

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

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

Before the HON. RICHARD P. GOLDENHERSH, Judge

REPORT OF PROCEEDINGS

JURY TRIAL

March 19, 1986

APPEARANCES:

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

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

MARSHA SCHNIPPER
Official Court Reporter

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EXHIBITS

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EXHIBITS SUBMITTED ON BEHALF OF THE PLAINTIFFS:

Plaintiffs' Exhibit No.:

1746A	98	99
1779	115	120

1 BE IT REMEMBERED AND CERTIFIED that heretofore, on
2 to-wit: March 19, 1986, being one of the regular judicial
3 days of this Court, the matter as hereinbefore set forth came
4 on for hearing before the Honorable Richard P. Goldenhersh, a
5 Judge in and for the Twentieth Judicial Circuit of the State
6 of Illinois, Belleville, St. Clair County, Illinois, and the
7 following was had of record, to-wit:

8
9 * * * * *

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

12
13 RAYMOND R. SUSKIND

14 being called on behalf of the defendant, having been first
15 duly sworn, testified as follows:

16 CROSS EXAMINATION

17 BY MR. CARR:

18 Q. Dr. Suskind, we were discussing Mr. Willard at the
19 conclusion of the day Monday. Would you turn to your Exhibit
20 1743, that is, the record of examination of yours conducted
21 in 1979 for Mr. Willard.

22 A. I don't have it here, sir.

23 MR. CARR: Could you give him 1743?

24 A. No, I do not.

1 Q. Would you turn to the page numbered 24 please,
2 sir.

3 A. Yes, sir.

4 Q. And directing your attention to that section on
5 that page dealing with the neuropsychiatric or neurological
6 examination --

7 A. Umhm.

8 Q. Would you read please what is entered in the
9 physical examination side of that sheet dealing with the
10 neuropsychiatric? Read it for us so that -- the first
11 sentence or first clause, cranial nerves normal?

12 A. I believe so.

13 Q. The next one is what, sir?

14 A. Motor nerves normal.

15 Q. And the next one?

16 A. Sensory slight decrease in vibratory left great
17 toe, sensory otherwise normal, finger to nose normal, that's
18 a test, and there's a Romberg positive. In this instance as
19 we were discussing last week --

20 Q. Dr. Suskind?

21 A. Yes, sir.

22 Q. If you don't mind, just read it for us. Romberg
23 positive?

24 A. Yes, sir.

1 Q. What else does it say there?

2 A. It indicates what the reflexes were.

3 Q. What's the next three words, sir, the Romberg
4 positive is underlined, and then the next word below that is
5 reflexes?

6 A. Reflexes, right, and there's a diagram of the
7 reflexes.

8 Q. Well, there's two words there to the right of the
9 word reflexes. What are those two words? Is it falls
10 broken, Romberg positive, falls broken?

11 A. Yes, sir I'm not altogether sure what that infers,
12 sir.

13 Q. Well, the Romberg is a test that you give to see
14 whether or not the person sways upon closing his eyes, isn't
15 that right, sir?

16 A. I believe so.

17 Q. And the word falls broken, the word Romberg
18 positive is underlined, is it not, sir, underlined twice as a
19 matter of fact?

20 A. Well, it's underlined.

21 Q. There's two lines under the word Romberg positive,
22 is there not, sir?

23 A. There are.

24 Q. Then there's a dash and then beneath that it says

1 falls broken?

2 A. Right.

3 Q. Could that be interpreted to mean that when he was
4 asked to close eyes and perform the Romberg test that he
5 fell, but he was caught, that is, his falls were broken?

6 A. That's possible.

7 Q. And, Doctor, there is a drawing of a little
8 skeleton beneath that with minuses and pluses?

9 A. Right.

10 Q. Could you interpret that, those symbols for us
11 relating to each part of body so described?

12 A. Well, the -- going from the bottom up, the --
13 there's an one plus ankle, two plus knee, two plus elbow.

14 Q. Before -- stay down there at the ankle. You left
15 something off there. There's a plus sign on the ankle, but
16 there's also an arrow by each ankle, is there not, sir?

17 A. Right.

18 Q. That arrow points downward, doesn't it, sir?

19 A. Yes, sir.

20 Q. What does that mean, sir?

21 A. I'm only going to show what the neuropsychiatric
22 examination in this instance inferred by the arrow, sir.

23 Q. Excuse me. You're what?

24 A. I'm not sure what he meant by it, sir.

1 Q. Doctor, you told us what the downward going arrow
2 meant up in the sensory line. You said slight?

3 A. I wasn't--

4 Q. Excuse me, Doctor, you said slight decreased
5 vibratory sense, did you not, slight arrow down?

6 A. Right.

7 Q. You interpreted that arrow down to mean decrease,
8 did you not, sir, or diminished?

9 A. I would indicate that that was --

10 Q. Excuse me, didn't you just say to us, sir -- excuse
11 me, Dr. Suskind.

12 A. Probably decrease, sir.

13 Q. Dr. Suskind, would you let me finish the question
14 please, sir?

15 A. Sure.

16 Q. Would you please, sir? Would you?

17 MR. HEINEMAN: Objection, Your Honor, he asked him
18 a question and he was answering it. Now, he's interrupted
19 him.

20 THE COURT: Objection is overruled. Go ahead, Mr.
21 Carr.

22 Q. Dr. Suskind, didn't you tell us that that downward
23 pointing arrow meant decreased?

24 A. Yes.

1 Q. All right. And the same man that wrote that
2 downward arrow drew that downward arrow there, he also drew
3 downward arrows relative to that skeleton, did he not, sir?

4 A. Yes.

5 Q. There is a plus sign there and a downward going
6 arrow, is there not, sir?

7 A. Yes.

8 Q. At the ankle?

9 A. No, the plus-- the downward, sir, is at the toe,
10 not the ankle, sir, there's a one plus for the ankle, and
11 there's a downward for the end of it, and that does not refer
12 to the ankle, sir.

13 Q. Doctor, that refers to the Babinski, and this
14 drawing you told us relates to the reflexes. The toes going
15 downward is a Babinski test, is it not, sir?

16 A. Yes.

17 Q. Is it not, sir?

18 A. Yes, and when the toes go down for a Babinski, it's
19 normal, sir.

20 Q. Yes, it is indeed, sir.

21 A. This is normal, sir.

22 Q. Dr. Suskind, but you told us this test here, this
23 drawing here was relating to the reflexes and the word above
24 it relates to reflexes, doesn't it, sir?

1 A. That's right.

2 Q. Now, Doctor, there is a one plus at the ankle and a
3 two plus at the knee, is there not, sir?

4 A. Correct, sir.

5 Q. Now, the one plus at the ankle would be a lesser
6 response than the response at the knee, would it not, sir?

7 A. Yes, but it would still be normal, sir.

8 Q. Excuse me, Doctor.

9 MR. CARR: Your Honor, would you direct the jury to
10 disregard what the doctor is volunteering beyond my question.

11 THE COURT: I think it was not responsive. It was
12 beyond the question. The jury is ordered to disregard the
13 doctor's last answer. Doctor, please confine your responses
14 to the question that has been asked of you.

15 Q. Dr. Suskind, you understand you've added those
16 words to about ten or fifteen answers that I have given you,
17 and each time the Court has told you it's not responsive.

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

20 THE COURT: Yes, you may.

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

23 MR. HEINEMAN: The Court has the province of
24 instructing the witness. Mr. Carr doesn't have the province

1 of instructing the witness. I object to his chastising or
2 instructing the witness with respect to what he has or has
3 not been doing in terms of his behavior in the courtroom.

4 MR. CARR: Your Honor, I agree it's not my
5 province, but sometimes I just do --

6 MR. HEINEMAN: I object very strenuously to his
7 doing that, and it is improper. It's the Court's province,
8 not his. I object to it, and I wish the Court would admonish
9 him not to do it any more.

10 MR. CARR: As I started to say, your Honor, I agree
11 it is not my province to instruct the jury, but it is in
12 point of fact that the Court has remonstrated with him, the
13 Court has asked him, the Court has ordered him, the Court has
14 threatened him. None of those things have done any good.
15 Anything the Court has done but put the man in jail has done
16 absolutely no good. I thought perhaps I could appeal to his
17 sense of fair play, bring out the fact that he is
18 consistently doing this and continues to do it and just
19 perhaps persuade him, if I could, that he shouldn't be doing
20 it any further.

21 THE COURT: It is the province of this Court to
22 admonish witnesses and instruct them as far as answering.
23 From the part of the question that I heard, and I don't think
24 it was completed, I think it was a question, which I

1 interpreted to bring to his attention what he has been doing
2 rather than an instruction or an admonishment and a question
3 which shows the clear -- which points out clear recalcitrance
4 of this witness as opposed to an instruction or
5 admonishment. It is within the scope of counsel to ask, and
6 I think that that question from what I heard of it, and it
7 was not completed, was proper. If it had gone into the area
8 of admonishment or anything like that, it would not be, but
9 from what I heard of the question it did not go into that
10 area. Your objection is overruled. You may continue.'

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

12 Q. Doctor, you do understand that I wasn't asking you
13 to interpret the significance of these various reflexes,
14 whether they were normal or abnormal, you do understand that,
15 don't you, sir?

16 A. Yes, sir.

17 Q. All right.. And, Doctor, the reflex was less
18 active at the ankle than it was at the knee, was it not, sir?

19 A. According to this method of scoring, sir.

20 Q. Because there's one plus mark at the ankle and two
21 plus marks at the knees, correct, sir?

22 A. Yes.

23 Q. Going up a little farther, sir, at the-- there are
24 other signs up above for the upper extremities. Could you

1 interpret those signs for us, sir, with relation to activity?

2 A. Well, the reflex at the elbow was two plus and the
3 wrist reflex there's a negative sign, which means absent,
4 sir.

5 Q. There actually a negative sign in two places on the
6 --

7 A. Right.

8 Q. -- On the person's arms, Doctor.

9 A. Right.

10 Q. Not just at the wrist?

11 A. Right.

12 Q. What other reflex is being tested there, sir?

13 A. In this instance, sir, I'm not altogether sure what
14 he was doing there.

15 Q. Doctor, was this a neurologist that conducted this
16 examination?

17 A. This was -- this was an internist, who has -- who
18 had neurologic training.

19 Q. What he found, sir, was absence of reflexes in both
20 arms, upper distal part of the arm, correct, sir?

21 A. He wasn't able to elicit reflexes there, sir, yes.

22 Q. Is the answer to my question that he found absent
23 reflexes in the forearm, sir, forearms?

24 A. That is true, sir.

1 Q. And he found decreased reflexes in the ankle in the
2 case of Mr. Willard's ankles, did he not, sir?

3 A. No, he found a one plus, sir.

4 Q. Which was decreased from two plus, correct, sir?

5 A. Two -- he didn't find it, two plus at the ankle
6 before, so it couldn't have been decreased, sir.

7 Q. Doctor, it was decreased in relation to the
8 activity of the reflex at the knee, was it not, sir?

9 A. No, sir, it was less than.

10 Q. It was a less active reflex, Doctor, was it not,
11 sir?

12 A. It was less active at the ankle than at the knee,
13 sir.

14 Q. All right. Less active, it was more sluggish at the
15 ankle than it was at the knee?.

16 A. No, I wouldn't say that, sir.

17 Q. Doctor, is less active more sluggish?

18 A. Not necessarily.

19 Q. Not necessarily, but it can be, can't it, sir?

20 A. No.

21 Q. It can't be?

22 A. No.

23 Q. If one is less active, one is not sluggish, sir?

24 A. If you -- if you compare it on two different

1 occasions that might be so, sir, but this was only done on
2 one occasion, and on that occasion he elicited a one plus
3 reaction at the ankle, and one would say then, sir, that he
4 had a one plus reaction at the ankle and he had a two plus
5 reaction at the knee.

6 Q. And no reflex in the lower arms, no reflexes in the
7 lower arms?

8 A. If you mean the wrist reflex, it was in this
9 occasion absent.

10 Q. Is that correct, sir?

11 A. That is correct, sir.

12 Q. There's more than just the wrist reflex that he
13 notes there, Doctor, is there not?

14 A. Right.

15 Q. So it's the reflex in the forearms?

16 A. In the forearms, sir.

17 Q. Were completely absent, weren't they, sir?

18 A. In the forearm and the wrist he was not able to
19 elicit by -- at the time he did it he wasn't able to elicit
20 reflexes.

21 Q. That means the reflexes were absent.

22 A. At the time he did it, sir, yes.

23 Q. Yes. And he wasn't called back to do it again on a
24 later occasion, was he, sir?

1 A. No, he wasn't. We did only one examination, sir,
2 on this occasion.

3 Q. You did that examination that you thought necessary
4 to do to discover the man's condition at that particular
5 point in time, isn't that correct, sir?

6 A. That is correct, sir.

7 Q. Now, Doctor, with regard to the Mt. Sinai's medical
8 some few months before, if you have 1778 and I think you do.

9 A. I do not, sir.

10 Q. Their neurological examination revealed according
11 to the cover sheet, deep tendon reflexes decreased
12 bilaterally upper and lower extremities, correct, sir?
13 Second paragraph, first page, do you see that, sir?

14 A. Yes, I do, sir.

15 Q. And some few months later your examiner found a
16 less active reflex in the ankle and absent reflexes in part
17 of the upper extremities, correct, sir?

18 A. No, sir.

19 Q. Didn't we just go through that, sir?

20 A. No, sir.

21 Q. Didn't -- wasn't -- didn't your examiner found less
22 -- find less active reflexes in the ankle?

23 A. Less active than the knee, sir.

24 Q. Did they find less active reflexes in the ankle?

1 A. Less active than the knee, sir.

2 Q. Is it that less active, sir?

3 A. That's less active than the knee, sir, if you're
4 comparing it, it's less active than the knee.

5 Q. Doctor, do you really believe that your examiner
6 was comparing the reflexes at the ankle with the reflexes at
7 the knee?

8 A. Insofar as his grading system was concerned, yes,
9 sir.

10 Q. Doctor, you know as we've established before, that
11 the one plus means it's a decreased reflex from normal, don't
12 you know that, sir?

13 A. It does not, sir.

14 Q. Doctor, didn't we go through-- oh, that's right,
15 you say the one plus, two plus, and three plus all mean the
16 same, don't you, sir?

17 A. No, I didn't say that. I said it could be normal
18 for that person.

19 Q. But they all mean--

20 A. An aged person -- let me finish.

21 Q. Now, Doctor, I didn't ask you that, did I, sir?

22 A. No.

23 Q. I'm talking about the one plus and two plus and
24 three plus--

1 A. I am.

2 Q. And you said that that means they are active, did
3 you not?

4 A. They are active and could be normal, yes.

5 Q. And, Doctor, you also agreed however that the
6 purpose of taking these reflex tests is to discover whether
7 or not compared with a ordinary person, with reflexes an
8 ordinary person has whether they are the same as, less than,
9 diminished than or hyperactive, correct, sir?

10 A. Not necessarily, sir, no.

11 Q. Doctor, you say not necessarily?

12 A. No.

13 Q. Didn't Mt. Sinai test have a scale that it's
14 comparing to, sir, the zero, the one plus, two plus and three
15 plus?

16 A. They did, sir, they did.

17 Q. You're aware that other neurologists use the same
18 scale and compare these things to normal reflexes? Not what
19 is normal for that person, but to normal reflexes in the
20 average population. You know that, don't you, sir?

21 A. No, sir.

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

23 A. No, sir.

24 Q. All right. Doctor, you're not willing to agree that

1 the reflex scales, grading for activity is related to what's
2 considered normal reflexes?

3 A. I am, sir.

4 Q. You are willing to agree to that?

5 A. Yes, I am, sir.

6 Q. All right. Then the one plus is less active than
7 normal, is it not, sir?

8 A. No, sir.

9 Q. Then, Doctor, what's the purpose of having a one
10 plus or a two plus or a three plus if you're grading it
11 against the normal person, sir, you're comparing it to normal
12 persons? Which is the normal reflex of the three, sir, for a
13 normal person, a reflex that is one plus, a reflex that is
14 two plus or a reflex that is three plus?

15 A. In my -- according to my knowledge of reflexes all
16 three are normal, all three can be considered normal.

17 Q. Doctor, what you're saying is all three can be
18 considered normal in a particular individual, he just may
19 have slow reflexes?

20 A. No.

21 Q. Or he may just have hyperactive reflexes, but I
22 asked you, and you agreed, sir, that these reflex grades are
23 for the purpose of comparing these reflexes to so-called
24 normal reflexes, and you agreed that was so, did you not,

1 sir?

2 A. Yes, I did.

3 Q. What grade would a so-called normal reflex have,
4 sir, in the scale of zero to three or zero to four?

5 A. Okay. In my view it could be either one plus or
6 two plus --

7 Q. Well, Doctor--

8 A. -- Or three plus.

9 Q. Doctor, which one on the grading scale, which one
10 is it, sir?

11 A. It's all three, sir.

12 Q. Then, Doctor, then it's not the purpose of
13 comparing to a normal reflex then, is it, sir?

14 A. Yes, it is.

15 Q. If they can all mean the same thing, they're
16 meaningless, aren't they, sir?

17 A. No, they're not, sir.

18 Q. Doctor, when you read something that says it's two
19 plus or one plus, do you know whether or not that is a normal
20 reflex?

21 A. Yes, sir.

22 Q. How do you know that, sir, if that's all the
23 information you have, sir?

24 A. Because depending upon who the individual is, his

1 age, his medical history, he can have one pluses or two
2 pluses or three pluses, and they can be completely normal.

3 Q. Doctor, I understand that, and you said that a
4 number of times, but I'm directing your attention, sir, to
5 the scale or the grade for a normal, normally active reflex.
6 I agree with you, sir, that for a given individual because of
7 his age or his youth or whatever, a one plus reflex, a
8 diminished reflex may indeed be normal, but that's not what
9 I'm asking you, and you surely are aware of that, aren't you,
10 Doctor?

11 A. No, sir.

12 Q. You're not aware of that? Then let me make it
13 clear, Doctor. I'm asking you to compare the grades against
14 a so-called normally active reflex. Now, what grade would a
15 normally active reflex be at that scale, sir?

16 A. One plus, two plus or three plus, sir.

17 Q. Doctor, you're again considering the age of a
18 person, aren't you, sir?

19 A. No, I'm considering the fact that individuals react
20 differently, and I'm also considering--

21 Q. Doctor, but now I'm asking you, sir--

22 A. May I finish the answer?

23 Q. -- To disregard the individual reaction of these
24 persons, and I'm asking you to look at the reflex, sir, not

1 --

2 MR. HEINEMAN: Objection, interrupted the answer.

3 THE COURT: Objection is overruled.

4 Q. -- The person and tell me what is a normally active
5 reflex, what should be the number appended to a normally
6 active reflex?

7 A. There is no one number, sir.

8 Q. All right. Then, Doctor--

9 A. It could be one plus, two plus or three plus.

10 Q. What you're saying is the scales that neurologists

11 --

12 A. Right.

13 Q. -- And orthopedists and neurosurgeons use to grade
14 reflexes are all inapplicable and cannot be used?

15 A. No, they can be used, sir.

16 Q. Doctor, they're using a scale, the Mt. Sinai used a
17 scale, did they not, sir?

18 A. I believe they did. You pointed that out to me.

19 Q. For sluggish and normal and hyperactive, remember,
20 sir, do you remember that, sir?

21 A. I don't have it before me, sir.

22 Q. But do you remember it, sir? They put out the
23 scale there so that you could look at a one plus and say, ah,
24 that's a sluggish reflex. Do you recall that, sir?

1 A. I don't believe.

2 MR. HEINEMAN: Objection?

3 A. -- That they had the one plus as a sluggish. They
4 had a number one, which meant, number one was absent, number
5 two was sluggish. No, they didn't use a one plus, two plus,
6 three plus scale, so I don't think you can -- it's
7 appropriate to confuse the one plus, two plus, three plus
8 scale which you are now talking about in the case of our
9 examination as compared with the Mt. Sinai method, which was
10 completely different, their numbers meant different things.

11 Q. Doctor, you agreed at the time that the zero or the
12 one at the Mt. Sinai was equivalent to zero on your scale,
13 did you not, sir?

14 A. It was absent on our scale.

15 Q. Excuse me. Did you not agree, sir, that the one on
16 the Mt. Sinai scale was equivalent to zero or absent on your
17 scale?

18 A. It would appear to be, sir.

19 Q. Did you not also agree that the two on the Mt.
20 Sinai scale was equivalent to one plus on your scale?

21 A. I do not know, sir.

22 Q. No, Doctor, I asked you whether or not you did not
23 agree that that was a proper comparison?

24 A. I don't believe I did, sir, because I don't know.

1 Q. Doctor, what you're now doing is saying that the
2 scale that used at Mt. Sinai you cannot determine whether or
3 not the person had a reflex that would be considered normally
4 active, is that what you're saying, sir?

5 A. I really don't know, sir, cause I don't know what
6 they used as their --

7 Q. Now, Doctor --

8 A. -- Scoring technique.

9 Q. You have their scoring technique, you saw the
10 scale, it was there, it was plain, and you saw they put the
11 numbers down. You could look at a number and you could go
12 look over at the reference range and see what they
13 interpreted that number to be?

14 A. Correct. Sir.

15 Q. Couldn't you, sir?

16 A. No, I wouldn't know unless I saw how they did their
17 examinations.

18 Q. Doctor, we went through--

19 A. May I finish, sir.

20 Q. Doctor, we went through that as well, did we not,
21 sir?

22 A. We did, sir, and I never said --

23 Q. What is the point in going over the same material
24 time and time again?

1 A. I never said there was a equivalent.

2 Q. You understand we could never finish this-- perhaps
3 that's what you want, Dr. Suskind.

4 A. No, sir.

5 Q. Dr. Suskind, do you not agree that they had a
6 scale, you can look at the numbers and interpret what those
7 numbers mean by looking at that reference range?

8 A. I can only interpret those numbers as to--

9 MR. CARR: Your Honor, would you direct the
10 witness--

11 A. Yes.

12 MR. CARR:-- To answer my question?

13 A. Yes, I can interpret them.

14 Q. By looking at that scale and by looking at that
15 number, could you not, sir?

16 A. Only insofar as --

17 MR. CARR: Your Honor, would you direct the witness
18 to answer my question directly without adding on or prefacing
19 his answer with other remarks.

20 THE COURT: Doctor, answer the question directly.

21 MR. HEINEMAN: Objection, Your Honor. He was doing
22 that, and I object.

23 THE COURT: Object is overruled. It was not
24 responsive.

1 A. Would you point out, sir, where this scale is?

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

3 THE COURT: Doctor, that's not in response to the
4 question. I've asked you to respond to the question
5 directly, sir. Please do that now.

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

8 THE COURT: Yes, you may.

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

11 MR. HEINEMAN: May I ask the Court what the problem
12 is with the witness asking where the scale is in the
13 exhibit?

14 MR. CARR: If I could respond to that, we have gone
15 through that scale, I have gone through the scale time and
16 time again. We have done it once and at length. The witness
17 is playing a game.

18 MR. HEINEMAN: He is not playing a game. He wants
19 to look at the scale. I don't see what's wrong with that.

20 MR. CARR: He may look at the scale when you
21 redirect him, but I'd like him to answer my question so I can
22 move on.

23 THE COURT: The witness is playing games, there's no
24 question about that. The question was properly posed to him,

1 he has not responded to it. I've directed him to respond to
2 it directly, and that does not encompass asking a question,
3 and your objection is overruled.

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

5 Q. Doctor, would you now answer my question please,
6 sir?

7 A. Would you repeat the question please.

8 MR. CARR: Would you read the question to him
9 please.

10 (Court reporter read back the question.)

11 A. No, I cannot, sir.

12 Q. Doctor, didn't you just agree a moment ago that you
13 could, that they did have such a scale?

14 A. They have a scale, sir, but I cannot understand
15 what they really mean.

16 Q. All right. Now, Doctor, without trying to find out
17 what they "really" mean, do they not have a scale that
18 grades the reflexes one equals absent, two equals sluggish,
19 three equals active, four equals very active, five equals
20 transient clonus, six equals sustained clonus? Do they not,
21 sir?

22 A. No, sir.

23 Q. They don't have the scale, sir? Don't you recall,
24 Doctor, we went through that scale?

1 A. I believe they have two scales, sir?

2 Q. Doctor, don't you recall we went through that scale

3 --

4 A. Yes, sir.

5 Q. -- For the reflexes?

6 A. Yes, but I believe they have two scales, sir.

7 Q. Doctor, do you recall that they had the scales for
8 the reflexes as I gave it to you, sir?

9 A. Yes, sir.

10 Q. They do indeed have that scale, don't they, sir?

11 Doctor, I can direct your attention to it, but I would like
12 for you to recall what you testified to, sir, and I cannot--

13 A. Well, I cannot recall unless I see--

14 Q. Doctor, let me finish my question.

15 A. All right, I'm sorry.

16 Q. Do you not recall the scale as I gave it to you for
17 reflexes, one equals absent, two equals sluggish and so
18 forth? Do you not recall that, Dr. Suskind? Dr. Suskind,
19 did you hear my question?

20 A. Yes, yes, I do, sir.

21 Q. Did you not recall that question, sir, and your
22 answer being there was such a scale?

23 A. There is such a scale, sir. I have it before me.

24 Q. Doctor, you have the scale before you now? My

1 question is, sir, notwithstanding that you now have the scale
2 in front of you, you do recall the questions about that
3 scale, don't you, sir?

4 A. I do, sir.

5 Q. You do recall now that you agreed there was such a
6 scale, did you not, sir?

7 A. There is a scale, sir, yes.

8 Q. That isn't my question.

9 MR. CARR: Your Honor, would you direct the witness
10 to quit prefacing his answer to my question with a
11 volunteered statement and to answer my question directly.

12 MR. HEINEMAN: Objection, it's directly responsive
13 to his question.

14 THE COURT: It was not responsive. Objection is
15 overruled. Doctor, listen to the question carefully. Do not
16 interrupt the question--

17 THE WITNESS: Your Honor, I am trying.

18 THE COURT: Doctor, don't interrupt me either. Do
19 not interrupt the question as it is being given to you and
20 then answer the question directly. No more, no less, and
21 then we'll be able to move on.

22 Q. Doctor, my question was not whether or not there is
23 such a scale. My question was do you not recall that there
24 was such a scale. That was my question, sir.

