16 HONORABLE RICHARD P. GOLDENHERSH
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