1 A. I recall such a scale, sir, now.

2 Q. Now you recall it?

3 A. Yes, I do.

4 Q. You had forgotten it when you answered earlier?

5 A. Well, I wasn't quite sure, sir, because I'm
6 confused about their use--

7 Q. Is the answer to my question that you had forgotten
8 it, sir?

9 A. I had to remind myself, sir, yes, sir.

10 Q. Is that a yes, you had forgotten it?

11 A. No, it's--

12 Q. Doctor, answer my question directly then, sir. I
13 asked you a question whether you had forgotten it or not.

14 A. I had forgotten it, sir.

15 Q. And you gave me an answer and ended up saying,
16 yes. Now, that yes could be interpreted as I interpreted,
17 yes, you had forgotten it, but then when I asked you directly
18 if you had forgotten it, you said, no, you hadn't forgotten
19 it. Doctor, either you forgot it and, therefore, were telling
20 the truth to this jury when you couldn't remember it or you
21 were deliberately lying to us, sir. I suggest to you that
22 the appropriate answer might be for your sake, for your
23 welfare is that you had indeed forgotten that there was such
24 a scale. Now, Doctor --

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

3 THE COURT: Yes, you may.

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

6 MR. HEINEMAN: There's another one of Mr. Carr's
7 outrageous speeches to the jury, and I object to it, and I
8 move that it be stricken and I ask the jury be instructed to
9 disregard it.

10 MR. CARR: I think it speaks for itself, Your
11 Honor.

12 THE COURT: Your objection is overruled. The only
13 outrageous thing in this proceeding right now is the conduct
14 of your witness. You may proceed.

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

16 Q. Now, Doctor, by referring to that scale you can
17 thereby find out what they meant to convey when they put
18 numbers relative to these various reflexes, can you not, sir?

19 A. No, sir.

20 Q. Doctor, is there on the right hand side of the page
21 where the scale is, on the reflex page, are there columns,
22 sir, that have little boxes in little squares where you can
23 put in numbers?

24 A. Yes, there are.

1 Q. And let the record show that I'm showing in front
2 of the jury part of Plaintiffs' Exhibit 1776, and, Doctor,
3 next to each or opposite each little box there's a
4 description of a reflex like triceps, finger, patellar and so
5 forth?

6 A. Umhm.

7 Q. Above that there is the scale, is there not,
8 reflexes one equals absent, two equals sluggish, and so
9 forth?

10 A. Yes.

11 Q. And, Doctor, there -- if there's a number one, for
12 instance, in the ankle reflex, you can look up to that scale
13 and say number one means absent, can't you, sir?

14 A. You can.

15 Q. And that's the purpose of using the numbers, so you
16 don't have to write absent in that little square, you can
17 just put one in there, and you look at the scale, and you'll
18 know how one is to be interpreted as far as the grade of
19 activity of that particular reflex, isn't that correct, sir?

20 A. Correct, sir.

21 Q. Doctor, they indeed are grading, they have this
22 grade, this scale with reference to normal reflexes, are they
23 not, sir?

24 A. No, sir.

1 Q. Doctor, the word sluggish does not that mean that
2 that reflex that they call sluggish is less active than the
3 normally active reflex?

4 A. It might be, sir, yes.

5 Q. Doctor, what other meaning could it have?

6 A. It could be normal for this person.

7 Q. Doctor, I'm not asking about that again. I've asked
8 you several times to refrain from that, the Court has asked
9 you to refrain from that, you been directed to refrain from
10 that. I'm not asking you about this particular person.

11 MR. HEINEMAN: Objection, Your Honor.

12 Q. I'm asking you what sluggish means, sir.

13 MR. HEINEMAN: He asked what other meaning could it
14 have, and that answer is responsive. I object to it.

15 THE COURT: Overruled, it's not responsive.

16 Q. Doctor, what else could sluggish mean except in
17 comparing it to a normally active reflex?

18 A. In this instance, sir, I don't know, because I
19 don't -- I've never seen this scale before, sir.

20 Q. Doctor, is there any other significance or meaning
21 that you can put to it other than they're saying sluggish is
22 what that reflex is as compared to a normally active reflex?

23 A. It might be considered --

24 Q. No, my question --

1 A. -- Slower than normal.

2 Q. What other could it be, sir?

3 A. I'm not sure, sir, I don't know.

4 Q. As far as you know, there are no other
5 interpretations, correct, sir?

6 A. I don't know, sir. That is my answer, my answer is
7 I don't know.

8 Q. Therefore, you don't know of any other
9 interpretation, isn't that correct, sir?

10 A. I have some questions about it.

11 Q. Doctor, my question is you don't know of any other
12 interpretation except this is a comparison to a normally
13 active reflex, isn't that correct, sir?

14 A. In this instance---

15 Q. That's the only interpretation that you know of?

16 A. In this instance it might be normal, sir, and I
17 have reasons for saying so.

18 Q. Doctor, and again you're comparing it, you're
19 discussing the man, aren't you, sir? I'm talking about the
20 grading of the reflex, sir, not whether or not it is normal
21 for this man or abnormal for this man to have sluggish
22 reflexes. It might be that he was born with sluggish
23 reflexes, that it's a perfectly normal thing for him to have
24 sluggish reflexes. My question is, as you well know, Dr.

1 Suskind, is comparing what they mean by the word sluggish,
2 what are they comparing the reflex to when they use the word
3 sluggish?

4 A. I don't know, sir.

5 Q. Then, Doctor, you don't know anything other than
6 they're comparing it to a normally active reflex?

7 A. Yes, I do, sir.

8 Q. What else do you know that--

9 A. On page 382 of the same report, sir, there is a
10 examination of reflexes -- this is 9574446, which I assume is
11 Mr. Willard's chart.

12 Q. Doctor, I'm not even talking about --

13 A. And it says-- may I finish, sir?

14 Q. No, because I'm not talking about this?

15 A. The reflexes are regarded as normal in that
16 examination.

17 Q. Dr. Suskind, that may be. My question to you, sir,
18 does not refer to Mr. Willard. My question to you, sir, as
19 you know my question refers to the grading system and not to
20 any particular individual. I'm not yet ready to move into
21 what this means insofar as Mr. Willard is concerned, sir. Do
22 you understand that, sir?

23 A. I do not know, sir.

24 Q. You don't know anything other than they're

1 comparing it with a normally active reflex with that scale,
2 isn't that correct?

3 A. Yes, I do. I just said I do know that they are
4 comparing it, because there is another record of Mr. Willard.

5 Q. Doctor, you are now talking about Mr. Willard
6 again.

7 A. But if they regard Willard as normal--

8 Q. Doctor, do you understand what I'm asking you
9 about?

10 A. Yes, sir.

11 Q. Because this same scale, sir, is used with all of
12 the people that Moses Selikoff studied, not just with Mr.
13 Willard. They didn't pick it up from Mr. Willard. They used
14 it for all of them, didn't they, sir?

15 A. I assume they did.

16 Q. Yes. And so they set up a scale, a standard scale
17 to be used with everybody, did they not, sir?

18 A. I assume they did, sir.

19 Q. Now, in that standard scale that they set up to use
20 for everybody, sir, doesn't the grade of two that is
21 sluggish, aren't they referring to a sluggish reflex as
22 compared to a normally active reflex?

23 A. I don't know, sir.

24 Q. All right, Doctor. If you persist in that, we'll

1 pass to something else, sir. Doctor, did Mr. Willard then in
2 -- according to these reports that we have gone through from
3 Mt. Sinai and from the West Virginia hospital and from the
4 Herbert J. Thomas Memorial Hospital, did he have problems
5 that did not clear up with time?

6 A. No, he didn't have problems that did not clear up,
7 sir.

8 Q. These problems he had that he has mentioned in --
9 has been mentioned in these various reports that we have gone
10 through were they real problems, sir, or were they all the
11 product of a psychoneurotic individual?

12 A. Depends when they happened, sir, when they were
13 reported.

14 Q. Would you answer my question, sir. We have all the
15 exhibits, we have gone through the exhibits. I'm now asking
16 for your judgment, sir. Were these problems that the man had
17 that were real in 1979 or were they problems that were the
18 product of an imagination of a psychoneurotic individual?

19 A. I do not believe they were real, and I believe that
20 the problems were the result of his attempt to exaggerate
21 complaints which previous people have observed as well.

22 Q. Doctor, were the absence of the reflexes that you
23 found a real absence or were they imagined by your examiner?

24 A. They were not found previously, sir.

1 Q. Doctor, my question is were the absent reflexes
2 that your examiner found in 1979, was that a real absence of
3 reflexes or did your examiner imagine this?

4 A. I assume they were a real finding, sir.

5 Q. Yes, Doctor. So that was something, a problem that
6 he did have, correct, sir?

7 A. He had it, but he may not have had it before.
8 There was no other examination.

9 Q. He may not have had it before, but he had a number
10 of complaints indicative of peripheral neuritis or peripheral
11 neuropathy, did he not, in 1953 when you saw him?

12 A. In '53 he still complained, sir, and we thought--

13 Q. Didn't he have those problems in '53?

14 A. No, sir, he complained, but they were not real
15 problems, sir.

16 Q. They were imaginary then with Mr. Willard?

17 A. They were exaggerated problems, sir.

18 Q. Doctor, you called them significant in your
19 summary, you said he had a significant --

20 A. Significant because he complained about them and --

21 Q. Doctor, you called them significant symptoms. You
22 didn't say they were complaints.

23 A. Yes, we did.

24 Q. You said they were significant symptoms, did you

1 not, sir? Now you're calling them imaginary. You called
2 them symptoms in 1953, and now you're saying he imagined
3 these symptoms?

4 A. I didn't say he imagined it. I said that he was a
5 psychoneurotic, and we been through this before.

6 Q. Doctor, they're either real or they're imagined,
7 aren't they, sir?

8 A. No, sir.

9 Q. We went through that, too, sir?

10 A. We been through this before.

11 Q. What can they be other than real or unreal, sir?

12 A. This man believed that he had those symptoms, sir.

13 Q. Doctor, I understand that and you said that.

14 A. Yes, sir.

15 Q. Whether he believes it or not if he has them and he
16 believes it, they're real, if he doesn't have them and he
17 believes it, they're imaginary, isn't that correct, sir?

18 A. No, sir.

19 Q. His belief --

20 A. No, sir.

21 Q. Oh, really?

22 A. That's right.

23 Q. If he doesn't have it, and he believes that he has
24 it, are they not imaginary, sir, if he doesn't have them?

1 A. He believes that he has it and they're --

2 Q. Would you answer my question, Dr. Suskind?

3 A. They are real to him, sir.

4 Q. I know they're real to him, Doctor, but I'm talking
5 about real in the sense that you and I both use it. You
6 don't consider something that's imagined to be real in the
7 real world, do you, sir?

8 A. I'm not sure I can answer that question, sir.

9 Q. Doctor, you do know that imaginary means something
10 that is not there, you do know that, don't you, sir?

11 A. Imaginary may be --

12 Q. Could you answer my question, Dr. Suskind?

13 A. Would you repeat the question.

14 (Court reporter read back the question.)

15 A. It might be, sir, yes.

16 Q. Doctor, please answer my question yes first or no
17 first?

18 A. No, no.

19 Q. The answer to that question is no then?

20 A. That's right.

21 Q. Then you believe something that imagined is really
22 there then, is that correct, sir?

23 A. No, I believe somebody may believe they have it,
24 and it's real to them, sir.

1 Q. Doctor, I'm not quarrelling with it.

2 A. If you will let me finish --

3 Q. I accept that. Now, what I'm asking you, Doctor,
4 whether it is real in fact simply because the man imagines he
5 has it. Is that real?

6 A. It may be real, sir.

7 Q. If he imagines he has it, but doesn't have it?

8 A. He believes he has it.

9 Q. Doctor, I know that.

10 A. It's real to the person.

11 Q. You said that a dozen times.

12 A. Well, that's all I can say, sir, and
13 psychoneurotics--

14 Q. I'm not talking about what he believes.

15 A. Psychoneurotics believe they have problems.

16 Q. Indeed they do, Doctor.

17 A. Yes, sir.

18 Q. Now, listen to me, Doctor. I'm not talking about
19 what they believe. Have you got that in your mind now,
20 Doctor? I'm not talking about what they believed, I'm
21 talking about whether it is really there, whether it is real
22 or not, sir. Have you got that, sir?

23 A. Yes, I do have it, sir.

24 Q. All right. Now, Dr. Suskind, if the complaint is

1 not there in fact, if the symptom is not there in fact, if
2 the pain is not there in fact, his belief that it's there
3 doesn't make it there in the real world, does it, sir?

4 A. Yes, in his real world it does, sir.

5 Q. Doctor, I didn't say in his. Did you think that I
6 said in his real world?

7 A. Well, that's part of the real world, sir.

8 Q. Did you think that I said in his real world or did
9 I say in the real world, which did I say, Doctor?

10 A. You said in the real world.

11 Q. Yes, Doctor.

12 A. Which includes his, I assume, and it includes mine,
13 it includes yours and it includes Mr. Willard's.

14 Q. Doctor, what you're saying then is things that one
15 imagines exist in the real world, is that what you're saying?

16 A. No, I did not.

17 Q. Doctor, you know that what one imagines isn't real,
18 you know that, don't you, sir, by definition?

19 A. I do not, sir.

20 Q. You don't know that by definition?

21 A. No, sir.

22 Q. Then it is your belief that something that imagined
23 is real, is that your belief, sir?

24 A. I believe that in this case --

1 Q. No, Doctor, I'm not asking about in this case and
2 you know I'm not asking about in this case.

3 A. Well, I thought you were, sir, cause we're talking
4 about Mr. Willard.

5 Q. No?

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

8 Q. We're talking about the word imagined, Doctor, and
9 the word real.

10 A. Okay.

11 Q. Because before we can talk about Mr. Willard we
12 have to define the words that we use, don't we, sir?

13 A. I'm not sure, sir.

14 Q. We do apparently, Doctor. Do you not agree, Doctor,
15 that if they are imagined, that that is a problem that is not
16 real if it is a problem that is imagined?

17 A. No, sir, I would disagree with that.

18 Q. Then you believe that real and unreal mean the same
19 thing?

20 A. No, I do not.

21 Q. Doctor, if I imagine that I have a pain in my back,
22 but I really don't, do I have a real pain in my back?

23 A. You might have a real problem, sir.

24 Q. Well, I agree with that, Doctor, no question about

1 that, we agree one hundred percent on that, but, Doctor, did
2 you conceive that I said problem? I said pain, didn't I,
3 Doctor? Now, Doctor, if I imagine that I have a pain in my
4 back, if I believe I have a pain in my back, but in fact I
5 don't have a pain in my back, that is an unreal pain, isn't
6 it, sir?

7 A. No, sir.

8 Q. It is a real pain?

9 A. It's a real pain to the person who has it, sir.

10 Q. Doctor, you know I'm not talking about whether or
11 not it's real to the person, you know that I agree with you
12 that it's real to the person. I'm not quarrelling with you
13 it's real to the person. I accept it that the man is sincere
14 in believing that he has that pain in the back, I agree with
15 you a thousand percent, Doctor, but now I'm directing your
16 attention to whether or not it is really there.

17 A. It may not be really there --

18 Q. If it isn't --

19 A. But it's a real problem, sir.

20 Q. Yes, Doctor, it is.

21 A. To the person it's real pain.

22 Q. I agree with that, Doctor, but if it isn't really
23 there, it's imaginary, isn't it, sir?

24 A. Not necessarily, no.

1 Q. Doctor, if something isn't really there, it's
2 imaginary, isn't it, sir, it's a figment of the imagination,
3 isn't it, sir, if it isn't really there?

4 A. No, imagination may have--

5 MR. HEINEMAN: Objection, Your Honor.

6 THE COURT: Objection is overruled?

7 A. --nothing to do with it, sir.

8 Q. Doctor, if I tell you that I see a man standing in
9 front of me and I believe I see a man standing right here
10 three feet from me, you know good and well there's no man
11 standing there. Now, that's a figment of my imagination,
12 isn't it, sir, or else I'm lying, one of the two. I really,
13 really believe that I see a man there or I'm lying when I
14 tell you I see a man there, isn't that right, sir?

15 A. Correct.

16 Q. Therefore it's an imagined man. It's not really
17 there, is it, sir?

18 A. That, sir, is a delusion.

19 Q. Well, a delusion is another form of imagination,
20 isn't it, sir?

21 A. It might be.

22 Q. And it's imagined, it's not real, is it, sir?

23 A. No, that would not be real according to what you're
24 telling me.

1 Q. Doctor, according to--

2 A. The pain is something else.

3 Q. Doctor, is what you're saying then that the pain
4 that Mr. Willard or anybody else has if they imagine they
5 have the pain, it's really there then?

6 A. No, I didn't say that. I said they believe they
7 have the pain.

8 Q. I know, Doctor, we've talked about that ad
9 infinitum, but I'm talking about whether it is really there.
10 Is it there simply because they believe that it's there?

11 A. It may not be there, but they believe it's there,
12 and it's a real problem.

13 MR. CARR: Your Honor, would you direct the witness
14 to answer my question and not go on and on about the real
15 problem and what he believes and just answer my question, Dr.
16 Suskind.

17 A. Yes, sir.

18 THE COURT: Doctor, please respond to the question.
19 I think you went way beyond it.

20 MR. CARR: Would you read the question to him
21 again.

22 (Court reporter read back the question.)

23 A. Yes, it's there simply because they believe that
24 it's there.

1 Q. All right. Then these men then have real problems,
2 and they did not go away insofar as they were concerned,
3 isn't that correct, sir?

4 A. No, sir.

5 Q. Doctor, if it's there, it didn't go away, did it,
6 sir? They're real problems, they did not go away, isn't that
7 correct, sir?

8 A. But they're psychoneurotic problems, sir.

9 Q. I don't care whether they're psychoneurotic or not.
10 They're real problems they've got, correct, sir?

11 A. They are problems for the person, and they have to
12 be dealt with, yes, sir.

13 Q. They're problems for the person that dated from the
14 time of the exposure, isn't that correct, sir?

15 A. What problems are you talking about, sir?

16 Q. What problems do you think we're talking about,
17 Doctor?

18 A. I'm not altogether sure.

19 Q. You give me your idea of what I'm talking about.

20 A. Well, he's had multiple problems, and I'm not sure
21 which ones you're talking about.

22 Q. You give me the problems that he's had since the
23 date of the exposure that he continued to have up to '79,
24 Doctor, whether they're imagined or real, what are these

1 problems that he has so far as he's concerned?

2 A. According to the complaints he indicated that he
3 had a -- he had a history of pains and nervousness and that
4 he had a heart problem.

5 Q. And those problems then didn't go away, did they,
6 sir?

7 A. We believe that they did, sir.

8 Q. Well, Doctor, you said the imagined problems, these
9 problems that he's got were imagined, not real, but they were
10 problems for him and they were dated from the exposure, and
11 I've asked you then what problems did he have dated from the
12 exposure that he still has and you have given us these
13 problems.

14 A. Those are complaints, sir.

15 Q. But I asked you about problems.

16 A. They're not findings, they're complaints.

17 Q. Doctor, I asked you about what problems the man
18 had. Do you recall I asked you that, sir?

19 A. Yes, sir.

20 Q. And you gave me the problems that --

21 A. I gave --

22 Q. Because you want to respond to my question
23 properly, you gave me in answer to my question the problems
24 the man had, didn't you, sir?

1 A. I gave it to you as complaints, sir.

2 Q. Doctor, you know I didn't ask you that.

3 A. That's what I said, I said he complained of.

4 Q. Dr. Suskind, you know I didn't ask you what he
5 complained of. Did you hear me use the word complained of?

6 A. No.

7 Q. But that was my answer, sir.

8 Q. Doctor, then you're not following the Court's
9 direction if you're answering a question I didn't ask,
10 because I didn't ask you about his complaints, did I, sir? I
11 asked you about the problems that he had from the exposure
12 that he continues to have. I asked you to give me those
13 problems, sir. Now, will you answer that question, sir?

14 A. The only problem that I could tell you about, if
15 that is the question, the only problem that I could answer
16 with a positive, in a positive way is that his psychoneurosis
17 and his exaggerated complaint continued. That is all I can
18 say.

19 Q. Doctor, I didn't ask you about exaggerated
20 complaints. I asked you about the problems that he had. What
21 problems did he have that did not go away?

22 MR. HEINEMAN: Objection?

23 A. The exaggerated complaints are one of his problems,
24 sir, that is a problem. It's a problem for the doctor, it's

1 a problem for the patient and his psychoneurosis, which was
2 part of the exaggerated complaints or the exaggerated
3 complaints, part of his psychoneurosis, that also continued
4 and that we determined in 1953, and he continued to have
5 that.

6 Q. Doctor, in 1953 in addition to the psychoneurosis
7 you said the man had significant problems relating to pain.

8 A. Which we believed were exaggerated and part of his
9 psychoneurosis.

10 Q. Well, exaggerated or not, he still had problems
11 related to pain, did he not, sir?

12 A. That was part of the psychoneurosis, sir.

13 Q. Excuse me, Doctor. Didn't you say they were
14 significant problems in '53?

15 A. Yes, we did.

16 Q. Yes. Now, he's got those same problems that he had
17 in '53, he's got some of those same problems in '79, doesn't
18 he, sir?

19 A. He has one of those major problems in '79, sir.

20 Q. Which one is that, sir?

21 A. Psychoneurosis.

22 Q. He has no pain?

23 A. That's part of it, sir.

24 Q. Does he have any pain or not, Doctor?

1 A. He complains of it.

2 Q. Doctor, my question is not whether or not he
3 complains of it, my question is whether or not he has it.

4 A. That's the only way we can determine it.

5 Q. Doctor, could you please determine it for me. Does
6 he have the pain or not?

7 A. I don't know.

8 Q. Well, Doctor, you said the only way you can
9 determine it is by his complaints.

10 A. Okay.

11 Q. Now, does he have the pain or not?

12 A. He complains, but that doesn't mean he has it.

13 Q. Doctor, in your judgment does he have it?

14 A. No, sir.

15 Q. Then he's lying to you?

16 A. No, he believes he has it, but he doesn't have it.

17 Q. Then it's a real problem to him, isn't it, sir?

18 A. It might be, yes.

19 Q. Well, is it or is it not?

20 A. It's a real problem to a psychoneurotic.

21 Q. Is it a real problem to Mr. Willard?

22 A. It could be a real problem to a psychoneurotic.

23 Q. My question is is it a real problem to Mr. Willard?

24 A. It is a problem to Mr. Willard.

1 Q. Is it a real problem to Mr. Willard?

2 A. It is a real problem to Mr. Willard.

3 Q. All right. Doctor, it's a real problem that Mr.
4 Willard has starting with the exposure, isn't that correct,
5 sir?

6 A. No, sir.

7 Q. When did it start, Doctor, according to the records
8 that you have?

9 A. I cannot tell you when the --

10 Q. Doctor, according to the records you have, when did
11 it start, when did he first start complaining of it according
12 to the records that you have?

13 A. According to the records he had pain. Whether it's
14 the same pain, I don't know.

15 Q. My question is, Doctor, when did it start according
16 to the records that you have?

17 A. In 1949.

18 Q. Yes, Doctor. And he has that same problem in 1979,
19 doesn't he, sir?

20 A. No, sir.

21 Q. Doctor, didn't you just tell us that that's what he
22 has?

23 A. In 1949 it was really real.

24 Q. Didn't you just tell us that he has that problem in

1 '79, psychoneurosis?

2 A. He has the psychoneurotic problem in '79, sir.

3 Q. Isn't that the problem that he had in '49?

4 A. No, sir.

5 Q. Doctor, I asked you then what problem does he have
6 in '79 that he had to start with and you said he's
7 psychoneurotic. He has a psychoneurotic problem with pain is
8 what you said.

9 A. Right, and I don't know when that started, sir.

10 Q. Doctor, that's the problem that I asked you. I
11 asked you to give me what problems he had in '79 that he had
12 to start with, and you said he's only got the one problem in
13 '79 that he had to start with, that is, the psychoneurosis.
14 Now, that's what you said, sir.

15 A. Well, if I did, then what -- he didn't have --

16 Q. Doctor, that's what you said.

17 A. He didn't have psychoneurosis in '49 to my
18 knowledge.

19 Q. Sir?

20 A. I don't believe he had a psychoneurosis in '49, not
21 that we could determine.

22 Q. Well --

23 A. In '53 -- let me finish -- in '53 we did determine
24 that he had it. That is four years later.

1 Q. You also determined -- Doctor you also determined
2 that this man had real significant problems relating to aches
3 and pains, nervousness, fatigue, loss of vigor, shortness of
4 breath, decrease in libido, didn't you, sir?

5 A. In what dates, sir?

6 Q. In 1953, sir. And haven't you testified also that
7 he was among the ten that you found to have significant
8 problems relating to the these significant problems, didn't
9 you tell us that also, sir?

10 A. We did, but that was part of the psychoneurosis.

11 Q. Now, Doctor--

12 A. We believed that he exaggerated, and it's in the
13 record, sir --

14 Q. Did you say to us in your earlier testimony or did
15 you say in this 1953 report that these aches and pains and
16 nervousness and fatigue were significant in this man's case?

17 A. There were significant as part of the
18 psychoneurosis, which we had described quite succinctly in
19 1953., and I'll give you the page if you'd like to refer to
20 it again, sir.

21 Q. It's Page 46, Dr. Suskind. You've given us that
22 page before, and we've looked at that page.

23 A. It's on Page 46, sir, yes.

24 Q. Doctor, what you said is there he is a rather

1 unstable person who has made a very poor psychological
2 adjustment to his original illness, isn't that right, sir?

3 A. Correct.

4 Q. All right. Now, Doctor, what you're saying is that
5 he had an original illness, has an original illness, correct,
6 sir?

7 A. Correct.

8 Q. And he's made a poor psychological adjustment to
9 it, isn't that right, sir?

10 A. Yes, sir.

11 Q. Now, Doctor, you're not calling, you're not saying
12 he doesn't have the original illness, you're just saying that
13 he's one of the kinds of persons that can't adjust to it,
14 that didn't adjust to it, correct, sir, isn't that correct,
15 sir?

16 A. We're saying that he made a poor psychological
17 adjustment.

18 Q. Would you answer my question please, sir.

19 A. Yes, he made a poor psychological adjustment to his
20 original illness.

21 Q. And this poor psychological adjustment was a major
22 difficulty, which contributed to his present disability,
23 isn't that correct, sir?

24 A. Didn't have any disability, sir.

1 Q. Doctor, didn't you tell us in the 1953 report that
2 this poor psychological adjustment was one of the major
3 difficulties which contributed considerably to his present
4 disability?

5 A. Yes, we did, and it's right in the report, sir.

6 Q. Doctor, you used the words to his present
7 disability, didn't you, sir?

8 A. Right, his --

9 Q. Now, you say he didn't have any disability?

10 A. He didn't have a real disability.

11 Q. Doctor, you didn't say that. You didn't say to his
12 imagined disability. The words that you used, Doctor, in
13 Exhibit 1701 on Page 46 that you referred us to is that it
14 appears that he has two major difficulties, which may
15 contribute considerably to his present disability?

16 A. Correct.

17 Q. Now, Doctor, you meant to say to his present
18 disability, didn't you, sir?

19 A. Yes, he was not working at the time.

20 Q. Doctor, excuse me. Didn't you mean to say to his
21 present disability?

22 A. Yes, sir.

23 Q. And, Doctor, this -- one of these two major
24 difficulties was the fact that he had made a poor

1 psychological adjustment to his present disability, isn't
2 that correct, sir?

3 A. No, he didn't say that.

4 Q. Doctor that's exactly what you said.

5 A. No, his present illness, not disability.

6 Q. No, Doctor, you said to his present disability.

7 One of these two major difficulties, which may contribute
8 considerably to his present disability.

9 A. I thought you were reading the sentence below that,
10 sir, which I think you were.

11 Q. Doctor, how can you say when I use the words to his
12 present disability, how can you say I was reading the
13 sentence below it, sir?

14 A. Okay.

15 Q. Doctor, his present disability at that time was
16 contributed to by his psychological makeup, was it not, sir?

17 A. I believe so.

18 Q. That's what you said here, isn't it, sir?

19 A. Yes, sir.

20 Q. All right. Now, sir, but he had a present
21 disability that this psychological maladjustment contributed
22 to then, did he not, sir?

23 A. It was largely responsible for it, yes.

24 Q. Excuse me, sir. Did not cause, but contributed to,

1 correct, sir?

2 A. Yes, largely responsible for.

3 Q. Doctor, you didn't say largely responsible. You
4 said which may contribute. You didn't even say that it did
5 for sure contribute to it, did you, sir? You just said this
6 poor psychological adjustment may contribute considerably to
7 his present disability, didn't you?

8 A. Yes, we did.

9 Q. You didn't say was the major cause of it, did you,
10 sir?

11 A. That's what we said, sir.

12 Q. Excuse me. You didn't say it was a major cause of
13 it, did you, sir?

14 A. We didn't say that in this report, sir.

15 Q. And, Doctor, you didn't even say that it did in
16 fact contribute to it, you simply said it may contribute to
17 it, didn't you, sir?

18 A. I think we were being cautious.

19 Q. Excuse me, Doctor. Could you answer my question
20 please.

21 A. Yes, sir.

22 Q. You didn't even say that it caused it or did
23 contribute to it, you simply said it may contribute, didn't
24 you, sir?

1 A. Yes, we did, that's what we said.

2 Q. And his present disability at that time, sir, were
3 the problems that you related on Page 10 or 11 rather, the
4 aching, the shortness of breath, the heart palpation, the
5 flushing, the low back pain, the posterior cervical pain,
6 recurrent vertigo, sandy feeling in the eyes and depression,
7 correct, sir?

8 A. No, sir.

9 Q. Doctor, what other present disability -- what was
10 his present disability that you referred to?

11 A. His refusal to go back to work, sir, that was his
12 disability.

13 Q. Doctor, a refusal to go back to work is not a
14 disability?

15 A. Well, he--

16 Q. That's what comes from a disability. My question,
17 sir, is what was the disability that you found him to have in
18 1953?

19 MR. HEINEMAN: Objection, it's been asked and
20 answered.

21 THE COURT: Objection is overruled. It has not.

22 A. Would you read the last question please.

23 (Court reporter read back the question.)

24 A. As I answered previously, his disability was his

1 refusal to go back to work on the basis of the complaints,
2 and we did not believe that the complaints were, in fact,
3 valid.

4 Q. Doctor, do you -- do you --

5 A. We believed they were exaggerated.

6 Q. Excuse me, Doctor. Where did you say in here that
7 he exaggerated a single complaint?

8 A. I believe it's inferred in that first, in that
9 first item on Page 46, sir.

10 Q. Doctor, you didn't say anywhere that the man's
11 complaints were exaggerated, did you, sir?

12 A. It's inferred in the statement we made.

13 Q. Doctor, my question is-- No, Doctor, you can infer
14 something by reading anything. My question is, Doctor, where
15 did you say that he exaggerated a single complaint that he
16 had, sir?

17 A. Well, my answer remains the same, sir.

18 Q. There isn't any place here where you say the man
19 exaggerated the complaints, is there, sir?

20 A. That is our interpretation.

21 Q. That is your present interpretation.

22 A. No, it was then, sir.

23 Q. Doctor, did you--

24 A. And it's not only mine. Others have said the same

1 thing.

2 Q. Doctor, please don't refer to others. You know my
3 question refers to you.

4 MR. CARR: Your Honor, would you direct the jury to
5 disregard this outburst from the doctor that he knows clearly
6 is not responsive and not proper.

7 THE COURT: Ladies and gentlemen of the jury, you
8 are so ordered to disregard the doctor's last remark. It was
9 not responsive to the question that was asked of him. You
10 may proceed.

11 Q. Dr. Suskind, this man's problems that he had in '53
12 you described as significant then, did you not, sir?

13 A. We felt that they were significant, sir.

14 Q. My question, sir, is you described them as
15 significant then, did you not, sir?

16 A. We described his -- his problem as being
17 significant, sir.

18 Q. Yes, Doctor. Now, did those problems go away, sir?

19 A. Problems? Yes, they did go away.

20 Q. And what is the evidence in this record that we
21 have that supports your conclusion that the problems that he
22 had went away, sir?

23 A. In the 1979 examination our interview as well as
24 our findings indicate that those previous problems that he

1 complained about or the problems that he complained about in
2 1979, which he believed he had in '53 and which he carried
3 over in to '79, we believed that they didn't exist any longer
4 except his psychoneurosis and when we consulted--

5 A. Doctor, excuse me. You know again, Doctor, that
6 you're going beyond the parameters of my question, you know
7 you're in contempt of this Court in so doing, Dr. Suskind,
8 because I asked you in this record, did I not, sir?

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

11 THE COURT: Sure.

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

14 MR. HEINEMAN: I object again to Mr. Carr's
15 statement to this witness that he is in contempt of this
16 Court. That is for this Court to decide, not Mr. Carr. This
17 Court has not yet made that decision, and I object to Mr.
18 Carr making such a statement to the witness. It's totally
19 improper and Mr. Carr knows it.

20 THE COURT: Do you have anything to say?

21 MR. CARR: No, Your Honor.

22 THE COURT: Like I said on a number of occasions
23 that this witness' actions are contemptuous. I think if I
24 would be ineffectual under the circumstances in which he

1 appears here and I am not -- I have observed him, and I am
2 not going to throw this 73 year old man in jail for contempt.
3 I have stated a number of times on a number of occasions that
4 his actions before this Court as a witness are contemptuous
5 so there happens to be a basis in the record for the
6 statement that was made.

7 MR. HEINEMAN: My point, Your Honor, is that that
8 may be the Court's feeling, and that's for the Court to
9 decide.

10 THE COURT: Right.

11 MR. HEINEMAN: And the Court to do something about
12 or the Court to say something about. It's not for Mr. Carr to
13 say anything to this witness about, and I object to it. It's
14 an effort to influence the jury, to make some kind of
15 statement in front of the jury, and I object to it. It's
16 clearly improper.

17 THE COURT: Overruled.

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

19 Q. Doctor, do you have Exhibit 1743 in front of you?

20 A. I do, sir.

21 Q. Refer to that record please, sir, and tell me where
22 in that record you describe this man's problems as being
23 psychoneurotic. Let me direct your attention to Page 24.
24 That's the neuropsychiatric page, Doctor. Does it not say,

1 sir, in the neuropsychiatric column the words see below?

2 Does it say that, sir?

3 A. Yes.

4 Q. And below it says, does it not, episodes of
5 nervousness, palpations, stomach feels like it's falling out,
6 can't explain it, occasionally has visual signs accompanying
7 spells, doesn't go out much, afraid to meet people for fear
8 of having nervous attack, if something angina, signs of
9 something leg down, lasts about fifteen minutes, doesn't know
10 how long would last if couldn't relax, something for any
11 particular -- don't come for any particular reason ever since
12 exposure to product of explosion, becomes easily tired, also
13 subsequent to exposure acne all over, pain behind right knee
14 and left chest pain. You see that, sir?

15 A. Yes.

16 Q. Now, does it say anywhere on that page, sir, that
17 his problems are psychoneurotic?

18 A. No.

19 Q. Does it say anywhere on that page that he doesn't
20 have real pain?

21 A. No.

22 Q. Does it say anywhere on that page that he doesn't
23 have real nightmares that started in '49?

24 A. This is simply a record of the interview, sir. No,

1 he doesn't say --

2 Q. Does it say anywhere that he doesn't really have
3 nightmares or that's a product of a psychoneurotic, disturbed
4 person?

5 A. What is the question, sir?

6 Q. Does it say that he doesn't have nightmares and the
7 nightmares that he says that he has are a product of a
8 psychologically disturbed person or neurotic person?

9 A. I fail to see where he mentions nightmares, sir.
10 Does he mention nightmares here?

11 Q. Doctor, you know he mentioned nightmares in this
12 report dating from 1949. We went through it already, sir.

13 A. To another interviewer, sir, yes.

14 Q. Yes. My question is, Doctor, is there anywhere on
15 this page or any place else in this report where this man's
16 problems of nightmares that started in '49 are the product of
17 a psychologically, disturbed, neurotic person?

18 A. I'm unable to answer that question, sir.

19 Q. Well, Doctor, I submit to you that there is nothing
20 in this report that tells you that these nightmares are not
21 real, isn't that correct, sir?

22 A. There's nothing in the doctor's interview that
23 mentions it, sir.

24 Q. Doctor, more than that. In this entire report 1743

1 that you have, sir, there is nothing that tells you or
2 anybody else that reads it that his nightmares are not real,
3 isn't that correct, sir?

4 A. I can't answer that question, sir.

5 MR. CARR: Your Honor, would you direct the witness
6 to answer that question, because he can answer that question.

7 THE COURT: Doctor, I have determined that the
8 question is proper. You are ordered to answer it.

9 A. Yes, I think there is.

10 Q. All right, Doctor. And what is -- where, what page
11 does it appear on, sir?

12 A. The fact that -- on Page 24.

13 Q. Excuse me, Doctor. On Page 24, Doctor, you referred
14 me to Page 24, and the next question is you already told us,
15 Doctor, that there was nothing on Page 24 that refers to the
16 nightmares, did you not, sir?

17 A. Correct, sir.

18 Q. And, therefore, there is nothing on that page
19 referring to the nightmares that says the nightmares are not
20 real, isn't that correct, sir?

21 A. No, what I'm saying is that it's --

22 Q. Doctor, isn't that correct, sir?

23 A. There is no mention of nightmares, sir, yes.

24 Q. Doctor, that isn't what I asked you. You can't

1 pose the question for me, sir, and then give an answer.

2 THE COURT: Wait a second.

3 MR. HEINEMAN: My objection is the question said
4 referring to nightmares on Page 24.

5 THE COURT: Objection is overruled. Go ahead, Mr.
6 Carr.

7 Q. Now, answer the question that I asked you, Doctor.

8 A. Would you read the question please about
9 nightmares.

10 THE COURT: Doctor, I have ruled on that already.
11 Just wait till the next question and answer please.

12 THE WITNESS: All right. Thank you.

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

14 Q. Doctor, there is nothing on that page that refers
15 to nightmares and tells you that the nightmares are not real,
16 isn't that correct, sir?

17 A. There was nothing on that page, sir, yes.

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

20 A. I have. I said there's nothing on that page.

21 MR. HEINEMAN: That answer is responsive.

22 THE COURT: You can rephrase it, Mr. Carr.

23 Q. No, you just answered part of the question.

24 MR. CARR: Would you read the question to him again.

1 Q. You just answered part of the question, sir.

2 (Court reporter read back the question.)

3 A. There's nothing on this page.

4 Q. Could you answer that question yes or no, Dr.

5 Suskind?

6 A. No.

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

9 THE COURT: Yes, you may.

10 A. I thought I answered it before.

11 THE COURT: Doctor, no comments please.

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

14 MR. HEINEMAN: Your Honor, that answer is directly
15 responsive. He asked him is there anything on this page, and
16 he says there is nothing on the page.

17 THE COURT: It's responsive to the first half of the
18 question. It is not responsive to the second half of the
19 question, and that is why reading it back or having it
20 repeated was proper. I am now ordering him to answer the
21 entire question. He answered the first part only, and it was
22 responsive to the first part, but being responsive to the
23 entire question means answering the second part also.

24 MR. HEINEMAN: Your Honor, whether or not there's

1 anything on the page refers to the entire question. He's not
2 entitled to a yes or no answer. The witness is entitled to
3 give a responsive answer.

4 MR. CARR: We've already established there's
5 nothing on the page that refers to nightmares, I've already
6 asked that question. I am now incorporating his prior answer
7 to that part of the question in a new question and to make
8 sure that he doesn't wiggle out I'm saying now, there's
9 nothing on that page that refers to nightmares or tells you
10 that the nightmares are not real.

11 THE COURT: It's that second half that was not
12 answered.

13 MR. HEINEMAN: He says there's nothing on the page
14 that does either of those thing.

15 MR. CARR: But he didn't say that.

16 MR. HEINEMAN: Well, you didn't--

17 MR. CARR: He didn't say that.

18 THE COURT: No, his answer was not responsive to the
19 second half of the question. It was responsive to the first
20 part only. You are making an inference which may be
21 reasonable, but which is not total and which under the
22 circumstances cannot be made. The second part of the
23 question was properly framed, it was a proper question, and
24 it is proper that he be directed to answer the second half of

1 the question also. Objection is overruled. After that I
2 think it's time to take a break

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

4 Q. Now, Doctor, would you please answer that question,
5 sir.

6 A. Would you repeat the question please.

7 MR. CARR: Would you read the question to him.

8 (Court reporter read back the question.)

9 A. You want a yes or no answer, sir?

10 Q. Yes, please.

11 A. No, sir, there's nothing on that page.

12 Q. My question was, isn't that correct, sir, isn't
13 what I said in that question correct, sir?

14 A. Yes.

15 Q. All right.

16 A. You are correct.

17 THE COURT: Mr. Carr, is this a good point for a
18 break?

19 MR. CARR: Yes, your Honor.

20 THE COURT: We'll take a short recess at this time
21 and then resume testimony. I would remind you that you're
22 not to discuss this matter or among yourselves or with anyone
23 outside of the jury panel or as of yet form any opinions or
24 conclusions about the matters on trial. Court's in a short

1 recess.

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

3

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

5 MR. HEINEMAN: Excuse me, Your Honor, may counsel
6 approach the bench for a minute?

7 THE COURT: Sure.

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

10 MR. HEINEMAN: Your Honor, with respect to Mr.
11 Carr's statement to the witness before that he was in
12 contempt, I objected, and the Court overruled my objection.

13 THE COURT: I think he said was contemptuous, but
14 that's close enough.

15 MR. HEINEMAN: Whichever way it was stated.

16 THE COURT: Right.

17 MR. HEINEMAN: As the record will reflect, I would
18 ask that-- I'm making a motion at this time that that remark
19 be stricken and that the jury be instructed to disregard it
20 as being improper.

21 MR. CARR: Your Honor, I think what -- it probably
22 should be stricken, and the jury should be instructed to
23 disregard it, because it indeed is just my judgment, and the
24 Court hasn't -- the Court did find him in contempt once, but

1 not for this problem and to waive the contempt finding
2 without explaining the circumstances -- and I think it
3 probably would be better to grant counsel -- that you do
4 instruct the jury that my statement should be stricken from
5 the record and the jury should be instructed to disregard it.

6 THE COURT: Agreed order if it's agreed, I'll do it.

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

8 THE COURT: Ladies and gentlemen, I would advise you
9 that the remark that was made earlier by Mr. Carr that this
10 witness is in contempt is to be stricken from the record, and
11 you are ordered to disregard that remark. Mr. Carr, you may
12 proceed.

13 MR. CARR: Yes, Your Honor.

14 Q. Doctor, referring now to the-- back to the records
15 of Mr. Willard with respect to the neuropsychiatric column of
16 the page that we been referring to, that neuropsychiatric
17 examination describes a person who says and describes a
18 number of episodes of nervousness, does it not, sir?

19 A. It does, sir.

20 Q. And he in effect says that these nervousness
21 attacks don't come on for any particular reason, but that
22 he's had them ever since exposed to the product of the
23 explosion, does it not, sir?

24 A. No, sir.

1 Q. Doctor, don't you recall we just read it, and if
2 you would look at about two inches from the bottom of Page
3 24, doesn't it say " don't come on for any particular reason
4 -- ever since exposed to product of explosion"?

5 A. Yes, sir, I see that, absolutely.

6 Q. All right.

7 A. But that's not referring to the nervousness. It
8 refers, I imagine --

9 Q. What does it refer to?

10 A. It could refer to the --

11 Q. Excuse me, Doctor.

12 A. -- Previous sentence.

13 Q. What does it refer to in your judgment, sir?

14 A. I don't know, but in the previous sentence --

15 Q. Doctor, is it true then that you have no judgment
16 that it does or does not refer to the nervousness, sir?

17 A. I don't know whether it refers to the nervousness,
18 cause he says a lot of other things between that nervousness
19 palpitations, stomach feels like it's falling out, and he
20 can't explain it, but he goes on to say that he has problems
21 putting his leg down, and it last for fifteen minutes, and he
22 doesn't know how long it would last if he couldn't relax and
23 after that, after that he says don't come on for a particular
24 reason. Now, I don't know whether he's referring to the

1 nervousness or the leg problem. I assume he's referring to
2 the leg problem.

3 Q. Doctor, if he's referring to the leg problem, then
4 he's talking about pains that he's had ever since the
5 explosion?

6 A. No, he doesn't say pain in that.

7 Q. Doctor, he talks about that his--

8 A. There's no word referring to pain in that sentence,
9 sir.

10 Q. What does it say, sir, the preceding sentence?
11 Would you read it for us, sir?

12 A. Well, it's a little difficult to read this
13 handwriting, but it has something to do with putting his leg
14 down.

15 Q. Doctor, could you just please read it for us, sir,
16 the best as you can.

17 A. I'm unable to read that part of it, but there's no
18 word for pain there.

19 Q. Dr. Suskind, could you read it please, sir, as you
20 did before, sir?

21 A. The handwriting is not very readable.

22 Q. Doctor, you interpreted it once in the past.

23 A. He has something when he puts his leg down.

24 Q. May I finish my question please, Doctor?

1 A. Sure.

2 Q. You have interpreted it in the past, you've drawn
3 conclusions from what it said in the past, so please do the
4 same for us now, sir, read it for us now, tell us what it
5 says?

6 A. I haven't drawn any conclusions from it, sir.

7 Q. Well, Doctor, I asked you to draw conclusions based
8 upon this record that you have here, 1743, what problems the
9 man has had since the time of the explosion?

10 A. Yes, sir.

11 Q. And you have read this necessarily in coming to
12 your conclusions, haven't you, sir?

13 A. Yes, sir.

14 Q. All right. Now, Doctor, please do it again and give
15 us the benefit of how this sentence reads?

16 A. Shall I start from the very beginning, episodes of
17 nervous, sir?

18 Q. No, because that we have read and we have no
19 problem with that, sir. I want you to read that sentence
20 that you believe the clause refers to that he's had this
21 problem ever since exposed to the product of the explosion.
22 That's what I want you to do for us, sir, if you believe that
23 that clause just refers to that sentence?

24 A. It has something to do with not being able to put

1 his leg down, and it lasts for fifteen minutes.

2 Q. Doctor, you're now interpreting for us. I'm asking
3 you to read it for us.

4 A. I'm unable to read the first three. Perhaps others
5 in this room can help us if they can, but I'm not able to
6 read after if.

7 Q. Well then, Doctor, what you can do is read C-I-N
8 leg down. Interpret that for us, sir?

9 A. Well, I don't know what happens when he's not able
10 to put his leg down.

11 Q. Excuse me, Doctor. Just read it for us please, sir.
12 You've interpreted it once. Interpret it for us again.

13 A. There's a sentence which starts with if.

14 Q. Yes. Then read the next one, read the next word
15 that you can, sir.

16 A. Something -- if not around anyone. I think that's
17 how it reads, if not around anyone.

18 Q. Doctor, what it says is if not around anyone and
19 can lay down, his nervous attacks last fifteen minutes.

20 A. It doesn't say nervous attacks.

21 Q. Oh, Doctor, what is it referring to? The entire
22 neuropsychiatric profile here it talks about, it starts out
23 episodes of nervousness, doesn't it, sir?

24 A. Okay.

1 Q. It gives these episodes, and it describes the
2 episodes?

3 A. Correct.

4 Q. Then it says if not around anyone and can lay down,
5 lasts fifteen minutes. Now what about fifteen minutes?
6 Doesn't know how long would last if couldn't relax. What is
7 the man talking about, sir?

8 A. I would assume, sir, that he's talking about his
9 previous complaints, which is palpitations, nervousness,
10 stomach fullness.

11 Q. It talks about what is called episodes of
12 nervousness, correct, sir?

13 A. That might be so, sir, yes.

14 Q. Doctor, there isn't any question about it. And he's
15 had these episodes of nervousness according to this ever
16 since the exposure to the product of the explosion, isn't
17 that correct, sir?

18 A. This is what the record reads, sir.

19 Q. Doctor, you could read it for us, and it does say
20 as I suggested to you that it said. It says he's had this
21 episodes of nervousness ever since the explosion, doesn't it,
22 sir?

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

24 Q. Now, Doctor, you know that most of these others

1 have also said they've been nervous since the explosion,
2 correct, sir?

3 A. Some of them may have, sir.

4 Q. And you found in your 1953 examination that they
5 were nervous and had complaints of nervousness, many of them,
6 did you not?

7 A. Some of them did, sir, but since the explosion is
8 another matter, sir.

9 Q. Doctor, he's talking about now problems that he has
10 had, one problem that he has had, episodes of nervousness,
11 isn't he, sir?

12 A. Yes, sir.

13 Q. Now, Doctor, if he's had this episodes of
14 nervousness, are you interpreting that to mean that he is
15 psychoneurotic?

16 A. I believe he is, sir.

17 Q. Are you interpreting this to mean that he is
18 psychoneurotic, sir?

19 A. I believe that -- yes.

20 Q. Doctor --

21 A. The whole description is a description of a
22 psychoneurotic man.

23 Q. I think you answered my question when you said
24 yes.

1 A. Yes.

2 Q. Now this particular psychoneurosis is dated
3 according to this exhibit from the time of his exposure,
4 isn't it, sir?

5 A. No, sir.

6 Q. When is it dated from, sir?

7 A. According to this particular sentence it is, but
8 he--

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

10 A. But he didn't have it in '49 and '50.

11 Q. Now, Doctor, what else in this report suggests to
12 you that it's not dated from the time of the exposure?

13 A. I don't believe in this report, sir, in this report
14 --

15 Q. Everything in this report, Doctor --

16 A. In this report there is nothing to contradict it.
17 However, there is something to contradict it.

18 Q. Doctor, excuse me. Now, you know that I'm asking
19 about this report.

20 A. Okay.

21 Q. You're doing it again, aren't you, Doctor? You know
22 that you're doing something that isn't proper when you add
23 that, don't you, sir? Don't you, sir?

24 A. I'm only trying to be complete, sir.

1 Q. Doctor, you know that you're doing something that
2 is improper when you add that?

3 A. No, sir.

4 Q. You been told by the Court you can make your
5 explanations on redirect, you been told, you been begged by
6 me to please respond to the questions and not require me to
7 go down some other path so that I can finish this particular
8 point, haven't you, sir? Haven't I begged you to do that, Dr.
9 Suskind? Haven't I, sir?

10 A. You have asked me, sir.

11 Q. Doctor, now referring to this report, sir, do you
12 understand what I'm asking you to refer to this report, sir?

13 A. I am, sir.

14 Q. And, Doctor, this report dates this man's problems
15 from his exposure to the products of the explosion, does it
16 not, sir?

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

18 Q. Yes. And there is nothing in this report that
19 contradicts that, is there, sir?

20 A. Not in this report, sir.

21 Q. All right. Now, Doctor, this according to these
22 problems then that are dated to the time of the exposure are
23 problems that did not go away according to this record, isn't
24 that correct, sir?

1 A. No, sir.

2 Q. Doctor, didn't we establish that this report has
3 nothing in it to contradict the statement that he's had these
4 problems since the exposure? Didn't we just establish that,
5 sir?

6 A. No, sir.

7 MR. CARR: Your Honor, would you ask the -- would
8 you read back the question that I asked with reference to
9 that report so the witness can be reminded that he did say
10 that, sir.

11 THE COURT: Why don't you read it?

12 A. Would you read it back please?

13 (Court reporter read back the question.)

14 A. Not in this report, sir.

15 Q. Does that refresh your memory, sir?

16 A. Yes, sir.

17 Q. All right. Doctor, then according to this report
18 his problems did not go away, did they, sir?

19 A. I really can't say, sir, I cannot answer that
20 question directly.

21 Q. Doctor, are you referring to this report?

22 A. I am referring to this report.

23 Q. According to this report were his problems dated to
24 the exposure to the product, sir?

1 A. Yes, sir.

2 Q. Did they go away according to this report or did he
3 still have them at the time he was examined in '79 according
4 to this report?

5 A. Would you read the question please.

6 (Court reporter read back the question.)

7 A. According to this report it's my interpretation
8 that the problems that he had in '49 and '50 went away.

9 Q. And, Doctor, where in this report, what information
10 is there in this report, direct me to the material that tells
11 you the problems went away. What do you base that opinion
12 upon, sir?

13 A. The interpretation of his --

14 Q. Excuse me, Doctor. Direct me to the place in the
15 report where it has that fact that supports your
16 interpretation?

17 A. I said it was my interpretation--

18 MR. HEINEMAN: Excuse me, Your Honor. Object. The
19 question was what was in the report, then direct me to the
20 report.

21 Q. Direct me to the report please, sir. What is in the
22 report, sir, to support your interpretation?

23 A. The paragraph written by the examining physician
24 about the psychoneurotic problem.

1 Q. Doctor, that paragraph is what we just been
2 reading?

3 A. Yes, sir.

4 Q. In which he describes episodes of nervousness?

5 A. Right.

6 Q. And those according to your examining doctor there
7 he writes down, does he not, sir, ever since exposed to
8 product of explosion? Isn't that his handwriting, sir?

9 A. It is, sir.

10 Q. And he ties it up, does he not, with the explosion,
11 does he not, sir?

12 A. He didn't, the patient did. No, the doctor did
13 not, sir.

14 Q. Did the doctor say that it wasn't tied up to it?

15 A. The doctor is simply repeating what the patient
16 said.

17 Q. Doctor, did the examining doctor take it away from
18 the exposure, did he say he didn't believe him?

19 A. The examining doctor simply repeated what the man
20 said, sir.

21 Q. Doctor, my question is did the examining doctor say
22 he didn't believe him?

23 A. No.

24 Q. And, Doctor, do you believe the man when he says

1 that he's had these episodes of nervousness ever since
2 exposure to the product?

3 A. Absolutely not, I do not believe him, sir.

4 Q. Then what you're saying is the man is lying?

5 A. No, the man believes that he did, but in the
6 history of this man's record in '49 and '50 he didn't have
7 these things, sir.

8 Q. Doctor, he didn't have these problems that we went
9 through a number of times in 1953? Didn't you report, sir,
10 that he had significant problems associated with--

11 A. In '53 he had the palpitations, sir, but not in '49
12 and '50, and the business about lying down and being nervous
13 he did not have in '49 and '50. That's in the record, sir.

14 Q. Doctor, did he not have pains in his legs in '49?

15 A. Yes, he did.

16 Q. Didn't they become severe, sir?

17 A. He claimed they did, sir, yes.

18 Q. That's in '49, correct, sir?

19 A. Yes.

20 Q. And didn't he have pains in the chest, sir, in '49
21 and loss of libido and insomnia, sir?

22 A. Yes, sir.

23 Q. Didn't he have those problems then in '53, the
24 chest aching, the shortness of breath, the low back pain

1 posterior cervical pain, the depression, sir?

2 A. He complained about some of those problems, yes,
3 sir.

4 Q. He complained about all of those problems. I just
5 read to you from the '53 report.

6 A. I thought you were reading from the '49 report,
7 sir, which is what we were referring to originally.

8 Q. No, I'm asking you now, sir, about '53, frequent
9 headaches, aches and pains, extreme fatigue, nightmares,
10 numb, loss of libido, and in '53 at the time you -- I'm
11 reading the wrong man, I'm sorry -- the presternal aching,
12 the marked shortness of breath, the heart palpations, the
13 flushing, the low back pain, the cervical pain, the vertigo,
14 the sandy feeling and the depression were problems that he
15 still had, sir, in '53? Isn't that correct, sir, on Page 11
16 of the 1953 report, sir? Doctor, are you referring to Page
17 11?

18 A. I am reading it now, sir, yes.

19 Q. And he had those problems in '53, didn't he, sir,
20 according to his statement, according to your report of his
21 statement?

22 A. Would you read the whole question please.

23 Q. Doctor, do you understand my question?

24 A. Well, I want to make sure I know what problems

1 you're talking about in '53, sir.

2 Q. Doctor, let me repeat them again, Doctor. He
3 complained of in 1953 the presternal aching, the shortness of
4 breath on exertion, heart palpations, flushing, low back pain
5 posterior neck pain, recurrent vertigo, that's dizziness,
6 sandy feeling in the eyes and depression, isn't that correct,
7 sir?

8 A. He complained of those things, and they are
9 different than '79.

10 Q. Doctor -- Doctor, do you conceive in '79, did you
11 find in '53 that he was a poor psychological adjusted person,
12 nervous?

13 A. Yes, we did, sir.

14 Q. Doctor, didn't he in '79 have the same problem of
15 nervousness that you said he had in '53?

16 A. I'm unable to find the word nervousness in '53,
17 sir.

18 Q. Didn't you tell us just a moment ago, sir, that
19 this was a psychoneurotic person?

20 A. I did, sir.

21 Q. Isn't a neurotic person one that is by definition a
22 nervous person?

23 A. But it doesn't appear in the record.

24 Q. Excuse me, Doctor, isn't a neurotic person one

1 that's a nervous person?

2 A. Yes, sir.

3 Q. Didn't you tell us it was your judgment from 1953,
4 sir, that he was a neurotic nervous person?

5 A. We said he was a neurotic person.

6 Q. Didn't you say that, sir?

7 A. Yes, sir.

8 Q. So, therefore, you found in 1953 that he was a
9 nervous person, didn't you, sir?

10 A. It was our judgment, sir, that he was a nervous
11 person.

12 Q. He's got that same problem in 1979, hasn't he, sir?

13 A. He has a psychoneurotic problem in '79, sir, yes,.

14 Q. He has the same problem of nervousness in '79,
15 doesn't he, sir according to your statement of your man that
16 did the examining that he said?

17 A. No, sir. No, sir.

18 Q. Doctor, didn't we just--

19 A. He didn't complain of nervousness in '53, sir.

20 Q. Doctor, you found that he was nervous in '53,
21 didn't you, sir?

22 A. We found that he was a psychoneurotic, but he
23 didn't complain of nervousness.

24 Q. Didn't you find, sir, that he was nervous in '53,

1 that he was a nervous individual, sir?

2 A. He was a psychoneurotic individual, yes, sir.

3 Q. Would you answer my question, sir? Is that a yes,
4 you did find that he was nervous in '53?

5 A. It was our overall estimate that he was, yes.

6 Q. And he also told you in '79 that he was nervous,
7 didn't he, episodes of nervousness?

8 A. He said he had episodes of nervousness.

9 Q. So he said in '79 that he was nervous as you found
10 him to be in '53, isn't that correct, sir?

11 A. Yes, sir.

12 Q. Yes. And that problem didn't go away, did it, sir?

13 A. Yes, sir, it did go away.

14 Q. Doctor, did he say that he had the problem in '79
15 that you found him to have in '53?

16 A. Yes, sir.

17 Q. Yes. If he has that problem, he has that problem,
18 hasn't he, sir?

19 A. Yes, sir.

20 Q. And if he has it, it didn't go away, did it, sir?

21 A. The psychoneurosis didn't go away, sir, no, sir.

22 Q. The nervousness that you found--

23 A. The psychoneurosis did not go away, sir.

24 Q. Sir?

1 A. The psychoneurosis--

2 Q. Did you understand that I used the word
3 nervousness, Doctor?

4 A. I understand you did, but --

5 Q. I didn't use the word psychoneurosis. Could you
6 answer my question, sir? Did the nervousness that you found
7 him to have in '53, did it go away or did he still have
8 episodes of nervousness according to him in 1979?

9 A. He had episodes of nervousness in 1979, he
10 describes it, sir.

11 Q. Could you answer my question, sir.

12 MR. CARR: Read the question to him again please.

13 (Court reporter read back the question.)

14 MR. HEINEMAN: Object, the witness just answered
15 that question.

16 THE COURT: Objection is overruled. It was not
17 answered.

18 A. My answer was, yes, it went away, sir.

19 Q. Doctor, my question was did he still have the
20 complaints of nervousness according to him, was he still
21 nervous in '79 according to him?

22 A. He was still nervous, he was nervous in '79, yes,
23 sir.

24 Q. And did you find him to be nervous in '53?

1 A. He did not complain of nervousness in '53, sir.

2 MR. CARR: Your Honor, would you direct the witness
3 to answer my question.

4 A. The answer is no, sir, we did not find him.

5 Q. You did not find him to be nervous in '53?

6 A. We did not get a complain of nervousness.

7 Q. Doctor, do you understand my question?

8 A. I do indeed, sir.

9 Q. I didn't say complaint, did I, sir? I asked you--

10 A. I interpreted your sentence to mean--

11 MR. CARR: Your Honor, would you direct the witness
12 that he is absolutely playing games. He knows exactly what
13 I'm asking him.

14 MR. HEINEMAN: Objection, Your Honor. May counsel
15 approach the bench?

16 THE COURT: Yes, you may.

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

19 MR. HEINEMAN: Now, Your Honor, I object to Mr.
20 Carr's request that you instruct this witness that he's
21 playing games. That is not a proper request. It would not
22 be a proper instruction from the Court, and I would ask the
23 Court not to give such an instruction. I object to the
24 statement of counsel as being nothing but a jury speech,

1 something to enhance his position with the jury, that is,
2 counsel's position with the jury, and I object to it on that
3 basis. The Court may decide to instruct the witness with
4 respect to certain things that are proper for the Court to
5 instruct the witness, but playing games is not such an
6 instruction, and I object to it.

7 MR. CARR: I have nothing to say on the point.

8 THE COURT: There is no question that this witness
9 is attempting to evade the answer. He was asked about
10 complaints, he is answering in terms of interpretation. He
11 happens to be game playing. I think the proper instruction
12 would be for him to answer the question that was asked of
13 him, and that is the instruction that I intend to give.
14 There's no question in my mind that this witness is
15 deliberately trying to evade the question that was asked of
16 him, and that is the instruction I will give.

17 MR. HEINEMAN: Obviously, Your Honor, I disagree
18 with your interpretation, and I ask that Mr. Carr's statement
19 about game playing be stricken and that the jury be
20 instructed to disregard it.

21 THE COURT: Objection is overruled.

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

23 THE COURT: Doctor, I'm going to ask you to listen
24 to exactly what it calls for in the terms that it calls for

1 and answer that question and that question alone, no other,
2 no more and no less please. Mr. Carr, would you repeat your
3 question.

4 Q. Doctor, did you not find in 1953 that Mr. Willard
5 was a nervous individual, sir?

6 A. We found that he was a nervous individual, yes.

7 Q. Doctor, did he not have complaints of episodes of
8 nervousness in 1979 that he dated back to the time of the
9 exposure?

10 A. He had episodes of nervousness which he dated back
11 to the 1949.

12 Q. Now, what in this record is their, sir, that tells
13 you that this man's nervous problems that you found him to
14 have in 1953 went away?

15 A. There is nothing in this particular record, nothing
16 in this record which indicates that he was -- that the
17 nervousness which he complained about in 1953 did not go
18 away, nothing in this record, sir.

19 Q. Doctor, you told us earlier that he didn't complain
20 of nervousness in 1953, you found the nervousness in 1953.
21 He didn't complain of it in '53. Don't you recall that, sir?

22 A. We said he was a psychoneurotic in '53, yes, sir.

23 Q. Don't you recall, sir, that he did not complain,
24 that you said he didn't complain of nervousness in '53, but

1 that you found the nervousness in '53?

2 A. We found he was a psychoneurotic in '53, yes, sir.

3 Q. Doctor, that is not a yes to my question. My
4 question is didn't you find that he was a nervous person in
5 '53?

6 A. If nervousness and psychoneurosis is the same, yes,
7 sir.

8 Q. Doctor, aren't you the one that said they were the
9 same?

10 A. No, they're not necessarily so.

11 Q. Doctor, aren't you the one in this courtroom ten
12 minutes ago that said they were the same, sir?

13 A. They could be overlapping, but they're not
14 identical. I can be nervous --.

15 Q. Doctor, my question is are you--

16 A. I can be nervous and not be a psychoneurotic.

17 Q. Doctor, listen to my question, would you? Aren't
18 you one that told us the neurosis and the nervousness mean
19 the same?

20 A. It can mean the same thing.

21 Q. My question is aren't you the one that told us
22 that, sir?

23 A. I may have if it's in the record, sir.

24 Q. Don't you recall just saying it a few minutes ago,

1 Doctor?

2 A. I don't know whether I did, but what I meant--

3 Q. Doctor, don't you recall just saying it a few
4 moments ago?

5 A. Yes. What I meant, sir, is--

6 Q. Doctor, my question is don't you recall saying it
7 just a few moments ago?

8 A. I do.

9 Q. Now, Doctor, if this man has in fact, if he was
10 telling the truth that he had episodes of nervousness in '79
11 that he dates back to the explosion, that's a problem that
12 did not go away, isn't that correct, sir?

13 A. No, sir.

14 Q. Does he have the problem according to him in '79?

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

16 Q. Did he have that problem in '79 according to him,
17 sir?

18 A. According to him, sir?

19 Q. Yes.

20 A. Yes, according to him, sir.

21 Q. Did it go away, sir?

22 A. No, according to him it didn't go away.

23 Q. All right.

24 THE COURT: Mr. Carr, is this a good point to break

1 for lunch?

2 MR. CARR: Yes, your Honor.

3 THE COURT: We'll break at this time. We'll resume
4 again at 1:15. The admonishments I gave you earlier will
5 apply during this break also. Court's in recess for lunch.

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

7

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

9 Q. Dr. Suskind, do you still have 1778 in front of
10 you, sir?

11 A. Yes, I do.

12 Q. Doctor, there were in fact two neurological
13 examinations conducted of Mr. Willard, was there not, as
14 shown by that report, that is, the Mt. Sinai report?

15 A. There appear to be, sir, yes.

16 Q. There was one that took place in the section called
17 the general physical examination section, isn't that correct,
18 sir, beginning on Page 9574440?

19 A. Yes, there was one under that group, yes.

20 Q. And the -- that particular page in the -- rather
21 that particular section has on Page 46 in that section the
22 neurological reflex examination, doesn't it, sir?

23 A. It does, sir.

24 Q. And it has just -- it has the block for if all the

1 reflexes were normal off to the left, doesn't it, sir?

2 A. Umhm.

3 Q. Then it has two parallel blocks for each particular
4 reflex on the right and left, doesn't it, sir?

5 A. Correct.

6 Q. Then there's a code given for the use of that
7 particular table, isn't there, sir?

8 A. Yes, there is.

9 Q. It's I for increased, D for decrease and A for
10 absent, correct, sir?

11 A. Correct.

12 Q. Its not a numbering system, but it is a letteriing
13 system as I have indicated, isn't that correct, sir?

14 A. Yes.

15 Q. And in the case of Mr. Willard there were no blocks
16 filled in, were there, sir, by any letters?

17 A. None of those letters.

18 Q. That would indicate that the examiner found his
19 reflexes to be normal?

20 A. I believe so. He checked the normal box, sir, yes.

21 Q. And he checked the normal box because he found the
22 reflexes were not increased, were not decreased and were not
23 absent, correct, sir?

24 A. Correct, sir.

1 Q. All right. So it's clear that his idea of grading
2 the reflexes is that he will check the -- if they are
3 abnormal, he will put the letter in, either increased,
4 decreased, or absent, that's considered abnormal according to
5 this particular page, is it not, sir?

6 A. I would believe so, yes.

7 Q. If they are not increased and if they are not
8 decreased and if they are not absent, they would be
9 considered normal, and he would put a check in the normal
10 box, correct, sir?

11 A. I would believe so, yes.

12 Q. Now there is a special neurological examination
13 section for this patient as well, is there not, sir, for
14 special neurological exam? It follows, immediately follows
15 the general physical section, starts on page 9574448, does it
16 not, sir?

17 A. Yes, I have it before me, sir.

18 Q. It is captioned special neurological exam, isn't
19 it, sir?

20 A. It is, yes.

21 Q. And the reflex examination is found on Page 4453 in
22 that section, isn't it, sir?

23 A. Yes, it is, sir.

24 Q. And that is the page that has this scale for the

1 reflexes, the numbering system, one equals absent, two
2 sluggish and so forth, correct, sir?

3 A. Correct, sir.

4 Q. And in the columns on that particular page there is
5 the number two entered for these reflexes, upper and lower
6 extremities, isn't it, sir?

7 A. Correct.

8 Q. Two according to that scale means what, sir?

9 A. According to this scale it would mean sluggish.

10 Q. All right. Now, Doctor, this special neurological
11 examination found his reflexes to be sluggish, correct, sir?

12 A. Yes.

13 Q. And the interpretation of that, of those sluggish
14 reflexes by Drs. Moses and Selikoff is found on the first
15 page of Plaintiffs' Exhibit 1778, isn't it, sir, the second
16 paragraph, and this is a part that has been passed to the
17 jury, isn't that correct, sir?

18 A. Yes, I believe so.

19 Q. And they -- these tests performed on Mr. Willard
20 are interpreted to be decreased deep tendon reflexes
21 bilaterally, upper and lower extremities, correct, sir?

22 A. Yes.

23 Q. So they have interpreted the sluggish reflexes to
24 be decreased reflexes, haven't they, sir?

1 A. That is correct, sir.

2 Q. All right. Now, Doctor, the -- we have gone through
3 the 11 persons who have been re-examined, have we not, sir,
4 that are shown on Plaintiffs' Exhibit 1734 and 1734A?

5 A. We haven't gone through all of them, no, sir, we
6 have not.

7 Q. Well, Dr. Suskind, we have whether you remember it
8 or not, but we have gone through otherwise they couldn't be
9 on this board and we--

10 A. I'm sorry, I thought you were referring to the way
11 we just did it, sir, individual by individual.

12 Q. Well, Doctor, we went through them individual by
13 individual as well.

14 A. No, sir.

15 Q. The way we just did it?

16 A. No, sir.

17 Q. I'll suggest to you that your memory is not as
18 clear on the point as it should be, and the record will speak
19 for itself. Doctor, in addition to going through these
20 individuals, we, of course, have accounted for 13 of the
21 other 36, have we not?

22 MR. CARR: Let me have a number 1746A please.

23 MR. HEINEMAN: Objection, Your Honor. May counsel
24 approach the bench.

1 THE COURT: Sure.

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

4 MR. HEINEMAN: I think I object to Mr. Carr's
5 statement about -- about the witness' recollection, because
6 my recollection is also that I don't think we've covered
7 Charles Arthur yet in this last go round when he started
8 going through them one by one as to whether their situation
9 had changed with time. He went through Arthur when he went
10 through that Exhibit 1734, I think it is, but he didn't go
11 through Arthur, I don't think, in this last go round. I
12 object to his statement about the witness' recollection. I
13 think the witness' recollection is correct.

14 MR. CARR: If his is correct, he can point it out on
15 redirect, counsel, and show up that I did not cover him.

16 THE COURT: Let's go ahead. At some point in time
17 they've all been gone through

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

19 (Plaintiffs' Exhibit 1746A marked for
20 identification.)

21 Q. Doctor, the 1746A is a blowup of 1746 that you have
22 in front of you, is it not, sir?

23 A. I have 1748, sir. Is that right?

24 Q. No, you've got a different --

1 A. It's the same names and the same causes of death
2 and so on. I don't believe I have that, sir, not in front of
3 me.

4 Q. Well, we did have two Exhibits 1746 and 1748.
5 Could you give us please 1746? Here is 1746, and it is --
6 1746A is a blowup of that, is it not, sir?

7 A. Yes, it is, sir.

8 Q. Doctor, 1748 --

9 MR. CARR: Your Honor, I'd offer 1746A into
10 evidence.

11 THE COURT: Any objection?

12 MR. HEINEMAN: We'd like to interpose the same
13 objections that we did with respect to 1746 and I think
14 1745. I think the two were connected, as I recall, Your
15 Honor.

16 THE COURT: They're incorporated. It's admitted
17 over objection.

18 Q. Doctor, 1748 is the exhibit that is -- has the same
19 men's name listed and identified, gives the life expectancy
20 and the average age as well, does it not, sir? Let me hand
21 you 1748 so you can be -- oh, you do have a copy of 1748?

22 A. Yes.

23 Q. It shows the life expectancy of each individual,
24 the plus or minus number of years and the average age at

1 death. Otherwise, it contains the same information as 1746,
2 does it not, sir?

3 A. Yes, it does.

4 Q. Yes. Now, Doctor, these reports that you made over
5 the years as we have mentioned before, have been relied upon
6 and have been used by others in attempting to discover what's
7 -- what can be the consequences or health effects from
8 exposure to dioxin. Do you recall that, sir, we went through
9 that?

10 A. Are you referring to specific reports, sir?

11 Q. Doctor, I'm referring to the reports that you have
12 made in '73 and '78 and in '80 all as shown in the exhibits,
13 Plaintiffs' Exhibit 1751 that your reports have been relied
14 upon as to the health effects of these Nitro workers by the
15 world in general and scientific world in particular. Do you
16 recall that, sir?

17 A. We have made -- we have made explanations of the
18 effects of exposure to 2,4,5-T manufacturing in the papers
19 you mentioned, yes, sir.

20 Q. Doctor, that isn't the question that I have asked
21 you. Now, if the yes, sir relates to the question I asked
22 you, I'll accept it, but my question was not as you related
23 it, sir, but my question was these reports have been relied
24 upon with reference to the health effects from Nitro workers

1 by the world in general and scientific world in particular,
2 isn't that correct, sir?

3 A. I assume they have, sir.

4 Q. And, Doctor, you also -- are you aware of the fact
5 that the EPA reviews reports of this sort and uses reports of
6 the sort you have made in arriving at conclusions as to what
7 to do with dioxin spills and dioxin exposure?

8 A. I'm aware of the EPA reports, sir, yes, sir.

9 Q. Is that also a yes to my question, sir, that you're
10 aware that the EPA uses reports of this sort and relies upon
11 reports of this sort in making decisions relative to dioxin
12 spillage and contamination and things of that sort, relying
13 upon them among other things, not just on your reports?

14 A. I would have to answer no to that, sir, because --
15 go ahead -- I'm answering no to that, sir.

16 Q. You're not aware of the fact that the EPA has used
17 and relied upon your reports, sir?

18 A. Some reports, yes, some they have quoted, others
19 they haven't.

20 Q. Well, you know they've relied upon your reports as
21 to the longevity of the health effects of dioxin upon the
22 Nitro workers as you've reported it, you know that?

23 A. No, sir.

24 Q. You don't know that?

1 A. About longevity, no, sir, I never heard them quote
2 about longevity.

3 Q. You've never heard them talk about how long these
4 symptoms last, sir, according to your reports?

5 A. Longevity means length of life, sir.

6 Q. Doctor, I'm talking about longevity in terms of the
7 health effects, the system, sir, the health effects upon the
8 human system, the longevity of those health effects?

9 A. Are you talking about persistence, sir, or lack of
10 persistence?

11 Q. Yes, how long those health effects last, sir.

12 A. They may have.

13 Q. Well, don't you know that they have, sir?

14 A. Well, I can't quote offhand that they have, but
15 they may have.

16 Q. Well, you expect them to at least, you expect them
17 to rely upon reports that you make, sir, that these are
18 problems that last for a couple of years and then go away,
19 you expect them to rely upon that kind of report, don't you,
20 sir?

21 A. I would hope that they would rely on my report,
22 sir.

23 Q. Is that a yes to my question, sir, that you expect
24 them to rely upon the statements that you make as to how long

1 these health effects last, how long the chronic symptoms
2 last?

3 A. I would hope that they would, sir, yes.

4 Q. Yes. And are you aware that their most recent
5 publication on the health effects of dioxin relies upon what
6 you have said relative to how long these symptoms are
7 lasting?

8 A. While I have read some of the EPA reports I'm not
9 sure what you're referring to at this time, sir.

10 MR. CARR: Do you have Plaintiffs' Exhibit 1627
11 there? It's the big -- it's a thick book the EPA -- it won't
12 be in those, Tammy.

13 Q. Now, Doctor, if that is numbered the same --

14 MR. CARR: Your Honor, I have a page from that
15 paper, 8-62 to pass to the jury at this time.

16 THE COURT: Fine.

17 Q. Doctor, if you would turn to 8-62?

18 A. Yes, I will. Sir, did you say 8-52?

19 Q. 62.

20 A. 62.

21 Q. Are you there, Doctor? Doctor, are you on that
22 page, sir?

23 A. Yes, I am on that page, sir.

24 Q. Doctor, the first full paragraph on that page

1 refers to the Nitro, West Virginia study, does it not, sir,
2 the accident in Nitro West Virginia? Do you see that, sir,
3 the first full paragraph, first sentence, you see that, sir?

4 A. I have it on 8-61, sir.

5 Q. No, 8-62, Dr. Suskind.

6 A. This is the one I have, sir.

7 Q. Well, it's a different -- oh, you've got the
8 earlier draft, but the language is exactly the same, yes.
9 Doctor, the Page 8-62 the exhibit that you have is the first
10 draft of the EPA report -- there's another exhibit, I don't
11 recall the number offhand, that is the final draft, but the
12 language in question is exactly the same and directing your
13 attention to the first paragraph on the page that I gave you,
14 sir, from the EPA book, it does refer to the 1949 explosion
15 at Nitro, West Virginia, doesn't it, sir? Do you see that,
16 sir, the first full paragraph?

17 A. Yes, I do, sir.

18 Q. All right. Now, Doctor, it describes the symptoms
19 included being nausea headaches, fatigue, muscular aches and
20 pains and chloracne, Zack Suskind, 1980. Do you see that,
21 sir?

22 A. Yes, it is.

23 Q. And that's the study from which this quote in
24 Plaintiffs' Exhibit 1730 from which it was taken, correct,

1 sir, the Zack Suskind study in 1980?

2 A. It's not an exact quote, sir, no.

3 Q. Doctor --

4 A. It's taken from the same --

5 Q. Doctor, excuse me, you're confusing--

6 A. I'm sorry.

7 Q. The Zack Suskind mortality study in 1980, are you
8 with me on that, Doctor?

9 A. Yes, I am.

10 Q. The statement that's contained on Plaintiffs'
11 Exhibit 1730 was taken from that Zack Suskind 1980 report,
12 was it not, sir, exact quote?

13 A. 1751 is that? No, that's something else.

14 Q. Well, it's also on 1751.

15 A. Well, I can't see that so I better look at it.

16 Q. Doctor, it reads in a few case workers continued to
17 complain of aches and pains of the lower extremities and
18 nervousness, excessive fatigue, and dyspnea?

19 A. Yes, I have that, sir.

20 Q. All right. That is the quote that's taken from the
21 study, is it not, sir, that -- taken from the Zack Suskind
22 1980 study report?

23 A. That's taken from the 1980 report, sir, yes.

24 MR. CARR: And, Your Honor, for the record the page

1 that has been passed to the jury is not from Plaintiffs'
2 1627, which was the first draft, but it's page 8-62 from
3 Plaintiffs' Exhibit 1665, which was the final report.

4 Q. Now, Doctor, this statement in this book published
5 by the EPA says, does it not, chronic symptoms lasting up to
6 two years were severe aches and pains, fatigue, peripheral
7 neuropathy, and some residual chloracne. You see that, sir?

8 A. Yes, sir.

9 Q. And, Doctor, the reports we have gone through --
10 oh, strike that. This would suggest, does it not, sir, that
11 these symptoms that we have gone through lasted only two
12 years?

13 A. That's what it would suggest here, sir. That's not
14 a quote from my paper, however.

15 Q. I understand that, Doctor, but the people read your
16 various papers at this time in 1984, they certainly had
17 available to them all your various studies, did they not,
18 sir?

19 A. Correct, sir.

20 Q. And the conclusion that the EPA got from your study
21 at least the 1980 study that's cited here, is that these
22 symptoms lasted up to but not beyond two years, isn't that
23 correct, sir?

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

1 Q. That's an interpretation that they got presumably
2 from your various reports, correct, sir?

3 A. I can't be responsible for what they did, sir.

4 Q. Oh, but, Doctor, I insist that you can be
5 responsible.

6 A. No, they may have misinterpreted--

7 Q. Doctor, you are responsible for those reports that
8 you put out, are you not, sir?

9 A. Sure, and I stand behind them.

10 Q. Doctor, you expect people to read these reports,
11 don't you, sir?

12 A. I assume that they do and read it accurately.

13 Q. Doctor, you expect them to believe that as you --
14 as shown in Plaintiffs' Exhibit 1751, that in a few cases
15 they continued to complain of it in a subsequent examination
16 and in 1727 that in a very few cases they continued to
17 complain of mild pains, nervousness, and fatigue, and in 1728
18 you expect them to believe that only a few cases did workers
19 continue to complain of pains, nervousness, and fatigue. You
20 do expect them to believe those things, don't you, sir?

21 MR. HEINEMAN: Objection, your Honor.

22 A. I don't have this before me, sir, so--

23 MR. HEINEMAN: Excuse me, Doctor.

24 A. Where are the exhibits?

1 THE COURT: Doctor, please.

2 MR. HEINEMAN: Doctor, please, I'm making an
3 objection.

4 THE COURT: When someone's trying to make an
5 objection, please stop.

6 MR. HEINEMAN: Okay. Your Honor --

7 THE COURT: Gentlemen, why don't you approach the
8 bench for a minute please.

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

11 MR. HEINEMAN: Would you -- I wonder if you would
12 read back to me what that last question by Mr. Carr was,
13 because I thought he was referring to 1627 and reading in
14 words that weren't there. He said 1627 says a few.

15 MR. CARR: I said 1727, counsel, you can't hear,
16 1727 not 1627.

17 THE COURT: Okay.

18 MR. HEINEMAN: I understood you to say 1627.

19 MR. CARR: If I did, I misspoke.

20 THE COURT: Why don't you restate 1727.

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

22 Q. Doctor, the reports of yours that I'm referring to
23 are the Monsanto Exhibit 62 the Zack Suskind 1980 report, the
24 Plaintiffs' Exhibit 1727, which is your 1978 Lyon, France

1 report to the cancer agency, and Plaintiff's Exhibit 1728,
2 which is your 1970 report to the NIEH conference at Research
3 Triangle Park in North Carolina. You do recognize those
4 quotes that I cited, do you not, sir?

5 A. I do.

6 Q. Yes. And, Doctor, you expected people to -- would
7 it be reasonable a person reading those reports to come to
8 the conclusion, sir, that these chronic symptoms would go
9 away after a couple years?

10 A. No, sir.

11 Q. It wouldn't be reasonable for somebody to come to
12 that conclusion?

13 A. Not if they read the paper, sir.

14 Q. Doctor, your paper, the strongest language you used
15 was that in a few cases in the 1953 exam they continued to
16 complain. The other language that you used was to the effect
17 that in a very few cases they had, in very few cases workers
18 continued to complain of mild pains, nervousness, and
19 fatigue?

20 A. Correct.

21 Q. Didn't you intend to convey, sir, that these
22 problems were mild and short-lived?

23 A. I can't answer that question as it's asked for,
24 sir. Short-lived is the problem.

1 Q. Doctor, you understand what I mean what I use the
2 word short-lived, don't you, sir?

3 A. No, I don't, sir.

4 Q. Doesn't last a long time, lasts a couple of years?

5 A. Well, in this instance it may have, some of them
6 may have lasted longer than two years.

7 Q. Doctor, that isn't what I'm asking you, sir. I'm
8 asking did you not mean to convey -- do you have 1751 in
9 front of you, sir, which has the three quotes in question?

10 A. I do, sir, yes.

11 Q. Did you not mean to convey in these three
12 publications that these problems that these workers had were
13 after a few years mild and short-lived?

14 A. Again I have problems with the short-lived. If
15 four years --.

16 Q. By short-lived I mean lasting a couple of years?

17 A. If four years is short-lived, yes, sir, but this
18 says two years.

19 Q. I understand that, Doctor. It wouldn't make a lot
20 of difference whether or not they put in there chronic
21 symptoms lasting up to four years or two years, would it,
22 sir, as far as this--

23 A. I think it would.

24 Q. As far as the sense of what you meant?

1 A. It would to me, and it might be to this Court as
2 well.

3 Q. Well, Doctor, it does make a difference to this
4 Court, because you knew in '53 that it wasn't a few cases
5 that had these complaints, you knew it was 27 out of 29 as
6 we've established, isn't that correct, sir?

7 A. No, sir.

8 Q. It's not correct, sir, that we established that?

9 A. No, sir, not to my satisfaction, sir.

10 Q. Doctor, you testified time and again that it was
11 your interpretation in this courtroom, it was your
12 interpretation that 27 out of 29 people continued to have
13 these complaints. Don't you recall that, sir?

14 A. It wasn't my interpretation, it was yours, sir.

15 Q. Doctor, are you now saying it was not your
16 interpretation?

17 A. No.

18 Q. You are saying that it is not your interpretation?

19 A. It is indeed.

20 Q. Doctor, you don't recall the number of times that I
21 re-established that it was your interpretation, that I
22 established it over and over again, and you agreed that it
23 was indeed your interpretation?

24 MR. HEINEMAN: Object. He just said it is indeed,

1 didn't he? Did I misunderstand?

2 MR. CARR: No, he said it's my interpretation and
3 not his interpretation.

4 Q. Isn't that what you're saying, Doctor?

5 A. I said it was not my interpretation.

6 Q. But don't you recall, sir, that we've established a
7 number of times that it was your interpretation according to
8 your interpretation of your records? Don't you recall we
9 established that a number of times?

10 A. I can't recall that completely, sir, no, I don't.

11 Q. Doctor, on March 7th, 1986, Page 52, counsel.

12 Didn't I ask you these questions, Doctor? Question: There
13 were 27 out of 29 had these symptoms, didn't they, sir, and
14 your answer was, according to your records, sir, yes. Then
15 my question was, Doctor, according to whose interpretation of
16 these records? These were symptoms according to whose
17 interpretation? And your answer was, sir, according to my
18 record and my interpretation. Didn't you say that, sir, at
19 that time?

20 A. I may have said it at that time, sir, yes. However
21 --

22 Q. Doctor, I didn't ask you about anything calling for
23 a however. I established that time and time again. Don't you
24 recall that, sir? On Page 77 didn't you say that these were

1 symptoms that these men had?

2 A. I don't have the transcript, sir, so I can't verify
3 it, sir.

4 Q. Doctor, do you have no memory at all that we
5 established -- and the Court even instructed you a couple of
6 times that you had testified that it was your
7 interpretation. You recall that, sir?

8 A. I recall that the Court instructed me to assume
9 that it was.

10 Q. And the Court instructed you to assume that, sir,
11 based upon your testimony that it was your interpretation of
12 your records. Don't you recall that, sir?

13 A. Based on that assumption.

14 Q. No, based upon the fact that it was your
15 interpretation of your records.

16 A. It was my records, but the interpretation has a
17 variety of meanings, sir.

18 Q. Doctor, just so there won't be any problem about
19 it, you said there 27 out of 29 and then according to my
20 records and my interpretation 27 out of 19 had these
21 symptoms.

22 A. I believe I was asked to assume that that was the
23 case.

24 Q. No, Doctor, look and see if you were asked to

1 assume that here, sir. You see that anywhere where you were
2 asked to assume that, sir? You see that anywhere, Doctor?

3 A. I do not see it here, sir, no.

4 Q. That is your testimony, isn't it, Doctor?

5 A. That was my testimony, sir, yes.

6 Q. Now, Doctor, these 27 out of 29 with these
7 particular symptoms you relayed to the world that only a very
8 few had these symptoms, didn't you, sir?

9 A. Yes, I did, sir.

10 Q. And the EPA has interpreted your reports to mean
11 that these chronic symptoms only lasted a relatively few
12 years, isn't that correct, sir?

13 A. Correct, sir.

14 Q. Now, Doctor, isn't that a reasonable interpretation
15 to reach based upon what you reported the case to be in these
16 three exhibits?

17 A. Yes, sir.

18 Q. Yes. Now, Doctor, and the -- even at the time you
19 were making your various reports you, of course, as late as
20 in 7 -- in '80 and '73 and '78 you had just the '49, the
21 1950, and the 1953 examinations, didn't you, sir, to
22 interpret?

23 A. Yes.

24 Q. Yes. And, Doctor, by 1973 and '78 you in addition

1 had seen the reports of Dr. Nessman relative to some of these
2 workers, had you not, sir?

3 A. I had seen his -- I can't remember, sir, whether I
4 saw all of them, but what I -- what I can recall is that
5 there was and this was reinforced by the memorandum of Mr.
6 Wager.

7 Q. Excuse me, Doctor, my question is you had seen the
8 Nessman reports?

9 A. Report, sir, not reports.

10 Q. Doctor, doesn't this exhibit here 1759 indicate
11 that you discussed with Mr. Stone the findings concerning the
12 psychoneurosis in these employees, in most of these
13 employees?

14 A. That's what the memorandum reads, sir.

15 Q. Doctor --.

16 (Plaintiffs' Exhibit 1779 marked for
17 identification.)

18 Q. Doctor, I'll hand you now what's been marked
19 Plaintiffs' Exhibit 1779, and I'll represent to you that
20 these are the the reports of Dr. Nessman that were given to
21 us a couple weeks ago at our request by Monsanto for these
22 reports.

23 MR. HEINEMAN: Objection. May counsel approach the
24 bench?

1 THE COURT: Sure.

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

4 MR. HEINEMAN: I object to that statement about
5 these being given to him a couple weeks ago. These documents
6 are among the Nitro documents that were provided to Carnow
7 and on which there was constructive production made over a
8 year ago.

9 MR. CARR: Your Honor, to my knowledge there's
10 absolutely no truth in that statement that Mr. Heineman said.
11 I'm not suggesting that he's misrepresenting on purpose, he
12 simply doesn't know the facts of the case. We have inquired
13 and we did not find -- Court asked for these Nessman reports
14 would be forthcoming. It isn't material to the point
15 anyway. The records that I have given to the witness are
16 Nessman reports that were given to us a few weeks ago. I
17 represented to the witness that these are reports Monsanto
18 has given to us a few weeks ago.

19 MR. HEINEMAN: But the problem is --

20 MR. CARR: Whether they had been given earlier or
21 not is -- and Mr. Heineman can represent what they were, and
22 I tell the Court to my knowledge they were not, but it's
23 really a waste of time for the Court to try and decide
24 whether they were or were not.

1 MR. HEINEMAN: My understanding is they were. They
2 were in that microfilm stuff.

3 THE COURT: I don't think either of you needs to
4 resolve that now.

5 MR. HEINEMAN: They were on the microfilm.

6 THE COURT: Let's go ahead. There's no question
7 what he said is correct as far as this whether you had --
8 whether they were constructively produced before or not, they
9 were requested and produced a couple weeks ago. You're not
10 disputing that fact?

11 MR. HEINEMAN: No, the problem is the implication
12 in front of the jury.

13 THE COURT: Well, I don't think so.

14 MR. HEINEMAN: That they were withheld in some
15 way, and I don't think that's right.

16 THE COURT: I don't think that implication was
17 made. What was said was that he asked for them and you gave
18 them to him. That's -- I think there's a neutral implication
19 there in what was said. Since it is a neutral implication, I
20 think the other argument isn't really worth going into in
21 front of the jury right now anyway, so I'll overrule your
22 objection.

23 MR. HEINEMAN: Okay. For the record I ask that the
24 Court that the remark of counsel be stricken, and the jury be

1 instructed to disregard it.

2 THE COURT: Overruled.

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

4 MR. CARR: Your Honor, I'd like to offer 1779, I
5 think the number is, into evidence at this time.

6 THE COURT: Any objections?

7 MR. HEINEMAN: One moment, Your Honor.

8 THE COURT: Pardon?

9 MR. HEINEMAN: One moment please.

10 THE COURT: Sure.

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

13 THE COURT: Sure.

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

16 MR. HEINEMAN: First of all, Your Honor, in
17 connection with what we were saying before, Mr. Nassif
18 informs me that the -- that the receipt which was given to
19 Mr. Carr along with these reports recites something about
20 these are the ones that were not produced before, so I
21 withdraw my objection, because -- but with respect to the --
22 with respect to the documents of this, I would object on the
23 basis that this document, a, these aren't all of the reports,
24 and I thought they were represented to be all of the Nestmann

1 reports. Secondly, I would object on the basis there's no
2 identification, no authentication, and they're hearsay, so
3 there's no foundation been laid for them.

4 MR. CARR: It's already been by exhibits in this
5 case shown that Dr. Nestmann examined these people for
6 Monsanto. The authenticity is recorded in the fact that they
7 have delivered them to us from their records, and, well, I
8 don't think --

9 MR. HEINEMAN: Well, the record also says, Mr.
10 Carr, that he examined people on behalf of the Workers' Comp
11 Commission, and that is stated in the document which Mr. Carr
12 has, and so I don't know whether this particular examination
13 was a result of anything done by -- for Monsanto or whether
14 it was something done for the Workers' Comp Commission.

15 MR. CARR: There is no document at all that states
16 that.

17 MR. HEINEMAN: There certainly is.

18 MR. CARR: There is not, period.

19 MR. HEINEMAN: I believe I can show it to you.

20 THE COURT: That '56 memo stated that he examined on
21 behalf of Monsanto. What other document are you talking
22 about?

23 MR. HEINEMAN: I believe that there's a document --
24 I'll ask -- I'll be glad to go get it.

1 THE COURT: If there is, go get it you can.

2 MR. HEINEMAN: Well, Mr. Nassif informs me that the
3 memo is in our office. I have seen it, I can tell the Court
4 that it's there, but I don't have it in the Court with me.

5 MR. CARR: If he's seen it, I haven't seen it.

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

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

9 MR. CARR: Your Honor, we ask leave to pass the
10 exhibit to the jury, 1779.

11 THE COURT: Fine.

12 Q. Doctor, this Exhibit 1779 consists of a number of
13 reports by Dr. Nestmann, does it not? Doctor, you can see
14 that just at a glance, can't you, sir? I'm not asking you to
15 read them all at this time, just to confirm that this exhibit
16 consists of a number of Nestmann reports?

17 A. Yes, I believe they do, on several people, sir.

18 Q. And, Doctor, the first one is -- Dr. Nestmann, by
19 the way, we previously established is a doctor of internal
20 medicine, correct, sir?

21 A. Yes, I believe we have stated that, sir.

22 Q. And the first one there is a date over to the left
23 hand side of apparently January 25th, 1955, correct, sir?

24 A. Yes, sir.

1 Q. And it deals with Chester Jeffers, who was a pipe
2 fitter in the building, correct, sir? You see that, sir?

3 A. According to this record, sir, yes.

4 Q. According to what Mr. Jeffers told Dr. Nestmann,
5 who examined the man in behalf of Monsanto, he was all right
6 until this explosion, wasn't he, sir?

7 MR. HEINEMAN: Object to the question, your Honor,
8 on the basis previously stated to the Court.

9 THE COURT: Objection is overruled.

10 Q. You see that the very first sentence in the first
11 full-bodied paragraph, sir?

12 A. I do, sir.

13 Q. And, Doctor, he describes a number of chief
14 complaints that he had at the very top of the page, doesn't
15 he, sir?

16 A. He does.

17 Q. And these are complaints that he's having as of 19
18 -- as of the 1955 examination, isn't that correct, sir?

19 A. I assume that's so, sir.

20 Q. And that's some six years after the explosion, sir,
21 nearly six years, not quite?

22 A. Yes.

23 Q. And, Doctor, he states, does he not, sir, in the
24 third full paragraph there that -- I'm sorry, yeah, the third

1 paragraph that his eye trouble started four years ago? That
2 would be about 1951?

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

4 Q. And also states that his nervousness is as bad as
5 when it started, that he thought it was due to his liver?

6 A. That's what this record states, sir.

7 Q. The record also states, does it not, sir, that
8 nervousness is present all the time?

9 A. That's what the patient claimed, sir, yes.

10 Q. And the patient also said, did he not, sir, that
11 he's been sleeping poorly the last month?

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

13 Q. Now, Doctor, when you use the word claim, are you
14 implying by that or meaning to imply by that that you think
15 the man was lying, that this claim was not true?

16 A. No, sir, not at all, sir.

17 Q. Doctor, then the question as I put it to you this
18 is what he stated, you would accept that, wouldn't you, sir?

19 A. Only as a complaint, sir, yes.

20 Q. Doctor, you didn't say as a complaint, you said as
21 a claim, didn't you, sir?

22 A. It's the same --

23 Q. My question to you, sir, is he stated to this
24 doctor that he had this particular problem, did he not, sir?

1 A. Yes, sir.

2 Q. And, Doctor, he also stated to the doctor that he
3 had been sleeping poorly the last month, right, sir?

4 A. Yes, that's what he complained of, sir.

5 Q. He also described an ankle problem that he had,
6 didn't he, sir?

7 A. He did.

8 Q. Popping and cracking, isn't that correct, sir?

9 A. I assume he's referring to his ankle, sir, yes.

10 Q. You have heard of the phrase ratchet joints,
11 haven't you, Dr. Suskind?

12 A. I have on occasion.

13 Q. And you have heard, whether you accept it as fact
14 or not, that others have said that dioxin exposure can cause
15 ratchet joints?

16 A. Absolutely not, sir.

17 Q. Haven't you heard that, Doctor?

18 A. No, sir, not from authoritative sources.

19 Q. My question is haven't you heard that, sir?

20 A. No, sir, I have not.

21 Q. Not from any source?

22 A. Not from any source.

23 Q. All right. And, Doctor, he also states that legs
24 ache more or less intermittently, worse at different times?

1 A. That is what it reads, sir, yes.

2 Q. He also describes that he has headaches -- I'm
3 sorry, earaches, he has stomach discomfort, he got a headache
4 and weak stomach that started two weeks ago?

5 A. Can we take that one at a time, sir? He's had
6 headaches?

7 Q. First is the ear.

8 A. Earaches.

9 Q. Is the earaches and then he's got discomfort in his
10 abdomen, his lower abdomen he has problems. On the next page
11 he describes headache and weak stomach that started two weeks
12 ago?

13 A. That was among his complaints, sir, yes.

14 Q. His headache is present all day long, is that
15 correct, sir?

16 A. His headache present all day long, yes, that's what
17 he claimed.

18 Q. He states that as far as he was concerned he had
19 always had good health as far as the past history is
20 concerned?

21 A. That's how the record reads, sir.

22 Q. He also described his libido as not being affected
23 now, but that he had a problem for some three years, is that
24 correct, sir?

1 A. Yes, that is correct, sir, according to this
2 record.

3 Q. Doctor, his jerks on a scale of one to four or zero
4 to four would all be in the reflexes examination four plus,
5 would they not, sir?

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

7 Q. That would be hyperactive, Doctor?

8 A. It might according to the judgment of the doctor.

9 Q. So according to judgment of this doctor, this man
10 had hyperactive reflexes in all of his extremities?

11 A. I don't know, sir.

12 Q. Doctor, doesn't he describe them as four pluses?

13 A. Yes.

14 Q. And haven't you agreed that four plus means
15 hyperactive?

16 A. It could be, sir.

17 Q. Doctor, is there anything else that it could be?

18 A. It could be normal for this person.

19 Q. Doctor, I'm not asking you about that, did I?

20 You're back on that again. I'm asking you about the activity
21 of the reflexes.

22 MR. HEINEMAN: Objection, Your Honor, he asked is
23 there anything else it could be. The answer is responsive.

24 THE COURT: Overruled.

1 Q. Doctor, isn't it correct that the four plus
2 describes hyperactive reflexes?

3 A. In some individuals, yes, but not all the time,
4 sir.

5 Q. Doctor, doesn't the description four plus mean
6 hyperactive reflexes?

7 A. It could.

8 MR. HEINEMAN: Object, asked and answered.

9 Q. What else does it mean, sir, if it doesn't mean
10 hyperactive?

11 A. It could be, sir, but I'm not sure.

12 Q. Doctor, my question is what else could it be other
13 than--

14 A. It could be normal for this person.

15 Q. Excuse me, Doctor, I didn't ask you that, and you
16 didn't let me finish the question. With regard to the
17 activity of the reflex, sir, not whether it's abnormal or
18 whether it's normal. It may be perfectly normal, Doctor, I'm
19 not asking you whether or not it's a normal reflex. Do you
20 understand that, Doctor?

21 A. I do indeed, sir.

22 Q. You understood it when you gave me the answer,
23 didn't you, sir? You understood that I'm asking you about
24 the grade of the activity. Now, Doctor --

1 A. The grade of the activity is --

2 Q. What does four plus mean with respect to the
3 activity of the reflex other than a hyperactive reflex?

4 A. I think I said it could mean normal.

5 Q. Doctor, you again are interpreting. I'm not asking
6 you for an interpretation whether it's normal or abnormal.
7 Do you understand me, Doctor?

8 A. I do indeed.

9 Q. With respect to the grade of activity, sir, what
10 could four plus mean other than hyperactive?

11 A. It means four plus.

12 Q. Doctor, that's saying four plus means four plus?

13 A. It means--

14 Q. Doctor, what I'm asking you --

15 A. It means a vigorous reaction, that's what it means.

16 Q. Doctor, what I'm asking you is what could four plus
17 mean other than with reference to grade of activity other
18 than hyperactive reflex?

19 A. Are you asking me for a generic interpretation?

20 Q. Doctor, you understand what I'm asking you. Would
21 you answer my question please?

22 A. Sir, I have to apologize, but I'm not sure I do.

23 Q. Doctor, I'm sure you do, so please answer my
24 question. What could four plus mean, as you understand it

1 based upon your experience, sir, of grading of activity of
2 reflexes, what could four plus mean other than hyperactive
3 reflex?

4 A. It could mean a vigorous --

5 MR. HEINEMAN: Excuse me, Doctor. Objection. May
6 counsel approach the bench?

7 THE COURT: Yes, you may.

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

10 MR. HEINEMAN: Object to the statement of counsel
11 about I'm sure you do know what I mean and ask that it be
12 stricken and ask that the jury be instructed to disregard
13 it. In addition to that, this question has been asked and
14 answered. He asked what else could it mean, and the man said
15 it could be a vigorous reaction. It's already been answered.

16 THE COURT: First of all, we have gone through this
17 at least once today, we have gone through it before today.
18 We have gone through this same thing as far as his
19 interjecting. He knows very well, and he knew very well that
20 that answer was not called for, and I previously said it was
21 not responsive. I think under that context Mr. Carr's
22 question was correct. He started to give the answer that you
23 talked about in the middle of a question that was being
24 asked. If he would wait and answer the question after it is

1 asked and respond that way, it might very well be responsive
2 to the question, but he never gave it again after the
3 question was asked, so I don't know if it was responsive or
4 not. When he did say vigorous reaction, it was in the middle
5 of a question being asked, which he also persists in doing
6 despite requests not to do so. So I don't -- you and I
7 cannot tell whether it's responsive to that question or not
8 at this point in time. Your objections are both overruled.

9 MR. HEINEMAN: Your Honor, he's frequently
10 answering in the middle of Mr. Carr's questions, because Mr.
11 Carr continues to interrupt his answers, and to that end I
12 would disagree with the Court's interpretation of what
13 happened, but in any event he has said a vigorous reaction.
14 That's precisely responsive.

15 THE COURT: The only way to keep this witness from
16 continually giving nonresponsive answers in many
17 circumstances is to interrupt his answer. Mr. Carr is not
18 abusing that. Why don't you ask the question again.

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

20 Q. Doctor, the word hyper means more or greater than,
21 does it not, sir?

22 A. Yes.

23 Q. Like hypo means less than?

24 A. Yes, sir.

1 Q. Hyper means above or more than, correct, sir?

2 A. Right, right.

3 Q. Hyperactive means more than ordinary activity,
4 doesn't it, sir?

5 A. Yes.

6 Q. And what could four plus mean other than more than
7 ordinary activity?

8 A. Depending upon the interpretation of what a four
9 plus reaction means --

10 Q. Doctor, I'm not asking you to interpret the test.
11 I'm asking you when the neurologist conducts the test and
12 uses the number four plus, I'm asking you to tell us a
13 neurologist or an internist or a dermatologist, whoever uses
14 that with regard to grading the activity of a reflex, what
15 could four plus mean other than a reflex that is more active
16 than ordinary, that is hyperactive?

17 A. Well, if there is an ordinary reflex, and that
18 would be a two plus or a three plus, this would be more than,
19 this would be more than a two or a three plus, this would be
20 a greater than.

21 Q. My question is what could it be other than that,
22 Doctor?

23 A. Well, you couldn't have anything other than that.

24 Q. Thank you, Doctor. Now, in addition thereto, the

1 doctor found that his abdominal reflexes were one plus, did
2 he not, sir?

3 A. Right.

4 Q. And one plus would be hypoactive, wouldn't it, sir?

5 A. No, not necessarily.

6 Q. What could it be other than my hypoactive, sir,
7 less than ordinary?

8 A. As I indicated in this other instance, Mr. Carr, I
9 really believe, honestly believe that a one plus reaction
10 could be a normal reaction and even though it is -- now, what
11 I would say it is less than, it is less than a two plus or a
12 three plus and what a neurologist does is and Dr. Nestmann
13 did that is to interpret the significance of these reactions.

14 Q. Doctor, I'm not asking you to interpret the
15 significance of these reactions, am I?

16 A. I'm not, I'm not interpret willing.

17 Q. Do you understand that--

18 A. Yes, sir.

19 Q. Do you understand that I was asking you whether or
20 not a neurologist does interpret these reactions? You know
21 that I know that, you know that the jury knows that, don't
22 you, sir?

23 A. No, I don't.

24 Q. You don't know that?

1 A. You haven't asked me, sir.

2 Q. Doctor, you have explained it and explained it,
3 other neurologists have been here and explained it. You know
4 that we know that, don't you, sir?

5 A. I would --

6 Q. Doctor, referring to the one plus, that means a
7 less active reflex, does it not, sir?

8 MR. HEINEMAN: Objection, he interrupted the last
9 answer.

10 A. It means less active than two plus.

11 THE COURT: Pardon?

12 MR. HEINEMAN: Never mind.

13 Q. If a two plus is a normal reflex as you suggested
14 it may be, it is a reflex then that is less active than a
15 normal reflex, isn't it, sir?

16 A. I would interpret it to be a less active than --

17 Q. Could you answer that question please, sir, not how
18 you interpret it.

19 A. Less active than an average.

20 Q. Thank you, Doctor.

21 A. Less active than an average.

22 Q. That's fine, Doctor. In addition thereto the man
23 found, his impression was that he had a moderately severe
24 psychoneurosis, did he not, sir?

1 A. That is the impression, sir, not the diagnosis.

2 Q. Now, Doctor, what does the doctor mean when he says
3 impression?

4 A. It means that on the basis of this single
5 examination he has made, he has an impression --

6 Q. No, Doctor, you're using the word impression to say
7 impression. Now, I'm asking you to tell us what impression
8 means, and you can't define a word by using the word. Please
9 define what it means, sir.

10 MR. HEINEMAN: Objection, he interrupted the
11 answer.

12 THE COURT: Objection is overruled.

13 A. Let me try again, sir.

14 Q. Please do.

15 A. An impression of the physician following an initial
16 examination is his view of what the individual may have.

17 Q. Thank you, Doctor.

18 A. May have.

19 Q. Yes, Doctor. Now the next person listed here on
20 this we have a report on is what appears to be a Mr.
21 Cunningham, I think, I can't be sure of that, Cecil
22 Cunningham, I think that's what it is, correct, sir?

23 A. I think it is, too, sir, yes.

24 Q. And his reports, he has his chief complaints he has

1 nervousness, and when he's most nervous his something arm,
2 apparently his arms and legs and chest will hurt, is that
3 correct, sir?

4 A. I believe that may be so. When he is most nervous?

5 Q. Yes.

6 A. Yes.

7 Q. And he also described to the doctor that he's
8 messed up sexually, that he has had difficulty in getting
9 erections ever since the accident and that for one period of
10 time he was unable to get an erection for a period of two
11 months, correct, sir?

12 A. That is what the record reads, sir.

13 Q. He has trouble with his eyes dilating, things gets
14 blurred and grayish, correct, sir?

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

16 Q. He also reported to the doctor that he started
17 having the trouble with the nervousness in February of 1950,
18 isn't that correct, sir?

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

20 Q. He started having between February and that May he
21 started having legs and chest hurting, whenever he gets the
22 bad nervous spell, he has trouble with his legs and chest,
23 correct, sir?

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

1 Q. While he's having fewer nervous spells recently and
2 less leg and chest trouble, he says he stays nervous all the
3 time, has difficulty going to sleep and rarely sleeps more
4 than four hours at a time, correct, sir?

5 A. What what the record reads, sir.

6 Q. He also describes that he will simply go to pieces
7 with his nerves if he starts to exercise, he goes to pieces?

8 A. That's what the record reads.

9 Q. Doctor, that is indeed a very serious situation,
10 isn't it, sir, if a grown man starts to exercise, just to mow
11 the yard and he goes to pieces with his nerves?

12 A. If it is accurate, sir.

13 Q. Well, it's either accurate or he's lying,
14 correct, sir?

15 A. He may believe that to be so, sir. We went through
16 that.

17 Q. He may believe that he's going to pieces?

18 A. He may have that--

19 Q. Doctor, now you're saying he may believe that he
20 has a nervous problem and his belief that he has a nervous
21 problem is caused by nerves. You're saying nervousness is
22 caused by nervousness. That's a redundant statement,
23 Doctor.

24 A. That is not what I said, sir.

1 Q. Doctor, if this man indeed is telling the truth,
2 what he describes as going to pieces occurs, doesn't it,
3 sir? It's not something that he imagines or makes up, isn't
4 that correct, sir?

5 A. No, sir.

6 Q. That isn't correct?

7 A. No, he could be making it up, sir.

8 Q. Then he would be lying, wouldn't he, sir?

9 A. He might be.

10 Q. Now, Doctor, I have asked you to assume that the
11 man is telling the truth, but you've testified a number of
12 times that all of these men in your judgment under oath here,
13 in the federal court you testified in your judgment all of
14 these men were telling the truth, that they weren't lying.
15 Don't you recall that, sir?

16 A. This is another instance, sir. This is a
17 compensation examination.

18 Q. Excuse me, sir, don't you--

19 A. This is a compensation examination.

20 Q. Excuse me, sir, when you saw him you examined him
21 for the company, when Dr. Nestmann saw him, he examined him
22 for the company, when you went to the Workers' Compensation
23 Commission you testified in behalf of the company. Doctor,
24 the times that you saw the man you were called in by these

1 men you were called in by the company to do this, weren't
2 you, sir?

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

5 THE COURT: Yes, you may.

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

8 MR. HEINEMAN: Your Honor, I am objecting to all
9 this a, as being irrelevant, and, b, as being misleading on
10 the part of counsel.

11 THE COURT: Keep your voice down.

12 MR. HEINEMAN: Because I don't know of any evidence
13 that the doctor ever looked at Jeffers and Cunningham in
14 1953. Mr. Carr is suggesting that he did.

15 MR. CARR: No, I'm not. I'm suggesting that
16 Nestmann, these are the problems and he's looked at
17 Nestmann's reports.

18 MR. HEINEMAN: No, you suggested that he has
19 examined these people, and I'm objecting to that, because I
20 don't know that there's any evidence that he did.

21 MR. CARR: The 36 people that he examined he
22 examined this.

23 MR. HEINEMAN: Oh, really?

24 MR. CARR: I'm not suggesting that he examined this

1 person.

2 MR. HEINEMAN: Well, you certainly did by your
3 question.

4 MR. CARR: We'll clear it up if you think that's
5 the case.

6 THE COURT: I did not get that implication from the
7 question that he was implying that he had. Your objection is
8 overruled. You may proceed.

9 MR. HEINEMAN: How about my objection as to its
10 irrelevance if he hasn't examined them.

11 THE COURT: You want to address that?

12 MR. CARR: The relevance is that this shows what
13 there was or was at least reported to be in 1955. Dr.
14 Suskind, as I understand, saw these reports, he saw these
15 reports, many of these same men, and he's announced to the
16 world they didn't have any problems. Monsanto -- and
17 Monsanto, of course, knew that he announced to the world,
18 because Zack was an employee of Monsanto when he made that
19 announcement to the world. They prepared that document
20 together. Monsanto knew these problems did not go away,
21 Monsanto knew that at least as late as 1955 that your
22 physician reported that the -- therefore, this goes on to
23 impeach Monsanto's position that it's taken in the world.

24 MR. HEINEMAN: Your Honor, there's no evidence,

1 there's no evidence in this record that this witness has seen
2 any reports with respect to these individuals. There is no
3 such identification of the individuals in the Butch Wager
4 memo that Mr. Carr's referring to. It doesn't say, and the
5 witness denies seeing reports, he said he saw a report, but
6 he denied seeing more than one report. There's no evidence
7 that he saw any of these reports that are in Plaintiffs'
8 Exhibit 1779 as outlined in Butch Wager's memo. It isn't even
9 outlined that these are -- any of these people were the
10 people that Dr. Nestmann examined on Monsanto's behalf. That
11 memo doesn't say, doesn't give the names of any of these
12 people.

13 THE COURT: Are you saying that there could be more
14 of these types of memos that you haven't produced then?

15 MR. HEINEMAN: No. What are you talking about?

16 THE COURT: Okay. Your objection is overruled.

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

18 MR. CARR: Would you read the last question please.

19 (Court reporter read back the last question.)

20 A. No, sir.

21 Q. Doctor, did any of these workers ever call you in
22 on their own to examine them and treat them?

23 A. No, sir.

24 Q. Is it a fact that each time you came in and

1 examined and treated these men that you did so at the request
2 of the company?

3 A. No, sir.

4 Q. Who requested you other than the company, Doctor?

5 A. When I casually examined Mr. Cunningham at the
6 workmen's compensation--

7 Q. Doctor, I'm not talking about Mr. Cunningham
8 specifically.

9 A. Well, I am, because this is the case we're talking
10 about.

11 Q. Doctor, I'm asking you questions, sir, about all of
12 the workers that you saw. Did you not examine these workers
13 at the request of Monsanto?

14 MR. HEINEMAN: Objection, he interrupted the prior
15 answer.

16 THE COURT: Objection is overruled.

17 A. The answer is no, sir.

18 Q. Did you examine these workers or some of these
19 workers at the request of somebody other than Monsanto?

20 A. Yes.

21 Q. Who requested you so to do, sir?

22 A. In November of 1956 I examined at the hearing, I
23 examined Mr. Cunningham, because he was there at the request
24 of the commission.

1 Q. Who requested you to examine them, Doctor?

2 A. The commissioner asked me to look at these people
3 while they were there. They were -- they were --

4 Q. Doctor, were you -- and you saw who at that time,
5 Doctor?

6 A. I saw Harold Young, I saw Cecil Cunningham, the man
7 we're talking about now.

8 Q. Go ahead. Doctor?

9 A. I saw Louie Halloran-- Hallman, I'm sorry, and Carl
10 Haning and Paul Willard at the time, and I wasn't there to
11 examine people, sir. I was there as a -- to tell the
12 commission what I knew about the overall problem and what
13 kind of research I had done on this problem. I wasn't there
14 to examine the people, but I was asked to.

15 Q. Doctor, you were there at the request of Monsanto
16 to testify in behalf of Monsanto, were you not, sir?

17 A. I was asked to testify as to what I knew.

18 Q. Doctor, could you answer my question. You've
19 answered this question a dozen times before, and you have
20 testified that you were there at the request of Monsanto
21 and--

22 A. I was there at the request--

23 Q. That you did testify in behalf of Monsanto?

24 A. I was there at the request of Monsanto.

1 Q. And, Doctor, when you examined these people on the
2 occasion of the time that you were there appearing for
3 Monsanto in 1956, were you aware of Dr. Nestmann's report
4 relating to Mr. Cunningham?

5 A. I was not, sir.

6 Q. Had you seen that report at the time in June of
7 '56, I think that memo is June of '56?

8 A. '55.

9 Q. '55 when you had this meeting that's referred to?
10 No, it's November of '55.

11 A. Right.

12 Q. The Mr. Wager memo in which these findings were
13 discussed with you, sir?

14 A. We didn't look at reports like you have given me,
15 sir.

16 Q. Doctor, when you testified in front of the
17 commission, you were aware of the fact that Dr. Nestmann, who
18 examined a number of employees for Monsanto had stated that
19 they were psychoneurotic, you were aware of that fact,
20 weren't you, sir?

21 A. I was aware that he had examined some of the or
22 all, I really don't know, I didn't know at the time how many
23 he examined and what the reports contained.

24 Q. Doctor, you -- my question --

1 A. Individually, sir.

2 Q. You're aware that he stated they were
3 psychoneurotic?

4 A. I didn't know whether it was Cunningham that was in
5 that group, sir.

6 Q. Doctor, I'm not asking you about Cunningham at this
7 point in time. My question relates to what you knew at the
8 time you testified in front of the commission? Did you know
9 at that time that Nestmann had examined a number of these
10 workers, employees for Monsanto and made reports on these men
11 to Monsanto?

12 A. I knew that he had examined them, whether he
13 examined them for Monsanto, I can't remember, but I knew that
14 he had examined them and--

15 Q. And did you know --

16 A. -- We discussed --.

17 Q. Doctor, my question is did you know that he had
18 made reports to Monsanto as to the condition of these men?

19 A. I'm not sure I knew that. I knew that he had --

20 Q. Doctor --

21 A. He had the impression--

22 Q. Excuse me, Doctor.

23 A. He had the impression, sir. Let me finish. He had
24 the impression that these mean according to the Cornell

1 Medical Index test, which is not a very good one, were
2 psychoneurotic.

3 Q. Doctor, did you not advise the Monsanto attorneys
4 that you would see about getting another opinion as to the
5 value of this particular test done by Dr. Nestmann? Didn't
6 you tell them that, sir?

7 A. I must have if that's what the record reads, sir.

8 Q. And you knew at that time that Mr. Stone was
9 apprehensive as to the implications that could be drawn if
10 the Nestmann reports were submitted as evidence, you knew
11 that as well, did you not, sir? Doctor --

12 A. That's what the Wager memorandum reads, sir.

13 Q. And you have no memory to dispute that, do you,
14 sir?

15 A. I can't recall whether that was so, sir, no.

16 Q. My question is you have no memory to dispute that,
17 do you, sir?

18 A. I have no memory to dispute that, yes.

19 Q. Thank you, Doctor. Now, Doctor, did you tell the
20 commission that Nestmann had found these employees, including
21 Mr. Cunningham that you examined there, that they were -- had
22 severe or moderately severe psychoneurosis?

23 A. I didn't have to, sir.

24 Q. Doctor, my question is--

1 A. No, I did not, sir.

2 Q. Did you tell them that, sir?

3 A. No, I did not, sir.

4 Q. And, Doctor, do you -- I think you testified
5 earlier that you were told by the Monsanto attorneys that
6 they would inform the commission as to the Nestmann
7 findings? Is that what you testified you were told earlier,
8 sir?

9 A. No.

10 Q. Are you listening to me, Doctor?

11 A. I said in my testimony here, sir --

12 Q. Yes.

13 A. -- That I believed that Dr. Nestmann would be a
14 witness before the commission, and I believe he was.

15 Q. Doctor, you said that based upon what attorneys
16 told you, correct, sir?

17 A. No, because I knew that he had examined --

18 Q. Who told you that, Doctor, who told you that he was
19 going to be a witness if it weren't the attorneys?

20 A. I said I assumed, sir, that the doctor--

21 Q. Doctor, you also -- you also testified that you
22 assumed that from what you were told by the attorneys. Don't
23 you recall saying that?

24 MR. HEINEMAN: Objection, he cut off the witness in

1 the middle of the answer.

2 THE COURT: Overruled.

3 A. What's the question?

4 (Court reporter read back the last question.)

5 A. I don't recall saying that, but I might have done
6 that, sir.

7 Q. All right, Doctor.

8 A. I might have done that, but I knew that he was
9 going to testify.

10 Q. Do you have any knowledge that he did in fact
11 testify, sir?

12 A. I believe I do now.

13 Q. And the source of that knowledge is what, sir?

14 A. The Monsanto attorneys.

15 Q. The Monsanto lawyers here have told you that Dr.
16 Nestmann testified?

17 A. When I asked them.

18 Q. Did the Monsanto attorneys --

19 A. I asked them, sir.

20 Q. -- Tell you that Dr. Nestmann testified at the
21 compensation commission hearings?

22 A. I asked them, and they said they believed that he
23 did.

24 Q. Doctor, my question is did these lawyers tell you

1 that he did in fact testify at the commission?

2 A. After I asked them, sir, yes.

3 Q. All right. Now, did they ever show you a
4 transcript of his testimony, sir?

5 A. No, sir, I haven't seen that, sir.

6 Q. Then you have no knowledge other than what these
7 gentlemen have told you that he testified, isn't that
8 correct, sir?

9 A. I have no knowledge, I have no papers in hand.

10 Q. Doctor, my question is you have no knowledge as to
11 whether or not Dr. Nestmann testified other than what
12 Monsanto attorneys have told you, isn't that correct, sir?

13 A. After I asked about it, yes, sir.

14 Q. You haven't read a document?

15 A. No.

16 Q. You haven't read a report of the commission, you
17 haven't read anything in which he's described as having
18 testified, isn't that correct, sir?

19 A. That's true, sir.

20 Q. Yes. Now, Doctor--

21 THE COURT: Mr. Carr, is this a good point for a
22 break?

23 MR. CARR: Yes, Your Honor.

24 THE COURT: We'll take a short break at this time

1 and then resume testimony. The admonishments that I gave you
2 earlier will apply during this break also. Court's in
3 recess.

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

5

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

7 MR. CARR: Your Honor, may we approach the bench?

8 THE COURT: Yes, you may.

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

11 MR. CARR: The witness has indicated that counsel
12 has told him that Dr. Nestmann testified at the compensation
13 hearing.

14 THE COURT: Yes.

15 MR. CARR: The transcripts that have been furnished
16 to us do not include any testimony of Dr. Nestmann. I'd like
17 counsel to state whether or not there is any such testimony
18 by Dr. Nestmann, whether or not there is any transcripts of
19 testimony of Dr. Nestmann.

20 MR. HEINEMAN: The answer to that question is yes,
21 Dr. Nestmann has testified and that's information -- it's
22 public record, it's been available to Mr. Carr.

23 MR. CARR: I don't have it. It has not made
24 available to me.

1 MR. HEINEMAN: There's so many times when you said
2 you didn't have something and we had to demonstrate that you
3 have it.

4 MR. CARR: In that mess of microfilm that you gave
5 us that you know there are reels and reels and reels of
6 microfilm. To my knowledge it is not in there. I have
7 testimony from the commission hearing. I do not have any of
8 that testimony, any testimony of Dr. Nestmann, and I ask the
9 Court to order counsel to produce the testimony Dr. Nestmann
10 to me if he has it this evening after Court.

11 MR. HEINEMAN: Your Honor, I have no problem in
12 reproducing to Mr. Carr the testimony of Dr. Nestmann --

13 THE COURT: Great.

14 MR. HEINEMAN: -- That we have.

15 THE COURT: Great.

16 MR. HEINEMAN: I believe that Mr. Carr already has
17 it.

18 MR. CARR: In what form?

19 MR. HEINEMAN: As a transcript.

20 MR. CARR: I don't.

21 THE COURT: If you don't have any problem producing
22 it, if you don't have any producing it, why don't you have
23 one of your people call your office so it can be ready.

24 MR. HEINEMAN: Well, it isn't very long. He says

1 he doesn't have the Nestmann transcript.

2 MR. CARR: Testimony of Nestmann at the comp
3 hearings.

4 MR. NASSIF: He may not, I don't know.

5 THE COURT: Why don't you call--

6 MR. NASSIF: He's got it on microfilm. I don't know
7 if he's copied it or not.

8 THE COURT: Wait a second. Since there is no
9 problem reproducing it, why don't you have someone call your
10 office and xerox it so it can be reproduced. Since you said
11 there's no problem, then there's no problem.

12 MR. HEINEMAN: All right.

13 THE COURT: Okay.

14 MR. HEINEMAN: Okay. I can give you --

15 MR. CARR: I have no -- I have a copy of the
16 commission hearing, but it did not include any testimony of
17 Dr. Nestmann.

18 MR. NASSIF: It's in the commission records.

19 MR. HEINEMAN: I have a copy of a portion of it, I
20 know. I don't know how much else we have in St. Louis.

21 THE COURT: Umhm. Why don't you have someone call
22 both and put it together and then reproduce it.

23 MR. HEINEMAN: If there is something we don't have
24 in St. Louis, we may have to get it from Charleston.

1 THE COURT: I understand that. That's where it took
2 place. I understand that.

3 MR. HEINEMAN: I know we have some of it here.

4 THE COURT: Okay.

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

6 Q. Doctor, before the break you testified?

7 THE WITNESS: If Your Honor pleases, may I ask a
8 question, sir?

9 THE COURT: No, just please answer the question.
10 Mr. Carr, you may proceed.

11 THE WITNESS: There's something about the last
12 question that I answered, sir.

13 THE COURT: Doctor, please just answer the questions
14 as they are asked of you. As I have explained to you before,
15 the attorney for Monsanto has the right of redirect
16 examination where they can ask you various clarifying
17 questions or supplemental questions or any other questions
18 they in their professional judgment feel should be asked, and
19 the time when anything else other than this attorney asks you
20 should be covered is when the other attorneys asks. Mr.
21 Carr, you may proceed.

22 MR. CARR: Yes, Your Honor.

23 Q. Doctor, you testified shortly before the break that
24 you testified at the compensation commission hearing, and I

1 think you previously agreed that did you testify in behalf of
2 Monsanto. Are we clear on that?

3 A. I testified at the request of Monsanto, sir, yes.

4 Q. No, I'm going more than that, Doctor. I'm saying
5 you testified in behalf of Monsanto, not just at their
6 request?

7 A. I'm saying I did not. I testified in my own behalf
8 at the request of Monsanto, and what I did was to --

9 Q. Excuse me, Doctor, you answered my question. You
10 said, your answer was that you did not testify in behalf of
11 Monsanto if I've got your answer correct, is that right, sir?

12 A. Yes, I'm saying that I testified at their request,
13 sir.

14 Q. No, Doctor, you understand, and that's the reason I
15 have to ask these questions over again when you give me a yes
16 answer, when you preface it with some other remark, because
17 you're not answering my question. My question is, sir, you
18 testified in behalf of Monsanto at that commission hearing,
19 did you not, sir?

20 A. Well, I'm not altogether sure I understand what the
21 difference is on behalf or at the request.

22 Q. Doctor, my question is simply. You testified in
23 behalf of Monsanto, did you not, sir, and you've read the
24 transcript that describes you as having testified in behalf

1 of Monsanto?

2 A. Well, if it says so then, I will agree that that is
3 correct, sir.

4 Q. Oh, Doctor, my question is -- it's not whether or
5 not I can prove that you're stating something wrong here.
6 That's not the important issue. The important issue is
7 whether or not you did in fact know then and know now that
8 you've testified in behalf of Monsanto. That's what's
9 important here. You do understand that, don't you, sir?

10 A. No, I do not, sir.

11 Q. Doctor, you have read your transcript of testimony
12 at the compensation commission, because I've asked you about
13 it --

14 A. Correct.

15 Q. -- Before today, correct, sir?

16 A. Yes, yes.

17 Q. Don't you recall then after examination, sir, that
18 you did agree that you did testify in behalf of Monsanto
19 then, and you're now requiring me to cover the same
20 territory?

21 A. If that's what I said at the time, sir, then that's
22 how it stands.

23 Q. Doctor, I know that. No, my question is don't you
24 recall that you testified that way, sir? Don't you recall

1 that, Dr. Suskind? Doctor, I'm asking you to search you're
2 memory and not your records. Dr. Suskind, do you hear me and
3 understand me?

4 A. Yes, sir, but this is --.

5 Q. I'm asking you don't you recall--

6 A. -- 30 years ago, sir --.

7 Q. No, Doctor, I'm asking you--

8 A. And I want to, I would like to make sure of the
9 language.

10 Q. Doctor, I'm asking you to testify as to what you
11 recall about your testimony here, not 30 years ago.

12 A. It occurred 30 years ago, sir.

13 Q. I understand that, Doctor, but you testified here
14 just a few days ago.

15 A. Correct.

16 Q. Doctor, now my question is do you recall having
17 testified here that you testified in behalf of Monsanto at
18 that hearing?

19 A. If that's what I said, then I stand by it.

20 Q. No, Doctor, it's not just what you said. I'm just
21 simply asking you do you recall it, sir. If you don't recall
22 it, simply say you don't recall it, sir. Could you answer my
23 question, sir?

24 A. Well, I can't recall it, but I'd like to see it.

1 Q. That's fine, Doctor. Now, do you have your copy of
2 your testimony at the compensation commission hearing?

3 A. I do indeed, sir, yes.

4 Q. Would you turn to page numbered 3, sir.

5 A. Yes, sir.

6 Q. Does it not describe you there as a witness called
7 in behalf of the employer?

8 A. Right, it does indeed.

9 Q. All right. Yes, Doctor. Now, Doctor, you also
10 testified here that you examined these six people at the
11 request of the commission. Do you recall that, sir?

12 A. I did.

13 Q. Now, Doctor, you have your complete transcript of
14 testimony in front of you, do you not, sir?

15 A. Of the testimony before the --

16 Q. Yes.

17 A. Yes, I do.

18 Q. When were you requested to examine these men for
19 the commission?

20 A. I really can't recall whether it was before the
21 hearing or whatever, but I know I examined them before the
22 hearing.

23 Q. Oh, I know that, Doctor, but my question is when
24 were you requested by the commission to examine them?

1 A. I don't recall.

2 Q. Doctor, do you have any record at all that you were
3 ever requested by the commission to examine them? You have
4 no recollection, do you, sir? So my question, sir, is do you
5 have any record to indicate that you examined these men at
6 the request of the commission?

7 A. I don't have any record. It's my recollection,
8 sir.

9 Q. Doctor, you mean to say you do recall that the
10 commission asked you to examine them?

11 A. This is my --

12 Q. Or was it an attorney that asked you to examine
13 them?

14 A. Sir, this is my best recollection.

15 Q. Sir, it is your recollection that the commission
16 asked to you examine them?

17 A. That's what I said this morning.

18 Q. When did they ask you, sir?

19 A. That I can't tell you.

20 Q. Did you appear there at the commission just on one
21 day, Dr. Suskind?

22 A. Yes.

23 Q. Did you have any contact with the commission a
24 month before that hearing, sir?

1 A. I can't recall, sir.

2 Q. Doctor, you did have contact with the attorneys,
3 did you not, sir?

4 A. Yes.

5 Q. And, Doctor, you examined these men the day before
6 you testified, didn't you, sir?

7 A. If that's the way it reads, then it must be so,
8 sir.

9 Q. Doctor, it's not -- that's not the question is that
10 the way it reads, whether or not I can prove what I'm asking
11 you of, sir. The question is you did in fact examine them
12 the day before, didn't you, sir?

13 A. Well, sir, I cannot recall whether it was the same
14 day --

15 Q. Turn to Page 21, sir, of your testimony. Doctor,
16 do you find on that page the question asked of you by the
17 Monsanto attorney, sir, this question, have you had a chance
18 to examine any of the 13 claimants whose claims are being
19 heard here today? Wasn't that the question asked of you by
20 the Monsanto attorney?

21 A. Yes.

22 Q. And your answer was there, yes, we have, isn't that
23 right, sir?

24 A. Yes, and I see where I did.

1 Q. Sir?

2 A. And I see it was the afternoon before, sir.

3 Q. Doctor, there is no suggestion or statement here
4 that you examined these men in behalf of the commission, is
5 there, sir?

6 A. No, sir.

7 Q. And there is nothing in this record other than the
8 question, have you had a chance to examine any of the 13
9 claimants, isn't that right, sir?

10 A. That is right, sir.

11 Q. So you in fact--

12 A. I didn't examine the 13 claimants.

13 Q. No, the question was had you had a chance to
14 examine any of the 13 claimants.

15 A. Any of the 16 claimants, sir.

16 Q. Well, my record is very poor, and it looks like a 3
17 to me, but I'll certainly accept 16, sir.

18 A. Yes, sir.

19 Q. And, Doctor, that's the question, isn't it, sir?

20 A. Yes, sir.

21 Q. If you had examined these people in behalf of the
22 commission, the commission would have asked you the question,
23 wouldn't they, sir?

24 A. Not necessarily.

1 Q. Doctor, didn't the attorney for Monsanto ask you to
2 examine these claimants?

3 A. I can't recall whether that's so.

4 Q. You can recall that it's not so either, can you?

5 A. No, I can't recall that it's not so.

6 Q. All right, Doctor. Doctor, you also at that time
7 before you testified you had read the reports of Dr.
8 Nestmann, had you not, sir?

9 A. No, sir.

10 Q. Doctor, turn to Page 48 of the commission hearings,
11 sir.

12 A. Page 8?

13 Q. Page 48.

14 A. 48, sir, thank you.

15 Q. It starts at Page 47 at the bottom.

16 A. Okay.

17 Q. Were you not asked, sir, by the Monsanto attorney
18 at the present time based upon your personal examination of
19 some of the claimants yesterday and from you're reading of
20 the reports of the special medical examining board, the
21 reports of Dr. Nestmann and O'Dell, and the summary of the
22 testimony by Dr. Halloran, do you feel that there is any
23 existing disability referable to the skin or other organs of
24 the men?

1 A. Right.

2 Q. Do you see that question being asked you, sir?

3 A. Yes, sir.

4 Q. And you did indeed read the reports of Dr.
5 Nestmann, did you not, sir?

6 A. No, sir.

7 Q. Doctor, did you --

8 A. Not at the time of that hearing, sir. I had read
9 them since.

10 Q. Doctor, this question --

11 A. But not at the time of the hearing.

12 Q. Doesn't the question ask you, sir, from your --
13 based upon your personal examination and from your reading of
14 the reports of Drs. Nestmann and O'Dell? Doesn't that --
15 isn't that in that question, sir, from your reading of the
16 these reports?

17 A. That's right, that's what the question reads, sir.

18 Q. Doctor, did you say, no, you did not read the
19 reports of Nestmann?

20 A. No, I didn't answer it that way, sir. I said from
21 my examination.

22 Q. Did you say that you did not read the reports of
23 Dr. Nestmann?

24 A. No, but I didn't say I read a report of Halloran

1 either.

2 Q. Doctor, I'm asking you --

3 A. Or O'Dell.

4 Q. I'm asking you about Dr. Nestmann. How would this
5 attorney-- Had you in fact read the summary of the testimony
6 of Dr. Halloran?

7 A. The only thing I recall is that in Wager's
8 memorandum --

9 Q. Doctor, I'm not discussing Wager's memorandum now.
10 I'm asking you, sir, the attorney for Monsanto incorporated
11 in the question he asked you at the present time based upon
12 your personal examination and from your reading of the
13 reports of Dr. Nestmann, among others, what was your
14 opinion. Doctor, it's clear from the question there that you
15 had read the reports of Dr. Nestmann, didn't you, sir?

16 MR. HEINEMAN: Objection, Your Honor, he
17 interrupted the prior answer of the witness.

18 THE COURT: Objection is overruled. Not
19 responsive.

20 A. This question indicates that the reports of Dr.
21 Nestmann, O'Dell, and the summary of Halloran, summary of the
22 testimony of Dr. Halloran were either available to us or we
23 had read them, but, sir, I honestly can't recall, honestly
24 can't recall that at that time I had gone over all of these

1 reports prior to my examining these people. I can't recall
2 that.

3 Q. Doctor, that's perfectly all right --

4 A. That's 30 years ago.

5 Q. -- That you can't recall it, but what you have said
6 here, sir, is that you in fact did not read the reports.

7 A. Correct.

8 Q. And you swore under oath that you did not read
9 them?

10 A. Correct.

11 Q. That you could recall what went on 30 years ago.

12 A. It was my best recollection--

13 Q. No, Doctor, you didn't say that. You told us that
14 you didn't read them. And, Doctor, here when the attorney
15 asks you the question that from your reading of it give an
16 opinion, you didn't say, well, hold it, I haven't read those
17 and I can't give an opinion based upon that. You gave your
18 opinion, didn't you, Doctor?

19 A. I gave my opinion from the examination that I did
20 of the men, sir.

21 Q. Now, Doctor --

22 A. And what I knew about them.

23 Q. But the question asked you included the reports,
24 didn't it, sir, based upon the report of the special medical

1 examining board, report of Dr. Halloran, the report of
2 Nestmann, the report of O'Dell, it included all those things
3 in addition to your personal examination, didn't it, sir?

4 A. I believe that this refers to the --

5 Q. Isn't that correct, sir, my question as stated--

6 A. Yes, but I believe it refers to the report --

7 Q. My question--

8 MR. CARR: Your Honor, would you ask the witness to
9 answer my question.

10 THE COURT: Doctor, please respond only to the
11 question asked.

12 A. Would you repeat the question please.

13 (The court reporter read back the last question.)

14 A. This is how this thing reads here, yes.

15 Q. Doctor, did you tell the commission in your
16 testimony that Dr. Nestmann called most of these employees
17 psychoneurotic?

18 A. No, I did not, sir.

19 Q. No, you did not, did you, sir?

20 A. No, I did not, and I had no reason to.

21 Q. Doctor, if the question was asked you -- strike
22 that. You were asked questions about whether or not these
23 people had emotional problems, anxiety and apprehension,
24 weren't you, sir?

1 A. Yes, I was.

2 Q. You were asked, matter of fact you were examined at
3 some length on that point as we have established earlier,
4 isn't that right, sir?

5 A. That's quite true, sir.

6 Q. So you would have a reason then, would you not,
7 sir, to refer to Dr. Nestmann's diagnosis or impression?

8 A. Not necessarily, sir.

9 Q. Not necessarily, Doctor, but if you're being asked
10 about the anxieties and their problems and their emotional
11 problems, nervousness, and all that, and you have already
12 been asked earlier to refer to the reports, your attention
13 has been directed to them, wouldn't you have a reason to tell
14 the doctor, tell the commission about what Nestmann has said?

15 A. Not necessarily, sir.

16 Q. Or could it be, Doctor, that the Nestmann reports
17 were edited in some way or another?

18 A. What are you, what are you inferring--

19 Q. You know what the word edit means, don't you?

20 A. I sure do.

21 Q. Could it be--

22 A. I take offense at what you said, sir.

23 Q. Oh, I'm not accusing you of editing them, Doctor?

24 A. Who are you accusing of editing?

1 Q. I don't know who edited them, Doctor, but my
2 question is hypothetical. Could it be that the Nestmann
3 reports were edited?

4 A. I have no idea, sir, and I don't think they would
5 have been.

6 Q. Well, they sure, the Monsanto attorneys are sure
7 apprehensive about the implications, aren't they, sir?

8 A. Yes, but they made them available to the
9 commission. They made all of Nestmann's reports available to
10 the commission, and you know it, sir.

11 Q. Oh, did they, sir?

12 A. Yes, sir.

13 Q. And do you know it, sir?

14 A. Yes, I do now.

15 Q. And who told you that they made all the reports
16 available?

17 A. The Monsanto attorneys told me so and there's
18 evidence to prove that in memoranda, sir, which you should
19 have.

20 Q. And the memoranda is what, Doctor?

21 A. Well, I don't know what the memoranda is, but I
22 know there is a memorandum.

23 Q. From what, attorneys to somebody else that I should
24 have?

1 A. No, from the Monsanto files.

2 Q. Well --

3 MR. CARR: Your Honor, could I include that among
4 the requests as well?

5 THE COURT: Gentlemen, could you approach the bench
6 please.

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

9 THE COURT: What memorandum is he talking about?

10 MR. HEINEMAN: I'm not sure I know, and, therefore,
11 I'm --

12 MR. CARR: I would like to request of Monsanto any
13 documentation, memos, reports that they have that was
14 submitted to the commission in the form submitted, and I
15 would like to also have any memorandum referring to what will
16 or will not be submitted to the commission with reference to
17 Dr. Nestmann or Dr. O'Dell or anybody else that submitted
18 reports.

19 MR. HEINEMAN: Sure. I can produce whatever has
20 been -- you want, you want what's been submitted by Monsanto
21 to the commission?

22 THE COURT: Umhm.

23 MR. CARR: Reports submitted by Nestmann, O'Dell to
24 the commission, I want copies of those reports that were in

1 fact submitted. If there is a memoranda or memorandum even
2 referring to what's going to be submitted to the commission
3 or not submitted to the commission, I would like to have that
4 as well. Any documents that you have that refer to the
5 matter of what the commission is going to be told relative to
6 Nestmann's reports.

7 MR. HEINEMAN: Yeah, I'll find out from Charleston.
8 I don't have any idea.

9 THE COURT: Fine, and again to forestall any
10 problems, it either has to be submitted to Mr. Carr or if you
11 have a claim about it, it has to be submitted to me in
12 camera. Anything that is in existence has to be submitted
13 either to Mr. Carr or to me just as before, same ground
14 rules.

15 MR. HEINEMAN: Okay. You mean in terms of if
16 there's any privilege to be asserted?

17 THE COURT: If you are asserting any, then that has
18 to be given to me. If you are not asserting any, then give
19 it to Mr. Carr.

20 MR. HEINEMAN: Do you want legal memos that we've
21 written, memorandum that we've written to the Court? By we,
22 I mean, you know, that the lawyers that were handling this in
23 Charleston back in 1956.

24 MR. CARR: I want whatever memoranda might be in

1 existence relative to what was or what was not given to the
2 compensation commission regarding Nestmann's reports,
3 including the reports, and the memoranda that may have gone
4 with the reports, if there was memoranda that may be in the
5 lawyers' files relating to what they were or were not giving
6 to the commission, what they did give the commission.

7 MR. HEINEMAN: Well, obviously any memorandum that
8 would be in the lawyers' files is going to be -- well, that
9 depends on what it is.

10 THE COURT: Talk to the lawyers in Charleston.

11 MR. HEINEMAN: We'll have to see what there is.

12 MR. CARR: May be something that the witness has
13 scene.

14 THE COURT: Whatever exists here in St. Louis or
15 Charleston is to be produced.

16 MR. HEINEMAN: All right.

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

18 Q. Doctor, you did respond to the commission, did you
19 not, sir, that it was impossible for you to say whether or
20 not their anxiety problems and apprehensions and fears had a
21 real basis and was connected to the exposure?

22 A. I believe I did that, sir, yes.

23 Q. And you gave that at the time you were privy to the
24 reports of Dr. Nestmann, didn't you, sir?

1 A. I knew of Dr. Nestmann's reports yes,, sir.

2 Q. All right. Now, Doctor, with regard to Mr. Willard
3 while we're on the point of the commission and what was told
4 the commission, you, in fact, told the commission about Mr.
5 Willard's complaints, you didn't describe those as imaginary
6 or the product of psychoneurosis or the product of
7 nervousness at the time you talked to the commission, did
8 you, sir? Do you understand my question, Doctor?

9 A. Yes, I did, sir, and it's on Page 113.

10 Q. Doctor, before we get to 113, if you will turn to
11 Page 94, at the bottom of the page you say, do you not,
12 Doctor, I can site these as when the symptoms of aches and
13 pains and nervousness and so-called loss of vigor were
14 moderate were Stiehl, Willard, Westfall, Berry, Hudnall,
15 Beckman, and Stover, isn't that correct, sir? Bottom of Page
16 94 and the top of Page 95. Do you see that, sir?

17 A. Yes.

18 Q. And you do describe those symptoms, those symptoms
19 of aches, pains, nervousness so-called loss of vigor that
20 were moderate with respect to Mr. Willard, did you not, sir?

21 A. I believe he is included in that, yes, sir.

22 Q. Doctor, my question is you did so describe those
23 problems or those symptoms rather of Mr. Willard at that
24 time, didn't you, sir?

1 A. Yes, I did, sir.

2 Q. Doctor, on the next page on 95 you were asked
3 whether or not these men that told you that were truthful,
4 didn't you, sir, weren't you, sir, and you said at that time
5 that in the main these men were fairly truthful, you said
6 that, didn't you, sir?

7 A. I said fairly truthful.

8 Q. Didn't you, sir, You said that?

9 A. Fairly truthful.

10 Q. Doctor, on Page 96 you were asked whether or not
11 the aches and pains were there and what did you say about the
12 aches and pains that these men had described to you, sir,
13 that Willard among others had described to you?

14 A. I said that the aches and pains were there, they
15 believed they had them, yes.

16 Q. Oh, Doctor, now you've added something. Please
17 read to the jury what you said then without the addition.
18 Read exactly what you told the commission as to whether or
19 not the aches and pains were there.

20 A. My answer is, I would say that the aches and pains
21 were there. It's followed by an explanation, sir.

22 Q. Doctor, there is no explanation followed. That is
23 the complete answer that you gave at that time, is it not,
24 sir?

1 A. No, there is a --

2 Q. Doctor, did you read the complete answer that you
3 gave?

4 A. I did, but there is an explanation after that, sir.

5 Q. Doctor, there is another question that's asked you,
6 isn't that right, sir?

7 A. Yes, but in the answer to that question --

8 Q. Excuse me, Doctor. Doctor, your answer that you
9 gave at that time was whole and complete, wasn't it, sir?

10 A. No, sir, because other questions were asked about
11 it, sir, and they're on Page 96 and 97.

12 Q. Doctor, the question was asked you, would the fact
13 that you were not, that you could not find them be conclusive
14 towards saying that the aches and pains were not there?
15 Wasn't that the question asked you?

16 A. That was the first question, sir.

17 Q. Doctor, my question is wasn't that question asked
18 you?

19 A. Yes, it was, sir.

20 Q. Wasn't your response to that question whether or
21 not you could say that the aches and pains were not there,
22 wasn't your answer to that question, I would say that the
23 aches and pains were there. Wasn't that your answer at that
24 time?

1 A. Indeed it was, sir, that is the answer I gave, and
2 I believe that.

3 Q. Sir?

4 A. I believe that.

5 Q. Doctor, all I asked you wasn't that your answer at
6 that time?

7 A. It was indeed at that time.

8 Q. Doctor, your answer in 1956 to the commission was
9 with regard to Mr. Willard is that the aches and pains were
10 there, isn't that correct, sir?

11 A. Yes.

12 Q. Yes. And, Doctor, you didn't examine Mr. Willard
13 after 1956, did you, sir?

14 A. Yes, I did, sir.

15 Q. You examined him in 1979, didn't you, sir?

16 A. Yes, but you asked me whether I examined him
17 afterwards, and I said yes, sir.

18 Q. All right. And you did indeed, but you did not
19 examine him in between the time you examined him there the
20 day before this hearing, sir, and 1979, did you, sir?

21 A. I don't believe I did, sir.

22 Q. Doctor,, we've already gone through your belief at
23 the present time, isn't that correct, sir?

24 A. I don't know what you're talking about belief.

1 Belief as to what?

2 Q. Whether or not his aches and pains were there.

3 A. I think my answer is in this 1953 hearing that the
4 aches and pains were there.

5 Q. This is a 1956 hearing, Doctor.

6 A. '56 I mean.

7 Q. And on Page 97 you say that in 1953 there were
8 still men not working as caused by the aches and pains, did
9 you not, sir?

10 A. Without any objective findings is written after
11 that, sir.

12 Q. Doctor, my question to you, sir, is you -- did you
13 not say in 1953 that there were men who were still not
14 working because of their aches and pains without objective
15 findings?

16 A. I did, sir.

17 Q. Did you not say that they weren't working because
18 of their aches and pains, sir?

19 A. That is what I said.

20 Q. Wasn't Willard among those people who were not
21 working in 1953, sir?

22 A. That is true, sir.

23 Q. Yes. And you said at that time he was not working
24 because of his aches and pains, isn't that correct, sir?

1 A. Because he believed he had aches and pains.

2 Q. No, Doctor, that isn't what you said then. You
3 said then, sir, that he wasn't working because of his aches
4 and pains, did you not, sir, on Page 97, sir? Doctor, would
5 you look to Page 97 and answer my question?

6 A. I will as soon as I get to the '53 report.

7 Q. Doctor, I'm not asking you about the 1953 report.
8 I'm asking you what you testified to before the commission,
9 sir.

10 A. I did, and it had to do with the 1953 report, sir.

11 Q. Indeed it did, sir.

12 A. Sure.

13 Q. It had to do with your 1953 examination. But my
14 question to you, sir, is you said to the commission that he
15 wasn't working because of the aches and pains, didn't you,
16 sir?

17 A. That's what I said, sir.

18 Q. Yes. Now, Doctor, and you've also described in
19 this report, you don't describe in this commission testimony,
20 you don't describe him as a psychoneurotic, do you, sir?
21 Matter of fact, you don't even come close to the word
22 psychoneurotic. You describe him as a tense person, as a
23 very tense person, don't you, sir on Page 113?

24 A. Yes, there is additional material on Page 98 that

1 you can refer to, sir.

2 Q. Doctor, my question to you, sir, is that you did
3 not refer to this man as psychoneurotic or unstable, did
4 you, sir, or neurotic or nervous -- not nervous, you did say
5 he was nervous at one place in point of time, but you did not
6 say that he was psychoneurotic, did you, sir? Did you, sir?

7 A. I believe I have, sir, on Page 98 as a general
8 discussion of the -- of the problem of fear of job of
9 physical condition.

10 Q. Doctor, on Page 98 you said you didn't think any of
11 these men at the present time had any fear?

12 A. Yes, that is--

13 Q. -- Of the job or physical condition. That's what
14 you told the commission.

15 A. That's what I said.

16 Q. You said the exact opposite of the men being
17 neurotic. You told the commission that they didn't have any
18 fear at the present time. That's what you told the
19 commission.

20 A. Not necessarily, sir.

21 Q. Doctor, that is exactly what you said. I do not --
22 The part you referred us to, I do not think that any of these
23 men at the present time have any fear of his job or physical
24 condition. Isn't that what you said then, sir?

1 A. There is another part --

2 Q. Doctor, isn't that what you said then, sir?

3 A. That's an incomplete --

4 Q. Doctor, isn't that what you said then, sir?

5 A. -- Quotation, sir. That's an incomplete quotation,
6 sir. Read the rest of it.

7 Q. You went on to say, and if they do, and I think
8 that is a dual presumption, because I don't think they do.

9 A. Okay.

10 Q. That's what you said, isn't that right, sir?

11 A. Correct, sir.

12 Q. Because it doesn't interfere with their job by
13 their own admission. You were giving an argument to the
14 commission at that time that these men were not neurotic,
15 that they did not have any fears associated with their jobs
16 or their physical condition, isn't that correct, sir?

17 A. No, sir.

18 Q. Where do you tell them that there, that they do
19 have fears of their jobs and physical condition?

20 A. I say that --

21 Q. Point out the page to me please.

22 A. Page 98, the aches and pains.

23 Q. 98 we just read, didn't we, Doctor?

24 A. No, at the bottom of the page, sir, their aches and

1 pains did interfere with the performance by these men in
2 their jobs, but since they do not have aches and pains any
3 more, there isn't anything to interfere with them.

4 Q. Doctor, you told the commission, and this is not
5 anything regarding their neurotic condition -- my question to
6 you so we won't get off on that point, my question to you,
7 sir, is that you were trying to convince the commission that
8 these men were not neurotic, that they did not have any fears
9 or apprehensions connected with their jobs or physical
10 condition, isn't that correct, sir?

11 A. No, sir.

12 Q. Well, wherein -- isn't that what you say on Page
13 98?

14 A. No, not necessarily.

15 Q. Oh, Doctor, not necessarily. That can cover the
16 world. Don't you say--

17 A. We didn't discuss neuroses here, sir.

18 Q. Doctor, don't you say, I do not think that any of
19 these men at the present time have any fear of his job or
20 physical condition?

21 A. Correct.

22 Q. Doctor, is there anywhere in this report that you
23 describe Mr. Willard as being anything other than very tense?

24 A. I haven't read through this whole report.

1 Q. Doctor, you certainly don't describe him as being a
2 neurotic in this paragraph, do you, sir, this sentence that
3 we just read, isn't that right, sir?

4 A. Are you asking me there is nothing in here that
5 describes him as a neurotic?

6 Q. Doctor, could you listen to my question?

7 MR. CARR: Would you read the question to him
8 please.

9 A. Would you read the question?

10 (Court reporter read back the last question.)

11 A. Not in that sentence, sir.

12 Q. Doctor, the only other reference to Mr. Willard or
13 his mental or emotional condition by you is on Page 113,
14 isn't that correct, sir?

15 A. 115, sir.

16 Q. 115?

17 A. Umhm. I'm sorry, 113, you're right, I apologize.

18 Q. 113, Doctor, describes Mr. Willard as a very tense
19 individual, doesn't it, sir? Isn't that the sole description
20 you make of his emotional condition or psychological
21 condition?

22 A. No, sir.

23 Q. Where else do you describe his--

24 A. But he was concerned with the fact--

1 Q. Doctor, where else do you describe his emotional or
2 psychological condition?

3 A. On Page 113, sir.

4 Q. He states a concern with the fact that the doctor
5 told him he had a heart disease?

6 A. Correct.

7 Q. That's certainly something that--

8 A. That's correct.

9 Q. -- Absolutely normal, well adjusted person would be
10 concerned about if the doctor told him he had a heart
11 disease, wouldn't it, sir?

12 A. Not necessarily, sir.

13 Q. Doctor, you mean to say that if an ordinary normal
14 well adjusted person is told by his doctor that he has a
15 heart disease, that he should not be concerned about it, that
16 he wouldn't be concerned about it? He would be insane not to
17 be concerned about it, wouldn't he, sir?

18 A. Yes, there were other reasons, too, sir.

19 Q. Doctor, my question is because he is concerned with
20 the fact that his doctor told him he had a heart disease
21 doesn't in any way indicate that he's a neurotic individual,
22 does it, sir?

23 A. If it persists, yes, sir.

24 Q. Doctor, but we're not talking about persistent,

1 because the only thing you site there, sir, is not a
2 persistence of it, but what you say is the doctor told him
3 that he had a heart disease that was incurable and he was
4 concerned about it.

5 MR. HEINEMAN: Objection.

6 A. As of 1953, sir.

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

9 THE COURT: Yes, you may.

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

12 MR. HEINEMAN: Do you think that persistence would
13 be covered by the phrase from which the man has recovered?
14 Now, that's in there. Now, I object to the question as being
15 a false misleading statement of what's there.

16 THE COURT: Shh.

17 MR. HEINEMAN: The problem is --

18 THE COURT: Wait. Let me' read it.

19 MR. CARR: It's not in any way contradictory what
20 I'm asking the witness, Your Honor. We're talking concern,
21 the question is concern of the man.

22 MR. HEINEMAN: The question is whether or not the
23 man would still have the concern once he knew that the
24 problem wasn't there, and here it says that the guy's problem

1 is the doctor told him he had this, and the doctor caused
2 heart disease from which the man has recovered.

3 MR. CARR: Does that say the man knew it?

4 MR. HEINEMAN: How do we find out?

5 MR. CARR: You're making the objection. Does it say
6 that the man knew it?

7 MR. HEINEMAN: I don't have to answer your
8 questions. My objection is that the question is misleading,
9 and he's talking about persistence, and the issue is that the
10 man recovered from it. That's what the testimony was.

11 THE COURT: Objection is overruled. That's not what
12 it says, that's not the implication.

13 MR. HEINEMAN: Not what it says?

14 THE COURT: You read that. The problem with your
15 position is just what Mr. Carr stated as far as the inference
16 of that sentence, that's the problem with the position that
17 you've taken as far as the basis for your objection. Your
18 objection is overruled. The question is not misleading.

19 MR. HEINEMAN: May I read this into the record.

20 THE COURT: I thought you did.

21 MR. HEINEMAN: So that at the Appellate Court it
22 will be there for the Appellate Court.

23 MR. CARR: I'm going to read it to the witness when
24 I get back.

1 THE COURT: Go ahead. Why have it read twice?

2 MR. HEINEMAN: I need to have it part of my
3 objection.

4 THE COURT: It's referred to. I don't need to have
5 it read twice. Objection is overruled. Mr. Carr, you may
6 proceed.

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

8 Q. Doctor, the commission's transcript goes on to say,
9 it says, does it not, this man, who is very tense, was Paul
10 Willard. His concern was not with his acne and not with his
11 liver, but he was concerned about the fact that a doctor had
12 told many he had heart disease which was incurable, and this
13 man had what I regarded and put into the record -- I can't
14 make out that word on mine-- what diacter--

15 A. Iatrogenic.

16 Q. I got a D on mine. Isn't there a D there?

17 A. It's a transcription error.

18 Q. D- I --

19 A. It's a transcription error, sir.

20 Q. Well, it reads diactorenia, doesn't it, sir?

21 A. No, it should read iatrogenic, I-A-T-R-O--

22 Q. In any event you say you put into the record
23 iatrogenic, which means the doctor caused heart disease, from
24 which the man has recovered?

1 A. Right.

2 Q. Is that correct, sir?

3 A. Correct.

4 Q. Doctor, is there any indication there that the man
5 was told by his doctor that he had recovered from this heart
6 disease?

7 A. I believe he indicated to us that he had.

8 Q. Doctor, my question to you, sir, in this record of
9 some 30 years ago is there any -- nearly 40 -- 30 years ago,
10 is there any indication that this man was told by his doctor
11 that he had recovered from the heart disease?

12 A. Not in this record, sir.

13 Q. All right, Doctor. Where in this record, sir, is
14 there any indication that this man was a neurotic, unstable
15 individual who had fears and apprehensions about his physical
16 condition?

17 A. I haven't reviewed this record completely, but I
18 don't know of any statement that we made at the time which
19 specifically mentions that these men were psychoneurotic, I
20 do not.

21 Q. Doctor, in point of fact, you were arguing with the
22 commission or at least Monsanto was taking the position that
23 you were supporting that they had no problems that stemmed
24 from their exposure emotionally, isn't that correct, sir?

1 Isn't that correct, sir?

2 A. I believe at that time this was our view, sir.

3 Q. Yes, indeed. Doctor back, to what Monsanto knew in
4 fact was the condition of these men, back on the report of
5 doctor -- of his report with reference to Mr. Cunningham, he
6 points out there -- it's reported, is it not, sir, about him
7 going to pieces with his nerves?

8 A. Are you referring --

9 Q. I'm now on Exhibit 1779, Dr. Suskind.

10 A. Yes, sir.

11 Q. Doctor, in 1955 -- strike that -- in 1956 when you
12 testified in front of commission, you knew that Dr. Nestmann
13 had reported that this man said he'd go to pieces with his
14 nerves if he starts to exercise, isn't that correct, sir?

15 A. I didn't see this report before, sir. I had no --

16 Q. Doctor, we have gone through the commission
17 transcripts to establish that you were seeing Dr. Nestmann's
18 reports, and Mr. Cunningham was one of those claimants, was
19 he not, sir?

20 A. He was, sir.

21 Q. You testified with regard to Mr. Cunningham, did
22 you not, sir?

23 A. I -- he was one of the people I examined, sir.

24 Q. You didn't tell the commission, did you, sir, that

1 this man has problems reported by Dr. Nestmann that he's go
2 to pieces with his nerves?

3 A. I can't recall doing that, sir, but that's 30 years
4 ago.

5 Q. It's not in the record here, is it, sir?

6 A. It certainly is not.

7 Q. All right, Doctor. The man went on to describe the
8 problem that he had with his sexual ability, does it not,
9 sir, difficulty with erection? Middle of the page, Doctor,
10 starting with the sentence that says he's had trouble with
11 his sexual life starting in 1951.

12 A. Yes.

13 Q. Doctor, he also described to the doctor that he's
14 got eyes that have been dilating for which he's received
15 treatment, correct, sir, takes medication to bring them down
16 to normal size, correct, sir?

17 A. This is what he told the doctor, sir.

18 Q. He told the doctor in addition that he's seeing Dr.
19 Breisacher for that and getting medicine for it, doesn't it,
20 sir?

21 A. He told the doctor that, sir.

22 Q. Do you have any reason to doubt what he was saying
23 was the truth?

24 A. I have no opinion on that, sir.

1 Q. Doctor, if the eyes are in fact dilating, started
2 dilating in 1952, that's a serious problem, isn't it, sir?

3 A. I have no idea, I'm not an opthamologist, and I
4 can't comment here or anywhere on it.

5 Q. Doctor, if it was occurring, it would be an
6 indication of something going wrong with the central nervous
7 system?

8 A. Not necessarily, sir, no.

9 Q. Could it, Doctor?

10 A. No.

11 Q. It could not?

12 A. No, it doesn't have to be. It could be a --

13 Q. Doctor, I didn't ask you didn't it have to be. I
14 said it could be, didn't I, sir?

15 A. It might be, but remotely, sir.

16 Q. That's what I have asked you.

17 A. Remotely, sir.

18 Q. Doctor, it could be, couldn't it, sir?

19 A. At the moment I would say no.

20 Q. All right, Doctor. But in any event he had the
21 problem and did you ever find out an explanation for it other
22 than dioxin exposure?

23 MR. HEINEMAN: Objection, Your Honor, it assumes he
24 knew about it.

1 A. What's the question, sir?

2 THE COURT: Objection overruled.

3 A. Can you repeat the question? What is the question?

4 (Court reporter read back the last question.)

5 A. I can't answer that question, sir. First of all, I
6 have no idea whether or not any of these things are caused by
7 dioxin. I have no idea.

8 Q. You have no idea?

9 A. I have no idea.

10 Q. All right, Doctor. If you have no idea--

11 A. I would say that in the majority--

12 Q. We can pass on if you have no idea, Doctor, let me
13 finish please, sir. If you have no idea whether or not
14 dioxin can cause these problems, let's pass to the next
15 question.

16 A. Let me finish my answer, sir.

17 Q. My concern in this case is with what dioxin can
18 cause, and if you have no idea --

19 A. Dioxin cannot cause a dilated eye.

20 Q. Oh, then do you have a --

21 A. Oh, I actually do.

22 Q. So when you said you had no idea, you were
23 incorrect, is that right, Doctor?

24 A. No, I was not incorrect. You have.

1 Q. Do you have an idea or not, sir?

2 A. Mr. Carr, you have attempted to confuse me by
3 asking long questions.

4 Q. Doctor, please believe me, I'm incapable of
5 confusing you. Doctor, do you or do you not have an idea
6 whether or not dioxin can cause central nervous system
7 disorders and/or problems with the eyes, including dilation
8 of the eyes?

9 A. Yes, I do.

10 Q. And your judgment, sir, is that it cannot do any of
11 those things?

12 A. I have never heard of--

13 Q. Excuse me, Doctor. Is your judgment that it cannot
14 do any of those things?

15 A. No, I didn't say that. It's in my judgment.

16 Q. Can it do some of those things. If so, which ones
17 in your judgment?

18 A. In my judgment an acute exposure might cause some
19 central-- acute exposure might cause some central nervous
20 system effects, but I have never seen --

21 Q. What effects, Doctor, would those--

22 A. Let me finish, sir.

23 Q. Doctor, I'm not interested in what you've ever
24 seen. I'm interested in your judgment, sir.

1 MR. HEINEMAN: Objection, Your Honor.

2 A. That is my judgment. I make a judgment on what my
3 experience has been and if you have -- if you would have the
4 courtesy to allow--

5 THE COURT: Doctor, counsel for Monsanto was trying
6 to object. If he has an objection to interpose, please let
7 him do so. Give him a chance.

8 MR. HEINEMAN: My objection, Your Honor, was that
9 the witness was asked a question about his opinion and his
10 judgment, and he was in the middle of giving that when Mr.
11 Carr interrupted him again, and I object to it and ask that
12 he be allowed to finish his answer.

13 MR. CARR: Your Honor, I didn't ask him what his
14 experience was. I asked what his judgment was, because once
15 he gave me his judgment. I was going to examine him on that.
16 I didn't ask him what his experience was.

17 THE COURT: Objection is overruled. You may
18 continue please, Mr. Carr.

19 Q. Doctor, what other-- what problems with the central
20 nervous system do you believe dioxin can cause?

21 A. There is evidence that some --

22 Q. Doctor, stop a moment there so we can get on the
23 same question. I'm not asking you whether there is or is not
24 evidence for anything. I'm asking you what central nervous

1 system disorders in your judgment can dioxin cause?

2 A. In my opinion, sir, none.

3 Q. All right.

4 A. Okay.

5 Q. All right.

6 A. Okay.

7 Q. All right. Doctor, now, the problem that this man
8 had he also had in vision problems that started in '49 or
9 '50, isn't that right, sir? He says he always had good
10 vision, sir? Do you see that, sir, third paragraph from the
11 bottom that starts past history, he says that his vision was
12 good until he had the accident and has needed -- I can't read
13 that.

14 A. Glasses.

15 Q. Glasses since '49 or 1950, do you see that, sir?

16 A. Yes.

17 Q. He dates his problem with his eyes, his vision to
18 the exposure, does he not, sir?

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

21 THE COURT: Yes, you may.

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

24 MR. HEINEMAN: This word looks to me like health,

1 not vision.

2 THE COURT: Which one are you on?

3 MR. HEINEMAN: Past history, he has always had good
4 health until the time, not vision.

5 THE COURT: The second one talks about vision. I
6 think it does say that. After that he says his vision was
7 good until he had the accident and has needed glasses since
8 1949 or 1950.. I think that probably does say health on top.

9 MR. CARR: Fine with me.

10 MR. HEINEMAN: All right.

11 THE COURT: Okay. Let's go on.

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

13 Q. Doctor, that paragraph says that he always
14 something had, oh, he has always had good health until the
15 time of the accident, I guess, the time of his accident. He
16 says that his vision was good until he had the accident and
17 has needed glasses since '49 or '50, is that correct, sir?

18 A. That's what this record reads, sir.

19 Q. He also says he wasn't nervous before the accident,
20 doesn't he, sir?

21 A. He said he denies nervousness prior to the
22 accident, yes.

23 Q. Isn't that saying that he wasn't nervous before the
24 accident?

1 A. Yes, sir.

2 Q. Doesn't he also say that he has nocturia two or
3 three times a night, that is, he has to go to the bathroom
4 two or three times a night?

5 A. Where are you reading from, sir?

6 Q. The last paragraph on that page, Doctor. He has
7 had nocturia two or three times?

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

9 Q. But this was thought due to his nervousness?

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

11 Q. I can't make out what the rest of that is, there's
12 a number over it. But he still gets -- he gets what? He
13 gets di something in his nervous spells? Can you make that
14 out, Doctor?

15 A. No, I can't.

16 Q. Oh, shortness of breath, he gets shortness of
17 breath, dyspnea in nervous spells, correct, sir?

18 A. It might be dyspnea, it's covered by --

19 Q. He has a dull ache in his chest, which he notes
20 with the nervous spells, is that correct, sir?

21 A. That's what he claims, sir.

22 Q. Top of the next page he tells us things that I
23 can't make out in the first couple of lines, but in the third
24 line he says nerves are bad. He states he has blacked out

1 something, oh, as long as two minutes at a time, and this is
2 a symptom that has only started since January 10th, 1955, and
3 he's had it eight or ten times since then, correct, sir?

4 A. Correct, sir.

5 Q. This doctor also performed a neurological
6 examination as far as reflexes, did he not, sir?

7 A. Correct, sir.

8 Q. He found that his ankle jerks were absent, didn't
9 he, sir?

10 A. Correct, sir.

11 Q. Doctor, he concluded with saying that the man had a
12 moderately severe or severe psychoneurosis, correct, sir,
13 that was his diagnosis?

14 A. That was the diagnosis on this man, sir.

15 Q. Now, he didn't say impression there, did he, sir?

16 A. No, sir.

17 Q. He said his diagnosis there, correct, sir?

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

19 Q. The next report is on Donald Stover, is it not,
20 sir? It's one of our persons that you re-examined in 1979, is
21 that correct, sir?

22 A. I believe so.

23 Q. Doctor, he reports according to Dr. Nestmann that
24 he -- his chief complaints he stays tired, he can't do a hard

1 day's work and he has hemorrhoids, correct, sir?

2 A. Correct.

3 Q. Doctor, he points out that he has not-- he tells
4 the doctor he hasn't been well for the past two, two and a
5 half, three years, is that correct, sir?

6 A. Yes, yes, sir.

7 Q. And he says after enduring the time he had the
8 rash, he noticed he had nervous spells, would get overly
9 tired, and he's had to force himself to do his work ever
10 since, isn't that right, Doctor?

11 A. That's the way the record reads, sir.

12 Q. So if that is true, that means the man has gone to
13 work, but he's forced himself to do it?

14 A. That's what he claims, sir.

15 Q. If that is true, is that right, sir?

16 A. I don't know if it's true, but that's what he
17 claims.

18 Q. Doctor, I asked you if that is true, that means the
19 man has forced himself to go to work, doesn't it, sir?

20 A. That's what he says he's done. He says he's forced
21 himself to do his work ever since.

22 Q. Doctor, what did you understand I was asking you?

23 A. You asked me whether he -- didn't he force himself
24 to do his work.

1 Q. No, I asked you if it's true, sir?

2 A. I said yes.

3 Q. I asked you if it's true, sir.

4 A. I don't know, sir.

5 Q. Doctor, I'll ask you if this is true, if what he
6 told the doctor is the truth, this man has had real problems
7 doing his job since the time of the exposure, has he not,
8 sir?

9 A. No, sir.

10 MR. HEINEMAN: Excuse me. Your Honor, I'll object
11 to the form of the question as asking the witness to assume
12 something that's not in evidence.

13 THE COURT: Objection is overruled.

14 Q. Does he say that, Doctor?

15 A. Does he say what, sir?

16 Q. That he's had real problems doing his work since
17 the accident?

18 A. He doesn't say it that way, sir.

19 Q. No, indeed, he doesn't say it that way, but that's
20 the essence of what he says, isn't it, sir?

21 A. No.

22 Q. Doctor, if you can't, if you stay tired and you
23 can't do a hard day's work and you have to force yourself to
24 work, you get overly tired, isn't that a real problem?

1 A. If it's true, sir.

2 Q. That's what I said, Doctor, if it's true, that's a
3 real problem, isn't it, sir?

4 A. If it's true, and I don't think it is here.

5 MR. CARR: Your Honor, would you ask the jury to
6 disregard what the doctor said. I didn't ask him what he
7 thought.

8 THE COURT: I think it was not responsive to the
9 question. The jury is ordered to disregard the last remark
10 by the doctor.

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

13 THE COURT: Yes, you may.

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

16 MR. HEINEMAN: He asked the man to assume something
17 on which there's no evidence at all, and that is that it's
18 true. All right. He asked the plan to assume it's true and
19 then says if it's true, then such and such would be the
20 case. The man says if it's true, that would be the case, but
21 I don't think it's true.

22 THE COURT: Right, and that last part was not at all
23 responsive to the question. It was not called for in the
24 question, I've already overruled your objection as far as it

1 being -- not being in evidence, and it's obvious from the
2 record what happened. He interjected this as he's
3 interjected a million other things before, and it's outside
4 the parameter of the question that was asked of him involving
5 having to go back and involves a conference at the bench.
6 It's just killing time. Your objection is overruled.

7 MR. HEINEMAN: Your Honor, all right, as long as --

8 THE COURT: The objection is overruled.

9 MR. HEINEMAN: It's clear that I'm making the
10 objection, and the Court's overruling my objection.

11 THE COURT: It is.

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

13 Q. Doctor do you think when I asked you that last
14 question that I asked your opinion as to whether or not it
15 was true or not? Doctor, are you listening to me?

16 A. Yes, I am listening, sir.

17 Q. Would you answer my question?

18 A. I'm thinking, sir.

19 Q. Sir?

20 A. I'm thinking.

21 Q. Can you answer my question?

22 A. No, I don't believe so.

23 Q. You know what I asked you was whether or not -- I
24 asked you if this is true, that's a real problem is what I

1 asked you, didn't I, Doctor?

2 A. If it is true, yes, sir.

3 Q. And if it is true, it is a real problem, isn't it,
4 sir?

5 A. If it is true, sir, yes, sir.

6 Q. You have advised us earlier that you thought these
7 men were truthful, didn't you, sir?

8 A. Not in this case, sir.

9 Q. Doctor, didn't I ask you about Donald Stover when
10 we went through his problems and didn't you--

11 A. When I examined him, sir.

12 Q. Didn't you tell me at that time that you thought he
13 was truthful?

14 A. When I examined him, yes, sir.

15 Q. Yes, that's right, sir.

16 A. But this is a different examination, this is an
17 examination --

18 Q. Doctor, all I'm going on is your judgment that Mr.
19 Stover told you the truth when he talked to you.

20 A. When he talked with me I believed--

21 Q. That's all I'm asking you. You thought he was a
22 truthful man, didn't you, sir?

23 A. I believe that in most instances he was.

24 Q. Excuse me, Doctor, you thought he was a truthful

1 man, didn't you, sir? Didn't you, sir?

2 MR. HEINEMAN: Object. It's been asked and
3 answered.

4 THE COURT: Objection overruled.

5 A. I thought he believed he was telling me the truth.

6 Q. No, Doctor, that isn't what I've asked you. I
7 asked you you told me that he was a truthful man in you're
8 judgment, you said that in the Federal Court at Nitro as
9 well, did you not, at Charleston, didn't you, sir?

10 A. What is the last question?

11 Q. My question is, Doctor, did you not --

12 A. What was the last part of the last question?

13 THE COURT: Excuse me, Doctor, he's reasking the
14 question for your benefit. Please listen.

15 Q. Did you not testify that you thought Mr. Stover was
16 a truthful man.

17 THE COURT: Doctor, please answer the question.
18 It's been asked twice.

19 A. Yes, I will, sir.

20 Q. Doctor, you're looking through your notes. Have
21 you made notations on what you've testified to earlier?

22 A. I made notations, sir, on the records that I have
23 of Mr. Stover.

24 Q. Are you now looking to see if you testified in this

1 case that he was truthful?

2 A. No, I'm not doing that.

3 Q. My question refers, Doctor, to whether or not you
4 told you this jury that you think the man is truthful or was
5 truthful when you saw him.

6 MR. HEINEMAN: Objection, your Honor. I thought the
7 reference was to the Nitro testimony?

8 A. You asked me about Nitro, and that's why I asked
9 about the question, cause I didn't testify about Stover.

10 THE COURT: Objection is overruled. Ask the
11 question again please.

12 Q. Because it gave you problems, Doctor, I withdrew
13 the Nitro question, I rephrased the question.

14 A. I didn't hear you withdraw it, sir.

15 Q. Doctor, did you hear my question? Didn't you
16 testify here that Mr. Stover is a truthful man?

17 A. I believe I said that he was in most instances
18 truthful, yes.

19 Q. Now, Doctor, he was also found by the examination
20 of this doctor to have one plus reflexes, didn't he, sir?

21 A. One plus reflexes where, sir?

22 Q. At the ankle.

23 A. Yes, sir.

24 Q. And we don't need to go through that again to show

1 what that would indicate, do we, sir?

2 A. No, sir, we do not.

3 Q. Doctor, you had no line on what the four plus, is
4 but there is four plus on abdominals, and we don't need to go
5 through on what four plus means, do we, sir?

6 A. I don't believe we do any longer, sir.

7 Q. Doctor, he ended up with a diagnosis, did he not,
8 that of severe psychoneurosis, that is, Dr. Nestmann's
9 diagnosis was among others severe psychoneurosis?

10 A. Correct, that was a Nestmann diagnosis, sir.

11 Q. Yes. Doctor, with regard to Mr. Saxton, whom you
12 have seen before, he was seen in 1956, wasn't he, sir, March
13 15 -- could be May 15 -- it looks like March 15, 1956, is
14 that correct, sir?

15 A. It looks like March 15, 1956, sir.

16 Q. His chief complaints to Dr. Nestmann at that time
17 was he feels weak and run down short-winded frequently, back
18 bothers him when he does heavy work, correct, sir?

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

20 Q. Doctor, he also said to the doctor that he had
21 seen, that he's had that weak and run down feeling for about
22 four years, stays the same, didn't he, sir? You see that,
23 Doctor, the first sentence, weakness and run down feeling for
24 about four years and stays about the same?

1 A. Yes, I do, sir.

2 Q. Doctor, that's certainly -- four years from '56
3 would be 1952, wouldn't it, sir?

4 A. Yes, sir.

5 Q. That's a problem that would give him great concern,
6 wouldn't it, sir?

7 A. Yes.

8 Q. And he went to at least ten doctors, and Dr. O'Dell
9 -- Dr. O'Dell, by the way, seeing these men along with Dr.
10 Nestmann in behalf of the company, isn't he, sir?

11 A. I don't know how these were done.

12 Q. You don't know that?

13 A. No.

14 Q. I'm sorry?

15 A. I don't know how these were done, whether O'Dell
16 did examinations for the company or the commission. I have
17 no idea, sir, but apparently in this instance--

18 Q. Doctor, you read the reports, he's not part of the
19 commission examining board, is he, sir? He's a Monsanto paid
20 examiner, isn't he, sir?

21 A. He's a physician who examined.

22 Q. For Monsanto?

23 A. At the request of Monsanto.

24 Q. Yes. Now, Doctor, he was told by Dr. O'Dell that

1 his trouble was too much coffee, correct, sir?

2 A. That is what this records says, sir.

3 Q. Doctor, he also describes the shortwindedness that
4 began four years ago, he also describes the back problem that
5 started five years ago, and describes heavy work causes him
6 discomfort, however, all heavy work will not do it, gets pain
7 lasting 10 to 35 minutes, correct, sir?

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

10 THE COURT: Yes, you may.

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

13 MR. HEINEMAN: I object to Mr. Carr paraphrasing
14 this document. He reads something like the first three words
15 of a sentence where the guy says he's got a problem and then
16 leaves off the part where it says but it's less frequent now
17 or it's gone away or something like that. I object to him
18 reading in snips and snags from this thing, and if he's going
19 to read it to the doctor, then he ought to read it to him, and
20 I object to the paraphrasing.

21 MR. CARR: Your Honor, the doctor has the report,
22 each juror has the report, and I'm trying to move the
23 examination along.

24 THE COURT: The jury does have the report. Your

1 objection is overruled.

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

3 Q. Doctor, he had these complaints that he made to Dr.
4 Nestmann, did he not, sir?

5 A. Yes.

6 Q. Doctor, he also stated that his right leg feels
7 numb at times, correct, sir? You see that, sir, under the
8 words, following the words system review, right leg feels
9 numb at times, feels like --

10 A. Yes, I see that, sir.

11 Q. Doctor, he also has had his reflexes tested by Dr.
12 Nestmann as shown on the next page, has he not, sir?

13 A. Yes.

14 Q. All of his deep tendon reflexes are all one plus,
15 aren't they, sir? Doctor, you see that?

16 A. That's correct, sir.

17 Q. Knee jerks, ankles jerks, biceps and triceps are
18 all one plus?

19 A. That's correct, sir.

20 Q. And again we've agreed on what one plus means, have
21 we not, sir?

22 A. I'm not sure, but we'll leave that as it is, sir.

23 Q. Doctor, he was found by doctor not to be
24 psychoneurotic, did he not, sir, he found that there was

1 psychoneurosis present-- no, he said it was not apparent
2 there was psychoneurosis present, isn't that right, sir?

3 A. That is a statement which Dr. Nestmann made.

4 Q. Doctor, the --

5 A. The diagnosis is there, too.

6 Q. Doctor, the next person examined is a Haning --
7 Vaning, I can't make that out. In any event, it's an
8 employee of Monsanto, is it not, sir, otherwise it wouldn't
9 be given to me.

10 A. I don't know, sir, I can't read it either.

11 Q. Doctor, this person, who may be Haning H-A-N--
12 there was a Haning, wasn't there, sir, you saw a Haning, did
13 you not, sir?

14 A. I examined a Haning in 1956 at the commission
15 hearing.

16 Q. I'm sorry?

17 A. At the commission hearing.

18 Q. And this is an employee --

19 A. I don't know whether it's the same Haning, but I--

20 Q. It may not be, but at any rate it is a Haning,
21 isn't it, sir?

22 A. Yes, sir.

23 Q. Mr. Haning has legs that bother him a lot, knees
24 ache, feet and ankles, something, I can't make that out,

1 ankles ache, feet and ankles ache, is that right, sir?

2 A. I believe that might be the --

3 Q. He has bottom of feet that are always -- oh, no,
4 bottom of feet stay numb all the time?

5 A. That's what this reads, sir I, believe.

6 Q. Doctor, there is certainly on these men seen by Dr.
7 Nestmann there's a lot of similar problems related, aren't
8 there, sir?

9 A. They sound similar, sir.

10 Q. His eyes bother him, he's seeing Dr. Breisacher as
11 well, is he not?

12 A. According to this record, yes, sir.

13 Q. He's also had sexual problems getting erections for
14 four or five years, he has the desire, but he has no ability
15 to perform, isn't that correct, sir, is that what he says?

16 A. He claims that, sir, yes.

17 Q. Doctor, you emphasize the word claims as if you
18 don't believe this man. Do you believe he's lying, sir?

19 A. I don't know, sir.

20 Q. Well then --

21 A. I didn't take the history, sir.

22 Q. All right, Doctor. Then this is what he states, he
23 doesn't put it in the form of a claim, it's a complaint of
24 his, isn't it, sir?

1 A. It's the same, sir.

2 Q. Doctor, you think a complaint is the same thing as
3 a claim?

4 A. It's one of the -- the two words are used often
5 synonomously by doctors taking a history, sir.

6 Q. Doctor, when somebody says they claim something,
7 you ordinarily mean that it's not necessarily true?

8 A. Not necessarily so.

9 Q. Isn't that the way it's interpreted? I claim --

10 A. Neither is a complaint, sir.

11 Q. These are described--

12 A. Neither is a complaint, sir.

13 Q. Doctor, these are described as chief complaints and
14 not as chief claims, aren't they, sir?

15 A. They are, and it's the same thing, sir.

16 Q. Doctor, you think a complaint and a claim is the
17 same?

18 A. In the parlance of a physician, yes, sir.

19 Q. Doctor, why is it that I never read reports where
20 they say chief claims? They always say chief complaints or
21 complaints.

22 A. You will see, however, that the patients may -- in
23 the doctor's record the patient claims that, it's a very
24 common usage, sir.

1 Q. But this man isn't described as claiming this, is
2 he, sir? He's described by the doctor--

3 A. It's the same thing, sir.

4 Q. Excuse me, Doctor, he's described by the doctor as
5 making these complaints, isn't he, sir?

6 A. Correct, sir.

7 Q. He also says he doesn't feel good at any time,
8 doesn't he, sir?

9 A. That what's he's complaining about.

10 Q. Doctor, this problem that this man has had of not
11 feeling good at any time, do you think that that just might
12 interfere with his every day enjoyment of life, take the edge
13 off of enjoyment?

14 A. I have no idea.

15 Q. If it's true, Doctor, don't you have an idea?

16 A. I have no idea, sir.

17 Q. Doctor, you mean to say that you don't have an idea
18 that if a person goes around not feeling good at any time,
19 that that would detract from his ability or from his
20 enjoyment of life? You do have an idea of that, don't you,
21 sir? You're just telling us that you say you have no idea.
22 In point of fact you do have an idea, don't you, sir?

23 A. If this is true, sir.

24 Q. Yeah, that's right, sir, if it is true, it does

1 take the edge out of the enjoyment of life, doesn't it, sir?

2 A. It's a big assumption and if it's true, sir.

3 Q. Doctor, I didn't ask you is it a big assumption or
4 a small assumption. I asked you if this man is telling the
5 truth, if this is true, that takes the edge out of the
6 enjoyment of life, doesn't it, sir?

7 A. If it is true, it should, yes, sir.

8 Q. Doctor, the man also testified as to when he
9 started or rather described to the doctor as when he started
10 having the aches and pains, isn't that right, sir? He says
11 that the aches and pains were worse then, that is, shortly
12 after the accident, but they are now more areas involved,
13 isn't that right, sir? Do you see that, sir? You do see
14 that, don't you, Dr. Suskind?

15 A. No, sir, I do not. I see his past history.

16 Q. Sir?

17 A. His past history is, I believe, provides a clue as
18 to some of the problems that he has, sir.

19 Q. Doctor, don't you read as I'm reading that the
20 pains were worse then, but there are more areas involved
21 now? Are you on the same page that I'm on, Doctor?

22 A. I may not be, sir. What page are you on?

23 Q. I'm on the first page of the report of Dr. Nestmann
24 referring to Mr. Haning, in the first full paragraph under

1 the part that says chief complaints in the paragraph called
2 present illness. Are you there, sir?

3 A. Yes, sir.

4 Q. And it does say as I have read, doesn't it, sir?

5 A. What paragraph are you reading from, second?

6 Seriously, I'm not following you, sir.

7 Q. Doctor, aren't you listening to my questions?

8 A. Yes, I am, sir, but I'm not able to follow you on
9 this page, sir.

10 Q. Doctor, what you're doing is you're reading ahead
11 and trying to anticipate a problem, aren't you, sir, rather
12 than a question?

13 A. No, I'm not, no, I'm just looking for your
14 quotation, sir.

15 Q. Doctor, do you recall I just asked you about he
16 does not feel good at any time?

17 A. I see that, sir.

18 Q. I went right to the next paragraph. You see that,
19 Doctor?

20 A. Right.

21 Q. And I asked you then it describes pains that were
22 worse shortly after the accident, but now there are more
23 areas involved. Isn't that there, sir?

24 A. No, I read it a little differently, sir.

1 Q. Well, how do you read it, Doctor?

2 A. The sentence that you're referring to the pains
3 were worse then.

4 Q. Yes.

5 A. But there are more areas involved now.

6 Q. That's exactly what I said.

7 A. I don't know what he means by then, whether it's
8 two weeks, four weeks after the accident or a month after the
9 accident or two months after the accident. It's a little
10 difficult to tell from this description, sir.

11 Q. Doctor, he's describing the aches and pains that he
12 had in a period of time close to the accident, isn't he, sir?

13 A. Yes, I believe so.

14 Q. Yes. And he tells you that the pains were worse
15 then, doesn't he, sir, in that period of time?

16 A. That's what he said, yes.

17 Q. But now there are more areas involved, correct, sir?

18 A. Yes, sir, that's what he said.

19 Q. Now at the present time. Doctor, he describes the
20 worries about his knees and hip, and his knees worry him at
21 night and his right hip feels insecure while he walks, isn't
22 that correct, sir?

23 A. That's true, sir.

24 THE COURT: Gentlemen, could you approach the bench

1 for a minute please?

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

4 THE COURT: Is this a good point to break? It's
5 about quarter till? I want a report in the morning on the
6 production we talked about earlier. We'll break now and
7 start tomorrow morning.

8 MR. CARR: Your Honor, if they have some of these
9 records in their office I'd like to have them this evening.

10 THE COURT: That's right.

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

12 THE COURT: Ladies and gentlemen, we're going to
13 break for the day at this time. We'll resume tomorrow
14 morning at 9:30. I would remind you as I do on any overnight
15 break besides the regular admonishments that I've given you
16 during the day that you're not to read, listen to, or watch
17 anything about this case in particular or subject matter in
18 general in any of the media. Thank you for your attention
19 and cooperation. Court's adjourned.

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1 STATE OF ILLINOIS)
2) SS.
3 COUNTY OF ST. CLAIR)
4

5 I, MARSHA SCHNIPPER, certify the foregoing to be a
6 true and accurate transcript of the testimony and proceedings
7 in the above-entitled cause.

8 Dated this 24th day of March, 1986.
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13 Marsha Schnipper
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1 STATE OF ILLINOIS)
2) SS.
3 COUNTY OF ST. CLAIR)
4

5 I, RICHARD P. GOLDENHERSH, one of the Judges in and
6 for the Twentieth Judicial Circuit, do hereby certify that
7 the foregoing transcript is a true and correct transcript of
8 the proceedings had in said cause.

9 Dated this ____ day of March, 1986.

10
11
12 _____
13 RICHARD P. GOLDENHERSH, JUDGE
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